

IN THE MATTER OF THE CLAIM  
OF MARK AND RENNIE LEVIN,<sup>1</sup>  
CLAIMANTS  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF FRANK GUYTON,  
T/A P & G SERVICES, LLC,  
RESPONDENT

\* BEFORE JOY L. PHILLIPS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-21-00872  
\* MHIC No.: 18 (90) 1022

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On May 14, 2019, Mark and Rennie Levin (Claimants<sup>2</sup>) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),<sup>3</sup> for reimbursement of \$19,880.00 in actual losses allegedly suffered as a result of a home improvement contract with Frank Guyton, trading as P & G Services, LLC (Respondent).<sup>4</sup> Md. Code Ann., Bus. Reg. §§ 8-401 through

<sup>1</sup> The appeal was transmitted to the Office of Administrative Hearings in the name of Mark Levin only. At the hearing, the Levins asked that I add Rennie Levin's name to the case.  
<sup>2</sup> I have referred to the Claimants by their first name only where necessary for my analysis.  
<sup>3</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.  
<sup>4</sup> Also referred to as P & G Construction, LLC.

8-411 (2015).<sup>5</sup> On December 29, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 18, April 20, and April 30, 2021 via a video conferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 20.01.02.20B. John Hart, Assistant Attorney General, Department, represented the Fund. Todd Forster, Esquire, represented the Claimants, who were present. Juanita F. Ferguson, Esquire, represented the Respondent, who was present.

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; and COMAR 28.02.01.

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I have attached a complete Exhibit List as an Appendix.

#### **Testimony**

Both Claimants testified and presented the testimony of Ronald Meely, who was accepted as an expert in home inspection and home improvement.

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<sup>5</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

The Respondent testified and presented the testimony of Lee McAllister, who was accepted as an expert in architecture, and Leonardo Mendes, who was the Respondent's electrical project manager and was accepted as an expert in electrical contracting.

The Fund presented no witness testimony.

### **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 01-105906.
2. On May 11, 2017, the Claimants and the Respondent entered into a contract calling for the Respondent to make certain renovations to the Claimants' home, including opening up a wall on the first floor, moving the HVAC equipment and water heater, replacing the electrical panel, consolidating two upstairs bedrooms into one, building a master bathroom, upgrading bathrooms, and installing new floors (Contract).
3. The plans for the renovation were drafted by an architectural firm.
4. The Claimants' home is over sixty years old. There was at least one prior renovation, in 2003.
5. The original agreed-upon Contract price was \$69,439.00.
6. With change orders, the final Contract price was \$70,144.00.<sup>6</sup>
7. The Claimants paid the Respondent \$65,500.00.
8. Work on the project started soon after the Contract was signed and was close to completion by mid-July 2017.

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<sup>6</sup> The exhibits raised questions regarding the final Contract price, but the parties agreed to \$70,144.00 as the final Contract price and this amount was used by the Fund in its closing argument.

9. On July 16 or 17, 2017, the Respondent and the Claimants did a walk-through of the home to identify remaining work. The work completed up to that point had already passed county inspections.

10. On an unknown date, the Claimants chose bamboo flooring and the Respondent talked them out of using it, as it would not hold up well. The Claimants changed their choice to engineered hardwood.

11. On an unknown date during this time, the relationship between Claimant Rennie and the Respondent broke down after a contentious discussion at the home while the crew was present and listening. The Respondent raised his voice because he believed Claimant Rennie was lying and impugning the work and word of his team. This led to acrimonious texts and emails between the parties.

12. Punch list items were developed in emails and texts between the parties in July 2017 and the Respondent intended to return to the Claimants' home on July 27, 2017 with his team to complete all remaining work and make minor repairs. On July 26, 2017, Claimant Rennie wrote the Respondent a lengthy email detailing many complaints against the Respondent and the work he had done. She also wrote that she did not want the Respondent's project manager, Jose, to come to the property on July 27, 2017, because the Claimants were leaving on vacation and she did not want the workers to be in the home while they were gone. Thus, the July 27, 2017 work day was cancelled.

13. On August 4, 2017, the Respondent replied to the July 26, 2017, email with a lengthy response to Claimant Rennie's accusations. He requested a meeting to discuss her complaints and agree on a schedule to finish the pantry, install the hot tub outlet, fix the attic light, clean up spilled paint, and diagnose a low water flow problem in the master bathroom

shower. He asked the Claimants to reach him after August 22, 2017, to schedule that meeting so that he could finish the project. The Claimants did not respond.<sup>7</sup>

14. On September 13, 2017, the Respondent again emailed the Claimants seeking a response. Claimant Mark emailed the Respondent's private email address with a new list of unfinished items, including a sliding barn door that had never been included in the Contract. The Respondent did not see that email immediately because it had been sent to his private email address.

15. On September 26, 2017, and on October 5, 2017, the Respondent emailed the Claimants, without response.

16. On October 10, 2017, the Respondent emailed Claimant Mark again. On October 11, 2017, Claimant Rennie responded with a list of five things to be done by October 31, 2017.

17. On October 15, 2017, the Respondent emailed that the Claimants must pay the balance of \$5,414.00 by October 20, 2017 or he would place a mechanics' lien on the property.

18. On January 31, 2018, the Claimants emailed the Respondent regarding talking to an attorney. They told the Respondent to "send Jose" because the Respondent was not welcome in their home. They listed ten items that had not been completed.

19. On February 2, 2018, the Respondent replied to the ten complaints contained in the Claimants' email and suggested a meeting to find a way forward.

20. The Respondent has not returned to the property since the July 27, 2017 work day was cancelled by the Claimants.

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<sup>7</sup> The Respondent testified Claimant Rennie texted him on September 5, 2017, and the text only mentioned seeing his sister and nothing about the renovation or the dispute. That text was not submitted into evidence.

Beam above kitchen island (Item 1)<sup>8</sup>

21. As part of the renovation, the Respondent removed the drywall on two sides of the large, square chimney that sits in the middle of a wall on one side of the kitchen, thereby exposing the bricks.

22. In a prior renovation, a beam was installed over the kitchen island to open the kitchen to the dining room. The beam was pocketed (or inserted) into the chimney. No supporting post was installed during that renovation; thus, the Respondent did not remove a post under that beam during his work.

23. A 2 x 10 board was attached to the beam to make the portion of the wall flush so the drywall would be even. For unexplained reasons, the board has fallen somewhat, resulting in a large crack in that portion of the wall.

24. No additional weight was added to the floors above the beam during the renovation project on the Claimants' home.

Passageway (also in Item 1)

25. The Respondent removed a wall dividing the dining room and a side room, adjacent to the kitchen, to open up a family room that connected with the kitchen and eating area. This created a passageway between the rooms. The Respondent installed three 2 x 10s across the top of the passageway, pocketing them inside the existing chimney. The joining compound used on the 2 x 10s resulted in cracks in the paint appearing in the passageway.

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<sup>8</sup> A. Item numbers refer to the list of issues contained in Claimant Exhibit 2.

B. In the evidence, there are at least six different lists of work that the Claimants want done—either repairs to be made, materials to be replaced, or jobs to be completed: email from Claimant Rennie, July 26, 2017; email from Claimant Mark, September 13, 2017; email from Claimant Rennie, October 11, 2017; email from Claimant Rennie, January 31, 2018; Memorandum to MHIC, March 22, 2018; and Claimant Exhibit 2, Itemized Claim Amounts. The parties focused their evidence and arguments on the items listed in Exhibit 2. The Claimants withdrew Item 14 on that list. I have focused my decision on the other thirteen items from that exhibit. I consider all other complaints mentioned in the other lists as withdrawn or abandoned.

C. Item 1 referred to both the beam over the kitchen island and the passageway, although the issues related to each of these areas are entirely distinct. I have separated the issues in my analysis.

26. The cracks must be cleaned out, the compound replaced with the correct compound, and the passageway repainted.

Insulation (Item 3)<sup>9</sup>

27. As part of the renovation, the Respondent moved the HVAC equipment and a water heater from a center closet to an outside wall. A portion of drywall on that outside wall was removed to facilitate installation of the equipment. Insulation was not added in the walls behind the equipment, resulting in the pipes freezing in cold weather, although the pipes were wrapped.

Drywall cracks and peeling paint (Item 4)

28. Numerous cracks in the drywall developed in the months and years after the renovation. Paint must be touched up in numerous areas of the home.

Electrical panel (Item 5)

29. The Contract did not call for a "heavy up," which would have increased the power service in the home to 240 amps. Instead, the Contract called for replacing and moving the electrical panel, which the Respondent did. The Respondent moved the panel about eighteen inches and built a barrier around it to separate it from the washer/dryer appliances, HVAC, and water heater nearby.

Attic light switch (Item 6)

30. The stairs to the attic were turned around during the renovation, at the request of the Claimants. As a result, the switch to the attic light was disconnected and the light could not be operated using a switch. The Respondent intended for his crew to repair the light switch during the final work day.

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<sup>9</sup> Item 3, the cost of an engineer's evaluation in 2021, is discussed on page 17.

Kitchen pantry (Item 7)

31. The kitchen pantry was to have been rebuilt from a laundry chute and was to have pull-out shelves. The specifics on the pantry were not clear in the architectural drawings nor were they included in the Contract. The Claimants and the Respondent made an oral agreement that the inserts for the pantry would come from IKEA to save money.

32. When the Respondent's crew installed what they believed the Claimants wanted, Claimant Rennie directed the crew to pull them out, as they were drawers, not sliding shelves.

33. The estimate obtained by the Claimants to finish the pantry calls for a custom-built pantry.

Master bath shower (Item 8)

34. A shower shelf was not installed in the master shower stall.

Master bath fan (Item 9)

35. The fan installed in the new master bathroom is not large enough or powerful enough for a room the size of that bathroom, approximately 78 square feet.

Doorbell connection (Item 10)

36. During the renovation, the power connection to the doorbell at the home's front door was severed, rendering the doorbell inoperable.

Frameless doors (Item 11)

37. The Contract called for frameless doors to be installed in the closets housing the HVAC and water heater, off the family room. Regular doors were installed instead.

Permit costs (Item 12)

38. The Contract change order provided for three permits: mechanical, at \$600.00; plumbing, at \$600.00; and electrical, at \$400.00. The Claimants accepted these costs as part of the change order.



Jacuzzi outlet (Item 13)

39. The Contract did not call for a jacuzzi outlet to be installed outside of the home although the Claimants specifically requested one in an email exchange before the work began. The Respondent verbally agreed to install one, but it was never installed.

Additional fact

40. There is no barrier, such as familial or business relationship, that would prevent the Claimants from being reimbursed by the Fund.

**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. However, the MHIC may deny a claim if the MHIC determines the "claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Bus. Reg. § 8-405(d). For the following reasons, I find that the Claimants have proven eligibility for compensation on some of the claimed items, but not on the entire Claim.

## Background

The Claimants bought their home in September 2016 and wanted to have it renovated before they moved in, in the summer of 2017. They received a number of bids for the renovation, choosing the Respondent even after telling him that his bid was the highest of them all. They were ever alert for ways to save money on the renovation. Unfortunately, this desire to save money led to problems between the parties. Despite architectural plans being used, there were many changes the Claimants desired as the project developed. While this is often the case in a large renovation project, these changes caused problems between the parties. Some of the changes, such as the kitchen pantry, were never reduced to writing and the parties never reached an agreement on what, exactly, should be done. Adding to these issues, the Respondent was on vacation during part of the project, leading to the Claimants giving direction to the field crew and not always clearing those directions through the Respondent. The Claimants then went on vacation at the end of July 2017 and cancelled the final work day when the Respondent had his crew ready to appear at the property and complete the work. The parties communicated via texts and emails, which led to some delays and poor communication, although even when they talked in person, they argued and raised their voices. Claimant Rennie was the point person for the renovation, the person who made the decisions and communicated with the Respondent throughout the project. Claimant Mark only emailed the Respondent once, on September 13, 2017.

Even while negotiating the terms of the Contract, the Claimants and the Respondent entered into oral agreements that were not spelled out in the Contract. For instance, the Claimants wanted a kitchen pantry with deep, pull out shelves, but they did not want to pay for custom cabinetry. The pantry does not appear in the Contract, although the architectural drawings include this note: "rework ex. pantry." (Clmt. Ex. 24). The revised Contract, which is

neither dated nor signed, includes this notation on the list of additional items completed by the Respondent: "ikea (sic) pantry cabinet." (Clmt. Ex. 5, last page). Another change was in what flooring the Claimants wanted to use. Instead of hardwood, they chose a cheaper bamboo, which the Respondent had to dissuade them from using. Eventually, they chose engineered wood floor, which needed to be ordered; this delayed the project somewhat.

The Respondent testified that there were other oral agreements they had and many small changes that were made during the course of the project. He agreed to some of those changes in an effort to appease the Claimants. The Claimants asserted, in emails and in testimony, that they were too trusting and did not know they needed to have every detail in writing. While having a written agreement covering every aspect of a renovation project can help avoid problems such as those that developed between the parties in this case, an ability to communicate and be flexible is even more important to ensuring a successful finished project and satisfying work relationships. This was a major renovation to an old house done over a fairly short period of time. There were bound to be unanticipated issues, such as where to locate the electrical panel, and last-minute decisions that had to be made. Good communication was critical but absent in this case. As a result, both parties are unhappy and are blaming the other side.

The Respondent and his crew were scheduled to work at the home on July 27, 2017 to complete everything on the "punch list" that the Claimants had developed. On July 26, 2017, the Claimants cancelled the work day, writing that they were leaving on vacation and did not want the work crew in the home while they were gone. Eventually, the parties reached an impasse, with the Claimants refusing to make the final payment until the repairs were made and the project completed, and the Respondent refusing to return to the property to make the repairs and complete the project until the Claimants had made the final payment and they sat down and hashed out what needed to be done.

To untangle the accusations and arguments, I will review the testimony, address the evidence presented, and discuss each item noted by the Claimants as needing repair, replacement, or completion.<sup>10</sup>

### The Experts

Ronald L. Meely is an experienced home inspector, and he was recognized at the hearing as an expert in home inspection and home improvement. He was hired by the Claimants to inspect the home, which he did on February 28, 2019. He testified that he could tell there was some problem with the kitchen beam, but an engineer was required to diagnose the problem. He said the beam should not rest on masonry. He noted the paint issues in the passageway, attributing them to the use of improper fill. Many of the painting issues only required a touch up, he said, and cracks in paint are not unusual after a renovation project. He saw no insulation in the HVAC closet and noticed that blocks from the outer wall were visible. His opinion is that the wall required insulation. He noted the lack of a shelf in the master bathroom shower and said the shower glass was not installed as it was designed. He confirmed there were no frameless doors installed and the attic light had no switch or pull. He said the master bathroom fan exhaust opened into the attic, which could later cause moisture problems. He said the Kingcaire estimate amounts were generally reasonable, although some were high and some low.

Lee McAllister was called by the Respondent as an expert in architecture. He noted that there was no structural engineering plan drafted prior to the renovation and said architects do not draft structural plans for beams; engineers do. Given the scope of the project, Mr. McAllister was surprised the Claimants got a permit for the project. He testified that the plan (Clmt. Ex. 24, Plan A1.0) called for no structural work, that is, insertion of a beam over the kitchen island. He

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<sup>10</sup> The Claimants' argument that the Claim should be awarded because the Respondent bullied them verbally and threatened to place a mechanic's lien on the property is rejected. I have confined my analysis to the evidence regarding actual loss, as that term is defined by law.

looked at the photograph taken by the engineer of the falling board and concluded that what is seen is not a weight bearing beam or LVL, but merely a board attached, or sistered to, something behind it. (Clmt. Exs. 3 and 7).<sup>11</sup> The actual weight bearing beam is not visible in the photograph, but he agreed there must be some such beam and believes it is anchored in the chimney masonry. There was not enough drywall removed to see what was behind the visible board. He was not able to explain why the board was falling.

Leonardo Mendes testified as an expert in electrical contracting. He supervised the electrical work done on the Claimants' home. He confirmed the Respondent's testimony that he was not directed to install a "heavy up," but only a replacement panel, which provides upgrades but not more power. The Respondent recalled discussions about the costs associated with a heavy up and that the Claimants told him they decided not to pay for it. He was required to be creative about where to place the electrical panel because of the nearby washing appliances and water heater and recalled building a small closet to provide a divider between those and the panel, thereby meeting code. He knew the doorbell wires were accidentally cut during the work and he would have repaired them and the attic light had he been given access to the property. He also would have installed the jacuzzi outlet.

### The Contract

In preparing for the hearing, the Respondent disclosed a copy of the Contract that contained a cover page never seen by the Claimants. (Resp. Ex. 5, p. 1). It is a cover page used in Washington, D.C.<sup>12</sup> that contains standard language about the names of the parties to the home improvement contract, the date of the contract, the timing of fulfillment, the buyer's right to cancel, and the contract amount, with deposit and balance. The Respondent testified this is

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<sup>11</sup> The black and white photograph appears in the ICI Structures report, March 2, 2021, an engineer's report. A color photograph was admitted as part of Claimant's exhibit 7.

<sup>12</sup> The Respondent crossed out "D.C. Permanent #" and wrote in "MHIC #," with his Maryland license numbers.

always the cover sheet he uses with his home improvement contracts. He recalled that the day the parties signed the Contract, on May 11, 2017, he did not complete the cover page, for some reason. He filled it out after the fact and intended to give the Claimants a copy but forgot to do so. When he completed that cover sheet, he referred to the Contract as Exhibit A and marked the first page of the Contract as Exhibit A, a mark that did not appear on the Claimants' copy of the Contract.

The Claimants argued that his failure to provide them a copy of the completed cover sheet impacted the Respondent's credibility and integrity. But there was no reason for the Respondent to have withheld it from the Claimants. It did not change the Claimants' exercise of their rights to pursue a claim with the Fund. The Contract itself contained the Claimants' signatures and correct date and they were provided with a copy of that Contract as well as the change orders. The Fund did not argue that it impacted this case in any way. I conclude it was sloppy on the Respondent's part, but not intentional or malicious. It does not impact my decision.

#### Kingcaire Estimate

The Claimants received an estimate from Kingcaire Construction (Kingcaire) to complete or correct certain work in the home at a cost of \$19,297.00. (Clmt. Ex. 4).<sup>13</sup> The estimate includes some items not in the Contract, such as a new center light over the dining table, and it groups all painting or drywall repair under one item. It includes a separate overhead charge of 15%. I have discussed the estimated costs below in each section.

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<sup>13</sup> The Claimants used an estimate from a different contractor in filing their Claim, but they did not introduce that estimate into evidence. Thus, I have referred only to the Kingcaire estimate in my decision.

Beam above kitchen island and engineer's report (Items 1 and 2)

As part of the renovation and in accordance with the architect's plan, the Respondent removed the wall separating the dining area from what is now the family room. This opened wall was referred to at the hearing as the "passageway." The beam over the passageway is pocketed in the bricks of the chimney. Perpendicular to the passageway is a beam that spans the ceiling above the kitchen island. This beam is also pocketed in the bricks of the chimney. The drywall surrounding two sides of the old chimney was removed as part of the renovation, exposing the brick.

Months after the 2017 renovation, the drywall over the area where the kitchen beam meets the chimney began to crack. The crack became longer over time. On February 20, 2021, in preparation for hearing, the Claimants had an engineer evaluate the crack. A small section of the drywall was removed, and the engineer could see an old board nailed to something behind it; the board was slightly falling on the left-hand side and was not inserted into the brick of the chimney. The engineer, who did not testify, wrote that,

we noticed that a 2 ply 9 ½" LVL dropped beam was missing support at the end located in the vicinity of the existing kitchen chimney pier . . . it seems that the original house had a post supporting the beam, which was hidden inside the wall and which was removed during renovation.

(Clmt. Ex. 3, p. 1 of engineer's report). The Claimants did not produce any drawings or photos to show that such a post previously existed.

Mr. McAllister testified that there were no LVL beams at the time the house was built, but possibly an LVL beam was installed during renovations that took place in 2003. He said what is shown in the photograph, however, is not an LVL beam, as indicated by the engineer hired by the Claimants, but is a 2 x 10 board sistered to something behind it. It is not inserted into the chimney pier and could not, therefore, have been a weight bearing beam. He believes the board was used to even out the wall to help make the drywall smooth. He said the screws

which are visible in the photograph must be screwed into something else that is unseen in the photograph taken by the engineer. Thus, he concluded the dropping board is not something that was added during this renovation and is not supporting the second-floor bedroom.

The Claimants never raised the issue of the falling board with the Respondent prior to the matter being scheduled for hearing. The Respondent testified that he checked with his foreman who confirmed the crew never removed a post that might have held up the kitchen beam. The Respondent denied knowing anything about the kitchen beam and said its movement was unrelated to the renovation he completed.

There is clearly a problem with the beam over the kitchen island, but the reliable evidence is insufficient to show that the cracking drywall or the dropping overhead board is the fault of the Respondent's work. The Respondent offered the only firsthand testimony regarding the structural renovations and he testified credibly that no post was removed during the renovation. Something may have shifted when the wall was removed to create the passageway, but the evidence does not show that was the fault of the Respondent, who was building according to architectural plans that were drafted by a different company. He did not add weight to the floor overhead and he did not remove the chimney which was used to anchor the previous beams. He first learned about the problem with the beam over the kitchen island while preparing for the hearing, almost four years later. Only cracks in the paint had previously been disclosed to the Respondent.

The engineer who examined the beam in 2021 and wrote a report did not testify. The report was attached to Mr. Meely's 2019 home inspection report. (Clmt. Ex. 3). I admitted it into evidence because Mr. Meely referred to it as a partial basis of his expert opinion during his testimony. While an expert's written report may constitute reliable evidence, in this case there were many questions left unanswered, in part because the engineer did not remove enough



drywall to view what the board was sistered to. He was not present at the time of the renovation. His report does not indicate that he reviewed the renovation plans from 2003 or 2017. His opinion is speculative as to the board and the reason it appears to be falling. As a result, I gave the engineer's report little weight. Because I am denying the Claim as it regards the kitchen beam, I will also deny the request for reimbursing the costs of the engineer's report, listed as Item 2. (Clmt. Ex. 2).

#### Passageway (Item 1)

The Claimants included repairs needed to the passageway in their list under Item 1. Kingcaire has included repairs to the passageway in its estimate of costs to repair the kitchen beam, but the passageway has a problem unrelated to the beam. (Clmt. Ex. 4). The passageway was created using three 2 x 10s. Different types of wood were used and the wood fill between the boards cracked and did not hold the paint. (Clmt. Ex. 9). The photographs of the passageway show paint peeling, cracking, and bubbling. Mr. Meely, the home inspector, concluded that the seams between the wood were improperly trimmed. It is obvious the fill needs to be scraped and replaced. This needs to be repaired. Kingcaire included the cost of repairing the cracks in its estimate for repairing the structural issues associated with the beam, a total of \$3,500.00. Having excluded the Claimants' eligibility for reimbursement on the kitchen beam, I must determine a reasonable amount to repair the passageway, which will involve stripping and replacing the trim. I conclude \$1,000.00 represents a fair estimate to complete those repairs.

#### Insulation (Item 3)

The HVAC system and water heater were moved from an interior closet to an exterior wall of the home. The Claimants showed photographs suggesting some drywall had been removed from behind the HVAC and water heater during installation and bare cement block was

left exposed. The photographs are not particularly clear, but the block is visible. (Clmt. Ex. 8). The Claimants said that twice, the water lines in that utility closet have frozen, leading them to put a space heater in the closet. The Respondent denied that he is responsible for adding insulation to any wall that he did not build or alter.

Someone has written "Insulation: Fill cavities in exposed exterior walls" on the permit drawings. (Clmt. Ex. 24). No one could explain who would have written that, but no one is disputing that insulation is required in exterior walls. The Respondent simply objected to being required to inspect all exterior walls and add insulation in areas where he did no work. No one is asking him to do that. However, it is evident that to install the pipes for the HVAC and water heater, drywall was cut, and the walls were not fully insulated afterward. Water pipes in utility closets should not freeze in the winter months. It is reasonable to put the responsibility for properly insulated exterior walls on the contractor who is working on those walls and opening them up to fit the plumbing and vents. The photographs indicate that insulation was not properly installed behind the HVAC/water heater utility closet. I conclude this represents unworkmanlike work by the Respondent.

The Claimants presented an estimate from Kingcaire to insulate behind the HVAC and laundry machines, replace the drywall, and paint the area. (Clmt. Ex. 4). The cost for this work is listed as \$3,300.00. As discussed in the next section, the estimate for repairing drywall and repainting the entire house is \$3,950.00. The paint that will be required in the closet once the insulation work is completed should be included in the estimate for the whole-house repainting. Accordingly, I will reduce the insulation estimate by \$300.00.

#### Drywall cracks and peeling paint (Item 4)

The Claimants provided numerous photographs of drywall cracks and peeling paint. (Clmt. Ex. 15). Some cracking is to be expected after a renovation of an old house, but it

obviously needs to be repaired. Kingcaire provided an estimate for painting and drywall repair of 100 hours at \$35.00 per hour, plus a material allowance of \$450.00, for a total of \$3,950.00. (Clmt. Ex. 4). The painting estimate includes not only all of the repainting throughout the house, but also any “shower caulking/grouting/threshold sand and refinish[ing]” in the master bath. As discussed below, I am denying any claim to reimbursement related to the shower grout. Thus, I have deducted \$500.00 from the painting/drywall estimate as a reasonable estimate of the grout replacement.

#### Electrical panel (Item 5)

The Contract provided that the electrical panel be relocated and upgraded; it did not call for a “heavy up.” (Resp. Ex. 5). In discussions with the Claimants, the idea of whether additional power would be needed was raised. The Respondent took that question to his electrician and let the Claimants know, via text, that more power was unnecessary and if it were supplied, the cost of the electrical work would increase from \$1,750.00 to \$3,500.00. The Claimants responded “Thanks, panel replace only. That is the goal.” (Resp. Ex. 4A). None of the change orders indicates the amps would be increased in the home. Nevertheless, the Claimants argued that the Respondent led them to believe they were getting a “heavy up” while only providing a panel replacement. The evidence simply does not support that assertion.

There was a great deal of testimony regarding the placement of the electrical panel and the various ideas for where the panel should go. Photographs reveal some new lines going to the panel. (Clmt. Ex. 11). Ultimately, the Respondent moved the panel about eighteen inches from its previous location and built a small closet around it to keep it away from the HVAC/water heater closet, thereby meeting code. Mr. Mendes testified that his team of electricians upgraded the panel but did not provide a “heavy up” because that was not in the Contract. He explained

that the older wires appearing in the photograph were long enough to reach the new location of the panel, since it was only moved eighteen inches.

I am denying any claim related to the electrical service. Upgrading to a “heavy up” was not in the Contract. That the Claimants believed they were getting increased service because the Contract included a replacement panel is not the fault of the Respondent and does not reflect unworkmanlike work by him. I also note that the Kingcaire estimate does not include increasing the electrical service to the house.<sup>14</sup>

Attic light switch (Item 6)

The stairs to the attic were “turned around” during the renovation at the request of the Claimants. As a result, the switch to the attic light was disconnected and the light could not be operated using a switch. (Clmt. Ex. 12).

The Respondent testified that he intended for his crew to repair the light switch during the final work day, but it was cancelled, and his crew has never returned to the property.

Kingcaire estimated the cost to repair or replace the light and wiring to the attic light, including installing a new switch, would be \$300.00. (Clmt. Ex. 4). This is reasonable. Regardless of what was in the Contract, the Respondent agreed to turn the attic stairs around and did so, resulting in an unworkable light switch.

Kitchen pantry (Item 7)

The disagreement over the kitchen pantry represented another focal point of the hearing. (Clmt. Ex. 13). I do not know why the parties did not include the details of the kitchen pantry in the Contract, but one of the change orders did specify an IKEA pantry. (Clmt. Ex. 5). In one email, the Claimants mentioned they did not want cheap “Home Depot or IKEA” fixtures, and

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<sup>14</sup> The Claimants argued that the Respondent’s testimony regarding the electrical panel and his memory loss regarding aspects of moving the panel should impact on his credibility. That argument has no merit. This renovation took place four years ago and the plans for the panel had to be reworked as the project developed due to the location of the appliances. A hazy memory regarding certain details is to be expected.

they argued at the hearing that this email proved Claimant Rennie would never have agreed to IKEA shelving, but shelving is not a "fixture" in the sense it was used in that email. The Respondent was quite credible in presenting the conversations they had regarding how to build the pantry, including that the Claimants wanted to do it as cheaply as possible. The Respondent's crew installed what they believed were the correct drawers in the pantry while the Respondent was on vacation and the Claimants directed the crew to remove them. Ultimately, the pantry was left unfinished.

Now the Claimants have presented an estimate for a "Custom build out kitchen pantry closet" at a cost of \$3,800.00. (Clmt. Ex. 4). The Contract did not call for a custom-built pantry. Rather, the parties had differing understandings of their oral agreement for what the pantry should look like. Instead of presenting the Respondent with concrete ideas of what they wanted, the Claimants complained about what was installed. This does not entitle them to be reimbursed for the cost of a custom pantry, estimated by Kingcaire to cost \$3,800.00.

Master bath shower (Item 8)

There is no doubt the glass shower shelf was not installed. The Respondent testified that would have been done had they been allowed back in the home. Kingcaire estimated the cost to add the shelf would be \$180.00. (Clmt. Ex. 4).

There was also testimony about the kind of grout used in the shower, but Mr. Meely put that issue to rest when he testified that the grout used by the Respondent can be used, it is just not as flexible as caulk. He did not find it to be unworkmanlike. The estimate from Kingcaire to repair the grout the Claimants were unhappy with was lumped in with the costs to repair paint and drywall throughout the house. The total for that is \$3,950.00. (Clmt. Ex. 10). In granting reimbursement for paint and drywall repair, I have deducted \$500.00 as a reasonable amount representing the estimate to repair the grout.

The shower glass was another cause of the parties' communication breakdown. The Respondent ordered it custom and testified that the company that measures for a custom glass shower wall should also install it. But when the Claimants learned how much it would cost, they balked and asked for the measurements to order the glass at a sale price from a company in Florida. This angered the Respondent; nevertheless, he gave them the measurements. The evidence was confusing regarding who ended up installing the glass, and whether the glass that was installed fit properly and, if not, whether it was due to the measurements, the different company being used, or because the header was damaged when it was delivered. (Clmt. Ex. 14). Many questions remained following the hearing. Thus, I conclude the Claimants did not prove this complaint by a preponderance of the evidence and I am denying any request for reimbursement related to the shower glass.

Additionally, there is no cost in the Kingcaire estimate for replacing the glass shower wall and the Claimants simply argue the "entire" unit must be replaced. Thus, even were I to find it represented unworkmanlike work by the Respondent, I cannot calculate the cost of replacing the shower glass.

#### Master bath fan (Item 9)

The fan installed in the master bathroom is not large enough or powerful enough for a room the size of that bathroom. It is only large enough for a 45 square-foot bathroom, whereas the bathroom is almost 78 square feet. (Clmt. Exs. 16 and 24).

Kingcaire has estimated it would cost \$300.00 to install a replacement fan to be purchased by the Claimants, and \$350.00 to run an exhaust pipe to the exterior of the house. The Respondent offered no testimony or evidence regarding whether he installed an exhaust pipe to the exterior of the house, but the installation of a fan in a master bathroom on the second floor of a house would require it. Failure to do so constitutes unworkmanlike work by the Respondent.

Doorbell connection (Item 10)

The doorbell connection was somehow lost as a result of the extensive renovation to the first floor. Kingcaire estimated the cost to repair the doorbell connection would be \$200.00 but conceded in the estimate that the problem of the connection was unknown. (Clmt. Ex. 4).

Frameless doors (Item 11)

The Respondent conceded he failed to install the frameless doors, as the Contract required. Instead, he installed regular closet doors, with regular trim. (Clmt. Ex. 20). The Contract listed the doors as costing \$1,148.00. (Clmt. Ex. 5).

Permit costs (Item 12)

The Claimants complained that the Respondent charged them more for each permit than the permits cost. (Clmt. Ex. 23). They accused him of bilking them of the extra costs and requested to be reimbursed for anything over the cost of the permit itself.

The Respondent testified that the cost of the permits includes the amount of time it takes to obtain a permit, which includes having professional crew waiting around the jobsite until the county inspectors show up and sign off on the permits.

Although the permits were excluded from the first Contract, they were included in the May 22, 2017 Contract, which included change orders for plumbing upgrades and changes and flipping the attic stairs. (Resp. Ex. 6). The costs were spelled out in the change orders: the Respondent charged \$600.00 for each of the mechanical and plumbing permits and \$400.00 for the electrical permit. The Respondent emailed a number of change orders to the Claimants, who responded, "Please call me tomorrow to discuss this. I do not want a video of the pipes or snake to the street. Do not have the plumber do this." (*Id.*). The Claimants never voiced an objection to the cost of the permits at the time they were presented in the change order. They only objected to having the plumber video record the pipes to the street. On May 31, 2017, the

Respondent emailed the Claimants another Contract containing change orders, removing the video of the pipe. The cost of the permits was again included in that Contract, with the cost unchanged. It was not until some later time the Claimants raised a complaint about the permit costs.

The Claimants failed to show how the permit amounts were unreasonable or, if so, how the cost constitutes an actual loss, as that term is defined. Bus. Reg. § 8-401.

Jacuzzi outlet (Item 13)

The Claimants are seeking reimbursement of \$660.00 for the jacuzzi outlet that was never installed. (Clmt. Ex. 2). The Claimants requested the outlet in an email dated April 19, 2017 (Clmt Ex. 21, last page) but it was never included in the Contract or change order. The Respondent mentioned in emails that he had agreed to install it. At the hearing, he conceded responsibility on this issue.

Bad faith

As noted above, the MHIC may deny a claim if it determines the “claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Bus. Reg. § 8-405(d). The Claimants argued the Respondent lacks credibility and acted in bad faith. The Respondent argued that it was the Claimants who acted in bad faith. I find both parties are at fault in the breakdown of communication during this project. The Claimants were unreasonable in banning the Respondent and his crew from the property beginning July 27, 2017 and were unreasonable in some of the demands they made of the Respondent. They must understand that they cannot pay for a cheaper pantry while expecting the Respondent to build a custom one. They cannot order flooring late in the project and expect the project to proceed on schedule. Their emails and texts related to whether the Respondent’s crew could return to the property were confusing, at



best, but it does appear the Claimants were willing to have the project manager and crew return to complete the project at some point, so long as the Respondent was not present.

On the other hand, the Respondent wrote the Contract and the change orders and should have been more careful about reducing agreements to writing to avoid just the type of disagreements that disrupted this project. He agreed to many changes and then complained about them after the fact. As the professional in the relationship, he is responsible for maintaining his composure when faced with accusations by the homeowner. Emailing a response after the fact to preserve the issues for later litigation is not tantamount to ensuring meaningful communication while the project is ongoing. The Respondent would not agree to return to the property to address the punch list until after the parties scheduled a meeting. The Respondent was responsible for getting his crew back to the property to complete the job. Good faith is not illustrated by demanding full payment knowing there are items unfinished. For these reasons, I conclude that the Claim is not barred by the Claimants' bad faith.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed the bulk of the work under the Contract, and the Claimants intend to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss:

If the contractor did work according to 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).

As insufficient evidence was presented to establish a claim to repair the grout in the master shower, a reasonable amount must be deducted from the painting estimate, which included grout repair. Thus, as to the costs of painting, I have deducted \$500.00 from the Kingcaire \$3,950.00 estimate. ( $\$3,950.00 - \$500.00 = \$3,450.00$ ). Additionally, as the painting estimate is for the entire house, I have deducted \$300.00 from the costs to insulate behind the HVAC/water heater as the reasonable costs of painting once the insulation is installed and the drywall has been repaired. ( $\$3,300.00 - \$300.00 = \$3,000$ ). I have singled out the work on the passageway that is required, allotting \$1,000.00 as a reasonable amount to scrape out and repair the wood trim. I have also awarded an additional 15% as overhead on costs of the items. That amount is included in the Kingcaire estimate. (Clmt. Ex. 4). Generally overhead is included in the line items, but in this estimate, it was not. It was not contested by the Respondent as unreasonable. These four items differ from what the Fund recommended in its closing argument. I have also removed the costs associated with the kitchen beam and the engineer's report from the Fund's recommended reimbursement amounts. The Fund's position on those items was dependent on my factual findings.

I have concluded the Claimants proved their eligibility for reimbursements in the following amounts for the work that needs to be repaired or completed:

Insulation behind HVAC	\$3,000.00
Paint and drywall repair throughout house	\$3,450.00
Passageway repair	\$1,000.00
Attic light repair	\$300.00
Bathroom fan replacement	\$650.00

Doorbell repair	\$200.00
Frameless doors reimbursement	\$1,148.00
Jacuzzi outlet installation	\$660.00
Shower shelf installation	<u>\$180.00</u>
Subtotal:	\$10,588.00
Plus overhead of 15%	<u>\$1,588.00</u>
Total:	\$12,176.00

Using the formula set forth above, the Claimants' actual loss is calculated as follows:

Amount paid to Respondent	\$65,500.00
Plus estimate to repair/replace/complete	<u>\$12,176.00</u>
Subtotal	\$77,676.00
Minus Contract amount	<u>\$70,144.00</u>
Actual loss	\$7,532.00

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 Claimants' actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$7,532.00.

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

I conclude that the Claimants have sustained an actual and compensable loss of \$7,532.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimants are entitled to recover that amount from the Fund.

#### **RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$7,532.00; 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>15</sup> and

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

June 17, 2021  
Date Decision Issued

  
\_\_\_\_\_  
Joy L. Phillips  
Administrative Law Judge

JLP/dlm  
#192238

<sup>15</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

*WHEREFORE, this 30<sup>th</sup> day of August, 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**