

<p><b>THE MATTER OF THE CLAIM</b></p> <p><b>OF ROBERT YODER,</b></p> <p><b>CLAIMANT</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 DAVID MARTIN,</b></p> <p><b>T/A MARTIN RENOVATIONS, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JENNIFER L. GRESOCK,</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><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-24-13712</b></p> <p><b>* MHIC No.: 24 (75) 580</b></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 January 9, 2024, Robert L. Yoder (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$25,863.00 for actual losses allegedly suffered as a result of a home improvement contract with David Martin, trading as Martin Renovations, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2024).<sup>2</sup> On May 15, 2024, the MHIC issued a Hearing Order on the Claim. On

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> All references to the Business Regulation Article are to the 2024 Volume of the Maryland Annotated Code.

May 16, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 7, 2024, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented, as was 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. 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 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**

The Claimant submitted a written summary with the following exhibits attached, which I admitted:

- Clmt. Ex. 1 Contract, dated May 22, 2023, and signed May 23, 2023
- Clmt. Ex. 2 Proof of payments to the Respondent, dated May 24, 2023, and July 1, 2023
- Clmt. Ex. 3 Log of communications between the Respondent and the Claimant, prepared by the Claimant, with entries from May 23, 2023, to September 30, 2023
- Clmt. Ex. 4 Contract with Barrick Deck & Fence (Barrick), dated October 9, 2023
- Clmt. Ex. 5 Proof of payments to Barrick, dated October 9, 2023; October 27, 2023; and November 9, 2023

- Clmt. Ex. 6 Complaint Form, dated November 7, 2023
- Clmt. Ex. 7 Text messages and emails between the Claimant and the Respondent, dated June 29, 2023, to September 30, 2023

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 Chart of Account, dated October 4, 2024
- Resp. Ex. 2 Lowe's order, dated July 5, 2023
- Resp. Ex. 3 The Home Depot receipt, dated July 5, 2023
- Resp. Ex. 4 The Home Depot receipt, dated July 5, 2023
- Resp. Ex. 5 The Home Depot receipt, dated July 6, 2023
- Resp. Ex. 6 Lowe's order, dated July 15, 2023
- Resp. Ex. 7 Lowe's order, dated July 29, 2023
- Resp. Ex. 8 Lowe's receipt, dated August 8, 2023
- Resp. Ex. 9 Lowe's order, dated August 27, 2023

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Home Improvement Claim Form, dated January 9, 2024
- Fund Ex. 2 Hearing Order, dated May 15, 2024
- Fund Ex. 3 Notice of Remote Hearing, dated June 17, 2024
- Fund Ex. 4 MHIC Registration and License History, printed September 19, 2024

### Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present 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.

2. At all times relevant, the Claimant resided in a home in Walkersville, Maryland. The residence is owned by a trust; the Claimant is executor of the trust.

3. On May 23, 2023, the Claimant and the Respondent entered into a contract (Contract) to remove the decking boards, handrails, and stairs (including stringers) from an existing deck; remove and replace any damaged or rotted boards; purchase and install new decking boards, handrails, and stairs, with specified products; purchase and install aluminum screen between joists; pour a small concrete pad for the stair stringers; purchase and install lattice on the deck and as a "wall"; construct a 16 foot by 14 foot screen room with a roof and aluminum screening; install PVC wrapping as specified; and purchase and install a screen door.

4. The original agreed-upon Contract price was \$24,705.00.

5. The Claimant paid the Respondent two payments of \$8,235.00, for a total of \$16,470.00.

6. The Respondent began work on June 29, 2023.

7. The Respondent removed the existing decking boards, railings, and steps. He installed new joists.

8. The decking boards specified in the Contract were not delivered until August 18, 2023. The boards that were delivered were not sufficient in number to complete the job.

9. The Respondent did no further work on the job after August 25, 2023. When the Respondent stopped work, the condition of the deck was unsafe due to open joists without flooring and the absence of any railings or steps.

10. Between August 25, 2023 and September 30, 2023, the Respondent and Claimant continued to communicate by email and text regarding permits and the Respondent's unsuccessful efforts to obtain materials to complete the job. In these exchanges, the Claimant expressed frustration and repeatedly requested updates on the status of orders for and delivery of materials.

11. On September 30, 2023, the Respondent emailed the Claimant and proposed that the Claimant order the needed materials, and that the cost be deducted from the Claimant's final payment amount. The Claimant did not respond.

12. On October 9, 2023, the Claimant entered into a contract with Barrick Deck & Fence (Barrick), a contractor licensed by the MHIC, to have all "poorly designed work" performed by the Respondent removed and then to complete the same job specified in the Contract, reusing materials when possible.

13. Though Barrick was unable to reuse most materials because of the way the boards were cut, it completed the work within two weeks, and the Claimant paid Barrick the contract price of \$34,100.00.

### 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). 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); *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.<sup>3</sup>

It is undisputed that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. Furthermore, the Claimant and Respondent generally agree on the facts, and both expressed that they had a good working relationship that somehow went wrong. The Claimant testified that the parties agreed to the Contract in May 2023, with work beginning at the end of June. The Respondent worked at a slow pace, and after two months, the deck and screened porch were not only unfinished, but in a hazardous state, with exposed joists, and no railings on or stairs to the three-foot high platform. In the month that followed, the Claimant became increasingly frustrated with the Respondent’s inability to obtain the materials needed to complete the job, culminating at the end of September 2023 with the Respondent’s proposal that if the Claimant wanted to help resolve the situation, he could purchase the materials himself and deduct the purchase from the final payment owed.

The Claimant explained that rather than accept (or even respond to) this solution, he contracted with a new contractor (Barrick), which quickly completed the work, though completion required Barrick to dismantle some of the Respondent’s work. The Claimant testified that Barrick told him this work was not done properly. The Claimant further explained that the Respondent had used boards of insufficient thickness between the joists, and that the boards were “wavy” instead of straight. Additionally, the Claimant complained that the

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<sup>3</sup> By statute, certain claimants are excluded from recovering from the Fund altogether. Here, the Claimant’s testimony on cross examination by the Fund established that 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). 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). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). 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).

Respondent left bags of concrete and other materials at his home, and that the concrete got rained on. The Claimant had to pay to have the hardened concrete hauled away.

The Respondent disputed little of the Claimant's testimony. He did not deny that he failed to complete the job because he never obtained the correct materials. The Respondent explained that the challenge with obtaining materials was due to the relatively small amount of a specific color needed for the job, claiming that he would place orders that vendors would then fulfill incorrectly or cancel. He noted that the Claimant suggested the Respondent would have an easier time placing orders if he returned unused materials for store credit, but the Respondent declined to do so because it was not financially feasible for him to make such large outlays of cash. The Respondent also explained that he finally proposed that the Claimant purchase the materials because the Claimant had repeatedly made inquiries of his own with vendors, and that while the Respondent recognized his contractual obligation to purchase materials, he just wanted to finish the job. The Respondent was apologetic about the concrete, which he explained he had covered with a tarp that must have blown off, and he noted that he did not pick up the materials left at the job site because the gate to the Claimant's property was closed and he did not feel welcome.

The Respondent did dispute the Claimant's allegation that the work he performed was inadequate, noting that he added boards between the joists to prevent sagging while waiting for materials. The Respondent further testified, without contradiction, that his work conformed with the applicable building code and was done pursuant to an approved permit.

The Respondent's regret and embarrassment over his failure to complete the Contract were evident in both his testimony and in his written communications with the Claimant. His testimony was honest and sincere, and it is clear that he was genuinely flummoxed by his inability to get the job done. Nonetheless, it is undisputed that he did in fact fail to complete

performance of his obligations under the Contract. No work was performed after August 25, 2023, despite the indisputably unfinished and hazardous condition of the deck and porch; the Respondent did not follow through with his obligation to obtain needed materials; and he did not refund any of the money the Claimant paid to him. Instead, the Respondent proposed a solution the Claimant reasonably chose not to accept, as the proposal deviated significantly from the terms of the Contract. This unaccepted proposal did not relieve the Respondent of his contractual obligations. Accordingly, I am persuaded that the Respondent performed an incomplete home improvement, and that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (2024).

However, I am not persuaded that the Respondent's work was either unworkmanlike<sup>4</sup> or inadequate. The Claimant submitted a photograph of the boards he described as "wavy," as well as a photograph with a ruler purporting to show the insufficient width of the board. He also provided the contract with Barrick, which refers to the removal of "poorly designed work." But the Claimant did not submit compelling evidence in support of his specific claim that the Respondent's work was inadequate, such as documentation of code requirements or industry standards for board width, or expert testimony that the boards were insufficient, unacceptable, or inconsistent with industry standards or requirements. Barrick's vague characterization of the work as "poorly designed" could mean anything from dangerously inadequate to simply

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<sup>4</sup>The Claimant submitted a written summary that reflects his understanding that "unworkmanlike" refers to the work ethic of a contractor ("less than 5 ½ [hours] per day"). I disagree with this interpretation. "Unworkmanlike" is not defined in the statute. Accordingly, I look to the dictionary for its ordinary meaning. "Unworkmanlike" means not in a workmanlike manner. *See Webster's New Universal Dictionary* 1984-88 (2d ed. 1983). The Supreme Court of Maryland has defined "workmanlike manner" as that term applies to building and construction contracts: "[t]he obligation to perform with skill and care is implied by law and need not be stated in any contract." *Gaybis v. Palm*, 201 Md. 78, 85 (1952). That rule was reaffirmed in *Worthington Construction Co. v. Moore*, 266 Md. 19, 22 (1972). In *K & G Construction Co. v. Harris*, 223 Md. 305, 314 (1960), the Court compared the express standard "workmanlike manner" with the implied standard of performance discussed in the *Gaybis* case. The *Harris* Court cited the *Gaybis* case for authority that the "workmanlike-manner" wording was equivalent to the "skill-and-care" wording in the *Gaybis* case. The Claimant did not present argument or evidence that the work completed by the Respondent was not done with skill and care, other than his contention regarding the inadequacy of the boards, which I address below in discussing "inadequate home improvement."



inconsistent with their own customary practice; it is insufficient to establish the former, particularly since no one from Barrick testified. As noted by the Fund, contractors who take over a partially complete job from another contractor often remove the incomplete work so that they have complete control over the quality of the finished job. Consistent with this practice, that Barrick removed the Respondent's work does not prove its inadequacy.

Nonetheless, based on the incomplete home improvement performed by the Respondent, I find that the Claimant is eligible for compensation from the Fund.<sup>5</sup> I must therefore 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); 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 Claimant retained another contractor to complete the work. Accordingly, the following formula<sup>6</sup> appropriately measures the Claimant's 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).

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<sup>5</sup> It was also the Fund's position that the Claimant established a legally sufficient claim and was entitled to compensation.

<sup>6</sup> Application of this formula was recommended by the Fund, and I agree that it is appropriate here.

It is undisputed that the Claimant paid the Respondent \$16,470.00 under the Contract. That amount plus the \$34,100.00 paid to Barrick equals \$50,570.00; subtracting \$24,705.00 (the Contract price) results in an actual loss of \$25,865.00.<sup>7</sup> However, a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5) (2024); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$25,865.00 exceeds the amount paid to the Respondent (\$16,470.00). Therefore, the Claimant's recovery is limited to \$16,470.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$25,865.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2024); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$16,470.00 from the Fund. Bus. Reg. § 8-405(e)(5) (2024); 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 \$16,470.00; 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>8</sup> and

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<sup>7</sup> While I have concluded that the Claimant did not prove that the Respondent's work was unworkmanlike, I have also concluded that Barrick reasonably removed work it considered poorly or insufficiently done as a condition of its agreement to complete the project. Additionally, as discussed, the Claimant credibly testified that materials purchased by the Respondent could not be reused by Barrick. Accordingly, my calculations do not credit the Respondent for any work completed.

<sup>8</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2024); COMAR 09.08.01.20.

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

December 20, 2024  
Date Decision Issued

*Jennifer L. Gresock*  

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Jennifer L. Gresock  
Administrative Law Judge

JLG/emh  
#215231

PROPOSED ORDER

*WHEREFORE, this 7<sup>th</sup> day of May, 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.*

*Wm. Bruce*

*Quackenbush*

*Wm. Bruce Quackenbush*

*Chairman*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**