

IN THE MATTER OF THE CLAIM	*	BEFORE JOHN T. HENDERSON, JR.
OF CHARLES & LETHIA JACKSON,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANTS	*	THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
KIMBERLY KAGEN, T/A	*	
PHOENIX REMODELING GROUP,	*	OAH No.: LABOR-HIC-02-22-24771
LLC,	*	MHIC No.: 21(75)566
RESPONDENT	*	

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On December 28, 2021, Charles Jackson and Lethia Jackson (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (Department), for the reimbursement of \$91,475.00 for actual losses allegedly suffered because of a home improvement contract with Kimberly Kagen, t/a Phoenix Remodeling Group, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401

through 8-411 (2015 & Supp. 2022).<sup>1</sup> On September 23, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 25, 2022, the OAH mailed a notice of the hearing (Notice) to the Respondent by certified and regular mail to her address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).<sup>2</sup> The Notice advised the Respondent of the time, place, and date of the hearing. The Notice was not returned to the OAH by the United States Postal Service (USPS) as undeliverable. On October 31, 2022, the USPS returned the green certified receipt evidencing delivery of the Notice to the Respondent at her address of record. I determined there was adequate notice of the hearing provided to the Respondent.

On January 27, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR); COMAR 28.02.01.20A. The Claimants appeared and represented themselves. The Respondent did not appear. Eric London, Assistant Attorney General for the Department, represented the Fund. After waiting for fifteen minutes for the Respondent to appear, I proceeded in the Respondent's absence, having found she failed to appear after receiving proper notice.

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; and COMAR 28.02.01.

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>2</sup> "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Bus. Reg. § 8-312(d).

## 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 exhibits offered by the Claimants, as follows:

- Cl. Ex. 1: Contract between the Claimants and the Respondent, June 3, 2020
- Cl. Ex. 2: Claimants' check number 3024 payable to the Respondent, in the sum of \$14,000.00, June 10, 2020
- Cl. Ex. 3A: Photograph of rear of the Claimants' home, undated
- Cl. Ex. 3B: Photograph of rear of the Claimants' home, undated
- Cl. Ex. 3C: Photograph of Howard County Inspection Certificate, November 10, 2020
- Cl. Ex. 3D: Photograph of Howard County Inspection Certificate, September 25, 2020
- Cl. Ex. 3E: Photograph of 4709 Hartford Street, undated
- Cl. Ex. 4: HIC Complaint form filed by the Claimants on December 29, 2020; the Claimants' Chronology Summary of Events, undated
- Cl. Ex. 5: Contract between the Claimants and Bay Area Contracting, LLC (Bay Area), September 13, 2021
- Cl. Ex. 6: Contract between the Claimants and Semper West Builders, Inc. (Semper West), August 16, 2021
- Cl. Ex. 7: Contract between the Claimants and Grove Heating & Cooling (Grove), September 14, 2021
- Cl. Ex. 8: Proposal from Walter Electric (Walter), August 24, 2021
- Cl. Ex. 9: Invoice from Renewal by Andersen (Renewal), July 21, 2021
- Cl. Ex. 10: Invoice from Renewal, August 31, 2021

I admitted into evidence exhibits offered by the Fund as follows:

- GF Ex. 1: Notice of Hearing, October 25, 2022
- GF Ex. 2: Hearing Order, September 16, 2022
- GF Ex. 3: Department of Labor licensing history for the Respondent, December 20, 2022
- GF Ex. 4: HIC Claim Form, December 28, 2021
- GF Ex. 5: Letter to the Claimants from the HIC, September 16, 2022
- GF Ex. 6: Letter to the Respondent from the HIC, April 13, 2022; Certificate of Mailing, April 14, 2022; email from the HIC to the HIC investigator, April 8, 2022

Testimony

The Claimants testified on their behalf. 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 contractor's salesperson license number 01-116244 and company license number 05-135908, trading as Phoenix Remodeling Group, LLC.
2. The Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent.
3. The Claimants' property subject to this matter is located in Ellicott City, Maryland on Simpkins Court (the Property). It is their primary residence.
4. The Claimants have not filed other claims against the Respondent outside of these proceedings.
5. The Agreement between the Claimants and the Respondent provided for an arbitration proceeding, at the Respondent's sole discretion. The Respondent declined to participate in arbitration.
6. On June 3, 2020, the Claimant, Mrs. Jackson, and the Respondent entered into a contract to construct a sunroom as an addition to the kitchen, replacing four windows, floors in the kitchen, painting the constructed areas, constructing a roof to the sunroom and demolition as required (Contract).
7. The Claimants met at the Property with the Respondent's representative, identified by name as Adam Sharretts.
8. The total contract price was \$43,321.00. A one-third deposit of \$14,000.00 was required. A payment of \$6,000.00 was due from the Claimants to the Respondent after framing

the project. A payment of \$10,000.00 was due from the Claimants to the Respondent after exterior completion. A payment of \$9,000.00 was due after completion of the interior electric, drywall and painting work. The balance of \$4,321.00 was due from the Claimants to the Respondent upon completion of the project.

9. The Claimants were told by Mr. Sharretts that the \$14,000.00 deposit would be used to start building the windows for the sunroom.

10. The Respondent advised the Claimants that the agreed upon work would take seven weeks to complete after approval of the required construction permit and the laying of the foundation for the sunroom.

11. On June 10, 2020, the Claimants paid the Respondent the \$14,000.00 deposit by check.

12. On August 7, 2020, the Respondent submitted the application to obtain the construction permit.

13. On or about August 27, 2020, pursuant to the Respondent's request, the Claimants paid the Respondent an additional \$1,510.34 to cover additional costs for the construction permit. (Cl. Ex. 4, Narrative.)

14. On August 28, 2020, the construction permit was issued to begin the work on the project.

15. On August 31, 2020, the sub-contractor hired to lay the foundation for the sunroom, prepared the site for the construction permit inspection. The Claimants contacted Mr. Sharretts to arrange the inspection. The inspection was not timely conducted because the Respondent did not obtain the required construction permit plans.<sup>3</sup>

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<sup>3</sup> The Claimants did not provide testimony or evidence as to whether the permit plans were provided by the local government or whether the Respondent was required to provide permits plans to the local government.

16. On September 2, 2020, the Respondent retrieved the construction permit plans so a foundation inspection could be scheduled.

17. On or about September 25, 2020, the foundation work was approved by the local government for construction and a construction permit was issued.

18. The Respondent, through its sub-contractor, began constructing the foundation but did not complete that stage of the project.

19. On October 7, 2020, the Claimants met with Mr. Sharretts and another representative of the Respondent to determine the status of the project.

20. On October 14, 2020, the Claimants received an email from Mr. Sharretts who told them materials increased in price two to three times original pricing and the construction of the sunroom windows were delayed. There was no request by the Respondent for additional money regarding materials.

21. On October 20, 2020, the Claimants received an email from the Respondent advising them that lumber was being retrieved and the date for the window delivery remained unknown.

22. On November 6, 2020, the Respondent returned to work on the foundation for the sunroom and constructed the floor joists and vapor barriers.

23. The Respondent did not return to continue or complete construction of the foundation for the sunroom, or do any further work required under the Contract after November 6, 2020.

24. The Respondent abandoned the home improvement project.

25. The Claimants sent emails to the Respondent in an effort to communicate about the Contract and project.

26. On or about December 14, 2020, the Claimants went to the address of record for the Respondent only to discover it did not have an office within the building it identified as its office location.

27. On or about December 14, 2020, the Claimants made telephone calls to the Respondent's telephone number of record and left messages. A person named Kim returned the Claimant's telephone calls and provided them with insurance information. The Claimants had no further communication with the Respondent. The Respondent did not communicate with the Claimants after about December 14, 2020.

28. The Claimants began completing the home improvement project after December 14, 2020 by contracting with additional contractors.

29. Pursuant to an invoice dated July 21, 2021, the Claimants paid Renewal \$14,004.00 for sunroom windows that was part of the June 3, 2020 Contract scope of work.

30. On August 16, 2021, the Claimants contracted with Semper West to complete the sunroom that was part of the June 3, 2020 Contract scope of work.

31. The Claimants paid Semper West its total contract price of \$5,423.00.

32. On August 24, 2021, the Claimants contracted with Walter to complete electrical work that was part of the June 3, 2020 Contract scope of work.

33. The Claimants paid Walter its total contract price of \$6,096.00.

34. Pursuant to an invoice dated August 31, 2021, the Claimants paid Renewal \$28,531.00 for the balance due for the sunroom windows that was part of the June 3, 2020 Contract scope of work.

35. On September 13, 2021, the Claimants contracted with Bay Area to complete the project, excluding the roof to the sunroom that was part of the June 3, 2020 Contract scope of work.

36. The Claimants paid Bay Area the total contract price of \$18,480.00.

37. On September 14, 2021, the Claimants contracted with Grove to complete electrical work and HVAC system that was part of the June 3, 2020 Contract scope of work.

38. The Claimants paid Grove the total contract price of \$4,541.32.

39. The work on the Property pursuant to the Contract with the Respondent was completed by the additional contractors before Thanksgiving of 2021.

40. The Claimants paid a total of \$77,075.32 to all additional contractors.

### DISCUSSION

The Claimants have 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. 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."). "[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 Claimants have 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 Claimants recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimants reside in the home that is the subject of the claim and does not own more



than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The Respondent had the right to waive an arbitration proceeding, which it did. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

The Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). According to the Claimants, there were no efforts made by the Respondent to resolve the claim. There is no competent evidence that the Respondent offered to the Claimants opportunities to correct or repair its work.

The Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. I thus find that the Claimants are eligible for compensation from the Fund.

According to the Claimants testimony and admitted exhibits, the Contract totaled \$43,321.00. On June 10, 2020, the Claimants paid the Respondent \$14,000.00 as the deposit for the Contract.

The Respondent began constructing the foundation for the sunroom on or about September 25, 2020. The Respondent began construction of the foundation using a subcontractor, but did no further work after November 6, 2020. The foundation for the sunroom was not completed. The Claimants made efforts to contact the Respondent to inquire of the progress and the projected completion date of the project. The Respondent abandoned the project and did not communicate with the Claimants after November 6, 2020. Since the Claimants had no communication from the Respondent, they contracted with additional contractors to have the original contract work completed.

The Fund argues that the Claimants have met their burden of proof that they are entitled to an award from the Fund. According to the Fund, the Claimants proved that they suffered an actual monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement

work performed by the Respondent. The Fund is convinced that due to the Respondent failing to complete the agreed upon work, the evidence admitted tends to show by a preponderance that the Respondent's work was unworkmanlike, incomplete or inadequate.

I agree with the Fund. The evidence, by a preponderance, shows that the Respondent, after laying the foundation for the sunroom, abandoned the project after November 6, 2020, resulting in an incomplete and inadequate construction. No further work was done by the Respondent. The Respondent did not make efforts to correct the incomplete and inadequate construction.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." The appropriate formula is the following:

(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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

\$14,000.00	Payment made to the Respondent by the Claimants as deposit for the home improvement pursuant to the contract of June 3, 2020 <sup>4</sup>
\$18,480.00	The amount paid to pay Bay Area to replace, repair, correct and complete the home improvement
\$ 5,423.00	The amount paid to pay Semper West to replace, repair, correct and complete the home improvement
\$ 4,541.32	The amount paid to pay Grove Heating to replace, repair, correct and complete the home improvement
\$ 6,096.00	The amount paid to Walter Electric to replace, repair, correct and complete the home improvement
<u>\$42,535.00</u>	The total amount paid to Renewal to replace, repair, correct and complete the home improvement (sunroom windows)
Total	\$91,075.32
Less	<u>\$43,321.00</u> The Original June 3, 2020 Contract Price with the Respondent
	\$47,754.32 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.<sup>5</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is more than the amount paid to the Respondent and more than the statutory cap of \$30,000.00. Therefore, the Claimant is entitled to recover the amount paid to the Respondent of \$14,000.00.

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<sup>4</sup> The Claimants' narrative (Cl. Ex. 4) reported paying the Respondent "on-line" the sum of \$1,510.34 for additional permitting fees. However, that sum is not within the claimed amount and the Claimants did not include that amount in testimony or a corroborating exhibit during the hearing.

<sup>5</sup> 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 CONCLUSION OF LAW

I conclude that the Claimant has sustained, and is entitled to recover from the Fund, an actual and compensable loss of \$14,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$14,000.00; 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>6</sup> and

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

April 24, 2023  
Date Decision Issued



\_\_\_\_\_  
John T. Henderson, Jr.  
Administrative Law Judge

JTH/cj  
#204677

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<sup>6</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 26<sup>th</sup> day of June, 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.***

***Lauren Lake***

***Lauren Lake***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***