

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF ENYINNA ANTHONY,</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 BRYAN JONES,</b></p> <p><b>T/A BOJ &amp; SON'S CONSTRUCTION</b></p> <p><b>LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JENNIFER A. NAPPIER</b></p> <p><b>*</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>* OAH No.: LABOR-HIC-02-22-00890</b></p> <p><b>* MHIC No.: 21 (75) 766</b></p> <p><b>*</b></p> <p><b>*</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 July 16, 2021, Enyinna Anthony (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 \$26,970.00 for actual losses allegedly suffered as a result of a home improvement contract with Bryan Jones, trading as BOJ & Son's Construction LLC (Respondent).<sup>1</sup> On December 6, 2021, the MHIC issued a Hearing Order on

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<sup>1</sup> Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 9, 2022, I held a hearing at the OAH in Hunt Valley, Maryland.<sup>2</sup> Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. 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.<sup>3</sup>

### **ISSUES**

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

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered by the Claimant, unless otherwise noted<sup>4</sup>:

- CL Ex. A Complaint Fact, undated
- CL Ex. B Contract between the Claimant and Respondent, November 2, 2020
- CL Ex. C Documentation of credit card payment from the Claimant to Wayfair, November 12, 2020; Payments to the Respondent, September 16, 2020 to December 14, 2020
- CL Ex. D Unfinished/Inadequate Remaining Scope, undated
- CL Ex. E NOT OFFERED
- CL Ex. F NOT OFFERED
- CL Ex. G Before and after photos of the master bedroom and bathroom

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<sup>2</sup> Bus. Reg. §§ 8-407(a), 8-312.

<sup>3</sup> 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.

<sup>4</sup> The Claimant's exhibits were pre-marked.

- CL Ex. H Before and after photos of the hallway bathroom
- CL Ex. I Before and after photos of the hallway, various dates
- CL Ex. J Photos of water damage, undated
- CL Ex. K Photos of the Claimant's home office, February 15, 2021
- CL Ex. L Contract between the Claimant and Allan Homes Unlimited, Inc., June 8, 2021; NV Kitchen & Bath Remodeling estimate, undated; Email from Mimosa Kitchen & Bath to the Claimant, August 31, 2021
- CL Ex. M Various text messages between the Appellant and the Respondent, December 19, 2020 to May 20, 2021

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 Hearing Order, December 6, 2021
- GF Ex. 2 Notice of Hearing, January 20, 2022
- GF Ex. 3 Letter from MHIC to the Respondent, July 26, 2021,<sup>5</sup> with attachment
- GF Ex. 4 Department I.D. Registration and Occupational/Professional License History, printed February 22, 2022.
- GF Ex. 5 Affidavit of Thomas Marr IV, February 23, 2022
- GF Ex. 6 Notice of Hearing, February 25, 2022
- GF Ex. 7 Summary of payments made by the Claimant to or on behalf of the Respondent, undated

The Respondent did not offer any exhibits.

### Testimony

The Claimant testified on his own behalf.

The Respondent testified on his own behalf.

The Fund did not present any witnesses

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<sup>5</sup> The letter was incorrectly dated July 26, 2014.

## **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 01-118128 and 05-137602.
2. At all relevant times, the Claimant was the owner of a home located on Vista Road in Columbia, Maryland, which was his personal residence.
3. The Claimant does not own any other residences.
4. On September 10, 2020, the Claimant and the Respondent entered into a contract to perform renovations to the master bedroom, upstairs hallway, hallway bathroom, and the basement office area of his home (Contract). Specifically, the Contract provided for:

### **Bedroom**

- Demolition of the bedroom area, with removal of all existing unusable building materials
- Carpentry, including installation of new wood stabilization framing and drywall, as needed; pointing up new drywall with the existing drywall, as needed; and installation of all wall trim, as needed
- Painting, including finishing all new drywall applications for primer and paint, painting the whole room, and painting the trim with semi-gloss white paint
- Electrical work, including installation of new recessed pan lighting and switches (four lights in the front area of the room in the existing drywall; six lights in the back area of the room where new drywall was being installed; installation of two reading light receptacles and switches; and installation of a new ceiling fan with its own switch

### **Hallway bathroom**

- Installation of 12x24 floor tiles (to be purchased by Claimant)
- Installation of bullnose base
- Installation of 72" long double sink and fixtures (to be purchased by Claimant)
- Installation of a new toilet
- Repairs to the drywall behind the sink
- Installation of new wall ties and fixtures
- Painting

### **Basement Office Area**

- Installation of new rear door, hardware and frame
- Converting the wet bar area to a closet
- Removal of book shelves

- Removal of the existing trim and installation of new trim
- Paint (to be purchased by Claimant)

5. The original agreed-upon Contract price was \$10,000.00

6. On November 2, 2020, the Claimant and Respondent signed a change

order/addendum to the Contract, which included renovation of the master bathroom and hallway, for the price of \$15,000.00. Specifically, the change order/addendum provided for the following:

Master Bathroom and Hallway

- Demolition, including removal of all existing unusable building materials (\$500.00)
- Carpentry, including installation of new framing for a closet and steam shower; “mold tough” drywall, as needed; pointing up new drywall with existing drywall, as needed; installation of wall trim, as needed (\$1,500.00)
- Finish and paint, including all new drywall applications for primer and paint, painting all affected areas, and painting the trim with semi-gloss white paint (\$1,500.00)
- Electrical and plumbing work, including installation of new recessed pan lighting and switches (four to six lights); installation receptacles and switches; checking the system and ensuring all electrical work is up to code; and installation of all new plumbing infrastructure to code (\$1,500.00)

Master Bathroom (\$9,500.00)

- Installation of ceramic tiled floor and wall tiles
- Installation of a bullnose base
- Installation of a 60” long double sink, with fixtures, a medicine cabinet, and light bars.
- Installation of a toilet with an enclosure room
- Building a new closet
- Installation of a new steam shower unit
- Installation of a towel rack and fixtures
- Painting

Hallway Area (\$1,500.00)

- Skimming and painting the entire area
- Installation of a new six-panel door, frame, and hardware.

7. Eventually the Claimant and Respondent realized that the Respondent had underestimated the cost of the materials for the steam shower because the Claimant and Respondent originally had a different understanding of the specifications for the shower. The parties agreed that the Claimant would purchase the more expensive components necessary for installation of the steam shower.

8. The Respondent began work under the Contract in mid-September of 2020.

9. The Claimant paid \$15,000.00 to the Respondent, as follows:

- September 16, 2020 \$3,500.00
- September 17, 2020 \$1,500.00
- November 2, 2020 \$3,500.00
- November 3, 2020 \$1,500.00
- November 25, 2020 \$2,500.00
- December 14, 2020 \$2,500.00

10. The Claimant paid \$13,454.99 for materials on behalf of the Respondent, as

follows:

- November 9, 2020 \$1,299.00 for Radke Vanity Cabinet<sup>6</sup>
- November 9, 2020 \$1,671.51 to IDesign Interior Solutions
- November 9, 2020 \$1,589.09 to Ferguson Enterprises
- November 11, 2020 \$1,925.64 to Architectural Ceramics
- November 12, 2020 \$ 435.66 to Wayfair
- November 13, 2020 \$3,132.00 to Sauna Place
- November 13, 2020 \$ 313.46 to Polaris Sinks
- November 23, 2020 \$ 46.37 to Sherwin Williams
- November 23, 2020 \$ 46.37 to Sherwin Williams<sup>7</sup>
- November 23, 2020 \$ 177.96 to The Home Depot
- November 29, 2020 \$1,443.40 for 2-piece toilet<sup>8</sup>
- December 14, 2020 \$ 650.00 to Granite Discounter
- January 20, 2021 \$ 724.53 to IDesign Interior Solutions

11. The Claimant paid a total of \$28,454.99 to and on behalf of the Respondent for work performed under the Contract. This increase in the Contract price was primarily due to the increased cost of the steam shower.

12. As the Respondent performed work on the Claimant's home, the Claimant found he was repeatedly dissatisfied with the work. The Respondent operates under the policy that the customer is always right and determines whether the work is done satisfactorily. Accordingly, as

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<sup>6</sup> It is unclear where the cabinet was purchased

<sup>7</sup> The Claimant made two purchases for the same price on the same date.

<sup>8</sup> It is unclear where the toilet was purchased.

the Claimant pointed out issues with the work, the Respondent agreed to redo much of the work that he had completed and demolished/uninstalled the unsatisfactory work in order to do so.

13. The day after the Respondent's plumbers installed plumbing for the steam shower on December 12, 2020, there was water leaking from the shower head that resulted in a leak into the mechanical room below the bathroom. The Respondent repaired the resulting damage, except for the replacement of the drywall in the mechanical room.

14. The Respondent last performed work at the Claimant's home on December 19, 2020.

15. On December 19, 2020, the Claimant text messaged the Respondent and told him that the tile job in the hallway bathroom looked horrible. He complained that the grout lines were not uniformed in size, the tile layout was not "nice," some of the lines were not straight and the tile edging was not laid properly.

16. On a date not in the record, the Respondent visited the Claimant's home and the Claimant showed him the issues with the hallway bathroom. After viewing the work, the Respondent acknowledged that some changes needed to be made with his personnel in order to obtain a satisfactory quality of work.

17. By December 19, 2020, the Respondent had not completed much of the work that he had started to redo. As of December 19, 2020, the following work need to be remediated and/or completed:

Master Bathroom

- Correction to framing issues
- Leveling of floor
- Installation of floor and shower tile
- Installation of bullnose
- Installation of transition
- Installation of bidet
- Capping the existing drain pipe for the old shower
- Repositioning of toilet and plumbing for sink

- Installation of switches and covers
- Installation of recessed LED Light covers
- Painting entire bathroom, including walls, trim, door, and ceiling
- Completing installation of the steam generator
- Installation of cabinets, mirrors, and "finishes"
- Installation of insulation

#### Master Bedroom

- Installation of ceiling fan
- Installation of recessed light LED covers
- Painting walls, ceiling, trim, and doors
- Installation of closet door
- Wall mounting of television
- Pointing up the walls where required
- Installation of insulation

#### Hallway Bathroom

- Installation of vanity and mirrors
- Removal of existing shower tile
- Installation of floor and shower tile
- Installation of bullnose
- Installation of transition
- Installation of plumbing for two sinks
- Installation of toilet
- Installation of switches and covers
- Installation of recessed LED light covers
- Installation of vanity lights
- Installation of all finishes and fixtures
- Painting of the walls, trim, ceiling, and door

#### Hallway

- Complete painting
- Installation of whole house fan cover
- Installation of three recessed lights
- Installation of switches

#### Office

- Paint all walls, trim, doors, ceiling, closet, etc.
- Replace old trim with modern trim
- Repair and replace exterior door and frame
- Remove bookshelves and convert wet bar to a closet

18. Eventually, on a date not in the record, the Respondent suggested that the

Claimant have another contractor complete the work to his satisfaction because the Respondent



felt that his crews and subcontractor were not capable of completing the job. The Respondent offered to pay the costs of the new contractor

19. From December 2020 through May 2021, the Claimant and the Respondent communicated amicably and tried in good faith to resolve the issues with the work. Eventually the Respondent decided that he would try to refund the Claimant's money, but by May 2021 he was unable to do so.

20. On June 8, 2021, the Claimant received a \$26,970.00 estimate from Allan Homes Unlimited (Allan Homes) for completion and remediation of the work as described in the Contract. Allan Homes is a licensed contractor.

21. The Claimant is not an officer or employee of the Respondent, related to the Respondent, or related to an officer or employee of the Respondent.

22. The Claimant has no other pending claims related to this matter and has not otherwise recovered for any losses connected to the Claim.

## DISCUSSION

### LEGAL FRAMEWORK

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>9</sup> 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.<sup>10</sup>

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ."<sup>11</sup> "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or

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<sup>9</sup> Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).

<sup>10</sup> *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

<sup>11</sup> 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.").

incomplete home improvement.”<sup>12</sup> The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.<sup>13</sup>

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) the claimant is not an employee, officer, or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor’s employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor’s good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage.<sup>14</sup>

For the following reasons, I find that the Claimant has proven eligibility for compensation.

#### THE MERITS OF THIS CASE

The undisputed evidence in this case establishes that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant and, there are no *prima facie* impediments barring the Claimant from recovering from the Fund. *Id.* It is also undisputed that the Respondent performed unworkmanlike, inadequate, and/or incomplete home improvements to the Claimant’s personal residence.

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<sup>12</sup> Bus. Reg. § 8-401.

<sup>13</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

<sup>14</sup> Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2020).

The Claimant credibly testified that as the Respondent performed work under the Contract, the Respondent encountered some issues in performing the work and some of the work was not satisfactorily performed. He testified that the Respondent last performed work in his home on December 19, 2021. By that time, the Respondent had demolished and uninstalled some of the previously performed work, in order to redo the work to the Claimant's satisfaction. As a result, when the Respondent left the job, much of the work under the Contract still needed to be completed. The Claimant supported his testimony with photos of the work that still needs to be completed or remediated and the Respondent does not dispute the scope of the work that needs to be either completed or remediated.

At the hearing, the Respondent apologized for not being able to complete the work on the Claimant's home and stated that he entered the Contract with every intention of completing the job. He explained that his policy is that the customer is always right and has the final say as to whether a job has been performed satisfactorily, so he voluntarily agreed to redo some parts of the job even though he felt it was done correctly. He also admitted that there were parts of the job that he found his crew were not capable of adequately performing. He said that he did not have previous experience installing steam showers and although his crews put their best effort forward, installing the steam shower to the Claimant's specifications was more of a challenge than he had anticipated. After the Respondent realized that his crews were unable to adequately perform the work, he obtained a subcontractor, but the subcontractor also failed to complete work to the Claimant's satisfaction.

The Respondent indicated that the Claimant's expectations were reasonable and that the Claimant asked for a level of work consistent with industry standard. The Respondent testified that when he realized that some of the crew members simply were not performing to either his or the Claimant's satisfaction and would not be able to adequately complete the job to the

Claimant's satisfaction, he suggested that the Claimant find another contractor to complete the work. It was the Respondent's intention to pay for the new contractor to complete the work. The Respondent stressed that he did not cavalierly leave the job unfinished and that he demolished and uninstalled the unsatisfactory work so that the next contractor would not have to. He agreed that \$20,000.00 is a reasonable cost for remediating and completing the work under the Contract.

Based on the foregoing, I find that the Claimant is eligible for compensation from the Fund.

Amount of Actual Loss

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.<sup>15</sup> MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent completed work under the contract and the Claimant retained other contractors to complete and remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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.<sup>16</sup>

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<sup>15</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

<sup>16</sup> COMAR 09.08.03.03B(3)(c).

The Claimant obtained estimates from three licensed contractors for completion of the work under the Contract. The lowest of the three estimates was \$26,000.00. The Claimant indicated that he has personally done some work on the home to make it livable and that based upon the estimate he obtained from Allan Homes, he believes that \$20,000.00 is a fair and reasonable amount for having the outstanding work completed and remediated.

I find that the Claimant's actual loss is as follows:

Amount paid to or on behalf of Respondent	\$28,454.99
Amount necessary for other <u>contractors to remedy the work</u>	+ \$20,000.00
<b>TOTAL</b>	<b>\$48,454.99</b>
<u>Contract Price</u>	<u>- \$28,454.99</u>
<b>Actual Loss</b>	<b>\$20,000.00</b>

The amount of the Claimant's actual loss is within the statutory cap on claims against the Fund.<sup>17</sup> Thus, the Claimant's recovery is for the full amount of his actual loss, \$20,000.00

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

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts or omissions.<sup>18</sup> 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 \$20,000.00; 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


<sup>17</sup> Md. Code Ann., Bus. Reg. § 8-405(e)(1), (e)(5).

<sup>18</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(1).

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission,<sup>19</sup> and

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

June 7, 2022  
Date Decision Issued

  
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Jennifer A. Nappier  
Administrative Law Judge

JAN/cj  
#198763

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<sup>19</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 2<sup>nd</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***