

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER M. CARTER JONES
OF CAROL TUSZYNSKI	* 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 JEREMY BARTH	*
T/A MARYLAND FENCE, DECK,	* OAH No.: LABOR-HIC-02-23-14107
& PATIO	* MHIC No.: 22 (75) 943
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 September 14, 2022, Carol Tuszynski (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$3,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Jeremy Barth, trading as Maryland Fence, Deck, & Patio (Respondent).<sup>2</sup> On May 10, 2023, the

---

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

MHIC issued a Hearing Order on the Claim. On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 8, 2023, I held a hearing at the OAH in Hunt Valley, Maryland.<sup>3</sup> MacKenzie Read, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent did not appear for the hearing.

Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice.<sup>4</sup> On June 12, 2023, the OAH mailed the Respondent a Notice of Remote Hearing (Notice) by certified and first-class mail to the Respondent's address of record with the Department and the OAH.<sup>5</sup> The Notice stated that a hearing was scheduled for August 8, 2023, at 9:30 a.m., at the OAH, in Hunt Valley, Maryland.<sup>6</sup> The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return either copy of the Notice. The Respondent did not notify the OAH of any change of mailing address either before or after the hearing.<sup>7</sup> The Respondent made no request for postponement of the hearing.<sup>8</sup> I determined that the Respondent received proper notice of the hearing,<sup>9</sup> and after waiting twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.<sup>10</sup>

---

<sup>3</sup> Bus. Reg. §§ 8-407(a), 8-312.

<sup>4</sup> Code of Maryland Regulations (COMAR) 28.02.01.23A.

<sup>5</sup> COMAR 28.02.01.05C(1).

<sup>6</sup> COMAR 09.08.03.03A(2).

<sup>7</sup> COMAR 28.02.01.03E.

<sup>8</sup> COMAR 28.02.01.16.

<sup>9</sup> COMAR 28.02.01.05A, C.

<sup>10</sup> 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:

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, May 13, 2021
- Clmt. Ex. 2 - The Claimant's Capitol One credit card statement for dates including May 11, 2021 through May 28, 2021
- Clmt. Ex. 3 - Copies of text messages between the Claimant and the Respondent for dates including January 6, 2022 through February 9, 2022
- Clmt. Ex. 4 - Contract between the Claimant and Fence Masters, Inc., February 18, 2022
- Clmt. Ex. 5 - Claimants recitation of events, undated

The Respondent did not appear and therefore, did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - OAH Notice, June 12, 2023
- Fund Ex. 2 - Letter addressed to "To Whom It May Concern," from David Finneran, MHIC Executive Director, with the Respondent's licensing history, May 20, 2022
- Fund Ex. 3 - Home Improvement Claim Form, received by the MHIC on September 14, 2022, and letter from MHIC Chairman Joseph Tunney, September 28, 2022

### Testimony

The Claimant testified and did not present other witnesses.

Neither the Respondent nor the Fund offered the testimony of any witness.

## PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 1-00997.
2. On May 13, 2021, the Claimant and the Respondent entered into a contract to install a fence around the Claimant's yard (Contract).
3. The Contract stated that work would begin on "approximately July 14, 2021."<sup>11</sup> and would be completed by "approximately July 14, 2021."<sup>12</sup>
4. The Claimant agreed to pay the Respondent \$9,000.00 for the installation of the fence. The Contract specified that the Claimant would pay the Respondent \$3,000.00 upon signing the Contract, \$3,000.00 upon arrival of the material and start of construction, and \$3,000.00 upon completion of the project.
5. On May 17, 2021, the Claimant paid the Respondent \$ 3,000.00.
6. The Respondent could not install the fence in July 2021 because the fence materials were in short supply due to the COVID-19 pandemic. Accordingly, the Respondent advised the Claimant that he would install the fence in August 2021.
7. The Respondent continued to extend the time for installing the fence. As of January 2022, the Respondent still had not installed the fence.
8. On January 6, 2022, the Claimant contacted the Respondent by text message to inquire when he planned to install the fence.
9. On January 13, 2022, the Respondent advised the Claimant that the materials for the fence would be available at the end of the month.

---

<sup>11</sup> Clmt. Ex. 1.

<sup>12</sup> *Id.*

10. As of February 4, 2022, the Respondent had not installed the Claimant's fence. On that date, the Claimant sent a text to the Respondent to again inquire about the installation of the fence.

11. On or about February 9, 2022, the Claimant called the Respondent's company and was told that the phone number for the Respondent now belonged to a new deck and fence company.

12. On February 9, 2022, the Claimant sent a text message to the Respondent and asked him if he had gone out of business. The Claimant asked that the Respondent give her an update on the status of the fence project and advised the Respondent that she planned to contact the Better Business Bureau.

13. The Respondent never contacted the Claimant again.

14. On February 18, 2022, the Claimant entered into a contract with Fence Masters, Inc., to install the fence. The Claimant paid Fence Masters, Inc., \$9,100.00 to install the fence.

### DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." <sup>13</sup> "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."<sup>14</sup> The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.<sup>15</sup>

---

<sup>13</sup> 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.").

<sup>14</sup> Bus. Reg. § 8-401.

<sup>15</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>16</sup> 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.<sup>17</sup>

By statute, certain claimants are excluded from recovering from the Fund altogether. 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.<sup>18</sup> The Claimant resides in the home that is the subject of the claim and does not own more than three residences or dwelling places.<sup>19</sup> The parties did not enter into a valid agreement to submit their disputes to arbitration.<sup>20</sup> 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.<sup>21</sup> Additionally, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim.<sup>22</sup>

For the following reasons, I find that the Claimant has proven eligibility for compensation. There is no dispute that the Claimant paid the Respondent \$3,000.00 as partial payment for the installation of a fence. There is also no dispute that the Respondent did not install a fence and stopped communicating with the Claimant in mid-January 2023. The Claimant presented evidence that after the Respondent stopped responding to her text messages, in February 2022, she hired and paid Fence Masters, Inc. to install a fence. The Claimant testified that the Respondent never returned the \$3,000.00 she paid on May 17, 2021.

---

<sup>16</sup> Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov’t § 10-217; COMAR 09.08.03.03A(3).

<sup>17</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>18</sup> Bus. Reg. §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).

<sup>19</sup> *Id.* § 8-405(f)(2) (Supp. 2022).

<sup>20</sup> *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022).

<sup>21</sup> *Id.* § 8-405(f)(1) (Supp. 2022).

<sup>22</sup> *Id.* § 8-405(d) (Supp. 2022).

I conclude that the Respondent abandoned the Contract without performing any work on the installation of the fence. Accordingly, the Claimant has sustained an actual loss in the form of the amount she paid for the Respondent's incomplete home improvement. She is, therefore, 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.<sup>23</sup>

The Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract."<sup>24</sup> As the Claimant paid the Respondent \$3,000.00, she is eligible for compensation in that amount.

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>25</sup> In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$3,000.00.

---

<sup>23</sup> Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).

<sup>24</sup> COMAR 09.08.03.03B(3)(a).

<sup>25</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(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").

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$3,000.00 as a result of the Respondent's acts or omissions.<sup>26</sup> I further conclude that the Claimant is entitled to recover that amount from the Fund.<sup>27</sup>

**RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,000.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>28</sup> and

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

August 22, 2023  
Date Decision Issued

  
\_\_\_\_\_  
Jennifer M. Carter Jones  
Administrative Law Judge

JCJ/at  
#206797

<sup>26</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022).

<sup>27</sup> COMAR 09.08.03.03B(3)(a).

<sup>28</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of October, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***