

<p>IN THE MATTER OF THE CLAIM</p> <p>OF KIMBERLY BRYAN,</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 JOHN HAWKINS,</p> <p>T/A HAWKINS CONTRACTING,</p> <p>RESPONDENT</p>	<p>* BEFORE JEFFREY T. BROWN,</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-02-23-21637</p> <p>* MHIC No.: 23 (75) 440</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On February 24, 2023, Kimberly Bryan (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$6,550.00 for actual losses allegedly suffered as a result of a home improvement contract with John Hawkins, trading as Hawkins Contracting (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 & Supp. 2023).¹ On August 15, 2023, the MHIC issued a Hearing Order on the Claim. On August

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

16, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 13, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20A. McKenzie Read, 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 & Supp. 2023); COMAR 09.01.03; and 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 - A packet of documents consisting of the following:

- Letter from the MHIC to the Claimant forwarding complaint form, undated, p. 1
- Maryland Home Improvement Mediation information sheet, undated, p. 2
- MHIC Complaint, with Explanation, September 30, 2022, pp. 3-6
- Home Improvement/Painting Agreement (Contract), May 9, 2022, pp. 7-10
- Navy Federal Credit Union Statement of Account, payment of \$1,000.00 to the Respondent, May 20, 2022, p. 11
- Email from Venmo.com to the Claimant confirming payment of \$2,850.00 to the Respondent, July 6, 2022, p. 12
- Emails and text messages between the Claimant and the Respondent, July 11, 2022 through August 5, 2022, pp. 13-24
- Photographs depicting painted surfaces, July 2022, pp. 25-34

Clmt. Ex. 2 - A packet of documents consisting of the following:

- MHIC Order to the Respondent, October 26, 2022, p. 1
- Letter from the Respondent to the MHIC, November 9, 2022, pp. 2-4
- Contract, May 9, 2022, pp. 5-8
- Certificate of Liability Insurance, January 1, 2022, p. 9
- Contract (partial),² May 9, 2022, pp. 10-11

Clmt. Ex. 3 - A packet of documents consisting of the following:

- Estimate, Blue Sky Painting & Carpentry (Blue Sky), January 17, 2023, pp. 6-8³
- Proposal, CertaPro Painters (CertaPro), January 19, 2023, pp. 9-14
- Proposal, S&J Painting & Remodeling (S&J), January 18, 2023, pp. 15-16
- Text messages between the Respondent and Dean Gray, undated, pp. 17-19

Clmt. Ex. 4 - A packet of documents consisting of the following:

- Letter from the MHIC to the Respondent, March 28, 2023, p. 1
- Letter from the MHIC to the Respondent, April 12, 2023, pp. 2-3
- Letter from the Claimant to the MHIC, August 20, 2023, p. 6
- Letter from the MHIC to the Respondent, April 12, 2023,⁴ pp. 7-8

Clmt. Ex. 5 - A packet of documents consisting of the following:

- Letter from the MHIC to the Claimant, January 17, 2023, p. 1
- Home Improvement Claim Form, February 21, 2023, pp. 2-3
- Letter from the Claimant to the MHIC, January 21, 2023, pp. 4-5
- Three Photographs of the interior of the Claimant's home, undated, pp. 21-22⁵

Clmt. Ex. 6 - Thirteen photographs depicting surfaces in the Claimant's home that were painted by the Respondent, undated

Clmt. Ex. 7 - Three photographs depicting switch plate covers and surfaces in the Claimant's home that were painted by the Respondent, undated

Clmt. Ex. 8 - Ten photographs depicting surfaces in the Claimant's home where drops of paint or contact with paint brushes or rollers occurred, undated

Clmt. Ex. 9 - Four photograph depicting hinged surfaces in the Claimant's home that were painted by the Respondent, undated

Clmt. Ex. 10 - Six photographs depicting bead board surfaces in the Claimant's home that were painted by the Respondent, undated

Clmt. Ex. 11 - One gallon can, partially used, of Behr Ultra Scuff Defense Stain-Blocking Paint and Primer, 100% acrylic

² This document consists of pages already admitted in Clmt. Ex. 2 as pages 5 and 7.

³ This packet of documents did not contain pages numbered 1 through 5.

⁴ This is a duplicate copy of the same letter that is already part of Clmt. Ex. 4.

⁵ Pages 6 through 21 were not included in this exhibit.

I admitted the following exhibits offered by the Respondent:⁶

- Resp. Ex. 1 - Facebook exchanges between the Respondent and Dean Gray, April 15, 2022 and later, undated after April 15, 2022
- Resp. Ex. 2 - Thirty-nine "before" photographs depicting the interior and exterior of the Claimant's home, April 2022;
- Resp. Ex. 3 - Home Depot receipts, June 27, 2023, June 29, 2023 and one undated; partial bank statement showing account transactions from June 23, 2023 to July 7, 2023, undated; partial bank statement showing account transactions from July 1, 2023 to July 5, 2023
- Resp. Ex. 4 - Five thumbnail photographs depicting priming and painting products, undated
- Resp. Ex. 5 - Agreement, May 9, 2022; Final invoice, July 5, 2022..
- Resp. Ex. 7 - Email from Dean Gray to the Respondent, undated
- Resp. Ex. 9 - Emails between the Claimant and the Respondent, July 22, 2022
- Resp. Ex. 10- Letter from the Respondent to the MHIC, March 31, 2023
- Resp. Ex. 11 - Letter from the Respondent to the MHIC, November 9, 2022
- Resp. Ex. 12 - Maryland Judiciary Case Search (MJCS) results in Case No. 06-K-10-040596, Circuit Court for Carroll County, printed October 7, 2023; MJCS result in Case No. 00727485C3, District Court for Baltimore County, printed October 7, 2023; MJCS result in Case No. 0S00048769, District Court for Carroll County, printed October 7, 2023; MJCS result in Case No. 03-K-10-005046, printed October 7, 2023; MJCS result in Case No. 03-L-95-004736, printed October 7, 2023; MJCS result in Case No. 06-K-95-022259, printed October 7, 2023; MJCS result in Case No. 06-K-96-023674, printed October 7, 2023

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, August 28, 2023; Hearing Order, August 15, 2023
- Fund Ex. 2 - MHIC Licensing Information for the Respondent, September 20, 2023
- Fund Ex. 3 - Notice to the Respondent from the MHIC advising of its receipt of the claim, with attached Home Improvement Claim Form, March 28, 2023
- Fund Ex. 4 - Emails between the Claimant and David Brown, MHIC, April 11, 2022; revised Claim Form, April 11, 2023

⁶ Respondent Exhibits 6 and 8 were offered but not admitted. They are retained with the file materials.

Testimony

The Claimant presented the testimony of Mr. Gray and the Respondent.

The Respondent testified and did not present other witnesses.

The Fund presented the testimony of the Claimant and did not call any other 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 01141595.
2. On May 9, 2022, the Claimant and the Respondent entered into a Contract requiring the Respondent to paint interior and exterior surfaces of the Claimant's home.
3. The original, agreed-upon Contract price was \$3,650.00.
4. Of the total original Contract price of \$3,650.00, \$2,950.00 was dedicated to interior painting, and \$700.00 was dedicated to exterior painting, which is not at issue herein.
5. Work under the Contract concluded on or about July 1, 2022.
6. On or about July 5, 2023, the parties modified the Contract to a price of \$3,850.00. This sum was the result of a reduction of \$100.00 from the cost of exterior painting, and an addition of \$300.00 for "caulking throughout the entire home."⁷
7. After the modification of the Contract price, the Claimant paid \$600.00 for exterior painting, and \$3,250.00 for interior preparation and painting.⁸
8. The modified Contract price of \$3,850.00 was fully paid to the Respondent as of July 6, 2022.⁹

⁷ Resp. Ex. 5, p. 3; $\$3,650.00 - \$100.00 + \$300.00 = \$3,850.00$.

⁸ $\$2,950.00 + \$300.00 = \$3,250.00$.

⁹ Clmt. Ex. 1, pp 11-12.

9. Painting under the Contract was performed in whole or in part by a subcontractor retained and paid by the Respondent.

10. As of at least July 11, 2022, the Claimant raised concerns in writing about the quality and adequacy of the Respondent's workmanship.¹⁰ On the same day, the Respondent replied that his work was "great" and that he stood by his performance and that of his partner.¹¹

11. Discussions between the parties about whether and how to remedy the defects enumerated by the Claimant continued without success until approximately July 23, 2023.¹² The Respondent substantially denied the Claimant's allegations while also stating without specificity that he was willing to correct some work. The Claimant requested a full refund of the Contract price, which the Respondent declined. The Respondent suggested that the Claimant should pursue her claim through the MHIC because they could not reach an agreement.

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); Md. Code Ann., 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); *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

¹⁰ Clmt. Ex. 1, p. 13.

¹¹ *Id.*, p. 14.

¹² *Id.*, p. 22.

home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant’s Evidence

The Claimant undertook to document with specificity the deficiencies she attributes to the Respondent’s workmanship since initiation of the complaint process with the MHIC. On September 30, 2023, the Claimant prepared an “Explanation” in support of her claim which itemizes what she contended were instances of incomplete, inadequate, and unworkmanlike performance.¹³ These include, but are not limited to, the following:

- Failure to paint the backs of three bifold closet doors;
- Failure to paint the closet in the living room;
- Failure to paint closet doors in the master bedroom and basement the same color as the rest of each room;
- Failure to fully paint trim around interior windows;
- Failure to apply sufficient paint to fully cover doors, ceilings, walls and trim;
- Failure to complete painting around light fixtures and smoke detectors on ceilings;
- Failure to remove switch plates on walls, and painting over them;
- Failure to remove a shoeprint of paint on a basement wall;
- Failure to properly tarp or protect non-painted surfaces such as appliances, furniture, and objects from paint spatter, thereby damaging them;
- Failing to remove window blinds, thereby painting only partial window casements and trim;
- Failure to prevent brushes or rollers holding paint from contacting blinds, thereby damaging them;
- Failure to properly clean brushes or tools by using the kitchen sink, which left paint residue and spatter on the faucet, sink, backsplash, and stovetop;
- Failure to paint around unpainted brass door hinges, painting over them instead;
- Failure to remove visible drips and defects left by improper painting;
- Failing to apply any paint at all to surfaces that were too difficult to easily reach;
- Failing to apply any paint at all to beadboard surfaces adjacent to the tub and on other beadboard surfaces in the master bathroom; and,
- Failing to properly prepare interior trim surfaces that were stained and coated in polyurethane to receive latex or acrylic (water-based) paint, resulting in peeling paint since July 2022.

¹³ Clmt. Ex. 1, p. 3, 5.

The Claimant called Mr. Gray to testify and offered him as an expert in home improvement. Mr. Gray is employed as a Senior Project Manager by Installation Services by HCR (Installation Services), a home improvement remodeling company. In his professional capacity, he oversees five project managers who typically conduct eight-to-ten ongoing commercial and residential remodeling jobs for the company. Painting is performed by employees of Installation Services and is something that Mr. Gray routinely inspects. He has worked in home remodeling for more than forty years. The Respondent conducted *voir dire* and inquired about numerous charges against and/or convictions of Mr. Gray for engaging in home improvement without a license, and for theft schemes, in the 1990's and in 2010.¹⁴ The Respondent objected to Mr. Gray being accepted as an expert on the basis of his criminal history. I ruled that such charges and/or convictions may bear upon any necessary evaluation of Mr. Gray's credibility, but that I would accept him as an expert and give his opinions the weight I found they deserved. Mr. Gray was accepted by me as an expert in home improvement.

Mr. Gray testified that he used to live with the Claimant in the home that was the subject of the Contract, and personally did much of the prior upgrading of the home, including installing baseboards and crown molding. He testified that he has done all of the prior maintenance of the home since the Claimant bought it in 2000, and he installed clear pine trim in the home, which was stained and coated with polyurethane. Mr. Gray stated that the pine trim was unpainted and very glossy, due to the polyurethane coating. Mr. Gray explained that before the Respondent was engaged to paint the interior, no trim had been painted inside the home except where white trim existed around closets.

Mr. Gray testified that he walked the Respondent through the house and discussed what was to be painted. The Contract specifies that all walls and ceilings in the entire home were to

¹⁴ Resp. Ex. 12.

receive an eggshell finish paint, and all trim and doors were to receive a semi-gloss finish paint.¹⁵ Concerning surface preparation work prior to painting, Mr. Gray said that he and the Respondent did not discuss this in detail, but that the Contract specified that surfaces would be primed as needed before they were painted.¹⁶ He stated that latex, a water-based paint, does not adhere to polyurethane unless the surface to be painted is prepared correctly, including sanding to rough-up the glossy surface so that latex paint can adhere to it. Similarly, Mr. Gray explained that latex paint does not adhere properly to oil paint, or an oil-based coat, such as polyurethane. As such, Mr. Gray testified, preparation work should have involved making the glossy surfaces suitable to accept paint, and that priming with a suitable primer for a polyurethane-coated surface was necessary for a finish coat of latex paint to correctly adhere to such surfaces. However, based on the result, this was not done.

The Claimant introduced some of her photographic evidence of the Respondent's work product through her examination of Mr. Gray,¹⁷ and the remainder through her examination of the Respondent.¹⁸ Mr. Gray testified to his own inspection of the Respondent's workmanship, and relying on the photographs contained in Clmt. Ex. 1 and his memory, he identified numerous examples of sloppy or incomplete work in each photograph. He opined that there was an inadequate amount of paint used on walls, ceilings and trim, resulting in deficient coverage and large areas where the underlying paint color was still visible through the minimal or missing paint applied by the Respondent. He also testified to observing inadequate caulking of repairs, nail holes that were not filled, and paint spatter on objects, surfaces, furniture, and floors.

¹⁵ Clmt. Ex. 1, p. 7.

¹⁶ *Id.*

¹⁷ Clmt. Ex. 1, pp. 25-34;

¹⁸ Clmt. Exs. 6 through 10.

Mr. Gray testified that he assisted the Claimant in securing estimates from three painting contractors for remedial work to correct the interior painting done by the Respondent: Blue Sky , CertaPro, and S&J. All three contractors hold MHIC licenses. Mr. Gray confirmed that he contacted and worked with the contractors on the Claimant's behalf, and that all of the contractors' estimates included fully preparing and repainting all interior surfaces painted by the Respondent. Blue Sky estimated a cost of \$6,550.00 to perform that work; CertaPro estimated a cost of \$4,364.06; and S&J estimated a cost of \$3,300.00.

The Respondent's Evidence

The Respondent testified during the Claimant's case, and in his own case. For simplicity, I will summarize the Respondent's total testimony. The Respondent testified that he has provided painting services as a licensed contractor since receiving his license in October of 2021. He mostly paints residential interiors and is familiar with the use of primers. The Respondent acknowledged agreeing to move some items as necessary to paint the interior of the Claimant's house but did not elaborate. He testified that it was standard practice to use a primer-based paint¹⁹ for interior painting, and that he applied two or three coats of paint in all areas. When shown photographs depicting light paint coatings that did not cover the original paint, he testified that he could not recall whether two or three coats were applied to those areas and could not tell what areas in the house they depicted. When shown photographs of painted switch plate covers, the Respondent testified that all switch plates were removed before walls were painted, and paint on those covers must have occurred prior to his work.

When shown photographs of excess paint on surfaces adjacent to painted trim, the Respondent remarked that it was an old home, implying but not demonstrating that the paint was already there. The Respondent acknowledged that trim inside the home had been stained. The

¹⁹ A primer-based paint is a pre-mixed combination of primer and paint.

Respondent acknowledged through photographs that paint drops and paint spatter on surfaces and objects in the kitchen, on floors, on a couch, and on brass door hinges did not belong in those places, but stated that they could have been removed if the Claimant had put them on a punch list and had asked him to remove them. When shown photographs of discoloration or inconsistent paint application on large beadboard surfaces, he attributed the appearance to shading or shadowing.

Regarding the type of paint that was used on the trim, which Mr. Gray said was previously stained and coated in polyurethane, the Respondent testified alternately that he used an oil-based primer and then a latex paint, and that he used a product that was both a primer and paint. He explained first that he applied an oil-based primer to the trim which was recommended to be applied over stain, and that this product enabled latex paint to adhere to it. The Respondent referred to receipts to show what paint products he purchased for the Claimant's home.²⁰ However, when asked to locate the recommended oil-based primer he described on the receipts, he was unable to do so.²¹ The Respondent clarified that he assumed he used an oil-based primer, but he did not. He then testified that he might have bought such a product another time, or for another job, and used it at the Claimant's home.

The Respondent thereafter relied on advertising photographs of products that he said he used at the Claimant's home and identified the primer he used as Zinsser Bulls Eye 1-2-3 Primer.²² The photograph of that item identifies it as a water-based product. When asked to locate that product on the receipts he produced, the Respondent was unable to do so. He testified

²⁰ The Respondent produced three receipts. One was dated June 27, 2022, one was dated June 29, 2022, and one was a partial undated receipt.

²¹ Resp. Ex. 3.

²² Resp. Ex. 4.

that cans of Kilz primer identified on the June 27, 2022 receipt was for a job other than the Claimant's.²³

The Respondent testified that he began communicating with Mr. Gray as a kind of mediator after the Claimant expressed her dissatisfaction with his workmanship, and that he was willing to come back to the home to correct some things, but that the Claimant did not want him to come back. He stated that he thought that he and Mr. Gray could have worked things out, but that the Claimant did not allow them to complete that process.

The Fund's Evidence

In addition to the exhibits admitted on behalf of the Fund, the Fund called the Claimant to testify in order to establish her threshold eligibility for a recovery from the Fund, if she prevailed. The Claimant testified that she is not related to the Respondent or anyone who works for him, she owns the subject property, she resides there, she does not reside anywhere else, she has not made an insurance claim for the damages she seeks, and there are no actions in court relating to this matter. Bus. Reg. § 8-405(f).

Analysis

The Claimant's photographs in evidence depict numerous incidents of poor workmanship, including incomplete paint coverage of multiple surfaces,²⁴ failure to paint several surfaces at all,²⁵ failure to prevent paint on trim from touching floors,²⁶ improper painting of hinges and hardware,²⁷ peeling of newly painted surfaces that were not properly prepared to be painted,²⁸ and paint spatter, brush marks and roller marks on numerous surfaces caused by

²³ Resp. Ex. 3.

²⁴ Clmt. Ex. 1, p. 26; Clmt. Ex. 6, photos 1-13; Clmt. Ex. 7, photos 1-3; Clmt. Ex. 10, photos 1-6.

²⁵ Clmt. Ex. 1, pp. 31, 34

²⁶ Clmt. Ex. 1, p. 26-27

²⁷ Clmt. Ex. 1, p. 33; Clmt. Ex. 9, all photos;

²⁸ Clmt. Ex. 1, p. 25.

insufficient protection by tarps, or by carelessness in the application of paint or subsequent clean-up.²⁹

The Respondent introduced photographs, but they depicted the condition of certain rooms or locations in the Claimant's home as they appeared before the Respondent's work. He also introduced photographs depicting the exterior of the Claimant's home, but the Claimant did not argue or present evidence to show that any part of her claim involved painting on the exterior of the house. As such, the Respondent's photographs did not provide any contradiction to the conditions identified in the Claimant's photographs, all of which were taken after the Respondent had completed painting.

When shown multiple photographs by the Claimant depicting paint coverage through which the underlying color was still visible, the Respondent said that he could not tell where the surfaces were that were shown, so he declined to comment about what they showed. It was evident from the pictures that regardless of where the surfaces were, they received no more than one light or incomplete coating of paint. In response to other questions by the Claimant whether some surfaces looked as if they received two or three coats, as the Respondent claimed were applied, he admitted that they did not. The Respondent attributed the poor appearance of painted beadboard walls to shadows or shading, but there was no evident basis to conclude that shadows covered an entire wall in immediate proximity to the camera taking the pictures. Instead, the surfaces appeared to be poorly covered by paint, especially if white paint was used, and their appearance was inconsistent with a properly painted surface. On another occasion, the Respondent could not explain why gray paint had been used on trim that required white paint.

²⁹ Clmt. Ex. 8, photos 2-10. In addition, in Clmt. Ex. 1, pp. 21-22 are identified as depicting rooms in which painting had begun but no tarps were in use.

I also found that the Respondent's attempt to explain and identify the product he used to paint the Claimant's trim was inconsistent and unclear. He could not correlate the products he used in the Claimant's home to products on receipts he attributed to her project, and could not identify the oil-based primer over which he intended to apply latex paint, which is water-based. When questioned about a can of paint that the Claimant brought from the home, which she identified as having been left over from the Respondent's work, the Respondent acknowledged that he had used that paint.³⁰ The product was an acrylic paint, which is a water-based product. When asked if he followed the directions on the can to "scuff and sand glossy surfaces" before applying it, the Respondent testified that he did not need to do so. However, he failed to explain whether that was because he used the "recommended" oil-based primer to which he earlier referred but could not locate, or because he simply disbelieved the label when he applied that water-based paint to a glossy, polyurethane-covered surface. In either event, his response lacked evidentiary support or a clear explanation. Furthermore, Mr. Gray testified that the application of paint by the Respondent to glossy trim, without preparing it correctly, led to paint that has already begun to peel since the Respondent applied it.³¹

The issue of peeling paint on trim painted by the Respondent was also identified in the estimates the Claimant obtained to remediate the Respondent's work. The Blue Sky estimate required "all loose paint" to be sanded as much as possible.³² The CertaPro estimate stated, "There are Spaces Where the Paint is Peeling on the Trim Work Where it was Previously not Prepped Properly. CertaPro Cannot be Responsible if the Undercoat of Paint Peels in the

³⁰ Clmt. Ex. 11.

³¹ See also Clmt. Ex. 1, p. 25.

³² Clmt. Ex. 3, p. 1.

Future.”³³ The S&J estimate stated, “S&J cannot be held responsible for peeling paint due to improper prep from previous paint job on trim and doors.”³⁴

Based on the preceding discussion, and having reviewed the photographic evidence of the finished work, I find that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements throughout the house. Having reached this conclusion, I also find that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. I find that the extent of the unworkmanlike, inadequate and incomplete work done by the Respondent or his subcontractor was so significant that accepting an imprecise assurance that the Respondent would make right what had not been done correctly in the first place was not a good faith offer to correct the problems or resolve the claim. The extent of correction that the Claimant’s photographs suggest is necessary, as well as the scope of work that the estimates encompass, reasonably supports the Claimant’s refusal to allow the Respondent back to make piecemeal corrections. The Claimant was not unreasonable in concluding that the Respondent would do no better in correcting his errors than he did in committing them. 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); COMAR 09.08.03.03B(1). 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

³³ *Id.*, p. 9. Spelling was derived from the original.

³⁴ *Id.*, p. 15.

is filed.³⁵ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). The 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 intends to retain 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).

I find that the amount the Claimant paid to the Respondent under the original Contract, as modified, for interior painting only is \$3,250.00.³⁶ The Claimant presented no evidence concerning the Respondent's performance in completing exterior painting and I do not find that work or the amount paid for it to be at issue. Therefore, I do not find that the \$600.00 the Claimant paid for exterior painting should be included in determining the cost of repair or replacement when calculating the Claimant's actual damages.

The scope and specificity of the CertaPro estimate makes it a reliable gauge of the amount the Claimant will be required to pay another contractor to repair the Respondent's poor

³⁵ 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").

³⁶ See Proposed Findings of Fact 6 and 7, above.

work and complete the original contract. It identifies work by room, cost by room, the products to be used, and the number of coats required by room. By comparison, the Blue Sky estimate is much higher but lacks specificity. It is not itemized for any task that is to be completed. The S&J estimate itemizes general tasks to be completed, i.e. labor, prep and primer, finish paint, etc., but does not further itemize the work that is proposed. Neither the Blue Sky estimate nor the S&J estimate is as instructive as the CertaPro estimate.

The total cost of the work estimated by CertaPro is \$4,364.06 for interior preparation and painting only. I find that this is the amount the Claimant must pay another contractor to repair or replace the Respondent's unworkmanlike, inadequate and incomplete work. The Claimant's actual loss is calculated as follows:

Amount the Claimant paid the Respondent for interior painting under the original contract, as modified:	\$3,250.00
Plus the amount the Claimant must pay another contractor to repair or replace the Respondent's poor work:	<u>\$4,364.06</u>
	\$7,614.06
Minus the original contract price, as modified, for interior painting:	<u>(\$3,250.00) =</u>
	\$4,364.06

In this case, the Claimant's actual loss is greater than the amount paid to the Respondent and is less than \$30,000.00. Despite this, the Claimant may not recover more than she paid to the Respondent for the unworkmanlike product. COMAR 09.08.03.03B(4). Therefore, the Claimant's actual loss is the amount she paid to the Respondent for interior painting: \$3,250.00. The Claimant is entitled to recover her actual loss of \$3,250.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$3,250.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$3,250.00 from the Fund. *Id.*

RECOMMENDED ORDER

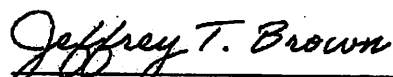
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,250.00; 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;³⁷ and

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

January 5, 2024
Date Decision Issued



Jeffrey T. Brown
Administrative Law Judge

JTB/lp
#209037

³⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 23rd day of February, 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***