

RAVEN LEA,

CLAIMANT

v.

THE HOME IMPROVEMENT

COMMISSION GUARANTY FUND

FOR THE ALLEGED ACTS OR

OMISSIONS OF JUAN ALAMAS LA

ROSA, t/a J & J MULTISERVICES

LLC,

RESPONDENT

* BEFORE ALECIA FRISBY TROUT,

* ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

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* OAH No.: LABOR-HIC-02-21-04013

* MHIC No.: 20 (75) 866

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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 January 22, 2020, Raven Lea (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of actual losses allegedly suffered as a result of a home improvement contract with Juan Alamas La Rosa, trading as J & J Multiservices LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹

¹ All later citations to the Business Regulations Article of the Annotated Code of Maryland are to the 2015 Replacement Volume to the Code.

On January 20, 2021, the Chairperson of the Commission determined a hearing was warranted on the Claim and on January 27, 2021, the Commission transmitted the matter to the Office of Administrative Hearings (OAH) for an evidentiary hearing, delegating its authority to the OAH to issue a proposed decision.

I held a hearing on the merits of the Claim on April 13, 2021, remotely, via the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. § 8-407(e); Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). The Claimant represented herself. The Respondent failed to appear for the hearing after proper notice. Andrew Brouwer, Assistant Attorney General, counsel to the Department of Labor (Department), represented the Fund.

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits in evidence offered by the Claimant:

- CL Ex. 1 - Timeline, undated
- CL Ex. 2 - Payment Schedule, March 15, 2021
- CL Ex. 3 - Construction Contract, February 22, 2019
- CL Ex. 4 - Home Point Financial, HomeStyle Draw Request, May 24, 2019

- CL Ex. 5 - J & J Multiservices, LLC Estimate, February 11, 2019
- CL Ex. 6 - Mutual Release of Obligation Under Contract of Sale, June 5, 2019
- CL Ex. 7 - Home Inspection Report, June 4, 2019
- CL Ex. 8 - Baltimore County Uniform Code Enforcement Correction Notice with photograph of posted notice and receipt attached, June 28, 2019
- CL Ex. 9 - AREA Engineering, Inc., Structural Inspection Letter, September 18, 2020
- CL Ex. 10 - AREA Engineering, Inc. Invoices, July 2, July 5, and July 9, 2019
- CL Ex. 11 - Faust Contracting Inc., Contract, August 5, 2019
- CL Ex. 12 - Electronic transfers: \$598.00 to Russell Harrison, October 3, 2019; \$1,000.00 to Mario Martinez, October 2, 2019; \$900.00 to Milton Harrell, undated; cancelled checks: \$268.00 to Russell Harrison, June 25, 2019; \$808.00 to Sixto Cruzado, November 24, 2019; \$2,500.00 to Mario Martinez, September 19, 2019; \$900.00 to Julio Rodriguez, November 14, 2019; \$890.00 to Ramon Rivera, November 8, 2019; \$3,021.11 to Joseph Stracke, October 28, 2019; \$775.00 to Joseph Stracke, November 2, 2019; \$500.00 to Robert Forsythe, November 27, 2019; \$400.00 to Robert Forsythe, November 26, 2019; \$575.00 to Robert Forsythe, November 11, 2019; \$200.00 to Robert Forsythe, November 13, 2019; \$200.00 to Robert Forsythe, November 12, 2019; \$1,000.00 to Brorell, LLC, October 24, 2019; \$1,200.00 to Brorell, LLC, October 7, 2019
- CL Ex. 13 - Photographs taken by the Claimant, various dates

I admitted the following exhibits in evidence offered by the Fund:

- GF Ex. 1 - Letter Order, January 20, 2021
- GF Ex. 2 - Notice of Hearing, March 4, 2021
- GF Ex. 3 - Letter from the MHIC to the Respondent, dated January 22, 2020, with the Claimant's Home Improvement Claim Form attached
- GF Ex. 4 - Department Identification Registration for the Respondent, March 30, 2021
- GF Ex. 5 - Affidavit of David Finneran, April 9, 2021

There were no other exhibits offered in evidence.

