

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF PRESS and MARIA PALMER,</b></p> <p><b>CLAIMANTS</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF CHIRSTOPHER</b></p> <p><b>PICKETT T/A PICKETT'S CHOICE</b></p> <p><b>BUILDERS, LLC</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE TERESA EPPS CUMMINGS,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-23-31782</b></p> <p>* <b>MHIC No.: 23 (75) 528</b></p> <p>*</p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On April 25, 2023, Press Palmer and Maria Palmer (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$186,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Pickett, trading as Pickett's Choice Builders, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

November 20, 2023, the MHIC issued a Hearing Order on the Claim. On November 30, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 30, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Ernie Dominguez, Assistant Attorney General, Department, represented the Fund. Tamara McNutty, Esquire, represented the Claimants. Claimant, Press Palmer, was present at the hearing. Claimant, Maria Palmer, did not attend the hearing. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A.

This hearing was originally scheduled for March 20, 2024. On January 24, 2024, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for March 20, 2024, at 9:30 a.m., at the OAH, in Hunt Valley, Maryland. 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." On March 15, 2024, via an email to the OAH, the Respondent stated that he would be out of town due to a family obligation and requested a postponement of the March 20, 2024, hearing. The postponement request was granted on March 19, 2024. The hearing was rescheduled and on March 26, 2024, the OAH provided a second Notice to the Respondent by certified mail and first-class mail. The Notice stated that the hearing was rescheduled for May 30, 2024, at 9:30 a.m., at the OAH, in Hunt Valley, Maryland.

The copy of the March 26, 2024 Notice which was sent via certified mail was returned by the United States Postal Service to the OAH with the notation, "Return to Sender. Unclaimed. Unable to Forward." The copy of the Notice which was mailed via first-class mail was not

returned to the OAH. The March 26, 2024 Notice also advised the Respondent that failure to attend the hearing might result in "a decision against you." The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. Therefore, I determined that the Respondent received proper notice, and I proceeded to hear the above-captioned matter. COMAR 28.02.01.05A.

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. 2023); 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?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Claimants:

- Clmt. Ex. 1 - Unsigned original contract between the Claimants and the Respondent, contract proposal date: July 2, 2020
- Clmt. Ex. 2 - Draft USI Carroll Insulation Work Agreement, Undated
- Clmt. Ex. 3 - Home Depot Special Order Quote, printed August 6, 2020
- Clmt. Ex. 4 - Declaration of Default letter from Tamara M. McNulty, Esq., to the Respondent, June 6, 2022
- Clmt. Ex. 5 - Copies of checks written by Claimant, Press Palmer, various dates from July 3, 2020 through August 14, 2023
- Clmt. Ex. 6 - EGG Construction Estimate, February 19, 2023

- Clmt. Ex. 7 - AIA<sup>3</sup> Document A103-2017 Standard Form of Agreement Between Owner and Contractor, executed between the Claimants,<sup>4</sup> and EGG Construction, February 19, 2023
- Clmt. Ex. 8 - MHIC Claim Form, April 25, 2023
- Clmt. Ex. 9 - Affordable Garage Doors Contract, April 3, 2023
- Clmt. Ex. 10 - Home Depot Special Services Customer Invoice, June 18, 2022
- Clmt. Ex. 11 - Emails between the Respondent and William Kirwan, AIA, LEED, AP, Muse Kirwan Architects, April 10, 2022 and April 27, 2022
- Clmt. Ex. 12 - Follow-up emails between the Respondent and Mr. Kirwan, April 10, 2022 and April 27, 2022
- Clmt. Ex. 13 - Emails titled: "Attachment 1- Architect's Estimate of Work Completed", March 16, 2023 and March 17, 2023
- Clmt. Ex. 14 - Declaration of William Greco, EGG Construction, May 29, 2024

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, March 26, 2024
- Fund Ex. 2 - MHIC Transmittal Form and Hearing Order, November 30, 2023
- Fund Ex. 3 - MHIC Claim Form, April 25, 2023
- Fund Ex. 4 - MHIC I.D. Registration and Database Information related to Respondent, March 6, 2024

There were no exhibits offered by the Respondent.

Testimony

The Claimant, Press Palmer, testified and presented the following witness: William "Bill" Kirwan, AIA, LEED AP,<sup>5</sup> Muse Kirwan Architects.

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<sup>3</sup> American Institute of Architects.

<sup>4</sup> In all other documentation, the co-Claimant's name is listed as Maria Palmer. In this document, the co-Claimant's last name is listed as "Aliprando."

<sup>5</sup> American Institute of Architects member. U.S. Green Building Council Certification.

## 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 01-96623, with an expiration date of March 18, 2026.

2. On July 2, 2020, the Claimants and the Respondent entered into a contract for the Respondent to build a new detached garage at the Claimants' home located in Woodstock, MD 21163.<sup>6</sup> The Contract stated that the garage would be built using plans supplied by an architect (Contract). Clmt. Ex. 1.

3. The original agreed-upon Contract price was \$186,311.00 with allowances for a driveway (\$5,000.00 total) and HVAC<sup>7</sup> (\$3,000.00 total), costs which were not included in the contract price.

4. The Contract stated that work would tentatively begin in August or September 2020 and that "substantial completion would be achieved within four to five months of commencement of actual work (barring unforeseen weather & complications)."

5. William "Bill" Kirwan, AIA, LEED AP, Muse Kirwan Architects was hired as the architect for the garage project. Mr. Kirwan was responsible for drafting the garage specifications and design.

6. In total the Claimants paid the Respondent \$156,846.00, which included the following payments:

-July 3, 2020, \$63,000.00

-April 13, 2021, \$29,300.00

-June 9, 2021, \$16,546.00

-December 16, 2021, \$18,000.00 and \$30,000.00 to cover the cost of the garage doors and windows.

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<sup>6</sup> For confidentiality purposes, the complete street address will not be listed.

<sup>7</sup> Heating, Ventilation, and Air Conditioning.

Clmt. Ex. 5.

7. Respondent arrived at the jobsite to begin work in September 2020.

8. Respondent was unable to begin work once it was determined that there were soil and foundation issues which needed to be addressed before the garage could be built. The Claimants conferred with Mr. Kirwan and a decision was made to install helical piles. It took several months to determine how to best rectify the soil issues. The Respondent was not able to perform that type of work and therefore, a second contractor, Bartley Corporation (Bartley), was hired by the Claimants to complete the necessary foundation remediation work by installing helical piles.<sup>8</sup> Bartley completed the soil remediation work in March 2021.

9. In addition to the delay caused by the soil remediation work, the COVID-19 pandemic also caused supply chain issues which then also caused further work delays.

10. Beginning in March 2021, the Respondent was able to begin work at the jobsite.

11. From March 2021 until April 2022, the Respondent would arrive at the jobsite and work for a week or two and then would not return to the jobsite for prolonged periods of time.

12. The Claimants continued to make payments to the Respondent per the draw schedule.<sup>9</sup>

13. On December 16, 2021, the Claimants made what would be the final two payments to the Respondent. These two payments were for the Respondent to purchase the garage doors and windows.

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<sup>8</sup> The date of the Bartley contract is not included in the record.

<sup>9</sup> A construction draw schedule is a financial plan that outlines when and how funds will be paid to a contractor throughout a construction project. Per the Contract, the draw schedule was as follows: (1) Payment of \$62,000.00 will be due upon contract being signed; (2) Payment of \$27,000.00 will be due upon footer completion; (3) Payment of \$15,546.00 will be done upon foundation wall completion; (4) Payment of \$16,000.00 will be due upon concrete slab completion; (5) Payment of \$31,000.00 will be due upon framing completion; (6) Payment of \$13,000.00 will be due upon utility rough-in completion; (7) Payment of \$11,000.00 will be due upon drywall board installation; (8) Final payment of \$10,765.00 will be due at jobs completion. Clmt. Ex. 1.

14. For the next two to three months, the Claimants repeatedly requested that the Respondent provide proof of the purchase order for the garage doors and windows. In March or April 2022, the Respondent provided the Claimants with what he purported to be proof of purchase for the doors from USI Carroll Insulation and windows from Home Depot. Clmt. Exs. 3 and 4.

15. The USI Carroll Insulation Work Agreement was marked draft and did not indicate that the garage doors had been ordered, and the Home Depot Special Order Quote also did not indicate that windows had been ordered. Clmt. Ex. 2.

16. As the project continued to progress and then stalled, Mr. Kirwan became involved in performing site visits and made attempts to contact the Respondent.

17. After a site visit on April 8, 2022, Mr. Kirwan emailed the Respondent on April 10, 2022. The email was regarding his observations of the progress of the construction of the garage. Clmt. Ex. 11.

18. The Respondent responded to Mr. Kirwan's email on April 27, 2022. The Respondent provided responses to Mr. Kirwan's site visit notes. On the same day, Mr. Kirwan sent a follow-up email asking whether the windows and garage doors had been ordered. The Respondent did not respond to the follow-up email. Clmt. Ex. 12.

19. On June 6, 2022, the Claimants' attorney sent a Declaration of Default letter (Default) to the Respondent via email and first-class mail. The Default letter demanded the Respondent return to the Claimants \$48,688.59 which was the current quoted costs for doors, windows, and specified insulated garage doors. Clmt. Ex. 4.

20. The Respondent did not respond to the Default.

21. On February 19, 2023, the Claimants received an estimate to complete the garage from EGG Construction (EGG or Completion Contractor). Clmt. Ex. 6.

22. Mr. Kirwan and the Completion Contractor determined that the Respondent completed 57% of the contract's cost. The Contract's cost was \$186,311.00 and 57% of that cost, is \$106,197.27. Clmt. Ex. 13.

23. On February 19, 2023, the Claimants executed a Cost of the Work Plus a Fee without Guaranteed Maximum Price contract with EGG. The estimated cost for EGG to complete the garage was \$123,250.00. Clmt. Ex. 7.

24. EGG agreed to complete the siding, plumbing, electrical, HVAC, insulation, drywall, carpentry, painting for the garage, and the repair work to the driveway.

25. Prior to performing any work, EGG visited the property to determine the amount of work already done to the garage. William Greco, EGG representative, determined that the Respondent had completed 95% of the framing, the roofing was partially installed but was missing drip edge and flashing tape and gutters, and no electrical or plumbing work had been completed. Clmt. Ex. 14.

26. Once the work on the garage resumed, EGG uncovered repairs and issues related to the work done by the Respondent which were necessary to complete the garage. The issues included missing blocking, missing metal hangers, delaminated TJI<sup>10</sup> joists and concrete stairs which were not properly installed.

27. On April 3, 2023, the Claimants contracted with Affordable Garage Doors of Eldersburg (Affordable) to order garage doors for \$18,090.00. Clmt. Ex. 9.

28. The Claimants ordered windows from Home Depot for \$14,868.58. Clmt. Ex. 10.

29. In early September 2023, EGG completed its work on the garage.

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<sup>10</sup> Trus Joists are designed using patented software that designs location-specific flooring.



## DISCUSSION

The Claimants 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 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. 2023); *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, the Claimants suffered an actual loss and has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimants.<sup>11</sup> The Claimants resided at the home where the detached garage was to be built. Bus. Reg § 8-405(f)(2)(i) (Supp. 2023). After considering several contractors and their applicable estimates, on July 2, 2020, the Claimants executed a Contract with the Respondent to build a new detached garage at the Claimants' residence. The Contract price to build the garage was \$186,311.00 and the doors and windows were to be supplied and furnished by the Respondent as dictated by the supplied architectural building plans. Mr. Kirwan, the architect who designed the Claimants' residence, was hired to work as the architect for the garage project.

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<sup>11</sup> "A person must have a contractor license whenever the person acts as a contractor in the State." Bus. Reg. § 8-301. Further, a contractor license is defined as a "license issued by the [MHIC] to act as a contractor." Bus. Reg. 8-101(d).

Considering that the Contract was signed in July 2020 and related work began in September 2020, we are now almost four years out from when this matter arose and therefore there were some dates and specific events which were estimated. Nonetheless, the Claimant Press Palmer credibly testified regarding the occurrence of events. The Claimants paid the \$63,000.00 deposit on July 3, 2020, and the Respondent arrived on site to begin work on the garage in September 2020. A major soil issue at the site caused a delay of several months. The initial delays were no fault of the Respondent and required the Claimants to hire Bartley to complete the necessary soil remediation work. Bartley installed helical piles and one level of the concrete slab. The Bartley work was completed in March 2021. Because Bartley installed one level of the garage's concrete slab, the Respondent no longer needed to install the lower-level concrete slab and the cost for the lower-level slab work was removed from the Contract.<sup>12</sup> The Bartley slab work cost approximately \$20,000.00 and that cost should be subtracted from the original Contract price.

After the soil work and lower-level slab work was completed and amid the COVID-19 pandemic, the Respondent began work on the garage in March 2021. Claimant Press Palmer testified that the Respondent estimated that the garage would take nine to twelve months to complete. The Claimant Press Palmer testified (and Mr. Kirwan corroborated) that the Respondent would come and do work for a week or two and then months would pass when no work was done. The Respondent never provided an explanation for the gaps in time when no work would be done on the garage. Although the work on the garage began as expected, it proceeded slower and slower with time. The Claimant assumed that some of the delays were related to the pandemic, however, the Respondent did not provide any evidence that COVID-19

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<sup>12</sup> A copy of the amended contract or change order was not provided, however there was credible testimony regarding the approximate cost of the Bartley slab work.

was the cause of the delays. In spite of the delays, Claimant Press Palmer testified that the Claimants continued to pay the Respondent the required draws as outlined in the Contract.

Per the terms of the Contract, the Claimants paid the Respondent the amount needed to order the doors and windows on December 16, 2021. Shortly thereafter, the Claimants began to ask for proof of purchase because he was concerned that the long lead time to order materials would further delay the project. In January 2022, the Respondent ceased all communication with the Claimants until March or April 2022 when the Respondent provided the Claimants with two documents in response to the requests for proof of ordering/purchase. The two documents provided were not receipts or proof that an order had been placed. The USI Carroll Insulation Work Agreement which lists the price for a garage door, opener and keypad, has the word "draft" stamped in the middle of the document. There is nothing on the document to indicate that an order was placed or to indicate that the garage door was purchased. There is no issue date listed on the document. Clmt. Ex. 2. The Home Depot Special Order Quote is dated August 6, 2020, and does not indicate that an order has been placed or that any of the window items listed have been purchased. Clmt. Ex. 3.

After he received the USI and Home Depot documents, the Claimant called both businesses to ascertain whether the items listed had been ordered. Both businesses advised him that the documents were estimates and no orders had been placed by the Respondent. They further advised that they were told that the Claimants would call to pay for the items listed. It was at this point that the Respondent again completely stopped responding to the Claimants.

In mid-2022, the Claimants hired an attorney. On June 6, 2022, the attorney sent a Default letter to the Respondent. By that time, the project was in the rough-in stage and was long overdue for completion. The Respondent had completed 95% of the framing, the roofing was partially installed but was missing drip edge and flashing tape and gutters, and no electrical

or plumbing work had been completed. Clmt. Ex. 14. Further, the doors, windows, and specified insulated garage doors had not been ordered. The letter explained, "Because of [the Respondent's] failure to perform, failure to order materials after payment, and unacceptable delays to the Project, [the Respondent] is hereby declared in default and terminated from the Project." Clmt. Ex. 4. The letter requested that the Respondent return \$48,688.59 which was the current quoted cost of the doors and windows.

Mr. Kirwan testified on behalf of the Claimants. Kirwan credibly testified that he was hired as the architect when the residence was built, and he was brought back to work as the architect for the garage. In addition to providing architectural guidance, specifications, design and site visits, Mr. Kirwan was also involved in trying to contact the Respondent when substantial delays in the project began to occur. Mr. Kirwan testified that the Respondent informed him in the Fall or Winter 2021 that the doors and windows had been ordered. After a site visit on April 10, 2022, Mr. Kirwan drafted a summary of work completed and sent an email to the Respondent. The email contained several questions and concerns related to the site visit. The Respondent replied to the email on April 27, 2022, and sent over the doors and windows documents discussed above. In a follow-up email, Mr. Kirwan raised questions regarding the word "draft" stamped on the estimate and questioned whether anything had been ordered. Clmt. Exs. 11 and 12. There is nothing in the record to indicate that the Respondent replied to the follow-up email.

Several months after the Default letter was sent, the Claimants hired EGG to complete the garage. From May 2022 until EGG was contacted in February 2023, the Respondent did not make any attempts to complete the project. EGG provided an estimate of \$123,250.00 to complete the garage. On February 19, 2023, because EGG did not start the project, the Claimants signed a time and material contract with EGG. Mr. Kirwan credibly testified that the

time and material contract seemed fair because until EGG commenced with completing the project and considering the potential construction issues outlined in his April 10, 2022 email, there was no way of knowing what remedial repairs would be necessary. Subsequently, EGG encountered several issues with the Respondent's work. The issues included missing blocking, missing metal hangers, delaminated TJI joists and concrete stairs which were not properly installed. Clmt. Ex. 14. In an effort to reduce costs, the Claimants provided the windows and doors and removed HVAC from the scope of work. The Claimants paid \$18,090.00 for the garage doors and \$14,868.58 for the windows. Clmt. Exs. 9 and 10. EGG completed the garage in early September 2023, three years after the initial Contract was signed.

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. 2023). The Claimants reside in the home that is the subject of the claim or do not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). 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. 2023).

The Respondent did not make any reasonable, good faith efforts to resolve the claim. The Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim, because no good faith efforts were made. *Id.* § 8-405(d) (Supp. 2023). The Respondent ceased all communication with the Claimants and their architect and did not return to complete the garage, forcing the Respondent to hire a Completion Contractor.

The Respondent performed inadequate and incomplete home improvements. There was

no communication from the Respondent beginning in May 2022. When EGG was hired, the framing was not completed, no electrical or plumbing work had been completed, the roofing was partially installed but was missing drip edge flashing tape and gutters, there was missing block and metal hangers, there was delaminated TJI joists, and the concrete stairs were not properly installed. Despite having been paid to order them, the Respondent did not order the windows, doors or specified insulated garage doors. I thus 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 is entitled to recover. The Fund may not compensate a Claimants for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a Claimants' actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimants 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 Claimants has solicited or is soliciting another contractor to complete the contract, the Claimants' actual loss shall be the amounts the Claimants has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the Claimants 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 original Contract price was \$186,311.00. The original Contract price shall be reduced by \$20,000.00 to \$166,311.00 to account for the first level slab which was installed by

Bartley. As evidenced by the check images contained in Claimants' Exhibit 5, the evidence is clear that the Claimants paid the respondent a total of \$156,846.00 to build the garage. The applicable calculation of the Claimants' actual loss as a result of the Respondent's inadequate and incomplete home improvement work is as follows:

Amount paid to Respondent	\$156,846.00
Amount paid to Completion Contractor	+ \$123,250.00
Amount paid for Doors and Windows	+ <u>\$32,958.58</u>
Total costs paid	\$313,054.58
Adjusted Original Contract price	<u>- \$166,311.00</u>
Actual Loss	\$146,743.58.

Effective July 1, 2022, a Claimants' recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a Claimants may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>13</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimants' actual loss of \$146,743.58 exceeds \$30,000.00. Therefore, the Claimants' recovery is limited to \$30,000.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimants have sustained an actual loss of \$146,743.58 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimants is entitled to recover \$30,000.00 from the Fund.

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<sup>13</sup> 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").

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$30,000.00; 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>14</sup> and

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

August 27, 2024  
Date Decision Issued

*Teresa Epps Cummings*  

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Teresa Epps Cummings  
Administrative Law Judge

TEC/at  
#213413

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<sup>14</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 27<sup>th</sup> day of December, 2024, 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.***

***Wm Bruce***

***Quackenbush***

***Wm Bruce Quackenbush***

***Chariman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***