

IN THE MATTER OF THE CLAIM
OF WILLIAM MARTIN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF STEVEN MORELAND,
T/A MORELAND CONTRACTING, INC.
RESPONDENT

* BEFORE ALECIA FRISBY TROUT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
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* OAH No.: DLR-HIC-02-18-13330
* MHIC No.: 16(05)1305

* * * * *

PROPOSED DECISION¹

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On June 27, 2017, William Martin (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$13,295.00 in alleged actual losses suffered as a result of a home improvement contract with Steven Moreland, trading as Moreland Contracting, Inc. (Respondent).

¹ The Code of Maryland Regulations (COMAR) 09.08.02.01B provides that “[a]ll contested case hearings delegated to the Office of Administrative Hearings shall be governed by COMAR 09.01.03.” COMAR 09.01.03.08 states:

A. Upon completion of the hearing, the ALJ shall submit a proposed decision to the administrative unit.

....

C. The proposed decision shall comply with the requirements of the Administrative Procedure Act and COMAR 28.02.01.22, and shall include:

- (1) Written findings of fact;
- (2) Proposed conclusions of law; and
- (3) A recommended order.

I held a hearing on July 3, 2018 at the Tawes State Office Building, Department of Natural Resources, 580 Taylor Avenue, Room C1B, Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimant appeared and was represented by his attorney of record, Derek A. Hills, Esquire. The Respondent did not appear for the hearing. Nicholas Sokolow, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural regulations, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01B and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions of the Respondent?
2. If so, what amount may the Claimant receive from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

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|----------|--|
| GF Ex. 1 | Notice of Hearing, May 4, 2018 |
| GF Ex. 2 | MHIC Hearing Order, April 20, 2018 |
| GF Ex. 3 | Letter from the MIHC to the Respondent, July 10, 2017, with attached Claimant's Claim Form, received by MHIC June 27, 2017 |
| GF Ex. 4 | Affidavit of Keyonna Penick regarding the current address for the Respondent, July 2, 2018 |

² Unless otherwise noted, all references hereinafter to the Business Regulation Article in the Annotated Code of Maryland are to the 2015 Replacement Volume.

GF Ex. 5 Department's Order addressed to the Respondent, dated May 17, 2016, with attached Respondent's response

I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. 1 K. Moore & Associates, LLC Building Consultants home inspection and evaluation report, October 18, 2017
- Cl. Ex. 2 AnnieMac Construction Contact Sheet and 203(k) HUD Consultant Agreement, September 29, 2015
- Cl. Ex. 3 Bill Evans Home Team, LLC Specification of Repairs, November 11, 2015
- Cl. Ex. 4 Moreland Contracting Inc. Proposal, Contract (Contract)³
- Cl. Ex. 5 Owner and Contractor Agreement, November 11, 2015
- Cl. Ex. 6 US Department of Housing and Urban Development Request for Acceptance of Changes in Approved Drawings and Specifications, January 14, 2016
- Cl. Ex. 7 Anne Arundel County, Maryland, Department of Inspections and Permits, Field Correction Notice, dated April 16, 2016, with attached communications
- Cl. Ex. 8 Email chain between Claimant's counsel, Derek Hills, and Eddie Hurst, Renovation Consultant, Bill Evans Home Team, LLC with attached inspection sticker, April 17-19, 2018
- Cl. Ex. 9 Email chain between Scott Magee of AnnieMac Home Mortgage, Eddie Hurst of Bill Evans Home Team and Josh of Moreland Contracting, May 10-11, 2016
- Cl. Ex. 10 Accounting for Renovation Escrow Funds, Draw Request, Renovation Escrow Disbursement Instructions, Lien Waiver and Release, and three checks made payable to William Martin and Moreland Contracting
- Cl. Ex. 11 Letter from Claimant's counsel, Tarrant H. Lomax, to Moreland Contracting, Inc., terminating their Contract, August 7, 2016
- Cl. Ex. 12 Anne Arundel County, Maryland, Department of Inspections and Permits, Permit Status Inspection History Display, undated

³ The document is undated. The Record reflects that the original Contract was signed on October 12, 2015. See GF Ex. 3, pg. 2.

- Cl. Ex. 13 David Wallace, P.E., Structural Consultation, letter regarding consultation on floor support work with copy of beam detail attached, October 28, 2015
- Cl. Ex. 14 Covered Bridge Home Improvement Renovations & Restorations, LLC Proposal, June 2, 2016
- Cl. Ex. 15 Wood Backhoe Service LLC, Proposal, September 30, 2015 and Statement, January 14, 2016
- Cl. Ex. 16 David Wallace, P.E., Structural Consultation Invoice, October 28, 2015

No exhibits were offered by the Respondent.

Testimony

The Claimant testified on his own behalf and presented one witness: Kevin A. Moore, whom I accepted as an expert in the field of home inspection.

The Respondent was not present to testify or present witnesses.

The Fund did not present any witnesses.

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. At all times relevant to the subject matter of this hearing, the Respondent was licensed as a home improvement contractor under license number 104780.
2. The Respondent's address of record with the MHIC and the Maryland Motor Vehicle Administration is 748 Ticonderoga Ave., Severna Park, MD 21146.
3. On or about October 12, 2015, the Claimant and the Respondent entered into a Contract to complete the scope of work as first outlined by the Specifications of Repairs report in reference to a Department of Housing and Urban Development (HUD) 203(k) loan. The bulk of the repairs included electrical, plumbing and structural work (replacing siding, replacing exterior steps and railings, excavating the back of the house to improve water flow, replacing the main support beam, repairing the septic system, installing a water softener system, installing new

pressure relief drain lines and washer hookup, installing a new ground wire for the main panel, installing new GFI outlets, installing a new exterior electrical box and posts, installing hard wired smoke detectors, installing new insulation in the crawl space, tearing down the garage and attached shed, removing all related debris, and performing a termite treatment). The original Contract price was \$45,216.50.

4. On January 18, 2016, the Claimant and Respondent, by way of the HUD Request for Acceptance of Changes in Approved Drawings and Specifications, amended the Contract to add the removal of a second well on the property, adding \$1,900.00 to the original Contract price.

5. The Claimant paid Respondent \$28,945.00 as follows:

- \$8,550.00 on December 15, 2015 (Check #17047)
- \$8,425.00 on January 21, 2016 (Check #657453)
- \$11,970.00 on March 28, 2016 (Check #659575)

6. The Respondent began work in December, 2015.

7. In April, 2016, the Claimant noticed exterior vents that the Respondent had installed directly onto solid wood only giving the appearance that they were working vents. The Claimant also noticed several inspection stickers noting failed inspections. Based on these observations, the Claimant contacted the County and requested an inspection. As a result of this inspection, the Claimant learned that other than the deck footings, the remainder of the work done by the Respondent, and for which the Respondent had accepted payment; did not pass inspection.

8. The alterations that the Respondent made to the main structural beam of the house were not in compliance with the engineer's report and left the home structurally unsound. As a result, the Claimant has been unable to get a Certificate of Occupancy, and therefore has been unable to live in the home.

9. On August 7, 2016, the Claimant, by way of counsel, Tarrant H. Lomax, Esquire, officially terminated the Contract with the Respondent.

10. At the time the Contract was terminated, the following items had been satisfactorily completed: removing 1' of siding around the bottom of the house and replacing with plywood; removing and filling in of the second well on the property; and demolishing the garage and attached shed, with the exception of the foundation and removing all related debris.

11. At the time the Contract was terminated, the following items had not been completed: install 6 vents at crawl space to allow for ventilation; purchase and install corrugated flex hose to all downspouts to move water 12' away (from house); demo the front steps; purchase and install 70 square feet of decking with 5 steps and 6 railings; excavate the back of the house and install drain tile, corrugated piping, silt barrier, and vapor barrier to ensure water flows away from the house; replace the damaged window at the right side; purchase and install a dead bolt lock at front door; replace main support beam at crawl space and joists per structural engineer's report and to include removing subfloor; replace the missing ceiling tiles and damaged panel at the first floor bedroom closet; purchase and install carpet at rear hall; replace vinyl flooring at the mechanical room, repair the septic system; purchase and install new water softener; purchase and install new pressure relief drains for water heater and boiler, install washer hook up, replace hose bib, tailpiece and trap on kitchen sink, reset toilet with new wax ring and flange; electrical work; purchase and install new insulation at the crawl space; and purchase and install a new Co2 detector.

12. The value of the work completed by the Respondent was \$15,650.00.

13. The Claimant has not had any of the work completed or repaired due to restrictions in the terms of the HUD 203(k) loan requiring that the dispute with the Respondent be remedied prior to commencing any remedial work. The total estimated cost to complete and remedy the faulty work is \$26,536.50.

14. On June 27, 2017, the Claimant filed the Claim with the MHIC.

15. On July 10, 2017, the Fund notified the Respondent that the Claim had been filed against him by the Claimant.

16. On April 20, 2018, the MHIC issued a Hearing Order stating that it was referring the Claim to the OAH for a hearing.

17. On May 4, 2018, the OAH mailed a Notice of Hearing (Notice) by United States Postal Service (USPS) Certified Mail Return Receipt and by First Class Mail to the Respondent's MHIC Address. This Notice advised the Respondent that a hearing was scheduled for July 3, 2018 at 10:00 a.m., at the Tawes State Office Building in Annapolis, Maryland.

18. The First Class Mail Notice was not returned to the OAH by the USPS. The Certified Mail for the Notice mailed to the Respondent's MHIC Address was returned to the OAH by the USPS as unclaimed.

19. The Respondent did not make a request to postpone the July 3, 2018 hearing.

20. The Contract contains an arbitration clause. As of the date of the hearing, the Respondent had not advised the Claimant, the MHIC or the OAH that he intended to participate in arbitration of the issues underlying this Claim.

21. The Respondent was first notified of the Claimant's Complaint on May 17, 2016 when MHIC mailed to him the Complaint and ordered that he file a response. The Respondent responded and stated in part, "Moreland Contracting Inc. would not like to participate in formal mediation."

22. The Claimant is not: a spouse or other immediate relative of the Respondent; an employee, officer, or partner of the Respondent, or an immediate relative of an employee officer, or partner of the Respondent.

23. The Claimant has not taken any action to recover monies for the Respondent's failure to complete the Contract work, other than the instant Claim.

24. The property where the Contract work was performed is the only residential property the Claimant owns in Maryland and it is his primary residence.

DISCUSSION

Preliminary Issues

1. The Respondent's failure to appear

The OAH mailed the Notice regarding the date, time and location of this hearing to the Respondent at his MHIC Address of record, which is also his address of record with the Motor Vehicle Administration. The Notice was mailed by both First Class and Certified Mail. The First Class Mail Notice was not returned to the OAH by the USPS. The Certified Mail Notice was unclaimed and was returned to the OAH by the USPS.

On July 3, 2018, at 10:00 a.m., I convened a hearing in this case at the Tawes State Office Building. By 10:15 a.m., neither the Respondent, nor anyone claiming to represent the Respondent, appeared for the hearing. The OAH did not receive any request for postponement of the hearing.

The Respondent was properly notified of the date, time and location of this hearing. The Notice was mailed two months before the scheduled hearing by both First Class and Certified Mail to the Respondent's address of record with the MHIC and the MVA. Md. Code Ann., Bus. Reg. § 8-312(d) (the hearing notice shall be sent at least ten days before the hearing by certified mail to the business address of the licensee on record with the MHIC); *see also id.* § 8-407(a).

Despite proper notice being sent, Moreland failed to appear for the hearing. As a result, I proceeded with the hearing in the Respondent's absence. COMAR 28.02.01.23A.

2. Arbitration Clause

The Contract between the Claimant and the Respondent contains an arbitration clause, which states, in pertinent part, as follows:

Claims or disputes relating to the Agreement or General Provisions will be resolved by the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) unless both parties mutually agree to other methods. The notice of the demand for arbitration must be filed in writing with the other party to this Agreement and with the AAA and must be made in reasonable time after the dispute has arisen.

See Cl. Ex. 5, Section 6.

Section 8-405(c) requires that the Claimant prove that he complied with any contract arbitration clause before seeking compensation from the Fund. Md. Code Ann., Bus. Reg. § 8-405(c). Additionally, COMAR 09.08.03.02E provides:

E. Compulsory Binding Arbitration. When a contract between a claimant and a contractor requires that all contract disputes be submitted to binding arbitration, the claimant shall either:

- (1) Submit their dispute to binding arbitration as required by the contract; or
- (2) Provide evidence to the Commission that the claimant has made good faith efforts to bring the dispute to binding arbitration which the contractor has either rejected or not responded to. The Commission shall then give the contractor written notice that, if the contractor does not agree to binding arbitration, the Commission will consider the compulsory arbitration clause to be void and process the claimant's claim pursuant to this chapter.

At the hearing, Derek Hills, the attorney representing the Claimant, stated that the Claimant is aware that the Contract contains this arbitration clause. He proffered that in March, 2018, David Brown, an inspector with the MHIC assigned to this case, had reached out to the Respondent specifically in reference to the arbitration clause, and because the Respondent never

responded, Mr. Brown concluded that arbitration was waived. Mr. Brown had stated to Mr. Hills that Moreland was unwilling to participate in anything. Since the MHIC mailed the claim form to the Respondent on June 8, 2017, the Respondent has failed to respond to any communication regarding the matter. Mr. Brown informed Mr. Hills that it is the MHIC's position that the Respondent waived his contractual right to compel arbitration and that the Claim may properly be considered at this time. Nicholas Sokolow, Assistant Attorney General representing the Fund, did not object to Mr. Hills' proffer, but noted he could not stipulate to it.

Section 8-405(c) of the Business Regulation Article protects the Fund from being depleted and ensures its continued solvency for the payment of future claims. Section 8-410 provides that once the MHIC pays a claim, the MHIC is subrogated to all rights of the claimant, and the MHIC may sue the contractor for the amount paid by the Fund on the claim. Md. Code Ann., Bus. Reg. §8-410(a) and (b). This subrogation right allows the Fund to collect from the offending contractor what it has paid to a claimant, thus replenishing the Fund so that it continues to have sufficient resources to make payments on future awards.⁴ However, when the MHIC initiates a lawsuit against a contractor, the MHIC steps into the shoes of the claimant, and the contractor may assert any defenses against the MHIC that it would have had against the claimant, including the claimant's failure to bring the dispute to arbitration. *See Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 313 (2007) (the substituted person "can exercise no right not possessed by his predecessor, and can only exercise such right under the same

⁴ The MHIC has been tasked with the establishment and administration of the Fund. *See* Md. Code Ann., Bus. Reg. § 8-403(a) and (c). The Fund is supported by initial fees and assessments from licensed contractors and from reimbursements the MHIC collects from the contractors who give rise to claims. *Id.* §§ 8-404, 8-410. If the Fund does not have sufficient money to cover an award, the claimant must wait until there is enough money to pay the claim. *Id.* § 8-409(c). Thus, the MHIC has a policy interest in preserving the Fund so that it is available for all claimants.

conditions and limitations as were binding on his predecessor.”) (quoting *Poe v. Phila. Cas. Co.*, 118 Md. 347, 353 (1912)). Accordingly, to ensure the continued solvency of the Fund through subrogation actions against contractors, section 8-405(c) limits the MHIC’s ability to pay an award from the fund when a claimant has not complied with a contract arbitration clause.

There are times, however, when a contract at issue in a claim contains an arbitration clause, but a claimant is unable to engage the contractor in arbitration. Clearly, the purpose of the Fund is to compensate homeowners for actual losses incurred at the hands of a licensed contractor, and thus dictates that a claimant, who is barred from complying with a contract arbitration clause due to the actions of a contractor, should nevertheless be permitted to seek recovery from the Fund.

Maryland courts recognize that the right to arbitrate is a right created by contract, and that a party to that contract may waive its right to arbitrate. 2 Maryland Law Encyclopedia, *Alternative Dispute Resolution* § 23 (Westlaw 2017); see also *Brendsel v. Winchester Const. Co., Inc.*, 162 Md. App. 558, 573, cert. granted, 389 Md. 124 (2005), aff’d, 392 Md. 601(2006). Usually, a court will only determine that a party waived its right when it does so through unequivocal acts or language. *Brendsel*, 162 Md. App. At 574. However, it is possible for waiver to be established when a party delays in demanding arbitration. *Id.* At 573; see also *Redemptorists v. Coulthard Servs., Inc.*, 145 Md. App. 116, 141 (2002). COMAR 09.08.03.02E is a mechanism for the Fund to establish that a contractor waived arbitration with a claimant. If the MHIC follows the procedures contained in COMAR 09.08.03.02E, it creates a factual record that may be used in any future subrogation lawsuit against defense of “failure to arbitrate” asserted by the contractor.

Clearly, however, if the facts of a particular case alone are sufficient to prove waiver of the arbitration clause by the contractor, it is unnecessary for the MHIC to follow the provisions of COMAR 09.08.03.02E. In this case, there is adequate evidence to support the MHIC's position, proffered by the Claimant's counsel, that the Respondent's action in this case, or more accurately his inaction, amounts to a waiver of his right to arbitrate, and therefore, it is unnecessary for the MHIC to require that it and the Claimant strictly adhere to the procedures outlined in COMAR 09.08.03.02E. The Respondent has known that this Complaint was pending before the Fund for the twenty-six months prior to this hearing. *See* GF Ex. 3 (May 17, 2016 letter to the Respondent advising him that this Complaint was pending against the Fund). Additionally, the Respondent was reminded of the pendency of this Claim through both the July 10, 2017 letter from the MHIC to the Respondent advising him of the claim (*See* GF Ex. 3), and the May 4, 2018 Notice of Hearing (*See* GF Ex. 1). Despite this repeated actual notice, the Respondent never attempted to compel arbitration either through the Claimant, the MHIC or the OAH. Specifically, the Claimant testified that the Respondent never contacted him about submitting the claim to arbitration, Mr. Hills proffered that the Respondent neither replied to the MHIC's inquiry regarding arbitration, nor contacted the MHIC to demand that the matter be submitted to arbitration, and the OAH case file does not include any correspondence from the Respondent addressing arbitration. The Respondent's only response to anything in relation to this Claim was in response to the MHIC's May 17, 2016 Order where he stated, in part, "Moreland Contracting Inc. would not like to participate in formal mediation" (*See* GF Ex. 5) but was silent regarding arbitration. Finally, the Respondent did not avail himself of his right to attend the hearing on the Claim and to object to the hearing of the matter prior to arbitration.

Based on these facts, I conclude that the Respondent waived his right to arbitrate this Claim, and that it was appropriate for the MHIC to forward this Claim for a merits hearing, despite the presence of an arbitration clause in the Contract and despite the Claimant's and the MHIC's strict adherence to the procedures contained in COMAR 09.08.03.02E.⁵

Merits of the Claim

A claimant bears the burden of proof, by a preponderance of the evidence, that it is entitled to an award from the Fund. Md. Code Ann., Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3); Md. Code Ann., State Gov't § 10-217 (2014). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces...a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n. 16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

A claimant 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); *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.”) 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. However, 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), and may not compensate a

⁵ Although, for purposes of whether an award should be made to the Claimant from the Fund I conclude that the Respondent waived his right to arbitrate, the court that presides over the subrogation case will render its own determination on that issue.

claimant for more than was paid to the original contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5).⁶

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The parties signed the Contract on October 12, 2015 and the Respondent performed work from December, 2015 through April, 2016, during which time, the parties stipulated, the Respondent was a licensed home improvement contractor.

The Claimant testified that he suffered an actual loss based on the Respondent's unworkmanlike and inadequate renovation. He presented expert testimony and an expert's written evaluation of the Respondent's performance under the Contract. The expert, Kevin Moore (Expert), credibly evaluated the work required by the Contract as compared to the work completed by the Respondent. He explained, both in his written evaluation and in testimony, with detail and photographs, what portion of the work required by each line item of the Contract was completed, and whether the work completed was adequate. The Expert gave the Respondent credit for work that was adequately completed, and supported his findings of inadequate and incomplete work with corroborating photos and evaluation in light of industry standards. The Expert noted a number of deficiencies with the Respondent's work and characterized the bulk of the work as incomplete and incompetent workmanship. Specifically, he noted in part, (1) that five of the six exterior vents were installed over plywood with no actual opening behind them so as to be merely cosmetic. (2) In reference to the main support beam, the Expert testified that the

⁶ A claimant must also prove that at all relevant times: (a) the owner owned fewer than three dwelling places or resides in the home as to which the claim is made; (b) the owner was not an employee, officer or partner of the contractor or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the owner did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) there is no pending claim for the same loss in any court of competent jurisdiction and the owner did not recover for the actual loss from any source; and (f) the owner filed the claim with the MHIC within three years of the date the owner knew or with reasonable diligence should have known of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(d), (f), and (g), 8-408(b)(1); *id.* § 8-101(g)(3)(i) (Supp. 2017). The Claimant provided uncontroverted evidence that he meets all of the above-enumerated requirements, and the Fund did not challenge any of the Claimant's evidence.

work done was not per the engineer's specifications. The Respondent installed two support footings rather than three. The Respondent used nails rather than washers and bolts as is standard procedure in Anne Arundel County and is what was required by the engineer's specifications. Nails, the Expert testified, would only be used as a temporary measure. The support posts did not have footers, were not plumb, and at one place were not in flush contact with the ground. The beam was improperly supported on either end causing a problem with the overall utility of the beam. The Expert concluded that the Respondent's installation of the main support beam rendered the home structurally unsound and was indicative of sloppy installation.

(3) The Expert noted multiple unsafe conditions caused by the condition of the electrical system in the home. He noted badly frayed exterior and interior cable, exposed wires, and ungrounded, two-prong outlets. He characterized the conditions as very unsafe. The Respondent did not appear for the hearing so the Expert's testimony was undisputed. I found the Expert's testimony to be credible. I find that the Claimant has proven eligibility for compensation.

The Respondent did perform some adequate work. The Respondent completed the contracted-to tasks of: removing 1' of siding around the bottom of the house and replace with plywood; removing and filling in of the second well on the property; and demolishing the garage and attached shed, with the exception of the foundation, and removing all related debris.

The Respondent partially completed the contracted-to tasks of: installing vents at crawl space to allow for ventilation (50% completed); demolishing the front steps and installing 70 square feet of decking with 5 steps and 6 railings (70% completed); excavating the back of the house and install drain tile to ensure water flows away from the house (60% completed); and replacing the main support beam per structural engineers report including removing and replacing the subfloor (40% completed).

The total value of the work done by the Respondent was \$15,650.00.

The Respondent also performed unworkmanlike, inadequate and incomplete home improvements. The Respondent failed to: purchase and install corrugated flex hose to all downspouts to move water 12' away (from house); replace the damaged window at the right side; purchase and install a dead bolt lock at front door; replace the missing ceiling tiles and damaged panel at the first floor bedroom closet; purchase and install carpet at rear hall; replace vinyl flooring at the mechanical room, repair the septic system; purchase and install new water softener; purchase and install new pressure relief drains for water heater and boiler, install washer hook up, replace hose bib, tailpiece and trap on kitchen sink, reset toilet with new wax ring and flange; perform any electrical work as outlined; purchase and install new insulation at the crawl space; and purchase and install a new Co2 detector.

The Claimant was reasonable to lose trust in the Respondent and to sever the contractual relationship first after he saw that the Respondent had installed vents directly over plywood such that they were merely cosmetic, and second, after he learned that most of the work that the Respondent had allegedly completed, and been compensated for, had failed inspection. Further, the excavation work done at the back of the house included the installation of a French drain, but did not result in water being redirected away from the home. The window that the Respondent replaced was not the window that was contracted to be replaced. The Respondent never laid flooring but rather left exposed floor joists covered by unsecured plywood. The Respondent left the electrical system in an unsafe condition with badly frayed cables, bare wires, and ungrounded outlets. The Respondent's work on the main support beam was not in compliance with the structural engineer's specifications. It included two support footings rather than three as required, support posts that were out of plumb and lacked structural integrity. In the condition that the house was in at the time the Claimant terminated the Contract with the Respondent, and

due to the Respondent's unworkmanlike repairs, the house did not qualify for a Certificate of Occupancy. At the time the Claimant learned of the unworkmanlike nature of the Respondent's work, he had paid \$28,945.00 to the Respondent.

The Claimant suffered an actual loss when he paid for work that was either not completed, or inadequately completed. I thus find that the Claimant is eligible for compensation from the Fund. The Claimant's testimony was undisputed. Moreover, I found the Claimant and his expert witness to be credible witnesses, and the Claimant's requested damages reasonable.

The Claimant's expert witness's testimony, report and photographs support the Claimant's reports regarding the inadequacy of the work done by the Respondent. The Fund agreed with the Claimant and concluded that the Respondent was "completely untrustworthy" and agreed that it was reasonable for the Claimant to ask that the Respondent not return to do work at the home. The Fund agreed with the amount claimed by the Claimant. The Fund could not draw a conclusion on whether or not the arbitration clause was waived, but concluded that if it was, the Claimant was entitled to receive the amount requested 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); 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. COMAR 09.08.03.03B(3).

In this case, the Respondent performed some work under the contract and the Claimant has not solicited other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Respondent'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 correct calculation of the award is determined by COMAR 09.08.03.03B(3)(b), set forth above. According to that regulation, the calculation is as follows:

Paid to the Respondent	\$28,945.00
<u>Value of work completed</u>	<u>- \$15,650.00</u>
Actual Loss	\$13,295.00

The Business Regulation article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$13,295.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts and omissions, and that an appropriate award in this case is \$13,295.00. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,295.00; 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 (10%) as set by the Maryland Home Improvement Commission;⁷ and

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

Signature on File

August 9, 2018
Date Decision Issued

Alecia Frisby Trout
Administrative Law Judge

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AFB

AFT/sw
#174967

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 14th day of September, 2018, 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