

Circuit Court for Montgomery County  
Case No. 483374V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 523

September Term, 2021

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ABRAHAM PORAT, ET AL

v.

RANDY SAGER, ET AL

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Kehoe,  
Arthur,  
Shaw

JJ.

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Opinion by Shaw, J.

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Filed: April 4, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from an order of the Maryland Home Improvement Commission that was affirmed by the Circuit Court for Montgomery County. Randy Sager, homeowner, filed a claim with the Commission seeking reimbursement of \$33,524.04 in losses from the Maryland Home Improvement Guaranty Fund as a result of deficient work by contractor Abraham Porat t/a AJP Builders, LLC. Following a hearing on February 6, 2020, the Commission awarded Sager \$20,000. AJP filed a petition for judicial review, and the Circuit Court for Montgomery County affirmed the Commission’s award. AJP appealed, presenting the following question for our review, which we have reworded:

1. Was there substantial evidence in the record for the Maryland Home Improvement Commission to hold that the homeowner sustained an actual loss and as a result was eligible to be compensated by the Maryland Home Improvement Guaranty Fund?<sup>1</sup>

For reasons explained below, we affirm.

### **BACKGROUND**

On May 9, 2016, homeowner, Randy Sager (“Sager” or “homeowner”), and Abraham Porat t/a AJP Builders, LLC (“AJP” or “contractor”), a licensed contractor,

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<sup>1</sup> The original question was phrased as follows:

Did the Agency make a substantial error of law, and/or act arbitrarily and capriciously, when it found that although the work in the Contract was complete, “the defects in the foundation, the steps, the flooring and other areas previously mentioned fall within the express warranty contained in the Contract [and] as a result, the [Respondent] has sustained an actual loss as defined by statute and is therefore eligible for compensation from the Fund”, when the Agency’s own website publishes the Agency’s policy that “MHIC does not enforce warranties because the authority of MHIC is limited to investigating whether the initial work was performed in a workmanlike manner. . . . [w]arranties are only as good as the company that issues them.”

entered into a contract for AJP to perform home improvement work at Sager’s home. The total contracted price was \$74,425.00<sup>2</sup> to be paid in five installments, the last two of which were scheduled to occur after “all final inspections including certificate of occupancy” had taken place, and after “completion of [a] mutually agreed punch list.” The contract stated that the project would be completed “no later than July 12, 2016 weather permitting” and would “be considered completed upon approval by Montgomery County, provided approval shall not be unreasonably withheld.” The contract also had a one-year warranty against “defects” in any of the “[l]abor and materials provided.”

Sager ultimately paid \$88,547.78 for the project, including payments she made directly to subcontractors and vendors at AJP’s direction. Sager alleged that AJP never fully addressed some issues, including the concrete floor in the basement not being sloped toward the floor drain, water pooling on the floor instead of into the drain, holes in the installed concrete, cracks in the hardwood floor, and AJP’s failure to install a cabinet and glass shelves as specified in the contract. For more than a year, the homeowner notified AJP of the deficient items and repeatedly asked that they be remediated, to no avail.

On March 17, 2017, the Montgomery County Department of Permitting Services approved the final building permit, the electrical permit, and the mechanical permit for the project, despite the fact that AJP had never fully addressed the issues identified by Sager. Sager then obtained several estimates from other contractors to correct and complete the project, including a \$21,915.75 estimate from Lofgren Construction Co.

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<sup>2</sup> The final contracted price, as amended, was determined to be \$74,673.20 at the hearing.

On June 19, 2018, Sager filed a claim with the Maryland Home Improvement Commission (“Commission”) seeking reimbursement from the Maryland Home Improvement Guaranty Fund (“Guaranty Fund” or “Fund”) for \$33,524.04 in actual losses suffered as a result of AJP’s deficient work. Following hearings on March 11 and May 7, 2019, an Administrative Law Judge found that the homeowner had sustained her burden of establishing that the contractor’s performance was incomplete and unworkmanlike. The ALJ found defects with the foundation; there was water infiltration and evidence of mold formation:

[T]he basement floor is improperly sloped so that water would not flow to the drain. The steps at the new stoop are not code compliant. There is a crack in the hardwood floor where the new addition joins the existing house. Finally the parging of the foundation walls is not consistent and show cracks.

In response to an argument made by AJP regarding the contract, the ALJ stated:

[w]hile the work specified in the permits may have been completed, the Contract also allows for a warranty period of one year in which “[l]abor and materials will be free from defects for 1 year from date of completion.” The [homeowner] has brought the issue of unworkmanlike performance by the [contractor] well within the one year period. The defects in the foundation, the steps, the flooring and other areas previously mentioned fall within the express warranty contained in the Contract.

The ALJ concluded, “[a]s a result, I find that the [homeowner] has sustained an actual loss as defined by statute and is therefore, eligible for compensation from the Fund.” The ALJ determined that Sager’s loss was \$35,790.33, based on the total amount paid by Sager (\$88,547.78), and the costs to correct and complete AJP’s work (\$21,915.75 per Lofgren

Construction Co.’s estimate), minus the contract price as amended (\$74,673.20). Since Sager’s loss exceeded the statutory cap of \$20,000, the ALJ recommended that the Commission award Sager the statutory maximum of \$20,000.

On April 29, 2020, the Commission issued a Final Order affirming the ALJ’s findings of fact and conclusions of law and awarded Sager \$20,000. AJP filed a Petition for Judicial Review in the Circuit Court for Montgomery County, and, following hearings, the Commission’s Final Order was affirmed on May 13, 2021. AJP timely appealed.

### **STANDARD OF REVIEW**

Our role here is narrow, “limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Employees’ Ret. Sys. of City of Baltimore v. Dorsey*, 430 Md. 100, 110 (2013) (citation and quotation marks omitted). When asking if substantial evidence for the agency’s decision exists, the court “decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Id.* (citation and quotation marks omitted). “The reviewing court defers to the agency’s factual findings, if supported by the record. . . . The reviewing court, moreover, ‘must review the agency’s decision in the light most favorable to it; . . . the agency’s decision is prima facie correct and presumed valid, and . . . it is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence.’” *Id.* (citations omitted).

“With respect to the agency’s conclusions of law, a certain amount of deference may be afforded when the agency is interpreting or applying the statute the agency itself administers. . . . We are under no constraint, however, to affirm an agency decision premised solely upon an erroneous conclusion of law.” *Id.* at 111 (citations and quotation marks omitted).

### DISCUSSION

The Maryland Home Improvement Commission is tasked with enforcing the Home Improvement Title of the Business Regulation Article of the Maryland Code. Md. Code Ann., Bus. Reg., § 8-208(a). The Commission administers the licensing of contractors and investigates complaints about those contractors. *Brzowski v. Maryland Home Imp. Comm’n*, 114 Md. App. 615, 628 (1997). The Commission is also responsible for establishing and administering the Home Improvement Guaranty Fund. Md. Code Ann., Bus. Reg., § 8-403. The Guaranty Fund provides an additional remedy for homeowners who have suffered actual losses due to unsatisfactory work by a home improvement contractor. *Brzowski*, 114 Md. App. at 628. A homeowner seeking compensation against the Fund must submit a claim to the Commission. Md. Code Ann., Bus. Reg., § 8-406. The Commission then reviews the claim, and it may investigate and hold hearings related to the claim. *Id.* § 8-407(c). It ultimately issues an order granting or denying all or part of the claim. *Id.* Recovery is limited to \$20,000. *Id.* § 8-405(e).

AJP argues the Commission’s decision, here, was error because it was in direct contravention of its preexisting policy. AJP points to the agency’s website, quoting “MHIC

does not enforce warranties because the authority of MHIC is limited to investigating whether the initial work was performed in a workmanlike manner. Warranties are only as good as the company that issues them . . . .” AJP, however, omitted the full website statement which states:

Warranties are covered by the Maryland Service Contracts and Consumer Products Guaranty Act, which is found in Title 14 of the Commercial Law Article of the Annotated Code of Maryland. *Typically*, MHIC does not enforce warranties because the authority of MHIC is limited to investigating whether the *initial work* was performed in a workmanlike manner. Warranties are only as good as the company that issues them so if the business closes, most consumers are left without a way to enforce the warranty.

(emphasis added).<sup>3</sup>

In our view, the website statement, read in its entirety, is not a limitation on the Commission’s responsibilities and does not establish that the Commission erred. Instead, it confirms that the Commission is tasked with determining whether a claim is compensable based on the manner in which work is performed. We found nothing in the statute that states a homeowner’s right to pursue a claim is waived if a warranty provision exists in the parties’ contract. As noted by the Commission, warranty work is the proper subject of a Guaranty Fund claim if it related to an “unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401.

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<sup>3</sup> MARYLAND DEPARTMENT OF LABOR, <https://www.dllr.state.md.us/license/mhic/mhicwarranties.shtml> (last visited March 14, 2022).

AJP also argues that the Commission’s decision violates the parties’ contract and “that Maryland courts will not, under the guise of construction, rewrite the contract which the parties have made.” *See, e.g., Compania De Astral, S.A. v. Boston Metals Co.*, 205 Md. 237, 271 (1954). AJP asserts that the contract provides a clear measure of completion and the ALJ’s decision that Sager sustained an “actual loss” unlawfully rewrote the contract. The Commission argues that claims against the Guaranty Fund are regulatory actions and not breach of contract actions and the inclusion of a clause regarding when the work is considered complete does not waive the provisions of the Home Improvement Title. Further, according to the Commission, the purpose of a County inspection is to determine code compliance, not to determine contractual fulfillment.

Following the presentation of evidence, the ALJ filed his proposed decision that concluded that the contractor performed an incomplete and unworkmanlike home improvement. The ALJ noted that the completion date was July 12, 2016, but the final approval occurred on March 17, 2017 and stated “[i]t is obvious from the long delay in receiving the permit approvals that something went terribly wrong with the Project.” He found AJP’s “request of [the homeowner] that she pay subcontractors and vendors directly rather than have the [contractor] pay directly out of the proceeds of the draws he was entitled to receive under the Contract” was “[t]he first indication that there was a problem.” The ALJ then made factual findings about AJP’s performance, specifically, its failure “to provide additional labor support to complete the Project on time” and its failure “to provide the necessary supervision to oversee the construction of the Project.” This lack of



supervision “caused work to be performed incorrectly, such as glass block being installed backwards and windows having to be installed several times.”

The ALJ’s decision noted that AJP’s own expert confirmed “that the foundation needed to be remediated due to leaks in the basement” and there was “evidence of water filtration” and “evidence of mold formation as well.” “[T]here [were] other instances of unworkmanlike performance,” such as “the basement floor [being] improperly sloped so that water would not flow to the drain.” In addressing the contract provision, the ALJ stated that because Sager “brought the issue of unworkmanlike performance by [AJP] well within the one year period,” the “defects in the foundation, the steps, the flooring and other areas previously mentioned fall within the express warranty contained in the Contract.” The ALJ determined that Sager had sustained an actual loss as “defined by statute.” The Commission, in its Final Order, concurred with his decision in its entirety.

Based on the record before us, the Commission did not err as a matter of law nor act arbitrarily or capriciously. The Home Improvement Title’s statutory framework expressly provides a remedy for homeowners who have suffered losses as a result of unworkmanlike and incomplete work by home improvement contractors and this framework operates outside of the parties’ contractual boundaries or warranties. We note that while the ALJ referred to the one-year warranty in his findings, this statement was not a determinant of whether the claim was compensable under the statute. AJP’s assertion that the contract was complete and thus, the claim was not compensable, is not supported by the contract itself which included a draw schedule, completion of contractual

components, fulfillment of AJP's obligation to provide labor, materials, and permits per drawings, and AJP's express contractual obligation to complete punch list items following inspection approval.

In sum, we hold that the Commission did not err, and there is substantial evidence in the record to support the Commission's conclusion that the work was incomplete and performed in an unworkmanlike manner.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED; COSTS TO BE PAID BY THE  
APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0523s21cn.pdf>