

IN THE MATTER OF THE CLAIM	* BEFORE KATHLEEN A. CHAPMAN,
OF MARY C. AGNEW,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-13-08562
FOR THE ALLEGED ACTS OR	* MHIC NO.: 11 (90) 461
OMISSIONS OF JAMES J.	*
WOLOHAN, T/A WINDSOR	*
CONSTRUCTION GROUP; HALSEY	*
HOME CORPORATION,	*
RESPONDENT	*

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 1, 2010, Mary C. Agnew (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$19,293.00 for actual losses allegedly suffered as a result of a home improvement contract with James J. Wolohan t/a Windsor Construction Group; Halsey Home Corporation (Respondent).¹

¹ The Claimant amended the amount of her claim on December 19, 2011 and is now seeking \$23,666.00 from the Fund. (GF Ex. 6.)

I held a hearing on July 29, 2013 at 11002 Viers Mills Road, Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent failed to appear after due notice to his address of record.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

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

- CL Ex. 1 Standard Form of Agreement Between Owner and Contractor, December 4, 2007
- CL Ex. 2 Windsor Construction Group AR Invoice List
- CL Ex. 3 Cancelled checks to Windsor Construction Group
- CL Ex. 4 MGD Design/Build Co. Contract Proposal, June 1, 2011
- CL Ex. 5 Description of complaint
- CL Ex. 6 E-mail from Respondent to Greg Agnew, August 6, 2009
- CL Ex. 7 Various e-mails between the Respondent, Justin Mackovyak, and the Claimant
- CL Ex. 8 Punch list & Part II
- CL Ex. 9 Various e-mails between the Claimant and James Sackett, Senior Permitting Services Inspector
- CL Ex. 10 Items open under the contract with Respondent

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

- GF Ex. 1 Corrected Copy of Notice of Hearing to Susan Cherry, May 28, 2013
- GF Ex. 2 File Copy of Corrected Copy of Notice of Hearing, May 28, 2013, with certified mail "green card" to 2005 Adams Hill Road, Vienna, VA 22182 (home address) with the Respondent's signature; certified mail "green card" to the Claimant with her signature
- GF Ex. 3 Hearing Order, January 30, 2013
- GF Ex. 4 Certified copy of the Respondent's licensing history, July 22, 2013
- GF Ex. 5 Home Improvement Claim Form, received December 1, 2010
- GF Ex. 6 Amended Home Improvement Claim Form, December 19, 2011
- GF Ex. 7 Letter from John Borz, Chairman, HIC, to the Respondent, January 18, 2012

No documents were admitted on behalf of the Respondent.

Testimony

The Claimant testified on her own behalf and presented the testimony of Michael Dent, Contractor, MGD Design Build Co., MHIC license #17963, who was accepted as an expert in the field of home improvement. No one testified on behalf of the Respondent. The Fund did not present any testimony.

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 license numbers 01-83848 -01 and 05-128058.
2. On December 4, 2007, the Respondent and the Claimant entered into a contract for the Respondent to perform major renovations on the Claimant's home, in accordance with architect's drawings and specifications, including demolishing the foundation, framing and roof, and the installing rough-ins, windows, siding, drywall, interior doors, trim work, hardwood flooring, and painting. (CL Ex. 1.)
3. The Respondent began work in December 2007 and projected that the owners could move into the home by August 2008.

4. The original contract price was \$390,000.00, to be paid in the following manner:

Draw #1 – Down Payment	10%	\$ 39,000.00
Draw #2 – Demolition Complete	10%	\$ 39,000.00
Draw #3 – Foundation, Framing & Roof Sheathed	15%	\$ 58,500.00
Draw #4 – Trade Rough-in (work complete)	10%	\$ 39,000.00
Draw #5 – Windows & Siding (installed)	10%	\$ 39,000.00
Draw #6 – Drywall – Hung & Taped	10%	\$ 39,000.00
Draw #7 – Interior Doors & Trim Work (installed)	10%	\$ 39,000.00
Draw #8 – Hardwood Flooring & Painting (installed)	10%	\$ 39,000.00
Draw #9 – County/City Final Inspection (approval)	10%	\$ 39,000.00
Draw #10 – Customer Move-In	2.5%	\$ 9,750.00
Draw #11 – Punch list Complete	2.5%	\$ 9,750.00
	100%	\$390,000.00

(CL Ex. 1).

5. Included in the price of the contract was \$74,150.00 in allowances for upgrades.

(CL Ex. 1.) Throughout the course of the project, there were many change orders concerning upgrades and additional work to be performed that impacted the price of the contract. (CL Exs.

2 and 3.) They include:

CHANGE ORDER	AMOUNT
CO #1	(\$ 5,420.00)
CO #2	\$ 4,000.00
CO #3	(\$ 1,500.00)
CO #4	(\$ 293.45)
CO #6	(\$ 1,203.70)
CO #7	\$ 2,132.00
CO #8	(\$3,573.01)
CO #9	\$ 3,325.00
CO #11	(\$ 2,000.00)
CO #12	\$ 1,252.28
CO #13	\$ 5,315.00
CO #14	\$ 3,647.00
CO #17	\$ 3,745.50
CO #18	\$ 1,365.00
CO #19	\$ 9,170.00
CO #20	\$ 2.71
CO #21	\$ 229.00
CO #22	(\$ 100.00)
CO #23	\$ 1,337.30
CO #24	\$ 3,255.00

CO #25	\$ 1,449.97
CO #27	(\$ 1,100.00)
CO #28	\$ 4,000.00
CO #29	\$ 348.55
CO #30	\$ 503.13
CO #31	(\$ 777.91)
CO #32	\$ 3,189.00
CO #33	(\$ 749.25)
CO #34	\$ 891.25
CO #35	\$ 400.00
CO #37	\$ 750.00
CO #38	(\$ 204.00)
CO #39	(\$ 1,600.00)
CO #40	\$ 1,339.28
CO #41	\$ 100.00
CO #42	(\$ 5,750.00)
CO #43	\$ 533.90
CO #44	\$ 438.00
CO #46	\$ 1,429.85
CO #50	\$ 950.00
CO #51	\$ 2,018.25
CO #55	\$ 77.35
FINAL	\$32,923.00²

6. The total cost of the project, taking into account the change orders listed in paragraph 5, equaled \$422,923.00 (\$390,000.00 + \$32,923.00 = \$422,923.00).

7. At some point, the Montgomery County Office of Permitting Services inspected the home, and the Claimant moved into the home in August 2008.

8. On August 20, 2008, Flanagan Architects prepared a punch list identifying a significant number of items that the Respondent was required to complete under the contract, as well as, correct defective work. (CL Ex. 8.) The list was single-spaced and seven pages long, identifying concerns with regard to the interior (foyer, living room, hallway, powder room, kitchen, family room, mud room, dining room, basement stairs, upper stairs, second floor hall,

² On the AR Invoice List provided by the Claimant, on the last page, the Respondent added \$9,750.00 to the total amount owed under the contract for "Progress Billing #11." (See CL Ex. 2.) The Claimant deleted this amount from her personal accounting sheet because she thought it was an "unapproved change order." Contrary to the Claimant's belief, this amount is owed for Draw #11; therefore, I did not delete \$9,750.00 from the list of change orders.

hall bathroom, pink bedroom, green bedroom, yellow bedroom, laundry room, master bedrooms 1 and 2, attic, basement hall, basement bathroom, basement bedroom, mechanical room, and garage), and exterior (front porch, front, right side, basement, back, deck, left side, roof).

9. On August 21, 2008, the Claimant prepared her own punch list identifying additional items that the Respondent was required to complete under the contract or to correct as defective work. (CL Ex. 8.) The list was single-spaced and four pages long, identifying concerns with regard to the following areas of the home: exterior, stone fireplace, basement fireplace, recreation room, living room, dining room, kitchen, painting, upstairs hall closet, attic, doors and windows, basement storage/utility room, bathrooms, electrical/wiring, and miscellaneous items.

10. On October 24, 2008, the Claimant made her last payment under the contract in the amount of \$14,221.65. As of this date, the Claimant still owed the Respondent \$11,474.80 ($\$422,923.00 - \$411,448.20 = \$11,474.80$.)

11. From November 2008 to July 2009, the Respondent and various sub-contractors worked on the project in an attempt to complete the two punch lists.

12. On August 6, 2009, the Claimant sent the Respondent an e-mail requesting a face-to-face meeting to resolve the completion of the project. (CL Ex. 6.) The parties meet the following day.

13. Work on the project continued through September 2009, but this was the last time the Respondent worked on the project. During this time, the Claimant signed off on a significant number of items, agreeing that they were completed. (CL Ex. 8, *see* initials, "ca," or a check mark, "✓," next to items completed; *see also* CL Ex. 7, December 4, 2009 e-mail.)

14. By October 2009, an impasse had occurred over the payment for services rendered and the completion of the project – the Respondent demanded payment under the contract and the Claimant demanded 100% completion of the project.

15. From October 2009 to December 2009, the Claimant sent several e-mails to the Respondent in an effort to resolve the few outstanding punch list items to no avail. (CL Ex. 7.)

16. In December 2009, the Respondent filed for bankruptcy. (CL Ex. 7.) In response, on or about December 14, 2009, the Claimant submitted a “list of open items,”³ that was single-spaced and four pages long, to the bankruptcy court detailing all outstanding work due to poor workmanship, code violations, or items she believed needed to be completed under the contract. (CL Ex. 10; *see also* CL Ex. 7, December 3, 2009 e-mail.)

17. Many of the items noted on the “list of open items” were not originally identified by either Flanagan Architects or the Claimant as needing correction when they crafted their August 2008 punch lists.

18. In an e-mail to the Respondent, the Claimant referenced or sent the “list of open items” to the Respondent or referenced the list. In a response e-mail, the Respondent complained to the Claimant that list exemplified her persnickety personality that had overshadowed the project from the beginning and suggested that the contract be considered satisfied. He would not demand the remaining money due and the Claimant should find another contractor to finish the work. (CL Ex. 7.)

19. The Claimant sent the Respondent two more e-mails in January and February 2010, hoping to have the Respondent finish the work, but the Respondent failed to respond. (CL Ex. 7.)

³ Noted on the “list of open items,” was the “[c]ompletion of the punch list dated August 21, 2008, parts I and II.” (CL Ex. 10.)

20. The Claimant did not receive any monies from the bankruptcy court.

21. In June 2010, James Sackett, Senior Permitting Services Inspector with the Montgomery County Office of Permitting Services, inspected the home and discovered electrical code violations, including: (a) the lack of guard strips for wiring in the attic; (b) receptacles in the basement mechanical room requiring singular round receptacles or GFCI; (c) an improper GFCI receptacle in the same area of the mechanical room; (d) alarm system in the bedroom was on the wrong circuit; and (e) bushing was needed for the THHN around the basement prefab fireplace. (CL Ex. 9.) Mr. Sackett also cited the home for improper grading outside the basement bedroom window. *Id.*

22. Between December 4, 2007 and October 24, 2008, the Claimant paid the Respondent \$411,448.20, as follows:

CHECK #	AMOUNT	DATE	DRAW	CHANGE ORDER (CO)
1050	\$ 39,000.00	December 4, 2007	Draw #1	
1630	\$ 39,000.00	February 3, 2008	Draw #2	
1649	\$ 58,500.00	March 18, 2008	Draw #3	
1660	\$ 3,325.00	April 9, 2008		CO #9
1668	\$ 4,899.28	April 22, 2008		CO #12 & 14
1671	\$ 10,425.50	May 5, 2008		CO #13, 17 & 18
1672	\$ 9,170.00	May 5, 2008		CO #19
1673	\$ 73,080.00	May 5, 2008	Draws #4 & 5	CO #1, 2, 3, & 11
1674	\$ 229.00	May 7, 2008		CO #21
1676	\$ 6,727.01	May 15, 2008		CO #7, 20, 23, 24
1683	\$ 38,900.00	May 20, 2008	Draw #6	CO #22
1684	\$ 1,449.97	May 23, 2008		CO #25
1687	\$ 35,426.99	May 31, 2008	Draw #7	
1688	\$ 8,040.68	June 5, 2008		CO #28, 29, 30 & 32
1690	\$ 39,000.00	June 5, 2008	Draw #8	
1693	\$ 750.00	June 9, 2008		CO #37
1695	\$ 1,289.25	June 12, 2008		CO #34 & 35
1698	\$ 1,339.28	June 19, 2008		CO #40
1707	\$ 100.00	June 26, 2008		CO #41
1713	\$ 1,429.85	July 16, 2008		CO #46
1714	\$ 533.90	July 18, 2008		CO #43
1721	\$ 438.00	August 8, 2008		CO #44
1729	\$ 950.00	August 12, 2008		CO #50
1733	\$ 8,222.84	August 22, 2008	Draw #10	CO #31 & 33

1752	\$ 15,000.00	September 29, 2008	Draw #9	
1764	\$ 14,221.65	October 24, 2008	Draw #9	CO #6, 27, 38, 39 & 42
	\$411,448.20	TOTAL PAID		

(CL Exs. 2 and 3).

23. On December 1, 2010, the Claimant filed a claim with the Fund for reimbursement of \$19,293.00.

24. On June 1, 2011, the Claimant obtained a contract proposal, in the amount of \$33,573.00, from MGD Design/Build Co. (MGD), MHIC license number 17963, to make repairs to the home as a result of the Respondent's poor workmanship, incomplete work, and/or code violations. (CL Ex. 4.) The proposal also included monies for extraneous or incidental items not reimbursable by the Fund.

25. MGD fashioned its contract proposal based on the "list of open items" the Claimant made in December 2009.

26. On December 19, 2011, the Claimant amended her claim based on the MGD proposal and is now seeking \$23,666.00 from the Fund. (GF Ex. 6.)

27. Below is a complete list of items to be repaired as a result of unworkmanlike, inadequate, or incomplete home improvement:

Demolition.....	\$ 58.00
o Haul all old construction debris	
Excavation and grading.....	\$ 4,208.00
o Correct code violations	
Masonry.....	\$ - 0 -
o Clean driveway	
o Provide and install a new stone in the driveway	
Floor Framing and sheathing.....	\$ 700.00
o Carpet in basement is not level due to an imperfect subfloor	
o Imperfect subfloor in the yellow bedroom	
Roof.....	\$ 395.00
o Redirect existing gutters to ensure proper sloping	
Exterior trim, porches and decks.....	\$ - 0 -

○ Provide and install decorative columns	
○ Provide and install deck freeze boards	
Doors and hardware.....	\$ 537.00
○ Repair existing screen doors in the basement and on the deck	
○ Align handle sets to work properly on the new master bedroom walk-in closets	
○ Provide and install wood door stops at the mud room and basement doors	
○ Fix locking mechanisms on the french doors and garage exit door	
Windows, Skylights and Accessories.....	\$ 79.00
○ Provide and install new replacement screen in bedroom. due to holes in it	
Plumbing.....	\$ 291.00
○ Repair basement handheld shower head	
○ Connect icemaker in mudroom	
HVAC... ..	\$ 89.00
○ Proper ventilation of hall bathroom fan	
○ Insure proper installation of hood fan	
Electrical.....	\$ 1,790.00
○ Correct code violations	
Interior wall and ceiling covering.....	\$ 124.00
○ Provide and install drywall in bathroom to fix a hole behind the mirror	
Tile – Marble.....	\$ 333.00
○ Install caulk in bathrooms and patch grout	
Trim, Millwork and Stairs.....	\$ 1,943.00
○ Provide and install replacement plinth block	
○ Provide and install stair panel	
○ Provide and install crown moulding around kitchen range	
○ Repair existing plantation shutters	
○ Provide and install moulding at stair nosing	
Cabinets and Appliances.....	\$ - 0 -
○ Fix scratches on master bath cabinet	
Painting and Decorating.....	\$ 5,449.00
○ Interior painting	
○ Prepare and finish house railings	
○ Patch and paint various imperfections	
○ Paint tops and bottoms of doors	
○ Clean off paint splatter	
○ Caulking	
Floor coverings.....	\$ 5,515.00
○ Stain where needed due to repairs	
○ Screen and re-coat wood floors	

- Provide and install oak treads
- Provide and install oak risers

TOTAL...	\$21,511.00
----------	-------------

(CL Ex. 4.)

28. The Claimant's actual loss is \$10,076.00.⁴

DISCUSSION

I. Respondent's Failure to Appear

Section 8-312(a) of the Business Regulation Article provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus Reg. § 8-312(a) (Supp. 2012). The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice shall be sent by certified mail to "the business address of the licensee on record with the Commission." *Id.* § 8-312(d) (Supp. 2012). The procedures for notice applicable to disciplinary proceedings also apply to claims against the Fund. *Id.* at § 8-407(a) (2010).

On May 28, 2013, the OAH sent a Notice of Hearing (Notice) by certified and first class mail to the Respondent's last address of record and his home address, 2005 Adams Hill Road, Vienna, Virginia 22182. The Notice advised the Respondent of the time, place and date of the hearing. According to the Fund, the Respondent signed the green card acknowledging receipt of the certified mailing to his home address and the green card is contained in the record as Guaranty Fund Exhibit 2.

Under section 8-312 of the Business Regulation article, "[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and

⁴ The amount of the actual loss is 10,076.20, but I rounded it out to the nearest dollar.

determine the matter.” Md. Code Ann., Bus Reg., § 8-312(h) (Supp. 2012). Based upon the record before me, I am satisfied that the OAH properly notified the Respondent of the date, time and location of the scheduled hearing, as well as the issues to be presented. Accordingly, when the Respondent was still not present after fifteen minutes of the scheduled hearing start time, I directed that the hearing proceed in the Respondent’s absence. Md. Code Ann., Bus Reg., § 8-312(h); COMAR 09.01.02.07E.

II. Merits

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. 2012). *See also* COMAR 09.08.03.03B(2). 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). For the following reasons, I find that the Claimants have proven eligibility for compensation.

First, a review of the licensure information for the Respondent makes it clear that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants.

Furthermore, it is clear from the evidence that the Respondent sought and received protection from the U.S. Bankruptcy Court after he entered into the home improvement contract with the Claimant and did not return to the property thereafter, leaving a fraction of the work undone or performed in an unworkmanlike manner.

In her narrative attached to the Fund Claim, the Claimant expressed frustration with the lack of professionalism by the Respondent and/or his subcontractors while working on her home. She wrote:

Work by subcontractors was not performed in a professional manner and without proper supervision, causing property damage and risk to our property. Examples include: painters working without tarp or tape in our home after move-in, leaving messes, using our sinks and toilets to clean brushes, and dripping paint on our carpets; electrical subcontractors arriving at our home (after move-in) unannounced and unsupervised; subcontractors (unsupervised, after move-in) leaving doors and garage doors open and ajar and leaving the site with no supervision from [the Respondent]; stone workers cut stone and mixed mortar on our newly finished driveway, without protecting the surface or properly cleaning the area; contractors working on the exterior columns ...without supervision at our home well after 7pm without the proper equipment (cleaning equipment, hose, extension cords, etc.)

(CL Ex. #5.) At the hearing, the Claimant focused her attention on specific items contained on the original home improvement contract needing repair and/or replacement as a result of unworkmanlike condition or incomplete product.

During her testimony, the Claimant presented an August 20, 2008 punch list prepared by the architect who prepared the specifications for the work, as well as her own supplemental punch list, dated August 21, 2008. The Claimant further included an all encompassing “list of open items” that she claimed summarized the current state of the home improvement project as of December 2009. In addition, the Claimant called as a fact and expert witness Michael Dent, owner/operator of MGD, to corroborate her testimony that the “list of open items” consisted of work performed by the Respondent in an unworkmanlike manner.

I found the Claimant’s and Mr. Dent’s testimony persuasive up to a point. To his credit, Mr. Dent readily acknowledged that he prepared his contract proposal based on the Claimant’s “list of open items,” a review of the original contract and the architectural blueprints. He also excluded items noted on the “list of open items” from his proposal after he personally inspected any alleged deficiencies and felt that they did not rise to the level of unworkmanlike condition or incomplete product. That said, I am reluctant to ascribe credibility to his findings that all

remaining items listed on his proposal were due to unworkmanlike condition or incomplete product.

The record reflects that both the Claimant and the original architect, Flanagan Architects, created a laundry list of items (*i.e.* punch lists) they believed to be objectionable in August 2008. Noticeably missing from both of those lists are items such as (1) the installation of a wrong-colored stone during the installation of the driveway; (2) imperfections in the driveway caused by the sub-contractors sloppy work ethic cutting stone on the newly installed driveway; (3) wrong-colored tracks on the replacement windows; and (4) missing freeze board. Given the tenacity upon which the Claimant pestered the Respondent to fix every imperfection under the contract, I find it reasonable to infer that the Claimant would have immediately reported these four items to the Respondent because they were allegedly visual and/or obvious imperfections. When the Claimant and Flanagan Architects failed to include these four items on their respective punch lists in 2008, it was incumbent upon the Claimant to include photographs to corroborate her and Mr. Dent's testimony. As a result, I found that the Claimant lacked sufficient documentation to establish by a preponderance of the evidence that the Respondent's actions were unworkmanlike or incomplete with regard to these four items.

The record also reflects that the Claimant signed off on the Flanagan Architects punch list noting that the columns and pedestals had been installed and/or corrected. However, Mr. Dent testified that the materials used to construct the columns and pedestals were far inferior to the materials specified by the architectural blueprints. I do not find Mr. Dent's or the Claimant's contention that the Respondent performed this aspect of the home improvement contract in an unworkmanlike manner persuasive or credible. If Mr. Dent's testimony is to be believed, then it would be reasonable for me to infer from the record that Flanagan Architects would have

identified this as a concern at the time the columns and pedestals were installed or, alternatively, included on its punch list. Similarly, I am confident that the Claimant would not have signed off on this particular item if it were not consistent with the original architectural blueprints.

Furthermore, after thoroughly reading all of the documents submitted into evidence, I found the Appellant's testimony purposefully misleading with regard to the doors. Buried in one of the e-mails between the Respondent and the Claimant, the Respondent chides the Claimant for much of the impasse between the parties in completing the home improvement project, because of her fastidiousness nature which, in his opinion, resulted in numerous change orders. As an example, the Respondent reminded the Claimant that he reimbursed her for the doors because she could not make up her mind on some aspect of the project and this led to the delayed installation of the doors. He also told the Claimant that the stain color of the front door was out of his control. The Claimant clearly did not communicate this to Mr. Dent, because he included the cost to supply and install new doors in his contract proposal. In addition, the Claimant never corrected the record on this topic during the course of the hearing. Her silence on this topic completely undermines her credibility on all other items, noted above, as well.

As to the scratches on the master bathroom cabinets, the Claimant, again, failed to submit any photographic documentation to support the severity of the damage. I am also not persuaded that the damage was due to unworkmanlike condition as opposed to being incidental in nature.

Despite my reservations concerning certain aspects of the Claimant's claim, all other items listed in Findings of Fact No. 27 are supported by the record insofar as either the Claimant or Flanagan Architects noted the items on their respective punch lists in August 2008 and the Claimant never signed off on the items as being repaired or completed.

Having found eligibility for compensation for the items listed in Findings of Fact No. 27, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant testified and presented evidence to establish that she paid the Respondent \$411,488.20. She also presented a proposal from MGD, which reflects that it would cost \$21,511.00 to complete and correct defective work. This company is licensed by MHIC; therefore, I find that the proposal is prepared by a competent contractor. Because the Respondent failed to appear at the hearing, never challenged the proposal and presented no evidence that it exceeds the scope of the work under the Respondent's contract, I will find for the Claimant. I calculate the Claimants' actual loss as follows:

\$ 411,488.20	Amount the Claimant paid the Respondent
<u>+ 21,511.00</u>	Amount required to correct and complete the contract work
\$ 432,999.20	
<u>- 422,923.00</u>	Contract price
\$ 10,076.20	The Claimant's actual loss

CONCLUSIONS OF LAW

Based upon the evidence presented and discussion, I conclude as a matter of law that the Respondent failed to appear after proper notice. Md. Code Ann., Bus. Reg. §§ 8-312(d) and 8-407(a) (2010 and Supp. 2012).

I further conclude that the Claimant has sustained an actual/compensable loss of \$10,076.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,076.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of 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

October 28, 2013
Date Decision Mailed

KAC/tc
#144197v2

Kathleen A. Chapman
Administrative Law Judge

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MARY C. AGNEW,</p> <p>CLAIMANT,</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JAMES J.</p> <p>WOLOHAN, T/A WINDSOR</p> <p>CONSTRUCTION GROUP; HALSEY</p> <p>HOME CORPORATON,</p> <p>RESPONDENT</p>	<p>* BEFORE KATHLEEN A. CHAPMAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-13-08562</p> <p>* MHIC NO.: 11 (90) 461</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
---	--

* * * * *

FILE EXHIBIT LIST

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

- CL Ex. 1 Standard Form of Agreement Between Owner and Contractor, December 4, 2007
- CL Ex. 2 Windsor Construction Group AR Invoice List
- CL Ex. 3 Cancelled checks to Windsor Construction Group
- CL Ex. 4 MGD Design/Build Co. Contract Proposal, June 1, 2011
- CL Ex. 5 Description of complaint
- CL Ex. 6 E-mail from Respondent to Greg Agnew, August 6, 2009
- CL Ex. 7 Various e-mails between the Respondent, Justin Mackovyak, and the Claimant
- CL Ex. 8 Punch list & Part II
- CL Ex. 9 Various e-mails between the Claimant and James Sackett, Senior Permitting Services Inspector
- CL Ex. 10 Items open under the contract with Respondent

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

- GF Ex. 1 Corrected Copy of Notice of Hearing to Susan Cherry, May 28, 2013
- GF Ex. 2 File Copy of Corrected Copy of Notice of Hearing, May 28, 2013, with certified mail "green card" to 2005 Adams Hill Road, Vienna, VA 22182 (home address) with the Respondent's signature; certified mail "green card" to the Claimant with

- her signature
- GF Ex. 3 Hearing Order, January 30, 2013
 - GF Ex. 4 Certified copy of the Respondent's licensing history, July 22, 2013
 - GF Ex. 5 Home Improvement Claim Form, received December 1, 2010
 - GF Ex. 6 Amended Home Improvement Claim Form, December 19, 2011
 - GF Ex. 7 Letter from John Borz, Chairman, HIC, to the Respondent, January 18, 2012

No documents were admitted into the record on behalf of the Respondent.