



STATE OF MARYLAND

DLLR

DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

**IN THE MATTER OF THE CLAIM
OF LLINDA L. JOHNSON
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED ACTS OR OMISSIONS
OF DANIEL PUCKETT
t/a PUCKETTS CUSTOM
CONTRACTORS**

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**MARYLAND HOME
IMPROVEMENT COMMISSION

MHIC CASE NO. 12 (90) 1336**

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FINAL ORDER

WHEREFORE, this 4th day of February, 2015, Panel B of the Maryland

Home Improvement Commission ORDERS that:

1) The Findings of Fact of the Administrative Law Judge are Amended as follows:

A) The Claimant sustained an actual loss of \$4,725.00.

B) Based upon review of the record, the Commission finds that the Claimant has not established that the Respondent is liable for removal and replacement of the existing concrete steps. (The estimate from Stone Scapes Design (Cl. Ex. 7) includes a price of \$4,200,00 for removal and replacement of the concrete steps.) Neither the original contract (Cl. Ex. 1), nor the other evidence presented by the Claimant, establishes that the Respondent is responsible for removal and replacement of the concrete steps.

C) With respect to the cost to repair the retaining wall installed by the Respondent, the Commission finds that the proposal of \$6,580.00 from licensed contractor Gary James, t/a Landscaping By Design, which the Claimant submitted into evidence (Cl. Ex. 7), is the fair and reasonable measure.

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE
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LAWRENCE J. HOGAN JR, GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY

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Linda L. Johnson
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**2) The Conclusions of Law of the Administrative Law Judge are Amended
as follows:**

**B) Pursuant to the formula set forth in COMAR 09.08.03.03B(3)(c),
the correct calculation of the Claimant's actual loss is as follows:**

● Amount paid to Respondent	\$10,000.00
● Reasonable cost to repair	<u>\$ 6,580.00</u>
	\$16,580.00
● Less original contract price	<u>-\$11,855.00</u>
● Actual Loss	\$ 4,725.00

**3) The Recommended Order of the Administrative Law Judge is Amended
as follows:**

**A) The Claimant is awarded \$4,725.00 from the Home Improvement
Guaranty Fund.**

**4) This Final Order shall become effective thirty (30) days from this date. During
the thirty (30) day period, any party may file an appeal of this decision to
Circuit Court.**

Andrew Snyder

**Chairperson - Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION**

IN THE MATTER OF THE CLAIM
OF LINDA L. JOHNSON,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DANIEL PUCKETT,
t/a A PUCKETTS CUSTOM
CONTRACTORS,
RESPONDENT

* BEFORE UNA M. PEREZ,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-13-46699
* MHIC No.: 12 (90) 1336

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 8, 2013, Linda L. Johnson (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$10,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Daniel Puckett, trading as A Puckett Custom Contractors (Respondent).

I held a hearing on May 14, 2014, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013)

and § 8-407 (2010). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear after proper notice.¹

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); COMAR 09.01.03, 09.08.02, and 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 on the Claimant's behalf:

Clmt. Ex. 1 – Proposal, undated

Clmt. Ex. 2 – Copies of four canceled checks payable to or on behalf of the Respondent and signed by the Claimant:

- Check #551, dated March 3, 2012, for \$3,500.00
- Check #554, dated March 22, 2012, for \$3,500.00
- Check #553, dated March 22, 2012, for \$2,000.00
- Check #864, dated May 5, 2012, for \$1,000.00

Clmt. Ex. 3 – Envelope containing twenty-five color photographs,² dated May 11, 2014

Clmt. Ex. 4 – MHIC Complaint Form, dated April 25, 2012, and MHIC Claim Form, dated November 21, 2012

¹ Nevertheless, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A; *see also* COMAR 09.01.02.07, and 09.

² I have numbered these 3A through 3Y, based on the numerical sequence of the JPG files shown on the back of the photographs.

Clmt. Ex. 5 – Letter from the Claimant to the MHIC, dated May 21, 2012

Clmt. Ex. 6 – Order from Steven Smitson, Executive Director, MHIC, to the Respondent, dated May 31, 2012, with the following attachments:

- Letter from MHIC to the Claimant, dated May 30, 2012
- Email from MHIC to the Claimant, dated May 30, 2012
- Letter from Michelle Escobar, Investigator, MHIC, to the Claimant, dated August 9, 2012
- Letter from Michelle Escobar to the Claimant, dated September 27, 2012
- Letter from John Borz, Chairman, MHIC, to the Respondent, dated January 23, 2013

Clmt. Ex. 7 – Estimates from Landscaping & Stonescaping by Design, dated October 10, 2012, and Continental Landscaping, Inc., undated

Clmt. Ex. 8 – Email from the Claimant to the Department, dated July 26, 2012

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 – Letter from Sandra L. Sykes, Docket Specialist, OAH, to the Department, dated March 31, 2014, with the following attachment:

- Certified Mail copy of Notice of Hearing addressed to the Respondent, dated February 27, 2014, and attachments, returned by United States Postal Service with the notations "Return to Sender, Unclaimed, Unable to Forward"

Fund Ex. 2 – Licensing history of the Respondent, dated May 6, 2014

Fund Ex. 3 – Letter from Mr. Borz to the Respondent, dated January 23, 2013, with the following attachment:

- Home Improvement Claim Form, received January 8, 2013

No exhibits were offered on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf and presented the testimony of her son, Robert Johnson, Jr.

Neither the Fund nor the Respondent presented any witnesses.

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 number 01-98696.
2. On or about March 8, 2012, the Claimant and the Respondent entered into a contract to remove an old retaining wall and to replace it with “gravity blocks,” and to “cap” the bottom area (near the dock) with four inches of dyed concrete. Clmt. Ex. 1. The project was expected to take about three weeks to complete.
3. The original agreed-upon contract price was \$10,400.00, payable in four installments. The parties later agreed to some additional items, adding \$1,455.00 to the price, for a total of \$11,855.00. Clmt. Ex. 1.
4. The Claimant paid the Respondent a total of \$10,000.00 by four personal checks. All four checks were endorsed and deposited by or on behalf of the Respondent. Clmt. Ex. 2.³
5. The Respondent began work on March 12, 2012. He did not return to complete the job until May 5, 2012; his last day on the job was May 7, 2012.
6. The Respondent’s work on the project was unworkmanlike in many respects, including but not limited to:
 - The concrete steps leading to the dyed concrete dock are of uneven height (Clmt. Ex. 3G, 3H);
 - The paving stones in the walkway are not buried or tamped down into the ground but simply sit on top of it (Clmt. Ex. 3A, 3B, 3W, 3Y);
 - The top layer of stone on the retaining wall is not glued down or sealed (Clmt. Ex. 3F, 3X);

³ Two of the checks are payable to and endorsed by “Kimberly Lane.” Because they match the amounts of two payments called for by the contract (Clmt. Ex. 1), I infer that Ms. Lane is an agent or employee of the Respondent.

- The Respondent did not put gravel behind the stones comprising the new wall;
- The stones framing the concrete steps are not flush with the new wall, which is separating from the frame of the steps (Clmt. Ex. 3E, 3F);
- There is a gap between the steps on one side and the wall, and the Respondent filled in the gap with blue or gray cement, which is plainly visible (Clmt. Ex. 3H, 3P);
- The Respondent filled in other gaps in the wall with the same type of cement (Clmt. Ex. 3G, 3I, 3N);
- There has been noticeable settling or erosion at the junction between the new wall and the ground of the lawn (Clmt. 3C, 3D, 3Q, 3V, 3X);
- There are visible gaps between the new concrete at the top of the steps and the new blocks (Clmt. Ex. 3S, 3T, 3U); and
- The overall appearance of the new retaining wall and steps is lopsided, crooked, and unfinished.

7. The Claimant contacted the Respondent several times by telephone, but he did not return to the jobsite until May 2013, after an investigator from MHIC asked him to appear there for the purpose of mediation. The Respondent never performed any corrective work or refunded any of the Claimant's money.

8. The Claimant obtained an estimate of \$6,080.00 from Landscaping and Stonescaping by Design to replace the retaining wall, using the materials left by the Respondent. Clmt. Ex. 7.

9. The Claimant obtained an estimate of \$14,600.00 from Stone Scapes Design (Continental Landscaping, Inc.) to remove and re-install the retaining wall and to remove and re-install the concrete steps, including necessary drains and drain tiles. Clmt. Ex. 7.

10. The Claimant's actual loss is \$12,745.00.

DISCUSSION

The Respondent's Failure to Appear

Neither the Respondent nor anyone authorized to represent him appeared. On February 27, 2014, the OAH sent a Notice of Hearing (Notice) by certified and regular first class mail to the Respondent's last business address of record, 431 Maple Lane NW, Glen Burnie, MD 21060. GF Ex. 1; *see also* GF Ex.2. The Notice advised the Respondent of the time, place and date of the hearing. The Notice further specified that failure to appear at the hearing could result in an adverse decision against the non-appearing party. The United States Postal Service (USPS) returned the certified mail envelope with the notations "Return to Sender, Unclaimed, Unable to Forward." GF Ex. 1. The USPS did not return the regular first-class mail copy of the Notice.

The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice shall be sent by certified mail to "the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (Supp. 2013). The procedures for notice applicable to disciplinary proceedings also apply to claims against the Fund. *Id.* § 8-407(a) (2010). Indeed, a claim against the Fund can be joined with a disciplinary proceeding based on the same facts. *Id.* § 8-408(a) (2010).

The OAH sent the Notice by certified mail to the Respondent's business address of record, as required by section 8-312(d) of the Business Regulation Article. According to MHIC records, this is also his home address. GF Ex. 2. Although the certified mail copy of the Notice was returned, the regular first-class mail notice was not. Upon this showing by the Fund, I determined that service was proper and that the Respondent had notice of the hearing.⁴

⁴ Under Maryland law, there is a presumption of delivery and receipt of mail that arises upon a showing that material is properly mailed. *Brenner v. Nationwide Mut. Ins. Co.*, 93 F.3d 1228, 1234 (4th Cir. 1996); *Border v. Grooms*, 267 Md. 100, 104 (1972). As to the first-class mail copy of the Notice, the presumption has not been rebutted here.

Consequently, I directed that the hearing proceed in the Respondent's absence under section 8-312(h) of the Business Regulation Article, section 10-209 of the State Government Article, and COMAR 09.01.02.07.

Applicable Law

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) (Supp. 2013); *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 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. His license is due to expire in November 2014.

I am persuaded that the Respondent performed unworkmanlike and inadequate home improvements. The Claimant did not produce any expert reports or call any expert witnesses. Nevertheless, I agree with the Fund that the photographs submitted by the Claimant, and her credible testimony, are sufficient to establish the inadequate nature of the Respondent's work, and that no expert evidence is required. The photographs show clearly the gaps in the wall, the bluish-colored caulking in some of the gaps, the unevenness of the concrete steps, and the generally sloppy and amateurish quality of the entire job.

The Respondent did not respond in writing to MHIC's letter of January 23, 2013, forwarding the Claim to him. Nor did he appear at the hearing to refute the Claimant's assertions

regarding the defects in the work. Moreover, the Respondent made no effort to rectify the situation. He came back once, in May 2013, at the instance of MHIC, and claimed he would send his crew out. He never did. I thus find that the Claimant is eligible for compensation from the Fund.

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 punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3).

The Claimant has not yet had another contractor perform work on the project. Therefore, the following formula offers an appropriate measurement to determine the amount of actual loss in this case. COMAR 09.08.03.03B(3)(c) provides, in pertinent part:

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.

In this case, the Fund noted the rather large discrepancy between the two estimates obtained by the Claimant. *See* Clmt. Ex. 7. On cross-examination, however, the Claimant explained that the \$6,080.00 estimate contemplated reusing the stone materials from the wall built by the Respondent, and it did not include the concrete steps. The \$14,600.00 estimate covered repair and replacement of both the retaining wall and the steps. The Fund recommended

that the calculation use the higher estimate, because that estimate is consistent with the scope of the original contract. I agree.

Applying the formula set forth in COMAR 09.08.03.03B(3)(c), then, the Fund argued that the Claimant's actual loss should be calculated as follows:

Amount paid to the Respondent	\$10,000.00
Stone Scapes Estimate of Repair Costs	<u>+\$14,600.00</u>
Total	\$24,600.00
Minus original contract price	<u>-\$11,855.00</u>
Actual loss	\$12,745.00

Pursuant to the Business Regulation Article, 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) (Supp. 2013). The Claimant paid the Respondent \$10,000.00, which is less than her actual loss of \$12,745.00 computed using the formula in COMAR 09.08.03.03B(3)(c). Accordingly, the Fund recommended, and I find the Claimant entitled to, reimbursement in the amount of \$10,000.00 from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2013).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; 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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

August 11, 2014
Date Decision Issued

Una M. Perez
Administrative Law Judge

UMP

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150030

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LINDA L. JOHNSON,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF DANIEL PUCKETT,</p> <p>t/a PUCKETT CUSTOM</p> <p>CONTRACTORS,</p> <p>RESPONDENT</p>	<p>* BEFORE UNA M. PEREZ,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-13-46699</p> <p>* MHIC No.: 12 (90) 1336</p>
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FILE EXHIBIT LIST

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Fund Ex. 3 – Letter from Mr. Borz to the Respondent, dated January 23, 2013, with the following attachment:

- Home Improvement Claim Form, received January 8, 2013

No exhibits were offered on behalf of the Respondent.

PROPOSED ORDER

WHEREFORE, this 26th of September 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.

Jeffrey Ross

Jeffrey Ross
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION