IN THE MATTER OF THE CLAIM	*	**BEFORE ROBERT B. LEVIN,**
OF KARI MELVIN,	*	**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 JUSTIN REIMOLD,	*	
T/A R.F.T. SERVICES LLC,	*	**OAH No.: LABOR-HIC-02-22-21309**
RESPONDENT	*	**MHIC No.: 22 (75) 752**

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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On March 14, 2022, Kari Melvin (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 $51,020.00 for actual losses allegedly suffered as a result of a home improvement contract with Justin Reimold, trading as R.F.T. Services LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).[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 August 5, 2022, the MHIC issued a Hearing Order on the Claim. On August 16, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 6, 2022, I held a remote hearing on the Webex video conference platform. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). John D. Hart, Assistant Attorney General, Department, represented the Fund. The Claimant was present and self-represented. The Respondent was present and 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); 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 - Email from the Respondent to the Claimant, October 23, 2019, with the following attachments:
- Pool Installation Contract with Addenda A and B, August 7, 2019
- Estimate, August 1, 2019
- Hull Concrete Construction Customer Education sheet, August 7, 2019
- Gallagher Pools & Spa Quote, August 3, 2019

Clmt. Ex. 2 - Respondent's Invoice, December 26, 2019

Clmt. Ex. 3 - Photographs, labeled as follows:
- Extra Stair
- Extra Stair
- Extra Stair
- Slope

- Grass (July 2020)
- Grass (July 2020)
- Grass (July 2020)
- Grass (December 2021)
- Grass (December 2021)
- Grass (December 2021)
- Grass (December 2021)
- Missing Swale
- Concrete (April 2020)
- Concrete (July 2020)
- Concrete (August 2022)
- Concrete (August 2022)
- Concrete (August 2022)
- Concrete (August 2022)

Clmt. Ex. 4 - Johnson Hydro Seeding Corp. Proposal, July 31, 2022

Clmt. Ex. 5 - Hawkins Landscaping Proposal, November 30, 2021, with attached checks from the Claimant payable to Hawkins Landscaping for $1,650.00, December 11, 2021, and for $6,570.00, October 17, 2022

Clmt. Ex. 6 - NailedIt Custom Cabinetry L.L.C. Proposal, March 5, 2022

Clmt. Ex. 7 - Email chain between the Respondent and the Claimant, January 3-5, 2020

Clmt. Ex. 8 - Email chain between Debbie Gist, Gallagher Pools & Spa, and the Claimant, May 30, 2020-June 1, 2020, with two attached photos of concrete

Clmt. Ex. 9 - Email chain between Debbie Gist, Gallagher Pools & Spa, and the Claimant, June 2-3, 2020, with nine attached "thumbnail" photos.

Clmt. Ex. 10 - Email Chain between the Respondent and the Claimant, December 28, 2021

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1.1 – 1.12 - Packet of twelve unlabeled photographs

Resp. Ex. 2 - Excerpt from International Residential Code (IRC), R311.7.5 (Stair treads and risers)

Resp. Ex. 3 - Email chain between the Claimant and the Respondent, July 8-23, 2021

Resp. Ex. 4 - Emails between the Claimant and the Respondent, April 8, 2020; July 24-27, 2020; December 25-27, 2019

Resp. Ex. 5 - Pool Installation Contract, August 7, 2019, with attached Estimate, August 1, 2019, and Gallagher Pools & Spa Quote, August 3, 2019

Resp. Ex. 6 - Printouts of Residential Use Permit (Addition, Alteration, Accessory) for existing dwellings, Building Final Inspection, Certificate Review, Gas Final Inspection, and Pool Location Inspection, various dates

Resp. Ex. 7 - R.F.T. Services LLC's Certificate of Liability Insurance with Erie Insurance Exchange, November 22, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, October 24, 2022

Fund Ex. 2 - Hearing Order, August 5, 2022

Fund Ex. 3 - Letter from Joseph Tunney, HIC Chairman, to the Respondent, March 18, 2022, with attached Home Improvement Claim Form, March 10, 2022

Fund Ex. 4 - HIC Licensing Information for the Respondent, printed February 27, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present 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 01-114498.

The Contract

2. On August 7, 2019, the Claimant and the Respondent entered into a contract for the installation at the Claimant's residential property of a 16 by 36 feet "Grecian Ultimate Pool Kit" with a six-foot-deep hopper (the deepest part of the pool) and an eight foot walk-in stair. (Contract).

3. The original agreed-upon Contract price was $59,949.43. Included in the price was the $21,683.43 cost of the pool kit (which Gallagher Pool & Spa (Gallagher Pool) manufactured), $9,500.00 for the pool installation (to include a "sand portland floor, pump installation, excavation, installation of pool, concrete footer around pool, basic plumbing and rough grade"), $1,500.00 for stabilization (defined as "finish grade, grass and straw"), excavation, and installation of an "automatic safety pool cover." The Contract provided that any additional options would be billed on a time and materials basis. (Cl. Ex. 1, "Estimate"). The installation of the pool and the automatic pool cover entailed two separate concrete "pours": the first for the pool, the second for the cover.

4. As reflected in the Respondent's two invoices marked "paid," the Claimant paid the Respondent a total of $71,104.43. (Cl. Ex. 2),

5. The Respondent started the job in December 2019 and completed it in the middle of 2020.

6. Frederick County passed the completed project on final inspection.

The New Basement Step

7. The Contract specified the depth of the pool (six feet) but did not specify the height or grade of the pool or the height of the surrounding concrete. The Respondent poured the concrete above the level of the then-existing top step of the staircase leading from the Claimant's yard down to her basement. As a result, the Respondent created a new top step at the top of the basement stairs. The new step has a 7.5-inch riser to conform to the 7.5 inch height of the existing steps.

8. The Claimant was displeased that the Respondent created the new step.

The Condition of the Concrete "Lip" from the Second Pour

9. The second concrete pour required for installation of the pool cover involved creation of a concrete lip about four inches in height. This lip has numerous small holes or flaking areas, mostly small but a few are inches large. The small holes were caused by air bubbles. The larger holes were caused by a stone blocking the concrete slurry when it was poured. The holes in this lip area are not structural defects. They are cosmetic issues.

10. The Respondent and the Claimant agreed that the Respondent's concrete subcontractor Hull Concrete Construction (Hull) would use grout to cover the holes in the second pour lip. Portions of the grout flaked or fell out. The lip is structurally sound, but there are color variations where the grout was placed.

11. A coating product such as Sun-Deck could be used to improve the appearance of the concrete lip from the second pour. A very fine grout slurry could also be used but it would not have a uniform color.

Efforts at Stabilization

12. Pursuant to the Contract's stabilization requirement, the Respondent brought in new fill dirt to prevent excessive grade changes resulting from the pool excavation and installation. The Claimant's property changed grade about three feet. The Respondent brought in seventeen truckloads of fill dirt (about 475 tons) to fill in the void from the three feet of grade change.

13. The Respondent obtained the fill dirt from a local provider, Bussard Brothers, whom the Claimant suggested. The Claimant paid $2,896.80 for the fill dirt. The Respondent used fill dirt because it is much less expensive than topsoil. He then spread three or four inches of topsoil (about twenty tons) over the fill dirt.

14. The Respondent planted grass seed around the pool except for a small buffer area closest to the pool's perimeter that the Claimant's husband instructed him not to seed because he was planning to install decorative stones in that area. The Respondent used the Penn State grass seed mix, consisting of 30% perennial rye, 30% Kentucky Blue, 30% tall fescue, and 10% annual rye.

15. The Respondent did not use an improper grass seed mix.

16. There are large patches or areas on the Claimant's yard where grass seed was planted but the grass did not survive.

17. The fill dirt brought by Bussard Brothers contained rocks, stones, bricks, cans, and debris that adversely affected the ability of grass to thrive in some portions of the yard.

18. Some of the topsoil the Respondent provided washed away from rain, leaving exposed rocks, stones or debris that inhibited the grass from thriving in some areas of the lawn.

19. In 2020, the Claimant paid Johnson Hydro Seeding Corp. (Johnson Seeding) $1,800.00 to repair the yard by clearing areas with an excess of rocks to expose the soil, hauling away the waste, seeding the lawn with 250 pounds per acre of a mix of 85% turf type tall fescue, 10% perennial rye grass, and 5% Kentucky Blue Grass, and applying mulch and fertilizer.

20. Johnson Seeding did not remove enough debris, so its work did not correct the patches or areas where grass did not thrive.

