

**The Maryland Home
Improvement Commission**

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**BEFORE THE
MARYLAND HOME IMPROVEMENT
COMMISSION**

**v. James Han
t/a JC Han Contractor LLC
(Contractor)
and the Claim of
Marie Volcy
(Claimant)**

MHIC No.: 15 (90) 610

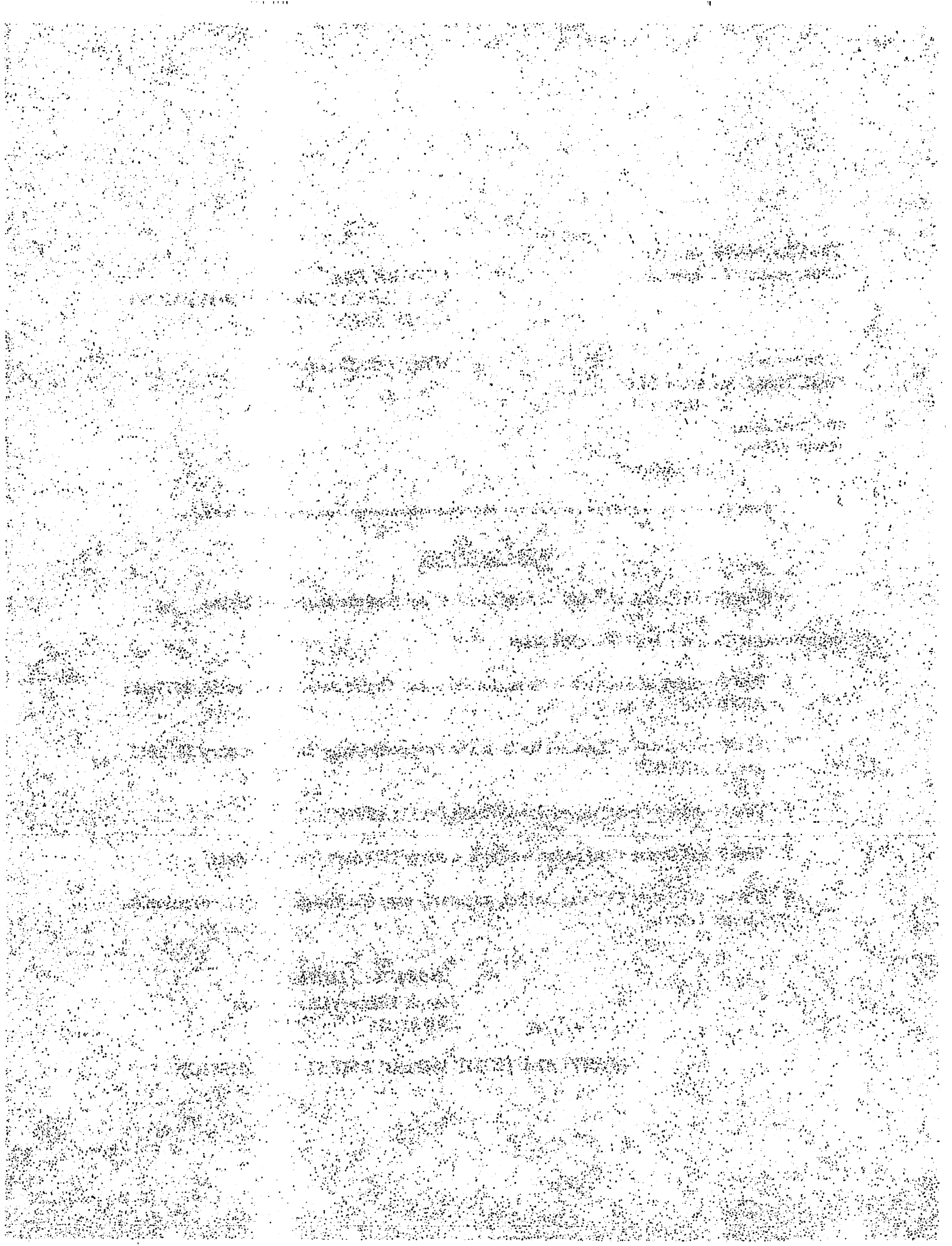
FINAL ORDER

**WHEREFORE, this 15th day of May 2017, Panel B of the Maryland Home
Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated January 30, 2017 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated January 30, 2017 are AFFIRMED.**
- 3. The Proposed Order dated January 30, 2017 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date.**
- 5. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

Joseph Tunney
**Joseph Tunney, Chairperson
PANEL B**

MARYLAND HOME IMPROVEMENT COMMISSION



IN THE MATTER OF THE CLAIM
OF MARIE VOLCY,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JAMES HAN,
T/A JC HAN CONTRACTOR, LLC,
RESPONDENT

* BEFORE DANIEL ANDREWS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-19393
* MHIC No.: 15 (90) 610

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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 April 29, 2015, Marie Volcy (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with James Han, trading as JC Han Contractor, LLC (Respondent). I held a hearing on September 29, 2016, at the Largo Government Center located in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented herself. The Respondent represented himself. Hope

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

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 and Supp. 2016), 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 Pepco letter to Claimant, August 3, 2012
- Cl. Ex. 2 Series of Estimates, Invoices, or Proposals by the Respondent², including:
- Insulation, May 20, 2009
 - Finish for final inspection of foundation walls, remove and install patio trim and door, and gutter and downspouts, May 8, 2009
 - Concrete slab driveway, October 12, 2008
 - Invoice, May 20, 2009
 - Invoice, May 27, 2009
 - Finish for final inspection foundation walls, remove and install patio trim and door, and gutter and downspouts, May 14, 2009

² These estimates, invoices, or proposals were issued by the Respondent using the business name "All Walls, Inc. trading as All Walls Construction."

Cl. Ex. 3 Series of Estimates or Invoices by the Respondent³, including:

- Outside Siding, August 27, 2012
- Siding Wall, October 20, 2012
- Install Underlayment, August 15, 2012
- Paint siding wall, remove green stain, November 12, 2012
- Basement under living and dining room, October 20, 2012

Cl. Ex. 4 Series of Estimates or Invoices by the Respondent, including:

- Flat Roof, November 12, 2012
- Exteriors, July 18, 2012
- Roof, July 18, 2012

Cl. Ex. 5 Series of Estimates or Invoices by the Respondent, including:

- Parking lot, April 5, 2013
- Parking lot, April 2013
- Invoice Driveway, April 25, 2013
- Credit (Build Deck), October 20, 2012

Cl. Ex. 6 Series of Claimant's personal checks paid to the Respondent, including:

- Check No. 129, March 5, 2013, in the amount of \$350.00
- Check No. 123, April 17, 2013, in the amount of \$1,050.00
- Check No. 130, April 25, 2013, in the amount of \$1,520.00
- Check No. 141, September 24, 2013, in the amount of \$1,000.00

Cl. Ex. 7 Photographs of the living room walls or ceiling with water damage and an exterior photograph of the Claimant's home, and a letter from the Claimant to the Respondent, April 24, 2014

Cl. Ex. 8 Records from other home improvement contractors including:

- Letter from G&D Construction, LLC (G&D), November 30, 2015
- Invoice from G&D, August 27, 2014
- Formal Contract between G&D and Claimant, August 18, 2014,
- G&D Formal Change Order, August 26, 2014
- Letter from K.C. Roofing and Guttering (K.C.), December 8, 2015
- Contract between the Claimant and K.C., March 31, 2015
- Proposal by 3M Roofing Co., January 18, 2012

³ These and all further estimates, invoices, or proposals were issued by the Respondent using the business name "JC Han Contractor, LLC."

Cl. Ex. 9 Respondent's Proposal, August 1, 2012

The Respondent offered no exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 Notice of Hearing, July 20, 2016 and Hearing Order, June 17, 2016

Fund Ex. 2 MHIC Licensing History for Respondent

Fund Ex. 3 MHIC letter to Respondent, May 14, 2015 and Claimant's Home Improvement Claim Form, April 29, 2015

Testimony

The Claimant testified on her own behalf.

The Respondent testified on 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 Claimant's claim against the Fund, the Respondent was a home improvement contractor licensed by the MHIC under license number 01-50740.
2. On June 29, 2012, the Maryland area was impacted by a destructive derecho storm. During the storm, the Claimant's home was damaged by a tree which fell against her house.
3. On or about August 1, 2012, the Claimant submitted a proposal, prepared by the Respondent, for repair work to be performed by the Respondent, to her homeowner's insurance company, State Farm. The proposal provided for work to be performed on several areas of the Claimant's home, including the roof, at the total cost of \$30,302.17.
4. State Farm approved the proposed work and cost of repair.
5. When the storm damaged occurred, the Claimant's home did not have a driveway.
6. During the process of making repairs, the Claimant and Respondent reached an

agreement to modify the original proposed work. The purpose of the agreement was to require the Respondent to manage the actual work performed so the Claimant could create an available credit from the insurance proceeds which could be applied to other home improvements she wanted performed, including installation of new driveway.

7. The Respondent performed all the repair work required and was eventually paid the entire amount of \$30,302.17.

8. On or about November 12, 2012, the Respondent repaired the Claimant's roof at the cost of \$494.00, instead of the originally proposed cost of \$5,586.00. The Respondent's repair work included cutting out and reinstalling two-inch insulation and refinishing with a rolled roof.

9. The Claimant and the Respondent agreed to use the difference between the original proposed cost for roof repair and the actual cost of repair as a credit towards other home improvements.

10. The Respondent also repaired the Claimant's outside deck. The total proposed cost was \$7,300.00. The actual cost to perform the work was \$5,260.00. The difference of \$2,040.00 was a credit, which the Claimant and Respondent agreed would be applied toward the construction of a new driveway for the Claimant's home.⁴ Based on an oral agreement between the Claimant and Respondent, the full credit to be applied toward the driveway construction was \$2,100.00.

11. On or About April 2013, the Respondent submitted a proposal to the Claimant to install a driveway at her home. The driveway proposal included a cost of \$3,500.00 to

⁴ The Claimant testified that the Respondent agreed to provide her a credit in the amount of \$2,040.00. The Claimant also testified that that Respondent orally agreed to round the credit allowance up to \$2,100.00. Finally, the Claimant testified that she and the Respondent agreed that the credit was going to be applied toward the cost of installing a driveway at her home. The Respondent agreed with the Claimant's testimony.

remove earth and an existing retaining wall and prepare the ground for a concrete slab. The proposal also provided a cost of \$2,100.00 to install a four-inch driveway concrete slab with wire meshing. The total cost of proposed work was \$5,600.00.

12. The Respondent began to install the driveway by excavating ground where the driveway was to be installed, installing pre-construction forms to shape the driveway, and installing a gravel subbase.

13. From March 5, 2013 through September 24, 2013, towards the cost of driveway construction, the Claimant paid the Respondent several checks in the amount of \$350.00 (deposit), \$1,050.00 (first payment), and \$1,520.00 (second payment), for a total amount of \$2,920.00.

14. After applying the agreed upon credit of \$2,100.00, the combined total compensation received by the Respondent to install the driveway was \$5,020.00.

15. Sometime after the driveway construction began, work was ordered to stop by a county code inspection officer, because necessary permits to install the driveway were not obtained.

16. By September 2013, the necessary permits to install the driveway were obtained.

17. On or about September 24, 2013, the Claimant and Respondent agreed to a \$2,500.00 increase in the cost to install the driveway. On September 24, 2014, the Claimant paid the Respondent \$1,000.00.

18. As of September 24, 2013, the Claimant and Respondent agreed to install a driveway at her home for a total cost of \$8,100.00. Also, by this same date, the Claimant had paid the Respondent a total of \$3,920.00. After applying the \$2,100.00 of credit, the Respondent had received a total of \$6,020.00 for work performed on the driveway.

19. However, since September 2013, despite the Claimant's repeated calls to the Respondent to get the driveway completed, the Respondent never returned to complete the driveway installation.

20. Additionally, since the Respondent repaired the Claimant's flat roof area, she continued to experience water seeping into her home. The flat roof area is above the living room area and the water seepage was causing water damage to her living room ceiling and walls.

21. On August 18, 2014, the Claimant hired G&D, another MHIC licensed contractor, to complete the driveway. The total cost to repair work performed by the Respondent and to complete the driveway was \$3,244.00. While G&D was working on the driveway, county inspectors required the installation of an additional gravel subbase and wire meshing on the portion of the driveway apron which met the county roadway. As a result there was an increase in the cost of construction of \$523.00, which increased the total contract price to \$3,767.00.

22. The Respondent improperly excavated and installed pre-construction form bracing which failed to meet county construction code. The existing pre-construction forms were crooked and required to be re-aligned to achieve a proper driveway edge. G&D removed the existing forms and installed new forms around the perimeter of the driveway to prepare the site for additional excavation and installation of driveway materials.

23. The Respondent also installed a gravel base and driveway apron which was too shallow to meet county code requirements. As a result, G&D removed the gravel and excavated more dirt to create more depth and reinstalled a gravel base to meet county code standards.

24. G&D also installed a wire mesh reinforcement, which the Respondent did not install as required by the original contract and county code.

25. The Respondent failed to correctly cut the driveway apron to permit vehicle entry onto the driveway. As a result, G&D removed and replaced an additional twenty feet of curb and gutter to properly install the apron to meet county code.

26. By the end of August 2014, G&D had completed installation of the concrete slab driveway, which passed a full inspection by county code inspectors.

27. The Claimant paid G&D the full contract price of \$3,767.00.

28. On March 31, 2015, the Claimant hired K.C. to seal the water leaks caused by the work performed by the Respondent on the Claimant's flat roof area. The total contract price for repair was \$600.00.

29. To repair the water leaks, K.C. was required to install a rubber membrane on all identified leak areas on the flat roof area. Under the area of the flat roof, K.C. removed an existing door frame and siding to install flashing behind the door frame and siding to eliminate water seepage into the Claimant's living room area.

DISCUSSION

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). *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. The Claimant has the burden of proving both that the contractor's performance was unworkmanlike, inadequate, or incomplete, as well as the amount of her actual loss. COMAR 09.08.03.03.A(3). For the reasons set forth below, I conclude that the Claimant

established an actual loss as a result of an inadequate or incomplete home improvement performed by the Respondent.

The Claimant testified that her home sustained damage to her roof as a result of a tree being blown over by a large derecho storm that affected Maryland in 2012. She explained that the tree damaged her home in several areas, including an area referred to as a flat roof. As discussed in my proposed findings of fact, the Claimant submitted a proposal, created by the Respondent, to her homeowner's insurance carrier, State Farm, and obtained \$30,302.17 for repair work to her home. The Respondent performed all the work and was paid the \$30,302.17.

During the repair work, the Claimant and Respondent made adjustments to the actual work performed to create a credit of available funds to complete other work not contained in the original proposal submitted to State Farm, including a new driveway. Of particular relevance is the roof repair. The original roof repair work proposed by the Respondent was \$5,586.00. However, the Claimant only required the Respondent to repair a portion of her roof, referred to as the flat roof. At a cost of \$494.00, the Respondent repaired the flat roof by cutting out and reinstalling insulation and refinishing with a rolled roof. However, after the work on the flat roof was completed, the Claimant experienced water seeping into her living room area causing water damage to her living room walls. The Claimant demonstrated the water damage through a series of photographs which depicted water stains to several areas of the living room.

The Respondent also repaired the Claimant's outdoor deck. The Claimant does not complain about the work performed by the Respondent. However, the actual work proposed was at a cost of \$7,300.00 and the actual cost to perform the work was \$5,260.00. Upon agreement by the parties, a total credit of \$2,100.00 was to be used toward the construction of a new driveway at the Claimant's home.

The Respondent proposed to install the Claimant's driveway at a total cost of \$5,600.00. The proposed cost was later increased by \$2,500.00, for a total cost of \$8,100.00. In March 2013, the Respondent began construction on the driveway by performing ground excavation, installing pre-construction forms to shape the driveway, installing a gravel subbase and cutting away a street curb to create the driveway apron. The driveway construction was eventually stopped by a county code inspector in September 2013. At the time, the Claimant had paid the Respondent a total of \$3,920.00. After applying the \$2,100.00 of credit, the Respondent had received a total of \$6,020.00 for work performed on the driveway. Even though county permits were eventually obtained, despite the Claimant's request to have the Respondent return and complete the driveway construction, the Respondent never returned to complete the work.

In August 2014, the Claimant contracted with G&D, another MHIC licensed contractor to repair any work performed by the Respondent and to finish the driveway, at a total cost of \$3,767.00. In order to properly install the driveway, G&D had to repair the work performed by the Respondent because the work performed was inadequate to meet county code requirements, including the removing existing pre-construction forms which were installed improperly to insure correct driveway edges, removing a gravel subbase which was too shallow to meet county code requirements, excavating more earth to deepen the gravel subbase, and installing a new gravel base to proper code depth. G&D also had to install a wire mesh over the gravel subbase, which the Respondent failed to do under his contract and which was required by county code. Additionally, G&D had to expand the existing driveway apron which the Respondent created by cutting away a street curb and expanding the driveway apron by several feet to meet county code requirement. Finally, G&D completed the driveway by installing the cement driveway and obtaining final county code inspection approval.

The Respondent admitted that the work he performed on the driveway was not to county code requirements. He explained, however, it was because the Claimant wanted work performed within her available budget, which did not permit him to properly install the driveway. The Respondent also admitted that he did not return to complete the work because the Claimant did not have the money available so he could complete the work. As to the issue with the Claimant's leaking roof, the Respondent testified the leaking was not due to the repair work he performed on the flat roof but with other issues the Claimant had with her roof and adjoining wall under the flat roof.

Even though the Respondent may have been unable to complete the driveway because of a lack of funds from the Claimant, the critical issue is that the he work performed and paid for was performed inadequately. The fact that county code inspectors stopped work on the driveway and G&D had to repair the work performed by the Respondent in order to obtain an approved final inspection of the driveway demonstrates that the Respondent performed an inadequate and incomplete home improvement. The Respondent also admits that he performed the driveway installation in a manner which was inadequate to meet county code requirements and also admitted that he never completed the driveway. For these reasons, I am persuaded that the Respondent performed an inadequate and incomplete home improvement.

The Respondent's position about the flat roof repair is not corroborated by any other evidence. For this reason, I have no way to determine his credibility as to the cause of the water leakage. Additionally, his credibility is suspect since he admittedly is willing to perform a home improvement which would not meet county code requirements.

The Claimant was able to produce photographs showing the water damage to her living room. Additionally, she contracted with another MHIC licensed contractor, K.C., to repair the

leaking flat roof. K.C. submitted a letter explaining that it was hired to repair water damage caused by another contractor's repair work on the Claimant's flat roof perimeter over the living room. At a cost of \$600.00, to repair the leaking area, K.C. installed a rubber membrane on all identified leak areas and installed flashing over a door frame and siding. Since the flat roof work performed by the Respondent resulted in a water leakage into the Claimant's living room, which was remedied by the work performed by K.C., I must conclude that the home improvement work performed by the Respondent on the Claimant's flat roof was inadequate. I also make this finding because there is no other credible evidence to persuade me otherwise.

Through counsel, the Fund had an opportunity to cross examine both the Claimant and Respondent, including issues related to the manner in which the parties massaged the insurance proceeds for repair work to the Claimant's home. In the end, any payments received by the Respondent from the Claimant, whether out of pocket from the Claimant or from State Farm, were received by the Respondent for home improvement work he performed. Based upon the evidence presented, during closing argument, the Fund's attorney did not contest that the Claimant established an actual loss as a result of the Respondent's inadequate or incomplete home improvement work. As discussed, I am in agreement with the Fund's assessment of the Claimant's claim against the Fund and determine the Claimant is eligible for compensation from the Fund.

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, and none are sought in this case. 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:

(c) 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).

Applying the above formula, I determine the Claimant's actual loss as follows:

Amounts paid to Respondent:	Flat Roof	\$ 494.00
	Driveway	\$6,020.00
Plus amounts paid to K.C.:	Flat Roof	\$ 600.00
Plus amounts paid to G&D:	Driveway	\$3,767.00
Minus original contract price	Flat Roof	\$ 494.00
	Driveway	<u>\$8,100.00</u>
	Actual Loss	\$2,287.00

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss \$2,287.00 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.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,287.00; 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;⁵ and

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

Signature on File

December 23, 2016
Date Decision Issued

Daniel Andrews
Administrative Law Judge

DA/da
#164600

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

PROPOSED ORDER

WHEREFORE, this 30th day of January, 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.

Sachchida Gupta

***Sachchida Gupta
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION