

<p>IN THE MATTER OF THE CLAIM</p> <p>OF TIMOTHY MAKO,</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 RONALD BATCHER,</p> <p>T/A BATCHER DESIGN BUILD, LLC.,</p> <p>RESPONDENT</p>	<p>* BEFORE SYEETAH HAMPTON-EL,</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>* OAH No.: DLR-HIC-02-18-16802</p> <p>* MHIC No.: 17 (75) 127</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 16, 2017, Timothy Mako and Susan Mako (Claimants)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Ronald Batcher, trading as Batcher Design Build, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On May 22, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ The case was filed in the name of one Claimant, Timothy Mako. Based on the testimony and the request of the named Claimant, I have included Susan Mako as an additional Claimant.
² Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on August 22, 2018 and August 24, 2018 at the OAH³. Bus. Reg. § 8-407(e). Kris King, Assistant Attorney General (AAG), Department of Labor, Licensing, and Regulation (Department), represented the Fund. Both Claimants were present and Claimant Timothy Mako took the lead in representing their interests. The Respondent represented himself.

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. 2018); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Is the Claim subject to dismissal because the Contract contains a mandatory arbitration clause?
2. Did the Claimants sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
3. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimants' behalf:

- Clmt. Ex. 1 - Email communication from the Respondent to the Claimants, dated November 17, 2016
- Clmt. Ex. 2 - Letter from the MHIC to the Respondent, dated August 30, 2016
- Clmt. Ex. 3 - Email communications between the Claimants and their attorney, dated August 5, 2015 and August 21, 2015

³ I continued the hearing until August 24, 2018 for further testimony from the parties.

- Clmt. Ex. 4 - Home Improvement Complaint; including:
- Copies of checks for dates: March 28, 2014, August 4, 2014, October 7, 2014, November 24, 2014, and December 5, 2014 for payment from the Claimants to the Respondent
 - Discover Card Transaction Details, dated January 19, 2015 and June 25, 2015
 - Taylor Electric and Generator, LLC invoices, dated February 3, 2015 and March 21, 2015
 - Copies of checks for dates: February 3, 2015 and March 21, 2015 for payment to Taylor Electric and Generator, LLC.
- Clmt. Ex. 5 - Claimant's Narrative regarding work; including:
- Thirteen black and white pictures
 - Walnut Fields Landscaping invoice, dated August 2, 2016
 - Copies of checks for dates September 24, 2016 and November 11, 2016 for payment to Walnut Fields Landscaping
 - Email communication from the Respondent to the Claimants, dated March 8, 2014 and March 9, 2014
 - Estimate from R & D Masonry, Inc., dated February 15, 2017
 - Estimate from Pink's Concrete Design, dated September 23, 2015
 - Estimate from Old Time Contractor's, Inc., dated August 12, 2015
 - Estimate from Custom Construction of Carroll County, LLC
- Clmt. Ex. 6 - Estimates from three companies to the Claimants:
- Estimate from Keystone Foundation Repair, Inc., dated July 16, 2018;
 - Estimate from Concrete Coating Systems, LLC, dated August 19, 2018
 - Estimate from Old Time Contractor's, Inc., dated August 20, 2018
- Clmt. Ex. 7 - Email communications between the Respondent and the Claimants, dated between May 13, 2015 through August 1, 2015
- Clmt. Ex. 8 - Contract between the Respondent and the Claimants
- Clmt. Ex. 9 - Twenty-three color pictures:
- Nine color pictures of the concrete
 - Two color pictures of the banquette
 - Twelve color pictures of the stone
- Clmt. Ex. 10 - Email communication from the Respondent to the Claimants, dated November 17, 2016
- Clmt. Ex. 11 - Email communication from the Respondent to the Claimants' attorney, dated August 21, 2015
- Clmt. Ex. 12 - Copies of text messages from the Respondent, dated between December 2, 2014 through December 13, 2014

Clmt. Ex. 13 - Email communications between the Respondent and the Claimant, dated March 8, 2014 and March 9, 2014

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

Resp. Ex. 1 - Spreadsheet of payments made from to the Respondent by the Claimants; including:

- Copies of checks received from the Claimants
- Bank of America Transaction details dated August 4, 2014 and December 8, 2014

Resp. Ex. 2 - Design drawings prepared by the Respondent, dated May 5, 2014

Resp. Ex. 3 - Three pictures of tree removal process, dated April 14, 2014

Resp. Ex. 4 - Email communications between the Respondent and the Claimants, dated November 5, 2014 and November 6, 2014

Resp. Ex. 5 - Email communication between the Respondent and the Claimants, dated January 26, 2015

Resp. Ex. 6 - Email communication between the Respondent and the Claimants, dated August 4, 2014

Resp. Ex. 7 - Lochsa Engineering of Idaho Invoice, dated August 14, 2014

Resp. Ex. 8 - Fourteen color pictures of the Claimants' home, dated July 13, 2015

Resp. Ex. 9 - Email communication between the Respondent and the Claimants, dated August 1, 2015; including:

- Spreadsheet detailing contract price adjustments and final amount due

Resp. Ex. 10 - Howard County Department of Inspections, Licenses, and Permits – Single Family Dwelling Permit

Resp. Ex. 11 - Twelve color pictures of the Claimants' home, dated between April 14, 2014 and August 21, 2018

Resp. Ex. 12 - Four color pictures of the Claimants' home, dated March 28, 2014

Resp. Ex. 13 - Howard County Department of Inspections, Licenses, and Permits – Residential Electrical Addition Alteration Permit

Resp. Ex. 14 - Email communication between the Respondent and the Claimants, dated January 31, 2015

Resp. Ex. 15 - Design drawings prepared by the Respondent, dated July 31, 2014

Resp. Ex. 16 - Text messages between the Respondent and the Claimants, dated between December 1, 2014 through December 10, 2014

Resp. Ex. 17 - Email communication between the Respondent and the Claimants, dated December 9, 2014

Resp. Ex. 18 - Email communication between the Respondent and the Claimants, dated January 28, 2015

Resp. Ex. 19 - Text messages and pictures between the Respondent and the Claimants, dated between February 22, 2015 through February 24, 2015

Resp. Ex. 20 - CD-ROM of video taken by the Respondent

Resp. Ex. 21 - Text messages between the Respondent and the Claimants, dated September 17, 2014 and September 18, 2014

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, dated May 30, 2018

Fund Ex. 2 - Hearing Order, dated May 15, 2018

Fund Ex. 3 - Respondent's Licensing Record

Fund Ex. 4 - Claimant's Home Improvement Claim Form, Dated November 10, 2017; including:

- Brief description of incomplete work and color pictures

Fund Ex. 5 - Letter from the MHIC to the Respondent, dated November 21, 2017

Fund Ex. 6 - Letter from the MHIC to the Claimant, dated August 30, 2016

Fund Ex. 7 - Letter from the MHIC to the Respondent, dated November 2, 2016

Fund Ex. 8 - Licensing Records for Walnut Fields Landscaping, R & D Masonry, Inc., Old Time Contractors, Inc., Custom Construction of Carroll County, LLC., Precision Garage Doors, Inc.; including:

- Letter from the MHIC regarding Pink's Construction, LLC, dated August 21, 2018

Testimony

The Claimants testified on their own behalf.

The Respondent testified on his own behalf.

The Fund did not present any 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 4858427.

2. On March 27, 2014, the Claimants and the Respondent entered into a contract to remodel the Claimants' existing garage, construct an addition of a new garage, gym, and workshop (Contract). The existing garage would be converted to a sitting space and included built-in seating with a table and pendant light or a banquette. The addition included a two-car garage and installation of 161 square feet of stone veneer and flagstone to match the existing residence. The Contract included all permit fees, inspections, and removal of construction debris. The Contract stated the dates of construction as April 7, 2014 through July 3, 2014.

3. The original Contract price was \$76,363.86.

4. The Contract outlined a payment schedule beginning with a twenty percent deposit of \$15,272.77 due upon signing the contract. Forty-five percent of the Contract price, or \$34,363.74, was due upon the start of construction on April 22, 2014. Ten percent of the Contract price, or \$7,636.39, was due on May 15, 2014. Another ten percent of the Contract price, or \$7,636.39, was due on June 3, 2014. The final fifteen percent of the Contract price, or \$11,454.57, was due at the end of the project after approval of the work.

5. The Contract detailed a schedule of customer requirements, beginning with the design selection by April 6, 2014. The Claimants would select siding, roofing, stone, and exterior paint colors by April 20, 2014. The Claimants would select interior paint colors, tile, vanity, plumbing fixtures, and lighting by May 20, 2014. The Claimants would select bar design, materials, and countertop by June 1, 2014.

6. The Claimants agreed to inspect the construction and progress on three dates: June 10, 2014, June 23, 2014, and June 30, 2014.

7. The Claimants own a rambler style residence in Howard County, Maryland, built in the 1980's, of approximately 1,600 square feet. After the renovations, the property increased in size to approximately 3,000 square feet.

8. The Respondent provided design drawings and the Claimants made design selections on April 6, 2014. On April 14, 2014, the Respondent began to remove a tree to clear space to begin construction of the new garage addition. (Resp. Ex. 3). After the tree removal, actual construction began on August 21, 2014 due to delays caused by the Respondent, including worker issues and health issues.

9. The Respondent poured concrete for the new garage on December 4, 2014. The Respondent returned to the Claimants' residence to repair concrete issues, but was unsuccessful. The Claimants received three estimates to repair the concrete floor problems which remained after the Respondent stopped work.

10. On July 12, 2015, the Respondent emailed the Claimants seeking to discontinue work and return at a later date after making money on smaller outstanding projects. At the time the Respondent stopped work, he had failed to complete the banquette, stone veneer, and flagstone work. (Clmt. Ex. 7).

11. As a result, the Claimants hired Walnut Fields Landscaping, which installed 225 square feet of stone veneer and flagstone in the locations identified in the original contract with the Respondent. The Claimants paid Walnut Fields Landscaping \$6,150.00 for this work.

12. The Claimants also obtained two estimates to complete the banquette identified in the original contract with the Respondent. The estimates were from Custom Construction for \$1,275.00 and Old Time Contractors, Inc. for \$6,200.00.

13. The Claimants paid the Respondent a total of \$70,409.29, beginning with a payment of \$15,272.77 on March 28, 2014. On August 4, 2014, the Claimants paid \$34,363.74. On October 7, 2014, the Claimants paid \$7,636.39. The Claimants paid another \$7,363.39 in two installments with \$3,000.00 on November 29, 2014 and \$4,636.39 on December 5, 2014. The Claimants paid another \$5,500.00 in two installments with \$4,000.00 on February 12, 2015 and \$1,500.00 on June 23, 2015.

14. The Claimants made the following two payments on behalf of the Respondent: First, on January 19, 2015, the Claimants paid \$2,200.00 to Precision Garage Door Installers for installation of the new garage doors. The original contract allocated \$2,135.15 for the garage doors. Second, the Claimants paid Taylor Electric a total of \$2,500.00 in two installments, \$1,750.00 on February 3, 2015 and \$750.00 on March 21, 2015. The original contract allocated \$1,969.57 for the electric work. The Claimants paid \$1,027.13 to Home Depot to install additional insulation. The Respondent did not charge the Claimants for the additional labor cost as it exceeded the original contract.

DISCUSSION

Motion to Dismiss

The Respondent argued the matter should be dismissed as the Claimants failed to comply with the Contract's arbitration clause. The Claimants responded the Respondent never mentioned the arbitration clause when the parties discussed Contract termination via an addendum. In addition, the Claimants argued the Respondent failed to mention the arbitration clause during the MHIC claims process. The Department argued several portions of COMAR provide guidance regarding the applicable procedures, including a provision which precludes granting a Motion to Dismiss without the agreement of all parties. The relevant sections of COMAR and the Business Regulation article are set forth below.

As relevant to the Contract's arbitration clause, the Fund's governing statute states:

(c) A claimant shall comply with a written agreement to submit a dispute to arbitration before seeking recovery from the Fund.

Md. Code Ann., Bus. Reg. § 8-405 (2015). Similarly, COMAR provides:

E. Compulsory Binding Arbitration. When a contract between a claimant and a contractor requires that all contract disputes be submitted to binding arbitration, the claimant shall either:

- (1) Submit their dispute to binding arbitration as required by the contract; or
- (2) Provide evidence to the Commission that the claimant has made good faith efforts to bring the dispute to binding arbitration which the contractor has either rejected or not responded to. The Commission shall then give the contractor written notice that, if the contractor does not agree to binding arbitration, the Commission will consider the compulsory arbitration clause to be void and process the claimant's claim pursuant to this chapter.

COMAR 09.08.03.02 (E).

As relevant to dispositive motions, generally, the regulations governing hearings delegated to the OAH by the Department provide:

B. A motion to dismiss or any other dispositive motion may not be granted by the ALJ without the concurrence of all parties.

COMAR 09.01.03.05 (B). The OAH Rules of Procedure provide as follows concerning dispositive motions:

C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

COMAR .28.02.01.12 (C).

Based on the arguments of the parties and the relevant law, I have denied the Respondent's Motion to Dismiss. In this case, COMAR clearly states an Administrative Law

Judge may not grant a Motion to Dismiss during the hearing without the consent of all parties.

The Contract states:

Arbitration

Unless the Company elects to proceed otherwise, any controversy, claim, dispute or question of interpretation relating to or arising from this Contract shall be resolved in accordance with the Commercial Rules of the American Arbitration Association (AAA). Fees will be assessed in accordance with the AAA's fee schedule as follows:

- (1) If the Customer's claim does not exceed \$10,000.00, then the Customer is responsible for one-half (1/2) of the arbitrator's fees up to a maximum of \$125;
- (2) If the Customer's claim is greater than \$10,000.00, but does not exceed \$75,000.00, then the Customer is responsible for one-half (1/2) of the arbitrator's fees up to a maximum of \$375; and
- (3) If the Customer's claim is over \$75,000.00, please refer to the AAA's fee schedules. This information may be viewed as www.adr.org, or the Customer may call 1-800-778-7879.

Please consult with the AAA regarding any changes in the fee schedule. The arbitrator's findings will be binding the parties

Under the Annotated Code of the State of Maryland, Business Regulation Article, section 8-405 (c), a claim against the Home Improvement Guaranty Fund by the Customer shall be stayed until completion of any mandatory arbitration proceeding.

Clmt. Ex. 8.

The Claimants and the Respondent communicated via email on July 30, 2015 at 4:44pm in which the Respondent stated, "After speaking with my attorney and weighing out all my available options, pursuing this further or legally is not worth the turmoil, stress, additional money, and time this will cost my company." (Clmt. Ex. 7). The Respondent cannot have it both ways by clearly stating his intention to not pursue legal action or arbitration and now seeking a Motion to Dismiss based on failure of the Claimants to arbitrate. It is clear; the Respondent could not financially maintain the design business and contacted an attorney who assisted in the Respondent's business decision to not pursue the Contract dispute legally or other avenues. I conclude that by declining to proceed with arbitration after having consulted with an attorney the Respondent knowingly and voluntarily waived the arbitration provision. The

Claimants reasonably relied on this email communication and proceeded to file a MHIC claim. Lastly, the Respondent failed to notify the MHIC of the arbitration clause and failed to seek a stay of the proceeding.

Merits of the Claim

In this case, the Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); Md. Code Ann., State Gov't §10-217 (2014 & Supp. 2018); 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 (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); *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual 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 Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants. The Claimants argued they relied on the Contract and design as created by the Respondent. The Claimants argued the Respondent failed to complete the Contract and as a result they hired additional contractors to complete the work not finished by the Respondent. The Respondent argued the Claimants breached the Contract by not following the payment schedule and not paying for the unforeseen costs associated with the project.

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. Namely, the Respondent failed to complete the construction as outlined in the Contract signed by the parties.

Stone Veneer and Flagstone

While the Respondent began the addition of the new garage, he failed to install the stone veneer or flagstone. The Respondent testified he did not complete the stone veneer or flagstone installation as agreed in the original contract. The Respondent stated he did not complete the stone veneer and flagstone installation because he needed to complete other work to generate funds to complete the flagstone work. During cross-examination, the Respondent admitted the Claimants never released him from his contractual obligations.

As a result of the Respondent's failure to complete the stone veneer and flagstone installation, the Claimants hired Walnut Fields Landscaping to fulfill the terms of the original contract. The original contract with the Respondent called for 161 square feet of stone veneer and flagstone installation. Walnut Fields Landscaping installed 225 square feet of stone veneer and flagstone at a cost of \$6,150.00.

Concrete Work

The Respondent failed to correct the concrete issues after the concrete was poured. The Respondent testified he was uncomfortable pouring a garage as big as the newly constructed two car garage. He stated after pouring the concrete he noticed it was uneven in random places and was unsure of the cause as he used levels and strings to level the surface. The Respondent used a grinder to smooth the surface, but the problems persisted. He also noticed the concrete surface was chalky. The Respondent testified he knew something needed to be done but was unsure of what to do. The Respondent argued the Claimants were responsible for the concrete issues as they parked on the floor too soon which prevented a proper cure. However, the Respondent also

did not remember telling the Claimants a specified period of time to stay off the floor or any discussion regarding the required cure time.

The Claimants received three estimates to demolish the floor, re-pour the concrete, or smooth out the problems areas. The estimates ranged in price from \$11,000.00 to \$16,000.00. The Claimants used the averaged amount of \$13,126.00 to create a claim amount as they had not hired a contractor. The Fund presented licensing information for the three companies which demonstrated that Pink's Concrete is not a licensed company in the State of Maryland. The Claimants argued the poor workmanship of the Respondent also caused water to enter the garage. However, the Claimants acknowledged the Respondent did not pour the asphalt in front of the garage and did not provide additional information regarding the slope of either the asphalt or the concrete.

Banquette

Although the Respondent remodeled the old garage he failed to install the banquette as agreed in the Contract. The Claimants and the Respondent both testified that the banquette was not installed as agreed. The Respondent testified he left the project on July 13, 2015 and agreed to return at a later date to finish the stone veneer and flagstone installation but did not promise to complete the bench. The Respondent partially completed the room, however; he left the banquette wall location exposed and painted concrete. Ultimately, the Claimants covered the area to temporarily address the issue until they can get the built-in completed.

The Claimants obtained two estimates to complete the banquette: Custom Construction for \$1,275.00 and Old Time Contractors, Inc. for \$6,200.00. The Claimants' average of the two estimates totaled \$3,737.50 and was used by the Claimants to create the claim amount.

Other Issues

In addition to the incomplete work and the poor workmanship, the Respondent failed to pay third-party vendors who completed work he was otherwise contracted to perform. The Respondent testified he agreed to allow the Claimants to hire other contractors to move the project along. The Claimants paid Precision \$2,200.00 to install the garage doors. Due to the continued electrical permitting issues, the Claimant hired Taylor Electric and paid a total of \$2,500.00. Lastly, after an inspection the inspector required additional insulation and the Claimants paid for additional insulation from Home Depot and the Respondent did not charge for labor. The additional insulation exceeded the original contract terms and is not included in the amount the Claimants paid to vendors on behalf of the Respondent.

Based on the testimony of both parties, it is clear the Respondent was not prepared to handle a construction project of the magnitude required by the Claimants. From the beginning, the Respondent lacked sufficient workers and did not accurately assess costs to obtain permits or materials. The Respondent admitted he never poured concrete in a space as large as the two car garage addition and therefore caused unnecessary delays and, as he recognized, the final concrete product was not workmanlike. The Respondent acknowledged he never installed the stone veneer, flagstone, and banquette. The Claimants met their burden by proving the actual loss they suffered as a result of the incomplete and poor workmanship of the Respondent.

I thus find that the Claimants are eligible for compensation from the Fund.

Amount of the Claim

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations

provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimants retained/intend to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss:

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).

Per the Contract, the Claimants paid the Respondent \$70,409.29. On behalf of the Respondent, the Claimants paid two vendors a total of \$4,104.72. The original contract allocated \$1,969.57 for the electric work and \$2,135.15 for the garage doors, which totaled \$4,104.72. Although the Claimants paid Home Depot \$1,027.13, the Respondent agreed to not charge for labor; therefore, the Claimants are not entitled to reimbursement for this cost as it exceeded the original contract. As a result of the incomplete work and poor workmanship of the Respondent, the Claimants paid Walnut Fields Landscaping \$6,150.00 to complete the stone veneer and flagstone installation. However, the original contract was for a smaller square footage and therefore the Respondent is only responsible for \$2,939.70.

The Respondent's poor workmanship caused significant concrete issues in the garage. The Claimants have not hired a contractor but based on the evidence the floor does not need to be demolished and can be repaired using a less expensive method. The Claimants proved actual loss but did not provide additional testimony to explain why the floor must be demolished

instead of using another method to smooth out the uneven floor. The Claimants obtained three estimates including from Concrete Coating Systems, LLC for \$5,900.00. Concrete Coating Systems, LLC provided a reasonable estimate and solution to address the uneven concrete floor poured by the Respondent. The other estimates provided by the Claimants are based on demolishing the entire floor.

Lastly, the Respondent failed to begin or complete the built-in bench and table. The Claimants obtained two estimates and the most reasonable estimate was provided by Custom Construction for \$1,275.00. The estimate provided by Old Time Contractors, Inc. for \$6,200.00 exceeded the original contract specifications.

The total cost to complete the original contract is \$10,114.70. The Contract between the parties totaled \$76,363.86. The actual loss totals \$8,264.85.

Calculation:

Amount paid to Respondent	\$70,409.29
Amount paid to Vendors	+ \$4,104.72
<u>Amount to Complete Contract</u>	<u>+ \$10,114.70</u>
<u>(\$2,939.70 + \$5,900.00+\$1,275.00)</u>	
Subtotal:	\$84,618.71
Contract Price	- <u>\$76,363.86</u>
Total Actual Loss:	\$8,264.85

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimants actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimants are entitled recover their actual loss of \$8,264.85. Lastly, there are no statutory impediments to the Claim. Md. Code

Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2018).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$8,264.85 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2018); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimants are entitled to recover \$8,264.85 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$8,264.85; 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 Commission⁴; and

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

Signature on File

November 26, 2018
Date Decision Issued

Syeeah Hampton-EL
Administrative Law Judge

SAH/cj
#176814

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 9th day of January, 2019, 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