

IN THE MATTER OF THE CLAIM	* BEFORE BRIAN ZLOTNICK,
OF TANVEER IQBAL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	* OAH No.: DLR-HIC-02-18-33405
OMISSIONS OF MEHMET NAZ,	* MHIC No.: 17 (05) 1314
T/A DESIGN BUILD ENGINEERING	*
EPHES SERVICES, INC.,	*
RESPONDENT	

* * * * *

PROPOSED REMANDED DECISION

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STATEMENT OF THE CASE

On October 10, 2017, Tanveer Iqbal (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$23,060.00 in losses allegedly suffered as a result of a home improvement contract with Mehmet Naz, trading as Design Build Engineering EPHEs Services, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On May 3, 2018, the MHIC ordered a hearing and forwarded the matter to the Office of Administrative Hearings (OAH).

¹ All references to the Business Regulation Article are to the 2015 volume.

A hearing was originally scheduled before me on August 14, 2018. Prior to the commencement of the hearing the parties indicated that they reached a settlement and the Claimant withdrew his appeal in accordance with Code of Maryland Regulations (COMAR) 09.01.03.07. After August 14, 2018, the Claimant notified the MHIC that the terms of the settlement were not followed by the Respondent. Therefore, on December 12, 2018, in accordance with COMAR 09.01.03.07B, the MHIC issued a Remand Order remanding the matter to the OAH for a hearing on the merits.

I held a remand hearing on February 7, 2019, at the County Office Building, 1400 McCormick Drive, Largo, Maryland. Bus. Reg. § 8-407(e). Andrew J. Brouwer, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent appeared and was represented by Antoine Jones, Esquire.

The contested case provisions of the Administrative Procedure Act, the Department's hearing 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. 2018); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits the Claimant offered, except as noted:

1. Check for \$500.00 from the Claimant to the Respondent, dated August 27, 2016
2. Complaint Form, dated June 5, 2017
3. Check for \$4,000.00 from the Claimant to the Respondent, dated September 13, 2016
4. Contract, dated October 18, 2016
5. Check for \$1,300.00 from the Claimant to Donnie Wells (Plumber), dated January 10, 2017
6. Invoice from Marble Systems, Inc., in the amount of \$2,396.00, dated January 6, 2017
7. E-mails between the Respondent, Mr. Tariq, and the Claimant, dated October 20, 2018 through October 22, 2018
8. Google reviews of the Respondent – **NOT ADMITTED**
9. Claimant's outline of payments made for the Contract, undated
10. Check for \$2,000.00 from the Claimant to the Respondent, dated February 23, 2017
11. Check for \$2,396.00 from the Claimant to the Respondent, dated September 25, 2018
12. Invoice from Thos. Somerville, Co., for \$1,057.88, dated January 5, 2017
13. Receipt from Lowe's for two bathroom doors totaling \$184.75, dated January 6, 2017
14. Photograph of bathroom wall, taken on October 20, 2018
15. Receipt from Lowe's for two light fixtures totaling \$233.35, dated October 23, 2018
16. Photograph of bathroom floor tile, taken on August 19, 2018
17. Photograph of bathroom wall tile, taken on August 19, 2018
18. Photograph of bathroom floor tile, taken on October 14, 2018
19. Photograph of bathroom wall tile, taken on October 14, 2018
20. Box for shower and tub fixtures
21. Photograph of shower/tub fixtures, taken on October 14, 2018
22. Photograph of bathroom wall tile, taken on October 14, 2018
23. Photograph of bathroom floor tile, taken on October 14, 2018
24. Photograph of bathroom floor tile, taken on October 14, 2018
25. Photograph of toilet water valve, taken on October 14, 2018
26. Photograph of bathroom wall tile, taken on August 23, 2018
27. Photograph of bathroom wall tile, taken on August 23, 2018
28. Photograph of marble toilet, taken on August 14, 2018
29. Photograph of bathroom fixtures, taken on October 14, 2018
30. Photograph of toilet rough-in, taken on August 19, 2018
31. Photograph of holes under bathroom sink, taken on January 9, 2018
32. Photograph of sink basin, taken on October 3, 2018
33. Estimate from Hometown Renovations, LLC, dated January 31, 2019
34. Estimate from KBR Kitchen and Bath, dated November 1, 2018

35. E-mail from Matthew Willis to the Respondent, dated August 3, 2017 – **NOT ADMITTED**
36. Estimate from Landmark Property Service for powder bathroom, dated September 23, 2017
37. Estimate from Landmark Property Service for second floor hall bathroom, dated September 23, 2017
38. Estimate from Landmark Property Service for second floor master bathroom, dated September 23, 2017
39. Proposal from Ren Vision for second floor bathrooms and first floor powder room, dated July 26, 2017

I admitted the following exhibit the Respondent offered:

1. List of completed Contract work signed by the Respondent, dated September 24, 2018

I admitted the following exhibits the Fund offered:

1. Hearing Order, dated October 22, 2018
2. Notice of Hearing, dated December 18, 2018
3. Letter from the MHIC to the Respondent with attached Claim Form, dated December 28, 2017
4. MHIC Licensing History, printed February 5, 2019

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present any other witnesses.

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 hearing, the Respondent has held a valid MHIC license. (Fund Ex. #4).
2. In August 2016, the Claimant contacted the Respondent and the Respondent went to the Claimant's home to discuss a bathroom renovation project. On August 27, 2016, the Claimant paid the Respondent using a \$500.00 check as a deposit for the project. (Testimony of Claimant and Claim. Ex. #s 1 & 2).

3. On September 13, 2016, the Respondent returned to the Claimant's home with marble samples. The Claimant paid the Respondent using a \$4,000.00 check to order the marble needed for the project. (Testimony of Claimant and Claim. Ex. #s 2 & 3).

4. On October 18, 2016, the Claimant and the Respondent entered into a contract (Contract) for the Respondent to perform home improvement at the primary residence of the Claimant and his wife, located in Bowie, Maryland. The Contract called for the work to be completed by November 18, 2016. The Contract entailed converting the Claimant's second floor bathroom into two full bathrooms and renovating the first floor half-bathroom. The Contract specified the following:

Second Floor:

- Respondent will provide labor and materials to demolish one large bathroom and convert into two bathrooms
- Respondent will build two shower stalls – Claimant will provide shower water diverter for both bathrooms
- Respondent will purchase and install vanity – Claimant will provide sink faucet for both bathrooms
- Respondent will hire licensed plumber to perform plumbing task
- Respondent will install marble floor and walls with marble and design approved by the Claimant. Respondent will use cement board before installing marble – Claimant will provide shower doors for installations
- Respondent will install two bathroom exhaust fans
- Claimant will do all electrical work

First Floor:

- Respondent will demolish small powder room and install marble tiles on the floor and wall
- Respondent will provide marble vanity
- All work must be performed by residential building codes

(Testimony of Claimant and Claim. Ex. #s 2 & 4).

5. The total contract price was \$12,000.00. (Claim. Ex. #4).

6. On October 10, 2016, the Respondent sent workers to the Claimant's home to perform demolition work on the bathrooms. (Claim. Ex. #2).

7. The Respondent did not perform any additional work for over a month. The Claimant made several calls to the Respondent inquiring when he would return to work on the Contract. The Respondent subsequently responded and asked the Claimant to purchase shower/tubs from Thomas Somerville Company. On January 5, 2017, the Claimant purchased two bathtubs from Thomas Somerville Company for \$1,057.88. (Claim. Ex. #s 2 & 12 and Testimony of Claimant).

8. On January 6, 2017, the Claimant purchased marble from Marble Systems, Inc., on January 6, 2017 for \$2,396.00. (Claim. Ex. #6).

9. On January 6, 2017, the Claimant purchased two bathroom doors from Lowe's for \$184.25 (Claim. Ex. #13 and Testimony of Claimant).

10. On January 10, 2017, per the Respondent's request, the Claimant paid Donnie Wells, a plumber, \$1,300.00. (Claim. Ex. #5 and Testimony of Claimant).

11. On February 23, 2017, the Claimant paid the Respondent \$2,000.00. (Claim. Ex. #10).

12. In March 2017, the Respondent's workers installed the marble tile on the second floor bathroom floors. (Testimony of Claimant).

13. No further work was performed on the Contract after March 2017. In March and April 2017, the Claimant sent several e-mails to the Respondent demanding that he finish the Contract. The Respondent sent two of his family members, Mr. Tariq and Mr. Yousef to the Claimant's home on April 13, 2017. Mr. Tariq and Mr. Yousef told the Claimant that they would talk to the Respondent to take care of the Contract and finish the project. (Claim. Ex. #2 and Testimony of Claimant).

14. At the end of April 2017, Mr. Tariq told the Claimant that his subcontractor needed \$8,500.00 to finish the two second floor bathrooms. No further work was performed by

the Respondent prior to the Claimant's October 10, 2017 filing of his claim against the Respondent. (Testimony of Claimant).

15. A contested hearing was scheduled before ALJ Zlotnick on August 14, 2018. A day before the hearing Mr. Tariq and Mr. Anzeem met with the Claimant at his home with the Respondent. Mr. Tariq told the Claimant that the Respondent is no longer in the picture and that he would take care of the Contract because he was taking over the Respondent's business. (Testimony of the Claimant).

16. The parties settled the matter on August 14, 2018.

17. On September 24, 2018, the Claimant signed an acknowledgement document that indicated that the second floor bathroom renovations have been completed. (Resp. Ex. 1).

18. On September 25, 2018, the Claimant paid the Respondent \$2,396.00. (Claim. Ex. #11).

19. On October 3, 2018, both second floor bathrooms sinks were leaking water through the first floor kitchen ceiling. Mr. Tariq came out to the Claimant's home to repair the leaks on October 3, 2018. On October 14, 2018, the bathroom sinks started leaking again. The Claimant called Mr. Tariq several times to come out and fix this second leak but Mr. Tariq never returned to the Claimant's home. (Testimony of Claimant).

20. The Respondent never performed any work on the first floor bathroom. (Testimony of Claimant).

21. On July 26, 2017, RenVision Kitchens & Bathrooms provided an estimate to complete the Claimant's first floor bathroom for \$17,064.00. This estimate did not provide any details regarding the scope of work involved. (Claim. Ex. #39).

22. On September 23, 2017, Landmark Property Services (Landmark) provided an estimate to renovate the first floor bathroom for \$5,596.00. This estimate specified demolition

work of existing powder room and installation of all electrical work and lighting, plumbing work including faucet and toilet installation, installation of flooring and wall surfaces, painting, carpentry work, installation of fixtures, mirrors, and vanity. Landmark's MHIC number is 130293. (Claim. Ex. #36).

23. On November 1, 2018, KBR Kitchen and Bath provided an estimate to renovate the Claimant's first floor powder room for \$9,600.00. This estimate did not contain any details regarding the scope of this renovation other than to state, "renovation with replacing bifold door." (Claim. Ex. #34).

DISCUSSION

The Claimant asserts he is eligible for reimbursement from the Fund due to the Respondent's poor workmanship in his renovation of two second floor bathrooms and for the Respondent's abandonment of the renovation of the first floor bathroom. The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); 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, 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); *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). "[A]ctual loss' means the costs of restoration, repair, replacement, or

completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”

Bus. Reg. § 8-401.

The Fund argues the Claimant has not proven unworkmanlike, inadequate, or incomplete improvement or, if so, the value of the loss. Therefore, the Fund recommends I deny compensation to the Claimant. For the following reasons, I find the Claimant has proven that the Contract was not completed because no work was done on the first floor bathroom; therefore, I conclude that the Claimant is eligible for compensation.

The Second Floor Bathrooms

The Claimant presented numerous photographs of the tile work performed by the Respondent in the renovation of the second floor bathrooms. The pictures depict small cracks in the tile surface, uneven tiles and gaps in the tile grout. The Claimant also presented photos that he claimed depicted the original toilet water valve and the original plumbing piping and valves instead of replacement pipes and valves in accordance with the Contract. The Contract, however, does not specify that new valves and pipes are to be installed for these bathrooms. Further, the Claimant did not offer any testimony from a qualified witness to offer an opinion regarding whether the imperfections depicted in photographs taken by the Claimant amounted to unworkmanlike, inadequate, or incomplete home improvement, or to testify that the installation of new toilets required the removal of existing pipes and valves in favor of new pipes and valves. I am unable to reach such conclusions from the photographs and other evidence before me. Likewise, although the Claimant experienced leaks in his second floor bathrooms, without expert testimony regarding the origin of those leaks, I am not convinced that the leaks were due to the work performed by the Respondent.

Additionally, the Claimant signed a document on September 24, 2018, which acknowledged that the second floor bathroom renovations were completed by the Respondent.

Therefore, I find that the Claimant has failed to prove his claim that the Respondent failed to complete the renovations of the second floor bathrooms in a workmanlike manner.

The First Floor Bathroom

There is no dispute that the Respondent did not perform any work on the first floor bathroom.

The Respondent argued that he did not perform work on the first floor bathroom because the Claimant failed to provide materials necessary for this work. The Claimant stated during cross examination that he received an e-mail from the Respondent on September 24, 2018 which listed materials needed to renovate the powder room, but he did not respond to this e-mail. The Contract did not specify the need for the Claimant to provide any materials for the first floor bathroom renovation, therefore, I find the Respondent's argument that he could not perform this renovation lacking in merit. Accordingly, I find that the Respondent failed to complete the Contract when he performed no work on the first floor bathroom.

The Contract stated the following regarding the first floor bathroom:

- Respondent will demolish small powder room and install marble tiles on the floor and wall
- Respondent will provide marble vanity
- All work must be performed by residential building code

(Claim. Ex. #4)

The Contract does not specify the replacement of a toilet for the first floor bathroom, thus the only work that was not performed was the installation of new marble tile flooring and walls and the installation of a new marble vanity.

The Claimant provided an estimate from RenVision with a cost of \$17,064.00 to renovate the first floor bathroom; however, this estimate provides no details of the scope of this work.

Accordingly, I give very little weight to the RenVision estimate.

The Claimant also provided an estimate from KBR Kitchen & Bath which only stated that it will renovate the powder room and replace the bifold door for a cost of \$9,600.00. This estimate goes beyond the scope of the Contract as the Contract did not specify the replacement of any doors for the powder room. Further, there are no specific details regarding the scope of the renovation, thus this estimate provides no information relative to the cost of completing the Contract.

The last estimate provided by the Claimant was from Landmark Property Services (Landmark) which did provide specific prices for the work needed for the powder room renovation. As the Contract only specified the replacement of the powder room's tile floors, walls, and its vanity, I will only consider the portion of this estimate that addresses those areas.

Landmark's estimate is as follows:

• demolition of the existing vanity -	\$172.00
• plumbing – faucet installation -	\$193.34
• demolition of drywall -	\$320.00
• demolition of floor tile -	\$266.75
• demolition of trim -	\$90.00
• tile floor install -	\$520.00
• tile wall install -	\$1,577.00
• vanity – cabinet install -	\$187.34
• vanity – top install -	<u>\$213.34</u>
total cost -	\$3,539.77

Accordingly, I find that the Claimant has established his eligibility for compensation from the Fund for the amount estimated by Landmark above for renovation of the first floor bathroom due to the Respondent's failure to complete the Contract.

The Amount of Claimant's Actual Loss

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work and any repair. In this case, as the Respondent performed the work called for in the Contract and the Claimant desires to have the work

remedied by another contractor, the appropriate formula for measuring the Claimant's actual loss is found in COMAR 09.08.03.03B(3)(c):

[T]he . . . 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.

(Emphasis added.) In applying this formula, I also consider that the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). Further, a claimant's recovery is capped at \$20,000.00 for the acts or omissions of one contractor and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

The original price for the Contract work was \$12,000.00. The Claimant paid the Respondent a total of \$13,384.13. The Claimant has established the reasonable amount he will be required to pay another contractor to complete the first floor bathroom renovation, \$3,539.77. As noted above, the Claimant failed to establish that he is entitled to recover for the Respondent's work for the second floor bathroom renovations. Accordingly, the Claimant established a total reasonable amount to complete the Respondent's work of \$3,539.77. Thus, applying the calculation in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is as follows:

\$13,384.13	paid to the Respondent
+ \$ 3,539.77	reasonable costs to complete the Respondent's work
\$16,923.90	
- \$12,000.00	original contract price
\$ 4,923.90	actual loss

In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than the \$20,000.00 cap on recovery from the Fund. The Claimant is not an excluded

claimant, he timely filed his claim, and the contract does not contain an arbitration provision. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), (g), 8-408(b)(1), (2); COMAR 09.08.03.02E, G. Accordingly, the Claimant is entitled to an award in the amount of his actual loss of \$4,923.90.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has established he sustained an actual and compensable loss of \$4,923.90 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,923.90; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;² and

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

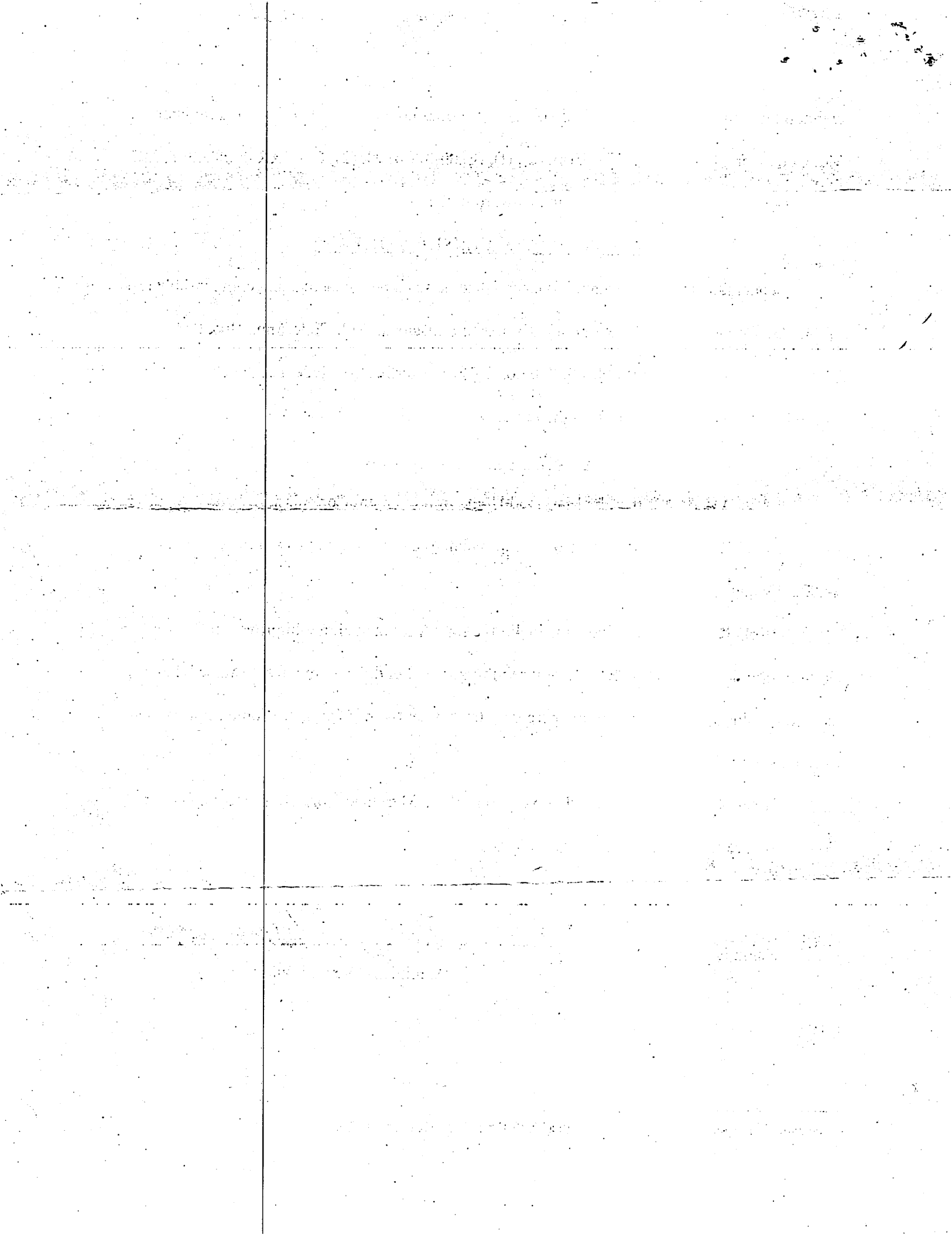
Signature on File

April 25, 2019
Date Decision Issued

Brian Zlotnick
Administrative Law Judge

BMZ/emh
#179409

² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 18th day of July, 2019, 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION