

IN THE MATTER OF THE CLAIM	*	BEFORE JOHN T. HENDERSON, JR.
OF MOHAMMAD R. NASSERGHODSI,	*	ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF	*	
DAVID PARRINO, T/A	*	
NEW PARADIGM PROJECTS, LLC,	*	OAH No.: LABOR-HIC-02-22-21271
RESPONDENT	*	MHIC No.: 22(75)432

* * * * *

PROPOSED DECISION

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ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On February 4, 2022, Mohammad R. Nasserghodsi (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (Department), for the reimbursement of \$4,643.71 for actual losses allegedly suffered because of a home improvement contract with David Parrino, t/a New Paradigm Projects, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

(2015 & Supp. 2022).¹ On August 16, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 12, 2022, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR); COMAR 28.02.01.20A. The Claimant appeared and was represented by his son and authorized representative, Ali Nasserghodsi.² The Respondent was present and was represented by Jude Wikramanyake, Esquire. Catherine Villareale, Assistant Attorney General for the Department, represented the Fund.

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; 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

I admitted into evidence exhibits offered by the Claimant, as follows:

- Cl. Ex. 1: Home Improvement Claim Form, undated
- Cl. Ex. 2: Letter from the Claimant to the Department, January 27, 2022
 - Tab A: Contract between Claimant and Respondent, July 31, 2021

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

² COMAR 9.01.02.08. The authorized representative proffered at the hearing that he is an attorney licensed to practice law in Maryland.

1. The Commission has received information that the respondent has been involved in a series of transactions with various individuals and entities, including but not limited to, the respondent's former employer, the respondent's family members, and the respondent's associates. The Commission is concerned that these transactions may constitute a violation of the provisions of the Act, particularly those relating to the disclosure of confidential information and the use of insider information.

2. The Commission has conducted a thorough review of the information provided to it, and has concluded that there is a strong likelihood that the respondent has violated the provisions of the Act. The Commission has therefore issued this order, which requires the respondent to take certain steps to rectify the situation and to prevent a recurrence of such conduct.

3. The Commission has determined that the respondent is not a fit and proper person to hold the position of a director or officer of a company listed on the stock exchange. The Commission has therefore ordered that the respondent's name be removed from the register of directors and officers of the company.

ORDER

The Commission orders that the respondent shall, within the period of 30 days from the date of this order, take the following steps:

1. The respondent shall provide to the Commission a written statement of the respondent's assets and liabilities, including but not limited to, the respondent's bank accounts, investments, and other financial interests.
2. The respondent shall provide to the Commission a written statement of the respondent's transactions with various individuals and entities, including but not limited to, the respondent's former employer, the respondent's family members, and the respondent's associates, during the period of 12 months immediately preceding the date of this order.
3. The respondent shall provide to the Commission a written statement of the respondent's compliance with the provisions of the Act, including but not limited to, the respondent's disclosure of confidential information and the use of insider information.

The Commission has determined that the respondent's failure to comply with these requirements would constitute a further violation of the provisions of the Act. The Commission has therefore ordered that the respondent's name be removed from the register of directors and officers of the company, and that the respondent be disqualified from holding the position of a director or officer of a company listed on the stock exchange.

- Tab B: Claimant's check number 1060, paid to the Respondent in the sum of \$4,643.71, August 7, 2021
- Tab C: Email from Travelers Insurance Company (Travelers) to the Claimant, regarding the Respondent's invoice, September 20, 2021
- Tab D: Email from Travelers, September 21, 2021
- Tab E: Inspection report from Seek Now Maestro (Maestro); December 7, 2021
- Tab F: Letter from Travelers to the Respondent, December 17, 2021
- Tab G: Roof Proposal from Roof Masters, December 17, 2021

Cl. Ex. 3: Email from RoofWorks to the Claimant, September 21, 2022; sketch estimate from RoofWorks, September 17, 2022

Cl. Ex. 4: Email from SmartRoof to the Claimant, October 16, 2022; inspection report from SmartRoof, October 16, 2022

I admitted into evidence exhibits offered by the Respondent, as follows:

Resp. Ex. 1: New Paradigm Projects nine photographs, taken December 12, 2022:

- Old Roof Removed down to decking, September 7, 2021
- New Plywood-Removed Rotten Plywood, September 7, 2021
- Rotten Plywood, September 7, 2021
- New plywood, September 7, 2021
- Black Outer Frame-Ice and Water; TopShield-Roof Underlayment, March 12, 2022
- Black Outer Frame-Ice and Water TopShield-Roof Underlayment, March 12, 2022
- Black Outer Frame-Ice and Water; TopShield-Roof Underlayment, March 12, 2022
- Black Outer Frame-Ice and Water; TopShield-Roof Underlayment, March 12, 2022
- Black Outer Frame-Ice and Water; TopShield-Roof Underlayment, March 12, 2022

Resp. Ex. 2: Inspection Images; House Room Construction, December 7, 2021 (2 pp.)

I admitted into evidence exhibits offered by the Fund as follows:

GF Ex. 1: Letter from the Department to the Respondent, February 17, 2022; Home Improvement Claim Form, February 4, 2022

GF Ex. 2: Hearing Order, August 5, 2022

GF Ex. 3: Notice of Hearing, September 9, 2022

GF Ex. 4: Respondent's licensing registration, last updated, June 10, 2022

Testimony

The Claimant testified on his own behalf.³ David Parino, testified on his own behalf and on behalf of New Paradigm Projects, LLC., as the sole owner of the company. Young Lee, Project Manager, testified on behalf of the Respondent. 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 contractor's license numbers 5898372 and 133530, trading as New Paradigm Projects, LLC.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is on Rutledge Drive, North Potomac, Maryland (the Property). It is his primary residence.
4. The Claimant has not filed other claims against the Respondent outside of these proceedings.
5. On July 21, 2022, the Claimant filed a claim with Travelers for damage to his roof.
6. On July 31, 2021, the Claimant and Respondent entered into a contract to replace the Claimant's roof, replace the gutters, replace panels in the ceiling, and replace the fascia board.
7. The scope of work was the following:
 - Remove all components of roof down to the decking
 - Remove and replace any rotten wood and flashing
 - Furnish and install new drip edge around perimeter of roof
 - Furnish and install new ice and water shield around gutter lines
 - Furnish and install starter strip on gutter lines and eaves
 - Furnish and install Premium Ridge Vent with Ridge Vent caps on top of roof
 - Furnish and install all new pipe collars and box vents on top of roof

³ An interpreter for the Farsi language, provided by OAH, was used during the hearing for the benefit of the Claimant.

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CONSTITUTIONAL PROVISIONS

Article I, Section 2, Clause 3...
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Article I, Section 3, Clause 3...

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- Furnish and install fifteen pound felt paper over entire roof
- Furnish and install Limited Lifetime Owens Corning Oakridge shingles over entire roof
- Synthetic felt paper⁴
- Clean up all debris, trash and nails with a high-powered magnet rake
- Install gutters/fascia without cost

8. The Contract provided the completion date would be within three to eight weeks of July 31, 2021.

9. The total contract price was \$13,931.13, with an initial deposit of \$4,643.71 payable to the Respondent.

10. On August 7, 2021, the Claimant paid the Respondent by check number 1060, the initial deposit of \$4,643.71. The balance owed was \$9,287.42.

11. On or about September 2, 2021, Young Lee, Project Manager and Foreman for Respondent met with the Claimant to discuss the scope of work to be performed pursuant to the Contract and to begin work on the roof with the Respondent's work crew.

12. The shingles to be used on the Claimant's roof came directly from Superior Building Supplies (Superior) and were installed by the Respondent on the Claimant's roof. The Superior shingles were old and brittle. They were stored too long within the warehouse of Superior resulting in degradation of the shingles.

13. Mr. Lee inspected the home and determined there was no gutter on the front of the house and the gutter on the back of the house was ready to fall from the roof.

14. Mr. Lee authorized the replacement of rotted fascia and rake board on the Claimant's home so that a drip edge could be installed.

15. The Respondent's work crew replaced two sheets of plywood upon the roof that was rotted and installed the ice and water shield as well as the drip edge.

⁴ This was the description within the contract, written without explanation or context.

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16. On September 10, 2021, the Respondent issued an invoice to the Claimant's insurance company, Travelers, seeking payment for the remaining balance of the contract of \$9,287.42.

17. The invoice from the Respondent reported charges for removing and replacing shingles, underlayment, accessories, as scope of work (\$10,633.55); and building code items (\$2,004.41); and any interior work, drywall, painting, etc., pertaining to Insurance Work scope (\$1,293.17).

18. The Respondent reported to Travelers that work was completed, as follows:

- Remove and replace shingles, underlayment, accessories \$10,633.55
- Code upgrades \$ 2,004.41
- Interior work, drywall, painting, etc. \$ 1,293.17

19. As of September 10, 2021, the Respondent did not complete any interior work.

There was no agreement to perform any interior work in the Claimant's home.

20. On or about October 7, 2021, after the work to replace the roof was completed by the Respondent, and it rained, the Claimant noticed water leaking from the master bedroom ceiling inside of his home and water accumulating within the basement.

21. The Claimant contacted Travelers one or two days after discovering the water leakage and damage.

22. The Claimant also telephoned the Respondent to inform him of the water damage and leaks from the roof. The Respondent informed the Claimant that a work crew would be sent to inspect and make necessary repairs.

23. The Respondent did not send a work crew to make repairs. The Claimant made several additional, but unsuccessful attempts to contact the Respondent about making repairs.

24. The Claimant did not allow the Respondent to return to the home after October 20, 2021.

1. The Commission has received a request from the applicant for a review of the decision made by the relevant authority on 15/01/2021 regarding the applicant's application for a grant under the relevant scheme. The applicant is seeking a review of the decision on the basis that the relevant authority failed to take into account certain relevant factors in reaching its decision.

2. The Commission has considered the applicant's request and the relevant authority's decision. The Commission notes that the relevant authority's decision was based on the information provided to it at the time of the applicant's application. The Commission is satisfied that the relevant authority acted reasonably in reaching its decision.

3. The Commission has concluded that the relevant authority's decision is lawful and that the applicant's request for a review is not well-founded. The Commission therefore declines to review the relevant authority's decision.

4. The Commission has advised the applicant of its decision and the reasons for it. The applicant has the right to appeal the Commission's decision to the relevant court.

25. On December 7, 2021, the inspector from Maestro came to the Claimant's home to inspect the roof. The inspector determined there was no ice shield, water shield, or drip edge installed by the Respondent. At the time of the inspection, the roof was in fair condition.

26. The inspector took photographs and discovered at least one tree branch that was laying under and between two shingles of the Claimant's Roof.

27. The affected roof area with the tree branch lodged under two shingles was not over the Claimant's master bedroom, but was a potential leak source from wind driven rain.

28. The inspector determined the roof should be replaced.

29. On December 17, 2021, the Claimant received an estimate from Roof Masters, who advised the roof required replacement at the following estimated cost:

Best Option: \$14,920.00⁵

30. The Claimant had not replaced the roof as of the date of the hearing.

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); State Gov't § 10-217; 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 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." 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."). "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike,

⁵ On September 17, 2022, the Claimant also received an estimate from RoofWorks in the sum of \$14,857.00 or \$63.00 less than Roof Masters. (Cl. Ex. 4, p. 52.) He also received an inspection report from SmartRoof. The SmartRoof report did not provide an estimate for replacement of the roof. (Cl. Ex. 4, p. 54.)

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) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim and does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). 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) (Supp. 2022).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). According to the Claimant, he made efforts by telephone to complain to the Respondent that his roof was defective. The Respondent has no records of having a conversation with the Claimant, however, their sales representative, Adrian Jajar (sp.), did have a conversation with the Claimant about the defective roof. The evidence shows that the Respondent did not reach out to the Claimant to make efforts to cure any defects after September 2, 2021. There is no competent evidence that the Respondent offered to the Claimant opportunities to correct or repair its work.

The Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. I thus find that the Claimant is eligible for compensation from the Fund.

The Claimant’s testimony was interpreted from the Farsi language. Often, the context of his testimony was difficult to discern, however, his exhibits admitted into evidence, including his letter narrative to the Department (Cl. Ex. 2, p. 2), provided the necessary context.

According to the Claimant's testimony and documents, on August 7, 2021, he paid \$4,643.71 to the Respondent as a deposit to have the roof replaced on his home, to include attaching new gutters, fascia board and other details pursuant to the contract dated July 31, 2021. The total contract price was \$13,931.13. The Respondent completed the roof replacement. After a rainstorm, the Claimant discovered on or about October 7, 2021, water accumulated within his basement and there were water spots and water damage to his upstairs master bedroom ceiling. The Claimant made effort to contact the Respondent at least five to six times to report water coming into his home from the roof. He left messages. He did not receive a return call from the Respondent about his complaints. He only received a return call from the Respondent's staff who requested the balance of the contract be paid.

After the Claimant himself contacted Travelers on or about October 7, 2021, to complain about his roof leaking, the insurance company sent on December 7, 2021, an inspector from Maestro to inspect the roof. The Maestro report was not favorable to the work done by the Respondent. It determined there were no ice shields used for the roof repair, no edge drip and the shingles used were too long, too old, and had evidence of blistering.⁶ Maestro concluded the roof needed replacing. The Claimant sought a proposal from Roof Masters who, within their report dated December 17, 2021, estimated the replacement cost of the roof to be \$14,920.00. According to the Claimant, after October 2021, Travelers paid to him directly \$12,931.13 to have his roof repaired.

The Claimant did not write the Respondent to request the company return to his home to make repairs after October 20, 2021, because the Respondent did not respond to his initial requests to make repairs when the Claimant discovered the roof was leaking causing water damage to his home. The Claimant did not want the Respondent to return to his home.

⁶ The parties did not specifically define ice shields and drip edge, other than each being necessary material for roofing construction. I do not find it necessary to know the definition of either to determine the issues for this case.

Mr. Lee testified on behalf of the Respondent. He was the project manager and foreman of the July 31, 2021 contract to replace the Claimant's roof. He had been in the roofing business for twenty-three years. According to Mr. Lee, he met with the Claimant on September 2, 2021, inspected the roof, discovered there was no gutter on the front of the house and the gutter was ready to fall on the back of the house. He advised the Claimant that the fascia board around the house was rotted and needed to be replaced. This was necessary in order to properly install the drip edge. According to Mr. Lee, the Respondent replaced the rotted fascia and rake board, as well as the vinyl soffit and installed a new gutter system.

The roof had two layers of shingles. The Respondent replaced two sheets of rotted plywood; installed the ice and water shield as well as the drip edge. According to Mr. Lee, the shingles used on the Claimant's roof came directly from Superior. Mr. Lee determined that the shingles installed were old and stored too long within the warehouse of Superior. According to Mr. Lee, the Respondent did offer a ten-year warranty on the labor, however, it was not valid when payment from the Claimant was not fully made. The Claimant did not notify the Respondent of a warranty claim. The Claimant did not allow the Respondent to further inspect the roof of the house after October 20, 2021; nor did the Claimant offer the Respondent an opportunity to correct or cure the work after that date.

Mr. Parino testified as the Respondent and license holder. According to Mr. Parino, the Respondent company did not have record of any telephone calls from the Claimant nor correspondence about deficient work. The Respondent company made efforts to contact the Claimant to collect the balance due on the Contract, however he did not have any records of making any contact with the Claimant after the roof was installed to make repairs. The Respondent company did send Mr. Jajar to the Claimant's home around the end of September

2021 to collect the balance due. Mr. Jajar and the Claimant had a conversation about the roof and fascia board. Mr. Jajar did not collect any money from the Claimant.

Mr. Parino confirmed that the Claimant did not allow the Respondent company to inspect the roof for any work defects after October 20, 2021. Mr. Parino speculated that damage to the roof could have occurred on October 25, 2021, when a storm occurred producing sixty-four mile per hour winds at the location of the Claimant's house.

The Fund argues that the Claimant has met his burden of proof that he is entitled to an award from the Fund. According to the Fund, the Claimant proved that he suffered an actual monetary loss as a result of unworkmanlike, inadequate, or incomplete home improvement work performed by the Respondent. The Fund is convinced that due to Maestro's inspection of the roof constructed by the Respondent, and Maestro determining a new roof was required, the evidence admitted tends to show by a preponderance that the Respondent's work was unworkmanlike, incomplete or inadequate.

I agree with the Fund. The evidence, by a preponderance, shows that the construction of the roof by the Respondent was unworkmanlike, incomplete and inadequate. When Mr. Lee determined on or after September 2, 2021 that the shingles used by the Respondent to construct the roof were old, brittle and had been stored too long, he and the Respondent should have determined that affixing those defective shingles to the Claimant's roof would prove inadequate in protecting the house from precipitation. The Respondent's speculation that a windstorm on October 25, 2021, caused the damage to the roof is not consistent with the Claimant's first report of water damage and leakage on October 7, 2021. I find the Claimant did not unreasonably deny the Respondent access to his house to make repairs.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's

regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." The appropriate formula is the following:

(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 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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

\$ 4,643.71	Payment made to the Respondent by the Claimant for the home improvement pursuant to the contract of July 31, 2021
<u>\$14,920.00</u>	The amount required to pay SmartRoof to replace, repair, correct and complete the home improvement
Total \$19,563.71	
Less <u>\$13,931.13</u>	The Original July 31, 2021 Contract Price with the Respondent
\$ 5,363.58	Actual Loss

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.⁷ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is more than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover \$4,643.71.

⁷ 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").

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained, and is entitled to recover from the Fund, an actual and compensable loss of \$4,643.71 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022) COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,643.71; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁸ and

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

March 9, 2023
Date Decision Issued



John T. Henderson, Jr.
Administrative Law Judge

JTH/emh
#203899

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

RECOMMENDED ORDER

1. The Court is satisfied that the proposed order is in the best interests of the children and is consistent with the provisions of the Act. The Court is satisfied that the proposed order is in the best interests of the children and is consistent with the provisions of the Act.

[Signature]

[Name]
Judge

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PROPOSED ORDER

WHEREFORE, this 27th day of April, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

