

IN THE MATTER OF THE CLAIM	* BEFORE ALECIA FRISBY TROUT,
OF OTHALENE LAWRENCE,	* 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 GHASSAN HAMDAN,	*
T/A EMPROVE REMODELING, INC,	* OAH No.: LABOR-HIC-02-23-23302
RESPONDENT	* MHIC No.: 23 (75) 221

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 22, 2023, Othalene Lawrence (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$10,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Ghassan Hamdan, trading as Emprove Remodeling Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).²

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

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

On August 31, 2023, the MHIC issued a Hearing Order on the Claim. On September 1, 2023,³ the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 23, 2023, I held a remote hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant and Respondent were each present and self-represented.

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 & Supp. 2023); 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 - Receipt for payment from the Claimant to the Respondent, April 14, 2022
- Clmt. Ex. 2 - Contract between the Claimant and the Respondent, March 23, 2022
- Clmt. Ex. 3 - Handwritten note authored by the Claimant, May 2023
- Clmt. Ex. 4 - Home Improvement Claim Form, received by the MHIC on February 22, 2023
- Clmt. Ex. 5 - Estimate by NOVA, February 2023

³ The Transmittal form from the MHIC is date-stamped as having been received by the OAH on September 14, 2023. I find this to be a typographical error, and that the matter was transmitted on September 15, 2023.

Clmt. Ex. 6 - Screenshot of text message between the Claimant and the Respondent, undated

Clmt. Ex. 7 - Comparison of windows by NOVA, February 9, 2023

Clmt. Ex. 8 - Email chain between the Claimant and the Respondent, May 5 – May 9, 2022

Clmt. Ex. 9 - Text message from the Claimant to the Respondent, July 19, 2022

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Email from the Respondent to the Claimant, June 29, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, September 15, 2023

Fund Ex. 2 - Hearing Order, August 31, 2023

Fund Ex. 3 - Home Improvement Claim Form, received by the MHIC on February 22, 2023

Fund Ex. 4 - HIC identification, registration and professional license history, October 4, 2023

Testimony

The Claimant testified.

The Respondent testified.

The Fund did not present any testimony.

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 01-120631.
2. On or about March 23, 2022, the Claimant contracted with the Respondent to replace all of the windows and doors in her Upper Marlboro home (Contract).
3. The original agreed-upon Contract price was \$30,000.00.
4. On April 14, 2022, the Claimant paid the Respondent a deposit of \$10,000.00.

5. After taking the initial deposit of \$10,000.00, the Respondent performed no work on the property.

6. The Claimant attempted to contact the Respondent multiple times to find out the status of her project, but received no information about when the Respondent would begin work.

7. The Claimant contacted the Respondent to obtain a refund of her \$10,000.00 deposit. The Respondent responded and said that he would contact his accounting department to refund the money, and it would take two days. Later, the Respondent informed the Claimant that he had to contact his legal department before refunding the money.

8. December 19, 2022 was the last day Emprove Remodeling was in business. After that, Emprove Remodeling filed for Chapter 7 bankruptcy.

9. The Respondent did not refund the Claimant's \$10,000.00 deposit.

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. 2023); *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.

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. 2023). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). 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. 2023).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant made multiple attempts to contact the Respondent in order for the Respondent to fulfill the terms of the Contract. The Respondent, however, abandoned the Contract without performing any work. It is abundantly clear that the Respondent took the Claimant's \$10,000.00 and then performed no work, making this an incomplete home improvement. I credit the Claimant's testimony that she made multiple attempts to contact the Respondent and, had the Respondent responded, she would have allowed the Respondent to perform the work the Respondent agreed to perform under the Contract. Based on the record before me, I find that the Claimant is 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. Bus. Reg. § 8-405(e)(3) (Supp. 2023); 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 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." COMAR 09.08.03.03B(3)(a).

The Claimant is seeking an award of the deposit price of \$10,000.00.

The Claimant's frustration with the position the Respondent placed her in by taking her deposit and then abandoning the Contract was palpable and absolutely understandable. The Respondent agreed that he took \$10,000.00 from the Claimant and failed to do any work under the Contract. He was not apologetic, but stressed that he suffered a greater loss with the loss of his company. I find the Claimant's actual loss to be \$10,000.00, which is the amount she paid to the Respondent.

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. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$10,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$10,000.00.

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 \$10,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; 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;⁵ and

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

January 8, 2024
Date Decision Issued

AFT/sh
#209310

Alecia Frisby Trout

Alecia Frisby Trout
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 23rd day of February, 2024, 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***