IN THE MATTER OF THE CLAIM OF	*	**BEFORE ANN C. KEHINDE,**
DAVID SHAFFER AGAINST THE	*	**AN ADMINISTRATIVE LAW JUDGE**
MARYLAND HOME	*	**OF THE MARYLAND OFFICE**
IMPROVEMENT GUARANTY FUND	*	**OF ADMINISTRATIVE HEARINGS**
FOR THE ALLEGED ACTS OR	*	**OAH NO.: DLR-HIC-02-15-15435**
OMISSIONS OF GERALD T. TITUS, t/a	*	**MHIC NO.: 15(90)101**
	*	
STAMPCRETE OF MARYLAND, INC.,	*	
RESPONDENT	*	
	*	

* * * * * * * * * * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
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STATEMENT OF THE CASE

On March 13, 2015, David Shaffer (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $21,356.00 for actual losses allegedly suffered as a result of a home improvement contract with Gerald Titus, t/a Stampcrete of Maryland, Inc. (Respondent). A hearing was held on September 9, 2015, at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2012). Robert MacMeekinn, Esquire, represented the Claimant.

Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Marshall Henslee, Esquire, represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

1. Contract between Claimant and Respondent, dated June 1, 2013
2. Weather History for Westminster, MD, month of July 2013
3. Section 5: Hot Weather Application; Vexcon Chemicals, Inc.
4. Diagram of patio
5. Picture of stamped concrete patio
6. a. Close-up picture of the popping, chipping and crumbling of the surface of the stamped concrete patio

   b. Close-up picture of the spalling of the stamped concrete patio.

   c. Medium range picture of stamped concrete patio

   d. Medium range picture of spalling

   e. Medium range picture of chipping

f. Medium range picture of chipping

g. Medium range picture of spalling

7. Picture of depressions in the concrete

b. Close up picture of exhibit 7.

c. Picture of patio not level

d. Picture showing stamping of concrete incorrectly done (not lined up properly)

8. Proposed contract from Arnold's Concrete, LLC, in the amount of $22,478.00.

9. [Not admitted: "The Effects of Temperature on Sealer Reactivity"; ConcreteNetwork.com]

10. "The effects of Deicing Salts on Sealer Performance"; ConcreteNetwork.com

I admitted the following exhibits on the Fund's behalf:

1. Notice of Hearing, dated August 25, 2015

2. Hearing Order, dated April 22, 2015, with a copy of Claim Form attached.

3. Respondent's Licensing History Letter

4. Letter from HIC to Respondent, dated March 20, 2015, with copy of Claim Form

The Respondent did not offer any documents for admission into evidence.

Testimony

The Claimant and his wife, Susan L. Shaffer, testified in support of the claim and also presented the testimony of Dale Alan Arnold, t/a Arnold's Concrete Construction, LLC. Mr. Arnold testified as an expert in concrete patio installation.

The Respondent testified and did not elicit testimony from any other witnesses. The Respondent testified as an expert in concrete installations including the use of Vexcon sealers.

The Fund did not present any witnesses.

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; he was first licensed in November 2002 and his current license is due to expire on September 19, 2016.

2. On June 1, 2013, the Claimant entered into a contract with the Respondent for the Respondent to install a 39 foot by 30 foot patio to the rear of the Claimant's house. The contract also provided that the Respondent would remove and replace the walkway from the patio to the driveway with a stamped colored design and for the installation of footings for columns with electrical conduit.

3. The cost of the contract was $12,920.00, plus an additional amount of $1,800.00 for the Respondent to provide a deeper base at the foot of the house. The Claimant paid the full amount of $14,720.00.

4. The Respondent began pouring concrete on or about July 15, 2013, and continued working on the project through July 18, 2013.

5. The wok was performed during a very hot time in July 2013; the temperatures during the daytime ranged from 93 degrees Fahrenheit to 96 degrees Fahrenheit.

6. The final step of the installation of the patio was to seal the stamped concrete with either a topical solvent sealer or a water-based sealer. The Respondent used Vexcon, which is a topical solvent sealer. A topical solvent sealer sits on top of the concrete and takes twenty-four hours to cure. If a topical solvent sealer is applied when the temperate is too hot, or if the area where it is to be applied is in direct sunlight, the sealer can evaporate or will not achieve the proper thickness or have time to harden. A water-based sealer saturates into the concrete and results in a low sheen.

7. When the Respondent completed the work on the patio, he did not give Claimant any instructions on how to maintain the patio.

8. In March 2014, as the snow and ice receded from the patio, the Claimant saw numerous areas of flaking, chipping and spalling.

9. The Claimant's wife contacted the Respondent and advised him of the condition of the patio.

10. The Respondent visited the Claimant's house to assess the patio. The Respondent told the Claimant that the winter had been very harsh and that if the Claimant would supply the sealer, he would supply the labor to re-seal the patio.

11. The first time the Respondent came to the Claimant's house to re-seal the patio, he did not contact the Claimant or his wife to inform them ahead of time when he would arrive. The Claimant or his wife told the Respondent not to re-seal the patio because the Claimant had been in contact with the manufacturer of the sealant, Vexcon, and the manufacturer said it would send an employee to examine the patio and give an opinion as to what caused the spalling.

12. The Respondent arrived at the house a second time without informing the Claimant ahead of time that he would be coming. The Claimant's wife told the Respondent not to re-seal the patio because there was an impending rainstorm.

13. The Respondent did not make any further attempts to re-seal the patio. The Claimant re-sealed the patio using the Vexcon in the fall of 2015.

14. The Respondent did not install the patio so that it was level across the entire patio.

15. There are areas of the patio in which the Respondent did not properly apply the stamps into the concrete.

16. There are areas of the patio in which there are indentations which filled with water and are referred to as "birdbaths" caused by the weight of workers standing in areas of concrete that were already stamped.

17. The Claimant solicited a contract from Arnold's Concrete, LLC, to demolish and remove the patio and sidewalks installed by the Respondent and install new stamped and colored concrete patio and sidewalks. The total cost of the proposed contract is $22,478.00. The proposal includes the removal of two "sitting" walls, which is outside of the scope of the work included in the Claimant's contract with the Respondent. The cost of the removal of the two "sitting" walls is $800.00 to $1,000.00.

18. The patio installed by the Respondent cannot be repaired. The surface has deteriorated and crumbled; there is nothing on the surface for a new sealer to bond with the original patio.

DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor...." Md. Code Ann., Bus. Reg. § 8-405(a) (2012). *See also* COMAR 09.08.03.03B(2). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). A claimant may not recover an amount in "excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." Md. Code Ann., Bus. Reg. § 8-405(e)(5) (Supp. 2014). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was qualified as an expert in the installation of concrete and the use of Vexcon sealer. He testified that although heat can be an issue in applying the sealer, he cools off the concrete with water before applying the sealer. He added that if the sealer was improperly

applied during a time it was too hot, the homeowners would have seen bubbles, or a web-like effect from flash drying. According to the Respondent, as none of those issues were reported by the Claimant, the cause of the spalling was the use of de-icer by the Claimant's wife.

I am not persuaded by the Respondent's testimony. First, the Claimant's wife testified clearly that she only applied a small amount of de-icer (salt) to the part of the patio near the door, one time, so that her mother could walk on the sidewalk and through the door without falling. The Claimant's wife's testimony is internally logical, as one would expect that only the area in which someone needed to walk to the door would be cleared of snow and ice.

The Claimant, his wife, and Mr. Arnold all testified that the spalling was over the entire surface of the patio and not just in the area where the Claimant's wife applied salt. The Claimant's wife took a picture on April 11, 2014, that shows that chipping and spalling occurred in places all over the patio and not just in the area close to the door. (Fund, Ex. #5).

Further, Mr. Arnold pointed out other aspects of the Respondent's work that was unworkmanlike. There were areas of the patio that were documented in a picture as not being level. (Cl. Ex. 7c). In addition, there were indentations in the concrete that Mr. Arnold referred to as "bird baths;" these indentations would not have been immediately apparent to the homeowner but would eventually fill with standing water. Mr. Arnold was very clear that this was caused by the weight of a worker after the concrete was poured and not caused during the re-sealing that the Claimant did.

Finally, the Respondent did not offer any reason as to why certain areas of the patio were stamped incorrectly which led to two lines being side by side.

I therefore conclude, by a preponderance of the evidence, that although the Respondent may be very familiar with using Vexcon in the sealing of concrete patios, he applied it when it was too hot (or allowed his workers to apply it) when installing the Claimant's patio.

Having found that the Claimant proved the Respondent's performance was unworkmanlike, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case:

> 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).

