

<p>IN THE MATTER OF THE CLAIM</p> <p>OF TONYA WINGFIELD,</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 GARY JONES,</p> <p>T/A AXIMUS CONTRACTING, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE ALECIA FRISBY TROUT,</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.: LABOR-HIC-02-23-04912</p> <p>* MHIC No.: 22 (75) 1203</p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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SUMMARY OF THE EVIDENCE  
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PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On November 10, 2021, Tonya Wingfield (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$15,853.02 for actual losses allegedly suffered as a result of a home improvement contract with Gary Jones, trading as Aximus Contracting, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On February 3, 2023, the MHIC issued a Hearing Order

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor.

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

on the Claim. On February 14, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 27, 2023, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1). Jonathan Phillips, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant appeared and was self-represented. The Respondent appeared and was self-represented.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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 offered by the Claimant:

- Clmt. Ex. 1 Text messages between the Claimant and the Respondent, September 16, 2021 - November 27, 2021
- Clmt. Ex. 2 Contract, September 24, 2021
- Clmt. Ex. 3 Home Improvement Claim Form, received November 10, 2022
- Clmt. Ex. 4 Email titled, "100 El Camino Way, Fort Washington," March 3, 2022; and Emails, December 26, 2021, titled:
  - "Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #2"
  - "Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #3"
  - "Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #4"
  - "Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #5"

“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #7”<sup>3</sup>  
“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #8”  
“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #9”  
“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #10”  
“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #11”  
“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #12”  
“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #13”  
“Account 6034-6202-5806-6408 – Dispute Filed 12/26/21 – Email #14”  
“Account 6034-6202-5806-6408 – Dispute Refiled 12/26/21”

- Clmt. Ex. 5 35 photographs of interior of home, undated
- Clmt. Ex. 6 Spreadsheet and photographs created by the Claimant, undated
- Clmt. Ex. 7 13 photographs of interior flooring, undated
- Clmt. Ex. 8 Email chain titled, “Claim against Aximus Contracting,” March 22, 2023 – April 6, 2023
- Clmt. Ex. 9 Email chain titled, “100 El Camino Way, Fort Washington,” with attached receipts, bank statements, November 28, 2021; Email chain titled, “El Camino Change Orders,” with attached receipts, bank statements, November 8, 2021
- Clmt. Ex. 10 2 photographs of building materials, undated
- Clmt. Ex. 11 Summary, drafted by the Claimant, April 10, 2023
- Clmt. Ex. 12 Text message between the Claimant and the Respondent, November 15, 2021

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 The Respondent’s narrative response to MHIC Complaint, December 10, 2021
- Resp. Ex. 2 The Respondent’s narrative response to Synchrony Bank complaint, undated
- Resp. Ex. 3 The Respondent’s narrative response to second Synchrony Bank complaint, January 14, 2022
- Resp. Ex. 4 The Respondent’s narrative response to the Claimant’s MHIC claim, undated
- Resp. Ex. 5 Response letter from Synchrony Bank, December 2, 2021
- Resp. Ex. 6 Screenshot, Wells Fargo bank statement, November 28, 2021

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<sup>3</sup> There was no “email #6.”

Resp. Ex. 7 Home Improvement Claim Form, received November 10, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 Notice of Remote Hearing, March 9, 2023

Fund Ex. 2 Hearing Order, February 3, 2023

Fund Ex. 3 Home Improvement Claim Form, received November 10, 2022

Fund Ex. 4 Maryland Department of Labor, I.D. Registration information, inquiry made on April 20, 2023

### Testimony

The Claimant testified and presented the testimony of Donna Young, Darrin Casper, and Elio Piñeda.

The Respondent testified.

The Fund did not present 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.

2. The Claimant owns a single-family home in Fort Washington, Maryland (Property). It is the only property she owns and is her primary residence.

3. On September 24, 2021, the Claimant and the Respondent entered into a contract for interior home remodel work at the Property (Contract). The Contract divided the work into ten phases as follows:

Phase I: Demo master bathroom shower (walls and floor), vanity (sink, mirror, and light), and floor, gently removing toilet to be transferred to the basement bath. During the demo process, all carpet will be removed throughout entire house. The hallway bathroom tile wall, floor and vanity (sink, mirror and light) will be demoed, the toilet and olive green bathtub will be salvaged to be reinstalled after floor tile is complete. Kitchen floor, countertop, sink, backsplash and pantry will be removed. In the basement all wood panel

in family room will be demoed. All interior doors will be removed throughout entire house. All trash and debris will be removed from property.

Phase II: Start bathroom(s) build out by installing diverter(s) in master and hallway bathroom. Install duroc in hallway bathroom floor and bath wall. Run pipe rough-in over center of master shower. Rough-in master shower drain to the center of shower. Move supply vent to opposite wall. Build out master bathroom shower floor. Install duroc in master bath floor and on shower walls.

Phase III: Frame corner wall and knee wall in kitchen. Frame out basement making adjustments for door relocations. Frame wall to utility room. Relocate all electrical switches and outlets where necessary.

Phase IV: Install drywall in basement and kitchen. All walls throughout will be prepped and ready for paint. Apply duroc to kitchen floor.

Phase V: Paint basement and foyer walls. Install master bathroom tile throughout

Phase VI: Paint master bath, install tile in hallway bathroom. Install vinyl floor in basement

Phase VII: Paint upper level throughout. Install stone countertop in kitchen. Install vanity (mirror, sink and light) and toilet in master bath. Install vanity (mirror, sink and light) and toilet in hallway bath.

Phase VIII: Install kitchen floor tile. All interior doors will be installed throughout.

Phase IX: Hardwood floor will be installed on the upper level. [The Respondent] will either sand and stain 12 stairs and risers finished to match engineered floor or install new stair treads matching engineered floor and white risers. [The Respondent] will apply over 800 liner ft of baseboard and trim throughout house (upper and lower level)

Phase X: Clean work area leaving property broom clean

The Contract also included the following language:

Price includes "Labor" for scope of work;  
Start and completion date may [vary] depending on weather conditions;  
Price may [vary] if additional coat(s) of paint is needed;  
Contractor will pull any necessary permits prior to start date.

The Contract included the following payment terms:

We propose hereby to furnish Materials and labor-complete in accordance with above specifications, for the sum of \$31,500.00.

4. The agreed upon Contract price was \$31,500.00.

5. On a date not evident in this Record, the Respondent started work at the Property under the Contract.

6. The Claimant paid the Respondent \$31,850.00 in the following installments:

October 3, 2021	\$877.00
October 3, 2021	\$383.00
October 4, 2021	\$2,000.00
October 5, 2021	\$2,000.00
October 13, 2021	\$2,040.00
October 13, 2021	\$2,700.00
October 19, 2021	\$13,750.00
November 4, 2021	\$1,400.00
November 8, 2021	\$1,500.00
November 15, 2021	\$5,200.00 <sup>4</sup>

7. On or about November 26, 2021, the Claimant communicated with the Respondent about items under the Contract that remained outstanding, and items that needed to be corrected. The Respondent requested more money from the Claimant. The Claimant did not pay the Respondent because she had already paid the full contract price. The Respondent advised the Claimant that he and his contractors would not return to the Property.

8. At the time the Respondent stopped work at the Property, the work under the Contract was not complete. Additionally, some of the work that the Respondent had completed was unworkmanlike. Specifically:

- 45 outlet and light switch coverings were either not installed or installed incorrectly
- Circuit box was left incomplete
- The edges of the interior stairs and landing were unfinished
- The interior stairs were unfinished
- The door and doorframe to the utility room were not installed
- Two vent covers were not installed
- The heating vent in the master bathroom was incorrectly removed and then not replaced

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<sup>4</sup> The Claimant paid this \$5,200.00 directly to Elio Piñeda who completed work under the Contract for the Respondent.

- Paint throughout the home was mis-matched; it dripped and was streaky
- Flooring in the master bedroom was scratched; other flooring in the dining room, hallway and living room was damaged by the masking tape the painters used; trim and molding throughout were not installed correctly
- Doors and doorknobs were not installed
- Supplies and trash were left behind
- Installation of new drywall over the stairs and in living room was unfinished

9. On a date uncertain in this record, the Claimant entered into a contract with Elio Piñeda, a contractor licensed by the MHIC, to complete and correct work that had originally been included in the Contract with the Respondent. The Claimant paid Mr. Piñeda \$12,353.02 to complete the following:

- Complete electrical work including correcting outlets; drywall damage and relabeling the circuit box: \$700.00
- Complete interior stairs and landing: \$2,200.00
- Complete trim and molding throughout the house; install remaining doors and doorknobs: \$3,753.02
- Repaint the house: \$4,000.00
- Remove trash: \$800.00
- Return leftover materials to Home Depot: \$300.00
- Complete drywall area over stairs and living room: \$600.00

10. Mr. Piñeda gave the Claimant a quote for the remaining work left incomplete under the Contract. That quote included:

- Relocate vents in utility room and master bathroom; installation of utility room door: \$500.00
- Refinish damaged wood floors on the main floor in all bedrooms, living room and dining room: \$3,000.00

### **DISCUSSION**

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”). “[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 evidence establishes that the Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. The Fund presented the Respondent’s license information reflecting an issue date of August 6, 2021, and an expiration date of July 25, 2025. (Fund Ex. 4.)

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery, as established by the Claimant’s unrefuted testimony. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). Additionally, the Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

Based on the evidence presented, I conclude that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant testified that she and the Respondent got into a disagreement about funding for the project when the Respondent



asked her for money above the agreed Contract price. When the Claimant asked for a breakdown of expenditures, the Respondent abandoned the project, leaving work incomplete under the Contract. I found the Claimant to be very credible. Her testimony was organized and supported by photographs, receipts, emails and text messages. The Claimant was direct and remained calm and poised throughout her presentation.

The Claimant presented the testimony of Elio Piñeda. At all times relevant to this proceeding, Mr. Piñeda was a MHIC licensed contractor. The Respondent asked Mr. Piñeda to help him with the project at the Property, and Mr. Piñeda agreed. When he worked under the Respondent, he followed the Respondent's instructions despite feeling the work was not satisfactory because Mr. Piñeda believed what the Respondent was requesting reflected the Claimant's preferences and it was not his position, as a subcontractor, to question it. When the Respondent abandoned the project, the Claimant asked Mr. Piñeda to provide her a quote for the correction and completion of the work under the Contract. Mr. Piñeda testified that upon evaluating the work done, and left undone, at the Property, he gave the Claimant a quote for \$15,853.02 and contracted with her to complete a portion of the proposed items for a total of \$12,353.02.

Specifically, Mr. Piñeda testified that the painting done throughout the house "wasn't professional." He testified that it appeared the painters tried to match colors, but did not do it properly and left "multiple colors everywhere." He concluded that the entire house, including the ceiling, had to be repainted. He testified that the stairs were left as bare plywood at the time the Respondent abandoned the job. The boards were loose and creaked. He estimated that the wood flooring throughout the house was 80% complete; the molding was not installed; and the new flooring in the living room and dining room was scratched and discolored due to the

masking tape the painters had used. He testified that some of the scratches were too deep to “buff out” due to how thin the wood flooring was. He testified that he replaced the flooring with the deeper scratches in the front foyer area, but did not replace flooring in the living room or dining room.

Additionally, Mr. Piñeda testified that drywall work in the bathroom was left incomplete; outlets were left exposed or improperly installed; the utility room door and door frame were not installed; and vent covers were not installed.

The Respondent conceded that during the project at the Property, some of his workers stole property from the Claimant. He also conceded that the painters did not do a professional job, and he had to fire another worker for poor craftsmanship. The Respondent testified that, “The way stuff was left is not ok. We wouldn’t leave things like that...My guys did not want to go back to the project because they were not paid...Was it ok to leave it like that? No.” The Respondent conceded that the pictures presented by the Claimant reflected work that was inadequate, incomplete and unworkmanlike.

The Respondent relied on the fact that the Claimant’s claim with Synchrony Bank had been denied as proof that he should prevail. I do not find the ruling by Synchrony Bank to be informative on this issue as its only inquiry was whether services were rendered. They did not do an analysis of the quality or completion of the services. Additionally, the Claimant testified credibly that Synchrony Bank informed her that the Respondent had agreed to work it out with the Claimant and that his agreement led Synchrony to close the claim.

The Respondent also argued that the Claimant paid a portion of the money directly to Mr. Piñeda rather than to him, and this prevented him from paying his other workers. The Claimant testified credibly that the Respondent had directed her to pay Mr. Piñeda. In relation to that

assertion, the Respondent testified that he “[could] not say if that is correct or not.” I find that the Respondent asked the Claimant to pay Mr. Piñeda directly.

I thus find that the Claimant is eligible for compensation from the Fund.<sup>5</sup>

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. Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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.

The Respondent performed some work under the Contract before abandoning the job, and the Claimant retained other contractors to both complete and 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).

In addition to the Claimant’s testimony, which I found credible due to her excellent recall of details, its cogency, and its overall consistency, the Claimant provided extensive documentation that establishes that she paid the Respondent a total of \$31,850.00. (Clmt. Ex. 9.) Similarly, the

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<sup>5</sup> It was also the Fund’s position that the Claimant established eligibility for compensation based on unworkmanlike, inadequate, and incomplete home improvement work by the Respondent.

Claimant testified in detail regarding payments she made to Mr. Piñeda to repair the Respondent's work and complete the work specified in the Contract. Mr. Piñeda testified and credibly corroborated the Claimant's testimony on this issue. These costs amounted to \$12,353.02 (Clmt. Ex. 9). Finally, the Claimant and Mr. Piñeda testified that outstanding work exists that the Claimant has not had done, but that would cost \$3,500.00 to complete.

The evidence also establishes that the Contract price was \$31,500.00. (Clmt. Ex. 2.). The calculation of actual loss is thus:

Amount paid to Respondent:	\$31,850.00
Plus amount paid to correct/complete:	\$12,353.02
Plus outstanding amount required to correct/complete:	\$3,500.00
Less original Contract price:	\$31,500.00
	= \$16,203.02 actual loss <sup>6</sup>

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>7</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$16,203.02 does not exceed \$30,000.00 or that amount paid to the Respondent. Therefore, the Claimant's recovery is \$16,203.02. Bus. Reg. § 8-405(e)(1).

<sup>6</sup> These figures are consistent with the Fund's recommendation regarding the calculation of actual loss.

<sup>7</sup> On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$16,203.02 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$16,203.02 from the Fund. Bus. Reg. § 8-405(e)(1) (Supp. 2022).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,203.02; 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>8</sup> and

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

July 19, 2023  
Date Decision Issued

*Alecia Frisby Trout*

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Alecia Frisby Trout  
Administrative Law Judge

AFT/kkc  
#206283

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

**PROPOSED ORDER**

***WHEREFORE, this 14<sup>th</sup> day of September, 2023, 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.***

***Chandler Louden***

***Chandler Louden***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***