IN THE MATTER OF THE CLAIM	*	**BEFORE JEFFREY T. BROWN,**
OF ERNEST STEPHENS,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF VANDORN ROWLS,	*	
T/A PREMIUM HOMES, LLC	*	**OAH No.: LABOR-HIC-02-21-21085**
RESPONDENT	*	**MHIC No.: 21 (75) 2**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On January 27, 2021, Ernest Stephens (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $49,404.00 in actual losses allegedly suffered as a result of a home improvement contract with Vandorn Rowls, trading as Premium Homes, LLC (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 through 8-411 (2015 and Supp. 2021).[1] On September 15, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on December 1, 2021 at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimant was represented by Eugene Souder, Esquire. The Respondent represented himself. Eric London, Assistant Attorney General, Department, represented the Fund.

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 (2021); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 - A binder consisting of the following tabs and contents:

Deck Plans by Arch Design Tab
- Photograph of the original deck before contract work, 2019
- Screened porch addition plans cover sheet, ArchDESIGN, April 15, 2019
- Demo, Foundation & Framing Plans, ArchDESIGN, April 15, 2019
- Elevations and Detail, ArchDESIGN, April 15, 2019
- Cross Sections & Details, ArchDESIGN, April 15, 2019

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume and 2021 Supplement of the Maryland Annotated Code.

Premium Homes, LLC Contract and Addendum Tab
- Proposal/Contract, June 24, 2019
- Email from the Respondent to the Claimant forwarding the addendum, November 8, 2019
- Addendum to the original Contract, undated

Plans As Filed by Premium Homes, LLC and Permit Tab
- ArchDESIGN plans, 4 pages
- Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) Permit, September 17, 2019

Performance Timeline Tab
- Basis of Complaint Against Premium Homes, LLC, undated

Violations and Inspections Tab
- Photograph, Stop Work sign, DPIE, June 9, 2020
- DPIE Correction Order, June 9, 2020
- Scovis Structural Engineers Structural Observation Report, 22 pages, June 25, 2020

MHIC Filings and Premium Homes, LLC Responses Tab
- Complaint Form, Department of Labor, Licensing and Regulation (DLLR), June 24, 2020
- Home Improvement Claim Form, January 16, 2021
- Letter from the Respondent to the Claimant, August 5, 2020
- Respondent's Response to Complaint, 6 pages, August 2, 2020
- Letter from the Respondent to the Division of Occupational and Professional Licensing, Maryland Home Improvement Commission, February 18, 2021

Correction Estimates Tab
- G&D Construction, LLC Formal Proposal, July 17, 2020
- Long Fence Company, Inc. proposal, January 13, 2021

Miscellaneous Site Photos Tab
- Photograph of the partially completed deck and room construction, undated
- Two photographs of construction/demolition debris, undated

Clmt. Ex. 2 - Curriculum Vitae of Travis Corwith, P.E., undated

Clmt. Ex. 3 - One page containing four photographs depicting various stages of construction, undated

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

Resp. Ex. 1 - A binder consisting of the following exhibits:

Ex. A - Eight photographs depicting the deck in various stages of completion, undated; DPIE Correction Order, June 9, 2020

Ex. B - Two photographs, one depicting the rear of the house and deck as partially built, and one depicting the Stop Work sign posted on June 9, 2020, both undated;
Four photographs depicting the deck and steps, with notations, undated;
DPIE Permit, September 17, 2019;
DPIE Homeowner Improvement Authorization Letter, undated;
Inspections History by Permit Number, undated

Ex. C - Five photographs of the enclosed porch room, undated

Ex. D - Site Plans,[2] April 15, 2019

Ex. E - Complaint Form, DLLR, June 24, 2020
DLLR I.D. Registration printout for the Respondent, July 1, 2020;
DLLR Professional License History printout for the Respondent, July 1, 2020;
Premium Homes, LLC Proposal/Contract, June 24, 2019

Ex. F - Respondent's Response to Complaint, August 2, 2020;
Fax Transaction Log, November 26, 2021

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

Fund Ex. 1 - Notice of Hearing, September 21, 2021

Fund Ex. 2 - Hearing Order, September 3, 2021

Fund Ex. 3 - Letter from the DLLR, HIC, To Whom it May Concern, November 23, 2021, concerning the Respondent's licensing history

Fund Ex. 4 - Home Improvement Claim Form, January 17, 2021

Fund Ex. 5 - Letter from the HIC to the Respondent, February 10, 2021

Witnesses

The Claimant testified and presented the testimony of Travis Corwith, P.E., as an expert in the field of Structural Engineering.

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

[2] In addition to a reduced version of the site plans in the Respondent's binder, he also provided a full-sized set of the plans measuring 24 inches by 18 inches, also marked as Ex. D.

PROPOSED FINDINGS OF FACT

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

1. The Respondent is a licensed home improvement contractor under MHIC individual license number 113066, and corporate license number 05-134878. The Respondent has been licensed from 2001 to the present.

2. On June 24, 2019, the Claimant and the Respondent entered into a contract to construct an exterior deck and screened porch enclosure (addition) at the Claimant's residence in Upper Marlboro, Maryland (Contract). The Contract stated that work would be substantially completed on or before August 15, 2019.

3. The original agreed-upon Contract price was $45,500.00.

4. The Contract required the addition to be constructed in accordance with architectural plans (plans) obtained by the Claimant from ArchDESIGN (architect), dated April 15, 2019.

5. The Respondent was responsible for obtaining permits.

6. The Respondent obtained a construction permit from the DPIE on the basis of the plans on September 17, 2019.

7. The Claimant paid the Respondent $34,500.00 in three installments, dated June 24, 2019 ($12,000.00 advance); July 31, 2019 ($12,000.00 draw); and November 22, 2019 ($10,500.00 draw).

8. The parties verbally agreed to the terms of a written addendum to the Contract on November 16, 2019, extending the time to complete the addition to December 31, 2019[3]

[3] The unsigned addendum projected a completion date of December 25, 2019, but the parties referred to December 31, 2019 during testimony as the agreed date of completion.

9. The parties' verbal agreement changed the scope of the addition, including that the Respondent agreed to construct a fully enclosed room in lieu of a screened porch enclosure, at no extra charge.

10. The addition was not completed by December 31, 2019.

11. Construction continued until June of 2020, when the Claimant became concerned about the construction methods used by the Respondent and requested that a DPIE inspector inspect the work completed to that time.

12. On June 9, 2020, a DPIE inspector inspected the addition, and imposed a "Stop Work" order on the basis of structural deficiencies, the lack of approved plans on site, and multiple alleged missed inspections.

13. The Respondent last performed work at the property in mid-May of 2020.

14. When the Respondent last worked at the property, work under the Contract and Supplement remained incomplete.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (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 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 they 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.

The Claimant's Case

The Claimant testified that he engaged the Respondent to build the addition in accordance with the plans. The Claimant testified at length concerning the progress of construction on the addition, which was marked by long delays, some due to illness on the part of the Respondent and some due to weather. Despite this, and in part based on a successful prior contractual relationship with the Respondent, the Claimant remained willing to permit the Respondent to attempt to complete the project, though he was unaware of the nature or extent of deviations from the architectural plans, code requirements, or construction standards of care of which he was later informed. He testified that his willingness changed when other contractors who were present at his property in mid-2020, for reasons unrelated to the addition, observed deviations in standard construction practices in the addition and brought them to the Claimant's attention.

The Claimant testified that these deviations sufficiently concerned him that he requested that the DPIE come to the property to inspect the work done to date. The DPIE inspection occurred on June 9, 2020, and resulted in the immediate imposition of a Stop Work order, identifying structural deficiencies foremost among several reasons for cessation of work. He testified that once alerted to structural deficiencies, he engaged Mr. Corwith and Scovis to fully inspect the construction for compliance with the architectural plans, applicable codes, and standards of care, and advise him concerning the integrity of the construction to date. The architect who prepared the plans accompanied the Claimant and Mr. Corwith on the inspection. Mr. Corwith and the architect identified to the Claimant numerous deviations from the plans, as well as deviations from acceptable construction practices.

The Claimant testified that after learning of the deficiencies in the Respondent's work, both from the DPIE inspection and Mr. Corwith's inspection, he no longer trusted the Respondent's skill, and believed that the number and scope of the deficiencies could not be cured merely by the Respondent attempting to remedy each deficiency. The Claimant made contact with twelve construction contractors to obtain an inspection and estimate of the cost to repair the work completed to that point, and to finish the project, if that was possible. He received only a few calls back, and once he informed those who did respond of the nature of the work, none would agree to continue the work begun by the Respondent. Only Long Fence was willing to provide an estimate to demolish the addition and rebuild it according to the plans.

The Claimant testified that because no contractor would agree to attempt to cure the Respondent's deficiencies and warranty the work, the Claimant engaged Long Fence to demolish the addition and start over with new construction. The Claimant testified that due to marketplace changes between January 2021 and May 2021, he was informed that the cost to perform the same work estimated by Long Fence in January 2021 had increased by approximately fifty percent, rising from $59,904.00 to $90,000.00. As such, the Claimant explained that he received no value for his $35,000.00 paid to the Respondent, and still needed to expend $90,000.00 in additional funds to obtain the addition described in the Contract.

I accepted Mr. Corwith as an expert in the field of structural engineering on behalf of the Claimant. He testified extensively about each of seventeen conditions identified in his report. Clmt. Ex. 1 at Violations and Inspections Tab. As an example of a significant structural deficiency, Mr. Corwith identified that the Respondent had installed fewer support posts than the original design required, which increased the span between beams. He opined that this resulted in the design capacity of the structure being unmet and gave rise to a violation of the applicable building code.

Mr. Corwith testified similarly as to each of the seventeen areas of deficiency identified in his report, including how each varied from the plans, and/or how each was either non-compliant with code or was a deviation from accepted industry standards of care, or both. He also testified concerning the structural affect that each category of deficiency had upon the addition, which was, in each instance, to diminish the structural integrity of the construction. Mr. Corwith stated his opinion, within a reasonable degree of structural engineering certainty, that the Respondent's work was inadequate, incomplete, and unworkmanlike. He further testified to his opinion that in several areas, all identified in his report, the Respondent's work was not consistent with the plans, did not use materials required by the plans, and did not accomplish the durability of the addition intended by the plans.

The Respondent questioned Mr. Corwith regarding several of his conclusions, for instance that the Respondent failed to use pressure treated wood where it was required. Mr. Corwith had testified that stamps identifying the wood as pressure treated were not visible, and that the applicable building code required that pressure treated lumber be labeled as such. The Respondent inquired of Mr. Corwith whether, because portions of the support posts were underground, the labels may be hidden, which Mr. Corwith agreed was possible, but that the only way to know that was to unearth them, which was not practical. Mr. Corwith also testified that they could not be coated and could not be cut off and supported above ground, since the addition had already been built on the support posts.

The Respondent questioned Mr. Corwith whether certain of the deficiencies identified could be retrofitted or repaired. Mr. Corwith agreed that certain deficiencies could be repaired, but that the failure to construct the addition in compliance with the plans in the first place resulted in construction that did not meet the original design intent and would not be as durable as the original design even if repaired. Mr. Corwith acknowledged that he was not an expert in

cost estimation, but that the extensiveness of the repairs to obtain a still-compromised addition would likely be comparable to the cost of demolition and reconstruction. He testified that he had recommended to the Claimant that he obtain estimates to compare the cost of attempted repairs with the cost to demolish and rebuild, and choose his best option.

The Respondent's Case

The Respondent testified and asserted that when the Claimant called the DPIE to request an inspection, he usurped the role of the Respondent to call for inspections when the Respondent determined they should occur. He asserted that it was his sole responsibility to request inspections and that the addition was near completion, but it was not yet ready for a DPIE inspection. He objected that the Claimant did not question him before calling for an inspection and did not include the Respondent when the architect and Mr. Corwith inspected the addition. He testified that the Claimant's actions were not consistent with a good working relationship.

The Respondent testified that many of the deficiencies identified by Mr. Corwith were known to him, and before finalizing the addition, he would have corrected many of them on his own, if given the chance. The Respondent pointed out that approximately $11,000.00 of unspent funds remained from the contract price, and that if he needed to, he would have spent all of it to correct the deficiencies. He testified that he was not allowed to attempt to fix the deficiencies identified by the DPIE inspector and Mr. Corwith[4], and that it was not necessary to demolish and rebuild the addition.

The Respondent acknowledged that he had not submitted revised drawings or plans to the DPIE before proceeding to convert the screened porch into an enclosed room. He testified that it was customary to complete construction with such changes, prepare revised drawings to reflect

[4] The Respondent testified that he was willing to complete the addition and would have done so, but upon trying to contact the Claimant to discuss continuing work, shortly after learning of the Stop Work order in June of 2020, he was informed that all communications with the Claimant should be made through the Claimant's counsel. He was informed that he would not be permitted to continue working on the addition.

the new design as built, submit the new design for approval (without revealing that it had already been built without approval), obtain approval, and then call out the necessary inspectors. He testified that by this method, what was finally inspected would be what had been approved. As to what had been built, the Respondent testified that he agreed that he had not followed the original plans, but that the addition was still constructed consistent with requirements of the applicable building code.

The Respondent did not dispute that the work remained incomplete by any deadline set by the parties. He confirmed that the agreement to proceed with conversion from a screened porch to a fully enclosed room in the addition, to be completed by the end of 2019, was motivated by the fact that he had failed to complete the Contract by the initial contractual deadline, so he offered the conversion without charge to the Claimant. There was no dispute that the deadline to complete the modified addition was also missed.

Analysis

Based on the foregoing, I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The issue is not, as the Respondent implies, that a certain percentage of the work had been performed and little remained, suggesting that the quantity of construction should be considered an offset to the quality of construction. Rather, the issue is whether the work that was performed, as examined and found lacking upon inspections, was inadequate, incomplete, and unworkmanlike. It certainly was deemed such by the DPIE inspector on June 9, 2020, when a Stop Work order was posted on the addition. Even if the parties disagree over some of the deficiencies noted in the Stop Work order as substantial enough to terminate the Respondent's continued performance,[5] the deficiencies detailed in Mr. Corwith's

[5] The Stop Work order identified several missed inspections. The Respondent testified that they had not been missed, but that the completion of the inspections had not been properly recorded.

report, and in his testimony, have not been explained or overcome by any evidence offered by the Respondent.

The Respondent admitted that he deviated from the architectural plans, but offered no sound reason for doing so. He admitted that there were multiple construction practices used while building the addition that he would have corrected later, if necessary, but only acknowledged them after Mr. Corwith pointed them out. The Respondent did not explain why he had not performed the work properly in the first place, so that subsequent remedial efforts would not have been necessary. He did not prepare or submit plans to the DPIE to obtain prior approval of his structural change to the number of deck supports, or the height of the deck as specified in the plans. Additionally, he did not receive prior approval regarding the later alteration from a screened porch to an enclosed room. He offered no evidence in support of his testimony that it was customary to redesign an approved structure mid-construction, build the new version without approved plans or a permit, and then obtain approval and a permit for what had already been built in contradiction to the plans.

In addition, even if the Respondent had succeeded in submitting new plans to obtain approval and a permit for the changed structure as built, it would still have contained the many uncorrected deficiencies Mr. Corwith confirmed and described. Subsequent approval and a new permit would have relied on plans created by the Respondent, rather than the Claimant's architect, to ensure that what he had already built passed inspection rather than what he had contracted to build. As such, the Claimant would not have received the structural integrity and durability of the designed addition for which he contracted. He would only have received the Respondent's version.

When faced with trying to finish the addition as built, the Claimant understandably did not have faith in the Respondent's abilities and elected to seek others qualified to complete the

work. I find his lack of confidence in the Respondent to be reasonable based on the evidence before me, including as set forth in the report and testimony of Mr. Corwith, who explained each of the seventeen categories of deficiencies he identified. I find that the Claimant did not reject good faith efforts on the Respondent's part to complete the work, as what had been done was not capable of being reasonably repaired while still providing the Claimant with the addition for which he contracted. He had been informed that the work done by the Respondent needed to be demolished and replaced with all new construction. The Claimant testified credibly about his considerable efforts to obtain estimates for repair, including contacting at least twelve contractors. He could not find one willing to repair the Respondent's work, complete the addition, and warranty the result. Only Long Fence was willing to perform the construction, and only by demolishing and reconstructing the addition. The Claimant credibly explained that if it had been an option to repair what had been done at a reasonable price and finish the construction, he would have preferred to do so, but that option was not available.

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); COMAR 09.08.03.03B(1). 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 performed some work under the Contract, and the Claimant has solicited another contractor to complete that work. The cost to pay another contractor to remedy prior work by demolition and complete the original contract, as established by the

Claimant, is $90,000.00.[6] Accordingly, the following formula appropriately measures the Claimant's actual loss:

> If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

Amount paid under the original Contract:	$34,500.00
Amount the Claimant will be required to pay to repair poor work and complete the original contract:	$90,000.00
	$124,500.00
Less the original Contract price:	($34,500.00)
Actual Loss:	$90,000.00

The Business Regulation Article caps a single claimant's recovery at $20,000.00 for the acts or omissions of one contractor. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a). In this case, the Claimant's actual loss is greater than $20,000.00. Therefore, the Claimant is entitled to recover the maximum award of $20,000.00.

[6] The Claimant was unable to locate a revision of his contract with Long Fence to verify the increase in the cost of that contract from $59,904.00 to $90,000.00. Nevertheless, his testimony was credible that he had paid Long Fence $10,000.00 and still owed $80,000.00. The period between the Long Fence proposal of January 13, 2021 and the Claimant's agreement to proceed in June or July of 2021 was marked by public reports of building material shortages and sharply rising prices, but the testimony of the Claimant alone was sufficiently credible to prove the amount he has agreed to pay Long Fence. In any event, the difference between the amount paid under the original contract ($34,500.00) and the amount of the Long Fence proposal of January 13, 2021 ($59,904.00) would still have yielded a calculation of an actual loss greater than $20,000.00 ($25,404.00). COMAR 09.08.03.03B(3)(c).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $20,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 and Supp. 2021); COMAR 09.01.03.08C(2); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.01.03.08C(3); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $20,000.00; 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;[7] and

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

February 7, 2022
Date Decision Issued

Jeffrey T. Brown
Jeffrey T. Brown
Administrative Law Judge

JTB/da
#195803

[7] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015 and Supp. 2021); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 9th day of May, 2022, 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

IN THE MATTER OF THE CLAIM OF	*	**MARYLAND HOME**
Ernest Stephens	*	**IMPROVEMENT COMMISSION**
AGAINST THE MARYLAND HOME	*	
IMPROVEMENT GUARANTY FUND	*	**MHIC CASE NO. 21(75)2**
FOR THE ACTS OR OMISSIONS OF	*	**OAH CASE NO. LABOR-HIC-**
VanDorn Rowls AND	*	**02-21-21085**
Premium Homes, LLC	*	

* * * * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on December 1, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on February 7, 2022, concluding that the homeowner, Ernest Stephens ("Claimant") suffered an actual loss as a result of the acts or omissions of VanDorn Rowls and Premium Homes, LLC (collectively, "Contractor"). *ALJ Proposed Decision* p. 15. In a Proposed Order dated May 9, 2022, 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 15, 2022, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs 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 timely 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 offered 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 deck and screened porch[1] at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, inadequate, and incomplete because the Contractor deviated from the plans incorporated in the parties' contract, used improper materials, and did not complete the project as a result of the Claimant's justified termination of the Contractor. *ALJ's Proposed Decision* pp. 11-14.

On exception, the Contractor argued that the ALJ erred by failing to reduce the amount of the Claimant's award by the value of the materials the Contractor provided under the contract. The Contractor further argued that the Claimant's removal of the deck constructed by the Contractor prior to the hearing constituted improper destruction of evidence. The Commission disagrees.

In this case, the Contractor performed work under the contract, and the Claimant solicited bids to complete the contract. Therefore, the Commission holds that the ALJ was correct to apply the formula for the calculation of the Claimant's actual loss prescribed in COMAR 9.08.03B(3)(c), which provides as follows:

> 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.

[1] The parties' written contract called for the construction of a screened porch. The parties verbally agreed to change the planned porch to an enclosed room without a change to the contract price.

Under COMAR 9.08.03B(3)(c), the Commission is not required to reduce a claimant's actual loss by the value of materials provided by the contractor. The value of the materials provided by the contractor could be relevant to the extent the record demonstrates that such materials were reasonably reusable by a subsequent contractor to correct and complete a project. However, in this case, the Commission is unaware of, and the Contractor did not identify any evidence of what materials he provided that a subsequent contractor reasonably could reuse or the value of such materials.

Moreover, the Claimant's destruction and removal of the Claimant's deck did not constitute improper destruction of evidence and did not preclude the Contractor from demonstrating the value of the materials he provided that were reasonably reusable. COMAR 9.08.03B(3)(c) expressly recognizes that homeowners may correct and complete deficient home improvements prior to the adjudication of their Guaranty Fund claims, as it provides for the consideration of "any reasonable amounts the claimant *has paid* . . . another contractor to repair poor work done by the original contractor." (Emphasis added.) And the fact that the claimant had the deck constructed by the Contractor removed did not preclude the Contractor from arguing and proving that some or all of the materials were reasonably reusable and the value of such materials, as the Contractor was aware of what materials he provided and how he constructed the deck.

The Contractor also argued on exception that the ALJ erred in failing to provide an "itemization" of the expenses underlying the amount of the Claimant claimed in his claim form. The Commission finds no error. The ALJ is not required to "itemize" a claimant's claim. Rather, if a claimant proves that their contractor performed an unworkmanlike, incomplete, or inadequate

home improvement, the ALJ is tasked with determining the amount of the Claimant's actual loss. The Commission finds that the ALJ properly calculated the Claimant's loss in accordance with COMAR 9.08.03B(3)(c).

The Contractor further argued on exception that the ALJ erred in finding that the Contractor was not justified in deviating from the plans for the Claimant's deck, citing his own purported testimony before the ALJ. The Commission disagrees. The Contractor did not timely provide the transcript of the OAH hearing, so his testimony is not available to the Commission, and the evidence in the record does not demonstrate to the Commission that the Contractor was justified in deviating from the plans. Moreover, even if the Contractor were justified in deviating from the plans, the Contractor's performance was unworkmanlike because he built the deck in a structurally unsound manner, using improper materials, and without a plan approved by permitting authorities or the Claimant. Accordingly, the reason the Contractor deviated from the agreed upon plans is immaterial to the outcome of this proceeding.

Finally, the Contractor argued on exception that the ALJ erred in relying on the estimate the Claimant obtained from Long Fence to correct and complete the contracted work because the estimate reflected the increased cost of materials during the Covid-19 pandemic and because the Claimant may have been able to obtain a lower estimate from another contractor. The Commission finds no error.

Regarding the increased cost of correcting and completing the deficient work, as noted above, COMAR 9.08.03B(3)(c) provides that the Commission is to consider the "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." The Commission does not find the increase in the cost of correcting and completing the

Contractor's work resulting from the pandemic, a phenomenon of which the Commission is well aware, to render the Long Fence cost estimate unreasonable.

Regarding the Claimant's submission of only one estimate to prove the cost to correct and complete the Contractor's work, the Home Improvement Law does not require claimants to submit multiple estimates. In addition, the Contractor has not identified, and the Commission is not aware of evidence in the record demonstrating that the Long Fence estimate was unreasonable. Therefore, the Commission finds the Long Fence estimate presented by the Claimant to be reasonable and holds that the ALJ properly relied on it to calculate the Claimant's actual loss.

Although not raised by the Contractor, the Commission finds that the ALJ erred in calculating the Claimant's actual loss because the ALJ erroneously used an original contract price of $34,500.00, instead of the correct original contract price of $45,000.00. Therefore, the Commission finds that the Claimant's actual loss is $_____, which is calculated as follows:

	$34,500.00	**Amount paid to or on behalf of the contractor**
+	**$90,000.00**	**Cost to correct and complete the work**
	$124,500.00	
-	**$45,500.00**	**Original contract price**
	$79,000.00	**Actual Loss**

Although not raised by the parties, effective July 1, 2022, the Maryland General Assembly amended section 8-405(e)(1) of the Business Regulation Article of the Maryland Code to increase the cap on Guaranty Fund awards to a single claimant for the acts and omissions of a single contractor from $20,000.00 to $30,000.00. This amendment applies to all pending claims. *See Landsman v. Maryland Home Improvement Comm'n*, 154 Md. App. 241, 251–62 (2003).

Therefore, because the Claimant suffered an actual loss of $79,000, the Commission holds that the Claimant is entitled to an award of $30,000.00.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 7th day of October 2022, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;

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

D. That the Claimant is awarded $30,000.00 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.

Robert Altieri
Chairperson –Panel
Maryland Home Improvement Commission