

<p>IN THE MATTER OF THE CLAIM OF JESSE CADE, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS ALLEGED AGAINST MARTY MINTON, T/A STONE GUYS, LLC, RESPONDENT</p>	<p>* BEFORE WILLIAM SOMERVILLE, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * * OAH No.: LABOR-HIC-02-23-06515 * MHIC No.: 22 (75) 1329</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 9, 2023, Jesse B. Cade (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$7,026.05 for actual losses he alleges he suffered as a result of a home improvement contract with Marty Minton, trading as Stone Guys, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to - 411 (2015 & Supp. 2022).² On February 3, 2023, the MHIC issued a Hearing Order on

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

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

the Claim. On February 14, 2023, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 24, 2023, I held a hearing at the Administrative Law Building in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, 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 agency regulations contemplate proceeding with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR)] 28.02.01.23A. After reviewing the case file and determining that the Respondent had been properly notified, I proceeded to hear the 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.

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 - Contract document, 2-5-2021

Clmt. Ex. 2 - Deliverables document, undated

Clmt. Ex. 3 - Email thread, 10/4/2021

Clmt. Ex. 4 - Email thread, 9-24-2021

Clmt. Ex. 5 - Email thread, 4-9-2022

Clmt. Ex. 6 - Packet of checks, various dates

Clmt. Ex. 7 - Packet of photographs

Clmt. Ex. 8 - Remedial plumbing contract document, 8-21-2022

Clmt. Ex. 9 - Remedial home improvement contract document, 7-28-2022

Clmt. Ex. 10 - Invoice, 9-8-2022

Clmt. Ex. 11 - Proposal, 3-31-2023

Clmt. Ex. 12 - Receipt, 7-17-2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice documents, various dates

Fund Ex. 2 - Licensing history document

Fund Ex. 3 - Letter, 1-18-2023

Testimony

The Claimant testified and did not present other witnesses. No one else testified.

PROPOSED FINDINGS OF FACT

Having considered demeanor evidence, testimony, and other evidence, 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 trading as Stone Guys, LLC, (Company). He was the license holder for that corporate entity.

2. On or about February 5, 2021, the Claimant and the Company entered into a contract by which the Claimant would pay \$34,055.00 and the Company would remodel a bathroom. The Company would install tile, relocate supply lines, relocate drain lines, install

fixtures in the shower area, install toilets and sinks, and paint the room. The contract document listed various allowances. (Clmt. Ex. 2.)

3. On or about September 24, 2021, the parties agreed that the \$1,000.00 allowance for a tub was to be subtracted from the total cost because the Claimant had supplied that item.

4. On or about October 2021, the parties modified the agreement to include installing insulation, an exhaust fan, and drywall in the bathroom ceiling. The Claimant bought supplies, and agreed to pay an additional \$1,700.00. (Clmt. Ex. 3.)

5. The Claimant paid the Company these amounts on these dates: February 6, 2021 -- \$11,351.66; September 27, 2021 -- \$13,000.00; October 7, 2021 -- \$1,400.00; and December 10, 2021 -- \$7,000.00.

6. Work on the project slowed.

7. In February 2022, the Company did its last work on the unfinished project.

8. On April 15, 2022, the parties negotiated, and they modified the contract such that the Company would no longer have to install vanity tops and sink bases, and the contract price would be reduced by \$1,367.39.

9. In or about June 2022, the Company filed a bankruptcy case.

10. Since that time, the Claimant has not heard from the Company, or from the Respondent.

11. On January 9, 2023, the Claimant filed a claim against the Fund.

12. The Claimant hired a plumber to complete unfinished items in the contract for \$3,587.00. That work was completed.

13. The Claimant hired a remedial home improvement contractor through the Home Depot to finish the unfinished enclosed shower for \$2,840.00, and that work was completed.

14. The Claimant hired another remedial home improvement contractor to hang mirrors, install towel bars, and finish some grouting work for \$650.00, and that work was completed.

15. The Claimant hired a roofing company to install the exhaust fan as required by the contract, for \$500.00, and that work was completed.

16. The Claimant had to purchase the toilet for which there was a \$125.00 allowance in the contract.

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. Showing unworkmanlike, inadequate, or incomplete work product are ways to show incompetence or failure to meet professional industry standards and actual loss. Through agency policy, however, the MHIC Guaranty Fund can compensate loss that is not incurred on a showing of incompetence or failure to meet industry

standards. Failure to fully perform contractual obligations based on insolvency is an additional way to show actual loss.³

For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant has not shown that the Respondent or his Company did not perform work up to industry standards. The Claimant has shown, however, that the Company failed to finish the project and that insolvency was the reason. Work on the project slowed. Then in February 2022, the Company performed its last work on the project. The parties renegotiated some of the contract in April 2022. The Company did not do any more work, and it filed a bankruptcy petition in June 2022. (Findings of Fact 6, 7, 8, and 9.) According to the Claimant's credible opinion, the project was only about half finished. Insolvency was the basis of the Company's failure to finish the project. The Claimant has shown that he suffered a substantial financial loss based on a contractor's failure to perform contractual obligations because of insolvency.

³ After January 21, 2004, the MHIC adopted an agency policy determining that "actual loss" could also be shown by merely demonstrating that a contractor failed to fully perform a contract because of insolvency. See DLR-HIC-02-04-14807, *Workman, et al.*, (issued Dec. 22, 2004) (citing final order from DLR-HIC-02-2002-00094, *Huddleston*). In essence, through that policy ruling, the MHIC determined that it had statutory authority to pay claims for "actual loss" not based on a showing of failure to meet industry standards or incompetence, but based upon proof that a contractor failed to perform part, or all, of the obligations set forth in a contract – because of insolvency. On January 21, 2004, the Secretary's designee issued a final Order in that case (*Huddleston*, no. DLR-HIC-02-200200094; MHIC no. 02-(90)-239) in which the MHIC discussed principles of statutory construction and concluded:

In a significant number of cases before the Commission, contracts are left incomplete due to the financial insolvency of a contractor, rather than "incompetence." A contractor may become insolvent, and go out of business, with only a small portion of the contract work completed. In such an instance, the homeowner faces a substantial financial loss, merely to complete work for which he has already paid the original contractor. To conclude that homeowners, in such circumstances, have no recourse to the protection of the Guaranty Fund would be inconsistent with the remedial purpose of the Fund, as well as the specific language of the statute.

Thus, under the MHIC's announced policy, a "substantial financial loss" based on a contractor's failure to perform contractual obligations because of insolvency had become equivalent to statutory "actual loss" that can properly be reimbursed by the Fund.

The Respondent was licensed by the MHIC at the time of the contract. No one has shown or argued that one of the statutory affirmative-defense bars to recovery exists. I conclude that on the basis of this evidentiary record, the Claimant has shown eligibility 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) (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 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).

With the Findings of Fact in mind, an “actual loss” calculation might be made as follows:

\$32,876.66	Amount paid to, or on behalf of, the contractor under the original agreement ⁴
+ \$7,577.00	Amount paid to the remedial contractors to construct those absent items within the scope of the original contract ⁵
- \$33,387.61	Price of the original agreement combined with change orders ⁶
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\$7,066.05	Actual loss

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.⁷ 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 his actual loss of \$7,066.05.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has demonstrated that he sustained an actual and compensable loss of \$7,066.05 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).

⁴ \$32, 752.66 (Finding of Fact 5) + \$125.00 (Finding of Fact 16) = \$32,876.66

⁵ \$2,840.00 (Finding of Fact 13) + \$650.00 (Finding of Fact 14) + \$500.00 (Finding of Fact 15) + \$3,587.00 (Finding of Fact 12) = \$7,577.00

⁶ \$34,055.00 (Finding of Fact 2) + \$1,700.00 (Finding of Fact 4) - \$1,000.00 (Finding of Fact 3) - \$1,367.39 (Finding of Fact 8) = \$33,387.61

⁷ 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”).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,066.05; 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;⁸ and

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

August 15, 2023
Date Decision Issued



William J.D. Somerville III
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 17th 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***