

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF THOMAS J. HURLBERT,</b></p> <p><b>CLAIMANT,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF ERIC CROWELL</b></p> <p><b>T/A CROWELL CONSTRUCTION &amp;</b></p> <p><b>REMODELING, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MICHAEL W. BURNS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH No.: DLR-HIC-02-12-32193</b></p> <p><b>* MHIC No.: 11 (90) 940</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On September 26, 2011, Thomas J. Hulburt (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$53,697.00 for actual losses allegedly suffered as a result of a home improvement contract with Eric Crowell, t/a Crowell Construction & Remodeling, LLC, (Respondent).

I held a hearing on May 17, 2013, at the Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312 and 8-407 (2010). The Claimant represented himself. Niknaz M. McCormally, Assistant Attorney

General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 Replacement Volume & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03.01; 09.08.02.01; and 28.02.01.

### **ISSUES**

Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent? If so, what is the amount of the loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on the Claimant's behalf unless otherwise noted:

- Cl. Ex. 1 Binder with numerous documents – objection to admission sustained; not admitted
- Cl. Ex. 2 Chronology, 7 pages
- Cl. Ex. 3 Cost Summary, 1 page
- Cl. Ex. 4 Cost Justification for Additional Work not included in Contract, 2 pages
- Cl. Ex. 5 Contract, signed March 29, 2010, 5 pages
- Cl. Ex. 6 Copy of check #106, dated March 29, 2010, amount \$44,462.00, and other related check-transaction information, 1 page
- Cl. Ex. 7 Copy of Cashier's check, dated August 19, 2010, amount \$44,000.00, and other related check-transaction information, 2 pages
- Cl. Ex. 8 Copy of check # 108, dated October 20, 2010, amount \$7,000.00, and other related check-transaction information, 1 page
- Cl. Ex. 9 Building Permit, Anne Arundel County, Maryland, with attachments, issue date July 19, 2010, 6 pages

- Cl. Ex. 10 MacIntosh Construction documents – objection to admission sustained – not admitted
- Cl. Ex. 11 Notice to Owner of Intention to Claim a Mechanic’s Lien, with attachments, dated November 16, 2010, 5 pages
- Cl. Ex. 12 Clean Air Heating and Air Conditioning, Co., Inc., Accounting and also checks with other related check-transaction information, 4 pages
- Cl. Ex. 13 Around the Clock Plumbing and Heating, Inc., Invoice, with attachments, including checks and related check-transaction information, 4 pages
- Cl. Ex. 14 MacIntosh Construction, State of Maryland license and Certificate of Liability Insurance, 2 pages
- Cl. Ex. 15 MacIntosh Construction, various documents including invoices; checks, including related check-transaction information, 69 pages
- Cl. Ex. 16 23 photographs; Photo Descriptions for first 15 photographs, 22 pages
- Cl. Ex. 17 TLC, Inc. Estimates for Lighting Repairs and Irrigation Repairs, 2 pages

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

- GF. Ex. 1 Notice of Hearing, dated January 10, 2013, 2 pages
- GF. Ex. 2 Letter to Legal Services from OAH, dated February 12, 2013, with attachments, 5 pages and one envelop
- GF. Ex. 3 Licensing Information for the Respondent, License # 01 76601, printed March 19, 2013, 4 pages
- GF. Ex. 4 Affidavit of Thomas Marr, IV, dated February 26, 2013
- GF. Ex. 5 Transmittal from HIC to OAH, with attachments, 4 pages

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

- L. Ex. 1 Letter, undated, 4 pages
- L. Ex. 2 Anne Arundel County, Department of Inspections and Permits, Permit Status Inspection History Display, printed March 8, 2011

## **Testimony**

The Claimant testified on his own behalf. The Fund did not present any witnesses.

Respondent Eric Crowell testified on his own behalf.

## **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 registration number 01 76601. (GF Ex. 3.)
2. The Respondent's MHIC license expired on or about September 29, 2012. (GF Ex. 3.)
3. During 2009, the Claimant determined that he wanted to have home improvement work done at his residential property located at 403 Walnut Drive, Annapolis, Maryland (the Property).
4. The home improvement work was to include major renovations to the Property involving the building of a second floor addition and enlargement of the kitchen.
5. The Claimant came into contact with the Respondent as a result of a search on Angie's List and discussion ensued regarding home improvement work at the Property.
6. In November, 2009, the Claimant contracted with the Respondent to conduct a study into the feasibility (Study) of the home improvements desired by the Claimant at the property.
7. On or about January 7, 2010, the Respondent completed the study.
8. The Respondent informed the Claimant that it was the Respondent's opinion that there were no zoning or permit variance issues that would be involved with the proposed home improvements at the property. The Respondent also informed the Claimant that a fire sprinkler system (the System) might be required for the property.

9. The Claimant told the Respondent he would not do the home improvement work if the System was required. The Respondent told the Claimant that the Respondent would pay for the System if it was required for the Property.
10. On or about March 29, 2010, the Claimant and the Respondent entered into a contract for home improvement work (the Project) on the Claimant's residence (Contract). (Cl. Ex. 5.)
11. The description of the Project in the Contract included:
  - a) the construction of a second floor addition with four bedrooms and one bathroom;
  - b) the construction of a new roof and front porch;
  - c) installation of windows and siding;
  - d) enlargement of the kitchen
  - e) electrical, plumbing, and HVAC work(Cl. Ex. 5.)
12. The total Contract price was \$133,386.00 to be paid in six installments. (Cl. Ex. 5.)
13. The estimated start date for the Contract was April 1, 2010 and the estimated completion date was September 15, 2010. (Cl. Ex. 5.)
14. The Contract stated that "[a]ll work to be performed pursuant to this Agreement will be commenced promptly and carried out in accordance with the direction and scheduling of the Customer." (Cl. Ex. 5.)
15. Work on the Contract did not commence on April 1, 2010. The initial delay was a result of the Respondent working on other projects.
16. A further delay occurred when the Respondent determined that a variance would be needed for the construction of the front porch. The Respondent's study had not discovered that this variance would be required.

17. The variance for the front porch was approved on or about June 25, 2010.
18. The Respondent took a vacation after the variance was approved which again delayed the work on the project.
19. Work on the project commenced on or about July 24, 2010.
20. The Claimant paid the Respondent \$44,462.00 on March 29, 2010 (Cl. Ex. 6) and \$44,000.00 on August 19, 2010 (Cl. Ex. 7).
21. On or about August 14, 2010, an electrical fire occurred at the Property as a result of the work performed by the Respondent under the Contract.
22. At some point in time the Claimant learned that Respondent had hired non-licensed subcontractors (the Subcontractors) to do work under the Contract.
23. The work performed by the Subcontractors included work on the roof and the installation of siding.
24. The Contract provided that the Respondent could “subcontract portions of this work to properly licensed and qualified subcontractors.” (Cl. Ex. 5.)
25. On or about September 15, 2010, the Claimant became concerned concerning the pace of the work on the Contract, the amount of work completed on the Contract, the quality of the work completed on the Contract and the amount of money he had paid to the Respondent. The Claimant spoke to Respondent about his concerns.
26. The Claimant continued to raise with the Respondent the issues listed in Finding of Fact number twenty-five (25) herein, until the termination of the Contract in November, 2010.
27. On or about October 20, 2010, the Claimant paid Respondent an additional \$7,000.00 (Cl. Ex. 8).
28. In October, 2010 the issue of the System arose when Anne Arundel County (the County) required that the System be installed at the property. The Claimant discussed the

situation with Respondent and Respondent again agreed verbally that if the System was required Respondent would pay for it. They agreed that they would attempt to convince the County not to require the installation of the System.

29. In October, 2010 work on the Contract stopped at the direction of the County because of the issue of the installation of the System.
30. On or about October 29, 2010, the Claimant and the Respondent again discussed the System situation. During this discussion, the Respondent once again agreed to pay for the System if it was required to be installed.
31. On or about October 29, 2010, the Claimant met with Jay Leshinskie of the County Permit Office. The Claimant was told that the ruling from the County was that the System was required to be installed at the Property. The Claimant was also told that the home improvement work was clearly a major improvement to the Property that required the installation of the System and that was clearly the case at all times.
32. The Respondent learned of the County's decision regarding the requirement that the System be installed at some unknown point in time.
33. On or about November 1, 2010, Respondent informed the Claimant that Respondent would not pay for the System.
34. On or about November 1, 2010, Claimant terminated the Contract.
35. After terminating the Contract the Claimant asked that the Respondent supply him with copies of invoices for work performed under the Contract. Respondent failed to provide any invoices to the Claimant.
36. After terminating the Contract the Claimant learned that two subcontractors, Around the Clock Plumbing (Around the Clock) and Clean Air Heating and Air Conditioning (Clean Air), were owed payments under the Contract.

37. The Claimant personally paid Around the Clock Plumbing and Clean Air Heating and Air Conditioning the amounts due them.
38. After November 1 or 2, 2010, the Respondent performed no further work on the Contract.
39. The Claimant made a total of three payments to the Respondent which totaled \$95,462.00.
40. The Claimant received no refund in any amount from the Respondent.
41. On or about November 6, 2010, the Claimant hired McIntosh Construction, LLC (McIntosh) to repair, correct and complete the project (except for the System).
42. In addition to finishing the incomplete work on the original Contract, McIntosh was required to repair, redo and replace other work done by Respondent. (Cl. Exs. 3 and 15.) This work included numerous Contract items, including improperly installed siding, decking, roofing and flashing as well as electrical rewiring required as a result of the August 14, 2010 fire caused by the Respondent's actions.
43. There was extra work performed by McIntosh in addition to the work described in Finding of Fact number forty-two (42) herein and in the Contract. This extra work totaled \$17,700.00. (Cl. Exs. 3 and 15.)
44. On or about November 8, 2010, the Claimant hired Metropolitan Fire Protection (Metropolitan) to install the System.
45. Metropolitan installed the System in November, 2010.
46. McIntosh completed the work on the Property in December, 2010.
47. On or about November 16, 2010, the Claimant received a Notice to Owner of Intention to Claim a Mechanics Lien from The Reisterstown Lumber Company (Reisterstown Lumber) concerning materials supplied to the Respondent pursuant to the Contract. (Cl. Ex. 11.)



48. The amount to repair and complete the Contract was \$87,166.00.
49. The Claimant's actual loss is \$49,242.00.

## DISCUSSION

### Applicable Law

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2010 & Supp. 2012).<sup>1</sup> Under this statutory scheme, licensed contractors are assessed for the monies that subsidize the Fund. When the Fund pays money to a homeowner as a result of the faulty performance of a home improvement contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until the Fund is reimbursed. Md. Code Ann., Bus. Reg. § 8-411. Homeowners who are victimized by the actions of licensed contractors may recover their “actual losses” from this pool of money, subject to a \$20,000.00 limitation on the claim of any one aggrieved homeowner because of the work of any one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2012).

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) (Supp.2012). *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).

The terms “unworkmanlike, inadequate, and incomplete” are not defined by relevant statute,

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<sup>1</sup> Unless otherwise noted, all references to the Annotated Code of Maryland, Business Regulation Article are to the version published in the 2010 Replacement Volume.

regulation, or case law. Therefore, those words are given their “ordinary and common meaning within the context in which they are used.” *Chaney Enters. Ltd. P’ship v. Windsor*, 158 Md. App. 1, 25, (2004), quoting *Polomski v. Mayor and City Council of Baltimore*, 344 Md. 70, 75, (1996).

“Workmanlike” is defined as “characterized by the skill and efficiency typical of a good workman.” Merriam-Webster’s Collegiate Dictionary 1443 (11<sup>th</sup> ed. 2006); see also Webster’s II New Riverside University Dictionary 1328 (1994) (“Typical of or befitting a skilled workman or craftsman.”) Therefore, unworkmanlike means not characterized by the skill and efficiency typical of a good workman.

“Inadequate” means “not adequate.” *Id.* at 627. “Adequate” means “sufficient for a specific requirement.” *Id.* at 15; see also Webster’s New Riverside University Dictionary 78 (1994) (“Able to satisfy a requirement.”). Therefore, inadequate means not sufficient for a particular purpose or not able to satisfy a requirement.

“Incomplete” means “not complete” or “unfinished.” “Complete” means “having all the necessary parts, elements, or steps.” Therefore, incomplete means not having all the necessary parts, elements, or steps or unfinished.

In addition, a remedial statute, like the one here, is “construed liberally in favor of the claimants.” *Lark v. Montgomery Hospice, Inc.*, 414 Md. 215, 228 (2010).

The Claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(e); COMAR 09.08.03.03A(3). The burden is by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2009). For the following reasons, I find that the Claimant has proven eligibility for compensation.

### Analysis

The Fund presented conclusive evidence that the Respondent was, at all relevant times, a licensed home improvement contractor and there is no dispute that the Respondent held a valid

contractor's license during all relevant times. There is also no dispute that the Claimant is an owner and that there is no procedural impediment barring him from recovering from the Fund (too many homes owned, a family relationship to the Respondent, etc.). Md. Code Ann., Bus. Reg. § 8-405(f) (Supp. 2012).

In this case, the Claimant has shown by a preponderance of the evidence that the Respondent failed to perform his obligations under the home improvement contract. The evidence is overwhelming that the Respondent performed unworkmanlike, inadequate and incomplete home improvement work on the Claimant's residence in Annapolis, Maryland.

The Claimant testified that he decided to engage in home improvement work on his property. This work was to include a second floor addition and kitchen expansion. The Claimant searched the website Angie's List and found the Respondent listed with what the Claimant said were "excellent references." The Claimant contacted the Respondent and they agreed that the Respondent would perform a feasibility study for the proposed work. The Claimant paid the Respondent \$3,000.00 to conduct the study. The Respondent reported the results of the study to the Claimant, who said that the Respondent's study indicated that a fire sprinkler system might be required by Anne Arundel County for the project to be approved. The Claimant said he told the Respondent that any such requirement would be a "deal breaker" and he noted that the Respondent responded by saying that if such a system was required by the County the Respondent would pay for it. Additionally, the Respondent told the Claimant that his investigation revealed that no variances would be needed for the project. The parties agreed to a Contract for the project at the property which was signed on March 29, 2010. The Claimant gave the Respondent a check for \$44,445.00 on that date pursuant to the Contract.

According to the Contract work was to begin on April 1, 2010 but did not do so. The Claimant stated he was told by the Respondent that the Respondent was finishing up other

projects first in order to “focus in on this one.” A further delay occurred when it was determined that a variance was needed for the front porch work. This variance had not, apparently, been noted by the Respondent’s study.

Work finally began at the property on or about July 24, 2010, almost four months behind schedule. Within several weeks, the Claimant began to have serious concerns with the progress and workmanship of the work performed on the project. The Claimant stated that his wife drove by the property “everyday” and that often no one was working at the site. In addition, an electrical fire occurred on August 14, 2010 at the property involving electrical work being conducted by the Respondent. This fire occurred when the Claimant was at the property and was extinguished before causing extensive damage to the property. The Claimant made a second payment to the Respondent by check in the amount of \$44,000.00 on August 19, 2010.

The Claimant testified that by September 15, 2010 – the agreed upon completion date in the Contract - he was increasingly concerned about the workmanship and pace of the work under the Contract, as well as the amount of money he had paid to the Respondent and the amount of work actually completed, and he spoke with the Respondent regarding these matters. He testified specifically that he was “starting to get concerned that money was being mishandled” by the Respondent. The Respondent assured him that the work was proceeding appropriately. The Claimant estimated that only 50% of the work was completed by September 15, 2010, although he had paid approximately 66% of the amount due under the Contract by that date.

During October, the issue of the fire sprinkler system again arose. A waiver was sought from the Anne Arundel County Permit Office regarding the installation of the system, which the County had informed the parties would be required at the property. On or about October 13, 2010, the Claimant again spoke with the Respondent regarding the system. It was the Claimant’s recollection that they agreed to request that Anne Arundel County waive the system installation

requirement. The Claimant provided the Respondent another payment in the amount of \$7,000.00 on October 22, 2010. All work on the property ceased during this time awaiting the decision of the Anne Arundel County Permit Office.

On or about October 29, 2010, the Anne Arundel County Permit Office informed the Claimant that the system would indeed be required at the property. The Claimant informed the Respondent of this decision and on or about November 1, 2010, the Respondent informed the Claimant that the Respondent, in spite of his prior, repeated commitments to pay for the system, would not pay for the system and expected the Claimant to pay for the system. As a result of this action by the Respondent, as well as his other ongoing concerns regarding the pace and workmanship of the work performed under the Contract (which was now almost two months behind the Contract due-date for completion) as well as his concerns regarding spending by the Respondent on the project, the Claimant decided to terminate the Contract. The Claimant pointed out during his testimony that “the money was beginning to run out” and the “numbers did not add up”. The Claimant informed the Respondent of his intention to terminate the Contract on or about November 1, 2010.

As part of the termination process, the Claimant said that he asked the Respondent for copies of invoices for the project in order to ensure that all sub-contractors had been paid. The Respondent refused to supply any invoices to the Claimant. The Claimant further noted that he eventually determined that two sub-contractors – Around the Clock and Clean Air - had not been paid by the Respondent and that he had personally paid them both. The Claimant also said he received a Notice of an Intention to Claim a Mechanic’s Lien from the Reisterstown Lumber Company, a vendor who had furnished materials and supplies for the Contract at the Respondent’s request and had not received full payment from the Respondent. Reisterstown

claimed \$24,554.49 due from the Claimant under the lien. The lien was eventually resolved without the Claimant being required to make any payment to Reisterstown.

The Claimant contracted with McIntosh to complete and repair the project in November of 2010. According to the Claimant, McIntosh not only had to finish the project, but also found numerous examples of inadequate and incomplete work performed by the Respondent. In addition, the Claimant contracted with Metropolitan to install the fire sprinkler system, which was installed by Metropolitan in November of 2010.

The Claimant explained in clear, organized detail, including the use of a number of photographs to illustrate his testimony, the work which McIntosh was required to perform to repair, correct and replace work performed by the Respondent under the Contract, as well as what McIntosh and Metropolitan were required to do to complete the Project. Utilizing a Cost Summary he had prepared (Cl. Ex. 3), the Claimant went line by line to describe the work required to repair and complete the Project, which included<sup>2</sup>:

- 7) siding
- 8) decking
- 9) insulation
- 10) drywall
- 11) flooring in the kitchen and refinishing first floor
- 12) install children's bath tile, vanity, toilet, etc.
- 13) second floor stairs railings
- 14) dumpster removal
- 15) plumbing contractor
- 16) HVAC contractor

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<sup>2</sup> The numbers of each item correspond to the number of the line item listed on Cl. Ex. 3. I will utilize these numbers from CL. Ex. 3 for purposes of discussing each specific line item in this decision.

- 17) electrical contractor
- 18) fire sprinkler
- 23) front door improperly installed
- 24) replace windows with correct, required windows (occupancy inspection failed due improper windows)
- 25) fix back decking structure (deck joists warped and not crowned properly)
- 26) replace front deck beam (required by building inspector); porch posts re-positioned (not evenly spaced)
- 27) framing inspection preparation (roof/wall connection improperly installed)
- 28) repair improperly installed roof and flashing
- 30) shrubs and bushes not transplanted
- 32) irrigation system repair and relocation
- 33) exterior low voltage lighting repair and relocation
- 35) electrical wiring repair and replacement in first floor ceiling

The Claimant noted that the work McIntosh agreed to perform and did perform was work contained in the original Contract with the Respondent but also included additional work in the amount of \$17,700.00 which he was not claiming from the Fund<sup>3</sup>. His evidence described in detail what additional work was performed by McIntosh and the amounts paid for this work (Cl. Ex. 4). McIntosh completed the work in December of 2010.

I found the Claimant to be an extremely credible witness. He was very well organized in his presentation, and explained what had transpired clearly and succinctly. His description of the work required to complete the Contract and to repair the faulty work performed by the Respondent was particularly clear and documented. His demeanor was appropriate, businesslike

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<sup>3</sup> I will discuss these items in the calculations I will list in reaching an amount to be proposed for the Claimant's actual loss in this matter.

and professional. His testimony was direct, open and factually-based. He was also honest in his testimony regarding the additional work performed by McIntosh. He explained which items from his Cost Summary (Cl. Ex. 3) was additional work done by McIntosh and had not been completed pursuant to the Contract. His explanation of the work performed and not performed by the Respondent and the work performed by McIntosh to correct or complete the work was clear, concise, factual and methodical – his detailed description provided a complete picture of how the Respondent had performed the Contract in an unworkmanlike, inadequate, and incomplete manner. He also testified that he is not a developer or contractor and he was simply seeking “a roof for his family” and needed a bigger house for his family, including for a new daughter who was born late in 2010. His frustration was very clear. The Claimant was extremely persuasive and credible.

Respondent Eric Crowell also testified. He said there were “delays at the beginning” of the Contract, saying “variances came up from the County” and that there was a “lot of engineering work” required. He did not, however, explain why these “variances” were not discovered during his initial feasibility study or why he agreed to an April 1, 2010 start date if such “engineering work” was required. He claimed that he had an appraiser review the project and that no sprinkler system was required. He also said that he did not tell the Claimant that he would pay for the System. He made various vague, general statements regarding what occurred during the project, including saying that he “was plugging away at the job” and that the work had been performed in a “workmanlike way.” Mr. Crowell claimed that the Claimant was “edgy” and “wanted to be called every day” regarding the project. He admitted that he did not provide invoices to the Claimant, stating that the invoices “were not any of his business.” He claimed that “everyone that needed to be paid got paid.”



I did not view Mr. Crowell to be particularly persuasive or credible in his testimony. He failed to answer the Claimant's very credible detailed testimony, including the issue of the System and that the Respondent had agreed on several separate occasions over at least a period of seven months to pay for the System. It is clear to me that the Claimant told the Respondent that the System was a "deal breaker" before the Contract was agreed to and that the Contract was signed based on the Respondent's clear and explicit promise to pay for the System if the County did require it be installed as a result of the Contract. The Respondent agreed to pay for the System if it was required by the County pursuant to the provisions of the Contract, and then backed-out of that commitment. The evidence is also clear that the Respondent, in spite of his testimony to the contrary, did not pay "everyone that needed to be paid." The Claimant's undisputed payments to Around the Clock and Clean Air, and particularly the potential Mechanic's Lien of Reisterstown Lumber, provide overwhelming evidence that the Respondent did not make payments to these vendors - in spite of receiving substantial funds from the Claimant. The Respondent's claim to have made all payments due under the Contract is false. I also found the Claimant's explanation and description of the inadequate, unworkmanlike and incomplete work in this case far more organized, substantiated and persuasive than Mr. Crowell's vague denials, blanket statements and unsupported claims that he performed workmanlike home improvement services under the Contract.

Mr. Crowell did testify as to some matters credibly, but these were matters which supported the Claimant's position - for example his admission that he utilized unlicensed subcontractors on this project and his statement that he did not supply invoices to the Claimant when asked. To summarize, I find Mr. Crowell's testimony to be unpersuasive and often unbelievable- he did not in any manner refute the Claimant's very credible evidence and testimony.

It is clear that the Claimant has met his required burden of proof in this matter. The evidence is clear that the Respondent had difficulty performing the Contract from the moment it was signed. The Respondent started months behind schedule on the Contract. The Respondent utilized unlicensed subcontractors prohibited by the Contract and had difficulty completing work in a timely and workmanlike fashion under the Contract. The Respondent's work was inadequate and unworkmanlike – it even resulted in an electrical fire in August of 2010 at the Property. The Respondent also agreed to install the System at the property if the System was required by the County. The Respondent's agreement to do so was a clear condition of the formation of the Contract and the Respondent agreed thereafter on other occasions to install that System at his own expense. When the County finally insisted on the System's installation, the Respondent reneged on his promise and agreement to do so. The Respondent also clearly failed to pay several subcontractors and vendors a total of nearly \$40,000.00 for work and supplies. The Claimant's concerns regarding the slow progress on the project, the quality of the work performed and the manner in which the Respondent was spending the money the Claimant paid to him were completely rational and justified by the facts. The Respondent failed to comply with the Contract and the Claimant's decision to terminate the Contract was not only justified, it served to actually mitigate the damages he suffered and would have suffered if he had continued on with the Contract with the Respondent after November 1, 2010. I find that the termination of the Contract was completely justified. The costs of the restoration, repair, replacement, and completion by McIntosh and Metropolitan were clearly proven and just as clearly arose from the unworkmanlike, inadequate, and incomplete home improvement work of the Respondent.

The Claimant testified and presented extensive documentation establishing the Contract terms, his payments to the Respondent, the Respondent's failure to complete the agreed-upon work in a timely and workmanlike manner, the Respondent's failure to pay various vendors and

subcontractors, the contracts to complete the work with McIntosh and Metropolitan, and the nature of the work performed by McIntosh and Metropolitan. The Respondent's evidence completely failed to credibly place any of the Claimant's evidence in dispute – and, in fact, sometimes actually bolstered the Claimant's case. The Fund's representative acknowledged that the evidence clearly established the Claimant's entitlement to an award from the Fund under a formula set forth in COMAR 09.08.03.03B(3). The Claimant has proved his eligibility for compensation.

### Recommended Award

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). Because of the Respondent's "misconduct" described above, the Claimant has established an entitlement to reimbursement on his claim against the Fund. COMAR 09.08.03.03B(2); Md. Code Ann., Bus. Reg. § 8-401. MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3).

COMAR 09.08.03.03B(3) sets forth the following formulas for determining an "actual loss:"

(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.

(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 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)(a) and (3)(b) do not apply to the facts as found. I will, therefore, calculate the Claimant's "actual loss" in accordance with COMAR 09.08.03.03B(3)(c).

The Claimant provided extensive evidence regarding his actual loss. I will explain in detail how I calculated the Claimant's actual loss.

