

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JESUS ALVAREZ FLORES,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF MICHAEL</p> <p>WHEATLEY,</p> <p>T/A SAFELOCK PROPERTIES, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JEROME WOODS, II,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-21-08253</p> <p>* MHIC No.: 20(05)50</p> <p>*</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 3, 2019, Jesus Alvarez Flores (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 \$61,832.44 in actual losses allegedly suffered as a result of a home improvement contract with Michael Wheatley, t/a Safelock Properties, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

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(2015).¹ On March 29, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on May 26, 2021 at the OAH Headquarters in Hunt Valley, Maryland, via the WebEx video platform. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant and Respondent represented themselves.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (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 on behalf of the Claimant:

Clmt. Ex. 1 - Fire Damage Description, October 7, 2018

Clmt. Ex. 2 - Disbursement Check Vouchers, December 13, 2018, \$10,000.00; February 21, 2019, \$29,937.50; June 4, 2019, \$21,894.94

Clmt. Ex. 3 - Building Permit, March 27, 2019

Clmt. Ex. 4a - Notice of Trial Date, April 10, 2019; Letter from Todd Parks, To Whom It May Concern, January 3, 2019

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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Clmt. Ex.4b - Notice of Recorded Judgment, June 12, 2020; Notice of Recorded Judgment, June 12, 2020

Clmt. Ex. 5 - Complaint Form, July 11, 2019

Clmt. Ex. 6 - Letter from Jennifer Grimes to Claimant, July 22, 2019

Clmt. Ex. 7 - Deed Transfer, February 27, 2004 and March 4, 2004

Clmt. Ex 8 - Circuit Court for Dorchester County, Maryland, Order, June 10, 2020

Clmt. Ex 9 - License Status report, undated

Clmt. Ex. 10- P.E Moore and Sons Construction, LLC Estimate, January 28, 2020

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1a - Email from Derek Hill, Esq. to Mr. London, May 14, 2021

Fund Ex. 1 - Notice of Remote Hearing, April 16, 2021

Fund Ex. 2 - Hearing Order, March 25, 2021

Fund Ex. 3 - Licensing History, April 28, 2021

Fund Ex. 4 - MHIC Claim Form, December 3, 2019

The Respondent did not offer any exhibits for admission into evidence.

Testimony

The Claimant's wife Maria Rubio testified for the Claimant. The Fund presented no 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 05 134000.

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2. On March 21, 2018, the Claimant experienced fire damage at his home at 810 Locust Street, Cambridge, Maryland 21613 (Property). The fire damaged the soffit, fascia, roof, and essentially destroyed the interior of the Property.

3. As a result of the fire damage, the interior framing, drywalls, flooring, plumbing, fixtures, and exterior roof needed to be replaced.

4. On October 7, 2018, the Respondent and the Claimant entered into a contract for \$159,750.00. The scope of the work for the contract was for the Respondent to repair the fire damage to the Property in the following manner:

- Repair/replace siding soffit and fascia;
- Replace small roof on back of home (plywood and shingles);
- Repair inside framing that has been damaged and replace unsalvageable framing;
- Bring all framing to code;
- Insulate to code;
- Bring electrical to code including new service panel boxes;
- Install plumbing and vent pipes;
- Install heating to code;
- Hang drywall and install flooring (carpet and laminate);
- Install kitchen cabinets; and
- Install new bathroom fixtures, interior doors, trim and baseboard.

5. The Contract did not state when the work would commence or be completed.

6. On the following dates, the Claimant paid the Respondent through his insurance company, to complete the work on the Property: December 13, 2018, \$10,000.00; February 21, 2019, \$29,937.50 and June 4, 2019, \$21,894.94.

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7. The Respondent received a total amount of \$61,832.44 to perform work on the Claimant's home.

8. The only work the Respondent performed on the Property was replacing some plywood and shingles on the roof, installing a small amount of framing and installing some siding.

9. The Respondent performed the work between December 2018 and April 12, 2019.

10. Some of the siding the Respondent installed was placed over windows and needed to be removed.

11. The Claimant lived in temporary housing after the fire damage to the Property

12. In June 2019, the Respondent abandoned the work on the Property.

13. The Respondent did not provide the Claimant any reason for why he abandoned the work.

14. The Claimant tried numerous times to get the Respondent to complete the work but the Respondent did not complete it. The Claimant's wife saw the Respondent in the community-at-large and requested that the Respondent complete the work, but he offered no plausible reason for why the work stopped.

15. On January 28, 2020, P.E Moore and Sons Construction, LLC provided an estimate to the Claimant for \$195,919.00 to perform the exact same work that the Respondent was supposed to do on the Property.

16. The Claimant obtained an estimate because the Respondent would not complete the work on the Property.

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17. There is no barrier, such as familial or business relationship, that would prevent the Claimant from being reimbursed by the Fund.²

18. The Claimant sustained an actual loss in excess of the maximum amount allowed by the Fund, \$20,000.00.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); 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." 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." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent received a total of \$61,832.44 from the Claimant in order to repair fire damage to his Property. The Respondent took the Claimant's money and did not perform the work agreed upon in the Contract. He performed some work, but that work was inadequate and sub-standard.

² *See* Bus. Reg. § 8-405(f)(1).

The Claimant's wife testified clearly and calmly, describing how the Respondent performed some meager work on the Property consisting of installing some siding, some shingles and some interior framing. The work that that the Respondent performed was not done properly. For example, the Respondent installed siding over windows. When the Claimant's wife testified to the work performed by the Respondent, she did not exaggerate or become emotional during the hearing. I detected no bias in her testimony.

The Respondent testified that he performed the work under the Contract, and only stopped working because an electrical bill was not paid and thus he would have no working electricity. Further, the Respondent claimed the Claimant told him not to come back to complete work on the Property. I do not find the Respondent to be credible for the following reasons. The Respondent did not offer any written correspondence documenting his alleged conversations with the Claimant regarding an outstanding electrical bill and how an alleged lack of electricity impacted his ability to complete the work. Additionally, the Respondent claimed the Claimant's insurance company advised him that all of the work performed was satisfactory. However, he had no documentation of the alleged approval by the insurance company indicating his work was performed in an acceptable and workmanlike manner. Lastly, the Respondent claimed he tried to contact the Claimant numerous times to complete the work, but he offered no documentation of any attempts to correspond with the Claimant in order to complete work on the Property.

The simple fact is that the Respondent entered into a Contract with the Claimant, took his money and performed some inadequate work. The Claimant and his wife diligently tried to get the Respondent to finish the work to no avail. The Respondent offered no plausible reason for failing to work on the Property so the Claimant reasonably concluded that he had no intention to complete the work. I find that the Respondent performed some inadequate work and abandoned

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the job and the Claimant is eligible for compensation from the Fund. The Fund agrees that the Claimant is entitled to receive the maximum amount from the Fund because the Respondent performed inadequate work and abandoned the job.

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. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The Claimant has sought none of the prohibited elements of a claim.

MHIC's regulations provide formulas to measure a claimant's actual loss, depending on the status of the contract work. Accordingly, the following formula 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.

COMAR 09.08.03.03B(3)(c).

The correct calculation of the award is determined by COMAR 09.08.03.03B(3)(c), set forth above. According to that regulation, the calculation is as follows:

\$61,832.44 paid to the Respondent; plus amounts paid to repair or complete the contract:
+\$195,919.00
\$257,751.44; minus the contract price:
-\$159,750.00; equals:
\$98,001.44 actual loss.

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The actual loss computed above is \$98,001.44, which exceeds \$20,000.00. Accordingly, the Claimant is entitled to reimbursement from the Fund of only a portion of his actual loss, or \$20,000.00. *Id.* § 8-405(e)(1).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

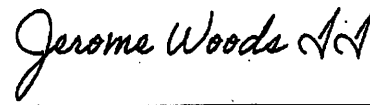
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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;³ and

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

August 17, 2021
Date Decision Issued



Jerome Woods, II
Administrative Law Judge

JW/cj
#193771

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

Date	Particulars	Debit	Credit
1997-01-01	Balance b/d		1000.00
1997-01-15	By Cash	500.00	
1997-01-20	To Cash		200.00
1997-02-01	By Cash	300.00	
1997-02-10	To Cash		100.00
1997-02-25	By Cash	400.00	
1997-03-05	To Cash		150.00
1997-03-15	By Cash	250.00	
1997-03-20	To Cash		80.00
1997-03-31	Balance c/d		1000.00
		2000.00	2000.00

PROPOSED ORDER

WHEREFORE, this 22nd day of November, 2021, 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.

Michael Newton

***Michael Newton
Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION***

The first part of the report
 describes the general situation
 and the results of the
 investigation. The second part
 contains the detailed description
 of the methods used and the
 results of the experiments.
 The third part discusses the
 results and compares them with
 the theoretical predictions.
 The fourth part contains the
 conclusions and the
 recommendations for further
 work.