

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER L. GRESOCK,
OF ALISON JONES,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF TROY SLIFER,	*
T/A T. & L REAL ESTATE, LLC	* OAH No.: LABOR-HIC-02-22-16711
RESPONDENT	* MHIC No.: 22 (75) 606

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On April 13, 2022, Alison Jones (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 \$8,225.00 for actual losses allegedly suffered as a result of a home improvement contract with Troy Slifer, trading as T & L Real Estate, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>1</sup>

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

On July 1, 2022, the MHIC issued a Hearing Order on the Claim. On July 8, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 17, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant and Respondent were both self-represented.

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); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 Complaint, undated
- Clmt. Ex. 2 Home Improvement Claim Form, dated March 28, 2022
- Clmt. Ex. 3 Photographs, undated
- Clmt. Ex. 4 Invoice from the Respondent, dated November 8, 2021
- Clmt. Ex. 5 Emails from Mike C. Zepp, Bureau Chief, Carroll County Department of Public Works Bureau of Permit and Inspections, to the Claimant, dated November 9, 2021, and November 15, 2021
- Clmt. Ex. 6 Text exchanges between the Claimant and Respondent, undated or with dates illegible

- Clmt. Ex. 7 Email from the Claimant to Mr. Harris (full name not listed), Carroll County government (specific department not identified), dated November 4, 2021
- Clmt. Ex. 8 Carroll County government record of permit and inspection status, print date unavailable
- Clmt. Ex. 9 Emails between the Claimant and Respondent, August 9, 2021 through November 10, 2021
- Clmt. Ex. 10 Emailed appointment reminder from the MHIC to the Claimant, dated November 1, 2021
- Clmt. Ex. 11 Estimate, Top Notch Contracting, dated March 23, 2022

I admitted the following exhibit offered by the Respondent:

- Resp. Ex. 1 Contract, dated August 16, 2021, and executed August 17, 2021

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Letter from the MHIC to the Respondent, dated April 28, 2022, with attached Home Improvement Claim Form (duplicate of Clmt. Ex. 2)
- Fund Ex. 2 Hearing Order, dated July 1, 2022
- Fund Ex. 3 Notice of Hearing, dated July 27, 2022
- Fund Ex. 4 MHIC Registration information for the Respondent, printed November 17, 2022

#### Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund presented the testimony of the Claimant.

#### **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.

2. At all times relevant, the Claimant owned a single-family home in Marriottsville, Maryland. The home had a deck originally built in 1995 or 1996.

3. On August 16, 2021, the Claimant and the Respondent entered into a contract (Contract) to remove and dispose of the existing finishes on her deck, including decking, railings, risers, and rail posts, as well as the stairs to the rear yard. The Respondent would examine the structure of the deck and replace all joist hangers as well as anything else deemed necessary. The Respondent would then replace the finishes using all wood joists at the perimeter, and solid white PVC material for the stair risers and stair stringers. The decking was to be Trex Select in a color selected by the Claimant. Rail posts and the porch post would be covered with white vinyl sleeves, and railings and square balusters would also be white vinyl.<sup>2</sup>

4. The Respondent believed at the time he calculated the cost of the work that a Carroll County building permit would not be required, and he estimated the cost of the job without including the cost of a permit or any modifications that might be required to meet current building code requirements.

5. At the Claimant's request, the Contract nonetheless specified that the Respondent would obtain a permit, with all permit-related costs to be paid by the Claimant, including any work required by the county that was otherwise outside of the scope of the Contract.

6. The original agreed-upon Contract price was \$21,000.00

7. The Contract stated that work would begin within four to six weeks of the date of the Contract and would be completed within ten business days, barring inclement weather or agreed-upon extensions.

8. In September 2021, the Respondent obtained a permit, prior to beginning work.

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<sup>2</sup> For clarity, I note that the finished job included two different sets of steps: two steps to enter the home's exterior door from the deck, and a longer set of steps from the deck to the yard.

9. On October 8, 2021, while the Claimant was out of town, the Respondent began demolition on the Claimant's deck. He began construction on October 14, 2021, and completed the job within five days.

10. When the Claimant returned, she expressed dissatisfaction with the Respondent's work, especially the deck finishing, the white vinyl, the framing style on the stairs from the home's exterior door to the deck, and the stairs from the deck to the backyard.

11. The Respondent removed and replaced the two stairs from the door to the deck at his own cost. The Claimant is satisfied with the replacement stairs.

12. The Claimant paid the Respondent a total of \$18,984.00.

13. The county permits inspector has inspected the deck four times (most recently in November 2021) but initially declined to approve it due to blocking (i.e., mechanical connections/fasteners) that did not meet code requirements and the absence of a graspable handrail. The deck failed the most recent inspection (on November 5, 2021) due only to the absence of the graspable handrail.<sup>3</sup>

14. The Respondent corrected the blocking but has not installed a graspable handrail because the Claimant was unwilling to pay any additional cost for it. The cost of materials for the handrail is \$275.00. The Respondent offered to perform installation free of any charge for labor.

15. The Claimant has not made the final payment due to the Respondent (\$2,016.00).

#### DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). To

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<sup>3</sup> The deck previously failed inspection on October 25, 2021; October 29, 2021; and November 4, 2021.

prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a) (Supp. 2022); *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 not proven eligibility for compensation.

First, I note that there is no dispute that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant.

The Claimant contends that she entered into an agreement, in good faith, to have her deck updated and reconstructed to closely resemble her neighbors’ newly built deck, which she had told the Respondent she admired. Instead, the Respondent built a deck that was aesthetically displeasing to her and that has repeatedly failed county inspection. The Respondent argues that he was upfront with the Claimant about the extravagant cost of her neighbors’ deck, which he had built, and that he and the Claimant had not only discussed and agreed to cost-cutting modifications but memorialized them explicitly and unambiguously in the Contract.

Additionally, while the Respondent conceded that he had wrongly believed that the deck did not require a permit (or inspections), he maintained that the Contract placed all costs associated with the permitting process clearly and squarely on the Claimant, and that the deck failed inspection

only because she was unwilling to pay these costs and in fact had not even paid him in full for the work he performed.

The Claimant testified that she spoke with the Respondent about having her aging, possibly structurally unsound deck reconstructed after she saw the deck he had built for her neighbor. She described herself as overwhelmed by the decision-making required in the selection of materials and construction style, as well as unfamiliar with the terminology used to distinguish different types of decking materials from one another. The Claimant further testified that while she and the Respondent discussed specific colors and materials (such as vinyl), she trusted that he understood the look she wanted and relied on his assurances that he would be able to recreate the appearance of her neighbors' deck.

However, she explained that early on in the process, before they signed the Contract, she and the Respondent disagreed over whether a permit would be required. While the Respondent was confident that no permit was required because he was updating an already-existing structure, the Claimant said that she told him it was important to her that the work be properly permitted, if required, and thus compliant with code requirements. She explained that ultimately, the Respondent agreed to obtain a permit, but that it delayed the start of the project and caused some tension between them.<sup>4</sup>

Another point of tension was the start date for the project. The Claimant testified that she frequently travels to Florida and had sought to have the construction done while she was present. She further stated that she expressed this to the Respondent, but that he insisted he had to do the

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<sup>4</sup> The Claimant implied in her testimony that the Respondent misrepresented the reliability of his conclusion that no permit was needed by telling her he had confirmed with Jason Green, who he said was the county's chief building inspector. The Claimant noted that she later learned that Mr. Green formerly worked in the county office overseeing permits but has not been in that position for several years. The basis for the Respondent's belief that no permit was needed is not an issue before me, and I draw no conclusions regarding his representations to the Claimant on this point. This includes any conclusions as to the Respondent's overall credibility, as nothing in the record suggests that the Respondent deliberately misrepresented Mr. Green's job position to the Claimant.

work when his crew was available, even if she was out of town, which is in fact what happened. The Claimant was not only unhappy that she was not able to observe the performance of the job, but also displeased that her teenaged son would be in the home alone while the work was being done. When the Claimant returned, the job was completed. Only then did she see how different the deck was from what she had envisioned, from the building style (she had wanted the decking arranged in a picture-frame type finish) to the white vinyl posts to the appearance of the two steps at the home's exterior door.

The Claimant discussed her complaints with the Respondent but did not feel he was appropriately receptive or responsive, though he did later replace the two stairs to her satisfaction. In addition to testifying regarding her dissatisfaction with the deck's appearance, the Claimant also stated that the Respondent should have understood that the completion of a rebuilt deck for \$21,000.00 would result in a deck compliant with current county code requirements, without additional charges to her. She explained that, as of the date of the hearing, the deck still had not passed inspection because it lacked a graspable handrail, and that the Respondent would not install the handrail for her without an additional charge for the materials.<sup>5</sup>

Finally, the Claimant testified that she was specifically seeking \$8,225.00 because this was the amount of an estimate from another contractor, Top Notch, to redo the deck in the style she wanted as well as ensure its compliance with building code requirements.

When questioned by counsel for the Fund, the Claimant acknowledged that she had not in fact read the Contract, but merely "glanced at it." She explained that she relied on assurances from the Respondent that her deck would look like her neighbors'.

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<sup>5</sup> I note that the Respondent did not simply fail to install a handrail; the stairs from the deck to the yard in fact have handrails on both sides. However, these handrails do not meet the county code requirements. (Clmt. Ex. 5.)



The Respondent agreed in his testimony that he and the Claimant had discussed her neighbors' new deck, but disagreed as to the outcome of those conversations. The Respondent testified that he explained to her that the neighbors' deck was a particularly extravagant one, and that he understood from her that she did not wish to spend such a large amount of money. Accordingly, he suggested specific modifications to reduce the cost, to which she agreed. He explained that he encouraged her to look at samples in stores and talked with her about differences in building materials and styles, and that he took care to reflect their agreed-upon modifications in the Contract.

The Respondent also acknowledged that he was incorrect about the need for a permit, but noted that the Contract explicitly made all additional costs related to permitting the responsibility of the Claimant. The Respondent emphasized that he was entirely upfront with her about this, in part because at the time the Contract was executed, he did not know exactly what would be required to meet current code requirements, or what the additional costs might be. The Respondent further noted that after the deck failed inspection, he added the required metal strengthening devices required to comply with code requirements and did not charge her for the labor or materials. He also stated that he would be glad to add the graspable handrail and would not charge her for labor costs, but that the Claimant was responsible for purchasing the materials, which she refused to do. Finally, he noted that she had never paid him the final 10% he was due, and that while he had asked her for the payment in November 2021, he ultimately decided not to pursue the matter.

Based on the evidence presented, I am not persuaded that the Claimant has shown that she suffered any monetary loss due to unworkmanlike, inadequate, or incomplete home improvement. The Claimant admitted that after the Respondent completed the work, she had

three specific concerns: the poorly built steps to the exterior door; the aesthetic look of the deck; and the deck's noncompliance with code requirements. She acknowledged that the Respondent later replaced the steps to her satisfaction at his own cost, and that while she did not like the appearance of the finished deck (which lacked the "picture frame" style she wanted), it did conform to the terms of the Contract, which she did not carefully read prior to performance of the Contract. That the Claimant did not like how the deck looked does not establish that the Respondent's work was unworkmanlike, inadequate, or incomplete.<sup>6</sup>

With regard to additional costs needed for the deck to meet county code requirements, the Contract is clear that these costs are the responsibility of the Claimant. While it is understandable that the Claimant might assume it is generally implicit in a home improvement contract that completed work would be code-compliant, the Contract to which she agreed explicitly says that any work completed specifically to meet code requirements would require an additional charge to the Claimant, and the Respondent explained that the basis for this was his desire to limit the scope of any unanticipated work to whatever was strictly necessary. Thus, the cost of the graspable handrail, which is required only to meet code requirements and not because the Claimant wanted the handrail<sup>7</sup> or included it in the Contract, is unambiguously the responsibility of the Claimant; further, the Respondent's refusal to pay for the materials needed for the handrail<sup>8</sup> is consistent

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<sup>6</sup> The Claimant submitted a photograph of the stairs from the deck to the yard and argued that they are "crooked." (Clmt. Ex. 3.) The estimate from Top Notch Contracting includes the following: "Straighten stairs if possible," with a line item of \$2,125.00 for "stair work." The photograph is small and appears to show that stairs near the top extend further beyond the railing than stairs at the bottom. The Claimant's written complaint states that the Respondent told her that sometimes stairs "can't be done straight." (Clmt. Ex. 1.) I do not find sufficient evidence in the record to support that the stairs are so crooked so as to be inadequate or unworkmanlike, especially in light of Top Notch's implication that it may not be possible to make them any straighter.

<sup>7</sup> In fact, the Claimant does not want the graspable handrail and, on November 4, 2021, requested an exemption from the code requirement that she have one installed. (Clmt. Ex. 7.) Her request was denied.

<sup>8</sup> The Respondent's offer to install the handrail free of any charges for labor is more than the Contract obligates him to do.

with the Contract and does not amount to inadequate, unworkmanlike, or incomplete home improvement work. (Resp. Ex. 1.)

The Claimant complained about a “pattern of miscommunication” with the Respondent; any such pattern, if it is present, is not a basis for a finding of actual loss due to misconduct by the Respondent. Similarly, the Claimant’s complaints about the Respondent’s alleged brash, pushy, or unprofessional manner are also not a basis for such a finding. And while the Claimant obtained an estimate from another contractor to have much of the work redone, that estimate is primarily for work with a different aesthetic look, along with the missing graspable handrail and possibly other minor work for code compliance, and thus does not correct any deficiencies in the Respondent’s work. Finally, the Claimant complained that the Contract provides that the work would be completed within ten business days from the start of work, but that the Respondent completed the work in only five days, with the apparent implication that the Respondent had plenty of time to build a deck that was more to her liking. Again, there is no evidence that the quality of the Respondent’s work was compromised by its speedy completion, and in fact the Respondent returned, outside of the ten-day timeframe, to rebuild the small set of stairs to the Claimant’s satisfaction. The Contract does not entitle the Claimant specifically to ten business days of the Respondent’s labor.

I thus find that the Claimant is not eligible for compensation from the Fund.<sup>9</sup>

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022).

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<sup>9</sup> It was also the Fund’s position that the Claimant did not show any actual monetary loss.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

February 8, 2023  
Date Decision Issued



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Jennifer L. Gresock  
Administrative Law Judge

JLG/dlm  
#202993

**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> day of March, 2023, 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***