

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LUIS ACOSTA,</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 JEREMY BUSSE,</p> <p>T/A ADVANCED BUILDING</p> <p>DESIGN, INC.</p> <p>RESPONDENT</p>	<p>* BEFORE TRACEE ORLOVE FRUMAN,</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-02-24-13768</p> <p>* MHIC No.: 20 (75) 734</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 8, 2022, Luis Acosta (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$219,620.89 for actual losses allegedly suffered as a result of a home improvement contract with Jeremy Busse, trading as Advanced Building Design, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).²

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

On May 15, 2024, the MHIC issued a Hearing Order on the Claim. On May 16, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 7, 2024, I held a hearing at the Rockville location of the OAH, in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.³ The Respondent was self-represented.

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 & Supp. 2024); Code of Maryland Regulations (COMAR) 09.01.03; 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:

- Clmt. Ex. 1 - General Contractor Agreement between the Claimant and the Respondent, dated November 17, 2018
- Clmt. Ex. 2 - Copies of checks and one credit card payment made by the Claimant to the Respondent, various dates
- Clmt. Ex. 3 - Email from the Respondent to the Claimant and Ms. Levin, dated April 12, 2019
- Clmt. Ex. 4 - Email from the Respondent to the Claimant and Ms. Levin, dated May 14, 2019
- Clmt. Ex. 5 - Emails between the Respondent and the Claimant and Ms. Levin, dated September 23 and 24, 2019
- Clmt. Ex. 6 - Email from the Respondent to the Claimant and Ms. Levin, dated October 1, 2019

³ Also present at the hearing was Karen Levin, the Claimant's wife.

- Clmt. Ex. 7 - Five photographs depicting water damage, taken by the Claimant on October 20, 2019
- Clmt. Ex. 8 - Letter from Mark A. Gilday, Esquire, to the Respondent, dated January 14, 2020
- Clmt. Ex. 9 - Proposal/Contract between Mark IV Builders, Inc. (Mark IV) and the Claimant, dated February 20, 2020
- Clmt. Ex. 10 - Alterations Required for Code Compliance, prepared by Mark IV, undated
- Clmt. Ex. 11 - Letter from Hadi Rahnama, P.E., Principal, HRA Structural Engineers, PA (HRA) to Mark IV, dated January 23, 2020; Copy of check number 221 from Ms. Levin to HRA, dated March 11, 2020
- Clmt. Ex. 12 - Mark IV Recap Sheet, dated March 12, 2020
- Clmt. Ex. 13 - Final Invoice/Statement from Mark IV, dated July 30, 2020; copies of checks from the Claimant and Ms. Levin to Mark IV, various dates
- Clmt. Ex. 14 - Copies of checks from the Claimant and Ms. Levin to Signature Elevator & Accessible Design (Signature), various dates
- Clmt. Ex. 15 - The Respondent's response to allegations of complaint, dated January 14, 2020; the Respondent's Transaction List by Customer (with handwritten notes), dated September 23, 2019; the Respondent's Sales by Item Summary (with handwritten notes), dated September 23, 2019

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Past Work Outside of Intended Scope Explanation, dated October 21, 2019
- Resp. Ex. 2 - List of work requested by the Claimant sent to the Respondent, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, dated June 17, 2024
- Fund Ex. 2 - Hearing Order, dated May 15, 2024
- Fund Ex. 3 - Respondent's licensing history, dated September 18, 2024
- Fund Ex. 4 - Home Improvement Claim Form, dated June 17, 2022
- Fund Ex. 5 - Letter to the Claimant from the MHIC, dated May 15, 2024

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present any 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 holding license numbers 01-97833 (contractor) and 05-126242 (salesperson).
2. The Claimant, his wife, and their daughter resided in a home in Chevy Chase, Maryland (Montrose Home), and purchased a second home in Silver Spring, Maryland (Spencer Home), with the intent to renovate it.
3. On November 17, 2018, the Claimant⁴ and the Respondent entered into a contract to perform a renovation and build an addition on the Spencer Home (Contract).
4. The original agreed-upon Contract price was \$300,000.00, which included all labor and materials. The materials allowance was "to be determined."⁵ Clmt. Ex. 1, p. 1.
5. The scope of the Contract was not explicitly set forth in the Contract but referred to "drawings [and] concept documents" attached to the Contract. *Id.*
6. The Contract stated that work would begin on November 18, 2018 and would be completed by the summer of 2019.

⁴ The Claimant's wife, Ms. Levin, was also a party to the contract, but only the Claimant filed the Claim.

⁵ The parties also entered into a separate design contract for \$18,000.00 which was not part of the Claim.

7. The Contract set forth the following payment schedule and terms:
 - a. Execution of contract: 19% of contract price
 - b. Completion of demolition: 19% of contract price
 - c. Completion of rough framing: 19% of contract price
 - d. Completion of rough utilities: 19% of contract price
 - e. Completion of finishes: 19% of contract price
 - f. Completion of punch list items: 5% of contract price
 - g. Payments for Change Orders shall be made upon execution of written orders.

8. The Claimant⁶ made payments totaling \$297,000.00 to the Respondent in the following installments:
 - a. October 30, 2018 - \$6,000.00
 - b. November 20, 2018 - \$6,000.00
 - c. November 28, 2018 - \$57,000.00
 - d. December 31, 2018 - \$57,000.00
 - e. February 10, 2019 - \$10,000.00
 - f. February 19, 2019 - \$10,000.00
 - g. February 26, 2019 - \$37,000.00
 - h. March 28, 2019 - \$10,000.00
 - i. March 28, 2019 - \$30,000.00
 - j. June 17, 2019 - \$8,500.00
 - k. June 17, 2019 - \$8,500.00
 - l. July 20, 2019 - \$13,000.00
 - m. July 31, 2019 - \$17,000.00

⁶ Some of the payments were made by Ms. Levin.

n. August 4, 2019 - \$10,000.00

o. August 5, 2019 - \$7,000.00

p. August 28, 2019 - \$10,000.00

9. The Claimant and the Respondent did not adhere to the payment schedule as set forth in the Contract.

10. The Contract contained a provision for change orders, which stated, in relevant part, "A written change order signed by the Owner is required before the GC can implement with the change." Clmt. Ex. 1, p. 3.

11. The Contract contained a provision for additional services, which stated, "Additional services shall be performed only upon the express, prior written authorization of the Owner and paid for as provided herein." *Id.*

12. The Respondent did not provide and the Claimant did not sign any change orders during the course of the project.

13. The Respondent emailed the Claimant and Ms. Levin on April 12, 2019 and May 14, 2019 and did not mention any issues of cost overages or change orders.

14. As of September 14, 2019, the renovation of the existing portion of the Spencer Home was incomplete. The porch railing, stairway railing, and new front door had not been installed. In addition, there was very little progress on the addition. The rough utilities, roof, and rough framing were not complete.

15. On September 14, 2019, the Respondent texted the Claimant and asked for more money. The Claimant replied that no additional money was due.

16. On September 23, 2019, the Claimant emailed the Respondent inquiring about progress on the renovation. The following day, the Respondent replied to the Claimant and stated, "The guys are not on the job right now. To put it simply, there is not enough money to

pay them to move forward.” Clmt. Ex. 5. In his email, the Respondent listed fifteen items he stated were not part of the Contract, but that he completed at a cost of \$62,000.00.

17. On October 1, 2019, the Respondent emailed the Claimant and Ms. Levin inquiring about how to proceed. The Respondent requested an additional \$13,000.00 to complete the roof, install the windows, and purchase and install three exterior doors. This work was necessary to prevent rain from damaging what had been completed by that time. The Claimant declined to pay the Respondent any additional money.

18. On October 20, 2019, heavy rains damaged the walls and floor of the original portion of the Spencer Home because the roof was incomplete.

19. On a date not clear from the record, the Respondent returned to the Spencer Home and put a tarp on the unfinished portion of the roof.

20. On dates not clear from the record, the Respondent did \$2,500.00 worth of drywall work at the Montrose Home. This was not included in the Contract.

21. Between October 2019 and January 2020, the Claimant and the Respondent attempted to settle their dispute so the Respondent could complete the project, but they were not successful in coming to an agreement.

22. In a letter dated January 14, 2020, the Claimant’s attorney terminated the Contract with the Respondent.

23. On February 20, 2020, the Claimant entered into a contract with Mark IV to complete the renovations and the addition on the Spencer Home (Mark IV Contract) for \$216,647.00. Eight change orders totaling \$6,073.89 brought the total amount the Claimant paid Mark IV to \$222,720.89.

24. Of the \$222,720.89 total cost, the Claimant paid Mark IV \$9,285.00 for work done to allegedly repair or correct the Respondent’s work so that it would pass inspection. This

included widening a stairwell opening, reworking a basement bulkhead, and installing an attic beam.

25. The Claimant also paid \$1,900.00 to a structural engineer who consulted and drew up plans for the installation of the attic beam.

26. The scope of work in the Mark IV Contract did not contain any additional work that was not included in the Contract with the Respondent.

27. The Contract included the construction of a deck, but the Respondent did not build the deck. The Mark IV Contract did not include construction of a deck.

28. The Contract included the installation of an elevator in the Spencer Home. The Respondent did not install the elevator.

29. On March 3, March 27, and May 22, 2020, the Claimant paid a total of \$18,000.00 to Signature for the installation of an elevator in the Spencer Home.

30. The Respondent completed approximately \$2,500.00 of drywall work at the Montrose Home, which was outside the scope of the Contract.

DISCUSSION

Legal-Framework

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); 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 Cnty. 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) (Supp. 2024); *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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2024). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2024). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2024). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2024).

The Claimant testified that from October 2019 to January 2020 he attempted, through counsel, to settle the dispute with the Respondent in order to complete the Spencer Home. The Respondent offered to complete the project for an additional \$60,000.00. However, the Claimant wanted to pay the Respondent when the work on the Spencer Home was complete, and the Respondent would not agree to that term. The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024).

The Parties’ Positions

The Claimant explained that he and his wife purchased the Spencer Home and intended to make it handicap accessible for their disabled daughter. The Claimant alleged that despite paying the Respondent most of the cost under the Contract, the Respondent completed only approximately 40% of the Contract. The Claimant argued that he never authorized any change

orders and believed that all of the work completed by the Respondent was covered under the Contract. The Claimant asserted that the Respondent never informed him of cost over-runs until September 2019, when the Respondent began asking for more money to complete the project. The Claimant averred that he had to hire another contractor at significant, additional expense in order to complete the Spencer Home so that he and his family could take occupancy.

The Respondent agreed with the timeline that the Claimant set forth in his case-in-chief, and did not contest that he abandoned the project before he completed it. The Respondent argued that the Claimant and his wife were preoccupied with their daughter and he did not want to bother them with paperwork or too many questions, so he just did the work. The Respondent averred that when a job changes scope, it requires a change in the compensation structure. The Respondent argued he was rarely able to communicate with the Claimant or his wife during construction, so he did the work until he ran out of money. The Respondent contended that he gave the Claimant a clear explanation of what was outside the scope of the Contract, what he did, and how much it cost. The Respondent acknowledged that he provided that information only after he abandoned the project.

The Fund argued that the Claimant has a legally sufficient claim. The Fund contended that the Contract required express prior written authorization before any changes were made to the Contract, and the Respondent did not comply with the terms of the Contract. The Fund averred that the Claimant did not prove that the Respondent's work was unworkmanlike; however, the Claimant did prove that the Respondent's work was incomplete, inadequate, and that the Respondent abandoned the project because he was not going to get any more money. The Fund argued that the Claimant was entitled to recover from the Fund, with offsets for certain expenses described further herein.

Analysis

The evidence proves that the Claimant paid the Respondent to renovate his home and put on an addition, but the Respondent performed inadequate or incomplete home improvements before abandoning the project, leaving the Claimant with an unfinished home. The Claimant had no choice but to hire another contractor, at great cost to the Claimant, to complete the renovation. I found the Claimant's testimony credible, and it was corroborated by invoices and receipts.

The Claimant testified that he relied upon the Contract, which he believed capped the cost of the project at \$300,000.00, and that he did not request any changes or submit any written change orders to the Respondent. He further testified that the Respondent never informed him of cost overruns until September 24, 2019. The Claimant testified that he believed that all of the work done on the Spencer Home was covered by the cost of the Contract. In support of that belief, the Claimant testified about a meeting he had with the Respondent in July 2019, when the Claimant asked whether the project was over budget. The Claimant recalled the Respondent telling him that the Contract was for \$300,000.00 and any amount more than that was the Respondent's responsibility. The Claimant also testified that the Respondent made suggestions for changes to the project, such as relocating a kitchen light and using a particular piece of granite for the bar countertop, but that the Respondent never mentioned any additional costs associated with those changes. I conclude that absent any change orders or communication from the Respondent that the project was overbudget, it was reasonable for the Claimant to believe that the project was still within the agreed-upon \$300,000.00 budget.

The Respondent argued that the Claimant and his wife were "unengaged and unavailable during the project" because they were caring for their disabled child. In a letter dated January 14, 2020 responding to the Claimant's Claim, the Respondent stated, "As they were regularly unavailable to meet with me or take the time to discuss these issues because of their daughter's

ongoing medical issues, I moved forward to complete the project with as much haste as possible to get them in the house.” Clmt. Ex. 15. While it is admirable that the Respondent was sensitive to the Claimant and his wife’s situation with their daughter’s health, it does not follow that he can violate the terms of the Contract and incur additional costs without the express written permission of the Claimant and expect the Claimant to cover the additional costs. This is true regardless of whether or not the Claimant and his wife were available and engaged during the project. There is no evidence, other than the Respondent’s January 14, 2020 letter, after the Respondent had already abandoned the project, that the Respondent ever discussed the cost over-runs of the project with the Claimant. I thus find that the Claimant is eligible for compensation from the Fund.

Despite finding the Claimant eligible for compensation from the Fund, there are some costs for which the Claimant is not entitled to be reimbursed. First, the Contract did not include work performed on the Montrose Home. The Respondent testified credibly, and the Claimant acknowledged, that he performed drywall work on the Montrose Home at a cost of \$2,500.00. While it would have been prudent to discuss payment for the work done on the Montrose Home separately, and before doing the work, the Respondent should not be required to cover the cost of the labor and materials for drywall work in a different home.

In addition, the Claimant presented evidence that he paid Mark IV \$9,285.00 for “Alterations Required for Code Compliance,” which included widening the stairwell opening for proper required headroom (\$2,667.00), reworking the basement bulkhead for required height (\$2,778.00), and installing an attic beam per engineer prepared drawings (\$3,840.00). Clmt. Ex. 10. The Claimant also paid a structural engineer \$1,900.00. Clmt. Ex. 11. However, the Claimant failed to offer any evidence that the alterations were due to any unworkmanlike work performed by the Respondent. The Claimant testified that the additional costs to pay for the alterations came

about in the context of Mark IV informing him that the Respondent's work did not meet code. The Claimant did not know what code provisions were not met and did not offer any testimony in support of his argument that those additional expenses were due to the Respondent's unworkmanlike renovations. Regarding the attic beam, the Claimant did not know whether the beam was installed in the original attic, in the portion of the attic that was in the addition that the Respondent built, or whether the attic beam was necessary due to a design change. Further, the Claimant testified that he had no direct contact with the structural engineer, so he did not have any information about those services. I conclude that the Claimant is not entitled to reimbursement of \$9,285.00 for the alterations or \$1,900.00 for the structural engineer.

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) (Supp. 2024); 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 that 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).

Applying the formula, the Claimant's actual loss is calculated as follows:

Amount the Claimants Paid to the Respondent:	\$297,000.00
Plus reasonable amounts the Claimant paid to complete the Contract:	\$209,035.89 ⁷ \$18,000.00 ⁸
Less total Contract price:	\$300,000.00
Actual Loss:	\$224,035.89

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$224,035.89 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$224,035.89 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4).

⁷ \$222,720.89 (total amount paid to Mark IV) - \$9,285.00 (amount paid for alterations required for code compliance) - \$1,900.00 (amount paid to structural engineer) - \$2,500.00 (amount owed for drywall work at the Montrose Home).

⁸ Amount paid to Signature for the elevator.

⁹ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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;¹⁰ and

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

December 3, 2024
Date Decision Issued

Tracee Orlove Fruman
Tracee Orlove Fruman
Administrative Law Judge

TOF/sh
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¹⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 8th day of May, 2025, 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.

Wm. Bruce

Quackenbush

Wm. Bruce Quackenbush

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**