

**The Maryland Home  
 Improvement Commission**

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**BEFORE THE  
 MARYLAND HOME IMPROVEMENT  
 COMMISSION**

**v. Carl McFadigon  
 t/a Affinity Group, LLC  
 (Contractor)  
 and the Claim of  
 Marc Dyson  
 (Claimant)**

**MHIC No.: 15 (90) 489**

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**FINAL ORDER**

**WHEREFORE, this 6<sup>th</sup> day of July 2017, Panel B of the Maryland Home**

**Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated April 3, 2017 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated April 3, 2017 are AFFIRMED.**
- 3. The Proposed Order dated April 3, 2017 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date.**
- 5. 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**

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY

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LABORATORY

CHICAGO, ILLINOIS

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IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER L. GRESOCK,
OF MARC T. DYSON,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF CARL MCFADGION,	*
T/A AFFINITY GROUP, LLC	* OAH No.: DLR-HIC-02-16-21302
RESPONDENT	* MHIC No.: 15 (05) 489

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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 November 17, 2016, Marc T. Dyson (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$31,064.00 in alleged actual losses suffered as a result of a home improvement contract with Carl McFadgion, trading as Affinity Group, LLC (Respondent).

I held a hearing on December 6, 2016, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent did not appear. After

waiting fifteen minutes for the Respondent or someone to represent him, I proceeded with the hearing.<sup>1</sup> Code of Maryland Regulations (COMAR) 28.02.01.23A.

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

### 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 on the Claimant's behalf, except where noted:

- Cl. Ex. 1 - Estimate by the Respondent, dated November 7, 2013
- Cl. Ex. 2 - Draw Schedule, dated November 7, 2013
- Cl. Ex. 3 - Letter from Eric Carpenter, US Inspect, LLC, dated October 22, 2014
- Cl. Ex. 4 - Invoice by the Respondent, dated March 22, 2014
- Cl. Ex. 5 - Letter from Patricia Hinrichs, Ms. Honey Do, LLC, dated July 3, 2015
- Cl. Ex. 6 - Structural Damage Claim Policy, dated June 18, 2009
- Cl. Ex. 7 - NOT ADMITTED
- Cl. Ex. 8 - US Inspect Inspection Report, dated October 22, 2014
- Cl. Ex. 9 - Check for \$11,000.00 from the Claimant to the Respondent, dated December 30, 2013

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<sup>1</sup> Multiple notices of the hearing were provided to the Respondent at his address of record, including notices sent by first-class mail and certified mail. While one copy of the notice was returned, the other was not. I therefore find that the Respondent was properly notified of the hearing. COMAR 09.08.03.03A(2).

- Cl. Ex. 10 - 2013-2014 Construction Costs Statement by the Respondent, undated; three checks from the Claimant to the Respondent, in the amounts of \$10,920.00 (dated December 30, 2013); \$5,000.00 (dated December 30, 2013); \$4,000.00 (dated August 18, 2014)
- Cl. Ex. 11 - Invoice by the Respondent, dated July 1, 2014
- Cl. Ex. 12 - Estimate by the Respondent, dated August 17, 2014
- Cl. Ex. 13 - Invoice by the Respondent, dated August 3, 2014
- Cl. Ex. 14 - Estimate by the Respondent, dated August 13, 2014
- Cl. Ex. 15 - Estimate by the Respondent, dated August 17, 2014
- Cl. Ex. 16 - Estimate by the Respondent, dated August 10, 2014
- Cl. Ex. 17 - Invoice by the Respondent, dated January 10, 2014
- Cl. Ex. 18 - Estimate by the Respondent, dated October 26, 2013
- Cl. Ex. 19 - Estimate by Ms. Honey Do, LLC, dated March 3, 2015
- Cl. Ex. 20 - Invoice by Ms. Honey Do, LLC, dated February 27, 2015
- Cl. Ex. 21 - Proposal by Ms. Honey Do, LLC, dated December 16, 2014
- Cl. Ex. 22 - Johns Eastern Company, Inc., policy documents, dated October 29, 2014

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - OAH Memorandum regarding undeliverable mail, dated November 15, 2016, with attached returned mail
- Fund Ex. 2 - Department of Labor, Licensing, and Regulation MHIC Inquiry Printout, dated November 28, 2016
- Fund Ex. 3 - Letter from the MHIC to the Respondent, dated February 26, 2016

I did not admit any exhibits on behalf of the Respondent, who did not appear.

#### Testimony

The Claimant testified on his own behalf and presented the testimony of Patricia Hinrichs, President and Owner of Ms. Honey Do, LLC.

The Fund did not present any 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 01 106441.
2. The Claimant lives in Los Angeles, California.
3. In 2012, the Claimant inherited a home from his mother, Karla Dyson. The home is located at 3706 Windom Road, Brentwood, Maryland.
4. In the fall of 2013, the Claimant sought to hire a general contractor to renovate the home and to repair water damage in the home caused by a leak in the roof. He obtained estimates from several contractors, including the Respondent and Ms. Honey Do, LLC (Honey Do).
5. The Claimant received \$11,935.33 from State Farm Insurance to repair the water damage. The Respondent provided the Claimant with an estimate of \$10,920.00 for the water damage repair. The Respondent and the Claimant regarded the estimate as a contractual agreement to complete the work for that amount.
6. On October 26, 2013, the Respondent and the Claimant agreed that the Respondent would replace the roof at the cost of \$5,000.00.
7. On November 7, 2013, the Claimant and the Respondent entered into a contract reflecting additions or "add ons" to the \$10,920.00 estimate for the water damage repairs. These add-ons included: demolish and replace the rear deck; install a chain link fence; rehabilitate water damage (including finishing a bathroom); install a light and sliding door in the dining room; replacing the basement steps and install basement flooring; install kitchen plumbing, cabinets, countertop, range hood and garbage disposal, and other appliances provided by the Claimant; move a wall in the laundry area; install and seal a new back door; frame bedroom

walls for two bedrooms, each with a closet; wire, drywall, and paint bedrooms; install an egress window in each bedroom; hang and paint bedroom doors; removal of all debris.

8. The Respondent and the Claimant agreed that the cost for these November 7, 2013 add-ons was \$22,000.00.

9. The contract stated that work would begin a week from the Respondent's receipt of the down payment and would be completed approximately two weeks later.

10. During the renovations, the Respondent and the Claimant agreed on additional tasks, at an additional cost of \$2,602.25. These tasks included rehabbing the HVAC system (\$2,065.00); install, prepare, prime, and paint a new entry door (\$371.00); and wiring and light fixtures for the three bedrooms and hallway (\$166.25).

11. The original agreed-upon contract price was \$40,522.25.

12. On December 30, 2013, the Claimant paid the Respondent an initial payment of \$11,000.00, as well as two additional payments of \$10,920.00 and \$5,000.00.

13. The Claimant made an additional payment of \$4,000.00 to the Respondent on August 18, 2014.

14. The Respondent did not install the roof properly. Shingles were missing, exposing the underlayment, necessitating a roof replacement.

15. The Respondent did not demolish and replace the rear deck.

16. The Respondent did not install the chain link fence.

17. The Respondent did not complete the bathrooms and did not install the fixtures chosen by the Claimant.

18. The Respondent did not install egress windows in the two bedrooms in which the Claimant had requested them; instead, he installed windows in the two bedrooms that did not function as egress windows.

19. The Respondent did not complete the construction of closets in the first floor bedrooms.
20. The Respondent did not construct the wall in the laundry room area.
21. The Respondent did not complete painting walls and doors, and where he did paint, he used an inadequate number of coats. He also slopped paint on surfaces that were not to be painted.
22. The Respondent did not complete electrical work specified in the contract.
23. The Respondent improperly attached the bathroom vent to the dryer vent.
24. A pipe installed by the Respondent broke, causing water damage that required extensive repairs by a subsequent contractor.
25. The Respondent continued work on the Claimant's home for about a year.
26. During the time that the Respondent was doing work on the home, the Claimant repeatedly asked if the Respondent needed anything else to complete the job. The Respondent maintained that he would get the job done. When the Respondent still failed to complete the work, the Claimant terminated the contract by sending the Respondent an email directing him to do no further work. The Respondent did not seek any additional payments from the Claimant.
27. On October 22, 2014, US Inspect inspected the property and provided a written report to the Claimant detailing problems identified by the inspector.
28. In early 2015, the Claimant hired Honey Do to correct work completed by the Respondent and to complete work he left unfinished.
29. The contract price for repairs and work completed by Honey Do was \$14,652.62.
30. The cost of replacing the bedroom windows installed by the Respondent with the egress windows provided for in the contract is \$11,554.04.
31. The Claimant's actual loss is \$16,378.87.



## DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>2</sup> “[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);<sup>3</sup> *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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, I find that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Fund provided documentation of his license. (Fund Ex. 2.)

I also find that the Respondent performed unworkmanlike, inadequate and incomplete home improvements. The Claimant’s presentation of evidence regarding the original contract and the subsequent work performed by both the Respondent and a subsequent contractor was, at times, jumbled and chaotic. However, what is nonetheless clear from the evidence is that the

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<sup>2</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Claimant and the Respondent agreed upon specific tasks that were to be completed, and the Respondent failed to complete most of them. Those that the Respondent did complete were done either incorrectly or so poorly that they needed to be re-done. The Respondent's workmanship was so poor that a pipe he installed broke, leading to additional damage that had to be repaired by a subsequent contractor.

The tasks specified in the contract between the Claimant and the Respondent included, for example, the roof. The Respondent agreed to replace the roof, but did such a poor job that an inspection in October 2014 found that shingles were missing, exposing the underlayment to the elements. The inspector noted that due to damage to the roof, it would need to be replaced, rather than repaired. (Cl. Ex. 8.)

The Claimant testified regarding other tasks specified in the contract. He stated that he lives in California and arranged for the home improvement work to be done without being physically present in Maryland. He explained that he works as a property manager and that achieving a certain look in a home is important to him, and that he choose appliances and fixtures with that in mind. For that reason, he was distressed to learn that the Respondent installed items, such as bathroom fixtures, that deviated from what the Claimant had approved.

Additionally, the Claimant testified that the work went on far longer than had been agreed to, dragging on for nearly a year when the parties had agreed that it would take about two to four weeks to complete. The Claimant further testified that the work completed by the Respondent was sloppy, with paint slopped on surfaces that were not to be painted and areas where the paint was too thin.

In addition, the Respondent failed to demolish and replace the back deck, did not install a chain link fence, failed to install basement steps and flooring, did not complete the kitchenette, failed to properly install and paint doors throughout the home, failed to construct the laundry

room wall, failed to complete closets in the bedrooms, failed to install the egress windows specified in the contract, failed to complete specified electrical work, and completed the HVAC work improperly. Evidence of these failures includes the Claimant's own testimony, based on his two-week visit to the property in the summer of 2014, the October 22, 2014 Inspection Report, and the testimony of Patricia Hinrichs, President and Owner of Honey Do.

Ms. Hinrichs testified that she had provided an initial estimate to the Claimant when he was first seeking a contractor in fall 2013, but that he had opted instead to hire the Respondent. She explained that the Claimant hired her in early 2015 to complete the unfinished work and to repair water damage caused by a pipe the Respondent had installed that subsequently broke. Ms. Hinrichs stated that when she opened up the wall to repair the plumbing and water damage, she discovered that there was no insulation behind the wall and that plumbing completed by the Respondent was not done correctly. Ms. Hinrichs corrected these problems and also addressed the problems highlighted in the Inspection Report, which the Claimant had obtained to evaluate the incomplete and inadequate work done by the Respondent. She testified that the scope of the work she completed was consistent with the scope of the Claimant's contract with the Respondent, though it also included some additional work that resulted directly from damage caused by the Respondent's inadequate work on the plumbing.

With regard to the egress windows, which the Claimant indicated were specified in the contract with the Respondent, the cost to have the windows installed by the Respondent removed and the egress windows installed instead is \$11,554.04. (Cl. Ex. 21.)

I found the Claimant's testimony credible and persuasive. While he had difficulty with the specifics of which invoice or estimate reflected exactly which task, he was able to explain the general scope of the work included in his contract with the Respondent and to detail exactly

which tasks were either incomplete or done so poorly they needed to be redone. In addition, the Claimant's account is corroborated by the testimony of Ms. Hinrichs, as well as the October 22, 2014 Inspection Report. It is clear that the Respondent failed to complete the majority of the items specified in the contract and that those he did complete were so poorly done that they needed to be redone. Accordingly, I find the Claimant has established the Respondent's home improvement work was unworkmanlike, inadequate, and incomplete.

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

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).

This formula requires me to ascertain the amount paid to the Respondent, which is \$30,920.00. It also requires me to determine the amounts paid to another contractor to repair poor work and complete the contract. In this case, the Claimant paid \$14,652.62 to Honey Do. In addition, he also obtained an estimate of \$11,554.04 to replace the bedroom windows with

egress windows. Thus, the total cost the Claimant has paid or will be required to pay to another contractor to repair poor work and complete the contract is \$26,206.66. Finally, I must also determine the amount of the original contract. The Claimant provided a number of invoices and estimates. Some of these invoices and estimates included work that he testified he had not agreed to. Others appeared to include duplicative items. Having carefully reviewed the documents provided by the Claimant to ensure that I have disregarded duplicative costs and those costs associated with work not agreed to, I find that the original contract price was \$40,522.25. This figure is based on adding together the \$10,920.00 agreed to for repair of water damage; the \$22,000.00 for "add ons"; the \$2,065.00 for HVAC work; the \$371.00 for a new entry door; and \$166.25 for electrical wiring.

The Claimant's award is therefore calculated as follows:

The amount paid to the Respondent		\$30,920.00
The cost to repair or correct work	+	\$26,206.66
	=	\$57,126.66
The amount of the original contract	-	\$40,522.25
	=	\$16,378.87

Accordingly, the Claimant is entitled to reimbursement of \$16,378.87.<sup>4</sup> Bus Reg. § 8-405(a).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$16,378.87 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

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<sup>4</sup> The Fund agreed that an award is appropriate in this case, though Ms. Sachs provided different calculations. She noted that her calculations were based on her best assessment of the evidence as presented at the hearing, and that the Claimant's documentation was difficult to sort out during the course of the hearing. I considered the calculations offered by the Fund but adjusted them to account for duplicative costs as reflected in the invoices and estimates provided by the Claimant.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,378.87; 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;<sup>5</sup> and

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

**Signature on File**

March 3, 2017  
Date Decision Issued

\_\_\_\_\_  
Jennifer L. Gresock  
Administrative Law Judge

JLG/dlm  
#166931

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of April, 2017, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.***

***W. Bruce Quackenbush***

***W. Bruce Quackenbush***

***Panel B***

***MARYLAND HOME IMPROVEMENT COMMISSION***