

**IN THE MATTER OF THE CLAIM  
OF MELANIE SMITH-TAYLOR**

**\* MARYLAND HOME IMPROVEMENT  
COMMISSION**

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**AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS  
OF JAMES SIMMONS t/a JIM'S  
HOME IMPROVEMENT, INC.**

**\* MHIC CASE NO. 17(90)231  
OAH CASE NO. DLR-HIC-02-18-07502**

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**FINAL ORDER**

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 1, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 22, 2018, concluding that the homeowner Melanie Smith-Taylor (“Claimant”) sustained an actual and compensable loss of \$16,024.00 as a result of the acts and omissions of James Simmons t/a Jim’s Home Improvement, Inc. (“Contractor”). *OAH Proposed Decision* p. 20. In a Proposed Order dated October 10, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimant \$16,024.00 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On January 3, 2019, a hearing on the exceptions was held before a three-member panel (“Panel”) of the MHIC. The Contractor appeared and was represented by counsel, Paul M. Weiss, Esq. The Claimant was present without counsel. Shara Hendler, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following two preliminary exhibits were offered by AAG Hendler and admitted into evidence at the exceptions hearing: 1) October 9, 2018 Cover Letter with MHIC Proposed Order and OAH Proposed Decision, 2) October 26, 2018 Notice of Exceptions Hearing to be held January 3, 2019 (a copy

of the *Respondent's Exceptions to Proposed Order and Request to Present Arguments*, as well as, the *Respondent's Request to Supplement the Record* were included in the exhibit).

As a preliminary matter, the Panel addressed the Contractor's request to supplement the record. The parties were notified of the test to be met to admit additional evidence on exceptions found at Code of Maryland Regulations ("COMAR") 09.01.03.09K, and given the opportunity to present argument. The Contractor sought to admit a two page document consisting of a Certificate of Satisfaction issued by the Mayor and City Council of Baltimore stating that the indebtedness secured by an Agreement recorded in the Land Records of Baltimore City in Liber LGA 17016, Folio 370 was discharged. The Contractor contended that this document was relevant and material because it was proof that the rehabilitation loan provided to the Claimant by the City had been forgiven, despite the Claimant's testimony at the hearing that she must still repay the loan. The Contractor further argued that although the Certificate of Satisfaction was signed April 20, 2018 it was not recorded until May 31, 2018 and therefore could not have reasonably been discovered and offered at the June 1, 2018 hearing before OAH.

In response to the Contractor's motion to supplement the record, AAG Hendler produced the Agreement referenced in the Certificate of Satisfaction and recorded at Liber LGA 17016, Folio 370. The Agreement is titled "Baltimore City Emergency Roof Repair Agreement" and provides that the City was "[t]o hold \$1,732.00 in escrow to ensure that rehabilitation of the property known as 623 E. 38th Street, Baltimore, Maryland 21218 is satisfactorily completed." AAG Hendler also produced a Deed of Trust, recorded at Liber 9299, Page 355 of the Land Records of Baltimore City, which secured repayment of the Claimant's \$29,340.00 rehabilitation loan. AAG Hendler argued that these documents should also be admitted to provide context for the Certificate of Satisfaction the Contractor sought to introduce. For the reasons stated on the record, the Panel admitted the two page document titled Certificate of Satisfaction as the

Contractor's exhibit. The Panel also admitted the Baltimore City Emergency Roof Repair Agreement and Deed of Trust offered by AAG Hendler as the Fund's preliminary exhibits 3 and 4 respectively. The Contractor was then permitted to present oral argument regarding his exceptions to the MHIC Proposed Order.

The first exception raised by the Contractor is that ALJ erred in finding the Claimant suffered an "actual loss." The Contractor claims that the Certificate of Satisfaction he offered in his motion to supplement the record was evidence that the rehabilitation loan the Claimant obtained from Baltimore City to pay for the work on her home had been forgiven and therefore she has not suffered an "actual loss." *Respondent's Exceptions to Proposed Order and Request to Present Arguments* p. 2. The "Agreement" referenced and discharged in the Certificate of Satisfaction, however, is the Baltimore City Emergency Roof Repair Agreement for \$1,732.00 and not the larger \$29,340.00 rehabilitation loan obtained by the Claimant. *MHIC Exceptions Hearing Fund Exhibit 3; OAH Hearing Claimant's Exhibit 35*. The Deed of Trust securing the Claimant's \$29,340.00 rehabilitation loan also appears to show that the Claimant's loan has not been forgiven. *MHIC Exceptions Hearing Fund Exhibit 4*. The ALJ already found based on the testimony of the Claimant, and the loan documents she provided at the OAH hearing, that she is still required to repay the rehabilitation loan. *OAH Hearing Claimant's Exhibits 2c, 35*. The Deed of Trust only provides further support for the ALJ's finding.

The Contractor also contends that the Commission should deny the claim pursuant to Annotated Code of Maryland, Business Regulation Article, § 8-405(d) because the Claimant declined the City's offer to pay for another contractor to repair and replace the windows installed by the Contractor. *Respondent's Exceptions to Proposed Order and Request to Present Arguments* p. 2-3. Business Regulation Article, § 8-405(d) provides that "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor

to resolve the claim.” The ALJ addressed this argument in her decision, stating that there is nothing in the statute barring a claim if a third party agrees to pay for repairs and the claimant declines. *ALJ Proposed Decision* p. 10. The ALJ went on to hold that “[d]eclining the offer does not release the Respondent from the obligation to pay the Claimant’s actual losses incurred due to his unworkmanlike and inadequate home improvement.” *Id.* The ALJ is correct, § 8-405(d) specifies that it is the unreasonable rejection of the “good faith efforts *by the contractor*” that may result in the dismissal of the claim. Annotated Code of Maryland, Business Regulation Article, § 8-405(d)(emphasis added). As written, this provision of the statute does not require dismissal if the Claimant declines a third party’s offer of assistance.

Lastly, the Contractor argues that the City did not communicate to him that there were any alleged deficiencies in his work, and did not allow him the opportunity to correct these deficiencies. *Respondent’s Exceptions to Proposed Order and Request to Present Arguments* p. 3-4. As a result, the Contractor contends that he was “denied a fair opportunity to resolve the claim as required by Bus. Reg. § 8-405(d).” *Respondent’s Exceptions to Proposed Order and Request to Present Arguments* p. 4. The record, however, contains communications where the Claimant directly expressed to the Contractor her dissatisfaction with the work on her home. *OAH Hearing Claimant’s Exhibit 2L, 2Q, 2R.* Moreover, several notices were sent to the Contractor alerting him to the fact that the Claimant was filing a complaint and claim with the Commission. *OAH Hearing Claimant’s Exhibits 2V, 2X, 2U; OAH Hearing Fund’s Exhibit 4.* Therefore, the Contractor was notified multiple times that the homeowner had problems with his work, and therefore had the opportunity to make good faith efforts to resolve these issues.

The Panel agrees with the ALJ’s analysis and finds no error in her decision. The ALJ’s decision is thorough, supported by the evidence in the record and correct as a matter of law. Having considered the parties’ arguments, the evidence in the record and the OAH Proposed

Decision, it is this 3rd day of April 2019 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 Proposed 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.

**Joseph Tunney**

**Chairperson –Panel  
Maryland Home Improvement  
Commission**

IN THE MATTER OF THE CLAIM  
OF MELANIE SMITH-TAYLOR,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JAMES SIMMONS,  
T/A JIM'S HOME IMPROVEMENT  
INC.,  
RESPONDENT

\* BEFORE MARY SHOCK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-18-07502  
\* MHIC No.: 17 (90) 231  
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On May 24, 2017, Melanie Smith-Taylor (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$49,500.00 in actual losses allegedly suffered as a result of a home improvement contract with James Simmons, trading as Jim's Home Improvement Incorporated (Respondent).

I held a hearing on June 1, 2018, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented

herself. Paul Weiss, Esquire, represented the Respondent. Hope Sachs, 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, 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. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted thirty-five exhibits for the Claimant, thirteen exhibits for the Respondent, and four exhibits for the Fund. A list of the exhibits is attached as an appendix to this decision.<sup>1</sup>

#### **Testimony**

The Claimant testified in her own behalf and presented the testimony of Frank E. Ramirez, Carpenter. The Respondent testified in his own behalf. The Fund did not present any testimony.

### **PROPOSED FINDINGS OF FACT**

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 0021297. (Fund 3.)<sup>2</sup>

<sup>1</sup> On June 2, 2018, the Claimant sent a letter to the OAH concerning a lien on her house. Because the Claimant sent the letter after close of the record on June 1, 2018, I did not consider the information when making this decision.

<sup>2</sup> Citations to exhibits are for the reader's convenience only and do not mean I base the fact solely on the exhibit referenced.

2. On October 27, 2013, the Respondent submitted a proposal to the Claimant for home improvement to her residence in Baltimore City. (CL 2a.) The proposal included the following work:

Roofing:

Main roof, side rear dormer roof, and front porch roof:

1. Remove existing layers of asphalt roofing shingles, felt paper down to wood deck, remove and replace flashing. Install sheathing, a vapor barrier base sheet, metal or equivalent ridge vents to ventilate attic, and metal drip edges at perimeters; and
2. Apply new natural shadow fiberglass shingle roofing system over entire roof including porch.

Both sides of second floor at main roof and short span at right side:

3. Replace gutters and downspout. Run downspout to drain into yard away from house foundation; and
4. Clean out rest of gutter and properly seal. At right side where sump pump discharge hose is located make sure downspout does turn around corner and run downspout to terminate past front porch not to drain along long side of the house make drain at the front of the house. Install gutter guards at gutters at front porch.

Exterior left side first floor dormer:

5. Replace gutters and downspout.

Second floor dormer:

6. Remove dormer, frame opening and install window.

Exterior Right Side:

7. Reconnect drain pipe for sump pump to drain to end of house past front porch.

Exterior front:

8. Remove wooden steps and install new pressure treated wood steps and handrails on each side;
9. Replace front porch;
10. Remove front entrance door and replace with a new steel door equipped with weather-stripping, matching deadbolt and entrance locks, metal threshold and



door sweeps. Repair trim at door unit. Prime and paint door and door frame unit interior and exterior. Caulk under threshold to seal; and

11. Install a new white vinyl and aluminum storm door.

Exterior Rear at Kitchen Entrance:

12. Remove rear kitchen entrance door and replace with a new pre-hung steel door. Repair trim at door unit. Prime and paint door and entire frame unit interior and exterior. Caulk under threshold to seal. Install weather-stripping at transom.

Exterior side window at attic:

13. Replace window, wrap wood trim as necessary, caulk and paint window trim.

Windows:

14. Replace twenty windows; and
15. Repair framing and seal front attic window.

Interior:

First floor bathroom:

16. Remove shower surround install green board and replace with a new ceramic tile tub surround;
17. Remove fixtures as required, remove existing ceramic tile floor and replace with a new ceramic tile floor. Install base trim; and
18. Repair, prime, and paint bathroom and trim with semi-gloss enamel.

Second floor dormer:

19. Frame to install insulation and sheetrock wall and to make to agree with interior décor as close as possible. Install all trim-work in repaired area.

Plumbing:

Exterior front:

20. Excavate front yard to replace twenty-two feet of galvanized water pipe with a copper water supply line to run from Baltimore City connection to house connection. Connect to existing inside water lines and equip system with lever valve shutoff. Install expansion tank, install pressure control and backflow valve. Reinstall removed soil and form into mound that will lower to proper level as original. Install grass seed as necessary to excavated area.

Basement:

21. Repair drain pipes under first floor bathroom. Check and repair supply pipes at bathtub as required; and
22. Install check valve at drain-line from vanity and bathtub to prevent water from backing up.

First floor bathroom:

23. Replace faucets and shower head;
  24. Replace toilet; and
  25. Replace sink with a new vanity with all required plumbing and faucet.
3. The Claimant financed the renovations through a loan from the Department of Housing and Community Development, to be administered by the Baltimore City Department of Housing and Community Development (Baltimore City). (CL 35.)
  4. On July 30, 2014, the Claimant settled on a loan for \$38,560.00 to pay for the rehabilitation work and for emergency roof repair. (CL 2f, 34-35.)
  5. On July 30, 2014, the Claimant and the Respondent entered into a contract which incorporated by reference the proposal dated October 27, 2013. The contract cost was \$34,000.00. The Respondent was required to complete the work within 120 days of the July 30, 2014 contract date. (CL 2a and 2d.)
  6. On August 8, 2014, the Claimant entered into a Baltimore City Emergency Roof Repair Agreement. (CL 34.)
  7. On September 16, 2014, the Claimant and the Respondent entered into a contract for installation of additional roof sheathing for \$1,672.00. The Claimant borrowed funds from Baltimore City for the roof repairs. (CL 2g.)
  8. On October 16, 2014, the Claimant and the Respondent agreed to an additional proposal calling for: upgrade front door style and size to thirty-six inches; modify the door opening to

accommodate the larger door; modify and install thirty-six inch transom window; and upgrade to security storm door. The additional cost was \$945.00. (CL 2b.)

9. Under the Claimant's loan agreement with Baltimore City the money the Claimant borrowed was placed into an escrow account and paid directly to the Respondent. (CL 2d.) The Respondent submitted requests for draws when work was completed, a Baltimore City inspector would inspect, and if the work was approved, the Respondent would be paid.

10. The Respondent was paid the full contract price of \$34,000.00.

11. After the Respondent completed work, the following defects existed:

- water penetrated the window frames, leading to water damage on the first and second floors;
- air passed through the front door and into the house through holes and gaps in the door frame, the door scraped when opening and closing;
- the sump pump drain led to erosion of the area around the tree roots in Claimant's front yard;
- the ground sank where the Respondent installed the water pipe and she lost water pressure;
- one gutter guard fell from the roof;
- the bathtub had not been sealed and the bathroom had not been properly painted; and
- the exterior shingles broke and were uneven, the color and type of shingles installed did not match the shingles already on the house.

12. On or about January 24, 2017, Abbott's Plumbing repaired the main drain to the City sewer system at no cost to the Claimant. (CL 5.) Abbott's Plumbing also fixed the problem the Claimant had with water pressure.

13. On March 31, 2017, Baltimore City, after inspecting the property, agreed to hire a contractor to perform certain repairs set out in a scope-of-work letter. (CL 2z.) Repairs included: replacing the windows; inspecting the plumbing; relocating the sump pump discharge pipe;

putting down seed and straw in the area disturbed by the water pipe; installing weather stripping on the rear door; repairing the front door; replacing siding; repairing water-damaged plaster; caulking around the bathtub and painting the bathroom; reinstalling a section of gutter guard; and removing an exposed wire near the rear door and sealing around the door.

14. On or about November 11, 2017, Arocon Design Build contracted with Baltimore City to make repairs at the Claimant's home. (CL 14.) Arocon completed the following work:

- replaced siding on side of house;
- repaired plaster in second floor bedroom;
- painted the bathroom; and
- replaced gutter guard that blew off of the roof.

15. The work Arocon performed was financed by a grant provided by the Baltimore City and the Claimant was not responsible for paying Arocon for the work.

16. Arocon did not complete all the work. The Claimant did not permit the company to install new windows because Baltimore City would not address or repair rotting wood around the windows.

17. To complete and repair the home improvement performed by the Respondent, \$14,624.00 is required to remove and replace the windows and \$1,400.00 is required to repair and complete the bathroom.

18. The Claimant's actual loss is:

-	Paid to Respondent	\$34,000.00
-	Plus cost to repair windows	14,624.00
-	Plus cost to repair bathroom	<u>1,400.00</u>
-	Total	\$50,024.00
-	Less contract price	<u>\$34,000.00</u>
-	Actual loss	\$16,024.00

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State

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

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a) (2015); *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). 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 (2015). The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

As stated above, the Claimant has the burden of proof in this case. She is angry and distressed by the work the Respondent performed on her home. She borrowed a significant amount of money for renovations to make her home watertight and energy efficient. She contends the Respondent failed to perform the home improvement in a workmanlike manner. For the reasons discussed below, I find the Claimant demonstrated the Respondent performed an unworkmanlike and inadequate home improvement for many of the items listed in the contract. However, but for the cost to replace the windows and repair and complete the bathroom, the Claimant failed to prove the total amount of her actual loss.

In her testimony, the Claimant listed the defects in the Respondent's work and identified some conditions repaired by Arocon and a plumber. First, she stated the windows are not airtight and do not close or lock easily. There is no weather stripping or seal around the back door and

there is an exposed wire at the back door. The front door entry doorframe and trim requires repair, caulking, and paint. The siding does not match the house. However, she stated Arocon performed siding work. The front porch stairs are not sealed or painted. The sump pump drainpipe is in the path of a tree and causes erosion and water to pour onto the sidewalk. The water line caused a sink-hole. Further, there is water damage on second floor, which was partially repaired by Arocon. There is no caulk around the bathroom tub. The Claimant stated Arocon painted the bathroom but with a flat paint, not semi-gloss. A gutter guard blew off and the guard is an inferior quality. The roof shingles are at an angle and there are nail pops in attic. There were issues with the plumbing, but a company, Abbott, fixed the water pressure at no cost.

The Claimant submitted an undated job proposal from Arocon to repair the windows, doors, water damage, sump pump, siding, kitchen, walkway, bathroom, bathtub plumbing, and roof for \$41,450.00. (CL 7.) The Claimant also submitted a proposal from Shaffer Plumbing & Heating for \$675.00 to install a Kohler rite-temp cartridge in the first floor tub; install a new diverter spout; replace the tub stopper assembly; and shorten laundry standpipe to allow machine to be installed nearby. She provided an estimate of \$14,624.00 from Clear View Window & Door Company for installation of windows, \$8,175.00 for installation of a front entry door, and \$3,995.00 for installation of a rear entry door. Finally, the Claimant entered a specification sheet from Gutter Guys for installation of gutters and guards for the front of the house for \$2,680.00 or the entire house for \$4,647.00. (CL 12.)

The Respondent contends he performed all work in accordance with the contract. He testified he was only paid after Baltimore City inspected and approved the work he performed. Additionally, he argues the Claimant has not suffered any loss because the Baltimore City paid him. The Claimant has not paid any money out-of-pocket. Finally, the Respondent notes Baltimore City offered to perform repairs at no cost to the Claimant, but she refused.

Addressing the Respondent's arguments first, the Claimant testified she must repay the loan she received from Baltimore City. She presented the loan offer outlining her legal obligation to repay the money and a Rehabilitation Loan Agreement. (CL 2c and 35.) The Respondent failed to prove the Claimant is not required to repay the loan. The statute provides that the Fund may award money paid "by or on behalf of the claimant to the contractor...." Md. Code Ann., Bus. Reg. § 8-405(e)(5). Baltimore City paid the Respondent on behalf of the Claimant with the money the Claimant borrowed. As a result, the Claimant is entitled under the statute to show she suffered an actual loss as the result of the Respondent's unworkmanlike home improvement.

Second, there is nothing in the statute that bars a claim if, as here, a third party agrees to pay for repairs and the claimant declines. Declining the offer does not release the Respondent from the obligation to pay the Claimant's actual losses incurred due to his unworkmanlike and inadequate home improvement.

Third, with regard to inspections, the Claimant testified Baltimore City never performed a final inspection. She also stated that in the summer of 2015, the problems with the windows increased. The Respondent testified he did not attend the final inspection. He also testified he was paid the full contract price. He entered the inspection record into evidence. (RSP 8.) He asks me to infer from that evidence that his work was workmanlike because he would not have been paid otherwise. Without further evidence, for example, documents from the inspector setting out exactly what he or she inspected, I cannot conclude the home improvement was workmanlike based on inspections and payments alone. Also, considering the Claimant's testimony that window problems increased over time, the quality of the work might not have been apparent to the inspector at the time the work was completed.

Moving to the original contract, the Claimant presented sufficient evidence to establish she suffered an actual loss because the Respondent performed an unworkmanlike, inadequate, or

incomplete home improvement in installing the windows and in the bathroom. I will recommend recovery for those losses. On the other items, however, the Claimant failed to prove the amount of her actual loss. I will discuss each item in turn.

### Roofing

The Claimant argued that the Respondent's roofing work was unworkmanlike because one of the gutter guards fell off and into the yard. She argued further that the fact that the gutter guard blew off demonstrates that the materials used by the Respondent were deficient. She also argued that the roofing shingles were improperly installed at an angle and there are nail pops visible in the attic. She offered photographs of the attic showing a nail pop and a hole. (CL 28.)

The Claimant called Frank Ramirez. Mr. Ramirez is a carpenter who worked on the project for the Respondent. He testified that he did not install the gutter guards; a separate roofing company performed that work. The Respondent testified that the gutter guards were installed properly, and that the particular type of roof guard used on Claimant's property is one that is commonly used by contractors.

The Claimant has not met her burden of demonstrating that the work done on the roof was done in an unworkmanlike manner. The uncontroverted evidence was that a single gutter guard fell off the roof. I am not able to conclude that the Respondent performed the work in an unworkmanlike manner based on that condition alone, nor does this fact demonstrate that the gutter guards used by the Respondent were of an inferior quality. This conclusion is reinforced by the fact that Baltimore City in its scope-of-work letter rejected Claimant's request to install new roofing materials. (CL 2z.)<sup>3</sup>

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<sup>3</sup> Baltimore City agreed to replace the one gutter guard that fell off the roof. The Claimant testified that they have in fact replaced that gutter guard.



Further, one Arocon estimate the Claimant offered into evidence states the front roof needs new flashing and sealing. (CL 6.) A second Arocon estimate states: "Roof install seems to be fine no leaks have been noticed and I believe it is intact." (CL 7.) Based on the conflicting evidence in the record, I cannot find the Respondent performed an unworkmanlike or inadequate home improvement on the roof.

Finally, the photographs of the attic showing a nail pop and a hole fail to prove the holes are due to the roof installation, and if they are, the Claimant failed to present any evidence to establish the cost to repair the condition. (CL 28.) As a result, the Claimant failed to prove an actual loss based on the holes in the attic.

#### Exterior

The Claimant argued that the Respondent oriented the sump pump drainpipe so that water spilled just in front of a tree. As a result, the area eroded and water pooled and created an unsafe condition particularly in winter when water from the drain spilled onto the sidewalk and froze. She submitted photographs showing exactly where the pipe discharges, as well as pooling of water and erosion in that general area. (CL 19.) The Respondent testified that the work he did was in line with what was required by the contract. He stated that he tried to explain to the Claimant that the tree presented an obstacle to extending the sump pump discharge pipe any further past the front porch.

An Arocon job proposal provides for installation of a new sump pump pipe underground to the street to eject onto the sidewalk in accordance with code for a cost of \$980.00. (CL 7.) The Baltimore City scope-of-work outline calls for realigning the pipe to a crushed stone drain field. (CL 2z.) Neither the proposal nor the scope-of-work state these measures are required to repair the Respondent's work. They appear to be an upgrade from the work the Respondent was required to perform under the contract. Because the contract did not require the Respondent to

either bury the sump pump or install a crushed stone drain field, the Claimant has not shown these steps are required to repair his work. Also, neither document establishes the cost to correct the Respondent's work. As noted above, the Arocon proposal includes burying the sump pump. The Claimant did not present evidence of the cost to redirect the sump pump.

The Claimant argued the steps were installed in an unworkmanlike manner and submitted photographs of the steps. (CL 20A.) The steps appear wet in the photographs, and the Claimant testified on cross-examination that the photographs were taken after a rainstorm. She argued that the fact that they were wet hours after a rainstorm demonstrated that the Respondent installed them improperly. She also maintained only one railing was installed and the steps are uneven.

Mr. Ramirez testified that he and the Respondent demolished the prior steps, then measured and installed the new steps. The Respondent testified that the steps were installed properly, and stated that the Claimant's photograph does not accurately depict what the stairs looked like when he finished the work since the photographs were taken after a rainstorm.

I conclude that the Claimant has not met her burden of demonstrating that the porch steps were installed in an unworkmanlike, inadequate, or incomplete manner, because I am not able to conclude from the photographs that the work is deficient. The photographs submitted by Claimant show that the steps and railings are wet, but I have no basis for concluding that this indicates that the work was done in a deficient manner. Although it is clear that the bottom step does not line up exactly with the concrete slab that forms the foundation of the steps, this evidence alone is insufficient for me to conclude that there is any sort of structural deficiency or other indication that the work was done in an unworkmanlike, inadequate, or incomplete manner. Additionally, the contract calls for pressure treated wood. The Claimant failed to prove the Respondent did not use pressure treated wood and there is nothing in the contract related to sealing and painting.

Finally, the photographs the Claimant provided show two railings. (CL 20-A.)

The record includes a proposal calling for upgrades to the front and back doors for an additional cost of \$925.00. (CL 2b.) The Respondent installed the larger doors and trimmed out the doorways to fit the doors as required under the proposal. The Claimant presented evidence to show the Respondent performed that home improvement in an unworkmanlike manner. (CL 21 and 25.) Although the original contract called for replacement doors, the Claimant failed to present sufficient evidence to allow me to apportion the work between the contracts. (CL 2a and 2b.) Also, although the Claimant submitted estimates to replace the doors, she did not present any evidence to establish why new doors are required and why the doors the Respondent installed cannot be rehung. As a result, the Claimant failed to establish an actual loss based on installation of the front and back doors.

A photograph shows the attic window frame was not properly sealed, caulked, or painted. (CL 28.) Mr. Ramirez looked at the photograph and testified there should have been caulking around the window and there was none. The Claimant submitted sufficient evidence to prove the Respondent performed an unworkmanlike or inadequate home improvement on the attic window. Because there is no estimate to address the attic window individually, I will address the actual loss for the attic window with the windows addressed in the next section.

### Windows

The contract required the Respondent to remove and replace a total of twenty windows, wrap the wood window trim in white aluminum coil stock, and caulk around the trim. Mr. Ramirez completed this work on behalf of Respondent. The Claimant testified credibly regarding the problems she experienced with the windows subsequent to the Respondent's installation of the windows, particularly the fact that water has penetrated through the windows. The Claimant's testimony was corroborated by photographs she submitted showing water penetration in the living room, dining room, and throughout the second floor of the house including the

middle bedroom. The photographs clearly show water on the interior of the window trim in each location, as well as water damage to walls and baseboards on the second floor. (CL 24 and 25.)

Mr. Ramirez testified that he was involved in the measuring and installation of the windows, but did not have an explanation for the water penetration. Similarly, the Respondent, who was not involved in the installation of the windows but did inspect the windows following installation, offered little explanation for the fact that water penetration had occurred subsequent to installation, except to conclude, without explaining, that the work was done in compliance with the requirements of the proposal. Because neither Mr. Ramirez nor the Respondent offered a credible rebuttal to the Claimant's testimony and documentary evidence regarding water penetration, I conclude that the Claimant has met her burden of demonstrating that the Respondent installed the windows in an unworkmanlike manner. This conclusion is buttressed by the fact that Baltimore City agreed to remove and replace all windows previously installed by the Respondent. (CL 2z.)

The Claimant submitted a proposal from Arocon to replace the windows. (CL 7.) The estimate includes: removing the windows; removing and replacing any rotten window frame lumber; installing new windows; and trimming, caulking, and painting. (CL 7.) The cost is \$15,995.00 for removal, disposal, installation, and "rough materials." The cost for window wrapping was \$4,000.00.

The Claimant also submitted an email from Clear View Window and Door Company, dated May 23, 2018. The company proposes installing new windows with clad wrapping for \$14,624.00. (CL 12.) Because the Clear View proposal covers removal and installation only with no cost for replacing rotten wood, which was not required under the original contract, I find it is a sufficiently reliable estimate and establishes the cost to replace the windows in the Claimant's residence.

The Claimant testified she did not accept Baltimore City's offer to install new windows because the City refused to address the rotting wood around the windows. The Claimant's decision may be reasonable, but failed to prove replacing any wood was included in her contract with the Respondent and is, therefore, part of her actual loss. Additionally, if the wood is rotting because of the Respondent's inadequate installation of the windows, which the Claimant did not prove, the damage would be a consequential damage; it is not recoverable from the Fund.

Similarly, the Claimant testified and presented photographs depicting water damage to the walls and baseboard which she attributes to the Respondent's inadequate installation of the windows. (CL 27.) Because that damage, if it was caused by the Respondent's failure to correctly install the windows, is a consequential damage, it is not recoverable from the Fund.

Finally, the Claimant stated some new windows had been delivered to her home, but not installed; they are on her porch. At this point, I do not know how many windows are involved and if any of the windows can still be used. The Claimant's testimony on this point is insufficient for me to determine the value of those windows and deduct that expense from the Clear View proposal. I have considered that the Claimant may have contributed to her own loss, but that is not certain and it does not excuse the Respondent's actions. His reasoning appeared to be that if someone else was willing to pay for the repairs required due to his deficient work, then he should not be held responsible for the cost. That is not the case. As of the date of the hearing, the Claimant required new windows because of the Respondent's work and, as stated above, she documented a reasonable cost for window replacement. The Respondent is responsible for that cost.

#### Interior

The contract required the Respondent to remove the existing shower and ceramic tile floor and replace with a new ceramic tile tub surround and new ceramic tile floor. The Claimant submitted photographs in which she has indicated by means of handwritten notes that the

bathroom was not properly grouted or sealed. (CL 23.) She also testified that the Respondent's painting job in the bathroom was inadequate and there were paint drips throughout the room and on the fixtures. She also stated the bathtub was not caulked. Mr. Ramirez could not remember any discussions with the Claimant regarding caulking in the bathroom. I believed the Claimant's testimony and conclude she has met her burden of demonstrating the work done by the Respondent in the bathroom was unworkmanlike, inadequate, or incomplete.

The Baltimore City scope-of-work includes items for securing the bathtub filler with strap and adhesive, caulking around the bathtub, and painting the bathroom. (CL 2z.) The Arocon proposal provides for repairing and painting the first floor bathroom, cleaning paint off the floor and fixtures, and strapping and adhering the tub fixture. (CL 7.) The cost of the work is \$1,400.00. The Claimant testified Arocon painted the room with flat paint, not semi-gloss paint. The other work still needs to be completed.

The Respondent did not present evidence to refute the Claimant's evidence on these items. As a result, I find the Claimant proved the Respondent performed an unworkmanlike home improvement in the bathroom. Because the contract required semi-gloss paint and Arocon used flat paint, painting with semi-gloss is still required. As a result, the cost to repair the Respondent's unworkmanlike home improvement is \$1,400.00.

The Claimant submitted photographs of the siding or shingles into evidence. (CL 30.) Near the window, paper is visible where shingles have fallen off. There is discoloration visible as well; the top half appears to be light blue while the lower half is gray. In other places, shingles appear broken and uneven. The photographs, alone, establish that the work was done in an unworkmanlike and inadequate manner. Further, Mr. Ramirez and the Respondent did not present any testimony or documentary evidence to refute or rebut the Claimant's photographs. However, the Claimant testified Arocon replaced the siding. She also testified she took the

photographs she entered into evidence between 2015 and 2018. I am not certain if the condition depicted in the photographs currently exists. As a result, the Claimant failed to prove the work still needs to be repaired.

Plumbing

The Claimant presented a Work Order from Abbott's Plumbing, dated January 24, 2017, addressing the sewer line in the basement. (CL 5.) The Claimant testified Abbott's Plumbing came out for Baltimore City. She also testified Abbott's Plumbing fixed the water pressure at no cost to her. Based on this evidence, I am unable to determine if the Claimant suffered an actual loss as the result of any work the Respondent performed installing the water supply line.

The Claimant further testified there is a sink hole or trench in her yard where the Respondent installed the water pipe. She presented photographs to support her testimony. (CL 19.) The Baltimore City scope-of-work provides for a contractor to seed, straw, and tack the area disturbed by water main installation and area disturbed by foot traffic, but does not provide a cost for the work. (CL 2z.) Arocon provides a \$4,700.00 estimate to install lumber under the gate, install landscape cloth and gravel on a 4x4 box, and seed and straw outside the chain link fence. (CL 7.) The Claimant did not present evidence to show the work described in the Arocon proposal is required to repair the Respondent's unworkmanlike or inadequate home improvement. The proposal calls for more work than was required under the Claimant's contract with the Respondent. Consequently, the Claimant failed to prove an actual loss for this item.

The Baltimore City scope-of-work provides a contractor would inspect the plumbing system for leaks, adequate water pressure, and draining. (CL 2z.) There is no item for plumbing or other work in the basement in Arocon's estimate. (CL 7.) As addressed above, Abbott's Plumbing, at no cost to the Claimant, performed plumbing work on the water line. In accordance with the Claimant's testimony, Abbott's Plumbing fixed the water pressure. The Claimant failed

to prove any further work is required or that she suffered an actual loss due to the Respondent's plumbing work in the basement.

The Claimant offered an estimate of \$675.00 from Saffer Plumbing & Heating (Saffer) providing for installation of a new Kohler rite-temp cartridge in the first floor bathtub, a new chrome diverter spout, and a new stopper assemble. The cost also includes shortening the basement laundry standpipe. (CL 12.) The estimate does not itemize the cost. The Claimant did not present evidence to establish the Respondent was required to perform all the work noted in the Saffer estimate and, if any work was required, the exact cost to perform or repair the work. The Claimant failed to prove an actual loss based on the plumbing work the Respondent performed in the bathroom.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).<sup>4</sup> In this case, the Respondent performed some work under the contract, and the Claimant has retained and intends to retain other contractors to complete or remedy that work. I will use the following formula to measure 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.

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<sup>4</sup> The first formula relates to instances where a contractor abandons the contract without doing any work. COMAR 09.08.03.03B(3)(a). The second applies to instances when the contract performed work and the claim is not soliciting another contractor complete the work. COMAR 09.08.03.03B(3)(b).



COMAR 09.08.03.03B(3)(c). As stated above, the Claimant demonstrated the cost to repair the windows is \$14,624.00 and the cost to complete the bathroom is \$1,400.00, for a total cost of \$16,024.00. Here, the Claimant's actual loss is \$16,024.00 ( $\$34,000.00 + \$16,024.00 = \$50,024.00 - \$34,000.00 = \$16,024.00$ .)

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$16,024.00 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 that amount from the Fund.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,024.00;

**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 as set by the Maryland Home Improvement Commission;<sup>5</sup> and

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

**Signature on File**

August 22, 2018  
Date Decision Issued

\_\_\_\_\_  
Mary Shock  
Administrative Law Judge

MKS/cmg  
#174439

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

**IN THE MATTER OF THE CLAIM**  
**OF MELANIE SMITH-TAYLOR,**  
**CLAIMANT**  
**AGAINST THE MARYLAND HOME**  
**IMPROVEMENT GUARANTY FUND**  
**FOR THE ALLEGED ACTS OR**  
**OMISSIONS OF JAMES SIMMONS,**  
**T/A JIM'S HOME IMPROVEMENT**  
**INC.,**  
**RESPONDENT**

\* **BEFORE MARY SHOCK,**  
 \* **AN ADMINISTRATIVE LAW JUDGE**  
 \* **OF THE MARYLAND OFFICE**  
 \* **OF ADMINISTRATIVE HEARINGS**  
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 \* **OAH No.: DLR-HIC-02-18-07502**  
 \* **MHIC No.: 17 (90) 231**  
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**APPENDIX: FILE EXHIBIT LIST**

I admitted the following exhibits for the Claimant:

- CL 1 Email from William Banks, Jr., MHIC Investigator, to Claimant, March 6, 2017
- CL 2a Proposal from Respondent, October 27, 2013
- CL 2b Additional Proposal from Respondent, October 16, 2014
- CL 2c Letter from Housing Authority of Baltimore City (Baltimore City) to Claimant, June 6, 2014
- CL 2d Contract between Claimant and Respondent, July 30, 2014
- CL 2e Letter from Bogman, Inc. to Claimant, August 27, 2014
- CL 2f Settlement Statement, July 30, 2014
- CL 2g Contract between Claimant and Respondent, September 16, 2014
- CL 2h Letter from Baltimore City to Claimant, June 16, 2015
- CL 2i Letter from Baltimore City to Claimant, June 25, 2015
- CL 2j Shingle Roof Warranty from Respondent, August 28, 2014

- CL 2k Work Completion Notification from Respondent, October 31, 2014
- CL 2l Email from Steve Bilis, Construction Project Supervisor 1, to Respondent, July 20, 2015, with attached letter from Claimant, July 4, 2015
- CL 2m Letter from Claimant, To Whom it May Concern, Summer 2016
- CL 2n Emails between Steve Bilis and Claimant, August 17 and 18, 2015
- CL 2o Baltimore City Department of Housing and Community Development Permit, August 20, 2014
- CL 2p Permit Details, last update August 20, 2014, and Inspection History, December 10, 2014
- CL 2q Emails between Respondent and Claimant, September 24, 2015 through October 21, 2015
- CL 2r Emails between Claimant and Respondent, September 24 and 25, 2015
- CL 2s Respondent's Postponement Request, May 15, 2018, Claimant's letter in Response to Postponement Request, May 17, 2018, Notice of Hearing, April 2, 2018, Hearing Order, February 16, 2018, letter from Maryland Volunteer Lawyers Service to Claimant, April 9, 2018, OAH Denial of Postponement Request, May 16, 2018
- CL 2t Email from Claimant to MHIC, September 10, 2016 (pg. 1), excluded (pp. 2-3)
- CL 2u Letter from MHIC to Claimant, September 1, 2016, with attached emails
- CL 2v Letter from MHIC to Claimant, March 2, 2017, MHIC Claim Form, April 2017
- CL 2w Letter from MHIC to Claimant, July 7, 2017
- CL 2x Letter from MHIC to Claimant, February 26, 2018
- CL 2y Letter from Claimant, To Whom it May Concern, December 21, 2006, Staples Receipt, December 30, 2016
- CL 2z Letter from Baltimore City to Claimant, February 21, 2017, letter from Claimant to Baltimore City, March 16, 2017, letter from Baltimore City to Claimant, March 31, 2017, letter from Claimant to Baltimore City, April 6, 2017
- CL 3 Letter from Claimant to various recipients, May 16, 2017, Staples Receipt, May 22, 2017
- CL 4 Letter from Better Business Bureau (BBB) to Claimant, September 16, 2016, and attachments

- CL 5 Abbott's Plumbing Work Orders, January 24, 2017, February 13 and 21, 2017
- CL 6 Arocon Design Build (Arocon) Job Proposal, undated, email from Arocon to Claimant, May 4, 2017
- CL 7 Arocon Job Proposals, undated, Claimant's notes regarding Scope of Work, undated
- CL 8 Emails between Arocon and Claimant, November 13, 2017
- CL 9 Emails between Arocon and Claimant, January 19, 2018 to January 24, 2018 and Notes
- CL 10 Excluded
- CL 11 USA Energy Co., Inc., Scope of Work, November 9, 2017
- CL 12 Saffer Plumbing & Heating, Estimate, May 21, 2018, emails between Claimant and Clearview Window & Door Co., May 23, 2018, Gutter Guys, Home Remodeling Specification Sheet, May 25, 2018
- CL 13 Certified Mail Receipt, July 3 and 10, 2017
- CL 14 Emails between Claimant and Baltimore City, April 4 and 13, 2018
- CL 15 DLLR, MHIC Guaranty Fund Workshop Information Sheet, undated
- CL 16 BGE Home Energy Report, January 23, 2017, BGE Bill Summary, May 22, 2018
- CL 17 Emails between Claimant and Baltimore City, July 6 and 17, 2017
- CL 18 Claimant's notes, undated
- CL 19 Sump Pump/Trench photographs, undated
- CL 20a Porch Stairs photographs, undated
- CL 20b Guard/Gutter photographs, undated
- CL 21 Front Door photographs, undated
- CL 22 Living Room photographs, undated
- CL 23 Bathroom photographs, undated
- CL 24 Dining Room photographs, undated
- CL 25 Kitchen photographs, undated

- CL 26 Wall in home photograph, undated
- CL 27 Second Floor photographs, undated
- CL 28 Attic photographs, undated
- CL 29 Siding photographs, undated
- CL 30 Side of house photographs, undated
- CL 31 Screenshot of email from MHIC to Hanna Long, March 7, 2017
- CL 32 Screenshot of letter from Baltimore City to Claimant, July 17, 2017
- CL 33 Arocon photographs, undated
- CL 34 Baltimore City Emergency Roof Repair Agreement, August 8, 2014
- CL 35 Rehabilitation Loan Agreement, July 30, 2014

I admitted the following exhibits for the Respondent:

- RSP 1 Contract Between Claimant and Respondent, July 30, 2014
- RSP 2 Letter from MHIC to Claimant, March 2, 2017
- RSP 3 Request for Subpoenas, undated, check, May 22, 2018
- RSP 4 Sump Pump photograph, September 18, 2015
- RSP 5 Photograph of Claimant's front yard with stairs, September 30, 2015
- RSP 6 Photograph of rear of Claimant's house, September 18, 2015
- RSP 7 Baltimore Housing Permit No. COM2014-17768, August 20, 2014
- RSP 8 Baltimore City, Inspection History Printed December 10, 2014
- RSP 9 Baltimore City, Inspection Notices, October 15 and 16, 2014
- RSP 10 Emails between Baltimore City, Claimant, and Respondent, August 28, 2015
- RSP 11 Respondent's Contractor's Application and Certificate for Payment for Roofing Work, September 4 and November 20, 2014, \$5,120.00 check payable to Respondent, October 2, 2014, \$15,768.00 check payable to Respondent, December 8, 2014, \$4,012.00 check payable to Respondent, December 12, 2014
- RSP 12 Proposal from Respondent, November 6, 2014

RSP 13 Additional Proposal from Respondent, October 16, 2014

I admitted the following exhibits for the Fund:

Fund 1 Notice of Hearing, May 14, 2018

Fund 2 Hearing Order, February 16, 2018

Fund 3 Respondent's Licensing History, May 31, 2018

Fund 4 Letter from MHIC to Respondent, January 29, 2018, Claim Form, May 24, 2017

**PROPOSED ORDER**

***WHEREFORE, this 10<sup>th</sup> day of October, 2018, 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.***

***Bruce Quackenbush***

***Bruce Quackenbush  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**