

IN THE MATTER OF THE CLAIM	*	BEFORE MARY SHOCK,
OF DORIS MOORE,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
MICHAEL CHENOWETH,	*	OAH No: DLR-HIC-02-15-37209
T/A M&A HOME CONTRACTORS,	*	MHIC No: 15 (90) 982
INC.,	*	
RESPONDENT	*	

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On June 29, 2015, Doris Moore (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,400.00 in alleged actual losses suffered as a result of a home improvement contract with Michael Chenoweth, trading as M&A Home Contractors, Inc.

On May 4, 2016, I held a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. The Respondent represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

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); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; COMAR 28.02.01.

### ISSUES

1. Was the Respondent licensed by the HIC at the time he performed home improvement for the Claimant?
2. If so, did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
3. If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits for the Claimant:

- |        |   |
|--------|---|
| CL #1  | Claimant's Statement, April 17, 2016  |
| CL #2  | Letter from Claimant to MHIC, March 15, 2015  |
| CL #3  | Letter from Claimant to District Court of Maryland for Baltimore City, July 24, 2015                                  |
| CL #4  | Photocopies of photographs of concrete pad (three), undated   |
| CL #5  | Photocopies of photographs of concrete walkway (four), undated  |
| CL #6  | Photocopies of photographs of concrete (two), undated   |
| CL #7  | Letter from Respondent to MHIC, October 26, 2015  |
| CL #8  | Contract, August 25, 2011   |
| CL #9  | Respondent's Install Checklist, September 14, 2009  |
| CL #10 | District Court of Maryland for Baltimore City, Entry of Appearance and Notice of Intention to Defend, August 21, 2015 |

CL #11 Letter from Claimant to MHIC, September 10, 2015  
CL #12 District Court of Maryland for Baltimore City, Complaint, July 24, 2015;  
Certificate of Service, September 18, 2015; and Hearing Notices, July 28,  
2015  
CL #13 Complaint, March 23, 2015, with ounce of gravel from walkway  
CL #14 Letter from Respondent to MHIC, April 10, 2015

I admitted the following exhibit for the Respondent:

RSP #1 Photographs of walkway (seven), undated

I admitted the following exhibits for the Fund:

GF #1 Notice of Hearing, March 30, 2016, and Hearing Order, October 30, 2015  
GF #2 Respondent's Licensing History, May 2, 2016  
GF #3 Letter from MHIC to Respondent, October 19, 2015, and Home  
Improvement Claim Form, June 29, 2015

### Testimony

The Claimant testified for herself. The Respondent testified for himself. The Fund did not call any witnesses.

### PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The HIC licensed the Respondent on November 23, 1993. He was continually licensed from that date through July 29, 2010.
2. The Respondent was not licensed from July 30, 2010 through May 30, 2012, when he was again licensed effective May 31, 2012.
3. The Claimant and the Respondent entered into a contract on August 25, 2011 for concrete paving work at the Claimant's residence.
4. The Respondent last work on the home improvement on December 10, 2011.

## DISCUSSION

In this case, the Claimant bears the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217; COMAR 09.08.03.03A(3). A preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to 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). 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 (2015). For the following reason, I find that the Claimant has not proven eligibility for compensation.

The Fund does not cover any claims against an unlicensed contractor. The Respondent was not a licensed home improvement contractor at the time he entered into the contract with the Claimant or when he performed the work. The parties entered into a contract on August 25, 2011. The Respondent completed the work by December 10, 2011. The Claimant maintained that she contacted the MHIC and was told that the Respondent was a licensed contractor. She did not provide the date she contacted the MHIC, or the full name of the person who gave her information. Without more, the Claimant's testimony alone fails to refute the MHIC records showing that between July 29, 2010 and May 30, 2012, the Respondent's license lapsed. (GF #2.) Because the Respondent was unlicensed at the time of the home improvement contract and work in 2011, the Claimant cannot recover an award from the Fund.

**PROPOSED CONCLUSION OF LAW**

I conclude that because the Respondent was unlicensed at the time he entered into a contract with the Claimant and at the time he performed the home improvement, the Claimant is not entitled to an award from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a).

**RECOMMENDED ORDER**

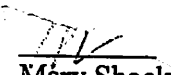
I **RECOMMEND** that the Maryland Home Improvement Commission:

**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.

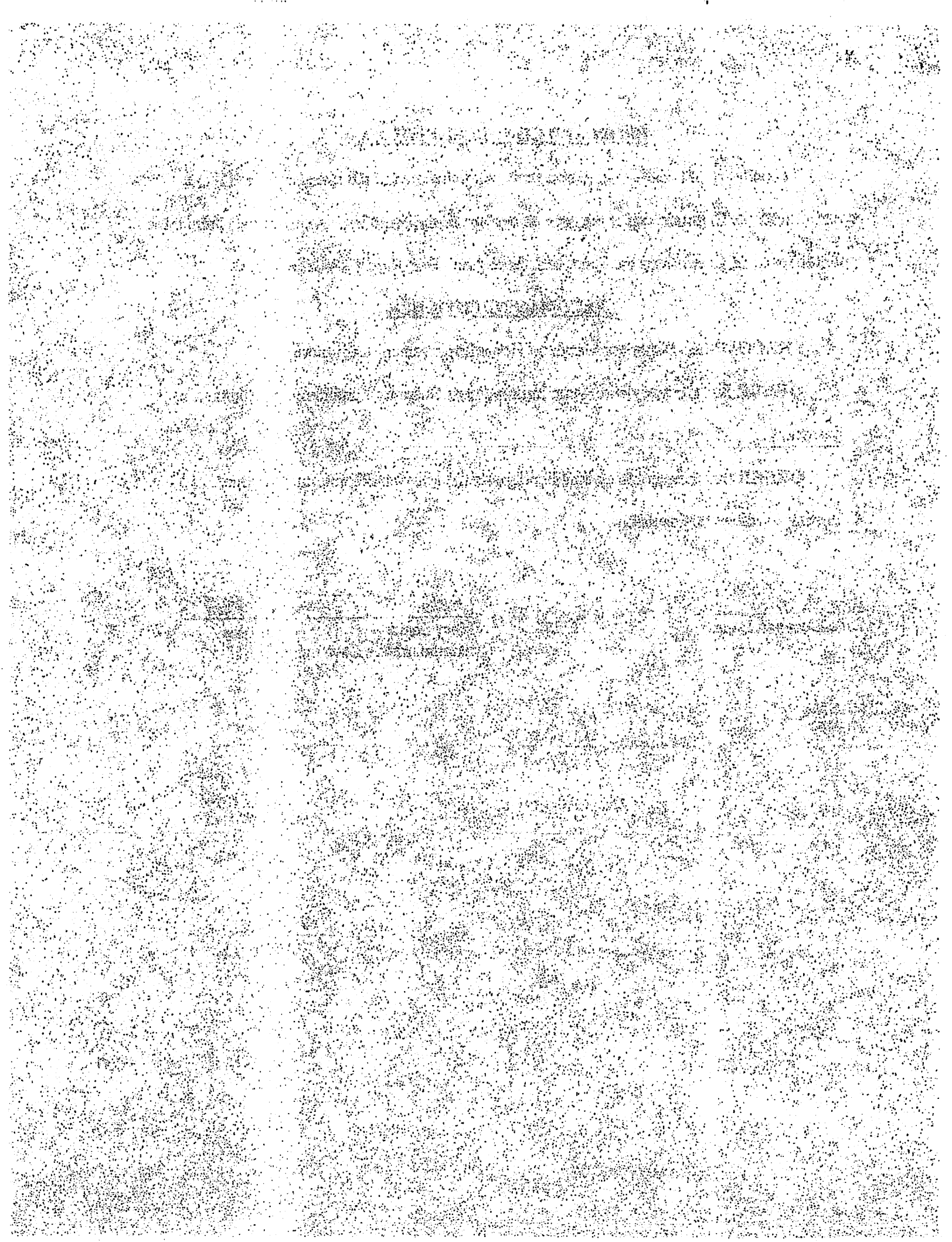
**Signature on File**

June 21, 2016  
Date Decision Issued

  
Mary Shock  
Administrative Law Judge

*MS*

MKS/kkc  
#162842



**PROPOSED ORDER**

***WHEREFORE, this 3rd day of August, 2016, 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.***

***Joseph Tunney***

***Joseph Tunney  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**