

<p><b>IN THE MATTER OF THE CLAIM OF MARK SPIER AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF KARIM HARRIED AND KDRB CONSTRUCTION, LLC</b></p>	<p><b>* MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 19(75)1517 * OAH CASE NO. LABOR-HIC- * 02-21-16439 * * * * * *</b></p>
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**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on September 23, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on December 1, 2021, concluding that the homeowner, Mark Spier (“Claimant”) failed to prove he suffered an actual loss as a result of the acts or omissions of Karim Harried and KDRB Construction, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated March 9, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On July 7, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. The Contractor did not participate. Assistant Attorney General John Hart appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH

hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the renovation of a home owned by the Claimant's wife and sister-in-law. Rather than paying the Contractor directly, the Claimant paid the lender through which the Contractor financed the improvements. The ALJ denied the claim because she found that the Claimant failed to prove that the Contractor's performance under the contract was unworkmanlike, incomplete, or inadequate, and because the Claimant did not directly pay any money to the Contractor. *ALJ's Proposed Decision* pp. 8-9.

On exception, the Claimant argued that the ALJ's conclusion that he did not suffer an actual and compensable loss was the result of two legal errors.

First, the Claimant argued that the ALJ's finding that he did not prove that the Contractor performed an unworkmanlike home improvement. Specifically, the Claimant argued that he demonstrated that the contractor committed fraud, which he argued rendered the performance of the improvements unworkmanlike. The Commission disagrees. First, the Commission finds that the Claimant failed to prove that the Contractor committed fraud under Maryland law. Second, even assuming that the Claimant proved fraud, the commission of fraud by a contractor does not render a home improvement unworkmanlike. Unworkmanlike means not done in a manner expected of a person with the knowledge training and experience for the successful practice of a trade. The commission of fraud by a contractor has no bearing on whether a home improvement is unworkmanlike.

Next, the Claimant argued that the ALJ erred in denying his claim because no amount was paid directly to the Contractor for the home improvement. The Commission agrees with the Claimant. The Home Improvement Law does not require that a claimant directly pay for a home improvement to be eligible for a Guaranty Fund award. Section 8-405 of the Business Regulation

Article of the Maryland Code prohibits the payment of an award “in excess of the amount paid by *or on behalf of* the claimant to the contractor against whom the claim is filed.” (Emphasis added.) The Commission finds that the lender paid the Contractor on behalf of the Claimant, who otherwise would have been liable to pay the Contractor for the improvements. Nonetheless, the Claimant remains ineligible for a Guaranty Fund award because, as discussed above, he did not prove that the Contractor performed an unworkmanlike, incomplete, or inadequate home improvement.

Finally, the Claimant implicitly argued that he was denied due process, asserting that the ALJ was biased against him because the ALJ described his loss as “alleged.” The Commission disagrees. The purpose of this proceeding is to determine whether the Claimant suffered an actual loss as that term is defined in the Home Improvement Law. The ALJ correctly found that the Claimant did not suffer an actual loss and correctly made no findings as to whether the Claimant suffered a monetary loss for purposes of any other cause of action the Claimant might have. Therefore, the ALJ’s description of the Claimant’s losses as alleged does not demonstrate bias.

Having considered the parties’ arguments, the evidence contained in the record, and the ALJ’s Recommended Decision, it is this 19<sup>th</sup> day of July 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant’s claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

***Michael Shilling***  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

**IN THE MATTER OF THE CLAIM  
OF MARK SPIER,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF KARIM HARRIED,  
T/A KDRB CONSTRUCTION, LLC,  
RESPONDENT**

**\* BEFORE TRACEE N. HACKETT,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
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\* OAH No.: LABOR-HIC-02-21-16439  
\* MHIC No.: 19 (75) 1517**

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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 October 15, 2019, Mark Spier (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$15,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Karim Harried, trading as KDRB Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup>

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On July 19, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.<sup>2</sup>

I held a hearing on September 23, 2021 at OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent did not appear for the hearing.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On August 5, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first-class mail and by certified-mail return receipt requested to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for September 23, 2021, at 9:30 a.m., at OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the first-class mail Notice to the OAH. The Notice sent via certified-mail return receipt requested was unclaimed by the Respondent. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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.

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<sup>2</sup> The September 3, 2021 hearing was postponed and rescheduled at the request of the Claimant.

Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Come Home Baltimore – Full Renovation Contract, dated December 15, 2013<sup>3</sup>
- Clmt. Ex. 2 - Settlement Statement (HUD<sup>4</sup>-1), dated April 7, 2017
- Clmt. Ex. 3 - Indemnity Deed of Trust, Assignment of Rents and Security Agreement, dated December 28, 2013<sup>5</sup>

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, dated August 5, 2021 and Hearing Order, dated July 9, 2021
- Fund Ex. 2 - Maryland Department of Labor, I.D. Registration, Home Improvement Commission Inquiry, dated August 24, 2021
- Fund Ex. 3 - Letter from Joseph Tunney, Chairman, Home Improvement Commission to Respondent, dated October 22, 2019, with copy of Home Improvement Claim Form, dated October 1, 2019

#### Testimony

The Claimant testified and did not present other witnesses. There were no witnesses presented by the Fund and no one testified for the Respondent.

<sup>3</sup> This document was signed by the Claimant on December 28, 2013.

<sup>4</sup> United States Department of Housing and Urban Development.

<sup>5</sup> Only the first page of this document was entered as an exhibit. The year was not reflected on the document provided; however, the Claimant testified that the year of execution was 2013.

## 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 home improvement contractor licensed by the MHIC.
2. On December 28, 2013, Susan Smith and Sherrie Spier,<sup>6</sup> tenants in common to a property located on Caves Forest Road in Owings Mills, Maryland (Property), executed an Indemnity Deed of Trust, Assignment of Rents, and Security Agreement (Agreement). The Agreement granted David Borinsky and Earl Johnson, as trustees for the benefit of The Come Home Baltimore, Fund, L.P., the power of sale of the Property, in consideration of the Note in the principal amount of \$160,000.00, executed by the Claimant as the Borrower.
3. The Respondent's contract services were accompanied with Mr. Borinsky's and Mr. Johnson's real estate services through The Come Home Baltimore, Fund, L.P., as a packaged deal.
4. On December 28, 2013, the Claimant and the Respondent entered into a contract (Contract) for a full renovation of the Property.<sup>7</sup> The start date of the Contract was not specified; however, the work was to be completed within 120 days from the date of the building permit issuance.
5. The original agreed-upon Contract price was \$160,000.00 with twenty-five percent due prior to commencing construction; twenty-five percent due at the completion of demolition and removal, framing, roof, and mold remediation; twenty-five percent due at the completion of all rough-in inspections, and window, door, tub, lights and sink installations; and the balance due upon delivery of the Certificate of Occupancy.

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<sup>6</sup> Susan Smith is the Claimant's sister-in-law, and Sherrie Spier is the Claimant's wife.

<sup>7</sup> There are twenty-four enumerated items that comprise the scope of work for the full renovation, but there was no further testimony or further documentation to elaborate on the completion of these items. Therefore, they are not delineated in this decision.



6. The Respondent commenced work on the Property in January 2014 and did not complete it until March 2017, which was thirty-four months beyond the original four-month completion deadline.

7. At some point between December 28, 2013 and April 4, 2017, the Claimant and Respondent agreed that payment would be made in full through the sale and settlement of the Property.<sup>8</sup>

8. At some point between December 28, 2013 and April 4, 2017, the Respondent completed additional work beyond the original scope of the Contract, in the amount of \$15,000.00, without the knowledge or consent of the Claimant.

9. At some point between December 28, 2013 and April 4, 2017, the Respondent obtained a loan from Virginia Marine Investments, using the \$160,000.00 original-contract price due for the work on the Property as collateral and adding the \$15,000.00 of additional work. This effectively placed a lien on the Property.

10. On April 4, 2017, the Claimant paid Virginia Marine Investments \$175,000.00 through the sale and settlement of the Property. The payment was listed as a "payoff of first mortgage loan" on the Settlement Statement, and the sellers are listed as Sherrie Spier and Susan Smith.

11. The Claimant made no direct payments to the Respondent for the work completed on the Property.

### **DISCUSSION**

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

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<sup>8</sup> The Claimant did not provide any written amendment to the original Contract to reflect this change in the payment schedule, so it is unclear if an amendment exists or if there is some other written agreement memorializing this change.

§ 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

An owner<sup>9</sup> may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for 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.”<sup>10</sup> Bus. Reg. § 8-401. By employing the word “means,” as opposed to “includes,” the legislature intended to limit the scope of “actual loss” to the items listed in section 8–401. *Brzowski v. Maryland Home Imp. Comm’n*, 114 Md. App. 615, 629 (1997).

For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Claimant’s position is that he is entitled to recovery from the Fund because the Respondent “extorted” \$15,000.00 for work that was unauthorized. He claims that the spirit of the law contemplates recovery in this type of situation. The Claimant requested recovery from the Fund for the price difference from the original contract price.

Conversely, the Fund opposes recovery on the basis that the Claimant has not proven the Respondent performed unworkmanlike, inadequate, or incomplete work. The Fund argued that a breach of contract claim in a court of law would have been the appropriate forum for the Claimant’s matter and requested that the Claim be dismissed. In support of its position, the Fund

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<sup>9</sup> “Owner” includes a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement. Bus. Reg. § 8-101(k). Although the documentation reflected joint ownership by the Claimant’s wife and sister-in-law, he meets the definition of owner as he contracted for the home improvement.

<sup>10</sup> “‘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.” Bus. Reg. § 8-101(g)(1).

highlighted the Claimant's testimony that this Claim was not about unworkmanlike or incomplete work, but rather is about the "extortion" or inflation of costs.

The Claimant testified that he hired Mr. Borinsky, a real estate agent who said he may be interested in renovating the property, and that he would find a contractor who would do the repairs and be paid at the time of settlement. The Claimant testified that the Respondent's services came as a "bundle" with Mr. Borinsky's real estate services. The Claimant further explained that he entered into the Contract with the Respondent on December 28, 2013, for a full renovation of the Property, which was given to the Claimant's wife and sister-in-law by their deceased father through a will.

The Claimant testified that the home improvement renovation was finished around March 2017, which was approximately three years after the work commenced. Once the work was finished, the Claimant was able to sell the renovated Property at settlement on April 7, 2017. It was at this time that he was first presented with Settlement Statement (HUD-1), dated April 7, 2017 (Clmt. Ex. 2) and learned of the payoff amount of \$175,000.00 due to Virginia Marine Investments. The Claimant indicated that this price overage was due to "11<sup>th</sup> hour renovations," and when the Claimant spoke to Respondent, the Respondent said that it was for additional work that had to be done. According to the Claimant, the Respondent recommended that the Claimant proceed with settlement and that the Respondent would "even it out afterwards," but that never happened. The Claimant testified that his numerous attempts to recoup the price difference of \$15,000.00 from the Respondent and his partner were unsuccessful, which is why he filed his Claim. The Claimant argued that this was "extortion" because he was forced to pay the additional \$15,000.00 in order to sell this Property.

Although I am sympathetic to the Claimant's predicament of having to pay a significant unexpected and unauthorized cost at closing, the type of claim that he has made is not the type

for which he is entitled to recovery from the Fund. In other words, the Claimant's argument that the spirit of the HIC law encompasses this type of situation is misplaced. This is not to say that the actions of the Respondent were appropriate, but just that the Claimant has not met his burden in this forum. "The Fund was established to provide an additional remedy for homeowners who suffered actual loss due to unsatisfactory work performed by a home improvement contractor." *Brzowski v. Maryland Home Imp. Comm'n*, 114 Md. App. 615, 628 (1997). The payment of claims from the Fund is limited to "only those claims that establish that a homeowner has suffered 'actual loss' due to the act or omission of a licensed contractor." *Id.* The Commission is presumed to be "aware of the Fund's limited purpose, to compensate for actual loss," and to act within the scope of its authority when making such an award. *Id.* at 631.

On the record before me, there is no evidence that there was an actual loss as defined under Maryland law. There is no indication that the Respondent performed any unworkmanlike, inadequate, or incomplete home improvement work. The Contract shows the scope of work, but there is nothing that shows what work if any the Respondent completed, or the quality of any work completed by the Respondent. Although the Claimant alluded to incomplete work, when asked to expound on this information, he clearly indicated that the basis of his claim does not include any incomplete or inadequate work. The Claimant testified that his claim was not about "what was done or not" or about a "failure" to complete work, but rather, it was "solely inflation of the contract price without [his] knowledge or consent." Inflation is not listed in the definition of actual loss.

Additionally, the Claimant is ineligible for recovery from the Fund because the Claimant did not pay any monetary funds directly to the Respondent. 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 is \$0.00, as there was no amount paid directly to the Respondent (contractor). Instead, the evidence presented is that the Claimant paid \$175,000.00 to Virginia Marine Investments for the first mortgage payoff. Therefore, the Claimant is not entitled to recover any money from the Fund as there is no actual loss as defined in Bus. Reg. § 8-401.

I agree with the Fund that there were other more appropriate avenues for the Claimant to attempt to recover the alleged monetary loss, such as a breach of contract claim in a civil court proceeding.

A claimant has essentially three avenues from which he can obtain relief from the Fund. He can file a claim directly with the Commission or proceed initially in court or in an arbitration proceeding. . . . A multitude of remedies might be granted by either forum, only some of which may fall within the finite scope of actual loss as defined by section 8-401. . . . Thus, an award arising out of either judicial or arbitration proceedings may compensate the claimant for items of damage which do not fall within the statutory definition of "actual loss."

*Brzowski v. Maryland Home Imp. Comm'n*, 114 Md. App. 615, 630-31, 691 A.2d 699, 707 (1997). (Citations omitted.) As such, the Claimant could have been entitled to compensation for the additional \$15,000.00 in a court of law if he prevailed, as the court is not constricted like the Fund, which may only grant an award solely based upon actual loss.

I thus find that the Claimant is not eligible for compensation from the Fund. The Commission may not award from the Fund any amount for consequential damages and may only award for actual loss. COMAR 09.08.03.03B(1)(a), (2).

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

I conclude that the Claimant has not sustained an actual and compensable loss 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(2).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

December 1, 2021  
Date Decision Issued

**CONFIDENTIAL**

Tracee N. Hackett  
Administrative Law Judge

TNH/at  
#194633

PROPOSED ORDER

*WHEREFORE, this 9<sup>th</sup> day of March, 2022, 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.*

*Joseph Tunney*

*Joseph Tunney*

*Chairman*

*Panel B*

*MARYLAND HOME IMPROVEMENT  
COMMISSION*