IN THE MATTER OF THE CLAIM	*	BEFORE WILLIAM SOMERVILLE,
OF SHANEE MCFADDEN,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR ACTS OR OMISSIONS	*	
ALLEGED AGAINST ANYA VERA	*	
MESTANZA,	*	OAH No.: LABOR-HIC-02-22-29145
T/A LS HOME IMPROVENMENT	*	MHIC No.: 22 (75) 275
LLC,	*	
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 8, 2022, Shanee McFadden (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)[1] Guaranty Fund (Fund) for reimbursement of $1,838.00 for actual losses she alleges she suffered as a result of a home improvement contract with LS Home Improvement LLC (Company). The MHIC license holder for that

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

company, at that time, was Anya Vera Mestanza (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).[2] On November 21, 2022, the MHIC issued a Hearing Order on the Claim. On November 28, 2022, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 22, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

After waiting at least fifteen minutes for the Respondent or the Respondent's representative to appear, I reviewed the case file, confirmed that notices were sent to the Respondent's correct address, ruled that the Respondent was properly notified, and I proceeded in the Respondent's absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.

After the hearing, I received from the Respondent, through the Clerk's Office, a written request to postpone the matter. The short note based the request on "personal reasons," without specificity, and did not provide good cause to postpone the hearing.. I granted no relief. COMAR 28.02.01.16.

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?

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 – Packet of photographs showing the project

Clmt. Ex. 2 – Remedial contract document, 4/22/2022

Clmt. Ex. 3 – Blurry photocopy of a contract document, 6/22/2021

Clmt. Ex. 4 – Text messages with photographs, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 – Hearing Notice issued by the OAH

Fund Ex. 2 – Licensing History document

Fund Ex. 3 – Letter, 9/22/2022

Testimony

The Claimant testified and did not present other witnesses.

No other party offered testimony.

PROPOSED FINDINGS OF FACT

Having considered demeanor evidence, testimony, and other evidence, 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 the MHIC license holder for Company.

2. On June 22, 2021, the Claimant's husband and the Company entered into a home improvement contract by which the Claimant's husband was to pay $4,800.00 and the Company was to do some interior design remodeling of the Claimant's home. The Company was to scrape and smooth the "popcorn" ceilings in the kitchen, living room, family room, dining room, and

first floor hallway. The Company was to install decorative, faux crossbeams and crown moldings on the ceilings in the family room, kitchen, and living room. The parties understood that the final product would look like the faux beams and moldings depicted in the photographs offered by the Company to the Claimant's husband. (Clmt. Ex. 4.) The six-line contract document, however, made it clear that only "building grade materials" (not finish grade) would be used. No project completion date was set forth.

3. Sometime after June 28, 2021, the Company began work on the project.

4. Progress on the project was slow.

5. The Claimant complained to the Company about the pace and quality of the work.

6. Instead of fine finish carpentry and quality architectural features, the project looked rough and amateurish. Cuts and joints were not tight and the design was not the same as that in photographs that the parties viewed in contemplation of the project. (Testimony and Clmt. Ex. 1.)

7. July 28, 2021 was the last day that the Company did any work on the project.

8. On or about July 31, 2021, a salesperson from the Company inspected the project and admitted that the quality of the work was poor. (Clmt. Ex. 1.) The salesman agreed to remedy the poor workmanship within three work days.

9. The salesman did not have a crew remedy the poor workmanship within three work days.

10. Sometime before August 9, 2021, the salesperson told the Claimant that he would have the work remedied on August 9, 2021.

11. On August 9, 2021, no remedial work occurred.

12. Thereafter, the Claimant requested the Company to modify the agreement and give her a rebate. No modification or rebate occurred.

13. As of that time, the Claimant had paid the Company $3,200.00 of the $4,800.00 price.

14. On April 22, 2022, the Claimant received a contract proposal from a remedial contractor, Handyman On Call LLC, to paint the living room walls for $450.00.

15. On May 10, 2022, the same remedial contractor issued to the Claimant an invoice for work done at the residence. The remedial contractor had removed the crown molding and faux beams in the living room, installed one-by-six "egg crate" ceiling fixtures (replacing about half of those faux beams that were removed), and painted the ceiling and walls in the living room, for $3,438.00. The Claimant paid that amount on that date. Of that amount, $450.00 was attributable to painting the walls in the living room.

16. On August 31, 2022, the Claimant filed a claim for $1,838.00 against the Fund.

DISCUSSION

Burdens

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).

With regard to the burden of persuasion and the weight of evidence, a trier of fact can properly accept all, some, or none of the evidence offered. *See Sifrit v. State*, 383 Md. 116, 135 (2004); *Edsall v. Huffaker*, 159 Md. App. 337, 341 (2004). Demeanor evidence played an

important role in this matter. *Bragunier Masonry Contractors, Inc. v. Maryland Comm'r of Labor and Indus.*, 111 Md. App. 698, 717, n.7 (1996); *N.L.R.B. v. Dinion Coil Co.*, 201 F.2d 484, 487 (2d Cir. 1952).

Arguments of the Parties

The Claimant argues that her husband entered into a contract with the Company but the Company did not finish the project within a few weeks, and the Company failed to finish the work.

The Fund argues that the Claimant paid $3,200.00 of the $4,800.00 price but that the Company failed to finish the job. It argues that the work was inadequate, in that the contract was for elegant, interior architectural features, but that is not what the Company produced.

Analysis

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 and certain other factors disqualify recovery altogether. In this case, no party argues that such a disqualification exists and there are no such statutory impediments to the Claimant's recovery. Bus. Reg §§ 8-405; 8-408 (2015 & Supp. 2022).

The Company performed unworkmanlike, inadequate, or incomplete home improvements. As the license holder for the Company, the Respondent is responsible for that performance. See COMAR 09.08.01.04C.

I conclude that the Respondent, as the license holder of the Company, performed some inadequate home improvement work. "Inadequate" as used in Md. Ann. Code Bus. Reg. §§ 8-311(a)(10) and 8-401 means that the home improvement work might have been done with all of the steps, phases, or processes required by industry standards but the result does not equal what is required by the contract, or is not suitable to the case or occasion. *See Black's Law Dictionary*: 61 (4th ed. 1957). The term is used in the statutory scheme to describe a method to prove a lack of compliance to industry standards in work, or lack of competence to produce that which the contract reflects. In the instant case, it appears that the decorative beams and moldings were rough and not finely finished. The Claimant's husband reasonably believed that he was contracting for finely-built, interior architectural features built by finish carpenters, and he received an amateurish, poorly-constructed final product that was not pleasing to the eye. (Findings of Fact 6 and 8.) Testimony and the photographs were telling. The final product was inadequate.

Having found eligibility for compensation from the Fund, I will 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 performed some work under the Contract, and the Claimant has retained another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

> 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)(c).

With the Findings of Fact in mind, the "actual loss" calculation is as follows:

$3,200.00	Amount paid to the contractor under the original agreement
+$3,438.00	Amount paid to the remedial contractor
-$4,800.00	Price of the original agreement
$1,838.00	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. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than $30,000.00. Therefore, I conclude that the Claimant is entitled to recover an actual loss of $1,838.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $1,838.00 as a result of the acts or omissions for which the Respondent is responsible. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022). I further conclude that the Claimant is 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 Claimant $1,838.00; and

ORDER that the Respondent be 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;[3] and

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

May 16, 2023
Date Decision Issued

William J.D. Somerville III
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 26th 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