

IN THE MATTER OF THE CLAIM

\* BEFORE HENRY R. ABRAMS,

OF PETER COLIUKOS,

\* AN ADMINISTRATIVE LAW JUDGE

CLAIMANT

\* OF THE MARYLAND OFFICE

AGAINST THE MARYLAND HOME

\* OF ADMINISTRATIVE HEARINGS

IMPROVEMENT GUARANTY FUND

\*

FOR THE ALLEGED ACTS OR

\*

OMISSIONS OF DANIEL STEEN, JR.,

\*

T/A CHESAPEAKE HOME

\* OAH No.: DLR-HIC-02-16-01428

REMODELING AND DESIGN, LLC

\* MHIC No.: 14 (90) 1176

RESPONDENT

\* \* \* \* \*

**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 June 2, 2014, Peter Coliukos (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) seeking reimbursement of \$16,500.00 in alleged actual losses suffered as a result of work performed pursuant to a home improvement contract with Daniel Steen, Jr., trading as Chesapeake Home Remodeling and Design, LLC (Respondent).<sup>1</sup>

<sup>1</sup>Unless otherwise noted or apparent from context, "Claimant" refers to both Peter Coliukos and his spouse, Paula Coliukos (Mrs. Coliukos).

I held a hearing commencing at 9:30 a.m. on June 21, 2016, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department or DLLR), represented the Fund.<sup>2</sup>

After waiting more than twenty minutes, neither the Respondent nor anyone acting or purporting to act on the Respondent's behalf appeared. I then proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>3</sup>

The contested case provisions of the Administrative Procedure Act, the MHIC procedural regulations, and the OAH's Rules of Procedure 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 as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss compensable by the Fund?

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<sup>2</sup> The MHIC is a unit of the DLLR. Md. Code Ann., Bus. Reg. § 8-201 (2015).

<sup>3</sup> Notice of the hearing was mailed to the Respondent at his address of record by certified mail on April 21, 2016, and was returned unclaimed. COMAR 09.08.03.03A(2).

## SUMMARY OF THE EVIDENCE

### Exhibits

I admitted the following exhibits on the Claimant's behalf:<sup>4</sup>

- Cl. Ex. 1A Respondent's sales material (excerpt only), undated
- Cl. Ex. 1B Respondent's sales material (excerpt only), undated
- Cl. Ex. 2 Executed financing contract between Claimant and Respondent, dated April 7, 2011
- Cl. Ex. 3 Addendum Contract No. 1, dated March 26, 2011<sup>5</sup>
- Cl. Ex. 4 Payment Coupon, dated due September 13, 2011, and Claimant's check nos. 102 and 453, dated June 17, 2011
- Cl. Ex. 5A Not offered
- Cl. Ex. 5B Letter from C. Mood to the Respondent and his spouse, dated August 26, 2014
- Cl. Ex. 6A- Photographs of Respondent's work, post-completion, taken approximately  
6E June 14, 2016<sup>6</sup>
- Cl. Ex. 7 Unsigned letter from Timeless Construction to Claimant, dated August 7, 2014
- Cl. Ex. 8 Copy of information from Respondent's web page as of June 21, 2016, copyrighted 2009

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 Notice of Hearing from OAH to the Respondent, dated April 21, 2016, together with DLLR Hearing Order, dated January 7, 2016; envelope marked "Return To Sender Unclaimed Unable To Forward," received May 16, 2016; copy of certified mail receipt, unsigned, undated; and Memorandum to File from OAH Docket Specialist Sandra Sykes, dated May 19, 2016<sup>7</sup>
- GF Ex. 2 DLLR Hearing Order, dated January 7, 2016
- GF Ex. 3 DLLR/MHIC licensing information re: Respondent
- GF Ex. 4 Claimant's Home Improvement Claim Form, dated June 2, 2014
- GF Ex. 5 Letter from MHIC Chairman Joseph Tunney to the Respondent, dated June 12, 2014 (missing attachment)
- GF Ex. 6 Contract between the parties, dated March 11, 2011
- GF Ex. 7A MHIC Name Search report, undated
- GF Ex. 7B DLLR/MHIC licensing information re: Respondent
- GF Ex. 7C DLLR/MHIC licensing information re: Timeless Construction

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<sup>4</sup> I excluded the handwritten interlineations on Cl. Exs. 1A and 1B and the green handwriting on Cl. Ex. 2 from those exhibits as admitted.

<sup>5</sup> The addendum describes the scope of work and was prepared in conjunction with the March 26, 2011 contract between the parties describing the nature of the home improvements, price, warranties, defaults and remedies. See Fund (GF) Exhibit 6.

<sup>6</sup> I accept as true the Claimant's testimony that these photographs represent the appearance of the patio here at issue as of the time the Claimant filed his claim.

<sup>7</sup> The original of GF Ex. 1 is in the OAH file. For ease of reference I have included a copy with the packet of the other exhibits admitted in evidence.

## Testimony

The Claimant and Mrs. Coliukos testified on the Claimant's behalf.

No one testified on the Respondent's behalf.

No one testified on the Fund's behalf.

## **PROPOSED FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was a licensed home improvement contractor, holding MHIC license number 4652255 (Mr. Steen).
2. At all relevant times, the Claimant and Mrs. Coliukos owned and resided at the home located at 4523 Nightingale Court, Ellicott City, Maryland (Home).
3. At all relevant times, neither the Claimant nor Mrs. Coliukos owned three dwellings or more. Neither was an employee, officer or partner of the Respondent, nor an immediate relative of the Respondent's spouse or any of his partners, officers or employees. Prior to the matters at issue in this case, neither the Claimant nor Mrs. Coliukos had any relationship or dealings with the Respondent.
4. Just prior to March 26, 2011, the Claimant met with one of the Respondent's sales representatives at the Claimant's home to discuss the possible construction of a patio made of concrete pavers in the backyard of the Home (initial meeting).
5. At all relevant times, the sales representative was acting on the Respondent's behalf.
6. During the initial meeting the sales representative gave the Claimant certain of the Respondent's sales literature. One piece contained information regarding the Respondent's company's home improvement license in Maryland, Pennsylvania and Delaware, and stated that

the Respondent was a certified ICPI installer.<sup>8</sup> Another piece identified different types of concrete pavers available and described in words and graphics each of the steps involved in installing patios made of concrete pavers. The graphic depicted a level patio.

7. During the initial meeting the sales representative indicated that if engaged, the Respondent would install a “performance-grade” installation. This is the highest grade installation depicted in the sales representative’s sales material. The representative never told the Claimant that it was possible that properly installed concrete pavers might shift and /or sink at uneven angles, leaving gaps between the pavers of one inch or more.

8. The Claimant reviewed the Respondent’s web site prior to entering any agreement with the Respondent. The web site represented that the Respondent was a “premier vendor” for EP Henry, a manufacturer and vendor of concrete pavers, and that EP Henry would give a “life-time warranty on not only the product, but also the labor.” (Cl. Ex. 8.)<sup>9</sup>

9. The Claimant and the sales representative had another meeting on March 26, 2011. Prior to or at the meeting, the sales representative provided the Claimant with a proposed contract (Contract) and addendum (Addendum.) (GF Ex. 6; Cl. Ex. 3.) The Contract contained, among other things, the price and payment terms for the work to be performed by the Respondent, and incorporated the Addendum.<sup>10</sup> The Addendum contained a description of the layout and scope of work entailed in installing the Claimant’s patio, the material to be used, and a warranty. (*Id.*)

10. The Claimant signed the Contract and Addendum on March 26, 2011. The Respondent signed the Contract on or about March 26, 2011.

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<sup>8</sup> ICPI stands for Interlocking Concrete Paving Institute.

<sup>9</sup> Cl. Ex. 8 is a copy of the Respondent’s web site the Claimant obtained shortly prior to the hearing. The Claimant testified without contradiction that the representations regarding the Respondent’s association with EP Henry and the lifetime warranty were also contained on the Respondent’s web site the Claimant reviewed prior to entering an agreement with the Respondent.

<sup>10</sup> The Contract, admitted as GF Ex. 6, is incomplete. It refers on the first page to additional terms contained on the back of the document, but neither party presented a copy of the back of the document. (*See* GF Ex. 6, ¶ 7.)

11. The Addendum contains the design and square footage of the patio and indicates that the Respondent would install 596 EP Henry "Imperial" pavers. (Cl. Ex. 3.) It states that the patio will be an ICPI certified installation, and carries a "Lifetime Labor & Manufacturer Warranty." (*Id.*)<sup>11</sup>

12. The Respondent was aware in designing the patio that the Claimant's backyard had a drainage problem. Prior to the Respondent's work the Claimant installed a drain in its center to augment the backyard's natural drainage.

13. The Contract price for the installed patio was \$16,500.00. (GF Ex. 6.)

14. Nothing in the Contract or Addendum, on the Respondent's web site, or in any of the material the sales representative gave the Claimant (or in any of the sales representative's descriptions of the layout of the patio) indicated that some or all of the stones of the patio would shift and sink, remaining at uneven angles, or that the patio would settle or otherwise not be level.

15. Nothing in the Contract or Addendum provided that the Claimant would be responsible for maintenance of the patio. Nothing in the Contract provided for arbitration of disputes.<sup>12</sup>

16. The Respondent installed the patio in or about June 2011. The Respondent kept the drain already in existence, which is located in or about the center of the patio, and installed additional drains at other patio locations.

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<sup>11</sup>The Claimant testified generally that he understood at or about the time he first met with the sales representative that an ICPI installer was one with the requisite knowledge and understanding to properly install concrete pavers. Neither the Claimant nor the Fund provided any information from the ICPI concerning the meaning of an ICPI certified installation. Although that would have been very helpful to my understanding of the contracting parties' obligations, it is not necessary to my Proposed Decision.

<sup>12</sup>The front side of the Contract does not contain an arbitration clause, and the parties did not directly address the presence or absence of an arbitration clause on the reverse side of the Contract. Nevertheless, the Respondent never invoked any arbitration requirement, even after the MHIC sent him a copy of the claim. (GF Ex. 5.) In addition, as detailed later in these proposed Findings of Fact, the Respondent told the Claimant his company was no longer in business; hence there was no company with which to arbitrate the dispute.

17. The Claimant paid the full Contract purchase price.<sup>13</sup>
18. The patio was level as installed.
19. Following installation the center drain was flush with the patio paving stones.
20. In or about May 2012, the Claimant noticed certain stones around the perimeter lifting up, and one chipped stone. The Claimant telephoned the Respondent about the matter. At an unspecified date thereafter, the Respondent detailed a work crew to the Home to address the Claimant's concerns. Sometime thereafter the crew replaced the chipped stone and reset and levelled the displaced perimeter pavers.
21. Over the summer of 2012 and throughout 2013, the Claimant observed that certain of the pavers were again shifting. The problem was no longer confined to a few perimeter pavers. The pavers throughout the patio randomly shifted and sank, in some places causing at least a one-inch (1") drop between pavers and in excess of a one-inch (1") drop in other places. It was no longer level and failed to drain correctly. (*See* Cl. Exs. 5B and 6A-E.) Individuals walking on the pavers could lose their balance or trip, causing falls.
22. Between 2013 and 2014, the Claimant called the Respondent on multiple occasions requesting that the Respondent address these problems. The Respondent did not answer or return the Claimant's telephone calls.
23. In or about the spring of 2014, the Claimant contacted EP Henry. One of its representatives informed the Claimant that the Respondent was never an approved EP Henry vendor.

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<sup>13</sup> The Claimant financed \$8,558.00 of the purchase price. (Cl. Ex. 2.) The Claimant produced check copies documenting payments of \$8558.37 paid to the financial institution providing the financing. (Cl. Ex. 4.) The Claimant was unable to document payment of the remainder of the Contract price, but testified without contradiction that he paid the Contract price in full. The Claimant's complaint was served on the Respondent and he did not submit anything contesting that he received payment in full. The Fund's representative was satisfied that the Claimant paid the full price. I found the Claimant's testimony credible and am satisfied that the claimant paid the full Contract price.

24. Thereafter, the Claimant tried without success several times to reach the Respondent by telephone.

25. Following the unsuccessful attempts to reach the Respondent by telephone, the Claimant sent the Respondent an email about the matter on April 24, 2014. The Respondent then telephoned the Claimant, who explained the problems the Claimant was experiencing with the patio. The Respondent told the Claimant to contact EP Henry. The Claimant told the Respondent that EP Henry denied any connection with the Respondent. The Respondent then told the Claimant that the Respondent was out of business.

26. On June 2, 2014, the Claimant filed a Claim with the MHIC complaining about the Respondent's work and seeking reimbursement of the full Contract price from the Fund.

27. Over the summer of 2014, the Claimant contacted several contractors recommended by EP Henry to inspect and address the Claimant's concerns about the patio. Only one of those contractors, Timeless Construction, agreed to inspect the patio and advise the Claimant how to proceed.

28. Timeless Construction is a licensed Maryland home improvement contractor.

29. Craig Mood, one of Timeless Construction's sales representatives, inspected the patio in or about the beginning of August 2014. He issued a report on August 26, 2014. (Cl. Ex. 5B.)

30. Mr. Mood opined that the patio had settled to such a degree that it no longer drained properly. His report indicated the problem "stems from a few 'potential' ineffective installation processes...." (*Id.*) The Report does not state which of the possible installation processes caused the problem.

31. Mr. Mood told the Claimant that the installation was the likely cause of the problem but he could not know for certain unless he removed the pavers and investigated further.



32. The Claimant asked Mr. Mood if Timeless Construction would repair the problems observed with the patio and guarantee the repairs. Mr. Mood said the company would not guarantee any repairs until it deconstructed the existing patio to identify the specific problem. Mr. Mood gave the Claimant a price of \$14,500.00 to raze and replace the patio.

33. The Claimant did not authorize Timeless Construction to proceed pending the outcome of this administrative action.

34. The Respondent installed the concrete pavers in an unworkmanlike way. As a result of the Respondent's faulty installation, the concrete pavers constituting the patio have shifted and sunk improperly, creating an uneven surface and hazard to those traversing the patio, exposing them to trips and falls. Also, the patio no longer drains properly as a result of the Respondent's faulty installation.

35. The Claimant filed his Claim with the MHIC less than three years after entering into the Contract with the Respondent. The Claimant has not filed a claim for reimbursement or damages in any other forum and has not recovered for his alleged loss from any source.

36. The Claimant's actual loss compensable by the Fund is \$14,500.00.

### DISCUSSION

The Claimant asserts that the Respondent failed to perform the installation of his patio in a workmanlike manner. The Claimant initially sought a refund of the full Contract price, \$16,500.00. At the conclusion of the hearing, the Claimant reduced his Claim to \$14,500.00, the amount Timeless Construction estimated it would cost to remove the existing patio and install a new patio in a workmanlike way, with a guarantee of the work.

An owner bears the burden to prove his claim against the Fund by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e) (2015); Md. Code Ann., State Gov't § 10-217 (2014); COMAR § 09.08.03.03A(3).<sup>14</sup> “[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)).

In its closing argument, the Fund recommended a finding that the Claimant met his burden and was entitled to \$14,500.00 from the Fund. For the reasons stated below, I find that the Claimant met his burden of proof with respect to his Claim.

An owner must prove a number of elements to recover compensation from the Fund. The owner must prove “an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015). *See also* COMAR 09.08.03.03B(2). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2015).

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

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<sup>14</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

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) (2015).

The Claimant satisfied each of the above elements. The Respondent was a licensed home improvement contractor, and the work concerned installation of a patio 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 Quality of the Installation**

The Claimant asserts that the Respondent failed to properly install the concrete pavers constituting the patio, such that pavers wrongly shifted and sank at random angles and at depths of one inch (1") or more, causing inadequate drainage and posing trip and fall hazards. The Claimant did not put on any expert testimony stating to a reasonable degree of certainty that the installation was unworkmanlike and that the pavers should not have shifted and sunk unevenly within two to four years of installation. The Claimant also failed to adduce any documents or other material from the ICPI or EP Henry addressing the issue. Further, the one other contractor who inspected the patio, Mr. Mood, refused to state with certainty that the Respondent's installation was the cause of the patio's ongoing settlement or collapse without further inspection of the Respondent's work. Mr. Mood's report *can* be read to state that the Respondent did

something wrong in the installation, but that Mr. Mood could not identify the specific cause until Timeless Construction deconstructed the patio. However, both the Claimant and Mrs. Coliukos testified that, while Mr. Mood stated that the installation was the *likely* culprit, Mr. Mood refused to definitively attribute the patio problems to the installation until he could examine each aspect of the Respondent's work.

It would have been helpful to have an expert or expert materials attesting to whether the patio and pavers should have remained flat after installation. Even without such evidence, I nevertheless find that the Respondent's installation was unworkmanlike. The Claimant did not have to prove with certainty that the Respondent's work was responsible for the patio's problems. The Claimant had to prove that it was *more likely than not* that the Respondent's work was at fault. Mr. Moody indicated that the Respondent's work was the likely cause, and I agree.

It is clear that the Respondent was aware of the fact that the Claimant's back yard had a drainage issue which was addressed by the operation of the center drain. That was obvious from the presence of the drain prior to any work by the Respondent. It is clear that for the central drain to work properly, it must be flush with, rather than sit above, the paving stones. If the drain sits above the pavers it will not be effective, or as effective, as it would be if it is flush with the surrounding pavers. As attested by Mr. Mood in his report, the "drainage system that was installed to direct water has settled to the degree that it has rendered the original drain ineffective." (Cl. Ex. 5B.) It does not require expert testimony to establish a lack of proper drainage. It is obvious from anyone's inspection of the backyard.

It is also clear as a matter of common sense, and as the Respondent's sales materials depict, that the pavers should be installed in an essentially flat, even pattern. (Cl. Ex. 1B.) The pavers installed by the Respondent were installed in this manner but soon shifted and sank unevenly.

There are two possible explanations for the uneven shifting and sinking of the pavers. It was either the result of some geological issue outside anyone's control or the result of improper installation. No one argued the former explanation, and I am satisfied it is the latter. First, the Respondent never advised the Claimant to expect this kind of change beginning only two years after installation. If that were a possibility, one would expect the Respondent's sales representative or promotional material to warn of such a possible development, despite a proper installation. One would also expect the Respondent to exclude such a result from the Respondent's warranty. Here, although the parties did not present the full Contract, the Respondent's sales material states that the work is guaranteed for life, without mentioning any exclusion.

The Respondent's sales material indicated that EP Henry provided a lifetime guaranty of the product and labor. I am satisfied that the warranty provided by EP Henry, had the Respondent been an approved vendor, only covered the pavers and the labor to repair or replace any faulty ones; the Respondent's sales material did not state that EP Henry's warranty applied to the quality of the initial installation. Rather, as indicated in the Addendum, the Respondent warranted the installation. (*Compare* Cl. Exs. 3 and 8.)

In addition, in or about May 2012, the Respondent's work crew did replace or reset the few pavers that had shifted and lifted around the perimeter of the patio. According to the Claimant's unchallenged testimony, no one indicated at that time that the Claimant should expect any settling or the extent of shifting and settling the Claimant experienced.

According to the Claimant's unchallenged testimony, when Mrs. Coliukos spoke with the Respondent in 2014 and described the patio problems, the Respondent did not indicate this was a natural development unrelated to installation. Instead, the Respondent told Mrs. Coliukos to contact EP Henry. When she responded that she had already contacted EP Henry, and had

learned that the Respondent was not one of its approved vendors, the Respondent told the Claimant that the Respondent's company was out of business and concluded the conversation.

I believe that Mrs. Coliukos had the telephone conversation with the Respondent and that the Respondent did not claim the uneven shifting and settling was a natural consequence of any patio installation. As previously indicated, there is nothing in the Respondent's promotional materials pointing out that shifting and sinking will occur or should be expected.

Of course, assuming that the Respondent's company had gone out of business, the Respondent may have had no material incentive to discuss the matter of responsibility with Mrs. Coliukos. In contrast, however, the Respondent had a great deal to lose if the Fund upheld the Claimant's claim. In such a case, the Respondent would lose his home improvement contractor license at least until he repaid to the Fund any amount the Fund paid to the Claimant. Given that exposure, had the Respondent believed the installation was not at fault, I would expect the Respondent to so state in response to the Claim forwarded to him by the Fund. The Respondent did not do so.

Based on all the above, I find that the Claimant met his burden, proving by a preponderance of the evidence that the Respondent's installation of the patio at the Claimant's Home was unworkmanlike.

**Calculation of Actual Loss**

The Fund may not compensate an owner for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1).

The MHIC's regulations provide the following measures for calculating an owner's actual loss. COMAR 09.08.03.03B(3):

Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

- (a) 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.
- (b) 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.
- (c) 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.

The formula set forth in COMAR 09.08.03.03B(3)(a) is inapplicable because the Respondent did not abandon the Contract without doing any work. The formula set forth in COMAR 09.08.03.03B(3)(b) is inappropriate because the Claimant is soliciting another contractor to do the work.

The formula set forth in COMAR 09.08.03.03B(3)(c) is appropriate. The Respondent did the work and the Claimant is soliciting another contractor to redo the patio.

The Claimant paid \$16,500.00 pursuant to the Contract, representing the full Contract price. Pursuant to COMAR 09.08.03.03B(3)c, I will add to this the estimated amount submitted by Timeless Construction, and subtract that amount from the total ( $\$16,500.00 + \$14,500.00 = \$31,000.00$ ;  $\$31,500.00 - \$16,500.00 = \$14,500.00$ ). The Claimant's actual loss is \$14,500.00.

Pursuant to statute, 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) (2015). Because \$14,500.00 is less than both such amounts, I find that the Claimant's actual loss compensable by the Fund is \$14,500.00.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$14,500.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2015).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$14,500.00; 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. Md. Code Ann., Bus. Reg. § 8-411(a) (2015); and

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

**Signature on File**

August 25, 2016  
Date Decision Issued

HRA/sw  
# 163978

Henry R. Adams  
Administrative Law Judge



**PROPOSED ORDER**

***WHEREFORE, this 5th day of October, 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**

# MEMORANDUM

TO : SAC, [illegible]

FROM : [illegible]

SUBJECT: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]