

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF GREGORY WEST,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF JEFFREY JONES,</b></p> <p><b>T/A JONES HOME GROUP, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE DEBORAH S. RICHARDSON,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-21-25365</b></p> <p>* <b>MHIC No.: 21 (75) 253</b></p>
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**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 April 22, 2021, Gregory West (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 \$75,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Jeffrey Jones, trading as Jones Homes Group, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).<sup>1</sup> On October 22,

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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 and shall be abbreviated "Bus. Reg."

2021, the MHIC issued a Hearing Order on the Claim. On November 2, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 3, 2022, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimant represented himself. Scott Hartinger, Esquire, represented the Respondent, who was present. Hope Sachs, Assistant Attorney General, Department, represented the Fund.

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); Code of Maryland Regulations (COMAR) 09.01.03; and 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:

- Clmt. Ex. 1 - Allstate scope of work, June 1, 2018
- Clmt. Ex. 2 - Contract between the Claimant and the Respondent, July 3, 2018
- Clmt. Ex. 3 - Letter from Wells Fargo to the Claimant, January 17, 2020
- Clmt. Ex. 4 - Insurance Loss Inspection, August 24, 2018
- Clmt. Ex. 5 - Insurance Loss Inspection, September 11, 2018
- Clmt. Ex. 6 - Third Party Authorization Form, August 22, 2018

- Clmt. Ex. 7 - Cabinetry order, September 12, 2018
- Clmt. Ex. 8 - Claimant's checking account statement, August 28, 2018 to September 27, 2018
- Clmt. Ex. 9 - Invoice, Build.com, November 14, 2018
- Clmt. Ex. 10 - Claimant's checking account statement, October 28, 2018 to November 27, 2018
- Clmt. Ex. 11 - Change Order, August 3, 2018
- Clmt. Ex. 12 - Respondent's receipts for payments, printed September 7, 2018
- Clmt. Ex. 13 - Contract between the Claimant and Final Touch Home Improvements, October 1, 2018
- Clmt. Ex. 14 - Checks from the Claimant to Final Touch, dated September 21, 2018, October 1, 2018, October 2, 2018, October 27, 2018, November 17, 2018, December 12, 2018, December 15, 2018, December 24, 2018, January 3, 2019

I admitted the following exhibit offered by the Respondent:

- Resp. Ex. 1 - Change Orders, August 30, 2018, August 30, 2018, August 30, 2018, July 16, 2018, July 19, 2018, July 19, 2018, July 25, 2018

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 - Notice of Hearing, March 17, 2022
- GF Ex. 2 - Hearing Order, October 22, 2021
- GF Ex. 3 - Licensing history, printed March 29, 2022
- GF Ex. 4 - Letter from MHIC to the Respondent, April 26, 2021; Home Improvement Claim Form, April 22, 2021; Complaint Form, September 11, 2020

### Testimony

The Claimant testified and presented the testimony of Michael Barnes, Final Touch Home Improvements.

The Respondent did not present any testimony.

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.
2. The Claimant owns a single-family home, his primary residence, in Frederick, Maryland (Property).
3. On January 2, 2018, the Claimant's Property was flooded.
4. The Claimant's insurer, Allstate, covered the loss from the flood. Allstate determined the actual cash value of the loss was \$187,931.38 and the net claim if depreciation was recovered was \$207,396.45.
5. On July 3, 2018, the Claimant and the Respondent entered into a contract to repair and renovate the Claimant's Property (Contract).
6. The original agreed-upon Contract price was \$186,921.00. The Contract included \$53,000.00 towards cabinets/fixtures/tile/countertop/appliances/flooring/hardware/door and window.
7. The parties agreed to change orders totaling \$78,464.50 including the following:  
Ceramic tile/under cabinet lighting, drywall on staircase, relocation of fridge recess,  
Shower niche – August 30, 2018 \$4,450.00  
Additional railing posts – August 30, 2018 \$1,125.00  
Relocate electrical in bathroom - August 30, 2018 \$1,050.00  
Replace water heater and other items - July 6, 2018 \$34,589.50

