

IN THE MATTER OF THE CLAIM  
OF JOHN T. WOODS,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF CHRISTINA HAMILTON,  
T/A BRIX N STIX MASONRY AND HOME  
IMPROVEMENT, LLC,  
RESPONDENT

\* BEFORE SUN E. CHOI,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-23-18643  
\* MHIC No.: 22 (75) 725

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On April 10, 2023, John T. Woods (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$17,900.00 for actual losses allegedly suffered as a result of a home improvement contract with Christina Hamilton, trading as Brix n Stix Masonry and Home Improvement, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On July 13, 2023, the MHIC

<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 Volume of the Maryland Annotated Code.

issued a Hearing Order on the Claim. On July 18, 2023, the MHIC transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a hearing.

On September 13, 2023, I held an in-person hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimant represented himself. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Respondent failed to appear for the hearing.

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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On July 19, 2023, the OAH mailed the Respondent a Notice of Remote Hearing (Notice) by certified and first-class mail to the Respondent's addresses of record with the Fund and the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for September 13, 2023, at 9:30 a.m., at the OAH, in Hunt Valley, Maryland. 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 United States Postal Service did not return the Notice that was sent by certified mail as well as first-class regular mail, as undeliverable. The addresses were the addresses of record that the Respondent provided to the Fund. The Respondent did not notify the OAH of any change of mailing address either before or after the hearing. COMAR 28.02.01.03E. The Respondent made no request for postponement of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and after waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. 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 & Supp. 2023); 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:

- CL Ex. 1: Complaint Form and Narrative, December 17, 2021
- CL Ex. 2: Contract between Claimant and Respondent, October 8, 2021
- CL Ex. 3: Emails between Claimant and Respondent, various dates
- CL Ex. 4: Invoice from Respondent to Claimant, October 8, 2021
- CL Ex. 5: Invoices from Respondent to Claimant, October 22, 2021, and November 5, 2021, with attachment, Payments Sent, various dates
- CL Ex. 6: Baltimore City Department of Transportation Permit, October 14, 2021
- CL Ex. 7: Written Messages via Texts and Facebook Messenger between Claimant and Respondent, various dates
- CL Ex. 8: Nine Photographs, undated
- CL Ex. 9: Complete Waterproofing & Concrete Estimate and Ten Photographs, December 16, 2021
- CL Ex. 10: Three American Arbitration Association Letters to Parties, January 13, 2023, and January 30, 2023, March 13, 2023, with attachments, Invoice and Payment Refund, various dates
- CL Ex. 11: Plot Map, undated

- CL Ex. 12: MHIC Order and Letter to Respondent, December 30, 2021
- CL Ex. 13: Emails between MHIC and Claimant, December 15, 2021, with attachments,
- Complete Waterproofing & Concrete Invoice and Ten Photographs, February 15, 2022
  - Emails from Claimant to Senator Cory McCray, Councilman Ray Dorsey, Legislative Director, Office of the Secretary, Maryland Department of Labor Andrew Fulginiti, and Executive Director, MHIC David Finneran, various dates

I admitted the following exhibits offered by the Fund:

- GF Ex. 1: Notice of Hearing, July 19, 2023, with attachment, Hearing Order, July 13, 2023
- GF Ex. 2: Department I.D. Registration, Occupational/Professional License History, and Change Code Screen printouts, August 29, 2023
- GF Ex. 3: MHIC Letter to Respondent, April 18, 2023, with attachment, Home Improvement Claim Form

#### Testimony

The Claimant testified and did not present other witnesses. The Respondent failed to appear and did not testify or present any witness. The Fund did not present any witness.

#### **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 license number 5640359.
2. At all relevant times, the Claimant was the owner of a home located on Old Harford Road, in Baltimore City, Maryland (home), which is his personal residence. The Claimant does not own any other dwellings.<sup>3</sup>

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<sup>3</sup> The Claimant did own another property at the time he entered into the Contract with the Respondent but has since sold that property. At the time of the hearing, the Claimant did not own any other property.

3. On October 8, 2021, the Claimant and the Respondent entered into a contract for home improvement that involved a curb cut, stone driveway, park pad, and shed pad (Contract).

*See CL Ex. 1.*

4. The agreed-upon Contract price was \$16,000.00. *See CL Exs. 4 and 5.*

5. The Claimant paid a total of \$11,000.00 to the Respondent in three payments.

6. On November 1, 2021, the Respondent began work. The Respondent completed the work on the curb cut.

7. The Respondent abandoned the rest of the work under the Contract.

8. The Claimant made efforts to contact the Respondent to resolve the dispute without success.

9. The Claimant requested a refund from the Respondent of the payments made, but those requests were ignored.

10. The Claimant pursued arbitration as per the Contract, but the Respondent failed to respond.

11. The Claimant hired a subsequent contractor to complete the work and repair the damages left by the Respondent.

12. The Claimant paid the subsequent contractor a total of \$17,900.00, which involved the work under the original Contract and clean-up of the damages left by the Respondent.

## DISCUSSION

### *Burden of Proof and Legal Framework*

In this case, 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. 2023); *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 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). For the following reasons, I find that that the Claimant has proven eligibility for compensation.

By statute, certain claimants are excluded from recovering from the Fund altogether. 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) (2015 & Supp. 2023). 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. 2023). The parties did enter into a valid agreement to submit their disputes to arbitration, but the Respondent failed to honor the request for arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). 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. 2023). Additionally, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim since the Respondent never made any good faith efforts to the Claimant to resolve the claim. *Id.* § 8-405(d) (Supp. 2023).

### *Analysis*

The facts are undisputed. The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The credible evidence in the record established that the Respondent was supposed to finish work under the Contract by November 2021, but by December 2021, the work was not complete, and the Respondent abandoned the project.

The Claimant testified that he paid the Respondent \$11,000.00, but only ended up with the curb cut, no driveway, and no shed pad. In addition, the Respondent left the area damaged and not up to code after the work was abandoned. The Claimant's efforts to contact the Respondent to resolve the dispute, to refund the payments made, and/or to engage in arbitration were ignored by the Respondent.

Consequently, the Claimant was forced to hire a subsequent contractor to complete the work under the Contract and to repair the damage left by the Respondent. The Claimant paid to the subsequent contractor \$17,900.00 that completed the work left by the Respondent.

I thus find that the Claimant is eligible for compensation from the Fund. The Fund agreed. 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.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. The first formula is applicable when a contractor abandons the contract without performing any work. COMAR 09.08.03.03B(3)(a). In this case the Respondent performed some work, and thus the first formula is clearly not applicable here.

The second formula applies when "the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract...." COMAR 09.08.03.03B(3)(b). Under this circumstance, "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." *Id.* The second formula does not apply in this case because the

Claimant hired a subsequent contractor to complete the work under the Contract.

The third formula is applicable when the Respondent performed some work under the Contract, and the Claimant retained another licensed contractor to complete and 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).

Applying the third formula to this case, the Claimant's actual loss is as follows:

\$11,000.00	Amount Claimant paid to the Respondent
\$17,900.00	Plus the amount Claimant paid to the subsequent contractor
\$16,000.00	Less the original Contract price
\$12,900.00	Equals actual loss amount

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>4</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 more than the amount paid to the

<sup>4</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").



Respondent and less than \$30,000.00. Therefore, the Claimant is limited to the amount he paid the Respondent and entitled to recover his actual loss of \$11,000.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$11,000.00 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 \$11,000.00 from the Fund. 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 award the Claimant \$11,000.00; 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;<sup>5</sup> and

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

December 1, 2023  
Date Decision Issued

*Sun E. Choi*  

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Sun E. Choi  
Administrative Law Judge

SEC/emh  
#207345

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

**PROPOSED ORDER**

***WHEREFORE, this 26<sup>th</sup> day of December, 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.***

***Robert Altieri***

***Robert Altieri***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***