

IN THE MATTER OF THE CLAIM \* BEFORE MICHELLE W. COLE,  
 OF JIM FULLER, \* 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 WILLIAM WRIGHT, \*  
 III, T/A WRIGHTWAY HOME \* OAH No.: DLR-HIC-02-17-02760  
 IMPROVEMENTS, INC., \* MHIC No.: 16 (05) 1291  
 RESPONDENT \*

\* \* \* \* \*

**PROPOSED DECISION**

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

Jim Fuller (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$10,800.00 in actual losses allegedly suffered as a result of a home improvement contract with William Wright, III, trading as Wrightway Home Improvements, Inc. (Respondent).

I held a hearing on August 15, 2017 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Kris M. King, Assistant Attorney General, Department of Labor, Licensing,

and Regulation (Department), represented the Fund. After waiting 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.<sup>1</sup>

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. 2017); COMAR 09.01.03; COMAR 28.02.01.

### ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- Clmt. Ex. 1 Remodeling Contract, dated May 29, 2015
- Clmt. Ex. 2 Estimate, dated June 15, 2015
- Clmt. Ex. 3 Checks, dated July 2, 2015 & June 22, 2015
- Clmt. Ex. 4 Photographs, undated
- Clmt. Ex. 5 Email correspondence, dated September 4, 2015 & September 10, 2015
- Clmt. Ex. 6 Text messages, undated
- Clmt. Ex. 7 Notice of Termination, dated September 16, 2015

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<sup>1</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on June 19, 2017, COMAR 09.08.03.03A(2), and was not returned as unclaimed or undeliverable. 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 received proper notice, and proceeded to hear the matter.

Clmt. Ex. 8 Text message, undated

Clmt. Ex. 9 Internet Web Page for Respondent, undated

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 Notice of Hearing, dated June 19, 2017, with attached certified mail receipts

Fund Ex. 2 Hearing Order, dated January 20, 2017

Fund Ex. 3 MHIC Registration Printout, dated August 14, 2017

Fund Ex. 4 Affidavit of Kevin Niebuhr, dated August 14, 2017

Fund Ex. 5 Home Improvement Claim Form, dated August 11, 2016

Fund Ex. 6 Letter from MHIC to Respondent, dated September 2, 2016

The Respondent did not offer any exhibits.

### Testimony

The Claimant testified on his own behalf.

The Respondent did not present any witnesses.

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 license number 130590.
2. On May 29, 2015, the Claimant and the Respondent entered into a contract (Contract) to remodel the Claimant's house located on Carroll Avenue (Property).<sup>2</sup> The Property was one of three residential properties owned by the Claimant at the time of the Contract.

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<sup>2</sup> The Respondent was working on other projects for the Claimant while he was performing work on the Property. The only issue before me is whether the Claimant suffered an actual loss as a result of the Respondent's renovation of the Property.

3. The Contract incorporated a document describing the work to be completed and a break-down of estimated costs. (Cl. Exs. 1 & 2).

4. The original agreed-upon contract price was \$56,195.00. The Contract set forth a payment schedule as follows:

Amount	Due upon:
\$7,500.00	Execution of the contract
\$7,500.00	Demolition
\$9,000.00	Framing and trade rough-ins
\$6,800.00	Drywall, doors and trim set
\$4,800.00	Painting complete
\$5,000.00	Cabinets and vanity set
\$4,800.00	Completion of tile and granite installation
\$3,800.00	Installation of electrical and plumbing fixtures
\$3,545.00	Hardwood refinished and carpet installed
\$3,450.00	Punch out and all finishes/hardware installed

(Cl. Ex. 1).

5. The Claimant paid the Respondent \$7,500.00 on June 22, 2015.

6. The Respondent began work on June 29, 2015.

7. The Respondent completed demolition of the Property's doors, trim, carpet, flooring, kitchen, and bathroom, but did not complete any other work. The estimated cost for demolition was \$4,200.00. (Cl. Ex. 2).

8. On July 2, 2015, the Claimant paid the Respondent \$7,500.00.

9. The Claimant obtained a building permit and provided the Respondent unrestricted access to the Property.

10. Shortly after the second payment, the Respondent reported delays caused by work crew problems. The Respondent never returned to the Property. Instead, he repeatedly provided excuses for not being able to complete the work.

11. The work was supposed to be completed by August 21, 2015.

12. On September 4 and September 9, 2015, the Claimant sent email correspondence to the Respondent proposing to terminate the Contract and requesting that certain funds be refunded to him since the project was not completed.

13. On September 16, 2015, the Claimant's attorney sent a notice of termination for breach of contract, abandonment of the project, and failure to perform the remodeling contract.

14. The Respondent sent the following text message response to the Claimant upon receipt of the letter:

Since your bright ass attorney gave me til fri Sept 28<sup>th</sup> to respond to your bullshit 30k claim and today mon the 28<sup>th</sup> and he is out til oct 15 here is my response . . . your claim is a crock of fuckin Shit. I was willing to work with you and would have been more then willing to work something out with you. Fuck with my lively hood and how I feed my family . . . see what you get.

(Cl. Ex. 8).

15. On June 19, 2017, the OAH sent to the Respondent's two addresses of record notices of hearing by regular and certified mail. The Unites States Postal Service did not return the notices and the Respondent signed one of the two certified mail receipts.

16. The Claimant's actual loss is \$10,800.00 ( $\$15,000.00 - \$4,200.00 = \$10,800.00$ ).

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. 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);<sup>3</sup> *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual 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.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. There are no *prima facie* impediments barring the Claimant from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(f) (2015).

The Claimant testified that he suffered an actual loss based on the Respondent’s incomplete and unworkmanlike renovation. He stated that the Respondent completed the demolition, but failed to perform any other work under the contract. He presented photographs of the house that he took after the Respondent completed the demolition. The photographs show exposed concrete floors and subflooring and unfinished walls. He presented text messages and email correspondence and reported his attempts to resolve the matter with the Respondent, which he stated were unsuccessful. While Maryland law provides that a claim against the Fund may be denied if the claimant has “unreasonably rejected good faith efforts by the contractor to resolve the claim,” Md. Code Ann. Bus. Reg. § 8-405(d) (2015), I find that the Respondent did not make

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

any efforts to resolve the claim. While the Respondent gave excuses for his failure to return to the Property after demolition, he made no attempts to complete the renovation.

The Claimant testified that he paid another licensed contractor, BBM Construction, to complete the renovation. He reported paying BBM Construction more than the contract price because of work order changes that were not part of the Contract. The Claimant did not provide the new contract or estimates for the completed renovation. He identified his actual loss as \$10,800.00 by subtracting the cost of demolition (\$4,200.00) from the amount that he paid to the Respondent under the Contract (\$15,000.00).

Based on the evidence and testimony, I conclude that the Claimant has established an actual loss based on the Respondent's acts and omissions. The Claimant's testimony was undisputed. Moreover, I found the Claimant to be a credible witness and his requested damages reasonable. The evidence shows that the Respondent performed unworkmanlike, inadequate and incomplete home improvements. The photographs support the Claimant's reports regarding the state of the Property after the Respondent abandoned the project. At the time the Respondent stopped working on the renovation, the Claimant had paid \$15,000.00 to the Respondent. The Respondent had completed only the demolition, which was estimated to cost \$4,200.00. (Cl. Ex. 2). Even though he incurred additional costs as a result of the Respondent's delay and incomplete renovation, including dumpster removal and permits, the Claimant agreed that the Respondent should be paid for the work that he completed under the Contract. The Respondent did not refund any of the money paid by the Claimant.

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. A claimant may not be compensated for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR

09.08.03.03B(1). MHIC's regulations at COMAR 09.08.03.03B(3) offer three formulas for measurement of a claimant's actual loss:

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) 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.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(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 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.

None of the formulas set forth above in COMAR 09.08.03.03B(3)(a)-(c) applies to the circumstances of this case. Even though the Claimant hired another contractor to complete the renovation, the Respondent only completed a small portion of the work under the Contract before he stopped working. Further, the evidence failed to show that BBM Construction was required to correct the Respondent's work. As such, I find that the Claimant is not entitled to reimbursement for the costs incurred by BBM Management to finish the renovation.

I find the following formula appropriate under this circumstance.<sup>4</sup> Md. Code Ann., Bus. Reg. § 8-405(e)(5). The Claimant paid to the Respondent the first two payments under the Contract, totaling \$15,000.00. The Respondent completed only the demolition before

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<sup>4</sup> I have applied the calculation set forth in COMAR 09.08.03.03B(3)(b) even though the Claimant paid another contractor to finish the renovation.



abandoning the project. The value for this work, as set forth in the estimate that was incorporated in the contract, was \$4,200.00. Thus, I have subtracted \$4,200.00 from the \$15,000.00 paid by the Claimant to the Respondent. Accordingly, the Claimant is entitled to reimbursement of \$10,800.00. Bus Reg. § 8-405(a).

### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$10,800.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,800.00; 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>5</sup> and

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

**Signature on File**

November 8, 2017  
Date Decision Issued

\_\_\_\_\_  
Michelle W. Cole  
Administrative Law Judge

MWC/dlm  
#170744

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of January, 2018, 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  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**