

<p>IN THE MATTER OF THE CLAIM</p> <p>OF BRUCE AND IVY HOOVER,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF MARTY MINTON,</p> <p>T/A STONE GUYS LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE DANIA AYOUBI,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* </p> <p>* </p> <p>* </p> <p>* OAH No.: LABOR-HIC-02-23-06656</p> <p>* MHIC No.: 22 (75) 1202</p>
--	---

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On July 18, 2022, Bruce and Ivy Hoover (Claimants)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement in the amount of \$28,711.00 for actual losses allegedly suffered as a result of a home improvement contract with Marty Minton, trading as Stone Guys LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).³ On March 1, 2023, the MHIC issued a

¹ References to “the Claimants,” in the plural, are to Bruce and Ivy Hoover. References to “the Claimant,” in the singular, are to Ivy Hoover.
² The MHIC is under the jurisdiction of the Department of Labor (Department).
³ All references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Hearing Order on the Claim. On March 9, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 24, 2023, the OAH provided a Notice of Remote Hearing (Notice) to the Respondent by United States Postal Service (USPS) first-class and certified mail to the Respondent's address on record with the OAH. Code of Maryland Regulations (COMAR) 28.02.01.05C(1). The Notice stated that a remote hearing was scheduled for May 18, 2023, at 9:30 a.m., to be held by the Webex videoconferencing platform. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The USPS did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address or request a postponement prior to the hearing. COMAR 28.02.01.03E; COMAR 28.02.01.16.

On May 18, 2023, I held a remote hearing by video as scheduled. Bus. Reg. §§ 8-407(a), 8-312; COMAR 28.02.01.20B(1)(b). Johnathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimants were self-represented. The Respondent did not appear for the hearing. After waiting over fifteen minutes for the Respondent or the Respondent's representative to appear, I determined that the Respondent received proper notice and failed to appear.⁴ Therefore, I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

⁴ Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. As a preliminary matter, the Fund represented that the Respondent had filed for bankruptcy. In *In re Michael Goodman*, No. 86-B-1700 (Bankr. D. Md., Aug. 28, 1987), the United States Bankruptcy Court for the District of Maryland held that the automatic bankruptcy stay is not applicable to proceedings by homeowners to recover claims against the MHIC Fund. See 11 U.S.C.A. § 362(a) (2015). Though an unpublished decision, I am persuaded by the court's rationale and determine that the Respondent's bankruptcy filing does not require or warrant a stay of this proceeding against 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimants:⁵

- Clmt. Ex. 1 - Complaint Form, signed April 22, 2022, with the following attachment:
- Claimants' narrative, signed April 22, 2022
- Clmt. Ex. 2 - Copy of text message correspondence between the Claimant and the Respondent, January 28, 2021, February 2, 2021, February 5, 2021, and March 10, 2022
- Clmt. Ex. 3-1 - Photograph depicting floor seam separation in living room, undated
- Clmt. Ex. 3-2 - Photograph depicting floor seam separation in family room, undated
- Clmt. Ex. 4-1 - Photograph depicting spice rack as installed, undated
- Clmt. Ex. 4-2 - Photograph depicting spice rack after the Respondent's repair, undated
- Clmt. Ex. 4-3 - Photograph depicting closeup view of spice rack after the Respondent's repair, undated
- Clmt. Ex. 4-4 - Photograph depicting first view of kitchen countertop, undated
- Clmt. Ex. 4-5 - Photograph depicting second view of kitchen countertop, undated
- Clmt. Ex. 4-6 - Photograph depicting third view of kitchen countertop, undated
- Clmt. Ex. 4-7 - Photograph depicting gap at kitchen countertop and cabinet joint, undated

⁵ I held the record open until May 30, 2023, to allow the Claimants an opportunity to provide a USB drive with a copy of the videos comprising Claimants' Exhibits 9 and 10 as well as to supplement the record with color copies of the photographs comprising Claimants' Exhibits 3 and 4. The Claimants failed to do so.

- Clmt. Ex. 4-8 - Two photographs depicting electrical outlets, undated
- Clmt. Ex. 5 - Proposal from 7th State Builders, LLC, July 9, 2022
- Clmt. Ex. 6 - Contract between the Claimants and the Respondent, January 13, 2020, with the following attachment:
- Copy of cashier's check from the Claimant to the Respondent, January 27, 2020
- Clmt. Ex. 7 - Copy of text message correspondence between the Claimant and the Respondent, September 4, 2020
- Clmt. Ex. 8 - Log of work performed by the Respondent, March 19 through 23, 2020, September 13 and 16, 2020
- Clmt. Ex. 9 - Twenty-second video depicting spice rack opening and closing, undated
- Clmt. Ex. 11 - Copy of two cashier's check from the Claimants to the Respondent, January 13, 2020 and March 27, 2020

I did not admit the following exhibit offered by the Claimants:

- Clmt. Ex. 10 - Audio-visual recording of the Respondent's employee captured by the Claimants' home security camera, September 16, 2020⁶

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Remote Hearing, March 24, 2023
- Fund Ex. 2 - Hearing Order, March 1, 2023
- Fund Ex. 3 - Home Improvement Claim Form, July 18, 2022
- Fund Ex. 4 - Respondent's MHIC licensing history, May 2, 2023

The Respondent did not attend the hearing and therefore offered no exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Fund presented no testimony.

The Respondent did not attend the hearing and therefore presented no testimony.

⁶ Under Maryland's Wiretap Act, a person must obtain all parties' consent before recording oral communications. See Md. Code Ann., Cts. & Jud. Proc. § 10-402 (2020 & Supp. 2022).

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-119854.
2. On or about January 13, 2020, the Claimants and the Respondent entered into a home improvement contract to renovate the kitchen and first floor of the Claimants' home (Contract).
3. The scope of work included labor and materials to: 1) demolish existing and install new kitchen cabinets and countertops (necessary plumbing, electric, and HVAC work included); 2) install recessed lighting throughout the first floor; 3) remove a wall between the dining room and kitchen; 4) replace the ceiling and walls in the family room; 5) install new baseboards and luxury vinyl tile flooring throughout the first floor, excluding laundry room; 6) rebuild staircase; and 7) paint throughout the first floor.
4. The original agreed-upon Contract price was \$50,791.00.
5. On January 13, 2020, the Claimants paid the Respondent a deposit in the amount of \$16,512.66. On January 27, 2020, the Claimants paid the Respondent \$16,930.33. And on March 27, 2020, the Claimants paid the Respondent \$20,965.68. In total, the Claimants paid the Respondent \$54,408.67 for the work performed.⁷
6. The Respondent commenced work pursuant to the Contract on or about January 27, 2020 and completed the work in August 2020.
7. Shortly after completion of the work, on September 4, 2020, the Claimant contacted the Respondent with her concerns regarding: the kitchen cabinetry, specifically the

⁷ The Claimant was unable to explain why the payments to the Respondent exceeded the Contract price.

spice rack and trash bin failing to sit flush with the cabinet; separation at the seam in the kitchen countertop; separation at the seams in the flooring; and two non-functional electrical outlets.

8. On September 16, 2020, an employee of the Respondent returned to the Claimants' home. The employee repaired the trash can. The employee attempted to repair the spice rack by removing the finished left and right side panels. However, the adjustment did not allow the spice rack to sit flush with the cabinet and failed to remedy the Claimant's concern. The employee did not attempt to address the Claimant's concerns regarding the countertop, flooring, and outlets and indicated that the Respondent would follow up with the Claimant.

9. Thereafter, the Claimant did not hear from the Respondent although she continued to contact him. On or around February 5, 2021, the Respondent visited the Claimants' home and indicated that he would follow up with a plan to address the remaining areas of concern. The Respondent failed to do so and in late 2021, the Claimant visited the Respondent's workplace to follow up with him.

10. The Claimant and the Respondent explored whether the Claimant could secure another contractor to address the remaining areas of concern, including an electrician to repair the two non-functional electrical outlets. The Respondent indicated that if he approved of the price, he would compensate the Claimants for the expense. The Claimant ultimately preferred that the Respondent complete the work.

11. On March 10, 2022, the Claimant contacted the Respondent to again follow up. Since then, the Respondent has not communicated with the Claimant.

12. As of the date of the hearing: at one area in the living room and one area in the family room, there is a slight separation at the seam in the flooring; there is a slight separation at the seam in the kitchen countertop; the spice rack does not sit flush with the cabinet and the

surrounding cabinetry is unfinished; and two electrical outlets installed by the Respondent are non-functional.

13. On July 9, 2022, the Claimant obtained a proposal from 7th State Builders, LLC in the amount of \$28,711.00 for labor and materials to: 1) demolish existing and install new luxury vinyl tile click flooring throughout the first floor; 2) install and paint new shoe molding throughout the first floor; 3) cut failing tape above the kitchen sink and re-tape, block, and skim the kitchen ceiling; and 4) replace a dimmer switch and receptacle under the kitchen cabinet.

DISCUSSION

Applicable Law

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) (Supp. 2022); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

Burden of Proof

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. *Id.* § 8-407(e)(1); State Gov’t § 10-217; 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 Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

Parties’ Positions

The Claimants argued that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement by failing to properly complete the work under the Contract,

including the flooring, countertop, cabinetry, and electrical outlets. The Claimants explained that they promptly raised their concerns to the Respondent and that he knew there were problems at the completion of the work. Despite having agreed to correct the areas of concern, the Claimants maintained, the Respondent ultimately failed to do so.

The Fund argued that the Claimants failed to meet their burden to demonstrate that they sustained an actual loss as a result of an act or omission by the Respondent. Specifically, the Fund argued that with respect to the flooring, the Claimants failed to demonstrate that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. Though the Claimants face no statutory bars to recovery, the Fund argued that what it perceived as inconsequential flooring separation would not warrant an award in the amount of \$28,711.00 to rectify. With respect to the Claimants' concerns regarding the countertop, cabinetry, and electrical outlets, the Fund argued that the estimate provided by 7th State Builders, LLC in large part failed to include those items.

Analysis

For the reasons that follow, I conclude that the Claimants have not proven eligibility for compensation.

No Statutory Bars to Recovery

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants' recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg. §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimants reside in the home that is the subject of the claim or do not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The

Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

Flooring

I begin with considering the evidence presented regarding the flooring, which the Claimant described as separating at the seams. Though the Claimant's testimony generally referred to areas of separation at the seams or joints in the luxury vinyl tile, upon further questioning, it became clear that there are specifically two areas of separation—one in the living room near a window and one in the family room near the stairs. The Claimants did not offer evidence as to how extensive each of the separations is but testified that the separations run the length of the plank.

The photographs comprising Claimants' Exhibit 3 depict a slight separation in two locations that appear to be no more than one-quarter of an inch at the widest point of separation. Though the Claimant was unsure of the square footage of flooring laid, the record indicates that the Contract included the installation of luxury vinyl tile throughout the first floor of the home, excluding the laundry room. The Claimants offered no other evidence to demonstrate either that there were more areas of separation or that the two areas of separation were more extensive. Nor did the Claimants offer, for example, expert testimony to establish why what might otherwise be perceived as a normal variation or imperfection in the flooring in two relatively minor areas was unworkmanlike or inadequate. Therefore, without more and on this record, I cannot conclude that the Claimants have met their burden to establish that the Respondent's installation of the luxury vinyl tile flooring was unworkmanlike, inadequate, or incomplete.

Kitchen Countertop

I next consider the evidence presented regarding the countertop, which the Claimant described as separating at the seam. Much like the separations in the flooring, the separation at

the seam in the kitchen countertop, though visible, is slight. The Claimants did not offer evidence as to how extensive the separation is. The photographs comprising Claimants' Exhibits 4-4, 4-5, and 4-6 depict a slight separation that appears to be no more than one-eighth of an inch at the widest point of separation. The Claimants offered no other evidence to demonstrate either that there were more areas of separation or that the area of separation was more extensive. Nor did the Claimants offer, for example, expert testimony to establish that this separation evidenced an unworkmanlike or inadequate countertop installation or an estimate from another contractor to demonstrate what, if any, repairs would be necessary. Therefore, without more and on this record, I cannot conclude that the Claimants have met their burden to establish that the Respondent's installation of the kitchen countertop was unworkmanlike, inadequate, or incomplete.

Cabinetry

Next, I turn to the Respondent's installation of the cabinetry, specifically the spice rack. The evidence demonstrates that from the time of installation, the spice rack never sat flush against the cabinet. The Claimant notified the Respondent shortly after his completion of the work and provided photographs and videos documenting her concerns. Further, the Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Respondent's employee came in September 2020 to repair the spice rack and in attempting to do so, removed the finished side panels on both the right and the left. Not only did this not allow the spice rack to sit flush against the cabinet, it also left the spice rack with an unfinished look. The employee indicated to the Claimant that he would notify the Respondent, and the Respondent was made aware of the Claimant's continued concerns regarding the spice rack on each occasion during which she followed up with him. Nevertheless, the Respondent failed to repair the spice rack.

The Claimants' Exhibit 9 is a twenty-second video depicting the spice rack opening and closing and which demonstrates that the spice rack continues to not sit flush against the cabinet. Additionally, Claimants' Exhibit 4-7 depicts the uneven way in which the spice rack was hung from the countertop and an increasing gap from left to right. Based on this evidence, I conclude that the Claimants have met their burden to establish that the Respondent's installation of the spice rack was unworkmanlike, inadequate, or incomplete and are therefore they are eligible for compensation from the Fund. However, for the reasons explained below, they have failed to meet their burden to demonstrate the amount of actual loss for this item.

Electrical Outlets

Finally, I turn to the Respondent's installation of the two electrical outlets. The evidence demonstrates that the two outlets were never functional. The Claimant reported her concern regarding the non-functional outlets to the Respondent, who offered to compensate the Claimants for the cost of an electrician to repair. The Claimant testified that she understood the Respondent would only do so if he approved of the price and that the quotes she received were expensive. However, there is no evidence that the Claimant presented any of those quotes to the Respondent or that he rejected them for being too costly. As demonstrated by their text message exchange in Claimants' Exhibit 2, the Claimant ultimately preferred that the Respondent complete the work.

Therefore, though the Claimants have established that the Respondent's installation of the two electrical outlets was unworkmanlike, inadequate, or incomplete, a question arises as to whether the Claimants unreasonably rejected good faith efforts by the Respondent to resolve the claim. *See* Bus. Reg. § 8-405(d) (Supp. 2022). However, for the reasons explained below, even assuming that the Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim with respect to the two electrical outlets and would be eligible for

compensation from the Fund on this basis, they have failed to meet their burden to demonstrate the amount of actual loss for this item.

Amount of Actual Loss

Though the Claimants are eligible for compensation from the Fund for the faulty spice rack installation and may be eligible for compensation from the Fund for the two non-functional electrical outlets, on this record, they have failed to meet their burden to demonstrate the amount of actual loss. The MHIC's regulations provide the following 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).

There is no evidence on this record to support a finding that the Respondent abandoned the contract without doing any work; accordingly, the first formula does not apply. Assuming that the Claimants were not soliciting another contractor to complete the Contract, on this record, I am unable to calculate the amount that the Claimants paid to the Respondent, less the value of any materials or services that he provided. The Contract only provides a lump sum of \$50,791.00 for all of the work to be performed. It does not separate out charges for the cabinetry

or electrical outlets from, for example, the flooring or painting. Therefore, the second formula is not instructive in calculating an award.

Further, I am unable to calculate an award under the third formula. Though the Claimants secured a proposal from 7th State Builders, LLC, it does not include work to repair any cabinetry nor have the Claimants provided evidence of what it would cost for that contractor or any other to repair the Respondent's poor work with respect to the spice rack. Additionally, while the proposal from 7th State Builders, LLC includes electrical work to replace a dimmer switch and receptacle under the kitchen cabinet, it does not provide a breakdown of the cost for doing so. Instead, the proposal provides a total sum of \$28,711.00 for all the work to be completed, including a full replacement of the main level flooring. Therefore, even assuming that the Claimants are eligible for compensation from the Fund for the two non-functional electrical outlets and assuming that the proposal by 7th State Builders, LLC is for work to remedy those outlets installed by the Respondent, the proposal fails to identify how much the Claimants would be required to pay to repair the Respondent's poor electrical work.

For the reasons stated above, although the Claimants have established that they are eligible for compensation from the Fund for the faulty spice rack installation and may be eligible for compensation from the Fund for the two non-functional electrical outlets, they have failed to meet their burden to demonstrate the amount of actual loss. Accordingly, I cannot recommend an award from the Fund in this case.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimants' claim; and

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

August 8, 2023
Date Decision Issued

Dania Ayoubi

Dania Ayoubi
Administrative Law Judge

DLA/at
#206419

PROPOSED ORDER

WHEREFORE, this 3rd day of October, 2023, 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**