

CLAIM OF ROBERT AND LORRAINE
BLAYDES,
CLAIMANTS,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND,
REGARDING THE ALLEGED ACTS AND
OMISSIONS OF RICHARD SANDERS, T/A
R T SANDERS BUILDING CONTRACTOR,
RESPONDENT

* BEFORE MICHAEL D. CARLIS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-15-20060
* COMPLAINT No.: 15 (90) 575

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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On April 22, 2015, Robert and Lorraine Blaydes (Claimants) filed a claim for reimbursement from the Guaranty Fund (Fund) with the Maryland Home Improvement Commission (Commission). The claim alleged that Richard Sanders, t/a R. T. Sanders Building Contractors (Respondent), performed unworkmanlike, inadequate, or incomplete home improvement that resulted in an actual loss of \$4,010.00. On June 2, 2015, the Commission forwarded the case to the Office of Administrative Hearings (OAH) for a hearing.

On October 14, 2015, I convened a hearing in Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407 (2015).¹ The Claimants represented themselves. The Respondent represented himself. Hope M. Sachs, Assistant Attorney General, and the Office of the Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Commission's Hearing Regulations, and the OAH's Rules of Procedure 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 and 09.08.03; and COMAR 28.02.01.

ISSUES

The issues are:

- A. Whether the Claimants unreasonably rejected good faith efforts by the Respondent to resolve the claim; and if not,
- B. Whether the Claimants incurred costs for restoration, repair, replacement, or completion that arose from the Respondent's unworkmanlike, inadequate, or incomplete home improvement;² and, if so,
- C. What is the amount of the Claimants' compensable actual loss?

SUMMARY OF THE EVIDENCE

Exhibits

The following exhibits were admitted for the Claimants:

Claimant #1: Claimants' Timeline;

Claimant #2: Respondent's rough proposal, email from Mrs. Blaydes to Respondent, dated August 2, 2014; Respondent's proposal/contract; and two canceled checks;

¹ All subsequent citations to the Business Regulation Article are to sections of the 2015 Replacement Volume, unless otherwise noted.

² A "'home improvement' means [] the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence[.]" Section 8-101(g)(1)(i). The home improvement in this case was the remodeling of a bathroom.

Claimant #3: Email from Mrs. Blaydes to Respondent, dated October 6, 2014; List of defects; and photographs;

Claimant #4: Email from Mr. Blaydes to Respondent, dated October 18, 2014; List of defects; and photographs;

Claimant #5: Statement by Mrs. Blaydes, October 22, 2014; and photographs;

Claimant #6: Fund's objection based on relevance was sustained;

Claimant #7: Statement regarding unfinished work, dated November 3, 2014, with photographs;

Claimant #8: Complaint Form, signed and dated November 6, 2014;

Claimant #9: Email from Respondent to Claimants, dated November 17, 2014; and duplicate letter from Respondent to the Claimants;

Claimant #10: Home Inspection Report by Patriot Home Inspection, dated January 29, 2015; and

Claimant #11: Three estimates from: D & E Remodeling and Repair Services, Potomac Restoration Services, and Wish Kitchens and Baths, LLC.

The following were admitted for the Fund:

Fund #1: Notice of Hearing and Hearing Order,

Fund #2: Licensing information for Respondent; and

Fund #3: Letter from the Commission to Respondent, with attachment, dated May 5, 2015.

The Respondent did not offer any exhibits.

Testimony

The Claimants testified for themselves.

The Respondent testified for himself.

The Fund did not offer witnesses.

FINDINGS OF FACT

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

1. The Commission licensed the Respondent as a home improvement contractor during all times relevant to this matter.

2. The Claimants own a single-family home in Hagerstown, Maryland.
3. On or about September 3, 2014, the Claimants and Respondent entered into a home improvement contract.³ The Respondent agreed to remodel the Claimants' bathroom for \$13,740.00. The home improvement included the following: (i) remove a tub, vanity, toilet, wall and floor coverings, and existing doors, (ii) remove and replace existing shelves, heat vent, and light and fan combination, (iii) remove waynes coating on ceiling and repair drywall, (iv) install moisture proof drywall to all walls, underlayment to floor, a vinyl tub and wall-surround with fixtures, pedestal sink and faucet, toilet, vinyl flooring, and shower and tub door, (v) replace medicine cabinet, light fixture, and three windows, (vi) prime and paint ceiling, walls, and trim, (vii) furnish and install trim base, and (viii) clean up all job related debris.
4. The Respondent worked on the home improvement from September 30, 2014, through October 21, 2014.
5. The Claimants paid the Respondent \$10,000.00.
6. Just before the Respondent left the home improvement for the last time, on October 21, 2014, Mrs. Blaydes and the Respondent argued about the quality of some of the Respondent's work. The Respondent became very angry and frightened Mrs. Blaydes.
7. During the course of the home improvement, the Claimants gave an email and lists to the Respondent that either described or listed what the Claimants identified as deficiencies in the quality of the Respondent's work.
8. After the Respondent left the home improvement project for the last time, he left behind the following unworkmanlike conditions: (i) a single area of exposed drywall tape on the ceiling and a noticeable drywall joint, (ii) irregular and rough seams where the walls meet the ceiling, (iii)

³ A "home improvement contract" is "an oral or written agreement between a contractor and owner for the contractor to perform a home improvement." Section 8-101(h). An "[o]wner" includes a homeowner[.]" Section 8-101(k).

poorly painted areas at the seams where the wall meets the ceiling, on the ceiling, and limited areas elsewhere where surfaces are not smooth, (iv) cracked caulking in some places where the walls meet floor molding, (v) improperly attached strike plates, (vi) pitting and sloppy painting on a door frame, (vii) an unfinished window frame, and (viii) an improperly fitted electrical outlet cover plate.

9. On November 6, 2014, Mr. Blaydes returned the Respondent's telephone call on the previous day. Mr. Blaydes requested a fully executed copy of the home improvement contract. The Respondent said the Claimants never returned the contract to him. The Respondent also asked whether the "whole issue" could be resolved.

10. In two telephone calls on November 13 and 15, 2014, the Respondent indicated a willingness to resolve the outstanding issues between the parties. Mr. Blaydes told the Respondent the Claimants did not want him to return to their residence. The Claimants reasonably rejected the Respondent's offer to resolve the claim because they did not trust the Respondent and Mrs. Blaydes was afraid of him.

11. The Claimants obtained three estimates or proposals from contractors to repair the Respondent's poor work. Each proposal contained only a global cost for the services the contractor offered to provide. The scope of the work proposed by each contractor included work that went beyond the repair of the unworkmanlike work of the Respondent.

DISCUSSION

The Fund's Preliminary Defense

Referring to section 8-405, the Fund argued that that the law allows a home improvement contractor an opportunity to resolve a claim against him or her. Subsection (d) of section 8-405 provides: "The Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the subcontractor to resolve the claim."

The parties agreed that the Respondent's last day of work on the home improvement contract was October 21, 2014. According to the Fund's argument, after October 21, 2014, the Claimants never allowed the Respondent to return to their residence to attempt to resolve their concerns with the quality of his work.

On cross-examination, the Fund asked Mr. Blaydes to explain the Claimants' refusal to allow the Respondent to return to resolve their dissatisfaction with his work. Initially, he testified:

On October 6th there was an email about the tub leaking and there was water on the tub and the doorframe and also on the 13th we gave a discrepancy list which [the Respondent] acknowledged and also on the 20th we gave him the second discrepancy list which he acknowledged that all of the items needed work. Many of the items still, when they departed on the 21st, were not finished.

When asked again to explain his timeline entries that show the Claimants trying to work things out between October 21, 2014, and November 15, 2014, and then show Mr. Blaydes "abrupt[ly]" deciding to stop further communication, Mr. Blaydes testified:

It was not abrupt. [The Respondent] departed on October 21, 2014, and did not call us for ten days and then only to ask us for money and by this time, which was the 15th of November, we did not trust [the Respondent]. We had given them two lists. We also had given them an email on the 6th and these items still had not been completed satisfactory and then [the Respondent] on . . . October 21st . . . [the Respondent] got angry and he was rude and abusive toward my wife as they argued about the windows outside, and we don't trust [the Respondent] at this point and he's an angry person. We're apprehensive when we're around him and so we told him we did not want him back in the house because what he did, even after we asked that the worker be replaced and the worker was left at the house to continue on doing work that was clearly not complete; it was not de-quate; it was very unworkmanlike.

For the following reasons, and based on the Claimants' time line, I find that the Respondent made a good faith effort to resolve the claim. The time line provides as follows:

11/1/14 [The Respondent] called, [Mrs. Blaydes] answered, he asked for the \$\$ balance for the job and asked to have [Mr. Blaydes] call him. This indicates he was finished with the job and considered it completed on 10/21/14.

- 11/2/14 Called [the Respondent]. Informed him that we do not consider the job complete because the ceiling (Spackling pulled and is pitted), wall-to-wall and wall-to-ceiling corners are poorly spackled/sanded/painted, and drywall seam (midwall) is visible. He disagreed. Told him we were going to have someone look at it. **He suggested a county inspector look at it.**
- 11/5/14 Called [the Respondent], no answer on his cell phone, left message requesting a copy of signed contract.
- 11/6/14 [The Respondent] left message on [Mr. Blaydes's] cell phone. Called [the Respondent] and requested a signed copy of the contract. He said he never received the contract from the Blaydes. Informed [the Respondent] that the proposal/contract signed by the Blaydes was sent in the envelope with the first check for \$5000. [The Respondent] stated he never received it. Asked [the Respondent] why he didn't ensure a signed contract was in place to start the job and he said we could get together and sign the contract. **[The Respondent] asked if we could resolve this whole issue.** [Mr. Blaydes] said he would contact [the Respondent] on 11/7/14 ([The Respondent] walked away from the job on 10/21/14).
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- 11/11/14 [The Respondent] called and left message to return call.
- 11/13/14 [Mr. Blaydes] returned [the Respondent's] call. **[The Respondent] still wants to resolve this issue and wants to meet.** Asked if we could meet at the Washington County Library and **[the Respondent] wanted to meet at the Blaydes's residence.** Told him I would call back.
- 11/15/14 **[The Respondent] called this morning and asked when we could get together to work out what needs to be done to finish the job.** Told him that when he left on 10/21/14 he did not return because he considered the job finished. He agreed. [Mr. Blaydes] stated that the job is not finished per 2 discrepancy lists given to [the Respondent] while the job was in-work. **Tried to agree on a date to get together and couldn't find an agreeable date.** [Mr. Blaydes] called [the Respondent] in the evening and told him we didn't want him to do anymore work on our house and a complaint has been filed through DLLR. [The Respondent] acknowledged and hung up.

Claimant #1 (emphasis added).

The Respondent sent the Claimants the following letter on or about November 17, 2014:

The renovation/remodeling work on your bathroom at the above listed address was completed on 10/21/14 along with the punch list items you requested. After numerous unsuccessful attempts to schedule a final exit meeting with you

on any outstanding issues and/or concerns you may have regarding the finish[ed] product final payment is being requested by November 25, 2014 as follows:

Draw #4 Due upon Completion of job	\$3,740.00
Credit for Shower Door	(300.00)
Credit for vinyl Flooring	(150.00)
Total Balance Due	\$3,290.00

[The Respondent] is once again willing to schedule an exit meeting prior to the 25th of November to discuss and resolve any issues and/or concerns you may have regarding the finish[ed] product. A resolution cannot be forth coming if the issues are not clear or identified to the Contractor, therefore please contact me prior to the 25th of November so that a resolution can be negotiated or final payment made.

Claimant #9 (emphasis added).

Based on the highlighted portions of the time line and the correspondence on November 17th, I find that the Respondent made good faith efforts to resolve the claim. Those efforts included a suggestion to have a neutral third party (a county inspector) look at the home improvement; the Respondent's repeated expression of interest to resolve the claim; and his suggestion to meet at the Blaydes's residence for that purpose. Moreover, after Mr. Blaydes refused the Respondent's offers, the Respondent again requested to "get together to work out what needs to be done to finish the job." For all these reasons, I find that the Respondent made a good faith effort to resolve the claim.

However, based on the record before me, I do not find that the Claimants unreasonably rejected the Respondent's good faith efforts to resolve the claim. When asked on cross-examination why the Claimants "abruptly" ended the conversations with the Respondent about resolving the claim on November 15, 2014, Mr. Blaydes denied there was an abrupt ending. Mr. Blaydes explained that they had lost trust in the Respondent because he left the job for the last time on October 21, 2014, having failed to repair deficient work they had repeatedly pointed out to him, and because he was rude and abusive toward Mrs. Blaydes.

Although Mr. Blaydes's testimony does not satisfactorily explain why he engaged the Respondent in conversation about resolving the claim well after October 21, 2014, it does, nonetheless, provide a logical basis or common sense explanation for the Claimants' rejection of the Respondent's good faith efforts to resolve the claim. Mr. Blaydes testified that the Claimants did not trust the Respondent because he stopped working on the home improvement before correcting deficient work. The Respondent continued to take the position with the Claimants during the conversations reproduced above from the time line that he had completed all the items on the "punch lists." However, at the hearing, he unhesitatingly admitted that several items on the Claimants' final deficiency list were unworkmanlike. Photographs in the record clearly show obviously poor workmanship. This gross disconnect between the Respondent's expressed satisfaction with his work and the objectively poor quality of some of his workmanship is an objectively valid reason for the Claimants' loss of trust in the Respondent's ability or willingness actually to resolve the claim.

Moreover, the evidence supports the finding that the Respondent's angry behavior toward Mrs. Blaydes reasonably frightened her. Mrs. Blaydes testified that, just before he left the Claimants' residence for the last time on October 21, 2014, the Respondent became "very angry" and "really shook me up" during a conversation about the appearance of newly installed windows. Mrs. Blaydes testified that Respondent's face turned red, he pointed his finger at her in a way that was "very frightening," and it was "part of the reason why we don't want him back." Although the Respondent denied acting unprofessionally, I did not believe his testimony. Mrs. Blaydes was more believable based on her demeanor and on a generally consistent note she wrote describing the incident on October 22, 2014. Claimant #5. I also find that Mrs. Blaydes's apprehension about future contact with the Respondent is another reasonable basis for the

Claimants to reject the Respondent's efforts to resolve the claim. For these reasons, I do not find that section 8-405(d) provides a basis to deny the claim.

Did the Claimants suffer a compensable actual loss?

Pursuant to section 8-405(a), the Commission may compensate an "owner . . . for an actual loss that results from an act or omission by a licensed contractor[.]" Under COMAR 09.08.03.03B(2), compensation is "only . . . for actual losses . . . incurred as a result of misconduct by a licensed contractor" "Actual loss" is "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Section 8-401.

Unworkmanlike home improvement

To be compensated from the Fund, the Claimants must prove that the Respondent performed unworkmanlike, inadequate, or incomplete home improvement. Throughout the Claimant's presentation of their case, Mr. Blaydes often referred to inadequate and incomplete home improvement. However, the evidence the Claimants offered at the hearing was relevant to unworkmanlike performance. For the reasons discussed below, I find that some of the Respondent's performance was unworkmanlike. In fact, the Respondent admitted that some of the photographs in the record depict "not good" home improvement.

