

**IN THE MATTER OF THE CLAIM
OF MATT SNOWLING**

*

**MARYLAND HOME IMPROVEMENT
COMMISSION**

*

*

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF ERIC ABELL t/a
COASTAL DESIGN & BUILD,
LLC**

*

**MHIC CASE NO. 18(90)300
OAH CASE NO. DLR-HIC-02-18-30021**

*

*

* * * * *

FINAL ORDER

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on February 6, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 12, 2019, concluding that the homeowner Matt Snowling (“Claimant”) sustained an actual and compensable loss of \$20,000.00 as a result of the acts and omissions of Eric Abell (“Contractor”). *OAH Proposed Decision* p. 11. In a Proposed Order dated May 23, 2019, the Maryland Home Improvement Commission (“Commission” or “MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimant \$20,000.00 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On August 1, 2019, a hearing on the exceptions was held before a three-member panel (“Panel”) of the MHIC. The Claimant was represented by William Schroeder, Esq., and the Contractor was represented by Douglas Walker, Esq. Shara Hendler, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following five preliminary exhibits were offered by AAG Hendler and admitted into evidence at the exceptions hearing: 1) OAH Proposed Decision, 2) May 23, 2019 Cover Letter with OAH Proposed Decision and MHIC Proposed Order, 3) Contractor’s Written Exceptions, 4) June 14, 2019 Notice of Exceptions Hearing to be held on August 1, 2019 with attached copy of the Contractor’s Written

10

THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

IN SENATE
January 10, 1954
MEMORANDUM FOR THE SENATE
SUBJECT: [Illegible]

[Illegible]

[Extremely faint and illegible text, likely bleed-through from the reverse side of the page]

Exceptions, and 5) Claimant's Response to the Contractor's Written Exceptions. A transcript of the OAH hearing was also provided by the Contractor.

In his written exceptions, the Contractor challenges the ALJ's application of the regulatory formula used in calculating a claimant's actual loss. The ALJ used the following formula set forth in the Commission's regulations at COMAR 09.08.03.03B(3)(c):

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.

The ALJ applied this formula to only the HVAC and electrical work in the contract, which he found the Claimant proved were completed by licensed individuals and that the Claimant sufficiently showed that the work done by these individuals was within the scope of the original contract. *ALJ Proposed Decision* pp. 8-10. The ALJ took the amount paid by the Claimant to the Contractor for this work, added the subsequent payments made by the Claimant to the HVAC and electrical contractors to complete their work after the Contractor abandoned the job, and then subtracted this sum by the price of the HVAC and electrical work in the original contract. *Id.* The ALJ arrived at an actual loss of \$33,685.31.¹ *Id.* On exceptions, the Contractor argued that the language of the formula calls for the entire original contract price to be used in the calculation, and that the formula cannot be applied to line items in the contract. *Contractor's Written Exceptions* p. 3. The Claimant in response argues that the application of the formula to line items in the contract is permissible under the language of the regulation. *Claimant's Response to Respondent's*

¹ The ALJ reduced this actual loss to an award of \$20,000.00 pursuant to the statutory cap on awards set forth in Annotated Code of Maryland, Business Regulation Article, § 8-405(e)(1).

1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...
11	...	...
12	...	...
13	...	...
14	...	...
15	...	...
16	...	...
17	...	...
18	...	...
19	...	...
20	...	...
21	...	...
22	...	...
23	...	...
24	...	...
25	...	...
26	...	...
27	...	...
28	...	...
29	...	...
30	...	...
31	...	...
32	...	...
33	...	...
34	...	...
35	...	...
36	...	...
37	...	...
38	...	...
39	...	...
40	...	...
41	...	...
42	...	...
43	...	...
44	...	...
45	...	...
46	...	...
47	...	...
48	...	...
49	...	...
50	...	...

Exceptions p. 5.

The formula at COMAR 09.08.03.03B(3)(c) takes into consideration the amount the homeowner left unpaid on the original contract, and effectively reduces the actual loss by that amount. The reasoning behind the formula is that the homeowner agreed to pay the original contract price for his home improvement, and if after paying the costs to correct or complete the original contractor's work he still paid less than the agreed original contract price, he has suffered no loss. The Commission disagrees with the Claimant's contention that application of the formula to either the entire contract or a line item in the contract has no difference. *Claimant's Response to Respondent's Exceptions p. 5.* For the formula to have the desired effect, it must use the price of the entire original contract and not a line item in the contract. Therefore, although the ALJ used the appropriate regulatory formula, the Commission does not agree with the ALJ's application of the formula to line items in the original contract, and will use the entire "original contract price" in its calculation of actual loss.

The ALJ correctly states in his decision that the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. *ALJ Proposed Decision p. 5.* In order to recover from the Guaranty Fund, the Claimant had to prove at the OAH hearing that he suffered an "actual loss that results from the act or omission by a licensed contractor." Annotated Code of Maryland, Business Regulation Article, § 8-405(a). The term "actual loss" is defined in the statute as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Annotated Code of Maryland, Business Regulation Article, § 8-401. Therefore, it is not only the burden of the Claimant to initially prove that the work done by the Contractor was either unworkmanlike, inadequate or incomplete, but in order to prove the amount of actual loss, the Claimant is also required to present evidence of what it would cost to restore, repair, replace or complete this work. If the Claimant is hiring other

Faint, illegible text in the left column, possibly bleed-through from the reverse side of the page.

Faint, illegible text in the middle column, possibly bleed-through from the reverse side of the page.

Faint, illegible text in the right column, possibly bleed-through from the reverse side of the page.

contractors to complete the job, the Commission looks to see whether the work paid for is within the scope of the original contract and does not contain any upgrades that might inflate the alleged cost to complete the job. The ALJ in this case correctly found that, other than the HVAC and electrical work, completed by Conner, Inc. and Complete Systems, the Claimant failed to provide a sufficient description of the work listed in his spreadsheet of payments made after the original Contractor abandoned the job. *ALJ Proposed Decision* p. 8. Although there appears to be no dispute as to whether the Claimant paid the money listed in the spreadsheet, it is disputed as to whether the work paid for was solely within the scope of the original contract. The Claimant held the burden of proving the cost to complete the work set forth in the original contract, and the spreadsheet offered alone, without further documentation describing the scope of the work paid for, does not meet this burden.

The Commission further finds that the \$90,252.00 the Claimant paid to settle the mechanics liens brought by the Contractor's suppliers and subcontractors after he abandoned the job, should be considered part of the amount the Claimant paid to the Contractor when calculating actual loss. The formula adds "the amounts the claimant has paid to *or on behalf of* the contractor under the original contract," to the amount paid to complete the job and then subtracts the original contract price. COMAR 09.08.03.03B(3)(c)(*emphasis added*). The \$90,252.00 the Claimant paid to settle the liens was for work completed by subcontractors under the original contract that should otherwise have been paid for by the Contractor. In effect, the settlement was money the Claimant paid on behalf of the Contractor and therefore can be included in the formula. Therefore the Commission's amended calculation of actual loss now reads as follows:

Faint, illegible text, possibly bleed-through from the reverse side of the page. The text is arranged in approximately 15 horizontal lines across the page.

Amount Paid to or on Behalf of the Contractor	(\$996,826.68 paid to Contractor + \$90,252.00 paid to settle mechanics liens)
Plus	
Amount Paid to Complete the Job of the Contractor	(\$12,331.00 for electrical and \$20,345.00 for HVAC, paid for work done after the abandonment of the job by the Contractor)
Minus	
Original Contract Price	(\$1,398,069.00)
Equals	
Actual Loss	(- 278,314.32)

When the sum of the amount paid to or on behalf of the Contractor and the amount the Claimant proved was paid to complete the job of the Contractor is subtracted by the full original contract price, a negative actual loss is reached. As a result, the Commission amends the ALJ's decision, and orders no award from the Guaranty Fund.

Having considered the parties' arguments, the evidence in the record and the OAH Proposed Decision, it is this **6th** day of **November 2019 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 **AMENDED**; AND
- C. That the Proposed Decision and Order of the Administrative Law Judge is **AMENDED**;
- 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 MATT SNOWLING,</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 ERIC ABELL,</p> <p>T/A COASTAL DESIGN & BUILD</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN PATRICK WEEKS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-18-30021</p> <p>* MHIC No.: 18 (90) 300</p> <p>*</p>
---	--

* * * * *

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 January 5, 2018, Matt Snowling (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$231,908.00 in actual losses allegedly suffered as a result of a home improvement contract with Eric Abell, trading as Coastal Design & Build LLC (Respondent).¹ Md. Code Ann., Bus. Reg.

Maryland Home Improvement
Commission

State's Exhibit # 1

¹ The Claim states that the Respondent was trading as Eric Abell, Inc., and the name on the contract between the Claimant and Respondent is Eric Abell, Inc. The Fund did not explain why the case was transmitted to the Office of Administrative Hearings with Coastal Design & Build LLC as the trade name for the Respondent.

§§ 8-401 through 8-411 (2015).² On September 17, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on February 6, 2019, at the OAH in Kensington, 10400 Connecticut Avenue, Suite 208, Kensington, Maryland. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. William Schroeder, Esquire, represented the Claimant, who was present. Douglas Walker, 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. 2018); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 - Summary of Loss, undated

Clmt. Ex. 2 - Contract, August 19, 2015

Clmt. Ex. 3 - Talbot County Permit, December 4, 2015

Clmt. Ex. 4 - Email from Respondent to Claimant, January 25, 2017

Court filings from Case No. 17-15826-TJC, United States Bankruptcy Court for the District of Maryland, various dates

² Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

1950

1951

1952

1953

1954

1955

1956

1957

1958

1959

1960

INDEX

1961

1962

1963

APPENDIX

1964

1965

1966

1967

1968

1969

1970

1971

1972

1973

1974

1975

1976

1977

1978

1979

1980

1981

1982

1983

1984

1985

1986

1987

1988

1989

1990

1991

1992

1993

1994

1995

1996

Clmt. Ex. 5 - Photos, January 27, 2017 and December 17, 2018

Clmt. Ex. 6 - Spreadsheet of invoices and payments to the Respondent with attached documentation, undated

Clmt. Ex. 6a - List of payments to other contractors and Claimant's bank statements, various dates

Clmt. Ex. 7 - List of liens with supporting documentation, various dates

Clmt. Ex. 8 - License status printout, undated

The Respondent did not offer any exhibits.

I admitted the following exhibits on behalf of the Fund:

GF Ex. 1 - Hearing Order, September 17, 2018

GF Ex. 2 - Notice of Hearing, October 22, 2018

GF Ex. 3 - Home Improvement Claim Form, December 28, 2017

GF Ex. 4 - Respondent's License History, January 25, 2019

Testimony

The Claimant testified on his own behalf.

The Respondent did not testify and did not present the testimony of any other witnesses.

The Fund did not present the testimony of 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 74140.

2. On August 19, 2015, the Claimant and the Respondent entered into a contract to renovate the property located at Church Neck Road, Saint Michaels, Maryland (Contract). The Contract stated that work would begin seven days after issuance of a permit, and would be completed no later than twelve months from the date of commencement.

The first part of the document discusses the importance of maintaining accurate records of all transactions.

This section outlines the various methods used to collect and analyze data from different sources.

The following table provides a summary of the key findings from the study.

Table 1: Summary of Key Findings

The data shows a significant increase in the number of transactions over the period.

This increase is attributed to several factors, including improved data collection methods.

The results indicate that the new system is highly effective in capturing all relevant data.

Overall, the study demonstrates the value of comprehensive data collection and analysis.

The findings suggest that further improvements can be made to enhance the system's performance.

It is recommended that the current system be maintained and updated as needed.

The document concludes with a final summary of the research and its implications.

The authors express their gratitude to the participants and funding agencies for their support.

References are provided for further reading on related topics.

APPENDIX A: DATA COLLECTION METHODS

This appendix details the specific procedures used for data collection and analysis.

The data was collected from various sources, including surveys and interviews.

The analysis was conducted using statistical software to identify trends and patterns.

The results of the analysis are presented in the main body of the report.

The authors acknowledge the limitations of the study and the need for further research.

The document is intended for use by all relevant stakeholders in the organization.

The information provided here is confidential and should be handled accordingly.

Page 1 of 1

The first part of the document discusses the importance of maintaining accurate records of all transactions.

This section outlines the various methods used to collect and analyze data from different sources.

The following table provides a summary of the key findings from the study.

Table 1: Summary of Key Findings

The data shows a significant increase in the number of transactions over the period.

This increase is attributed to several factors, including improved data collection methods.

The results indicate that the new system is highly effective in capturing all relevant data.

Overall, the study demonstrates the value of comprehensive data collection and analysis.

The findings suggest that further improvements can be made to enhance the system's performance.

It is recommended that the current system be maintained and updated as needed.

The document concludes with a final summary of the research and its implications.

The authors express their gratitude to the participants and funding agencies for their support.

References are provided for further reading on related topics.

The data was collected from various sources, including surveys and interviews.

The analysis was conducted using statistical software to identify trends and patterns.

The results of the analysis are presented in the main body of the report.

The authors acknowledge the limitations of the study and the need for further research.

The document is intended for use by all relevant stakeholders in the organization.

The information provided here is confidential and should be handled accordingly.

3. On December 4, 2015, the Talbot County Office of Permits and Inspections issued a Building and/or Zoning Permit, which describes the construction type as a residential addition.

4. The original agreed-upon Contract price was \$1,433,782.00. Subsequently, the Claimant and the Respondent removed pool construction from the scope of the Contract and entered into other change orders, resulting in an adjusted Contract price of \$1,398,069.00.

5. Between August 25, 2015 and January 26, 2017, the Claimant paid the Respondent a total of \$996,826.28.

6. On January 25, 2017, the Respondent informed the Claimant by email that he would be filing for Chapter 7 bankruptcy for Eric W. Abell, Inc. and himself as an individual. He further informed the Claimant that he could not complete the Contract because he would be ceasing operations as of close of business that day.

7. As of January 27, 2017, the Respondent had not installed garage doors, had not installed siding at the Property, had not completed the breezeway, and had not installed cabinets inside the Property. The Respondent also had not installed the heating, ventilation and air conditioning (HVAC) or electrical systems. Construction debris was left at the Property by the Respondent, and the Respondent had not completed exterior landscaping. The Claimant also had to dismantle two bathrooms and repair door frames and stairs. The Respondent had been required to complete all of the above work under the terms of the Contract.

8. On April 27, 2017, the Respondent filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Maryland (Court). On October 16, 2017, the Court issued an Order of Discharge in favor of the Respondent.

9. The Contract called for construction of a geothermal HVAC system at a total cost of \$61,990.00.

On 20

and 21

of

the

month of

19

19

19

19

19

19

19

19

19

19

19

19

19

19

19

19

19

19

19

10. On March 28, 2016, the Claimant paid the Respondent by check in the amount of \$46,564.00 for geothermal wells.

11. Between January 31, 2017 and August 23, 2017, the Claimant paid to Richard Conner, doing business as Conner, Inc., a total of \$66,560.00, for plumbing and HVAC work required under the Contract. Richard Conner has an active master HVAC and master plumber license through the Department.

12. The Contract called for electrical work at a total cost of \$48,667.00.

13. On September 29, 2016, the Claimant paid the Respondent by check in the amount of \$46,181.16 for electrical rough-in.

14. On February 9, 2017, the Claimant paid electrical contractor, Complete Systems, by check in the amount of \$14,252.15 for electrical work required under the Contract. Jeron Holland is the President of Complete Systems, and he has an active master electrician license through the Department.

DISCUSSION

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); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).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); *see also*

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

Second, the Respondent performed unworkmanlike, inadequate or incomplete home improvements. It is undisputed that the Respondent abandoned the Contract prior to filing for Chapter 7 bankruptcy. At the time he abandoned the project, the Respondent had completed some, but not all, work required under the Contract. Therefore, the Respondent performed incomplete home improvements.

The Respondent argued that the work specified in the Contract should not be covered by the Fund because the work was, in essence, construction of a brand new residence, rather than home improvement work.

The Fund statute defines “home improvement” as such:

(g)(1) “Home improvement” means:

(i) the addition to or alteration, conversion, improvement, modernization, 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; or

(ii) an improvement to land adjacent to the building.

(2) “Home improvement” includes:

(i) construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool;

(ii) a shore erosion control project, as defined under § 8-1001 of the Natural Resources Article, for a residential property;

(iii) connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines;

- (iv) installation, in the building or structure, of an awning, fire alarm, or storm window; and
 - (v) work done on individual condominium units.
- (3) "Home improvement" does not include:
- (i) construction of a new home;
 - (ii) work done to comply with a guarantee of completion for a new building project;
 - (iii) connection, installation, or replacement of an appliance to existing exposed plumbing lines that requires alteration of the plumbing lines;
 - (iv) sale of materials, if the seller does not arrange to perform or does not perform directly or indirectly any work in connection with the installation or application of the materials;
 - (v) work done on apartment buildings that contain four or more single-family units; or
 - (vi) work done on the commonly owned areas of condominiums.

Bus. Reg. § 8-101(g) (2018 Supp.).

The uncontroverted testimony from the Claimant is that the Respondent recommended that the project be characterized as a renovation. In order to obtain the requisite zoning for a renovation, work was done to the original structure including dismantling the kitchen. Further, the Respondent does not have a home builder's license. Based on the above facts, I conclude that the exclusion for construction of a new home is not applicable in this case, and that the work performed under the Contract constituted a home improvement as defined in the Fund statute.

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

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. 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.

The first of these is the fact that the defendant has been in possession of the property since the date of the seizure. It is a well established principle of law that possession is a fact, not a right, and it is sufficient to establish a prima facie case of theft if the defendant is shown to have been in possession of the property at the time it was taken. The second of these is the fact that the defendant has been in possession of the property since the date of the seizure. It is a well established principle of law that possession is a fact, not a right, and it is sufficient to establish a prima facie case of theft if the defendant is shown to have been in possession of the property at the time it was taken. The third of these is the fact that the defendant has been in possession of the property since the date of the seizure. It is a well established principle of law that possession is a fact, not a right, and it is sufficient to establish a prima facie case of theft if the defendant is shown to have been in possession of the property at the time it was taken.

The defendant has been in possession of the property since the date of the seizure. It is a well established principle of law that possession is a fact, not a right, and it is sufficient to establish a prima facie case of theft if the defendant is shown to have been in possession of the property at the time it was taken. The defendant has been in possession of the property since the date of the seizure. It is a well established principle of law that possession is a fact, not a right, and it is sufficient to establish a prima facie case of theft if the defendant is shown to have been in possession of the property at the time it was taken. The defendant has been in possession of the property since the date of the seizure. It is a well established principle of law that possession is a fact, not a right, and it is sufficient to establish a prima facie case of theft if the defendant is shown to have been in possession of the property at the time it was taken.

The Respondent performed some work under the contract, and the Claimant retained other contractors to complete or 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).

The Claimant's summary of loss indicates that the total amount paid over the adjusted contract amount was \$231,908.00. However, the list of payments made after the Respondent left the project does not contain a description of the work done. Further, the Claimant failed to show that the payments were made to licensed contractors. With respect to two contractors, the Claimant provided sufficient testimony and documentary evidence for me to conclude that the Claimant paid the contractors to complete the work required by the Contract, and that the contractors were properly licensed. Therefore, based on the formula set forth at COMAR 09.08.03.03B(3)(c) and as explained in further detail below, I conclude that the Claimant has proven that he suffered an actual loss of \$33,685.31 as a result of the Respondent's abandonment of the Contract.

The Contract called for a total of \$61,990.00 to be spent on a geothermal HVAC system. On March 20, 2016, the Claimant paid the Respondent \$46,564.00 for installation of geothermal wells. On January 31, 2017, the Claimant paid Conner, Inc. \$17,000.00 for work that had been completed by Conner, Inc. pursuant to the terms of the Contract. The Respondent had not paid Conner, Inc. for the work in question. Conner, Inc. is the company of Mark Conner, who holds

the first of these is the fact that the...

the second is the fact that the...

the third is the fact that the...

the fourth is the fact that the...

the fifth is the fact that the...

the sixth is the fact that the...

the seventh is the fact that the...

the eighth is the fact that the...

the ninth is the fact that the...

the tenth is the fact that the...

the eleventh is the fact that the...

the twelfth is the fact that the...

the thirteenth is the fact that the...

the fourteenth is the fact that the...

the fifteenth is the fact that the...

the sixteenth is the fact that the...

the seventeenth is the fact that the...

the eighteenth is the fact that the...

the nineteenth is the fact that the...

the twentieth is the fact that the...

the twenty-first is the fact that the...

the twenty-second is the fact that the...

the twenty-third is the fact that the...

the twenty-fourth is the fact that the...

the first of these is the fact that the...

the second is the fact that the...

the third is the fact that the...

the fourth is the fact that the...

the fifth is the fact that the...

the sixth is the fact that the...

the seventh is the fact that the...

the eighth is the fact that the...

the ninth is the fact that the...

the tenth is the fact that the...

the eleventh is the fact that the...

the twelfth is the fact that the...

the thirteenth is the fact that the...

the fourteenth is the fact that the...

the fifteenth is the fact that the...

the sixteenth is the fact that the...

the seventeenth is the fact that the...

the eighteenth is the fact that the...

the nineteenth is the fact that the...

the twentieth is the fact that the...

the twenty-first is the fact that the...

the twenty-second is the fact that the...

the twenty-third is the fact that the...

the twenty-fourth is the fact that the...

an active HVAC license through the Department. The Claimant entered into a new contract directly with Conner, Inc. after the Respondent abandoned the Contract, and subsequently paid Conner, Inc., at a minimum, \$20,345.00 to complete the work from the Contract.

The Respondent argued in closing that the spreadsheet detailing the payments made to Conner, Inc. after the Respondent abandoned the Contract was not sufficiently reliable because it did not specify the exact work that was paid for. However, for Conner, Inc., the spreadsheet does specify what some of the payments in question were for. The \$20,345.00 was a payment made by check on February 14, 2017, and the line item in the Claimant's spreadsheet indicates "HVAC Equipment installed." The Claimant also testified credibly and without equivocation that the work done by Conner, Inc. was solely for work required under the terms of the Contract, and not for any additional work beyond the scope of the Contract. I credit the Claimant's testimony, as he stated that he essentially became the general contractor after the Respondent abandoned the work, and therefore has familiarity with the terms of the Contract and the work done by Conner, Inc. For all these reasons, I conclude that the documentary evidence, bolstered by the Claimant's credible testimony, is sufficiently reliable for me to arrive at a definitive actual loss calculation with respect to the HVAC system.

The other line items showing payments made by the Claimant to Conner, Inc. do not explain what the payments were for. In one instance, the payment is indicated to be for "new plumbing & HVAC contract deposit." This alone does not provide me with sufficient detail to conclude that the payment in question was for work done under the Contract and therefore I will not include this payment in the actual loss calculation.

Based on the foregoing, I conclude that the Claimant spent at least a total of \$83,909.00 on the geothermal HVAC system. Subtracting the original contract price from \$83,909.00 leads

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the specific requirements for record-keeping, including the need to maintain original documents and to keep copies of all supporting documents. It also discusses the importance of ensuring that records are accessible and retrievable.

3. The third part of the document discusses the role of internal controls in ensuring the accuracy and reliability of financial records. It emphasizes that internal controls should be designed to prevent errors and to detect and correct any irregularities that may occur.

4. The fourth part of the document discusses the importance of regular audits in ensuring the accuracy and reliability of financial records. It emphasizes that audits should be conducted by independent auditors and that the results of the audits should be reported to the appropriate authorities.

5. The fifth part of the document discusses the importance of transparency and accountability in the financial system. It emphasizes that all transactions should be recorded and reported in a timely and accurate manner, and that the results of the audits should be made available to the public.

6. The sixth part of the document discusses the importance of maintaining the confidentiality of financial records. It emphasizes that financial records should be protected from unauthorized access and disclosure, and that appropriate security measures should be implemented to ensure the confidentiality of the information.

7. The seventh part of the document discusses the importance of maintaining the integrity of financial records. It emphasizes that financial records should be maintained in a secure and reliable manner, and that appropriate measures should be taken to prevent tampering or destruction of the records.

8. The eighth part of the document discusses the importance of maintaining the accuracy of financial records. It emphasizes that financial records should be maintained in a clear and concise manner, and that appropriate measures should be taken to ensure the accuracy of the information.

9. The ninth part of the document discusses the importance of maintaining the completeness of financial records. It emphasizes that all transactions should be recorded and reported, and that appropriate measures should be taken to ensure the completeness of the information.

10. The tenth part of the document discusses the importance of maintaining the timeliness of financial records. It emphasizes that financial records should be maintained in a timely manner, and that appropriate measures should be taken to ensure the timeliness of the information.

11. The eleventh part of the document discusses the importance of maintaining the consistency of financial records. It emphasizes that financial records should be maintained in a consistent manner, and that appropriate measures should be taken to ensure the consistency of the information.

12. The twelfth part of the document discusses the importance of maintaining the reliability of financial records. It emphasizes that financial records should be maintained in a reliable manner, and that appropriate measures should be taken to ensure the reliability of the information.

13. The thirteenth part of the document discusses the importance of maintaining the accuracy of financial records. It emphasizes that financial records should be maintained in an accurate manner, and that appropriate measures should be taken to ensure the accuracy of the information.

14. The fourteenth part of the document discusses the importance of maintaining the completeness of financial records. It emphasizes that all transactions should be recorded and reported, and that appropriate measures should be taken to ensure the completeness of the information.

15. The fifteenth part of the document discusses the importance of maintaining the timeliness of financial records. It emphasizes that financial records should be maintained in a timely manner, and that appropriate measures should be taken to ensure the timeliness of the information.

16. The sixteenth part of the document discusses the importance of maintaining the consistency of financial records. It emphasizes that financial records should be maintained in a consistent manner, and that appropriate measures should be taken to ensure the consistency of the information.

17. The seventeenth part of the document discusses the importance of maintaining the reliability of financial records. It emphasizes that financial records should be maintained in a reliable manner, and that appropriate measures should be taken to ensure the reliability of the information.

18. The eighteenth part of the document discusses the importance of maintaining the accuracy of financial records. It emphasizes that financial records should be maintained in an accurate manner, and that appropriate measures should be taken to ensure the accuracy of the information.

19. The nineteenth part of the document discusses the importance of maintaining the completeness of financial records. It emphasizes that all transactions should be recorded and reported, and that appropriate measures should be taken to ensure the completeness of the information.

20. The twentieth part of the document discusses the importance of maintaining the timeliness of financial records. It emphasizes that financial records should be maintained in a timely manner, and that appropriate measures should be taken to ensure the timeliness of the information.

21. The twenty-first part of the document discusses the importance of maintaining the consistency of financial records. It emphasizes that financial records should be maintained in a consistent manner, and that appropriate measures should be taken to ensure the consistency of the information.

22. The twenty-second part of the document discusses the importance of maintaining the reliability of financial records. It emphasizes that financial records should be maintained in a reliable manner, and that appropriate measures should be taken to ensure the reliability of the information.

23. The twenty-third part of the document discusses the importance of maintaining the accuracy of financial records. It emphasizes that financial records should be maintained in an accurate manner, and that appropriate measures should be taken to ensure the accuracy of the information.

24. The twenty-fourth part of the document discusses the importance of maintaining the completeness of financial records. It emphasizes that all transactions should be recorded and reported, and that appropriate measures should be taken to ensure the completeness of the information.

25. The twenty-fifth part of the document discusses the importance of maintaining the timeliness of financial records. It emphasizes that financial records should be maintained in a timely manner, and that appropriate measures should be taken to ensure the timeliness of the information.

to a total of \$21,919.00, which constitutes the Claimant's actual loss on the geothermal HVAC system.

The Contract called for a total of \$48,667.00 to be spent for electrical work. On September 29, 2016, the Claimant paid the Respondent by check in the amount of \$46,181.16 for the electrical rough-in. On February 7, 2017, the Claimant paid Complete Systems by check in the amount of \$14,252.15. The President of Complete Systems is Jeron Holland, who has an active master electrician license through the Department. The Claimant submitted into evidence an email exchange between the Claimant and Mr. Holland, in which Mr. Holland indicates that the February 7, 2017 payment is for work required under the Contract, and not any extra work, which he indicated that he would bill separately.

On the spreadsheet showing payments made after the Respondent abandoned the Contract, there is an additional payment in the amount of \$12,331.00 to Complete Systems. However, the spreadsheet does not indicate what this payment was for and there is no invoice in the record. As such, I cannot conclude that the \$12,331.00 check was for work required under the Contract.

Therefore, I conclude that the Claimant paid a total of \$60,433.31 for electrical work required under the Contract. Subtracting the original Contract price of \$48,667.00 from this amount leads to a total of \$11,776.31, which constitutes the Claimant's total loss on the electrical work.

Adding the Claimant's actual loss on the HVAC work to the Claimant's actual loss on the electrical work leads to a total of \$33,685.31 in 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. Bus. Reg. § 8-405(e)(1), (5); COMAR

09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$33,685.31 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$33,685.31 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1) (2015); COMAR 09.08.03.03D(2)(a).

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;⁴ and

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

Signature on File

April 12, 2019
Date Decision Issued

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#179014

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

1870

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...