

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF SANDRA SANFORD,</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 ERROL GEORGE</b></p> <p><b>MCDONALD, T/A HAVENPORT, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE LORRAINE E. FRASER,</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>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-23-06654</b></p> <p>* <b>MHIC No.: 22 (75) 629</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 August 25, 2022, Sandra Sanford (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$40,578.40 for actual losses allegedly suffered as a result of a home improvement contract with Errol George McDonald, trading as Havenport, 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

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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.

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

On May 17, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1). Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. 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. 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:<sup>3</sup>

- Clmt. Ex. 1 3 photographs: 1 of kitchen ceiling and 2 of shower floor
- Clmt. Ex. 2 Contract with P&L Contractors, 8/10/22
- Clmt. Ex. 3 Payments to P&L Contractors: \$3,500.00 on 8/10/22; \$5,666.00 on 8/16/22; \$5,666.00 on 9/1/22; and \$5,668.00 on 11/1/22
- Clmt. Ex. 4 11 photographs taken by P&L Contractors of the shower
- Clmt. Ex. 5 Letter from Wilbur S. Barham, 4/24/23
- Clmt. Ex. 6 Email from Elisa S. Gilmore, 5/3/23
- Clmt. Ex. 7 Complaint Form with narrative, 11/18/21
- Clmt. Ex. 8 Contract with the Respondent, 1/27/21
- Clmt. Ex. 9 Payments to the Respondent: \$6,324.00, check # 5409; \$6,324.00 check # 592; \$6,324.00 check # 593
- Clmt. Ex. 10 Information from the Better Business Bureau regarding the Respondent

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<sup>3</sup> The Claimant pre-marked her exhibits.

- Clmt. Ex. 11 Text messages among the Claimant and the Respondent's employees, 2/19/21-10/26/21
- Clmt. Ex. 12 Claimant's timeline of events, 11/19/21-7/17/22
- Clmt. Ex. A Certified mail receipt, 11/19/21
- Clmt. Ex. B MHIC Order to the Respondent, 12/9/21; emails between the Claimant and MHIC, 12/24/21-12/27/21; letter from the Claimant to the Respondent, 12/14/21; letter from MHIC to the Claimant, 2/2/22
- Clmt. Ex. C List of attorneys the Claimant contacted to engage for arbitration
- Clmt. Ex. D Text messages between the Claimant and Darlene Gamble to schedule arbitration, 5/3/22-6/17/22
- Clmt. Ex. E Emails among MHIC, the Respondent, the Claimant, and Darlene Gamble regarding mediation, 5/2/22-8/3/22
- Clmt. Ex. F Text messages between the Claimant and the Respondent, 5/13/22-6/28/22
- Clmt. Ex. G Email from the Claimant to MHIC, 5/17/22
- Clmt. Ex. H Emails among MHIC, the Respondent, the Claimant, and Darlene Gamble regarding repairs, 5/17/22-6/7/22
- Clmt. Ex. I Emails among MHIC, the Claimant, and Darlene Gamble regarding filing a Fund claim, 6/19/22
- Clmt. Ex. J Letter from MHIC to the Claimant regarding filing a Fund claim, 6/20/22
- Clmt. Ex. K Email from the Claimant to MHIC regarding claim with photographs, 6/30/22
- Clmt. Ex. L Email from the Claimant to MHIC regarding claim, 7/18/22

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Remote Hearing, 3/24/23
- Fund Ex. 2 Hearing Order, 3/1/23
- Fund Ex. 3 Letter to the Respondent from the MHIC, 8/30/22; Home Improvement Claim Form, 8/25/22
- Fund Ex. 4 The Respondent's licensing history, 4/24/23
- Fund Ex. 5 Business license for P&L Contractors<sup>4</sup>

Testimony

The Claimant testified.

The Respondent testified.

The Fund did not offer any witness testimony.

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<sup>4</sup> At the end of the hearing, I held the record open for the parties to submit documentation of the license held by P&L Contractors. After the hearing on May 17, 2023, the Claimant sent a picture of the license to counsel for the Fund, who then forwarded it to me. I have admitted it into evidence as Fund Ex. 5.

### 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 01-103851.
2. On January 27, 2021, the Claimant and the Respondent entered into a contract to remodel the master bathroom in the Claimant's home (Contract). The work included installing a new shower with a bench seat, a new shower door, new floor and wall tile, new lighting, a new vanity with a double sink, a new medicine cabinet, a new faucet, and a new shower head.
3. The original agreed-upon Contract price was \$18,972.00, paid in three installments of \$6,324.00.
4. The Respondent began work on February 1, 2021, and stopped work on March 1, 2021.
5. Between January 27, 2021 and March 1, 2021, the Claimant paid the Respondent \$18,972.00.
6. On March 3, 2021, the Claimant contacted the Respondent's project manager, Nord Gaynor, regarding problems with the work. The shower head leaked, the shower door was too large to enter and exit, the grout on the floor tile was coming up, the floor squeaked when walked upon, and one sink did not work.
7. From March 3 through June 2021, the Claimant contacted Mr. Gaynor and another of the Respondent's employees, J. Marez, attempting to have the problems repaired. The Respondent did not make the repairs.
8. In July and August 2021, the shower (located on the second floor) started to leak through the ceiling light fixture in the kitchen (located on the first floor underneath the shower).

9. On August 25, 2021, the Claimant contacted Mr. Gaynor regarding the delay in the repairs. Mr. Gaynor told the Claimant that he no longer worked for the Respondent and told her to directly contact the Respondent and his employee, Brady Smith. The Claimant then contacted Mr. Smith regarding the repairs.

10. On September 22, 2021, an employee of the Respondent's arrived at the Claimant's home and assessed the problems with the work.

11. In September and October 2021, the Claimant made numerous calls to Mr. Smith regarding the repairs but she did not receive any response.

12. On November 19, 2021, the Claimant filed a complaint with MHIC.

13. On February 2, 2022, MHIC told the Claimant that she needed to pursue arbitration because her contract contained a binding arbitration provision.

14. During April and May 2022, the Claimant contacted a number of attorneys to engage in arbitration with the Respondent. The Respondent did not respond to those attempts.

15. On May 14, 2022, the Respondent came to the Claimant's home and said he would make the repairs.

16. On May 27, 2022, the Respondent asked the Claimant for \$500.00 for materials.

17. On June 13, 2022, employees of the Respondent came to the Claimant's home and removed the shower bench and tile. They did not return to complete the work.

18. On August 10, 2022, the Claimant entered into a contract with P&L Contractors to repair and complete the work performed by the Respondent. The repairs included removing and replacing the Respondent's tile work, installing new plumbing and waterproofing, a new tub floor, a new shower door (supplied by the Claimant), and re-installing the shower hardware,

vanity, commode, and ceiling fan. The work also included repairing the damaged kitchen ceiling drywall and painting.

19. Between August 10, 2022, and November 1, 2022, the Claimant paid P&L Contractors \$20,500.00.

20. The Claimant paid for a new shower door and a new toilet. The Respondent damaged the first toilet.

21. P&L Contractors is not licensed by the MHIC as a home improvement contractor.

### 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, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. There were problems with the Respondent's

work immediately after completion. The shower head leaked, the shower door was too large to enter and exit, the grout on the floor tile was coming up, the floor squeaked when walked upon, and one sink did not work. As the Claimant used the shower, it began to leak through the second floor into the kitchen ceiling below it on the first floor.

The Claimant requested that the Respondent repair his work repeatedly from March 2021 through August 2021; however, the Respondent never made the repairs. The Claimant made multiple attempts to engage the Respondent in arbitration over two months in April and May 2021 but the Respondent did not respond.

Based on the Respondent's unworkmanlike work, the Claimant could potentially be eligible for compensation from the Fund. However, the Claimant has not proven a compensable actual loss.

First, the Claimant hired an unlicensed contractor, P&L Contractors, to repair and complete the work performed by the Respondent. The Claimant supplied a copy of P&L Contractors' business license. However, P&L Contractors is not licensed by MHIC as a home improvement contractor. A business license is not a home improvement contractor's license. Because P&L Contractors is not licensed by MHIC, the company has not paid into the Guaranty Fund.

As discussed earlier, the Fund may compensate a claimant for an actual loss that results from an act or omission by a licensed contractor. As a matter of policy, however, the Fund will not compensate a claimant for an actual loss if that claimant hires a home improvement contractor that is not licensed by MHIC to repair the actual loss. The Fund publishes this policy on its website, which provides, in relevant part: "The Fund also will not reimburse a claimant for money paid to an unlicensed home improvement contractor to correct or complete work

performed that is the subject of the claim.”<sup>5</sup> The MHIC policy seeks to protect the public from unlicensed home improvement contractors, who are not regulated and do not pay into the Guaranty Fund that provides compensation for claims.

Further, performing home improvements without being licensed as a contractor is a crime - a misdemeanor subject to a fine of \$1,000.00 and imprisonment not exceeding six months for a first offense. Bus. Reg. § 8-601. As a result, the Fund cannot reimburse the Claimant for the amounts she paid to an unlicensed contractor.

Second, the Fund could potentially reimburse the Claimant for materials she purchased herself for the repair work, such as the new, correctly-sized shower door. However, the Claimant did not produce any receipts or other documentation showing how much she spent on materials. She testified that the shower door cost at least \$1,000.00, but that testimony is too vague a basis to award an amount from the Fund.<sup>6</sup>

I am sympathetic to the Claimant’s need to obtain compensation for an actual loss sustained by the unworkmanlike home improvement performed by the Respondent. However, the Claimant hired a company not licensed by MHIC, P&L Contractors, to repair the Respondent’s unworkmanlike home improvement. To the Claimant’s detriment, she was either led to believe that P&L Contractors was properly licensed by MHIC or mistakenly believed that the company’s business license was a license issued by MHIC. Unfortunately, as a matter of public policy, the Fund cannot reimburse the Claimant for any repair work performed by P&L Contractors. As a result, the Claimant has failed to prove she is eligible for compensation from the Fund.

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<sup>5</sup> <https://www.dlr.state.md.us/license/mhic/mhicfaqgf.shtml#costs> (last visited July 27, 2023).

<sup>6</sup> Please note, if the Claimant had used a licensed contractor, she could have only recovered up to the amount she paid to the Respondent, which was \$18,972.00. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4).



**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained a compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022).

**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.

July 28, 2023  
Date Decision Issued

*Lorraine E. Fraser*

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Lorraine E. Fraser  
Administrative Law Judge

LEF/ja  
#206495

PROPOSED ORDER

*WHEREFORE, this 3<sup>rd</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**