

IN THE MATTER OF THE CLAIM OF	*	BEFORE STEPHEN J. NICHOLS,
RON J. VIDA	*	AN ADMINISTRATIVE LAW JUDGE
AGAINST THE	*	OF THE MARYLAND OFFICE
MARYLAND HOME IMPROVEMENT	*	OF ADMINISTRATIVE HEARINGS
GUARANTY FUND ON ACCOUNT OF	*	
HOME IMPROVEMENT WORK	*	
UNDERTAKEN BY	*	OAH NO.: DLR-HIC-02-06-47435
DAVID B. BARKLEY T/A	*	MHIC NO.: 06 (90) 1904
OMEGA CONSTRUCTION & REMODELING	*	

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

This case arose because of a complaint filed by Ron J. Vida (Claimant) with the Maryland Home Improvement Commission (MHIC) against David B. Barkley t/a Omega Construction & Remodeling (Respondent). The complaint asserts that the Claimant entered into a contract with the Respondent for the performance of home improvement work at the Claimant's residence and that the Respondent's performance of the work was incomplete and inadequate.

On May 4, 2006, the Claimant filed a claim with the MHIC seeking to recover \$49,849.02 from the Home Improvement Guaranty Fund (Fund). On October 13, 2006, the

MHIC issued an order for a hearing on the claim against the Fund. This case was originally scheduled for a hearing at the Office of Administrative Hearings (OAH) on May 1, 2007. On February 13, 2007, the MHIC revoked its delegation of authority for the OAH to hear the case because the Claimant had filed litigation against the Respondent in the Circuit Court for Baltimore County involving the same facts as alleged in his claim against the Fund.¹ On April 24, 2009, the Claimant filed a request with the MHIC to reinstate the proceedings because he was no longer pursuing a Circuit Court case. On May 20, 2009, acting on that request, the MHIC issued a second order for a hearing on the claim against the Fund.

On March 2, 2010, the above-captioned case was heard before Stephen J. Nichols, Administrative Law Judge (ALJ), on behalf of the MHIC. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (Supp. 2009). The hearing was conducted at the Administrative Law Building located in Hunt Valley, Maryland. Michael J. Jack, Esquire, represented the Claimant. Jessica Berman Kaufman, Assistant Attorney General, Office of the Attorney General, Department of Labor, Licensing & Regulation, represented the Fund. The Respondent failed to appear at the hearing.

On December 28, 2009, the OAH mailed notice of the hearing to the Respondent by certified and regular mail to his last address of record on file with the MHIC. The notice advised the Respondent of the time, place, and date of the hearing. The U.S. Postal Service returned the certified mail marked "Unclaimed" and also returned the regular mail marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." Md. Code Ann., Bus. Reg. § 8-312(d) (2004).²

¹ "If the claimant brings an action in a court of competent jurisdiction based on the same facts alleged in a pending claim, the Commission shall stay its proceedings on the claim until there is a final judgment and all rights to appeal are exhausted." Md. Code Ann., Bus. Reg. § 8-408(b) (2004).

² "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2004).

In 2007, when the case was first scheduled for a hearing, the Respondent had filed a motion for discovery with the OAH. Before the MHIC issued its second order for a hearing on the claim, the Respondent's status as a corporate entity was forfeited with the Maryland Department of Assessments and Taxation. The Respondent's MHIC license expired on August 26, 2009. "If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter." Md. Code Ann., Bus. Reg. § 8-312(h) (2004). As notice options have been exhausted and the Respondent no longer exists as a corporation or holds a MHIC license, the ALJ directed the hearing proceed in the Respondent's absence.

The contested case provisions of the Administrative Procedure Act; the procedural regulations of the Department of Labor, Licensing and Regulation; and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), Code of Maryland Regulations (COMAR) 09.01.03, COMAR 09.08.02.01; COMAR 28.02.01.

ISSUES

The issues are whether the Claimant sustained an "actual loss" compensable by the Fund as the result of an act or omission of the Respondent under a home improvement contract within the meaning of section 8-401 of the Business Regulation Article of the Annotated Code of Maryland, and if so, the amount of the award.

SUMMARY OF THE EVIDENCE

A. Exhibits

The following items were admitted into the record:

- Fund Exhibit #1 – Copies of three Notices of Hearing (twenty pages & three envelopes)
- Fund Exhibit #2 – Copy of a Transmittal letter, a copy of an Order for Hearing, and a copy of a Home Improvement Claim Form (four pages)
- Fund Exhibit #3 – Dept. of Labor, Licensing & Regulation I.D. Registration Inquiry on the Respondent, dated February 22, 2010 (seven pages)
- Claimant Exhibit #1 – Copy of an Agreement, with Change Order #1 and Change Order #2 (ten pages)
- Claimant Exhibit #2 – Copy of a Baltimore County Uniform Code Enforcement Citation and a copy of a Final Order of the Code Enforcement Hearing Officer (four pages)
- Claimant Exhibit #3 – Copy of a fee quotation and reports from EBL Engineers, LLC (six pages)
- Claimant Exhibit #4 – Copy of a letter and repair work estimate from Roofing Unlimited, Inc. (two pages)
- Claimant Exhibit #5 – Copy of an invoice from John Totty, Inc.
- Claimant Exhibit #6 – Copy of an invoice from D.A.B. Flooring, Inc., and a copy of an invoice from Q.L.S. Contractors (two pages)
- Claimant Exhibit #7 – Copy of a Sales Agreement from Chason Service Engineers, Inc. (five pages)
- Claimant Exhibit #8 – Copy of an invoice from National Lumber Company
- Claimant Exhibit #9 – Copies of invoices from C. D. Thomas (three pages)
- Claimant Exhibit #10 – Copies of invoices from C. D. Thomas (two pages)
- Claimant Exhibit #11 – Copies of invoices from National Lumber Company (three pages)
- Claimant Exhibit #12 – Copy of receipts and a contract from Lowe's (three pages)
- Claimant Exhibit #13 – Copy of a work order from Abbott's Plumbing (two pages)
- Claimant Exhibit #14 – Copy of a work order from R. J. Hellmann and Sons, Inc. (two pages)
- Claimant Exhibit #15 – Copies of invoices from The Home Depot (two pages)
- Claimant Exhibit #16 – Copies of receipts from Lowe's
- Claimant Exhibit #17 – Copy of a Proposal from Sheldon & Sons, Inc.

Claimant Exhibit #18 - Copy of a receipt from The Home Depot

Claimant Exhibit #19 - Copies of receipts from The Home Depot, Lowe's, Wal-Mart, Sears Home Central (seven pages)

Claimant Exhibit #20 - Copies of receipts from The Home Depot (three pages)

Claimant Exhibit #23 - Copy of a receipt from Lowe's (two pages)

Claimant Exhibit #24 - Copy of a Proposal from Diamond Point Contractors

Claimant Exhibit #25 - Copy of a summary sheet

Claimant Exhibit #26 - Copies of five photographs (five pages)

No other exhibits were admitted into evidence.¹

B. Testimony

The Claimant testified on his own behalf. No other witnesses were called to testify.

FINDINGS OF FACT

After considering all of the testimony and exhibits, the ALJ finds, by a preponderance of the evidence, the following to be fact:

1. At all times relevant, the Respondent was a home improvement contractor licensed with the MHIC under contractor license number 01-70346 and 05-51578 (trade name).
2. At all times relevant, the Claimant owned and lived at the residence located at 8192 Miller's Island Boulevard, Baltimore, Maryland (the property).
3. On July 13, 2005, the Claimant and the Respondent entered into a home improvement contract for the Respondent to build an addition to the existing house at the property. The scope of the work also included raising the existing house to a height of eleven feet and six inches off

¹ The Claimant pre-marked his exhibits in sequence. Claimant Exhibit #21 and Claimant Exhibit #22 were not offered into the record.

of the ground, installing flood vents, and making the new basement space into a three-car garage and an unfinished basement area.

4. The original contract price for the work was \$191,343.00. Under the draw schedule to the contract, the Claimant agreed to pay for the home improvement work in six installments as follows:

- \$48,258.00 - Due Upon Signing the Contract as a Deposit
- \$33,386.50 - Due Upon Completion of Foundation
- \$33,386.50 - Due Upon Completion of Framing, Exterior Walls, and Under Roof
- \$57,235.00 - Due Upon Start of Drywall
- \$ 9,539.00 - Due Upon Completion of Trim Installation and Compilation of Punch List
- \$ 9,539.00 - Due Upon Completion of Final Punch List

5. The contract provided that the work would begin within six weeks and be completed within twenty-four weeks.

6. On December 2, 2005, the Claimant and the Respondent entered into Change Order #1 to the contract for a price of \$312.94. On December 4, 2005, the Claimant and the Respondent entered into Change Order #2 to the contract for a price of \$1,644.58. The Claimant paid the Respondent the amounts due under the change orders by check at the time of the changes.

7. The total contract price for the home improvement work, including the change orders, was \$193,300.52.

8. Work on the home improvement project progressed slowly. The Respondent kept asking for payments in advance of the draw schedule for the home improvement project.

9. On or about December 7, 2005, the Respondent's concrete subcontractor appeared at the property in order to begin installing a concrete floor for the garage. However, the concrete subcontractor could not begin to work because the ground floor in the garage area had not been prepared properly and brought up to grade. The Claimant contacted the Respondent and was told that nothing could be done about the problem at that time, but that he could address the matter

himself. The Claimant paid \$1,675.20 to C. D. Thomas, a stone gravel vendor, to haul crush and run (stone) to the property and spread it as fill material in order to bring the ground floor in the garage area up to a level where the Respondent's concrete subcontractor could begin work.

10. The Claimant paid \$179,848.52 to the Respondent for his work at the property. This was accomplished by a series of twelve checks drawn against the Claimant's checking account. Although the contract specified there was to be six installment payments, additional checks were written because the Respondent kept asking for payments in advance of the draw schedule and the Claimant would only pay a portion of what he asked for. The Respondent negotiated and cashed those checks.

11. The Claimant communicated to the Respondent that he was dissatisfied with several items of the work, including a leak that had developed in the roof at the junction of the existing house and the addition. The Respondent made unsuccessful attempts to repair the leaking roof.

12. In June 2006, eleven months after the contract was signed, the Respondent wanted the final payments due under the contract; however, at that time, the framing of the exterior walls had not yet been completed and the drywall had not been started. The Claimant refused to make any more payments until the work was completed and all problems with the work were corrected. As the Respondent refused to return to the job site and perform any more work without more money, an impasse was reached.

13. The Claimant held the building permit for the addition in his name. On July 20, 2006, after an inspector visited the property and viewed the work that had been performed by the Respondent, the Claimant was cited for two areas of deficiency under the Baltimore County Building Code. As part of the citation, the Claimant was required to obtain an engineer's report with structural engineering calculations of the floor system for the elevated house.

14. On September 5, 2006, after a hearing, a Final Order was issued by a Baltimore County Code Enforcement Hearing Officer finding that the Respondent had failed to comply with building codes. Building code violations included inadequate grade in a crawl space for flood vents and inadequate floor system support causing the floor system of the elevated house to be overstressed. The Claimant was directed to perform corrective action or to pay a fine in the amount of \$4,000.00.

15. The Claimant engaged EBL Engineers, LLC, to visit the property, perform a structural analysis, and produce a report for remedial work. EBL Engineers, LLC, produced a report describing floor framing deficiencies in the basement and garage areas, structural issues relating to the second floor deck, and settlement deficiencies in the second floor. The Claimant paid \$600.00 to EBL Engineers, LLC, for their work.

16. The Claimant hired John Totty, Inc., to make repairs to the property in accordance with the EBL Engineers' recommendations for remedial structural work. The Claimant paid \$3,580.00 to John Totty, Inc., for their work.

17. The Claimant hired Roofing Unlimited, Inc., to inspect and repair the roof at the property that had been left in a leaking condition by the Respondent and to replace broken shingles on the addition that had been broken by the Respondent's workers during installation. The Claimant paid \$2,640.00 to Roofing Unlimited, Inc., for their work.

18. The Claimant hired D.A.B. Flooring, Inc., and Q.L.S. Contractors to install flooring in the addition that the Respondent had failed to install. The Claimant paid \$8,250.00 to D.A.B. Flooring, Inc., and Q.L.S. Contractors for the flooring installation.

19. The Claimant hired Chason Service Engineers, Inc., to install a HVAC system that the Respondent had failed to install. The Claimant paid \$7,421.00 to Chason Service Engineers, Inc., for the HVAC installation.

20. The Claimant hired Abbott's Plumbing to relocate a sump pump drain, install a new sump pump, and perform other plumbing work that the Respondent had failed to perform as required under the home improvement contract. The Claimant paid \$642.70 to Abbott's Plumbing for their work.

21. The Claimant hired R. J. Hellmann and Sons, Inc., to repave the existing driveway at the property that the Respondent had failed to perform as required under the home improvement contract. The Claimant paid \$2,200.00 to R. J. Hellmann and Sons for their work.

22. In order to complete the home improvement project, the Claimant purchased supplies and materials and did the work himself or purchased materials from vendors and provided those materials to contractors at the property. The following purchases were made in order to perform work within the scope of the work that the Respondent should have performed at the property:

<u>Amount:</u>	<u>Paid To:</u>	<u>For:</u>
\$3,235.04	National Lumber Company	wood, screws, beams
\$2,889.33	National Lumber Company	oak railings
\$ 166.80	National Lumber Company	additional oak railings
\$ 775.96	Lowe's	entry door purchase and installation
\$ 727.48	The Home Depot	toilet and vanity top
\$ 517.31	Lowe's	garage entrance door
\$ 167.84	Lowe's	six-sided lanterns
\$ 284.45	Lowe's	additional six-sided lanterns
\$ 79.00	The Home Depot	stucco paint
\$ 112.00	The Home Depot	porch/floor paint
\$ 232.95	The Home Depot	doorknobs
\$ 347.84	The Home Depot	five gallon buckets of paint
\$ 127.00	Sears Home Central	labor performed to vent dryer
\$ 46.94	The Home Depot	topsoil to raise grade level to flood vent
\$ 10.46	The Home Depot	tan screws
\$ 28.07	The Home Depot	oak shoe pan
\$ 2.44	Wal-Mart	three pack paint brushes
\$ 1.97	Wal-Mart	paint grid
\$ 20.52	The Home Depot	truck rental to transport materials
\$ 87.70	The Home Depot	insulation not installed

\$ 62.63	The Home Depot	oak steps
\$ 82.52	The Home Depot	oak handrails
\$ 7.24	The Home Depot	oak board
\$ 74.29	The Home Depot	oak board and steps
\$ 336.00	Lowe's	door at laundry room in basement

23. The Respondent had improperly installed the deck at the addition with inadequate support, loose or cracked decking boards, and inadequate handrails. The Respondent also did not install flashing under the siding of the back wall on the deck as required by building codes. The Claimant obtained an estimate from Diamond Point Contractors to repair and complete the Respondent's inadequate work on the deck at a cost of \$5,175.00.

DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2004 & Supp. 2009). Under this statutory scheme, licensed contractors are assessed for the monies that subsidize the Fund. Homeowners who are victimized by the actions of licensed contractors may recover their "actual losses" from this pool of money, subject to a \$20,000.00 limitation on the claim of any one aggrieved homeowner because of the work of any one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1).⁴ A homeowner is authorized to recover from the Fund when he or she sustains an actual loss that results from an act or omission by a

⁴ Effective October 1, 2008, section 8-405(e)(1) of the Business Regulation Article was amended raising the limit of recovery from the Fund from \$15,000.00 to \$20,000.00. Section 2 in Chapter 272 of House Bill 409 that raised the recovery limit reads, "[t]his Act shall be construed to apply to any claim pending before the Maryland Home Improvement Commission for which the Commission has not issued a final decision prior to the effective date of this Act."

licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). When the Fund pays money to a homeowner as a result of the faulty performance of a home improvement contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until he or she fully effectuates reimbursement. Md. Code Ann., Bus. Reg. § 8-411.

An action against the Fund does not correspond to a civil claim (in an administrative setting) against an individual contractor for breach of contract. Recovery against the Fund is based on "actual loss" as defined by statute and regulation. "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. "By employing the word 'means,' as opposed to 'includes,' the legislature intended to limit the scope of 'actual loss' to the items listed in section 8-401." *Brzowski v. Md. Home Improvement Comm'n*, 114 Md. App. 615, 629, 691 A.2d 699, 706 (1997). "The Fund may only compensate for actual losses [Claimant] incurred as a result of misconduct by a licensed contractor." COMAR 09.08.03.03B(2).

The Respondent did not complete his obligations under the terms of the home improvement contract. In order to facilitate the work while the Respondent was still working on the project, the Claimant paid C. D. Thomas, a gravel and stone vendor, to deliver and spread crush and run in order to raise the grade in the garage area high enough for the Respondent's subcontractor to install a concrete floor for the garage because the Respondent had failed to prepare the ground in the garage area for the concrete floor installation. After he had obtained payments in advance of the draw schedule, the Respondent ceased working on the home improvement project and abandoned the work. After the work was abandoned, subsequent events demonstrated that the Respondent's work had been inadequate including a failure to

comply with building codes. The evidence of the Respondent's inadequate performance and abandonment of the work is uncontradicted.

Because the Respondent had failed to comply with Baltimore County building codes, the Claimant was directed to perform corrective action or to pay a fine. The Claimant paid \$600.00 to EBL Engineers, LLC, for a structural analysis of the Respondent's work. EBL Engineers, LLC, produced a report describing floor framing deficiencies in the basement and garage areas, structural issues relating to the second floor deck, and settlement deficiencies in the second floor.

The Claimant arranged for John Totty, Inc., Roofing Unlimited, Inc., Q.L.S. Contractors, and R. J. Hellmann and Sons, Inc., to repair inadequate work performed by the Respondent and complete work that had not been performed. The Claimant paid D.A.B. Flooring, Inc., for flooring that the Respondent had failed to install; Q.L.S. Contractors installed that flooring at the job site. The Claimant engaged Chason Service Engineers, Inc., to install a HVAC system that the Respondent had failed to install. The Claimant also engaged Abbott's Plumbing to perform plumbing work that the Respondent had failed to perform. Further, in order to complete the home improvement project, the Claimant purchased supplies and materials from National Lumber Company, Sears Home Central, Wal-Mart, The Home Depot, and Lowe's and did the work himself or purchased materials and provided those materials to contractors at the property.

The Respondent improperly installed the deck at the addition with inadequate support, loose or cracked decking boards, inadequate handrails, and missing flashing under the siding of the deck's back wall. The Claimant has obtained an estimate from Diamond Point Contractors to repair and complete the Respondent's inadequate work on the deck. The Claimant is waiting on an award from the Fund to have that work done. The estimate from Diamond Point Contractors demonstrates that the reasonable amount to repair or complete the Respondent's inadequate work on the deck is \$5,175.00.

Because of the Respondent's "misconduct," described above, the Claimant has established an entitlement to reimbursement on his claim against the Fund. COMAR 09.08.03.03B(2); Md. Code Ann., Bus. Reg. § 8-401. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss" as follows:

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, 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.

(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 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)(a) and COMAR 09.08.03.03B(3)(b) do not apply to the matter *sub judice*. The ALJ will calculate the Claimant's "actual loss" in accordance with COMAR 09.08.03.03B(3)(c). The calculations follow:

\$181,523.72	Payments made to the Respondent or made on the Respondent's behalf
+ <u>\$40,932.48</u>	Cost to complete and repair the work (payments made or to be made)
\$222,456.20	(Expenditure Subtotal)
- <u>\$193,300.52</u>	Contract Price
\$ 29,155.68	Actual Loss

The Claimant has an "actual loss" of \$29,155.68. Md. Code Ann., Bus. Reg. § 8-401. However, the right to make a claim against the Fund is subject to some restrictions. "The Commission may not award from the Fund . . . more than \$20,000 to one claimant for acts or omissions of one contractor." Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2009). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$20,000.00.

Although immaterial to the outcome of this case, some additional points remain to be addressed. The Claimant presented evidence on other items that, he maintains, should be included as a measure of his actual loss. The ALJ disagrees with the assertion that these other items should be included as measures of the Claimant's actual loss. An explanation follows.

The Claimant paid C. D. Thomas for screened topsoil that was brought and spread at the jobsite in order to repair the grade at the property. However, the home improvement contract does not reflect that the Respondent was responsible for grading the ground at the property after the home improvement work had been completed. The Claimant failed to demonstrate that the scope of the Respondent's work included grading the property after the project was completed.

The Claimant paid for repairs to the interior of the existing home and the addition caused by rainwater that leaked from the leaky roof that the Respondent had improperly installed. The Claimant also paid for a replacement screen and entrance door that was damaged by the Respondent's workmen during their work. "Consequential damages," which may arise out of the performance of a home improvement contract, are not reimbursable from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (Supp. 2009); COMAR 09.08.03.03B(1)(a). Consequential damages are often characterized as being the product of special circumstances or an indirect result of some wrong. Consequential damages have been defined as "such damage, loss or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act." *Black's Law Dictionary* 390 (6th ed. 1990). There can be

no reimbursement for payments the Claimant made for repairs to the interior of the existing home and the addition caused by rainwater that leaked from the leaky roof or for the damaged screen and entrance door caused by workmen as these items are claims for consequential damages.

The Claimant paid for R30 insulation to replace the R18 insulation that was installed by the Respondent. However, the Claimant did not point out in the home improvement contract that R30 insulation was specified as the insulation required for the job. The Claimant has failed to demonstrate that the scope of the Respondent's work included installing R30 insulation.

The Claimant obtained an estimate from Sheldon & Sons, Inc., to prime and paint the interior surfaces of the addition that the Respondent had failed to paint at a price of \$8,095.00. However, Sheldon & Sons, Inc., performed no work, it merely prepared an estimate of work the Claimant could have had done. The Claimant, himself, primed and painted the interior surfaces of the addition. (The cost of materials that the Claimant used in this work was included in the instant calculation of his actual loss.) The calculation of an "actual loss" is not based on what could have been paid to a more expensive contractor if a claimant hires a less expensive contractor to do the work or performs the work himself. The ALJ discounts the estimate from Sheldon & Sons, Inc., to prime and paint the interior surfaces of the addition.

These additional measures of the claim for an actual loss are rejected and have not been included in the findings of fact, herein.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, the ALJ concludes as a matter of law that the Claimant has sustained an "actual loss" as a result of the Respondent's acts or omissions in the amount of \$29,155.68; yet, the award must be limited to \$20,000.00. Md. Code Ann., Bus. Reg. § 8-401 (2004); Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2009); COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Maryland Home Improvement Commission:


ORDER, that the Claimant be awarded \$20,000.00 from the Maryland Home Improvement Guaranty Fund to compensate him for "actual losses" sustained by the "acts and omissions" of the Respondent under section 8-409 of the Business Regulation Article of the Annotated Code of Maryland; and further,

ORDER, that the Respondent be ineligible for any MHIC license until the Respondent reimburses the Maryland Home Improvement Guaranty Fund for all monies disbursed under this Order plus annual interest of ten percent (10%), pursuant to section 8-411 of the Business Regulation Article of the Annotated Code of Maryland; and further,

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

April 22, 2010
Date Decision Mailed

SJN:sn
#112161v1


Stephon J. Nichols
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 21st day of May 2010, 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.

James Chiracol

*James Chiracol
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION