IN THE MATTER OF THE

* BEFORE ROBERT F. BARRY,

CLAIM OF LAURA MAMARIL,

* AN ADMINISTRATIVE LAW JUDGE

CLAIMANT,

* OF THE MARYLAND OFFICE

AGAINST THE HOME

OF ADMINISTRATIVE HEARINGS

IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS

OR OMISSIONS OF

OAH No.: LABOR-HIC-02-19-28697

WESLEY STANKIEWICZ,

MHIC FILE No.: 19 (75) 463

TRADING AS

EXTREME MEASURES HOME

IMPROVEMENT,

RESPONDENT

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On February 20, 2019, Laura Mamaril (Claimant) filed a claim with the Maryland Home Improvement Commission (Commission) against the Home Improvement Guaranty Fund (Guaranty Fund) for reimbursement for an actual loss allegedly suffered as a result of a home

3.627 字位 1.57 (方 A M G X L 为 3 SERVE STATE OF THE SERVE STATE O THE PROPERTY OF STREET WEST g the fact of the state of TAKE STORY TAKE harta et ar ésa terren de so THE PROPERTY OF THE PROPERTY O WELLER TO THE LINE OF THE SERVICE OF en natural de la companya della companya de la companya della comp STANDARD CONTRACTOR In Chicago Real Late Wilder Box 7 TARILY DOWN TOWN THE PART THE TENTE OF (1977) \$P\$(1977) K.P 。1980年18月1日日 Walley Colors (1) and ando menda a pe the Hardinand and the College based on the property lines and the College Resident and and to have the self months or record in the color of the contract of the growth of the color of energy a deciment in a metalling of the political in the contract of the contract of the Contract of the contract of improvement contract with Wesley Stankiewicz, trading as Extreme Measures Home Improvement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-405(a), 8-406 (2015).

On August 19, 2019, the Commission issued a Hearing Order; on August 22, 2019, the Commission transmitted the case to the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. § 8-407(c)(2)(i). The OAH postponed a hearing scheduled for March 17, 2020 due to the COVOD-19 pandemic and the OAH's inability to hold in-person hearings.

On October 2, 2020, I held a remote hearing via Cisco Webex, a video conference platform, from the OAH in Hunt Valley, Maryland. *Id.* The Claimant represented herself. The Respondent, after receiving notice of the hearing, did not appear. Nicholas Sokolow, Assistant Attorney General, Department of Labor (Department), represented the Guaranty Fund.

The contested-case provisions of the Administrative Procedure Act; the Department's and the Commission'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); Code of Maryland Regulations (COMAR) 09.08.02.01B, COMAR 09.01.03, and COMAR 28.02.01.

ISSUES

- 1. Did the Claimant sustain an actual loss arising from the Respondent's incomplete performance of a home improvement contract?
- 2. If so, what, if any, compensation may the Claimant recover from the Guaranty Fund?

¹ Unless otherwise noted, all references to the Business Regulation Article cite the 2015 Replacement Volume.

			• •
	the set in remains a consist of embasis and a Sopher	CHANGE STANDS	ing and the second seco
	一、行為中華人的學學人們可以不過一個人的學生的學生。	A Set Douglas	tion to the second second to the second to
A):	1970 S. S. Historia de de Santo Gerro De Decembro de la Proposicio de la P	1 \$64 (976); gr	かかいがいかがかり、計算 - 節 のでは、、人間
		litation of teacher	rterraghed i basis Sommer van trans il 1777 w
	and the second of the second o		- 1997年 日本中報 2000円も - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1
* #5	white the large of that a place of the one to		
	encontrol said in the control of the process.	February States	BOOK OF THE WARRY
c. 19	detector business, outque montes in windy and reading	Amoste, 177.	KINDULA (M.) G
	विकास अंतर के स्थान के स्थान के किए हैं के स्थान के किए हैं के किए हैं कि के किए हैं कि किए के किए किए किए कि		n Andreadhach Iolain
	healt granters on Egiptonica of the contraction of a	The state of the s	等的。 Stratucky es。 Stratuckyes
1457. 3 1	aparance in the action of several several sections in action and the		Fire Control of the C
er chet.	THE ENTIRE SEASON SET THE PROPERTY COMES AND THE RESERVE		
i cett			ASSACRATION DESCRIPTION OF STATE OF STA
.10.	0 51. \$2. \$2. \$4. \$0. \$0. \$0. \$0. \$0. \$0. \$0. \$0. \$0. \$0		And Seed his tri
		Not different difference	वित्री (अस्त्री स्वराधि सेव्र वि
	the description of the section of the section of		
•	Stock and the control of the many of the control of	Principles of the second	
•	भाग वास्त्र के कारण का माना करते हैं के समाव के किस समाव करते हैं किस समाव के किस समाव के किस समाव के किस समाव समाव के समाव के किस समाव की किस समाव की किस समाव क	And the property of the second	
			rwalencies.

श्रीत्व रिक्स,

SUMMARY OF THE EVIDENCE

Exhibits

I admitted seven exhibits into evidence for the Claimant:

- CLAIM. #1 Contract between the Claimant and the Respondent, July 8, 2017
- CLAIM. #2 Photocopies of text messages between the Claimant and the Respondent, July 10, 2017 through October 4, 2017
- CLAIM. #3 Photocopies of canceled checks payments made by the Claimant to the Respondent: July 13, 2017; July 19, 2017; and August 10, 2017
- CLAIM. #4 Stop Work Order, Code Compliance Division, Anne Arundel County
 Department of Inspections and Permits, September 18, 2017
- CLAIM. #5 Estimate, American Builders Corp. (American Builders), July 2, 2018
- CLAIM. #6 Contract between the Claimant and American Builders, August 16, 2018
- CLAIM #7 Photograph of the Claimant's garage and photocopies of canceled checks payments made to American Builders: August 16, 2018; October 3, 2018; October 24, 2018; November 29, 2018; and February 1, 2019

The Respondent did not appear for the hearing.

I admitted five exhibits into evidence for the Guaranty Fund:

- FUND #1 Notice of Remote Hearing
- FUND #2 Hearing Order, August 19, 2019
- FUND #3 Letter from the Commission to the Respondent, February 25, 2019, with Home Improvement Claim, February 20, 2019
- FUND #4 Respondent's licensing history with the Commission, September 4, 2020
- FUND #5 Affidavit of Kevin Niebuhr, February 4, 2020

Testimony

The Claimant testified on her own behalf.

The Guaranty Fund did not present any witnesses.

	Market Army	ाम के के केमा करते हैं। उनके तिहें हैं हैं के अपने ज		
	n parena	Dajangsiji. Graeni		Serial Control
i	The Asia as the second	is kindust Dadroll, o	od turnoch - (4	Milyan (1)
	Complete resemble of the parties of the complete of the comple	o di pilippe per aviolità Copady I IIII Novembre		
wije c	na i 2003. pa papaka jigi wanga Kabupatan janga 180, 2006.	- Elevida Luciose do Figlio Novilaçõe vida	ofersky of 1970. Making and 1991.	
	nes (I) (see a production of the free (I) and	rangang Loberton (1985). Kabupatangasas Pan	Constitution of the second	ing a light
¥			e simelas es	· 表示理以及可以
		ទេ ដ ើម្តងកម្លាំង (១៤) ។ ស	rgagasilo a 🐬	
	tet. impliet wagenere in belonder tet in Inchauge in kindle in ther i begriff in North waters	enige et state tip et. 1915 jail automin ja et.	Le la Lembert Consultation Consultation	
	in a state of the		hei alkijoz (1948.	
			12	
	Alon Markare Lowbert Chic	il o missionet i sata satul 10° (s. 18ma)	regressified to ere anyther	parties :
	Committee gaster stakimore Cologie is		representation of	AND THE RESERVE OF THE PERSON
			HANNING A	Mary Carlotte
		Manager were to	no la Catana di	gizy at

is experience of the state of t

FINDINGS OF FACT

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

- 1. The Respondent was licensed by the Commission as an individual home improvement contractor under registration number 01-95944 almost continuously from October 5, 2007 through October 15, 2017.
- 2. At all times relevant to this claim, the Claimant owned and resided in a house located on Hamlen Road in Anne Arundel County.
- 3. On July 8, 2017, the Claimant and the Respondent signed a home improvement contract whereby the Respondent agreed to perform work at the Claimant's home for \$26,800.00, including the construction of a two-story garage for \$24,500.00.
 - 4. On July 13, 2017, the Claimant paid the Respondent a deposit of \$8,040.00.
- 5. The construction of the garage required a permit from the Anne Arundel County
 Department of Inspections and Permits, which the Respondent never obtained.
- 6. Between July and September 2017, the Respondent constructed the garage, including footings, a concrete slab, block walls, framing, siding, and a roof.
- 7. On July 19, 2017 and August 10, 2017, the Claimant paid the Respondent installments of \$5,376.00. The three payments made by the Claimant to the Respondent totaled \$18,792.00.
- 8. On September 18, 2017, the Code Compliance Division of the Anne Arundel County Department of Inspections and Permits issued a Stop Work Order to the Claimant for constructing an accessory structure without the required permit.

TOP BEFORE !

•				and the second s	1		
			harman and a second of				
	in the state of th	11.1	i danibat,			,	i

on participation of the contraction of the contract

્રાહ્મોલી કરવા મહિલા મુદ્દાં માટે જિલ્લો કરવા હતા.

and the set from gales and the A. Statem that Columbia indicate and all and another the set in

ngenoù benezh kunt ei bañ megad eveledoù

วงเรียกระหวาย และ เลยเดิก (เมื่อเลยโดยเทียกเหลือ เลยเลี้ยว (เลยเลี้ยว) เลยเลี้ยว (เลยเลี้ยว) เลยเลือด (เลยเลือ

e e umant affinemant, i objetació de la plantació los especies comparable als estacións de la minima templa.

्राम प्राप्ति होते प्राप्ति सङ्ग्रहे<mark>स्य हे अवस्तु स्रहे</mark>शन करित हता है। बेल्यसम्बद्ध करित का नांत्री होक्या है है एक स्रहेशनी है

Co. Like 49, 2011 it is Chile with perfigue Historia properties in a property (Name of Co.)

not gradit taliaca A. 2000 kg William of Para by a Balifichen not are the gradition and billion in the

garge substitution in adjustic compact from a set of the factoristic of the particular of the configuration of the

The very their gradulogy from it allowed wild in the supplement of configural gailegical.

्रीया हिल्लामा जानसम्बद्धाः सुन्धारी स्थापन । अस्त । सामुन्य स्थापन स्थापन स्थापन । सामुन्य स्थापन स्थापन स्था

Source and the training from the particles of the problems the configuration of the Color Calling Constant and

39.590,945

terment to the relationship to the period of the period of

C. Land Deposition Cold through the first states of the best provided Cold and the Cold for the

sinterificial agents in resulting but tooks you know by wide were exp.

- 9. Between September 25 and October 4, 2017, the Claimant and the Respondent exchanged texts, with the Respondent asserting falsely that he was attempting to obtain the required permit.
- 10. After the Claimant texted the Respondent to inform him that she knew she could not get the required permit without tearing down the structure in order to allow for a footing inspection, the Respondent stopped communicating with the Claimant.
- 11. On August 16, 2018, the Claimant hired American Builders to construct a garage for \$27,618.00; the contract included \$2,800.00 for electrical work that was not part of the Claimant's contract with the Respondent.
- 12. American Builders was only able to use the footings constructed by the Respondent; it had to demolish the other unpermitted work performed by the Respondent to allow an inspection of the footings.
- 13. The Claimant paid American Builders Corp. a total of \$24,818.00 to complete the work that the Respondent had agreed to perform.²
- 14. On August 27, 2020, the OAH sent a Notice of Remote Hearing to the Respondent at his last address of record with the Commission and to his current address of record with the Motor Vehicle Administration (MVA).
- OAH a certified mail receipt indicating that the remote hearing notice sent to the MVA address was delivered to the Respondent's "agent." The USPS receipt was not signed by anyone and it did not contain anyone's printed name it read "COVID-19, Social Distance Order."

² The Claimant presented five canceled checks, three of which were drawn on the account of Baltimore Fleet Service, LLC, a company controlled by the Claimant and her then boyfriend. The Guaranty Fund did not object to these canceled checks as proof of the Claimant's payments to the Respondent.

the first of the reach product of the Nicker settled Court of the control of the reside is a settle of the reside in the control of the contr

(1. file of some meaning will repose to the consequence of the best of the constant of the con

englag i sammen, mgeskligt molsmen lagner men i Dose i Nobles Anter i Mi november ett på Tallinderet men ikk trodenskli i mank ett på Tallinder klimet klimet klimet for til til 122 vå Dose tondere wette i vælet for dette men i dette trodenskli i sammen ett på Tallinder trodensklike

the official and an experimental series of soften the experiment in the continues. The entire continues is the continues of t

The Chine are paid to refer the form of the control of the control

en en les ennes de la commentation de la commentati

nicus, am la vel completa, caso a postrio de la colificiament d'uniculare Rocifica especial de si de la color de l

and the factorial of the respect of the management of the state of the factorial of the factorial of the state of the factorial of the factori

16. On September 28, 2020 the USPS returned to the OAH a certified mail receipt indicating that the remote hearing notice sent to the Commission address was unclaimed.

DISCUSSION

The Respondent's Notice of Hearing

The procedures for notice and hearings for disciplinary actions against home-improvement contractors also apply to proceedings to recover compensation from the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-407(a). Section 8-312 of the Business Regulation Article requires the Commission to give the person against whom disciplinary action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a). The Commission is required to send a hearing notice to the person against whom disciplinary action is contemplated at least ten days before the hearing by certified mail to the business address on record with the Commission. *Id.* § 8-312(d). If, after due notice, the person against whom disciplinary action is contemplated does not appear, nevertheless the Commission (or by delegation the OAH) "may hear and determine the matter." *Id.* § 8-312(h).

In this case, the Respondent has not been licensed by the MHIC since his registration expired on October 15, 2017. On August 27, 2020, the OAH sent a Notice of Remote Hearing to the Respondent at his last address of record with the Commission and to his current address of record with the MVA. On September 4, 2020 the USPS returned to the OAH a certified mail receipt indicating that the remote hearing notice sent to the MVA address was delivered to the Respondent's agent. The USPS receipt was not signed; it read "COVID-19, Social Distance Order." On September 28, 2020 the USPS returned to the OAH a certified mail receipt indicating that the remote hearing notice sent to the Commission address was unclaimed. I am satisfied that the Respondent received actual notice of this proceeding at his MVA address and

Tier in languagit, the factor is a compactive to the color of the colo

un kai ir brio Mai kaipentaa 200

Alexande District and another expension and and another in the control of the con

telentes a service service service service construited and activate segments and activate service services and activate services and services and activate services activate services and activate services activated activate services activated activates activated ac

simply declined to attend. Therefore, it is appropriate for me to hear and determine this claim against the Guaranty Fund even in the Respondent's absence.

Guaranty Fund Claim

A homeowner "may recover compensation from the Guaranty Fund for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a). An "actual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Id.* § 8-401. The Commission may not award from the Guaranty Fund an amount for consequential damages, *id.* § 8-405(e)(3), which are losses that result indirectly from any unworkmanlike, inadequate, or incomplete home improvement, such as the cost of restoration of a flooded basement. The Commission may deny a claim if it finds that "the claimant unreasonably rejected good-faith efforts by the contractor to resolve the claim." *Id.* § 8-405(d).

A claimant has the burden of proof at a Guaranty Fund hearing. *Id.* § 8-407(e)(1). In the circumstances presented here, the Claimant has the burden to establish that: (1) the Respondent performed an incomplete home improvement; (2) the Claimant had an actual loss due to the costs of completing the home improvement; and (3) the Claimant did not unreasonably reject the Respondent's good-faith efforts to resolve the claim.³ As explained below, I find that the Claimant met her burden of proof as to her claim against the Guaranty Fund.

Incomplete Home Improvement

The Claimant asserted and the Guaranty Fund conceded that the Respondent failed to complete the home improvement, specifically, the garage. The construction of the garage required a permit from the Anne Arundel County Department of Inspections and Permits.

³ There was no issue of good-faith efforts to resolve the claim generated by the evidence; the Respondent abandoned the home-improvement contract after the Claimant learned that the Respondent had not obtained the required permit from Anne Arundel County.

And a little commence of figures of a second commence of the c

colleged in a second track of the first construction of a construction and construction of a construct

The control of the co

[4] Delta despendent and control to the first and control to the property control of the control of the property of the control of the control

partian de améanach an mailtiúr a dheal fair ma gará mar agus a chluideánach faith leis an ace a aid i Bhliadh an Teorga feagadh agus a liann a gan a leis a leis na cheanna llean adalaí agus a tigas com aidtiúr a d A agus fail agus feagadh agus a chean a leis a leis agus cheanna llean agus agus leis agus a chean leis agus a

Between July and September 2017, the Respondent constructed the garage, including footings, a concrete slab, block walls, framing, siding, and a roof, all without the required permit. On September 18, 2017, the Code Compliance Division of the Anne Arundel County Department of Inspections and Permits issued a Stop Work Order to the Claimant for constructing an accessory structure without the required permit. Between September 25 and October 4, 2017, the Claimant and the Respondent exchanged texts, with the Respondent asserting falsely that he was still attempting to obtain the required permit. After the Claimant texted the Respondent to inform him that she knew that she could not get the required permit without tearing down the structure the Respondent had built, the Respondent stopped communicating with the Claimant.

Actual loss due to the costs of restoration, repair, or replacement

COMAR 09.08.03.03B, which governs the calculation of awards from the Guaranty Fund, provides, in pertinent part, as follows:

- B. Measure of Awards from Guaranty Fund.
- (2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.
- (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(c) 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

The second of the second of the cutto fixed a meaning of the fit there is a provide more as the second of the seco

recordination of the state of the specific set of the state of the sta

Link to Angula a finished the

ji ngana mbasah kejaman dibi mmanganda sasa da jiji mingi manga mangi ngali mda Lapisa mbasah kang pangi mga mangan bang pangi mingi mangan bang pangina mangan bang pangina mbangan bang pang

ายกว่าเมิน และที่สุดเกาหลัง (สุดให้เป็นข้อเลื่องการกับสุดให้เลือน และที่การกับสามารถสมาชิก (ค.ศ.) เมษาการสมาชิก ที่สำนัก (ค.ศ.) (ค.ศ.)

The state of the s

for measuring actual loss, the Commission may adjust its measurement accordingly.

(4) The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

The Claimant paid the Respondent a total of \$18,792.00 for his work. The Claimant paid American Builders \$24,818.00 to complete the home improvement. (American Builders was only able to use the footings constructed by the Respondent; it had to demolish the other unpermitted work performed by the Respondent to allow an inspection of the footings.)

I am recommending an award under COMAR 09.08.03.03B(3)(c), but modified by the limitation of B(4). The calculation under B(3)(c) is as follows:

Amount Paid to the Respondent -	\$18,792.00
Plus	
Amount paid by the Claimant to complete -	<u>\$24,818.00</u>
Subtotal -	\$43,610.00
Less	
Amount of contract -	<u>\$24,500.00</u>
Claim	\$19,110.00

The Claimant's award from the Guaranty Fund is limited to the \$18,792.00 that she paid to the Respondent.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude:

(1) the Claimant suffered an actual loss as a result of the Respondent's acts and omissions, specifically his incomplete performance of a home improvement. Md. Code Ann., Bus. Reg. § 8-401;

Throughpulae call griffing good of all more that, and the appailable committee. The time the tention The Chemical in the contract of the Chemical and the Chemical and the States of the States of Langue Belginge bekenningsgrift Fragist cally by decrease many on talony differences by देशीचे सिंह के**प**्रोति The Continue and the compagnition of the first Continue of the Continue of the first of the continue of the Co and the confidence because a confidence of the first of a consequence of the confidence of the confidence and the first for the set of the contractivities which is the contractive of the contraction of a formation of the of the best of the section of the first of the process of the process of the first - merallok ex il (4). Et l'annok rahiholanc Milky Pharacetistics - was to read the or state of decrees. 903,47,350 MAME Strain and State Carlotte Comment 300014.040 ir lá-ládas 38:1 - Sun Trub ใช้เก็บ Name กระท่ \$1.5 p. 190.3 and the control of th A rathernize Posts of

tore sine changing in the factor of the same in the conference of the changing of the change of the

(2) the Claimant is entitled to recover an award of \$18,792.00 from the Guaranty Fund.

Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3);

(3) the Claimant did not unreasonably reject the Respondent's good-faith efforts to

resolve the Claimant's claim against the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-405(d).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded \$18,792.00 from the Home Improvement Guaranty

Fund; and

ORDER that the Respondent remain 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 Commission, Md.

Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a); and

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

CONFIDENTIAL

December 21, 2020
Date Decision Issued

Robert F. Barry Administrative Law Judge

RFB/kdp #188246

PROPOSED ORDER

WHEREFORE, this 15th day of March, 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.

<u>Joseph Tunney</u>

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION

The area of the first of the court of the co The to about the management of the seventer of the seventer of the seventer of the second of the sec a na sta linna a kie alie kielua sultigamistriga karrigaria. Lipud arri arritari kielua kungsinimista animba, र देवती के बाद के केंद्र कर के कि बाद के देवती है। यह अंदर के की प्रोहर्त के कि दूर देवती है को देवता है के द nga pagasati ing katapatan ang at mang at mang at pagasan ang katapatan ang katapat na katapat na managan. with the first till be the the first with the wind the of the first graph the first first first first for the rest of the contract of the state of the contract of the contr green wat dropping in