

IN THE MATTER OF THE CLAIM	*	BEFORE JOHN T. HENDERSON, JR.
OF JOTHILINGAM RAMALINGAM,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
EMIN ONUK	*	
AND	*	OAH No.: LABOR-HIC-02-24-21337
NV KITCHEN AND BATH MD, INC.	*	MHIC No.: 24 (75) 870
RESPONDENTS	*	

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
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DISCUSSION  
PROPOSED CONCLUSION OF LAW  
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**STATEMENT OF THE CASE**

On April 16, 2024, Jothilingam Ramalingam (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) under the jurisdiction of the Maryland Department of Labor (Department) for the reimbursement of \$47,482.60 for actual losses allegedly suffered because of a home improvement contract with

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

Emin Onuk (Respondent Onuk) and NV Kitchen and Bath MD, Inc. (Respondent NV)<sup>2</sup>. Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2024).<sup>3</sup> On July 31, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 19, 2024, the OAH mailed a Notice of Hearing (Notice) to the Respondent by certified and regular mail to his address of record on file with the MHIC advising them that failure to appear for the hearing might result in a decision against the party failing to appear. Bus. Reg. § 8-312(d).<sup>4</sup>

On October 31, 2024, I held the hearing via Webex. Bus. Reg. §§ 8-407(a), 8-312; COMAR 28.02.01.20B(1)(b). The Claimant appeared and represented himself. The Respondent Onuk appeared and represented himself. The Respondent NV appeared and was represented by Arif Akpinar, President and Manager, pursuant to a special power of attorney on record herein.<sup>5</sup> Jonathan P. Phillips, Assistant Attorney General for the Department, represented the Fund.

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 (2021 & Supp. 2024); COMAR 09.01.03; and COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondents' acts or omissions?
2. If so, what is the amount of the compensable loss?

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<sup>2</sup> Both respondents were named in the August 1, 2024 MHIC Order.

<sup>3</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2024 Volume of the Maryland Annotated Code.

<sup>4</sup> "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Bus. Reg. § 8-312(d).

<sup>5</sup> On November 4, 2024, Mr. Akpinar provided the special power of attorney authorizing his representation of his company. The record was kept open until that date.

## SUMMARY OF THE EVIDENCE

### Exhibits

I admitted into evidence the thumb drive offered by the Claimant and the individual files marked as follows:

- Cl. Ex. 1: Better Business Bureau (BBB) Arbitrator's Decision, April 11, 2024
- Cl. Ex. 2: Emails to and from the Claimant and Respondent NV, December 26, 27, and 29, 2023, January 2, 3, 25, 27 (with three photographs embedded) 28, 29 and 30, 2024, February 1, 2, 2024; Contractor Agreement from the Respondent, to the Claimant, start date January 29, 2024; plumbing inspection, January 18, 2024; Baltimore County Electrical Permit, December 19, 2023; electrical inspection, January 10, 2024; text messages between the Claimant and Respondent NV, December 26, 27, 28, 29 and 31, 2023, January 3, 4, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24 and 25, 2024; text messages between the Claimant and Respondent NV, January 3, 4, 17, 18 and 25, 2024
- Cl. Ex. 3: Text messages between the Claimant and Respondent NV, October 14 (with two photographs embedded), 16, 17, 18, 20, 23, 24, 26, 27, 29, 30 and 31, 2023, November 1, 2, 7, 8, 9, 10, 13, 14, 15, 17, 18, 20, 21, 25 and 27, 2023, December 1, 5, 8, 10, 15, 16, 17, 19, 20, 21, 22, 25 and 26, 2023
- Cl. Ex. 4: Text messages between the Claimant and Respondent NV, December 15, 19 and 26, 2023, January 2, 3, 4, 12, 14, 15 (with one photograph embedded), 16, 17, 18, 19, 20, 22, 23, 24 and 25, 2024
- Cl. Ex. 5: Emails from the Claimant and Respondent NV, December 31, 2023, January 11, 28, 29 and 30, 2024
- Cl. Ex. 6: Text messages between the Claimant and Respondent NV, October 14, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30 and 31, 2023, November 1, 2, 3, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, 21, 22, 25, 27, 30, 2023, December 1, 5, 6, 7, 8, 10, 12, 15, 16, 17, 19, 20, 21, 22, 25, 26, 27, 28, 29 and 31, 2023, January 2, 3, 4, 5, 6, 9, 17, 18 and 25, 2024
- Cl. Ex. 7: BB Residential Inspections Property Inspection Report, January 30 2024
- Cl. Ex. 8: Creditor list for Respondent NV's bankruptcy filing, undated; emails from Michelle Waters to Nager Law Group, LLC, August 30, 2024, September 30, 2024, Notice of Chapter 13, Bankruptcy Case, April 26, 2024

- Cl. Ex. 9: Contract and invoice from JVF Constructions, LLC, (JVF) January 29, 2024; Claimant's signed contract with JVF, January 19, 2024; Scope of Work prepared by JVF, February 4, 20024; Change Order from JVF, March 29, 2024; Claimant's check number 154, payable to Jose Flores in the sum of \$8,500.00, February 10, 2024; Bank of America account activity statement, March 28, 2024 and April 1, 2024; Claimant's check number 212, payable to JVF in the sum of \$14,000.00, April 1, 2024; Claimant's check number 211, payable to JVF in the sum of \$7,255.00, April 1, 2024; Final Revision Proposal from Mr. William Thigpen, Master Electrician (Thigpen), February 7, 2024; Receipt from Thigpen, in the sum of \$1,850.00, February 13, 2024; Claimant's check number 210 payable to Thigpen in the sum of \$2,400.00, February 7, 2024; Bank of America account activity statement, February 13, 2024
- Cl. Ex. 10: Claimant's record of contract amount and payments, undated, for the period of January 30, 2024 through April 1, 2024; BBB Arbitrator's Decision, April 11, 2024; Claimant's check number 137, payable to the Respondent NV, in the sum of \$1,711.79; Claimant's check number 138, payable to the Respondent in the sum of \$1,3141.20; Complaint to HIC, undated; Scope of Work with the Respondent NV, prepared by Patricia H. Hause, Designer for Respondent NV, October 23, 2023; Remodeling Agreement between Claimant and Respondent NV, October 23, 2023; Respondent NV's Change Order Form, October 28, 2023; Claimant's check number 141, payable to the Respondent NV in the sum of \$13,141.20, October 30, 2023; Claimant's check number 142, payable to the Respondent NV in the sum of \$16,426.49, January 2, 2024; Claimant's check number 130, payable to the Respondent NV in the sum of \$4,911.74, October 24, 2023; Claimant's check number 140, payable to the Respondent NV in the sum of \$5,000.00, October 30, 2023

The Respondent Onuk did not offer any exhibits.

As part of the record, the Respondent NV offered, but was not admitted into the evidence, its Exhibit 1, the Maryland Department of Labor Contractor/Salesman License expiring October 5, 2025. There were no other exhibits offered by the Respondent NV.

I admitted into evidence exhibits offered by the Fund, as follows:

- GF Ex. 1: Claimant's Claim Form, April 16, 2024
- GF Ex. 2: MHIC Hearing Order, August 1, 2024
- GF Ex. 3: Notice of Hearing, September 25, 2024
- GF Ex. 4: Department licensing history for the Respondent NV, October 23, 2024

## Testimony

The Claimant testified and offered the testimony of Brian Bruneau, Home Inspector.

The Respondents offered the testimony of the Respondent Onuk and Mr. Akpinar.

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 NV used the MHIC salesperson license number of 05-146753 which belonged to the Respondent Onuk.
2. Prior to March 2022, the Respondent Onuk was employed by the Respondent NV and held a MHIC salesperson license.
3. While employed with the Respondent NV, the Respondent Onuk allowed the Respondent NV to use his salesperson's license to conduct company business.
4. In or about March of 2022, the Respondent Onuk ceased employment with the Respondent NV.
5. After the Respondent Onuk ceased employment, the Respondent NV continued to conduct business using the Respondent's Onuk's license.
6. At all times relevant to the subject of this hearing, the Respondent Onuk knew that the Respondent NV was using the Respondent Onuk's MHIC salesperson's license for purposes of continuing the Respondent NV's home improvement business.
7. At all times relevant to the subject of this hearing, the Respondent NV did not have its own MHIC home improvement contractor license.<sup>6</sup>

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<sup>6</sup> Respondent NV's Exhibit 1, not admitted into evidence, is the MHIC license issued to the Respondent NV on a date not published, a Contractor/Salesman license number 146753, having an expiration date of October 5, 2025. There was no explanation or evidence presented by any party as to what was the effective date of valid period of the license. The license number is the one that was assigned to the Respondent Onuk.

8. The Claimant is not a relative, employee, officer, or partner of either Respondent and is not related to any employee, officer, or partner of either Respondent.

9. The Claimant resides in Milpitas, California.

10. The Claimant's property subject to this matter is located in Catonsville, Maryland on Wilkens Avenue (the Property) and is the Claimant's residential rental property. The Claimant has never resided in the property. The Property is titled in the name of the Claimant's family trust.

11. The Claimant owns two additional residential rental properties in Maryland.

12. On or about October 23, 2023, the Claimant and the Respondent NV entered into a home improvement agreement (the Contract) to remodel the Property, the scope of work being the following:

- Permits: Secure Baltimore County Building, Electrical and Plumbing permits.
- Demo: Demo and haul away all carpeting on the first and second floors; demo and haul away current kitchen including appliances; demo wall and haul away wall tile in the kitchen; Demo and haul away the paneled basement wall
- Kitchen: Install Kitchen, to include 21st Century Cabinetry, hardware and accessories, laminate granite counter tops and subway tile; install basement and upstairs bathroom to include shower stall, back walls, glass doors, pedestal sink and accessories, toilet, sink faucet, medicine cabinet and vanity light, shower head and trim packages; replace current electrical panel, outlets and switches in entire house; add four recessed lights to the room in the basement and two recessed lights in the living room; install line vanity light in both bathrooms; rough in water and drain lines for sink, faucet and dishwasher in the kitchen and basement; run water line to refrigerator; install kitchen sink, faucet and dishwasher; move gas line for range.
- Flooring: Install new LVT on entire first floor and second floor, including kitchen and closet; install new quarter round to the entire house; install sheet vinyl on the entire basement floor, except mechanical room.

**Wall Work:** Remove wallpaper and border from all rooms; clean, patch and skim coat where needed all interior walls; paint all rooms on all three floors to include ceilings, walls, trim and doors; frame and drywall new wall in basement separating room from stairs; enclose mechanical systems, frame and drywall; install new vented door to mechanical room; enlarge basement restroom to add shower and vanity-frame and drywall; replace ceiling tiles in basement where needed.

**Exterior Work:** Replace eight windows on the first and second floor; scrape and paint back metal porch and stairs (black).

(Cl. Ex. 9.)

13. The Contract provided that the home improvement was scheduled to begin on the later of the date the Respondent NV received the necessary custom materials, received the necessary permits, completed working drawings and specifications that were a part of the Contract and when it completed any prerequisite (undefined) work. (Cl. Ex. 9, p. 6.)

14. The original contract amount was \$70,155.98.<sup>7</sup>

15. The Claimant paid the Respondent NV for the home improvement as follows:

October 21, 2023	check	\$19,711.79
October 24, 2023	check	\$13,141.20
October 24, 2023	check	\$ 4,911.74
October 30, 2023	check	\$ 5,000.00
October 30, 2023	check	\$13,141.20
January 2, 2024	check	<u>\$16,426.49</u>

Total payments: \$72,332.42

16. On December 15, 2023, the Claimant and the Respondent NV communicated by email. The Respondent NV told the Claimant that the home improvement would be completed by January 8, 2024.

17. During the last week of December, 2023, the Respondent NV, through its subcontractor, Diego Costello (Subcontractor), and the Subcontractor's work crew, began work

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<sup>7</sup> The total contract amount was \$65,705.98 plus two change orders totaling \$4,450.00. (Cl. Ex. 9.)

on the home improvement, to include demolition of the Property, delivering building materials, roughing out and framing the Property, installing certain fixtures and acquiring building permits.

18. On December 31, 2023, the Claimant emailed the Respondent NV and reported the status of the home improvement, in summary, as follows:

- The flooring on the first and second floors were 100% complete but not complete in the basement
- The kitchen cabinets and basement kitchenette were 90% complete
- The drywall in the basement was not completed
- The basement bathroom plumbing and initial groundwork were not completed
- The windows installation remained pending in the living room and third-floor bathroom
- There was no proof that the countertop was ordered
- The appliances were delivered but not installed

19. On January 2, 2024, the Claimant and the Respondent NV conducted a walkthrough of the property to inspect and determine the completion of the home improvement. (Cl. Ex. 2, p. 8.). After the inspection, the Respondent NV, by email, advised the Claimant that the it intended to complete the home improvement by January 12, 2024. Further, the Respondent NV agreed to pay the Claimant a penalty of \$100.00 per day after January 12, 2004 if there was work remaining to be completed. (Cl. Ex. 2, p. 8.)

20. On January 15, 2024, the Respondent NV stopped work on the Property because the Subcontractor could no longer continue the work due to the Subcontractor needing to care for his father for family and medical reasons. The Subcontractor did not return to complete the home improvement. The Subcontractor did not authorize his work crew to continue and complete the home improvement.

21. The Respondent NV did not provide an alternative subcontractor or have his company continue and complete the home improvement.



22. The Claimant expressed to the Respondent NV his dissatisfaction with the progress of the home improvement. The Claimant communicated his dissatisfaction with the Respondent NV by several emails and text messages during December 2023 and January 2024.

23. Subsequently, the Claimant and Respondent NV could not agree upon the terms as to when and how the Respondent NV was to complete the project and to what extent the home improvement was completed.

24. On January 19, 2024, and before he terminated the services of the Respondent NV, the Claimant entered into an agreement with JVF Construction, LLC (JVF), for \$25,900.00. (Cl. Ex. [#], pp. 4-8.)

25. The scope of work with JVF is provided within Article 1 of the contract dated January 19, 2024. The Claimant paid JVF \$33,155.00 for the work.

26. On February 1, 2024, the Claimant advised the Respondent NV by email that the Claimant no longer wanted the Respondent NV to continue the home improvement project at the Property. The Claimant further advised that he planned to secure a new contractor. (Cl. Ex. 1, p. 17.)

27. On February 2, 2024, the Respondent NV, through Mr. Akpinar and the Respondent Onuk met at the Property to discuss what needed to be done to complete the home improvement. The Claimant was not at that meeting. Mr. Akpinar was soliciting the Respondent Onuk to complete the work as a subcontractor.

28. The Respondent Onuk attended the meeting at Mr. Akpinar's request. The Respondent Onuk did not agree to perform any work for the Claimant and was not employed by the Respondent NV, either as an employee or subcontractor, to perform any work pursuant to the Contract.

29. The Claimant learned of the meeting and informed the Respondent NV not to return to the Property to complete the home improvement. The Claimant retrieved the keys to the property from the Respondent NV.

30. On or about April 11, 2024, the Claimant and the Respondent NV submitted their dispute to arbitration before the Better Business Bureau (BBB). The arbitrator, Wanda Donnelly, awarded the Claimant \$83,722.90 to be paid to him by the Respondent NV. (Cl. Ex. 1.)

31. The Respondent NV did not pay the arbitration award to the Claimant.

### 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) (Supp. 2023); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate Claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, 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. 2024). The Claimant lives in California and does not reside in the home that is the subject of the

Claim, however, he does not own more than three dwelling places in Maryland. *Id.* § 8-405(f)(2) (Supp. 2024). On or about April 11, 2024, the Claimant and the Respondent NV participated in an arbitration proceeding with the BBB. The arbitrator granted an award to the Claimant to be paid by the Respondent NV. The Respondent NV has not paid the arbitration award. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2024).

The Claimant is not a relative, employee, officer, or partner of either Respondent, and is not related to any employee, officer, or partner of either Respondent. *Id.* § 8-405(f)(1) (Supp. 2024).

The credible evidence shows that the Respondent Onuk held an MHIC license that was used by the Respondent NV so the Respondent NV could continue its home improvement business when the Respondent Onuk left its employment in March of 2022. Although the Respondent Onuk was offering his services to the Respondent NV as a subcontractor in February 2024 to work on the Claimant's home improvement, the Respondent Onuk did not agree to perform any work for the Claimant, nor did he bind himself to the contract of October 23, 2023. Bus. Reg. § 8-101(c)(j). If there is an actual loss, I find by a preponderance that the credible evidence shows that the Respondent Onuk is not jointly and severally responsible for any reimbursement from the Fund pursuant to the Contract.

The Claimant instructed the Respondent NV not to return to the property to complete the home improvement. However, the Claimant did not unreasonably reject good faith efforts by the Respondent NV to resolve the Claim (*Id.* § 8-405(d) (Supp. 2024)), because the Respondent NV did not make any good faith efforts to resolve the Claim.

The Respondent NV did not begin or complete the home improvement until the last week of December 2023. Although the completion date was not firm within the Contract, the Respondent NV's ability to complete the home improvement in good faith by a new agreed upon completion date of January 12, 2024, was not met. The Respondent NV's only subcontractor for

the home improvement ceased work on January 15, 2024. The Respondent NV did not have any company employee work crew or another alternative subcontractor available to complete the project. I therefore find that the Claimant is eligible for compensation

According to the Claimant, the Respondent failed to complete the home improvement by December 15, 2023, the Claimant's requested completion date that was not agreed upon within the Contract. Nevertheless, The Claimant and the Respondent NV agreed to extend the completion deadline to January 8, 2024; and agreed to extend the deadline a second time to January 12, 2024, with a monetary penalty assessed against the Respondent NV for each day of work conducted beyond January 12, 2024.

Mr. Akpinar testified that the project was 80% complete and that his receipt of the \$72,332.42 payment from the Claimant was justified because of the work done by the company. However, he did not provide satisfactory evidence to refute the Claimant's evidence of incomplete and inadequate work. He did not testify credibly as to what the Respondent NV constructed for the Claimant's home improvement pursuant to the scope of work. Further he testified that he did agree to pay the monetary penalty if the home improvement was not completed by January 12, 2024 in effort to cooperate with the Claimant. According to Mr. Akpinar, the Claimant was impatient in not allowing the Respondent NV to complete the home improvement. Mr. Akpinar explained that he "wasn't directly the person who know (sic) all the details." Mr. Akpinar explained further that the Respondent NV, as a company, did not have an MHIC license and he and the company did not have an MHIC license when the Contract was signed with the Claimant. Mr. Akpinar testified that the Respondent NV was using the Respondent's Onuk's MHIC salesperson licensee and paying Respondent Onuk's MHIC licensing fee when it agreed to perform the home improvement for the Claimant. According to Mr. Akpinar, the Claimant did not allow the Respondent NV to return to the Property and

complete the project after February 1, 2024 as he grew impatient with the progress of the home improvement.

The Respondent Onuk testified and confirmed that he knew the Respondent NV was using his MHIC salesperson's license when he was no longer employed with the company. He further testified that he had no involvement with the Contract or home improvement with the Claimant, other than consulting with Mr. Akpinar on February 1, 2024.

According to the Claimant's testimony and admitted exhibits, the Contract totaled \$70,155.98. The Claimant paid the Respondent NV a total of \$72,332.42 toward the Contract price. The evidence shows by a preponderance that the Respondent NV did not complete the scope of work it contracted to do as a home improvement, which was to essentially remodel the Property.

It appears that an unexpected occurrence with Mr. Diego's family matter delayed the project, through no fault of the Claimant. Although the Claimant and Mr. Akpinar communicated to seek resolution and completion of the project, the Claimant lost confidence that the Respondent NV could get the work completed within a time period that would allow the Property to be available for tenancy in early 2024. The Claimant determined that further delays would result in his incurring additional tenancy expenses. Therefore, the Claimant solicited the services of JVF, which completed the home improvement begun by the Respondent NV and consistent with the scope of work of the Contract. The Respondent NV did not offer any competent evidence tending to show that JVF's completion of the home improvement was not consistent with or was outside of the scope of work of the Contract.<sup>8</sup>

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<sup>8</sup> The Claimant also solicited and used the electrician services of William Thigpen (Thigpen). The Claimant paid Thigpen \$4,250.00 for electrical work on the Property. However, the payment was not considered as there was no evidence presented to show Thigpen was an MHIC licensed contractor.

Finally, at the time of the Contract, the Respondent Onuk was not employed by Respondent NV. Although the MHIC license was issued to the Respondent Onuk, it was used by the Respondent NV so that it could continue to work as a home improvement contractor. The Respondent Onuk knew his MHIC license was being used by the Respondent NV. Nevertheless, the Respondent Onuk was not employed with the Respondent NV at the relevant time. COMAR 09.08.01.04B.<sup>9</sup>

According to the Fund, the Claimant proved he suffered an actual monetary loss as a result of the Respondent NV not completing the home improvement which required the Claimant to solicit another contractor to complete the work.

The evidence, by a preponderance, shows that the Respondent NV left an incomplete and inadequate construction as agreed upon by the Contract, after the Claimant requested he not return to the Property. There was good faith effort to resolve the dispute, but the parties could not come to agreement by February 2, 2024 when the Claimant told the Respondent NV not to return to the Property. The Claimant did not unreasonably reject any good faith effort by the Respondent to complete the home improvement.

The Fund may not compensate the Claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1).<sup>10</sup> The MHIC's regulations offer three formulas for measuring a Claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." The appropriate formula is the following:

(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

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<sup>9</sup>. "In order to obtain and maintain a corporate or partnership home improvement license, the corporation or partnership shall employ one individual licensed contractor who shall be in responsible charge of the corporation's or partnership's home improvement work."

<sup>10</sup> Any losses the Claimant incurred due to the Property not being available for tenancy is not considered as reimbursement from the Fund.

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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

	\$72,332.42	Payment made to the Respondent NV by the Claimant.
	\$37,000.00	Payments made to JVF.
Total	<u>\$109,332.42</u>	
Less	<u>\$70,155.98</u>	Amount of Original Contract with the Respondent NV.
	\$39,176.84	Actual Loss

A claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and the Claimant here may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>11</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2024); COMAR 09.08.03.03B(4). Therefore, the Claimant is entitled to recover as his actual loss the sum of \$30,000.00.

### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual loss of \$39,176.84 as a result of the Respondent NV Kitchen and Bath MD, Inc.'s acts or omissions, and is entitled to recover from the Fund a compensable loss of \$30,000.00. Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024); COMAR 09.08.03.03B(3)(a). I further Conclude that the Respondent Emin Onuk is not a responsible contractor in this matter as he was not employed by the Respondent NV and was not acting as a home improvement contractor, subcontractor, partner or salesperson pursuant to the Contract with the Claimant. COMAR 09.08.01.04B, C.

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<sup>11</sup> On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

**RECOMMENDED ORDER**

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


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

**ORDER** that the Respondent NV Kitchen and Bath MD, Inc., is ineligible for a Maryland Home Improvement Commission license until the Respondent NV Kitchen and Bath MD, Inc., 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>12</sup> and

**ORDER** that the claim against the Respondent Emin Onuk be **DISMISSED**, and

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

January 16, 2025  
Date Decision Issued

  
\_\_\_\_\_  
John T. Henderson, Jr.  
Administrative Law Judge

JTH/emh  
#216021

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<sup>12</sup> See Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 20<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.***

***Michael Thomas***

***Michael Thomas***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***