

**IN THE MATTER OF THE CLAIM  
 OF PAULETTE JACKSON  
 AGAINST THE MARYLAND HOME  
 IMPROVEMENT GUARANTY FUND  
 FOR ALLEGED VIOLATIONS OF  
 KARANE BROOKS  
 t/a HOMES BY KARANE**

**MARYLAND HOME  
 IMPROVEMENT COMMISSION**

**MHIC CASE NO. 16 (05) 18**

\* \* \* \* \*

**FINAL ORDER**

**WHEREFORE, this 22<sup>ND</sup> day of February, 2017, Panel B of the Maryland Home Improvement Commission ORDERS that:**

**1) The Findings of Fact of the Administrative Law Judge are Amended as follows:**

**A) The flooring installed by the Respondent in the foyer area (194 square feet) was defective in that it was wavy and raised in places.**

**B) Based upon review of the repair cost which the Claimant was charged by Luna Flooring, the Commission finds that the portion attributable to repair of the foyer was \$2,460.00.**

**2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:**

**A) Pursuant to the formula set forth in COMAR 09.08.03.03B, the correct calculation of the Claimant's actual loss is as follows:**

● Amount paid to Respondent	\$ 5,500.00
● Reasonable cost to repair	<u>\$ 2,460.00</u>
● Subtotal	\$ 7,960.00
● Less original contract price	<u>-\$ 5,500.00</u>
● Actual Loss	\$ 2,460.00

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**3) The Recommended Order of the Administrative Law Judge is Amended as follows:**

**A) The Claimant is Awarded \$ 2,460.00 from the Home Improvement Guaranty Fund.**

**B) Pursuant to Bus. Reg. Art. §8-411(a), any home improvement licenses held by the Respondent shall be Suspended at such time as any money is paid from the Home Improvement Guaranty Fund under this Order, and the Respondent shall be ineligible for any home improvement license until such time as the Home Improvement Guaranty Fund has been reimbursed. The Respondent shall be liable for 10% annual interest on any unreimbursed balance owed to the Guaranty Fund.**

**4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

**Andrew Snyder**

**Chair - Panel B**

**MARYLAND HOME IMPROVEMENT  
COMMISSION**

SECRETARY OF THE ARMY

1. The following information is being furnished to you for your information and use in the event you are called upon to testify before a committee of Congress or other body of the Government concerning the activities of the Communist Party, Inc. (CPI) in the United States.

2. The information is being furnished to you for your information and use in the event you are called upon to testify before a committee of Congress or other body of the Government concerning the activities of the Communist Party, Inc. (CPI) in the United States.

3. The information is being furnished to you for your information and use in the event you are called upon to testify before a committee of Congress or other body of the Government concerning the activities of the Communist Party, Inc. (CPI) in the United States.

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IN THE MATTER OF THE CLAIM  
OF PAULETTE JACKSON,  
CLAIMANT,  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF KARANE BROOKS,  
T/A HOMES BY KARANE,  
RESPONDENT

\* BEFORE DAVID HOFSTETTER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\*  
\*  
\* OAH No.: DLR-HIC-02-16-06913  
\* MHIC No.: 16 (05) 18

\* \* \* \* \*

**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 October 29, 2015, Paulette Jackson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with Karane Brooks, trading as Homes By Karane (Respondent). I held a hearing on July 6, 2016, at Largo Government Center, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant was present without representation. The Respondent did not appear for the

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

hearing.<sup>2</sup> Kris King, 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 Office of Administrative Hearings (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 Contract, dated May 9, 2014
- Cl. Ex. 2 Cashier's check, dated May 9, 2014
- Cl. Ex. 3 Fifty-nine photographs, various dates
- Cl. Ex. 4 Fax cover sheet, dated received at OAH, July 1, 2016; Estimate from Luna Flooring (Luna), dated June 25, 2016.

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<sup>2</sup> The OAH mailed a notice to the Respondent on May 10, 2016, at her address of record, by both certified and first class mail. The notice stated that failure to appear could lead to a decision against the Respondent. The certified mail envelope was returned to the OAH by the United States Postal Service (USPS) on or about June 13, 2016 with the notation "Return to Sender, Unclaimed, Unable to Forward." Fund Ex. 1. The copy of the notice sent by first class mail was not returned by the USPS, establishing a presumption of receipt. On July 5, 2016, the day before the scheduled hearing, the Respondent requested a postponement on the ground that she was traveling out-of-State. I denied the postponement request. However, the fact that the Respondent requested a postponement provides further proof that the Respondent received actual notice of the hearing date. Accordingly, I concluded that the Respondent failed to appear after due notice of the hearing and that the case could properly proceed in her absence.

The Respondent failed to appear for the hearing and offered no exhibits for admission into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated May 10, 2016; Returned Certified Mail Envelope, dated returned to sender, June 6, 2016
- Fund Ex. 2 Hearing Order, dated February 29, 2016
- Fund Ex. 3 Licensing History print-out, dated June 30, 2016
- Fund Ex. 4 Real Property Search print-out, printed June 30, 2016
- Fund Ex. 5 Affidavit of William Banks, Sr., dated March 29, 2016
- Fund Ex. 6 Home Improvement Claim Form, dated received, October 29, 2015
- Fund Ex. 7 Letter from HIC to the Respondent, dated December 1, 2015; letter from the Respondent to OAH, dated June 29, 2016

Testimony

The Claimant testified on her own behalf and presented the testimony of Yvette Stancil, her niece.

The Respondent failed to appear for the hearing and therefore did not testify or call any witnesses.

The Fund called no 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 home improvement contractor, licensed by the MHIC.
2. At all times relevant, the Claimant lived in her home in Bowie, Maryland.
3. At all times relevant, the Claimant's home had hardwood floors in the foyer, hallway, and first floor bathroom ("powder room").

4. Sometime shortly before May 2014, the Claimant noticed black discoloration on the wood floor in the powder room.
5. Around the same time, the Claimant noticed water damage on the ceiling in the basement, directly below the powder room.
6. On May 9, 2014, the Claimant and the Respondent entered into a contract (Contract) with the Claimant for home improvement services.
7. The Contract provided that the Respondent would do the following:
  - \* Foyer: Remove and discard damaged and buckled floors in the foyer area and replace with similar hardwood flooring; install new shoe molding and transitions;
  - \* Powder room: Remove toilet; repair plumbing; remove and discard damaged hardwood floors and install new hardwood flooring; repair subfloor; install new shoe molding;
  - \* Basement ceiling: Remove water-damaged ceiling and adjacent drywall; remove damaged insulation; replace insulation and drywall; spackle and paint.
8. The Contract provided that the Claimant would pay the Respondent \$5,500.00 for the work specified in the Contract.
9. The Claimant paid the Respondent \$5,500.00 under the Contract.
10. The Claimant<sup>3</sup>, or her employees, contractors, or agents, began work on the project within several days of the signing of the Contract on May 9, 2014.
11. The Respondent removed all the hardwood flooring from the powder room, foyer, and hallway. The Respondent also removed the threshold from under the front door.
12. After removing the hardwood flooring, the Respondent installed new hardwood flooring in the foyer, hallway, and powder room.
13. The Respondent and the Claimant had verbally agreed that the Claimant would be permitted to select the flooring to be installed.

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<sup>3</sup> In the remainder of this decision, references to "the Claimant" concerning the work performed, also refer to her employees, contractors, and agents.

14. The Respondent installed flooring without permitting the Claimant to choose the flooring, as they had previously agreed.
15. The Claimant complained to the Respondent that the flooring looked cheap and plastic. As a result of the Claimant's complaints, the Respondent took up the flooring and installed new hardwood flooring.
16. The newly-installed flooring was defective in that it was wavy and raised in places; it creaked when trod upon; there were gaps between the flooring and the baseboards; some of the baseboards were installed improperly; the transitions between rooms were not smooth and presented a tripping hazard; and a large gap was left between the bottom of the front door and the floor, allowing air and moisture to enter the house.
17. The Respondent did not perform the work in the basement called for in the Contract, because the Claimant instructed her not to do so, based on the Claimant's dissatisfaction with work performed elsewhere in the home.
18. Sometime in the summer of 2014, the Respondent stopped work on the project. The Claimant left several messages with the Respondent, asking her to return and correct problems with the work, but the Respondent failed to do so.
19. Sometime after the Respondent stopped work on the project, the basement work called for in the Contract was completed by a friend or family member of the Claimant. The Claimant was not charged for this work.
20. Sometime in 2014, after the Respondent stopped work, the Claimant hired a contractor who came and inspected the gap between the door and the floor. The contractor gave the Claimant an estimate of the cost to correct the problem, but the Claimant did not hire him and he did no work. The Claimant paid the contractor \$150.00 for the inspection.



21. At some time after the Respondent last performed work on the project, the Claimant hired a contractor to tear up the hardwood flooring in the powder room and replace it with tile. The Claimant supplied the contractor with the tile for the job. The Claimant paid the contractor \$250.00 to install the tile in the powder room.
22. On June 26, 2016, the Claimant received an estimate from Luna Flooring (Luna) to install laminate flooring in her home. The estimate covered installation in the foyer, kitchen, and family room. The cost of the work stated on the Luna estimate was \$7,400.00.

### DISCUSSION

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) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. The Claimant has the burden of proving both that the contractor’s performance was unworkmanlike, inadequate, or incomplete, as well as the amount of her actual loss. COMAR 09.08.03.03.A(3). For the reasons set forth below, I conclude that the Claimant has met her burden to show that the Respondent’s work was defective, but that she has not met her burden to establish her actual loss.

There can be no serious question as to the serious deficiencies in the Respondent’s work. Based on the testimony of the Claimant and her niece, as well as the numerous photographs included in Claimant’s Exhibit 3, I conclude that the flooring installed by the Respondent was defective in several respects, as set forth in Finding of Fact #16. For example, the first rule of flooring – that it lie flat – was breached. The floor is wavy and raised in spots and, as a result, creaks when walked upon. In addition, among other problems, a large gap between the front door and the floor allows hot and cold outdoor air and the elements to enter the home. The

Respondent did not appear to contest the Claimant's evidence and it therefore stands unrefuted. I conclude that the Respondent's work was inadequate and unworkmanlike.<sup>4</sup>

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and none are sought in this case. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case:

(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.

COMAR 09.08.03.03B(3)(c).

After considering the evidence presented, I conclude that the Claimant has failed to establish the amount of her actual loss. In determining the amount of actual loss, the Claimant relies primarily on Claimant Exhibit 4, the Luna estimate. At the hearing, the Claimant testified about this estimate, but did not have it with her. Without objection from the Fund, I gave the Claimant leave to fax it to me within 24 hours and she did so before the end of the day of hearing. Her cover sheet indicates that the document was also faxed to Mr. King, representing

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<sup>4</sup> Although the Contract called for work in the basement and the Respondent performed no work there, the Claimant testified that she instructed the Respondent not to do work in the basement because she was upset with the quality of the work she had performed on the first floor. Given her instructions to the Respondent, I am unable to conclude that the Respondent's work was also "incomplete."

the Fund. I therefore admitted the document (the fax cover sheet, and a two page estimate from Luna) as Claimant Ex. 4.<sup>5</sup>

The Luna estimate indicates a proposed contract price of \$7,400.00. However, for the reasons set forth below, I am unable to rely on the Luna estimate for any purpose regarding the determination of the Claimant's actual loss.

First, the Luna estimate is for three rooms or areas – the foyer, the kitchen, and the family room. It does not break down the costs of the work for each room or area. The Contract between the Respondent and Claimant did not call for any work in the kitchen or family room. As a result, it is impossible to compare “apples to apples” between the two contracts. For example, on the information before me, I cannot determine the portion of the Luna proposal that would be attributable to the installation of flooring in the foyer. Second, the Luna estimate refers to “laminare installation,” whereas the Contract and the Claimant's testimony refer to “hardwood flooring.” I am therefore unable to determine if the product installed by the Respondent and the one to be installed by Luna are comparable in price. I am therefore unable to employ the Luna estimate to make any determination concerning the cost to repair or replace the Respondent's defective work.

I also note that the fax cover sheet sent with the Luna estimate contains a handwritten notation, presumably made by the Claimant. The notation states:

This price includes the sq. ft. of  
\$4,818.63 Foyer – 194 sq. ft.  
Deposit 509.26 Kitchen 186 sq. ft.  
Fam room<sup>6</sup>

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<sup>5</sup> The Claimant should have sent her submission to the Respondent as well, but apparently did not. It is axiomatic that any filing with a court or quasi-judicial entity must be copied to all parties. In this case, however, because the Respondent has evinced indifference to the outcome of this proceeding based on her failure to appear, I conclude that the Claimant's error in not sending the documents to the Respondent does not constitute a basis for excluding them from evidence.

<sup>6</sup> The spacing and appearance of the handwritten notation are re-created above, to the extent possible.

For the following two reasons, I do not consider this notation to be in evidence and do not employ it in attempting to determine the Claimant's actual loss, if any. First, the Claimant was given leave only to submit the Luna estimate after the close of the hearing. She was not given leave to submit additional testimony, which her handwritten notation, in effect, is. Her opportunity to offer testimony ended at the end of the hearing. The notation is not subject to cross-examination, comes after the close of evidence, and therefore is not admissible and will not be considered by me.

Secondly, even if I were to consider the notation, it is unintelligible. There is no explanation as to what the figure of \$4,818.63 refers to. While there is a statement as to the square footage of the foyer and the kitchen, there is no such figure for the family room. Without the latter it is impossible to determine what fraction of the total cost of the Luna estimate is comprised by the work proposed for the foyer and therefore covered in the Contract. Even if such a figure were available, it is impossible to know whether the Luna figures are based on square footage alone or whether there are other considerations for each room, for example, the ease or difficulty of installation. For these reasons, the Luna estimate is of no value in determining the Claimant's actual loss.

Other problems exist in determining the Claimant's actual loss. A portion of the cost of the Contract is based on work to be done in the basement. The Contract, however, does not break out that cost and there is no evidence by which I can determine what percentage of the Contract price was based on the anticipated basement work. The Claimant ultimately had the work done, but apparently by a friend or family member who did not charge her for the work. Therefore, there is no extrinsic evidence in the record by which I can determine the value of this work.

Similar problems exist regarding the work done in the powder room. The Claimant's testimony was, in general, disjointed and at times contradictory, but never more so than when she spoke about the powder room. At one point she denied that the Respondent had ever put new flooring in the powder room at all, but later testified that she did so twice (the first attempt was ripped up due to the Claimant's dissatisfaction, she testified.) Her testimony also suggested that she was not particularly dissatisfied with the work in the powder room, but at some point decided that tile would be more appropriate. She hired a contractor (whom she was unable to identify by name) and supplied him with tile. The contractor ripped up the Respondent's flooring and installed the tile, charging the Claimant \$250.00. It is impossible to say, however, that her actual loss, as to the powder room, is \$250.00. First, she must establish her *total* actual loss, not the loss as to one room. More importantly, as noted above, the alleged defects in the flooring in the powder room were not clearly established by a preponderance of the evidence and it seems likely that the choice to ultimately use tile was merely a matter of personal preference.

We now come to the question of the estimate regarding the front door threshold. Although I find that the Claimant did pay a contractor \$150.00 for his estimate (again, she could provide no name or receipt), she never hired the contractor to actually do the work. In the event she actually has the work done (now over two years later) she will in all likelihood have to have a contractor (whether the same one or a different one) come out and evaluate the work again. Since the inspection of the threshold will have to be repeated, the \$150.00 paid to the contractor who looked at the front door cannot be reasonably considered to be "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." COMAR 09.08.03.03B(3)(c).

In sum, it is clear that the Claimant has suffered some actual loss. However, I may not speculate as to the amount of a loss based on guesswork or gut feelings. The Claimant offered

no expert testimony to provide guidance on the question of actual loss. The Luna estimate is of no assistance for the reasons set forth above. I have no way of knowing the value of the basement work identified in the Contract or the value of the powder room work, both of which bear substantially on the amount of any actual loss. I have no way of knowing the cost to correct the problems with the threshold. I have no way of knowing if some of the Respondent's work is salvageable or if it all must be torn up and the job started anew. Simply put, the Claimant has failed to establish the amount of an actual loss and I decline to speculate as to what it may be.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has failed to meet her burden to establish the amount of an actual and compensable loss as a result of the inadequate and unworkmanlike performance of the Respondent. 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 award the Claimant no money.

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

**Signature on File**

September 29, 2016  
Date Decision Issued

DAVID HOISTETTER   
Administrative Law Judge

DH/emh  
#163234

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the success of any business or organization. The text outlines various methods for collecting and organizing data, including the use of spreadsheets and databases. It also highlights the need for regular audits and reviews to ensure the integrity and accuracy of the information.

### THE SECOND PART OF THE DOCUMENT

The second part of the document focuses on the implementation of a robust financial management system. It provides a detailed overview of the key components of such a system, including budgeting, forecasting, and reporting. The author discusses the challenges associated with these processes and offers practical solutions to overcome them. The text also covers the importance of transparency and accountability in financial reporting, as well as the role of technology in streamlining these operations. The document concludes with a summary of the key findings and recommendations for further improvement.

In conclusion, the document provides a comprehensive guide to effective financial management. It covers all aspects of the process, from data collection to reporting and analysis. The author's insights and recommendations are valuable for anyone looking to optimize their financial performance. The document is a must-read for business owners, managers, and financial professionals alike. It offers a clear and concise overview of the subject matter, making it accessible to a wide range of readers. The author's expertise and attention to detail are evident throughout the text, providing a high-quality and informative resource.

**PROPOSED ORDER**

***WHEREFORE, this 3rd day of November, 2016, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**