

IN THE MATTER OF THE CLAIM	* BEFORE TRACEE N. HACKETT,
OF LISAMARIE EUSTICE,	* 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 VERNON G.	*
GRIFFIN, <sup>1</sup>	*
T/A 2 GRIFFINS, <sup>2</sup>	* OAH No.: LABOR-HIC-02-24-22636
RESPONDENT	* MHIC No.: 24 (75) 925

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### **PROPOSED DECISION**

STATEMENT OF THE CASE  
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PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

### **STATEMENT OF THE CASE**

On April 12, 2024, Lisamarie Eustice (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>3</sup> Guaranty Fund (Fund) for reimbursement of \$8,525.00 for actual losses allegedly suffered as a result of a home improvement contract with Vernon Griffin trading as Precision Restoration by 2 Griffins (Respondent). Md. Code Ann.,

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<sup>1</sup> Vernon Griffin, the sole owner and licensed contractor of the company passed away on January 20, 2022. As a result of his passing, the company was no longer able to operate, went into bankruptcy, and became defunct.

<sup>2</sup> On the form, the company name was noted as Precision Restoration by 2 Griffins; however, in the transmittal and on the documentation regarding licensure, the company's name was 2 Griffins.

<sup>3</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

Bus. Reg. §§ 8-401 to -411 (2024).<sup>4</sup> On August 15, 2024, the MHIC issued a Hearing Order on the Claim. On October 24, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.<sup>5</sup>

On November 27, 2024, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Ernie Dominquez, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Damien Griffin, the Respondent's son, and the former Operations Manager was present on behalf of the Respondent.

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. 2024); 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 - Narrative, signed November 11, 2024

Clmt. Ex. 2 - Contract, dated October 7, 2019

Clmt. Ex. 3 - Deposit Receipts, dated October 8, 2019 and December 10, 2019

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<sup>4</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2024 Volume of the Maryland Annotated Code.

<sup>5</sup> On September 4, 2024, this hearing was originally scheduled in person for the same date at the OAH office in Rockville, Maryland; however, due to construction issues at that satellite office, the case was converted to a remote hearing, and a new remote hearing notice was sent to the parties on October 24, 2024.

Clmt. Ex. 4 - Letter from the MHIC to the Claimant, dated March 8, 2024 with Claim form, signed March 28, 2024

I admitted the following exhibit offered by the Respondent:

Resp. Ex. 1 - No contest letter, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, dated October 24, 2024

Fund Ex. 2 - Hearing Order, dated August 15, 2024

Fund Ex. 3 - Claim form, received April 12, 2024

Fund Ex. 4 - Maryland Department of Labor, I.D. Registration Information for the Respondent, printed November 27, 2024

### Testimony

The Claimant testified and did not present any other witnesses.

Mr. Damien Griffin testified<sup>6</sup> and did not present any other witnesses.

The Fund did not present any witness testimony.

### **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 01-101176 (individual) and 05-128407 (sole proprietor/company).
2. Prior to October 2019, the Claimant had contracted with the Respondent for roofing work and was pleased with the quality and professionalism that he and his company provided.

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<sup>6</sup> For purposes of confidentiality and ease of redaction, I will refer to him as the Respondent's son throughout the remainder of this Decision.

3. On October 7, 2019, the Claimant and the Respondent entered into a contract for the replacement of windows (Phase I), exterior house painting (Phase II), and interior carpentry (Phase III) (Contract).
4. The original agreed-upon Contract price was \$33,410.94.
5. The Contract stated that work would begin approximately seven to ten days after receipt of the initial deposit and date of Contract signing and would be completed thirty days after the final change order payment.
6. The Claimant paid the Respondent a total of \$23,000.00 including an initial deposit of \$11,500.00 on October 8, 2019; and a second payment of \$11,500.00 on December 10, 2019.
7. In October 2019, the Respondent began work on the Contract beginning with Phase II, the exterior house painting.
8. In April 2020, the Respondent completed Phase II of the Contract, the cost of which was \$13,600.00.
9. The Claimant had no issues, concerns, or complaints regarding the workmanship, adequacy and completeness of the exterior house painting.
10. In June 2020, the Respondent completed Phase III of the Contract, the interior carpentry, the cost of which was \$375.00.
11. The Claimant had no issues, concerns, or complaints regarding the workmanship, adequacy and completeness of the interior carpentry.
12. The Respondent was unable to complete Phase I, the window replacement, due to the COVID-19 pandemic. The COVID-19 pandemic caused over a year's worth of work stoppages, shipping delays, material shortages, and significantly higher costs making the

final phase of the windows financially unrealistic for the Claimant to purchase the windows necessary for Phase I of the Contract.

13. As a result, the Claimant and the Respondent agreed that the remaining balance paid of \$9,025.00 would be credited towards various change orders for different work beyond the scope of the original Contract.

14. In June 2021, the Respondent refinished a wooden exterior door for \$200.00 as a change order.

15. In November 2021, the Respondent refinished a cherry dining table for \$300.00 as a change order.

16. The Claimant had no issues, concerns, or complaints regarding the workmanship, adequacy and completeness of the refinishes on the exterior door or the dining room table.

17. The Respondent and the Claimant fully anticipated that the remaining balance paid would be earned by the Respondent through various change orders.

18. The Respondent unexpectedly passed away on January 20, 2022.

19. Despite his efforts to have the MHIC license transferred to him after passing the required examination, including numerous unanswered/unresponsive telephone calls and emails to the Department for assistance, the Respondent's son was unable to obtain an MHIC license to keep the Respondent's business operational.

20. As the sole proprietor, owner, and licensed contractor, the Respondent's passing effectively bankrupted the business causing the Respondent's son to forfeit the Respondent's business and for the Respondent's business to become defunct. There was no funding to pay workers to complete any outstanding work from the Respondent's business, including the Contract, as a result of the business becoming defunct.

## 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 (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) (2024); *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.

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 Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. 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) (2024). 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) (2024). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2024). 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) (2024). Given the circumstances of his unexpected death and the status of the business, the Respondent

and his son were unable to make good faith efforts to resolve the claim and therefore, the Claimant could not reject offers to resolve which were incapable of being made. *Id.* § 8-405(d) (2024).

The sole issue in this case was the Respondent's inability to complete work associated with the unearned prepayment the business had received of \$8,525.00 due to his unexpected death. The Claimant commended the Respondent for the quality of all of the work that he completed for her, and testified sincerely that she fully expected to receive further work from the Respondent. Due to the very unfortunate circumstances of his passing, the company became defunct and was unable to make any effort to complete outstanding work based upon what had been paid under the original Contract. The Respondent's son did not contest the Claim. He testified genuinely that he attempted to keep the business active but was unable to get any responses from the Department for several months to transfer the MHIC license into his name. His father was the only licensed contractor; therefore, the business could not stay active, and he was forced to take a job with another company. The Fund agreed that the Claimant was entitled to receive an award under COMAR 09.08.03.03B(3)(b), because she met her burden to show an actual loss due to an incomplete home improvement and is not soliciting any other contractors to complete the work.

Based upon the undisputed facts before me, I find that the Respondent was incapable of providing a complete home improvement for the remaining \$8,525.00 paid by the Claimant due to his unexpected death. There were no workers available from the Respondent's business to complete the work because there were no funds to pay them. As such, I find that there was an incomplete home improvement. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2024); COMAR 09.08.03.03B(1). The 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 is not seeking 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 is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b). The Claimant paid a total of \$23,000.00 under the Contract. The Respondent completed work totaling \$14,475.00, which included \$13,600.00 for the exterior painting; \$375.00 for the interior carpentry; \$200.00 for the refinishing of a wooden exterior door change order; and \$300.00 for the refinishing of the cherry dining table change order. Therefore, Claimant's actual loss is the difference which is \$8,525.00 ( $\$23,000.00 - \$14,475.00 = \$8,525.00$ ).

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>7</sup> Bus. Reg. § 8-405(e)(1), (5) (2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the

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<sup>7</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 \$8,525.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$8,525.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2024); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (2024); 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 \$8,525.00; 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>8</sup> and

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

January 10, 2025  
Date Decision Issued

Tracee N. Hackett  
Tracee N. Hackett  
Administrative Law Judge

TNH/ja  
#215870

<sup>8</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2024); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 20<sup>th</sup> day of May, 2025, 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.***

**Michael Thomas**

***Michael Thomas***

***Panel B***

**MARYLAND HOME IMPROVEMENT  
COMMISSION**