

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE MARC NACHMAN</b>
<b>OF TRAVIS WOODS,</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>*</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>*</b>
<b>OMISSIONS OF GLEN COATES,</b>	<b>*</b>
<b>T/A GG &amp; S CONTRACTORS LLC,</b>	<b>* OAH No.: LABOR-HIC-02-23-06640</b>
<b>RESPONDENT</b>	<b>* MHIC No.: 22 (75) 521</b>

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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 April 8, 2022, Travis Woods (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$2,830.92 for actual losses allegedly suffered as a result of a home improvement contract with Glen Coates, trading as GG & S Contractors LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2022).<sup>2</sup> On March 1, 2023 the MHIC issued a Hearing Order on the

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Claim. On March 9, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 13, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312.<sup>3</sup> The Claimant represented himself. Anton L. Iamele, Esquire, Iamele & Iamele, LLP, represented the Respondent, who was present. Catherine Villareale, Assistant Attorney General, 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (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 Claimant's timeline of events, undated
- Cl. Ex. 2 Claimant's HIC Complaint form, dated October 2, 2021
- Cl. Ex. 3 DSD Paintings Service quote, dated September 24, 2021
- Cl. Ex. 4 Armor Prep Coatings LLC service proposal, undated
- Cl. Ex. 5 Photographs marked A through DD, which were all admitted into evidence except the following: I, N, O, P, V, W, X, Z, and BB.

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<sup>3</sup> The hearing was originally set for May 8, 2023. On that date, the parties agreed to a postponement so that the Respondent's attorney could enter his appearance and for the parties to be prepared for the hearing. The Claimant believed that the HIC would present his documents, so he did not have the documents with him.

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 – 4 Photographs from Claimant’s Instagram account pages

I admitted the following exhibits offered by the Fund:

GF Ex. 1 HIC Claim Form, received April 8, 2022

GF Ex. 2 Hearing Order, dated March 1, 2023

GF Ex. 3 Notice of Hearing for the initial hearing, dated March 21, 2023<sup>4</sup>

GF Ex. 4 Respondent’s HIC licensing information, dated May 3, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present the testimony of 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 01-116960.
2. Prior to August 5, 2021, the Claimant and the Respondent entered into a verbal agreement to apply an epoxy coating to the Claimant’s garage floor in his newly built home.
3. The original agreed-upon price for the epoxy coating was \$2,800.00.
4. The Claimant paid the Respondent \$2,500.00 for that work.<sup>5</sup>
5. The Respondent applied the epoxy to the Claimant’s garage floor on August 5, 2021. The work was completed the same day it started.

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<sup>4</sup> The Fund’s attorney also referenced the more recent notice dated May 15, 2023. The attorney intended to substitute the newer hearing notice for the earlier notice. The later notice is located in the OAH file for this matter.

<sup>5</sup> The Claimant also testified that the Respondent agreed to paint the garage walls adjacent to the epoxied garage floor. The Claimant presented no evidence for the cost to repaint the surfaces he claimed needed to be repainted.

6. Immediately after the epoxy was applied, the Respondent advised the Claimant not to open the garage door, step on the newly epoxied floor, or park any vehicles on the floor for two weeks to allow the epoxy to cure.

7. The Claimant believed that he was instructed that the cure period was three weeks.

8. On August 9, 2021, four days after the Respondent applied the epoxy, the Claimant parked his car in the garage, contrary to the curing instructions he was provided.

9. The Claimant photographed his vehicle parked on the garage floor on August 9, 2021 and posted the picture on his Instagram account.

10. On August 11, 2021, the Claimant walked on the newly epoxied garage floor to paint the garage walls. He applied and removed painter's tape to the newly epoxied garage floor, damaging its surface.

11. All of those actions damaged the epoxy coating that the Respondent applied to the garage floor.

## **DISCUSSION**

### **Legal requirements to prove a Fund claim**

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, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. GF Ex. 4

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 or 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.<sup>6</sup> *Id.* § 8-405(f)(1) (Supp. 2022).

For the following reasons, I cannot find that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement.

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<sup>6</sup> The Respondent’s wife, Toya, with whom the Claimant negotiated the project, is the Claimant’s cousin, somehow related to the Claimant on his mother’s side of the family. The proximity of the relationship was not clearly explained, but the Claimant testified that Toya is not a blood relative. All of the parties agreed that Toya is not an immediate family member, which may have disqualified the claim. I am satisfied with this explanation and will not recommend that the claim be barred for this reason.

**Claimant's home improvement agreement with the Respondent**

The Claimant "contracted" with the Respondent to apply an epoxy coating on the Claimant's garage floor. The Claimant's home in which the epoxy was applied was a newly built home.

The Claimant testified that he contacted the Respondent through Facebook, and although their agreement was not reduced to writing, there were text messages exchanged or phone calls made which set the price and scope of work. However, no record of that communication was submitted into evidence. None of the parties objected to this verbal agreement being considered the contract between the parties for the purpose of this claim.

The Claimant testified that the cost of the supplies was \$1,300.00 and the labor was \$1,500.00. Although these costs only add up to \$2,800.00, the Claimant wrote on his HIC Claim form that the price for the work was \$2,830.92. GF Ex. 1. On cross-examination, when asked to confirm that the materials cost was \$1,330.92, the Claimant stated, "that sounds about right." The Claimant conceded, however, that he only paid the Respondent \$2,500.00, which the Respondent's wife, Toya, told him was "sufficient." The Claimant justified this reduction in the contract price (which he described it as a "kickback") because he claimed he provided some of the labor applying additional, remedial chemicals to the floor suggested to him by the Respondent.

**Defects apparent to the Claimant the day following the installation**

In the Claimant's timeline, supported by his testimony, the work was started and was completed on the same day it started – August 5, 2021. He testified that he saw defects in the floor on the following day and contacted the Respondent through Toya, who initially negotiated the agreement with the Claimant to perform the work. Cl. Ex. 1.

The Claimant testified that the newly epoxied floor began peeling in spots. He also complained that some areas of the floor were not shiny and some areas had bubbled. The Claimant presented photographic evidence to support his testimony. Cl. Ex. 5. He also testified that he had seen floors in other houses covered in the same material and they were consistently shiny throughout the coverage.

The parties agreed that the Respondent attempted to address the Claimant's concerns about the garage floor by sending workers to his home and supplying chemicals to clean the floor. By the Claimant's account, the Respondent came back to the house to address the defects on August 9 and September 11, 12 and 13, 2021. Cl. Ex. 1.

The Claimant questioned whether the Respondent applied the epoxy correctly. He also complained that the Respondent left boxes and bags in the driveway and that chemicals had spilled onto the driveway.

#### **Estimates to cure defects**

The Claimant asserted that the floor defects were the result of the Respondent failing to properly prepare the floor by "diamond cutting" it to make the garage floor surface ready for the epoxy to be applied. One estimate from Armor Prep Coatings LLC described the work as follows: "Diamond grind concrete floor to create necessary profile for coating adhesion." CL. Ex. 4. No representative from that company was present to explain its estimate or the need to "diamond" cut the floor prior to the installation.

The Claimant did not present any expert opinion supporting the necessity for this step, and the Respondent testified that such a step was not necessary because the garage floor was in a newly built house. "It is well settled that expert testimony is required when the subject of the inference is so particularly related to some science or profession that it is beyond the ken of the

average layman.” *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 518 (2000) (internal citations and quotation omitted). Not every home improvement claim is complex. However, the properties of epoxy are chemical in nature, and the installation process and the subsequent interaction of the epoxy with air, light, and pressure - and how those elements affect the curing process - appears so complex that I find the science behind applying and curing a chemical like epoxy to be “beyond the ken of the average layman.”<sup>7</sup> In this case, an expert’s opinion concerning the Respondent’s application of the epoxy to the floor - including Claimant’s insistence “diamond grinding” was a necessary floor preparation - would be necessary to address whether the Respondent performed the installation in an “unworkmanlike, inadequate, or incomplete home improvement” manner.

This opinion, however, is immaterial because the concessions made by the Claimant showing that his impatience in opening the garage door, parking his vehicle or vehicles on the floor, and stepping on the floor - all before it could cure - is more likely than not the cause of the defects he claims.

### **The Claimant’s impatience**

I am convinced that any defects in the garage floor were the direct consequences of the Claimant’s failure to follow the Respondent’s simple instructions that would allow the epoxy to properly cure. The Claimant testified that the Respondent gave him these instructions: do not open the garage door, walk on the floor, or park vehicles on the garage floor for three weeks.<sup>8</sup>

The Respondent testified that this delayed use was necessary to allow the epoxy to cure, and

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<sup>7</sup> Preparing for, mixing and applying a coat of epoxy is significantly different than merely painting a wall and watching it dry. But even when considering those seemingly *simple* types of claims, expert opinions may be required to explain deficiencies in preparing the walls for painting or conditions that might adversely affect the drying process.

<sup>8</sup> The Respondent testified that he advised the Claimant not to take those actions for two weeks to allow the epoxy to properly cure. The difference in the curing duration is immaterial.



doing any of those acts would compromise the curing process. In his testimony, the Claimant acknowledged receiving those instructions from the Respondent immediately after the work was completed. There was abundant evidence that the Claimant failed to heed those instructions.

The Claimant testified that the Respondent also agreed to paint the wall above the garage floor. The Claimant testified that the painting work was sloppy, particularly because paint got on the garage floor – he believes that the painter should have used painter’s tape, an adhesive backed paper in a roll that would be applied to the non-painted, adjacent surface (i.e., the newly epoxied garage floor) to keep paint off. The Claimant conceded that eleven days after the Respondent completed the floor installation, he stepped on the garage floor to repaint the walls applying painter’s tape to the floor. He then removed the tape, which had attached to the uncured floor covering. Eleven days was less than the three weeks – or even two weeks – necessary to allow the epoxy to cure.

More significantly, pictures on the Claimant’s Instagram account proved that the Claimant parked his vehicles in the garage on the epoxied floor well before the two-week curing period ended. The Claimant acknowledged his Instagram identity,<sup>9</sup> which was the heading of all four of the pictures submitted into evidence by the Respondent. Resp. Ex. 1-4.

The Claimant conceded that he posted those pictures on his Instagram account, and they were a fair and accurate photo of the garage when they were taken. The posting date for Resp. Exs. 1 and 2 show that they were taken and posted on August 23, 2021.<sup>10</sup> Resp. Ex. 3 was taken and posted on November 21, 2021.

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<sup>9</sup> To conceal the identities of the parties, the Instagram “handle” is not included in this decision.

<sup>10</sup> The photographs were not date stamped, but the Claimant was shown the Instagram pages from which those exhibits were derived and agreed to the dates the pictures were taken.

But Resp. Ex. 4 was posted on August 9, 2021. The photograph shows the Claimant's Honda Accord parked on the garage floor, *four days after the work was completed*, well short of the two-week cure period. When responding to cross examination questions concerning this photograph, the Claimant's voice lowered in volume and he stifled his concurrences, looking clearly uncomfortable. He also avoided directly answering the questions posed to him, and his voice showed a stress that was not present during his direct testimony. Although I find these patterns to be indications of lack of truthfulness, it more likely showed his recognition that the evidence decimated his claim. The Claimant definitely made admissions against his interest by conceding that one of his vehicles was parked in the garage on August 9, 2021, contrary to the instructions he was given. His only defense to that admission was his claim that the tire marks in Cl. Exs. 5 U and DD were not caused by *that* vehicle. This testimony does not address the Respondent's contention – which was confirmed by the Claimant's admission – that the Claimant parked his vehicle on the newly epoxied garage floor before the floor was allowed two weeks to cure.

This admission dooms the Claimant's claim – it was not the workmanship or adequacy of the Respondent's installation that caused the defects in the floor. Rather, the Claimant's impatience in not letting the epoxy cure for the required time was more likely than not the reason for the floor's condition.

The Claimant failed to prove that the Respondent improperly applied the epoxy floor covering in his garage. He presented no probative evidence on these points. I therefore cannot find that the Respondent was responsible for any “unworkmanlike, inadequate, or incomplete home improvement.” The Claimant did not have “actual losses . . . incurred as a result of misconduct by a licensed contractor.” Bus. Reg. § 8-401. The damage to the epoxied floor

surface was the result of the Claimant's impatience in opening the garage door, stepping on the surface of the floor to continue painting, and parking his vehicle on the garage floor well before the end of the two weeks that was required to cure the epoxied surface.

For these reasons, the Claimant's request for a Fund award must be denied.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022). I further conclude that the Claimant is not entitled to any recovery from the Fund.

**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.

September 8, 2023  
Date Decision Issued

*Marc Nachman*  
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Marc Nachman  
Administrative Law Judge

MN/ja  
#207251

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of October, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***