

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF FAITH CARROLL,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF GEORGE MORGAN,</b></p> <p><b>T/A MIGHTY HOME</b></p> <p><b>IMPROVEMENT, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE SUSAN A. SINROD,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-21-27309</b></p> <p><b>* MHIC No.: 21 (75) 190</b></p> <p><b>*</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 31, 2021, Faith Carroll (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 \$10,947.00 for actual losses allegedly suffered as a result of a home improvement contract with George Morgan, t/a Mighty Home Improvement, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).<sup>1</sup> On

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

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November 17, 2021, the MHIC issued a Hearing Order on the Claim. On November 18, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 4, 2022, I conducted a hearing at the OAH in Salisbury, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. Jennifer Meschino, Esquire, represented the Claimant, who was present. The Respondent represented himself.

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

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Claimant submitted the following exhibits, which were admitted into evidence:

- Cl. Ex. #1- United States Department of Agriculture Construction Contract, dated November 9, 2018; Contract between the Claimant and the Respondent, unsigned and undated
- Cl. Ex. #2- Photograph of porch windows, undated
- Cl. Ex. #3- Photograph of porch windows, undated
- Cl. Ex. #4- Photograph of storm door, undated
- Cl. Ex. #5- Photograph of outside of porch, undated
- Cl. Ex. #6- Photograph of porch floor, undated

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Cl. Ex. #7- Photograph of storm door, undated

Cl. Ex. #8- Estimate of G.W. Home Improvements, dated June 24, 2020

The Respondent submitted the following exhibits, which were admitted into evidence:

Resp. Ex. #1- Photograph of porch floor, prior to completion of the Respondent's work, undated

Resp. Ex. #2- Photograph of inside of porch prior to completion of the Respondent's work, undated

Resp. Ex. #3- Photograph of inside of porch after siding removal, undated

Resp. Ex. #4- Photograph of outside of porch prior to completion of the Respondent's work, undated

Resp. Ex. #5- Photograph of porch with flooring removed, undated

Resp. Ex. #6- Photograph of left side of porch, undated

Resp. Ex. #7- Photograph of gutter, undated

Resp. Ex. #8- Photograph of gutter, undated

Resp. Ex. #9- Photograph of front of porch when work began, undated

Resp. Ex. #10-Photograph of front of porch, undated

Resp. Ex. #11-Photograph of front of porch, undated

Resp. Ex. #12-Photograph of front of porch, undated

Resp. Ex. #13-Photograph of front of porch, prior to installation of siding, undated

Resp. Ex. #14-Photograph of newly installed windows, undated

Resp. Ex. #15-Photograph of front of porch, after completion of framing, undated

Resp. Ex. #16-Photograph of installed floor joists on right side of porch, undated

Resp. Ex. #17-Photograph of installed floor joists on right side of porch, undated

Resp. Ex. #18-Photograph of inside of porch, undated

Resp. Ex. #19-Photograph of finished right side of porch, undated

Resp. Ex. #20-Photograph of bottom of storm door, undated



- Resp. Ex. #21-Photograph of porch inside of porch window on the right side of porch, undated
- Resp. Ex. #22-Photograph of window, undated
- Resp. Ex. #23-Photograph of underneath of floor on left side of porch, undated
- Resp. Ex. #24-Photograph of windows on left side of porch, undated
- Resp. Ex. #25-Photographs of windows, undated
- Resp. Ex. #26-Photograph of outside of windows on left side of porch, undated
- Resp. Ex. #27-Photograph of replaced plywood on left side of porch, undated
- Resp. Ex. #28-Photograph of outside of windows, undated
- Resp. Ex. #29-Photograph of outside of left side of porch, undated
- Resp. Ex. #30-Photograph of outside of windows, undated
- Resp. Ex. #31-Statement signed by the Respondent regarding refund to Claimant, undated
- Resp. Ex. #32-Respondent's response to Claim, dated September 2, 2020
- Resp. Ex. #33-Estimate of G.W. Home Improvements, dated June 24, 2020

The Fund submitted the following exhibits, which were admitted into evidence:

- Fund Ex. #1- Notice of Hearing, dated March 8, 2022
- Fund Ex. #2- Notice of Hearing, dated January 20, 2022
- Fund Ex #3- Hearing Order, dated November 17, 2021
- Fund Ex. #4- Letter from the MHIC to the Respondent, dated September 7, 2021, with Home Improvement Claim Form, received August 31, 2021, attached
- Fund Ex. #5- Licensing History, as of March 7, 2022
- Fund Ex. #6- Contract, dated November 13, 2018



## Testimony

The Claimant testified on her own behalf and did not present other witnesses.

The Respondent testified, and presented the testimony of Ashley Mandeville, his daughter.

The Fund did not present any witnesses.

## PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-11172.
2. On November 9, 2018, the Claimant and the Respondent entered into a contract, wherein the Respondent agreed to perform home improvement work on the Claimant's porch. The scope of work included removal of metal off of the inside and the outside of the porch; removal of windows and rotten wood from the porch and floor; jacking up the porch to replace band board with 4 x 6 salt treated wood; installing new floor joists, new windows, and new plywood on the floor, as well as new walls to replace rotten wood and siding (Contract).
3. The original agreed-upon Contract price was \$6,404.85.
4. The Claimant borrowed money from the United States Department of Agriculture, Rural Development, to pay for the project. Rural Development paid \$5,400.00 directly to the Respondent. The Claimant's portion of the Contract price, not covered by the loan from Rural Development, was \$1,004.85, which she paid.<sup>2</sup> The Claimant is in the process of repaying the Rural Development loan.<sup>3</sup>

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<sup>2</sup> The record does not reflect the date the Claimant paid the Respondent.

<sup>3</sup> The Claimant also received a grant from an entity called the MAC Center, to cover the cost of materials before Rural Development paid the Respondent. This grant did not need to be repaid and has no bearing on this case.



5. Although not contained in the Contract, the Claimant, and Rural Development, directed the Respondent to perform the work under the Contract only on the right side of the porch, which had been badly damaged from a storm in 2018.

6. The Respondent performed the work on the Claimant's porch with his daughter, Ashley Mandeville.

7. The Respondent replaced the windows on the right side of the porch. By verbal agreement, the Respondent also agreed to replace the windows on the left side of the porch, for which the Claimant paid him directly. This work was outside the scope of the Contract.

8. The Respondent informed the Claimant that because he tore down the walls of the right side of the porch, he installed new construction windows. Since he did not tear down the walls on the left side of the porch, he had to install replacement windows, which would be slightly different in size than those on the right side. The Claimant understood and accepted that the windows would be a different size.

9. After the Respondent's work was complete, the Claimant contacted him because one of the windows was leaking. The Respondent returned and fixed that window, but some leaking has continued through other windows.

10. The gutter above the porch is in poor condition and has holes in it. The roof has metal that runs from the roofline down, and then goes behind the siding. The gutter that is leaking is behind that metal, and any water that flows into the gutter goes down behind the windows. Water encroaches into the porch as a result. This leaking is caused by the roof and leaking gutter and is not the result of poorly installed windows.

11. The Respondent replaced the floor on the right side of the porch. In order to complete the floor installation, he had to pull up the plywood on the left side of the porch floor as well. Pursuant to the Contract, he replaced rotting joists and changed the direction of the joists

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice to ensure transparency and accountability.

2. The second section outlines the various methods used for data collection and analysis. It details how primary data is gathered through surveys and interviews, while secondary data is sourced from existing reports and databases.

3. The third part of the document focuses on the challenges faced during the implementation phase. It highlights the need for clear communication and collaboration between all stakeholders to overcome technical and organizational barriers.

4. The fourth section provides a detailed overview of the results obtained from the study. It includes statistical summaries and graphical representations that illustrate the key findings and trends observed in the data.

5. The final part of the document offers conclusions and recommendations based on the research findings. It suggests several strategies to improve the efficiency of the current processes and to address the identified areas for improvement.

underneath the right-side floor. On the left side porch floor, there was a rotted joist which the Respondent replaced, and he provided support to another joist. He did not have enough wood to change the direction of the joists under the left side floor. He finished the floor by reinstalling plywood across the entire porch.

12. Following the Respondent's completion of the flooring work under the Contract, the left side floor of the porch sloped downward and was sinking.

13. The Claimant obtained an estimate from G.W. Home Improvements (G.W.) in the amount of \$4,447.00 to fix the porch floor.

14. There is nothing in the Contract that requires the Respondent to do any work on the storm door that leads in and out of the porch.

### DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); 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. For the following reasons, I find that the Claimant has proven eligibility for compensation.



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. 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. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 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. *Id.* § 8-405(f)(1).

The Claimant had multiple complaints about the Respondent's work. At first glance, it would appear that the validity of some of her complaints is dependent upon whether the Respondent was supposed to complete work only on the right side of the porch, as the Respondent claimed. The Claimant testified that pursuant to the Contract, the Respondent was required to remove the four windows on the right side of the porch and tear out the entire right side of the porch and replace it with new framing, walls and siding. The Respondent was also to install new flooring. The Contract is quite vague. Cl. Ex. #1. It does not contain any specifications regarding materials to be used, and it does not specify that the work shall be completed on the right-side only.

When the Respondent initially arrived to perform the work, he and Ms. Mandeville believed the work was to occur throughout the entire porch. However, the Claimant and Rural Development verbally informed the Respondent that the work was to be on the right side only. At one point Ms. Mandeville pointed out to the Claimant that the gutter was leaking into both the left and right sides of the porch, and the Claimant told her not to worry about the left side; the work was only to be performed on the right side of the porch. The Respondent conceded that he



inadvertently failed to add a provision into the Contract that the work pertained to only the right side of the porch. Ms. Mandeville also noted that all of the damage and rotted wood was on the right side of the porch, and the Contract only provided for removal of rotted wood. As explained below, whether the scope of the Contract included the left side of the porch is not material to my decision.

I will address the Claimant's concerns separately.

#### **WINDOW SIZE**

The Contract required the Respondent to remove and replace windows. The Contract did not specify which windows were to be removed and replaced, but the Claimant testified that it was only the four right front windows. By verbal agreement outside the scope of the Contract, the Respondent replaced the left side windows as well. The Claimant ordered and purchased the left side windows herself.

The left side windows are slightly different in size than the right-side windows. The Respondent explained that the reason for the difference in size was because the windows on the right side were new construction windows, installed after he tore down the walls and reframed the porch. New construction windows fasten to the outside of the house as it is being built. The Respondent did not tear down the walls on the left side of the porch; therefore, he had to install replacement windows. The Respondent informed the Claimant that the windows would appear different in size. Both Ms. Mandeville and the Respondent strongly asserted that the Claimant was aware that the windows would be a different size and she was fine with it.

I found the Respondent's and Ms. Mandeville's testimony to be credible. The Respondent clearly explained the reason for the difference in the windows. He informed the Claimant, and the Claimant agreed to move forward regardless. The Claimant has not established that she is entitled to recover regarding the size of the windows.



## **WINDOW LEAKAGE**

The Respondent returned to the Claimant's home after the project was complete to fix a window that was leaking. However, there is still water leaking through other windows. The Claimant did not specify exactly which windows were still leaking, so it was unclear if it was the ones on the right that the Respondent installed pursuant to the Contract, or the left side windows that he installed outside of the Contract.

The Respondent explained the situation with the gutter above the porch; it is old, has holes in it and is leaking. When he went up onto the roof, he discovered metal that runs from the roofline down, and then goes behind the siding. The gutter that is leaking is behind that metal, and any water that flows into the gutter runs down behind the windows. He explained to the Claimant that the leaking is a problem with the roof, not with the windows; that is why the original windows also leaked. He provided photographs to support his explanation. Resp. Exs. #7 and 8.

I found the Respondent's explanation to be convincing. The photographs depict clear deterioration and holes in the gutter and the metal from the roof line. The Claimant did not specify which windows still leaked; therefore, she did not establish any problem with the windows that the Respondent replaced pursuant to the Contract. Regardless, the Claimant did not provide any evidence, expert or otherwise, to establish that the Respondent installed the windows improperly. Therefore, the Respondent's credible testimony is undisputed that the problem lies with the Claimant's roof, not the installation of the windows. I conclude that the Claimant did not establish her actual loss regarding the leaking windows.



## **FLOORING**

The Claimant's porch floor on the left side slopes downward and is sinking. When G.W. prepared its estimate, they pulled up flooring and found rotten joists. They told the Claimant that the floor was sloped because the joists and subfloor were not properly installed.

The Respondent had to remove the plywood from all of the flooring in the porch in order to complete the flooring on the right side. In doing so, the Respondent replaced a rotting joist and provided support to another weak joist on the left side. Then he reinstalled plywood over the entire porch. Ms. Mandeville noted that most of the flooring work was on the right side, where they removed rotting wood and joists. They changed the direction of the joists on the right side but did not have enough material to do the same on the left side without more cost to the Claimant. Therefore, they installed their remaining joists on the left side to support the existing joist and replace the rotting joist.

Whether or not the Contract was for the right side only, the Respondent endeavored to perform work on the left side of the porch floor. Once the Respondent took on that task, he also shouldered the responsibility to perform that work adequately. While I found the Respondent and Ms. Mandeville's testimony to be credible that the Claimant and Rural Development directed them to work on the right side of the porch only, it defies logic that a contract would provide for replacement of only half a porch floor. Nevertheless, whether I look to the plain language of the Contract, which failed to specify that the work to be performed was on the right side of the porch only, or whether I believe that the Claimant directed the Respondent to only address the right side, the Respondent performed work on the left side floor, which was inadequate and unworkmanlike. The end result was a sinking, sloping floor. I conclude that the Claimant has established that she suffered an actual loss due to the acts or omissions of the Respondent regarding his work on the porch floor.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The text notes that without reliable records, it would be difficult to track the flow of funds and identify any irregularities.

2. The second part of the document outlines the specific procedures that should be followed when recording transactions. It details the steps from the initial receipt of funds to the final entry in the accounting system. The procedures include verifying the source of the funds, recording the date and amount, and ensuring that the entry is properly classified and balanced. The text stresses that these procedures must be followed consistently to ensure the accuracy of the records.

3. The third part of the document discusses the role of internal controls in maintaining the integrity of the financial system. It explains that internal controls are designed to prevent and detect errors and fraud. The text describes various types of internal controls, such as segregation of duties, authorization requirements, and regular reconciliations. It notes that a strong system of internal controls is essential for the reliability of the financial statements.

4. The fourth part of the document discusses the importance of transparency and accountability in the financial system. It explains that transparency allows stakeholders to understand the financial performance of the organization and to hold management accountable for their actions. The text notes that transparency is achieved through the timely and accurate disclosure of financial information. It stresses that management has a responsibility to provide this information in a clear and understandable manner.

5. The fifth part of the document discusses the role of external audits in maintaining the integrity of the financial system. It explains that external audits provide an independent and objective assessment of the financial statements. The text notes that external audits are essential for the credibility of the financial statements and for the confidence of investors and other stakeholders. It stresses that management should cooperate fully with the external auditors and should address any findings in a timely and effective manner.

## **STORM DOOR**

The Claimant seeks recovery from the Fund because there is a gap between the storm door on the porch and the floor, and water seeps under the gap. She maintained that it was not like that prior to the construction. The Contract does not require any work relating to a storm door. The Respondent presented photographs of the porch during construction, and in those photographs the storm door was still hanging and untouched by the construction. Resp. Exs. #12, 15, 19. The Claimant did not present any evidence that the Respondent did anything with the storm door. To the extent that the Claimant intended to argue that the flooring the Respondent installed caused the gap, she provided no evidence to support that argument. The storm door is simply outside the scope of the Contract, and the Claimant is not entitled to recovery from the Fund with regard to the storm door.

## **RECOVERY**

The Claimant obtained an estimate in the amount of \$4,447.00 from G.W. to repair the sinking floor. The estimate includes removing the existing porch floor, framing with pressure treated lumber, installing tongue and groove plywood for the subfloor, and installing solid blocks under the floor system where needed for extra support. It also includes re-nailing windows on the porch and flash windows and installing a J channel and siding around the windows. These last two items are beyond the scope of the floor work in the Contract, and the estimate does not include a breakdown of the cost for those items. Regardless, I find that it is more likely than not that those last two tasks constitute a minimal cost with relation to the primary part of the estimate which is for the flooring. Therefore, I find that the G.W. estimate is appropriate to calculate the amount of the Claimant's recovery.

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

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09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed 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 Claimant paid the Respondent \$6,404.85. That amount must be added to the reasonable cost to repair, which, from G.W.'s estimate, is \$4,447.00, which totals \$10,851.85. Once the original Contract price is subtracted ( $\$10,851.85 - \$6,404.85$ ), the Claimant's actual loss is \$4,447.00.

A claimant's recovery is capped at \$20,000.00 for the 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.<sup>4</sup> In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$4,447.00.

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<sup>4</sup> Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00. H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). See also Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, 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 and compensable loss of \$4,447.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,447.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>5</sup> and

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

*Susan Sinrod*

June 27, 2022  
Date Decision Issued

Susan A. Sinrod  
Administrative Law Judge

SAS/at  
#199029

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 19<sup>th</sup> day of August, 2022, 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***

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