During the home improvement process, the Claimants told the Respondent about their concerns with progress and workmanship on a number of occasions. On October 6, 2014, Mrs. Blaydes emailed the Respondent about a leak and standing water at the newly installed bathtub and shower. On or about October 13, 2014, the Claimants gave the Respondent a list of twelve concerns they had with the quality or pace of the Respondent's workmanship. On October 20, 2014, the Claimants gave the Respondent a final list of twelve concerns they had with his

workmanship. When the Respondent left the job on October 21, 2014, the Claimants still considered that seven items from the final list had not been corrected.

Mr. Blaydes testified about and offered photographs of the Respondent's poor workmanship. The final list of what the Claimants called "obvious defects requiring repair" initially included twelve items on October 19, 2014. However, at the hearing, the Claimants agreed that the Respondent adequately repaired five items, leaving the following:

1. Most recent drywall repair was partially sanded and painted with a brush. Does not match wall above and below the repair area. It's too obvious to ignore. Please repair and paint.
2. The drywall specialist only spackled areas marked by [the Respondent]. There are a few areas that were not repaired and are easy to see. [The Respondent], please look over this . . . repair and paint as needed.
4. Window frame and both door frames have not been finished as discussed last weekend. All require filling, sanding, and painting.
7. Both door jamb lock plates do not fit the old hole. Needs repair and painted.
9. Electrical outlet wall plate (under the window) still does not fit snugly against against the wall. Please repair.
11. Please remove excess sealant from the bathtub without damage to the bathtub finish.
12. Wall to the left of the 3-way light switch is uneven. Repair and paint.

Claimant #4.

The record also includes a "job not finished" list as of November 3, 2014. The list includes the following:

1. Walls have noticeable drywall joint seam (approx. 4' from floor) that was not feathered before painting.
2. Corners in walls (vertical and horizontal) have several areas needing touch-up and repaint (e.g. spackling, sanding).
3. Ceiling has multiple places with uneven pitting[.] Needs to be filled and repainted.

4. Manufacturer's stickers were left on the windows[.]
5. Manufacturer's stickers were left on shower doors[.]
6. Manufacturer's stickers were left on light fixtures.
7. Water collects on the side of tub against the shower door frame.
8. Top horizontal cap piece of shower doors frame was cut straight up vertically from the shower doors frame[.] It should have been cut to extend to the walls on both sides. This was pointed out by contractor's observations during their assessments for estimates.

Claimant #7. The record does not explain why the November 2014 list does not include items 4, 7, 9, 11, and 12 from the October 2014 list.

Photographs corroborate some of the deficient workmanship related to the listed items. Photographs show (i) a single area of exposed drywall tape on the ceiling and a noticeable drywall joint, (ii) irregular and rough seams where walls meet the ceiling, (iii) poorly painted areas at the seams where the walls meet the ceiling, on the ceiling,⁴ and on limited areas elsewhere where surfaces are not smooth, (iv) cracked caulking in some places where walls meet the floor molding, and (v) improperly attached strike plates. Accordingly, I find these deficiencies are the result of the Respondent's unworkmanlike performance on the home improvement agreement.

The Claimants also offered some evidence that water leaked or pooled at the tub/shower installation. The record includes an October 6th email in which Mrs. Blaydes observes that "the tub is leaking water outside the tub from under the shower door" and "water lays on the tub instead of draining into the tub like it should" Claimant #3. The November list also complains

⁴ Item #5 on the Claimants' October 19th deficiency list states: "Ceiling paint coverage is uneven. The ceiling needs touch-up or entire coat of paint for even coverage." Claimant #4. As discussed above, this list contained 12 items, and the Claimants indicated on the exhibit that an item had not been corrected by circling the number of the item. Item #5 is not circled, indicating the Claimants considered that item corrected. This was an obvious mistake by the Claimants because item #5 appears on the November list and on a number of photographs that were taken after October 19th.

that “[w]ater collects on the side of the tub against the shower frame.” However, the Claimants’ October deficiency list does not mention the tub/shower installation. Moreover, the Claimants’ offered a home improvement report from a company which inspected the bathroom on January 29, 2015. The report states this:

Homeowner states that water gathers at top of outer wall and within shower door track. Bathtub was checked with a leveling device and is verified to level both fore and aft and side to side. Water gathering on top of tub and shower door track appears to be due to manufacturer design. Tub and shower appear to be installed as intended and designed.

Claimant #10. Based on the inconsistent and contradictory evidence related to the water and tub/shower, and without any expert testimony having been provided at the hearing, I am not persuaded that the Respondent’s installation of the tub/shower was unworkmanlike or inadequate.

The remaining items on the final October and the November deficiency lists are: (i) a window frame and two door frames that need filling, sanding, and painting, (ii) an electric outlet wall plate that “does not fit snugly against the wall,” (iii) excess sealant on the bathtub, (iv) a three-way light switch that was unevenly attached to a wall, (v) unremoved manufacturer’s stickers on two windows, the shower doors, and light fixtures, and (vi) and an improperly sized horizontal cap to the metal shower door frame.

In regard to the window and door frames, photographs depict a small paint-run at the top of the door, some “pitting” on part of the surface of a door frame, and an unfinished window frame, which I find unworkmanlike. Claimant #4, at photographs 6, 7, and 8. Also, a photograph in the home inspection report shows an electrical outlet cover plate that is not securely fitted to the wall. Based on this corroboration of Mr. Blaydes’s testimony, I find this installation unworkmanlike.

However, no evidence corroborates the alleged unworkmanlike installation of the three-way light switch or the alleged unworkmanlike application of sealant around the bathtub. Moreover, the home inspector examined the bathtub shower installation, and he does not mention the bathtub sealant in his report. In regard to the Respondent's failure to remove stickers from the newly installed windows, shower doors, and light fixture, this is a trivial matter without actual loss consequences. Finally, whether the horizontal cap to the top of the shower door is "improperly" cut is not obvious to me from the photograph; therefore, proof of an unworkmanlike installation requires expert testimony, which was not offered. Therefore, based on the above discussion, I find that the Claimants failed to prove that the Respondent's installation of the three-way light switch and the cap to the shower door, or the Respondent's application of the sealant around the bathtub and his failure to remove the stickers, was unworkmanlike.

Compensable actual loss

COMAR 09.08.03.03B governs the measurement of actual loss:

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney's fees;
- (d) Court costs; or
- (e) Interest.

...

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according 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.

(c) 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.

The appropriate measure of the Claimants' actual loss is set forth in COMAR

09.08.03.03B(3)(c), because the Claimants' intention is to have a different contractor "complete the contract." To calculate the amount of actual loss under Regulation .03B(3)(c), requires proof of three necessary factors: (i) the amount of money the Claimants paid to the Respondent; (ii) a reasonable amount the Claimants will be required to pay another contractor to repair the

Respondent's poor work; and (iii) the price of the contract between the Claimants and the Respondent. Under Regulation .03B(3)(c), the following calculation determines actual loss: amount paid to the Respondent + amount required to pay for the repair – the original contract price = actual loss.

The parties did not dispute the price of the original contract, which was \$13,740.00.⁵ In addition, they did not dispute that the Claimants paid \$10,000.00 to the Respondent pursuant to the agreement.⁶ In regard to the final factor — the amount required to pay for the repair of the Respondent's poor workmanship — the Claimants offered three proposals that were admitted into the record over the Fund's objection. None of the estimates includes any comments or references to the Respondent's work.

⁵ The parties did not fully execute a written home improvement contract. On September 3, 2014, the Claimants signed a "construction proposal/contract" that they received from the Respondent. Claimant #2. The Respondent did not sign the contract. The parties dispute whether the Claimants returned the signed copy to the Respondent for his signature. That dispute is not relevant to this decision, because the parties agreed that the terms contained in the contract constituted their agreement.

⁶ The Claimants gave the Respondent a check for \$5,000.00 on or about September 3, 2014, and another check for \$5,000.00 on or about October 13, 2014. The Claimants did not pay the balance of the cost.

The first proposal is an unsigned and undated estimate on D & E Remodeling and Repair Services (D & E) letterhead to "renovate" the Claimants' bathroom at a cost of \$7,300.00. The estimate does not itemize the cost. The scope of the work includes the following:

demolish and haul out tub, tub surround, wallboard at tub recess, vinyl flooring, shoe molding, & base-top molding; locate and remedy source of squeak in sub-floor near tub; furnish and install new fiberglass tub/tub surround assembly; furnish and install new moisture & mold resistant wallboard at tub recess; finish wallboard with setting-type drywall compound; furnish and install new vinyl flooring with new multiple underlayment; correct irregular horizontal corners where wall meets ceiling; furnish and install new shoe molding, base top molding; furnish and apply latex primer/sealer and painters' caulk at all new work; furnish and apply two coats latex finish coat at all new work; furnish and apply de-glosser and one coat latex paint at all undisturbed wall, ceiling, and trim surfaces; replace salvaged sink, toilet, bath accessories, shower head, faucets, tub spout, mixer, & shower door assembly, and HVAC register.

Claimant #11.

The second proposal is an unsigned estimate on Potomac Restoration Services (Potomac) letterhead, sent to the Claimants on April 15, 2015, that describes the following work for \$7,990.00:

In bathroom, demo all fixtures, demo floor, remove and dispose of bathtub. Repair subfloor so it does not squeak. Install new vinyl floor. Supply and install new metal tub. Install new green board. Install three piece tub surround. Install all removed fixtures. Install new show molding. Paint bathroom complete with customer supplied paint colors. Supply all needed permits.

Claimant #11.

The third proposal is an estimate that was emailed to the Claimants from Wish Kitchens and Baths, LLC (Wish) on December 29, 2014. The contractor states: "[W]e will have to decline doing just the shower for this project. We would be happy to do the entire bathroom remodel starting from the demo work and up." The cost is \$14,500.00.

None of the proposals is sufficient evidence to prove the final necessary factor to calculate actual loss — a reasonable amount the Claimants will have to pay another contractor to repair the Respondent's poor work. The scope of D & E's proposal is far beyond the areas of the Respondent's unworkmanlike performance. For example, D & E proposes to demolish the tub and the vinyl flooring, but I have found the record evidence insufficient to prove the Respondent's work on those items was unworkmanlike. Because D & E's proposal provides only a global cost for its service, is not possible to provide a reasonable amount the Claimants will have to pay to repair only the Respondent's unworkmanlike work.

The reasons the D& E proposal is not proof of a reasonable cost to repair the Respondent's poor work apply equally to Potomac's and Wish's estimates. These estimates also provide only a global cost for services and include items in the cost that are different from and go beyond the scope of the unworkmanlike items attributable to the Respondent's performance. Accordingly, the record before me contains insufficient evidence from which I can find a reasonable amount the Claimants will be required to pay another contractor to repair the Respondent's poor work. Therefore, the Claimants have failed to prove an amount of actual loss.⁷

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have 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).

⁷ This finding is contrary to the recommendation of the Fund. The Fund recommended, assuming I rejected its argument under section 8-405(d), an award of \$4,030.00, using D & E's estimate of \$7,300.00 as the reasonable amount the Claimants will be required to pay another contractor to repair the Respondent's poor work.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission ORDER:

- A. The Maryland Home Improvement Guarantee Fund deny the Claimants' claim; and
- B. The records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

January 11, 2016
Date Decision Issued

Michael D. Carlis
Administrative Law Judge

MBC/da
#146097