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| IN THE MATTER OF THE CLAIM   | * BEFORE DENISE O. SHAFFER,      |
| OF ALEXANDER POLANSKY,       | * 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 MATTHEW         | *                                |
| SOUTHARD,                    | * OAH No.: LABOR-HIC-02-23-07318 |
| T/A SOUTHARD BROTHERS        | * MHIC No.: 23 (75) 260          |
| CONCRETE CONSTRUCTION, INC., | *                                |
| RESPONDENT                   | *                                |

\* \* \* \* \*

**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 November 7, 2022, Alexander Polansky (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$30,000.00<sup>2</sup> for actual losses allegedly suffered as a result of a home improvement contract

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>2</sup> At the hearing, counsel for the Claimant acknowledged that the Claim was limited to the amount paid to the Respondent, \$24,000.00.

with Matthew Southard, trading as Southard Brothers Concrete Construction, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>3</sup> On March 1, 2023, the MHIC issued a Hearing Order on the Claim. That same day, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 27, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing, and Regulation, represented the Fund. Joel C. Richmond, Esquire, represented the Claimant, who was present. Richard J. Hackerman, Esquire, represented the Respondent, who was present.

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:

- Clmt. Ex. 1 - Contract, dated June 10, 2022
- Clmt. Ex. 2 - Invoice with a check attached for \$24,000 (paid to the Respondent by the Claimant), dated June 23, 2022
- Clmt. Ex. 3 - Printout of text messages, dated between June 22, 2022, to July 25, 2022
- Clmt. Ex. 4 - Email sent by the Claimant to the Respondent, dated July 5, 2022

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

- Clmt. Ex. 5 - Photo of water accumulation around the pool, taken by the Claimant between June 22 to July 5, 2022
- Clmt. Ex. 6 - Photo of water accumulation around the pool, taken by the Claimant between June 22 to July 5, 2022
- Clmt. Ex. 7 - Photo of water accumulation around the pool, taken by the Claimant between June 22 to July 5, 2022
- Clmt. Ex. 8 - Photo of a crack on the concrete, taken by the Claimant around June 15, 2022
- Clmt. Ex. 9 - Photo of a crack on the concrete, taken by the Claimant between June 12 to June 18, 2022
- Clmt. Ex. 10 - Photo of a crack on the concrete, taken by the Claimant around June 12 to June 18, 2022
- Clmt. Ex. 11 - Photo of a crack and chippings on the concrete, taken by the Claimant around June 12 to June 18, 2022
- Clmt. Ex. 12 - Photo of the chipping area by the pool, taken by the Claimant around June 12 to June 18, 2022
- Clmt. Ex. 13 - Photo of a dark spot, taken by the Claimant on June 13, 2022
- Clmt. Ex. 14 - Photo of a footprint, taken by the Claimant on June 13, 2022
- Clmt. Ex. 15 - Photo of footprints and discoloration, taken by the Claimant between June 13 to June 15, 2022
- Clmt. Ex. 16 - Photo of a crack, footprints, and discoloration, taken by the Claimant between June 13 to June 15, 2022
- Clmt. Ex. 17 - Photo of a footprint, taken by the Claimant between June 13 to June 15, 2022
- Clmt. Ex. 18 - Photo of cracks and bubbling on the concrete and the coping area, taken by the Claimant around June 13 to June 23, 2022
- Clmt. Ex. 19 - Photo of cracks, footprints, and bubbling on the concrete and the coping area, taken by the Claimant around June 13 to June 23, 2022
- Clmt. Ex. 20 - Offered but not admitted.<sup>4</sup>
- Clmt. Ex. 21 - Offered but not admitted.
- Clmt. Ex. 22 - Photo of the concrete removal process, taken by the Claimant on July 22, 2022
- Clmt. Ex. 23 - Photo of the concrete extraction process, taken by the Claimant on July 22, 2022
- Clmt. Ex. 24 - Photo of the gravel underneath the concrete, taken by the Claimant on July 22, 2022
- Clmt. Ex. 25 - Offered but not admitted.
- Clmt. Ex. 26 - Offered but not admitted.
- Clmt. Ex. 27 - Photo of the current state of the pool area, taken by the Claimant on May 31, 2023
- Clmt. Ex. 28 - Not offered during hearing, not admitted<sup>5</sup>

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<sup>4</sup> The Claimant's wife, Anna Tkach testified that they hired Hardscape Masters, Inc. to redo the work and that Hardscape Masters, Inc. was not a licensed Maryland home improvement contractor. She stated that they were "in the process of getting" a Maryland home improvement license. The Respondent and the Fund objected to evidence regarding Hardscape Masters, Inc.'s work on the project based on Commission policy not to reimburse a Claimant for work performed by an unlicensed contractor. While the Claimant's exhibits 20, 21, 25 and 26 were not admitted, they remain in the file as required. COMAR 28.02.01.22C ("All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall be retained for purposes of judicial review.")

<sup>5</sup> On July 12, 2023, the OAH received a letter from counsel for the Claimant attaching licensing records for Hardscaping Masters, Inc. and requesting that the record be admitted as an exhibit. On July 17, 2023, counsel for the Respondent objected via letter. As the record closed on June 27, 2023, I did not admit the exhibit. It is retained in the file.

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - Photo of the finished pool area, taken by the Respondent around June 14 to June 16, 2022
- Resp. Ex. 2 - Photo of the left side of the pool and the pool deck, taken by the Respondent around June 14 to June 16, 2022
- Resp. Ex. 3 - Photo of the stamped concrete and the pool area, taken by the Respondent around June 14 to June 16, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, dated March 1, 2023
- Fund Ex. 2 - Hearing Order, dated April 10, 2023
- Fund Ex. 3 - Respondent's licensing information, printed May 22, 2023
- Fund Ex. 4 - Letter from the MHIC to the Respondent, dated November 15, 2022, with attached Maryland Home Improvement Claim Form, dated November 2, 2022
- Fund Ex. 5 - A Stampcrete brochure about available stamped concrete patterns with a sticker indicating the Claimant's choice of pattern
- Fund Ex. 6 - A Stampcrete brochure about available stamped concrete colors with a sticker indicating the Claimant's choice of color
- Fund Ex. 7 - Offered but not admitted.

Testimony

The Claimant did not testify but presented the testimony of Anna Tkach, wife of the Claimant. The Respondent testified and did not present other witnesses; the Respondent was accepted as an expert witness in the field of concrete and stamped concrete. The Fund presented no 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 43578.
2. The Claimant owns a single-family home located in Glenelg, Maryland. It is the Claimant's primary residence and the only residential property owned by the Claimant in Maryland.

3. The Respondent has performed concrete services for 43 years and managed his company specializing in stamped concrete for 35 years.
4. On June 10, 2022, in order to refurbish the existing pool, the Claimant and the Respondent entered a contract to remove and replace 1020 square feet of pool deck pavers at the Claimant's home, which would be done in stamped concrete, by using concrete, stone, and wire mesh (Contract). The Contract also indicated that the pattern of the stamped concrete was up to the homeowner's selection.
5. The original agreed-upon Contract price was \$24,000.00.
6. The work was started around June 12, 2022, and completed within a week.
7. The work involved installing the coping, the 1-foot border, and the stamped concrete around the pool area. The finished pool deck was 4 inches taller than the original pool deck, which was required by the Claimant and agreed upon by the parties.
8. On June 18, 2022, the Claimant paid the Respondent \$24,000.00 with a check.
9. There was one surface crack that could be resealed on the concrete surface when the work was done. Several days later, but no later than June 22, the Respondent received complaints from the Claimant regarding multiple cracks.
10. Between June 18 and June 22, 2022, the Claimant and the Respondent discussed by phone calls the problems and defects regarding the pool.
11. Starting on June 22, 2022, Ms. Tkach addressed several problems around the pool to the Respondent by text messages, including multiple cracks, footprints, discoloration, undrained water, and slipperiness, and she requested that the Respondent fix them. She also provided pictures in the text messages.

12. The Respondent replied to these messages timely and promptly, usually within a day.

13. There were two to three inches of water accumulation above the stamped concrete area sometime between June 22 and July 5, 2022, on one side of the pool, and this problem never occurred before the renovation of the pool area.

14. On June 24, 2022, via text message, the Respondent indicated that he was willing to fix the issues but was waiting for some materials to come in. He did not identify what specific issues he planned to fix.

15. On June 29, 2022, the Respondent explained that the weather was too hot to apply the non-slippery sealer to the pool area, and Ms. Tkach restated her request to fix the existing issues listed in the June 24<sup>th</sup> texts.

16. On July 5, 2022, the Claimant sent the Respondent an email addressing eight issues to be fixed and the possibility of a lawsuit if these issues were not fixed soon (Email).

17. On July 6, 2022, the Respondent confirmed the receipt of the Email and offered to fix a footprint and apply the non-slippery sealer sometime the following week.

18. On July 11, 2022, the Respondent stated that he would fix the issues early that week but later rescheduled. The Respondent reassured the Claimant that he was willing to fix the pool areas to the Claimant's satisfaction and explained that the rescheduling was due to rainy weather.

19. On July 12, 2022, Ms. Tkach informed the Respondent that the issues listed in the Email had no easy fix and that the only way to solve these issues was to remove the entire concrete and coping and have it completely redone. She also demanded the Respondent fix the

listed issues in the Email at no additional cost or refund the whole payment. She noted that the Respondent had until the end of July 15 to give her a response, or she would pursue legal action.

20. On July 13, 2022, the Claimant paid a deposit to another pool refurbishing company to redo the work around the pool area, and on July 15, 2022, Ms. Tkach signed an agreement with that company.

21. On July 14, 2022, the Respondent stated that he was willing to fix the issues to the Claimant's satisfaction, and he listed the issues he would fix as the coping, the footprint, and applying a new S9000 sealer with sure grip.

22. On the same day, the Claimant communicated to the Respondent that the issues listed and the suggested fix of removing the whole concrete and coping were based on an assessment from licensed professionals.

23. On July 15, 2022, the Respondent indicated that he would consult with his attorney.

24. After the work was completed on June 18, 2022, the Respondent did not appear nor work at the Claimant's residence again.

25. The new company removed the entire concrete pool deck done by the Respondent in July 2022.

26. The new company used pavers, a completely different material than stamped concrete, around the pool area.

### **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 evidence establishes that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Fund presented the Respondent’s license information at the time of the Contract, reflecting an issued date of November 17, 2020, and an expiration date of January 3, 2023. The Respondent’s license was renewed on January 6, 2023.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there is no statutory impediment 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. *Id.* § 8-405(f)(1) (Supp. 2022).



However, based on the facts set out above, I find that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). When the Claimant addressed the issues to the Respondent in the text after the work was finished, the Respondent replied to the Claimant timely and promptly. The Respondent not only expressed his willingness to fix the issues he was responsible for, including fixing the footprint, removing the glossy sealer, and applying a non-slippery one, but he also gave the Claimant a time estimation for returning to the premises to fix the problems. Although the Respondent later had to reschedule the appointment several times, he had good reason to do so – he was waiting for the materials to come in, and then the hot weather was not suitable for the fix. The Respondent explained both in the text exchange to the Claimant and as an expert witness in the hearing that the sealer cannot be applied when the weather is above 60 degrees Fahrenheit. He further explained that applying the sealer above that temperature would cause bubbling problems. On July 14, 2022, less than 30 days after the job was complete, the Respondent reassured Ms. Tkach that he would repair the areas to the Claimant’s satisfaction. Based on the facts above, I found that the Respondent intended in good faith effort to fix the issues around the pool area. *Id.*

On the other hand, the Claimant failed to make good faith efforts to resolve the claim with the Respondent. The texts between Ms. Tkach and the Respondent regarding the issues around the pool area started on June 22, 2022. On July 12, 2022, Ms. Tkach notified the Respondent that he had until July 15, 2022, to fix the issues listed in the Email. On Monday, July 11, 2022, the Respondent offered to fix the issues later that week. However, Ms. Tkach contacted another contractor for a proposal to remove the entire stamped concrete work on July 13, 2022, and put down the first deposit on the same day. The Claimant and Ms. Tkach later accepted the proposal, and Ms. Tkach signed the new contract on July 15, 2022.

Additionally, the new contractor completely removed the Respondent's entire work on July 30, 2022, which was a little more than one month after Ms. Tkach first addressed the issues with the Respondent. Although the Respondent postponed the scheduled time to do the repairs several times, the postponements were reasonable due to hot weather and the time needed to acquire new materials. Putting down a deposit with a new contractor while the Respondent was proposing a time to repair demonstrated the Claimant's unwillingness to give the Respondent a chance to fix the concrete. Further, signing a new contract to remove the Respondent's entire work the day after the Respondent expressed his willingness to fix the pool area to the Claimant's satisfaction showed the Claimant's unwillingness to allow the Respondent to resolve the claim. Therefore, the Claimant failed to show a good faith effort to resolve the claim, as opposed to the Respondent.

Although the failure to allow the Respondent to make the repairs is a bar to the claim, as this is a proposed decision, I will also address the remaining issues. Based on the evidence presented, I conclude that the Respondent performed partial unworkmanlike, inadequate, or incomplete home improvements. The Claimant raised eight deficiencies in the Respondent's work to prove the unworkmanlike or inadequate home improvements of renovating the pool area, including water accumulation, cracks, chipped coping, crooked borders, discoloration, slippery surface and sealer, and footprints and bumps in the concrete. The Claimant, who bears the burden of proof, proved that the water accumulation was unworkmanlike and inadequate work by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). The Claimant failed to prove the other seven deficiencies were unworkmanlike or inadequate.

The Claimant also failed to show that removing and redoing the entire pool area was necessary to fix the water accumulation problem. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

As an expert witness, the Respondent was asked to explain the process of the original stamped concrete work, identify the problems in the pictures provided by the Claimant, suggest the fix, and explain the process of the fix. I found the Respondent's testimony credible and persuasive. He managed his concrete business, specializing in stamped concrete, for 35 years and had done similar projects hundreds of times over the years with only one complaint and that was unrelated to the quality of concrete or his work. He gave detailed descriptions and overviews of stamped concrete projects, which demonstrated his familiarity with the field. He was trained by the suppliers, and he kept up the training with new products. With no contradictory testimony from other expert witnesses in similar fields, his examination of the photos and suggestion of the fix was unrefuted and credible. Further, the Respondent was honest about the problems he was responsible for fixing in the communication with Ms. Tkach and in the hearing. He correctly identified the existing cracks, chipping, and bubbling in the pictures presented, and his testimony was consistent with the evidence presented by the Claimant.

The cracks, chippings, and crocked borders were not unworkmanlike or inadequate because they were common concrete surface problems with an easy fix. The Respondent identified three surface cracks and a pinhole (Clmt. Exs. 8, 9, 10, and 12), all of which could be fixed easily and did not interfere with the use of the pool. Based on 43 years of experience in the concrete business, the Respondent testified that such surface cracks were not uncommon on stamped concrete in general, and I find that the cracks did not establish unworkmanlike or

inadequate work. Further, the Contract stated that the Respondent is not responsible for any cracks, which released the Respondent from such liability. The Respondent also identified a few chippings and a small, crooked border that were easy to fix. (Clmt. Exs. 11 and 12). Such small and not uncommon problems were not sufficient to establish that the Respondent's concrete work was unworkmanlike or inadequate. Also, it is worth noting that the Respondent expressed his willingness to fix these issues for the Claimant both in the texts with Ms. Tkach and on the witness stand, showing his good faith in resolving the claim.

The Claimant failed to show evidence of discoloration on the pool deck that demonstrates unworkmanlike or inadequate work, and thus failed to meet the burden of proof. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). Both Ms. Tkach and the Respondent testified that the pattern and color of the stamped concrete were selected by the Claimant from the brochure the Respondent provided, even though the choice of color was not listed in the Contract. (Fund Exs. 5 and 6). The Claimant choose beige and dark brown from the color chart brochure. (Fund Exs. 5 and 6). Based on the brochure and the photos of the pool area after the Respondent's work, there is no significant difference between the selected color in the brochures and the color of the stamped concrete in the photos. The dark spots were also not easily identifiable from the photos and were similar to the dark brown color the Claimant chose. Additionally, although the Respondent did not follow the exact procedural guidelines in the supplier's brochure, he was trained by the supplier, and the Claimant failed to prove that the change of application procedure was less than professional or caused any deficiency.

The Claimant did not meet the burden of proof that the slippery surface caused by the clear sealer was unworkmanlike or inadequate because the Claimant and the Respondent agreed upon the application of such material, and the finished application itself had no deficiency. Bus.

Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). The Respondent testified that they followed the guidelines from the supplier and applied the materials to the pool deck as instructed. The clear sealer applied on the surface was not a safety hazard, based on his experience. However, after the Claimant complained to him, the Respondent offered to replace the sealer with a non-slippery one even though the Claimant had agreed upon the application of the clear sealer. The Respondent was unable to replace the sealer during the limited timeframe before the Claimant found and contracted with another company due to hot and rainy weather as discussed above, and he explained this delay to the Claimant promptly. Therefore, the application of the original clear sealer was not unworkmanlike or inadequate, and the Respondent clearly made good faith efforts to fix the issue.

Finally, all but one piece of evidence submitted by the Claimant was not sufficient to identify any footprints on the concrete and thus failed to meet the burden of proof. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). The Respondent testified that what the Claimant claimed to be footprints were stamped concrete patterns selected by the Claimant from the brochure. (Fund Ex. 5). I found that only Claimant exhibit 17 resembled a footprint. The Respondent expressed his willingness to fix it in the texts to Ms. Tkach. (Clmt. Ex 3). The pictures the Claimant presented failed to meet the preponderance of evidence standard that the one footprint caused the pool deck to be unworkmanlike or required repair. Moreover, the Respondent again showed a good faith effort to fix the issue.

On the other hand, the water accumulation due to the lack of drainage was unworkmanlike and inadequate because it interfered with the basic function of the pool deck area, and the Claimant met the burden of proof by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3).

The Claimant's testimony was that the water drainage was not installed on the left side of the deck and caused water accumulation which never happened before the Respondent's work. The Claimant provided photographs to show the water accumulation around the pool area not long after the work was done. (Clmt Exs 5, 6, and 7). I found that these photos clearly showed the water accumulation around the pool area and that it was problematic. The Respondent testified that water drainage installation was not included in the contract. However, the Respondent did not deny his responsibility for the water drainage problem in the hearing. Additionally, it was reasonable for the Claimant to expect the water around the pool deck to drain after the pool deck was renovated, regardless of whether this is expressly listed in the contract because draining water is one of the basic and fundamental functions a pool deck should have. It was reasonable for the Claimant to depend on the Respondent's expertise. The deficiency in water drainage is sufficient to establish that the Respondent's pool construction was partially unworkmanlike and inadequate, as the insufficient water drainage could also be a safety hazard.

Nonetheless, the Claimant failed to prove that it was necessary to remove all the work done by the Respondent and replace it with a completely different product in order to fix the issues caused by the unworkmanlike or inadequate work performed by the Respondent. The Respondent estimated that it would have cost approximately \$2,000.00 for all the repairs and replacements demanded by the Claimant in the Email, including the water drainage problem. (Clmt Ex. 4). The Respondent also stated multiple times when examining the photos taken on the scene that most of the issues had an easy fix and would only take minutes. Ms. Tkach claimed in her texts that the other experts suggested that the only way to fix the listed issues was to remove the entire work done by the Respondent, and there was no easy fix for the issues listed in the

Email. Yet the Claimant failed to present any statement from other experts or people from similar businesses and did not bring an expert witness to the hearing. There was, therefore, no compelling evidence to refute the Respondent's assessment. Since the Respondent was the only expert witness in the hearing with decades of experience, his estimation of the cost of fixing the issues was credible.

Instead of fixing the stamped concrete pool deck, the Claimant paid to have the entire concrete work removed and redone with pavers, a completely different material. This action was not undertaken to correct the water accumulation issue.. Therefore, the Claimant did not meet the burden to prove their actual loss.

Based on the evidence, the facts, and the analysis, I found that the Claimant had no intention of allowing the Respondent to fix the issues. The Ms. Tkach repeatedly emphasized displeasure about the "dark spots" on the stamped concrete. I suspect that, once the project was complete, they realized that they did not like the color and finish that they chose. That would explain why they removed the entire stamped concrete pool deck and replaced it with pavers rather than allowing the problems to be repaired. It was clear that the Respondent made good faith efforts and offered to fix the identified issues even though he was not fully responsible for each of them, while the Claimant rejected these efforts by giving the Respondent only two weeks before contacting a new construction company. The evidence and testimony support the conclusion that the Claimant wanted to have the entire stamped concrete pool deck removed instead of having a fix on the minor problems and adding drainage.

I thus find that the Claimant is not eligible for compensation from the Fund.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss of \$24,000 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.

**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.

August 9, 2023  
Date Decision Issued

*Denise O. Shaffer*  
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Denise O. Shaffer  
Administrative Law Judge

DOS/sh  
#205971



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*