

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE PETITION OF
KENNETH HENRY t/a CATONSVILLE
CONTRACTORS, INC. FOR JUDICIAL
REVIEW OF THE DECISION
OF THE MARYLAND HOME IMPROVEMENT
COMMISSION
Department of Labor, Licensing and Regulation
500 N. Calvert Street
Third Floor
Baltimore, Maryland 21202

Case No. 03-C-17-012598

IN THE CASE OF:
Andrew Gordon
v. Maryland Home Improvement Guaranty Fund
(Kenneth Henry t/a Catonsville Contractors, Inc.)
MHIC No. 15(90)1018
OAH No. DLR-HIC-02-16-25179

* * * * *

ORDER

Upon consideration of the Motion of the Maryland Home Improvement Commission to
Dismiss Petition For Judicial Review and the Memorandum in Support thereof, it is, this 13th
day of JUNE, 2018, by the Circuit Court for Baltimore County, Maryland

ORDERED that the Petition for Judicial Review of Kenneth Henry t/a Catonsville
Contractors, Inc. is hereby **DISMISSED**, with prejudice, and it is further

ORDERED that all costs of this proceeding be paid by Petitioner Kenneth Henry t/a
Catonsville Contractors, Inc.

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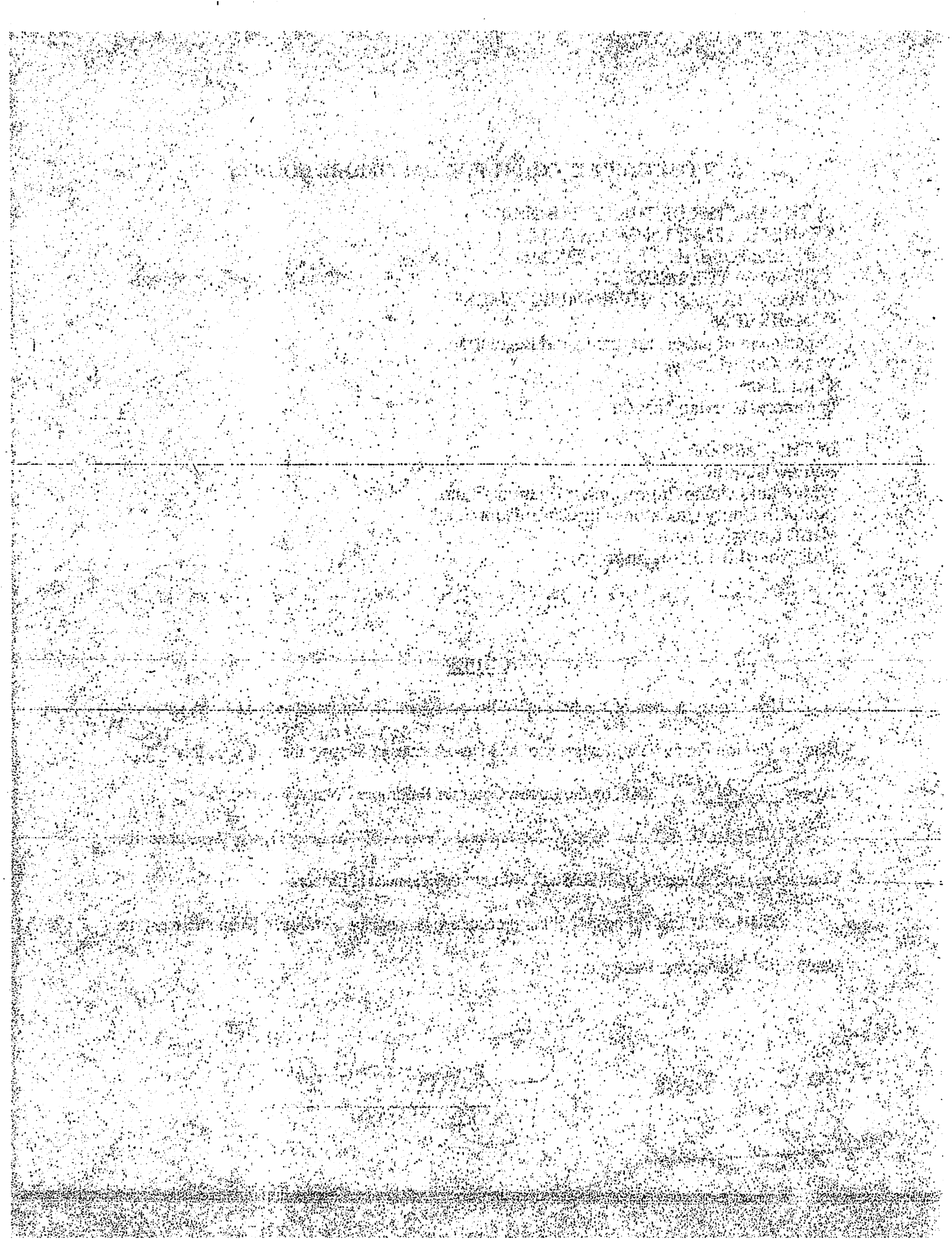
True Copy Test

Per JL
Signature on File
Assistant Clerk

JUDGE

FILED JUN 14 2018

3000-19



IN THE MATTER OF THE CLAIM
OF ANDREW GORDON

* MARYLAND HOME IMPROVEMENT
COMMISSION

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF KENNETH HENRY
t/a CATONSVILLE CONTRACTORS,
INC

* MHIC CASE NO. 15(90)1018
* OAH CASE NO. DLR-HIC-02-16-25179
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FINAL ORDER

On September 7, 2017, a hearing on the exceptions filed in the above-captioned matter was held before a three-member panel ("Panel") of the Maryland Home Improvement Commission ("MHIC"). The exceptions were filed by the contractor, Kenneth Henry t/a Catonsville Contractors, Inc., ("Contractor"), who was represented by Wayne S. Goddard, Esquire. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. Despite receiving proper notice, the homeowner, Andrew Gordon, ("Claimant") did not appear for the hearing.

The matter was originally adjudicated at the Office of Administrative Hearings over the course of two days of hearings on January 10, 2017 and February 8, 2017. Following the evidentiary hearing, the Administrative Law Judge ("ALJ") issued a Recommended Decision on May 8, 2017, concluding that the Claimant sustained an actual loss of \$23,283.00 as a result of the Contractor's acts and omissions, including incomplete and unworkmanlike home improvement. *ALJ Recommended Decision* p. 26. Pursuant to BR §8-405(e)(1)-(5), the maximum recovery from the MHIC Guaranty Fund is limited to the lesser of the \$20,000.00 or the amount paid by or on behalf of the Claimant to the Contractor, and therefore the ALJ recommended that an award of \$20,000.00 be made to the Claimant. *ALJ Recommended Decision* p. 25-26. In a Proposed Order dated June 8, 2017, MHIC affirmed the Recommended

Decision of the ALJ. On June 26, 2017, the Contractor, through his attorney, filed written exceptions to the ALJ's Recommended Decision that was adopted through the MHIC's Proposed Order.

