

**The Maryland Home
Improvement Commission**

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**BEFORE THE
MARYLAND HOME IMPROVEMENT
COMMISSION**

**v. Ralph Reeside
t/a Chesapeake Restorations, Inc.
(Contractor)
and the Claim of
Donnie Goddard
(Claimant)**

MHIC No.: 15 (75) 619

FINAL ORDER

**WHEREFORE, this 16th day of March 2017, Panel B of the Maryland Home
Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated December 8, 2016 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated December 8, 2016 are AFFIRMED.**
- 3. The Proposed Order dated December 8, 2016 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

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IN THE MATTER OF THE CLAIM
OF DONNIE GODDARD,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF RALPH REESIDE,
T/A CHESAPEAKE RESTORATIONS,
INC.,
RESPONDENT

* BEFORE TARA K. LEHNER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-15-42704
* MHIC No.: 15 (75) 619
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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 February 24, 2015, Donnie Goddard (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for actual losses he alleges he suffered as a result of a home improvement contract with Ralph Reeside, trading as Chesapeake Restorations, Inc. (Respondent).

I held a hearing on June 29, 2016 and August 16, 2016 at the Office of Administrative Hearings (OAH) in Hunt Valley, MD. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). Amanda Zorn, Esquire, represented the Claimant, who was present. Alan F. M. Garten, Esquire,

represented the Respondent, who was present. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; 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 behalf of the Fund:

- Fund Ex. 1 - Notices of Hearing, dated April 21, June 13 and July 5, 2016
- Fund Ex. 2 - Hearing Order, dated December 3, 2015
- Fund Ex. 3 - MHIC Licensing History for Respondent, printed June 28, 2016
- Fund Ex. 4 - MHIC Home Improvement Claim Form, received by MHIC February 24, 2015
- Fund Ex. 5 - Letter from MHIC to Respondent, dated March 9, 2015
- Fund Ex. 6 - Emails between Respondent and State Farm, dated August 11 and 25, 2014
- Fund Ex. 7 - Building Replacement Cost Benefits for Complainant's Homeowner Policy, for loss dated March 9, 2013

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

- CL Ex. 1 - Estimate from Tropea Restoration, Inc., dated April 25, 2013
- CL Ex. 2 - Contract between Claimant and Respondent, signed May 1, 2013
- CL Ex. 3 - Additional Scope of Work, dated October 16, 2014

- CL Ex. 4 - Three checks: two made out to the Respondent, dated September 17, 2013 and January 24, 2014; and one made out to the Claimant and Respondent jointly, dated February 12, 2014
- CL Ex. 5 - Safeguard Inspection Report, with attached pictures, dated November 13, 2014
- CL Ex. 6 - Safeguard Inspection Report, with attached pictures, dated December 29, 2014
- CL Ex. 7 - Safeguard Inspection Report, page 1 or 7, dated June 11, 2015
- CL Ex. 8 - Letter from Selene Finance to Claimant, dated June 11, 2015
- CL Ex. 9 - Arocon Design Build (Arocon) Home Improvement Contract Proposal for Claimant, undated
- CL Ex. 10 - Three Checks from Claimant to Arocon, one dated April 13, 2013, and two dated, May 15, 2015
- CL Ex. 11 - Safeguard Inspection Form, undated
- CL Ex. 12 - Email from Respondent to Gary Maslan, dated October 13, 2014

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

- Resp. Ex. 1 - Letter from Claimant to Respondent, dated December 12, 2014
- Resp. Ex. 2 - Unsigned General Contract for Services between Claimant and Respondent, dated June 24, 2014
- Resp. Ex. 3 - Email from Respondent to Claimant, dated May 15, 2013
- Resp. Ex. 4 - Floor plans by Bell Architects, undated
- Resp. Ex. 5 - Thirty photographs of Claimant's home, undated
- Resp. Ex. 6 - Transactional Report (Accounting) by Respondent for Claimant's home, for the period May 31, 2013 through August 12, 2016
- Resp. Ex. 7 - Permits for Claimant's home, October 2013 through April 2016
- Resp. Ex. 8 - Photograph of front door of Claimant's home, undated
- Resp. Ex. 9 - NOT ADMITTED - Affidavit of Adam C. Sharets of Arocon, dated August 11, 2016
- Resp. Ex. 10 - Respondent's response to MHIC, dated December 19, 2014

Testimony

The Claimant testified, and called his wife, Tyrussiaea Goddard, as a witness. The Respondent testified on his own behalf, and did not call any other witnesses. The Fund did not call any witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 4845242.

2. On May 1, 2013, the Claimant and the Respondent entered into a contract to rebuild the Claimant's home that had been destroyed by a fire (Contract). The parties entered into the Contract before the homeowner's insurance claim was approved by State Farm.

3. The Contract called for 30% of the total amount to be paid to the Respondent at the time the Contract was signed. The Respondent did not expect this money on May 1, 2014 because State Farm had not yet approved the insurance claim.

4. The initial Contract price was \$341,912.64. All parties understood that this was an initial estimate and that the Contract price would increase as the true extent of the fire damage was determined.

5. In May 2013, the Respondent hired an architect and had preliminary plans created with input from the Claimant. The Claimant initialed these plans.

6. On an unspecified date, but prior to September 17, 2013, State Farm agreed to cover the loss.

7. On September 17, 2013, the Claimant paid the Respondent \$38,620.28 via a certified check drawn on his personal account.

8. In October 2013, the Respondent began demolition work at the home. He also paid \$8,791.00 to have temporary fencing, electrical and plumbing installed at the property, and for the permits to undertake these activities.

9. On January 9, 2014, State Farm approved an additional \$37,262.56 towards the rebuild of the home, raising the Contract price to at least \$379,175.20.

10. On January 24, 2014, the Claimant paid the Respondent \$40,000.00 via a certified check drawn on his personal account. This was the last payment made to the Respondent. The Respondent received a total of \$78,620.28 for his work under the Contract.

11. On February 12, 2014, State Farm issued a check in the amount of \$15,000.00 to the Claimant and Respondent jointly. The Claimant took this check and refused to disburse these funds to the Respondent.

12. On April 27, 2014, the Claimant fired the Respondent. At some unspecified point he rehired the Respondent.

13. On June 24, 2014, the Claimant presented a new contract to the Respondent to try to amend the terms of the current Contract. The Respondent refused to sign it.

14. The Respondent repeatedly made demands for more money to be able to continue with the project.

15. Safeguard Properties (Safeguard), an independent inspection company hired by Bank of America, the Claimant's mortgage company, performed an inspection of the property on May 28, 2014. By that date, the Respondent had completed the demolition and cleanup of the property, had installed temporary electric, and had installed structural supports in the property.

16. Sometime prior to August 1, 2014, the Claimant received another \$35,040.27 for payment to the Respondent. The Claimant never paid this money to the Respondent.

17. Sometime between March and August 25, 2014, the Respondent had final architectural and engineering plans developed for the property. He paid the architect \$22,346.23 to develop these plans.

18. Safeguard performed a second inspection at the property on November 12, 2014 and generated a report. By that time, the Respondent had installed load bearing walls. The Claimant did not agree with this report.

19. The Respondent continued to make demands for more money to be able to complete the project. The Claimant refused to make any additional payments to the Respondent until the Respondent completed specific work, such as installing the roof.

20. At the time the Claimant demanded the Respondent install the roof, the house was not structurally ready for the installation of the roof.

21. The relationship between Claimant and the Respondent ended on December 12, 2014, when the Claimant sent a letter to the Respondent stating that he was terminating his relationship with the Respondent.

DISCUSSION

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). "[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 (3rd. 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);¹ *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.

Evidence

A catastrophic fire occurred at the Claimant’s home on March 9, 2013. The next day, State Farm, the Claimant’s home insurance company, hired Tropea Restoration, Inc. (Tropea) to perform an initial inspection of the property. Tropea then created an estimate for the repair of the home. Cl. Ex. 1. The initial estimated cost to repair the home was \$341,912.64.

State Farm did not immediately approve the fire claim. Although it is unclear from the record exactly how long the investigation took, there is no dispute that in May 2013, State Farm was still investigating. Ultimately, State Farm agreed to cover the loss.

The Claimant entered into the Contract with the Respondent to rebuild the home on May 1, 2013. Cl. Ex. 2. In that Contract, the Claimant agreed to pay the Respondent 30% of the Contract price at signing. At that time, the best estimate the parties had regarding the Contract price was the Tropea estimate. However, given the reality of a rebuild after a fire, and the fact that the Tropea estimate was based on an inspection that took place before any cleanup or demolition, all parties were on notice that the final contract price was likely higher than the estimate and would not be determined until a later time.

¹ All references to the Business Regulation Article will be referred to as “Bus. Reg.” and are from the 2015 Replacement Volume, unless otherwise noted.

In fact, the Contract price did increase. On January 9, 2014, State Farm approved an additional \$37,262.56 towards the rebuild of the home. (Fund Ex. 7). The Respondent explained that this approval, called a supplemental, is for additional work not contemplated by the initial Tropea estimate. It is unclear from the record whether State Farm approved additional supplementals, but the record is clear that as of January 9, 2014, the minimum contract price was approximately \$379,000.

Although the Contract called for the Claimant to pay the Respondent 30% of the Contract price at the time of signing, the Respondent did not expect that money at that time. As explained by the Respondent, in the usual course, an insurance company will initially authorize an amount that it will pay for the repair of a home and it will disburse the funds to the mortgage holder, who then disburses funds to the homeowner as it deems appropriate. This gives the mortgage company a mechanism to ensure that its asset is protected; that homeowners are not able to abscond with the insurance proceeds without properly repairing the mortgaged home. The Respondent explained at the hearing that at the time he signed the Contract with the Claimant in May 2013, he did not expect to receive the 30% payment at that time, because at that time State Farm had still not yet approved the claim. However, the Respondent understood that once State Farm approved the claim, he would be paid this initial amount.

The Respondent testified that, in good faith, and believing that the claim would ultimately be approved by State Farm, he moved forward with starting the work necessary to rebuild the home. He stated that he hired an architect, and, in conjunction with the Claimant and his wife, began the development of the preliminary plans. The Respondent offered plans into evidence (Resp. Ex. 4) that contain the Claimant's handwritten initials on each page.

The Respondent received his first payment from the Claimant on September 17, 2013, in the amount of \$38,620.28. Cl. Ex.4. This payment appears to have been drawn from an account

of the Claimant in the form of a cashier's check. *Id.* The evidence does not reveal whether this was the full amount approved at that time for disbursement to the Respondent by the Claimant's mortgage company (which at that time was Bank of America), or whether some of the money authorized to be disbursed to the Respondent by Bank of America remained in the Claimant's possession. However, it is clear that this amount was only a small portion of what the Contract called for; 30% of the Tropea initial estimate was approximately \$104,000.00.

The Respondent testified that in October 2013, he began demolition work on the home. He offered a spread sheet of his internal accounting that states he paid money to Baltimore City for permits, to Freedom Fence for fencing around the construction site, and to The Problem Solvers, a company that the Respondent explained performs demolition work. The permitting record for the property corroborates the Respondent's testimony; Baltimore City's records reflect that the first demolition and fencing permits were pulled in October 2013. The Claimant and his wife, however, testified that Tropea, not the Respondent, performed the demolition work at the home; however, they did not offer any corroborating evidence to support their assertion.

As discussed above, on January 9, 2014, State Farm approved an additional \$37,262.56 toward the rebuild of the home increasing the Contract price to approximately \$379,000; 30% of which is approximately \$114,000. On January 24, 2014, over eight months after the Contract was executed, the Respondent received a second payment from the Claimant in the amount of \$40,000.00 (for a total of \$78,620.28 paid to the Respondent), once again drawn from the Claimant's personal account and given to the Respondent in the form of a cashier's check. The record again remains unclear regarding whether Bank of America was limiting the funds being paid to the Respondent at that time, or whether the Claimant himself was withholding funds.

Nevertheless, at this point over eight months after signing the Contract with the Claimant (May 1, 2013 to January 24, 2014), the Respondent had only received approximately 70% of the initial 30% payment.

The Claimant offered a third check into evidence. This check, dated February 12, 2014, in the amount of \$15,000.00 was issued directly from State Farm to the Claimant and Respondent jointly. The Respondent testified that the Claimant took this check and refused to disburse these funds to him; the Claimant did not offer any evidence to prove that the Respondent ever received these funds.

There is evidence in the record that Bank of America disbursed an additional \$35,000.00 to the Claimant for payment to the Respondent on or before August 1, 2014. *See* Cl. Ex. 8 (as of August 1, 2014, \$113,660.55 was paid out by Bank of America for the Contract). Thus, on or before August 1, 2014, sufficient funds had been released by Bank of America to pay the Respondent the 30% initial payment. However, the Respondent testified that he never received any additional money other than the \$78,620.28 he received in September 2013 and January 2014. The Claimant's wife testified that she was aware of approximately \$35,000 that was authorized to be paid to the Respondent by State Farm and Bank of America, but that the Claimant "never approved the release of these funds" to the Respondent because he did not want to pay the Respondent until he saw that work was completed at the home.

All parties agree that the Respondent repeatedly made demands for more money to be able to continue with the project. However, the parties disagree whether the Respondent was entitled to this money.

The Claimant and his wife testified that the Respondent failed to perform under the Contract. Mrs. Goddard went so far as to testify that, at the time the parties parted ways, the Respondent had performed "0%" of the Contract scope of work. They asserted that Tropea did

the demolition and cleanup work at the home, and after that, they did not see any additional work completed. They also testified that any work that was completed by the Respondent had to be redone by a new contractor because the Respondent's work was inadequate.

In support of his Claim, the Claimant offered inspection reports completed by Safeguard, an independent inspection company hired by the Claimant's mortgage companies.² The first inspection report from May 28, 2014 documents that "demo, clean up, temporary electric & support" had been completed at the property, but that "no repairs [had been] completed per scope." Cl. Ex. 11. The report further states that the Claimant advised Safeguard at the time of the inspection that he was having "problems with [his] general contractor." *Id.* The inspector opined that the "work is 30% completed." *Id.* The second inspection report, dated November 12, 2014, states that "load bearing walls, structural, demo, cleanup" were completed at the property; but that "mechanical, electrical, plumbing, roof, doors, walls, floors, windows, cleanup, trim, paint" still needed to be done. Cl. Ex. 5. The inspector entered "40%" next to the prompt "Percentage of Work Completed." Photographs are attached to this report documenting the status of the work at that time. The Claimant testified that he did not agree with this report and demanded Safeguard send another inspector to perform an investigation. On December 29, 2014, another inspector opined that "6%" of the work was completed. The inspector noted that a dumpster was present on site and that "demo of plaster and lathe, removal of some radiators" was completed; but, that "electrical, plumbing, mechanical, trim, doors, windows, roof, floors, drywall, clean up, structure, radiators, paint, fixtures, tile, exterior, cabinetry, shelving, framing" remained to be completed.

² At the beginning of the project, Bank of America was the Claimant's mortgage servicer. In August 2014, the loan was service transferred to Selene Finance (Selene).

The Claimant explained that the relationship between he and the Respondent ended when the Respondent said he did not feel like he could go forward with the project without "sufficient payment." The Claimant admitted that he did not want the Respondent to have any additional money because he wanted the work completed prior to payment.

The Claimant's wife testified that she and her husband then hired new contractors to complete the work. She asserted that they had to pay the new contractors an additional \$49,100.00 above and beyond what State Farm paid as part of the claim. She said that she was forced to pay architects and engineers for new plans since she did not have the plans created by the Respondent. She explained that she and the Claimant are seeking reimbursement for this additional money they had to pay out-of-pocket.

The Respondent testified that he repeatedly asked for additional money so that he could proceed with rebuilding the home. However, he explained that, as per the Contract terms, he was entitled to money at certain points in the construction process, and that because he did not receive this money, he was unable to proceed with the project. He stated that a contract for construction often calls for a significant portion of the contract payment to be made up front because there are substantial upfront costs associated with construction, and that the payment schedule contained within his Contract with the Claimant was reasonable and common in the industry. He further testified that he completed substantial work at the Claimant's home for which he was never properly paid.

The Respondent explained that when rebuilding a home after a fire, preliminary plans must first be developed with an architect. As discussed above, the Respondent offered copies of the plans that were created for this project with the Claimant's signed initials on them. *See Resp. Ex. 4.* The damaged areas of the home must then be demolished and cleaned out. He testified that while Tropea had done some demolition and cleanup, he completed the demolition and removed

the damaged partition walls, plaster, masonry, tile, floor joists, cabinets and doors. He explained that the demolition was much more cumbersome than originally anticipated because the fire was much more severe than a usual house fire, and the extreme heat resulted in the house suffering much more significant structural damage than expected. The Respondent asserted that a May 2014 inspection report completed by Safeguard documents that he completed the demolition. *See* Cl. Ex. 11. He also offered his financial spreadsheet showing payments to The Problem Solvers, a demolition subcontractor. *See* Resp. Ex. 6.

The Respondent further explained that in order to perform the demolition and cleanup, he had to pull permits and pay for installation of temporary construction site fencing, electric and plumbing. He pointed to his financial spreadsheet, the Baltimore City permit records, an email from State Farm, dated August 25, 2014, confirming that he paid \$2,270.68 for permits and \$6,510.96 for temporary electrical, and the May 2014 Safeguard inspection report, as evidence that he performed this work and incurred these costs. *See* Cl. Ex. 11; Resp. Exs. 6 and 7; Fund Ex. 6.

Once the demolition is done, the Respondent explained that final architectural and engineering plans must be developed. He testified that these plans were finalized for the property and that the plans are now in the possession of the Claimant. He directed my attention to the August 25, 2014 email from State Farm in which State Farm acknowledged that the Respondent incurred a cost of \$22,346.23 to develop these plans. *See* Fund Ex. 6. Additionally, he offered his financial spreadsheet for this project to demonstrate that he made multiple payments to an architectural and engineering firm, and that these payments began in March 2014. *See* Resp. Ex. 6.

As further proof of the work he completed at the home, the Respondent offered photographs that depict scaffolding in place at the home. *See* Resp. Ex. 5, pics. 2, 3, 10, and 16. The pictures also document the bracing and supports he installed throughout the home to allow

his workers to move throughout the property to perform other work. *Id.* at 14, 15, and 20. The pictures further demonstrate the many structural repairs he made at the home to bring the home up to code, including updating the many brick arches in the home and the installation of appropriate roof rafters. *Id.*, pics 3, 10 - 13, 15 - 17, and 19.

Despite completing all of this work, and despite the terms of the Contract, the Respondent never received any more than \$78,620.28. The Respondent explained that without being paid the money he was owed under the Contract, he was unable to continue to outlay additional money to perform more work at the home.

In addition to not providing the Respondent with the money he needed to perform work at the home, the Respondent asserted that the Claimant and his wife micromanaged him and did things that caused delays in his ability to perform the work. He played a voice mail message from April 27, 2014, in which the speaker identified himself as Donnie Goddard and told the Respondent, "I don't want you in my house.... I am taking you off the job." He offered a document entitled General Contract for Services which he alleged the Claimant insisted the Respondent sign in June 2014, and when the Respondent refused to do so, that the Claimant threatened to call the police if the Respondent entered the home. *See* Resp. Ex. 2. The Respondent offered a picture of a lock on the front door of the home that the Claimant allegedly placed there to lock the Respondent out of the home. *See* Resp. Ex. 8. The Respondent stated that the Claimant failed to pay the electric bill which resulted in the power being turned off at the home and that the Claimant did not act diligently in ensuring that the power was returned. He offered evidence that the Claimant demanded the Respondent provide a complete accounting of how he had spent the money he had received for the project, including the amount of money he spent on things such as nails. *See* Resp. Ex. 1. He testified that the Claimant demanded the Respondent perform specific work, including installing the roof before the house was not

structurally ready for it, and threatened that the Respondent would not receive any additional money until he did so.

The Respondent asserted that these incidents, along with a lack of payment as per the terms of the Contract, left the Respondent in a position where he could not perform under the Contract. He stated that on December 5, 2014, the Claimant's wife came to his office to see the final plans and that she "walked off" with the plans at the end of the meeting. Then, on December 17, 2014, the Respondent received a letter from the Claimant stating that he was ending the Contract with the Respondent. Resp. Ex. 1.

Analysis

The Claimant has not proven the validity of his Claim against the Fund. The Claimant has the burden to demonstrate that some act of the Respondent resulted in an unworkmanlike, inadequate, or incomplete home improvement. Bus. Reg. § 8-401; COMAR 09.08.03.03B(2). There is no credible or reliable evidence that the Respondent engaged in any act that caused the incomplete home improvement.

The only evidence presented by the Claimant in support of his and his wife's testimony that the Respondent was not performing work in a timely manner and in accordance with the Contract is the Safeguard inspection reports. I do not agree with the Claimant, however, that the "Percentage of Work Completed" figure contained within the Safeguard reports documents that the Respondent did not perform work in accordance with the Contract. The inspection reports do not explain the meaning of this potentially subjective figure and neither party called an employee of Safeguard as a witness to provide further explanation. The inspectors do not discuss or recognize the fact that preliminary drawings and final architectural and/or engineering plans were developed by the Respondent. For this reason, I do not consider this completion number an accurate reflection of the amount of work the Respondent performed under the Contract. Instead,

I consider and rely upon the statements of the inspectors within the reports regarding what the inspector observed had and had not been completed, as well as the pictures of the current state of the home attached to the reports.

The contention of both the Claimant and his wife that the Respondent performed *no work* at the home is patently untrue and renders all portions of their testimony suspect. The preponderance of the evidence in the record is that the Respondent completed significant work under the Contract, especially in light of the fact that he never received more than \$78,620.28, and that he did not receive the last \$40,000 of these funds until eight months after the Contract was signed. Preliminary plans developed by the architect were admitted into evidence, and the Claimant's signed initials are on each page. Inspection reports completed by Safeguard and offered by the Claimants into evidence document that as of May 2014, the Respondent had completed clean up and demolition, and that by November 2014, the Respondent had completed additional work including the installation of load bearing walls and structural repairs within the home. Photographs offered by the Respondent document the demolition, the installation of many support structures, and the repair of the brick arches and roof rafters to bring those items to code. The Respondent's testimony that he had final architectural and engineering plans developed for the property is confirmed by State Farm, and not contradicted by anything except the Claimant and his wife's self-serving testimony. From the evidence contained within the record, there is no doubt that the Claimant performed this work under the Contract.

More significantly, the preponderance of the evidence is that the Claimant's own actions caused the termination of the Contract and the incomplete home improvement. Selene stated that as of August 1, 2014, at least \$113,660.55 was released to be paid to the Respondent; however, as confirmed by the Claimant's wife, the Claimant did not release all of these funds to the Respondent. Instead, the Claimant withheld at least \$35,000 of these funds. The Claimant

testified that he did not believe the Respondent deserved payment until he saw actual reconstruction of the home; however, the Claimant's belief is completely inapposite to the Contract he signed with the Respondent. As explained by the Respondent, the upfront payments in the Contract provide funding for the pre-construction activities, such as permit pulling, fencing, demolition, cleanup, structural repairs, and development of the architectural and engineering plans. The Claimant's unilateral decision to withhold funds from the Respondent was the direct cause for the Respondent's inability to perform the work under the Contract.³

The Claimant further asserts that the work completed by the Respondent was inadequate and had to be redone by his new contractor. However, aside from this general allegation, the Claimant did not present any evidence to support his assertion. Without any additional evidence beyond a bald allegation, I am unable to conclude that the Respondent's work was inadequate or unworkmanlike.

Finally, Claimant's attorney briefly raised the issue of whether the Contract was even controlling in the case. She offered evidence that soon after the Contract was entered into between the parties, the Respondent advised the Claimant that he was terminating the Contract. *See* Resp. Ex. 3. However, the evidence is that soon after this letter, the parties resumed their relationship, and the parties worked together to develop the preliminary plans. Additionally, the Claimant testified that there was no oral or other written agreement that changed the terms of the written Contract between the parties. Accordingly, I find that the Contract was the controlling agreement between the parties.

³ Aside from not being paid the full initial 30%, as per the terms of the Contract, the Respondent was entitled to receive an additional 35% of the Contract price upon completion of demolition. The investigator from Safeguard documented that demolition was completed by May 28, 2014 (Cl. Ex. 11); thus, the Respondent was entitled to an additional \$132,000 at that time.

Accordingly, based on the evidence in the record, I conclude that the Claimant did not prove that an act of the Respondent caused the incomplete home improvement. Additionally, I find there is insufficient evidence to support a finding that the Respondent's work was inadequate or unworkmanlike. Thus, I conclude that the Claimant has not proven the validity of his Claim against the Fund, and I do not recommend an award.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

Signature on File

November 7, 2016
Date Decision Issued

Tara K. Lehner
Administrative Law Judge

TKL/sw
163997

PROPOSED ORDER

WHEREFORE, this 8th day of December, 2016, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

CONFIDENTIAL

CONFIDENTIAL - SECURITY INFORMATION

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