IN THE MATTER OF THE CLAIM	*	**BEFORE RICHARD O'CONNOR,**
OF TERRY AND RONALD JENKINS,[1]	*	**ADMINISTRATIVE LAW JUDGE,**
CLAIMANTS	*	**THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF GREGORY STOTTS,	*	
T/A GRELLIS CONSTRUCTION,	*	**OAH No.: LABOR-HIC-02-19-34291**
LLC,	*	**MHIC No.: 19 (05) 736**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On March 7, 2019, Terry and Ronald Jenkins (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[2] for reimbursement of $12,200.00 in actual losses allegedly suffered as a result of a home improvement contract with Gregory Stott, trading as Grellis

[1] Terry Jenkins signed the Claim Form. The Hearing Order and Transmittal name the claimant as Ronald Jenkins. The Jenkinses are husband and wife and are joint claimants herein.
[2] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[3] On October 21, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing. Hearings scheduled for April 6, 2020 and October 23, 2020 were cancelled because of the COVID-19 pandemic.

I held a hearing on December 15, 2020 by videoconference. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Nicholas C. Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimants participated without representation. Anthony M. Shore, Esquire, represented the Respondent, who was present.

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 Claimants 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 into evidence on the Claimants' behalf:[4]

1. Contract, dated March 3, 2018, signed March 19, 2018.

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[3] All references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

[4] The Claimants attached cover sheets to most of their exhibits labeling them as "Appendix 1," etc. However, not all the exhibits had cover sheets, so the numbers given as appendices do not exactly correspond to the exhibit numbers stated here.

2. Unsigned contract, March 3, 2018.

3. Another copy of the signed contract, mostly illegible.

4. Copy of a check for $11,000.00, March 19, 2018.

5. Architectural drawing, April 17, 2018; emails between the Claimants and the Respondent, April 23 to 27, 2018.

6. Prince George's County Permit Application, May 1, 2018; Maryland-National Capital Park and Planning Commission On-Line Permits Tracking System entry, November 14, 2018.

7. Emails between the Claimants and the Respondent, April 23 to May 14, 2018; Maryland-National Capital Park and Planning Commission Permit Review Section comments, May 15, 2018.

8. Emails between the Maryland-National Capital Park and Planning Commission and the Respondent, May 15 and 21, 2018; blank Homeowner Minor Amendment Checklist.

9. Text messages between the Claimants and the Respondent, May 22 to 29, 2018.

10. Emails between the Maryland-National Capital Park and Planning Commission and the Respondent, June 7 and 21, 2018.

11. Copy of a check for $1,200.00, June 15, 2018.

12. MHIC complaint, undated.

13. Text messages between the Claimants and the Respondent, June 29, 2018.

14. Emails between the Maryland-National Capital Park and Planning Commission and the Respondent, July 11 to August 9, 2018.

15. Emails between the Claimants and the Balk Hills Village Architectural Review Board, November 1 to 5, 2018; emails between the Respondent and the Balk Hills Village Architectural Review Board, July 24, 2018.

16. Email from the Maryland-National Capital Park and Planning Commission to the Respondent, September 5, 2018; example of a lot coverage calculation.

17. Emails among the Claimants, the Respondent, the Maryland-National Capital Park and Planning Commission, and Jim LaPier, July 18 to September 29, 2018.

18. Text messages between the Claimants and the Respondent, dates illegible.

19. Email from the Maryland-National Capital Park and Planning Commission to the Claimants, November 2, 2018.

20. Email from the Claimants to the Respondent, November 2, 2018.

21. Text messages between the Claimants and the Respondent, October 25 to November 9, 2018.

22. Email from the Better Business Bureau to the Claimants, November 14, 2018.

I admitted the following exhibits into evidence on the Respondent's behalf:

1. Emails between the Claimants and the Respondent, January 9 and 11, 2019.

2. Email from the Respondent to the Balk Hills Village Architectural Review Board, November 16, 2018; email from the Balk Hills Village Architectural Review Board to the Respondent, December 18, 2018; email that appears to be from the Respondent to the Claimants, date illegible.

3. Email from the Maryland-National Capital Park and Planning Commission to the Respondent, November 27, 2018, with attached list of documents required.

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

1. Notice of Hearing, November 5, 2020.

2. Hearing Order, October 17, 2019.

3. Home Improvement Claim Form, received March 7, 2019; letter from the MHIC to the Respondent, March 20, 2019.

4. The Respondent's licensing history with the MHIC, March 10, 2020.

Testimony

Ronald Jenkins testified on behalf of the Claimants.

The Respondent testified.

The Fund presented no 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 numbers 01-102832 (personal) and 05-134418 (corporate).

2. On March 19, 2018, the Claimants and the Respondent entered into a contract to construct a screened porch and an open brick paver patio at the Claimants' residence. The contract stated that work would begin on May 1, 2018 and would be completed by June 17, 2018.

3. The contract stated that the Respondent would obtain approval for the project from the homeowners' association and secure building and electrical permits.

4. The original contract price was $33,500.00.

5. On March 19, 2018, the Claimants paid the Respondent $11,000.00.

6. Aniisha White was the Respondent's employee who handled most of the administrative functions for the Respondent, including obtaining permits and approvals.

7. The Respondent needed to obtain approval from the Balk Hills Village Architectural Review Board before beginning work on the project.

8. The Respondent submitted an application to the Balk Hills Village Architectural Review Board on or about July 24, 2018.

9. The Balk Hills Village Architectural Review Board informed the Respondent on July 24, 2018 that the application was incomplete and would need to be resubmitted with additional information.

10. The Respondent resubmitted the application on or about November 16, 2018.

11. The Balk Hills Village Architectural Review Board approved the project on December 18, 2018.

12. The Respondent submitted a permit application to the Prince George's County Department of Permitting, Inspections and Enforcement on May 1, 2018.

13. The Prince George's County Department of Permitting, Inspections and Enforcement works in conjunction with the Maryland-National Capital Park and Planning Commission (M-NCPPC), which must also approve building permits.

14. The architectural drawings submitted with the permit application showed a setback from the property line of fifteen feet, but the Balk Hills Village Comprehensive Design Plan requires setbacks of twenty feet.

15. On May 21, 2018, the M-NCPPC informed the Respondent that a Homeowner Minor Amendment application would be required for the project because of the setback discrepancy and provided the Respondent with a blank checklist and a copy of the applicable section of the county code.

16. On or about May 22, 2018, the Respondent asked the Claimants to pay $2,500.00 to cover the additional paperwork associated with the permitting process.

17. On June 15, 2018, the Claimants paid the Respondent $1,200.00.

18. On or about June 6, 2018, the Respondent provided additional documents to the M-NCPPC. The M-NCPPC still considered the application incomplete.

19. On or about June 20, 2018, the Respondent provided additional documents to the M-NCPPC.

20. On July 18, 2018, the M-NCPPC informed the Respondent that the project could not be permitted as a Homeowner Minor Amendment. Instead, the application would require a

Detailed Site Plan (DSP), many more documents, an application fee of $500.00, and approval at a meeting of the Prince George's County Planning Board.

21. On or about August 3, 2018, the M-NCPPC gave the Respondent detailed instructions and forms for filing a DSP.

22. Sometime before September 5, 2018, the Respondent submitted an updated DSP to the M-NCPPC.

23. On September 5, 2018, the M-NCPPC informed the Respondent that the DSP was still incomplete because it did not state the total percentage of the Claimants' lot that would be covered by improvements and driveways.

24. The Respondent did not submit a completed DSP to the M-NCPPC.

25. The Respondent did not keep the Claimants informed of the problems he was having with the M-NCPPC.

26. In October 2018, the Respondent told the Claimants that work on their project would begin on October 29, 2018. The start date was subsequently pushed back to October 31, then November 8, 2018. At that time, the Respondent did not have approval from the Balk Hills Village Architectural Review Board or a permit from the M-NCPPC.

27. On November 1, 2018, the Claimants learned that the Respondent had not obtained the required approval and permits.

28. On November 2, 2018, the Claimants demanded a refund of the $12,200.00 they had paid the Respondent.

29. The Respondent agreed to provide the refund. Over the next several days, Ms. White assured the Claimants by text message that the refund check had been mailed and would arrive shortly.

30. No check ever arrived, and the Respondent did not refund any of the Claimants' $12,200.00 payment.

31. On January 9, 2019, the Respondent asked the Claimants to sign a completed M-NCPPC permit application.

32. On January 11, 2019, the Respondent told the Claimants that he was willing to complete the project as stated in the contract.

DISCUSSION

The Claimants have the burden of proving the validity of their 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).

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. I find that the Claimants have proven eligibility for compensation.

The Respondent received $12,200.00 from the Claimants and did not perform any of the work specified in the contract. The reason for the non-performance was that the Respondent was unable to get the required permit from the M-NCPPC and made very little effort to obtain approval from the Balk Hills Village Architectural Review Board.

The contract called for work to begin on May 1, 2018, but the Respondent did not submit the application for a building permit to the Prince George's County Department of Permitting, Inspections and Enforcement until that same date. The application to the Balk Hills Village Architectural Review Board did not go in until July 24, 2018. The Architectural Review Board immediately told the Respondent that the application was incomplete and needed to be resubmitted with additional information. The Respondent did not resubmit the application until November 16, 2018, well after the Claimants had demanded a refund because nothing had been done on their project.

The Respondent's bigger problem was with M-NCPPC. The Balk Hills Village Comprehensive Design Plan requires setbacks of twenty feet, meaning that any structure on a lot must be at least twenty feet from the property line. The plans for the Claimants' screened porch show that at part of the porch is within fifteen feet of the property line. The author of the plans (apparently Jim LaPier of IMPACT Designs, LLC) and the Respondent did not account for the setback requirement when designing the project.

The Respondent was already behind schedule when he submitted the permit application to the Prince George's County Department of Permitting, Inspections and Enforcement. Then on May 21, 2018, the M-NCPPC told the Respondent that he would have to apply for a Homeowner Minor Amendment to get the project approved. However, after the Respondent filed additional information in June 2018, it turned out that a Homeowner Minor Amendment would be insufficient and that the Respondent would have to go through the lengthy DSP process to try to obtain approval from the M-NCPPC and the Planning Board. The M-NCPPC informed the Respondent of this on July 18, 2018 and provided instructions for the DSP.

Emails between the M-NCPPC and the Respondent make clear that Ms. White was unable to submit a properly completed DSP application. The Respondent provided more documentation in August 2018, but as of September 5, 2018, the M-NCPPC still considered the application incomplete because at least one necessary element was missing, a calculation of the percentage of the Claimants' lot that would be under roof (or devoted to driveways and parking) once the project was complete. Nothing in the evidence shows that this information was ever provided, and the M-NCPPC never issued a permit for the project.

Equally lacking from the evidence is anything indicating that the Respondent kept the Claimants informed of his problems with the M-NCPPC or explaining why their project had not yet begun. On May 22, 2018, the Respondent asked the Claimants to pay $2,500.00 to compensate for additional paperwork. It is unclear whether this payment was to be an addition to the contract price or an advance on the next draw.[5] In any event, the Claimants paid $1,200.00 on June 15, 2018.

The documents in evidence show the next written communication with the Claimants as September 29, 2018, when the Claimants asked Ms. White: "What's the next step now that the final drawing has been provided!" [sic]. This indicates that as of that date, the Respondent had told the Claimants that the "final drawing" had been submitted to the M-NCPPC. Emails between Ms. White, Mr. LaPier, and the Respondent on August 23 and 24, 2018 refer to "Instructions for Filing a Detailed Site Plan," but these seem to be follow-up on the instructions that the M-NCPPC had provided.

What is certain is that as of September 5, 2018, the M-NCPPC did not consider the Respondent's application complete, yet the Respondent told the Claimants that the final drawing

[5] The contract called for the next payment of $11,000.00 to be made when construction began.

had been submitted. In fact, the Respondent never provided the lot coverage calculations that, perhaps, would have finalized the application. Yet in October 2018, the Respondent still assured the Claimants that work would start momentarily, telling them in a text message: "We will be starting Oct 29th." In response to the Claimants' inquiry about homeowners' association approval, the Respondent texted: "Everything is straight . . ." At the same time, the Respondent indicated that he was awaiting receipt of the approval package from the county, which was not true. Nor had he obtained approval from the Balk Hills Village Architectural Review Board.

When work did not start as promised, the Claimants inquired about the status of project to the Balk Hills Village Architectural Review Board and the M-NCPPC, quickly learning that neither application had ever been completed.

On November 2, 2018, the Claimants emailed the Respondent that their "patience has run out," cancelled the contract, and requested a refund of the $12,200.00 they had paid. On November 5, 2018, the Respondent texted: "We received your call your check was mailed from our main office you will receive it in two business days." Over the next week, the Respondent continued to assure the Claimants that the check was in the mail, but no check was ever actually sent, and the Respondent did not refund any money.

The Respondent then contacted the Claimants by email on January 9, 2019, asking them to "sign off on major amendment application." On January 11, 2019, he told the Claimants that he was willing to finish the job as stated in the contract if the M-NCPPC application was approved. The Claimants responded that the Respondent had never told them that a major amendment was required and that they were not interested in continuing the contract.

At the hearing, the Respondent testified that the delay in the M-NCPPC permit was caused by the Claimants' refusal to sign the completed M-NCPPC application. He stated that he

first asked the Claimants to sign in October or November 2018 but was unsure when the application had been completed. He did not produce any documentation of a request to sign before the email of January 9, 2019.

The Respondent further testified that he did not know that the M-NCPPC needed a "major amendment" (actually a DSP) until "months" after he applied for a permit. The date of that revelation was July 18, 2018, so the Respondent's testimony on this point is technically true but is misleading because in the ensuing months he did not seem to have the expertise to give the M-NCPPC the information it required, instead providing documents piecemeal and never submitting everything that was needed for approval.

Additionally, the Respondent certainly did not keep the Claimants apprised of his difficulties with the M-NCPPC. There is no evidence of any discussion with the Claimants about why approval was taking so long, the problem with the setback, or the possibility of revising the project to comply with the Balk Hills Village Comprehensive Design Plan. In October, the Respondent was still telling the Claimants that work would start that month, even though he knew that was not possible.

On the issue of the delay being due to the Claimants' failure to sign the M-NCPPC application, I do not find the Respondent's testimony credible. Nothing in the emails and text messages indicates that the Respondent asked the Claimants to sign anything before January 9, 2019. Mr. Jenkins vigorously denied ever being asked to sign an application. The Claimants obtained all the emailed communications between the Respondent and the M-NCPPC, and nothing therein shows that the application was awaiting the homeowners' signatures. The Respondent's testimony on this point is a fabricated excuse for his own failures.

Section 8-405(d) of the Business Regulation Article states that the MHIC may reject a claim if it finds that the homeowner rejected good faith efforts by the contractor to resolve the claim. As stated previously, the Respondent indicated a willingness to complete the contract on January 11, 2019. The Claimants rejected this offer because they felt that the Respondent had not been honest with them about the status of the permit application, the approval of the homeowners' association, or the start date of the work.

I find the that Claimants' unwillingness to continue to work with the Respondent is reasonable. The evidence is clear that until November 1, 2018, the Claimants were in the dark as to the status of their project and were still being told that it would begin at any moment. In other words, the Respondent had been untruthful with them for months while the permit process languished. When the Claimants realized this, they filed a complaint with the MHIC. The Respondent's emails of January 9 and 11, 2019, were merely attempts to deflect blame, not good faith efforts to resolve the situation.

I thus find that the Claimants are eligible for compensation from the Fund. I must next determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent abandoned the contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the

amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a). The amount paid to the Respondent under this contract was $12,200.00.

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 Claimants' actual loss is not more than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimants are entitled to recover their actual loss of $12,200.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of $12,200.00 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)(a). I further conclude that the Claimants are 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 Claimants $12,200.00; and

ORDER that the Respondent be 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;[6] and

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

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

Richard O'Connor

March 10, 2021
Date Decision Issued

Richard O'Connor
Administrative Law Judge

ROC/kdp
#190902

IN THE MATTER OF THE CLAIM OF TERRY AND RONALD JENKINS AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF GREGORY STOTTS AND GRELLIS CONSTRUCTION, LLC	*	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 19(05)736** **OAH CASE NO. LABOR-HIC-02-19-34291**

* * * * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on December 15, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on March 10, 2021, concluding that the homeowners, Terry and Ronald Jenkins ("Claimants") suffered an actual loss of $12,200.00 as a result of the acts or omissions of Gregory Stotts and Grellis Construction, LLC ("Contractor"). *ALJ Proposed Decision* pp. 13-14. In a Proposed Order dated June 23, 2021, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On September 16, 2021, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. Ronald Jenkins participated without counsel. Anthony Shore, Esq., represented the Contractor. Assistant Attorney General Justin Dunbar appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Contractor's exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel's review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the

exhibits admitted as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the construction of a patio and screened porch at the Claimants' home. The ALJ found that the Contractor abandoned the project without performing any work. *ALJ's Proposed Decision* p. 13.

On exception, the Contractor argued that the ALJ erred in finding that the Contractor abandoned the Claimants' project because the finding was not supported by substantial evidence. The Contractor argued that the project was delayed because the project was not consistent with the applicable setback requirements and required a more extensive permit review by the Prince George's County Planning Department of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") than anticipated, that the Contractor was in a serious automobile accident, that the contract did not provide that time was of the essence, and that the ALJ's finding of abandonment was based on the Contractor's failure to communicate with the Claimants about the project, but that the contract did not require the Contractor to communicate with the Claimants, and the Claimants knew about the status of the project because they communicated directly with M-NCPPC.

The Commission finds no error with the ALJ's findings. Regarding the permit review process, the record does demonstrate that the scope of review necessary to obtain the permits for the project escalated after the Contractor applied for a permit, first to a Homeowner's Minor Amendment and then to a Detailed Site Plan revision requiring additional documentation, approval from the Claimants' Homeowner's Association, and a hearing and approval by the full M-NCPPC. However, the record reveals that the Contractor learned on July 11, 2018, that the project was not eligible for a Minor Amendment and that a revision to the applicable Detailed Site Plan would be necessary, which required additional documentation and a hearing, and that on November 1, 2018,

the Claimants contacted M-NCPPC and discovered (1) that a Detailed Site Plan revision was required, (2) that the Contractor had not submitted the documentation necessary for M-NCPPC to review the application and had not communicated with M-NCPPC since September 5, 2018, when M-NCPPC notified the Contractor that the application was incomplete. In addition, on November 1, 2018, M-NCPPC provided the Claimants' with email correspondence between M-NCPPC and the Contractor that revealed to the Claimants that the Contractor was aware of the need for a Detailed Site Plan revision since July 11, 2018, but had not notified them and that the Contractor had lied to them about the status of the permit application, as the Contractor had promised them that the application was "straight" and that work would start on the project on October 29, 2018. (OAH Hearing Claimants' Exhibit 18.) Also on November 1, 2018, the Claimants contacted their homeowner's association and learned that it had notified the Contractor on July 24, 2018, that the application for the HOA's approval of the project was incomplete and that it had never heard from the Contractor again. Finally, again on November 1, 2018, the Claimants, armed with the information obtained from the HOA and M-NCPPC, contacted the Contractor, whose employee advised them for the first time that a Detailed Site Plan revision was required but also lied to them and said that the Contractor had already obtained the necessary approvals from the HOA and M-NCPPC.

Because, as of November 1, 2018, the Contractor had not attempted to correct the shortcomings of the HOA application since it was notified that it was deficient on July 24, 2018, and had not attempted to correct the shortcomings of the M-NCPPC application since it was notified that it was deficient on September 5, 2018, the Commission finds that the Contractor had abandoned the Claimants' project. In addition, the fact that the Contractor, when confronted by the Claimants regarding the abandonment, responded by promising to refund the Claimant's

payment further demonstrates to the Commission that the Contractor had abandoned the project. (OAH Hearing Claimants' Exhibit 21.)

The Commission is not persuaded by the Contractor's argument that its efforts to obtain the HOA and M-NCPPC approvals of the project after the Claimant's asserted abandonment, requested a refund, and filed a complaint with MHIC demonstrate that it had not abandoned the project. Specifically, the Contractor cites its January 9, 2019, email to the Claimants asking them to sign the M-NCPPC application and its January 11, 2019, email to the Claimants stating that it wanted to perform the contracted work (OAH Hearing Respondent's Exhibit 2) as proof that the Contractor did not abandon the project. This email, which the Contractor sent two months after the Claimants advised the Contractor that they had deemed it to have abandoned their contract and the Contractor had promised to refund the Claimant's payment, almost two months after the Claimant filed complaints with MHIC and the Better Business Bureau, and four months after M-NCPPC notified the Contractor that its application was incomplete, does not convince the Commission that the Contractor did not abandon the project. Rather, like the ALJ, the Commission finds that the Contractor's correspondence with the Claimant's in January 2019 was intended to create the impression that the Claimants were responsible for the Contractor's failure to perform the contract and did not constitute a good faith effort to resolve their claim by performing the contract or demonstrate that the Contractor had not abandoned the project. Moreover, even if the Contractor's actions following the Claimant's notice of abandonment constituted a good faith effort to resolve the claim by performing the contract, the Commission finds that the Claimants were reasonable to reject the Contractor's efforts because the Contractor had repeatedly lied to the Claimants about the status of their project and their refund and neglected their project for months before the Claimants filed a complaint.

Regarding the Contractor's argument that the absence of a time is of the essence provision in the Claimants' contract precludes a finding of abandonment, first, the Commission notes that the contract is illegible, so it is unclear whether it includes such a provision or not. Second, assuming, *arguendo*, that there is not a time is of the essence clause, the Commission finds that Contractor's failure to correct the deficiencies in the HOA approval application from July 24, 2018, through November 1, 2018, or to correct the deficiencies in the M-NCPPC application from September 5, 2018, through November 1, 2018, constitute abandonment of the project.

Regarding the Contractor's argument that the fact that he was in two automobile accidents rendered the ALJ's finding that he abandoned the Claimants' project erroneous, the only evidence in the record of the automobile accidents is in a January 11, 2019, email from Gregory Stotts to the Claimants where Mr. Stotts says, "I was in 2 crazy car accidents and wasn't able to be [sic] work as closely with you as I would've liked." The Commission does not find this to be persuasive evidence that the Contractor did not abandon the contract.

The Contractor also made numerous factual allegations in its written exceptions, but they were either unsupported by the record or irrelevant or both.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 15th day of October, **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**;

C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED;**

D. That the Claimant is awarded $12,200.00 from the Maryland Home Improvement Guaranty Fund;

E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor 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);

F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Bruce Quackenbush
Chairperson –Panel
Maryland Home Improvement Commission

PROPOSED ORDER

WHEREFORE, this 2nd 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