

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF HAROLD ROCHE,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF STEFANIE</b></p> <p><b>PETROVICH, T/A PETROS PAVING</b></p> <p><b>&amp; SEAL COATING,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE RICHARD O'CONNOR,</b></p> <p>* <b>ADMINISTRATIVE LAW JUDGE,</b></p> <p>* <b>THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: LABOR-HIC-02-19-18708</b></p> <p>* <b>MHIC No.: 18 (90) 1316</b></p>
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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 August 8, 2018, Harold Roche (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,500.00 in actual losses allegedly suffered as a result of a home improvement contract with Stefanie Petrovich, trading as Petros Paving & Seal Coating (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On June 7, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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<sup>1</sup> All citations to the Business Regulation Article are to the 2015 replacement volume.

I held a hearing on September 3, 2019 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund. The Claimant represented himself. The Respondent did not appear for the hearing. After waiting twenty minutes for the Respondent or her representative to appear, I proceeded with the hearing. 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 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 into evidence on the Claimant's behalf:

- Clt. Ex. 1. Contract, January 26, 2018.
- Clt. Ex. 2. Check from the Claimant to the Respondent for \$3,500.00, February 4, 2018; check from the Claimant to the Respondent for \$4,000.00, February 9, 2018.
- Clt. Ex. 3. Proposal from Lee's Paving, Inc., December 7, 2017; proposal from Thurmont Paving, LLC, June 1, 2018; proposal from Mickey's Asphalt Company, Inc., July 13, 2018.
- Clt. Ex. 4. Email from the Claimant to the Respondent, August 1, 2018.

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

I admitted the following exhibits into evidence on behalf of the Fund:

- Fund Ex. 1. Hearing Order, June 5, 2019.
- Fund Ex. 2. Notice of Hearing, June 24, 2019.
- Fund Ex. 3. Letter from the MHIC to the Respondent with the Claimant's Home Improvement Claim Form attached, August 20, 2018.
- Fund Ex. 4. The Respondent's licensing history with the MHIC, updated on August 12, 2019.
- Fund Ex. 5. The Respondent's licensing information with the MHIC showing her business address as of August 9, 2017.

Testimony

The Claimant testified. The Fund presented no testimony.

**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 01-114067.
2. On January 26, 2018, the Claimant and the Respondent entered into a contract to apply a two-inch-thick layer of new asphalt over an existing asphalt driveway covering about 3,500 square feet. The contract included saw-cutting the existing driveway for flush tie-ins at the road and at another driveway, and pre-filling settled areas of the existing driveway.
3. The Claimant's driveways form a rough "Y" shape – one branch goes to the house and another goes up to a winery. The contract included only the driveway to the house.
4. The contract price was \$7,500.00.
5. The Claimant paid the Respondent \$7,500.00 under the contract.
6. The Respondent began work on February 6, 2019 and finished on February 9, 2019.

7. The Respondent did not use asphalt-laying equipment to resurface the driveway. Peter Petrovich, the Respondent's on-site foreman, said their asphalt-laying machine had broken down. Instead, the Respondent brought in asphalt using a front loader, dumped and raked it, then compacted it with a road roller.

8. The Respondent's methods were unsuccessful in creating a smooth driveway, instead leaving ridges about every three feet where the front loader dumped the asphalt.

9. The Claimant noticed problems with the Respondent's work on February 8, 2018. He questioned Mr. Petrovich, who assured him that the Respondent's method would be adequate.

10. After the completion of the work, aggregate in the asphalt mixture began to come loose, the surface of the driveway was undulating, the tie-ins were not smooth, and the edges were disintegrating.

11. The Claimant asked the Respondent to return and cure the problems. The Respondent said she would, but never did.

12. On August 1, 2018, the Claimant asked the Respondent to refund the \$7,500.00 he had paid. The Respondent refused to refund the payment.

13. Lee's Paving, Inc. (Lee's) has offered to correct the Respondent's work for \$7,400.00.

14. Thurmont Paving, LLC (Thurmont) has offered to mill the asphalt as necessary and overlay the Respondent's work for \$8,400.00. Milling the asphalt means removing some of the asphalt to ensure evenness and a good bond with the new asphalt.

15. Mickey's Asphalt Company, Inc. (Mickey's) has offered to overlay the Respondent's work with new asphalt for \$6,530.00, or mill the Respondent's asphalt and put down a new layer for \$9,750.00.

16. From at least August 9, 2017 until August 12, 2019, the Respondent's address of record with the MHIC was 3433 McCurley Drive, Abingdon, MD 21009.

17. When renewing her license on August 12, 2019, the Respondent provided a new address.

18. The OAH sent Notices of Hearing to the Respondent at the McCurley Drive address on June 24, 2019 by both first-class and certified mail.

19. The United States Postal Service returned the notice sent first-class to the OAH with the notation "insufficient address."

20. The United States Postal Service returned the notice sent certified to the OAH with the notation "unclaimed."

## DISCUSSION

### *The Respondent's Failure to Appear*

Section 8-312 of the Business Regulation Article, entitled "Hearings," states, in pertinent part, as follows:

(a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.

(b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

...

(d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.

...

(h) If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.

Md. Code Ann., Bus. Reg. § 8-312.

Although the above statute applies to disciplinary proceedings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. Md. Code Ann., Bus. Reg. § 8-407(a). These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

Section 8-309 of the Business Regulation Article requires a licensee to notify the MHIC of a change of address within ten days of the change.

The notice of hearing in this case went to the Respondent's address of record with the MHIC on June 24, 2019 by certified mail and by first-class mail. The United States Postal Service returned both notices, one for insufficient address and one unclaimed. At that time, the Respondent's address of record with the MHIC was the McCurley Drive address in Abingdon. If the Respondent's business address had changed at that time, she had not provided notice of the change to the MHIC as required by section 8-309. The OAH had sent "due notice" to the Respondent under Business Regulation section 8-312(h), above, and the hearing proceeded in the Respondent's absence.

#### The Merits of the Claim

The Claimant has the burden of proving the validity of his 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.” 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 she entered into the contract with the Claimant and performed an unworkmanlike and inadequate home improvement. The evidence shows beyond doubt that the Respondent’s installation of the driveway was incompetent, with defects that would be unacceptable to any consumer. The Respondent’s biggest failing was to attempt to do the work without an asphalt-laying machine, which would have put down a smooth layer of asphalt with uniform thickness. The Respondent’s machine had broken, so instead of arranging for a replacement or waiting for repairs to be completed, the Respondent undertook the job without the required equipment.

The Respondent had asphalt dumped onto the driveway by a front loader. Workers with rakes then tried to smooth the asphalt into an even layer. After the road roller compacted the asphalt, the ridges where the loads were dumped were still prominent and the asphalt was uneven throughout the project. This construction method precluded the Respondent from making smooth tie-ins with the road and the other section of the driveway. In addition, the Respondent’s asphalt immediately started to disintegrate because it was installed improperly. The aggregate (small stones) that is part of the asphalt mix began to come loose from the asphalt even before the Respondent finished the project. Within a few weeks, the edges of the installation were crumbling, as were the tie-in areas.

The Claimant recognized the problems with the Respondent's work even before it was finished. He had another asphalt contractor come out on February 8, 2018, while the Respondent's crew was still working. That contractor declined to take over the project. Meanwhile, Mr. Petrovich falsely assured the Claimant that his method of installation was adequate and would provide the driveway called for in the contract. This was completely untrue, but it did have the effect of convincing the Claimant to pay the full contract price, \$7,500.00.

The Claimant attempted to have the Respondent return to repair the driveway, and Mr. Petrovich texted that he would, but never showed up. As the condition of the asphalt worsened, the Claimant emailed the Respondent on August 1, 2018, asking for his money back in lieu of filing a complaint with the MHIC. The Respondent denied that request.

The evidence establishes that the Claimant is entitled to recover from the Fund for the Respondent's inadequate and unworkmanlike home improvement. The next question is the amount of the award.

The Claimant has had three asphalt contractors provide proposals for repair or replacement of the Respondent's work. Lee's prepared their proposal before the Respondent did the work, but the Claimant testified that the scope of the work and the cost, \$7,400.00, would be the same. Lee's would put down a two-inch asphalt overlay to cover the Respondent's defective installation.

Thurmont and Mickey's each provided proposals after the Respondent's work was finished. Mickey's gave two possibilities: \$6,530.00 to install an overlay and \$9,750.00 to mill the Respondent's asphalt and install new asphalt. The Claimant testified that the proprietor of Mickey's was adamant that the driveway should be milled because he was not convinced that a two-inch overlay would solve the Claimant's problems. I have no way of knowing whether that



opinion is correct, since no asphalt contractor testified at the hearing. Thurmont's proposal of \$8,400.00 was, according to the Claimant, "mostly" an overlay on top of the Respondent's work.

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). The Claimant is not seeking any such compensation. 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 Claimant intends to retain another contractor to remedy that work. 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).

In calculating the award, I shall not consider Mickey's proposal of \$9,750.00 to mill and replace the asphalt. As stated previously, there is no evidence from which I can conclude that such work is necessary. Also, the other two contractors proposed to remedy the problems with an overlay without milling, indicating that this is an adequate solution for the Respondent's failures.

This leaves us with three proposals to put down a new asphalt overlay on the Claimant's driveway: \$6,530.00 from Mickey's, \$7,400.00 from Lee's, and \$8,400 from Thurmont, an average of \$7,433.33. The actual work proposed by each contractor seems to be the same, and

there is no reason to favor any particular one. I do not believe it is proper to use only the cheapest proposal in calculating the award; I shall use the average of the three and leave it up to the Claimant to choose a contractor. The calculations are as follows:

\$7,500.00	paid to the Respondent under the contract; plus
<u>+7,433.33</u>	required to repair poor work; equals
\$14,933.33	minus the original contract price;
<u>-7,500.00</u>	equals
\$7,433.33	actual loss.

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 his actual loss of \$7,433.33.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$7,433.33 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; 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 \$7,433.33; and

**ORDER** that the Respondent be 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 as set by the Maryland Home Improvement Commission;<sup>3</sup> and

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

November 26, 2019  
Date Decision Issued



Richard O'Connor  
Administrative Law Judge

ROC/kdp  
# 183201

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<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

FROM: [Illegible]  
 TO: [Illegible]  
 SUBJECT: [Illegible]

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**PROPOSED ORDER**

***WHEREFORE, this 2<sup>nd</sup> day of January, 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***

# PROPOSITION 1

The first part of the proposition states that if a function  $f$  is continuous on a closed interval  $[a, b]$ , then  $f$  is uniformly continuous on  $[a, b]$ . The proof of this part involves the Heine-Borel theorem, which states that a closed and bounded interval in  $\mathbb{R}$  is compact. Since  $f$  is continuous on a compact set, it is uniformly continuous.

The second part of the proposition states that if a function  $f$  is uniformly continuous on a set  $S$ , then  $f$  is continuous on  $S$ . The proof of this part is straightforward. Given  $\epsilon > 0$ , we can find  $\delta > 0$  such that for any  $x, y \in S$  with  $|x - y| < \delta$ , we have  $|f(x) - f(y)| < \epsilon$ . This implies that  $f$  is continuous at every point in  $S$ .

The proposition is a fundamental result in real analysis, showing the relationship between uniform continuity and ordinary continuity. It is particularly useful in proving the existence of antiderivatives and in the study of function spaces.