

**IN THE MATTER OF THE CLAIM
OF ANTHONY AND ROCHELLE
HARRIS,**

CLAIMANTS

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ROBERT SPERO
T/A MARYLAND POOLS, INC.,**

RESPONDENT

*** BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS**

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* OAH No.: DLR-HIC-02-16-36257
* MHIC No.: 15 (05) 1280

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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 September 14, 2016, Anthony and Rochelle Harris (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in alleged actual losses suffered as a result of a home improvement contract with Maryland Pools, Inc., (Respondent).¹

¹ The holder of the Respondent's MHIC license is Robert Spero. Therefore, the case name reflects Robert Spero, t/a Maryland Pools, Inc., as the Respondent.

I held a hearing on April 12, 2017, at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimants represented themselves. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting twenty minutes for the Respondent or someone to represent him to appear, I proceeded with the hearing without the Respondent. Code of Maryland Regulations (COMAR) 28.02.01.23A.²

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. 2016); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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 Claimants' behalf:

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|--------|---|
| Cl. #1 | Contract, October 7, 2014 |
| Cl. #2 | Checks #1921, #1032, #1005, #1944, #1945 |
| Cl. #3 | Email to T. Harris from Julie Chayt, April 15, 2015 |
| Cl. #4 | Email to T. Harris from Julie Chayt, April 1, 2015 |
| Cl. #5 | Color photographs of pool construction site, May 2015 |

² Notice of the hearing was mailed to the Respondent at the address of record by certified mail on January 14, 2017. The Respondent signed the receipt indicating he received the Notice. COMAR 09.08.03.03A(2).

Cl. #6 Arcadia Pools Invoice/Summary with Checks # 1963, #1958, #1967,
 #1999, #2001

I admitted the following exhibits on behalf of the Fund:

Fund #1 Notice of Hearing, January 5, 2017

Fund #2 Hearing Order, October 18, 2016

Fund #3 Licensing Information—Respondent

Fund #4 State Department of Assessments and Taxation, Real Property Records

Fund #5 MHIC Claim Form, received September 14, 2016

Fund #6 Letter from MHIC to Respondent, September 15, 2016

Testimony

The Claimants testified on their own behalf.

No one appeared to testify on behalf of the Respondent.

The Fund presented no witnesses.

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 0093100. Although the Respondent's MHIC license was subject to an emergency suspension on June 9, 2015, it did not expire until October 29, 2015.

2. On October 7, 2014, the Claimants and the Respondent entered into a contract (Contract) to construct a swimming pool at the Claimants' new residence site in Silver Spring, Maryland. The shape of the pool was a geometric rectangle, 20 feet in width and 50 feet in

length, with water depth ranging from three to eight feet, six inches. The Contract also included the following equipment:

- Six-foot love seat
- Underwater LED lights
- Automatic pool cleaner
- Pool heater
- Automatic pool cover
- 40 square foot tanning shelf
- Mineral springs salt systems
- Tanning shelf; and
- Inside bench.

3. The agreed-upon contract price for the pool construction was \$81,300.00.

4. The Claimants paid the Respondent a \$2,000.00 deposit upon signing the Contract. The Contract specified that 40% of the pool price was due at the time of excavation; 55% of the pool price was due upon completion of the pneumatically applied concrete pool shell; and 5% of the pool price balance was due prior to the application of the interior finish.

5. The Contract did not contain a specific start or completion date. However, boilerplate on the Contract contained the following: “[the Respondent] shall apply for a building permit within 14 working days from the date of this contract. If contract requires financing, the building permit will be applied for within 7 working days after notification of approval of financing. Construction shall be scheduled approximately 7 working days after permit has been obtained and shall be substantially completed approximately 35 working days after completion

of excavation, weather permitting.” The Respondent told the Claimant that the work on the pool would begin around October 2014 and was to be completed by October 2015.

6. The Claimants paid the Respondent \$76,720.00.
7. By November 2014, the pool foundation, form, concrete and support structure was laid.
8. On April 1, 2015, the Respondent’s representative contacted the Claimants via email and informed them that a date would be provided by which the pool tile would be installed.
9. No more work was performed on the pool by the Respondent after November 2014.
10. After May 2015, the Claimants did not hear from the Respondent for several weeks. The Claimants made numerous attempts to call the Respondent, but there was no response.
11. In early June 2015, the Claimants were finally able to reach the Respondent, but were told that one of the owners died and that the company would be unable to finish the pool. Shortly thereafter, the Respondent essentially went out of business.
12. At this time, the pool consisted of a concrete shell with plumbing ports and pipes.
13. In order to complete the pool, the Claimants contacted several pool contractors. The Claimants ultimately chose Arcadia Pools.
14. Arcadia Pools is licensed in Maryland.

15. The Claimants contracted with Arcadia Pools to complete the pool for a total price of \$63,690.00.³ Arcadia Pools agreed to perform all of the work not completed by the Respondent, with no upgrades or additional work.

16. The pool was satisfactorily completed by Arcadia Pools by May 1, 2016.

DISCUSSION

In this case, the Claimants have the burden of proving the validity of their claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).⁴ “[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);⁵ *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). For the following reasons, I find that the Claimants have proven eligibility for compensation.

³ The Claimants have approximately \$15,000.00 left to pay to Arcadia Pools, which they will pay over time.

⁴ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁵ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants.

Based in the unrefuted evidence, the Respondent performed an incomplete home improvement. Md. Code Ann., Bus. Reg. § 8-101 (Supp. 2016). The Respondent essentially left the Claimants with a large, concrete-coated hole in the ground with pipes and ports when he abandoned the job. Shortly after abandoning the job, the Respondent went out of business; this occurred after the Claimants paid him almost the entirety of the Contract.

Fortunately for the Claimants, they were able to contract with Arcadia Pools to complete the job to their satisfaction. Arcadia Pools performed the remainder of the Respondent's contract, and was promptly paid by the Claimants. I thus find that the Claimants are 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 Claimants are 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).

Pursuant to the applicable law, 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 Claimants to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015).

In this matter, the Claimants paid the Respondent directly, and also incurred costs paid over and above the Contract to complete the pool. These costs are reflected in the following calculation.

Amount paid to Respondent	\$76,720.00
Amount required to complete Contract	+ \$63,690.00
TOTAL	\$140,410.00
Contract Price	- \$81,300.00
Actual Loss	\$59,110.00

The actual loss computed above is \$59,110.00, which exceeds \$20,000.00 by \$39,110.00. Accordingly, the Claimants are entitled to reimbursement from the Fund of only a portion of their actual loss, or \$20,000.00. *Id.* § 8-405(e)(1).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have 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); 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 Claimants \$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;⁶ and

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

Signature on File

June 29, 2017
Date Decision Issued

Jerome Woods, II
Administrative Law Judge

JW/cj
#168711

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 21st day of August, 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