



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

DEPARTMENT OF LABOR, LICENSING AND REGULATION

**The Maryland Home
Improvement Commission**

**v. Stanley Stevenson
t/a Hunny Do LLC
(Contractor)
and the Claim of
Nortia Parker
(Claimant)**

* **BEFORE THE**
* **MARYLAND HOME IMPROVEMENT**
* **COMMISSION**
*
* **MHIC No.: 15 (05) 308**
*
*

FINAL ORDER

**WHEREFORE, this 9th day of September 2016, Panel B of the Maryland Home
Improvement Commission ORDERS that:**

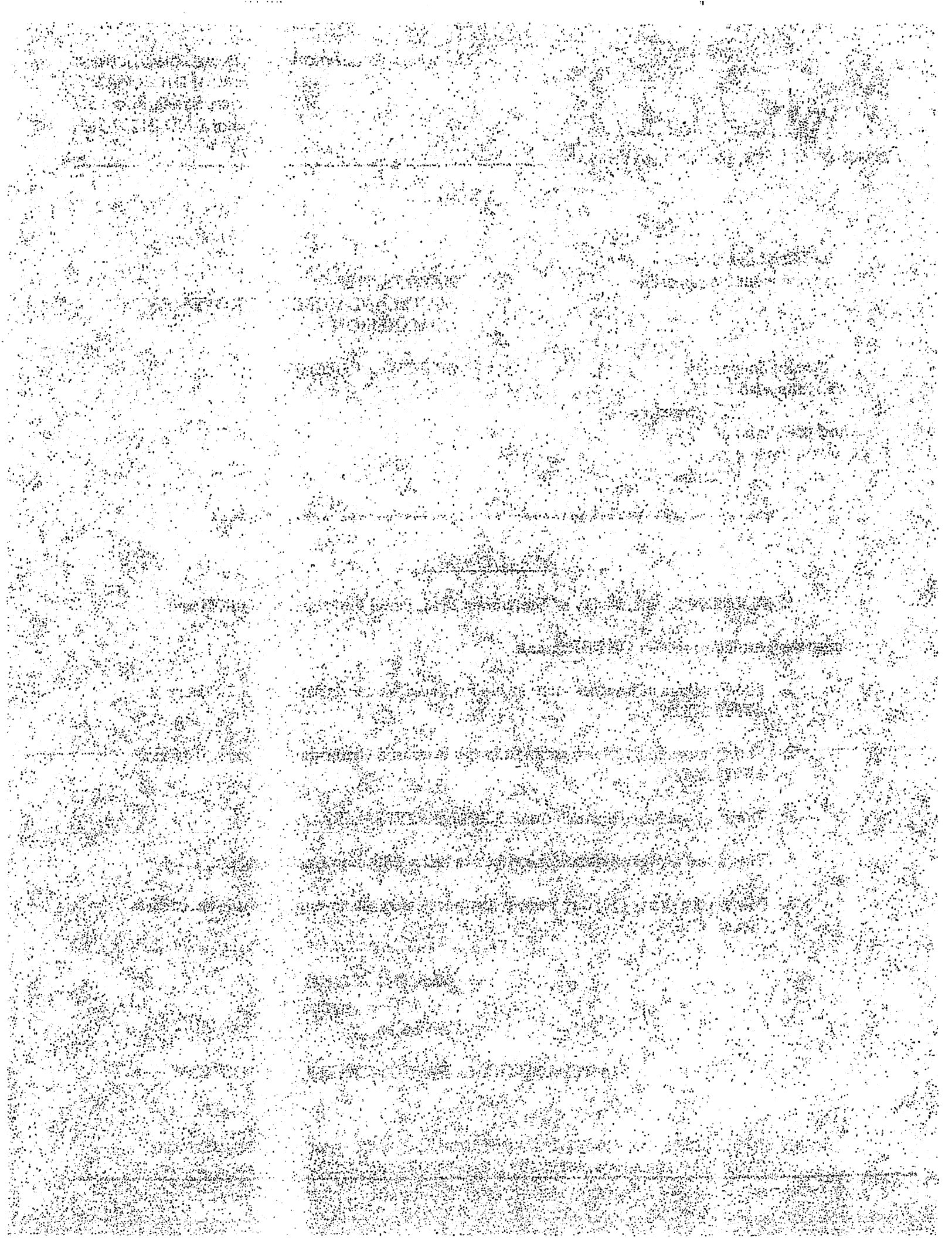
- 1. The Findings of Fact set forth in the Proposed Order dated June 3, 2016 are AFFIRMED.**
- ~~**2. The Conclusions of Law set forth in the Proposed Order dated June 3, 2016 are AFFIRMED.**~~
- 3. The Proposed Order dated June 3, 2016 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date.**
- 5. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

