IN THE MATTER OF THE CLAIM	*	**BEFORE BRIAN ZLOTNICK,**
OF RYAN DECAMP,	*	**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 HEATHER	*	
JUHRING, T/A MOUNTAIN VIEW	*	
REMODELING, LLC	*	**OAH No.: LABOR-HIC-02-23-01512**
RESPONDENT	*	**MHIC No.: 22 (75) 1365**
	*	

* * * * * * * * * * * * *

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 September 8, 2022, Ryan Decamp (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)[1] Guaranty Fund (Fund) for reimbursement of $40,642.00 for actual losses allegedly suffered as a result of a home improvement contract

[1] The MHIC is under the jurisdiction of the Department of Labor (Department).

with Nicholas Miller,[2] trading as Mountain View Remodeling, LLC (Respondent or Mountain View). Md. Code Ann., Bus. Reg. §§ 8-401 - 411 (2015 & Supp. 2022).[3] On January 6, 2023, the MHIC issued a Hearing Order on the Claim. On January 17, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 1, 2023, two days prior to the scheduled in-person hearing, Ms. Juhring filed a request (Request) to participate remotely because she resides in New Jersey. On March 2, 2023, I issued an order (Order) granting Ms. Juhring's request to participate remotely in accordance with the Code of Maryland Regulations (COMAR) 28.02.01.20B(1). In the Order I ruled that the Claimant and the Fund would participate in the hearing in-person at the OAH. On March 3, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Ms. Juhring appeared remotely through the Webex platform on behalf of the Respondent.

At the outset of the hearing, Ms. Juhring argued that she has no financial ties to Mountain View and that Nicholas Miller, her husband, is the owner of Mountain View. Ms. Juhring went on to state that she is separated from Mr. Miller and that she has filed for divorce. I allowed Ms. Juhring to represent the Respondent at the hearing, and I requested Ms. Juhring to obtain a power of attorney to represent the Respondent in this matter and submit it to the OAH within five days from the conclusion of the March 3rd hearing. Ms. Juhring indicated that because she has a restraining order against Mr. Miller, he refuses to cooperate with her. Ms. Juhring did not provide a power of attorney. Neither the Fund or the Claimant raised any objection to Ms.

---

[2] Heather Juhring was the licensed contractor for Mountain View Remodeling at all relevant times regarding this matter.

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

Juhring representing the Respondent. Although Ms. Juhring is not an attorney, her representation of Mountain View is permissible in accordance with Md. Code Ann., State Gov't § 9-1607.1(a)(4) (2021), as Ms. Juhring is the designated MHIC license holder for Mountain View. Therefore, I find that Ms. Juhring is a principle of Mountain View.

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); 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:

Cl. Ex. 1 - Siding contract (Siding Contract), March 25, 2021

Cl. Ex. 2 - Window replacement contract (Window Contract), March 25, 2021

Cl. Ex. 3 - Mountain View's proposed scope of work for siding replacement, February 10, 2020

Cl. Ex. 4 - Photographs taken by the Claimant on June 26, 2021

Cl. Ex. 5 - Emails between the Claimant and Nicholas Miller, August 7 and 9, 2021

Cl. Ex. 6 - Emails between the Claimant, Chris Bjoro and Angel Alt, August 3 and 4, 2021

Cl. Ex. 7 - Emails between the Claimant and Chris Bjoro, July 6, 7, and 12, 2021

Cl. Ex. 8 - Satisfactory Completion and Installation Certificate, June 18, 2021

Cl. Ex. 9 - Emails between the Claimant and Nicholas Miller, July 12 and 28, 2021

Cl. Ex. 10 - Emails between the Claimant and Angel Alt, November 4, 5, and 8, 2021, with attached photographs

Cl. Ex. 11 - Power Home Remodeling Estimate, May 14, 2022

Cl. Ex. 12 - BGE Home Estimate, January 27, 2021

Cl. Ex. 13 - Text from Chris Bjor, November 29, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, January 19, 2023

Fund Ex. 2 - Hearing Order, January 6, 2023

Fund Ex. 3 - Claim Form, September 8, 2022, with attached letter from the MHIC to the Respondent, September 22, 2022

Fund Ex. 4 - Respondent's MHIC licensing history, March 1, 2023

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and presented the testimony of Laura DeCamp, the Claimant's wife.

