

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MATTHEW DALY,</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 DAVID MARROCCO,</p> <p>T/A MARROCCOS STAMPED</p> <p>CONCRETE, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE EDWARD J. KELLEY,</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-02-22-08913</p> <p>* MHIC No.: 22 (75) 326</p> <p>* </p>
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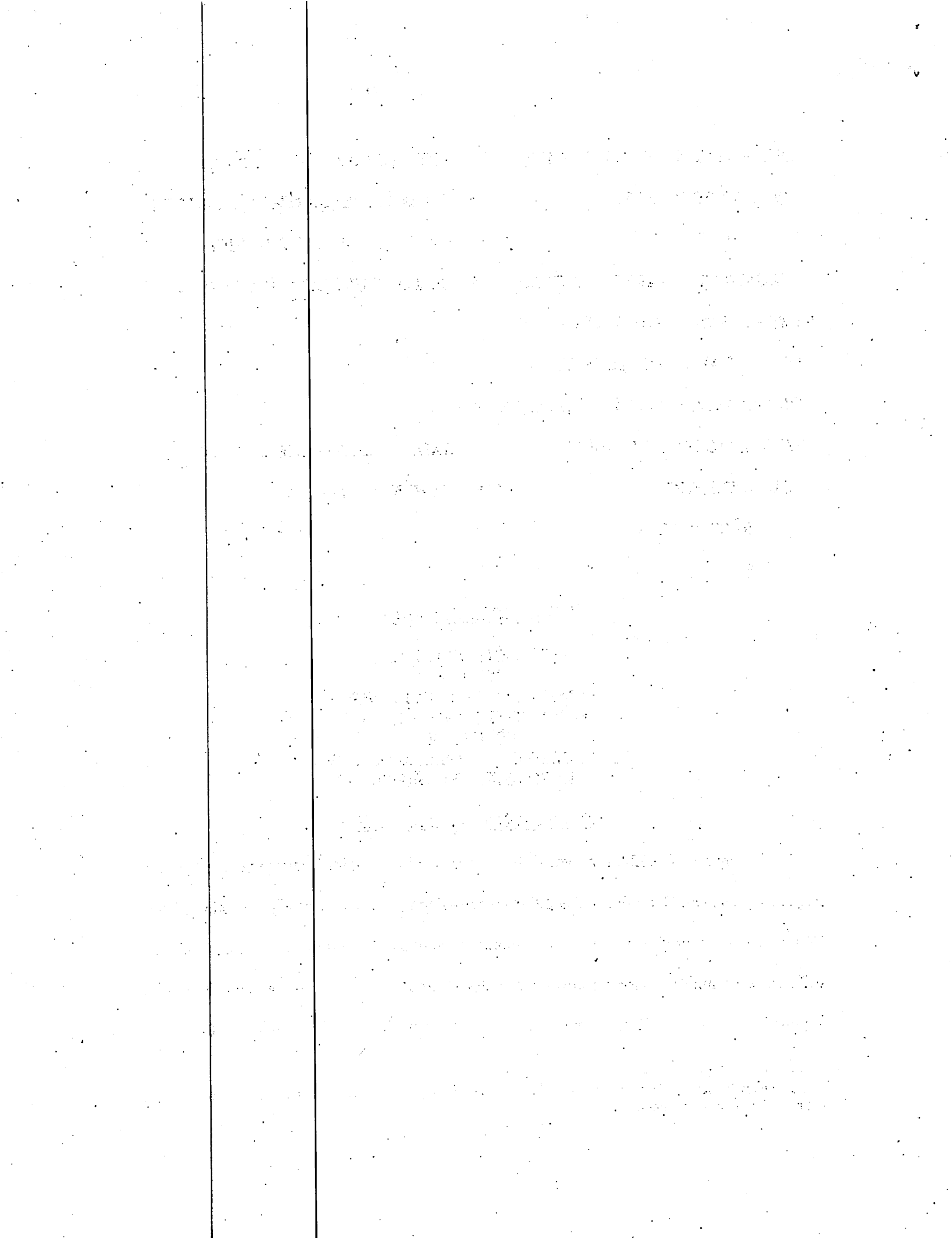
PROPOSED DECISION

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STATEMENT OF THE CASE

On January 10, 2022, Matthew Daly (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 \$11,205.00 for actual losses allegedly suffered as a result of a home improvement contract with David Marrocco, trading as Marroccos Stamped Concrete, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹

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



On April 15, 2022, the MHIC issued a Hearing Order on the Claim. On April 18, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 16, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Justin Dunbar, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent did not appear.

After waiting over 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On April 21, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first-class mail and certified mail to the Respondent's address on record with the OAH and the MHIC. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 16, 2021, at 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."

As of the date of the hearing, the United States Postal Service did not return the Notice to the OAH or state that the mail was undeliverable as addressed.² The Respondent did not notify the OAH of any change of mailing address, and the Fund's exhibits confirmed that the mail was sent to the correct address of record with the MHIC. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

² Following the hearing, the Notice sent by certified mail to the address of record was returned to the OAH as "unclaimed."

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 received. It states that any such variance must be investigated immediately and reported to the appropriate authority.

3. The third part of the document details the process of reconciling the accounts at the end of each month. It requires that the total amount recorded in the books must match the total amount shown on the bank statements.

4. The fourth section discusses the role of the internal audit department in monitoring the financial records. It notes that the audit team should conduct regular reviews to identify any potential areas of concern or fraud.

5. The fifth part of the document describes the process of preparing the annual financial statements. It requires that all transactions for the year be properly classified and summarized in a clear and concise manner.

6. The sixth section outlines the requirements for the external audit. It states that the external auditors should be independent and qualified to provide an objective opinion on the financial statements.

7. The seventh part of the document discusses the importance of maintaining the confidentiality of financial information. It requires that all records be stored securely and access be restricted to authorized personnel only.

8. The eighth section outlines the process of archiving financial records. It requires that all records be retained for a minimum of seven years to comply with legal requirements.

9. The ninth part of the document discusses the process of disposing of old records. It requires that records be properly destroyed and the disposal process documented.

10. The tenth and final section of the document discusses the importance of ongoing training and education for all staff involved in financial record keeping. It requires that staff receive regular updates on the latest accounting practices and regulations.

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); 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 acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1: Contract between the Claimant and the Respondent, June 12, 2020
- Clmt. Ex. 2: Proof of payments from the Claimant to the Respondent, June 30, November 16, and December 23, 2020
- Clmt. Ex. 3: Seven pictures of Project as of December 23, 2020.
- Clmt. Ex. 4: Text exchanges between the Claimant and the Respondent, April 12 - July 7, 2021
- Clmt. Ex. 5: Text exchanges between the Claimant and Richard Shermer, October 16, 2020 - June 30, 2021
- Clmt. Ex. 6: \$21,000.00 Estimate, LandEscapes, LLC, undated
- Clmt. Ex. 7: \$1,800.00 Estimate, LandEscapes, LLC, undated
- Clmt. Ex. 8: Proof of payments from the Claimant to LandEscapes, LLC, December 23 and 28, 2021

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

- Fund Ex. 1 - Notice of Hearing, dated April 21, 2022
- Fund Ex. 2 - Hearing Order, dated April 15, 2022

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Fund Ex. 3 - Letter from the MHIC to Respondent, dated January 31, 2022, and Home Improvement Claim Form, received January 10, 2022

Fund Ex. 4 - Respondent's MHIC licensing history, dated June 1, 2022

Testimony

The Claimant testified and did not present other witnesses. The Fund did not present any witnesses. The Respondent did not appear at the hearing.

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 01-47709.

2. On June 12, 2020, the Claimant and the Respondent entered into a contract (Contract) for the installation of a 10' X 20' stamped concrete patio, which included a concrete wall and a fire pit, at the Claimant's residence (Project).

3. The original agreed-upon Contract price for the Project was \$12,450.00.

4. The Contract did not identify a start date or a completion date for the Project.

5. The Contract provided the following payment schedule:

Project Start	\$3,735.00
Excavation	\$3,735.00
Pour Concrete	\$3,735.00
Project Completion	\$1,245.00

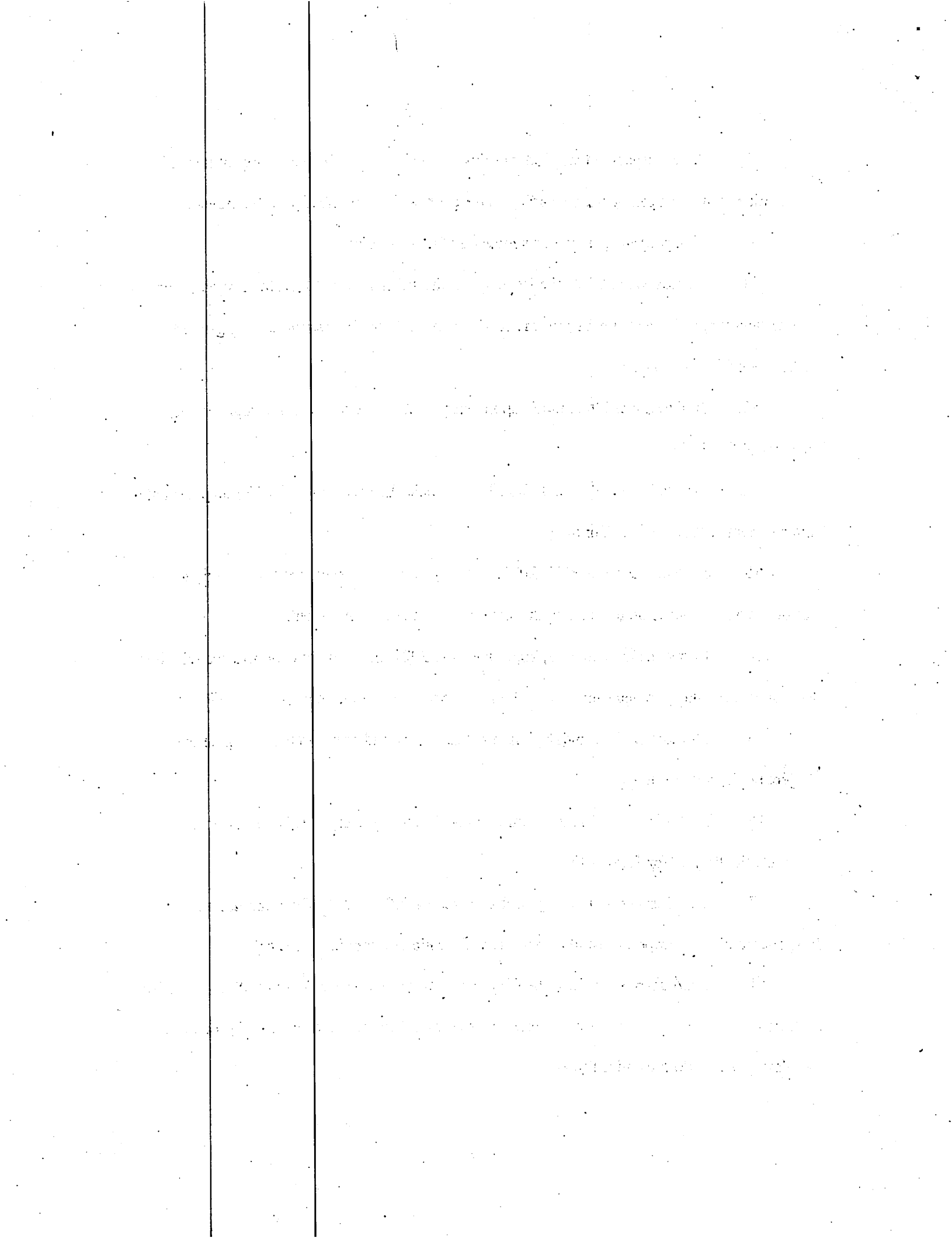
6. The Respondent initially began work on the Project in June 2020.

7. The Claimant paid the Respondent \$3,735.00 on June 30, 2020, pursuant to the payment schedule of the Contract.

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8. The Respondent stopped working on the Project in June 2020 when it was determined that a propane gas line leading to the proposed fire pit needed to be moved.
9. The propane gas line was moved in October 2020.
10. In November 2020, the Respondent did substantial work on the Project, including the excavation, and the Claimant paid the Respondent \$3,735.00 pursuant to the payment schedule of the Contract.
11. In December 2020, the Respondent poured the concrete and completed ninety percent of the Project.
12. On December 23, 2020, the Claimant paid the Respondent \$3,735.00 pursuant to the payment schedule of the Contract.
13. Between December 23, 2020, and July 2021, the Respondent only came to the residence on one occasion to clean up the site and gather some equipment.
14. Between December 23, 2020, and July 2021, the Claimant communicated with the Respondent regularly to determine when the Respondent was going to complete the Project.
15. The Respondent told the Claimant that he would return to complete the Project but he did not do so.
16. In November 2021, the Claimant hired LandEscapes, LLC (LandEscapes), to complete the Project for \$1,800.00.
17. After inspecting the Project, LandEscapes informed the Claimant that the Respondent did not properly install a concrete wall, which destabilized the Project.
18. LandEscapes provided the Claimant with an estimate of \$21,000.00 to demolish the existing concrete wall and install a new concrete wall. This estimate essentially required LandEscapes to redo the entire Project.



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 Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1).

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

SECRET

The following information was obtained from a review of the files of the [redacted] and is being furnished to you for your information. It is to be understood that this information is being furnished to you on a confidential basis and is not to be disseminated outside of your office.

[The remainder of the text is extremely faint and illegible due to the quality of the scan.]

Very truly yours,
[Signature]

The Claimant testified that the Respondent abandoned the Project after it was ninety percent completed. The Claimant's evidence included pictures which showed the status of the Project as of December 23, 2021, the last day the Respondent did any work on the Project. The pictures combined with the Claimant's credible testimony confirms that the Project was substantially completed by the Respondent, but not completed to the terms of the Contract. The Claimant testified credibly that he made substantial efforts over several months to have the Respondent return and complete the Project, but the Respondent never returned to complete the Project and eventually stopped communicating with the Claimant altogether.

The Claimant stated that in November 2021, LandEscapes evaluated the Project and provided two estimates. The first estimate was for \$1,800.00, and this was to complete the Project to the Contract's specifications. The second estimate was for \$21,000.00 and this was to demolish and redo the Project to the Contract's specifications. According to the Claimant, LandEscapes determined that the Respondent did not properly install a concrete wall, which compromised the entire Project and required the Project to be completely redone. The Claimant testified that he entered into a contract with LandEscapes to complete the Project for \$1,800.00, but he would like to have LandEscapes redo the Project if he could afford to do so.

The credible and uncontradicted evidence presented at the hearing established that the Respondent performed an incomplete home improvement by failing to finish the Project to the specifications of the Contract. Based on the evidence presented, the Fund took the position that the Claimant was eligible for compensation from the Fund. Based upon the evidence presented, I agree and 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). 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 has retained other contractors to complete or remedy that work. Accordingly, as the Fund indicated, 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).

Using this formula, the Fund's counsel calculated the Claimant's actual loss as \$19,755.00, which is the sum total of the amount the Claimant paid to the Respondent, \$11,205.00, plus the amount the Claimant would be required to spend to completely redo the project, \$21,000.00, minus the amount of the original contract, \$12,450.00.³ The Fund recommended an award of \$11,205.00, which is the amount the Claimant paid to the Respondent. I find that this is not the proper award based on the evidence presented.

³ \$11,205.00 + \$21,000.00 - \$12,450.00 = \$19,755.00.

The Claimant established by a preponderance of the evidence that the Respondent completed ninety percent of the Project and that LandEscapes was able to complete the Project to the Contract specifications for \$1,800.00. I do not find LandEscapes' \$21,000.00 estimate and the Claimant's testimony sufficient to show that a total reconstruction of the Project is necessary. There was no expert testimony presented regarding a structural defect to the concrete wall or how this purported defect, or any other defect, destabilized the Project. To the contrary, the pictures of the Project are consistent with the Project being close to completion, and the Claimant apparently has full use of the Project after LandEscapes completed it for \$1,800.00. The fact that LandEscapes agreed to complete the Project indicates that the Project was in sufficient condition to be finished. Based on the evidence presented, I calculate the Claimant's actual loss as the amount he paid the Respondent, \$11,205.00, plus the amount the Respondent paid LandEscapes to complete the Project, \$1,800.00, less the Contract price, \$12,450.00, which equals \$555.00.⁴

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 In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$555.00.

⁴ \$11,205.00 + \$1,800.00 = \$13,005.00.

\$13,005.00 - \$12,450.00 = \$555.00

⁵ 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").

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$555.00 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 that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$555.00; 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.



September 1, 2022
Date Decision Issued

Edward J. Kelley
Administrative Law Judge

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

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PROPOSED ORDER

WHEREFORE, this 7th day of October, 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

