

MARYLAND HOME  
IMPROVEMENT COMMISSION

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MARYLAND HOME IMPROVEMENT  
COMMISSION

v.

HIGGS CONSTRUCTION, LLC

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OAH CASE NO.: DLR-HIC-01-1717920  
MHIC CASE NO.: 17(70)243

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on September 13, 2017. Following the evidentiary hearing, the ALJ issued a Recommended Decision on October 23, 2017, concluding that Higgs Construction, LLC (“Respondent”) violated Annotated Code of Maryland, Business Regulation Article, § 8-301(a) and Code of Maryland Regulations (“COMAR”) 09.08.01.04. *ALJ Recommended Decision* p. 15. The ALJ recommended that the Maryland Home Improvement Commission (“MHIC”) order the Respondent to pay a civil penalty of \$2,500. In a Proposed Order dated December 14, 2017, the MHIC affirmed the Recommended Decision of the ALJ. The Respondent subsequently filed exceptions of the MHIC Proposed Order.

On March 15, 2018, a hearing on the exceptions filed in the above-captioned matter was held before a three- member panel (“Panel”) of the MHIC. The Respondent was present and represented by counsel, Richard Lebovitz, Esq. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC.

The Respondent raises through its written exceptions, and at oral argument, the contention that the company was not performing or offering to perform a home improvement but was merely acting as a “project manager,” and thus did not need to be licensed as a home improvement contractor. *Respondent's Written Exceptions* p. 1. The ALJ found that regardless

of the Respondent's label of "project manager," the company was in fact acting as a general contractor providing a home improvement. *ALJ Recommended Decision* p. 10-12. The homeowner in this case was in contract with the Respondent, believed that the Respondent was the general contractor on the job, and made all payments to the Respondent for the work done on the home. *OAH Hearing Transcript* p 20-21, 24-25, 33, 54-55, 74-75. The evidence in the record further shows, and the ALJ correctly found, that the Respondent arranged for the labor necessary to complete the contract, purchased the materials for the completion of the contract, executed agreements with subcontractors to perform the work and purchase materials, and paid these subcontractors with checks signed by the Respondent. *ALJ Recommended Decision* p. 11; *OAH Hearing Transcript* p. 30, 33, 37, 41-44, 46-47, 54, 67-68, 72-73, 76-78, 110-113, 119-121; *OAH Hearing, MHIC Exhibits 5a-5xx*. Other than an individual who provided floor installation, the homeowner was not in contract with nor provided payment directly to the other subcontractors hired by the Respondent to complete work at the home. *OAH Hearing Transcript* p. 64-65.

Pursuant to Business Regulation Article § 8-101(c) a "contractor" is defined as "a person other than an employee of an owner, who performs or offers or agrees to perform a home improvement for an owner." In this case the Respondent was performing and offering to perform a home improvement for the homeowner. The Respondent performed the home improvement largely through the use of subcontractors. Business Regulation Article § 8-101(o) provides the definition of "subcontractor" as "a person, other than a laborer or supplier of materials, who makes an oral or written agreement with: (1) a contractor to perform *all* or part of a home improvement contract; or (2) another subcontractor to perform all or part of a subcontract to a home improvement contract." (*emphasis added*). Even if the Respondent, as it has

maintained at the OAH hearing and on exceptions, was found to have hired out all of the work to be done on this job to other entities and did not complete any of the work on the home itself, those other entities would still fall under the definition of a subcontractor. The mere subcontracting of the work does not relieve the contractor who has entered into contract with a homeowner to provide a home improvement, from licensure as a home improvement contractor. Therefore, the Panel agrees with the ALJ's findings that despite the Respondent's label of "project manager" the evidence in the record shows that the Respondent was acting as home improvement contractor and therefore was required to be licensed as such.

The Respondent also argues in his written exceptions that its employee Jordan Gregg "is a laborer, and a majority of his job consists of job maintenance, cleaning, and occasionally helping other members on the job site with minor problems." *Respondent's Written Exceptions* p. 2. The record, however, shows that the Respondent billed the homeowner for Mr. Gregg's work, labelled as "trim work" and the ALJ found that Mr. Gregg performed framing work in the basement and supervised the installation of flooring, all of which falls under the definition of a home improvement as either an "alteration, conversion, improvement, modernization, repair, or replacement . . ." Business Regulation Article, § 8-101(g)(1)(i); *OAH Hearing, MHIC Exhibits* 5z and 5uu. The Panel agrees with the ALJ that the work done by Respondent's employee Jordan Gregg is further evidence that the Respondent was acting as a home improvement contractor without the requisite license.

After establishing that the Respondent had violated § 8-301(a) of the Business Regulation Article and COMAR 09.08.01.04 by not obtaining a license, the ALJ weighed the six factors to be considered in setting a penalty. The Panel otherwise agrees with the assessment of the factors made by the ALJ but reduces the penalty amounts to \$250 for each violation for a total penalty of

\$500. The Panel finds that in the factor pertaining to the good faith of the violator, the Respondent in this case truly believed that it did not need to be licensed by the Commission to act as what it was labeling a “project manager.” Although this belief was mistaken and a license was required for the services provided in this case, the good faith of the Respondent leads the Panel to modify the ALJ’s recommended decision by reducing the total penalty to \$500.

The ALJ’s decision is thorough, supported by the evidence in the record and correct as a matter of law. The Panel does not find that the ALJ erred in his decision and will not overturn it on exceptions. Having considered the parties’ arguments, the transcript of the hearing before the ALJ, the documentary evidence contained in the record, and the ALJ’s Recommended Decision, it is this 3rd day of July 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 with a reduction in the total penalty to \$500**;
- D. The Respondent has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

**Bruce Quackenbush**  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

MARYLAND HOME IMPROVEMENT \* BEFORE STEPHEN W. THIBODEAU,  
 COMMISSION \* AN ADMINISTRATIVE LAW JUDGE  
 v. \* OF THE MARYLAND OFFICE  
 HIGGS CONSTRUCTION LLC, \* OF ADMINISTRATIVE HEARINGS  
 RESPONDENT \* OAH CASE No.: DLR-HIC-01-17-17920  
 \* MHIC CASE NO.: 17 (70) 243

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 24, 2016, Bryan Lopez (Complainant) filed a complaint with the Maryland Home Improvement Commission (Commission) against Higgs Construction LLC (Respondent). On June 1, 2017, the Commission issued charges against the Respondent based on the complaint. In its charging document, the Commission alleged that the Respondent violated Md. Code Ann., Bus. Reg. § 8-301 (2016) and Code of Maryland Regulations (COMAR) 09.08.01.04.

On September 13, 2017, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Section 8-312(a) (2016). Kris King, Assistant Attorney General, represented the Commission. Timothy Manuelides, Esquire, represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the procedures for hearings on behalf of the Secretary of the Department of Labor, Licensing and Regulation, and the

OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2017); COMAR 09.01.03, 09.08.02 and 28.02.01.

### ISSUES

Did the Respondent act as a home improvement contractor without a valid home improvement contractor's license and, if so, what sanction is appropriate?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The following were admitted for the Commission:

- HIC #1: Notice of Hearing, July 11, 2017
- HIC #2: Notice of Charges and Order for Hearing, June 1, 2017
- HIC #3: Three letters from David R. Finneran, Executive Director of the Commission, September 12, 2017
- HIC #4: Corporate Charter Approval Sheet for Respondent, December 12, 2014; Resolution to Change Principal Office or Resident Agent of Respondent, December 12, 2014; Corporate Charter Approval Sheet for Respondent, February 3, 2014; Articles of Amendment of Higgs-Cowan Construction, February 3, 2014; Corporate Charter Approval Sheet for Respondent, January 13, 2004; Organization of Higgs<sup>1</sup>-Cowan Construction, LLC, January 13, 2004
- HIC #5: A series of invoices and receipts, sub-identified by letter as follows:
- a. Invoice from Respondent to Complainant, July 31, 2015
  - b. Invoice for labor forwarded from Respondent to Complainant, July 25, 2015
  - c. Timesheet for "Andrew" and "Joaquin," July 21, 2015 through July 24, 2015
  - d. Invoice for labor forwarded from Respondent to Complainant, July 4, 2015
  - e. Timesheet for "Andrew" and "Joaquin," June 29, 2015 through July 3, 2015
  - f. Invoice for labor forwarded from Respondent to Complainant, July 10, 2015

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<sup>1</sup> The January 2004 documents refer to a "Higgs-Cowan Construction," but the remaining documents as well as the entity identified as the Respondent, spell "Higgs" without an "e."

- g. Timesheet for "Andrew" and "Joaquin," July 10, 2015
- h. Invoice for labor forwarded from Respondent to Complainant, July 18, 2015
- i. Timesheet for "Joaquin," July 17, 2015
- j. Invoice from Baltimore Floor Supply to Respondent, July 7, 2015
- k. Invoice from Small Gain Hardwood to Respondent, July 10, 2015
- l. Home Depot receipt, July 17, 2015
- m. Invoice from Respondent to Complainant, August 10, 2015
- n. Invoice from Reisterstown Lumber Company to Respondent, July 2, 2015
- o. Invoice from Reisterstown Lumber Company to Respondent, July 8, 2015
- p. Invoice from Reisterstown Lumber Company to Respondent, July 22, 2015
- q. Timesheet for "Andrew" and "Joaquin," July 29, 2015
- r. Invoice from Respondent to Complainant, August 28, 2015
- s. Invoice from Baltimore Floor Supply to Respondent, August 19, 2015
- t. Two Home Depot receipts, dated August 11, 2015 and August 13, 2015
- u. Home Depot receipt, August 20, 2015
- v. Contractors Invoice from Perfect Floors to Respondent, August 19, 2015
- w. Timesheet for interior trim work, undated
- x. Timesheet for "Andrew" and "Joaquin," August 11, 2015 through August 14, 2015
- y. Timesheet for "Andrew" and "Joaquin," August 5, 2015
- z. Invoice from Respondent to Complainant, September 9, 2015
- aa. Invoice from Respondent to Complainant, September 9, 2015
- bb. Invoice from Close Construction to Respondent, September 8, 2015
- cc. Invoice from Reisterstown Lumber Company to Respondent, August 19, 2015
- dd. Invoice from Reisterstown Lumber Company to Respondent, August 19, 2015
- ee. Invoice from Reisterstown Lumber Company to Respondent, August 20, 2015
- ff. Invoice from Reisterstown Lumber Company to Respondent, August 21, 2015
- gg. Invoice from Reisterstown Lumber Company to Respondent, August 21, 2015
- hh. Invoice from Reisterstown Lumber Company to Respondent, August 24, 2015
- ii. Invoice from Reisterstown Lumber Company to Respondent, August 25, 2015
- jj. Invoice from Reisterstown Lumber Company to Respondent, August 25, 2015

- kk. Invoice from Reisterstown Lumber Company to Respondent, August 25, 2015
- ll. Invoice from Reisterstown Lumber Company to Respondent, August 25, 2015
- mm. Invoice from Reisterstown Lumber Company to Respondent, August 27, 2015
- nn. Invoice from Reisterstown Lumber Company to Respondent, August 27, 2015
- oo. Invoice from Reisterstown Lumber Company to Respondent, August 27, 2015
- pp. Invoice from Reisterstown Lumber Company to Respondent, August 27, 2015
- qq. Two Home Depot receipts, dated August 27, 2015 and August 31, 2015
- rr. Four Home Depot receipts, dated August 25, 2015 and August 26, 2015
- ss. Respondent Construction Labor Time timesheet printout for August 24, 2015 through August 28, 2015
- tt. Respondent Construction Labor Time timesheet printout for "Andrew" for August 31, 2015 through September 4, 2015
- uu. Respondent invoice to Complainant for labor for Jordan Gregg, timesheet for August 17 through August 21, 2015
- vv. Respondent invoice to Complainant for labor for Jordan Gregg, timesheet for August 24, 2015 through August 28, 2015
- ww. Respondent invoice to Complainant for labor for Joaquin Axol, timesheet for August 31, 2015 through September 4, 2015
- xx. Timesheet for "Andrew" and "Joaquin," August 17, 2015 through August 21, 2015

HIC #6: Commission Complaint Form filed by Complainant, August 24, 2016

The following were admitted for the Respondent:

Resp. #1: Email from Complainant to Respondent, June 19, 2017

Resp. #2: Portion of letter from Respondent to David R. Finneran, Executive Director of the Commission, redacted, September 22, 2016.

### Testimony

The Complainant testified for the Commission. Michael Higgs, project and construction manager for Higgs Construction, testified for the Respondent.

## FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. The Complainant lives in Monkton, Maryland. His home was built by the Respondent in 2010 to 2011.
2. In June of 2015, the Complainant was seeking to have home improvement work done on his home, including woodworking and finished trim work, flooring work, and work on an unfinished basement. The Complainant solicited estimates for the work from two companies, including the Respondent.
3. Ultimately, the Complainant contracted with the Respondent for the work, based both on his prior personal relationship with Michael Higgs, construction and project manager for the Respondent, and the Respondent's prior work in building the home. The Complainant and the Respondent agreed to an oral contract for the work.
4. Pursuant to their contract, the Respondent arranged for several laborers and companies to work on and provide the materials for the Complainant's contract. The Respondent charged a fifteen percent "management fee" for this work.
5. Approximately \$27,500 worth of work was performed and billed to the Complainant by the Respondent. The Complainant paid for all the work done from mid-June 2015, through approximately mid-August 2015. At that point, the Complainant stopped paying the Respondent for the work performed due to dissatisfaction with the quality of work, and the Respondent stopped all work on the project at that time.
6. During the time of the improvement work, the bulk of the work was done by two laborers identified as "Andrew" and "Joaquin," as well as by Jordan Gregg, an employee of the Respondent.

7. The Respondent has never been licensed by the Commission as a home improvement contractor. Michael Higgs was licensed by the Commission from October 9, 2001 through April 10, 2004.

## DISCUSSION

### Summary of the Evidence

The Complainant testified that he was the owner of a property in Monkton, Maryland. The home was built by the Respondent beginning in 2010, and was occupied in 2011. In June, 2015, the Complainant was seeking home improvement work to be done on the home, specifically woodworking and finished trim work, flooring, and finishing of a basement. Because of his personal relationship with Michael Higgs, construction manager for the Respondent, and the prior work the Respondent did with building his home, the Complainant contracted with the Respondent for the work. The Complainant testified there was no written contract for the work or its scope; instead, the agreement was that the Respondent would do the work based upon a written estimate of a number of hours of labor and a cost estimate of materials. The scope of the work, as understood by the Complainant, would be for carpentry and woodworking for crown molding and trim work in the living room, dining room, office, and family room. It also included finishing work in the basement, as well as installing flooring throughout parts of the home.

During the time the work was being done on his home, from June 2015 through August 2015, the Complainant testified he spoke with someone representing the Respondent two to three times a week. He primarily dealt with Michael Higgs. Over the course of the work, the Complainant paid roughly \$27,500 to the Respondent in the form of either cash or check payments. The Complainant testified that the invoices for labor and materials included in HIC Exhibit #5 were billed to him and payment was remitted to the Respondent.

According to the Complainant, the work was primarily done by three individuals: "Andrew" (last name unknown); "Joaquin" (last name unknown; nicknamed "Flaco," identified as "Joaquin Axol" in HIC Ex. 5ww); and Jordan Gregg, an employee of the Respondent. The Complainant provided Michael Higgs a key to the home in order for the Respondent to have access to the home to do the work. The Complainant, who vacated the home for the summer, periodically returned to Monkton to check on the progress of the work.

Work on the contract stopped in early September, 2015. The Complainant testified he refused to pay the invoice from the Respondent dated September 9, 2015. (HIC # 5aa). The Complainant felt at the time the work was not being done in a professional manner, including an instance where he witnessed "Andrew" not installing flex molding properly in the office and dining room of his home, where it had to be torn down and reinstalled. The Complainant also testified he felt he was being overcharged. After the Complainant refused to pay in September, 2015 and stopped the Respondent's work on the project, the Respondent filed a civil suit against Complainant to collect the amount not paid on the contract.

The Complainant understood the Respondent's role in this project to be one of a general contractor. The Complainant also understood Michael Higgs would collect a fifteen percent "management fee" for his services in his overall management of the completion of the project.

The Respondent presented testimony through Michael Higgs, who identified himself as the construction and project manager for the Respondent. Mr. Higgs testified he does not hold either himself or the Respondent out as a general contractor. He stated that the Respondent essentially has two employees: himself, and Jordan Gregg. Jordan Gregg did spend some time at the Complainant's home doing work, but Mr. Higgs maintains it was merely for "clean up and helping" the other laborers on the project.

Michael Higgs' understanding of the agreement between the Respondent and the Complainant differs from the Complainant's view. Mr. Higgs testified that the agreement meant he would manage the project as requested by the Complainant by locating and selecting contractors to do the home improvement work, as well as administer the purchase of materials. The Respondent would be responsible for the start to finish management of the job, but would not provide any architectural, engineering, or construction services. For this service, the Respondent would receive a fifteen percent management fee.

To that end, the Respondent vetted and hired seven contractors licensed by the Commission. (Resp. #2). The Respondent maintains these were the true home improvement contractors on the Complainant's project. The Respondent paid all of the contractors directly and then billed the Complainant for the materials and work. Mr. Higgs stated that the Complainant never complained directly to him regarding the quality of the work done on the project. The Respondent has never been cited with any prior violations by the Commission, and Mr. Higgs stated he did not believe that the Respondent needed a Commission license to do "project management" work.

#### Analysis

The Commission has the burden of proof by a preponderance of the evidence. COMAR 09.01.02.16A. For the reasons discussed below, I find that the Respondent violated section 8-301(a) of the Business Regulation Article of the Maryland Annotated Code by performing home improvement work as an unlicensed contractor. I also find the Respondent violated COMAR 09.08.01.04 by acting as a home improvement contractor but not obtaining a corporate or partnership home improvement license. Consequently, I also find that the Respondent is subject to civil penalties under section 8-620 of the Business Regulation Article.

## Performing Work as an Unlicensed Contractor

Section 8-301 of the Business Regulation article provides:

- (a) Except as otherwise provided in this title, a person must have a contractor license whenever the person acts as a contractor in the State.
- ...
- (c) This section does not apply to:
- (1) An individual who works for a contractor for a salary or wages but who is not a salesperson for the contractor;
  - (2) A clerical employee, retail clerk, or other employee of a licensed contractor who is not a salesperson, as to a transaction on the premises of a licensed contractor;
  - (3) A solicitor for a contractor who calls an owner by telephone only;
  - (4) An architect, electrician, plumber, hearing, ventilation, air-conditioning, or refrigeration contractor, or other person who:
    - (i) is required by State or local law to meet standards of competency or experience before engaging in an occupation or profession;
    - (ii) currently is licensed in that occupation or profession under State or local law; and
    - (iii) is:
      1. acting only within the scope of that occupation or profession; or
      2. installing a central heating or air-conditioning system;
  - (5) A security systems technician licensed under Title 18 of the Business Occupations and Professions Article;
  - (6) A marine contractor licensed under Title 17, Subtitle 3 of the Environment Article; or
  - (7) A person who is selling a home improvement to be performed by a person described in item (4) of this subsection.

Md. Code Ann., Bus. Reg. § 8-301.

Section 8-101(c) of the Business Regulation Article defines “contractor” as “a person,<sup>2</sup> other than an employee of an owner, who performs or offers or agrees to perform a home improvement for an owner.”

In addition, section 8-101(g)(1) of the Business Regulation Article defines “home improvement” as “the addition to or alteration, conversion, improvement, modernization,

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<sup>2</sup> Section 8-101(g) of the Business Regulation Article includes “partnership, firm, association, corporation, or other entity” in its definition of “person.” Md. Code Ann., Bus. Reg. §8-101(g) (2016).

remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building.” Section 8-103 of the Business Regulation Article provides the provisions of this title may not be waived.

Finally, COMAR 09.08.01.04(A) provides:

(A) A corporation or partnership may not act as a home improvement contractor unless it obtains a corporate or partnership home improvement contractor’s license.

The Commission argues that the Respondent acted as a general contractor providing home improvement services. Essentially, the Respondent contracted with seven subcontractors to provide the materials and labor for the woodworking, trim, flooring, and finishing project agreed to by the Complainant. The Complainant, in turn, saw the Respondent as the general contractor and went to the Respondent when there were any issues or problems, paid the Respondent in a timely fashion for all invoices forwarded by the Respondent, and provided the Respondent access to his home for the purpose of making the improvements.

The Respondent counters that this was not home improvement work, but rather “project management.” In essence, the Respondent argues there is no evidence that it did any actual home improvement work: no “alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building” that is required by statute. The Respondent asserts it merely acted as coordinator of services and overseer of the project by hiring the contractors to do the work that needed to be done and managing the project. The Respondent argues that the intent of the home improvement contractor licensing statute is to ensure that unscrupulous and unqualified contractors do not do home improvement work in the State, not to punish “project managers” such as the Respondent.

The Respondent never provided a definition for a “project manager,” and there does not appear to be one in the Maryland Business Regulation Article. To the extent the Respondent

argues a “project manager” is not the same as a “general contractor” in the realm of home improvement, it is really a distinction without a difference. As set forth below, I find that the Respondent acted as a home improvement contractor in his interactions with the Complainant, regardless of whether the Respondent labelled itself as a “project manager.”

The key reason is the nature of the work the Respondent performed. The Respondent arranged for the labor necessary to complete the contract for the Complainant, purchased the materials to perform the contract, and otherwise executed agreements with subcontractors to perform the work and purchase the materials. The Respondent also paid each and every one of the subcontractors for the work and materials with checks signed by the Respondent. The subcontractors are listed in Respondent’s Exhibit 2. The Respondent calls them “contractors,” presumably to distinguish them from subcontractors in which the Respondent, as general contractor, would contract out the work on the project. According to the Respondent, its actions as a “project manager” were to simply arrange for various “contractors” (as opposed to “subcontractors”) to do the work of the project.

Simply labelling itself as a “project manager” does not mean the Respondent did not do any home improvement work, however. In fact, the Respondent’s employee, Jordan Gregg, did work on the contract for the Complainant that amounts to home improvement work. While Mr. Higgs testified that Mr. Gregg merely did clean-up work and unspecified “helping” with the project, the timesheets the Respondent submitted to the Complainant for payment tell a different story. On several instances in August, 2015, the Respondent billed the Complainant for Mr. Gregg’s work, labelled as “trim work” on the invoices and timesheet. (HIC # 5z and 5uu). Mr. Gregg also spent time from August 26, 2015 through August 28, 2015 performing framing work in the basement of the Complainant’s home, as well as supervising the installation of floors at the home. That work alone amounts to “alteration, conversion, improvement, modernization,

remodeling, repair, or replacement” as defined by the Maryland Code. Mr. Gregg, as the Respondent’s employee, performed that work for the Respondent, meaning that the Respondent acted as a home improvement contractor.

As to the Respondent’s argument that it acted as a “project manager” as opposed to a home improvement contractor, even if I were to accept that premise, project managers are not specifically excluded from statute as needing a home improvement license. Indeed, the statute excludes several categories of people and companies from the licensing requirements; project managers are not one of those categories. Md. Code Ann., Bus. Reg. § 8-301(c) (2016). Had the General Assembly intended to exclude project managers from the requirements of home improvement contract licensing, it would have done so. It did not.

Moreover, there seems to be some confusion on the part of the Respondent as to the charge of operating without a home improvement license. Mr. Higgs testified that he is the project and construction manager for the Respondent. Indeed, while Mr. Higgs, as an individual, may be a project manager, it does not mean the Respondent is one. The Respondent in this case is a corporation. Certainly Mr. Higgs took on the role of project manager, but, as discussed above, his company was a home improvement contractor, and as such, the Respondent was subject to the requirement to have a home improvement license. This requirement cannot be waived for any reason if the company engages in home improvement contract work. Md. Code Ann., Bus. Reg. § 8-103 (2016).

There is no dispute that the Respondent was unlicensed. Mr. Higgs testified that he did not believe the Respondent needed a license, and the records of the Commission demonstrate that Respondent was not registered as one. (HIC #3). To that end, I find that that the Respondent violated section 8-301 of the Business Regulation Article and COMAR 09.08.01.04.

## Penalty

The Commission's Charges allege that violations of the section 8-301(a) of the Business Regulation Article and COMAR 09.08.01.04 subject the Respondent to a civil penalty not to exceed \$5,000 per violation under section 8-620(a). Section 8-620 of the Business Regulation Article provides that the Commission may impose a civil penalty for any violation of Title 8 of that Article. Specifically, section 8-620 states:

- (a) *In general.* The Commission may impose on a person who violates this title, including § 8-607(4) of this subtitle, a civil penalty not exceeding \$5,000 for each violation, whether or not the person is licensed under this title.
- (b) *Considerations.* In setting the amount of a civil penalty, the Commission shall consider:
- (1) the seriousness of the violation;
  - (2) the good faith of the violator;
  - (3) any previous violations;
  - (4) the harmful effect of the violation on the complainant, the public, and the business of home improvement;
  - (5) the assets of the violator; and
  - (6) any other relevant factors.

Because the Respondent violated Md. Code Ann., Bus. Reg. § 8-301(a) (2016) and COMAR 09.08.01.04, it is subject to civil penalties. The Commission requested a total penalty of \$3,500 for both violations.

### Seriousness of the Violation

I find that the Respondent's violations are serious. The Complainant paid over \$27,500 on the contract but the work was not completed. In addition, the Complainant observed that the work was not done in a professional manner by the laborers on site. Further, the Respondent's failure to be licensed as a contractor precluded the Respondent from any reimbursement from the Home Improvement Guaranty Fund for an actual loss due to the Respondent's misconduct.

### **Good Faith of the Respondent**

I do not find that the Respondent acted in bad faith. Respondent had a subjective belief that it did not need to be licensed by the Commission to act as a "project manager." While the Complainant testified he believed the Respondent to be a licensed home improvement contractor, he also understood his arrangement with the Respondent to be one in which the Respondent was acting as a project manager for the contract. While I do question whether the Respondent simply represented itself as a "project manager" in order to subvert the requirement to obtain a home improvement license, the evidence in this case is insufficient to establish that.

### **Previous Violations**

The record does not contain any evidence of prior violations.

### **Harmful Effect of the Violations**

The Complainant was harmed, as discussed above, because the home improvement was poorly done, and he had no right to seek reimbursement from the Commission's Guaranty Fund. I also find that the business of home improvement was harmed because of the Respondent's actions. While the Respondent held itself out as a "project manager," but conducted home improvement work, it harmed the home improvement profession by performing poor work and taking potential business away from other properly licensed contractors.

The Respondent argues that the intent of the home improvement licensing statute was to prevent unscrupulous, unqualified contractors from taking advantage of the public, not to punish the business of project management, and that a finding against the Respondent would effectively wipe out project managers as a profession. I disagree. Indeed, as the purpose of the statute is to prevent unscrupulous, unqualified contractors from taking advantage of the public, the clear harm to the Respondent's action is signaling to all home improvement contractors that they simply can call themselves "project managers" and never have to obtain a home improvement license. Surely that

would do more damage to the statutory scheme, and the public in general, than the work of legitimate project managers. As such, I find the Respondent's actions harmed the public by skirting the requirement of obtaining a home improvement license.

#### **Assets of the Respondent**

The record contains no evidence relevant to the Respondent's assets.

Based on my consideration of the factors found in Section 8-620(b) of the Business Regulation Article, I recommend that the Commission assess a total civil penalty of \$2,500 (\$1,250 for each violation) on the Respondent. I acknowledge this is less than the \$3,500 requested by the Commission, but I am recommending a lesser amount due to my inability to find bad faith on the part of the Respondent and the lack of any prior violations by the Respondent.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude the following:

- A. The Respondent violated Section 8-301(a) of the Business Regulation Article and COMAR 09.08.01.04.
- B. The Respondent is subject to sanction under Section 8-620 of the Business Regulation Article.

#### **RECOMMENDED ORDER**

I RECOMMEND the following:

- A. The Maryland Home Improvement Commission find that the Respondent violated Section 8-301(a) of the Business Regulation Article and COMAR 09.08.01.04; and
- B. The Maryland Home Improvement Commission order the Respondent to pay a total civil penalty of \$2,500, pursuant to Section 8-620 of the Business Regulation Article; and

C. The records and publications of the Maryland Home Improvement Commission reflect this decision.

## Signature on File

October 23, 2017  
Date Decision Issued

Stephen W. Thibodeau  
Administrative Law Judge

SWT/dlm  
#169918

**PROPOSED ORDER**

***WHEREFORE, this 14<sup>th</sup> day of December, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**