Heather Juhring, testified on behalf of the Respondent.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. The Respondent was a licensed home improvement contractor under MHIC license number 5420971 at all times relevant to the subject of this hearing.

2. Heather Juhring is the MHIC license holder and is Nicholas Miller's wife. Mr. Miller is the owner of Mountain View. Ms. Juhring is separated from Mr. Miller and has a restraining order filed against him.

3. Mr. Miller renewed the MHIC license held by Ms. Juhring, without her knowledge or consent, when it expired on October 11, 2021.

4. On March 25, 2021, the Claimant and the Respondent entered into two contracts, Siding Contract and Windows Contract.

5. The Siding Contract specified the following:

- removal and replacement of twenty-five squares of insulated siding
- removal and replacement of house wrap
- removal and replacement of house shutters
- seal and paint window shutters
- detach and reset exterior light fixture
- detach and reset outlet or switch
- detach and reset meter base and main disconnect
- remove and replace window frame wrap and trim with aluminum sheet
- remove and replace wood door frame with aluminum

6. The original agreed-upon Siding Contract price was $20,000.00.

7. The Windows Contract specified the following:

- Installation of fourteen Fortis Vytex windows
- Installation of one Georgetown window in the garage
- Installation of two Hopper windows in the basement

8. The original agreed upon Windows Contract was $9,981.00.

9. The Siding Contract was paid for through Foundation Financing, who paid the Respondent $20,000.00. The Claimant is responsible for monthly payments of $285.00 to Foundation Financing to pay off the $20,000.00 debt.

10. The Claimant paid the Respondent a deposit of $3,000.00 by check in March 2021 for the Windows Contract. The Claimant paid the Respondent a second payment of $3,000.00 by check for the Windows Contract in April 2021. A balance of $3,981.00 remains due for the Windows Contract.

11. On May 1, 2021, the Respondent began work on the Siding Contract. The Respondent replaced the siding in sections and failed to remove the existing house wrap and replace it with new Tyvek house wrap.

12. The siding installed by the Respondent was cracked in certain sections and was nailed through the garage resulting in exposed nails protruding through the garage. The siding began to buckle and warp after it was installed by the Respondent. The Respondent finished the siding work in August 2021.

13. On August 9, 2021, the Claimant emailed the Respondent expressing his concerns regarding the Respondent's work on the Siding Contract.

14. The Respondent began work on the Windows Contract on October 15, 2021. Over a period of three days, the Respondent installed fifteen windows on the house, one window in the garage, and two Hopper windows in the basement. After completion of the windows installation, a technician employed by the Respondent told the Claimant that one of the windows was installed backwards, was broken and missing a lock. The technician was unable to repair this window because they lacked a replacement window.

15. On October 18, 2021, the Claimant notified the Respondent's project manager that one of the windows was broken and could not be repaired.

16. On November 4, 2021, the Claimant emailed the Respondent's project manager that the living room window was installed without a locking component and its outside frame was damaged.

17. On November 8, 2021, the Respondent's project manager replied to the Claimant that she was reaching out to the window manufacturer to inquire as to why the living room window lacked a locking mechanism.

18. The windows installed by the Respondent were improperly flashed resulting in condensation and air leakage through the windows. Several of the windows installed by the Respondent were incorrect sizes for their spaces.

19. After November 8, 2021, the Claimant asked Foundation Financing to mediate their issues with the Respondent, but no resolution was obtained.

20. The Respondent last performed any work at the Claimant's home on November 8, 2021.

21. On May 14, 2022, the Claimant obtained an estimate from Power Home Remodeling (Power) to fix the Respondent's siding work. Power Home Remodeling noted that the siding on the Claimant's home was installed improperly with nails on the outside of siding panels and flashing installed on top of old existing siding.

22. The Power estimate included removing the Respondent's siding, removing the original house wrap and installing new house wrap and siding. The Power estimate only included one item (installation of J-Channels) that was beyond the scope of the Siding Contract. The cost of the J-Channels installation was estimated at $3,000.00. The total cost of the Power estimate is $32,495.00.

23. On January 27, 2021, the Claimant obtained an estimate of $9,306.00 from BGE Home for the installation of windows. This estimate was within the scope of the Windows Contract.

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); State Gov't § 10-217; 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. 2022); *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 from the Fund.

Ms. Juhring testified on behalf of the Respondent and argued that Mr. Miller is the owner of Mountain View and that she had little input in the operations of Mountain View. Ms. Juhring asserted that she asked Mr. Miller not to renew the Respondent's MHIC license under her name when it expired on October 10, 2021, but Mr. Miller renewed it against her will. Ms. Juhring further indicated that when she learned of the Claimant's claim, she asked the Respondent's project manager for paperwork associated with this project, but that paperwork was not provided to her because Mr. Miller refuses to provide her with any information. Ms. Juhring asked that Mr. Miller be held accountable for his actions. Ms. Juhring did not contest any of the Claimant's assertions in this matter.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant testified that he hired the Respondent to remove existing siding and windows and install new siding and windows. The Claim relates to the Respondent's work on the Siding and Windows Contracts. The Siding Contract dictated that the Respondent would remove the existing siding and house wrap and then apply new house wrap and install new

siding. The Windows Contract dictated that the Respondent would install new windows throughout his house and in his garage.

The Respondent completed the siding work sometime between May 2021 and August 2021. The Claimant submitted photographs into evidence that showed that the siding was installed in sections with the original house wrap remaining on the house during installation. The Siding Contract specified that the Claimant's existing house wrap would be removed and replaced. The Respondents failed to perform that aspect of the Siding Contract. Further, the Claimant introduced photographs into evidence that showed cracked siding installed by the Respondent. The Claimant also testified that the siding installed by the Respondent started to buckle shortly after installation in 2020. Based on the above uncontested evidence of unworkmanlike, inadequate and incomplete home improvements, I find that the Claimant is eligible for compensation from the Fund for the Respondent's performance of the Siding Contract.

Regarding the Windows Contract, the Claimant again submitted photographs that depicted the poor quality of the windows installed by the Respondent. Several photographs showed the plastic that was used by the Claimant to keep outside air from leaking through the poorly installed window. The photographs also show the wood beam that the Claimant had to install himself on the window as a locking device since the Respondent failed to install that window with a lock. Further, after the windows were installed in October 2021, a technician employed by the Respondent notified the Claimant that one of the windows was installed backwards and was broken. Again, based on the above uncontested evidence of unworkmanlike, inadequate and incomplete home improvements, I find that the Claimant is eligible for compensation from the Fund for the Respondent's performance of the Windows Contract.

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. 2022); 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.

The Respondent performed work under the Siding and Windows Contracts, and the Claimant has retained estimates from 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 paid a total of $26,000.00 to the Respondent for the Siding Contract ($20,000.00) and the Windows Contract ($6,000.00), and then obtained an estimate from Power to repair and correct the Siding Contract ($32,495.00 - $3,000.00 for work beyond the scope of the Siding Contract = $29,495.00) plus the cost of the BGE Home estimate for work within the scope of the Windows Contract ($9,306.00). This equals a total cost of $38,801.00 to correct the unworkmanlike, inadequate and incomplete home improvements. Therefore, the Claimant's cost to correct the errors, plus the amount it paid to the Respondent is $64,801.00 ($38,801.00 + $26,000.00). Accordingly, the Claimant's actual loss is $34,820.00

($64,801.00 - $29,981.00 – the total original contract prices for the Siding and Windows Contracts).

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.[4] Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of $34,820.00 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 $30,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $30,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2022).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant the amount of $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

[4] 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").

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.

Brian Zlotnick

May 19, 2023
Date Decision Issued

Brian Zlotnick
Administrative Law Judge

BMZ/emh
#205151

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

PROPOSED ORDER

WHEREFORE, this 18th day of July, 2023, 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.

Heather Connellee

Heather Connellee
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION