



I convened a hearing on October 16, 2014, at the Calvert County Public Library, located at 850 Costley Way, Prince Frederick, Maryland 20678. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (Supp. 2014). Tracey M. Delaney, Esquire, represented the Claimant. The Respondent failed to appear for the hearing. Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), MHIC, represented the Fund.

After the hearing concluded, I left the record open until October 23, 2014 to permit the parties to submit additional exhibits and a memorandum of law to address whether contractors hired by the Claimant to complete the home improvement work at her home were MHIC licensed contractors and, if not, whether the Claimant's claim against the Fund is otherwise eligible for compensation.

On October 20, 2014, Ms. Kaufman, on behalf of the Fund, submitted additional exhibits for the record. On October 27, 2014, Ms. Delaney, on behalf of the Claimant, submitted a memorandum with several attached exhibits.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 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 that loss?

## SUMMARY OF THE EVIDENCE

### Exhibits

During the hearing on October 16, 2014, I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. 1 Invoice from Respondent, May 28, 2010
- Cl. Ex. 2 Invoice from Respondent, June 2, 2010
- Cl. Ex. 3 Invoice from Respondent, June 23, 2010
- Cl. Ex. 4 Invoice from Respondent, June 23, 2010
- Cl. Ex. 5 Invoice from Respondent, July 6, 2010

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- Cl. Ex. 6 Invoice from Respondent, July 24, 2010
- Cl. Ex. 7 Contractor Agreement between the Respondent and Claimant, September 2, 2010 (Contract)
- Cl. Ex. 8 Exhibit A and B of the Contract with Claimant's handwritten notations
- Cl. Ex. 9 Claimant's handwritten notes
- Cl. Ex. 10 Handwritten note from Matt (an employee of the Respondent)
- Cl. Ex. 11 Email from Respondent to Claimant, October 19, 2010
- Cl. Ex. 12 Exhibit A of the Contract with Claimant's handwritten notes of incomplete work
- Cl. Ex. 13 Binder of Photographs including:
  - A - Thirteen photographs of electrical work
  - B - Twelve photographs of hot water heater and mold
  - C - Fourteen photographs of drywall painting
  - D - Thirty-six photographs of incomplete drywall work
  - E - Two photographs of rotten support beam
  - F - Two photographs of windows

- Cl. Ex. 14 (Not Admitted)<sup>1</sup>
- Cl. Ex. 15 Series of Claimant's personal checks, totaling \$4,230.00, paid to C.E. Harris for electrical work, including:
- Check 1038, in the amount of \$390.00, dated March 12, 2011
  - Check 1037, in the amount of \$780.00, dated March 11, 2011
  - Check 1036, in the amount of \$845.00, dated March 7, 2011
  - Check 1034, in the amount of \$780.00, dated March 2, 2011
  - Check 1030, in the amount of \$585.00, dated February 21, 2011
  - Check 1028, in the amount of \$850.00, dated February 18, 2011
- Cl. Ex. 16 Contract between Claimant and Lifetime Builders, Inc. (Lifetime Contract or Lifetime), with attached addendum and handwritten estimates of itemized cost totaling \$34,966.00
- Cl. Ex. 17 Lifetime estimate for work to be performed including windows, insulation and trim with proposed draw schedule, in the amount of \$31,380.00, November 4, 2010
- Cl. Ex. 18 Lifetime estimate for work to be performed including electric, hardware and trim, in the amount of \$2,930.00, January 14, 2011
- Cl. Ex. 19 Lifetime estimate for work to be performed including demolition, flooring, and plumbing, in the amount of \$500.00, November 24, 2010
- Cl. Ex. 20 A and L Contracting, Invoice for repainting interior and patching walls, in the amount of \$5,240.00
- Cl. Ex. 21 Claimant's receipt for payment to Respondent on June 22, 2010 in the amount of \$4,267.00
- Cl. Ex. 22 Claimant's receipt for payment to Respondent on June 24, 2010 in the amount of \$7,268.86; Claimant's receipt for payment to Respondent on July 8, 2010 in the amount of \$14,110.14
- Cl. Ex. 23 Claimant's receipt for payment to Respondent on August 27, 2010 in the amount of \$14,989.00; copy of Respondent's invoice dated July 27, 2010 with note of \$500.00 rebate to Claimant

