IN THE MATTER OF THE CLAIM	*	BEFORE KRISTIN E. BLUMER,
OF ROBERT EVANS,	*	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 NADINE SHIPMAN,	*	
T/A NTS CONSULTING,	*	OAH No.: LABOR-HIC-02-22-28207
RESPONDENT	*	MHIC No.: 22 (75) 872

* * * * * * * * * * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On July 1, 2022, Dr. Robert Evans, on behalf of Daniel Brown, B&E Construction LLC, and himself (Claimants)[1] 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 $20,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Nadine Shipman, trading as NTS Consulting (Respondent).[2]

---

[1] Dr. Evans is listed as the Claimant on the Claim form. He and Mr. Brown are equal partners and owners of B&E Construction LLC. Dr. Evans and Mr. Brown appeared at the hearing and seek the requested relief.
[2] Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On October 26, 2022, the MHIC issued a Hearing Order on the Claim. On November 7, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 3, 2023, I held a hearing at the OAH in Hunt Valley, Maryland.[3] Andrew J. Brouwer, Assistant Attorney General, represented the Fund. The Claimants represented themselves, with Dr. Evans taking the primary role.[4] The Respondent did not appear.

After waiting for more than 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.[5] On December 6, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail to the Respondent's address on record with the OAH.[6] The Notice stated that a hearing was scheduled for January 3, 2023, at 9:30 a.m., at the OAH in Hunt Valley, Maryland.[7] 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, sent by regular mail or certified mail, to the OAH, nor was the certified mail card returned to the OAH. The Respondent did not notify the OAH of any change of mailing address, email address, and/or telephone number.[8] The Respondent made no request for postponement prior to the date of the hearing.[9] I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.[10]

---

[3] Bus. Reg. §§ 8-407(a), 8-312.
[4] On January 3, 2023, the Claimants filed a properly executed power of attorney form, dated January 3, 2023, designating Dr. Evans as the true and lawful attorney-in-fact for the B&E Construction LLC for the limited purposes of the hearing at the OAH. State Gov't § 9-1607.1(a)(4), (b)(1) (2021).
[5] Code of Maryland Regulations (COMAR) 28.02.01.23A.
[6] COMAR 28.02.01.05C(1).
[7] COMAR 09.08.03.03A(2).
[8] COMAR 28.02.01.03E.
[9] COMAR 28.02.01.16.
[10] 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. [11]

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 Claimants:

Clmt. Ex. 1: Various documents, including: the Respondent's Proposal and Description of Scope of Work, July 15, 2021; Lynk Capital Contractor Information Sheet re: Respondent, undated; State Department of Assessments and Taxation Articles of Incorporation for the Respondent, April 13, 2018; the Respondent's MHIC Certification cards, expiration date March 21, 2021; the Respondent's Articles of Organization, undated; the Respondent's Form W-9, Department of the Treasury, Internal Revenue Service, July 23, 2019

Clmt. Ex. 2: Copy of cashier's check, August 2, 2021

Clmt. Ex. 3: Copy of cashier's check, September 21, 2021

Clmt. Ex. 4: Copies of text messages between Claimants and Respondent, various dates

Clmt. Ex. 5: Copies of text messages between Claimants and Respondent, various dates

Clmt. Ex. 6: Contract between Claimants and Jones & Jones Construction LLC, March 31, 2022

Clmt. Ex. 7: Claimants' video, December 22, 2021

Clmt. Ex. 8: Various documents, including: email to Claimants re: MHIC License Verification, March 13, 2022; and Lynk Capital Contractor Information Sheet re: Jones Home Improvement LLC, undated

Clmt. Ex. 9: Lynk Capital Construction Loan Draw Request, August 31, 2021

[11] Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1: MHIC Hearing Order, July 1, 2022

Fund Ex. 2: Notice of Remote Hearing, December 6, 2022

Fund Ex. 3: Letter to Respondent from MHIC, July 7, 2022, with the following attachment: Claimant's Home Improvement Claim Form, July 1, 2022

Fund Ex. 4: MHIC Licensing Information for the Respondent, printed December 30, 2022

Fund Ex. 5: Maryland Judiciary Case Search printout, Circuit Court for Baltimore City – Civil System, Case Number 24C22002437, undated

The Respondent did not appear and therefore did not offer any exhibits.

Testimony

The Claimants testified and did not present other witnesses.

The Respondent did not appear and therefore did not present any 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 01-117046, and the Respondent corporation was a licensed home improvement contracting business under MHIC license number 05-13690.

2. At all times relevant to the subject of this hearing, the Claimants owned, but did not live in, a residential property located in Baltimore City, Maryland (Property).

3. The Claimants intended to renovate the Property and sell it.

4. The Claimants entered into an agreement with Lynk Capital to fund the renovation of the Property. Lynk Capital reimbursed the Claimants for work done upon its completion, subject to inspection.

5. In July 2021, on a date not specified in the record, the Claimant and the Respondent entered into a contract to renovate the Property (Contract).

6. The scope of work pursuant to the Contract included demolition; installation of flooring, kitchen cabinets, countertops, plumbing fixtures, drywall, electrical, HVAC,[12] doors, door hardware, insulation, windows; and completion of painting, miscellaneous carpentry, and miscellaneous framing.

7. The agreed-upon Contract price was $80,000.00.

8. On August 2, 2021, the Claimants paid the Respondent $10,000.00 by a cashier's check.

9. The Claimants understood that the Respondent would begin the work on August 2, 2021, the date of the first payment, to include obtaining permits for the work, completing demolition, and removal of debris.

10. The Respondent did not remove the siding from the Property.

11. The Respondent partially demolished the existing drywall inside the Property instead of fully removing it.

12. The Respondent attempted to perform some electrical work before the demolition was completed at the Property but did not complete it and left wires exposed in the Property.

13. The Respondent did not properly seal around the windows at the Property, leaving gaps in the outside window frames.

14. The Respondent left the Property unsecured and exposed after the partial demolition.

[12] Heating, ventilation, and air conditioning.

15. On August 24, 2021, Baltimore City issued a stop-work order at the Property because the Respondent did not obtain a permit for the demolition and failed to remove debris outside of the Property.

16. The Respondent never took steps to get the stop-work order lifted.

17. The Respondent did not perform any work at the Property after the end of August 2021.

18. On September 21, 2021, the Claimants paid the Respondent $10,000.00 by a cashier's check.

19. The Claimants understood that the second payment would cover the Respondent's deposits to subcontractors for the replacement of the windows and doors and address a problem with the joists in the kitchen floor.

20. On December 19, 2021, the Claimants requested a meeting with the Respondent in person or by telephone.

21. Between December 21 and 22, 2021, the Claimants and Respondent exchanged text messages in attempts to identify a convenient time to meet, without success.

22. The Respondent failed to respond to the Claimants after December 22, 2021.

23. The Claimants contacted the Respondent by text message on December 29, 2021 in which they notified her that they wished to terminate the Contract and requested a refund of $10,000.00.

24. The Respondent did not respond to the Claimants on or after December 29, 2021, and the Claimants and the Respondent never met in person or by telephone.

25. The Respondent never returned any of the money paid by the Claimants.

26. The Respondent never attempted or requested to complete the Contract.

27. On March 31, 2022, the Claimants entered into a contract with Jones & Jones Construction LLC (Jones) to correct the work that the Respondent did incorrectly under the Contract for a price of $38,400.00.

28. After March 31, 2022, the Claimants entered into a second contract with Jones to complete the work that the Respondent did not perform under the Contract.

29. The Claimants paid Jones approximately $110,000.00 in total to remedy the Respondent's work and complete the renovation.

DISCUSSION

Legal Framework

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.[13] 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.[14]

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants' recovery. The claim was timely[15] filed, there is no pending[16] court claim for the same loss, and the Claimants did not recover the alleged losses from any other source.[17] Although the Claimants did not reside in the home that is the subject of the claim, they did not own more than three residences.[18] The parties did not enter into a valid agreement to submit their disputes to arbitration.[19] The Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any

---

[13] Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3).
[14] *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).
[15] Bus. Reg § 8-405(g).
[16] The Claimants filed a claim against the Respondent in the Circuit Court for Baltimore City under case number 24C22002437 on or about May 27, 2022. *See* Fund Ex. 5. The claim was dismissed without prejudice due to lack of service upon the Respondent on or about December 20, 2022. *See id.*
[17] Bus. Reg § 8-408(b)(1).
[18] *Id.* § 8-405(f)(2).
[19] *Id.* §§ 8-405(c), 8-408(b)(3).

employee, officer, or partner of the Respondent.[20] An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor."[21] "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."[22]

For the following reasons, I find that the Claimants have proven eligibility for compensation.

Analysis

The Claimants entered into the Contract with the Respondent in July 2021. Although the Respondent provided the Claimants with proposal that described the scope of work,[23] the Claimants credibly testified that the Respondent did not provide the Claimants with a clearly written contract or itemized list of the costs associated with the work in the Contract. The Claimants further testified that the agreed-upon Contract price was $80,000.00. The Claimants explained that after they made the first payment of $10,000.00 on August 2, 2021, the Respondent began work.[24]

The Claimants testified that the stop-work order was issued on August 24, 2021 because the Respondent did not obtain the required permit for demolition and because there was debris in the yard. The Claimants believed that the Respondent would resolve the issues that led to the stop-work order and continue the work, which is why they made the second $10,000.00 payment on September 21, 2021.[25] However, the Respondent never resolved that issue and failed to perform any additional work at the Property after August 2021.

---

[20] *Id.* § 8-405(f)(1) (Supp. 2022).
[21] *Id.* § 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.").
[22] Bus. Reg. § 8-401.
[23] Clmt. Ex. 1.
[24] Clmt. Ex. 2.
[25] Clmt. Ex. 3.

The Claimants took a video that captured the state of the Property on December 22, 2021.[26] The video clearly shows that the demolition was incomplete.[27] The siding had not been removed.[28] Portions of drywall had been removed but other portions were still in place; exposed wires were visible coming from holes cut into the existing drywall.[29] Preexisting tile work was still in place.[30] The windows were not properly sealed.[31] Consequently, on December 29, 2021, the Claimants terminated the Contract with the Respondent and requested a refund of $10,000.00 to resolve the matter.[32] The Respondent never replied to the Claimants' request and did not contact them further regarding completion of the Contract. As a result of the Respondent's failure to complete the work, the Claimants could not obtain funding from Lynk Capital under the terms of that agreement.

After the Claimants terminated the Contract with the Respondent, the Claimants contracted with Jones in two separate contracts to remedy the Respondent's unworkmanlike work and complete the renovations. The Claimants paid Jones $34,800.00 to remedy the Respondent's work to date.[33] The Claimants credibly testified that none of the work done by the Respondent was salvageable, and in fact, fixing what had been done cost them more money. The Claimants did not introduce any documentation regarding the second contract under which the renovations were completed; however, Mr. Brown testified that they paid Jones approximately $110,000.00 in total to remediate and complete the renovations. Although the Claimants did not introduce any testimony or documentation to corroborate this figure, I found them credible in

[26] Clmt. Ex. 7.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Clmt. Ex. 5.
[33] Clmt. Ex. 6.

their explanations as to the work that needed to be done leading to the costs. Moreover, this evidence was uncontested.

Based on the foregoing, I find that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. I further find that the Claimants are eligible for compensation from the Fund. Having found eligibility for compensation, I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.[34] 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 Claimants retained another contractor to remedy and complete 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).

[34] Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).

The Claimants credibly testified that they paid approximately $110,000.00 in total to Jones to remedy and complete the work originally contracted for with the Respondent. I find the following calculation applies to their Claim:

$20,000.00	Amount paid by the Claimants to the Respondent under the Contract
$110,000.00	Fair market cost to make corrections and complete Respondent's work
$130,000.00	Subtotal, less:
$0.00	Work adequately performed by the Respondent, and
$80,000.00	Original contract price, equals:
$50,000.00	**Amount of the Actual Loss to the Claimants**

Effective July 1, 2022, a claimant's recovery is capped[35] 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] At the hearing, the Claimants revised their requested reimbursement in their Claim to $30,000.00, based on the cap. I decline to award the Claimants that amount. In this case, the Claimant's actual loss of $50,000.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to $20,000.00, the amount paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $20,000.00 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 that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(3)(c).

[35] 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").

[36] Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $20,000.00; 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;[37] and

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

Kristin E. Blumer

March 3, 2023
Date Decision Issued

Kristin E. Blumer
Administrative Law Judge

KEB/ja
#203764

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

PROPOSED ORDER

WHEREFORE, this 27th day of April, 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.

Chandler Louden

Chandler Louden
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION