

IN THE MATTER OF THE CLAIM	*	BEFORE WILLIAM F. BURNHAM,
OF ANTHONY BOBECK,	*	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 GARY SWEITZER,	*	
T/A GARY SWEITZER SERVICES,	*	OAH No.: LABOR-HIC-02-24-01594
INC.	*	MHIC No.: 23 (75) 362.
RESPONDENT	*	
* * * * *		

**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 October 18, 2023, Anthony Bobeck (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$33,172.00 for actual losses allegedly suffered as a result of a home improvement contract with Gary Sweitzer, trading as Gary Sweitzer Services, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On January 16, 2024, the MHIC issued a Hearing

---

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

Order on the Claim. On January 17, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 2, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Chris King, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. 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. 2023); 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**

Unless otherwise noted, I admitted the following exhibits offered by the Claimant:

- CL Ex. 1 - Proposal from Excellent Contracting, March 14, 2022
- CL Ex. 2 - Copies of checks from the Claimant to the Respondent: check number 1001 for \$24,000.00, March 15, 2022; check number 1002 for \$16,000.00, April 6, 2022; check number 1004 for \$16,700.00, May 17, 2022
- CL Ex. 3 - Finished Basement Floor Plan, revised March 15, 2022
- CL Ex. 4 - Letter from the Respondent to the MHIC and the Claimant, March 7, 2022<sup>3</sup>
- CL Ex. 5 - Summary of the Claim, September 19, 2022
- CL Ex. 6 - Howard County Permit Status, October 11, 2022

---

<sup>3</sup> The letter contains an additional date, July 13, 2022

- CL Ex. 7 - Department Complaint Form, September 20, 2022<sup>4</sup>
- CL Ex. 8 - Letter from the Complainant to the Respondent, December 6, 2022; U.S. Postal Service Certified Mail Receipt, December 6, 2022; U.S. Postal Service receipt, December 6, 2022
- CL Ex. 9 - USPS<sup>5</sup> Tracking update, December 7, 2022
- CL Ex. 10 - Not Admitted<sup>6</sup>
- CL Ex. 11 - Copies of texts between the Claimant and the Respondent, various dates in July and August 2022
- CL Ex. 12 - Order from the MHIC to the Respondent, October 4, 2022; letter from the MHIC to the Claimant, January 4, 2023; letter from the MHIC to the Respondent, October 24, 2023; letter from the MHIC to the Claimant, January 16, 2024;
- CL Ex. 13 - Photos, taken September 20, 2022
- CL Ex. 14 - letter from the MHIC to the Respondent, January 13, 2023

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, February 1, 2024
- Fund Ex. 2 - Hearing Order, January 16, 2024
- Fund Ex. 3 - MHIC Licensing History for the Respondent, April 23, 2024
- Fund Ex. 4 - MHIC Claim Form, received October 18, 2023
- Fund Ex. 5 - Letter from the MHIC to the Respondent, October 24, 2023

#### 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.

---

<sup>4</sup> The document contains an additional date, October 26, 2022.

<sup>5</sup> United States Postal Service.

<sup>6</sup> The exhibit is in the file. COMAR 28.02.01.22C.

### 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 numbers 01 48726 and 05 127704.
2. In July 1997, the Fund paid a claimant for an actual loss suffered due to an unworkmanlike or incomplete home improvement performed by the Respondent.
3. In February or March 2022, the Claimant paid a designer for a floor plan to finish the basement level of his house. The plans contained a bedroom.
4. On or about March 15, 2022, the Claimant and the Respondent entered into a contract (Contract) to finish the Claimant's basement to include a sixth bedroom in his house.
5. The Respondent told the Claimant it would take three or four months to complete.
6. Among other things, the Contract included framing the basement with metal studs and finished drywall, insulation, electrical outlets, approximately twenty-five recessed lights, plumbing for, and, a wet bar, new drains, a full bath, a furnace room vent and return, and enlarging an egress window and the sealing of doors.
7. The original agreed-upon Contract price was \$71,200.00.
8. The Contract required someone to obtain permits from Howard County.
9. On the following dates, the Claimant paid the Respondent the following amounts:
  - March 15, 2022, \$24,000.00
  - April 6, 2022, \$16,000.00
  - May 17, 2022, \$16,700.00
10. In April 2022, the Respondent began work on the Contract before he obtained the proper building permits.

11. On a date unknown in this record, the Claimant and the Respondent entered into a verbal contract to repair drains that added an additional \$2,600.00 to the Contract.
12. After work on the Contract began, the Complainant was not satisfied with the progress of the Respondent's work.
13. The Claimant texted the Respondent about his concerns regarding a window, doors, and a drain, among other things.
14. On or about July 12, 2022, the Respondent applied for a Howard County building permit.
15. In order to construct a sixth bedroom, the Howard County Health Department required that the Claimant update his septic system including replacing his septic tank. The Claimant did not wish to update his septic system.
16. The Claimant contacted the MHIC in July or August 2022 to inquire about a complaint against the Respondent.
17. In or around September 2022, the Claimant and/or his spouse told the Respondent that the Respondent could no longer continue work on the Contract. By that time, the Respondent installed twenty-eight lights and approximately forty electrical outlets.
18. In or about August and September 2022, the Claimant assumed the Howard County building permit that the Respondent applied for and added himself as the general contractor.
19. On or about October 18, 2022, the Claimant filed a complaint with the MHIC.
20. The Claimant told Howard County there was an office in the basement plans and not a bedroom.

21. On or about December 6, 2022, the Claimant informed the Respondent that he invoked the arbitration clause in the Contract. The Respondent knew the Claimant invoked the arbitration clause and did not reply to the Claimant.

22. On or about January 13, 2023, the MHIC mailed the Respondent a letter regarding the Claimant's request for arbitration.

23. On or about February 1, 2023, the Howard County building permit was issued in the Claimant's name.

24. The Claimant hired contractors to finish the basement remodeling project, some of whom were the Respondent's sub-contractors.

25. The Claimant had another electrician install fifteen more outlets and twenty lights.

26. All the Contract work was completed and passed inspection.

### 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 (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). The Claimant bears the burden to show he is entitled to compensation from the Fund for an actual loss by a preponderance of the evidence. COMAR 28.02.01.21K(1), (2).

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. 2023); *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. 2023). 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. 2023). 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. 2023).

#### Arbitration

The parties agreed that they entered into a valid agreement to submit their disputes to arbitration. *See id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023).<sup>7</sup> The Contract contained the following language: “Customer agrees to Arbitration to resolve any issues.” (CL Ex. 1).

On or about December 6, 2022, the Claimant informed the Respondent that he wanted to arbitrate the dispute. At the hearing, the parties disagreed as to the content of the Claimant’s arbitration communication, but there was no dispute that the Claimant informed the Respondent

---

<sup>7</sup> There are mandatory arbitration clause provisions contained in COMAR 09.08.01.25, which provides:

A. A mandatory arbitration clause in a home improvement contract shall include the following information:

- (1) The name of the person or organization that will conduct the arbitration;
- (2) Whether any mandatory fees will be charged to the parties for participation in the arbitration and include the fee schedule;
- (3) Whether the arbitrator’s findings are binding; and
- (4) A disclosure that, under Business Regulation Article, §8-405(c), Annotated Code of Maryland, a claim against the Home Improvement Guaranty Fund by an owner shall be stayed until completion of any mandatory arbitration proceeding.

B. The parties shall affix their initials and date immediately adjacent to any mandatory arbitration clause in a home improvement contract, at the time of execution of the contract.

C. This regulation shall apply to all home improvement contracts executed after October 31, 1994.

The Contract lacked the requisite language, but the parties agreed that the clause, as written, was valid.

he wanted to arbitrate. The Respondent testified that he wanted the Claimant to “take the next step” and “left it in [the Claimant’s] hands” and did nothing in response to the Claimant’s request for arbitration. The Respondent testified that he was still willing to arbitrate because he “suffered the loss” and did not know how arbitration worked when he was informed that the case was referred to the OAH. When the Respondent spoke to the MHIC about the scheduled hearing, he did not raise the issue of arbitration.

The Claimant testified that the MHIC told him that they would mail the Respondent a letter regarding arbitration. The MHIC mailed a letter to the Respondent on January 13, 2023, informing the Respondent that he must provide “documentation that [he had] agreed to submit [the] dispute to arbitration and paid [his] share of the preliminary fee ... within 21 days of the date of [the] letter.” (*See* CL Ex. 14). The Respondent denied receiving that letter from the MHIC and testified that he would have responded “right away” had he received it.

The Respondent’s testimony was uncertain and contradictory. Although the Respondent testified that he had no knowledge of the MHIC claim process because he had never “had issues” like this before, the Respondent had a claim against him paid by the Fund in 1997. (*See* Fund Ex. 3). He was, therefore, at least somewhat familiar with the workings of the Fund and claims for actual loss. He admitted that he received every letter from the MHIC except the January 13, 2023 letter. The Claimant received the letter and included it as evidence in this case. (CL Ex. 14). I find it more probable than not that the Respondent received the letter. In any event, he knew that the Claimant wanted to arbitrate and did nothing. Therefore, the Respondent waived any enforceable arbitration clause. *See* Bus. Reg. § 8-405(d) (Supp. 2023).<sup>8</sup>

---

<sup>8</sup> Although not raised as an affirmative defense, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *See* Bus. Reg. § 8-405(d) (Supp. 2023).



### Incomplete Home Improvement

The only persuasive evidence of unworkmanlike and inadequate home improvement is the testimony of the Claimant and Claimant's Exhibit 13. There was no inspection report of the Respondent's work admitted into evidence and the Claimant is not a contractor. The photographs were taken in September of 2022. (See CL Ex. 13). The Claimant alleges the photographs depict an unworkmanlike and inadequate home improvement. The Respondent testified the photographs show "rough in" work that would have been completed were he allowed to complete the work outlined in the Contract. (See CL Ex. 13). There was no expert testimony to explain what unworkmanlike or inadequate qualities the photos depict. There was no evidence to indicate what repairs were necessitated by the work shown in the pictures. Without explanation, the photos themselves do not amount to proof of inadequate or unworkmanlike home improvement. See Bus. Reg. § 8-401.

The Respondent performed an incomplete home improvement. There was no dispute that the Respondent failed to complete the work under the Contract. The Respondent took the position that he was denied the opportunity to complete the Contract because the Claimant's wife banned him from the worksite and the Claimant "took over" the building permit. He lamented that he was forced by the Claimant to begin work before obtaining permits because the Claimant wanted the work completed by a certain date. He admitted the framers and subcontractors began work when "technically" they should have waited for permits to be issued.

According to the Respondent, the Howard County building permit was delayed because the Howard County Department of Health demanded that the Claimant's septic system be updated before it issued a building permit that included a sixth bedroom at the Claimant's property. He testified that he had never been denied a building permit for a basement renovation and he told the Claimant that the extra bedroom was the issue that prevented him from obtaining

the building permit. However, according to the Respondent, the Claimant would not believe him, and “leaned on” him to get the renovation done. The Respondent argued that “supply issues” due to the COVID-19 pandemic further stalled work on the Contract, but that the work that was completed was “fine.”

For example, the Respondent testified that the aluminum framing he installed was “roughed in” correctly and only appeared flimsy because sheetrock had not yet been installed. He additionally testified that the sheetrock was not installed because the inspections were not completed, because the building permit was not issued. Additionally, according to the Respondent, he installed electrical boxes that could not be wired because there was no inspection, because there was no building permit. According to the Respondent the issues that the Claimant pointed out to him would have been resolved in time after inspections occurred. The Respondent wondered why the Claimant paid the draws in accordance with the Contract if the work was inferior, and why the Claimant hired the Respondent’s subcontractors to complete the work if they were incapable.

In the Respondent’s view, it would have taken \$20,000.00 to finish the Contract because sixty-seven percent of the work was completed. The Respondent testified he that was paid \$56,700.00 and made no profit.

The Claimant contended that the Respondent verbally told him the Contract would be completed in three to four months. In April 2022, the Respondent began work before permits were obtained even though the Respondent told him the project was “good to go.” The Claimant testified that he agreed to have the Respondent install an exterior drain for an additional \$2,600.00.

He described what he called, the Respondent’s “cloak and dagger techniques” such as requests for draws and then failures of the Respondent to communicate with him. The Claimant

testified that the Respondent's crews came intermittently or not at all, or, if the crew did come, materials were not delivered for the crews to work. The Claimant testified to delays and that he alerted the Respondent to issues with the drain, doors, and egress windows that included flooding and leaking. The Claimant testified that he became the project manager because by September 14, 2022, the second verbally agreed-upon completion date, the project was incomplete and he wanted it to be completed.

According to the Claimant, when he discovered that the building permit was not issued, he called the MHIC who informed him he had a right to file a claim with the Fund. The MHIC also informed him that he needed plumbing, HVAC,<sup>9</sup> electrical, and framing permits that the Respondent never obtained.

According to the Claimant, the Respondent did not install the duct work that he presumed was part of the Contract, though it was not expressly part of the Contract. (See CL Ex. 3). He paid another contractor \$4,150.00 to complete the duct work. (See CL Ex. 1; Fund Ex. 4). The Respondent installed twenty-eight lights and approximately forty outlets. The Claimant had another electrician install fifteen more outlets and twenty lights to "provide adequate lighting" for the space. The Claimant testified that the Respondent's work was "ill installed" by "unqualified installers" but he also testified he was "mostly satisfied" with the work of the Respondent's electricians in September 2022. He averred that his heated floors were damaged by the Respondent when the floor drains were relocated. According to the Claimant, some framing was missing, "haphazardly done," and the studs were partially installed and secured by one screw, and "just stuck up there." The Claimant testified that all told, he paid \$77,223.60 to different contractors to finish the work, \$28,038.00 of which was the cost of all the repairs.

---

<sup>9</sup> Heating, ventilation, and air conditioning.

The Respondent conceded that the work on the Contract took too long and was not complete.

The delays were the fault of both parties. The Respondent failed to obtain the permits necessary to have inspections completed, and the Claimant refused to have the septic system updated, and eventually changed his plan from a bedroom to an office in order to get the building permit. The Respondent testified that the cost to complete the incomplete Contract was about \$20,000.00. He also testified sixty-seven percent of the Contract was completed. However, he was paid \$56,700.00 which is seventy-seven percent of the Contract price (e.g.  $\$71,200.00 + \$2,600.00 = \$73,800.00 \times .67 = \$49,446.00$ ).

The Claimant testified that his MHIC claim form reflects the amount of his actual loss, \$28,038.00. (See CL Ex. 3). The Fund took the position that the amount of actual loss was not proven. The Fund agreed that the Respondent performed an incomplete home improvement, and the Claimant acted reasonably to disallow the Respondent to complete the project because he had not obtained permits, began work without permits, and took over six months to complete a renovation he told the Claimant in March 2022 would take three or four months.

The Fund argued that if there was any award, it should be the amount paid to the Respondent (\$56,700.00) plus the amount the Respondent testified that it would take to complete the Contract (\$20,000.00) minus the Contract price (\$73,800.00), or \$2,900.00. The Fund explained that the testimony from the Respondent is the best evidence of what the cost to complete the Contract that the Respondent estimated and priced. Accordingly, because there was no competent evidence on that point, save for the Claimant's unsupported opinion testimony and the Claim form, the Respondent's estimate is the best evidence.

I agree with the Fund that there was incomplete home improvement work and the Claimant paid other contractors to complete the Contract. I thus conclude 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. Bus. Reg. § 8-405(e)(3) (Supp. 2023); 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. *See* COMAR 09.08.03.03B(3)(a)-(c).

The Respondent performed some work under the Contract, and the Claimant retained other contractors to complete or remedy that work. However, none of the following three regulatory formulas is appropriate in this case because the Claimant did not definitively establish the reasonable amounts the Claimant had to pay another contractor to complete the original contract:

(a) 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.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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)(a)-(c). Accordingly, I shall apply a unique formula to measure the Claimant's actual loss.

The Claimant paid the Respondent \$56,700.00 and I find the amount it would have taken to complete the Contract was an additional \$20,000.00. I agree with the Fund that the Respondent's testimony is the best evidence, even though  $\$56,700.00 + \$20,000.00 = \$76,700.00$  and exceeds the original Contract price of \$73,800.00. I propose calculating the cost of the actual loss as follows:

Amount paid to the Respondent:	\$56,700.00
Amount it would take to complete the Respondent's incomplete Home Improvement	<u>+ \$20,000.00</u>
	\$76,700.00
Original Contract price	<u>- \$73,800.00</u>
Actual Loss	\$ 2,900.00

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.<sup>10</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$2,900.00.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$2,900.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405

---

<sup>10</sup> 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").

(2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$2,900.00 from the Fund.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,900.00; 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;<sup>11</sup> and

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

July 19, 2024  
Date Decision Issued

*William F. Burnham*  

---

William F. Burnham  
Administrative Law Judge

WFB/emh  
#212806

---

<sup>11</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 10<sup>th</sup> day of December, 2024, 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***



**IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
ANTHONY BOBECK \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 23(75)362  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
GARY SWEITZER AND GARY \* 02-24-01594  
SWEITZER SERVICES, INC. \***

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on May 2, 2024. Following the evidentiary hearing, the ALJ issued a Proposed Decision on July 19, 2024, concluding that the homeowner, Anthony Bobeck (“Claimant”) suffered an actual loss as a result of the acts or omissions of Gary Sweitzer and Gary Sweitzer Services, Inc. (collectively, “Contractor”). *ALJ Proposed Decision* p. 14. In a Proposed Order dated December 10, 2024, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$2,900 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On March 20, 2025, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Catherine Villareale appeared at the exceptions hearing on behalf of the Guaranty Fund. The Panel entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Contractor’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR

09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the finishing of the basement at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, inadequate, and incomplete. *ALJ's Proposed Decision* p. 10.

On exception, the Contractor argued that the ALJ erred in recommending an award for the Claimant because the contract required that disputes between the parties be arbitrated. The Panel finds no error. The ALJ found that the Contractor waived his right to arbitrate the dispute by failing to respond to the Claimant's invocation of arbitration and failing to respond to the Commission's letter of January 13, 2023, notifying him that he would be deemed to have waived his right to arbitration if he did not submit documentary evidence of his engagement in the arbitration process in accordance with COMAR 09.08.03.02E(2). (OAH Hearing Claimant's Exhibit 14). The Contractor does not challenge the ALJ's finding that he waived his right to arbitration exception. Moreover, the Panel finds that the ALJ's finding of waiver is supported by substantial evidence and legally correct. Because the Contractor waived his right to arbitrate the dispute, the Panel agrees with the ALJ that the arbitration clause in the parties' contract does not preclude a Guaranty Fund award.

The Contractor also argued that the ALJ erred in recommending an award for the Claimant because the Claimant refused to allow him the opportunity to correct and complete his performance of the contract. The Panel finds no error. The ALJ found that the Claimant was reasonable to terminate the Contractor before the Contractor completed performance of the contract because the Contractor ceased responding to the Claimant's communications on November 16, 2020, and because the Contractor was already behind schedule at that point. Because the Contractor failed timely to complete the contract and stopped communicating with the claimant, the Panel agrees

with the ALJ that the Contractor's acts and omissions caused the Claimant's loss.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 4<sup>th</sup> day of April 2025, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant is awarded \$2,900 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

*Chandler Loudon*  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**