

**IN THE MATTER OF THE CLAIM
OF LYDIA R. PIETZ,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JONATHAN COOK,
T/A LOW MAINTENANCE
LANDSCAPING,
RESPONDENT**

*** BEFORE EILEEN C. SWEENEY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
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*
* OAH No.: DLR-HIC-02-15-37649
* MHIC No.: 15 (90) 835

* * * * *

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 September 25, 2015, Lydia R. Pietz (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,345.00 in alleged actual losses suffered as a result of a home improvement contract (Contract) with Jonathan Cook, trading as Low Maintenance Landscaping (Respondent).

I held a hearing on September 7, 2016 at the Office of Administrative Hearings (OAH), in Hunt Valley, Maryland.¹ Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. John D. Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The Respondent failed to appear. After waiting fifteen minutes for the Respondent or someone to represent him, and after determining that proper service had been made, I proceeded with the hearing.² 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?

¹ A hearing originally scheduled for May 6, 2016 was postponed at the Claimant's request due to a documented illness.

² The Respondent's MHIC license expired on May 5, 2014. A March 30, 2016 Notice of Hearing relating to the hearing previously scheduled for May 6, 2016, was mailed by the OAH to the Respondent by certified mail at his last address of record with the Motor Vehicle Administration (7111 John Calvert Court, Ellicott City, Maryland 21075) and was returned as unclaimed. COMAR 09.08.03.03A(2). An April 26, 2016 letter from Peter Martin, Assistant Attorney General, to the Respondent, enclosing the March 30, 2016 Notice of Hearing and a November 6, 2015 Hearing Order, was sent by regular and certified mail to 10778 Frederick Road, Ellicott City, Maryland 21042, the Respondent's last address of record with the MHIC while his home improvement license was in effect. That mailing was returned marked "forward time expired." A Notice of the hearing scheduled for September 7, 2016 was mailed by the OAH to the Respondent by certified mail at the John Calvert Court address and was returned as unclaimed.

SUMMARY OF THE EVIDENCE

Exhibits

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

- CL Ex. 1 April 21, 2013 Contract between the Claimant and the Respondent
- CL Ex. 2 July 11 and 30, 2014 and September 3, 2015 emails from the Claimant to the Respondent
- CL Ex. 3 July 15, 2013 Complaint Form
- CL Ex. 4 January 2, 2015 Complaint Form, received by the MHIC on January 28, 2015, with attachment
- CL Ex. 5 September 13, 2015 "Addendum/Amendment to Complaint Forms dated 7/5/13 and 01/02/2015"
- CL Ex. 6 September 16, 2015 letter from the Claimant to the MHIC
- CL Ex. 7 Copy of pages from the Claimant's check register
- CL Ex. 8 Photographs
- CL Ex. 9 July 13, 2015 emails between the Claimant and Archer Drainage
- CL Ex. 10 July 19, 2015 estimate from Maryland Sealcoat & Striping
- CL Ex. 11 August 31, 2014 estimate from Maryland Sealcoat & Striping
- CL Ex. 12 Undated "Statement of Expenses Paid to Insert Drainage System in Front of House on 8543 Pineway Drive"
- CL Ex. 13 May 17, 2016 Proposal from B.R.E. Paving
- CL Ex. 14 May 14, 2015 Contract and Proposal from HF Asphalt
- CL Ex. 15 July 13, 2015 emails between the Claimant and Archer Drainage
- CL Ex. 16A-N Photographs
- CL Ex. 17 Diagram
- CL Ex. 18 Chase credit card bill, including August 30, 2016 Rental Works charge
- CL Ex. 19 August 4, 2016 Lowe's receipt

CL Ex. 20 June 12, 2016 Lowe's receipt

CL Ex. 21 June 12, 2016 Home Depot receipt

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 April 11, 2016 licensing information

Fund Ex. 2 April 8, 2016 Affidavit of Charles Corbin

Fund Ex. 3 March 30, 2016 Notice of Hearing; November 6, 2015 Hearing Order

Fund Ex. 4 April 26, 2016 letter from Peter Martin, Assistant Attorney General, to the Respondent, enclosing the March 30, 2016 Notice of Hearing and the November 6, 2015 Hearing Order, sent by regular and certified mail to 10778 Frederick Road, Ellicott City, Maryland 21042, and returned marked "forward time expired"

Fund Ex. 5 May 25, 2016 Memorandum from Sandra Sykes, Docket Specialist, to Legal Services with attached correspondence returned to the OAH as unclaimed

Fund Ex. 6 June 9, 2016 Memorandum from Ms. Sykes, Docket Specialist, to Legal Services with attached correspondence returned to the OAH as unclaimed

Fund Ex. 7 July 7, 2016 Notice of Hearing

Fund Ex. 8 August 5, 2016 Memorandum from Ms. Sykes, Docket Specialist, to Legal Services with attached correspondence returned to the OAH as unclaimed

Fund Ex. 9 September 6, 2016 Affidavit of Keyonna Penick

Fund Ex. 10 October 5, 2015 letter from the MHIC to the Respondent, with attachment

Testimony

The Claimant testified in her own behalf and presented the testimony of her son, David Pietz. The Respondent did not appear to testify or present the testimony of any witnesses. The Fund did not present the testimony of 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 01-20233.

2. On April 21, 2013, the Claimant and the Respondent entered into a Contract for the Respondent to perform the following home improvements to the Respondent's home:

- Take up and haul away old asphalt driveway and walkway
- Install new 18' x 85' at 3" asphalt driveway, packed and rolled with new RCG³ used as needed
- Take up adjacent dry stacked stone wall and rebuild before installation of new driveway; rebuild portion of wall up against side of the garage with new flashing
- Install new French drain
- Install new 42' x 3' walkway
- Install new 7' x 12' porch of interlocking panel brick (to be chosen later) in front of house. "Crushed stone, RCG [and] snap edge will be used along with Polymeric sand to lock everything in." (CL Ex. 1.)
- Install bed of crushed decorative stone on fabric between house and walkway
- Rework flower bed up against house. Remove most plants and the wooden boards, then set up treated 2" x 8" board against house and spread 3-4 yards of enriched soil into the bed, making it a raised flower bed. (Homeowner to come up with new edging).
- Lower front yard, re-contour and re-grade with proper swales
- Transplant two [illegible] and remove plum tree
- Install sod front yard

3. Some of the work contracted for was intended by the parties to address drainage issues the Claimant was experiencing.

³ The parties did not define this acronym.

4. The Contract did not state when work would begin. It stated that work would “[would] be done by mid to late May [with an] outside deadline of June 15th barring weather [and] other circumstances beyond our control.” (CL Ex. 1.)

5. The Contract provided that “[c]onstruction [was] guaranteed for 2 years.” (CL Ex. 1.)

6. The original agreed-upon contract price was \$12,995.00, with an add-on of \$1,355.00, totaling \$14,350.00.⁴

7. The Respondent began work on the home on June 10, 2013.

8. The Respondent dug up the front yard and then did not come back for four to five months.

9. The Respondent stopped working on the project on August 26, 2013.

10. The Claimant made the following payments to the Respondent:

April 21, 2013	\$3,500.00
May 26, 2013	4,350.00
June 10, 2013	3,500.00
August 26, 2013	<u>3,000.00</u>
Total:	\$14,350.00

11. After the Respondent stopped working, the Claimant and/or her son observed the following conditions:

- Water leaking into the front part of the basement and into the garage
- Buckling and cracking of the driveway, as well as areas of puddling
- The driveway is uneven where it meets the garage floor, with very little slope

⁴ I note that there is a minor difference of \$5.00 between the actual total amount and the total amount of \$14,345.00 set forth in the Claimant's Complaint Form; however, the evidence shows that she paid a total of \$14,350.00. Thus, I believe that the latter is the correct Contract amount.

- The flower bed had not been reworked and raised
- The installation of the sod was not complete⁵

12. The Claimant telephoned the Respondent multiple times in an attempt to get him to return to repair and complete the work; however, he did not respond.

13. On July 11, 2014, the Claimant emailed the Respondent about defective conditions. He responded by telephone that he would return to the home, however, he failed to do so at that time. He later returned to do some work.⁶

14. The following work is necessary to correct or complete the work the Respondent contracted to perform at the indicated cost:

- | | |
|---|------------|
| • Repair the driveway | \$1,350.00 |
| • Install a French drain on the side of the garage ⁷ | \$3,890.00 |

15. The Claimant's actual loss is \$5,240.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her 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).

⁵ As discussed below, I have found that the Claimant failed to prove the other defects alleged by her.

⁶ It was not made clear when he returned and what work was done at that time.

⁷ As discussed below, the Claimant failed to prove an actual loss relating to the repair or rebuilding of the stone wall, reworking/rebuilding the flower bed, lowering the front yard, and installing sod.

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);⁸ *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401.

For the following reasons, I find that the Claimant has proven eligibility for compensation.

Licensing

The licensing information submitted into evidence by the Fund shows that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

Claimant's Case⁹

As discussed below, the Claimant and Mr. Pietz indicated at times that the Claimant's basement and garage leaked before the Respondent worked on the property and at other times that it did not. The Claimant also testified that her main objective in hiring the Respondent was to have him fix a drainage problem at her home. According to the Claimant, the Respondent told her that he was a licensed arborist, knew all about drainage, and was good at drainage issues. The Claimant also testified that prior to contracting with the Respondent, she was unhappy with the asphalt driveway leading from the street to the front door, which she considered ugly and not functional. She contracted with the Respondent to remove the driveway and install a lower one.

⁸ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume.

⁹ Again, the Respondent did not appear at the hearing. The Fund submitted numerous exhibits but did not present any testimony.

According to the Claimant, the Respondent was supposed to grade the driveway away from the house.

The Claimant testified that the Respondent dug up the front yard and then did not come back for four to five months. Pursuant to his Contract with the Claimant, the Respondent took up and hauled away the old asphalt driveway and walkway and installed new ones. He put paving stone in the walkway and installed a porch. He rebuilt the stone wall on the side of the garage, laid a new drain line along the side of the garage, put down gravel and moved the downspout. The Claimant testified that the Respondent also made a path along the side of the garage. He stopped working in late August 2013.

Around December 2013, the Claimant noticed that the new driveway was cracking and buckling and was concave in parts. One hole was 24" x 20" and has grown with time. The cracks were in various lengths from 12 to 36 inches. The driveway is uneven where the driveway meets the garage floor, with very little slope. Furthermore, according to the Claimant, after the Respondent installed the driveway, the Claimant began having leaks in the garage and basement where it had not leaked before. She believed that this occurred because the Respondent did not grade properly. In addition, there were puddles everywhere after rain.

The Claimant testified that water has leaked into the basement where the Respondent put paving stone on the walkway. Furthermore, after the Respondent rebuilt the stone wall and put in drainage along the side of the garage, water has gone into the garage and there is washout along the stone wall adjacent to the garage.

In addition, the Respondent did not rework and raise the flower bed. He laid sod only part of the way, stopping around twenty feet from the street.

The Claimant testified that her son, who lives with her, cleaned up a lot of the mess in the garage and basement. He dug a trench along the garage to keep water from going into the garage

but it still leaks. He also installed equipment in front of the house to drain water away from the house.

According to the Claimant, the driveway and the drainage work have to be redone.

The Claimant's son, David Pietz, testified that fixing the grading and drainage was the reason his mother hired the Respondent. The Respondent was supposed to grade the walk and ground away from the house. Because the Respondent "didn't do the grading right," Mr. Pietz had to put in drains. Furthermore, the Respondent just filled a gap between the house and the walkway with gravel, trapping water in that area.

Mr. Pietz testified that he tried to fix the leakage by digging a temporary ditch alongside the garage and that this "has worked for the most part." He felt this was just a temporary solution, however, and that his mother still needs to hire a contractor. He testified that the piping he laid in the ditch still needs to be covered and sod laid over it. He also dug and laid piping in the front of the house. He testified, however, that he did not anticipate his mother having to hire a contractor to do any more drainage work in the front.

Mr. Pietz corroborated his mother's testimony about the condition of the driveway.

Analysis

Drainage

The testimony of the Claimant and Mr. Pietz was confusing and contradictory regarding what water problems existed prior to the Respondent performing work and those that arose afterwards.

The Claimant testified at one point that the leakage in the basement developed after the Respondent installed the driveway and front walkway. Mr. Peitz initially testified that the Claimant never experienced flooding in the basement before the Respondent performed work on the house. The Claimant and Mr. Pietz also testified, however, that the main objective in hiring

the Respondent was to correct drainage problems on the property, which the Appellant described broadly as "water getting in one section of the house." She testified that a home inspector indicated when she bought the house in 2013 that water was already getting into the house.

The Claimant first testified that there was prior leakage in the garage. She also testified that she had the Respondent remove and lower the driveway so that water would not get into the garage. She later testified that before the Respondent rebuilt the stone wall, the garage did not leak. Mr. Peitz testified contradictorily that "the water was worse after [the Respondent's] work" and that the Claimant never experienced flooding in the garage before the Respondent performed work on the house.

Thus, I do not believe that the Appellant's water problems were new. Nonetheless, a review of the Contract shows that the nature of at least some of the work to be performed was such that drainage was an underlying issue that the work was intended to correct, i.e., rebuilding the stone retaining wall next to the garage, installing a new French drain alongside the garage, and lowering the front yard, re-contouring and re-grading with proper swales.

For the following reasons, I find that the Respondent performed that and other work in an unworkmanlike, inadequate and incomplete manner.

Unworkmanlike, Inadequate, Incomplete

*Take Up/Haul Away Old Driveway and Walkway; Install Porch; Install Bed of Grass;
Transplant/Remove Trees/Other; Install Walkway*

There was no evidence that the Claimant failed to take up and haul away the old asphalt driveway and walkway or that he did so improperly. Nor was there evidence in that regard as to the installation of the porch, the installation of a bed of decorative stone, or transplanting/removing trees or other objects.

The Claimant did not provide expert testimony to support her contention that the new walkway was improperly constructed and I find that this is not something within a layman's knowledge.

Therefore, I find that the Claimant failed to prove that the aforementioned work was unworkmanlike, inadequate or incomplete.

Driveway

The Appellant did not provide expert testimony with regard to alleged defects in the new asphalt driveway or to support her contention that water was entering the basement and the garage near its entrance because of the uneven grading of the driveway. Nonetheless, I do not believe that an expert is required to testify that a new driveway should be flush with or at least sloped away from a garage floor.

Furthermore, considering the testimony presented and upon examination of the photographs submitted into evidence, showing extensive cracks over much of the driveway, I find that even a layman can reasonably conclude that the driveway contains excessive cracks and indentations, which the Appellant testified began as early as December 2013¹⁰ and have become progressively worse. Thus, I find that this work was unworkmanlike and inadequate.*

Stone Wall

The photographs of the area next to the garage show a steep retaining wall adjacent to a raised area of ground. Expert testimony is not necessary to conclude that without a properly constructed retaining wall, water will come off the higher ground onto the lower ground next to the garage. Thus, I find that this work was related to the drainage issue. The Appellant testified

¹⁰ In her complaint, the Appellant indicated that the Respondent completed work on the driveway on August 26, 2013.

that she saw washout coming from the new wall. Thus, I find that a preponderance of the evidence established that this work was unworkmanlike and inadequate.

French drain

The Appellant was not sure if the Appellant installed a French drain next to the garage but testified that water leaks into the garage from that area. I find that expert testimony is not necessary to establish that the purpose of a French drain is to retard or prevent leakage. Thus, I find that a preponderance of the evidence established that the Respondent either failed to install the drain or did so improperly.

Rework and Raise Flower Bed

The Appellant testified that the Respondent did not rework and raise the flower bed, as agreed. The Respondent did not appear to rebut the Appellant's testimony regarding this item. Accordingly, I find that a preponderance of the evidence established that the Respondent failed to complete this work.

Lower front yard, re-contour and re-grade with proper swales

It does not take an expert to conclude that this item related to drainage on the property. Nor does it take an expert to conclude that the Respondent failed to perform this work in such a manner as to achieve its intended purpose, i.e., to direct water away from the house. Thus, I find that this work was unworkmanlike and inadequate.

Install Sod

The Claimant testified without contradiction that the Respondent laid only a portion of the sod, stopping short approximately twenty feet from that street. Accordingly, I find that a preponderance of the evidence established that the Respondent failed to complete this item.

Accordingly, I find that the Respondent performed unworkmanlike, inadequate or incomplete home improvements.

Award

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled.¹¹ A claimant may not be compensated for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR

09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss, unless a unique measurement is necessary. COMAR 09.08.03.03B(3). I find that the

following formula is applicable 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).

Although the Claimant submitted higher estimates from Maryland Sealcoat & Striping, B.R.E. Paving, and HF Asphalt with regard to repair of the driveway, I have relied on a second lower estimate submitted by her from Maryland Sealcoat & Striping showing a total cost of repairs to the driveway in the amount of \$1,350.00.¹² (The Claimant never explained why the two estimates differed, but I note that the first included a charge for installing a new asphalt driveway and the second did not).

The Claimant also submitted into evidence an estimate from Archer Drainage in the amount of \$14,700.00, which included the following:

¹¹ Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015).

¹² I note that for unexplained reasons, the total amount of the estimate (\$1,225.00) failed to include an itemized charge of \$125.00 for Gator Seal.

Construct P.T. Timber Retaining wall beside garage (to replace stone)
Install commercial grade drainage system same side running across garage
opening and to low area by street. [C]onnect front downspout, and install drain.
Install channel drain across garage opening, connect to system.
Gravel areas between garage and new wall.

(CL. Ex. 9.) The Claimant's Contract with the Respondent called for a stone wall, however, and the Claimant presented no expert testimony to establish that a different type of retaining wall is necessary. Unfortunately, Archer Drainage did not delineate in its estimate how much of the total estimated amount related to the construction of such a wall. Thus, I cannot rely on the estimate with regard to the other items listed in it, including the installation of a drainage system.¹³

An estimate from Maryland Sealcoat & Striping indicates that the cost to install a properly working French drain at the side of the house is \$3,890.00.¹⁴

The Claimant presented no evidence as to the cost to rework and raise the flower bed and complete the sodding or as to the cost to address the drainage in the front yard. (I note Mr. Peitz testified that he does not anticipate his mother needing further drainage work in the front).

I also acknowledge that Mr. Pietz has attempted to fix the drainage problem himself. Unfortunately, there is no evidence that he is a contractor, licensed or otherwise. Thus, the Claimant cannot recover from the Fund amounts she paid Mr. Pietz for labor and materials under the formula set forth above.

¹³ In any event, the description of the drainage system was too broad and vague. I cannot conclude that it refers to a French drain as called for by the original Contract. For the same reason, I did not consider an estimate from B.R.E. Paving relating to the installation of a drainage system alongside the garage in the amount of \$1,250.00.

¹⁴ I did not consider Maryland Sealcoat & Striping's estimate for the installation of a French drain in the front of the house because there was no evidence that the original Contract called for the installation of such a drain in that location.

Thus, I have calculated the Claimant's actual loss as follows:

Amounts Claimant has paid Respondent	\$14,350.00
Plus reasonable amounts Claimant has paid or will be required to pay another contractor to repair poor work done by Respondent under original contract and complete original contract	+ 5,240.00 ¹⁵
	\$19,590.00
Less original contract price	- 14,350.00
Total:	\$ 5,240.00

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,240.00 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).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,240.00; 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,¹⁶ and

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

November 29, 2016
Date Decision Issued

CONFIDENTIAL

Eileen C. Sweeney
Administrative Law Judge

ECS/emh
165361

¹⁵ This amount represents the sum of \$1,350.00 for repairs to the driveway plus \$3,890.00 for installation of the French drain along the side of the garage.

¹⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 15th day of February, 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.

Sachchida Gupta

***Sachchida Gupta
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF
LYDIA PIETZ

* IN THE
* CIRCUIT COURT
* FOR
* HOWARD COUNTY
* Case No. 13-C-17-112023

ENTERED
DEC 19 2017
CLERK, CIRCUIT COURT
HOWARD COUNTY

* * * * *

ORDER

This matter comes before the Court upon review of the Plaintiff's December 5, 2017 Correspondence and the September 7, 2016 Transcript of proceedings before the Maryland Home Improvement Commission (D.E. 11/0). On November 29, 2017, the Court dismissed this matter because the administrative record (*i.e.* transcript of the September 7, 2016 hearing) had not been received (D.E. 8/0). Petitioner asks the Court to rescind this order and allow her appeal to proceed now that a transcript has been filed.

Pursuant to Rule 7-206(d), the Maryland Home Improvement Commission was required to transmit the record of its proceedings to the Circuit Court within 60 days after the agency received the petition for judicial review. Under Rule 7-206(b), this record needed to contain a copy of the September 7, 2016 transcript and the Petitioner was required to pay the expense of the same. The Maryland Home Improvement Commission received a copy of the petition for judicial review on July 19, 2017 (D.E. 2/0). Accordingly, the Court needed to receive the Maryland Home Improvement Commission's record (and September 7, 2016 transcript) on or before September 18, 2017.

On September 18, 2017, the Petitioner filed a Motion for Dismissal of Transcript Requirement (D.E. 7/0). The Court denied this Motion on October 23, 2017 (D.E. 7/0).

Pursuant to Rule 7-206(e), the Court may extend the time for filing the administrative record for

Office of Attorney General

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Wayne A. Robey
Clerk

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no more than an additional 60 days, or no more than 120 days from the administrative agency's receipt of the petition for judicial review. Though the Court did not specifically grant an additional 60 days to transmit the record, the Court will construe its October 23, 2017 Order as granting this additional time. Accordingly, the administrative record should have been received on or before November 16, 2017.

Under Rule 7-206(e), the Court is required to dismiss the Petitioner's petition if the administrative record is not timely received, unless the Court finds the failure is the result of failures other than a person other than the Petitioner. Here, the Court finds the delays in the filing of the administrative record to be caused, at least in part, by the Petitioner's own failures. Petitioner did not file her Motion for Dismissal of Transcript Requirement until the final day permitted to transmit the administrative record. Further, upon review of "Enclosure 1A," the Court finds that Petitioner waited until November 8, 2017 to order the transcripts. Accordingly, the Court is required by the Maryland Rules to deny the Petitioner's request. Therefore, it is this 14th day of December 2017, by the Circuit Court for Howard County, Maryland, hereby

ORDERED, that the relief requested in Plaintiff's December 5, 2017 Correspondence (D.E. 11/0), be and is hereby **DENIED**.

CONFIDENTIAL

Lenore R. Gelfman, Administrative Judge
Circuit Court for Howard County

Circuit Court for Howard County
Case No: 13-C-17-112023

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1694

September Term, 2019

LYDIA PIETZ

v.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING, *et al.*

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 30, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In April 2013, Lydia Pietz, appellant, contracted Jonathan Cook, trading as Low Maintenance Landscaping, to perform home improvements on her residence to address “drainage problems on the property.” Mr. Cook was tasked with, in pertinent part, removing and replacing the asphalt driveway, walkway, and porch on the property, installing a new French drain and “a stone wall 6 or 7 feet away from the garage,” and re-grading the front lawn. In return, Ms. Pietz agreed to pay \$14,350.00, which she paid in full.

Following a protracted work schedule, Mr. Cook either failed to complete the tasks as contracted or failed to complete his work in an adequate and workmanlike manner. Accordingly, Ms. Pietz filed a claim with the Maryland Home Improvement Commission (“the Commission”), appellee, seeking \$14,350.00 in actual losses from its Guaranty Fund based on the acts and omissions of Mr. Cook.¹ The Commission referred Ms. Pietz’s claim to the Office of Administrative Hearings where, following a hearing, an administrative law judge (“ALJ”) issued a proposed order awarding Ms. Pietz \$5,240.00 in actual losses. Because the ALJ proposed an award less than Ms. Pietz’s claim, Ms. Pietz noted exceptions to the proposed order. In a June 2017 order, however, the Commission affirmed the ALJ’s findings of fact, conclusions of law, and proposed order.

¹ The Commission is required to establish and administer a Home Improvement Guaranty Fund from which “an owner may recover compensation . . . for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann. Bus Reg. §§ 8-403; 8-405(a).

Ms. Pietz, thereafter, filed a petition for judicial review with the Circuit Court for Howard County. Following a hearing, the circuit court affirmed the decision of the ALJ. On appeal, Ms. Pietz raises the following issues, which we paraphrase for clarity:

1. Was it legally correct for the circuit court to “disregard/not review” any of the appellant’s evidence presented upon judicial review?
2. Was it legally correct for the circuit court to imply that the ALJ’s “lack of malicious intent” was a sufficient reason to deny the appellant’s petition for judicial review?
3. Was it legally correct for the circuit court to use the appellant’s pro se status to negate her right to “equal justice under the law?”

For the foregoing reasons, we shall affirm.

DISCUSSION

In directing this Court to her alleged claims of error, Ms. Pietz has not articulated the correct standard for review of an order affirming the decision of an administrative agency. As we have previously stated, when reviewing the decision of an administrative agency, we “do not evaluate the findings of fact and conclusions of law made by the circuit court.” *Howard Cty. Dep’t. of Soc. Servs. v. Linda J.*, 161 Md. App. 402, 407 (2005) (internal citation omitted). Instead, “we bypass the judgment of the circuit court and look directly at the administrative decision.” *Kim v. Maryland State Bd. of Physicians*, 196 Md. App. 362, 370 (2010). Our inquiry is limited to determining “whether there is substantial evidence in the record to support the agency’s findings and conclusions and whether the agency’s decision is premised upon an erroneous conclusion of law.” *McClellan v. Dep’t of Pub. Safety & Corr. Servs.*, 166 Md. App. 1, 18 (2005).

Contrary to this standard, and as reflected by the questions presented in her brief, Ms. Pietz requests that we review purported errors by the circuit court rather than addressing the alleged errors of the ALJ. Not only would this be improper for the reasons previously stated, we are unable to review the alleged error by the circuit court because Ms. Pietz has failed to provide the Court with the transcript of the circuit court’s hearing on her petition for judicial review. Pursuant to Maryland Rule 8-411, it was Ms. Pietz’s responsibility to provide the transcripts relevant to the issues on appeal for the Court’s consideration. With regard to the three issues raised in Ms. Pietz’s brief, therefore, we are unable to review the transcript to determine whether the circuit court “disregarded [her] evidence,” implied that the ALJ should be affirmed because she “lack[ed] . . . malicious intent,” or considered her pro se status in rendering its judgment. We decline, therefore, to address the claims of error set forth by Ms. Pietz in her brief. *See Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) (“The failure to provide the court with a transcript warrants summary rejection of the claim of error.”).

Moreover, on appeal, in order to reverse the ALJ’s decision, Ms. Pietz was required to direct this Court to portions of the record showing that there was insufficient “evidence in the record to support the agency’s findings and conclusions” or argue that the ALJ’s “decision [was] premised upon an erroneous conclusion of law.” *McClellan v. Dep’t of Pub. Safety & Corr. Servs.*, 166 Md. App. 1, 18 (2005). She failed to do either.

We acknowledge, however, that Ms. Pietz’s recitation of the facts includes some reference to the ALJ’s decision suggesting that it was “grossly insufficient.” For example, Ms. Pietz states that the ALJ “chose to disallow some claims due to [her own]

misunderstanding of presenting evidence,” without specifying the claims she contends were disallowed. Additionally, she states that the ALJ, upon finding that Ms. Pietz’s testimony was “confusing,” should have “clarif[ied] the issues before reaching a final decision.” However, this assertion is non-specific as to which issues should have been clarified and how. It is also unsupported by any legal support in Ms. Pietz’s brief. On the contrary, it was Ms. Pietz’s burden to prove by a preponderance of the evidence the losses she incurred as a result of Mr. Cook’s acts and omissions. *See* Md. Code Ann., State Gov’t. § 10-217. Lastly, Ms. Pietz asserts that the ALJ erroneously relied on a cost estimate in determining the cost of repairing the driveway, but she fails to specify the estimate to which she refers and fails to specify any legal error in the ALJ’s reliance on this estimate.

Because these contentions were not briefed with sufficient particularity, we decline to consider them on appeal. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain “[a]rgument in support of the party’s position.”); *Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not be considered on appeal”).

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**