

October 4, 2018

Peter Lule
10009 Maryland Street
Lanham, MD 20706

RE: Complaint/Claim: 16 (05) 575

Dear Peter Lule:

The Maryland Home Improvement Commission has completed adjudication of a total of 11 Guaranty Fund claims against contractor Richard Stearns t/a Honest Exteriors. The awards in those 11 cases total \$106,008.14.

As you were previously advised, under the Maryland Home Improvement Law, the Commission may not pay a total of more than \$100,000.00 in Guaranty Fund Claims against any one contractor. Because the total of the approved claims exceeds the \$100,000.00 limit, it is necessary for the Commission to pay the claims on a "pro-rated" percentage basis. Based on the total award amount of \$106,008.14 and the \$100,000.00 payment limit under the law, the Commission may pay 93.85% of each approved claim award.

You will receive a *pro-rated* payment from the Guaranty Fund totaling 93.85% of your approved claim award. Therefore, you will receive a payment in the amount of \$18,770.76.

Please allow six (6) to eight (8) weeks from the date of this letter to receive the award from the State Treasury. If you have any questions concerning this matter, please feel free to contact this office at 410-230-6178.

Very truly yours,

Keyonna Penick

Keyonna Penick
Panel Specialist
Maryland Home Improvement Commission

cc: Shawn Bartley, Esq.
8730 Georgia Avenue, Ste. 610
Silver Spring, MD 20910

**IN THE MATTER OF THE CLAIM
OF PETER LULE,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF RICHARD STEARNS
T/A HONEST EXTERIORS LLC,
RESPONDENT**

*** BEFORE NICOLAS ORECHWA,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
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* OAH No.: DLR-HIC-02-17-28182
* MHIC No.: 16 (05) 575**

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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 5, 2016, Peter Lule (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$106,016.18 in alleged actual losses suffered as a result of a home improvement contract with Richard Stearns, trading as Honest Exteriors LLC (Respondent).

I held a hearing on October 12, 2017, at the Largo Government Center, 9201 Basil Court, Conference Room 102, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. § 8-407(e) (2015).¹ Shawn D. Bartley, Esquire, represented the Claimant, who was present. Kris King, Assistant

¹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Neither the Respondent nor his representative appeared.

On September 12, 2017, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to 22835 Avenmar Drive, Leonardtown, MD 20650, the last known address of record on file with the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).² The notice advised the Respondent of the time, place, and date of the hearing. The United States Postal Service did not return the notice as unclaimed or undeliverable. On September 21, 2017, the OAH received the signed³ return receipt for the notice. Since the notice of the hearing was sent to the Respondent at its address of record with the MHIC, and no forwarding order or other correspondence from the Respondent was provided to identify other alternative addresses, I determined that the Respondent was properly notified, but failed to appear for the hearing. As a result, I found it appropriate to proceed in the Respondent's absence. Therefore, after waiting twenty minutes, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.⁴

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. 2017); COMAR 09.01.03; COMAR 28.02.01.

² "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

³ The signature on the return receipt is not legible enough to determine the identity of the person who signed.

⁴ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on September 12, 2017, COMAR 09.08.03.03A(2), and was not returned as unclaimed/undeliverable. Notice only went to Richard Stearns. However, during the hearing, both the Fund and the Claimant provided evidence that Honest Exteriors is an LLC with two partners. The second partner is William Watts, who is also listed on the Home Improvement Claim Form. However, the Claimant only contracted with Richard Stearns. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1 - Claimant's Home Improvement Claim Form dated July 27, 2016, with exhibits
- Clmt. Ex. 2 - Contract between Claimant and Respondent dated August 5, 2014
- Clmt. Ex. 3 - Claimant's checking account ledger for August 2014 and May 2015
- Clmt. Ex. 4 - Letter from Weinstock, Friedman & Friedman to Respondent dated August 19, 2015
- Clmt. Ex. 5 - Architectural Blueprint
- Clmt. Ex. 6 - Photo of the roofs of the existing structure and addition
- Clmt. Ex. 7 - Two photos of ceiling water damage
- Clmt. Ex. 8 - Photo of a tarp on the roof of the existing structure
- Clmt. Ex. 9 - Photo of unfinished addition to existing structure
- Clmt. Ex. 10 - Letter from Prince George's County Government to Claimant dated March 22, 2016
- Clmt. Ex. 11 - Contract between Claimant and Jose Chavez Framing dated March 22, 2016
- Clmt. Ex. 12 - Contract (undated) between Claimant and Marion D. Bennett, Jr. to remove framing
- Clmt. Ex. 13 - Photo of concrete driveway to Claimant's garage
- Clmt. Ex. 14 - Proposal (undated) from Mike "Triplem" at Professional Concrete Work
- Clmt. Ex. 15 - Proposal from MK Electric dated April 13, 2016
- Clmt. Ex. 16 - Proposal from ATCO Services dated April 5, 2016

Clmt. Ex. 17 - Contract (undated) between Claimant and Marion D. Bennett, Jr. to replace the roof on the original structure and addition

Clmt. Ex. 18 - [NOT ADMITTED]

Clmt. Ex. 19 - Invoice from Ferguson Enterprises, Inc. dated June 10, 2016

Clmt. Ex. 20 - Invoice from Home Depot dated May 5, 2016

Clmt. Ex. 21 - Receipt from Lowes dated April 15, 2016

Clmt. Ex. 22 - Proposal from Triple M dated June 2, 2016

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - OAH Notice of Hearing dated September 12, 2017, with United States Postal Service Return Receipts

Fund Ex. 2 - MHIC Hearing Order dated August 30, 2017

Fund Ex. 3 - MHIC Registration and License printouts dated October 11, 2017

Fund Ex. 4 - State Department of Assessments and Taxation Real Property Data Search dated October 11, 2017

Fund Ex. 5 - Claimant's Home Improvement Claim Form dated July 27, 2016

Testimony

The Claimant testified in his own behalf.⁵

The Fund presented no witness testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 103677.

2. The Claimant's home subject to this matter is located in Lanham, Maryland 20706 (the Home).

⁵ The Claimant is hearing impaired and utilized the services of sign language interpreters during the hearing.

3. The Claimant filed a civil suit against the Respondent in the Circuit Court for Prince George's County. The Claimant obtained a default judgment against the Respondent in the amount of \$54,986.24. The Claimant received no payments from the Respondent toward satisfaction of the Judgment.

4. On August 5, 2014, the Claimant and the Respondent⁶ entered into a home improvement contract (the Contract). The Contract specified that Respondent would perform the following work for the Claimant:

- Pull all permits concerning work done on Claimant's property (electrical, plumbing, HVAC and building)
- Build an addition to Claimant's existing residence (addition) including:
 1. Erecting all framing
 2. Laying a foundation
 3. Installing all electrical systems
 4. Installing all plumbing
 5. Installing a sub-floor
 6. Installing a roof
- Install shingles on the roof of the addition
- Install shingles on the roof of the existing residence

5. The Contract did not provide for specific dates when the Respondent would begin work and complete work. The Contract contains a clause prohibiting oral modifications to its terms.

6. The agreed-upon contract price was \$54,500.00.

⁶ The contract was between Richard Stearns d/b/a Honest Exteriors LLC and the Claimant.

7. The Claimant paid the Respondent \$41,623.00 toward the contract price on the following dates:
 - \$18,167.00 on August 6, 2014 (Check #2634)
 - \$18,176.00⁷ on May 5, 2015 (Check #2662)
 - \$5,280.00 on May 20, 2015 (Check #2664)
8. The balance due upon completion of the Contract was to be \$18,166.00.
9. After receiving the August 6, 2014, payment from the Claimant, the Respondent obtained building permit 32356-2014 and completed the foundation work on the addition.
10. After completing the foundation work, the Respondent repeatedly postponed further work on the addition.
11. Prior to the Respondent commencing work on the Contract, the Claimant provided the Respondent with an architectural sketch of the addition. The roof of the addition, per the architectural sketch, was to be flush and even with the roof of the Claimant's existing residence.
12. The roof on the incomplete addition the Respondent eventually built was not flush with the roof of the existing residence.
13. After receiving the May 5, 2015 payment from the Claimant, the Respondent constructed the framing work on the addition inconsistent with the blueprint.
14. The Respondent did not complete the roof on the addition.
15. At some point during the initial construction, the Respondent drove a heavy truck onto the Claimant's driveway which caused a crack in the driveway that extended into the Claimant's garage and the foundation of the addition.

⁷ The Claimant testified he mistakenly transposed the numbers seven and six when writing the check. The correct amount per the Contract should have been \$18,167.00; however, the Respondent received \$18,176.00.

16. The Respondent refused to repair the crack or do any other work under the Contract unless the Claimant paid for the repair.

17. On May 20, 2015, the Claimant paid the Respondent the \$5,280.00, identified as check no. 2664, to have the crack repaired since the Respondent refused to complete the remaining work on the Contract unless payment for the repair was made.

18. The Respondent did not repair the crack in the driveway.

19. The Respondent stopped all work on the home improvement addition after May 20, 2015, and did not return to the property after that date to complete any of the work, to include the home improvement to be done on the roof of the existing residence.

20. After May 20, 2017, the Claimant repeatedly requested the Respondent complete the home improvement work per the terms of the Contract.

21. The Respondent refused to return and complete the home improvement and demanded the Claimant pay the balance of the entire contract price prior to returning to complete the work.

22. The Claimant, through counsel, twice demanded the Respondent complete the home improvement. The Respondent ignored the demands and made no effort to resolve the dispute with the Claimant.

23. The partially constructed addition to the residence was damaged by rain and other elements due to it being incomplete.

24. The ceiling of the existing residence began to leak after the Respondent stopped work.

25. The foundation poured by the Respondent cracked and required replacement.

26. The Respondent's failure to complete the home improvement addition required the Claimant to hire other contractors to make repairs and complete the work.

27. Because of the Respondent's refusal to complete the work under the contract, the building permit expired.

28. The Claimant paid \$47.00 to renew the building permit in order to retain new contractors to complete the work.

29. The Claimant paid the following to new contractors to complete the contracted home improvement;

- \$12,500.00 to Jose Chavez Framing, a licensed Maryland contractor, to demolish the framing on the home improvement addition and build new framing.
- \$13,680.00 to Professional Concrete Work to remove and replace concrete in the garage and driveway due to the crack caused by the Respondent.
- \$14,298.69 to Marion D. Bennett, an unlicensed contractor, to perform the following:
 1. \$6,551.00 to place new shingles on the roof on the existing residence
 2. \$1,000.00 to demolish the original home improvement addition built by the Respondent
 3. \$5,897.69 to install new shingles on the home improvement addition
 4. \$850.00 to dig for installation of a new drain system for the home improvement addition
- Of the \$14,298.69 the Claimant paid to Marion D. Bennett, \$4,176.43⁸ concerned payment for materials used by Marion D. Bennet in his work.
- \$8,500.00 to MK Electric, a licensed Maryland contractor, to install wiring in the home improvement addition.

⁸ This number is derived from \$3,776.43 paid by the Claimant for roof materials, lumbers, air vent and miscellaneous materials as well as \$400.00 he paid for a rental tractor, back hoe, pipe and gravel to dig the drain system.

- \$7,800.00 to ATCO services, a licensed Maryland contractor, to install a heat pump and air handler system in the home improvement addition.
- \$585.48 to Ferguson Enterprises Inc., for a new bathtub to be installed in the home improvement addition.
- \$5,700.00 to Triple M Construction, a licensed Maryland contractor, to install plumbing (including the bathtub from Ferguson Enterprises Inc.) in the home improvement addition.
- \$1,087.16 to Home Depot for new roof trusses on the home improvement addition (to be installed by Jose Chavez Framing).
- \$113.42 to Lowes for Tyvek paper to be installed in the home improvement addition.

DISCUSSION

Applicable Law

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).⁹ “[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); *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a

⁹ As noted above, “COMAR” refers to the Code of Maryland Regulations.

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.

Claimant's Case

The Claimant testified that he performed all his obligations under the Contract with the Respondent. However, when it came time for the Respondent to complete the work after the Claimant paid the first two installments, the Respondent refused and demanded full payment. The Claimant testified that the Respondent's demand for full payment prior to finishing the work violated the terms of the Contract. Additionally, the Claimant testified that the Respondent caused a crack which ran from the Claimant's driveway into his garage floor. When the Claimant requested the Respondent repair the crack, the Respondent demanded payment in exchange for the repair and continuation of work under the Contract. When the Claimant paid the Respondent for the repair, the Respondent did not repair the driveway and garage floor. After receiving the second installment under the Contract and the payment for the repairs, the Respondent did no further work and abandoned the home improvement. This left the Claimant with an incomplete home improvement addition to his current residence, no replacement shingles on the roof of his current residence and a cracked driveway and garage floor. The Claimant further testified that the Respondent's failure to replace the roof shingles on his existing residence caused water damage in various spots in the ceiling during heavy rain.

The Claimant contended that the Respondent not only left an incomplete home improvement but also performed his duties in an unworkmanlike manner. The principal example the Claimant provided was the framing of the home improvement addition. The Claimant delivered an architectural sketch of the home improvement addition to the Respondent. The

sketch called for the roof of the home improvement addition to be flush with the roof of the existing residence. The roof of the home improvement addition the Respondent began constructing was, upon completion, going to result in the roof being several feet lower than the roof on the existing residence. Additionally, the Respondent drove a heavy truck onto the Claimant's driveway causing the driveway to crack. The Claimant argues that the Respondent should have known the truck weighed too much for the driveway to bear without cracking.

Because the Respondent failed to complete the work he agreed to perform under the Contract, and performed the work in an unworkmanlike manner, the Claimant had no choice but to retain new contractors and spend more money to fix and complete the home improvement project.

The Fund's Position

The Fund agreed that the Claimant was required to retain new contractors to repair and complete the home improvement. However, the Fund argued that the Claimant may not recover money paid to certain unlicensed contractors, who were Marion D. Bennett and Professional Concrete Work.

Analysis

The Claimant was the only witness to testify at the hearing. I listened to his testimony and found it to be credible and worthy of belief. The Claimant was consistent throughout his testimony as to when specific events took place (e.g. payments to the Respondent, work which was completed, etc) and was able to support his testimony with documentation. Additionally, the Claimant acknowledged when he was unable to remember certain facts (e.g. whether or not certain contractors were licensed).

The Respondent was a licensed home improvement contractor at the time it entered into the Contract with the Claimant. The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Contract required the Respondent to complete various tasks in exchange for payment, including building a complete addition to the existing residence and replacing the roof shingles on the same.

Under the plain language of the Contract, the Respondent was not within its rights to demand full payment from the Claimant prior to completing the work. Therefore, the Respondent violated the Contract by refusing to perform further work without the final payment from the Claimant.

The Claimant's unrefuted evidence shows that the Respondent did not complete most of the home improvement work required by the Contract and performed in an unworkmanlike manner. The Claimant's documentary evidence, to include photographs of the work done by the Respondent, objectively shows the home improvement was poorly constructed.

The Claimant further argued that the ceiling in the existing residence leaked because the Respondent failed to replace the roof shingles. However, the Claimant provided no credible evidence tending to show that the leaks were the direct result of the Respondent's failure to replace the roof shingles. To the extent the Claimant suffered any damages from the leaks, I find those to be consequential. Nevertheless, I do find by a preponderance of the evidence, that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). As such, 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).

Disposition of the \$5,280.00 the Claimant paid to repair the driveway crack

The Claimant explained that he paid \$5,280.00 to the Respondent for repairs for the cracked driveway. I find the Claimant's un rebutted testimony that the Respondent caused a crack on his driveway and garage floor to be credible. The testimony is supported by documentation that the Claimant paid the \$5,280.00 to the Respondent to repair the crack. (Clmt. Ex. 3). It is further supported by a photograph of the repair to the driveway. (Clmt. Ex. 13). Repairing the driveway was not within the scope of work the Respondent was to perform under the Contract. However, the Contract includes a clause entitled "Oral Agreements and Changes in proposal" which reads as follows:

I understand there are no oral agreements. Everything I expect [THE RESPONDENT] to do has been included in writing in this proposal. Modifications, alteration, representation, or promises must be in writing accepted and agreed upon by the Seller and Buyer.

(Clmt. Ex. 2) [Emphasis Added].

At the hearing, the Fund took the position that because the Respondent had no authority to demand payment for the repair under the Contract, the payment can only be construed as a payment by the Claimant toward the overall contract price. I am persuaded by the Fund's position. The above referenced clause clearly states the obligations of the parties to the Contract

with regard to modifications. This is especially true with regard to the language which reads: "Everything I expect [THE RESPONDENT] to do has been included in writing in this proposal." (Clmt. Ex. 2). The Claimant did not testify as to the existence of a separate agreement with the Respondent to repair the driveway and, in point of fact, testified that the Respondent tied payment of the repair into the completion of the other contract items by refusing to do further work until the Claimant made further payment. Thus, I find the \$5,280.00 paid by the Claimant to the Respondent to be part of the payment of the overall contract price.

Disposition of payments Claimant made to Marion D. Bennett Jr. and Professional Concrete Work

The Claimant testified and presented documentary evidence that he paid \$14,298.69 to Marion D. Bennett and \$13,680.00 to Professional Concrete to both repair and finish the work the Respondent did not complete. The sum of these payments is \$28,069.12. The Claimant testified that Marion D. Bennett was not a licensed contractor. The Claimant did not know whether Professional Concrete was a licensed contractor. The Fund argued that because these workers were either unlicensed or their licensure was unknown, that the Claimant's payments to them should not be considered in determining any award from the fund.

Section 8-101(c) of the Business Regulation Article defines "contractor" as "a person, other than an employee of an owner, who performs or offers or agrees to perform a home improvement for an owner." Section 8-101(d) of the Business Regulation Article defines "contractor license" as "a license issued by the Commission to act as a contractor." [Emphasis added] COMAR 09.08.03.03B(3)(c) [set forth in full above] specifically states in pertinent part "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" [Emphasis Added]

Because the regulation specifically refers to payment to another contractor, and because an individual may only hold himself or herself out as a contractor in Maryland if he or she is licensed, I agree with the Fund that I should exclude payments made to Marion D. Bennett from my calculation of an award from the Fund to the Claimant. The Claimant specifically testified that Marion D. Bennett is not a licensed contractor. In argument however, the Fund contended that payment by the Claimant for any materials used by Marion D. Bennett should not be excluded in the calculation. The fund specifically noted \$3,776.43 the Claimant paid to Marion D. Bennett for roofing materials and \$400.00 he paid for a rental tractor, back hoe, pipe and gravel to dig the drain system. The sum of these payments is \$4,176.43. I agree with the Fund that I should include these payments in my calculation of an award. None of these materials are unique to Marion D. Bennett and the Claimant could have used them to have a licensed contractor perform the work.

I further find that payments the Claimant made to Professional Concrete should be excluded as well. The Claimant bears the burden in this matter by a preponderance of the evidence. By stating he did not know if Professional Concrete is a licensed contractor, I do not find the Claimant has met that burden. Accordingly, I will exclude the \$13,680.00 the Claimant paid Professional Concrete.

Award

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).

In computing the Claimant's actual loss, I utilize the formula set forth in COMAR 09.08.03.03B(3)(c) which is the amount paid by the Claimant to the Respondent under the original contract plus reasonable amounts paid by the Claimant to other contractors to complete work less the original contract price. The Claimant made three payments under the original Contract to the Respondent: \$18,167.00 + \$18,176.00 + \$5,280 which total \$41,623.00. The Claimant paid the following to other contractors to complete/repair the Respondent's work:

- \$12,500.00 to Jose Chavez Framing
- \$4,176.43 to Marion D. Bennett¹⁰
- \$8,500.00 to MK Electric
- \$7,800.00 to ATCO services
- \$585.48 to Ferguson Enterprises Inc.
- \$5,700.00 to Triple M Construction
- \$1,087.16 to Home Depot
- \$113.42 to Lowes for Tyvek paper

The total amount of the original Contract is \$54,400.00. Therefore I find the Claimant's actual loss is the following: $(\$41,623.00 + \$40,462.49) - \$54,400.00 = \$27,685.49$. Accordingly, the Claimant is entitled to reimbursement of \$20,000.00. Md. Code Ann., Bus Reg. § 8-405(a).

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 and Supp. 2017); COMAR 09.08.03.03B(3)(c).

¹⁰ As noted above, this only includes the amounts the Claimant paid for materials.

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;¹¹ and

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

Signature on | Signature on File

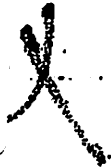
November 13, 2017
Date Decision Issued

NO/sw
170469

Nicolas Orechwa
Administrative Law Judge

¹¹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

Signature on File

A handwritten signature, possibly 'X' or a stylized name, written in black ink.

PROPOSED ORDER

WHEREFORE, this 25th day of January, 2018, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION