

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF TRELLA COLLINS,</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</b></p> <p><b>JARED DANIEL ROSS, T/A</b></p> <p><b>GREEN FROG HOME</b></p> <p><b>IMPROVEMENTS, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JOHN T. HENDERSON, JR.,</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><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-17-06439</b></p> <p><b>* MHIC No.: 15 (05) 110</b></p>
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**RECOMMENDED DECISION**

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**STATEMENT OF THE CASE**

On August 3, 2016, Trella Collins (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$11,961.00 of actual losses allegedly suffered because of a home improvement contract with Jared Daniel Ross, t/a Green Frog Home Improvements, LLC (Respondent).

On March 29, 2017, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to his address of record on file with the

MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).<sup>1</sup> The notice advised the Respondent of the time, place, and date of the hearing. On April 4, 2017, the United States Postal Service returned receipt evidencing the notice was delivered to the Respondent's address of record.

I held the hearing on July 17, 2017, at the Prince George's County Office Building, 1400 McCormick Drive, Largo, Maryland 20774. Bus. Reg. §§ 8-312(a), 8-407(a) and (e) (2015). The Claimant appeared and represented herself. The Respondent appeared and represented himself at the hearing. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02; COMAR 28.02.01.

### **ISSUES**

1. Did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
2. If so, how much is the Claimant entitled to receive from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted exhibits on behalf of the Claimant as follows:

- Cl. Ex. 1 Contract between Claimant and Respondent dated March 12, 2014
- Cl. Ex. 2 Emails from Claimant to Steve Luck dated June 6 and 30, 2014; July 3, 9, 10, and 16, 2014; letter from Respondent to Claimant undated
- Cl. Ex. 3 Bank of America check number 2029 dated March 14, 2014, payable to the Respondent in the sum of \$4,965.00; check number 2056 dated April 24, 2014,

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<sup>1</sup> "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) (2015).

payable to the Respondent in the sum of \$1,000.00; check number 2080 dated May 23, 2014, payable to the Respondent in the sum of \$5,965.00; check number 2085 dated May 30, 2014, payable to the Respondent in the sum of \$3,500.00; check number 2107 dated June 24, 2014, payable to the Respondent in the sum of \$1,200.00

- Cl. Ex. 4 HIC Claim Form listing claim amount as \$11,961.00 undated
- Cl. Ex. 5 Letter from the Respondent to the Claimant undated
- Cl. Ex. 6 Facsimile Cover Sheet with comments to the Respondent from the Claimant dated July 31, 2014
- Cl. Ex. 7 Facsimile Cover Sheet with comments to the Respondent from the Claimant dated October 7, 2014
- Cl. Ex. 8 Contract between PENWIN Windows and Doors and the Claimant dated August 6, 2014
- Cl. Ex. 9 Bank of America check number 2133 dated August 6, 2014, payable to the PENWIN Windows and Doors in the sum of \$4,331.00
- Cl. Ex. 10 Bank of America Loan Disclosure Statement dated August 11, 2014
- Cl. Ex. 11 Letter from Richard E. Woods to the Claimant dated August 11, 2014
- Cl. Ex. 12 Authorization to Release Information dated August 13, 2014
- Cl. Ex. 13 DLLR Complaint Form dated July 23, 2014
- Cl. Ex. 14 Not admitted
- Cl. Ex. 15 Not admitted
- Cl. Ex. 16 HIC Claim Form listing claim amount of \$11,961.00, dated July 30, 2016
- Cl. Ex. 17 Summons from the State's Attorney for Charles County to Bank of America requesting document production dated August 24, 2015
- Cl. Ex. 18 Copies of photographs (4) of subject property

I admitted an exhibit on behalf of the Respondent as follows:

- Resp. Ex. 1 Letter from the State's Attorney for Charles County to the Respondent dated August 4, 2016

I admitted exhibits on behalf of the Fund as follows:

- GF Ex. 1 Notice of Hearing from the OAH dated March 29, 2017
- GF Ex. 2 The Respondent's DLLR license history as of July 13, 2017
- GF Ex. 3 Letter from HIC to the Respondent dated August 16, 2016; Claim form dated July 30, 2016

Testimony

The Claimant testified on her behalf. The Respondent testified on his behalf. The Fund did not present any witness 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 contractor's license number 107780 and was trading as Green Frog Home Improvements, LLC.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is located at 15906 N. Thames Court, Accokeek, Maryland 20607 (the Property).
4. The Property is the Claimant's primary residence.
5. The Claimant has not filed other claims against the Respondent outside of these proceedings.
6. On March 12, 2014, the Claimant and the Respondent entered into an agreement (the Contract) whereby the Respondent agreed to build a deck and sunroom on the rear of the Property.
7. The Claimant entered into the Contract with the Respondent's employee, Steve Luck (Luck), who was referred to her by a Home Depot salesperson.

8. Luck was employed by the Respondent from October 2013.
9. The original contract price was \$13,125.00.
10. On March 14, 2014, the Claimant and Respondent revised the Contract to add three additional feet to the construction.
11. The revised Contract provided for the following scope of work:
  - Install a 16x16 rectangle deck with stairs coming off the right side of the house going to the right
  - The deck will be constructed of pressure treated 6x6 post and double 2x12 beams and 2x10 floor joist
  - Install screen over floor joist
  - The deck floor will have Azek Brownstone floor boards screwed in and capped
  - The rails will be white vinyl railing
  - The band board and toe kick of the steps will be wrapped with white Azek board
  - There will be white lattice around bottom of deck
  - Build roof over deck with a reverse A and cathedral ceilings
  - Install shingle to match house
  - Install 2 skylights
  - Wrap all exposed wood in white
  - Install gutters on either side of roof
  - Install Eze Breeze screen system in room to include storm door
  - Install ceiling fan with light
  - Provide drawing for home owners association
  - Obtain all permits and inspections required to complete job and obtain use and occupancy (U&O) from county
  - Remove all debris

12. The payment terms pursuant to the revised Contract were the following:

Total for Job per revised Contract	\$17,794.00
1/3 down	\$ 5,965.00
Under <sup>2</sup> roof 1/3	\$ 5,965.00
Due on Completion	\$ 5,864.00

13. The revised Contract did not provide a completion date for the home improvement.

14. The Respondent began work on the home improvement on April 16, 2014.

15. The Claimant made the following payments:

March 14, 2014	Payable to the Respondent	\$ 4,965.00
April 24, 2014	Payable to the Respondent	\$ 1,000.00
May 24, 2014	Payable to the Respondent	\$ 5,965.00
May 30, 2014	Payable to the Respondent	\$ 3,500.00
June 24, 2014	Payable to the Respondent	<u>\$ 1,200.00</u>
	Total Payments	\$16,630.00

16. The Claimant paid the Respondent, through Luck, a total of \$16,630.00.

17. July 4, 2014, was the last time the Claimant saw Luck when he appeared on the property with his son to collect and dispose of debris. The home improvement was not completed by that date.

18. The home improvement was incomplete as of July 4, 2014.

19. The contracted work that was incomplete included the installation of the Eze Breeze screen system. In addition, the stairs were not constructed correctly and the door leading from the deck to the patio area was framed and hung incorrectly.

20. On July 7, 2014, the Respondent terminated Luck as an employee.

21. The Claimant met the Respondent for the first time on July 17, 2017.

22. The Respondent received \$4,700.00 from Luck for the work done on the revised Contract. Luck cashed the remaining checks the Claimant gave him at Waldorf Liquors in

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<sup>2</sup> This was the word used in the revised contract. It was not defined by either party.

Charles County. Luck did not provide any of the additional payments he received from the Claimant to the Respondent.

23. Luck was convicted of the crime of theft (\$10,000.00 to \$100,000.00) by the Circuit Court for Charles County, Maryland on June 23, 2016 (Case No. K15-570).

24. The Respondent never completed the home improvement despite the Claimant's requests.

25. On August 6, 2014, the Claimant contracted with PENWIN Windows & Doors (PENWIN) to complete the home improvement for \$13,125.00.

### **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 reserve of money from which homeowners could seek relief for actual losses sustained because of an unworkmanlike, inadequate, or incomplete home improvement performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015).<sup>3</sup> Under this statutory scheme, licensed contractors are assessed fees, which subsidize the Fund. Homeowners who sustain losses by the actions of licensed contractors may seek reimbursement for their "actual losses" from this pool of money, subject to a maximum of the lesser of \$20,000.00 or the amount paid by or on behalf of the claimant to the contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). 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 licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). When the Fund reimburses a homeowner as a result of an actual loss caused by a licensed 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

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<sup>3</sup> Unless otherwise indicated, all references are to the 2015 version.

reimburses the Fund in full with annual interest as set by law. Md. Code Ann., Bus. Reg.

§ 8-411(a).

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 (1997). The Fund may only compensate claimants for actual losses incurred as a result of misconduct by a licensed contractor. COMAR 09.08.03.03B(2). At a hearing on a claim, the Claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., State Gov’t §10-217 (2014); COMAR 09.08.03.03A(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 (3d ed. 2000).

There is no dispute that the Respondent held a valid contractor’s license in 2014 when his company entered into the Contract with the Claimant. Md. Code Ann., Bus. Reg. § 8-405(a).

There is no dispute that the Claimant is the owner of the subject property and that there is no procedural impediment barring her from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a), (f). The next issue is whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement due to misconduct, and if so, whether the Respondent made good faith efforts to resolve the claim. A claim may be denied if the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Md. Code Ann.,



Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimant has proven eligibility for compensation and has not unreasonably rejected good faith efforts by the Respondent to resolve the claim.

On March 12, 2014, the Claimant met with Luck who had been an employee of the Respondent since October of 2013. The Claimant sought a contractor to construct an enclosed screened deck and sunroom on the back of her home. She received a referral from a salesperson of the Home Depot. Luck's name appeared on a referral list with the company name of Green Frog. The Claimant testified that she chose the Respondent because Luck told her that the company was started by and owned by three military men, which suited her.

According to the Claimant's testimony, she asked Luck why there was no completion date provided within the Contract. Luck assured her that a completion date would not be necessary, as he would complete the home improvement. The total cost of the home improvement was \$17,794.00 of which the Claimant paid the Respondent through Luck checks totaling \$16,630.00. The Claimant testified that the Respondent, through Luck, began work on April 16, 2014; that she last saw Luck on July 4, 2014; and that as of that date, the work was incomplete and was performed poorly. The Claimant testified that she had every indication from Luck's refusal to communicate with her that the Respondent, through Luck, did not intend to complete the home improvement.

The Claimant further testified that when she filed the complaint with DLLR, the Respondent telephoned her to discuss the matter. She advised the Respondent that the home improvement was incomplete in that the window panels needed to be installed and an electrician was needed to inspect the electrical work. The Claimant and Respondent could not come to an agreement through the DLLR complaint process so the Claimant contracted with PENWIN to

complete the home improvement. PENWIN did install the Eze Breeze screen system. However, the steps remained incomplete and the door remained installed backwards.

The Respondent testified that he founded his company with a retired navy Seal named Munn, a third military person who did not become a member of the LLC and himself. The Respondent was on active duty with the United States Army as a Green Berets at the time the company was founded. The company intended to remodel homes in Baltimore City, Maryland. The Respondent testified that Munn had a prior relationship with Luck and suggested he be brought into the company to manage projects because he was supposed to have experience in home improvement. The Respondent also testified that he knows Luck from their attending the same high school, but they were not friends. Nevertheless, the Respondent agreed with Munn and Luck was hired by the Respondent's company in October of 2013. The Respondent retired from the Army in November 2014.

The Respondent further testified that the Respondent company did most of its work solely in Baltimore City until January 2014, when due to an effort to solve cash flow problems, the company branched out into Charles County and other areas at the suggestion of Luck to generate additional revenues. According to the Respondent, he had knowledge of the Contract with the Claimant. However, he testified, until he received the complaint from DLLR, he thought the Claimant owed the company money because he only received the initial deposit of \$4,965.00 from Luck. It was after the complaint was filed that he discovered Luck had cashed the additional payments from the Claimant at a liquor store and apparently kept the money for himself. The Respondent pursued criminal charges against Luck for theft. Luck was convicted and sentenced to a period of jail at the Charles County Detention Center.

The Respondent argues that he should not be held responsible for Luck's theft since he did not receive the money stolen by Luck. He did concede that Luck was an employee of the

Respondent's company; that Luck had access to the company computer and company contracts and was allowed to solicit business and enter into agreements with clients. The Respondent testified that he thought by prohibiting Luck from collecting cash directly from a client and having checks made payable to the LLC, those procedures would be sufficient safeguards against employee theft. They were not.

Mr. Veal, the Claimant's husband, testified and corroborated the incomplete nature of the same and the steps, doors and electrical not being properly constructed.

Business Regulation 8-405(b) provides that for purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists. The evidence, by a preponderance, shows that Luck was a salesperson and employee of the Respondent at the time of the March 14, 2014, Contract and up to July 7, 2014, when he was terminated from the Respondent's employ. Although the Respondent and Claimant were victims of Luck's criminal behavior where he was convicted for the same, such behavior does not prevent the Claimant from recovering from the Fund under the facts found herein.

The Fund argued that the credible evidence shows that the Claimant has proved a loss by the acts or omissions of the Respondent and recommended an award to the Claimant of \$11,961.00. I agree. I find that by failing to complete the home improvement and improperly constructing the steps and door, the Respondent did incomplete and unworkmanlike home improvement for which it was contracted. Thus, the misconduct in this case lies in the Respondent not performing the agreed upon work pursuant to the March 14, 2014, revised Contract. The Claimant sustained an actual monetary loss. She is eligible for compensation from the Fund. I now turn to the amount of the award, if any.

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 offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3) sets forth the various formulas for determining an "actual loss." According to the Fund, and I agree, the appropriate formula is the following:

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

...

(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.

Using the formula in COMAR 09.08.03.03B(3)(c), the following calculations apply:

	\$16,630.00	Payment made to the Respondent by Claimant under the Contract
Plus	<u>\$13,125.00</u>	The amount paid to PENWIN to complete home improvement
Total	\$29,755.00	
Less	<u>\$17,794.00</u>	The original contract price
	\$11,961.00	To be considered as actual loss

The fund may not pay a Claimant an amount in excess of the amount paid by or on behalf of a claimant to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). The Claimant has an "actual loss" of \$11,961.00.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual loss of \$11,961.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and (5) (2015); COMAR 09.08.03.03B(3)(b).

**RECOMMENDED ORDER**

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

**ORDER** that the Claimant sustained an actual loss; and

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$11,961.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until he 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;<sup>4</sup> and

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

**Signature on File**

October 11, 2017  
Date Decision Issued

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John T. Henderson, Jr. JTG  
Administrative Law Judge

JTH/dlm  
#170304

<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of November, 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.***

***J. Jean White***

***L. Jean White  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**