IN THE MATTER OF THE CLAIM	BEFORE GERALDIN	E A. KLAUBER,
OF MELISSA FOCA,	AN ADMINISTRATIV	Æ LAW JUDGE
CLAIMANT	OF THE MARYLAND	OFFICE
AGAINST THE MARYLAND HOME	OF ADMINISTRATIV	E HEARINGS
IMPROVEMENT GUARANTY FUND		
FOR THE ALLEGED ACTS OR		
OMISSIONS OF DARRELL		
GOTTSCHALK, T/A GOTTPOWER	OAH No.: LABOR-HI	C-02-21-02349
RESTORATION SERVICES, INC.,	MHIC No.: 18 (75) 142	
RESPONDENT		

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 March 29, 2019, Melissa Foca (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 \$7,861.96 in actual losses allegedly suffered as a result of a home improvement contract with Darrell Gottschalk, trading as Gottpower Restoration Services, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401

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

ALEMA OF LOS ESTA TRABALACE ÁRACSE 。 "我没有我的我的我们就 J. FRENIS Kirking visa ... novid sljuvenog kirki e o HI COLORDA LIKERE, YES CHOOK JURA SAGRIS SYLVELIA D international desirable and the contraction of the 可见的事 不见。据我说:"我就是这些事么是一个。" - 1.04 - CESTO 22 SEC. EAROTED S usad ilə bi səfəarran atitional recomponsation **以前3种以外** [발송시**왕**다음 (1) 남글(10 년이 基表形式 存在的 不够 医肾膜炎 - **2000 30 30 30 30 30 30 30** through the stands of contribution and I down this firm the first property of The transfer of the continue o Placement were all from the field of the first of the first of the contract to be contract to be seen to be in od och filma de samta**l krav** lätar på propresider at devet efter, at vest baritere and the triple control of the contro

ា នៅ ្រា**នសុស្ទី២** មានប្រកាស្ត្រ **្ន**ែក វា

n sama kang sa salapagasi mga mga salap<mark>angangangan pangangan pangangan kan</mark>asa Nasasa.

through 8-411 (2015).² On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 31, 2021 via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Justin Dunbar, Assistant Attorney General, represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (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 on the Claimant's behalf:

- Clmt. Ex. 1 Contract, March 19, 2017
- Clmt. Ex. 2 Letter from William R. Bryant, Assistant Director of Anne Arundel County Department of Inspections and Permits, March 14, 2018
- Clmt. Ex. 3 Report from Vannoy and Associates, September 5, 2017

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

³ Melissa Foca signed and submitted the Claim to the MHIC on behalf of herself and her husband Joseph Foca. Both were present at the hearing and, without objection from the parties, Joseph Foca presented the Claimant's case.

no putera proporti dell'atti proprima dall'Alla di prodeti dell'atti anno il continuo di continuo dell'atti di a safitis kanjag salatwijanigi. and a sign of the company of the contract of t i kanegasan di usume la lipingda edda qiri kuli ili senorumbi delili da lipin di gelek delimba da besh เป็นที่ เป็น เดิมเกราะหน้า เหมาะหน้า เราเรียก and the second of the second s All reported to the second of the party of the second of t Commission of the control of the con a Promission Large Applications rative galacies for the about attractive agreed and bayes in them in it is also be in the Tean Properties and place parties at a literature of The state of the partition of the partit A 12 F Lorent Library of Constitution The product of the process of the pr an area is a fig. . The second of the second in the second of the second of

Clmt. Ex. 4 - The Travelers' Home and Marine Insurance Company (Travelers) scope of work for replacement of wall, October 16, 2017; Copy of check from Travelers payable to Joseph Foca in the amount of \$30,957.01, October 17, 2017

I admitted the following exhibits on the Respondent's behalf:

- Resp. Ex. 1 Contract, signed by Respondent on March 29, 2017
- Resp. Ex. 2 General Release, July 20, 2017
- Resp. Ex. 3 Complaint Form, July 20, 2017
- Resp. Ex. 4 Building permit and attached plans, April 12, 2017
- Resp. Ex. 5 Letter from Travelers to the Claimant, March 13, 2018
- Resp. Ex. 6 Rental Works Invoice, June 12, 2017; John Deere Invoice, June 9, 2017
- Resp. Ex. 7 Scope of work/estimate, March 7, 2017

I admitted the following exhibits on the Fund's behalf:

- Fund Ex. 1 Notice of Remote Hearing, February 10, 2021
- Fund Ex. 2 Hearing Order, January 20, 2021
- Fund Ex. 3 Home Improvement Claim Form, March 29, 2019
- Fund Ex. 4 Letter from MHIC to the Respondent, April 3, 2019
- Fund Ex. 5 MHIC licensing history for the Respondent, March 23, 2021

Testimony

Joseph Foca testified on behalf of the Claimant.

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

Passer i de la como de La como de la como de l		n i di sebaga hayi il. Milayin dan ke		
			ni arkabi tingi keleb	
		tarky to Proceeding.	Contain the	
· · · · · · · · · · · · · · · · · · ·			1	
:	•	ings y they are a single		
•		(1) (1) (1) (1) (1) (1) (1) (1) (1) (1)		92 Japan (*)
	the state of the		emounds being	
	(ti 1948 ji jadi menengajan t	Todas et la especie	
		Saffler by A. Row	1. * 1. pr 4.72	
	•		1	
			นูล กลุ่มกลุ่ม	
A.		jamie sugari nasi 1956	a. Para sensi	
			e likuri serrik sako, i	the April 1. As a
	ÇATARK ÇAR.	Mary Carlotte Carlotte		
	•			
			on without the	H. C. C.
			a reposition para eq	okopii :
			in the state of th	71 TT
	•			•
)
•				•
				,

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 131067.
- 2. On March 19, 2017, the Claimant and the Respondent entered into a contract to repair a bowing/cracked foundation wall in the Claimant's residence (Contract).
 - 3. The original agreed-upon Contract price was \$7,861.00.
 - 4. The Claimant paid the Respondent the total Contract price.
 - 5. After obtaining the necessary permit, the Respondent began work on May 12, 2017.
 - 6. On June 9, 2017, the Respondent completed the work.
- 7. On June 12, 2017, the Anne Arundel County Department of Permits and Inspections (Department of Permits) inspected the work done by the Respondent. The work did not pass inspection due to grading issues.
- 8. On August 1, 2017, the Respondent returned to the Claimant's property to grade the yard. After the Respondent left the job, the Claimant noticed a new crack in the foundation wall. The Claimant called the Respondent regarding the crack and instructed him not to return to the property.
- 9. On August 2, 2017, the work performed by the Respondent failed the final inspection due to new crack in the basement wall. The crack may have been caused by impact or the backfill pressure on the wall.
- 10. In August 2017, the Claimant contacted her insurance company, Travelers; regarding the damaged foundation wall. Travelers retained Vannoy and Associates (Vannoy), an engineering firm, to inspect the wall.

The part of the part of the report of the part of the first of the fir

entre en la recentión de participa de la fille de la final de la superior de la final de la final de la final d La final de la

A till boling would like bloom at Samuela generale is mile

et en la de montre de la figuration de la completa de la completa de la figura de la figura de la figura de la completa de la figura de

e de la companya de l La companya de la companya de

e standard de la companyación de l La companyación de la companyación

Level in the description of the property of the control of the property of the control of the cont

o aktorolitok para se o matikatak kuntak kudang pasta sa matik tadip 200 Komin. Paga paganan mengangan menganan menganan menganan pada semak dan pada semak dan pada semak Komanga tij

al en espera a la como a primera area a <mark>espera de espera de la como distribucido de e</mark>

Berlinger Billionweitigen Auf von Verreichen ungerheite und Weiteren Auf von der

သည်။ သည် မော်သို့သည်။ သည် အာရှိသည် သည်။ သည် သည် မော်သို့သည် သည် အာရှိသည် ရေးသည် သည် မော်သည် မော်မော်မို့ မြောင်းသည် မော်သည် မော်သည်။ မော့သည် မော့သည်။

and the second of the second o

- 11. On September 5, 2017, Vannoy inspected the Claimant's wall. At the time of the inspection the wall was out of plumb; rebar was visible through the cracks and was not spaced in accordance with the plans submitted and approved by the Department of Permits; the rebar did not extend to the solid top course of the block; there was no evidence of grout at the location of the vertical rebar and a water leak existed at the rear left corner of the foundation wall.
- 12. Thomasville Homes (Thomasville) was retained by the Claimant to replace the entire foundation wall.
- 13. Travelers paid the Claimant a total of \$42,080.06 toward the claim for the damaged wall. Travelers made the final payment on the claim on March 13, 2018. The Claimant paid the insurance proceeds to Thomasville.
- 14. On July 20, 2018, the Claimant executed a General Release whereby for the receipt of \$5,285.00 the Claimant released the Respondent from any and all causes of action arising out of the damage to the wall sustained on August 1, 2017.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). 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. Coleman v. Anne Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor" 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."). "[A]ctual loss' means the costs of restoration,

ratificación define de explosivo de explosive de exemplosive de exemplos de exemplos de entre exemplos de entre to some more than the common agreety but agree where to be because a state of all the old out a first care to a comme comme to be because to other to care the contribution of the significance. and the first of the major of the figure of the state of the first of the first of the state of This is I have a suffice of given I be always to bounce out the line in facility by I will also were and the second of the second s a server frage and frage Carrier to the Carrier and the Carrier and refigies auf breit de jarre arest laga desette Traffickers and with a way to the state of t tok kana ing santator tigik wakang dalah alaken sa kata dang dalah dan kana sa kata dan dan dan dan dan dan da The artification of appropriate the continue to the continue of the continue to the continue of the continue to the continue of the continue to the continue t and read to the greater of the long of seed to be a comment and in a side of a

repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

The Claimant established that the Respondent's repair of the Claimant's structural wall was unworkmanlike and inadequate. On August 1, 2017, after the Respondent had completed the grading, the Claimant noticed a new extensive crack in the structural wall. Vannoy, the engineering firm retained by Travelers, inspected the wall and determined that the work done by the Respondent was unworkmanlike and prepared a report that listed the issues with the Respondent's work. (See Finding of Fact 11). Additionally, the work performed by the Respondent was not approved by the Anne Arundel County Department of Permits. The failure of the Respondent's work to pass inspection, coupled with the report of Vannoy, is sufficient to establish that the Respondent's work was unworkmanlike. The Claimant's refusal to allow the Respondent to return to the property to perform any additional or remedial work was reasonable given the extent of the Respondent's poor workmanship and consequential damages he had caused.⁴

The Claimant is seeking \$8,861.00 in reimbursement from the Fund, which represents the amount paid to the Respondent plus the \$1,000.00 insurance deductible paid to Thomasville.

Having found that the Claimant established an actual loss, I must now turn to calculating the Claimant's actual loss. The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work and provide as follows:

- (3) 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.

⁴ Joseph Foca testified that the Respondent damaged the sump pump, breaker box, HVAC unit and mower. The Claimant received reimbursement for the damages through insurance proceeds from the Respondent's carrier.

assignation and the compact and providing implications to be provided and the provided and the compact of the professional and the compact of the provided and the compact of the provided and the compact of the provided and the compact of the comp the standard for the content of this รีโดย คลากกระ (The Tree) **สมโด**ย์ โด<mark>ยต้อง</mark> (Padecay SP สภาพสัง <mark>พากับสาก สากและผู้กัก (ส</mark>.) The maternature can be the related by the 1984 of the deposition of the particular productions for the coneju trojino 17. diu ili jagovinia setta e <mark>s</mark>logi povernjeh redna za jedneka kaje 40. kaje gjetere koj ge^r danst volume di ond e expansigis en 180<mark>0</mark> distant a_lend is e bels d'exiliparient que la piète e dos co or treated in the state of the property of the paragraph of a public or provide the project of t in the second responsibility to the second of the second o ရားကြီးမှုပြီး နှစ်ရှာတွင် ၁၂၁၈ ရှိနှ<mark>င့်မည် ရမောက်</mark>ပြီးခြင့် မောက်ကို ရေးနှစ်မြောက်ချင်တွင် ရှားများသည်။ လူ့ပြုန er mekalijere i i receptivi sej megali tiji i i i magdamaraje a zapi i ji i da se septemberaje. anti contis esti. Tim i compositalesti, ca o lorro control de dical coloniale entre di farte qui juino. distrational and the same of more publications with a second advance of group for professional and មាន នៅខ្លួនក្រក់ ប៉ាន់ អាស្តាន់ម៉ែលនិម័យ នៃ សារមេញនៅមន្តម ខេត្ត ខេត្តនៅ នៅខ្លែង ប៉ុន្តែទៅបន់នៃ Macheman (1) v to the trett grift magazination on Macheman to the control of the control of the control of the austisca con a filozofia de la forma en suche. El abbato de la filozofia de la capación a ser el completa de l energio de la estrelación de la grafia de energio de la fina harábilita de entre entre a filha de la grafia por el filha de combinador de la grafia del grafia de la grafia del grafia de la grafia de l la stable, a se californial objeticate par, sergio regardillo bell'est, e viet bry e de tospan (V set rance of the selection of Dr. Labour Strang, and to the first artists. In the gift, we distribute a second report

> rangaran di 🚌 jaga darah jagarip di teorgan delikurah pada Alif ાજ શામની ઉત્તરના નિવાસથી હતા હજી ના નો કો north (1966) and a state of the second ada merika kenanggalah daran berana kerandar di Kila mada bebera 1 1 2 2 5 7 7 . 8 7 and the state of the first of t i a sakupan adminin a

o de la companya de describa de describa de describ La companya de la com

- (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). In determining the amount of the Claimant's actual loss, I also consider that the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

In this case, the Respondent performed work under the Contract, and the Claimant retained Thomasville, a contractor, to remedy that work. If the measure of the Claimant's actual loss included only the amounts paid to the Respondent and to Thomasville to repair the wall, calculating the Claimant's actual loss would be accomplished using the formula provided at COMAR 09.08.03.03B(3)(c). This would result in an actual loss comprised of the amount the Claimant spent above and beyond the Contract price to repair of the wall. In this instance, however, there are several factors that dictate the use of a unique measurement to determine the Claimant's actual loss. The first factor under consideration is the scope of the original contract, which called for repair, not replacement of the structural wall. Although Vannoy determined that it was feasible to strengthen the existing foundation wall, due to the extent and severity of the damage, the cost, and long-term durability, it recommended replacement of the rear foundation wall. In accordance with the recommendation, Thomasville removed and replaced the foundation wall.

par di Herrico, e o di baro esconos isti, e<mark>n pattago escapes telle</mark> operarente, el trago y e में अने अने अनुभा 💛 व्यवस्थान विशेषक एक एक अवश्यास है। 🔂 एक एक में हुं का सुंद्र है अने क्र ใน อะสังห์ เลา 5 ทำ แล้วแล้วก็ สิวิกาล และวัน สิงิสาก. อาลุการ ครั้ง ลิสากัง และก็หั้ง โดยได้ and the property of the first of the state o at the third and a got broad to the complete of the for A complete of a continue interference of a continue of the first of the continue of the contin o de la companya del companya de la companya del companya de la companya del companya de la companya de la companya del companya de la companya del companya de la companya de la companya a grape alabate a professional programma deligión de la definión pelos alabates produces de la colonidad de la La tempo a colonidad del del la talva como a tempo de la colonidad del colonidad de la colonida Andrew to the Charles of the College of the Colleg Maria de la compansión de ri dali sump through the principle of the first of the fi Charles and the state of the control of the charles and the con-4.8 1,3844. grante de la completa and 600 miles and services of the California and Same of the california and the californi

I start to a first according to the start of the start to the start of the start of the start of the start of a victorias establication de la compania de la comp graphical contraction and the contraction of the contraction of the contraction of the contraction of . And will the transfer of the object of the course of the second of the control eta errantido de celon. El papal, aos inimas esperantes de la esperantidistifición de seculo de seculo de secu o servicinais participado la combinación de servicina de la contraction de la comprehensión de servicina de de - และ สาร์ หลังและ วาร์ต (ค.ศ. 15 เดิม เมื่อในคนาม ซาการ์ เประเทศ และ และ และ และ และ และ ค.ศ. พัญลัสโปลเพื่อส tago sorte do latro también pero pero la facilidade forma exemplo da el comprese relación escala estra del and the common termination of the companies of the contract of the figure one so the new parameters. i de partir de la cialidad partir de la trapa de la consequencia de la cialidad de la consequencia del consequencia de la consequencia del la consequencia de la consequencia de la consequencia del consequencia de la consequencia del consequencia del consequencia del la consequencia del consequenc

and the second of the second

that we have the strong with the company of the strong of

That is taken

The second factor to consider is the Claimant's receipt of insurance money from an insurance claim filed with Travelers. The Claimant received \$42,080.06, from Travelers, which included the replacement of the wall and work above the foundation wall. In addition to the insurance funds, the Claimant received \$5,258.00 from the Respondent as consideration for a release of the Respondent's liability. Although the release executed by the Claimant does not preclude the Claimant from filing a claim against the Fund, the money from the release is essentially the same as if the Claimant had received an award from a civil proceeding and therefore, I find that Claimant's actual loss is offset by the insurance proceeds received from Travelers as well as the money received from the Respondent.⁵

To determine the actual loss, I calculated the amount it would have cost Thomasville to perform the work called for in the original contract. As pointed out by the Fund, Travelers' calculation of the scope of work relied upon by Thomasville to replace the wall reflects a basement wall measurement of 649 square feet (Clmt. Ex. 4), which is comparable to the Respondent's measurement in his scope of work. (Resp. Ex. 7). The Travelers' scope of work breaks down the cost value of the basement wall as \$3,875.08. I have used this figure to determine the cost to Thomasville to repair the basement wall. My calculation of the actual loss is as follows:

\$7,861.00 paid to the Respondent

+ \$3.875.08. paid to complete the Respondent's work

\$11,742.08 total amount expended by Claimant

- \$7,861.00 amount paid to Respondent

= \$3,875.08

- \$2,875.08. insurance proceeds attributable to rear wall (\$3,875.08 - \$1,000.00)

= \$1,000.00

⁵ The Fund recommended an award to the Claimant for her actual loss but did not take into account either the insurance or the Release proceeds.

in actions		i i senta i arii settaji		
		pti (tamen การคิด แกะ	verity of his light in the	
	in the second second	egente a pensio	e from Marian Control	y (25), 25, 25, 26, 27, 27, 27, 27, 27, 27, 27, 27, 27, 27
tan ing mengangan di kecamatan d La kecamatan di kecamata		resi (teleki), ke wa si j kin		
Teat Michell Hosel of		k strøsiska ligi	1	
	•		,	
113 p. 11 180.			l .	
		e ja Sele kod kurist	1	
·		essa en lació destina.	•	· ·
		e de montant de la comp		
6-28 A.B. C. C.		i juda Arron (Apolytica) V		
in Later Constitution			1	
$\frac{1}{4} \left(\frac{1}{2} \frac{\partial x}{\partial x} \right) \frac{1}{2} \left(\frac{\partial x}{\partial x} \right) = 0$				
The production of the second			•	
		Processing the State of the Sta	1	
iga e de marió a trada.				
			:	and a second
		างสุดนากที่ ที่น้อง () ให้การจากไม่การสุดนาน	1	
	រដ្ឋមន្ត្រី () () () () () () () () () (publik eskula terrigukak Banyalsa Masa Julia Kal	(2) 1000年(1000年) - 中国的发生真实等	

Substitution of the second times, was to be in the second times of the second times of

rentin en la configuera de la presidenta i l'Arte e regionale.

a magnega, ilmene a lagget, at all tert. Lagget at agence a topological terms of The Claimant received \$ 5,258.00 from the Respondent as consideration for releasing the Respondent from liability. As I previously noted, because the amount paid pursuant to the Release is directly related to the work in question, I find that this sum mitigated the Claimant's actual loss. Subtracting the \$5,258.00 from the actual loss of \$1,000.00 leaves the Claimant with a negative balance and, therefore, I find she is not entitled to any reimbursement from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

May 4, 2021
Date Decision Issued

CONFIDENTIAL

Geraldine A. Klauber Administrative Law Judge

GAK/at #191672

altigation for the entry of property in the period and their more than the complete enterior for the comp . The state of the companies of the configuration of the state of the configuration of the co e du la collega de la comparta de la collega de la col o de la compactión de la compactificación de la compactificación de la compactificación de la compactificación and not be seen to be professionable and distribution of this configuration of the encountries of the configuration ne fraktingstan spe the constraint of the contract is an finite of the first of the constraint of the co g the property of the section of the property of the section of the property of the section of int ar was a nei fly chaft Transfer Continues with a continue of the continues of th Caracacal etc., cliptocal (Associal connecte typelicano el calgerial nace ella 2004) the law is the firefried with a first record will the second will the second with the property of the second will be second with the property of the second will be second with the second ารสอบการต้อง แล้วการต้องเรียง สอร์ดอง (ความก)

IN THE MATTER OF THE CLAIM OF MELISSA FOCA
AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF DARRELL GOTTSCHALK T/A GOTTPOWER RESTORATION SERVICES, INC.

- * MARYLAND HOME
- * IMPROVEMENT COMMISSION
- * MHIC CASE NO. 18(75)142
- * OAH CASE NO. LABOR-HIC-
- * 02-21-02349

PROPOSED ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on March 31, 2021, via Webex videoconference. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 8, 2021, concluding that the homeowner, Melissa Foca ("Claimant") did not suffer an actual loss as a result of the acts or omissions of Darrell Gottschalk t/a Gottpower Restoration Services, Inc. ("Contractor"). (ALJ Proposed Decision p. 9.) A Panel of the MHIC reviewed the ALJ's Proposed Decision in accordance with COMAR 09.01.03.08, which is incorporated herein and amended as set forth below.

The Commission finds that the ALJ erred in calculating the Claimant's actual loss because the ALJ incorrectly deemed \$5,258.00 paid by the Contractor's insurer to the Claimant to have mitigated the Claimant's actual loss.

The Claimant received \$5,258.00 from the Contractor's insurer in exchange for the release of her claims against the Contractor and the Contractor's insurer for property damage or personal injury arising from "the accident on or about August 01, 2017." (OAH Hearing Respondent's Exhibit 2.) August 1, 2017, is when the Contractor caused a "new extensive crack" in a wall of the Claimant's home when performing regrading work. (ALJ Proposed Decision p. 6.) This proceeding involves a statutory claim for compensation for "the costs of restoration, repair,

○ 1001 はいい | (42.50 32 7 0 mm) LAND TO PERSON ASSESSED salament cere objections as ing engage of the magnetic of the particular period of the decrease in the case of e liter**ation of** the **CS** the dependent of the commence of the continuous gradie in the American of Berger Control of the Control of the Artist the Control of the Con a presidente de la compara de la presidente de la completa de la completa de la completa de la completa de la c าง และ เมืองและเกลาใหล่ และ และเด็กเล่น **สอร์แ**บโลยด์ ของเล่น หมายที่ เกลา เล่น เล่น เล่น เดียว คือ เมื่อเกล่ on the light of the first of the left from the light to the first of the left of the first of the light of the left of the left of the light of the left of the left of the light of the left of the l and the training of the control of t escende tendro de la como qualita de elemento de la latina own on an opinio over the major known is a fact of the way in the way of the fact and the contract of the fact of construction of the constr ever a companie est ante est presenta i de la companie per est de la companie de la companie de la companie de perceptron of the compact compact to be existed to see that the contract of th guarden ann i guirus a lagh fhann i de laighe iagus an ar an againeas ag if a bú a airme barain. politica a periodipio de la presenta de la francia de production de la circa de la circa de la francia de la fr The Contraction of agree 1223 to be grobed at great at large care, areas from the al em agrandador los entre sello del conferencia en los estas en entre en entre en la conferencia en la compara

replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Md. Code Ann.*, Bus. Reg. § 8-401. Therefore, the release executed by the Claimant and the payment the Claimant received in exchange for the release of a claim for consequential damages caused by the Contractor are irrelevant to the calculation of the Claimant's actual loss. Accordingly, the Commission calculates the Claimant's actual loss as follows:

\$7,861.00 Amount paid to the contractor

+3,875.08 Cost to correct the contractor's work

- 7,861.00 Original contract price

\$3,875.08 Actual loss

Having considered the evidence contained in the record and the ALJ's Proposed Decision, it is this 10th day of June 2021, ORDERED:

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is AMENDED;
- D. That the Claimant is awarded \$3,875.08 from the Home Improvement Guaranty Fund;
- E. That Daryll Gottschalk shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, Md Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Unless, within twenty days of the date of this Proposed Order, any party files with the

. และเกล่า และว่า การกระบบ ค.ศ. ค.ศ. อธิบัติการณ์วิธีที่สมาสัสดา (ค.ศ. ค.ศ. 1762) (es in lea more l'anten to di termentos
yan yahibutuan geran mengapitikan terlih dipingan m	12 January Alexandria
	Const. It to be reported that the first of the
्रातिक <mark>महिल्ला के किल्ला के अपने कार्य के स्वतिक के अपने के किल्ला के अपने के किल्ला के अपने किल्ला के अपने किल्ला के अपने के किल्ला के अपने किल्ला के</mark>	ger gie ermonigen in to michigania.
ten vitar es estitu de ettre unis et jarelunigo igar	
	and the property of the same
outer of the fire of the confidence with the suppression of the following of	्या कर्षा भारती स्वाद हुन कर्ष
	ille o olimb promin medille pide en
en e	The perfect of the speed of the second
on the second of	
restricted the trade of the complete the control of the property of the control o	हता <mark>र संग्रहीं के साम लेक्सी हती</mark> है ।
า และเกิดเลีย กรุ่งเกาะเกรียก และเกรียก หลุ่งเกาะเกิดเกียก <mark>หลัง</mark> กระเดิเดีย ใช้เกรียก เกาะเกรียกรู้	It was so a manifer of the Foundation
and the companies of th	The authority about the property of the con-
्रक्तिकृति । क्षेत्र क	on the factor of the contraction
· 医抗性 医company to the spin of the distribution to paying a	et et e <mark>t et et e</mark> t et
Taled Articlarity and pitch to be gothered	t (nagos) Distribu <mark>ante en 1775</mark> Di
. Topigal en Manero Doublemanni engladi na la giputa misali nasi kalengo	do lating bug Annog Leon (i.e., p. 12)
	्रेट्ट जिल्हा विश्वविद्या क्षेत्र कर्मा १९०० । स्थानिक क्षेत्र कर्मा १९०० ।
i digentia i galia galagi ji milaheti kashiya (ilifah kesal seti) i	o grantistic estimate participation of the

Commission written exceptions or a request to present argument, then this Proposed Order will become final. By law, the parties then have an additional thirty days to file a petition for judicial review in Circuit Court.

<u>Michael Newton</u>

Chairperson –Panel B
Maryland Home Improvement
Commission



1.00

PROPOSED ORDER

WHEREFORE, this 10th day of June, 2021, 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.

<u>Lauren Lake</u>

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION

क्षेत्र वर्षे हो प्रदेशक के के किस्ता के किस किस के किस के किस के कि The property of the state of the property of the state of and the protection of the configuration of the protection of the configuration of the configu radio reprodució de la completa de ૽ૡૡ૽૱ૢ૱ૹૢૡ૽૽ઌ૽૽ૢૹૢ૽ૹ૾ૢૹઌૺ૱ૡૹૡૣ૽૱ૢઌ<mark>ઌ૽૽ૢ</mark>૽ૢ૽૽ૡૡૢ૾ઌૹઌઌ૱ૺઌ૾ૺૺ૱ઌ૽૽ૡૢઌઌ૽૽૽૽ૺૡ૽ૡઌ૱ૢઌૢ૱૽૽૽૽ઌઌ૱ ngaran angaran sa karawa ngapara 🖟 akara tahini pakan diga ngarahasan bibis 🗀 CONTROL OF THE PARTY OF THE PAR ASSESSED NOTE