

Circuit Court for Baltimore County
Case No. C-03-CV-23-003282

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1147

September Term, 2024

IN THE MATTER OF SHAWNNE BITTORIE,
ET AL.

Nazarian,
Albright,
Kenney III, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: January 27, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Mark Towles and Sherri Romm (the “homeowners”) filed a claim with the Maryland Home Improvement Commission’s (the “Commission”) Guaranty Fund seeking compensation for losses they incurred from Harman Bittorie Homes’s (“HBH”) alleged failure to complete certain home improvement projects. After a hearing before an Administrative Law Judge of the Office of Administrative Hearings (“OAH”), the OAH concluded that the homeowners had suffered a compensable loss and recommended that the agency order the Guaranty Fund to disburse an award. The Commission affirmed the OAH’s findings of fact, conclusions of law, and proposed decision, and after HBH sought judicial review, the Circuit Court for Baltimore County affirmed the agency’s final order. HBH appeals and we affirm.

I. BACKGROUND

Shawnn Bittorie is a licensed contractor who trades as HBH. On or around September 10, 2020, the homeowners and HBH executed a residential construction services contract under which they agreed to pay HBH \$62,000 to complete thirty-three home improvement projects. The statement of work included projects to remove and replace siding, gutter boxes, and windows and to repair leaks in the roof. HBH promised to order all work materials within forty-eight hours of the homeowners’ acceptance of the contract. And HBH agreed that the work would be substantially complete within “five weeks for custom items,” not including delays caused by “shortage of labor and materials; additional time required for Change Order[s] and additional work; delays caused by [the homeowners] . . . and other delays unavoidable or beyond the control of [HBH].” The

parties agreed that any discovery of concealed conditions or any “alteration or deviation from the Scope of Work” at the homeowners’ request would “be treated as Additional Work.” Additionally, HBH reserved the right to stop further work if the homeowners failed repeatedly to provide product selections or information necessary to advance the project. HBH agreed to give the homeowners written notice of that material breach of the contract and fourteen days to cure it. And the homeowners agreed to follow this same notice procedure if they alleged a contractual breach by HBH.

By October 19, 2020, the homeowners had paid HBH \$55,000 to complete the work. They added additional projects on January 7, 2021, increasing the contract price to \$83,000,¹ and then again on April 10, 2021,² for a total contract price of \$111,000. HBH and the homeowners agreed to a total of seventeen change orders that introduced additional projects, including roof replacement, staircase replacement, siding replacement due to exterior rot, and tree removal.

The homeowners fired HBH in late June 2021 due to incomplete work. The next month, they hired another contractor, J.K. Exteriors (“J.K.”), to whom they paid

¹ The work orders memorialized in the January 2021 addendum involved: base scope; roof scope; master bedroom window add; master trapezoid; master tall glazed; chimney exterior re-work/replace top rows and seal; chimney internal flu liner seal and cavity repair.

² The work orders memorialized in the April 2021 addendum comprised the following: stair box; stair treads; other trees; interior wall panels; concrete facing – fireplace; exterior light fixtures; new electrical wiring exterior; exterior rot; seal entire foundation area and patch; foyer and new portico; change to stucco in noted areas; interior wiring and relocation.

approximately \$150,000 to finish the outstanding home improvement projects. On or around November 17, 2021, the homeowners filed a claim with the Commission’s Guaranty Fund seeking reimbursement of \$35,608.97. The Commission forwarded the matter to the OAH for a hearing.

The homeowners, HBH, and the Commission’s Guaranty Fund appeared before an Administrative Law Judge on October 11, 2022. The purpose of the hearing was to determine whether the homeowners had “suffered an actual monetary loss as a result of [HBH’s] unworkmanlike, inadequate or incomplete home improvement work” and, if so, by what amount. The ALJ admitted three preliminary exhibits from the Commission³ and heard opening statements. In its opening argument, HBH claimed that it had discovered “excessive rot from insects and from moisture infiltration” on the interior and exterior of the home upon starting the work. It said the homeowners started considering different materials to address the problem and that delays ensued with each change order, and HBH posited that supply chain difficulties during the COVID-19 pandemic complicated the procurement process even more. HBH maintained that the parties never agreed on substitute siding material for the external part of the house and that the scope of the project “was never tied down.”

Mr. Towles testified that HBH told him the work would be complete by December 16, 2020. HBH had agreed to order new windows and roof shingles in October 2020 but

³ The preliminary exhibits were the hearing notice; Ms. Bittorie’s licensing record; and a letter from the Commission to the homeowners enclosing a copy of their November 2021 claim.

didn't. When HBH did order the windows, they arrived in January 2021 in the wrong size. And then the reordered windows that arrived in April 2021 were fewer than the number needed for the project. HBH failed to complete the work on his rain spouts and still hadn't installed his roof by July 2021. HGH didn't show up for scheduled appointments multiple times and repaired the homeowners' rotted siding with the wrong replacement siding. It took down three trees but left the stumps behind. It "left unterminated wires hanging from the ceiling—exposed wires" and removed the homeowners' staircases without replacing them. When the parties discussed the removal of the bedroom staircase in October 2020, HBH suggested the homeowners would be without the staircase for four days. They ended up going without stairs for more than a year until they could hire another contractor to replace them.

Mr. Towles testified that he kept waiting but "nothing was getting done." When HBH couldn't get the original Hardie Board siding the parties had discussed, it suggested exploring stucco as a replacement; then, when HBH's stucco contractor came to the house, "he didn't want to do the job." According to Mr. Towles, HBH kept changing the work orders on the siding material due to "lack of availability." And the "final straw" came when he realized the number of projects that were incomplete as of June 2021, including replacements of the homeowners' roof, gutter boxes, siding, and windows. Ms. Romm testified that the homeowners hired J.K. after they found out in June 2021 that HBH still hadn't ordered their siding material. Despite the "COVID supply problem," J.K. managed to get the siding material within three months.

Ms. Bittorie testified that product supply chains in 2020 and 2021 were “hit or miss.” With regard to the siding, the homeowners chose initially an iron gray Hardie Board product that came in four-by-eight or four-by-ten sheets. Because the lead time on that product was “very long,” the parties considered rain screens next. HBH obtained sample products from the Hardie Board sales representative and the homeowners selected between different colors, but then ran into availability problems with that product too. The parties then explored stucco, and HBH arranged for its subcontractor to “work[] on samples for the home.” This process continued into May 2021, but the stucco subcontractor didn’t work out.

Ms. Bittorie recounted that Ms. Romm identified another Hardie Board product after the stucco plan fell through, and around mid-June 2021, the parties decided to pursue that plan. HBH’s Hardie Board sales representative visited the homeowners to discuss the product, and HBH emailed him the siding scope report that evening. The representative began “pulling what was readily available” and because supply on the East Coast was limited, he tried to “pull from other areas.” He put in the wrong order before leaving town for several days. HBH tried to work with another person from his office but couldn’t correct the order. The order went out on or around June 24, 2021, and the homeowners terminated the contract a few days later.

Ms. Bittorie testified that HBH discovered water damage and rot in multiple parts of the house’s exterior. As a result, HBH had to remove siding, caulk and seal the areas, and replace the siding, and regrade and waterproof other affected areas. As to the window

installment, HBH ordered the windows in October 2020 and told the homeowners that they would arrive in December. But HBH had made mistakes on the window measurements for the first order.⁴ The changes in siding material affected the kind of replacement windows HBH could install, and when the stucco plan didn't work out, the windows needed to be reordered. Because of the unfinished order of siding material, HBH couldn't finish the windows.

Ms. Bittorie explained that HBH placed a roofing order that wasn't delivered because there were "several other things to take care of, couldn't deal with the roof until after the trees were taken out, etc." The electrical subcontractor had "made a mess" of the homeowners' electrical wiring and "there were issues" with another subcontractor's crew who had broken one of their kitchen windows and "weren't getting things done." HBH didn't resolve the electrical mess or repair an area of the homeowners' deck that its subcontractors had cut without authorization. HBH's tree contractors broke one of the homeowners' gutter boxes and didn't reattach it because of rot. HBH had to remove the bedroom stairs to refinish the floors around October 9, 2020, and the homeowners authorized it to throw away the stairs and explore different replacement designs. The homeowners chose a custom-made design that HBH sent to a subcontractor who came to the house and met with Ms. Romm. But the project ran into problems with code requirements and executing the design the homeowners wanted.

⁴ HBH didn't submit receipts of this purchase as evidence at the hearing.

During closing argument, HBH argued that it hadn't abandoned the job and that the homeowners had terminated the contract wrongfully. It asserted that supply chain interruptions from the COVID-19 pandemic forced the parties to explore other siding material alternatives and there was "no meeting of the minds" on the final replacement product. HBH acted reasonably in addressing the multiple areas of rot discovered in the exterior of the home, it claimed, and the homeowners' changing preferences complicated the replacement of their bedroom staircase. Ultimately, HBH attributed its incomplete work to "supply chain problems" and the homeowners' termination of the contract without giving HBH an opportunity to cure the issue. In closing, the Commission's Guaranty Fund argued that the homeowners had met their burden of proving that they had suffered a compensable loss. The Guaranty Fund recommended an award of \$30,000.

During the hearing, the ALJ admitted nine exhibits depicting the condition of the homeowners' house after HBH's partial work. The ALJ also admitted receipts of their payments to other contractors to finish removing the tree stumps and completing the electrical work HBH had started. The evidentiary record included the contract between the parties, the two addenda to the contract, and records of the homeowners' payments to J.K., the contractor they hired ultimately to finish all their outstanding projects. Ms. Romm submitted into evidence the complaint and narrative timeline that the homeowners filed with the Commission and documentation of their \$55,000 payment to HBH. The record also included six exhibits proffered by HBH and three exhibits from the Commission's Guaranty Fund.

The OAH released a proposed decision concluding that the homeowners had “sustained an actual and compensable loss of \$79,922.69 as a result of [HBH’s] acts or omissions” and that the homeowners were entitled to recover \$30,000 from the Guaranty Fund. The OAH found that HBH never delivered the windows or siding promised under the contract; that the homeowners entered into contracts with J.K. to repair or complete HBH’s previous work, including the roof installation and siding projects, at a cost of \$97,600; that the homeowners paid a contractor \$750.00 to remove tree stumps that HBH left behind; that the homeowners paid another contractor \$2,900 to repair and replace lighting fixtures that HBH did not complete; and that HBH had managed to complete some projects, including performing chimney work, resealing the foundation, removing trees (excluding stumps), replacing some siding, removing sheet rock, removing the bedroom staircase, refinishing the bedroom floors, removing the deck stairs, completing electrical work in the basement, and installing four exterior light fixtures.

The OAH found that by October 2020 very little work had been completed and material orders remained outstanding, even though the homeowners had paid nearly fifty percent of the adjusted contract price, and that HBH’s failure to complete the scope of work in the contract was undisputed. It found further that the homeowners had terminated the contract reasonably given the amount they had paid and how much time had passed since the scheduled completion date. In response to HBH’s explanations, the OAH determined that other than project design changes, any issues with supply chains, code requirements, subcontractor pricing, or discovery of water rot were ultimately HBH’s responsibility to

resolve. It noted also how HBH didn't order the homeowners' siding until June 24, 2021, nearly ten months after the time stated in the contract. The OAH reasoned that HBH's failure to complete the scope of work was an omission that constituted a basis for relief from the Commission's Guaranty Fund. It recommended that the Commission order the Guaranty Fund to award the homeowners \$30,000, order Ms. Bittorie ineligible for a Commission license until she reimburses the Guaranty Fund for the amount paid, and order that the Commission's records and publications reflect the OAH's decision.

With the proposed decision, the Commission released its proposed order to approve the OAH's recommended order. HBH filed exceptions to the OAH's proposed decision and the parties came before the Commission for an exceptions hearing. The record before the Commission exceptions panel included the proposed decision, the Commission's proposed order, HBH's exceptions, and the exhibits admitted at the administrative hearing.⁵

The exceptions panel rejected the argument that HBH's discovery of exterior rot and the homeowners' changing decisions were responsible for its performance delays. The panel noted HBH's prior statement to the Commission that it was aware of "a lot of exterior rot around the house" when the parties executed the contract in September 2020. The panel

⁵ The record on review didn't include the OAH hearing transcript because neither party produced it. Therefore, the Commission exceptions panel limited its review to these record items pursuant to COMAR 09.01.03.09, which provides that the record must consist of transcripts, if filed. COMAR 09.01.03.09(G)(5). And if the transcript isn't filed, then the parties at the exceptions hearing "may not refer to any testimony before the [Administrative Law Judge] which was not incorporated into the ALJ's findings of fact or conclusions of law." COMAR 09.01.03.09(I).

reasoned that there was no evidence in the record to support a relationship between the need to repair rotted wood and HBH's ability to order the siding, or evidence of when the homeowners changed their mind about the siding material or when they finalized their decision relative to the ultimate order placed on June 24, 2021. The panel noted further that HBH's June 24, 2021 siding order "matched nearly exactly the September 11, 2020 Siding Scope Report estimating the square footage of siding necessary for the project," leading the panel to conclude that unforeseeable circumstances didn't prevent HBH from ordering the materials within forty-eight hours of executing the contract. The panel considered HBH's earlier statement that its delay in calling the sales representative before he left for vacation resulted in the incorrect siding order. In the panel's view, the record was devoid of any evidence that HBH's failure to order the windows was attributable to the homeowners.

The exceptions panel questioned the merits of HBH's position that the homeowners' changing minds caused its incomplete work because HBH never notified the homeowners of any issue with their change orders, an action available in the contract if the changes rose to the level of a material breach. According to the panel, the homeowners acted reasonably when they terminated HBH after the project surpassed the completion date by six months, after its vendor ordered incorrect siding materials that were nine months overdue already, and after HBH failed to order the windows for the project at all. The panel rejected the suggestion that the homeowners breached the contract by failing to give proper notice of their dissatisfaction, reinforcing that the scope of the issue concerned their entitlement to

an award from the Commission’s Guaranty Fund. The exceptions panel affirmed the OAH’s findings of fact, conclusions of law, and proposed decision.

HBH petitioned the Circuit Court for Baltimore County for judicial review and the court heard argument from HBH and the Commission. The circuit court determined that the record contained substantial evidence to support the OAH’s factual findings and conclusions of law and that the OAH’s decision, as adopted by the agency, relied on correct conclusions of law. The court denied HBH’s motion to alter, amend, or revise its order. From that latter decision, HBH noted a timely appeal.

II. DISCUSSION

On appeal, HBH asks whether the circuit court erred in affirming the findings and conclusions of the OAH, as affirmed by the Commission.⁶ We hold that substantial evidence supported the agency’s final decision and that its legal conclusions were correct, and we affirm the circuit court’s judgment to that effect.

When reviewing an administrative agency’s decision, our role is to determine whether there is substantial evidence in the overall record to support the agency’s findings and conclusions and whether the agency’s decision rests on an erroneous legal conclusion. *Motor Vehicle Admin. v. Sanner*, 434 Md. 20, 31 (2013) (citation omitted). This review is limited and narrow. *Id.* To answer the first question, we ask “whether a reasoning mind

⁶ The Commission identified one Question Presented in its brief: Was the Commission’s decision to grant Mr. Towles an award from the Guaranty Fund for HBH’s incomplete performance after he terminated HBH because of numerous delays and errors supported by substantial evidence in the record and legally correct?

reasonably could have reached the factual conclusion the agency reached.” *Lumbermen’s Mut. Cas. Co. v. Ins. Comm’r*, 302 Md. 248, 266 (1985) (quoting *Prince George’s Drs. ’ Hosp. v. Health Servs. Cost Rev. Comm’n*, 302 Md. 193, 200–01 (1985)) (cleaned up). Regarding conclusions of law, we remember that the ““agency’s interpretation and application of the statute [it] administers should ordinarily be given considerable weight”” *Sanner*, 434 Md. at 31 (quoting *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 572 (2005)).

HBH maintains that a simple failure to complete work, by itself, isn’t sufficient to support an award and that the Commission’s decision was improper because it lacked a finding of misconduct. HBH contends that the work wasn’t completed for reasons other than misconduct and the record lacks evidence of any delay “in any step of the procurement process” for the siding products. HBH insists also that the homeowners made completion of the contract impossible when they terminated it.

The Commission counters that HBH’s arguments ignore the numerous reasons it determined that the homeowners terminated the contract reasonably and that the record is replete with non-siding projects that HBH failed by its own conduct to complete. The agency argues that this administrative proceeding derives from a statutory claim against the Guaranty Fund for actual losses suffered due to HBH’s conduct rather than a breach of contract action, making the contractual provision that contemplated unforeseen delays immaterial to the issue before the agency. The Commission maintains that the record supported its finding that HBH’s acts and omissions were responsible for the incomplete

projects and entitled the homeowners to recover from the Guaranty Fund. We hold that there was substantial evidence to support the agency’s decision and that its decision wasn’t premised on an erroneous legal conclusion.

The Maryland Home Improvement Law governs disputes between homeowners and home improvement contractors. *See* Md. Code (1992, 2024 Repl. Vol.), § 8-101 *et seq.* of the Business Regulation Article (“BR”). The Commission is the licensing authority that regulates home improvement contractors in the state. BR §§ 8-201, 8-207–8-212, 8-301. The agency has established a Home Improvement Guaranty Fund, BR § 8-403(a), to compensate homeowners for “an actual loss that results from an act or omission by a licensed contractor,” as found by the agency. BR § 8-405(a). These acts or omissions include those of the contractor’s subcontractors, salespersons, or employees. BR § 8-405(b). The statute defines “actual loss” as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” BR § 8-401. The Commission can award up to \$30,000 for actual losses caused by the acts or omissions of one contractor. BR § 8-405(e)(1).

In this case, the agency’s final decision was grounded in substantial evidence in the record. The issue before the OAH was whether the homeowners had suffered an actual monetary loss due to HBH’s unworkmanlike, inadequate, or incomplete home improvement work. The record in this appeal documented a series of incomplete projects, when those projects began, when the homeowners terminated the contract, and the costs they incurred to pay other contractors to finish them.

A few examples from the record reinforce the substance behind the Commission’s final decision. HBH failed to order the siding and the windows within forty-eight hours of the homeowners’ acceptance of the contract on September 10, 2020. It is undisputed that HBH didn’t order either set of materials by September 12. In fact, HBH told the Commission that its “[f]irst time measuring windows for the scope was within 2 weeks of the agreement which was the earliest [it] could get someone to come in while groups were still under ‘COVID’ work schedules” and after that there was a second measurement appointment. The promise to order supplies within forty-eight hours was not conditioned on unforeseen delays or circumstances beyond HBH’s control as was the promise to substantially complete the work within five weeks. And according to Mr. Towles, HBH told him that it would order the windows in October 2020, more than forty-eight hours after contract execution. HBH testified that it ordered the windows in October 2020 but didn’t produce evidence of that purchase at the hearing when the homeowners asked for it during cross-examination. The record reveals that HBH still hadn’t ordered the correct window, siding,⁷ or roof materials as of June 10, 2021, eight months later, and that was the “final straw” for the homeowners, understandably so.

⁷ HBH’s hearing testimony about its orders of the siding materials didn’t include specific dates, but its earlier statement to the Commission did. The record indicates that when the homeowners chose the third Hardie Board product, the sales representative visited their home on Tuesday, June 15, 2021. HBH testified that it sent the siding scope report to the representative that evening, but the report is dated June 21, 2021. According to HBH, it spoke to the representative on Wednesday June 16 and planned to get back to him on Thursday but “was delayed.” By the time HBH called him on Friday June 18, the representative was out of town on vacation and wouldn’t return until June 24, the date HBH placed the correct siding order.

From the record, it is undisputed that HBH didn't complete the work on the homeowners' rain spouts, left behind the stumps of the trees it removed, and left exposed electrical wires hanging from the ceiling. HBH began removing the trees in October 2020. The tree stumps remained in the ground until July 2021, when the homeowners paid another contractor who removed them within approximately five hours. There is no dispute that HBH removed the homeowners' bedroom staircase in October 2020 and that by late June 2021, when the homeowners fired HBH, it still hadn't been replaced. The homeowners had to hire another contractor to replace it.

Even HBH's assurance that it would complete the original scope of work by December 16, 2020 defied its promise that "construction time through substantial completion" would occur by no later than October 15, 2020 for custom items. This contractual provision qualified that the date could change for delays due to labor shortages, change orders, or other unavoidable delays beyond HBH's control, but the work still must be done within a reasonable period, and the record doesn't substantiate HBH's claims that these factors did, in fact, add nine additional months to the project. HBH's numerous explanations don't change the fact that it didn't complete these projects and that the homeowners had to pay someone else to do them. In other words, HBH's explanations have no bearing on the homeowners' entitlement to an award from the Commission's Guaranty Fund.

The record of the administrative proceeding included photos of HBH's incomplete work, receipts of the homeowners' payments to other contractors to finish the work that

HBH left unfinished, and the contract and its addenda. The record supported the OAH’s findings that HBH never delivered the windows or siding promised and that major projects and material orders remained outstanding by October 2020, even though the homeowners had paid HBH \$55,000. It is not our place to substitute our judgment or our own findings of fact for those contained within the Commission’s decision. *Landsman v. Md. Home Improvement Comm’n*, 154 Md. App. 241, 250 (2003) (citing *Maryland State Bd. of Pharmacy v. Spencer*, 150 Md. App. 138, 147–48 (2003)), rev’d on other grounds, 380 Md. 515 (2004)). On this record, a reasoning mind easily could have reached the Commission’s factual conclusion that the homeowners suffered actual losses due to HBH’s failure to take necessary actions to complete these projects within a reasonable time.

Moreover, we are unpersuaded by HBH’s suggestion that a Guaranty Fund award is improper without an explicit finding of licensee misconduct. To support its argument, HBH cites COMAR 09.08.03.03B(2), which states that the Commission’s Guaranty Fund “may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.” This regulation implements the agency’s framework for adjudicating claims against the Guaranty Fund that seek compensation for an “act or omission” of the contractor. BR § 8-405(a). And its language represents the Commission’s interpretation of the statute it is charged with administering and enforcing, *see* BR §§ 8-207–8-208, which we accord “‘considerable weight.’” *Sanner*, 434 Md. at 31 (quoting *Noland*, 386 Md. at 572). The agency obviously uses the term “misconduct” in reference to whatever acts or omissions by the contractor caused the claimant to suffer monetary

losses. Both the agency and the circuit court determined correctly that HBH’s failure to complete the projects within a reasonable time was the “misconduct” that entitled the homeowners to obtain an award from the Guaranty Fund pursuant to BR § 8-405(a) and COMAR 09.08.03.03B(2). We conclude that the Commission’s decision was not premised on erroneous conclusions of law.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**