21. In December 2021 and October 2022, the Claimant paid Hawkins Landscaping a total of $8,220.00 to "rockhound [remove rocks] in the disturbed areas twice to remove rocks and debris, rough grade the swale along the road for proper water flow, add topsoil to prepare for seeding, fine grade, seed, fertilize the disturbed areas and install straw and straw mat as needed." (Cl. Ex. 5).

22. Following Hawkins Landscaping's work, which included the use of heavy equipment to remove rocks and debris that Johnson Hydro did not remove, the condition of the lawn has improved.

The NailedIt Proposal

23. The Claimant obtained a March 5, 2022, proposal from NailedIt Custom Cabinetry to "break up and remove all concrete around pool. Break up and remove pool. Excavate everything down 7.5 inches deeper including pool. Install pool and concrete around pool with double pour for recessed auto cover. Clean up and haul away all construction debris" for $41,000.00." (Cl. Ex. 6). The Claimant has not accepted the NailedIt proposal.

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 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 proven eligibility for compensation.

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) (2015 & Supp. 2022). 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) (Supp. 2022). 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. 2022). 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) (Supp. 2022). There was no contention or evidence that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022).

The Claimant's Claims

The Claimant argued that although the current condition of the pool is "fine," the condition of the concrete is unworkmanlike and inadequate in that (a) the Respondent excavated the down to an insufficient depth (7.5 inches too low), causing him to install an unaesthetic and potentially hazardous extra step (7.5 inches high than the previous top step) at the top of the stairs leading from the yard to the home's basement, and (b) the concrete is flaking and cracking, particularly in the concrete lip created by the second pour.

The Claimant further argued that the Respondent's efforts at stabilization were unworkmanlike and inadequate in that the truckloads of fill dirt the Respondent obtained from Bussard Brothers contained excessive amounts of rocks and debris that prevented grass from thriving in portions of the lawn, and that the Respondent provided insufficient topsoil above the fill dirt, which prevented the grass from thriving in portions of the yard.

The Claimant sought recovery of the $1,800.00 she paid Johnson Hydro and the $8,220.00 she paid Hawkins to remediate the stabilization and enable the grass to grow in areas where what she contended fill dirt containing excessive rocks and debris was dumped. In addition, she sought recovery of $41,000.00, the amount proposed by NailedIt to break up and remove all concrete around pool, break up and remove the pool, excavate everything down 7.5 inches deeper including the pool, install the pool and the concrete around pool with a double pour for the recessed auto cover, and clean up and haul away all construction debris.

The Respondent's Responses

The Respondent denied that his work was unworkmanlike or inadequate. With respect to the extra basement step he installed, he argued that he set the overall elevation of the pool and surrounding concrete appropriately high to provide proper grading and swelling around the pool to protect its structural integrity. The extra step complied with building code requirements and passed Frederick County's inspection.

With respect to stabilization, the Respondent argued that he complied with the Contract's stabilization requirement, which was limited to creating a final grade, grass seeding, and placement of straw. He properly had Bussard Brothers' fill dirt brought to the site to prevent an excessive grade change from the excavation and installation of the pool. Then he covered the fill dirt with three or four inches of topsoil, which is much more expensive than fill dirt. He used a proper, premium grass seed mix. He suggested that the Claimant's failure to properly water the lawn was the cause of the grass's failure in some areas to thrive.

As to the condition of the concrete in the second pour lip, the Respondent argued that there are small bubbles but not major deficits. The surface color variation in the lip was caused by Hull, his concrete subcontractor's use of grout to fill in bubbles or holes which the

Respondent did not recommend but which he had Hull install at the Claimant's request. He conceded that the appearance of the exposed concrete coping around the pool cover tracks is "not perfect."

The Fund's Position

The Fund argued that the Claimant did not prove that the pool was installed at an improperly low height. The only evidence she presented to support this claim was the installation of the extra step in the basement stairwell. The Fund noted that the step was within the building code and passed inspection. It was not an illegal step, and the Claimant did not establish that it was a hazard created by the Respondent.

Moreover, the Fund observed that the Contract did not specify the grade at which the pool must be set. The Claimant did not show that the Respondent failed to follow any plans or specifications. Thus, the Contract did not prohibit the Respondent from pouring the concrete at the grade he chose. The pool was not set at an incorrect depth that would require ripping out the entire pool, as the Claimant requested and which NailedIt proposed to do for $41,000.00.

