

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LOIS FOSTER,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF WILLIAM BAILEY,</p> <p>T/A NEW VISION HOME</p> <p>IMPROVEMENT, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JEFFREY T. BROWN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-32271</p> <p>* MHIC No.: 20 (75) 277</p> <p>*</p>
---	---

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On April 7, 2023,¹ Lois Foster (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$18,958.00 for actual losses allegedly suffered as a result of a home improvement contract with William Bailey, trading as New Vision Home Improvement, LLC (Respondent or New Vision). Md. Code Ann.,

¹ The Home Improvement Claim Form was signed on March 12, 2023, but it was not received by the MHIC until April 7, 2023. I will use the date of receipt by the MHIC as the filing date. Code of Maryland Regulations (COMAR) 28.02.01.04D(1)(b).

² The MHIC is under the jurisdiction of the Department of Labor (Department).

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On December 15, 2023, the MHIC issued a Hearing Order on the Claim. On December 15, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 26, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. COMAR 28.02.01.20A. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. On December 20, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for February 26, 2024, at 9:30 a.m., at the OAH. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent was given proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.03; COMAR 28.02.01.

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

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 admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Scope of work for 7424 Gunpowder Road, undated
- Clmt. Ex. 2 - Renovation Loan Agreement, June 26, 2019
- Clmt. Ex. 3 - Respondent's General Contractor Fee Contract (Contract), July 1, 2019; SWBC Mortgage (SWBC) Contractor Permit/Certification-Registration Advisory, undated
- Clmt. Ex. 4 - Contract (the June 13, 2019 contract), June 13, 2019
- Clmt. Ex. 5 - SWBC Invoice, July 3, 2019
- Clmt. Ex. 6 - Photocopy of check 1172, from the Respondent to John Electrician, LLC, July 5, 2019
- Clmt. Ex. 7 - Emails from the Claimant to the Respondent, May 20, 2019; partial email from Robert Sauer, BGE⁴, hand dated July 2, 2019; BGE Start Service – Residential Customer, receipt, November 27, 2019
- Clmt. Ex. 8 - McCon Engineering (McCon) report to the Respondent, July 26, 2019; emails between McCon and the Claimant, August 16, 2019
- Clmt. Ex. 9 - Blake Structural Invoice and Plans, September 17, 2019
- Clmt. Ex. 10 - Content of correspondence from the Claimant to the Respondent, hand dated August 9, 2019; Claimant's list of concerns, undated; photocopy of Certified Mail envelope from the Claimant to the Respondent, Certified Mail cards, and receipt from the U.S. Postal Service, August 9, 2019

⁴ Baltimore Gas & Electric.

- Clmt. Ex. 11 - Multiple (17) photocopied photographs depicting the condition of numerous rooms in the Claimant's home following partial demolition and work not started, undated; Porach Home Services (Porach) Contractor Profile Report, August 20, 2019; partial W9 Form, August 18, 2019
- Clmt. Ex. 12 - Emails from the Claimant to the Respondent, July 25, 2019
- Clmt. Ex. 13 - Invoice from Humpty Dumpsters, July 10, 2019, paid on August 15, 2019
- Clmt. Ex. 14 - Letters from the Claimant to Second Avenue Group Property Management (Second Avenue), August 8, 2019, September 23, 2019, and November 14, 2019; Claimant's checks to Second Avenue, September 24, 2019, October 25, 2019, and November 20, 2019; Lease Extension Offer to the Claimant from Second Avenue, October 20, 2019
- Clmt. Ex. 15 - Porach Contract, August 20, 2019; SWBC "Amount Paid" receipts, August 20, 2019 and October 15, 2019; Jim Krug Contracting (Jim Krug) Invoice, October 1, 2019; Porach Invoice, October 7, 2019; copy of a check from the Claimant to Jim Krug, October 11, 2019; copy of a check from Porach to the Claimant, September 3, 2019; Jim Krug's itemization of work performed, undated; letter from Amy Porach to Whom it May Concern, June 25, 2022
- Clmt. Ex. 16 - Letter from Nicholas Foster to Whom it May Concern, June 14, 2022; letter from Catherine Hettinger to Whom it May Concern, June 24, 2022; letter from Karen Dunne to Whom it May Concern, June 24, 2022; letter from Louis Rezanka to Whom it May Concern, June 24, 2022
- Clmt. Ex. 17 - Home Improvement Contract between the Claimant and A Direct Result, August 28, 2019; A Direct Result proposal, August 20, 2019; A Direct Result itemization of items completed to date, December 2, 2019
- Clmt. Ex. 18 - G&C Environmental proposal and information sheets, April 15, 2019
- Clmt. Ex. 19 - Respondent's letter to the MHIC, undated
- Clmt. Ex. 20 - Entry of judgment against the Respondent, District Court of Maryland for Baltimore County, Case No. D-08-CV-019534, October 27, 2022⁵

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, December 20, 2023; Hearing Order, December 15, 2023
- Fund Ex. 2 - Respondent's licensing history, February 1, 2024
- Fund Ex. 3 - Letter from the MHIC to the Respondent, April 7, 2023 with Home Improvement Claim Form, March 12, 2023

⁵ This same document is also found in Fund Ex. 7.

- Fund Ex. 4 - Claimant's MHIC Complaint form, August 20, 2019
- Fund Ex. 5 - Letter from the MHIC to the Claimant, November 20, 2019
- Fund Ex. 6 - Letter from the OAG to the Claimant, August 8, 2023
- Fund Ex. 7 - Letter from the Claimant to the MHIC, November 28, 2022; Entry of judgment against the Respondent, District Court of Maryland for Baltimore County, Case Number D-08-CV-22-019534, October 27, 2022

I admitted no exhibits on behalf of the Respondent.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not testify or present any witnesses.

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 personal license number 5834507 and contractor license number 05 135172.
2. The Claimant and the Respondent signed the June 13, 2019 contract on that date for a home improvement in the total amount of \$97,730.00.⁶ This contract was for a whole house renovation including plumbing, painting, flooring, electrical, HVAC,⁷ duct work, wall removal and construction, roof repairs, outside work, plans and permits.
3. The June 13, 2019 contract specified that the work would begin and be substantially completed within approximately 90 days after execution of the contract. This contract was not accepted by the Claimant's lender.

⁶ Clmt. Ex. 4.

⁷ Heating, ventilation, and air conditioning.

4. On June 26, 2019, the Claimant signed a Renovation Loan Agreement with SWBC concerning the subject property.⁸

5. On July 1, 2019, the parties signed a General Contractor Fee Contract (Contract), which stated that, “[T]his agreement represents the entire agreement...” between the parties.⁹ The Contract expressly incorporated the June 13, 2019 contract, including the Contract price of \$97,730.00 and a 90-day completion deadline, and it was accepted by SWBC.

6. On a date not clear from the record, the Respondent met with the Claimant and a representative of SWBC and agreed to complete work under the Contract by September 30, 2019, as a condition of the Renovation Loan Agreement.¹⁰

7. On July 3, 2019, the Claimant paid the Respondent a deposit of \$9,773.00; at which time work was to begin.

8. Before July 22, 2019, the Respondent removed some walls or partial walls in the residence, along with some resulting debris, but did not complete demolition or removal of debris throughout the remainder of the residence.

9. On a date prior to July 23, 2019, the Respondent hired McCon to visually inspect the residence concerning removal of interior walls. McCon inspected the residence on July 23, 2019, and prepared a report to the Respondent dated July 26, 2019.

10. Between July 25, 2019 and August 9, 2019, the Claimant sent emails to the Respondent expressing concern that the project was not making progress, and requesting updates regarding remaining work on the residence. She did not receive a response.¹¹

⁸ Clmt. Ex. 2. The Claimant explained that the residence was a bank foreclosure property and she participated in a loan program to complete its renovation.

⁹ Clmt. Ex. 3.

¹⁰ Clmt. Ex. 2, section 2.1.5.

¹¹ Clmt. Ex. 12.

11. On August 9, 2019, the Claimant notified the Respondent that work performed substantially incomplete, requested performance of certain tasks by August 12, 2019 and August 16, 2019 in order to continue to complete the Contract by September 30, 2019, and requested status updates on a task-by-task basis.¹²

12. The Respondent did not return to the residence after July 22, 2019 and performed no additional work under the Contract.

13. The Claimant paid Humpty Dumpsters \$600.00 on August 15, 2019 to remove a dumpster that the Respondent left at her residence after he failed to respond to her requests to remove it.

14. On August 20, 2019, the Claimant filed a Complaint with the MHIC.

15. On August 20, 2019, the Claimant contracted with Porach, a licensed Maryland home improvement contractor, to perform work at her home that was the subject of the Contract. SWBC paid \$7,800.00 to Porach on August 20, 2019 and paid \$10,750.00 to Porach on October 15, 2019.

16. On August 28, 2019, the Claimant contracted with A Direct Result to complete some of the original work under the Contract.¹³ The contract price was \$54,300.00.¹⁴ The Claimant was unsure what amount was paid to A Direct Result.

17. On or about September 1, 2019, the Claimant hired Blake Structural to inspect the interior of the residence and prepare a plan for interior framing restoration. The Claimant paid Blake Structural \$425.00 in September 2019 for its services.¹⁵

¹² Clmt. Ex. 10.

¹³ Clmt. Ex. 17.

¹⁴ Clmt. Ex. 17 included other itemizations from A Direct Result, including one totaling \$84,740.00, but these were not in the form of a contract, they were not signed, they were heavily notated, and they were not accompanied by testimony explaining whether they were incurred or not. The only contract with A Direct Result was in the amount of \$54,300.00.

¹⁵ Clmt. Ex. 9.

18. Jim Krug, a subcontractor of Porach, was paid a total of \$6,400.00 to complete demolition work within the scope of the Contract.

19. On November 20, 2019, the MHIC informed the Claimant of the following:

- that she was required to file a claim form against the Fund within three years of discovering her loss or damages;¹⁶
- that the MHIC had ascertained that the Claimant was involved in civil litigation against the Respondent;¹⁷
- that pursuant to Bus. Reg. section 8-408(b), upon the filing by the Claimant of legal proceedings against the Respondent, upon the same facts asserted in a claim against the Fund, the MHIC shall stay its proceedings on the claim until there is a final judgment with all appeal rights exhausted;
- that pursuant to Bus. Reg. section 8-409(2), if the claim filed against the Fund arose from the same facts alleged in the civil suit, and a judgment resulted, the Fund would pay any final judgment in the Claimant's favor if the civil suit was contested and the decision contained the basis of the award, including poor workmanship; abandonment of contract, incomplete contract, etc.;
- that the Claimant's Complaint will be stayed until the MHIC received notice from the Claimant regarding the final court decision.¹⁸

20. On October 27, 2022, the Claimant obtained a judgment against the Respondent in the District Court for Baltimore County, Case No. D-08-CV-22-019534, in the amount of \$22,508.96, not including interest or costs.¹⁹

¹⁶ The MHIC enclosed a claim form for the Claimant's use if she wished to file a claim.

¹⁷ There was no evidence presented by the Claimant to show that she had filed a civil suit against the Respondent as of November 20, 2019.

¹⁸ Fund Ex. 5.

¹⁹ No evidence was presented by the Claimant to show that this civil suit was pending as of November 2019, or when it was filed before the entry of judgment on October 27, 2022.

21. On November 28, 2022, the Claimant notified the MHIC that she had obtained judgment against the Respondent on October 27, 2022, and requested payment from the Fund in reliance on the MHIC letter of November 20, 2019.

22. On April 7, 2023, the Claimant filed the Claim against the Fund for the acts or omissions of the Respondent.

23. On August 8, 2023, the OAG informed the Claimant that the proof of judgment provided by the Claimant did not state that the District Court found on the merits that the claimant is entitled to recover under Bus. Reg. section 8-405(a), and did not state that the court found the value of the Claimant's actual loss.

24. The OAG informed the Claimant on August 8, 2023 that the Claim may still be adjudicated through an evidentiary hearing, and transferred this matter to the OAH for a hearing. The OAG identified no affirmative defenses.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); 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 Cnty. 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) (Supp. 2023); *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 eligibility for compensation.

Statutory Eligibility

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no statutory impediments to the Claimant’s recovery. The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023). The Claimant did not reject any efforts by the Respondent to resolve the Claim as there is no evidence that the Respondent made such efforts.

The Claimant did not file the Claim until more than three years after she determined that the Respondent had abandoned the Contract. However, the Fund has declined to raise an affirmative defense relating to the timeliness of the Claim filed on April 7, 2023. Although the Claimant filed only a Complaint on August 26, 2019, and not the Claim, the MHIC expressly informed the Claimant on November 20, 2019 that it was staying her Complaint pending resolution of the civil suit, on its presumption that a civil suit had been commenced by the Claimant against the Respondent. Similarly, although the Claimant did not file the Claim until April 7, 2023, the MHIC expressly informed the Claimant on August 8, 2023 that it was permitting the Claimant to pursue adjudication of the Claim through a hearing at the OAH, and referred the matter to the OAH to hold a hearing on the merits. At the hearing, the Fund did not assert the affirmative defense of statute of limitations, and consented to the matter proceeding to

a determination of the Claimant's actual loss. The Fund recommended an award in the Claimant's favor.

Accordingly, if there was an affirmative defense available to the Fund regarding the timeliness of the Claimant's claim against the Fund, the Fund waived that defense by expressly authorizing the Claim to proceed to hearing, while declining to raise the affirmative defense of statute of limitations. As such, the Claim may proceed to adjudication with the consent of the MHIC.

Finally, the Claimant is not concurrently pursuing the same facts on which the Claim is based; a court of competent jurisdiction has entered an award against the Respondent upon the same breach of contract; and the Claimant has obtained a final judgment in her favor with all rights of appeal having been exhausted.

Md. Code Ann., Bus. Reg. §§ 8-101(g)(3)(i); 8-405(c), (d), (f), and (g); 8-408(b)(1), (b)(3)(i) (2015 & Supp. 2023).

The Parties' Positions

The Claimant's Testimony

The Claimant testified that she contracted with the Respondent for extensive renovation to her residence. At the outset of the relationship, she paid a deposit in the amount of \$9,773.00. This sum is the extent of monies paid by the Claimant to the Respondent under the terms of the Contract. The Claimant testified to the very limited work actually performed by the Respondent. The Claimant produced photographs taken after July 22, 2019, the last day on which the Respondent performed work under the Contract, showing extensive debris that had not been removed from the basement, the first floor, and the second floor.²⁰ The Claimant also produced photographs showing floors that were to have been removed, but remained in place.

²⁰ Clmt. Ex. 11.

She explained her concerns that the minimal amount of work performed by the Respondent strongly suggested that the Contract work would not be completed by September 30, 2019, a deadline imposed by SWBC, her lender. However, when she attempted to obtain an affirmative response from the Respondent, and spur him to make progress, she received no reply. The Claimant testified that the Respondent did not perform work under the Contract after July 22, 2019.

Based on the foregoing, I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements.

The Fund's Evidence

The Fund presented evidence which addressed the seeming failure to timely file a claim against the Fund within three years of the Claimant's knowledge of her loss, and which excused that failure. The Fund noted that the MHIC had assured the Claimant in November 2019 that it was staying further action on her complaint pending the outcome of a civil action, and implied that this representation may have misled the Claimant to not file her Claim on time. In addition, the Fund observed that the OAG had allowed the Claim to proceed to adjudication at a hearing, notwithstanding the apparent failure to file the Claim in a timely manner, and that the Fund did not object to an award in the Claimant's favor under these circumstances.

I thus find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1). No such claims are made here.

The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

If the Respondent abandoned the Contract without doing any work, 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). In this case, the Respondent performed a limited amount of work consisting of labor only for removing some walls and debris. Accordingly, this formula is not directly applicable.

If the Respondent performed some work under the Contract, and the Claimant is not seeking other contractors to complete or remedy that work, the following formula appropriately measures the Claimant's actual loss: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b). In this case, the Respondent performed some work but the Claimant is seeking other contractors to complete or remedy that work, so this formula is not directly applicable.

If the Respondent performed some work under the Contract, and the Claimant has retained other contractors to complete or remedy that work, 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). In this case, the Claimant paid numerous contractors and subcontractors to complete or remedy the incomplete work under the Contract. An itemization of those amounts is as follows:

Claimant's deposit to Respondent:	\$ 9,773.00
Humpty Dumpsters:	600.00
Porach (on August 20, 2019):	7,800.00
Porach (on October 15, 2019):	10,750.00
Jim Krug:	6,400.00
Blake Structural:	425.00
A Direct Result:	<u>54,300.00</u>
Total paid:	\$90,048.00

If the original Contract price of \$97,773.00 is subtracted from this total, the result is a negative number, and there is no award in favor of the Claimant. However, this result would be unjust given that the Claimant paid \$9,773.00 and received almost no benefit from that payment other than several hours of labor to remove only some of the walls that were to be demolished and replaced. In reviewing the evidence in this case, I conclude that the original contract price is too unrealistically high to provide a proper basis for measuring the actual loss in this case.

COMAR 09.08.03.03B(3)(c). I note that when the amounts itemized above which relate strictly to completing the Contract are added together, they come to less than the original Contract amount, indicating that the work under the Contract could have been completed for approximately \$90,000.00. Accordingly, I find that none of the three regulatory formulas is appropriate in this case, and I shall apply a unique formula to measure the Claimant's actual loss.

If the Respondent had abandoned the Contract and performed no work, the Claimant would have been entitled to an award of \$9,773.00. COMAR 09.08.03.03B(3)(a). If the Respondent had abandoned the Contract after performing some work and the Claimant was not seeking a contractor to complete or replace the work, she would have been entitled to the amount of her deposit minus the value of the work performed. COMAR 09.08.03.03B(3)(b). I find that

the proper measure of actual loss in this instance is the amount the Claimant paid the Respondent under the Contract less the value of services provided by the Respondent, despite the fact that the Claimant solicited and paid other contractors to complete the Contract for an amount less than the original Contract price. I conclude that this measure most accurately identifies the Claimant's actual loss while acknowledging that there was at least some minimal value in the services provided by the Respondent in the form of demolition only.

To assist in this determination, I refer to Claimant's Exhibit 15, which includes documentation pertaining specifically to costs related to demolition. Within Claimant's Exhibit 15 is a written description by Jim Krug of the demolition he performed in the residence, including removal of ceilings, walls, floors, shelves, bathroom fixtures, a hot water heater, and all remaining debris. Mr. Krug was paid \$6,400.00 for performing this work, which appears to constitute almost the entirety of the demolition to be completed under the Contract. In comparison to the extent of demolition performed by Mr. Krug, the Claimant described the removal by the Respondent of a few walls or partial walls, with the resulting debris. The Claimant's photographs depicted a considerable amount of debris remaining throughout the residence when the Respondent's services ceased.

In considering what Mr. Krug charged, and that his work appears to constitute almost the entirety of the demolition called for under the Contract, I find that the value of the demolition work performed by the Respondent constitutes not more than ten percent of the value of the demolition work performed by Mr. Krug, or not more than \$640.00. By deducting the sum of \$640.00 from \$9,773.00, I conclude that the Claimant's actual loss is \$9,133.00.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for the acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the

contractor against whom the claim is filed.²¹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$9,133.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$9,133.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B. I further conclude that the Claimant is entitled to recover \$9,133.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,133.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;²² and

²¹ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

²² *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 Health Improvement

Commission reflect this decision.

May 21, 2024

Date Decision Issued

Jeffrey T. Brown

Jeffrey T. Brown

Administrative Law Judge

JTB/kh
#211889

PROPOSED ORDER

WHEREFORE, this 14th day of August, 2024, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***