

IN THE MATTER OF THE CLAIM	*	BEFORE STEPHEN W. THIBODEAU,
OF BRIAN SMITH,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF CHUNG YI,	*	
T/A STANDARD CONSTRUCTION	*	OAH No.: LABOR-HIC-02-20-24930
AND COATINGS, LLC,	*	MHIC No.: 16 (90) 1390
RESPONDENT	*	

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**REVISED PROPOSED DECISION ON REMAND<sup>1</sup>**

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**STATEMENT OF THE CASE**

On August 22, 2016, Brian Smith (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor<sup>2</sup> for reimbursement of \$34,000.00 in actual losses allegedly suffered as a result of a home improvement contract (Contract) with Chung Yi, trading as Standard Coatings

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<sup>1</sup> I initially issued a Proposed Decision on Remand in this case on May 10, 2021. On June 8, 2021, I was informed by the MHIC that MHIC number that transmitted the case to OAH initially, MHIC case number 19 (75) 1390, was incorrect. The MHIC requested that a revised decision be issued reflecting the original case number for this case, 16 (90) 1390. I am issuing this Revised Decision on Remand with this change, reflected in both the case caption and appendix caption, and it is the only change in the revised decision.

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

and Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>3</sup>

I held a hearing that commenced on September 29, 2017, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland.<sup>4</sup> Md. Code Ann., Bus. Reg. § 8-407, 8-312. The Claimant represented himself. Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Respondent represented himself. The hearing was not concluded on September 29, 2017, and by agreement of the parties the hearing was continued until November 3, 2017. At the November 3, 2017 continued hearing, the Claimant and counsel for the Fund appeared; however, the Respondent failed to appear. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the continued hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>5</sup>

Following the closure of the record at the first hearing, I issued a Proposed Decision on January 22, 2018, concluding the Claimant sustained an actual and compensable loss of \$20,000.00 as a result of the acts and omissions of the Respondent. In a Proposed Order dated March 9, 2018, the MHIC affirmed the Proposed Decision to award the Claimant \$20,000.00 from the Fund.

The Respondent filed exceptions to the MHIC's Proposed Order, and on November 15, 2018, a three-member panel of the MHIC held a hearing on the exceptions. At the exceptions

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<sup>3</sup> All references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>4</sup> The prior case has the OAH case number DLR-HIC-02-17-21612, and an MHIC case number of 16 (90) 1390.

<sup>5</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on October 23, 2017, COMAR 09.08.03.03A(2), and returned as unclaimed/undeliverable on December 7, 2017. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. Because notice of the hearing was mailed to the Respondent at his address of record and because he was at the prior hearing on September 29, 2017, and agreed to the continued hearing date of November 3, 2017, I determined that the Respondent had received proper notice and proceeded to hear the matter.

hearing, the Respondent argued that he should have been given an opportunity to present his case to me at the first hearing.

By Final Order dated February 13, 2019, the MHIC rejected the Respondent's argument and affirmed the Proposed Decision. On February 28, 2019, the Respondent filed a Petition for Judicial Review in the Circuit Court for Montgomery County (Court), and by order entered December 17, 2019, the Court reversed and vacated the rulings, decisions, and orders of the MHIC and the OAH and remanded the case for further hearing for the limited purpose of allowing the Respondent to present evidence, witnesses, and exhibits; allowing the Claimant an opportunity to present rebuttal evidence; and to allow the parties to present closing argument.

To that end, on January 28, 2021 and February 8, 2021, I conducted a hearing via the Webex videoconferencing platform for the limited purposes outlined in the Court's remand order.<sup>6</sup> COMAR 28.02.01.20B. The Claimant represented himself. Edward Brown, Esquire, represented the Respondent. Shara Hendler, Assistant Attorney General, represented the Fund.

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. 2020); COMAR 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

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<sup>6</sup> For the purposes of the remand hearing, I instructed the parties on the record that I considered all prior exhibits admitted at the first hearing on behalf of the Claimant and the Fund, as well as all testimony taken at the first hearing, as incorporated by reference and part of the record for the remand hearing.

## SUMMARY OF THE EVIDENCE

### Exhibits

A list of the exhibits offered into evidence is attached to this Proposed Decision as an Appendix.

### Testimony

The Claimant testified in his own behalf.

The Respondent testified and presented the following witnesses: Rahn Barnes, Director of Loan Programs with Healthy Neighborhoods; Patrick Ritchey, home inspector with PSR Services; and the Claimant.

The Fund did not call any witnesses to testify.

## 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 01-104337.
2. Beginning in December, 2014, the Claimant and the Respondent began discussions for a complete home renovation in Baltimore, Maryland.
3. On January 30, 2015, the Claimant and the Respondent<sup>7</sup> entered into the Contract to perform the following improvements at 216 South Highland Avenue (Property) in Baltimore, Maryland:
  - Demolition of the brick chimney;
  - Carpet removal;
  - Providing main water service to the whole home, including the reinstallation of copper piping;

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<sup>7</sup> The name of the contractor's business on the Contract is different from that in the caption of this case. Specifically, Mr. Yi is listed on the Contract as the founder of CYCD Baltimore, Construction and Design (CYCD), and the Contract is made between the Claimant and CYCD, who is for the purposes of this Proposed Decision the Respondent, as there was no dispute that Mr. Yi and CYCD were one in the same.

- Installation of a tankless gas water heater;
- Replacement of toilets in the bathroom;
- Caulking of the bathtub in the bathroom;
- Installation of torch down roofing over the whole roof, including covering over conventionally framed wood ceiling joists, using half-inch roof sheathing with torch down roofing, and revealing the existing skylight;
- Installing an in-floor French drain sump pump basket in the bathroom;
- Installing drywall to walls and ceilings;
- Installing fire alarms and detection systems with electrical hard-wiring;
- Checking all electrical outlets;
- Installing new light and power circuits;
- Sanding and refinishing the wood flooring;
- Providing a stove, refrigerator, dishwasher, and garbage disposal in kitchen; and
- Installing a new kitchen sink.

4. The Contract stated that work would begin on the date the initial deposit on the Contract was made and would be completed ninety days from that date. However, the Claimant did not actually purchase the Property until March 2015, and work began shortly thereafter.

5. The Contract for renovation was required to be executed before the purchase of the home, pursuant to the City of Baltimore's Healthy Neighborhoods Initiative (Healthy Neighborhoods), which is the program the Claimant was using to purchase and renovate the home.

6. Healthy Neighborhoods is a non-profit organization that lends money for the purpose of renovation and rehabilitation of homes in Baltimore. The Claimant secured funding from Healthy Neighborhoods to fund the project at the Property.

7. Healthy Neighborhoods would issue checks as co-payee to both the Claimant and the Respondent at various times, pursuant to a draw schedule, at different phases of the project. As a condition of issuing funds, Healthy Neighborhoods would have the work inspected each time there was a draw request and require an inspection report approving the draw before the money could be distributed.

8. The Claimant obtained a loan from Healthy Neighborhoods (Loan) for a total of \$130,275.00. A total of \$30,097.60 of that amount was to be used for renovation of the Property. In addition, the Claimant was provided a grant of \$10,000.00 to reduce his overall loan amount to incentivize renovation of the Property.

9. The original agreed-upon Contract price was \$30,097.60.<sup>8</sup>

10. The Claimant made the initial deposit of \$3,000.00 on the Contract January 28, 2015 from the \$6,000.00 advance from the Loan.

11. The Respondent began work on the home in March 2015.

12. By March 11, 2015, the following work was completed on the Contract: removal of the carpet; demolition of the chimney; main water service and miscellaneous plumbing; installation of a new sump pump; and installation of a new water heater. All work was inspected by Patrick Ritchey, a home inspector hired by Healthy Neighborhoods, and the approval of a draw of \$7,000.00 was made to the Claimant and the Respondent on the Loan.

13. Unlike what was called for in the Contract, the new water heater was not a tankless water heater. However, the Claimant did not raise an objection at the time of the draw on the Loan and cashed the check.

14. By April 13, 2015, the following work was completed on the Contract: installation of the torch down roofing; completion of electrical testing and repairs; and rough in for new smoke detectors. All work was inspected by Mr. Ritchey and a draw of \$8,014.00 was made on the Loan and paid to the Claimant and the Respondent.

15. On April 21, 2015, the Claimant and the Respondent agreed to amend the Contract to remove partition walls in the living room, rewire and move electricity and patch the

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<sup>8</sup> The Contract in Clmt. Ex. 4 lists the contract price at \$28,875.00. However, the scope of work in the estimate provided in Clmt. Ex. 5 lists the price as \$30,097.60, and I have used this price as the agreed-upon contract price.

ceiling with any electrical openings. This work was done instead of sanding and finishing the floors as called for in the Contract. The change order did not include any additional cost from the original Contract.

16. On May 20, 2015, the Claimant and the Respondent agreed to amend the Contract again to provide for treating termite infestation, including replacement and/or sister lamination of damaged joists. The change order did not include any additional cost from the original Contract. However, \$4,410.00 of the Contract amount was to be applied to the termite infestation, in place of installation of appliances. Moreover, this change order did provide for \$215.00 extra in the event the Respondent's costs for the treatment of the termite infestation went above and beyond the already agreed upon cost of \$4,410.00.

17. By July 7, 2015, the following work had been completed on the Contract: installation of the smoke detectors; demolition pursuant to the April 21, 2015 change order; rough in of the electrical work pursuant to the change order; and hanging of sheetrock ceilings. All work was inspected by Mr. Ritchey and a draw of \$5,083.60 was made on the Loan and paid to the Claimant and the Respondent.

18. In late 2015, the Claimant and the Respondent orally agreed to more work to be performed by the Respondent, including:

- Overhaul of the electrical service for the whole home;
- New hardwood flooring to the whole home;
- New kitchen cabinets;
- New master bath shower; and
- Replacement of two rear windows on the top floor of the home.

19. The agreed upon contract price for this additional work was \$12,000.00.

20. The Claimant moved into the Property in September 2015.

21. From February 2015 through July 2015, the Claimant made the following payments on the Contract with funds from the Loan:

- \$3,000.00 on January 28, 2015;
- \$3,500.00 on March 11, 2015;
- \$3,500.00 on March 12, 2015;
- \$3,500.00 on April 13, 2015;
- \$4,514.00 on April 13, 2015;
- \$5,083.60 on July 7, 2015; and
- \$3,000.00 on January 28, 2016.

22. From July 2015 through September 2015, the Claimant made the following payments to the Respondent on the oral agreement with his own funds:

- \$5,650.00 on July 31, 2015
- \$4,000.00 on August 6, 2015
- \$2,000.00 on September 28, 2015

23. The total amount paid by the Claimant to the Respondent for work under the original Contract from January 2015 and the oral agreement from August 2015 was \$37,747.60.

24. A final inspection was made by Healthy Neighborhoods of the Property on January 27, 2016. This included final approval of the punch list, which included inspection and approval of the installation of the subflooring, drywall, painting, plugs and switches in the kitchen, living room, master bathroom, and confirmation that the furnace and water heater were set and connected in the basement.

25. As a result of the punch list inspection, a final draw was made on the Loan of \$3,000.00. It is unclear if any of that money was paid to the Respondent.

26. The Respondent stopped working on the project in late May 2016.

27. The Respondent did not complete or did inadequate work as follows:

- Installed drywall had exposed seams and buckling;
- Inadequate supply of flooring;
- Inadequate supply of cabinets;
- Inadequate supply of tile; and
- No delivery of windows.



28. Sometime in February 2016, the Claimant demanded to know when the work would be completed. The Respondent replied, via e-mail on February 25, 2016, with a list showing the scope of work the Respondent believed they had agreed to perform, totaling \$20,000.00.

29. The Claimant had intermittent contact with the Respondent through May 2016, via text messages and telephone calls, requesting that the Respondent correct and complete the work, but the Respondent never did either.

30. The items below had the following costs:

- Sheet of drywall: \$18.00
- Thirteen IKEA kitchen cabinets: \$3,482.91
- Installation cost of IKEA kitchen cabinets: \$660.00
- Shower tile: \$1.99 per square foot
- Waterproofing material for shower tiles: \$5.00 per square foot
- Vinyl window: \$170.00
- Labor cost for installing vinyl windows: \$60.00 per window.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "[A]ctual 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 reasons to follow, the Claimant has proven eligibility for compensation.

### Licensing

The licensing information submitted into evidence by the Fund established that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. (Fund Ex. 3.)

### Claimant's Case

The Claimant broadly claims that the Respondent engaged in home improvement work that was either unworkmanlike, inadequate, or incomplete. According to the Claimant, after executing the Contract for renovations on the Property, the Respondent performed some of the work on the Contract between March and June 2015. During this time period, the Respondent was on site at the Property one to two days a week. While the pace of work was slow, the Claimant continued to contract with the Respondent for further renovations. In April and May 2015, respectively, two change orders were made to the Contract: one replacing the sanding and finishing of the floors with removal of partition walls and further electrical work, and another for termite removal in the home. Neither change order altered the cost of the Contract significantly.

Then, in August 2015, the Claimant and the Respondent orally agreed to more improvements to the Property. According to the Claimant, the agreement included installing new hardwood flooring throughout the home, a complete overhaul of the electric service to the home, installation of new kitchen cabinets, installation of a new shower in the master bathroom, and installation of two windows in the rear of the home on the top floor. Also, according to the Claimant, the Respondent agreed to do this work for \$12,000.00.

By February 2016, however, according to the Claimant, most of the work from the oral agreement was not completed. The Respondent delivered some of the flooring, as well as some

of the tiling for the master bathroom, but did not install either. In addition, the Respondent performed electrical work at the Property, but the work rendered electricity in the home useless, requiring repair. The Claimant demanded to know when the work would be completed. The Respondent replied, via e-mail on February 25, 2016, with a list showing the scope of work the Respondent believed they had agreed to perform, totaling \$20,000.00. The Claimant insists that he never agreed to this scope of work.

Following the e-mail from the Respondent, the Claimant and the Respondent had intermittent contact until April 2016. The Respondent never offered to fix the issues the Claimant wanted remedied. These issues, according to the Claimant, were for the work in the Contract as well as the oral agreement. As to the Contract, these issues included the failure to demolish the brick chimney, the lack of work in the spare bathroom, the failure to install a tankless hot water heater, the failure to install a torch down roof, the poor installation of drywall, the lack of installation of fire alarms, and the failure to treat for termites. In terms of the oral agreement, the Respondent delivered some material for the work contracted, but did not install the hardwood floors, the master shower or the kitchen cabinets, and did no work on the rear windows. The Respondent also performed electrical work that rendered the electricity in the home unusable. According to the Claimant, all of those issues remained unresolved in April 2016 and the Respondent never returned to the home following his February 25, 2016 e-mail to perform any work.

### **The Respondent's Case**

The Respondent's case differs greatly from the Claimant's case. While the Respondent agrees that he and the Claimant contracted to renovate the Property, the Respondent maintains that the work was done and it was quality work. To that end, the Respondent presented the testimony of Rahn Barnes, the Director of Loan Programs with Healthy Neighborhoods, and

Patrick Ritchey, the home inspector who worked with Healthy Neighborhoods and inspected the Property to approve the draw on the loan funds. In addition, the Respondent submitted into evidence the draw approvals and inspections indicating that at each stage of the Contract the work was completed on all issues the Claimant claimed were unworkmanlike, inadequate, or incomplete.

As to the oral agreement, the Respondent disagrees with the Claimant's claim that he agreed to do a series of projects above and beyond the original Contract. The Respondent described an arrangement in which he would provide extra materials to the Claimant to allow for the Claimant to do his own home improvement work, including renoyations to his master bathroom and his kitchen. However, no formal contract was executed for home improvement work. The Respondent agreed that the February 25, 2016 e-mail he sent to the Claimant represents the crux of the arrangement he had with the Claimant in terms of the materials and work he provided; however, the Respondent disputes that he agreed to do all of that work for \$12,000.00, instead calculating his costs at over \$20,000.00. Moreover, the Respondent noted that he was only paid roughly \$10,000.00 by the Claimant for work under the oral agreement. Finally, the Respondent noted that he terminated the work on the Property in early 2016 because he felt the Claimant was becoming hostile towards him and he felt continuing work at the Property would be unsafe.

**Unworkmanlike, Inadequate, or Incomplete Home Improvements**

In order to prove eligibility for compensation from the Fund, the Claimant must show, by a preponderance of the evidence, that the Respondent performed unworkmanlike, inadequate or incomplete home improvements. For the reasons set forth below, I find that the Claimant has met his burden on some of the issues he raised in his Claim.

I will note that in weighing the evidence before me, I found neither the Claimant nor the Respondent completely credible. It is clear from the testimony of both the Claimant and the Respondent, as well as the hundreds of text messages submitted into evidence, that the Claimant and the Respondent had developed more than a simple client/contractor relationship; indeed, it appears that the Claimant and the Respondent developed a friendship that ultimately went sour over the project. In many respects, in the course of four days of hearing spanning the course of four years, this case resembled a bad divorce more than a simple Fund claim. It is through that lens that I have examined the evidence in this case, giving less weight to random accusations, claims, and counterclaims made during the testimony of the Claimant and the Respondent and relying more on the exhibits submitted into evidence and examining them through the timeframe of both the Contract and the oral agreement.

**1. Original Contract signed January 30, 2015**

**a. Demolition of brick chimney**

The Claimant maintained that he contracted for a full demolition of a brick chimney that included not only the chimney on the roof but all of the interior brick running inside the wall for all three floors of the Property. The Respondent noted that such a project would have been more than the forty square feet of demolition allowed for in the Contract, and cost far more than \$352.80. Evidence was presented in the form of the Healthy Neighborhoods inspection, including photographs, that the chimney was demolished on the roof per the terms of the Contract, as of March 11, 2015. As such, I do not find this work by the Respondent to be unworkmanlike, inadequate, or incomplete.

**b. Replacement of toilet and caulking of bathtub in spare bathroom**

The Claimant presented photos taken September 27, 2017, that showed what he claimed to be the original toilet and lack of caulking of the bathtub in the spare bathroom. However, the

Respondent noted that as part of the Contract he performed plumbing work, which required installation of a new toilet as well as caulking work around the bathtub and wall. On the March 2015 inspection report from Healthy Neighborhoods, it was noted that those inspections were completed. As such, I give more weight to the inspection report closer in time to work performed on the Contract than to a photo taken two and a half years later, and I do not find this work to be unworkmanlike, inadequate, or incomplete..

**c. Installation of a tankless water heater**

The Respondent installed a water heater; however, the water heater was not a tankless water heater as required by the written Contract. The Respondent explained that the Claimant agreed to the change that was not otherwise reflected in a change order at the time of installation because it was not possible to install a tankless system given the venting at the Property. Again, the March 2015 Healthy Neighborhoods draw request noted the new water heater had passed inspection before issuing the draw check, and included a photo of the water heater. The Claimant subsequently cashed the draw check for the work and signed it over to the Respondent. In addition, the Claimant moved into the home in September 2015, and there was no evidence he complained about the water heater to the Respondent at any time prior to the filing of his Claim. As such, I find that this work was not unworkmanlike, inadequate, and incomplete, because the Claimant had ample notice of the change to a standard water heater and did not otherwise indicate that the water heater he received was otherwise faulty.

**d. Installation of a torch down roof**

The Respondent worked on the roof of the home. However, the Claimant maintains the Respondent merely placed a white coating over the surface of the roof, and not a torch down roof as called for in the original Contract. The Claimant buttresses this claim with a text exchange he

had with Louis Lopez<sup>9</sup> who the Claimant maintained was one of the Respondent's workers. In that conversation, Mr. Lopez indicated that the Respondent did not install a torch down roof, but simply provided a white coat over the roof. The Respondent counters that there were actually two roofs that he completed work for, the main roof on the exterior of the home and the low roof at a lower portion of the home. Both were inspected and indicated as completed per the Healthy Neighborhoods inspection of April 9, 2015. Photos attached to that inspection indicate that the roof appears to be white; it also shows marks on the roof where a blow torch was used to apply layers of material to the roof. Moreover, in the photos that are part of the inspection, there are seams visible where the layers of material were to be applied. As such, I find this work was completed by the Respondent in April 2015.

That leaves the question of whether the work, while completed, was inadequate or unworkmanlike. The Claimant provided photographs beginning in February 2016 of leaks he experienced on the upper floor of the Property. The Respondent maintained that these leaks were not caused by a problem in the roof, but rather due to HVAC work done to the Property that created moisture to come through the ceiling. Indeed, in the Claimant's rebuttal case, a picture from May 23, 2016 shows moisture in the area of interior duct work that does not appear to be from a leak in the roof. Moreover, the pictures of the roof provided in the Claimant's case from February 2016 do not show any obvious defects. Finally, as part of a text exchange from February 29, 2016, the Respondent asked the Claimant whether he should repair the bathroom ceilings, and the Respondent noted that he did not need to repair the ceiling. (Clmt. Ex. 9). Moreover, the Claimant did not submit into evidence any text or email exchanges with the Respondent during the period of time the roof allegedly began to leak to demonstrate that he

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<sup>9</sup> Throughout the evidence, in particular the text messages, there are references to "Louis," "Luis," and "Ivan" Lopez. It was never conclusively explained whether this was three different people, one person, or a combination thereof.

wanted the Respondent to remedy poor workmanship on the roof. The only other photo regarding the roof submitted by the Claimant is from February 2019, when a portion of the roof blew off after a significant windstorm. However, the Claimant provided the photo without any context, or how it might have been related to the alleged poor work of the Respondent. Taken together, I cannot find that the Claimant met his burden of proof to demonstrate that the Respondent's work on the roof was unworkmanlike or inadequate.

**e. Installation of drywall to walls and ceilings**

The Respondent installed the drywall as called for in the original Contract. However, the Claimant presented photographs from February 2016 showing the drywall having several exposed seams as well as buckling. The Respondent relies on the final punch list inspection of January 2016 done by Healthy Neighborhoods to indicate that he completed the work, and his own opinion that it was not unusual to have exposed seams or buckling of drywall. Despite the Healthy Neighborhoods inspection, however, the significant buckling of the drywall just a month later, particularly in the ceiling as demonstrated in Claimant's Exhibit 13p, demonstrate that while the drywall passed inspection initially, the poor workmanship was showing just a month later. As such, I find this work was unworkmanlike and inadequate.

**f. Installation of hard-wired fire alarms**

The Claimant referred to the Respondent's failure to install seven "fire alarms;" the Respondent referred to them as smoke detectors. In any respect, the Claimant produced photos from 2017 showing that they were not installed, and just the heads for the smoke detectors were installed. However, the Healthy Neighborhoods inspection from July 3, 2015 noted seven smoke detectors were installed. I therefore do not find the Claimant's claim that they were not installed at all to be credible, and therefore cannot find this work to be unworkmanlike, inadequate, and incomplete.



**g. Termite removal and treatment**

As part of the May 20, 2015 change order to the original Contract, the Respondent agreed to perform termite treatment and repairs to damaged joists. There was disagreement between the parties regarding what constituted “termite treatment.” The Claimant said the Respondent claimed he had taken five one-pound bags of termites from the home, and that the home was tented for further treatment. He also presented a text message from the Respondent noting chemicals were used at the Property around the time the termite issue was discovered. However, the Claimant said he never saw any of the work regarding termites, in particular the tenting of the property or the bags of dead termites.

The Respondent noted that when he referred to “treatment” of the termites he meant the treatment of the underlying wood behind the wall and the securing and sistering of joists. That work was completed and noted in the Healthy Neighborhoods inspection of July 3, 2015.

The Claimant’s claim for termite treatment is made on the basis that it was never done. Curiously, no evidence was presented that the Claimant had a continuing termite problem as a result of the lack of treatment, or what, if any, loss the Claimant suffered as a result of a misunderstanding regarding the scope of work as to what the Respondent considered “termite treatment.” Moreover, obviously some sort of work was done with respect to chemical treatment to prevent future termite infestation, as evidenced by the text messages presented in the Claimant’s own rebuttal case. As such, I cannot find that this work was unworkmanlike, inadequate, and incomplete.

**2. Oral agreement made August 2015**

As noted above, the Respondent and the Claimant differ greatly on the scope of the oral agreement and what precisely was agreed to, and for what price. The Claimant states he had an agreement with the Respondent for \$12,000.00 to install new hardwood flooring throughout the

home, completely overhaul the electric service to the home, install new kitchen cabinets, install a new shower in the master bathroom, and install two windows in the rear of the home on the top floor. The Respondent stated the agreement was more of an understanding in which he would provide materials when he had extra available and that the Claimant was responsible for performing his own work in the home. However, the Respondent submitted a scope of work for well over \$20,000.00 to the Claimant indicating the amount of work he had already done by February 2016 exceeded the amount the Claimant had paid him at that point on the oral agreement, which was \$11,650.00.

Again, the discussion the parties had via text message close in time to the project are far more instructive than the testimony provided at the hearing years later, and I give those discussions more weight. In particular, the conversation via text message that occurs in Claimant's Exhibit 9 demonstrates first that there was an agreement to have the Respondent provide materials to the Claimant for continuing work on the home, and the Claimant undertook the labor on part of the project himself. This includes an exchange in which the Respondent agrees to provide the two windows for the back room as agreed in approximately September 2015; confirming the electrical work to be around the same time, as well as in February and March 2016; confirming that they had discussed ordering cabinets for the kitchen, potentially from IKEA, in February 2016; ordering of flooring materials in February 2016; and ordering tile so the Claimant could install it in February 2016.

I give the text messages included in Claimant's Exhibit 9 more weight than the Respondent's claimed list of scope of work emailed to the Claimant on February 25, 2016 that is included as part of Claimant's Exhibit 7. This is because the Respondent's list seems to include items that may be part of the original Contract mixed in with other work that may or may not have been part of the oral agreement. Moreover, the Respondent's list does *not* include other

items where there was a clear agreement, such as providing flooring, as demonstrated through the text message discussion.

As a result, I find that the oral agreement between the Claimant and the Respondent was for the Respondent to provide electrical work for the whole home, and provide the following materials for the Claimant to perform work, including providing flooring, kitchen cabinets, shower tile, and two windows for the rear of the Property. The agreed upon contract price was \$12,000.00, and the Claimant paid the Respondent \$11,650.00 towards that contract price in the form of three checks from July 2015 through September 2015. As to whether any of the Respondent's contracted work in this regard resulted in an unworkmanlike, inadequate, or incomplete home improvement, my analysis for each area of the oral agreement is below.

Finally, I do not find the reason the Respondent gave for discontinuing work on the oral agreement portion of this project credible. The Respondent testified that he felt the Claimant was becoming more aggressive and belligerent in his demands and he felt unsafe around the Claimant for fear the Claimant may become violent. This supposedly occurred in late February 2016. However, in early May 2016, the Respondent delivered flooring to the Property, oblivious to any fear he supposedly had with a potential encounter with the Claimant. I find instead that the Respondent discontinued work on the project without justification because, as he noted in his testimony, he was losing money on the project with respect to the amount he had already advanced to the Claimant in costs. In other words, he made a bad deal with the Claimant.

**a. Electrical service for whole home**

As part of the oral agreement, the Claimant contracted with the Respondent to perform electrical work for the whole home, including rewiring the home. The Respondent performed the work; the Claimant maintained it was not done properly and that the electricity was not working. The Respondent produced evidence, in the form of photographs and video, that the

lights and other electrical outlets were functional shortly after the work was completed in February 2016. Moreover, there was reference in the text messages to the Claimant doing work on the electrical wiring in the home as well. In sum, I cannot determine, by a preponderance of the evidence, that any alleged electrical problems in the home were the result of unworkmanlike, inadequate, or incomplete work on the part of the Respondent, because it appears the electricity was functioning before his participation in the project terminated, and I cannot discount the possibility that that the Claimant himself may have altered the Respondent's electrical work and caused subsequent electrical problems in the Property. As such, I find the Respondent's work to be acceptable.

**b. Installation of hardwood flooring to whole home**

The Respondent was to provide hardwood flooring for the Claimant to install in the home. The Respondent ordered nearly 1,500 square feet of Triangulo Guajuvira Graphite flooring in February 2016, at a cost of over \$8,000.00, and delivered it to the Property in early May 2016.

The Claimant maintains he did not receive the flooring the Respondent claims to have ordered, and instead received only seventeen boxes of hardwood flooring that would have covered approximately only 1,047 square feet. That flooring was from Great Lakes Flooring and was a different color – maple – as opposed to the graphite color the Respondent ordered.

A video of the Respondent delivering the flooring in early May (Clmt. Ex. 18), as well as photos of boxes of flooring from late May (Clmt. Ex. 17), were provided for my review. Two things are clear from my review of both the video and the photos. First, both the video and the photos show far more than seventeen boxes of flooring present in the Claimant's home. The video shows thirty-three boxes of flooring, and the photo shows at least thirty boxes. Second, the flooring shown in the video is not the same as the flooring in the photo. Specifically, the

boxes of flooring in the video are stacked four across, while the photo shows boxes stacked three across. Moreover, the open box of flooring in the video appears to be a darker shade than the open box of flooring in the photo.

Simply stated, I find the Respondent's version of events with regard to the flooring far more credible than the Claimant's. Why or how the flooring changed from early to late May is of no moment for the purposes of this decision; the fact that the Respondent delivered flooring per the terms of the agreement means I cannot find an unworkmanlike, inadequate, or incomplete home improvement by the Respondent.

**c. Installation of new kitchen cabinets**

The Claimant had gone over plans with the Respondent to get thirteen kitchen cabinets, preferably from IKEA per their text message discussion, so that they could be installed at the Property. The Respondent provided four mismatched cabinets to the Claimant. The Respondent testified there was no agreement to provide kitchen cabinets, but I do not find that credible. There was extensive discussion in the text messages regarding when and how cabinets would be provided. As such, I find this work to be incomplete.

**d. Master bathroom shower tile and installation**

The Respondent provided some of the tile for the master bathroom project, but not enough for the Claimant to complete the project. The Respondent countered that he provided a Schuler shower pan for the shower, but that was not contested at any point. The Claimant clearly was going to perform the work on the shower himself, as he indicated in text messages with the Respondent, even asking the Respondent if it was alright to proceed with the project. Because the Respondent did not provide enough tile or waterproofing material for the shower as required under the agreement, I find this work to be incomplete.

**e. Replacement of top floor rear windows**

The Respondent agreed to order two replacement windows for the rear of the home and install them. The Claimant stated the windows were never provided or installed; the Respondent says they were, but did not provide any documentation in the form of either a receipt or a line item on his February 25, 2016 email. As such, I find this work to be incomplete.

**3. Other**

The Claimant also presented evidence of two other projects, one from the written Contract, and one from the oral agreement, that he claims to be unworkmanlike, inadequate or incomplete. First is the installation of the expansion tank in the basement of his home near a window. The expansion tank was installed as part of the work the Respondent did to install main water service to the home per the original written Contract. The Claimant stated he wanted the tank moved after installation because he needed to frame out an area near the window for another room, but the Respondent refused to move the tank, stating that it would be impossible to move. Because the original Contract called for installation of main water service to the home, but did not specify a location of an expansion tank, I cannot find that this work was unworkmanlike, inadequate or incomplete.

The second project for which the Claimant seeks compensation from the Fund that I have not discussed above is the kitchen plumbing. This project was part of the August 2015 oral agreement, and the Claimant produced evidence that the Respondent improperly installed the kitchen plumbing. However, the Claimant testified that he fixed the issues with the plumbing himself, and as such, he is not eligible for any compensation from the Fund to remedy the issue.

Based upon the above unworkmanlike, inadequate, and incomplete work by the Respondent, I find that the Claimant is eligible for compensation from the Fund.

### Award

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

In this case, the Respondent performed some work under the Contract. The Claimant solicited two contractors, Ecologic Home Solutions and All Service Plumbing and Drain Cleaning, for estimates to complete or remedy some of the work. However, I have not relied on those estimates, as the Claimant performed the remedial work himself.

Accordingly, the following formula appropriately measures the Claimant's actual loss: "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." COMAR 09.08.03.03B(3)(b). Below I apply this formula to calculate the Claimant's actual loss for each of the areas of unworkmanlike, inadequate and incomplete work discussed above.

#### **1. Installation of drywall to walls and ceilings**

The Respondent installed drywall, but the installation was done incorrectly and required replacement and repair. The Claimant performed the reinstallation of the drywall himself, and is entitled to the cost of materials. The Claimant testified he needed to purchase twenty-three sheets of drywall at \$18.00 per sheet. Therefore, the Claimant's actual loss for this part of the Contract is \$414.00 (23 sheets of drywall X \$18.00 per sheet = \$414.00).

## **2. Installation of new kitchen cabinets**

The Respondent delivered four mismatched cabinets to the Claimant, but did not provide a complete set of thirteen cabinets as agreed to by the parties. The mismatched cabinets could not be used because the project required matching cabinets. The Claimant provided an estimate for thirteen IKEA cabinets at a cost of \$3,482.91 for the cabinets and \$660.00 for their installation. Therefore, the Claimant's actual loss for this part of the Contract is \$4,142.91.

## **3. Master bath shower tile and installation**

Per the oral agreement, the Respondent agreed to provide material to install an eighty-one square foot shower in the master bathroom. The Respondent only provided approximately fifty-six square feet of tile for the project. The Claimant installed the master shower himself, requiring him to purchase an additional twenty-five square feet of tiling, and also requiring him to waterproof the whole eighty-one square feet of the shower. The Claimant indicated that the tiling cost \$1.99 a square foot for twenty-five square feet, for a total cost of \$49.75. The waterproofing cost \$5.00 a square foot for eighty-one square feet for a total cost of \$405.00. Therefore, the Claimant's actual loss for this portion of the Contract is \$454.75.

## **4. Replacement of top floor rear windows**

The Respondent never provided the two rear windows for the top floor. The Claimant testified the cost for the windows at \$170.00 each, based on a search for vinyl windows at The Home Depot, and the installation of the windows would cost \$120.00 (\$60.00 each window, based upon his knowledge of standard labor costs in the industry). The Claimant's actual loss for this portion of the Contract is \$460.00.



Based on all the losses incurred for the various portions of the Contract, I have calculated the Claimant's total actual loss as follows:

Drywall:	\$414.00
Kitchen cabinets:	\$4,142.91
Master shower:	\$454.75
Rear windows, top floor:	\$460.00
<b>TOTAL:</b>	<b>\$5,471.66</b>

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 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$5,471.66.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$5,471.66 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover that amount from the Fund. *Id.*

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,471.66; 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;<sup>10</sup> and

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

**CONFIDENTIAL**

June 16, 2021  
Date Revised Proposed Decision Issued

Stephen W. Thibodeau  
Administrative Law Judge

SWT/da  
#192727

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<sup>10</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

*WHEREFORE, this 28<sup>th</sup> day of June, 2021, 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.*

*Joseph Tunney*

*Joseph Tunney*

*Chairman*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**