

IN THE MATTER OF THE CLAIM  
OF WALTER VEST,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF SARATH  
PUTHUSSERY,  
T/A BALTIMORE DESIGN &  
REMODELING,  
RESPONDENT

\* BEFORE WILLIAM F. BURNHAM,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-23-07325  
\* MHIC No.: 23 (75) 439  
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**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 January 11, 2022, Walter Vest (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$15,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Sarath Puthussery, trading as Baltimore

Design & Remodeling (Respondent).<sup>1</sup> Md. Code Ann., Bus. Reg.

§§ 8-401 through 8-411 (2015).<sup>2</sup> On March 9, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 7, 2023, the OAH provided a Notice of Hearing (Notice) to the parties by United States mail delivery<sup>3</sup> to the parties' addresses on record with the OAH. Code of Maryland Regulations (COMAR) 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for May 18, 2023, at 9:30 a.m., at the OAH in Hunt Valley. The Notice further advised the parties that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return any notice as undeliverable or for any other reason. On May 18, 2023, I conducted the hearing at the OAH in Hunt Valley. COMAR 28.02.01.20; Md. Code Ann., Bus. Reg. § 8-407(e). MacKenzie Read, Assistant Attorney General, Department, represented the Fund. The Claimant was represented himself. Neither the Respondent nor anyone authorized to represent the Respondent attended the hearing, and, after waiting more than fifteen minutes for the Respondent to appear, I proceeded with the hearing in his absence. COMAR 28.02.01.23A.

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; COMAR 28.02.01.

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<sup>1</sup> The Respondent's contract was labeled "Old Bay Remodeling." The address on the contract was the same as Baltimore Design & Remodeling.

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>3</sup> First Class and Certified Mail.

## 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 between the Claimant and the Respondent (Contract), print date May 25, 2022.
- CL. Ex. 2 Hammer Home Improvement (Hammer) Estimate (Hammer Estimate), November 28, 2022
- CL. Ex. 3 Forty-five photographs, undated<sup>4</sup>
- CL. Ex. 4 Copies of three checks<sup>5</sup> for \$5,000.00 each, May 31, 2022; June 18 and 23, 2022.

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on the Fund's behalf:

- MHIC Ex. 1 Notice of hearing, April 7, 2023; Hearing Order, March 1, 2023
- MHIC Ex. 2 Department Licensing History for the Respondent, April 24, 2023
- MHIC Ex. 3 Letter from J. Tunney to the Respondent, January 11, 2023; HIC Claim Form, received January 11, 2023.<sup>6</sup>

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<sup>4</sup> At the hearing, the Claimant showed the Fund photographs. At that time, the Claimant indicated there were thirty photographs. I instructed the Claimant to provide copies to the Fund and the OAH for admission. I additionally instructed that I be informed of any objection. The Claimant provided the OAH more than thirty photographs on May 25, 2023. I received no objection from the Fund and admit the photographs.

<sup>5</sup> The copy of the checks came in the packet with the photographs on May 23, 2023.

<sup>6</sup> The date on the form is "2022." The Contract date, and the dates of the checks paid to the Respondent, make it more likely than not that the HIC received the complaint in January 2023.

Testimony

The Claimant testified and presented the testimony of Tammy Vest, his spouse.

The Respondent did not present the testimony of any witnesses.

The Fund did not present the testimony of 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/salesperson under MHIC license numbers 107191 and 01-119037.
2. At all relevant times, the Claimant owned and resided in a home located in Baltimore, Maryland (Property).
3. The Property is the site of a daycare.
4. On or about May 22, 2022, the Claimant and the Respondent entered into the Contract for the remodel of the Claimant's bathroom.
5. The scope of the Contract included, among other things, removal of: the existing bathtub, walls to the studs, toilet, built in corner cabinet, floors, and wall accessories.
6. The Contract provided that the Respondent would install: an acrylic whirlpool tub with twelve adjustable jets; a 1500-watt whirlpool heater; a dedicated electric line and receptacle for the tub; ceramic tile from floor to ceiling on all shower walls; brush nickel shower trim; Kohler Arsdale grab bar on the rear wall; shower curtain rod screwed into the tile walls; vinyl flooring throughout; and a sixty-inch double bowl vanity.
7. The Contract called for specific items and listed sku<sup>7</sup> numbers and internet item numbers.

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<sup>7</sup> Stock keeping unit.

8. The Contract provided that the Respondent would clean up and haul away all job debris and install coverings at the work area at all times while working. A professional cleaning crew would “Windex” clean the completed bathroom. (*See* Cl. Ex. 1).

9. The total Contract price was \$18,000.00 to be paid as follows: thirty percent on signing of the Contract; thirty percent when work started; thirty percent upon substantial completion of the Contract; and ten percent upon the completion of the Contract.

10. The Contract did not break down the costs of any work or items to be installed.

11. On a date after May 22, 2022, the Claimant and Respondent met at Home Depot to pick out materials.

12. The Claimant paid the Respondent a total of \$15,000.00 by three checks on the following days, in the following amounts:

- May 31, 2022, \$5,000.00
- June 18, 2022, \$5,000.00
- June 23, 2022, \$5,000.00.

13. The Respondent began work on or about June 18, 2022.

14. The Respondent informed the Claimant that a sixty-inch vanity, that the Respondent initially recommended, would not fit.

15. The Respondent informed the Claimant that he could not install the two medicine cabinets with two lights that he previously recommended.

16. After June 28, 2022, the Claimant informed the Respondent that the tiles the Respondent installed on the floor were the same tiles he installed on the shower walls, and not the flooring the Claimant agreed to have installed.

17. The Respondent requested, and the Claimant allowed him, to reinstall the proper flooring while the Claimant was away on vacation. While the Claimant was on vacation, the Respondent installed the same tiles a second time.

18. The off/on button on the whirlpool tub was glued shut and could not function.  
There was grout on the tub that would not wipe off.
19. There were nicks and divots on the walls.
20. The Respondent installed a \$99.00 toilet instead of the \$400.00 toilet the Claimant picked out at Home Depot.
21. The towel and toilet paper holders came off the wall within three weeks of installation.
22. The tiles in the shower were offset and not flat.
23. At least three times, the Complainant showed the Respondent all the things that did not conform with the Contract and the Respondent, and except for cutting the glue away from the whirlpool button (the Respondent chipped the button in that process), refused to make repairs.
24. The Respondent asked for the final payment of \$3,000.00 and the Claimant refused.
25. The Claimant obtained the Hammer Estimate after Hammer inspected the Respondent's work.
26. The Hammer Estimate called for the removal of everything except the walls, ceiling exhaust fans, and vanity light (the Claimant was to "choose what [he wanted] to keep after removal for basement bathroom"). (See Cl. Ex. 2).
27. The Hammer Estimate described some of the proposed work as "similar to existing." (Cl. Ex. 2).

28. The Hammer Estimate contained an “Allowance Items” section with various itemized costs. (Cl. Ex. 2).

29. The Hammer Estimate totaled \$14,850.00 after considering the application of a military discount of \$1,650.00. (See Cl. Ex. 2; Cl. Test).

## DISCUSSION

### Legal Framework

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to “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); *see also* COMAR 09.08.03.03B(2). The statutes governing the Fund define “actual loss” as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401.

At a hearing on the claim, 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); 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 Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

The Fund indicated that it cannot, based on the evidence presented at the hearing, suggest an award. According to the Fund, even though the claim is legally sufficient, the actual loss was

not established. I agree. For the reasons explained below, I find that the Claimant has not proven eligibility for compensation from the Fund.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed his Claim with the MHIC on January 11, 2022. Finally, the Claimant has not taken any other legal action to recover monies. Md. Code Ann., Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1) (2015 & Supp. 2022).

The Respondent Performed an Inadequate and Unworkmanlike Home Improvement

The Respondent performed an inadequate and unworkmanlike home improvement. The record demonstrates that the Respondent failed to properly install the whirlpool tub and tiles in the bathroom. Some of his work would have to be torn out and redone. The photographs<sup>8</sup> taken of the Property and the project document numerous issues with poorly laid tile, gaps in tiles, and poor caulking. (See CL. Ex. 3). Photographs show a substance around the whirlpool tub's on/off button and the whirlpool was full of drop cloths after the Respondent installed it. (See CL. Ex. 3; Test. Cl.). The Respondent installed the wrong floor tiles on two separate occasions. Accordingly, I find the Respondent performed an inadequate and unworkmanlike home improvement and the Claimant engaged another contractor to provide an estimate of the costs to complete the Contract.

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<sup>8</sup> I can identify only some of the photographs. Some of the photographs are blurry and/or unidentifiable.



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. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

*The Amount of the Claimant's Actual Loss*

As an initial matter, the Claimant and his witness outlined several things that the Respondent promised to do but did not. Foremost in the testimony was the condition of the Property after each day of work by the Respondent and its effect on the operation of the daycare at the Property. The testimony was that because the Respondent did not clean up the Property after each day of work, the Claimant and his spouse were left to spend hours each day cleaning so that the Property was suitable for daycare activities. Any damages incurred because of the need to clean are consequential damages<sup>9</sup> and the Fund cannot compensate the Claimant for cleaning. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). Even if the cleaning was considered, and as discussed more fully below, the Claimant adduced no evidence of the costs of cleaning as related to the Contract.

Hammer estimated that the cost to complete the bathroom was \$14,850.00. However, it is not possible to determine what costs are attributable to the work the Respondent completed in an unworkmanlike manner. Nor is it possible to determine what, if any, of the Respondent's work was completed in a workmanlike manner.

The Hammer Estimate indicates that "everything" must be removed "besides the walls, ceiling, exhaust fans and vanity light." (Cl. Ex. 2). That indicates that some of the Respondent's work may have been workmanlike. In another example, the Hammer Estimate indicates that

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<sup>9</sup> Consequential damages are defined as "[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act." *Black's Law Dict.* 489 (11<sup>th</sup> ed. 2019).

plumbing is in the “correct location” and that may mean the Respondent’s work was not unworkmanlike. (Cl. Ex. 2). No explanation or comparison of what Hammer intended to do to remedy the Respondent’s failures was provided.

None of the work proposed in the Hammer Estimate was itemized for cost. Some of the items indicate they are “similar to existing” but it is not possible to determine if they are the same as those in the Contract. Despite the “Shower Surround” section of the Hammer Estimate providing work to be done in the shower, it also indicates that several items are “similar to existing” and, as stated above, no breakdown of cost is provided. (Cl. Ex. 2).

The “Allowance Items” listed in the Hammer Estimate have costs associated with them, but no explanation was provided about what they are or what they mean. (*See* Cl. Ex. 2). For example, the flooring section of the Hammer Estimate suggests that the approximately sixty square feet of tile flooring would be “similar to existing.” (*See* Cl. Ex. 2). In the “Allowance Items,” the first entry is “bath floor tile set at \$2.50 ea. Sqf. Need 66 sq. ft.” (Cl. Ex. 2). No explanation was provided how these, if they do, relate to the Respondent’s installation of floor tiles. The uncontroverted testimony was that the Respondent installed the same incorrect floor tiles two times. How then are the new tiles “similar to existing,” and does the Hammer Estimate call for sixty square feet or sixty-six square feet?

In contrast, the Contract was specific in its descriptions of the items that were to be installed. There are Home Depot sku numbers and internet numbers to identify specific products, but neither the Contract nor the Claimant provided what the cost of each item<sup>10</sup> was, and therefore, it is impossible to attribute a cost to any item that may have been installed incorrectly, i.e., the whirlpool tub or the alleged \$400.00 toilet.

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<sup>10</sup> The Claimant testified that the Respondent installed a \$99.00 toilet instead of the \$400.00 he picked out at Home Depot.

While I sympathize with the Claimant because the evidence shows the Respondent provided some unworkmanlike home improvements, based upon the evidence in this record, it is not possible for me to determine what the costs are to restore, repair, replace, or complete the Contract; nor can I apply a formula to appropriately measure the Claimant's actual loss. *See* Md. Code Ann., Bus. Reg. § 8-401, 405; COMAR 09.08.03.03B. Simply put, the Claimant has not proved the amount of his actual loss.

The Claimant has the burden to establish his actual loss. The Hammer Estimate does not itemize any of the proposed work and does not sufficiently correlate its proposal to the Contract and the work performed by the Respondent. Therefore, the Hammer Estimate that the Claimant obtained to fix his bathroom does not establish his actual loss. There is simply no evidence in the record by which to determine the dollar amount of any loss suffered by the Claimant. Because proof of the actual loss is a necessary, statutory element of any claim to recover from the Fund, it alone is a basis to find against the Claimant.

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

I conclude that the Claimant has not proved an actual loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B.

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund **DENY** the Claimant's claim; and

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

July 31, 2023  
Date Decision Issued

WFB/at  
#206540

*William F. Burnham*  

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William F. Burnham  
Administrative Law Judge

PROPOSED ORDER

*WHEREFORE, this 15<sup>th</sup> day of September, 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.*

*Chandler Louden*

*Chandler Louden*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**