

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ALYS SUMMERTON,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOHN GOFORTH,</p> <p>T/A MARYLAND CONSTRUCTION</p> <p>AND RESTORATION SERVICES,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER L, GRESOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-HIC-02-16-24420</p> <p>* MHIC File No.: 13 (90)1317</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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PROPOSED DECISION

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DISCUSSION
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STATEMENT OF THE CASE

On September 1, 2015, Alys Summerton (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,890.00 in alleged actual losses suffered as a result of a home improvement contract with John Goforth, trading as Maryland Construction and Restoration Services, LLC (Respondent).

I held a hearing on October 28, 2016, at the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented herself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

- Cl. Ex. 1 Home Improvement Claim Form, dated May 30, 2014; Complaint Form, dated June 10, 2013
- Cl. Ex. 2 Check for \$2,785.00 to the Respondent from the Claimant, dated January 11, 2013
- Cl. Ex. 3 Contractors Invoice, dated September 18, 2012² (two copies); Contractors Invoice, dated December 22, 2012; Scope of Work (two pages), undated
- Cl. Ex. 4 Check for \$2,500.00 to the Respondent from the Claimant, dated February 27, 2013
- Cl. Ex. 5 Photographs 5A through 5M, undated

¹ I held the record open for five days for the submission of additional documents.

² The parties agreed that this date appeared to be an error, and the contract was agreed upon on or about January 11, 2013.

- Cl. Ex. 6 Photographs (three), undated
- Cl. Ex. 7 Email chain between the Claimant, the Respondent and Glen Stanley, various dates
- Cl. Ex. 8 Photographs 8A through 8E, undated
- Cl. Ex. 9 Photographs 9A through 9I, undated
- Cl. Ex. 10 Photograph, undated
- Cl. Ex. 11 Email chain between the Claimant and the Respondent, various dates
- Cl. Ex. 12 Estimate from Roofing Unlimited, Inc., dated June 5, 2013; Estimate from AMF Contractors, dated November 12, 2015; Estimate from T.E. Seifert Contractors, LLC, Kris Konstruction, dated January 13, 2014
- Cl. Ex. 13 Email chain between the Claimant and the Respondent, various dates
- Cl. Ex. 14 Letter from the Claimant to the MHIC, dated September 1, 2015
- Cl. Ex. 15 NOT ADMITTED
- Cl. Ex. 16 Photograph, undated

I admitted the following exhibits on the Respondent's behalf:

- Resp. Ex. 1 Letter from the Respondent to the MHIC, dated June 26, 2013
- Resp. Ex. 2 Letter from the Respondent to the MHIC, dated May 18, 2014
- Resp. Ex. 3 Letter from the Respondent to the MHIC, dated June 18, 2014

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated September 15, 2015, with certified mail receipts showing September 17, 2016 date of delivery
- Fund Ex. 2 Hearing Order, dated August 2, 2016
- Fund Ex. 3 DLLR Registration Inquiry and Professional License History, dated October 25, 2016
- Fund Ex. 4 Home Improvement Claim Form, dated May 30, 2014
- Fund Ex. 5 Letter to the Respondent from the MHIC, dated June 4, 2014

Testimony

The Claimant testified on her own behalf. The Respondent also testified on his own behalf. Neither the Claimant nor the Respondent presented other witnesses. The Fund also presented no witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 08 105237.
2. The roof of the Claimant's home was damaged by Hurricane Sandy in October 2012. The wind blew several tiles off the roof, causing rain water to leak into the home in the living room and around the chimney.
3. On December 22, 2012, Glen Stanley, the Respondent's partner, performed emergency work on the Claimant's roof at a cost of \$285.00.
4. On January 11, 2013, the Claimant and the Respondent entered into a contract to remove and replace the roof of her home and repair the interior ceilings.
5. The Respondent informed the Claimant that in order to replace the roof, the gutters would need to be removed and ultimately replaced. The Claimant and the Respondent agreed that the Respondent would remove the gutters, but that she would hire someone else to install new gutters.
6. The Respondent quoted a price of \$400.00 for new gutters.
7. The original agreed-upon contract price was \$8,035.00. This included \$7,350.00 for the roof; \$285.00 for emergency repairs completed on December 22, 2012; and \$400.00 for new gutters.

8. At the time the parties signed the contract, the Claimant made an initial payment of \$2,785.00. This included payment for the emergency work completed in December 2012.
9. The Respondent began work on February 27, 2013.
10. The Respondent's partner, Glen Stanley, was primarily responsible for the roofing work.
11. The Claimant made a second payment, in the amount of \$2,500.00, on February 27, 2013.
12. Work on the Claimant's home continued into March 2013.
13. The Respondent covered the roof with a tarp during the construction, but it was not attached properly. During a rainstorm on March 12, 2013, water poured into the kitchen of the home, damaging lights and the home interior.
14. The Respondent last performed worked on the Claimant's home in mid-April 2013.
15. The Respondent left debris, including tiles and nails, in the backyard of the Claimant's home. He never returned to clean up the yard, despite having told the Claimant that he would do so.
16. The Respondent did not complete the interior ceiling repair.
17. After the Respondent completed work on the roof, it continued to leak, including in places where it had not leaked before the Respondent replaced it. Specifically, it began leaking near the front door, in the upstairs hallway, in a closet in the front bedroom, in a closet in a back bedroom, and around the skylights on the back porch. It also continued to leak in the living room around the chimney.
18. The Respondent did not complete the agreed-upon interior work.

19. The Claimant continued to correspond with the Respondent and Mr. Stanley by email and text, but neither the Respondent nor Mr. Stanley returned to the Claimant's home to repair or complete the work.

20. The Claimant did not pay the Respondent any additional funds due under the contract. The total amount of her payment to the Respondent was \$5,285.00.

DISCUSSION

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).³ “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125 n. 16 (2002), quoting Maryland Pattern Jury Instructions 1:7 (3rd ed. 2000).

An owner 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) (2015);⁴ *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant testified that she owns a two-story Arts and Crafts style home with a chimney and dormers. She stated that the roof began leaking around the chimney after Hurricane Sandy blew several shingles off. The Claimant filed a claim with her homeowner's insurance

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

company, which approved her claim and instructed her to have the work done and then submit an itemized bill for reimbursement. After researching possible contractors and meeting with several, she selected the Respondent because she thought he was both experienced and trustworthy. She explained that initially, Mr. Stanley came to her home on December 22, 2012, and did some emergency repair work to her living room ceiling. She subsequently signed a contract with the Respondent for the replacement of the roof and interior ceiling repairs. She explained that they also discussed the gutters, agreeing on a price of \$400.00 to replace them, though both the Claimant and Respondent understood that the Respondent would hire a subcontractor to install new gutters.

The Claimant further testified that the Respondent was slow to start the work; he did not begin until February 27, 2013. Rather than the few days or week of work that the Claimant expected, the work dragged on into April 2013. She recalled that the Respondent covered the roof with a tarp when he left the site, but that the tarp was not properly secured. It came loose during a storm on March 12, 2013, resulting in water pouring into the kitchen and causing interior damage. She had to replace the kitchen lights due to water damage. She estimated that though the work took place over several weeks, there were long periods of time during which no one showed up at her home to work. She further estimated that work actually took place on only six to ten days.

When the Respondent finished the roof in April 2013, the Claimant immediately noticed leaks. She contacted the Respondent and corresponded by email with both him and Mr. Stanley, but she testified that Mr. Stanley was initially not responsive, and that when he did respond, he was insulting and said that he would not do work for free. She stated that the Respondent was more conciliatory and apologized for Mr. Stanley's handling of her complaints, but that he (the

Respondent) never returned to fix the roof. The last time the Claimant saw the Respondent was when he removed the trash receptacle at her home in April 2013.

The Claimant further testified that once she realized the Respondent was not going to resolve the problems with her roof, she contacted other contractors to obtain estimates for the work. All three of the contractors from whom she sought estimates indicated that the entire roof should be replaced, and each provided an estimate (discussed below). The Claimant further stated that at the time of the hearing, her roof was still not fixed, pieces of the gutters remain hanging off of the house, and water continues to leak into the interior of the home when it rains. She testified that she had received an estimate of \$1,400.00 to replace the gutters, which she cannot afford to pay.

The Respondent testified on his own behalf. He was apologetic about his failure to complete the work, noting that he and Mr. Stanley did not communicate well during the time that they were working on the Claimant's home. He also testified that it was Mr. Stanley who had roofing expertise, and that he relied on this expertise to get the job done. He explained that he and Mr. Stanley had a disagreement and no longer work together. The Respondent also acknowledged that the roof leaks and that while he believes repair, rather than replacement, would be adequate, he is not an experienced roofer and does not have the skill to assess the roof's condition. He stated that he would like to make things right with the Claimant but does not know how to do so. The Respondent was sincere and direct in his testimony, and he appeared to me to be remorseful about the situation.

Based on the evidence before me, it is clear that the work done by the Respondent, a licensed home improvement contractor, was inadequate, incomplete, and unworkmanlike. A newly replaced roof, if competently installed, should not allow rainwater to leak into the home. In the Claimant's case, she was able to identify five separate places where the roof continues to

leak. She provided photographs that showed water damage in the home, as well as buckets placed in the home to collect rain water. (Cl. Exs. 5 and 9.) She also provided photographs of the debris that remains in her yard. (Cl. Ex. 6.) In addition, as the Claimant and Respondent agreed that the gutters were to be replaced at a cost of \$400.00 and as that task has not been completed (Cl. Ex. 3), the work performed is clearly also incomplete.

Accordingly, I find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

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

COMAR 09.08.03.03B(3)(c).

This formula requires a figure for the cost the Claimant will need to pay to another contractor to have work repaired and/or completed. The Claimant provided three estimates, from the following contractors: Roofing Unlimited, Inc. (for \$10,640.00); AMF Contractors (for \$5,499.00); and Kris Konstruction (for \$8,250.00, plus an addition \$3,200.00 for interior work). Mr. King pointed out, and I agree, that it is difficult to match the scope of work outlined in these three contracts with the scope of the original work. I agree that the proposal that appears to

match the Claimant's contract with the Respondent most closely in terms of scope is the one proposed by Kris Konstruction, excluding the \$3,200.00 proposed for additional interior work.⁵ For that reason, I use the \$8,650.00 figure as the cost the Claimant will be required to pay another contractor to repair work completed by the Respondent and complete the original contract.

In addition, the formula requires a figure for the total amount of the contract agreed upon by the Claimant and the Respondent. I calculate this amount as follows: \$7,350.00 (January 11, 2013 contract price) + \$285.00 (emergency repairs completed December 22, 2012, and added to the January 11, 2013 contract as a separate line item) + \$400.00 (the agreed-upon price for replacement of the gutters). This results in a total of \$8,035.00.

Accordingly, I calculate the Claimant's actual loss, as defined by COMAR 09.08.03.03B(3)(c), as follows:

The amount the Claimant paid to the Respondent	\$5,285.00
Plus the cost to repair and complete original contract	\$8,650.00
	= \$13,935.00
Minus the contract price of \$8,035.00	= \$5,900.00

Thus, the Claimant's actual loss is \$5,900.00. However, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5). In this case, the amount paid by the Claimant (\$5,285.00) is less than the actual loss of \$5,900.00. The Claimant's award is limited

⁵ The interior work, which includes the removal and replacement of damaged drywall and insulation and painting of repaired drywall, is due to consequential damages. Under COMAR 09.08.03.03B(1)(a), a Guaranty Fund award may not include consequential damages. The Claimant argued that such damages ought to be included, as the losses were caused by the Respondent's actions. However, the cited regulation is clear. However, even if I were to determine that the repair work proposed by Kris Konstruction was not excluded as consequential damages, the Claimant's award would still be limited to \$5,295.00, the amount she paid to the Respondent. COMAR 09.08.03.03B(4).

to the amount she paid to the Respondent. COMAR 09.08.03.03B(4); Bus Reg. § 8-405(e).

Accordingly, she is entitled to an award of \$5,285.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss in the amount of \$5,285.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c) and 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 \$5,285.00; 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;⁶ and

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

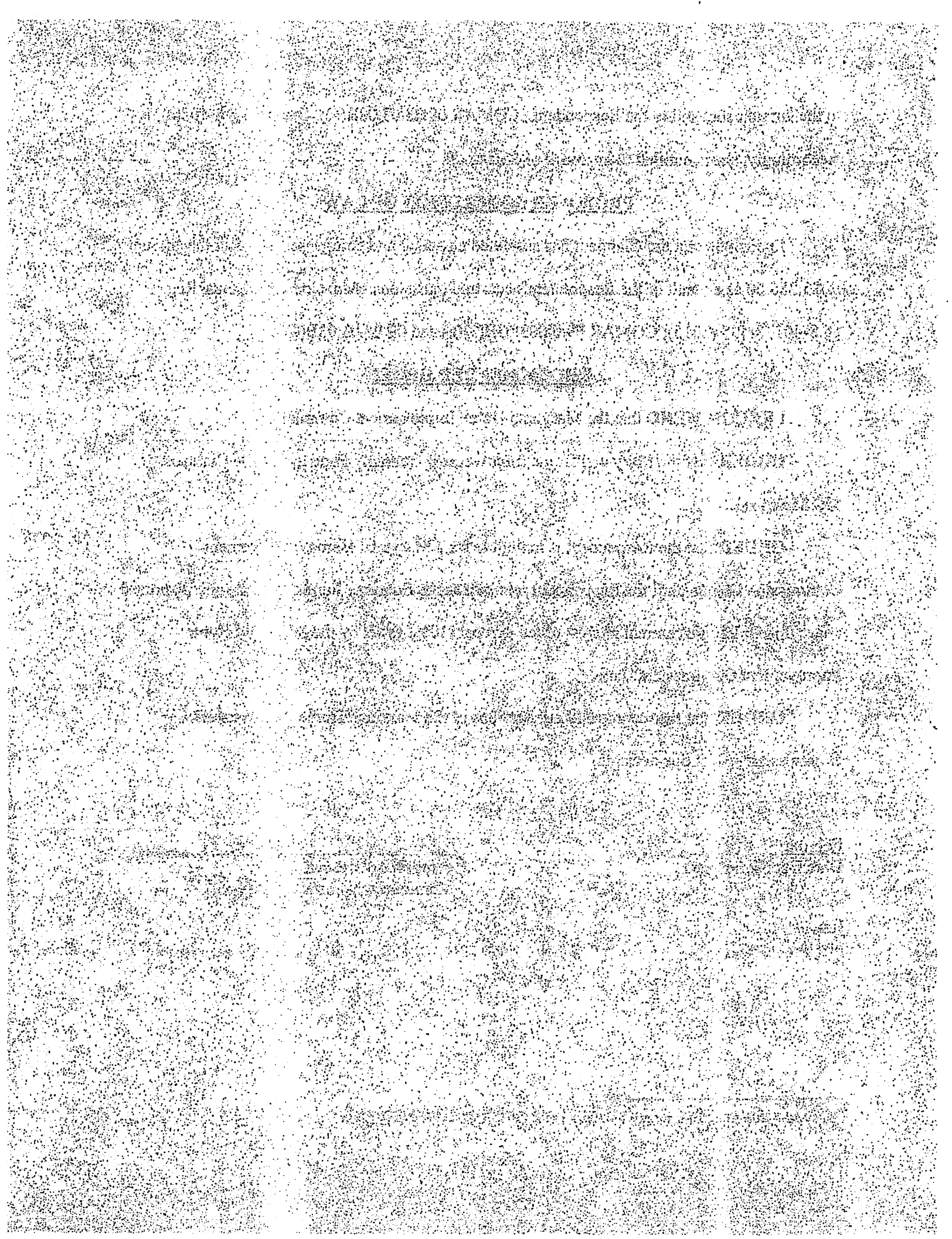
Signature on File

February 1, 2017
Date Decision Issued

Jennifer L. Gresock
Administrative Law Judge *bj mso*

JLG/slm
#166162

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 10th day of April, 2017, 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION