

**IN THE MATTER OF THE CLAIM
OF MICHELLE GILES**

**MARYLAND HOME IMPROVEMENT
COMMISSION**

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF HARRY BRUNSON t/a
HB BUILDERS AND HOME
IMPROVEMENT, INC.**

**MHIC CASE NO. 17(90)1352
OAH CASE NO. DLR-HIC-02-18-09888**

* * * * *

FINAL ORDER

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 25, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 24, 2018, concluding that the homeowner Michelle Giles (“Claimant”) sustained an actual and compensable loss of \$4,000.00 as a result of the acts and omissions of Harry Brunson t/a HB Builders and Home Improvement, Inc. (“Contractor”). *OAH Proposed Decision* pp. 11-12. In a Proposed Order dated November 20, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimant \$4,000.00 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On January 17, 2019, a hearing on the exceptions was held before a three-member panel (“Panel”) of the MHIC. Both the Contractor and the Claimant were present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following three preliminary exhibits were offered by AAG Sachs and admitted into evidence at the exceptions hearing: 1) November 20, 2018 Cover Letter with MHIC Proposed Order and OAH Proposed Decision, and 2) December 14, 2018 Notice of Exceptions Hearing to be held January 17, 2019 with a copy of the Contractor’s written exceptions. Neither

the Contractor nor the Claimant produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel's review was limited to the ALJ's proposed decision, the exhibits introduced into evidence at the OAH hearing, and the preliminary exhibits offered by AAG Sachs at the exceptions hearing. COMAR 09.01.03.09(G) - (I)

In his written exceptions, the Contractor alleges that some of the items that were found to be done in an unworkmanlike manner, were items that he claims he offered to correct for the Claimant. The Contractor has failed to provide the Commission with a copy of transcript of the OAH hearing and therefore this Panel is unable to ascertain whether the Contractor testified as such before the OAH. Moreover, the ALJ found that "[t]he Respondent would not correct the defects," and that "[t]he Claimant asked the Respondent to correct this work, which was obviously unworkmanlike and inadequate. The Respondent pulled his crew off the job and would do no further work." *ALJ's Proposed Decision* pp. 5, 9. The ALJ was tasked with observing the demeanor of the witnesses as they testify, judge their credibility, and ultimately make findings of fact based on this testimony. The ALJ clearly found the Claimant's version of events to be more credible. *ALJ's Proposed Decision* pp. 5, 9. The Panel will not overturn the credibility determinations of the ALJ in this case.

The Contractor also argues that he was willing to participate in mediation as a way to resolve the claim, but that the Claimant backed out of the mediation during the scheduling process. The Commission offers mediation to the parties involved in a Guaranty Fund claim, however, participation in the mediation program is not mandatory. Therefore, the Claimant's choice to decline mediation and proceed with the claims process does not prevent the Commission from issuing an award from the Guaranty Fund.

Lastly, the Contractor argues that once he allowed the Claimant to pay his worker, Mr. Megginson, with the proceeds of the \$2,000 cashier's check the Claimant originally obtained in

the name of the Contractor, that it was understood by the Claimant that the Contractor would be "no longer contractually responsible for any work on her project." *Contractor's Written Exceptions* p. 1. However, after listening to the testimony of the parties, the ALJ found that "[t]he Respondent's contention that he was foreclosed from completing the job is inconsistent and self-serving; he failed to pay his worker, who threatened the Claimant's property, and cooperated with the Claimant's plan to pay the worker his wages in exchange for completing the work." *ALJ's Proposed Decision* p. 7. The record reveals that the Claimant paid the Contractor the full amount owed for the construction of the deck enclosure, \$6,729.00. *OAH Hearing Claimant's Exhibits 1, 55*. The \$4,729.00 was paid by the Claimant directly to the Contractor via a cashier's check. *OAH Hearing Claimant's Exhibit 55*. The Claimant also obtained a separate \$2,000.00 cashier's check in the name of the Contractor for the final payment for the enclosure. *OAH Hearing Claimant's Exhibit 55*. When the Contractor's worker, Mr. Megginson, threatened to remove all the work done on the Claimant's property because he had not been paid by the Contractor, the Contractor cashed the \$2,000.00 cashier's check and allowed the Claimant to use this money to pay Mr. Megginson on his behalf. *OAH Hearing Claimant's Exhibits 54, 55*. Therefore, the Contractor received full payment on the contract, \$4,729.00 directly and \$2,000.00 paid on his behalf to his worker that he otherwise would have had to pay. Despite the fact that full payment was provided by the Claimant, the Contractor failed to complete the job in a workmanlike manner. *ALJ's Proposed Decision* pp. 5, 8-9. The Panel agrees with the ALJ's analysis and finds no error in his decision. 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 evidence in the record and the OAH Proposed Decision, it is this 16th day of April 2019 **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 Proposed 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**

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MICHELLE GILES,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF HARRY BRUNSON,</p> <p>TRADING AS HB BUILDERS AND</p> <p>HOME IMPROVEMENT, INC.</p> <p>RESPONDENT</p>	<p>* BEFORE MARC NACHMAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-18-09888</p> <p>* MHIC No.: 17 (90) 1352</p> <p>*</p>
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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 September 19, 2017, Michelle Giles (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$ 4,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Harry Brunson, trading as HB Builders and Home Improvement, Inc. (Respondent).

I held a hearing on June 25, 2018, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented herself. Andrew Brouwer, Assistant Attorney General, Department of

Labor, Licensing and Regulation (Department), represented the Fund. The Respondent represented himself.

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. 2017); Code of Maryland Regulations (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?

SUMMARY OF THE EVIDENCE

Exhibits

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

- CL. Ex. 1 Contract for porch enclosure (pp 3-4)
- CL. Ex. 2 Photograph - Wide view pictures of outside of enclosed porch (p.5)¹
- CL. Ex. 3 Photographs - Outside of porch door; door closure on outside of door instead of inside; caulking spots and caulking line left showing (p. 7)
- CL. Ex. 4 Photographs - Entrance to area under porch area under porch (p.8)
- CL. Ex. 5 Photographs - Wide inside views of porch (p.9)
- CL. Ex. 6 Photographs - Wide inside views of porch (pp. 11-12)
- CL. Ex. 7 Photographs - Areas of door frame pieced together; gaps between door frame and siding (pp. 13-14)
- CL. Ex. 8 Photographs - Pieced together overhang; gap under step (p. 15)
- CL. Ex. 9 Photographs - Bottom left side of door frame; nail holes and large nail heads showing (p. 16)
- CL. Ex. 10 Photographs - Outside molding splitting; messy caulking; horizontal molding missing; molding splitting; gap between under porch framing siding (pp. 17-20)
- CL. Ex. 11 Photographs - Inside door frame broken and glued crooked (p. 21)
- CL. Ex. 12 Photographs - Holes above porch door; overhang piece cut too short and gapping; glue visible (p. 22)

¹ The exhibits are designated by the titles supplied by the Claimant which were supported by her testimony, as will be explained below.

