

IN THE MATTER OF THE CLAIM  
OF MAXINE MCCULLOUGH,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF  
KIRK LAFONTAINE,  
T/A CHAMPION QUALITY  
CONSTRUCTION, LLC,  
RESPONDENT

\* BEFORE THOMAS G. WELSHKO,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-16-19272  
\* MHIC No.: 16 (05) 826  
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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 April 8, 2016, Maxine McCullough (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$10,000.00 in alleged actual losses suffered as a result of a home improvement contract with Kirk LaFontaine, trading as Champion Quality Construction, LLC (Respondent).

I held a hearing on September 14, 2016, at Prince George's County Government Center in Landover, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Neither the Respondent, nor anyone authorized to represent him appeared, and after waiting fifteen minutes, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>1</sup>

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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 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 eleven exhibits on behalf of the Claimant, five exhibits on behalf of the Fund, and no exhibits on behalf of the Respondent. (I have attached a complete Exhibit List as an Appendix to this decision.)

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<sup>1</sup> On July 20, 2016, the OAH sent a Notice of Hearing to the Respondent at his address of record by both regular and certified mail. COMAR 09.08.03.03A(2). The first class mail was not returned; the certified mail return-receipt was also not returned. Because the Respondent remains licensed, service of the hearing notice was proper. Md. Code Ann., State Gov't § 10-209 (2014).

Testimony

The Claimant testified on her own behalf. The Respondent was not present and, therefore, did not offer any witnesses. The Fund did not present any witnesses.

**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 numbers 01-88015 and 05-129044. (Fund Ex. 3.)
2. In October 2014, the Claimant was contemplating adding a deck to her Bowie, Maryland home. (Test. Cl.)
3. In October 2014, the Respondent ran an advertisement in the Pennysaver advertising circular distributed in the Claimant's neighborhood, in which the Respondent promoted a fence and deck sale. (Test. Cl.; Cl. Ex. 1.)
4. The Respondent's advertisement caught the Claimant's attention because of her interest in having a deck built at her home. She called the Respondent's company and made an appointment with Collin Corkum, a representative of the Respondent, to discuss her contemplated deck construction project. (Test. Cl.; Cl. Ex. 11.)
5. On October 2, 2014, Mr. Corkum came to the Claimant's home. He identified himself as "the owner" of the Respondent's home improvement company. The Claimant told Mr. Corkum that she wanted a 20' x 20' deck added to her home because she anticipated using it to host a wedding and graduation parties that she had scheduled within the next year. Mr. Corkum responded that this would not be a problem; he told the Claimant once construction began, the deck would be finished in two weeks. (Test. Cl.)

6. When the Claimant asked Mr. Corkum whether she needed to get a permit for building the deck, Mr. Corkum responded that his firm would take care of securing one.

(Test. Cl.)

7. On October 2, 2014, the Claimant entered into a contract with the Respondent to have the Respondent build a 20' x 20' deck with Trex Transcend<sup>2</sup> (fire pit<sup>3</sup>) at her home. The contract called for the deck to include white vinyl railings, 6' x 6' posts, 2" x 10' beams and 2" x 8" joists. The deck would have two to three steps and meet International Building Code (IBC) [requirements]. (Cl. Ex. 2.)

8. The contract price was \$9,200.00. (Cl. Ex. 2.)

9. Mr. Corkum told the Claimant because autumn is not the ideal season to have a deck built, he wrote the contract such that it specified that construction would begin after April 1, 2015. On or after April 1, 2015, the Claimant would then call Mr. Corkum to schedule a date when construction would begin. (Test. Cl.; Cl. Ex. 2.)

10. On October 2, 2014, the Claimant gave the Respondent a \$2,000.00 deposit by check. (Cl. Ex. 3.)

11. In April 2015, the Claimant called Mr. Corkum many times to schedule deck construction. Construction did not begin immediately, because Mr. Corkum continued to offer excuses for not starting the job. On one occasion, he represented that the Respondent's truck was broken. On another occasion, he stated that the materials had not arrived. On yet another occasion, he called the Claimant and told her, "I'm on my way," but failed to appear. (Test. Cl.)

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<sup>2</sup> This is a brand of composite decking.

<sup>3</sup> This term might refer to the color of the decking and not an actual fire pit. It does not readily make sense in this context, and the Claimant never elaborated on what "fire pit" meant.

12. In all, the Claimant called Mr. Corkum at least twenty times in an effort to get the Respondent to come to her home and begin work on her deck. (Test. Cl.)

13. In April 2015, Mr. Corkum brought materials for the deck to the Claimant's home in a piecemeal fashion. (Test. Cl.)

14. On April 15, 2015, the Claimant paid the Respondent an additional \$5,000.00 by means of three credit card payments of \$2,000.00, \$1,000.00 and \$2,000.00 respectively. (Test. Cl.; Cl. Ex. 3.)

15. When work finally began, the Respondent sent an employee who worked only fifteen minutes. During the time that this employee was present, the Claimant asked to see the permit that the Respondent was supposed to have obtained. The employee indicated that the permit was in his truck, but he never showed it to the Claimant. (Test. Cl.)

16. The Claimant's homeowners association (HOA) wanted to see a drawing of the deck in order to approve its construction under its by-laws. The Respondent only provided the requested drawing to the HOA on July 15, 2015—three months after construction had started. (Test. Cl.; Cl. Ex. 11.)

17. The Respondent only obtained a county permit for the deck on August 12, 2015. (Test. Cl.; Cl. Ex. 4.)

18. Work proceeded on the deck slowly through October 2015. (Test. Cl.)

19. In September 1, 2015, a Prince George's County building inspector inspected the Claimant's deck and determined that it was unacceptable (i.e., it did not meet the standards of the county's building code) because the band bolts for the deck were spaced inadequately and the flashing that the Respondent used was improperly cut. He issued a Correction Order to the Claimant. (Test. Cl.; Cl. Ex. 5.)

20. After the deck failed inspection, the Claimant called Mr. Corkum, told him about the failed inspection and asked him what the Respondent was going to do to address the problem. Mr. Corkum replied, "We can fix this; this is nothing." (Test. Cl.)

21. In September 2015, a Respondent employee came to the Claimant's residence and attempted to correct the problems found by the county building inspector. (Test. Cl.)

22. On September 25, 2015, the county building inspector re-inspected the deck. He determined that the Respondent's employee had reinstalled the band bolts correctly, but he still had not addressed the flashing issues. Consequently, for a second time, the inspector found that the deck failed to meet the county's building code requirements. He issued a second Correction Order to the Claimant. (Cl. Ex. 6.)

23. In late September 2015, the Claimant called Mr. Corkum to express dissatisfaction with her deck and demanded a refund of the \$7,000.00 that she had paid the Respondent to date under the contract. Mr. Corkum refused to refund any of the Claimant's money. (Test. Cl.)

24. In October 2015, because of the slow pace of the work, the failed county inspections and other perceived workmanship issues, the Claimant called Mr. Corkum and told him that she did not want the Respondent to do any more work on the deck. The Respondent did no additional work. (Test. Cl.; Cl. Ex. 9.)

25. The following conditions existed at the time that the Respondent stopped work on the Claimant's deck:

- The Respondent did not install a deck floor; the deck consists only of framing;
- The Respondent used interior wood for the deck framing rather than treated exterior wood;

- The untreated interior wood that the Respondent used for the deck framing has deteriorated and continues to deteriorate; and
- Most of the flashing used by the Respondent has peeled off the deck.

(Test. Cl.; Cl. Ex. 7 (photographs) and Cl. Ex. 10.)

26. On November 12, 2015, the Claimant's attorney sent a certified letter to the Respondent, in care of Mr. Corkum, which informed the Respondent of the problems that existed with the deck and invited the Respondent to contact him within ten days to discuss a remedy. The letter also alerted the Respondent that should he fail to respond, the Claimant would file a complaint against him with the MHIC. (Test. Cl.; Cl. Ex. 9.)

27. The U.S. Postal Service returned the certified letter sent by the Claimant's attorney with the notation—Return to Sender Unclaimed Unable to Forward. (Cl. Ex. 8.)

28. Neither Mr. Corkum nor anyone else representing the Respondent ever called the Claimant's attorney to discuss potential remedies with regard to the construction of the Claimant's deck. (Test. Cl.)

29. On March 21, 2016, the Claimant obtained a \$12,200.00 estimate from Custom Works, Inc. (Custom Works) to remove the deck built by the Respondent and to rebuild a new deck. That estimate relied on the same specifications as the Respondent's October 2, 2014 deck contract. (Test. Cl.; Cl. Ex. 10.)

30. The Claimant's actual, compensable loss is \$7,000.00. (Cl. Ex. 10.)

### 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).<sup>4</sup> “[A] preponderance of the evidence means such evidence which, when

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<sup>4</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

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);<sup>5</sup> *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.” Md. Code Ann., 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 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).

I conclude that the Claimant has met her burden of proof. She has shown that the Respondent provided an unworkmanlike, inadequate and incomplete home improvement and, therefore, is entitled to reimbursement of her claim from the Fund.

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<sup>5</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.



The facts are undisputed. On October 2, 2014, the Claimant entered into a \$9,200.00 contract with the Respondent, through his representative, Collin Corkum,<sup>6</sup> to have a 20' by 20' Trex deck built at her Bowie, Maryland home. The parties agreed that construction would not start until the following spring. On October 2, 2014, the Claimant provided the Respondent with a \$2,000.00 down payment by check. On April 15, 2015, the Claimant provided the Respondent with \$5,000.00 in additional payments using three different credit cards.

At the time that the Claimant entered into the contract, Mr. Corkum represented to the Claimant that the Respondent would complete the deck in two weeks once construction began. When the spring 2015 start time for building the deck came, though, the Claimant had much difficulty getting anyone from the Respondent's company to begin work. She testified that she had to call Mr. Corkum at least twenty times. She noted, "I had him on speed dial."

Work began piecemeal with the delivery of materials in April 2015. It continued sporadically for the next sixth months. Many problems arose. Despite Mr. Corkum's promises that the Respondent would secure all building permits and approvals, the Respondent did not provide a drawing of deck to the Claimant's HOA, as the HOA had requested, until July 2015; the Respondent also did not apply for a county building permit until August 2015. On September 1, 2015, an inspection pursuant to that permit by a Prince George's County building inspector took place. The county inspector found defects in the Respondent's workmanship such that the deck did not comply with the standards of the county code and he issued a Correction Order. The Respondent attempted to remedy the two code violations found by the inspector, but only

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<sup>6</sup> Mr. Corkum represented himself to the Claimant as owner of the Respondent's company. This, of course, appears to be false, as Mr. Corkum is not the license holder. Nevertheless, the Respondent has not communicated to the MHIC or to the OAH that Mr. Corkum operated in a rogue capacity or that he was not actually associated with his company. Consequently, despite Mr. Corkum's presumed misrepresentation about his ownership status, I will presume that Mr. Corkum was a *bona fide* agent of the Respondent.

addressed one. Consequently, on September 25, 2015, the county disapproved the Claimant's deck a second time and issued a second Correction Order.

The Claimant testified that by September 2015, she was frustrated with both the quality of the Respondent's work and time it was taking the Respondent to complete the contract. (Two weeks had grown to five months.) The Claimant's frustration prompted the Claimant to call Mr. Corkum and demand a refund. Mr. Corkum refused to refund any money to the Claimant. By October 2015, the Claimant had lost all confidence in the Respondent to complete her deck in a workmanlike manner. She ordered him to do no further work. Later, in November 2015, the Claimant engaged an attorney to send the Respondent a certified letter to alert him about her dissatisfaction with the deck and to invite the Respondent to meet and discuss resolution of their dispute. The Respondent did not reply to the letter sent by the Claimant's attorney. The attorney's certified letter went unclaimed.

After filing a complaint against the Respondent with the MHIC, the Claimant sought an estimate from Custom Works, a licensed Maryland home improvement contractor, to remedy problems with the deck built by the Respondent. The Claimant explained that the Custom Works estimator looked at the deck and concluded that the work done by the Respondent was unsalvageable and, therefore, worthless. The estimator discovered that the Respondent had used interior untreated wood to build this *exterior* deck. The Respondent's improper use of interior wood to build the deck had caused the deck framing to rot. Additionally, the flashing that the Respondent applied to the deck is now coming loose. Because the deck has no value, the Custom Works estimator determined that his company must completely remove and replace it.<sup>7</sup> Custom

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<sup>7</sup> The March 21, 2016 Custom Works estimate actually anticipated Custom Works using the existing framing to complete the deck, but the Claimant testified that the Custom Works estimator, apparently after he provided his written estimate, determined that this was not feasible.

Works' estimated price for removing and replacing the deck is \$12,200.00. The Claimant did not offer estimates from any other contractors into evidence.

The Fund did not oppose the Claimant's claim and conceded that the Claimant sustained an actual, compensable loss. It agreed with the Claimant that the unfinished deck that the Respondent built for her was an unworkmanlike, incomplete *and* inadequate home improvement that has no value. Accordingly, the Fund recommended that the Claimant is entitled to receive a \$7,000.00 to compensate her for actual losses caused by the Respondent acts and omissions—the maximum amount permitted by the statutory and regulatory scheme. (See below.)

I concur with the Claimant and the Fund that the Claimant has sustained an actual loss. The Fund, however, did not squarely address one important point relevant to the outcome of this case—whether the Claimant rejected any good faith efforts by the Respondent to resolve their dispute. Md. Code Ann., Bus. Reg. § 8-405(d). Although it is true that in October 2015, the Claimant ordered the Respondent to stop all work, the Respondent precipitated the Claimant to issue this order by building the deck at her home of such poor quality it could not pass a county inspection—twice. The Respondent offered the Claimant no recompense for his poor workmanship. In September 2015, the Claimant asked for a refund of her money. The Respondent's agent, Mr. Corkum, refused to refund any of the Claimant's money. The Respondent also refused to offer any solutions after the Claimant's attorney sent him a letter detailing the problems associated with the deck. Therefore, I conclude that the Claimant did not reject any good faith offers by the Respondent to resolve the problems with the deck stemming from his poor, inadequate and incomplete workmanship.

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 the Claimant's actual loss:

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).

I have performed the following calculations to compute the Claimant's actual loss:

\$7,000.00	Amount paid by the Claimant to or in behalf of the Respondent
<u>+12,200.00</u>	Reasonable cost of repair and completion
\$19,200.00	
<u>- 9,200.00</u>	Original contract price
\$10,000.00	<b>Actual loss by the Claimant</b>

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); COMAR 09.08.03.03B(4). Here, the Claimant paid the Respondent \$7,000.00, so that is the maximum amount that she can recover from the Fund.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$7,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c) and B(4).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,000.00; 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 (10%) as set by the Maryland Home Improvement Commission;<sup>8</sup> and

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

**Signature on File**

November 7, 2016  
Date Decision Issued

TGW/sw  
#164789

\_\_\_\_\_  
THOMAS G. WEISIKO  
Administrative Law Judge

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

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\* BEFORE THOMAS G. WELSHKO,  
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**FILE EXHIBIT LIST**

**Claimant's Exhibits:**

1. 2015 Pennysaver Ad for the Respondent (similar to 2014 Pennysaver Ad)
2. October 2, 2014 Contract with diagram
3. 2014 and 2015 Cancelled Check and Credit Payment Receipts
4. August 12, 2015 Permit Application
5. September 1, 2015 Correction Order issued to the Claimant by the Prince George's County Department of Permitting, Inspections and Enforcement
6. September 25, 2015 Correction Order issued to the Claimant by the Prince George's County Department of Permitting, Inspections and Enforcement
7. September 2015 photographs of the deck (A - O)
8. Unclaimed Envelope for "Demand Letter" (See below)
9. November 5, 2015 Demand Letter sent by the Claimant's attorney to the Respondent

10. March 21, 2016 Custom Works estimate

11. December 18, 2015 Complaint filed by the Claimant with the MHIC with attachments

Respondent's Exhibits:

None

Fund's Exhibits:

1. July 20, 2016 Hearing Notice

2. June 17, 2016 MHIC Hearing Order

3. August 9, 2016 Licensing History for the Respondent

4. April 8, 2016 Claim Form

5. April 18, 2016 letter from Joseph Tunney, Chairman, MHIC, to the Respondent, alerting the Respondent about the Claimant's claim and requesting a response from the Respondent within ten days

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**PROPOSED ORDER**

***WHEREFORE, this 8<sup>th</sup> day of December, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**



