

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SONYA STACKPOLE,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF SYDNEY HUTH,</p> <p>T/A BELLE MANOR</p> <p>CONSTRUCTION, LLC</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER L. GRESOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-11557</p> <p>* MHIC No.: 22 (75) 1212</p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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PROPOSED FINDINGS OF FACT  
DISCUSSION  
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RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 11, 2022, Sonya Stackpole (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$9,635.00 for actual losses allegedly suffered as a result of a home improvement contract with Sydney Huth, trading as Belle Manor Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On April 10, 2023, the MHIC issued a Hearing

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Order on the Claim. On April 20, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 15, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).<sup>3</sup> Jonathan P. Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. 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. On May 12, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 28.02.01.05C(1). The Notice stated that a remote hearing was scheduled for June 15, 2023, at 9:30 a.m. via Webex. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Notice was returned to the OAH with the notation "return to sender – not deliverable as addressed – unable to forward." However, the Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E.<sup>4</sup> The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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.

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<sup>3</sup> On May 2, 2023, the Claimant submitted a request that the hearing be held by video, as she works in New Jersey and cannot easily take time off from work. I granted the request.

<sup>4</sup> The Fund confirmed that the address to which the Notice of Remote Hearing was mailed is also the address on record with the MHIC.

## 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 Home Improvement Claim Form, dated September 19, 2022; Certified Mail Receipt, postmarked August 13, 2021; Belle Manor Construction Estimate and Contract, dated November 4, 2020; Letter to MHIC Investigator, dated April 22, 2022; Record of check #171 to Comer, dated October 5, 2021; Record of check #172 to Comer, dated November 4, 2021; Letter from the MHIC to the Claimant, dated August 17, 2022; Complaint Form, dated April 22, 2022; Email from the Claimant to the Respondent, dated November 12, 2021, with attachments (including a letter to Mr. Lucky, dated November 12, 2021 and Complaint Activity Report with the Better Business Bureau of Greater Maryland showing activity from October 18, 2021 through November 1, 2021); text exchange between the Claimant and Mr. Lucky between November 17, 2020 and November 12, 2021
- Clmt. Ex. 2 Seven photographs of unfinished home improvement work and debris, undated
- Clmt. Ex. 3 Three photographs of completed home improvement work, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Remote Hearing, dated May 12, 2023
- Fund Ex. 2 Hearing Order, dated April 10, 2023
- Fund Ex. 3 Home Improvement Claim Form, dated September 19, 2022
- Fund Ex. 4 MHIC Registration and License History for the Respondent, printed May 25, 2023

The Respondent did not appear and thus did not offer any exhibits for admission into evidence.

Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present witnesses, and the Respondent was not present to do so.

**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. At the relevant time, the Claimant resided in a single-family home located at 600 Market Street in Havre de Grace, Maryland.<sup>5</sup>
3. The only other property owned by the Claimant at that time was a home in Chesapeake, Virginia, which she co-owns with her sister. Her mother lives in the Chesapeake, VA home.
4. On November 4, 2020, the Claimant and the Respondent entered into a contract to remove the concrete porch and steps at the back of her home, repair the sidewalk, build a 16 x 16 foot deck, and install two sets of steps with a railing (Contract I).
5. All of the Claimant's interactions with the Respondent were limited to contact with Gary Lucky, Sr., an employee of the Respondent acting on behalf of the Respondent.
6. The original agreed-upon price for Contract I was \$11,640.00.
7. Contract I stated that work would begin approximately November 18, 2020, and would be completed by approximately December 4, 2020.
8. The Claimant paid the Respondent a total of \$10,500.00 under Contract I, including an initial deposit of \$8,000.00.

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<sup>5</sup> As of the date of the hearing, the Claimant no longer owned the property. This is immaterial to my decision.

9. On April 16, 2021, the Claimant and the Respondent entered into a second contract (Contract II) for the Respondent to install a concrete patio. The cost of the work was \$6,950.00. On an unspecified date, the Claimant paid the Respondent \$5,000.00 for this work.
10. Mr. Lucky did not begin any work until June 19, 2021, when he started on the deck.
11. Mr. Lucky obtained a permit, removed the existing porch and steps, and completed the footings and framing for the new deck. He also completed grading for the concrete patio.
12. Neither Mr. Lucky nor any other person employed by the Respondent completed any further work on either project, leaving an unfinished deck, incomplete concrete work, and debris.
13. The Claimant repeatedly tried to contact Mr. Lucky by phone, text, and certified mail in the weeks after he stopped work. Mr. Lucky was not responsive.
14. On November 12, 2021, Mr. Lucky contacted the Claimant and agreed to a repayment plan of the money the Claimant had paid him.
15. On December 21, 2021, Mr. Lucky refunded the Claimant \$500.00. He made no further repayment to her, and she had no further contact from him.
16. In the fall of 2021, the Claimant hired Comer View Construction (Comer), a licensed home improvement contractor, to complete the work specified in Contracts I and II. She paid Comer a total of \$12,725.00 for the work, all of which was within the scope of the two contracts, and which was completed by the end November 2021.

### 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); 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).

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.

The Claimant contends that she and the Respondent entered into two contracts for the completion of a new deck as well as a concrete patio, and that the Respondent left both jobs substantially unfinished. She paid the Respondent a total of \$15,500.00. Ultimately, she paid another licensed contractor to complete the work at a cost of \$12,725.00. The Claimant seeks an award of \$9,365.00. For the following reasons, I find that the Claimant has proven eligibility for compensation.<sup>6</sup>

First, the evidence reflects that the Respondent was a licensed home improvement contractor at the time the Respondent entered into Contracts I and II with the Claimant.

Second, the evidence clearly establishes that the Respondent performed incomplete home improvements. The Claimant credibly testified that the Respondent began work seven months

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<sup>6</sup> By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, the Claimant’s undisputed testimony on cross examination established that there are no 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) (2015 & Supp. 2022). 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) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). 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) (Supp. 2022).

later than anticipated and then performed only some of the work specified in each of the contracts. Specifically, Mr. Lucky obtained a permit, removed the existing porch and steps, and completed the footings and framing for the new deck. He also completed grading for the concrete patio. However, as of July 23, 2021, the work was still incomplete, with neither the deck nor the patio finished, and substantial debris left on the property, and no further work was performed after that date. The Claimant documented the unfinished work, as well as the large piles of concrete debris and trash left on her property, in photographs she submitted into evidence. (Clmt. Ex. 2.) These photographs corroborate her detailed, comprehensive testimony, which I find to be persuasive due to her clear recollection and cohesive, uncontradicted narrative.

The Claimant testified that she attempted to contact Mr. Lucky repeatedly in the weeks after July 23, 2021, and she provided copies of texts she sent to him on July 27, July 29, and August 5, 2021, none of which received a reply from him. (Clmt. Ex. 1.) She also stated that she sent him certified mail, which he did not claim. (Clmt. Ex. 1.) Additionally, the Claimant submitted a copy of an email she sent Mr. Lucky on November 12, 2021, which she explained was prompted by Mr. Lucky finally reaching out to her when he learned that a Home Improvement Claim had been filed. (Clmt. Ex. 1.) In a letter attached to the email, the Claimant informed Mr. Lucky that she wished to have her payments to him refunded. The Claimant testified that following this exchange, Mr. Lucky refunded \$500.00 to her, which was paid as part of a monthly repayment plan, but that he made no further payments. These communications make clear that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim; the Respondent's only attempt to do so was after she filed her claim, and he did not follow through on the repayment plan. *Id.* § 8-405(d) (Supp. 2022).

As the Respondent was a licensed contractor and did not complete the work for which he was paid under the two contracts, and the Claimant did not reject good faith efforts to resolve the matter, I find that the Claimant is eligible for compensation from the Fund.<sup>7</sup>

I must next 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 retained another licensed contractor to complete that work.<sup>8</sup> 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).<sup>9</sup>

Applying this formula, the calculation is as follows: \$15,500.00 (total amount paid to the Respondent) plus \$12,725.00 (the amount paid to another contractor to complete the work), which equals \$28,225.00, less the total contract price of \$18,590.00, resulting in \$9,635.00.

From this amount, the Fund recommends that \$500.00 be deducted, as the Respondent refunded

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<sup>7</sup> It was the Fund's position that the Claimant established a legally sufficient claim and that she therefore be found eligible for an award.

<sup>8</sup> The Claimant was unsure whether Comer was a licensed contractor. However, during the hearing, counsel for the Fund accessed MHIC records and confirmed that Comer is licensed with the MHIC.

<sup>9</sup> The Fund recommended that this formula be applied.



this amount to the Claimant in November 2021. I agree that this deduction is appropriate, which results in an actual loss of \$9,135.00.

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.<sup>10</sup> 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, the Claimant is entitled to recover her actual loss of \$9,135.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$9,135.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(a) (Supp. 2022).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,135.00; 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

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<sup>10</sup> On or after July 1, 2022, the increased cap is applicable to any claim 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").

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>11</sup> and

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

September 6, 2023  
Date Decision Issued

*Jennifer L. Gresock*

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Jennifer L. Gresock  
Administrative Law Judge

JLG/ds  
#206446

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<sup>11</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of October, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***