Testimony

The Claimant testified on her own behalf. The Respondent failed to appear for the proceeding and, accordingly, no testimony was offered on his behalf. The Fund did not present any witness testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the proceeding, the Respondent was a licensed home improvement contractor under MHIC registration number 114666.
2. The Claimant is not related to the Respondent or any of his employees, by blood or marriage.
3. The Claimant purchased the subject residential property (Property) in Baltimore as a renovation project. She resides in a different property. During the relevant times, she owned three total properties in the State.
4. On February 25, 2019, the Claimant and the Respondent entered into a contract for the Respondent to complete a renovation to Property. The agreed upon contract price was \$34,951.20.
5. There was one change order regarding the roof. The change order was an additional \$4,300.00. The change order brought the contract total to \$39,251.20.
6. Work began under the contract in March 2019.
7. Funds to pay for the renovation came from a construction loan. The lender was Home Point Financial.
8. After a certain amount of work was completed on the contract, Home Point Financial would issue a draw. The Respondent completed work on May 24, 2019, and the Claimant paid him in full, \$39,251.20.

9. After the Respondent completed the renovation, the Claimant listed the Property for sale and acquired a buyer. On June 4, 2019, the buyer's home inspection report revealed that the work the Respondent had completed on the Property was not done per code, requisite permits and subsequent inspections had not been obtained, and as a result, the buyer terminated the contract for the home purchase.

10. On June 5, 2019, the Claimant provided the Respondent with a copy of the home inspection report. The Respondent never again returned to the Property, nor contacted the Claimant.

11. On June 27, 2019, the Baltimore County Department of Permits, Approvals and Inspections issued a stop work order for the Property, posted it as unsafe for use or occupancy pending a positive structural engineering report, and fined the Claimant \$1,000.00 which she paid in full.

12. Pursuant to the County Department of Permits, Approvals and Inspections order, on July 17, 2019, the Claimant hired a Structural Engineer, AREA Engineering, Inc. (Area Engineering). The Claimant paid AREA Engineering \$3,685.00 for their inspection, report and corrective plans.

13. The Claimant engaged another contractor, Faust Contracting Inc., to remedy the problems and complete the contract. Faust Contracting Inc. completed the contract on December 9, 2019. The Claimant paid Faust Contracting \$74,550.00 for their work.

DISCUSSION

Notice

It is well-settled that the constitutional requirements for sufficiency of notice are satisfied by the government sending notice to a person through the mail when the person has an obligation to provide their address to the government; this is a mechanism reasonably calculated to provide

actual notice. *Jones v. Flowers*, 547 U.S. 220, 226, 231 (2006); *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 792, 798 (1983); accord *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 146-48 (4th Cir. 2014); *Griffin v. Bierman*, 403 Md. 186, 196-98 (2008). Even if the notice is returned, "if there were no reasonable additional steps the government could have taken upon return of the unclaimed notice letter, it cannot be faulted for doing nothing." *Jones*, 547 U.S. at 234.

On March 4, 2021, the OAH mailed a Notice of Hearing (Notice) to the Respondent, via first-class and certified mail, at his business addresses of record with the MHIC, setting forth the date, time, and location of the hearing. GF Exs. 2, 5; Md. Code Ann., Bus. Reg. §§ 8-312(d), 8-407(a) (2015); COMAR 09.08.03.03A(2). The Notice further provided, in all capital letters, that "failure to appear may result in dismissal of your case or a decision against you." GF Ex. 2. Neither the Notice sent by first-class mail nor by certified mail to the Respondent were returned by the United States Postal Service as being undeliverable, unable to forward, or for any other reason.

As a licensee of the MHIC, the Respondent is obliged to maintain his address with the MHIC, and during the pendency of a proceeding, with the OAH. Md. Code Ann., Bus. Reg. §§ 8-309, 8-407(a); COMAR 09.08.01.11; COMAR 28.02.01.03E. As set forth above, the Respondent's Notice and the Order were mailed to his addresses of record with the MHIC and the OAH and not returned. GF Exs. 2, 5. The OAH and the MHIC have no other addresses for the Respondent. *Id.*

I find, therefore, that proper notice of the hearing was sent to the Respondent and he failed to appear for the hearing after proper notice. *Id.*; *Jones*, 547 U.S. at 226, 231, 234; COMAR 28.02.01.05. As such, I concluded I may hear and issue a proposed decision in this matter, without the Respondent being present, in accord with the applicable law, due process,

and the governing regulations. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312(h) (2015); *Jones*, 547 U.S. at 226, 231, 234; COMAR 28.02.01.23A.

Analysis

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); COMAR 09.08.03.03B(2). Actual 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 purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists.” Md. Code Ann., Bus. Reg. § 8-405(b).

At a hearing on a claim for reimbursement from the Fund, the Claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03(A)(3). The standard of proof is by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2014). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so,” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

For the following reasons, I am persuaded that the Claimant has proven eligibility for an award from the Fund.

The Claimant testified that she found the Respondent through the Better Business Bureau and asked him to accompany her to walk through the Property before she purchased it. The Respondent accompanied the Claimant on the walk through and prepared a Contract for the work requisite to get the Property ready for re-sale. The Claimant entered into the Contract with the

Respondent on February 25, 2019, and subsequently purchased the Property "as is" on March 1, 2019. The initial Contract price was \$34,951.20, which after a change order for work on the roof, totaled \$39,514.20.

The Claimant contends the Respondent started work in March 2019, and completed work on May 24, 2019. The Claimant paid the Respondent in full by that date. She stated the Respondent's work looked nice and was aesthetically pleasing. The Claimant listed the Property for sale and acquired a buyer. The buyer conducted a home inspection and the home inspection report was issued on June 4, 2019. That report revealed that the Respondent had not gotten the requisite permits or inspections of the work he performed, and the work was not completed to code. The Respondent was required to get permits for the renovation work in the kitchen, all of the electrical work and the plumbing work. In some instances, the work the Respondent performed caused dangerous structural deficiencies. For example, the Respondent demolished portions of the flooring on the main level in a way that damaged the structural integrity of the basement ceiling and placed the first floor at risk of collapse into the basement.

Following the home inspection, the County Department of Permits, Inspections and Approvals posted the property as unfit for use, fined the Claimant \$1,000.00 and required that she hire a structural engineer to complete plans to remedy the dangerous defects, and complete the work properly. The Claimant paid the fine. On July 17, 2019, she hired AREA Engineering, Inc. to complete an inspection, a report and corrective plans. The Claimant paid AREA Engineering \$3,685.00 for their work.

On August 5, 2019, the Claimant engaged Faust Contracting Inc. to complete the work under the contract and correct the problems caused by the Respondent pursuant to the report and plans created by AREA Engineering. Because the majority of the problems requiring corrective action were within the walls of the home, all of the finishing work such as dry wall, flooring and

fixtures, had to be removed to complete the work. Faust Contracting Inc. completed the work in December 2019. The Claimant paid Faust Contracting Inc. and its subcontractors \$74,550.00 for their work.

The Claimant sent the Respondent a copy of the home inspectors report in June 2019, but never heard back from the Respondent. The Respondent did not offer to remedy the errors, or return to the Property.

Due to the Respondent's failure to complete the home improvement, the Claimant avers she suffered an actual monetary loss and seeks just compensation from the Fund to redress this loss.

The Fund agreed with the Claimant's position that the Respondent performed an incomplete, unworkmanlike and inadequate home improvement, and that the subsequent-work completed by AREA Engineering and Faust Contracting was required due to the incomplete and inadequate job done by the Respondent. Failure to pass inspection or meet code is unworkmanlike and falls well short of industry standards. The Fund observed that there was no legal impediment to recovery and recommended an award to the Claimant for her actual loss as calculated by the tribunal.

There was no expert testimony offered in this case. "It is well settled that expert testimony is required when the subject of the inference is so particularly related to some science or profession that it is beyond the ken of the average layman." *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 518 (2000) (internal citations and quotation omitted). The nature of the work in this case does not require expert testimony to persuasively establish it was incomplete; it turns on a question of fact that is not beyond the ken of a layperson—was the contract work fully performed or not—an inquiry that turns on my review of the testimonial and documentary

evidence of record. See *Suburban Hospital Ass'n v. Hadary*, 22 Md. App. 186, 194 (1974);² see also *Para v. 1691 Ltd. P'ship*, 211 Md. App. 335, 380 (2013) (expert testimony is not necessary in an agency hearing before a presumably expert hearing office.).

The Claimant's testimony was delivered clearly, consistently, and sincerely without any signs of doubt, evasion, falsity, deception, or contradiction; it was supported by documentation, including pictures taken contemporaneously with the performance of the work at issue, detailed records, and invoices detailing the Respondent's malfeasance and the costs to complete the contract work and to satisfy the requirements of the County Department of Permits, Approvals and Inspections. The Claimant's account was not refuted or contravened on the record before me. I find the Claimant's testimony and her account of events credible and I give it great weight. See *Dickey v. State*, 404 Md. 187, 202-03 (2008) (factors to be weighed by a fact-finder in assessing credibility); *Maryland Bd. of Physicians v. Elliott*, 170 Md. App. 369 (2006) (a finder-of-fact is authorized to determine the credibility of a witness's testimonial evidence based on the witness's demeanor); *Montgomery Cty. Dep't of Health & Human Servs. v. P.F.*, 137 Md. App. 243, 268 (2001) (the credibility to be given a witness and the weight to be given his testimony is the exclusive province of the finder-of-fact).

For these reasons, I am persuaded that, more likely than not, the home improvement work at issue was inadequate, unworkmanlike and incomplete, as those terms are used in the law and regulations. See *Steinberg v. Arnold*, 42 Md. App. 711, 712 (1979) ("as fact finder, [the judge] has

² In *Suburban Hospital Association*, a hospital stored sterile and nonsterile needles in the same cabinet and a physician used a nonsterile needle in performing a liver biopsy, requiring a patient to undergo a painful series of gamma globulin injections. The Court determined expert testimony was not essential for the jury to determine that storage of the needle was inconsistent with hospital's obligation to use due care. The Court held that where, as analogous here, an issue of performance is not related to technical matters peculiarly within the knowledge of practitioners in the field, but to circumstances where common knowledge and the experience of reasonable persons can evaluate the conduct of professionals, expert testimony is not essential for the factfinder. *Id.* at 194-95.

the usual jury prerogatives of whether to believe or disbelieve witnesses, how much weight to give testimony and ultimately whether to be persuaded or not to be persuaded”).

Based upon the credible evidence of record, I find the Respondent, a licensed contractor, entered into a written agreement with the Claimant to perform a home improvement to the Claimant’s Property, accepted payment totaling \$39,514.20, but failed to complete the work in a workmanlike and adequate manner. The work was not completed pursuant to the code and the Respondent did not acquire requisite permits prior to starting work. Additionally, the Respondent did not acquire requisite inspections and, as a result, the Claimant lost her buyer, was fined by County, and the Property was deemed unfit. The Respondent’s work was inadequate as the home could not pass inspection after the Respondent had completed the work under the contract. To remedy the problems, the Claimant hired a structural engineer and a new contractor to complete the work at a total cost of \$78,235.00. Further, I find there is no dispute that the Claimant is the owner of the subject property and that there are no procedural impediments barring her from recovery from the Fund. Md. Code Ann., Bus. Reg. § 8-405(f), (g); COMAR 09.08.01.13.

I conclude, therefore, that the home improvement at issue here is incomplete within the meaning of the statute, the Claim is not barred by any relevant statutory or regulatory provisions, and the Claimant is eligible for compensation from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405.

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Claimant may not be compensated for consequential or punitive damages, personal injury, attorney’s fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). In the January 22, 2020 Claim, the Claimant seeks an award from the Fund in the sum of \$75,000.00. GF Ex. 3.

The Commission's regulatory scheme offers three formulas for measurement of a claimant's actual loss unless a unique measurement is necessary. COMAR 09.08.03.03B(3)

(a)-(c).

It is undisputed that the Respondent performed some work under the contract, however it is also undisputed that all of the Respondent's work had to be removed in order to make the corrections required for the home to pass inspection. I am persuaded the credible evidence of record establishes that the Claimant engaged other licensed contractors to complete the original contract after the Respondent left the work inadequate and incomplete. Accordingly, the following formula, which most closely fits the facts, 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 this formula to the facts of the case at bar, I add \$39,514.20 (the amount paid to the Respondent under the contract) to \$78,235.00 (the amount paid to the structural engineer and other licensed contractor to complete the contract work), which equals \$117,749.20. I then subtract from this figure \$39,514.20 (the original contract price), which yields the sum of \$78,235.00 (the Claimant's actual loss).

The law and controlling regulations cap a claimant's recovery at \$20,000.00 for the acts or omissions of one contractor, and expressly provide that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann, Bus.

Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$78,235.00 far exceeds the statutory maximum of \$20,000.00 and the amount paid to the Respondent. Therefore, the Claimant is entitled to an award from the Fund in the sum of \$20,000.00. Md. Code Ann, Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude, as a matter of law, that the Claimant sustained an actual loss of \$78,235.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg.

§§ 8-401, 8-405, § 8-407(e)(1) (2015); COMAR 09.08.03.03(A)(3). I further conclude, as a matter of law, that the Claimant is entitled to an award of \$20,000.00 from the Fund. *Id.*; COMAR 09.08.03.03B(3), (4), D(2)(a).

RECOMMENDED ORDER

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

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

ORDER that the Respondent is deemed to be ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Maryland Home Improvement Guaranty Fund for all monies disbursed under this Order, plus annual interest of at least ten percent, as set by the Maryland Home Improvement Commission³; and

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

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

Alecia Frisby Trout

July 1, 2021
Date Decision Issued

Alecia Frisby Trout
Administrative Law Judge

AFT/kdp
#192777

PROPOSED ORDER

WHEREFORE, this 23rd day of September, 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.

Robert Altieri

Robert Altieri

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***