

**IN THE MATTER OF THE CLAIM  
OF DENNIS LEGO**

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**MARYLAND HOME IMPROVEMENT  
COMMISSION**

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**AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS  
OF ILAN GOLDBERG t/a  
DETAILZ CONSTRUCTION  
CORPORATION**

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**MHIC CASE NO. 17(90)707  
OAH CASE NO. DLR-HIC-02-17-32267**

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**FINAL ORDER**

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on January 11, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 12, 2018, concluding that the homeowner Dennis Lego (“Claimant”) sustained an actual and compensable loss of \$5,584.26 as a result of the acts and omissions of Ilan Goldberg t/a Detailz Construction Corporation (“Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated June 14, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimant \$5,584.26 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On August 6, 2018, a hearing on the exceptions filed in the above-captioned matter was held before a three- member panel (“Panel”) of the MHIC. The Contractor was present and represented by counsel, Jennifer L. Harris, Esq. Despite receiving proper notice, the Claimant did not appear. Hope Sachs, Assistant Attorney General, also appeared at the exceptions hearing to present evidence on behalf of the MHIC. AAG Sachs submitted three preliminary exhibits into evidence at the exceptions hearing. The first exhibit contained the ALJ Proposed Decision, the Commission’s Proposed Order, and the June 14, 2018 cover letter sent to the parties explaining the appeal rights regarding the Proposed Order. The second exhibit consisted of the notice for the

exceptions hearing and a copy of the Claimant's written exceptions. The third exhibit included the Contractor's Motion to Admit Additional Evidence At Exceptions Hearing.

At the outset of the exceptions hearing, the parties presented argument regarding the Contractor's motion to admit the trial transcript of a December 12, 2016 hearing in the District Court of Maryland for Baltimore County, Case No. 0804-0023501-2016. The Panel subsequently admitted the transcript into the record. The Contractor argues on exceptions that this transcript is proof of the Claimant's waiver of his claim against the Guaranty Fund.

The excerpt of the transcript provided by the Contractor in support of this argument covers a discussion that occurred with the District Court Judge at the outset of the trial. In that discussion the District Court Judge mistakenly informed the Claimant that "[s]omewhere in the law it indicates that if you have a DLLR complaint filed that has to be resolved before court." Pursuant to Maryland Annotated Code, Business Regulation Article, § 8-408(b)(1)-(2) a "claimant may not concurrently submit a claim to recover from the Fund and bring an action in a court of competent jurisdiction based on the same facts alleged in the claim." However, if a claimant does file a civil action, then the Guaranty Fund claim is stayed pending the outcome of the civil action, the statute, however, does not provide that a claim shall be stayed when a civil action is filed by the Contractor. The Claimant in this case did not file a counterclaim in the civil action at the District Court, but was only defending a suit filed by the Contractor for nonpayment of the balance owed on the contract. *Transcript of OAH Hearing*, p. 115. Therefore, the Claimant's Guaranty Fund claim would not have to be decided before the District Court case proceeded, and absent the Claimant's filing of a counterclaim, the claim against the Guaranty Fund would not be stayed.

Moreover, the District Court Judge did not have the jurisdiction to accept a waiver of the Claimant's Guaranty Fund claim, as that claim was not before the Court. The only claim before

the Court was that of the Contractor's suit for nonpayment, and the Judge had no jurisdiction over the Claimant's claim for the cost to repair the job that is the subject of his Guaranty Fund claim. At the end of the trial, the District Court Judge clearly demonstrates that he does not believe that the Guaranty Fund claim is waived stating:

I would not be satisfied at all with this job. I wouldn't want to pay a penny for it. I'm not going to require them to pay the balance. I think it's – I'm sure you all generally do good work, but this is not one of those times. And I think the only way that this patio is going to be properly repaired is to be replaced. **And that will be another subject for another day before the home improvement commission.**

*Transcript of District Court Trial*, pp. 32-33 (emphasis added). Therefore, the Commission finds no merit in the argument that the Claimant waived his Guaranty Fund claim.

As for the Contractor's request for a remand of the hearing to OAH for the taking of additional testimony, the Commission will not remand this case. Although the Contractor argues that he thought the Guaranty Fund claim had been waived at the District Court case, the closing lines of the District Court Judge refutes this understanding. *Transcript of District Court Trial*, pp. 32-33. Moreover, after the District Court trial, the Contractor was sent notices that the OAH hearing was still proceeding on the claim. *ALJ Proposed Decision* p. 2. The Contractor could have appeared at the OAH hearing and presented his arguments, but chose not to appear.

The ALJ's decision is thorough, supported by the evidence in the record and correct as a matter of law. The Panel does not find that the ALJ erred in her decision and will not overturn it on exceptions. Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Proposed Decision, it is this 7th day of December 2018 **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Proposed Decision and Order of the Administrative Law Judge is **AFFIRMED**;

D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

**Joseph Tunney**  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

**IN THE MATTER OF THE CLAIM  
OF DENNIS LEGO,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF ILAN GOLDBERG,  
T/A DETAILZ CONSTRUCTION  
CORPORATION,  
RESPONDENT**

**\* BEFORE TAMEIKA LUNN-EXINOR,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH No.: DLR-HIC-02-17-32267  
\* MHIC No.: 17 (90) 707  
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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 March 20, 2017, Dennis Lego (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,594.26 in alleged actual losses suffered as a result of a home improvement contract with Ilan Goldberg, trading as Detailz Construction Corporation (Respondent).

I held a hearing on January 11, 2018 at the Office of Administrative Hearings located in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Eric B. London, Assistant Attorney General, Department of Labor, Licensing

and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or someone to represent him to appear, I proceeded with the hearing in his absence, having determined that the notice provided to the Respondent was proper.<sup>1</sup> Md. Code Ann., Bus. Reg. §§ 8-312(h), 8-407(a) (2015); Code of Maryland Regulations (COMAR) 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant 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 have attached a complete Exhibit List as an Appendix.

#### Testimony

The Claimant testified in his own behalf.

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 numbers 4700868 and 5014142.

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<sup>1</sup> Notice of Hearing (Notice) was mailed to the Respondent at his address of record by certified mail return receipt and regular mail on November 21, 2017. COMAR 09.08.03.03A(2). The Notice that was mailed certified return receipt was returned to the OAH on December 20, 2017 by the United States Postal Service with a note indicating "return to sender, unclaimed, unable to forward". The Notice that was sent using regular mail was not returned.

2. On July 1, 2016, the Claimant and the Respondent entered into a contract in which the Respondent agreed to remove and install a new concrete patio with a walkway at the rear of the house as well as a walkway and stoop on the side of house.

3. The contract stated that work would begin between July 1, 2016 and July 22, 2016.

4. The contract called for the Respondent to perform the following:

**Concrete Patio and Walkway Project and Side concrete walkway and entrance stoop -**

- Pull all permits needed through Baltimore County
- Bring in 30 yard dumpster
- Demo existing 502 sq.ft. concrete patio
- Demo existing 152 sq.ft. concrete walkway and stoop
- Haul away all debris
- Tie in existing sump pump discharge to drain underground
- Regrade land as needed
- Pour 1-2'' of cr6 crushed stone for base
- Install rebar/wire mesh throughout
- Pour 3-4'' thick high strength 3500PSI Lafarge concrete patio
- Pour 4-5'' thick high strength 3500PSI Lafarge concrete walkway and entrance stoop
- Install control joints every 7-8' at concrete patio
- Install control joints every 2-3' at concrete walkway and entrance stoop
- Broom concrete for a slip resistant finish
- Clean entire area

5. The original agreed-upon contract price was \$8,391.41.

6. The Claimant paid the Respondent a total of \$5,594.26 in the following payments:

- July 6, 2016: \$2,797.13
- July 25, 2016: \$2,797.13

7. The Claimant stopped payment on his third and final payment to the Respondent – a check dated July 29, 2016 in the amount of \$2,797.03.<sup>2</sup>

8. The Respondent began work at the Claimant's home on July 25, 2016 and completed the patio and walkways on July 29, 2016.

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<sup>2</sup> The three checks made to the Respondent totaled \$8,391.29, not \$8,391.41.

9. The Respondent used heavy equipment at the Claimant's property damaging a drain pipe and a security light.

10. The concrete was delivered on July 28, 2016 when there was a heavy rain storm.

11. The Respondent poured the concrete in the rain and wind and covered it with polyethylene but there were gaps that allowed the water to infiltrate the concrete.

12. The Respondent caused concrete to splatter and harden on the exterior bricks of the Claimant's home.

13. On July 28, 2016, the Claimant immediately noticed that the concrete mixture was extremely wet and more water was entering the mixture due to the rain and wind.

14. On July 29, 2016, the Respondent returned to the Claimant's home to remove the polyethylene covering from the concrete.

15. On July 29, 2016, the Claimant was not satisfied with the appearance of the concrete. The Respondent repaired a few holes in the patio.

16. On July 29, 2016, the Claimant paid the Respondent the last payment for the work performed.

17. On July 30, 2016, the Claimant noticed a dusty white substance all over the concrete (dusting) that was on their shoes and was tracking into his home.

18. The Claimant requested the Respondent fix the spalling (holes) and the dusting. The Respondent did not make the requested repairs to the Claimant's concrete.

19. On August 3, 2016, the Claimant stopped payment on the third check paid to the Respondent on July 29, 2016.

20. In December 2016, the Respondent filed a civil lawsuit against the Claimant for the third and final payment on the contract. Judgement was found in favor of the Claimant.



21. On January 30, 2017, Goode Paving & Sealcoating, Inc. provided the Claimant with an estimate to remove and replace the concrete pad and sidewalk at the rear of the Claimant's home, for a total contract price of \$7,500.00.

22. In May 2017, the Claimant had his patio concrete, sidewalks, the entrance stoop and other repairs such as the drain pipe repaired by David Paravano (Paravano). The Claimant paid Paravano \$12,000.00 to repair the Respondent's contracted work and some additional work.

23. The estimated amount of work performed by Paravano that was originally contracted to be performed by the Respondent is \$8,391.46.

24. The Claimant's actual loss is \$5,584.26.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions 1:7* (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);<sup>3</sup> *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."

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

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

The Claimant testified that his concrete patio and walkways were twenty-eight years old. He testified that the concrete was separating and it was a tripping hazard. The Claimant testified that he also wanted his sidewalk widened. On July 1, 2016, he hired the Respondent to tear out and replace his concrete patio at the rear of his home, the walkways of his home, and a side-entrance concrete stoop.

The Claimant testified that the Respondent began the work on July 25, 2016. The Claimant testified that from the beginning he questioned the Respondent's ability to complete the job to his satisfaction. He stated that the Respondent used heavy equipment such as jack hammers for two days without wetting the concrete or wearing protective masks. The Claimant stated that he was concerned about the level of dust and everyone's safety. The Claimant testified that on the third day, the Respondent installed the forms for the concrete and he informed the Respondent that there would be a storm on the date they planned to pour the concrete. The Claimant testified that the Respondent assured him that the rain would not be a problem.

On the fourth day, the concrete truck arrived and the Respondent began pouring the mixture. The Claimant testified that he noticed that the mixture was extremely wet and that there was a layer of water on top of the mixture. The Claimant stated that the Respondent covered the concrete with a blue polyethylene covering and trash bags but there were gaps that allowed in the rain. On the fifth day, the Claimant testified that the Respondent returned to his home to remove the polyethylene covers and trash bags from the concrete. The Claimant noticed a few holes in the concrete and the Respondent repaired those holes by patching them. The Claimant testified

that he requested a few more days in order to make the final payment because he did not like the condition of the concrete but the Respondent refused to leave the property without the final payment. The Claimant testified that he felt threatened and intimidated by the Respondent so he made the final payment.

On July 30, 2016, the Claimant testified that his granddaughter came to his home and was playing with her dolls and her bike on the back patio installed by the Respondent. The Claimant stated that there was dust all over her shoes and her toys. The Claimant testified that the amount of white dust from the concrete was increasing and a problem. The Claimant testified that he was concerned about the health risks involving the dust. He was also concerned about pooling of water on the concrete in areas that were not leveled. A few days later, the Claimant stopped payment on the final check he gave to the Respondent.

The Claimant testified that on August 3, 2016, he received a threatening email and telephone call from the Respondent demanding payment and threatening to come to the Claimant's home and remove the concrete. Claimant testified that prior to the removal and repair of the patio, there were more than forty holes in the concrete. The Claimant received an estimate from Goode Paving in the amount of \$7,500.00 to remove the concrete patio and walkway and reinstall it. However, the Claimant utilized another contractor, Paravano, to make the concrete repair. The Claimant testified that Paravano did similar work in his neighborhood and he was impressed. Also, Paravano would not accept payment until the Claimant was satisfied. The Claimant testified that he paid the Respondent a total of \$5,594.26 under the Contract and as a remedy he requests the money he paid to the Respondent. The Claimant paid Paravano \$12,000.00 but that amount included the work to repair the Respondent's contracted work as well as some additional repairs such as the drain pipe. The Claimant testified that approximately \$8,600.00 of the cost paid to Paravano was to repair the Respondent's work.

I carefully reviewed the numerous photographs submitted by the Claimant. The photos clearly show holes in the concrete starting one day after it was poured, pooling water on the concrete where it was uneven, and extreme dusting of the concrete. Any rational person viewing the Claimant's photos and hearing his testimony can deduce that the concrete work performed by the Respondent was unworkmanlike as the patio had holes and a top layer of concrete dust, and was uneven. There is no need for a concrete expert or expert contractor to testify as to this issue. The Respondent was not available to refute the Claimant's evidence. Therefore, I find that the Respondent performed in an unworkmanlike manner.

The Fund argued that the Claimant's evidence supports that he receive an award from the Fund. The Claimant's testimony was corroborated by photographs, exhibits, estimates, and cancelled checks. For all of these reasons, I find that the Respondent performed in an unworkmanlike manner and that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Accordingly, the Claimant is not entitled to reimbursement for the cost of the drain pipe, cement splatters and the broken security light the Respondent ruined during installation of the concrete, as those are consequential damages.

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).

Using this measurement, the Claimant would be entitled to the full amount he paid to the Respondent (\$5,584.26 (amount paid on original contract) + \$8,600.00 (replacement cost) = \$14,184.26 - \$8,391.46(original contract) = \$5,792.80).<sup>4</sup> 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 Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). Accordingly, the Claimant is limited to be reimbursed in the amount he paid to the Respondent, \$5,584.26.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$5,584.26 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 Claimant \$5,584.26; 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

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<sup>4</sup> \$5,792.80 is greater than the amount the Claimant paid to the Respondent under the Contract.

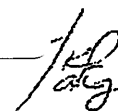
under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission,<sup>5</sup> and

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

## Signature on File

April 12, 2018  
Date Decision Issued

\_\_\_\_\_  
Tameika Lunn-Exinor  
Administrative Law Judge



TLE/cmg  
#172978

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

**IN THE MATTER OF THE CLAIM**

**OF DENNIS LEGO,**

**CLAIMANT**

**AGAINST THE MARYLAND HOME**

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**FOR THE ALLEGED ACTS OR**

**OMISSIONS OF ILAN GOLDBERG,**

**T/A DETAILZ CONSTRUCTION**

**CORPORATION,**

**RESPONDENT**

**\* BEFORE TAMEIKA LUNN-EXINOR,**

**\* AN ADMINISTRATIVE LAW JUDGE**

**\* OF THE MARYLAND OFFICE**

**\* OF ADMINISTRATIVE HEARINGS**

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**\* OAH No.: DLR-HIC-02-17-32267**

**\* MHIC No.: 17 (90) 707**

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**APPENDIX - FILE EXHIBIT LIST**

The Claimant submitted the following exhibits which were admitted into evidence:

- Cl. 1 Claimant's Summary of Case submitted to HIC, no date
- Cl. 2 Contract for Home Improvement, July 1, 2016
- Cl. 3 Copy of Check from Claimant to Respondent for \$2,797.13, July 6, 2016
- Cl. 4 Wells Fargo returned items detail for Check #3955 for \$2,797.03, August 3, 2016
- Cl. 5 Article: The Health Risks of Concrete Dust, no date
- Cl. 6 Concrete report from LaFarge for the Claimant's concrete, July 28, 2016
- Cl. 7 (a-b) a. Picture of patched hole in patio concrete, July 29, 2016; b. Picture of the same patched area in patio concrete, February 27, 2017
- Cl. 8 Information about spalling in concrete, August 24, 2016
- Cl. 9 Article: Dusting Concrete Surfaces
- Cl. 10 (a-b) Photos of the concrete powder on a spoon, August 2016
- Cl. 11 (a-t) Photos showing spalling on the concrete patio, July 30, 2016
- Cl. 12 Photograph of pooled water on the concrete due to uneven finish, October 2016
- Cl. 13 Photo of 4 inch indentation in grass created by a heavy tool, no date
- Cl. 14 Email correspondence between the Claimant and Respondent, August 6, 2016
- Cl. 15 Estimate from Goode Paving & Sealcoating, Inc., January 30, 2017
- Cl. 16 Second estimate from Goode Paving & Sealcoating, Inc., January 30, 2017
- Cl. 17 Check Receipt for Check #3954 in the amount of \$2,797.13, July 25, 2016<sup>1</sup>

<sup>1</sup> The parties agreed to leave the record open until January 12, 2018 to allow the Complainant an opportunity to provide proof of the second check paid to the Respondent. The Complainant faxed a copy of the check receipt on January 12, 2018 and this document was admitted as Claimant's Exhibit 17.

The Respondent did not submit any exhibits to be admitted into evidence.

The Fund submitted the following exhibits which were admitted into evidence:

- GF 1 Undeliverable Mail Memo from Docket Specialist to DLR Legal Services,  
December 26, 2017
- GF 2 Hearing Order, October 2, 2017
- GF 3 Licensing History, January 10, 2018
- GF 4 Home Improvement Claim Form, February 26, 2017
- GF 5 Letter to the Respondent from the MHIC, March 20, 2017
- GF 6 Notice of Judgment Entered, District Court of Maryland for Baltimore County,  
December 12, 2016



**PROPOSED ORDER**

***WHEREFORE, this 14<sup>th</sup> day of June, 2018, 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.***

***J. Jean White***

***I. Jean White  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**