IN THE MATTER OF THE CLAIM	*	BEFORE SUN E. CHOI,
OF GIRISH DURGAIAH,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: LABOR-HIC-02-22-21295
FOR THE ALLEGED ACTS OR	*	MHIC No.: 22 (75) 1064
OMISSIONS OF AMILCAR BENITEZ,	*	
T/A SHALOM HOME SOLUTIONS,	*	
LLC,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On June 22, 2022, Girish Durgaiah (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 $8,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Amilcar Benitez, t/a Shalom Home Solutions, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp.

2022).[1] On August 5, 2022, the MHIC issued a Hearing Order on the Claim. On August 16, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 13, 2023, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent failed to appear.

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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On December 5, 2022, the OAH mailed a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 13, 2023, at 10:00 a.m., at the OAH, at 40 West Gude Drive, Suite 235, Rockville, Maryland 20850. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did return the Notice to the OAH. Rather, the December 5, 2022 Notice was "unclaimed."[2] The Respondent did not notify the OAH of any change of mailing address and/or phone number. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[2] At the hearing, the parties and I were not aware that the December 5, 2022 Notice was unclaimed. I was notified after the conclusion of the hearing.

Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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); 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:

CL Ex. 1 - Narrative of Claimant's involvement with Respondent, undated

CL Ex. 2 - MHIC Claim Form, June 22, 2022[3]

CL Ex. 3 - Complaint Form, March 11, 2022

CL Ex. 4 - Contract for home improvement between Claimant and Respondent, January 8, 2022

CL Ex. 5 - Claimant's Bank Wire Transfer Payment to Respondent of $8,000.00, January 10, 2022[4]

CL Ex. 6 - Text messages between the Claimant and Respondent regarding the payment of $8,000.00 via wire transfer, and Respondent's acknowledgment of receipt of payment, January 11, 2022

CL Ex. 7 - Claimant's emails to Respondent, various dates January 2022

[3] This is the same as Fund Ex. 5.

[4] The financial account information contained in the exhibit was redacted.

CL Ex. 8 - Claimant's emails to Respondent, various dates January 2022, and February 14, 2022

CL Ex. 9 - Photograph of Claimant's backyard, January 8, 2023

CL Ex. 10 - Contract with Meadows Farms, subsequent contractor, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notices of Hearing, September 9, 2022[5], and December 5, 2022

Fund Ex. 2 - MHIC Transmittal and Hearing Order to OAH, August 5, 2022

Fund Ex. 3 - Licensing Database, Respondent's Licensing History

Fund Ex. 4 - MHIC letter to Respondent regarding the Claim, July 6, 2022

Fund Ex. 5 - MHIC Claim Form, June 22, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent failed to appear and 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 5737839.

2. On January 8, 2022, the Claimant and the Respondent entered into a contract for home improvement to build a Flagstone Patio Building, 910 square feet, including a grill station, benches, an island, and a firepit (Contract).

3. There were no verbal or written change orders to the Contract.

[5] The OAH copy of the Notice was marked "unable to forward."

4. The original agreed-upon Contract price was $32,000.00.

5. The Contract did not indicate a start date and/or a completion date.

6. On January 10, 2022, the Claimant paid the Respondent $8,000.00 via a wire transfer. On January 11, 2022, the Respondent confirmed in writing that he received the payment from the Claimant.

7. The Claimant made multiple unsuccessful attempts to contact the Respondent by telephone, by text messages, and by email concerning the Contract work.

8. The Respondent never started work pursuant to the Contract.

9. The Respondent's license is currently suspended due to at least three payouts from the Fund concerning other homeowners and at least one failure to respond to a complaint, unrelated to this Claim. (Fund Ex. 3).

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. 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.

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 on June 22, 2022, 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. 2022). 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. 2022). 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. 2022). 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. 2022). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Respondent was issued his license on August 13, 2021, and it was due to expire on June 11, 2023. The parties entered into the Contract on January 8, 2022.

The Claimant testified that he wanted to build a patio in the back yard of his home. He received four contractor referrals from Home Depot. Two of the contractors responded, including the Respondent. After communicating with the Respondent, who visited the Claimant's home several times, the Claimant decided to hire the Respondent.

The parties entered into the Contract on January 8, 2022. The Respondent requested that the Claimant pay twenty-five percent of the total Contract price to begin work. On January 10, 2022, the Claimant paid to the Respondent $8,000.00 via wire transfer. (CL Ex. 5). The Claimant testified that the Respondent's address appeared in the transfer information that was consistent with the Respondent's address of record with the MHIC, OAH, and the Contract. In addition, the Respondent acknowledged in writing that he received the payment. On January 11, 2022, at 7:52 p.m., the Respondent wrote, "Hi Sir, I just checked the bank account, and the money is there, thank you so much. I will send you the receipt tomorrow morning. Have a great night." (CL Ex. 6). The Claimant made several attempts thereafter to contact the Respondent for the receipt of payment and the design document. (CL Exs. 6 and 7). The Claimant never received the receipt of payment and/or the design document. In addition, the Respondent did not perform any home improvement pursuant to the Contract, after he received a payment of $8,000.00 from the Claimant. The Claimant testified that his back yard is the same condition as when the Contract was entered into two years ago. He provided a photograph of his back yard, taken on January 18, 2023. Based on the evidence before me, I find that the Respondent has abandoned the home improvement Contract. I thus 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. 2022); 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). In this case, the Claimant paid to the Respondent $8.000.00. After receipt of the payment, no work was ever started. The Fund agreed and recommended an award of $8,000.00 to the Claimant.

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. 2022); 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 $30,000.00. Therefore, the Claimant is entitled to recover his actual loss of $8,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $8,000.00 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)(2). I further conclude that the Claimant is entitled to recover $8,000.00 from the Fund.

[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. *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").

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $8,000.00; 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;[7] and

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

February 21, 2023
Date Decision Issued

Sun E. Choi
Sun E. Choi
Administrative Law Judge

SEC/dlm
#202903

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

PROPOSED ORDER

WHEREFORE, this 24th day of March, 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.

I Jean White

I Jean White
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION