

**IN THE MATTER OF THE CLAIM OF  
ROBIN PRINTIS  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS OF  
ORVILLE BARBER T/A LIBERTY  
FENCE AND RAILING AKA  
MEDALLION**

**\* MARYLAND HOME  
\* IMPROVEMENT COMMISSION  
\*  
\* MHIC CASE NO. 20(90)105  
\* OAH CASE NO. LABOR-HIC-  
\* 02-19-34189  
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**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on December 8, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on February 19, 2021, concluding that the homeowner, Robin Printis (“Claimant”) failed to prove that she suffered an actual loss as a result of the acts or omissions of Orville Barber t/a Liberty Fence and Railing AKA Medallion (“Contractor”). *ALJ Proposed Decision* pp. 7-10. In a Proposed Order dated June 2, 2021, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On August 19, 2021, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Anthony Shore, Esq., represented the Contractor. Assistant Attorney General Shara Hendler 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) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Claimant sought to introduce new evidence, but she failed to demonstrate that the documents and testimony she wanted to put in evidence were not and could

not have been discovered before the February 19, 2021, OAH hearing. 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 gazebo and deck and the installation of a hot tub at the Claimant's home. (OAH Hearing, Claimant's Exhibit 46.) The ALJ found that the Claimant failed to prove that the Contractor's performance under the contract was unworkmanlike, inadequate, or incomplete, deeming the Claimant's evidence to show only minor cosmetic issues. In addition, the ALJ found that, even if the Claimant had proven that the Contractor's performance was unworkmanlike, inadequate, or incomplete, she also failed to prove a compensable actual loss because she did not prove the cost to correct or complete the Contractor's allegedly defective work. *ALJ Proposed Decision* pp. 7-9.

On exception, the Claimant argued that the ALJ erred in finding that she failed to prove that the Contractor's work was unworkmanlike, inadequate, or incomplete. Specifically, she argued that the Contractor did not use the decking material specified in the contract, that the gazebo differed from a picture of gazebo in the contract, and that the screen on the gazebo was on the outside of the gazebo, rather than inside as she had agreed to with the Contractor. She also argued that the gazebo had structural issues and that the hot tub and gazebo were not lowered below her window as called for in the plans for her project.

The Claimant did not cite to evidence in the record in support of her arguments, and the Commission finds no error with the ALJ's findings of fact or conclusions of law on these issues.

The Claimant also argued that the ALJ's finding that her project was 95% complete in August 2019 was erroneous, citing the fact that the project had not yet received county approval.

The Claimant also argued that the ALJ's finding that she prevented the county from reinspecting the project following a June 19 county inspection failure was erroneous.

The ALJ cited the Claimant's refusal to allow the county to reinspect the project in rejecting a private June 14, 2019, inspection report obtained by the Claimant as evidence of unworkmanlike work by the Contractor.

The Commission finds no error with the ALJ's finding that the project was 95% complete in August 2019 because the Commission agrees that the Claimant's refusal to allow the county to reinspect her property justifies the ALJ's reliance on the Contractor's testimony that the project was 95% complete. The Commission also finds no error with the ALJ's finding that the Claimant refused to allow the county to reinspect the project. The ALJ relied on the Contractor's testimony that the Claimant refused to allow the reinspection because she did not want anyone on her property, *ALJ Proposed Decision* p. 5, and the Claimant did not cite, and the Commission is not aware of, evidence to the contrary.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 1<sup>st</sup> day of September 2021, **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's claim is denied;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to

Circuit Court.

**Lauren Lake**  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE BRIAN ZLOTNICK,</b>
<b>OF ROBIN PRINTIS,</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>*</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>*</b>
<b>OMISSIONS OF</b>	<b>*</b>
<b>ORVILLE BARBER,</b>	<b>*</b>
<b>T/A LIBERTY FENCE AND RAILING</b>	<b>* OAH No.: LABOR-HIC-02-19-34189</b>
<b>AKA MEDALIAN,</b>	<b>* MHIC No.: 20(90)105</b>
<b>RESPONDENT</b>	<b>*</b>

\* \* \* \* \*

**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 20, 2019, Robin Printis (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Orville Barber, trading as Liberty Fence and Railing<sup>1</sup> (Respondent). Md. Code Ann., Bus. Reg.

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<sup>1</sup> This company is also referred to as Medallion.

§§ 8-401 through 8-411 (2015).<sup>2</sup> On December 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 8, 2020, I conducted a remote hearing via the Webex video conferencing platform. Bus. Reg. § 8-407(c)(2)(i); Code of Maryland Regulations (COMAR) 09.08.03.03A(1); 28.02.01.20B. Hope M. Sachs, Assistant Attorney General, Department of Labor (Department),<sup>3</sup> represented the Fund. The Claimant represented herself. Anthony M. Shore, Esquire, represented the Respondent, who was present.<sup>4</sup>

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; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I have attached a complete Exhibit List as an Appendix.

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<sup>2</sup> Unless otherwise indicated, all citations to the Business Regulation article of the Annotated Code of Maryland are to the 2015 Replacement Volume.

<sup>3</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>4</sup> Michael Smirnoff, General Manager, Liberty Fence and Railings, appeared on behalf of the Respondent.

## Testimony

The Claimant testified on her own behalf and did not present any additional witnesses.

Michael Smirnoff, General Manager, Medallion, testified on behalf of the Respondent.

The Fund did not present the testimony of 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 01 5302696.

2. At all relevant times, the Claimant owned and resided in a home located in Prince George's County, Maryland.

3. On April 3, 2019, the Claimant and the Respondent entered into a contract (Contract) to repair and finish an abandoned job. The Contract specified the following:

- Installation of 20 by 12 foot Trex Transend (Spice Rum Color) deck flooring
- Deck railing system is black pickets
- Use material on-site and order more if needed
- Install a privacy divider for hot tub
- Installation of a 12 by 10 foot hot tub
- Construct a 12 by 12 foot screened in gazebo with black solar screens, electricity, ceiling fan, and shingles matching the home's roof shingles
- Install a 4 by 4 foot paver pad for the gazebo steps

(Claim Ex. 45).

4. The original agreed-upon Contract price was \$35,000.00. (Claim Ex. 46).

5. The Respondent and Claimant entered into a Change Order on April 16, 2019, which specified that the Claimant would make a \$6,600.00 down payment on April 16, 2019, and an additional payment of \$6,700.00 when work begins. The Change Order also indicated that the Claimant would pay the Respondent \$6,700.00 upon the completion of the Contract with the remaining \$15,000.00 balance financed by Aqua Financing. (Claim Ex. 46).

6. The Claimant paid the Respondent \$6,600.00 on April 16, 2019. The Respondent began work on the Contract on May 14, 2019, and the Claimant paid the Respondent \$6,700.00 on May 15, 2019. On May 21, 2019, the Claimant paid the Respondent \$6,700.00. The Claimant paid the Respondent a total of \$20,000.00. (Claim Ex. 4, 5, and 6).

7. During the course of the home improvement work, the Claimant complained to the Respondent that the project was not in conformance with the Contract. The Claimant noted that the gazebo screen was installed on the outside instead of the inside of the gazebo and that three levels of decking were not installed. The Claimant also indicated to the Respondent that the gazebo and the hot tub were not lowered below the window level of the main house.

8. On May 28, 2019, the Respondent e-mailed the Claimant seeking her signature to sign off on completion of the Contract. On June 1, 2019, the Claimant replied to the Respondent that its workers were still completing work on the Contract and that she was not satisfied with the gazebo's roof pitch and that the its shingles were lifted. (Claim Ex. 8).

9. On June 1, 2019, the Prince George's County Inspection Division (PGID) conducted a final inspection of the Contract work and issued a Correction Order which stated that no electric permit was called in for final inspection and there were no lights at the stairs.

10. On June 3, 2019, the Respondent notified the Claimant that it would install stair lights on June 4, 2019, and that it would modify the electrical permit for final inspection. On June 17, 2019, the Respondent e-mailed the Claimant that a final inspection for the gazebo was scheduled for June 19, 2019. (Claim Ex. 10).

11. The Respondent completed the electrical work corrections noted by the PGID. (Testimony of Claimant).



12. On June 19, 2019, the PGID conducted a final inspection of the gazebo and issued a Correction Order which stated the following discrepancies that needed to be corrected:

- Metal Truss Clips
- Joist Hangers
- Boxing on Railing Post

(Claim Ex. 12).

13. The Respondent addressed the PGID Correction Orders and sometime in June 2019 the Respondent called the PGID to re-inspect the project. The Claimant did not allow the PGID to re-inspect the project because she did not want anyone to re-enter her property.

(Testimony of Mr. Smirnoff).

14. On or about June 14, 2019, Cranford Contractors, Inc. (Cranford) inspected the Claimant's gazebo roof and found that the structure of the gazebo was not stable as it swayed when its technician stepped toward the back of the gazebo. Cranford also found that the shingle overhang was short and there were exposed unsealed nail heads visible in the shingles which increases the risk of water penetration. Cranford noted that the peak of the gazebo was not capped in one of two accepted methods. (Claim Ex. 13).

15. On July 12, 2019, the Claimant filed a complaint with the MHIC regarding the Respondent's performance on the Contract. (Testimony of Claimant).

16. In August 2019, the Claimant and Mr. Smirnoff met at the Claimant's home. Mr. Smirnoff told the Claimant "if you want me to fix everything you are asking for I would have to tear everything down" and he told her that he would not do that. At that time, 95% of the Contract was completed and it would take the Respondent a couple of days to fix punch list items that remained. No further work was performed by the Respondent after the August 2019 meeting. (Testimony of Mr. Smirnoff).

17. On September 12, 2019, Prince William Home Improvement (Prince William) provided an estimate to the Claimant which specified the following:

- 14 foot by 10 foot Transcend Hot Tub area - \$13,568.00
- 12 foot by 12 foot Gazebo - \$27,234.00
- Resurface Trax Transcend Decking - \$14,340.00

(Claim Ex. 7).

18. On September 20, 2019, the Claimant filed a claim with the MHIC.

19. The Claimant does not possess any expertise in the areas of roofing or construction.

## DISCUSSION

### Legal Framework

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to “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 statutes governing the Fund define “actual loss” as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

At a hearing on the claim, 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). “[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)).

For the reasons explained below, I find that the Claimant has not proven eligibility for compensation from the Fund.

Statutory Eligibility

The home improvement work was performed on the Claimant’s residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent’s employees, officers, or partners. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed her Claim with the MHIC on September 20, 2019. The Claimant has not taken any other legal action to recover monies. Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (f), and (g), 8-408(b)(1) (2015 & Supp. 2020).

The Respondent did not perform unworkmanlike, inadequate, or incomplete home improvement work.

The Claimant argued that the Respondent’s work was unworkmanlike based on the following: (1) inadequate gazebo roof pitch,<sup>5</sup> (2) visibility of screws in the gazebo roofing and incorrect brackets,<sup>6</sup> (3) incorrect construction of interior gazebo roof,<sup>7</sup> (4) faulty trim on gazebo screen door,<sup>8</sup> (5) nail punch marks on gazebo interior walls,<sup>9</sup> (6) drill holes in gazebo decking,<sup>10</sup> (7) sloppy trim work on pica board surrounding the deck,<sup>11</sup> (8) ceiling/roofing trim debris on gazebo decking,<sup>12</sup> (9)

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<sup>5</sup> See Claimant Exs. 16, 17, and 18.

<sup>6</sup> See Claimant Exs. 20 and 21.

<sup>7</sup> See Claimant Exs. 22, 23, and 24.

<sup>8</sup> See Claimant Ex. 25.

<sup>9</sup> See Claimant Exs. 26 and 27.

<sup>10</sup> See Claimant Exs. 28 and 29.

<sup>11</sup> See Claimant Ex. 30.

<sup>12</sup> See Claimant Ex. 33

uneven gazebo trim work,<sup>13</sup> (10) footing under the gazebo,<sup>14</sup> (11) framing under the deck,<sup>15</sup> and (12) hot tub on same level as deck (not dropped below deck level).<sup>16</sup>

I find that the Claimant has numerous cosmetic issues with the Respondent's work. The evidence falls short of proving that the Respondent performed unworkmanlike or inadequate home improvement work. In particular, the Claimant conceded that she did not have any expertise in the areas of roofing or construction. The Respondent indicated that many of the issues noted by the Claimant are punch list items that could be completed in a couple of days. Further, the Respondent indicated that at the time of their August 2019 meeting, the project was 95% completed. Additionally, the Claimant's contention that the gazebo and hot tub be suspended below her window view is not supported by the Contract, which did not specify that the gazebo and hot tub were to be lowered below the home's window view. Further, the Claimant also argued that the Contract required the Respondent to build three landing levels for this project, but again, the Contract does not specify three levels. Even the change orders agreed to by the parties on April 9, 16, and May 21, 2019, never mentioned three deck levels or the suspension of the gazebo and hot tub below the home's window line. Lastly, the Claimant argued that the Respondent failed to install the gazebo's screens on its interior and instead installed those screens around the exterior of the gazebo. The Claimant argued that she made it clear to the Respondent that the hot tub and gazebo were to be suspended, the gazebo screens were to be installed inside the gazebo, and that three deck levels were to be built, but without inclusion of this language in the Contract or the change orders, I find that the Respondent did not fail to complete the project in accordance with the Contract.

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<sup>13</sup> See Claimant Exs. 34, 35, 36, 37, 38, and 39.

<sup>14</sup> See Claimant Ex. 40

<sup>15</sup> See Claimant Ex. 41

<sup>16</sup> See Claimant Exs. 42, 43, and 44

The Claimant submitted a report from Cranford Contractors who inspected the gazebo on June 14, 2019, and found it structurally unsound. Cranford noted that the gazebo swayed when its inspector walked through it and that the shingles and the overhang of the gazebo roof were improperly built. This inspection was conducted prior to the June 19, 2019 PGID inspection which issued a correction order for the gazebo. I found it compelling that the Respondent testified that after it corrected the deficiencies found in the PGID inspections, it requested a re-inspection by PGID but that re-inspection was prevented by the Claimant. Therefore, I find the Cranford inspection does not illustrate the August 2019 condition of the gazebo and thus fails to show that the Respondent's performance of the Contract was unworkmanlike.

Moreover, the Claimant failed to offer any expert testimony to explain how the above-mentioned items constitute unworkmanlike or inadequate home improvement work. I am unable to reach such conclusions from the photographs before me. As a result, I cannot find the Respondent's work was inadequate or unworkmanlike; therefore, the Claimant did not suffer an actual loss.

Even if I had found the Respondent performed unworkmanlike, inadequate, or incomplete home improvement work, there was no evidence that the Claimant suffered a compensable loss in the form of repair or replacement costs. While the Claimant offered an estimate from Prince William, this estimate was vague in its description of work and thus it is unclear if this contract was within the scope of the Contract. Therefore, the Claimant failed to prove a compensable loss.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions and is not entitled to an award from the Maryland Home

Improvement Guaranty Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a) (2015) and COMAR 09.08.03.03B(2).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

February 19, 2021  
Date Decision Issued

*Brian Zlotnick*

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Brian Zlotnick  
Administrative Law Judge

BMZ/cj  
#190621

**PROPOSED ORDER**

***WHEREFORE, this 2<sup>nd</sup> 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***