

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF LORI SMITH,</b></p> <p><b>CLAIMANT</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 AMANDA</b></p> <p><b>WILLIAMS,</b></p> <p><b>T/A WILLIAMS LANDSCAPE AND</b></p> <p><b>DESIGN, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE M. TERESA GARLAND,</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>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-19-24757</b></p> <p><b>* MHIC No.: 19 (90) 77</b></p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On November 27, 2018, Lori Smith (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,550.00 in actual losses allegedly suffered as a result of a home improvement contract with Amanda Williams, trading as Williams Landscape and Design, LLC (Respondent). Md. Code

Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On July 29, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on November 7, 2019 at the Tawes State Office Building, Department of Natural Resources, 580 Taylor Avenue, Annapolis, MD 21401. Bus. Reg. § 8-407(e). Robert McCray, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund. The Claimant represented herself. The Respondent represented herself.

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. 2019); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

Clmt. Ex. 1 – Photographs A through H, undated

Clmt. Ex. 2 – Emails between Claimant and Respondent, dated May 9, 27 and 28, 2018

Clmt. Ex. 3 – Garner Exteriors Proposal Landscape Enhancement, dated November 1, 2018

Clmt. Ex. 4 – Emails between Claimant and Respondent, dated June 19, 2018

Clmt. Ex. 5 – Emails between Claimant and Respondent, dated June 19, 2018

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

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

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

Resp. Ex. 1 – Respondent's narrative of events, dated July 28, 2018, with attached Google reviews posted by the Claimant and review response by the Respondent

Resp. Ex. 2 – Respondent's timeline of events from May 11, 2018 through July 12, 2018, undated

Resp. Ex. 3 – Respondent's Proposal of Services, undated, with attached design plan and invoice for materials

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Respondent's MHIC Licensing History, certified November 4, 2019

Fund Ex. 2 – Hearing Order from Department of Labor, dated July 29, 2019

Fund Ex. 3 – Letter from Department of Labor to Respondent, dated December 17, 2018

Fund Ex. 4 – Home Improvement Claim Form, dated November 21, 2018

### Testimony

The Claimant testified and presented no other witnesses.

The Respondent testified and presented no other witnesses.

The Fund offered documents, but presented no testimony.

### **PROPOSED FINDINGS OF FACT**<sup>3</sup>

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 numbers 01-114845 and 05-135269.
2. Sometime in May 2018,<sup>4</sup> the Claimant and the Respondent entered into a contract to remove an existing walkway and garden on the Claimant's property, install a paver patio and

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<sup>3</sup> Much of the content of the Findings of Fact was derived from Resp. Exs. 1 and 2. The Claimant's testimony lacked sufficient specificity to formulate the Findings of Fact. The Claimant did not object to the admission of the Respondent's exhibits.

<sup>4</sup> The Contract, provided by the Respondent as Resp. Ex.3, is undated. I infer that it was signed sometime prior to May 11, 2018, as the Respondent's written timeline indicates that the Claimant was choosing materials for the project on that date. See Resp. Ex. 2.

replace existing stairs. (Contract). The Contract did not specify when that work would begin or when it would be completed.

3. The original agreed-upon Contract price was \$7,700.00.

4. On unknown dates, the Claimant paid the Respondent installments which totaled \$7,700.00.<sup>5</sup>

5. On May 11, 2018, the Claimant chose the material she wanted for the construction of the patio on location at a paver distributor.

6. On May 15, 2018, the materials were delivered and construction of the patio began. The patio was finished several days later.

7. Several days after the completion of the patio, the Claimant complained to the Respondent that she was dissatisfied with the edges of the patio. Additionally, several pavers had sunk below the level of others and a few pavers sustained damage during installation.

8. The Respondent replaced the pavers that had sunk, agreed to replace any damaged pavers and agreed to install bullnose pavers on the edges of the patio. The Claimant chose the bullnose pavers.

9. The installation of the bullnose edging pavers was not included in the terms of the Contract. The Respondent bore the cost of purchasing and installing the bullnose pavers.

10. On or about June 19, 2018, the Respondent installed the bullnose pavers.

11. Once installed, the bullnose pavers were not aesthetically pleasing and the Claimant was dissatisfied.

12. On July 1, 2018, the Respondent conveyed to the Claimant that she would remove the bullnose pavers and determine a material which would be better suited for the edges of the patio.

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<sup>5</sup> The Claimant did not present copies of any cancelled checks. There was no dispute that the Contract was paid in full.

13. On July 6, 2018, the Respondent went to the Claimant's home with her head laborer to explore ways to rectify the edge of the patio. The Claimant was present and acknowledged that the Respondent would require several days to come up with a proposed solution.

14. Between July 6 and 11, 2018, the Respondent explored ways to adjust the border of the patio to the Claimant's satisfaction, which included meeting with her head laborer and paver distributor. During this period, the Claimant did not contact the Respondent.

15. Beginning July 12, 2018, the Claimant posted a series of negative, on-line reviews of the Respondent's business. In the reviews, the Claimant proclaimed that she had, or would, file a complaint with the MHIC.

16. The Respondent has not refused to rectify the edging of the patio, although it was not a part of the Contract. The Respondent remains willing to replace pavers which had been damaged during the installation process.

17. The Respondent performed all work pursuant to the Contract.

18. The Claimant did not sustain an actual loss.

### **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) (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.” Bus. Reg. § 8-405(a) (2015); *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.” Bus. Reg. § 8-401.

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

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

The Contract, offered by the Respondent as Resp. Ex. 3, provided the scope of work as described in Finding of Fact 2, above. That scope of work did not include the installation of bullnose or any other type of finished edge on the patio. The Claimant was unhappy with the appearance of the installed patio without a finished edge. In an effort to appease the Claimant, the Respondent offered to install the bullnose edging pavers, which the Claimant agreed to and personally chose. Once installed, both parties agreed that the bullnose pavers were not aesthetically pleasing.

On June 19, 2018, after the bullnose was installed, the Claimant emailed the Respondent to express her dissatisfaction. Within forty-five minutes of receiving the Claimant’s email, the Respondent notified the Claimant, via email, that she was on her way to the Claimant’s property to inspect the work. When the Respondent arrived an hour later, she saw that the Claimant had emailed her not to come to her house. The relationship between the Respondent and the Claimant took a turn for the worse thereafter. (Cl. Ex. 5). Nonetheless, the Respondent was permitted to inspect the work, in the Claimant’s presence, on June 27, 2018 and she returned again on July 6, 2018 with her head laborer. At the July 6, 2018 inspection, both parties agreed

that a new solution to the edging would have to be found, which would require some research and consultation.

Between July 6 and July 11, 2018, there was no communication between the Claimant and the Respondent, although the Respondent continued to explore options to appease the Claimant. Thereafter, on July 12 and July 16, 2018, the Claimant posted disparaging on-line reviews of the Respondent's business which indicated that the Claimant had rejected the Respondent and her efforts to repair or replace pavers which were damaged (per the Contract) and replace the edging with another material (not a part of the Contract). Further, the Claimant testified that she was "not comfortable having the patio remedied with [the Respondent's] company.

The Respondent's testimony and timeline (Resp. Exs. 1 and 2) were in substantial accord with each other and with the Findings of Fact, above. During her testimony, she further identified Resp. Ex. 1 as a July 28, 2018 letter she had written to the MHIC seeking guidance in resolving the conflict with the Claimant. She testified that she was willing to work with the Claimant and was willing to make repairs, but the Claimant has denied her the opportunity. The Respondent further acknowledged that the bullnose pavers were never a part of the Contract, but she provided the material and labor to satisfy the Claimant.

The Claimant has not demonstrated that the Respondent's work, pursuant to the Contract, was unworkmanlike. She presented no expert testimony that the patio the Respondent installed did not meet the standards in the industry. Her personal opinion of the quality of the Respondent's work is insufficient to establish a breach of industry standards. Further, the Claimant failed to allow the Respondent to repair or replace damaged pavers. I cannot conclude that the Claimant established an act or omission on the part of the Respondent that caused the Claimant an actual loss. She did not establish that the Respondent abandoned or failed to complete the project

through any fault of her own. The Respondent was ready and willing to repair the damaged pavers and to correct the patio edging, which was not a part of the Contract. Therefore, I conclude that the Claimant did not establish by a preponderance of the evidence that she is entitled to recovery from the Fund.

**PROPOSED CONCLUSION 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).

**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.

January 16, 2020  
Date Decision Issued

MTG//dlm  
#183115

**CONFIDENTIAL**

M. Teresa Garland  
Administrative Law Judge

*A. J. T. W.*



PROPOSED ORDER

*WHEREFORE, this 3<sup>rd</sup> day of March, 2020, 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**

