

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF SUSAN KIRBY,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF ERIC CHESTNUT,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE DENISE O. SHAFFER,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>* </p> <p>* </p> <p>* <b>OAH No.: LABOR-HIC-02-22-20984</b></p> <p>* <b>MHIC No.: 22(75)810</b></p>
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**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 July 18, 2022, Susan Kirby (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 \$16,250.00 for actual losses allegedly suffered as a result of a home improvement contract with Eric Chestnut (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2022).<sup>1</sup> On August 5, 2022, the MHIC issued a Hearing Order on the Claim. On August 16, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

PROPOSED DECISION

STATEMENT OF THE COURT

WRIT

COMPLAINT OF THE PETITIONER

FOR ENFORCEMENT OF RIGHTS

OF CONSTITUTION

AND FOR ENFORCEMENT OF LAWS

AND FOR OTHER RELIEF

STATEMENT OF THE COURT

The petition is filed by the petitioner for enforcement of his rights under the Constitution and for other relief. The petitioner claims that the respondent has violated his rights under the Constitution and the laws of the State. The respondent denies the allegations and claims that the petitioner is not entitled to the relief sought. The court finds that the petitioner has established a prima facie case and that the respondent's actions are illegal. The court orders the respondent to pay compensation to the petitioner and to take steps to prevent a recurrence of the same. The court also orders the respondent to pay the costs of the proceedings.

For and in behalf of the petitioner, the undersigned counsel has appeared and read the foregoing petition and proposed decision and has stated that the contents of the same are true and correct and that he is authorized to sign the same.

On January 9, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented and was accompanied by her sister and co-owner, Laura Morales. The Respondent was self-represented.

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); 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

#### Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Invoice dated August 11, 2021 for \$15,500.00; invoice dated August 19, 2021 for \$21,500.00; printout of payments, undated; copy of check number 2583 dated August 31, 2021 in the amount of \$1,450.00
- Clmt. Ex 2 - Superior Deck and Fencing Proposal dated June 6, 2022; Superior Deck and Fencing, undated; printout of payments made to Superior Deck and Fencing, undated; copy of check number 3882 dated June 7, 2022 in the amount of \$3,300.00; copy of check number 2601 dated July 12, 2022 in the amount of \$5,600.00; copy of check number 4190 dated October 8, 2022 in the amount of \$8,300.00; copy of check number 3885 dated October 20, 2022 in the amount of \$9,500.00
- Clmt. Ex. 3 - Permit application and attached sketch, undated; building permit, dated August 17, 2021

On June 1, 2011, a hearing was held in the District Court of the State of New Jersey, County of Essex, at the County Courthouse, Newark, New Jersey, to hear the testimony of the witnesses and to receive evidence in support of the application for summary judgment filed by the Plaintiff, [Name], against the Defendant, [Name].

The court, after reviewing the pleadings and the evidence submitted, finds that the Plaintiff has established its right to summary judgment. The court therefore grants summary judgment in favor of the Plaintiff and dismisses the Defendant's motion for summary judgment with prejudice.

The court's decision is based on the following facts: [Name] is a [Title] at [Company]. [Name] was hired by [Company] on [Date]. [Name] was paid a salary of \$[Amount] per month. [Name] was terminated by [Company] on [Date]. [Name] claims that [Company] failed to pay [Name] for [Number] hours of work. [Name] seeks compensation for [Number] hours of work at the rate of \$[Amount] per hour. [Name] also seeks interest on the unpaid wages. [Company] denies the claim. [Name] has submitted evidence in support of its claim, including [List Evidence]. [Company] has failed to submit any evidence in support of its defense. The court finds that [Name] has established its right to summary judgment.

- Clmt. Ex. 4 - Letter from Jake Doub, Building Official, Town of Ocean City, to Claimant, dated July 1, 2022
- Clmt. Ex. 5 - In and Out Home Inspections, Inspection Report dated June 27, 2022
- Clmt. Ex. 6 - MHIC Complaint form dated January 14, 2022, with attachments; Home Improvement Claim Form dated July 11, 2022
- Clmt. Ex. 7 - Better Business Bureau of Greater Maryland Complaint Activity Report covering January 1, 2022 through August 5, 2022
- Clmt Ex. 8 - Letter from Claimant to Respondent dated December 28, 2021
- Clmt. Ex. 9 - Letter from Claimant to Respondent dated May 19, 2022, with attachments
- Clmt. Ex. 10 - Email from Claimant to Respondent dated May 23, 2022
- Clmt. Ex. 11 - Email from Claimant to Respondent dated September 13, 2021, with attachments; Email from Claimant to Respondent dated September 20, 2021, with attachments; Email from Claimant to Respondent and Respondent's reply dated October 8, 2021; Email from Claimant to Respondent dated October 18, 2021; Email from Claimant to Respondent and Respondent's reply dated October 19, 2021; Email from Claimant to Respondent and Respondent's reply dated October 20, 2021; Email from Claimant to Respondent and Respondent's reply dated October 21, 2021; Email from Claimant to Respondent and Respondent's reply dated October 25, 2021; Email from Claimant to Respondent and Respondent's reply dated October 31, 2021, with attachments; Email from Claimant to Respondent dated November 9, 2021; Email from Claimant to Respondent and Respondent's reply dated November 22, 2021; Email from Claimant to Respondent dated December 2, 2021
- Clmt. Ex. 12 - Text messages between Claimant and Respondent covering September 2 to 4, 2021
- Clmt. Ex. 13 - Text messages between Claimant and Respondent dated September 11 and 17, 2021
- Clmt. Ex. 14 - Text messages between Ms. Morales and Respondent covering September 11 to December 1, 2021
- Clmt. Ex. 15 - Text messages between Claimant and Respondent, dated December 11 to 16, 2021
- Clmt. Ex. 16 - Photographs of demolition of work done by Respondent; Photographs of work after completion by Superior Deck and Fences, October 2022

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I admitted the following exhibit offered by the Respondent:

Resp. Ex. 1 - Framing Inspection approval dated October 28, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Letter from MHIC to Respondent dated July 22, 2022

Fund Ex. 2 - MHIC Claim Form dated July 11, 2022

Fund Ex. 3 - MHIC Hearing Order dated August 5, 2022

Fund Ex. 4 - OAH Notice of Hearing dated October 5, 2022

Fund Ex. 5 - Printout of Respondent's licensing history with MHIC

Testimony

The Claimant and Laura Morales testified. The Respondent testified and did not present other witnesses. The Fund did not call 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 01-120384.
2. On August 11, 2021, the Claimant and the Respondent entered into a contract for work at the Claimant's vacation property in Ocean City, Maryland. The contract was to repair and reinforce an upper deck and replace the lower deck ceiling, including: "(1) repair left side brick support, (2) remove rotten header, (3) remove/replace 4x4s replace with 6x6 post, (4) install girde, (5) remove joist replace joist, (6) install new 2x8 header, (7) install metal white roof (rain channel), (8) fix top bricks remoter." (Clmt. Ex. 1, p. 1).
3. The original agreed-upon contract price was \$15,500.00.

1 subject of following exhibit offered by the Respondent:  
Exhibit 1 - M. C. [Name] - [Address] - [City, State, Zip] - [Date]  
1 subject of following exhibit offered by the Plaintiff:  
Exhibit 2 - M. C. [Name] - [Address] - [City, State, Zip] - [Date]  
Exhibit 3 - M. C. [Name] - [Address] - [City, State, Zip] - [Date]  
Exhibit 4 - M. C. [Name] - [Address] - [City, State, Zip] - [Date]  
Exhibit 5 - M. C. [Name] - [Address] - [City, State, Zip] - [Date]

The Court can find that the Respondent's exhibits are relevant and material to the issues in this case.

### RELEVANT EVIDENCE DETAIL

1. The Respondent's exhibits are relevant to the issue of [Issue].  
2. The Plaintiff's exhibits are relevant to the issue of [Issue].  
3. The Court finds that the Respondent's exhibits are more credible than the Plaintiff's exhibits.  
4. The Court finds that the Respondent's exhibits are more relevant than the Plaintiff's exhibits.  
5. The Court finds that the Respondent's exhibits are more material than the Plaintiff's exhibits.  
6. The Court finds that the Respondent's exhibits are more probative than the Plaintiff's exhibits.  
7. The Court finds that the Respondent's exhibits are more reliable than the Plaintiff's exhibits.  
8. The Court finds that the Respondent's exhibits are more accurate than the Plaintiff's exhibits.  
9. The Court finds that the Respondent's exhibits are more complete than the Plaintiff's exhibits.  
10. The Court finds that the Respondent's exhibits are more consistent than the Plaintiff's exhibits.



4. On August 17, 2021, the Respondent applied for and received a roofing/siding permit with the Town of Ocean City. The Respondent submitted a drawing with the application and falsely stated that the project's construction value was \$2,800.00. The permit application inaccurately described the scope of work: "Remove soffit (10x20) underneath 2<sup>nd</sup> floor deck. Install metal soffit for rail channel. Replace (2) 4x4s with 6x6's. Install furring strips on joist." (Clmt. Ex. 3).

5. On August 19, 2021, the parties revised the contract. They expanded the scope to add: "(9) remove all rail, (10) remove all trek decking, (11) remove all 4x4 post 2<sup>nd</sup> deck, (12) remove a joist, (13) replace all joist, (14) replace 4x4 with 6x6, (15) reinstall railing, (16) install post sieves with 6x6, (17) reframe 2<sup>nd</sup> floor deck completely, (18) install ceiling fan, (19) replace damaged railing, (20) flash door." (Clmt. Ex. 1, p. 2).

6. The expanded scope of work added \$6,000.00 to the contract price for a total of \$21,500.00.

7. The Respondent did not amend the permit application to reflect the expanded scope of work. The final contract's scope reflected a "substantial rebuild of a 2 story deck and was well outside the scope of the application description." (Clmt. Ex. 4).

8. The parties verbally agreed to remove items 2 (remove rotten header) and 8 (fix top bricks remoter) from the scope of work resulting in a reduction of \$450.00, making the total agreed-upon price \$21,050.00.

9. Neither version of the contract specified a start date, the estimated duration of the work, or an end date. The parties agreed verbally that the work would be completed by September 6, 2021, Labor Day, as that was the last day the Claimant would be at the property.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the smooth operation of any business and for the protection of its interests.

2. The second part of the document outlines the various methods and procedures that should be followed to ensure the accuracy and reliability of the records. It includes detailed instructions on how to collect, classify, and store the data, as well as the necessary checks and balances to prevent errors and fraud.

3. The third part of the document provides a comprehensive overview of the different types of records that should be maintained, including financial statements, contracts, correspondence, and other important documents. It also discusses the legal requirements and regulations that govern the retention and disposal of these records.

4. The fourth part of the document offers practical advice and tips for implementing an effective record-keeping system. It covers topics such as the selection of appropriate record-keeping software, the training of staff, and the regular review and updating of the system to meet changing needs.

5. The fifth and final part of the document concludes with a summary of the key points and a call to action, urging all businesses to take the necessary steps to ensure the accuracy and integrity of their records.

10. The Claimant made six payments to the Respondent totaling \$16,250.00 as follows: (1) August 11, 2021 - \$4,800.00, (2) August 19, 2021 - \$4,500.00, (3) August 28, 2021 - \$4,000.00, (4) August 28, 2021 - \$500.00, (5) August 31, 2021 - \$1,450.00, and (6) September 9, 2021 - \$1,000.00.

11. The work began on August 18, 2021. It was not completed by September 6, 2021. The Respondent informed the Claimant that the work was completed on September 8, 2021. The Claimant was not at the property on the 8<sup>th</sup>.

12. The Claimant's sister and co-owner, Ms. Morales, went to the property on September 9, 2021. Ms. Morales noted rain leaking onto the lower deck, an improperly installed gutter, and crooked railings. Ms. Morales contacted the Respondent, and they met at the property on September 10, 2021.

13. At the September 10, 2021, meeting at the property, the Respondent acknowledged the visible defects and agreed to correct the errors. He did not return to the property on September 11, 2021, as promised.

14. On September 13, 2021, Ms. Morales emailed the Respondent a list of 27 issues with photographs, as well as a list of proposed corrections. The parties worked together in good faith from September 2021 through May 2022 to remedy the then-known reported issues, but many items remained unfinished and inadequate.

15. The Claimant and the Respondent agreed that all of the work would be finished by Christmas of 2021. It was not.

16. In May of 2022, the Claimant again attempted to reach the Respondent to finish the work.

1. The Commission has received a request from the applicant for a review of the decision made by the Board of Directors on 15th March 2011 regarding the proposed acquisition of the company. The applicant claims that the Board's decision was based on incorrect information and that the Board failed to consider all relevant factors. The Commission is required to determine whether the Board's decision was reasonable and lawful in the circumstances. The Commission will consider the evidence submitted by the applicant and the Board, and will make a decision on whether to grant the review. The Commission's decision will be final and binding on the parties.

17. On June 6, 2022, the Claimant and Ms. Morales entered into a contract with Superior Decks and Fences to correct what they believed to be the remaining errors. The contract price was \$9,900.00 to complete items covered in the contract with the Respondent.

18. When Superior Decks and Fences began work and removed the ceiling, it exposed the framing. The contractor advised the Claimant that there were additional defects and paused work for the Claimant to have the Respondent's work inspected.

19. The Claimant requested that the Town of Ocean City inspect the deck repairs and hired a home inspection company to do the same.

20. Jake Doub, a building official with the Town of Ocean City, inspected the project on June 30, 2022, noting that the scope of the Respondent's work involved a "substantial rebuild of the 2-story deck" that was inconsistent with the permit application. The following additional flaws existed at the time of the inspection:

- The permit did not describe electrical work, but the inspection shows a partially completed branch circuit for an exterior ceiling fan;
- The fastening was inadequate as the ledger board was improperly fastened to the dwelling, some lag bolts had the wrong washer sizes and some SDWS fasteners did not comply with the manufacturer's installation requirements;
- The 2<sup>nd</sup> story deck joists are secured with nails and angle connectors not designed to be used as joist hangers, and the joists bear directly on the masonry;
- The 2<sup>nd</sup> story deck beam was undersized and did not meet the minimum construction requirements for beams;
- The 2<sup>nd</sup> story deck guard/railing moved substantially when load was applied and did not meet the minimum stability and load requirements;
- The 1<sup>st</sup> story deck guard/railing was loose, not fastened to the adjacent post, and did not meet the minimum stability and load requirements;
- The 6x6 columns rested on composite decking material and did not provide a continuous load path to the foundation in violation of the building code;
- The existing footings for the deck may not be of adequate size and depth and needed to be excavated and inspected; and
- There were no lateral load connectors installed.

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21. Bill Crooks, a licensed home inspector with In and Out Home Inspection, inspected the project on June 27, 2022. At the time of this inspection, the following defects existed:

- The deck ledger board was bolted to the house using carriage bolts;
- The joist was too short and did not make contact with the beam;
- The deck guardrail was loose and too short;
- The flashing was not installed consistently with the manufacturer's recommendations
- The girder under the deck was not fastened properly and was not the correct size;
- The railing posts were not thoroughly bolted;
- The ledger was not installed with the proper spacing distance between the lag screws;
- The beam size was too small;
- The posts were sitting on the block and no fasteners were holding the post to the blocks;
- Multiple brands and colors of decking were used;
- The electrical conduit had a loose cover and the wiring was exposed.

22. The defects noted in the two inspections were significant. The deck would not pass inspections with these defects, and repairs were required to safely use the deck.

23. In late June, the Claimant and Ms. Morales entered into a revised contract with Superior Decks and Fences to repair the deficiencies noted in the inspection and to complete the work. The total contract price was \$24,700.00, which the Claimant paid to Superior Deck and Fences.

### DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407I(1); State Gov't § 10-217; 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. 2022); *see also*

The following table shows the results of the regression analysis. The dependent variable is the natural logarithm of the number of employees. The independent variables are the natural logarithm of sales, the natural logarithm of assets, and the natural logarithm of the industry's sales. The results show that sales, assets, and industry sales are all positively related to the number of employees. The coefficient on sales is 0.15, on assets is 0.10, and on industry sales is 0.05. The adjusted R-squared is 0.85.

**DISCUSSION**

The results of the regression analysis indicate that the number of employees is positively related to sales, assets, and industry sales. This is consistent with the theory that larger firms have more employees. The industry sales variable is also positively related to the number of employees, suggesting that firms in larger industries tend to have more employees. The adjusted R-squared value of 0.85 indicates that the model explains a large portion of the variation in the number of employees.



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.

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. 2022). The Claimant does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). 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. 2022). 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. 2022).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). In fact, the Claimant worked collaboratively and patiently with the Respondent for many months before hiring another contractor. The Claimant extensively documented those attempts via emails, texts, phone calls, and meetings. During this period, the Respondent disputed some of the repairs, for example, whether the deck boards were all the same color. The Respondent also contested this fact during the hearing. The Claimant’s evidence, however, provided overwhelming evidence that the flaws were extensive and not cosmetic. I found the Claimant’s testimony to be supported by the detailed emails, photographs, and inspection reports.

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Moreover, the Claimant's actions demonstrate her and her sister's credibility. The Claimant first hired Superior Deck and Fence to finish the job started by the Respondent at a cost of \$9,900.00. She had no idea that the deck was not structurally sound and would not and could not pass an inspection. Once she learned the extent and severity of the problems, she understandably shifted her focus from smaller, albeit not minor issues, such as the color of the boards, to the pressing safety concerns.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Respondent built a deck that was not safe. He failed to accurately represent the scope and the cost of the project on the permit application, failed to amend the permit to reflect the scope of the project, and did not seek an electrical permit. While the Respondent pointed to an approval from a framing inspection of October 28, 2021, to argue that the project had been approved, the Respondent did not and could not explain why the subsequent inspection revealed fundamental defects. The Respondent argued that the June 2022 inspections exposed flaws that predated his involvement with the project. I do not credit that testimony. The scope of work contained in the second contract required the Respondent to "substantially rebuild the 2-story deck." (Clmt. Ex. 4). As such, he was responsible for delivering a usable, safe deck. He failed to do this in accordance with minimum building and safety standards, as documented by two qualified inspectors. (See Findings of Fact 20 & 21). As a result, the Claimant was required to go to considerable expense to repair the work so that the deck would be functional and secure.

Because the work performed by the Respondent was unworkmanlike, and inadequate, I find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for



consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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.

The Respondent performed some work under the Contract, and the Claimant retained Superior Deck and Fencing to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

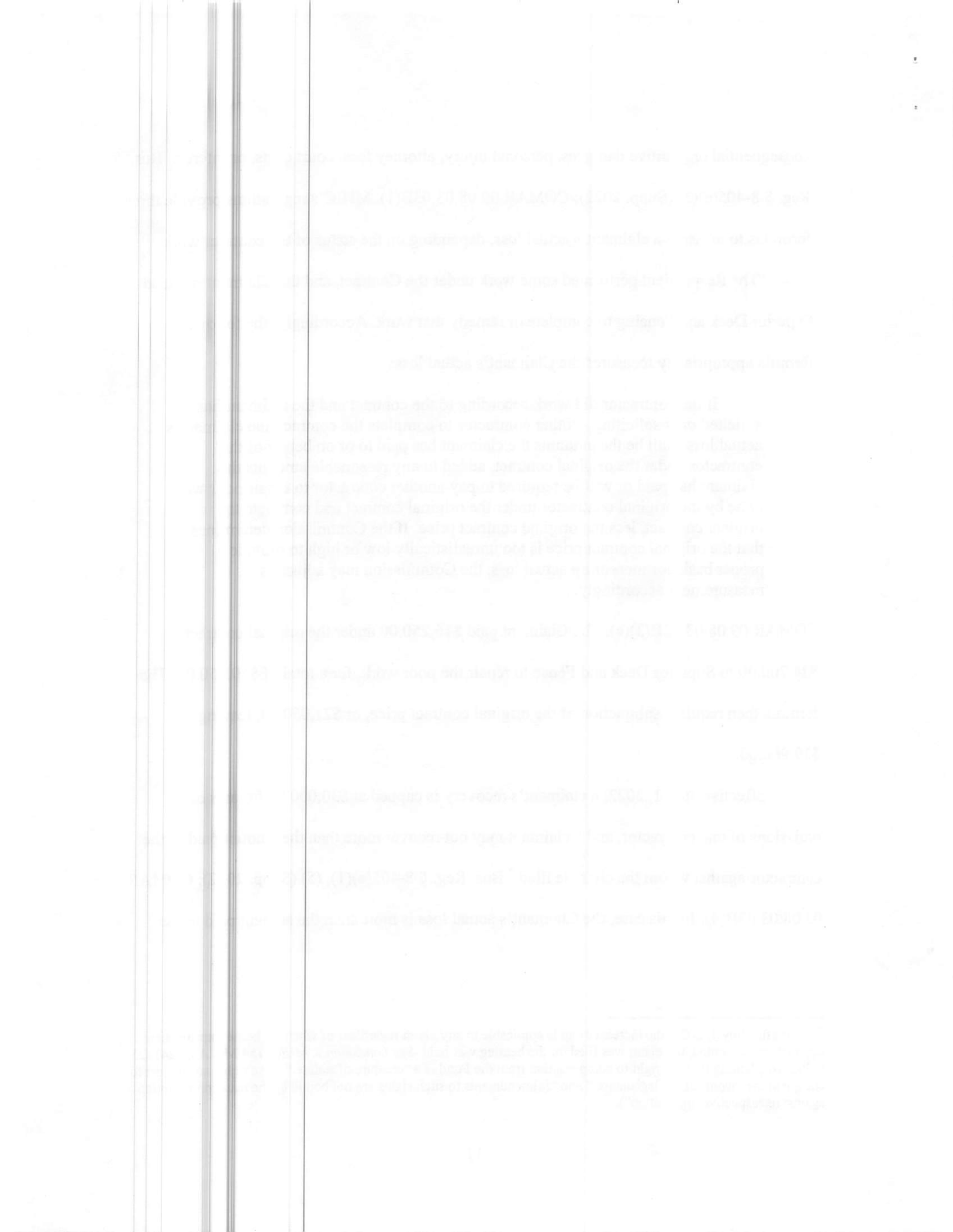
If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable 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). The Claimant paid \$16,250.00 under the original contract and \$24,700.00 to Superior Deck and Fence to repair the poor work, for a total of \$40,950.00. The formula then requires subtraction of the original contract price, or \$21,050.00, leaving \$19,900.00.

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>2</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is more than the amount paid to the

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<sup>2</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").



Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$16,250.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$16,250.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$16,250.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,250.00; 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>3</sup> and

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

March 8, 2023  
Date Decision Issued

DOS/ja  
#203833

*Denise O. Shaffer*

\_\_\_\_\_  
Denise O. Shaffer  
Administrative Law Judge

<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

Date of Birth: 01/01/1980

PERSONAL INFORMATION

Address: 123 Main Street, Anytown, CA 90210  
Phone: (555) 123-4567  
Email: john.doe@example.com  
Social Security: 123-45-6789

EMPLOYMENT HISTORY

Company Name	Position	Start Date	End Date
ABC Corporation	Software Engineer	01/2018	06/2020
XYZ Inc.	Product Manager	07/2020	01/2022
DEF Solutions	Senior Analyst	02/2022	03/2023

Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Title: \_\_\_\_\_



**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> day of May, 2023, 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***

PROPOSAL FORM

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James P. ...  
Chairman  
Board of Supervisors  
COUNTY OF ...