

IN THE MATTER OF THE CLAIM	* BEFORE KRISTIN E. BLUMER,
OF JOHN AND SANDRA KLOTH,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANTS	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF	*
TRENTON BERNHARDT,	*
T/A CREATIVE RENOVATIONS,	* OAH No.: LABOR-HIC-02-23-06659
RESPONDENT	* MHIC No.: 22 (75) 908

* * * * *

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 December 28, 2022, John and Sandra Kloth (Claimants) filed a claim (Claim)¹ with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of \$80,606.00 for actual losses allegedly suffered as a result of a home improvement contract with Trenton Bernhardt, trading as Creative Renovations (Respondent).³

¹ The Claimants dated the Claim form November 2, 2022. The Maryland Home Improvement Commission received the Claim form on December 28, 2022.
² The MHIC is under the jurisdiction of the Department of Labor.
³ Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On March 1, 2023, the MHIC issued a Hearing Order on the Claim. On March 9, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On September 15, 2023, I held a hearing at the OAH in Hunt Valley, Maryland.⁴ Ernie Dominguez, Assistant Attorney General, represented the Fund. The Claimants represented themselves, with Ms. Kloth taking the primary role. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department of Labor's hearing regulations, and the Rules of Procedure of the OAH govern procedure.⁵

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits⁶

I admitted the following exhibits offered by the Claimants, except as noted:

- Clmt. Ex. 1: Contract, April 26, 2020
- Clmt. Ex. 2: Contract list of work to be completed, April 17, 2020
- Clmt. Ex. 3: Claimants' record of payments made to Respondent, various dates
- Clmt. Ex. 4: Copies of cancelled checks, various dates
- Clmt. Ex. 5: Claimants' record of payments made to other vendors, various dates
- Clmt. Ex. 6: Email from Jennifer Grimes, MHIC Investigator, to the Claimants, June 30, 2022

⁴ Bus. Reg. §§ 8-407(a), 8-312.

⁵ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

⁶ All exhibits were marked for identification; those exhibits which were not admitted will be retained in the file for the purposes of judicial review. COMAR 28.02.01.22C.

- Clmt. Ex. 7: Payment Invoice, Exterior Dynamics, March 30, 2023; Agreement, Exterior Dynamics, September 7, 2022; Letter to Anne Arundel County Inspections and Permits from Claimants and Permit Form, November 2, 2022
- Clmt. Ex. 8: Invoice, Kurtz Development, LLC, February 2, 2022; Email from Kurtz Development, LLC to Claimants, May 5, 2022; Abbreviated Quote Report, Andersen Windows & Doors/84 Lumber, print date January 10, 2022
- Clmt. Ex. 9: Receipt, The Home Depot, February 26, 2022
- Clmt. Ex. 10: Proposal, Mahon Plumbing, accepted February 26, 2022; Description of Work, Mahon Plumbing, accepted March 24, 2022
- Clmt. Ex. 11: Receipt, Lowe's Home Improvement, August 22, 2022
- Clmt. Ex. 12: Work Order, Linder Glass & Mirror, August 2, 2022
- Clmt. Ex. 13: Account Summary, Capital One, December 13, 2020 to January 12, 2021
- Clmt. Ex. 14: not admitted
- Clmt. Ex. 15: Screen shots of text messages between the Claimants and the Respondent, various dates
- Clmt. Ex. 16: Claimants' record of attempts to contact Respondent, various dates
- Clmt. Ex. 17: Color photograph of steps, undated
- Clmt. Ex. 18: Color photograph of exterior, undated
- Clmt. Ex. 19: Color photograph of exterior, undated
- Clmt. Ex. 20: Color photograph of exterior, undated
- Clmt. Ex. 21: Color photograph of siding, undated
- Clmt. Ex. 22: Color photograph of exterior and tree, undated
- Clmt. Ex. 23: Color photograph of unfinished foundation and equipment, undated
- Clmt. Ex. 24: Color photograph of equipment, undated
- Clmt. Ex. 25: Color photograph of trailer, undated

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1: Notice of Hearing, August 1, 2023

Fund Ex. 2: MHIC Hearing Order, March 1, 2023

Fund Ex. 3: Claimants' Home Improvement Claim Form, November 2, 2022

Fund Ex. 4: MHIC Licensing Information for the Respondent, printed May 3, 2023

Testimony

Ms. Kloth testified on behalf of the Claimants. The Claimants did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present any 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 license number 01-99008 and sole proprietor of Creative Renovations.
2. At all relevant times, the Claimants resided in a home located in Severna Park, Maryland (the Residence) that is owned by a trust. The Claimants do not own any other residential properties in Maryland.
3. On April 26, 2020, the Claimants entered into a contract with the Respondent for the Respondent to perform various improvements to the Residence (Contract).
4. The scope of the work set forth in the Contract list of work included, but was not limited to: (1) renovating two bathrooms; (2) renovating the primary bedroom closet; (3) finishing the basement, to include installation of a bedroom and bathroom; (4) installing new

windows; (5) constructing an addition to serve as a mud room; (6) replacing the roof; (7) renovating the kitchen; and (8) constructing a detached two-car garage to the rear of the Residence.

5. The agreed-upon contract price was \$172,275.00.

6. The Contract required an initial payment of \$30,000.00 in cash upon the execution of the Contract and periodic payments thereafter, correlated to the start of each phase of the project.

7. The Contract specified that the Respondent would start work within thirty days of the date of the Contract and would complete the work within 180 days, absent delays caused by weather or unforeseen events. There was no specific timeframe established for the start or completion of the different phases of the project.

8. On or about June 3, 2020, the Respondent began work pursuant to the Contract.

9. The Claimants paid the Respondent for work under Contract in the following installments:

Date	Payment
April 26, 2020 – Contract signed	\$15,000.00 (check)
April 26, 2020 – Contract signed	\$15,000.00 (cash)
June 3, 2020 – start of work	\$15,000.00 (check)
June 3, 2020 – start of work	\$15,000.00 (cash)
August 27, 2020 – start of bathroom renovations	\$10,000.00 (check)
August 27, 2020 – start of bathroom renovations	\$20,000.00 (cash)
October 8, 2020 – start of kitchen renovation	\$15,000.00 (check)
October 8, 2020 – start of kitchen renovation	\$15,000.00 (cash)
March 9, 2021 – start of addition	\$15,000.00 (check)
March 9, 2021 – start of addition	\$5,000.00 (cash)
June 17, 2021 – unidentified	\$5,000.00 (check)
June 17, 2021 – unidentified	\$5,000.00 (cash)
TOTAL	\$150,00.00

10. The Respondent completed some work under the Contract between June 2020 and September 2021.

11. The Respondent last worked at the Residence on September 30, 2021.

12. The Respondent did not respond to the Claimants' attempts to speak with him by telephone on November 21, 2021 and November 23, 2021.

13. After he last worked at the Residence, the Respondent left a trailer and other equipment on the Claimants' property.

14. On a date not specified in the record, the Claimants relocated the Respondent's trailer to another area of their property so that the garage could be constructed.

15. As of the end of 2021, the Respondent had failed to install some windows, started but failed to complete the construction of the mud room, and started but failed to complete the construction of the garage, as required by the Contract.

16. On February 26, 2022, the Claimants paid \$242.74 for a storm door for the mud room entrance.

17. On August 22, 2022, the Claimants paid \$413.12 for tile for the mud room floor.

18. In September 2022, the Claimants contracted with Exterior Dynamics to finish the mud room and the garage.

19. Exterior Dynamics completed the mud room and the garage in March 2023, at a cost of \$44,250.00.

20. In January 2022, the Claimants purchased windows from 84 Lumber at a cost of \$7,121.42.

21. In February 2022, the Claimants contracted with Kurtz Development, LLC (Kurtz) to install the windows and complete the interior and exterior trim around the windows at a cost of \$5,800.00.

DISCUSSION

LEGAL FRAMEWORK

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.⁷ 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.⁸ An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”⁹ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹⁰

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants’ recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source.¹¹ The claimants reside in the home that is the subject of the claim.¹² The parties did not enter into a valid agreement to submit their disputes to arbitration.¹³ The Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent.¹⁴

For the following reasons, I find that the Claimants have proven eligibility for compensation from the Fund.

⁷ Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217; COMAR 09.08.03.03A(3).

⁸ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

⁹ Bus. Reg. § 8-405(a) (Supp. 2023); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”).

¹⁰ *Id.* § 8-401.

¹¹ *Id.* §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023).

¹² *Id.* § 8-405(f)(2) (Supp. 2023).

¹³ *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023).

¹⁴ *Id.* § 8-405(f)(1) (Supp. 2023).

POSITIONS OF THE PARTIES

The Claimants asserted that the Respondent failed to complete the mud room and the garage, and failed to install some of the windows, as agreed to in the Contract. The Claimants further claimed that the plumbing work the Respondent completed in the bathrooms is faulty. The Claimants argued that the Respondent took too long to complete the work and then abandoned the job, which caused them to seek other contractors to remedy the plumbing work done by the Respondent and complete the mud room, garage, and window installation as set forth in the Contract.

The Respondent conceded that he did not complete all of the work required by the Contract and did not dispute that the Claimants paid him \$150,000.00 pursuant to the Contract. He argued that the pricing of materials rose dramatically during the Covid-19 pandemic, which was not accounted for in the costs under the Contract.¹⁵ He further asserted that he intended to return to the job after September 2021 and work through the pricing issues with the Claimants to complete the work, but once his tools were removed from his trailer that was on the Claimants' property, he had no intention of further negotiating with the Claimants about completing the Contract. He denied that the plumbing problems the Claimants experienced after the bathrooms were renovated were attributable to unworkmanlike home improvement on his part.

The Fund argued that the Claimants established that they paid the Respondent \$150,000.00 pursuant to the Contract, that the Respondent did not complete the work contracted for, and that he abandoned the job without justification.

¹⁵ The Contract and the Contract list of work to be completed did not include a breakdown of costs for labor and materials for each phase of the project. See Cl. Exs. 1, 2.

The Fund further asserted that the Claimants established that they paid other contractors to complete the work required under the Contract, and that the appropriate calculations result in an actual loss that exceeds the cap of \$30,000.00. Therefore, the Fund recommended an award to the Claimants of \$30,000.00.

ANALYSIS

Mud Room and Garage

Ms. Kloth testified that the Respondent completed the framing of the mud room and matched the siding and the roof to the Residence, but did not install insulation, drywall, plumbing, electrical wiring, electrical outlets, storm door, security lighting, or floor tile. Furthermore, he built the addition too close to an existing tree in the yard.¹⁶ The Claimants paid to have the tree taken down as a result.¹⁷ The Respondent installed footers and block work for the garage.¹⁸ No further work on the garage was completed.

When the Claimants asked the Respondent why he could not complete the work, the Respondent told them that the prices had gone up during the pandemic and he could not get the materials. The Respondent never gave them any indication of when the mud room and the garage might be completed before he abandoned the job.

The Respondent did not dispute that the work on the mud room and garage was incomplete. He testified that he left the project because of the significant increase in costs of materials during the pandemic and asserted that Ms. Kloth knew he was walking off the job but that he would be back to discuss the numbers and complete the project. Ms. Kloth disputed that this conversation occurred; she recalled only that she asked him to talk with them before he walked away. She asserted that they never had a conversation about an adjustment to the pricing

¹⁶ See Cl. Ex. 22.

¹⁷ The Claimants did not submit any documentation or provide any testimony related to the cost of the tree removal.

¹⁸ See Cl. Exs. 23, 24.

to finish the project or a revised schedule for completion of the work. The Respondent stated that he did not return to discuss the project after he discovered that his tools had been removed from the trailer that he left on the property. The Respondent did not state whether he notified the Claimants about the missing tools prior to the hearing. The Respondent testified that he estimated the cost to build the garage at the time he agreed to the Contract would have been about \$32,000.00, minus the footers and block work.¹⁹

I am unpersuaded by the Respondent's assertion that he would have returned to renegotiate the costs and complete the work had he not discovered that his tools were missing from the trailer. I did not find his testimony on this point to be credible, as his statements were self-serving and attempted to shift blame for his failure to the Claimants. The fact that the Respondent's tools were missing from the trailer that he left at the Residence after he stopped work there, as he noted in his testimony, does not relieve him of his obligations under the Contract or change the fact that he walked off the job and left work incomplete some eighteen months after it began.

In September 2022, the Claimants contracted with Exterior Dynamics to finish the mud room and the garage.²⁰ The total cost to complete the work was \$44,250.00.²¹ On February 26, 2022, the Claimants purchased the storm door from Home Depot for \$242.74.²² On August 22, 2022, the Claimants purchased the floor tile from Lowe's Home Improvement for \$413.12.²³

¹⁹ No party provided any estimate as to the value of the footers and block work completed by the Respondent before he abandoned the work.

²⁰ See Cl. Ex. 7.

²¹ See *id.*

²² See Cl. Ex. 9.

²³ See Cl. Ex. 11.

I decline to consider the Claimants' purchase of the outdoor lighting on or about December 23, 2020²⁴ in my calculations, as that purchase was made before the Respondent left the mud room incomplete and the Claimants provided no further evidence or testimony on this issue.

I find that the Respondent failed to complete the mud room and the garage as specified in the Contract, as he admitted to in his testimony. I further find that the Claimants contracted with Exterior Dynamics to finish the mud room and garage and paid them \$44,250.00 for the work. Additionally, I find that the Claimants purchased the storm door for \$242.74 and the tile for the mudroom for \$413.12 after the Respondent abandoned the job. Therefore, the total cost to the Claimants to complete the mud room and the garage amounts to \$44,905.86 ($\$44,250.00 + \$242.74 + \$413.12 = \$44,905.86$).

Windows

The Contract called for the Respondent to replace windows in three different areas of the home: the basement, the kitchen, and the first floor of the Residence.²⁵ The Claimants noted that the Respondent installed all but two of the windows in the basement and did not install the kitchen and first floor windows as required. The Respondent did not dispute that this work was incomplete and offered no explanation about it other than his general assertion that the pricing of materials had risen.

On November 17, 2021, the Claimants ordered the windows from 84 Lumber.²⁶ The windows were delivered on or about January 10, 2022 at a cost of \$7,121.42.²⁷ On or about February 3, 2022, Kurtz installed the windows at a cost of \$5,800.00.

²⁴ See Cl. Ex. 13.

²⁵ See Cl. Ex. 2.

²⁶ See Cl. Ex. 8.

²⁷ See *id.*

The total cost to the Claimants to complete the window installation left incomplete by the Respondent is \$12,921.42 (\$7,121.42 + \$5,800.00 = \$12,921.42).²⁸

I find that the Respondent failed to complete the window installation as required by the Contract, and that the Claimants paid a total of \$12,921.42 to complete the work.

Plumbing

Ms. Kloth testified that the Respondent advised the Claimants that he had a plumber that would complete the required plumbing work for the bathrooms; however, she noted that the Respondent and his brother performed the work instead. She explained that they have had difficulties with the plumbing ever since. They cannot use the bathtub in the main bathroom because the drain leaks into the basement.²⁹ She noted that the basement bathroom vent was not properly installed and the sewer backs up into the kitchen sink.³⁰ She testified that the Claimants contracted with Mahon Plumbing to correct the deficiencies in the Respondent's plumbing work.³¹ However, she noted that the plumbing problems are still not resolved and no other plumbers will "touch it."

The Respondent disputed that the Claimants' plumbing problems were as a result of unworkmanlike home improvement on his part. He testified that the sump pump in the Claimants' basement is problematic and is the cause of the leaks in the basement. He asserted that his work did not cause or contribute to the problem. He further noted that the Claimants' washing machine overflowed multiple times and that he and his employees tried to fix it but ended up addressing problems that had nothing to do with the work under the Contract.

²⁸ On or about May 5, 2022, Kurtz charged the Claimants an additional \$240.00 to remove and replace the trim on a sliding door at the Residence. *See* Cl. Ex. 8. The Claimants provided no testimony about this cost; their Contract list of work reflects that the trim work was completed. *See* Cl. Ex. 2, item 13. Therefore, I decline to include the \$240.00 charge in my calculations.

²⁹ *See* Cl. Ex. 5.

³⁰ *See id.*

³¹ Cl. Ex. 10.

Given the conflicting testimony presented by the parties, I cannot find, based on the record before me, that the Respondent performed unworkmanlike home improvement with respect to the plumbing. The Claimants credibly presented general information about the problems that they experienced, but provided no specifics as to how or why those problems were caused by the Respondent's work. Moreover, this assertion was credibly contradicted by the Respondent. I decline to find that the Respondent performed unworkmanlike home improvements in the plumbing work completed under the Contract.

Trailer

The Respondent did not dispute that he left his trailer on the property after he walked off of the job in September 2021. The Claimants did not know what to do with it; they contacted an investigator with the MHIC in June 2022, seeking advice.³² Ms. Kloth testified that they made numerous inquiries in attempts to deal with the trailer; however, they have been unsuccessful in efforts to remove the trailer. They have relocated it to another part of the property. The Claimants provided no response to the Respondent's assertion that his tools are missing from it. The Claimants did not offer any evidence of costs associated with their efforts to deal with the trailer. While I find have no doubt that the Respondent's abandonment of his property at the Residence caused the Claimants frustration and loss of time, it is not unworkmanlike, inadequate, or incomplete home improvement. Therefore, I do not find that they are entitled to compensation with respect to the trailer.

Miscellaneous Tasks

The Claimants made various other assertions about work under the Contract that the Respondent failed to complete. I do not find the Claimants have met their burden as to these assertions and briefly address each in turn.

³² See Cl. Ex. 6.

The Claimants noted on the Contract list of work that the Respondent did not complete renovations to the primary bedroom closet and the second bedroom closet.³³ Ms. Kloth testified that after the Contract was signed, she changed her mind about renovating one of the closets and the Respondent verbally agreed instead to fix the chimney and install a gas line to the fireplace; however, the gas line was never installed.³⁴ The Claimants provided no further evidence or testimony on this issue or the efforts and costs to resolve it. The Contract and the Contract list of work did not break down the costs of each project and the Claimants offered no testimony or evidence that the costs related to the close were comparable to the costs for the gas line. Therefore, I find that they have not met their burden to prove that this work was incomplete and that they are therefore entitled to compensation.

The Claimants indicated on the Contract list of work that the Respondent failed to install an exhaust fan in the basement bathroom, failed to finish an area around a staircase and back door hallway, failed to purchase and install the kitchen appliances, and disconnected the doorbell.³⁵ While the Respondent did not dispute these assertions, the Claimants provided no evidence or testimony as to the costs of those items, nor as to the efforts and costs to address the Respondent's failures to complete the work. Therefore, I find that they have not met their burden to prove that this work was incomplete and what it would cost to complete it.

The Claimants' Contract list of work indicated that flooring was damaged due to the roof leaking. Ms. Kloth testified that the leak occurred when the mud room addition was put on, but that the leak was resolved when the Respondent replaced the entire roof. The Claimants provided no further evidence or testimony on this issue.

³³ See Cl. Ex. 2, items 5, 6.

³⁴ See Cl. Ex. 5.

³⁵ See Cl. Ex. 2, items 9, 14, 30; Cl. Ex. 5.

Therefore, I find that they have not met their burden to prove that this work was unworkmanlike, inadequate, or incomplete and that they are therefore entitled to compensation.

The Claimants submitted an invoice from Lindner Glass and Mirror for the purchase and installation of shower glass, ordered on August 2, 2022, for a total cost of \$1,061.63.³⁶ However, the Claimants provided no further evidence or testimony on this issue and the Contract does not specify that the Respondent was responsible for providing the shower glass; therefore, I find that they have not met their burden to prove that this work was unworkmanlike, inadequate, or incomplete and that they are therefore entitled to compensation.

Ms. Kloth testified that the Claimants and the Respondent orally agreed that the Respondent would install fence posts and fencing to replace a railing on outside stairs; she conceded that this work was not part of the Contract and was a separate agreement. On September 27, 2021, the Claimants paid the Respondent \$6,105.00 for this work, which was not completed. However, as this work was agreed to under a separate contract and is not part of the Contract at issue in this case, I decline to consider it.³⁷

Compensation

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.³⁸ MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.³⁹

³⁶ See Cl. Ex. 12.

³⁷ The Claimants sought compensation for two additional jobs that were not part of the Contract: additional flooring installation, for which the Claimants paid the Respondent \$3,540.00 on December 21, 2020; and installation of siding, for which the Claimants paid the Respondent \$14,500.00 on July 23, 2021. As these tasks were not part of the Contract, and the Claimants provided no further evidence or testimony on these issues, I decline to consider them.

³⁸ Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.B(1).

³⁹ COMAR 09.08.03.B(3).

The first formula is applicable when a contractor abandons the contract without performing any work.⁴⁰ In this case the Respondent performed some work, and thus, the first formula is clearly not applicable here.

The second formula applies when “the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract”⁴¹ Under this circumstance, “the claimant’s actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.”⁴² The second formula does not apply in this case because the Claimant hired a subsequent contractor to complete the work abandoned under the Contract.

The third formula is applicable when the Respondent performed some work under the Contract, and the Claimant retained another licensed contractor to complete that work.

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.^[43]

Applying the third formula to this case, the Claimants’ actual loss is as follows:

Amount paid to the Respondent:	\$150,000.00
Plus amount paid to complete the mud room and garage:	+\$44,905.86
Plus amount paid to complete the window installation:	+\$12,921.42
<u>Less the original contract price:</u>	<u>-\$172,275.00</u>
Actual Loss Total:	\$35,552.28

⁴⁰ COMAR 09.08.03.03B(3)(a).

⁴¹ COMAR 09.08.03.03B(3)(b).

⁴² *Id.*

⁴³ COMAR 09.08.03.03B(3)(c).

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.⁴⁴ In this case, the Claimant's actual loss of \$35,552.28 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$35,552.28 as a result of the Respondent's acts or omissions.⁴⁵ I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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;⁴⁶ and

⁴⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). 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").

⁴⁵ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c).

⁴⁶ *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.

December 7, 2023
Date Decision Issued

KEB/sh
#208128

Kristin E. Blumer

Kristin E. Blumer
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 9th day of January, 2024, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Heather Connellee

Heather Connellee

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***