

IN THE MATTER OF THE CLAIM
OF BEHZAD KALAGHCHI,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ROBERT SPERO,
T/A MARYLAND POOLS, INC.,
RESPONDENT

* BEFORE JENNIFER A. NAPPIER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-16-37278
* MHIC No.: 16 (05) 172
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PROPOSED DECISION

STATEMENT OF THE CASE
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DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On September 22, 2016, Behzad Kalaghchi (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$39,000.00 in alleged actual losses suffered as a result of a home improvement contract with Maryland Pools, Inc., (Respondent or Maryland Pools).¹ After an investigation, the Commission issued a Hearing Order on October 17, 2016 and forwarded the case to the Office of Administrative Hearings (OAH).

¹ The holder of the Respondent's MHIC license is Robert Spero. Therefore, the case name reflects Robert Spero, t/a Maryland Pools, Inc., as the Respondent.

On January 20, 2017, the Respondent's attorney, Robert M. Stahl, Esquire, filed a letter which stated that the Respondent filed bankruptcy on July 6, 2015. Mr. Stahl requested that the OAH stay this case on the basis that a bankruptcy trustee had been appointed by the United States Bankruptcy Court for the District of Maryland to administer the Respondent's bankruptcy estate.^{2,3}

I held a hearing on April 17, 2017 at the OAH in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Neither the Respondent, nor his attorney, appeared for the hearing. After waiting over an hour for the Respondent or someone representing him to appear, I proceeded with the hearing.^{4,5} Code of Maryland Regulations (COMAR) 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 09.01.03; COMAR 28.02.01.

² The OAH file also includes a letter dated January 19, 2017, from Assistant Attorney General Joel Jacobson, MHIC's counsel. Mr. Jacobson's letter was a response to a January 5, 2017 letter in which Mr. Stahl requested, on behalf of Respondent, a stay of a different Guaranty Fund claim against Respondent. The asserted basis for the Respondent's request for a stay was that the Respondent had filed a bankruptcy petition. Mr. Jacobson stated in his January 19, 2017 letter to the Respondent's attorney that "the United States Bankruptcy Court for the District of Maryland has ruled that the automatic stay provisions of the Bankruptcy Code are not applicable to proceedings by homeowners to recover from the Maryland Home Improvement Guaranty Fund. Therefore, [MHIC] may adjudicate homeowner claims filed with the Guaranty Fund based upon transactions with Maryland Pools, Inc. However, in the event that a claim is paid from the Guaranty Fund, the Respondent's bankruptcy filing will stay any collection proceeding against the Respondent by the State to recover the Guaranty Fund payment." See OAH Case File, docket entry 3.

³ I will treat Mr. Stahl's January 20, 2017 letter as a motion to stay this proceeding as a result of the Respondent's bankruptcy filing. I will address the motion in the discussion, below.

⁴ Another hearing was scheduled for the same date and time as the hearing in this matter. This case was heard second and therefore, commenced over an hour after the scheduled time.

⁵ Notice of the hearing was mailed to the Respondent and Mr. Stahl by certified mail on January 5, 2017. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). Mr. Stahl received the notice on January 9, 2017. The Respondent received the notice on January 14, 2017. See OAH Case File, docket entry 2.

ISSUES

1. Should this Claim be stayed on the basis that a bankruptcy trustee has been appointed by the United States Bankruptcy Court for the District of Maryland to administer the Respondent's bankruptcy estate?
2. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
3. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- CL Ex. 1 Maryland Pools Contract, February 20, 2015
- CL Ex. 2 Copies of checks written to Maryland Pools, dated February 20, 2015, March 31, 2015, April 12, 2015 and April 21, 2015
- CL. Ex 3 Copies of checks written to Aquatic Solutions, dated June 10, 2015 and July 7, 2015
- CL Ex. 4 Wilcoxon Construction invoices, July 17, 2015 and July 6, 2015
- CL Ex. 5 TriStar Electric invoice, April 23, 2015
- CL Ex. 6 Copies of checks written to Santana's Design Build, dated March 27, 2015 and June 9, 2015; copy of check written to Walter Santana, dated June 26, 2015

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 Hearing Order, October 17, 2016
- GF Ex. 2 Notice of Hearing, January 5, 2017
- GF Ex. 3 Letter to Robert Spero from MHIC, September 22, 2016; Home Improvement Claim Form, September 17, 2016
- GF Ex. 4 MHIC Licensing Information for the Respondent, printed February 14, 2017

I admitted the following joint exhibit on behalf of the Claimant and the Fund:

Joint Ex. 1 Maryland Pools Contract, February 20, 2015⁶

No exhibits were offered on the Respondent's behalf.

Testimony

The Claimant testified on his own behalf. The Fund did not present any witnesses. No one appeared to testify on behalf of the Respondent.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 93100.
2. At all relevant times, the Claimant was the owner of a home located on Pointdexter Lane in Rockville, Maryland, which is his personal residence. The Claimant owns two other residential properties in Maryland.
3. The Claimant is not an employee, officer or partner of the Respondent, nor is he related to any of the Respondent's employees, officers or partners, either by blood or marriage.
4. Robert Spero holds the Respondent's MHIC license.
5. On September 20, 2015, the Claimant and the Respondent entered into a contract for construction of a rectangular swimming pool (Contract) at the Claimant's residence. The pool was to be twenty feet in width and forty feet in length, with a water depth ranging from three feet to six feet. The Contract also included the following equipment:
 - One six-foot loveseat
 - Three underwater LED lights

⁶ The copy of the Maryland Pools Contract admitted as Claimant's Exhibit 1 is a shrunken copy which is nearly illegible. Joint Exhibit 1 is larger copy, which was offered by the Claimant and the Fund so that a legible copy would be in the record.

- Automatic pool cleaner
- Natural gas heater
- Hydro-spa
- Automatic pool/spa controls
- Automatic pool cover
- Pool raised beam
- Two two-foot sheer descents
- One four-foot sheer descent
- H.P. pump for sheer descents
- Spa raised cultured stone

6. The original agreed-upon contract price was \$93,090.00.

7. The Contract required the Claimant to pay a \$9,390.00 deposit at the time of the Contract. The Contract provided for the following cash payment schedule for the balance of the Contract price:

- \$33,480.00 due at the time of excavation
- \$8,370.00 upon delivery of the equipment
- \$25,110.00 due upon completion of pneumatically applied concrete shell
- \$8,370.00 due at the time of the coping and tile installation
- \$8,370.00 due prior to application of the Pebble-Tec finish.

8. The Contract did not contain a specific start or completion date. However, the Contract contained the following: “[the Respondent] shall apply for a building permit within 5 working days from the date of this contract. If contract requires financing, the building permit will be applied for within 7 working days after notification of approval of financing.

Construction shall be scheduled approximately 7 working days after permit has been obtained and shall be substantially completed approximately 35 working days after completion of excavation, weather permitting.”

9. The Claimant paid the Respondent \$76,350.00 as follows:

- \$9,390.00 on February 20, 2015 (check #651)
- \$33,480.00 on March 31, 2015 (check #666)
- \$25,110.00 on April 12, 2015 (check #612)
- \$8,370.00 on April 21, 2015 (check #620)

10. On or about March 27, 2015, the Respondent’s project manager visited the Claimant’s home to inspect the work site. At that time, the project manager discovered an issue with the elevation of the Claimant’s land, which would affect the excavation. The project manager told the Claimant that the Respondent would have Santana’s Design Build correct the elevation issue and asked the Claimant to pay Santana’s Design Build directly for the work. However, there was no modification of the Contract at that time, and the Claimant agreed that he and the Respondent would address the issue when the pool was completed.

11. In March 2015, the Claimant also entered a separate contract with Santana’s Design Build for decking and landscaping work.

12. The Respondent began to perform work under the Contract on March 31, 2015.

13. The Respondent last performed work under the Contract on April 29, 2015. By that time, the Respondent had completed excavation and applied the concrete pool shell. However, none of the equipment had been installed or delivered to the Claimant, the Pebble-Tec finish had not been applied and the stonework was incomplete.

14. In May 2015, the Claimant attempted to contact his Maryland Pools salesman, project manager, and architect, each by phone and/or email. None of these individuals responded to any of the Claimant's messages.

15. In late-May 2015, the Claimant's attorney attempted to contact the Respondent on the Claimant's behalf. However, his attorney was also unable to reach anyone.

16. In late-May 2015, the Claimant visited the Respondent's office during normal business hours. When he arrived, he saw employees carrying boxes out of the office. The Claimant spoke to Mr. Spero and the Respondent's engineer, Bob Brucksch. Mr. Spero informed the Claimant that the Respondent was closing its business that day.

17. During the Claimant's visit to the Respondent's office, Mr. Spero and Mr. Brucksch offered to personally finish the pool if the Respondent would pay an additional sum of approximately \$20,000.00. The Respondent declined that offer.

18. The Claimant has had no contact with the Respondent since visiting the Respondent's office in late-May 2015.

19. In June 2015, the Claimant contracted with Santana's Design Build to perform stonework left incomplete by the Respondent, in addition to correcting the elevation issues that were discovered prior to the excavation.

20. The Claimant paid Santana's Design Build/Walter Santana \$55,041.00 as follows:

- \$15,041.00 on March 27, 2015 (check #665)
- \$20,000.00 on June 9, 2015 (check #631)
- \$20,000.00 on June 26, 2015 (check #553)

These payments covered both work performed under the Claimant's separate contract with Santana's Design Build and the work Santana's Design Build performed which was related to the Contract with the Respondent. The exact cost of the work related to the Contract with the Respondent is unknown.

21. Aquatic Solutions was the subcontractor that was originally slated to install the Claimant's pool equipment under the Contract with the Respondent. Around June 2015, the Claimant contracted with Aquatic Solutions to install the pool equipment included in the Contract with the Respondent, with no upgrades or additional work, for the price of \$21,740.69.

22. Wilcoxon Construction was the subcontractor that was originally slated to apply the Pebble-Tec finish to the pool under the Contract with the Respondent. In July 2015, the Claimant contracted with Wilcoxon Construction to apply the finish to the pool for \$8,006.65.

23. Aquatic Solutions and Wilcoxon Construction are both licensed home improvement contractors in Maryland.

24. The Claimant's pool was completed in mid-July 2015.

25. In July 2015, the Claimant received a notice that the Respondent had filed for bankruptcy. The Claimant is not a party to the bankruptcy action.

26. The Claimant has not taken any action to recover monies for the Respondent's failure to complete the Contract work, other than the instant claim.

27. The Contract contains an arbitration clause. As of the date of the hearing, the Respondent had not advised the Claimant, the MHIC or the OAH that he intends to participate in arbitration of the issues underlying this Claim.

DISCUSSION

Bankruptcy Stay

As discussed in the Statement of the Case, the Respondent's attorney filed a January 20, 2017 letter with the OAH, requesting that the OAH stay this case on the basis that a bankruptcy trustee has been appointed by the United States Bankruptcy Court for the District of Maryland to administer the Respondent's bankruptcy estate. For the following reasons, I deny the motion to stay.

Under 11 U.S.C.A.⁷ § 362(b)(4), the filing of a bankruptcy petition "does not operate as a stay of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a monetary judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police and regulatory powers." In an unpublished decision, the United States Bankruptcy Court for the District of Maryland held in *In re Michael Goodman*, No. 86-B-1700 (Bankr. D. Md., Aug. 28, 1987) (Order Granting Relief From Stay), that the automatic bankruptcy stay is not applicable to proceedings by homeowners to recover claims against the Maryland Home Improvement Guaranty Fund. See also *In the Matter of the Claim of Patrick Madden Against the Maryland Home Improvement Guaranty Fund for the Alleged Acts or Omissions of Chung Yi, t/a Chung Yi Construction and Design*, OAH No.: DLR-HIC-02-15-07570 (Issued August 27, 2015).⁸

In an analogous case, the United States District Court for the District of Maryland held that the Maryland Racing Commission's police and regulatory power to suspend a debtor's license as a horse trainer was not barred by or stayed under the bankruptcy code. See *In re*

⁷ "U.S.C.A." stands for "United States Code Annotated."

⁸ Although, under rules applicable in Maryland courts, an unpublished opinion is neither precedent within the rule of *stare decisis* nor persuasive authority, I have discussed the aforementioned cases as I agree with the rationale of the decisions.

Christmas, 102 B.R. 447 (Bankr. D. Md. 1989). See also *International Resort and Beach Club*, 36 B.R. 189 (Bankr. D. S.C. 1983) (plaintiff's claim seeking an award from South Carolina's vacation time sharing recovery fund was an action by a governmental unit to enforce the unit's police or regulatory power and was not subject to bankruptcy court's jurisdiction or to the automatic bankruptcy stay). I am persuaded by the reasoning of these decisions that the Respondent's bankruptcy filing does not require or warrant a stay of this proceeding against the Fund.

The Merits of this Case

Legal Framework

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

A claimant 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) (2015);⁹ see also COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). 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. However, the Fund may not compensate a claimant for

⁹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and may not compensate a claimant for more than was paid to the original contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(1).

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or he owns no more than three dwelling places; (b) the claimant is not an employee, officer or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2016).

For the reasons that follow, I find that the Claimant has proven eligibility for compensation.

Statutory Eligibility

The undisputed evidence in this case establishes there are no *prima facie* impediments barring the Claimant from recovering from the Fund. *Id.* The Claimant filed his Claim within three years of learning that the Respondent had closed its business and would not be completing the work on his pool. The Claimant testified that the home improvement work at issue in this case concerned his pre-existing personal residence in Maryland, which is one of three dwellings

that he owns; he was not an employee, officer or partner of the Respondent and is not related to any of the Respondent's employees, officers or partners; the Respondent made no reasonable effort to resolve the claim in this matter;¹⁰ and the Claimant has not taken any other legal action to recover monies for the Respondent's failure to complete the pool.

The remaining prerequisite under section 8-405 of the Business Regulation Article is the requirement that the Claimant complies with the arbitration clause contained in the Contract before seeking compensation from the Fund.

In order to be enforceable, an arbitration clause in a home improvement contract must contain: (1) the name of the person or organization that will conduct the arbitration; (2) whether any mandatory fees will be charged to the parties for participation in the arbitration and include the fee schedule; (3) whether the arbitrator's findings are binding; *and* (4) a disclosure that, under Business Regulation Article, §8-405(c), Annotated Code of Maryland, a claim against the Home Improvement Guaranty Fund by an owner shall be stayed until completion of any mandatory arbitration proceeding. COMAR 09.08.01.25A. In addition, the parties shall affix their initials and date immediately adjacent to any mandatory arbitration clause in a home improvement contract, at the time of execution of the contract. COMAR 09.08.01.25B.

The arbitration clause contained in the Contract states, in pertinent part, as follows:

Any controversy, action, claim, dispute, breach or question of interpretation relating to or arising out of this contract shall be resolved by arbitration in accordance with Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction.

¹⁰ The Claimant testified that Mr. Spero and Mr. Brucksch offered to *personally* complete the pool, provided the Claimant pay them approximately \$20,000.00. Not only do I find that this does not amount to an offer from the Respondent, since Mr. Spero and Mr. Brucksch offered to complete the pool as individuals, but I also find that this was not a reasonable offer, as it would have required the Claimant to pay an amount in excess of the price he agreed to in the Contract.

The costs of arbitration shall become by the losing party or shall be borne in such proportions as the arbitrators determine.

(Testimony, Claimant).¹¹

Based on the evidence in the record, I find that the arbitration clause fails to fully comply with the provisions of COMAR 09.08.01.25A. The arbitration clause does not contain the name of the person or organization that will conduct the arbitration, address whether the arbitrator's findings are binding, include a fee schedule, or include a disclosure that a claim against the Fund shall be stayed until completion of any mandatory arbitration proceeding. COMAR 09.08.01.25A. I also note that since there is not a physical copy of the portion of the Contract containing the arbitration clause in evidence and the record is otherwise silent on the matter, there is no evidence that the parties initialed and dated the portion of the Contract containing the arbitration clause. COMAR 09.08.01.25B. Failure to comply with any one of the provisions of COMAR 09.08.01.25A or B is sufficient to render an arbitration clause unenforceable. *See* COMAR 09.08.01.25A, B. Since the arbitration clause contained in the contract is unenforceable, the Claimant is not required to comply with the clause and it was appropriate for the MHIC to forward this Claim for a merits hearing.¹²

¹¹ The arbitration clause is contained on the back of the Contract; however, the Claimant and the Fund only submitted as evidence a copy of the front of the Contract. At the hearing, the Claimant had a photograph of the reverse side of the Contract on his cellular phone, and on cross-examination, counsel for the Fund asked that the Claimant read the arbitration clause into the record. This is the entirety of what the Claimant read into the record.

¹² COMAR 09.08.03.02E provides that when a contract between a claimant and a contractor requires that all contract disputes be submitted to binding arbitration, the claimant shall either submit their dispute to binding arbitration as required by the contract; or provide evidence to the MHIC that the claimant has made good faith efforts to bring the dispute to binding arbitration which the contractor has either rejected or not responded to. Since the arbitration clause in this case does not indicate that arbitration would be binding, I find that this regulation does not apply.

I note that the Respondent never advised the Claimant, the MHIC or the OAH of any intention to participate in arbitration of the issues underlying this Claim. Although the Respondent sought to stay this proceeding based on its pending bankruptcy action, the Respondent never sought to stay the Claim based on the arbitration clause. Even if I were to assume the arbitration clause was binding, I find that by failing to take any action to enforce the arbitration clause, the Respondent has waived any right to arbitration that might have otherwise existed.

Was the Home Improvement Unworkmanlike, Inadequate or Incomplete?

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. There is no allegation that the home improvement work performed by the Respondent was either unworkmanlike or inadequate. However, the undisputed evidence establishes that the Respondent failed to complete installation of the pool, as provided by the Contract. The Claimant paid the Respondent over 80% of the amount owed under the Contract and the Respondent essentially left the Claimant with a large, concrete-coated hole in the ground. The Respondent failed to apply the interior finish to the pool, complete the stonework and install the pool equipment. After abandoning the job, the Respondent went out of business and filed for bankruptcy.

The Claimant testified that after Mr. Spero informed him in May 2015 that the Respondent was closing its business, he contracted with Aquatic Solutions, Santana's Design Build and Wilcoxon Construction to complete the work which the Respondent left incomplete. The Claimant further testified that each of these contractors performed the work with the same specifications contained in his Contract with the Respondent. In fact, Aquatic Solutions and Wilcoxon Construction would have been the subcontractors under the Claimant's Contract with the Respondent.

I thus find that the Claimant is eligible for compensation from the Fund.

Amount of Actual Loss

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. MHIC's regulations provide three formulas for measurement

of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

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).

In this matter, the Claimant paid the Respondent directly, and also incurred costs paid over and above the Contract to complete the pool. I find that the amounts paid to Aquatic Solutions and Wilcoxon Construction are reasonable, given that each contractor performed work with the same specifications contained in his Contract with the Respondent, as discussed above. However, as to the payments to Santana's Design Build, I am unable to ascertain what amount of those payments were for work performed to complete the items left undone by the Respondent versus the amount the Claimant owed under his separate, unrelated contract with Santana's Design Build. The Claimant testified the payments he made to Santana's Design Build were for work done related to his Contract with the Respondent, as well as unrelated work under his separate contract with this contractor. The Claimant did not know what portion of the payment was allocated to the work related to his Contract with the Respondent. Therefore, I am unable to include any of the monies paid to Santana's Design Build in my calculation of the Claimant's actual loss.

The Claimant's actual loss is as follows:

Amount paid to Respondent	\$ 76,350.00
Amount paid to Aquatic Solutions & Wilcoxon to complete the Contract	+ \$ 29,747.34
<u>TOTAL</u>	<u>\$106,097.34</u>
<u>Contract Price</u>	<u>- \$ 93,090.00</u>
Actual Loss	\$ 13,007.34

The amount of the Claimant's actual loss is within the statutory cap on claims against the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (e)(5). Thus, the Claimant's recovery is for the full amount of his actual loss, \$13,007.34.

This case is only one of many against the Respondent. Section 8-405(e)(2) of the Business Regulation Article provides for a statutory cap of \$100,000.00 to cover all claimants for the acts or omissions of one contractor, unless the contractor reimburses the Fund. Thus, although I recommend an award of \$13,007.34 to the Claimant, this award may be limited by the statutory cap of section 8-405(e)(2).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts and omissions, and that an appropriate award in this case is \$13,007.34, subject to any limitations imposed by section 8-405(e)(2) of the Business Regulation Article. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$13,007.34, unless otherwise limited by section 8-405(e)(2) of the Business Regulation Article; and; 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;¹³ and

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

Signature on File

July 17, 2017
Date Decision Issued

Jennifer A. Nappier
Administrative Law Judge

JAN/sw
168904

¹³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

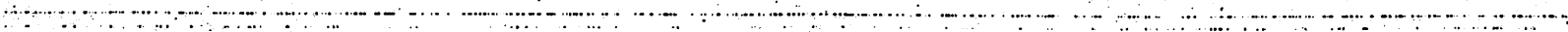


The Board of Directors of the Corporation has resolved to
 amend the Charter of the Corporation by adding to the
 Charter the following provisions:

Passed and approved at a meeting of the Board of Directors
 held at the City of New York, New York, on the 14th day of
 December, 1960.

Signed, sealed and delivered in presence of the
 undersigned Secretary of the Corporation, this 14th day of
 December, 1960.

 Secretary



PROPOSED ORDER

WHEREFORE, this 21st day of August, 2017, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION