

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

**IN THE MATTER OF THE CLAIM
OF CASTYLE N. FOUTS
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
LEWIS BURGWARD, t/a
BURGWARD REMODELING
& PAINTING**

* MARYLAND HOME
IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 14 (05) 1298
*

* * * * *

FINAL ORDER

WHEREFORE, this 21ST day of September, 2016, Panel B of the Maryland

Home Improvement Commission ORDERS that:

1) The Findings of Fact of the Administrative Law Judge are Amended as follows:

A) The Administrative Law Judge found that, on August 13, 2014, the Claimant contracted with Quality Insulation, in the amount of \$1,830.00, to install attic insulation and air seal the attic. (Finding of Fact No. 28). The Commission takes official notice of its licensing records which reflect that, on August 13, 2014, Quality Insulation was licensed by the Commission (license no. 01-106910).

2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) Since Quality Insulation was a MHIC licensed contractor, the payment made by the Claimant to Quality Insulation (\$1,830.00) should be included in the calculation of the Claimant's actual loss.

B) The persons who the Claimant paid to do cleaning work (Gasten - \$50.00 and Bastable - \$525.00) were not required to hold a MHIC license to perform cleaning work. Those payments by the Claimant should be included in the calculation of the Claimant's actual loss.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF POLITICAL SCIENCE
1100 SOUTH EAST ASIAN BUILDING
CHICAGO, ILLINOIS 60607
TEL: 773/936-3100

OFFICE OF THE DEAN
1100 SOUTH EAST ASIAN BUILDING
CHICAGO, ILLINOIS 60607
TEL: 773/936-3100

OFFICE OF THE DEAN
1100 SOUTH EAST ASIAN BUILDING
CHICAGO, ILLINOIS 60607
TEL: 773/936-3100

OFFICE OF THE DEAN
1100 SOUTH EAST ASIAN BUILDING
CHICAGO, ILLINOIS 60607
TEL: 773/936-3100

C) Pursuant to the formula set forth in COMAR 09.08.03.03B, the correct calculation of the Claimant's actual loss is as follows:

● Amount paid to Respondent	\$21,092.37
● Reasonable cost to repair and complete: (8,975.00 plus \$1,830.00 [Quality Insul.], \$50.00 [Gasten], \$525.00 [Bastable]	+ <u>\$11,380.00</u>
● Subtotal	\$32,472.37
● Less original contract price	- <u>\$29,440.49</u>
● Actual Loss	\$ 3,031.88

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

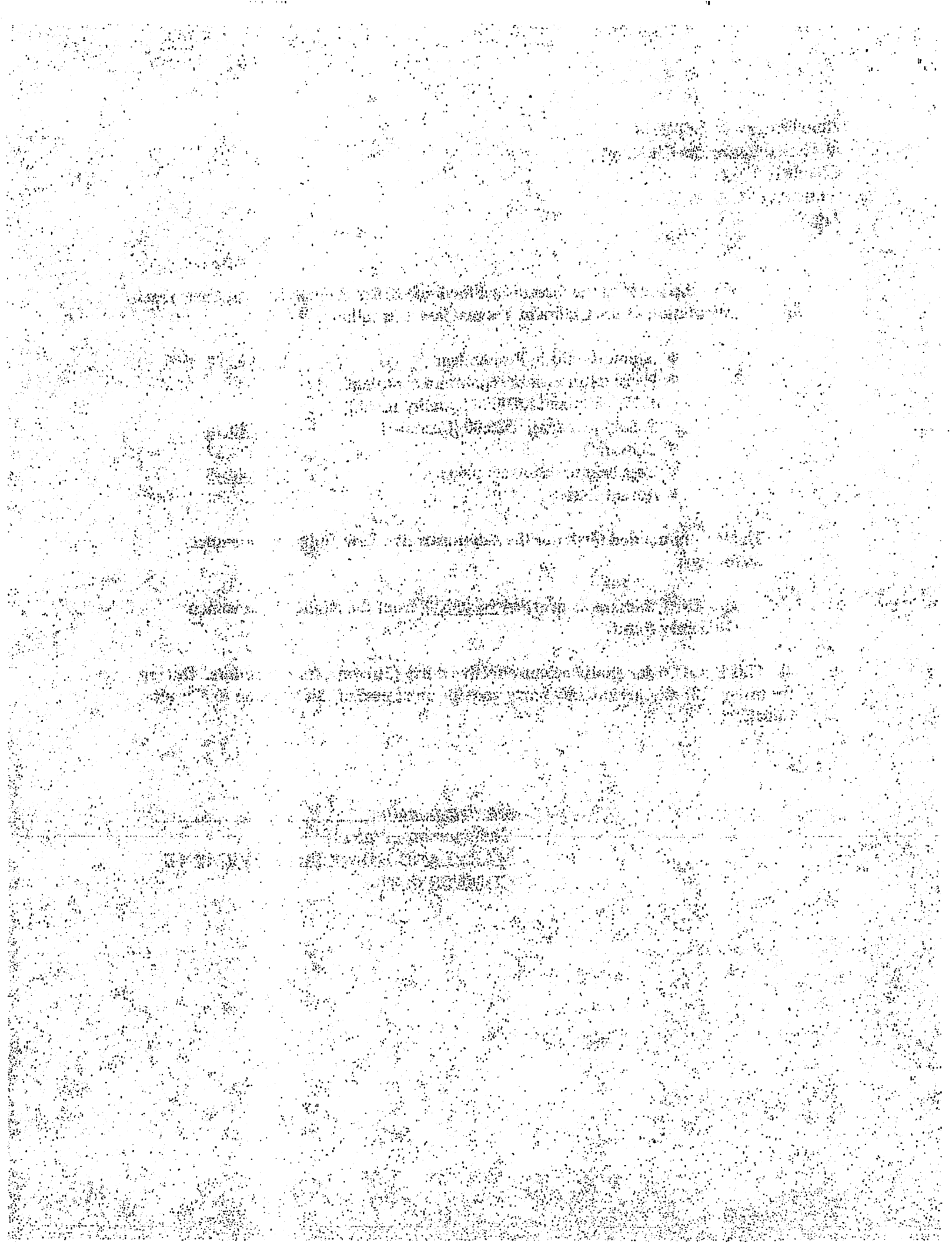
A) The Claimant is awarded \$ 3,031.88 from the Home Improvement Guaranty Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

Marilyn Jumalon

Chairperson - Panel B

MARYLAND HOME IMPROVEMENT
COMMISSION



IN THE MATTER OF:
CLAIM OF CASTYLE N. FOUTS,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF LEWIS BURGWALD,
T/A BURGWALD REMODELING &
PAINTING,
RESPONDENT

* BEFORE DOUGLAS E. KOTEEN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No. DLR-HIC-02-15-10855
* MHIC No. 14 (05) 1298
*
*
*
*

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On January 14, 2015, Castyle N. Fouts (Claimant) filed a claim with the Maryland Home Improvement Guaranty Fund (Fund) in which he was seeking reimbursement in the amount of \$9,031.80 for alleged actual losses suffered as a result of a home improvement contract with Lewis Burgwald, trading as Burgwald Remodeling & Painting (Respondent).

I held a hearing on August 13, 2015 at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant was present and represented himself. The Respondent was also present and represented himself. Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund.

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 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions committed by the Respondent?
2. 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. Home Improvement Claim Form from Claimant, dated November 10, 2014, with attachment (3 pages)
- CL Ex. 2. Allstate National Catastrophe Team Payment Worksheet for AA-Dwelling, dated February 22, 2014 (10 pages);
- CL Ex. 3. Work Completed at June 3, 2014 – Itemized List (2 pages);
- CL Ex. 4. Work to be completed – Itemized List, undated (2 pages);
- CL Ex. 5. Respondent Property Restoration Proposal to Claimant, dated April 1, 2014 (2 pages);
- CL Ex. 6. Respondent Extra Charge Supplement Proposal to Claimant, dated March 27, 2014 pages);
- CL Ex. 7. Respondent Property Restoration Proposal, dated March 14, 2014, with attached Mold Remediation Proposal, dated February 4, 2014 (4 pages);

¹ All citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

- CL Ex. 8. Chevy Chase Remodeling Formal Proposal to C. Fouts, dated June 13, 2014 (2 pages);
- CL Ex. 9. Quality Insulation Proposal to Claimant, dated August 13, 2014 (1 page);
- CL Ex. 10. Required To Do List Documents, dated April 3-29, 2014 (1 page);
- CL Ex. 11. Fax Cover Sheet from Claimant to Franklin American, dated April 29, 2014, with attached W-9 Request for Taxpayer Identification Number and Certification, dated April 29, 2014, and Letter from Franklin American Mortgage Company to Claimant, dated April 15, 2014 (4 pages);
- CL Ex. 12. Payments to Respondent, Itemized List, dated February 4, 2014 through May 7, 2014 page);
- CL Ex. 13. Cancelled Checks, with attachments, dated March 13 and 15, 2014; April 2 and 14, 2014; May 1 and 7, 2014; June 16, 2014; and July 1, 16, and 19, 2014 (7 pages);
- CL Ex. 14. Home Depot Receipts, dated June 23 and 26, 2014 (1 page);
- CL Ex. 15. Letter from Claimant to Respondent, dated June 5, 2014 (1 page);
- CL Ex. 16. Order from Maryland Home Improvement Commission (MHIC) to Respondent, dated July 3, 2014 (1 page); and
- CL Ex. 17. Respondent's Response to MHIC, undated (1 page).

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1. Notice of Hearing, dated June 11, 2015, for August 13, 2015 hearing (2 pages);
- GF Ex. 2. MHIC Hearing Order, dated March 12, 2015 (2 pages);
- GF Ex. 3. MHIC Licensing History for Respondent, dated August 12, 2015 (1 page);
- GF Ex. 4. Home Improvement Claim Form from Claimant, dated November 10, 2014 and received January 14, 2015 (1 page); and
- GF Ex. 5. Letter from Joseph Tunney, Chairman, MHIC, to Respondent, dated February 11, 2015 (1 page).

Testimony

The Claimant and Respondent each testified in their own behalf.

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 under MHIC license number 01-92185. (GF Ex. 3).
2. On January 8, 2014, a sprinkler pipe broke in the attic of the Claimant's home causing extensive water and mold damage in the home. (CL Ex. 1).
3. On or about February 4, 2014, the Claimant and the Respondent entered a contract for the

Respondent to remove and repair the mold damage, referred to as the mold remediation contract.

The Respondent completed the mold remediation contract in a timely manner to the Claimant's satisfaction and the Claimant paid the Respondent in full for completion of this work. (CL Ex. 1, 7).

4. On or about March 14, 2014, the Claimant and the Respondent entered into another contract calling for the Respondent to repair and restore the home due to the water damage caused by the broken sprinkler pipe, referred to as the restoration contract. (CL Ex. 1, 7).

5. The restoration contract called for the Respondent to remove damaged materials; install drywall and crown molding; clean baseboard; perform painting work; perform plumbing work; replace and install flooring; install lights, smoke detectors, fire sprinklers, and insulation; and reinstall wooden handrails on steps. The work was to be performed in the first floor and main floor hallway, bathroom, living room, dining room, hall closet, basement, basement closet, kitchen, second floor stairs, and attic. (CL Ex. 2-7).

6. The total cost of the restoration contract was \$27,376.86. (CL Ex. 5, 7).

7. The contract called for a deposit of \$4,000.00, and an additional early payment of \$5,000.00. It also required the Claimant to make a subsequent payment of \$9,000.00 after certain work milestones were met. It then required the remaining balance of \$9,376.86 to be paid upon completion of the work. (CL Ex. 5).

8. Under the restoration contract, the Claimant and Respondent agreed that the cost of the carpeting, including labor, installation, and materials, was the responsibility of the Claimant. (CL Ex. 5).

9. On or about March 27, 2014, the Claimant and the Respondent entered a supplemental contract. The supplemental contract called for the Respondent to perform additional work involving installation of drywall, lights, smoke detectors, crown molding, baseboard materials,

and trim molding; reattachment of wooden handrails, performance of additional painting work, and performance of a final cleanup. (CL Ex. 6)

10. The total cost of the supplemental contract after deductions was \$2,063.63. (CL Ex. 6).

11. The Claimant paid the Respondent a total of \$21,092.37 for work performed under the restoration and supplemental contracts, by making the following payments:

March 13, 2014	\$ 1,000.00
March 15, 2014	\$ 4,000.00
April 02, 2014	\$ 2,100.00
April 14, 2014	\$ 2,063.63
May 12, 2014	<u>\$11,928.74.</u>
Total	\$21,092.37

(CL Ex. 12, 13).

12. By mid-April 2014, the Respondent had completed about one-half of the work under the restoration and supplemental contracts. (CL Ex. 1).

13. The Claimant filed a claim with Allstate Insurance Company regarding the water damage in his home. The Claimant received checks from the insurance company to make payments to the Respondent under the home improvement contracts. Certain insurance payments were delayed because the Claimant's mortgage company, Franklin American, required the Respondent to submit additional documentation regarding his W-9 IRS tax form, Request for Taxpayer Identification Number and Certification. (CL Ex. 1, 11).

14. After the Respondent filed the required paperwork, the Claimant received a check from the insurance company on or about May 12, 2014 in the amount of \$11,928.74. (CL Ex. 1, 13).

15. During the same period, the Respondent told the Claimant he would not perform any further work under the contract until he received the second installment of \$9,000.00. (CL Ex. 1).

16. Upon receipt of the insurance check on or about May 12, 2014, the Claimant promptly telephoned the Respondent several times to notify him that the check had arrived. (CL Ex. 1).

17. On May 16, 2014, the Respondent came to the Claimant's home. The Claimant gave the Respondent the check in the amount of \$11,928.74 that day. (CL Ex. 1, 13).

18. The Respondent advised the Claimant at that time that he was working on another job and would return to the Claimant's residence on or about May 26, 2014 to complete the work. (CL Ex. 1).

19. The Respondent did not return to complete the work as promised. After several attempts to contact the Respondent, the Claimant subsequently spoke with him by telephone on June 2, 2014. The Respondent agreed to return to the Claimant's home the next day to review the payments and the work that needed to be done. (CL Ex. 1).

20. The Claimant failed to return as promised on June 3, 2014 and performed no further work under the home improvement contracts. The Claimant made several unsuccessful attempts to contact the Respondent after his failure to attend the June 3, 2014 meeting. (CL Ex. 1).

21. The Claimant sent the Respondent a letter on June 5, 2014 advising that he considered the Respondent to have abandoned the contract based on his recent actions. The Claimant addressed the Respondent's failure to return as promised during the week of May 26, 2014 to complete the work, his failure to return as agreed for the scheduled meeting on June 3, 2014 at the Claimant's home, and his failure to respond to the Claimant's repeated attempts to contact him. The Claimant also noted that his payment to the Respondent of the second installment check was made before the Respondent had met all of the work milestones stated in the contract. The Claimant indicated that his house was a mess due to the incomplete work and that he intended to hire another contractor to quickly complete the job. (CL Ex. 1, 15).

22. In July 2014, the Respondent notified the MHIC in writing that he would release the Claimant from the contract because the parties could not reach agreement on a final payment. He acknowledged that a new contractor could perform the additional work that remained. (CL Ex. 17).

23. The Respondent left the Claimant's job without completing certain work under the contracts, including painting work, installation of crown molding, installation of lighting, removal of old flooring and installation of new wood flooring, installation of smoke detectors, and installation of attic insulation. (CL Ex. 4).

24. On or about June 13, 2014, the Claimant contracted with Chevy Chase Remodeling (Chevy Chase) to complete the work that the Respondent had failed to complete under the restoration and supplemental contracts. (CL Ex. 8).

25. Chevy Chase, a licensed home improvement contractor, contracted to remove existing wood flooring and install new wood flooring, complete all painting, install new crown molding, and install carpeting. Chevy Chase also contracted to install new closet doors, knobs, tile, vents, trim, white shoe molding, three new light fixtures, two smoke detectors, and repair a roof leak. The total cost of the Chevy Chase contract was \$10,275.00. (CL Ex. 8).

26. The Claimant paid Chevy Chase the full cost of the contract, through payments made on or about June 16, 2014; July 1, 2014; and August 4, 2014. (CL Ex. 8, 13).

27. The carpet work and roof repair that Chevy Chase contracted to perform were both outside the scope of the Claimant's contracts with the Respondent. The cost of the carpet work in the Chevy Chase contract was \$1,300.00. The cost of the roof repair was \$275.00. (CL Ex. 2-8).

28. The Claimant contracted with Quality Insulation on August 13, 2014 to install attic insulation and air seal the attic. The total cost of the Quality Insulation contract was \$1,830.00. (CL Ex. 9).

29. The Claimant paid Quality Insulation the full cost of this contract in August 2014. Quality Insulation is not a licensed home improvement contractor.

30. The Claimant paid \$50.00 to Zelma Gasten (Gasten) for cleaning work on July 16, 2014, and paid E.F. Bastable (Bastable) \$525.00 on July 19, 2014 to perform additional cleanup work. (CL Ex. 13). Gasten and Bastable are not licensed home improvement contractors.

31. The Claimant purchased crown molding, tile materials, and painting supplies from Home Depot on June 23 and 26, 2014 for a total cost of \$275.00. (CL Ex. 14). These materials were required for work within the scope of the original contracts with the Respondent.

32. The Claimant paid Chevy Chase a total of \$8,700 for work that was within the scope of the Claimant's home improvement contracts with the Respondent. The Claimant spent \$275.00 at Home Depot to purchase materials within the scope of the Respondent's contracts. The total amount the Claimant paid for materials and for work performed by a licensed home improvement contractor to complete the work that the Respondent failed to perform under the home improvement contracts with the Claimant was \$8,975.00.

DISCUSSION

Legal Background

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). *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. The Claimant has the burden of proof to establish by a preponderance of the evidence that he suffered an actual loss. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014). For the following reasons, I find that the Claimant has proven that he suffered an actual loss as a result of the Respondent's failure to complete the work under the home improvement contracts with the Claimant.

Merits of the Claim

It is undisputed that the Respondent was a licensed home improvement contractor at the time he entered into the contracts with the Claimant, and that he remains licensed at this time.

(GF Ex. 3). The Claimant entered two home improvement contracts with the Respondent, the restoration contract and the supplemental contract, to perform home improvement work throughout the Claimant's home to repair extensive water damage resulting from a broken sprinkler pipe in the attic of the Claimant's home.² The Respondent performed work under the home improvement contracts but failed to complete all of the work required under those contracts.

The restoration contract was entered on or about March 14, 2014. The total cost of work to be performed under this contract was \$27,376.86. (CL Ex. 5, 7). The parties also entered a supplemental contract on or about March 27, 2014 with a total cost, after deductions, of \$2,063.63. (CL Ex. 6). Consequently, the total cost of the Claimant's home improvement contracts with the Respondent was \$29,440.49. The contracts called for extensive restoration work throughout the home, including removal of damaged materials; installation of drywall and crown molding, lighting, smoke detectors, fire sprinklers, insulation, wooden handrails, baseboard materials and trim molding; replacement and installation of wood flooring; performance of painting and plumbing work; and cleanup work. (CL Ex. 2-7). The Claimant made payments to the Respondent under the contracts in the total amount of \$21,092.37. (CL Ex. 12, 13). The Claimant did not pay the full contract price because the Respondent failed to complete the work.

The Claimant became frustrated when the work was not completed in a timely manner. Some of the delays resulted when the insurance and mortgage companies withheld certain payments to the Claimant until the Respondent submitted required documentation regarding his W-9 IRS tax form. In addition, the Respondent began working on another job and put off his

² The parties also entered into a third contract, the mold remediation contract, on or about February 4, 2014. The Respondent completed all work, and the Claimant made all payments, required under this contract. The parties identified no disputes under the mold remediation contract. Therefore, the mold remediation contract is not at issue in this proceeding.

continuation of the Claimant's home improvement work during April and May 2014. After the Claimant received a check from the insurance company on May 12, 2014 in the amount of \$11,928.74, he immediately attempted to contact the Respondent to forward this payment. The Respondent came to the Claimant's home on May 16, 2014 to pick up the check. The Claimant paid the Respondent more than the amount required under the restoration contract for the second installment (\$9,000.00) even though he believed the Respondent had not yet completed all of the required work milestones called for in the contract.

On May 16, 2014, the Respondent promised to return to the Claimant's home on or about May 26, 2014 to complete the work. However, he failed to return. The Respondent subsequently agreed to attend a meeting on June 3, 2014 to discuss future payments and a plan for completion of the work. The Respondent failed to attend the meeting or contact the Claimant. The Claimant made several unsuccessful attempts to contact the Respondent after his failure to attend the scheduled meeting. Finally, the Claimant sent the Respondent a letter in June 2014 explaining why he believed the Respondent had abandoned the contract and informing him of his plan to hire a new contractor to complete the work. (CL Ex. 15). The Respondent performed no further work after June 3, 2014 and failed to complete the work that he contracted to perform under the restoration and supplemental contracts. The Respondent subsequently responded to the MHIC and agreed that he would release the Claimant from the contract and acknowledged that the Claimant could hire a new contractor to complete the work. (CL Ex. 17).

I conclude that the Respondent failed to complete the home improvement work that he contracted with the Claimant to perform. I find that the Claimant was justified in concluding that the Respondent had abandoned the contract when he failed to complete the home improvement work in a timely manner, repeatedly failed to return to the Claimant's residence to complete the work, as promised, and failed to respond to the Claimant's numerous attempts to contact him.

Md. Code Ann., Bus. Reg. §§ 8-401, 8-405. Although the Respondent performed more than half of the work, there was no dispute that he failed to complete the contracted-for work and left nearly every category of work incomplete. The Claimant did not allege that the Respondent performed the work in an unworkmanlike manner, only that he failed to complete the work in a timely manner and ultimately abandoned the contract.

When the Respondent failed to respond to the Claimant's efforts to contact him, the Claimant contracted with Chevy Chase, a licensed home improvement contractor, on June 13, 2014 to complete the work. The cost of the Chevy Chase contract was \$10,275.00. The Claimant paid that amount in full to Chevy Chase. (CL Ex. 8, 13). A review of the multiple contractual documents involving the work to be performed by the Respondent, including the Allstate worksheet, and consideration of testimony from the Claimant and the Respondent, demonstrate that all of the work in the Chevy Chase contract fell within the scope of the original Respondent contracts, except for the carpet work and the roof repair. (CL Ex. 2-8).

The carpet work was expressly excluded from the restoration contract. The contract stated that labor, installation, and materials for the carpet were the responsibility of the Claimant. (CL Ex. 5). The Claimant also admitted that he did not contract with the Respondent for him to perform any carpet work. The cost of the carpet work in the Chevy Chase contract was \$1,300.00, so that amount must be deducted from the amount of the Claimant's cost to complete the work. (CL Ex. 8). In addition, there was no agreement for the Respondent to perform roof repair work, so that item must also be deducted from the Claimant's cost to complete. The repair of a roof leak was itemized in the Chevy Chase contract, but the contract did not specify a cost for that particular work. (CL Ex. 8). The Claimant testified that the cost of the roof repair was \$275.00, and that testimony was not disputed. Therefore, the total cost for the Claimant to

complete the work under the Chevy Chase contract is \$8,700.00, after the costs for the carpet work and roof repair are deducted. ($\$10,275.00 - \$1,300.00 - \$275.00 = \$8,700.00$).

The Claimant also made purchases in the amount of \$275.00 from Home Depot on two dates in June 2014. These purchases for crown molding, and for tile and paint supplies, were for materials that were within the scope of the original home improvement contracts with the Respondent. (CL Ex. 2-7, 14).

The Claimant also contracted with Quality Insulation on August 13, 2014 to install attic insulation and to air seal the attic for a total cost of \$1,830.00. (CL Ex. 9). The insulation work was also within the scope of the Respondent's contracts, as reflected in several contractual documents, including the Allstate worksheet. (CL Ex. 2, 4). Although there was no cancelled check in the record, the Claimant testified that he paid the full cost of the insulation contract, and that testimony was undisputed. However, the Claimant failed to provide any evidence to establish that Quality Insulation is a licensed home improvement contractor.

The Claimant also paid \$50.00 to Zelma Gasten (Gasten) and \$525.00 to E.F. Bastable (Bastable) in July 2014 to perform cleanup work at the Claimant's residence. Cleanup work was within the scope of the Claimant's supplemental contract with the Respondent. (CL Ex. 6). However, the Claimant also failed to prove that either Gasten or Bastable is a licensed home improvement contractor.

The representative for the Fund argued that the Claimant failed to prove that either Quality Insulation or the two cleaning contractors were licensed home improvement contractors with the MHIC. The Fund argued, in effect, that full reimbursement is barred for work performed by an unlicensed home improvement contractor to repair or complete work under a

home improvement contract.³ The policy of the MHIC to bar recovery for work performed by an unlicensed contractor to repair or complete work under an original home improvement contract is reflected in the Fund's statutory scheme set forth in the Business Regulation Article of the Maryland Annotated Code. Section 8-405(a) provides that a homeowner "may recover compensation from the Fund for an actual loss that results from an act or omission of by a *licensed* contractor." (Emphasis supplied). An actual loss is defined at section 8-401 as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."

The MHIC policy is designed to encourage contractors to obtain MHIC licenses and to discourage homeowners from using unlicensed contractors. If the Respondent had been unlicensed by the MHIC, the Claimant would have been barred from asserting his claim against the Fund. Moreover, a person may not act as a home improvement contractor in this State unless he or she has a contractor's license. In addition, if a contractor is unlicensed when he or she performs the work, the contractor would be guilty of a misdemeanor crime and would be subject to a fine of \$1,000.00 or imprisonment not exceeding six months, or both, for a first offense. Md. Code Ann., Bus. Reg. § 8-601(a), (d). Furthermore, in light of this statutory scheme, the courts, as a matter of public policy, do not enforce contracts made by or with unlicensed contractors. *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118 (1997); *Baltimore Street Builders v. Stewart*, 186 Md. App. 684 (2009).

For all these reasons, I conclude that the Claimant is not entitled to reimbursement from the Fund for the cost of the completion work performed by unlicensed contractors. The Claimant has the burden of proof in this Guaranty Fund hearing. Md. Code Ann., Bus Reg. § 8-407(e)(1).

³ The Fund's representative argued that the Claimant could recover a lesser amount, as reflected in the Claimant's original contracts with the Respondent, for the repair or completion work performed by unlicensed contractors. The Fund's representative did not provide any legal support, however, for this theory permitting recovery of a lesser amount.

As the Claimant has failed to prove that Quality Insulation, Gasten, or Bastable was a licensed contractor when it, he, or she performed work to complete the work under the Claimant's home improvement contracts with the Respondent, I must conclude on this record that they are unlicensed contractors. Therefore, the Claimant is not entitled to reimbursement from the Fund for the insulation or cleanup work performed at the Claimant's home. The Claimant is eligible for reimbursement for the actual loss he suffered in the amount of \$8,975.00 for the work performed within the scope by Chevy Chase and the materials he purchased at Home Depot. (\$8,700.00 + \$275.00 = \$8,975.00).

Based on the evidence addressed above, I find that the Claimant is eligible for compensation from the Fund because the Respondent failed to complete the work.

Calculation of Actual Loss

Having found eligibility for compensation, I will now address the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest.

COMAR 09.08.03.03B(1). The MHIC 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 the actual loss in this case.

(c) If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is calculated under the formula as follows:

Amount paid under original contract	\$ 21,092.37
Amount paid to complete and correct	+\$ <u>8,975.00</u>
	\$ 30,067.37
Original contract price	-\$ <u>29,440.49</u>
Amount of Actual loss	\$ 626.88

In accordance with the formula set forth in the regulations, the Claimant's actual loss for the acts and omissions of the Respondent is \$626.88. COMAR 09.08.03.03B(3)(c).

Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$626.88.

Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$626.88 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission: **ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$626.88; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission. *See* Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20; and **ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

November 12, 2015
Date Decision Issued

Administrative Law Judge

DEK/da
159216

PROPOSED ORDER

WHEREFORE, this 2nd day of February, 2016, 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

