

IN THE MATTER OF THE CLAIM
OF ELIZABETH B. WOLFF,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF CHUNG YI,
T/A CYCD,
RESPONDENT

* BEFORE DEBORAH S. RICHARDSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
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* OAH No.: DLR-HIC-02-16-07543
* MHIC No.: 14 (90) 1055

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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DISCUSSION
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STATEMENT OF THE CASE

On October 8, 2015, Elizabeth B. Wolff (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,600.00 in alleged actual losses suffered as a result of a home improvement contract with Chung Yi, trading as CYCD (Respondent).

I held a hearing on September 9, 2016, at the Office of Administrative Hearings (OAH) at 11101 Gilroy Road, Hunt Valley, MD 21031. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. John Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1 - Contract between Claimant and Respondent, October 10, 2013
- Clmt. Ex. 2 - Home Improvement Claim Form, October 5, 2015
- Clmt. Ex. 3 - Check from Claimant to Respondent for \$ 2,600, November 7, 2013
- Clmt. Ex. 4 - Certificate of Liability Insurance, October 21, 2013
- Clmt. Ex. 5 - Letter from Shelley Bell, Cardmember Service, July 3, 2014
- Clmt. Ex. 6 - Notes written by Claimant regarding Claim, April 21, 2014
- Clmt. Ex. 7 - Letter from W. Steven Smitson, Esq. to Kevin Niebuhr, MHIC, June 30, 2014
- Clmt. Ex. 8 - Letter from Peter McConaughy, P.E., Structural Engineer, to Claimant, April 18, 2014, attaching receipt for \$500, April 15, 2014
- Clmt. Ex. 9 - Letter from Peter McConaughy, P.E., Structural Engineer, to Claimant, May 19, 2014
- Clmt. Ex. 10 - Letter from W. Bruce Quackenbush to Claimant, May 23, 2013
- Clmt. Ex. 11 - Letter and proposal from Michaels Home Service's[sic] of Maryland, LLC, June 1, 2014

- Clmt. Ex. 12 - Letter and proposal from American Contracting Services, Inc., to Claimant, June 24, 2014
- Clmt. Ex. 13 - Contract between Claimant and American Contracting, August 21, 2014 attaching payment history and check receipt
- Clmt. Ex. 14 - Account Summary for Claimant's Citibank account, April to May 2014
- Clmt. Ex. 15 - Notice of Dismissal, April 11, 2016
- Clmt. Ex. 16 - Letter and proposal from American Contracting Services, Inc., to Claimant, August 20, 2014

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

- Resp. Ex. 1 - Contract between Claimant and Respondent, October 10, 2013
- Resp. Ex. 2 - Multiple e-mails beginning with October 28, 2013 from Respondent to Claimant
- Resp. Ex. 3 - Text messages between Respondent and Claimant from March 4, 2014 to April 23, 2014
- Resp. Ex. 4 - Article from The Washington Post, The long, white 2013-2014 winter: Bringing snowy back to the D.C. region (season statistics), March 27, 2014
- Resp. Ex. 5 - Weather history for BWI from October 1, 2013 to April 28, 2014
- Resp. Ex. 6 - Multiple e-mails beginning with October 10, 2013 from Respondent to Claimant
- Resp. Ex. 7 - Text messages between Respondent and Patrick Schulader from October 14, 2013 to November 4, 2013
- Resp. Ex. 8 - Multiple e-mails beginning with August 18, 2014 from George Bealefeld to Respondent

Over objection, I allowed the Respondent during his testimony to show me five pictures of the construction project at issue on his iPad. The Respondent did not have copies of the pictures to have admitted into the record. I informed the Respondent that he had five business days to provide copies of those pictures to me, the Claimant and the Fund and that if I did not receive those copies, I would not consider the pictures he showed me on his iPad or his testimony about those pictures. The Respondent did not submit the pictures and I am not considering the pictures or the Respondent's testimony about the pictures.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Letter from Joseph Tunney, Chairman, MHIC, to Respondent, October 9, 2015
- Fund Ex. 2 - Home Improvement Claim Form, October 5, 2015
- Fund Ex. 3 - Letter from Keyonna Penick, MHIC, to Respondent, December 15, 2015
- Fund Ex. 4 - Letter from Respondent to Keyonna Penick, MHIC, with attachments, January 5, 2016
- Fund Ex. 5 - Hearing Order, February 29, 2016
- Fund Ex. 6 - Notice of Hearing, July 25, 2016
- Fund Ex. 7 - Letter from John Hart, Assistant Attorney General, to Matthew Evans, Esq. with attachments, August 15, 2016
- Fund Ex. 8 - Memorandum from Sandra Sykes to Legal Services, with attachments, August 23, 2016
- Fund Ex. 9 - Letter To Whom It May Concern from David Finneran, MHIC, September 8, 2016

Testimony

The Claimant testified in her own behalf.

The Respondent testified in his own behalf.

The Fund did not present any testimony.

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 Contractor's license numbers 01-104337 and 05-133715.
2. At all times relevant to this matter, the Claimant owned a single family home at 9307 Luray Drive, Parkville, Maryland (the Property). The Claimant lives in the Property.

3. In October 2013, the front foundation wall of the Property was cracked and had been for years. The wall began showing signs of movement so the Claimant decided to have it repaired.

4. On October 10, 2013, the Claimant and the Respondent entered into a contract (Contract) to restructure the front foundation wall of the Property, which included "anchoring the wall to ground with anchoring positions, possible void block fiber fill, dry-locking masonry wall, building 2x6 structure wall for lateral support, removing old well plumbing, and capping, pouring new porch concrete slab in front that was damaged and removed during demolition." (Clmt. Ex. 1). The contract stated that work would begin on October 10, 2013 and would be completed by November 10, 2013.

5. The original agreed-upon Contract price was \$13,000.00.

6. The Claimant paid the Respondent a total of \$12,333.34 on her credit card towards the \$13,000.00. The payments were as follows: \$4,333.34 on Oct. 11, 2013; \$5,000.00 on October 18, 2013; and \$3,000.00 on October 22, 2013.

7. The Respondent sub-contracted with OCD Contracting (OCD), an unlicensed contractor, to perform some of the components of the Contract. On October 14, 2013, OCD Contracting began removing the shrubs in front of Claimant's house in order to access the foundation wall. On October 15, 2013, OCD began digging down to access the foundation wall.

8. As soon as the OCD crew dug about two to three feet down outside of the foundation wall, the wall began buckling into the Claimant's basement. OCD supported the wall from the inside using poles and boards anchored to the floor.

9. The Claimant immediately called the Respondent who came to inspect the problem. The Respondent informed the Claimant that the scope of the project had changed. He

said that instead of anchoring the existing wall back into place and repairing it, he would need to tear out most of the wall and replace it.

10. The Respondent and the Claimant orally agreed that the Claimant would pay an additional \$5,200.00 to cover the unexpected additional work to replace the foundation wall.

11. The Respondent sub-contracted with Four L Masonry to perform the masonry work on the contract. Four L Masonry is not a licensed contractor. On October 23, 2013, Four L Masonry finished installing a new block foundation wall in the basement of the Property. On October 24, 2013, Four L Masonry built three block columns outside the new wall, which were stacked blocks leaned against and stuck to the outside of the wall with mortar. On October 25 and 26, 2013, Four L Masonry sealed the outside of the wall with tar and plastic sheets.

12. During construction, as planned, the contractors tore up the Claimant's front concrete porch in order to access the front foundation wall.

13. On October 29, 2013, OCD put in a drainage system, filled the hole outside with dirt and tamped it down.

14. On November 7, 2013, the Claimant gave the Respondent a personal check for \$2,600.00, representing half of the agreed upon additional \$5,200.00.

15. By November 26, 2013, cracks appeared in the Claimant's new foundation wall. The Claimant immediately told the Respondent about the cracks.

16. On December 2, 2013, Wendell¹ from Four L Masonry told the Claimant the new foundation wall was cracking because OCD filled in the hole out front too soon and the wall had not been allowed to cure long enough before the weight of the dirt outside was put against it.

¹ The Claimant testified that Wendell was the principal at Four L Masonry and the person she had direct contact with during this project. None of the parties were able to provide Wendell's last name.

Wendell had his employee chip out some mortar in places where it was cracked and put more mortar on it as a patch.

17. The Claimant continued to point out the cracks in the new wall to the Respondent over the next several weeks. The Respondent told the Claimant the cracks were just settlement and were perfectly normal. He also told the Claimant that on two different occasions a structural engineer had looked at the wall and reported that it was fine and structurally sound.

18. Four L Masonry demolished the remaining portion of the concrete porch on December 2, 2013.

19. The Respondent and Claimant agreed that the new concrete porch would be curved.

20. On December 3, 2013, Four L Masonry laid out the forms for the new porch in a rectangle. When the Claimant told Wendell she had agreed with the Respondent that the porch would be curved, Wendell said that he could not do curves. Ultimately Wendell poured the concrete porch in neither a perfect rectangle nor in the curve shape that the Claimant had requested but rather in an imperfect curved rectangle.

21. When Four L Masonry poured the concrete for the porch on December 4, 2013, the Claimant immediately pointed out to Wendell that the porch was sloped towards the house, which would cause water to run into the wall that had just been replaced. Wendell told the Claimant he would fix it.

22. The new concrete porch also sloped towards the front door.

23. While the concrete was being poured for the porch, Four L Masonry did not support the four posts that were supporting the overhanging roof as the parties agreed; instead Wendell only poured the concrete around the posts. Wendell never removed the forms for the

porch and they were held in place with wooden pegs and chunks of broken concrete. Once the porch was poured, the porch sank about an inch.

24. When Four L Masonry demolished the old porch, it did not support the brick exterior of the home which caused bricks on the front of the house to crack and fall down.

25. On December 5, 2013, the Claimant texted the Respondent to tell him the porch was not properly constructed. After inspecting the porch, the Respondent told the Claimant he would have Wendell tear it up and replace it right away. The Respondent did not offer to fix or replace the foundation wall.

26. On January 30, 2014, the Respondent informed the Claimant that his legal department was searching for Wendell, who was not responding to his calls, and that he would get back to her.

27. On February 4, 2014, Wendell came to look at the porch and said he would be back the following Friday or Monday to tear it out and redo it. The Claimant has not heard from Wendell since that time.

28. On April 7, 2014, Claimant filed a dispute with her credit card company requesting a refund for all of the money she had paid to the Respondent.

29. On April 10, 2014, Mike Cole, a landscape designer the Claimant knew, came to look at the Property. Mr. Cole recommended the Claimant have an engineer inspect the new foundation wall.

30. On April 15, 2014, Peter McConaughy, P.E., a Structural Engineer with McConn Engineering, met with the Claimant to inspect the repairs made to her front foundation wall. As a result of that inspection, Mr. McConaughy issued an Engineering Report on April 18, 2014, which accurately revealed the following deficiencies in workmanship and standard of care:

1. The replacement portion of wall was constructed with 10" masonry block on the original, first two courses of 12" masonry. In a photo we saw that the 12" CMU² was not filled solid with grout and the face of the 10" CMU sits on the hollow portion of the block below. This constitutes a building code violation.
2. The height of retained backfill exceeds the structural capacity of the 12" unreinforced hollow block wall (which is why the original wall failed). The 10" thick replacement wall further reduces its structural capacity, and a similar failure can be expected in the future unless additional reinforcing measures are implemented to strengthen the "repaired" wall.
3. During the wall replacement the original CMU was removed, leaving the brick veneer with no vertical support for several days. Eventually 3"x3" angles were installed to span approximately 12 ft. between new masonry "piers", but our calculations indicate that the angles are structurally inadequate to carry the brick. Excessive deflection has already resulted in cracking of the brick veneer, which can be expected to continue indefinitely.
4. The 10"x16" masonry "piers" supporting the 3"x3" angles offer negligible structural reinforcing to the wall, and they do not appear to be filled solid with grout as required by the building code for a masonry pier of this height. In a photo these "piers" appear to have been constructed directly on the dirt at the bottom of the excavation, without a footing or foundation of any kind. Subsequent vertical movement of the piers (and whatever structure they supposedly support) is to be expected.
5. The wood sill plate and anchor bolts that originally secured the house to the top of the front foundation wall were retained in place, but the anchor bolts were not grouted into the top course of the new CMU (they came loose at our touch). Accordingly, there is no direct mechanical connection of the house to the replacement foundation wall.
6. There is an approximately 3/8" air gap between the bottom of the original sill plate and much of the replacement wall, so there is no vertical support to the sill plate. Several electrical wires which originally ran along the face of the sill plate were caught in a length of the gap and are now pinched under the weight of the house.
7. A new exterior foundation drain was installed approximately 12" or more above the basement floor slab. The building code clearly requires that an exterior foundation drain be at or below the elevation of the basement floor.

² Concrete masonry unit.

8. The trench was backfilled by hand with little to no mechanical compacting, and significant consolidation and settling of the backfill has already occurred (and can be expected to continue). Loose backfill material is entirely unsuitable for supporting the slab-on-grade replacement concrete porch. We observed a void below the replacement slab which extends much of its 28 ft. such that the new porch slab is now hanging on the 3"x3" angle and/or the face of the foundation wall.
9. The quality of workmanship exemplified in the front porch slab is deplorable. The slab is 5" out of level in its 28 ft. length, and there is negligible or negative cross slope so water pools on the surface. No control joints or reinforcing were installed, and at least one shrinkage crack has already developed near the front door. This entire porch slab should be removed and replaced using proper construction techniques, including control joints, isolation joints, internal reinforcing, competent subgrade with gravel drainage, proper slope and grade, hard trowel (or broom) finish, and metal post bases to keep the wood posts from contacting the concrete.
10. The building code requires that the finish grade slope a minimum of 5% away from the building for at least 10 ft., but the present grading slopes towards the house in a manner that will impound water adjacent to the foundation and in the window wells. This will lead to increased hydrostatic pressure and will contribute to premature failure of the wall. The backfill should be regraded and the slope periodically corrected as the soil compacts and settles.
11. With a metal detector we scanned the replacement wall to locate any reinforcing steel. No vertical reinforcing was detected (although several photos show a few half-height bars). We did detect horizontal reinforcing at approximately 16" on center (alternate courses), but it was installed discontinuous with gaps of 12" or more, which render it virtually ineffective.

(Clmt. Ex. 8).

31. The Respondent did not obtain any permits for this construction project.
32. At some point after Wendell disappeared, the Respondent offered to have another concrete sub-contractor come to the Claimant's home and pour a new porch.
33. On April 23, 2014, the Claimant texted the Respondent that he should not call her, he should contact her attorney and that neither he nor his sub-contractors were allowed to return to the Property.

34. The Claimant requested an estimate from American Contracting Services, Inc. to repair the work. On May 23, 2014, W. Bruce Quackenbush of American Contracting sent a letter to the Claimant which included the following: “[W]e inspected your home and reviewed the documentation from your engineer, to wit, his initial report of the damages and the follow up letter outlining the corrective action required. There are significant deficiencies that need correction. They are very well outlined in the reports from the engineer. We completely agree with his assessment. Basically the front wall will need to be removed and rebuilt, the porch removed, the slab repoured and new columns put into place, among other things.” (Cl. Ex. 10).

35. The Claimant obtained an estimate from Michaels Home Service’s [sic] of Maryland LLC, a licensed contractor, to repair the foundation wall and make repairs to the house caused by the poor workmanship. The estimate, dated June 1, 2014, included the following assessment of the work done by the Respondent:

This job was one of the most incomplete amateurish, and at this point, structurally unsound projects I have seen in 18 years of foundation work. This work needs a complete redo. This job could have been done quite inexpensively from the beginning had a structural engineer been hired as a consultant to approve the scope of the repairs necessary to complete the job.

(Cl. Ex. 11).

36. The Claimant received a refund from her credit card company on July 3, 2014 in the amount of \$12,333.34.

37. Beginning in August of 2014, the Respondent, through his attorney, attempted to inspect the Property.

38. The Claimant signed a contract with American Contracting Services on August 21, 2014 to replace the foundation wall, replace the concrete porch, and repair the

damages to the house that were caused by the faulty construction. The contract price was \$44,850.00.

39. The Claimant's actual loss is \$2,600.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).³ “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125, n. 16 (2002) (quoting Maryland Pattern Jury Instructions 1:7 (3rd. ed. 2000)).

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) (2015);⁴ *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. There is no prima facie impediment to the Claimant's recovery from the Fund (being related to or employed by the Respondent; recovering damages from the Respondent in court or through insurance stemming from the same facts that are the basis of her

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

claim; not occupying the property that is the subject of the contract; or owning more than three houses). Md. Code Ann., Bus. Reg. §§ 8-405(f) and 8-408(b)(1).

The Claimant has shown that the Respondent provided an unworkmanlike, inadequate and incomplete home improvement. The front foundation wall of the Claimant's Property cracked almost immediately after it was installed. It was also immediately apparent, even to a layperson, that the porch was improperly constructed. The porch sloped toward the house, was uneven, and lacked proper support for the columns in front of the house.

The Claimant made several complaints to the Respondent about the wall having cracked within weeks of installation. The Respondent told the Claimant that the cracks were only settlement and the wall was structurally sound.

The Claimant obtained a detailed and convincing Engineering Report outlining the deficiencies in the foundation wall. The end result of this report, detailed above in the Findings of Fact, is that the wall is not structurally sound. The Claimant requested estimates from two licensed contractors to repair the wall and porch. Again, as detailed above, both of those contractors concurred with the Engineer Report.

Regarding the concrete porch, the Respondent did not deny that the work was deplorable. However, the Respondent insisted that the concrete porch was never intended to be permanent. He said that by the time the work on the wall had been completed, it was too cold to do a complete and proper job on the concrete porch. The weather was too cold at that time to pour concrete. Therefore, he testified that he had instructed Wendell to pour a small, basic, bare bones concrete porch so that the Claimant did not have to walk from her driveway to her front door through the mud throughout the winter. He believes that Wendell ended up pouring a full porch because he had extra concrete on his truck that he wanted to use. The Respondent said that he always intended to pour a proper porch when the weather was appropriate. The Claimant

testified, credibly, that the Respondent never told her the concrete porch was intended as a temporary fix. In any event, even if the Respondent had actually instructed Wendell to pour a temporary concrete porch that would be replaced in the Spring, even the temporary porch was unworkmanlike and inadequate, as it sloped towards the house, allowing water to pool directly in front of the brand new front foundation wall.

The Respondent testified that his subcontractors were supposed to pull the permits for this job and he acknowledged that it was his fault for not ensuring that it was done. However, the Respondent did not acknowledge that the front foundation wall was structurally unsound, despite the detailed Engineering Report, and maintained adamantly that the wall was built with 12" masonry block that was an exact match to the block already in place. He also insisted that Wendell used rebar to reinforce the wall. As evidence of this fact, he pointed out that he saw rebar on site during a visit and the rebar was no longer visible once the wall was constructed, leading him to believe Wendell must have used rebar in the wall.

The Respondent's primary contention is that he was denied an opportunity to inspect the Property for the alleged deficiencies and to remediate the problem. He argues the Claimant rejected good faith efforts to repair. To be sure, the Respondent did introduce into evidence a series of emails between his attorney and the Claimant's attorney, beginning in August 2014, illustrating the Respondent's attempts to inspect the Property. The Respondent contacted the Claimant through her attorney because on April 23, 2014, the Claimant learned from the Engineering Report how significant the problems were with the wall, and told the Respondent not to return to her property and to deal directly with her attorney. Not only did the Claimant learn of the seriousness of the workmanship problem at that time, but she also began to experience damages to her home as a result of the poor workmanship. For example, cracks began

appearing on the wall around her bay window and the brick veneer on the front of her house began falling off because the weight had not been properly supported during construction.

The Fund did not oppose the Claimant's claim and conceded that the Claimant sustained an actual, compensable loss. First, the Fund acknowledged that pursuant to Md. Code Ann., Bus. Reg. 8-405(b), a contractor is responsible for the acts of his subcontractors, whether or not an express agency agreement exists. The Fund found the Engineering Report persuasive in determining the Respondent had provided inadequate and unworkmanlike repairs. In contrast to the persuasive Engineering Report, the Respondent's opinions are based on assumptions, such as seeing the rebar on the scene, even though the Respondent himself is not a mason.

The Fund also addressed the Respondent's contention that the Claimant made an unreasonable rejection of good faith efforts to resolve their dispute pursuant to section 8-405(d) of the Business Regulation Article of the Maryland Code. On this issue the Fund pointed out that Wendell came to look at the Property on February 4, 2014. Wendell said he would be back the following Friday or Monday to tear it out and redo it. The Claimant never again heard from Wendell. The Fund recommended that based on this failure to appear and remediate the porch problems, it was reasonable to reject any subsequent efforts on the Respondent's part to remediate. Moreover, the Fund recommended that the Engineering Report obtained in April 2014, which revealed the serious problems with the wall, made it reasonable to reject any offers by the Respondent to remediate.

I agree with the Fund and conclude that the Claimant did not unreasonably reject any good faith offers by the Respondent to resolve the problems with the wall and the porch stemming from his poor, inadequate and incomplete workmanship. The work on the Claimant's Property was undoubtedly unworkmanlike, resulting in significant damages to the Claimant's Property. The Claimant acted reasonably in not allowing a contractor to return who had already

caused such significant damage to her Property. Therefore, the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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 original agreed upon contract price was \$13,000.00. The Claimant paid the Respondent a total of \$12,333.34 on her credit card towards the \$13,000.00. After the scope of the intended project changed from repairing the wall to replacing the wall, the parties agreed that the Claimant would pay the Respondent an additional \$5,200.00. On November 7, 2013, the Claimant gave the Respondent a personal check in the amount of \$2,600.00, representing half of the agreed upon additional \$5,200.00. On July 3, 2014, the Claimant received a refund from her credit card company in the amount of \$12,333.34.

The Fund recommended that the Claimant is entitled to receive \$2,600.00 to compensate her for actual losses caused by the Respondent's acts and omissions—the maximum amount permitted by the statutory and regulatory scheme. The calculation under the above formula is as follows:

	\$2,600.00	--	amount paid (because other amounts were returned)
+	\$44,850.00	--	cost to correct or complete work ⁵
	\$47,450.00	--	subtotal
-	\$18,200.00	--	less the original contract price (13,000 + 5,200)
	\$29,250.00		

Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). Therefore, the Claimant is limited to \$2,600.00, which is the amount paid by the Claimant to the Respondent.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant sustained an actual and compensable loss of \$2,600.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03 B(3)(c).

⁵ The Fund addressed the fact that the quote from American Contracting Services for \$44,850.00 to repair the wall and porch did not exclude the additional consequential damages that had been incurred by the Claimant. While it is clear that a portion of that \$44,850 is attributable to consequential damages, the quote is so high compared to the original contract price of \$18,200, and the Claimant is ultimately limited to a \$2,600.00 award, that I agree with the Fund that it is still reasonable to use this figure in this calculation.

RECOMMENDED ORDER

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


ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,600.00; 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 (10%) as set by the Maryland Home Improvement Commission;⁶ and

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

Signature on File

November 29, 2016
Date Decision Issued


Deborah S. Richardson
Administrative Law Judge

DSR/sw
164944

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 27th day of January, 2017, 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.

Michael Shilling

***Michael Shilling
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

