

IN THE MATTER OF THE CLAIM	* BEFORE LAURIE BENNETT,
OF ALLEN WISH,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	* OAH No.: DLR-HIC-02-18-28889
OMISSIONS OF WILLIAM ARNOLD,	* MHIC No.: 18 (75) 181
T/A KITCHENS BY REQUEST, INC.,	*
RESPONDENT	*

* * * * *

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 October 16, 2017, Allen Wish (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in losses allegedly suffered as a result of a home improvement contract with William Arnold, trading as Kitchens by Request, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On September 10, 2018, the MHIC ordered a hearing and forwarded the matter to the Office of Administrative Hearings (OAH).

¹ All references to the Business Regulations article are to the 2015 volume.

I held a hearing on January 16, 2019 at the Office of Administrative Hearings, Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Kris King, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent represented himself.

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. 2018); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered jointly by the Claimant, the Respondent, and the Fund:

1. Contract, December 5, 2016
2. Blueprint

I admitted the following exhibits the Claimant offered, except as noted:

1. Photograph
2. Photograph
3. Photograph
4. Photograph
5. Photograph
6. Photograph
7. Photograph
8. Photograph
9. NOT ADMITTED

10. Photograph
11. Photograph
12. Photograph
13. Photograph
14. Photograph
15. Photograph
16. Photograph
17. Photograph
18. Photograph
19. Photograph
20. Emails, 9/29/17, 10/2/17
21. Emails, 1/5/17
22. Email, 3/27/17
23. Email, 3/10/17
24. Email, 3/25/17
25. Email, 11/17/16
26. Email, 1/17/17
27. NOT ADMITTED
28. Agreement, 7/31/17
29. Email, 4/11/17, 3/29/17
30. Contract, J.D. Carpets, Inc., 10/10/17
31. Estimate, Kitchen Saver, not dated
32. Kitchens by Request, Add On To contract, 6/6/16
33. Morgan Stanley account activity, 12/8/15 to 8/25/16; cancelled check 4/17/17

I admitted the following exhibits the Respondent offered, except as noted:

1. Building Permit, issued 3/11/16--met all county inspection
2. DuraCeramic Installation and Technical Guide, not dated
3. NOT ADMITTED
4. Letter from Jarvis Appliance, 1/16/19
5. Customer satisfaction checklist, Date Opened 11/18/16
6. Photograph
7. Photograph
8. Photograph
9. Photograph
10. Kitchens by Request, work order, 2/18/16
11. Photograph

I admitted the following exhibits the Fund offered:

1. Notice of Hearing, 10/11/18
2. Hearing Order, 9/10/18
3. MHIC Licensing History, printed 1/7/19
4. MHIC Claim Form, received by the MHIC on 10/16/17
5. Letter from the MHIC to the Respondent, 10/23/17

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and presented one witness: Sergio Gonzales, his field manager.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the hearing, the Respondent has held a valid MHIC license.
2. On December 5, 2015, the Claimant and the Respondent entered into a contract for the Respondent to perform home improvement at the Claimant's and his wife's primary residence in Baltimore, Maryland. The home improvement included but was not limited to performing demolition in the kitchen and laundry room; installing drywall, cabinets, countertops, sinks, fixtures, appliances, and flooring in the kitchen and laundry room; performing plumbing and electric in the kitchen; painting the kitchen, family room and laundry room walls, ceiling and trim; and installing a hood vent exhaust damper on the exterior of the house.
3. The total contract price was \$92,464.00.
4. On June 6, 2016, the Claimant and the Respondent entered into a change order for \$4,200.00 for painting labor and repairs to stairwell drywall and a cracked area around a heating, ventilation, and air conditioning (HVAC) return.

5. The Claimant entered into an additional change order on an unspecified date for work in two bathrooms, bringing the total contract price to \$130,356.00.² The Claimant paid the Respondent in full.

6. The Claimant and his wife met with the Respondent at the latter's showroom, where the Respondent presented blueprints for the renovation and showed the Claimant and his wife sample kitchen cabinets. The cabinets each had different fronts and the same plain poplar box.³ The Claimant contracted for maple cabinets; the contract does not distinguish between the species of wood for the boxes, drawers, and the doors. The Claimant and his wife chose a cabinet style.

7. The Respondent's field manager, Sergio Gonzales, was on the job for the first few days, to introduce his work crew to the Claimant and his wife, and periodically afterwards.

8. The Respondent installed the chosen cabinets. The drawer boxes had a clear coating.

9. The floor work required the Respondent to remove the vinyl existing floor covering the kitchen and adjacent laundry room, prepare the subfloor to receive DuraCeramic flooring, install DuraCeramic 12 x 24 tiles, and apply grout.

10. The Respondent removed the old vinyl floor in both rooms. The laundry room had a concrete slab substrate. The Respondent added plywood to the kitchen floor to bring it

² The original contract includes a line item for "contract price" for \$57,013.16. The Claimant was unsure what is included in this amount, and no one questioned the Respondent at the hearing. Below that is a line for "installation" totaling \$35,000.00 and a "delivery charge" of \$450.84 for a total of \$92,464.00. Jt. Ex. 1. The Claimant testified he signed a change order for \$4,200.00. Clmt. Ex. 32. He also testified he entered into a change order for two bathrooms for work he is not claiming. The change order for the bathrooms is not in evidence. He offered undisputed testimony that the original contract and two change orders totaled \$130,031.48, which he paid in full through Morgan Stanley. He testified without clear explanation he then made a final payment of \$325.00. The Respondent does not claim the Claimant owes him money.

³ The box is the cabinet frame, not including the door.

flush with the laundry room floor, making one continuous surface.⁴ The Respondent personally oversaw the floor preparation to ensure it was within manufacturer's specifications. Using laser levels, he measured the flatness of the floor to within manufacturer's specifications. Flatness ensures the floor does not have peaks that will cause the floor to rock. Peaks are the number one reason tiles dislodge. The Respondent installed DuraCeramic tiles the Claimant and his wife chose.

11. The Respondent completed the work required under the contract and change orders.

12. Soon after the floor installation, the Claimant noticed four kitchen floor tiles had dislodged from the adhesive and had "popped up." He reported the problem to the Respondent in or about December 2016. The Respondent agreed to fix the tiles. Mr. Gonzales told him he wanted to wait for warmer weather to fix the tiles to ensure the adhesive worked properly. Mr. Gonzales fixed the four tiles in April 2017.

13. On April 11, 2017, the Claimant sent the Respondent a list of requested repairs, including sealing the cabinet drawers to prevent warping and splintering and repairing the floors.⁵

14. The Claimant complained to the Respondent about the finish on nine cabinet doors. The Respondent removed and refinished the doors.

15. Mr. Gonzales had instructions from the Respondent to re-install the doors provided the Claimant signed a release. The release obligated the Respondent to repaint nine cabinet doors, touch-up paint in two areas of the kitchen, re-spackle the ceiling area next to the HVAC register in the second floor area, and repaint the register area. In return, the Claimant

⁴ "The Respondent" generally means his work crew.

⁵ The list includes other items that I will not discuss because they are not the subject of the Claimant's Fund claim. See Clmt. Ex. 29.

would agree to withdraw a Better Business Bureau complaint he had filed, refrain from making critical statements about the Respondent, withdraw claims the Claimant made on social media about the Respondent, and release the Respondent from further disputes about the work.

16. On or about July 31, 2017, when Mr. Gonzales went to the property, believing the Claimant would sign the release, he started installing the doors while the Claimant read it. After Mr. Gonzales had installed eight doors, the Claimant told him he would not sign the release. Mr. Gonzales wrapped the ninth door in plastic to protect it and placed it in the garage, and he left the property.

17. On October 14, 2016, the Claimant received \$600.00 from Jarvis Appliance for his claim of floor damage.⁶

DISCUSSION

The Claimant asserts he is eligible for reimbursement from the Fund due to the Respondent's poor workmanship in four areas: the kitchen floor, nine doors, ceiling paint, and kitchen cabinets. The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a

⁶ The record does not offer more information about this transaction.

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.

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., 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:

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

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

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(a)-(c).

The Fund argues the Claimant has not proven unworkmanlike, inadequate, or incomplete improvement or, if so, the value of the loss. Therefore, the Fund recommends I deny compensation to the Claimant. For the following reasons, I find the Claimant has not proven eligibility for compensation.

The Doors

The Claimant is seeking replacement of three kitchen cabinet doors because one contains a “ding” or “divot” and two have wood grain that shows through the paint finish. The record includes a photograph of the divot; the Claimant testified he took the photograph on or about July 31, 2016, when Mr. Gonzales was last at the property. The record does not specify the size or depth of the divot. The photograph of the divot does not have any size reference, although it gives the impression of being smaller than a pea. Clmt. Ex. 8. The record does not include any photographs showing the alleged wood grain.

The Respondent testified he removed nine cabinet doors, including these three, at the Claimant’s request, refinished them and re-installed all but one (which Mr. Gonzales left at the house uninstalled) on August 2, 2107.

Assuming without deciding that the Claimant proved the Respondent’s act or omissions caused a ding or the appearance of wood grain in the replaced doors, the Claimant did not prove the amount of the loss. The Claimant offered an estimate for three custom-made replacement doors for a total of \$1,958.00. The record, however, does not contain any evidence the doors must be replaced to remedy seemingly minor cosmetic damage. The Claimant did not offer any evidence of the cost of patching the divot and refinishing the three doors. I cannot therefore assess the Claimant’s loss.

The Claimant testified that when Mr. Gonzales returned to his house to re-install the nine doors, he presented the Claimant with a release from the Respondent. Mr. Gonzales testified the Respondent told him not to install any of the doors until the Claimant signed the release. The Respondent does not dispute Mr. Gonzales’ and the Claimant’s testimony on this point. Notwithstanding the Respondent’s instruction, Mr. Gonzales installed eight of the doors while

the Claimant read the release and decided what to do. When the Claimant would not sign, Mr. Gonzales declined to install the ninth door and he left it on the premises. The Respondent should have installed the doors without a contingency. It seems that as of the hearing, the door had not been installed. The Claimant did not prove the cost of installing the door. For this reason, I cannot determine the value of his loss.

The Claimant made much of the fact the kitchen cabinet doors are a different wood than the cabinet boxes. The contract calls for maple cabinets but does not distinguish between wood for the doors versus the rest of the cabinet. The Respondent testified he showed the Claimant the cabinets in his showroom and the cabinets had poplar boxes. The Claimant is not asking for reimbursement related to this item so the Claimant's grievance about the type of wood does not merit further discussion.

The DuraCeramic Tile Floor in the Kitchen and Laundry Room

The Claimant testified that after the Respondent installed the tile floor, four tiles popped up and the Respondent repaired them (although not in a timely fashion, in the Claimant's view), after which more tiles popped up.

The Respondent testified he personally oversaw the tile installation because the kitchen and adjacent laundry room floors started at different heights and he had to make the floor tops flush before he installed the tile. He therefore characterized the job as "difficult." He testified he placed an extra layer of plywood over the existing plywood in the kitchen to make it flush with the concrete laundry floor. He ensured the "flexion" and "flatness" of the floor according to manufacturer's instructions. The Respondent explained these terms, generally, as follows: flexion is the result of the flatness and flatness relates to peaks in the floor; peaks will cause the floor to rock; flexion is the number one reason tiles pop; and it is possible to follow

specifications for flatness and still have too much flexion. To mitigate flexion, the Respondent testified he followed manufacturer's specifications for the thickness of the subfloor. The Respondent testified that while he personally measured the floor for flatness, he would need an engineer to measure for flexion (which he did not do). He testified the Claimant only complained about four tiles in the kitchen near the transition to the laundry room.

The Respondent further testified that when the Claimant complained about tiles popping and, later, grout cracking, he (the Respondent) called the manufacturer, Congoleum. Someone there told him the room might have a "thermal problem" because the laundry room was near the garage and because a concrete slab (as was in the laundry room) can absorb a lot of cold. The Respondent did not offer testimony or a written statement from that person.

Mr. Gonzales testified about his interaction with the Claimant over the tile. The Claimant told him on January 2 (presumably 2016) that tiles were popping up and sent him photographs of the tiles. Mr. Gonzales told the Claimant the tile glue required installation in warmer weather. The Claimant was worried that if he waited until warmer weather, the warranty would expire. Mr. Gonzales told him not to worry about that. Mr. Gonzales ordered an extra box of tiles and grout which he left for the Claimant for any future problem. When Mr. Gonzales fixed the four tiles, the Claimant asked him to fix two others, which Mr. Gonzales declined to do because those tiles only had surface damage. The Claimant does not claim the Respondent caused the surface damage.

As to the reason the four tiles failed, Mr. Gonzales testified he assumed dust on the floor prevented the tile glue from adhering. He explained the plywood must be sanded to accept the glue, and he spent an entire day sanding and cleaning the surface before the tiles were laid. Even though Mr. Gonzales was not offered as an expert in installing ceramic floor tile, I give his

testimony considerable weight because he was the Respondent's field manager on this job and he installed the tile. Thus, I have to give fair consideration to the possibility the tiles failed because the floor was not properly prepared.

Tiles on a newly installed floor should not pop up, and even Mr. Gonzales was concerned about the temperature at the time of installation and possible dust on the surface. Even if the Claimant experienced a thermal problem, it is the Respondent's responsibility to either understand how to accommodate that possibility or advise a homeowner against the flooring. If Mr. Gonzales is correct the floor was dusty, that, too, is the Respondent's responsibility.

The Claimant presented an estimate for \$6,440.00 to replace the entire floor in the kitchen and laundry room. The Claimant testified he has not had a problem with the tiles in the laundry room. Mr. Gonzales testified the Claimant only complained about the kitchen tiles. The Claimant testified he must replace the entire floor in both rooms because he does not know whether the old tile is still available. The Claimant offered no evidence he made inquiry about the availability of the tile. Mr. Gonzales ordered an extra box of tiles for the Claimant so at least as of then the tiles were available.

Also, the Claimant did not offer sufficient, persuasive evidence about the extent of any additional tile problem in the kitchen beyond the four tiles the Respondent fixed. The Claimant wrote in a June 17, 2017 email to the Respondent that "one of the tiles next to the tiles replaced experienced collateral damage during the replacement process." Clmt. Ex. 26. "Collateral damage" is not explained. The Claimant attached a photograph to the email that does not show any obvious damage. The Claimant testified he does not know how many tiles have since popped up because he has not counted them. Given his concern about the popped tiles, I find it hard to believe the Claimant would not have counted.

If additional tiles have popped up, the Claimant must show why it is unacceptable to replace just those tiles. The Claimant testified someone from a company that gave him an estimate to replace the floor told him he cannot replace some tiles because that is like playing a game of “whack a mole” and that person believes the problem is below the surface of the floor. The Claimant did not present that person’s testimony or written statement about why replacement of the entire floor is necessary. Without more persuasive evidence about why the entire floor needs replacing, rather than a repair to an unspecified number of popped tiles, I find the Claimant has not proven his loss.

The Claimant testified that some grout lines in the kitchen tile have separated from the tile. Claimants Exhibits 3, 4, and 5 show the separation. The Claimant was unsure when he took the photographs or when the grout separated; he guessed it was one year earlier, so around January 2018. That was two years after the Respondent laid the tile. The evidence does not show when or why the grout separated. I cannot attribute the separation to the Respondent’s acts or omission.

Also, on October 14, 2016, the Claimant received \$600.00 from Jarvis Appliance for his claim of floor damage. The record does not show the nature of the damage or whether this reimbursement covers any floor work the Claimant is now claiming.

The Cabinet Drawer Boxes

The Claimant asserts the Respondent installed cabinet drawers that are unfinished and the unfinished wood has splintered and given him splinters. The Claimant testified it is his understanding from other contractors a finish is required. The Contract is silent as to whether the Respondent shall finish the drawers with a coating. The Respondent nevertheless testified he

sanded the poplar smooth and gave the drawers (and the boxes) a clear finish. Mr. Gonzales testified nothing about the drawers would have caused splinters.

The record does not include sufficient, persuasive evidence of splintered wood or that the Claimant sustained splinters. As between the Claimant's testimony the boxes are unfinished and the Respondent's testimony they are finished, I find the evidence in equipoise, meaning it is equal. The Claimant has not met his burden of proof.

The Claimant seeks replacement of the boxes. Even if the boxes were not coated and that has caused splintering, the evidence does not show the appropriate remedy is to replace the boxes. The Claimant did not present any evidence of the cost to re-sand and coat the boxes.

Drywall and Paint Around the HVAC Return at the Hall Bathroom and Miscellaneous Paint and Drywall Repairs

The Claimant asserts he is eligible for \$4,200.00 in labor to paint the dining room walls, ceiling, and new trim; paint the foyer walls; paint the stairwell and upstairs hallway ceiling and walls; paint the powder room walls, ceiling and trim; paint the hall bath walls; repair nail pops and horizontal drywall seams where drywall is taped; and repair a cracked area around the HVAC return at the hall bathroom. *See Clmt. Ex. 32.*

Claimant Exhibit 19, a photograph, clearly shows the imperfections around the HVAC return. Mr. Gonzales testified he does not know why the drywall has "undulations." He speculated the damage was pre-existing to the Respondent's work and possibly caused by condensation to the drywall. He noted the Claimant had previous work done in this area of the wall/ceiling. Mr. Gonzales said he "wouldn't let that work fly." Mr. Gonzales could not say whether work in the photograph represents the Respondent's finished product or someone else's. He believes the problem was addressed when they painted the staircase.

The Claimant testified the Respondent told him he would re-spackle and re-paint the area. In fact, the release the Respondent prepared for the Claimant to sign includes this work. The area needing repair is little more than the length of the return and perhaps a couple of inches wide. In all, the repair strikes me as relatively minor. The Claimant's estimate for \$4,200.00 for many different services does not itemize this particular service. Thus, it is impossible to value the Claimant's loss.

The Claimant presented photographs to show a ceiling drywall seam is separating; he wants the seam repaired and the ceiling repainted. Clmt. Exs. 11, 12, 13, 14, 15. He testified he took the photographs on January 1, 2019, just days before the hearing. If so, the conditions represented in the photographs are nearly three years after the Respondent performed the work. It is impossible for me to determine whether the separating drywall seam is the result of the Respondent's acts or omissions. Without more evidence, I cannot find the Claimant suffered a loss.

The record does not include photographs of nail pops or the number of nail pops. More importantly, the record does not show when the nail pops first appeared or why they have appeared. I cannot attribute any nail pops to the Respondent's act or omissions.

As to other items in the estimate, the record is not clear why the Claimant is attributing them to the Respondent.

The Powder Room Tile Grout

The Claimant testified the grout in the powder room tile "has not stood the test of time." I am unclear whether the Claimant is seeking reimbursement for the cost to fix the tile. He testified he and the Respondent entered into a change order for work. Assuming he is claiming the grout, I cannot conclude the cracked grout is due to the Respondent's acts or omission. The

record includes a photograph of the grout the Claimant took in January 2019, three years after the Respondent finished the work. Clmt. Ex. 18. The record does not include any evidence of how pervasive the cracks are and, importantly whether the grout should have lasted longer or the cost to repair it. Thus, assuming the Respondent is responsible for the cracks, the Claimant did not prove the value of his loss.

Finally, as to the Respondent's work in general, the Claimant testified the Respondent looked him in the eye and gave his word he would not finish the job until the Claimant and his wife were 100% satisfied. The Claimant expects the Respondent to fulfill his promise. The record shows the Respondent fulfilled his obligation to perform workmanlike, adequate, and complete home improvement; to the extent the Respondent may have fallen short, the Claimant did not prove the value of his loss.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3). I therefore conclude that the Claimant is entitled to recover zero dollars from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant zero dollars; and

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

April 9, 2019
Date Decision Issued

CONFIDENTIAL

Laurie Bennett
Administrative Law Judge

LB/kdp
#177787

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT OF THE COMMITTEE ON THE PHYSICS DEPARTMENT

FOR THE YEAR 1964-1965

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CHICAGO, ILLINOIS

**IN THE MATTER OF THE CLAIM
OF ALLEN WISH**

**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF WILLIAM ARNOLD t/a
KITCHENS BY REQUEST, INC.**

**MARYLAND HOME IMPROVEMENT
COMMISSION**

**MHIC CASE NO. 18(75)181
OAH CASE NO. DLR-HIC-02-18-28889**

* * * * *
FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on January 16, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 9, 2019, concluding that the homeowner Allen Wish (“Claimant”) failed to prove that he sustained an actual loss as a result of the acts or omissions of William Arnold t/a Kitchens by Request, Inc. (“Contractor”). *ALJ Proposed Decision* p. 17. In a Proposed Order dated June 13, 2019, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to deny an award from the MHIC Guaranty Fund. The Claimant subsequently filed exceptions of the MHIC Proposed Order.

On August 1, 2019, a hearing on the exceptions filed in the above-captioned matter was held before a three-member panel (“Panel”) of the MHIC. Both the Claimant and the Contractor were present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following two preliminary exhibits were offered by AAG Sachs and admitted into evidence at the exceptions hearing: 1) June 12, 2019 Cover Letter with OAH Proposed Decision and MHIC Proposed Order, and 2) Notice of Exceptions Hearing with Claimant’s Written Exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel’s review of the record was limited to the preliminary exhibits offered by AAG Sachs at the exceptions

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

IN SENATE
JANUARY 11, 1966

REPORT OF THE
COMMISSIONERS OF THE STATE BOARD OF CONTROL

FOR THE YEAR
ENDING DECEMBER 31, 1965

CONTENTS

Introduction	1
Summary of Major Accomplishments	2
Financial Statement	10
Personnel Statement	15
Administrative Statement	20
Recommendations	25
Appendix A - Financial Statement	30
Appendix B - Personnel Statement	35
Appendix C - Administrative Statement	40
Appendix D - Recommendations	45

hearing, the OAH Proposed Decision and the exhibits introduced into evidence at the OAH hearing, COMAR 09.01.03.09(G) - (I).

In his written exceptions the Claimant challenges the credibility of the Contractor and his witness Mr. Gonzales. The ALJ was tasked with observing the demeanor of the witnesses as they testify, judge their credibility, and ultimately make findings of fact based on this testimony. The Commission will not overturn the credibility determinations of the ALJ in this case.

The Commission, however, disagrees with the ALJ's analysis of the issue of the faulty tile floor. The ALJ acknowledged that the tile floor was installed incorrectly stating "[t]iles on a newly installed floor should not pop up, and even Mr. Gonzales was concerned about the temperature at the time of installation and possible dust on the surface." *ALJ Proposed Decision* p. 12. The ALJ, however, did not make an award, instead finding that the Claimant failed to prove the value of his loss because he did not provide persuasive evidence as to why the entire floor needed to be replaced rather than repairing specific popped tiles. *ALJ Proposed Decision* p. 13. The Commission finds that the replacement of individual ceramic tiles in a larger tile floor is extremely difficult to accomplish without causing further damage to surrounding tiles. More importantly, from the ALJ's Proposed Decision it is clear that the Contractor's field manager, Mr. Gonzales, testified that he assumed dust on the floor was preventing the tile glue from adhering, and that he was concerned about the temperature at the time of installation. *ALJ Proposed Decision* pp. 11-12. This calls into question whether the floor was properly prepared before laying the tile, and therefore replacement of the floor is an appropriate remedy. As a result, the Commission finds that the Claimant provided sufficient evidence of the value of his actual loss through the estimate for the replacement of the entire tile floor. *OAH Hearing Claimant's Exhibit 30*. Pursuant to the formula set forth in COMAR 09.08.03.03B(1), the Commission calculates the Claimant's actual

loss as follows:

Amount paid to the Contractor (\$130,356.00) + Amount to correct the Contractor's work (\$6,440.00) – Original Contract Price (\$130,356.00) = Actual Loss (\$6,440.00)

The Commission amends its decision to award the Claimant \$6,440.00 from the Maryland Home Improvement Guaranty Fund.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 14th day of November 2019 **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED;**
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED;**
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**
- D. That the Claimant is awarded **\$6,440.00** from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, Md Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a) (2015);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; **AND**
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

1. The first part of the experiment is devoted to the study of the reaction of hydrogen peroxide with various metal ions. The reaction is carried out in a series of test tubes, each containing a different metal ion and a known amount of hydrogen peroxide. The color change observed in each test tube is recorded and compared with the results obtained in the previous part of the experiment.

2. The second part of the experiment is devoted to the study of the reaction of hydrogen peroxide with various metal ions in the presence of a catalyst. The reaction is carried out in a series of test tubes, each containing a different metal ion, a known amount of hydrogen peroxide, and a known amount of catalyst. The color change observed in each test tube is recorded and compared with the results obtained in the previous part of the experiment.

3. The third part of the experiment is devoted to the study of the reaction of hydrogen peroxide with various metal ions in the presence of a catalyst and a known amount of a substance which is known to inhibit the reaction. The reaction is carried out in a series of test tubes, each containing a different metal ion, a known amount of hydrogen peroxide, a known amount of catalyst, and a known amount of inhibitor. The color change observed in each test tube is recorded and compared with the results obtained in the previous part of the experiment.

4. The fourth part of the experiment is devoted to the study of the reaction of hydrogen peroxide with various metal ions in the presence of a catalyst and a known amount of a substance which is known to inhibit the reaction. The reaction is carried out in a series of test tubes, each containing a different metal ion, a known amount of hydrogen peroxide, a known amount of catalyst, and a known amount of inhibitor. The color change observed in each test tube is recorded and compared with the results obtained in the previous part of the experiment.