

<p>IN THE MATTER OF THE CLAIM</p> <p>OF RICHARD MELTZER,</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 REGINALD LEWIS,</p> <p>SR.,</p> <p>T/A AMAZING HOME</p> <p>REMODELING,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN PATRICK WEEKS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: LABOR-HIC-02-22-21007</p> <p>* MHIC No.: 22 (75) 477</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 6, 2022, Richard Meltzer (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$41,813.00 for actual losses allegedly suffered as a result of a home improvement contract with Reginald Lewis, Sr., trading as Amazing Home Remodeling (Respondent). Md. Code Ann.,

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

PROPOSED DECISION

STATEMENT OF THE CASE

ISSUE

ANALYSIS OF THE EVIDENCE

APPLICABLE PRINCIPLES OF LAW

DISCUSSION

REASONED CONCLUSIONS OF LAW

RECOMMENDED ORDER

STATEMENT OF THE CASE

On January 20, 2012, Richard Michael (Richard) filed a petition for writ of habeas corpus in the Circuit Court of Cook County, Illinois, seeking relief from the conviction and sentence imposed on him by the State of Illinois in 1997. Richard was convicted of the same offense for which he is now seeking relief. Richard's conviction was based on a confession that he made to the police. Richard's confession was obtained after he was arrested and taken to the police station. Richard was not advised of his rights before he made his confession. Richard's confession was not voluntary. Richard's confession was coerced. Richard's confession was not the product of his free will. Richard's confession was not reliable. Richard's confession was not credible. Richard's confession was not trustworthy. Richard's confession was not admissible. Richard's confession was not evidence. Richard's confession was not a confession. Richard's confession was not a statement. Richard's confession was not a declaration. Richard's confession was not a communication. Richard's confession was not a disclosure. Richard's confession was not a revelation. Richard's confession was not a disclosure. Richard's confession was not a revelation. Richard's confession was not a disclosure. Richard's confession was not a revelation.

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).² On August 5, 2022, the MHIC issued a Hearing Order on the Claim. On August 16, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 17, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On October 20, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 17, 2023, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the matter. COMAR 28.02.01.05A, C.

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; COMAR 28.02.01.

² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

1. The first part of the document is a letter from the Secretary of the Department of Health and Human Services to the Director of the Centers for Disease Control and Prevention. The letter discusses the need for a comprehensive review of the Department's operations and the role of the Centers for Disease Control and Prevention in this process.

2. The second part of the document is a report from the Director of the Centers for Disease Control and Prevention to the Secretary of the Department of Health and Human Services. The report provides a detailed overview of the Department's current operations and the challenges it faces.

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6. The sixth part of the document is a report from the Director of the Centers for Disease Control and Prevention to the Secretary of the Department of Health and Human Services. The report provides a detailed overview of the Department's current operations and the challenges it faces.

7. The seventh part of the document is a report from the Director of the Centers for Disease Control and Prevention to the Secretary of the Department of Health and Human Services. The report provides a detailed overview of the Department's current operations and the challenges it faces.

8. The eighth part of the document is a report from the Director of the Centers for Disease Control and Prevention to the Secretary of the Department of Health and Human Services. The report provides a detailed overview of the Department's current operations and the challenges it faces.

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:

- Cl. Ex. 1 - Proposal, November 10, 2019
- Cl. Ex. 2 - Contract, signed November 21, 2019
- Cl. Ex. 3 - Construction cost worksheet, signed November 20, 2019
- Cl. Ex. 4 - Contract Addendum, January 6, 2020
- Cl. Ex. 5 - AROCON Roofing and Construction (AROCON) Contract, August 19, 2021
- Cl. Ex. 6A to 6O - Photographs, undated
- Cl. Ex. 7 - Ruff Roofing and Sheet Metal, Inc. (Ruff Roofing) Contract, August 5, 2021
- Cl. Ex. 8 - Letter from the Claimant to the Respondent, September 7, 2021
- Cl. Ex. 9 - Emails between the Claimant and the Respondent, various dates
- Cl. Ex. 10 - Order Granting Discharge of Joint Debtors, United States Bankruptcy Court for the District of Maryland, Case No. 12-30901-DER

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, October 20, 2022
- Fund Ex. 2 - Licensing history for the Respondent, January 10, 2023
- Fund Ex. 3 - Letter from the MHIC to the Respondent with attached Claim, January 31, 2022

The Respondent failed to appear and did not offer any exhibits.

Testimony

The Claimant testified and presented the testimony of Anne Meltzer, the Claimant's wife.

The Fund and the Respondent did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. The Respondent was a licensed home improvement contractor under MHIC license number 102808 at all times relevant to the subject of this hearing.
2. On November 21, 2019, the Claimant and the Respondent entered into a contract to construct an addition to the Claimant's residence, install a new roof, and make some modifications to the existing residence (Contract). The Claimant was not residing in the home at that time.
3. The original agreed-upon Contract price was \$345,000.00.
4. On an unspecified date or dates, the Claimant paid the Respondent \$345,000.00.
5. On an unspecified date, the Respondent installed and finished a new roof at the Claimant's residence.
6. In October 2020, the Claimant moved into the residence. He noticed that there was leaking around the seams in the roof and in the interior of the home near the chimney and that water was pouring over portions of the roof rather than through the downspouts. He also heard audible nail pops.
7. On August 10, 2021, Brock Murray from AROCON inspected the Claimant's roof and found the following:
 - Active ponding in multiple areas of the roof;

THE POLITICAL SITUATION IN THE EAST

- Dried-up ponding waterbeds in multiple areas of the roof;
- Plywood sheets were visible and buckling at multiple corners around the roofing surface;
- Multiple areas where two or three sheets of plywood came together and showed signs of distress;
- Multiple areas on the roof that were uneven;
- No fiberboard and/or insulation present between the plywood and the roofing membrane;
- Roofing membrane was bubbling and major loss of adhesion in numerous spots;
- Vent-pipes had incorrect pipe-boot collars; and
- Numerous nail-pops throughout various parts of the roof.

8. On October 4, 2021, the Claimant entered into a contact with Ruff Roofing to remove the roof that had been installed by the Respondent and install an entirely new roof. The total contract cost was \$41,813.00. Ruff Roofing installed a new roof at the Claimant's residence.

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); State Gov't § 10-217; 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 Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

DISCUSSION

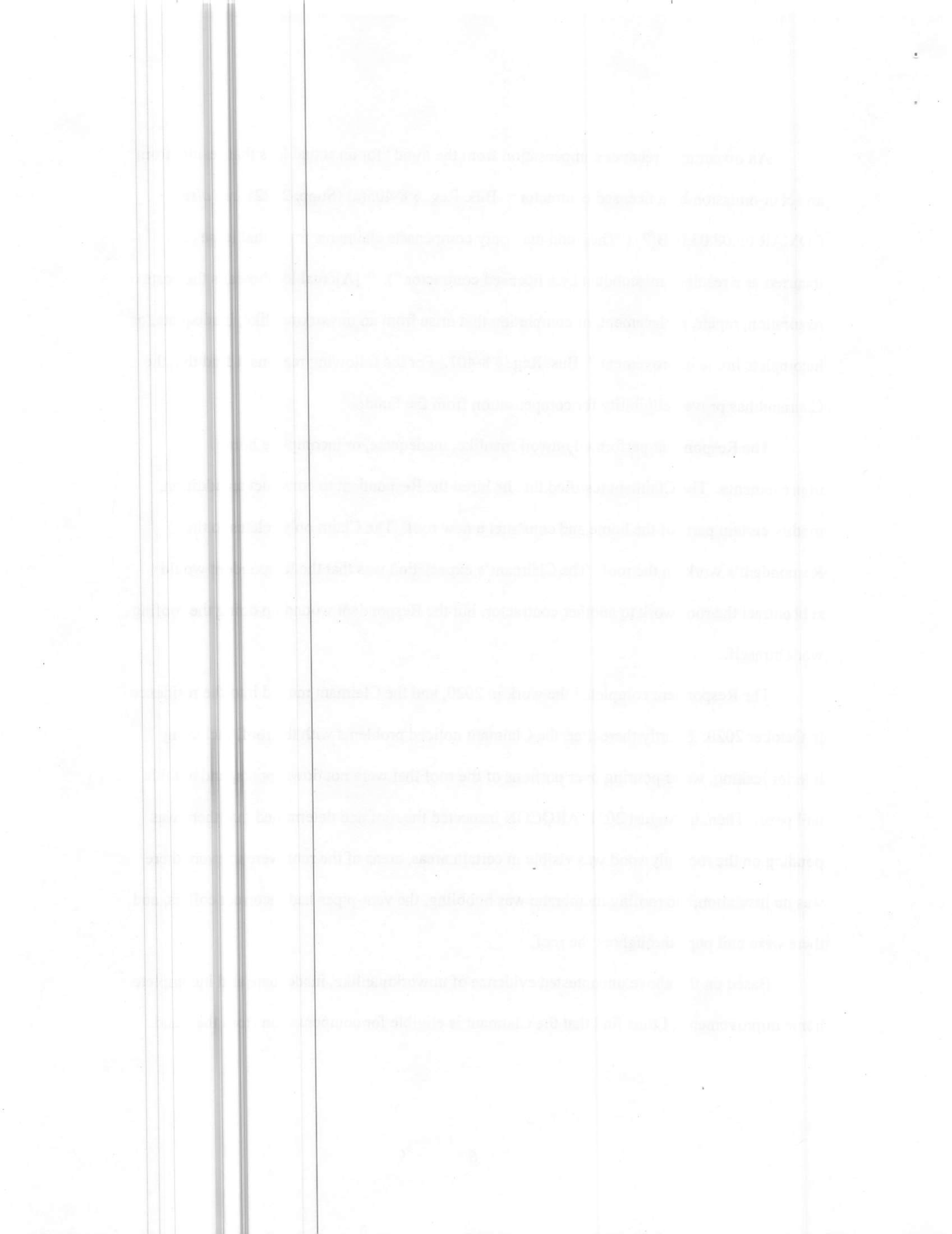
The Commission has reviewed the evidence presented in this case and has concluded that the respondent's conduct was in violation of the provisions of the Act. The Commission has also considered the respondent's explanation for his conduct and has found it to be unconvincing. The Commission has therefore recommended that the respondent be fined \$1,000 and that his name be placed on the list of persons who are prohibited from holding office in the Commission.

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) (Supp. 2022); *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 from the Fund.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant testified that he hired the Respondent to construct an addition, modify certain parts of the home and construct a new roof. The Claim only relates to the Respondent’s work on the roof. The Claimant’s expectation was that the Respondent would subcontract the roof work to another contractor, but the Respondent wound up doing the roofing work himself.

The Respondent completed the work in 2020, and the Claimant moved into the residence in October 2020. Shortly thereafter, the Claimant noticed problems with the roof, including interior leaking, water pouring over portions of the roof that were not downspouts, and audible nail pops. Then, in August 2021, AROCON inspected the roof and determined that there was ponding on the roof, plywood was visible in certain areas, areas of the roof were uneven, there was no insulation, the roofing membrane was bubbling, the vent-pipes had incorrect collars, and there were nail pops throughout the roof.

Based on the above uncontested evidence of unworkmanlike, inadequate and incomplete home improvements, I thus find that the Claimant is eligible for compensation from the Fund.



Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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.

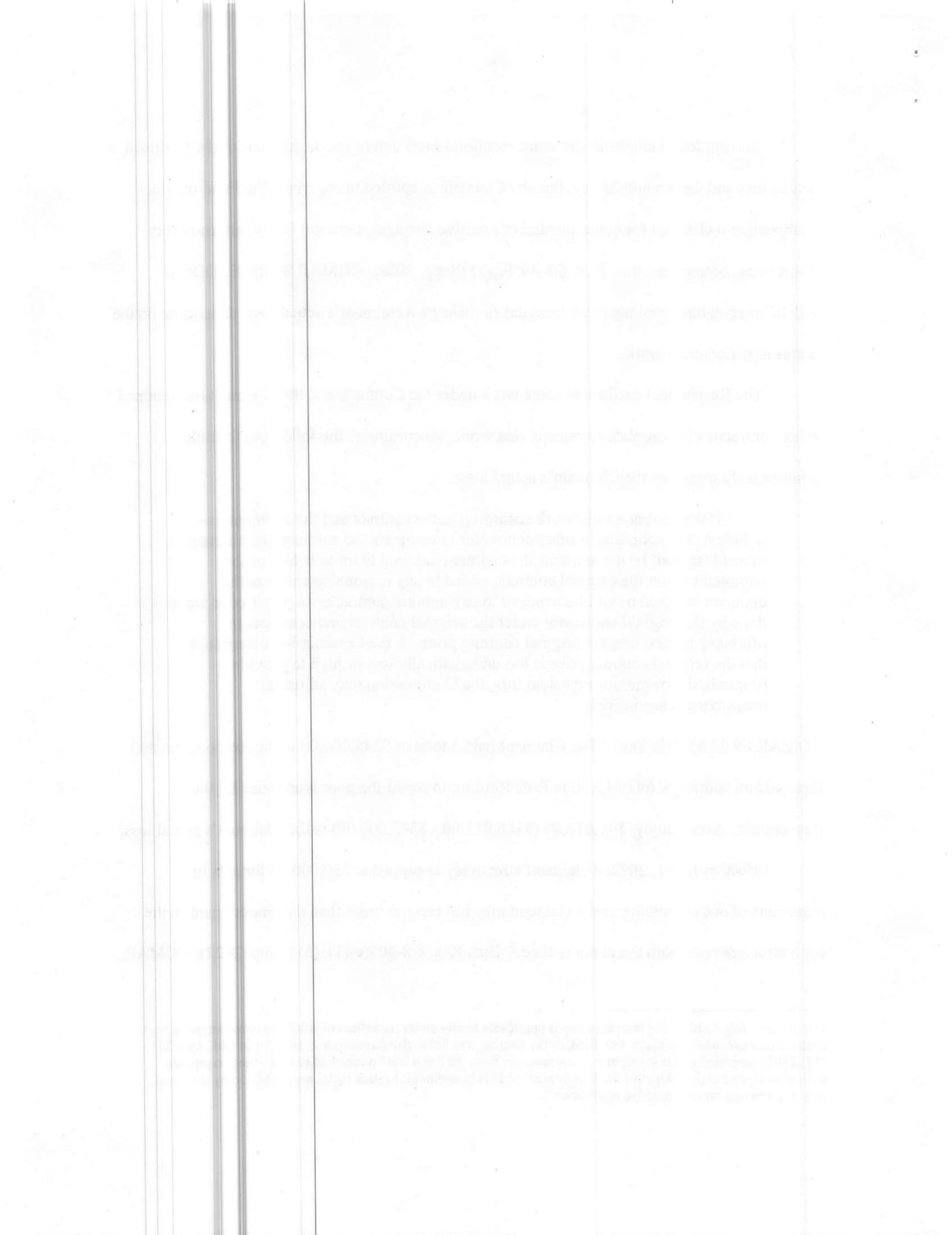
The Respondent performed some work under the Contract, and the Claimant has retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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

COMAR 09.08.03.03B(3)(c). The Claimant paid a total of \$345,000.00 to the Respondent, and then paid an additional \$41,813.00 to Ruff Roofing to repair the poor work done by the Respondent. Accordingly, \$41,813.00 (\$386,813.00 - \$345,000.00) is the Claimant's actual loss.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR

³ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").



09.08.03.03B(4). In this case, the Claimant's actual loss of \$41,813.00 exceeds \$30,000.00.

Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$41,813.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2022).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant the amount of \$30,000.00; 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;⁴ and

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

March 29, 2023
Date Decision Issued

BPW/ds
#204081

Brian P. Weeks

Brian Patrick Weeks
Administrative Law Judge

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

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RECORDS SECTION

RECORDS SECTION

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PROPOSED ORDER

WHEREFORE, this 24th day of May, 2023, 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

NUMBER: 002-24-404 (10/2024) Filed: 10/24/24

IN RE: [Name of Debtor], Debtor.

Chapter 11 Reorganization Plan of the Debtor.

Case No. 24-404 (US Bankruptcy Court, District of Columbia).

On 10/24/24, the Court held a hearing on the proposed order.

The Court has considered the evidence presented and the arguments of the parties.

It is the Court's order that the proposed order be granted.

[Signature]

Joseph J. [Name]

Clerk of Court

United States Bankruptcy Court

1000 Bankruptcy Center

Washington, DC 20004