

IN THE MATTER OF THE CLAIM OF	* BEFORE NANCY E. PAIGE,
JOHN T. COOPER	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR	* OAH NO.: DLR-HIC-02-09-29606
OMISSIONS OF HENRY HUDGINS	* MHIC NO.: 08 (75) 744
T/A HRH CONSTRUCTION & DESIGN	*
GROUP, LLC	*

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On September 15, 2009, John R. Cooper (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,232.97 for actual losses allegedly suffered as a result of a home improvement contract with Henry Hudgins, T/A HRH Construction & Design Group, LLC (Respondent).

I held a hearing on May 18, 2010 at the Largo Government Center, 9201 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the

Fund. The Claimant represented himself. The Respondent failed to appear after due notice to his address of record.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01 and 28.02.01.

### **ISSUE**

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

Cl. #1. July 6, 2007 Contract between Claimant and Respondent

Cl. #2. October 9, 2007 Complaint

Cl. #3. September 15, 2008 Claim

Cl. #4. July 10, 2008 Proposal of Custom Design Concrete

Cl. #5. Copies of checks

Cl. #6. A-L Photographs

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

GF #1. February 24, 2010 Memorandum from OAH to Legal Services with attachments

GF #2. February 24, 2010 Memorandum from OAH to Legal Services with attachments

GF #3. March 3, 2010 Memorandum from OAH to Legal Services with attachments

GF #4. March 3, 2010 Memorandum from OAH to Legal Services with attachments

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*also* COMAR 09.08.03.03B(2). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he and the Claimant entered into the contract.

Second, the Respondent performed an unworkmanlike and incomplete home improvement. He contracted to build a one-story addition to the Claimant’s home, including a family room and garage. He partially completed exterior walls, but built the walls higher than the walls on the existing house, so they had to be removed and rebuilt. He did not build the roof, did not install windows, and did not complete any interior work. The Claimant secured an estimate from another licensed contractor to complete the work for \$8,100.00.

Having found eligibility for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney’s fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC’s regulations offer three formulas for measurement of a claimant’s actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant supplied documentation that he paid the Respondent \$13,332.97. The cost to complete the work will be \$8,100.00, for a total cost of \$21,432.97. The difference between that cost and the original contract is \$5,432.97. I will therefore recommend an award to the Claimant from the Fund of \$5,432.97.

**CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$5,432.97 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

**RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,432.97; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

August 2, 2010  
Date decision mailed

  
Nancy E. Paige  
Administrative Law Judge

NEP/  
#115568

PROPOSED ORDER

*WHEREFORE, this 5th day of October 2010, 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.*

*Marilyn Jumalon*

*Marilyn Jumalon  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**

IN THE MATTER OF THE CLAIM OF	* BEFORE NANCY E. PAIGE,
JOHN T. COOPER	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
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GF #5. April 27, 2010 Memorandum from OAH to Legal Services with attachments

GF #6. April 27, 2010 Memorandum from OAH to Legal Services with attachments

GF #7. January 12, 2010 Licensing History – computer printout

GF #8. October 6, 2008 letter from MHIC to Respondent with attachments

### Testimony

The Claimant testified on his own behalf.

The Fund did not call any witnesses.

### **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 95388.
2. On July 6, 2007, the Claimant and the Respondent entered into a contract to construct an addition to the Claimant's home. The Respondent was to supply labor and the Claimant was to supply materials.
3. The original agreed upon contract price was \$16,000.
4. The Respondent started work on July 12, 2007 and left the job on August 14, 2007 without completing the work.
5. The Claimant paid the Respondent a total of \$13,332.97.
6. The cost to complete the work is \$8,100.00.
7. The Claimant's actual loss is \$5,432.97.

### **DISCUSSION**

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a) (2010). *See*



*also* COMAR 09.08.03.03B(2). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he and the Claimant entered into the contract.

Second, the Respondent performed an unworkmanlike and incomplete home improvement. He contracted to build a one-story addition to the Claimant’s home, including a family room and garage. He partially completed exterior walls, but built the walls higher than the walls on the existing house, so they had to be removed and rebuilt. He did not build the roof, did not install windows, and did not complete any interior work. The Claimant secured an estimate from another licensed contractor to complete the work for \$8,100.00.

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**CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$5,432.97 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

**RECOMMENDED ORDER**

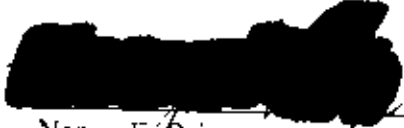
I **PROPOSE** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,432.97; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

August 2, 2010  
Date decision mailed

  
Nancy E. Paige  
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PROPOSED ORDER

*WHEREFORE, this 5th day of October 2010, 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.*

*Marilyn Jumalon*

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Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**