



I held a hearing on January 15, 2020, at the OAH, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),<sup>1</sup> represented the Fund. The Claimant appeared and represented himself. The Respondent failed to appear. After waiting twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

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 (2014 & Supp. 2019); 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 on the Claimant's behalf:

Clmt. Ex. 1 - Contract, February 25, 2018

Clmt. Ex. 2 - Two checks from Claimant payable to Respondent in the amount of \$5,160.00, February 25, 2018

Clmt. Ex. 3 - Claimant's 2018 timeline of phone calls, texts and other correspondence

<sup>1</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.  
<sup>2</sup> Notice of the hearing was mailed to the Respondent at his address of record by regular and certified mail on October 22, 2019, COMAR 09.08.03.03A(2), and returned undeliverable as addressed. Counsel for the Fund submitted into evidence the Respondent's licensing history which reflects that the address to which the notice was mailed is still Respondent's current address. 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. I determined that the Respondent had received proper notice and proceeded to hear the captioned matter.

Clmt. Ex. 4 - Two checks from Claimant payable to Respondent in the amount of \$2,660.00

Clmt. Ex. 5 - Email chain between Claimant and Respondent between the dates of July 29, 2018 and August 16, 2018

Clmt Ex. 6 - Letter from Claimant to Respondent, August 16, 2018

Clmt. Ex. 7 - Contract between Claimant and McWhorter Construction, August 28, 2018

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, July 29, 2019

Fund Ex. 2 - Notice of Hearing, October 22, 2019

Fund Ex. 3 - Letter from HIC to Respondent with attached Home Improvement Claim Form, November 15, 2018

Fund Ex. 4 - Respondent's HIC licensing history

#### Testimony

The Claimant testified on his own behalf.

The Fund did not offer 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.

2. On February 25, 2018, the Claimant and the Respondent entered into a contract (Contract) to construct a three-season room, deck and steps at his home located at 11523 Lager Blvd., Fulton, Maryland (Property). The Contract stated that the approximate start date was May 15, 2018.

3. The original agreed-upon Contract price was \$68,800.00.

4. On February 25, 2018, the Claimant paid the Respondent \$10,320.00.

5. In late April 2018, the Claimant telephoned the Respondent to confirm that work on the project would begin in mid-May.

6. In early May 2018, the Claimant contacted the Respondent to determine a start date. The Respondent informed the Claimant that due to rain delays he would not be able to start work until late May.

7. In early June 2018, the Claimant telephoned the Respondent regarding a start date. The Respondent informed the Claimant that due to rain delays, he was not certain of a start date. In mid-June, the Respondent was still unable to provide the Claimant with a start date.

8. On July 13, 2018, the Respondent contacted the Claimant and requested the Claimant to make payment directly to Barrons Lumber for materials. The Claimant paid Barron's Lumber \$5,000.00 for materials via credit card.

9. On July 15, 2018, the Respondent dug footers. The Claimant paid the Respondent by check an additional \$5,320.00 for the footers.

10. On July 19, 2018, the Respondent completed the footers, but did not return to perform any additional work.

11. On July 23, 2018, the Respondent informed the Claimant he would begin work on July 26, 2018. The Respondent did not report to the Property as represented and informed the Claimant that the materials and his crew would be on-site July 27, 2018.

12. On July 27, 2018, the materials were not delivered, and the Respondent did not begin work. The Respondent informed the Claimant that he was sick and needed to finish another project. The Respondent stated he would begin work the following week.

13. On July 27, 2018, the Claimant canceled the order with Barron's Lumber and received a refund of the \$5,000.00 payment.

14. On July 29, 2018, the Claimant emailed the Respondent a complaint regarding the Respondent's failure to perform the work.

15. On July 31, 2018, the Claimant contacted the Respondent by telephone and asked him to either refund all of the money paid to the Respondent or provide a start date along with project milestones. The Respondent responded that he thought the Claimant had canceled the Contract because the Claimant had canceled the lumber order. The Respondent told the Claimant he would get back to him.

16. On August 4, 2018, after not receiving a response from the Respondent, the Claimant posted negative reviews on two social media websites.

17. On August 4, 2018, the Respondent contacted the Claimant and stated he would begin work on August 16, 2018.

18. The Respondent did not return to the Property on August 16, 2018 or at any time thereafter. The Respondent did refund any money to the Claimant.

19. On August 16, 2018, the Claimant sent an email to the Respondent requesting a refund of the \$15,640.00 deposit paid to the Respondent.

20. On August 28, 2018, the Claimant entered into a contract with McWhorter Construction to complete the Contract. The total contract price was \$77,510.00.

21. The footers dug by the Respondent were inadequate for the project and could not be used by McWhorter.

22. On September 24, 2019, the Claimant telephoned the Respondent and again requested a refund of the deposit. The Respondent informed the Claimant that the

Claimant had breached the Contract and he had no intention of returning the deposit to the Claimant.

23. The Claimant has not received any reimbursement from the Respondent.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1);<sup>3</sup> Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>4</sup> “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“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.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Respondent performed inadequate and incomplete home improvements. The Claimant provided more than sufficient evidence to establish that the

---

<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>4</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

Respondent failed to complete the home improvement contract entered into in February 2018. The Respondent agreed to begin work in mid-May 2018, but other than reporting to the Property one day in July 2018 to dig footers, the Respondent did no work on the project. The Claimant contacted the Respondent numerous times regarding the Respondent's failure to perform the work and provided the Respondent with every opportunity to do so. On August 16, 2018, when the Respondent again failed to begin construction, the Claimant contacted the Respondent and requested reimbursement of the deposit he had paid the Respondent. When the Respondent did not reply, the Claimant again requested, via a telephone conversation with the Respondent, a refund of the deposit. The Respondent made it clear to the Claimant that he had no intention of returning the Claimant's deposit.

The Claimant had no choice but to hire another contractor to complete the project. On August 28, 2018, the Claimant entered into a contract with McWhorter Construction, a Maryland licensed home improvement contractor, to perform the same work called for in the Contract. The total contract price with McWhorter was \$77,510.00. After beginning construction, McWhorter determined that none of the footers dug by the Respondent were adequate to support the porch and deck project. The little amount of home improvement work performed for the Claimant by the Respondent was unworkmanlike, inadequate, and incomplete. Bus. Reg. § 8-401.

Based on the evidence presented by the Claimant, 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. Md. Code Ann., Bus. Reg. § 8-405(e)(3); 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 Claimant paid the Respondent a down payment of \$10,320.00 and additional \$5,320.00 for digging the footers. The Respondent abandoned the Contract without doing any work, other than footers that could not be used. Accordingly, I have used the formula under COMAR 09.08.03.03B(3)(a) to calculate the actual loss. The regulations state: "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." In this case, the Claimant paid the Respondent \$15,640.00 and he is entitled to reimbursement from the Fund in that amount.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss \$15,640.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a). 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 \$15,640.00 amount; 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>5</sup> and

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

March 6, 2020  
Date Decision Issued

**CONFIDENTIAL**

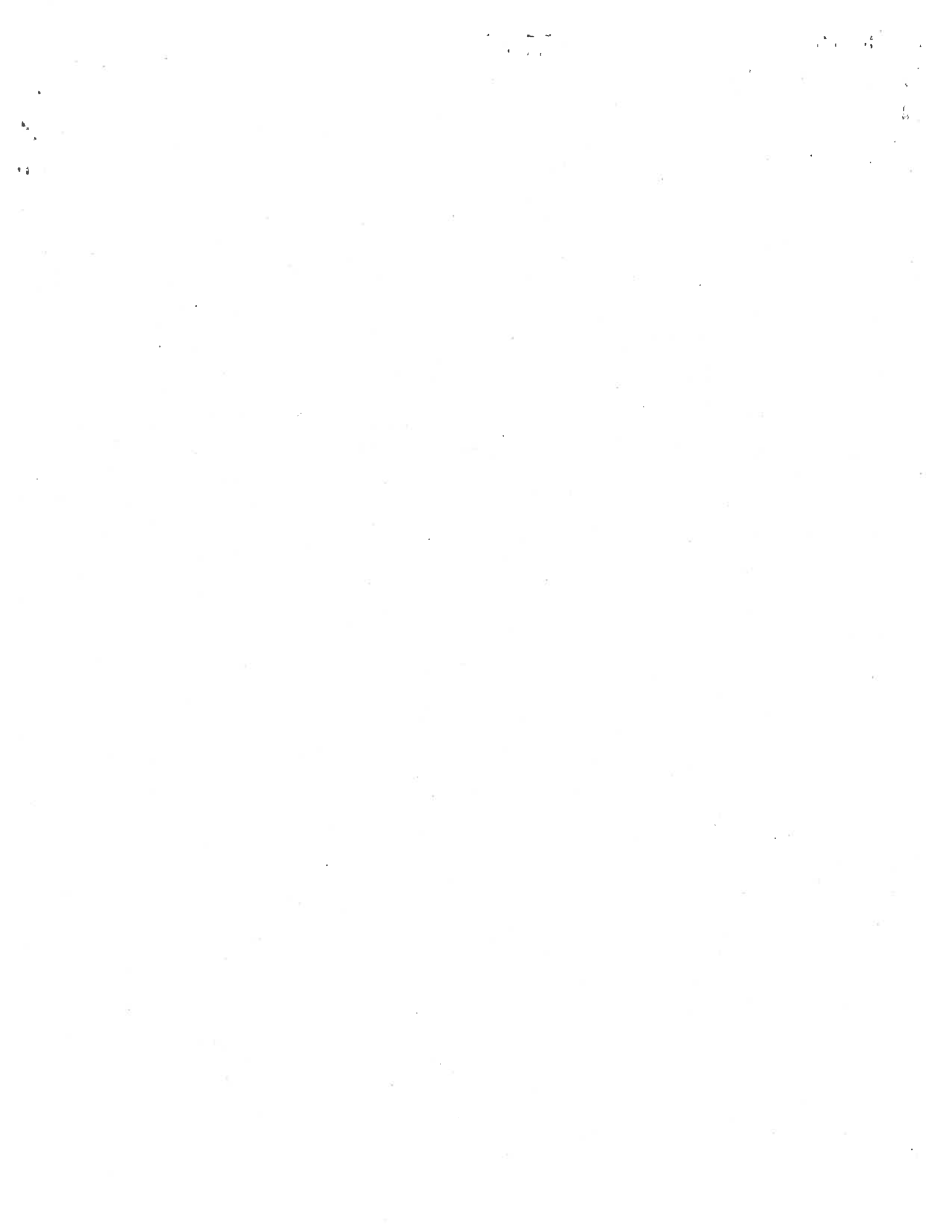
Geraldine A. Klauber  
Administrative Law Judge

*Kac*

GAK/da  
#184518

---

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



**PROPOSED ORDER**

***WHEREFORE, this 1<sup>st</sup> day of July, 2020, 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***