With respect to the second pour and the appearance of the concrete lip, the Fund argued that there are holes, some smaller and some larger, but nothing structurally wrong. The issue is cosmetic. The parties agreed to have the concrete grouted to remedy its appearance, but the grout failed. But, the Fund argued, the Claimant did not prove the reasonable cost to correct the concrete and grouting. All she submitted was a $41,000.00 estimate to completely redo the pool. And, the Fund argued, the $9,000.00 cost of the second pour is not a reasonable amount to fix the concrete and grout problem, because the second pour covered a much larger area than the unaesthetic portion.

As to the grass, the Fund noted that that the Contract was a pool installation contract with a stabilization provision, not a grass contract. The Respondent did not promise a lush, green lawn in the future. Though the Fund noted that photos show large grassless patches, it argued the Claimant did not prove the Respondent's stabilization efforts were unworkmanlike or that he used the wrong type of grass seed. The Fund further noted that the Claimant first had Johnson Hydro and then Hawkins attempt to remediate the lawn. Johnson Hydro failed in eliminating the grassless patches. The Fund was concerned that the evidence was unclear as to whether Hawkins' work fixed the Respondent's stabilization or instead fixed Johnson Hydro's work. The Fund concluded that if I find the Respondent's stabilization was unworkmanlike or inadequate, the Claimant's actual loss for the stabilization problems should be limited to reimbursement of the Contract's $1,500.00 stabilization charge.

Analysis

For the reasons that follow, I conclude that while most of the Respondent's performance was workmanlike, the Claimant showed that the Respondent performed partially unworkmanlike and inadequate home improvements, specifically regarding the stabilization. Each of the Claimant's claims will be addressed in turn.

1. The Extra Basement Step

The Claimant did not establish that the extra step showed that the pool was not dug deep enough. The Contract did not specify the grade at which the pool would be set. There was no evidence the Respondent failed to follow any plans or specifications. The rise of the step was within the building code. The step passed inspection. While the Claimant stated it is a tripping hazard, she presented no evidence that anyone has ever tripped or almost tripped on it. The evidence does not support the Claimant's claim that the Respondent installed the pool in an

unworkmanlike manner by setting it at the depth and height he chose. Ripping out the entire pool would be both unreasonable and unnecessary. I conclude that the existence of the step does not show the pool was installed in an unworkmanlike or inadequate manner. I do not recommend an award from the Fund on this issue.[2]

2. Flaking/Cracking Concrete from the Second Pour

From the photographs offered in evidence, I conclude that the flaking and cracking of portions of the second concrete pour shows unworkmanlike and inadequate performance of that limited portion of the job. The grouting did not fix the problem. It is important to note, however, that this is not a structural issue, but is cosmetic. As the Fund persuasively argued, the Claimant did not prove the reasonable cost to correct the cracking/flaking concrete or the grout. Reimbursement of the entire $9,000.00 contractually allocated to the second pour would be far more than the reasonable cost to fix the problem, which represents only a fraction of the entire second pour. The NailedIt estimate of $41,000.00 to redo the entire pool would be an even more excessive and unreasonable solution to this problem.

The Respondent testified there are much less expensive techniques available to fix the appearance of the concrete, such as a Sun-Deck coating or use of a fine slurry. But neither side provided an estimate of the cost of these or other alternative forms of remediating the flaking/cracking/grout issue. Accordingly, though I find the condition of the concrete lip is unworkmanlike, lacking persuasive evidence of the reasonable cost to correct it, I do not recommend an award from the Fund for this issue.

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[2] While the Claimant briefly mentioned that the Respondent is responsible for a "missing swale," she offered insufficient evidence to find that the Respondent's work was unworkmanlike or inadequate regarding the allegedly missing swale or that it caused water or other damage. She did not offer evidence of the reasonable cost of repairing this issue or clear evidence that Hawkins actually installed a swale that was previously missing. The Fund did not address the swale and did not recommend an award for it. I do not recommend an award for the allegedly missing swale.

3. Grass

I find it more likely than not that the patchy, grassless portions of the lawn resulted from excessive amounts of rocks, stones, and debris in the seventeen truckloads of fill dirt the Respondent had Bussard Brothers dump on the site in furtherance of the Contract's stabilization requirement. I give weight to the Claimant's uncontradicted testimony that the loads of fill dirt included debris such as bricks and cans. I was not persuaded that the cause of the grass's partial failure to thrive was any failure of the Claimant to water her lawn.

To fix this problem, the Claimant first paid Johnson Hydro $1,800.00. Its effort was unsuccessful. Apparently, Johnson Hydro was not able to remove enough of the rocks and debris. Next, the Claimant paid Hawkins $8,220.00 to use heavy equipment to clear the lawn of the rocks, stones, and debris that I find inhibited the growth of the grass. The Claimant proceeded in a reasonable manner by first opting for Johnson Hydro's less expensive proposal and when it did not fix the issue, then paying Hawkins $8,220.00 for a more extensive rockhounding effort. Because Johnson Hydro did not fix the problem, however, I do not recommend the Fund reimburse the Claimant the $1,800.00 she paid Johnson Hydro for its unsuccessful attempt at remediation.

I recommend the Fund reimburse the Claimant the $8,220.00 she paid Hawkins. It is true that, as the Fund argued, the Respondent did not promise the Claimant would have a lush, green lawn in the future. It is also true that the Respondent created a final grade, seeded the lawn, and put straw on the seeded area, which is all the contract's stabilization provision required. Moreover, the evidence did not show the Respondent used the wrong type of seed. But, I find the Respondent's stabilization was unworkmanlike because the excessive amounts of rocks and debris in the fill dirt, combined with an insufficient amount of top soil caused the grass to fail in

limited portions of the lawn. While the Fund correctly noted that the Respondent did not promise a lush, green lawn, the Claimant reasonably expected that the lawn's appearance would not be marred by unsightly patches where grass failed to grow.

The Fund argued that *if* I find (and I do so find) that the Respondent's stabilization was insufficient, an appropriate award would be reimbursement of the $1,500.00 stabilization charge under the Contract. The Fund asserted the evidence is unclear whether Hawkins fixed the Respondent's unworkmanlike work or if Hawkins fixed Johnson Hydro's work. I respectfully disagree with that assertion, because I find it clear from the evidence that Hawkins did not fix a condition that *Johnson Hydro created* at the site. Rather, I infer that Johnson Hydro removed an insufficient quantity of the rocks and debris, which made it necessary for Hawkins to bring in heavy equipment to remove more rocks and debris. As it is not clear what value Johnson Hydro added in terms of remediating the lawn, I do not recommend the Fund reimburse the Claimant the $1,800.00 she paid Johnson Hydro. By contrast, because Hawkins corrected the underlying problem of rocks and debris in Bussard Brothers' fill dirt inhibiting the growth of grass, I recommend the Fund reimburse the Claimant the $8,220.00 she paid Hawkins.

Accordingly, I 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) (Supp. 2022); 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 retained other contractors (Johnson Hydro and Hawkins) to complete or remedy that work. As noted above, however, because Johnson Hydro's repair effort was unsuccessful to repair the stabilization, it would not be reasonable to require the Fund to reimburse the Claimant for Johnson Hydro's unsuccessful effort to fix the problem with the grass. By contrast, the evidence shows that Hawkins, using heavy equipment, was able to remove the rocks and debris that caused or contributed to the failure of the grass to thrive in portions of the yard.

Accordingly, the following formula appropriately measures the Claimant's actual loss:

> If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

Application of this formula is straightforward: The Claimant paid the Respondent $71,104.43. She paid Hawkins $8,220.00 to remediate the stabilization, the only part of the Respondent's work that I found unworkmanlike and inadequate and for which there was proof of the reasonable cost to repair. $71,104.43 plus $8,220.00 equals $79,324.43. $79,324.43 minus $71,104.43 equals $8,220.00, the amount the Claimant paid Hawkins. Accordingly, $8,220.00 is the amount of the Claimant's actual loss that I recommend the Fund award the Claimant.

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.[3] Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). 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 her actual loss of $8,220.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $8,220.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $8,220.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015 & Supp. 2022); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $8,220.00; 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;[4] and

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[3] 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").

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

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

Robert B. Levin

February 23, 2023
Date Decision Issued

Robert B. Levin
Administrative Law Judge

RBL/emh
#203564

PROPOSED ORDER

WHEREFORE, this 24th day of April, 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.

Robert Altieri

Robert Altieri
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION