

**IN THE MATTER OF THE CLAIM  
OF LAUREN HELMS,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF TIMOTHY FARO,  
JR.,  
T/A BIRDLAND BUILDERS, LLC,  
RESPONDENT**

**\* BEFORE KATHLEEN A. CHAPMAN,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-19-25009  
\* MHIC No.: 18 (90) 1190**

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On January 2, 2019, Lauren Helms (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,772.33 in actual losses allegedly suffered as a result of a home improvement contract with Timothy Faro, Jr., trading as Birdland Builders, LLC (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 through 8-411 (2015).<sup>1</sup> On August 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on January 9, 2020 at the Tawes State Office Building located in Annapolis, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Nicholas Sokolow, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund. The Claimant represented herself. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, no one appeared on his behalf and I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>3</sup>

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. 2019); 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

Clmt. Ex. 1 – 926 Blue Ridge Drive – Addition Proposal, signed by the Claimant on February 21, 2017

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<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>3</sup> A Notice of Hearing (Notice) was mailed to the Respondent at the address of record by regular and certified mail on October 17, 2019, COMAR 09.08.03.03A(2), and, on October 19, 2019, someone (the name was not legible) at the address signed the Domestic Return Receipt green card acknowledging receipt of the Notice. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

- Clmt. Ex. 2 – Expense Summary, dated May 9, 2018
- Clmt. Ex. 3 – Invoice, dated August 9, 2017
- Clmt. Ex. 4 – Tile allowance overage, dated July 10, 2017
- Clmt. Ex. 5 – Letter from the Claimant to the Respondent, dated June 11, 2018, sent via Certified Mailing; Domestic Return Receipt (green card), signed by K. Delawder, but undated
- Clmt. Ex. 6 – Bucksavers Home Improvements, Inc. Estimate, dated June 19, 2018; The Tile Shop receipt, dated June 23, 2018; The Tile Shop receipt, dated June 29, 2018; Atlas Marble & Title receipt, dated July 17, 2018; Home Depot receipt, dated July 16, 2017; The Tile Shop receipt, dated July 16, 2018; Ace Hardware Store receipt, dated July 17, 2018; The Tile Shop receipt, dated July 19, 2018; typewritten statement to To Whom It May Concern, unsigned and undated; cancelled check no. 730 (\$2,000.00 issued to Bucksavers Home Improvements), dated July 8, 2018; cancelled check no. 669 (\$2,000.00 issued to Bucksavers Home Improvements), dated July 16, 2018; cancelled check no. 1074 (\$1,921.19 issued to Bucksavers Home Improvements), dated July 20, 2018
- Clmt. Ex. 6 – Typewritten statement to To Whom It May Concern, unsigned and undated; nine color photograph copies attached to emails, dated January 6, 2020

I did not admit any exhibits on behalf of the Respondent.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 – Notice of Hearing (Notice), dated October 17, 2019
- Fund Ex. 2 – Hearing Order, dated August 5, 2019
- Fund Ex. 3 – Licensing History, printout date: January 6, 2020
- Fund Ex. 4 – Letter from Joseph Tunney, Chairman, MHIC, to the Respondent, dated January 7, 2019; Home Improvement Claim Form, received on January 2, 2019
- Fund Ex. 5 – Notice, dated October 17, 2019, sent via Certified Mailing; Domestic Return Receipt (green card), date of delivery: October 19, 2019 (signature is illegible)

### Testimony

The Claimant testified.

The Respondent did not testify or offer any witnesses, since he failed to appear.

## 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 132509.
2. On or about February 21, 2017, the Claimant and the Respondent entered into a contract to build a two level 12 x 16 addition to the rear of the Claimant's home (Contract) to include: foundation, framing, siding, painting, drywall, electric, HVAC,<sup>4</sup> trim, doors, and plumbing.
3. The addition created a new bathroom, linen closet, and storage area (referred to as the workshop).
4. Work under the Contract was to begin on or about April 19, 2017 and be completed within five to six months.
5. The base Contract was for \$42,430.00 plus a \$2,450.00 allowance for bathroom fixtures (vanity combo, \$750.00; glass shower doors, \$1,000.00; toilet, \$200.00; shower faucet, \$200.00; and shower pan, \$300.00) for a total of \$44,880.00.
6. Thereafter, the parties entered into a series of change orders that impacted the cost of the Contract. Specifically, the Claimant agreed to pay the Respondent \$1,500.00 for a custom shower pan; \$975.00 for exterior windows; \$1,070.00 for gutter guards; and \$837.23 for a tile allowance overage for a total of \$4,382.23.
7. With these changes, the Contract price increased to \$49,262.23.<sup>5</sup>
8. The Respondent performed the Contract as specified and was finished on or about August 2017.

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<sup>4</sup> Heating, ventilation, and air conditioning

<sup>5</sup> \$44,880.00 (base contract) + \$4,382.23 (change orders) = \$49,262.23.

9. The Claimant, however, paid the Respondent \$48,407.23 for the work performed.

This amount represents the change orders and any credits agreed to, as follows:

\$44,880.00	base contract
+ 975.00	trim windows
+ 1,070.00	gutter guards
+ 1,500.00	shower pan
+ 837.23	tile allowance overage
- 200.00	toilet (customer provided)
- 750.00	vanity (customer provided)
- 150.00	shelves (customer provided)
+ 245.00	refinish hardwood floor (new change order)
+ 0.00	install ceiling fan (no charge)
<u>\$48,407.23</u>	

10. Approximately one month after the Respondent completed the work, the Claimant noticed mold and water spots in the basement on the ceiling in the area corresponding to the location of the bathroom addition (the workshop).

11. The Claimant contacted the Respondent, who agreed to return and fix the leak.

12. On or about March 2018, the Respondent met with the Claimant and told her that the leak was due to issues with the pipes and he made those repairs.

13. The repairs, however, failed to fix the leak.

14. The Claimant continued to try to and resolve the matter with the Respondent, but to no avail.

15. On June 11, 2018, the Claimant wrote a letter to the Respondent explaining that another contractor would be hired to make the repairs.

16. Bucksavers Home Improvements, Inc., a Maryland-licensed contractor, evaluated the bathroom addition and found that the shower enclosure, not the pipes, was the cause of the water leakage due to unworkmanlike installation, as follows:

- the inside corners and cement backer board installed joints were not pre-filled with mortar embed tape;
- the waterproofing membrane was not sealed around the outside perimeters;
- the concrete shower base had no slope to drain, causing water to puddle;

- the rubber membrane corners were not installed per manufacturers specifications;
- the corners did not overlap with tears;
- the screws were imbedded into the rubber membrane;
- the drain unit was set too high;
- the threshold on curb sloped toward the floor rather than to the shower base; and
- the tile lacked an adhesive adherence to bond.

17. The Claimant paid Bucksavers a total of \$5,921.19 to remove and dispose of the existing shower wall surround tile, shower base, base tile and niches, and damaged ceiling in the workshop; repair walls and drywall ceiling in the workshop; and install a new shower stall with waterproofing and vapor-retardant membrane over new drywall, new tiles, corner shelves, new shower sliding glass doors, grout, and seal.

18. The Claimant spent \$2,851.14 out-of-pocket on materials to accomplish the repair.

19. The total cost to repair the unworkmanlike conditions of the shower enclosure equaled \$8,772.33.

20. The Claimant did not experience any additional water leakage after Bucksavers performed the work.

21. The Claimant has since sold her home.

22. The Claimant does not own more than three residences or dwelling places.

### **DISCUSSION**

In this case, the Claimant has 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); 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.” Md. Code Ann., 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 scope of work to be performed under the Contract consisted of building an addition to the rear of the Claimant’s home. And while the majority of the work performed was workmanlike, the bathroom addition was not.

The Claimant indicated during her presentation that soon after the Respondent completed the home improvement project, her husband began noticing water spots and mold growing on the ceiling in the workshop. The Claimant explained that the area where the water spots were apparent corresponded with the location of the bathroom addition.

The Claimant testified that she discussed the water leakage with the Respondent, who agreed to return and fix the issue; however, he was wrong in his assumption that the cause of the water leakage was due to the pipes. The Claimant stated that when the water continued to leak after the purported repairs, she attempted to contact the Respondent again, to no avail.

Clmt. Ex. 5.

Thereafter, the Claimant sought proposals from other contractors and settled on Bucksavers to provide her with a scope of repairs to fix the water leakage. Through the course of diagnosing the problem, Bucksavers discovered that the cause of the leakage was poor workmanship pertaining to the installation of the shower enclosure in the bathroom addition.

Essentially, Bucksavers determined that the Respondent undermined the efficacy of the shower enclosure by not (1) pre-filling corners and joints with mortar embed tape; (2) sealing the waterproofing membrane about the outside perimeters; (3) sloping the concrete shower base to promote proper drainage; (4) overlapping tears at the corners; (5) properly setting the drain unit; (6) sloping the curb toward the shower base; and (7) installing an adhesive bond to the tile. It was further noted that the Respondent installed screws directly into the rubber membrane allowing water to penetrate the drywall. Clmt. Exs. 6 and 7.

Even though no one from Bucksavers appeared at the hearing to provide firsthand knowledge of the unworkmanlike conditions discovered, the Claimant produced pictures taken by Bucksavers memorializing the conditions found as well as a narrative of its findings. Clmt. Ex. 7. Coupled with the Claimant's testimony that she did not experience any additional water leakage after-the-fact, I am persuaded by a preponderance of the evidence that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., 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 the work under the Contract, and the Claimant has retained other contractors to remedy that work. Accordingly, the following formula appropriately measures the Claimant's 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).

When pressed during cross-examination to clarify the amount paid to the Respondent, the Claimant's testimony was hazy, at best. At one point, her figures vacillated between \$49,262.23 and \$50,362.23. She also repeatedly apologized for the lack of clarity in her testimony on this narrow issue and explained that some of the documentation showing payments to the Respondent was unavailable to her because she no longer had access to an on-line portal that housed the documents. That said, the credible evidence (Claimant Exhibits 1 through 4) shows a series of change orders and/or modifications to the original agreed upon contract price of \$44,880.00. Those changes ultimately resulted in a payment to the Respondent in the amount of \$48,407.23. Clmt. Ex. 3. While the Claimant sincerely believed she paid a total of \$50,362.23 (with the Fund concurring), Claimant Exhibit 3 contained the latest full accounting of all of the credits and additions to the base price. See Findings of Fact No. 9. To further illustrate this point, Claimant Exhibit 3 was dated August 9, 2017 (showing amount paid to be \$48,407.23) and Claimant Exhibit 4 was dated July 10, 2017 (showing amount owed to be \$49,262.23). Upon closer examination, it appears to me that the Claimant erroneously added \$1,100.00 for bathroom fixtures she purchased to the July 10, 2017 invoice with the belief that the Respondent did not credit her for monies paid out of pocket.<sup>6</sup> Since the August 2017 invoice provided a complete accounting of all monies paid and any credits owed to the Claimant, I find it more likely than not to be a more accurate reflection of the Contract price.

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<sup>6</sup> \$49,262.23 + \$1,100.00 (toilet, vanity, and shelves) = \$50,362.23.

In addition, the Claimant provided the contract from Bucksavers as well as receipts for materials she paid out-of-pocket to complete the repairs to similar, like, kind, and quality of the work anticipated under the Contract. Clmt. Ex. 6. Therefore, the Claimant is eligible to receive the following award from the fund:

Amount paid under the Contract.....	\$48,407.23
Plus amount paid to Bucksavers.....	\$ 5,921.19
Plus amount paid for materials.....	\$ 2,851.14
Subtotal.....	\$57,179.56
Minus original Contract price.....	\$48,407.23
Total.....	\$ 8,772.33

In the intervening time, the Claimant testified that she has since sold the home where the home improvement and subsequent repairs occurred. So long as the Claimant “does not own more than three residences or dwelling places,” the fact that she no longer “resides in the home as to which the claim is made” is not a bar to making a claim against the Fund. Md. Code Ann., Bus. Reg. § 8-405(f)(2)(i), (ii).

Finally, 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 Claimant’s actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover \$8,772.33.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$8,772.33 as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,772.33; 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;<sup>7</sup> and

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

February 19, 2020  
Date Decision Issued

**CONFIDENTIAL**

Kathleen A. Chapman  
Administrative Law Judge

XXXXXXXXXXXX  
XXXXXXXXXXXX

KAC/da  
# 183944v1A

<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 27<sup>th</sup> day of April, 2020, 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.***

***Robert Altieri***

***Robert Altieri***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***