

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LAWANA PRESSLEY-LAWSON,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF RYAN VIEIRA t/a C.</p> <p>MASON CONSTRUCTION</p> <p>MANAGEMENT, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE DANIEL ANDREWS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-06489</p> <p>* MHIC No.: 20 (75) 880</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On November 24, 2021, Lawana Pressley-Lawson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$21,475.00 for actual losses allegedly suffered as a result of a home improvement contract with Ryan Vieira trading as (t/a) C. Mason Construction Management, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).²

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On March 2, 2022, the MHIC issued a Hearing Order on the Claim. On March 17, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 8 and March 16, 2023, I held a hearing using the Webex videoconferencing platform.³ Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). The Claimant was represented by Toby N. Byrd, Esquire. The Respondent was represented by Rhonda Woods, Esquire. The Fund was represented by Jonathan Phillips, Assistant Attorney General.

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 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 - MHIC letter to the Respondent regarding Claim, December 7, 2021, with attached Claim, received November 24, 2021
- Clmt. Ex. 2 - MHIC Licensing History for the Respondent, April 26, 2022
- Clmt. Ex. 3 - Estimate for Water Damage Reconstruction Claim 032150074-1, Respondent, December 5, 2018 (Contract)

³ The following hearing dates were postponed for the follows. May 5, 2022 was postponed because the Respondent's attorney had prior court conflicts; August 15, 2022 was postponed because the Claimant had health issues; November 10, 2022 was postponed because Appellant requested time to hire an attorney; and January 6, 2023 was postponed because the Claimant's attorney was recently retained and required time to prepare for a hearing.

- Clmt. Ex. 4 - Text message from the Claimant to the Respondent, November 9, 2018
- Clmt. Ex. 5 - Text message from the Claimant to the Respondent, November 20, 2018
- Clmt. Ex. 6 - Text message from the Claimant to the Respondent, January 7, 2019
- Clmt. Ex. 7 - Text message from the Claimant to the Respondent, January 10, 2019
- Clmt. Ex. 8 - Photographs of Floor Tiles, A through S, various dates
- Clmt. Ex. 9 - Photographs of Grout Joints, A through J, various dates
- Clmt. Ex. 10 - Photographs of Stairs, A through N,⁴ undated
- Clmt. Ex. 11 - Photographs of Paint, A through G, various dates
- Clmt. Ex. 12 - Photographs of Vent, A through D, undated
- Clmt. Ex. 13 - Photographs of Door from Garage, A and B, undated
- Clmt. Ex. 14 - A photograph of a sink, undated
- Clmt. Ex. 15 - Printout of Swan Ellipse vanity sink product description, January 25, 2023
- Clmt. Ex. 16 - Photograph of Utility Door and Room, undated
- Clmt. Ex. 17 - Property Inspection Report, Dynamic Home Inspection, July 5, 2022
- Clmt. Ex. 18 - Contract Estimate, Elohim Construction, LLC, with floor diagram, undated
- Clmt. Ex. 19 - Proof of Payment to Alberto Carter, Notarized, April 26, 2022
- Clmt. Ex. 20 - Printout of Vanity Backsplash purchase from Signature Hardware, August 16, 2019
- Clmt. Ex. 21 - Contract Proposal, Modern Home, LLC, July 31, 2022
- Clmt. Ex. 22 - *Curriculum, Vitae*, G. Robert Fuller, Professional Engineer (P.E.), undated
- Clmt. Ex. 23 - Report by G. Robert Fuller, January 30, 2023
- Clmt. Ex. 24 - Claimant's Actual Loss Statement of Claim, undated

⁴ Clmt. Ex. 10N is a thumb drive with a video of the stairs.

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Insurance Claim Estimate, USAA, May 8, 2018
- Resp. Ex. 2 - Pipe Repair Estimate, Respondent, December 5, 2018
- Resp. Ex. 3 - Contract, December 5, 2018
- Resp. Ex. 4 - Photographs, Interior of Home prior to repair work, undated
- Resp. Ex. 5 - Photographs, undated
- Resp. Ex. 6 - Photographs, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - OAH Notice of Remote Hearing on November 10, 2022, issued August 18, 2022⁵
- Fund Ex. 2 - Hearing Order, March 2, 2022
- Fund Ex. 3 - MHIC letter to Respondent regarding Claim, December 7, 2021, with attached Claim, received November 24, 2021
- Fund Ex. 4 - MHIC Licensing History for the Respondent, August 24, 2022

Testimony

The Claimant testified and presented the testimony of:

- 1) Denny Ashley, a friend of the Claimant's, who performed odd jobs at the Claimant's home;
- 2) Cristo Arturo Garcia, owner of Elohim Construction, LLC; and
- 3) G. Robert Fuller, who was accepted as an expert in Residential Construction Standards.

The Respondent testified and did not present other witnesses.

The Fund did not present any witnesses.

⁵ As discussed earlier, the hearing was rescheduled to February 8, 2023, and continued to March 16, 2023.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant, the Respondent was a licensed home improvement contractor under MHIC license number 01-106819. The corporate license number was 05-136086.
2. On February 2, 2018, the Claimant experienced significant water damage to the first floor of her home requiring water restoration and home improvement repair to be performed.
3. At the time, the Claimant had a homeowner insurance policy with USAA and filed a property loss claim. On April 23, 2018, after an inspection of the property loss, USAA determined the actual cash value of the loss was \$11,373.18.
4. The first floor of the Claimant's home included an entrance front door foyer. Entering the foyer from the front door to the left is a living room and also to the left, a stairway leading to the second floor. From the foyer and front door is a hallway leading to a large kitchen area, with a small utility room toward the right of the kitchen. On the right side of the foyer hallway is a half bathroom. To right of the foyer and front door is a dining room.
5. A water restoration company, Restoration One, came to the Claimant's home and removed all water-damaged material including floor coverings and drywall, but only two feet of drywall height from the floor.
6. To repair the water damage to her home, the Claimant contacted the Respondent, who came to her home in June 2018 to begin the repair work. At that time, the Claimant paid the Respondent \$11,373.18, which he used to buy materials, including ceramic floor tiles, which were stored at the home.

7. On December 5, 2018, the Claimant and Respondent entered into the Contract, which was written by the Respondent in a manner consistent with the USAA estimate.

8. The Contract specifically described the work required by the Respondent to reconstruct the interior of the Claimant's first floor, including:

- (a) Half Bath - mask and prep for paint, install drywall, install baseboards, paint two coats to walls and trim, install vanity, install p-trap assembly, install plumbing fixture supply line, install interior door unit and hardware, and install floor tile.
- (b) Hallway/Foyer - mask and prep for paint, install drywall, install baseboards/trim, paint two coats to walls and trim, install floor tile.
- (c) Stair Closet - mask and prep for paint, install drywall, install baseboards/trim, install door unit and hardware, paint two coats to walls and trim, install floor tile.
- (d) Kitchen - move and reset contents, mask and prep for paint, install drywall, install three door units and hardware, paint two coats to walls and trim, install floor tile.
- (e) Dining Room - move and reset contents, mask and prep for paint, install drywall, install baseboards/trim, install floor tile.
- (f) Living Room - mask and prep for paint, install drywall, install baseboards/trim, paint two coats to walls and trim, install carpet and padding.
- (g) Additional Cost Items - purchase and install toilet (\$265.19), floor prep/materials, leveling/grinding/build ups (\$1,148.00).

9. The Contract's total cost was \$20,274.62. The Contract provided that \$11,373.18 was paid and that the remaining balance was \$8,901.44.

10. At an unspecified time in December 2018, the Respondent installed ceramic tiles in the Hallway/Foyer and in the Kitchen and Dining Room areas. Ceramic tiles installed in the Kitchen and Dining Room areas were of a simulated wood plank style. In the Living Room area and on the Foyer stairway, the Appellant installed a carpet. The Respondent had installed doors in areas of the first floor, including for a utility room, under the stairs, and a double door in the entry from the Foyer to the Living Room. The Respondent has also repaired wall spaces by

installing drywall, preparing the installed drywall for painting, and painting the entire wall space to make it uniform.

11. The Respondent received the full contract price of \$20,274.62.

12. By January 2019, the Claimant began to experience workmanship issues and communicated those issues with the Respondent. Also in January 2019, the Respondent met with the Claimant to discuss those issues and the Respondent promised to return and either repair any work or complete any required work. After January 11, 2019, the Respondent stopped coming to the Claimant's home to complete any requested repairs.

13. In the Kitchen, Dining Room, Foyer, and Hallway, the Respondent installed ceramic tiles unevenly resulting in numerous loose tiles with voids, loose grout, and some broken tiles because of poor installation. The Respondent also installed tiles with grout joints widths between tiles that varied from one-eighth to one-half inch.

14. In these same areas, the Respondent installed ceramic tiles without adhesive leveling compound being installed before the ceramic tiles were installed, which will continue to cause the tiles to crack.

15. To repair the ceramic tiles required all tile to be removed and proper adhesive leveling compound applied across the floor before tiles could be reinstalled. The tiles could not be repaired by fixing only certain areas of the floor tile.

16. The Respondent inadequately installed and painted drywall. Taped drywall joints were cosmetically applied, with visible joints, with inadequately applied joint compound, and improper sanding prior to being painted, and required repair.

17. The doors installed by the Respondent were not level and required replacing, including replacing a louvre style door in the utility room to meet building code.

18. Based on the estimated by Elohim Construction, LLC, the total cost repair the work performed by the Respondent was \$21,475.00.

DISCUSSION

Legal Framework

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."). For purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists. Bus. Reg. § 8-405(b). Actual loss means "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and 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 and 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; also, the Claimant is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

Compensation Eligibility

The Claimant

The Claimant testified that she has lived in her home for twenty-nine years. In February 2018, her home experienced substantial water flood damage to the entire first floor, including the walls, which caused the Claimant to file a claim with her home insurance company, USAA. The Claimant testified that a water damage mitigation company, Restoration One, came to her home and removed all contents of the first floor and removed all floor tile coverings. The Claimant testified that USAA estimated the property loss to her home was \$11,373.18.⁶

Repair of the damage led her to contact the Respondent, who originally came to her home in late May or early June 2018. The Claimant and the Respondent entered into a contract to repair the Claimant's home.⁷ The Contract was prepared by the Respondent and was based upon the USAA estimate. In addition to making repairs to walls and installing ceramic tiles or other floor coverings, the Contract also required the installation of a toilet at a cost of \$265.19 and required floor preparation, floor grinding and leveling, including material at a cost of \$1,148.00. The total Contract price was \$20,774.62 and included a required deposit of \$11,373.18, which was paid.

⁶ See Resp. Ex. 1.

⁷ Clmt. Ex. 3.

The Claimant explained that the Respondent originally started work to repair her home in June 2018. She added that to perform the work required to repair the home, the Claimant had a project manager and two crew members. The Claimant testified that she originally paid the Respondent the \$11,373.19, which he used to buy materials including the ceramic floor tiles.

The Claimant testified that the Respondent did not consistently work for approximately five months. She explained that the delay frustrated her, which she communicated by text messages in November 2018 with the Respondent.⁸ In these text messages, the Respondent also complained about two doors installed by the Claimant, one door was installed under the stair area and another door was installed at the utility room, just off of the kitchen. She added that the Respondent did not begin to install the ceramic tiles until November 2018. The Claimant also explained that Respondent installed the ceramic tiles on her first floor in December 2018.

By January 2019, the Claimant testified that she had issues with the work performed and met with the Respondent to discuss these issues. The Claimant explained that the issues she had with the Respondent's work included sloppy painting on the walls, the stairs required repair, ceramic tiles were broken, tile grout was missing, different sized grout widths, floor registers were missing, and a utility room door was improperly installed and not compliant with code. The Claimant also had an issue with another door that was stored in her garage area. The Claimant alleged that the Respondent removed the door from its storage area and placed it outside, where it remained for some time, exposed to the weather, and which required it to be replaced because of the damage caused. To document these work issues the Claimant entered into evidence several photographs and a video.⁹

⁸ Clmt. Exs. 4 and 5.

⁹ Clmt. Exs 8, 9, 10, 11, 12, 13, and 16

The Claimant testified that the Respondent promised to return to the home and to fix these issues but that the Respondent never returned and repaired or completed the work.

Eventually, the Claimant contacted an MHIC licensed home improvement contractor and two home inspectors to evaluate the Respondents workmanship and to determine the cost to repair or complete any work performed by the Respondent. Cristo Arturo Garcia, with Elohim Construction, LLC estimated that to repair or complete the work required by the Contact, was \$21,475.00.¹⁰ Mr. Garcia testified in support of the Claimant's claim. On or about July 5, 2022, Patrick Murphy, with Dynamic Home Inspection, LLC (Dynamic), inspected the work performed by the Respondent and concluded that the ceramic floor tiles were installed improperly with poor workmanship.¹¹ Mr. Murphy did not testify. After an inspection on January 19, 2023, G. Robert Fuller, a licensed Professional Engineer, also determined that the work performed by the Respondent, including the ceramic tile installation, drywall installation and painting, and door installations were done with poor workmanship.¹² Mr. Fuller testified in support the Claimant's claim as an expert witness.

To determine the cost to replace the door, the Claimant entered into evidence a photograph of the door the Claimant alleged the Respondent or his crew placed outside unprotected from the weather.¹³ The Claimant testified that the door was a brand-new door before it was put outside and to replace it would cost \$288.00.

The Claimant also testified that she paid Alberto Carter to install or replace a vanity sink, granite top and backslash in the Half-Bath, which the Respondent was required to install but did not. The Claimant entered into evidence a notarized statement from Mr. Carter that, on August

¹⁰ Clmt. Ex. 18.

¹¹ Clmt. Ex. 17.

¹² Clmt. Ex 18.

¹³ Clmt. Ex. 13.

25, 2022, he was paid \$320.00 for that work.¹⁴ To have this work performed, the Claimant had to purchase the materials. Through Paypal, the Claimant purchased the vanity backsplash at cost of \$120.84.¹⁵ The Claimant also purchased the vanity sink at a cost of \$299.00.

The Claimant testified that the Respondent was to replace floor registers that were damaged by the flood and required replacing. She offered into evidence photographs of the missing or damaged floor registers. The Claimant alleged that the Respondent did not do this work and it cost her \$100.00 to do this on her own.¹⁶

Finally, the Claimant explained that the Respondent was required to install a louvre-style door for the utility room. She explained that Respondent installed a solid paneled door which was inappropriate and cost her \$520.00 to replace.

After receiving estimates and reports regarding the work performed by the Respondent, the Claimant filed her claim against the Fund seeking reimbursement for all the cost she incurred or will incur repair her home.

Denny Ashley

Mr. Ashley testified in support of the Claimant's issues with the Foyer stairs. Mr. Ashley testified that he has been a friend to the Claimant for several years and has a background in carpentry, with work experience performing carpentry for a local union and in general home construction. Mr. Ashley testified that he was familiar with the Claimant's project to repair her home and became involved to help the Claimant repair interior steps.

Mr. Ashley explained that bottom treads of the staircase were loose and moved or shifted. After pulling up installed carpet, he observed that the second step from the bottom of the stairs, was cut along the back.

¹⁴ Clmt. Ex. 19.

¹⁵ Clmt. Ex.20.

¹⁶ The Claimant did not offer into evidence any documentation to support this cost.

He further explained that the step was cut at the stringer and along the stair tread. He added that there appeared to be no reason for the cutting of the stair in this manner. Mr. Ashley testified that he repaired the step by placing a "brace" underneath the stairs. Mr. Ashley testified that the Respondent paid him for the work to fix the stairs.

Cristo Arturo Garcia

Since 2009, Cristo Arturo Garcia has owned Elohim Construction, LLC, and is a general contractor, licensed by the MHIC. The Claimant requested Mr. Garcia to estimate the cost to repair any work performed by the Respondent. Mr. Garcia testified that he has performed this type of work approximately seventy-five times. On October 27, 2021, Mr. Garcia inspected the Claimant's home, the work performed by Respondent, and created an estimate to repair or correct any work.¹⁷ To conduct the inspection and prepare the estimate, Mr. Garcia explained that he reviewed the scope of work performed by the Respondent by measuring the floors of each room or space and creating a drawing of the house.

The estimate by Mr. Garcia generally explained that the ceramic tiles installed in the Kitchen, Dining Room, Entry Hallway (the Foyer) were installed unevenly and without proper spacing, and with grout that was not sealed. He testified that doors were improperly installed and not level, requiring replacement. He also determined that the bottom stair in the Foyer was cut too short and required replacement to meet building code.

Mr. Garcia testified, or explained in the estimate, that he observed the floor tiles in the Kitchen and Dining Room area of the Claimant's home to be installed unevenly, with numerous tiles with loose grout because of poor installation, and some tiles already broken.

¹⁷ The estimate was admitted into evidence as Clmt. Ex. 18.

Mr. Garcia indicated that the tiles had a sound which indicated voids existed under the tiles. He added that the sound of a void is determined by knocking on the tiles. He also observed that grout joints widths between tiles varied from one-eighth to one-half inch and should have been the same width. Mr. Garcia also observed that the ceramic tiles installed in the Hallway had more than one-half inch grout widths, and without being sealed. He also explained that the grout looked dirty upon inspection. Mr. Garcia also inspected the wall spaces which were repaired by the Respondent and found the installed drywall not properly prepared for painting, including improper application of wall mud (joint compound) and improper sanding before painting, which required repairing and repainting.

In the estimate, Mr. Garcia explained that the Kitchen floor was a total of 216 square feet. To repair the work required removal of the improperly installed tiles, cleaning of the concrete subfloor, leveling the existing floor, installing new tiles with one-eighth of an inch spacing, and new grouting which is cleaned and sealed. The estimate to perform this work was \$5,400.00. To repair the Kitchen tiled floor also required removing seventy-two linear feet of baseboard and installing new three and one-quarter inch baseboard, with caulking and painting as required. The cost of this work was \$720.00. In the Kitchen, Mr. Garcia estimated that there was 512 square feet of Kitchen walls requiring repair and repainting as an estimated cost of \$1,408.00.

Mr. Garcia estimated that the Dining Room floor was a total of 133 square feet. To repair the ceramic tiles in this area required the same work as in the Kitchen and would cost \$3,325.00. The Dining Room area had 48 linear feet of baseboard, which required to be removed and replaced to repair the ceramic tiles at a cost of \$480.00. Mr. Garcia also estimated that the Dining Room walls were a total of 383 square feet, required small necessary repairs, and then to repair and repaint would cost \$1,506.00.

Similarly, Mr. Garcia estimated that the Foyer floor, which he described as the entry area floor, was 82 square feet, and with the same work required to repair the ceramic tiles as indicated in other rooms, would cost \$2,050.00. The Foyer area had 36 linear feet of baseboard that required removing and replacing at a cost of \$360.00. Mr. Garcia's estimate did not contain a cost to repair or repaint any walls in the Foyer area.

As to the Half-Bath, the estimate created by Mr. Garcia did not provide an estimate of this floor area's floor square footage. However, to remove the existing tile floor and to install new tile, required removing the bathroom sink, vanity, and toilet (keeping for re-installation) at cost of \$3,890.00. Mr. Garcia estimated the Half-Bath contained 21 linear feet of baseboard, which required removal and replacing at a cost of \$210.00. He also estimated that the Half-Bath had 224 square feet of wall space, which required small repair and painting at a cost of \$616.00.

Mr. Garcia also inspected the Stairs in the Foyer area and observed that the first step had been cut. Mr. Garcia did not provide any further description in his testimony or through the estimate. However, Mr. Garcia estimated to repair the step would cost \$400.00.

Mr. Garcia testified that he inspected doors installed in the Claimant's home and found the three doors to be installed improperly and not level. His estimate also included replacing the utility door with the louvre door. His testimony or estimate did not provide any additional explanation as to improperly installed doors. Mr. Garcia estimated that to replace three doors in the Claimant's home, including a door between the Dining Room and Kitchen area, a door between the Foyer and the Kitchen, and a door installed under the stairs would cost \$520.00 each, or total of \$1,560.00.

The total cost Mr. Garcia to repair the work described in his estimate was \$21,475.00. Mr. Garcia testified the scope of work in his estimate was the same scope of work as contained the Claimant's contract with Respondent. He also testified that estimate provided in 2021 was a fair and reasonable cost at that time.

During his testimony, Mr. Garcia acknowledge that were specific differences between his estimate and the Claimant's contract with the Respondent, like in the bathroom area, the Respondent's contract does not reference installing a toilet. He also agreed that his estimate required removing and installing new baseboard and not reinstalling baseboard installed by the Respondent. Mr. Garcia testified that also agreed that he did not count how many tiles were broken. However, he also explained that other than improper and uneven installation, broken tiles can result from something being dropped on a tile. As to grout issues, Mr. Garcia explained that missing or loose grout is caused by moving tiles which were installed improperly. Mr. Garcia explained that the damage to the tiles he observed could not be caused by overuse, misuse, or something heavy being dropped. He also explained that depending on the product used by the contractor, a person would have to wait approximately four hours before walking on the floor. However, he did not agree that the walking too early on the floor would cause the tiles to break.

Dynamic Home Inspection, LLC (Dynamic)

In support of her claim, the Claimant submitted into evidence an inspection report conducted by Dynamic and dated July 5, 2022.¹⁸ The inspection was performed by Patrick Murphy, a certified Master Inspector.¹⁹ According to the report, Mr. Murphy inspected the ceramic tiles installed in the Claimant's foyer, kitchen, and living room.

¹⁸ See Clmt. Ex. 17.

¹⁹ Mr. Murphy did not testify.

Based on the inspection, Mr. Murphy determined that no leveling compound was used to feather out any low areas to make a flat consistent base to properly install ceramic tile before installation. Mr. Murphy determined that many of the tiles have high and low areas which confirmed a lack of leveling compound. Mr. Murphy determined that the floor tiling had many areas that were not properly adhered, which was confirmed by tapping the tiles. Mr. Murphy explained that when tapping tiles with the knuckle of your hand, there is a clear difference in sound between solid level substrate and the areas which are "low producing a hollow sound when tapped."

Mr. Murphy also determined that the grout between tiles are different widths apart, which was observed based on eye-sight inspection only. Based on the variance in widths, Mr. Murphy concluded that the proper spacers were not used to make consistent spacing between each tile. Mr. Murphy also determined that the grout was not sealed to prevent discoloration, dirt and staining between tiles.

Mr. Murphy supported his determinations with four photographs. Two photographs were of a wood plank style ceramic tile.²⁰ Two photographs were of ceramic tiles installed in the Claimant's first floor half bath. Under the wood plank tile photographs, Mr. Murphy indicated that over twenty percent of the installed tiles had the hollow sound upon tapping and the grout widths were over a one-eighth of an inch in multiple areas. Regarding photographs of the ceramic tile installed in the half bath, Mr. Murphy indicated that there were hollow areas and the grout between tiles were not sealed after installation. Based on the inspection performed, Mr. Murphy concluded that the ceramic floor tile installation was unworkmanlike.

²⁰ The wood plank style ceramic tiles were installed in the Kitchen area.

According to the report, Mr. Murphy also inspected missing floor registers in two locations, the Claimant's family room and kitchen, which he documented with two photographs. Mr. Murphy determined the floor registers were either missing or of an incorrect size creating a tripping and safety hazard requiring replacement.

G. Robert Fuller

G. Robert Fuller is a licensed Professional Engineer in Maryland and Virginia. Mr. Fuller earned a bachelor's degree in civil engineering in 1963 and a Graduate Studies (Masters) degree in Structural Engineering in 1967. Since 1960 through the present, Mr. Fuller has been employed in a variety of capacities in the Structural Engineering field. Mr. Fuller's work experience involved structural analysis and design of residential homes, evaluating relevant building codes, with experience inspecting residential remodeling or renovation construction. Based on his education and work experience, without objection by the Respondent or the Fund, Mr. Fuller was accepted as an expert in Residential Construction Standards.

Before conducting his inspection of the Claimant's home, Mr. Fuller reviewed the report by Dynamic, as well as documentation and photographs the Claimant filed with the MHIC. On January 19, 2023, Mr. Fuller inspected the Claimant's home and created a report of his inspection.²¹ Mr. Fuller explained, in his testimony or through the report, that there were two types of floor tiles installed in the Claimant's home. There were ceramic tiles installed in the Foyer and Half-Bath.²² Other ceramic tiles installed in the Kitchen and Dining Room area, which were a simulated wood plank style tile.

²¹ See Clmt. Ex. 23.

²² Mr. Fuller referred to the Half-Bath as a "powder room."

Mr. Fuller explained that, upon inspection, he observed that several of the tiles installed in Foyer area were cracked. In the area where the Foyer tiles and an adjacent carpeted Living Room area join together, there were broken tiles. Mr. Fuller observed that there was no threshold strip installed between the two areas and that the concrete floor surface underneath the tiles was rough and uneven. He also observed a gap between the tiles and the carpet, there was no carpet wood strip installed, and the carpeting edge was loose and frayed.

In the Foyer, where the stairway was located, Mr. Fuller observed that there was a gap between the tile edges and the bottom wood stair riser. The concrete surface at the gap was rough with no leveling compound under the edge of the tile. Mr. Fuller observed that the grout widths between tiles varied from a one-quarter to one-half of an inch and were discolored. Mr. Fuller testified that the wood plank tiles were installed over a rough surface, and several tiles were cracked.

Based on this inspection, Mr. Fuller's testified that he saw no evidence of any adhesive leveling compound being installed before the ceramic tiles were installed, which will continue to cause the tiles to crack, especially with the tiles being installed over a rough and uneven surface. Mr. Fuller explained that inadequate adhesive leveling compound creates voids underneath the tiles and causes the tiles to be installed unevenly in areas with as much as one-eighth inch unevenness over the horizontal plan. He added that the unevenness of the tiles creates a tripping hazard. Mr. Fuller also explained that voids under the tiles are detectable by a simple method of knocking on the tiles to hear a sound consistent with the existence of a void.

Mr. Fuller opined that the ceramic tiles were installed with poor workmanship and the conditions he observed would not be attributed to excessive use or misuse.

To repair the tile installation, Mr. Fuller explained that the tiles would have to be removed and proper adhesive leveling compound applied across the floor before tiles could be reinstalled. He added that the tile repair could not be corrected by fixing only certain areas of the floor tile.

As to the stairs in the Foyer, Mr. Fuller testified that to inspect the stairs, he had to remove the carpeting from the bottom of the stairs. After doing so, he observed that the bottom treads moved sideways and that the treads were not firmly anchored to the adjoining wall. He explained that there was a gap between the bottom stair risers and adjoining wall and between the treads and the wall.

Additionally, Mr. Fuller observed that there was no cover or base molding along the stair and the adjoining left wall. Mr. Fuller opined that the bottom stairs were unsafe due to structural inadequacy. He also explained that the condition of the stairs was not the result of excessive use or misuse.

Mr. Fuller also inspected wall surfaces, approximately four feet above the floor and the drywall joints which were oriented horizontally from the floor as well the top joints, which were typical of installed four by eight-foot dry wall sheets. Mr. Fuller observed drywall tape and joint compound were improperly applied, with the joints being visible. Mr. Fuller opined that the visible drywall joints indicated inadequately applied joint drywall compound and improper sanding prior to being painted. In his opinion, the quality of the work was poor and required repair.

Mr. Fuller also explained that he inspected a Utility Room door that was installed. He explained that the Claimant requested a louvre-style door to be installed but a solid paneled door was installed. In his opinion, the installed door should have been a louver-style door for a most efficient HVAC air return system and to meet building codes.

Mr. Fuller testified that he did not know what work Restoration One performed on Claimant's floors but added that typically the contractor installing floor tiles is the contractor responsible to ensure that the underlying floor was properly leveled. Mr. Fuller also testified that he did not review then the USAA estimate and did not know was covered by that estimate. Mr. Fuller also did not interview with the Respondent before completing his report and providing his testimony in this case.

During his testimony, Mr. Fuller acknowledged that using a "rotor toothbrush" may be used to clean grout between ceramic tiles but such a method would likely require much more abrasiveness to clean the grout. He further explained that the tiles should have been properly cleaned and sealed after installation and it is not probable that using this method to clean grouting would cause damage to the grout, even if the grout was not sealed, but it may help clean the grout to some extent.

As to cracked ceramic tiles Mr. Fuller continued to explain that the primary reason for cracked tiles are voids underneath the tiles. However, he agreed that other possible causes for a cracked tile could be dropping heavy objects on a tile. But he further explained that the areas he observed indicated the cracked tiles was caused by voids. Mr. Fuller also explained that he observed approximately a half-dozen cracked ceramic tiles in the Hallway/Foyer area and about two or three cracked wood plank ceramic tiles. Again, Mr. Fuller continued to opine that all ceramic tiles required replacing because of improper leveling and a lack of grout sealing, not just because of cracking.

The Respondent

The Respondent testified that since 2017, the Respondent has owned C. Mason Construction. He has been involved as contractor for over twenty-three years and has never had an MHIC complaint or claim filed against him.

The Respondent testified that he entered into a contract with the Claimant to repair her home. He originally estimated that it would take between thirty to sixty days to complete the contract, which became difficult to do for several months because of several issues.

The Respondent testified that delay in completing the Contract occurred because his crew would be scheduled to work, but the Claimant had a large dog which would be loose in the house, making it difficult for work to be performed or required work to be rescheduled. At times, the dog would get out of an upstairs room and defecate on the work, which required the crew to clean it up, until eventually that situation became unacceptable. Additionally, the air conditioning was not working in the home and the temperature in the home would become unbearable for the work crew, which only became more difficult if the dog had urinated or defecated in the home.

The Respondent also testified that sometimes the Claimant would call and indicate that she was not feeling well and wanted the Respondent to reschedule. The Respondent further explained that sometimes the crew would be at the house and the Claimant was not feeling well and wanted to reschedule. The Respondent further testified that the Claimant had issues with her sons and would want the Respondent to not let her sons in the house while the Respondent worked or would want to the Respondent to reschedule. The Claimant's sons would sometimes take showers in an upstairs bathroom, which would cause a water leak onto the first-floor level. When this happened, the Respondent's crew would have to repair tiles that were newly installed. The water leaks happened several times and caused the Respondent to fix the leak at no cost to

the Claimant and for which USAA would not provide reimbursement. The Respondent explained that the water leak occurred at least seven or eight times. Other times, the Claimant's sons would walk on freshly installed tile causing the tile to move and would require the Respondent to repair and reinstalled those tiles. Because of these issues, the Respondent testified that work on the project was often delayed beyond the anticipated time to complete the Contract.

The Respondent explained there was an estimate from USAA which detailed and authorized the scope of work to repair to the Claimant's home.²³ In the Half-Bath, USAA authorized the installation of a tile floor covering, baseboards, drywall - up to two feet from the floor, and to paint the walls, baseboard, and a door casing with two coats of paint.

The Respondent testified that he completed all the work required to be performed in the Half-Bath, except for the installing a sink in a vanity, which the Claimant wanted to do on her own.²⁴

In an area described by the USAA estimate as "Stair Closet," USAA authorized work including installing tile floor coverings, baseboards, drywall - up to two feet from the floor, and painting the walls, baseboards, and a door casing with two coats of paint. Similarly, in the Foyer and Hallway, Kitchen, and Dining Room areas, USAA authorized work including installing tile floor coverings, baseboards, drywall - up to two feet from the floor, and painting the walls, baseboards, and door casings with two coats of paint. In the Living Room area, USAA authorized similar work as in other rooms, but did not authorize tile floor coverings. Instead, the USAA authorized the installation of a vinyl floor covering.

²³ See Resp. Ex. 1.

²⁴ My review of the USAA estimate indicated that the authorization to install a vanity as well as some related plumbing is on a portion the estimate related to the Foyer and Hallway.

The Respondent explained that because of the water damage, USAA only authorized the repair of the Claimant's walls two feet up from the floor. The Respondent also explained that a remediation company came into the Claimant's home and removed the two feet of dry wall in each of the Claimant's rooms and his job was to repair the work authorized by USAA. The Respondent further explained that because he was going to repair and paint the walls in each room, to make the walls uniform, he painted the entire wall space, including the ceilings, in each room, for which he did not charge the Respondent. USAA estimated that the actual cash value of all authorized scope of work would cost \$11,373.18.

The Respondent testified that he entered into a separate contract with the Respondent to repair a pipe in the Claimant's Half-Bath.²⁵ This contract required the Respondent to remove drywall, remove a clean-out access to a wastewater line, install two couplings and three feet of new pipe, reinstall new drywall, with drywall mud, and paint. The cost of this contract was \$1,398.00. The Respondent completed this work, but USAA would not pay for this work and the Claimant never paid the Respondent.

To repair the work authorized by USAA, the Respondent testified that he entered into the Contract with the Claimant.²⁶ The Respondent explained that he used the USAA estimate as a guide to create the Contract. The Respondent testified that the Contract did not require any work to repair the steps or stairs. Additionally, the Respondent testified that the Contract did not require the Respondent to install two double doors, at the foot of the stairs, between the entry Foyer and the adjacent Living Room area, which was a carpeted room. The Respondent explained the Claimant already had the doors at her home and requested the doors be installed, which he did. The Respondent also testified that because the bottom stair extended beyond the

²⁵ See Resp. Ex. 2.

²⁶ See Resp. Ex. 3, *see also* Clmt. Ex. 3.

adjoining wall, to install the doors required the bottom step to be cut. However, the Respondent maintained that as to the damage the Claimant described to the steps, he did no work other on the steps, which would have caused that type damage. Nevertheless, the Respondent explained that he installed carpet on the steps, which he agreed to do at Claimant's request, and which was not provided in the Contract.

The Respondent testified that, by January 2019, he completed all work required by the USAA estimate and the Contract. He documented the completed work with photographs attached to Contract, which included before and after photographs of the work performed. The Respondent testified when he completed the Contract there were no loose or cracked tiles. He also testified that the tiles were properly sealed by his work crew. However, he testified that when the Claimant complained about tile installation, he did have his crew respond to her home to make repairs as soon as possible.

As to variances in the grout widths, the Respondent testified that the Claimant had input on installation of the tiles and wanted the wood plank tiles to have a more natural realistic appearance. The Respondent explained that the Claimant requested that the tile be installed without using spacers. The Respondent also testified that the Claimant wanted the tiles installed in the Hallway / Foyer areas with wider grout spaces. The Respondent testified that he explained to the Claimant that wide spacing would cause the grout to crack. However, the Respondent admitted that he installed the grout with spacing wider than should be done to accommodate the Claimant's request.

Before beginning work on the Claimant's home, the Respondent took several photographs of the condition of each room.²⁷ The photographs depict substantial damage caused by water damage or the water restoration work performed prior to the Respondent beginning the

²⁷ See Resp. Exs. 4 and 5.

repair work. The Respondent also offered several photographs of water damage caused by the water leaking from an upstairs bathroom, which were taken in July or August 2018.²⁸ The Respondent submitted several photographs to show the condition of the tiles and carpeting installed in each room, including the stairs after completing the repair work.²⁹ The Respondent explained that to install the tiles required that he grind down all high spots on the tile subfloor, then install a leveling compound to even out the low spots with any high spots. He explained that in one of the photographs, the leveling compound is seen as in green bags.³⁰

The Respondent explained that the Contract did not require him to replace floor registers. The Respondent could not recall a specific discussion with the Claimant to install floor registers. However, he testified that, if the Claimant purchased floor registers, he would have installed them. Regardless, the Respondent testified that installation of floor registers was not required by the USAA estimate or the Contract.

As to the door to the utility room, the Respondent testified that, in January 2019, the Claimant wanted a friend of hers, Denny Ashley, to perform some repair work in the home, including installing a door to the utility room. The Respondent explained that he never installed that door but agreed to pay Mr. Ashley to install the door. The Respondent also testified that the Claimant wanted Mr. Ashley to repair the loose stair, for which the Respondent also agreed to pay Mr. Ashley. The Respondent further testified that on these two issues, all he wanted was for the Claimant to be satisfied with the work performed and was willing to accommodate anything she requested to achieve that goal. The Respondent testified that he paid Mr. Ashley approximately \$300.00 to \$400.00 cash to install the door and to repair the stairs. After January 2019, the Respondent testified that he had no more contact with the Claimant.

²⁸ See Resp. Ex. 5.

²⁹ See Resp. Ex. 6.

³⁰ See Resp. Ex. 3, (photograph on page 5, labeled as "additional floor repair.").

Finally, the Respondent testified that he had nothing to do with a steel door which was placed outside the home.

Analysis

The of the Claimant's Claim against the Fund is about extensive damage to her home caused by a massive water leak in February 2018. This water damage required immediate water remediation work to remove all floor coverings and partial dry wall removal throughout the first floor of her home. The Claimant's homeowner's insurance, USAA estimated the cash value of the loss for repair purposes was \$11,373.18. The Claimant eventually entered into the Contract with the Respondent to perform all the repair work, which the Respondent drafted, and modeled to be consistent with the USAA estimate. The total cost of the Contract was \$20,274.62. To pay for materials, the Claimant paid the Respondent the \$11,373.18. The Contract provided that balance owed was \$8,907.44. The substance of the claim against the Fund is about the Respondent's workmanship installing the ceramic tiles in the Claimant's home.

There was extensive testimony regarding delays to complete the work. Much of that testimony was a distraction to the real issue which was whether the Claimant sustained an actual loss caused by the Respondent's unworkmanlike conduct in performing the Contract. The Respondent argues that he completed all the work required by the Contract by December 2018 and took pictures of the work, which were admitted into evidence. I agree that the photographs appear to show completed work and the ceramic tiles installed appear to be without damage. However, the Respondent admits that installed ceramic tiles in the Foyer and Hallway as well as in the Kitchen and Dining Room without spacers and with gaps that would generally not be appropriate, albeit installation in this manner was at the Claimant's request. The Respondent testified that he warned the Claimant that installing the tiles with wide grout spacing could cause the grout to crack.

In January 2019, the Claimant complained to the Respondent about several issues she had with the work done in her home. She testified about cracked tiles, poor drywall and painting, and other work issues she had with the Respondent. Frankly, I found her testimony to be a bit confusing and meandering.

However, the evidence she presented through Mr. Fuller and Mr. Garcia was convincing. Their testimony was consistent, detailed, and persuasive. I reviewed their testimony with detail because it persuaded me by a preponderance of the evidence that the ceramic tiles installed by the Respondent was unworkmanlike because of a failure to properly prepare the subfloor and to properly apply an adhesive or leveling compound to prevent the installed tiles from cracking. The poor workmanship in installing these tiles was made worse by creating inconsistent or too large a grout width. Both witnesses supported their testimony that the ceramic tiles were installed without proper leveling of subfloor by discussing the sound of voids under the tiles. Both of these witnesses testified that the cracked tiles they observed were not because of misuse or abuse by the Claimant. Both witnesses testified without hesitation that the ceramic tiles will continue to break and the grout will continue to deteriorate because of the of improper installation and that the only appropriate process to repair the work is to completely remove all tiles and to reinstall with a proper leveling of the subfloor.

Mr. Fuller also described his observation that the Respondent repaired the Claimant's drywall in each room with rough and visible joints at drywall seams. I also accepted his opinion that to repair the work required the joints be re-sanded and repainted.

The bulk of the Claimant's claim against the fund is the cost to repair the ceramic tiles and drywall. Mr. Garcia's estimate supports in very specific detail the cost to repair these issues in the Claimant's Kitchen, Dining Room, Foyer, and Half-Bath. Mr. Garcia explained that his estimate did not contain any work not required by the Respondent's contract and that the costs

provided in the estimate were fair and reasonable at the time. The cost to repair the Respondent's unworkmanlike work is \$21,475.00. Except for disputing the need to correct any work her performed, the Respondent did not dispute the cost in the estimate.

Collectively, based on the Claimant's photographic evidence, which was corroborated by the evidence presented through Mr. Fuller and Mr. Garcia, I am persuaded that the Respondent performed an unworkmanlike home improvement to repair the Claimant's ceramic floors and drywall.

The Claimant presented evidence regarding several issues she had the Respondent's work. At times, this evidence was confusing or not directly relevant to her specific request for compensation from the Fund. There was an issue about an installed door for the utility room. There was some evidence that the Respondent installed a solid door but building code required, and the Claimant wanted, a louver style door. Again, neither the Contract nor the USAA estimate did not require a door replacement. However, Mr. Fuller opined that a louver style door was required and that it should be replaced. Mr. Garcia's estimate included replacing this door with a louver style door at a cost of \$520.00, as well as other doors because of poor installation at a total cost of \$1,560.00. After considering all evidence about this door and other doors, I find that the evidence demonstrated that any door installed by the Respondent was inadequately installed and that the cost described by Mr. Garcia was reasonable.

As to the door which was allegedly placed outside and was unprotected by the weather. The Respondent denied having ever touched that door. The Claimant's allegation appears to be speculation on her part. Simply put, I have no idea how or why that door was outside for so long a time, perhaps that's because there is no credible evidence which answers that mystery.

There was also testimony regarding the Claimant's stairs in her Foyer. The Claimant alleged that the Respondent cut the stair tread and riser, did not resecure the step, and covered up the damage with a carpet. The Respondent denied cutting the stair as described by the Claimant. However, the Claimant did not present the cost to repair that stair in her claim. Therefore, I find any evidence presented on that issue is a distraction, and not a part of any actual loss compensable by the Fund.

The Claimant presented evidence of having to replace or install a vanity sink, countertop, and backsplash in the Half-Bath. That issue was also confusing. Installing a vanity in the Half-Bath was not a part the Contract or the USAA estimate. The Respondent may have agreed to install a vanity; however, it is not clear that there was a contractual agreement, even a verbal agreement to actually do so. Regardless, the Claimant paid another individual, Alberto Carter, to perform that work and, there is no evidence that this person is licensed by the MHIC to perform home improvements. The evidence presented does not support a finding that the Claimant sustained a compensable loss for the vanity in the Half-Bath.

Finally, the issue of the floor vents. This issue was confusing. The evidence is unclear if the Respondent was required to install any floor registers. The Claimant asserted that it cost her \$100.00 to do this on her own but she presented no evidence to establish that cost. Therefore, I find that the Claimant did not sustain a compensable loss to replace floor registers.

Award Amount

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss compensable from the Fund. The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contractor's work.

The following formula is most applicable:

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) (emphasis added).

Using this formula, the Claimant's actual loss is calculated as follows:

Amount paid to Respondent -	\$20,274.62
Plus amount to repair -	+ \$21,475.00
Subtotal:	\$41,749.62
Less the original contract price -	- \$20,274.62
Actual Loss:	\$21,475.00

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for 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.³¹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss does not exceed the \$30,000.00 statutory cap. Therefore, the Claimant's is entitled to recover the full value of the actual loss, which is \$21,475.00.

³¹ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$21,475.00 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). I further conclude that the Claimant is entitled to recover \$21,475.00 from the Fund. Md. Code Ann., Bus. Reg. 8-405(a), (e)(1) (Supp. 2022).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$21,475.00; 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,³² and

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

June 14, 2023
Date Decision Issued

DA/sh
#205354

Daniel Andrews

Daniel Andrews
Administrative Law Judge

³² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**IN THE MATTER OF THE CLAIM OF
LAWANA PRESSLEY-LAWSON
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
RYAN VIEIRA AND C. MASON
CONSTRUCTION, LLC**

*** MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 20(75)880
* OAH CASE NO. LABOR-HIC-
* 02-22-06489**

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on February 8 and March 16, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on June 14, 2023, concluding that the homeowner, Lawana Pressley-Lawson (“Claimant”) suffered an actual loss as a result of the acts or omissions of Ryan Vieira and C. Mason Construction Management, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 32. In a Proposed Order dated August 3, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$21,475.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On January 18, 2024, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant was represented by Toby Byrd, Esq. The Contractor was represented by Rhonda Wood, Esq. Assistant Attorney General MacKenzie Read 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; 3) Contractor’s exceptions, and 4) Claimant’s response to Contractor’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 repair of water damage at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike. *ALJ's Proposed Decision* p. 29.

On exception, the Contractor argued that the ALJ erred in calculating the Claimant's award because this case involved a contractual dispute between the Claimant and the Contractor, and the Claimant's claim should have been confined to the corners of the contract. The Commission finds no error. This proceeding involved a statutory claim against the Guaranty Fund for compensation for actual losses suffered as a result of the acts or omissions of a licensed contractor under Md. Code Ann., Bus. Reg. § 8-405. The ALJ calculated the Claimant's actual loss using the formula prescribed under COMAR 09.08.03.03B(c)(3).

The Contractor further argued that the ALJ erred by allowing Robert Fuller, the Claimant's expert witnesses, to testify and by admitting into evidence Mr. Fuller's report because Mr. Fuller issued his report on January 30, 2023, which was after the November 10, 2022, and January 6, 2023, hearing dates that OAH set for this claim but then continued. The Commission finds no error. The Contractor did not cite, and the Commission is not aware of any statute, regulation, or precedent that prohibits the admission of evidence obtained after a continued hearing date.

The Contractor further argued that the ALJ erred in allowing Mr. Fuller's testimony and admitting his report because they were hearsay and because they were unreliable as a result of the lapse in time between the Contractor's performance of the contract in December 2018 and Mr. Fuller's inspection of the Claimant's home in January 2023. Again, the Commission finds no error. Mr. Fuller testified at the hearing, and the Contractor had the opportunity to cross examine

him, so his testimony was not hearsay. Regarding Mr. Fuller's report, in administrative proceedings such as this, evidence may not be excluded solely because it is hearsay. Md. Code Ann., State Gov't § 10-213. Rather, evidence, including hearsay evidence, may be excluded if it is incompetent, irrelevant, immaterial, or unduly repetitions. *Id.* The Commission does not find that the four-plus years between the Contractor's work and Mr. Fuller's inspection rendered his report and testimony to be incompetent, irrelevant, immaterial, or otherwise lack probative value. Nothing in Mr. Fuller's report or his testimony cited by the ALJ appears to the Commission to be rendered unreliable because of the passage of time before his inspection. Generally, Mr. Fuller's observations related to facts that would not change over time, such as uneven spacing between tiles, gaps between surfaces, the absence of leveling compound, improperly sized vents, uneven floor surfaces, visible drywall joints, and uninstalled trim. Although Mr. Fuller acknowledged that cracked floor tiles could be the result of someone dropping objects on the tiles, he testified that the cracked tiles he observed were caused by voids under the tiles. *ALJ Proposed Decision* p. 21. In addition, the Claimant's other witnesses' testimony about their observations of the Contractor's work corroborated Mr. Fuller's observations. *ALJ Proposed Decision* pp. 13-18, 28. Accordingly, the Commission holds that the ALJ properly admitted Mr. Fuller's report and allowed his testimony.

The Contractor also argues that the ALJ erred in allowing Mr. Fuller to testify as an expert and admitting his report into evidence because the Claimant did not identify Mr. Fuller or provide share his report with the Contractor before the OAH hearing. The Commission finds no error, as COMAR 09.01.03.04 expressly provides that there is no prehearing discovery in hearings delegated to OAH.

The Contractor also argued that, if the Commission does not deny the Claimant's claim,

then it should remand the case to OAH to allow him to present testimony about the labor hours expended on the Claimant's project because he did not profit from his contract with the Claimant and it would be unfair to also require him to reimburse the Guaranty Fund for an award. The Commission declines to remand the case to OAH to allow testimony about the Contractor's labor expenses or other expenses incurred in the performance of the contract because such evidence is not relevant to the quality or completeness of the Contractor's performance of the Claimant's home improvement or the calculation of the Claimant's actual loss. Because the Contractor performed work under the Claimant's contract and the Claimant solicited another contractor to correct and complete the Contractor's deficient performance, the ALJ properly calculated the Claimant's actual loss using the formula prescribed in COMAR 09.08.03.03B(c)(3). Under COMAR 09.08.03.03B(c)(3), the only relevant figures are the amount paid by the claimant to or on behalf of the contractor, the cost to correct and complete the contractor's deficient performance, and the original contract price.

Finally, the Contractor objected to the suspension of his license if he fails to reimburse the Guaranty Fund for any award paid to the Claimant, arguing that a suspension would prevent him from earning money to make the reimbursement. The Commission declines to allow the Contractor to maintain an active license if he fails to reimburse the Fund because prompt reimbursement is necessary to maintain the balance of the Fund so that the Fund can pay awards without imposing assessments on licensees. The Commission notes that the Contractor's license will remain active before the Fund pays the award in this proceeding and that the Contractor may lawfully perform and collect payment for home improvement contracts entered into prior to the suspension of his license.

Although not raised by the Contractor, the Commission finds that the ALJ erred by recommending an award in excess of the amount the Claimant paid to or on behalf of the Contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5) 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.” In this case, the Claimant paid the Contractor \$20,274.62, but the ALJ recommended an award equivalent to the Claimant’s total actual loss of \$21,475.00. The Commission holds that the Claimant’s compensable actual loss is \$20,274.62.

Having considered the parties’ arguments, the evidence contained in the record, and the ALJ’s Recommended Decision, it is this 7th day of February 2024, **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 **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant is awarded \$20,274.62 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

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

Jean White

**Chairperson –Panel
Maryland Home Improvement
Commission**

PROPOSED ORDER

WHEREFORE, this 3rd day of August, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***