

IN THE MATTER OF THE CLAIM
OF ANNA DEADRICK AND
BRETT DEADRICK,
CLAIMANTS

* BEFORE EILEEN C. SWEENEY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

COPY

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF LEWIS BURGWALD,
T/A BURGWALD REMODELING &
PAINTING,
RESPONDENT

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* OAH No.: DLR-HIC-02-18-36564
* MHIC No.: 18(05)534
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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 February 8, 2018, Anna and Brett Deadrick (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Lewis Burgwald, trading as Burgwald Remodeling & Painting (Respondent). Md. Code Ann.,

TO THE HONORABLE SENATE OF THE UNITED STATES
FROM THE SECRETARY OF THE INTERIOR
REPORT OF THE COMMISSIONER OF THE GEOLOGICAL SURVEY
ON THE PROGRESS OF THE SURVEY DURING THE YEAR 1878
AND THE STATE OF THE SURVEY AT THE CLOSE OF THE YEAR
AND THE PROSPECTS FOR THE FUTURE

DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WASHINGTON
1879

Published by the Government Printing Office
under authority of an act of Congress, approved
March 3, 1877, entitled "An Act to amend
an Act approved March 3, 1877, entitled
"An Act to provide for the publication of
the reports of the Geological Survey."

Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On November 26, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 25, 2019 at the OAH – Kensington, 10400 Connecticut Avenue, Suite 208, Kensington, Maryland 20895. Bus. Reg. § 8-407(e). Nicholas Sokolow, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. Claimant Anna Deadrick represented the Claimants.² The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department’s hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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 Claimants’ behalf:

- | | |
|-------------|--|
| Clmt. Ex. 1 | March 1, 2017 Proposal from the Respondent |
| Clmt. Ex. 2 | December 2, 2016 Proposal from the Respondent |
| Clmt. Ex. 3 | March 1, 2017 cancelled check from the Claimant to the Respondent in the amount of \$58,333.00 |

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

² Hereafter, I will refer to Ms. Deadrick, individually and in her capacity as the Claimants’ representative, as the “Claimant”. I will refer to Mr. Deadrick, individually, by name. I will refer to both individuals, collectively, as the “Claimants”.

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- Clmt. Ex. 4 December 10, 2016 cancelled check from the Claimant to the Respondent in the amount of \$7,500.00
- Clmt. Ex. 5A-E Photographs taken on or about July 27, 2017, August 10, 2017, and October 5, 2017
- Clmt. Ex. 6A-B Photographs taken on or about July 6, 2017
- Clmt. Ex. 7 Unsigned November 21, 2017 Standard Short Form of Agreement between Owner and Architect
- Clmt. Ex. 8A January 28, 2018 Estimate from Gutterman Services, Inc.
- Clmt. Ex. 8B January 28, 2018 Estimate from Gutterman Services, Inc.
- Clmt. Ex. 9A August 30, 2017 letter from Richard B. Rosenblatt, Esquire, to the Claimants
- Clmt. Ex. 9B October 28, 2016 email from the Respondent to the Claimants
- Clmt. Ex. 9C Undated "Attachment 1"
- Clmt. Ex. 10 October 19, 2017 MHIC Complaint Form
- Clmt. Ex. 11 Undated Memorandum from the Claimants to the MHIC, with attachments
- Clmt. Ex. 12A Undated email from the Claimants to the Respondent, with handwritten notations
- Clmt. Ex. 12B August 25-27, 2017 emails between the Claimants and the Respondent
- Clmt. Ex. 13 September 1, 2017 Residential Lease Agreement
- Clmt. Ex. 14 August 25, 2017 Denial of Interim Petition for Peace Order, Petition for Peace Order, Peace Order Supplement, and Addendum to Petition for Peace Order, District Court of Maryland for Montgomery County, Case No.: 0601SP042372017
- Clmt. Ex. 15 Undated internet printout entitled, "Maryland Home Improvement Contracts - Home Improvement Commission"

The Respondent did not submit any exhibits for admission into evidence.

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I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 November 21, 2018 Hearing Order
- Fund Ex. 2 February 13, 2019 Notice of Hearing
- Fund Ex. 3 February 14, 2018 letter from the MHIC to the Respondent
- Fund Ex. 4 February 13, 2019 Licensing Information

Testimony

The Claimant testified on behalf of the Claimants.

The Respondent testified on his own behalf.

The Fund did not present the testimony of any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 4821853.
2. On December 6, 2016, the Claimants and the Respondent entered into a contract for the Respondent to provide "architectural services" (Architectural Services Contract) for a two-story rear addition and second floor reconstruction with interior renovations to the existing single family residence located at 324 Howard Avenue, Rockville, Maryland 20851 (Property). (Clmt. Ex. 2.) Pursuant to the Architectural Services Contract, the Respondent was to act as a "Structural Consultant" for a fee of \$1,500.00. Reichard Design Haus, LLC (Architect), was to provide architectural drawings for a fee of \$6,000.00, and the Claimants and the Architect were to sign a Standard Form of Agreement between Owner and Architect drafted by the Respondent after completion of the drawings.
3. On or about December 10, 2016, the Claimants paid the Respondent a total of \$7,500.00 under the Architectural Services Contract.

4. On March 1, 2017, the Claimants entered into a contract with the Respondent for renovation services for the two-story rear addition and second floor reconstruction with interior renovations to the Property (Contract).

5. Pursuant to the Contract, the Respondent was to perform the following scope of work:

- Demolish existing roof including second floor interior demising wall partitions
- Demolish existing first floor interior demising wall partitions. Install new engineered wood beam(s) and associated columns
- Demolish existing first floor rear elevated utility room and foundation and demolish deck
- Demolish existing masonry chimney and first floor fireplace
- Install new basement and second floor staircase[s]
- Install 32 inch wide interior doors hollow core six panel
- Construct full height crawl space in addition foundation (not finished)
- Install rear sliding door in kitchen with guardrail to future deck
- Exterior fenestration:³ provide new vinyl siding at all new locations
- Construct new two-story addition at rear of existing residence with pitched gabled roof trusses

6. The first floor addition renovation was to be an open plan concept, including:

- An L-shaped kitchen with gray kitchen cabinets and quartz/granite white/grey countertop with under mount sink
- A corner office/bedroom
- A full bath with shower and no tub
- Hardwood floor throughout main level except bathroom
- Six panel doors
- Recessed lighting
- Hardwiring of the whole home for smoke detectors
- Baseboard
- Sprinkler system
- Electrical
- Plumbing
- Insulation
- Sliding patio door in kitchen to future deck (deck not included)
- Guardrail installed at patio door for safety until a deck is built
- Sheet rock installation and finishing
- Painting interior walls and ceiling off white flat same color trim, and doors and windows semi-gloss white

³ At the hearing, the Respondent defined "fenestration" as the "sides of the house."

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the sampling process and the statistical tools employed.

3. The third part of the document presents the results of the study, including a comparison of the different methods and a discussion of the findings. It highlights the strengths and weaknesses of each approach.

4. The fourth part of the document provides a comprehensive analysis of the data, including a breakdown of the results by category and a discussion of the implications for future research.

5. The fifth part of the document concludes the study and offers recommendations for further research. It suggests that future studies should focus on refining the methods and exploring new areas of inquiry.

6. The sixth part of the document provides a summary of the key findings and a final conclusion. It reiterates the importance of accurate record-keeping and the value of the research presented.

7. The seventh part of the document includes a list of references and a bibliography. It cites the various sources used in the study and provides information for further reading.

8. The eighth part of the document contains a list of appendices and supplementary materials. These include detailed data tables, charts, and other supporting information.

9. The ninth part of the document provides a list of figures and tables. It includes a detailed description of each figure and table and explains how they relate to the study's findings.

10. The tenth part of the document includes a list of footnotes and a glossary. It provides additional information and definitions for key terms used in the study.

11. The eleventh part of the document contains a list of acknowledgments and a list of contributors. It expresses gratitude to those who assisted in the study and provided valuable input.

12. The twelfth part of the document includes a list of contact information and a list of distribution channels. It provides details on how to reach the author and where the document can be accessed.

13. The thirteenth part of the document contains a list of references and a bibliography. It cites the various sources used in the study and provides information for further reading.

7. The second floor addition/renovation was to include:

- Three bedrooms
- One full large bathroom with a 48-inch-wide shower and soaking bathtub
- Two doors into the bathroom for access between the master bedroom and hall
- A separate sink and shower area
- Smoke detectors
- Interior doors
- Windows
- Baseboard
- Sheetrock
- Attic access panel (no steps to attic)
- Carpet flooring in upper sleeping area and hall in upper level of home
- Hardwood finish of new interior stairway between the first floor and the second floor
- Painted handrail
- Painted walls and ceiling off white flat paint—same color trim; trim and doors semi-gloss white; bathroom eggshell sheen
- Ceiling light fixtures
- Electrical\Plumbing

8. The Property was to be renovated according to the drawings supplied by the Architect and approved by the Claimants.

9. Under the Contract, utility subcontractors (plumbers, electricians, HVAC mechanics, plumbers, HVAC technicians) were to obtain permits for the work to be provided by them.

10. Pursuant to the Contract, the Respondent was to develop construction documents depicting demolition and new work at a level of detail sufficient to obtain a building permit, obtain such a permit, respond to comments made by the City of Rockville and Montgomery County, and revise drawings accordingly. In addition, the Respondent was to coordinate scheduling with the mechanical HVAC, plumbing, electrical and concrete subcontractors.

11. All work was to be completed according to Maryland and City of Rockville building codes.

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1. The first part of the document discusses the general principles of the proposed system. It outlines the objectives and the scope of the project, which is intended to improve the efficiency of the administrative process. The document is divided into several sections, each dealing with a specific aspect of the system.

2. The second part of the document provides a detailed description of the proposed system. It includes a list of the various components and their functions. The system is designed to be flexible and adaptable to changing requirements. It is expected that the system will be implemented in a phased manner, starting with the most critical areas.

3. The third part of the document discusses the financial aspects of the project. It provides an estimate of the total cost of the system, including the cost of hardware, software, and personnel. It also discusses the expected benefits of the system, which are expected to result in significant cost savings over the long term.

4. The fourth part of the document discusses the implementation and maintenance of the system. It provides a detailed plan for the implementation of the system, including the timeline and the resources required. It also discusses the ongoing maintenance and support of the system, which will be provided by a dedicated team of personnel.

5. The fifth part of the document discusses the conclusion of the project. It summarizes the key findings of the study and provides recommendations for the future. It is expected that the proposed system will be a significant improvement over the current system and will result in a more efficient and effective administrative process.

12. No work was to be done in the basement except for the installation of a new electrical panel box and repair around the electrical panel box, the patching of holes where the sewer drain line was to be attached to the existing sewer drain line, and the installation of sheetrock for needed repairs of sheetrock damaged by the plumber or electrician. The existing basement stairway was to be replaced. The basement steps in the second floor addition were to be unfinished with no carpet.

13. The Property already had water service. The Respondent was to provide all new water supply and sewer line drain(s) to the basement and tap into the old water service. This did not include new water service from the street to the house.

14. The Respondent was to reroof the shingles on the closed-in porch/entrance entry room and paint the room.

15. Soil from the foundation installation was to be spread throughout the backyard and areas that could use back fill or grading.

16. The Contract provided that progress meetings with the Claimants would be held and stated: “[n]o one allowed on premises [due] to insurance and safety regulations (work area). Please be advised that this is a construction site with lumber and construction material throughout the jobsite and is dangerous and may cause death.” (Clmt. Ex. 1.)

17. The Contract did not state when work would begin; the estimated time of completion was eight to ten months of the framing start date.

18. The original agreed-upon Contract price was \$175,000.00.⁴

19. The total Contract amount was to be paid as follows: “1/3 down to start \$58,333.00 [with the] remainder in three payments of \$38,889.00.” (Clmt. Ex. 1.)

20. On March 1, 2017, the Claimants paid the Respondent \$58,333.00.

⁴ The Respondent testified confusingly and with no apparent relevance about the reduction in an earlier proposed amount as a result of an alleged discount.

1. The first part of the document is a letter from the author to the editor of the journal. The letter discusses the author's motivation for writing the paper and the importance of the research.

2. The second part of the document is the abstract of the paper. It provides a brief summary of the research objectives, methods, results, and conclusions.

3. The third part of the document is the introduction. It provides a detailed overview of the research background, the specific research questions, and the significance of the study.

4. The fourth part of the document is the literature review. It discusses the existing research on the topic and identifies the gaps that the current study aims to address.

5. The fifth part of the document is the methodology. It describes the research design, the data collection methods, and the statistical analysis techniques used in the study.

6. The sixth part of the document is the results. It presents the findings of the study, including the statistical significance of the results and the interpretation of the data.

7. The seventh part of the document is the discussion. It discusses the implications of the findings, the limitations of the study, and the directions for future research.

8. The eighth part of the document is the conclusion. It summarizes the main findings of the study and provides a final statement on the research.

9. The ninth part of the document is the references. It lists the sources of information used in the study, including books, journal articles, and online resources.

10. The tenth part of the document is the appendix. It contains supplementary information that supports the main text of the paper, such as additional data, figures, and tables.

11. The eleventh part of the document is the acknowledgments. It expresses the author's gratitude to the individuals and organizations that provided support and assistance during the research process.

12. The twelfth part of the document is the author's biography. It provides a brief overview of the author's academic and professional background.

13. The thirteenth part of the document is the declaration of interest. It states whether the author has any potential conflicts of interest that could affect the objectivity of the research.

14. The fourteenth part of the document is the consent form. It provides information about the study and obtains the informed consent of the participants.

15. The fifteenth part of the document is the data access statement. It describes the conditions under which the data generated during the study will be made available to other researchers.

16. The sixteenth part of the document is the ethical approval statement. It states that the study has been approved by the appropriate ethics committee and that all procedures followed were in accordance with the ethical standards of the committee.

17. The seventeenth part of the document is the funding statement. It identifies the sources of financial support for the research and acknowledges the contribution of each funding source.

18. The eighteenth part of the document is the copyright notice. It states the copyright holder and the terms of use for the document.

21. Work on the project began on or about June 6, 2017, when the Respondent started demolition on the house.

22. The Respondent performed demolition work on the second floor, a small room (office), the hall and closet on the main level of the house, a bedroom, a staircase, and the deck.

23. The Respondent dug a trench and added rebar for the concrete foundation.

24. The Respondent kept the architectural drawings in his truck or at his home to use while working on the project.

25. With the Respondent's knowledge and consent, the Claimants lived in the basement of the Property throughout the summer, using the intact first floor bathroom and kitchen, while the Respondent performed work on the Property. The Claimants' children stayed with their grandparents for most of the summer but sometimes also occupied the basement.

26. At an August 16, 2017 meeting, the Respondent told the Claimants:

- “[W]ork would be progressing approximately August 25-28, 2017” (Clmt. Ex. 12A.)
- Demolition would resume after the foundation was complete
- The electrical panel update would occur either after the framing or three to four days prior to framing
- The dumpster and portable toilet would be brought in around November 2017
- The approximate completion date was January or February 2018
- The Claimants' access to the basement was “OK.” *Id.*
- Additional plumbing work required by the County that was not included in the Contract (water main and meter), would be done and the Claimants should talk to their plumber

27. At the August 16, 2017 meeting, the parties also discussed a change to the architectural drawings with regard to additional footing support and columns and the Respondent explained to the Claimants a delay involving lumber.

28. At the August 16, 2017 meeting, the Respondent expressed his enthusiasm over continuing the Project and his willingness to communicate with the Claimants weekly. The parties agreed to meet again on August 25, 2017 to go over the matters outlined at the meeting.

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29. The Respondent did not meet with the Claimants on August 25, 2017. Instead, they had a contentious telephone conversation that morning. On that same date, Mr. Deadrick emailed the Respondent asking to meet the following Monday.

30. On August 25, 2017, the Respondent filed a Petition for Peace Order in the District Court for Montgomery County seeking protection from Mr. Deadrick, which was denied on that same date. The Petition was based on Mr. Deadrick's alleged threats to the Respondent on June 13, 2017 that "he worked for Homeland Security and he knows people who would make [the Respondent] disappear and no one will find out" and on July 11, 2017 that "his friends at both Homeland Security and the Pentagon will take care of [the Respondent] in ways that [the Respondent] can't be found." (Clmt. Ex. 14.)

31. Sometime in August 2017, the Respondent removed trash bags of debris from the Property, but left other debris.

32. The Respondent did not complete the remainder of the work under the Contract.

33. On or about August 26, 2017, the Respondent called the police to the Property because the Claimants' children (one of whom was a teenager) were alone in the home.

34. As the Claimants were leaving the Property at 6:00 a.m. on August 27, 2017, the Respondent videotaped them from their driveway.

35. The last date the Respondent performed work on the project was August 27, 2017, when he checked the soil in preparation for inspection. Because it was saturated, he cancelled the inspection.

36. On August 27, 2017, the Respondent emailed Mr. Deadrick, complaining that the Claimants had delayed work on the Property "by still living on the property which is a liability [that] can cause injury or death" and advising that he would be contacting the Claimants by the end of the following week through "a neutral party to speak on [the Respondent's] behalf."

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 success of any business or organization. The text outlines various methods for collecting and organizing data, such as using ledgers, journals, and spreadsheets. It also highlights the need for regular audits and reconciliations to ensure the integrity of the financial information.

The second part of the document focuses on the analysis and interpretation of the recorded data. It describes how to identify trends, patterns, and anomalies in the financial records. The author provides examples of how to calculate key performance indicators (KPIs) and how to use these metrics to make informed decisions. The text also discusses the importance of comparing current performance against historical data and industry benchmarks.

The final part of the document addresses the communication of financial information. It explains how to prepare clear and concise financial statements, such as the balance sheet, income statement, and cash flow statement. The author provides guidelines for presenting the data in a way that is easy to understand and interpret. It also discusses the importance of providing context and explanations for the numbers, as well as the need for transparency and accountability in financial reporting.

(Clmt. Ex. 12B.) In his email response dated August 27, 2017, Mr. Deadrick agreed that “[b]ringing in a neutral party is a good idea” and further stated:

Send us the information about the person as soon as you can. We will review his/her credentials and decide if we agree or not.

Also, if we are NOT contacted by you or your neutral part[y] by the end of the upcoming week (by Sunday, September 3) we will contact MHIC on September 4 and forward all our written communication with you to them along [with] an official complaint.

(Clmt. Ex. 12B.)

37. On August 30, 2017, the Respondent’s lawyer sent a letter to the Claimants stating:

It is clear from the [C]ontract and conversations between you and [the Respondent], that you and your family should not be living in the house during the ongoing work. There is no occupancy permit, and there are substantial construction hazards due to the demolition occurring in the house. It is very dangerous for you and your family to continue residing in the home, and it was [the Respondent’s] understanding that you would not be living in the home while construction was ongoing.

Additionally, [the Respondent] has received death threats from Mr. Deadrick. There are also concerns that the site has been tampered with, as well as a request to have another plumber work under [the Respondent’s] permit, instead of the plumber that it utilized by [the Respondent]. [The Respondent] will not have other contractors work under its permit due to potential liability.

.... Given your continuing breach of the [C]ontract, [the Respondent] is ceasing work at the premises.

(Clmt. Ex. 9A.)

38. On or about September 1, 2017, the Claimants entered into a Residential Lease Agreement for an apartment and moved out of the house.

39. The Respondent performed no further work on the Property.

40. The Respondent failed to take measures sufficient to protect the trench and rebar from the elements. A plastic tarp he had put in place to cover the trench failed and the trench accumulated water. A piece of concrete on the side fell into the trench and the rebar loosened.

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41. The Respondent did not return the architectural drawings to the Claimants and the Architect refused to release the drawings to them without the Respondent's permission.

42. On or about October 19, 2017, the Claimants filed a Complaint with the MHIC against the Respondent.

43. On February 8, 2018, the Claimants filed a Claim with the Fund for reimbursement for actual losses suffered as a result of the Contract with the Respondent.

44. The Respondent made no good faith efforts to resolve the Claimant's Claim.

45. On or about November 21, 2017, the Claimants contracted directly with the Architect to provide drawings for the project. They paid the Architect \$6,000.00 for those replacement drawings.

46. The Claimants subsequently acted as their own general contractor and hired subcontractors to complete and/or correct some of the work the Respondent contracted to perform. They paid more than \$20,000.00 for that work.⁵

47. The value of materials and services provided by the Respondent to the Claimants is \$4,800.00.

48. The Claimant's actual loss is \$53,533.00 (the amount the Claimants paid to the Respondent (\$58,333.00) minus the value of materials and services provided by the Respondent (\$4,800.00)).

DISCUSSION

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

⁵ As discussed below, I was unable to determine the exact amount paid by the Claimants exceeding \$20,000.00.

that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg.

§ 8-401.

Section 8-101(g)(1), (2)(i), (iii), (iv), 3(i)-(iii) provides in pertinent part as follows:

(g)(1) “Home improvement” means:

(i) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building; or

(ii) an improvement to land adjacent to the building.

(2) “Home improvement” includes:

(i) construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool;

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(iii) connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines;

(iv) installation, in the building or structure, of an awning, fire alarm, or storm window; and

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(3) “Home improvement” does not include:

(i) construction of a new home;

(ii) work done to comply with a guarantee of completion for a new building project;

(iii) connection, installation, or replacement of an appliance to existing exposed plumbing lines that requires alteration of the plumbing lines[.]

Under section 8-405(d) of the Business Regulation Article, “[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.”

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. 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*

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Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

The Claimants contend that the Respondent “made [the Claimants] sign a faulty contract,” performed demolition without the required permit, left debris, “abandoned” the project, did not perform some work properly, did not return architectural plans to the Claimants, and did not return materials to which the Claimants were entitled. The Claimants argued that they tried to resolve this matter with the Respondent before filing a complaint with the MHIC: they were willing to let the Respondent come back to finish the job or to let him out of the Contract if he returned their \$58,333.00 deposit. However, the Respondent refused to meet with them to attempt to resolve this matter.

The Respondent did not dispute that he failed to complete the Contract but contended that he was prevented from doing so by the Claimants. Specifically, (1) the Claimants continued to unsafely occupy the home; (2) Mr. Deadrick made death threats to the Respondent involving Mr. Deadrick’s employment relationship with Homeland Security and the Pentagon; (3) the Claimants tampered with the work site; and (4) the Claimants requested to have another plumber work under the Respondent’s plumbing subcontractor’s permit, exposing the Respondent to potential liability.

For the following reasons, I find that the Claimants have proven incomplete, unworkmanlike and inadequate home improvements by the Respondent and that they are entitled to compensation from the Fund.

Licensing

Based on the licensing information submitted into evidence by the Fund, I find that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants.

Claimants' Case

Incomplete

The Claimant testified that the Respondent began work on the house in early June when he began demolition work on the second floor of the existing house; he also performed demolition work in a small room (office) on the main level of the house and on a staircase, as well as the deck. He removed some drywall from a bedroom.⁶ In addition, the Respondent dug out a trench for the foundation for the new addition and started putting in rebar. According to the Claimant, this is all the work the Respondent performed

The Claimant also submitted into evidence and testified about (1) a photograph taken on or about August 10, 2017, showing construction debris in and out of numerous large trash bags left by the Respondent in the living room; (2) a photograph taken July 27, 2017, showing large mounds of dirt from excavation and the incomplete foundation. According to the Claimant, the foundation work failed formal inspection and the Respondent cancelled a subsequent inspection; (3) a photograph taken October 5, 2017, showing large chunks of concrete in the front side yard, which the Respondent dug out and failed to remove; (4) photographs of the second floor of the house taken on or about August 10, 2017, showing a large disassembled HVAC unit and loose wiring left by the Respondent, and no insulation.

The Claimant also presented photographs which she testified were taken on July 6, 2017 showing work begun prior to the date of the permit (i.e., photographs showing construction debris in the living room; some demolition of a staircase; removed insulation and some removed HVAC parts on the second floor; and removed drywall in a bedroom).

The Claimants submitted into evidence emails and the Claimant's notes indicating that the Respondent met with the Claimants on August 16, 2017. The notes reflect that the

⁶ It was not clear if the bedroom was on the first or second floor.

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It is followed by a detailed account of the various projects and schemes undertaken, and the results achieved. The report also contains a list of the names of the staff members who have been engaged in the work, and a statement of the amount of money spent on the various projects.

The second part of the report deals with the financial position of the organization. It contains a statement of the income and expenditure for the year, and a balance sheet showing the assets and liabilities of the organization at the end of the year. It also contains a statement of the funds received from the Government and other sources, and a statement of the funds expended on the various projects.

The third part of the report deals with the administrative work of the organization. It contains a statement of the various committees and sub-committees appointed during the year, and a statement of the work done by each of them. It also contains a statement of the various reports and papers submitted to the organization during the year, and a statement of the work done by the various departments.

The fourth part of the report deals with the general progress of the work done during the year. It contains a statement of the various projects and schemes undertaken, and the results achieved. It also contains a statement of the various reports and papers submitted to the organization during the year, and a statement of the work done by the various departments.

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Respondent explained a delay relating to lumber and assured the Claimants that “work would be progressing approximately August 25-28, 2017” and demolition would resume after the foundation was complete. (Clmt. Ex. 12A.) The electrical panel update would occur either after the framing or three to four days prior to framing⁷ and the dumpster and portable toilet would be brought in “Novemberish.” *Id.* The Respondent also gave the Claimants an approximate completion date of January or February 2018 and stated that the Claimants’ access to the basement was “OK.” *Id.* They discussed additional plumbing work required by Montgomery County and a change to the architectural drawings with regard to additional footing support and columns.

In an August 25, 2017 email to the Respondent, Mr. Deadrick indicated that at the August 16, 2017 meeting, the Respondent expressed enthusiasm over continuing the project and a willingness to communicate with the Claimants weekly and agreed to meet again on August 25, 2017. Instead, according to Mr. Deadrick’s email, the Respondent called and made personal threats. Nonetheless, Mr. Deadrick asked in his email to meet with the Respondent the following Monday.

Exhibits submitted into evidence by the Claimants indicate that on August 25, 2017, the Respondent filed a Petition for Peace Order in the District Court for Montgomery County seeking protection from Mr. Deadrick, which was denied on that same date. A subsequent email from the Respondent on August 27, 2017 indicates that the Respondent was nonetheless agreeable to having a neutral party intervene on his behalf. Mr. Deadrick’s email in response indicates the Claimants were also open to that; however, the Claimant contended at the hearing that the Respondent subsequently refused to continue to work on the project because the email also warned that the Claimants were considering filing a complaint with the MHIC.

⁷ This was not clear from the Claimant’s notes.

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The Claimant testified that the Claimants subsequently received a letter from the Respondent's attorney dated August 30, 2017, voiding the Contract based on the Claimants' breach of contract, i.e., their continued unsafe occupancy of the home, Mr. Deadrick's death threats, their tampering with the work site, and their request to have another plumber work under the Respondent's permit, exposing the Respondent to potential liability.

The Claimant testified that the Claimants never refused to move out of the Property. Rather, they had an oral agreement with the Respondent that they could live in the basement where no work was to be done and then move out either when the Claimants became uncomfortable in the home or after the foundation for the addition was completed. The Respondent also agreed that they could have access to the intact kitchen and the bathroom while temporarily living in the basement. When they spoke to the Respondent on the telephone or in person, he would tell them to stay in the house and to just be ready to move out with some notice. The only time he would say that the Claimants were not supposed to be in the house was when they asked him about the lack of progress on the work.

According to the Claimant, the Claimants sent their children to stay with their grandparents in Minnesota in June 2017 and the Claimants started looking for alternative living accommodations. When the children returned at the end of the summer, the Claimants found a rental apartment and made plans to move out on September 1.

The Claimant testified about an incident on August 26, 2017, when the Respondent went to the Property while the children (one of whom was a teenager) were alone in the house while the Claimants went for a walk. According to the Claimant, the Respondent demanded access to the house, scared the children, and called the police. "Police told us and [the Respondent] that as homeowners we had the right to be in the house and they asked [the Respondent] to leave and not create [a] disturbance. . . . We were all scared and confused by this encounter and decided to

move to a hotel early in the morning. As we were leaving the house around 6 am [sic], [the Respondent] was in the driveway video-taping us.” (Clmt. Ex. 9C.)

The Claimant called the Respondent’s death threat accusations absurd and testified that her husband works for the National Institutes of Health as an IT engineer. She further testified that she was present during two heated conversations between her husband and the Respondents during which no threats took place. In an exhibit submitted into evidence by the Claimants, the Claimant stated:

My husband . . . has no connection to [the] Pentagon or Homeland Security. . . . He has no history of violence. . . . He never spoke to [the Respondent’s] plumber whether directly or on the phone.

(Clmt. Ex. 9C.)

The Claimant did not know to what the Respondent’s lawyer referred when he accused them of tampering with the Project. She speculated that he was referring to an occasion when Mr. Deadrick dug out some piled clay blocking the path to the back of the house in order to move the gas grill from the driveway as directed by the Respondent.

The Claimant also denied that the Claimants ever hired or attempted to hire a different plumber to perform work using the Respondent’s or his subcontractor’s permits.

The Claimants contended that they attempted to resolve this matter with the Respondent before filing a complaint with the MHIC: they were willing to let him come back to finish the job or to let him out of the Contract if he returned their deposit. The Claimants’ attorney notified the Respondent’s attorney that the Claimants were willing to meet with the Respondent but the Respondent refused. Because they were unable to resolve this matter, on October 19, 2017, the Claimants filed a complaint with the MHIC, followed by a claim against the Fund on February 8, 2018.

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The Claimant testified that the Claimants moved out of the house on August 31, 2017 and could not return until June 2018 because it was uninhabitable – pipes and toilets had burst and the Claimants had no architectural plans or the funds needed to repair or complete the work.

On cross-examination, the Claimant admitted that sometime in 2017, her husband worked for a company that provided IT services to Homeland Security. She could not recall the exact dates or where he was employed when they signed the Contract. She recalled hearing a telephone conversation when the plumber was on speaker phone and Mr. Deadrick was yelling about the lack of progress on the job.

The Claimant also denied being aware when the Respondent started work in June 2017 that he did not have a permit.

The Claimant further testified on cross-examination that she did not know if the Respondent removed trash bags of debris from the Property after she took the photographs in August 2017, stating that she “stayed out of his way.” She admitted that the Respondent initially told the Claimants not to go in the back of the house but testified that the Respondent subsequently instructed Mr. Deadrick to put the grill back there and testified he had to move some dirt to do so.

Unworkmanlike, Inadequate

The Claimant indicated that in addition to requesting an award from the Fund to complete the work under the Contract, the Claimants are also making a claim for the amount necessary to repair or correct work performed. Specifically, they claim that the foundation work was deficient because it failed inspection and that the trench was not protected from rain causing water to accumulate, the trench to fill in, and the rebar to fall out.

1. The first part of the document is a letter from the President of the United States to the Congress, dated September 17, 1787.

2. The second part is a copy of the Constitution of the United States, as it was originally adopted.

3. The third part is a copy of the Declaration of Independence, as it was originally adopted.

4. The fourth part is a copy of the Bill of Rights, as it was originally adopted.

5. The fifth part is a copy of the original Constitution, as it was signed by the delegates to the Constitutional Convention.

6. The sixth part is a copy of the original Declaration of Independence, as it was signed by the delegates to the Continental Congress.

7. The seventh part is a copy of the original Bill of Rights, as it was signed by the delegates to the First Congress.

8. The eighth part is a copy of the original Constitution, as it was signed by the delegates to the Constitutional Convention.

9. The ninth part is a copy of the original Declaration of Independence, as it was signed by the delegates to the Continental Congress.

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26. The twenty-sixth part is a copy of the original Constitution, as it was signed by the delegates to the Constitutional Convention.

Respondent's Case

The Respondent testified that this project originally started out as a remodel and construction of an addition, but changes were made and it became a new construction project.

According to the Respondent, he started work on the project in April or May 2017: he changed blueprints, applied for permits, ordered approved materials and lined up subcontractors. Physical work on the Property was delayed approximately a month because the Claimant did not like the layout of the original drawings, necessitating modifications to the architectural plans and resubmission to the County. Beginning in June, the Respondent did some demolition work and started dry walling, and dug up the backyard. According to him, the Claimants were fully aware he did not have permits when he began demolition.

The Respondent contended that Montgomery County does not require a permit for the type of work he performed prior to obtaining a permit, he did all that was required in order to obtain permits, and all of the necessary subcontractor permits were obtained.⁸

The Respondent testified that he performed demolition of the upstairs and middle level of the house, including a bedroom, hallway and small addition to the kitchen, as well as the deck. He or the foundation subcontractor dug out soil and rebarred; the Respondent dug out footings and covered the trench with plastic. According to the Respondent, he had to stop working a couple of times because the Claimants ran out of money. He did not deny that the remainder of the Contract was never completed.

The Respondent testified that he last went to the Property on August 27, 2017 to see if the soil was dry enough for inspection. He cancelled the inspection because the soil was so saturated.

⁸ In his cross-examination of the Claimant, the Respondent implied that he had an April 12, 2017 permit that was suspended because the work exceeded the scope of the remodeling project and had to get new construction permits.

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The Respondent testified that he did not want the Claimants' children on the Property because of dangerous conditions, such as live wires. He repeatedly asked the Claimants to vacate the Property beginning on June 5 or 6, 2017, and sent them a text to that effect, but they refused to leave. When he asked the Claimants again on August 16, 2017 to vacate the Property, they again refused, saying they had no money. He had difficulty getting to the electrical panel in the basement to disconnect the power because of all the "stuff" there. In addition to the Claimants' refusal to follow his directions regarding vacating the Property, they ignored his instructions not to burn wood left from the demolition of the deck.⁹

The Respondent further testified that, although he repeatedly told Mr. Deadrick to stay away from the work being performed, Mr. Deadrick "had his hands on everything"; he was an on-going nuisance and it was a constant battle. Mr. Deadrick would become irate and threatened the Respondent to the point he was in tears.

The Respondent testified that on or about June 13, 2017, Mr. Deadrick became angry at the Respondent and the plumber because of a delay in getting permits approved. According to the Respondent's statements in the August 25, 2017 Petition for Peace Order, Mr. Deadrick told the Respondent that he worked for Homeland Security, knew people who would make him disappear, and no one would find out. The Respondent testified that the plumber overheard Mr. Deadrick make that threat. In addition, on July 11, 2017, Mr. Deadrick told him that his friends at Homeland Security and the Pentagon would take care of the Respondent in ways that he could not be found. The Respondent asked him to repeat himself (so that others could hear him, including the Respondent's friend, "Chrissy"), which Mr. Deadrick did. The Respondent further alleged that Mr. Deadrick set up video cameras and microphones to monitor him.

⁹ The Respondent indicated he had concerns about arsenic in the wood.

For those reasons, the Respondent always kept his cell phone on to record their conversations or had someone with him. When the Respondent met with the Claimants on August 16, 2017, he had two people in the truck in the driveway and he recorded the conversation on his cell phone.

According to the Respondent, he called the police to the Property on August 26, 2017 when he heard the children playing there with no adults present.

The Respondent further testified that on the day he returned to the Property to check the condition of the back area prior to inspection (August 27, 2017), the Claimant(s) told him not to enter the Property anymore.

The Respondent believed that the Claimants made a request to have another plumber work under the Respondent's permit.

The Respondent testified that he tried to settle this matter, offering all of his subcontractors and bathroom material, but the Claimants declined. He acknowledged that he kept the architectural drawings in his truck or at his house for work purposes, but testified that he forwarded them to his attorney who told him the Claimants picked them up. He further testified that this job caused him so much stress, he has stopped working as a contractor.

Analysis

Faulty Contract; Failure to Return Materials

Initially, I note that the Claimants' allegation that the Respondent's Contract did not meet MHIC requirements for form and content is not an issue before me with regard to a claim against the Fund, which involves instead a determination of whether the Claimants may recover compensation from the Fund for an actual loss that results from an act or omission by the Respondent. *See* Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2).

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In addition, the Claimants presented no evidence relating to materials to which they were entitled that the Respondent allegedly failed to return. Documentation in the record indicates that the Claimants received a refund from the Home Depot for materials that had been purchased but were never picked up by the Respondent.

Incomplete

For the following reasons, I find that the Respondent did fail to complete home improvements.

By his own admission, the only work the Respondent performed under the Contract was demolition of the upstairs and middle level of the house, including a bedroom, hallway and small addition to the kitchen, as well as the deck. He also dug out soil for the foundation and rebarred and dug out footings. He testified that he removed bags of debris from the Property sometime in late August 2017; however, other photographs show unbagged debris left on the Property. Thus, the evidence is clear that the Respondent did not complete the remainder of the work under the Contract.

Unworkmanlike, Inadequate

The Claimants did not present any evidence that the Respondent's failure to obtain a building permit before beginning work on the Property interfered with the performance of the Contract. In addition, the Claimants had no apparent personal knowledge of the status of subcontractors' permits and produced no documentation to dispute the Respondent's testimony that the subcontractors did obtain those permits. The Respondent denied that any of his work failed final inspection and the Claimants presented no documentary evidence to support their assertion.

I find, however, that the Respondent did perform the following unworkmanlike or inadequate home improvements: the trench was not protected from rain causing water to

accumulate, the trench to fill in and the rebars to fall out. The Respondent testified he covered the trench with a tarp; however, the photograph taken by the Claimants of the water-filled trench shows that the trench was not covered or the tarp was not sufficient.

Claimants' Breach

This case substantially boils down to the credibility of the Claimants and the Respondent with regard to whether the Respondent had valid reasons for not completing the work. I find that a preponderance of the evidence does not support the Respondent's position.

I find the Claimant's testimony regarding Mr. Deadrick's alleged lack of connection to Homeland Security to be disingenuous. Nonetheless, I find her testimony to be otherwise more credible than the Respondent's. She appeared genuinely puzzled by the Respondent's stance with regard to the performance of the Contract and by his accusations.

The Respondent presented as scattered and nervous. He did not deny or adequately explain certain behaviors such as video-taping the Claimants from their driveway at six o'clock in the morning and calling the police when he discovered the Claimants' children (one of whom was a teenager) at home in August without the Claimants being present.

Additionally, based on the Respondent's demeanor and his aforementioned bizarre behaviors, I do not find his testimony convincing with regard to Mr. Deadrick's alleged death threats. Mr. Deadrick was present at the hearing, but did not testify; however, in an email, he indicated that he was perplexed about the Respondent's allegations. Furthermore, although the Respondent contended that the Claimant was present during one such alleged volatile conversation, the Claimant denied hearing Mr. Deadrick threaten the Respondent. The Respondent testified that numerous other individuals heard Mr. Deadrick threaten him, but he produced none of those individuals as witnesses. He testified that he recorded conversations,¹⁰

¹⁰ There was no evidence that the Claimants were aware of or consented to those recordings.

The world is a stage, and we are all players in it. Some are leading roles, some are supporting actors, and some are extras. But everyone has their moment to shine. Life is a performance, and we are all on stage.

Some people are born with a spotlight on them, while others have to work hard to get it. But in the end, it's not about the spotlight, it's about the story you tell. The story of your life, the story of your struggles, the story of your triumphs.

Life is a journey, and it's a journey that we all take. We are all on the same path, and we are all heading in the same direction. But the way we travel is different. Some are fast, some are slow, and some are taking a different route.

But no matter how we travel, we are all on the same journey. We are all on the same path, and we are all heading in the same direction. And in the end, it's not about the destination, it's about the journey itself.

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but offered no such recordings into evidence. I find it particularly significant that although the Respondent alleged Mr. Deadrick threatened him on June 13, 2017 and July 11, 2017, the Respondent continued to work on the project until mid-August 2017.

For the same reasons, although I seriously question the Claimants' judgment in occupying and allowing their children to sometimes occupy the home while demolition and trench digging were going on, I do not find credible the Respondent's testimony that he stopped performing work on the Property because of the Claimant's continued unsafe occupancy. He contended it was his understanding that they would not be living in the home while construction was going on and the Contract does specifically prohibit their presence on the Property. Nonetheless, the Respondent continued to work on the Property while the Claimants occupied the basement and used some upstairs facilities. He testified that he texted the Claimants in June 2017 to vacate the Property; however, he submitted no documentation, such as a screenshot, to support that testimony. The first mention in any correspondence with the Claimants regarding vacating the Property is an email from the Respondent dated August 27, 2017, followed by a letter from his lawyer dated August 30, 2017 terminating the Contract. The Claimants testified that they did vacate the Property one or two days later, yet the evidence shows that the Respondent did not subsequently agree to return to complete the work.

I also find that a preponderance of the evidence does not establish that the Claimants "tampered" with the job site. The only instances offered were Mr. Deadrick digging out some dirt to make a path to the back yard in order to place a grill there as instructed by the Respondent, and the burning of some deck wood. I find those instances were not so severe as to excuse the Respondent from further performance of the Contract.

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Furthermore, the Respondent did not clearly explain or present evidence to support his allegation that the Claimants requested to have another plumber work under the Respondent's permit. He gave no details as to whom that alleged request was made and when.

Based on his lack of veracity with regard to the aforementioned matters, I also do not find credible the Respondent's testimony that the Claimants told him on August 27, 2017 not to return to the Property. I note that his lawyer made no mention of that alleged instruction in his subsequent letter to the Claimants voiding the Contract.

Efforts to Resolve

The only evidence of any effort by the Respondent to resolve the Claim is an October 12, 2017 email from the Respondent's lawyer indicating that if the Claimants agreed that the Respondent could be "extricated from the project" and to release him from any liability, the Respondent would allow them to continue to build under the Respondent's name and permits, and to use his subcontractors and their existing permits.

I find that an offer to allow someone else to complete the work using the Respondent's name and permits is essentially a non-offer. Accordingly, I find that a preponderance of the evidence does not establish that the Respondent made a good faith effort to resolve the Claim, which the Claimants rejected.

I also do not find merit in the Respondent's assertion that the project actually involved the construction of a new home rather than a home improvement covered by the Fund. The Contract itself clearly indicates to the contrary and there is no evidence that the Respondent demolished an existing structure.

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

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fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). In addition, 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).

Remedy

Initially, I find that the architectural services described in the aforementioned Architectural Services Contract do not constitute a home improvement covered by Title 8 of the Business Regulation Article. Bus. Reg. § 8-101(g). In addition, the consequential damages relating to the replacement of those drawings (\$6,000.00) is not compensable by the Fund. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

It was undisputed that the Claimants paid an initial deposit of \$58,333.00 to the Respondent.

The Claimant testified that Gutterman Services, a licensed home improvement contractor,¹¹ provided an estimate after it looked at "[the Claimant's] new plans." However, the Claimant acknowledged that some of the work under the new plans was different from or in addition to work to be performed by the Respondent under the Contract. Thus, I have placed no weight on Gutterman's estimate in the amount of \$196,330.00.

The Claimants also submitted into evidence a second estimate from Gutterman. It states, "This serves as an evaluation of work completed by another contractor" and gives an estimate of \$4,800.00 for the following work, including all labor, materials, management and clean up, completed by the Respondent:

¹¹Gutterman is identified in estimates in evidence as holding "MHIC Reg # 130169". (Clmt. Exs. 8A and 8B.)

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- Demo/gut attic
- Dig trench/rebar/for concrete foundation up to Code for addition

(Clmt. Ex. 8B.)

The Claimant testified that the Claimants have acted as their own general contractor and estimated that they have paid a total of \$150,000.00 to repair poor work done by the Respondent and complete some of the work he failed to complete. On cross-examination by the Fund, the Claimant testified that the Claimants got a second loan to complete some of the work the Respondent was supposed to perform and that the following work has been done by subcontractors hired by them:

- The foundation has been completed
- More demolition has been performed
- The entire house has been framed
- The plumbing is ready for rough-in
- Drywall has been installed
- Insulation has been installed
- The chimney has been demolished and removed
- Some electrical and HVAC work has been done
- The installation of windows is partially done
- The two story addition has the exterior on it
- Siding has been installed but not painted
- Roofing has been mostly completed
- Heating has been installed on the main floor

The Claimant testified that Mr. Deadrick installed some tiling. In addition, the Claimants purchased some trusses, tiles, a tub and toilet, framing materials, siding, HVAC and roofing materials, and other miscellaneous supplies.

COMAR 09.08.03.03B(3) provides:

(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

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 out of the car was a cold wind, but
 the sun was shining brightly in the
 sky. The air smelled fresh, like
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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.¹²

Although the Claimants used the term "abandon" in their Claim, subsection (a) is not applicable because a preponderance of the evidence establishes that the Respondent did perform some work under the Contract. Subsection (b) does not apply because, as discussed above, the Claimant's own testimony established that the Claimants did solicit others to complete at least part of the Contract.

With regard to the formula in subsection (c), although the Claimants established that they have paid subcontractors to repair some of the poor work and/or complete some of the work covered by the original Contract, they failed to present any documents showing the exact amounts they paid for that work and to whom. In addition, the Claimant acknowledged that at least one subcontractor was unlicensed and that some changes were made to the scope of the work per County requirements.

Nonetheless, the Claimants clearly paid a great deal of money to the Respondent for home improvements he never performed. Accordingly, I find that a unique measurement of actual loss is appropriate in this case: the amount the Claimants paid under the original Contract with the Respondent (\$58,333.00) minus the value of the work already performed by the Respondent per the second Gutterman estimate (\$4,800.00), for a total of \$53,533.00.

¹² There was no evidence that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss.

The first part of the document discusses the importance of maintaining accurate records and the role of the auditor in this process. It emphasizes the need for transparency and accountability in financial reporting.

The second part of the document details the various methods used to collect and analyze data, including interviews, surveys, and document reviews. It also discusses the challenges associated with data collection and analysis, such as bias and incomplete information.

The third part of the document focuses on the results of the study and the implications for practice. It highlights the key findings and provides recommendations for improving financial reporting and auditing practices.

The final part of the document concludes the study and discusses the limitations of the research. It also provides information about the author and the organization that conducted the study.

Thus, I find that a preponderance of the evidence established that the Claimant's actual loss is more than \$20,000.00 but the Claimants' recovery is limited to that Fund reimbursement cap amount. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss 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 \$20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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;¹³ and

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

June 17, 2019
Date Decision Issued


Eileen C. Sweeney
Administrative Law Judge

ECS/emh
179875

¹³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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PROPOSED ORDER

WHEREFORE, this 18th day of July, 2019, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

DECLARATION

I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of [County Name], State of [State Name].

Witness my hand and seal of office this [Day] day of [Month], 19[Year].

[Signature]
[Title]
[Official Seal]