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| IN THE MATTER OF THE CLAIM | * | BEFORE DANIA AYOUBI, |
| **OF PAUL AND GIULIANNA** | * | **AN ADMINISTRATIVE LAW JUDGE** |
| **TESSIER,** | * | **OF THE MARYLAND OFFICE** |
| **CLAIMANTS** | * | **OF ADMINISTRATIVE HEARINGS** |
| **AGAINST THE MARYLAND HOME** | * | |
| **IMPROVEMENT GUARANTY FUND** | * | |
| **FOR THE ALLEGED ACTS OR** | * | |
| **OMISSIONS OF ROBERT YOUNG,** | * | |
| **T/A STANDARD ENERGY** | * | |
| **SOLUTIONS, LLC,** | * | **OAH No.: LABOR-HIC-02-23-14548** |
| **RESPONDENT** | * | **MHIC No.: 23 (75) 447** |

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## PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

## STATEMENT OF THE CASE

On January 19, 2023, Paul and Giulianna Tessier (Claimants)[1] filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)[2] Guaranty Fund (Fund) for reimbursement of $29,289.68 for actual losses allegedly suffered as a result of a home improvement contract with Robert Young, trading as Standard Energy Solutions, LLC

[1] References to the Claimant in the singular are to Giulianna Tessier.
[2] The MHIC is under the jurisdiction of the Department of Labor (Department).

(Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).[3] On May 10, 2023, the MHIC issued a Hearing Order on the Claim. On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 25, 2023, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Ernie Dominguez, Assistant Attorney General, Department, represented the Fund. The Claimants were self-represented. Samuel Morse, 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 & Supp. 2023); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

## ISSUES

1. Did the Claimants 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 Claimants:

Clmt. Ex. 1 - Contract, May 23, 2017

Clmt. Ex. 2 - Change Order, May 23, 2017

Clmt. Ex. 3 - Text message to the Claimant with handwritten notation, May 20, 2017

Clmt. Ex. 4 - Email correspondence from LadderNow, July 26, 2022, with the following attachment:
- Seek Now Maestro Report, on or after July 26, 2022

[3] Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

Clmt. Ex. 5 - Proposal from Semper Fi Exteriors, August 18, 2022

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Complaint Form, October 4, 2022, with the following attachment
- Claimants' Narrative, September 30, 2022

Resp. Ex. 2 - UPS receipts for Respondent's submission to the MHIC, November 23 and 25, 2022, with the following attachments:
- MHIC Order, October 26, 2022
- Complaint Form, October 4, 2022, with Claimants' Narrative, September 30, 2022
- Correspondence from the Respondent to the MHIC, November 19, 2022
- Contract, May 23, 2017
- Certificate of Liability Insurance, February 24, 2022
- Building Permit, Montgomery County Department of Permitting Services, Issued June 19, 2017
- Electrical Permit, Montgomery County Department of Permitting Services, Issued June 8, 2017
- Professional Engineer Building Permit Approval, Montgomery County Department of Permitting Services, June 19, 2017
- Correspondence from the Respondent to the MHIC, November 19, 2022
- Contract pages 1, 5, 8-10, 14, May 23, 2017
- Text message to the Claimant with handwritten notation, May 20, 2017
- Text message to the Claimant, May 20, 2017
- Invoice from Respondent to Paul Tessier, August 8, 2017
- Email correspondence from GreenSky to Paul Tessier, June 5, 2017
- GreenSky loan approval to Paul Tessier, expiration September 2017
- EGR General Contractor, Inc. business information, August 18, 2022
- Email correspondence from LadderNow, July 26, 2022
- Seek Now Maestro Report, on or after July 26, 2022
- Proposal from Semper Fi Exteriors, August 18, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, July 13, 2023

Fund Ex. 2 - Hearing Order, May 10, 2023

Fund Ex. 3 - Home Improvement Claim Form, January 19, 2023

Fund Ex. 4 - Respondent's Licensing Information, September 25, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund presented no witness testimony.

## 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 01-117724.

2. In October 2016, the Claimants purchased their home.

3. In February 2017, the Claimants were contacted by Hector Vargas, a sales representative with Solar City, to consider installing solar panels on the roof of their home. Solar City inspected the roof on the Claimants' home and determined that due to the age of the home, the roof would need to be replaced prior to the installation of solar panels. Solar City prepared a proposal and scope of work that included replacement of the main area of the roof.

4. Thereafter, Solar City became nonresponsive and the Claimants learned that Solar City was no longer in business. Mr. Vargas informed the Claimants that he would soon be working for Maryland State Solar. As a solar sales organization, Maryland State Solar secures interested customers but does not perform solar panel installation.

5. Mr. Vargas arranged to provide the proposal and scope of work previously prepared for the Claimants by Solar City to Reid Garton, a salesperson for Maryland State Solar.

6. Mr. Garton began communicating with the Claimants regarding their interest in solar panels.

7. On May 20, 2017, Mr. Garton sent a text message to the Claimant to advise her that "the guys said that whole roof and the 5 inch gutters around the whole house is around

$13500 . . . . I want to send you a proposal by tomorrow . . . . We can tie in the roof and gutter work with the solar project to take advantage of the tax credit." Clmt. Ex. 3.

8. On or about May 22, 2017, Mr. Garton shared the proposal that he had prepared for the Claimants with the Respondent. The scope of work contained in the proposal did not include roof repair. The proposal bore Maryland State Solar's logo.

9. The Respondent, a solar installer and home improvement contractor, accepted and agreed to perform the proposed work at the Claimants' home.

10. On May 23, 2017, the Claimants and the Respondent entered into a contract for the Respondent to install thirty-eight solar panels on the roof of the Claimants' home (Contract). Though the Contract was also signed by Mr. Garton as the salesperson, the Contract defined Standard Energy Solutions, LLC as the Contractor. Clmt. Ex. 1, p. 10.

11. The original agreed-upon Contract price was $38,570.00.

12. The Contract included the following terms under paragraph 1 "CONTRACT WORK":

> Contractor agrees to furnish all labor and materials described in the foregoing Scope(s) of Work attached hereto at the Property (the "Contract Work"). The Contract Work does not include structural or roof repair or reinforcement, painting, electrical panel upgrades, drywall repair, trenching or any other construction, repair service or work other than that expressly set forth in the attached Scope(s) of Work.

Clmt. Ex. 1, p. 10.

13. The Contract also included the following terms under paragraph 5 "SITE CONDITIONS":

> A. If there are latent or unanticipated conditions on or about the Property that would or could affect the proper performance or safety of the Contract Work, require reinforcement or repair of the roof or structure to support the Contract Work or materially increase the cost to Contractor of the Contract Work, the parties may agree in writing upon an additional price for the Contract Work and amend this Contract to reflect the change in price, or Contractor may thereafter immediately terminate this Agreement by providing written notice to Owner and restore the Property with respect to any Contract Work performed to the condition it was in immediately prior to the commencement of such Contract Work, ordinary, wear and tear excepted . . . .

B. If it becomes apparent after Contract signing and acceptance that structural repair, electrical work to resolve existing code violations or any additional work required to make the structure suitable for installing solar, Owner will be promptly notified of the additional cost thereof and the Contract Price adjusted accordingly. If Owner does not agree with such additional costs, any deposit amounts paid to Contractor by Owner, less engineering and other costs or expenses incurred by Contractor through the date of termination in an amount not to exceed One Thousand Dollars ($1,000) shall be refunded to Owner.

. . . .

Clmt. Ex. 1, p. 12.

14. With respect to changes to the Contract, paragraph 11 stated "[e]xcept as expressly provided otherwise herein, this Contract may not be amended without the written consent of both parties in the form of a document titled 'Amendment to the Terms and Conditions of Your Contract' or a change order on Contractor Letterhead." Clmt. Ex. 1, p. 14.

15. Also on May 23, 2017, the Claimants and the Respondent executed a change order, containing Standard Energy Solutions' logo at the top of the document, that stated "**The Contract is hereby revised by the following terms:** Roof replacement per roofing contract." The change order referenced the Contract date as May 23, 2017. The change order provided the description as "Roof replacement." The change order stated that "[t]he Contract Value will be changed by this Change Order in the amount of $13,500.00." Adding this amount to the original Contract price of $38,570.00, the change order stated that "[t]he new Contract value including this Change Order will be $52,070." Clmt. Ex. 2. No separate roofing contract was provided to or executed by the Claimants.

16. On May 31, 2017, the Claimants and the Respondent executed a second change order, containing Standard Energy Solutions' logo at the top of the document. The second change order stated "**The Contract is hereby revised by the following terms:** Addition of 1 solar panel for a total of 39 panels." The second change order referenced the Contract date as May 23, 2017. The second change order stated that "[t]he Contract Value will be changed by

this Change Order in the amount of $1,015.00." Adding this amount to the Contract price of $52,070, which reflected the increase resulting from the first change order, the second change order stated that "[t]he new Contract value including this Change Order will be $53,085." Clmt. Ex. 2.

17. The Claimants obtained a loan from Sunnova to finance the solar panels. The Claimants obtained a second loan for $20,000.00 from GreenSky to finance the roof replacement and new windows.

18. In June 2017, EGR General Contractor (EGR) replaced the roof on the Claimants' home. Later that month, the Respondent installed the solar panels on the Claimants' roof.

19. From the proceeds of the Claimants' financing with GreenSky, the Respondent received $20,000.00 for replacement of the roof and the windows at the Claimants' home. From these funds, the Respondent paid EGR for the roofing work.

20. On October 19, 2017, the Respondent provided the Claimants an invoice dated August 8, 2017, containing Standard Energy Solutions' logo at the top of the document. The invoice was stamped "PAID" and indicated that the Claimants paid the Respondent $39,585.00 for "Solar Install"; $13,500.00 for "Solar – Other Roof Replacement"; and $6,500.00 for "Solar – Other Windows Replacement." In total, the Claimants paid the Respondent $59,585.00. The Claimants required this invoice to claim a solar energy tax credit.

21. Beginning in the spring and into the summer of 2022, the Claimants began to notice water dripping from the ceiling in the guest room of their home. The Claimants initiated a claim with their insurer.

22. On July 26, 2022, at the Claimants' insurer's direction, an adjuster inspected the Claimants' home. Per the adjuster, the front slope roof condition was "fair" with the notation "Improper Installation." Clmt. Ex. 4, p. 21. The back slope roof condition was also "fair" with the notation "Improper Installation." Clmt. Ex. 4, p. 23. Covering a portion of the roof ridge at

the chimney was a tarp. The Claimants' insurance claim was subsequently denied; the insurer cited the roof's improper installation.

23. The roof at the Claimants' home continues to leak where the roof ridge attaches to the chimney column.

24. The Claimants also reached out to the Respondent, who attempted to inspect the roof of the Claimants' home. The Claimants initially did not permit the Respondent's employees to inspect the roof, citing that the Respondent did not have prior authorization to do so and requesting additional information before allowing the Respondent's employees on the roof. Thereafter, the Respondent indicated that he was not responsible for the roof installation.

25. On August 18, 2022, Semper Fi Exteriors provided the Claimants a proposal to fully remove the existing roof and install a new roof on the Claimants' home for $29,289.68.

## DISCUSSION

### *Applicable Law*

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a) (Supp. 2023); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

### *Burden of Proof*

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).

*Parties' Positions*

The Claimants argued that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement by failing to properly replace the roof of their home before installing solar panels. The Claimants explained that they entered into the Contract with the Respondent for the solar project on their home, which ultimately included replacement of the roof, and that they were under the impression that the Respondent was responsible for all aspects of the project.

The Respondent argued that he is not responsible for the replacement of the roof to the Claimants' home because the roofing work was performed by another contractor. The Respondent offered that although the roof may have been completed in an unworkmanlike manner, the Respondent did not perform that work and cannot be responsible for any faulty roofing work.

The Fund argued that if a subcontractor relationship between the Respondent and EGR were found, the Claimants met their burden to demonstrate that they sustained an actual loss as a result of an act or omission by the Respondent and would be entitled to an award in the amount of $29,289.68.

***Analysis***

For the reasons that follow, I conclude that the Claimants met their burden to demonstrate that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements and that the Claimants are therefore eligible for compensation from the Fund. Further, I recommend an award in the amount of the Claimants' actual loss as explained below.

*No Statutory Bars to Recovery*

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants' recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover

the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimants reside in the home that is the subject of the claim or do not own more than three dwellings. *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 Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

*Claimants Reasonably Understood Contract with Respondent to Include Roof Replacement*

In this case, there is no dispute that the roof installed on the Claimants' home leaks and therefore constitutes an unworkmanlike, inadequate, or incomplete home improvement. Indeed, an adjuster's inspection of the roof at the Claimants' insurer's direction found improper installation of both the front and back slopes of the roof, and the insurer denied the claim upon concluding that the leak was not caused by any casualty.

Instead, the central question here is whether the faulty roofing work can be considered an act or omission by the Respondent. Though the evidence demonstrates the involvement of several entities for various reasons and incentives, and a complex relationship among them to accomplish the solar panel project at the Claimants' home, of central importance is the language of the agreement between the Respondent and the Claimants.

The May 22, 2017 proposal prepared by Mr. Garton stated that roof repair was not included in the scope of work. Clmt. Ex. 1, p. 9. And the Contract made clear that it did not include "structural or roof repair or reinforcement." Clmt. Ex. 1, p. 10. However, the Contract, by its own terms, contemplated amendments to the Contract if additional work were required to address latent or unanticipated conditions, including reinforcement or repair of the roof to support the installation of solar panels. The Contract further explained that "[i]f it becomes apparent after Contract signing and acceptance that structural repair . . . or any additional work

required to make the structure suitable for installing solar, Owner will be promptly notified of the additional cost thereof and the Contract Price adjusted accordingly." Clmt. Ex. 1, p. 12. To effectuate these and other changes, the Contract specifically required that "this Contract may not be amended without the written consent of both parties in the form of a document titled 'Amendment to the Terms and Conditions of Your Contract' or a change order on Contractor Letterhead." Clmt. Ex. 1, p. 14.

Here, the Claimants and the Respondents executed, in writing and on the Respondent's letterhead, two change orders that served as amendments to the Contract. The first change order was executed on the same day as the Contract and stated: **"The Contract is hereby revised by the following terms:** Roof replacement per roofing contract." The change order description provided was "Roof replacement." The change order stated that "[t]he Contract Value will be changed by this Change Order in the amount of $13,500.00." Adding this amount to the original Contract price of $38,570.00, the change order stated that "[t]he new Contract value including this Change Order will be $52,070." Clmt. Ex. 2.

No separate roofing contract was provided to or executed by the Claimants. The only additional information provided to the Claimants about the roof replacement was from Mr. Garton, who sent a text message to the Claimant three days prior advising her that "the guys said that whole roof and the 5 inch gutters around the whole house is around $13500 . . . ." Mr. Garton further explained that "[w]e can tie in the roof and gutter work with the solar project to take advantage of the tax credit." Clmt. Ex. 3.

Based on this record, it was reasonable for the Claimants to understand that their Contract with the Respondent had been amended to include the roof replacement. That another contractor had been secured to replace the roof was unknown to the Claimants and does not preclude their

ability to recover from the Fund.[4] The Claimants had no agreement with EGR. In fact, the Claimant testified that she only learned of the involvement of EGR years later when the roof began to leak and she reached out to communicate her concerns to the Respondent.

On May 31, 2017, the Claimants and the Respondents executed a second change order, which appears on letterhead identical to the first change order. Like the first change order, the second change order stated: "**The Contract is hereby revised by the following terms:** Addition of 1 solar panel for a total of 39 panels." The second change order stated that "[t]he Contract Value will be changed by this Change Order in the amount of $1,015.00." Adding this amount to the Contract price of $52,070, which reflected the increase resulting from the first change order for the roof replacement, the second change order stated that "[t]he new Contract value including this Change Order will be $53,085." Clmt. Ex. 2.

The Respondent does not dispute that the second change order was for work that the Respondent performed. Both the first and second change orders were communicated in identical fashions to the Claimants and complied in form with the terms of the Contract's amendment requirements. Accordingly, the Claimants reasonably understood that the Respondent would be performing the work under the terms of the Contract as amended by the two change orders.

Further, all payments for the roofing work performed were made to the Respondent. The Claimants obtained a loan from GreenSky in part to finance the roof replacement and all proceeds were paid to the Respondent. The Respondent also provided one invoice showing payments from the Claimants to the Respondent for installation of the solar panels in the amount of $39,585.00 and replacement of the roof in the amount of $13,500.00. The Respondent acknowledged receiving the funds from GreenSky and remitting payment to EGR for the roofing

[4] Even in subcontractor arrangements, the Business Regulation Article is clear that "[f]or purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists." Bus. Reg. § 8-405(b) (Supp. 2023).

work. The Respondent explained that this was done to facilitate the Claimants' ability to claim the solar panel installation and roofing replacement along with the new windows as an energy tax credit on the belief that the Respondent was considered a participating merchant or provider by GreenSky while EGR was not.

Notwithstanding any such arrangements to assist the Claimants in claiming a larger solar energy tax credit, this record supports a conclusion that the Claimants reasonably understood that they had contracted with the Respondent to replace the roof of their home and install solar panels. To finance that work, the Claimants secured loans, the proceeds of which were paid directly to the Respondent. And upon completion of the work, the Claimants received from the Respondent an invoice showing that they paid the Respondent for the solar installation and roof replacement.

For these reasons, I conclude that the faulty roof replacement resulted from an act or omission of the Respondent.

*Claimants Did Not Reject Good Faith Efforts to Resolve the Claim*

This record does not support a conclusion that the Claimants unreasonably rejected good faith efforts by the Respondent to resolve the Claim. Bus. Reg. § 8-405(d) (Supp. 2023). After the Claimants reached out to the Respondent regarding the leak in the roof, the Respondent sent his employees to inspect the roof of the Claimants' home. The Claimants initially did not permit the Respondent's employees to inspect the roof, citing that the Respondent did not have prior authorization to do so and requesting additional information before allowing the Respondent's employees on the roof. The Claimant testified that during the initial roof demolition and installation in June 2017, she returned home to find debris surrounding her home and landscaping destroyed. Therefore, when the Respondent's crew arrived unannounced to investigate the leak, she reasonably declined to permit them on the roof until she could get more information from the Respondent. Thereafter, the Respondent indicated that he was not

responsible for the roof installation and made no further efforts to resolve the Claim.

For the reasons stated above, I conclude that the Claimants are eligible for compensation from the Fund.

*Amount of Actual Loss*

Having found eligibility for compensation, I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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). Depending on the status of the contract work, the MHIC's regulations provide the following three formulas to measure a claimant's actual loss:

> (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 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).

The Respondent performed work under the Contract and the Claimants intend to retain another contractor to complete or remedy that work. However, the proposal provided by Semper Fi Exteriors for $29,289.68 is to entirely remove the existing roof and install a new roof on the Claimants' home. The evidence indicates that the leak is in one area of the roof and that water entered the ceiling in the guest room of the Claimants' home. The Claimant testified that the

roof of her home continues to leak where the roof attaches to the chimney column, which is also the area covered by a tarp. The Claimant indicated that she would be unsatisfied with a patch job, but the evidence does not suggest that a full roof replacement would be required to repair the poor roofing work. As the Claimants did not offer an estimate for what it would cost another contractor to repair the roof leak, I am unable to calculate the Claimants' actual loss under the third formula. Because the first and second formulas do not apply here, it is more appropriate to measure the Claimants' actual loss under a unique measurement. *See* COMAR 09.08.03.03B(3). Accordingly, an appropriate measure of the Claimants' actual loss is the $13,500.00 the Claimants paid the Respondent under the first change order for the roofing work.

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.[5] Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimants' actual loss is less than the amount paid to the Respondent and less than $30,000.00. Therefore, the Claimants are entitled to recover their actual loss of $13,500.00.

## PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of $13,500.00 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 Claimants are entitled to recover that amount from the Fund. COMAR 09.08.03.03B(4).

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[5] 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 Claimants $13,500.00; 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;[6] and

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

December 26, 2023
Date Decision Issued

*Dania Ayoubi*
Dania Ayoubi
Administrative Law Judge

DLA/ckc
#208700

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

## PROPOSED ORDER

***WHEREFORE, this 13th 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***