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<sup>1</sup> This exhibit was identified as Claimant's personal check paid to Oscar Nicholson in the amount of \$800.00 on November, 9, 2010 for repair work of a flower bed and cement crawl space and to install tubing to remedy water overflow into the basement. The Fund objected to this exhibit as being irrelevant because there was no evidence that the Respondent was required to perform this work in any invoice or Contract. The Claimant alleged that the work performed by Nicholson was to correct work performed by the Respondent, which the Respondent was required to do based on an oral agreement with the Claimant. With no written document to corroborate the Claimant's allegation, I sustained the objection.

- Cl. Ex. 24 Claimant's receipt for payment to Respondent on September 8, 2010 in the amount of \$15,408.00
- Cl. Ex. 25 Email from Claimant to Respondent regarding a \$1,000.00 cash payment by Claimant to Respondent's subcontractor (Danny) for tile installation, September 9, 2010

After the hearing on October 16, 2014, I admitted the following exhibits on behalf of the Claimant:<sup>2</sup>

- Cl. Ex. 26 Printout of MHIC website pages, Frequently Asked Questions
- Cl. Ex. 27 Claimant's HIC Claim Form, October 2, 2012 with attached HIC information sheet about the Fund

There were no exhibits admitted into evidence on behalf of the Respondent.

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~~During the hearing on October 16, 2014, I admitted the following exhibits on behalf of~~

the Fund:

- Fund Ex. 1 A series of Notices of Hearing mailed by the OAH to the Respondent on July 30, July 31, and August 13, 2014 for a hearing scheduled on October 16, 2014, with an attached photocopy of certified mail receipt of service to the Respondent, August 15, 2014
- Fund Ex. 2 MHIC Transmittal Form to the OAH with attached Claimant's HIC Claim Form received by the MHIC on October 2, 2012 and MHIC Hearing Order, March 12, 2014
- Fund Ex. 3 MHIC Licensing History for the Respondent, August 26, 2014
- Fund Ex. 4 MHIC letter to Respondent, February 5, 2014, with attached Claimant's HIC Claim Form
- Fund Ex. 5 United States Bankruptcy Court for the District of Maryland, Order Granting Relief From Stay, August 28, 1987<sup>3</sup>

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<sup>2</sup> The Claimant offered these exhibits with a memorandum filed on October 23, 2014, which she marked as exhibits A and B respectively. Since these exhibits are in addition to the hearing exhibits, I renumbered the exhibits to be in sequential order with all of Claimant's exhibits.

<sup>3</sup> Ms. Kaufman demonstrated that a Fund hearing may proceed despite a bankruptcy discharge by a licensed contractor in a claim against the Fund by a homeowner.

- Fund Ex. 6 Letter from MHIC to Lawrence E. Hefner, Esquire, regarding a bankruptcy discharge filed by the Respondent and its impact on a claim against the Fund, dated September 5, 2013
- Fund Ex. 7 MHIC letter to Ms. Delaney and Mr. Hefner notifying each person that a hearing on the Claimant's claim against the Fund will be referred to the OAH, March 6, 2014
- Fund Ex. 8 Letter to Claimant from the Office of the Attorney General, Consumer Protection Division, July 17, 2012

After the hearing on October 16, 2014, I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 9 Letter regarding MHIC licensing of Fred Donley t/a Lifetime Builders, Inc., dated October 17, 2014
- Fund Ex. 10 Letter regarding MHIC licensing of Larry t/a A and L Contracting, dated October 17, 2014<sup>4</sup>
- Fund Ex. 11 Printout of MHIC website pages, Frequently Asked Questions and Consumer Advice

### **Testimony**

The Claimant testified on her own behalf.

There was no testimony presented on the Respondent's behalf.

The Fund did not present any testimony.

### **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 license number 01-97311. Fund Ex. 3.
2. The Respondent's personal and business address with the MHIC is 118 Galyn Drive, Knoxville, Maryland 21758 (address of record). Fund Ex. 3.

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<sup>4</sup> This exhibit does not further identify "Larry."

3. On or about May 2010, the Claimant purchased her home located in Chesapeake Beach, Maryland, which required significant home improvement repair.

4. From May 2010 through September 2010, the Claimant hired the Respondent to perform home improvement work required for her home. The Claimant and Respondent, however, did not enter into a written contract to perform any of the work during this time period. Instead, the parties agreed on the work to be performed and cost through separate written estimates, invoices and/or oral agreements.

5. By an invoice dated May 28, 2010 and an estimate dated June 2, 2010, the Respondent was to perform mold remediation in the basement area, including installing ~~CleanSpace crawl space liner; seal foundation and insulate ceiling joist; and remove basement~~ carpeting, existing built-in bar system, existing wall board, wood storage space, desk system, refrigerator, and all built-in basement seating. The total cost of this work was \$6,467.00. Cl. Exs. 1 and 2.

6. On an unspecified date, the Claimant paid the Respondent \$2,200.00 by personal check number 5435. Cl. Ex. 2.

7. On June 22, 2010, the Claimant paid the Respondent \$4,267.00 for work performed. Cl. Ex. 21.

8. By an estimate dated June 23, 2010, the Respondent was to install wall framing for a bedroom in the basement with two door openings; remove nine feet of a concrete wall; install wall studs in basement living area; apply two coats of masonry waterproofing paint; and frame a bathroom area by relocating two walls. The total estimate was \$21,379.00. Cl. Ex. 3.

9. By an estimate dated June 23, 2010, the Respondent was to install vinyl siding to match existing siding currently on the basement exterior walls; remove and dispose of existing

basement subflooring and replace; repair floor joist and level as much as possible; install a vapor barrier seal to the perimeter wall; and install insulation along the exterior walls. The total estimate was \$6,214.00. Cl. Ex. 4.

10. On June 24, 2010, the Claimant made a second payment to the Respondent in the amount of \$7,268.00 for work performed. Cl. Ex. 22.

11. On July 8, 2010, the Claimant made a third payment to the Respondent in the amount of \$14,110.14 for work performed. Cl. Ex. 22.

12. By an estimate dated July 24, 2010, the Respondent was to perform mechanical, electrical, and plumbing work throughout the basement including: installing recessed lights, wiring for outdoor and inside heating and air conditioning; rewire the basement bathroom; install receptacle outlets; three-way switches; relocate a hot water heater; add plumbing for a shower and install plumbing fixtures; install cable outlets; install and finish dry wall throughout the basement; install new trim throughout the basement; install built-in shelves for bedroom closet; replace interior doors; install a ceiling detail to divide ceiling into four sections; and apply one coat of primer paint and two coats of finish paint. The total estimate was \$15,489.80. Cl. Ex. 6.

13. From May 28, 2010 through July 24, 2010, the total cost of all work described in estimates provided by the Respondent was \$49,549.80.

14. On August 28, 2010, the Claimant made a fourth payment to the Respondent in the amount of \$14,989.80. Cl. Ex. 23.<sup>5</sup>

15. From June 2010 through August 2010, the Claimant paid a total of \$42,835.50 to the Respondent for work performed.

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<sup>5</sup> This payment was applied to the estimate dated July 24, 2010 in the amount of \$15,489.50; however, because the Claimant allowed the Respondent to collect the \$500.00 rebate, her cost was reduced by \$500.00.



16. On September 2, 2010, the Claimant and Respondent entered into a written contract for additional home improvement work to be completed in the Claimant's home. Cl. Ex. 7.

17. The Contract required the Respondent to complete the work on or before October 30, 2010 and the total contract price was \$46,224.00. Cl. Ex. 7.

18. The Contract required the Claimant to pay the Respondent \$15,408.00 prior to the work beginning, \$15,408.00 upon substantial completion of the drywall work; and \$15,408.00 within five days after the work was completed. Cl. Ex. 7.

19. The Contract required the Respondent to obtain all permits as his expense and ~~allowed the Respondent to hire subcontractors who were to be paid by the Respondent. The~~ Contract also required all disputes to be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. Cl. Ex. 7.

20. The Contract required the Respondent to provide all labor and materials to perform the following:

- Demolish walls, remove carpet, vinyl flooring, remove kitchen cabinets and bulkhead, remove and make safe all electrical outlets within walls to be demolished, remove existing trim;
- Frame new walls and knee walls;
- Apply wall patch to drywall affected by demolition, patch and point-up existing drywall to obtain a like new appearance;
- Paint entire upper floor of house;
- Apply reused and new trim to complete all rooms; provide and install seven new doors;

- Install recessed lights in kitchen; reinstall all outlets removed during demolition; install cabinet lights in kitchen; install outlets required for new appliances provided by the Claimant;
- Install light tubes in kitchen;
- Install bathroom finishes;
- Replace all windows except for three octagonal windows in the basement level and seven window within the upper level bay window location;
- Replace three sliding glass doors; and
- Install home wrap and siding to match existing siding on the north and south elevation of the home.

Cl. Ex. 7.

21. On September 8, 2010, the Claimant paid the Respondent \$15,408.00. Cl. Ex. 24.
22. On October 19, 2010, the Respondent sent an email to the Claimant notifying her that the he was no longer going to complete the Contract. Cl. Ex. 11.
23. On an unspecified date, the Claimant made a second payment under the Contract in the amount of \$15,408.00. Through the email, the Respondent acknowledged that the Claimant paid him a total of \$30,816.00 and believed that the remaining balance of \$15,408.00 would adequately cover the remaining work to be performed by another contractor.<sup>6</sup> Cl. Ex. 11.
24. When the Respondent left the Contract incomplete, the Claimant paid the Respondent for work performed prior to the Contract and under the Contract in the total amount of \$73,651.50.

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<sup>6</sup> The Claimant did not have a separate record or receipt demonstrating she made the second payment of \$15,408.00 under the written contract and relies on the Appellant's email admission as evidence to support this payment was made.

25. The Respondent left the Contract incomplete or inadequately performed work, as follows:

- leaving all electrical boxes open with exposed wire, improperly installing several boxes thereby presenting a fire hazard, and installing switches that did not work;
- the hot water heater was moved to perform other work but when it was reinstalled it began to leak and create mold in the basement which needed to be removed;
- drywall painting and trim work was left incomplete;
- the master bathroom was left incomplete, fans and venting were not installed, faucets and shower were not installed;
- there was a rotten support beam that was required to be removed and reinstalled;
- basement painting was incomplete; and
- seven windows purchased by the Respondent did not fit.

Cl. Ex. 13.

26. To complete the Contract, the Claimant hired several contractors, including C.E. Harris, an electrician.<sup>7</sup> Mr. Harris performed general electrical work to complete the electrical work left incomplete or inadequately performed by the Respondent.

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<sup>7</sup> Throughout the hearing there was an issue as to whether any contractors hired by the Claimant to complete her home renovation were licensed by the MHIC. During the hearing, Ms. Kaufman mentioned that, after checking the on-line database, she found that Mr. Harris was licensed. However, the record is unclear as to what type of license Mr. Harris possessed. I never received any documentary evidence from the Fund or the Claimant to substantiate Mr. Harris' license status. Nevertheless, based on Ms. Kaufman's representation, I shall conclude that Mr. Harris possessed the proper license to perform the electric work he performed.

27. From February 18, 2011 through March 12, 2011, the Claimant made five separate payments to C.E. Harris, via personal checks, totaling \$4,230.00.00. Cl. Ex. 15.

28. On or about November 18, 2010, the Claimant entered into a contract with Lifetime to complete her home renovation. The Lifetime Contract also included an Addendum. Cl. Ex. 16.

29. Lifetime was to:

- remove and dispose of old windows except for a triple window in the upstairs level and a triple window in the kitchen, seal all windows to make water tight, install new windows and sliding glass doors, reframe a back wall on the deck, remove an old air conditioning unit on the back wall and patch area, insulate with non-expanding foam around inside frame of windows and doors, and re-trim all windows, sliders, and bow windows;
- run new exhaust fan and switch for master bathroom, install new cover on shower light, run new exhaust fan for basement bathroom, install all exterior lights and replacing all outside receptacles with weather guard covers;
- hang mirror, towel bar, toilet paper holder, robe hook and medicine cabinet in bathroom;
- install trim in bathroom, pocket door hardware, trim around top of bedroom closet, bi-fold doors in foyer, install missing plates around some plumbing, and shoe molding in hardwood and tile areas of kitchen; and
- remove water heater and old flooring to exposed floor frame, remove any rotten wood, and after mold is removed install new plywood to sub-floor.

Cl. Exs. 17 through 19.

30. The Lifetime Contract and Addendum total price was \$39,663.00. Cl. Ex. 16.

31. Notations with the Addendum indicate that the Claimant paid Lifetime a total of \$34,966.00. Cl. Ex. 16.

32. Under the Lifetime Contract and Addendum, Lifetime also removed and reinstalled a hot water heater which was damaged by the Respondent during work he performed in the basement. Because the Respondent improperly damaged the water heater causing a leak in the tank, the area around the tank had to be repaired in order to remediate mold which developed later. The Claimant paid Lifetime \$500.00 for this work. Cl. Exs. 16 and 13B.

33. The Claimant paid Lifetime a total of \$35,466.00 to complete the Contract or correct work inadequately performed by the Respondent.

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34. The Claimant hired A and L Contracting to repaint the interior of her house and to patch walls, as needed. The cost of the work performed by A and L Contracting was \$5,240.00; however, there is no record of payment to A and L Contracting. Cl. Ex. 20.

35. The Claimant paid C.E. Harris and Lifetime a total of \$39,696.00 to complete the Contract or correct work inadequately performed by the Respondent.

36. On or before July 17, 2012, the Office of the Attorney General's Consumer Protection Division (CPD) attempted to obtain the Respondent's participation in mediation or arbitration regarding the Claimant's complaint about the Respondent's failure to properly perform the Contract. Fund Ex. 8.

37. On July 17, 2012, the CPD notified the Claimant that the Respondent would not agree to mediation or arbitration because his construction company had gone out of business. Fund Ex. 8.

38. On October 2, 2012, the MHIC received a claim against the Fund filed by the Claimant seeking reimbursement for an actual loss in the amount of \$26,152.00, because Respondent failed to perform a home improvement contract or performed home improvement work in an unworkmanlike manner. Fund Ex. 2.

39. On July 30, 31 and August 13, 2014, the OAH mailed a Notice to the Respondent by certified and regular first-class mail, using his address of record with the MHIC. The Notice informed the Respondent of the date, time, and location of a hearing on the Claimant's claim against the Fund. Fund Ex. 1.

40. On or about August 15, 2014, the Respondent accepted delivery of the Notice.<sup>8</sup>

41. On October 17, 2014, a review of MHIC records revealed that from July 1, 1989 through October 17, 2014, the MHIC had no information on record for Fred Donley t/a Lifetime Builders, Inc., and this individual is not currently or has never been issued a salesman, sub-contractor, or contractor license. Fund Ex. 9.

42. On October 17, 2014, a review of MHIC records revealed that from July 1, 1989 through October 17, 2014, the MHIC had no information on record for Larry t/a A and L Contracting, and this individual is not currently or has never been issued a salesman, sub-contractor, or contractor license. Fund Ex. 10.

43. On the DLLR's MHIC website, under Guaranty Fund Frequently Asked Questions - question nine, the MHIC informs consumers that the Fund will not reimburse a claimant for money paid to an unlicensed home improvement contractor to correct or complete work performed that is the subject of the claim. Fund Ex. 11, Cl. Ex. 26.

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<sup>8</sup> The receipt of service is contained in the OAH case file.

## DISCUSSION

### Respondent's Failure to Appear

Section 8-312 of the Business Regulation Articles provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus Reg. § 8-312(a) (Supp. 2014). The OAH mailed several Notices to the Respondent using his address of record with the MHIC. The Notices advised the Respondent that a hearing on the Claimant's claim against the Fund was scheduled for October 16, 2014, that it would begin at 10:00 a.m., and would be held at the Calvert County Public Library located at 850 Costley Way, Prince Frederick, Maryland 20678. The Respondent accepted delivery of the Notice on or about August 15, 2014.

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On October 16, 2014, I convened the hearing in accordance with the Notice. The Respondent, however, failed to appear for the hearing. After waiting approximately fifteen minutes to give the Respondent an opportunity to appear for the hearing, he still failed to appear. Since the Respondent received due notice of the hearing, I conclude that he was afforded an opportunity to participate in the hearing, but failed to appear. Accordingly, I found it appropriate to proceed in the Respondent's absence.

### Merits of Claimant's Claim

A homeowner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor..." Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2014); *see also* COMAR 09.08.03.03B(2). A claimant shall comply with a written agreement to submit a dispute to arbitration before seeking recovery from the Fund. Md. Code Ann., Bus. Reg. § 8-405(c) (Supp. 2014). A contractor may not abandon or fail to perform, without justification, a home improvement contract. Md. Code Ann., Bus. Reg. § 8-605 (2010).

An "actual loss" is defined as "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 (2010).

Preliminarily, although the Respondent was not present to argue that the contract between Claimant and the Respondent contained a requirement to submit all disputes to arbitration, the Fund raised the issue for the record. The evidence established that the Claimant did make a complaint to the CPD about the work performed by the Respondent under the Contract. The CPD attempted to obtain the Respondent's participation in mediation or arbitration and the Respondent refused to cooperate. Under these circumstances, I find that the Respondent has waived the arbitration requirement. For this reason, I conclude that the Claimant's claim against the Fund is properly considered for compensation, if otherwise eligible.

It is undisputed that the Respondent is a licensed MHIC contractor. The Claimant and Respondent entered into a series of agreements between May and September 2010 to perform home improvement work at her home. Under these agreements, the Respondent performed mold remediation and renovation of the Claimant's basement. By the end of August 2010, the Claimant paid the Respondent a total of \$42,835.00 for work performed.

It was also established that on September 2010, the Claimant and Respondent entered into the Contract to renovate the upper floors of the Claimant's home. The Contract's total price was \$46,224.00. The Respondent began work under the Contract but notified the Claimant that he would not complete the Contract, by email dated October 19, 2010. At the time, the Claimant had paid the Respondent a total of \$30,816.00 under the Contract. The Claimant's photographic evidence corroborated her testimony that the Respondent left the Contract incomplete or inadequately performed by leaving electrical boxes, switches, and wires exposed and improperly



secured to prevent an electrical fire. The Respondent left substantial portions of the drywall work unfinished and unpainted. The Respondent left a master bathroom and kitchen area incomplete and without fixtures. The Respondent ordered windows which did not fit the intended space and window spaces were not properly sealed or insulated.

To complete the Claimant's renovation under the Contract, the Claimant hired several contractors including C.E. Harris, an electrician, who performed substantial electrical work left incomplete and inadequately performed by the Respondent. The Claimant paid Mr. Harris a total of \$4,230.00. The Claimant also entered into the Lifetime Contract to install windows, sliding glass doors, properly insulate and seal windows, install lighting and plumbing fixtures, install trim, and remedy a problem with a hot water heater improperly or inadequately reinstalled by the Respondent. The Claimant paid Lifetime a total of \$35,966.00. Finally, the Claimant hired A and L Contracting to repaint the interior of the house and patch drywall, as needed. The Claimant paid A and L Contracting \$5,240.00.

Because the Claimant contracted both verbally and writing with the Respondent, a MHIC licensed contractor, who then inadequately performed and left incomplete a home improvement contract, I am satisfied by a preponderance of the evidence that the Claimant established an actual loss under Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a), 8-605 (2010 and Supp. 2014). *See also* COMAR 09.08.03.03B(2).

Before determining what if any actual loss amount was established, I must address an issue raised by the Fund regarding the MHIC license status of Lifetime and A and L Contracting. The undisputed evidence is that neither owner of these businesses nor the business entity had a MHIC license issued to them when they performed home improvement work for the Claimant. The Fund contends that it is a policy of the MHIC to not provide reimbursement to homeowners

who hire unlicensed contractors to correct or complete work performed that is the subject of the claim. The policy upon which the Fund relies on for its position is found on the MHIC website and clearly states the position articulated by the Fund. Fund Ex. 11 and Cl. Ex. 26. The MHIC policy is designed to encourage contractor's to be licensed and to discourage homeowners from using unlicensed contractors. The MHIC's policy is reflected in a number of ways. To begin, a homeowner may recover compensation from the Fund for an actual loss resulting from an act or omission by a *licensed* contractor. Md. Code Ann., Bus. Reg. § 8-401, 8-405(a) (Supp. 2014). In other words, if the Respondent was not licensed by the MHIC the Claimant would have been barred from asserting her claim against the Fund. Likewise, if the Respondent was unlicensed when he performed the work, he would have committed misdemeanor crime and be subject to a fine of \$1,000 or imprisonment not exceeding six months or both, for a first offense. Md. Code Ann., Bus. Reg. § 8-601 (Supp. 2014). Additionally, Maryland appellate decisions offer some guidance on the treatment of unlicensed home-improvement contractors. Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage home owners from using unlicensed home-improvement contractors, the courts, as a matter of public policy, will not enforce contracts made by or with unlicensed contractors. *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118 (1997) (homeowner can repudiate a contract made with a consultant if the consultant is performing a home-improvement without a license); *Baltimore Street Builders v. Stewart*, 186 Md. App. 684 (2009) (an unlicensed contractor cannot enforce a home-improvement contract with a homeowner); *Harry Berenter, Inc. v. Berman*, 258 Md. 290 (1970) (unlicensed home-improvement contractor cannot enforce a mechanic's lien against a home owner).

The Claimant attempts to minimize the important public policy raised by the Fund by claiming it was buried with forty-one questions and answers on the MHIC website and was not included on an informational sheet for homeowner's explaining how to submit a MHIC claim. Nonetheless, the policy is on the MHIC website and it is supported by other statutory provisions and has been applied by Maryland courts in different circumstances. Again, the policy is designed to require contractors to be licensed and to homeowner's to hire licensed contractor's if either wishes to seek a remedy under the law. For this reason, as it applies to the Claimant's claim against the Fund, I find that the amount paid to Lifetime in the amount of \$35,466.00 is not compensable by the Fund as a matter of policy. Additionally, even if the Claimant presented evidence to support she paid A and L Contracting \$5,240.00, this amount would also not be compensable by the Fund as a matter of policy.

The only remaining issue is whether monies paid to C.E. Harris, in the amount of \$4,230.00, is compensable by the Fund. The Fund did not present any evidence to suggest that Mr. Harris was not licensed to perform the electrical work that he did for the Claimant. The evidence established that the Respondent left much electrical work incomplete requiring the services of another electrician to complete, which Mr. Harris did to some extent and for which the Claimant paid him. Therefore, I shall consider the amount paid to Mr. Harris by the Claimant as compensable as an actual loss from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award, if any. Unless a particular claim requires a unique measurement, the MHIC shall determine a claimant's actual loss using one of the formulas found in COMAR 09.08.03.03B(3). The formula most applicable to the case before me found under COMAR 09.08.03.03(3)(c), which provides:

(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.

In this case, however, because the Claimant and Respondent entered into agreements for home improvement work by oral agreements and a written contract, the original contract price is not clearly established by the evidence. Additionally, because a large portion of the amounts paid by the Claimant to other contractors to complete or repair work performed by the Respondent are barred from the actual loss calculation, the formula will not accurately determine the amount of the Claimant's actual loss. Under these circumstances, I find it appropriate to use a unique measurement for actual loss not contemplated by COMAR 09.08.03.03B(3). Since the Claimant paid another licensed individual to complete or repair the Respondent's electrical work then, I propose that the amount of her award from the Fund should be the amount she paid to C.E. Harris, which was \$4,230.00.

### **CONCLUSIONS OF LAW**

I conclude, as a matter of law, that the Claimant established an actual loss because the Respondent inadequately performed and left incomplete a home improvement contract. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a), 8-605 (2010 and Supp. 2014). *See also* COMAR 09.08.03.03B(2).

I conclude as a matter of law that the Claimant's request for compensation from the Fund for funds she paid to unlicensed contractors to complete or repair work performed by Respondent is barred by MHIC policy.

I further conclude as a matter of law that the Claimant established an actual loss in the amount of \$4,230.00. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,230.00; 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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

**Signature on File**

January 21, 2015  
Date Decision Issued

Daniel Andrews  
Administrative Law Judge

*DA*

DA/da  
# 154052

**PROPOSED ORDER**

***WHEREFORE, this 2nd day of March 2015, 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.***

***Marilyn Jumalon***

***Marilyn Jumalon  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**