

IN THE MATTER OF THE CLAIM	* BEFORE JOHN T. HENDERSON, JR.,
OF JOHN MARATTA,	* ADMINISTRATIVE LAW JUDGE
CLAIMANT	* THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF	*
CHUMA AGUBUZO, T/A	*
MERCHANT LINKS SERVICES, LLC,	* OAH No.: LABOR-HIC-02-19-36210
RESPONDENT	* MHIC No.: 19 (90) 494

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On May 1, 2019, John Maratta (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$12,000.00 of actual losses allegedly suffered because of a home improvement contract with Chuma Agubuzo, t/a Merchant Links Services, LLC (Respondent). On November 1, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5800 S. UNIVERSITY AVENUE
CHICAGO, ILLINOIS 60637
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RESEARCH INTERESTS
IN THE CHEMISTRY OF
ORGANOMETALLIC COMPOUNDS
AND CATALYSIS

PROFESSOR
JAMES P. COLLAPSE
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ASSISTANT PROFESSOR
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1981-1982

ASSOCIATE PROFESSOR
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PROFESSOR
JAMES P. COLLAPSE
2024-2025

I held a video hearing on September 29, 2020, initiated from the OAH in Hunt Valley, Maryland, and the parties participated from their respective locations.¹ Code of Maryland Regulations (COMAR) 28.02.01.20B(1); Md. Code Ann., Bus. Reg. § 8-407(e) (2015).² Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),³ represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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 09.08.02; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
2. If so, how much is the Claimant entitled to receive from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence exhibit number one offered by the Claimant, along with attachments, as follows:

- Home Improvement Claim Form, May 1, 2019
- Claimant's written narrative, undated
- Invoice from Merchant Links Services, LLC, May 22, 2018
- Claimant's check number 1021, payable to the order of Merchant Links Services, in the sum of \$2,300.00, April 28, 2018
- Claimant's check number 1029, payable to the order of Merchant Links Services, in the sum of \$2,575.00, May 23, 2018
- Claimant's check number 1030, payable to the order of Nicson (sic) Zelaya, in the sum of \$1,300.00, May 25, 2018

¹ A hearing was originally scheduled for March 24, 2020, but postponed and rescheduled due to the Covid-19 pandemic.

² Unless otherwise indicated, all references to the Business Regulation Article are to the 2015 version.

³ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

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- Claimant's check number 1033, payable to the order of Safeway Glass and Doors (Safeway), in the sum of \$1,200.00, June 4, 2018
- Claimant's check number 1035, payable to the order of Safeway, in the sum of \$1,325.00, June 27, 2018
- Merchant Links Services LLC check number 3192, payable to the order of the Claimant, in the sum of \$500.00, June 27, 2018
- Memo, Cost of Materials from May 2, 2018 to May 22, 2018
- Receipt, illegible, except total payment, \$270.02
- Receipt, illegible, except total payment, \$232.57
- Receipt, illegible, except total payment, \$383.09
- Receipt, illegible, except total payment, \$75.46
- Letter from the Claimant to the Respondent, July 23, 2018
- Certified mail envelope from the Claimant to the Respondent, unclaimed, postmarked August 2018
- Letter from the Claimant to the Respondent, August 7, 2018
- Estimate from Bucksavers Home Improvements, Inc., March 27, 2019
- Twenty-eight copies of photographs depicting work done for bathroom home improvement

I admitted into evidence the following exhibit offered by the Respondent:

Resp. Ex. 1 Invoice to the Claimant, June 4, 2018

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

GF Ex. 1 Hearing Order from the MHIC, October 28, 2019

GF Ex. 2 Notice of Remote Hearing, August 27, 2020

GF Ex. 3 Notice of Hearing, December 27, 2019

GF Ex. 4 Letter from Labor to the Respondent, May 14, 2019; Home Improvement Claim Form, May 1, 2019

GF Ex. 5 MHIC License history of the Respondent as of September 10, 2020

Testimony

The Claimant testified on his own behalf. His wife, Kenesha Maratta, testified on his behalf. The Respondent testified on his own behalf. The Fund did not present any testimony.

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 license number 01-104-4402 and was trading as Merchant Floors Kitchen and Bath, LLC, and Merchant Links, LLC.

2. The Claimant is not related to the Respondent.

3. The Claimant's property subject to this matter was located at 808 Amory Court, Severn, Maryland 21144 (the Property).

4. The Property was the Claimant's primary residence.

5. The Claimant does not own more than three residences or dwelling places.

6. The Claimant has not filed other claims against the Respondent outside of these proceedings.

7. On April 28, 2018, the Claimant and the Respondent entered into an oral agreement (the Contract) whereby the Respondent agreed in the form of an invoice provided to the Claimant, to do the following home improvement:

Bathroom Remodeling:

- Demo existing upstairs master bedroom shower and base with top and bottom recessed wall soap dish.
- Demo vanity and install all new if upgraded.
- Haul away all debris.
- Install all new shower wall tile 12x24 to ceiling.
- Install all new shower tile base and all new surround tile to jacuzzi bath tub.
- Install all new floor tile; 9.5 x 7.5.
- Install all new frameless chrome shower glass.

8. The Claimant was to provide all the material for the work.

9. The agreed upon price was \$7,800.00.

10. The scope of work and the agreed upon price was memorialized with an invoice the Respondent provided to the Claimant.

11. The Respondent did not perform any labor himself but provided employees and sub-contractors to work on the home improvement.

12. The Claimant paid the Respondent as well as sub-contractors Nican Zelaya (sic) and Safeway for the home improvement, as follows:

1021	April 28, 2018	Merchant Links Services	\$2,300.00	1/3 Down payment
1029	May 23, 2018	Merchant Links Services	\$2,575.00	2/3 Down payment
1030	May 25, 2018	Nican Zelaya	\$1,300.00	Tile Team
1033	June 4, 2018	Safeway	\$1,200.00	Glass Team
1035	June 27, 2018	Safeway	<u>\$1,325.00</u>	Glass Team

Total Paid for the Home Improvement: \$8,700.00

13. The cost of materials paid by the Claimant is as follows:

Receipt from May 2, 2018:	\$270.02
Receipt from May 11, 2018	\$232.57
Receipt from May 17, 2018	\$383.09
Receipt from May 22, 2018	<u>\$ 75.46</u>

Total Cost \$961.14

14. The Respondent began work on or about May 14, 2018 and completed approximately two weeks from that date.

15. June 27, 2018 was the last day work was performed on the home improvement by a sub-contractor of the Respondent. Safeway was paid that date and completed its installation of the glass shower doors.

16. On June 27, 2018, the Respondent refunded to the Claimant \$500.00 to satisfy the parties' dispute concerning the shower glass work.

17. The Claimant paid a total of \$9,661.14, less the \$500.00 refund resulting in a net payment of \$9,161.14 paid for the home improvement constructed under the direction of the Respondent.

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18. The home improvement conducted by the Respondent resulted in inadequate and incomplete work as follows:

- The placement of uneven bathroom tiles.
- The tiles had jagged edges, uneven grout lines and visible holes in the grout.
- The shower and soaking tub tile surround had uneven lippage.⁴
- In several places, the pattern used to place the tile was inconsistent in appearance with the grout lines for different rows of tiles coming too close together and not looking uniform.
- There are places where grout should have been used but silicone was used instead leaving a sloppy appearance.
- There was consistent failure to use 45 degree angle cuts at corners.
- The shower seat and threshold are not properly angled for water to drain onto the shower floor and water sits on the seat and leaks onto the floor from the shower threshold.
- The glass shower was installed without notching the tile resulting in large gaps between the glass and the tile wall.
- The glass shower door does not close flush.
- The entire glass surround wobbles when the door is opened or shut.
- The glass was not properly sealed to prevent the accumulation of soap scum.

19. On July 23, 2018, the Claimant emailed the Respondent to report his dissatisfaction with the finished home improvement.

20. The Claimant made additional attempts by telephone and text messaging to contact the Respondent to discuss his dissatisfaction with the home improvement.

21. The Respondent did not reply to the Claimant to discuss the problems with the home improvement.

22. On August 7, 2018, the Claimant mailed the Respondent a certified letter again expressing his dissatisfaction with the home improvement.

23. Neither the Respondent nor anyone else has returned to the Claimant's home to address the Claimant's complaints since June 27, 2018.

⁴ "Lippage is the vertical displacement between two adjacent tiles of a ceramic, glass, or stone installation. When excessive, this can lead to numerous problems, ranging from chipped edges to snagged furnishings and appliances to safety hazards." <https://www.constructionspecifier.com/tile-and-stone-lippage-what-is-acceptable-and-how-do-you-specify-it/#:~:text=Lippage%20is%20the%20vertical%20displacement,and%20appliances%20to%20safety%20hazards.> (Last viewed, December 17, 2020.)

Assets

Real Estate: \$1,000,000.00
Loans: \$5,000,000.00
Investments: \$10,000,000.00
Cash: \$2,000,000.00
Total: \$18,000,000.00

Liabilities: \$15,000,000.00
Capital: \$3,000,000.00
Total: \$18,000,000.00

Income: \$1,000,000.00
Expenses: \$500,000.00
Net Income: \$500,000.00

Assets: \$18,000,000.00
Liabilities: \$15,000,000.00
Capital: \$3,000,000.00

Income: \$1,000,000.00
Expenses: \$500,000.00
Net Income: \$500,000.00

Assets: \$18,000,000.00
Liabilities: \$15,000,000.00
Capital: \$3,000,000.00

Income: \$1,000,000.00
Expenses: \$500,000.00
Net Income: \$500,000.00

Assets: \$18,000,000.00
Liabilities: \$15,000,000.00
Capital: \$3,000,000.00

Income: \$1,000,000.00
Expenses: \$500,000.00
Net Income: \$500,000.00

Assets: \$18,000,000.00
Liabilities: \$15,000,000.00
Capital: \$3,000,000.00

24. On March 27, 2019, the Claimant received an estimate from Bucksavers Home Improvements, Inc. (Bucksavers), in the sum of \$12,000.00 to demo, repair and complete the home improvement constructed by the Respondent.

25. The Claimant did not authorize Bucksavers to perform the work estimated in the sum of \$12,000.00 as of the date of the hearing.

DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available reserve of money from which homeowners could seek relief for actual losses sustained because of unworkmanlike, inadequate, or incomplete home improvement work performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. Under this statutory scheme, licensed contractors are assessed fees which subsidize the Fund. Homeowners who sustain losses by the actions of licensed contractors may seek reimbursement for their “actual losses” from this pool of money, subject to a maximum of the lesser of \$20,000.00 or the amount paid by or on behalf of the claimant to the contractor. *Id.* § 8-405(e)(1), (5). A homeowner is authorized to recover from the Fund when he or she sustains an actual loss that results from an act or omission by a licensed contractor. *Id.* § 8-405(a). When the Fund reimburses a homeowner as a result of an actual loss caused by a licensed contractor, the responsible contractor is obligated to reimburse the Fund. *Id.* § 8-410. The MHIC may suspend the license of any such contractor until he or she reimburses the Fund in full, with annual interest as set by law. *Id.* § 8-411(a).

Recovery against the Fund is based on “actual loss,” as defined by statute and regulation. “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” *Id.* § 8-401. “By employing the word ‘means,’ as opposed to ‘includes,’ the legislature intended to limit the scope of ‘actual

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loss' to the items listed in section 8-401." *Brzowski v. Md. Home Improvement Comm'n*, 114 Md. App. 615, 629 (1997). The Fund may only compensate claimants for actual losses incurred as a result of misconduct by a licensed contractor. COMAR 09.08.03.03B(2).

At a hearing on a claim, 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); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[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)).

There is no dispute that the Respondent held a valid MHIC contractor's license in 2018 when he and his company entered into the Contract with the Claimant. Md. Code Ann., Bus. Reg. § 8-405(a). There is no dispute that the Claimant was the owner of the subject property at the time of the home improvement and that there is no procedural impediment barring him from recovering from the Fund as an owner of the subject property. *Id.* § 8-405(a), (f).

The next issue is whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement due to misconduct, and if so, whether the Respondent made good faith efforts to resolve the claim. A claim may be denied if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d). For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund because he has proved an unworkmanlike, inadequate or incomplete home improvement due to the misconduct of the Respondent and has suffered an "actual loss."

The Claimant testified that on April 28, 2018, he, his wife and the Respondent entered into an oral contract to have the master bathroom at their residence remodeled as described in

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findings of fact number seven. The Respondent began work on or about May 14, 2018 and completed the work approximately two weeks from that date. The Claimant paid the Respondent a net total of \$9,161.14 for the home improvement in full satisfaction of the agreed upon price.

The Claimant further testified that he and his wife were not satisfied with the completed home improvement. As described in findings of fact number eighteen, the home improvement was riddled with deficiencies and inadequate work resulting in an unsightly presentation of what they envisioned their master bathroom to be and creating a water damage hazard due to incorrect tile placement.

According to the Claimant, he made efforts to communicate his dissatisfaction to the Respondent by email, telephone voice and text, as well as sending a certified letter. The Claimant testified that the Respondent did not respond to the Claimant's efforts to communicate his concerns with the work completed by the Respondent.

The Respondent testified that he was referred to the Claimant's wife by one of his clients and only met the Claimant once. He further testified that he went to the Property about six times before completion to supervise the work.

Apparently, according to the Respondent, he underbid the installation of the glass shower doors and did not want to cover the additional cost, creating a dispute between him and the Claimant. To resolve the dispute concerning the glass shower doors, the Respondent refunded \$500.00 to the Claimant. According to the Claimant, he was resolving all issues the Claimant complained about the home improvement by providing the \$500.00 refund. The Claimant did not have the same understanding.

According to the Respondent, the photographs in evidence provided by the Claimant were taken long after the Respondent completed the job. The Respondent testified that the Claimant did not notify him of the concerns identified within the photographs in evidence, which

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contradicts his testimony as to the reasons he provided the \$500.00 refund payment to the Claimant. The Respondent further testified that when he met with the Claimant for the last time on a date uncertain, it was only to discuss the issue concerning the shower glass installation. The Respondent testified that the Claimant did not want to communicate with him and that if an email was sent, he would have responded. The Respondent remembers a telephone conversation with the Claimant in July 2018 about their concerns, but according to the Respondent, the Claimant did not want him to return to the Property to complete the home improvement. According to the Respondent, he first saw what the Claimant was complaining about when he viewed the photographs that are admitted into evidence.

The Respondent does not dispute that he was paid by the Claimant and that his subcontractors were paid. He did testify, upon viewing the photographs admitted into evidence, that the tile work had issues that needed correction and that the tile work created a water damage risk to the flooring.

The Fund agreed that the Claimant met his burden by a preponderance of the evidence that the Respondent performed an inadequate and incomplete home improvement. Further, the Fund pointed out that the Claimant, a contractor of ten years, committed misconduct by not providing a written contract to the Claimant before any monies were accepted and the home improvement began, in violation of the regulatory statute. Md. Code Ann., Bus. Reg. § 8-501(b) (2015 & Supp. 2020). The Fund further argued that the Respondent's testimony was not credible and that he was unable to rebut the evidence provided by the Claimant.

The Fund argued that the Claimant's actual loss is \$12,000.00 based on the estimate of Bucksavers; however, according to the Fund, the required formula used to determine an amount from the Fund results in an award of \$9,161.14.

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I agree with the Fund. The credible evidence shows by a preponderance that the home improvement conducted by the Respondent was inadequate and incomplete resulting in the Claimant having to have the job repaired and constructed anew. This resulted in the Claimant suffering an actual loss entitling him to an award from the Fund.

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." According to the Fund, and I agree, 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:

\$ 9,161.14	Net Payments made to the Respondent by the Claimant for the home improvement and the cost of materials pursuant to the oral agreement.
<u>\$12,000.00</u>	The amount required to pay Bucksavers to repair, correct and complete the home improvement
Total	\$21,161.14
Less	<u>\$12,000.00</u> Actual Loss

The MHIC may not award from the Fund more than \$20,000.00 to one claimant for acts or omissions of one contractor or an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). The actual loss is in excess (\$12,000.00) of the amount paid by the

Claimant to the Respondent, therefore, the award is \$9,161.14, the amount actually paid to the Respondent.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss of \$9,161.14 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and (5) (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Claimant sustained an actual loss; and

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,161.14; and

ORDER that the Respondent Chuma Agubuzo, t/a Merchant Links Services, LLC, each, jointly and severally, are ineligible for a Maryland Home Improvement Commission license until the Guaranty Fund is reimbursed for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission;⁵ and

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

December 22, 2020
Date Decision Issued

JTH/emh
#189663

NOT FOR PUBLIC RELEASE

John T. Henderson, Jr.
Administrative Law Judge

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

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PROPOSED ORDER

WHEREFORE, this 17th day of March, 2021, 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***

STATE OF TEXAS

County of _____

Know all men by these presents, that _____ of the County of _____ State of Texas, for and in consideration of the sum of _____ Dollars, to _____ in hand paid by _____ the receipt of which is hereby acknowledged, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____ of the County of _____ State of Texas, all that certain _____

WITNESSED my hand and seal of office this _____ day of _____ 19____.

Notary Public in and for the State of Texas