Joseph Tunney
**Joseph Tunney, Chairperson
PANEL B**

MARYLAND HOME IMPROVEMENT COMMISSION

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LARRY HOGAN, GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY



IN THE MATTER OF THE CLAIM	* BEFORE M. TERESA GARLAND,
OF NORITA MBONINSI A/K/A	* AN ADMINISTRATIVE LAW JUDGE
NORITA PARKER,	* OF THE MARYLAND OFFICE
CLAIMANT,	* OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	*
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF STANLEY	* OAH No.: DLR-HIC-02-15-28666
STEVENSON T/A HUNNY DO, LLC,	* MHIC No.: 15 (05) 308
RESPONDENT	*

* * * * *

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 June 25, 2015, Norita Mboninsi (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$23,812.00 in alleged actual losses suffered as a result of a home improvement contract with Stanley Stevenson t/a Hunny Do, LLC (Respondent).

I held a hearing on February 1, 2016 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented herself. Vladimir I. Gvozd, Esquire, represented the Respondent, who was present. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

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 case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (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 any acts or omissions committed by the Respondent?
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:

- Cl. Ex. 1 - Healthy Neighborhoods draw schedule, revised contract August 16, 2013
- Cl. Ex. 2 - Hunny Do Proposal, November 19, 2013
- Cl. Ex. 3 - Cancelled check from Home Title Company, December 10, 2013
- Cl. Ex. 4 - Cancelled check from M&T Bank, January 13, 2014
- Cl. Ex. 5 - Cancelled check from M&T Bank, March 26, 2014
- Cl. Ex. 6 - Two photographs with notes
- Cl. Ex. 7 - Photograph
- Cl. Ex. 8 - Photograph
- Cl. Ex. 9 - Photograph
- Cl. Ex. 10 - Photograph
- Cl. Ex. 11 - Cancelled check from M&T Bank, June 2014
- Cl. Ex. 12 - Cancelled check to Hunny Do, June 19, 2014

¹ Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

- Cl. Ex. 13 - Cancelled check to Hunny Do, July 3, 2014
- Cl. Ex. 14 - Photograph
- Cl. Ex. 15 - Photograph
- Cl. Ex. 16 - Photograph
- Cl. Ex. 17 - Photograph
- Cl. Ex. 18 - Photograph
- Cl. Ex. 19 - Photograph
- Cl. Ex. 20 - Photograph
- Cl. Ex. 21 - Photograph
- Cl. Ex. 22 - Photograph
- Cl. Ex. 23 - Quote from Forbes Home Improvement & Construction, Inc., August 12, 2014
- Cl. Ex. 24 - Photograph with notes
- Cl. Ex. 25 - Photograph with notes
- Cl. Ex. 26 - Photograph with notes
- Cl. Ex. 27 - Renovation costs, revised August 16, 2013

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

- Resp. Ex. 1 - Copies of three Notice to Builders
- Resp. Ex. 2 - E-mail: List of Corrections with photographs, April 20, 2014
- Resp. Ex. 3 - Complaint Continued
- Resp. Ex. 4 - Resume of Respondent
- Resp. Ex. 5 - Copy of coupon for Hunny Do
- Resp. Ex. 6 - Copies of cancelled check from Hunny Do, April 22, 2014
- Resp. Ex. 7 - Copies of cancelled check from Hunny Do, May 1, 2014
- Resp. Ex. 8 - Copies of cancelled check from Hunny Do, May 2, 2014
- Resp. Ex. 9 - List of Subcontractors
- Resp. Ex. 10 - Expenses Accounting, March 2, 2014
- Resp. Ex. 11 - Expenses Accounting, March 2, 2014
- Resp. Ex. 12 - Expenses Accounting, March 2, 2014
- Resp. Ex. 13 - Letter from Hunny Do, August 14, 2014
- Resp. Ex. 14 - Copy of text from Claimant

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Notice of Hearing, October 16, 2015; Hearing Order, August 18, 2015
- GF Ex. 2 - HIC information about the Respondent
- GF Ex. 3 - Letter to the Respondent, July 1, 2015; Home Improvement Claim Form
- GF Ex. 4 - Letter from the Claimant and Respondent to M&T Bank, May 29, 2014
- GF Ex. 5 - Department of Housing and Community Development Permit
- GF Ex. 6 - Proposal from Womack's Electric, April 2, 2015

Testimony

The Claimant testified on her own behalf.

The Respondent testified on his behalf.

The Fund did not present any witnesses.

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 license number 125757.
2. On November 19, 2013, the Claimant and the Respondent entered into a contract to renovate the second and third floors of 828 Newington Avenue, Baltimore, Maryland. The proposal included plumbing, drywall, roofing, HVAC, electrical,² carpentry, painting and the purchase of fixtures, windows and flooring.³ The contract stated that the start and completion dates were to be determined.
3. Financing for the renovations was secured by Healthy Neighborhoods Baltimore through M&T Bank.⁴
4. The original agreed-upon contract price was \$82,102.00.
5. The Claimant paid the Respondent the following amounts:⁵
 - December 10, 2013 - \$8,000.00 as an advance;
 - January 13, 2014 - the first draw of \$21,664.00 for the installation of the roof and sump pump;

² The electrical component of the contract involved the installation of light fixtures, track lighting and electrical outlets. It did not include upgrading the electrical service from 100 amps to 200 amps.

³ The flooring component of the contract included only the purchase of materials. It did not include installation.

⁴ Neither party offered to elaborate on the role or mission of Healthy Neighborhoods Baltimore in the Claimant's renovations. As I did not think this information was determinative of any issue in this matter, I did not make further inquiry.

⁵ Unless otherwise noted, the checks were M&T bank checks made payable to both parties. When the checks were signed by both parties, the Respondent took possession of the funds, with the exception of the June 19, 2014 check, which the Claimant deposited into her account.

- March 26, 2014 - the second draw of \$19,500.00 for framing, rough-in HVAC, electric and plumbing, install basement door and windows, insulate exterior walls and pour concrete in second and third floor showers. This draw was delineated in the draw schedule to be \$22,164.00;
- June 19, 2014 - the third draw of \$9,464.00 was retained by the Claimant. The draw was delineated in the draw schedule to be \$22,164.00;
- June 19, 2014 - \$2,000.00 by personal check;
- July 3, 2014 - \$850.00 by personal check.

6. The Claimant's chosen sub-contractor installed an HVAC unit.

7. Either the Claimant or the Respondent hired an electrician to upgrade the electrical service from 100 amps to 200 amps. The 200 amp sub-panel was installed on the second floor and tied into the existing electrical panel in the basement. (Fund Ex. 6.) Upgrading the electrical service was not within the scope of the contract.

8. The Respondent obtained the permit for the electrical upgrade on February 21, 2014. (Fund Ex. 5.)

9. The HVAC and the electrical upgrade passed Baltimore City inspection. (T. Cl.)

10. The Respondent installed a new roof pursuant to the terms of the contract. The roof passed Baltimore City inspection. (T. Cl.)

11. The Respondent installed a new sump pump pursuant to the terms of the contract.

12. The drywall installed on the second and third floors was not satisfactorily installed, but was acceptably corrected by the Claimant's sub-contractor, Bruce Watkins, whom the Respondent paid. (T. Cl.; Resp. Ex. 3.)

13. The installation of a total of sixteen windows was delayed due to mismeasurement by the distributor. Two windows were returned and reordered. (T. Resp.)

14. When the windows were installed, the areas around the windows needed carpentry work, and the trim around the windows was unfinished. At least one of the windows was out of plumb. (T. Cl.; Cl. Exs. 24-26.)

15. Tile and flooring installation was not a provision within the contract between the parties. The Claimant was responsible for purchasing the flooring and hiring an installer. When the Claimant purchased the tile and flooring, the Respondent was to pay for the materials from draw funds.

16. The Claimant ordered tile, but no other flooring. The Respondent paid for the materials from draw funds. (T. Resp.)

17. The tile installation was not a part of the contract, but the Respondent referred the name of a sub-contractor to the Claimant to install tile walls and floors in the showers on the second and third levels of the property.⁶ The Claimant was responsible to supervise the tile installation. The tile installation workmanship was poor. (Cl. Exs. 14-22.)

18. The flooring installation was not a part of the contract. The Respondent could not install doors within the property, including shower doors, until the flooring ordered by the Claimant was installed. (T. Resp.)

19. The second draw was short of its maximum because the windows were delayed. The third draw was short of its maximum because the flooring was not complete. The Claimant retained the portion of the third draw released by M&T Bank on June 19, 2014.

20. On June 19, 2014, the Claimant paid the Respondent \$2,000.00 from her personal checking account with a notation "paint, tile, labor." (Cl. Ex. 12.)

21. On July 3, 2014, the Claimant paid the Respondent \$850.00 from her personal checking account with a notation "tile deposit and materials." (Cl. Ex. 13)

⁶ The date of the tile installation was not clear from the testimony or documents.

22. On July 18, 2014, the Claimant met with the Respondent and requested that he fix the poorly-laid tile. The Respondent agreed, but required payment from the Claimant for the work since it was beyond the scope of the contract. (T. Cl.)

23. Between July 18, 2014 and August 14, 2014, there was no communication between the Claimant and the Respondent. (T. Cl.)

24. On August 14, 2014, the Respondent terminated the contract with the Claimant. (Resp. Ex. 13.)

25. On June 25, 2015, the Claimant filed a claim with the MHIC, requesting reimbursement of \$23,812.00 from the Fund.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. 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 (3rd. 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). *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. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. There are no *prima facie* statutory impediments barring the Claimant from recovering compensation from the Fund (such as being related to the Respondent, recovering damages from the Respondent in a court proceeding, owning more than three residential properties, etc.). Md. Code Ann., Bus. Reg. §§ 8-405(f)(1) and (2) (2015).

The Respondent and the Claimant entered into a contract in which the Claimant bore responsibility for some aspects of the work and not others, which complicates the analysis of this dispute. Further hampering the analysis of this case is the lack of clarity with which the Claimant presented her case. For the reasons that follow, I find that the Claimant has not met her burden to show that there was an act or omission by the Respondent that caused her to sustain an actual loss compensable by the Fund.

The Claimant testified regarding her perception of the deficiencies in the Respondent's work. She did not testify with particularity as to dates or even timeframes during which any portion of the work was performed. I have outlined below the areas of the work on which the Claimant focused in her testimony.

The Bathroom Tile

The Claimant spent a great deal of her testimony focused on the unworkmanlike tile construction of her bathroom shower floors and walls. However, the Respondent's only responsibility for the tile work was the purchase of the tile, and nothing more. The Respondent gave the Claimant the name of a subcontractor to perform the tile work on the Claimant's bathrooms, and the Claimant was responsible for the supervision of the work. I find that the Respondent fulfilled his contractual obligation to purchase the tile, with no evidence presented to the contrary.

The Electrical Upgrade

Electrical upgrade was not a part of the contract between the Claimant and the Respondent. Either the Claimant or the Respondent hired an electrician to upgrade the electrical service from 100 amps to 200 amps. The electrician also secured the basement electrical panel. Accordingly, I find that the work, although not within the scope of the contract, was complete.

The Windows

The Claimant was responsible for ordering the windows. This project was delayed when the store from which the Claimant ordered the windows incorrectly measured two windows, which had to be reordered. (T. Resp.) This error caused the second draw to be \$19,400.00 instead of \$22,164.00. (T. Cl.; Cl. Ex. 5.) The windows were installed, but the work was incomplete as trimming, leveling and sills needed to be finished. There was no testimony clarifying when the windows were installed relative to the termination of the contract, and the Claimant presented no testimony that she requested the Respondent to ameliorate any deficiency and that he failed to do so.

Flooring

The Claimant failed to purchase the remaining flooring and did not have the flooring installed before the Respondent terminated the contract. The Claimant's failure to hire a floor installer prevented the Respondent from installing interior doors and diminished the amount of the third draw from \$22,164.00 to \$9,464.00, which amount the Claimant retained.

The Claimant testified that she texted the Respondent on May 27, 2014 because there had been no activity on her project for four weeks. She said that the Respondent came to her home on May 29, 2014 and told her that he had no funds to pay for his laborers. On June 19, 2014, the Claimant received a partial draw from the bank in the amount of \$9,464.00, which she retained after the Respondent countersigned the check. She then wrote the Respondent a \$2,000.00 check

from her personal account the same day. (Cl. Ex. 12.) After the Claimant gave the Respondent the check, there was some phone text activity between the parties as to when the Respondent could cash the check and access the funds. (Resp. Ex. 14.) The Respondent cashed the check on June 24, 2014 and presumably continued to work on the Claimant's house. On July 3, 2014, the Claimant wrote the Respondent an \$850.00 check, which he cashed on July 7, 2014.

On July 18, 2014, the Respondent met with the Claimant to discuss the difficulties he was experiencing with the project as a result of the Claimant's interference at various junctures and her hindrance of progress of the project. (T. Resp.) On that same date, the Claimant showed the Respondent the bathroom tile work, with which she was unhappy. According to the Claimant, she requested that the Respondent remediate the poor tile work. The Respondent agreed, although the tile installation was not a part of the contract, but told her that he could not move forward without additional funds. There is no evidence before me that the Claimant ever complained to the Respondent about any work the Respondent performed pursuant to the contract.

There was no further communication between the parties until the Respondent terminated the contract in writing on August 14, 2014. The Respondent cited the Claimant's failure to disperse the funds from the third draw, which impeded his ability to purchase materials or pay his sub-contractors, as his reason for terminating the contract. (Resp. Ex. 13.) The Respondent could not continue to work unless he could pay his workers. I find no fault with the Respondent's termination of the contract based on the Claimant's failure to complete work on the part of the project for which she took responsibility. This resulted in the bank withholding funding from two draws, and a lack of funds being disbursed to the Respondent, without which the Respondent could simply not function. Accordingly, I conclude that the Claimant failed to prove that she is entitled to compensation from the Fund.

For the sake of completeness, the Claimant submitted an August 12, 2014 quote from Forbes Home Improvement and Construction, Inc., for completion of work on the property. (Cl. Ex. 23.) This quote included work that had already been completed during the contract period, work that was outside the scope of the original contract, and the quote lacked specificity as to which part of the estimate was attributable to labor and which part was for materials. Consequently, even had I found that the Respondent unjustifiably abandoned the work on the Claimant's property, it would have been impossible for me to determine an appropriate measure of damages based upon this imprecise estimate, and the result in this case – denial of the Claimant's Fund claim – would be the same.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

Signature on File

April 5, 2016
Date Decision Issued

M. Teresa Garland
Administrative Law Judge

MTG/sw
160678

