

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER M. CARTER JONES,
OF KEITH WYATT	* 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 MICHELE BAILEY,	*
T/A PHENOMENAL, LLC,	* OAH No.: LABOR-HIC-02-22-24614
RESPONDENT	* MHIC No.: 21 (75) 825

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On August 4, 2022, Keith Wyatt (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 \$49,122.00 for actual losses allegedly suffered as a result of a home improvement contract with Michele Bailey, trading as Phenomenal, LLC (Respondent).¹

¹ Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 & Supp. 2022). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On September 16, 2022, the MHIC issued a Hearing Order on the Claim. On September 23, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 3, 2023,² I conducted a video hearing via Webex. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Nicholas C. Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant and the Respondent represented themselves.

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

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- CL. Ex. 1 –
- a Contract between the Claimant, the Claimant's wife, Sherry Wyatt, and the Respondent, June 18, 2019
 - b Text message from the Respondent to the Claimant
 - c Copy of a Cashier's Check for \$6,000.00 from the Claimant to the Respondent, July 3, 2019
 - d Copy of a Cashier's Check for \$17,104.54 from the Claimant to the Respondent, August 6, 2019

² The hearing was originally scheduled for January 19, 2023, but I postponed the hearing to February 3, 2023 to allow the Claimant an opportunity to organize and submit his exhibits.

- e Estimate from AAA Insurance/CSAA Affinity Insurance Company (AAA), undated, and "Summary for A-Dwelling, May 17, 2019
 - f & g Photographs of floor demolition, June 26, 2019
 - h Photograph of water damage to the ceiling, June 26, 2019
 - i Photograph of the family room, June 26, 2019
 - j & k Photographs of baseboards in the family room, June 26, 2019
- CL Ex. 2 -
- a1 - a7 Text message from the Claimant to Preston Bailey,³ President of Phenomenal, LLC, with a photograph of the vanity, tile, and wood flooring the Claimant wanted installed, August 6, 2019
 - a.8 Text message from the Claimant to the Respondent, August 12, 2019
 - a.9 Photograph of the Respondent's employee installing wood laminate flooring, August 10, 2019
 - a.10 Photograph of Bruce Gunstock Solid Oak flooring, August 9, 2019
 - a.11 Text messages between the Claimant and the Respondent, August 13 and 14, 2019
- CL Ex. 3 -
- a - m Text Messages between the Claimant and the Respondent, August 16, 2019 through August 24, 2019
 - n Letter from the Respondent to the Claimant, August 21, 2019
 - o Respondent invoice, August 28, 2019
 - p Homeowner's Final Release and Affidavit, undated
 - q. Letter from the Claimant to the Respondent, September 26, 2019
 - r. Settlement Agreement and Release, unsigned and undated
- CL Ex. 4 - Text messages between the Claimant and the Prince George's Community Collaborative Resolution Center (PG Mediation), May 17, 2021 through October 8, 2021

³ Mr. Bailey represented that he is the president of Phenomenal, LLC. Michele Bailey serves only as the company's resident agent. Although Mr. Bailey is not the named Respondent in the matter, as he is the president of the company and primarily interacted with the Claimant and his wife, I refer to Mr. Bailey throughout this decision as "the Respondent." See Md. Code Ann., State Gov't § 9-1607.1(a)(4)(i).

- CL Ex. 5 - Test messages from the Claimant to Troy Lester, Respondent's Administrative Management Associate, August 5, 2021 through August 17, 2021
- CL Ex. 6 - Contract between Chesapeake Environmental Solutions and the Claimant, January 9, 2021, with attached scope of work.
- CL Ex. 7 - Photographs of the state of the Claimant's home, August and September 2019

I admitted the following exhibits offered by the Claimant:

- Resp. Ex. 1 - AHF⁴ brand chart, undated
- Resp. Ex. 2 - Email between Troy Lester and "Nicole," April 9, 2021

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - OAH Notice of Remote Hearing, December 27, 2022
- Fund Ex. 2 - Fund Hearing Order, September 16, 2022
- Fund Ex. 3 - Letter from the MHIC to the Respondent, August 16, 2022
- Fund Ex. 4 - Licensing History for the Respondent, printed January 5, 2023

Testimony

The Claimant testified and presented the testimony of his wife, Sherry Wyatt.

The Respondent testified and presented the testimony of Troy Lester, the Respondent's Administrative Managing Partner.

The Fund did not present any testimony.

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 01-92028. Phenomenal, LLC is licensed under MHIC license number 05-127295.

⁴ This is the name of a company. No one produced any information of what the letters in the Company's name stand for.

2. The Claimant and Sherry Wyatt own a property on Bishops Bequest Road in Upper Marlboro, MD (the Property). The Property has two above-ground floors and a basement.
3. In October 2018, there was extensive damage to all of the Property levels due to an overflowing toilet in in the second-floor bathroom.
4. The Claimant filed a claim with his insurance company, AAA, which agreed to cover the water damage to the Property interior. AAA prepared an estimate of the cost and a scope of work to repair the water damage to the Property.
5. On or about June 18, 2019, the Claimant and the Respondent entered into a contract for \$29,104.54 (Contract). The Contract called for performing repairs to the Property as provided on the AAA estimate.
6. The AAA estimate included the following repairs:
 - Move the main floor contents to a pod⁵ for storage during repairs
 - Remove, replace, and refinish the oak flooring on the main level, including the living room, the dining room, the den, the powder room, the hallway and the kitchen
 - Detach and reset the toilet and the pedestal sink in the powder room
 - Mask and paint the walls and ceiling in the kitchen
 - Remove and replace the carpet on the stairs from the main level to the basement
 - Remove and replace carpet, drywall, and recessed light fixtures in the basement and paint the ceiling
 - Move out and reset contents of an upstairs bedroom
 - Remove and replace carpet in a second-level bedroom

⁵ A "pod" is a mobile storage unit.

- Remove and replace oak flooring in the second-level hallway.
- Remove debris

7. The Respondent also agreed to do mold remediation. The AAA estimate did not include an amount for mold remediation.

8. The Contract called for the Claimant to pay the Respondent a deposit of \$6,000.00 on July 2, 2019 for demolition and a dumpster, pay \$17,104.54 on July 9, 2019 for materials and labor, and pay \$6,000.00 upon completion of the work.

9. By cashier's check dated July 3, 2019, Sherry Wyatt paid the Respondent \$6,000.00.

10. By cashier's check dated August 6, 2019, the Claimant paid the Respondent \$17,104.54.

11. The Claimant and Sherry Wyatt paid the Respondent a total of \$23,104.54.

12. The Respondent paid \$3,892.43 for a pod intended to store the Claimant's belongings while repairs were being made to the property.

13. The Claimant selected items at Home Depot that they wanted installed in the Property, including a toilet, vanity, tile, and the oak wood flooring.

14. The Claimant selected Bruce Laurel Oak Gunstock (Laurel Oak) wood flooring and, on August 6, 2019, sent a picture of the oak flooring name, cost, and the Home Depot SKU⁶ number to the Respondent.

15. The Claimant contacted Home Depot and ensured it they had enough of the Laurel Oak wood flooring in stock.

⁶ "SKU" stands for stock keeping unit.

16. On August 10, 2019, an employee of the Respondent was installing oak flooring on the Property's main level. The wood the Respondent's employee was installing was not Laurel Oak; rather, he was installing Bruce Gunstock Solid Oak (Solid Oak).

17. The Claimant contacted the Respondent and asked him to remove the wood flooring being installed in the living room and install the Laurel Oak flooring instead.

18. The Respondent refused to remove the Solid Oak flooring his employee had begun installing and refused to purchase and install the Laurel Oak flooring.

19. The Respondent did not move all of the Claimant's belongings out of the Property as called for in the AAA estimate. Rather, they piled the Claimant's belongings in the laundry room and hallways without covering them. Some of the Claimant's belongings were covered in dust and paint as a result of the repairs to the home.

20. On August 16, 2019, the Claimant or Sherry Wyatt contacted the Respondent and advised him that they were dissatisfied with how he stored their belongings and that those belongings were covered in dust and paint.

21. By letter dated August 21, 2019, the Respondent notified the Claimant that he would no longer perform any further repairs to the Property due to "discrepancies within the insurance adjustor's documentation and the expectations of the homeowners." (Stop Work Letter).⁷

22. In the Stop Work Letter, the Respondent stated that he had ceased work effective April 16, 2019, and that he would give the Claimant a refund once the Claimant signed a waiver. The Stop Work Letter noted that the Respondent had not yet determined the amount of any refund due to the Claimant.

⁷ Claimant Ex. 3n.

23. Before the Respondent sent the Claimant the Stop Work Letter, the Respondent had completed the following work at the Property:

- Demolition
- Painting
- Mold remediation
- Pod rental
- Dumpster rental
- Installation of drywall in the basement
- Installation of drywall in the second-level bathroom and in bathroom on the main floor

24. The Respondent sent the Claimant an invoice, dated August 28, 2019, noting the work completed by the Respondent and the amounts the Claimant had paid the Respondent.

25. The Respondent offered to issue a refund to the Claimant in the amount of \$13,732.17.

26. The Respondent also sent the Claimant a Homeowner's Final Release and Affidavit (Release), including the following calculation of the refund due the Claimant:

Original Contract Amount	\$29,104.54
Less Previous Payments	<u>-\$23,104.54</u>
Balance	\$6,000.00
Less Labor, Fees and O&P ⁸	<u>-\$9,372.17</u>
Final Refund (Payments – Labor/fees)	\$13,732.17 ⁹

27. On September 26, 2019, the Claimant sent a letter to the Respondent in response to the Respondent's August 28, 2019 invoice and Release. In that letter, the Claimant included a Summary of Charges and requested a refund of \$16,984.70.

⁸ Overhead and profit.

⁹ Claimant Ex. 3p.

28. The Respondent did not respond to the Claimant's September 26, 2019 letter.
29. Before January 9, 2021, the Property sustained more damage when a leak developed somewhere on the second level. The Claimant filed a claim with his insurance company, AAA, which agreed to cover the water damage to the Property interior resulting from the leak.
30. AAA estimated it would cost \$59,793.68 to make all of the necessary repairs at the Property.
31. On or about January 9, 2021, Sherry Wyatt entered into a contract with Chesapeake Environmental Solutions, LLC to rebuild, repair, and remodel the Property (Chesapeake Contract). The Chesapeake Contract included most of the work that was included in the Claimant's original Contract with the Respondent as well as additional repairs to the Property.
32. On March 10, 2021, the Claimant filed a complaint against the Respondent with the MHIC.¹⁰
33. After March 10, 2021, Troy Lester spoke with the Claimant and advised him that the Respondent would pay the Claimant's \$16,984.70, the amount the Claimant requested as a refund. The Respondent did not issue a refund of any amount to the Claimant.
34. On April 9, 2021, Mr. Lester sent an email to "Nicole." Attached to that email was a copy of the Claimant's September 26, 2019 letter and a copy of the Settlement Agreement and Release drafted by the Claimant. Neither document was signed by the Respondent or anyone representing the Respondent.¹¹

¹⁰ A complaint against a licensed contractor is different than a claim of entitlement to reimbursement from the Fund. <https://www.dllr.state.md.us/license/mhic/mhicfaqgf.shtml#:~:text=Once%20a%20complaint%20is%20filed,money%20from%20the%20Guaranty%20Fund> (last visited May 2, 2023).

¹¹ CL. Exs. 3q and 3r.

35. On or about May 17, 2021, the Claimant contacted PG mediation so the Claimant and the Respondent could resolve their dispute through mediation.

36. PG mediation scheduled a remote mediation session on the Zoom videoconferencing platform for July 15, 2021, at 12:00 noon. The Respondent did not appear for the July 15, 2021 remote mediation.

37. PG mediation scheduled a second mediation for August 5, 2021, at 12:00 noon.

The Respondent did not appear for the August 5, 2021 remote mediation.

38. On August 5, 7, and 17, 2021, the Claimant sent texts to Mr. Lester advising him that he was unable to get in touch with the Respondent, that the Respondent did not participate in mediation, and questioning whether the Respondent intended to send a refund.

39. In his August 17, 2021 text, the Claimant advised Mr. Lester that if he did not receive a response from the Respondent, he would move forward with his complaint with the MHIC.

40. The Respondent never refunded the Claimant any amount of money.

41. In June or July 2022, Chesapeake Environmental Solutions stopped work at the Property because it failed to obtain required permits.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.¹² 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.¹³

¹² Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3).

¹³ *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”¹⁴ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹⁵ 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.¹⁶ The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings.¹⁷ The parties did not enter into a valid agreement to submit their disputes to arbitration.¹⁸ 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.¹⁹

The Parties’ positions

The Claimant

The Claimant argues that the Respondent’s work at the Property was unprofessional. In support of that assertion, Sherry Wyatt testified that the Respondent often neglected to protect doorknobs and ceilings when he painted, he failed to properly store many of the Claimant’s family’s items as called for in the Contract, which resulted in many of their personal items being

¹⁴ Bus. Reg. § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”).

¹⁵ Bus. Reg. § 8-401.

¹⁶ Bus. Reg. §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).

¹⁷ *Id.* § 8-405(f)(2) (Supp. 2022).

¹⁸ *Id.* §§ 8-405(e), 8-408(b)(3) (2015 & Supp. 2022).

¹⁹ *Id.* § 8-405(f)(1) (Supp. 2022).

coated in dust and paint. Overall, the Claimant and Sherry Wyatt were unhappy with what they characterized as sloppy work by the Respondent.

According to the Claimant, his greatest dissatisfaction with the Respondent's work stemmed from the fact that the Respondent used Solid Oak flooring rather than the Laurel Oak flooring the Claimant specifically requested. This was a problem, explained the Claimant, because the main floor of the Property has an open floor plan. As the staircase from the main floor to the second level was Laurel Oak, using a different type, color, or finish of oak would detract from the visual continuity on the main level.

The Claimant testified that when he raised the flooring issue with the Respondent, the Respondent refused to remove the solid oak, explaining that the solid oak was an upgrade and returning the Solid Oak to the warehouse where he purchased it would result in a hefty restocking fee.

The Claimant testified that on August 21, 2019, shortly after their disagreement about the oak flooring, the Respondent sent him a Stop Work Letter, advising the Claimant that he would not perform any additional work set forth in the Contract. The Respondent followed that letter on August 28, 2019 with an invoice stating that the Respondent would refund the Claimant \$13,732.00. The Claimant further explained that in a letter, dated September 26, 2019, he countered the Respondent's refund amount, asserting that the Respondent owed him \$16,984.70.²⁰ Notwithstanding the Stop Work Letter, the Claimant testified that he attempted to settle the matter with the Respondent, and even arranged for PG Mediation to schedule three

²⁰ At the hearing, the Claimant amended the amount he was claiming as an actual loss from \$49,122.00 to \$16,984.70.

mediation sessions so the Parties could address their issues with input from a neutral mediator. However, the Respondent did not appear for any of those mediation sessions.²¹

Ultimately, the Claimant asserted that he was entitled to compensation from the MHIC Fund in the amount of \$16,984.70, which is the amount the Claimant paid the Respondent less the amount the Respondent received for work he performed. To that end, the Claimant testified that AAA is requiring him to recoup funds he paid to the Respondent for work he did not complete.

The Respondent

The Respondent concedes that as of August 21, 2019, he decided not to perform any additional work under the Contract because the Claimant and his wife were unreasonable. Specifically, regarding the oak flooring, the Respondent testified that the solid oak flooring he began to install in the Property was an upgrade to the Laurel Oak flooring the Claimant preferred.

The Respondent also conceded that after subtracting the amount he was paid for work he completed on the Property pursuant to the Contract, he we owed the Claimant a refund of \$16,984.70. According to Mr. Lester, the Respondent was prepared to pay the Claimant that amount as of April 2021, and on April 9, 2021, Mr. Lester sent copies of the Claimant's September 26, 2019 letter to the Respondent²² and the Claimant's Settlement Agreement and Release²³ to a woman named Nicole. According to Mr. Lester, he and the Respondent believed that Nicole was the Claimant's attorney. Mr. Lester further testified that neither he nor the

²¹ The Claimant and Sherry Wyatt also offered evidence about property that was damaged in the pod used for storing furniture and a health condition Sherry Wyatt developed as a result of mold that formed after the second-floor bathroom toilet overflowed. The Claimant is not seeking any compensation for those items, so I did not give of these statements any substantive weight.

²² CL Ex. 3q.

²³ CL Ex. 3r.

Respondent received a response from Nicole or the Claimant. By August 2021, when the Claimant again contacted Mr. Lester about the refund, the Respondent was no longer financially capable of paying the Claimant the full amount of the refund.

Analysis

For the following reasons, I conclude that the Claimant has proven that he experienced an actual loss as a result of the acts or omissions of the Respondent because the Respondent abandoned the Contract without performing all of the work required under that Contract.

There is no question that the Claimant and the Respondent did not see eye-to-eye on whether the work the Respondent performed at the Property was workmanlike and they were certainly not on the same page regarding which oak flooring to install. There is also no dispute that it was the Respondent who terminated the Contract with the Claimant, and, therefore, the Respondent owes the Claimant a refund for the work he did not perform under the Contract. The Respondent and the Claimant agree that the Respondent owes the Claimant a refund of \$16,984.70. The invoice the Claimant submitted to the Respondent specifically set forth the line item amounts for the work the Respondent performed under the Contract. Neither party offered any other calculation for what the Respondent owes the Claimant.

I recognize that there was some lack of communication and miscommunication between the parties about how they would move forward with settling this matter. The Claimant presented evidence that he sought to resolve the refund issue via mediation with PG Mediation, but the Respondent did not participate in the scheduled mediation sessions. The Respondent offered documentation that Mr. Lester emailed "Nicole," who he believed to be the Claimant's attorney,²⁴ a copy of a settlement letter in April 2021, but neither Nicole nor the Claimant

²⁴ The Claimant testified that "Nicole" is the person who recommended the Respondent to perform the repairs at the Claimant's Property.

addressed their offer of settlement. I conclude that past efforts to settle the matter does not change the fact that the Claimant established that he experienced a loss because the Respondent abandoned the Contract after being paid for work he did not complete.²⁵

Accordingly, I conclude that the Claimant has experienced an actual loss that resulted from acts or omissions by the Respondent.²⁶

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.²⁷

MHIC's regulations provide the following three formulas to measure a claimant's actual loss, depending on the status of the contract work:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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

²⁵ In so concluding, I note that the history of the damage to the Property was somewhat confusing. Sherry Wyatt testified that before the Respondent began working under the Contract in summer 2019, the second-floor ceiling fell in due to an undiscovered leak. On January 9, 2021, AAA issued an estimate of repairs much higher than its estimate of repairs associated with the Contract. This may be because the Property deteriorated while no work was being done between August 2019 and January 2021. Sherry Wyatt testified that there was additional water damage to the Property after the Respondent stopped working under the Contract in August 2019. Regardless, the Claimant offered no evidence that this higher estimate should be included in the calculation of the amount of compensation he is eligible to receive from the Fund. Furthermore, the Claimant testified that AAA is requiring him to recoup the funds paid to the Respondent for work he did not complete. The Claimant offered no evidence that AAA requires the Respondent to recover any other funds for damages to the Property after the Respondent stopped work.

²⁶ Bus. Reg. § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.").

²⁷ Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).

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.²⁸

The MHIC is not bound by these specific formulas for calculating the amount of the actual loss. Rather, when necessary, it may use a unique formula to calculate the measure of the Appellant's actual loss.²⁹ The Respondent performed some work under the Contract before abandoning that Contract. Although the Claimant hired Chesapeake Environmental Solutions to do work on the Property, the time between August 2019 when the Respondent issued the Stop Work Letter and stopped making repairs under the Contract, and January 2021, when the Claimant hired Chesapeake Environmental Solutions to begin work at the Property, the scope and cost of the work necessary to repair the house increased significantly due to either further deterioration after the Respondent stopped working on the Property, intervening damage from a leak in the Property ceiling, or both. Accordingly, I consider the two scopes of work to be independent and distinct. Therefore, it is inappropriate to calculate the actual loss the Claimant experienced due to the Respondent's acts or omissions in relation to the cost to the Claimant (or, in this case, AAA) for the work performed by Chesapeake Environmental Systems. Accordingly, calculating the Claimant's actual loss requires the following unique measure:

Amount paid to the Respondent:	\$23,104.54
Agreed-upon value of the work performed by the Respondent	<u>- \$6,119.80</u>
	\$16,984.70

²⁸ COMAR 09.08.03.03B(3).

²⁹ *Id.*

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.³⁰ In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$16,984.70.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$16,984.70 as a result of the Respondent's acts or omissions.³¹ I further conclude that the Claimant is entitled to recover that amount from the Fund.³²

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,984.70; 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;³³ and

³⁰ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

³¹ Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c).

³² Bus. Reg. § 8-405(a) (Supp. 2022); COMAR 09.08.03.03B(2).


³³ *See* Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

May 3, 2023
Date Decision Issued

JCI/sh
#204889



Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 23rd day of August, 2023, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Michael Newton

Michael Newton

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***