

<p>IN THE MATTER OF THE CLAIM</p> <p>OF TIMOTHY WHITE,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF DANIEL OSTROW,</p> <p>T/A PUDDLES COMPANY,</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER L. GRESOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* </p> <p>* </p> <p>* </p> <p>* OAH No.: LABOR-HIC-02-22-21310</p> <p>* MHIC No.: 22 (75) 951</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 May 31, 2022, Timothy White (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$111,266.45 for actual losses allegedly suffered as a result of a home improvement contract with Daniel Ostrow, trading as Puddles Company (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).² On August 5, 2022, the MHIC issued a Hearing Order on the

¹ The MHIC is under the jurisdiction of the Department of Labor.
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

PROPOSITION DECISION

STATEMENT OF THE CASE

ISSUE

SUMMARY OF THE EVIDENCE

PROPOSED FINDINGS OF FACT

DISCUSSION

PROPOSED ORDER OF THE COURT

RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 1, 1991, the Plaintiff, [Name], filed a lawsuit against the Defendant, [Name], for breach of contract.

The Plaintiff alleges that the Defendant failed to perform its obligations under the contract.

The Defendant denies the Plaintiff's allegations and asserts that the contract was never formed.

The Plaintiff seeks damages of \$100,000 and costs of litigation.

The Defendant seeks dismissal of the lawsuit and costs of litigation.

Respectfully,
[Name]

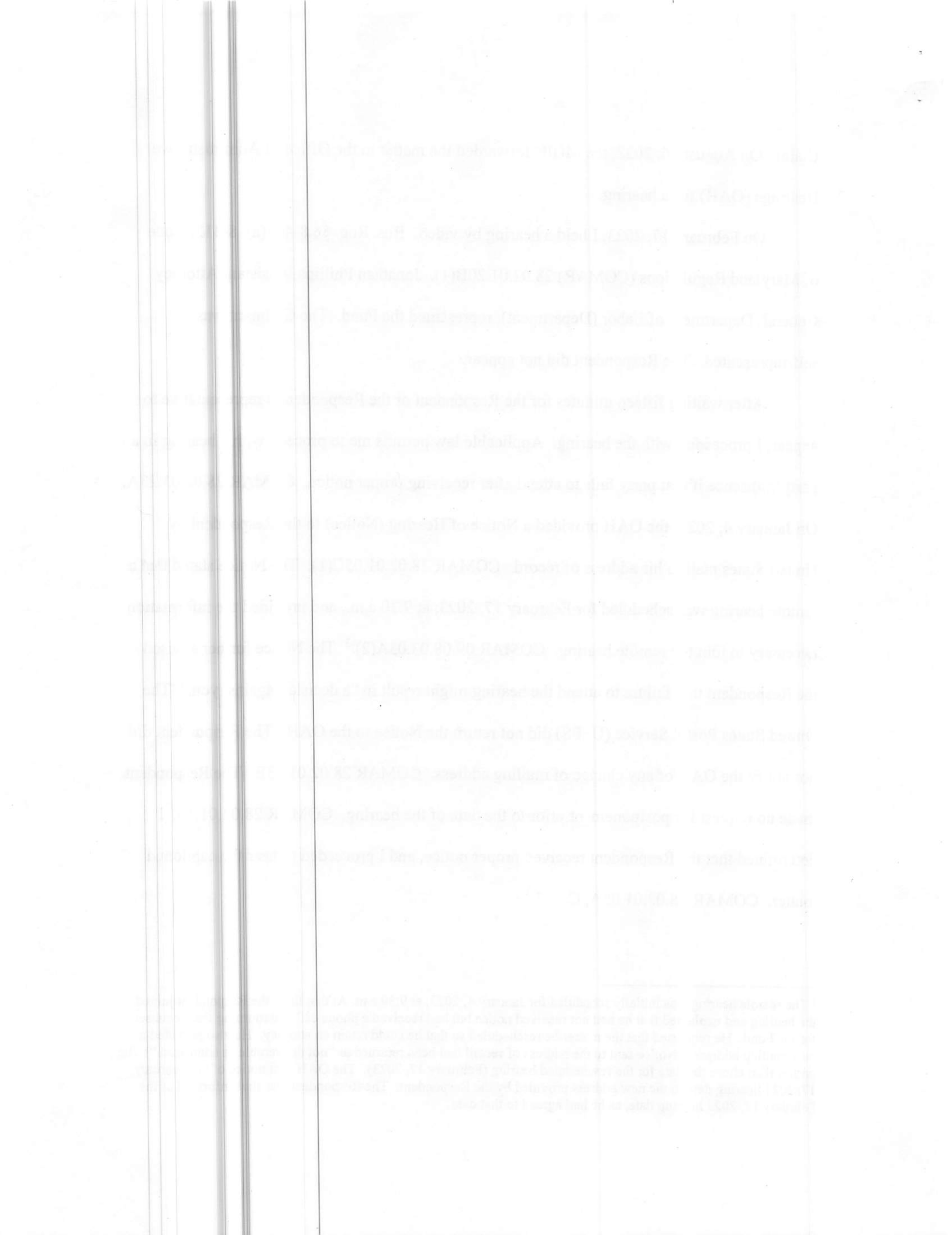
Submitted on this 1st day of May, 1991.

Claim. On August 16, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 17, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1). Jonathan Phillips, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant was self-represented. The Respondent did not appear.

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 January 4, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to his address of record. COMAR 28.02.01.05C(1). The Notice stated that a remote hearing was scheduled for February 17, 2023, at 9:30 a.m., and provided the information necessary to join the remote hearing. COMAR 09.08.03.03A(2).³ The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The United States Postal Service (USPS) 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. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

³ The remote hearing was initially scheduled for January 4, 2023, at 9:30 a.m. At that time, the Respondent joined the hearing and explained that he had not received notice but had received a phone call that morning from counsel for the Fund. He requested that the matter be rescheduled so that he could retain an attorney. He also provided a new mailing address. (Notice sent to the address of record had been returned as "not deliverable as addressed.") The parties then chose the date for the rescheduled hearing (February 17, 2023). The OAH sent notice of the February 17, 2023 hearing date to the new address provided by the Respondent. The Respondent was thus informed of the February 17, 2023 hearing date, as he had agreed to that date.



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); 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 Explanation of Facts and Circumstances (summary), undated
- Clmt. Ex. 2 Contract, dated January 16, 2021
- Clmt. Ex. 3 Permitting documents, Frederick County Division of Planning and Permitting Department of Permits and Inspections, various dates
- Clmt. Ex. 4 Contract (updated to show payments), dated August 19, 2021
- Clmt. Ex. 5 Check for \$10,000.00 (paid to Respondent by Claimant), dated January 19, 2021
- Clmt. Ex. 6 Check for \$16,000.00 (paid to Respondent by Claimant), dated January 22, 2021
- Clmt. Ex. 7 Payments to Respondent by Claimant, various amounts and dates
- Clmt. Ex. 8 APL Credit Union Statement, dated September 30, 2021, showing September 10, 2021 payment
- Clmt. Ex. 9 Direct payments to Schuster Concrete, August 2021
- Clmt. Ex. 10 Letter from the Claimant (and his spouse) to the Bankruptcy Clerk's Office, dated March 21, 2022
- Clmt. Ex. 11 Bankruptcy document excerpt, undated
- Clmt. Ex. 12 Returned mail sent to Respondent, postmarked June 17, 2022

1987

SUMMARY OF THE FIDELITY

- 1. The following is a summary of the activities of the Fidelity Fund for the year 1987.
- 2. The Fund was established in 1985 to provide a source of funds for the development of the Fidelity Fund.
- 3. The Fund has received contributions from the following sources:
- 4. The Fund has received contributions from the following sources:
- 5. The Fund has received contributions from the following sources:
- 6. The Fund has received contributions from the following sources:
- 7. The Fund has received contributions from the following sources:
- 8. The Fund has received contributions from the following sources:
- 9. The Fund has received contributions from the following sources:
- 10. The Fund has received contributions from the following sources:
- 11. The Fund has received contributions from the following sources:
- 12. The Fund has received contributions from the following sources:

- Clmt. Ex. 13 Photograph of job site, undated
- Clmt. Ex. 14 Change Order, Frederick Fence Company, Inc., (Frederick FENCECO), dated February 22, 2022
- Clmt. Ex. 15 Check for \$5,198.00 (paid to "Frederick Fence" by Claimant), dated January 19, 2021
- Clmt. Ex. 16 APL Credit Union Statement, showing March 21, 2022 payment, dated March 31, 2022
- Clmt. Ex. 17 Claimant's credit card statement (p. 4 of 6 only), showing March 22, 2022 payment to Frederick FENCECO, dated March 2, 2022 to April 1, 2022
- Clmt. Ex. 18 License information for Frederick FENCECO, undated
- Clmt. Ex. 19 Make N Waves Contract (pool only), dated February 22, 2022
- Clmt. Ex. 20 Make N Waves Estimate (deck and retaining wall only), dated March 24, 2022
- Clmt. Ex. 21 Email from Make N Waves regarding additional items not in the Contract, dated December 13, 2022
- Clmt. Ex. 22 Email from Make N Waves, dated September 21, 2022
- Clmt. Ex. 23 Check for \$2,500.00 (paid to Make N Waves by Claimant), dated March 11, 2022
- Clmt. Ex. 24 Check for \$14,156.25 (paid to Make N Waves by Claimant), dated April 14, 2022
- Clmt. Ex. 25 Check for \$44,037.50 (paid to Make N Waves by Claimant), dated May 27, 2022
- Clmt. Ex. 26 Check for \$18,600.00 (paid to Make N Waves by Claimant), dated July 1, 2022
- Clmt. Ex. 27 Check for \$10,240.00 (paid to Make N Waves by Claimant), dated September 21, 2022
- Clmt. Ex. 28 Photograph of bonding repair, undated
- Clmt. Ex. 29 Photograph of plumbing pressure gauges, undated
- Clmt. Ex. 30 Photograph of plumbing pressure gauge, undated
- Clmt. Ex. 31 Photograph of drain repair, undated
- Clmt. Ex. 32 Photograph of skimmer replacement, undated

Year	Month	Day	Event	Location	Notes
1970	Jan	1	...	...	...
1970	Jan	2	...	...	...
1970	Jan	3	...	...	...
1970	Jan	4	...	...	...
1970	Jan	5	...	...	...
1970	Jan	6	...	...	...
1970	Jan	7
1970	Jan	8
1970	Jan	9
1970	Jan	10
1970	Jan	11
1970	Jan	12
1970	Jan	13
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1970	Jan	20
1970	Jan	21
1970	Jan	22
1970	Jan	23
1970	Jan	24
1970	Jan	25
1970	Jan	26
1970	Jan	27	...	...	...
1970	Jan	28	...	...	...
1970	Jan	29	...	...	...
1970	Jan	30	...	...	...
1970	Jan	31	...	...	...

- Clmt. Ex. 33 Photograph of near-complete construction, undated
- Clmt. Ex. 34 License information for Make N Waves, Inc., undated
- Clmt. Ex. 35 Invoices, Huffer Trucking and Bulk Services, LLC, dated May 18, 2022
- Clmt. Ex. 36 Claimant's credit card statement (p. 4 of 6 only), showing May 20, 2022 payment to Huffer Trucking and Bulk Services, LLC, dated May 2, 2022 to June 1, 2022
- Clmt. Ex. 37 Invoice, Huffer Trucking and Bulk Services, LLC, dated May 31, 2022
- Clmt. Ex. 38 Estimate, Huffer Trucking and Bulk Services, LLC, dated June 1, 2022
- Clmt. Ex. 39 Claimant's credit card statement (p. 3 of 6 only), showing May 31, 2022, and June 6, 2022 payments to Huffer Trucking and Bulk Services, LLC, dated June 2, 2022 to July 1, 2022
- Clmt. Ex. 40 Invoice, Barrick & Sons, LLC, dated August 17, 2022
- Clmt. Ex. 41 Check for \$800.00 (paid to Barrick & Sons, LLC by Claimant), dated August 5, 2022
- Clmt. Ex. 42 Bill pay activity showing payment to Barrick & Sons, LLC by Claimant, dated August 31, 2022
- Clmt. Ex. 43 License information for Barrick & Sons Lawn Service, LLC, undated
- Clmt. Ex. 44 Photograph of finished job, December 2022
- Clmt. Ex. 45 Spreadsheet of costs and payments, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Remote Hearing, dated January 4, 2023
- Fund Ex. 2 Hearing Order, dated August 5, 2022
- Fund Ex. 3 Home Improvement Claim Form, dated May 26, 2022
- Fund Ex. 4 License Information for Respondent, printed January 3, 2023

The Respondent was not present to offer any exhibits for admission into evidence.

Testimony

The Claimant testified and did not present other witnesses.

1944-45 - 1945-46

1946-47 - 1947-48

1948-49 - 1949-50

1950-51 - 1951-52

1952-53 - 1953-54

1954-55 - 1955-56

1956-57 - 1957-58

1958-59

1959-60 - 1960-61

1961-62 - 1962-63

1963-64 - 1964-65

1965-66 - 1966-67

1967-68 - 1968-69

1969-70 - 1970-71

1971-72 - 1972-73

1973-74 - 1974-75

1975-76 - 1976-77

1977-78 - 1978-79

1979-80 - 1980-81

1981-82 - 1982-83

1983-84

1984-85 - 1985-86

The Fund did not present witnesses. The Respondent was not present to testify.

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.
2. The Claimant owns a single-family home in Frederick, Maryland. It is the only property he owns and is his primary residence.
3. On January 16, 2021, the Claimant and the Respondent entered into a contract for the installation of an outdoor pool at the Claimant's home, including site-planning, excavation, pool shell, tiling, hardscaping, landscaping, all electrical and plumbing work (including permits and inspections), and all equipment (Contract). The Contract also included installation of a patio with a woodburning firepit.
4. The original agreed-upon Contract price was \$94,485.00.
5. The Contract stated that the project completion date was estimated to be "Late Spring, 2021."
6. Work began on April 7, 2021, and progressed slowly.
7. The Respondent did not add electrical bonding to the pool rebar and failed to ensure that plumbing was properly installed, as required by the Contract.
8. The Respondent applied shotcrete in August 2021. However, it was so poorly applied that the Respondent contracted with a subsequent subcontractor to have it reapplied.
9. The Respondent performed some grading, dug a trench, and installed PVC plumbing in November 2021.

THE PROVISIONS OF THE ACT

1. This Act is to be construed as if it contained the following provisions:

2. At a time when the report of the Commission is published, the Commission shall submit to the Secretary of State a report containing the following information:

The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

3. The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

4. The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

5. The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

6. The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

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8. The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

9. The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

10. The Commission shall also submit to the Secretary of State a copy of the report of the Commission on the following matters:

10. In December 2021, after a site survey was completed, the Respondent indicated that fencing would be installed in six to eight weeks.
11. The Respondent did not perform any additional work and pool equipment specified in the Contract was never ordered.
12. The Claimant's last contact with the Respondent was on January 4, 2022. After that date, the Respondent was unresponsive to texts, emails, and phone calls. The Claimant gave up on contacting the Respondent regarding completion of the job in mid-February 2022.
13. The Claimant paid the Respondent and his subcontractors a total of \$92,430.45.
14. On February 22, 2022, the Claimant contracted with Make N Waves to repair work improperly performed by the Respondent and complete the project. In total, the Claimant has paid Make N Waves \$87,833.00 for the work, with an additional \$19,818.75 due when the pool is opened in spring 2023.
15. The Claimant paid an additional \$1,700.00 to Make N Waves for a modification to the heat pump pool heater; this was not included in the Contract.
16. The Respondent had paid Frederick FENCECO a deposit of \$5,356.00; the total amount of the original contract with Frederick FENCECO was \$16,068.00. On February 22, 2022, the Claimant and Frederick FENCECO agreed to a reduced total contract price of \$15,752.00, based on a change order. The Respondent was not a party to the new contract. The Claimant paid the remaining \$10,396.00 directly to Frederick FENCECO.
17. The Claimant paid Huffer Trucking and Bulk Services LLC a total of \$1,383.99 for fill dirt and topsoil to complete landscaping work that was included in the Contract.
18. The Claimant paid Barrick & Sons LLC a total of \$3,700.00 for grading and landscaping work (sod) that was part of the Contract.

1. The Commission has received a request from the applicant for a review of the decision made by the relevant authority on 15/01/2018 regarding the applicant's application for a grant under the relevant scheme.

2. The Commission has considered the request and the relevant documents and has concluded that the applicant has not provided sufficient evidence to support the claim for a grant.

3. The Commission has therefore decided to refuse the applicant's application for a grant under the relevant scheme.

4. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

5. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

6. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

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16. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

17. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

18. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

19. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

20. The Commission has also decided to refuse the applicant's application for a grant under the relevant scheme.

19. In July 2022, the Claimant attempted to contact the Respondent by mail using the address listed on the Contract to initiate arbitration, as the Contract has an arbitration clause. The mail was returned by USPS as “not deliverable as addressed – return to sender.”

DISCUSSION

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

First, the evidence establishes that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Fund presented the Respondent’s license information reflecting an issue date of November 13, 2020, and an expiration date of October 20, 2024. (Fund Ex. 4.)

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, as established by the Claimant’s unrefuted testimony. The claim was timely filed, there is no pending court claim

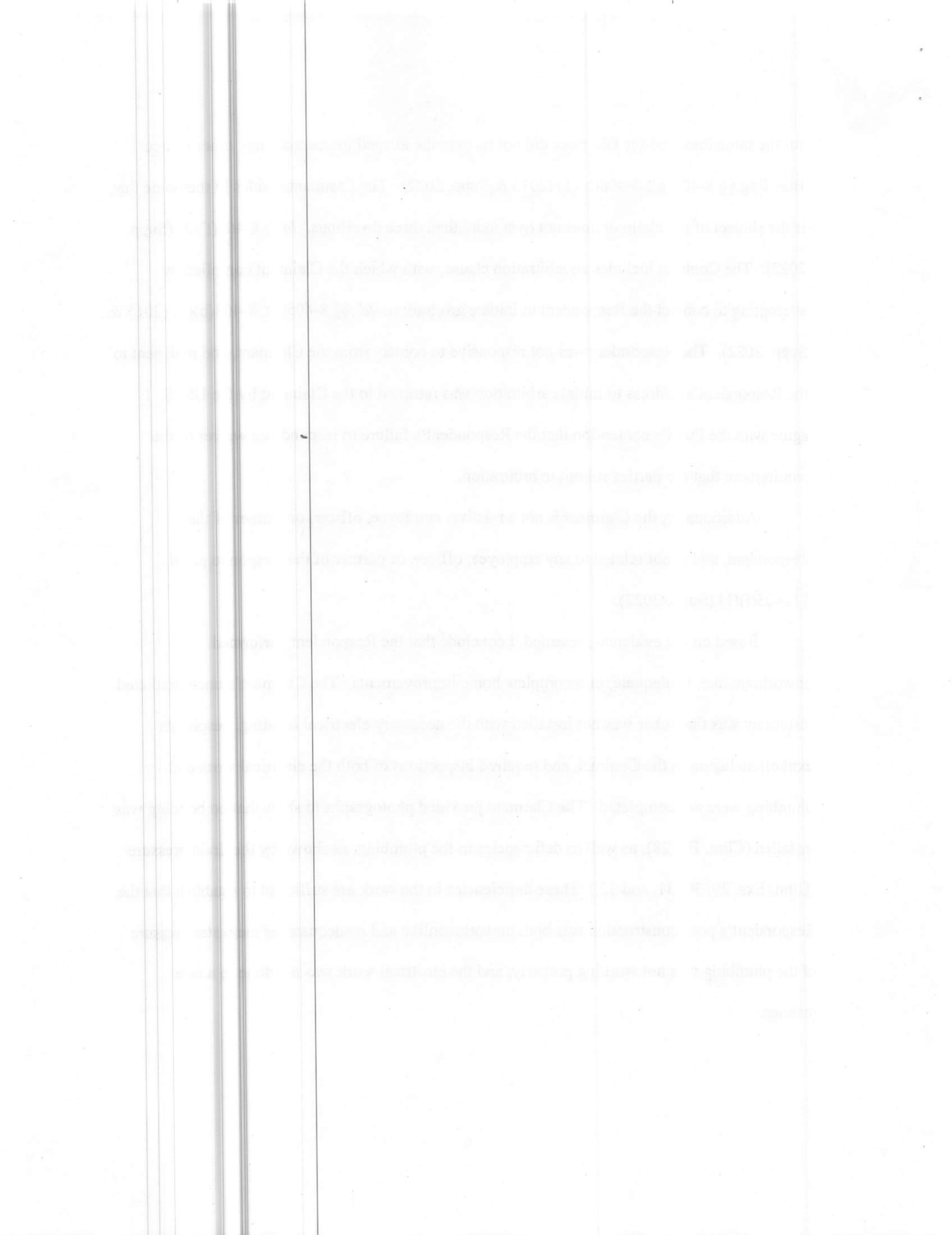
DISCUSSION

The Commission has been asked to review the activities of the Communist Party, USA, in the United States and its branches, and to report on the results of its activities. The Commission has conducted a thorough investigation of the activities of the Communist Party, USA, and its branches, and has prepared this report for the House of Representatives. The Commission has found that the Communist Party, USA, is a highly organized and active organization that has been engaged in a long and systematic campaign to overthrow the government of the United States and to establish a Communist dictatorship. The Commission has found that the Communist Party, USA, has a wide range of activities, including political, cultural, and educational activities, and that it has a strong presence in many parts of the country. The Commission has found that the Communist Party, USA, has a long history of subversive activities, and that it has been engaged in a long and systematic campaign to overthrow the government of the United States and to establish a Communist dictatorship. The Commission has found that the Communist Party, USA, has a wide range of activities, including political, cultural, and educational activities, and that it has a strong presence in many parts of the country. The Commission has found that the Communist Party, USA, has a long history of subversive activities, and that it has been engaged in a long and systematic campaign to overthrow the government of the United States and to establish a Communist dictatorship. The Commission has found that the Communist Party, USA, has a wide range of activities, including political, cultural, and educational activities, and that it has a strong presence in many parts of the country.

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 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. 2022). The Contract includes an arbitration clause, with which the Claimant complied by attempting to contact the Respondent to initiate arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Respondent was not responsive to contact from the Claimant, and mail sent to the Respondent's address to initiate arbitration was returned to the Claimant by the USPS. I agree with the Fund's contention that the Respondent's failure to respond is a waiver of the requirement that the parties submit to arbitration.

Additionally, 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).

Based on the evidence presented, I conclude that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant's uncontradicted testimony was that rebar was not installed with the necessary electrical bonding, despite its explicit inclusion in the Contract, and required inspections of both the electrical work and plumbing were not completed. The Claimant provided photographs to show that no bonding was installed (Clmt. Ex. 28), as well as deficiencies in the plumbing, as shown by the drain pressure (Clmt. Exs. 29, 30, 31, and 32.) These deficiencies in the work are sufficient to establish that the Respondent's pool construction was both unworkmanlike and inadequate, as the water pressure of the plumbing was not working properly, and the electrical work was not done in a safe manner.



The evidence further establishes that the Respondent abandoned the work well before it was completed. The Claimant testified that his last contact with the Respondent was in early January 2022; at that time, work was progressing slower than anticipated. Excavation was complete, and the pool shell had been installed and shotcrete applied (twice, because the Respondent's initial effort was improperly done, and he had to hire a subcontractor). Additionally, the Respondent had completed some grading, trench digging, and plumbing work. However, the vast majority of the work was not completed: the fence was not installed; inspections were never conducted; the pool itself was unfinished; hardscaping and landscaping was never completed; grading, fill dirt, and sod application were not completed; and the woodburning firepit was never installed. The Claimant provided a photograph of the job site at the time the Respondent abandoned work, which clearly demonstrated the project was far from completion. (Clmt. Ex. 13.)

I thus find that the Claimant is eligible for compensation from the Fund.⁴

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.

⁴ It was the Fund's position that the Claimant established eligibility for compensation based on unworkmanlike, inadequate, and incomplete home improvement work by the Respondent.

The Respondent performed some work under the Contract before abandoning the job, and the Claimant retained other contractors to both complete and 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).

In addition to the Claimant's testimony, which I found credible due to his excellent recall of details, its cogency, and its overall consistency, the Claimant provided extensive documentation that establishes that he paid the Respondent a total of \$92,430.45. (Clmt. Exs. 5, 6, 7, 8, and 9.) Similarly, the Claimant testified in detail regarding payments he made to other contractors to repair the Respondent's work and complete the work specified in the Contract. These costs amounted to \$123,131.74.⁵ (Clmt. Exs. 14, 15, 16, 17, 23, 24, 25, 26, 27, 36, 39, 41, and 42.) Finally, the evidence also establishes that the Contract price was \$94,485.00. (Clmt. Ex. 2.) The calculation of actual loss is thus:

Amount paid to Respondent:	\$ 92,430.45
Plus amount paid to correct/complete:	\$123,131.74

⁵ This amount includes the following: \$10,396.00 paid to Frederick FENCECO; \$107,651.75 paid to Make N Waves; \$1,383.99 paid to Huffer Trucking and Bulk Services; and \$3,700.00 paid to Barrick & Sons. I excluded payment of \$1,700.00 to Make N Waves for a modification to the pool heater that was not included in the Contract.

The Board of Directors of the Company has reviewed the financial statements of the Company for the year ended December 31, 2011, and has approved the financial statements for release to the public. The financial statements have been prepared in accordance with the accounting principles generally accepted in the United States of America.

In addition, the Board of Directors has reviewed the financial statements of the Company for the year ended December 31, 2010, and has approved the financial statements for release to the public. The financial statements have been prepared in accordance with the accounting principles generally accepted in the United States of America.

The Board of Directors of the Company has reviewed the financial statements of the Company for the year ended December 31, 2009, and has approved the financial statements for release to the public. The financial statements have been prepared in accordance with the accounting principles generally accepted in the United States of America.

Less original Contract price: \$ 94,485.00
= \$121,077.19 actual loss⁶

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.⁷ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$121,077.19 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00. Bus. Reg. § 8-405(e)(1).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$121,077.19 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 \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1) (Supp. 2022).

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;⁸ and

⁶ These figures are consistent with the Fund's recommendation regarding the calculation of actual loss.

⁷ 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").

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

11/15/2010

On 11/15/2010, the following information was received from the...

LEGAL OPINION ON THE...

The following information was received from the...

LEGAL OPINION ON THE...

The following information was received from the...

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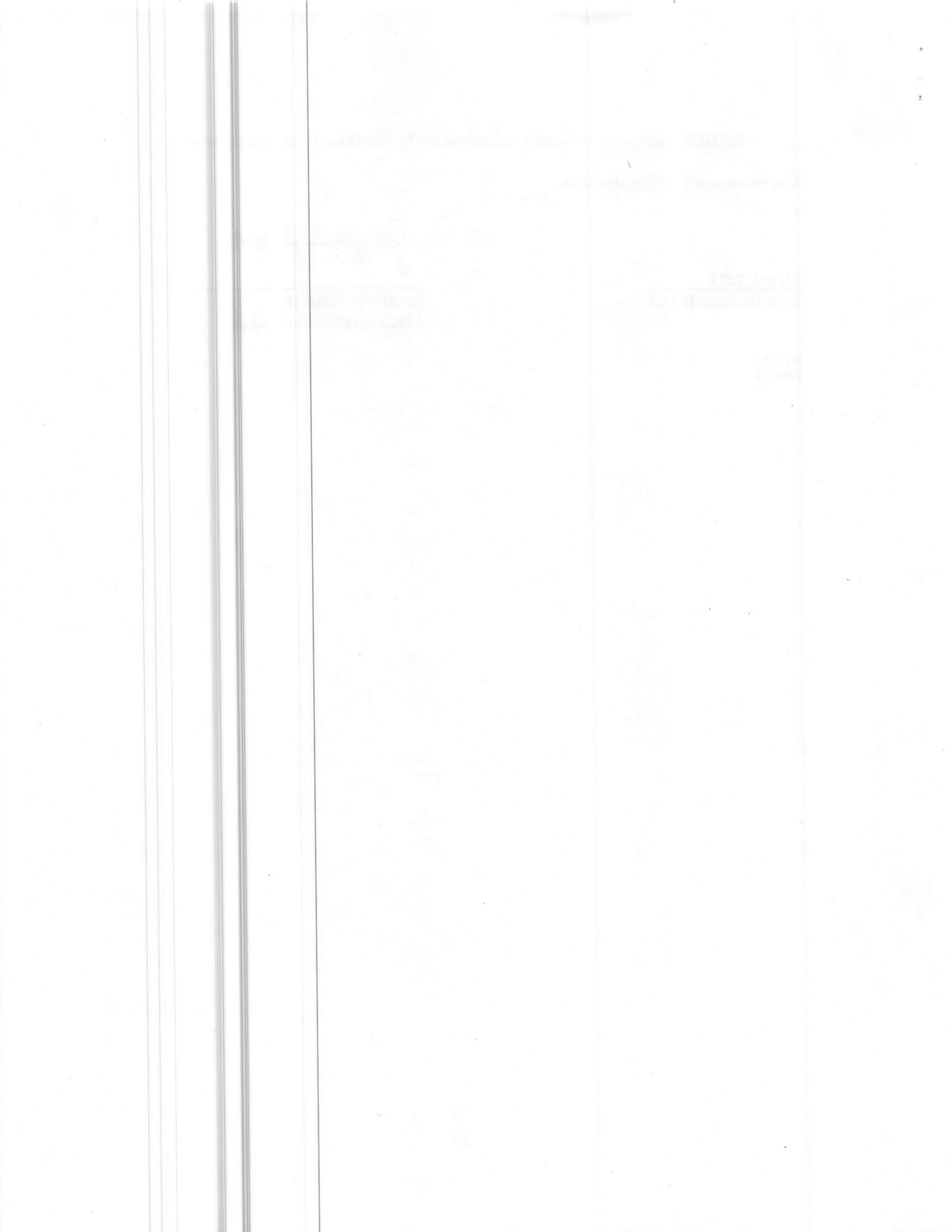
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

May 9, 2023
Date Decision Issued

JLG/dlm
#204518

Jennifer L. Gresock

Jennifer L. Gresock
Administrative Law Judge



PROPOSED ORDER

WHEREFORE, this 26th day of June, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

PROCEEDINGS

It is the duty of the Board to see that the
the Board of Directors of the Corporation
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James E. [unclear]
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