IN THE MATTER OF THE CLAIM	*	**BEFORE KATHLEEN A. CHAPMAN,**
OF CARRI TUCKER,[1]	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF ANTHONY MILLER,	*	
T/A 5 STAR HOME	*	
IMPROVEMENTS, LLC,	*	**OAH No.: LABOR-HIC-02-19-40281**
RESPONDENT	*	**MHIC No.: 19 (75) 415**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 30, 2019, Carri Tucker (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[2] for reimbursement of $8,300.00 in actual losses allegedly suffered as a result of a home improvement contract with Anthony Miller, trading as 5 Star Home Improvements, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

[1] Ms. Tucker's married name is Coleman, but the Claim was filed under her maiden name.
[2] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

(2015).[3] On December 2, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 4, 2020 and April 1, 2020, the OAH mailed a Notice of Hearing (Notice) to the parties, which scheduled a hearing for May 1, 2020 and August 7, 2020, respectively, to be held at the OAH – Cumberland office. The notices were mailed to each party, using their respective address of record, by first class regular and Certified Return Receipt Requested (Certified) mail.[4] Both hearings were cancelled due to the COVID-19 pandemic.

On July 30, 2020, the OAH mailed a Notice of Telephone Pre-Hearing Conference (TPHC) to the parties informing them that a telephone conference would be held on August 7, 2020. I also mailed a letter to the parties on July 30, 2020 explaining the purpose of the TPHC was to discuss the rescheduling of the hearing from an in-person to a videoconferencing platform.

On August 7, 2020, I held a TPHC with Shara Hendler, Assistant Attorney General, on behalf of the Fund, and the Claimant participating. The Respondent did not participate in the TPHC.[5] After much discussion, those participating in the TPHC agreed to a remote hearing to take place on September 15, 2020, at 10:00 a.m. I sent the parties a confirmation letter on August 10, 2020 and a follow-up email on August 24, 2020. On August 24, 2020, the OAH issued a Notice of Remote Hearing to the parties.[6]

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[3] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

[4] The OAH received the signed green certified return receipt cards from both the Claimant and the Respondent based on the April 1, 2020 Notice of Hearing.

[5] Later in the day, the Respondent contacted the OAH, speaking to Clerk Linda Bailey, indicating that he did not know he needed to call into the TPHC as opposed to waiting for a phone call. The Notice of Prehearing Conference, issued on July 30, 2020, instructed the parties to be available via pre-identified telephone numbers. My letter, dated July 30, 2020, instead instructed the parties to call a conference line. When Mr. Miller did not call the conference line, I phoned him leaving a voicemail message to join us on the conference line but he never did.

[6] The OAH received the signed green certified return receipt cards from both the Claimant and the Respondent based on the August 24, 2020 Notice of Remote Hearing.

On September 11, 2020, the Respondent filed a request for postponement on the basis that his work schedule as a correctional officer changed from the 3:00 p.m. to 11:00 p.m. shift to the 7:00 a.m. to 3:00 p.m. shift. The Respondent provided documentation to support his request. After I found good cause to postpone the case, my Administrative Assistant contacted the parties to schedule a new hearing date. The new agreed-upon hearing date was October 19, 2020, at 2:00 p.m. On September 23, 2020, the OAH issued a Notice of Remote Hearing to the parties.[7]

At 1:17 p.m. on October 19, 2020, I sent the parties an invitation to participate in the hearing via the Google Meet videoconferencing platform for the hearing to begin at 2:00 p.m. On October 19, 2020, I held the hearing as scheduled. Code of Maryland Regulations (COMAR) 28.02.01.20B. The hearing was initiated from the OAH in Hunt Valley, Maryland, and the parties participated from their respective locations. Bus. Reg. § 8-407(e). Ms. Hendler appeared, representing the Fund; the Claimant appeared, representing herself; and the Respondent appeared, representing 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. 2020); COMAR 09.01.03; and 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?

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[7] When the notice to the Respondent was returned as undeliverable, Ms. Hendler provided the OAH with a new address for the Respondent and a new notice was mailed to him on October 9, 2020. The OAH received the signed green certified return receipt card from the Respondent in response to the October 9, 2020 Notice of Remote Hearing.

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 – Contract with several handwritten notations, dated June 22, 2018

Clmt. Ex. 2 – Letter from the Claimant to Jeffrey Parks, Manager with the Respondent company, dated September 4, 2020

Clmt. Ex. 3 – Letter from the Claimant to the MHIC, dated June 29, 2020; Complaint Form, undated; Home Improvement Claim Form, undated

Clmt. Ex. 4 – Ten pages containing twenty color photographs, undated

Clmt. Ex. 5 – Eight pages containing text messages between the Claimant and Mr. Parks, from June 22, 2018 to August 30, 2018

Clmt. Ex. 6 – Invoice from Adilio Diaz, dated September 14, 2018

Clmt. Ex. 7 – Three separate Sales Orders from The Roof Center, dated August 29, 2018, August 29, 2019, and August 30, 2020

Clmt. Ex. 8 – Not admitted (relevancy)[8]

Clmt. Ex. 9 – Not admitted (relevancy)[9]

Clmt. Ex. 10 – Listing of additional expenses incurred by the Claimant, undated

Clmt. Ex. 11 – Advertisement/Coupon, undated

Clmt. Ex. 12 – License Categories and Requirements – Home Improvement Commission from the MHIC website, undated

Clmt. Ex. 13 – Results for Active Licensed Home Improvement from the MHIC website, undated

I admitted no exhibits on the Respondent's behalf.

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

GF Ex. 1 – Hearing Order, dated December 2, 2020

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[8] Claimant Exhibit 8 was an online review of the Respondent on Google.com, dated March 30, 2017.
[9] Claimant Exhibit 9 consisted of a Maryland Judiciary Case Search, with a variety of dates.

GF Ex. 2 – Notice of Remote Hearing, dated August 27, 2020; Notice of Hearing, dated April 1, 2020; Notice of Hearing, dated February 2, 2020

GF Ex. 3 – Home Improvement Claim Form, dated June 30, 2019 (date-stamped received on July 2, 2019); letter from Joseph Tunney, Chairman, MHIC, to the Respondent, dated July 12, 2019

GF Ex. 4 – Licensing History, printout date: July 27, 2020

Testimony

The Claimant testified and did not present other witnesses. The Respondent testified and presented the testimony of Jeff Parks, Salesman/Project Manager with the Respondent company.

The Fund presented no witness testimony.

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 110764.

2. On June 22, 2018,[10] the Claimant and the Respondent entered into a contract to remove and replace the roof on the Claimant's home, and install (a) an ice shield at the gutter edges, (b) a synthetic felt to remainder of the roof, (c) a new drip edge, (d) new vent pipe collars, (e) new Velux skylights, (f) 50-year architectural shingles, and (g) a new ridge vent with shingle caps (Contract). The Respondent also agreed to keep the area clean while performing the work.

3. The Contract did not contain a start or end date, but Jeff Parks, Salesman/Project Manager with the Respondent company, verbally committed to completing the project within two weeks.

[10] The quote was dated June 22, 2018, but the Claimant made the down payment, or deposit, on June 26, 2018.

4. The original Contract price was $21,500.00 less a $800.00 discount, for a total of $20,300.00; however, Mr. Parks reduced the price further by $1,500.00 to an agreed-up price of $18,800.00.

5. On June 26, 2018, the Claimant paid the Respondent $4,700.00. This resulted in a remaining balance owed of $14,100.00. Mr. Parks memorialized the change by handwriting and initializing the new balance on the Contract.

6. The Claimant wrote on her check that the $4,700.00 deposit was to be used for the purchase of materials – specifically, shingles.

7. On July 9, 2018, the Claimant paid the Respondent $1,800.00 for the purchase of additional materials.

8. On July 12, 2018, work began on the project.

9. After two days on the project, the workers stopped working.

10. On July 20, 2018, Mr. Parks asked the Claimant to pay a second one-third payment. He told the Claimant that the payment was necessary to cover the cost of labor.

11. While the Contract specifically did not require the remaining two-thirds balance to be paid until completion of the project, the Claimant felt compelled to pay $6,800.00 to avoid a work stoppage.

12. By this point, the Claimant had paid a total of $13,300.00 to the Respondent.

13. After making the payment, the Claimant asked Mr. Parks to complete the project by no later than August 4, 2018, explaining that she had additional contractors lined up to paint the exterior of the home and to install a driveway. The Claimant also told Mr. Parks that she had a family gathering planned for the weekend of August 24, 2018 and she wanted all work (roof, painting, and driveway) completed before then.

14. The Respondent did not return to perform any additional work despite the Claimant's numerous telephone calls and text messages asking when the project would resume.

15. A crew appeared at the Claimant's home on August 25, 2018 and worked for approximately 1.5 hours, then left. This was the last date the Respondent worked on the project.

16. The Respondent left the project unfinished.

17. On August 30, 2018, the Claimant contacted Mr. Parks informing him that she was cancelling the Contract. She also requested the Respondent to reimburse her $2,900.00 for the cost of materials that were never delivered under the Contract.

18. On September 4, 2018, the Claimant memorialized her concerns about the Contract in a letter to the Respondent detailing the history of the project. She also renewed her demand for reimbursement of money for the cost of materials never delivered.

19. The Claimant purchased $3,308.77 in roofing materials from The Roof Center to complete the project.

20. The Claimant paid Adilio Diaz, an unlicensed contractor, $5,000.00 to install the remaining shingles (approximately twenty squares of roofing) as well as the skylights.[11]

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

[11] The invoice mentions bay windows as opposed to skylights.

[illegible]

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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. For the following reasons, I find that the Claimant has proven, in part, eligibility for compensation.

The Claimant's testimony and presentation mirrors the Findings of Fact. For his part, the Respondent relied entirely on the testimony of Mr. Parks to describe the interactions he had with the Claimant since Mr. Parks was the project manager and salesperson under the Contract.

There is no dispute between the parties that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The purpose of the Contract was to remove and replace the existing roof and skylights on the Claimant's home. The Contract further included a variety of trim items to complete the project. While Mr. Parks offered a fair amount of bluster during his testimony over whether the Claimant needed a new roof, the inescapable truth is that he accepted payment from the Claimant for the performance of a Contract requiring the installation of a new roof. If he truly thought a new roof was totally unnecessary, then he should not have bid on the project in the first place.

Both the Claimant and Mr. Parks testified that the project would take two weeks to complete once started. Both parties concur that the project did not finish in two weeks. Both parties concur that the project was still a work in progress two months after the signing of the Contract.

While there was some dispute between the parties regarding the cause for the delay in completing the Contract, both sides agreed that weather, specifically rainy days and high temperatures, prevented the roofers from consistently working on the project. That said, Mr. Parks also acknowledged that he accepted another roofing job at the same time he was to perform the work at the Claimant's home which, in all likelihood, contributed to the unavailability of his crew to finish the work in a timely fashion. In essence, Mr. Parks overbooked himself which took his and his crew's time and energy away from completing the project at the Claimant's home. Mr. Parks also did not dispute that the Claimant made every effort to reach out to him by telephone and text to get regular updates from him inquiring about when the crew would be returning to work on the project. Both sides agree that the last day the crew was on site to work on the roof was August 25, 2018. Both sides agree that the work remained incomplete when the crew left. For all of these reasons, I find that the Respondent performed an incomplete home improvement.

Items not compensable by the Fund

Not contained in the Findings of Fact or in the discussion above are miscellaneous issues the Claimant brought to the Respondent's attention in a September 4, 2018 letter about the quality of the work performed and lack of care the crew demonstrated while performing the Contract. Clmt. Ex. 2. These include failing to keep the area clean and free from debris (such as nails); having a pair of metal snips fall from the roof nearly striking the Claimant; clogging the downspouts on the gutters and not cleaning them; leaving filth (food contains and empty cans) and cigarette butts everywhere on premises; and destroying a wheelbarrow. Because of these issues, in her Claim to the Fund, the Claimant estimated that she suffered an additional expense in the amount of $2,950.00 for flat tires ($100.00), the purchase of a nail magnet ($50.00), two

and one-half months of inconvenience and loss of another contractor's discount ($2,000.00), a ruined wheelbarrow ($100.00), unpaid leave from work ($500.00), a leak caused by improper installation of the rubber underlayment ($100.00), and skylight repair ($100.00).

According to Section 8-405(e)(3) of the Business Regulation Article and COMAR 09.08.03.03B(1), the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Each of the items listed above, except for the last two, squarely fall under the category of consequential damages that are not intended to be reimbursed by the Fund.

With regard to the skylight repair and the improper installation of the rubber underlayment, the Claimant failed to prove an unworkmanlike performance under the Contract. The Claimant's presentation included two invoices, pictures, and her testimony. The Roof Center invoice was for material only and did not speak to any performance issues. The Diaz invoice covered the cost of labor, but it too did not offer any commentary that the labor costs included time to cure any alleged improper installation of the skylights or rubber underlayment. While the Claimant offered pictures into evidence and explained her position on these issues, I found her testimony and the evidence insufficient to prove this aspect of the Claim. Equally important, as further elaborated below, I did not give any weight to the Diaz invoice because it was prepared by an unlicensed contractor.

Unlicensed contractor

Both the Respondent and Mr. Parks questioned the amount paid by the Claimant to have Mr. Diaz install the shingles and skylights onto the home. According to Mr. Parks, he and his crew installed the roofing material over the garage and close to one-half of the rest of the home. All that was left to do, according to Mr. Parks, was the remaining one-half of the rest of the

home as well as the installation of the skylights. I found Mr. Parks' testimony and the position taken by the Respondent on this point curious and deceiving when the total amount owed under the Contract for labor, had the work been performed, was $5,500.00. Neither the Respondent nor Mr. Parks questioned or rebutted the Claimant's testimony that the first two payments, $4,700.00 and $1,800.00 for a total of $6,500.00, was for the purchase of material only. As such, it would stand to reason that any remaining monies owed would be for the cost of labor. That said, the Claimant retained the services of an unlicensed contractor to complete the work and is not eligible for reimbursement from the Fund for monies paid to Mr. Diaz.

The MHIC's legislative policy is designed to encourage contractors to be licensed and to discourage homeowners from using unlicensed contractors. It is reflected in a number of ways, including: a homeowner may recover compensation from the Fund only for an actual loss resulting from an act or omission by a *licensed* contractor. Bus. Reg. §§ 8-401, 8-405(a). In other words, if the Respondent had not been licensed by the MHIC, the Claimant would have been barred from asserting its claim against the Fund. Further, if the Respondent had been unlicensed when he performed the work, he would have committed a misdemeanor crime and been subject to a fine of $1,000.00 or imprisonment not exceeding six months, or both, for a first offense. *Id.* § 8-601 (Supp. 2020).

Additionally, Maryland appellate decisions have offered some guidance on the treatment of unlicensed home improvement contractors. Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage homeowners from using unlicensed home improvement contractors, the courts, as a matter of public policy, will not enforce contracts made

by or with unlicensed contractors. In *Goldsmith v. Mfrs.' Liability Ins. Co. of N.J.*, 132 Md. 283, 286 (1918), the Court of Appeals held:

> [A] contract entered into by an unlicensed person, engaged in a trade, business, or profession required to be licensed, and made in the course of such trade, business, or profession, cannot be enforced by such person, if it appears that the license required by the statute is, in whole or in part, for the protection of the public, and to prevent improper persons from engaging in such trade, business, or profession.

See also Balt. St. Builders v. Stewart, 186 Md. App. 684, 706 (2009) (unlicensed contractor cannot enforce a home improvement contract with a homeowner); *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118, 134 (2003) (homeowner can repudiate a contract made with a consultant if the consultant is performing a home improvement without a license).

Accordingly, the purpose of the Fund is to compensate a homeowner for an actual loss resulting from an act or omission of a licensed home improvement contractor. Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2). When an award is granted, the Fund is entitled to reimbursement from the original contractor in the amount paid to a claimant, plus interest. Bus. Reg. § 8-410(a)(1)(iii). The MHIC is also permitted to suspend a contractor's license until the Fund is reimbursed. *Id.* § 8-411(a).

If the Fund were to grant reimbursement for the work performed by unlicensed contractors, in essence it would be rewarding a claimant who was a party to an illegal contract with an unlicensed contractor at the expense of a licensed contractor who, although deficient, observed the licensing requirements of the State. It would be improper for the Fund to act against public policy and condone a contract undertaken by a claimant with a party that the Fund considers in violation of the law. Therefore, I find that the Claimant is not eligible for reimbursement for the monies paid to Mr. Diaz for installing the shingles and skylights (or bay window).

Deposit

In her complaint to the MHIC, the Claimant claimed that she paid more than one-third the contract price when she made two payments to the Respondent, on June 26, 2018 for $4,700.00 and on July 9, 2018 for $1,800.00, for a total of $6,500.00.[12] As noted above, the Business Regulation Article limits the scope of these hearings to whether an owner may recover compensation from the Fund. *See* Bus. Reg. § 8-405(a).

Was there a good faith effort by the Respondent to resolve the claim?

To qualify for an award from the Fund, the Claimant may not "unreasonably reject[] good faith efforts by the contractor to resolve the claim." Bus. Reg. § 8-405(d) (2015 & Supp. 2020). Although the term "good faith" is not defined in the applicable regulation or statute, it generally refers to "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or seek unconscionable advantage." *Black's Law Dictionary* 836 (11th ed. 2019). Applying this standard, I find that the Respondent did not act in good faith.

According to Mr. Parks, he asked the Claimant to allow him to complete the work, but the Claimant did not allow that to happen. He also claimed that his crew was almost finished with the project when the Claimant "chased" him off the job. According to Mr. Parks, "all he needed to do was to call the roof center for the materials." Mr. Parks' testimony was neither credible nor persuasive.

The Claimant presented several pages worth of text messages between herself and Mr. Parks, from June 22, 2018 to August 30, 2018, detailing her efforts to persuade Mr. Parks to

[12] One-third of $18,800.00 is $6,204.00; a difference of $296.00.

finish the project, with messages such as "Any chance the guys could work at least tomorrow since the rain is supposed to hold off until the afternoon?" (August 13, 2018); "Can you have the roof completed by the 24th so I can get the driveway project started?" (August 14, 2018); "Morning Jeff, [l]ooks like a sunny day for roofing. Think we might have a full crew today?" (August 16, 2018); "Morning Jeff, [y]ou mentioned starting with a full crew today. Is that still the case? Forecast appears good today." (August 20, 2018); "Gorgeous day for roofing. Can't wait to see all the progress you're going to make with this fine weather." (August 22, 2018); "What time are you planning on getting started today?" (August 24, 2018, 7:08 a.m.); "Are you planning on roofing here this afternoon?" (August 24, 2018, 1:06 p.m.); "Hey Jeff – any chance you are heading over here today?" (August 24, 2018, 1:52 p.m.); and "Jeff, you said you were coming early. Where are you?" (August 26, 2018).

Further, when I reviewed these text messages, the communication between the two parties was overwhelmingly one-sided; meaning, the Respondent did not contemporaneously respond to the Claimant's pleas to finish the work, thus eviscerating the Respondent's characterization that he was chased away by the Claimant when he asked her that he be permitted to complete the Contract. I also did not find Mr. Parks' testimony credible or supported by the record that the Claimant insisted he perform work under unfavorable weather conditions when viewed in light of her various text messages mentioning the forecast. Moreover, there is no give and take in the text messages suggesting that Mr. Parks tried to gently persuade the Claimant to allow his men to work only when the weather allowed for it. Similarly, I found Mr. Parks' testimony dubious that "all I needed to do was to call the roof center for the materials" to finish the project. The Claimant testified forthrightly and without challenge that the first two deposits were intended for the purchase of material and supplies.

Even though the Contract lacked a start and end date, both sides agreed that there was a mutual understanding and an oral agreement the work would finish within two weeks of when it began. There is no dispute that the work began on July 12, 2018. Two weeks from this date would have been July 26, 2018. Even assuming that the weather was not cooperative at times, the Claimant did not cancel the Contract until August 30, 2018, more than one month later. So, I find it more likely than not that the Claimant justifiably refused the Respondent's overture to complete the Contract after waiting more than a month and one-half for him to finish the project.

Award amount – materials

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 MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract 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 Claimant provided the invoice for materials she paid out-of-pocket to complete the project with similar, like, kind, and quality shingles anticipated under the Contract. Clmt. Ex. 7.

She also provided the invoice for the labor paid to Mr. Diaz. Clmt. Ex. 6. Therefore, the Claimant is eligible to receive the following award from the fund:

Amount paid under the Contract.....	$13,300.00
Plus amount paid for labor.....	$ 5,500.00
Plus amount paid for materials.....	$ 3,308.77
Subtotal.....	$22,108.77
Minus original Contract price.....	$18,800.00
Total.....	$ 3,308.77[13]

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 to recover her actual loss of $3,308.77.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $3,308.77 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 $3,308.77; and

[13] This amount covers solely the out-of-pocket costs for the materials.

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;[14] and

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

December 22, 2020
Date Decision Issued

Kathleen A. Chapman
Administrative Law Judge

KAC/kdp
#189346v1A

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

PROPOSED ORDER

WHEREFORE, this 1st day of June, 2021, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION