

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF RICHARD CANZONERI,</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 CLIFFORD</b></p> <p><b>PETERSON,</b></p> <p><b>T/A CLIFF PETERSON'S BAY</b></p> <p><b>COUNTRY BUILDERS,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE ERIN H. CANCIENNE,</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>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-22-28176</b></p> <p>* <b>MHIC No.: 20 (75) 530</b></p> <p>*</p> <p>*</p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On July 28, 2022, Richard Canzoneri (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$134,698.27 for actual losses allegedly suffered as a result of a home improvement contract with Clifford Peterson, trading as Cliff Peterson's Bay Country Builders (Respondent). Md. Code

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On October 26, 2022, the MHIC issued a Hearing Order on the Claim. On November 7, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

This case was initially set for a remote hearing for March 8, 2023. However, on the day of the hearing, Jay Emery, Esq., who was representing the Claimant requested a postponement as he had been recently retained and did not have the opportunity to submit exhibits prior to the remote hearing. This matter was postponed and reset for a remote hearing on April 21, 2023 at 9:30 a.m. On April 21, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). During that date, the parties provided opening statements and testimony began. However, due to frustrations with the exhibits, and the remote platform, counsel for the Claimant requested that the hearing be continued in person at a later date. The other parties did not oppose the request for an in-person hearing, but the Respondent requested that it be set after a few months as his witnesses had been available two times already within a short time frame and it was a burden for them to appear again at a hearing too quickly. I granted the request to continue the case, to hold the next hearing date in person at the Office of Administrative Hearings in Hunt Valley, Maryland and to delay the hearing by a few months to lessen the burden on the Respondent's witnesses. On July 14, 2023, the hearing proceeded in person at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. For all three dates of the hearing, the representation of each party remained the same. Hope Sachs, Assistant Attorney General, Department, represented the Fund. Jay Emery, Esquire, represented the Claimant, who was present. The Respondent was self-represented.

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

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant timely file his claim with the Fund?
2. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
3. 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 - Handwritten Contract between Claimant and Respondent, undated
- Clmt. Ex. 2 - Check #150 from Claimant to Respondent, January 30, 2019
- Clmt. Ex. 3 - Check #151 from Claimant to Respondent, February 20, 2019
- Clmt. Ex. 4 - Check #152 from Claimant to Respondent, February 26, 2019
- Clmt. Ex. 5 - Account Transaction Detail Reports,<sup>3</sup> various dates in 2018 and 2019
- Clmt. Ex. 6 - Hickey Consultants, LLC Notice of Default and Demand for Return of Monies Paid, May 30, 2019
- Clmt. Ex. 7 - Troy Contracting & Home Improvement, LLC, Scope of Work, September 1, 2019

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<sup>3</sup> While this is labeled transaction detail report, the three pages of this exhibit were not printed at the same time. The account numbers appear to match, but one page says, "Page 1 of 3" and the other two pages indicate that they are pages 1 and 2 out of two pages. Further, the dates of printing at the bottom of the pages state May 23, 2019, October 7, 2019 and the third is illegible.

- Clmt. Ex. 8 - Photograph,<sup>4</sup> Peterson in Action, 19 of 24, undated
- Clmt. Ex. 9 - Photograph, Peterson in Action, 8 of 24, undated
- Clmt. Ex. 10 - Photograph, Peterson in Action, 3 of 24, undated
- Clmt. Ex. 11 - Photograph, Peterson in Action, 1 of 24, undated
- Clmt. Ex. 12 - Photograph, Pre-Peterson, 3 of 18, undated
- Clmt. Ex. 13 - Photograph, Post Peterson, 16 of 18, undated
- Clmt. Ex. 14 - Photograph, Pre-Peterson, 15 of 18, undated
- Clmt. Ex. 15 - Photograph, 77, undated
- Clmt. Ex. 16 - Photograph, 61, undated
- Clmt. Ex. 17 - Photograph, Peterson in Action, 9 of 24, undated
- Clmt. Ex. 18 - Photograph, Peterson in Action, 18 of 24, undated
- Clmt. Ex. 19 - Photograph, 63, undated
- Clmt. Ex. 20 - Photograph, Post Peterson, 10 of 18, undated
- Clmt. Ex. 21 - Photograph, Post Peterson, 8 of 18, undated
- Clmt. Ex. 22 - Photograph, Post Peterson, 6 of 18, undated
- Clmt. Ex. 23 - Photograph, Post Peterson, 11 of 18, undated
- Clmt. Ex. 24 - A.B. Martin, Roofing Supply LLC, Invoice, June 7, 2019
- Clmt. Ex. 25 - Belle Manor Construction Order Info, July 14, 2021
- Clmt. Ex. 26 - Not offered, nor admitted.

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<sup>4</sup> Prior to the hearing, Claimant's counsel sent multiple packets of photographs which were not pre-marked with exhibit numbers. Some photographs had page numbers only. Some photographs had a title such as "Peterson in Action" with a page number in the format of X of Y. Some of the designations are difficult to read because it printed in the same area as the picture itself and the ink is a similar color to the picture. Claimant's counsel only introduced a small portion of the photographs, which were pulled from the various packets. This exhibit list will only include each photograph that was introduced as an exhibit with whatever designation was on the page; however, as the designations varied, the exhibit list will necessarily be inconsistent.

Clmt. Ex. 27 Lawson Home Services Invoice, December 20, 2019

Clmt. Ex. 28 - MHIC Complaint Form, including a typed Statement of Facts, received October 11, 2019

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Payment Schedule,<sup>5</sup> undated and unsigned

Resp. Ex. 2 - Photograph,<sup>6</sup> 13, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, December 8, 2022

Fund Ex. 2 - Hearing Order, October 26, 2022

Fund Ex. 3 - MHIC Licensing History for Respondent, as of January 20, 2023

Fund Ex. 4 - Letter from MHIC to Claimant, August 10, 2022, attaching Claim Form, received July 28, 2022

#### Testimony

The Claimant testified and presented the testimony of Dina Canzoneri, and John Hickman.

The Respondent testified and presented the testimony of Donald Poore.

The Fund did not present any 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 01-97908.

<sup>5</sup> The Respondent purported that this was the payment schedule for his contract with the Claimant. It was not. This page was actually the payment schedule attached to the Troy Contracting and Home Improvement LLC, Scope of work. Clmt. Ex. 7.

<sup>6</sup> While the Respondent offered this photograph, the photograph had been sent by the Claimant to the other parties prior to the remote hearing.

2. On or about February 13, 2019, the Claimant and the Respondent entered into a contract to remodel the Claimant's home on Blue Ball Road in Elkton, Maryland. (Contract).

3. The original agreed-upon Contract price was \$129,750.00.

4. The Contract did not provide any estimated date of completion.

5. Initially, the Claimant paid the Respondents in checks the following amounts:

January 30, 2019	\$5,000.00
February 2, 2019	\$10,000.00
February 26, 2019	<u>\$5,000.00</u>
	\$20,000.00

6. Subsequently, the Claimant paid the Respondent via cash in unknown amounts.<sup>7</sup>

7. The Claimant fired the Respondent in May 2019 before the work was completed.

8. The Claimant would not allow the Respondent to return to his property to collect his tools without police involvement.

9. The Respondent did not perform any work at the Claimant's residence after May 16, 2019.

10. The Claimant filed an MHIC Complaint on October 11, 2019.

11. The Claimant hired two unlicensed home improvement contractors to finish the work under the Contract, Rodney Hamm, and John Hickman Sr.

12. The Claimant filed a claim with the MHIC Fund on July 28, 2022.

13. At the time of the hearing, the work on the Claimant's home is still not completed.

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<sup>7</sup> The Claimant testified that he paid a total of \$96,700.00 to the Respondent in cash and checks combined. The Claimant's wife, Ms. Dina Canzoneri testified that she and her husband paid \$126,007.00. Respondent testified that he only received \$66,000.00. I did not find any of the testimony credible and sufficient to support the amounts. None of the three witnesses had receipts, invoices or other records showing what was paid or received, and were basing their testimony on memory, cash withdrawals from the bank and an incorrect draw schedule.

## DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; 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 Cnty. 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." Bus. Reg. § 8-405(a) (Supp. 2022); *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." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022). However, the Claimant did not file a timely claim with the Fund.

*Statute of Limitations*

A “claim shall be brought against the Fund within three years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage.” Md. Code Ann., Bus. Reg. § 8-405(g).

The Claimant and the Respondent agreed during testimony that the Claimant fired the Respondent in May 2019. After that time, the Respondent did not come back to the jobsite to perform any other work. The Claimant’s Home Improvement Claim Form was filed on July 28, 2022. Fund Ex. 4.

As the Claimant filed his claim form with the MHIC on July 28, 2022, it falls beyond the three-year limitation period, and as a result the Appellant is not eligible for compensation from the Fund. Md. Code Ann., Bus. Reg. § 8-405(g).

Statutes of limitation *are* waivable, but I note that both the Fund and the Respondent specifically raised this issue at the hearing. It was clear in the closing arguments that both the Respondent and the Fund were not waiving their argument on the statute of limitation. The Claimant argued that the Complaint form was filed in October 2019 and that there should be an extension of the statute of limitations due to the COVID-19 pandemic. Additionally, the Claimant argued that the HIC did not provide the Claimant with a claim form until sometime in May 2022 and therefore, it frustrated his attempt to file a timely claim.

While the Claimant filed a Complaint form in October 2019, this is not the same as a Claim. The Complaint Form makes no demand against the Fund, and instead alerts the HIC that that the Claimant is reporting a problem with the Contractor and/or his work. The Complaint form asks for information about the details of the contract, the work performance, and a description of facts to support a complaint.



This document does not ask for any specific amount of damages or actual loss. Further, the Complaint form specifically states “Note – If the contractor was licensed at the time of the contract, you may be eligible to file a claim against the Home Improvement Guaranty Fund. To initiate a Guaranty Fund claim, you must complete and submit a separate claim form, which is only available after you file this complaint form and the Commission completes its investigation of the allegations contained in this complaint.” Clmt. Ex. 28 (emphasis Added).

The Claim form is designed to determine the financial claim of the Claimant against the Fund. It does not provide space for explanations or descriptions of what was wrong with the Contractor’s work. Instead, the blanks are generally for dates, and dollar amounts.

*See Fund Ex. 4.*

The Complaint form itself makes clear that the Claim form and the Complaint form are two different steps in making a claim against a contractor and therefore, the date of the filing of the Complaint form is irrelevant in determining whether the Claim form was filed within the statute of limitations.

The Complaint form indicates that the Claimant would not have been able to file a claim until the HIC completed its investigation of the allegations contained in the complaint. However, there was no testimony or evidence provided as to when the HIC completed its investigation of the Complaint, nor when the Claimant received the claim form.

During closing arguments, Claimant’s counsel in rebuttal contended that the Claim form was not received by the Claimant from HIC until May 2022. However, the exact date was not provided during closing arguments, or through testimony or evidence. In addition, the Claimant did not provide any testimony, evidence, or argument, that he followed up with the HIC between the October 2019 Complaint form and May 16, 2022 to ask for the HIC to conclude its

investigation, to obtain a claim form, or to alert the HIC that the time for filing the claim was approaching. Finally, even assuming arguendo that the HIC sent the Claim form in May 2022, depending on when the Claimant received the claim form in May 2022, the Claim form could have been filed timely. Therefore, I do not find sufficient evidence to support an argument that the HIC frustrated the Claimant's ability to file a timely Claim form.

Finally, the Claimant argued that due to the COVID-19 pandemic, the statute of limitations should have been tolled. Claimant's counsel provided no legal authority for this tolling of the statute of limitations, nor did he provide any explanation for how long the statute of limitations should have been tolled and how the tolling would apply to this case.

None of the Claimant's arguments are persuasive. He had until May 16, 2022 to file his claim with the HIC Fund. The Claimant filed his claim on July 28, 2022 and therefore, it is untimely and barred.

#### *Incomplete Home Improvements*

There was no dispute that the Respondent did not complete the home improvements under the Contract. The parties agreed that the Claimant fired the Respondent on or about May 16, 2019 and that the work under the Contract was ongoing at that time. Further, as the Claimant had fired the Respondent and hired an attorney to send a demand letter,<sup>8</sup> the Respondent did not make any good faith efforts to resolve the dispute with the Claimant. Md. Code Ann., Bus. Reg. § 8-405(d) (Supp. 2022). Therefore, I find that the Claimant did prove an incomplete home improvement.<sup>9</sup>

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<sup>8</sup> Clmt. Ex. 6.

<sup>9</sup> The testimony from both the Claimant and the Respondent showed that neither the Claimant nor Ms. Canzoneri addressed concerns with the Respondent before terminating the contract. The Claimant and the Respondent talked about the project on Fridays, and the Friday before the contract was terminated, no concerns were raised. The Claimant fired the Respondent the next week, without giving any chance for an explanation or time to correct. However, the Respondent also did not attempt to correct in good faith either at that time or thereafter.

*Actual Loss*

Even if the Claim was not barred by the statute of limitations, the Claimant has not proven an actual and compensable loss. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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.

In this case, the Respondent performed some work under the Contract, and the Claimant retained other contractors to complete or remedy 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).

First, the Claimant failed to prove by a preponderance of the evidence how much he actually paid to the Respondent. The formulas to determine actual loss require the starting point of what was actually paid, and I do not find that the Claimant has proven that amount. COMAR 09.08.03.03B(3)(c). The Claimant and his wife both testified as to what was paid to the Respondent. The Claimant testified that the total amount was \$96,700.00. The Claimant's wife, Ms. Canzoneri testified that the total amount was \$126,000.00. Both relied on their recollections and reviews of the bank accounts for cash withdrawals. While there were checks to substantiate payments of \$20,000.00, there were no checks, invoices, receipts or other records to verify

whether the cash withdrawals were used to pay the Respondent, or for other purposes and the inconsistent testimony of the Claimant and Ms. Canzoneri made the bank statements unreliable evidence of what was actually paid to the Respondent.

The Respondent testified that he was paid \$66,000.00. This was also unreliable evidence. During his testimony, the Respondent relied heavily on a draw schedule that the Respondent purported was the draw schedule for the Contract. Resp. Ex. 1. He linked the alleged payments with work he would have performed and what payments would be due under the draw schedule for the work he performed. However, the draw schedule relied upon was actually the draw schedule attached to a proposal that Claimant had obtained from another contractor to complete the work under the Contract after the Claimant had fired the Respondent. Clmt. Ex. 7. Therefore, any reliance on that draw schedule for what payments were made and received is misplaced. The Respondent testified that his records regarding payments had been at the Claimant's home when the Respondent was terminated and that he was unable to retrieve them. He did not have access to any records to verify what payments were received. Neither side presented credible evidence as to what was paid other than the \$20,000.00 in checks. Clmt. Exs. 2-4.

Second, the Claimant hired two unlicensed contractors to finish the work. Initially, the Claimant hired Rodney Hamm, Respondent's cousin<sup>10</sup> to finish the work. Mr. Hamm is a landscaper and does not hold an HIC license.

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<sup>10</sup> The Claimant knew Rodney Hamm through hunting and Mr. Hamm introduced the Claimant to the Respondent. While the Respondent was performing work inside of the home, Mr. Hamm was performing work outside of the home. The Respondent denied that Mr. Hamm was ever working as part of his crew inside of the home.

After the Claimant terminated Mr. Hamm, the Claimant hired Mr. Hickman to perform the work. At the time of the hearing, Mr. Hickman's work was not completed. The Claimant testified that he knew Mr. Hickman was not licensed when he hired him and yet he hired him anyway. Mr. Hickman has worked as an employee for licensed contractors in the past, but he was not working under a licensed contractor for any work at the Claimant's residence. The Claimant did not provide any evidence of a contract with a licensed contractor for the work that was completed by Mr. Hickman.

"[A] person must have a contractor license whenever the person acts as a contractor in the State."<sup>11</sup> Md. Code Ann., Bus. Reg. § 8-301(a). Acting as a contractor without a license is a misdemeanor, and a person who does so can be fined, imprisoned or both. Md. Code Ann., Bus. Reg. § 8-601 (c). Further, the Fund is established by fees paid by licensed contractors. Md. Code Ann., Bus. Reg. § 8-404 (a).

Both Mr. Hickman and Mr. Hamm were acting as a contractor without a license. Neither have contributed any money to the establishment of the Fund. Therefore, it is against public policy to award the Claimant any compensation for payments to an unlicensed contractor hired to complete the work.

Third, it is unclear what the Claimant paid the other contractors and or any suppliers. Several payments made by the Claimant were in cash, and while cash is an acceptable form of payment, I do not find the Claimant's records and testimony sufficient to prove by a preponderance of the evidence what was paid to the various individuals. Much of his testimony relied on withdrawals from his bank account of cash, but none of these withdrawals show any notes of why the money was withdrawn.

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<sup>11</sup> There are some exceptions to the general rule, which do not apply here. See Md. Code Ann., Bus. Reg. § 8-301(c).

Further, there are no receipts or invoices that correspond directly to the amounts withdrawn. Mr. Hickman testified at the hearing, but was not certain what he received as payment. Mr. Hamm did not testify at the hearing.

I did not find the Claimant or Ms. Canzoneri credible as to “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.” COMAR 09.08.03.03B(3)(c). As stated above, the amounts they allegedly paid vary wildly based on their testimony, and the records provided are cash withdrawals that are not matched to any invoice, receipt, or other records. Therefore, I do not find that the Claimant has proven any actual loss under COMAR 09.08.03.03B(3)(c).

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

I conclude that the Claimant’s claim against the Home Improvement Guaranty Fund is untimely. Md. Code Ann., Bus. Reg. §8-405(g) (2015 & Supp. 2022). I further conclude that while the Claimant has proven that the Respondent’s work was incomplete, the Claimant has not proven 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 & Supp. 2022); COMAR 09.08.03.03B(3)(c).

#### **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.

October 2, 2023  
Date Decision Issued

EHC/slr  
#207512

*Erin H. Cancienne*  

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Erin H. Cancienne  
Administrative Law Judge

**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of November, 2023, 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***