Through his written exceptions, received by the MHIC on June 26, 2017, the Contractor made a motion to admit additional evidence, attached to the written exceptions as exhibits B, C, D, and E. At the exceptions hearing the Contractor added an additional affidavit with attached exhibits A, B1, B2, B3, B4 to his request to admit additional evidence. The Contractor presented further oral argument on his motion at the exceptions hearing. The test that must be met in order to admit additional evidence on exceptions is found at Code of Maryland Regulations ("COMAR") 09.01.03.09K. For the reasons stated on the record at the exceptions hearing, the Panel found that this test had not been met, and the Contractor's requests to admit new evidence were denied.

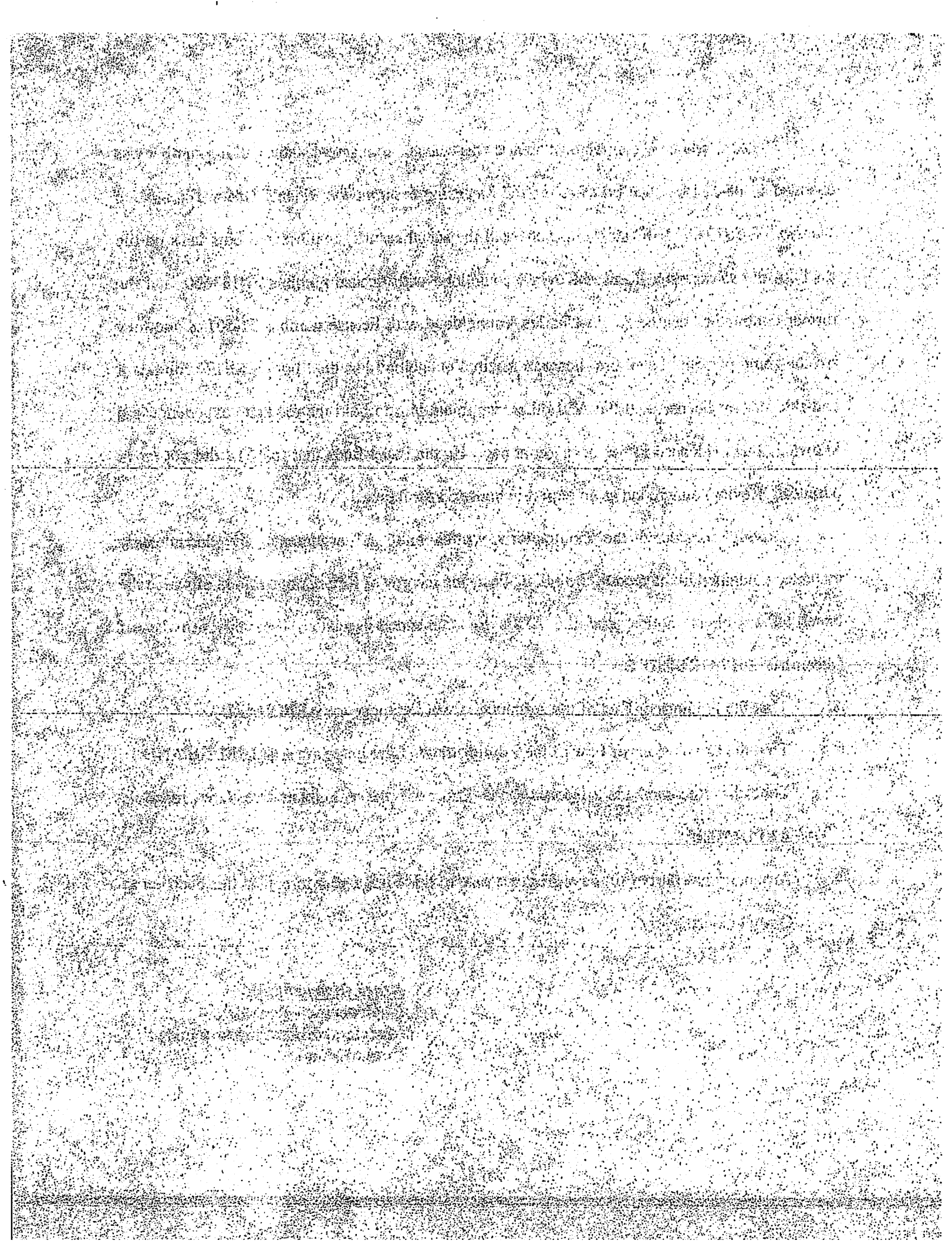
The Contractor further argued on exceptions that the ALJ erred in admitting Kevin Youngblood as an expert witness because he was not licensed by the MHIC. At the exceptions hearing, Assistant Attorney General Hope Sachs, offered a printout from the MHIC licensing records showing that as of September 26, 2016, Kevin Youngblood has been licensed with the MHIC as a salesperson under license number 03-133660. At the exceptions hearing, the Panel stated that it would take judicial notice of its own records pertaining to the licensing of Kevin Youngblood, and admitted into the record, with no objection, the salesperson license printout offered by Assistant Attorney General Hope Sachs. Also at the exceptions hearing, the parties were further notified that a subsequent search of MHIC licensing records would be done to ascertain whether Mr. Youngblood held any prior licenses. This search has revealed that Kevin Youngblood was licensed as a contractor under license number 01-50128 from October 20, 1995

to July 29, 2016 when his contractor's license was changed to inactive status and his number was changed to 08-50128. *See attached MHIC Licensing Printout for Kevin Charles Youngblood Lic. No. 08-50128.* MHIC staff cross checked the social security number and birthdates on file for both the salesperson licensee Kevin Youngblood with license number 03-133660, and the former contractor licensee Kevin Charles Youngblood with license number 01-50128 and they are the same person. Therefore, because Kevin Youngblood has held both a MHIC contractor and salesperson license, and the ALJ otherwise found him to hold the requisite experience and knowledge as evidenced in her decision at page 19, the Panel finds that the ALJ did not err in admitting Kevin Youngblood as an expert in house construction.

Having considered the Contractor's written and oral arguments, the documentary evidence contained in the record, the MHIC licensing records of Kevin Youngblood of which the Panel takes judicial notice, and the ALJ's Recommended Decision, it is this 6th day of December 2017 **ORDERED:**

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

Bruce Quackenbush
Chairperson –Panel B
Maryland Home Improvement
Commission



I held a hearing on January 10, 2017 and February 8, 2017, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).² The Claimant was present and represented himself. The Respondent was also present and represented himself. Jessica B. Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the MHIC'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. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Claimant (CL Ex.):

1. Contract with Catonsville Contractors, dated April 22, 2012;
2. Overages as of September 21, 2012, with attached Invoice/Change Orders, dated February 6, 2013; Invoice, dated June 6, 2013; and Invoice, dated August 19, 2013;
3. Per your punch list submitted to the commission, undated;
- 4A-4Y. Twenty-five annotated photographs, undated;
5. Cancelled checks from Claimant to Respondent, dated April 23, 2012 (# 2526); July 20, 2012 (# 2457); July 20, 2012 (# 2458); September 25, 2012 (#2459); October 23, 2012 (# 2461); October 23, 2012 (# 2462); February 7, 2013 (# 2470); April 30, 2013 (# 2478); June 13, 2013 (# 2601); August 29, 2013 (# 2602); September 6, 2013 (# 2604); and September 13, 2013 (# 2605);

² All references to the Business Regulation Article are to the 2015 volume.

6. Clarksville Construction Services, Inc. Contract # KY7072, dated January 28, 2016;
7. W.L.C., Inc. Estimate, dated February 19, 2016;
8. Home Improvement Claim Form, dated July 20, 2016; with attached Explanation, undated;
- 9A-9B. Two photographs, undated;
10. Roberts Residence List, undated;
11. Federal scrutiny on home deals, by John B. O'Donnell, Baltimore Sun, dated February 4, 2001;
12. Letter from Building Engineer, Baltimore County Department of Permits, Approvals & Inspections to Cecily Roberts, dated January 24, 2017;
13. District Court of Maryland for Anne Arundel County, Case No. D-07-CR-15-003194, for Henry Edward Herrick, III, dated May 24, 2016;
14. District Court of Maryland for Baltimore County, Case No. 3C00414837, for Henry Edward Herrick, III, dated March 14, 2015;
15. District Court of Maryland for Baltimore County, Case No. 080400141852011, for Henry Edward Herrick, III, dated January 31, 2013;
16. Circuit Court for Anne Arundel County, Case No. 02-K-11-000247, for Henry Edward Herrick, III, dated April 19, 2011;
17. District Court of Maryland for Anne Arundel County, Case No. 4A00226216, for Henry Edward Herrick, III, dated February 4, 2011;
18. Circuit Court for Baltimore City, Case No. 309051001, for Henry Edward Herrick, III, dated April 9, 2009;
19. District Court of Maryland for Howard County, Case No. 0T00056931, for Henry Edward Herrick, III, dated February 15, 2008;
20. District Court of Maryland for Howard County, Case No. 4T00056557, for Henry Edward Herrick, III, dated February 27, 2008;
21. District Court of Maryland for Howard County, Case No. 1T00049862, for Henry Edward Herrick, III, dated April 13, 2006;
22. District Court of Maryland for Howard County, Case No. 3T00040953, for Henry Edward Herrick, III, dated February 17, 2004;
23. District Court of Maryland for Baltimore City, Case No. 5B01557442, for Henry Edward Herrick, III, dated September 12, 2003;
24. Circuit Court for Baltimore City, Case No. 036005136252, for Henry Edward Herrick, III, dated February 6, 2004;
25. District Court of Maryland for Baltimore City, Case No. 3B01378758, for Henry Edward Herrick, III, dated March 19, 2002;
26. District Court of Maryland for Baltimore County, Case No. 6C00146243, for Henry Edward Herrick, III, dated April 4, 2001;
27. Sales Order Report, HomeClick LLC, dated July 2, 2012;
28. Amazon.com Order, dated May 30, 2012;
29. Follow-up Report, Kevin Youngblood, Senior Design Consultant, Clarksville Construction Services, dated February 2, 2017;
30. Text Message chain for Claimant/Roberts and Respondent, from February 3, 2015 through March 18, 2015;
31. Eight photographs, undated;
32. Photograph, undated;

33. Photograph, undated; and
34. Bilco door email, undated.

I admitted the following exhibits into evidence on behalf of the Respondent (Contractor Ex.):

- 1-9. Nine photographs, undated;
10. Catonsville Contractors Invoice/Change Orders, dated February 15, 2014;
11. Baltimore County Department of Permits, Approvals, and Inspections, Building Permit, dated July 5, 2012;
12. Baltimore County Building Code Outside Deck Stair Details, dated November 2, 2015; and
13. Itemized list of original contracted items, add-ons and change orders, and payments, undated, and Invoice/Change Orders, dated February 15, 2014.

I admitted the following exhibits into evidence on behalf of the Fund (GF Ex.):

1. Notice of Hearing, dated September 30, 2016, for January 10, 2017 hearing;
2. Transmittal from MHIC, dated August 12, 2016, with attached MHIC Hearing Order, dated August 11, 2016, and attached Home Improvement Claim Form, filed July 27, 2016;
3. MHIC I.D. Registration, Professional License History, and Change Code Screen, dated December 22, 2016; and
4. Letter from Joseph Tunney, Chairman, MHIC, to Respondent, dated August 5, 2016, with attached Home Improvement Claim Form, received July 27, 2016.

Testimony

The Claimant testified in his own behalf and presented the testimony of Kevin Youngblood, a licensed home improvement contractor with Clarksville Construction Services, who was accepted as an expert in house construction.

Gary Henry, owner of Catonsville Contractors, Inc., testified on behalf of the Respondent, and was accepted as an expert in home inspection and home improvement. The Respondent also presented testimony from Henry Herrick and Justin Davidson, employees of the Respondent, and from the Claimant.

The Fund did not present any witnesses. The Claimant presented testimony from Cecily Roberts on Rebuttal.

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 Registration No. 101090. The Respondent was licensed from February 25, 2010 through February 25, 2016. (GF Ex. 3). The Respondent's MHIC license went into inactive status on or about February 24, 2014. (GF Ex. 3).

2. On April 23, 2012, the Claimant and the Respondent entered into a contract (Contract) to make improvements to the Claimant's home, including the construction of a two-story addition to the Claimant's existing home, converting one bedroom to a master bath, renovating an existing screened-in porch, and installing a Bilco door in the basement to make a new outside entrance. The Contract included performance of work in the addition on a new bedroom and mud room, a master bathroom, and a porch. (CL Ex. 1).

3. The Contract called for the work to begin within two to four weeks and to be completed within four to six months. (CL Ex. 1).

4. The total Contract price was \$50,000.00. The Contract required the Claimant to make payments to the Respondent, as follows:

Draw # 1	\$16,000.00	Contract Signing;
Draw # 2	\$10,500.00	Completion of addition framing and roofing shingles;
Draw # 3	\$10,500.00	Completion of window installation and drywall rough-in;
Draw # 4	\$10,500.00	Completion of siding, shower, tub, mud room, cabinetry;
Draw # 5	\$ 2,500.00	Completion of project.

The Contract also provided that no alteration or amendments to the Contract would be valid unless they were agreed to in writing by both parties. (CL Ex. 1).

5. The parties agreed to the following written changes to the Contract:

September 21, 2012:	Terrace Built	\$5,500.00
	Deck Extension	\$ 250.00
	Handrails Terrace	\$ 650.00
	Handrails Deck	\$ 650.00
	Double Stair Handrail	\$ 224.00
	Two Additional Windows in Addition	\$ 760.00
	Metal Roof	<u>\$1,738.00</u>
	Total	\$9,772.00
February 6, 2013:	Fire Alarms	\$1,200.00
	Relocate Bathroom Wall/ Plumbing/Electric	\$ 450.00
	Hardwood Floors in Family Room/Foyer	\$ 565.00
	Lights in Master Bedroom (5 with dimmers)	\$ 200.00
	Master Bathroom Windows (3 @ \$449.00)	\$1,347.00
	Wire/Material for Pantry Fridge	\$ 168.00
	Third Level Heater/Wire	<u>\$ 375.00</u>
	Total	\$4,305.00
June 6, 2013:	Exhaust Fan Master Bath	\$ 90.00
	Laundry Room Vent Line/Gas Line	\$ 380.00
	Leveling Floor	\$ 400.00
	First Level Door	\$ 330.00
	Bedroom Door	\$ 445.00
	Porch Enclosure Final	\$2,000.00
	Remaining Balance of Draw 3	\$ 500.00
	Vince Labor	\$ 112.00
	Cabinet Shelve Install	\$ 220.00
	Powder Room Door Trim	<u>\$ 300.00</u>
	Total	\$4,777.00
August 19, 2013:	Tile Overage	\$1,418.00
	Tile Custom Pattern	\$ 900.00
	Bathroom Wainscoting	<u>\$1,900.00</u>
	Total	\$4,218.00

(CL Ex. 2).

6. These four Contract changes totaled \$23,072.00. These changes included the construction of an upstairs deck off the master bedroom, a lower deck off the back entry, and the installation of electric smoke detectors to replace existing battery-operated smoke detectors.

(CL Exs. 1, 2, 8).

7. The parties agreed to the following additional changes:

First Level Deck	\$4,500.00
Convert porch to mud room and pantry	\$6,000.00.

These additional changes totaled \$10,500.00, resulting in a total Contract price of \$83,572.00.

(\$50,000.00 + \$23,072.00 + \$10,500.00). These additional changes were set forth in writing in a document prepared by Gary Henry on or about February 2014. (Contractor Ex. 13).

8. The Claimant made the following payments to the Respondent by check:

April 23, 2012	Check No. 2526	\$16,000.00
July 20, 2012	Check No. 2457	\$10,500.00
July 20, 2012	Check No. 2458	\$ 5,000.00
September 25, 2012	Check No. 2459	\$ 9,772.00
October 23, 2012	Check No. 2461	\$10,500.00
October 23, 2012	Check No. 2462	\$ 2,500.00
February 7, 2013	Check No. 2470	\$ 4,305.00
April 30, 2013	Check No. 2478	\$10,000.00
June 13, 2013	Check No. 2601	\$ 4,410.00
August 29, 2013	Check No. 2602	\$ 2,893.00
September 13, 2013	Check No. 2605	\$ 775.00.

These payments totaled \$76,655.00. (CL Ex. 5).³

9. The Respondent began working on the project on or about June 1, 2012. The Respondent's owner, Gary Henry, told the Claimant the project would be completed by the end of calendar year 2012. The agreed-upon changes added additional time required for completion of the work. (CL Exs. 2, 8; Contractor Ex. 13).

10. After three years, the Respondent still had not completed the work. Gary Henry told the Claimant the project was lagging behind because the Respondent had other projects to complete, and because he did not have enough money and was trying to control costs to avoid bankruptcy. (CL Ex. 8).

³ The copies of checks submitted by the Claimant include check no. 2604, dated September 6, 2013, for \$500.00. However, because this check does not identify any payee, I have not included it in the list of payments the Claimant made to the Respondent. (CL Ex. 5).

11. The Respondent never told the Claimant he did not intend to complete the project. He told the Claimant he would provide special prices or would complete certain items for free because the Claimant had been so patient with the project. The pace of the project slowed over time. The Claimant met with or contacted Gary Henry (Henry) multiple times to discuss the slow progress of the work. Henry repeatedly promised to increase the pace and devote more time and employees to the project. While there were temporary increases in activity, they did not last and, subsequently, the Respondent stopped all work on the project in February 2015. (CL Ex. 8).

12. The Claimant contacted the Respondent by text message repeatedly in February and March 2015, asking him when he would return to complete the project. (CL Ex. 30). Henry promised on several occasions in February and March 2015 that he would return and finish the work. However, the Respondent performed no further work on the project after on or about February 11, 2015. (CL Exs. 4Y, 30). When the Respondent ceased working on the project, the work was still not complete.

13. The Respondent failed to complete the home improvement project at the Claimant's residence and performed some work in an unworkmanlike manner. (CL Exs. 8, 29).

14. The Respondent failed to install a metal roof as the Contract required, instead installing an asphalt roof. He also failed to properly complete the exterior shingles where the addition joins the existing house, he failed to install a missing soffit, and the weather stripping on the back door required repair. He also failed to replace missing shingles on the side of the house. (CL Ex. 8).

15. The lower deck was incomplete and unworkmanlike because the Respondent did not properly secure the deck to the house using the proper bolts, and failed to properly secure the support beam to the posts. The lower deck also required an additional footing and post for

proper support to carry the load. The hand rails were left unfinished on the upper and lower decks, and on the stairs. The Respondent failed to seal both decks, add rail toppers, and install a header board. The Respondent also left construction debris under the lower deck and in the master bedroom. (CL Exs. 4J, 4N, 8, 29).

16. The bottom step on the lower deck was loose, but the Contract did not call for installation of a concrete landing at the base of the lower deck stairs. (CL Exs. 4J, 4N, 8). A storm door was left lying on the lower deck near the back door, but the Contract did not call for installation of a storm door. (CL Exs. 1, 2, 4Y). The Claimant requested that the Respondent install a lattice under the lower deck and install an outdoor flood light, but these items were also not included in the Contract. (CL Exs. 1, 2, 8).

17. The landing on the upper deck was not properly supported and was dangerous. The lack of proper support caused the landing to bounce when it was walked on. It required repair to provide proper support. (CL Exs. 9A, 29).

18. The Respondent did not properly install flashing with the plywood siding. The joints were also not adequately caulked and began to fail. This allowed moisture to penetrate the joints. The moisture in turn caused warping, wood delamination, and the presence of mold in several areas. The Respondent did not properly attach the siding on the new addition to the shingles on the existing house where the old and new portions of the house came together. (CL Exs. 4A, 4B, 4H, 4I, 4K, 29). The caulking around the windows was substandard and allowed moisture to penetrate beneath the plywood siding. (CL Ex. 4M, 29).

19. The painting work was incomplete and parts were performed in an unworkmanlike manner. The exterior paint was peeling and cracking on the addition, and knots were visible

through the paint. There was mildew present on the exterior walls from water that was seeping behind the exterior boards. Portions of the siding on the new addition were warped and were pulling away from the house near the bottom. (CL Ex. 8).

20. The painting required completion around the exterior door frame, and on the exterior shingles near the upper deck where a window was removed. A second coat of paint was needed for the pantry door and the back entryway. (CL Ex. 8).

21. The framing and insulation was not closed and complete on the underside of the new addition, which created the potential for moisture, weather damage, and the opportunity for bugs or rodents to enter the house. The Respondent removed a window and left the opening exposed to the outdoors. He also failed to complete the installation of shingles above this opening and left the underlying insulation exposed. (CL Ex. 4G). When the Respondent removed an existing basement door, he covered the opening with plywood, failing to adequately close off the area and allowing water to penetrate this area. The Respondent also failed to install a Bilco door in the basement. (CL Exs. 1, 4L, 29).

22. Multiple electrical items were not completed in the house. This included unattached and incomplete wiring in the master bedroom and master bathroom; smoke detectors not working properly; electric outlets not installed in the bathroom, kitchen pantry, on the third floor, and outdoors; and wiring left exposed in the basement. The electrical panel box was not labeled properly and it was full. An additional panel box was needed to provide adequate electrical supply for the new addition. (CL Exs. 4O, 4U, 8, 29, 32, 33).

23. The Respondent failed to complete the flooring work when he failed to install a threshold where the old flooring met the new flooring in the mudroom and in the second floor hallway. (CL Exs. 4C, 4D, 4Q). The Respondent also failed to complete the bamboo flooring near the

radiator in the master bedroom. (CL Ex. 4T). Additionally, the Respondent failed to install the flooring properly, resulting in water damage on the floor in the exterior bedroom near the upper deck. (CL Ex. 4W). The Respondent also failed to finish edging the flooring in the walk-in closet. (CL Ex. 8).

24. The tile work in the bathroom was incomplete around the shower and the marble tile required an acid wash and resealing. The Respondent failed to install the glass shower door. The bathroom fan was not properly installed and vented to the outside and did not produce sufficient power to remove moisture from the bathroom. The Respondent also failed to install a threshold where the master bedroom floor met the bathroom tile. The shower step was incomplete, required caulking, and was framed with wood instead of tile, creating a moisture issue. The Respondent also failed to install several fixtures in the master bathroom, failed to complete the installation of bathroom ceiling lights and the medicine cabinet light, and did not finish painting in the bathroom. (CL Exs. 4R, 4S, 4V, 4X, 8, 29).

25. The cubby cabinets in the new mudroom were incomplete and installed poorly. This included the Respondent's failure to install certain hooks and knobs, to finish staining the wood, and to close gaps in the wood. The Respondent also failed to complete the painting in the mudroom. (CL Exs. 8, 29, 4E, 4F).

26. The Respondent failed to install baseboard heating in the third floor bedroom after removing the radiator during construction, which left this area without heat. (CL Ex. 4P). The Respondent also failed to provide heat in the new master bedroom. (CL Ex. 29). The Respondent also failed to install the radiator in the kitchen, providing no heat in the kitchen and pantry. (CL Ex. 4D). The Respondent also removed the door to the kitchen pantry and left it incomplete. (CL Ex. 29).

27. The Respondent's employees damaged a leg on a dresser, a driveway gate, a dryer door, a stairway wall, and the floor in front of the dryer when the dryer was moved. The Respondent also damaged an outlet under the window on the third floor. The Respondent did not repair these damaged areas, although they are consequential damages. (CL Ex. 8).

28. The Respondent failed to move lights on the first floor that were installed in the wrong place and failed to install door knobs and latches on some doors on the second floor. (CL Ex. 8).

29. The Respondent obtained a building permit from Baltimore County on July 5, 2012 for the home improvement project at the Claimant's residence in Catonsville. The permit was scheduled to expire in one year. (Contractor Ex. 11).

30. On January 28, 2016, the Claimant obtained a contract proposal from Clarksville Construction Services, Inc. (Clarksville) to repair and complete the home improvement work performed by the Respondent under the Contract. The price for the Clarksville proposal was \$37,825.00. Clarksville is an MHIC licensed home improvement contractor. (CL Ex. 6).

31. The Clarksville proposal called for the repair or completion of siding work, exterior painting, deck repairs, repair or completion of work in the rear entrance, upstairs hallway, master bathroom, master bedroom, laundry room, and stairway, and the repair or completion of electrical work. (CL Ex. 6). The Claimant intends to hire Clarksville to perform the work.

32. The siding work in the Clarksville proposal included the replacement of the siding due to water damage and mold, and the installation of flashing. Clarksville determined that the siding needed replacement in its entirety to ensure that flashing was installed properly, and to avoid the presence of numerous seams and unsightly repairs. The Clarksville proposal also called for painting the siding to match the existing color and finish. (CL Ex. 6).

33. The Clarksville proposal included several items that were non-compensable because they were either outside the scope of the Contract and changes, or involved consequential damages.

The non-compensable items in the Clarksville proposal include the following:

Fiber cement siding (upgrade from button board)	\$1,000.00
Install vinyl lattice on lower deck	\$1,500.00
Install solid wood closet door	\$ 250.00
Install glass transom	\$ 125.00
Repair broken leg on dresser furniture	\$ 50.00
Install TV bracket	\$ 25.00
Install radiator cover	\$ 325.00
Repair/replace/paint damaged wallpaper/wall	\$2,650.00
Install solar lighting caps on lower deck	\$ 350.00
Install exterior flood light	\$ 150.00

The total estimated cost of these non-compensable items is \$6,425.00.

34. The stairs on the lower deck did not violate the Baltimore County Code. The value of the lower deck stairs, including the concrete landing, are estimated at \$1,200.00, approximately one-third of the cost to repair the lower deck. After deducting the non-compensable items, the reasonable cost for Clarksville to repair and complete the home improvement work under the scope of the Contract is \$30,200.00. ($\$37,825.00 - \$6,425.00 - \$1,200.00 = \$30,200.00$).

35. The Claimant obtained a more expensive estimate from W.L.C., Inc. (WLC) for \$42,248.00 to complete and repair the work under the Contract. (CL Ex. 7).

36. The Claimant's actual loss is calculated based on the documented payments the Claimant made to the Respondent (\$76,655.00), added to the reasonable cost to repair and complete the Contract work (\$30,200.00), for a subtotal of \$106,855.00. After the total Contract price (\$83,572.00) is subtracted from the subtotal, this results in an actual loss to the Claimant of \$23,283.00. ($\$106,855.00 - \$83,572.00 = \$23,283.00$).

DISCUSSION

Background

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125 n.16 (2002), quoting Maryland Pattern Jury Instructions 1:7 (3rd ed. 2000).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. For the reasons addressed below, I find that the Claimant has proven eligibility for compensation to repair and complete a home improvement project that was incomplete, inadequate, and unworkmanlike.

In April 2012, the Claimant entered into a home improvement Contract with the Respondent, a licensed home improvement contractor. (GF Ex. 3). The original Contract was executed on April 23, 2012 and called for the construction of a two story addition, the conversion of one bedroom to a master bathroom, the renovation of an existing screened-in porch, and the installation of a Bilco door to the basement. The price of the original Contract was \$50,000.00. (CL Ex. 1). The parties agreed to five separate change orders from September 2012 through

February 2014, which totaled \$33,572.00. (CL Ex. 2; Contractor Ex. 13). These changes resulted in a total Contract price of \$83,572.00.

The Claimant submitted copies of cancelled checks made payable to Cafonsville Contractors or Gary Henry that totaled \$76,655.00. (CL Ex. 5). Henry agreed that he received all these checks. Therefore, I conclude that the Claimant made payments to the Respondent in the amount of \$76,655.00 for the cost of the home improvement Contract and changes.

The Contract called for the Respondent to begin work on the project within two to four weeks of when the Contract was signed on April 23, 2012, and for the project to be completed within four to six months of when the work began. (CL Ex. 1). The evidence established that the Respondent began working on the project on or about June 1, 2012. The Respondent told the Claimant he expected to complete the project by the end of calendar year 2012. After the parties agreed to the five change orders between September 2012 and February 2014, this extended the time for completion of the work. (CL Exs. 1, 2; Contractor Ex. 13).

Delay and Efforts to Resolve Claim

A preponderance of the evidence in the record establishes that the Respondent failed to complete the work under the Contract and performed some work in an unworkmanlike manner. The evidence demonstrates that the Respondent had still not completed the work by February 2015, almost three years after the Contract was signed. Kenneth Henry, the Respondent, was licensed by the MHIC. Gary Henry, the Respondent's owner, testified extensively at the hearing, and was accepted as an expert in home inspection and home improvement. The Respondent argued that the Claimant unreasonably rejected good faith efforts by the contractor to resolve the claim under section 8-405(d) of the Business Regulation Article. Henry claimed that the Claimant prevented him from completing the project by removing him from the project and

changing locks on the doors at the Claimant's residence, and hiring another individual to perform repairs. Henry also claimed that the Claimant and his wife mistreated the Respondent's employees by accusing them of theft, using bad language, and diverting their time to side jobs.

For the reasons addressed below, I conclude that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. The evidence demonstrates that the Respondent worked on the project for nearly three years and still failed to complete the work. Henry admitted in his testimony that a number of items under the Contract were not completed. Although he characterized them as minor or insubstantial, I find that the Respondent left substantial work incomplete. The Claimant and his wife, Cecily Roberts (Roberts), testified, and text messages submitted into evidence supported, that the Claimant repeatedly contacted Henry to inquire as to when he would return to their residence and when the project would be completed. Although Henry promised repeatedly to return to complete the work, and bring additional employees to speed up the project, Henry and other employees failed to appear regularly as promised. The text messages showed that at times the Claimant and his wife pleaded with Henry to return and finish the work. (CL Ex. 30). Although he promised to do so, Henry ultimately failed to return.

Henry claimed that he continued to work on the project until December 2015. The Claimant and Roberts testified that Henry did not return or perform any further work on the project after about February 11, 2015. I credit the testimony of the Claimant and Roberts because it was supported by the dates and conversation in the text messages between Roberts and Henry regarding Henry's failure to return to the residence, and was supported by the annotations on the photographs submitted by the Claimant. (CL Exs. 4Y, 30). After three long years, the Claimant and his wife were justified in deciding they no longer wanted the Respondent to

perform work on the home improvement project. Henry Herrick (Herrick), one of the Respondent's employees, confirmed that the Respondent was still performing work on the project in 2015, three years after the Contract was signed.⁴ Furthermore, Henry was unresponsive to multiple requests from the Claimant and Roberts that he return and complete the work, many items of the project were left incomplete, and some aspects were performed in an unworkmanlike manner.

Moreover, there is no document or other evidence to demonstrate that the Claimant terminated the Contract at a particular time. Instead, a preponderance of the evidence supports that Henry failed to return despite repeated requests from the Claimant and his wife that he complete the work. The evidence also fails to support the Respondent's contention that the Claimant fired the Respondent and hired another individual to complete the work. Henry admitted that Tim Lehr (Lehr) was an employee of the Respondent, Henry's testimony was contradictory and confusing regarding when Lehr stopped working for the Respondent, and Henry acknowledged that he never fired Lehr because he had difficulty contacting him. In contrast, Roberts testified that Lehr worked at the house as the Respondent's employee, and that she only paid Lehr directly after Lehr requested money and she tried unsuccessfully to contact Henry about the payment. The Claimants were justified in becoming frustrated with the Respondent's slow progress on the job, numerous incomplete items, some aspects of the work that were performed poorly, and with Henry's lack of responsiveness.

Furthermore, I credit the detailed and straightforward testimony of Roberts that she and the Claimant did not deny the Respondent access to their home and that Henry continued to have keys and access to the home in 2015. Justin Davidson, another employee of the Respondent,

⁴ The Claimant offered numerous documents to show that Herrick was previously convicted of some drug and theft charges. This evidence did not significantly impact my findings in this case.

claimed that he did not work at the Claimant's residence after December 31, 2014 because the Claimant changed their locks. However, this testimony was refuted by Henry, Herrick, the Claimant, and Roberts, who all testified that the Respondent continued to work on the project well into 2015. While the Claimant and/or Roberts did apparently accuse some of the Respondent's employees of taking their property, including a watch, and some bad language was used by both parties, the evidence does not establish that this prevented the Respondent from performing the work. Employees of the Respondent continued to work at the Claimant's home after such allegations were raised. Moreover, the evidence does not demonstrate that small side jobs the Claimant or Roberts asked the Respondent's employees to perform prevented the Respondent from completing work on the project.

For the foregoing reasons, I conclude that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d).

Incomplete and Unworkmanlike Work

A preponderance of the evidence demonstrates that the Respondent failed to complete the work under the Contract, and performed some work in an unworkmanlike manner. The testimony of the Claimant and his wife, and the numerous photographs they submitted, identified many items that were not completed under the Contract and changes, including roofing, siding, and shingle work; windows and doors; flooring and thresholds; electrical work, wiring and outlets; heating issues in several rooms; painting; shower door and bathroom tile work; lighting fixtures; cubby cabinets; outdoor railings; and cleanup and removal of debris. Henry admitted that a number of items were incomplete. His claim that he was not responsible for installing thresholds where new flooring came into contact with existing flooring because it was not addressed in the Contract was unreasonable and illogical. The Contract and changes called for

flooring work and the photographs demonstrated that the flooring without finished thresholds was clearly incomplete and inadequate. (CL Exs. 4A-4Y). Henry's claim that he was not responsible for installing a glass shower door is directly refuted by the entry for "Install shower glass surround" in the Master Bathroom section of the Contract. (CL Ex. 1).

The Respondent also performed certain work in an unworkmanlike manner. The evidence established that the Respondent failed to provide proper support for the upper deck landing. He also failed to use proper hardware to support the lower deck and attach it to the house. The Claimant presented testimony from Kevin Youngblood (Youngblood), a licensed home improvement contractor from Clarksville Construction Services, who was accepted as an expert in house construction. Youngblood testified that he has forty years of contracting and remodeling experience, and that he attends continuing education seminars. Youngblood testified logically and in detail regarding certain aspects of the work that he concluded were incomplete and inadequate. Youngblood explained that the landing for the upper deck was not properly supported and he believed it was unsafe as constructed. He stated that when he walked on the landing he could feel it bouncing, which led him to conclude that it required additional support to carry the load. The photographs of the upper deck confirmed the lack of structural support for the landing. (CL Ex. 9A; Contractor Exs. 4-7). Henry's testimony was inadequate to refute that of Youngblood. While Henry stated generally that the upper deck was cantilevered and that Youngblood did not understand this, he failed to explain this contention or why the upper deck landing, which lacked any obvious structural support, was safe as constructed. I also found that Youngblood's detailed Follow-up Report, which the Claimant submitted on the second day of hearing, was admissible as reliable hearsay because Youngblood had already testified extensively on the first day of hearing, and the Report was consistent with, and supplemented, his testimony. (CL Ex. 29).

I also credit Youngblood's testimony and the Report with regard to the lack of adequate support for the lower deck and the absence of proper fasteners for attaching the lower deck to the house. He stated that the lower deck required bolts to ensure that the deck was properly secured to the house. In his Report, Youngblood indicated that this was required by the Baltimore County Code. Youngblood also indicated in his Report that the lower deck was not properly secured from the support beam to the posts and that it required an additional footing and post for adequate support. (CL Ex. 29). Henry's claim that it was sufficient for the deck to simply lay on the house foundation without bolts to secure it was illogical and inadequate to refute Youngblood's sound testimony and the Report. Henry failed to offer any documentary proof to support his claim that the decks were approved by County inspectors.

The Claimant did not prove, however, that the stairs to the lower deck were constructed improperly under the requirements of the Baltimore County Code. The Respondent submitted documentation from the Baltimore County Code regarding the requirements for the outside deck stairs. (Contractor Ex. 12). Although Youngblood claimed generally that open stairs were improper, the Code document indicated that the size of the opening was controlling and the evidence in this record did not establish the dimensions of the openings between the deck stairs or show that these openings were improper. Youngblood acknowledged that he was not familiar with the Baltimore County Code regarding the construction of the deck stairs. Henry testified that the stairs were in compliance and the Claimant did not prove otherwise. While the Claimant testified that the bottom deck stair was loose, this could be addressed with a simple repair and did not establish that the entire stair complex was unworkmanlike. The Claimant also failed to establish that a concrete landing was required for the deck stairs. The concrete landing was not included in the Contract and the Code document did not indicate that a concrete landing was

required. Therefore, I have deducted a reasonable estimate of the cost of the stairs, including the concrete landing, from the Clarksville proposal as a non-compensable item. As no itemization of the cost of the deck stairs was provided, I have concluded that the cost of each deck is the same, and that the cost of the stairs is equal to approximately one-third of the total cost of the lower deck, rounded up to \$1,200.00. ($\$6,975.00 / 2 = \$3,487.50 / 3 = \$1,162.50$). (CL Ex. 6; Contractor Ex. 12).

Youngblood also testified that the visible moisture damage in multiple areas on the siding, including warping, delamination, and mold, which led to the conclusion that the siding did not include adequate flashing, and that the caulking that was used was failing. (CL Exs. 4H, 4I, 4K). Although Youngblood acknowledged that perhaps piecemeal siding repairs could be done in some areas, he concluded through his testimony and the Report that the siding should be replaced in its entirety so the underside could be inspected, the flashing could be installed properly, and the repairs would not be aesthetically inferior and leave multiple seams.

Youngblood also stated that the home's exterior would require painting to address the moisture damage and complete the work. While Henry claimed he had installed flashing with the siding, the numerous areas of visible water damage indicate that if flashing was used, it was inadequate. The Respondent failed to offer any documentation to support Henry's claim that the flashing was approved by the inspectors.

Youngblood confirmed that the Clarksville proposal called for a more expensive siding (fiber cement) and that the added cost for this product was \$1,000.00. (CL Ex. 6). Therefore, I have deducted \$1,000.00 from the Clarksville proposal to account for this upgrade. Youngblood also addressed the inadequate caulking of windows, which Henry admitted required repair. (CL Ex. 4M).

Youngblood noted that the plywood covering the opening where an exterior door was removed from the basement was inadequate and opened up the house to potential damage from rodents, bugs, water, and weather. The photograph of this issue plainly showed that the installation of the plywood in this area was inadequate and unsightly. (CL Ex. 4L). He also noted incomplete and inadequate framing and insulation where other openings in the addition were left exposed to the outdoors. Youngblood also stated that the shower curb in the master bathroom was not installed properly because the use of wood beneath the tile would not protect against the water from the shower. (CL Ex. 4X). Youngblood also stated that the bathroom exhaust fan was not functional because it produced insufficient power to remove moisture and the fan vent was not installed properly. Although Henry questioned the manner in which Youngblood tested the fan, this did not adequately refute the problems that Youngblood identified with the fan. Youngblood also confirmed that the smoke detectors were not working properly. Henry's claim that he was not responsible for this issue was not credible as the smoke detectors were clearly included in the February 6, 2013 change order as "fire alarms." (CL Ex. 2).

Although Youngblood acknowledged that he was not a licensed electrician, he identified several obvious electrical problems, including the need for a new electrical panel box because the existing one was full and not labeled properly, and exposed wires were left unconnected and hanging. He also noted unfinished and inoperable lighting, and he identified the absence of heat in several areas of the home. Heaters were included in the change orders. (CL Ex. 2).

Youngblood acknowledged that certain items in the Clarksville proposal were outside the scope of the Contract (or non-compensable consequential damages), including \$1,500.00 for the lattice, \$250.00 for the solid wood closet door, \$125.00 for the glass transom, \$50.00 for repair of broken furniture, \$25.00 for a TV bracket, \$325.00 for a radiator cover, and \$2,650.00 to repair

damaged walls and wallpaper. I did not deduct \$350.00 for the washer drain pan, as the Fund argued, because Henry admitted this pan was necessary, and the Contract called for relocation of the washer and dryer. I deducted an estimated cost of \$350.00 for the solar lighting caps on the deck because, as Henry asserted, this item was not included in the Contract. I also deducted an estimated cost of \$150.00 for the exterior floodlight because it also was not included in the Contract. (CL Exs. 1, 2, 6).

I find that Youngblood's testimony, as an expert in home construction with forty years of experience, was credible and persuasive with regard to the evidence that the Respondent failed to complete the home improvement project and performed some work in an inadequate and unworkmanlike manner. Youngblood's testimony was detailed and logical, and was supported by his Report, numerous photographs, and testimony from the Claimant and Roberts. While Henry was also knowledgeable in a number of areas and had a home inspection license, he did not hold a home improvement or salesman's license, and I find that his testimony did not refute the preponderance of the evidence which established that the Respondent's work was unworkmanlike, inadequate, and incomplete for the reasons addressed above. Md. Code Ann., Bus. Reg. § 8-401.⁵ Henry's claim that the Respondent lost money on the project is not material because the Respondent is responsible for the pricing the parties agreed to in the Contract and change orders. Accordingly, I find the Claimant has established his eligibility for compensation from the Fund.

Compensation and Actual Loss

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or

⁵ It is also noted that the federal Department of Housing and Urban Development barred Henry for one year from participating in a federal housing program due to his involvement in an inaccurate appraisal. (CL Ex. 11).

punitive damages, personal injury, attorney's fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

MHIC's regulations provide three formulas for measuring a claimant's actual loss. COMAR 09.08.03.03B(3). The formula that is relevant to the circumstances of this case applies to situations where a contractor has been found to have performed work poorly or has failed to complete the work, and the claimant is seeking another contractor to remediate the problems with the original contractor's work. This formula states the following:

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 Respondent did work according to the Contract and the Claimant obtained a proposal from Clarksville to repair and complete the work at a cost of \$37,825.00. (CL Ex. 6). The Clarksville proposal sets forth a reasonable cost to repair and complete the incomplete and unworkmanlike home improvement, with the deductions noted below. The Claimant obtained another proposal from WLC for \$42,248.00, which was nearly \$5,000.00 more than the Clarksville proposal. (CL Ex. 7). I find that the more detailed, itemized, and less expensive proposal from Clarksville provides the most reasonable basis for determining the cost to repair and complete the work.

As discussed above, I have reduced the Clarksville proposal by \$7,625.00 to exclude those items in the Clarksville estimate that are outside the scope of the Contract and change

orders, or that involve non-compensable consequential damages designed only to repair damage caused by the Respondent's employees. Neither work outside the scope of the Contract, nor consequential damages, may be recovered as a reasonable cost to repair and complete work under the Contract. After deducting the non-compensable items which total \$7,625.00, I conclude that the reasonable cost to repair and complete the Contract is \$30,200.00. (\$37,825.00 - \$7,625.00 = \$30,200.00).

The Claimant's actual loss is calculated as follows under the above formula:

Amount paid to the Respondent	\$ 76,655.00
Reasonable cost to repair and complete	+ \$ 30,200.00
Subtotal	\$106,855.00
Contract price (including change orders)	- \$ 83,572.00
Actual Loss	\$ 23,283.00.

In accordance with the formula set forth above, I conclude that the Claimant's actual loss is \$23,283.00 as a result of the acts or omissions of the Respondent in performing incomplete and unworkmanlike home improvement work under the Contract and change orders. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).

Under the statute, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5). The Claimant's actual loss in this case is not limited by the amount he paid to the Respondent because that amount is far greater, at \$76,655.00. The actual loss computed above is \$23,283.00, which exceeds the \$20,000.00 maximum. Accordingly, the Claimant is entitled to reimbursement from the Fund in the maximum amount of \$20,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$23,283.00 as a result of the Respondent's acts and omissions, including incomplete and unworkmanlike home improvement. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

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

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

Signature on File

May 8, 2017
Date Decision Issued

Douglas E. Koteen
Administrative Law Judge

DEK/da
167845

PROPOSED ORDER

WHEREFORE, this 8th day of June, 2017, 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
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

SECRET

1. The first part of the document discusses the general situation in the country and the progress of the work in various fields. It mentions the achievements of the government and the people in the past year.

2. The second part of the document deals with the economic situation and the measures taken to improve it. It highlights the success of the agricultural sector and the development of industry.

3. The third part of the document focuses on the social and cultural aspects of the country. It describes the progress of education, health care, and social services.

4. The fourth part of the document discusses the foreign relations of the country and its role in the international community. It mentions the country's participation in various international organizations and its commitment to peace and cooperation.

5. The fifth part of the document concludes with a summary of the main points and a call to action for the people to continue their efforts towards a better future.

SECRET

Approved for release by the CIA on 05/12/2014 pursuant to E.O. 13526