IN THE MATTER OF THE CLAIM	*	**BEFORE TRACEE N. HACKETT,**
OF PATRICK HALASZ,	*	**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 DAYN GRAVES,	*	
T/A ALL FINISH, LLC	*	**OAH No.: LABOR-HIC-02-22-06440**
RESPONDENT	*	**MHIC No.: 22 (75) 296**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 3, 2021, Patrick Halasz (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 $44,007.20 for actual losses allegedly suffered as a result of a home improvement contract with Dayn Graves, trading as All Finish, LLC (Respondent).[1] On March 2, 2022, the MHIC issued a Hearing Order

[1] Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

on the Claim. On March 17, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 5, 2022, I held a hearing at the OAH in Hunt Valley, Maryland.[2] Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

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.[3] On March 25, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first-class mail and certified mail to the Respondent's address on record with the OAH.[4] The Notice stated that a hearing was scheduled for May 5, 2022, at 9:30 a.m. at the OAH in Hunt Valley, Maryland. 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 to the OAH. Furthermore, the Respondent signed the certified mail return receipt on March 30, 2022. The Respondent did not notify the OAH of any change of mailing address.[5] The Respondent made no request for postponement prior to the date of the hearing.[6] I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter in his absence.[7]

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.[8]

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[2] Bus. Reg. §§ 8-407(a), 8-312.
[3] Code of Maryland Regulations (COMAR) 28.02.01.23A.
[4] COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).
[5] COMAR 28.02.01.03E.
[6] COMAR 28.02.01.16.
[7] COMAR 28.02.01.05A, C.
[8] Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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:[9]

Clmt. Ex. A - Home Improvement Claim Form, November 1, 2021; Home Improvement Complaint Form, September 1, 2021

Clmt. Ex. B - Attachment #1[10] – Description of the Facts, undated

Clmt. Ex. C - Attachment #2A-2C – Deadline and one-week extension, various dates

Clmt. Ex. D - Contract with change orders, various dates[11]

Clmt. Ex. E - Attachment #3 – Payment History, various dates

Clmt. Ex. F - Picture of flooding in walkout area of basement, September 1, 2021

Clmt. Ex. G - Attachment #2D-2I –Pictures of unfinished walkout, unfinished bathroom, unfinished kitchen, unfinished painting of walls and ceilings, missing flooring and incomplete plumbing, undated; text message, July 20-July 21, 2021

Clmt. Ex. H - Attachment #2J-2M – Pictures of incomplete stairway, unmoved deck stairs, lack of grass sodding, unflushed shower tiles, improperly set HVAC, and blocked HVAC filter, undated

Clmt. Ex. I - Attachment #2N-2O– Text messages between the Claimant and the Respondent regarding the 7-day completion plan, undated

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[9] I permitted the Claimant to provided color copies of his photographic and text message exhibits by close of business on Friday, May 6, 2022. The Claimant emailed copies of all of his exhibits to the Fund and me on May 5, 2022 at 10:10 p.m. Therefore, I have added the colored copies of the photographs and text messages to the record.

[10] The "attachments" were included original attachments to the Claim. These documents were entered as exhibits in the order offered by the Claimant during the hearing; however, their original titles, i.e., "Attachment 1", etc., were not changed.

[11] The Claimant indicated that he could not find the "Day 3" Change Order, so it was not included.

Clmt. Ex. J - 10/31/21 Costs Update to Initial Submission to MHIC; Proposal with Donnelly General Contractors, Inc., (Donnelly) undated; Checks from the Claimant to Donnelly, various dates; Home Depot receipts, various dates; Amazon order screenshot, October 20, 2021; and Bank of America Personal Checking Online Account screenshot, October 23, 2021

Clmt. Ex. K - Email from Corey Donnelly, March 16, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, March 25, 2022

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

Fund Ex. 3 - Letter from MHIC to Respondent, November 10, 2021; Home Improvement Claim Form, November 1, 2021

Fund Ex. 4 - Sealed letter signed by David Finneran Executive Director, MHIC, April 26, 2022

Fund Ex. 5 - Signed affidavit of Charles Corbin, Investigator, MHIC, April 27, 2022

Testimony

The Claimant 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 MHIC license number 01-118027.[12]

2. On June 19, 2021, the Claimant and the Respondent entered into a contract to finish the basement in the Claimant's home which included adding a bedroom, a full bathroom, a kid's play area, a workout room, a television lounge area, and a kitchenette, installing a walkout, moving existing stairs, and finishing the stairway leading to the basement (Contract).

[12] On January 20, 2022, the Respondent's contractor's license was suspended for failure to respond to a Show Cause Hearing (Fund Ex. 4). However, from the time that the Claimant entered into a contract with the Respondent until the time of the suspension, the Respondent was validly licensed.

3. The original agreed-upon Contract price was $44,775.00. The Contract included the following payment schedule: a $14,925.00 deposit due with the execution of the Contract; $14,295.00 due two weeks prior to the project start date; $7,500.00 due two weeks after the start of the project; and $7,425.00 due upon completion of the project.

4. On June 25, 2021, the Claimant and the Respondent agreed upon a Change Order Contract with included additional costs for labor and materials related to painting the basement, adding engineered tread and riser steps to the existing staircase and installation of shoe molding; and additional charges for unforeseen areas of work and materials related to electrical, plumbing, the workout room extension, sprinkler fittings, replacement of duct work, and moving the deck staircase (Change Order).

5. The Change Order reflected a total cost of $9,059.99, which included a $500.00 refund because the Claimant and the Respondent agreed that the Respondent would not install a kitchen cabinet, a trashcan, and a spice rack.

6. The Change Order included increased costs of lumber which were not verified by the Respondent when he quoted the initial Contract price to the Claimant.

7. The Contract did not specify a start date; however, the Respondent began work on the project in mid-June 2021 with an anticipated completion date of July 23, 2021.

8. The Respondent did not complete the work by the July 23, 2021 deadline.

9. On or around July 27, 2021, the Claimant and the Respondent developed a seven-day completion plan, which outlined specific tasks to be completed and amounts to be paid for each day (seven-day plan). Each day of the seven-day plan was written on a change order form handwritten by the Respondent and included payments totaling $7,500.00.

10. At the time of the seven-day plan, the Claimant only had $3,999.99 left to pay on the Original Contract price and the Change Order price. Therefore, the Respondent charged the Claimant a total additional charge of $3,500.01 as part of the seven-day plan.[13]

11. The Respondent completed days one, two, and three of the seven day-completion plan and the Claimant paid the Respondent for those dates of work.[14] However, the Respondent failed to complete days four through seven and the Claimant refused to pay for the incomplete days of work.

12. The Claimant paid the Respondent directly a total of $52,834.99 which included a check of $500.00 on May 21, 2021; two separate checks for $3,500.00 each and one check for $2,500.00 on June 4, 2021; a check for $4,500.00 on June 11, 2021; a check for $11,425.00 and a check for $3,500.00 on June 21, 2021; a check for $7,500.00 on June 30, 2021; two checks for $3,750.00 each on July 12, 2021; a check for $3,000.00 and a check for $2,409.99 on July 20, 2021; a check for $1,000.00 on July 27, 2021; a check for $1,000.00 on July 28, 2021; and a check for $1,000.00 on July 30, 2021. All of these checks were cashed by the Respondent.

13. On August 12, 2021, the Claimant paid $710.00 to Edward Lehman, a plumber subcontractor who had not been paid by the Respondent for the plumbing work completed on the Claimant's property. The Claimant paid this amount directly to Mr. Lehman to avoid a mechanic's lien on his home.

14. The Respondent did not complete installation of the walkout (adding steps and walls), the bathroom (installing shower, toilet, and vanity), the kitchenette (installing counter, cabinets, sink), and the stairway to the basement; painting all walls and ceilings; hanging doors; boxing in windows; installing all flooring; moving the deck stairs; and replacing damaged sod.

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[13] $7,500.00 - $3,999.99 = $3,500.01.

[14] The Claimant did not specify which of the remaining days three through seven was completed, but I infer that it was the third day.

Additionally, the Respondent did not complete all necessary plumbing, HVAC,[15] and electrical work.

15. Throughout the project, the Respondent claimed that he had purchased materials for the project but did not produce any receipts or delivery such materials which were included in the Contract costs. The materials included flooring, the toilet and vanity for the bathroom, wall tile, kitchen cabinets and countertops and sink, cement for walkout, paint, sod, and light fixtures.

16. The Respondent installed the sprinklers in one section of the basement in such a way as they are hanging too low from the ceiling instead of being recessed in the ceiling.

17. In one section of the basement, the wall was installed in such a way to block a portion of the HVAC system so that the filter cannot be removed and replaced.

18. On September 1, 2021, the walkout area flooded with water into the basement of the Claimant's home. The Respondent dug out of the basement at the back of the home to install the basement door and walkout and never completed the walkout. Additionally, he also buried the water pump under cinderblocks/cement without turning the pump on before doing so.

19. On September 4, 2021, the Claimant contracted with Donnelly General Contractors, Inc. (Donnelly) to perform the following: tear out existing concrete pad and drain; cut concrete floor from door to sump pump; tear out existing bathroom tile and replace with new tile; tear out ceiling to extend fire sprinkler system; finish framing basement; install new drywall and tape and finish existing drywall to professional grade; install kitchenette flooring, baseboards, bathroom vanity, kitchenette cabinets, new granite countertops and sink in kitchenette, hardwood on landing and tile on the risers of the stairway, new concrete footers for stairway walls to rest on, new walls, new stairs to lead up to the backyard; and paint the entire basement.

[15] Heating, ventilation, and air conditioning.

20. The Claimant paid Donnelly a total of $45,000.00 to complete the outstanding work and replace/repair work completed by the Respondent. The payments included three checks for $15,000.00 each on September 2, 2021; September 26, 2021, and October 20, 2021.

21. On October 12, 2021, the Claimant paid $1,000.00 for Donnelly's electric subcontractor.

22. On October 13, 2021, the Claimant purchased walkout railing materials from Home Depot in the amount of $107.67.

23. On October 19, 2021, the Claimant purchased plumbing materials from Home Depot in the amount of $368.22 and additional walkout railing materials in the amount of $49.27.

24. On October 20, 2021, the Claimant purchased a bathroom mirror from Amazon for $120.93.

25. On October 25, 2021, the Claimant paid for additional plumbing costs in the amount of $800.00.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.[16] 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.[17]

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor."[18] "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete

[16] Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3).
[17] *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).
[18] 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.").

home improvement."[19] By employing the word "means," as opposed to "includes," the legislature intended to limit the scope of "actual loss" to the items listed in section 8-401.[20]

For the following reasons, I find that the Claimant has proven eligibility for compensation. The Claimant and the Fund agreed that recovery from the Fund was appropriate in this case. The Claimant argued that due to contract delays, misrepresentations, payment without full performance, and work that had to be redone by the second contractor, that he was entitled to recovery from the Fund. The Fund argued that recovery is appropriate. The Fund based its argument on the fact that the Claimant almost paid the complete Contract price with *de minimis* work performed by the Respondent, that the Claimant was justified in ceasing payment when the Respondent failed to complete all of the work required by the Contract, and that the Claimant has proven unworkmanlike and incomplete work performed by the Respondent.

The Respondent performed unworkmanlike and inadequate home improvements, as demonstrated by the Claimant's testimony and photographic evidence. The ceiling, drywall, HVAC, and walkout installation were performed in an unworkmanlike[21] and inadequate[22] manner. From the photographs, you can see that the sprinklers are hanging too low from the ceiling instead of being recessed into the ceiling.[23] I can infer without expert testimony that if the sprinklers went off, water could get into the exposed hole in ceiling. In one section of the basement, the drywall and wall were installed in such a way to block a portion of the HVAC system so that the filter cannot be removed and replaced.[24] One of the Claimant's pictures shows that the HVAC vent is recessed into the wall instead of being flush. Lastly, as a result of the

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[19] Bus. Reg. § 8-401.
[20] *Brzowski v. Maryland Home Imp. Comm'n*, 114 Md. App. 615, 629 (1997).
[21] Unworkmanlike is defined as "not characteristic of or suited to a good workman: INCOMPETENT, INEFFICIENT." *Merriam-Webster's Online Dictionary*, retrieved July 5, 2022.
[22] Inadequate is defined as "not enough or good enough." *Merriam-Webster's Online Dictionary*, retrieved July 5, 2022.
[23] Clmt. Ex. G.
[24] *Id.*

Respondent failing to complete the walkout, leaving a large dug-out hole to the basement[25] and pouring cement over the turned off water pump,[26] the basement flooded because there was no mechanism for the water to be pumped elsewhere and/or drained.[27]

The Respondent also failed to complete several home improvement tasks included in the Contract as demonstrated by the Claimant's testimony and photographic evidence.[28] The Claimant's photographs show that there is incomplete flooring and exposed unpainted drywall throughout the basement. The kitchenette area has no cabinetry, countertops or sink, and there are several workbenches, plywood/boards, a ladder, and numerous work tools left scattered throughout this area. The bathroom has pieces of tile lying on the floor that had not been installed, and there is no drain, shower head, toilet, or vanity. There is a large hole dug out of the basement for the door which was just left in that condition, and it appears that the exterior door is lying on its side inside of the basement. The Claimant presented evidence of the extent of work that had to be repaired and replaced by the second contractor, Donnelly,[29] as well as an email from Donnelly which indicated that "all the work that was performed look like a labor [sic] had performed the work that had no knowledge of what to do. From the tile work to drywall to even the electrical."[30]

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

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[25] Clmt. Ex. K.
[26] Clmt. Ex. F.
[27] *See* Clmt. Ex. K. Additionally, any damages caused by the basement flooding would be considered consequential damages caused by the Respondent's poor workmanship and would not be recoverable. In this case, the Claimant has not requested recovery or provided evidence for any such costs.
[28] Clmt. Exs. F-I.
[29] *See* Findings of Fact #19 and Clmt. Ex. J.
[30] Clmt. Ex. K.

interest.[31] 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.[32]

Under the original Contract, the Claimant paid Respondent a total of $53,545.00.[33] The Claimant testified that the work was completed by Donnelly, and he paid Donnelly $45,000.00 to complete the project.[34] The Claimant also incurred additional costs in the amount of $2,797.19 for plumbing, electrical, and materials. The original Contract price between the Claimant and the Respondent was $44,775.00, a Change Order for $9,599.99, and the additional $3,500.01

[31] Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).
[32] COMAR 09.08.03.03B(3)(c).
[33] Clmt. Ex. E.
[34] Clmt. Ex. J.

charges from the seven-day plan (total of $57,875.00).[35] This would make the actual loss $44,007.19, calculated as follows:

Amount paid to the Respondent:	$ 53,545.00
Added to	+
Amount paid to another contractor:	$ 45,000.00
Expenses incurred by Claimant:	$ 2,797.19
	$101,342.19
Less	-
The original contract price:	$ 57,875.00
	$ 43,449.19

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.[36] In this case, the Claimant's actual loss of $43,449.19 exceeds $30,000.00. Therefore, the Claimant's recovery is limited to $30,000.00.[37]

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $43,449.19 as a result of the Respondent's acts or omissions.[38] I further conclude that the Claimant is entitled to recover $30,000.00 from the Fund.[39]

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[35] The Claimant indicated that the total amount due to the Respondent including the Original Contract and all change order was $57,334.99 (see Clmt. Ex. J); however, based upon the dollar figures submitted into evidence, I cannot recreated the Claimant's calculation.

[36] 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").

[37] *Id.*

[38] Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

[39] 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).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $30,000.00; 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;[40] and

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

Tracee N. Hackett

July 11, 2022
Date Decision Issued

Tracee N. Hackett
Administrative Law Judge

TNH/at
#198801

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

PROPOSED ORDER

WHEREFORE, this 19th day of August, 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.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION