

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE MICHAEL R. OSBORN,</b>
<b>OF LEIGH A. PRACHT,</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>* OAH No.: DLR-HIC-02-16-13744</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>* MHIC No.: 16 (05) 920</b>
<b>OMISSIONS OF GLENN MASON,</b>	<b>*</b>
<b>T/A GOOD NEWS IMPROVEMENTS,</b>	<b>*</b>
<b>REMODELING AND HANDYMAN</b>	<b>*</b>
<b>SERVICE LLC,</b>	<b>*</b>
<b>RESPONDENT</b>	<b>*</b>

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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 April 8, 2016, Leigh A. Pracht (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$22,295.09 in alleged actual losses suffered as a result of a home improvement contract with Glenn Mason trading as Good News Improvements, Remodeling and Handyman Service LLC (Respondent).

I held a hearing on October 31, 2016, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented himself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent was not present. 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 Department's hearing regulations, the MHIC hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); 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.

#### **Testimony**

The Claimant testified in his own behalf and presented the testimony of Ryan Kigin, who was qualified as an expert in Home Improvement and Contracting.

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<sup>1</sup> All references to the Business Regulation Article are to the 2015 volume.

<sup>2</sup> Notice of the hearing was mailed to the Respondent at his address of record, by certified mail on July 27, 2016. COMAR 09.08.03.03A(2). The certified mail receipt was signed as received on August 5, 2016, with a notation reflecting the Respondent's address had changed. See HIC Exhibit 1.

No one testified on behalf of the Respondent.

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 131659.

2. On December 3, 2015, the Claimant and the Respondent entered into a contract (the contract) to make improvements to the Claimant's home, as follows:

#### **Exterior**

- to remove and replace a garage door;
- to remove a storm door and to replace it with a door supplied by the Claimant;
- to remove and replace the brick molding around the garage door; and,
- to remove and replace the lauan around the existing hot tub, and install a door to the hot tub, including removal and replacement of siding as required.

#### **Master Bathroom**

- to demolish the tub, shower and shower wall;
- to install a toilet, shower with frameless shower enclosure, double vanity with granite top, backsplash, sinks, faucets and mirrors;
- to install several storage cabinets and a medicine cabinet;
- to move electric supply lines and install new sconces;
- to install and finish drywall as needed;
- to install a granite top trim on the knee wall;
- to install a ceiling fan supplied by the Claimant;
- to construct and install a new shower enclosure, including all plumbing supply lines and shower fixtures;
- to install all wall, floor, and decorative tile; and,
- to install a new bathtub, with fixtures, including moving plumbing supply lines as needed.

#### **Hall Bathroom**

- to demolish the tub, shower, and shower wall;
- to install floor tile up to forty square feet, to install tile in the shower up to seventy square feet, and to install twenty feet of bullnose tile;
- to install a new toilet;
- to install a forty-eight inch vanity, sink, granite top and fixtures;
- to install a ceiling fan supplied by the Claimant;
- to install a 3/8" thick glass bypass shower door;
- to paint the ceiling;
- to install a triple-sconce light, including relocating the electric supply;

- to remove and replace a medicine cabinet;
- to install a mirror; and,
- to install baseboards and quarter-round trim.

3. The original agreed-upon contract price was \$26,949.56. The Respondent represented that all work under the contract would be done in six weeks. However, the contract did not include any specific start date or completion date.

4. The contract required the Claimant to make payments to the Respondent, as follows:

- \$9,000.00 as a deposit;
- \$9,000.00 when materials are delivered, or on the first day any work is performed under the contract;
- \$2,000.00 per week, payable each Thursday for three consecutive weeks; and,
- any remaining balance on the day all work is complete.

5. On December 17, 2015, the Claimant and the Respondent entered into a modification of the contract. Most of the terms of the contract remained in place, with the exception of the following items:

- install less expensive toilet for master bathroom; (-\$99.75)
- increase in cost of double vanity, top and fixtures in master bathroom (+\$200.00);
- install master bath medicine cabinet supplied by Claimant instead of Respondent (-\$79.80);
- install less expensive toilet in hall bath (-\$99.75);
- increase cost of vanity, bowl and faucets in hall bath (+\$100.00);
- paint walls and ceiling (instead of just the ceiling) in hall bath (+\$73.15);
- install hall bath medicine cabinet supplied by Claimant instead of Respondent, (-\$79.80); and,
- install new soaking tub in hall bath, with diverter and trim (+\$1,263.50).

6. The December 17, 2015 modification of the contract brought the total cost the contract to \$28,666.06. The modification of December 17, 2015, acknowledged that the Claimant had made two payments of \$9,400.00 each to the Respondent. The

modification also recited that three draw payments of \$2,100.00 each would be due from the Claimant on Thursday of each week, except the week of Christmas.

7. The Claimant paid the Respondent, as follows:

- December 4, 2015 - \$9,400.00
  - December 15, 2015 - \$9,400.00
  - December 16, 2015 - \$2,100.00
  - January 2, 2016 - \$2,100.00
- \$23,000.00

8. On December 14, 2015, the Respondent and two laborers began, but did not complete, demolition of the hall bath. The Respondent explained that his mother was ill, and that he was going through a separation from his wife, as the reasons why he was unable to work full days on the contract.

9. The Claimant purchased the following items for installation by the Respondent, as was called for under the contract. The Respondent installed two bath fans, and the entry door, and did so in a workmanlike fashion. The Respondent did not install the medicine cabinets.

- Entry door with pet door - \$ 395.40
  - Master bath medicine cabinet - \$ 161.10
  - Hall bath fan - \$ 141.20
  - Master bath fan - \$ 168.54
  - Hall bath medicine cabinet - \$ 152.10
- \$1,018.34

10. The Respondent explained to the Claimant that the initial deposit was to be used by the Respondent to purchase major renovation items such as bathtubs, toilets, vanities, sinks, shower enclosures, and fixtures. From December 15, 2015 through the end of the month, the Claimant tried, without success, to find out from the Respondent when several large fixtures such as bathtubs, vanities, sinks, faucets, mirrors and items such as tile and paint would be delivered to his home for installation. The Claimant, frustrated by the Respondent's lack of response to such inquiries, did some personal investigation. For example, on December 17, 2015, the

Claimant went to a nearby Home Depot to check stock levels of toilets he had selected. The Claimant found several of the toilets described in the contract in stock, but was told the following day by the Respondent that the same Home Depot was out of stock for these toilets.

11. In response to the Claimant's continuing inquiries about poor progress, the Respondent provided several excuses ranging from flat tires to stock shortages to family either arriving for the holidays or leaving for the holidays. The Respondent repeatedly assured the Claimant that he would be working on the project with a crew the following day, but neither the Respondent nor a labor crew arrived as promised. On occasion the Respondent sent text messages to the Claimant asking the Claimant to be home at a particular time of day to go over the contract, but failed to be at the Claimant's home at the agreed-upon time. The Respondent repeatedly sent text messages to the Claimant that various cabinets, tubs, sinks, or other items to be installed had arrived, but the Respondent never delivered the items that he claimed had "arrived" to the Claimant's home.

12. In December 2015, when any workers arrived at the Claimant's home, they arrived as late as 10:00 a.m., only to shortly thereafter break for lunch, then not return to do any more work.

13. On December 18, 2015, the Respondent laid floor tile in the Claimant's hall bath before the bathtub was installed. The floor tile was laid too soon.

14. On or about December 20, 2015, two bath vanities arrived for installation in the hall bath, one of which was the wrong product.

15. On December 30, 2015, the Respondent texted the Claimant to tell him that all of the master bath components had been purchased, which included a new bathtub, new toilet, new vanity and sink, new hardware, and all floor and wall tile. On the same date, the Claimant

responded, urging the Respondent to make progress as the Claimant and his wife were without the use of either the master bath or the hall bath.

16. Three of the items described in the Respondent's text message of December 30, 2015 were delivered to the Claimant's home. The Respondent delivered a tub for the master bathroom, which cost \$1,149.00, a heater for the tub, which cost \$199.00, and an unknown amount of tile of an unknown cost. All of the tile had to be demolished and removed by another contractor and later repurchased. Thus, the value of items purchased by the Respondent with funds supplied by the Claimant, and which remained available for installation by another contractor, was \$1,348.00 ( $\$1,149.00 + \$199.00$ ) (no credit for unknown tile that had to be demolished, repurchased, and reinstalled).

17. On January 2, 2016, the Respondent visited the Claimant and told the Claimant that another "labor draw" was needed for any further work to be done. The Respondent requested the Claimant issue a check to him, personally, instead of making a check payable to "GNI Contracting" in order to make cashing the check easier. The Claimant issued the requested check in the amount of \$2,100.00.

18. On January 2, 2016, the Claimant and the Respondent executed a written understanding that no more payments would be made by the Claimant to the Respondent unless significant progress was made on the contract. The written understanding also acknowledged that any final payment due the Respondent would be adjusted for items purchased by the Claimant that the Respondent was supposed to purchase under the contract.

19. On an unknown date in December 2015 or January 2016, the Claimant purchased a glass shower surround from Mt. Airy Glass, at a cost of \$2,360.00,<sup>3</sup> to be used by the Respondent. The Claimant purchased this item with the expectation the Respondent would reduce the amount owed under the contract by an equivalent amount.<sup>4</sup>

20. During the dates of January 10, 2016, through January 12, 2016, because no work had been done on the contract, the Claimant made several inquiries of persons familiar with the Respondent, including his estranged wife (who answered the Respondent's cell phone when the Claimant called), an uncle (who called the Claimant), and laborers who had done work under the contract at the Claimant's home. Through these inquiries, the Claimant was told that the Respondent had suffered a heart attack and was in the hospital (which the Claimant confirmed, in part, by calling the hospital to inquire if the Respondent was hospitalized there), had totaled his work truck, and had relapsed and was again using drugs. The Claimant performed a judiciary case search and learned that the Respondent had a history of convictions for larceny. In response to his inquiries and discoveries, the Claimant changed all the locks on the entry doors to his home as the Respondent had keys to these locks, at an expense of \$548.02.

21. On January 17, 2016, the Respondent sent a text message to the Claimant in which he offered to complete the work on the contract. In this text message the Respondent explained that the correct vanity had arrived for the hall bath, that all granite had been paid for except for \$200.00, that no vanities for the master bath had been ordered, that the hall bath and master bath shower supplies had not been ordered, and that he needed money to pay his workers.

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<sup>3</sup> The Claimant did not have a receipt for this purchase to offer as an exhibit. The Claimant and the Fund counsel conferred off the record, following which the Claimant and the Fund stipulated that the Claimant incurred this expense for this item.

<sup>4</sup> On the Home Improvement Claim Form of April 5, 2016, Claimant's Exhibit 1, the Claimant entered a claim amount of \$22,295.09. I permitted the Claimant to revise his claim by \$2,360.00 to \$24,655.09.



The Respondent refused to identify the fabrication shop or company where the granite work was being done, and would not provide to the Claimant any invoices or receipts for materials the Respondent claimed had been purchased. The Respondent also evaded the Claimant's questions as to when he would resume work if the Claimant allowed him to do so.

22. On January 18, 2016, in the presence of a Carroll County Sheriff's Deputy, the Claimant allowed the Respondent to gather his tools from the Claimant's home. This is the last date the Claimant had any contact with the Respondent.

23. From January 20, 2016 through February 26, 2016, the Claimant paid \$7,261.81 for renovation supplies for the master bathroom and hall bathroom in the home.<sup>5</sup> The Claimant purchased these supplies in anticipation of hiring a contractor other than the Respondent to complete the renovations in his home.

24. The Respondent performed the following work under the contract:

• Master bath demolition -	\$1,090.35 (which had to be redone)
• Install master bath fan -	\$ 99.75
• Hall bath demolition -	\$ 498.75 (which had to be redone)
• Purchase/install hall bath toilet	\$ 498.75 (which had to be removed to demolish and reinstall the tile floor beneath it)
• Tile hall bath floor -	\$1,901.90 (which had to be demolished and reinstalled)
• Install hall bath fan -	\$ 99.75
• Install hall bath tub with trim	\$1,263.50 (which had to be removed and reinstalled to effect repairs)
• Install new entry door	<u>\$ 252.70</u>
	\$5,705.45

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<sup>5</sup> Claimant's Exhibit 6 includes nineteen pages of receipts for purchase of supplies to be used either by the Respondent or by RK Construction, LLC. Some of the receipts are for items the Claimant was required to supply under the contract, some receipts are for items the Claimant purchased with the expectation the Respondent would reimburse him for the expense, and some receipts are for purchase of supplies for use by another contractor after the Claimant allowed the Respondent to recover his tools.

Thus, the only work the Respondent performed that did not have to be redone by another contractor to effect repairs was installation of two bath fans ( $\$99.75 \times 2 = \$199.50$ ) and installation of the entry door ( $\$252.70$ ). The value of the work the Respondent performed under the contract was  $\$452.20$ .

25. On March 17, 2016, the Claimant entered a contract with RK Construction, LLC, to repair and complete the work done by the Respondent in the master bathroom and hall bathroom of the Claimant's home. The contract was in the amount of  $\$19,650.00$ , which has been paid in full.<sup>6</sup> The contract with RK Construction, LLC, required the Claimant to supply the following items for the master bathroom: bathtub; bathtub drain and heater; all tile, grout and the threshold; all cabinets, sinks, vanity top and knobs; all plumbing fixtures; all vanity lights and mirrors; all toilet paper holders and towel rods; and a custom shower door. The contract with RK Construction, LLC, required the Claimant to supply the following items for the hall bathroom: bathtub and bath drain; all tile and grout and the threshold; all cabinets, sink and vanity top, and all cabinet knobs; all plumbing fixtures and trim; all toilet paper holders and towel rods; a vanity light; and a mirror. The contract with RK Construction, LLC did not include any work on the garage door, or any work on a hot tub.

26. The Claimant's actual loss is  $\$23,605.75$ <sup>7</sup> ( $\$23,000.00$  paid to the Respondent, plus  $\$19,650.00$  paid to RK Construction, LLC, plus  $\$9,261.81$  for renovation supplies the Respondent was supposed to purchase under the contract with money supplied by the Claimant,

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<sup>6</sup> Claimant's Exhibit 9 reflects checks in the amount of  $\$17,650.00$ , made payable to RK Construction, dated February 18, 2016 through April 8, 2016. The contract between the Claimant and RK Construction, LLC was for  $\$19,650.00$ . The Claimant testified that between April 8, 2016 and the date of the hearing he paid RK Construction, LLC any money remaining due under the contract.

<sup>7</sup> At the hearing the Fund agreed that the Claimant had demonstrated that he is entitled to an award from the Fund. By the Fund's calculations, the Claimant's actual loss was  $\$23,788.85$ . I agree with the Fund that the Claimant is entitled to an award, but disagree with the Fund's calculation by  $\$183.10$  ( $\$23,788.85$  minus  $\$23,605.75$ ). This minor variance does not affect my recommendation that the MHIC award the Claimant the maximum amount permitted by law,  $\$20,000.00$ .

but which the Respondent did not purchase equals \$52,271.81, minus \$28,666.06, (original contract price) equals \$23,605.75).

### 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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

The Respondent performed very little work under the contract, and what he did perform was unworkmanlike and incomplete. Ryan Kigin, accepted as an expert in home improvement and contracting, testified for the Claimant that the work done in the hall bath was unworkmanlike and apparently not done by a licensed contractor. He explained that in the hall bath the workers

installed cement board underlayment over vinyl, and that the adhesive used to install the cement board was so weak that he could remove the cement board by prying it up with his fingers. He testified that the workers did not remove the hall bath baseboards, which resulted in a large gap between the wall and the edge of the underlayment. The tile floor and underlayment would, he explained, have to be completely removed and reinstalled. Mr. Kigin testified about each of the photographs in Claimant's exhibit two, identifying numerous instances of uneven tile surfaces, improper installation of tile, failure to remove casings and baseboards to install new floors, broken tile, inconsistent spacing between tiles in the same field of tiles – some too wide and some too narrow. Mr. Kigin testified that the Respondent simply did not know how to install tile properly. He also pointed to exposed edges of tile where there should have been bull-nosed tile, and locations in which the horizontal surfaces were installed so as to cause water to pool away from the drain.

Mr. Kigin also testified that the only toilet installed rocked, demonstrating the uneven surface of the floor under the toilet. He testified that the very likely result of the rocking would be that the porcelain toilet would eventually break at the base. Mr. Kigin testified that the plumbing supply lines in the hall bath shower wall were improperly installed, and that new electrical supply boxes in the hall bath were not properly placed over the mirror below them but that they were, instead, almost a foot from where they should have been installed. He pointed to a plumbing drain line vent that was vented into the bathroom instead of away from the bathroom and through the roof of the home as it should have been. Several of the electrical outlets, he testified, did not work at all.

Mr. Kigin testified that, with the exception of the bath fan installations, the errors in both the master bath and hall bath were so numerous, and the quality so poor, that the only remedy was to tear out everything the Respondent did and start over.

The Fund agreed with the Claimant's position that the Respondent effectively abandoned the contract and left the contract incomplete. In support of this position, the Fund noted that the Claimant's evidence established that the Respondent repeatedly failed to work consistently, repeatedly broke promises to return to work, and failed to comply and meet the work schedule as required by the contract. The Respondent failed to deliver to the Claimant's home numerous expensive renovation supplies that the Respondent told the Claimant had been ordered or had arrived for pick-up.

Although the Claimant terminated the contract on or about January 18, 2016, I am persuaded that the Respondent is responsible for the contract termination through his demonstrated pattern of inconsistent and sporadic work punctuated by significant periods of time with no work being performed. The Respondent's primary motive was to obtain progress payments due under the contract. His methods of obtaining the progress payments was to perform small amounts of work to convince the Claimant that work under the contract was progressing on schedule, and to lie to the Claimant regarding the purchase of thousands of dollars worth of renovation supplies. The Claimant's evidence established that after receiving the second draw payment, the Respondent failed to return to work, except for brief periods of time during which not much work was performed. Then, after entering into the modification to the contract on December 17, 2015, the same pattern of sporadic work interspersed with periods of no work without proper explanation or justification continued until the Claimant was forced to terminate the contract and pursue any remedy available to him. Accordingly, I am in agreement

with the Claimant and the Fund, and conclude that the Respondent effectively abandoned and left incomplete the home improvement contract, without justification in violation of section 8-605 of the Business Regulation Article.

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). Thus, the Claimant may not recover \$548.02 for changing the locks.

MHIC's regulations provide three formulas for measuring a claimant's actual loss. COMAR 09.08.03.03B(3). The first formula applies to situations where a contractor abandons a job without doing any work. It states, "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

The second formula applies to situations where the contractor performs work, or abandons a contract before he completes it, but the claimant is not remediating any defects in the contracted work. That formula states, "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 third formula applies to situations where a contractor has been found to have performed work poorly or has abandoned a contract, and the claimant is seeking another contractor to remediate the problems with the original contractor's work. It states the following:

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).

The third formula applies here. The Respondent did work according to the contract and the Claimant retained RK Construction, LLC, to complete the contract. The Claimant's actual loss is the amount the Claimant has paid to the Respondent, (\$23,000.00), added to any reasonable amounts the Claimant has paid to RK Construction, LLC, to repair poor work done by the Respondent under the original contract and to complete the original contract (\$19,650.00), plus \$9,621.81 (shower surround at Mt. Airy Glass, \$2,360.00, plus \$7,261.81 for renovation supplies purchased by the Claimant that the Respondent was required to purchase, but did not), less the original contract price (\$28,666.06). COMAR 09.08.03.03B(3)(c).

Thus, the Claimant's actual loss is \$23,605.75 (\$23,000.00 plus \$19,650.00 plus \$9,261.81 equals \$52,271.81, minus \$28,666.06, equals \$23,605.75.) 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).

Pursuant to the applicable law, 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). The actual loss computed above is \$23,605.75, which exceeds \$20,000.00 by \$3,605.75. Accordingly, the

Claimant is entitled to reimbursement from the Fund of only a portion of his actual loss, or \$20,000.00. *Id.* § 8-405(e)(1).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual loss of \$23,605.75 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).

**RECOMMENDED ORDER**

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


**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>8</sup> and

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

**Signature on File**

January 19, 2017  
Date Decision Issued

\_\_\_\_\_   
Michael R. Osborn  
Administrative Law Judge

MRO/sm  
#165149

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



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SERVICE LLC,	*
RESPONDENT	*

\* \* \* \* \*

**APPENDIX**

**Claimant's Exhibits:**

1. Home Improvement Claim Form, signed April 5, 2016, with attachment
2. Complaint Form with attachments
3. Notes of texts between the Claimant and the Respondent, December 17, 2015 through January 18, 2016
4. Contract, December 3, 2015
5. Supplemental Contract, December 17, 2015
6. Collection of receipts and order forms
7. Home Improvement Fixed Amount Contract, February 16, 2016
8. Completion Certificate, Permit #16-0129, approved October 25, 2016, with attachments
9. Four (4) cancelled checks
10. Myers Remodeling Company LLC proposal, January 29, 2016; Owings Brothers Contracting proposal, January 18, 2016
11. Liberty Mutual reference: check amount \$1,006.14 dated April 1, 2016

**Fund Exhibits:**

1. Notice of Hearing, June 27, 2016
2. Hearing Order, April 22, 2016

3. HIC Information on Respondent
4. Affidavit of Keyonna Penick, October 27, 2016
5. Home Improvement Claim Form, received April 8, 2016
6. Letter to the Respondent, April 13, 2016

**Respondent's Exhibits:**

None.

**PROPOSED ORDER**

***WHEREFORE, this 2<sup>nd</sup> day of March, 2017, 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**