

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF TORI SHAW,</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 JOSE REYES,</b></p> <p><b>T/A REYE'S CONSTRUCTION</b></p> <p><b>GROUP, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE PATRICIA M. DEMAIO,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-10888</b></p> <p><b>* MHIC No.: 22 (75) 75</b></p> <p><b>*</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 February 14, 2022, Tori Shaw (Claimant), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$48,050.15 in actual losses allegedly suffered as a result of a home improvement contract with Jose Reyes, trading as Reye's Construction Group, LLC<sup>1</sup> (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

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<sup>1</sup> The name of the Respondent's company, as reflected on the transmittal from the MHIC and the exhibits, is Reye's Construction Group, LLC.

PROCEEDINGS

STATEMENT OF THE CASE

Issues

SUMMARY OF THE EVIDENCE

PROPOSED FINDINGS OF FACT

DISCUSSION

THE POINTS IN ISSUE OF LAW

RECOMMENDED ORDER

STATEMENT OF THE CASE

On the 14th day of June, 1952, the following facts were stated:

The respondent, [Name], is a resident of [Address], [City], [State].

He is a single man, [Age] years of age, and is a [Occupation].

He is a member of the [Organization], and has been so since [Date].

He is a resident of [Address], [City], [State], and is a [Occupation].

He is a resident of [Address], [City], [State], and is a [Occupation].

(2015).<sup>2</sup> On May 6, 2022, the MHIC issued a Hearing Order. On May 11, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing. On July 20 and August 8, 2022, I held a remote hearing initiated from the OAH in Hunt Valley, Maryland, utilizing the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. Terri D. Mason, Esquire, represented the Respondent, who was present.

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 (2021); Code of Maryland Regulations (COMAR) 09.01.03; and 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<sup>3</sup>

Unless otherwise noted, I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 Offered, Not Admitted<sup>4</sup>

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

<sup>3</sup> Because this was a remote hearing, the Claimant's proposed exhibits were delivered to the OAH prior to the hearing. As part of her proposed exhibits, the Claimant submitted an email from the Respondent dated July 10, 2021. During the hearing, the Claimant stated that the document was duplicative. The email was not offered into evidence or marked with an exhibit number but has been retained for the file. Pursuant to COMAR 28.02.01.22C, all exhibits presented must be retained for the record.

<sup>4</sup> Renovation Issues Timeline, undated.



- Clmt. Ex. 2 \$56,700.00 Reye's Construction Group, LLC, Invoice # TA-11189, February 22, 2021<sup>5</sup>
- Clmt. Ex. 3 \$10,000.00 check paid by the Claimant to the Respondent, April 2, 2021
- Clmt. Ex. 4 \$7,000.00 check paid by the Claimant to the Respondent, April 26, 2021
- Clmt. Ex. 5 \$15,000.00 check paid by the Claimant to the Respondent, May 12, 2021
- Clmt. Ex. 6 \$20,000.00 check paid by the Claimant to the Respondent, June 1, 2021
- Clmt. Ex. 7 \$24,332.37 Reye's Construction Group, LLC, Invoice # TA-11206, April 8, 2021
- Clmt. Ex. 8 \$24,332.37 check paid by the Claimant to the Respondent, April 9, 2021
- Clmt. Ex. 9 Letter from the Claimant to the Respondent, June 5, 2021
- Clmt. Ex. 10 Emails between the Claimant and the Respondent, June 5, 2021
- Clmt. Ex. 11 Emails between the Claimant and the Respondent
- June 7, 2021
  - June 10, 2021
- Clmt. Ex. 12 Letter from the Claimant to the Respondent, June 22, 2021
- Clmt. Ex. 13 Proposal from DB Genesis Hardwood Flooring, LLC (DB Genesis), August 2, 2021
- Clmt. Ex. 14 Estimate from Mr. Handyman of Anne Arundel & North PG (Mr. Handyman), December 7, 2021
- Clmt. Ex. 15 Estimate from APM Contractors (APM), December 12, 2021
- Clmt. Ex. 16 Photographs<sup>6</sup>
- Clmt. Ex. 17 Text messages between the Claimant and the Respondent, April 16, 2021 through May 28, 2021
- Clmt. Ex. 18 Correspondence from the Claimant to the MHIC, February 8, 2022
- Clmt. Ex. 19 MHIC Home Improvement Claim Form, unsigned, not dated

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<sup>5</sup> The invoice is a proposal dated February 22, 2021. The invoice was signed by the Claimant on April 1, 2021.

<sup>6</sup> The Claimant submitted twenty photographs that were marked collectively as Clmt. Ex. 16. The photographs were identified individually as 16A through 16T. The Claimant testified that between June 2021 and July 2021, she and her husband used their cellular telephones to capture the photographs.

1. The first part of the document is a list of names and addresses of the members of the committee.

2. The second part is a list of the names of the members of the committee who have been elected to the office of chairman.

3. The third part is a list of the names of the members of the committee who have been elected to the office of secretary.

4. The fourth part is a list of the names of the members of the committee who have been elected to the office of treasurer.

5. The fifth part is a list of the names of the members of the committee who have been elected to the office of clerk.

6. The sixth part is a list of the names of the members of the committee who have been elected to the office of reporter.

7. The seventh part is a list of the names of the members of the committee who have been elected to the office of reader.

8. The eighth part is a list of the names of the members of the committee who have been elected to the office of teller.

9. The ninth part is a list of the names of the members of the committee who have been elected to the office of doorkeeper.

10. The tenth part is a list of the names of the members of the committee who have been elected to the office of janitor.

11. The eleventh part is a list of the names of the members of the committee who have been elected to the office of messenger.

12. The twelfth part is a list of the names of the members of the committee who have been elected to the office of steward.

13. The thirteenth part is a list of the names of the members of the committee who have been elected to the office of waiter.

14. The fourteenth part is a list of the names of the members of the committee who have been elected to the office of porter.

15. The fifteenth part is a list of the names of the members of the committee who have been elected to the office of bellman.

16. The sixteenth part is a list of the names of the members of the committee who have been elected to the office of doorman.

17. The seventeenth part is a list of the names of the members of the committee who have been elected to the office of night watchman.

18. The eighteenth part is a list of the names of the members of the committee who have been elected to the office of fireman.

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28. The twenty-eighth part is a list of the names of the members of the committee who have been elected to the office of cooper.

29. The twenty-ninth part is a list of the names of the members of the committee who have been elected to the office of cooper.

30. The thirtieth part is a list of the names of the members of the committee who have been elected to the office of cooper.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Remote Hearing, May 25, 2022
- Fund Ex. 2 Hearing Order, May 6, 2022
- Fund Ex. 3 Notice letter from the MHIC to the Respondent, March 7, 2022
- MHIC Home Improvement Claim Form attached
- Fund Ex. 4 Certification of the Respondent's licensing history, June 15, 2022

The Respondent did not offer any exhibits.

### Testimony

The Claimant testified and did not present other witnesses. The Respondent testified and did not present other witnesses. The Fund did not present any witnesses.

### PROPOSED FINDINGS OF FACT

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC personal license number 01-110225 and corporate license number 05-135529. (Fund Ex. 4).

2. The Claimant's property subject to this matter is located in Prince George's County, Maryland and is the Claimant's residence (Property).

3. On April 1, 2021, the Claimant and the Respondent entered into a home improvement contract for the Respondent to renovate the Claimant's Property (Contract). The scope of work as outlined in the Contract was extensive and included but was not limited to:

- Demolish and renovate the master bathroom;
- Remove existing kitchen floor and install new subfloor and ceramic tile;
- Remove existing floor and install new tile in the main entry (foyer);
- Remove existing floor and install new subfloor and ceramic tile in the powder room;
- Remove existing floors on the main and second level and install new hardwood floors in all areas except the kitchen and bathrooms;

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- Install new recessed<sup>7</sup> lighting; and
- Remove and replace existing balusters, sand and stain hand railings for three sets of stairs.

4. The original agreed-upon Contract price was \$56,700.00.<sup>8</sup> Except for shoe molding, the Claimant was responsible for obtaining all materials. (Clmt. Ex. 2).
5. The Contract did not specify start or completion dates. (Clmt. Ex. 2).
6. On April 2, 2021, the Claimant paid the Respondent a \$10,000.00 deposit toward the Contract price. (Clmt. Ex. 3).
7. On April 7, 2021, the Respondent began working on the home improvement project. The Respondent hired several subcontractors to work on the home improvement project.
8. On or about April 8, 2021, the Respondent provided the Claimant an estimate in the amount of \$24,332.37. The estimate was for the Respondent to purchase the hardwood floors and other materials necessary to complete the hardwood floor installation at the Property.<sup>9</sup> (Clmt. Ex. 7).
9. On April 9, 2021, the Claimant paid the Respondent \$24,332.37 to purchase prefinished hardwood floors and installation materials. (Clmt. Ex. 8).
10. On April 26, 2021, the Claimant paid the Respondent \$7,000.00 toward the Contract price. (Clmt. Ex. 4).
11. The hardwood floors were delivered to the Property in two shipments. On April 28, 2022, the Claimant received sixty percent of the hardwood floors, and on May 5, 2022, an additional thirty percent was delivered to the Property.

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<sup>7</sup> The Claimant testified that the Contract contains a typographical error, and the agreement was for recessed lighting not "russet" lighting as it appears in the Contract.

<sup>8</sup> The total Contract price is itemized and includes: \$15,000.00 for the master bathroom; \$7,000.00 for the kitchen update; \$3,600.00 for the main entry; \$1,600.00 for the powder bathroom; \$4,500.00 for the recessed lights; \$10,000.00 for the hand railings; and \$15,000.00 for the hardwood floors. (Clmt. Ex. 2).

<sup>9</sup> The estimate is itemized and includes: \$21,250.00 for 5,000 square feet of hardwood floors; \$460.07 for thirteen boxes of staples; and \$1,245.00 for 2,980 linear feet of shoe molding.



12. On May 10, 2021, the Respondent's subcontractors began installing the hardwood floors. At 7:59 a.m., the Claimant text messaged the Respondent and asked him to remind his contractors that the floor needed to be leveled before the new floor was installed. (Clmt. Ex. 17).

13. On May 12, 2021, the Claimant paid the Respondent \$15,000.00 toward the Contract price. (Clmt. Ex. 5).

14. The same day, the Claimant text messaged the Respondent advising him that she left a piece of paper on the floor that said, "fix squeaks" and marked the squeaky area with painter's tape. The Claimant also asked the Respondent to remind the subcontractors to use tile on the floor in the powder room. (Clmt. Ex. 17).

15. On May 17, 2021, the Claimant text messaged the Respondent asking whether the squeaks in the floor had been repaired.<sup>10</sup> The Respondent replied that the problem was being repaired. The Respondent also confirmed that the hardwood floors in the powder room were removed.<sup>11</sup> (Clmt. Ex. 17).

16. On June 1, 2021, the Claimant paid the Respondent \$20,000.00 toward the Contract price. (Clmt. Ex. 6).

17. On June 5, 2021, the Respondent attempted to deliver the remaining ten percent of the hardwood floors to the Property. The Claimant denied the Respondent entry to her gated community thus preventing the Respondent from delivering the materials.

18. On June 5, 2021, at 2:58 p.m., the Claimant emailed the Respondent a letter with a list of complaints regarding the home improvement project. She advised the Respondent that

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<sup>10</sup> On a date not specified in the record, the Respondent's subcontractors installed two and a half boxes of hardwood floors without repairing the squeaky area of the subfloor. As a result, the newly installed flooring was removed and new hardwood floors installed after the subfloor in that area was replaced. (Clmt. Ex. 17).

<sup>11</sup> On a date not specified in the record, the Respondent's subcontractors installed two boxes of hardwood floors in the powder bathroom instead of tile as specified in the Contract.



she did not want him to attempt to repair the issues and requested a refund in the amount of \$54,600.00.<sup>12</sup> (Clmt. Exs. 9, 10).

19. Among other things, the Claimant alleged that the Respondent's subcontractors wasted materials by having to redo flooring based on their mistakes; the hardwood floors were uneven and buckling in various locations throughout the Property; wood stain was applied unevenly and splattered on the stair trim, risers, baseboards and walls; clear coat and/or polyurethane was splattered and smeared on the newly installed hardwood floors; the tile floor in the foyer was not installed in a symmetrical pattern near the walls.

20. On June 5, 2021, the Respondent emailed the Claimant and stated that "pending details" including hardwood floors, carpentry or moldings are part of the punch list and items considered his responsibility would be addressed. The Respondent requested that the Claimant forward him a punch list and copies of the photographs referenced in the Claimant's letter. (Clmt. Ex. 10).

21. On June 7, 2021, the Claimant emailed the Respondent reiterating her request for a \$54,600.00 refund and advised the Respondent that based on the issues with the renovation, it was best to part ways. (Clmt. Ex. 11).

22. On June 10, 2021, the Respondent emailed the Claimant with an offer to have the subcontractor repair the hardwood floors by sanding and "recoloring" them at no cost to the Claimant. The Respondent also offered a twenty percent reduction of the highest invoice. (Clmt. Ex. 11).

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<sup>12</sup> Per the Claimant's letter, the proposed refund amount of \$54,600 included: \$12,000.00 for staining; \$15,000.00 for hardwood floor installation; \$24,000.00 for the actual hardwood floors; \$3,600 for the foyer tile installation; and \$723.00 for the cost of the tile used in the foyer. (Clmt. Ex. 9). The total for the listed items is \$55,323.00.



23. On or about June 22, 2021, the Claimant emailed the Respondent a second letter restating her initial complaints with the home improvement project and notifying the Respondent that the balusters were improperly installed.

24. As an alternative to the refund the Claimant initially requested, she proposed that, at no additional cost to the Claimant, the Respondent:

- Remove the existing hardwood floors and replace them with new hardwood flooring of equal value;
- Remove and replace the tile in the foyer;
- Redo the staining so that there were no blotchy areas, prime and paint to cover stain that dripped/smearred on stair risers and drywall;
- Correct the balusters; and
- Complete all unfinished work.

25. The Respondent did not accept the Claimant's counteroffer.

26. On August 2, 2021, the Claimant obtained a proposal from DB Genesis to remove the hardwood floors installed by the Respondent and reinstall new hardwood floors. The proposal amount was \$45,035.45, which included labor and materials. (Clmt. Ex. 13). The work to be performed is within the scope of the original Contract.

27. On December 7, 2021, the Claimant obtained an estimate from Mr. Handyman to remediate and complete the work under the Contract related to the railings and stairs. Mr. Handyman presented two estimates, \$7,750.30 and \$8,414.65.<sup>13</sup> (Clmt. Ex. 14). The work to be performed is within the scope of the original Contract.

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<sup>13</sup> Per the estimate, the actual cost is determined by the time required to complete the work and the cost of materials used. The estimator allotted fifty-six to sixty-one hours for labor to be performed over three to four days by two technicians.

1. The Commission has received information from the complainant that the respondent has been in contact with the complainant's family members and friends in an attempt to influence the outcome of the investigation.

2. The Commission has also received information from the complainant that the respondent has been in contact with the complainant's family members and friends in an attempt to influence the outcome of the investigation.

3. The Commission has also received information from the complainant that the respondent has been in contact with the complainant's family members and friends in an attempt to influence the outcome of the investigation.

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7. The Commission has also received information from the complainant that the respondent has been in contact with the complainant's family members and friends in an attempt to influence the outcome of the investigation.

8. The Commission has also received information from the complainant that the respondent has been in contact with the complainant's family members and friends in an attempt to influence the outcome of the investigation.



28. On December 12, 2021, the Claimant obtained a proposal from APM<sup>14</sup> to demolish and retile the floor at the main entrance to the property and the master bathroom shower floor.<sup>15</sup>

## DISCUSSION

### *Legal Framework*

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); 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); *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.

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) the claimant is not an employee, officer or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor’s employees, officers or partners; (c) the work at issue did not involve new home construction; (d)

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<sup>14</sup> The record is void of any credible evidence to establish that APM is an MHIC licensed contractor.

<sup>15</sup> The Claimant testified that she discovered the issue with the shower floor after she terminated the Contract. Accordingly, the issue was not addressed in her June 5, 2021 or June 22, 2021 letters to the Respondent.

DISCUSSION

The first part of the paper discusses the importance of the research and the need for a more comprehensive approach to the study of the human mind. It then goes on to discuss the various methods used in the study and the results of the experiments. The paper concludes with a discussion of the implications of the findings and the need for further research.

1. The research was supported by the National Science Foundation, Grant No. 12345678.

the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Bus. Reg. § 8-101(g)(3)(i) (Supp. 2021).

### ***Statutory Eligibility***

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. Several of the factors necessary to establish statutory eligibility can be disposed of easily. The home improvement work was to be performed on a residential property in Maryland in which the Claimant resides and did not involve new construction. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. Further, the Claimant has not taken any other legal action to recover financially for the same loss, and the Claimant did not recover for the actual loss from any source. The Contract between the Claimant and the Respondent does not contain an arbitration provision. Additionally, the Claimant timely filed the Claim with the MHIC on February 14, 2022.

The remaining factor requires more discussion. The Respondent essentially argued that the Claimant unreasonably rejected his good faith effort to resolve the Claim as conveyed in the Respondent's June 10, 2021 email. (Clmt. Ex. 11). The Claimant testified credibly that she purchased prefinished hardwood floors, and that she was concerned that if she allowed the Respondent to sand and stain the floors, she would effectively void the manufacturer's warranty.

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the research and the objectives of the study. It also provides a brief overview of the methodology used in the study.

2. The second part of the report is a detailed description of the methodology used in the study. It discusses the data collection methods, the data analysis methods, and the statistical tests used in the study.

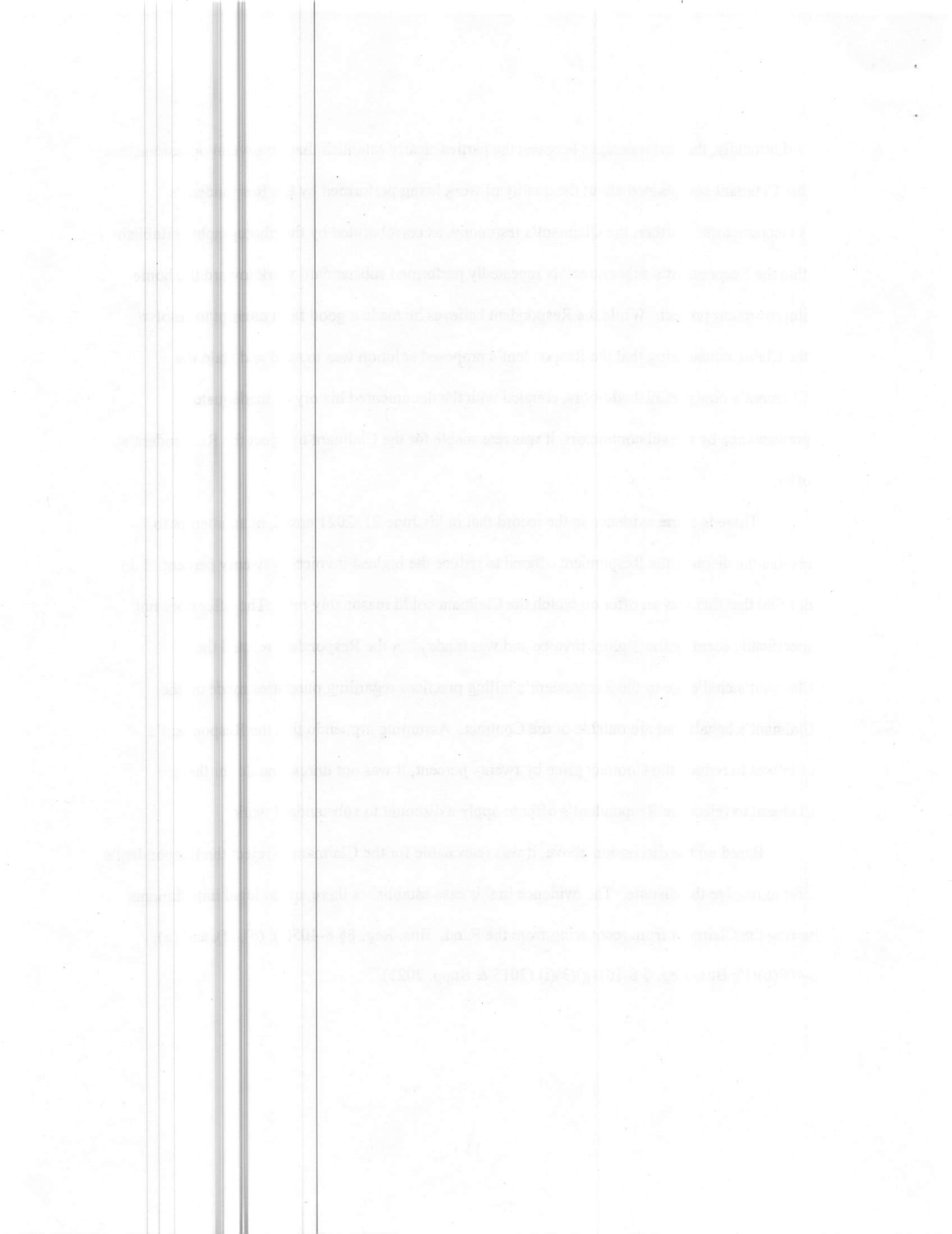
3. The third part of the report is a discussion of the results of the study. It discusses the findings of the study and compares them with the findings of other studies in the field. It also discusses the implications of the findings for practice and policy.

4. The fourth part of the report is a conclusion and recommendations. It summarizes the findings of the study and provides recommendations for future research and practice.