Cl. Ex. # 3 provides clear proof that the Claimant was required to pay the following amounts to repair and complete the project under the Contract:

<u>LINE ITEM #</u>	<u>Work</u>	<u>Amount</u>
8)	decking	\$18,465.00
9)	insulation	\$3,000.00
13)	second floor stairs railings	\$1,300.00
14)	dumpster removal	\$1,130.00
17)	electrical contractor	\$4,500.00
18)	fire sprinkler system	\$7,000.00
23)	front door improperly installed	\$375.00
24)	replace windows with correct, required windows	\$690.00
25)	fix back decking structure	\$350.00
26)	replace front deck beam	\$1,350.00
27)	framing inspection preparation	\$400.00
28)	repair improperly installed roof and flashing	\$650.00

30)	shrubs and bushes not transplanted	\$1,000.00
32)	irrigation system repair and relocation	\$1,534.00
33)	exterior low wattage lighting repair and relocation	\$1,140.00
35)	electrical wiring repair and replacement	
	in first floor ceiling	<u>\$2,750.00</u>
		\$45,634.00

The Claimant also proved that additional work was performed by McIntosh in the amount of \$17,700 and illustrated that he had not claimed that amount from the Fund. Taking into account the amounts Claimant proved that he spent for this additional work (Cl. Ex. 4), the Claimant also proved the following amounts to repair and complete the project under the Contract:

<u>LINE ITEM #</u>	<u>Work</u>	<u>Amount</u>
7)	siding	\$18,911.00
10)	drywall	\$5,500.00
11)	flooring in the kitchen and refinishing first floor	\$2,000.00
12)	install children's bath tile, vanity, toilet, etc.	<u>\$626.00</u>
		\$27,037.00

The Claimant, as discussed, also was required to pay two vendors for work performed under the Contact in the following amounts (as amended):

<u>LINE ITEM #</u>	<u>Work</u>	<u>Amount</u>
15)	plumbing contractor	\$3,100.00 <sup>4</sup>

<sup>4</sup> A review of Cl. Ex. 13 indicates that Around the Clock was paid \$1,550.00 by way of a check on September 17, 2010 by the Respondent. This amount has been deducted from the \$4,650.00 total owed to Around the Clock for the work performed and claimed by the Claimant in Cl. Ex. 3, line item #15. Hence the \$3,100.00 figure found for this line item is listed above.

16)	HVAC contractor	<u>\$11,395.00<sup>5</sup></u>
		\$14,495.00

The total of the various amounts required to repair and complete the Contract was, therefore, \$87,166.00.

The Claimant also presented evidence on other two other items found in Clamant Exhibit #3, line items # 31 and 34, for the purpose of including them as amounts suffered as part of his actual loss. These two items, which involve a tree which was cut down by the Respondent (line item #31) and broken patio stones (line item #34) were consequential damages for items not a part of the Contract. As noted, 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). The tree that was cut down and the damage to the patio stones are regrettable; however, the Contract does not involve cutting down trees or patio stones. I find that these two line items should not be included as measures of the Claimant's actual loss as they are consequential damages and the Claimant is not, therefore, entitled to compensation from the Fund for these alleged damages.

Using the applicable COMAR formula previously noted, the computation is, therefore, as follows:

Amount paid to the Respondent:	\$95,462.00
<i>Plus</i> amount payable to repair and complete:	<u>\$87,166.00</u>
<b>Total:</b>	<b>\$182,628.00</b>
<i>Minus</i> Contract price	<u>\$133,386.00</u>
<b>Actual Loss:</b>	<b>\$49,242.00</b>

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<sup>5</sup> A review of Cl. Ex. 12 indicates that the total due to Clean Air was actually the amount listed above, \$11,395.00, not the amount of \$11,300.00 claimed in Cl. Ex. 3, line item #17. Hence the \$11,395.00 figure found for this line item is listed above.

The Claimant has, therefore, demonstrated an “actual loss” of \$49,242.00. Md. Code Ann., Bus. Reg. § 8-401. The Fund may not, however, award more than \$20,000.00 to one claimant for acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$20,000.00.

The Fund’s representative recommended that the actual loss of the Claimant be found to be in the amount of \$47,658.00 (the amount the Claimant paid on the Contract of \$95,462.00 plus the amount to complete the Contract from line items 7-18 of Cl. Ex. 3 of \$85,582.00 minus the Contract price of \$133,386.00) and that the Claimant be reimbursed in the amount of \$20,000.00 from the Fund.

Based upon my calculations and for the reasons outlined above, I recommend a finding of an actual loss in an amount different than that proposed by the Fund’s representative – the \$49,242.00 actual loss figure found above. I concur with the Fund’s representative, however, that the Claimant is entitled to compensation under the law in the amount of \$20,000.00<sup>6</sup>.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant sustained an “actual loss” as a result of the Respondent’s acts or omissions in the amount of \$49,242.00 and that the Claimant is entitled to compensation from the Fund in the amount of \$20,000.00. Md. Code Ann., Bus. Reg. § 8-401 (2010); Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2012); COMAR 09.08.03.03B(3).

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<sup>6</sup> As I have noted, the governing statute provides that the “Commission may not award . . . more than \$20,000.00 to one claimant for acts or omissions of one contractor . . .” The Commission’s regulations provide that it may not award more than \$15,000.00 in such circumstances. *Compare* Md. Code Ann., Bus. Reg. § 8-405(e)(1)(Supp. 2012) with COMAR 09.08.03.03D(2)(a). The difference between these two enactments constitutes a conflict, as a result of which I am bound to follow the statute. *Thanner Enterprises v. Balt. Cnty.*, 414 Md. 265, 276 (2010).

**RECOMMENDED ORDER**

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is  
**RECOMMENDED** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant  
\$20,000.00; 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.

**Signature on File**

August 7, 2013  
Date Decision Mailed

Michael W. Burns  
Administrative Law Judge

MWB/tc  
# 143533



<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF THOMAS J. HURLBERT,</b></p> <p><b>CLAIMANT,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF ERIC CROWELL</b></p> <p><b>T/A CROWELL CONSTRUCTION &amp;</b></p> <p><b>REMODELING, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MICHAEL W. BURNS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH No.: DLR-HIC-02-12-32193</b></p> <p><b>* MHIC No.: 11 (90) 940</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**FILE EXHIBIT LIST**

**Exhibits**

I admitted the following exhibits on the Claimant's behalf unless otherwise noted:

- Cl. Ex. 1      Binder with numerous documents – objection to admission sustained; not admitted
- Cl. Ex. 2      Chronology, 7 pages
- Cl. Ex. 3      Cost Summary, 1 page
- Cl. Ex. 4      Cost Justification for Additional Work not included in Contract, 2 pages
- Cl. Ex. 5      Contract, signed March 29, 2010, 5 pages
- Cl. Ex. 6      Copy of check #106, dated March 29, 2010, amount \$44,462.00, and other related check-transaction information, 1 page
- Cl. Ex. 7      Copy of Cashier's check, dated August 19, 2010, amount \$44,000.00, and other related check-transaction information, 2 pages
- Cl. Ex. 8      Copy of check # 108, dated October 20, 2010, amount \$7,000.00, and other related check-transaction information, 1 page

- Cl. Ex. 9 Building Permit, Anne Arundel County, Maryland, with attachments, issue date July 19, 2010, 6 pages
- Cl. Ex. 10 McIntosh Construction documents – objection to admission sustained – not admitted
- Cl. Ex. 11 Notice to Owner of Intention to Claim a Mechanic’s Lien, with attachments, dated November 16, 2010, 5 pages
- Cl. Ex. 12 Clean Air Heating and Air Conditioning, Co., Inc., Accounting and also checks with other related check-transaction information, 4 pages
- Cl. Ex. 13 Around the Clock Plumbing and Heating, Inc., Invoice, with attachments, including checks and related check-transaction information, 4 pages
- Cl. Ex. 14 McIntosh Construction State of Maryland license and Certificate of Liability Insurance, 2 pages
- Cl. Ex. 15 McIntosh Construction, various documents including invoices; checks, including related check-transaction information, 69 pages
- Cl. Ex. 16 23 photographs; Photo Descriptions for first 15 photographs, 22 pages
- Cl. Ex. 17 TLC, Inc. Estimates for Lighting Repairs and Irrigation Repairs, 2 pages

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

- GF. Ex. 1 Notice of Hearing, dated January 10, 2013, 2 pages
- GF. Ex. 2 Letter to Legal Services from OAH, dated February 12, 2013, with attachments, 5 pages and one envelop
- GF. Ex. 3 Licensing Information for the Respondent, License # 01 76601, printed March 19, 2013, 4 pages
- GF. Ex. 4 Affidavit of Thomas Marr, IV, dated February 26, 2013
- GF. Ex. 5 Transmittal from HIC to OAH, with attachments, 4 pages

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

- L. Ex. 1 Letter, undated, 4 pages
- L. Ex. 2 Anne Arundel County, Department of Inspections and Permits, Permit Status Inspection History Display, printed March 8, 2011

**PROPOSED ORDER**

*WHEREFORE, this 30th day of September 2013, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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**