

IN THE MATTER OF THE CLAIM	* BEFORE MARC NACHMAN,
OF DONALD ROBINSON,	* 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 BRANDON KETTER,	*
T/A KETTER CONSTRUCTION AND	* OAH No.: LABOR-HIC-02-23-23298
REMODELING, LLC,	* MHIC No.: ²² 23 (75) 1285
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On March 28, 2023, Donald Robinson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$25,840.00 for actual losses allegedly suffered as a result of a home improvement contract² with Brandon Ketter, T/A Ketter Construction and Remodeling, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411.(2015 & Supp. 2023).³

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² The issue of whether contracts existed between the parties will be addressed below.
³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

On August 31, 2023, the MHIC issued a Hearing Order on the Claim. On September 1, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 30, 2023, I held a hearing over the Webex video conferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear at the hearing despite notice.

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 September 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 October 30, 2023 at 9:30 a.m. 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 received 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.

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:

- Cl. Ex. 1 Separated into the following letters:
 - A Text messages between the Claimant, his wife and the Respondent, November 30, 2021 through January 21, 2022
 - B. Initial, pre-construction text messages between the Claimant and Respondent, undated
 - C. Text messages between the Claimant, his wife and the Respondent, April 27, 2021 through May 13, 2021
 - D. [Mismarked]
 - E. Conversations between Claimant and Respondent, April 27, 2021 through September 20, 2021
 - F. Conversations between Claimant's wife and Respondent, September 21, 2021 through November 12, 2021
 - G. Conversations between Claimant's wife and Respondent, October 8, 2021
 - H. Conversations between Claimant's wife and Respondent, November 11, 2021 through November 23, 2021
- Cl. Ex. 2 Claimant's narrative regarding stucco/exterior work, to which were attached: email between Respondent and Claimant's wife, dated June 18, 2021; estimate for stucco/exterior work on house by Alignments Eifs, LLC, dated May 11, 2022; and Proposal/Contract from D.L.Boyd, Inc., dated September 14, 2022
- Cl. Ex. 3 Claimant's narrative of complaints, undated
- Cl. Ex. 4 Estimate from Robin's Nest Artistry, August 9, 2022; a proposal from D.L.Boyd, Inc., for stucco repair in the amount of \$18,990.00; an estimate from John Krause Construction.com Landscaping, dated March 20, 2023, to repair ceiling tile, light fixture, crown molding, etc., in the amount of \$4,550.00; a September 7, 2022 estimate from Sita Tile to repair the floor tiles for \$800.00
- Cl. Ex. 5 Respondent's Estimates, change orders and correspondence
- Cl. Ex. 6 Bank transaction details
- Cl. Ex. 7 Emails between the Claimant, his wife and the Respondent, February 1, 2022 through February 1, 2022
- Cl. Ex. 8 Photographs (58 marked exhibits, excluding photo 57, which was not admitted into evidence)

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 Notice of Hearing, dated September 20, 2023
- GF Ex. 2 HIC Hearing Cover Sheet/Order for Hearing
- GF Ex. 3 Licensing Record for Respondent
- GF Ex. 4 Letter to Claimant and Fund Claim Form.

No exhibits were admitted on behalf of the Respondent.

Testimony

The Claimant and his wife testified and did not present other witnesses.

The Respondent failed to appear, so he did not present any testimony.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-0138698.
2. Sometime in April 2021, the Respondent prepared a proposal to power wash the surface of the house's stucco exterior, repair cracks in the stucco, and paint the stucco exterior, soffits and fascia.
3. The Respondent warranted that his exterior work would be "flawless" with a ten year warranty.
4. After the Respondent completed his exterior work, it exhibited cracks and damage to the Claimant's house that the Respondent never corrected despite having been given the opportunity to do so.
5. The Claimant must retain a contractor to repair the exterior work that the Respondent failed to perform properly. The cost to repair the exterior of his house is \$18,990.00.
6. Before he finished the exterior work on the Claimant's house, the Respondent prepared a proposal to remodel the kitchen, laundry room and other interior rooms in the house.

7. The Respondent's proposal to remodel the Claimant's house interior included: removing and refinishing the kitchen cabinets; moving the appliances and air conditioning duct work; installing new countertops, backsplash, an island, plumbing fixtures and flooring; and modifying the existing bathroom to create a powder room, pantry and laundry room. The work would include the necessary electrical, plumbing and HVAC modifications.

8. The Respondent also created change orders to perform other interior work to the dining room and upstairs bedroom.

9. The Respondent's interior work exhibited defects that the Respondent never corrected despite having been given the opportunity to do so:

- a. The cabinet doors were poorly finished and were damaged by the Respondent and not repaired,
- b. The cabinet door finish was not durable, showing peeling, cracking, flaking and was able to be wiped off with water;
- c. The porcelain tiles were chipped, uneven and the grout was poorly applied;
- d. The ceiling in the dining room adjacent to the kitchen was damaged;
- e. The floor finishing and drywall were poorly installed and finished, with scuff marks on the flooring;
- f. Vents were poorly installed without the proper sealing and finished poorly;
- g. Gaps were present in the kitchen ceiling and molding;
- h. The holes from removed lighting fixture were still evident and there was paint on the new fixture;
- i. Windows were not caulked properly;

- j. Unauthorized work was performed on the windows;
- k. Pocket doors were damaged by shelving anchors in the adjacent room;
- l. Painted molding in the dining room was cracked;
- m. Shoe molding and paint on the molding was mismatched.
- n. Paint on the walls was chipped and marred by painter's tape that was improperly removed;
- o. Molding on the stairway showed poor workmanship;
- p. Installed flooring was chipped;
- q. Plumbing and venting in the powder room were improperly installed; and
- r. Residue from tile cutting was left in the driveway.

10. The Claimant must retain a contractor to repair the interior work that the Respondent failed to perform properly. The cost to repair the interior work is \$7,650.00.

11. For both the exterior or interior work, the Respondent did not prepare a contract for signature by the Claimant, but prepared proposals that were signed. The Respondent also prepared change orders.

12. The total price of the proposals and change orders was \$77,559.81.

13. The total amount paid by the Claimant to the Respondent for both the exterior and interior work was \$78,756.55.

14. The total amount needed to repair the exterior and interior conditions left by the Respondent is \$26,640.00.

DISCUSSION

Applicable law - generally

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.

The Respondent was a licensed home improvement contractor at the time he performed the work for the Claimant. By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). 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) (2015 & Supp. 2023).

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).

Exterior work

The parties initially agreed that the Respondent would perform work on the exterior of the Claimant and his wife's house. The Respondent prepared an estimate on June 17, 2021, proposing to perform stucco repair and painting on the exterior of their house. There was no formalized contract, and the parties treated the estimate as their mutual obligations as if there were a formalized contract.

The estimate contained a description of the work to be performed:

Exterior paint

- Pressure washing house prior to work being performed, removing contaminants that could interfere with the paint adhesion
- Patching all stucco cracks with a mix of stucco caulk and fast dry stucco concrete patch
- Caulking areas where caulk failed or was missing.
- Applying two coats of a "top of the line" exterior paint.

Soffits and Facia

- Scraping all loose or peeling paint;
- Priming with peel bond primer to ensure the that he paint will not peel over time; and
- Brushing and rolling two coats of exterior paint on all soffits and facias around the house.

The payment terms noted a ten year warranty and the draw schedule, with the last payment due "after the entire home [h]as been painted and looks flawless." CL. Ex. 2.

The work was not done to the Claimant's satisfaction.

Among the Claimant's complaint to the Respondent was that the work was guaranteed to be "flawless" with a ten year warranty, The Claimant still observed visible cracks on the back of his house; although brought to his attention, the Respondent did not correct the cracks.

...and the Claimant made the following complaints to the Respondent, which were also never addressed, despite the Claimant paying the Respondent's final billing:

- Brown paint on white stucco
- Windows were taped off prior to painting; tape residue remained visible on the window trim;
- Lights on back of the house were removed or knocked off; they were never reinstalled;
- One flood light was broken during painting, leaving the socket base of the light in the socket.

Because the Respondent failed to correct the defects cited by the Claimant, he and his wife obtained two estimates to correct the Respondent's work. On May 16, 2022, the Claimant obtained an estimates from Alignment Eifs Stucco, LLC, for \$16,000.00.⁴ Cl. Ex. 2. That estimate addresses the stucco defects left by the Respondent and did not exceed the scope of the Respondent's exterior work contract. On September 14, 2022, they obtained a second estimate from D.L.Boyd, Inc.,⁵ for \$18,900.00 covering the same work. Cl. Exs. 2 and 4. That second estimate also addresses the stucco defects left by the Respondent and did not exceed the scope of the Respondent's exterior work contract.

Interior work

While the exterior work was ongoing, the parties agreed to have the Respondent perform interior work as well. The Claimant testified that the Respondent was to remodel the kitchen in his home, which comprised of: tearing out the kitchen to the studs; removing cabinets; removing the wall between the kitchen and the laundry room; building a laundry room that would "bump out" into the garage; taking down another smaller wall; opening up the doorway between the kitchen and the dining room; turning the half bath into a smaller half bath and a food pantry; moving the back wall out 12 inches into the sunroom; installing new flooring; removing an

⁴ The company does not show a MHIC license number on its documentation.

⁵ This is a HIC licensed contractor.

island and the stove vent above it; installing a new island; removing wood paneling that went up a quarter of the wall on the bathroom side of the kitchen and underneath the bay window; and painting existing cabinets that would remain in the kitchen.

The Respondent again did not present the Claimant and his wife a contract to sign; instead, the Claimant's wife signed the proposal, which listed the following "description" of the work to be done:

- Demolition:

Demolishing the kitchen in its entirety, including flooring, removing wall between kitchen and laundry area. Opening up closet area to accompany refrigerator move; removing flooring, paneling, etc., to start remodeling; disposing of all debris.

- Cabinets

Refinishing all cabinets in color chosen by Claimant. Rehangng cabinets with new hardware.

- Countertops

Claimant's choice of custom quartz countertops, with matching countertop for 8' island. New sink and faucet style chosen by Claimant.

- Flooring

Installing Luxury Vinyl Plank (LVP) flooring chosen by Claimant. Installing thresholds where the flooring meets different types of flooring

- Powder room/Pantry

Framing a wall in the middle of the existing bathroom. Adding a door from a back room to bathroom. Installing new flooring, toilet, pedestal sink, mirror, toilet paper holder and towel rack. Installing a pantry with built-in shelves and a door opening to the kitchen. Painting the powder room and pantry, caulked the trim and filling nail homes. Hanging and painting doors, Installing brushed nickel⁶ hardware.

⁶ The contract read "knicker" but that is a non sequitur.

◦ Laundry Room

Building the laundry room in a “bump out” into the garage to add more livable square footage. Installing double bi-fold door, studs from the ceiling to the cement foundation in the garage, and new water lines, electrical and duct work.

- Island

Installing an 8' long by 30" wide island in the middle of the kitchen.

- Backsplash

Installing, grouting and sealing Claimant's choice of stone backsplash between the top of the countertop and bottom of top cabinets.

- Electrical, plumbing and HVAC

Installing new electrical for changes in powder room, new hook-ups for appliances and installing new light, with scaffolding to be set up in the living room to replace two lights.

- Plumbing

Installing new connections for changes in bathroom, washer hook ups, and line for ice maker.

- HVAC

Rerouting duct work for new laundry room and near cabinets “to create more room.”⁷

- Other

Completing “[a]ll minor things that were missed or pop up throughout the job.” Painting all ceiling walls and trip, with new baseboards and shoe molding throughout, installing new door trim, handles and accessories.

The total price of the work was estimated on the proposal, but the invoices the Respondent presented did not match that amount. Because there was no signed contract for the purposes of the claim calculation, I am relying on the total of the invoices to establish the contract amount.

⁷ The paragraph continued with another non sequitur: “Added mini cabinets above the regulars.”

On the day of the demolition, August 6, 2021, the Respondent told the Claimant that the work would be completed in two weeks, although the entire project took almost four months to complete. The Respondent also told the Claimant that he and his wife would get a text message nightly regarding the Respondent's progress and plans for the following day; those updates were sparse.

The interior construction was completed on November 24, 2021. The Claimant gave the Respondent a punch list on December 7, 2021, which the Respondent did not personally review with the Claimant until December 15, 2021, more than a week later. In the interim, the Respondent sent some of his workers to address the listed items. The Respondent sent the Claimant a text that his workers completed the items on the punch list, but he never returned to the home to verify the completion of the work or discuss any remaining complaints by the Claimants. Items on the punch list remained incomplete.

The Claimant paid the amount requested by the Respondent, although the Claimant and his wife dispute the quality and completion of that work.⁸ The Claimant's complaints were elicited by testimony and in the narrative presented in the exhibits.

The Claimant and his wife cited three major deficits and a list of other items that were not addressed to their satisfaction.

The first of the major concerns was the condition of the cabinets. The Respondent agreed to finish the cabinets, taking them "off the property" to be sprayed for a "factory finish." Instead, the cabinets were removed from the kitchen and spray painted in the Claimant's back yard, a fact evident from paint on the grass.

⁸ Cl. Ex. 5 contains banking records. The transactions are difficult to follow, but because the Claimant and his wife clearly paid the amounts due the Respondent, and the Respondent was not present at the hearing to challenge that the payments were made, I accept the Claimant's testimony regarding what he paid the Respondent for the work that the Respondent agreed to perform (which were sometimes contained in one check).

When spraying cabinet doors, the Respondent placed hooks on the doors when painting them, the holes from those hooks remained; holes also remained where the hinges used to be attached to the cabinet doors. Those that were repaired were painted with a brush, which was obvious. The doors showed drips, gouges and exposed primer, and it was evident that on some doors, the workers used brushes instead of spraying them for a uniform appearance. When the cabinet door under the sink got wet, the paint came off when the water was wiped off with a paper towel. The paint on the doors started to chip, flake and crack in places.

When the Respondent installed the porcelain tile floor, small, noticeable chips were present throughout the kitchen and one edge had very noticeable cracks across the edge. The Respondent advised the Complainant and his wife that it was an "easy fix," but never resolved it. The Respondent's worker said that the tiles might have come out of the box broken, but that does not excuse the installer using the chipped tiles, if indeed they were chipped prior to their installation. The floor had uneven grout lines, with some corners higher than the others. When widening the opening between the kitchen and the dining room, the dining room ceiling was damaged and never repaired.

In Cl. Ex. 3, the Claimant listed eighteen other defective conditions not addressed by the Respondent, including:

- 1) Worker's heel marks were present on wood thresholds;
- 2) Drywall was uneven and patchy, evidencing poor installation and finish;
- 3) There was improper, unsealed vent pipe installation;
- 4) There were gaps between kitchen ceiling and molding;
- 5) Paint was on the new ceiling light fixture and holes were evident where prior lighting was removed;

- 6) Paint on kitchen walls was uneven with primer showing through;
- 7) There were caulking gaps on kitchen window;
- 8) There were unauthorized modifications to the kitchen window;
- 9) Poorly installed pocket door were marred by shelving anchors in the adjacent room;
- 10) Ceiling paint cracks were apparent in the dining room molding;
- 11) There was mismatched shoe molding in the dining room;
- 12) Paint was missing in the dining room where painters tape applied and removed, leaving a mark;
- 13) Shoe molding paint was mismatch;
- 14) Chips in the wall were evident where shoe molding was removed;
- 15) Poor workmanship in molding was evident at the bottom of the stairs;
- 16) There was chipped flooring in the hallway that was caused by poor installation;
- 17) There were oversized holes in the drywall around plumbing in the laundry room; and
- 18) There were exterior manifestations of poor workmanship around the dryer vent installation and removal and tile residue on the driveway that was not cleaned up.

CL, Ex. 3. These defective conditions were evident in the photographs supplied by the Claimant and his wife, who testified that they were fair and accurate representation of the condition of their home after the Respondent completed his work and never returned.

On August 9, 2022, the Claimant's wife obtained a repair estimate from Robin's Nest Artistry for kitchen work that was within the scope of the initial agreement between the Claimant and the Respondent, and was necessary to complete the unworkmanlike conditions in the kitchen

and cabinets left by the Respondent at a cost of \$2,300.00. Cl. Ex. 4. John Krause provided the Claimants with March 20, 2023 estimate to repair the dining room ceiling tiles and poor light fixture installation. CL. Ex. 4. Sita Tile Installation, Inc., estimated the cost to cosmetically repair the tile for \$800.00.⁹ Cl. Ex. 4.

“Good faith” analysis

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant and his wife had almost constant communication with the Respondent, advising him of the deficits in his company’s work. When the final punch list was prepared and sent, the Respondent failed to complete much of the work and failed to come back to the house to see what was (and mostly, was not) done.

Based on the evidence and for all the reasons stated above, derived from the Claimant and his wife’s testimony, the documentary evidence, the photographic evidence, none of which was contradicted by the Respondent who failed to appear at the hearing, I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements.

I thus find that the Claimant is eligible for compensation from the Fund.

Fund award

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).

⁹ Sita Tile Installation, LLC., is a Virginia company, that does not hold an MHIC license. Nevertheless, the Claimant and his wife explained that Sita supplied the tile, and they would be in the best position to cosmetically treat it. Therefore, although I recognize that this is not a company that holds a MHIC license, I will consider the need and value of the work described in its estimate and the condition of the tile described by the Claimant and his wife, which was also evident in the photographs. The cost to repair the damage should not be ignored.

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

The Respondent performed some work under the Contract, and the Claimant has retained or intends to retain other contractors to complete or remedy that work. 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).

Calculation of actual damages¹⁰

Although the payment records are not delineated clearly between the interior and exterior payments, I find that based on the evidence of payment to the Respondent, the Claimants made the following payments to the Respondent for the work done on their house:

Date	Amount
April 27, 2021	\$1,000.00
April 28, 2021	\$500.00
July 2, 2021	\$10,000.00
July 13, 2021	\$3,700.00
August 9, 2021	\$14,000.00
August 26, 2021	\$18,850.00
September 10, 2021	\$9,495.00
October 13, 2021	\$18,411.55
February 9, 2012	<u>\$2,800.00</u>
Total	\$78,756.55

Cl. Ex. 5.

¹⁰ These amounts do not fully match the amounts on the Claim. Nevertheless, I find that that the amounts used in the calculations were sufficiently proven and the Respondent was not present to oppose these minimal amendments to the claim.

The cost to correct the Respondent's unworkmanlike, inadequate, or incomplete home improvement is as follows:

Contractor	Amount
Robin's Nest Artistry	\$ 2,300.00
D.L. Boyd	\$ 18,990.00 ¹¹
John Krause	\$ 4,550.00
Sita Tile	<u>\$ 800.00</u>
Total	\$ 26,640.00

Although the total price of the work was estimated on the proposal, the invoices did not match that amount and are not delineated clearly between the interior and exterior work.

Because there was no signed contract, I am relying on the total of the invoices to establish the contract amount for the purposes of the claim calculation:¹²

Date	Amount
April 28, 2021	\$ 1,500.00
July 13, 2021	\$ 12,964.50
Undated change order	\$ 4,850.00
October 10, 2021	\$ 48,510.55
January 18, 2022	\$ 5,934.76
February 9, 2022	<u>\$ 3,800.00</u>
Total	\$ 77,559.81

Therefore, the calculation of actual loss is as follows:

<u>\$78,756.55</u>	Total Amount paid by the Claimants to the Respondent, plus
<u>\$26,640.00</u>	Fair market cost to make corrections and complete Respondent's work
\$105,396.55	Subtotal, less
<u>\$77,559.81</u>	Original contract price (including the price of any addendum) equals
\$27,836.74	Amount of the Actual Loss to the Claimant

¹¹ The lower estimate was from EIF, an unlicensed contractor. I was able to use the estimate prepared by Boyd, a licensed contractor, to calculate damages.

¹² The Respondent was responsible for creating a written contract to cover the work, but failed to do so. I cannot hold the Claimant responsible for the Respondent's failure in this regard.

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.¹³ 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 their actual loss of \$27,836.74.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$27,836.74 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(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$27,836.74; 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;¹⁴ and

¹³ 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").

¹⁴ *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

January 26, 2024
Date Decision Issued

MN/sh
#209302

Marc Nachman

Marc Nachman
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 16th day of April, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***