IN THE MATTER OF THE CLAIM	*	BEFORE CARLTON A. CURRY,
OF DIANA CALDER,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF MICHAEL HENRY,	*	
T/A MDH CONTRACTING &	*	OAH No.: LABOR-HIC-02-22-06442
CONSTRUCTION LLC,	*	MHIC No.: 21 (75) 1070
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On November 12, 2021, Diana Calder (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $19,083.00 for actual losses allegedly suffered as a result of a home improvement contract with Michael Henry, trading as MDH Contracting & Construction LLC (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 to -411 (2015).[1] 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.

The original hearing date of May 6, 2022, was postponed and rescheduled to June 23, 2022, so that the Respondent could obtain legal counsel. On June 22, 2022, Administrative Law Judge Jocelyn L. Williams granted the Claimant's request for a postponement, because two of her witnesses were diagnosed with COVID-19. Based on the availability of the parties, a remote hearing was scheduled for July 27, 2022.

On July 27, 2022, I held a hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-312, 8-407(a); Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Brian S. Jablon, Esquire, represented the Claimant, who was present. Marc D. Minkove, Esquire, represented the Respondent, who was present. Eric B. London, Assistant Attorney General, Department, represented the Fund. To allow adequate time for the parties to present their respective sides, the hearing was continued to a second day, August 15, 2022.

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; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of the compensable loss?

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

SUMMARY OF THE EVIDENCE

Exhibits

Unless otherwise noted, I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 – Raunjiba Design & Construction LLC (Raunjiba) Project Proposals for the Claimant
- Clmt. Ex. 1A – Raunjiba Project Proposal #090120
- Clmt. Ex. 1B – Raunjiba Project Proposal #102720

Clmt. Ex. 2 – Raunjiba Required Inspection Upgrades #041321

Clmt. Ex. 3 – Photocopies of cancelled checks from the Claimant for the following amounts:
- check # 1260, the Claimant to Raunjiba, $3,500.00 on July 30, 2020
- check # 149, the Claimant to Raunjiba, $5,000.00 on October 27, 2020
- check # 159, the Claimant to Raunjiba, $1,500.00 on March 22, 2021
- check # 168, the Claimant to Raunjiba, $2,012.00 on April 2, 2021
- check # 1282, the Claimant to Pearnell Wilson, $250.00 on May 25, 2021

Clmt. Ex. 4 – Not admitted[2]

Clmt. Ex. 5 – Not admitted

Clmt. Ex. 6 – Not admitted

Clmt. Ex. 7 – Not admitted

Clmt. Ex. 8 – Not admitted

Clmt. Ex. 9 – Not admitted

Clmt. Ex. 10 – Not admitted

Clmt. Ex. 11 – Not admitted

Clmt. Ex. 12 – Inspection Report, Highland Home Inspections, Inc., May 5, 2022

Clmt. Ex. 13 – Not admitted

Clmt. Ex. 14 – Not admitted

Clmt. Ex. 15 – Probuilt Construction, Inc. Concept #1 Quote, May 3, 2022

Clmt. Ex. 16 – Twenty photographs of deck area, March 2021: partially identified as:
- Clmt. Ex. 16 -1: deck two,[3] pooled water where two trees removed.
- Clmt. Ex. 16 - 2: deck one

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[2] Exhibits not admitted have been retained in the file for the purpose of judicial review. COMAR 28.02.01.22C.
[3] The Respondent constructed two decks for the Claimant.

- Clmt. Ex. 16 - 3: deck one rail coming up step, original construction
- Clmt. Ex. 16 - 4: rail on deck one
- Clmt. Ex. 16 - 5: deck two steps
- Clmt. Ex. 16 - 6: deck one post separating, not repaired
- Clmt. Ex. 16 - 7: deck one separating, repaired by Mr. Tucker
- Clmt. Ex. 16 - 8: deck one railing
- Clmt. Ex. 16 - 9: deck one railing, repaired by Mr. Tucker
- Clmt. Ex. 16 - 10: deck two, showing detached from the house

Clmt. Ex. 17 – Twenty-Four photographs of deck area from August 2021, partially identified as:

- Clmt. Ex. 17 - 1: partial view of deck length
- Clmt. Ex. 17 - 2: view of deck width
- Clmt. Ex. 17 - 3: deck one, excavated footer showing depth
- Clmt. Ex. 17 - 4: deck one bolts

Clmt. Ex. 18 – Not admitted

Clmt. Ex. 19 – Footing inspection report from Pearnell O. Wilson, P.E.,[4] May 25, 2021

Clmt. Ex. 20 – Long Fence estimate, undated

Unless otherwise noted, I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 – Not admitted

Resp. Ex. 2 – Raunjiba Project Proposal #102720

Resp. Ex. 3 – Raunjiba computer-aided design of decks

Resp. Ex. 4 – Various photographs of the deck

Resp. Ex. 5 – Various photographs of the decks

Resp. Ex. 6 – Not admitted

Resp. Ex. 7 – Various photographs of areas of the decks repaired by Mr. Tucker

Resp. Ex. 8 – Various photographs of the deck one

Resp. Ex. 9 – Inspecting Structural Engineer's Certification, Stephen M. Brown, P.E., Skarda and Associates, Inc., July 7, 2021

[4] A Professional Engineer (PE) is an engineer licensed by a state board to practice engineering.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 – Notice of Remote Hearing, June 24, 2022

Fund Ex. 2 – Hearing Order, March 2, 2022

Fund Ex. 3 – The Respondent's MHIC Licensing History April, 26, 2022

Fund Ex. 4 – Home Improvement Claim Form, November 12, 2021

Fund Ex. 5 – Letter from Joseph Tunney, MHIC, to the Respondent, November 22, 2021

Fund Ex. 6 – The Respondent's Memorandum Response to the Complaint, July 28, 2021

Testimony

The Claimant testified and presented the testimony of Pearnell O. Wilson, P.E., accepted as an expert in professional engineering, civil engineer and the inspection of structures, and Richard Belliveau, Owner, Highland Home Inspections, Inc., accepted as an expert in deck construction.

The Respondent testified and presented the testimony of Scott Tucker, President, Raunjiba.

The Fund did not present any witnesses.

STIPULATED FACT

The parties agree the Respondent refunded $1,116.85 to the Claimant for materials and work that was not performed.

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 numbers 01-104169 and 05-132317.[5]

[5] It was not stated which license number was used for the work at issue. During the hearing, all references were to a single license, so I will use the singular term "license."

Michael Henry holds the licenses, and Scott Tucker, a person known to Mr. Henry, performs work under the license.

2. Mr. Tucker is the Owner and Creative Director of Raunjiba, which is not a licensed home improvement contractor with the MHIC.

3. The Claimant's property, subject to this matter, is located in Anne Arundel County, Maryland and is the Claimant's residence (the Property).

4. The Claimant paid $3,500.00 to Raunjiba on July 30, 2020. The word "design" is in the memo section of the check.

5. Mr. Tucker prepared at least two project proposals for the Claimant for the rear deck construction and landscaping in the rear of the Property, one for $18,958.00, and one for $8,008.00.

6. In October 2020, the Claimant came to an agreement with Mr. Tucker that he would perform work based on a project proposal prepared by Mr. Tucker and using the MHIC license of Mr. Henry.

7. At all relevant times thereafter, Raunjiba was a subcontractor of the Respondent and had permission to use the Respondent's MHIC license numbers to obtain permits to perform work on the Claimant's property.

8. On October 27, 2020, the Claimant and the Respondent, through Mr. Tucker, entered into an agreement to build a main deck off of the kitchen, a deck off of a bedroom, and steps from the living room to a stone patio (Contract). The Contract was memorialized in a project proposal created by Mr. Tucker. Neither the Claimant nor the Respondent signed the Contract.

9. The original agreed-upon Contract price was $8,008.00.

10. Work began on the decks in March 2021.

11. The Claimant paid the Respondent by check in the following manner: $5,000.00 on October 27, 2020; $1,500.00 on March 22, 2021; and $2,012.00 on April 2, 2021. All checks were made payable to Raunjiba or Raunjiba Design.

12. As subcontractor to the Respondent, Mr. Tucker built two decks on the rear of the Property. On April 13, 2021, the one deck was inspected by an inspector with Anne Arundel County Department of Inspections and Permits. The deck construction did not meet the requirements of Anne Arundel County.

13. On April 13, 2021, the Respondent, through Mr. Tucker, agreed to remediate the following issues highlighted during the inspection: obtain an engineering footing inspection and certification, and provide a copy of the report to the Claimant and to the County inspector; install additional grabbable handrails to the steps of both decks; raise the railing tops to required heights; and install additional bolts to the ledger board on both decks.

14. Wiley Drake, a friend, installed the required handrails. Mr. Drake also made modifications to the steps constructed by the Respondent.

15. The Respondent raised the railing tops to the required heights and installed additional bolts to the ledger boards on both decks.

16. Mr. Tucker contacted Mr. Wilson to perform the engineering footing inspection and certification on the deck. Mr. Wilson inspected the footings for one of the two decks on May 18, 2021 and completed a report on May 25, 2021. (Clmt. Ex. 19).

17. Mr. Wilson determined that none of the footings exposed for his review met minimum depth and size requirements per the Anne Arundel code. Further, Mr. Wilson's report noted deleterious material in the concrete mixture.

18. The Claimant paid for the footings inspection report after the Respondent refused.

19. After the May 2021 footings inspection, the Claimant contacted Mr. Henry in an effort to address the deficiencies of the decks.

20. The footings of the decks were not constructed to the proper depth as required by Anne Arundel County code and industry standards.

21. The decks were not properly affixed to the house and the ledger boards were insufficient and not appropriately size to support the constructed decks.

22. From the May 2021 through the time the Claimant filed the Claim in November 2021, the Respondent did not make reasonable efforts to repair the decks.

23. The Claimant does not own any other residential properties or dwellings.

24. The Claimant is not related to the Respondent, is not an employee or business associate of the Respondent and is not related to an employee or business associate of the Respondent.

25. The Claimant has not filed any legal proceedings against the Respondent arising from the Contract and has not filed any insurance claim related to the Respondent's work.

DISCUSSION

Burden of Proof and the Statutory 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); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a

result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

The Parties' Positions

The Claimant argued that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement by improperly constructing and installing two exterior decks at the Claimant's home. The Claimant explained after the failed inspection the Respondent agreed to address all the concerns of the county inspector, in addition to other items not required by the inspection to satisfy the Claimant. Having concerns about the quality of work based on the county inspection results, the Claimant contacted Mr. Henry to ensure that the appropriate repairs were completed. The Claimant stated that on several occasions, Mr. Henry agreed to meet with the Claimant but never did.

The Claimant also argued that all funds paid to Raunjiba were for deck materials and construction and stated that she did not pay for any costs related to the project's design.

The Respondent argued that the Claimant never had an agreement with Mr. Henry, and no payments made to Mr. Tucker were shared with Mr. Henry. Specifically, the Respondent argued that any payment for the design of the decks should be excluded as payment to the Respondent. The Respondent also stated that the Claimant unreasonably rejected the good faith efforts to fix the deficiencies at no additional cost. Further, the Respondent argued that modifications to work Mr. Tucker performed exacerbated any problems initially identified by the county inspection.

The Fund argued that the decks ultimately provided by the Respondent do not meet the specifications of the decks for which the Claimant contracted. The Claimant demonstrated through expert testimony that the construction of the decks did not meet the minimum

requirements of the county; therefore, the Fund argued the Respondent performed the work in an unworkmanlike or inadequate manner. The Fund argued Mr. Tucker acknowledged that the relationship with the Claimant was severed, and there were no efforts to remediate after the Claim was filed. The Fund further argued that the Claimant met her burden to prove her actual loss. With respect to measuring the Claimant's loss, the Fund argued that no sum paid for the design of the decks should be considered, as compensation must be for work performed.

For the reasons stated below, the Claimant met her burden to demonstrate the Respondent performed unworkmanlike or inadequate home improvements and that she is, therefore, eligible for compensation from the Fund. Further, I recommend an award in the amount of the Claimant's actual loss, as explained below.

Analysis

No Statutory Bar for Recovery

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such 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. *See* Bus. Reg §§ 8-405(g), 8-408(b)(1). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *See* Bus. Reg. § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *See* Bus. Reg. §§ 8-405(c), 8-408(b)(3). 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. *See* Bus. Reg. § 8-405(f)(1).

The Respondent Performed Unworkmanlike or Inadequate Home Improvements

The Claimant became aware of Mr. Tucker's work because she was an acquaintance of Mr. Tucker's family. Through his company, Raunjiba, Mr. Tucker provided design proposals for

landscaping improvements and the construction of decks in the rear of the Property. In October 2020, the Claimant and Mr. Tucker agreed that Mr. Tucker would build two decks based on one of the design proposals, using the Respondent's MHIC license to obtain the necessary permits. Mr. Henry testified that he was aware of the project, although he did not participate in any of the deck construction and was not compensated in any way. Both Mr. Tucker and Mr. Henry testified that Mr. Tucker updated Mr. Henry on the deck construction with photographs.

On April 13, 2021, one deck was inspected by an Anne Arundel County inspector. On the same date, the Respondent agreed to remediate the following issues highlighted during the inspection: obtain an engineering footing inspection and certification and provide a copy of the report to the Claimant and the County inspector; install additional grabbable handrails to the steps of both decks; raise the railing tops to requires heights; and install additional bolts to the ledger board on both decks. (Clmt Ex. 2). The Respondent raised the railing tops to the required heights and installed additional bolts to the ledger boards on both decks as required by the inspection. (Resp. Ex. 8). The Claimant testified that the cost the Respondent quoted for handrail materials was cost prohibitive and, therefore, he had Wylie Drake, a friend, install the required handrails. Mr. Drake also modified steps constructed by the Respondent to address the Claimant's complaints about water pooling on the steps. After seeing the work performed by Mr. Drake, communication between the Claimant and Mr. Tucker became strained, and the Claimant began communicating with Mr. Henry.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. Specifically, the Respondent improperly constructed the deck footings to the required depth and with deleterious material in the concrete. After the April county inspection identified several deficiencies, the Respondent "retained & consulted an engineering firm for the footing certification." (Clmt. Ex. 2). The Respondent retained Mr. Wilson, a professional

engineer. Mr. Wilson testified he knew Mr. Tucker from a previous project in Washington, DC, and Mr. Tucker asked him to perform the footings inspection on one of the two decks. Mr. Wilson credibly testified that Mr. Tucker sent photographs indicating the footings were constructed to a proper depth of 30 inches. On May 18, 2021, Mr. Wilson went to the Claimant's home to visibly inspect the footers. As stated in his detailed report dated May 25, 2021, Mr. Wilson found that all the exposed footings, "Footings B1, B2, and B3 were not installed to the minimum depth of 30 [inches]." (Clmt. Ex. 19). Mr. Wilson's report includes measured drawings of the decks. Mr. Wilson testified he measured the depths of footings identified in his report: B1 at 12 inches, B2 at 20 inches, and B3 at 10 inches. Mr. Wilson also testified, consistent with his report, that the concrete was not properly mixed; the aggregate did not look smooth and contained deleterious material, specifically cement bags, which should not be added to the concrete mix. On cross-examination, Mr. Wilson stated Mr. Tucker sent him photographs prior to the site visit, and the photographs did not match what was viewed on-site. Mr. Wilson did not inspect the second deck. However, he testified that because both decks were constructed during the same time, it is reasonable to believe that the deficiencies found in deck one, specifically the footers, would be found in deck two. Mr. Wilson opined that replacing the decks would be necessary, because of the questionable methods used in constructing the footers.

Based on his findings at the Property, Mr. Wilson testified that he lost trust in Mr. Tucker and requested payment prior to providing the report. Mr. Wilson credibly testified that he contacted Mr. Henry, who acknowledged being aware of the work and indicated he would rectify the situation. Mr. Wilson informed the Claimant that Mr. Tucker refused to pay for the report but offered the report to the Claimant if she was willing to pay for it. The Claimant paid Mr. Wilson $250.00 for the report. (Clmt. Ex.3).

The Claimant offered the testimony of Richard S. Belliveau, who testified he inspected the decks on May 4, 2022, evaluating the construction and components of the decks. Consistent with his report dated May 5, 2022, Mr. Belliveau found that the deck-house connection was improper and not in accordance with the county code. (Clmt. Ex. 12). The deck was installed over wall siding; however, removal of the siding is required by code. Further, the bolt pattern of the ledger board to the house was not proper, and the ledger board was not flashed as required by code. When questioned on cross-examination regarding the appropriateness of a 2"x6" ledger board used by the Respondent, Mr. Belliveau opined that that size was not acceptable due to the required bolt pattern and that a 2"x8" is needed for proper construction. Mr. Belliveau also indicated that there were no lateral load connections or diagonal bracing, which is violative of the code and industry standards.

Consistent with his report, Mr. Belliveau also testified that footings supporting the deck posts were improper or missing. The report noted: "[t]he soil had been recently excavated around the post bases which allowed for visual inspection of the work. Concrete had been poured around the posts, but there were no visible footings." (Clmt. 12, pg.1). Mr. Belliveau stated that to replace the ledger board would require the deck to be fully removed from the house and that all the footings needed to be dug to the necessary depth, concluding full replacement of the decks are needed to meet current deck building guidelines.

The Respondent supported his claim that the footers were of appropriate size and depth through an Inspection Structural Engineer's Certification (Certification) from Stephen M. Brown, P.E. of Skarda and Associates, Inc., dated July 7, 2021. (Resp. Ex. 9). Mr. Brown's attestation that the footers of the deck posts are properly sized and of proper depth is general in nature and lacks the specificity of the reports and testimony of Mr. Wilson and Mr. Belliveau. The photographs included with Mr. Belliveau's report directly contradict Mr. Brown's

Certification. (Clmt. Ex. 12, pg. 6). In weighing the evidence presented, I do not find Mr. Brown's Certification credible and accord it no weight.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *See* Bus. Reg. § 8-405(d). The record demonstrates that the Claimant was eager to have the Respondent return to remedy and repair the work. The Claimant communicated with Mr. Henry after the April inspection, and Mr. Henry never met with the Claimant.

For the reasons stated above, I find that the Claimant is eligible for compensation from the Fund.

Amount of Actual Loss and Recovery

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant intends to retain 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).

The Fund argued that the Claimant met her burden of demonstrating that the Respondent performed an unworkmanlike or inadequate home improvement. With respect to the amount of actual loss, the Fund argued that the Claimant failed to meet her burden regarding $3,500.00 paid to Raunjiba for design work, and therefore, that amount should not be included in an award recommended in this case. The Respondent joined in the argument. I concur.

The Claimant argued that all monies paid were for actual deck construction and materials, and there was no payment for design. I do not find the testimony of the Claimant credible on this issue. The check for $3,500.00 dated July 20, 2020, made payable to Raunjiba, had "design" entered in the memo section. This payment was made prior to any project proposal prepared for the Claimant by Mr. Tucker. Mr. Tucker testified that the project numbers on the Raunjiba documents correspond to the dates they were generated.[6] I conclude that any payment paid to Raunjiba prior to October 27, 2020 was for design, and I will not consider it as payment to the Respondent.

The Claimant offered quotes from two MHIC-licensed contractors that would remove and replace the decks: the first from Probuilt Construction, Inc. for $27,300.00; and the second from Long Fence for $19,083.00.[7] The Fund argued that I should not consider Probuilt's quote, because the Long Fence quote was the sum referenced when the Claimant filled out the Home Improvement Claim Form. Accordingly, I shall only consider the second quote from Long Fence.

I find that the quote prepared by Long Fence specifically sets out the work that would be required to repair the Respondent's unworkmanlike or inadequate home improvements,

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[6] The Claimant's own exhibits support this assertion; Claimant's Ex. 1B has the project proposal number 102720, which coincides with a payment by check of $5,000.00. And Claimant's Ex. 2, Required Inspection Upgrades, has the project number 041321, which corresponds to the following statement in the document: "We are prepared to execute the following tasks required by todays [*sic*] inspection 4/13/21."

[7] A notation on the Long Fence quote indicates a retail price of $27,262.00 and a sale price of $19,083.00.

including removing the existing decks; installing 9'x25' and 10'x7'decks; using 6"x6" support post with 2"x10" support beams; and, constructing steps to grade on each deck. (Clmt. Ex. 20). Therefore, I conclude that the quote by Long Fence constitutes a reasonable amount that the Claimant will be required to pay to repair the Respondent's unworkmanlike or inadequate home improvements.

Relying on the quote from Long Fence and applying the formula set forth above yields the following:

Amount the Claimant paid the Respondent under the Contract	$ 7,395.15
Amount the Claimant will be required to repair the Respondent's poor work	+ $19,083.00
	$26,478.15
Less the Contract price	- $ 8,008.00
Actual Loss	$18,470.15

Therefore, I find that the Claimant has demonstrated her actual loss is $18,470.15 and that she is entitled to recover an award in this amount. However, pursuant to COMAR 09.08.03.03B(4), "[t]he Commission may not award from the Fund an amount 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 Respondent $7,395.15 under the Contract; accordingly, her actual loss compensable by the MHIC Fund is limited to that amount. Therefore, the Claimant is entitled to recover $7,395.15 for her actual loss.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $18,470.15 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $7,395.15 from the Fund. 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 award the Claimant $7,395.15 from the Fund. COMAR 09.08.03.03B(3)(c); 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;[8] and

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

Carlton A. Curry

November 9, 2022
Date Decision Issued

Carlton A. Curry
Administrative Law Judge

CAC/at
#200176

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

PROPOSED ORDER

WHEREFORE, this 9th day of January, 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