

**IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
ROBERT MILLER, II * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 21(75)57
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
ADELMO MENENDEZ QUINTERO * 02-21-19509
AND MQ RENOVATION, LLC ***

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on September 28, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 19, 2021, concluding that Robert C. Miller, II, (“Claimant”) failed to prove he suffered a compensable actual loss as a result of the acts or omissions of Adelmo Menendez Quintero and MQ Renovation, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 16. In a Proposed Order dated March 9, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On September 15, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Tyler Nowicki, Esq., represented the Contractor. Assistant Attorney General Hope Sachs 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; and 3) Claimant’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 comprehensive renovation of a home owned by JT Investments, LLC. The ALJ found that the Claimant was an “owner” eligible to file a Guaranty Fund Claim, *ALJ’s Proposed Decision* pp. 8-9, that the Contractor’s performance under the contract was incomplete because he failed to obtain necessary permits, *ALJ’s Proposed Decision* pp. 10-12, and that the Contractor caused an actual loss of \$22,138.00. *ALJ’s Proposed Decision* p. 14. However, the ALJ found that the Claimant was ineligible for an award because JT Investments, with which the Claimant had no apparent legal relationship, incurred the actual loss. *ALJ’s Proposed Decision* pp. 14-15.

Although not raised by the Claimant on exception, the Commission finds that the ALJ erred in deeming the cost of replacing the drywall that had to be removed as a result of the Contractor’s failure to obtain permits for its work to be consequential damages that are not the proper subject of a Guaranty Fund award. The Claimant contracted for a comprehensive renovation that included the construction of new walls and the preparation of existing walls for painting. Therefore, the Claimant bargained for a complete renovation with drywall ready to paint, and the Contractor’s failure to obtain the necessary permits prevented the Claimants from receiving the bargained for consideration, which is a direct, rather than a consequential damage.

On exception, the Claimant implicitly argued that the ALJ erred in denying his claim when he was deemed to be an “owner” eligible to file a claim for purposes of Md. Code Ann., Bus. Reg. § 8-405(a). The Commission disagrees.

Under COMAR 09.08.03.03B(3)(c), a claimant’s actual loss is “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.” (Emphasis added.) In this case, the Claimant paid the Contractor \$39,000.00, and did not and will not be required to pay another contractor to correct or complete the Contractor’s work because JT Investments already paid for the correction and completion of the contracted work, and there is no evidence of a legal relationship between the Claimant and JT Investments. Therefore, applying COMAR 09.08.03.03B(3)(c), the Commission calculates the Claimant’s actual loss as follows:

\$39,000.00	Amount Claimant paid to or on behalf of the contractor
+ \$0.00	<u>Amount Claimant paid to correct and complete the work</u>
\$39,000.00	
- \$53,000.00	<u>Original contract price</u>
-\$14,000.00	Actual Loss

Because the Claimant failed to prove he suffered an actual loss, he is not entitled to a Guaranty Fund award.

Having considered the parties’ arguments, the evidence contained in the record, and the ALJ’s Recommended Decision, it is this 11th day of October 2022, **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’s claim is **DENIED**.
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

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

Robert Altieri
Chairperson –Panel
Maryland Home Improvement
Commission

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ROBERT MILLER, II,</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 ADELMO</p> <p>MENENDEZ QUINTERO T/A MQ</p> <p>RENOVATION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE DENISE OAKES SHAFFER,</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-02-21-19509</p> <p>* MHIC No.: 21(75)57</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 November 1, 2020, Robert Miller, II (Claimant) filed a Claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$38,053.15 in actual losses allegedly suffered as a result of home improvement under a contract with Adelmo Menendez Quintero T/A MQ Renovation, LLC (Respondent). Md. Code Ann., Bus.

Reg. §§ 8-401 through 8-411 (2015).¹ On August 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on September 28, 2021, via videoconferencing on the Webex platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B.² Eric London, Assistant Attorney General, Department of Labor, represented the Fund. The Claimant represented himself. Tyler Nowicki, Esquire, represented the Respondent.

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

ISSUES

1. Is the Claimant an "owner" of the property as defined by the governing law?
2. Is the Respondent the contractor responsible for the scope of work set out in the February 11, 2019 contract?
3. Was the work done by the Respondent unworkmanlike, inadequate or incomplete?
4. Was there an actual loss compensable by the Fund?
5. What is the amount of any compensable loss?
6. May the Claimant be compensated for any actual loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted eighteen Claimant exhibits, six Fund exhibits, and seven Respondent exhibits.

I have attached a complete Exhibit List as an Appendix.

¹ All references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² The hearing was originally scheduled for an in-person hearing. On September 9, 2021, I granted the joint request of all parties to convene the hearing via video teleconferencing.

Testimony

The Claimant testified and the Respondent testified. 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 01-114846.
2. The property that is the subject of the home improvement is located at 1931 Robinwood Road, Dundalk, Maryland 21222. At the time of the home improvement, JT Investments, LLC owned the property. After the home improvement, JT Investments sold the property to a third party.
3. The Claimant does not reside in or own the property that was the subject of the home improvement. The Claimant does not have any ownership interest in JT Investments.
4. At the time of the home improvement, JT Investments owned one property, 1931 Robinwood Road. The Claimant owned two properties.
5. Carl Schmuff is a former licensed home improvement contractor. He did not have an MHIC license at the time of this home improvement contract and he has been criminally charged with contracting without a license. He also has more than \$480,000.00 in civil judgments against him.
6. Before the contract at issue in this case, the Respondent worked for Mr. Schmuff at C&D Contracting. Mr. Schmuff abruptly closed the company and laid off all of the workers. The Respondent then applied for and received his own home improvement license. The Respondent did not have any other employment relationship with Mr. Schmuff.

7. On February 11, 2019, the Claimant entered into a contract with Mr. Schmuff to completely renovate the property at 1931 Robinwood Road. Mr. Schmuff is identified as the contractor; the Claimant is identified as the Client. An MHIC license number is handwritten under Mr. Schmuff's signature. Mr. Schmuff wrote the Respondent's MHIC number on the contract.

8. An unsigned attachment to the contract listing the scope of work, cost, completion timeline, and a payment schedule has the Respondent's name listed under Mr. Schmuff's name in the header. This document also lists the Respondent's MHIC number.

9. The Respondent and the Claimant spoke by telephone before the contract was signed. The Respondent represented to the Claimant that he knew that Mr. Schmuff was using his MHIC number and was aware of the contract. The Claimant relied on the representation that Mr. Schmuff was acting with the Respondent's permission and added the Respondent's name to the scope of work portion of the contract.

10. The estimated total cost of the project was \$42,675.00.

11. On February 7, 2019, JT Investments paid Carl Schmuff \$10,000.00. On March 15, 2019, JT Investments paid Carl Schmuff \$4,000.00. Jamie Williams, an owner of JT Investments, signed the checks.

12. On March 6, 2019, the Claimant made a \$1,000.00 payment via PayPal to Denise Schmuff. On March 4, March 7, March 14, March 16, March 27, and March 28, 2019, the Claimant made a \$2,500.00 payment via PayPal to Denise Schmuff. On March 20, 2019, the Claimant made a \$3,000.00 payment via PayPal to Denise Schmuff.

13. On an unspecified date, the Claimant gave Mr. Schmuff \$4,000.00 in cash.

14. On March 15, 2019, the Claimant, via a personal check, paid Carl Schmuff \$1,000.00. On April 3, 2019, the Claimant, via a personal check, paid Carl Schmuff \$10,000.00. On May 8, 2019, the Claimant, via a personal check, paid Carl Schmuff \$5,000.00.

15. The Claimant paid Mr. Schmuff, personally and through the PayPal account of Denise Schmuff, a total of \$39,000.00. JT Investments paid Mr. Schmuff a total of \$14,000.00.

16. In May of 2019, the Claimant was unhappy with the progress and began reaching out via email, telephone, and text messages to both Mr. Schmuff and the Respondent. Mr. Schmuff responded and indicated that he discussed the issue with the Respondent.

17. On May 21, 2019, the Claimant, the Respondent, and Mr. Schmuff entered into an "Addendum Contractor Agreement" (Addendum 1). That agreement listed Mr. Schmuff and the Respondent as parties to the contract and identified them as "licensed contractors operating under MHIC # 114846." (Cl. Ex. 3). Addendum 1 also noted that Mr. Schmuff had been paid \$53,000.00 and that no additional payments would be made for the original scope of work. The Respondent and Mr. Schmuff agreed that the contract price had been paid in full. They also agreed to complete the contracted work, to the Client's satisfaction, by July 15, 2019. Addendum 1 included a \$25,000.00 liquidated damages clause.

18. On August 18, 2019, the Respondent entered into a "Final Addendum Contractor Agreement" (Addendum 2) with the Claimant. Mr. Schmuff did not sign this agreement and he is not listed as a party to Addendum 2. In Addendum 2, the Respondent agreed to complete the original scope of work by September 30, 2019.

19. When signing Addendum 2, the Respondent agreed to the following statements:

"III. (Mr. Menendez; Owner MHIC #:114846) acknowledges and agrees MHIC #: 114846 has breached previous agreements and contracts multiple times, including but not limited to original project completion date by 3/25/19; agreed extension to 7/15/19; and is financially obligated to repay Client total sum of \$25,000."

“VI. Contractor (Mr. Menendez; Owner MHIC #: 114848) acknowledges and agreed [he] will: (a) fully complete project 1931 Robinwood Rd on or by 9/30/19, is fully responsible for all materials, labor, costs, etc., and, to Client’s full and complete satisfaction. Should Contractor fail to complete project on or by 9/30/19, without prior written approval from Client, Contractor is, again, in breach of Addendum Contract[;] (b) Fully support Client’s rightful and legal process to recover all financial costs agreed to be repaid a total sum of \$25,000, from Mr. Menendez and/or Carl Schmuff, both operating under MHIC #: 114846. (c) Mr. Schmuff was contracted as/under MHIC #: 114846, entered into a legal agreement under this MHIC, has not responded to numerous attempts to communicate and coordinate project completion, therefore [is] removed from this final Addendum Contract.” (Cl. Ex. 5).

20. On October 21, 2019, the Respondent entered into a “Final Addendum Contractor Agreement” (Addendum 3) with the Claimant. Mr. Schmuff did not sign this agreement and he is not listed as a party to Addendum 3. In Addendum 3, the Respondent agreed to complete the work by November 15, 2019. This addendum was otherwise the same as Addendum 2. (Cl. Ex. 6).

21. Before May 2019, the Claimant dealt primarily with Carl Schmuff and Mr. Schmuff executed the initial contract and began work on the project. Mr. Schmuff last performed work on the property on July 16, 2019. He removed all of his tools from the property and did not return. Neither the Claimant nor the Respondent had any further contact with Mr. Schmuff, despite repeated attempts to reach him.

22. The Respondent agreed to complete the work unfinished by Mr. Schmuff and signed an agreement to that effect on August 18, 2019 (Addendum 2). At the time the Respondent took over the work, the walls were up and finished. The Respondent finished the floors, some ceilings, and some finishing work.

23. The Respondent was not paid any money for the project. He spent approximately \$25,000 on the project.

24. In February 2020, the Claimant and Respondent walked the property and agreed that the Respondent had completed the work that Mr. Schmuff left unfinished. At that time, the Claimant was satisfied and did not ask the Respondent to address any other issues.

25. On March 28, 2020, Bad Monkey Electric, a licensed electrician, performed electrical and lighting work in the home. The cost of this work was \$2,500.00.

26. On April 4, 2020, Ideal Plumbing, LLC, a licensed plumber, performed plumbing work in the home. The cost of this work was \$1,100.00.

27. On April 6, 2020, O.E.S. Services, LLC, a licensed home improvement contractor, performed work in the home.

28. The cost of this work was \$4,570.00.

29. On April 10, 2020, the Baltimore County Building Engineer Office issued a stop-work order. The order indicated: "working without permit" and imposed a \$1,000.00 fine. The inspector required that "all work must be exposed, remove all drywall and ceiling from basement, open new walls and ceiling first floor, obtain permit, have work inspected." (Cl. Ex. 12).

30. The Claimant notified the Respondent in April that the property did not pass inspection. The Claimant asked the Respondent to return to the property to do the work. The Respondent informed the Claimant that the Claimant had told him he was satisfied with the work back in February. The Respondent informed the Claimant that he could not continue to work on the property without being paid.

31. To satisfy the inspection requirements and lift the stop-work order, JT Investments, contracted with various contractors as follows:

A. On or about April 17, 2020, Bad Monkey Electric performed the electrical work required by the inspection at the cost of \$4,348.00.

B. On or about April 19, 2020, Ideal Plumbing performed the plumbing work required by the inspection at the cost of \$6,860.00.

C. On or about May 11, 2020, Precision Home Services reinstalled the drywall after the inspection was completed at the cost of \$3,850.00.

D. On or about July 1, 2020, O.E.S. Services performed the structural and finishing work required by the inspection at the cost of \$10,930.00.

E. On May 27, 2020, Junk King removed all debris from the property at the cost of \$778.00.

31. The Claimant's name does not appear on any of the proposals or invoices listed in finding of fact # 30. Except for Junk King, all invoices and proposals are directed to JT Investments at the business address of 3717 Boston Street, # 276, Baltimore, MD 21224. The Junk King invoice was sent to Jamie Williams at the property address.

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).

Is the Claimant an "owner" of the property?

The Claimant testified that he did not own the property and did not reside there. He stated that the property was owned by JT Investments, an entity owned by Jamie and Travis Williams. The Claimant further testified that he had no ownership interest or employment relationship with JT Investments. The Claimant also testified that he owned two properties at the time of this home improvement contract, and JT Investments owned one – the property at issue in this case.

Section 8-101(k) of the Business Regulation Article defines "owner." It states: "Owner includes a homeowner, tenant, or other person who buys, **contracts for**, orders or is entitled to a

home improvement.” Bus. Reg. § 8-101(k) (emphasis added). The evidence established that the Claimant was the person who entered into this home improvement contract. He is listed as the “Client” on the initial contract as well as the three addendums. Therefore, the Claimant is an owner of this property as it is defined for purposes of home improvement contracts.

An owner may make a claim against the Fund “only if” the owner (1) resides in the home or (2) does not own more than three dwelling places. Bus. Reg. §8-405(f)(2). The Claimant does not reside in the home. At the time of the home improvement contract, he owned two properties. Under the statutory definitions, he is an owner eligible to make a claim against the Fund.

Is the Respondent the contractor responsible for the scope of work set out in the February 11, 2019 contract?

I agree with the Respondent that Mr. Schmuff is the primary bad actor in this home improvement situation. I do not agree that this fact eliminates the Respondent’s responsibility.

The Claimant testified that he contacted the Respondent before entering into the home improvement contract with Mr. Schmuff to ensure that the Respondent knew about and agreed to Mr. Schmuff entering into this contract using the Respondent’s home improvement license number. The Respondent testified that Mr. Schmuff entered into this contract without his knowledge or authorization and that he was unaware of the contract until May of 2019 when the Claimant contacted him for the first time. As these two accounts are entirely opposed, resolution of this issue requires a credibility determination. While both witnesses appeared sincere and trustworthy while testifying at the hearing, I find that the evidence in the record corroborates the Claimant’s version of events. I further find that the Respondent’s actions undermine his account that he was unaware of the contract before May 2019.

The record evidence that corroborates the Claimant’s testimony includes the addition of Mr. Menendez’s name and his MHIC number on the scope of work on the original contract. The Claimant testified that he asked Mr. Schmuff to add that information to the contract after the

Claimant confirmed via telephone that the Respondent was aware of the contract. After that, the Respondent entered into three agreements with the Claimant accepting responsibility for the original contract. In the first addendum, both Mr. Schmuff and the Respondent signed the agreement, bolstering the notion that there was an affiliation or partnership between them. In the second addendum, Mr. Schmuff was no longer listed, but the Respondent expressly agreed that he was responsible for the contract and that he and Mr. Schmuff were “both operating under MHIC #: 114846.” (Cl. Ex. 5) The third addendum contained similar representations.

The Respondent argued that he only entered into these agreements to avoid trouble and clear his license. I do not doubt that this is a true statement. I find, however, that this concern was motivated by his agreement that Mr. Schmuff could use his MHIC license to enter into this contract and not because Mr. Schmuff's actions blindsided him.

Was the work done by the Respondent unworkmanlike, inadequate or incomplete?

The evidence established that Mr. Schmuff abandoned the job on July 16, 2019. He removed all of his tools and equipment, and no one was able to reach him after that date. The Respondent agreed to come in and complete the work. Various extensions were agreed upon to give him time to do so. The Respondent was not paid for the work and invested approximately \$25,000 to complete the work. When the Respondent walked through the property with the Claimant in August of 2019, the walls were mostly up and finished. The Respondent completed flooring, ceiling, and other finishing work. Nothing that the Respondent undertook to do after Mr. Schmuff abandoned the project required permitting or inspection.

The Respondent and the Claimant walked the property when the Respondent completed the work. They agreed that the Respondent had satisfied his obligations under the contract. Shortly after that, and before the property was inspected, the Claimant engaged several other contractors to perform work on the property to get it ready for sale.

On April 10, 2020, the Baltimore County Building Engineer Office issued a stop-work order. The order indicated: "working without permit" and imposed a \$1,000.00 fine. The inspector required that "all work must be exposed, remove all drywall and ceiling from basement, open new walls and ceiling first floor, obtain permit, have work inspected." (Cl. Ex. 12). The Claimant asked the Respondent to return to the property to redo the work generated by the failure to have permits issued and inspections completed. The Respondent refused to return, stating that they had agreed that the project was complete.

At the hearing, the Respondent argued that his involvement with the property did not involve pulling any permits or need for inspection. He noted that the various contracts and addendums did not mention permits, and there was no obligation on his part to satisfy the permit and inspection obligations.

MHIC's regulations governing home improvement contracts address this responsibility as follows:

In the performance of any Home Improvement Contract it shall be the non-delegable duty and obligation of the prime contractor to secure, or see to the securing of, every permit, license, or special exception necessary to the proper completion of the contract according to applicable state or local building laws.

COMAR 09.08.01.08. There is no definition of "prime contractor" in the Business Regulation Article. I interpret prime contractor as the person responsible for the home improvement contract, and the word prime is used to exclude a subcontractor. The statute also states: "A person may not perform or sell a home improvement with or through another person who is required to be licensed . . . but is not licensed." Bus. Reg. § 8-612. As I have determined that the Respondent was aware of the contract and allowed Mr. Schmuff to enter into it using the Respondent's MHIC number, the Respondent is the prime contractor. As such, the Respondent was responsible for securing every permit or license necessary to complete the work. The fact

that the Respondent was not present at the job site until after Mr. Schmuff abandoned it does not alleviate this responsibility under the regulations.

The work completed by other contractors after the Respondent and the Claimant agreed that his obligations under the contract had been satisfied does not negate this finding. The Respondent testified that the walls were closed when he finished the job, and the project appeared on the surface to be complete. The pictures he produced corroborate this testimony. There would have been no reason for these other contractors to understand that permits had not been issued and that inspections had not been performed.

Therefore, I find the Respondent failed to secure the permits and inspections necessary to complete the work, and the work was incomplete. Bus. Reg. § 8-401.

Was there an actual loss compensable by the Fund?

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.

Based on the testimony at the hearing, it is unclear whether the Claimant is also seeking reimbursement for the monies paid to several contractors before the April 10, 2020, stop-work order (*see* Finding of Fact 25-27). I find that the Claimant has failed to prove that those payments were the result of any unworkmanlike, inadequate or incomplete home improvement on the part of the Respondent. The evidence established that the Respondent and the Claimant agreed in February 2020 that the Respondent had completed the contract to the Claimant’s satisfaction.

Any additional work performed by other contractors to get the house ready to sell was not based on any failure of the Respondent.

Of course, the Claimant had no way of knowing that no permits or inspections had been secured at the time of the February 2020 meeting. Any expenses incurred to remediate the failure to secure permits and inspections resulted from the Respondent's failures. The Claimant established that JT Investments contracted with several contractors after the stop-work order to comply with the inspector's order. That work was the direct result of the failure of the Respondent to acquire permits and inspections necessary to complete the contract. Any work performed by a contractor after the April 10, 2020, stop-work order constitutes an actual loss caused by the Respondent's act or omission.

What is the amount of the compensable loss?

In this case, the Respondent performed incomplete work under the contract, and the other contractors were retained, after April 10, 2020, to complete or remedy that work. The statute prevents the Fund from making an award for "an amount for attorney fees, consequential damages, court costs, interest, personal injury damages, or punitive damages." Bus. Reg. §8-405(e)(3). The Claimant included an invoice from an attorney. I admitted the exhibit but advised the Claimant on the record that attorney's fees are not compensable. I further find that the invoices from Junk King and Precision Home Services represent consequential damages that are not compensable.³ The work done by Bad Monkey Electric, Ideal Plumbing, and O.E.S. Services was undertaken to remediate the incomplete permitting and inspection work.

³ The reinstallation of the dry wall and removal of debris are not the direct result of the failure to pull the permits. A common example of consequential damages is the cost to clean carpets and remove mold after an unworkmanlike roof repair leads to an interior flood. In that case, the Fund could compensate an owner for the cost to repair the roof, but not to remediate the damage caused by the water. The work in these invoices is analogous to the carpet cleaning and mold removal.

Accordingly, the following regulatory formula appropriately measures the 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).

I find that the total actual loss should be calculated as follows:

Amount paid under the original contract	
Paid by Claimant	\$39,000.00
Paid by JT Investments	<u>\$14,000.00</u>
Total	\$53,000.00
Amount paid to complete the work	+
O.E.S. Services	\$10,930.00
Ideal Plumbing	\$6,860.00
Bad Monkey Electric	\$4,348.00
<hr/>	
Total	\$75,138.00
Original contract price	- <u>\$53,000.00</u>
Actual loss	\$22,138.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). Therefore, the recovery in this case is capped at \$20,000.00.

May the Claimant be compensated for the actual loss?

The Claimant testified that he paid the invoices from O.E.S. Services, Ideal Plumbing, and Bad Monkey Electric set out in the calculation above. Each of the invoices was sent to JT Investments at its business address. None of the invoices included the Claimant's name or address. The Claimant produced no documentation that he was liable for the invoices or paid the

invoices. The Claimant was able to produce every canceled check, PayPal transfer, and cash withdrawal paid to Mr. Schmuff. I find that the Claimant has not demonstrated that he is the person who suffered an actual loss compensable by the Fund. The evidence demonstrates that JT Investments was the entity contracting with O.E.S. Services, Ideal Plumbing, and Bad Monkey Electric to complete the work.

The Fund argued that the Claimant is not required to meet this burden. It stated that if any actual loss was sustained, the Claimant could be compensated by the Fund. The Fund argued that JT Investments would not be able to make a similar claim and that, if JT Investments had suffered the actual loss, JT Investments would have a cause of action against the Claimant.

I disagree with the Fund's interpretation of the governing regulation. The language is not ambiguous. It states: "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." COMAR 09.08.03.03B(3)(c) (emphasis added).

The Claimant has established that he paid Mr. Schmuff \$39,000.00 under the original contract. The Claimant has failed to prove that he paid any amount to another contractor to repair the incomplete work. The Claimant also disavowed any employment or fiduciary relationship with JT Investments. Allowing any claimant to recover from the Fund, without regard to that claimant's own financial loss, has the potential to result in a windfall to a claimant to the detriment of the party who, in fact, incurred the actual loss.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant is an owner who is eligible to make a claim against the Fund. Bus. Reg. § 8-101(k); § 8-405(f)(2) (2015).

I further conclude that the Respondent is the responsible contractor and that there was an incomplete home improvement. Bus. Reg. § 8-401 (2015); COMAR 09.08.01.08

I further conclude that there was an actual loss 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 amount of the actual loss is \$22,138.00. COMAR 09.08.03.03B(3)(c).

I further conclude that the Claimant cannot be compensated for the actual loss because he did not incur it. COMAR 09.08.03.03B(2), (3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

November 19, 2021
Date Decision Issued

Denise O. Shaffer

Denise Oakes Shaffer
Administrative Law Judge

DOS/ja
#195059

PROPOSED ORDER

WHEREFORE, this 9th day of March, 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**