Additionally, the text messages between the parties clearly establish that on several occasions, the Claimant complained about the quality of work being performed by the Respondent's subcontractors. Further, the Claimant's testimony, as corroborated by the photographs, establish that the Respondent's subcontractors repeatedly performed substandard work toward the home improvement project. While the Respondent believes he made a good faith attempt to resolve the Claim, considering that the Respondent's proposed solution was to sand and stain the Claimant's new prefinished floors, coupled with the documented history of inadequate performance by the subcontractors, it was reasonable for the Claimant to reject the Respondent's offer.

There is some evidence in the record that in his June 21, 2021 email, in an attempt to resolve the dispute, the Respondent offered to reduce the highest invoice by twenty percent. I do not find that this was an offer on which the Claimant could reasonably rely. The offer does not specifically identify the highest invoice and was made after the Respondent refuted the Claimant's challenge to the Respondent's billing practices regarding purchases made on the Claimant's behalf that are outside of the Contract. Assuming arguendo that the Respondent's offer was to reduce the Contract price by twenty percent, it was not unreasonable for the Claimant to reject the Respondent's offer to apply a discount to substandard work.

Based on the discussion above, it was reasonable for the Claimant to reject the Respondent's offer to resolve the dispute. The evidence in this case establishes there are no legal impediments barring the Claimant from recovering from the Fund. Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Bus. Reg. § 8-101(g)(3)(i) (2015 & Supp. 2021).



### *Compensability Analysis*

The Claimant took the position that she suffered an actual loss incurred as a result of the Respondent's conduct, entitling her to compensation from the Fund. Specifically, the Claimant argued that the work performed under the Contract was done in an unworkmanlike and inadequate manner. The Fund agreed that the Respondent performed an unworkmanlike and inadequate home improvement; therefore, it recommended an award to the Claimant. The Respondent argued that most of the issues raised by the Claimant relating to the quality of the home improvement project amount to nothing more than a "punch list," and that if given the opportunity, he would have repaired the items the Claimant identified.

#### *Foyer Tile Floor / Shower Tile Floor*

The Claimant contends that the installation of the tile flooring in the foyer was unworkmanlike and inadequate. In support of her allegation, the Claimant provided one photograph depicting the floor after the tile was installed. The Claimant testified that the tile is not level and was not installed in a symmetrical pattern. The Claimant explained that the tile was installed with mostly "short pieces" of tile abutting the wall on one side of the foyer and mostly "full-sized" tiles abutting the opposite wall. The Claimant contends that this warrants complete demolition and reinstallation of new tile.

I find that the evidence does not support the Claimant's argument. The photograph provided by the Claimant does not show any obvious defects or flaws. While the Claimant may be dissatisfied with the symmetry of the tiles, the evidence does not support a finding that the installation of the foyer tile floor was done in an unworkmanlike or inadequate manner.

Similarly, the Claimant presented insufficient evidence to support a finding that the shower floor of the master bathroom was installed in an unworkmanlike or inadequate manner.

Faint, illegible text, possibly bleed-through from the reverse side of the page. The text is mirrored and difficult to decipher.



The Claimant testified that the shower floor installed by the Respondent's subcontractors is improperly sloped. As a result, water does not drain properly. The Claimant did not provide any video or photographs to support her argument; instead, the Claimant provided an estimate from APM. Per the estimate, the "customers reported" that the drainage system is not working well and that there is insufficient slope for the drain to work properly. (Clmt. Ex. 15). The estimate does not explain the author's qualifications and experience or provide any independent basis or explanation for any opinion or conclusion rendered. Accordingly, it is insufficient to support a finding that the Claimant sustained an actual loss that is compensable by the Fund.

#### *Hardwood Flooring / Railings*

The Claimant's chief complaint regarding the home improvement project pertains to the quality of the work performed by the Respondent's subcontractors when installing the hardwood floors, installing the balusters, and sanding and staining of the railings and steps. In support of her claim, the Claimant testified in detail and provided extensive evidence, which documented the unworkmanlike and inadequate work performed by the Respondent as well as the amount it will cost the Claimant to restore, repair, replace, and complete the unworkmanlike and inadequate home improvement project.

The Claimant provided copies of text messages, emails and photographs that established, as the events occurred, the scope of the Contract, several mistakes made by the Respondent's subcontractors, and that the Claimant repeatedly alerted the Respondent to the inadequate workmanship of his subcontractors. As evidenced by the Claimant's photographs, at various places throughout the Property, the newly installed hardwood floors are uneven, and appear to be cupping and buckling. Additionally, the photographs support the Claimant's argument that some type of clearcoat or polyurethane is splattered in various locations on the hardwood floors, and

Statement of the Chairman

The Chairman of the Board of Directors of the Company is pleased to announce the results of the annual meeting of the shareholders held on the 15th day of December, 1954. The meeting was held at the headquarters of the Company in New York City. The following resolutions were adopted by the shareholders:

1. That the report of the Board of Directors for the year ended December 31, 1954, be and it is so resolved.

2. That the dividends for the year ended December 31, 1954, be and it is so resolved.

3. That the Board of Directors be and it is so resolved.

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that the balusters were improperly installed. Further the photographs also support the Claimant's argument that the subcontractors dripped wood stain on the paint surrounding the stairs.

After considering the testimony and reviewing all exhibits, I find that the Respondent performed an unworkmanlike and inadequate home improvement. The overall quality of the installation of the hardwood floors, installation of the balusters, and staining of the steps and railings was unworkmanlike and not one the Claimant should be reasonably expected to accept.<sup>16</sup>

The Claimant established, by a preponderance of the evidence, the Contract price, the money paid to the Respondent, and that the Respondent performed a home improvement that was inadequate and unworkmanlike. The Claimant also provided evidence that she has solicited other contractors to repair the unworkmanlike and inadequate home improvement performed by the Respondent to complete the Contract.

The Fund agreed that the Respondent performed work on the home improvement project in an inadequate and unworkmanlike manner. The Fund argued that the Claimant's credible evidence shows that she sustained a loss from the acts or omissions of the Respondent, and it therefore recommended an award to the Claimant from the Fund. I find 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

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<sup>16</sup> In reaching this decision, I considered the Respondent's argument that he advised the Claimant that the existing subfloor was not the standard necessary for hardwood floors and that he recommended that the subfloor be replaced before installing the hardwood floors, but the Claimant opted not to follow his advice. Considering the scope of the original Contract coupled with the text messages between the parties, I do not find the Respondent's testimony regarding that issue persuasive. Additionally, I reject the Respondent's general argument that the Claimant walked on the hardwood floors thus causing some of the damage. The Respondent failed to present any credible evidence to establish that the Claimant caused any damage to the hardwood floors.



fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's "actual loss," unless a unique measure is necessary. COMAR 09.08.03.03B(3).

The controlling regulation provides, as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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)(a)-(c).

The Respondent performed work under the Contract, and the Claimant has solicited other contractors to complete or remedy that work. As argued by the Fund, I find that the third regulatory formula as outlined in COMAR is appropriate in this case. Therefore, I shall apply COMAR 09.08.03.03B(3)(c) to measure the Claimant's actual loss, using the following calculations:

\$45,035.45	Amount of DB Genesis Flooring proposal
+ \$7,750.30	Amount of Mr. Handyman estimate <sup>17</sup>
\$52,785.75	Total Amount the Claimant has paid or will pay to other contractors to complete the work
+\$76,332.37	Total Paid to the Respondent by the Claimant
Total	\$129,118.12

<sup>17</sup> The Fund argued, and I agree that the lowest of the two Handyman estimates should be used to calculate the Claimant's actual loss.



-\$81,032.37<sup>18</sup> Less the Contract Amount

Equals \$48,085.75 Actual Loss

The Business Regulation Article caps a claimant's recovery at \$30,000.00 for acts or omissions of one contractor. Bus. Reg. § 8-405(e)(1). In this case, the Claimant's actual loss of \$48,085.75 exceeds the per claim statutory cap. Therefore, the Claimant's recovery is limited to \$30,000.00. Bus. Reg. § 8-405(e)(1).

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$48,085.75 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). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(1).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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>19</sup> and

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<sup>18</sup> The original Contract amount was \$56,700.00. (Clmt. Ex. 2). Under the original Contract, the Claimant was responsible for purchasing and providing materials. The Contract amount was increased by \$24,332.37 because the Respondent purchased the materials for the hardwood floor installation on behalf of the Claimant. (Clmt. Ex. 7). Accordingly, the adjusted Contract amount is \$81,032.37.00.

<sup>19</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

1. The Commission has received a request from the Government of the State of New York for the purpose of determining the amount of the State's contribution to the cost of the construction of the proposed project.

RECOMMENDATION OF THE COMMISSION

The Commission has considered the request and has concluded that the State's contribution to the cost of the construction of the proposed project should be determined on the basis of the following factors:

RECOMMENDATION OF THE COMMISSION

The Commission has concluded that the State's contribution to the cost of the construction of the proposed project should be determined on the basis of the following factors:

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**ORDER** that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

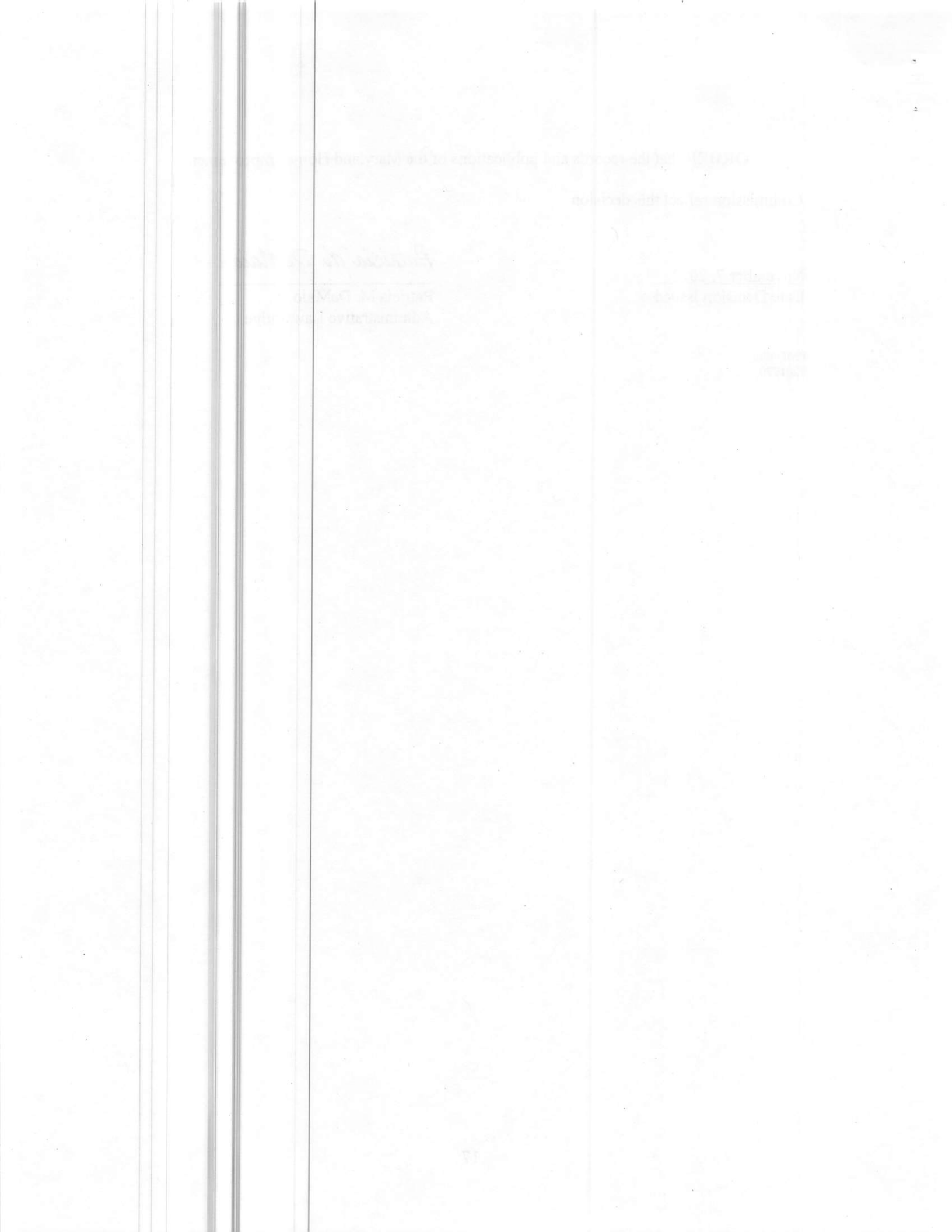
November 7, 2022  
Date Decision Issued

*Patricia M. DeMaio*

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Patricia M. DeMaio  
Administrative Law Judge

PMD/dlm  
#201770



**PROPOSED ORDER**

***WHEREFORE, this 14<sup>th</sup> day of December, 2022, 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.***

***Lauren Lake***

***Lauren Lake***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

PROPOSED ORDER

IT IS HEREBY ORDERED that the Commission shall have jurisdiction over the proposed order and shall have authority to issue such orders as may be necessary to carry out its duties under the Act. The Commission shall also have authority to enforce its orders and to take such action as may be necessary to carry out its duties under the Act.

James M. [Name]

James M. [Name]  
Member  
Federal Reserve Board  
Washington, D.C.