

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JUANITA BOONE,</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 BEVERLY</p> <p>HAGGERTY,</p> <p>T/A HEARN INSULATION &</p> <p>IMPROVEMENT CO., INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN PATRICK WEEKS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-19-23172</p> <p>* MHIC No.: 18 (90) 1198</p>
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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 August 13, 2018, Juanita Boone (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,800.00 in actual losses allegedly suffered as a result of a home improvement contract with Beverly Haggerty, trading as Hearn Insulation & Improvement Co., Inc. (Respondent). Md.

Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On or about July 8, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on October 11, 2019 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented herself. The Respondent represented herself.

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. 2019); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Cl. Ex. 1 - Email from USA Energy Co., Inc. to Claimant with attached photos, sent May 1, 2018
- Cl. Ex. 2 - Contract, April 29, 2014
- Cl. Ex. 3 - CertainTeed Limited Warranty, 2013
- Cl. Ex. 4 - CertainTeed Limited Warranty, 2014
- Cl. Ex. 5 - Emails between Claimant and Respondent with attached photos, various dates

¹ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

- Cl. Ex. 6 - Photos of roof, undated
- Cl. Ex. 7 - RoofPro Proposal, March 13, 2018
- Cl. Ex. 8 - USA Energy Co., Inc. Scope of Work, March 7, 2018
- Cl. Ex. 9 - D.A.W. Contracting, Inc. Roof Inspection, October 27, 2018
- Cl. Ex. 10 - Charis Contractors, LLC Roof Report, September 6, 2019
- Cl. Ex. 11 - Local Climatological Data Daily Summary, March 2018
- Cl. Ex. 12 - Respondent's response to Claim, June 11, 2018

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of Hearing, August 20, 2019
- Fund Ex. 2 - Respondent's Licensing History, printed October 11, 2019
- Fund Ex. 3 - Letter from MHIC to Respondent, August 21, 2018

The Respondent did not offer any exhibits.

Testimony

The Claimant testified on her own behalf.

The Respondent testified on her own 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 license number 83782.
2. On April 29, 2014, the Claimant and the Respondent entered into a contract to install a new roof (Contract). The work was completed shortly after the Contract was signed.
3. The original agreed-upon Contract price was \$3,200.00.

4. On unspecified dates, the Claimant paid the Respondent a total of \$3,200.00.
5. In or around March 2016, the Claimant noticed certain shingles were loose on the rear roof.
6. On March 2, 2018, the maximum wind speed was sixty-one miles per hour. On or around that date, a sheet of shingles blew off the front of the Claimant's roof.
7. On March 5, 2018, the Claimant contacted the Respondent and the Respondent gave her an estimate of \$975.00 to repair the missing shingles.
8. On or about March 28, 2018, USA Energy Co., Inc. replaced the shingles at no cost to the Claimant.
9. In or about late April 2018, a second sheet of shingles blew off the Claimant's roof. This sheet of shingles has not been replaced.

DISCUSSION

In this case, 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 & Supp. 2019); 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”). “[A]ctual 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 Respondent was a licensed home improvement contractor at the time she entered into the Contract with the Claimant.

The Claimant testified that as early as March 2016, less than two years after the work was completed, she began to notice that certain shingles were loose. Then, in March 2018, one sheet of shingles blew off the roof. The Claimant had that sheet of shingles replaced at no cost to her, but subsequently, in late April 2018, a second, different, sheet of shingles blew off. That sheet of shingles has not been replaced.

The Claimant submitted into evidence a number of documents that show the problems with the Respondent’s work. Two licensed MHIC contractors performed inspections of the roof and observed that the nails were not driven flush to the shingles and that there were many lifted shingles on both the front and rear roofs. Even though these contractors did not testify, I credit those portions of their reports that are based on personal observation and describe the state of the roof on the date of the inspection.³ The contractors’ personal observations are also corroborated by the photographs that the Claimant submitted into evidence, which show that, in addition to the blown-off shingles, certain parts of the shingles are loose which is consistent with the contractors’ descriptions of the lifted shingles and the nails not being driven flush to the shingles.

The Respondent did not contest the fact that one sheet of shingles blew off the roof in March 2018. The Respondent argued that the damage was caused by excessive wind and that the

³ The inspections took place on October 27, 2018 (D.A.W. Contracting, Inc.) and September 6, 2019 (Charis Contractors, LLC).

Respondent's work is only guaranteed to withstand normal weather conditions. The Respondent asserted that March 2018 was "unprecedented" in terms of the weather, but offered no evidence or historical data to support this argument. The Respondent asserted that there were four major storms during March 2018 and that the damage to the roof is attributable to those storms. The Claimant admitted into evidence a daily summary of climatological data that shows that March 2, 2018 was the date with the highest average speed for wind (25.7 mph) and the highest peak speed (61 mph).

The Respondent argued that winds lower than fifty miles per hour constitutes normal weather conditions. This assertion is based on an incorrect reading of the manufacturer's warranty for the shingle, which instead states that the warranty covers damage due to excessive wind, defined as "up to 90 mph." The Respondent also argued that the Claimant should have reached out to the manufacturer of the shingle to see if the damage was covered by the warranty. However, the manufacturer's warranty is for damage to the shingle itself if such damage causes leaks, and expressly disclaims any protection for improperly installed shingles.

The Respondent did not offer any explanation for the additional damage in April, nor did she assert that unusual weather was to blame for that damage.

I conclude based on the above discussion that the Claimant has proven that the cause of the damaged shingles was Respondent's unworkmanlike, inadequate, or incomplete work, and that the Claimant is eligible for compensation from the Fund. This conclusion is based primarily on the photographs and corroborating documentary evidence from the contractors who inspected the roof. The Respondent did not offer any testimony or documentary evidence to show that the roof was completed in a workmanlike manner, nor did she respond to or provide an explanation for the photographs and the observations of the contractors who inspected the roof.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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).

The Claimant asserts that she should be awarded \$4,800.00 from the Fund. This represents the estimated cost to replace the entire roof less the original contract price. However, she did not provide any expert testimony in support of her argument that the entire roof needs to be replaced. Additionally, I am not privy to the credentials or expertise of the contractors that submitted written inspection reports regarding the Claimant's roof. The inspection reports indicate that future damage is anticipated, but only one of the reports recommends that the roof be removed and replaced. The Claimant also pointed to the Respondent's response to the MHIC, in which she states that the Claimant will "continue to have problems if her roof is not

completely torn off and replaced.” However, this conclusion appears to be based on the expense associated with inspecting every shingle to ensure that it does not need to be replaced. Neither the contractors’ inspection reports nor the Respondent’s MHIC complaint response provide a sufficiently reliable basis for me to conclude that the Claimant needs to replace her entire roof at this time.⁴

Although the Claimant did not obtain an estimate for repairing the second sheet of shingles that blew off her roof, there is sufficient evidence of the cost to replace a sheet of shingles in the record. There are three estimates for replacing the shingles that blew off in March 2018 – all are from contractors licensed by the MHIC. The first estimate is from RoofPro, and is a total of \$585.00 for work that includes replacing the missing shingles as well as replacing siding on the left side of the Claimant’s porch. The second estimate is from USA Energy Co., Inc., and is a total of \$550.00 for patching the Claimant’s roof with new shingles. The third estimate is from the Respondent’s letter to the MHIC, and apparently was also given orally to the Claimant on March 5, 2018. This estimate is a total of \$975.00 to fix the missing shingles.

I conclude that the USA Energy Co., Inc. estimate constitutes the best estimate of the amount the Claimant 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. The USA Energy Co., Inc. estimate provides a separate line item describing the exact work to be done, unlike the RoofPro estimate. The Respondent’s estimate is not sufficiently reliable because it was given orally and does not describe the scope of work, and an estimate from the original contractor is not contemplated by the MHIC formula, which takes into account “reasonable amounts the

⁴ The Claimant has the right to file further claims against the Fund in the event that damage to specific shingles is discovered.

claimant . . . will be required to pay **another** contractor.” COMAR 09.08.03.03B(3)(c) (emphasis mine).

Applying the formula, I arrive at an actual loss of \$550.00 (\$3,200.00 (amount paid to Respondent) + \$550.00 (cost to complete) = \$3,750.00 - \$3,200 (original contract price) = \$550.00 (actual loss)).

The Business Regulation Article caps a claimant’s recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover 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). In this case, the Claimant’s actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$550.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$550.00 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)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$550.00; 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;⁵ and

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

December 20, 2019
Date Decision Issued

CONFIDENTIAL

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#183579

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**IN THE MATTER OF THE CLAIM
OF JUANITA BOONE**

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**MARYLAND HOME IMPROVEMENT
COMMISSION**

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**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS**

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**MHIC CASE NO. 18 (90)1198
OAH CASE NO. LABOR-HIC-02-19-
23172**

**OF BEVERLY HAGGERTY t/a
HEARN INSULATION &
IMPROVEMENT CO., INC.**

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on October 11, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on December 20, 2019, concluding that the homeowner, Juanita Boone (“Claimant”) proved that she sustained an actual loss as a result of the acts or omissions of Beverly Haggerty, t/a Hearn Insulation & Improvement Co., Inc. (“Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated February 14, 2020, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to grant an award from the MHIC Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On July 2, 2020, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. Both the Claimant and the Contractor participated without counsel. Justin Dunbar, Assistant Attorney General, appeared at the exceptions hearing on behalf of the MHIC. The following preliminary exhibits were offered by AAG Dunbar and admitted into evidence at the exceptions hearing: 1) April 13, 2020 hearing notice letter and Claimant’s written exceptions; 2) Claimant’s written exceptions; 3) February 14, 2020 letter, ALJ OAH Proposed Decision, and MHIC Proposed Order; 4) Beverly Haggerty remote hearing consent; 5) James Haggerty remote hearing consent; and 6) Juanita Boone remote hearing consent. Neither the

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Claimant nor the Contractor submitted a transcript of the hearing before the ALJ. Therefore, the Panel's review of the record was limited to the preliminary exhibits offered by AAG Dunbar at the exceptions hearing, the OAH Proposed Decision and the exhibits introduced into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The home improvement contract at issue in this proceeding was a contract between the Claimant and Contractor for the installation of a new roof on the Claimant's home for \$3,200.00. The Claimant filed her claim after shingles installed by the Contractor began blowing off of her roof. The ALJ, in his Proposed Decision, found that the Contractor's unworkmanlike, inadequate, or incomplete performance of the contract work caused the shingles to come off of her roof. The Claimant sought an award of damages sufficient to cover the cost of replacing the entire roof installed by the Contractor, but the ALJ deemed the evidence in the record insufficient to support a finding that the Claimant's entire roof must be replaced and awarded the Claimant \$550.00, which the ALJ found to be the cost of replacing the shingles missing from the Claimant's roof at the time of the hearing.

The Claimant argues on exceptions that the ALJ erred in determining that she failed to present sufficient evidence to prove that her entire roof must be replaced. The Commission agrees with the Claimant.

In March 2016, within two years of the Contractor's installation of her roof, the Claimant discovered that some of the shingles on the rear of her roof were loose. (Proposed Decision pp. 4-5.) On March 2, 2018 and in late April 2018, individual sheets of shingles blew off of the Claimant's roof. (Proposed Decision pp. 4-5.) A third party replaced the first sheet of shingles that blew off the Claimant's roof at no cost to the Claimant, and the second sheet had not been replaced at the time of the OAH hearing. (Proposed Decision pp. 4-5.)

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Two licensed contractors inspected the Claimant's roof on October 27, 2018 and September 6, 2019. (Proposed Decision p. 5; OAH Hearing Claimant's Exhibits 9-10.) The first contractor, D.A.W. Contracting, Inc., in a letter to the Claimant regarding its inspection, reported that it observed shingles lifting away from the roof because of improperly nailed and improperly aligned shingles and recommended that the roof be removed and replaced. (OAH Hearing Claimant's Exhibit 9.) The second contractor, Charis Contractors, LLC, in a report issued to the Claimant, noted many lifted shingles on the front and back of the roof, which it attributed to nail pops caused by the Contractor's failure to drive nails flush with the shingles when it installed the roof. (OAH Hearing Claimant's Exhibit 10.) Charis Contractor's report also advised the Claimant that the nails will eventually poke through the shingles and cause leaks and that the roof is vulnerable to further wind damage because wind can get under the shingles and blow them off the roof. (OAH Hearing Claimant's Exhibit 10.) Charis Contractors enclosed with its report an estimate for the removal of the Claimant's roof and installation of a new roof for \$6,000.00. (OAH Hearing Claimant's Exhibit 10.)

The Contractor, in its response to the Claimant's MHIC Complaint, admitted that the Claimant "will continue to have problems if her roof is not completely torn off and replaced" and that "[r]epairs will not be sufficient since every shingle cannot be examined and repaired as needed. This would be too costly to have done." (OAH Hearing Claimant's Exhibit 12.) The Contractor asserted in its response to the Complaint (OAH Hearing Claimant's Exhibit 12), and again asserted at the exceptions hearing, that the cause of the problems with the Claimant's roof was excessive wind, rather than its unworkmanlike performance.

The Commission finds, based on the report of D.A.W. Contracting, the report and estimate of Charis Contractors, and the Contractor's response to the Claimant's Complaint, that the

1. The first part of the document is a letter from the Secretary of the State to the Governor, dated 18th March 1877.

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Contractor failed properly to align and nail down the shingles throughout the Claimant's roof, rendering the Contractor's performance of the work under the contract unworkmanlike, and that the Claimant's entire roof must be replaced to remedy the Contractor's unworkmanlike performance so that the Claimant does not continue to experience shingle loss and to prevent her roof from leaking. The Commission agrees with the ALJ's finding that the problems with the Claimant's roof were not the result of excessive wind, as the record does not include reliable evidence of excessive wind.

The ALJ selected the correct regulatory formula to calculate the Claimant's actual loss, which reads as follows:

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.

Code of Maryland Regulations ("COMAR") 09.08.03.03B(3)(c). The formula can be expressed as the following equation:

Amount paid to or on behalf of the contractor + Cost to correct and complete the work
- Original contract price = Actual Loss

In this case, the amount the Claimant paid to or on behalf of the Contractor is \$3,200.00. (Proposed Decision p. 3.) The Commission finds, based on the estimate of Charis Contractors, that the cost to correct and complete the work by removing and replacing the roof is \$6,000.00. (OAH Hearing Claimant's Exhibit 10.) Accordingly, the Commission's calculation of actual loss is as follows:

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\$3,200.00 Amount paid to or on behalf of the contractor
 + **\$6,000.00 Cost to correct and complete the work**
\$9,200.00
 - **\$3,200.00 Original contract price**
\$6,000.00 Actual Loss

The Commission may not make an award from the Guaranty Fund in excess of the amount paid by or on behalf of the Claimant to the Contractor. *Md. Code Ann.*, Bus. Reg. § 8-405(e)(5). Because the Claimant's actual loss exceeds the \$3,200.00 she paid to the Contractor, the Commission finds that the proper award is \$3,200.00.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 19th day of July 2020 **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED** ;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant is awarded **\$3,200.00** from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; AND

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The manual process involves reviewing each entry individually, while the automated process uses software to identify patterns and anomalies.

The third part of the document focuses on the results of the analysis. It shows that there are several areas where the data deviates from the expected values. These deviations are likely due to human error or system malfunctions. The author provides a detailed breakdown of these errors and suggests ways to prevent them in the future.

Finally, the document concludes with a summary of the findings and a list of recommendations. The key recommendation is to implement a more robust data management system that can handle large volumes of data more efficiently. Additionally, regular audits should be conducted to ensure the accuracy of the records.

G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the effective management of any organization and for the protection of its assets.

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