

**IN THE MATTER OF THE CLAIM  
OF SHERITA WESLEY**

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**MARYLAND HOME IMPROVEMENT  
COMMISSION**

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**AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS  
OF HARRY BRUNSON t/a  
HB BUILDERS AND HOME  
IMPROVEMENT, INC.**

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**MHIC CASE NO. 17(05)805  
OAH CASE NO. DLR-HIC-02-18-09815**

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**FINAL ORDER**

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 13, 2018 and July 9, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on October 9, 2018, concluding that the homeowner Sherita Wesley (“Claimant”) sustained an actual and compensable loss of \$8,849.40 as a result of the acts and omissions of Harry Brunson t/a HB Builders and Home Improvement, Inc. (“Contractor”). *OAH Proposed Decision* p. 22. In a Proposed Order dated November 20, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimant \$8,849.40 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On January 17, 2019, a hearing on the exceptions was held before a three-member panel (“Panel”) of the MHIC. Both the Contractor and the Claimant were present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following three preliminary exhibits were offered by AAG Sachs and admitted into evidence at the exceptions hearing: 1) November 20, 2018 Cover Letter with MHIC Proposed Order and OAH Proposed Decision, 2) December 11, 2018 Notice of Exceptions Hearing to be held January 17, 2019 with a copy of the Contractor’s written exceptions and attached

documents, and 3) December 18, 2018 letter from the Contractor requesting the admission of additional evidence that was not otherwise provided at the hearing before OAH. Neither the Contractor nor the Claimant produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel's review was limited to the ALJ's proposed decision, the exhibits introduced into evidence at the OAH hearing, and the preliminary exhibits offered by AAG Sachs at the exceptions hearing. COMAR 09.01.03.09(G) - (I)

As a preliminary matter, the Panel addressed the Contractor's request to submit additional evidence. The parties were notified of the test to be met to admit additional evidence on exceptions found at Code of Maryland Regulations ("COMAR") 09.01.03.09K, and given the opportunity to present argument. For the reasons stated on the record the Contractor's request was denied.

The Contractor's written exceptions largely consist of testimony and new evidence that could otherwise have been brought before the ALJ during the two days of hearing at OAH. Moreover, several of the documents that the Contractor attached to his written exceptions were already admitted at the OAH hearing as Claimant's Exhibits 1, 6, 9, and 12. This includes the "Draw Request Section 203(k) form" that the Contractor alleges the Claimant provided an incomplete version of at the OAH hearing. *Contractor's Written Exceptions* p. 1. Despite the Contractor's claim, a review of the record reveals that the same two-page document offered by the Contractor on exceptions was admitted into evidence at the OAH hearing as Claimant's Exhibit 6.

The Contractor also claims in his written exceptions that he was "not given the timeline of ninety (90) days" to complete the work, yet the agreement signed by both the Contractor and the Claimant in Claimant's Exhibit 3, specifies in two different places that the work was to be completed by 12/15/2016, "but in no event later than 90 days (3 months) from the loan closing." *Contractor's Written Exceptions* p. 1; *OAH Hearing Claimant's Exhibit 3*, pp. 1, 3. Therefore, it is clear that the Contractor was on notice of when the work was to be completed.

The ALJ in this case found that the Claimant had good cause to terminate the contract with the Contractor “because the Respondent had made little progress on a job that should have been nearly completed.” *OAH Proposed Decision* p. 16. As is permitted pursuant to COMAR 09.08.03.03(B)(3), the ALJ used a unique calculation of the actual loss of the Claimant, by taking the amount paid to the Contractor and subtracting the value of the work provided. *OAH Proposed Decision* p. 20-21. Now on appeal, the Contractor is attempting to provide proof of the value of the work he claims he completed. The ALJ notes in her decision that at the hearing the Contractor did not testify, call any witnesses, or offer any exhibits into evidence. *OAH Proposed Decision* p. 5, 15. The Contractor’s opportunity to present testimony and evidence in support of his case was at the two-day hearing before OAH, and not on exceptions.

The ALJ found based on the documents, photographs and testimony provided at the two-day hearing that the Contractor completed work on the gutters, downspouts and roof. The ALJ in turn assigned a value to this work, \$1,500.00 for the gutter/downspouts and \$4,200.00 for the roof, based on the costs assigned to these tasks in the Amended Contract, signed August 29, 2016, between the Claimant and the Contractor. *OAH Proposed Decision* p. 21; *OAH Hearing Claimant’s Exhibit 2*. The Panel, however, notes that the ALJ’s calculation of the value of the gutter/downspout work is incorrect. The Amended Contract reflects that such work cost \$1,500.00 for materials and \$1,000.00 for labor, resulting a total value of \$2,500.00. *OAH Hearing Claimant’s Exhibit 2*. Therefore, the total amount paid by the Claimant to the Contractor, \$14,549.40, should be reduced by the \$6,700.00 (\$2,500.00 for gutter/downspouts + \$4,200.00 for the roof) value of work the Contractor performed, and not the \$5,700.00 used by the ALJ. As a result, the Panel reduces the award from the Guaranty Fund to \$7,849.40 to correct this miscalculation. The Panel otherwise agrees with the ALJ’s analysis and finds no error in her decision. The ALJ’s decision is thorough, supported by the evidence in the record and correct as

a matter of law.

Having considered the parties' arguments, the evidence in the record and the OAH Proposed Decision, it is this **15th** day of **April 2019 ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Proposed Decision and Order of the Administrative Law Judge is **AMENDED to reduce the award to \$7,849.40**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

*Andrew Snyder*

**Chairperson –Panel  
Maryland Home Improvement  
Commission**

**IN THE MATTER OF THE CLAIM  
OF SHERITA WESLEY,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF HARRY BRUNSON,  
T/A HB BUILDERS AND HOME  
IMPROVEMENT, INC.,  
RESPONDENT**

**\* BEFORE LAURIE BENNETT,  
\* ADMINISTRATIVE LAW JUDGE,  
\* THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-18-09815  
\* MHIC No.: 17 (05) 805  
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On or about September 17, 2017, Sherita Wesley (Claimant) filed a claim (Claim) with the Department of Labor, Licensing and Regulation (Department), Maryland Home Improvement Commission<sup>1</sup> (MHIC), Guaranty Fund (Fund) for reimbursement of monetary losses allegedly suffered as a result of a home improvement contract with Harry A. Brunson, t/a HB Builders and Home Improvement, Inc. (Respondent). On March 23, 2018, the MHIC ordered a hearing. On March 26, 2018, the Office of Administrative Hearings (OAH) received the Order from the MHIC.

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

I held a hearing on June 13, 2018 and July 9, 2018, at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015).<sup>2</sup> The Claimant represented herself. The Respondent represented himself. Andrew J. Brouwer, Assistant Attorney General, represented the Fund.

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. 2018); 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 into evidence on behalf of the Fund:

1. Hearing Order, 02/23/18
2. Notice of Hearing, 05/07/18
3. Letter from the MHIC to the Respondent, 08/23/17
4. Letter from the MHIC to the Respondent, 09/20/17
5. MHIC licensure information, not dated

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<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 replacement volume of the Maryland Annotated Code.

Unless noted, I admitted the following exhibits that the Claimant offered:

1. Scope of Work agreement with Respondent, 07/25/16
2. Revised Scope of Work agreement with Respondent, 08/29/16
3. American Financial Resources Homeowner/Contractor Agreement, 07/25/16
4. U.S. Dept. of Housing and Urban Development, Draw Request, 07/21/16
5. Vincent Cimino, Recap Totals, 07/21/16
6. U.S. Dept. of Housing and Urban Development, Draw Request, 07/21/16
7. Photographs
  - a. 1-6
  - b. 1-11
  - c. 1-4
  - d. 1-6
  - e. 1-4
  - f. Marked for identification
  - g. 1-8
  - h. Marked for identification
  - i. Marked for identification
  - j. Marked for identification
  - k. Marked for identification
  - l. 1-5
  - m. 1-10
  - n. Marked for identification
  - o. 1-13
  - p. Marked for identification
  - q. 1-15
  - r. Marked for identification
8. Baltimore Housing search results for permits issued 09/20/16 and 10/17/16
9. Dept. of Housing and Community Development, Division of Construction and Building Inspection, electric permit, issued 09/20/16
10. Better Business Bureau complaint submission confirmation, 12/09/16
11. Better Business Bureau, Complainant Activity Report, undated
12. Lien Waiver and Release, 09/22/16
13. Front and back images of check, 09/22/16

14. Letter from MHIC to Respondent, 01/23/17
15. Email from Claimant, 12/09/16, without the referenced attachment
16. Email from Claimant, 12/10/16, without the referenced attachment
17. Email from Claimant, 12/13/16, without the referenced attachment
18. Certified mail documentation; envelope marked "Return To Sender, Unclaimed, Unable To Forward"
19. Letter from Claimant to Respondent, 12/10/16
20. Letter from Claimant to Respondent, 12/10/16
21. Letter from Claimant to Respondent, 12/10/16
22. American Financial Resources, Inc., Lien Release, signed only by Claimant, 12/10/16
23. Letter from Claimant to American Financial Resources, Inc., 02/08/17
24. Email from Respondent to XXX@bankingunusual.com and XXX@yahoo.com, 12/27/16
25. Email from Claimant to Respondent, 12/27/16
26. Email from Claimant to Respondent, 01/06/17
27. Email from "Vince," 09/21/16
28. Email from Vincent Camino, 12/02/16
29. Telephone record, for various calls on 12/24/[year absent]
30. Allstate Vehicle and Property Insurance Company policy, not dated; invoice, 10/25/16
31. Licensure information for Anthony N. Fortune, 02/25/18
32. Estimate Order/Scope of Work, 02/05/18
33. Receipt of Payment, Anthony N. Fortune, 02/05/18
34. Two cancelled checks to Anthony Fortune, both 02/05/18
35. Contractors Invoice, Anthony N. Fortune, undated



36. Home Mechanical Plus+, Quote, 01/12/18
37. Home Mechanical Plus+, Quote, 03/26/18
38. Home Mechanical Plus+, Invoice, 06/11/18
39. Superior Image Contracting, LLC, quote, undated
40. Scope of Work/Customer: Contractor's Agreement, Patricio Cruz, 01/31/17
41. Contractor's Invoice, 08/26/17; Two Receipts of Payment from James Carter, both 08/28/17; Contractor's Invoice, 09/02/17
42. Home Depot Receipts, 08/27/18 and 08/28/17
43. Front and back images of three checks: 03/26/18, 04/08/18 and 05/05/18

On Wednesday June 27, 2018, six business days before the second hearing day,<sup>3</sup> the Claimant asked the OAH to issue a subpoena for records to Sprint, the Claimant's cell phone carrier, in Kansas City, Missouri. The OAH issued the subpoena by first class mail on June 28, 2018. Sprint had not complied by the time of the hearing. I ruled at the hearing I would not hold the record open for compliance because the Claimant had unduly delayed asking for the subpoena, especially where the custodian of the records is out of State and mailing time both directions is presumably longer than if Sprint were in Maryland. On August 1, 2018, after I closed the hearing record, the OAH received records from Sprint. The records are not in evidence and I have not considered them in making this Proposed Decision.

#### Testimony

The Claimant testified on her own behalf and did not call other witnesses.

The Respondent did not testify or call witnesses.

The Fund did not call witnesses.

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<sup>3</sup> There were two weekends and the July 4 holiday before the hearing.

## PROPOSED FINDINGS OF FACT

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

1. At all relevant times, the MHIC licensed the Respondent as a home improvement contractor in Maryland.
2. On July 25, 2016, the Claimant and the Respondent entered into a contract (Contract) to perform an extensive renovation on property (Property) the Claimant was going to purchase and use as her primary residence.
3. The Property consists of: a basement with a full bathroom; a main level (referred to at the hearing as the first floor) with a powder room; a second floor with two bedrooms and a full bathroom; and an attic with access from the second floor. The Property was built in 1931.
4. The original agreed-upon Contract price was \$48,500.00. The Contract called for payment in three draws: \$16,166.00 due at the start date of the Contract; \$16,166.00 due on a later "agreed upon date"; and \$16,168.00 due at walk-through at the completion of the Contract. The Contract does not have a specific date for the second draw.
5. On August 29, 2016, the Claimant and the Respondent entered into an amended contract (Amended Contract). The terms and price of the Contract and Amended Contract are the same, but the Respondent adjusted the cost for certain line items on the Amended Contract.
6. The Amended Contract called for the Respondent to:
  - Replace and install flagstone step
  - Replace and install wood fascia
  - Install a twenty-five-year slate roof; replace and repair slate roof as needed to the house and garage
  - Repair gutters and downspouts as needed for the house and garage
  - Replace and install twenty-four windows as needed
  - Install a fence

- Paint outside wood trim
- Repair all interior and exterior doors
- Upgrade all electrical to code and have whole house electric
- Install and replace all plumbing to the whole house
- Install new heating, ventilation, and air conditioning (HVAC) and repair boiler
- Remove and install all new kitchen cabinetry and appliances
- Remove dining room walls
- Paint the entire interior of the house
- Repair wood trim
- Fully renovate two full and one half bathrooms, including replacement/addition of one washer/dryer, two bathtubs, two showers, two sinks and two toilets
- Install new floors in the kitchen and dining room
- Finish floors; clean all floors

Clmt. Ex. 2.

7. On September 15, 2016, the Claimant went to settlement on the Property and gave the Respondent a door key to the Property.

8. On July 25, 2016, the Claimant and the Respondent agreed to certain terms required by the Claimant's home improvement lender, American Financial Resources, Inc. (Lender), including that "work shall begin 09/15/16, or as soon as practical, but in no event later than thirty (30) days from the loan closing, and will be completed by 12/15/16, but in no event later than 90 days (3 months) from the loan closing." Clmt. Ex. 3. The loan closed on or about September 15, 2016 and, thus, work should have been completed by December 15, 2016.

9. The first draw was for the following work: the gutters and downspouts for \$1,500.00; the roof for \$4,200.00; bath accessories for \$4,000.00; plumbing for \$4,000.00; electrical for \$1,200.00; heating for \$1,200.00; and cabinetry for \$3,366.00.

10. On September 22, 2016, the Lender issued the first draw to the Respondent in the amount of \$14,549.40.<sup>4</sup> Clmt. Ex. 13.

11. The Respondent started demolition on the Property on September 19, 2016.

12. The Property was habitable at the time the Respondent started work.

13. By October 7, 2016, the Claimant had concerns about how the job was progressing. To assuage her concerns, she asked the Respondent to complete one specific task rather than to move around from one task to another, but he did not honor that request. The Amended Contract does not call for the Respondent to complete a single task before moving to another part of the job.

14. On October 22, 2016, the Claimant's home owner's insurance company, Allstate, advised her that it was cancelling her policy effective December 12, 2016, because the condition of the home was worse than a dwelling in average condition. Allstate specifically cited dry rot to the soffits, fascia, and eaves, and further wrote:

The condition concern(s)... constitute a change in the physical condition or contents of the premises or dwelling which results in an increase in the hazard insured against. If the condition concern(s) had been present and known to Allstate prior to the issuance of the policy, Allstate would not have issued the policy.

Clmt. Ex. 30.

15. An Allstate representative spoke to the Respondent, who promised to perform work necessary to have the insurer reinstate the policy. The Respondent did not perform the work as promised.

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<sup>4</sup> The Amended Contract calls for a first draw in the amount of \$16,166.00. The Lender released only \$14,549.40. The Claimant testified that the Lender reserved a ten-percent holdback on the first draw. Withholding ten percent of a \$16,166.00 draw does not leave a balance of \$14,549.40. The evidence does not explain the discrepancy.

16. During demolition, the Respondent removed a load bearing wall and support beam on the first floor that then caused the floor in the room above to start to cave in. Vincent Cimino, the Claimant's FHA Consultant, instructed the Respondent to replace the beam. On December 5, 2016, the Respondent did as instructed.

17. The Respondent inadequately installed ductwork. Not all rooms had ducts and vents and returns were missing.

18. On an unspecified subsequent date, the Respondent asked for a second draw. The Claimant was alarmed at the lack of progress. She told the Respondent she would not give him more money. The Respondent attempted to negotiate a second draw with the Claimant, but she did not relent.

19. The Respondent performed work on the roof.

20. The Amended Contract does not call for any landscaping work. The Respondent nevertheless performed some landscaping at the property, including cutting down a cherry tree because he thought it was dead, and removing a tree stump. The Claimant had previously advised the Respondent not to touch the cherry tree or the tree stump.

21. By December 4, 2016, just two weeks before the Amended Contract should have been completed, the Respondent had completed work on the roof, downspouts, and gutters and had performed some demolition, but generally performed no other work required under the Amended Contract.

22. On December 8, 2016, the Claimant terminated the Amended Contract because she believed that the Respondent had misappropriated her funds. The Respondent offered to take only a percentage of the next draw and continue work, but the Claimant declined.

23. On December 24, 2016, the Respondent called the Claimant and told her he was ready to deliver the contractually-promised HVAC system, and a water heater. Although the Amended

Contract called for the Respondent to install a new HVAC system and repair the "boiler," for \$3,500.00 in labor and \$4,500.00 in materials, the Amended Contract does not call for a water heater. The Claimant refused to permit the Respondent to leave the appliances at the Property and she told him instead to deliver them to her mother's house fifteen to twenty blocks away where she was celebrating Christmas. Someone else eventually installed the water heater. The HVAC was not installed because it was undersized for her house.

24. The Claimant's home has thirty-two windows, although the Amended Contract called for replacement of twenty-four, as needed.

25. On or about February 5, 2017 and March 26, 2017, the Claimant hired Anthony Fortune, a master plumber and gas fitter, to make repairs to the radiators that the Respondent disconnected and to the boiler and to make other repairs for a total of \$3,500.00 in three draws (\$1,500.00, due on acceptance of the contract; \$1,000.00 due on full completion of rough-ins with proof of signed off permits; and \$1,000.00 on completion of the work). The Claimant paid Mr. Fortune \$1,500.00 on February 5, 2017. Mr. Fortune did some work and then abandoned the job.

26. On January 12, 2017 and March 26, 2017, the Claimant obtained estimates from Home Mechanical Plus+ to make repairs to the radiators that the Respondent had disconnected and to the boiler, for \$3,500.00 and \$670.00 respectively. On June 11, 2017, the Claimant obtained an estimate from Home Mechanical Plus+ to make repairs to the radiant heat supply.

27. On January 31, 2017, the Claimant contracted with Patricio Cruz for \$43,000.00 to perform other home improvement to complete or repair the work covered by the Amended Contract and to perform a significant amount of work outside the scope of the Amended Contract, such as: installing thirty or more recessed lights; installing ceiling fans; remodeling the deck; creating a laundry room with new cabinetry; removing a gas fireplace line and "open for normal wood burning;" closing the attic entry way and creating a new entry way for the master

bedroom; creating a walk-in master bedroom closet; re-designing the guest room closet; and creating attic and basement storage spaces. Also, Mr. Cruz contracted to reface and stain the old kitchen cabinetry whereas the Respondent agreed to replace the cabinetry.

28. On August 28, 2017, the Claimant contracted with James Carter to make plumbing, electrical, and HVAC repairs, for a total of \$3,400.00.

29. In August 2017, the Claimant made two purchases at Home Depot for home improvement items.

30. On March 26, 2018, the Claimant paid Joshua Whitehurst another \$216.00 as a boiler repair deposit. On April 8, 2018, the Claimant paid Mr. Whitehurst another \$314.00 for boiler repairs. On May 5, 2018, the Claimant paid Mr. Whitehurst \$200.00 for boiler and radiator repairs.

### **DISCUSSION**

The Claimant seeks reimbursement from the Fund for the Respondent's home improvement under the Amended Contract. The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); 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)).

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); *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.

I find that the Claimant has met her burden. First, the Respondent was a licensed home improvement contractor at the time he entered into the Contract and Amended Contract. Second, the Respondent performed unworkmanlike, inadequate or incomplete home improvements.

The Respondent started work on the Amended Contract as expected on September 19, 2016. He should have completed the work by mid-December of that year. On September 22, 2016, the Respondent received the first draw, in the amount of \$14,549.40. That draw covered the following work, as valued by the Respondent: the gutters and downspouts for \$1,500.00; the roof for \$4,200.00; bath accessories for \$4,000.00; plumbing for \$4,000.00; electrical for \$1,200.00; heating for \$1,200.00; and cabinetry for \$3,366.00.

The Amended Contract is ambiguous as to the anticipated roof work. It states, “Install 25 year slate roof; Replace and repair slate roofing as needed (house and garage). Labor \$2100 Materials \$2100 **Total \$4200.**” Clmt. Ex 2. Thus, it seems to say both to replace the roof *and* repair it without distinguishing what would be replaced and what part would be repaired. “[I]t is a basic principle of contract law that, in construing the language of a contract, ambiguities are resolved against the draftsman of the instrument.” *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins. Co.*, 415 Md. 313, 327 (2010) (quoting *Burroughs Corp. v. Chesapeake Petroleum & Supply Co., Inc.*, 282 Md. 406, 411 (1978)). The Claimant’s expectation was for a new roof, which is not inconsistent with the Contract. According to the Claimant, the Respondent installed a roof that subsequently leaked and it was still leaking in the basement at the time of the hearing. The record is insufficient to prove the Respondent caused the leak.

In support of her roof claim, the Claimant offered the Banos estimate, which was \$1,500.00 for shingle work. The Amended Contract, however, calls for a slate roof. There is no



evidence showing Banos meant slate when he estimated shingles. Also, nothing in the Banos estimate shows exactly what roof work he was going to perform, whether he intended to repair or complete the Respondent's work, or whether he expected to perform work outside the scope of the Amended Contract. Banos said nothing about a leak occasioned by the Respondent's work.

The Claimant also offered Patricio Cruz's estimate, which includes repairing and replacing the roof as necessary, but he did not include a dollar amount and no evidence shows exactly what was necessary to bring the roof into good repair. He also did not mention a leak occasioned by the Respondent's work.

The Claimant's testimony is the only evidence about a leak. She testified she asked the inspector before she bought the house whether there was evidence of water infiltration and the inspector said no, yet after the Respondent installed the roof, it leaked. The Claimant did not offer any evidence that someone looked at the roof to determine whether it had a leak and whether the Respondent caused the leak. She testified the roof is "chipping," but the record does not show whether the Respondent caused that condition. It could be that the Respondent poorly installed the shingles, or it could be that a squirrel or debris damaged the roof after the Respondent performed his work. I do not find the Claimant's testimony alone is sufficient to support a finding that the Respondent performed unworkmanlike home improvement as to the roof.

In addition to the roof work, the Claimant testified that the Respondent performed some inadequate work to the gutters and downspouts. She testified her insurance company called the Respondent who said he would fix the downspouts and gutters, as well as the fascia and soffits, but he never did. The letter from her insurance company cancelling her insurance states only that there were problem soffits, fascia, and eaves. The only specific problem the Claimant identified is that the Respondent did not install some "black thing" she bought to divert water.

The record is insufficient to prove that there was a problem with the Respondent's work on the gutters and downspouts.

The Claimant also asserted that the Claimant performed inadequate duct work. She was more specific about this problem. The Claimant testified the Respondent: did not run all of the necessary duct work throughout the house; some rooms did not have vents or grates; duct work was wrongly installed near windows and doors; he did not install duct work in parts of the basement, including the bathroom; the front room in the basement had duct work but not a vent outlet; he did not install duct work to the attic and the second floor bathroom. The Amended Contract does not specifically include duct work; arguably it is covered by the HVAC system required by the Amended Contract. I find the Claimant proved the Respondent installed inadequate duct work.

The Claimant testified that the Respondent performed some plumbing. The Claimant testified that the Respondent: cut plumbing lines and when the Claimant turned on the heat, the lines leaked; a radiator was disconnected; and disconnected plumbing lines and did not reconnect them and complete other even by the time the job should have been nearly finished. I find that the Claimant proved inadequate, incomplete or unworkmanlike plumbing.

As to the plumbing, the Claimant also testified that the Respondent improperly used a "blue" adhesive on PVC pipes and he used "CPVC glue" instead. As a result, the "government inspector" would not "pass the plumbing." The Claimant conceded that she does not know the difference between the two glues, and she did not offer any documentation from an inspector that the adhesive violated plumbing or code standards and was the reason the plumbing did not pass inspection. I cannot find based on her limited testimony alone that the adhesive was unworkmanlike or inadequate.

The Claimant criticized the Respondent for not performing asbestos removal during the phase-one demolition. The Amended Contract, however, does not call for asbestos removal. Thus, the Respondent did not perform incomplete home improvement.

The Claimant testified the Respondent did not extract lead from the house. The Amended Contract does not call for lead abatement. Thus, the Respondent did not perform incomplete home improvement.

The Claimant complains that the Respondent did not remove all of the plaster at the Property. She testified it was understood he would do that. The Amended Contract does not call for this home improvement. Thus, the Respondent did not perform incomplete home improvement.

The Respondent did not perform any other work under the Amended Contract. For this reason, the Claimant terminated his services in December 2016, about two weeks before all the work should have been completed. The Respondent declined to testify; he did not present any evidence that the work was proceeding at an appropriate pace.

For all of these reasons, I find that the Claimant has proved that the Respondent performed unworkmanlike, inadequate, or incomplete home improvement. Before deciding the value of the Claimant's loss, however, I must decide whether she is barred from reimbursement on the basis that she unreasonably denied the Respondent's good faith efforts to resolve the claim under section § 8-405(d) of the Business Regulations Article.

The Claimant asserts that she lost all confidence in the Respondent's work because he accomplished so little at the point when he should have been almost finished and, therefore, she had good reason to terminate the Amended Contract. Also, the Claimant testified that the Respondent told her, in effect, he was fed up with the job and wanted to stop. The Respondent claimed in his opening statement at the hearing that the Claimant refused his offer to continue

working on the Amended Contract after she fired him, but he did not present any evidence to refute the Claimant's testimony. The Fund agrees that the Claimant had cause to cancel the Amended Contract.

I find that the Claimant had good reason to terminate the Amended Contract because the Respondent had made little progress on a job that should have been nearly completed. The only evidence of a good faith offer to complete the Amended Contract is that the Respondent delivered the HVAC and a water heater. The Claimant testified that the HVAC was undersized for the house and she could not use it. The Amended Contract does not call for the Respondent to provide a new water heater. Whether the Respondent believed he was supposed to provide and install a water heater or did so as a gesture of good will, I do not find his action constituted a good faith effort to complete the Amended Contract.

Because the Claimant had good cause to terminate the Respondent's services and she proved unworkmanlike, incomplete or inadequate home improvement, the next inquiry is whether she proved the value of her loss, in any. The Fund is correct that determining the value is complicated.

The Claimant nevertheless testified she has spent over \$40,000.00 on renovations since the Respondent stopped working and her house is still not habitable. The Claimant presented contracts with and estimates from contractors to complete and repair the Respondent's work.

On February 5, 2018, the Claimant entered into a contract with Anthony Fortune, a Master Plumber. Clmt. Ex. 32. Mr. Fortune's contract includes plumbing work that is contemplated by the Amended Contract, such as ensuring adequate plumbing. On the other hand, Mr. Fortune's contract includes a significant amount of work that is not contemplated by the Amended Contract. Unlike the Amended Contract, Mr. Fortune's contract called for installing a garbage disposal, a range, a dish washer, and a drain for the basement Jacuzzi tub. Mr. Fortune's contract totals

\$4,500.00. The Amended Contract called for the Respondent to install two sinks and two toilets. Mr. Fortune's contract called for three toilets and six sink fixtures. The Claimant paid him \$3,000.00. The record does not show exactly what work Mr. Fortune performed before he abandoned the job, according to the Claimant. The contract price is not broken down as per line items and it is therefore impossible to value the items included in the Amended Contract that he may have performed to complete or repair unworkmanlike items from the Amended Contract.

On January 12, 2017, the Claimant also received an estimate from Home Mechanical Plus+ for \$670.00 to reconnect a radiator, install radiator supply lines, install piping, and troubleshoot the boiler. Clmt. Ex. 36. On March 26, 2017, the Claimant received a second estimate from Home Mechanical Plus+ for \$720.00 for plumbing to the bathroom and second floor bedrooms, to install an expansion tank for the boiler system, and to troubleshoot the boiler. Clmt. Ex. 37. The Amended Contract does not call for an expansion tank. On June 11, 2017, the Claimant received a third estimate from this company, this time for bedroom radiator supply work and other plumbing, for a total of \$300.00. Clmt. Ex. 38. There is obvious overlap between the estimates. Nevertheless, the evidence does not establish whether this contractor's work either completed or repaired any items in the Amended Contract.

The Claimant also presented a quote from "Banos." Clmt. Ex. 39. The quote does not include the contractor's name, but I accept the Claimant's testimony about what it is. Nevertheless, the quote is not clear. For example, it includes a line item for vinyl windows, but it does not say how many. It includes framing for walls, but it does not say where in the house the walls would be installed, and I cannot conclude the walls are contemplated by the Amended Contract. It includes HVAC, plumbing, and electrical work line items, but the specific work is not described. It includes a line item for wall tile and masonry work, but these items are not part of the Amended Contract. It includes work related to pre-hung doors, but it does not say where

or how many, as the Amended Contract just calls for door repair. On the other hand, the Banos estimate includes work obviously contemplated by the Amended Contract such as kitchen cabinetry. Also, the Banos quote is for a total of \$129,030.00 which is three times more than the Amended Contract and for that reason alone quite obviously contemplates significantly more work than in the Amended Contract. The Banos contract therefore does little to help me determine what it will cost to repair and complete the Respondent's work.

On January 31, 2017, Patricio Cruz and the Claimant entered into a contract for \$43,000.00 that the Claimant testified would complete the Amended Contract. Clmt. Ex. 40. Mr. Cruz's estimate, however, includes a significant amount of work that is not contemplated by the Amended Contract, including: removing asbestos, repairing and/or providing three storm security gate/doors, installing recessed lights, refacing and staining old cabinetry, straightening the frame on all ceilings and walls as needed, remodeling/providing deck work, creating a laundry room with new cabinetry and closing off the utility room, removing a gas fireplace line and opening the fireplace for normal wood burning, closing off the attic entry and creating a new master bedroom closet within it, providing/framing a walk-in closet in the master bedroom, re-designing a guest room closet, attic, basement and storage spaces, installing sheetrock throughout the house, and exposing brick wall. Mr. Cruz's contract does include work contemplated by the Amended Contract, such as installing a new HVAC, painting, installing plumbing, upgrading the electrical to code, and other miscellaneous items. The contract price is not broken down into per line items and it is therefore impossible to value the items contemplated by the Amended Contract.

The Claimant also presented two contracts with James Carter for plumbing, electrical, and HVAC repairs, for \$4,300.00 and \$750.00. Clmt. Ex. 41. One contract includes installing a water heater, which is not part of the Amended Contract, and purchasing and installing an HVAC system which is. The higher estimate includes terminating available power lines and

terminating available electrical, seemingly to forty-five receptacles and twenty-five switches. It is not clear to me this was part of the Amended Contract.

The less expensive contract was to return to the Property to trouble shoot the boiler, mount two thermostats, “level and stone AC unit,” repair the kitchen ground fault indicator, run wire for the living room lights and for a dining room ceiling fan, repair the inlet water main and turn water on, and fabricate a cage for the AC unit. The Respondent did not work on the boiler. The Amended Contract does not include the other items.

The Claimant also presented two receipts from Home Depot from August 2017 that she testified were for items necessary to complete or repair the Amended Contract. The first purchase was for \$310.21 (Claimant. Ex. 42) and the second for \$76.30 (Clmt. Ex. 43).

The Claimant testified that the first draw was supposed to include insulation, which the Respondent did not install. The Amended Contract does not include insulation.

The Claimant paid Joshua Whitehurst for three separate boiler repairs in March, April, and May 2018. Clmt. Ex. 43. The evidence does not show exactly what the repair was; the only evidence is the Claimant’s notation on the bottom left side of the check that she was paying for boiler repairs. Also, the evidence does not show that the repairs were necessitated by the Respondent’s work on the boiler. To the contrary, the evidence shows that the Respondent did not work on the boiler.

Because the Respondent received estimates from contractors that far exceeded the scope of the Amended Contract, I cannot accept her testimony that the expenditures were solely to complete the Amended Contract. In fact, some expenditures are obviously not contemplated by the Amended Contract, including the purchase and installation of a programmable thermostat.

The Claimant complains that the Respondent did not replace all thirty-two windows at the Property. The Amended Contract called for the Respondent “replace and install 24 windows

as needed.” In any event, the evidence shows the Respondent did not replace any windows and the Claimant never released the draw that would have covered the windows. Thus, she has no loss as to the windows.

I now turn to the formula for calculating the amount the Claimant is eligible to receive from the Fund. MHIC regulations provide for calculating reimbursement, 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 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.

I find that a unique formula is appropriate. The Claimant performed roof, gutter, and downspout work under the Amended Contract that had value to the Claimant. The Respondent did not perform much of the work under the Amended Contract. He performed demolition which arguably has some value, but the Respondent did not present any evidence of a dollar amount. I find that the demolition offered trivial value to the Claimant in the grand scheme of the Amended Contract. The Claimant solicited contractors to perform the Amended Contract, but it is largely impossible to discern whether their estimates were to repair or complete the Respondent’s work. Also, the estimates contain extensive work beyond the scope of the



Amended Contract. As to the plumbing, it is impossible to discern from estimates alone what contractors did to remedy the Respondent's work, versus performing new work. I find that the most appropriate way to value the Claimant's loss is simply to take the amount the Claimant paid to the Respondent and subtract the value of work he did perform. In the Amended Contract, the gutters and downspouts are valued at \$1,500.00 and the roof is valued at \$4,200.00, for a total of \$5,700.00. The Claimant is eligible for reimbursement for \$14,549.40 (the amount she paid) less \$5,700.00 (the value of work the Respondent performed), for a total of \$8,849.40. I did not make a deduction for the hot water heater because there is no evidence the Claimant contracted with the Respondent for it and I have no evidence of its value.

A claimant may not recover more than \$20,000.00 for acts or omissions of one contractor, or more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). The Claimant's reimbursable loss is less than the maximum allowed.

Finally, the Claimant testified the Property was without heat for a couple of years and the pipes burst. Any resulting damage would constitute a consequential damage. The Fund may not compensate a claimant for consequential damages (or punitive damages, personal injury, attorney fees, court costs, or interest.) Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). In any event, the Claimant did not prove the value of any loss from burst pipes.

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

I conclude that the Claimant has sustained an actual and compensable loss \$8,849.40 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover \$8,849.40 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,849.40; 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; and

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

**Signature on File**

October 9, 2018  
Date Decision Issued

Laurie Bennett / — <sup>2</sup>/<sub>1</sub>  
Administrative Law Judge

LB/cmg  
# 174397

**PROPOSED ORDER**

***WHEREFORE, this 20<sup>th</sup> day of November, 2018, 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.***

***Jeffrey Ross***

***Jeffrey Ross  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**