

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE NICOLAS ORECHWA,</b>
<b>OF DARRYL WONG,</b>	<b>* ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>* THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>*</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>*</b>
<b>OMISSIONS OF JAMES</b>	<b>*</b>
<b>CHRISTIANSEN,</b>	<b>* OAH No.: LABOR-HIC-02-21-00990</b>
<b>T/A DIAMOND FORK BUILDING</b>	<b>* MHIC No.: 19 (05) 1556</b>
<b>COMPANY,</b>	<b>*</b>
<b>RESPONDENT</b>	<b>*</b>

\* \* \* \* \*

**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 18, 2020, Darryl Wong (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),<sup>1</sup> for reimbursement of \$20,388.00 in actual losses allegedly suffered as a result of a home improvement contract with James Christiansen, trading as Diamond Fork Building Company (Respondent). Md. Code Ann., Bus. Reg.

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<sup>1</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

THE UNITED STATES OF AMERICA  
DO hereby certify that  
[Name] is  
[Title]  
of the  
[Department/Agency]  
and is authorized to  
[Action]

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the  
Department of State, at Washington, D.C., this [Date] day of [Month], 19[Year].

Secretary of State

[Signature]

§§ 8-401 through 8-411 (2015).<sup>2</sup> On January 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 3, 2021 via the Webex online platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Shara Hendler, Assistant Attorney General, Department, represented the Fund. Trevor Addie-Carter, Esquire, represented the Claimant, who was present.

After waiting fifteen minutes for the Respondent or the Respondent's representative to sign on to the Webex session, 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 February 2, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail 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 March 3, 2021, at 9:30 a.m., via the Webex online platform, meeting number 129 394 7614. 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 Notice to the OAH. 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.

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<sup>2</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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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. 2020); 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 on the Claimant's behalf:

- Clmt. Ex. 1 - Respondent's Estimate, July 19, 2018;
- Clmt. Ex. 2 - Respondent's Estimate, August 14, 2018;
- Clmt. Ex. 3 - Contract between the Claimant and the Respondent, September 25, 2018;
- Clmt. Ex. 4 - Check number 800 in the amount of \$5,000.00 issued from the Claimant to the Respondent;
- Clmt. Ex. 5 - Proof of the Respondent's active MHIC license;
- Clmt. Ex. 6 - Frederick County building permit number 184722;
- Clmt. Ex. 7 - Check number 896 in the amount of \$10,000.00 issued from the Claimant to the Respondent;
- Clmt. Ex. 8 - Check number 802 in the amount of \$8,000.00 issued from the Claimant to the Respondent;
- Clmt. Ex. 9 - Check number 803 in the amount of \$5,000.00 issued from the Claimant to the Respondent;
- Clmt. Ex. 10 - Check number 805 in the amount of \$7,500.00 issued from the Claimant to the Respondent;
- Clmt. Ex. 11 - Email from the Claimant to the Respondent, June 18, 2019;

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- Clmt. Ex. 12 - Emails between the Claimant and the Respondent with attached receipt beginning June 18, 2019;
- Clmt. Ex. 13 - MHIC Complaint Form, June 19, 2018;
- Clmt. Ex. 14 - Thumb drive containing voicemail from the Respondent;
- Clmt. Ex. 15 - Email from the Claimant to David Brown, September 24, 2019;
- Clmt. Ex. 16 - Email from Sheila Curry to the Claimant, September 30, 2019;
- Clmt. Ex. 17 - Estimate from Stoltzfus Structures, LLC to [ ] October 1, 2019;
- Clmt. Ex. 18 - Estimate from Stoltzfus Structures, LLC, October 1, 2019 with attached MHIC license information;
- Clmt. Ex. 19 - Credit Card receipt for \$5,000.00 to Stoltzfus Structures, LLC, October 9, 2019;
- Clmt. Ex. 20 - Check number 809 in the amount of \$10,000.00 issued from the Claimant to the Stoltzfus Structures, LLC;
- Clmt. Ex. 21 - Check number 107 in the amount of \$15,948.00 issued from Lin Dai to the Stoltzfus Structures LLC; Check number 810 in the amount of \$1,440.00 issued from the Claimant to the Stoltzfus Structures, LLC and Frederick County Building Permit Number 203542;
- Clmt. Ex. 22 - MHIC Complaint Form, March 18, 2020;
- Clmt. Ex. 23 - Photograph, undated;
- Clmt. Ex. 24 - Photograph, undated;
- Clmt. Ex. 25 - Photograph, undated.

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

- Fund Ex. 1 - Hearing Order, January 7, 2021;
- Fund Ex. 2 - OAH Notice of Remote Hearing, February 9, 2021;
- Fund Ex. 3 - MHIC Complaint Form, March 18, 2020;
- Fund Ex. 4 - Respondent's MHIC License History.

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## Testimony

The Claimant testified and did not present other witnesses. The Fund presented no testimony.

### **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 0136059.
2. On September 25, 2018, the Claimant and the Respondent entered into a contract to construct a garage foundation and structure at the Claimant's residence (Contract). The Contract did not specify the project's beginning and end date.
3. The original agreed-upon Contract price was \$47,500.00.
4. On the following dates, the Claimant paid the Respondent the following amounts:
  - September 27, 2018 - \$5,000.00;
  - November 14, 2018 - \$10,000.00;
  - December 24, 2018 - \$8,000.00;
  - December 31, 2018 - \$5,000.00;
  - May 6, 2019 - \$7,500.00.
5. The Respondent commenced work per the terms of the contract in November of 2018. The Respondent completed the building's foundation walls on December 24, 2018 and the concrete floor on May 6, 2019.
6. Despite repeated follow up from the Claimant, the Respondent did not complete building the garage structure per the terms of the contract.

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7. To complete the work under the contract, the Claimant needed to hire Stoltzfus Structures LLC (Stoltzfus). At all times relevant to the subject of this hearing, Stoltzfus was a licensed home improvement contractor under MHIC license number 103063.

8. To finish the work the Respondent failed to complete under the Contract, the Claimant paid Stoltzfus the following amounts on the following dates:

- October 8, 2019 - \$5,000.00;
- October 22, 2019 - \$10,000.00;
- November 19, 2019 - \$15,948.00;
- December 31, 2019 - \$1,440.00.

9. Stoltzfus finished the work the Respondent failed to complete under the Contract.

10. The county requested Stoltzfus install upgraded windows. Due to this request Stoltzfus charged, and the Claimant paid an additional \$1,748.00. The original contract between the Claimant and the Respondent did not contain the window upgrade as a term.

### DISCUSSION

In this case, 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). 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 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* 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

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2. The second part details the various methods used to collect and analyze data, including surveys, interviews, and focus groups. It notes that these methods provide valuable insights into customer behavior and market trends.

3. The third part describes the implementation of the research findings into business strategies. It highlights the role of the marketing department in identifying opportunities and addressing challenges based on the research results.

4. The fourth part discusses the challenges faced during the research process, such as limited resources and time constraints. It offers suggestions for overcoming these obstacles through strategic planning and collaboration.

5. The fifth part concludes the document by summarizing the key findings and their implications for the company's future growth. It encourages ongoing research and innovation to stay competitive in a dynamic market.

incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant met his burden.

*The Claimant's case*

The Claimant testified that after entering into the September 25, 2018 contract to build the garage (Contract), he paid the Respondent \$5,000.00. (Clmt. Ex. 4.) In November of 2018, the Respondent obtained a building permit from the county. (Clmt. Ex. 6.) The Respondent then requested the Claimant pay \$10,000.00 to commence the work under the Contract. The Claimant paid the Respondent \$10,000.00. (Clmt. Ex. 7.) The Claimant needed to provide his homeowners association (HOA) with an estimated completion date. The Claimant asked the Respondent if he could complete the work in five weeks. While the Respondent did not affirmatively state he could complete the work in five weeks, he did not deny it either. Accordingly, the Claimant told the HOA the Respondent would complete the work five weeks after issuance of the permit.

The Respondent commenced work and completed the foundation walls for the garage on December 24, 2018. The Claimant paid the Respondent \$8,000.00 after the Respondent completed the foundation walls. (Clmt. Ex. 8.) On December 31, 2018, the Claimant paid the Respondent an additional \$5,000.00 to complete the concrete floor for the foundation walls. (Clmt. Ex. 9.) The Respondent did not complete the concrete floor until May of 2019. After completion of the concrete floor, on May 6, 2019, the Claimant paid the Respondent an additional \$7,500.00 for the framing of the garage. (Clmt. Ex. 10.)

The Respondent performed no work on the framing. When the Claimant questioned the delay, the Respondent claimed he was waiting on delivery of the trusses. (Clmt. Ex. 12.) When the Claimant paid him the \$7,500.00 in May of 2019, the Respondent stated he ordered the trusses and provided a four-to-six-week timeframe to get the trusses. However, when the

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Claimant later followed up, the Respondent claimed he could not know a timeframe until he ordered the trusses (thus contradicting his earlier statement that he had ordered the trusses).

The Claimant then requested a receipt for the trusses. In response, the Respondent emailed the Claimant and said he ordered the trusses from 84 Lumber. (Clmt. Ex. 13.) The Claimant called 84 Lumber and 84 Lumber stated the Respondent requested a quote for the trusses but never paid. The Respondent claimed he provided a receipt for the trusses. However, he only provided the Claimant with a cost estimate from 84 Lumber for the trusses and a check which 84 Lumber never cashed.

At this point, the Claimant lost patience with the Respondent and filed his first complaint with the MHIC (first complaint). Upon receipt of the first complaint, the Respondent left the Complainant a voice mail claiming he provided the Complainant proof of payment to 84 Lumber for the trusses. The Respondent also said “[the truss] build date is coming up and I don’t know if I want to proceed or not.” (Clmt. Ex. 14.) The Respondent provided a convoluted excuse about 84 Lumber firing its manager for “misappropriation of builder’s funds” and “that’s where [the Respondent’s] first money went to.” *Id.*

The MHIC assigned an investigator to the first complaint. The investigator told the Claimant that the Respondent promised to finish the garage. Upon that representation, the Claimant withdrew his first complaint. However, the Respondent never returned despite repeated follow up from the Claimant. The Claimant last followed up with the Respondent by email in September 2019. The Respondent never replied. (Clmt. Ex. 15.)

In September 2019, the Claimant’s HOA manager complained to the Claimant by email about the unfinished garage. (Clmt. Ex. 16.) Not wanting to further stoke the ire of the HOA, and certain the Respondent had no intention of finishing the garage, the Claimant hired Stoltzfus. The Claimant entered into a contract with Stoltzfus in October 2019 to complete the garage’s

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construction. (Clmt. Ex. 17.) The Claimant paid Stoltzfus \$5,000.00 upon signing of the contract. (Clmt. Ex. 19.) Later the Claimant made payments of \$10,000.00, \$15,948.00, and \$1,440.00 to Stoltzfus. (Clmt. Ex. 20.) Stoltzfus completed the garage in January 2020. (Clmt. Ex. 21.) In March 2020, the Complainant filed his second complaint with the MHIC. The second complaint is the complaint subject of this decision.

### *Analysis*

The Claimant presented a credible case fully supported with documentation. The Respondent did not appear and thus did not rebut any of the Claimant's case. The record contains credible evidence the Respondent abandoned the work under the Contract as the Claimant alleged. On this issue I found the Claimant testified credibly and consistently with the documentation. For example, he clearly explained the time frame of the photographs in evidence which depict the unfinished work. (Clmt. Ex.'s 23, 24 and 25.) Further, the email from the HOA, as well as the Claimant's follow up emails, support his contention the Respondent abandoned the work. The record contains credible evidence Stoltzfus completed the work for which the Claimant paid. The Claimant provided the certificate of completion. The record contains credible evidence in the form of checks, that the Claimant paid the Respondent and Stoltzfus the amounts he alleges. Accordingly, I find the Claimant 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. 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.

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In this case, the Respondent performed some work under the Contract, and the Claimant retained Stoltzfus to complete 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).

In this case, the Claimant paid the Respondent \$35,000.00 under the original Contract. The Claimant paid Stoltzfus \$32,388.00 to finish the building the garage. However, \$1,748.00 of that amount concerns a window upgrade the county requested. This did not appear in the Claimant's original Contract with the Respondent. While the county would have required the Respondent to perform the same window upgrade, the record contains no evidence the Respondent would have also charged the Claimant \$1,748.00. Accordingly, I find the Claimant paid Stoltzfus \$30,640.00 to complete the work under the original Contract.

Thus, the Claimant paid a total of \$65,640.00.<sup>3</sup> The price of the Contract between the Claimant and the Respondent was \$47,500.00. \$65,640.00 minus \$47,500.00 equals \$18,140.00.

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.

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<sup>3</sup> \$35,000.00+\$30,640.00.

§ 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$18,140.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$18,140.00 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 Claimant is entitled to recover \$18,140.00 from the Fund. COMAR 09.08.03.03D.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$18,140.00; 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>4</sup> and

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

May 26, 2021  
Date Decision Issued

**CONFIDENTIAL**

Nicolás Orechwa  
Administrative Law Judge

NO/at  
#192318

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

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**PROPOSED ORDER**

***WHEREFORE, this 9<sup>th</sup> day of July, 2021, 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***

COPIES OF THE  
STATUTES OF THE  
STATE OF  
NEW YORK  
AS PASSED BY THE  
SENATE AND ASSEMBLY  
IN THE YEAR 1880

THE SENATE AND ASSEMBLY  
OF THE STATE OF NEW YORK  
DO HEREBY CERTIFY THAT THE  
FOLLOWING ARE THE STATUTES  
AS PASSED BY THE SENATE  
AND ASSEMBLY IN THE YEAR  
1880

RECORDED IN THE  
OFFICE OF THE CLERK OF THE SENATE