IN THE MATTER OF THE CLAIM	*	**BEFORE BRIAN PATRICK WEEKS,**
OF BRADLEY ROGERS,	*	**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 RAFFAELE	*	
MANNARELLI,	*	
T/A CONCEPTUAL BUILDING &	*	
LANDSCAPE, LTD,	*	**OAH No.: LABOR-HIC-02-19-40308**
RESPONDENT	*	**MHIC No.: 18 (90) 694**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 6, 2019, the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) received a claim (Claim) by Bradley Rogers (Claimant) for reimbursement of $47,700.00 in actual losses allegedly suffered as a result of a home improvement contract with Raffaele Mannarelli, trading as Conceptual Building & Landscape, LTD (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On or about December 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on July 6, 2020, at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department of Labor (Department),[1] represented the Fund. The Claimant represented himself. After waiting at least fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.[2]

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. 2019); 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 on the Claimant's behalf:

Cl. Ex. 1 - Contract, June 15, 2017

Cl. Ex. 2 - Copy of $29,299.00 Check, June 16, 2017

Cl. Ex. 3 - Copy of $4,950.00 Check, June 16, 2017

Cl. Ex. 4 - Text Messages Between Claimant, Claimant's Wife, and Respondent, July 12 through October 18, 2017

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[2] Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on March 31, 2020, COMAR 09.08.03.03A(2), and returned to the OAH as received on May 11, 2020. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice and proceeded to hear the captioned matter.

Cl. Ex. 5 - Text Messages Between Claimant and Respondent, June 6 through October 20, 2017

Cl. Ex. 6 - Email from Live Green Landscape Associates, LLC to Claimant with attached Contract Proposal, November 30, 2017

Cl. Ex. 7 - MHIC Complaint, October 25, 2017

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - OAH Notice of Hearing, March 31, 2020

Fund Ex. 2 - Hearing Order, December 2, 2019

Fund Ex. 3 - Respondent's Licensing History, June 19, 2020

Fund Ex. 4 - Letter from MHIC to Respondent with attached Claim Form, August 6, 2019

The Respondent did not appear and therefore did not offer any exhibits.

Testimony

The Claimant testified on his own behalf.

The Fund and the Respondent 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 in Maryland under MHIC license number 50636.

2. On June 16, 2017, the Claimant and the Respondent entered into a contract to install an outdoor pizza oven, terraces, and an outdoor spa (Contract). The Contract stated that work would begin within one week of delivery of the pizza oven.

3. The original agreed-upon Contract price was $54,950.00.

4. On June 16, 2017, the Claimant paid the Respondent a total of $34,249.00 using two checks in the following amounts: (1) $29,299.00, and (2) $4,950.00. The $4,950.00 check was to allow the Respondent to purchase the pizza oven.

5. On August 20, 2017, the Respondent began work at the Claimant's residence. He began but did not complete work on the patio terraces and the spa.

6. On October 11, 2017, the Respondent came to the Claimant's residence for the final time. At that time, he had not completed the work under the Contract.

7. On October 20, 2017, the Respondent stopped communicating with the Claimant.

8. On November 30, 2017, the Claimant obtained an estimate totaling $44,410.00 from Live Green Landscape Associates, LLC, to complete the work required under the Contract. The estimate includes the following items that were not part of the Contract: installation of a new stair railing ($2,650.00), totem statue restoration ($1,500.00), and custom wood serving table ($2,200.00). Under the Contract, the Claimant was to provide string lights, and the Respondent was responsible for installation. The estimate includes the cost of supplying and installing string lights. The cost of the string lights was approximately $250.00. The cost to complete the work required by the Contract was $37,810.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2015); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *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)).

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) (2015)[3]; *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. With respect to the pizza oven, the Contract required the Respondent to purchase and install a pizza oven. This never occurred. The Respondent indicated that one of his workers had dropped and destroyed the pizza oven and offered to construct one himself for the Claimant. The Claimant never agreed to a modification of the Contract to allow the Respondent to construct a replacement and the pizza oven was neither delivered nor installed. The Respondent also began, but did not complete, the kitchen island.

With respect to the patio, the Respondent began, but did not complete, some work. Rather than install a gravel base as required by the Contract, the Respondent piled soil from the Claimant's yard and set stones on top of it. The stones were set in such a way that they created a tripping hazard at multiple spots. Many of the stones were cracked and some were loose. The Respondent did not install a drainage pipe or flashing to direct water away from the Claimant's house. The Respondent also failed to install the fire pit as required by the Contract. Ultimately,

[3] Unless otherwise noted, all references to the Business Regulation Article cite the 2015 Replacement Volume of the Maryland Annotated Code.

the Claimant had to completely redo the patio. The Respondent also failed to install the lighting, trenches, and string lights for the spa area.

I thus find 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); 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 performed some work under the contract, and the Claimant has retained other contractors to complete or remedy 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).

The Claimant obtained an estimate from Live Green Landscape Associates, LLC, on November 29, 2017. Based on this document and the Contract, I conclude that the Claimant has shown that it would cost $37,810.00 to complete the work required under the Contract. I arrived at this number by including the following line items and corresponding dollar amounts from the estimate: flagstone patio installation, grout bluestone patio, kitchen island completion, firepit installation, pizza oven installation, electric trenching and hookup, replace one boulder stepper,

rebuild patio edge stones on wood, and tree pruning. I included the amounts corresponding to these line items because I can tell by reviewing the Contract that they were covered by the Contract. The patio work included in the estimate is to repair and replace the unworkmanlike, inadequate, or incomplete work of the Respondent. All the other items on the estimate are to complete work that was required under the Contract but which the Respondent did not begin.

I excluded the following items because there is no corresponding line item on the Contract: installation of a new stair railing ($2,650.00), totem statue restoration ($1,500.00), custom wood serving table ($2,200.00).[4] The estimate also includes a line item for supply and installation of string lights. The Contract requires the Claimant to provide string lights and he testified that they cost around $250.00; as such, I will deduct that amount as well. Subtracting these amounts from the total estimate of $41,960.00 results in a total estimate of $37,810.00 to complete the work required by the Contract.

Adding the amount paid to the Respondent ($34,249.00) to the cost to complete the work ($37,810) results in a total of $72,059.00. Subtracting the Contract amount of $54,950.00 results in a total of $17,109.00, which represents the Claimant's actual loss pursuant to the specified formula.

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 less than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled recover his actual loss of $17,109.00.

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[4] The Fund argued, based on the Claimant's testimony, that only the wood table should be excluded from the actual loss calculation. My review of the Contract as compared to the estimate established that the new stair railing and totem statue restoration are not mentioned at all in the Contract.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $17,109.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(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 $17,109.00; 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[5]; and

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

September 18, 2020
Date Decision Issued

Brian Patrick Weeks
Administrative Law Judge

BPW/kdp
#186949

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

PROPOSED ORDER

WHEREFORE, this 2nd day of November, 2020, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Michael Newton

Michael Newton
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF BRADELY ROGERS AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF RAFFAELE MANNARELLI T/A CONCEPTUAL BULDING & LANDSCAPE, LTD	* * * * * * *	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 18(90)694** **OAH CASE NO. LABOR-HIC-02-1940308**

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on July 6, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 18, 2020, concluding that the homeowner, Bradley Rogers ("Claimant") proved that he suffered an actual loss as a result of the acts or omissions of Raffaele Mannarelli t/a Conceptual Building & Landscape, Ltd ("Contractor"). *ALJ Proposed Decision* p.8. In a Proposed Order dated November 2, 2020, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On January 7, 2021, 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 Justin Dunbar appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission 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; 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 presented 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 installation of an outdoor pizza oven, spa, and landscaping terraces at the Claimant's home. The ALJ found that the Contractor's performance under the contract was incomplete and unworkmanlike. *ALJ's Proposed Decision* pp. 5-8.

On exception, the Claimant, who did not attend the OAH hearing in this proceeding, argued that he did not receive notice of the OAH hearing because his children signed for the notice and did not give it to him. The Claimant also argued that he believed the ALJ's proposed award of $17,109.00 was excessive. The Commission finds no error with the ALJ's Proposed Decision and will affirm.

Regarding the OAH hearing notice, the record reveals that the notice was delivered to the Contractor's business address of the record with the Commission via certified mail more than ten days before the hearing date in accordance with *Md. Code Ann.*, Business Regulation Art. § 8-312(d).

Regarding the amount of the award, the Commission holds that the ALJ properly found that it would cost the Claimant $37,810.00 to correct or complete the Contractor's work based on the contract with the Contractor (OAH Claimant's Exhibit 1) and the estimate of Live Green Landscape Associates, LLC (OAH Claimant's Exhibit 6), properly found that the Claimant paid the Contractor $34,249.00 under the contract based on checks from the Claimant to the Contractor (OAH Claimant's Exhibits 2-3), and properly applied COMAR 09.08.03.03B(3)(c) to calculate the Claimant's award by adding the cost to correct and complete and the amount paid to the Contractor and subtracting the original contract price.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 25th day of January 2021, **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 $17,109.00 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.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement Commission