

Circuit Court for Baltimore City
Case Nos. 24-C-21-001362; 24-C-21-001363; 24-C-21-001364

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
CONSOLIDATED

Nos. 1179, 1180, 1182

September Term, 2021

KARL JOHNSON

v.

THE MARYLAND HOME IMPROVEMENT
COMMISSION

Nazarian,
Leahy,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: October 3, 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.

Karl Johnson appeals from the decision of the Circuit Court for Baltimore City affirming three Final Orders of the Maryland Home Improvement Commission (“Commission”), which awarded \$10,024.26 in total compensation to three claimants—Justin Miles, Tammy Savage, and Warren and Ethel Johnson (collectively, the “Claimants”)—for reimbursement of funds collected by Building Contractors of Maryland, Inc. (“BCM”), from the Claimants without completing the contracted work.

Mr. Johnson presents two questions for our review:

- “I. Did the [Commission] err in finding that Karl Johnson, individually, was properly named as a party to the MHIC Claims?
- II. Did the [Commission] err in finding that Karl Johnson, individually, is a responsible person and individually liable for any losses suffered by the Claimants as a result of any action or inaction of Building Contractors of Maryland, Inc.?”

For the reasons set forth below, we conclude that the Commission did not err in concluding that Mr. Johnson was properly named as a party before the Commission and that he was responsible for the losses sustained by the Claimants because Mr. Johnson was the individual licensed contractor in responsible charge of BCM’s home improvement work.

BACKGROUND

Mr. Johnson was a 50% shareholder of BCM and a licensed home improvement contractor under the Maryland Home Improvement Act. BCM also held a corporate/partnership home improvement contractor license. Since November 2014, Mr. Johnson was the “individual licensee and responsible charge” for BCM’s corporate license.

In conformity with Code of Maryland Regulations (“COMAR”) 09.08.01.24, Mr. Johnson and BCM provided the same business address to the Commission.¹ Initially, Mr. Johnson and BCM provided a business address of 8014 Belair Road, Baltimore, MD 21236 and then provided a revised address of 5134 Buttermilk Road, Pylesville, Maryland 21132, effective May 8, 2019.

On or about March 28, 2019, BCM ceased operating and filed for bankruptcy. Before ceasing operations, BCM entered into separate contracts with each of the Claimants to repair damage to their homes. BCM collected sums of money under each contract but did not perform the work nor refund the money to Claimants.

Because Mr. Johnson raised the same defense and exceptions before the ALJ and the Commission, we briefly recount the facts unique to each claim before reviewing the common arguments and defenses central to this appeal in the procedural background.

Justin Miles

On April 30, 2018, Mr. Miles entered into a contract with BCM to replace a second-floor deck on Mr. Miles’ property that required demolition and reconstruction due to fire damage at a total cost of \$7,664.07. The contract listed BCM’s corporate license number, 6158, and specified that “[a]ll home improvement contractors and subcontractors must be licensed by the Home Improvement Commission.” Mr. Johnson signed the contract as Vice President of BCM. Below his signature, he also listed his license number. On

¹ COMAR 09.08.01.24.B. requires that “[a]n applicant for a contractor license shall provide to the Commission the actual street address of the contractor’s principal business office.”

December 18, 2018, Mr. Miles paid BCM a cashier's check totaling \$4,509.00 to begin the project.

After Mr. Johnson failed to return Mr. Miles' text messages or phone calls for months, Mr. Miles called Mr. Johnson and informed him that he would file a claim with the Commission. Mr. Miles then went to BCM's office on Belair Road and found that "it was completely shut down." BCM did not complete the work and did not refund Mr. Miles' payment.

Tammy Savage

On December 3, 2018, Ms. Savage entered into a contract with BCM to repair her kitchen and living room that had been damaged by water when the ceiling collapsed at a total cost of \$12,658.23. The contract included BCM's corporate license number, 6158, and specified that "[a]ll home improvement contractors and subcontractors must be licensed by the Home Improvement Commission." Mr. Johnson signed the contract as Vice President of BCM. Below his signature, he listed his license number. On January 14, 2019, Ms. Savage paid BCM a total of \$3,166.31.

While Mr. Johnson did meet at Ms. Savage's house to discuss the project, BCM did not perform the work or refund her money. On April 1, 2019, Mr. Johnson, this time identifying himself as President of BCM, sent Ms. Savage a letter advising her:

[A]s of March 28, 2019, [BCM] has ceased doing business. It is anticipated that [BCM] will auction off its equipment and property in an effort to raise funds to pay creditors through a Chapter 7 Bankruptcy proceeding.

I am sorry for these circumstances and hardship it may cause you, but [BCM] simply does not have the wherewithal to continue.

Warren and Ethel Johnson

On August 28, 2018, Ethel and Warren Johnson entered into a contract with BCM to repair and correct flood damage to their basement at a total cost of \$7,829.82. The contract included BCM's corporate license number, 6158, and specified that "[a]ll home improvement contractors and subcontractors must be licensed by the Home Improvement Commission." Mr. Johnson signed the contract as Vice President of BCM. Below his signature, he listed his license number. On August 28, 2018, the Johnsons made the first payment in the amount of \$2,348.95.

While Mr. Johnson did meet at the Johnsons' house to discuss the project, Mr. Warren Johnson testified at the hearing that the work was not performed and that BCM did not return the Johnsons' money.

Administrative Proceedings

Each of the Claimants filed claims with the Commission in 2019 for reimbursement of their funds. On July 14, 2019, Mr. Miles filed "Home Improvement Claim Form," listing "Karl Johnson" in the box on the form entitled "CLAIM AGAINST" and "Building Contractors of MD" in the box entitled "TRADING AS." Mr. Miles's claim sought \$5,598.44, representing his payment, as well as "\$1,000.00 to replace stairs" that BCM demolished. Likewise, on July 7, Ms. Savage filed a "Home Improvement Claim Form" and listed "Building Contractors of Maryland" in the box entitled "CLAIM AGAINST." Ms. Savage sought \$3,166.13—the amount of her January 14, 2019 payment. Then, on July 13, the Johnsons filed a "Home Improvement Claim Form, listing "Karl Johnson" in

the box on the form entitled “CLAIM AGAINST” and “Building Contractors of Maryland” in the box “TRADING AS.” The Johnsons claimed \$2,348.95, the amount of their first payment, and specifically noted on their claim form “NO WORK PERFORMED.” In each instance, the Commission’s staff entered Mr. Johnson’s individual license number, 01-92209, at the top of each claim form.

The Commission sent letters to Mr. Johnson and BCM’s office at Belair Road on July 2 and 10, 2019, advising that the Commission was “in receipt of a claim against you,” by Mr. Miles and Ms. Savage. The claims were referred to the Office of Administrative Hearings (“OAH”) for adjudication, and OAH issued notices of the evidentiary hearing in each proceeding to “Karl Johnson T/A Building Contractors of MD, Inc.” and Mr. Johnson’s counsel.

On March 16, 2020, counsel for Mr. Johnson and BCM wrote the OAH. Counsel stated: “Please be advised the undersigned represents Karl Johnson and Building Contractors of Maryland relative to the above-referenced cases” and noted that his client had received notice of hearing dates for these proceedings, among others. Counsel requested “[i]n the interest of judicial economy and given the similar facts and contractor,” that the matters be “postponed and consolidated to be heard on one date.”

After separate hearings before an administrative law judge (“ALJ”), the ALJ issued separate “Proposed Decision[s]” in each matter between July 22 and 28, 2020, concluding in each case that “Karl Johnson, Contractor, was properly named as a party” and that each claimant sustained actual losses as a result of Mr. Johnson and BCM’s acts and omissions.

Among other things, the ALJ concluded, again in each proceeding, that Mr. Johnson, “individually, was a contractor who agreed to perform and bind BCM to perform a home improvement for the claimant . . . and that [Mr. Johnson], individually, was a licensed home improvement contract as well as BCM. If there is an actual loss, the credible evidence also shows that [Mr. Johnson and BCM], individually and collectively, are both responsible jointly and severally,” pursuant to COMAR 09.08.01.04. The ALJ recommended that “Karl Johnson, t/a Building Contractors of Maryland, each, jointly and severally, [would be] ineligible for a Maryland Home Improvement Commission license until the Guaranty Fund is reimbursed for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission.”

Mr. Johnson filed exceptions to the Proposed Decisions, “contend[ing] that the ALJ erred in finding that Karl Johnson, individually[,] was a properly named party to these proceedings.” While Mr. Johnson conceded that the “Claim could have been properly brought against” BCM, he argued “that did not occur.” Accordingly, Mr. Johnson also surmised that the “ALJ erred by finding that Building Contractors of Maryland, Inc. was a party to the proceeding and finding joint and several liability against that entity.” Instead, according to Mr. Johnson, the Claimants asserted claims against an entity that had not contracted with the Claimant and did not cause the loss.

A three-member panel of the Commission held a remote hearing on the exceptions on February 18, 2021, for Mr. Miles’ claim; February 18 for Ms. Savage’s claim; and March 4 for the Johnsons’ claim. In separate “Final Orders,” the Commission affirmed the

award to the Claimants from the Maryland Home Improvement Guaranty Fund and ordered that “Karl Johnson shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order.” Relying on COMAR 09.08.01.04 and 09.08.03.03, the Commission held that “Karl Johnson and BCM are necessary and proper parties in this proceeding and each is jointly and severally liable for Claimant’s actual loss.”²

Circuit Court Proceedings

Mr. Johnson timely filed petitions for judicial review in each proceeding. After a joint hearing on the petitions, the circuit court affirmed the Commission’s decisions. Mr. Johnson timely appealed the orders in each case, and this Court consolidated the three appeals.

STANDARD OF REVIEW

When we review an administrative action, “we look through the decision of the circuit court and review [the] agency decision directly.” *Garrity v. Md. State Bd. of*

² The Commission amended the ALJ’s recommendations and explained:

[I]n light of BCM’s filing of a bankruptcy petition, the Commission finds that the ALJ’s recommended order that BCM and Mr. Johnson be ineligible for a home improvement contractor’s license under the Guaranty Fund is reimbursed for monies disbursed to the Claimant must be amended. The Commission may only suspend Mr. Johnson’s individual license if he and BCM fail to reimburse the Guaranty Fund for the Claimant’s award. In the event that Mr. Johnson’s individual license is suspended for failure to reimburse the Guaranty Fund, BCM may maintain its corporate license while its bankruptcy petition is pending or its obligation is discharged if it employs another licensed contractor.

Plumbing, 447 Md. 359, 368 (2016). “Judicial review of an administrative agency decision is ‘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 on an erroneous conclusion of law.’” *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 532 (2017).

With regard to the factual findings of the Commission, “it is well settled that a reviewing court may not substitute its judgment for that of the administrative agency or make its own findings of fact when reviewing the decision of an ALJ.” *Landsman v. Md. Home Improvement Comm’n*, 154 Md. App. 241, 250 (2003). Whether we accord any deference to an agency’s legal conclusions depends upon whether those legal conclusions involve the interpretation and application of a statute which the agency administers. *W. Montgomery Cnty. Citizens Ass’n v. Montgomery Cnty. Planning Bd. of the Md.-Nat’l Cap. Park and Plan. Comm’n*, 248 Md. App. 314, 333 (2020); *cert. denied*, 474 Md. 198 (2021). If we are reviewing a statute that the agency administers, then the agency’s “legal conclusions based on interpretations of the statutes and regulations it administers are afforded ‘great weight.’” *Blue Buffalo Co., Ltd. v. Comptroller of Treasury*, 243 Md. App. 693, 702 (2019) (quoting *Gore Enter. Holdings, Inc. v. Comptroller of Treasury*, 437 Md. 492, 505 (2014)). We do not, however, “affirm an agency decision premised solely upon an erroneous conclusion of law.” *Employees’ Ret. Sys. of City of Balt. v. Dorsey*, 430 Md. 100, 111 (2013). And, finally, “our review of mixed law and fact asks ‘whether a reasoning mind could reasonably have reached the conclusion reached by the agency, consistent with

a proper application of the controlling legal principles.” *Belfiore v. Merch. Link, LLC*, 236 Md. App. 32, 44 (2018) (quoting *State Comm’n on Human Relations v. Kaydon Ring & Seal, Inc.*, 149 Md. App. 666, 692 (2003)).

DISCUSSION

I.

Proper Party

A. Parties’ Contentions

Mr. Johnson avers that the Commission “erred in finding that Karl Johnson, individually, as a MHIC licensed salesperson[,] was a properly named party to the Claim proceedings” and that “[t]here is no substantive evidence whereupon the [Commission] could have found that Karl Johnson, individually was a named party.” In support, Mr. Johnson contends that none of the MHIC Claims properly identify Building Contractors of Maryland, Inc. as a “separate existing corporate entity with its own MHIC registration number,” and none were sent to “Building Contractors of Maryland, Inc.” According to Mr. Johnson, “[t]he MHIC made an initial identification error that it never bothered to correct.” Further, the “evidence of payment . . . show that payment was not made to [Mr. Johnson], but rather to Building Contractors of Maryland, Inc.” Finally, Mr. Johnson asserts that the “MHIC’s own proposed orders only identify one ‘party’, namely Karl Johnson in an individual capacity, using a tradename.”

In response, the Commission first notes that “Mr. Miles and the Johnsons patently named Karl Johnson in the box on the form entitled ‘CLAIM AGAINST,’ and listed

‘Building Contractors of Maryland’ in the box entitled ‘TRADING AS.’” Likewise, the Commission observes “Tammy Savage named ‘Building Contractors of Maryland’ in the box on the form entitled “CLAIM AGAINST.”” Second, while the Commission concedes that “had Mr. Johnson held only a salesperson license, then he would not be a proper party to the agency proceeding,” it nonetheless stresses that he held a contractor license. Third, relying on BR § 8-406 the Commission asserts that “claimants are not required to include a license number on their claim form” or “provide the name of the respondent on file with the Commission or state the license number of the alleged responsible contractor.” Fourth and “most importantly,” according to the Commission, “Mr. Johnson was the proper party because under his Category 01 contractor license, he was the individual licensed contractor in responsible charge of BCM’s home improvement work.” The Commission relies on COMAR 09.08.01.04C(3), which provides that a corporation and “the individual in responsible charge of the corporation’s . . . home improvement work *shall be jointly and severally responsible for* . . . [r]epayment to the Home Improvement Commission Guaranty Fund . . . for any payments made to claimants from the Fund on account of violations by the corporation . . . or the individual in responsible charge.”

B. The Maryland Home Improvement Law

In 1962, the General Assembly enacted the Maryland Home Improvement Law, currently codified at Maryland Code (1992, 2015 Repl. Vol., 2021 Supp.), Business Regulation Article (“BR”), § 8-101–8-802. Our appellate courts have consistently recognized that the Maryland Home Improvement Law (“MHIL”) “is a regulatory statute

enacted for the protection of the public.” *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 628 (1997) (citing *Harry Berenter, Inc. v. Berman*, 258 Md. 290, 294 (1970)); see also *Landsman v. Md. Home Improvement Comm’n*, 154 Md. App. 241, 248 (2003) (same). The MHIL was intended, in part, to provide “for the regulation of the home improvement business” and to establish “a system of licensing certain contractors and salesmen under a new administrative agency.” *Landsman*, 154 Md. App. at 248. Consistent with the statutory scheme, the law established the Maryland Home Improvement Commission within the Department of Labor, Licensing, and Regulation.³ BR § 8-201. The Commission is entrusted with both “administer[ing] and enforce[ing] this title” and granted the authority to “adopt and enforce regulations to carry out this title.” BR § 8-207, 208.

Under BR § 8-301(a), “a person must have a contractor license whenever the person acts as a contractor in the State.” A contractor, in turn, means “a person, other than an employee of [a homeowner], who performs or offers or agrees to perform a home improvement for [a homeowner].” BR § 8-101(c). Individual, corporate, partnership, and joint venture applicants may apply for licenses. BR § 8-303(b). Pursuant to COMAR 09.08.01.04.A., “[a] corporation or partnership may not act as a home improvement contractor unless it obtains a corporate or partnership home improvement contractor’s license.” To obtain—and maintain—such a license, the regulation further requires the

³ On July 1, 2019, the Department of Labor, Licensing, and Regulation became the Department of Labor.

corporation or partnership to “employ one individual licensed contractor who shall be in responsible charge of the corporation’s or partnership’s home improvement work,” and “be jointly and severally responsible for”:

- (1) Payment of any fees required by Business Regulation Article, §§ 8-302, 8-303, 8-308, and 8-404, Annotated Code of Maryland;
- (2) Filing of a bond or other evidence of financial responsibility required by Business Regulation Article, § 8-303(c), Annotated Code of Maryland;
- (3) Repayment to the Home Improvement Commission Guaranty Fund pursuant to Business Regulation Article, § 8-410, Annotated Code of Maryland, for any payments made to claimants from the Fund on account of violations by the corporation or partnership or the individual in responsible charge.

COMAR 09.08.01.04.B., C.

In 1981, the General Assembly enacted Subtitle 4 of the Home Improvement Law, establishing the Home Improvement Guaranty Fund “to provide an additional remedy for homeowners who suffered actual loss due to unsatisfactory work performed by a home improvement contractor.” *Brzowski*, 114 Md. App. at 628. The provisions governing the administration of the Fund limit a homeowner’s recovery payments from the Fund to their “actual loss” due to the act or omission of a licensed contractor or a violation of BR § 8-607(4).⁴ BR § 8-405(a). An “actual loss” is defined as “the costs of restoration, repair,

⁴ BR § 8-607(4) provides: “A person may not: . . . (4) fail to give the written notice required under § 8-501(c)(2) and (3) of this title.” These provisions, in turn, state:

- (2) If payment for work performed under the home improvement contract will be secured by an interest in residential real estate, a written notice in not smaller than 10 point bold type that is on the first page of the contract shall state in substantially the following form: “This contract creates a mortgage or lien against your property to secure payment

(Continued)

replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” BR § 8-401.

BR § 8-406 sets forth the procedure for filing a claim for recovery from the Fund:

To begin a proceeding to recover from the Fund, a claimant shall submit to the Commission a claim, under oath, that states:

- (1) the amount claimed based on the actual loss;
- (2) the facts giving rise to the claim;
- (3) any other evidence that supports the claim; and
- (4) any other information that the Commission requires.

Pursuant to COMAR 09.08.03.03.A.(1)(a), “[t]he claimant who brought the claim, and the contractor alleged to be responsible for the monetary loss of the claimant, shall be parties in all claim hearings.”

After a Commission pays out a claim from the Fund, its rights are subrogated “to all rights of the claimant in the claim up to the amount paid,” and “has a right to reimbursement of the Fund by the contractor who Commission finds responsible for the act or omission giving rise to the claim.” BR § 8-410(a)(1)(i), (iii).

We have recognized that “[w]hen the Commission orders payment from the Fund, serious repercussions can be visited upon the contractor responsible for the actual loss that

and may cause a loss of your property if you fail to pay the amount agreed upon. You have the right to consult an attorney. You have the right to rescind this contract within 3 business days after the date you sign it by notifying the contractor in writing that you are rescinding the contract.”

- (3) The notice under paragraph (2) of this subsection shall be independently initialed by the homeowner.

BR § 8-501(c).

the Fund payment sought to compensate.” *Brzowski*, 114 Md. App. at 629. These repercussions include the suspension of individual contractor’s MHIL license should the contractor fail to reimburse the Fund in full. *See* BR § 8-411. The repercussions “naturally . . . can have dire consequences for a contractor,” and range from being unable to act as a contractor or enforce contracts. *Brzowski*, 114 Md. App. at 629.

C. Analysis

Turning to Mr. Johnson’s contention, we conclude that he was a proper party in each of the proceedings before the Commission because Mr. Johnson was the individual licensed contractor in responsible charge of BCM’s home improvement work. As explained immediately above, a corporate licensee, such as BCM, must “employ one individual licensed contractor who shall be in responsible charge of the corporation’s . . . home improvement work.” COMAR 09.08.01.04.B. The individual licensed contractor is—alongside the corporation—“*jointly and severally responsible for* . . . (3) Repayment to the Home Improvement Commission Guaranty Fund pursuant to Business Regulation Article, § 8-410 . . . for any payments made to claimants from the Fund on account of *violations by the corporation* or partnership or the individual in responsible charge,” COMAR 09.08.01.04.B. (emphasis added). The applicable regulations further require that the “contractor alleged to be responsible for the monetary loss of the claimant” is a party. COMAR 09.08.03.03.1.(a).

Mr. Johnson’s arguments do not alter our conclusion that he is a proper party. First, because BCM and Mr. Johnson are jointly and severally liable for violations of BCM, it is not relevant that the Claimants contracted with BCM and only made payment to BCM.

Second, Mr. Johnson argues that none of the MHIC Claims and hearing notices were sent to the contractor alleged to be responsible. However, the Commission transmitted the claims to “Karl Johnson[,] Building Contractors of MD” at the address in the Commission’s records for Mr. Johnson and BCM. Mr. Johnson’s counsel then entered his appearance, advising that he “represents Karl Johnson and [BCM] relative to the above-referenced cases” and that his “client has received a notice hearing days for all of the above-referenced cases.” After this, the Commission sent proposed orders and related filings both to Mr. Johnson and BCM’s counsel and to Mr. Johnson and BCM at their revised address of 5134 Buttermilk Road, Pylesville, Maryland 21132. In short, Mr. Johnson’s notice argument has no merit.

Finally, Mr. Johnson takes issue with the notation of “Karl Johnson t/a Building Contractors of Maryland, Inc.” However, as the Commission points out, “the Commission has always identified the business by the name of the individual contractor who is responsible charge of the corporate licensee’s home improvement work, followed by the individual’s trade name.” As the Commission explained “identifying the individual contractor and the corporation they were representing in the contract facilitates the Commission’s provision of notice of claims to the correct corporate licensee.” While another identification system could be clearer, this notation clearly offered notice to Mr.

Johnson and properly identified him as a party. Indeed, counsel entered his appearance on behalf of both Mr. Johnson and BCM, and, as noted above, Mr. Johnson remained jointly and severally liable with BCM and a proper party.

II.

Responsible Party

A. Parties' Contentions

Next, Mr. Johnson avers that the Commission “erred in finding that Karl Johnson, individually, is a responsible party for any loss suffered by the Claimant.” Mr. Johnson argues, based on the “clear and unambiguous language” of the MHIL, that he cannot be liable because he “was not a party to the contract, nor was he paid any monies individually.” According to Mr. Johnson, “[t]here is no evidence of a violation (as defined by statute) that would give rise to impose joint and several liability upon Karl Johnson and, even assuming *arguendo* that such a violation existed, Karl Johnson, individually, did not have the capacity to prevent any such violation.”

In response, the Commission counters that “Karl Johnson was personally responsible for reimbursing the Guaranty Fund for the Claimants’ losses.” Because “this proceeding involves a statutory claim against the Guaranty Fund, and COMAR 09.08.01.04C imposes personal liability on the individual contractor in responsible charge of a corporate licensee’s home improvement work,” Mr. Johnson was required to reimburse the Guaranty Fund.

B. Analysis

Applying the law and much of the same analysis set out above, we conclude that Mr. Johnson was the individual licensed contractor in responsible charge of BCM’s home improvement work and, as such, was jointly and severally responsible for repayment, alongside BCM, of payments from the Guaranty Fund made by the Commission on account of violations by BCM. COMAR 09.08.01.04.B., C.

Mr. Johnson attempts to evade the plain meaning of these regulations by claiming that the violations referenced in COMAR 09.08.01.04 are limited by BR § 8-405. According to Mr. Johnson, section 8-405 recognizes a “distinction between an[] award to a Claimant for a ‘loss that results from an act or omission by a licensed contractor *or* a violation of § 8-607(4).”⁵ We disagree.

The word “or” “generally has a disjunctive meaning, that is, the word is used to indicate ‘an alternative between unlike things, states, or actions[.]’” *State v. Williams*, ___ Md. App. ___, ___, No. 802, September Term 2021 (filed Aug. 31, 2022) (quoting *Gilroy v. SVR Riva Annapolis, LLC*, 234 Md. App. 104, 111 (2017), *aff’d*, 459 Md. 632 (2018)). Accordingly, the “or” provided in BR § 8-405 does not limit a contractor’s liability but clarifies that a contractor may be liable for “an action or omission” as well as a “violation

⁵ The Commission argues that “Mr. Johnson has waived this issue on judicial review” because he failed to assert the “need for a finding of a violation of [BR] § 8-607(4) as a prerequisite for holding Mr. Johnson personally responsible.” While Mr. Johnson did not present this narrow argument before the agency, it was encompassed in his general argument that he was not liable for reimbursing the Guaranty Fund. Accordingly, we will consider this issue.

of § 8-607(4).” Regardless, section 8-607(4) is not the only means for a contractor to violate the MHIL. Among other things, section 8-605 of the Business Regulations Article requires that “[a] contractor may not: (1) abandon or fail to perform, without justification, a home improvement contract.” BCM’s abandonment of the contract is a violation of the MHIL and, accordingly, requires repayment to the Guaranty Fund for any payments made to claimants as COMAR 09.08.01.04.C.(3) provides.

Finally, Mr. Johnson avers that he “lacked the standing to complete any contract work when [BCM] went out of business, and thus he could not avoid any violation or wrongful act of [BCM].” Therefore, Mr. Johnson asserts, pursuant to BR § 8-411, his license could not be suspended. However, Mr. Johnson did not raise this argument before the Commission. Accordingly, the Commission did not have the opportunity to receive evidence concerning whether Mr. Johnson could have performed the contracts, refunded the Claimants’ funds, or otherwise prevented the violations under the MHIL. This argument is waived.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**