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| <p>IN THE MATTER OF THE CLAIM</p> <p>OF HELENE SCHAEFER</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 GARY SAMUEL,</p> <p>T/A ARMOUR OVERHEAD DOORS,</p> <p>LLC,</p> <p>RESPONDENT</p> | <p>* BEFORE JOHN D. HART,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-28162</p> <p>* MHIC No.: 23 (75) 270</p> <p>*</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 March 27, 2023, Helene Schaefer (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$5,800.00 for actual losses allegedly suffered as a result of a home improvement contract with Gary Samuel, trading as Armour Overhead Doors, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On October 30, 2023, the MHIC issued a Hearing

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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 Volume of the Maryland Annotated Code.

Order on the Claim. On October 31, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 25, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Mackenzie Read, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.<sup>3</sup>

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); 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?

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<sup>3</sup> At the outset of the hearing the Respondent made a request for postponement arguing that he never received the OAH Notice of Hearing. On November 30, 2023, the Notice of Hearing was sent to the Respondent's address of record via both regular and certified mail. Although no signed green card was received for the certified mail, neither mailing was returned to the OAH as undeliverable. The Respondent stated that he became aware of the hearing when he received a copy of the Claimant's request for the OAH to issue a subpoena, approximately seven to ten days prior to the hearing. The Respondent stated that based on this letter he was able to call and receive the time and location of the hearing. The Respondent did not make a request for postponement at that time, and his request the morning of the hearing was considered under the regulations for an emergency postponement request requiring that the reason be for a "sudden, unforeseen occurrence requiring immediate attention." COMAR 28.02.01.16E(1). For the reasons stated on the record, including that proper notice was provided to the Respondent, that his request was not considered an emergency given he admitted to having actual notice of the hearing at least seven to ten days ahead of his request, and the prejudice to the Claimant who was prepared to proceed and the subpoenaed witness who appeared as compelled, I denied the postponement request.

## SUMMARY OF THE EVIDENCE

### Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 – Contract between Claimant and Respondent, signed May 11, 2022
- Clmt. Ex. 2 – Letter to MHIC from Respondent, dated October 20, 2022
- Clmt. Ex. 3 – Respondent's two invoices provided to MHIC, both dated October 25, 2022
- Clmt. Ex. 4 – Revised Contract Number 137, signed May 26, 2022
- Clmt. Ex. 5 – Text messages from Claimant to Respondent, dated August 15-16, 2022
- Clmt. Ex. 6 – Photograph of bottom of left side exterior wall of shed
- Clmt. Ex. 7 – Text message from Claimant to Respondent, dated August 16, 2022
- Clmt. Ex. 8 – Claimant's contract with Oriole Basement Waterproofing, Inc., signed September 12, 2022, and two checks issued by Claimant on September 12, 2022 and October 10, 2022
- Clmt. Ex. 9 – Photograph of exposed studs at rear of shed
- Clmt. Ex. 10 – Photograph of bottom of right-side exterior wall of shed
- Clmt. Ex. 11 – Photograph of bottom of right-side exterior wall of shed
- Clmt. Ex. 12 – Photograph of bottom of rear interior wall of shed
- Clmt. Ex. 13 – Photograph of interior of shed after completion of work by Oriole Basement Waterproofing, Inc.
- Clmt. Ex. 14 – Photograph of gate hinges screwed into fence
- Clmt. Ex. 15 – Photograph of bottom of fence
- Clmt. Ex. 16 – Claimant's Sequence of Events Home Construction Project, covering May 10, 2022 through September 30, 2022
- Clmt. Ex. 17 – Respondent's invoice for rebuilding back wall of shed, date of invoice crossed out

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 – Photograph of front of shed after Respondent completed work
- Resp. Ex. 2 – Photograph of rear interior of shed after Respondent completed work
- Resp. Ex. 3 – Photograph of Respondent’s son working at rear of shed
- Resp. Ex. 4 – Photograph of Respondent’s son and worker painting fence
- Resp. Ex. 5 – Photograph of fence gate after Respondent completed work
- Resp. Ex. 6 – Photograph of interior side of fence after Respondent completed work

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 – OAH Notice of Hearing, issued November 30, 2023
- Fund Ex. 2 – MHIC Hearing Order, dated October 30, 2023
- Fund Ex. 3 – Printout from the AS400 licensing database, printed December 28, 2023
- Fund Ex. 4 – Fund Claim Form, filed March 27, 2023, and cover letter to Respondent, dated April 27, 2023
- Fund Ex. 5 – Claimant’s letter requesting issuance of subpoena for Giovanni Onorato, dated January 10, 2024

Testimony

The Claimant testified and presented the following witness: Giovanni Onorato, who I accepted as an expert in construction and painting.

The Respondent testified and did not present other witnesses.

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 license number 01-119498.<sup>4</sup>

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<sup>4</sup> Fund Ex. 3

2. The Respondent's company, Armour Overhead Doors, LLC, holds a corporate home improvement license under MHIC license number 05-138053.<sup>5</sup>
3. On May 11, 2022, the Claimant and the Respondent entered into a contract to install a new front garage door to an existing shed, as well as fix and stain damaged and rotten portions of the shed and surrounding fence. The document was identified as "Estimate #137."<sup>6</sup>
4. The original agreed-upon contract price was \$9,900.12.<sup>7</sup>
5. On May 26, 2022, the Respondent informed the Claimant that the work had been completed.
6. On May 26, 2022, the Claimant notified the Respondent that his employees used two different colors of stain and brought in Giovanni Onorato to assist her in discussing the issue with the Respondent. The Respondent resolved the issue and provided his employee with the correct stain.
7. On a date not specified in the record, the Claimant and the Respondent amended the contract to include additional work involving the rebuilding of the rear wall of the shed for an additional amount of \$1,982.00.<sup>8</sup>
8. Via four checks executed on May 11, 20, 28, and June 3, 2022, the Claimant paid the Respondent a total of \$12,150.00.<sup>9</sup>
9. The \$12,150.00 paid by the Claimant to the Respondent was considered payment in full and no additional payments were owed to the Respondent.

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<sup>5</sup> *Id.*

<sup>6</sup> Clmt. Ex. 1

<sup>7</sup> *Id.*

<sup>8</sup> Clmt. Ex. 3

<sup>9</sup> Clmt. Ex. 4

10. On July 14, 2022, the Respondent's worker, Shane, returned to the property to address repairs raised by the Claimant and informed her that some of the T1-11<sup>10</sup> siding along the left side of the shed was rotten.<sup>11</sup>

11. The Respondent had her landscaper dig down and independently confirm the presence of rotten T1-11 siding along the left side of the shed.<sup>12</sup>

12. Rotten T1-11 siding was also revealed along the right side of the shed.<sup>13</sup>

13. The rotten T1-11 preexisted the Respondent's work but was not removed and replaced before he stained the shed.<sup>14</sup>

14. The Respondent's employee applied a thin line of flex seal along the rotten areas of T1-11.<sup>15</sup>

15. The Respondent's employees installed new T1-11 along the rear of the shed over rotten framing found in the right corner that was to be replaced.<sup>16</sup>

### 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*

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<sup>10</sup> As described by the Claimant's expert, T1-11 is a wooden siding that is commonly used for exteriors of sheds.

<sup>11</sup> Clmt. Ex. 5

<sup>12</sup> Clmt. Ex. 6

<sup>13</sup> Clmt. Ex. 10, 11

<sup>14</sup> Clmt. Ex. 6, 10, 11

<sup>15</sup> Clmt. Ex. 10, 11

<sup>16</sup> Clmt. Ex. 9

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). 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).

### **Scope of Work**

The job at issue involved the installation of new doors and replacement of damaged/rotten sections of a shed that had been constructed over thirty years prior.<sup>17</sup> After the Respondent ceased working on the shed, the Claimant observed continued water intrusion into the structure and sought to have the Respondent correct the issue. Ultimately the Claimant contracted with a subsequent contractor, Oriole Basement Waterproofing, Inc. (Oriole), to address the issue and waterproof the shed. Although the Claimant contends that she contracted with the Respondent to fix the water intrusion issues, this is not reflected in the written contract

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<sup>17</sup> Although the Claimant produced photographs of the Respondent’s work on her fence and testified along with her expert on the quality of that work, she ultimately did not include any cost to correct or complete the fence work and stated that it was not a part of her claim. (Clmt. Ex. 16, p. 4).

entered into by the parties. Nowhere in the four documents making up the written agreement between the parties does the Respondent promise to or specifically state that he would stop the water intrusion into the shed. Instead, the Respondent's contract largely involved the replacement of front doors and the replacement of damage to the roof and sides of the shed. However, even under this limited scope of work I find the Respondent's work was unworkmanlike, inadequate and incomplete and the Claimant is eligible for compensation from the Fund.

On May 11, 2022, the Claimant signed the first version of the contract with the Respondent, identified as "Estimate #137."<sup>18</sup> Stated generally, this version called for: 1) the removal and replacement of front carriage doors on the shed, 2) repairs to damaged shed roof, 3) removal, replacement and staining of all T1-11 siding and the installation of trim and drip edge, 4) repairs and staining of the fence, rear gate, picnic table and mailbox stand.<sup>19</sup> The contract also stated that the Respondent would inspect for further water and termite damage. The total amount to be paid under the contract was \$9,900.12. The Claimant paid the Respondent the \$3,300.00 deposit on May 11, 2022, and then an additional \$3,300.00 payment on May 20, 2022.

On May 26, 2022, the Claimant and Respondent signed a second version of the contract, titled "Revised Contract Number 137."<sup>20</sup> This agreement stated that it "supersedes all previous contracts/proposals/agreements." However, it did not include the removal and replacement of the doors or the replacement and staining of the T1-11 siding that was present in the May 11, 2022 agreement, and was paid for and ultimately partially performed by the Respondent. Moreover, the agreement stated that the new contract price was \$5,200.00, yet the Claimant would go on to pay the Respondent \$12,150.00 in total.<sup>21</sup> Lastly, it appears that this agreement

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<sup>18</sup> Clmt. Ex. 1

<sup>19</sup> *Id.*

<sup>20</sup> Clmt. Ex. 4

<sup>21</sup> *Id.*



did not actually supersede the earlier agreement as the Claimant was able to produce invoices provided to her by the MHIC investigator assigned to her claim, that the Respondent in turn had provided to the MHIC. The invoices were dated October 25, 2022, long after the Respondent had left the job, the first included the same scope of work outlined in the May 11, 2022 agreement and the same cost of \$9,900.12. (Clmt. Ex. 3). The second invoice added work to rebuild the back wall of the shed for an added cost of \$1,982.00. Although the October 25, 2022 invoices appear to have been generated by the Respondent to respond to the filing of the claim with the MHIC, they provide the most complete version of the parties' written agreement and more closely track the work that was actually paid for and performed. As a result, I used these invoices to ascertain what constituted the agreed upon scope of work.<sup>22</sup>

#### **Removal and Replacement of Rotten T1-11 Siding**

Both the first October 25, 2022 invoice and the original May 11, 2022 agreement called for "Remove and Replace all T111 approx 300 sqft," which on its face appears to call for the removal of all the T1-11 siding on the shed.<sup>23</sup> However, the document later reads that "[d]ue to condition of Shed, Armour will inspect for further water and termite damage. . . [a]dditional cost to remove and replace of T111 is approx. \$100."<sup>24</sup> This second line contradicts the first and suggests that not all the T1-11 siding was to be replaced. What is not ambiguous, however, is that the Respondent agreed to inspect for further water damage and replace T1-11 if needed, which he did not do. The contract further stated that the Respondent would be transparent with the Claimant about any additional work, which he was not.

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<sup>22</sup> The total cost noted in the October 25, 2022 invoices is \$11,882.12 (\$9,900.12 + \$1,982.00). The Claimant was questioned as to why this sum does not equal the \$12,150.00 she ultimately paid to the Respondent. The Claimant testified that she believed the extra money she paid must have been for added shelving that was installed by the Respondent. Neither party disputed that the \$12,150.00 paid was the full amount owed, and the discrepancy in the invoices and the checks paid has no bearing on my decision.

<sup>23</sup> Clmt. Ex. 3

<sup>24</sup> *Id.*

The Claimant provided photographs of T1-11 siding that the Respondent had stained and left in place. The photographs show that the T1-11 was rotten at the bottom to such an extent that the Claimant testified you could push your finger through and touch the floor framing behind the siding.<sup>25</sup> The photographs show that the rot would have been readily apparent to anyone who had properly inspected the portion of the T1-11 siding that extended below the grade surrounding the shed.<sup>26</sup> The photographs also show a minimal amount of flex seal that was sprayed by the Respondent's employees along the line of rotten siding.<sup>27</sup>

The Claimant presented the testimony of Giovanni Onorato, who was accepted as an expert in construction and painting. Mr. Onorato further stated that the use of flex seal on rotted wood that sits below grade is not a proper application of that product. Mr. Onorato's expert opinion was that proper inspection for damaged wood would require digging down along the sides of the shed until you reached two inches below the bottom of the T1-11 siding, at which point the rotten T1-11 should have been removed and replaced. Mr. Onorato argued that not only is this what was called for in the contract, but also opined that is what would be expected in the industry. Mr. Onorato has worked in the construction and painting industry for over 25 years, including working with T1-11 on over 100 occasions throughout his career, and I found his testimony and opinions to be credible and persuasive. Therefore, I find that the Respondent's failure to properly inspect the T1-11 and then remove and replace the rotten T1-11 prior to staining, and his attempts to instead apply a minimal amount of flex seal to the affected areas, to be unworkmanlike and inadequate work.

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<sup>25</sup> Clmt. Ex. 6, 10, 11

<sup>26</sup> *Id.*

<sup>27</sup> Clmt. Ex. 10, 11

### **Removal and Replacement of Rotten Framing**

The Claimant further testified that when she hired Oriole to conduct repair work that needed to be done to waterproof the shed, they showed her rotten 2x4 framing in the back right corner of the shed that was not replaced by the Respondent. The Claimant submitted a photograph of the rotten framing member and testified that it was taken between September 28 and 30, 2022, after the Respondent completed the job.<sup>28</sup> The Respondent first claimed that the photograph was not of the Claimant's shed, and later argued that it must have been taken before he started work and showed the condition of the framing that his company would later replace when it rebuilt the back wall of the shed. I find the Claimant to be more credible than the Respondent on this issue. Although the Respondent was present from time to time on the job, he did not personally rebuild the back wall of the shed, and his claim that this was a photograph of the condition of the framing prior to his employee's completion of the job is based on the peg board attached to the inside of the studs in the photograph. The Respondent argued that the peg board was removed and replaced with Oriented Strand Board (OSB) when his employees rebuilt the rear wall as seen in his photograph of the interior rear of the shed taken at the completion of the job.<sup>29</sup> Although the Respondent's photograph does show the installation of OSB on the interior rear of the shed, it does not definitively prove that the peg board was removed rather than simply covered over when the OSB was installed. Moreover, the peg board in the Claimant's photograph appears to be from one of the sides of the shed where it meets the corner of the back wall and therefore would not have been removed by the Respondent while rebuilding the back wall. What is more convincing is the fact that the Oriole estimate calls for the removal of peg board from two sides of the interior of the shed indicating that it was still present when Oriole

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<sup>28</sup> Clmt. Ex. 9

<sup>29</sup> Resp. Ex. 2

came to provide its estimate after the completion of the Respondent's job.<sup>30</sup> Therefore, the presence of the peg board in the photo does not prove that it was taken prior to the Respondent completing the job. In further support of the Claimant's testimony, her photograph shows what appears to be freshly stained T1-11 butting against the rotten stud on what would be the back wall of the shed, further denoting that the photo was taken after the Respondent completed his work.<sup>31</sup> The second October 25, 2022 invoice provides for the rebuilding of the back wall of the shed of which the rotten 2x4 in the photo forms one corner. The Respondent's failure to remove and replace the rotten framing and his covering over of the framing with new T1-11 was unworkmanlike, inadequate and incomplete work.

#### **Calculation of Actual Loss**

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. However, none of the following three regulatory formulas are appropriate in this case:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(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

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<sup>30</sup> Clmt. Ex. 8

<sup>31</sup> Clmt. Ex. 9

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)(a)-(c). At first glance it appears the third formula should be used because the Respondent did some work and the Claimant has hired another contractor to continue work on the shed. The AAG representing the Fund recommended an award of \$5,800.00 based on the application of the third formula utilizing the amount paid to the subsequent contractor, Oriole. However, Claimant's contract with Oriole included work well beyond the scope of the original contract with the Respondent. In regard to the shed, the Respondent's contract involved the replacement of the carriage doors, as well as replacement of damage to roof, siding and rear framing.<sup>32</sup> The Oriole contract is focused more on controlling the water intrusion into the shed, including installing moisture barriers on the walls and floor, new insulation, new flooring, and changing the grade around the shed and installing river rock drainage.<sup>33</sup> To apply the third formula would permit the Claimant to recover for work not contemplated in the original contract.

The three formulas are to be used "[u]nless [the Fund] determines that a particular claim requires a unique measurement." COMAR 09.08.03.03B(3). Because the first two regulatory formulas are not applicable to the facts of this case and the third cannot provide an accurate calculation of the cost to correct or complete the work to be provided by the Respondent under the original contract, I shall apply a unique measurement of the Claimant's actual loss.

The Claimant contracted for the rebuilding of the back wall of the shed as is evidenced by the second invoice dated October 25, 2022 in the amount of \$1,982.00.<sup>34</sup> As discussed above,

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<sup>32</sup> Clmt. Ex. 1, 3

<sup>33</sup> Clmt. Ex. 8

<sup>34</sup> Clmt. Ex. 3, 17

the back wall was not properly rebuilt leaving rotten framing in place. Therefore, I find that the Claimant is entitled to recover the \$1,982.00 charged to rebuild the rear wall as this work has no value given that it will have to be ripped out to install new framing in the place of the rotted wood that was covered over by the Respondent.

In addition to this amount, I find that the Claimant is entitled to recover the cost to replace and stain the rotting T1-11 siding along the left and right sides of the shed. As discussed above, the Respondent's contract called for the replacement of all T1-11 and at the very least stated that they would inspect for further water damage and be transparent with the Claimant about additional work. The Respondent was aware of rot at the base of the T1-11 siding, and his application of a limited amount of flex seal on the siding sitting below grade, per the Claimant's expert witness, was unworkmanlike and inadequate. As a result, the T1-11 along the left and right side of the shed that was rotten along the bottom should have been replaced. Because the T1-11 has to be replaced, the staining and trim work done by the Respondent holds no value either because the new T1-11 will need to be stained and trimmed again.

The Claimant's subsequent contract with Oriole provides for the replacement and staining of T1-11 along two sides of the shed but does not provide a line item for what this would cost, instead it is included in the total cost of the project. As I stated previously, I cannot use this total cost for calculating the Claimant's actual loss as it contains work that is beyond the scope of the Respondent's contract. However, a reasonable cost for the replacement of the T1-11 along two sides of the shed can be deduced using figures found in the Respondent's contract.

Per the original contract under the heading "Remove Replace T111," the Respondent charged the Claimant \$3,760.12 to remove and replace all T1-11 siding, stain the siding and

install trim and drip edge.<sup>35</sup> The contract also required the Respondent to inspect for additional water damage and replace T1-11 as needed, being transparent with the Claimant, which was not done.<sup>36</sup> The shed has four sides and dividing the \$3,760.12 by four provides a price per side of \$940.03.<sup>37</sup> Therefore, I find that the Claimant may recover for the cost to replace, stain and trim two sides of the shed in the amount of \$1,880.06 ( $\$940.03 \times 2$  sides).

Taking the \$1,982.00 for the cost that was charged to rebuild the back wall that now needs to be rebuilt plus the \$1,880.06 charged to replace two sides of T1-11, the Claimant's total actual loss of \$3,862.06.

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.<sup>38</sup> 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 their actual loss of \$3,862.06.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$3,862.06 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). I further conclude that the Claimant is entitled to recover that amount from the Fund.

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<sup>35</sup> Clmt. Ex. 1, 3

<sup>36</sup> *Id.*

<sup>37</sup> While the walls were not exactly the same dimensions, it is clear from the photographs that the side walls were longer than the front and the back wall. Therefore, any benefit from using this method to calculate the value of the side walls would go to the Respondent and not to the Claimant.

<sup>38</sup> 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").

**RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,862.06; 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;<sup>39</sup> and

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

April 24, 2024  
Date Decision Issued

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John D. Hart  
Administrative Law Judge

JDH/ckc  
#211397

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<sup>39</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 21<sup>st</sup> 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.***

***Heather Connellee***

***Heather Connellee***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***