IN THE MATTER OF THE CLAIM	*	**BEFORE SUSAN H. ANDERSON,**
OF REBECCA SLAUGHTER,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT COMMISSION	*	
GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF JOHN SWEENEY,	*	
T/A SOUTHERN MARYLAND HOME	*	
IMPROVEMENTS, INC.,	*	**OAH No.: LABOR-HIC-02-19-25032**
RESPONDENT	*	**MHIC No.: 19 (75) 520**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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STATEMENT OF THE CASE

On August 5, 2019, Rebecca Slaughter (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $10,000.00 in actual losses allegedly suffered as a result of a home improvement contract with John Sweeney, trading as Southern Maryland Home Improvements, Incorporated (Respondent). Md. Code Ann.,

Bus. Reg. §§ 8-401 through 8-411 (2015).[1] On August 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a video hearing on September 28, 2020 using the WebEx videoconferencing platform.[2] Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),[3] represented the Fund. The Claimant represented herself. 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. 2019); Code of Maryland Regulations (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 on the Claimant's behalf:

Cl. Ex. 1 - Contract between Claimant and Respondent, signed January 29, 2018

Cl. Ex. 2 - Electrical Bid Form from R.G.C. Electric (R.G.C.), undated

Cl. Ex. 3 - Estimate from Jeff Bowie of LaPlata Home Improvements, LLC (LaPlata), January 12, 2019

[1] Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.
[2] The case was previously scheduled twice and was administratively postponed both times due to the COVID-19 pandemic and the temporary suspension of in-person hearings.
[3] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Cl. Ex. 4 - Copies of all text messages between the Claimant and the Respondent, undated[4]

Cl. Ex. 5 - Installation Instructions for Airstep Advantage, Airstep Evoluation, Airstep Plus, and Airstep Basix, undated

Cl. Ex. 6 - Photographs taken by the Claimant on a date unclear in the record, but after the Respondent had last performed any work on the renovation:

a. Drywall dust embedded in the cracks of the Claimant's living room wood flooring
b. Drywall dust embedded in the cracks of the Claimant's hallway wood flooring
c. Drywall dust embedded in the cracks of the Claimant's dining room wood flooring
d. Trim work showing uncapped end piece in hallway
e. Scratched trim work in dining room
f. McCormick Latex Flat Paint
g. Kitchen doorway showing partially painted trim work around door frame
h. Hallway door showing different colors on trim work around the door frame and on the jamb
i. Cracked grouting in the kitchen
j. Not admitted

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, August 5, 2019

Fund Ex. 2 - Notice of Remote Hearing, August 27, 2020

Fund Ex. 3 - Notice of Remote Hearing, February 18, 2020

[4] The Claimant testified that these were emails. However, she also explained that she printed the messages from her phone and the cover sheet for her exhibits stated that these were text messages; I therefore infer these are copies of text messages and not emails. The Claimant apparently downloaded all of the various messages and printed them off in a single, six page document that does not provide any delineation as to when the messages were sent; there are no dates on any of the pages. However, the Claimant testified that they were all during the course of the renovation and the Respondent did not challenge that testimony.

Fund Ex. 4 - Notice of Remote Hearing, January 30, 2020

Fund Ex. 5 - Letter from MHIC to Respondent, attaching claim, January 24, 2019

Fund Ex. 6 - MHIC Licensing Information for Respondent, printed September 10, 2020

Fund Ex. 7 - MHIC Licensing Information for LaPlata, printed September 28, 2020

The Respondent offered no exhibits.

Testimony

The Claimant testified and presented the testimony of Brenda Lough.

The Respondent testified on his own behalf.

The Fund offered no 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 47462.

2. On January 28, 2018, the Claimant and the Respondent entered into a contract to remodel the Claimant's kitchen and to install new drywall and paint the hallway and dining room (Contract). (Cl. Ex. 1).

3. The original agreed-upon Contract price was $15,300; however, the Claimant and the Respondent modified it to add some additional work for an extra $1,500.00. The total Contract price was $16,800.00.

4. The Claimant paid the Respondent the full, modified Contract price pursuant to a draw schedule on various dates that were not established in the record.

5. The Contract called for the Respondent to apply two coats of satin paint to the walls in the kitchen. The Respondent's employees mistakenly applied two coats of flat paint. After the

Claimant pointed this out, the Respondent directed his employees to apply one coat of satin paint on top of the flat paint.

6. The Respondent's flooring subcontractor, The Ultimate Flooring Company (Ultimate), installed vinyl flooring manufactured by AirStep; they had first installed a plywood overlayment over the subflooring. The Installation Instructions for installing AirStep vinyl flooring on a resilient floor such as the one in the Claimant's kitchen, indicate that there "[m]ust be single layer of flooring, fully adhered and well bonded." (Cl. Ex. 5).

7. During the course of the installation, the Respondent's employees tore the vinyl flooring when moving the Claimant's refrigerator. Ultimate did not remove the damaged vinyl flooring. Instead, in order to repair the damage, Ultimate applied an embossing leveler compound to the newly installed vinyl flooring and installed new vinyl flooring on top.[5]

8. The grouting around the newly-installed tiles in the Claimant's kitchen cracked within weeks of being installed.

9. The Contract called for the Respondent to install a dedicated outlet for a new microhood.[6] The Respondent never installed the dedicated outlet. The Respondent did not credit the Claimant with the amount she had paid under the Contract for this work.

10. The Respondent did not apply for and obtain permits for either the plumbing or the electrical work during the course of the remodel. At the Claimant's request, the Respondent did apply for a plumbing permit so that he could have the plumbing work he completed inspected. He received approval for an initial permit on August 29, 2018. However, the Respondent never arranged for the inspection so that an inspector could approve the work and issue a final permit.

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[5] An embossing leveler is a compound used to smooth out any irregularities in an existing floor before installing new floor on top of it.

[6] This is a microwave oven that is installed over the stove top and acts as both a microwave and exhaust hood.

11. The Respondent never applied for a permit for the electrical work because when he spoke with an employee in the local permitting office, the employee advised that the installation of a dedicated outlet may require the Claimant to "heavy up" the electrical system in her home, which would result in additional costs.[7]

12. During the course of the remodel project, drywall dust became embedded in the hardwood floors in the Claimant's dining room, living room, and hallway. The Respondent paid a cleaning company to clean the floors but the cleaning company was unable to remove all of the embedded dust without scraping, which would have damaged the floors.

13. The Claimant procured an estimate from R.G.C. to "heavy up" the electrical panel in her home for $4,500.00. (Cl. Ex. 2). The Claimant's home has a 100 AMP main breaker panel; the Respondent would have "heavied up" the panel with a new 100 AMP main breaker panel. The estimate from R.G.C. upgraded the system to a 200 AMP main breaker panel and included additional work such as installing smoke detectors and various other dedicated outlets. (Cl. Ex. 2).

14. The Claimant also obtained an estimate from LaPlata in the amount of $3,269.42 to repair the grout; add a single coat of satin paint to the kitchen, dining room, and hallway; sand down the hardwood floors in the dining room, living room, and hallway, and then apply a stain and polyurethane to the floors to match the existing color. (Cl. Ex. 3).

DISCUSSION

THE APPLICABLE LAW AND THE STANDARD OF PROOF

In this case, 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) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means

[7] The Respondent explained that "heavying up" means upgrading a home's electrical panel to current code requirements and further explained that this could result in other upgrades being needed, which would result in additional costs.

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) (2015); *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for partial compensation.

THE POSITION OF THE PARTIES

The Claimant in this case asserted that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements to her kitchen, dining room, and hallway because he used the wrong paint type and then only applied a single coat of the correct paint type; he did not rectify the cracks in the grout that developed shortly after the work was completed; he laid new vinyl flooring over flooring that his employees damaged when moving her refrigerator, instead of removing the damaged flooring first; he did not install a dedicated outlet for the microhood; his workmen did not properly protect the worksite, which left drywall dust embedded in her hardwood floors that could not be removed without damaging the floors; and he did not obtain permits for the plumbing or electrical work or have the work inspected.

The Respondent contends that he would have been happy to correct the problems with the grout but the Claimant went straight to the MHIC to file a complaint instead of giving him a chance to fix them. He acknowledged that his employees used flat paint instead of satin paint for the walls but stated that he applied a single coat of satin paint over the two coats of flat pain to remedy the

problem. The Respondent argued that since the paint was the same color, he did not need to apply two coats of the satin. The Respondent also contended that new vinyl flooring could be applied over the damaged vinyl flooring, so there was no need to rip out the entire sheet of vinyl flooring and then replace it after his employees tore it.

He indicated that he did not install the dedicated outlet for the microhood because he had advised the Claimant that doing so could incur additional costs for her and she never gave her approval for him to do so. The Respondent explained that he did not need permits for the plumbing or electrical work he did because he did not run new plumbing or electrical lines but simply connected to the existing plumbing and electrical systems. Therefore, the work did not require permits. Finally, the Respondent asserted that his workers protected the work site as best they could but drywall dust is insidious and "goes everywhere."

ANALYSIS

The Unworkmanlike, Inadequate, or Incomplete Home Improvements

The Grouting

The Claimant produced a picture showing the cracks in the grout. (Cl. Ex. 6 i). The Respondent admitted that it is common for grout to crack after new installation and did not dispute the Claimant's assertion that the cracks appeared soon after the remodeling project was completed. He explained that he would have been more than happy to remedy it by caulking the grout with a silicone base caulk product the same color as the grout, which would adhere to the granite and ceramic tile and cover the cracks. By the Respondent's own admission, he should have fixed the cracks in the grout and his failure to do so, despite whatever was going on with the Claimant's MHIC complaint, constitutes an incomplete home improvement.

The Satin Paint

The Respondent conceded that his employees had erred by using flat paint instead of the satin paint called for under the Contract. However, he asserted that they then applied a single coat of satin paint over the two coats of flat paint, which remedied the problem. Nevertheless, the Claimant produced a photograph showing trim around one of her doors where the underlying wood is not completely covered and the wood tone shows through. (Cl. Ex. 6 g). In addition, she also produced a photograph showing that the Respondent did not paint the door trim and the door jambs the same color so she now has two tone paint in her doorways. (Cl. Ex. 6 h). If the Respondent had carefully applied two coats of flat paint, then one coat of the satin paint, that may have been sufficient to complete the job. However, the photographs demonstrate, at the very least, that the painting work was done in an unworkmanlike manner. Moreover, as the Fund pointed out, the Contract calls for the Respondent to apply *two* coats of satin paint and he applied only one. The Claimant is entitled to compensation for the Respondent's failure to complete this work in a workmanlike manner.

The Vinyl Flooring

The Respondent freely admitted that his employees damaged the vinyl flooring they had installed when they ripped it while moving the Claimant's refrigerator. The Respondent testified that Ultimate then glued new vinyl flooring over the previously-installed vinyl flooring but argued that this was in accordance with the flooring manufacturer's installation instructions because Ultimate first used an embossing leveler as suggested by the instructions. (Cl. Ex. 5).

A review of the installation instructions is pertinent to this discussion. The AirStep installation instructions contain a chart captioned, "Subfloor Recommendations." For a resilient floor, such as the type the Respondent was installing in the Claimant's kitchen, the chart indicates that the installer should "prepare with embossing leveler" or install a new underlayment. (*Id.*). In the "Notes" column, it states, "[m]ust be single layer of flooring, fully adhered and well bonded." (*Id.*).

Under questioning, the Respondent explained that this statement means that the AirStep product can be installed over a single layer of flooring, i.e., the vinyl flooring that was damaged, and there was no need to remove the previously-installed vinyl flooring. The Respondent stated that because Ultimate prepared the floor with an embossing leveler, the new floor was installed correctly.

The instructions seem clear; the plain wording contained in the instructions, "must be single layer of flooring," seems to suggest that the resilient vinyl flooring should be the only layer of flooring and should not be layered over itself or other types of flooring. The instruction to "prepare with embossing leveler" appears to apply in situations where no new underlayment is installed. I agree with the Fund's assertion that this would be the most common-sense reading of this instruction. The Respondent does not install this type of flooring himself; rather, he relies on flooring subcontractors. He did not produce expert testimony to establish that his interpretation of the instructions was correct. Therefore, I find it more likely than not the Respondent's installation of new vinyl flooring over the damaged vinyl flooring was improper and constituted an unworkmanlike home improvement, for which the Claimant is entitled to compensation.

The Dedicated Outlet for the Microhood

The Respondent readily agreed that he did not install a dedicated outlet for the microhood as was called for in the Contract. He explained that he would have needed an electrical permit to do so and, when he called the permitting office, an employee advised him that a new code had been enacted so if he got a permit, the inspector may have required him to upgrade the electrical system for the whole home. There was some conflicting testimony about whether the Respondent advised the Claimant of this. The Respondent indicated he advised her and she never told him whether she wanted to proceed. The Claimant testified that the Respondent never told her about this. Brenda Lough, the Claimant's neighbor and witness who was present for this conversation, testified that the Respondent did advise the Claimant of the issue and the Claimant immediately told him to get the

permit and do what was needed because she wanted the work to be done correctly. What was actually said during this conversation is in some ways immaterial to the claim. The bottom line is that the Contract called for the Respondent to install a dedicated outlet for the microhood and he did not do so. Based on his own testimony, industry standards would require him to "heavy up" the lines in order to install this dedicated outlet. The Respondent did neither. This part of the Contract was not fulfilled and the work with regard to this is incomplete.

The Respondent admitted that he did not refund the Claimant any money for this work that he did not perform. Therefore, the Claimant is entitled to compensation for this incomplete work.

The Lack of Permits

The Claimant focused a large portion of her testimony on the fact that the Respondent did not obtain permits before doing the plumbing and electrical work on her home. The Respondent testified that he did not need permits because the nature of the work he was doing did not require them. The Claimant insisted that he did need permits but presented no evidence of any kind to show that permits were required in this situation. Moreover, even assuming the Respondent was required to obtain the permits, the Claimant has not demonstrated an actual loss as the result of his failure to do so. As the Claimant has not demonstrated an actual loss with regard to the lack of permits, she is not entitled to compensation on this issue.

The Hardwood Floors

The Claimant offered testimony and photographs detailing the embedded drywall dust in the hardwood floors of her dining room, hallway, and living room. (Cl. Ex. 6 a, b, c). The Claimant attributed this to the Respondent not properly protecting the work area and the other areas of her home. The Respondent challenged this testimony and stated that his crew had properly protected the area by using drop cloths and sealing off non-work areas with plastic sheeting. He conceded that drywall dust "goes everywhere" and it is possible it did get embedded despite his crew's best efforts.

The Respondent also stated that he had paid a cleaning company to go in and professionally clean the floors, which, in his opinion, should have been sufficient to remedy the problem. The Respondent suggested that if the professional cleaning did not fully remedy the issue, it was likely due to the condition of the Claimant's flooring. The Claimant testified that the cleaners told her that the only way to get out the deeply embedded dust was to scrape the floor, which would damage the wood.

There is no question that the Respondent's work resulted in drywall dust being embedded in the Claimant's hardwood flooring in her living room, dining room, and hallway. The photographs speak for themselves. The Claimant is seeking compensation to cover the cost of sanding down the floors, staining them, and applying a urethane coating to them in order to resolve the problem. However, the embedded dust is considered a consequential damage, which is not compensable under the appliable law.[8] The Contract did not call for the Respondent to perform work on the hardwood floors. Rather, the embedding of the drywall dust resulted from, or was a consequence of, the work the Respondent performed under the Contract. For these reasons, I find the Claimant has not proven that she is entitled to compensation for fixing the hardwood floors in her dining room, hallway, and living room.

The Actual Loss

Having found eligibility for compensation with regard to some of the items in the Claim, I must now determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3);

[8] 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). Black's Law Dictionary defines consequential damages as, "such damage, loss, or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act." https://thelawdictionary.org/consequential-damage (last viewed October 20, 2020).

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.

> (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).

In the instant case, the Respondent did not abandon the Contract without doing any work and the Claimant is soliciting another contractor to complete the work. Therefore, the formulas set forth in a and b, above, are inapplicable. Moreover, the Claimant provided estimates that are of little use in determining the actual cost to repair or complete the work under the Contract and so the formula set forth in c is also not applicable. Accordingly, I shall apply a unique formula to measure the Claimant's actual loss.

The Claimant provided two estimates to prove her cost to remedy and complete the work the Respondent began. The first, from R.G.C., is not useful because the scope of work encompassed by the estimate is different from the scope of work under the Contract. The Respondent, who was a credible witness as evidenced by his willingness to admit to things that were clearly against his self-interest, explained that the R.G.C. quote involved upgrading the Claimant's 100 AMP Main Breaker Panel to a 200 AMP Main Breaker Panel and upgrading all of the rest of the components of the system. The Respondent explained that had he "heavied up" the Claimant's system, he would have

used a 100 AMP Main Breaker Panel. Therefore that estimate is not for the same scope of work and is inapposite.

The quote from LaPlata is similarly not useful. A careful review of the quote reveals that the bulk of the proposed work is to remedy the consequential damage the problem of the unsightly drywall dust embedded in the hardwood floors. The only work in the quote that does not deal with sanding, staining, and applying urethane to the hardwood floors is repairing the grout, sealing the tile backsplash, and applying one coat of paint in the kitchen, dining room, and hallway. None of the work items are broken down by price; the estimate lists all of the proposed work and then gives a total price of $3,269.42. As previously stated, the problem of the embedded drywall dust in the hardwood floors is a consequential damage and is not compensable in this case. Because there is no breakdown of the cost for each work item on the estimate, it is impossible to discern how much LaPlata would charge to repair the grout and apply an additional coat of satin paint.[9]

What is useful is the Respondent's own estimates for what it would take to remedy the problems with the work. The Respondent clearly has many years of experience in the home improvement field and the Fund argued that, as a result, his estimates of the cost to remedy the problems should be considered reliable. I agree. The Respondent offered straightforward testimony on these issues and a rational basis for his estimate for each repair item. For those reasons, I accept his estimates as reasonable for determining the actual loss sustained by the Claimant.

[9] The Respondent argued that Jeff Bowie, the person who issued the quote purportedly on behalf of LaPlata, is not a licensed contractor or salesman and was not actually working for LaPlata at the time he prepared the quote. He asserted that while Mr. Bowie had worked for LaPlata at one point in time, the owner of LaPlata had told the Respondent that Mr. Bowie was not working for him at the time the estimate was prepared. However, he provided no specifics as to when Mr. Bowie worked for LaPlata and no testimony from the owner of LaPlata to confirm that Mr. Bowie was acting on his own when he prepared the quote. The Fund argued that the Respondent's testimony is not sufficient to establish that Mr. Bowie was acting outside of the scope of LaPlata's authority and without permission, so there is insufficient evidence to warrant discounting the entire estimate. However, I find this point to be immaterial as the quote is not useful for determining actual loss due to its lack of specificity in pricing for the various jobs listed.

The Respondent estimated that it would cost approximately $500.00 to tear up the damaged vinyl and replace it with new vinyl. The Respondent further explained that to fix the appearance of the grout he would apply a caulking application with a silicone base that would cover the grout and adhere to the granite and the ceramic tile; he estimated that this would cost approximately $25.00. The Respondent next estimated $500.00 as the cost to apply an additional coat of satin paint so that there were two coats as called for by the Contract, rather than just the one he applied. Finally, he indicated that he believed it would cost approximately $1,500.00 to install the dedicated outlet for the microhood, which includes the "heavying up" of the electrical system, which he conceded is a necessary prerequisite to installing the outlet. Based upon this testimony, I find the Claimant has demonstrated an actual loss of $2,525.00 ($1,500.00 + $500.00 + $500.00 + $25.00).

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 Claimant's actual loss is less than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled recover her actual loss of $2,525.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $2,525.00 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). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §8-405 (2015); COMAR 09.08.03.02.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $2,525.00; 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;[10] and

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

October 30, 2020
Date Decision Issued

Susan H. Anderson
Administrative Law Judge

SHA/sw
#188122

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

PROPOSED ORDER

WHEREFORE, this 1st day of December, 2020, 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

IN THE MATTER OF THE CLAIM OF REBECCA SLAUGHTER AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF JOHN SWEENEY T/A SOUTHERN MARYLAND HOME IMPROVEMENTS, INC.	* * * * * * *	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 19 (75) 520** **OAH CASE NO. LABOR-HIC-02-19-25032**

* * * * * * *

FINAL ORDER

This matter was originally heard via video conference before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on September 28, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on October 30, 2020, concluding that the homeowner, Rebecca Slaughter ("Claimant") suffered a compensable actual loss of $2,525.00 as a result of the acts or omissions of John Sweeney t/a Southern Maryland Home Improvements, Inc. ("Contractor"). *ALJ Proposed Decision* p. 15. In a Proposed Order dated December 1, 2020, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On May 6, 2021, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Andrew Brouwer appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; 3) Claimant's exceptions, and 4) revised hearing notice. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Claimant sought to introduce new evidence but she failed to demonstrate that the documents she wanted in evidence were not and could not have been discovered before the OAH

hearing. Therefore, the Panel's review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits admitted as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the remodeling of the kitchen and drywall work and painting in the dining room and hallway at the Claimant's home. The ALJ found that the Contractor's performance under the contract was incomplete with respect to grouting the tiles in the kitchen and the installation of an electrical outlet for a microwave oven, and unworkmanlike with respect to the installation of the kitchen floor and painting. *ALJ's Proposed Decision* pp. 8-11.

On exception, the Claimant argued that the ALJ erred in finding that no permits were required for the work completed by the Contractor. The Claimant did not identify evidence in the record and the Commission is not aware of evidence in the record demonstrating that any permits were required. The Commission agrees with the ALJ's finding that no permits were required for the work performed by the Claimant. In addition, the Commission agrees with the ALJ's finding that the Claimant failed to prove any amount of an actual loss relating to the lack of permits.

The Claimant also alleged that the Contractor lied when he testified that he had an electrician perform the electrical work involved in the kitchen remodel. The Claimant did not provide a transcript of the hearing before the ALJ, the ALJ did not reference testimony regarding the hiring of an electrician in the Proposed Decision, and the Claimant did not identify evidence in the record demonstrating that the Contractor did not hire an electrician. Therefore, the Commission finds no error with the ALJ's Proposed Decision.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 14th day of May 2021, **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**;

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

D. That the Claimant is awarded $2,525.00 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);

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