

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ANGELA VALLARIO,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF LARRY PAYNE,</p> <p>T/A CARPENTER CRAFT,</p> <p>RESPONDENT</p>	<p>* BEFORE ERIN H. CANCIENNE,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-23333</p> <p>* MHIC No.: 23 (75) 210</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On April 4, 2023, Angela Vallario (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$20,182.92 for actual losses allegedly suffered as a result of a home improvement contract with Larry Payne, trading as Carpenter Craft (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2023).² On August 31, 2023, the MHIC issued a Hearing Order on the Claim.

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

On September 1, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 10, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jessica Kaufman, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Neither the Respondent nor any authorized representative for the Respondent appeared.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On October 31, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 10, 2024, at 9:30 a.m., at the OAH office, 11101 Gilroy Road, Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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 & Supp. 2023); 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:

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|------------------------|---|
| Clmt. Ex. 1 - | Not offered. |
| Clmt. Ex. 2-1 - | Home Improvement Claim Form, undated, and Complaint Form, August 22, 2022 |
| Clmt. Ex. 2-2 - | Original Contract between Respondent and Claimant, undated |
| Clmt. Ex. 2-3 - | Payments by Claimant to Respondent, July 8, 2021, August 10, 2021, and September 1, 2021 |
| Clmt. Ex. 2-4 - | Substitute Agreement, October 29, 2021 |
| Clmt. Ex. 2-5 - | Payments by Claimant to Respondent, July 15, 2021, October 15, 2021, October 29, 2021, November 5, 2021 |
| Clmt. Ex. 3-1 to 3-6 - | Photographs of window installation, November 2022 |
| Clmt. Ex. 4-1 to 4-4 - | Photographs of door from screened porch to outside, November 2022 |
| Clmt. Ex. 5-1 to 5-2 - | Photographs of sliding door from screened porch to kitchen, November 2022 |
| Clmt. Ex. 6-1 - | MHIC License History for Quest Contracting, LLC (Quest), undated |
| Clmt. Ex. 6-2 - | Quest Invoice, November 30, 2022; Receipts from Johnson Lumber, Home Depot, and Sherwin Williams, various dates |
| Clmt. Ex. 6-3 - | Payment by Claimant to Quest, December 1, 2022 |
| Clmt. Ex. 7-1 - | MHIC License History for ACE Home Improvements, LLC (ACE), undated |
| Clmt. Ex. 7-2 - | Contract with Claimant and ACE, December 30, 2022 |

- Clmt. Ex. 8-1 to 8-8 - Photographs of roof and gutters for the screened porch, November 2022³ and January 2023
- Clmt. Ex. 9-1 to 9-3 - Photographs of side of the screened porch, November 2022
- Clmt. Ex. 10-1 to 10-2 - Photographs of interior of screened porch, November 2022 and January 2023
- Clmt. Ex. 11-1 to 11-4 - Photographs of the interior of the kitchen, November 2022
- Clmt. Ex. 12-1 to 12-4 - Photographs of the stairs and landing to the screened porch, November 2022
- Clmt. Ex. 13 - Estimate from JAD Construction, LLC, November 22, 2022

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits offered by the Fund:

- GF⁴ Ex. 1 - Notice of Hearing, October 31, 2023
- GF Ex. 2 - Transmittal to OAH,⁵ and Hearing Order, August 31, 2023
- GF Ex. 3 - MHIC License History for the Respondent, printed September 18, 2023
- GF Ex. 4 - Letter from MHIC to the Respondent, April 7, 2023, and Home Improvement Claim Form, received April 4, 2023

Testimony

The Claimant testified and presented the testimony of Eric Kindall, owner of ACE, accepted as an expert in roofing and sunroom addition construction.

The Respondent did not attend or present any witness.

The Fund did not present any witness.

³ Photographs 8-1 through 8-5 were prior to the repairs. Photographs 8-6 through 8-8 were taken after the work by ACE.

⁴ The exhibits were premarked with the initials GF for Guaranty Fund.

⁵ The copy in the exhibit is undated. However, the OAH received this transmittal on September 1, 2023.

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 01-22220.⁶

2. On July 8, 2021, the Claimant and the Respondent entered into a contract to demolish an existing deck and build a new deck; and to create a screened in porch off the kitchen,⁷ including necessary changes to ceilings, electrical wiring and plumbing (Original Contract).

3. The agreed-upon Original Contract price was \$43,800.00 to be paid in four payments.

4. On October 29, 2021, the Parties entered into a second contract (Substitute Agreement). This Substitute Agreement incorporated the Original Contract and included changes regarding recessed lighting, drywall, insulation, wires, and deck boards. The total price of the additional materials and labor was \$3,702.72.

5. The Claimant paid the Respondent additional amounts for the windows, and the materials and installation of the sliding glass door.⁸ These verbal changes added an additional \$14,455.56 (\$11,290.56 sliding door material + \$2,200.00 sliding door installation + \$965.00 windows).⁹

6. In total, the Claimant paid the following amounts to the Respondent:

July 8, 2021	\$14,800.00
July 15, 2021	\$11,290.56
August 10, 2021	\$14,800.00
September 1, 2021	\$10,100.00

⁶ As of May 19, 2022, the Respondent's license was suspended. However, at the time the contract was entered, and at the time the work was performed in this matter, the Respondent had an active license with the MHIC.

⁷ During the hearing, this area was sometimes referred to as a sunroom and sometimes a screened in porch.

⁸ The payments are reflected in Claimant's Exhibit 2-5.

⁹ Throughout the remainder of this decision, the term "Contract" refers collectively to the Original Contract, Substitute Agreement, and the verbal changes.

October 15, 2021	\$2,200.00
October 29, 2021	\$3,702.72
November 5, 2021	<u>\$965.00</u>
Total	\$57,858.28

7. The windows installed by the Respondent on the screened porch had gaps between the window and the framing, screws that were not flush to the frame, let water seep between the window and the wall, and were not level.

8. The Respondent installed a sliding glass door but did not install the door handle on the door.

9. The Claimant hired Quest on a labor and material basis to repair the window, door and sliding glass door on the screened porch and properly seal those items. The Claimant paid Quest \$3,682.92 for labor and materials.¹⁰

10. The roof that the Respondent had installed over the screened porch leaked.

11. Portions of the soffits installed by the Respondent were coming loose, starting to sag, and showing gaps. In addition, the Respondent used beadboard, which is made for interior use, on the exterior of the Claimant's home.

12. The Respondent did not finish all of the interior work such as painting and completing the ceiling.

13. The Respondent installed stairs and a landing to access the screened porch from outside.

14. On the stairs and the landing, the railing to the stairs was not attached, and various screws and edges were not flush with the remainder of the structure or were left unfinished.

¹⁰ Claimant's Exhibit 6-2 includes invoices for all materials purchased by Quest, as well as an invoice from Quest to the Claimant, which was paid by check. See Clmt. Ex. 6-3.

15. The Claimant hired ACE to make repairs to the roof, to the exterior siding and soffits of the screened porch, to the interior of the screened porch and kitchen, and to the stairs off the screened porch. The Claimant paid ACE \$20,600.00.¹¹

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 (2021); 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. 2023); *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 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. 2023). The Claimant resides in the home that is the subject of the Claim. *Id.* § 8-405(f)(2) (Supp. 2023). 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. 2023).

¹¹ Claimant’s Exhibit 7-2 is the Claimant’s contract with ACE, and Claimant’s Ex. 7-3 contains copies of the checks.

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. 2023).

There was no evidence that Respondent made any good faith efforts to resolve the Claim.

Id. § 8-405(d) (Supp. 2023).

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. In July 2021, the Claimant and the Respondent entered into the Original Contract for the Respondent to add a screened porch off of the kitchen of the Claimant's house, including all interior finishing work, and building stairs and a deck to access the screened porch from the exterior. The original costs for the Original Contract were \$43,800.00. Clmt. Ex. 2-2.

In October 2021, the parties entered into a Substitute Agreement that increased the costs by \$3,702.72. Clmt. Ex. 2-4. In addition, during the term of the Original Contract, the Respondent requested a separate payment for the sliding glass door, an additional payment for windows, and a payment for installation of the sliding glass door. While the Claimant had concerns regarding delays and requests for additional payments, the Claimant allowed the Respondent to continue to work on the Contract until approximately February 2022. At that time, the Respondent insisted on receiving the final payment on the Contract, which was not due until the Contract was completed, and the Claimant refused to pay that amount as the Respondent had not completed the work under the Contract.

At the time the Respondent left the project in February 2022, there were portions of the Contract that were incomplete, including interior painting, finishing interior ceilings, and installing the door handle on the sliding door. In addition, there were portions of the work that were unworkmanlike, such as walls that were not level, screws that were not installed to be flush with windows or the deck, gaps in installations, handrails not being attached for the stairs, and sagging soffits.

These were items that could be seen in pictures and described by the Claimant without expert testimony. The Claimant provided numerous photographs regarding these items.

See Clmt. Exs. 3-1 to 3-6, 4-1 to 4-4, 5-1 to 5-2, 9-1 to 9-3, 10-1 to 10-2, and 12-1 to 12-4.

Besides the photographs and her own testimony, the Claimant presented the expert testimony of Eric Kindall. He explained that the roof on the screened porch was improperly installed. Namely, the roof did not have flashing, and did not have a cricket in the corner. This caused the roof to be susceptible to leaking, and the Claimant's roof was actually leaking at the time of the repairs and causing interior damage to the sheetrock. Mr. Kindall testified that not installing a cricket is unworkmanlike. Mr. Kindall testified that not caulking doors and windows to seal them would be unworkmanlike, and that the Respondent had not caulked the doors for the Claimant. Mr. Kindall explained that on the landing and steps, the stair treads were not properly installed because they did not have the wrap around the edges to make them smooth and hide the grooves. Mr. Kindall explained the problems with the soffit, which was installed in a way that required more seams and gaps, and the use of wood beadboard, which is an interior product and not designed for exterior use. Mr. Kindall explained that the Respondent incorrectly installed the lattice work next to the deck. Mr. Kindall testified that all of the work performed by ACE was necessary to bring the Respondent's work to the industry standard.

Mr. Kindall testified that all of his work was within the scope of the Contract between the Respondent and the Claimant.

I found Mr. Kindall's testimony to be both credible and persuasive. Mr. Kindall has been a licensed contractor for sixteen years and has performed hundreds of similar jobs throughout his career. He thoroughly explained the work he performed, why he performed that work, and why the work of the Respondent was unworkmanlike and inadequate. Mr. Kindall had been paid for his work by the Claimant prior to the hearing and had no financial interest in the Claimant

recovering from the Fund. As the Respondent's work was incomplete, unworkmanlike and inadequate, I thus find that the Claimant is eligible for compensation from the Fund.

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. Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant has retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Original Contract price in July 2021 was \$43,800.00. Clmt. Ex. 2-1. On October 29, 2021, the Claimant and the Respondent entered the Substitute Agreement and the price increased by \$3,702.72. Clmt. Ex. 2-4. The Claimant testified that there were verbal increases in price for the sliding glass door, installation of the sliding glass door and an advance for the windows, which totaled \$14,455.56. Clmt. Ex. 2-5.¹²

¹² This exhibit includes the payment for the Substitute Agreement, as well as the other verbal increases in price.

Therefore, the total costs of the Contract with all change orders (written and verbal) was \$61,958.28. The Claimant paid the Respondent a total of \$57,858.28 between July 2021 and November 2021. See Clmt. Exs. 2-3, and 2-5.

She did not pay the remainder to the Respondent because the final draw was due when the work was completed, and the work was incomplete.

The Claimant initially had obtained an estimate from JAD Construction to repair or complete the Respondent's work under the Contract, which quoted the cost as \$34,475.00. However, the Claimant decided not to proceed with JAD Construction as the costs for the estimate were high.

After consulting with various contractors, the Claimant hired Quest to repair the windows and door, and ACE to perform all other work necessary to repair or complete the Respondent's work under the Contract. The Claimant paid Quest \$3,682.92. Clmt. Exs. 6-2 and 6-3. The Claimant paid ACE \$20,600.00. Clmt. Exs. 7-2 and 7-3. The Claimant explained that there were some things that are still not completed to the standard that she expected and that she was not made whole after the work was performed by Quest and ACE. Unfortunately, it was cost prohibitive to demolish the Respondent's work and to start over, and the Claimant was trying to minimize the additional costs. I find that the Claimant paid reasonable amounts to ACE and Quest to repair or complete the work done by the Respondent.

Therefore, the formula to determine Claimant's actual loss is:

Amount paid to the Respondent	\$57,858.28
Amount paid to Quest	+ \$3,682.92
Amount paid to ACE	+ \$20,600.00
Less the Contract price	- <u>\$61,958.28</u>
	<u>\$20,182.92</u>

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.¹³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). 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 her actual loss of \$20,182.92.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,182.92 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. 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 \$20,182.92; 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;¹⁴ and

¹³ 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").

¹⁴ *See* Md. Code Ann., 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.

March 22, 2024
Date Decision Issued

EHC/kh
#210755

Erin H. Cancienne
Erin H. Cancienne
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 11th day of June, 2024, 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***