IN THE MATTER OF THE CLAIM OF MARVIN BARRASH	*	**MARYLAND HOME IMPROVEMENT COMMISSION**
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AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMMISSIONS OF GARY COOPER t/a COOPER RESTORATION & REMODELING, LLC	*	**MHIC CASE NO. 16(05)1103** **OAH CASE NO. DLR-HIC-02-16-37080**
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on May 4, 2017. Following the evidentiary hearing, the ALJ issued a Recommended Decision on August 2, 2017, concluding that the homeowner Marvin Barrash ("Claimant") sustained an actual and compensable loss of $20,000 as a result of the acts and omissions of the contractor Gary Cooper t/a Cooper Restoration & Remodeling, LLC ("Contractor"). *ALJ Recommended Decision* p. 16. In a Proposed Order dated September 12, 2017, the Maryland Home Improvement Commission ("MHIC") affirmed the Recommended Decision of the ALJ to award the Claimant's $20,000 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On January 18, 2018, a hearing on the exceptions filed in the above-captioned matter was held before a two- member panel ("Panel") of the MHIC. The Claimant and the Contractor were both present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. Pursuant to Maryland Annotated Code, Business Regulation Article ("BR") §8-313(b), a hearing panel of the Commission is to consist of three Commission members. The panel must also contain at least one member who has experience in some phase of the business of home improvement, and at least one consumer member. The consumer member scheduled to participate in this hearing did not appear. The

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Contractor and the Claimant were asked at the outset of the hearing whether they wished to proceed with a hearing panel consisting of only two members, both of whom were engaged in the business of home improvement, or have their hearing postponed so that a full three-member hearing panel could be present to hear the case. Both the Contractor and the Claimant agreed to proceed with the two-member panel.

At the beginning of the hearing, the Panel reminded the parties that because no requests to admit new evidence were submitted, and no transcript of the hearing of the ALJ was provided, the parties would be limited to citing to the ALJ's decision and any exhibits introduced into evidence at the OAH hearing. The Contractor then raised, for the first time, the claim that he was not able to attend the OAH hearing below because he had emergency surgery for torn tendons in his knee. When questioned by the Panel as to whether he notified OAH of the medical emergency either before or after the hearing, the Contractor responded that he had not. Moreover, the Contractor has failed to produce any documentation to either OAH or this Panel proving that he had to miss the hearing due to emergency surgery on his knee. The Panel finds that the Contractor has not shown good cause for his failure to appear at the OAH hearing and will not remand this case for another hearing before OAH. Therefore, pursuant to Code of Maryland Regulations ("COMAR") 09.01.03.09(I), the parties were limited to citing to the ALJ's decision and any exhibits admitted at the hearing below.

The main argument raised by the Contractor at the exceptions hearing before this Panel was that he did not abandon the job but rather stopped work when the Claimant failed to pay the next draw. The fact that the Claimant stopped payment on the contract is not in dispute. The ALJ, however, did not find Claimant's withholding of further payments to be a bar to recovery from the Fund. *ALJ Recommended Decision* p. 13. The ALJ found that the Claimant informed

the Contractor that he would not make any further payments until the Contractor had provided the receipts and warranty documents for certain items purchased for the home under the contract. *ALJ Recommended Decision* pp. 8-9. The ALJ further found that "much of the work that the Claimant had already paid for remained incomplete or in an unworkmanlike and/or inadequate state," and therefore the Claimant's request to receive receipts and warranty documents prior to making any further payments was reasonable. *ALJ Recommended Decision* p. 13. Having heard the arguments presented by the parties, the Panel does not find that the ALJ erred in her decision and will not overturn it on exceptions. The ALJ's decision is thorough, supported by the evidence in the record and correct as a matter of law.

Having considered the parties' arguments, the documentary evidence contained in the record, and the ALJ's Recommended Decision, it is this **17th** day of **April 2018 ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND

C. That the Recommended Decision and Order of the Administrative Law Judge is **AFFIRMED;**

D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Andrew Snyder
Chairperson –Panel
Maryland Home Improvement Commission

IN THE MATTER OF THE CLAIM	*	**BEFORE JENNIFER A. NAPPIER,**
OF MARVIN BARRASH,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: DLR-HIC-02-16-37080**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 16 (05) 1103**
OMISSIONS OF GARY COOPER,	*	
[T/A COOPER RESTORATION &	*	
REMODELING, LLC]	*	
RESPONDENT	*	

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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 July 20, 2016, Marvin Barrash (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $212,475.66 in alleged actual losses suffered as a result of a home improvement contract with Cooper Restoration & Remodeling (Respondent).[1] After an investigation, the Commission issued

[1] The holder of the Respondent's MHIC license is Gary Cooper. Therefore, the case name reflects Gary Cooper, t/a Cooper Restoration & Remodeling, LLC, as the Respondent.

a Hearing Order on November 28, 2016 and forwarded the case to the Office of Administrative Hearings (OAH).

I held a hearing on May 4, 2017 at the Kent Island Branch of the Queen Anne's County Library in Stevensville, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Neither the Respondent, nor a representative for the Respondent, appeared for the hearing. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.[2]

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 (2014 & Supp. 2016); COMAR 09.01.03; 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?

[2] Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on March 2, 2017, COMAR 09.08.03.03A(2). Respondent received the certified mail copy on March 4, 2017. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent received proper notice, and proceeded to hear the captioned matter.

SUMMARY OF THE EVIDENCE

Exhibits

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

CL Ex. 1	Contracts between the Claimant and Respondent, various dates
CL Ex. 2	Copies of checks written to Cooper Restoration, various dates
CL Ex. 3	Emails between the Respondent and the Claimant, various dates
CL. Ex. 4A	Photo of deck support pier installed by Respondent, November 2016
CL. Ex. 4B	Photo of deck support pier installed by Lauer Construction, April 2017
CL. Ex. 4C	Photo of deck support piers, November 2016
CL. Ex. 4D	Photo of proper deck support pier footer, April 2017
CL Ex. 5A	Photo of incomplete work on the exterior backside of the home, March 2016
CL Ex. 5B	Photo of incomplete work on the exterior front of home, March 2016
CL Ex. 6A	Photo of the interior of the attic, March 2016
CL Ex. 6B	Photo of the exterior of the attic, March 2016
CL Ex. 7A	Photo of excavated deck footers in the Claimant's yard, April 2017
CL Ex. 8	Photo of sunroom foam insulation installed by Lauer Construction, circa January 2017
CL Ex. 9A	Photo of fireplace insert installed by Lauer Construction, unknown date
CL Ex. 9B	Photo of exhaust stack and electrical wires, April 2016
CL Ex. 9C	Photo of fiberglass, April 2016
CL Ex. 9D	Email from Old Line Chimney Sweeps, LLC to the Claimant, April 25, 2016, with attachment
CL Ex. 10	Lauer Construction, Inc. Contract, August 1, 2016
CL Ex. 11	Elitedeals.com packing slip, order date January 25, 2016

CL Ex. 12 Building permit, approved December 9, 2015

CL Ex. 13 Photo of sunroom flooring, March 12, 2016

CL Ex. 14A Complaint Form (Amendment #1), March 30, 2016, with attachments

CL Ex. 14B Complaint Form (Amendment #2), April 2, 2016, with attachments

CL Ex. 14C Complaint Form (Amendment #3), April 5, 2016, with attachments

CL Ex. 14D Complaint Form (Amendment #4), April 18, 2016, with attachments

CL Ex. 14E Complaint Form (Amendment #5), April 27, 2016, with attachments

CL Ex. 15 Photo of unfinished fireplace, unknown date

CL Ex. 16 Statement of Account, April 11, 2017, with attachments

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

GF Ex. 1 Notice of Hearing, March 2, 2017, with attached certified mail and domestic return receipts

GF Ex. 2 Hearing Order, November 28, 2016

GF Ex. 3 MHIC Licensing Information for the Respondent, printed May 3, 2017

GF Ex. 4 Home Improvement Claim Form, received July 20, 2016

GF Ex. 5 Letter to Gary Cooper from MHIC, August 11, 2016

Testimony

The Claimant testified on his own behalf. The Fund did not present any witnesses. No one appeared to testify on behalf of the Respondent.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 130480.

2. At all relevant times, the Claimant was the owner of a home located at Woodmoor Road in Stevensville, Maryland, which was his personal residence.

3. The Claimant is not an employee, officer or partner of the Respondent, nor is he related to any of the Respondent's employees, officers or partners, either by blood or marriage.

4. Gary Cooper holds the Respondent's MHIC license.

5. The Claimant and the Respondent entered into a series of contracts (collectively referenced as the Cooper Contract) between October 21, 2015 and December 31, 2015.

6. On October 21, 2015, the Claimant and the Respondent entered into two contracts. The first contract included the following:

- Framing in one room (approximately 9'3 x 13')
- Installation of one 30" door
- Installation of four 4" recessed lights
- Installation of one ceiling fan
- Installation of two light switches
- Installation of electrical outlets per code
- Installation of drywall on walls, mud sand and finish
- Paint walls where drywall is installed, with one coat of primer and one coat of paint
- Installation of the base around the bottom inside and outside of installed walls

The agreed-upon contract price was $3,525.00. The contract provided that the Claimant would pay an initial deposit of $1,000.00, $2,000.00 at the start of the job, and $525.00 upon completion of the job. The contract did not include either a start or completion date.

7. The second October 21, 2015 contract included the following:

- Demolition of the existing sun room and wooden deck; and hauling away the trash
- Construction of an 18'4" x 22 sunroom:
  - Installation of six 5' x 5' Anderson sliding windows
  - Framing a bump out area for a fireplace insert
  - Building a chase for a double wall vent pipe
  - Removal of a window and door in the house and installation of one beam in the opening

- Installation of 1 x 6 tongue and groove cedar planks on ceiling
- Installation of one ceiling fan
- Installation of electrical outlets around perimeter of room per code
- All support beams to be pressure treated
- All floor joist were to be pressure treated
- All main post were to be treated
- Insulation of bottom of room and installation of 1x6 beaded soffit for ceiling
- Framing the roof out per specifications
- Matching roof shingles
- Installation of siding around perimeter

- Construction of 12' x 15' screen room:
  - Use screen tight system in screen room
  - Use pressure treated lumber for floor joist
  - All support beams to be pressure treated
  - All support posts to be treated
  - Cut out door opening in kitchen to access room
  - Installation of one 5' sliding door
  - Installation of tongue and groove planks on ceiling
  - Installation of one ceiling fan

The agreed-upon contract price was $81,000.00. The contract provided that the Claimant would pay an initial deposit of $10,000.00, $20,000.00 at the start of the job, $10,000.00 after demolition, $10,000.00 after framing of the sunroom was completed, $10,000.00 upon completion of the sunroom, $10,000.00 at the start of work on the screen room, $8,000.00 after start of the framing and $3,000.00 upon completion. The contract did not include either a start or completion date.

8. The Claimant and the Respondent entered into a third contract on October 28, 2015. That contract included the following:

- Removal of the existing siding on the perimeter of the house
- Installation of new Novistone DS Drystack stone panel siding

The agreed-upon contract price was $25,600.00. The contract provided that the claimant would pay an initial deposit of $10,000.000, $10,000.00 at the start of the job, $3,100.00 upon

"substantial completion" of the job, and $2,500.00 upon "final completion" of the job. The contract did not include either a start or completion date.

9. The Claimant and Respondent entered into a fourth contract on or about November 12, 2015. That contract was for installation of one 34" attic fan for an agreed upon contract price of $1,287.00. The contract provided that the Claimant would pay an initial deposit of $687.00 and then pay the $600.00 balance upon completion of the work.

10. The Claimant and Respondent entered into a fifth contract on or about December 10, 2015. That contract was for upgrading the six windows covered in the second October 21, 2015 contract to 48" x 48" casement windows with a half oval window at the top, with grids. The agreed-upon contract price was $7,800.00. The contract provided that the Claimant would pay the entire amount immediately.

11. The Claimant and Respondent entered into a sixth contract on December 11, 2015. The sixth contract included the following:

- Installation of 6" gutters, downspouts, and gutter guards around the house
- Installation of new soffit around the perimeter of the house
- Installation of white PVC trim around the garage door and all windows
- Installation of Tyvek HomeWrap around the house
- Installation of pebble grey trex decking boards on the screen room deck
- Installation of one smart thermostat
- Installation of 5/8 plywood on block wall around the house

The agreed-upon contract price was $10,295.00. The contract provided that the Claimant would pay the entire amount immediately.

12. The Claimant and Respondent entered into two more contracts on December 31, 2015. The seventh contract was for the removal of existing shingles on the back of the home and installation of new shingles to match the new roof on the sunroom and screen room. The agreed

upon contract price was $2,550.00. The contract provided that the Claimant would pay the entire amount immediately.

13. The eighth contract included the following:

- Installation of a new electrical panel
- Installation of new breakers
- Installation of smoke detectors with strobe lights in the bedroom hallway and the lower level
- Installation of six recessed lights and two extra boxes in the ceiling

The agreed upon contract price was $3,510.00. The contract provided that the Claimant would pay the entire amount immediately.

14. The Claimant and Respondent entered into a ninth and final contract on January 14, 2016. The ninth contract was for the addition of two 3" x 20' engineered beams under the ridge poles. The agreed-upon contract price $2,330.00, to be paid immediately

15. None of the contracts contain an arbitration clause.

16. The Respondent began work under the first contract on October 23, 2015.

17. The Respondent last performed work under the Cooper Contract on March 9, 2016.

18. On several occasions during the period of time that the Respondent worked on the Claimant's home, the Claimant emailed Gary Cooper regarding various issues he found with the quality of the Respondent's work.

19. Sometime prior to March 9, 2016, the Claimant asked Mr. Cooper to provide him with the receipts and warranty documents for certain items which were purchased for his home under the Cooper Contract.

20. On March 9, 2016, the Claimant sent Mr. Cooper an email stating that before he made any further payments to the Respondent, the Respondent needed to provide him with the

receipts and warranty documents for certain items that were purchased for his home under the Cooper Contract. The Claimant asked that the Respondent provide the requested documentation in a timely manner so that he could include the documents in his tax filings.[3]

21. On March 9, 2016, Mr. Cooper responded to the Claimant's email, stating that the costs for the items were included in the contracts and work order, and Mr. Cooper refused to provide the Claimant with any receipts from the Respondent's suppliers. Mr. Cooper further stated that he was informed that the Claimant had received the warranty paperwork earlier that week and that he would get another copy to the Claimant.

22. On March 11, 2016, Mr. Cooper and his son removed the Respondent's tools and building materials from the Claimant's home.

23. On March 11, 2016, the Claimant emailed Mr. Cooper regarding his abandonment of the worksite. The Claimant stated that he needed to know if the Respondent was going to return to complete the work and if not, the Claimant expected a refund of all money paid to the Respondent for the supplies that were not used and the work that had not been completed.

24. On March 11, 2016, Mr. Cooper responded to the Claimant's email, stating that the Respondent would not return to complete the contract until the Claimant paid the next draw. Mr. Cooper again refused to provide the Claimant with any receipts, but stated that the Claimant had the right to request the warranty information.

25. The Respondent never provided the Claimant with the requested receipts and warranty documentation.

26. The Claimant did not pay the Respondent the next draw and the Respondent never returned to complete the work on the Claimant's home.

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[3] The Claimant sought to obtain a home energy tax credit on his federal tax returns.

27. The Respondent has made no efforts to resolve his dispute with the Claimant.

28. The Claimant paid the Respondent $117,097.00 as follows:

- $1,000.00 on October 21, 2015 (check #434)
- $10,000.00 on October 21, 2015 (check #435)
- $2,000.00 on October 23, 2015 (check #438)
- $30,000.00 on October 28, 2015 (check #439)
- $525.00 on November 9, 2015 (check #445)
- $687.00 on November 23, 2015 (check #449)
- $10,000.00 on December 8, 2015 (check #451)
- $10,000.00 on December 8, 2015 (check #452)
- $13,300.00 on December 9, 2015 (check #453)
- $10,295.00 on December 11, 2015 (check #454)
- $6,960.00 on December 31, 2015 (check #462)
- $2,330.00 on January 14, 2016 (check #467)
- $10,000.00 on January 26, 2016 (check #469)
- $10,000.00 on January 30, 2016 (check #470)

29. The Respondent failed to complete a substantial portion of the work provided for in the Cooper Contract, including:

- Installation of some drywall
- Installation the Tyvek HomeWrap, siding and insulation on the sunroom addition to the home
- Installation of light fixtures in the sunroom
- Installation of the attic fan
- Construction of the screened in porch
- Installation of a French door between the kitchen and screened in porch
- Painting of the sunroom and screened in porch
- Installation of gutters, downspouts and gutter guards
- Removal of existing deck footers
- Restoration of the outside attic wall after creating an opening for installation of a beam for the screened in porch
- Installation of some of the support piers for the sunroom and screened in porch

30. Some of the work completed by the Respondent was unworkmanlike and/or inadequate, including:

- The sunroom floor that warped because the Respondent left the area exposed to the elements while still on the job.
- Wooden support piers installed without a properly constructed concrete footer, as required by the building code.
- Installation of the incorrect insulation, which failed to comply with the building code
- Installation of insufficient insulation in the attic
- Installation of a substandard fireplace insert, which was smaller than what the Claimant requested
- Installation of the all-fuel pipe for the fireplace/chimney too close to the wood frame
- Installation of electrical wires and insulation running too close to the all-fuel pipe, resulting in a fire hazard
- Exposed wiring in the attic
- Failure to fix damage to the wall that occurred during installation of a new circuit box

31. On April 5, 2016, technicians from Old Line Chimney Sweeps, LLC (Old Line) visited the Claimant's home to prepare an estimate to complete installation of the fireplace. The technicians found the all-fuel pipe was installed too close to the wood frame construction and that there was electrical wiring and insulation installed to close to the pipes, contradictory to the manufacturer's installation requirements.

32. Old Line is a licensed home improvement contractor in Maryland.

33. On August 1, 2016, the Claimant entered into a contract with Lauer (Lauer Contract). Lauer agreed to perform all of the work not completed by the Respondent and to correct any inadequate and/or unworkmanlike work performed by the Respondent. The Lauer Contract also provided for "sod/seed/fine grade/landscape," which was not included in the Cooper Contract.

34. The Lauer Contract price was $95,378.66.

35. Lauer charged the Claimant $1,247.40 for the sod/seed/fine grade/landscape.

36. The Claimant has paid Lauer $79,009.81 as follows:

- $11,298.70 on September 18, 2016 (check #3460)

- $8,435.06 on October 18, 2016 (check #374)
- $6.955.20 on November 10, 2016 (check #518)
- $32,142.83 on December 16, 2016 (check #5198)
- $13,361.47 on January 26, 2017 (check #525)
- $6,815.55 on April 18, 2017 (check #3641)

37. Lauer Construction, Inc. (Lauer) is a licensed home improvement contractor in Maryland.

38. The Claimant has not taken any action to recover monies for the Respondent's incomplete, unworkmanlike and/or inadequate work, other than the instant claim.

39. The Claimant sustained an actual loss of $73, 331.26 as a result of the Respondent's acts and omissions.

The Claimant's compensable loss is $20,000.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).[4] "[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 (3d 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);[5] *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a

[4] As noted above, "COMAR" refers to the Code of Maryland Regulations.
[5] Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

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. However, the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and may not compensate a claimant for more than was paid to the original contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(1).

I find that there are no *prima facie* impediments barring the Claimant from recovering from the Fund (ownership of more than three dwelling places, being related to or employed by the contractor, refusing to adhere to an arbitration clause in the contract, or unreasonably rejecting good faith efforts to resolve the claim). Md. Code Ann., Bus. Reg. § 8-405(c), (d) and (f). With regard to whether the Claimant unreasonably rejected good faith efforts to resolve the claim, I note that the Claimant's request for certain documentation related to the home improvement work performed by the Respondent was reasonable, but the Respondent refused the that reasonable request. The Respondent never made any good faith effort resolve the claim, and much of the work that the Claimant had already paid for remained incomplete or in an unworkmanlike and/or inadequate state.

For the reasons that follow, 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. The undisputed evidence in this case establishes that the Respondent performed unworkmanlike, inadequate and incomplete home improvements at the Claimant's personal residence. The Claimant gave credible testimony as to the deficiencies in the Respondent's work and submitted as evidence numerous photographs to corroborate his

testimony. The photographs depict the state the Respondent's home was left in after the Respondent abandoned the work site in March 2016.

The Claimant presented several photographs which show the incomplete aspects of the work, including: the exterior of the sunroom, with only a minimal amount of Tyvek HomeWrap installed and no siding; the unfinished interior of the sunroom; the exterior of the home, with no screened in porch; the interior and exterior of the attic, showing a large rectangular portion of the wall missing, thus exposing the attic to the elements; the pre-existing deck footers which were not demolished and hauled away; the installation of only three support piers for the screened in porch, instead of the five piers depicted in the building plans; the installation of only eight support piers were installed for the sunroom, instead of the ten piers depicted in the building plans; and the incomplete fireplace installation. CL Exs. 5A, 5B, 6A, 6B, 7A, and 15.

With regard to the unworkmanlike and inadequate work, the Claimant presented photographs of: support piers which were poorly installed with the improper concrete footers; wiring and insulation installed too close to the all-fuel pipe;[6] exposed wiring in the attic; the unleveled sunroom foundation; warped flooring in the sunroom floor; and the improper insulation installed in the sunroom. CL Exs. 4A, 9B, 9C, 13 14B, and 14D.

The inadequacy and unworkmanlike quality of the home improvements performed by the Respondent is obvious from an examination of the photographs, even to a layperson. I note that where the inadequacy of the work was due to the Respondent's failure to adhere to the relevant building code, the Claimant also provided a copy of the building code, with diagrams, which is not overly technical in nature and easy for a layperson to comprehend. CL Ex. 14B. A simple

[6] The Claimant also offered as evidence a photo of the warning label on the all-fuel pipe, which reads "maintain minimum airspace clearance to combustible materials specified in installation instructions of the IHP fireplace". CL Ex. 14C. Although the installation instructions were not presented as evidence, the photograph of the all-fuel pipe and insulation shows that little, if any space at all, was left between the pipe and insulation. CL Ex. 9C.

comparison of photographs of the insulation and the support piers with the building code confirms that the Respondent's work was not up to code. With regard to the all-fuel pipe, the Claimant also presented a letter from Old Line, stating that when the company's technicians visited the Claimant's home on April 5, 2016 to prepare an estimate to complete the fireplace work, the technicians found the all-fuel pipe was installed too close to the wood frame construction, and there was also electrical wiring and insulations too close to the pipe. CL Ex. 9D. The letter from Old Line Chimney Sweeps also stated that this did not meet the manufacturer's requirements for installation. *Id.*

The Claimant testified that after it became apparent that the Respondent would not be returning to complete and correct the work, he contracted with Lauer to complete and correct the scope of work in the Cooper Contract. The Lauer Contract provides for Lauer to complete and correct the Respondent's work, with one additional service, described as "sod/seed/fine grade/landscape". CL Ex. 10. The Lauer Contract is detailed and designates a specific price for the sod/seed/fine grade/landscape.

I thus find that the Claimant is eligible for compensation from the Fund.

Amount of Actual Loss

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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).

In this matter, the Claimant paid the Respondent directly, and also incurred costs paid over and above the contract to have the Respondent's work corrected and completed. I find that the amounts paid to Lauer were reasonable, but that the cost of the sod/seed/fine grade/landscape must be excluded from the calculation, as that service was not provided for in the Claimant's Contract with the Respondent.

The Claimant's actual loss is as follows:

Amount paid to Respondent	$117,097.00
Amount necessary for Lauer to complete the Contract	+ $ 94,131.26[7]
TOTAL	$211,228.26
Contract Price	- $137,897.00
Actual Loss	$ 73,331.26

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).

The actual loss computed above is $73,331.26, which exceeds $20,000.00 by $53,331.26. Accordingly, the Claimant is entitled to reimbursement from the Fund of only a portion of his actual loss, or $20,000.00. *Id.* § 8-405(e)(1).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); 09.08.03.03B(3)(c).

[7] This figure excludes the $1,247.00 charged for sod/seed/fine grade/landscape.

RECOMMENDED ORDER

I **RECOMMEND** 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 ten percent (10%) as set by the Maryland Home Improvement Commission;[8] and

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

Signature on File

August 2, 2017
Date Decision Issued

Jennifer A. Nappier
Administrative Law Judge

JAN/sw
169281

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

PROPOSED ORDER

WHEREFORE, this 12th day of September, 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.

Sachchida Gupta

Sachchida Gupta
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION