

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF KAAREN S. SIMMONS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF JAMES J. MARTIN,</b></p> <p><b>T/A PROMPT RESTORATION, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JOY L. PHILLIPS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH No.: DLR-HIC-02-16-29331</b></p> <p><b>* MHIC No.: 16 (90) 1284</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 1, 2016, Kaaren S. Simmons (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$115,111.17 in alleged actual losses suffered as a result of a home improvement contract with James J. Martin, trading as Prompt Restoration, Inc. (Respondent).

The Office of Administrative Hearings (OAH) sent notice of the hearing by certified and by regular U.S. Mail to the Respondent at his address of record, 3200 Water Lily Court, Laurel, Maryland 20724 on December 21, 2016. As of the date of the hearing, this was the address the Respondent maintained with the Maryland Motor Vehicle Administration. The certified letter

was returned to the OAH marked, "Not deliverable as addressed." On February 10, 2017, Andrew J. Brouwer, Assistant Attorney General, notified the OAH that the Respondent had notified him in another matter that he resides out-of-state, but maintains a post office box in Maryland, and the Respondent provided the box number. Accordingly, the OAH resent the Notice of Hearing by certified mail and by regular U.S. Mail to the Respondent at P.O. Box 1272, Pasadena, Maryland 21122. The certified letter was returned to the OAH marked, "Unclaimed." Code of Maryland Regulations (COMAR) 09.08.03.03A(2). Neither of the notices sent by regular mail was returned.

I held a hearing on March 8, 2017 at the Tawes State Office Building, Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. Andrew Brouwer and Kris King, Assistant Attorneys General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or someone to represent him, I found that the Respondent had received either actual or constructive notice of the hearing and I proceeded with the hearing in his absence. 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 have attached a complete Exhibit List as an Appendix.

### Testimony

The Claimant testified in her own behalf.

The Respondent was not present and presented no witnesses.

The Fund presented no 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 4770629/registration number 100702.<sup>1</sup>
2. On August 20, 2014, while the Claimant and her family were out of town, a fire started in the Claimant's home. As a result of fire damage and damage to the home caused by fire rescue efforts, the home had to be virtually rebuilt. What the fire did not destroy was damaged by water.
3. The Claimant's home is a split level structure with five-bedrooms. It has a garage and a family room in the basement.
4. Due to the extensive destruction of the Claimant's home, the Claimant and her family moved into a rental home.
5. On November 25, 2014, the Claimant and the Respondent entered into a contract to clean the area, rebuild the structure of the house, reframe internal rooms, finish all of the

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<sup>1</sup> A. When asked to identify the Respondent's license number, Mr. Brouwer referred to the registration number. Both numbers appear on the licensing information print-out submitted as Guaranty Fund Exhibit 7. B. On a date after the period relevant to this hearing, the Respondent's license was suspended.

rooms, including the kitchen, replace the roof, replace siding, and repair the deck. A new heat, vent and air conditioning system was to be installed. Windows had to be replaced. The Respondent would clean up at the completion of the contract. The contract was comprehensive in its scope of work.

6. The work outlined in the contract was to be completed by June 2015. Due to a delay in the release of funds from the insurance company, the work did not begin until January 2015.

7. The original agreed-upon contract price was \$190,153.00 (rounded to nearest dollar).

8. The following amounts were paid to the Respondent either by the Claimant or by the Claimant's bank (numbers rounded to nearest dollar):

•	December 2, 2014	\$ 56,021.00
•	March 3, 2015	\$ 37,348.00
•	May 14, 2015	\$ 18,674.00
•	May 18, 2015	\$ 18,674.00
•	September 15, 2015	\$ 4,500.00
•	September 25, 2015	\$ 45,118.00
•	TOTAL:	\$180,335.00

9. The Respondent worked on the Claimant's home between January 2015 and August 2015.

10. The Respondent demolished the ruined portions of the Claimant's home in January 2015 and began framing. Ultimately, framing was completed, but did not pass inspection.

11. The house was never sided, leaving under-boards and Tyvek weatherproofing exposed. The Respondent put on a new roof but did not include soffits. The interior rooms were left unfinished. There was no kitchen. No heat or air-conditioning system was installed. The floors were unfinished. Electrical wiring was not finished. Plumbing was unfinished. Drywall was not installed and rooms were not painted. The deck was not completed.

12. Between August 2015 and April 2016, the Respondent made multiple promises to the Claimant to work on her house and finish the contract, but he and his crew did nothing.

13. The insurance money for the rental home expired after one year and the Claimant and her family had to move in with her parents.

14. No further work was accomplished until the Claimant hired a new contractor, American Remodeling Corporation (ARC), to complete the renovations to the home, in April 2016.

15. ARC installed the soffits; installed siding on the home; completed the interior rooms; installed a heating and air-conditioning system; added necessary plumbing and electrical wiring; completed the kitchen; completed the deck; and overall, completed the work required by the contract the Claimant had with the Respondent. The contract work passed inspection and the Claimant was able to return to the home to live.

16. The cost of the Claimant's contract with ARC was \$178,710.00 (rounded to nearest dollar), of which the Claimant still owed \$73,710.00 as of March 8, 2017.

17. The Claimant's actual loss is \$168,892.00.

### **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 (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>2</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.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Although his license has since been suspended, it was active during the time he was working with the Claimant on her home.

The Respondent performed incomplete home improvements on the Claimant’s home. The Claimant’s home was virtually destroyed by a fire that occurred while she and her family were out of town. What the fire did not damage, the water from fire rescue efforts did. The photographs of her home after the fire show a shell of a house. She hired the Respondent to essentially rebuild the home. Although he completed the demolition of destroyed sections of the home and completed framing the rooms, his framing work did not pass inspection. The Respondent built some exterior walls and got as far as putting up Tyvek weatherproofing before he abandoned the job. The Claimant testified that after August 2015, the Respondent performed

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<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

no further work. The Claimant only saw the Respondent once after August 2015, in October 2015, when he took another bank check from her to cash. The Claimant introduced a series of text messages ranging from December 2015 to April 2016 in which two employees working for the Respondent, using the last name of Prompt, made repeated promises to her to return to the job, but no one ever showed up to work.

Meanwhile, the Claimant and her family were without a home and the Respondent had been paid approximately \$180,335.00. The Claimant eventually hired ARC to complete the contract. It was not clear how much repair ARC had to do to the framing work which, according to the Claimant, had not passed inspection. The Claimant did testify that the only replacement item purchased was a new garage door because the door installed by the Respondent was damaged. Otherwise, she said ARC simply completed the contract. The home is now fully rebuilt and the Claimant and her family have returned to the home.

No evidence was submitted by the Respondent to rebut the Claimant's assertion that he abandoned her contract sometime around August 2015. I thus find that the Claimant is eligible for compensation from the Fund on the basis of incomplete work.

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).

I have applied this formula as follows:

Amount paid to the Respondent	\$180,335.00
Plus amount paid to ARC	\$178,710.00
Equals	\$359,045.00
Less the original contract price	<u>\$190,153.00</u>
Actual Loss	\$168,892.00 <sup>3</sup>

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).

The actual loss computed above is \$168,892.00, which exceeds \$20,000.00.

Accordingly, the Claimant is entitled to reimbursement from the Fund of only a portion of her actual loss, that is, \$20,000.00. *Id.* § 8-405(e)(1).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

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<sup>3</sup> There were some questions raised regarding the actual contract price with ARC and about small additional payments to the Respondent, although the amounts do not affect the final decision. In calculating the Claimant's loss, I have used the figures appearing in the exhibits introduced into evidence. That I have not used figures attested to by the Claimant is not a statement on the Claimant's credibility. Given the large contracts at issue here, I had no need to resolve those questions. Rather, I simply used the exhibits for the relevant figures.



**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>4</sup> and

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

**Signature on File**

May 17, 2017  
Date Decision Issued

\_\_\_\_\_  
Joy L. Phillips  
Administrative Law Judge

JLP/dlm  
#168094

<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF KAAREN S. SIMMONS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF JAMES J. MARTIN,</b></p> <p><b>T/A PROMPT RESTORATION, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE JOY L. PHILLIPS,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: DLR-HIC-02-16-29331</b></p> <p>* <b>MHIC No.: 16(90) 1284</b></p>
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**APPENDIX - FILE EXHIBIT LIST**

I admitted the following exhibits on behalf of the Claimant:

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|---|---|
| <p>Claimant Ex. 1</p> <p>Claimant Ex. 2</p> <p>Claimant Ex. 3</p> <p>Claimant Ex. 4</p> <p>Claimant Ex. 5</p> <p>Claimant Ex. 6</p> <p>Claimant Ex. 7</p> <p>Claimant Ex. 8</p> <p>Claimant Ex. 9</p> <p>Claimant Ex. 10</p> <p>Claimant Ex. 11</p> <p>Claimant Ex. 12</p> <p>Claimant Ex. 13</p> <p>Claimant Ex. 14</p> <p>Claimant Ex. 15</p> <p>Claimant Ex. 16</p> <p>Claimant Ex. 17</p> <p>Claimant Ex. 18</p> <p>Claimant Ex. 19</p> | <p>Contract with the Respondent, November 25, 2014<sup>1</sup></p> <p>The Respondent's Draw Schedule, undated</p> <p>Draw History, BB&amp;T, April 21, 2016</p> <p>Cancelled check from the Claimant, September 15, 2015</p> <p>The Respondent's Scope of Work, June 5, 2015</p> <p>Cancelled check from Allstate, September 25, 2015</p> <p>Claim Form, July 20, 2016</p> <p>American Remodeling Scope of Work, June 2, 2016</p> <p>Photographs (A-C)</p> <p>Photograph</p> <p>Photograph</p> <p>Photographs (A-E)</p> <p>Invoice, American Remodeling Corp., January 17, 2017</p> <p>Photographs (A-F)</p> <p>Text exchange between Jim Prompt and the Claimant, December 4-8, 2015</p> <p>Text exchange between Jim Prompt and the Claimant, January 1-7, 2016</p> <p>Text exchange between Jim Prompt and the Claimant, January 11-15, 2016</p> <p>Text exchange between Jim Prompt and the Claimant, January 29-February 1, 2016</p> <p>Text exchange between Jim Prompt and the Claimant, March 3, 2016</p> |
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<sup>1</sup> The contract is missing pages one and two.

Claimant Ex. 20 Text exchange between Jim Prompt and the Claimant, April 1-11, 2016  
Claimant Ex. 21 Text exchange between Brian Prompt and the Claimant, March 1-23, 2016  
Claimant Ex. 22 Text exchange between Brian Prompt and the Claimant, April 11, 2016  
Claimant Ex. 23 Text exchange between Brian Prompt and the Claimant, April 15, 2016

I admitted the following exhibits on behalf of the Guaranty Fund:

GF Ex. 1 Hearing Order, September 21, 2016  
GF Ex. 2 Notice of Hearing, December 21, 2016  
GF Ex. 3 Affidavit of Kevin Niebuhr, March 7, 2017  
GF Ex. 4 Notice of Hearing, February 13, 2017  
GF Ex. 5 Letter from MHIC to the Respondent, August 8, 2016  
GF Ex. 6 Claim Form, July 20, 2016  
GF Ex. 7 Licensing print-out, printed February 10, 2017

The Respondent failed to appear and therefore, did not offer any exhibits into evidence.

**PROPOSED ORDER**

***WHEREFORE, this 10<sup>th</sup> day of July, 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**

INSTRUCTIONS

1. The first part of the test is a multiple choice section. You should answer all questions in this section. Each question has four possible answers, only one of which is correct. Mark your answer on the answer sheet by filling in the circle next to the correct letter. Do not mark more than one circle for any question. Do not write in the answer sheet.

2. The second part of the test is a short answer section. You should answer all questions in this section. Each question has a short answer. Write your answer in the space provided. Do not write in the answer sheet.

3. The third part of the test is a long answer section. You should answer all questions in this section. Each question has a long answer. Write your answer in the space provided. Do not write in the answer sheet.

4. The fourth part of the test is a problem solving section. You should answer all questions in this section. Each question has a problem. Write your answer in the space provided. Do not write in the answer sheet.

5. The fifth part of the test is a writing section. You should answer all questions in this section. Each question has a writing prompt. Write your answer in the space provided. Do not write in the answer sheet.