

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ANDREAS COMNINOS AND</p> <p>GEORGIO COMNINOS,</p> <p>CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF ANDREI AVDEEV,</p> <p>T/A ABE'S EMPIRE LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE RICHARD O'CONNOR,</p> <p>* ADMINISTRATIVE LAW JUDGE,</p> <p>* THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-27100</p> <p>* MHIC No.: 21 (75) 267</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On February 21, 2022, Andreas Comninus (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$39,181.13 for actual losses allegedly suffered as a result of a home improvement contract with Andrei Avdeev, trading as Abe's Empire LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-

¹ The MHIC is part of the Department of Labor (Department).

401 to -411 (2015 & Supp. 2023).² On October 13, 2023, the MHIC issued a Hearing Order on the claim and, on the same date, forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I convened a hearing at the OAH in Rockville, Maryland, on January 29, 2024, but postponed the hearing over the Claimant's objection after determining that the OAH had not sent proper notice to the Respondent, who had not appeared for the hearing. At the same time, at the Claimant's request and without objection from the Fund, I added Georgio Comminos as an additional claimant.³

The hearing was rescheduled for May 8, 2024. On February 2, 2024, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail to the address that the Department had provided at the hearing on January 29, 2024. Neither Notice was returned undelivered. On May 7, 2024, the Respondent emailed the OAH as follows: "I need to request a postponement. I will not be able to attend the hearing. I have kids modification hearing scheduled for the same day." I determined that the Respondent's request did not meet the criteria for an emergency postponement under Code of Maryland Regulations (COMAR) 28.02.01.16E ("a sudden, unforeseen occurrence"), particularly since the Respondent had received notice of the OAH hearing approximately three months previously. I denied the request for postponement and my administrative assistant informed the parties of the denial on May 7, 2024.

On May 8, 2024, I convened a hearing as scheduled at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Ernie Dominguez, Assistant Attorney General, Department,

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

³ I shall use "Claimant" to refer to Andreas Comminos and "Claimants" to refer to Andreas and Georgio Comminos.

represented the Fund. The Claimants were present and participated without representation. The Respondent did not appear for the hearing.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with 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. COMAR 28.02.01.23A; Bus. Reg §§ 8-312(h), 8-407(a). The Notice advised the Respondent that failure to attend the hearing might result in "a decision against you." There is no doubt that the Respondent received the Notice and was aware of the date, time, and location of the hearing. I determined that the Respondent received proper notice, knew that his request for a postponement was denied, and had chosen not to attend the hearing. I proceeded to hear the above-captioned matter in the Respondent's absence.

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 Claimants 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 into evidence the following exhibits offered by the Claimants:

- Cl. Ex. 1. Work Authorization, June 22, 2018.

- Clt. Ex. 2. Copy of a check to the Respondent, June 29, 2018; copy of a check to the Respondent, April 12, 2019; copy of a check to the Respondent, October 31, 2019.
- Clt. Ex. 3. WSSC⁴ Water Long-Form Permit Report, last entry February 13, 2020; two Permit Inpermit Inspection History Reports, undated.
- Clt. Ex. 4. Montgomery County Office of Consumer Protection agreement between the Claimants and the Respondent, November 4, 2019.
- Clt. Ex. 5. Letter from John Robertson of Encompass Indemnity Company to the Claimant, October 29, 2019.
- Clt. Ex. 6. Emails from the Claimant to the Respondent, January 6, January 11, January 17, and February 23, 2020.
- Clt. Ex. 7. Retainer Agreement – Flat Fee, March 17, 2020.
- Clt. Ex. 8. Letter from Christopher R. Wampler, Esquire, to the Respondent, March 20, 2020.
- Clt. Ex. 9. Letter from Montgomery Meadows Homeowners Association, Inc., to the Claimant, November 29, 2018.
- Clt. Ex. 10. Photograph, June 16, 2020.
- Clt. Ex. 11. Emails between Michelle Lozano and the Claimants, January 27 to March 2, 2021.
- Clt. Ex. 12. Email from Georgio Comminos to Charles Corbin of the MHIC, September 27, 2021; email from Michelle Lozano to Georgio Comminos, September 30, 2021.
- Clt. Ex. 13. Thirty-seven photographs, August 28, 2021.
- Clt. Ex. 14. Invoice from CoolBreeze Plumbing, Heating &⁵, December 27, 2021.
- Clt. Ex. 15. Invoice from A Phase Electric L.L.C., January 11, 2022; copies of two checks payable to Andre Stokes, November 4 and November 6, 2021.
- Clt. Ex. 16. Order Confirmation from Ferguson Enterprises LLC #38, December 8, 2021; Ferguson Enterprises LLC #38 Cash Sales order, December 9, 2021; credit card statement, January 6, 2022.
- Clt. Ex. 17. The Home Depot invoice, November 12, 2021.

⁴ Washington Suburban Sanitary Commission.

⁵ The company letterhead has nothing following the ampersand. I shall refer to the company as CoolBreeze.

- Cl. Ex. 18. Lowe's statement, January 14, 2022.
- Cl. Ex. 19. Copy of a check to Jose Arturo Campos, November 2, 2021.
- Cl. Ex. 20. Contract with Primos Home Improvement, unsigned and undated.
- Cl. Ex. 21. Copy of a check to Primos Home Improvement, November 17, 2021.
- Cl. Ex. 22. Affidavit of Oscar Escobar, May 7, 2024, with another copy of the unsigned contract with Primos Home Improvement; Estimated Value of Work Done by Property Solutions, January 25, 2022.
- Cl. Ex. 23. City of Gaithersburg Permit, November 4, 2021.
- Cl. Ex. 24. Contract with Pepco, May 5, 2021; credit card statement, June 6, 2021.

I admitted into evidence the following exhibits offered by the Fund:

- Fund Ex. 1. Notice of Hearing, February 2, 2024.
- Fund Ex. 2. The Respondent's licensing history with the MHIC, February 17, 2024.

Testimony:

Claimant Andreas Comminos was the only witness to testify.

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 numbers 01-113201 (individual) and 05-134402 (corporate).
2. Although the Respondent is registered with the MHIC as trading under the name Abe's Empire LLC, he also performed home improvement work under the trade name Property Solutions.
3. At all relevant times, the Claimants owned a dwelling house on Garth Terrace in Gaithersburg, Maryland.

4. The Claimants used the house as a rental property; neither Claimant lived there.
5. On January 5, 2018, the Claimants' house on Garth Terrace was completely destroyed by fire.
6. On June 22, 2018, the Claimants and the Respondent entered into a contract to rebuild the house, which essentially meant constructing a new dwelling on the same property. The contract identified Property Solutions as the contractor.
7. The contract assigned the Claimants' proceeds from insurance coverage to the Respondent.
8. The contract included concrete, framing, sheathing, house wrap, siding, brick veneer, roofing, electrical, insulation, plumbing, drywall, painting, windows, interior and exterior doors, gutters and downspouts, lighting, flooring (tile, solid wood, and carpet), a water heater, bathroom fixtures, stairs, kitchen and bathroom countertops, cabinets, a refrigerator, a range and range hood, a dishwasher, a sink with a garbage disposal, furnace and air conditioning system (HVAC), ductwork, shutters, a fence, a deck, all necessary trim pieces such as baseboards and shelves, removal of debris and construction materials, and final cleaning.
9. The contract stated that the goal of the project was to return the property to the same condition that existed before the fire.
10. The Respondent was the general contractor on the project.
11. The Respondent was responsible for obtaining all necessary permits and ensuring that the construction passed the required inspections.
12. The contract price was \$200,000.00.
13. The contract stated that work would begin on June 25, 2018, and would be completed by February 2019.

14. The Claimants paid the Respondent \$155,623.13 under the contract.
15. The Respondent did not start work on the project promptly as contemplated in the contract.
16. The Respondent began work in January 2019 and made very slow progress on the project.
17. In October 2019, the Claimants complained to the Montgomery County Office of Consumer Protection, which resulted in a new agreement between the parties on November 4, 2019. That agreement stated that the Claimants would owe the Respondent \$80,000.00 upon completion of the contract and passing required inspections. The project was to be completed by February 2020, and if not timely completed the Respondent would owe the Claimants \$2,100.00 per month for lost rental income, retroactive to July 2019.
18. As part of the agreement, the Claimants paid the Respondent \$35,000.00 for work performed through October 2019.
19. At the time, the exterior of the house was mostly complete, but two windows needed replacing because they did not match the original construction or other homes in the neighborhood. The interior was almost entirely unfinished, with no drywall, flooring, insulation, fixtures, cabinets, shelves, trim, lighting, or appliances.
20. The building failed a county inspection for ground work on June 7, 2019, but passed on October 7, 2019.
21. The building failed WSSC and county inspections for building close-in on October 7, 2019; November 8, 2019; January 2, 2020; and February 4, 2020. It passed on February 13, 2020.

22. The Respondent made little further progress on the project after November 4, 2019, and the building was not completed by February 2020 as agreed.

23. The Claimants engaged an attorney to write a letter to the Respondent in March 2020.

24. The Claimants emailed and texted the Respondent many times to ask about the progress of the project and complain that the house was incomplete. The Respondent gave few, if any, replies and provided little information.

25. Most of the Claimants' contact with the Respondent was through the latter's secretary, Michelle Lozano.

26. In March 2021, the Respondent, through Ms. Lozano, assured the Claimants that work was ongoing and would be completed in about three weeks.

27. By August 2021, drywall and kitchen counters had been installed in the house, along with a refrigerator. No flooring, light fixtures, bathroom fixtures, additional appliances, concrete walkways, or gutters and downspouts had been installed. Electrical work, HVAC, and plumbing were incomplete. The Respondent had performed no painting or cleaning. The Respondent had installed kitchen cabinets, but they were not complete and some were damaged. The incorrect windows that the Respondent had agreed to replace were still present.

28. The Respondent did no more work under the contract after August 2021.

29. The Respondent withdrew from the project on September 30, 2021.

30. The Claimants paid CoolBreeze \$1,000.00 to hook up gas and electric lines, install drain lines, install a filter box, and install a thermostat.

31. The Claimants paid Andre Stokes, trading as A Phase Electric L.L.C., \$5,000.00 to complete the electrical work.

32. The Claimants paid Ferguson Enterprises LLC #38 \$1,789.29 to furnish and install a water heater.
33. The Claimants bought a washer and dryer for the house at The Home Depot for \$1,461.70.
34. The Claimants bought a gas range for the house at Lowe's for \$1,043.24.
35. The Claimants paid Jose Arturo Campos \$1,900.00 to move incorrectly placed gas lines and install a meter.
36. The Claimants hired Oscar Escobar, trading as Primos Home Improvement (Primos), to complete the construction of the house and repair poor work done by the Respondent.
37. Primos replaced the two incorrect windows, installed shutters, installed bathroom tile and fixtures, installed HVAC vents and returns, installed flooring, sanded and stained the stairs, installed a backsplash in the kitchen, fixed the front door and installed glass, fixed the subfloor in the kitchen, installed gutters and downspouts, installed a fence, installed grass turf, replaced concrete paths, fixed the front railing, painted the deck, and patched and painted drywall.
38. All of Primos's work was included in the contract with the Respondent.
39. The Claimants paid Primos \$47,149.98 to complete the contract.
40. The Claimants' building permit expired because of the long delays in the Respondent's work. The Claimants paid \$343.20 to renew the permit.
41. The Claimants paid Pepco \$1,976.00 to install new underground electrical service to the house.

42. The Claimants' contract with the Respondent did not include new underground electrical service.

43. The Claimants paid a total of \$59,687.41 to have other contractors repair or replace the Respondent's poor work and complete the work contemplated in the contract with the Respondent.

DISCUSSION

The Claimants have the burden of proving the validity of their claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); 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. 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).

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants. By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, the Fund raised two possible statutory bars to recovery.

First, the Fund questioned whether constructing what is essentially a new home on the Claimants' property meets the definition of a home improvement. The Fund suggested that the Claimants' contract with the Respondent might be for construction of a custom home, meaning "a single-family dwelling constructed for the buyer's residence on land currently or previously owned by the buyer." Md. Code Ann., Real Prop. § 10-501(c) (2023).

The Fund did not vigorously pursue this argument, and I do not find it convincing. The Custom Home Protection Act excludes "an agreement for work to be done by a licensed home improvement contractor and subject to the provisions of Maryland Home Improvement Law." *Id.* § 10-501(e). Furthermore, the definition of "home improvement" in the Business Regulation Article includes "replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place." Bus. Reg. § 8-101(g)(1)(i) (Supp. 2023). The definition of home improvement excludes "construction of a new home" (*Id.* § 8-101(g)(3)(i)), but in this case, the Claimants contracted with a licensed home improvement contractor to replace a building, i.e., the house that had been destroyed by fire. I find that the Claimants' contract with the Respondent was a home improvement contract for replacement of a building, not a contract to construct a new home or a custom home.

The second possible bar to recovery is stated in section 8-405(f)(2) of the Business Regulation Article, as follows:

- (2) An owner may make a claim against the Fund only if the owner:
 - (i) resides in the home as to which the claim is made; or
 - (ii) does not own more than three residences or dwelling places.

Id. § 8-405(f)(2) (Supp. 2023). The evidence firmly establishes that neither Claimant lived or lives in the home for which the claim was made, and that the Claimants used it as a rental property. On cross-examination, the Claimant at first testified that he does not think that the

Claimants own more than three properties in Maryland, then stated that he believes that they do own more than three properties. He was asked no more questions on this issue and provided no further evidence concerning other properties.

Denial of a claim under section 8-405(f)(2) is an affirmative defense that the Fund may raise. The Fund has the burden of proving this defense to the claim by a preponderance of the evidence. COMAR 29.02.01.21K(2)(b); MPJI-Cv 1:14. The Claimant's testimony did not clarify whether the other properties the Claimants might own are residences or dwelling places. His statement that he believes the Claimants own more than three properties does not establish by a preponderance of the evidence that they do, in fact, own more than three residential properties. The Fund has not shown by a preponderance of the evidence that this claim is barred under section 8-405(f)(2). No other statutory bars to this claim, as set forth in section 8-405, are applicable.

The Respondent contracted to rebuild the Claimants' house on Garth Terrace, and the parties expected, per the contract, that the project would be finished by February 2019. By the latter date, the Respondent had barely started rebuilding the house, and his desultory approach to the project prompted the Claimants to seek relief from the Montgomery County Office of Consumer Protection, which brokered a new agreement with the parties. The Claimants paid the Respondent \$35,000.00, and the Respondent agreed to complete the house by February 2020. The parties agreed that the Claimants would pay \$80,000.00 upon completion.

When the house was nowhere near completion in March 2020, the Claimants engaged an attorney to write a threatening letter to the Respondent. This may have had some effect, as the Respondent performed work on the project during the spring and summer of 2020. In March 2020, the Respondent, through Ms. Lozano, had assured the Claimants that the house would be

finished in three weeks. This was woefully inaccurate, and by August the interior of the home was far from complete. Flooring, HVAC, appliances, and bathrooms remained unfinished, along with many other deficiencies. Finally, on September 30, 2020, the Respondent, again through Ms. Lozano, informed the Claimants that he was withdrawing from the project and would perform no further work on the house.

The Claimants hired other contractors to complete the electrical, plumbing, HVAC, appliances; flooring, bathrooms, and other areas that the Respondent had left incomplete, as outlined in Findings of Fact 30 through 39, above. Additionally, the building permit expired because of the delays the Respondent caused, and the Claimants had to renew it at a cost of \$343.20. In all, the Claimants paid a total of \$59,687.41 to complete the work that the Respondent should have performed under the contract. This sum does not include the \$1,976.00 the Claimants paid Pepco for new underground electrical service because that item is not specifically mentioned in the contract with the Respondent.

The evidence establishes that the Respondent performed inadequate and incomplete home improvement by leaving the house unfinished and refusing to complete the contract. Thus, the Claimants are eligible for an award from the Fund. The Claimants calculated their claim as \$39,181.13 by subtracting Mr. Escobar's estimate of the value of the Respondent's work – \$116,442.00 – from the amount they paid the Respondent – \$155,623.13.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work, as follows:

(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 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.

COMAR 09.08.03.03B(3).

The Claimants calculated their claim based on paragraph (b) above, but that paragraph applies only to a situation where the claimant did not hire another contractor to complete the work. In this case, as explained above, the Claimants engaged several other contractors and incurred additional expenses to complete the Respondent's unfinished work. Therefore, paragraph (c) above provides the proper approach to the Claimants' award from the Fund. The calculations are as follows:

\$155,623.13 paid to the Respondent under the contract; plus
+59,687.41 paid to repair and complete the Respondent's work; equals
\$215,310.54 minus the original contract price
-200,000.00 equals
\$15,310.54 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.⁶ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimants' actual loss is less than the amount paid to the

⁶ 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.

Respondent and less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$15,310.54.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$15,310.54 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)(c). I further conclude that the Claimants are entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$15,310.54; 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;⁷ and

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

July 18, 2024
Date Decision Issued

Richard O'Connor

Richard O'Connor
Administrative Law Judge

ROC/ja
#212551

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 8th day of November, 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.

Robert Altieri

Robert Altieri

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***