

**IN THE MATTER OF THE CLAIM  
OF CARLTON PHILLIPS**

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**MARYLAND HOME IMPROVEMENT  
COMMISSION**

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**AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS  
OF GREGORY TYLER t/a  
BUILDING ON THE ROCK, INC.**

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**MHIC CASE NO. 16(05)337  
OAH CASE NO. DLR-HIC-02-18-13335**

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**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on August 20, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 7, 2018, concluding that the homeowner Carlton Phillips (“Claimant”) failed to prove that he sustained an actual loss as a result of the acts or omissions of Gregory Tyler t/a Building on the Rock, Inc. (“Contractor”). *ALJ Proposed Decision* p. 14. In a Proposed Order dated December 28, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to deny an award from the MHIC Guaranty Fund. The Claimant subsequently filed exceptions of the MHIC Proposed Order.

On March 7, 2019, a hearing on the exceptions filed in the above-captioned matter was held before a three-member panel (“Panel”) of the MHIC. The Claimant was present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The Contractor was not present. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel’s review of the record was limited to the ALJ’s recommended decision and the exhibits introduced into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The ALJ correctly states in her decision that the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. *ALJ Proposed Decision* p. 10-11. In

order to recover from the Fund, the Claimant had to prove at the OAH hearing that he suffered an “actual loss that results from the act or omission by a licensed contractor.” Maryland Annotated Code, Business Regulation Article (“BR”), § 8-405(a). The ALJ found that the Claimant modified the contract in the middle of the job, telling the Contractor that he was not going to pay the second draw, and that if the Contractor could finish the siding and roof shingles the Claimant would finish the rest. *ALJ Proposed Decision* p. 7, 11. Because the Claimant had stopped the Contractor’s work in the middle of the job, the ALJ reasonably found that it was “impossible to determine whether any of the alleged defects were due to unworkmanlike or inadequate work, or simply the result of the Claimant examining a half-finished product, created at the Claimant’s insistence.” *ALJ Proposed Decision* p. 12.

The term “actual loss” is defined in the statute as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” BR § 8-401. Therefore, it is not only the burden of the Claimant to initially prove that the work done by the Contractor was either unworkmanlike, inadequate or incomplete, but in order to prove the amount of actual loss, the Claimant is also required to present evidence of what it would cost to restore, repair, replace or complete this work. Based on the evidence presented at the evidentiary hearing, the ALJ also found that the Claimant had paid the Contractor less than half of the total contract price, yet the Contractor had completed “at least half of the work that was itemized in the Contract.” *ALJ Proposed Decision* p. 12. The ALJ found that the Claimant failed to provide evidence as to the value of the work that was completed by the Contractor, nor did he provide evidence as to the expense that he incurred in completing the project. *ALJ Proposed Decision* p. 13.

On exceptions, the Claimant now tries to provide the evidence that the ALJ found lacking

at the evidentiary hearing. The Claimant attached to his written exceptions a number of documents that were not admitted into evidence at the hearing below. At the exceptions hearing, the Claimant was notified of the test to be met to admit additional evidence on exceptions found at Code of Maryland Regulations (“COMAR”) 09.01.03.09K, and given the opportunity to present argument as to why these additional documents should be admitted on exceptions. For the reasons stated on the record, the Panel denied the Claimant’s request to supplement the record with new evidence.

The Claimant’s opportunity to present his case was at the evidentiary hearing before the ALJ. The ALJ’s decision is thorough, supported by the evidence in the record and correct as a matter of law. The Panel does not find that the ALJ erred in her decision and therefore will not overturn it on exceptions.

Having considered the parties’ arguments, the evidence contained in the record, and the ALJ’s Recommended Decision, it is this 4th day of June 2019 ORDERED:

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

**Andrew Snyder**  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

IN THE MATTER OF THE CLAIM  
OF CARLTON PHILLIPS,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF GREGORY TYLER,  
T/A BUILDING ON THE ROCK, 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-02-18-13335  
\* MHIC No.: 16 (05) 337

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On December 21, 2017,<sup>1</sup> Carlton Phillips (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$34,670.00 in actual losses allegedly suffered as a result of a home improvement contract with Gregory Tyler (Respondent), trading as Building on the Rock, Inc. (Company).

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<sup>1</sup> There is a dispute over when the claim was filed. The Home Improvement Commission Guaranty Fund argued that the filing date is December 26, 2017. The Claimant, Carlton Phillips, has a United States Postal Service Priority Mail Express return receipt showing the claim was received by the Home Improvement Commission on December 21, 2017 at 9:26 a.m. (Fund Ex. 5). For reasons I will explain in more detail below, I find that the filing date is December 21, 2017.

I held a hearing on August 20, 2018 at The County Office Building, 1400 McCormick Drive, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing 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. 2018); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### **ISSUES**

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 MHIC Hearing Order, April 20, 2018
- Fund Ex. 2 Notices of Hearing, July 12, 2018 and May 30, 2018
- Fund Ex. 3 Home Improvement Claim Form, time stamped by MHIC December 26, 2017
- Fund Ex. 4 Department Licensing Registration and History for Gregory Tyler t/a Building on the Rock, Inc., July 12, 2018
- Fund Ex. 5 United States Postal Service Priority Mail Express Return Receipt, accepted by MHIC on December 21, 2017, also purchase receipt for Exp-1 Day domestic postal service, December 21, 2017
- Fund Ex. 6 Letter from Kevin Niebuhr, Investigator, MHIC to the Claimant, November 12, 2015

I admitted the following exhibits offered by the Claimant:

- Cl. Ex. 1 Contract between the Claimant and the Respondent, June 2, 2014, photocopies of two personal checks from the Claimant: (1) Check No. 2824, Pay to the Order of the Company for \$11,470.00, June 2, 2014, deposited on June 3, 2014; (2) Check No. 3134, Pay to the Order of Respondent for \$1,000.00, November 18, 2014, deposited on November 18, 2014
- Cl. Ex. 2 Engineering drawings, created by Daniel Hoke, undated
- Cl. Ex. 3 Photocopies of two checks from the Claimant: (1) Check No. 3134, Pay to the Order of Respondent for \$1,000.00, November 18, 2014, deposited on November 18, 2014;<sup>2</sup> (2) Sun Trust Official Check No. 4683060388, Pay to the Order of Respondent for \$3,000.00, October 21, 2014
- Cl. Ex. 4 Thirteen photographs of exterior and interior of Claimant's garage, undated
- Cl. Ex. 5 Five permits:
- (1) Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) RGW Permit for 14501 Thorpe Lane, Upper Marlboro, Maryland 20772 (Premises), to "Revise to remove 2<sup>nd</sup> story windows, change contractor," dated March 19, 2015, "final approved" September 23, 2015;
  - (2) Prince George's County DPIE Electrical Permit for the Premises, issued April 15, 2015, passed inspection on May 5, 2015 and July 8, 2015;
  - (3) Prince George's County DPIE, Permitting and Licensing Division, Building Plan Examination and Permit Application for the Premises, March 19, 2015;
  - (4) Prince George's County Department of Environmental Resources, Receipt for Misc. Residential Permit, March 19, 2015;
  - (5) Prince George's County Maryland, government website print out showing final inspection date of September 23, 2015 for Case Number 2112-2014-04, printed on September 22, 2015
- Cl. Ex. 6 Printed notes originally drafted by Claimant on his cellphone, December 18, 2014; Printed notes originally drafted by Claimant on his cellphone, undated, incomplete document
- Cl. Ex. 7 Timeline created by the Claimant to attach to his HIC Complaint, undated

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<sup>2</sup> The Check No. 3134 entered in both Cl. Ex. 1 and Cl. Ex. 3 is the same check.

Cl. Ex. 8

Eleven pages acquired by the Claimant when he researched the zoning requirements for the new garage on the Premises:

- (1) Two pages: hand-drawn sketches of the exterior of the property, undated
- (2) Seven pages: Untitled, undated pages from the Prince George's zoning code with handwritten notes
- (3) One page: Maryland Department of Assessments and Taxation print out showing information for the Premises, printed July 9, 2014
- (4) One page: Print out from PGAtlas (internal) – Advanced Mapping showing the latitude and longitude of the Premises, printed July 9, 2014

Cl. Ex. 9

Home Depot and Lowe's Receipts

- (1) November 30, 2013, \$38.10
- (2) April 1, 2014, \$65.53
- (3) October 13, 2014, \$5.87
- (4) December 17, 2014, amount is illegible
- (5) December 26, 2014, \$10.47
- (6) January 23, 2015, \$101.15
- (7) February 3, 2015, \$44.41
- (8) February 15, 2015, \$53.93
- (9) February 15, 2015, \$11.62
- (10) March 12, 2015, \$30.38
- (11) March 12, 2015, (\$-60.84)
- (12) March 23, 2015, \$153.28
- (13) March 24, 2015, \$22.99
- (14) March 25, 2015, \$72.27
- (15) March 30, 2015, \$69.99
- (16) April 6, 2015, (\$-113.91)
- (17) April 15, 2015, \$55.32
- (18) April 16, 2015, \$57.47
- (19) April 29, 2015, \$50.91
- (20) May 3, 2015, \$672.77
- (21) May 31, 2015, \$68.34
- (22) June 11, 2015, \$263.31
- (23) June 11, 2015, \$40.61
- (24) June 12, 2015, \$33.54
- (25) June 17, 2015, \$230.63
- (26) June 29, 2015, \$219.24
- (27) July 4, 2015, \$29.48
- (28) July 6, 2015, \$215.98
- (29) July 8, 2015, \$569.11
- (30) July 13, 2015, \$114.43
- (31) July 14, 2015, \$83.19

- (32) July 15, 2015, \$62.47
- (33) August 21, 2015, \$71.82
- (34) August 25, 2015, \$143.91
- (35) September 3, 2015, \$14.59
- (36) September 13, 2015, \$89.90
- (37) September 15, 2015, \$57.63
- (38) September 16, 2015, \$10.58
- (39) September 16, 2015, \$53.31
- (40) September 16, 2015, \$20.52
- (41) September 16, 2015, \$260.84
- (42) September 19, 2015, \$81.00
- (43) September 21, 2015, \$100.29
- (44) September 23, 2015, \$153.13
- (45) September 24, 2015, \$112.32
- (46) September 27, 2015, \$31.72
- (47) September 27, 2015, \$158.37
- (48) September 28, 2015, \$204.95
- (49) September 29, 2015, \$4.21
- (50) September 30, 2015, \$188.90
- (51) October 4, 2015, \$22.88
- (52) October 10, 2015, total is illegible
- (53) October 12, 2015, \$56.64
- (54) October 17, 2015, \$436.39
- (55) October 20, 2015, \$33.71
- (56) October 21, 2015, \$50.35
- (57) October 26, 2015, \$10.06

The Respondent did not offer any exhibits.

Testimony

The Claimant testified on his own behalf.

The Respondent testified and presented the testimony of Mr. Rusty Baltimore and Mr. Daniel Hoke.

The Fund did not present any witnesses.

## PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 4461610.
2. On June 2, 2014, the Claimant and the Respondent entered into a contract to build a two-story, 24 by 34 foot garage on the Premises. The contract contained the following line items: footing and excavation, block work, concrete slab, framing, drawing the plans and obtaining permits. The contract did not lay out specific tasks other than those mentioned above. Specifically, the contract did not address the installation of windows, doors, siding or electrical work. The contract likewise did not address timing.
3. The original agreed-upon contract price was \$34,412.00.
4. The Claimant paid the Respondent \$15,470.00 as follows:
  - \$11,470.00 on June 2, 2018
  - \$3,000.00 on October 21, 2018
  - \$1,000.00 on November 18, 2018
5. The project was delayed because Prince George's County initially denied the permit. The County required that the height of the building be changed in order for it to meet zoning requirements but the Claimant did not agree to change the height. The architectural designer, Mr. Hoke, was able to resolve the issue without changing the height by moving the location of the garage closer to the residential home on the Premises. The change moved the garage further into the slope of the property requiring three of the walls to be redesigned as retaining walls. These revisions extended the anticipated time that it would take to obtain the permit.

6. Between June, 2014 and December, 2014, the Respondent worked on the project. He completed drawing the plans and obtaining permits, pouring the slab, footing, excavation, and building the garage. He installed the siding and roof shingles on the exterior. The Claimant volunteered the use of some of his personal heavy machinery which the Respondent used.

7. During the course of the project, an inspector came to the Premises and required that a sump pump be installed. The Respondent dug a trench and installed the sump pump as required by the inspector, but did not charge any extra for that additional work.

8. On December 22, 2014, the Claimant told the Respondent that he was not going to provide the second draw. He told the Respondent that if the Respondent could finish the siding and roof shingles, the Claimant would complete the rest. The Claimant and Respondent shook hands and parted ways based on the Claimant's modification of the contract that terminated the continuation of the Contract as of that date.

9. At the time the Respondent left the job, the garage was complete except for: installation of windows and garage doors, painting, blockers,<sup>3</sup> bridging between the floor joists, building and installing the staircase, electrical work and grading. The Contract did not include the specific tasks of installing windows and garage doors, painting, electrical work and grading. Building and installing the staircase was a contemplated part of the initial project even though it was not in the written Contract.

10. On December 21, 2017, the MHIC received the Claimant's claim.

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<sup>3</sup> The Respondent testified that "blockers" are blocks of wood placed in between the long support boards supporting the second story floor. He testified that this was a minor task that would not take long to complete. He agreed that it might not have been completed at the time the Claimant modified the Contract. The Claimant produced a picture showing the blockers. (CL Ex. 4, pg. 2).

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

12. 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.

13. The Claimant has not taken any action against the Respondent other than the instant Claim.

14. The property where the Contract work was performed is the Claimant's primary residence and he does not own more than three homes.

## DISCUSSION

### Preliminary Issue

#### Timeliness of the Claim

The Business Regulation Article provides: "A claim shall be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage." Md. Code Ann., Bus. Reg. § 8-405.

Under Maryland law, the "discovery rule" applies with respect to limitations of actions. *See Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435 (2000); *Poffenberger v. Risser*, 290 Md. 631 (1981). Pursuant to the discovery rule, the cause of action accrues when the claimant in fact knew, or reasonably should have known, of the wrong. In using the phrase "discovered, or, by use of ordinary diligence, should have discovered the loss or damage," the statute of limitations for the filing of a claim against the Fund specifically incorporates the discovery rule. Therefore, the cases that discuss the application of that rule in civil actions are instructive.

In *Lumsden*, the Court of Appeals affirmed that the statute of limitations begins to run at the time that a problem was discovered, not from the date of a determination of what caused the problem. *See also, Sisters of Mercy of Union in U.S. of America v. Gaudreau, Inc.*, 47 Md. App. 372 (1980). Specifically, the Court of Appeals in *Lumsden* stated,

Thus, the clock for a statute of limitations begins to run when a claimant gains knowledge sufficient to put him or her on inquiry notice. From that date forward, a claimant will be charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation.

*Lumsden*, at 447.

Generally speaking, the Maryland courts have strictly construed statutes of limitation and when they may be tolled. Barring an exception specifically expressed in a statute of limitations rule, the courts have been unwilling to allow any “implied or equitable exceptions to be engrafted upon it.” *Booth Glass v. Huntingfield Corp.*, 304 Md. 615, 623 (1985); *Walko Corp. v. Burger Chef Systems*, 281 Md. 207, 211 (1977). Citing *Booth Glass*, the Court of Appeals, in *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 333 (1994), stated:

We have long maintained a rule of strict construction concerning the tolling of the statute of limitations. Absent legislative creation of an exception to the statute of limitations, we will not allow any “implied and equitable exception to be engrafted upon it.” (Citations omitted).

The Fund sought dismissal of the claim as time barred. I disagree with the Fund that this Claim is barred by the applicable three-year statute of limitations. The Claimant, Respondent and Mr. Hoke testified credibly that the Claimant was very involved in the entire process of designing and building the garage. The Respondent characterized the Claimant’s involvement as “micromanaging.” Because the Claimant was so involved, the timeframe in which he “knew or reasonably should have known” about the alleged defects in the Respondent’s workmanship cannot be extended beyond the time that the Respondent was doing work on the garage. The most reasonable time from which to start the clock on the statute of limitations is the last day that

the Respondent performed work on the garage: December 22, 2014. Therefore, to be timely, a claim would have to be filed with the HIC by December 22, 2017. The Fund agrees that the claim had to be filed by December 22, 2017, but the Fund contends that the Claim was filed with the MHIC on December 26, 2017 when it was time-stamped by the MHIC. The Claimant produced a postal receipt showing that the Claim was received and signed for by the MHIC on the morning of December 21, 2017 at 9:26 a.m. The Fund did not explain why the Claim sat with the MHIC for five days before being time-stamped, but I find no reason why the Claimant should be penalized for the MHIC's clerical delay. The date the Claim was received, and not the date it was finally given a time-stamp, is the date of the Claim and therefore, the Claim is not barred by the applicable three-year statute of limitations.

#### Merits of the Claim

A claimant bears the burden of proof, by a preponderance of the evidence, that the claimant 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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation. Although the Fund argued that the case should be dismissed due to the Claimant’s failure to timely file the Claim, the Fund argued that, in the alternative, the Claim should be denied due to the Claimant’s failure to prove eligibility for compensation.

The Respondent was a licensed home improvement contractor at all times relevant to his relationship with the Claimant. The parties signed the Contract on June 2, 2014, and the Respondent performed work in June through December, 2014. The Respondent performed work under the contract consistent with its terms.

The Claimant modified the contract before it was completed and did not provide a clear reason as to why. The Claimant was unhappy with the pace of the project. The initial delay was caused by an unforeseen zoning problem created by Prince George’s County’s disapproval of the Claimant’s planned height of the structure. The Respondent addressed the problem and worked with the architectural designer, Mr. Hoke, to have it resolved to the Claimant’s satisfaction. The delay was not the fault of the Respondent. The Respondent testified, and Mr. Baltimore corroborated, that a large amount of rainfall also caused some delay which was likewise not the fault of the Respondent. The Claimant did not provide any evidence of an unreasonable delay.

Further, the Claimant did not provide any evidence that he modified the Contract due to unworkmanlike or inadequate work. The Claimant testified that he did not notice defects such as missing nails and gaps in the siding until after he had already modified the Contract. Additionally, the Claimant testified that he did not tell the Respondent about his dissatisfaction because his “focus was to get it completed.” The Claimant modified the Contract with the

Respondent before the work was completed and without giving the Respondent an opportunity to finish the work or to remedy those items that the Claimant alleges were deficient. Without more, it is impossible to determine whether any of the alleged defects were due to unworkmanlike or inadequate work, or simply the result of the Claimant examining a half-finished product, which was the result of the modified contract, created at the Claimant's insistence.

At the time the Claimant modified the Contract, a substantial portion of the primary garage structure was completed, yet the Claimant had only paid one of three installments, and an additional \$4,000.00 to the Respondent. The total paid was less than half of the total Contract price. From the evidentiary record, it is clear that the Respondent completed at least half of the work that was itemized in the Contract. At the time the Contract was modified, there was a two-story garage with cement foundation on the Premises that had not been there when the Respondent started work in June 2014. The work that remained at the time the Claimant modified the Contract (installation of windows and garage doors, painting, blockers, bridging between the floor joists, building and installing the staircase, electrical work and grading) was not specified by line items in the Contract. The Respondent testified that "the hard work was done." The Respondent's testimony was credible. He was candid about what work was completed and what was not completed. He went through the photographs provided by the Claimant and testified that the majority of the items pointed to by the Claimant as incomplete were in fact items that were not complete at the time the Claimant modified the Contract. Mr. Baltimore corroborated the Respondent's testimony about the circumstances that led to the Claimant modifying the Contract.

The Claimant did not provide any evidence as to the value of the work that was completed by the Respondent. Likewise, he did not provide any evidence as to the expense he incurred in completing the project after modifying the Contract with the Respondent. The only monetary evidence provided by the Claimant was the receipts from Home Depot and Loews. The receipts include purchases as early as November 30, 2013, seven months prior to the execution of the Contract, and as late as October 26, 2015, which is several months after Mr. Baltimore testified to seeing the completed garage. Without further proof tying the Home Depot and Loews receipts to this particular project, and more specifically, to the specific items set forth in the contract document, I find that they are not helpful in establishing any expense incurred by the Claimant in relation to this Claim.

The Claimant modified the Contract before it was completed. Over the course of six months, the Respondent performed work under the Contract for which he was compensated less than half of the total contract price. The Claimant failed to prove that the Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Claimant failed to show that the value of the work completed by the Respondent at the time the Claimant modified the Contract was less than the total paid to the Respondent by the Claimant.

I thus find that the Claimant is not eligible for compensation from the Fund.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not demonstrated that he has sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

**Signature on File**

November 7, 2018  
Date Decision Issued

\_\_\_\_\_  
Alecia Frisby Trout  
Administrative Law Judge

AFT/sw  
# 175545