

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF DARRYL W. JOYCE,<sup>1</sup></b></p> <p><b>CLAMINANT,</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 ANDREW</b></p> <p><b>WALLACE, T/A COREMEN, INC.</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE A. ELIZABETH ROJUGBOKAN,</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>* OAH NO.: DLR-HIC-02-10-39720</b></p> <p><b>* MHIC NO.: 09 (90) 1096</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On August 11, 2009, Darryl Joyce (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$27,140.94 for actual losses allegedly suffered as a result of a home improvement contract with Andrew Wallace *u/a* Coremen, Inc. (Respondent).

I held a hearing on March 28, 2011 at the Office of Administrative Hearings (OAH) in Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Hope M. Sachs,

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<sup>1</sup> This case identifies the Claimant as "Darryl A. Joyce" in error. The Claimant should be correctly identified as "Darryl W. Joyce."

Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010), Code of Maryland Regulations (COMAR) 09.01.03.01, 09.08.02.01, and 28.02.01.01.

### **ISSUE**

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on the Claimant's behalf:

- Cl. #1 Contract Proposal for the Claimant, December 5, 2006
- Cl. #2 Complaint Form, January 5, 2009 with the following attachments:
  - Typed Chronology of Events
  - Claim Form for \$62,530.90, unsigned and undated
- Cl. #3 Letter to Samuel C. Steelman, Jr., Esquire, from Charles E. Walton, Esquire, undated
- Cl. #4 Letter to the Claimant from Mr. Steelman, October 27, 2008, with a six-page attachment
- Cl. #5 Mid-Atlantic Waterproofing Proposal, February 4, 2010
- Cl. #6 NB Homes Invoice, February 12, 2009
- Cl. #7 Gutters For Less Invoice, August 8, 2008
- Cl. #8 RepairMax Receipt, June 17, 2008
- Cl. #9 Mech. Contracting Invoice, June 20, 2008

- Cl. #10 Construction Loan Draw History, January 1, 2009
- Cl. #11 Photograph of house

I admitted the following exhibits on the Fund's behalf:

- Fund #1 Memorandum to Legal Services from Sandra Sykes, January 5, 2011, with a five-page attachment and envelope
- Fund #2 Memorandum to Legal Services from Sandra Sykes, January 5, 2011, with a five-page attachment and envelope
- Fund #3 Memorandum to Legal Services from Sandra Sykes, November 18, 2010, with a six-page attachment and envelope
- Fund #4 Memorandum to Legal Services from Sandra Sykes, November 18, 2010, with a six-page attachment and envelope
- Fund #5 Affidavit of Hubert Lowery, December 1, 2010
- Fund #6 Respondent's Licensing History
- Fund #7 Home Improvement Claim Form, March 1, 2010

No exhibits were offered for admission into evidence on the Respondent's behalf.

The Respondent offered no exhibits.

Testimony

The Claimant testified on his own behalf.

The Respondent testified on his own behalf..

The Fund presented no testimony.

**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 #122845.

2. On December 6, 2006, the Claimant entered into a contract with the Respondent to build a large addition to his residence that he intended to have commercially zoned for use as a church meeting hall (church addition). The church addition consisted of one large room expected to hold approximately fifty to sixty people. There were no bedrooms in the church addition.

3. Between January 2007 and August 2007, the work was delayed while the Respondent pursued the commercial zoning process.

4. After a six-month delay, the Claimant elected to forgo the commercial zoning process and have the addition treated as a residential property. The Claimant, nevertheless, intended to have the property zoned commercial after the work was completed.

5. As of the day of the hearing, the property has not been used as residential property.

### DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a) (2010). See also COMAR 09.08.03.03B(2). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). Moreover, a home improvement is defined under Business Regulation Article, section 8-101 as follows:

(g) *Home improvement*.- (1) "Home improvement" means:

(i) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building; or

(ii) an improvement to land adjacent to the building.

Md. Code Ann., Bus. Reg. § 8-101(g)(1) (Emphasis added.) For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Claimant testified regarding the original terms of the December 6, 2006 contract which included finishing the basement in the existing house<sup>2</sup> and the construction of forty-five by fifty-eight foot church addition, which was anticipated to hold approximately fifty to sixty people. The church addition was built on the Claimant's single family home rental property. The Claimant's intention for undertaking the project was to have it be a contribution or endowment to his church.

After the Claimant's construction loan was reduced from \$423,000.00 to \$234,000.00, the Claimant entered into an oral agreement with the Respondent, between May and August 2007, to reduce the size and scope of the church addition. He did not provide any detail as to what the reduction in size and scope entailed. The Claimant also did not provide any documentation itemizing any of the changes in the scope of work to accommodate the cost reduction.

The Claimant expressed his frustration with the six-month construction delay between December 2007 and June 2008. He explained that, while intending to obtain a commercial permit for the church addition, he opted to move forward with the project as a residential property, with the intention of completing the commercial permitting process at a later time. The Claimant further acknowledged that by June 2008, most of the work on the church addition was

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<sup>2</sup> The Claimant acknowledged that, sometime in February 2007, the basement was completed to his satisfaction. Therefore, the Claimant's basement is not the subject of this Fund claim.

substantially completed.<sup>3</sup> He further admitted that the Respondent did not have any contractual obligation to reimburse the Claimant for any late fees associated with his construction loan.

The Respondent testified that, despite his financial difficulties between December 2007 and June 2008, most of the work on the church addition was substantially completed by June 2008. Moreover, the remaining work to be completed was solely punch-out items.

Finally, the Claimant testified that he paid the Respondent \$231,737.57 in four installments:

<i>Date</i>	<i>Draw Amount</i>
October 5, 2007	\$56,647.06
October 30, 2007	\$100,419.78
December 21, 2007	\$43,772.73
January 7, 2008	\$30,898.00
<b>Total</b>	<b>\$231,737.57</b>

Based on the evidence presented, I find that the Claimant has not proven eligibility for compensation under the Fund. The purpose of the Fund is to reimburse homeowners for actual losses associated with home improvement work. The Claimant contracted with the Respondent to build a church addition, intended to be used for commercial purposes. As noted above, a home improvement involves an addition that is "used or designed to be used as a residence or dwelling place." Md. Code Ann., Bus. Reg. § 8-101(g)(1)(2010). I am not persuaded that the Claimant's construction project is within the definition of home improvement. The Claimant contracted to build a large meeting room, anticipated to hold approximately fifty to sixty people. It has no bedrooms and as of the day of the hearing has not been used as a residence or dwelling

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<sup>3</sup> The Claimant referenced dissatisfaction with the steps in November 2007, which were corrected by June 2008. The Respondent obtained a final inspection and the project was approved. The Claimant could not recall specifically what work was left incomplete after June 2008.

place. Therefore, the Claimant's Fund claim is not compensable and he is not eligible for an award.

**CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained an actual loss compensable by the Fund. Md. Code Ann., Bus. Reg. § 8-401 (2010).

**RECOMMENDED ORDER**

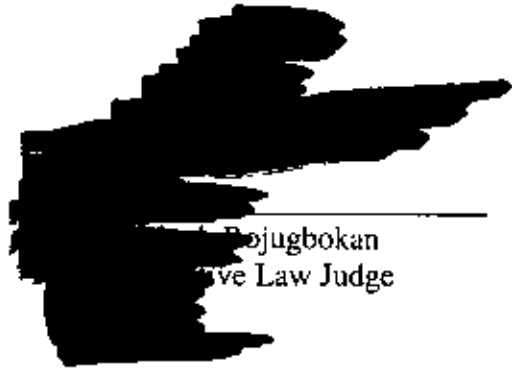
**I RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the claim be dismissed, and

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

June 20, 2011  
Date Decision Mailed

AER/\*\*  
# 123447



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Bojugbokan  
ve Law Judge

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF DARRYL C. JOYCE,</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 ANDREW</b></p> <p><b>WALLACE, T/A COREMEN, INC.</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE A. ELIZABETH ROJUGBOKAN,</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>OAH NO.: DLR-HIC-02-10-39720</b></p> <p>* <b>MHIC NO.: 09 (90) 1096</b></p> <p>*</p> <p>*</p> <p>*</p>
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**FILE EXHIBIT LIST**

I admitted the following exhibits on the Claimant's behalf:

- Cl. #12      Contract Proposal for the Claimant, December 5, 2006
- Cl. #13      Complaint Form, January 5, 2009 with the following attachments:
  - Typed Chronology of Events
  - Claim Form for \$62,530.90, unsigned and undated
- Cl. #14      Letter to Samuel C. Steelman, Jr., Esquire, from Charles E. Walton, Esquire, undated
- Cl. #15      Letter to the Claimant from Mr. Steelman, October 27, 2008, with a six-page attachment
- Cl. #16      Mid-Atlantic Waterproofing Proposal, February 4, 2010
- Cl. #17      NB Homes Invoice, February 12, 2009
- Cl. #18      Gutters For Less Invoice, August 8, 2008
- Cl. #19      RepairMax Receipt, June 17, 2008
- Cl. #20      Mech. Contracting Invoice, June 20, 2008



Cl. #21 Construction Loan Draw History, January 1, 2009

Cl. #22 Photograph of house

I admitted the following exhibits on the Fund's behalf:

Fund #8 Memorandum to Legal Services from Sandra Sykes, January 5, 2011, with a five-page attachment and envelope

Fund #9 Memorandum to Legal Services from Sandra Sykes, January 5, 2011, with a five-page attachment and envelope

Fund #10 Memorandum to Legal Services from Sandra Sykes, November 18, 2010, with a six-page attachment and envelope

Fund #11 Memorandum to Legal Services from Sandra Sykes, November 18, 2010, with a six-page attachment and envelope

Fund #12 Affidavit of Hubert Lowery, December 1, 2010

Fund #13 Respondent's Licensing History

Fund #14 Home Improvement Claim Form, March 1, 2010

No exhibits were offered for admission into evidence on the Respondent's behalf.

The Respondent offered no exhibits.

PROPOSED ORDER

*WHEREFORE, this 4th day of August 2011, 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.*

*J. Jean White*

*I. Jean White  
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION