

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF VICKI AND DAN BALLARD,</b></p> <p><b>CLAIMANTS</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF BRETT</b></p> <p><b>SCHOOLNICK,</b></p> <p><b>T/A THE BAYWOOD DESIGN/BUILD</b></p> <p><b>GROUP INC.</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE MICHAEL R. OSBORN,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-18-17670</b></p> <p><b>* MHIC No.: 18 (05) 396</b></p> <p><b>*</b></p> <p><b>*</b></p>
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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 January 3, 2018, Vicki and Dan Ballard (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$46,827.75 in actual losses allegedly suffered as a result of a home improvement contract with Brett Schoolnick, trading as The Baywood Design/Build Group, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On June 4, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on October 5, 2018 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Nicholas Sokolow, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. Mrs. Ballard represented the Claimants. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, and after being satisfied that the Respondent had received notice of the hearing, I proceeded. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>1</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 Claimants 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 Claimants' behalf:

Clmt. Ex. 1 -	Home Improvement Claim Form, December 10, 2017 (front and back)
Clmt. Ex. 2 -	Bankruptcy e-mail, August 13, 2017
Clmt. Ex. 3 -	Summary of Contract and payments
Clmt. Ex. 4A-F -	Contract and change orders
Clmt. Ex. 5 -	Copies of cancelled checks
Clmt. Ex. 6 -	Contractors' estimates
Clmt. Ex. 7 -	Photographs

The Respondent did not appear and did not submit any exhibits into the record.

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<sup>1</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on July 10, 2018, COMAR 09.08.03.03A(2), and returned as unclaimed on August 28, 2018. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Notice of Hearing, July 10, 2018
- GF Ex. 2 - Hearing Order, May 30, 2018
- GF Ex. 3 - HIC information on the Respondent
- GF Ex. 4 - Letter to the Respondent, January 18, 2018

Testimony

Mrs. Ballard and her husband, Dan, both testified.

The Respondent did not appear and did not testify.

The Fund did not present any witnesses.

**PROPOSED FINDINGS OF FACT**

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 21664.

2. On January 13, 2016, the Claimants and the Respondent entered into a contract to do work in their mudroom, staircase, kitchen, great room, and to do general work (Contract). The Contract stated that work would begin on January 27, 2016 and would be completed by July 1, 2016. Work began on schedule.

3. The original agreed-upon Contract price was \$135,939.00. On January 27, 2016, the parties revised the Contract to eliminate a first-floor closet area, and to add a basement office. These changes resulted in a Contract price of \$139,713.00. On May 4, 2016, the parties again revised the Contract to include new attic stairs and handrail, adding \$15,214.00 to the Contract for a total Contract price of \$152,927.00. On August 2, 2016, the parties again revised the Contract to include attic finish work and installation of skylights, for an additional \$11,001.00, for a total Contract price of \$165,928.00.

4. During the course of work certain costs exceeded the estimates. On June 2, 2016, the parties agreed that the Claimants would be responsible for \$2,270.00, the difference between a \$2,800.00 allowance for plumbing and the actual cost of \$5,070.00. On August 16, 2016, the parties agreed that the Claimants would be responsible for \$1,016.08, the difference between the estimated cost of stairs, \$1,600.00, and the actual cost, \$2,616.08. These additional costs (\$3,286.08) brought the total Contract price to \$169,214.08.

5. On the following dates the Claimants paid the Respondent, as follows:

Date	Reason	Check number	Amount	Total
11/6/2015	Deposit for drawings and blueprints	1376	\$2,500.00	\$2,500.00
1/13/2016	Draw	1403	\$35,000.00	\$37,500.00
1/27/2016	Draw	1406	\$10,000.00	\$47,500.0
1/27/2016	Change order	1407	\$3,774.00	\$51,274.00
2/3/2016	Draw	1408	\$10,000.00	\$61,274.00
2/10/2016	Draw	1412 <sup>2</sup>	\$10,000.00	\$71,274.00
2/22/2016	Draw	1416	\$15,000.00	\$86,274.00
3/10/2016	Addition	1421	\$15,000.0	\$101,274.00
3/17/2016	Draw	1423	\$9,500.00	\$110,774.00
5/7/2016	Change order	1440	\$10,000.0	\$120,774.00
6/8/2016	Plumber increase	1449	\$2,270.00	\$123,044.00
7/14/2016	Change order	1459	\$2,500.00	\$125,544.00
7/21/2018	Draw	1463	\$8,500.00	\$134,044.00

<sup>2</sup> Check 1412 is dated January 11, 2016, but was negotiated on February 11, 2016. Its sequence number from the checks issued by the Claimants to the Respondent also supports a conclusion that the check was simply misdated when it was written. I am convinced this check was dated February 10, 2016 by these factors and the Claimants' other records admitted as evidence.

8/4/2018	Draw	1466	\$5,500.00	\$139,544.00
8/9/2016	Change order	1470	\$2,750.00	\$142,294.00
8/16/2018	Draw	1472	\$6,000.00	\$148,294.00
8/19/2018	Draw	1473	\$6,000.00	\$154,294.00
8/30/2016	Stair increase	1479	\$1,016.08	\$155,310.08
9/1/2016	Draw	1480	\$5,000.00	\$160,310.08
11/2/2016	Draw	1499	\$3,000.00	\$163,310.08

6. The Respondent worked on the Contract throughout the months of January 2016 through November 2016, then sporadically through July, 2017. In 2017, the Claimants contacted the Respondent to inquire about supplies, progress, and to inquire about when work would be completed, without satisfactory responses from the Respondent. Some of the work under the Contract was completed, and some of the work was not. Some work, though completed, was not satisfactory to the Claimants. Each time the Claimants pointed out unsatisfactory work to the Respondent, the Respondent addressed the problem or promised to do so. The parties had not yet arrived at the point where a punch list could be composed for items to be addressed before final payment was due.

7. The Claimants bought some supplies that the Respondent had agreed to supply. The Respondent had not yet credited the Claimants for their deposit for drawings and blueprints against the final Contract price, or made adjustments for supplies purchased by the Claimants. The parties had not yet arrived at the point where a comprehensive list of credits and adjustments could be composed.

8. On August 13, 2017, the Respondent sent an email to the Complainants in which he stated that The Baywood Design/Build Group would be filing for bankruptcy and would no

longer be operating as a business as of August 14, 2017. The email instructed the Claimants to address all further matters through Baywood's attorney.

9. The Respondent did no further work on the Contract.

10. At the time the Respondent filed for bankruptcy protection the following work was incomplete:

Mud room: Install waterproof molding around washing machine  
Install coat hooks  
Install drain in floor of laundry room  
Install permanent step from garage into the house  
Install vent lines to ceiling vent

Staircase: Finish stairwell display case  
Finish bottom step  
Install molding

Kitchen: Secure posts under island  
Install air vent cover over open vent  
Fill and finish nail holes

Great room: Install granite over fireplace  
Install moldings and lighting  
Install Ethernet cable over fireplace  
Install lighting

Front door: Install front door, sidelights and transom, including resizing the frame

General: Install exterior deck concrete footers and support pillars  
Reconfigure electrical lines to accommodate new front door

Basement office: Entire project

Attic room: Entire project, except stairs to attic (which required completion)

11. The cost to complete the modifications to the Claimants' home is as follows:

Basement office: \$8,850.00 (supply and install drop ceiling, supply and install desk, cabinets and shelves, supply and install base and ceiling trims, relocate electrical and lights, paint)

Prepare for new front door: \$10,250.00 (remove siding, remove existing door, reframe for larger door, relocate electrical, install new door,

reinstall exterior trim, repair drywall, prepare and finish same)<sup>3</sup>

New front door:	\$16,981.75	(supply and install new door with sidelights, install trims and casings) (See footnote below)
Attic room:	\$19,750.00	(supply and install skylights, electrical, framing, insulation, exterior and interior doors, closet, drywall, ceiling fan, and trim and finish room)
General completion:	<u>\$6,950.00</u>	Miscellaneous unfinished details
	\$45,800.00	(this total excludes the higher front door proposal)

### DISCUSSION

In this case, the Claimants have 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). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.”

*Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015)<sup>4</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.”

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<sup>3</sup> Claimant’s Exhibit 6-2 is a proposal from Shackelford Builders. Section 1.3 of that proposal, “Front Door” includes a front door total of \$10,250.00, which includes installation of a new door with transom to include reframing to accommodate a larger door, installation of the door, installation of all necessary flashing and hardware, and installation of exterior trim. The Shackelford proposal includes that Shackelford will supply a door that costs up to \$3,000.00 as part of the proposal. Claimant’s Exhibit 6-1 is a proposal in the amount of \$16,981.75 from K.D. Company to install a new front door. This proposal includes removal of the existing door, preparation of the opening to accept the new door, installation of the door, and installation of interior trim. The proposal is for the entire job, and does not specify the unit price of the door. The Respondent agreed, in the Contract, to install a new front door for \$4,071.00. From these three sources I conclude the Shackelford proposal is the best estimate of the cost of the new front door.

<sup>4</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants.

The Respondent's performance was incomplete in almost every area. The mud room was almost done, but for a drain and some trim work. The kitchen was nearly complete but for some vent covers, electrical work and finish details. The attic was just getting started, and no work was done in the basement office. The front door replacement had not been started. The parties were proceeding to completion but had not arrived at the point they could work out a punch list or reconcile their accounts of who owed whom, and in what amount. Then the Respondent went bankrupt, and never returned to the Claimants' home.

I thus find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover. The Claimants had some complaints about a damaged washing machine knob and two torn window screens. However, the Fund may not compensate a claimant for consequential or 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. One of those formulas applies here.

In this case, the Respondent performed some work under the contract, and the Claimants intend to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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).

Amount paid to Respondent:	\$163,310.08
Cost to complete:	\$ <u>45,800.00</u>
	\$209,110.08

Less Original Contract price:	<u>\$169,214.08</u>
Actual loss:	\$ 39,896.00

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 Claimants' actual loss is less than the amount paid to the Respondent and more than \$20,000.00. Therefore, the Claimants are entitled recover the statutory cap of \$20,000.00.

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

I conclude that the Claimants have sustained an actual loss of \$39,896.00 and a compensable loss \$20,000.00 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 Claimants are entitled to recover \$20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405 (2015); COMAR 09.08.03.03B(4), D(2)(a).

#### **RECOMMENDED ORDER**

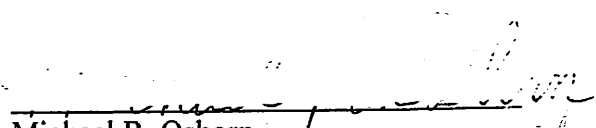
I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$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<sup>5</sup>; and

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

December 20, 2018  
Date Decision Issued

  
\_\_\_\_\_  
Michael R. Osborn  
Administrative Law Judge

MRO/kp  
#176438

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 22<sup>nd</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**