Using the formula prescribed in COMAR 09.08.03.03B(3)(c), my computation of the Claimant's actual loss is as follows:

$14,720.00	Amount paid by the Claimant to the Respondent
+21,478.00	Reasonable cost of demolition and replacement[1]
$36,198.00	
-14,478.00	Original contract price paid
$21,720.00	**Actual loss by the Claimant**

Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of $20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(1), (5) (Supp. 2014). Therefore, I will recommend that the Fund reimburse the Claimant the maximum amount allowable, $14,478.00,

[1] Mr. Arnold testified that approximately $1,000.00 of his proposed contract covered items outside the scope of the work agreed to by the Respondent; therefore, the reasonable cost of demolition and replacement of the patio was reduced by $1,000.00 from Mr. Arnold's proposed contract price of $22,478.00.

for compensable losses that he suffered because of the Respondent's poor and inadequate work, which constitutes "an act or omission" under sections 8-401 and 8-405(a) of the Business Regulation Article.

CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual, compensable loss of $14,720.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $14,720.00; 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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

December 1, 2015
Date Decision Mailed

Ann C. Kehinde
Administrative Law Judge

ACK/cj
#159551

PROPOSED ORDER

WHEREFORE, this 28th day of January, 2016, 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
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE CIRCUIT COURT FOR CARROLL COUNTY, MARYLAND

PETITION OF:	*	
GERALD TITUS	*	
T/A STAMPCRETE OF MARYLAND, INC.	*	
	*	CASE NO.: 06-C-16-070753
Appellant/Petitioner	*	
FOR JUDICIAL REVIEW	*	
OF THE DECISION OF THE MARYLAND HOME IMPROVEMENT COMMISSION	*	
IN THE CASE OF DAVID SHAFFER v. MARYLAND HOME IMPROVEMENT GUARANTY FUND	*	OAH NO.: DLR-HIC-02-15-15435 MHIC NO.: 15(90)101

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ORDER

For the reasons more fully set forth in the attendant Memorandum Opinion of even date, which is incorporated herein by reference, it is this 13th day of October, 2016, by the Circuit Court for Carroll County

ORDERED, that the decision of the Maryland Home Improvement Commission be, and is hereby, **AFFIRMEI** Signature on File

RICHARD R. TITUS, Judge
Circuit Court for Carroll County

ENTERED OCT 14 2016

IN THE CIRCUIT COURT FOR CARROLL COUNTY, MARYLAND

PETITION OF:	*	
GERALD TITUS	*	
T/A STAMPCRETE OF MARYLAND, INC.	*	
	*	CASE NO.: 06-C-16-070753
Appellant/Petitioner	*	
FOR JUDICIAL REVIEW	*	
OF THE DECISION OF THE MARYLAND HOME IMPROVEMENT COMMISSION	*	
IN THE CASE OF DAVID SHAFFER v. MARYLAND HOME IMPROVEMENT GUARANTY FUND	*	OAH NO.: DLR-HIC-02-15-15435 MHIC NO.: 15(90)101

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MEMORANDUM OPINION

On September 9, 2015, Administrative Law Judge Ann C. Kehinde (the "ALJ") conducted a hearing on a claim filed with the Maryland Home Improvement Commission ("MHIC") by Mr. David Shaffer ("Claimant") against Gerald Titus, t/a Stampcrete of Maryland, Inc. ("Petitioner") alleging improper workmanship in connection with construction of a new concrete patio. Based upon the testimony presented, the ALJ issued a recommended decision finding that Petitioner's acts and omissions caused the Claimant to sustain actual, compensable damages in the amount of $14,720.00. The ALJ recommended that: (a) such sum be paid to Claimant from the Maryland Home Improvement Guaranty Fund ("the Fund"); and (b) that Petitioner

be ineligible to perform home improvement work in the State until he had reimbursed the Fund for such award. On January 28, 2016, the MHIC issued an Order affirming and adopting the ALJ's recommended decision. After a timely Petition for Judicial Review was filed, the Petitioner and MHIC submitted Memoranda in support of their respective positions and presented oral argument to the Court at a hearing conducted on August 26, 2016. At the conclusion of such hearing, the Court held the matter *sub curia.*

I. BACKGROUND

On June 1, 2013, Petitioner entered into a contract with the Claimant to install a patio in the backyard of the Claimant's house. The total cost of the patio installation, including change orders, was $14,720.00 which the Claimant paid in full. Petitioner commenced work on July 15, 2013 and completed the job on July 18, 2013. As part of the job, the newly installed stamped concrete patio was to be sealed by Petitioner. To accomplish this, Petitioner applied a solvent-based sealer called "Vexcon" to the patio. In March 2014, after the previous winter's snow and ice melted, the Claimant's wife noted that the concrete was chipping, flaking, and spalling across the entire surface of the patio. All attempts at repairs were unsuccessful and resulted in the filing of the present claim.

II. ISSUES PRESENTED

A. Whether the ALJ's reliance upon allegedly "contradictory" expert testimony was improper thereby rendering her findings of fact and conclusions of law erroneous?

B. Whether the ALJ erred by failing to address costs of repair not related to any defect in the concrete sealant?

III. ANALYSIS

A. Standard of Review

To reverse or modify an administrative agency's findings, this Court must determine whether the administrative agency's decision was based on erroneous conclusions of law. *Motor Vehicle Administration v. Marshall Clapp McDorman,* 364 Md. 253, 261 (2001). More specifically, this Court must evaluate the ALJ's decision in light of the factors set forth in Md. Code Ann., *State Gov't,* §10-222(h)(3). When doing so, this Court must apply the substantial evidence test to the MHIC's final decision. *Board of Education of Montgomery County v. Paynter,* 303 Md. 22, 35 (1985). The application of the substantial evidence test centers on "whether a reasonable mind might accept as adequate to support a conclusion" of the administrative agency. *Id.*

In evaluating administrative appeals, this Court should defer to the administrative agency's fact-finding and inferences if the record supports those inferences. *Marshall Clapp McDorman,* 364 Md. at 261. It is well-settled that an administrative agency's decision is "*prima-facie* correct and presumed valid." *Id.* As a result, this Court must not substitute its judgment for that of the administrative agency. *Maryland State Police v. Lindsey,* 318 Md. 325, 333 (1990). However, if the administrative agency based its findings on erroneous conclusions of law, the

reviewing court may reverse the administrative agency's decision. *Paynter*, 303 Md. at 35. Finally, the administrative agency's decision should be reviewed in the light most favorable to it. *Lindsey,* 318 Md. at 334.

B. The Expert Testimony

Petitioner's primary contention is that the ALJ erred in relying upon testimony from Claimant's expert witness, Mr. Dale Arnold, because it was inconsistent with the manufacturer's specifications for the installation of Vexcon. Specifically, Mr. Arnold testified that in his opinion, application of a solvent sealer like Vexcon should not occur when air temperatures exceed 85 degrees. [T.64]. However, the specifications for "Vexcon" did not prohibit application of the product during hot weather and, in fact, provide instruction on how to "cool" the patio. Petitioner contends that this claimed inconsistency was so substantial that the ALJ erred as a matter of law in relying upon Mr. Arnold's opinions when issuing her recommended decision. The Court disagrees.

Mr. Arnold was recognized as an expert in the field of concrete patio installation without objection. He has been self-employed in the concrete patio installation business for ten years [T.55] but has been in the concrete business for more than 30 years. [T.60]. With regard to Vexcon, he testified he has not used the product in 3 years because he does not like topical, solvent-based sealers. [T.57]. He indicated he was familiar with Vexcon and had used the product himself between 30-40 times during his career. [T.58]. Indeed, he stated he had attended seminars

regarding Vexcon – including when the product should be applied. [T.57]. While he did not see the Petitioner apply the Vexcon, he testified that the Claimant showed him a container of the product used by Petitioner which confirmed it was Vexcon. [T.72].

He opined that Vexcon should not be applied in hot weather which, in his opinion, meant more than 85 degrees. [T.64]. Rather, the application of sealer should be delayed until such time as the weather had cooled making it more conducive to application of the product. [T.64]. If the product were applied when it was too hot, Mr. Arnold opined that the product would not bind to the concrete [T.63-64] leaving the concrete surface unprotected. Further, the failure to bind due to hot weather installation could cause the type of flaking, peeling and spalling experienced by the Claimant. [T.64-65]. While Mr. Arnold did acknowledge that Vexcon's specifications did not explicitly prohibit sealing when temperatures exceed 80 degrees [T. 72-73], it seems clear to the Court that Mr. Arnold's opinion was based on more than just the specifications. Indeed, he testified that in his "experience," [T.63], solvent type sealers should not be applied until a solid week of cooler temperatures occurred or until the end of summer weather. [T.64].

Finally, with regard to the cause of the flaking, chipping and spalling concrete, the following testimony was elicited before the ALJ:

> Q: Now, if I understood your testimony, the cause of the spalling that you observed were the weather conditions. In other words, ice and snow sat on the surface. It wasn't removed by the homeowners. And then finally when it melted, ***it's your opinion that because the sealant hadn't been properly applied, the snow***

and ice was getting directly to the concrete surface. Is that a fair characterization?

A: Yes. If the solvent sealant had been applied properly – the proper thickness, the right temperature, the curing time – if the snow had set on top and stayed on top, it would not have spalled, and popped, and flaked because that topical sealer – just here's concrete, here's sealer, here's elements. It will protect it for at least the first year or two.... (Emphasis added).

As Petitioner sees it, because specifications do not ***expressly prohibit*** application of Vexcon during hot weather, an insurmountable conflict exists within Mr. Arnold's testimony such that the ALJ was not permitted to rely on his opinions. The Court concludes that this is far too restrictive of an interpretation. To be sure, the Vexcon specifications do not prohibit application of the product during hot weather. Equally clear, however, is that application during such weather causes special concerns requiring special preparation to properly apply the product. For example, Claimant's Exhibit 3 reflects, *inter alia*, that the following precautions must be taken:

(a) Spray water across the slab, broom out water from joints or low spots and allow the water to evaporate or "steam off" before sealing;

(b) Avoid sealing in hot direct sun or during hottest parts of day; and

(c) Apply multiple thin coats instead of one or two coats.

During his testimony, Petitioner did not indicate he followed these precautions. Rather, he indicated that consistent with his normal practice, he scrubbed down the Claimant's patio with Dawn soap which he indicated was a de-greasing agent. [T.101]. Notably, nothing in Exhibit 3 refers to utilization of a "de-greasing agent." Further, after scrubbing the patio, Petitioner indicated that instead of allowing the water to

evaporate or "steam off," he instead chose to utilize "heavy duty leaf blowers" to remove remaining water from the patio. [T.102]. The Petitioner did not offer any testimony regarding the physical manner in which the Vexcon sealer was applied (e.g. – spray application, roller, back-rolling) or whether multiple thin coats were used. Finally, during cross-examination, Petitioner admitted that the sealer application likely took place between 10:00 a.m. and 12:00 noon during July, 2013 in direct sunlight. [T. 116].

In light of such testimony, when considered in its entirety, the record before the ALJ reflects that Mr. Arnold's opinion was not so contradictory as to render it unworthy of consideration. Indeed, the record reflects that even if Mr. Arnold's testimony arguably contained an inconsistency as to the Vexcon specifications, it is equally clear that the Petitioner's testimony did not confirm he applied the Vexcon in complete conformity with the manufacturer's hot weather installation requirements. Accordingly, when considered as a whole, the Court finds that the record before the ALJ was sufficient to permit a reasoning mind to conclude by a preponderance of the evidence that the improper application of Vexcon during hot weather proximately caused the damage to the Claimant's patio.

As to Petitioner's allegation that the flaking, chipping and spalling resulted from improper application of salt or de-icing solutions to the patio, the record reveals that there was conflicting testimony on the amount of such solution applied by the Claimant. The Claimant's wife admitted applying a small amount of salt on one

occasion in a small area. [T.43]. Mr. Arnold testified that had such a minor application occurred, it would not have caused the widespread damage across the entire patio that was visible but, rather, would have been limited to a small area. While Petitioner was of a contrary opinion, the ALJ was free to reject such opinion and clearly did so. Based upon the record, the Court concludes the ALJ's rejection of Petitioner's alternative "salt" theory was also supported by substantial evidence and that a reasoning mind could have properly reached that conclusion.

C. The Cost of Repairs

Finally, Petitioner asserts the ALJ erred by making the factual finding that the patio could not be repaired as a result of improper application of the Vexcon sealer. Although the argument is a bit muddled, it appears that Petitioner assigns error to the ALJ's failure to distinguish between the costs of repair associated with the Vexcon application as opposed to the cost of repair for other defects (e.g. – the depressions in the concrete referred to as "bird baths" [T.67]). The Court finds this argument to be nonsensical given the ALJ's conclusion regarding causation which, as noted above, was supported by substantial evidence. Mr. Arnold testified that the flaking, chipping and spalling was present across the entirety of the patio. [T.76-77]. He further stated it was impossible to repair the damage. [T.66-67].

In light of such testimony, it is apparent that the only way to remedy the situation was to remove and replace the ***entire*** patio. While the ALJ factually concluded that other improper workmanship had been proven, it was unnecessary to

separately address the costs of repair for such additional items due to the conclusion that the entire patio had to be replaced. In light of such testimony, the Court concludes that the ALJ's findings on this issue were also supported by substantial evidence such that a reasoning mind could have reached the same conclusion.

IV. CONCLUSION

For the foregoing reasons, the decision of the Maryland Home Improvement Commission is **AFFIRMED.**

Signature on File

10/13/16
Date

RICHARD R. TITUS, Judge
Circuit Court for Carroll County