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| **IN THE MATTER OF THE CLAIM** | * | **BEFORE STEPHEN W. THIBODEAU,** |
| **OF ANGELA GODWIN,** | * | **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 JAMES BURTON,** | * | |
| **T/A REVELATION CONTRACTORS** | * | **OAH No.: LABOR-HIC-02-21-04005** |
| **LLC,** | * | **MHIC No.: 20 (75) 953** |
| **RESPONDENT** | * | |

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## PROPOSED DECISION



## STATEMENT OF THE CASE

On July 9, 2020, Angela Godwin (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $3,000.00 in actual losses allegedly suffered as a result of a home improvement contract with James Burton, trading as Revelation Contractors LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on April 15, 2021 via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. John Hart, Assistant Attorney General, Department of Labor, represented the Fund. The Claimant represented herself.

After waiting 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On March 4, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for April 15, 2021, at 9:30 a.m., via the Webex videoconferencing platform. The Notice provided instructions on how to access the Webex platform and provided the appropriate meeting room number for the hearing. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH prior to the hearing. However, on May 25, 2021, a month after the hearing, the Notice was returned to the OAH with the notation "unclaimed, unable to forward." The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. 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 in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); 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 the Claimant's behalf:

Clmt. Ex. 1 - Estimate prepared by the Respondent for the Claimant, labelled "Estimate 1417," November 8, 2019

Clmt. Ex. 2 - Handwritten receipt from the Respondent to the Claimant, January 8, 2020

Clmt. Ex. 3 - Text messages between the Claimant and the Respondent, November 2019 through January 2020

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

GF Ex. 1 - Notice of Hearing, March 4, 2021

GF Ex. 2 - Hearing Order, January 20, 2021

GF Ex. 3 - Letter from the MHIC to the Respondent, July 15, 2020

GF Ex. 4 - MHIC Licensing History for the Respondent, printed April 13, 2021

GF Ex. 5 - Estimate prepared by the Respondent for the Claimant, labelled "Estimate 1419," November 9, 2019

No exhibits were offered by the Respondent.

Testimony

The Claimant testified and did not present other witnesses. The Respondent and the Fund did not present any testimony.

## 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 01-114363.

2. On November 8, 2019, the Claimant and the Respondent entered into a contract for improvements to the Claimant's home at 2713 Bagnell Court, Edgewood, Maryland. (Contract). Under the Contract, the Respondent agreed to remove old carpet from three upstairs bedrooms in the home, and replace it with new carpet.

3. The original agreed-upon Contract price for the carpeting work was $2,000.00.

4. Later, on January 8, 2020, the Claimant and Respondent expanded the scope of the work of the Contract to include the installation of hardwood flooring in the Claimant's home, specifically the living and dining room, for a total of $1,000.00.

5. The Contract was specifically for the Respondent's labor for the installation of the carpet and hardwood flooring.

6. The total Contract price was $3,000.00, which the Claimant had paid to the Respondent in full by January 8, 2020.

7. The Respondent performed work in the Claimant's home for other projects unrelated to carpeting or flooring installation, but the Claimant never installed the carpeting or flooring as agreed to in the Contract.

8. By January 20, 2020, after no work was performed on the Contract, the Claimant requested a full refund of the $3,000.00 on the Contract.

9. The Respondent did not refund the Claimant's money or otherwise remedy the lack of work on the Contract.

## DISCUSSION

In this case, 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.

There is no dispute the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The MHIC licensing history introduced by the Fund as part of GF Exhibit 4 shows a license that was current as of November 2019, at the time of the original agreement between the parties.

The next question is whether the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. I find that the Respondent's work was incomplete under the Contract.

Indeed, there was some confusion related to the Respondent's work for the Claimant, the scope of that work, and the payments related to that work. The Claimant produced two separate

estimates of work the Respondent provided her, neither of which reflected the exact agreement of home improvement work agreed to between the Claimant and the Respondent. As the Claimant testified, some of the items on these separate estimates were not agreed to in the form of a contract, and the price of the items of the estimate do not reflect the contract between the parties. For instance, in Estimate 1419 (GF Ex. 5), the Claimant testified that she and the Respondent agreed to only two of the three items listed in the estimate – painting and replacement of the electrical outlet covers – and the Respondent completed that work to her satisfaction. Estimate 1417 (Clmt. Ex. 1), on the other hand, was revised to include only work on flooring issues, specifically removal of carpet, replacement of carpet, and installation of hardwood flooring, and the agreed upon contract price was $3,000.00. This, for the purposes of the Claimant's claim, is the Contract at issue in this case.

It is undisputed, however, that despite a full payment of $3,000.00 to the Respondent for the Contract, the Respondent never performed any of the work on the Contract. Indeed, as reflected in a January 20, 2020 text message from the Claimant to the Respondent, the Claimant made a demand of a refund of the full $3,000.00 after the Respondent failed to perform any work. The Respondent did not refund the money, or otherwise return to the Claimant's home to perform any of the work on the Contract. As such, the Respondent's work was incomplete, and 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. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a). As the Claimant paid $3,000.00 to the Respondent under the Contract, the Claimant's actual loss is $3,000.00.

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover her actual loss of $3,000.00.

## PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $3,000.00 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)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code. Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(3)(a), B(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 $3,000.00; 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.

June 30, 2021
Date Decision Issued

Stephen W. Thibodeau
Administrative Law Judge

SWT/da
#192876

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

## *PROPOSED ORDER*

***WHEREFORE, this 6th 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.***

*Wm Bruce Quackenbush*

***Wm Bruce Quackenbush***
***Panel B***
***MARYLAND HOME IMPROVEMENT COMMISSION***