

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF JENKINS WASHINGTON,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF GILBERTO</b></p> <p><b>MONNOT, T/A MONNOT</b></p> <p><b>CONSTRUCTION, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE JEFFREY T. BROWN,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-24-01743</b></p> <p>* <b>MHIC No.: 23 (75) 1281</b></p> <p>*</p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On September 19, 2023, Jenkins Washington (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$9,370.32<sup>2</sup> for actual losses allegedly suffered as a result of a home improvement contract

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>2</sup> This figure is taken from the Claimant's Complaint to the MHIC. If an actual loss is determined, it will be based on the evidence presented, rather than the amount stated in the Complaint.

with Gilberto Monnot, trading as Monnot Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>3</sup>

On January 16, 2024, the MHIC issued a Hearing Order on the Claim. On January 16, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.<sup>4</sup>

On July 1, 2024, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20A. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was present and represented himself. Charles Lazar, Esquire, represented the Respondent who was present.

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 & Supp. 2023); 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 - Mid-Atlantic Credit Union Check pages, Check Nos. 400023899, March 23, 2022, and 400023956, April 7, 2022, payable to the Respondent

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

<sup>4</sup> The transmittal form from the MHIC to the OAH is dated April 1, 2024; however, it has a stamp noting it was "Hand Delivered" on "3/29/24." This was not explained at the hearing, and I must assume the date stamp is incorrect.

- Clmt. Ex. 2 - Montgomery Village Foundation, Inc., Architectural Standards Department, letter to the Claimant, May 12, 2022
- Clmt. Ex. 3 - Montgomery County Building Permit, May 19, 2022
- Clmt. Ex. 4 - Montgomery County Inspection Disapproval, June 9, 2022
- Clmt. Ex. 5 - Screenshot of text messages between the Respondent and the Claimant, June 8, 2022
- Clmt. Ex. 6 - Montgomery County Inspection Disapproval, June 13, 2022
- Clmt. Ex. 7 - Architectural detail drawing, June 15, 2022
- Clmt. Ex. 8 - Montgomery County Inspection Disapproval, June 29, 2022
- Clmt. Ex. 9 - Photographs (2) of ground-fault circuit interrupter (GFCI) outlets, December 2022
- Clmt. Ex. 10 - DARS Appliance Repair Invoice, December 23, 2022
- Clmt. Ex. 11 - Photographs (6) related to dryer vent repairs, December 2022
- Clmt. Ex. 12 - Montgomery County Inspection Disapproval, January 9, 2023
- Clmt. Ex. 13 - Letter from the Claimant to the Respondent, January 10, 2023
- Clmt. Ex. 14 - Email from the Respondent to the Claimant, January 25, 2023
- Clmt. Ex. 15 - Email from the Claimant to the Respondent (partial), January 25, 2023
- Clmt. Ex. 16 - MHIC Complaint, March 7, 2023
- Clmt. Ex. 17 - MHIC Complaint as received by the MHIC, April 8, 2023
- Clmt. Ex. 18 - Photographs (4) of exterior construction, June 29, 2023
- Clmt. Ex. 19 - Inspection Approval, July 3, 2023
- Clmt. Ex. 20 - Home Improvement Claim Form, September 8, 2023, with attachments
- Clmt. Ex. 21 - Photographs (9) of post-construction deck conditions, June 2023 to September 2023
- Clmt. Ex. 22 - Montgomery County Permitting Services Residential Typical Deck Details, issued April 15, 2021

Clmt. Ex. 23 - Email from the Respondent to the Claimant's son, Patrick Washington,  
May 9, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, March 26, 2024

Fund Ex. 2 - Hearing Order, January 16, 2024

Fund Ex. 3 - Home Improvement Claim Form, received September 19, 2023

Fund Ex. 4 - MHIC Licensing History for the Respondent, June 27, 2024

The Respondent did not offer any exhibits.

### Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present any 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 numbers 6133558 and 05-137714.

2. On April 19, 2022, the Respondent prepared an estimate in the amount of \$9,505.25 to construct a deck on the Claimant's home, to be paid for by the Claimant's son as a gift to the Claimant. The scope of work identified in this document constitutes the original Contract.

3. Pursuant to a change order on a date not stated in the record, an additional sum of \$1,600.00 was negotiated to have the Respondent to stain the deck.

4. Including the change order, the total contract price was \$11,100.25.<sup>5</sup> The Respondent agreed he was paid \$9,505.25.
5. A building permit was issued by the Montgomery County Department of Permitting Services (Permitting Services) on May 19, 2022.<sup>6</sup>
6. On May 30, 2022, the Respondent commenced construction by digging holes for the deck supports.
7. On June 7, 2022, the deck was inspected and was failed by Permitting Services due to framing deficiencies.<sup>7</sup>
8. On June 8, 2022, the Respondent informed the Claimant that the deck should be completed in June 2022.<sup>8</sup>
9. On June 9, 2022, the deck was inspected again and failed because the framing deficiencies had not been corrected.<sup>9</sup>
10. On June 27, 2022, the deck failed a Final Inspection because an exterior outlet was not a ground fault circuit interrupter (GFCI) outlet.<sup>10</sup>
11. On June 27, 2022, the Permitting Office also noted receipt of photographs from the Claimant showing that his dryer vent had been altered and enclosed during construction, requiring the installation of an access panel to the dryer vent.
12. On July 26, 2022, the Claimant notified the Respondent that his vent pipe fixture, located below the deck surface, had been removed and the vent opening was blocked.

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<sup>5</sup> \$9,505.25 + \$1,600.00 = \$11,100.25.

<sup>6</sup> Clmt. Ex. 3.

<sup>7</sup> Clmt. Ex. 20, p. 9; *see also* Clmt. Ex. 4. Per the Permitting Office Inspections record, the inspection took place on June 7, 2022. The Inspection Disapproval was issued on June 9, 2022.

<sup>8</sup> Clmt. Ex. 5.

<sup>9</sup> Clmt. Ex. 20, p. 9; *see also* Clmt. Ex. 6, which is the disapproval issued on June 13, 2022 from the inspection on June 9, 2022.

<sup>10</sup> Clmt. Ex. 20, p. 9; *see also* p. 8, showing that the Respondent's estimate of April 19, 2022 did not include any electrical services.

13. On August 13, 2022, the Respondent stained the deck. On August 25, 2022, the Claimant complained to the Respondent about unevenness in the deck stain. On September 24, 2022, deck staining was completed.

14. On January 5, 2023, the deck failed a Final Inspection because the dryer vent required cleaning and there were open risers on the deck stairs.<sup>11</sup>

15. On January 10, 2023, the Claimant requested in writing that the Respondent complete remaining work on the deck, including replacing damaged boards, staining new boards, installing risers and creating an access panel for the covered dryer vent, or he would file a complaint.<sup>12</sup>

16. On January 25, 2023, the Respondent replied to the Claimant and told him to do what he felt he needed to do.<sup>13</sup>

17. The Claimant filed his Complaint with the MHIC on March 7, 2023.<sup>14</sup>

18. On June 29, 2023, the Respondent installed step risers and an access panel to the dryer vent.<sup>15</sup>

19. On July 10, 2023, the deck passed a Final Inspection.<sup>16</sup>

20. On August 31, 2023, the Claimant obtained an estimate from a MHIC-licensed contractor to remove and repair work done by the Respondent.<sup>17</sup>

### 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 (2021); COMAR 09.08.03.03A(3).

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<sup>11</sup> Clmt. Ex. 20, p. 9.

<sup>12</sup> Clmt. Ex. 13.

<sup>13</sup> Clmt. Ex. 15.

<sup>14</sup> Clmt. Exs. 16, 17.

<sup>15</sup> Clmt. Ex. 20, p. 4.

<sup>16</sup> Clmt. Ex. 20, p. 9.

<sup>17</sup> Clmt. Ex. 20, pp. 21-22.

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. 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.”). The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The statute defines actual loss as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

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 Fund established through questioning of the Claimant at the hearing that 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. 2023). The Claimant resides in the home that is the subject of the claim. *Id.* § 8-405(f)(2) (Supp. 2023). 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. 2023). 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. 2023). There is no evidence that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). The Claimant’s uncontested testimony was that he attempted to contact the Respondent multiple times to pursue correction of deficiencies in the workmanship of the deck

before commencing this action in March 2023. In response, the Respondent told the Claimant to do what he needed to do, including taking legal action, and brought up his own disputes with the Claimant's son.

### ***The Parties' Positions***

#### **The Claimant:**

The Claimant testified that his son gifted a deck to the Claimant and his wife. The Claimant stated that the cost of the deck was paid upfront by the son in two payments to the Respondent, with whom the son had other contracts, the latter of which payments was completed on April 7, 2022. The amount that the Claimant stated his son paid for the deck was \$11,100.00, which the Claimant argued included the amount of the estimated Contract price of \$9,505.25, plus \$1,600.00 to stain the deck, excluding \$5.25.<sup>18</sup> However, the two checks the Claimant associates with this Contract were not written by the Claimant, and neither clearly identified the Claimant's deck as the work for which both payments were made. The Claimant had no personal knowledge concerning the relationship between the two checks and construction of his deck. No date of the change order adding staining was provided by either party. As such, the check dated April 7, 2022 cannot be directly associated with the change order to stain the deck. The Claimant did not call his son to testify in clarification of this issue.

The Claimant explained that prior to the beginning of construction, he submitted deck construction plans to his Homeowner's Association (HOA) and obtained permission to have the deck built. He stated that he provided the Respondent with the same deck construction plans he submitted to the HOA. The Claimant testified that construction began on May 20, 2022, when the Respondent began digging deck footings. The Claimant produced evidence that the Respondent stated by text message on June 8, 2022, a Wednesday, that the deck should be

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<sup>18</sup> Clmt. Ex. 1.



completed when the Claimant and his wife returned from a trip on Sunday, June 12, 2022.<sup>19</sup> The deck was not completed by that time.

The Claimant testified that construction of the deck was plagued with errors from the outset, including that the original footing depths were incorrect, necessitating that the footings be completely redone. He testified that the framing of the deck was not correctly performed, resulting in the deck failing an inspection and requiring that the framing be corrected. The Claimant testified that the plans he provided to the Respondent were not considered during the construction, and that he had difficulty communicating with the Respondent's workers when issues arose that the Claimant thought required correction.

The Claimant testified, and presented photographic evidence, that numerous boards used to plank the deck surface were unevenly cut, apparently by hand, and many were cut too short to be joined end to end.<sup>20</sup> The Claimant's photographs showed uneven and inconsistent spacing between boards.<sup>21</sup> The Claimant's photographs showed that miter joints cut at forty-five degree angles for railings were uneven, were not joined flush to one another, and that the poor quality of the cuts would have made a clean joint impossible even if they were connected together. The photographs showed that split, cracked, and improperly cut boards were used on the deck. The Claimant's photographs also showed improperly cut boards used on the stairs, including step-boards that did not extend far enough to cover the edges of the risers beneath them.<sup>22</sup>

The Claimant also testified extensively about two additional matters that he felt should be included as actual losses. The first involved the alleged failure of the Respondent to install a GFCI outlet, accessible from the deck. Concerning the GFCI outlet, the Claimant argued that it

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<sup>19</sup> Clmt. Ex. 5.

<sup>20</sup> See Clmt. Ex. 21, taken by the Claimant between June 2023 and September 2023.

<sup>21</sup> See Clmt. Ex. 22, p. 14, the Montgomery County Residential Code, recommending spacing of 1/8 inch between deck surface boards. The Respondent testified that the deck was constructed pursuant to the Code. One of the Claimant's photographs shows spacing of nearly one inch between some boards.

<sup>22</sup> Clmt. Ex. 18, pp. 3-4.

was the Respondent's obligation to install the GFCI outlet, and that the failure to do so led to the deck failing at least one inspection.

The second matter involved the Respondent's removal of an external vent hood and blockage of the dryer vent, which prevented the Claimant's clothes dryer from venting air and lint to the outside of the house and rendered the dryer useless. Concerning the removal of the external vent hood and blockage of the vent pipe, which were located beneath the level of the deck surface, the Claimant presented evidence showing that the Respondent removed the vent hood and installed wooden components supporting the deck structure over the vent opening, blocking it. The Claimant presented evidence concerning what it cost him to have the dryer vent cleaned out. The Claimant also presented photographic and written evidence showing that the Respondent eventually cut an access panel in the location of the vent pipe before the deck passed final inspection.

The Claimant testified that in August of 2023, he obtained an estimate from DeckMaster, an MHIC licensee, to replace 317 square feet of deck boards while retaining the framing, to replace the rails while keeping the existing posts, and to rebuild the steps with matching deck materials, for the cost of \$8,571.00.<sup>23</sup>

#### The Respondent

The Respondent testified that he contracted with the Claimant's son to build the deck and the price of the deck before adding staining as a change order was \$9,505.25. The Respondent also testified that the change order to stain the deck added \$1,600.00 to the total Contract price. The Claimant testified, and his photographs show, that the deck was stained. The Respondent testified that he was paid \$9,505.25 for the original Contract, but he was not paid the additional

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<sup>23</sup> Clmt. Ex. 20, p. 22; the DeckMaster estimate also provided a \$1,000.00 discount, which reduced the estimated price to \$7,571.00, but only if the offer was accepted within ten days. There was no evidence that the offer was accepted or that the Respondent's work has been repaired, so I will consider the undiscounted estimate to be the applicable repair estimate. I was not provided with a more current estimate accounting for current costs.

\$1,600.00 to stain the deck, which he contended the Claimant's son still owed him. The Respondent testified that he had other contracts with the Claimant's son, and that the payments identified by the Claimant as relating to the Contract were not for the Claimant's deck but for other work the Respondent was doing for the son.

The Respondent testified that he did not rely on the plans the Claimant provided him because he had to build the deck according to the applicable building code, but did not explain why or how the Claimant's plans failed to comply with the applicable building code. The Respondent also testified that he built the deck just as the Contract required him to do, and he was satisfied that the deck complied with the building code. The Respondent stated that there was no part of the Contract that required him to install a GFCI outlet, and that he told the Claimant to hire an electrician to do that.

The Respondent testified that the Claimant did not enter into the Contract with the Respondent and that the deck was a gift. The Respondent argued, on that basis, that the Claimant was not a proper party to assert a claim for his actual loss. The Respondent also testified that the deck finally passed inspection and argued that on that basis that no defect in workmanship had been proved.

The Respondent was questioned by the Fund concerning what he would charge to repair or replace the deficient work shown in the Claimant's photographs. Initially, the Respondent deferred, saying that he usually relies on a program based on hours and costs to estimate work for his company. When the Fund asked for his best estimate, however, the Respondent testified that he could do the repairs for an amount between \$2,500.00 and \$3,000.00.

### *Analysis*

Based on the evidence and testimony presented, I find that the Respondent performed an unworkmanlike and inadequate home improvement on the Claimant's property. Before

addressing the evidence presented by both parties concerning whether the Respondent performed an unworkmanlike and inadequate home improvement as to the deck, I will address and dispose of the Claimant's arguments that the Respondent should be accountable in this matter for the failure to install a GFCI outlet next to the deck, as well as for the expense incurred to clean the dryer vent after the Respondent improperly covered it.

The Claimant argued that the Respondent was responsible to install a GFCI outlet in the exterior wall adjoining the deck during construction. However, this part of the Claimant's argument does not find support in the Contract. Rather, the argument seems to derive from the fact that the deck failed inspection due to the lack of this outlet, from which its necessity as part of the construction might be inferred. Neither the Contract, nor any other evidence presented by the Claimant, obligated the Respondent to perform installation of the outlet or to subcontract that task to an electrician. I do not find that installation of the GFCI outlet was part of the Contract and I cannot find that the alleged failure to do so was an incomplete home improvement.

Similarly, I must note that the Respondent's poor workmanship resulting in the Claimant's dryer vent being covered resulted in a consequential damage that is not compensable in this matter. The MHIC may not award from the Fund an amount for consequential damages. Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1). The Contract did not include any work associated with the dryer vent, even if it possibly should have. For instance, there is no line item in the Contract concerning how the Respondent would address the dryer vent pipe and fixture during construction, such as removing the fixture, preserving a vent opening, and replacing the fixture, and that this was incorrectly done. Rather, as a consequence of the Respondent's unworkmanlike and inadequate performance, the fixture was removed and the vent opening was covered and made inaccessible. The Claimant incurred an expense to remedy the Respondent's non-contractual failure to account for the vent pipe and the vent opening. As such,

I find that it is a consequential damage and even if the Respondent's work created this expense, I may not consider it compensable.

In addition, before analyzing the parties' evidence and arguments, I will address two arguments made by the Respondent that the Claim is improper. The first argument was that the Claimant is not a proper party because the deck was a gift, and he has no contractual standing to argue that the deck was deficient. The second argument was that because the deck was a gift, the Claimant must take it subject to the rights of the contracting party, his son, meaning he must take it as it was delivered. The Respondent offered no legal authority in support of either position.

Neither argument has merit. An action before the MHIC for recovery from the Fund is not a civil breach of contract action. To be eligible to recover, an owner who resides in the home in which a home improvement was performed or should have been performed is not required to prove privity with a contractor. In addition, there is no bar to recovery if an owner is a third-party beneficiary to a contract. An owner with an actual loss may recover compensation from the Fund as long as the owner is not otherwise precluded by statute from asserting the claim. Bus. Reg. §8-405. In this case, the Claimant testified without contradiction that he is an owner of the residence on which the deck was installed, and it was established by the Fund that he was not statutorily precluded from making a claim. Accordingly, the Respondent's argument that the Claimant did not contract with the Respondent and, therefore, is not a proper party to pursue a claim, is without merit. Both arguments based on contractual privity are invalidated on the same basis.

Turning to the issue of the sufficiency of the actual workmanship performed on the deck, the Claimant presented ample photographic evidence of visible defects in workmanship by the Respondent throughout the deck structure, as enumerated above. The Respondent argued that because the Claimant did not present expert testimony that the Respondent's work needed repair

or replacement, he failed to carry his burden of proof to show actual damage. This argument is also misplaced. The photographs introduced by the Claimant do not require expert testimony to explain what they depict. A new deck should not consist of numerous boards so unevenly cut that the angle of an edge fails to match the angle of an adjoining edge in boards that adjoin lengthwise. The spaces between the ends of such boards should not be large enough to expose a significant amount of the beam beneath, including one gap of more than 3/4 inch in one picture. A new deck should not be built using boards that are split, cracked, and damaged. A new deck should not be built with spaces between deck boards that are significantly greater than 1/8 of an inch, according to the applicable County building code, but even allowing for some variation in that spacing, deck boards should not be nearly an inch apart. Mitered railing joints, unlike deck boards, should be cut smoothly and evenly and have no gaps or spaces between their edges. Deck boards should not have random cuts made into their edges.

All these conditions were depicted in the Claimant's photographs. No specialized knowledge is necessary to detect any of these conditions and recognize their deficiencies. The Respondent did not address any of these patent conditions other than to generally state that the deck was built according to code, which alone does not contradict photographic evidence that the workmanship was poor and the home improvement inadequate. A workmanlike, adequately constructed deck should not appear as aged and deficiently built within months of completion as the Claimant's deck does.

I thus 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. In this case, the Respondent performed some work under the Contract, and the Claimant is soliciting another contractor to complete the

contract, as evidenced by the estimate from DeckMaster. The applicable formula to calculate the Claimant's actual loss is provided by COMAR 09.08.03.03B(3)(c):

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.

There is a dispute in the evidence regarding whether the Respondent was paid the full Contract price of \$11,105.25. The Respondent testified that he was paid only \$9,505.25, and that he was not paid the remaining \$1,600.00 associated with the change order for staining the deck. The Claimant contends the Respondent was paid \$11,100.00 based on two checks issued on behalf of the Claimant's son to the Respondent, one on March 23, 2022 and one on April 7, 2022. The March 23, 2022 check is annotated "Renovation," and the April 7, 2022 check is annotated "Renovation Office."

The Respondent testified that he and the Claimant's son had an ongoing contract at that time for renovation of the son's office, and that neither check was for the deck. It is noted that both checks predate the Contract in this matter. The Claimant acknowledged that he did not request the issuance of either check, and he did not have knowledge of other matters between his son and the Respondent. On the basis of this evidence, I cannot reasonably infer that checks written before the Contract in this matter were issued in payment of the services itemized in the Contract. Because the Respondent has acknowledged that he was paid the original Contract price of \$9,505.25, I conclude that the amount paid under the Contract is limited to \$9,505.25.

The Fund argued that the evidence supported a conclusion that the Respondent performed an unworkmanlike and inadequate home improvement, and that the correct formula was

provided by COMAR 09.08.03.03B(3)(c). The Fund further argued that the Claimant's actual loss can be calculated by providing a cost to repair based on either \$2,500.00 or \$3,000.00, as suggested by the Respondent, or based on the DeckMaster estimate of \$7,571.00. Based on the Respondent's testimony, I must rule out his two suggested costs to repair. I find that he was initially hesitant to offer an estimate that was not calculated as is customary for him, but I also find that he is not a proper party from whom to solicit or apply an objective estimate of repair, knowing that he would be the one who would pay it.

Instead, I find the DeckMaster estimate to be both more reliable and objectively credible because it suggested limited repair or replacement, while excluding work that had been done adequately by the Respondent. The DeckMaster estimate provided several options, and provided a cost for each, but the one that most accurately addressed the deficiencies shown in the Claimant's photographs was the "Wood Redecking Pkg: -Redecking," which provided as follows:

Resurface existing deck 317 sq. ft. 1) Framing: Keep existing framing as is (no change) any damaged joists are extra. 2) Decking: Install 2x6 PT [pressure treated] (#1 wood) w/screws on top. 3) Rails: Install wooden rails w/squared balusters. 4) Posts: Keep existing. 5) Fascia: N/A. 6) Stairs: Rebuild 2x4'W steps w/matching deck materials...

The remainder of the package components include reference to permits and a two-year warranty on workmanship. Another contractor might have proposed tearing the deck down entirely and starting over, but DeckMaster did not. It left in place some construction done by the Respondent that it could have also required to be torn down and rebuilt before a warranty would be included. This approach persuades me that the costs estimated by DeckMaster are a reasonable estimate of what is necessary to repair or replace poor work, but not more than that.



That said, I find that the correct amount to be applied from the DeckMaster estimate is not the \$7,571.00 used by the Fund, but is the original undiscounted estimate of \$8,571.00.<sup>24</sup> A \$1,000.00 discount on the original estimate was only applicable if the estimate was accepted within ten days. There is no evidence that occurred. After ten days, and to date, the estimate was the original amount of \$8,571.00.

Therefore, using the above formula, I find the Claimant's actual loss to be calculated as follows:

Amount paid by or on behalf of the Claimant to the Respondent:	\$ 9,505.25
Plus the amount required to pay another contractor to repair:	<u>\$ 8,571.00</u>
Subtotal:	\$18,076.25
Minus the original contract price:	(\$ 9,505.25)
<b>Actual loss:</b>	<b>\$ 8,571.00</b>

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.<sup>25</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); 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 his actual loss of \$8,571.00.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$8,571.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg.

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<sup>24</sup> Clmt. Ex. 20, p. 21.

<sup>25</sup> 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").

§§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

**RECOMMENDED ORDER**

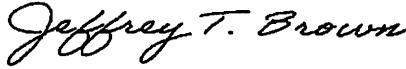
I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,571.00; 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,<sup>26</sup> and

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

September 24, 2024  
Date Decision Issued

  
\_\_\_\_\_  
Jeffrey T. Brown  
Administrative Law Judge

JB/kh  
#214044

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<sup>26</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 28<sup>th</sup> day of February, 2025, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.***

***Chandler Louden***

***Chandler Louden***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***