

IN THE MATTER OF THE CLAIM	* BEFORE EMILY DANEKER,
OF MICHIAL GILL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: LABOR-HIC-02-24-02060
FOR THE ALLEGED ACTS OR	* MHIC No.: 21 (75) 609
OMISSIONS OF PAUL SMITH,	*
T/A THE SMITH GROUP	*
CONSTRUCTION, LLC,	*
RESPONDENT	*

\* \* \* \* \*

# **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 October 2, 2023, the Maryland Home Improvement Commission (MHIC)<sup>1</sup> received a claim submitted by Michial Gill (Claimant) seeking to recover \$55,631.12 from the Maryland Home Improvement Guaranty Fund (Fund) for actual losses allegedly sustained as a result of the acts or omissions of contractor Paul Smith, trading as The Smith Group Construction, LLC (collectively, Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup>

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

On December 29, 2023, the MHIC issued a Hearing Order on the Claim directing that the claim proceed to a hearing to allow the Claimant an opportunity to prove entitlement to reimbursement for losses sustained as the result of the conduct of Mr. Smith and The Smith Group Construction LLC, and advising that they would be required to reimburse the Fund for any amount it paid to the Claimant on the claim. That same day, the MHIC transmitted the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 23, 2024, I held the hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimant was self-represented. Mr. Smith represented both himself and The Smith Group Construction LLC. Md. Code Ann., State Gov't § 19-1607.1(a)(4)(i) (2021); *see also* Bus. Reg. § 8-407(a). Ernie Dominguez, 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); Code of Maryland Regulations (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**

#### **Testimony**

The Claimant testified in his own behalf.

Mr. Smith testified on behalf of the Respondent.

The Fund did not present any witnesses.

### Exhibits

The Claimant offered the following exhibits, which I admitted into evidence:

- Clmt. Ex. A - Letter from Bertram Alleyne, B & BV LLC Home Improvement,<sup>3</sup> dated April 19, 2024 & April 23, 2024<sup>4</sup>
- Clmt. Ex. A1 - Invoices from BandBV LLC, both dated December 14, 2020
- Clmt. Ex. B - Contract between the Claimant and the Respondent, January 6, 2020
- Clmt. Ex. B1 - Checks written by the Claimant to the Respondent, dated between January 16, 2020 and June 10, 2020; Account statement, for period of January 17 to February 16, 2020
- Clmt. Ex. D - Record of Contact, with entries dated September 9, 2020 through November 27, 2020
- Clmt. Ex. E - Photographs of the Residence (numbered 1 through 17B), dated January 3, 2021 and September 29, 2021
- Clmt. Ex. F - Text messages between the Respondent and the Claimant, dated November 11, 202 through November 27, 2020
- Clmt. Ex. G - Letter from Aaron Turner, Levin Gann PA, Attorneys At Law, to the Respondent, dated January 6, 2021

The Claimant initially offered a document marked as Claimant's Exhibit C and entitled, "Fernpark Punch Out List," but subsequently withdrew the document. Because there was testimony about the document and it was marked, I have retained a copy of it for the record.

COMAR 28.02.01.22C.

The Respondent offered the following exhibits, which I admitted into evidence:

- Resp. Ex. A - Three exterior photographs of the Residence prior to any work, undated
- Resp. Ex. B - Photograph of the second floor bathroom renovation at the Residence, undated
- Resp. Ex. C - Photograph of boxes of flooring stacked inside the Residence, undated
- Resp. Ex. D - Inspection Notice for interior framing at the Residence, dated April 24, 2020; Inspection Notice for insulation at the Residence, dated April 29, 2020

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<sup>3</sup> The documents refer this entity as "B & BV LLC Home Improvement" in some instances and as "BandBV LLC" in other instances. For consistency, I hereinafter refer to this entity as B&BV.

<sup>4</sup> Both dates were typewritten at the top of the letter, it is unclear which date was the actual date of the letter.

The Fund offered the following exhibits, which I admitted into evidence:

- GF Ex. 1 - Notice of Hearing, dated February 1, 2024
- GF Ex. 2 - MHIC Hearing Order, dated December 29, 2023
- GF Ex. 3 - Home Improvement Claim Form, received October 2, 2023
- GF Ex. 4 - MHIC License Registration and History Information, printed April 23, 2024<sup>5</sup>

### **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 operating under MHIC individual license number 01-99095 and corporate license number 05-133082.
2. At all times relevant to this hearing, the Claimant was the owner of a house located at 5311 Fernpark Avenue in Baltimore, Maryland (the Residence).
3. The Claimant never resided in the Residence; the Claimant sought to renovate and rehabilitate the Residence and then sell it.
4. On or about January 6, 2020, the Claimant and the Respondent entered into a contract for a full renovation of at the Residence, including:
  - Removing the radiators, doors and carpeting throughout the house
  - Demolishing the second floor kitchen
  - Removing the bathtubs in the first and second floor bathrooms
  - Removing the wall between the second floor bedroom and kitchen and the wall in the hallway bathroom
  - Repairing, replacing and painting railings, floor boards, and spokes of balcony, as needed
  - Repairing damaged walls and ceilings as needed
  - Removing suspended ceilings on the first floor
  - Removing the wall between the first floor kitchen and adjoining room
  - Removing the partition between the first floor living room and stairs
  - Creating an entrance between the living room and dining room
  - Removing the water heater, the boiler pipes, oil tank, utility sink, galvanized pipes, and side exterior door in the basement

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<sup>5</sup> With the consent of all parties, the Fund submitted this document after the conclusion of the hearing.

- Demolishing the stairs to the basement
- Removing lattice on the exterior of the Residence
- Removing the front steps and rotted porch on the exterior of the Residence
- Removing the exterior door and steps to the second floor
- Removing and repairing 24 square feet of damaged siding
- Framing out new closets, doorways, windows, and a second floor hallway bathroom
- Installing recessed lighting and new doors throughout the Residence
- Leveling the first floor bathroom floor
- Installing insulation and drywall where framework was done
- Plumbing, electrical, and HVAC work throughout the home, including ductwork for new central heating and air and a new furnace and hot water heater
- Painting all ceilings, walls, and woodwork
- Sanding and refinishing all wooden floors
- Installing "quality vinyl flooring" in all bathrooms, the kitchen, and the basement
- Replacing the second floor windows
- Sanding and painting the steps
- Painting and installing vinyl treads on the basement steps
- Smoothing and painting the fireplace
- Installing new cabinets and countertops in the kitchen
- Providing and installing stainless steel kitchen appliances (refrigerator, stove, dishwasher, and microwave)
- Painting the exterior wood trim and vinyl siding
- Installing new porch steps and entry lights
- Installing new porch flooring where needed
- Scraping and paint porch columns and painting the porch
- Installing new vinyl lattice

5. The original contract price was \$74,896.00, to be paid in five installments: \$17,000.00 as a deposit (Draw 1), \$17,000.00 to complete rough in of HVAC, plumbing, and electrical (Draw 2), \$17,000.00 draw to complete insulation, drywall, kitchen, and bathrooms (Draw 3), \$11,948.00 draw to complete exterior work (Draw 4), and \$11,948.00 due on completion of the work (Draw 5).

6. The contract work was to begin on January 20, 2020, with no major work taking place until permits were obtained, and the work was to be completed by June 22, 2020. The Respondent, or any relevant subcontractors, were to obtain all necessary permits.

7. The Claimant paid the Respondent a total of \$82,321.00, as follows:

<u>Date</u>	<u>Purpose</u>	<u>Amount</u>
January 16, 2020	Initial deposit/Draw 1	\$17,000.00
February 5, 2020	Draw 2	\$17,000.00
February 21, 2020	Change order	\$1,200.00
February 26, 2020	Draw 3, partial	\$8,500.00
March 5, 2020	Draw 3, remainder	\$8,500.00
March 13, 2020	Draw 4, partial	\$6,500.00
March 19, 2020	Draw 4, remainder	\$5,500.00
March 27, 2020	Additional plumbing work	\$3,000.00
March 27, 2020	Draw 5, partial	\$4,171.00
April 3, 2020	Draw 5, partial	\$3,525.00
April 17, 2020	Draw 5, partial	\$1,475.00
May 20, 2020	Draw 5, partial	\$2,700.00
June 10, 2020	Additional bathroom work	\$3,250.00
	Total	\$82,321.00

8. The change orders and additional work brought the total price for the work to \$82,346.00 (or \$74,896.00 + \$1,200.00 + \$3,000.00 + \$3,250.00).

9. Some of the delay in completing the work was the result of delays at the permitting office, the impact of the COVID-19 pandemic, which began in March 2020, and the Claimant's requests for changes and delays in selecting finishes. Some of the delay was due to the Respondent's schedule.

10. The Respondent framed out ductwork in the Residence, but the Claimant decided he did not like the location of the ductwork, which would have required a bulkhead, so the Respondent ripped out the work and relocated it, which added delays and expenses.

11. As of November 13, 2020, the contract work was in various stages of completion:

- The Respondent had completed the interior framing and insulation work at the Residence.
- The Respondent had painted the exterior of the Residence, with the exception of the fascia.
- The Respondent had installed the HVAC system but had not hooked it up.
- The Respondent had performed some electrical work at the Residence, but there were still significant electrical problems that needed to be diagnosed and resolved and the electrical panel needed to be properly upgraded.
- The Respondent had installed recessed lighting at the Residence, installed new windows, where called for in the contract, repaired siding, performed some drywalling, interior painting, and carpentry work, and sanded the upstairs wood floors, where those floors were being kept and restored.
- The Respondent had completed the installation of a second-floor bathroom, including the plumbing, fixtures (tub, toilet, and vanity), tile, and flooring.
- The Respondent had completed the installation of a powder room on the first floor of the Residence.
- The Respondent had begun the renovation of the basement bathroom, but the shower installation was incomplete. While plumbing, framing, and a shower basin were installed, the wallboard, tiles, and shower fixtures were not installed.
- The Respondent had not begun installation of the fourth bathroom at the Residence.
- Although the Respondent purchased flooring for the Residence, the flooring had been installed in the kitchen only, and the new kitchen flooring was not level with the old flooring that abutted it.
- The Respondent had not purchased the kitchen appliances.
- The Respondent had not purchased and replaced the interior or exterior doors.

12. After November 13, 2020, the Respondent did not perform any work at the Residence.

13. After November 13, 2020, the Respondent did not reply to the Claimant's repeated inquiries about the status and completion of the work at the Residence.

14. In or about late-November 2020, the Claimant locked the Respondent out of the Residence.

15. The Claimant retained B&BV to complete the renovation of the Residence.

16. B&BV purchased and installed the kitchen appliances, completed the installation of the basement bathroom, installed the additional second-floor bathroom, installed closets, purchased and installed interior and exterior doors, installed flooring and baseboards, finished the stairs, resurfaced walls, completed the exterior painting, installed a downspout, performed some interior lighting and painting work, upgraded the electrical panel, and hooked up the HVAC system, all as called for in the contract between the Claimant and Respondent.

17. B&BV removed and repaired flooring that had been installed by the Respondent in order to level the floors.

18. The Claimant paid B&BV \$40,000.00 to complete the work at the Residence.

19. The Claimant filed the claim with the MHIC on October 2, 2023; the Claimant and does not have any other claims or lawsuits pending against the Respondent.

20. The Claimant does not own more than three residences.

21. The Claimant and the Respondent are not related and do not have any employment or business affiliation. The Claimant is not related to anyone who has an employment or business affiliation with the Respondent.

## **DISCUSSION**

### **Applicable Law**

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for an “actual loss” sustained at the hands of incompetent or unscrupulous home improvement contractors. Bus. Reg. §§ 8-401 to 8-411. The governing statute defines “actual loss” as “the costs of restoration, repair, replacement, or



completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”

*Id.* § 8-401. The Commission may deny a claim if the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. *Id.* § 8-405(d).

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. *Id.* § 8-405(e)(3); COMAR 09.08.03.03B(1). In addition, a claimant may not recover from the Fund more than was paid to the original contractor. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4). Effective July 1, 2022, a claimant’s recovery is capped at \$30,000.00 for the acts or omissions of one contractor. Bus. Reg. § 8-405(e)(1).

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).

### **Analysis**

While there were disputes between the parties as to the precise scope of the work actually performed by the Respondent, it was clear from the testimony of both the Claimant and the Respondent, as well as the photographs taken in January 2021,<sup>6</sup> that the contract work was significantly incomplete. In particular the testimony and photographs established that one of the four bathroom renovations was only partially complete, and another bathroom had not been renovated at all; the interior and exterior doors had not been replaced; electrical issues persisted; appliances were not purchased; the exterior painting was incomplete; flooring installation was incomplete throughout the Residence, with the exception of the kitchen; the HVAC was not

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<sup>6</sup> Clmt. Ex. E, at 10-17B.

hooked up; the stairwell work was not performed; and some interior drywalling and painting work remained. In addition, the flooring work in the kitchen needed to be redone, as the floor was not level. The evidence clearly established that the Respondent's home improvement work was unworkmanlike, inadequate, and incomplete.

The Claimant and Respondent also both agreed that, at some point in time, the Claimant locked the Respondent out of the property. Although there was disagreement as to the date when the Claimant locked the Respondent out of the Residence, it was clear that it was sometime after November 13, 2020, as the Respondent performed work at the Residence that day. After November 13, 2020, the Claimant repeatedly contacted the Respondent by text message<sup>7</sup> to get information about the status of the work and when it would resume. Specifically, he sent messages to the Respondent on November 16, November 17, November 18, November 23, and November 27, 2020;<sup>8</sup> the Respondent did not reply to any of those messages. In the November 27, 2020 message, the Claimant expressly inquired whether the Respondent intended to finish the contract work at the Residence. As noted, the Respondent did not reply. At that point, the Claimant retained another contractor to complete the work. In these circumstances, the Claimant's decision to secure the property and find a replacement contractor was entirely reasonable—particularly as the project was already substantially behind, in part due to the Respondent's own scheduling delays. The Claimant did not unreasonably reject any good faith efforts by the Respondent to resolve the deficiencies with the work, and there are no other impediments to the Claimant's recovery from the Fund.

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<sup>7</sup> The Claimant and Respondent had been communicating by text message previously.

<sup>8</sup> Clmt. Ex. F.

As the Claimant is eligible for compensation, the remaining question is the amount of any actual loss that is compensable by the Fund. I apply the formula established by the MHIC for measuring actual loss when a contractor fails to complete the work and the claimant hires a replacement contractor. That formula is:

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. . . .

COMAR 09.08.03.03B(3)(c).

Application of the regulatory formula results in an actual loss to the Claimant of \$29,225.00, calculated as follows:

\$82,321.00	amount paid by the Claimant to the Respondent
+ \$40,000.00	amount paid to complete the contract
\$122,321.00	total paid by the Claimant
- \$82,346.00	total contract price
\$39,975.00	actual loss per formula

See COMAR 09.08.03.03B(3)(c).

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for 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.<sup>9</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$39,975.00 exceeds the \$30,000.00 statutory cap. Therefore, the Claimant's recovery is limited to \$30,000.00

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<sup>9</sup> 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").

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that, as a result of the Respondent's unworkmanlike, inadequate, and incomplete home improvement project, the Claimant is entitled to recover \$30,000.00 of his actual loss from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); 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 \$30,000.00; 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;<sup>10</sup> and

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



July 19, 2024

Date Order Issued

\_\_\_\_\_  
Emily Daneker  
Administrative Law Judge

ED/kdp  
#212855

<sup>10</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 27<sup>th</sup> day of November, 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.***

**W. Bruce**

**Quackenbush**

**W. Bruce Quackenbush**

**CHAIRMAN**

**Panel B**

**MARYLAND HOME IMPROVEMENT  
COMMISSION**

IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
MICHIAL GILL \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 21(75)609  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
PAUL SMITH AND THE SMITH \* 02-24-02060  
GROUP CONSTRUCTION, LLC \*

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on April 23, 2024. Following the evidentiary hearing, the ALJ issued a Proposed Decision on July 19, 2024, concluding that the homeowner, Michial Gill (“Claimant”) suffered an actual loss as a result of the acts or omissions of Paul Smith and The Smith Group Construction, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 12. In a Proposed Order dated November 27, 2024, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$30,000 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On March 20, 2025, 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 Catherine Villareale appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Contractor’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits 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 renovation of a home owned by the Claimant. The ALJ found that the Contractor's performance under the contract was unworkmanlike, inadequate, and incomplete. *ALJ's Proposed Decision* p. 10.

On exception, the Contractor argued that the ALJ erred in recommending an award to the Claimant because the Claimant did not reside in the home where the contract was to be performed and had purchased the home as an investment.

The Commission finds no error. Under Md. Code Ann., Bus. Reg. § 8-405, a homeowner is eligible to make a Guaranty Fund claim in connection with a home in which the claimant does not reside so long as the claimant does not own more than three residences. The ALJ found that the Claimant does not own more than three residences, *ALJ Proposed Decision* p. 8, and the Contractor has not challenged that finding on exception or identified evidence in the record that contradicts that finding.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 4<sup>th</sup> day of April 2025, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant is awarded \$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.

Chandler Loudon  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**