

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ALAN AND LISA NAHORY,¹</p> <p>CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF EDWARD FIGGS,</p> <p>T/A SHORE CRAFTSMAN, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE DANIEL ANDREWS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-24-12454</p> <p>* MHIC No.: 23 (75) 159</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On December 11, 2023, Alan and Lisa Nahory (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$1,697.24 for actual losses allegedly suffered as a result of a home improvement contract with Edward Figgs,³ trading as Shore Craftsman, LLC (Business) (collectively, Respondent). Md.

¹ The original claimant was Alan Nahory, who is also referred to as "Shawn." During the hearing, without objection by the Fund, Lisa Nahory, the Claimant's wife, was added as a claimant. Any reference to either Alan or Lisa Nahory shall be as "Claimants."
² The MHIC is under the jurisdiction of the Department of Labor (Department).
³ During the hearing and in exhibits, the Respondent is also referred to as "Stan," which is reportedly his middle name.

Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).⁴ On May 1, 2024, the MHIC issued a Hearing Order on the Claim. On the same date, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 23, 2024, I held a hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting fifteen minutes during which time neither the Respondent or a representative for the Respondent appeared for the hearing, and after determining that the Respondent received proper notice, I proceeded with the hearing.⁵ COMAR 28.02.01.05 and .23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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?

⁴ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

⁵ On May 21, 2024, the OAH provided a Notice to the Respondent by regular first-class mail and certified mail, return receipt requested. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice informed the Respondent that a hearing was scheduled on August 23, 2024, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Notice sent by first-class mail was not returned to the OAH as undeliverable by the United States Postal Service (USPS). A return receipt indicating delivery of the Notice sent by certified mail was not returned to the OAH by the USPS. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimants:

- Clmt. Ex. 1 - Description of work to perform, materials, and costs, November 16, 2024
- Clmt. Ex. 2 - QuickBooks receipt of payment from the Claimants to the Respondent, in the amount of \$1,697.34, December 22, 2021
- Clmt. Ex. 3 - Date log of events, November 16, 2021 to March 1, 2022
- Clmt. Ex. 4 - Print out of text messages between the Claimants and the Respondent, including several photographs of the Claimants' residential property and work performed by the Respondent, December 7, 2021 to February 8, 2022
- Clmt. Ex. 5 - Email between the Claimants and the Respondent, January 1, 2022
- Clmt. Ex. 6 - Richard Hammond Builders, LLC, Invoice, April 19, 2022, with receipt of payment by the Claimants
- Clmt. Ex. 7 - Two photographs after crown molding was removed, undated
- Clmt. Ex. 8 - Lowe's Home Centers, LLC, Receipt, February 14, 2022
- Clmt. Ex. 9A - Photographs of work done by the Respondent, with notations, taken on February 3, 2024
- Clmt. Ex. 9B - Photographs of damaged kitchen cabinet, with notations, taken on February 3, 2024
- Clmt. Ex. 9C - Photographs of work done by the Respondent, with notations, taken on February 3, 2024

The Respondent did not offer exhibits into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing on August 23, 2024, mailed date May 21, 2024; MHIC Hearing Order, May 1, 2024
- Fund Ex. 2 - MHIC Licensing History for Respondent, August 7, 2024
- Fund Ex. 3 - MHC letter to Respondent, December 13, 2023
- Fund Ex. 4 - Home Improvement Claim Form, received by MHIC December 11, 2023

Testimony

The Claimants testified on their own behalf.

The Respondent did not present any witnesses.

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 01 140922.⁶

2. On or about November 16, 2021, the Claimants and the Respondent entered into an agreement to perform home improvement work at the Claimants' residence located Ocean City, Maryland (Contract).⁷ The Contract was to be completed by December 25, 2021.

3. The residence located in Ocean City, Maryland is not the Claimants' primary residence. As a result, the Claimants relied on the Respondent to provide text messages and photographs as the home improvement progressed.

4. The Contract required the Respondent to perform the following home improvement, including materials, with the following itemized costs:

- Install Nailer board for crown molding, along wall, glue and scree, and install crown molding over Nailer board - \$800.00
- Install 4-1/2-inch base board and shoe molding - \$1,100.00
- Install bedroom door and trim with casing - \$250.00
- Install wood jamb and casing in bedroom, and hang bi-fold door - \$250.00
- Install base and wall cabinets in the kitchen area⁸ - \$585.00

⁶ See Fund Ex. 2.

⁷ See Clmt. Ex. 1.

⁸ During the hearing, the Claimants explained that they purchased the kitchen cabinets and that the Respondent was to install the cabinets.

- Install cabinet crown molding - \$75.00
- Door casing entry door, slider, and bathroom pocket door - \$432.00
- Paint two coats of finish paint on ceiling and walls in living room, hallway, and kitchen; paint trim in living room, hallway, and kitchen; paint all trim in living room, hallway and living room, use satin Sherwin Super paint; Bedroom paint, two coats of finish paint on wall in satin finish Sherwin Williams Super paint - \$1,600.00

5. The total cost of the Contract was \$5,092.00, payable as 1/3 upon acceptance of the Contract, 1/3 payable when work began, and 1/3 due upon completion.

6. The Respondent performed the work required by the Contract through subcontractors or employees and sent text messages with photographs to Claimants as the work progressed.

7. On December 21, 2021, by text message,⁹ the Respondent informed the Claimants that the work was completed and that he needed to walk through the property to inspect the work performed and to determine if there was any work not completed. The Respondent also agreed to create a "punch out list" of any work to be completed or requiring any "touch up," and that he will send the workers back to the job site to complete.

8. The Claimants paid the Respondent in three installments, the first two payments were \$1,697.33, and the third payment of \$1,697.34 was paid on December 22, 2021, for a total of \$5,092.00.

9. On December 30, 2022, the Claimants went to the property in Ocean City and inspected the work performed by the Respondent. The Claimants found the residence to look like a "construction zone;" it was not cleaned-up, with paint rollers in the refrigerator, pieces of trim (trash) on the balcony, extra molding on stacked on the floor, and a client folder for the Respondent left on the kitchen counter.

⁹ See Clmt. Ex. 4.

10. After the Claimants contacted the Respondent, the Respondent was unaware of the condition of the work site and requested a “punch list” of work to be completed.

11. On January 1, 2022, by email,¹⁰ the Claimants informed the Respondent of the following “punch list” of work required to be completed:

Kitchen:

- island cabinet should be a 1-inch inset (including doors) from side wall
- missing base molding on wall under sink cabinet
- base molding edge not painted at stove

Laundry area:

- pocket door framing *all looks terrible
- crown molding not completely installed
- crown molding caulk not smooth
- Paint or caulk drips on walls
- nail holes need to be filled
- only 1 coat of paint
- top of interior jamb on pocket door needs to have finish screws installed, not nailed so pocket door can be removed
- pocket door not sanded and painted

Bedroom:

- closet door framing also all look terrible
- casing and trim around slider is not sanded smooth

All crown molding:

- seams showing, not filled and smooth nail heads exposed
- mitered corners are sloppy
- caulked crown molding above slider in living room (not painted)

All base molding:

- needs second coat of paint (no paint at all 1” up from the floor)
- mitered corners are sloppy
- nail holes need filled smooth

All door molding:

- not sanded prior to paint (looks like nail holes had caulk applied, some without being completely filled, and was not sanded, and then painted over)
- living room slider - poor quality wood
- door casings do not go to the floor
- door casing behind bedroom door too high

¹⁰ See Clmt. Ex. 5.

Front door:

- drywall was not sanded around door
- caulk in corners of crown molding not smooth

Walls - dings/dents marked with painters' tape

Bottom edge of bathroom is peeling up, looks like door was slid, (marked with tape)

Corner of entry at kitchen ceiling has trim paint (gloss)

Heat registers were not moved to paint behind

12. The Claimants requested that the last payment made to the Respondent be returned until all the work was completed. The Respondent declined to return the payment and indicated that he would complete the work contained in the Claimants' "punch list" sent by email.

13. Between January 1, 2022 and February 5, 2022, the work was not completed, however, the Respondent reported to the Claimants that he and his workers had COVID symptoms.

14. On February 5, 2022, the Claimants went to the property and found that very little of the work described in the email was completed and the work that was done resulted in more harm, including: a different paint was used to repaint the "patched" walls; areas of the walls and trim were not painted; missing trim; nothing from bedroom punch list was done; and the kitchen cabinet was moved again to an incorrect position and is now completely damaged and requires to be replaced or repaired.

15. On February 8, 2022, the Claimants sent the Respondent a text message¹¹ complaining that the work was not completed by December 25, 2021, as promised, and that the Respondent reported that the work was completed on December 21, 2021. The Claimants also

¹¹ See Clmt. Ex. 4.

complained that after sending the “punch list” of work to complete on January 1, 2022, that the work was also not completed.

16. By the same text message, the Claimants requested that the Respondent refund the last two payments, so that the Claimants can purchase a replacement kitchen cabinet, door casings, and floor moldings, and repaint the residence.

17. On the same date, the Respondent sent a reply text message¹² apologizing that the work was not completed and that he has fired the guys on the project because of the way things were left there. The Respondent requested till the end of the following week to sort things out and to personally make sure that things are corrected.

18. By text message the next day,¹³ the Claimants declined the Respondent’s offer to complete the work and explained that the Respondent had since January 1, 2022, approximately seven weeks, to complete the work but did not do so and continued to request a return of the last two payments paid to the Respondent.

19. On February 14, 2022, the Claimants purchased materials from Lowes Home Centers, LLC, including a finish paneling, and corner molding, at a cost of \$259.34.¹⁴ This material was to be used to repair the damaged kitchen cabinet.

20. On February 17, 2022, after filing a dispute with the Claimants’ credit card company regarding payments made to the Respondent, the Claimants’ received reimbursements from the credit card company equaling two installment payments, totaling \$3,394.68.¹⁵

21. The Claimants entered into an agreement with Richard Hammond Builders, LLC (RHB) to repair or complete the work performed by the Respondent at a cost of \$12,037.03.¹⁶

¹² *Id.*

¹³ *Id.*

¹⁴ *See* Clmt. Ex. 8.

¹⁵ *See* Clmt. Ex. 2.

¹⁶ *See* Clmt. Ex. 6. This exhibit indicated that RHB is a licensed MHIC contractor under license number 87058

22. On April 19, 2022, RHB invoiced the Claimants for the cost of the following itemized work:

Labor at a cost of \$7,642.00, including:

- replacing baseboards in living room, kitchen, and part of bedroom due to shoddy workmanship and poor paint quality;
- replacing all door casings, door jambs, and re-hang bi-fold doors due to shoddy workmanship and poor paint quality;
- resetting upper cabinet over refrigerator to correct set back;
- replacing the toe kicks and back panel on the island cabinet since it was damaged during previous install;
- resetting the island cabinets to correct set back and shift away from the wall so base molding fits next to island;
- replacing crown molding in utility closet due to shoddy workmanship and poor paint quality; and
- replacing the toe kick on cabinets alongside wall due to damage and poor installation.

Painting at cost of \$3,630.00, including preparing and painting the ceiling, walls, and trim in the entry hall, kitchen, living room, bedroom, and utility closet. Entire unit required preparation due to low quality primer and paint.

Materials at cost of \$765.03, including: base trim, casing, quarter round, caulk, and paint.

23. On April 20, 2022, the Claimants paid RHB \$12,037.00.¹⁷

24. The scope of work performed by RHB was the same scope of work required by the Contract between the Claimants and the Respondent.

25. The inadequately performed work by the Respondent had no value and required RHB to repair or completely redo.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so

¹⁷ See *id.*

than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a) (Supp. 2024); *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.”). “[A]ctual 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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants’ recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2024). Although the property that is the subject of the claim against the Fund is a second home for the Claimants, the Claimants do not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2024). The Claimants and Respondent did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2024). The Claimants are not a relative, employee, officer, or partner of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2024).

There is evidence that the Respondent made an offer to complete the work, which the Claimants rejected. However, I find that the Claimants did not unreasonably reject a good faith effort by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024). After discovering that the work was not completed by December 25, 2021, as promised by the Respondent, on January 1, 2022, by email, the Claimants notified the Respondent that the work was not complete

and provided a detailed “punch list” of items which required to be completed. The Claimants also requested a refund of one payment until the work was completed. In response, the Respondent indicated that he would complete the work to the Claimants’ satisfaction and did not refund any payment. However, as of February 8, 2022, the Respondent had not completed the “punch list” of work and any work that was performed was poorly done. As a result, as of February 8, 2022, the Claimants requested a refund of the last two payments with a purpose to end the contractual relationship with the Respondent. The Respondent again requested to complete the work, but the Claimants informed the Respondent that it was too late, having provided the Respondent with an opportunity to complete the work since January 1, 2022, and after approximately seven weeks, the work was still not completed. The only reasons provided by the Respondent for not timely completing the work was having hired workers who were not responsible, which required the workers to be fired from the project, and a claim of having COVID symptoms. However, the Respondent’s reasons do not overcome the Claimant’s more than reasonable expectation that the work would be completed as promised by December 25, 2021, and within a reasonable time after January 1, 2022. After January 1, 2022, a delay of seven weeks during which the work was not performed provided the Claimants with a reasonable basis to reject the Respondent’s request to complete the work.

The Claimants established by a preponderance of the evidence that the Respondent performed an incomplete and inadequate home improvement. The Claimants testified and present photographic evidence that the work performed by the Respondent was inadequately performed, requiring and detailed “punch list” of additional work to complete the home improvement, which was not performed by the Respondent. As a result, the home improvement was left incomplete by the Respondent. To correct the inadequate work and to complete the home improvement the Claimants hired another contractor, at a substantial cost. The

uncontested evidence demonstrated that the work performed by the Respondent had no value.

Accordingly, I find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2024); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimants have retained another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss:

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) (emphasis added).

The Claimants' actual loss is calculated as follows:

Amount paid to Respondent ¹⁸	1,697.34
Plus amount paid to RHB	+ <u>12,037.00</u>
	13,734.34
Less the original contract price	- <u>5,092.00</u>
Actual Loss total	\$ 8,642.34

¹⁸ The amount paid to the Respondent was the full Contract price of \$5,092.00. But the Claimants recovered from their credit card company all monies paid, except for \$1,697.34. Accordingly, the only amount actually paid the Respondent was \$1,697.34.

However, effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.¹⁹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). Although the Claimants paid the Respondent \$5,092.00, after filing a dispute with the Claimant's credit card company, the Claimants recovered all but \$1,697.34. The Claimants would prefer to recover the actual loss of \$8,642.34, however, applicable law limits the eligible reimbursement to \$1,697.34, the amount the Claimants actually paid to the Respondent. Further, the uncontested evidence also demonstrated that the Claimants purchased kitchen cabinets to be installed by the Respondent, which were damaged by the Respondent's workers and required the Claimants to purchase materials to fix the damaged cabinets at a cost of \$259.34. This additional cost to repair work performed to by the Respondent is appropriately considered an additional actual loss, causing the total actual loss to be \$1,956.68.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$1,956.68 because of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimants are entitled to recover \$1,956.68 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$1,956.68; and

¹⁹ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

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,²⁰ and

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

November 14, 2024
Date Decision Issued

Daniel Andrews

Daniel Andrews
Administrative Law Judge

DA/ja
#214859

²⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of March, 2025, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***