

**IN THE MATTER OF THE CLAIM
OF ERIC JOHNSON,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JEFFREY OVADIA,
T/A EZ FULLREHAB, LLC,
RESPONDENT**

*** BEFORE RACHAEL BARNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-19-02537
* MHIC No.: 15 (75) 429**

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On December 3, 2014, Eric Johnson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$161,744.16 in actual losses allegedly suffered as a result of a home improvement contract with Jeffrey Ovadia, trading as EZ Fullrehab, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On January 16, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 17, 18, 19, 20 and 21, 2019 continuing August 12, 13, 14, and 16, 2019 at OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031. Bus. Reg. § 8-407(e).

THE UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C. 20530

IN RE: [Illegible]

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MEMORANDUM FOR THE ATTORNEY GENERAL

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Shara Hendler, Assistant Attorney General, Department of Labor (Department),¹ represented the Fund. The Claimant represented himself. Jeffrey L. Forman, Esquire, represented the Respondent, who was present.

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. 2019); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1 - Curriculum Vitae of Ken Watters, P.E., undated
- Clmt. Ex. 2 - Building Code Adopting Ordinance, Baltimore County, July 10, 2010
- Clmt. Ex. 3 - Building plans for 1336 Heather Hill Road, undated
- Clmt. Ex. 4 - Photographs of the subject property, undated
- Clmt. Ex. 5 - KW Engineering report, May 13, 2014
- Clmt. Ex. 6 - Order of the Office of Administrative Hearings for Baltimore County, April 17, 2014
- Clmt. Ex. 7 - Proposed Scope of Work to Repairs to Code Violations, Plowden Engineering, April 29, 2014
- Clmt. Ex. 8 - Build permit issued November 10, 2011
- Clmt. Ex. 9 - Construction video of 1336 Heather Hill Road, undated
- Clmt. Ex. 10 - Electronic mail communications, December 6, 2011 through February 23, 2014
- Clmt. Ex. 11 - Ovidia LLC building and remodeling proposal, September 20, 2011
- Clmt. Ex. 12 - Electronic mail between Claimant and Respondent, September 10, 2011 through October 7, 2011
- Clmt. Ex. 13 - Electronic mail between Claimant and Respondent, May 13, 2012 through May 15, 2012
- Clmt. Ex. 14 - Various receipts for items and services purchased by Claimant, undated

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

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- Clmt. Ex. 15 - Electronic mail between Claimant and Respondent, March 3, 2012 through April 12, 2012
- Clmt. Ex. 16 - Check copies of payments from Claimant to Respondent, November 1, 2011 through May 1, 2012
- Clmt. Ex. 17 - Photograph of cabinet used in the project, undated
- Clmt. Ex. 18 - Check copies of payments from Claimant to other service providers, April 14, 2012 through June 26, 2012
- Clmt. Ex. 19 - Electronic mail between Claimant and Respondent, June 19 and 20, 2012
- Clmt. Ex. 20 - Electronic mail between Claimant and Respondent, May 1, 2012 through August 20, 2013
- Clmt. Ex. 21 - Electronic mail between Claimant and Respondent, December 17, 2013 through December 23, 2013
- Clmt. Ex. 22 - Photograph of cabinet used in the project, undated
- Clmt. Ex. 23 - Wood Construction Connectors, Important Information & General Notes, Simpson Strong-Tie Company, 2013
- Clmt. Ex. 24 - Baltimore County Uniform Code Enforcement Correction Notice, July 30, 2013
- Clmt. Ex. 25 - True Test Copy, Automated Permit Tracking System, Inspection Detail Screen, May 10, 2013
- Clmt. Ex. 26 - Baltimore County Uniform Code Enforcement Correction Notice, October 7, 2013
- Clmt. Ex. 27 - Permits, Approvals, and Inspections; Building, Electrical, and Plumbing Inspections, October 5, 2014
- Clmt. Ex. 28 - Partial Deposition Transcript of Arnold Jablon, October 27, 2014
- Clmt. Ex. 29 - Drawing of pantry wall, 1336 Heather Hill Road, undated
- Clmt. Ex. 30 - Electronic mail between Claimant and Respondent, December 9 and 10, 2011
- Clmt. Ex. 31 - Electronic mail between Claimant and Respondent, June 9, 2014 through July 21, 2014
- Clmt. Ex. 32 - Respondent's adjustments to contract: December 12, 2011; January 12, 2012; January 26, 2012; February 16, 2012; and, May 6, 2012
- Clmt. Ex. 33 - Electronic mail and correspondence from Glenn Berry to the attorneys of Claimant and Respondent, May 16, 2014
- Clmt. Ex. 34 - Electronic mail and correspondence from Stanford Gann, Jr., attorney for Claimant to Jeffrey L. Forman, attorney for Respondent, December 16, 2014
- Clmt. Ex. 35 - Electronic mail between Claimant and Respondent, January 5, 2014
- Clmt. Ex. 36 - Attachment to Complaint Form, undated
- Clmt. Ex. 37 - Electronic mail between Claimant and Respondent, May 13 and 15, 2012
- Clmt. Ex. 38 - Exterior photographs of two doors, undated
- Clmt. Ex. 39 - Electronic mail between Claimant and Respondent, September 7, 2013 through June 6, 2014
- Clmt. Ex. 41 - Electronic mail from Claimant to Respondent, September 10, 2011
- Clmt. Ex. 42 - Correspondence from Ian P. Sokoloski, President of Design Evolution Architecture, LLC, January 24, 2014
- Clmt. Ex. 43 - Petition to Establish and Enforce Mechanic's Lien in the Circuit Court for Baltimore County, August 10, 2012
- Clmt. Ex. 44a - Partial electronic mail from Josh Nicodemus to Respondent concerning beams. October 21, 2011

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Clmt. Ex. 44b-Electronic mail between Claimant and Josh Nicodemus, January 30, 2014
Clmt. Ex. 45 - Electronic mail between Claimant and Peter Malmquist, December 9, 2011
through December 15, 2011

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

- Resp. Ex. 1 - Electronic mail from Claimant to Respondent, May 13, 2012
- Resp. Ex. 2 - Electronic mail from Respondent to Claimant, May 13, 2012
- Resp. Ex. 3 - Electronic mail from Respondent to Claimant, May 15, 2012
- Resp. Ex. 4 - Electronic mail from Respondent to Claimant, May 16, 2012
- Resp. Ex. 5 - Electronic mail from Claimant to Respondent, July 26, 2012
- Resp. Ex. 6 - Correspondence from Respondent to Claimant, July 10, 2013
- Resp. Ex. 7 - Correspondence from Respondent to Claimant, August 6, 2013
- Resp. Ex. 8 - Electronic mail from Respondent to Claimant, August 21, 2013
- Resp. Ex. 9 - Electronic mail from Respondent to Claimant, September 7, 2013
- Resp. Ex. 10 - Electronic mail from Respondent to Claimant, December 11, 2013
- Resp. Ex. 11 - Electronic mail from Respondent to Claimant, December 15, 2013
- Resp. Ex. 12 - Electronic mail from Respondent to Claimant, December 16, 2014
- Resp. Ex. 13 - Electronic mail from Respondent to Claimant, December 19, 2013
- Resp. Ex. 14 - Electronic mail from Claimant to Respondent, December 22, 2013
- Resp. Ex. 15 - Electronic mail from Respondent to Claimant, December 23, 2013
- Resp. Ex. 16 - Electronic mail from Respondent to Claimant, January 2, 2014
- Resp. Ex. 17 - Electronic mail from Respondent to Claimant, January 5, 2014
- Resp. Ex. 18 - Electronic mail from Respondent to Claimant, February 10, 2014
- Resp. Ex. 19 - Correspondence from Respondent to Claimant sent certified mail, March 21, 2014
- Resp. Ex. 20 - Electronic mail from Respondent to Claimant, April 1, 2014
- Resp. Ex. 21 - Electronic mail from Claimant, April 2, 2014
- Resp. Ex. 22 - Electronic mail from Respondent to Claimant, April 2, 2014
- Resp. Ex. 23 - Electronic mail from Glenn Berry to J. Plowden, May 2, 2014
- Resp. Ex. 24 - Electronic mail from Jeff Forman to Stanford Gann, May 2, 2014
- Resp. Ex. 25 - Correspondence from Mr. Gann to Mr. Forman, May 5, 2014
- Resp. Ex. 26 - Electronic mail from Berry to Forman, May 23, 2014
- Resp. Ex. 27 - Correspondence from Mr. Gann to Mr. Forman, May 30, 2014
- Resp. Ex. 28 - Electronic mail from Mr. Berry to Mr. Forman, June 6, 2014
- Resp. Ex. 29 - Electronic mail from Respondent to Claimant, June 26, 2014
- Resp. Ex. 30 - Electronic mail from Respondent to Claimant, July 31, 2014
- Resp. Ex. 31 - Electronic mail Mr. Forman to Mr. Gann, January 8, 2015
- Resp. Ex. 32 - Contractual Agreement between Respondent and Claimant, October 24, 2011
- Resp. Ex. 33 - Baltimore County Uniform Code Enforcement Correction Notice, November 26, 2013
- Resp. Ex. 35 - Overhead photograph of property, undated
- Resp. Ex. 39 - Photograph of exterior of property, undated
- Resp. Ex. 40 - Photograph of exterior of property, undated
- Resp. Ex. 41 - Photograph of rear exterior of property, undated
- Resp. Ex. 42 - Photograph of rear deck of property, undated
- Resp. Ex. 43 - Photograph of exterior of property showing vapor barrier, undated
- Resp. Ex. 44 - Photograph of exterior door and porch showing vapor barrier, undated
- Resp. Ex. 45 - Photograph of interior work showing wall is not on subfloor, undated

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Resp. Ex. 46 - Photograph of interior work showing subfloor as planks, undated
Resp. Ex. 47 - Photograph of kitchen, partial completion, showing tilework, undated
Resp. Ex. 48 - Electronic mail from Respondent to Sarah Ovadia, containing picture of a kitchen, August 13, 2019

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order designating OAH to hear the matter, January 16, 2019
Fund Ex. 2 - Notice of Reschedule issued by OAH on May 14, 2019
Fund Ex. 3 - MHIC Claim Form submitted by Claimant on December 3, 2014
Fund Ex. 4 - Licensing history of Respondent from MHIC database, June 11, 2019

Testimony

The Claimant testified and presented the testimony of: Fiona Newton, wife of Claimant; Anthony Alexander, President of Commercial Index Bureau; Kenneth Archer Watters, II, Structural Engineer, accepted as an expert in structural engineering; Albert Glenn Berry, Chief Inspector for Baltimore County, retired; Michael Jim Jacobson, Home Inspector; Jay Hosley, General Contractor, accepted as expert in building, construction, and bidding; Sarah Ovadia, wife of Respondent; James Plowden, Professional Engineer; and, Ian Sokoloski, Architect, accepted as an expert in the field of architecture.

The Respondent testified and presented the testimony of Arnold Jablon, Deputy Administrative Officer and Director of the Department of Permits, Approvals and Inspections, Baltimore County, retired.

The Fund presented no testimony.

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 98274.
2. The Claimant is the owner of 1336 Heather Hill Road, Baltimore, Maryland (the Property). It is his primary residence. He purchased it several years ago with his mother and in

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2003 began to share the home with, Fiona Newton, who relocated from England to the United States. The couple married in 2005. The Claimant's mother does not reside at the Property.

3. After sharing the home together for a few years, Ms. Newton suggested that it should be expanded and remodeled.

4. The Claimant hired Design Evolution Architecture, LLC to draw up architectural plans for the addition. Ian Sokoloski, architect, drew the plans and Joshua Nicodemus, engineer, stamped them with his approval.

5. After the plans were created, the Claimant sought bids with contractors.

6. The Claimant learned of the Respondent through Angie's List.

7. On September 20, 2011, the Respondent provided the Claimant with a building and remodeling proposal.

8. On October 24, 2011, the Claimant and the Respondent entered into a contract (Contract) to make improvements to the home according to the plans drawn up by the Claimant's architect. The Contract stated in pertinent part,

"The Owner acknowledges that the Builder is relying upon the expertise of the Architect and/or engineer that drafted and prepared the Plans ... to assure that all the Work is structurally sound and properly designed in accordance with all prevailing codes, ordinances, laws, statutes, rules and regulations."

(Lic. Ex. 32)

9. The plans called for construction work to be performed on the upper and lower levels of the home, with the main change being the construction of an addition over the lower level concrete storage area. The ceiling of the storage area would be removed. The addition would include a larger kitchen and pantry area. The plans also called for the installation of an electrical system, with several recessed lights and other light fixtures. The plans also called for the installation of a front and back deck.

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10. On November 10, 2011, Baltimore County, Department of Permits, Approvals, and Inspections, issued a building permit for the Property, listing the Respondent as the contractor.

11. The permit listed the following work to be performed: demolish existing sunroom, leave the foundation in place, construct an addition over the existing foundation with the kitchen and pantry measuring thirteen feet by twenty-one feet, construct front and rear decks with the front measuring thirteen feet by five feet and four inches and the rear deck measuring fifty-two feet by nineteen feet irregular in shape, make interior alterations to remove a load bearing wall, install a new header beam, and install doors and windows.

12. The original agreed-upon Contract price was \$109,000.00.

13. The Contract included neither a start date nor a completion date; however, the construction began shortly after the Claimant and Respondent entered into the contract.

14. The Claimant and Ms. Newton moved out of the home in October 2011 to allow the construction to proceed.

15. The Claimant oversaw the project while Ms. Newton worked out of the home.

16. On December 12, 2011 and May 6, 2012, the Claimant and Respondent agreed upon change orders in writing.

17. The cost of the change orders amounted to \$38,431.00.

18. Over the course of the project, the Claimant paid the Respondent \$ 111,631.00.

19. The Claimant and Ms. Newton ultimately moved back into the home in April 2012; however, the work was not yet complete.

20. The Respondent concluded the bulk of his work by May 2012 and declined to return to the job until the Claimant paid him additional sums.

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21. The Claimant withheld partial payment based upon the status of the work performed at the Property.

22. There were numerous significant problems with the construction of the addition including the framing of the wall, the failure to lay subfloor under the walls, the use of rubble in the footers to the foundation and the inadequate depth of footers, the use of the wrong size of joists², unsupported beam splices, and the lack of adequate support for the deck.

23. On August 10, 2012, the Respondent filed a Petition to Establish and Enforce Mechanic's Lien in the Circuit Court for Baltimore County. The Respondent claimed the Claimant owed him \$24,682.00 for labor and materials.

24. From 2012 through mid-2014, the Respondent and Claimant exchanged emails regarding the Respondent's demand for the remaining payment on the contract and the Claimant's demands for repairs to the work performed. In some of the e-mails, the Respondent informed the Claimant that he would charge for repairs to the Property but the Respondent never provided any proposed figures or explained what work he would perform to remedy the repairs. The failure to provide this information irked the Claimant and created a source of tension between the parties.

25. On July 30, 2014, Rodney Larrick, Baltimore County Building Inspector, issued a Baltimore County Uniform Code Enforcement Correction Notice to the Respondent, citing violations of the International Residential Code of 2009, Sections 12-607, 311.7.4.1, and 703.8.

26. On October 7, 2013, Mr. Larrick issued another Baltimore County Uniform Code Enforcement Correction Notice to the Respondent, citing him with violating Baltimore County Building Code: Part 120 Stop Work Order, Part 115.3 and ordered all phases of construction

² According to Mr. Sokoloski, a joist is a horizontal supporting framing member; it can support a floor or a ceiling.

must remain stopped until Baltimore County receives and approves engineered drawings that have been agreed upon by the Claimant and the Respondent.

27. On November 26, 2013, Glenn Berry, Baltimore County Building Inspector, issued a code enforcement correction notice to the Respondent for additional violations of the International Residential Code of 2009.³

28. On January 17, 2014, Mr. Berry issued a replacement code enforcement notice to the Respondent for violations of the International Residential Code of 2009.

29. On March 7, 2014, Mr. Berry issued a Code Enforcement and Inspections Citation, assessing a civil penalty of \$12,800.00.

30. On April 17, 2014, Judge John Beverungen, Administrative Law Judge for Baltimore County, issued an order in which he found multiple violations of the International Residential Code of 2009 and Baltimore County Building Code with regard to construction work performed by the Respondent at the property. The violations were grouped by area of the home as follows:

- a. Floor:
- b. Walls
- c. Deck
- d. Stairs

31. Judge Beverungen ordered that the civil penalty be suspended provided the following conditions were met:

- a. Within ten days, the Respondent shall provide to Mr. Berry a "punch list" or remediation plan prepared by a licensed professional engineer for correcting the code violations;

³ The copy of the correction notice in evidence as Licensee Exhibit 33 states "violations – see attachment #1"; however, there was no attachment provided with the document.

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It also contains a list of the names of the persons who have been appointed to various positions in the service of the Government.

The second part of the report deals with the financial statement of the Government for the year. It contains a statement of the income and expenditure of the Government and a statement of the assets and liabilities of the Government.

The third part of the report deals with the progress of the work done during the year in various departments of the Government. It contains a statement of the work done in each department and a statement of the progress of the work done during the year.

The fourth part of the report deals with the progress of the work done during the year in various departments of the Government. It contains a statement of the work done in each department and a statement of the progress of the work done during the year.

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The tenth part of the report deals with the progress of the work done during the year in various departments of the Government. It contains a statement of the work done in each department and a statement of the progress of the work done during the year.

- b. Within five days of receipt, Mr. Berry shall approve or disapprove the remediation plan;
- c. Within ninety days of plan approval, the Respondent shall complete, in a workmanlike manner, all repairs required by the approved plan;
- d. Final approval of the remediation work performed under the approved plan shall be determined in the sole discretion of Mr. Berry; and
- e. Each of the Respondent's obligations is conditioned upon being provided access to the Property to complete the repairs.

32. On April 29, 2014, the Respondent provided Mr. Berry with a document entitled "Proposed Scope of Work Repairs to Code Violations," prepared by Plowden Engineering.⁴

33. On May 2, 2014, the Respondent (through counsel) sent the Claimant an e-mail stating he is ready to remedy the code violations.

34. On May 5, 2014, the Claimant (through counsel) sent the Respondent a letter requesting that the Respondent provide the Claimant with a "performance bond or other adequate assurance that all necessary work will be completed properly" and "a clear statement that your client will not charge my clients to correct your client's defective work..." Once these items are provided, the Claimant stated the Respondent would be able to enter the property and correct his work. (Lic. Ex. 25).

35. On May 13, 2014, Kenneth Watters, KW Engineering, issued a report in which he identified code violations set forth in the judge's order for which there was no plan to correct them based on Plowden Engineering's April 29, 2014 proposal.

36. Mr. Berry did not approve the April 29, 2014 submission and required changes to be made to the repair proposal. The Respondent submitted a revised proposal.

⁴ The revised version of this document was admitted as Claimant's Exhibit 7.

37. On May 21, 2014, Mr. Berry approved the revised scope of work for repairs to remedy the code violations at the Property.

38. On May 23, 2014, Mr. Berry emailed the Respondent and Claimant, requesting confirmation by May 30, 2014 that the Claimant has granted the Respondent permission to enter his home to remedy code violations.

39. The Claimant did not grant the Respondent permission to enter and repair because the Respondent had not provided the assurances he requested on May 5, 2014.

40. On June 6, 2014, Mr. Berry closed the code violation case.

41. The Respondent's staff has not performed the majority of the mandated repairs on the Property.⁵ The Respondent made repairs to the deck flashing and his employee made repairs to the mortar of the foundation wall and installed a few missing joist hangers under the deck.

42. On February 6, 2017, Judge Dennis Robinson, of the Circuit Court of Baltimore County ordered a judgment in favor of the Claimant in the amount of \$130,000.00 against the Respondent. However, the Claimant did not recover because the Respondent declared bankruptcy.

43. The cost of performing the work to remedy the most significant problems with the construction is \$78,500.00.

DISCUSSION

As I determined in my Prehearing Conference Report and Scheduling Order, the special verdict from the Circuit Court of Baltimore County did not satisfy the requirements for the MHIC to order the Fund to pay a financial award to the Claimant. Bus. Reg. § 8-409 (2015). For this reason, I heard the case on its merits and my decision is as follows.

⁵ There was testimony by the Claimant that an electrician made some repairs; however, the Baltimore County order does not address electrical work. The Claimant also testified that one of the Respondent's workers installed a few hangers under the deck; however, the Claimant said this work was limited and did not specify a date when this repair occurred.

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In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).⁶ “[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)).

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) (2015)⁷; see also COMAR 09.08.03.03B(2) (“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. This recovery is conditional in nature. The Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. Bus. Reg. § 8-405. For the following reasons, I find that the Claimant has proven eligibility for compensation.

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

The Respondent performed unworkmanlike home improvements. Building codes are the bare minimum of what is required of contractors in order to ensure their work creates a safe environment for homeowners. A contractor who performs workmanlike home improvements can be expected to adhere to building code standards while satisfying the requirements of a

⁶ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁷ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

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contract with a homeowner. In this case, the Respondent violated building codes and failed to adhere to the terms of his own contract, including following the architectural plans which he incorporated by reference into his contract with the Claimant.

Contract Noncompliance

The Claimant presented the testimony of several witnesses with expertise in areas relating to construction and its affiliated fields. Mr. Watters, an expert in structural engineering testified the Respondent built the addition in a manner that was non-compliant with the architectural plans. He described the construction as “extremely poor” and pointed out numerous points at which the construction did not follow the architectural plans. Jim Jacobson, an expert in building construction and home inspection, testified about his observations of the property upon inspection. He found many deficiencies. Jay Holsey, an expert in building, construction, and bidding, and Ian Sokoloski, an expert in architecture echoed these sentiments. Mr. Sokoloski testified that the Respondent only consulted him about the roof construction and that his construction of other areas of the addition departed from the plans significantly.

Joists

The building plans called for the Respondent to use two by twelve joists, running underneath the addition to support the portion of the addition that would be an overhang. However, the Respondent used two by eight joists and added beams under the addition. Mr. Watters opined the addition of beams supporting the cantilever created a visually unpleasant result and the substitution of two by eights was inconsistent with the architectural plans, which called for larger and stronger joists. The Respondent admitted he did not follow the plans in his construction of the joist system under the addition.

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Concrete slab

The building plans called for the removal of the concrete slab roof on top of the storage area, before the contractor was to lay the joist construction. The Respondent admitted during his testimony that he did not follow the plans in this respect. Mr. Sokoloski, who created the architectural plans, testified the removal of the concrete slab ceiling was necessary because the Respondent was installing a new floor. In order to align the new floor with the existing kitchen area floor, the Respondent needed to remove the slab. However, the Respondent did not remove the slab and rather built the joist construction directly on top of it. As a result, there was no access to electrical wiring and the other structural components between the slab and the joist construction.

Insulation

The insulation used in the pantry wall area did not allow for adequate ventilation. Mr. Sokoloski testified the Respondent used the "pink insulation" when the plans called for applied polyurethane to ensure the area was insulated and had enough space for ventilation. As a result, there was inadequate ventilation in this area.

Foundation

The plans called for sill plates on top of the foundation, attached to the rest of the structure, holding it in place; however, the Respondent did not use any sill plates, which placed the structure at risk of moving in an earthquake or high wind event. The Respondent admitted during his testimony that he did not install sill plates and therefore did not build the front foundation wall according to the plans, nor did he get approval from an engineer to make a change to the front foundation wall. In his May 13, 2014 report, Mr. Watters indicated there should have been a lateral support underneath the two by eight floor joists; the joists should not be sitting directly on top of the masonry foundation wall (previously the storage area). Due to

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this flaw in construction and the fact that untreated joists were used, there is nothing preventing them from decaying or rotating, because they are not connected to the bottom foundation structure.

Subfloors

The Respondent laid the subfloor such that it stopped short of the exterior walls. This can be seen in the photographs (Clmt. Ex. 4) and was observed by Mr. Watters, who explained that drawing A5.2 in the plans (Clmt. Ex. 3) reflects that the subfloor should run under the exterior walls and emphasized this creates structural stability. The Respondent testified this was an acceptable manner of construction and he did not know it constituted a code violation. However, none of the experts agreed with him, and he was cited for code violations for this deficiency.

Footers

The Respondent did not install the foundation footers properly. Mr. Watters summarized that the Respondent's errors demonstrated a lack of knowledge regarding how framing is supposed to be done and noted, "This isn't the way we frame houses; this is the way we frame chicken houses." Mr. Jacobson echoed Mr. Watters concerns for the footers, stating they should be at least thirty-two inches deep and be conical, which is not what the Respondent did. Rather one footer was both not conical and was buried a shallow six to eight inches, as is reflected by the photographs with a measuring stick next to the dug-out footer in Claimant's Exhibit 4. Mr. Sokoloski agreed the footers were not deep enough and expressed concern that there were debris and rubble in the footers. He testified there should never be rubble in a footer. Mr. Sokoloski explained the risk of having footers installed in this manner is that the foundation may crack.

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Deck

The architectural plans called for the use of two by twelve beams running under the addition and out under the deck. The use of this size of beam would allow the deck to cantilever out. Mr. Jacobson opined that when the Respondent reduced the size of the beams to two by eights, it became impossible to achieve the same cantilever designed in the architectural plans for the deck. To compensate, the Respondent used supporting posts under the deck, which was less aesthetically pleasing and inconsistent with the building plans. The Respondent acknowledged using these posts but testified he did not charge the Claimant for their installation. That was not really the point, as they were not supposed to be used in construction. Additionally, Mr. Sokoloski testified there were gaps between the decking posts and the house, which was inconsistent with the plans and a workmanship issue

Building Code Violations

Baltimore County found the Respondent in violation of the following sections of the International Residential Code of 2009. The Respondent did not contest these violations:

<i>Area of the home</i>	<i>Codes Violated</i>	<i>Reason for Violation</i>
<i>Floor</i>	R408.1	-Must provide ventilation under floors
	R408.4	-Must provide access to all under floor spaces
	R502.9	-Must fasten the subfloor in compliance with R602.3(1)
	R503.1.1	-Subfloor bearing must comply with code
	R403.1.6	-Floor system must be properly attached to foundation
	R1001.11	-Must provide required clearance around combustible framing

The first part of the report is a general introduction to the subject of the study. It discusses the importance of the problem and the objectives of the research. The second part is a literature review, which examines the work of other researchers in the field. This is followed by a description of the methods used in the study, including the design, the subjects, and the data collection procedures. The results of the study are then presented, and a discussion is provided to interpret the findings. Finally, the report concludes with a summary of the main points and some suggestions for further research.

Date	Description	Amount
1950-01-01	Initial deposit	100.00
1950-02-15	Withdrawal	25.00
1950-03-01	Deposit	50.00
1950-04-10	Withdrawal	15.00
1950-05-01	Deposit	30.00
1950-06-15	Withdrawal	10.00
1950-07-01	Deposit	20.00

<i>Walls</i>	R602.3(1)(14)	-Must nail bottom plates as specified
	R602.3	-Studs must be continuous from sole plate to top plate and comply with this section
	R602.6.1	-Drill and notching the top plate must comply with code
<i>Deck</i>	R312 & R301.5	-The guard must be installed in compliance with this section and the table in the code
	R502.2.2.1	-Deck ledger connection shall comply with code
	R703.8	-Deck flashing shall comply with code
	R403.1.4.1	-Footings must comply with code
	R502.6	-Beam bearing – all beam members shall be continuous between bearing points
<i>Stairs</i>	R311.7.4.1	-Riser Height of all stairs must comply with code
	R311.7.7	-Handrails must be installed per code
	R311.7.4.3	-The nosing of the tread profile must comply with code

(Clmt. Ex. 6).

The Respondent argued that he was only responsible for following the terms of the contract and that a clause in his contract with the Claimant placed liability for any defects on the Claimant's architect. The clause states,

The Owner acknowledges that the [Respondent] is relying upon the expertise of the Architect and/or engineer that drafted and prepared the Plans and any specifications accompanying the Plans ...to assure that all the Work is structurally

sound and properly designed in accordance with all prevailing codes, ordinances, laws, statutes, rules and regulations (collectively the "Law").

(Licensee Ex. 32).

The HIC argued that, pursuant to COMAR 09.08.01.08, a contractor may not shift all liability to the architect for adherence to building codes. The regulation states,

In the performance of any Home Improvement Contract it shall be the non-delegable duty and obligation of the prime contractor to secure, or see to the securing of, every permit, license, or special exception necessary to the proper completion of the contract according to applicable state or local building laws.

While the regulation creates an obligation that is specific to the securing of permits and licenses, the whole point of doing so is to ensure the contract is completed "according to applicable state or local building laws." It would not make sense to read the regulation to require the architect to apply for permits and licenses but then flagrantly violate international or county building codes.

In fact, the Claimant's architectural plans include a section, entitled "General Conditions," which specifies that all work be performed in a workmanlike manner in accordance with local, state, and federal laws. (Clmt. Exhibit #3). These laws include building codes. Furthermore, a home 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) (2015). This statute requires a contractor to avoid poor performance that results in financial damages to a home owner. Furthermore, Mr. Watters testified that architectural plans serve as a guide for construction; however, contractors are expected to know building codes and abide by them. I agree. The Respondent cannot offload his responsibility for adhering to building codes to an architect who designed the plans for the addition.

Mr. Jacobson and Mr. Holsey testified about the nature and consequences of several of the code violations, based on their inspections, Jacobson in 2019 and Holsey in 2017.

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Floor

The subfloor did not run under the walls and therefore was not properly fastened according to the International Residential Code of 2009. The subfloor plywood should run under plates, which attach to the walls, holding the structure in place. Without this structure, Mr. Jacobson opined the addition lacked stability which could allow the structure to move in a severe weather event. Mr. Jacobson also explained that by leaving the concrete slab in place and laying the floor joists on top of it, there was no access underneath it. By code, access must be provided to all under floor spaces.

Mr. Holsey testified that the foundation was too thick and the flooring system was not properly attached. The foundation needed to be reduced and a sill plate installed and anchored to the block wall, foam installed, and new joists put in place. He also agreed with Mr. Jacobson that the subfloor should run underneath the walls and proposed cutting off the bottom of the walls to run the subfloor underneath.

The Respondent used the existing lower level fireplace as a support for the flooring above it and installed wood beams up against the fireplace. Installing support beams in this area of the home was consistent with the architectural plans; however, Mr. Sokoloski testified he did not know there was a fireplace on the lower level because there was so much junk being stored in that vicinity when he visited the home in advance of drawing the plans. Mr. Sokoloski opined the Respondent should have modified the construction design to allow for a standoff (gap space) between the fireplace and the combustible framing. Mr. Watters echoed this sentiment in his report, in which he stated there is a requirement of a four-inch clearance behind a masonry chimney according to the International Residential Code of 2009. This is obviously a safety hazard. The fireplace cannot be used with combustible wood framing against it. Mr. Jacobson

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testified this constituted a code violation and he directly observed it. The Respondent constructed the floors of the addition in an unworkmanlike manner.

Walls

Mr. Holsey opined the main wall in the addition was not built adequately and was weak. (See Clmt. Ex. 4, photograph 70). He testified, the drywall would need to come down and new studs put in place. He also recommended using longer beams, rather than having smaller joint beams running across the main wall of the addition. Mr. Watters opined the wall was not framed properly. Specifically, his May 13, 2014 report explained the Plowden proposal omitted a plan to fix the code violation for omission of the drilling and notching of the top plate at the top of the main wall. As such, the Respondent failed to construct the main wall in a workmanlike manner.

Deck

Mr. Jacobson opined the deck was unsafe for numerous reasons that corresponded to code violations. The deck was weak because the Respondent did not use enough bolts to secure it. There should be one bolt per bay; however, Mr. Jacobson observed bolts randomly placed, and missing in several adjacent bays. Additionally, the deck was not adequately bolted to the house. The Respondent used a beam that was spliced without placing a post underneath the splice. Also, the deck footing was not buried thirty-two inches below ground, nor was it conical. The footing appeared to Mr. Jacobson to be sitting directly on the ground, which constituted code violations related to deck requirements, because beam bearings shall be continuous and footings must comply with the International Residential Code of 2009. Mr. Jacobson opined the deck is in danger of collapse because bolts were missing between the hangers and the ledger board connection was inadequate.

The Claimant testified he barely uses the deck because he understands it is not safe. He mostly uses it for his cats to go outside. The Respondent presented undated aerial photographs

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showing that there was at some point a table and a barbecue on the deck. I find that this evidence rebutted the Claimant's testimony that he barely uses it. However, the question is whether or not the deck was built in a workmanlike manner, not whether the Claimant chooses to use it. I find that the deck was not built in a workmanlike manner.

Stairs

Mr. Jacobson testified the risers (step level)⁸ for the deck stairs were inconsistent heights, in violation of International Residential Code of 2009. By law, only a 3/8 of an inch difference between the risers is permissible and one of the risers was 5/8 of an inch different from another step, which Mr. Jacobson explained was a code violation. Such significant riser differentials are something one would expect to see from a homeowner building stairs for the first time, not from a licensed contractor. The Respondent did not construct the stairs in a workmanlike manner.

Efforts to Repair

Mr. Watters opined that the Proposed Plan by Plowden Engineering to correct the code violations left the following code violations unresolved: R403.1.6 (Foundation Anchorage), R403.1.1 (Footings), R502.6 (Beam Bearing), R100.11 (Framing Clearance), R602.3(1)-23 (joist connection, R602.3.(1) Rim Joist Connection, and R602.3(1)(14) Wall fastening, and R602.6.1 (Drilling and Notching Top Plate), and R703.8 (Deck Flashing). Mr. Watters made several recommendations in a letter to Mr. Gann, dated May 13, 2014, and opined that if these additional repairs are not made, the home will remain in an unsafe condition.

Baltimore County ordered the Respondent to repair the Claimant's home to remedy all noncompliance with building codes. Specifically, the Respondent was obligated to hire an engineer to look at the construction and develop a plan for remediation and submit it to Mr. Berry. The Respondent hired Mr. Plowden to develop a plan and Mr. Plowden submitted it to

⁸ Risers are the vertical portion of a step.

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Mr. Berry. After one revision of the plan, Mr. Berry approved it. However, Mr. Berry learned that the Respondent had not been permitted to enter the Claimant's home to make repairs and sent an e-mail providing the Claimant with a deadline for allowing entry. In response to that e-mail, counsel for the Claimant sent a letter to Mr. Berry explaining that the Claimant would permit entry once the Respondent provided a plan for correction of the construction defects and a performance bond or other assurances that his company would correct the defects. The Claimant never received these items and therefore, did not permit the Respondent back into the home.

While Baltimore County required the Claimant to grant entry for enforcement of the order, the Home Improvement Commission took another view. The HIC argued that these requests by the Claimant were reasonable, especially considering that the Respondent informed the Claimant that he may charge for his corrective work on the Property. I agree. While the Respondent was not required to provide assurances as a condition for abiding by Baltimore County's order, I do not find that these requests were unreasonable. First, such assurances are anticipated under Bus. Reg. § 8-501C(1)(ix) and COMAR 09.08.01.26A(3). Section 8-501C(1)(ix) requires a home improvement contract to include the following items: a notice set by the Commission that: (1) specifies the protections available to consumers through the Commission; and (2) advises the consumer of the right to purchase a performance bond for additional protection against loss. COMAR 09.08.01.26A(3) requires a home improvement contract to include a notice that a homeowner may request that a contractor purchase a performance bond for additional protection against losses not covered by the Guaranty Fund. The Claimant's request for a performance bond or other assurances is legally supported. Furthermore, considering that the Respondent made so many errors during construction, it was indeed reasonable for the Claimant to ask the Respondent for a plan to correct his errors before beginning work.

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The Respondent argued that this case is analogous to *U.K. Const. & Management, LLC v. Gore*, 199 Md. App. 81 (2011), in which the Court of Appeals of Maryland ruled that by denying U.K. the opportunity to make corrections, Gore relieved U.K. of its obligation to do so and fatally impaired her breach of warranty claim. *Id.* at 95. However, in *Gore*, the Appellant changed the locks and hired another construction company to complete the job. In this matter, the Respondent elected to stop working on the Claimant's home in May 2012. The Claimant and Respondent subsequently exchanged correspondence about correcting the work; however the Respondent declined to provide the assurances sought by the Claimant. The Claimant therefore only allowed minor jobs to be completed by the Respondent, including mortar repairs by John Vlahoginnis, an independent contractor working for the Respondent, and repairs to the deck flashing done by the Respondent himself. Therefore, I do not find the Claimant prevented the Respondent from correcting the construction errors. I thus find that the Claimant is eligible for compensation from the Fund. The next step is to determine the costs to repair the unworkmanlike job performed by the Respondent.

Costs to Repair

Mr. Holsey offered his expert opinion regarding the costs to repair the most seriously unworkmanlike and unsound aspects of the job. First, he would reduce the thickness of the foundation from eight to twelve inches down to four inches thick. Then he would lay a sill plate and fill the cinderblock used by the Respondent with concrete and place a bolt on the sill plate (which would be anchored concrete to the block wall). Then he would put down foam, the sill plate would rest on the foam, and then the new joists would rest on the sill plate. He estimated this job would cost \$20,000.000, based on the cost of time and materials.

Second, Mr. Holsey recommended fixing the subfloor, which would support the walls. To do so, he would tear up the kitchen tiles, remove cabinets and base cabinets. He would cut

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off the bottom of the walls, and run the subfloor under the wall and rebuild the bottom of the walls and install new studs in the walls. He estimated the cost of this repair to be \$25,000.00.

Third, Mr. Holsey recommended fixing the beams supporting the deck where there are splices. To do so, he would remove the spliced beams and install beams with no splicing. The cost of this repair would be \$1,500.00 to \$2,000.00.

Fourth, Mr. Holsey recommended digging one new footing and installing a post directly on the footing, because one of the posts for the deck did not land on a footing. He estimated the cost to dig a new footing would be \$300.00. He did not provide a cost estimate for placing the post on the footing. It was not clear whether he anticipated using the same post or a new one.

Fifth, Mr. Holsey proposed fixing the stairs, which Baltimore County cited for code violations. He estimated it would cost \$1,200.00 to put the stairs at the same riser height, per code.

Sixth, Mr. Holey explained that the whole kitchen would have to be reassembled. Before doing so, Mr. Holsey recommended taking down the walls to achieve code compliance. He specifically recommended placing new studs in the wall structure once the walls were down to bring them into compliance with building codes. Drywall would then be installed, new ceramic tile would be laid, cabinets and countertops would be reinstalled. The cost of this work would be \$50,000.00.

The Claimant argued that the floor in the kitchen to the living room area should be level. The joint between the wood floor and the tile floor in the kitchen is currently not level. The Claimant obtained an estimate from Tom Moran to raise the height of the wood floors, at a cost of \$13,650.00. However, Mr. Ovadia testified that the Claimant changed his tile selection, causing the ¼ inch height differential, which could be solved with an angled transition strip. I accept that a transition strip would be appropriate, especially in light of the Claimant's decision

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the success of any business and for the protection of the interests of all parties involved. The document then goes on to describe the various methods and techniques used to collect and analyze data, highlighting the need for consistency and reliability in the information gathered.

The second part of the document focuses on the application of these principles in a specific context, such as the management of a large organization or the implementation of a new system. It provides a detailed account of the challenges faced and the solutions implemented, illustrating the practical value of the concepts discussed in the first part. The document concludes by summarizing the key findings and offering recommendations for future research and practice.

to change the tile selection. There is no evidence that the floor differential formed the basis of a code violation and neither Mr. Jacobson nor Mr. Holsey expressed concerns about it during their testimony. No financial award is appropriate for the ¼ inch height differential of the flooring.

The Claimant also argued that he was due additional costs on the project. First, the Respondent was supposed to give him credits for the cost of several items but never did so. Those items included a back patio door (\$1,000.00), a second patio door (\$600.00), kitchen windows (\$570.00), clerestory windows (\$500.00) and a casement picture window (\$970.00). Second, the Claimant testified the electrical system did not work and he paid \$1,295.00 to get it working and completed. Additionally, the Claimant paid \$2,400.00 for siding and \$1,300.00 for drywall and \$2,666.33 for masonry to make the brickwork match. The Respondent did not counter the Claimant's argument that he failed to provide necessary offsets; however, the Respondent testified his electrician went out to the Claimant's home to remedy electrical problems and argued that the receipt the Claimant presented from Gramophone was for work not anticipated under the contract. The Respondent believed the masonry work was a close enough match and did not believe he was liable for redoing that work. Globally, the Respondent testified he never permitted the Claimant to subtract from the amount owed the cost of having work done by other contractors, with the exception of \$120.00 for gutter work over the addition. Considering that the work called for by Mr. Holsey is already far in excess of the \$20,000.00 limit on an award from the Fund, I need not resolve whether the Claimant is entitled to some or all of these amounts.

The Respondent argued that the Claimant owed him the remainder of the balance on the contract, \$24,682.00 because he had satisfied the requirement of substantial completion under the contract. However, Mr. Sokoloski testified that given all of the incomplete and inadequate work (with cracked tiles, hanging wires, and trim not installed), the Respondent did not reach

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and procedures used to collect and analyze data. It details the steps involved in identifying key performance indicators (KPIs) and how they are measured against established benchmarks.

3. The third part of the document focuses on the interpretation of the collected data. It explains how the information is used to identify trends, patterns, and areas of concern, providing valuable insights into the organization's overall performance.

4. The fourth part of the document discusses the role of management in utilizing the data for decision-making. It highlights the importance of regular communication and reporting to ensure that all stakeholders are informed and aligned with the organization's strategic goals.

5. The fifth part of the document addresses the challenges associated with data collection and analysis. It identifies common obstacles such as data quality issues, limited resources, and complex data structures, and offers practical solutions to overcome these challenges.

6. The sixth part of the document provides a summary of the key findings and conclusions drawn from the analysis. It reiterates the importance of continuous monitoring and evaluation to ensure the organization remains competitive and responsive to market changes.

7. The seventh part of the document offers recommendations for future actions based on the findings. It suggests areas for improvement and outlines specific steps that should be taken to address identified weaknesses and optimize the organization's performance.

8. The eighth part of the document concludes with a final statement on the value of data-driven decision-making. It emphasizes that by leveraging data effectively, the organization can gain a significant competitive advantage and achieve its long-term vision.

substantial completion of the job. I do not find the Claimant owed the Respondent any additional sums, considering the inadequacies and incomplete nature of the job when he left in May 2012.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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 paid \$111,661.00 to the Respondent under the contract and will have to pay another contractor \$78,500.00 to remedy the most significant issues with the construction, as described by Mr. Holsey. The sum of these two figures is \$190,131.00. From \$190,131.00 the amount of the contract (including change orders) is subtracted for a result of \$190,131.00 minus \$147,421.00, which equals \$42,710.00.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount

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paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$42,710.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a), 8-407(e)(1) (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;⁹ and

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

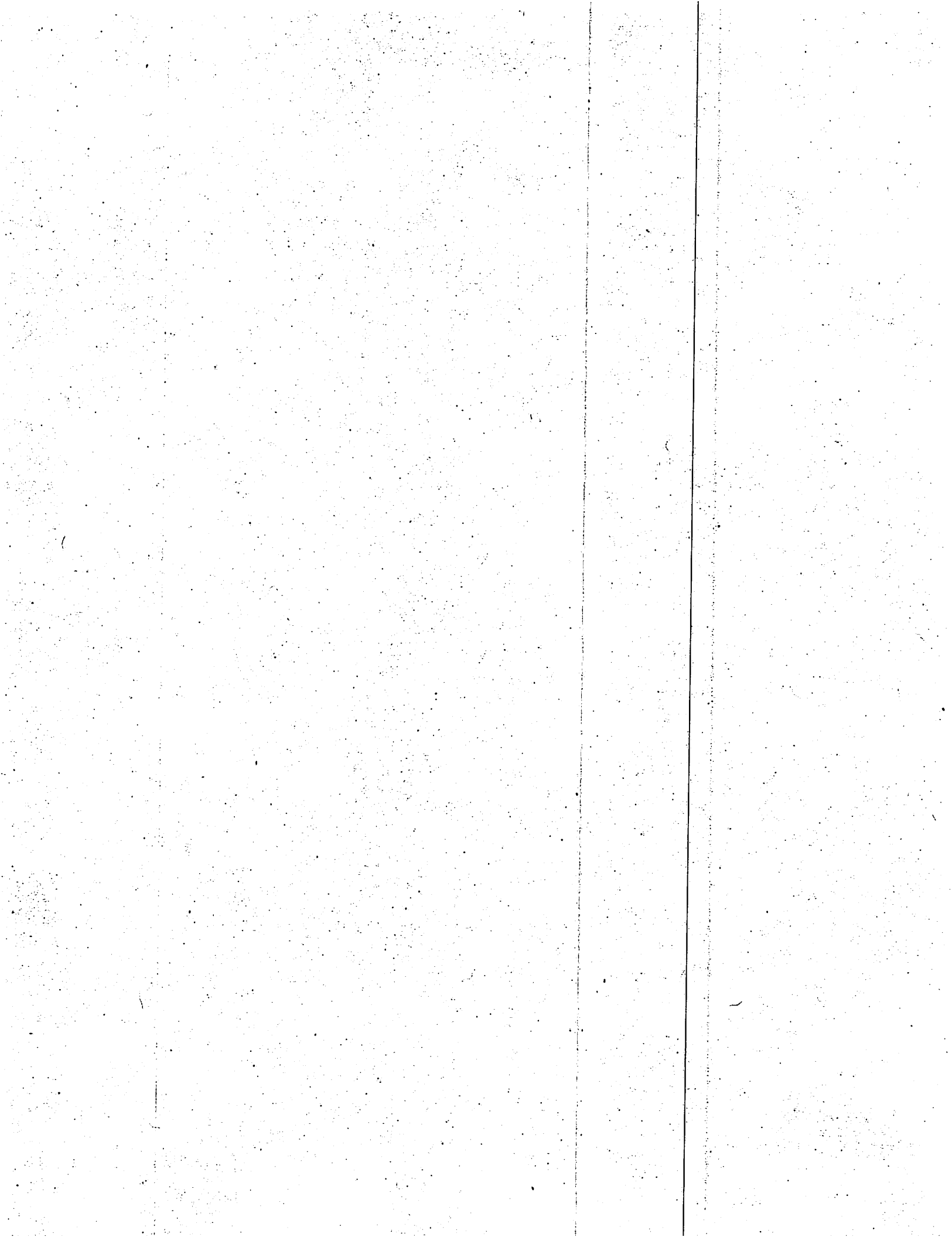
November 14, 2019
Date Decision Issued

CONFIDENTIAL

Rachael Barnett
Administrative Law Judge

RAB/da
182698

⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**IN THE MATTER OF THE CLAIM
OF ERIC JOHNSON**

**MARYLAND HOME IMPROVEMENT
COMMISSION**

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF JERRY OVADIA, T/A
OVADIA, LLC**

**MHIC CASE NO. 15(75)429
OAH CASE NO. LABOR-HIC-02-19-
02537**

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 17-21 and August 12-14 and 16, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 14, 2019 concluding that the homeowner, Eric Johnson (“Claimant”) proved that he sustained an actual loss as a result of the acts or omissions of Jerry Ovadia (“Contractor”) and awarded the Claimant \$20,000.00 from the Home Improvement Guaranty Fund (“Guaranty Fund”). *ALJ Proposed Decision* pp. 26-27. In a Proposed Order dated February 12, 2020, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant Claimant an award from the Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On August 20, 2020, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Contractor participated and was represented by counsel, Jeffrey Forman. The Claimant participated without counsel. Assistant Attorney General Andrew Brouwer appeared at the exceptions hearing to present evidence and argument on behalf of the Guaranty Fund. The following preliminary exhibits were offered by AAG Brouwer and admitted into evidence at the exceptions hearing: 1) February 12, 2020 transmittal letter and OAH Proposed Decision; 2) Contractor’s Exceptions; 3) February 26, 2020 hearing notice; 4) Contractor’s March

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES

DEPARTMENT OF CHEMISTRY
5301 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

PROFESSOR J. D. WATSON
DEPARTMENT OF CHEMISTRY
5301 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

DR. J. D. WATSON
DEPARTMENT OF CHEMISTRY
5301 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

RESEARCH REPORT

THE UNIVERSITY OF CHICAGO, DIVISION OF THE PHYSICAL SCIENCES

DEPARTMENT OF CHEMISTRY

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3, 2020 request for postponement; 5) Claimant's March 4, 2020 request for postponement 6) Claimant's April 16, 2020 request for postponement; and 7) Proposed Order. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Claimant sought to introduce new evidence but he failed to demonstrate that the documents he wanted in evidence were relevant and were not and could not have been discovered before the OAH hearing in June and August 2019. Therefore, the Panel's review of the record was limited to the preliminary exhibits offered by AAG Brouwer at the exceptions hearing, the OAH Proposed Decision and the exhibits introduced into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

In his written exceptions and during argument before the Panel, the Contractor asserted that the ALJ's Proposed Decision included the following errors:

1. The case caption identified the Contractor as Jeffrey Ovadia, rather than by his correct name, Jerry Ovadia.
2. The Proposed Decision unlawfully recommended that the Commission order that the Contractor, in his individual capacity, be ineligible for a home improvement contractor license until he reimburses the Guaranty Fund for the award to be paid to the Claimant because the Contractor's debts were discharged by the United States Bankruptcy Court for the District of Maryland in an Order of Discharge entered February 13, 2019.
3. The Proposed Decision identified EZ Fullrehab, LLC, as the corporate entity that the Contractor was trading as when he contracted with the Claimant, when in fact the Contractor was trading as Ovadia, LLC, when he contracted with the Claimant.

The Claimant argued that the Contractor should not escape liability for his conduct because he declared bankruptcy and that the Contractor currently is operating EZ Fullrehab LLC, so EZ

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Fullrehab LLC should be included as a party to this proceeding.

The Commission agrees that the Contractor's name in the caption in this proceeding should be corrected to reflect his name.

The Commission finds, based on the contract giving rise to this proceeding (OAH Hearing Respondent's Exhibit 32), that the Claimant contracted with Ovadia, LLC, and not EZ Fullrehab, LLC. Therefore, the Commission holds that the caption of this proceeding should be revised to identify Ovadia, LLC, as the corporate respondent.

The Commission finds, based on the Order of Discharge in Case Number 17-12110 in the United States Bankruptcy Court for the District of Maryland (Exceptions Hearing MHIC Exhibit 2) that Mr. Ovadia's personal liability for the reimbursement of the Guaranty Fund for the Fund's payment of an award to the Claimant was discharged pursuant to the bankruptcy laws of the United States. Therefore, the Commission holds that Mr. Ovadia is not responsible for reimbursing the Guaranty Fund for the award to be disbursed pursuant to this Order and that Ovadia, LLC, is solely liable to reimburse the Guaranty Fund for the award.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 9th day of September 2020, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the case caption is revised to identify the Contractor/Respondent as Jerry Ovadia t/a Ovadia, LLC;
- E. That the Claimant is awarded \$20,000.00 from the Maryland Home Improvement Guaranty

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Fund;

F. That Ovadia, LLC, is solely liable to reimburse the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

G. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

H. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Jean White
Chairperson –Panel
Maryland Home Improvement
Commission

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