

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ZHI-GANG TU,</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 DYLAN CREW,</p> <p>T/A MARYLAND OUTDOOR LIVING</p> <p>AND DESIGN, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN ZLOTNICK,</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>* OAH No.: LABOR-HIC-02-22-01060</p> <p>* MHIC No.: 21 (75) 673</p> <p>*</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 October 8, 2021, Zhi-Gang Tu (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$26,870.76 for actual losses allegedly suffered as a result of a home improvement contract with Dylan Crew, trading as Maryland Outdoor Living and Design, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411

PROPOSED DECISION

STATEMENT OF THE CASE

STATEMENT OF THE FACTS
PROPOSITIONS OF FACT

DISCUSSION
A PROPOSED DECISION ON THE
RECOMMENDED ORDER

STATEMENT ON THE CASE

(2015).¹ On December 28, 2021, the MHIC issued a Hearing Order on the Claim. On January 4, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 5, 2022, I held a hearing by video through the Webex platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Justin Dunbar, Assistant Attorney General, Department, represented the Fund. Logan Haarz, Esquire, represented the Claimant, who was present. 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and 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 offered by the Claimant:

- Clmt. Ex. 1 – Contract for retaining wall and pond, unsigned and undated
- Clmt. Ex. 2 – E-mails between the Claimant, Respondent and Ashlye Bonomo, August 4, 6, and 21, 2020
- Clmt. Ex. 3 – Maryland Excavation Contractors, LLC invoice, August 10, 2020
- Clmt. Ex. 4 – Receipt from Carlos Guilleen, August 19 and 25, 2020
- Clmt. Ex. 5 – Chart of payments made by the Claimant, June 3, 2020 through August 25, 2020
- Clmt. Ex. 6 – Text messages between the Claimant and the Respondent, August 21, 2020
- Clmt. Ex. 7 – Venmo payment receipt from the Claimant to the Respondent, August 21, 2020

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

On April 24, 1968, a hearing was held in the hearing room of the Office of Administrative Hearings, Room 100, 1000 North 17th Street, Anchorage, Alaska. The hearing was held pursuant to the provisions of the Alaska Administrative Code, Title 7, Chapter 15, Section 010. The hearing was held in accordance with the provisions of the Alaska Administrative Code, Title 7, Chapter 15, Section 010. The hearing was held in accordance with the provisions of the Alaska Administrative Code, Title 7, Chapter 15, Section 010. The hearing was held in accordance with the provisions of the Alaska Administrative Code, Title 7, Chapter 15, Section 010.

ISSUES

The issues presented for consideration are: 1. Whether the respondent is entitled to a permanent injunction against the respondent's use of the premises. 2. Whether the respondent is entitled to a permanent injunction against the respondent's use of the premises.

STATEMENT OF FACTS

The respondent, [Name], is the owner and operator of the premises located at [Address]. The premises are used for [Purpose]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date]. The respondent has been operating the premises since [Date].

It is the finding of the hearing officer that the respondent is entitled to a permanent injunction against the respondent's use of the premises. It is the finding of the hearing officer that the respondent is entitled to a permanent injunction against the respondent's use of the premises.

- Clmt. Ex. 8 – Texts between the Claimant and the Respondent, August 21, 2020
 Clmt. Ex. 9 – Cancelled Checks from the Claimant to the Respondent, June 3 and 17, 2020
- Clmt. Ex. 10A – Photograph of the Claimant’s backyard, taken in April 2020
 Clmt. Ex. 10B – Photograph of the Claimant’s front yard, taken in late August 2020
 Clmt. Ex. 10C – Photograph of the Claimant’s left side yard, taken in late August 2020
 Clmt. Ex. 10D – Photograph of the Claimant’s backyard, taken in late August 2020
 Clmt. Ex. 10E – Photograph of the Claimant’s backyard, taken in late August 2020
 Clmt. Ex. 10F – Photograph of the excavation of the Claimant’s center patio, taken in late August 2020
- Clmt. Ex. 10G – Two photographs of the Claimant’s backyard, taken in late August 2020
 Clmt. Ex. 10H – Photograph of the Claimant’s backyard, taken in late August 2020
 Clmt. Ex. 10I – Photograph of the Claimant’s right side yard, taken in late August 2020
- Clmt. Ex. 11 – Texts between the Claimant and the Respondent, August 28 and 30, 2020
 Clmt. Ex. 12 – E-mail from the Claimant to the Respondent, August 14, 2020
 Clmt. Ex. 13 – E-mails between the Claimant and the Respondent, August 28, 2020 through September 5, 2020
- Clmt. Ex. 14 – Chart of materials delivered to the Claimant’s home on July 27, 2020 and August 21, 2020
- Clmt. Ex. 15 – Contract with Rock Creek Excavation Corporation (Rock Creek), September 14, 2020
- Clmt. Ex. 16 – Cancelled checks from the Claimant to Rock Creek, September 14, 18, and 28, 2020
- Clmt. Ex. 17 – Frederick Home Improvement Invoice, September 20, 2020
 Clmt. Ex. 18 – Damascus Enterprises, Inc. Invoices, October 14, 2020, November 18, 2020, April 26, 2021, April 28, 2021, April 29, 2021, May 25, 2021, June 8, 2021, and June 29, 2021
- Clmt. Ex. 19 – Vulcan Materials Company Invoices, November 2, 2020, December 11, 2020, March 23, 2021, March 26, 2021, March 29, 2021, and April 5, 2021
- Clmt. Ex. 20 – The Hardscape Store Invoices, October 19, 2020, December 7, 2020, and April 23, 2021
- Clmt. Ex. 21 – Ledger of payments made by the Claimant to Irwin Stone of Frederick, March 27, 2021 through June 26, 2021
- Clmt. Ex. 22 – Ledger of payments made by the Claimant to Damascus Enterprises, October 26, 2020 through June 30, 2021

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 – Photograph of the side of the Claimant’s home, taken on August 10, 2020
 Resp. Ex. 2 – Page four from the Claimant’s MHIC Complaint Form, November 25, 2021

I admitted the following exhibit(s) offered by the Fund:

- Fund Ex. 1 – OAH Notice of Hearing, January 28, 2022
 Fund Ex. 2 – Hearing Order, December 28, 2021

- Fund Ex. 3 – Letter from the MHIC to the Respondent, November 4, 2021, with attached Claim Form
- Fund Ex. 4 – Respondent's Licensing History, April 1, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present 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 5545597.
2. In late May or early June 2020, the Claimant contacted the Respondent regarding a retaining wall and fish pond project for his backyard. In early June 2020, the Respondent provided a contract to install a retaining wall on the higher portion of the Claimant's property, a raised patio, a seating retaining wall, installation of a transformer for exterior lights, installation of lights into the hardscape, installation of a pond area with a waterfall, and installation of a firepit (Contract). The Contract price was \$36,500.00. The Contract is undated and unsigned by either the Claimant or Respondent. (Clmt. Ex 1).
3. Work on the Contract started on June 3, 2020, when the Claimant paid the Respondent \$12,166.00. The Respondent began excavation work for the retaining wall and pond on June 16, 2020. On June 16, 2020, the Claimant paid the Respondent \$13,417.21. (Clmt. Ex. 9).
4. No work was performed on the Contract between June 17, 2020 and July 27, 2020 due to a shortage of construction materials. In July 2020, the Claimant and the Respondent had discussions regarding amending the Contract to include the construction of a pool and a patio.

The Claimant and the Respondent verbally agreed to an amended contract price of \$103,000.00 for the addition of a pool and a patio. (Testimony of Claimant).

5. On August 6, 2020, the Respondent e-mailed the Claimant that the Frederick County permit for construction of the pool had been approved. On August 21, 2020, the Claimant e-mailed Ashley Bonomo, Frederick County Government, to inquire if the permit for construction of the pool had been approved. Ms. Bonomo replied on August 21, 2020, that the permits for construction of the pool had not been approved and that Frederick County has not approved the Respondent to proceed with any construction because a permit has not been issued. (Clmt. Ex. 2).

6. On August 11, 2020, the Claimant paid Maryland Excavation Contractors, LLC, \$7,000.00 to excavate the pool and retaining wall. (Clmt. Exs. 3 and 5).

7. On August 15, 2020, the Respondent called the Claimant and indicated that he was not happy with the Claimant's e-mail request for a written cost breakdown/scope of work for the Contract. The Respondent told the Claimant that he wanted to leave the project but he would complete the pool until the point that the concrete would be poured. (Testimony of Claimant).

8. On or about August 17, 2020, the Claimant paid Court Gardner \$6,500.00 for the rebar and plumbing materials for the pool. (Testimony of Claimant and Clmt. Ex. 5).

9. On August 19, 2020, the Claimant paid Carlos Guilleen, a sub-contractor of the Respondent, \$2,000.00 to perform labor work on the retaining wall. (Clmt. Exs 4 and 5).

10. On August 21, 2020, the Respondent excavated the backyard and then installed re-barbs and plumbing for the pool in that area. (Testimony of Claimant and Clmt. Ex. 10-D).

11. On August 21, 2020, the Claimant paid the Respondent \$4,586.92 for stone supplies for the Contract. (Clmt. Exs. 5 and 7).

The Chairman of the Board of Directors of the Corporation is hereby notified that the Board of Directors of the Corporation has adopted the following resolution:

Resolved, That the Corporation be authorized to execute and deliver such instruments as may be necessary or appropriate in order to carry out the purposes and intent of the foregoing resolution.

Witness my hand and the seal of the Corporation this 1st day of January, 1920.

Attest:

Secretary

12. On August 23, 2020, the Claimant terminated the Contract during a meeting with the Respondent at the Claimant's home.

13. On August 25, 2020, the Claimant paid Carlos Guillen \$1,000.00 to perform labor work on the retaining wall. (Clmt. Exs 4 and 5).

14. On September 14, 2020, the Claimant entered into a contract with Rock Creek Excavation Corporation (Rock Creek) to backfill the excavated pool site. The Claimant paid Rock Creek \$5,500.00. (Testimony of Claimant and Clmt. Exs. 15 and 16).

15. On October 21, 2020, the Claimant paid Frederick Home Improvement \$700.00 to repair siding that was damaged by the Respondent when he removed the Claimant's deck to build the patio. (Testimony of Claimant and Clmt. Ex. 17).

16. In October 2020 the Claimant consulted with Damascus Enterprises (Damascus) to convert the patio installed by the Respondent to a pond with a waterfall and a surrounding patio that covered the remaining backyard area (Damascus Project). The Claimant paid Damascus a series of payments from October 2020 through June 2021 totaling \$41,782.50. Damascus installed a new retaining wall, an eight by ten foot eco system pond with a fifteen foot long stream and three to four drops in the waterfalls. Damascus also installed three LED waterfall lights, two LED pond lights, and 3,500 square feet of sod in the Claimant's backyard. (Testimony of Claimant and Clmt. Ex. 18).

17. The Claimant paid Vulcan Materials Company \$2,350.55 for materials used by Damascus for the Damascus Project. (Clmt. Ex. 19).

18. The Claimant paid The Hardscape Store \$3,707.08 for materials used by Damascus for the Damascus Project. (Clmt. Ex. 20).

19. The Claimant paid Irwin Stone of Frederick \$583.85 for materials used by Damascus for the Damascus Project. (Clmt. Ex. 21).

1. The Commission has received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 1 of the Act.

2. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 2 of the Act.

3. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 3 of the Act.

4. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 4 of the Act.

5. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 5 of the Act.

6. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 6 of the Act.

7. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 7 of the Act.

8. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 8 of the Act.

9. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 9 of the Act.

10. The Commission has also received information that the applicant has been engaged in a course of conduct which is likely to result in the commission of an offence under section 10 of the Act.

20. The Damascus Project was different in scope from the Contract. The retaining wall installed by the Respondent was not replaced by Damascus. (Cross Examination of the Claimant).

DISCUSSION

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 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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.

Claimant's Position

In late May or early June 2020, the Claimant was seeking to upgrade his backyard by installing a retaining wall, a pond with a waterfall, a fire pit and a hardscaped patio area. The Respondent provided a written contract for this work at a price of \$36,500.00. The Claimant indicated that in July 2020 he and the Respondent verbally agreed to amend the Contract to include the installation of an in-ground pool for a total contract price of \$103,000.00. The Claimant indicated that the retaining wall was completed in August 2020 but that the Respondent failed to obtain permits for construction of the pool. The Claimant asked the Respondent for a

DISCUSSION

The Commission has received a number of requests for information regarding the proposed rule. The Commission has held several public hearings and has received many comments. The Commission has also conducted a cost-benefit analysis of the proposed rule. The Commission believes that the proposed rule is necessary to protect the public interest and to ensure the integrity of the market. The Commission has determined that the proposed rule is justified and is hereby adopted. The Commission will continue to monitor the implementation of the rule and will take any necessary steps to address any concerns that may arise.

breakdown of costs and a detailed scope of work for the Contract which was met with resistance from the Respondent. On August 15, 2020, the Respondent told the Claimant that he wanted to leave the Contract after he secured the pool prior to the point of pouring the pool's concrete. The Claimant ultimately terminated the Contract with the Respondent on August 23, 2020, because the Respondent began excavation work for the pool without obtaining permits from Frederick County.

The Claimant also indicated that the Respondent damaged the siding of his home when he removed his deck to perform work on the Contract. The Claimant testified as to his frustration regarding the consistency and quality of the work. He had three different pool contractors visit his backyard to observe the Respondent's work and all opined that the Respondent's work was contrary to industry standards. The Claimant also contended that he and the subcontractor who installed the retaining wall noted that correct size pipes were not used and that the retaining wall fabric was also incorrect.

The Claimant decided to backfill the excavated pool after he terminated the Contract and nixed the pool construction when he contracted with Damascus. The Claimant contracted with Damascus to construct a new retaining wall, patio and pond with a waterfall in his backyard. The Claimant contended that he paid Damascus \$41,782.50 and an additional \$6,641.48 for materials used by Damascus.

Respondent's Position

The Respondent testified that the Contract was unsigned and that the Claimant never settled on the scope of work for the project. The Respondent also indicated that he was never advised of any damages to the Claimant's siding.

The Commission has been reviewing the work of the Commission which is to be done in the next few months. It is to be noted that the Commission is to be a permanent body and will be responsible for the work of the Commission in the future. The Commission is to be a permanent body and will be responsible for the work of the Commission in the future. The Commission is to be a permanent body and will be responsible for the work of the Commission in the future.

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Analysis

Sufficiency of Contract

I will first address the Respondent's main argument that because the Contract was not signed, it does not meet the definition of a contract and therefore the Claimant is ineligible for relief. I agree that a home improvement contract is necessary, however, I disagree with the Respondent's contention that the Contract in this matter was not a home improvement contract. A home improvement contract is defined as "an oral or written agreement between a contractor and owner for the contractor to perform a home improvement." Md. Code Ann., Bus. Reg. § 8-101(h) (Supp. 2021). Thus, in order for there to have been an actual loss in this case, there first must be a home improvement contract.

The touchstone of contract interpretation is the intent of the parties. [Internal citations omitted]. "Determination of the intent of the contracting parties is to be accomplished by viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of the respective interpretations advocated by the parties."

Labor Ready v. Abis, 137 Md. App. 116, 127 (2001) (citing *Berg v. Hudesman*, 801 P.2d 222, 228 (1990)). Moreover, in order for there to be a valid contract: (1) the parties must be competent to contract, (2) the contract must be for a proper or lawful subject matter, (3) there must be consideration and mutuality of agreement or assent, and (4) mutuality of obligation. In addition to offer and acceptance, there must be consideration. *Beall v. Beall*, 291 Md. 224 (1981); *WILLISTON ON CONTRACTS* § 3:2 (4th ed. 2001). Without consideration, there is no contract. *Beall*, 291 Md. at 229.

The Contract, while unsigned, did contain a description of the work to be performed and the cost as well. Further, the Respondent accepted consideration from the Claimant through the Claimant's June 2020 payments totaling \$25,583.21 and the Respondent performed work in accordance with the Contract. Clearly, the subject matter and objective of the Contract was to

1. The first part of the document discusses the background and context of the project. It outlines the objectives and the scope of the work. The document is divided into several sections, each addressing a specific aspect of the project. The first section provides an overview of the project's goals and the challenges that need to be addressed. The second section details the methodology used for data collection and analysis. The third section presents the results of the study, and the fourth section discusses the implications and conclusions. The document concludes with a list of references and an appendix containing additional data and figures.

install a retaining wall, patio, pond and pool. Therefore, I find that the Respondent has failed to present any credible evidence that there was no contractual agreement between him and the Claimant.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was performed on a residential property owned by Claimant in Maryland. The Claimant does not own more than three residences or dwelling places. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed his Claim with the MHIC on October 8, 2021. Finally, the Claimant has not taken any other legal action to recover monies. Md. Code Ann., Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1) (2015 & Supp. 2021).

Consequential damages

A claim against the Fund has limitations including a bar to a claim for an actual loss related to consequential damages. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1)(a). Although neither the statute nor the regulations governing the Fund define "consequential damages," the law provides that an award from the Fund is allowable only to reimburse a homeowner for the cost of "restoration, repair, replacement, or completion" of a substandard or unfinished home improvement job. Md. Code Ann., Bus. Reg. § 8-401. Consequential damages are damages stemming from problems that arise as a consequence of poor performance and not the poor performance itself. *See generally CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 411-13 (2012).

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The Claimant is seeking reimbursement of \$700.00 that he paid Frederick Home Improvement on October 21, 2020, to repair siding that was damaged by the Respondent when he removed the Claimant's deck to build the patio. Therefore, the Claimant is seeking not reimbursement from the Fund to restore, repair, replace or complete the Contract; instead, the Claimant is seeking monies from the Fund to cover the cost of repairing the siding that was damaged by the Respondent in the performance of the Contract. These are damages that arose as a consequence of the Respondent's performance of the Contract and as such must be borne by the Claimant and not by the Fund.

The Respondent Performed an Unworkmanlike or Inadequate Home Improvement

The Claimant did not provide any expert testimony or reports that detailed how the Respondent's work was unworkmanlike or inadequate. In fact, the Claimant admitted that when he hired Damascus to perform the backyard restoration project after he terminated the Respondent, he did not instruct Damascus to re-do the retaining wall built by the Respondent. Therefore, I find that the Claimant has failed to meet his burden to demonstrate that the retaining wall was built in an unworkmanlike manner by the Respondent. However, the Contract included the installation of an in-ground pool and I find that the Respondent's performance of this aspect of the Contract was unworkmanlike. Notably, the Claimant asked the Respondent if he obtained building permits for the pool and the Respondent assured him in an August 6, 2020 e-mail that he had. Yet, when the Claimant contacted Frederick County on August 21, 2020, he was informed that no permits had been approved for the pool and that until permits are approved, the Respondent is not permitted to do any work towards the pool construction. The Respondent began construction of the pool when he excavated the pool area and installed re-barb and plumbing pipes inside the excavated area on August 21, 2020. I find that the Respondent's decision to proceed with excavating a large swath of land to construct the pool without obtaining

permits from Frederick County is unworkmanlike. Going forward with the construction of a pool without required permits does not require expert testimony about the Respondent's performance of the Contract or his failure to meet industry standards.

As a result, the Claimant terminated the Contract on August 23, 2020, and hired Damascus to complete his backyard project. The Claimant admitted during the hearing that the Damascus project was different in scope from the Contract. Additionally, the Claimant paid Rock Creek to fill in the excavated pool area because he decided to abandon the installation of a backyard pool. Therefore, I find that the Claimant has failed to establish that the Damascus contract entailed the repair, replacement or completion of the Contract as it differed in scope from the Contract. Further, the Claimant indicated that Damascus did not replace the retaining wall installed by the Respondent and the Claimant did not present any expert testimony or reports that documented an unworkmanlike performance by the Respondent in building the retaining wall. Therefore, I find that there is no evidence that this wall was built in an unworkmanlike manner by the Respondent.

Damages

Having only found eligibility for compensation from the Fund regarding the Respondent's construction of the pool, 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:

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.

The Commission has received information from the Government of the Republic of the Congo that the Government is planning to carry out a project of development of the agricultural sector. The project is intended to improve the productivity of the agricultural sector and to increase the income of the farmers. The project is intended to be carried out in the provinces of the Republic of the Congo. The project is intended to be carried out in the provinces of the Republic of the Congo.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

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

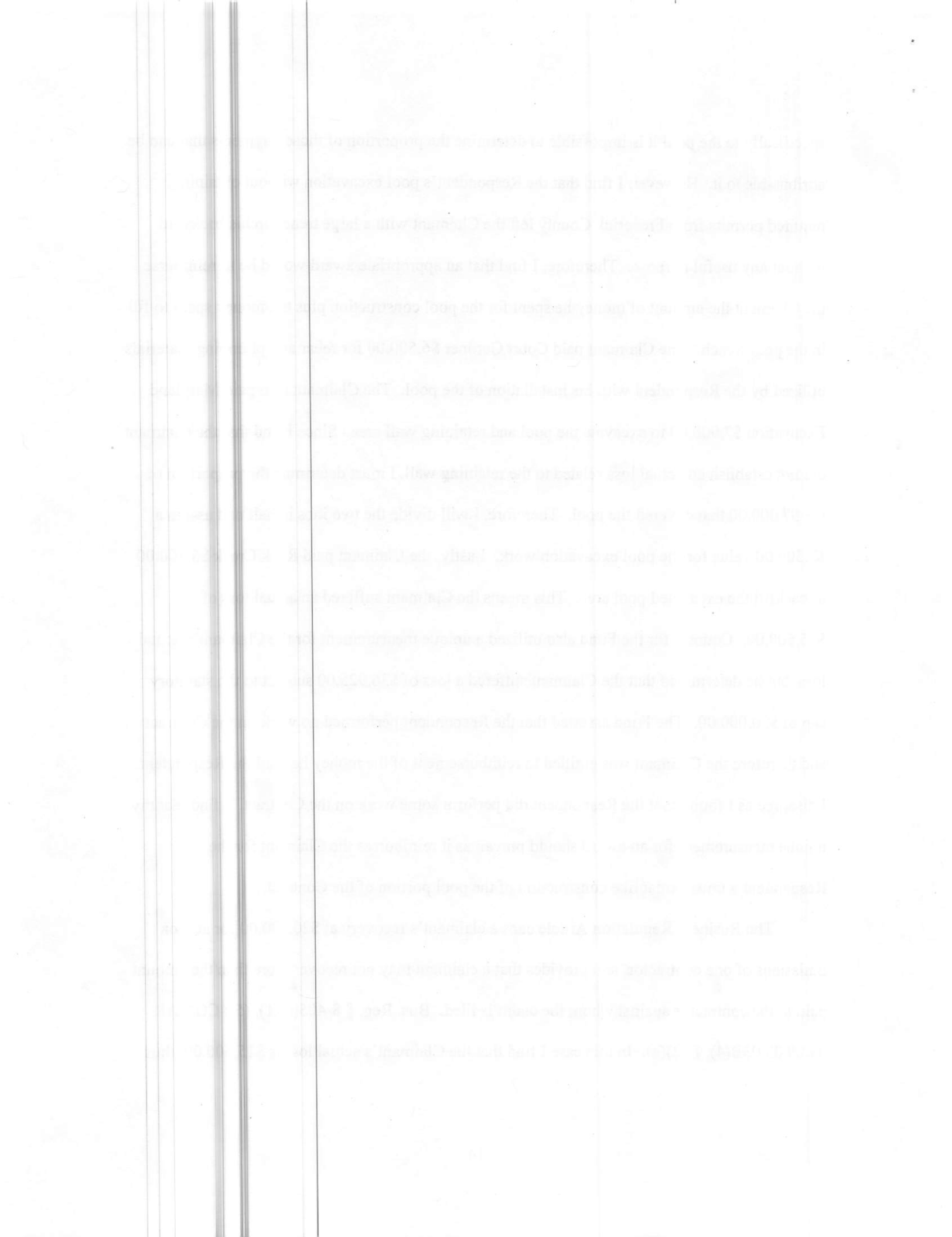
COMAR 09.08.03.03B(3)(a)-(c).

However, none of the three regulatory formulas is appropriate in this case. Subsection (a) is not applicable because although the Respondent abandoned the project by notifying the Claimant that he was walking away from the project after he secured preliminary construction of the pool, he did perform some work under the Contract as he completed the retaining wall and excavated the pool. Subsection (b) is not applicable because the Claimant did solicit Damascus to complete the Contract. Subsection (c) is applicable, but unworkable, to calculate loss in this case. The Respondent did some work under the Contract and the Claimant solicited Damascus to complete the work; however, the Claimant was unable to prove by a preponderance of the evidence the reasonable amounts paid to Damascus to complete the project, because the subsequent contract he entered into did not have an identical scope of work to the original Contract.

Accordingly, I shall apply a unique formula to measure the Claimant's actual loss. The amended Contract between the Claimant and Respondent was for \$103,000.00. According to the Claimant's credible testimony and the pictures taken in August 2020, the only work performed by the Respondent was on the excavation and initial build of the pool and the completion of a retaining wall. Since the Claimant's payments to the Respondent were not designated

specifically to the pool it is impossible to determine the proportion of those payments that can be attributable to it. However, I find that the Respondent's pool excavation without obtaining required permits from Frederick County left the Claimant with a large trench in his backyard without any useful purpose. Therefore, I find that an appropriate award would be to reimburse the Claimant the amount of money he spent for the pool construction plus the money spent to fill in the pool trench. The Claimant paid Court Gardner \$6,500.00 for rebar and plumbing materials utilized by the Respondent with his installation of the pool. The Claimant also paid Maryland Excavation \$7,000.00 to excavate the pool and retaining wall area. Since I find that the Claimant did not establish an actual loss related to the retaining wall, I must determine the proportion of the \$7,000.00 that covered the pool. Therefore, I will divide the two jobs in half and assign a \$3,500.00 value for the pool excavation work. Lastly, the Claimant paid Rock Creek \$5,500.00 to backfill the excavated pool area. This means the Claimant suffered an actual loss of \$15,500.00. Counsel for the Fund also utilized a unique measurement for the Claimant's actual loss, but he determined that the Claimant suffered a loss of \$36,925.00 subject to the statutory cap of \$20,000.00. The Fund asserted that the Respondent performed no work on the Contract and therefore the Claimant was entitled to reimbursement of the money he paid the Respondent. I disagree as I found that the Respondent did perform some work on the Contract. I find that my unique measurement for an award should prevail as it reimburses the Claimant for the Respondent's unworkmanlike construction of the pool portion of the Contract.

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 I find that the Claimant's actual loss is \$15,500.00, thus



his recovery is not limited by the \$20,000.00 cap or the amount he paid the Respondent (\$25,583.21) which exceeded \$15,500.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$15,500.00 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). I further conclude that the Claimant is entitled to recover \$15,500.00 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 \$15,500.00; 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;² and

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

June 13, 2022
Date Decision Issued

B:MZ/cj
#198825

Brian Zlotnick

Brian Zlotnick
Administrative Law Judge

² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

RECOMMENDATION ORDER

1. The Board of Directors of the Corporation has reviewed the report of the Special Committee on the proposed acquisition of the Corporation by the Company and has concluded that the acquisition is in the best interests of the Corporation and its stockholders.

RECOMMENDATION ORDER

2. The Board of Directors of the Corporation has recommended that the Corporation accept the offer of the Company to acquire the Corporation.

\$1,000,000

3. The Board of Directors of the Corporation has recommended that the Corporation accept the offer of the Company to acquire the Corporation.

4. The Board of Directors of the Corporation has recommended that the Corporation accept the offer of the Company to acquire the Corporation.

5. The Board of Directors of the Corporation has recommended that the Corporation accept the offer of the Company to acquire the Corporation.

[Signature]

Chairman of the Board

Dec 11, 1992
The Board of Directors

PROPOSED ORDER

WHEREFORE, this 2nd day of August, 2022, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

PROPOSED ORDER

WHEREAS, the 17th day of August 2022, Paul B. [Name] filed a motion for summary judgment in Case No. [Case No.] and the Court has considered the motion and the evidence presented and the Court has concluded that the motion should be granted and the proposed Order should be entered.

Joseph J. [Name]
Judge
Paul B. [Name]
MARTIN AND BOND
COMMISSIONER