STATE OF MARYLAND
DLLR
DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

IN THE MATTER OF THE CLAIM OF ROBERT M. HENSCHEN AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR ALLEGED ACTS OR OMISSIONS OF ROBERT L. LEHMAN t/a CREATIVE DECK DESIGNS, INC.	*	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 11 (05) 1315**

* * * * *

FINAL ORDER

WHEREFORE, this 9th day of December, 2014, Panel B of the Maryland Home Improvement Commission ORDERS that:

1) **The Findings of Fact of the Administrative Law Judge are Amended as follows:**

   A) **The Claimant sustained an actual loss of $18,483.90.**

   B) **The Claimant obtained an estimate of $10,220.00 to tear out and replace 700 square feet of laminate flooring. (Finding of Fact #30). The Administrative Law Judge included this estimate in the calculation of the Claimant's actual loss. Based upon review of the record, the Commission finds that the Respondent was not responsible for installation of 700 square feet of laminate flooring. Respondent Exhibit #4 shows that, on July 28, 2010, the Respondent subcontracted with The Design Expo Flooring Center of Bowie to perform installation of the laminate flooring on the project. The contract for that work lists the square footage of the laminate at 350. The schematic drawing (Claimant Exhibit #19) also indicates that the laminate square footage was substantially less than 700. Based upon review of the record, the Commission finds that the Respondent was responsible for installation of 400 square feet of laminate. The Commission further finds $8.00 per square foot to be a fair and reasonable measure of the cost to replace the laminate flooring. Therefore, the fair and reasonable cost to replace the laminate flooring is $3,200.00 (400 sf x $8.00 per sf).**

2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

B) Pursuant to the formula set forth in COMAR 09.08.03.03B(3)(c), the correct calculation of the Claimant's actual loss is as follows:

• Amount paid to Respondent	$34,315.00
• Reasonable cost to repair and complete	$16,983.90
	$51,289.90
• Less original contract price	-$32,815.00
• Actual Loss	$18,483.90

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimant is awarded $18,483.90 from the Home Improvement Guaranty Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

Andrew Snyder
Chairperson - Panel B
MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM	*	**BEFORE KIMBERLY A. FARRELL,**
OF ROBERT M. HENSCHEN,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT,	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: DLR-HIC-02-14-11825**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 11 (05) 1315**
OMISSIONS OF ROBERT L.	*	
LEHMAN,	*	
T/A CREATIVE DECK DESIGNS,	*	
INC.,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On January 10, 2012, Robert M. Henschen, (Claimant), filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $10,220.00 for alleged actual losses suffered as a result of a home improvement contract with Robert L. Lehman, trading as Creative Deck Design (collectively,

Respondent).[1] On August 20, 2013, the Claimant submitted an amended claim seeking $25,503.90 as alleged actual losses. The MHIC permitted amendment of the claim to the higher amount.

The matter was referred to Office of Administrative Hearings (OAH) for hearing by a Hearing Order dated April 10, 2013. The OAH sent notices for a hearing to be held on September 26, 2013. Sometime after the hearing started, the parties agreed among themselves that the matter should be withdrawn for settlement in accordance with Code of Maryland Regulations (COMAR) 09.01.03.07.[2] On April 1, 2014, the MHIC transmitted this case (and the related one) back to the OAH for a hearing on the Fund claim.

I held a hearing on April 25 and May 7 and 9, 2014, at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland.[3] Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013) and § 8-407 (2010). Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH govern procedure in this

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[1] Mr. Lehman is the Licensee. His MHIC records show that he uses the trade name Creative Deck Design, which is a sole proprietorship. His home improvement contract form refers to Creative Deck Design, Inc., and he also uses Creative Deck and Vinyl as a trade name. Although he referred to an incorporated entity, and made reference to another individual being a "full partner" in the business, Mr. Lehman is registered and licensed by the MHIC as a sole proprietor.

[2] That provision reads:

> **.07 Withdrawal of a Case.**
> A. At any stage of the proceedings, upon the agreement of the parties, the case may be withdrawn from the Office of Administrative Hearings docket for settlement purposes.
> B. Withdrawal of the case from the Office of Administrative Hearings docket may not be deemed a dismissal of the regulatory charges or the guaranty fund claim, and may not preclude a subsequent referral to the Office of Administrative Hearings, if settlement is not accomplished.

[3] This case was consolidated with DLR-HIC-02-14-11809 which involved the same parties but a different home improvement contract. These two cases were heard over a period of four days. On April 25 and May 7 and 9, 2014, the hearing focused on the contract and issues relevant to this Proposed Decision. A separate Proposed Decision will be issued addressing the merits of DLR-HIC-02-14-11809, which was heard on May 9 and 14, 2014.

case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013), COMAR 09.01.03, 09.08.02, and 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

Clmt. Ex. 1 – Not admitted
Clmt. Ex. 2 – Customer Agreement from the Respondent, dated January 18, 2010
Clmt. Ex. 3 – Complaint Form, dated January 8, 2012, with the following attachment:
- Statement of Incomplete and/or Substandard Work by [the Respondent], undated

Clmt. Ex. 4 – Swift Contract Flooring Proposal, dated December 23, 2011
Clmt. Ex. 5 – CGC Builders, LLC Proposal, dated December 8, 2011
Clmt. Ex. 6 – CGC Builders, LLC Estimate Sheet #1, undated
Clmt. Ex. 7 – Acoustiblok, Inc. Estimate, dated August 21, 2013
Clmt. Ex. 8 – Sterling Mirror Company Invoice, dated September 10, 2010
Clmt. Ex. 9 – Visa credit card statements, spanning October 8, 2009 through January 2, 2010 and March 28 through December 15, 2010, with the following attachment:
- Photocopy of check #521, dated January 21, 2010

Clmt. Ex. 10 – Expenses Incurred by Owner, undated, with the following attachments:
- Capitol Tile and Marble Company Sales Order, dated March 31, 2010
- The Home Depot Special Services Customer Invoice, dated May 22, 2010
- The Home Depot Special Services Customer Invoice, dated April 10, 2010
- The Home Depot Will Call Pick List, dated May 22, 2010
- The Home Depot Special Services Customer Invoice, dated April 10, 2010
- Lighting Headquarters Invoice, dated March 27, 2010
- LightingDirect.com Invoice, dated March 28, 2010
- Lowes Home Centers, Inc. receipt, dated December 27, 2009
- Sterling Mirror Company Invoice, dated September 10, 2010

Clmt. Ex. 11 – Photocopy of check #642, dated November 30, 2011

Clmt. Ex. 12 – Pentagon Federal Credit Union Credit/Debit Card Dispute Form, dated October 21, 2010, with the following attachments:

- Letter from Sandi Bader, Credit Card Dispute Analyst, Pentagon Federal Credit Union, to the Claimant, dated November 8, 2010
- Letter from Jill Parsons, Manager, Card Fraud Services, Pentagon Federal Credit Union, to the Claimant, dated April 5, 2011

Clmt. Ex. 13 – Letter from John W. Hidey, Jr., Plumbing Inspector, Inspections and Enforcement Division, Howard County Department of Inspections, Licenses and Permits, to the Claimant and Michael Ehrhardt, dated January 6, 2011, with the following attachments:

- Letter from Kenneth D. Brown, Building Inspector, Inspections and Enforcement Division, Howard County Department of Inspections, to the Claimant, dated January 10, 2011
- One color photograph, undated

Clmt. Ex. 14 – Acoustiblok Installation Overview, undated
Clmt. Ex. 15 – Six color photographs on three pages, undated
Clmt. Ex. 16 – Certified letter from the Claimant to the Respondent, dated December 29, 2010, with the following attachment:

- United States Postal Service Certified Mail receipt, dated December 29, 2010

Clmt. Ex. 17 – Two color photographs on one page, undated
Clmt. Ex. 18 – Not admitted
Clmt. Ex. 19 – Claimant Basement schematics, undated

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 – Notice of Hearing, dated April 3, 2014[4]
Fund Ex. 2 – Hearing Order, dated April 10, 2013
Fund Ex. 3 – Licensing history of the Respondent, dated April 24, 2014
Fund Ex. 4 – Home Improvement Claim Form, received, January 10, 2012
Fund Ex. 5 – Letter from John Borz, Chairman, MHIC, to the Respondent, dated January 17, 2012
Fund Ex. 6 – Letter from the Claimant to Michelle Escobar, MHIC, dated August 20, 2013

I admitted the following exhibits on the Respondent's behalf:

Resp. Ex. A – Four color photographs on one page, undated[5]
Resp. Ex. 1 – Not admitted
Resp. Ex. 2 – Two color photographs on one page, undated
Resp. Ex. 3 – The Home Depot Special Services Change Order, dated July 28, 2010
Resp. Ex. 4 – The Design Expo Flooring Center of Bowie, dated July 28, 2010
Resp. Ex. 5 – Payment stub, The Design Expo, dated July 29, 2010
Resp. Ex. 6 – Not admitted (duplicate of CLMT #5)

[4] Fund Ex. 1 is the file copy of April 3, 2014 Notice of hearing and the related certified mail return Receipts (green cards) located in the OAH file. This is separate from the other exhibits.

[5] The Respondent had pre-numbered his exhibits, but one exhibit was entered at a different time. To avoid duplicate numbers, it was assigned the letter A as its exhibit designation.

Resp. Ex. 7 – Not admitted (duplicate of CLMT #7)
Resp. Ex. 8 – Capitol Tile and Marble Company Invoice, dated May 22, 2010
Resp. Ex. 9 – Ehrhardt Brothers Quality Plumbing, Inc. Job Bid, dated, March 24, 2010
Resp. Ex. 10 – Ehrhardt Brothers Quality Plumbing, Inc. Additional Work, dated April 28, 2010
Resp. Ex. 11 – Payment stub, Ehrhardt Brothers, dated April 9, 2010
Resp. Ex. 12 – Withdrawn
Resp. Ex. 13A – Electrical schematics, undated
Resp. Ex. 13B – Electrical schematics, undated
Resp. Ex. 14 – Leroy W. Davis & Son Inc. Invoice, dated August 2, 2010
Resp. Ex. 15 – Memo from Frank Billingsley to Creative Vinyl Products, dated July 27, 2010, with the following attachment:
- The Design Expo Flooring Center of Bowie Invoice, dated July 6, 2010

Resp. Ex. 16 – Chart with Visa charges, undated
Resp. Ex. 17 – Merchant Services Chargeback Summary, dated November 12, 2010
Resp. Ex. 18 – Merchant Services Chargeback Summary, dated December 9, 2010
Resp. Ex. 19 – Not admitted (duplicate of CLMT #13)
Resp. Ex. 20 – Four color photographs on one page, undated

Testimony

The Claimant testified on his own behalf; the Respondent testified on his own behalf; no additional witnesses were called.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC registration number 37346.

2. The Claimant lives at 8492 Tipton Drive in Laurel, Maryland. All the home improvement work discussed in this Decision was done to the Claimant's home.

3. The Respondent was already performing home improvement work for the Claimant under a separate contract when, on January 18, 2010, the Claimant and the Respondent entered into a second contract in which the Respondent agreed to do the following to create a bedroom, bathroom, kitchen and living space in the Claimant's basement: "supply, furnish, and install as follows:" (1) frame all walls and bulkheads with metal studs; (2) insulate exterior walls; (3) install soundproofing in ceiling; (4) install electric to code; (5) sheetrock all walls, ceilings,

and bulkheads inside living area; (6) finish sheetrock by sanding and putting on a coat of primer; (7) install four interior doors; (8) install bi-folds in bedroom;, (9) build a bathroom, including installing a toilet, shower, and vanity, and also including demolishing the floor to reroute plumbing, patching the floor, and moving the water heater; (10) install laminate flooring in kitchen, living room, and hallways; and (11) install Berber carpet in bedroom and tile on bathroom floor. In the same contract, but set forth separately from the above, the Respondent agreed to do the following to a kitchen located in the basement: "supply, furnish, and install as follows:" (1) install cabinets; (2) route microwave exhaust outside; (3) install laminate countertops; (4) set all appliances (appliances were to be homeowner supplied); (5) move lolly column so as to be hidden in a wall, with a new footer; and (6) acquire building permits. Clmt. Ex. 2.

4. The original agreed-upon contract price was $32,815.00.

5. The Claimant agreed to pay the Respondent in the following installments: $10,815.00 deposit, $3,000.00 upon the start, $3,000.00 when the walls were framed, $3,000.00 when the sheetrock was finished, $3,000.00 when the kitchen was finished, $3,000.00 when the bathroom was finished, $3,000.00 when there was substantial completion, and $4,000.00 at the completion of the contract.

6. The contract contained a provision stating that the Respondent would complete projects based on the written contract and that if a customer wanted something done differently or added to the contract, it would be done by way of a change order, which could delay dates contemplated for work to be completed, or might even necessitate a new contract.

7. At no time were any change orders written or signed for this contract.

8. The contract was proposed on behalf of the Respondent by Frank Billingsley – (Billingsley), who had been given full authority to act on behalf of the Respondent. He was still

involved in the Respondent's home improvement business at time of the hearing at OAH. The Claimant had very little contact with Mr. Lehman, the named Respondent, until the very end of this contract, when the Claimant was quite dissatisfied with the Respondent's performance. The Respondent made short visits to the site on occasion.

9. Billingsley had a substantial commute to come to the Claimant's home. He would sometimes ask the Claimant to show workers where they were supposed to be working and tell them what they should be doing instead of coming to the site himself. The Claimant expressed to Billingsley that it would be better for Billingsley to direct the workers and subcontractors.

10. At the start of construction, the Respondent used wood studs to frame the walls rather than the more expensive metal studs specifically called for in the contract. The Claimant complained to Billingsley about the switch, but did not stop construction or force the Respondent to act in accordance with the contract.

11. The Respondent agreed to install Acoustiblok in the ceiling. Acoustiblok is a specialty product designed to provide superior sound reduction.

12. Acoustiblok requires careful installation to provide the intended performance. Once installed to specifications, for example using special Acoustigrip tape to seal joints, the installation should be as close to airtight as possible. All perimeter edges or joints between pieces of Acoustiblok are to be sealed. Any gap in coverage reduces performance.

13. Acoustiblok is very heavy. The manufacturer suggests two or three person crews due to the weight of the material. It comes in large rolls.

14. Although the Respondent was supposed to install Acoustiblok over the entire ceiling in the finished part of the basement, the Respondent installed no Acoustiblok at all for about 40% of the total space.

15. Where it installed Acoustiblok, the Respondent installed it incorrectly. There was no sealing of seams or the outside perimeter. Rather than using large pieces of Acoustiblok, the Respondent cut it into small pieces. It was then laid on the drywall or between studs. The pieces were sometimes ill-fitting for the space, resulting in gaps, or in waves being created in the product. These problems render the product essentially useless and the Claimant now has problems in the home with sound traveling between the basement and the first floor.

16. The Respondent kept all the leftover Acoustiblok.

17. The options for fixing this problem are (a) to tear out the drywall ceiling, take out the Acoustiblok, reinstall a soundproofing product, and put new drywall ceilings up or (b) to install Acoustiblok underneath the current ceiling and then build a new ceiling under it. The latter option requires that electrical work be redone, with all that entails.

18. The Claimant obtained an estimate from CGC Builders to tear out the drywall ceiling, take out the ruined Acoustiblok, install soundproofing, and hang drywall for the ceiling. The total estimate was $7,850.00. The estimate included two coats of finish paint on the ceiling, which was not included in the original contract between the Claimant and the Respondent.

19. The Claimant obtained an estimate for Acoustiblok and the proper related products to cover the ceiling. It came to $3,109.90 for the product plus shipping and handling.

20. There were a number of plans or drawings used by the parties over the course of construction. None were explicitly made a part of the contract and none in evidence are a completely accurate rendering of the space as it was left when the Respondent ceased working on it. This resulted in various problems.

21. The Claimant came home one day to find that a wall had been built two feet off where it was supposed to have been. Billingsley acknowledged that the wall was incorrectly

placed, but asked the Claimant to agree that it could remain as built. Despite being unhappy, the Claimant agreed.

22. When the Claimant had the basement built (by a different contractor), he did not intend to make it a finished space. He had two options for the basement floor – a relatively smooth option which would be more suitable for eventual finishing of the basement, or a cheaper, rougher finish appropriate for those who did not intend to use the basement as finished living space. The Claimant chose the latter.

23. The Respondent contracted to install laminate floor in the kitchen, living room, and hallways.

24. The Respondent hired a subcontractor to install the laminate floor.

25. As soon as the laminate floor was put down, the Claimant noticed that it gave in certain places when weight was on it. The Claimant complained to Billingsley about the problem. Billingsley told the Claimant to contact the subcontractor.

26. The owner of the subcontracting company came to the Claimant's home to view the problem and discuss it with the Claimant. That person told the Claimant that the floor had not been properly prepped for the laminate's installation. He further related that he usually comes with his crews and if he had seen the state of the floor, he would not have gone ahead with installation, but he was not with his crew for this job. He also told the Claimant that he had been subcontracted by the Respondent to install the laminate – not to do prep work. The man apologized to the Claimant for the error and offered to come back and provide free labor to tear up the faulty floor and reinstall it if the Respondent would provide new laminate.

27. The Respondent refused to provide material to fix the floor.

28. The floor is also damaged in a relatively small area by water penetration from the outside of the home.[6]

29. The Claimant obtained an estimate from Swift Contract Flooring to tear out and replace the laminate flooring for $10,171.50. The Swift estimate shows the square footage (sf) of the laminate flooring to be 705 sf.

30. The Claimant obtained an estimate from CGC Builders to tear out and replace the laminate flooring for $10,220.00. The CGC estimate shows the sf of the laminate flooring to be 700 sf.

31. The contract called for the Respondent to route the microwave exhaust to the outside. The Respondent failed to do that.

32. The Respondent contracted to move a lolly column in the basement by about three feet so that it would end up inside a wall. The contract called for the Respondent to dig a new footer for the lolly column. The Respondent did not dig the footer as called for in the contract.

33. The parties had in mind a particular layout for the bathroom. Billingsley told the Claimant that plan would not work because it would be too expensive to move the drains in the room. A revised plan was developed.

34. Then a subcontractor of the Respondent pointed out that the revised plan would not work because the door to the room would hit the shower, so it was redesigned.

35. The Respondent intended to use an inexpensive self-contained shower unit for the bathroom. A unit was delivered to the property and set in place, but not installed. When the Claimant asked a week or so later why the shower unit was not installed, the plumber told him the unit did not have the right "lip" around the bottom and could not be used for this job. With

[6] This is an awkward intersection of the two cases between these parties. The water coming in the house is the result of problems caused when the Respondent installed French doors as part of the other home improvement contract, but the damage is being caused to the laminate floor that was included in the contract being discussed in this proposed decision.

all the redesigning and the walls and tile put in by the Respondent's employees or subcontractors, no cheap self-contained unit would work and the Claimant ended up paying for custom glass to finish the remaining two sides of the shower.

36. The Claimant paid $2,541.60 plus tax for the shower glass after Billingsley told the Claimant that the Respondent could not find anyone to complete the shower installation.

37. The Respondent's second plumber advised the Claimant that he could not move the water heater as called for in the contract because it was old and would be risky to move. He told the Claimant that the proper and cheaper thing to do was to get a new water heater. A new water heater was installed.

38. On several occasions, Billingsley asked or invited the Claimant to pay for and obtain items the Respondent was responsible for under the contract, telling the Claimant that the Respondent did not really know what he wanted and that it was better if he shopped for himself and the Respondent would reimburse him or give him credit later. When doing so, Billingsley would instruct the Claimant not to spend too much. The Claimant was not credited for these purchases.

39. The Claimant paid for the bathroom sink base which cost $461.10. The vanity was to be provided by the Respondent.

40. There are additional areas of dispute between the parties on this contract.

41. The Claimant paid the full amount of the contract.

42. The Claimant was charged an additional $1,500.00 above the contract price.

43. The Respondent did not charge against the Claimant's credit card in accordance with the draw schedule. He sometimes charged against the Claimant's credit card without authorization, and charges on the instant contract and charges for the other contract were not always clearly distinguished.

44. The Respondent's work on the Claimant's home became more and more sporadic and then stopped. The Claimant made complaints about work on both contracts.

45. The Claimant and the Respondent met around August or September 2010 to try to iron out their differences. The attempt was unsuccessful.

46. The Respondent charged the Claimant's credit card after the meeting although he did not have authorization to do so. He charged the full amount remaining on the contract, $2,000.00, plus an additional $1,500.00 that the Claimant agreed to pay once certain conditions were met. The Respondent was to complete certain repairs and return to the Claimant the Acoustiblok left over from the project. The Respondent did not meet any of the conditions.

47. After the unsuccessful meeting, the Claimant made numerous attempts to contact the Respondent to try to get him to finish the job, including phone calls and letters. The Respondent did not respond to these efforts.

48. The Claimant's actual loss is in excess of the $20,000.00 statutory maximum which he can recover in this forum.

DISCUSSION

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2013). *See also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). I find that the Claimant has proven eligibility for compensation – the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant and he performed unworkmanlike, inadequate or incomplete home improvements.

The Claimant engaged the Respondent to do certain home improvement work for him on the other contract. All the negotiations on this contract were through Billingsley. The Claimant was not planning to finish his basement, but Billingsley approached him about a proposal and encouraged him to enter a second contract offering a very good price. Billingsley was frequently absent from the site, but he was the contact person for the Respondent in this basement contract. The Respondent referred to Billingsley as a full partner in his business, but as noted earlier, it is not clear from the evidence before me whether there is any incorporated entity involved. The Respondent never offered any explanation for why Billingsley did not testify before me. I heard testimony from the Claimant, who was very involved in all aspects of this home improvement project, and I heard from the Respondent, who was on site two or possibly three times a month for one-half hour or less each visit. Neither witness was aided by the years that have passed since the contract and the original work, but the difference in the persuasiveness of the testimony was dramatic.

The Claimant testified most of the time in a low key manner. He gave a basic bare-bones narrative about what happened, but when cross-examined could give additional details. The details were highly persuasive. He talked about day-to-day happenings and conversations as work progressed. His testimony seemed natural and rang true. When he realized he had made a mistake, he immediately corrected his testimony. The Respondent was left trying to comment on events he had not witnessed and conversations he had not heard. He seemed to view everything on a "big picture" level and would make broad sweeping statements that he would then have to retreat from when asked questions about details. He answered questions too quickly, sometimes before the question was finished, leading to inaccurate answers that caused confusion and had to be retracted.

The Respondent did not offer any explanation for the Acoustiblok portion of the job. He had no reason to offer why so much of the work called for in the contract was not performed at all and why the work that was performed was so inadequate and unworkmanlike. Asked if he thought that it was a good idea, considering that the material came in gigantic rolls, to cut it in small pieces and install it so haphazardly. The Respondent was flip in his reply that "somebody" thought it was a good idea.

The Claimant obtained an estimate of $7,850.00 from CGC builders to demolish and remove the existing ceiling. This requires moving and protecting items that did not have to be considered in the original project, such as flooring, counters, and furniture. The estimate includes hauling away the old ceiling and the ruined Acoustiblok material and properly installing new soundproofing and a ceiling. The estimate includes two coats of white finish paint which were not included in the original contract. That item is not priced out separately. The Claimant also used a tool available from Acoustiblok to calculate how much material would be needed to complete the job. The estimate for material plus shipping and handling is $3,109.90.

The Respondent argued that the CGC estimate was inflated and that the Acoustiblok should not cost so much. He reported that he paid $2,170.00 for the Acoustiblok and freight charges. He did not indicate that the related materials needed for proper installation had been purchased, which added about $270.00 to the Claimant's estimate. Because the Respondent offered no cogent evidence to support his assertions, however, I find that the estimates offered by the Claimant are reasonable.

On the laminate flooring, the Claimant's testimony was very credible. He explained that he was on the scene when the subcontractor came to install the floor. He expected that there would be prep work necessary before the floor was installed, and he was surprised that the subcontractor was not prepared to do any prep work. As he watched, the subcontractor's

workers pulled out the laminate flooring, which was designed to snap together, and glue. The Claimant asked them what the glue was for since the floor snapped together. These details lend an air of authenticity to the testimony of the Claimant. He was keenly aware of and interested in the work being done to his home and he kept on top of it.

Once the floor was installed, the Claimant felt it give in places when he walked on it because the concrete floor below was uneven. He complained to Billingsley, who told him to talk to the subcontractor about it. This was but one example of Billingsley shifting the Respondent's responsibilities to the Claimant. The Claimant did as he was told and contacted the subcontractor.

The flooring subcontractor's owner came out, inspected the work, and stated that the job had been done incorrectly in that the floor was not properly prepared before the laminate was installed. He said that he was sorry about it and set out a plan for making it right by providing free labor to tear out and replace the floor, contingent on the Respondent providing new material. The flooring subcontractor's owner said that he had been contracted for installation only and not for prep work, but that if he had been on site he would not have allowed his workers to install the floor because of the lack of prep work. The statement that Design Expo had been contracted for installation only is confirmed by Respondent's exhibit #4, which shows that the Respondent agreed to pay $800.00 for labor to install the laminate floor. Asked about this, the Respondent insisted that he was "sure it included everything. It was started. It was finished, and I paid them."

Later, when the Respondent acknowledged there were areas of movement or deflection in the floor, he was asked if the problem was ever corrected, to which he replied, "I don't know." Asked if he agreed it should be corrected he said, "if it's that important to someone," but added

that at his house he would not worry about it. He also questioned whether it was worth the cost of the correction.

On the flooring and other issues, the Respondent professed a lack of knowledge, asserting that he hired an expert and relied on the expert, the implication being that he was not responsible for any problems.[7] He said he did not know whether the floor came with a guarantee, he indicated that he did not know what effect long-term exposure to water might have on the product, and he stated he did not know whether a plastic barrier was usually part of the installation process. Asked if the floor should have been level before it the laminate was installed, he deferred to the expertise of his subcontractor. Asked if he knew that the subcontractor who installed it had acknowledged that the installation was flawed, the Respondent said that he knew nothing about it. Asked if he at least recalled that the Claimant had previously related the conversation about the floor to the Respondent, the Respondent said he had no recall of the matter. The Respondent acknowledged that the floor had some damage from moisture and some areas of give. The Respondent disingenuously suggested that he did not know what caused the moisture damage and that it could be from such things as wet feet leaving puddles or dog accidents.

The Claimant obtained estimates from two companies to take out the laminate floor, do necessary prep work, and install a new floor. The Swift proposal estimated the area of the laminate floor as 705 sf and offered a price of $10,171.50. The CGC proposal estimated the area to be 700 sf and offered a price of $10,220.00. The Respondent argued that these estimates were inflated both as to the sf and as to the price. The Respondent suggested that the area covered by

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[7] The Respondent is responsible in a Fund case as follows:

> (b) Acts of subcontractors, salespersons, and employees. -- For purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists.

Md. Code Ann., Bus. Reg. §8-405 (b).

the laminate was closer to 350 sf. He pointed to an exhibit showing that some of the flooring material purchased for the Claimant's project had been returned to the Home Depot. RESP #3.

When he had the opportunity to address the issue, the Claimant advised that he was present when the floor was being installed and there was an insufficient quantity of the flooring material on site. Billingsley left the site and went to purchase additional laminate. Apparently the returned material was surplus from the second batch purchased. This was another example of the Claimant filling in the picture with details that the Respondent did not know. The Respondent protested that he was sure that this did not happen because he would have seen a bill for it. Again, the Claimant's first-person account is much more persuasive than the Respondent's testimony, which is based exclusively on an alleged lack of paperwork.

The shower glass was not, as the Respondent characterized it, an expensive upgrade desired by the Claimant and for which the Claimant should be expected to pay. The original bathroom plan was first changed by Billingsley, then changed again on the advice of the Respondent's plumber. The Claimant did not protest or ask for anything different from the inexpensive shower unit the Respondent intended to use. The unit arrived on site and the Claimant did not ask for it to be replaced or for a substitution to be made. The unit that was ordered was not correctly configured for the space according to what the Respondent's plumber told the Claimant. With all the changes to the plan and what had already been installed, the Claimant ended up with a shower that was not finished. The Respondent kept asking questions of the Claimant, and when the Claimant answered it just showed how out of touch the Respondent was with what had been going on with this project. The Respondent did not know what actually transpired with the shower unit. The Claimant should be reimbursed for the $2,824.00 he paid to purchase the glass necessary to finish his shower.

When the parties to the contract met in August or September of 2010 to try to resolve problems with both contracts, the Respondent was insisting to the Claimant that he (the Respondent) was losing money on this contract. The Respondent then testified that the Claimant was "kind enough" to agree to pay an additional $1,500.00 over the contract price to help him out. The Claimant's version is that at that point in time he wanted to get a couple critical things tied up and cut his losses. He agreed to pay the Respondent an additional $1,500.00 contingent on the Respondent fixing certain items and the Respondent giving to the Claimant the Acoustiblok left over from the job. The Respondent never provided any of the leftover Acoustiblok to the Claimant and he also never fixed any of the problems (at least not before years had gone by). The Respondent had the Claimant's credit card number and he just charged the $2,000.00 remaining on the original contract price, plus the additional $1,500.00 to which he was not entitled. There ensued a dispute with the credit card company over the legitimacy of the $3,500.00 charge. The final result was that the Respondent ended up with the money.

It is not necessary to consider other areas of contention between the parties because the actual losses due to the items discussed thus exceed the maximum amount of recovery available in a Fund case.

Having found eligibility for compensation I now turn to the amount of the award to which the Claimant is entitled. The MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The correct formula for measuring the Claimant's actual loss on these facts is as follows:

> 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.

COMAR 09.08.03.03B(3)(c).

The Claimant has the following reasonable estimates or has actually paid for these items to repair poor work done by the Respondent:

CGC estimate for ceiling work and soundproofing	$ 7,850.00
Acoustiblok	3,109.90
Shower glass	2,824.00
CGC estimate for laminate tear out and reinstallation	10,220.00
	$24,003.90
Amount paid to contractor (contract amount plus $1,500.00)	+ 34,315.00
	= 58,318.90
Less original contract price	- 32,815.00
Actual loss	$25,503.90

This calculation of actual loss fails to account for the portion of the CGC estimate that covers the two coats of white paint that the Respondent was not required to do in the original contract. Although that item is not separately priced out, it is a fair inference that it is not more than $5,503.90 of the $7,850.00 CGC estimate. It is probably a much more modest fraction of that estimate, but I use the figure $5,503.90 because given the application of the formula above, the Claimant actually lost $5,503.90 above the statutory maximum recovery of $20,000.00. Md. Code Ann., Bus. Reg. §8-405 (e)(1), (5) (Supp. 2013). As long as the painting portion of the CGC estimate does not exceed $5,503.90, it would not affect the Claimant's recovery in this matter. The calculation of actual loss also does not take into account items such as the bathroom vanity, which is another amount of loss to the Claimant, and it does not take into account other disputed items, none of which would decrease the Claimant's recommended award even if the issues were decided adversely to him.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss in excess of the statutory maximum for recovery from the Fund. He has sustained a compensable loss of $20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2013).

PROPOSED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $20,000.00;[8] 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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

August 8, 2014
Date Decision Mailed

Kimberly A. Farrell
Administrative Law Judge

KAF/kkc
149558

[8] The Business Regulation Article places certain limitations on recovery from the Fund. Relevant to this case, because there is a related case, is the following: "The Commission may not award from the Fund: (1) more than $20,000 to one claimant for acts or omissions of one contractor[.]" Md. Code Ann., Bus. Reg. § 8-405(e)(1). I am issuing two proposed decisions and between them the total award proposed will exceed $20,000.00; however, the Claimant's recovery is limited by the cited statute. The Claimant's actual award, of course, is determined by the Fund, and may be less than the proposed amounts, so the second case is not mooted by the proposed decision in this case.

IN THE MATTER OF THE CLAIM	*	BEFORE KIMBERLY A. FARRELL,
OF ROBERT M. HENSCHEN,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-14-11825
FOR THE ALLEGED ACTS OR	*	MHIC No.: 11 (05) 1315
OMISSIONS OF ROBERT L.	*	
LEHMAN,	*	
T/A CREATIVE DECK DESIGNS,	*	
INC.,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

FILE EXHIBIT LIST

Exhibits

I admitted the following exhibits on the Claimant's behalf:

Clmt. Ex. 1 – Not admitted
Clmt. Ex. 2 – Customer Agreement from the Respondent, dated January 18, 2010
Clmt. Ex. 3 – Complaint Form, dated January 8, 2012, with the following attachment:
- Statement of Incomplete and/or Substandard Work by [the Respondent], undated

Clmt. Ex. 4 – Swift Contract Flooring Proposal, dated December 23, 2011
Clmt. Ex. 5 – CGC Builders, LLC Proposal, dated December 8, 2011
Clmt. Ex. 6 – CGC Builders, LLC Estimate Sheet #1, undated
Clmt. Ex. 7 – Acoustiblok, Inc. Estimate, dated August 21, 2013
Clmt. Ex. 8 – Sterling Mirror Company Invoice, dated September 10, 2010
Clmt. Ex. 9 – Visa credit card statements, spanning October 8, 2009 through January 2, 2010 and March 28 through December 15, 2010, with the following attachment:
- Photocopy of check #521, dated January 21, 2010

Clmt. Ex. 10 – Expenses Incurred by Owner, undated, with the following attachments:
- Capitol Tile and Marble Company Sales Order, dated March 31, 2010
- The Home Depot Special Services Customer Invoice, dated May 22, 2010

- The Home Depot Special Services Customer Invoice, dated April 10, 2010
- The Home Depot Will Call Pick List, dated May 22, 2010
- The Home Depot Special Services Customer Invoice, dated April 10, 2010
- Lighting Headquarters Invoice, dated March 27, 2010
- LightingDirect.com Invoice, dated March 28, 2010
- Lowes Home Centers, Inc. receipt, dated December 27, 2009
- Sterling Mirror Company Invoice, dated September 10, 2010

Clmt. Ex. 11 – Photocopy of check #642, dated November 30, 2011

Clmt. Ex. 12 – Pentagon Federal Credit Union Credit/Debit Card Dispute Form, dated October 21, 2010, with the following attachments:

- Letter from Sandi Bader, Credit Card Dispute Analyst, Pentagon Federal Credit Union, to the Claimant, dated November 8, 2010
- Letter from Jill Parsons, Manager, Card Fraud Services, Pentagon Federal Credit Union, to the Claimant, dated April 5, 2011

Clmt. Ex. 13 – Letter from John W. Hidey, Jr., Plumbing Inspector, Inspections and Enforcement Division, Howard County Department of Inspections, Licenses and Permits, to the Claimant and Michael Ehrhardt, dated January 6, 2011, with the following attachments:

- Letter from Kenneth D. Brown, Building Inspector, Inspections and Enforcement Division, Howard County Department of Inspections, to the Claimant, dated January 10, 2011
- One color photograph, undated

Clmt. Ex. 14 – Acoustiblok Installation Overview, undated

Clmt. Ex. 15 – Six color photographs on three pages, undated

Clmt. Ex. 16 – Certified letter from the Claimant to the Respondent, dated December 29, 2010, with the following attachment:

- United States Postal Service Certified Mail receipt, dated December 29, 2010

Clmt. Ex. 17 – Two color photographs on one page, undated

Clmt. Ex. 18 – Not admitted

Clmt. Ex. 19 – Claimant Basement schematics, undated

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 – Notice of Hearing, dated April 3, 2014[9]

Fund Ex. 2 – Hearing Order, dated April 10, 2013

Fund Ex. 3 – Licensing history of the Respondent, dated April 24, 2014

Fund Ex. 4 – Home Improvement Claim Form, received, January 10, 2012

Fund Ex. 5 – Letter from John Borz, Chairman, MHIC, to the Respondent, dated January 17, 2012

[9] Fund Ex. 1 is the file copy of April 3, 2014 Notice of hearing and the related certified mail return Receipts (green cards) located in the OAH file. This is separate from the other exhibits.

Fund Ex. 6 – Letter from the Claimant to Michelle Escobar, MHIC, dated August 20, 2013

I admitted the following exhibits on the Respondent's behalf:

Resp. Ex. A – Four color photographs on one page, undated
Resp. Ex. 1 – Not admitted
Resp. Ex. 2 – Two color photographs on one page, undated
Resp. Ex. 3 – The Home Depot Special Services Change Order, dated July 28, 2010
Resp. Ex. 4 – The Design Expo Flooring Center of Bowie, dated July 28, 2010
Resp. Ex. 5 – Payment stub, The Design Expo, dated July 29, 2010
Resp. Ex. 6 – Not admitted (duplicate of CLMT #5)
Resp. Ex. 7 – Not admitted (duplicate of CLMT #7)
Resp. Ex. 8 – Capitol Tile and Marble Company Invoice, dated May 22, 2010
Resp. Ex. 9 – Ehrhardt Brothers Quality Plumbing, Inc. Job Bid, dated, March 24, 2010
Resp. Ex. 10 – Ehrhardt Brothers Quality Plumbing, Inc. Additional Work, dated April 28, 2010
Resp. Ex. 11 – Payment stub, Ehrhardt Brothers, dated April 9, 2010
Resp. Ex. 12 – Withdrawn
Resp. Ex. 13A – Electrical schematics, undated
Resp. Ex. 13B – Electrical schematics, undated
Resp. Ex. 14 – Leroy W. Davis & Son Inc. Invoice, dated August 2, 2010
Resp. Ex. 15 – Memo from Frank Billingsley to Creative Vinyl Products, dated July 27, 2010, with the following attachment:

- The Design Expo Flooring Center of Bowie Invoice, dated July 6, 2010

Resp. Ex. 16 – Chart with Visa charges, undated
Resp. Ex. 17 – Merchant Services Chargeback Summary, dated November 12, 2010
Resp. Ex. 18 – Merchant Services Chargeback Summary, dated December 9, 2010
Resp. Ex. 19 – Not admitted (duplicate of CLMT #13)
Resp. Ex. 20 – Four color photographs on one page, undated

STATE OF MARYLAND
DLLR
DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

PROPOSED ORDER

WHEREFORE, this 26th of September 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.

Wm. Bruce Quackenbush, Jr.
William Bruce Quackenbush, Jr.
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION