

**IN THE MATTER OF THE CLAIM
OF BURGE, LLC,¹
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF LYNN GUIFFRE, T/A
CREATIVE SURROUNDINGS, LLC,
RESPONDENT**

*** BEFORE TARA K. LEHNER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-24475
* MHIC No.: 15 (75) 701**

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PROPOSED DECISION²

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On October 1, 2015, Gregory W. and Arthur Thomas Burge filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for

¹ The Claim was filed in the name of Gregory W. Burge and Arthur Thomas Burge; however, as will be discussed further below, the Claim is more appropriately brought in the name of Burge, LLC, and it is recommended that the Fund grant a requested amendment of the name of the Claimant.

² Code of Maryland Regulation 09.08.02.01B provides that “[a]ll contested case hearings delegated to the Office of Administrative Hearings shall be governed by COMAR 09.01.03.” COMAR 09.01.03.08 states:

A. Upon completion of the hearing, the ALJ shall submit a proposed decision to the administrative unit.

...

C. The proposed decision shall comply with the requirements of the Administrative Procedure Act and COMAR 28.02.01.22, and shall include:

- (1) Written findings of fact;
- (2) Proposed conclusions of law; and
- (3) A recommended order.

....

reimbursement of \$8,798.00 in alleged actual losses suffered by Burge, LLC (hereinafter sometimes referred to as the Claimant) as a result of a home improvement contract with Lynn Guiffre, trading as Creative Surroundings, LLC (Respondent).

I held a hearing on February 8, 2017, at the Office of Administrative Hearings (OAH), 10400 Connecticut Avenue, Suite 208, Kensington, Maryland 20895 (Kensington Office). Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).³ Gregory W. Burge, as the designee in the Articles of Cancellation responsible for winding down the affairs of Burge, LLC, represented the Claimant. The Respondent did not appear for the hearing. Sarah Keogh, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Fund did not send a party representative.

At the conclusion of the hearing, I left the record open until March 1, 2017 for the Claimant to submit documents regarding Burge, LLC, and for the Claimant and the Fund to submit legal memoranda regarding the effect of the property being owned by a limited liability company. On February 22, 2017, Gregory W. Burge submitted documents related to the formation and cancellation of Burge, LLC, and I marked and accepted these documents into evidence as Claimant's exhibits 12 to 15 as described in the exhibit list below. On March 1, 2017, the Fund submitted a memorandum expressing its position on issues raised at the hearing regarding Burge, LLC.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01B, and 28.02.01.

³ All citations to the Business Regulation article are to the 2015 volume.

ISSUES

1. Who is the proper Claimant and may the Claim be amended to name a new Claimant?
2. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions of the Respondent, and if so, what amount may the Claimant receive from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Notice of Hearing, October 13, 2016
- GF Ex. 2 - Undeliverable Certified Mail to Respondent, returned to OAH on November 14, 2016
- GF Ex. 3 - State Department of Assessments and Taxation (SDAT) Real Property Search for Respondent, printed December 12, 2016
- GF Ex. 4 - Transmittal from MHIC to OAH, undated, with MHIC Hearing Order, August 2, 2016
- GF Ex. 5 - MHIC Licensing Information for the Respondent and its salesman, Bryan Guiffre, February 1, 2017
- GF Ex. 6 - Letter from the MHIC to the Respondent, October 21, 2016, with Claimant's Claim Form, received by MHIC October 1, 2015 attached

I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. 1 - Proposal and Contract, March 15, 2014
- Cl. Ex. 2 - Change Order, April 15, 2014
- Cl. Ex. 3 - Notice of Cancellation, April 16, 2014
- Cl. Ex. 4 - Text messages from Respondent to Claimant, April 16 and 29, 2014
- Cl. Ex. 5 - Checks from Claimant to Respondent, March 15 (two) and April 16, 2014
- Cl. Ex. 6 - Letter to the Claimant from Great Scapes by ESI, Inc. (Great Scapes), July 17, 2015
- Cl. Ex. 7 - MHIC Order, December 22, 2014
- Cl. Ex. 8 - Letter from Respondent to MHIC, illegible date
- Cl. Ex. 9 - Engineering plans, April 24, 2014
- Cl. Ex. 10 - Two contracts with Great Scapes, July 30, 2014
- Cl. Ex. 11 - Claimant's notes - NOT ADMITTED
- Cl. Ex. 12 - Burge, LLC Operating Agreement, October 1, 2013
- Cl. Ex. 13 - Burge, LLC Membership Roster, undated
- Cl. Ex. 14 - Burge, LLC Corporate Charter Approval Sheet, June 19, 2013, with Articles of Organization, June 19, 2013 attached.

Cl. Ex. 15- Burge, LLC Articles of Cancellation, with SDAT's confirmation of acceptance, October 14, 2015, attached

No exhibits were offered by the Respondent.

Testimony

Gregory W. Burge and Arthur Thomas Burge testified on behalf of the Claimant.

The Respondent was not present to testify or present witnesses.

The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. In 2013, Burge, LLC was formed. Gregory W. Burge (Greg) and Arthur Thomas Burge (Tom) were the only members of Burge, LLC. Burge, LLC purchased 10845 Childs Street, Silver Spring, Maryland (Subject Property) to be a rental property and neither Greg, nor Tom, resided there.

2. At all times relevant to the subject matter of this hearing, the Respondent, who traded as Creative Surroundings, LLC, was licensed as a home improvement contractor under MHIC license numbers 01-103025 and 05-129022. Bryan Guiffre was licensed as a salesperson for Creative Surroundings under MHIC license number 03-103687.

3. The Respondent's address associated with her MHIC licenses is 3606 Woodridge Avenue, Silver Spring Maryland 20902. SDAT Real Property Search records reflect that this address is also the Respondent's principal residence.

4. On or about March 15, 2014, Burge, LLC and the Respondent entered into a contract for the removal of an existing, and the construction of a new, retaining wall at the Subject Property (Contract). The Contract price was \$17,820.00.

5. On April 16, 2014, the parties executed a change order that provided for additional work to be completed, including the installation of additional footers and an increase in the height of the retaining wall. This change order increased the Contract price by \$18,200.00, for a total Contract price of \$36,020.00.

6. The Claimant paid the Respondent \$8,798.00 as follows:

- \$5,881.00 on March 15, 2014 (Check # 1003)
- \$1,250.00 on March 15, 2014 (Check # 1004)
- \$1,667.00 on April 16, 2014 (Check # 1122)

7. On April 16, 2014, the Claimant cancelled the change order.

8. The Contract provided that changes to the Contract terms are only permitted by a written addendum signed by both the Claimant and the Respondent.

9. The engineering plans provided to the Claimant by the Respondent were not created by the engineer who allegedly stamped the plans.

10. The Respondent did not perform any work at the Subject Property and the Claimant did not receive any materials or useable engineering plans from the Respondent.

11. On October 14, 2015, Burge, LLC filed Articles of Cancellation and designated Greg as the individual to wind up the LLC's affairs.

12. On October 13, 2016, the OAH mailed a Notice of Hearing (Notice) by United States Postal Service (USPS) Certified Mail Return Receipt and by First Class Mail to the Respondent at 3606 Woodridge Avenue, Silver Spring, Maryland 20902. This Notice advised the Respondent that a hearing was scheduled for February 8, 2017, at 10:00 a.m., at the OAH Kensington Office. The Certified Mail Return Receipt Notice was returned to the OAH by the USPS as "unclaimed." The First Class Mail Notice was not returned to the OAH by the USPS.

13. No party made a request to postpone the February 8, 2017 hearing.

14. Neither Greg nor Tom is: a spouse or other immediate relative of the Respondent; an employee, officer, or partner of the Respondent; or an immediate relative of an employee, officer, or partner of the Respondent. The Respondent is not a member or employee of Burge, LLC.

15. The Contract does not contain an arbitration clause.

16. Neither Burge, LLC, Greg, nor Tom has taken any action to recover monies for the Respondent's Contract work, other than the instant Claim.

17. Burge, LLC does not own any residential properties in Maryland aside from the Subject Property.

DISCUSSION

The Respondent's failure to appear

As discussed in the Findings of Fact above, the OAH mailed the Notice regarding the date, time and location of this hearing to the Respondent to her MHIC address of record via both First Class and Certified Mail. The address for the Respondent was also confirmed through a SDAT Real Property Search.

The First Class Mail Notice was not returned to the OAH by the USPS. The Certified Mail Notice was returned to OAH as "unclaimed."

On February 8, 2017, at 10:00 a.m., I convened a hearing in this case at the OAH Kensington Office. By 10:20 a.m., neither the Respondent, nor anyone claiming to represent the Respondent, appeared for the hearing. The OAH did not receive any request for postponement of the hearing.

The Respondent was properly notified of the date, time and location of this hearing. The Notice was mailed more than three months before the scheduled hearing by both First Class and Certified Mail to the address the Respondent provided to the MHIC for both her individual and business license and that is listed in SDAT records as the Respondent's primary residence. Md. Code Ann., Bus. Reg. § 8-312(d); *see also* Md. Code Ann., Bus. Reg. § 8-407(a) (the hearing notice shall be sent at least ten days before the hearing by certified mail to the business address of the licensee on record with the MHIC). Despite proper notice being sent, the Respondent failed to appear for the hearing. As a result, I proceeded with the hearing in the Respondent's absence.

Who is the appropriate Claimant?

This Claim was originally filed on October 1, 2015, in the names of Greg and Tom, individually. However, at the hearing, the evidence demonstrated that the Contract with the Respondent and the checks written to pay the Respondent were written in the name of an entity known as Burge, LLC. Greg testified that Burge, LLC was the owner of the Subject Property at the time the parties entered into the Contract and that this was the only property owned by this LLC. He also represented that the Subject Property has since been sold and that Articles of Cancellation were recorded, terminating Burge, LLC.

The Fund offered that it was possible that the Claim was improperly filed on behalf of Greg and Tom individually and rather should have been filed in the name of Burge, LLC, since Burge, LLC was the owner of the Subject Property. *See* Md. Code Ann., Bus. Reg. § 8-405(a) (an "owner" may recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor). At the hearing, Greg made a request that the Claim be amended to name Burge, LLC as the Claimant.

In order to permit the Fund to have sufficient information to address the request to amend the name of the Claimant, I directed Greg to submit the legal documents related to the creation and termination of Burge, LLC to both me and Ms. Keogh on or before February 22, 2017. The Fund agreed that these documents could be marked as exhibits and admitted into the record. I then gave Ms. Keogh until March 1, 2017 to file a memorandum explaining the Fund's position in light of this new information.

The Operating Agreement, Membership Roster, Articles of Organization, and Articles of Cancellation for Burge, LLC, were submitted into the record by Greg. These records reflect that Burge, LLC was created in 2013, and that Greg and Tom were the only members. They also reflected that on October 14, 2015, two weeks after this Claim was filed, SDAT accepted the Articles of Cancellation of Burge, LLC, which terminated the LLC, and that Greg was designated to wind up the LLC's affairs. In its responding memorandum, the Fund stated that it had no objection to the Claim being amended to be in the name of Burge, LLC.

Section 4A-908(b) of the Maryland Limited Liability Company Act (2014) states that when a limited liability company is canceled, it "continues to exist for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets, and doing all other acts required to liquidate and wind up its business and affairs." Md. Code Ann., Corps. & Assoc. § 4A-908(b) (2014). Additionally, COMAR 09.08.03.02C states as follows:

C. Amending of Claims. Once a verified claim has been filed with the Commission, the claimant may not amend the claim unless the claimant can establish to the satisfaction of the Commission that either the:

- (1) Claimant did not know and could not have reasonably ascertained the facts on which the proposed amendment is based at the time the claim was filed; or
- (2) Claimant's proposed amendment would not prejudice the contractor whose conduct gave rise to the claim.

Based on these provisions of law, I find that it is appropriate and correct to amend the Claim to be in the name of Burge, LLC, as Burge, LLC was the owner of the Subject Property at the time it entered into the Contract with the Respondent, at the time it paid the Respondent, and at the time the Claim was filed, and based on section 4A-908(b) of the Corporations and Associations Article, it remains an appropriate legal entity to enforce this Claim, even despite its subsequent termination.⁴ The Respondent is not prejudiced by this amendment because the Contract reflects that the Respondent contracted with Burge, LLC, and not Greg and/or Tom as individuals, and the checks paid to the Respondent were written on the LLC account.

Additionally, I conclude that Greg was the appropriate representative of Burge, LLC at the hearing, as Greg was designated by the Articles of Cancellation to be the individual authorized to wind up the affairs of Burge, LLC and is authorized to bind Burge, LLC and to act on its behalf. Md. Code Ann., Corps. & Assoc. § 4A-905 (2014).⁵

⁴ This case may be distinguished from *Price v. Upper Chesapeake Health Ventures*, 192 Md. App. 695 (2010). In *Price*, the Court of Special Appeals held that a limited liability company that was forfeited in accordance with section 4A-911 for failing to meet specific tax requirements still existed as legal entity, but that it was not permitted to initiate or prosecute lawsuits. *Price*, 192 Md. App. at 709. The Court reviewed the legislative history for the relevant statutes (sections 4A-911 and 4A-920) and stated that the legislature's intent in stripping a forfeited limited liability company's right to do business in Maryland and the right to the use of the company's name in any action at law or in equity was meant to be a consequence and/or penalty for the company's failure to comply with the statutory requirements that it pay its taxes, pay its unemployment contributions and file its personal property returns with the State. *Id.* at 705-06. The Court determined that a forfeited limited liability company could not file or maintain a lawsuit because a forfeited limited liability company cannot satisfy Maryland Rule 2-201, requiring that every court action be prosecuted in the name of the real party in interest. *Id.* 707-08.

In the present case, Burge, LLC was not forfeited; it was terminated in accordance with its Articles of Cancellation. Thus, Burge, LLC continues to exist as a legal entity and sections 4A-911 and 4A-920 are not relevant to Burge, LLC.

⁵ Section 4A-905 states:

Following dissolution, a member of a limited liability company can bind the limited liability company:

- (1) By any act appropriate for winding up the affairs of the limited liability company or completing transactions unfinished at the time of dissolution, unless the member purporting to act on behalf of the limited liability company does not have the authority to do so and the person with whom the member is dealing has actual knowledge or actual notice of the absence of authority; and
- (2) In any transaction which would have been binding on the limited liability company had it not been dissolved; provided, that the person with whom the member is dealing does not have actual knowledge or actual notice of the dissolution.

Excluded claimants

Section 8-405 of the Business Regulation Article of the Maryland Annotated Code states, in pertinent part, as follows:

§ 8-405. Claims against Fund

(a) In general. -- Subject to this subtitle, an owner may recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor or a violation of § 8-607(4) of this title as found by the Commission or a court of competent jurisdiction.

....

(f) Excluded claimants. –

(1) A claim against the Fund based on the act or omission of a particular contractor may not be made by:

- (i) a spouse or other immediate relative of the contractor;
- (ii) an employee, officer, or partner of the contractor; or
- (iii) an immediate relative of an employee, officer, or partner of the contractor.

(2) ***An owner may make a claim against the Fund only if the owner:***

- (i) resides in the home as to which the claim is made; or***
- (ii) does not own more than three residences or dwelling places.***

....

(Emphasis added.)

At the hearing, Greg and Tom disclosed that in addition to owning the Subject Property through the LLC, Greg individually owned two other properties in Maryland and Tom individually owned one other property in Maryland. It is undisputed that Burge, LLC owned only the Subject Property, and that the Subject Property was a rental property and was not the residence of either Greg or Tom.

At the hearing, the Fund raised the question as to whether Greg and Tom's collective ownership of more than three residential properties in Maryland, both individually and through the LLC, would bar the Claimant's recovery in this case under section 8-405(f)(2)(ii). In light of the new information provided during the hearing and Greg's agreement to submit the formation and termination documents for Burge, LLC into the record, I provided the Fund until March 1, 2017 to file a memorandum explaining the Fund's position on this issue.

In its March 1, 2017 memorandum, the Fund concluded that the ownership of residences in Maryland by Greg and Tom individually was not relevant to a determination of whether the Claim was barred by section 8-405(f)(2)(ii). The Fund pointed to section 8-405(f)(2) of the Business Regulations Article which states that an *owner* may not own more than three residences. The Fund stated that its position was that the LLC was the owner in this case, and not Greg and Tom as individuals, and as such and in accordance with the Maryland Limited Liability Company Act (Title 4A of the Corporations and Associations Article), the only properties relevant under section 8-405(f)(2)(ii) are the properties owned by Burge, LLC.

The Maryland Limited Liability Company Act provides that a LLC may own property and that the members of an LLC are not usually personally liable for the obligations of the limited liability company. *See* Md. Code Ann. Corps. & Assoc. § 4A-203(6) (2014) (an LLC may own an interest in real or personal property, wherever located) and Md. Code Ann., § 4A-301 (2014) (except as otherwise provided by this title, no member shall be personally liable, whether arising in contract, tort or otherwise, solely by reason of being a member of the limited liability company). *See also* Md. Code Ann., Corps. & Assoc. § 4A-302 (2014) (except in limited instances not applicable to this case, a member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company).

It is clear that the Maryland Limited Liability Company Act generally provides that an LLC is a separate and distinct legal entity from the members therein, and therefore, I find the Fund's interpretation that only the residences owned by the LLC are relevant to a determination of whether a claim may be excluded under section 8-405(f)(2) of the Business Regulations Article to be reasonable and appropriate. In the present case, the evidence is that Burge, LLC

owned only the Subject Property. Thus, the exclusion provided under section 8-405(f)(2) is not applicable to this case.

Merits of the Claim

A claimant bears the burden of proof, by a preponderance of the evidence, that it is entitled to an award from the Fund. Md. Code Ann., Bus. Reg. § 8-407(e); COMAR 09.08.03.03A(3); Md. Code Ann., State Gov't § 10-217 (2014). A claimant 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) (“The Fund may only compensate claimants for 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.

In this case, the relationship between the Claimant and Respondent began when Greg and Tom, on behalf of Burge, LLC, solicited contractors to repair a collapsing retaining wall at the Subject Property. The home was rented to an individual who ran an in-home daycare and Greg and Tom were worried that the collapsing wall could result in an injury to one of the children. They spent months trying to locate a contractor willing to perform the repair quickly and when they met with Brian Guiffre, the salesman for the Respondent, Mr. Guiffre represented that his company could perform the work immediately.

The Contract was entered into on March 15, 2014, in the amount of \$17,820.00, plus up to \$2,500.00 additional for engineering plans, and that day the Claimant paid the Respondent \$1,250.00 to develop the engineering plans and another \$5,881.00 for the first payment toward the construction. (Cl. Exs. 1 and 5.) The Contract states the exact work that was to be completed by the Respondent, in great and specific detail, including the size of the footers and the height of

the wall. (Cl. Ex. 1.) The Contract further provided that changes to the Contract terms are only permitted by written addenda signed by both the Claimant and the Respondent. (*Id.*) Finally, the Contract states that if additional work is required to meet code, the Respondent “shall not be obligated to continue the work if an addendum is not executed.” (*Id.*)

A few weeks later, Mr. Guiffre contacted Greg and Tom and asked them to meet with him to discuss a proposed change order. At a meeting with Tom on April 16, 2014, Mr. Guiffre represented that the engineer developed the plans and that a lot more work needed to be completed than he had originally anticipated in order for the retaining wall to meet code. Specifically, he represented that the engineer stated that the wall needed additional footers and needed to be taller. He offered a change order that would raise the Contract price by \$18,200.00 to a total of \$36,020.00. Tom and Mr. Guiffre then signed the change order that included a term that the first draw for this change order would be paid “once engineer stamped plans are given to the homeowner.” Tom, however, did pay the Respondent an additional \$1,667.00 to cover additional expenses the Respondent allegedly paid to the engineer.

Later that day, Tom executed a Notice of Cancellation and delivered it to the Respondent. This document reflects that Tom intended to cancel the change order and not the original Contract, and that he did so because the change order lacked specific details. Tom testified that he felt unsure about agreeing to pay \$18,200.00 more than the original Contract when he didn’t have engineering plans to support the increased scope of work. Text messages from Mr. Guiffre demonstrate that Mr. Guiffre understood that Tom was not willing to make any additional payments toward the Contract and to re-execute the change order until Tom and Greg had an opportunity to review the engineer’s plans.

On April 29, 2014, Mr. Guiffre texted Tom and asked to meet so he could share the engineer's plans with Tom and Greg and so they could execute a revised change order. The parties met on April 30, 2014. Mr. Guiffre gave Tom and Greg the engineering plans, and both Tom and Greg testified that they felt the plans looked unprofessional and that they were not even sure they were created by a licensed engineer. Tom and Greg refused to sign another change order and refused to pay the Respondent any additional money.

The Respondent then requested another meeting with Greg and Tom, and on May 21, 2014, they again met with Mr. Guiffre. Mr. Guiffre insisted that Tom and Greg agree to pay the Respondent almost \$40,000.00 to complete the Contract work with the additions regarding the footers and wall height; Greg and Tom refused, stating that they were not sure this additional work was really necessary. Greg and Tom made it clear to Mr. Guiffre that they did not feel the engineering plans were accurate and wanted the original scope of work completed for the original Contract price. Mr. Guiffre then stormed out of the meeting and stated that he was going to bring all of the materials he bought for the project thus far and leave them at the Subject Property. Mr. Guiffre never dropped off the materials and neither Greg, nor Tom, heard from the Respondent again.

Greg and Tom testified that no work had been performed at the Subject Property by the Respondent, and they offered a letter from a representative of Great Scapes, a licensed contractor, in which the representative confirmed that he did not observe any demolition or signs of anyone beginning the repair of the retaining wall. Greg also testified the engineering plans Greg and Tom received from the Respondent were not useful to Great Scapes, the contractor who ultimately built the retaining wall, because the Respondent's plans were not appropriate for the project. Additionally, Greg testified that he called the engineer listed on the Respondent's plans and that the engineer told him that he knew Mr. Guiffre, but he was not aware of any plans

that were created for the Claimant's project and that he did not stamp or initial any plans for this project. Greg further stated that he and Tom demanded that the Respondent return the \$8,798.00 they had paid, but that the Respondent refused. Greg and Tom then filed a complaint with the MHIC and eventually filed this Claim.

Based on the evidence presented, I find that the parties entered into the Contract with the Respondent, and paid the Respondent \$8,798.00, but that the Respondent never performed any work under the Contract and did not provide the Claimant with any materials or engineering plans that were of any value to the Claimant. The evidence also demonstrates that the engineering plans provided by the Respondent were not created by the engineer reflected on the plans, and thus, I conclude that the Respondent did not have a basis to be released from the terms of the Contract, as the Respondent never demonstrated to the Claimant that additional work was necessary and required to meet code. The Respondent's failure to attend the hearing and present evidence, despite having received proper notice of this hearing, renders the Claimant's evidence unconverted.

As discussed above, a claimant may recover compensation from the Fund for an "actual loss" it suffers and an "actual loss" includes an "incomplete home improvement." Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a). Based upon the evidence in the record, I find that the Claimant contracted with the Respondent for the construction of a retaining wall, that the Claimant paid the Respondent \$8,798.00, and that the Respondent refused to complete the work as contracted for, and did not provide the Claimant with a basis to cancel the Contract. Also, there is no evidence that the Respondent provided any materials or plans that had any value to the Claimant. Accordingly, I conclude that the Claimant did suffer an actual loss due to the Respondent's abandonment of the Contract.

Proposed Award

The Claimant makes a demand for the \$8,798.00 that it paid the Respondent under the original Contract. The Fund agrees that if I determined that the Respondent abandoned the Contract, that an award in this case was appropriate and recommended that I consider the formula contained within COMAR 09.08.03.03B(3)(a) when computing the award.

COMAR 09.08.03.03B(3)(a) states that when a contractor abandons the contract without doing any work, “the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.”

It is undisputed that the Claimant paid the Respondent \$8,798.00 by way of three checks for the Contract work, and that they received no value from the Respondent for these payments. Additionally, none of the money demanded is for consequential or punitive damages suffered by the Claimant, related to any personal injury to any individual, or for attorney's fees, court costs, or interest. *See* Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). Also, the \$8,798.00 is less than the \$20,000.00 maximum recovery allowed from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1). Thus, the Claimant’s recovery is appropriately \$8,798.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$8,798.00 as a result of the Respondent’s acts and omissions and is entitled to an award from the Maryland Home Improvement Guaranty Fund for this full amount. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a), (e) (2015); COMAR 09.08.03.03B(3)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,798.00; 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;⁶ and

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

Signature on File

April 18, 2017
Date Decision Issued

Tara K. Lehner
Administrative Law Judge

TKL/sw
#167394

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

PROPOSED ORDER

WHEREFORE, this 22nd day of May, 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, Chairman
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION