

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SHANNA BAILEY,</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</p> <p>EFRAIN CONTRERAS,</p> <p>T/A G.E.A. CONTRUCTION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER M. CARTER JONES,</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-02-22-06436</p> <p>* MHIC No.: 21 (75) 417</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 or about October 21, 2021, Shanna Bailey (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (DOL) for reimbursement of \$20,000.00 in alleged actual losses suffered as a result of a home improvement contract with Efrain Contreras, T/A

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the information is both reliable and up-to-date.

The third part of the document focuses on the results of the analysis. It shows that there is a clear trend in the data, which suggests that the current strategy is effective. However, there are some areas where improvement is needed, particularly in terms of efficiency and cost reduction.

Finally, the document concludes with a series of recommendations for future action. These include implementing new software tools, training staff on best practices, and conducting regular audits to ensure ongoing compliance and accuracy.

The following table provides a summary of the key findings from the analysis. It shows the percentage change in various metrics over the specified period.

Metric	Start Date	End Date	Percentage Change
Revenue	2023-01-01	2023-06-30	+15.2%
Expenses	2023-01-01	2023-06-30	+8.7%
Profit Margin	2023-01-01	2023-06-30	+6.5%
Customer Satisfaction	2023-01-01	2023-06-30	+3.1%

Based on the data presented in the table, it is evident that the company has achieved significant growth in revenue and profit margin over the six-month period. This is a positive indicator of the company's overall performance.

However, the increase in expenses is a concern, as it suggests that the company is spending more on operations than it is generating in revenue. This could be due to a variety of factors, such as increased marketing costs or higher wages.

The improvement in customer satisfaction is also a positive sign, as it indicates that the company is providing a better quality of service to its clients. This is essential for long-term success in a competitive market.

G.E.A. Construction, LLC (Respondent).¹ On March 7, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 2, 2022, I held a hearing at the OAH in Hunt Valley, Maryland.² Andrew Brouwer, DOL Assistant Attorney General, represented the Fund. The Claimant represented herself. The Respondent failed to appear for the hearing.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice.³ On March 25, 2022, the OAH mailed, by first-class and certified mail, a Notice of Hearing (Notice) to the Respondent at his address of record with the MHIC on Sudbrook Lane, in Pikesville, MD and to an alternative address for the Respondent on Gwynnwest Road in Reisterstown, Maryland.⁴ The Notice stated that a hearing was scheduled for 9:30 a.m. at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service (USPS) returned as unclaimed both Notices mailed by certified mail to the OAH. The USPS also returned the Notice it mailed by first-class mail to the Sudbrook Lane address as undeliverable. The USPS the did not return the Notice mailed by first-class mail to the Gwynnwest Road address. The Respondent did not notify the OAH of any change of mailing address.⁵ The Respondent made no request for postponement prior to the date

¹ Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² Bus. Reg. §§ 8-407(a), 8-312.

³ COMAR 28.02.01.23A.

⁴ COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).

⁵ COMAR 28.02.01.03E.

And the first thing I did was to write a letter to the

little girl who had written to me about her

and I told her how much I enjoyed her letter

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of the hearing.⁶ I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.

The contested case provisions of the Administrative Procedure Act, the DOL's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case.⁷

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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

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|-------|---|
| CL #1 | Contract between the Claimant, Renard Bailey, and the Respondent dated August 3, 2020 (Contract) |
| CL #2 | Copy of the Claimant's Bank of America statement for the period of July 25 through August 24, 2020, and copy of the Claimant's Bank of America statement for the period of August 22 through September 22, 2020 |
| CL #3 | Photographs, taken in late October 2020:

A. Upper portion of the front of the Claimant's home;
B. Lower portion of the Claimant's home, including the porch;
C. Debris outside of the Claimant's home;
D. Tree stump and debris outside of the Claimant's home;
E. Debris and rebar outside of the Claimant's home; and
F. Gravel and air conditioning unit outside of the Claimant's home; |
| CL #4 | Estimate from Hammer Home Improvement, dated September 7, 2021 ⁸ |

⁶ COMAR 28.02.01.16.

⁷ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

⁸ During the hearing, I erroneously marked this document as CL #3.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. It is essential to ensure that all entries are supported by proper documentation and receipts.

3. Regular audits should be conducted to verify the accuracy of the records and identify any discrepancies.

4. The second part of the document outlines the procedures for handling cash and credit transactions.

5. All cash receipts should be recorded immediately and deposited in a secure bank account.

6. Credit sales should be recorded at the time of sale, and the amount should be tracked until payment is received.

7. The third part of the document provides guidelines for managing inventory and stock levels.

8. Inventory should be counted regularly to ensure that the records match the actual physical stock.

9. The final part of the document discusses the importance of maintaining confidentiality and security of the financial data.

I admitted the following exhibits on behalf of the Fund:

- Fund #1 DOL Hearing Order, dated March 2, 2022
- Fund #2 Copy of the OAH Notice, dated March 25, 2022
- Fund #3 Letter from the MHIC to the Respondent, dated November 10, 2021 and copy of the Claim, received by the MHIC on December 21, 2021
- Fund #4 The Respondent's licensing history with the MHIC, printed on April 26, 2022

The Respondent did not appear for the hearing and therefore, he did not submit any exhibits for admission into the record.

Testimony

The Claimant testified and presented the testimony of her husband, Renard Bailey (Mr. Bailey).

No one appeared to testify on behalf of the Respondent.

The Fund presented no witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC personal license number 117294 and corporate license number 05-136510.

2. On August 3, 2020, the Claimant entered the Contract with the Respondent for the Respondent to construct a rear deck with the following attributes:

- 6 x 6 columns;
- Handrails;
- Deck boards;
- Concrete footers;
- Column steel base;
- Solid stain;
- Dark screws;

1. The first part of the document is a list of names.

2. The second part is a list of dates.

3. The third part is a list of locations.

4. The fourth part is a list of events.

5. The fifth part is a list of people.

6. The sixth part is a list of organizations.

7. The seventh part is a list of activities.

8. The eighth part is a list of places.

9. The ninth part is a list of things.

10. The tenth part is a list of people.

11. The eleventh part is a list of organizations.

12. The twelfth part is a list of activities.

13. The thirteenth part is a list of places.

14. The fourteenth part is a list of things.

15. The fifteenth part is a list of people.

16. The sixteenth part is a list of organizations.

17. The seventeenth part is a list of activities.

18. The eighteenth part is a list of places.

19. The nineteenth part is a list of things.

20. The twentieth part is a list of people.

3. The scope of work under the Contract also included removing and replacing steps that led from the Claimant's home to the backyard/deck, removing bushes and ivy, removing a tree, adding a privacy fence, installing a cement parking pad in the back yard, and removing and replacing stairs from the parking pad to the backyard.
4. On August 26, 2020, the Claimant and the Respondent entered into an agreement to expand the scope of work under the Contract to include repairing the Claimant's front roof.
5. The Respondent advised the Claimant that the work outlined in the Contract would be completed within two weeks.
6. The agreed-upon price for the work specified in the Contract was \$8,480.00 (\$6,800.00 for the rear vegetation removal, parking pad, deck and stairs; 1,680.00 for the front roof work).
7. On August 17, 2020, the Claimant paid the Respondent a deposit of \$2,968.00 and paid the Respondent an additional \$3,976.00 on August 28, 2020, for a total of \$6,944.00.
8. The Respondent promptly began work on the home improvements specified in the Contract. Specifically, in the rear of the house, he removed the existing stairs from the parking pad to the deck and he removed bushes, ivy, and a large tree, without removing the tree stump.
9. In the front of the house, the Respondent removed terra cotta shingles from the front roof and replaced them with slate shingles, he replaced the columns on the front porch which supported the porch roof.
10. After approximately one week, the Respondent worked on the Claimant's home sporadically; approximately once or twice per week.
11. Mr. Bailey consistently called the Respondent to learn when the Respondent would complete the work under the Contract.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the various methods used to collect and analyze data. It describes the use of statistical techniques to identify trends and anomalies in the data, and the importance of using reliable sources of information.

3. The third part of the document discusses the role of the auditor in the process. It explains that the auditor's primary responsibility is to provide an independent and objective assessment of the financial statements. This involves a thorough review of the records and a comparison of the results with the applicable accounting standards.

4. The fourth part of the document discusses the importance of transparency and accountability in the financial system. It argues that the public has a right to know how their money is being spent, and that this information should be made available in a clear and accessible format.

5. The fifth part of the document discusses the role of the government in the financial system. It explains that the government has a responsibility to ensure that the financial system is fair and efficient, and that it should take steps to prevent and punish any wrongdoing.

6. The sixth part of the document discusses the role of the courts in the financial system. It explains that the courts have a responsibility to enforce the law and to provide a fair and impartial forum for the resolution of disputes. This involves a thorough review of the evidence and a fair and impartial judgment.

7. The seventh part of the document discusses the role of the media in the financial system. It explains that the media has a responsibility to provide accurate and unbiased information to the public, and to hold those in power accountable for their actions. This involves a thorough investigation of the facts and a fair and impartial report.

8. The eighth part of the document discusses the role of the public in the financial system. It explains that the public has a responsibility to be informed and to participate in the decision-making process. This involves staying up-to-date on the latest news and developments, and expressing one's views to those in power.

9. The ninth part of the document discusses the role of the private sector in the financial system. It explains that the private sector has a responsibility to operate in a fair and ethical manner, and to contribute to the overall well-being of the community. This involves following the law and the principles of good business practice.

10. The tenth part of the document discusses the role of the international community in the financial system. It explains that the international community has a responsibility to work together to address global financial issues, and to promote a fair and equitable global financial system. This involves cooperation and coordination between all countries.

12. Eventually, Mr. Bailey spoke with someone named "Junior,"⁹ who worked with the Respondent.

13. Approximately two months after the Claimant and the Respondent entered into the Contract, Efrain Contreras' son Frank Contreras "Junior," advised Mr. Bailey that the Respondent had underbid the project and the Respondent did not have enough money to complete the work.

14. The Respondent returned to the property in October 2020 and prepared the rear parking pad area for the pouring of concrete and installed fence posts. The Respondent never poured the concrete for the parking pad.

15. The Claimant never returned to finish the installation of the parking pad, the deck, the stairs between the deck and the back door to the home, the fence, or the stairs from the deck to the parking pad.

16. The Claimant left significant debris at the Claimant's home, including rebar, trash and large pieces of construction material.

17. The Claimant had to pay someone to remove the debris and construction materials.

18. The Respondent did not return to the Claimant's property after October 2020.

19. On or about September 7, 2021, the Claimant obtained an estimate from Hammer Home Improvement (Hammer) to complete the work under the Contract related only to the back of the home. Hammer estimated that it would cost \$24,200.00 to install a new cement parking pad, build a deck, install a landing and stairs from the deck to the parking pad, install steps to the back door, and install a privacy fence.

⁹ According to Mr. Bailey, Frank Contreras referred to himself as "Junior."

20. The Claimants have not been able to pay another contractor to finish the deck, parking pad, and stairway work specified in the Contract.

21. Currently, the Claimants do not have stairs leading from the back of their home to the backyard. They also do not have stairs leading from the back yard to the parking pad.

22. The Respondent did not refund any money to the Claimant.

DISCUSSION

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence.¹⁰ “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.”¹¹

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”¹² Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹³ For the following reasons, I find that the Claimant has proven eligibility for compensation.

Based on the unrefuted evidence, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant paid the Respondent \$6,944.00 of the \$8,480.00 contract price to remove vegetation, install a parking pad, deck and stairs in the back of the Claimant’s house, and to repair the roof on the front of the Claimant’s house.

¹⁰ Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov’t § 10-217 (2021); COMAR 09.08.03.03A(3); COMAR 28.02.01.21K(1).

¹¹ *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

¹² Md. Code Ann., 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.”).

¹³ Md. Code Ann., Bus. Reg. § 8-401.

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According to the Claimant, the Respondent initially started working diligently on completing the projects enumerated in the Contract, but after about one week, the work slowed to the extent that the Respondent's workers only came to the property once or twice per week. Mr. Bailey testified that he consistently called the Respondent, and those calls often went to the Respondent's voicemail. According to Mr. Bailey, eventually the Respondent's son, Junior, advised Mr. Bailey that the Respondent had underbid the project and it was going to cost more money than specified in the Contract to complete the work. Mr. Bailey testified that he did not offer any more money to the Respondent and except for preparing the parking pad areas for concrete and installing a few fence posts in October 2020, the Respondent stopped working on the contracted-for home improvements.

The Claimant testified that she was very concerned once the Respondent stopped working because he had removed the stairs from her back door to the backyard; therefore, they did not have any point of egress other than the front door. The Claimant testified that she is afraid that if there is an emergency, she and Mr. Bailey might be exposed to harm. Furthermore, the Claimant testified that her central air conditioning needs repair; however, a repairperson cannot address the problem because without stairs from the back door to the back yard or stairs from the parking pad area to the backyard, a repairperson cannot access the air conditioning condenser located in the backyard.

Ultimately, the Claimant and Mr. Bailey testified that they tried to obtain estimates from other contractors, but most refused to give them a written estimate because as they could not guarantee the quality of the Respondent's work, they did not want to get involved in completing it. The Claimant and Mr. Bailey testified that two contractors gave them verbal estimates of \$23,000.00 and \$27,000.00 to complete the work in the back of the house. Hammer was the only

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The document also highlights the need for transparency and accountability in all financial dealings.

The second part of the document focuses on the role of the auditor in ensuring the accuracy and reliability of financial statements. It outlines the various procedures and techniques used by auditors to verify the information provided by management. This includes testing of transactions, confirmation of balances, and analytical procedures. The document stresses that auditors must maintain independence and objectivity throughout the audit process.

The third part of the document addresses the challenges faced by auditors in a complex and rapidly changing business environment. It discusses the impact of new technologies, such as data analytics and artificial intelligence, on the audit process. It also highlights the need for auditors to stay current in their knowledge and skills to effectively address these challenges.

The final part of the document provides a summary of the key points discussed and offers recommendations for improving the effectiveness of the audit process. It emphasizes the importance of a strong audit culture and the need for ongoing education and training for auditors. The document concludes by stating that a robust and transparent financial system is essential for the success of any organization.

contractor to give them a written estimate and Hammer estimated it would cost \$24,000.00 to complete the deck, stairs, parking pad, and fence installation in the back of the Claimant's home.

I conclude that although the Respondent began work under the Contract, he failed to complete that work. I further conclude that the Claimant has provided evidence, in the form of the Estimate from Hammer, that it will cost them an additional \$24,200.00 to complete the deck, parking pad, stairs, and fence installation. Accordingly, the Claimant has experienced an actual loss in the difference between the amount she will required to pay a contractor to finish the work and the amount she paid the Respondent under the Contract.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed work under the Contract, and the Claimant has retained or will retain another contractor to complete or remedy that work. Accordingly, the following regulatory formula measures the Claimants' 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.¹⁴

The calculation is as follows:

\$6,944.00	paid to the Respondent under the Contract
<u>+\$24,200.00</u>	payable to repair or complete the home improvements
\$31,144.00	
<u>- \$8,480.00</u>	(original Contract price)
\$22,664.00	

¹⁴ COMAR 09.08.03.03B(3)(c).

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice to ensure transparency and accountability.

2. The second section outlines the procedures for handling discrepancies between the recorded amounts and the actual cash flow. It suggests a systematic approach to identify the source of the error and correct it promptly to avoid any financial misstatements.

3. The third part of the document addresses the role of internal controls in preventing fraud and misappropriation of assets. It highlights the need for a strong internal control system that includes segregation of duties, regular audits, and a clear reporting structure.

4. The fourth section discusses the importance of maintaining up-to-date financial statements. It notes that these statements are essential for providing a clear picture of the organization's financial health to management and external stakeholders.

5. The fifth part of the document focuses on the importance of accurate budgeting and forecasting. It explains how a well-defined budget can help in planning and controlling the organization's resources effectively.

6. The sixth section covers the importance of maintaining accurate records of all assets and liabilities. It stresses that this information is crucial for determining the organization's net worth and for compliance with regulatory requirements.

7. The seventh part of the document discusses the importance of maintaining accurate records of all income and expenses. It notes that this information is essential for calculating the organization's profit and for determining its tax liability.

8. The eighth section outlines the procedures for handling the organization's cash flow. It suggests a systematic approach to manage cash inflows and outflows, ensuring that the organization has sufficient funds to meet its obligations.

9. The ninth part of the document addresses the importance of maintaining accurate records of all investments and capital expenditures. It notes that this information is essential for determining the organization's return on investment and for making informed decisions about future investments.

10. The tenth and final section of the document discusses the importance of maintaining accurate records of all other financial transactions. It notes that this information is essential for providing a complete and accurate picture of the organization's financial performance.

In conclusion, the document emphasizes that maintaining accurate financial records is a critical responsibility for any organization. It provides a comprehensive overview of the various aspects of financial record-keeping and offers practical advice on how to ensure the accuracy and reliability of the data.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor.¹⁵ However, pursuant to COMAR 09.08.03.0B(4), "[t]he Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." In this case, the Claimant paid the Respondent \$6,944.00 under the Contract; accordingly, her actual loss compensable by the MHIC Fund is limited to that amount. Therefore, the Claimant is entitled to recover her actual loss of \$6,944.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$6,944.00. as a result of the Respondent's acts or omissions.¹⁶ I further conclude that the Claimants are entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Commission Guaranty Fund award the Claimants \$6,944.00; and

I **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;¹⁷ and

¹⁵ H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, 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").

¹⁶ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).

¹⁷ *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

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

July 21, 2022
Date Decision Issued



Jennifer M. Carter Jones
Administrative Law Judge

JCJ/emh
#199749

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PROPOSED ORDER

WHEREFORE, this 16th day of September, 2022, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

STATE OF TEXAS

County of ... State of Texas

Know all men by these presents...

That I, the undersigned...

Witness my hand and seal...

This 1st day of...

at the City of...

19...