

**The Maryland Home  
Improvement Commission**

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**BEFORE THE  
MARYLAND HOME IMPROVEMENT  
COMMISSION**

**v. Glenn Mason  
t/a Good News Improvements, Remodeling  
& Handyman Service, LLC  
(Contractor)**

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**MHIC No.: 16 (05) 884**

**and the Claim of  
Robert Tubbs  
(Claimant)**

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**FINAL ORDER**

**WHEREFORE, this 21<sup>st</sup> day of February 2017, Panel B of the Maryland Home**

**Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated November 17, 2016 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated November 17, 2016 are AFFIRMED.**
- 3. The Proposed Order dated November 17, 2016 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date.**
- 5. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

*Joseph Tunney*  
**Joseph Tunney, Chairperson  
PANEL B**

**MARYLAND HOME IMPROVEMENT COMMISSION**

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IN THE MATTER OF THE CLAIM  
OF ROBERT N. TUBBS,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF GLENN MASON,  
T/A GOOD NEWS IMPROVEMENTS,  
REMODELING AND HANDYMAN  
SERVICES, LLC,  
RESPONDENT

\* BEFORE MICHAEL R. OSBORN,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: DLR-HIC-02-16-13731  
\* MHIC No.: 16 (05) 884  
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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 March 24, 2016, Robert N. Tubbs (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,285.00 in alleged actual losses suffered as a result of a home improvement contract with Glenn Mason, trading as Good News Improvements, Remodeling and Handyman Services, LLC (Respondent).

I held a hearing on August 2, 2016 at the County Office Building in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> James N. Lewis, Esq., represented the Claimant. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or someone to represent him, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

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); COMAR 09.01.03; COMAR 09.08.02.01B; 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 have attached a complete Exhibit List as an Appendix.

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<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

<sup>2</sup> On June 13, 2016, the Office of Administrative Hearings (OAH) mailed three Notices of the hearing to the Respondent to addresses provided by the MHIC, by certified mail. COMAR 09.08.03.03A(2). One was returned to the OAH as undeliverable as addressed. One Notice was returned to the OAH, unclaimed. One Notice was signed for as received on June 24, 2016.

## Testimony

The Claimant testified in his own behalf and presented the testimony of:

1. Janet L. Tubbs, his wife
2. Jason Johnson, Good Measure, LLC, accepted as an expert in Home Improvement Contract Work

No other witnesses testified.

## **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 4564579.<sup>3</sup>
2. On or about April 2015, the Claimant and the Respondent met at the Claimant's home to discuss renovation of a bathroom in the Claimant's home. Following this meeting, the Claimant provided product descriptions or website links to the Respondent for fixtures the Claimant had selected for the bathroom, such as a pedestal sink, a toilet, shower fixtures and faucets, cabinetry, light fixtures, towel rods, and glass shower enclosure hardware. The Claimant and the Respondent met a second time at the Respondent's home to discuss the scope of work. During the discussions with the Claimant, and after assessing the work to be done, the Respondent represented to the Claimant that the renovation could be done in two weeks. All fixtures and material to complete the project were to be supplied by the Respondent, as selected by the Claimant.
3. On May 16, 2015, the Claimant and the Respondent entered into a contract to renovate the bathroom. The contract stated that work would begin as early as ten business days

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<sup>3</sup> The Respondent's MHIC license number in MHIC records is different than the MHIC number the Respondent used on the contract with the Claimant. The business address on file with the MHIC is also different than the business address used by the Respondent on the contract with the Claimant.

from the signed contract and receipt of a deposit. The agreed-upon contract price was \$15,338.23.

4. The Claimant paid the Respondent, as follows:

- May 18, 2015 \$5,100.00
  - June 2, 2015 \$5,100.00
  - June 12, 2015 \$2,500.00
  - June 26, 2015 \$1,500.00
- Total \$14,200.00

5. Work began under the contract on June 2, 2015.

6. The Claimant's home is in Laurel, Maryland, and the Respondent's principal place of business was in Sykesville, Maryland.

7. By early July 2015, the Claimant or his wife, Janet, had pointed out to the Respondent several issues relating to poor quality of the work the Respondent was performing. The Claimant or his wife also pointed out several instances when fixtures staged in the Claimant's garage, such as the pedestal sink, did not match the fixtures the Claimant had selected. The Claimant or his wife also found items in the garage, such as a water seal for a shower water supply mixing valve, in its unopened packaging, despite the fact the shower mixing valve was installed and the Respondent had already installed ceramic tile over the shower water supply mixing valve. The Claimant or his wife also inquired about these discoveries.

8. Work on the bathroom renovation was slow. The Respondent seldom worked at the Claimant's home and often sent a worker named Donny, who worked on the renovation as little as one day a week.

9. On July 20, 2015, the Claimant's wife sent the Respondent several photographs of incomplete or inadequate work, and requested the Respondent meet with her and the Claimant before proceeding with the work. These photos depicted:

- A toilet water supply line protruding through a bead board wall, connected to the toilet with no escutcheon to cover the hole in the bead board
- A wide joint in the shower wall trim tile
- Shower tile that tapered as it descended down the line of the wall because the new wall on which it was installed was not square
- A toilet installed at an angle to the wall behind it, instead of square to the wall
- A bulge in a section of drywall that the installer had tried to repair with drywall compound, without effect
- Shower wall and trim tile installed with irregular spacing, with large amounts of grout in wider spaces
- Irregular spacing between the shower wall and the door frame, with a space visibly wider at the top than the bottom, the result of framing the shower wall out of square

10. On July 24, 2015, the Claimant's wife sent the Respondent several photographs and told the Respondent that she and the Claimant were not happy with the work performed.

These photos depicted:

- Irregular gaps in tile spacing, with excessive grout used in wider spaces
- Wood trim that was cut short and which a worker had filled with one-half inch and three-quarter-inch pieces to reach the corner
- Wood trim that was cut short and in which a worker had used excessive amounts of caulk as fill material
- Wood trim that was higher in the corner on one side than the corner it met
- Excessive amounts of fill material to cover a crack in a shower wall tile
- Numerous irregularities in the spacing between wall and shower wall tile
- Finish trim that was short, leaving a gap at the end

11. On July 26, 2015, the Respondent replied to the Claimant's wife's e-mail that he had been out of town, that he would be spending time with his family in the upcoming days, that he was watching his children while his wife was away, and that he would try to give her a call.

The Respondent did not call.

12. On August 11, 2015, the Claimant's wife sent the Respondent a list of items she and the Claimant wanted the Respondent to address. The list included:

- Shower wall tile and the off-center location of the shower head
- A mismatched entry door that was not the same as other doors in that part of the Claimant's home
- An entry door that entered into the room from the wrong side, making entry into the bathroom awkward and causing the entry door handle to make contact with the shower glass enclosure when the entry door was opened
- Entry door trim casing that was improperly installed
- Numerous gaps and irregularities in finished surfaces that had been filled with excessive amounts of grout, caulk or spackling

13. On September 3, 2015, the Claimant and the Respondent had a telephone conversation. The Claimant followed this conversation with an e-mail that requested the Respondent personally attend to all of his concerns and personally complete the work. The Claimant also requested the Respondent tell him when the Respondent would resume work on the project.

14. Over a course of months, the Claimant purchased a pedestal sink, faucets for the sink, and towel rods at his expense because the Respondent was unresponsive to his complaints that the sink, faucets, and towel rods were wrong.

15. The Claimant or his wife engaged in a months-long e-mail exchange with the Respondent, in each e-mail inquiring when the several problems they had identified would be corrected, and when they could expect the work on the contract would be complete.

16. When, and if, the Respondent replied to any of the Claimant or his wife's e-mails, he requested clarification of the problem, or explained that the physical distance between Laurel and Sykesville made addressing the Claimant's or his wife's complaints difficult as he would have to spend more time in transit than addressing the complaint. The Respondent also sent



replies that explained the unavailability of fixtures, faucets, or towel rods that Claimant had selected as the reason for delay.

17. On November 21, 2015, the Claimant sent the Respondent an e-mail in which he asked the Respondent when he was going to finish the bathroom renovation. On the same day, the Respondent sent the Claimant an e-mail in which he stated that everything was complete. The Claimant later responded that he and his wife would be sending the Respondent a punch list.

18. On December 1, 2015, the Claimant's wife sent the Respondent an itemized list of thirty items that she and the Claimant wanted the Respondent to repair.<sup>4</sup> On December 5, 2015, the Claimant's wife added four additional items to the list. The Respondent did not address any of the items on either the December 1, 2015 or the December 5, 2015 list.

19. Although the Respondent considered the bathroom renovation to be complete, the work was unworkmanlike or incomplete, as follows:

- The plumbing supply lines that fed the shower head were a cobbled-together mismatch, with copper supply lines improperly connected to plastic supply lines. Some runs of supply line include a pressure fitting, a plastic pipe union threaded to a brass union, and a plastic pipe cement union all in the space of one foot of supply line. The water supply lines were also installed in a very inefficient manner, with numerous bends, joints, and connectors, thus increasing the risk of future failure. No water seal or barrier was used behind the shower water supply control. Long screws were used, along with rough pieces of scrap wood, as wedges to hold plumbing supply and plumbing drain lines in place behind the shower wall;
- The shower head supply line was not properly affixed to the wall behind the shower, which allowed play in the shower head;
- The shower enclosure framework was out of square by approximately two inches over a vertical distance of eight feet, which resulted in numerous adjustments such as tapered tile and wide grout lines in the shower walls and floor to compensate for framing errors;
- Several trim pieces, and several horizontal surfaces were not level;

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<sup>4</sup> The list also included complaints that failure to use a dust barrier had allowed a fine layer of drywall dust to cover the Claimant's entire home, that the renovated bathroom was not clean, that a hose from the Claimant's shop-vac was missing, and that the job took six months. Earlier complaints mentioned that the Respondent had allowed debris to accumulate for several months without any effort to remove it.

- Towel bars were not level;
- The entry door was hung from the wrong side of the door frame;
- Entry door trim casing was ripped down its length to a taper to fit, and the vertical ripped surface was not sanded or painted before it was installed;
- The main drain line for the toilet was too tall, and the toilet drain line flange was too high, which did not allow the toilet to be properly seated on the floor and caused it to rock when used;
- The shower door was hung in the wrong place, with the result that the entry door casing had to be notched to accommodate the shower door hinge;
- Short pieces of trim, or excessive amounts of caulk, spackling or other measures were used on almost every surface of the bathroom to hide imperfections;
- The electrical supply box for the fixture over the sink and mirrored medicine cabinet was not moved up the wall closer to the ceiling. The result was a mirror over the sink that the Claimant had to duck to use because the top of the mirror was at his mid forehead. In addition, the downward-hanging sconces for the light fixture over the sink and medicine cabinet were so low that to change a light bulb, the Claimant had to remove the medicine cabinet. The medicine cabinet also affected the light in the room because the light from the bulbs reflected directly off the top of the medicine cabinet;
- The shower head and shower faucet were not centered on the shower wall, and were not aligned vertically with each other;
- The shower enclosure was built with an approximately eight-inch curb over which a person using the shower must step. The curb was faced with square black tiles with horizontal grout lines that were completely out of alignment, left to right. Near the top of the curb there was a three-quarter inch gap in the tile, behind which was visible an accumulation of dried fill material that has fallen out of place. There was nothing behind this fill material. At the corner of the curb there was a vertical grout line less than one-half inch wide at the bottom and approximately three-quarter inch wide at the top. The wide, though tapered, grout line compensated for the out-of-square curb and also compensated for facing tile that was too small to reach the end of the tiled surface.
- Several pieces of trim casing were roughly-cut flush-cuts at the ends, such as the window sill and the skirt trim under the window sill.

20. The only way to repair the Respondent's unworkmanlike work was to completely tear out the work and start over. The shower stall was not square, the plumbing work was faulty and of overall poor quality, wall and floor tile was cut at odd and irregular angles to correct for corners that were not square, grout lines were irregularly wide at several locations or were not aligned, and the toilet flange was so high the tile floor had to be removed and re-laid.

21. The Claimant paid Good Measure, LLC, \$16,733.31 to repair the Respondent's unworkmanlike work.

22. The Claimant has thus far paid \$14,200.00 to the Respondent and \$16,733.31 to Good Measure, LLC, for a total of \$30,933.31 to renovate the bathroom in his home.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[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 (3rd. ed. 2000)).

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); *see also* COMAR 09.08.03.03B(2) ("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.

In addition, an owner must prove that at all relevant times: (a) the owner owned fewer than three dwelling places; (b) the work at issue concerned the owner's personal residence in Maryland; (c) 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; (d) the work at issue did not involve new home construction; (e) the owner did not

unreasonably reject the contractor's good faith effort to resolve the claim; (f) any remedial work was done by licensed contractors; (g) the owner complied with any contractual arbitration clause before seeking compensation from the Fund; (h) 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 (i) 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(c), (d), (f), and (g) (2015), 8-408(b)(1) and (2).

The Claimant satisfied each of the above elements. The Respondent was a licensed home improvement contractor, and the work concerned installation of a bathroom renovation at the Claimant's primary residence. The Respondent entered into a home improvement contract with the Claimant. In addition, the Claimant owned fewer than three dwelling places, the parties were neither related nor associated in business, the Claimant was not contractually obligated to arbitrate the claim, the Claimant did not file any other action to recover for the Respondent's acts or omissions, and the Claimant filed his Claim within three years of the date of the Contract. In addition, as discussed below, the Claimant proved that the Respondent's installation was unworkmanlike. The claimant also demonstrated that the remediation was performed by a contractor licensed by the MHIC.

The quality of the Respondent's work was terrible – that is to say, exceptionally unworkmanlike. The Claimant called an expert witness to testify about the poor quality of the work, and his testimony was not contested. Claimant's exhibits 25, 26, 30, 30a, and especially Claimant's exhibits 31, 32, and 34 demonstrate, in an undeniable way, the exceptionally poor quality of the Respondent's work. Claimant's exhibit 38 shows what the work should have looked like if the Respondent did the work correctly.

The Fund argued that the claim should be paid.

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

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. 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).<sup>5</sup>

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). Thus, the maximum recovery under the Business Regulation Article is \$14,200.00, the amount the Claimant paid the Respondent.

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

I conclude that the Claimant has sustained an actual and compensable loss of \$14,200.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

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<sup>5</sup> Amount paid to Respondent, \$14,200.00, plus amount paid for remediation, \$16,733.31, minus the original contract price, \$15,338.23, equals \$15,595.08.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$14,200.00; 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;<sup>6</sup> and

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

**Signature on File**

October 4, 2016  
Date Decision Issued

Michael R. Osborn  
Administrative Law Judge

MRO/sm  
#163754

<sup>6</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

IN THE MATTER OF THE CLAIM	* BEFORE MICHAEL R. OSBORN,
OF ROBERT N. TUBBS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-16-13731
FOR THE ALLEGED ACTS OR	* MHIC No.: 16 (05) 884
OMISSIONS OF GLENN MASON,	*
T/A GOOD NEWS IMPROVEMENTS	*
REMODELING AND HANDYMAN	*
SERVICES, LLC,	*
RESPONDENT	*

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**APPENDIX**

**Fund Exhibits:**

1. Notice to Legal Services, Undeliverable Mail, July 19, 2016
2. Notice to Legal Services, Undeliverable Mail, June 21, 2016
3. Notice to Legal Services, Unclaimed Mail, June 9, 2016
4. Maryland Motor Vehicle Administration Driving Record Information, February 25, 2016
5. HIC Address for the Respondent
6. Letter from the DLLR to the Respondent, April 1, 2016

**Claimant's Exhibits:<sup>7</sup>**

1. Contract, May 16, 2015
2. E-mail from Mrs. Tubbs, May 16, 2015
3. E-mail from Mrs. Tubbs, November 4, 2015
4. Building Permit
5. Good Measure contract, May 31, 2016
6. Complaint Form, January 9, 2016

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<sup>7</sup> All e-mails listed are between the Claimant, his wife, and the Respondent.

7. E-mail from the Claimant, with attached photos, July 20, 2016
8. All Clear Plumbing & Drain Services invoice, date illegible
9. E-mail from Mrs. Tubbs, July 19, 2015
10. E-mail from the Claimant, with attached photos, July 24, 2015
11. E-mail from Mrs. Tubbs, July 27, 2015
12. Three (3) photos
13. E-mail from Mrs. Tubbs, August 11, 2015
14. E-mail from Mrs. Tubbs, August 16, 2015
15. E-mail from Mrs. Tubbs, August 17, 2015
16. E-mail from the Claimant, with attached photos, August 18, 2015
17. E-mail from the Claimant, September 3, 2015
18. E-mail from the Respondent, forwarded on September 15, 2015
19. E-mail from the Respondent, October 31, 2015
20. E-mail from the Respondent, November 3, 2015
21. E-mail from Mrs. Tubbs, November 3, 2015
22. Not admitted
23. E-mail from the Respondent, November 21, 2015
24. E-mail from Mrs. Tubbs, November 24, 2015
25. Thirteen (13) photos
26. Seven (7) photos
- 26a. Three (3) photos
27. One photo
28. One photo
29. Two (2) photos
30. Four (4) photos
- 30a. Two (2) photos
31. Two (2) photos
- 31a. One photo
32. Two (2) photos
- 32a. One photo
33. Five (5) photos
34. Two (2) photos
- 34a. One photo
35. One photo
36. One photo
37. One photo
38. One photo

**Respondent's Exhibits:**

No documents were admitted on the Respondent's behalf.



**PROPOSED ORDER**

***WHEREFORE, this 17th day of November, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**

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