

Statement submitted in support of HB 917
Feb. 23, 2022
By Eric Johnson

I am writing in support of HB917. I am also including further comments regarding the MHIC and issues related to this bill. This bill would increase the limit for payment from the MHIC Guaranty Fund from \$20,000 to \$30,000. This increase, although hardly enough, is a start to make the MHIC work better for the citizens of Maryland.

I had a contractor do an addition on my house with over 20 building code violations. He sued me for payment under the contract. I had to counter sue. I won a judgement of \$120,000 in Circuit court. He declared bankruptcy and paid nothing. After 9 years, I won a judgement of over \$60,000 from an administrative court in my Guaranty Fund case. I was paid the maximum of \$20,000.

This shows that an increase in the limit is necessary. Although an additional \$10,000 is not enough, it is at least something. With a kitchen renovation these days starting at \$50,000, \$30,000 is hardly enough. There are many ways this could be done without making life difficult for the good contractors.

However this bill is hardly all that is needed to improve the MHIC. My story, recounted in part below, demonstrates some of the ways the MHIC is an utter failure at protecting the citizen's of Maryland from bad contractors.

I have attached a few documents that can corroborate parts of the story. Much more is available upon request and I would be happy to discuss this topic with anyone. I will explain the nightmarish process that I went through with the MHIC and outline specific problems that I believe need to be remedied immediately by Maryland state representatives.

My encounters with the MHIC began because I was trying to get help with a disastrous home improvement work done by a contractor and further. I was also trying to protect other citizens of Maryland from this dangerous contractor. I hope that by understanding the nightmare that I went through, others, particularly elected representatives, will understand the shortcomings of the MHIC and its operations and take action to prevent the problems that I had from threatening the lives and livelihoods of fellow Marylanders.

Here is my (and my wife's) story:

I signed a contract with Mr. Jerry Ovadia and Ovadia, LLC on October 24, 2011. This contract included extensive renovations to my home including, but not limited to, an addition to my home that involved removing a sun room and adding a kitchen, pantry, screened porch, and deck. I had an architect's plan with detailed drawings, which Ovadia agreed to follow under the contract he prepared and that I signed. By May, 2012, after I discovered construction defects and deviations from the architect's plans, I expressed my concerns to Ovadia. He then walked off the job refusing to do more work without getting paid the full amount under the contract. He left the job uncompleted and with many serious structural and other defects.

In spite of agreeing in the contract to follow the architect's plan, in performing the work Ovadia, in most aspects, did not do so. With few exceptions, Ovadia did not consult with me, the engineer, or the architect in making changes from the plan, including, among many others, under-sizing the floor joists that supported the entire addition. The work that he did violated 20 Baltimore County Building Codes as proven and cited in an Baltimore County administrative hearing by Judge Beverungen.

As a result Ovadia put my family's safety at risk and left us at risk for 10 years. Ovadia refused to address these and other defects continuing to leave me and my family exposed to injury and death and leaving my property with no market value.

As I said, this contractor violated 20 building codes on my house. These building codes are enshrined in law to protect Marylanders from injury, death, and financial ruin. Yet this contractor, Mr. Ovadia, said in front of witnesses, "Building codes are bullshit." This has been testified to in sworn court testimony. This is also known to the MHIC. Ovadia, is still a licensed contractor in the state of Maryland.

Not only did Ovadia violate building codes on my house, he proudly declared that he always built that way and cited other instances where he built without following building codes. The MHIC was informed of this. They did nothing to investigate, cite, or take away the license of Ovadia. Nor did they investigate any of the projects that he has done around the state of Maryland putting untold residents at risk.

On August, 10, 2012, Ovadia filed for a Mechanics Lien on my house to force a final payment from me of \$24,682 in spite of the many proven deficiencies and failures. I had to counter sue for damages and to lift the lien which prevented sale or refinance of my house. After a 6 year legal battle, which cost me over \$200,000 in legal fees, I won \$130,000 in damages in a 2 week jury trial.

I filed a complaint with the MHIC in 2014. The MHIC refused to consider the case at that time because of the lawsuit filed against me by my contractor. They also refused to do any investigation of Ovadia. They insisted that they solely relied on the Guaranty Fund process to take care of problems even though I informed them of the violations of state and federal laws and regulations by Ovadia. (See Addendum) Thus he continued to operate and put the citizens of Maryland at risk.

After the trial, Ovadia filed for bankruptcy which he was granted so that he did not have to pay me any of the judgement against him. I discovered that he had done the same in Israel before he moved to the U.S.

In spite of winning a judgement against Ovadia at trial, the MHIC refused to pay me the Guaranty Fund money due to me. Since Ovadia appealed, the MHIC claimed that I had to go to a Maryland State administrative hearing even though I had already won a judgement in court. This violates the accepted legal doctrine of *Res Judicata* which states that a judgement in one jurisdiction does not need to be relitigated and proved in another jurisdiction.

The MHIC lost all of the files including photos, reports, and many other items that I had submitted to them at the time of my complaint. Yet at the hearing the judge told me that I could only use evidence that I had previously submitted to the MHIC.

The administrative hearing took 2 weeks in which Ovadia was represented by counsel. I could not afford to spend another \$100,000 for counsel myself. I took a month off of work, 2 weeks to prepare for the trial and 2 weeks to present the case. I spent hundreds of dollars on professional testimony. In spite of my lack of representation I won over \$60,000 at the administrative hearing. **18 months later** the MHIC sent me a check for \$20,000 which is the maximum Guaranty Fund payment allowed.

Normally the MHIC requires that contractors refund the State's Guaranty Fund for any payments, but since Ovadia had declared bankruptcy they allowed him to skate without paying. He now operates under a new company "founded" by his wife. He still uses his MHIC license.

In spite of my insistence, the MHIC still refuses to investigate Ovadia for any of his illegal activities:

- Thanks to my investigation he was cited by the Workplace Fraud Unit of the DLLR for his illegal hiring practices. See Addendum.
- Ovadia was cited by the EPA for not taking lead paint precautions for work done at my house. He claimed in his advertising that he was lead paint certified when he was not. See Addendum.
- Ovadia broke many, many MHIC rules and regulations. See Addendum.

Ovadia is still licensed as a contractor in Maryland, but under any company he is an imminent threat to the health and safety of Maryland residents. He should not be allowed to continue to do home improvement contracting in the State of Maryland.

MHIC Problems and Problems with Maryland Law

Here are the problems that I believe need to be fixed with the functioning of the MHIC and Maryland Laws and Regulations:

1. Contractors should not be allowed to escape responsibility for their bad work by suing homeowners. The cost to defend yourself is prohibitive for homeowners when taking into consideration the costs of litigation. This gives an incentive to contractors to sue. If I had had any idea what it would cost me I should have simply paid off the contractor and walked away. This is not right.

2. Contractors should not be allowed to avoid any investigation by the MHIC by simply filing a lawsuit against a homeowners. It is ridiculous for the MHIC to delay any action against a contractor for litigation to play out. As in my case it can take years. In the meantime the homeowner has no money from the Guaranty Fund to make repairs to their house. And the contractor can continue to operate and cause further damage to the citizens of Maryland. The

MHIC should be required by law to process, investigate, and take action on any complaint filed by a homeowner within a limited period of time. It is absolutely astonishing that a contractor who says, "Building codes are bullshit" and acts out that statement, should be allowed by the MHIC to continue to operate in the State of Maryland because he is protect by filing a lawsuit.

3. The MHIC needs to hold contractors accountable. The MHIC believes that in most cases the Guaranty fund is sufficient to protect homeowners. The MHIC seems to have no interest in investigating bad contractors or enforcing their own rules and regulations. When I raised the issue of numerous building code violations on my house I was told that correcting that was up to the County. Baltimore County had no interest in enforcing building codes that I found as it was an indictment of their own inspectors who failed initially to find the code violations due to incompetence or corruption. In any event, County officials do not have the ability to remove an MHIC license.

4. The MHIC seems to have neither the manpower nor the interest in actually protecting the homeowners of Maryland. They have few investigators and little interest in investigating. I gave them evidence of numerous infractions of Maryland and MHIC law, rules, and regulations by Ovadia, many of which have MHIC fines and penalties associated with them, yet they have never taken any action. They know that Ovadia thinks building codes are bullshit and they know that he does not follow building codes. They know he has violated state, federal, and MHIC rules and regulations yet they do nothing to protect Marylanders from this dangerous contractor. How many other bad contractors are out there doing untold damage to the homes of Marylanders due to MHIC inaction.

5. The max payment under the Guaranty Fund of \$20,000 is totally insufficient. Perhaps this was a significant amount many years ago, but now, many if not most home improvement jobs cost far more. A kitchen renovation alone is likely to be \$50,000 or more. Legal fees alone can quickly wipe this out. The Guaranty Fund should cover all of the costs to a homeowner. Concerns that the Fund will go bust are misplaced. How much money is in the Fund right now? There are also concerns that raising this limit would keep many from getting a license. This can be changed as I will outline below.

6. MHIC regulations require that contracts include a clause notifying homeowners that they can require that contractors offer insurance (a bond) to homeowners. However, Ovadia left this out of my contract, and there was no penalty from the MHIC for leaving it out. A bond could have saved me. But the contractor doesn't really need to include this because the MHIC does not penalize them for doing so. Again, there is a law but there are no teeth. Maryland law should make leaving the clause out of any contract an instant loss in any dispute with a contractor and a heavy fine. It should make failure to include this in a contract a cause for immediate loss of license. If there is no penalty for a contractor, why would anyone be surprised if contractors leave it out. Why are these and other regulations and laws in place if they are never enforced? The law must require the MHIC to enforce these provisions, give homeowners remedies if they don't, and provide serious penalties if contractors do not follow this regulation including loss of license.

7. Home improvement contractors can easily jump from one home improvement entity to another. They can operate under anyone else's MHIC license including that of friends and family members. Ovadia investigated doing both in anticipation of losing his license. He never lost his license so he did not have to do this. This type of scam is well known in the home improvement industry.

8. The MHIC should accept the judgement of a Maryland court and not require that homeowners also go through an administrative hearing. This should be illegal under the doctrine and principle of Res Judicata. Besides, it's just not fair. After winning a judgement of \$130,000 in a 2 week jury circuit court trial (and spending over \$100,000 in legal fees) why should I have to spend another 2 weeks in an OAH hearing going up against an attorney for the State of Maryland and an attorney for a contractor? It is just plain wrong

9. The administrative hearing process itself is not fair. In my case I was up against an experienced attorney. Yet the judge in the case, continually cited me for not following proper legal procedures and at times even threatened to throw out my case. This is ridiculous. If a homeowner is going to have to represent themselves then there needs to be a process that does not require counsel, or counsel should be appointed. Homeowners are not lawyers and should not be required to be lawyers in order to represent their interests.

In my OAH hearing the MHIC was represented by legal counsel and the state's attorney fought me in an attempt to keep the MHIC from being charged. Why is the MHIC allowed to have their own attorney fighting the citizens of Maryland when they try to get restitution? This is 2 attorneys against my none. There is no circumstance under which it would make sense for a homeowner to hire an attorney when the limit of any claim is \$20,000 or even \$30,000. A couple of phone calls = \$1000 with most attorneys.

10. The Mechanic's Lien law needs to be changed. It is simply too easy for a contractor to sue a homeowner and not worth it to fight. I would never do it again. I would simply pay the contractor anything they demand instead of losing thousands in a court fight. You may win, but you will lose.

11. A contractor should not be able to escape any penalty from the MHIC by declaring bankruptcy. First the MHIC should fight the contractor in bankruptcy court. Second, the MHIC could explicitly change the nature of the Guaranty Fund re- payment by the contractor into something more in the nature of a fine which would make it impossible for a contractor to get it removed by bankruptcy court. The MHIC is only encouraging contractors to declare bankruptcy and allowing them to escape all responsibility for their misdeeds. In my case the contractor paid no penalty, no fine, and was not cited at all by the MHIC.

12. Fines for violations of MHIC regulations are tiny. And they are never, as far as I can tell, ever enforced. These fines should be much, much higher and they should be enforced. In my case, Ovadia violated numerous regulations but was never investigated or fined in spite of the fact that I provided them with evidence and made many complaints that he was not being investigated.

13. Regarding the concern expressed by the DLLR that raising Guaranty Fund will prevent contractors from being able to afford to get licensed:

It is my understanding that contractors are required to be able to prove that they have funds or assets equivalent to the maximum Guaranty Fund payout. I am not sure why this is required or if it is even necessary. Below are some suggestions to get around this problem, I am sure other solutions could be found.

- A. This requirement could simply be eliminated.
- B. There could be 2 or more levels of licensure. The first would allow contractors to sign up at say \$30,000 or maybe even less, but they would be limited to that level of contract. After they have been working on smaller jobs they should have the assets available to go to the next level whether it is \$50,000, \$100,000, or unlimited. This would be helpful to homeowners as it would establish contractors who would do smaller jobs. I have found it almost impossible to find contractors to do small jobs.
- C. Contractors could be required to have insurance, or provide a bond, if they do not have sufficient assets.

This only touches the surface of what is wrong with the home improvement industry in the State of Maryland. I have discovered many more problems, too numerous to even be mentioned here, where my goal is to address some of the problems with the MHIC.

I believe that the General Assembly should investigate the serious problems with the MHIC system. It is a disaster and does not serve the citizens of Maryland. Those who run the MHIC should be called to the Assembly to explain why they rarely investigate contractors or take actions to stop them from breaking the rules and regulations. The laws in Maryland in these regards need to be examined and compared to those in other states with successful home improvement contractor programs.

Unfortunately, there is no organized lobby for homeowners. I expect that nothing will ever be done to help us. I am sure that I am not the only one.

Please contact me for more information about the problems with the MHIC as well as problems with inspections and the OAH.

Eric Johnson
1336 Heather Hill Road
Towson, MD 21239
443 824 4266
baltimoreeric@comcast.net