IN THE MATTER OF THE CLAIM	*	**BEFORE WILLIS GUNTHER BAKER,**
OF WILLIAM DENVIL,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
JUSTIN CHEETHAM,	*	**OAH No.: LABOR-HIC-02-22-06482**
T/A REMARKABLE HOME	*	**MHIC No.: 21(75)927**
IMPROVEMENTS,[1]	*	
RESPONDENT	*	

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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On November 1, 2021, William Denvil (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 $44,498.00 for actual losses allegedly suffered as a result of a home improvement contract with Justin Cheetham,

[1] At the time of the contract with the Claimant, the Respondent was trading as Remarkable Home, LLC. That name now belongs to the Respondent's former wife.

T/A Remarkable Home Improvements (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).[2] On March 2, 2022, the MHIC issued a Hearing Order on the Claim. On March 17, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 9, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Justin Dunbar, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent represented himself.

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

Unless noted otherwise, I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Contract between the Claimant[3] and Respondent, dated March 6, 2018[4] (Contract)

Clmt. Ex. 2 - Final Invoice #2303, July 17, 2019

Clmt. Ex. 3 - Claimant's cancelled checks, various dates between March and August 2019

[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[3] The contract was signed by the Claimant's wife, Deborah Hazlett. The Claimant and his wife own the property jointly, so I will attribute any references to the wife to include the Claimant.
[4] The Claimant testified that the Contract was not executed until March 28, 2019 when they paid the deposit.

Clmt. Ex. 4 - Emails between the parties, November 15-17, 2019

Clmt. Ex. 5 - Emails between the parties, November 24, 2019 to March 2, 2020

Clmt. Ex. 6 - Emails between the parties, December 27, 2020 to March 9, 2021

Clmt. Ex. 7 - Sixty-nine photographs of the exterior of the home taken by the Claimant between December 2020 and March 2021

Clmt. Ex. 8 - Case Home Inspections Report, July 12, 2021

Clmt. Ex. 9 - CertaPro Painters Estimate, October 15, 2021

Clmt. Ex. 10 - ROI Construction Estimate, September 22, 2021 (not admitted)

Clmt. Ex. 11 - DeVere Insulation Proposal, October 27, 2021

Clmt. Ex. 12 - Pyramid Contractors, Inc. Estimate, September 1, 2021

Clmt. Ex. 13 - Claimant's cancelled checks to ROI Construction, November 1, 2021 and December 14, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, March 28, 2022

Fund Ex. 2 - MHIC Hearing Order, March 2, 2022

Fund Ex. 3 - Home Improvement Claim Form, November 1, 2021

Fund Ex. 4 - Notice of Claim Letter to the Respondent, November 23, 2021

Fund Ex. 5 - Respondent's MHIC Licensing Information, printed April 27, 2022

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other 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 the MHIC.

2. On March 28, 2019, the Claimant and the Respondent entered into a contract to remove and dispose of the existing aluminum siding on the exterior of the Claimant's home (Home); clean and prep existing wood siding; prime and paint all wood siding surfaces; repair or replace any rotten wood (if necessary at an additional cost as stated in contract), and insulate the four main exterior walls of the home (Contract).

3. The original agreed-upon Contract base price was $38,775.00.

4. On multiple dates between March 28, 2019 and August 29, 2019, the Claimant paid the Respondent by checks, for a total of $44,220.00.

5. Most of the Claimant's work was done during July 2019 and it was completed in August 2019.

6. In November 2019, the Clamant noticed that there were several places on the exterior of the Home where paint was peeling.

7. On November 12, 2019, the Claimant emailed the Respondent to discuss how the Respondent would address the peeling paint, requesting that they meet at the house to review the work. (Clmt. Ex. 4).

8. Emails continued between the parties from November 2019 through March 2020, with the Respondent requesting that work be done before it was too cold to paint. The repair work was not done before winter. The parties planned to meet in February or March to discuss repairs. (Clmt. Ex. 5).

9. In March 2020, the Respondent returned to the Home and addressed some blistering and cracking paint issues.

10. In November and December 2020 the Claimant noticed additional paint issues and other concerns regarding calking and insulation.

11. On December 27, 2020, the Claimant sent the Respondent a detailed list of concerns including caulking of the bottom of the clapboard siding causing moisture and paint blisters; blistering, cracking and peeling paint; split wood that should have been replaced at the time of the original work; improper vertical seams at clapboard joints; and lack of insulation. (Clmt. Ex. 6).

12. Additional emails were exchanged between the parties between December 27, 2020 and March 9, 2021, and the Claimant provided photographs to the Respondent of his concerns. The relationship became strained, and the Respondent sought other assistance with resolving the issues.

13. The Claimant produced photographs of the Home showing blistering, cracked paint, split wood that had not been repaired per the contract, un-smooth and un-sanded areas that appear to have not been painted or not pretreated before the paint was applied; caulked areas at the bottom of the clapboard; and one area that appeared to have had insulation blown in from the exterior that was then caulked over.

14. The Claimant hired Case Home Inspections to inspect issues with the Home on July 12, 2021. The inspection found that: the paint was failing and noted that it did not appear that the wood had been properly cleaned and prepared prior to painting; nails and aluminum shards were left on the wood and painted over; the wooden clapboard siding had been caulked under all the laps which did not allow the boards to breathe properly, trapping moisture which could cause the wood to deteriorate; and only one place was observed to have been opened then

patched for the blown insulation that should have been observed every 16 inches around the entire exterior. (Clmt. Ex. 8).

15. On September 1, 2021, the Claimant received an estimate from Pyramid Contractors, Inc. to insulate the first floor exterior walls of the Home, commensurate with the terms of the Contract, at a cost of $3,372.00. (Clmt. Ex. 12).

16. The Claimant received an estimate from CertaPro Painters on October 15, 2021 to repaint the exterior of the Home for $13,970.00. (Clmt. Ex. 9). The Claimant did not hire CertaPro.

17. The Claimant received an estimate from ROI Construction, but it exceeded the scope of the original Contract and was not comparable. ROI completed work for the Claimant beyond what was contemplated in the Contract with the Respondent.

18. On October 26, 2021, the Claimant received an estimate of $3,498.00 from DeVere Insulation to drill and fill the external walls with insulation that was commensurate with the original Contract. (Clmt. Ex. 11).

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 proven eligibility for compensation.

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 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). 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 provided credible testimony as well as email exchanges between the parties showing that the paint had begun to fail within months of the initial application by the Respondent. The Claimant provided many photographs showing the condition of the paint on the exterior of the house that were taken between December 2020 and March 2021, only about a year and a half after the paint job was done by the Respondent, and after the Respondent had already come back to make repairs. There is no question that this was not a $40,000.00 paint job. The photographs and the Claimant's testimony demonstrate the poor condition of the paint at various locations throughout the Home.

It is also difficult to see how the insulation could have been installed when there was only one visible hole in the wood siding to demonstrate insulation had been blow into the wall. The Claimant had an inspection that found that there was no evidence that insulation had been blown in anywhere other than one small location.

The Respondent testified that the insulation equipment was rented and was on site, but agreed he was not on site when the insulation was installed and could not account for why there were no indications on the exterior of the house to account for the insulation being blown inside. The Respondent stated repeatedly that his workers "cleaned, scraped, primed, and painted" and that he went above and beyond to make the Claimant happy. He stated that some of the Home was painted with a sprayer and some with a roller, depending on the area. He stated the workers painted a coat of primer and a coat of paint. When shown the photos numbered 13, 14, 35, 36, and 37, the Respondent agreed that they did not appear to show that the wood had been scraped and with the latter three photographs stated that they did not look like they had been scraped, "not at all, not the least bit."

While the Respondent never clearly stated that the caulk at the bottom of the clapboard was placed there by his crew, he stated that where two pieces of wood meet he will "seal the gap" with caulk, but later argued in closing that they would only have sealed where they put in new wood.

If a picture paints a thousand words, the Claimant's pictures paint a clear claim. While there is no question that the Respondent came to the Claimant's Home and performed work, the work was not done well or professionally. The Respondent should have known that the wood siding was older and had been covered for many years and would need a good deal of care to prepare it for painting. The Respondent's work was inadequate and unworkmanlike and did not provide the lasting paint job that was expected, causing the Claimant to have to hire someone to redo the work. There was no evidence other than a single hole to substantiate that any insulation was provided by the Respondent and it certainly was not what was envisioned by the Contract. The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant has demonstrated he is entitled to recovery.

While the Respondent returned to the home to address some paint issues in March of 2020, it is clear that the touch-ups were ineffectual to address the amount of paint failure throughout the house and the lack of insulation. The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d).

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); 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. I find that in the circumstances of this case two different formulas apply. First, I will address the insulation provided for in the Contract.

The Respondent performed some insulation work under the Contract, and the Claimant is not seeking 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 is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

The amount paid to the Respondent for the original contract was $3,775.00 for insulation. The Claimant received two estimates for the completion of the insulation, Pyramid Contractors, Inc. at a cost of $3,372.00 and DeVere Insulation at a cost of $3,498.00. However, the Claimant has not had the insulation work done and is not anticipating having it done, so I will not consider the estimates. I find that the claimant paid the Respondent $3,775.00 for insulation he did not

receive so the insulation work has no value and the Claimant may recover the entire amount he paid to the Respondent under the contract for insulation, that is, $3,775.00.

I will now address the painting and wood repair portion of the Contract. The Respondent performed some painting and wood repair 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 amount paid to the Respondent for the original contract was $40,445.00 for painting and wood replacement.[5] The Claimant received an estimate from CertaPro Painting for $13,970.00 to repaint the exterior of his home. The Claimant hired ROI Construction to repair the Respondent's poor work, but the scope of work exceeded the scope of the original Contract and did not separate out the cost for the items that were comparable to the original Contract, so there is no basis for me to rely on the ROI repair costs. The Respondent agreed that the CertaPro estimate was reasonable. Therefore, I will only consider the CertaPro estimate.

Contract Price Paid		$40,445.00
CertaPro Estimate	+	$13,970.00
		$54,415.00
Total of above		$54,415.00
Contract Price	-	$40,445.00
		$13,970.00 recoverable for the painting

[5] Contract Price Paid $44,220.00 - $3,775.00 for insulation work.

Insulation $3,775.00 + Painting Repair $13,970.00 = $17,745.00 Recovery.

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] In this case, the Claimant's actual loss of $17,745.00 does not exceed $30,000.00 or the amount paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $17,745.00 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)(b), (c). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(4), D.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $17,745.00; 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

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[6] H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, 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").

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

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

Willis Gunther Baker

July 29, 2022
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/emh
#199847

PROPOSED ORDER

WHEREFORE, this 16th 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