Changes to bathroom and basement scope - July 19, 2018 \$31,800.00

French doors - July 19, 2018 \$4,850.00

Basement electrical - July 25, 2018 \$600.00

8. Allstate paid a total of \$127,244.93 to Wells Fargo, the Claimant's mortgage company, which in turn paid the Respondent as follows:

May 31, 2018 - \$42,390.90<sup>2</sup>

August 23, 2018 - \$32,729.48

August 28, 2018 - \$52,124.55

9. Sometime after July 3, 2018, the Respondent began work on the Contract.

10. On August 23, 2018, the work was 50% complete.

11. In September 2018, the Claimant noticed that costs on the Contract were ballooning, and there was a discrepancy between the scope of the work and the costs. The Claimant did not understand where the increased costs were coming from. The Claimant asked the Respondent if he could participate in a telephone call with the Claimant and a representative from Allstate.

12. The Respondent agreed to participate in the telephone call and the Claimant scheduled it for September 7, 2018 at 11:00 a.m.

13. On September 7, 2018 at 11:00, the Claimant, with the Allstate representative on the line, attempted to call the Respondent three times. The Respondent did not answer.

14. The Claimant reached the Respondent later by telephone. The Respondent stated he was unwilling to participate in the telephone call until he received a new scope of work.

15. The Claimant forwarded the Respondent a revised scope of work.

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<sup>2</sup> There is a slight discrepancy on this figure. Clmt. Ex. 12 shows the amount as \$42,038.90, which Clmt. Ex. 3 shows the number above.

16. Later that day on September 7, 2018, the Claimant went to the Property and found that the house was empty and had been cleaned and the Respondent's construction sign that had been in the yard was gone.

17. The Claimant spoke to the Respondent a few more times after September 7, 2018, but the Respondent never returned to the job.

18. On September 11, 2018, the work was 55% complete. The ceiling, drywall, electrical, trim and decorative woodwork had been completed. The work which still needed to be completed included flooring, painting, appliances, cabinets and countertops throughout.

19. On September 17, 2018, the Claimant paid \$35,003.97 for cabinets to Home Depot.

20. On October 1, 2018, the Claimant entered into a contract with Final Touch Home Improvement to complete the work under the original Contract.

21. The Claimant has paid Final Touch Home Improvements at least \$27,000.00.

22. On November 6, 2018, the Claimant paid \$9,494.69 for appliances to Bray and Scarff.

23. On November 14, 2018, the Claimant paid \$4,269.27 to Build.com network for bathroom accessories that were included in the Contract. (Clmt. Ex. 9).

### 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); Md. Code Ann., State Gov't § 10-217 (2021); 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 Cty. 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); *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 Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. 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, 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). The home that is the subject of the claim is the Claimant’s primary residence. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). 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).

The Claimant testified that the Respondent abandoned the Contract, which amounts to an incomplete home improvement. Counsel for the Respondent asked the Claimant several questions on cross-examination about him ordering the Respondent to leave the job, insinuating that the Claimant had fired the Respondent, as opposed to the Respondent abandoning the job. However, the Claimant answered “no” to each of those questions. The Respondent chose not to testify. At closing, counsel asked that I draw an inference that the Claimant told the Respondent

to leave the job. I decline to do so, as that would be purely speculative. The only evidence presented on the matter was from the Claimant, who testified unequivocally that the Respondent abandoned the job. According to the only evidence presented on the matter, which was credible, I find the Respondent abandoned the Contract and performed an incomplete home improvement.

Nevertheless, for the reasons discussed below, I find that the Claimant has not proven an actual loss that resulted from an act or omission by the Respondent.

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); 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 other contractors 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).

The amounts the Claimant has paid to or on behalf of the contractor under the original contractor is one of the easier items to address in this case. Claimant's Exhibit 3 shows that



Allstate paid a total of \$127,244.93 to Wells Fargo, the Claimant's mortgage company, which in turn paid the Respondent as follows:

May 31, 2018 - \$42,390.90

August 23, 2018 - \$32,729.48

August 28, 2018 - \$52,124.55

While Claimant's Exhibit 12 shows the amount of the May 31, 2018 check was \$42,038.90, this difference is negligible and is likely attributed to a typo in one of the two documents.

Next I must add any reasonable amounts the claimant has paid or will be required to pay another contractor to complete the original contract. The Claimant proved that he paid \$35,003.07 for cabinets to Home Depot that should have been paid by the Respondent under the original Contract. (Clmt. Ex. 7 & 8). The Respondent's argument that it was not clear whether cabinetry was the responsibility of the Respondent under the Contract is unpersuasive as it states in red print on the Contract that it includes \$53,000.00 for cabinets /fixtures/tile/counter top/appliances/flooring/hardware/door and window. (Clmt. Ex. 2). The Claimant also paid \$4,269.27 to Build.com network for bathroom accessories that were included in the Contract, (Clmt. Ex. 9), and \$9,494.69 to Bray and Scarff for appliances that were included in the Contract. (Clmt. Ex. 10).

The amount paid to Final Touch Home Improvements is more difficult. The contract itself, Claimant's Exhibit 13, has a total amount listed in typed print as \$40,185.00, although there are also handwritten figures of \$33,685.00 and \$36,255.00. (Clmt. Ex. 13). Mr. Barnes testified the contract was for \$40,185.00, but that he has been paid only \$27,000.00. However, the checks in evidence from the Claimant show the Claimant has paid Mr. Barnes \$37,329.00. (Clmt. Ex. 14). It appears some of the payments in Claimant's Exhibit 14 are for items outside of

the Claimant's contract with Final Touch, therefore, I will accept Mr. Barnes' testimony, which was not contested by the Claimant, that he has been paid only \$27,000.00 for work performed under this contract. The Fund argued that Mr. Barnes did not appear to expect payment for the amount outstanding under the \$40,185.00 contract. Therefore the Fund argued I should use the \$27,000.00 that had been paid to Mr. Barnes in the formula, rather than the \$40,185.00 allegedly due to Mr. Barnes. As the Claimant bears the burden of proof in this matter, and he did not testify credibly that he still owes money to Mr. Barnes, I will use the \$27,000.00 figure. In any event, as will be shown below, even if I were to use the \$40,185.00 figure, the Claimant is still not entitled to an award from the Fund.

Thus, the amount paid by the Claimant to complete the original work is \$35,003.97 paid to Home Depot + \$4,269.27 paid to Build.com + \$9,494.69 paid to Bray and Scarff + \$27,000 paid to Final Touch Home Improvement, which equals \$75,767.93.

Finally, I must subtract the original contract price. At the hearing, the Fund recommended that this number was \$186,921.00, which all parties agree was the contract price specified in the July 3, 2018 Contract. However, the Respondent introduced into evidence change orders totaling \$78,464.50. (Resp. Ex. 1). Some of these change orders are marked as completed. The inspection completed on September 11, 2018 on behalf of the insurance company, showing the repairs were 55% complete, do not include detail regarding the change orders. Thus, they must be included in the Contract price. Furthermore, the Claimant did not provide testimony or documents to prove that his contract with Final Touch Home Improvements excluded the change order items. Instead, the Claimant testified that he walked through the house with Mr. Barnes and pointed out everything that needed to be completed. The contract with Final Touch Home Improvements lacks the specificity needed to determine whether the change order items from the Contract with

the Respondent were excluded. Therefore, again with the Claimant bearing the burden of proof, I have no choice but to include the change orders in the original contract price, taking it to \$265,385.50.

Application of the formula using these figures is as follows:

Amount paid to Claimant under the Contract:	\$127,244.93
+ amount paid to complete the Contract:	\$75,767.93
Equals:	\$203,012.86
Less original Contract price:	\$265,385.50
<b>Equals:</b>	<b>-\$62,372.64</b>

Therefore, the Claimant has failed to prove he suffered an actual loss as a result of the act or omission of the Respondent and he is not entitled to compensation from the Fund.

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

I conclude that the Claimant has not sustained an actual and compensable loss 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)(c).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

July 29, 2022  
Date Decision Issued

DSR/ja  
#199683

*Deborah S. Richardson*  

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Deborah S. Richardson  
Administrative Law Judge

PROPOSED ORDER

*WHEREFORE, this 16<sup>th</sup> day of September, 2022, 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.*

*Chandler Louden*

*Chandler Louden*

*Panel B*

*MARYLAND HOME IMPROVEMENT  
COMMISSION*