

**The Maryland Home
Improvement Commission**

**v. Joseph Marini
t/a Joseph Marini Asphalt Paving
(Contractor)
and the Claim of
Bryn Johnson
(Claimant)**

* **BEFORE THE**
* **MARYLAND HOME IMPROVEMENT**
* **COMMISSION**
*
* **MHIC No.: 14 (90) 362**
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FINAL ORDER

**WHEREFORE, this 19th day of June, 2015, Panel B of the Maryland Home
Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated April 16, 2015 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated April 16, 2015 are AFFIRMED.**
- 3. The Proposed Order dated April 16, 2015 is AFFIRMED.**
- 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.**

Joseph Tunney
**Joseph Tunney, Chairperson
PANEL B**

MARYLAND HOME IMPROVEMENT COMMISSION

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<p>IN THE MATTER OF THE CLAIM</p> <p>OF BRYN K. JOHNSON,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOSEPH B. MARINI</p> <p>T/A JOSEPH MARINI ASPHALT</p> <p>PAVING ,</p> <p>RESPONDENT</p>	<p>* BEFORE MICHAEL R. OSBORN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-14-27201</p> <p>* MHIC No.: 14 (90) 362</p> <p>*</p>
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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 April 4, 2014, Bryn K. Johnson (Claimant) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,680.00 in alleged actual losses suffered as a result of a home improvement contract with Joseph B. Marini t/a Joseph Marini Asphalt Paving (Respondent).

I held a hearing on January 21, 2015 at the LaPlata Public Library in LaPlata, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014). Jessica Kaufman,

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

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (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 the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1a - Contract, March 9, 2013
- Clmt. Ex. 1b - Invoice, March 19, 2013
- Clmt. Ex. 1c - Cancelled check to the Respondent, check #1023 in the amount of \$7,900.00
- Clmt. Ex. 2 - Letter to the Respondent, September 25, 2013
- Clmt. Ex. 3a-e - USPS Delivery Documents/Receipts
- Clmt. Ex. 4 - HIC Complaint Form, October 7, 2013
- Clmt. Ex. 5a-b - Repair Proposals
- Clmt. Ex. 6a-l - Photographs
- Clmt. Ex. 7 - HIC Formal Mediation E-mail
- Clmt. Ex. 8 - HIC Order, November 4, 2013
- Clmt. Ex. 9 - HIC Investigation Letter, January 6, 2014
- Clmt. Ex. 10 - HIC Guaranty Fund Claim Letter, February 10, 2014
- Clmt. Ex. 11 - HIC Claim Form, March 30, 2014
- Clmt. Ex. 12 - Letter from the HIC to the Respondent, April 16, 2014
- Clmt. Ex. 13 - Letter from the HIC to the Claimant, July 25, 2014
- Clmt. Ex. 14 - Offered, but not admitted

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 - Notice of Hearing, November 14, 2014
- GF Ex. 2 - Letter to Legal Services from Sandra Sykes, December 22, 2014, with attachments
- GF Ex. 3 - Transmittal
- GF Ex. 4 - HIC Information on registration for the Respondent, printed December 10, 2014
- GF Ex. 5 - Letter from the HIC to the Respondent, April 16, 2014, with attached Claim Form
- GF Ex. 6 - HIC Information on registration for Timothy Moore, printed December 10, 2014
- GF Ex. 7 - HIC information on registration for Chad Accipiter LLC, printed December 10, 2014

The Respondent did not offer any exhibits for admission as evidence.

Testimony

The Claimant testified on his own behalf.

The Respondent testified on his own behalf.

Ms. Kaufman presented the Fund's position.

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 4603257.
2. On March 9, 2013, the Claimant and the Respondent entered into a contract to install an asphalt driveway at the Claimant's property. The contract included grading and preparation of the surface upon which the new asphalt driveway would be laid, and a new asphalt driveway over the prepared surface. The contract stated that work would be completed within three (3) days of the construction beginning.
3. The original agreed-upon contract price was \$7,675.00. An additional \$225.00 was charged for the delivery of pre-cast steps.

4. On March 19, 2013, the Respondent completed the work under the contract, and the Claimant paid the Respondent \$7,900.00, of which \$7,675.00 was for the driveway paving work.

5. The Claimant waited twenty-five days to park any vehicle on the new driveway. The Claimant parked vehicles in several different places on the new driveway after he began parking on it.

6. Indentations and low spots formed in the new driveway wherever the Claimant parked any vehicle. A large depression in the driveway also formed. Rainwater pooled in the indentations and low spots, and in the depression.

7. Over a period of months after the work was performed, pieces of asphalt started to crumble and separate from the new driveway. Holes in the driveway developed where the asphalt material crumbled and separated. The driveway has several areas which have become littered with loose asphalt pebbles and gravel.

8. Some parts of the new driveway were left rough and not well-compacted, which contributed to deterioration, crumbling and separation over time.

9. The surface of the new driveway has ripples and ridges and, near the house, is sloped toward the house instead of away from the house. This causes rainwater to run to the house instead of away from the house.

10. The Claimant contacted the Respondent on numerous occasions, starting in May 2013, in an unsuccessful effort to convince the Respondent to return to his property, to see the poor quality for himself, and to give the Respondent an opportunity to correct the issues identified by the Claimant. Some of the Claimant's efforts were met with a promise by one or more of the Respondent's employees to visit the Claimant's home while in the area, none of

which occurred. On one call, one of the Respondent's employees told the Claimant that he and the Respondent had visited the Claimant's home when the Claimant was not there, that they had seen the driveway, and would take care of it. The Respondent did not take care of it.

11. From May 2013 through September 2013, the Claimant contacted the Respondent several times by phone, e-mail, and regular mail with responses from the Respondent that ranged from "we'll be by" to "we're very behind" to other comments, none of which resulted in any repair of the Claimant's driveway.

12. The cost to remove the driveway, install new base materials as needed, and install a new layer of asphalt is \$4,250.00.

13. The Claimant's actual loss is \$4,250.00.

DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2014). *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 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant presented a straightforward case, supported by photographs of the driveway and various depressions, low spots, and grooves made by tires. He pointed to areas where the asphalt was crumbling. The Claimant also testified as to his efforts to get the Respondent to repair the work.

The Respondent testified that he did a good job, that the claimed defects were the result of normal wear and tear, and that every driveway is different. He attributed the deterioration of the driveway to petroleum products that must have leaked from the Claimant's vehicle, or other chemicals that may have affected it. He also testified that the deterioration and problems with the driveway were the result of the Claimant's failure to apply a recommended seal coating. The Respondent asserted that if it was his company doing the work, he would charge \$1,600.00 to remove the asphalt and replace it. Thus, he argued, the estimates submitted by the Claimant were excessive.

I find the Claimant's testimony far more credible than the Respondent's. The Claimant was specific, and provided a complete and detailed account of his course of dealings with the Respondent. The photographs he submitted as evidence reveal the nature and extent of the poor quality of the driveway. The Respondent, on the other hand, provided a number of excuses and hypothetical explanations, and blamed the deterioration of the driveway on the Claimant. The Respondent's testimony was not specifically directed at this Claimant. Rather, his testimony was something of a generic laundry list of reasons why the Claimant's claim should not be paid.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

The Respondent performed inadequate home improvements. The driveway he installed for the Claimant was inadequate for its intended use. The driveway has ripples and depressions in which rainwater collects. The driveway slopes toward the house, which directs rainwater to the house instead of away from it. When vehicles are parked on the driveway, the result is indentations in the asphalt surface. The asphalt surface has continuously eroded, causing holes in the driveway. The driveway continues to deteriorate, resulting in loose asphalt and pebbling.

The photographs submitted by the Claimant show the poor quality of the paving work, and show various areas where rainwater pools in depressions and grooves. The Claimant's descriptions of the indentations caused by tires, and the photos, convince me of the inadequate quality of the work without the need for expert testimony as to the cause of the poor performance of the driveway the Respondent installed.

I thus find that the Claimant is eligible for compensation from the Fund. The Claimant submitted two estimates to repair the driveway, both of which include removal of the existing driveway, repair of the base over which a new driveway will be laid, and installation of a new asphalt driveway. October 9, 2013, Beltway Paving of Waldorf, Maryland estimated the cost of repair to be \$4,680.00. On October 7, 2013, Southern Maryland Paving and Sealcoating of Owings, Maryland estimated the cost of repair to be \$4,250.00. The closeness of the estimates suggests the Respondent's estimate of \$1,600.00 to repair to the driveway is unrealistically low. As the Claimant did not express a specific desire to hire one of the two companies from which he obtained estimates over the other, I will use the lower estimate of the two the Claimant submitted as evidence as the measure of the actual loss in this case.

Having found eligibility for compensation I now turn to 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). 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).

Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(1), (5) (Supp. 2014).

The actual damages in this case are:

Amount the Claimant paid the Respondent	\$ 7,675.00
Plus the cost of repair	\$ <u>4,250.00</u>
Total	\$ 11,015.00
Minus the contract price	\$ <u>7,675.00</u>
Equals actual damages	\$ 4,250.00

Accordingly, the Claimant is entitled to reimbursement of \$4,250.00. Md. Code Ann., Bus. Reg. § 8-405 (e)(5) (Supp. 2014); COMAR 09.08.03.03B(3)(c).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss \$4,250.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014); 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 \$4,250.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed

under this Order, plus annual interest of at least ten percent (10%) as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

March 31, 2015
Date Decision Issued

Michael R. Osborn
Administrative Law Judge

MRO/kkc
154205

PROPOSED ORDER

WHEREFORE, this 16h day of April 16, 2015, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION