

<b>IN THE MATTER OF THE CLAIM</b>	<b>*</b>	<b>BEFORE WILLIAM SOMERVILLE,</b>
<b>OF JONAH KUCZYNSKI,</b>	<b>*</b>	<b>AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>*</b>	<b>OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>*</b>	<b>OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>*</b>	
<b>FOR THE ACTS OR</b>	<b>*</b>	
<b>OMISSIONS ALLEGED AGAINST</b>	<b>*</b>	
<b>SCOTT RILL,</b>	<b>*</b>	
<b>T/A RILL ESTATE HOMES, LLC,</b>	<b>*</b>	<b>OAH No.: DLR-HIC-02-18-21708</b>
<b>RESPONDENT</b>	<b>*</b>	<b>MHIC No.: 17 (05) 1362</b>

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On September 6, 2017, Jonah P. Kuczynski (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,291.00<sup>1</sup> for actual losses he alleged that he suffered arising out of a home improvement contract with Scott Rill, trading as Rill Estate Homes, LLC, (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). Thereafter, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

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<sup>1</sup> As a preliminary matter at the hearing, the claim amount was amended down to \$5,040.63.

I held a hearing on October 19, 2018, at the Administrative Law Building in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Andrew Brower, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. After waiting about fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing without the Respondent. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

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. 2018); 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Packet of photographs, drain field
- Clmt. Ex. 2 - Invoice, 12-19-2016
- Clmt. Ex. 3 - Photographs, drip edge
- Clmt Ex. 4 - Packet of Photographs, roof
- Clmt Ex. 5 - Packet of miscellaneous photographs

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<sup>2</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on July 27, 2018, COMAR 09.08.03.03A(2). Applicable law permits me to proceed with a hearing in a party's absence if that party fails to appear after receiving proper notice. Md. Code Ann., Bus. Reg. §§ 8-407(a) and 8-312(h); COMAR 28.02.01.23A. I determined that the Respondent had been properly notified.

- Clmt Ex. 6 - Packet of two proposals
- Clmt Ex. 7 - Packet of two invoices, siding and garage doors
- Clmt Ex. 8 - Demand letter, undated
- Clmt Ex. 9 - Copies of eight checks
- Clmt Ex. 10 - Memorandum work order, 11-22-2016

I admitted the following exhibit offered by the Fund:

- Fund Ex. 1 - Packet of documents containing the Notice and Hearing Order, Licensing history, and Ten-day letter with attachments, 6-14-2017

Testimony

The Claimant testified.

**PROPOSED FINDINGS OF FACT**

Upon considering demeanor evidence, testimony, and other evidence, I find the following facts by a preponderance of the evidence:

1. At all times relevant, the Respondent was a home improvement contractor licensed by the MHIC. (Fund Ex. 1.)
2. On October 25, 2015, the Claimant and the Respondent, individually, entered into a home improvement contract. The Claimant was to pay \$55,000.00 and the Respondent was to build a two-story addition onto the Claimant's home. The first floor was to be a garage and the second floor was to be residential dwelling area. (Clmt Exs. 5 and 10.) If shake-style siding was to be used on the front of the addition, there would be an extra charge. The project was to include soffit, fascia, gutters, and down spouts. Types were not specified. Interior walls of the addition were to be framed with two by fours. The scope-of-work memorandum was less than one page. (Clmt Ex. 10.) The agreement between the parties was "fluid." (Testimony.) There were some oral changes to the agreement.

3. On or about December 19, 2016, the Respondent began working on the project.

4. Despite having information about where the property's septic field lines were located, the Respondent, or his work crew, hit a septic field line while digging footers. (Clmt. Ex. 1.)

5. Work progressed on the project.

6. By February 24, 2017, the Claimant had paid the Respondent \$53,000.00. (Clmt Ex. 9.)

7. The Respondent completed much of the project.

8. On April 25, 2017, the Claimant and the Respondent met. The Claimant agreed to pay for the garage doors and their installation if the Respondent would install the gutters and otherwise complete the project.

9. On April 27, 2017, the Respondent's workers "cut through" from the addition to the existing house. That was the last time that the Respondent, or his workers, did any work on the project.

10. On or about May 30, 2017, the Claimant had a Home Depot contractor from Pennsylvania install the garage door. The door cost \$1,428.00 and installation cost another \$384.00. (Clmt Ex. 7, p. 3.)

11. The Respondent did not complete the following items on the project: siding on front of the addition, the garage door, soffit, fascia, gutters, and down spouts.

12. Because rain water leaked into the addition from the roof, the Claimant had to remedy items of poor workmanship, inadequate work, or incomplete work, which were within the scope of the agreement (and not consequential damages) as follows: install ice block at drip edge on roof, revise the contour of the roof, and re-shingle and tie in parts of the roof.

13. On some undisclosed date on or before July 27, 2017, the Claimant sent to the Respondent a demand letter offering an additional \$500.00 for the shake-style siding, and asking that the Respondent complete the siding installation, the soffits, and the gutters and spouts.

(Clmt Ex. 8.)

14. On July 29, 2017, the Claimant obtained a proposal for a remedial contractor to install: siding on the front (cedar shake style) and side (Dutch lap) of the addition, fascia, rake board, flashing at the foundation wall, tape at the windows, lower level soffit, five-inch *seamless* gutters, two inch by three inch down spouts, and wrap trim at the garage door. The proposal also contained a 10-year guarantee. The proposed cost was \$8,632.00.

15. On August 25, 2017, the Claimant obtained a proposal from another remedial contractor to install siding, five-inch gutter, soffit, and fascia for \$5,950.00. (Clmt Ex. 6.)

16. By August 29, 2017, the Claimant had paid to a supplier in Pennsylvania \$2,078.62 for siding material for the front of the addition. It was the shake-style siding that was not included in the agreement with the Respondent. (Clmt Exs. 5, 7, 8, and 10.)

17. At some unknown point, the Claimant paid to remedial contractors \$275.00 to have seamless gutters installed and paid \$3,890.63 to have the garage door and missing siding installed. (Testimony.)

18. On September 6, 2017, the Claimant filed a claim against the Fund.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);<sup>3</sup> *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual 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.

The Respondent was a licensed home improvement contractor, at the time of the contract with the Claimant. (Finding of Fact 1.) Md. Code Ann., Bus. Reg. § 8-405(a).

Despite the Claimant’s failure to offer any expert opinion evidence about minimum standards of workmanship in the home improvement industry, the evidence is clear with regard to the Respondent’s unworkmanlike performance in building the roof on the addition. (Finding of Fact 12.) The lack of ice block or drip edge, the insufficient method used to attach the addition roof to the existing roof, and the resulting rain water that leaked into the addition demonstrated poor workmanship, as testified to by the Claimant. In addition to not completing all of the necessary steps required to build a workmanlike roof on the project, the Respondent did not finish the following items that were required by the shifting, fluid agreement: siding on front of the addition, the garage door, soffit, fascia, gutters and down spouts. (Findings of Fact 2 and 11.) The addition without those items was inadequate, as that term is used in the statute.<sup>4</sup> Md. Code Ann., Bus. Reg. § 8-401.

Having concluded that the first prong of the legal standard has been satisfied, I turn to the proof of what amount, if any, is the compensable “actual loss.” “Actual loss” is a statutory term

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<sup>3</sup> Unless otherwise noted, all citations to the Business Regulation Article refer to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>4</sup> “Inadequate” as used in the statutory scheme, *see* Md. Ann. Code Bus. Reg. §§ 8-311(a)(10) and 8-401, means that the home improvement work might have been done with all of the steps, phases, or processes required by industry standards but the result does not equal what is required by the contract, or is not suitable to the case or occasion. *See Black’s Law Dictionary* 61 (4<sup>th</sup> ed. 1957); *Black’s Law Dictionary* 47 (10<sup>th</sup> ed. 2009); B.A. Garner, *A Dictionary of Modern Legal Usage*, 16 (1987) (“adequate”).

that does not mean contract damages or consequential damages. The Fund may not compensate a claimant for consequential damages (such as the damage to septic lines in the instant case), punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B.

In this case, the Respondent performed some work under the contract, and the Claimant has already hired, or intends to hire, remedial contractors to remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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).

In applying this "actual loss" formula, I have to be able to determine what was paid, or will be paid, to remedy "poor work done" by the Respondent. COMAR 09.08.03.03B(3)(c). In this case, installation of the garage door cost \$1,812.00 (Finding of Fact 10). Installing the *seamless* gutter, an item not contemplated in the original agreement, cost \$275.00. (Finding of Fact 17.) Evidence was offered, however, from which I can determine a cost of \$5,950.00 for

installation of the missing siding, soffits, *regular* gutters, and down spouts.<sup>5</sup> (Finding of Fact 15.) With regard to remedying the roof, the Claimant provided no costs. (Finding of Fact 12.)

With these findings in mind, the “actual loss” calculation is as follows:

\$53,000.00	Amount paid to the contractor under the original agreement
+\$7,762.00 <sup>6</sup>	Amount that might be paid to remedy some of the unworkmanlike and inadequate work performed by the contractor
-\$55,000.00	Price of the original agreement
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\$5,762.63	Actual loss

The Business Regulation Article caps a claimant’s recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant’s actual loss is less than the amount paid to the Respondent and less than \$20,000.00. At the hearing, the Claimant amended his claim against the Fund from \$5,291.00 down to \$5,040.63. Therefore, the Claimant has shown that he is entitled to recover an actual loss in the full amount that he requested. He is entitled to an award of actual loss in the amount of \$5,040.63.

<sup>5</sup> With regard to a proposal by one remedial contractor, Brothers Services Company (Clmt Ex. 6.), that proposal contained many items, or premium items, that were not contemplated by the Claimant’s agreement with the Respondent, and the proposal did not break out the items, such that items not contained in the original agreement with the Respondent could be subtracted from the total price. Determining costs using that proposal would be mere speculation. The other proposal, from K & S Remodeling (Clmt Ex. 6, p. 2), gave one cost for installing siding, soffits, fascia, regular gutters, and spouts.

<sup>6</sup> Purchase and installation of the garage door cost \$1,812.00 (Finding of Fact 10) and installation of siding, five-inch gutter, spouts, soffit and fascia was proposed at \$5,950.00. (Finding of Fact 15.)



**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has demonstrated that he sustained an actual and compensable loss of \$5,040.63 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015). I further conclude that the Claimant has shown that he is entitled to recover that amount from the Fund.

**RECOMMENDED ORDER**

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



**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,040.63; and

**ORDER** that the record reflect that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>7</sup> and

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

**Signature on File**

January 3, 2019  
Date Decision Issued

  
\_\_\_\_\_  
William J.D. Somerville III  
Administrative Law Judge 

WS/emh  
# 177381

<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

DECLASSIFICATION AUTHORITY

1. This document is classified "Confidential" because it contains information the disclosure of which could result in the identification of sources of information and the compromise of the national defense.

2. This document is classified "Secret" because it contains information the disclosure of which could result in the identification of sources of information and the compromise of the national defense.

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5. This document is classified "Confidential" because it contains information the disclosure of which could result in the identification of sources of information and the compromise of the national defense.

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of February, 2019, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**