

IN THE CIRCUIT COURT FOR HARFORD COUNTY

Petition of Marcus Johnston
For Judicial Review of the Decision of
the Department of Labor, Licensing
and Regulation – Maryland Home
Improvement Commission

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Civil Action No.:
C-12-CV-18-000194

In the Matter of the Claim of:

Teresa Conroy
MHIC Case No. 16(90)303
OAH No. DLR-HIC-02-16-37556

* * * * *

ORDER

Having considered the Motion to Dismiss filed by the Respondent, Maryland Home Improvement Commission, and any response filed thereto, it is this 13th day of September 2018, hereby **ORDERED**:

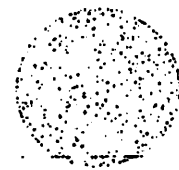
1. That the Petition for Judicial Review is **DISMISSED**.

JUDGE

M. Elizabeth Bowen

09/13/2018 12:57:58 PM

Noted
Teresa Conroy
Clerk of Circuit Court
As: [Signature]
Deputy Clerk



Entered: Clerk, Circuit Court for
Harford County, MD
September 13, 2018

**IN THE MATTER OF THE CLAIM
OF TERESA CONROY**

**MARYLAND HOME IMPROVEMENT
COMMISSION**

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF MARCUS JOHNSTON t/a
JOHNSTON BUILDERS, LLC**

**MHIC CASE NO. 16(90)303
OAH CASE NO. DLR-HIC-02-16-37556**

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on May 26, 2017. Following the evidentiary hearing, the ALJ issued a Recommended Decision on August 24, 2017, concluding that the homeowner Teresa Conroy (“Claimant”) sustained an actual and compensable loss of \$20,000 as a result of the acts and omissions of the contractor Marcus Johnston t/a Johnston Builders, LLC (“Contractor”). *ALJ Recommended Decision* p. 23. In a Proposed Order dated October 10, 2017, the Maryland Home Improvement Commission (“MHIC”) affirmed the Recommended Decision of the ALJ to award the Claimant’s \$20,000 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On February 1, 2018, a hearing on the exceptions filed in the above-captioned matter was held before a three- member panel (“Panel”) of the MHIC. The Claimant was present without counsel. The Contractor appeared and was represented by counsel Anthony DiPaula, Esq. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing on behalf of the MHIC. Because no requests to admit new evidence were submitted, and no transcript of the hearing of the ALJ was provided, the parties were limited to citing to the ALJ’s decision and any exhibits introduced into evidence at the OAH hearing. Code of Maryland Regulations (“COMAR”) 09.01.03.09G-L.

The main argument raised by the Contractor in his exceptions is that the \$13,994.00 the Claimant paid directly to subcontractors of the Contractor for work that had already been completed should be excluded from the calculation of actual loss. The ALJ in this case used the appropriate regulatory formula to calculate actual loss that reads as follows:

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)(emphasis added); *ALJ Recommended Decision* p. 21-23. This formula takes into consideration not just those payments made directly to a Contractor, but also those payments made by the Claimant on behalf of the Contractor. It is undisputed that the Contractor in this case failed to complete the project, and that when he ceased work on the job he left unpaid outstanding balances due to suppliers and subcontractors who provided materials and services on the project. *ALJ Recommended Decision* p. 10. The ALJ found that the Claimant paid subcontractors a total of \$13,994.00 for work that they had completed but for which the Contractor had failed to pay them. *ALJ Recommended Decision* p. 11-13. This figure is supported by the subcontractors' invoices admitted into evidence at the OAH hearing. *OAH Hearing Claimant's Exhibits* 8A-E. The ALJ also noted in his decision that the Contractor admitted that he had not paid the subcontractors, and presented no evidence that the amounts paid by the Claimant were incorrect. *ALJ Recommended Decision* p. 11. The Claimant therefore paid the \$13,994.00 to the subcontractors *on behalf* of the Contractor who was supposed to pay

them for the work completed. Based on the language of the regulatory formula used in this case, which takes into consideration the “amounts the claimant has paid to or on behalf of the contractor under the original contract,” the ALJ reasonably included the \$13,994.00 paid to the subcontractors on behalf of the Contractor in his calculation of actual loss. Having heard the arguments presented by the parties, the Panel does not find that the ALJ erred in his decision and will not overturn it on exceptions. The ALJ’s decision is thorough, supported by the evidence in the record and correct as a matter of law.

Having considered the parties’ arguments, the documentary evidence contained in the record, and the ALJ’s Recommended Decision, it is this **2nd** day of **May 2018 ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Recommended Decision and Order of the Administrative Law Judge is **AFFIRMED**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission

<p>IN THE MATTER OF THE CLAIM</p> <p>OF TERESA CONROY,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF MARCUS</p> <p>JOHNSTON,</p> <p>T/A JOHNSTON BUILDERS, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE MARC NACHMAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-HIC-02-16-37556</p> <p>* MHIC No.: 16 (90) 303</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</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 July 1, 2016, Teresa Conroy (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00¹ in alleged actual losses suffered as a result of a home improvement contract with Marcus Johnston, trading as Johnston Builders, LLC (Respondent).

¹ The initial claim amount was for reimbursement of \$29,864.04, which was reduced to the \$20,000.00 statutory cap, discussed below.

I held a hearing on May 26, 2017, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Anthony J. DiPaula, Esquire, represented the Respondent, who was present.

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

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of 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 testified in his own behalf.

The Fund did not present 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 102882.

2. On or about April 23, 2015, the Claimant and the Respondent entered into a contract (Contract) for the Respondent to perform home improvements on the Claimant's residence in Parkville, Maryland.

3. The Contract called for the construction of an approximately ten foot deep addition to be built onto the house, extending the second floor bedroom and first floor kitchen and adding a laundry area to the first floor.

4. Prior to entering into the Contract, the Respondent presented the Claimant with a "Pre-Construction Contract" (Clmt. Ex. 6a) which she and the Respondent signed on March 12, 2015. The scope of the work under the Pre-Construction Contract was for the Respondent to perform work he determined necessary to prepare for construction, such as consulting with designers, engineers and governmental agencies to develop the building plan and secure building permits, getting surveys necessary for building, and doing the work necessary to draw up the Contract. The Respondent's fee for these services was \$5,000.00, which the Claimant agreed to pay and which she did pay by check on March 12, 2015. This amount is not an element of the Contract for the purposes of the Claim.

5. The scope of the Contract was listed in the Contract and included all aspects of the structure from the external walls to the interior details (e.g., excavation and footings, structure (including walls, floors, and flooring), roofing (including eaves and gutters, windows, internal and external doors, electrical service, ductwork, plumbing, etc.). The Contract also called for the removal of a shed next to the house, with the construction of a new shed subject to further negotiations; the cost to construct a new shed was not included in the Contract.

6. The original Contract price was \$99,780.00, which was to be paid in draws according to a schedule attached to the Contract.

7. The Contract contained a list of “Allowances for Items to be Selected by [the Claimant]” as follows:

- Kitchen appliances: \$3,500.00
- Light Fixtures: \$375.00
- Flooring: Carpet \$3.00 per square foot
- Ceramic Tile: \$3.00 per square foot Hardwood: \$3.00 per square foot
- Bath Shower tile: \$3.00 per square foot
- New bath to have fiberglass shower unit, white elongated toilet, vanity and sink with synthetic stone top
- Kitchen Cabinets, Vanities and Countertops: Wolf Brand in owner's choice of style and color
- Granite counter tops in kitchen to be selected from group I level granite. Contractor to provide samples for selection
- Mirrors, Towel Bars and Toilet paper holders: \$200.00.

8. The “Allowances” also listed the following “Options:”

- Remove existing tub in existing bathroom and replace with fiberglass shower. Cost to be verified in field.
- Existing shed removal included in contract. Reconstruction cost to be determined in field.

9. In a “[w]ork proposal and contract” dated July 10, 2015, the Claimant and Respondent agreed that the cost to rebuild the shed would be \$4,946.00, with the following specifications:

- 12 feet x 12 feet square foot print to rest on concrete blocks. Floor is constructed of 4"x4" treated skids and 3/4" subfloor
- Walls to be 2x4 framing with OSB sheathing and vinyl siding to match the house.
- Roof to be gable on 2 ends and to be 2x4 rafters with OSB sheathing and shingled to match House.
- 1 6 foot double steel door no windows and 1 2'x2' window on each side of door and one 2x2 window on side of shed facing yard.

10. Any change to the contract was to be written in a “Change Order” form which was attached as Exhibit E of the Contract.

11. One change order, signed May 7, 2015, called for redesigning the plans to include a change to the laundry and storage area, making a new bathroom (6’ by 8’), moving the

bedroom closet, and relocating windows if necessary. The change order reflected the price of the change as \$400.00, which the Claimant paid.

12. The Claimant paid the Respondent \$81,339.59 under the Contract as follows:

Payment April 23, 2015	\$ 33,333.34
Change order of May 7, 2015	\$ 400.00
Payment June 19, 2015	\$ 10,000.00
Payment July 8, 2015	\$ 6,644.55
Payment July 11, 2015 (shed)	\$ 4,946.00
Payment July 31, 2015	\$ 8,322.50
Payment August 4, 2015 (attic insulation)	\$ 1,047.20
Payment August 8, 2015	<u>\$ 16,645.00</u>
Total:	\$ 81,338.59

13. On or about June 5, 2015, Baltimore County issued the Respondent the required building permit. Construction started shortly thereafter.

14. On August 25, 2015, the Respondent advised the Claimant in writing that he was closing his business and would be unable to complete the construction or pay any of the subcontractors or suppliers who provided services or materials supplied under the Contract; and he advised the Claimant that he would supply the Claimant with the contact information of the subcontractors, should the Claimant want them to complete the project at her own expense. The Respondent also was willing to suggest the name of a project manager that the Claimant might want to use.

15. The Respondent failed to pay all of his subcontractors varying amounts for work that they performed under the Contract.

16. The subcontractors had not all completed their work under the Contract.

17. The Respondent did not advise the Claimant what balances were due to the subcontractors.

18. The Claimant properly paid the unpaid balances for those subcontractors, totaling \$13,994.00, as follows:

- Maryland Concrete Foundations \$ 475.00
- Value Electric \$ 2,059.00
- Kirchner Plumbing Co, Inc. \$ 5,260.00
- S & S Drywall \$ 2,450.00
- JR's Custom Framing & Carpentry \$ 3,750.00

19. Additional labor charges for work still to be done under the Contract were as follows:

<i>Contractor</i>	<i>Price</i>
• BGE – “Construction charge” ²	\$ 263.00
• Joel L. Woody Painting	\$1,800.00
• ProSource - material and labor to close existing shower wall with matching tile	\$ 191.72
• D & L Window Tinting - Purchase and Install safety glaze (new) bathroom window mandated by law	\$ 159.00
• Seamless Gutters - gutter Install on addition	\$ 280.00
• Gutter Guys - install drip edge on roof over addition	\$ 150.00
• Brett Butler ³ - concrete for floor placement & clean up old pipe line	\$ 400.00
• Brett Butler - Install bathroom floor (new bathroom)	\$ 400.00
• Kirchner Plumbing - final plumbing Install	\$ 2,353.00
• Value Electric - final electric installation	\$ 844.00
• J.R.Carroll - Install Subflooring bedroom addition & closet (new)	\$ 600.00
• Next Day Floors - install carpet and padding over subflooring in bedroom addition	<u>\$ 187.09</u>
Total:	\$ 7,627.81

² The BGE charge was required to turn on power after construction, which was the responsibility of the Respondent under the Contract. The Claimant paid this charge to turn on the power after the required construction interruption.

³ The Respondent challenged this charge on the basis Mr. Butler is an unlicensed contractor (App. Ex. 1). For the reasons stated elsewhere in this decision, Mr. Butler worked on the property and his use was tacitly approved by the Respondent in his letter to the Claimant of August 25, 2015.

20. The Claimant properly purchased kitchen appliances for \$3,410.98.
21. The Claimant properly purchased bathroom fixtures (including the vanity, thresholds and shower door) for \$629.80.
22. Before he abandoned the Contract, the Respondent obtained a detailed kitchen cabinet design from the Home Depot, and an order for those cabinets was drafted. He did not advise the Claimant he intended to purchase the cabinets elsewhere at a lower price.
23. The Home Depot kitchen cabinets were custom designed to fit in the Claimant's kitchen.
24. The Claimant properly purchased the kitchen cabinets from the Home Depot for \$5,271.36.
25. The Claimant properly purchased the granite countertops for installation over the kitchen cabinets for \$2,789.64.
26. The Claimant properly purchased a kitchen faucet and drawer pulls for \$376.44.
27. The Claimant properly purchased and installed molding around the cabinets in the kitchen for \$383.62.
28. The interior doors purchased by the Claimant were as described in the Contract, and the Claimant properly purchased doors from the Home Depot for \$1,919.77 (including miscellaneous drawer pulls, etc.).
29. The Contract called for recarpeting the rooms that were extended, and not to stitch a swath of carpet on to the existing carpet. The Claimant properly purchased carpeting and floor covering for the downstairs rooms for \$354.68 and \$1,464.22, respectively.

30. The Claimant was required to pay for installing and finishing her home within the scope of the contract. The cost of the labor to complete the Respondent's work under the Contract is \$13,851.31.

31. The actual loss incurred by the Claimant is \$20,000.00

DISCUSSION

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);⁴ *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. The Respondent's home improvement work was largely inadequate or incomplete.

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

On April 23, 2015, the Claimant and Respondent entered into the Contract (Clmt. Ex. 3A). The Contract called for the Respondent to “erect the improvements shown on the plans and specifications” on the Claimant’s home, described on what was cited as “Exhibits A and B.” In essence, the Contract called for the Respondent to extend the Claimant’s home by approximately ten feet in the back; the bulk of the addition was to the kitchen and laundry room on the first floor of the house and the bedroom on the second floor of the house over the kitchen, although there were modifications to the master bathroom as well. The price stated in the contract was \$99,870.00, payable in draws according to an attached schedule, and subject to any change orders agreed upon by the Respondent and Claimant. A form for completing change orders was attached to the Contract as well, requiring signatures of the Claimant and the Respondent (Clmt. Ex. 3A, p. 17).⁵

The scope of the work to be performed under the Contract was included in the Specifications to the Contract (Clmt. Ex #3A, p 8-14). Among those specifications was excavation and footings for the addition, and structure (including walls, floors, flooring), roofing (including eaves and gutters), windows, internal and external doors, electrical service, ductwork, plumbing. Handwritten in the contract were “Misc[ellaneous] items to be done:” pulldown attic stairs in the hall and shelving in the existing pantry area closet and shelving in the new laundry closet; the handwritten items were signed by the Respondent.

The Contract also listed prices for allowances and optional work, set forth at length in Findings of Fact # 7 and 8. The removal of the existing shed was included in the contract price. In an addendum to the contract signed by the Claimant and the Respondent, (Clmt. Ex. 3B), the Respondent agreed to rebuild the shed for \$4,946.00, and the specifications were listed in the Findings of Fact # 9. Building began after Baltimore County issued the Respondent a building

⁵ The Respondent drew up a “Pre-Construction Contract,” (Clmt. Ex. 6A) for which the Claimant paid \$5,000.00.

permit (Clmt. Ex. 5A). The parties entered into a change order on May 7, 2015, to change certain aspects of the Contract, at an increased price of \$400.00 (Clmt. Ex. 6C).

The Claimant paid the Respondent the following payments under the Contract:

Payment April 23, 2015	\$ 33,333.34	Clmt. Ex. 6B
Change order of May 7, 2015	\$ 400.00	Clmt. Ex. 6C
Payment June 19, 2015	\$ 10,000.00	Clmt. Ex. 6D
Payment July 8, 2015	\$ 6,644.55	Clmt. Ex. 6E
Payment July 11, 2015 (shed)	\$ 4,946.00	Clmt. Ex. 6F
Payment July 31, 2015	\$ 8,322.50	Clmt. Ex. 6G
Payment August 4, 2015 (attic insulation)	\$ 1,047.20	Clmt. Ex. 6H
Payment August 8, 2015	\$ 16,645.00	Clmt. Ex. 6I
Total:	\$ 81,338.59	

Work began on the construction, as evidenced by photographs the Claimant submitted into evidence (Clmt. Ex. 67 A through G). The existing shed was removed, and the house was extended ten feet; however, the work was not completed and it was left in an unfinished state as evidenced by the photographs, the testimony of the Claimant, and the concession by the Respondent that he did not complete the work. That concession was supplied in a letter dated August 25, 2015, in which the Respondent advised the Claimant that, effective August 24, 2015 at 6 p.m., he had closed his business and his LLC “will be unable to complete your project or pay any outstanding balances due to suppliers and subcontractors who provided materials and or (sic) services at your project.” The letter further promised that the Respondent was “willing to supply subcontractor information and the name of a possible project manager if you wish to continue with these people at your expense.” Clmt. Ex. 7.

After the Respondent abandoned the project, there was still work to be done that the Claimant had paid for and other work she had not yet paid for. The Respondent argued that by paying the subcontractors, the Claimant might have double paid the contractors (if he had already paid them) or been overcharged by them, but his abandonment of the project and tacit endorsement of the subcontractors to complete the work belied that position. That the

Respondent owed the subcontractors money was corroborated by the Respondent's admission that he did not pay them. He presented no evidence that the amounts paid them by the Claimant were incorrect, and he did not provide the Claimant with any information about what invoices were outstanding, paid or disputed.

The Claimant testified that she paid the following subcontractors for work that they had already performed at the behest of the Respondent.

The Respondent contracted for a dumpster that remained unpaid. The Claimant paid Maryland Concrete Foundations its \$475.00 charge, evidencing the reason for the payment on the memo line of the check: Payment owed by [Respondent]." Clmt. Ex. 8A.

Value Electric invoiced the Respondent directly on July 31, 2015 for \$1,650.00 for "rough in draw" and on August 4, 2015 for "run[ning] new service cable, permit, service head, 1 screw eye, straps and labor" for \$409.00. The Claimant received her own invoice for the open charges on September 9, 2015 for the combined charge of \$2,059.00, paying it to Value Electric by check dated September 8, 2015 (Clmt. Ex. 8B).

Kirchner Plumbing Co, Inc., billed the Respondent for \$5,260.00 for "Rough in" citing the Claimant by name. The Claimant paid this invoice by check dated August 30, 2015, again referencing "unpaid balance due by" the Respondent in the memo line of her check (Clmt. Ex. 8C). S & S Drywall invoiced the Respondent \$2,450.00 on August 20, 2015 for "Supply Hand [a]nd Finish Drywall." The Claimant paid this invoice by check dated August 28, 2015, again referencing "unpaid balance due by contractor" in the memo line of her check (Clmt. Ex. 8D).

JR's Custom Framing & Carpentry billed the Respondent \$6,350.00 for the following work: "remove porch – remove shed – build addit[i]on on back of house – install shingles on

addit[i]on – remove inside walls –for [?] header – install lvl [?] headers⁶ – build shed in back of house.” The invoice shows a prior payment of \$2,400.00, with a balance due of \$3,750.00, which the Claimant paid by check on August 29, 2015 (Clmt. Ex. 8E).

All told, the Claimant paid the various subcontractors evidenced by the invoices in Clmt. Ex. 8 A-E a total of \$13,994.00. The scope of the work listed on the invoices matches the scope of the work stated in the Contract. There is no evidence that any of these invoices were paid by the Respondent, leaving all of them for the Claimant to pay; alternatively, the Claimant could be subject to possible suits or mechanic’s liens for the unpaid balances. I am fully convinced that the Claimant chose to pay these subcontractors to avoid further legal entanglements (i.e., suits or liens), and to encourage the craftsmen who had already worked on the house to continue their work, as the Respondent suggested in his letter of August 25, 2015. . This money was paid on behalf of the Respondent, who still owed the subcontractors and suppliers, and who had no intention to pay them (as was evidenced by the fact that he had not paid them or reimbursed the Claimant for the amounts that she paid them).

The Fund and the Respondent argued that payments to contractors that are not licensed MHIC contractors should not be accepted as part of a Fund claim. However, within days of the Respondent’s abandonment letter, the Claimant secured the remaining work on her house from these contractors (that the Respondent tacitly recommended, having promised his assistance in securing their continued services in his August 25, 2015 letter). Moreover, I am convinced that the work performed by these contractors was the most efficient means of securing completion of the project. Had another contractor been retained, he or she might have rejected the work already done, wanting to work on that aspect of the construction from scratch (so as not to assume responsibility for work completed by a prior contractor), or would not be familiar with

⁶ These entries were illegible, as indicated by the “[?]” symbols.

the project. The Claimant’s use of these subcontractors was necessary, reasonable and within the spirit - even if not the letter as some might interpret it- of the MHIC claim law and regulations. Accordingly, I find that the outstanding balances due to these subcontractors was – by definition – within the scope of the contract and either paid on behalf of the Respondent or paid by the Claimant to complete the Contract that the Respondent abandoned. The Claimant properly paid the cost attributable to these items totaling \$13,994.00, which becomes an element of her claim calculations.

Similarly, the Claimant used labor to complete the construction from the subcontractors who performed work for the Respondent. In an MHIC claim, it is not only the Fund that needs the protection of licensed contractors, but the responsibility for reimbursing the Fund for any claim lies with the Respondent. The Respondent suggested the use of these contractors. It would be disingenuous for the Respondent to now disclaim that suggestion after the Claimant took his advice and used these contractors to complete the work that was originally under contract by the Respondent to perform. Accordingly, all of the services provided to perform the work to complete the contract within its scope (discussed below vis-à-vis the materials being purchased by the Claimant to complete the work under the Contract) are elements of her claim calculations:

<i>Clmt. Ex. #</i>	<i>Contractor</i>	<i>Price</i>
20	BGE – “Construction charge” ⁷	\$ 263.00
33	Joel L. Woody Painting	\$ 1,800.00
46	ProSource - material and labor to close existing shower wall with matching tile	\$ 191.72
47	D & L Window Tinting - Purchase and Install safety glaze (new) bathroom window mandated by law	\$ 159.00
48	Seamless Gutters - gutter install on addition	\$ 280.00

⁷ The BGE charge was required to turn on power after construction, which was the responsibility of the Respondent under the Contract. The Claimant paid this charge to turn on the power after the required construction interruption..

49	Gutter Guys - install drip edge on roof over addition	\$ 150.00
50	Brett Butler ⁸ - concrete for floor placement & clean up old pipe line	\$ 400.00
51	Brett Butler - install bathroom floor (new bathroom)	\$ 400.00
52	Kirchner Plumbing - final plumbing Install	\$ 2,353.00
53	Value Electric - final electric installation	\$ 844.00
54	J.R.Carroll - install subflooring bedroom addition & closet (new)	\$ 600.00
55	Next Day Floors - install carpet and padding over subflooring in bedroom addition	<u>\$ 187.09</u>
	Total:	\$ 7,627.81

With regard to the materials which the Claimant contracted for but did not receive under the Contract, Clmt. Ex. 9 represents the purchase of appliances which was stated in the Contract under "Allowances." An allowance is the maximum amount of cost that a contractor allocates for that particular item in a contract to be chosen by the homeowner. According to the allowance schedule (Clmt. Ex. 3A, Schedule F, p. 18a), the Respondent included a kitchen appliance allowance of \$3,500.00, meaning that the Claimant would pay be able to pick out appliances up to that limit; any additional costs over \$3,500.00 would be borne by the Claimant (e.g., if the Claimant picked out \$4,000.00 in appliances, she would have to pay the additional \$500.00 outside the Contract). The Claimant chose and had delivered kitchen appliances for \$3,410.98 (Clmt. Ex. 9), which was within the allowances specified in the contract, making that purchase well within the scope of the contract and, accordingly, becomes an element of her claim.

Similarly, the Claimant stayed within the \$200.00 allowance for "Mirrors, Towel Bars and Toilet paper holders." As these items were explicitly mentioned in the allowance list (and obviously necessary to equip a bathroom), the purchases she made for bathroom fixtures (as well as bathroom features, such as vanities, thresholds, and the like) were within the expectation of

⁸ The Respondent challenged Mr. Butler's status as an unlicensed contractor (App. Ex. 1). For the reasons stated elsewhere in this decision, Mr. Butler worked on the property and his use was tacitly approved by the Respondent in his letter to the Claimant of August 25, 2015. An analysis of Mr. Butler's later charges is below.

the parties. Accordingly, the Claimant properly paid the cost attributable to these items of \$629.80 (Clmt. Exs. 13, 14, 15, 16 and 17⁹) - which becomes an element of her claim calculations.

The Contract called for kitchen cabinets to be installed. The Allowance list specified “Wolf Brand” items. However, there was nowhere in the Contract that defined “Wolf Brand” and the Claimant testified that she was unaware of “Wolf Brand.” She was, however, familiar with the cabinets sold by the Home Depot, and Clmt. Ex. 21B is the design that the Respondent had Home Depot draw up for the kitchen cabinets. When the Respondent abandoned the Contract, the cabinets had not yet been purchased, but the Home Depot had the order details already in their computer and ready to order under the Respondent’s name.¹⁰ The Respondent testified that “Wolf” was the cabinet manufacturer that contractors used, and that his price was significantly less than the price charged by retailers like the Home Depot. But there was no probative evidence that the Respondent advised the Claimant the source of the cabinets either in the Contract stage, during construction, or after he abandoned work on the project. The only cabinets that the Claimant knew about were the Home Depot cabinets that had already been designed with the assistance of the Respondent. Despite his denial that he placed this order, the cabinets were ordered from the Home Depot without alteration in the order, and they fit in the Claimant’s kitchen. Whether Home Depot sold Wolf Brand was immaterial; the Respondent completed the Home Depot order, which the Claimant properly assumed were the cabinets that

⁹ The Respondent argued that the bathroom plans did not call for a shower door, but merely a rod on which to hang a shower curtain. The Respondent drafted the contract; any ambiguities inure to the party who did not draft the Contract – the Claimant. Accordingly, I find that the shower door was within the scope of the Contract and reimbursable.

¹⁰ The Respondent denied that he intended to order the cabinets but could not cogently explain why the Home Depot had such a detailed order already created. Because he testified that cabinet dimensions were generally standard, even if the Respondent merely intended to use the Home Depot design services to determine what cabinets he would order from Wolf, he did not tell the Claimant of such a plan, and she could only assume that he intended to purchase the cabinets from the Home Depot which already had a detailed order drafted.

the Respondent was going to install, per the allowance list.¹¹ If the Respondent wanted to order the cabinets elsewhere, to save money, he should not have abandoned the Contract. Accordingly, the Claimant properly paid the cost attributable to the Home Depot kitchen cabinets of \$5,271.36 (Clmt. Ex. 21A) - which becomes an element of her claim calculations.

Additionally, the cost of crown molding (\$310.83) and related materials (\$72.99) (Clmt. Exs. 23 and 24) – although not explicitly stated in the contract – was also necessary to fill in gaps between the cabinets and the walls they were installed on, and become an element of the Claimant’s claim, totaling \$383.62.

Similarly, the Contract called for the Claimant to select a “group I level” granite countertop over the base cabinets from samples to be provided by the Respondent (Clmt. Ex. 3A, Exhibit F, p. 18a). There was no probative evidence that the Respondent showed the Claimant any samples, told her what “group 1” meant, or where he was going to purchase the countertops. Similar to the cabinets, the Respondent did not know where the countertops could be purchased or the upper limit of the allowance; merely identifying the item as “group 1” did not inform the Claimant about the limitation. It is immaterial whether the Respondent could have purchased this item at a lower price than the Claimant could and did. I find that the Claimant chose and purchased a countertop that was within the scope of the Contract and allowance. Any limitation given by the Contractor was at best ambiguous (if present at all), and, as such, is construed against the Respondent, who was drafted the Contract. Accordingly, the Claimant properly paid the cost attributable to the purchase of the granite countertops for \$ 2,789.64 (Clmt. Ex. 22) - which becomes an element of her claim calculations.

¹¹ There were also questions whether Wolf sold its cabinets wholesale and not directly the public, as the Respondent could not identify a retail dealer to the Claimant or at the hearing. Accordingly, there is little probative evidence that the lower cabinet prices identified by the Respondent would be available to the Claimant, a retail purchaser.

Similarly, the cost of the kitchen faucet (\$156.88) and pulls for the cabinets (\$219.56) (Clmt. Ex. 25 and 26) were within the scope of the Contract and not completed by the Respondent. Accordingly, the Claimant properly paid these costs (\$376.44) which becomes an element of her claim calculations.

The part of the contract calling for the installation of “interior doors” called for one swinging door, described as “Jeldwin or equivalent brand to match existing house style” and “casing” described as “Ranch style MDF casing 2 1/4” to match existing style.” Clmt. Ex. 3A, p. 12-13. As with many aspects of the construction, the project had not progressed to the stage when the Respondent had purchased, and accordingly hung, the referenced doors. The Claimant purchased two doors which were installed as called for in the Contract, as well as other construction materials necessary to complete construction, for \$1,919.77 (Clmt. Ex. 41). The crux of the Respondent’s argument against the inclusion of the bulk of these expenses is that the doors were not as described, and that he could have purchased them “wholesale” for significantly less. Nevertheless, I find that the Claimant did not have access to the wholesale market but was able to purchase the door from the Home Depot, even if at a price greater than the discounted price available to the Respondent.¹² The Respondent also questioned whether the casing was an appropriate cost, as the doors he was to install had casing built on. He did not probatively explain, however, that all doors were built and installed the same way. Accordingly, the Claimant properly paid the cost attributable to the doors and related construction materials for \$1,919.77 (Clmt. Ex. 41) - which becomes an element of her claim calculations. The aforesaid reasoning also supports the inclusion of \$41.54 for the purchase of door knobs (Clmt. Ex. 40)

¹² The Respondent made similar arguments concerning what he considered to be inflated labor costs. He priced some work (such as installing the trim between floors in the existing property and addition) at what he would pay as a general contractor, ignoring the fact that consumers would not have access to his pricing or subcontractors (who wanted to keep his business) would work for less, and he further ignored the markup that he would charge for those items as business overhead.

and \$18.70 for the purchase of caulk (Clmt. Ex. 42) as elements of the Claimant's claim, totaling \$60.24.

The Claimant is seeking the cost to purchase the carpeting to cover the entire bedroom floor after construction as well as the labor and materials necessary to install the carpet. The Respondent argued that the Contract did not call for the total removal of the bedroom carpet, but that the approximately ten foot long bedroom extension was the only carpet that he intended to install. He expected the Claimant to add ten feet of depth to her home, and that new area would have newer carpet than the carpet that was already in place. His testimony that the existing and new carpet would be pieced together across the width of the new addition is incredulous and not supported by any interpretation of the Contract, which, for the reasons stated elsewhere in this decision, if ambiguous, would be construed against the Respondent as its drafter. I find that all of the costs related to purchase of the carpet of \$323.93 (Clmt. Ex. 32)¹³ and the related costs of materials necessary for the construction Clmt. Exs. 30 (\$19.04) and 31 (\$11.71), totaling \$354.68, are elements of the Claimant's claim.

Similarly, the cost of the other flooring materials related to the addition (\$1,464.22) is also properly an element of the Claimant's claim: Clmt. Ex. 27 (\$85.44); Clmt. Ex. 28 (\$1,140.38); and Clmt. Ex. 29 (\$238.40).

I find that the charges by Mr. Handyman (Clmt. Ex. 57) for \$1,262.00 were sufficiently divided between items outside the scope of the Contract and those within. The Claimant fastidiously struck through the items that she acknowledged to be outside of the Contract scope. The work done by "Don" in the first part of the invoice (for 2 ¾ hours) were mostly struck out, and should not be a part of the Claimant's claim. The remaining eight hours, however, dealt with

¹³ The Respondent also argued that the carpet exceeded the allowance in the contract. He did not explain, however, how the Claimant could have had access to his wholesale pricing and get the carpet for the amount of the allowance.

shelves in the laundry room and trim in the kitchen, etc. The charges also, however, cover the lattice work that I have specifically excluded from the claim, as it was not within the scope of the Contract. The labor charge is \$96.00 per hour, or \$768.00, which I will reduce by one quarter, or 2 hours, so that the amount of these services attributable to the Claimant's claim would be \$576.00. Similarly, the materials used were not adequately described to see whether they were for work within the scope of the Contract, and will not be counted towards the claim. The same calculation (reducing the claimed amount by a quarter) applies to the second invoice (Clmt. Ex. 58 for \$530.00) for the same reasons, so that the amount of these services attributable to the Claimant's claim would be \$397.50.

A similar division must be applied to Brett Butler's additional invoice and checks (Clmt. Ex. 59-63). The invoice covers "interior trim installed ~ cabinets, shower door, flooring ramp to new shed ~ shelving units built in old laundry room."¹⁴ Ignoring the last check for \$650.00 which specifically refers to the "ramp shed" among other covered items, the labor attributed to this contractor was \$5,200 (\$5,850.00, less the last check referencing the ramp to the shed of \$650.00).

I also note that the Claimant was careful to separate claim charges from those that she did not attribute to work to be done to complete to the work within the scope of the Contract. The lawn relate costs, necessary to put the proper back to its pre-contract condition - Clmt. Exs 34 (\$5.81), 35 (\$119.46), 36 (\$82.60), 37 (\$32.75) and 38 and (\$52.96) – totaled \$293.58 and are elements of the claimant's claim, as are the registers purchased for the heating and ventilation ductwork (Clmt. Exs. 18 and 19 for \$16.06 and \$16.62, respectively).

¹⁴ Punctuation would have been helpful in seeing what words were associated, and other than the commas in the original, I have indicated line returns with the "~" symbol.

The cost for labor properly paid by the Claimant for work within the scope of the Contract, per the Claimant's testimony is as follows:

• BGE	\$ 263.00
• Joel L. Woody Painting	\$ 1,800.00
• ProSource - material and labor to close existing shower wall with matching tile	\$ 191.72
• D & L Window Tinting - Purchase and Install safety glaze (new) bathroom window mandated by law	\$ 159.00
• Seamless Gutters - gutter Install on addition	\$ 280.00
• Gutter Guys - install drip edge on roof over addition	\$ 150.00
• Brett Butler - concrete for floor placement & clean up old pipe line	\$ 400.00
• Brett Butler - Install bathroom floor (new bathroom)	\$ 400.00
• Kirchner Plumbing - final plumbing Install	\$ 2,353.00
• Value Electric - final electric installation	\$ 844.00
• J.R.Carroll	\$ 600.00
• Next Day Floors - install carpet and padding over subflooring in bedroom addition	\$ 187.09
• Mr. Handiman	\$ 973.50
• Brett Butler	\$ 5,250.00
Total:	\$13,851.31

I find certain elements of the Claimant's claim do not stand up under scrutiny. After the Respondent abandoned work on the Claimant's house, the Claimant prepared a series of change orders, on a form supplied by the Respondent in the Contract (Clmt. Ex. 3A, p. 17). These "change orders" (Clmt. Exs. 4A through 4F) were signed by the Claimant but not by the Respondent, who had already abandoned work on the Claimant's house. These change orders covered the following: cabinets, countertop, appliances, carpeting, doors, completion trim. Although the Claimant contended that the contract should have these changes, the forms and

their content are immaterial to the scope or cost of the work, having not been agreed upon by the Respondent, with whom she initially contracted.

I also find that the Claimant's complaints regarding the construction of the shed not to have been proven. The lattice (Clmt. Ex. 44) and ramp material (Clmt. Ex. 45) were not included in the scope of the Contract and is not considered as a part of the Claim. The \$63.80 cost of the jack hammer rental (Clmt. Ex. 39) was not thoroughly explained and therefore cannot be included as part of the Claimant's claim.

Furthermore, the rebuilding of the roof and the consequential damage to the interior as a result of the allegedly faulty roof installed by the Respondent (Clmt. Exs. 64, 65 and 66) were not sufficiently proven to include these items in the Claimant's claim. A claimant may not be compensated for consequential damages. COMAR 09.08.03.03B(1).

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

Fund Award

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). Accordingly the calculation of an award is as follows:

Amount paid by the Claimant to the Respondent

	\$ 33,333.34	Payment April 23, 2015
	\$ 400.00	Change order of May 7, 2015
	\$ 10,000.00	Payment June 19, 2015
	\$ 6,644.55	Payment July 8, 2015
	\$ 4,946.00	Payment July 11, 2015 (shed)
	\$ 8,322.50	Payment July 31, 2015
	\$ 1,047.20	Payment August 4, 2015 (attic insulation)
\$ 81,338.59	<u>\$ 16,645.00</u>	Payment August 8, 2015

Plus

Payments made to subcontractors after the Respondent abandoned the Contract

	\$ 475.00	Maryland Concrete Foundations, Inc.
	\$ 2,059.00	Value Electric
	\$ 5,260.00	Kirchner Plumbing Co., Inc.
	\$ 2,450.00	S & S Drywall
\$ 13,994.00	<u>\$ 3,750.00</u>	JR's Custom Framing & Carpentry

Plus

Fair market cost to make corrections and complete Contract work:

Material:

	\$ 3,410.98	Kitchen Appliances
	\$ 629.82	Bathroom fixtures, etc.
	\$ 5,271.36	Kitchen cabinets
	\$ 383.82	Molding, etc.
	\$ 2,789.64	Granite countertops
	\$ 376.44	Kitchen pulls, etc.
	\$ 1,919.77	Doors, etc.
	\$ 60.24	Door knobs and caulk
	\$ 354.68	Carpeting
	\$ 1,464.22	Kitchen flooring
\$ 16,693.65	<u>\$ 32.68</u>	Registers

Labor:

	\$ 263.00	BGE
	\$ 1,800.00	Joel L. Woody Painting
	\$ 191.72	ProSource - material and labor to close existing shower wall with matching tile
	\$ 159.00	D & L Window Tinting - Purchase and Install safety glaze (new) bathroom window mandated by law

	\$ 280.00	Seamless Gutters - gutter Install on addition
	\$ 150.00	Gutter Guys - install drip edge on roof over addition
	\$ 400.00	Brett Butler - concrete for floor placement & clean up old pipe line
	\$ 400.00	Brett Butler - Install bathroom floor (new bathroom)
	\$ 2,353.00	Kirchner Plumbing - final plumbing Install
	\$ 844.00	Value Electric - final electric installation
	\$ 600.00	J.R.Carroll - Install Subflooring bedroom addition & closet (new),
	\$ 187.09	Next Day Floors - install carpet and padding over subflooring in bedroom addition
	\$ 973.50	Mr. Handiman
	\$ 5,250.00	Brett Butler
	<u>\$ 13,851.31</u>	
\$ 125,877.55		Subtotal
		Less:
		Original Contract Price
	\$ 99,870.00	Original contract price
	\$ 4,946.00	Shed construction price
	<u>\$ (105,216.00)</u>	<u>\$ 400.00</u> Change order (May 7, 2015)
\$ 20,661.55		Calculation of Actual Loss

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 \$661.55 above the maximum. Accordingly, the Claimant is entitled to reimbursement from the Fund of only a portion of her actual loss, or \$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).

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;¹⁵ and

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

Signature on File

August 24, 2017
Date Decision Issued

/ Marc Nachman
Administrative Law Judge

MN/sm
#169575

¹⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

<p>IN THE MATTER OF THE CLAIM</p> <p>OF TERESA CONROY,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF MARCUS</p> <p>JOHNSTON,</p> <p>T/A JOHNSTON BUILDERS, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE MARC NACHMAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-HIC-02-16-37556</p> <p>* MHIC No.: 16 (90) 303</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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EXHIBIT LIST (Appendix)

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

- Clmt. Ex. 1 - Thank you letter from Respondent to Claimant, March 12, 2015
- Clmt. Ex. 2 - Survey of Claimant's property, September 23, 2010
- Clmt. Ex. 3A - Custom home contract, April 23, 2015
- Clmt. Ex. 3B - Work proposal and contract for shed, detailing proposed cost of \$4,946.00, July 10, 2015
- Clmt. Ex. 4A - Change order: attic stairway not purchased or installed, November 15, 2015
- Clmt. Ex. 4B - Change order: hot water heater not moved, October 24, 2015
- Clmt. Ex. 4C - Change order: granite ordered, detailing additional cost of \$670.42, August 30, 2015
- Clmt. Ex. 4D - Change order: upgrade kitchen cabinet pulls, detailing additional cost of \$106.00, November 15, 2015
- Clmt. Ex. 4E - Change order: purchase of kitchen faucet, detailing additional cost of \$59.88, October 23, 2015
- Clmt. Ex. 5A - Building permit for renovations to the house, June 5, 2015
- Clmt. Ex. 5B - Building permit for removal and replacement of the shed, June 5, 2015
- Clmt. Ex. 6A - Copy of check from Claimant to Respondent for \$5,000.00 payment of preconstruction contract, March 12, 2015
- Clmt. Ex. 6B - Copy of check from Claimant to Respondent for payment of \$33,333.34, April 23, 2015
- Clmt. Ex. 6C - Change order: redesign plans and check from Claimant to Respondent for \$400.00 payment of change order fee, May 7, 2015

- Clmt. Ex. 6D - Copy of check from Claimant for \$10,000 to Respondent for payment schedule 1, June 19, 2015
- Clmt. Ex. 6E - Copy of check from Claimant for \$6,644.55 to Respondent for payment schedule 2, July 8, 2015
- Clmt. Ex. 6F - Copy of check from Claimant for \$4,946.00 for shed payment, July 11, 2015
- Clmt. Ex. 6G - Copy of check from Claimant for \$8,322.50 to Respondent for payment schedule 3, July 31, 2015
- Clmt. Ex. 6H - Copy of check from Claimant for \$1,047.20 to Respondent for attic insulation, August 4, 2015
- Clmt. Ex. 6I - Copy of check from Claimant for \$16,645.00 to Respondent for payment schedules 4 & 5
- Clmt. Ex. 7 - Letter from Marc Johnston to Claimant detailing insolvent financial status of Respondent, closing of business and inability to pay outstanding debts, August 25, 2015
- Clmt. Ex. 8A - Copy of 9/4/15 invoice and check for \$475.00 from Claimant to Maryland Concrete Foundations for dumpster payment on behalf of Respondent, September 3, 2015
- Clmt. Ex. 8B - Copy of invoices and check for \$2,059 from Claimant to Value Electric Inc. for payment on behalf of Respondent, September 8, 2015
- Clmt. Ex. 8C - Copy of 7/31/15 invoice and check for \$5,260.00 from Claimant to Kirchner Plumbing Co., Inc. for payment on behalf of Respondent, August 30, 2015
- Clmt. Ex. 8D - Copy of 8/20/2015 invoice and check for \$2,450.00 from Claimant to S & S Drywall for payment on behalf of Respondent, August 28, 2015
- Clmt. Ex. 8E - Copy of invoice and check for \$3,750 from Claimant to JR's Custom Framing Carpentry for payment on behalf of Respondent, August 29, 2015
- Clmt. Ex. 9 - Home Depot receipt and invoice for \$3,410.98 for appliances order, July 2, 2015
- Clmt. Ex. 10 - Lowe's receipt for \$372.04, highlighting \$115.54 (including tax) charge for ceiling fan, August 31, 2015
- Clmt. Ex. 11 - Home Depot receipt highlighting \$38.98 for Flushmount 11" cover and \$49.97 for Flushmount 13" cover, October 22, 2015
- Clmt. Ex. 12 - Lowe's receipt highlighting \$25.64 (including tax) for porch light and white STD duplex and toggle
- Clmt. Ex. 13 - Home Depot receipt highlighting \$133.30 (including tax) for bathroom fixtures and medicine cabinet
- Clmt. Ex. 14 - Home Depot receipt highlighting \$61.42 (including tax) for bathroom fixtures, robe hook, hand towel bar & towel bar, August 10, 2015
- Clmt. Ex. 15 - Home Depot receipt for \$76.32 (including tax) for vanity top, September 6, 2015
- Clmt. Ex. 16 - Lowe's receipt for highlighting \$20.11 (including tax) for threshold, September 6, 2015
- Clmt. Ex. 17 - Lowe's receipt highlighting \$338.67 (including tax) for shower door, October 8, 2015
- Clmt. Ex. 18 - Home Depot receipt for \$16.06 purchase of registers, October 18, 2015
- Clmt. Ex. 19 - Home Depot receipt highlighting \$16.62 purchase of registers, October 13, 2015
- Clmt. Ex. 20 - October 13, 2015 BGE bill for reconnection of electricity to home, and October 19, 2015 check for payment of \$263.00 from Claimant to BGE
- Clmt. Ex. 21A - Home Depot receipt for \$5,271.36 for kitchen cabinets, August 30, 2015
- Clmt. Ex. 21B - Home Depot invoice and details for kitchen cabinets, August 30, 2015
- Clmt. Ex. 22 - Countertop receipt

- Clmt. Ex. 23 - Home Depot receipt and invoice for \$310.83 purchase of Crown Molding kitchen cabinets, September 5, 2015
- Clmt. Ex. 24 - Home Depot receipt and invoice for \$72.99 purchase of additional molding filler, scribe hinges, September 26, 2015
- Clmt. Ex. 25 - Lowe's receipt for \$156.88 purchase of kitchen faucet, October 18, 2015
- Clmt. Ex. 26 - Home Depot invoice for \$219.56 purchase of kitchen cabinet pulls, October 24, 2015
- Clmt. Ex. 27 - Home Depot receipt highlighting \$85.44 (including tax) purchase of bathroom floor tiles, September 17, 2015
- Clmt. Ex. 28 - Home Depot receipt and invoice for \$1,140.38 purchase of kitchen, family room, laundry and pantry flooring, September 18, 2015
- Clmt. Ex. 29 - Home Depot receipt highlighting \$238.40 (including tax) purchase of underlayment, September 8, 2015
- Clmt. Ex. 30 - Home Depot receipt for \$19.04 purchase of carpet trim, September 17, 2015
- Clmt. Ex. 31 - Home Depot receipt for \$11.71 purchase of carpet molding, November 19, 2015
- Clmt. Ex. 32 - Next Day Floors receipt and invoice for \$323.93 purchase of carpet padding for addition bedroom and closet, November 12, 2015
- Clmt. Ex. 33 - Contract for Home Improvement between Ms. Conley and Painting, Inc., detailing \$1800.00 cost, April 4-April 13, 2016
- Clmt. Ex. 34 - Lowe's receipt for \$5.81 purchase of topsoil, October 19, 2015
- Clmt. Ex. 35 - Home Depot receipt for \$119.46 purchase of lawn soil and grass seeds, September 19, 2015
- Clmt. Ex. 36 - Lowe's receipt for \$82.60 purchase of soil, October 19, 2015
- Clmt. Ex. 37 - Home Depot receipt for \$32.75 purchase of lawn soil and straw bales, October 17, 2015
- Clmt. Ex. 38 - Home Depot receipt for \$52.96 purchase of grass seeds and lawn soil, October 17, 2015
- Clmt. Ex. 39 - Home Depot rental contract and receipt for \$63.80 rental of jackhammer, October 15, 2015
- Clmt. Ex. 40 - Lowe's receipt for \$41.54 purchase of door knobs, September 26, 2015
- Clmt. Ex. 41 - Home Depot receipt and invoice for \$119.77 purchase of doors, casing, shelving and floor mold, August 29, 2015
- Clmt. Ex. 42 - Home Depot receipt for \$18.70 purchase silicone caulk, October 31, 2015
- Clmt. Ex. 43 - Home Depot receipt highlighting \$44.67 (including tax) purchase of saw blades, October 10, 2015
- Clmt. Ex. 44 - Lowe's receipt highlighting \$114.64 purchase of lattice for shed contract, October 24, 2015
- Clmt. Ex. 45 - Home Depot receipt and invoice for \$89.38 purchase of ramping for shed contract, October 3, 2015
- Clmt. Ex. 46 - ProSource Wholesale Floorcoverings invoice for \$191.72 purchase of shower tiles and photograph of shower tiling that needed replacing, November 23, 2015
- Clmt. Ex. 47 - Invoice for purchase and installation of safety glaze on bathroom windows from D & L Window Tinting dated November 12, 2015, check for \$159.00 from Claimant to D & L Window tinting for payment of invoice dated November 12, 2015, slip and letter from Mr. Johnston indicating this installation of new glaze was done in accordance with Baltimore County Inspector's mandate
- Clmt. Ex. 48 - Invoice and check for \$280.00 from Claimant to Seamless Gutters for gutter installation, November 4, 2015

- Clmt. Ex. 49 - Invoice and payment receipt from "The Gutter Guys" for \$150.00 installation of drip edge, April 7, 2016
- Clmt. Ex. 50 - Copy of check from Claimant to Brett Butler for \$400.00 for preparation of concrete floor and cleaning of pipe line, November 12, 2015
- Clmt. Ex. 51 - Copy of check from Claimant to Brett Butler for \$400.00 for installation of flooring in new bathroom, September 18, 2015
- Clmt. Ex. 52 - Invoice and copy of check for \$2353.00 from Claimant to Kirchner Plumbing Co., Inc. for final plumbing installation, October 23, 2015
- Clmt. Ex. 53 - Invoice and copy of check for \$844.00 from Claimant to Value Electric, Inc. for final electrical installation, October 27, 2015
- Clmt. Ex. 54 - Copy of check for \$600.00 from Claimant to J.R. Carroll Hopkins for installation of subflooring in bedroom and closet addition, November 29, 2015
- Clmt. Ex. 55 - Copy of check for \$187.09 from Claimant to Next Day Floors for installation of carpet and padding over subflooring in bedroom addition, November 19, 2015
- Clmt. Ex. 56 - Copy of check for \$350.00 from Claimant to Brett Butler for installation of transition strip in family room, December 3, 2015
- Clmt. Ex. 57 - Copy of check for \$1262.00 from Claimant to "Mr. Handy Man" and invoice for installation of vent covers, shelves in new laundry room and lattice on new shed, November 12, 2015
- Clmt. Ex. 58 - Copy of check for \$530.00 from Claimant to "Handy Man" and invoice for installation of base trim in new bedroom and kitchen pulls, November 19, 2015
- Clmt. Ex. 59 - Copy of check for \$1500.00 from Claimant to Blair Phillips, invoice from C. Blair Phillips for \$5850.00 for installation of interior trim, cabinets, shower doors, flooring, ramp to new shed and shelving units in laundry room, October 4, 2015
- Clmt. Ex. 60 - Copy of check for \$500.00 from Claimant to C. Blair Phillips for partial installation of kitchen cabinets, September 5, 2015
- Clmt. Ex. 61 - Copy of check for \$1000.00 from Claimant to C. Blair Phillips for complete installation of kitchen cabinets, September 24, 2015
- Clmt. Ex. 62 - Copy of check for \$1600.00 from Claimant to C. Blair Phillips for installation of flooring in kitchen, family room new laundry and old laundry, October 4, 2015
- Clmt. Ex. 63 - Copy of check for \$560.00 from Claimant to C. Blair Phillips for installation of medicine cabinet, ramp to shed and kitchen exhaust fan, October 30, 2015
- Clmt. Ex. 64 - Invoice for \$200.00 from ReBuild Inc. for repairs to roof due to improper installation, December 22, 2015
- Clmt. Ex. 65 - Invoice from S & S Drywall and check for \$225.00 from Claimant to S & S Drywall for drywall repair due to water damage resulting from issue with the roof, March 3, 2016
- Clmt. Ex. 66 - Summary of \$723.82 payment calculation from The Travelers Home and Marine Insurance Company for damage resulting from workmanship of roof, dated December 1, 2015, \$8,032 invoice and receipt for roof replacement from ReBuild Inc., February 19, 2016 [Not admitted into evidence]
- Clmt. Ex. 67A - Photograph of unfinished new family room
- Clmt. Ex. 67B - Photograph of unfinished new family room
- Clmt. Ex. 67C - Photograph of bedroom closet and added bedroom
- Clmt. Ex. 67D - Photograph of back and side of the house
- Clmt. Ex. 67E - Photograph of dumpster
- Clmt. Ex. 67F - Photograph of unfinished kitchen

- Clmt. Ex. 67G - Photograph of mechanical room and new pantry
- Clmt. Ex. 68 - Itemized spreadsheet of exhibits, costs incurred and payments made by Claimant on Respondent's behalf¹⁶

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

- Resp. Ex. 1 – Letter from the DLLR detailing result of information request for records on C. Blair Phillips, highlighting he has never been licensed with the Maryland Home Improvement Commission, May 24, 2017

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - MHIC Hearing Order, November 23, 2016
- Fund Ex. 2 - Fund's letter to Respondent notifying him of the claim, July 8, 2016
- Fund Ex. 3 - Notice of Hearing sent to Fund's attorney, March 3, 2017
- Fund Ex. 4 - Notice of Hearing sent to Fund's attorney, April 11, 2017
- Fund Ex. 5 - Affidavit of Thomas Marr, April 12, 2017
- Fund Ex. 6 - DLLR licensing records for Respondent
- Fund Ex. 7 - DLLR licensing records for Respondent

¹⁶ The Claimant submitted additional exhibits after the hearing, some at my request and some on her own. The drawings attached to the contract were admitted into evidence, but the photographs concerning the condition of the shed floor were not, for reasons expressed at the hearing before their submission.

PROPOSED ORDER

WHEREFORE, this 10th day of October, 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.

Bruce Quackenbush

***Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION