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| IN THE MATTER OF THE CLAIM | * BEFORE JOHN D. HART, |
| OF LAKEISHA JACKSON, | * 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 TIMOTHY FARO, | * |
| JR., | * OAH No.: LABOR-HIC-02-23-29517 |
| T/A BIRDLAND BUILDERS, LLC, | * MHIC No.: 23 (75) 869 |
| RESPONDENT | * |

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 5, 2023, Lakeisha Jackson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$23,454.50 for actual losses allegedly suffered as a result of a home improvement contract with Timothy Faro, Jr., trading as Birdland Builders, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On June 7, 2023, the Claimant amended her claim to

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

\$127,000.50. Code of Maryland Regulations (COMAR) 09.08.03.02C(1)-(2). On November 15, 2023, the MHIC issued a Hearing Order on the Claim. On that same date, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 27, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jessica Kaufman, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant was self-represented and joined by her husband and mother. The Respondent was self-represented.

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 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 exhibits offered by the Claimant:

- Cl. Ex. 1 - Contract between the Claimant and the Respondent, dated April 30, 2022
- Cl. Ex. 2 - Paid invoices and copies of checks, multiple dates from November 26, 2021 through February 11, 2023
- Cl. Ex. 3 - Communications between Claimant and Respondent, dated January 6, 2022 through March 28, 2023
- Cl. Ex. 4 - Photographs
 - a. Foundation work performed by Respondent, dated June 2022
 - b. Foundation work performed by Respondent, dated June 2022
 - c. Front of the house before foundation was poured by Respondent, dated June 2022
 - d. Front of the house before foundation was poured by Respondent, dated June 2022
 - e. Unfinished porch, dated July 2022

- f. Unfinished laundry room, dated August 2022
- g. Unfinished laundry room, dated August 2022
- h. Framing of unfinished bedroom, dated August 2022
- i. Framing of unfinished bedroom, dated August 2022
- Cl. Ex. 5 - Estimate from Construction Etc., LLC, dated March 29, 2023
- Cl. Ex. 6 - Estimate from DBF Concrete Construction, dated February 15, 2023
- Cl. Ex. 7 - Complaint Form, received January 3, 2023
- Cl. Ex. 8 - Contract between Claimant and Deck Soldier d/b/a Deck Boss and Leonpro Services, dated February 14, 2023

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, issued December 21, 2023
- Fund Ex. 2 - Transmittal Form (received November 15, 2023), MHIC Hearing Order (issued November 15, 2023) and Claim Form (filed April 5, 2023)
- Fund Ex. 3 - Printouts from MHIC AS400 Licensing Database, printed February 1, 2024
- Fund Ex. 4 - April 7, 2023, MHIC letter to Respondent with attached Claim Form dated April 5, 2023, and June 7, 2023, letter from Claimant amending claim amount

The Respondent did not offer any exhibits for admission.

Testimony

The Claimant testified and presented the testimony of her husband, Antoine Jackson.

The Respondent testified and did not present other 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. The company Birdland Builders, LLC held a MHIC corporate license under the number 05-132509.³ Mr. Faro held the individual contractor's license for the company under MHIC license number 01-109840.⁴

³ Fund Ex. 3.

⁴ *Id.*

2. On November 26, 2021, the Claimant and the Respondent entered into an initial contract for the remodeling of the Claimant's home for an amount not specified in the record.

3. The Claimant is the owner of the home where the work was to be done and it is her primary residence.

4. On November 26, 2021, the Claimant paid the Respondent a deposit of \$52,000.00.⁵

5. On April 30, 2022, the Claimant and the Respondent entered into a revised contract (Contract) to remodel the Claimant's kitchen, bedroom and laundry room, as well as build an addition to the home.⁶

6. The agreed-upon price for the revised Contract was \$179,475.00.⁷

7. On May 2, 2022, the Claimant paid to the Respondent a "Cabinet Deposit" in the amount of \$11,800.00.⁸

8. On June 21, 2022, the Claimant paid the Respondent \$30,000.00 for the completion of the foundation work.⁹

9. The Claimant paid for part of the cost of the Contract by taking out a loan with Lyons Financial.

10. On June 29, 2022, the Claimant's lender disbursed \$8,312.50 to the Respondent for a "Demo Draw."¹⁰

11. On September 1, 2022, the Claimant paid the Respondent \$8,312.50 for a "Cabinet Draw."¹¹

⁵ Cl. Ex. 2.

⁶ Cl. Ex. 1.

⁷ *Id.*

⁸ Cl. Ex. 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

12. On dates not specified in the record, the Respondent received two payments of \$8,312.00 titled "Lyons Financial Draw" and "Lyons Financial Draw Final."¹²
13. The "Lyons Financial Draw" and "Lyons Financial Draw Final" were paid to the Respondent prematurely outside the draw schedule in the Contract to close out the Claimant's loan with Lyons Financial.
14. The premature draws from Lyons Financial were to be applied towards future draws due under the Contract.
15. The Claimant paid the Respondent a total of \$127,049.00.¹³
16. The Respondent has not repaid to the Claimant any of the money he has received from her or Lyons Financial in connection with this project.
17. The Respondent completed the pouring of the porch slab, the construction of the foundation for the addition, interior plumbing work and the framing of a second-floor bedroom and laundry room.
18. The last day the Respondent worked at the home was November 15, 2022.
19. Other than the drafting of designs, the kitchen was not started, and no cabinets were delivered.
20. The foundation of the addition was completed but the structure of the addition was not started.
21. From November 15, 2022, through March 15, 2023, the Claimant made attempts to contact the Respondent to restart work on the project. The Respondent did not respond until March 21, 2022.¹⁴

¹² *Id.*

¹³ *Id.*

¹⁴ Cl. Ex. 3.

22. The value of the framing completed by the Respondent in the second-floor bedroom and laundry room is \$1,900.00.¹⁵

23. The cost to complete the second-floor bedroom and laundry room is \$12,420.00.¹⁶

24. The Claimant paid Deck Soldier d/b/a Deck Boss and Leonpro Services \$16,600.00 to complete the following items: 1) finish the porch (\$13,500.00), 2) install a new exterior door (\$1,500.00), and 3) install railings on concrete stairs (\$1,600.00).¹⁷

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 than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). 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 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. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimant resides in the home that is the subject of the claim or does 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 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. *Id.* § 8-405(f)(1) (Supp. 2023).

¹⁵ Cl. Ex. 5.

¹⁶ *Id.*

¹⁷ Cl. Ex. 8.

The Fund may also deny a claim if a claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). Although the Respondent offered in March 2023 to restart work on the project, this offer came after a four-month period where the Claimant received no response to her requests for updates of when the Respondent would restart work. Moreover, by March 2023 this project had been going on for a year and four months with significant portions left to be completed despite the Claimant paying over 70% of the total contract price at that point. Given these circumstances I find that the Claimant reasonably lost faith in the Respondent's ability to satisfactorily complete the job and therefore her rejection of his offer to restart work was also reasonable.

Claimant has suffered an actual loss due to acts or omissions of the Respondent

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. The Claimant contended both that the Respondent provided inadequate and unworkmanlike plumbing work and that the Respondent left the larger home improvement project incomplete.

Plumbing Work

The Claimant alleged that the Respondent's plumbing subcontractor performed unworkmanlike and inadequate work. The Claimant offered photographs of exposed plumbing in the laundry room but did not specify what was wrong with the plumbing.¹⁸ When asked on cross examination whether she knew what was wrong with the plumbing she responded she

¹⁸ Cl. Ex. 4f, 4g.

could only recall that it did not pass inspection, and that her husband could testify about the issues with the plumbing because he was present at the inspection. The Claimant's husband testified about the plumbing but did not provide any further insight into the specific issues with the work. The husband described meeting with the Respondent's plumber when the work was done but did not testify about the results of any later inspection. Instead, the husband's testimony focused on how much of the walls the plumber opened to do his work, that the work was done without a permit, and that the plumber expressed concerns about getting paid by the Respondent. Other than this general testimony, and the submission of photographs without explanation, the Claimant did not provide any documentation from the permitting authority, or any plumber subsequently hired to correct the work, stating why it did not pass inspection or what it cost to correct. Without any detail as to why the plumbing installed was faulty, I cannot find that the Respondent performed inadequate or unworkmanlike plumbing work. Even if I were to find that the work was faulty, based on the Claimant's unsupported testimony that it did not pass inspection, without any evidence of what it would cost to fix this work I cannot quantify the amount of actual loss suffered. Other than the plumbing, the Claimant did not contest the quality of the work performed by the Respondent. Therefore, I do not find that the Claimant has met her burden of establishing that the Respondent performed unworkmanlike or inadequate work.

Incomplete Home Improvement

I do, however, find that the Claimant has established that the Respondent performed an incomplete home improvement in this case. Although neither party produced a copy of the contract entered into at the beginning of their relationship, it is clear from the testimony of the parties and the proof of payments made, that the parties first entered into a contract on or around

November 26, 2021.¹⁹ The scope of work to be completed under this initial contract was on a larger scale than what would eventually be agreed to by the parties. The Claimant's husband, Mr. Jackson, testified that the project originally started at \$300,000 worth of work and was revised to under \$200,000. The written communications show that beginning in March 2022, the Claimant began to express concerns about the progress of the project.²⁰ At that time the Respondent provided timely responses and explanations for the delays. The initial contract included the building of a three-car garage that ultimately ran afoul of set-back issues with the local permitting authority. There were also further delays during this period due to changes to the size of the addition that required redrawing of plans. Lastly, the Respondent was waiting on certain selections to be made by the Claimant, such as the flooring for the bedroom and appliances for the kitchen.²¹ The communications in March 2022 show that the Respondent was working on obtaining permits and designing the kitchen, and he provided prompt and appropriate responses to the Claimant's concerns.²² In an effort to avoid further delay, the parties entered into a revised contract on April 30, 2022, with a scaled back scope of work that dropped the garage.²³ The total price of this revised contract was \$179,475.00. This was the most recent contract entered into by the parties, and as such was the agreement on which my analysis of the claim was based.

From May through June 2022, the Respondent began work on the structure of the home. This consisted of demolishing the existing porch, pouring a new foundation for the porch, and constructing the foundation for the addition. In August 2022, the Claimant started to express concerns again about the progress of the project and repeatedly requested a schedule for

¹⁹ Cl. Ex. 2.

²⁰ Cl. Ex. 3.

²¹ *Id.*

²² *Id.*

²³ Cl. Ex. 1.

completion of the work.²⁴ The Respondent explained to the Claimant why certain aspects of the project were not progressing. One of the delays to the framing of the second-floor bedroom and laundry room was the removal of a chimney. In late July 2022, the Claimant stated that her husband would take care of demolishing the chimney, and in early August the Respondent asked for an update on the status of the chimney.²⁵ It was not until November 2022, when the Respondent sent a crew to begin framing, that the chimney was removed by the Claimant's husband.²⁶ The Respondent also noted that delays were occurring due to the Claimant and her family continuing to live in the home while the work was done. The Respondent credibly testified as to how a project such as this must be completed in stages, and that various stages are reliant on the completion of other work, walking through how the porch roof could not be built until the addition was started and that the addition could not be started until the homeowners moved their bedroom.

Despite these legitimate explanations for some delays in the work, beginning in November 2022 the contractor failed to continue work, or communicate with the Claimant, for a span of four months. The last day of work the Respondent performed at the Claimant's property was November 15, 2022. The Claimant provided emails she sent to the Respondent on November 15, and December 16, 20, and 27, 2022, with no response from the Respondent.²⁷ The Claimant filed her complaint with the MHIC on January 3, 2023. On March 15, 2023, she sent the Respondent a message via Facebook stating that the contract would be terminated if he did not report to the job by March 22, 2023. The Respondent finally responded on the evening of March 21, 2023, stating why he would not be able to begin the following day.

²⁴ Cl. Ex. 3.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

The Respondent testified that there were ongoing communications between the parties during the time from when work ceased in November 2022 through December 2022, consisting of a phone call and emails. The Claimant disputes this testimony. Although the Respondent claims communications occurred, he did not produce any copies of the emails allegedly sent by him between November 15, 2022 and the end of December 2022. Moreover, looking at the emails in evidence sent by the Claimant to the Respondent on December 16, 20, and 27, 2022 they generally continue to ask when he would return to work on the home and whether he would update the payments in the application used to track draws. The repetitive nature of these questions is indicative of communications that have gone unanswered. Therefore, I find the Claimant's recollection of a lack of communication during this time period to be more credible than that of the Respondent. Moreover, there is no dispute from the Respondent that he did not communicate with the Claimant from the time she filed her complaint with the MHIC on January 3, 2023, until his email sent to the Claimant on March 21, 2023. The Respondent also did not dispute that the last time his company worked on the property was in November 2022.

While the Respondent did begin engaging through email on March 21, 2023, and offered to restart work, the Claimant reasonably ended the contract. Given the four-month silence and lack of work performed by the Respondent, I find that it is through his acts and omissions that the job is incomplete, resulting in an actual loss to the Claimant. Therefore, I find that the Claimant is eligible for compensation from the Fund for incomplete work.

Calculation of Actual Loss

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is 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. 2023); 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. However, none of the following three regulatory formulas are appropriate in this case:

(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.

COMAR 09.08.03.03B(3)(a)-(c).

The first formula is to be used when a contractor abandons the job without doing any work. In this case the Respondent did perform some work and therefore this formula is not appropriate and the Claimant is not eligible for a full refund of the money they paid to the Respondent. The Fund recommended that I look solely at the "Kitchen Remodel," which had an itemized cost of \$44,927.00 in the April 30, 2022 contract, and find an actual loss in this amount because the kitchen was not even started.²⁸ I do not agree with the recommendation because it is clear from the written communications between the parties that the Respondent did do some work towards the "Kitchen Remodel" in the form of drawing up designs and plans.²⁹ Moreover,

²⁸ Cl. Ex. 1.

²⁹ *Id.*; see also Cl. Ex. 3.

such a calculation does not account for whether the money the Claimant has paid to the Respondent thus far was paid to cover the full \$44,927.00 for the Kitchen Remodel or was for other work done under the contract.

The second formula is also inappropriate, as it is to be used when some work has been done by the original contractor and the claimant is not seeking another contractor to correct or complete the work. The Claimant in this case is seeking other contractors to complete the project and has already hired at least one contractor to complete work on the porch.³⁰ Even if I were to apply this formula it would result in an inequitable result as the Claimant did not establish the full value of the work the Respondent did perform.

The Claimant provided two estimates and an invoice from other contractors as evidence of both the value of the Respondent's work and the cost to complete his unfinished work.³¹ The estimate from DBF Concrete Construction covers both what that contractor would charge to pour a porch slab and build a foundation for the addition, as well as their cost for building the porch itself.³² The estimate does not break out the costs of each item but includes everything under a total cost of \$18,000.00. This is problematic because the Respondent completed the porch slab and the addition foundation, and the Claimant is not arguing that those installations are defective and need to be replaced. Instead, she offered the estimate as a way of showing their value based on what another contractor would charge for the same installation. However, that cost is mixed with the cost to build the portion of the porch not completed by the Respondent, leaving me unable to parse out what the value is of the porch slab and addition foundation completed by the Respondent, versus what it would cost the Claimant to have the porch completed.

³⁰ Cl. Ex. 8.

³¹ Cl. Ex. 5, 6, 8.

³² Cl. Ex. 6.

The Claimant's second estimate, from Construction Etc., LLC, also combines items completed by the Respondent with items that need to be completed. This estimate does break down the costs via line items.³³ Therefore, the Claimant showed that the \$1,900.00 was the value of the framing completed by the Respondent because that is what another contractor would charge to redo the framing.³⁴ The remaining \$12,420.00 is the cost to finish the bedroom and laundry room started by the Respondent.³⁵

The Claimant also provided an invoice from Deck Soldier for work that was done on the home. The Claimant paid Deck Soldier \$16,600.00 to complete the following items: 1) finish the porch (\$13,500.00), 2) install a new exterior door (\$1,500.00), and 3) install railings on concrete stairs (\$1,600.00).³⁶

The Fund recommended that I find the value of the porch slab and addition foundation installed by the Respondent by taking the \$13,500.00 paid to Deck Soldier to finish the porch and subtract it from the \$18,000.00 DBF Concrete Construction quoted it would charge to finish the porch, repour the porch slab and rebuild the addition foundation. The result would be \$4,500.00. The Fund then added the \$4,500.00 to \$1,900.00 Construction Etc., LLC quoted as what it would charge to redo the framing completed by the Respondent. This resulted in a valuation of the work completed by the Respondent of \$6,400.00. To reach the actual loss of the Claimant you would then subtract that amount from the amount paid to the Respondent. I do not agree with this recommendation either, as it similarly fails to account for the value of other work completed by the Respondent, such as the design work and applying for permits.

The third formula is used when the original contractor has done some work and the claimant is seeking other contractors to correct or complete that work. In this case work was

³³ Cl. Ex. 5.

³⁴ *Id.*; The Claimant did not claim that the framing installed by the Respondent was inadequate or unworkmanlike.

³⁵ Cl. Ex. 5.

³⁶ Cl. Ex. 8.

done by the Respondent and the Claimant has sought other contractors to correct or complete that work. The problem is that the Claimant did not provide estimates for what it would cost to complete the entire project but only a few items of the project; that is finishing the second-floor bedroom, laundry room and porch. Because of this, the formula results in a negative award as follows:

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| \$127,049.00 (amount paid to the Respondent) |
| + \$29,020.00 (cost to complete porch, bedroom and laundry room) |
| <hr/> |
| \$156,069.00 |
| - \$179,475.00 (original contract price) |
| <hr/> |
| - \$23,406.00 (actual loss) |

A strict use of this formula provides an inequitable result, as the Claimant has paid 70% of the original contract price with a significant amount of work still to be completed. Moreover, the Respondent's own invoices show that the Claimant paid for items that were never delivered such as a "Cabinet Deposit" for \$11,800.00 and a "Cabinet Draw" for \$8,312.50.³⁷ Moreover, the Respondent testified that some draws were made not because the work had been completed, but only to comply with the Claimant's lender's disbursement schedule. Therefore, it is clear even on the current record before me that the money paid thus far by the Claimant to the Respondent outstrips the work provided by the Respondent. To find no award would provide a windfall to the Respondent for a job left incomplete by his acts and omissions.

The three formulas are to be used "[u]nless [the Fund] determines that a particular claim requires a unique measurement." COMAR 09.08.03.03B(3). Because the first two formulas are not applicable and the third results in a negative award when it is clear from the record that the Claimant has suffered an actual loss, I find that this claim requires a unique measurement. The Respondent's own invoices show that on May 2, 2022 the Claimant paid \$11,800.00 for a

³⁷ Cl. Ex. 2.

“Cabinet Deposit” and on September 1, 2022 paid \$8,312.50 for a “Cabinet Draw.”³⁸ The Claimant established that the cabinets were never delivered as no physical work was started on the kitchen in the home. Therefore, the Claimant has established an actual loss for the cost she paid for cabinets that were never delivered in the total amount of \$20,112.50.

In addition, the Respondent’s invoices show that he received two payments of \$8,312.00 titled “Lyons Financial Draw” and “Lyons Financial Draw Final.”³⁹ The Respondent stated that this was money paid prematurely outside the draw schedule so the Claimant could close out her loan, and that it would have been applied to the next draw owed. The Respondent acknowledged that the money paid prematurely through these draws has not been paid back to the Claimant. Therefore, the Claimant’s actual loss also includes the money paid through these two additional draws in the amount of \$16,624.00. I find that based on the record before me the Claimant has established a total actual loss of \$36,736.50 (\$20,112.50 + \$16,624.00).⁴⁰

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.⁴¹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant’s actual loss of \$36,736.50 exceeds \$30,000.00. Therefore, the Claimant’s recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$36,736.50 as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ I am not crediting the Claimant the amounts paid under the invoices labeled “Deposit,” “Foundation Complete” and “Demo Draw” as these amounts can be tied to work done by the Respondent. Cl. Ex. 2.

⁴¹ 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”).

2023); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to receive \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

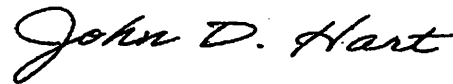
ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; and

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;⁴² and

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

May 28, 2024
Date Decision Issued

JDH/dlm
#212062



John D. Hart
Administrative Law Judge

⁴² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 20th day of August, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***