IN THE MATTER OF THE CLAIM	*	**BEFORE ROBERT B. LEVIN,**
OF DAWN M. MILLER,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF JUSTIN ROY,	*	
T/A BLUESTAR HOME	*	**OAH No.: LABOR-HIC-02-21-25220**
INNOVATION LLC,	*	**MHIC No.: 20 (75) 1227**
RESPONDENT	*	

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PROPOSED DECISION

STATEMENT OF THE CASE

On January 25, 2021, Dawn M. Miller (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $20,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Justin Roy, trading as Bluestar Home Innovation LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to

411 (2015). On October 22, 2021, the MHIC issued a Hearing Order on the Claim.[1] On November 2, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.[2]

On January 18, 2021, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent failed to appear.

After waiting over fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. On November 3, 2021, the OAH sent a Notice of Hearing by both United States mail certified delivery as well as United States first class mail to the Respondent's home address on record with the MHIC and the OAH. [3] COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 18, 2021, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The certified mail receipt (green card) for the certified mailing to the Respondent's home address at Derby Farms Drive was signed for delivery on November 6, 2021, with "CO19R12" written in the signature line. The first class mailing to the Respondent's home address at Derby Farms Drive was not returned by the Post Office.

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[1] The MHIC's hearing order identifies the claimants as both Dawn Miller and her daughter Brook Miller. The claim was filed solely in Dawn Miller's name. Accordingly, I have captioned this proposed decision as shown above. Both Dawn Miller and Brook Miller testified at the hearing in this matter.
[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[3] Derby Farms Drive in Severn, Maryland. *See* Fund Ex. 2.

On November 3, 2021, the OAH also sent the Notice of Hearing by both United States mail certified delivery and United States first class mail to the Respondent's trade address on record with the MHIC and the OAH.[4] There is no indication in the file as to whether the certified mailing to the Respondent's trade address at Williams Drive was either received or returned. The first class mailing to the Respondent's trade address at Williams Drive was returned as undeliverable.

The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. As the certified mailing of the Notice to the Respondent's home address at Derby Farms Drive was signed for delivery and the first class mailing to the home address at Derby Farms Drive was not returned by the Post Office, I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

CL. Ex. 1 - Complaint form with attached Claimant's narrative, May 22, 2020

CL. Ex. 2 - List of withdrawals from Claimant's Bank of America account, various dates

[4] Williams Drive in Pasadena, Maryland. *See* Fund Ex. 2.

CL. Ex. 3 - Email from Lowe's Home Improvement (Lowe's) to Claimant, April 27, 2020

CL. Ex. 4 - Email chain between the Claimant and the Respondent, May 7 – 13, 2020

CL. Ex. 5 - Agreement between the Claimant and the Respondent, February 28, 2020

CL. Ex. 6 - Respondent's kitchen design renderings, undated

CL. Ex. 7 - DMV Kitchen & Bath Remodeling Contract with the Claimant, May 7, 2020

CL. Ex. 8 (a-v) - Photographs, undated

CL. Ex. 9 (a-aa) - Screenshots of text messages between the Claimant and the Respondent, March 27, 2020 – May 7, 2020

The Respondent did not appear and offered no exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, November 3, 2021, with attached Hearing Order, October 22, 2021

Fund Ex. 2 - MHIC licensing history for the Respondent, December 10, 2021

Fund Ex. 3 - Letter from Joseph Tunney, Chairman, MHIC, to the Respondent, January 27, 2021, with attached Home Improvement Claim Form, January 25, 2021

Testimony

The Claimant testified and presented the testimony of the following witnesses: Brook Miller, the Claimant's daughter, and James Cherry, the Claimant's friend.

The Respondent did not present witnesses.

The Fund did not present witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-118985.

2. The Respondent's MHIC license was suspended on September 22, 2021, and again on October 18, 2021, as a result of Fund payouts to other claimants.

3. On or about February 28, 2020, the Claimant and the Respondent entered into a written contract (Contract) for remodeling the kitchen in the Claimant's residence.

4. The agreed-upon Contract price was $15,200.00, of which the Claimant paid the Respondent a total of $14,500.00.

5. The Respondent's scope of work as described in the Contract required the Respondent to: (a) remove the wall dividing the kitchen and the dining room; (b) replace all kitchen appliances with new appliances; (c) replace the kitchen countertop; replace the kitchen cabinets; (d) install new tile flooring in the kitchen and dining room; (e) redesign the kitchen layout; (f) install a backsplash; (g) refinish the drywall; (h) run new plumbing and electrical; (i) vent the microwave hood range; (j) paint the entire kitchen, (k) install new crown molding and floor molding, (l) replace light fixtures; and (m) install a new garbage disposal.

6. The Contract did not specify the starting and completion dates for the Respondent's work.

7. The Respondent started work on March 26, 2020, by working on the kitchen and dining room floors.

8. The Respondent initially sent a three person crew to perform the work but by April 17, 2020, the crew was reduced to one worker. That worker told the Claimant that the

Respondent had not paid him for two weeks and he was not sure he would return to the job because the Respondent had not paid him and was unresponsive to his concerns.

9. The Respondent's work was unworkmanlike, inadequate and incomplete, in that: (a) the flooring tiles were uneven and cracking; (b) mortar came out between the tiles; (c) the floor was not reinforced and screwed down properly; (d) the countertops did not align properly; (e) cabinets were not level and square; (f) a plumbing valve was incorrectly installed inside a wall; (g) the dishwasher did not fit; (h) the Respondent's electrical work caused the Claimant's HVAC system to lose power, resulting in problems with the bathroom water pressure and temperature; (i) the Respondent failed to redesign the kitchen layout; (j) the Respondent failed to install a water line for the refrigerator; (k) there were gaps in the drywall; (l) the Respondent failed to vent the microwave hood range to the outside; (m) the Respondent failed to paint the entire kitchen; (n) the Respondent failed to install crown and floor molding; (o) the Respondent replaced two recessed lighting fixtures which were dangling from the ceiling; and (p) the Respondent failed to install a new garbage disposal.

10. The Claimant terminated the Respondent by text message on April 30, 2020.

11. On May 6, 2020, the Respondent met with the Claimant at her home. The Claimant asked the Respondent for a $12,000.00 refund and proposed a payment plan. The Respondent said she deserved compensation but that he would need a longer payment plan. He never provided his proposed payment plan.

12. The Respondent did not refund any money to the Claimant. He became unresponsive to her attempts to communicate with him.

13. The Claimant later contracted with DMV Kitchen & Bath (DMV) to correct the Respondent's deficient work and complete the kitchen remodeling job. The total price under the DMV contract was $19,375.00, which the Claimant paid in installments.

14. In addition to the $19,375.00 the Claimant paid DMV, she paid Lowe's $3,027.05 for kitchen appliances that the Respondent was required, but failed, to obtain and install under the Contract.

15. DMV performed the work called for under its contract with the Claimant, including satisfactorily installing the appliances the Claimant bought from Lowe's.

16. The Claimant is not a relative, employee, officer, or partner of the Respondent; she is not related to any of the Respondent's employees, officers, or partners.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant showed through credible testimony and photographic evidence that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. Brook Miller, the Claimant' daughter, credibly testified that the removal of the wall dividing the kitchen and dining room was the only item the Respondent completed. He failed to replace the Claimant's appliances. His workers caused electrical power, HVAC, and plumbing problems. The countertop he installed was incorrectly cut and was not level. The new tile he installed was uneven, popping up and cracking. The drywall he installed had gaps. He failed to vent the microwave hood range to the outside. He did not paint the kitchen. He replaced two recessed lighting fixtures incorrectly and left them dangling from the ceiling. The Claimant fired the Respondent before he attempted to install crown and floor molding.

Brook Miller further testified that a crew member told her and her mother that the Respondent stated he was losing money on the job and had not paid the crew. The worker said the crew would not be able to return and complete the job. The Claimant terminated the Respondent on April 30, 2020. The Claimant and Brook Miller met with the Respondent on May 6, 2020. He agreed the Claimant's payment should be refunded and offered to provide a payment plan but he never refunded any money and never provided a payment plan.

Brook Miller's account of the Respondent's deficient Contract performance was substantiated by the photographs in CL. Exs. 8 and 9. The photos depict numerous unworkmanlike, inadequate or incomplete aspects of the Respondent's work. Among other things, they show that the flooring did not meet the wall or door; tile and grout lines were uneven; cabinets were not flush with the wall; the countertop was improperly cut; the vent was not installed; the lazy Susan was not installed flush; wires were left dangling from the electrical panel; and the Respondent's crew left debris in the house.

The Claimant's next witness was James Cherry, her friend who is in the construction business. Mr. Cherry inspected the kitchen using a level and tape measure and credibly testified that the cabinets did not fit in the space allotted, causing the countertop to buckle. He noticed the flooring tiles were uneven, starting to crack and mortar was starting to come out. He also observed that the Respondent incorrectly installed a plumbing valve inside a wall.

Finally, the Claimant testified that after she terminated the Respondent's services she obtained estimates from ten contractors to compete the renovation but only three were willing to take on the project because of the kitchen's condition. She engaged DMV to correct and complete the kitchen renovation. She is satisfied with their performance. The Complainant paid DMV $19,375.00. She also paid Lowe's $3,027.05 for the kitchen appliances, which DMV installed. Testifying that she was devastated by the experience, the Claimant requested a $17,500.00 award from the Fund, which she said represented the $14,500.00 she paid the Respondent plus the $3,027.05 (less $25.05) she paid Lowe's.

The evidence also establishes that no legal impediments bar the Claimant from recovering from the Fund. The home improvement work was performed on the Claimant's residence. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not unreasonably reject any efforts by the Respondent to resolve the claim, as the Claimant requested a refund, which the Respondent said would have been appropriate but never made. There is no evidence that the Contract between the Claimant and the Respondent contains an arbitration provision. The Claimant timely filed her Claim with the MHIC on January 25, 2021. Finally, the Claimant has not taken any other legal action to recover monies. Md. Code Ann.,

Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1). The Claimant is therefore not statutorily precluded from collecting from the Fund.

The credible testimony of the Claimant, her daughter and Mr. Cherry shows that the Respondent performed an inadequate, unworkmanlike, and incomplete home improvement. The photographs in evidence show numerous deficiencies in the Respondent's work. *See* CL. Exs. 8, 9. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. The Respondent performed some work under the Contract, and the Claimant retained another contractor to complete and remedy that work. Accordingly, the following formula set forth in COMAR 09.08.03.03B(3)(c) appropriately measures the Claimant's actual loss:

> If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

This formula, however, must be read in conjunction with section 8-405(e)(5) of the Business Regulation Article, which limits the amount of an award from the Fund by providing

that the MHIC "*may not award from the Fund...an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.*" (Emphasis added.)

The total Contract price was $15,200.00. The Claimant paid the Respondent $14,500.00. She paid $19,375.00 to DMV and also paid $3,027.05 to Lowe's, for a total of $22,402.05 to correct and complete the job. Adding $14,500.00 (the amount the Claimant paid the Respondent) to $22,402.05 (the total amount paid to DMV and Lowe's) yields $36,902.05. Per COMAR 09.08.03.03B(3)(c), subtracting the $15,200.00 Contract price from $36,902.05 (the amount paid the Respondent plus the correction/completion payments) yields $21,702.05.

Using the COMAR 09.08.03.03B(3)(c) formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	$ 14,500.00
+ Amount paid to correct or complete the work	$ 22,402.05
	$ 36,902.05
- Amount of original contract	$ 15,200.00
Amount of actual loss	$ 21,702.05

The Claimant paid $14,500.00 to the Respondent. Under Bus. Reg. section 8-405(e)(5), she is not entitled to recover more than $14,500.00 from the Fund. The Fund recommended an award of $14,500.00 to the Claimant, the maximum legally permissible award under the circumstances of this case.

I agree, and conclude that the Claimant is entitled to a $14,500.00 award from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $14,500.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2021); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $14,500.00 from the Fund.

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $14,500.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;[5] and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Robert B. Levin

March 11, 2022
Date Decision Issued

Robert B. Levin
Administrative Law Judge

RBL/emh
#197072

[5] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 23rd day of May, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Heather Connellee

Heather Connellee
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION