IN THE MATTER OF THE CLAIM OF MARIA MOSES	*	**MARYLAND HOME IMPROVEMENT COMMISSION**
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AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF BRIAN BOYLE t/a HANDY HUSBAND CONTRACTORS, LLC	*	**MHIC CASE NO. 18(90)245** **OAH CASE NO. DLR-HIC-02-18-21719**
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FINAL ORDER

This matter was heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on October 11, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on January 9, 2019, concluding that the homeowner Maria Moses ("Claimant") sustained an actual and compensable loss of $2,572.10 as a result of the acts and omissions of Brian Boyle t/a Handy Husband Contractors, LLC ("Contractor"). *OAH Proposed Decision* p. 16. In a Proposed Order dated March 25, 2019, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to award the Claimant $2,572.10 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On June 20, 2019, a hearing on the exceptions was held before a three-member panel ("Panel") of the MHIC. The Contractor and Homeowner were both present without counsel. Nicholas Sokolow, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following four preliminary exhibits were offered by AAG Sokolow and admitted into evidence at the exceptions hearing: 1) January 9, 2019 OAH Proposed Decision, 2) March 25, 2019 MHIC Proposed Order, 3) April 4, 2019 Written Exceptions of the Contractor, and 4) April 15, 2019 Notice of Exceptions Hearing to be held June 20, 2019. Neither the Contractor nor the Claimant produced a copy of the transcript of the hearing before the ALJ,

and therefore the Panel's review was limited to the ALJ's proposed decision, the exhibits introduced into evidence at the OAH hearing, and the preliminary exhibits offered by AAG Sokolow at the exceptions hearing. COMAR 09.01.03.09(G) - (I)

In his written exceptions, the Contractor alleges that there are two "non-truths" in the ALJ's findings of fact. First, the Contractor contends that he replaced the Claimant's original 3 inch copper line with a line made of PVC, and not a new copper line as was found by the ALJ. The Contractor, however, does not contest the ALJ's further finding that the new line later leaked. *OAH Proposed Decision* p. 6. The Contractor's second contention is in the same vein, arguing that the ALJ's finding that he installed a plywood bi-fold door was incorrect because they were sliding doors and not bi-fold. Regardless of the style of door installed, the ALJ correctly found, and the photographs in evidence clearly show, that the doors were "installed unfinished with observable saw-cut edges." *OAH Proposed Decision* p. 6. The Contractor failed to point to evidence in the record showing that the ALJ was incorrect on these two specific details. More importantly, even if the Contractor were correct, the two discrepancies in the ALJ's description of the work would be irrelevant to the ALJ's ultimate finding that both items installed by the Contractor needed to be repaired or replaced.

The Contractor's remaining exceptions challenge the ALJ's calculation of actual loss. Without citing to the record to support his calculation, the Contractor contends that the true amount he was paid by the Claimant is $9,429.16 and not the $9,432.33 found by the ALJ. *OAH Proposed Decision* p. 6-7. The ALJ's finding, however, is supported in the record by copies of three checks from the Claimant to the Contractor in the amounts of $5,123.00, $3,269.33, and $1,040.00, which total $9,432.33. *OAH Hearing Claimant's Exhibits* 3, 14.

The Contractor also argues that the regulatory formula used by the ALJ is incorrect and offers his own formula where the amount paid to the contractor is reduced by the cost of a

macerating toilet he left on the jobsite. The formulas used in the calculation of actual loss in Maryland Home Improvement Commission Guaranty Fund claims are set by regulation at COMAR 09.08.03.03. The specific formula used by the ALJ is found at COMAR 09.08.03.03B(3)(c) and reads as follows:

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

The regulation can be reduced to the following equation:

(Amount Paid to Contractor) + (Amount to Correct or Complete Work) – (Original Contract Price) = (Actual Loss)

The formula is designed to produce a figure of actual loss that represents the cost to the homeowner to achieve what she contracted for with the original contractor.

The ALJ found that the amount paid to the Contractor was $9,432.33. *OAH Proposed Decision* p. 7. This finding is supported in the record by copies of the checks the Claimant wrote to the Contractor totaling this amount. *OAH Hearing Claimant's Exhibits* 3, 14. The ALJ then found that the total cost to correct or complete the Contractor's work was $5,088.77. *OAH Proposed Decision* p. 10. The ALJ based this cost on the invoices for work done by a subsequent contractor the Claimant hired to finish the job. *OAH Hearing Claimant's Exhibits* 11, 12. The fact that the Contractor delivered the macerating toilet to the Claimant has no bearing on the ALJ's finding that the Claimant still had to pay an additional $5,088.77 to a subsequent contractor to correct and complete the original Contractor's work.

The ALJ then found the original contract price to be $11,949.00. *OAH Proposed Decision* p. 5. The original contract price is the total cost of the job contracted for by a homeowner and the original contractor. The ALJ derived this total cost from the sum of the original proposal emailed by the Contractor to the Claimant on May 20, 2017, and a subsequent proposal for additional work that was emailed to the Claimant on June 11, 2017. *OAH Proposed Decision* p. 4-5; *OAH Hearing Claimant's Exhibit* 1. The macerating toilet in question is clearly contemplated in the original proposal provided by the Contractor. *OAH Hearing Claimant's Exhibit* 1. This proposal contains a total of $10,178.00 for materials and labor. When this amount is combined with the cost of the separate proposal of $1,771.00, for additional work that was later agreed to by the Claimants, the resulting original contract price is $11,949.00. *OAH Hearing Claimant's Exhibit* 1.

The ALJ correctly applied the appropriate formula laid out in the regulation. *OAH Proposed Decision* p. 15; COMAR 09.08.03.03B(3)(c). When the ALJ's figures are placed in the formula it reads as follows:

$9,432.33 (Amount Paid to Contractor) + $5,088.77 (Amount to Correct or Complete Work) – $11,949.00 (Original Contract Price) = $2,572.10 (Actual Loss)

The Commission agrees with the ALJ's analysis and finds no error in his decision. The ALJ's decision is thorough, supported by the evidence in the record and correct as a matter of law.

Having considered the parties' arguments, the evidence in the record and the OAH Proposed Decision, it is this **24th** day of **September 2019 ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND

C. That the Proposed Decision and Order of the Administrative Law Judge is **AFFIRMED;**

D. 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

IN THE MATTER OF THE CLAIM	*	**BEFORE DANIEL ANDREWS,**
OF MARIA MOSES,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF BRIAN BOYLE, T/A	*	
HANDY HUSBAND CONTRACTORS,	*	
LLC,	*	**OAH No.: DLR-HIC-02-18-21719**
RESPONDENT	*	**MHIC No.: 18 (90) 245**

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PROPOSED DECISION

STATEMENT OF THE CASE

On December 1, 2017, Maria Moses (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of an actual loss suffered as a result of a home improvement contract with Brian Boyle, trading as Handy Husband, LLC (Respondent). On July 3, 2018, the Department of Labor, Licensing, and Regulation (Department), MHIC, issued a Hearing Order and referred the matter to the Office of Administrative Hearings (OAH) to hold a hearing.

On October 11, 2018, I convened the hearing as scheduled. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).[1] The Claimant represented herself. The Respondent represented himself. Shara Hendler, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Claimant:

CL 1 Emails between Respondent and Jonny Moses[2] and the Claimant, dated May 19 and 20, 2017

CL 2 Claimant's hand-drawn diagram of the Claimant's unfinished basement area with general depiction of the work performed the Respondent, undated

CL 3 Claimant's personal checks paid to Respondent, dated July 7, 16, and 26, 2017

CL 4 Photograph's of installed bathroom and tile

CL 5 Photographs of hallway

CL 6 Photographs of laundry

CL 7 Photographs of closet and hallway

CL 8 Photographs of closet and guest room

[1] Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 volume.
[2] Jonny Moses is the Claimant's husband.

CL 9 Photograph of toilet in master bath

CL 10 Invoice, Michael & Son Services, dated August 16, 2017

CL 11 Estimate and Invoices from Mr. Handyman, including:

- Estimate, dated September 14, 2017
- Invoice, dated September 22, 2017
- Invoice, dated September 22, 2017
- Invoice, dated September 26, 2017
- Invoice, dated September 27, 2017

CL 12 Claimant's personal checks paid to Mr. Handyman, dated September 12, 22, 26, and 27, 2017

CL 13 Photographs of bathroom and laundry area

CL 14 Invoice from Mr. Handyman, dated January 15, 2018, with Claimant's personal check paid to Mr. Handyman, dated January 15, 2018

I admitted the following exhibits on behalf of the Respondent:

RP 1 Respondent's letter to MHIC, undated

RP 2 Emails between Respondent and Jonny Moses and the Claimant, dated May 17, 2017 through June 16, 2017; copies of Claimant's personal checks paid to the Respondent on July 7 and 16, 2017

RP 3 Home Improvement Claim Form, dated December 1, 2017

RP 4 Invoice from Thomas Somerville Co., dated July 19, 2017, with information regarding a Saniflush system, undated

RP 5 Respondent's written response to Claimant's complaint, undated

RP 6 Emails between Respondent and Jonny Moses, dated August 10, 22, and 30, 2018

I admitted the following exhibits on behalf of the Fund:

GF 1 Hearing Order, dated July 3, 2018

GF 2 OAH Notice of Hearing, dated July 25, 2018

GF 3 Home Improvement Claim Form, dated December 1, 2017

GF 4 MHIC Licensing History for Respondent, dated October 9, 2018

GF 5 MHIC Complaint Form, dated August 18, 2017, and MHIC Order, dated August 23, 2017

CL-9 Disclosure of failed to record [illegible]

CL-10 Typolog, Mr. and Mrs. John [illegible] dated August 16, 2017

CL-11 Petitioners' Invoice Cash Disbursements, including:
- [illegible] dated [illegible] 14, 2017
- Invoice dated September 22, 2017
- Invoice dated September 22, 2017
- Invoice [illegible] September 26, 2017
- Invoice dated September [illegible], 2017

CL-12 Claimants' personal checks paid to [illegible] Investigations, dated September 12, 22, 26, and [illegible], 2017

CL-13 Photographs of bathroom and laundry area

CL-14 Invoice from [illegible] Handyman, dated January [illegible], 2018, with Claimants' personal check paid to [illegible] dated January 15, 2018

Exhibits to follow, with a [illegible] [illegible]

RX-1 Respondent's letter to [illegible], undated

RX-2 Email between Respondent and [illegible] Management for Claimant, dated July 12, 2017 [illegible] July 16, 2017, copies of Claimants' [illegible] checks [illegible] the [illegible] on July [illegible], 2017

RX-3 Lease [illegible] dated September 1, 2017

RX-4 Invoice from Thomas Plumbing Co., dated [illegible] 20, 2017, for a [illegible] repairing a [illegible] water line

RX-5 Warranty [illegible] equipment [illegible]

RX-6 Email [illegible] Management [illegible] August 12, 22, [illegible], 2017

Exhibits to follow, with a [illegible] [illegible]

CX-1 Leasing Order, dated [illegible]

CX-2 Claimants' Notice of Claim, dated [illegible] 2017

CX-3 Mediation Agreement, Claim Form, dated [illegible] 2017

CX-4 Leasing History [illegible], dated October [illegible]

CX-5 [illegible] Fees [illegible] August 16, 2017 and [illegible] August 16, 2017

Testimony

The Claimant testified her own behalf and presented the testimony of Barry Webb, a technician employed by Mr. Handyman.

The Respondent testified on his own behalf.

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, the Respondent was a licensed home improvement contractor operating under MHIC registration number 01-98683.

2. On May 19, 2017, the Claimant or her husband, Jonny Moses, met with the Respondent at the Claimant's home to discuss the renovation of the Claimant's unfinished basement area.

3. By email dated May 20, 2017, the Respondent proposed to perform a home improvement at the Claimant's home (the Original Proposal), which included:

- relocating a hot water heater, washer, dryer, and slop sink and reconnecting all plumbing;
- installing a seven by five foot bathroom;
- installing plumbing and electrical work to the new bathroom;
- installing drywall ceiling; tape and finish;
- installing drywall walls, tape, and finish;
- installing drywall to new laundry room area, tape, and finish;
- installing a thirty-inch door to access new bathroom;
- installing ceramic tile to floor, grout, and finish;
- installing a toilet, shower stall (diverter), and vanity to a macerator holding tank;
- painting new drywall;
- installing baseboard molding;
- installing floor tile to remaining portion of room outside of the new bathroom;
- installing closet framing for sliding doors, four-doors wide;
- removing current door outside of basement office and close opening;
- creating new access to closet through basement office, installing door; and
- adding a light switch to operate light in closet.

4. By the same email, the Respondent proposed that the cost of materials would be $470.00,[3] the proposed cost of labor would be $9,808.00, for a total proposal of $10,178.00.[4]

5. By the same email, the Respondent required one-third of labor plus the cost of materials be paid to consummate the agreement ($3,739.33), one-third of labor costs to be paid on the first day of work ($3,269.33), and one-third of labor costs to be paid upon completion of the work ($3,269.33).

6. On June 11, 2017, the Respondent emailed the Claimant a separate proposal to install a three-inch waste line at a cost of $1,582.00, with a materials cost of $189.00, for a total proposed cost of $1,771.00 (Separate Proposal).[5]

7. The Original Proposal ($10,178.00) plus the Separate Proposal ($1,771.00) resulted in a total proposed contract price of $11,949.00.

8. On or about June 15, 2017, the Claimant and her husband agreed with the Respondent's proposed home improvement work and cost (the Contract).

9. Based on conversations with the Respondent, the Claimant anticipated that the Contract would be performed in eleven days.[6]

10. On or about July 7, 2017, the Respondent began to perform the Contract by turning off the water that serviced two toilets, two sinks, and a shower on the floor above the basement so he could replace an old three-inch copper pipe.

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[3] In the Respondent's email, he described the materials to be "fittings, pipe, wire, recessed can lights, lumber, and thin-set."

[4] My calculation of the proposed material and labor costs amounts to a total of $10,278.00; however, the parties agreed to a cost of $10,178.00. Based on the parties agreed upon cost of $10,178.00, I have used that amount as the total cost of the Original Proposal for any subsequent analysis.

[5] The three-inch pipe was to replace an old copper pipe that fed two toilets, two sinks, and a shower tub.

[6] The Claimant testified that she also understood that when the Respondent indicated that the Contract would take eleven days that his estimate really meant twenty-two days.

11. On July 7, 2017, the Claimant paid the Respondent $5,123.00, which represented one-third of the proposed labor costs, all materials, and the full amount of the plumbing agreement (Separate Proposal).

12. On July 16, 2017, the Claimant paid the Respondent by a check in the amount of $3,269.33, which represented another one-third of the proposed labor cost.

13. On or about July 19, 2017, the Respondent ordered a SaniPlus macerating pump, with tank and toilet bowl (SaniPlus), in the amount of $1,036.83, from the Thomas Somerville Co., which was to be installed in the Claimant's new bathroom. The SaniPlus was not received by the Respondent until July 25, 2017.

14. On or about July 16, 2017, many areas of the work performed by the Respondent were incomplete including ceramic tiles without grouting; installed electrical fixtures including lights, electric boxes, and switches were exposed; and wood trim and baseboards were unfinished and had significant gaps due to poor cutting and installation. Additionally, large areas of drywall installed by the Respondent were unfinished and required additional work to make ready for painting, and a plywood bi-fold closet door was installed unfinished with observable saw-cut edges.

15. The Respondent also replaced an old waste water copper pipe with a new copper pipe which leaked and caused mold damage to areas of the drywall installed by Respondent. Additionally, a shower diverter installed by the Respondent was leaking and required to be repaired.

16. After July 16, 2017 and multiple occasions, the Claimant raised concerns regarding the Respondent's workmanship and work progress, including the amount of time it will take the Respondent to finish the Contract.

17. After July 16, 2017 and until August 9, 2017, the Respondent worked on the Contract sporadically by not working consistently on a daily basis and, when he did work, he would only stay for a minimal amount of time.

18. On July 26, 2017, the Claimant paid the Respondent by a check in the amount of $1,040.00.

19. As of July 26, 2017, the total amount paid to the Respondent was $9,432.33, with a remaining balance due on the Contract in the amount of $2,516.67.

20. August 9, 2017 was the last day the Respondent performed any work at the Claimant's home and the issues the Claimant had with the Respondent's workmanship and progress remained as it was since July 16, 2017.

21. On August 16, 2017, the Claimant hired Michael and Son Services to repair a plumbing fixture installed by the Respondent which serviced the shower in the new bathroom. Michael and Son rebuilt or replaced a water diverter in the shower handle which permitted water to flow to the shower head and also had the effect of stopping a constant drip of water which was leaking from the shower head. The cost of the repair work was $347.06.

22. On August 18, 2017, the Claimant filed a complaint with the MHIC.

23. On August 22, 2017, the Respondent sent an email to the Claimant's husband which requested that he be allowed back into the Claimant's home to finish the Contract. As an alternative, the Respondent requested to be paid for supplies and the agreed upon portion of the remaining labor and he would consider the Contract fulfilled.[7] Otherwise, the Respondent threatened the Claimant and her husband with collection and legal action.

24. On August 23, 2017, the MHIC issued an order to the Respondent to respond in writing within fourteen days to the MHIC complaint filed by the Claimant.

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[7] The Respondent asserts that the Contract was ninety-six percent complete.

25. On or about August 30, 2017, the Claimant's husband responded that he and his wife were done with the Respondent and would not agree to his proposed terms to return to work or to make a payment to the Respondent. As a result, the Claimant sought other contractors to complete the Contract and repair any work performed by the Respondent.

26. On September 14, 2017, the Claimant obtained an estimate from Mr. Handyman, a licensed MHIC contractor, to repair or complete the work performed by the Respondent. The estimated cost of the proposed work ranged from $6,807.13 to $7,750.00. The proposed work included:

- installing drywall at the ceiling of the stairs and under the wall of the stairs and make paint ready;
- cutting drywall back at the base of the stairs, installing cornerbead and make paint ready, and installing supplied grout at ceramic tiled area under the stairway;
- in the utility area, removing pieces of tiled floor, cutting carpet back, installing termination strip, installing supplied tile and grout, installing carpet tack, and setting carpet;
- in the utility area, adding extension to existing door jamb to make flush with drywall then installing new casing trim and making paint ready;
- repairing drywall installed by the Respondent, installing colonial casing, and make paint ready;
- removing and reinstalling a dropped ceiling above washer and dryer;
- laundry bathroom and closet areas have eighty liner feet of baseboards installed but which are not cut to fit and have large gaps, requiring installation of new baseboard and making paint ready;
- removing casing at rear entrance door, installing jamb extension to interior frame, installing new colonial casing, and make paint ready;
- re-installing exterior entrance door light fixture;
- removing up to four electrical fixtures and installing four two-way light switches;
- in bathroom area, removing drywall at the shower head area to reveal plumbing properly installed at the shower enclosure flange, finishing drywall, and make paint ready;
- in bathroom area, removing drywall at the back of shower enclosure wall, installing wood frame to extend beyond shower enclosure panel, finishing with drywall, and make paint ready;
- in bathroom area, removing toilet, installing new drywall, and make paint ready;
- in bathroom area, installing supplied grout where grout is missing near the shower;
- at rear entrance and electrical panel area, finish drywall and make paint ready;
- in closet area, removing make-shift doors, installing new bi-fold doors, with wood studs, and make drywall paint ready;

- installing up to eight supplied recessed light trim rings;
- in the laundry and utility room, applying primer paint and applying supplied wall, ceiling, and trim paint to the area;
- in the family room and closet area, finishing drywall, setting baseboards and paint; and
- at the closet threshold, cutting tile and installing supplied threshold.

27. On September 22, 2017, the Claimant received an invoice from Mr. Handyman for work performed including finishing wood trim and reinstalling drywall that was removed due to mildew, reassembling bathroom trim and toilet, installing vent for bathroom, fixing leak in four-inch pipe under steps, and installing tape and drywall mud. The invoiced amount was $1,151.10.

28. On September 22, 2017, the Claimant received a second invoice from Mr. Handyman for work performed including hanging drywall in areas that required drywall, installing corner bead at shower wall, and moving supply lines for service sink so the lines are outside the wall. The invoiced amount was $1,043.11.

29. On September 26, 2017, the Claimant received a third invoice from Mr. Handyman for work performed including finishing and trimming framed out closet door fronts, installing corner bead mud and tape, installing three bi-fold closet door, installing baseboard and trim around door frame, and skimming the rest of the (drywall) in the hallway and ceiling. The invoiced amount was $1,263.76.

30. On September 27, 2017, the Claimant received a fourth invoice from Mr. Handyman for work performed including removing basement door and installing new thirty-six inch door, hanging mirror and towel holders in bathroom, installing electrical box and light, apply grout where grout was missing, caulking trim base, installing tack and ceiling tiles above washer and dryer, replacing outlets and switches, installing electrical box and run wire for lights for washer and dryer, and installing carpet in closet. The invoiced amount was $1,461.80.

31. Through a series of payments, the Claimant paid Mr. Handyman for the work performed a total of $5,088.77. The amount and date of each payment are:

- $169.00 on September 12, 2017
- $2,194.21 on September 22, 2017
- $1,263.76 on September 27, 2017
- $1,461.80 on September 27, 2017

32. The Claimant's actual loss is $2,572.10.

DISCUSSION

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. 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 (3rd 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 licensed contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Id.* at § 8-401. The MHIC may deny a claim against the Fund if a claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. *Id.* § 8-405(d). For the following reasons, I find that the Claimant established an actual loss and is eligible for compensation from the Fund.

The Claimant sought home improvement contractors to renovate the basement of her home. The Claimant wanted to renovate the basement because her mother was coming to live in her home for several months to assist the Claimant with several young children. After receiving two email proposals from the Respondent which generally described the proposed work to

renovate the basement, the Claimant agreed to a total contract price of $11,949.00 and the proposed work is described in my Findings of Facts.

On July 7, 2017, the Respondent began to perform the work required by the Contract. By July, 16, 2017, the Respondent had performed a substantial portion of the Contract and, by July 26, 2017, the Claimant had paid the Respondent a total of $9,432.33. However, after July 16, 2017, the Claimant found that the Respondent was no longer consistently performing the work required by the Contract. The Respondent was not working on a daily basis and when he did work, the Respondent would only be present in the home for a very limited period of time. The Claimant became concerned with the progress of the renovation and began complaining to the Respondent about his ability to finish the Contract on a timely basis. The Claimant also complained to the Respondent that the work performed was incomplete or inadequately performed. To support her complaints, the Claimant offered into evidence several photographs taken in July or August of 2017, which demonstrated several electrical fixtures including electrical boxes, switches, and lighting were not fully installed and were left open and exposed; ceramic tiles were installed without grout; wood trim and baseboards were installed with substantial gaps due to improper sizing and cutting; and, areas of drywall were not installed or if installed where not properly made ready to be paint and required additional work to be properly taped, skimmed, and made ready to be painted. The Respondent also installed a new closet with a plywood tri-fold door which was inadequately built with observable saw cuts along the edges of the door.

After the Claimant made her complaints known to the Respondent, the progress of the renovation came nearly to a halt. The Claimant made several attempts by telephone to ask the Respondent to finish the Contract but by sometime after the third week of July 2017, the Respondent stopped answering the Claimant's or her husband's telephone calls. August 9, 2017

was the last day the Respondent performed any work required under the Contract and, as of this date, the work required by the Contract was left incomplete or inadequately performed as described in the Findings of Facts. As a result, the Claimant filed her original complaint with the MHIC on August 18, 2017. Then, on August 23, 2017, the Respondent sent an email to the Claimant's husband requesting to be allowed back into the Claimant's home to finish the Contract. As an alternative, the Respondent requested to be paid for supplies and the agreed upon portion of the remaining labor and he would consider the Contract fulfilled. Otherwise, the Respondent threatened the Claimant and her husband with collection and legal action. Based on the prior experience with the Respondent, the Claimant and her husband rejected the Respondent's offer and sought other contractors to complete the basement renovation and to repair any work performed work by the Respondent. After a search, the Claimant selected Mr. Handyman to complete the renovation of her basement.

The Claimant presented further support for her claim that the Respondent performed an inadequate or incomplete home improvement through the testimony of Barry Webb, a senior technician employed by Mr. Handyman. Mr. Webb completed the Claimant's basement renovation. He testified that he found water dripping from plumbing installed by the Respondent which was beginning to damage drywall installed by the Respondent and which required repair to both the plumbing and the drywall. Mr. Webb also found that the plumbing to a utility sink installed by the Respondent had the hot and cold water reversed and was dripping which also had to be repaired. Mr. Webb testified that behind the vanity installed by the Respondent there was an electrical box without a cover which had to be fixed by installing a cover to reduce the risk of a dangerous electrical problem. Mr. Webb testified that he observed water on the ceramic tile floors the source of which was coming from the drip in the shower diverter installed by the Respondent, which he had to be replaced in order to prevent further water damage. Mr. Webb

explained that is several areas the corner bead was not properly prepared for painting and required additional drywall mud and preparation to be properly completed. In other areas, Mr. Webb explained that several areas of the drywall installed by the Respondent were inadequately prepared for painting and required additional work to be made ready to paint. Finally, Mr. Webb explained that the closet installed with plywood doors required him to install new headers and installed regular bi-fold doors because plywood in the damp basement setting will have a tendency to bow over time. Mr. Webb added that he decided to install the new bi-fold doors because the doors installed by the Respondent had several saw-cut rough edges and determined it was a better solution to install the bi-fold doors that he installed for the Claimant.

Other than Mr. Webb's testimony, the Claimant presented several invoices from Mr. Handyman which demonstrated the work that was required to be performed the complete the Claimant's basement renovation and to repair any work inadequately performed by the Respondent. In total, the Claimant paid Mr. Handyman $5,088.77 to complete the renovation project or repair the work performed by the Respondent.

The Respondent made a presentation regarding the payments he received for work performed, materials, and other uncompensated costs he incurred without compensation to assert that the Claimant was attempting to defraud the MHIC to receive a reimbursement that she is not entitled to. He acknowledged that another plumber contractor (Michael and Son) repaired the dripping shower diverter at a cost of $347.06 but claimed that could have been attributed to manufacturing debris, which is not unusual. The Respondent also acknowledged that Mr. Handyman primarily addressed the drywall finish, doorway trim, painting, grouting, and replacing the closet doors. He asserts that Mr. Handyman completed portions of the Contract, which he asserts was about four percent of the total contract. He also points out that Claimant seeks compensation from the Fund in the amount $7,277.88. With this background, he argues

that for a total contract price $10,178.00, without four percent of the Contract remaining to be performed, he contends that the Claimant's request for compensation in the amount of $7,277.88 is inflated.

After a careful review of the documentary exhibits and reviewing the hearing testimony, I find the Respondent's understanding of the Contract price and payment history to be inaccurate. In the Findings of Facts, I describe the two proposals made by the Respondent to perform the basement renovation for the Claimant, the total contract price, and the payment history. I am persuaded by a preponderance of evidence that the total contract price was $11,949.00 and that the Claimant paid the Respondent $9,432.33. The Claimant's photographic evidence, coupled with Mr. Webb's testimony, demonstrates that the Respondent inadequately installed drywall, wood trim and baseboards, a closet, and other plumbing and electrical fixtures. I am also persuaded that, after the Claimant began to complain about the progress and quality of his work, the Claimant became unmotivated to consistently work to complete the Contract. By early August 2017, all work by the Respondent on the renovation had essentially ceased.

Without question, on August 22, 2017, the Respondent requested to finish the Contract or be paid and threatened the Claimant and her husband. Clearly, the Claimant rejected the offer. Under the circumstances of this case and the Claimant's experience with the Respondent, I cannot find by a preponderance of the evidence that the Claimant's rejection was unreasonable.

The Respondent acknowledged that Mr. Handyman completed the work that was left incomplete by the Respondent. The Respondent's allegation that only four percent of the work was left incomplete is not credible. His allegation is purely self-serving and is not supported by the photographic evidence and testimony presented in this case. As to the cost to complete the Contract or repair the Respondent's work, Mr. Handyman was paid $5,088.00. Neither the Respondent nor the Fund demonstrated that this amount paid to Mr. Handyman or the work

performed by Mr. Handyman was unreasonable. For all these reasons, I am satisfied that the Claimant has sustained an actual loss which is compensable by the Fund.

Having found that the Claimant is entitled to compensation from the Fund for the actual loss sustained when the Respondent performed an incomplete and inadequate basement renovation in the Claimant's home, I now address what is the amount of the actual loss. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The 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.

> 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).

Using the above formula, the actual loss suffered by the Claimant is calculated as follows:

Amount paid by the Claimant to the Respondent:	$ 9,432.33
Cost to repair/complete the Respondent's work:	+$ 5,088.77
	$14,521.10
Less the Contract price:	- $11,949.00
Actual Loss:	$ 2,572.10

I therefore conclude that the Claimant's actual loss is $2,572.10. *Id.* at § 8-405(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss as a result of the Respondent's acts and omissions. I further conclude that the amount of the actual and compensable loss is $2,572.10. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $2,572.10; 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;[8] and

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

Signature on File

January 9, 2019
Date Proposed Decision Issued

Daniel Andrews
Administrative Law Judge

DA/kdp
#177319

[8] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 25th day of March, 2019, 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.

Michael Shilling

Michael Shilling
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION

Maryland Home Improvement Commission

State's Exhibit # 2