Circuit Court for Baltimore County
Case No. 03-C-18-011867

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2141

September Term, 2019

WILHELMINA WATNOSKI

v.

MARYLAND HOME IMPROVEMENT
GUARANTY FUND

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: March 11, 2021

*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.

Appellant, Wilhelmina Watnoski, challenges a decision of the appellee, Maryland Home Improvement Commission ("the Commission") to award her $6,310.60 from the Home Improvement Guaranty Fund ("Guaranty Fund"). The Circuit Court for Baltimore County affirmed the Commission's decision.

This is the second time we consider Ms. Watnoski's claim for monetary damages resulting from a failed home improvement contract with John David Parrott t/a Parrott Construction ("Parrott"). In the last appeal, we remanded the case to the Commission to recalculate Ms. Watnoski's actual losses. *Watnoski v. Maryland Home Improvement Commission*, No. 2437, September Term, 2015, (filed March 17, 2017) ("*Watnoski I*").

On remand, the Commission determined that Ms. Watnoski was entitled to the cost to correct the electrical and HVAC work of Parrott but other claims were time barred. In calculating Ms. Watnoski's actual loss, the Commission considered only the amount attributable to the compensable claims and reduced that amount by the amount left unpaid on the original contract. The circuit court affirmed the decision of the Commission. On appeal, Ms. Watnoski presents one question: Did the Commission err in calculating her actual loss?

For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND[1]

This case began in February 2007, when Ms. Watnoski entered into a home improvement contract with Parrott for the purpose of constructing a second-story addition to her home in Dundalk. The parties agreed on a price of $235,000. As additional items were added to the project, the total project cost increased. A dispute arose between the parties in late 2007 regarding the quality and timeliness of the work. In February 2008, Ms. Watnoski notified Parrott of her complaints regarding the work on the project. In March 2008, Ms. Watnoski moved back into the home and noticed problems with the electrical system. That same month, representatives from Parrott made their last visit to the property. Ms. Watnoski paid Parrott a total of $253,620.84, which was $5,555.40 less than what Parrott claimed it was owed as the contract price, *i.e.*, $259,176.24.

On February 28, 2011, Ms. Watnoski filed a claim against the Guaranty Fund administered by the Commission. The Commission referred Ms. Watnoski's case to the Office of Administrative Hearings ("OAH"). Following a hearing, the Administrative Law Judge (ALJ) recommended that the Commission dismiss the claim as untimely. The Commission issued a final order dismissing Ms. Watnoski's claims as untimely, with the exception of the alleged defects in the electrical work. Because the unpaid balance on the contract exceeded the cost she had paid for electrical repairs, however, the Commission

[1] These facts are condensed from the background summary set forth in our previous opinion, *Watnoski I*.

dismissed the claim for electrical work, finding that she had failed to prove a compensable loss.

Ms. Watnoski filed a petition for judicial review in the circuit court. The circuit court concluded that Ms. Watnoski's entire claim should be dismissed as untimely, and remanded the case to the Commission for further proceedings. Ms. Watnoski appealed that decision to this Court.

We determined that there was substantial evidence to support the Commission's findings that, with the exception of certain electrical issues, Ms. Watnoski's claims regarding Parrott's defective workmanship were untimely filed and, therefore, time barred. We noted, however, that the Commission made no findings as to whether Parrott or someone else was responsible for certain electrical work, and whether any of that work was the subject of the electrical problems. We further noted that the Commission made no findings as to the timeliness of the claim for repairs to the HVAC system or Ms. Watnoski's claim for additional electrical repairs, demolition work, and repairs to the HVAC system. Accordingly, we remanded the case for further findings on these issues.

On remand, the ALJ found that Ms. Watnoski had incurred a loss of $1,366.00 as a result of the acts and omissions of Parrott. The Commission issued a proposed order affirming the ALJ's findings. Ms. Watnoski filed exceptions to the proposed order.

