

**IN THE MATTER OF THE CLAIM
OF THERESA YEE (deceased) AND
NAYEEM HOQ**

**MARYLAND HOME IMPROVEMENT
COMMISSION**

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF GORDON LANE t/a
LANE BUILDING SERVICES, LLC**

**MHIC CASE NO. 15(75)1046
OAH CASE NO. DLR-HIC-02-17-32206**

* * * * *

FINAL ORDER

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on April 5, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 20, 2018, concluding that the homeowners Theresa Yee and Nayeem Hoq (“Claimant Yee” and “Claimant Hoq”) sustained an actual and compensable loss of \$15,693.84 as a result of the acts and omissions of Gordon Lane t/a Lane Building Services, LLC (“Contractor”). *ALJ Proposed Decision* p. 16. In a Proposed Order dated May 7, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimant \$15,693.84 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On August 2, 2018, a hearing on the exceptions filed in the above-captioned matter was held before a three-member panel (“Panel”) of the MHIC. The Claimant was present without counsel. The Contractor was present and represented by, Stephen P. Kauffman, Esq. Andrew Brouwer, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following six preliminary exhibits were offered by AAG Brouwer and admitted into evidence at the exceptions hearing: 1) May 7, 2018 Cover Letter with MHIC Proposed Order and OAH Proposed Decision, 2) Exceptions to Proposed Decision filed by the

Contractor, 3) Request to Present Additional Evidence filed by the Claimants, 4) Notice of Exceptions Hearing issued on May 29, 2018, 5) Transcript of April 5, 2018 OAH Hearing, 6) OAH case file containing the exhibits admitted at the January 29, 2018 hearing. Both the Claimant and the Contractor initially sought to admit additional evidence that was not otherwise admitted at the OAH hearing. After the parties were notified of the requisite test to admit additional evidence, both the Claimant and the Contractor withdrew their requests.

The Contractor outlines six exceptions to the Commission's Proposed Order. *Exceptions to Proposed Decision* p. 4. In the first exception, the Contractor argues that he was not properly joined as a party because he was not named in the initial claim form filed by the Claimants on August 24, 2017. As early as September 13, 2017, the Commission sent the standard notice to Mr. Lane informing him that there was a claim lodged against him by Claimant Yee. *OAH Hearing, Guaranty Fund Exhibit 4*. Furthermore, the Commission specifically named Gordon Lane t/a Lane Building Services, LLC as the responsible contractor in the hearing order that initiated the administrative proceedings on this claim before OAH. *OAH Hearing, Guaranty Fund Exhibit 1*. Therefore, the Contractor was properly made a party to this case. Moreover, Mr. Lane appeared at the OAH hearing, admitted that he was involved in the transaction with the Claimants and did not otherwise object to or raise any argument that he was improperly joined as a party because his name was not originally on the claim form submitted by Claimant Yee.

In his second exception, the Contractor contends that there was no evidence to suggest that any of the work was performed by the Contractor, his employee or his subcontractor. *Exceptions to Proposed Decision* p. 1-2, 4. The ALJ found that the Contractor permitted Kitchen Land and Mr. Quispe to utilize his MHIC license to perform the work under the contracts with the Claimants, knowing that neither held the requisite MHIC license to perform home improvement services. *ALJ*

Proposed Decision p. 9. The ALJ's finding is supported by the evidence in the record. Two of the contracts entered into with Claimant Yee, one involving the installation of hardwood flooring and another for work on "bathroom #2," are signed by a representative of Lane Building Services and contain Mr. Lane's MHIC license number. *OAH Hearing, Claimants Exhibits 1, 4*. Claimant Yee also was led to believe the Mr. Lane was in charge of the work as evidenced by the letters she sent to Mr. Lane regarding her concerns with the work, as well as Mr. Lane's appearance at the home to observe the problems with the work raised by Claimant Yee. *OAH Hearing, Claimants Exhibits 7, 8; OAH Hearing, Guaranty Fund Exhibit 8; OAH Hearing, Transcript* p. 82, lines 7-10. Lastly, Mr. Lane admitted at the OAH hearing that he knew that Kitchen Land and Mr. Quispe were unlicensed and that he agreed to act as the licensed contractor on the job stating that "[a]nd Juan came to me, explained to me that Zye had this project and Juan was going to do it, but he was not licensed. So he asked me if I would act as the contractor. . . [w]hich unfortunately I did." *OAH Hearing, Transcript* p. 84, lines 19-24. Pursuant to Annotated Code of Maryland, Business Regulation Article, § 8-405(b), "[f]or 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." The evidence in the record shows that Mr. Lane t/a Lane Building Services, LLC agreed to be the licensed contractor in charge of the work, and as a result the acts and omissions of Kitchen Land and Mr. Quispe are attributable to the Contractor for the purposes of this Guaranty Fund claim.

The Contractor argues next that Claimant Yee's objection was with the quality of the flooring and not with the installation. *Exceptions to Proposed Decision* p. 3-4. As such, the Contractor contends that he would not bear responsibility for defects in the quality of the flooring. The evidence in the record, however, shows that the Claimants clearly objected to the installation

of the flooring. The record contains three letters sent by Claimant Yee to the Contractor on January 9, 2015, January 25, 2015 and February 21, 2015. *OAH Hearing, Claimants Exhibits 7, 8; OAH Hearing, Guaranty Fund Exhibit 8.* In each of these letters, Claimant Yee objected to the installation of the floors. Moreover, the photographs of the condition of the floors offered into evidence by the Claimants show gaps in the flooring and missing trim in support of their claim that the floor was installed improperly. *OAH Hearing, Claimants Exhibit 3.* It is clear from the letters and photographs that Claimant Yee was objecting to the installation of the flooring.

The fourth exception presented by the Contractor involves a series of emails that the Contractor states were produced without providing the full email exchange or response. *Exceptions to Proposed Decision p. 4.* The Contractor contends that he was prejudiced by the Claimant's failure to produce the whole email exchange. *Exceptions to Proposed Decision p. 4.* The Contractor attached the referenced emails as exhibits to his written exceptions. *Exceptions to Proposed Decision, Exhibit 3.* A review of the record reveals, however, that none of these emails were admitted into evidence at the OAH hearing and therefore they exist outside of the record on which the ALJ and subsequently the Commission is basing their decision. Moreover, the Contractor made no objection at the OAH hearing regarding any missing email exchanges. Although, there is no prehearing discovery in Guaranty Fund cases, the Contractor had the option to request OAH to issue a subpoena for the production of documents at the hearing, but did not avail himself of this procedure. *Code of Maryland Regulations ("COMAR") 09.01.03.04; 28.02.01.14.* The Commission does not find that the Contractor was prejudiced as claimed.

The Contractor also argues that there was no expert testimony to establish whether the problems with the hardwood floors were attributable to quality of the flooring or quality of the work in installing the flooring. *Exceptions to Proposed Decision p. 4.* The photographs submitted

by the Claimants show numerous gaps in the flooring and missing trim. *OAH Hearing, Claimants Exhibit 3*. A copy of the installation instructions for the flooring product used was also admitted into evidence. *OAH Hearing, Guaranty Fund Exhibit 5*. The instructions for installing the planks as a floating floor call for the application of glue “in the groove on the side and end of each board.” *OAH Hearing, Guaranty Fund Exhibit 5*, p. 6. Claimant Yee repeatedly informed the Contractor that the planks were not glued in accordance with the instructions. *OAH Hearing, Claimants Exhibits 7, 8; OAH Hearing, Guaranty Fund Exhibit 8*. Moreover, at the OAH hearing the Contractor admitted that he had been to the property after the installation of the flooring, and when questioned by counsel for the Guaranty Fund, “[a]nd would you agree with Mr. Hoq’s conclusion that the flooring was not put in, in a working like manner,” the Contractor responded “[i]t’s been such a while, but I’m going to agree with him.” *OAH Hearing, Transcript* p. 82, lines 7-19. Such evidence does not require an expert to determine that the flooring was installed improperly, and the ALJ reasonably could conclude based on the photographs and documentary evidence presented, the testimony of Claimant Hoq, and the admission of the Contractor, that the installation of the flooring was unworkmanlike.

Lastly, the Contractor contends that the claim should be barred because Claimant Yee unreasonably rejected the Contractor’s “several good faith offers to correct any installation issues.” *Exceptions to Proposed Decision* p. 3-4. The ALJ, however, found that “[t]he Respondent thought Kitchen Land or Mr. Quispe would honor the Claimants’ request for a refund, but failed to follow-up after the February 21, 2015 correspondence with Claimant Y.” *ALJ Proposed Decision* p. 8. The testimony of the Contractor at the OAH hearing supports the ALJ’s finding and shows that although he claims he told Kitchen Land and Mr. Quispe to “get the things fixed,” and that “once this evolved, I explained to him that they had to take the money and get this thing fixed,” the

Contractor admits that nothing happened and that he did not follow-up to ensure that the issues with the work were fixed. *OAH Hearing, Transcript* pp. 83-84, lines 23-25, 1; p 86, lines 1-5. Moreover, Claimant Hoq testified that after January 2015 no one from the Contractor, Kitchen Land, or Mr. Quispe returned to the property to correct the work. *OAH Hearing, Transcript* p. 68-69. Therefore, the Commission does not find merit in the Contractor's argument on exceptions that he made several good faith efforts to resolve the claim that were unreasonably rejected by the Claimants.

The Panel agrees with the ALJ's analysis and finds no error in her decision. The ALJ's decision is thorough, supported by the evidence in the record and correct as a matter of law. Having considered the parties' arguments, the transcript of the OAH hearing, the exhibits submitted into evidence before OAH and the ALJ's Proposed Decision, it is this 31st day of

October 2018 ORDERED:

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Proposed Decision and Order of the Administrative Law Judge is **AFFIRMED**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission

IN THE MATTER OF THE CLAIM
OF THERESA YEE (deceased),

CLAIMANT

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR
OMISSIONS OF GORDON LANE,

T/A LANE BUILDING SERVICES,
LLC

RESPONDENT

* BEFORE KATHLEEN A. CHAPMAN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

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* OAH No.: DLR-HIC-02-17-32206

* MHIC No.: 15 (75) 1046

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On August 24, 2017, Theresa Yee (Claimant Y) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,502.93 in actual losses allegedly suffered as a result of a home improvement contract with Gordon Lane, trading as Lane Building Services, LLC (Respondent).

On April 5, 2018, I held a hearing at the Office of Administrative Hearings (OAH), in Kensington, Maryland.¹ Md. Code Ann., Bus. Reg. § 8-407(e) (2015). Nayeem Hoq (Mr. H. or Claimant), the Claimant Y's husband, represented the Claimants.² Eric London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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 Claimants' behalf:

Clmt. Ex. 1 – Contract (re: flooring), dated October 8, 2014; Contract (re: trim), dated November 11, 2014; Contract (re: labor), dated October 8, 2014

¹ The hearing was originally scheduled for January 10, 2018, but was postponed at Claimant Y's request to continue with scheduled medical treatment.

² Claimant Y passed away on January 28, 2018. In a letter dated March 20, 2018, Claimant Y's husband, Mr. H, informed the OAH that he was the executor of his wife's estate. At the hearing, however, Mr. H explained that he had not yet filed the requisite paperwork to initiate the estate. See Md. Code Ann., Est. & Trusts § 5-102 (2017). (When a person dies, an estate may be opened to take care of the decedent's final affairs. A person may not exercise the powers and duties of a personal representative unless that person has been appointed through the administrative or judicial probate process.). To avoid postponing the case or cancelling the hearing, the Respondent and the Fund agreed to waive notice to permit an amendment of the Claim to permit Mr. H to be added as a Claimant. (Hereinafter, Claimant Y and Claimant H will collectively be referred to as the Claimants). This amendment is appropriate since Claimant H and his wife resided together, jointly-owned the home at the time of the home improvement project, and all payments made to the Respondent were from the jointly-owned bank account.

- GF Ex. 6 - Color photocopy of two pictures re: "Ruined Kitchen Door"
- GF Ex. 5 - IndusParquet instructions manual, www.indusparquet-usa.com, undated August 24, 2017)
- GF Ex. 4 - Letter from Joseph Tunney, Chairman, MHIC, to Respondent, dated September 13, 2017; MHIC claim form, dated August 18, 2017 (date-stamped received on August 24, 2017)
- GF Ex. 3 - Licensing History, printout date of January 8, 2018
- GF Ex. 2 - Notice of Hearing, dated March 26, 2018 (for a hearing scheduled for April 5, 2018); Domestic Return Receipt (Green Cards) signed by the Claimant Y's estate on March 28, 2018, Claimant H on March 28, 2018, and the Respondent on March 30, 2018
- GF Ex. 1 - Notice of Hearing, dated October 19, 2017 (for a hearing scheduled for January 10, 2018); Hearing Order, dated October 2, 2017

I admitted the following exhibits on behalf of the Fund:

The Respondent did not offer any documents to be admitted into evidence.

- Clmt. Ex. 8 - Letter from Claimant Y to the Respondent, dated February 21, 2015
- Clmt. Ex. 7 - Letter from Claimant Y to the Respondent, dated January 25, 2015
- Clmt. Ex. 6 - Color photocopies of fifteen pictures re: bathrooms (shower door, medicine cabinets, and flooring)
- Clmt. Ex. 5 - Cancelled checks, as follows:
 - Check #1029, in the amount of \$14,738.00, dated September 6, 2014
 - Check #1033, in the amount of \$4,924.00, dated September 15, 2014
- Clmt. Ex. 4 - Contract (re: double slide shower enclosure), dated September 6, 2014; Contract (re: labor), dated September 6, 2014
- Clmt. Ex. 3 - Color photocopies of twenty pictures re: floor and trim
 - Check #1041, in the amount of \$7,223.00, dated October 4, 2014
 - Check #1043, in the amount of \$433.38, dated October 13, 2014
 - Check #1044, in the amount of \$1,986.67, dated October 13, 2014
 - Check #1052, in the amount of \$1,986.67, dated November 4, 2014
 - Check #1054, in the amount of \$279.96, dated November 11, 2014
 - Check #1055, in the amount of \$640.12, dated November 11, 2014
 - Check #1057, in the amount of \$1,986.00, dated November 11, 2014
- Clmt. Ex. 2 - Cancelled checks, as follows:
 - Check #1041, in the amount of \$7,223.00, dated October 4, 2014
 - Check #1043, in the amount of \$433.38, dated October 13, 2014
 - Check #1044, in the amount of \$1,986.67, dated October 13, 2014
 - Check #1052, in the amount of \$1,986.67, dated November 4, 2014
 - Check #1054, in the amount of \$279.96, dated November 11, 2014
 - Check #1055, in the amount of \$640.12, dated November 11, 2014
 - Check #1057, in the amount of \$1,986.00, dated November 11, 2014

installation of a double slide shower enclosure and two separate medicine cabinets.
6. On September 6, 2014, the Claimants entered into a contract for the purchase and

contracts.

5. At issue are the September 6, 2014, October 8, 2014, and November 30, 2014

4.

Neither 3Kitchen Land nor Mr. Quispe had a license with the MHIC.

the work under the various contracts with the Claimants.

with 3Kitchen Land and Mr. Quispe allowing them to use his MHIC license number to perform

3.

Unbeknownst to the Claimants, the Respondent entered into a side arrangement

collective value of the contracts came to \$54,236.80.

unlicensed subcontractor), and the Respondent to renovate a newly purchased home. The

home improvement contracts with 3Kitchen Land (the supplier of material), Juan Quispe (an

2.

From September 2014 to December 2014, the Claimants entered into a series of

home improvement contractor under MHIC license number 127707.

1.

At all times relevant to the subject of this hearing, the Respondent was a licensed

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

PROPOSED FINDINGS OF FACT

The Respondent testified in his own behalf.

Claimant H testified on behalf of the Claimants.

Testimony

GF Ex. 9 -

Color photocopy of two pictures re: "Damaged Bathroom Door Frame"

GF Ex. 8 -

Letter from Claimant Y to the Respondent (re: punch list), dated January 9, 2017; Canceled check #1060, in the amount of \$350.00, dated November 30, 2014

GF Ex. 7 -

Lowes's Home Centers invoice, dated February 20, 2018

- 7. The Claimants paid 3Kitchen Land \$14,738.00 (check #1029) on September 6, 2014 and \$4,924.00 (check #1033) on September 15, 2014, for a total of \$19,662.00, for the performance of the September 6, 2014 contract, among other things.
- 8. Mr. Quispe began work on the shower enclosure and medicine cabinets in earnest soon after the contract was signed.
- 9. After learning that the shower enclosure was too large for the space it was intended for, Mr. Quispe sent one of the glass panels to a glass shop to have the panel cut smaller to fit the space.
- 10. As a result of the modification, the shower enclosure became too small for the space it was intended for thereby causing the shower enclosure door to wobble.
- 11. The shower enclosure has no value and must be replaced.
- 12. The Claimants have not obtained a quote from a licensed contractor to remove and replace the shower enclosure.
- 13. The agreed-upon contract price for the shower enclosure was \$1,150.00 (materials only).
- 14. When Mr. Quispe installed the two medicine cabinets he failed to affix them to the wall causing a discernable gap between the cabinet and the wall. As a result, both medicine cabinets shake when the door is opened and closed.
- 15. There is no structural damage to the medicine cabinets themselves.
- 16. The Claimants have not obtained a quote from a licensed contractor to remove and re-install the medicine cabinets.
- 17. On October 8, 2014 (an addendum was added on November 11, 2014 for the trim), the Claimants entered into another contract for the removal of existing parquet flooring

and the installation of 1,200 square feet of Brazilian cherry hardwood flooring and 93.6 square feet of trim. The agreed-upon contract price was \$7,223.00 (materials – flooring), \$640.12 (materials – trim), and \$5,960.00 (labor) for a total of \$13,823.12.

18. The Claimants paid 3Kitchen Lane and Mr. Quispe a total of \$14,535.80 for the performance of the October 8, 2014 contract,³ the amounts paid are as follows:⁴

- \$7,223.00 (check #1041) on October 4, 2014
- \$433.38 (check #1043) on October 13, 2014
- \$1,986.67 (check #1044) on October 13, 2014
- \$1,986.67 (check #1052) on November 4, 2014
- \$279.96 (check #1054) on November 11, 2014
- \$640.12 (check #1055) on November 11, 2014
- \$1,986.00 (check #1057) on November 11, 2014

19. Mr. Quispe began work on the flooring project in earnest soon after the contract was signed.

20. Before the installation of the floor was complete, Claimant Y observed gaps and moving floor boards, and pointed it out to Mr. Quispe and 3Kitchen Land salesman Philip Lucara. Both men told Claimant Y that it was supposed to look that way since it was a “floating” floor.

21. Within three weeks of the installation of the flooring, the floor boards were shifting under foot, cracking, warping, shrinking, and popping up (resulting in uneven heights). There were also large gaps between floorboards.

22. The condition of the flooring presented a tripping hazard.

23. Mr. Quispe failed to properly install the floorboards per manufacturer’s instructions; specifically, the floorboards were not glued down or properly laid.

³ Claimant H was not able to explain the variance in the amount paid (\$14,535.80) versus the amount of the contract (\$13,823.12).

⁴ With the exception of check #1054, all payments were made to 3Kitchen Land.

24. The installation of the trim, too, was noticeably faulty – there were gaps between the wall and trim, some areas lacked trim, the trim was unfinished in other areas, or the trim was cracked.

25. In the process of installing the floor and trim in the home, Mr. Quispe purposefully cut one side of a bi-fold kitchen door without the Claimants' knowledge or permission. As a result, one side of the bi-fold door was no longer flush with the companion bi-fold door and needed to be removed and replaced.

26. On December 12, 2014, Zy Kaspisr, Owner of 3Kitchen Land, Mr. Lucara, Mr. Quispe, and the Respondent met with Claimant Y at the Claimants' home. Both Mr. Kaspisr and the Respondent agreed with Claimant Y that the flooring was installed in an unworkmanlike manner and that the kitchen bi-fold door needed replacement.

27. At some point in December 2014/January 2015, Claimant Y was diagnosed with cancer. Afterwards, she was unable to immediately follow-up with the Respondent concerning her home improvement project.

28. In a letter dated January 9, 2015, Claimant Y asked the Respondent for a refund in the amount of \$14,936.80 (\$8,696.72 materials, and \$6,240.08 labor) for the flooring and trim, and \$370.72⁵ for the removal and replacement of the kitchen door. Claimant Y also told the Respondent that she fell ill and was seeing doctors, etc.

29. In the same letter, Claimant Y identified five items requiring repair from a punch list that she had paid Mr. Quispe \$350.00 (check #1060) on November 30, 2014 to have

⁵ Claimant Y's handwritten note on the Lowe's estimate listed the amount to be \$458.72. Since Claimant Y was not at the hearing to explain the discrepancy between her handwritten note and the amount she listed in her February 21, 2015 letter, I kept the figure at \$370.72.

completed. The items included: a bathroom door frame, a bathroom fixture, a sink seal around drain, trim and re-attachment of a toe-kick, and the installation of Charlie bars.

30. In a letter dated January 25, 2015, Claimant Y again asked the Respondent for a refund in the amount of \$14,936.80 for the floors, as well as the replacement of the kitchen bi-fold door.

31. In a letter dated February 21, 2015, Claimant Y asked Mr. Kaspisr and the Respondent for a refund in the amount of \$14,936.80. In addition, Claimant Y identified six items requiring repair from the punch list, including: a bathroom door frame, a bathroom fixture, a sink seal around drain, trim and re-attachment of a toe-kick, the installation of Charlie bars, and the repair of cracked shower walls.

32. The Claimants did not hire another contractor to remove and replace the floor and trim, to install a new kitchen bi-fold door, or to finish the punch list items.

33. The Respondent thought 3Kitchen Land or Mr. Quispe would honor the Claimants' request for a refund, but failed to follow up after the February 21, 2015 correspondence from Claimant Y.

34. On August 18, 2017 (date-stamped received on August 24, 2017), Claimant Y submitted a claim with the Fund in the amount of \$20,502.93.

35. On January 28, 2018, Claimant Y passed away.

36. On April 5, 2018, the Claim was amended to include Mr. H as a Claimant.

37. The Claimants sustained an actual loss of \$15,693.84 (\$13,823.12 – flooring and trim; \$1,150.00 – shower door; \$370.72 – kitchen bi-fold door; and \$350.00 – punch list items).

DISCUSSION

In this case, the Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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) (2015);⁶ *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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into various contracts with the Claimants. Though the circumstances of the Respondent’s involvement in the contracts was highly unusual – the Respondent acknowledged permitting 3Kitchen Land and Mr. Quispe to utilize his MHIC license number in order to perform the work under the contracts with the Claimants. The Respondent also knew going into that arrangement that neither 3Kitchen Land nor Mr. Quispe was licensed to perform home improvement projects on their own. Nevertheless, short of being simply complicit, the documents in evidence show

⁶ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

signed contracts between the Respondent, 3Kitchen Land, Mr. Quispe, and Claimant Y creating the illusion that the Respondent was more involved than he really was. See Clmt. Exs. 1 and 4. This was underscored by the fact that Claimant Y communicated with the Respondent, both in person and in writing, about the performance issues under the contracts. See Clmt. Exs. 7 and 8; GF Ex. 8.

I also find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. In this case, the contract called for a multi-faceted home improvement project on the Claimants' newly purchased home. Much of the project was performed well, as evidenced by the Claim form submitted by Claimant Y. GF Ex. 4. That said, the Respondent, by and through 3Kitchen Land and Mr. Quispe, nevertheless badly botched many aspects of the project, including: (1) damaging the shower enclosure; (2) improperly installing the medicine cabinets; (3) improperly installing the Brazilianian cherry hardwood flooring and trim; (4) damaging the kitchen bi-fold door while installing the floor; and (5) failing to finish the punch list items.

On behalf of the Claimants, Claimant H testified about his wife's interactions with the representatives of 3Kitchen Land (Mr. Kaspir and Mr. Lucara), Mr. Quispe, and the Respondent. Claimant H admittedly was not an active participant in the home improvement project unlike his wife and, as such, he was not able to offer much first-hand knowledge about the Claim. Claimant Y, however, documented her concerns about the workmanship of the aforementioned items contemporaneous in time to the performance of the home improvement project by taking pictures, providing commentary on color photocopies of the pictures describing the poor workmanship, and writing letters to 3Kitchen Land and the Respondent detailing her concerns and interactions with them.

According to Claimant H, on September 6, 2014, the Respondent agreed to renovate two bathrooms, for which the couple paid \$19,662.00 in labor and materials. Clmt. Exs. 4 and 5.

One aspect of the renovation included the installation of a shower enclosure and two medicine cabinets. *See* Clmt. Ex. 4. In referencing the pictures taken by his wife, Claimant H pointed out that the installation of the shower enclosure was remarkable for what Mr. Quispe did to a newly purchased item prior to installation. Clmt. Ex. 6. Claimant H testified that Mr. Quispe sent the middle glass panel (the enclosure contained three glass panels) to a glass shop to have it cut down to size to fit the space it was intended for. In doing so, upon installation there was a one-half inch gap on both the right and left sides of the glass panel and frame, and the glass panel failed to sit squarely in the grooves causing it to wobble. In addition, in an effort to jerry-rig a solution (Claimant H said it was a “Band-Aid job”), Mr. Quispe used silicon sealant between the door and wall where the glass should have been. The result – “the whole thing shakes.” Claimant H expressed concern for anyone using the shower enclosure because of the gap between the door and the wall; specifically, he fears someone might fall and be injured when the door moves in a manner it is not expected to.

As for the medicine cabinets, Claimant H testified that the pictures his wife took show a one-quarter to one-half inch gap between the cabinets and the wall. Clmt. Ex. 6. In other words, the cabinets were not securely fastened to the wall. As a result, both medicine cabinets tend to move when the doors are opened and closed.

Claimant H also indicated that on October 8, 2014 (with an amendment on November 11, 2014), the Respondent agreed to provide and install 1,200 square feet of Brazilian Cherry hardwood flooring and 93.6 square feet of trim, for which the couple paid \$13,823.12 in labor and materials. Clmt. Exs. 1 and 2. In referencing the pictures taken by his wife, Claimant H

According to Claimant H, the Respondent agreed to cover the cost of the damage. To Respondent on this topic as well as a Lowe's invoice. See Clmt. Exs. 7 and 8; GF Exs. 7 and 8. during the installation of the flooring. Claimant H presented three letters his wife wrote to the In addition, Claimant H testified that Mr. Quispe inexplicably cut the kitchen bi-fold door tripping hazard since the raised boards were located directly in front of his wife's bedroom. fixed. Claimant H recalled why this was so important – he and his wife were worried about the it.” Despite this, Claimant H said his wife was determined to work with the men to get the floor brushed her off” and told her it was a “floating floor” and to “squint your eyes and forget about concerns about the flooring to the Respondent, Mr. Kaspisr, Mr. Lucara and Mr. Quispe, “they use glue, as required by the instructions. Claimant H further testified that when his wife raised stressed that “the installers were amateurs – they did not mark the subfloor or lay padding” or described the proper method for installing this type of flooring. Clmt. Ex. 5. Claimant H To underscore this point, Claimant H presented the manufacturer's instructions which

GF Ex. 8.

home.
warranty of 20 years & I do not wish to have ANY of these floorboards in my
warp. With the product deteriorating at this rate, they are not living up to their
last board was installed, the product began & continues to crack, gap, shrink, &
The raised board here has become a tripping hazard. Less than 3 weeks after the
pictures are of the hallway where I need to walk through to go to the bedrooms.
boards are now coming loose & are uneven heights. Photos are attached. These
not glued, nor properly laid, they have increasingly become a liability. The
Since the floors were not installed according to the manufacturer's instructions,
shrink, warp, & move boards.
December 12, 2014, to inspect the floors, seeing & feeling the cracking, gapping,
I appreciate you, Zy Kaspisr, Phillip Lucara & Juan Quispe coming to my home on

Specifically, Claimant Y wrote in her January 9, 2015 letter to the Respondent:

pointed out that the installation of the flooring was without a doubt unworkmanlike. Clmt. Ex. 3.

substantiate this point, Claimant H referred to his wife's February 21, 2015 letter to Mr. Kaspisr and the Respondent, wherein she wrote:

Thank you for examining the kitchen door & agreeing that it also needs to be addressed. Since Juan Quispe, without my permission, ruined the door by cutting off the side so that it is no longer flush, it needs to be replaced. Lowe's came out & gave me an estimate on the cost to replace the door. Please reimburse me the amount below:

\$194.00 labor
164.00 door
12.72 hardware
\$370.72 TOTAL DOOR REPLACEMENT

Clmt. Ex. 8.

Finally, Claimant H presented documentation about the punch list items his wife identified as being outstanding. Clmt. Ex. 8; GF Ex. 8. Claimant H testified that his wife wrote two letters to the Respondent, dated January 9, 2015 and February 21, 2015, asking him to resolve the five or six items itemized on the punch list. *Id.* Claimant H said that no one representing the Respondent, 3Kitchen Land, or Mr. Quispe returned to the home to complete the punch list.

The Respondent testified that he thought 3Kitchen Land and Mr. Quispe had taken care of the issues. In fact, the Respondent insisted that he had no idea the Claimants had not been made whole. Furthermore, the Respondent took offense to the fact that 3Kitchen Land and Mr. Quispe disparaged his reputation in the community where he is known in the industry as someone who takes care of his customers. That said, the Respondent quickly added that it was his fault for allowing someone else to use his license, and for not following up.

During another candid moment during his testimony, the Respondent agreed with the Claimants that the work performed by Mr. Quispe was unworkmanlike, incomplete, or inadequate. Furthermore, the Respondent did not challenge the fact that Mr. Quispe failed to

In this case, the Respondent performed some work under the contract and the Claimants are not soliciting other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss: "If the contractor did work according to contract work. COMAR 09.08.03.03B(3).

provide three formulas to measure a claimant's actual loss, depending on the status of the court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations compensate a claimant for consequential or punitive damages, personal injury, attorney fees, actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not Having found eligibility for compensation I must determine the amount of the Claimant's Respondent did not offer an opinion regarding the value of the Claim.

the kitchen bi-fold door for a total of \$15,307.52. Clmt. Exs. 7 and 8; GF Ex. 8. The Claimant Y's January 9, 2015, January 25, 2015, and February 21, 2015 letters, plus \$370.72 for is requesting reimbursement in the amount of \$14,936.80 which is the amount mentioned in unable to obtain quotes or have the work performed by another contractor. As such, Claimant H removed and replaced. He indicated, however, that with his wife's illness and death he has been punch list items) remain in the same condition today as they were in three years ago and must be shower enclosure, the medicine cabinets, the flooring and trim, the kitchen bi-fold door, and the compensation the Claimants should receive, Claimant H testified that the items at issue (the supporting the Claimants' request for compensation from the Fund. With regard to how much persuasive, the photographs in evidence incriminating, and Claimant Y's letters eloquent, thus Notwithstanding the Respondent's admission, I found the Claimants' presentation to be Respondent agreed he was responsible for the damage to the kitchen bi-fold door.

follow the manufacturer's instructions when installing the floor. More importantly, the

to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

I did not award any monies to the Claimants for items Claimant H was unable to substantiate. As I had mentioned earlier, Claimant H was not involved in the negotiation of the contracts, he had no communication the Respondent and the others, and he did not have a good grasp of how Claimant Y arrived at the \$15,307.52 figure (*i.e.*, the amount Claimant Y requested in her letters) or the \$20,502.93 figure (*i.e.*, claim amount). I might also add that the contracts were of no help either – they contained a great deal of handwriting and various dollar figures representing various aspects of the work to be performed. Without Claimant Y to help explain this information, Claimant H was at a bit of a loss. That said, applying the formula above, I find that the Claimants are entitled to recover \$15,693.84 from the Fund, as follows:

- \$1,150.00 for the shower enclosure (material costs only);
- \$13,823.12 for the removal and replacement of the floor and trim;
- \$370.72 for the removal and replacement of the kitchen bi-fold door based on the Lowe's invoice;⁷ and
- \$350.00 paid for the labor to finish the punch list.

I did not award any monies for labor costs for the shower enclosure or medicine cabinets since the Claimants did not show either in contracts or in a quote from a licensed contractor the costs involved.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR

⁷ Claimant Y handwrote on the Lowe's receipt that the amount for removal and replacement for two bi-fold doors was \$458.72. Claimant H could not explain the discrepancy and agreed on cross-examination that he was seeking reimbursement for the amount Claimant Y listed in her letters.

09.08.03.03B(4), D(2)(a). In this case, the Claimants' actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimants are entitled recover the actual loss of \$15,693.84.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$15,693.84 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimants are entitled to recover that amount from the Fund.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$15,693.84 and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁸ and

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

Signature on File

April 20, 2018
Date Decision Issued

Kathleen A. Chapman
Administrative Law Judge

KAC/dn
#173240v1A

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

PROPOSED ORDER

WHEREFORE, this 7th day of May, 2018, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION