

IN THE MATTER OF THE CLAIM	*	BEFORE WILLIAM C. HERZING,
OF HELEN J. MAAREC,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-14-05465
FOR THE ALLEGED ACTS OR	*	MHIC No.: 13 (90) 1140
OMISSIONS OF MICHAEL BLOT,	*	
T/A MIDI FLOOR WORKS, LLC,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On October 15, 2013, Helen J. Maarec (Claimant), filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with Michael Blot, trading as Midi Floor Works, LLC (Respondent).

I held a hearing on November 12, 2014, at the Maryland Office of Administrative Hearings (OAH) in Wheaton, Maryland. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (Supp. 2014). Eric B. London, Assistant Attorney General, Department of Labor, Licensing and

Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent also appeared and represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following documents as Claimant Exhibits:

1. Advertisement for Mr. Sandless floor refinishing
2. Wood Floor Estimate & Inspection, April 3, 2012
3. Department of Labor, Licensing and Regulation (DLLR) Active Licensed Home Improvement
4. Photocopy of check #3836 issued to Respondent by the Claimant
5. Ten photographs of wood flooring
6. Business cards
7. Inspection Form for inspection on February 27, 2013
8. Estimate, PH Contractors, LLC
9. Proposal, Floor Rio Abbey Carpet
10. Estimate, Dean's Custom Floors, Inc.

The Respondent submitted a Complaint Inspection Report that I admitted into evidence as Respondent Exhibit 1

I admitted the following documents as Fund Exhibits:

1. Notice of Hearing, September 22, 2014
2. Hearing Order, January 29, 2014
3. The Respondent's licensing history with the MHIC
4. Home Improvement Claim Form, October 15, 2013
5. Letter to the Claimant from Barbara Hardy, Panel Secretary, MHIC

Testimony

The Claimant testified and also presented testimony from Dean Berkheimer who was qualified as an expert in wood flooring.

The Respondent testified on his own behalf and the Fund did not present any witness 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 05-12927.
2. On April 3, 2012, the Claimant and the Respondent entered into a contract to install wood flooring in the Claimant's home located at 14317 Platinum Drive, North Potomac, Maryland, 20878.
3. The contract stated that work would be completed in approximately five days.
4. The original agreed-upon contract price was \$6,750.00.
5. The Claimant's husband wanted the flooring to run parallel with the floor joists but the Respondent advised that the flooring should run perpendicular to the joists.

6. The Claimant and the Respondent agreed to add a layer of plywood subflooring for extra support. The subflooring added \$800.00 to the contract price for a total of \$7,550.00, all of which the Claimant paid to the Respondent.

7. The Respondent completed installation of the wood flooring in April 2012.

8. Sometime after installation of the wood flooring, white streaks began to appear between the floor boards.

9. The Claimant called the Respondent and he agreed to sand and refinish the floor.

10. After the floor was sanded and refinished, the white streaks reappeared so the Respondent sanded and refinished the floor a second time.

11. The white streaks appeared again approximately six weeks later.

12. The Respondent had another contractor sand and refinish the floor a third time and also apply sealant.

13. When the white streaks appeared again, the Respondent called a representative for Indiana Floor Inc. The representative, Don Wendell, inspected the floor on February 7, 2013. He observed that the floor moved up and down and that there were nailing deficiencies in the floor. (Respondent Exhibit 1)

14. The Claimant hired Atlas Floors, Inc. to inspect the floors and Tom Skowron performed an inspection on February 27, 2013. He concluded that nails were not spaced according to National Wood Flooring Association (NWFA)¹ standards and two coats of stain were applied improperly. (Claimant Exhibit 7)

¹ The NWFA is a not-for-profit trade association representing all segments of the hardwood flooring industry, including manufacturers, distributors, retailers, installers, inspectors, and consultants. <http://www.nwfa.org/about-nwfa.aspx>

15. On March 21, 2013, Dean Berkheimer inspected the floor and found that it was not nailed properly and that there was insufficient subfloor support which caused the floor to move up and down.

16. Sanding and refinishing is not a solution to the problem because the floor has already been sanded to a minimal level.

17. The Claimant obtained estimates from PH Contractors, LLC, Floor Rio Abbey Carpet and Dean's Custom Floors, Inc., to remove and replace the wood floor installed by the Respondent.

DISCUSSION

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) (Supp. 2014). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The evidence established that the Respondent's installation of the wood floor was an unworkmanlike, inadequate or incomplete home improvement. Specifically, two inspection reports and the testimony of the Claimant's expert witness established that the floor was nailed improperly. Wendell's inspection on February 7, 2013 stated that that the floor moved up and down and that there were nailing deficiencies in the floor. The Atlas Floors inspection on February 27, 2013 determined that nails were not spaced according to NWFA standards and the stain was not applied properly. Dean Berkheimer, an expert with 28 years

experience in wood floor installation, testified that he inspected the floor and found that it was not nailed properly. He also stated that there was not enough support in the subfloor which caused the floor to move up and down and resulted in the finish peeling. He also testified that the white streaks were caused by improper application of stain which was put over a first coat that was sealed and the second coat did not penetrate the wood. Berkheimer testified that the floor installed by the Respondent must be removed and replaced because it has already been sanded to a minimal thickness.

The Respondent suggested that the white streaks were caused by excessive moisture on the floor. However, he did not present any type of inspection report or expert testimony to support his supposition. He admitted on cross examination that he did not know if the floor was subjected to excess moisture and the Claimant also testified that she did not put water on the floor. Thus, the credible evidence in this record is that the white streaks in the floor were the result of improper nailing and staining which allowed movement of the floor boards and peeling of the finish.

Having found that the Claimant is entitled to compensation, I must determine the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price.

COMAR 09.08.03.03B(3)(c).

To determine the Claimant's actual loss in accordance with the formula set forth in the regulation, the following calculations are applicable:

Amount paid to the Respondent under original contracts	\$ 7,550.00
Cost to complete	<u>\$ 7,686.90</u> ²
Subtotal	\$ 15,236.90
Less original contract price	<u>\$ 7,550.00</u>
Claimant's actual loss	\$ 7,686.90

The Claimant has established an actual loss in the amount of \$7,686.90 as a result of the actions of the Respondent. Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(1), (5) (Supp. 2014).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$ 7,550.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,550.00; and

² I have used the estimate from Dean's Custom Floors because it is closest in price and to the scope of work to the Claimant's contract with the Respondent. The estimates from PH Contractors and Floor Rio Abbey Carpet are both for \$12,500.00. There is no indication of why those estimates are \$5,000.00 more than the Dean's Custom Floors estimate.

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 at least ten percent (10%) as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

January 29, 2015
Date Decision Issued

William C. Herzing
Administrative Law Judge

WCH/tc
#153843

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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 25th day of March 2015, 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
Panel B**

MARYLAND HOME IMPROVEMENT COMMISSION