- CL. Ex. 13 Photographs - Gap under door sweep; missing screw; inside door frame unevenly pieced together (p. 23)
- CL. Ex. 14 Photographs - Inside molding bent, cut short and uneven; molding joints not meeting properly; splitting and gapping (pp. 24-30)
- CL. Ex. 15 Photographs - Gap in molding at ceiling; molding not properly cut to fit (p. 31)
- CL. Ex. 16 Photographs - Rain water leaking from roof down inside wall (pp. 32-35)
- CL. Ex. 17 Photographs - Debris on wall and accumulated at base board (p. 36)
- CL. Ex. 18 Photographs - Water mark on indoor carpet (p. 37)
- CL. Ex. 19 Photographs - Water and debris leaking from roof (pp. 38-39)
- CL. Ex. 20 Photographs - Screw/nail left protruding (p. 40)
- CL. Ex. 21 Photographs - Exposed wire; gap in molding at ceiling (p. 41)
- CL. Ex. 22 Photographs - Siding patch (p. 42)
- CL. Ex. 23 Photographs - Porch screens not pulled tight (pp. 43-44)
- CL. Ex. 24 Photographs - Waterfall at corner of gutter (p. 45)
- CL. Ex. 25 Photographs - No roofing flashing; upside-down roofing shingles (pp. 46-48)
- CL. Ex. 26 Photographs - Poor roof construction; improper gutter attachment ; Improper roof slope; flapping roof shingle (p. 49)
- CL. Ex. 27 MHIC Complaint form (pp. 50-51)
- CL. Ex. 28 Cashier's check (p. 52)
- CL. Ex. 29 Boyce Renovation Estimate (6/2/2017) (p. 53)
- CL. Ex. 30 Respondent's letter to MHIC (p. 54)
- CL. Ex. 31 Cashier's checks (p. 55)
- CL. Ex. 32 DLLR letter to Mr. Megginson (p. 56)
- CL. Ex. 33 MHIC Claim form (p. 57)
- CL. Ex. 34 MHIC letter to Claimant (p. 58)
- CL. Ex. 35 Hearing Order (pp. 59-60)
- CL. Ex. 36 OAH Hearing Notice (p. 61)
- CL. Ex. 37 "Assessment and Estimate," Remodeling Maryland (June 2018) (p. 62)

No exhibits were submitted into evidence on behalf of the Respondent.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Order, dated March 23, 2018
- Fund Ex. 2 - Notice of Hearing, dated April 3, 2018
- Fund Ex. 3 - Letter addressed to Respondent from James Tunney, Chairman, MHIC, dated September 25, 2017, with MHIC Fund Claim Form attached
- Fund Ex. 4 - Licensing information for Respondent, dated June 21, 2018

Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

The Fund was present but 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 number 4791775.

2. On or about September 26, 2016, the Claimant and the Respondent entered into a contract (Contract) to enclose the deck on her home (the Property) with screening and a door, including the installation a roof over the deck, rain gutters and downspouts, and a ceiling fan.²

3. The Contract did not provide a start or completion date.

4. The original agreed-upon Contract price was \$5,680.00. The parties agreed to a change order, adding \$1,049.00 to the Contract, for a total of \$6,729.00.

5. The Claimant paid the Respondent an initial payment of \$4,729.00 with a cashier's check dated October 15, 2016, made payable to the Respondent and his company.

Within days of withdrawing the initial cashier's check, the Claimant also withdrew an additional check dated October 18, 2016, for \$2,000.00 for the balance of the Contract price, but did not immediately pay it over the Respondent.

6. After the initial payment, work commenced on the deck enclosure.

7. During construction, Mr. Megginson, the Respondent's lead worker, told the Claimant that he intended to remove the construction already done, as he had not been paid by the Respondent.

8. On or about November 2, 2016, the Respondent accompanied the Claimant to her bank, endorsed the \$2,000.00 cashier's check made payable to the Respondent and his company, and gave the cash immediately to the Claimant, who then had a \$2,000.00 cashier's check made payable to Mr. Megginson, to be paid to him as a result of his threat.

² The Contract covered additional work that the Claimant did not pay for or have the Respondent start or complete, including a main roof, fencing and a garage floor.

9. The Claimant paid \$6,729.00 to or on behalf of the Respondent for the home improvement work done on the Property.

10. Work progressed on the construction of the deck enclosure (roof, door and screening), but it was not done in a workmanlike, adequate or complete manner.

11. Specifically, the following work was not done in a workmanlike manner:

- The pneumatic door closer was on the wrong side of the door;
- Caulking was applied sloppily;
- Gaps were visible in the construction;
- Joints, framing and siding were seriously misaligned;
- Wooden panels that would have been solid were poorly pieced together;
- Nail heads were showing;
- The roof was poorly designed and constructed, causing water to leak inside the enclosed deck;
- Screening was improperly installed;
- Moldings were split where installed; and
- Wiring was not run properly at the lighting fixture.

12. The Respondent would not correct the defects.

13. The actual loss to the Claimant is \$4,000.00, the amount that she claimed from the Fund.

DISCUSSION

In this case, 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) (2015); 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 (3d ed. 2000)).

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

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. All of the statutory and regulatory prerequisites have been met.⁵ For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant (Fund Ex. 4). The Claimant signed the Contract with the Respondent on or about September 26, 2016 to enclose the deck of her house with screening, putting a roof over it, and a doorway into the newly enclosed area (Cl. Ex. 1). The Contract also called for other work to be done to the main roof of the house and in the garage, but the Respondent did not start any of that work, nor was the Respondent paid for it.

The Claimant completed a MHIC Complaint form that was largely consistent with her testimony and unchallenged in any meaningful way by the Respondent (Cl. Ex. 27). The Respondent claimed not to need a permit to start construction and had some supplies delivered to

⁴ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

⁵ None of the following disqualifications exists:

(f)(1) A claim against the Fund based on the act or omission of a particular contractor may not be made by:

- (i) a spouse or other immediate relative of the contractor;
- (ii) an employee, officer, or partner of the contractor; or
- (iii) an immediate relative of an employee, officer, or partner of the contractor.

(2) An owner may make a claim against the Fund only if the owner:

- (i) resides in the home as to which the claim is made; or
- (ii) does not own more than three residences or dwelling places.

the job site, which were incorrect for the job according to the Respondent's lead worker, Tyrone Megginson, who represented himself to the Claimant as the Respondent's lead worker. During the construction, Mr. Megginson said that he was not being paid by the Respondent, and threatened to take down the work that was done on the Property. In order to protect the construction and avoid further damage to her property, the Claimant contacted the Respondent, who claimed not to have any money available to pay Mr. Megginson, and he suggested that the Claimant pay Mr. Megginson the \$2,000.00 that was owed him under the Contract. Having already gotten the cashier's check withdrawn from her bank account, and having had it made payable to the Respondent and his company, the Respondent accompanied the Claimant to the Wells Fargo Bank, cashed the \$2,000.00 cashier's check, which allowed the Respondent to immediately have the cash converted to another cashier's check, this time made payable to Mr. Megginson, so that he could be paid for his work and not destroy the Claimant's property (Cl. Ex. 31). This version of events was clearly and sincerely testified to by the Claimant, without any serious contradiction from the Respondent or the Fund. Moreover, the banking documents presented at the hearing (Cl. Ex. 31) were consistent with this explanation. The Respondent's contention that he was foreclosed from completing the job is inconsistent and self-serving; he failed to pay his worker, who threatened the Claimant's property, and cooperated with the Claimant's plan to pay the worker his wages in exchange for completing the work. Accordingly, I find that, despite the Respondent's assertion that Mr. Megginson was an independent contractor, the money initially paid to the Respondent (\$4,729.00) as well as \$2,000.00 paid to Mr. Megginson, were paid respectively to the Respondent directly, and to Mr. Megginson on behalf of the Respondent and with his agreement, proving that the full amount of the Contract price (\$6,729.00) paid to the Respondent and paid to Mr. Magginson on his behalf.

Despite these payments, the work was done in an unworkmanlike, inadequate or incomplete manner. The Claimant clearly testified, explaining the contents of each of the photographs that were admitted into evidence on her behalf. This evidence went largely unchallenged by the Respondent. The photographic evidence proving the Respondent's unworkmanlike, inadequate or incomplete home improvements can be categorized and described as follows:

Category	Cl. Ex.	Description
Door closer	2, 4	The pneumatic door closer was installed on the outside of the construction, and not on the inside where it is normally placed
Caulking	4	Caulking sloppily applied
	7	Putty showing along with paint chips
	10	Sloppy caulking beside door frame
	12	Holes over door with glue or caulking smudges
Gaps	6	Visible gaps in the construction walls
	7	Gaps over door frame
	8	Gaps in door frame and steps leading to enclosure
	9	Gaps between framing and floor, with nail holes and sloppy caulking
Misalignments	7	Obvious piecing of wood where solid wood should be located (or properly pieced together)
	8	Uneven piecing of siding and soffit
	10	Gaps between framing and house; joints not aligned; sloppy caulking
	11	Misaligned pieces on door frame which should be solid or properly joined; sloppy caulking
	12	Misaligned porch framing and soffit; visible glue or caulk
	13	Gaps between bottom of door and floor; improperly installed door sweep
	13	Misaligned framing on door framing
	14	Misaligned screen framing with visible and unsightly screw heads
	14	Misaligned screening frames and bunched screening
	14	Misaligned screen framing
	14	Misaligned and gapping supports and screening
	14	Misaligned support and ceiling ; misaligned framing pieces; sloppy screening
14	Misaligned support at ceiling and molding that does not extend to floor	
14	Misaligned joints and screening	
14	Misalignment of door molding	

	14	Gaps in molding
	15	Gaps in ceiling molding
	15	Misaligned molding in corner with gaps
	21	Gaps in molding at ceiling
	22	Misaligned and sloppy siding patches
Nail heads	7	Nail heads showing
	10	Missing molding and nail holes showing
	20	Protruding nail heads
Roofing	16	Rain water leaking from roof onto enclosed porch
	17	Debris running off of leaking roof
	18	Rain water staining carpet in enclosure
	24	Improper rain drainage from roof
	25	Lack of flashing on roof
	25	Misapplied shingles (upside down and bending over gutter)
	26	Poor roof construction with gaps and misalignment of gutter
	26	Loose shingles and poor gutter alignment
Screening	6	Loosely installed screening (not taut).
	23	Loosely installed screening
Splitting	10	Molding splitting with sloppy caulking and nail heads showing
	10	Molding splitting and frame not cut to proper fit
	10	Molding cracking and gapping with nail holes showing
	14	Misaligned and splitting screen framing
	14	Molding splitting
Wiring	21	Exposed wire coming from lighting fixture

The Claimant asked the Respondent to correct this work, which was obviously unworkmanlike and inadequate. The Respondent pulled his crew off the job and would do no further work.⁶ The Respondent had to deal with Mr. Megginson to complete the work, as explained above. Mr. Megginson's work was equally incomplete, resulting in work that was obviously unworkmanlike and inadequate as seen in the photographs.

In order to rebuild and repair the work performed by the Respondent, the Claimant submitted two estimates into evidence. Boyce Renovations, LLC, proposed to repair and replace the construction (Cl. Ex. 29). The proposal for work is well within the scope of the initial Contract, and is within the amount claimed on the Claimant's MHIC Claims form (CL.Ex. 33).

⁶ The Claimant testified without contradiction that the Respondent was seen at the job site dropping off supplies, but not performing any other labor.

The Claimant also submitted an email from Mark Miller from Remodeling Maryland with an additional estimate (Cl. Ex. 37).⁷ Although more recent than the Boyce proposal, it is for more than the amount being claimed. Nevertheless, the scope of the work necessary to repair the Respondent's work, shown in that email, easily supports the Claimant's assertion that the Respondent's work was unworkmanlike, inadequate or incomplete.

Because I find the Respondent performed unworkmanlike, inadequate or incomplete home improvements, I find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures 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). The calculations, therefore, are as follows:

⁷ The latter estimate includes the installation of footers. Although poor workmanship and lack of aesthetics in the Respondent's work was obvious, the need for footers on this type of construction is not so obvious, and would have required an expert's opinion regarding the need for footers, which was not provided.

\$ 4,729.00	(Amount paid by the Claimant to the Respondent), plus
\$ 2,000.00	(Amount paid by the Claimant on behalf of the Respondent), plus
<u>\$ 4,000.00</u>	(fair market cost to make corrections and complete Contract
\$ 10,729.00	work),
	Subtotal
	Less:
<u>\$ (6,729.00)</u>	Original contract price, equals
\$ 4,000.00	(Amount of the Claimant's actual loss).

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled recover her actual loss of \$4,000.00, which is the amount that she claimed.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$4,000.00 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 \$4,000.00; 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 Commission⁸; and

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

Signature on File

September 24, 2018
Date Decision Issued

Marc Nachman
Administrative Law Judge



MN/cj
#175999

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

PROPOSED ORDER

WHEREFORE, this 20th day of November, 2018, 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.

Jeffrey Ross

**Jeffrey Ross
Panel B**

MARYLAND HOME IMPROVEMENT COMMISSION