A hearing on Ms. Watnoski's exceptions was held before a three-member panel of the Commission. Ms. Watnoski argued that 1) the ALJ erred in finding that it could have been the work of Ms. Watnoski and her family, subsequent to Parrott's completion of the job, that caused the electrical issues; 2) she was entitled to the cost to replace the faulty

electrical work, plus the amount to fix the HVAC system installed by Parrott, totaling $12,366.00; and 3) the total amount of the award should not be reduced by $5,555.40, the amount left unpaid on the original contract with Parrott.

The Commission agreed with Ms. Watnoski, in part, and amended the proposed findings of fact to reflect that the faulty electrical work was caused by Parrott, and that she was entitled to the cost of repair or replacement of the faulty wiring, which the Commission determined to be $10,500.00. The Commission affirmed the finding of the ALJ that Ms. Watnoski was entitled to the cost of repair of the deficiencies in the HVAC work caused by Parrott in the amount of $1,366.00. Thus, the Commission determined that the total cost to correct and complete the deficient electrical and HVAC work caused by Parrott was $11,866.00.

The Commission disagreed with Ms. Watnoski's argument that her award should not be reduced by the $5,555.40 left unpaid on the original contract and deducted $5,555.40 from her award of $11,866.00, leaving a balance of $6,310.60.

The circuit court affirmed the order of the Commission. Ms. Watnoski noted a timely appeal.

DISCUSSION

The sole issue in this appeal is the computation of loss under the Commission's regulatory formula.

Section 8-405(a) of the Business Regulations Article ("BR") provides that an owner may recover compensation from the Guaranty Fund for "an actual loss that results from an act or omission by a licensed contractor[.]" BR § 8-401 defines "actual loss" as "the costs

of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."

The regulations governing the adjudication of claims against the Guaranty Fund specify the formulas to be used by the Commission when calculating an award for actual loss from the Guaranty Fund:

> Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:
>
> (a) If the contractor abandoned the contract without doing any work, the Claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.
>
> (b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, 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.
>
> (c) 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).

When reviewing administrative decisions, "this Court 'look[s] through' the decision of the circuit court and directly evaluates the decision of the agency." *Motor Vehicle Admin. v. Medvedeff*, 466 Md. 455, 464 (2019) (quoting *Brutus 630, LLC v. Town of Bel Air*, 448 Md. 355, 367 (2016)). "An agency decision based on regulatory and statutory

interpretation is a conclusion of law." *Kor-Ko Ltd. v. Md. Dep't of the Env't*, 451 Md. 401, 412 (2017). Our review of an agency's conclusions of law is "expansive, and we may substitute our judgment for that of the agency if there are erroneous conclusions of law." *Matthews v. Housing Auth. of Baltimore City*, 216 Md. App. 572, 582 (2014) (citation and internal quotation marks omitted). Even with conclusions of law, however, we must respect an agency's expertise in its field. *Kor-Ko Ltd.*, 451 at 412 (quoting *Carven v. State Ret. & Pension Sys. of Maryland*, 416 Md. 389, 406 (2010)). Therefore, "an administrative agency is entitled to deference in the interpretation of its own propounded regulations unless the agency's interpretation is clearly erroneous or inconsistent with the regulation." *Para v. 1691 Ltd. P'ship*, 211 Md. App. 335, 389 (2013).

The Guaranty Fund was established "to provide an additional remedy for homeowners who suffered actual loss due to unsatisfactory work performed by a home improvement contractor." *Brzowski v. Maryland Home Imp. Comm'n*, 114 Md. App. 615, 628 (1997). The payment of claims from the Fund is limited to "only those claims that establish that a homeowner has suffered 'actual loss' due to the act or omission of a licensed contractor." *Id.* The Commission is presumed to be "aware of the Fund's limited purpose, to compensate for actual loss," and to act within the scope of its authority when making such an award. *Id.* at 631.

In *Watnoski I*, we affirmed the Commission's determination that, with the exception of certain problems with the electrical work, Ms. Watnoski's claims were barred by the three-year statute of limitation set forth in BR § 8-405(g). On remand, the Commission reasoned that, because the defective electrical work and HVAC remained the only viable

claims, only the costs associated with those claims should be included in its calculation of Ms. Watnoski's award.

Ms. Watnoski's claim was governed by COMAR 09.08.03.03B(3)(c), as she had paid another contractor to repair the work of Parrott. Ms. Watnoski interprets subsection (c) to require that the Commission include in the formula the cost she paid to repair all deficiencies in her home caused by Parrott. Ms. Watnoski paid Parrott $253,620.84 and she paid other contractors $38,940.00 for repairs. Under Ms. Watnoski's calculation, the amount she paid to Parrott plus the amount she paid for all repairs totaled $292,560.84. Subtracting the original contract price of $259,176.24 from that amount, her actual loss was $33,384.60. The issue in this case arises because a portion of the amount paid to other contractors was time barred. She acknowledges that only the costs for repairs to the electrical work and HVAC, totaling $11,866, would be compensable as those items were not time barred. Ms. Watnoski argues that the amount of compensable loss, $11,866, should not have been reduced by $5,555.40, the amount unpaid on the original contract.

The Commission responds that it correctly applied the regulatory formula in COMAR 09.08.03.03B(3)(c). Under that formula, the amount Ms. Watnoski paid to Parrott, $253,620.84, would be added to the amount she paid for repairs to the electrical and HVAC, $11,866. To determine actual loss, the Commission explains that the original contract price of $259,176.24 was subtracted from the sum of the amount she paid to Parrott, $253,620.84, plus the amount she paid for electrical and HVAC repairs, $11,866.00. The net result was an award of $6,310.60.

The Commission explains that it considered only the costs that Ms. Watnoski incurred to repair the electrical work and HVAC because those were the only claims properly before the Commission. Consistent with this Court's prior opinion, the Commission excluded from its calculation of Ms. Watnoski's actual loss claims that were untimely filed.

As an alternative to the Commission's calculation, Ms. Watnoski suggests that the Commission should have utilized a "unique" formula that did not account for the balance left unpaid on the contract. Under that "unique" formula, the costs to repair the deficient electrical work and HVAC would not be reduced by the unpaid contract amount owed to Parrott. She asserts that the unpaid amount "should not be applicable because (a) it was for deficient workmanship and therefore not owed; (b) the amount was to correct or finish items other than the electrical and HVAC work; and (c) since the unpaid work on the contract was considered time barred for [her] to present a claim, it should also be considered time barred for the contractor to receive a credit."

The Commission contends that no unique formula was needed in this case to account for the unpaid balance on the contract, as the purpose of the reduction of Ms. Watnoski's award was not to compensate Parrott, but to limit her award based on her underpayment of the contract price. The Commission asserts that a finding that the original contract price may be reduced where the contractor has not timely asserted a claim for the unpaid balance, would graft an additional element that does not currently exist onto the Commission's regulatory formula. Moreover, the Commission points out that this is an administrative

proceeding governed by statute and regulations, rather than a contract action between private parties.

Although the applicable regulation does not expressly address the effect of a limitations bar to a portion of a claim, the Commission's decision to consider only those repair costs paid to other contractors that were not time barred was reasonable and consistent with the Guaranty Fund's limited purpose of compensating homeowners for actual loss. We conclude that the Commission's application of COMAR 09.08.03.03B(3) was not an error of law.

Ms. Watnoski also contends that the legal principle of set-off, discussed in *Webster v. Byrnes*, 32 Md. 86 (1870), applies to her claim against the Guaranty Fund. *Webster* involved a payment dispute between private parties concerning an overdue account. She argues that because any claim by Parrott to recover the unpaid balance remaining on the contract would be time barred, "neither Parrott, and by extension, the Fund," should be permitted to use the unpaid balance as a set-off against her claim.

We agree with the Commission that the principle of set-off set forth in *Webster* does not control the Commission's calculation of actual loss under its regulatory formula. As we explained in *Watnoski I*, Ms. Watnoski's claims are not governed by civil case law pertaining to breach of contract actions. *Watnoski I* at *4. Rather, this is an administrative action seeking an award of costs pursuant to the Business Regulation Article and applicable regulations. *Watnoski I* at *4.

The Commission did not err in interpreting its own regulation and in calculating Ms. Watnoski's award from the Guaranty Fund. We therefore affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.