

IN THE MATTER OF THE CLAIM  
OF DAVID SHARLIP AND EILEEN  
McAFEE,<sup>1</sup>

CLAIMANTS

AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF BRETT SCHOOLNICK,  
T/A THE BAYWOOD DESIGN/BUILD  
GROUP, INC.,

RESPONDENT

\* BEFORE EMILY DANEKER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: DLR-HIC-02-18-31031  
\* MHIC No.: 18 (75) 948  
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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 March 12, 2018, the Maryland Home Improvement Commission (MHIC) received the Claimants' claim seeking reimbursement from the Maryland Home Improvement Guaranty Fund (Fund) for \$10,607.66 in actual losses allegedly sustained as a result of the acts or omissions of Brett Schoolnick, trading as The Baywood Design/Build Group, Inc. (Respondent). Md. Code

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<sup>1</sup> This claim was originally filed in Mr. Sharlip's name only. At the hearing, I granted his request to amend the claim to include Ms. McAfee, who is his wife and who, like Mr. Sharlip, is a party to the contract at issue and an owner of the residence at issue, as a claimant. Code of Maryland Regulations 09.08.03.02C(2). Mr. Sharlip and Ms. McAfee will hereinafter be referred to in the collective as "Claimants."

Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>2</sup> On or about October 1, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held the hearing on January 15, 2019 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). The Claimants represented themselves. Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. Neither the Respondent, nor anyone authorized to represent him, appeared for the hearing. I waited fifteen minutes past the scheduled hearing time and then proceeded with the hearing in the Respondent's absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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

The Claimants offered the following exhibits, which I admitted into evidence:

Clmt. Ex. 1 - Contract Agreement, dated October 21, 2016

Clmt. Ex. 2 - Photographs marked 2A-H

Clmt. Ex. 3 - Canceled check, dated October 21, 2016

Clmt. Ex. 4 - Canceled check, dated March 18, 2017

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<sup>2</sup> Unless otherwise indicated, all citations to the Business Regulation article of the Annotated Code of Maryland are to the 2015 Replacement Volume.

- Clmt. Ex. 5 - Canceled check, dated March 20, 2017
- Clmt. Ex. 6 - Canceled check, dated March 29, 2017
- Clmt. Ex. 7 - Canceled check, dated April 3, 2017
- Clmt. Ex. 8 - Canceled check, dated April 3, 2017
- Clmt. Ex. 9 - Canceled check, dated May 9, 2017
- Clmt. Ex. 10- Canceled check, dated June 5, 2017
- Clmt. Ex. 11 - Canceled check, dated June 8, 2017
- Clmt. Ex. 12- Email from Respondent to Claimants, dated August 13, 2017
- Clmt. Ex. 13- Invoice from Tri-Star Electric, dated May 12, 2017
- Clmt. Ex. 14- Invoice from Ehrhardt Brothers Quality Plumbing, Inc., dated January 5, 2018
- Clmt. Ex. 15- Invoice from Tri-Star Electric, dated October 9, 2017
- Clmt. Ex. 16- Invoice from Country View Builders, Inc., dated January 2, 2018
- Clmt. Ex. 17- Invoice from Country View Builders, Inc., dated December 19, 2017
- Clmt. Ex. 18- Estimate from Robert H. Peabody, dated August 21, 2017
- Clmt. Ex. 19- Proposal from Pailer Custom Painting, dated September 4, 2017

The Respondent was not present to offer any exhibits.

The Fund offered the following exhibits, which I admitted into evidence:

- Fund Ex. 1 - Notice of Hearing, dated November 19, 2018
- Fund Ex. 2 - Letter from Barton J. Sidle, Esquire, to David R. Finneran, Executive Director of the MHIC, dated March 19, 2018
- Fund Ex. 3 - Hearing Order, dated September 25, 2018
- Fund Ex. 4 - Licensing History summary, provided under seal by Mr. Finneran, dated January 4, 2019
- Fund Ex. 5 - Home Improvement Claim Form, received March 12, 2018
- Fund Ex. 6 - Letter from the MHIC to the Claimants, dated September 25, 2018

Fund Ex. 7 - Notice of Chapter 7 Bankruptcy Case—No Proof of Claim Deadline, case filed September 19, 2017

Testimony

Both of the Claimants testified in their case. No other witnesses were called to testify at the hearing.

**PROPOSED FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 01-21664.
2. On October 21, 2016, the Claimants and the Respondent entered into a contract to renovate the Claimants' master bathroom (Contract) at their residence located in Columbia, Maryland. The Contract stated that work would begin on or about January 15, 2017 and estimated that the work would be completed by March 30, 2017.
3. The Contract work included, as relevant here: obtaining permits, demolition, framing, electrical and plumbing work, painting the bathroom and adjoining bedroom, installing cabinets and countertops supplied by the Claimants, installing base trim, tiling, installing drywall and a new "hollow core" door, installing "shower glazing" and mirrors, and installing plumbing fixtures. Architectural plans dated October 21, 2016 were an integral part of the Contract work.
4. The Contract included approximated allowances of \$1,350 for tiles, \$2,000 for tiling labor, \$2,800 for shower glass/door and for mirrors, \$1,600 for plumbing fixtures, and \$2,800 for "plumbing (labor & material)."
5. The Contract price was \$33,345.00, to be paid in installments as follows:
  - \$11,000.00 as an initial deposit
  - \$5,000.00 at the start of demolition
  - \$5,000.00 at the start of framing
  - \$4,000.00 at the start of mechanicals

- \$2,400.00 at the start of sheetrocking
- \$2,000.00 at the start of cabinet installation
- \$2,000.00 at the start of the interior trim work
- \$1,000.00 upon final notice from the county
- \$945.00 at completion of the punch list

6. The Claimants paid the Respondent a total of \$31,927.72, including \$1,335.00 for change orders, as follows:

- \$11,000.00 on October 21, 2016, as an initial deposit
- \$5,000.00 on March 18, 2017, at the start of demolition
- \$5,000.00 on March 20, 2017, at the start of framing
- \$4,000.00 on March 29, 2017, at the start of mechanicals
- \$405.00 on April 3, 2017, for a change order
- \$930.00 on April 3, 2017, for a change order
- \$2,400.00 on May 9, 2017, at the start of sheetrocking
- \$1,192.72 on June 5, 2017, at the start of cabinet installation
- \$2,000.00 on June 8, 2017, at the start of the interior trim work

7. The Respondent subcontracted the electrical work called for in the Contract to Tri-Star Electric (Tri-Star) and subcontracted the plumbing work called for in the Contract to Ehrhardt Brothers Quality Plumbing, Inc. (Ehrhardt Brothers).

8. The Contract work proceeded very slowly. After August 10, 2017, the Respondent did not perform any work at the Claimants' residence. At that time, the following work remained:

- electrical outlets and switches were not fully installed, outlet covers and plates were missing, lights had not been installed over the sink area or shower stall;
- shower tiling work was incomplete, the tiling work performed included cracked and irregularly cut tiles;
- floor tiling work was incomplete;
- the shower basin/floor had not been installed over the shower membrane;
- the shower glass and door had not been installed;
- the toilet was not installed;
- mirrors/medicine cabinets were not installed;
- sink fixtures were not installed;
- painting work had not been performed;
- trim and molding had not been installed.

9. On August 13, 2017, the Respondent notified the Claimants, by email, that it would cease business as of August 14, 2017. On September 19, 2017, the Respondent filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, 11 U.S.C. sections 701 *et seq.*

10. On August 28, 2017, the Claimants paid Tri-Star \$1,650.00 for Contract electrical work that Tri-Star performed prior to August 10, 2017, but for which it was not paid. The permit for the electrical work at the residence was issued in Tri-Star's name. After the Respondent's bankruptcy, Tristar refused to complete the electrical work at the residence unless the Claimants made payment for the outstanding amount due.

11. On or about September 18, 2017, the Claimants paid Robert H. Peabody (Peabody), an MHIC licensed contractor, \$1,462.50 to complete the floor tiling and grout work. Peabody was ultimately unable to perform the shower work originally contemplated and the Claimants opted to have another contractor, Country View Builders, Inc. (Country View) complete the remainder of the outstanding work in the bathroom itself, exclusive of plumbing and electrical work.

12. On or about October 9, 2017, Tri-Star completed the electrical work called for in the Contract. On October 20, 2017, the Claimants paid Tri-Star an additional \$700.00 for that work.

13. The Claimants paid Country View, also an MHIC licensed contractor, a total of \$7,110.16 as follows:

- \$3,450.00 for purchase and installation of shower glass (which includes a \$200.00 upgrade in the shower door)
- \$100.00 to install millwork and trim on the bathroom cabinetry
- \$230.00 to install and paint baseboard molding
- \$125.00 install and caulk crown molding
- \$85.00 to mount two medicine cabinets supplied by client
- \$175.00 to finish wall from creation of new doorway
- \$165.00 for purchase and installation of marble top wall cap
- \$2,310.00 for demolition of lower 12 inches of shower base, installation of new shower pan, membrane and drain kit, tiling on lower 12 inches of shower

wall, removal and replacement of 5 existing tiles, grouting of entire shower wall and floor

- \$350.00 for painting in bathroom
- \$75.00 to purchase and install vent cover
- \$45.16 for tile material and plan review

14. On or about January 2, 2018, the Claimants paid Pailer Custom Painting (Pailer) \$500.00 to paint the walls, ceiling, and trim in the adjoining bedroom. Pailer is an MHIC licensed contractor. (Clmt. Ex. 19.)

15. On or about January 5, 2018, Ehrhardt Brothers completed the plumbing work called for in the Contract. On January 22, 2018, the Claimants paid Ehrhardt Brothers \$1,130.00 for the plumbing work called for in the Contract.

16. The Claimants are not related to the Respondent and are not business affiliates of the Respondent.

17. The Claimants filed a claim in the Respondent's bankruptcy, but have not filed any other claims related to the Respondent's work.

18. The Contract included a binding arbitration provision that required any claim filed against the Fund be stayed until the completion of the mandatory arbitration and provided that the arbitration must be held within thirty days. (Clmt. Ex. 1 at 6, ¶ 24.)

19. The Claimants filed their claim on March 12, 2018 and the MHIC forwarded the claim to the Respondent sometime prior to March 19, 2018.

20. On March 19, 2018, the Respondent, through counsel, admitted he had not completed the Contract work, and advised that the business was in bankruptcy and no longer conducting operations. At no time did the Respondent attempt to enforce the arbitration provision in the Contract.

## DISCUSSION

### **I. Notice to the Respondent**

The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice of the proceeding shall be sent by certified mail to “the business address of the licensee on record with the Commission.” Md. Code Ann., Bus. Reg. § 8-312(d). These same notice procedures apply to proceedings involving claims against the Fund. Md. Code Ann., Bus. Reg. § 8-407(a). The purpose of the notice requirement is to provide a measure of due process.

The MHIC’s business address of record for the Respondent is P.O. Box 1011, Columbia, Maryland 21044-0020; Barton J. Sidle, Esquire, counsel for the Respondent, provided this address to the MHIC on March 19, 2018. (Fund Ex. 2.) On November 19, 2018, the OAH sent the Respondent a Notice of Hearing (Notice), advising that the hearing was scheduled for 9:30 a.m. on January 15, 2019, at the OAH in Hunt Valley, Maryland. The Notice was sent to the Respondent at his address of record by both first-class mail and certified mail. The certified mailing was returned to the OAH marked, “Return to Sender, Not Deliverable as Addressed, Unable to Forward”; the first-class mailing was not returned to the OAH.

The Respondent is obligated to keep the MHIC apprised of his current address. *See* Md. Code Ann., Bus. Reg. § 8-309 (requiring a licensee to notify the MHIC of a change of address within ten days). Notice of the hearing was sent to the Respondent at the MHIC’s last known address for the Respondent by first-class and certified mailing; only the certified mailing was returned for non-delivery. The method of notice to the Respondent was reasonably calculated to provide him with notice of the hearing and I concluded that the Respondent received proper notice of the hearing. Md. Code Ann., State Gov’t § 10-209 (2014); *Board of Nursing v. Sesay*, 224 Md. App. 432 (2015). Therefore, the hearing proceeded in the Respondent’s absence. Md. Code Ann., Bus. Reg. §§ 8-312(d), (h), 8-407.



## **II. There are No Preliminary Bars to the Claimants' Claim**

The statute establishing the Fund, its implementing regulations, and MHIC policy provide that certain claimants are excluded from recovering from the Fund, regardless of the merits of their claim. The Fund may not pay a claim if: (a) the claimant owns more than three residences and does not reside in the home at issue; (b) the claimant is an employee, officer or partner of the contractor or is related to the contractor or the contractor's employees, officers or partners; (c) the work at issue involved new home construction; (d) the claimant unreasonably rejected the contractor's good faith effort to resolve the claim; (e) the remedial work was done by unlicensed contractors; (f) the claimant did not make good faith efforts to comply with an enforceable binding arbitration clause; (g) there is a pending claim for the same loss in any court of competent jurisdiction; or (h) the claimant failed to file the claim with the MHIC within three years of the date the claimant knew of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), (g), 8-408(b)(1), (2); COMAR 09.08.03.02E, G.

### **The Claimants are not in a Precluded Category of Individuals & Timely Filed the Claim**

The evidence establishes that the work was to be performed on the Claimants' primary residence, an existing dwelling in Columbia, Maryland. The Claimants are not relatives, employees, officers, or partners of the Respondent; the Claimants are not related to any of the Respondent's employees, officers, or partners. The Claimants did not reject any efforts by the Respondent to resolve the claim, as the Respondent ceased all operations and made no such efforts. The Claimants used licensed contractors to complete the Contract work. The Claimants timely filed their claim with the MHIC on March 12, 2018. Thus, the Claimants are not within any of the categories that would preclude their recovery from the Fund. Md. Code Ann., Bus. Reg. §§ 8-405(d), (f), (g); COMAR 09.08.03.02G.

**The Claimants are not Barred by the Contract's Arbitration Provision**

The Contract contains a binding arbitration provision that complies with the applicable regulation governing arbitration clauses in home improvement contracts, and it is initialed by the Claimants. COMAR 09.08.01.25A; (Clmt. Ex. 1 at 6-7, ¶ 24). The MHIC notified the Respondent of the Claimants' claim some time prior to March 19, 2018. The Respondent, despite being represented by counsel, never sought to enforce the arbitration provision or stay this proceeding. In this regard, it is notable that the letter from Respondent's counsel makes clear that counsel had a copy of the Contract, which contains the arbitration provision. (Fund Ex. 2; *see also* Clmt. Ex. 1.) The Respondent, despite notice, did not attend the hearing to contest the claim. To the contrary, on learning of the claim, the Respondent, through counsel, acknowledged that the Contract work was incomplete. (Fund Ex. 2.) Additionally, I note that the Respondent is in bankruptcy and the arbitration provision imposes financial obligations on both parties for any arbitration. (Clmt. Ex. 1 at 6-7, ¶ 24.) Under these circumstances, I consider the Respondent to have knowingly waived the right to arbitration; thus, the arbitration clause is not a bar to the claim. COMAR 09.08.03.02E; *see also* Md. Code Ann., Bus. Reg § 8-405(c).

**The Claimants are not Barred by their Bankruptcy Claim**

The Claimants filed a claim in the Respondent's bankruptcy proceeding seeking to recover from the Respondent's bankruptcy estate. Generally, the MHIC is to stay a claim for recovery from the Fund if the claimant is concurrently pursuing a claim, arising from the same underlying facts, in another proceeding. Md. Code. Ann., Bus. Reg. § 8-408(b)(2). The MHIC did not stay this proceeding. At the hearing, the Fund explained its position was that the Claimants' bankruptcy claim did not impact their claim for recovery from the Fund because the Claimants were aware that they would need to reimburse the Fund in the event they received any payment in the bankruptcy proceeding. The Claimants acknowledged as much at the hearing and

additionally noted that there were many creditors in the bankruptcy proceeding and it was unlikely they (the Claimants) would receive any distribution from the bankruptcy estate.

As a general matter, the prospect of the underlying facts being determined in a decision on the merits in another proceeding would warrant the MHIC staying the claim against the Fund until that other proceeding concludes, with the merits determination in that proceeding dictating whether the Fund pays the claim. *See* Md. Code Ann., Bus. Reg. § 8-408(b). However, here, the Respondent has acknowledged that the Contract work was incomplete. (Fund Ex. 2.) Further, it is not clear that the bankruptcy proceeding would result in a contested adjudication of the merits of the claim. *See* 11 U.S.C. § 502(a) (2016). Finally, it is noteworthy that the applicable law provides for the Fund's ability to maintain a claim for reimbursement against a contractor, such as the Respondent, who has filed for bankruptcy, *see* Md. Code Ann., Bus. Reg. § 8-410(e). In light of the Fund's position and the circumstances at hand, I do not consider the filing of the claim in the bankruptcy proceeding to impact the claim against the Fund.

Having determined there are no preliminary bars to the Claimants' recovery, I consider the merits of their claim.

### **III. The Merits of the Claim**

#### **Relevant Law**

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "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* COMAR 09.08.03.03B(2). The statutes and regulations governing the Fund define "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an

unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401.

At a hearing on a claim, a claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3). The claimant’s burden is by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217; *Schaffer v. Weast*, 546 U.S. 49, 56 (2005). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so[,]” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). For the reasons explained below, I find that the Claimants have proven eligibility for compensation from the Fund.

**The Claimants Sustained an Actual Loss from an Incomplete and Unworkmanlike Home Improvement**

The evidence established that the Respondent contracted to demolish and remodel the master bathroom at the Claimants’ residence. The Contract is in evidence and it sets forth the nature of the work to be performed; while the architectural plans referenced in the Contract were not provided, the Contract’s description of the scope of work demonstrates that the Contract was for a complete overhaul of the bathroom. The Contract specifies that the work includes permitting; demolition; framing and drywall; electrical work; plumbing; painting, in both the bathroom and adjoining room; installing cabinets, countertops, plumbing fixtures, lighting, shower glass and doors; tiling; and trim work. (Clmt. Ex. 1 at 1-2.) Claimant Sharlip testified concerning the work to be performed under the Contract; his testimony was consistent with the Contract terms.

The evidence was undisputed that the Respondent did not complete the Contract work. Claimant Sharlip offered detailed testimony concerning the state of the project when the Respondent stopped work in mid-August 2017. He supported his testimony work with multiple photographs, which are in evidence, documenting the status of the project in mid-August, after

the Respondent ceased work at the residence. (Clmt. Ex. 2, A-H.) The photographs show that the shower was only partially tiled and the shower glass was not installed; plumbing fixtures (the toilet and faucets) were not installed; the flooring was not complete; the bathroom door was not hung; electrical wires protruded from the walls, and outlets and switches were without covers; lighting, a vent fan, cabinets and molding were not installed; and no painting had been done.

(*Id.*) Significantly, on learning of the Claimants' claim, the Respondent, through counsel, admitted that the work was incomplete, stating: "Baywood admits that it has not completed the work outlined in [the claim]." (Fund Ex. 2.)

The Claimants also submitted invoices from the contractors who ultimately completed the project after the Respondent stopped work. (Clmt. Exs. 16-19.) When those invoices are compared to the Contract, it is apparent that the work performed by those contractors was the same work that the Respondent was supposed to perform under the Contract.

The testimony from Claimant Sharlip and the documents from the replacement contractors also establish that aspects of the Respondent's work was inadequate and unworkmanlike. For instance, Country View's work included demolition of the lower 12 inches of the shower walls and the shower pan. (Clmt. Ex. 16 at 3.) Country View noted that this work was necessary due to improper installation of the shower base, which sloped toward the wall areas and not toward the drain and because the shower drain was not compatible with the shower pan system membrane. (*Id.*) In addition to that work, Country View removed and replaced 5 tiles. (*Id.*) Claimant Sharlip explained that those tiles needed to be replaced as they were cracked and irregularly cut.

I find that the Respondent performed an incomplete and unworkmanlike home improvement at the Claimants' residence. The Claimants are eligible to recover the amount of their actual loss from the Fund.

## The Amount of the Claimants' Actual Loss

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. In this case, as the Respondent performed some of the Contract work and the Claimants had the work completed by other contractors, the appropriate formula for measuring the Claimants' actual loss is found in COMAR

09.08.03.03B(3)(c):

[T]he . . . 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.

In applying this formula, I also consider that 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). Further, a claimant's recovery is capped at \$20,000.00 for the acts or omissions of one contractor and 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).

The original price for the Contract work was \$33,345.00, plus \$1,335.00 in change orders, making the total Contract price \$34,680.00. The Claimants paid the Respondent a total of \$31,927.72 before the Respondent abandoned the project.<sup>3</sup> In order to obtain completion of the Contract work, and remedy deficiencies, the Claimants paid Tri-Star a total of \$2,350.00, they paid \$1,130.00 to Ehrhardt Brothers, they paid \$1,462.50 to Peabody, they paid \$7,110.16 to Country View, and they paid \$500.00 to Pailer. The amount paid to Country View must be

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<sup>3</sup> In the claim, the Claimants report making a total of \$32,735.00 in payments to the Respondent, but there was no evidence at the hearing to support any payments being made to the Respondent beyond the \$31,927.72 documented by canceled checks. (See Clmt. Exs. 3-11.)

reduced by \$200.00 to account for an upgrade in the shower door,<sup>4</sup> bringing the amount paid to Country View to complete the Contract work to \$6,910.16. The evidence did not show any other upcharges from the Contract. The total amount paid by the Claimants to other contractors to complete the Contract in a workmanlike manner was \$12,352.66.

Although a portion of the \$12,352.66 in payments made by the Claimants went to Tri-Star and Ehrhardt Brothers for work that they performed before the Respondent abandoned the Contract, and that work was to have been covered by the payment the Claimants had already made to the Respondent (\$4,000.00 at the start of mechanicals), the evidence was that the Respondent, now in bankruptcy, failed to pay Tri-Star and Ehrhardt Brothers for their work at the residence. The Claimants explained that Tri-Star and Ehrhardt Brothers refused to perform any further work unless they were paid for the Contract work already performed and that Tri-Star further threatened the possibility of filing a mechanic's lien against the property if it were not paid. The Claimants explained that they were having a difficult time finding anyone willing to take on a project with work partially performed by another contractor. Further, Tri-Star and Ehrhardt Brothers had obtained the permits for their respective work on the project under their licenses, and the Claimants understood that if they used a different electrical or plumbing contractor they would need to pay to have the new contractor pull permits again. In these circumstances, I am convinced that the Claimants' payments to Tri-Star and Ehrhardt Brothers were necessary in order to obtain completion of the Contract work.

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<sup>4</sup> At the hearing, the Fund attempted to elicit testimony from the Claimants to establish the price difference resulting from the Claimants' request for changes in the shower glass/door, as compared to the original Contract. The Claimants were unable to provide reliable testimony in response to the Fund's questions. The invoice from Country View supplies that evidence, however: it expressly reflects that the change order for the shower glass/door resulted in a \$200.00 total increase in the price for furnishing and installing it. (Clmt. Ex. 17.) As the Contract provides a combined materials allowance for the shower glass/door and the bathroom mirrors and does not provide a cost for the labor to install the door, I accepted the upgrade amount identified by Country View.

Thus, applying the calculation in COMAR 09.08.03.03B(3)(c), the Claimants' actual loss is as follows:

	\$31,927.72	paid to the Respondent
+	<u>\$12,352.66</u>	paid to complete & repair the Respondent's work
	\$44,280.38	
-	<u>\$34,680.00</u>	original Contract price (including change orders with Respondent)
	\$9,600.38	actual loss

In this case, the Claimants' actual loss is less than the amount paid to the Respondent and less than the \$20,000.00 cap on recovery from the Fund. Therefore, the Claimants are entitled to recover their actual loss of \$9,600.38. The Fund advised the Claimants at the hearing that there are other claims against the Respondent and if those claims exceed \$100,000, it will pay all the claims on a *pro rata* basis. See Md. Code Ann., Bus. Reg. § 8-405(e)(2); COMAR 09.08.03.03D(2)(b).

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

I conclude that the Claimants have sustained an actual and compensable loss of \$9,600.38 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 that amount from the Fund.

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$9,600.38, or an amount as otherwise limited by application of section 8-405(e)(2) of the Business Regulation article; and

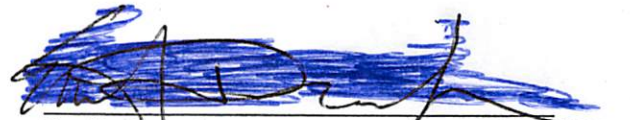
**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed



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.

March 21, 2019  
Date Decision Issued

  
Emily Daneker  
Administrative Law Judge

ED/cj  
#178537

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

**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of May, 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.***

***Michael Shilling***

***Michael Shilling  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**