

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF CRAIG BOYER,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF SCOTT WILHELM,</b></p> <p><b>T/A S &amp; L GROUP, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE LORRAINE E. FRASER,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-15-20065</b></p> <p><b>* MHIC No.: 12 (75) 1406</b></p>
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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 June 11, 2013, Craig Boyer (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$37,671.86 in alleged actual losses suffered as a result of a home improvement contract with Scott Wilhelm, t/a S & L Group, Inc. (Respondent).

I held a hearing on October 8, 2015 at the Largo Government Center in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented himself.

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<sup>1</sup> Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

Kevin Yungmann, Esquire, represented the Respondent, who was present. 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 procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (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 any acts or omissions committed by the Respondent?
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:

- Cl. Ex. 1 Revised Proposal, 5/19/11
- Cl. Ex. 2 Cancelled check paid to the Respondent for \$31,234.00, 5/27/11; cancelled checks paid to J.P. Manning Construction or James Manning: 3/16/12 for \$14,000.00; 2/24/12 for \$17,000.00; 2/8/12 for \$5,879.21; 1/4/12 for \$16,000.00; 12/7/11 for \$12,000.00; 11/18/11 for \$31,000.00; 11/2/11 for \$31,000.00; 10/5/11 for \$15,000.00
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- Cl. Ex. 14 Contract with Terrapin Construction, 5/21/12; Certificate of Liability Insurance

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The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, 7/28/15; Hearing Order, 6/3/15
- Fund Ex. 2 Licensing History, 10/7/15
- Fund Ex. 3 Letter to the Respondent from Joseph Tunney, MHIC, 6/18/15; Home Improvement Claim Form, received 6/11/13

### Testimony

The Claimant's wife Carol testified.

The Respondent did not present any witness testimony.

The Fund did not present any witness 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 01 102328.
2. On May 27, 2011, the Claimant and the Respondent entered into a contract to build a one story 20' x 43' addition and to convert the garage into living space (the project). The contract stated that work would be completed in sixteen to nineteen weeks.
3. The original agreed-upon contract price was \$156,168.00.
4. Prior to signing the contract, the Respondent included James Manning, t/a JP Manning Construction, Inc., in discussions with the Claimant regarding the project.
5. Work on the property began in October 2011 after the building permits were issued by Prince George's County.
6. All work on the property was performed or supervised by James Manning or Peter Manning on behalf of the Respondent.
7. Work progressed during October through December 2011. Beginning in January 2012, work was sporadic.
8. On February 6, 2012, the parties agreed to amend the contract to include additional items, which added \$19,376.82 to the original price, for a total contract price of \$175,544.82.
9. March 5, 2012, was the last day JP Manning employees performed work on the Claimant's project.
10. Sometime during the beginning of April 2012, subcontractors installed drywall on the project.

11. The Claimant paid the Respondent the following amounts on the following dates: May 27, 2011 \$31,234.00; October 5, 2011 \$15,000.00; November 2, 2011 \$31,000.00; November 18, 2011 \$31,000.00; December 7, 2011 \$12,000.00; January 4, 2012 \$16,000.00; February 8, 2012 \$5,879.21; February 24, 2012 \$17,000.00; and March 16, 2012 \$14,000.00; for a total of \$173,113.21.

12. On May 5, 2012, James Manning presented the Claimant with an invoice for \$6,867.45 and asked for an immediate payment of \$4,000.00. The invoice included items the Claimant had already paid for. Also on that day, the Claimant showed Mr. Manning a leak in the roof that Mr. Manning had installed that was causing damage to the drywall and asked that it be repaired.

13. On May 15, 2012, the Claimant notified the Respondent that he was terminating the contract, citing the leaking roof, Mr. Manning's lack of work on the project since March 5, 2012, Mr. Manning's request for payment for items already paid for, and price discrepancies between amounts Mr. Manning cited on the May 5, 2012 invoice and earlier price quotes.

14. The Claimant hired Terrapin Construction (Terrapin) to repair and complete the work described in the Respondent's contract. Specifically, Terrapin repaired the bay windows Mr. Manning installed, which were sagging due to insufficient bracing; primed and painted the entire addition, hung three interior doors, trimmed all windows and doors, caulked the trim, repaired all nail holes, repaired the dry wall around the entry door, fixed the plywood on the floors in three spots, installed the plumbing rough in, powered the electric, built stairs, and finished the copper skirt on the exterior of the bay windows.

15. The Claimant paid Jeff Vant of Terrapin the following amounts: July 3, 2012 \$5,525.00; July 16, 2012 \$4,165.00; July 25, 2012 \$2,235.32; August 9, 2012 \$3,152.25; August 24, 2012 \$3,540.00; and September 6, 2012 \$1,640.00, for a total of \$20,257.57.

16. The Claimant paid R.A. Ohler Plumbing & Heating, Inc., \$3,430.00 to complete the plumbing work described in the Respondent's contract.

17. The Claimant paid for the following materials that were included in the Respondent's contract: Lamar & Wallace \$775.63 for wood trim and molding; Sherwin-Williams \$1,581.97 for paint; Allied Building Products Corp., \$222.27 for door jams; Home Depot \$21.33 for PVC cement, flange extension rings, and tile drains; Faucet Direct \$2,683.49 for plumbing fixtures; D.C Floors, Inc., \$2,025.00 for flooring; and Philip Long \$5,600.00 to install flooring.<sup>2</sup>

18. The Claimant paid at least \$36,597.26 to repair and complete the work under the Respondent's contract.

19. The Claimant's actual loss is \$34,165.65.

### DISCUSSION

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." Bus. Reg. § 8-405(a). *See also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor").

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<sup>2</sup> The Claimant also paid Lumber Liquidators \$10,444.83 for wood floor planks but his wife testified that they purchased a higher grade than in the Respondent's contract. A specific price for the flooring is not listed in the Respondent's contract so I have no way to compare the two and as a result have not included this amount in my calculations.

Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant and he performed unworkmanlike, inadequate or incomplete home improvements. During preliminary discussions prior to the contract being signed, the Respondent introduced James Manning to the Claimant and included him in the discussions. Once the Claimant signed the contract, either James Manning or Peter Manning was at the Claimant’s home performing and/or supervising the work. As work progressed, James Manning requested payments from the Claimant, which he paid. After March 5, 2012, neither the Mannings nor the Respondent performed any work on the Claimant’s project. On May 5, 2012, James Manning presented an invoice to the Claimant and asked for an immediate payment of \$4,000.00. The invoice included items that the Claimant had already paid for and there were price discrepancies between amounts Mr. Manning listed on the May 5, 2012 invoice and earlier price quotes. Further, the Claimant realized he had already made payments totaling almost the full amount due under the contract yet the work was incomplete. In addition, the roof installed by Mr. Manning was leaking and the bay windows he installed were sagging. On May 15, 2012, the Claimant notified the Respondent that he was terminating the contract, citing the leaking roof, Mr. Manning’s lack of work on the project since March 5, 2012, Mr. Manning’s request for payment for items already paid for, and price discrepancies between amounts Mr. Manning cited on the May 5, 2012 invoice and earlier price quotes.

The Claimant hired other home improvement contractors to repair and complete the work under the Respondent’s contract and paid for materials directly. The Claimant paid a total of \$36,597.26 to repair and complete the work under the Respondent’s contract.

The Claimant wife's testimony regarding the events involving this contract was credible, supported by receipts and other documentation, and uncontroverted. The Respondent was present at the hearing but chose not to testify and he did not present any other witnesses or exhibits. As a result, the Respondent did not present any evidence that contradicted the Claimant's evidence. Thus, I find that the Claimant is eligible for compensation from the Fund.

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 following formula offers an appropriate measurement to determine the amount of actual loss in this case.

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

COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is calculated as follows:

Amount paid to the Respondent	\$173,113.21
Cost to repair the work	<u>+36,597.26</u>
	209,710.47
Amended contract price	<u>-175,544.82</u>
Actual loss	\$34,165.65

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. Bus. Reg. § 8-405 (e)(1), (5).



The Claimant paid \$173,113.21 to the Respondent, which is more than her actual loss of \$34,165.65, computed using the formula in COMAR 09.08.03.03(c). The Claimant's actual loss exceeds the \$20,000.00 maximum recovery from the Fund. Accordingly, the Claimant is entitled to the maximum reimbursement from the Fund: \$20,000.00. Bus. Reg. § 8-405 (e)(1).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

**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 at least ten percent (10%) as set by the Maryland Home Improvement Commission,<sup>3</sup> and

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

**Signature on File**

December 22, 2015  
Date Decision Issued

  
Lorraine E. Fraser  
Administrative Law Judge

LEF/kc  
# 159860

<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF CRAIG BOYER,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF SCOTT WILHELM,</b></p> <p><b>T/A S &amp; L GROUP, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE LORRAINE E. FRASER,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-15-20065</b></p> <p><b>* MHIC No.: 12 (75) 1406</b></p>
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**FILE EXHIBIT LIST**

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**PROPOSED ORDER**

***WHEREFORE, this 2nd day of February, 2016, 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**