IN THE MATTER OF THE CLAIM * BEFORE MARY R. CRAIG,

OF KIMBERLEY B. YOUNG, * 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 MICHAEL BIRNER, *

T/A HUNT'S END REMODELING * OAH No.: LABOR-HIC-02-21-07330

LLC, * MHIC No.: 20 (90) 848¹

PROPOSED DECISION

RESPONDENT

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 April 11, 2020, Kimberly Young (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$23,950.00 in actual losses allegedly suffered as a result of a home improvement contract with Michael Birner, t/a Hunt's End

¹ This is the MHIC case number on the Hearing Order issued by the MHIC and the MHIC's transmittal to the Office of Administrative Hearings (OAH). The number handwritten on the Claim is 20 (75) 848.

	·			
	•			
				4
			1.00	athag that he ha
		}		· Base ·
			<u> </u>	•
		£ jogesti		
				nauthale (1), and the
Marke a Len.		1.00 (
		randi.		
		ROMENIA. Marija (1880a)	स्ट <i>्</i> म्	
		eren i kana eren Karan laggara i didi		· · ·)
हिन्दि हुन्द्री विश्ववेता है। सम्बन्ध	. '		•	·
		j	[ro i sikke i komunektriklije. T
•	•			eli gradi di Percama del del del y Propio
		तिति सम्बद्धिः यम् सक्	STEEL SHOT THE	Professional Community (1997)
A CONTRACTOR OF THE CONTRACTOR		Lain gung phai sing	1 must la l	and the second s
	k je ur te je jar i vije	estudije iš nama seša () D		faratas etatspalar eta espera.
	,			
		; :		()
	l.	I		

Remodeling LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).²
On March 23, 2021, the MHIC forwarded the matter to the OAH for a hearing.

I held a hearing on May 11, 2021 on the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Hope Sachs, Assistant Attorney General, Department, 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. 2020); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 Not offered
- Clmt. Ex. 2 Contract between Claimant and Respondent, February 2017³
- Clmt. Ex. 3 FCITS Inspection Report, undated
- Clmt. Ex. 4 Carpet Arts Invoice, September 1, 2018; Report of August 31, 2018 inspection with eight photographs of flooring

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

³ The Contract is not dated. The Claimant testified without contradiction that it was executed in February 2017.

	, i			
		•		
•				o trobbly guide out
				es 1985 (Strong Sign)
gar est også er gr]	
	•		l . [our Signification of Sp
ार ^{कें} च प्राप्त कर केंद्र तीर	Pade Villago Arg		1	A GARNER CHROCK.
		•		सम्बद्धाः । १८ मान्यः
इस सम्बद्धार संस्त	et viogt de	ng kabulang balan 1995.	ing Assertation	s barp wagan salas s
in die die Fassilande der die die A	rgoling Sa	ed go coder na 1968.	, ill oat t	e i sa a de <mark>de ser qu</mark> e de el
			1	
			,	•
· 我们就是一个一个一个相似的。	ve sidenie in e	jed ien , stejsev		ughadan lag
				ા કરાજુ પ્રાતિ કહિલી
	្តី និងស្រាំ មេ វិ សាធ	ele meneral le la company de l	to the sec	The Control of the Co
	•			
		Alia (Talis), a terra ete		
· · · · · · · · · · · · · · · · · · ·		•	11 12 14 11 1	
<u>(</u> ~	กิ การยองรับได้เพล	Margaria de Graceria de	ellytete y n	24 (M. 1907)
		Complete Control		mad Guyani.
and require a title of Deep	mer i sa kaliwa 19	¥10. maga sebil ni Tagabay Tabiga		ipasi v tagij. Autov
	· · · · · · · · · · · · · · · · · · ·			
tanan periode translation	Fig. 1. State of the second	the state of the pro-		, rama ka
i de la compañ de hom ante.	អង្គ និយកស្ថេសស៊ូ : •	rate chart. Do to Witches or	2 m	The second second to the second secon
		,		
•				
		· · · · · · · · · · · · · · · · · · ·	1 .	

- Clmt. Ex. 5 Letter from Joseph Tunney, MHIC Chairman, to Respondent, April 22, 2020
 Letter from Respondent to Mr. Tunney, April 30, 2020
 Letter from Respondent to David R. Finneran, Executive Director, MHIC,
 February 18, 2020 with Respondent's estimates to replace hardwood floors and
 refinish sections of floors, undated
- Clmt. Ex. 6 Respondent's itemized list of materials for performance of the Contract, undated
- Clmt. Ex. 7 Claimant's checks paid to Respondent, February 15, 2017 to May 18, 2017
- Clmt. Ex. 8 Letter to Claimant from Maryland Insurance Administration (MIA), October 22, 2019

 COMAR 31.02.01

 Letter to MIA from Gretchen A. Tome, Erie Insurance, October 29, 2018

 Letter from Christine Foard, Erie Insurance, to Claimant, October 12, 2018

 MIA blank form of Customer Questionnaire, undated
- Clmt. Ex. 9 Emails from Claimant to OAH attaching exhibits
- Clmt. Ex. 10 Residential Construction Performance Guidelines for Professional Builders & Remodelers, undated
- Clmt. Ex. 11 Photographs of floors, undated

The Respondent offered no exhibits for admission into evidence.

I admitted the following exhibits on the Fund's behalf:

- Fund Ex. 1 Notice of Remote Hearing, April 12, 2021 Hearing Order, March 11, 2021
- Fund Ex. 2 MHIC Licensing History for Respondent, printed April 26, 2021
- Fund Ex. 3 Letter from Chairman Joseph Tunney, April 22, 2021 Claim received by MHIC April 14, 2020 (with attached proposal from Ferraro Custom Builders, April 10, 2020)

Testimony

The Claimant testified and presented testimony from her husband Jacob A. Young.

The Respondent testified and presented the testimony of Philip J. Luman, Project

Manager, Hunt's End Remodeling LLC.

The Fund did not present testimony from any witness.

			. ,		
					•
	•				
the state of the		n e i Pediri, poni			
्रास्त्र संत्री (च संत्र कार्रा १ संस्कृतिक विकास	to the end of the	in in the state of the second			
o Calawa Ludga, o Kara I	n same e e e	in in it was a second in in Mannetter (2003)			r i tikalet
	,	d at one profit is a se			
in the motor of the fact		ngerral tag nyekkala d			
មុខស មើ ង ស្លឹក មាន មិនប្រមា <mark>រ</mark> ស	Duranto nasc Populationa Populationa	Grand Standard (Standard Comment May 10 at 2000 teach		arterna. La Parterna	
		gris are to just the			
et ja Solla Miller allest 1985					
			·		
	1. 200 € . 1. 3 € 1 €	alike on the fillers.		Section 12	
			A Questi		- 1
			7 07 E		
		Parkasa kara 1999		2.241.4	
e was William States	·		·		
			· 20.35.		
	•				
energy in Austra		Press Craft a gas son			
· Spirit Sales	gradu in gra	egy in the fire area, by	· 4/124	a service process	
		The state of the s		Autor dise	ा । अधुन्तराहरू
	AT SERVE		d night.	e ratheupp	*** (*********************************
					•
				ľ	

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 104625.
- 2. On February 15, 2018, the Claimant and her husband Jacob Young (collectively Owners) and the Respondent entered into a contract (Contract) to extensively remodel the first floor of their home (House), including removal of existing flooring throughout the first floor (excluding the two front bedrooms) and replacement with hardwood flooring.
- 3. The Contract required the Respondent to remove the existing flooring and install new 2¼" red oak unfinished hardwood flooring in the foyer, living room, hall, mudroom, powder room, kitchen and dining room. The hardwood was to be sanded, stained in the Owners' choice of color, and finished with two coats of polyurethane. The Contract called for a \$2,055.00 optional upgrade to 5" wide unfinished red oak flooring.
- 4. The Contract required work to begin as soon as practical and be substantially complete within seventy working days.
- 5. The original agreed-upon Contract price was \$146,300.00, plus \$2,055.00 for the flooring upgrade, for a total Contract price of \$148,355.00, before any change orders and upgrades.
 - 6. The Owners paid the Respondent a total of \$156,173.60 as follows:

2/15/17	\$10,450.00 (due at signing of Contract)
2/23/17	\$10,450.00 (due at wall and flooring removal)
3/3/17	\$20,900.00 (due at framing, electrical and plumbing rough-in)
3/14/17	\$10,450.00 (windows)
3/27/17	\$3,000.00 (mason work)
3/27/17	\$10,450.00 (drywall)
4/2/17	\$28,273.60 (windows, floors, extras)
4/13/17	\$20,900.00 (flooring, trim doors)

					•
)			·	•
				·	
			a di ji		•
•	e respect english	l popular korrespons			
e. Personal distribution water of		en la	en e e e e e e e e e e e e e e e e e e		
		m agaja Niberajora d		erion en	9.2 ¹ .5 (4.3)
และสายสื่อเจาสาร์เมื่อเ	, i s são day.	e in izveniljetek kare. Prijs	the	Keng Tarah Ja	et .
and the fall of a great	engen de Grande				e September 1
	ी त्रीतिस्मान	ing particular designation of the second sec		an animi cee	
D ₁		स्राप्तकृष्टा भाषांत्र । इत्या १०००		of content	· ·
The second of the second secon		3 Mixer A. Bellehi.	a Finalis	est de la company	e ja
the straining the particular		in the garden boson	i in the fair	Läxx sant i	· Washing
ennen er gelle stad fil	dav. H. Carrier a	en sammen. Prosent die		una in it njës d	4
2. 2.研究 "他会产品"的1.2.2	la sejaka ad		100		2 (1721) 2 (1
		nn 188 án lemán.		i i a se e e e e e e e e e e e e e e e e e	
group things to the	e i pare pare sere	es situat e in folker r			
		4.40		rezas udibles	rear L
odine jih karabes	K. W. M. John L. John				
king nervarianses				9 1. 22 mg m	granti.
•				•	e en rigi
a distribution	ki disebilik si	Market is the comment of			
Char		ah yizot ere territati. Azərbayca ilk ili illəri			
		There is the time of the contract of the contr	•		•
			1		

4/24/17 \$10,450.00 (countertops) 5/9/17 \$10,450.00⁴ 5/18/17 \$20,400.00.

- 7. The Respondent bought the hardwood flooring on March 1, 2017.
- 8. The Respondent removed the existing flooring in the areas specified in the Contract and installed new red oak hardwood flooring. The flooring was installed in early March 2017. The Respondent sanded the floors and finished staining and sealing them one month later.
 - 9. The Respondent completed work in May 2017.
- 10. After the work was completed, beginning in June 2017, the Owners noticed that the hardwood flooring was cupping, meaning the edges of the planks were raised and the centers were lower, creating an uneven and unsightly floor.
 - 11. The Owners contacted the Respondent about the problem on July 16, 2017.
- 12. The Respondent came to the House and inspected the floors on July 28, 2017. He told the Owners that cupping was temporary and recommended they wait for the floors to settle and flatten.
- 13. On August 8, 2017, the Claimant emailed the Respondent, complaining that the floors were still uneven.
- 14. On August 11, 2017, the Respondent again inspected the floors, which were still cupping throughout.
- 15. On August 11, 2017, the Respondent contacted the vendor of the flooring, which in turn retained FCITS, a company providing inspection and evaluation of allegedly defective flooring on behalf of the manufacturer.

⁴ The May 9 and 18, 2017 checks do not contain any reference to the purpose for the payments, and I am unable to determine the steps of the Contract payment schedule to which these payments correspond. See Contract (Clmt. Ex. 2, page 7) & checks (Clmt. Ex. 7).

	·		٠.	
		· · · · · · · · · · · · · · · · · · ·		
		The manage graphs		
	• •			
		cir benebicish et inige.		
្នាំ នៅជាមិននៅសំ	o of polonic park	र के कुरारे पर्याप्त सम्बद्धिताला । व		
		approble been well.	strong	e Barthire Bartharia
		केटी अस्तिक अंदर्भ बुक्त र	1.275	one de la
		क्राम्य केंद्र क्षेत्रकले प्रकार है _{है}	00 F 1 100	
in the problem of the second problem.		i Populari de santa de santa de la compansión		
		l : .	1	
				general de la companya de la company
			1	
			1	1
	•			
ti našvarovi a krati s trus 14. T	ស្លាប់ ស្ថិត្រី ដោយប្រាស់ ព្រះ	보고하는 15년만 1 보는 및 1 c. 		
				n steritoria
្រាស់ ស្រុក និង សេចប្រើប្រើប្រាស់ ម៉ាន់។ ក្រុម	ppda.keer 47		-	
	· . · · · · · ·	· · ·		the state of the s
in the state of th	ja a dz <mark>els</mark> nyembo	a jaranjaran 1985 A. A.	1 1 1 1	
				and the area with
e e e e e e e e e e e e e e e e e e e	roe me jeur ji e se L		14.4	
		i an anangi na mila g		and Care respect
			o standard	elektrika kalendari di diri
			190 a 3	
	-			
	,			

- 16. A representative from FCITS inspected the hardwood flooring at the House and completed a report, which the Claimant received on September 11, 2017.⁵
- 17. On the recommendation of FCITS, the Owners ran a dehumidifier in the House continuously for thirty days.
- 18. On September 28, 2017, the Claimant again emailed the Respondent, asking him what he planned to do about the floors, which were still cupping.
- 19. The Respondent re-inspected the floors in November 2017, and told the Owners he wanted to wait a year from the date of installation to see if the floors would cease cupping.
- 20. On February 9, 2018, the Claimant asked the Respondent if the repair or replacement of the flooring was covered by the one year warranty under the Contract.
- 21. In May 2018, the Respondent repaired at no cost to the Claimant a portion of the floor near the oven which was cupping badly.
- 22. On August 12, 2018, the Claimant told the Respondent the floors were still cupping.
- 23. In response, the Respondent told the Claimant the problem with the floors was related to humidity.
 - 24. The Owners were still dissatisfied with the cupping of the floors.
- 25. On August 31, 2018, Mark Brown, an inspector with Carpet Arts, inspected the floors and submitted a report.⁶ The inspector selected eight boards at random in the kitchen, foyer, dining room, and family room. He used a taper gauge and a square to check for cupping. All of the boards showed cupping of varying degrees from .010" to .030".

⁵ Clmt. Ex. 3.

⁶ Clmt. Ex. 4.

	```			
a opert setto pai o	ម ខេត្តក្រ <mark>ង់</mark> ខ្លែក នៃ។	Company (Company)	an in hill	entre de la companya
	lila da La Basa.		11:4.	Service of the service
ik od vetarnjiha V	1 .	5.00 (1) 2 <b>用模</b> 点的。	Į.	
				The state of the second of the
i erek geredik. Broken gerek	-			
t – sa ka <b>ti mjil</b> je, panaji				•
		<u> </u>	i	and the last of the state of the
en en jazz orgalistis en en jazz orgalistis	a i i e e e e e e e e e e e e e e e e e	kijas ergalisētā kair jūras.		
			1	ra jedia ki oraz ji osjava.
		•	}	•
			,	Barton o Archert (b.
្រុសស្រាស់ ស្រាស់ ស្រាស់ 🖟 😅		AT THE BUILDING ST.		
	in to send or			11. 4.2 (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)
powerski se objekt oc	A separate unione	ing and the second second		gui grann Gui grann
nav soet sections	in the party and and			gui grant on lui
	A registration and	a Classification of the		gui grant en la compania de la La compania de la compania del compania de la compania de la compania del compania de la compania del compania de la compania de la compania de la compania del la compania del

- 26. Flooring installers need to carefully monitor the moisture content of the wood flooring systems that they work with to prevent issues like cupping.
- 27. Wood will absorb or let off moisture until it reaches equilibrium with the ambient humidity of the environment. The moisture content at which the wood stops absorbing or letting off moisture is called the equilibrium moisture content of the wood.
- 28. The Respondent installed the flooring before the new floor boards reached equilibrium moisture content with the humidity of the House, resulting in many of the floor boards swelling after installation. The boards did not have room to expand once they absorbed ambient moisture, so the edges of the floor boards were forced to rise up, resulting in uneven flooring.
- 29. There is no barrier, such as familial or business relationship, that would prevent the Claimants from being reimbursed by the Fund.⁷
  - 30. The Claimant sustained an actual loss of \$23,950.00.8

#### **DISCUSSION**

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. Coleman v. Anne Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor..." Bus. Reg. § 8-405(a); see also COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses... incurred as a

⁷See Bus. Reg. § 8-405(f)(1).

⁸ See Estimate of Farraro Custom Builders, attached to Claim. Fund Ex. 3.

					•
		•			•
				•	•
		i <b>s</b> a national element		•	
	1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945 - 1945	a tulkki mining was		<mark>atis ta</mark> espera periodo a como espera de la como espera dela como espera dela como espera dela como espera dela como espera de la como espera dela como	
ામ સ્ટ્રામ જ અને સીઉટ ઇક્ટલોટી સ્ટ્રામ	Gaze spellerer Hij	্যুক্ত ২০৭০) 🕮 বিশ্বস্থা :		Haraka at	
	e Basella e e e e e e e			เมา - กลังเอาโลก <b>กลักแ</b> น่ว	•
	State 1 A	urtuurteen kojulitareen kol K	r. Vity	ur yeu de linke e	•
Parties America		egi kinggana seki tipanta atta	a Donales	grafisi i sil	
Leuf dae gefal	Agrian Burgari Brian	ra . Perali al. ra	And Age	s de fechal	•
popular in the property of	es, <b>a</b> se aspectorio	។ សក់ខណៈសិក្សានទើកស្រាំ២៩១ -	i praha	era di Bolejili, e vandillajan	•
Contract of the contract of	ta isti etimoga			ediffusion ellarginession	•
			•		
	ใน แก <b>ละเ</b> กา (สิ่นส	i Profitalistikasi kalendari	. Cignal ay	en egg	
		ti Tak Harrist	tierin.	o kapan sa sansar e 📆	
	1 <b>.0</b> 0 taga 20.	eri Martin Parisa da jeri	1.28度等。		
		le Caretti Lago.	issantii l	ing and the second seco	
	ina boje bio	Najar 1965 - Angels Sa	ស្តាន	production of the production of the contract o	
	ខ ខេត្ត មួ <mark>ងម</mark> េ	ga da Santana M	0.500	e sa <b>g</b> entin	
ja ja sa <b>sa</b> s, ili da sasjast		en er		e popular a la decreta en la companya en la company	•
				on the other many three	
en e			1		
		ning. Nggarang	1,160	es in neishbre ce i i wa	
	interviring and the ex-	defendensigen wegte	, er tres		
	. + * 1	taga amatu katan ka	to the first of the	ing takan penggun kabupatèn Kabupatèn Bababah penggun	
		•			
	·				••
					•

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 compensation.

The Respondent performed unworkmanlike home improvements in the installation of hardwood flooring. It is undisputed that the new hardwood flooring installed by the Respondent was uneven. It is a matter within the competence of an ordinary person that new hardwood flooring should be level and smooth throughout. The edge of the planks should not rise higher than the middle of the planks. This is precisely what happened to the flooring the Respondent installed. The cupping was explained credibly by the Owners in their testimony and supported by photographs. It was also documented in the inspector's report which also contained photographs. The Respondent did not deny the cupping problem.

The dispute involves the cause of the cupping. The Claimant maintains that the flooring cupped because the Respondent did not allow the raw wood to reach equilibrium with the ambient humidity of the environment in the House before installation. Thus, when the flooring was finished and sealed, the planks swelled and, having no room to expand, were forced upwards on the edges. Despite the passage of time, the cupping remains.

The Owners are not experts in the installation of hardwood flooring; neither do they have any expertise in the properties of hardwood. However, the Owners amply supported their reasons for believing the cupping was caused by the Claimant's failure to allow the raw wood to reach equilibrium before the flooring was installed.

According to a report admitted as Claimant's exhibit 4, Mark Brown inspected the flooring on August 31, 2018. Mr. Brown was not present to testify, so he was not qualified as an

					·	
					•	•
rights an hair leadan he					•	
1				1		
				1	ľ	
•		r ogsåde pritte.				
रिकार स्टार्टिस इस का	· ·	*		ļ		
graph services assets the second		ti. Bi o to sugar	¥ .			. Smight o
	'	t		1		
		Catellor Services	*	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	ista in the light	हैं नाम्बद्धाः कार्रेड्डिक
	rian bagarbiya	end of the	far <b>e</b> ga	a dia kan	gyst.if	120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 · 120 ·
er trageling websit	ion a <b>no</b> se i s	responding to the	ar julia	on well :	. 21 e es	in the sp
				1年次数。		A The State
er religione de la cuada	i Harati talahi salif L		19.00	i sari	with the second	·
	demonstrate	n of with the site of		i i e e e e e e e e e e		
grain a language de H	and the contract of	अर्थ कर्काट (१ दर्ग ) -	· * · ·	in this term	. A Partition	Gradeji
Andrew Frank Funda (40)		rite i jura iste-	Maria de la composição de La composição de la composição	1. 30 to 1.	denote const	
		ja gajavare kasi			of green to be	
in a state of the			firk	1	11.74 m 12.74	•
i digita ta disensi ya kang ka		festi fil i ol.		st. Carlo	g - B +, t	
A second to an explain	Her grafts # to	Same of the same	\$ *	in proces		i Berete
				. 4500	aligni ee	y + 4 % *:
o Difference in the province	i ar Light Might	lating of the late.		· 25g.		
and a burth open comiss		্ আ <b>রে</b> টেটা টেটা পান্তর্		li jind.		

expert witness. I do not have any information about his qualifications. However, his report was admitted into evidence without objection from the Respondent. His report appears to be unbiased and demonstrates knowledge of the properties of hardwood flooring. I accept the report as reliable evidence of the cause of the cupping.

Mr. Brown inspected the floor, observed the cupping, and took measurements. He measured the temperature and humidity in the basement, took pin meter readings of the subfloor, and measured the temperature and humidity of the main floor of the House. Mr. Brown cited the National Wood Flooring Association standards for causes of flooring problems. Relying on that source, he wrote that the potential sources of any cupping are:

A moisture differential within individual pieces of flooring, usually excessive moisture on the underside of the flooring. More subtle cupping can be caused by lack of proper acclimation, (this is generally permanent cupping). Flooring also may cup when a wood floor experiences conditions that cause rapid drying on the surface. This condition occurs with gaps as the flooring shrinks. Clmt. Ex. 4, p. 3.

Mr. Brown reached the conclusion that improper acclimation caused cupping in this instances partly through eliminating other potential causes. The measurements taken indicate that there was no excessive moisture on the underside of the flooring, so that cause was eliminated. Span measurements of the flooring indicated that the flooring was at the manufacturer's width of five inches when it was installed. However, uninstalled floor boards that were left at the job site in the same moisture as the installed flooring were measured as *more than five inches wide* at the time of the 2018 inspection.

Mr. Brown concluded:

BOARDS THAT ACCLIMATE TO A HIGHER MOISTURE CONTENT AFTER INSTALLATION AND DO NOT HAVE ADEQUATE FIELD SPACING WILL CUP. The evidence indicates that the flooring was not properly acclimated.
Clmt. Ex. 4, p. 4.

٠.	,		. •				
•		•					•
•	•	; ;					<b>.</b>
•	\$1.55 j.	andar <b>as</b> , in the A	eli erajalir Musi		el samm	ertura ( juliotet tuegit	•
	•	ve or <u>proved</u> ji e	property of the Market		n, de sil		•
•		on Charle	<b>ព</b> េស - ១១៩៩ កុំខក្ខុន្ធ ម៉ុ			gatacaratic make with a	
		•	•	Marijar (S. 1999)	1 (1 - 2 to 1	na na Walaza na v	• .
<b>4</b>		ा <mark>र्वेद्रि</mark> विकास स्थापन	i i i sa ngan	groves us mad in	i waik d	part in which by	• .
	:	della sella esta a <b>n b</b> es	an track with the pr		1 1 1 1 1 1 1 1 1	regularismo servicio de la compansión de l	
•	<i>5</i> 40.	distribute Vibra	rajai jiraa mati			er graff af tresatte a earlier	:
		or english to the section		aliens at the laws as			
				Mesto, yi ii se sostanii		erik arrej de wyr Vije is a r	
		e gladije vije Geloje vedije		e gande offensjelinge fin e gande og gjarte og de skrive gande figt og den gjart efte gande offensig en gande fin gande offensig fin eller entre		raffice to whome sections is a state section of the space section of the	
			A feire i majarres i a			A STORES AND A STO	
	٠,					ing nebagain saman.	• •
		•					•
•							
	•					en de la competencia	4
	. 15 d.					in the promotion flow makes better	
•				in company (1800)	+14, 1		
	•				1413 <b>3</b> 51	Contract the of the	
		. 1.	· Weight				
							•
	• •						
		•			·		
•		4	1	<u>'</u>			. ,

I accept this conclusion as the most likely explanation of the cause for the cupping.

The Respondent testified that the cupping could have been caused by moist air leaking into the House through the attic door. I reject this suggestion because the evidence shows that the Respondent replaced the original attic door during the construction project.

The Respondent also testified that the cupping could have been solved by re-sanding the floors. However, the Claimants rejected that suggestion because it was not recommended by the inspector.

Mr. Luman, the project manager for the Respondent, testified that the flooring was delivered to the House on a date between March 3rd and 6th. The flooring was spread around after delivery to enable acclimation. The floor was installed on an unspecified date after it was in the House with the air conditioning and/or heat running for several days. According to Mr. Luman, the floors should have had adequate time to acclimate. Mr. Luman suggested that a deficiency in the floor joists contributed to the cupping. On cross-examination, however, Mr. Luman acknowledged that the Owners paid extra to the Respondent to have those floor joists replaced. Therefore, I reject the suggestion that a problem with the floor joists caused the cupping.

I thus find that the Claimant is eligible for compensation from the Fund. The Claimant proved that the installation of the flooring was unworkmanlike. The totality of the reliable evidence shows that the wood flooring was not allowed to sufficiently acclimate before it was installed. When the wood absorbed moisture from the air inside the House it swelled. There was insufficient room for expansion, so the planks rose at the edges, resulting in uneven and unsightly floors.

			•			
p				•		•
		•				
		•	•	•		
	· 9					
•						A.
						•
•						
<del> </del>						
						· · · · · ·
						•
	<del></del>					
•						
•						
•	•				√ <b>α</b> √ Δ	•
					•	
				•		
•					•	•
					· ·	

The Respondent argued that the Claimant should be required to wait longer to see if the cupping subsides. I reject that notion for two reasons. First, the floors were installed more than a year before Mr. Brown's inspection; he found cupping. If the floors were going to right themselves I would expect it to have happened by then. Second, the inspection report indicates that, if cupping is the result of poor acclimation, it is likely to become permanent.

Having found eligibility for compensation I must 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); COMAR 09.08.03.03B(1). MHIC's regulations provide formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the Contract, and the Claimant intends to retain other contractors to complete or remedy that work. The Claimant obtained an estimate from Ferraro Custom Builders to remove and replace the flooring. The estimated cost totals \$23,950.00. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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

COMAR 09.08.03.03B(3)(c).

Applying that formula to reach the proper award is as follows:

		,					
						; ·	
					4		
					•		
		and states the sales.		i kan hat Dagir	in Land	า สสมรัฐเลางารใ	
	•	e dagawe e diak elili tek	the solution of	e annes a prant e end		er et endig <b>ic</b> e	gar pajas
		न्त्रीत वर्षक्ष		oni sepa produkta <b>reo</b>			r. 1887 d
		and the state of t	grantija saatal	. 1944 - Espainion de la companya d		Singar Markey Lagra	n water
				a in 1918, godo svato sa k		ang ng banda, miligi na	
·	•	r Kamara Pijeli keralista	egg gin ein.	i di Santa da Perangan da k			
	•	and specify it. of $\Gamma$	Sanger et grant in	en de normalità della com-		eracija in jedanike.	- 1 all*#
				in or hogger five	្នាស់ស្នាក់	a eleganistic de la company	<del>grajen</del> as
		in the Miles of the same to		region a governo		r i sa sel u ses	W TARRY
	•	a are son out to be	Brigario (del 1990)	rdy y e i fastige û beza.	All the second	Care of the second	
							A sour
			i kija da <del>ke</del> ga di	ret i gjalat <b>le</b> maste gja	KO E MRZ		:
	••		g g ^{rego} – je jegovat 2 <del>naga.</del> •	Marine Commission	i e tuar ei		4. A.B.
		garana etilek taki g		i dega i societa e e e e		e Pemerata (Indiana)	, Artina
	•	to manifest the second	্যানু প্ৰতিষ্ঠ সংগ্ৰ		t ją de	ignasion wheels of	
		n e sa principlik epikobile	त्यसम्बद्धाः स्थापः । स्थापः । स्थापः स्थापः । स्थापः	oti sa goktabolijos Kieja o sale <b>talata</b> pos Otino valdatniakom o	មានមួយវិទា សេសមាន	figura en aj instru I komo ekon fanto	
		TO THE HOLD SHELL IN THE SHELL	mijalenik serel 100 - Dart Miller	An en lega paradizona por uno. Asopor por Asos Prendingas Perasportus estre silvas est	· Single Markana	láng más sing . Tang más lengt	į.
		n triperio di				म्बर्क्स्ट्रिक्ट स्टब्स्ट्रिक्ट १ सम्बद्धी स्टब्स्ट्रिक्ट	•
	•			• . •			
	•					imato da Polici.	. M. P. A.
			ल्लुक इस्टीहर ५४ । १	in the reserve of arts in so		of year peoples.	• •
	*						

Amount paid to the Respondent	\$156,173.60
Plus amount to be paid to Ferraro to complete the Contract	<u>\$23.950.00</u>
-	\$180,123.60
Less original Contract price	<b>\$156.173.60</b>
Actual loss	\$23,950.00

The law 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 of \$23,950.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

# PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$23,950.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

#### RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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; and

⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

	₹ <mark>*</mark>		Þ		٠.	
•	•					
•	•				•	
			2 1996 (4)	Api orași Api orași		m til e gjern e <b>gy</b> Komon gjern gjol
					e salike	servician (186 empres) est
. Adher to San		10 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		Million of the	ិត្តលាក់វិស្សិល រាក្សា	a section of the sect
r <b>w</b> al e e e e.		ere greto di granz		ing parameter in	्ष्राः	element of the figure
	Anda (f	LOSS SERVICE	( ) ( i ) :		t var \$ 4	all disconsist acquired
	persentitis, ne		نو : ښه چښ		11/10 Dec	makiki jerikogo sasti
•			) (영화, 1943년) (영화, 1943년)		ję, k _i sto	
						. Tells promotion with the
argia nome				1. 1. # 18 86 (1997)	· •	t.Zo.úr ko eg
		i de la Article de	ិស្នក៖ ក្នុង។ /	Negogi i elja .	m la va	e na Porty de para ja jak
	1955 (1957) 2011	gal goodbach oo	eri <b>ca</b> (Des)	i garaka 🖂	. weigh	
	, si u	00 350 330	(0 em 97.)	Ye IP L.	1. 1. w - 3	and the second
	•					
		entition and the	60.2 10 1.	parati e car il con		
i saida	adi þigʻyn i	e prio mengi mini.		miros (i		ing to the first of
	•			•	٠	a. In Sec.
		erti kaza jaroj	1.77.e 1941.	บได้เรียกเลือ		and the ST.
i lion (fil i ev la)	s 197 38 2.	त्मन स्टब्स्य होता <b>स</b>		Barata yang		a recent of green had to
	te i gy ist		in the same	ઋજિં ન ફેંગ્રહ	w but wa	ete, kiložani i buji
	* * * * * * * * * * * * * * * * * * *				11	i Pro Danson State
		2514 D 823				and the second of the second
					•.	
•	***************************************					
	# * * * * * * * * * * * * * * * * * * *					
	1					·

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

July 16, 2021 **Date Decision Issued** 

Mary R. Craig Administrative Law Judge

Mary R. Craig

MRC/cj #192616

			÷					•
	•	•		•	-		•	
				•				
	. 9	•					·	•
								•
•				•			·	
•	•					•		
		•	-		•			•
•			•	•			• ·	•
•	•	•		•				
			•.			•	223	
•								
			••					•
	$(x,y) = (x,y) \cdot (x,y$	• · · • · · •				(f.c.)	- <del>- 1</del> 1	•
		<u>·</u>	<u> </u>					
				•				
					1.4		<u>.</u>	
							- <del>".</del>	
					•			
		•	·					
			•					•
<i>*</i> .	•	•	•	•				
		:	•		•		i Na Nasa	•
		•						•
•								
		•	. *				\$ 100 miles	•
							****	
	•		· ·				·	
		•					.4	
		•			•			
		•						
	•							
•			•		•			
					•			٠.
	•	•	•					
					÷	X. :		•
		•	•					
		•						•
. •	•	•			4.1		• 1 •	
•				•				•
· •	•		•	•.		•	•	,
	·	•						1.74*
					•			1 14.1 3
	*		•	•	•			•

# PROPOSED ORDER

WHEREFORE, this 13th day of October, 2021, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

<u>Joseph Tunney</u>

Joseph Tunney Chairman Panel B MARYLAND HOME IMPROVEMENT COMMISSION

