

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER A. NAPPIER,
OF SHARRON CREDLE, <sup>1</sup>	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: LABOR-HIC-02-23-07330
FOR THE ALLEGED ACTS OR	* MHIC No.: 21 (75) 948
OMISSIONS OF NATALIA MARIN,	*
T/A BENT PALM DESIGN/BUILD	*
LLC,	*
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 August 12, 2021, Sharron Credle (Claimant) filed a claim (Claim) with the MHIC<sup>2</sup> Guaranty Fund (Fund) for reimbursement of \$19,137.40<sup>3</sup> for actual losses allegedly suffered as a result of a home improvement contract with Natalia Marin, trading as Bent Palm Design/Build

<sup>1</sup> The Maryland Home Improvement Commission's (MHIC) March 1, 2023 Hearing Order and its March 9, 2023 transmittal to the Office of Administrative Hearings (OAH) state that the Claimant's first name is Sharon. However, at the hearing, the Claimant stated that the correct spelling of her first name is Sharron.

<sup>2</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>3</sup> At the outset of the hearing, the Claimant clarified that she seeks reimbursement in the amount of \$18,153.40, which is the amount that she paid to the Respondent.

LLC (Bent Palm Design or Respondent).<sup>4</sup> On March 1, 2023, the MHIC issued a Hearing Order on the Claim. On March 9, 2023, the MHIC forwarded the matter to the OAH for a hearing.

On May 10, 2023, I held a hearing by video.<sup>5</sup> Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. Dara Polakoff, Esquire, represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.<sup>6</sup>

### 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following pre-marked exhibits, which were offered jointly by the Claimant and the Respondent:

- D. Ex. 1 Home Improvement Claim Form, received August 12, 2021
- D. Ex. 2 Contract, signed July 14, 2020
- D. Ex. 3 Bank to Bank Wire Request Form, July 14, 2020
- D. Ex. 4 Contract, signed January 27, 2021
- D. Ex. 5 Contract, signed January 27, 2021
- D. Ex. 15 Drawing of existing plan and elevation, revised November 6, 2020
- D. Ex. 16 Drawing of proposed framing, revised November 6, 2020

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<sup>4</sup> Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>5</sup> Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).

<sup>6</sup> Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

- D. Ex. 17 Drawing of proposed elevations, revised November 6, 2020
- D. Ex. 18 Drawing of proposed bracing, revised November 6, 2020
- D. Ex. 19 Permit Application, December 8, 2020
- D. Ex. 20 Permit, February 9, 2021
- D. Ex. 21 Emails between the Claimant and Thomas Griest, March 6, 2021 to April 5, 2021
- D. Ex. 22 Novation Agreement, March 25, 2021
- D. Ex. 23 Refund Proposal, March 25, 2021

I admitted the following exhibits offered by the Respondent<sup>7</sup>:

- D. Ex. 6 3D design of the Claimant's home, undated
- D. Ex. 7 Overhead 3D design of the Claimant's home, undated

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 Notice of Remote Hearing, April 5, 2023
- GF Ex. 1A Hearing Order, March 1, 2023
- GF Ex. 2 Certification of Custodian of Record of the MHIC, David Finneran, MHIC Executive Director, April 20, 2023
- GF Ex. 3 Home Improvement Claim Form, received August 12, 2021
- GF Ex. 4 Letter from the MHIC to the Respondent, August 24, 2021

The Claimant did not offer any additional exhibits.

#### Testimony

The Claimant testified and presented the testimony of her husband, Ira Credle.

Thomas Griest, Bent Palm Design Consultant and Salesperson, testified on behalf of the Respondent.

The Fund did not offer any witness testimony.

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<sup>7</sup> Pre-marked exhibits D8-D14 and D24-D30 were provided by the Respondent ahead of the hearing but were not offered into evidence. These exhibits have been retained in the file.

## 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, individually, was a licensed home improvement contractor under MHIC contractor/salesperson license number 01-104766 and MHIC corporate number 05-129910.

2. The Claimant is not an officer or employee of the Respondent, related to the Respondent, or related to an officer or employee of the Respondent.

3. At all relevant times, the Claimant and her husband were the owners of a home located on Gambier Drive in Upper Marlboro, Maryland which is their personal residence.

4. On July 14, 2020, the Claimant and the Respondent entered into a contract for the following:

- A 303-square-foot creative space/office addition and hot tub - \$53,025.00
- Raised paver patio, stone walls, step, and grill bump out - \$13,670.00
- A 154-square-foot upper deck with sliding glass door and finished ceiling - \$16,210.00
- Installation of 12-foot circular paver patio with wood burning fire pit - \$4,035.00
- Installation of approximately 12 boulder steps - \$1,020.00
- Demo and hauling away of existing project - \$2,000.00

The total agreed-upon contract price was \$89,960.00.

5. The July 14, 2020 contract required a ten percent deposit of \$8,996.00.

6. On July 14, 2020, the Claimant paid the Respondent a deposit in the amount of \$8,996.00.

7. The Respondent's design consultant/salesperson, Thomas Griest, created two-dimensional and three-dimensional design plans for the Claimant's home improvement project.

8. On December 8, 2020, the Respondent submitted a permit application to the Prince George's County's Department of Permitting, Inspections and Enforcement (DPIE) for the construction of a ground level addition to the Claimant's home.

9. In December of 2020, the Claimant notified the Respondent that she wished to void the July 14, 2020 contract and, instead, create two separate contracts for that work—one for the creative space/office addition and one for the deck/patio.

10. On January 27, 2021, the Claimant entered into a contract with the Respondent for the installation of a new deck, RainEscape under the deck ceiling, and construction of a patio area and fire pit (Deck/Patio Contract).

11. The total cost of the Deck/Patio Contract was \$42,418.00.

12. The Deck/Patio Contract required a \$4,498.00 design deposit. The Respondent applied half of the Claimant's July 14, 2020 deposit (\$4,498.00) to the design deposit for the Deck/Patio Contract, reducing the cost of the Deck/Patio Contract to \$37,920.00.

13. On January 27, 2021, the Claimant, on behalf of her company, The Dr. Sharron D. Credle Corporation, entered into a contract with the Respondent for the construction of an approximately 303-square-foot addition to her home, which she intended to use as a creative space/office (Addition Contract).

14. The total cost of the Addition Contract was \$50,016.00. The Respondent applied the remaining \$4,498.00 of Claimant's July 14, 2020 deposit to the cost of the Addition Contract, reducing the cost of the Addition Contract to \$45,518.00.

15. The Addition Contract provided the following payment schedule:

- 30% payment due at permit posting - \$13,655.40
- 30% payment due at the completion of the addition's framing - \$13,655.40

- 30% payment due at close-in inspection - \$13,655.40
- 10% final payment due at completion - \$8,553.80<sup>8</sup>

16. On February 9, 2021, DPIE issued the building permit for the addition project. Thereafter, the Claimant paid the Respondent an additional \$13,655.40 toward the Addition Contract.

17. The Claimant paid the Respondent a total of \$18,153.40 toward the Addition Contract.

18. The Respondent incurred \$5,710.25 in expenses in preparation for construction of the addition to the Claimant's home, as follows:

- Structural drawings - \$3,210.00
- Engineer seal - \$800.00
- Permit fees - \$500.25
- 3D design fees - \$1,200.00

19. On a date not in the record, the Respondent began work on the deck/patio project.

20. By March 2021, the Respondent had not begun work on the addition project.

21. On March 4, 2021, Mr. Griest met with the Claimant to discuss the status of the addition project. During that meeting, Mr. Griest was unsure how soon the Respondent would be able to begin laying the foundation for the addition and he told the Claimant that he would call her the next day after speaking to his crew.

22. By the evening of March 5, 2021, Mr. Griest had not contacted the Claimant. As a result, at 8:56 p.m. that evening, the Claimant emailed Mr. Greist to inform him that she no longer wished for the Respondent to begin work on the addition of her office space and she requested an immediate refund of \$18,153.40, the full amount that she had paid toward the Addition Contract. The Claimant further stated that the Respondent could continue the

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<sup>8</sup> The Addition Contract provides that the 10% final payment is \$8,553.80. However, it appears that this was an error. The balance left would be \$4,551.80, which is 10% of \$45,518.00.

deck/patio project and that the final bills for the Deck/Patio Contract would be paid by her husband.

23. Mr. Griest agreed to the termination of the Addition Contract. On March 25, 2021, Mr. Griest emailed the Claimant a Novation Agreement and final invoice.

24. In calculating the amount of the refund due to the Claimant, the Respondent subtracted the \$5,710.25 it paid for expenses associated with the Addition Contract, as well as the \$5,042.00 outstanding balance for the Deck/Patio contract. On this basis, the Respondent offered the Claimant a total refund of \$7,401.15.<sup>9</sup>

25. The Claimant disagreed with the Respondent deducting the outstanding balance of the Deck/Patio Contract. As a result, the Claimant and Respondent were unable to reach an agreement about the amount of the refund due to the Claimant.

26. On or about August 12, 2021, the Claimant filed a Claim with the Fund for reimbursement of \$19,137.40. The Claim relates only to the Addition Contract.

27. As of the date of the hearing, the Respondent has not refunded any portion of the money the Claimant paid for the Addition Contract.

28. The Claimant has no other pending claims related to this matter and has not otherwise recovered for any losses connected to the Claim.

## DISCUSSION

### **BURDEN OF PROOF**

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>10</sup> To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered.<sup>11</sup>

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<sup>9</sup> \$18,153.40 paid for Addition Contract - \$5,710.25 costs paid by the Respondent - \$5,042.00 outstanding balance for Deck/Patio Contract = \$7,401.15.

<sup>10</sup> Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3).

<sup>11</sup> *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

## RELEVANT LAW

In 1962, the Maryland General Assembly (Legislature) enacted the Maryland Home Improvement Law, now found at sections 8-101, et seq., of the Business Regulation Article of the Maryland Code.<sup>12</sup> The purpose of the statutes is the protection of the public.<sup>13</sup> In 1981, the Legislature enacted further legislation that established the Fund “to provide a remedy for homeowners who suffer an “actual loss that results from, [*inter alia*,] an act or omission by a licensed contractor.”<sup>14</sup> “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”<sup>15</sup> The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.<sup>16</sup>

By statute, certain claimants are excluded from recovering from the Fund altogether. There are no such statutory impediments to the Claimant’s recovery. The Claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source.<sup>17</sup> The Claimant resides in the home that is the subject of the claim.<sup>18</sup> The parties did not enter into a valid agreement to submit their disputes to arbitration.<sup>19</sup> The Claimant is not a relative, employee, officer, or partner of the Respondent and is not related to any employee, officer, or partner of the Respondent.<sup>20</sup> Additionally, the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim.<sup>21</sup>

<sup>12</sup> *Landsman v. Maryland Home Improvement Comm’n*, 154 Md. App. 241, 248 (2003).

<sup>13</sup> See *Harry Berenter, Inc. v. Berman*, 258 Md. 290, 294 (1970); *Brzowski v. Maryland Home Improvement Comm’n*, 114 Md. App. 615, 628 (1997); *Landsman* at 248.

<sup>14</sup> *Id.* at 249. Bus. Reg. § 8-405(a) (Supp. 2022); 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.”).

<sup>15</sup> Bus. Reg. § 8-401.

<sup>16</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

<sup>17</sup> Bus. Reg. §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).

<sup>18</sup> *Id.* § 8-405(f)(2) (Supp. 2022).

<sup>19</sup> *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022).

<sup>20</sup> *Id.* § 8-405(f)(1) (Supp. 2022).

<sup>21</sup> *Id.* § 8-405(d) (Supp. 2022).



For the following reasons, I find that the Claimant has not proven eligibility for compensation.

#### **THE MERITS OF THIS CASE**

The salient facts of this case are undisputed. The Respondent was a licensed home improvement contractor when the Claimant and Respondent entered into multiple contracts for the Respondent to perform home improvement work at the Claimant's primary residence. Initially, the parties signed a single contract on July 14, 2020 which covered two projects—the construction of an addition to the home, to be used as the Claimant's office/creative space, and a patio/deck area. However, before the Respondent could begin work on either project, the Claimant requested that the July 14, 2020 contract be nullified and that the two projects be set forth in separate contracts. On January 27, 2021, the Claimant and Respondent signed two contracts—the Addition Contract and the Patio/Deck Contract.<sup>22</sup> Only the Addition Contract is the subject of the case before me.

By March 2021, the Respondent had created a 3D design and structural drawings and obtained an engineer's seal and a building permit for the addition project, but had not begun construction of the addition. At this time, the Claimant had paid the Respondent \$18,153.40 toward the addition project. After becoming frustrated with, among other things, the Respondent's failure to provide a definitive start date for the work, on March 5, 2021, the Claimant emailed Mr. Griest, stating "I, Dr. Sharron D. Credle of The Dr. Sharron D. Credle Corporation request that you do not begin the build of my office space .... I am requesting a refund for the two deposits I have made for work that has not begun on the office space in the amount of \$18,153.40 immediately."<sup>23</sup> However, the Claimant allowed the Respondent to

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<sup>22</sup> The Claimant's husband also signed each of the January 27, 2021 contracts.

<sup>23</sup> D. Exhibit 21.

continue with the deck/patio project and informed Mr. Griest that her husband would settle the final bill for that work.

Although the Respondent agreed to termination of the Addition Contract, the Claimant and Respondent were unable to reach an agreement as to what portion of the \$18,153.40 payment should be refunded to the Claimant. Although the Claimant acknowledges that the Respondent did incur some costs related to preparation for the addition project, the main point of contention is that the Respondent seeks to deduct costs associated with the patio/deck project from the \$18,153.40 the Claimant paid towards the addition project. The Claimant took the position that it is improper to allocate funds paid for the addition project to the deck/patio project because the deck/patio project falls under a separate contract, required a separate permit, and the payments made towards the addition project were separate from any payments associated with the deck/patio project. As a result of this impasse between the Claimant and Respondent, the Respondent never refunded any portion of the Claimant's payments, and the Claimant filed the instant Claim.

The record is clear—the Respondent did not perform any home improvements under the Addition Contract that were unworkmanlike, inadequate, or incomplete because the Respondent never began the construction on the addition project at all. Further, the Respondent did not abandon the Addition Contract—the Respondent merely agreed to termination of the Addition Contract, at the Claimant's behest. Therefore, any loss incurred by the Claimant does not meet the definition of an “actual loss” that may be recovered from the Fund.<sup>24</sup> Instead, it appears that the dispute between the Claimant and the Respondent is contractual in nature and, therefore, not one that may be adjudicated by this tribunal. Accordingly, the Claim must be denied.

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<sup>24</sup> Bus. Reg. §§ 8-401, 8-405(a).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual loss compensable by the Fund as a result of the Respondent's acts or omissions.<sup>25</sup>


**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.

July 31, 2023  
Date Decision Issued

  
Jennifer A. Nappier  
Administrative Law Judge

JAN/at  
#206549

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<sup>25</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(2).

PROPOSED ORDER

*WHEREFORE, this 3<sup>rd</sup> day of October, 2023, 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*

*Chairman*

*Panel B*

*MARYLAND HOME IMPROVEMENT  
COMMISSION*