

IN THE MATTER OF THE CLAIM	*	BEFORE JOHN T. HENDERSON, JR.
OF ALEXANDRA ADAMES,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
JORDAN JONES, T/A	*	OAH No.: LABOR-HIC-02-23-01530
JDS HOME IMPROVEMENT LLC,	*	MHIC No.: 22(75)768
RESPONDENT	*	

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On September 12, 2022, Alexandra Adames (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (Department), for the reimbursement of \$4,957.00 for actual losses allegedly suffered because of a home improvement contract with Jordan Jones, t/a JDS Home Improvement, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015 &

Supp. 2022).<sup>1</sup> On January 17, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 2, 2023, the OAH mailed a notice of the hearing to the Respondent by certified and regular mail to his address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).<sup>2</sup> The notice advised the Respondent of the time, place, and date of the hearing.

On April 10, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20A. The Claimant appeared and represented herself. The Respondent appeared and represented himself. Catherine Villareale, Assistant Attorney General for the Department, represented the Fund.

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 (2021); 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**

- Cl. Ex. 1: Original contract between the Claimant and the Respondent, undated
- Cl. Ex. 1a: Copy of Screenshot of the MHIC website, undated
- Cl. Ex. 2: Text messages between Claimant and the Respondent from January 25, 2020, through September 6, 2021

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>2</sup> "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015). The first hearing was scheduled for March 9, 2023. An OAH docket specialist postponed that hearing due to the Claimant's travel schedule.

- Cl. Ex. 3: Receipt for deposit of \$3,360.00 paid to the Respondent by the Claimant, February 13, 2020
- Cl. Ex. 4: Emails between the Claimant and the Respondent for the period of December 31, 2019, through May 31, 2020
- Cl. Ex. 5: Revised contract between the Claimant and the Respondent, undated
- Cl. Ex. 6: Photograph of envelope containing cash payment to the Respondent, June 4, 2020
- Cl. Ex. 7: Photograph of envelope containing cash payment to the Respondent, June 8, 2020
- Cl. Ex. 8: Photograph of envelope containing cash payment to the Respondent, June 9, 2020
- Cl. Ex. 9: Claimant's check number 2053, payable to the Respondent in the sum of \$409.00, June 9, 2020
- Cl. Ex. 10: Two photographs of the inside of Claimant's window well showing standing water, July 17, 2021
- Cl. Ex. 11: Video of the inside of the window well showing water entering the window well, July 17, 2021
- Cl. Ex. 12: Photograph of the inside of the window well showing standing water from the perspective of inside the Claimant's home, August 9, 2021
- Cl. Ex. 13: Video of the outside of the window well showing water being pumped out, August 9, 2021
- Cl. Ex. 14: Video of the inside of the window well showing water filling the window well and flowing into the home, September 1, 2021
- Cl. Ex. 15: Receipt from Home Depot, September 1, 2021
- Cl. Ex. 16: Second Receipt from Home Depot, September 1, 2021
- Cl. Ex. 17: Receipt from Lowe's Home Center, September 1, 2021
- Cl. Ex. 18: Invoice from NextGen Home Improvement, LLC, October 14, 2021
- Cl. Ex. 19: Proposed Order from the MHIC, November 29, 2022

I admitted into evidence exhibits offered by the Respondent, as follows:

- Resp. Ex. 1: Original contract between the Claimant and the Respondent, January 21, 2020
- Resp. Ex. 2: Email from the Respondent to the MHIC, December 13, 2022
- Resp. Ex. 3: Invoice from NextGen Home Improvement, LLC, October 14, 2021
- Resp. Ex. 4: Revised contract between the Claimant and the Respondent, April 14, 2020
- Resp. Ex. 5: Emails between the Respondent and the Claimant for the period of December 31, 2019, through May 31, 2020; text messages between the Respondent and the Claimant for the period of January 25, 2020, through September 6, 2021; Receipt from Home Depot, September 1, 2021
- Resp. Ex. 6: Claimant's Explanation of Facts and Circumstances for the period of January 21, 2020, through September 6, 2021

I admitted into evidence exhibits offered by the Fund, as follows:

- GF Ex. 1: Letter from the MHIC to the Respondent, January 31, 2022
- GF Ex. 2: MHIC Hearing Order, January 6, 2023

GF Ex. 3: OAH Notice of Hearing, March 2, 2023  
GF Ex. 4: The Respondent's MHIC license number, printed April 8, 2023

Testimony

The Claimant testified on her behalf. The Respondent testified on his behalf. The Fund did not present any witnesses.

**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 general contractor's license number 01-94098 and corporate license number 05-131271, trading as JDS Home Improvement, LLC.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is located in Potomac, Maryland on Ivymount Terrace (the Property). It is her primary residence.
4. The Claimant has not filed other claims against the Respondent outside of these proceedings.
5. On January 21, 2020, the Claimant and the Respondent met at the Property to discuss the home improvement project of changing an existing basement window to an egress window/door system.<sup>3</sup>
6. On January 25, 2000, the Claimant sent a text to the Respondent to inquire if the company would extend the downspouts for both gutters on the side of the property where the egress window/door system would be constructed, to ensure drainage around the egress window/door system. The Respondent agreed to do that work charging time and materials at the rate of \$75 per hour.

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<sup>3</sup> This system allows someone to exit the basement to the outside in an emergency.

7. The Claimant and Respondent did not memorialize in writing their agreement to have the downspouts extended, and the Claimant did not pay the Respondent to have the downspouts extended. The Respondent did not extend the downspouts.

8. On or about February 13, 2020, the Claimant and Respondent entered into a contract (Contract) to construct the egress window/door system in the basement of the Property, which included installation of a window sized 28x45 and a sump pump. (Cl. Ex. 1.)

9. The Claimant agreed to accept the Respondent's recommendation and purchase a Sump Pump Package, which the Respondent advised would prevent flooding of the egress window/door well.

10. The total contract price was \$7,440.00. A \$2,313.33 deposit was due upon contract acceptance. A payment of \$2,313.33 was due upon installation of the window in the frame. The final payment of \$2,313.33 was due upon completion of the Original Contract for total payments of \$6,939.99, which was rounded up to \$6,940.00.

11. As an option, a sump pump was to be installed for \$1,000.00 and the window size was to be upgraded for the sum of \$500.00.

12. The total contract price with the options was increased to \$8,439.99. A \$500.00 discount was applied leaving a net due of \$7,939.99, which was written in the Original Contract to be \$7,440.00 due.<sup>4</sup>

13. On or about February 14, 2020, the Claimant and Respondent executed a revised Contract, where the base cost was calculated to be \$7,440.00.

14. The only change to the revised Contract was the window size (enlarged to 30x60), which the Respondent did not install because the Claimant wanted the original size of window written into the original Contract.

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<sup>4</sup> The computations are in error on the Contract.

15. The extension of the downspouts was not added to the revised Contract.
16. The option of the sump pump was added for \$1,000.00. The discount of \$500.00 was included. The revised Contract price was \$7,940.00.
17. The Revised Contract provided that the Respondent would install a 1/3 HP sump pump. The Respondent installed a 1/4 HP sump pump, which was less horsepower than the Revised Contract provided.
18. The Revised Contract between the Claimant and the Respondent did not provide for an arbitration proceeding.
19. On February 13, 2020, the Claimant paid the Respondent \$3,360.00 as the deposit so work could begin on the project.
20. On June 1, 2020, as agreed upon by the Claimant due to past rain weather considerations and COVID-19 quarantine issues, the Respondent began the work on the home improvement project.<sup>5</sup>
21. On June 4, 2020, the Claimant paid the Respondent \$2,000.00 as the second payment toward the home improvement project.
22. On June 8, 2020, the Claimant paid the Respondent \$2,000.00 as the third payment toward the home improvement project.
23. On June 9, 2020, the Claimant paid the Respondent \$80.00 as the final payment toward the home improvement project. The work was completed that day.
24. The Claimant paid the Respondent a total of \$7,440.00 for the agreed upon home improvement project.

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<sup>5</sup> The four-month delay was agreed upon by the Claimant and Respondent for the reasons stated.

25. On or about July 17, 2021, the Claimant discovered the window well of the egress window/door system was flooded with water. She sent to the Respondent a text message, with photographs and video, to advise of the water accumulating within the window well.

26. The Respondent sent a return text to the Claimant and asked her to check to see if the sump pump was working. The Claimant sent a text back to advise the sump pump was not working.

27. On or about August 9, 2021, the egress window/door system filled with water causing flooding into the basement of the Property. After the Claimant sent the Respondent a text message, he determined and advised the Claimant by text message that the GFCI<sup>6</sup> was shutting off from the outlet to which the sump pump was connected for power.

28. On August 11, 2021, the Respondent returned to the Claimant's property to make repairs by sealing around the edges of the GFCI outlet. He also advised that he would fix the Claimant's downspout.

29. On August 17, 2021, the Claimant reported to the Respondent by text message that the electrical outlet was still not working properly but there was no flooding in the window well.

30. On September 1, 2021, the Claimant reported to the Respondent by text message that the sump pump was not working, the window well again filled with water and began flooding inside of the basement of the Property.

31. The Claimant had NextGen Home Improvement, LLC (NextGen)<sup>7</sup> make repairs and install a new sump pump.

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<sup>6</sup> Ground Fault Circuit Interrupter. "Unlike regular outlets and circuit breakers designed to protect [a] home's electrical system, GFCI outlets, . . . are designed to guard people against electrical shock. Easy to identify, GFCI outlets are recognizable by the 'test' and 'reset' buttons on the outlet face." <https://mrelectric.com/blog/what-s-a-gfci-outlet> (Last viewed, July 2, 2023.)

<sup>7</sup> NextGen' MHIC license number is 134044.

32. NexGen advised the Claimant that the GFCI outlet failed because the wiring burned out, and that the sump pump was failing because it was not sealed off properly, resulting in small rocks entering the sump pump. NextGen recommended a ½ HP<sup>8</sup> sump pump having the opinion that the ¼ HP sump pump was insufficient to adequately move water from the window well to prevent accumulation and flooding.

33. The Respondent sent a text message to the Claimant after NextGen began making repairs and told the Claimant to plug the sump pump into an extension cord from the inside of the home.

34. The Respondent further advised the Claimant that the sump pump was burned out and a replacement was required.

35. The Claimant went to Lowe's hardware store and purchased a dehumidifier for \$268.18 to remediate the flooding in the basement of the Property. In addition, the Claimant purchased from Home Depot two high speed fans and a wet/dry vacuum for \$511.95, also to remediate the flooding. The Claimant also purchased from Home Depot a ½ HP sump pump to replace the failed sump pump for \$277.32. The total expenditures the Claimant paid due to the flooding in the basement of the Property were \$1,057.45. (See. Cl. Ex. 15-17; Resp. Ex. 6.)

36. On October 14, 2021, the Claimant paid NextGen Home Improvement, LLC (NextGen) \$3,900.00 for the following work: replace the sump pump; extend underground PVC water pipe further from the home; remove and replace insulation at the bottom of walls; replace drywall on left side of house, rear, and bedroom; replace baseboard and shoe molding; apply plaster and paint to walls and trim; and, connect 3" PVC pipe to downspouts to direct water away from house.

37. There have been no leaks in the egress window well since October 2021.

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<sup>8</sup> Horse Power

## 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<sup>9</sup> 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. 2022). The Claimant resides in the home that is the subject of the claim and does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). There was no arbitration agreement between the Claimant and the Respondent. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). 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. 2022).

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<sup>9</sup> The regulations and case law do not define “misconduct” in the context of COMAR 09.08.03.03B(2). Misconduct is defined as: A dereliction of duty; unlawful, dishonest, or improper behavior, esp. by someone in a position of authority or trust. *See* misbehavior. Black’s Law Dictionary (11th ed., Westlaw, 2019)

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). There is no competent evidence that the Respondent satisfactorily corrected or repaired its work.

According to the Claimant's testimony and admitted exhibits, the revised Contract totaled \$7,440.00. The Respondent agreed to construct an egress window/door system within the basement of the Property for emergency exit purposes.

On June 9, 2020, the Claimant paid the Respondent the last payment of the full revised Contract amount of \$7,440.00, and the home improvement was completed the same day.

The window well of the egress window/door system was a natural source of collecting rainwater. To prevent that from happening, the Respondent installed a sump pump into the window well, powered by a GFCI electrical outlet installed within the well wall outside of the Property. In addition, the Respondent discussed with the Claimant her request to extend the downspouts to divert water a significant distance away from the Property and window well. However, the Respondent did not include extending the downspouts within the revised Contract, he did not extend them, and the Claimant did not pay for that work.

Despite several demands made by the Claimant through text messaging, the Respondent did not correct the problem of water flooding into the Property through the window well and the egress window/door system. The Respondent failed to fulfill his obligation under the revised Contract to install a system that did not cause water damage.

As a result, the Claimant contracted with NextGen to install a new ½ HP sump pump<sup>10</sup> and install the correct size PVC piping to extend from the downspout to move the water a sufficient distance from the Property. In addition, NextGen repaired the basement walls, insulation, baseboards, and shoe molding that were damaged due to the flooding.

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<sup>10</sup> The Respondent installed only a 1/4 HP sump pump into the window well when the revised contract required a 1/3 hp sump pump.

The Claimant testified that she did not request larger windows as was stated in the revised Contract. She only requested the extension of the downspouts, which the Respondent did not include in the revised Contract and did not install.

The Respondent testified that his company completed the job in a workmanlike manner, having secured the necessary permits, and installed the sump pump included in the original Contract. According to the Respondent, the ¼ HP sump pump he installed was considered industry standard for pumping requirements of the egress window/door system he constructed. He also testified that he remembers discussing with the Claimant the issue with the downspouts, but according to the Respondent, there was no agreement to include that work into the revised Contract.

The Respondent's construction did not go according to plan, as the window well accumulated rainwater, causing the water to escape into the egress window/door and flood the basement of the Property causing water damage.

The Fund argues that the Claimant has met her burden of proof that she is entitled to an award from the Fund. According to the Fund, the Claimant proved that she suffered an actual monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement work performed by the Respondent. The Fund is convinced that the Respondent failed to construct an egress window/door system that did not leak and cause flooding into the basement of the Property.

I agree with the Fund. The evidence shows that the Respondent failed to install an egress window/door system into the basement of the Property that prevented flooding into the basement. The point of installing the sump pump was to prevent flooding. The Respondent failed to achieve that goal. He understood the point when he sent a text to the Claimant on August 11, 2021, stating the following: "It sucks having water problems especially when it's a

system I put in. So personally, I can't abandon my project, if it were to be my mistake I would def fix it." (Resp. Ex. 6, pg. 3.) He did not "fix it." Accordingly, I conclude that the Respondent's installation of the window/door egress was unworkmanlike, inadequate, and incomplete, and the Claimant is eligible for compensation from the fund for any actual loss attributable to that unworkmanlike, inadequate, and incomplete work.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's regulations offer three formulas for the measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." The appropriate formula is the following:

(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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

\$ 7,440.00	Payment made to the Respondent by the Claimant pursuant to the Revised Contract of February 14, 2020
\$ 511.95	Payment made to Home Depot, September 1, 2021, to purchase two high speed room fans to remediate the water damage
\$ 277.32	Payment made to Home Depot, September 1, 2021, to purchase a ½ hp sump pump
\$ 268.18	Payment made to Lowes, September 1, 2021, to purchase a dehumidifier to remediate the water damage
<u>\$ 3,400.00</u>	The amount paid to NextGen to repair, correct, and complete the home improvement
<b>Total \$11,897.45</b>	

Less \$ 7,440.00 The February 14, 2020 Revised Contract Price with the Respondent  
\$ 4,457.45 Actual Loss

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>11</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); 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 the statutory cap of \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$4,457.45.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained, and is entitled to recover from the Fund, an actual and compensable loss of \$4,457.45 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).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,457.45; 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>12</sup> and

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<sup>11</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").

<sup>12</sup> *See* 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.

July 6, 2023  
Date Decision Issued

JTH/emh  
#206063

*John T. Henderson, Jr.*  

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John T. Henderson, Jr.  
Administrative Law Judge

**PROPOSED ORDER**

***WHEREFORE, this 31<sup>st</sup> day of August, 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.***

***Michael Newton***

***Michael Newton***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***