

IN THE MATTER OF THE CLAIM
OF STEPHEN VIGUES,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF
MUHAMED RAMA, t/a EUROPEAN
TOUCH REMODELING, LLC ,
RESPONDENT

* BEFORE EMILY DANEKER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: DLR-HIC-02-14-37106
* MHIC No.: 13 (90) 1269
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PROPOSED DECISION

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DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On June 4, 2014, Stephen Vignes (Claimant), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) seeking reimbursement of \$102,749.00 in alleged actual losses incurred as a result of a home improvement contract with Muhamed Rama, t/a European Touch Remodeling, LLC (Respondent).

I held a hearing on March 4, 2015 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 & Supp. 2014).¹ The Claimant appeared *pro se*. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR or Department), represented the Fund. Neither the Respondent, nor anyone authorized to represent him, appeared at the hearing.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02; COMAR 28.02.01.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered for the Claimant:

- Clmt. Ex. 1 - Contract for Home Repairs (Contract) between Claimant, his wife, and Respondent, dated July 22, 2012
- Clmt. Ex. 2 - Proof of Payment, dated July 23, 2012
- Clmt. Ex. 3 - Proof of Payment, dated August 14, 2012
- Clmt. Ex. 4 - Customer Agreement with BT Stone, dated September 27, 2012
- Clmt. Ex. 5 - Spreadsheet reflecting payments to Respondent

¹ The Claimant filed his claim in June 2014 and I held the hearing prior to the issuance of the 2015 edition of the Business Regulation article; accordingly, all citations to the Business Regulation article of the Maryland Annotated Code are to the 2014 version, unless otherwise noted.

- Clmt. Ex. 6 - Proof of Payment, dated February 25, 2013
- Clmt. Ex. 7 - Photographs and diagrams of residence at 45 E. Wheeling Street, Baltimore, Maryland 21230 (Residence), labeled A through E
- Clmt. Ex. 8 - Letter from David Greenwood, Licensed Home Inspector, to Claimant, undated
- Clmt. Ex. 9 - Letter from Trident Engineering Associates, Inc. to Steve Lusby, Erie Insurance Group, dated March 12, 2014
- Clmt. Ex. 10 - Letter from Michael J. Walkley, P.A., to Celine Plachez (Claimant's wife), dated October 13, 2014
- Clmt. Ex. 11 - Structural Repairs spreadsheet prepared by John Bolster and Patrick O'Brien, dated October 25, 2014
- Clmt. Ex. 12 - Diagram of the Residence
- Clmt. Ex. 13 - Photographs of the Residence
- Clmt. Ex. 14 - Photographs of the Residence
- Clmt. Ex. 15 - Benchmark Home Improvement, Inc. Estimate, dated July 22, 2013
- Clmt. Ex. 16 - Diagram of the Residence
- Clmt. Ex. 17 - Photographs of the Residence, labeled A through C
- Clmt. Ex. 18 - Diagram of the Residence
- Clmt. Ex. 19 - Photographs of the Residence, labeled A through B
- Clmt. Ex. 20 - Notice of Non-Renewal from Erie Insurance Exchange, to Claimant, dated December 5, 2014
- Clmt. Ex. 21 - Diagram of the Residence
- Clmt. Ex. 22 - Photographs of the Residence, labeled A through C
- Clmt. Ex. 23 - Letter from New Renaissance Architects & Builders, Inc. to Claimant, dated October 28, 2014
- Clmt. Ex. 24 - Photographs of the Residence
- Clmt. Ex. 25 - Letter from Garden Springs Landscaping, Inc., to Claimant, dated March 12, 2013
- Clmt. Ex. 26 - Photographs of the Residence, labeled A through C

Clmt. Ex. 27 - Diagram of the Residence

Clmt. Ex. 28 - Letter from Air-Tech Refrigeration & Mechanical Contractors, Inc. to Claimant, dated August 29, 2013

Clmt. Ex. 29 - Letter from Air-Tech Refrigeration & Mechanical Contractors, Inc. to Claimant, dated October 14, 2014

Clmt. Ex. 30 - Judiciary Case Information for Baltimore City Circuit Court Case No. 813324047

Clmt. Ex. 31 - Total Cost for Repair Replacement, Restoration and Completion of work at the Residence

I admitted the following exhibits offered for the Fund:

Fund Ex. 1 - Notice of Hearing, dated January 8, 2015, with Hearing Order attached

Fund Ex. 1A - Certified Mail Receipt Cards

Fund Ex. 2 - Respondent's Licensing Record

Fund Ex. 3 - Letter from the DLLR to Respondent, dated June 4, 2014, with enclosed Home Improvement Claim Form

Testimony

The Claimant presented the testimony of Celine Plachez and Mike Miller, investigator with the Maryland Home Improvement Commission. The Fund did not present any witnesses.

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 01-98875.

2. At all relevant times, the Claimant and his wife, Celine Plachez,² were the owners of the Residence, located in Baltimore City, which was their primary residence.

² The Claimant and his wife will hereinafter be referred to collectively as the Homeowners.

3. On July 22, 2012, the Homeowners and the Respondent entered into a contract to construct an addition to the third floor of the Residence. The contract work consisted of demolishing the existing second floor roof, adjusting and extending the existing third floor structure and roof, adding and finishing out a bathroom and bedroom on the expanded third floor, building a balcony off the expanded third floor, building a roof deck (dependent on code requirements), and obtaining the necessary permits.

4. The contract stated that work would begin on August 1, 2012 and would be completed by September 15, 2012, weather permitting.

5. The original agreed-upon contract price was \$36,150.00, which did not include the construction of the roof deck. The Respondent also agreed to pay 50% of the Homeowners' rent expenses for the period of time that the Claimant and his family relocated from the Residence.

6. The original agreed-upon price for construction of the roof deck was \$7,500.00. On October 30, 2012, while work was still ongoing, the Homeowners decided to increase the size of the roof deck, resulting in an agreed-upon increase to the contract price in the amount of \$3,402.00.

7. The Claimant made the following payments to the Respondent, totaling \$34,201.00:

- \$2,500.00 on September 27, 2011³
- \$5,000.00 on July 22, 2012
- \$15,000.00 on July 23, 2012
- \$5,000.00 on August 12, 2012

³ Ms. Plachez testified that she and the Claimant had planned this project for some time and made this advance payment to the Respondent, who was a personal acquaintance.

- \$5,000.00 on August 14, 2012
- \$1,701.00 on December 12, 2012

8. The Claimant also paid a total of \$5,000.00 to BT Stone on September 27, 2012 and September 28, 2012 for the application of stucco-type siding to the addition.

9. The Respondent extended the flue for the water heater and furnace using improper thin walled flex ducting. An improper vent fixture was also used for a natural draft flue.

10. The Respondent did not properly seal or flash penetrations for the mechanical systems. Flashing is missing or improperly installed throughout the Residence, including on the roof edge, deck, balcony, siding, and chimney.

11. The Respondent improperly constructed the rooftop deck such that its combustible surface is even with the chimney line.

12. The Respondent did not properly support the rooftop deck with load-bearing headers.

13. The Respondent supplemented the main ridge beam from the prior second floor roof by adding a new beam on top, but he failed to interconnect the beams for composite action.

14. The Respondent removed an intermediate beam from the prior second floor roof and improperly replaced it using conventional lumber bearing on wood posts that bear on the third floor joists rather than the masonry walls.

15. The Respondent did not supplement the header above a large second floor window that previously supported only a bare roof, but is now supporting a portion of the third floor, the balcony, the staircase, and a portion of the rooftop deck.

16. The Respondent constructed the stairs from the balcony to the rooftop deck such that they bear on a single cantilevered floor joist, which provides insufficient support, and require reinforcement.

17. The Respondent performed welding work on the balcony stairs in a manner that left burn marks covering the new sliding glass door leading onto the balcony.

18. The Respondent did not properly frame the sliding glass door leading onto the balcony.

19. The stucco siding is improperly supported between the original and additional sections of the house, resulting in visible protrusions at the joints and cracking that allows water to enter the wall.

20. The Respondent installed a section of the new roofing material with the wrong side facing outward and exposed to the elements.

21. The Respondent used untreated plywood on the exterior of the Residence under the third floor bedroom window, which has permitted water intrusion under the window.

22. The Respondent never completed the bathroom addition. Some of the tiles laid by the Respondent were broken or cracked. The waterproofing on the drywall was damaged in some areas.

23. The door jambs in the addition are not straight or plumb. Moulding is unfinished. Floorboards are loose.

24. The Homeowners attempted to work with the Respondent to address these problems, but he was dismissive of some concerns, blaming issues on the fact that it was an "old house," and he was unable to properly address the remaining concerns.

25. Mike Miller, an investigator with MHIC toured the Residence on June 21, 2013. Mr. Miller attempted to facilitate a resolution between the Homeowners and the Respondent, but the Respondent did not respond to Mr. Miller.

26. On March 12, 2013, Garden Springs Landscaping, Inc. (Garden Springs) provided the Homeowners with an estimate of \$5,700.00 to remove and replace the tile floor, shower tile,

shower pan, and drywall, install a shower door, toilet, sink, medicine cabinet, closet doors, and electrical plugs and switches. The Homeowners have not been able to retain Garden Springs to perform this work.

27. On July 22, 2013, Benchmark Home Improvement, Inc. (Benchmark) provided the Homeowners with an estimate of \$43,700.00 to extend the chimney above the finished deck height, replace the hardboard siding on the side of the Residence, ensure proper flashing and edging, seal exterior penetrations, replace the stucco on the addition, replace the section of the roof where the material was incorrectly installed, install a new rooftop deck, replace the sliding glass door between the addition and the balcony, replace windows on third floor addition, and install moulding. The Homeowners have not been able to retain Benchmark to perform this work.

28. On August 29, 2013, Air-Tech Refrigeration & Mechanical Contractors, Inc. (Air-Tech) provided the Homeowners with an estimate of \$5,935.00 to furnish and install a two-zone ductless heat pump system for the third floor of the Residence. The Homeowners have not been able to retain Air-Tech to perform this work.

29. On October 14, 2014, Air-Tech provided the Homeowners with an estimate of \$9,145.00 to furnish and install a furnace, air conditioning unit, and water heater. The Homeowners have not been able to retain Air-Tech to perform this work.

30. On October 28, 2014, New Renaissance Architects & Builders, Inc. (New Renaissance) provided the Homeowners with an estimate of \$12,360.00 to repair the overload of the second floor bedroom header, repair the overload of the main ridge beam under the new third floor addition, and repair the overload on the intermediate roof beam. The Homeowners have not been able to retain New Renaissance to perform this work.

31. The Claimant has not had any additional work done on the Residence because the cost is too great.

32. The Claimant sustained an actual loss of \$63,989.00, prior to consideration of the applicable statutory limitation on recovery.

33. The Homeowners have not filed legal proceedings against the Respondent to recover their loss and the Homeowners have not filed an insurance claim to recover their loss.

DISCUSSION

I. The Statutory Notice Provisions Were Met.

The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice of the proceeding shall be sent by certified mail to “the business address of the licensee on record with the Commission.” Md. Code Ann., Bus. Reg. § 8-312(d). These same notice procedures apply to proceedings involving claims against the Fund. Md. Code Ann., Bus. Reg. § 8-407(a). Although the Respondent’s MHIC license expired in January 2013, the address that remained on record with the MHIC for the Respondent was 29 E. Wheeling Street, Baltimore, Maryland 21230. (Fund Ex. 2.) The notice sent to the Respondent by certified mail at the address of record was signed for and accepted, though it was someone other than the Respondent who signed the certified mailing receipt.

From all this information, I concluded that the Respondent received proper notice of the hearing and chose not to attend. Therefore, the hearing proceeded in the Respondent’s absence. Md. Code Ann., Bus. Reg. § 8-312(h).

II. The Merits of the Claim.

Relevant Law

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. This legislation created an available pool of money from which homeowners could seek

relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411.

A homeowner is authorized to “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). The statutes and regulations governing the Fund define “actual loss” as “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. Through this definition, the legislature limited the scope of recovery from the Fund to the categories of costs enumerated in section 8-401. *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 629 (1997) (for an award to be paid from the Fund based on a court ruling or arbitration, the court or arbitrator’s decision must contain express finding of fault on the part of the contractor and a dollar value of the actual loss).⁴ “The Fund may only compensate for actual losses [a claimant] incurred as a result of misconduct by a licensed contractor.” COMAR 09.08.03.03B(2). There is a \$20,000.00 per claim limitation on recovery from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1). Further, a claimant cannot recover an amount in excess of the amount that paid to the contractor and cannot recover for consequential damages. Md. Code Ann., Bus. Reg. § 8-405(e)(3), (5).

In addition, certain claimants are excluded from recovering from the Fund. In this regard, a claimant must prove that at all relevant times: the claimant owned fewer than three dwelling places; (b) the work at issue concerned the claimant’s personal residence in Maryland;

⁴ Under this statutory scheme, all licensed contractors are assessed for the monies that subsidize the Fund. When the Fund pays out money to a homeowner as a result of a faulty or incomplete performance by a home improvement contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of such contractor until the contractor fully effectuates reimbursement. Md. Code Ann., Bus. Reg. § 8-411.

(c) the claimant was not an employee, officer or partner of the contractor or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (d) the work at issue did not involve new home construction; (e) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (f) any remedial work was done by licensed contractors; (g) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (h) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (i) the claimant filed the claim with the MHIC within three years of the date the owner knew or with reasonable diligence should have known of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1) and (2).

At a hearing on a claim, a claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3). The Claimant's burden is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217; *Schaffer v. Weast*, 546 U.S. 49, 56 (2005). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[.]" when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 125 n.16 (2002). For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

The Respondent was a Licensed Contractor.

In order to recover from the Fund, the claim must be for acts and omissions of a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). The Respondent was a licensed home improvement contractor in 2012 at the time he entered into the contract with the Claimant and performed the work at the Claimant's home. (Fund Ex. 2.) Although he is no longer licensed, that does not affect the claim in this case.

The Respondent's Work was Unworkmanlike, Inadequate, and Incomplete

The evidence shows that the Respondent performed woefully unworkmanlike, inadequate, and incomplete home improvements. Ms. Plachez testified concerning the work performed by the Respondent. Her testimony was thorough and detailed. She kept detailed records and supported her testimony with more than thirty exhibits. Her testimony was consistent with the written opinion of David Greenwood, the home inspector she hired. The written opinion of Trident Engineering Associates, Inc. (Trident)⁵ also detailed substantial deficiencies in the Respondent's work. Trident's five-page written opinion was based on, among other things, an inspection of the Residence performed by Joseph Davis, a licensed professional engineer. Trident's opinions and conclusions were stated to a reasonable degree of engineering certainty, signed by Mr. Davis. The written opinion of Michael J. Walkley, P.A., also detailed the same deficiencies in the Respondent's work as noted by Trident. The opinion was based on Mr. Walkley's observations during his visit to the Residence, his review of construction drawings, photographs taken while the work was in progress, and his review of Trident's report. Mr. Walkley is a Maryland licensed professional engineer. The written opinion of John Bolster and Patrick O'Brien, who also were retained by the Claimant, was in accord. Mike Miller, an MHIC investigator who visited and viewed the Residence in response to a complaint filed by the Homeowners, also testified concerning the work performed by the Respondent. His testimony was in accord with the testimony provided by Ms. Plachez, though he noted that Ms. Plachez may have *understated* the deficiencies in the Respondent's work.

⁵ Trident was retained by Erie Insurance Group (Erie), which provided homeowner's insurance for the Residence. As a result of Trident's report, Erie issued a Notice of Non-Renewal for the homeowner's insurance policy. (Clmt. Ex. 20.)

The testimony and evidence establish that, pursuant to the contract between the Homeowners and the Respondent, the Respondent was to demolish a portion of the second floor roofline in the rear of the Residence, extend the existing partial third floor to the rear wall of the Residence, including the framing and roof, create and finish-off a bathroom and bedroom on the expanded third floor, build a balcony with stairway off of the third floor extension, and build a rooftop deck.

In the course of the work, the Respondent extended the flue for the water heater and furnace using improper thin walled flex ducting. As Mr. Miller described it, the furnace was “jerry-rigged” with flexible dryer vent tubing, which is an insufficient type of material for a furnace system. An improper vent fixture was also used for a natural draft flue. This resulted in elevated carbon monoxide readings in the home. The Respondent did not properly seal or flash penetrations for the mechanical systems. In early 2013, the heating system was condemned by a licensed contractor. This work was clearly inadequate and unworkmanlike.

The rooftop deck constructed by the Respondent was deficient in several respects. First, the combustible surface of the deck was even with the top of the chimney. (Clmt. Ex. 17B.) This is a fire hazard and a code violation. Second, the Respondent did not properly support the rooftop deck with load-bearing headers. As a result, the deck places too much weight on the windows below it, causing damage to windows on the third floor. Ms. Plachez testified that as a result of the excess weight from the deck, they had difficulty closing a new tilt-in window on the third floor addition. Trident explained that a support post for the rooftop deck is located directly over that window and the window has a double 2x4 header, which is inadequate for the applied loads. The stucco around that window has cracked, which permits water to enter the wall and cause damage. (Clmt. Exs. 9 & 17B.) Mr. Miller testified that when he toured the property, he

discerned movement in the rooftop deck and he had serious concerns about it. The evidence was consistent and clear that this work was unworkmanlike and inadequate.

The structural deficiencies were pervasive in the Respondent's work. The Respondent supplemented the main ridge beam from the prior second floor roof by adding a new beam on top, but he did not properly tie it in for composite action. As a result, the hallway in the third floor addition has a noticeable slope. Ms. Plachez testified that her child's ball rolled across the floor unaided. Trident measured a 1.2 degree downward slope in the floor. This has also led to cracking in the drywall in that hallway. The Respondent also removed an intermediate beam from the prior second floor roof and improperly replaced it using conventional lumber bearing on wood posts that bear on the third floor joists rather than the masonry walls. The Respondent did not supplement the header above a large second floor window that previously supported only a bare roof, but is now supporting a portion of the third floor, the balcony, the staircase, and a portion of the rooftop deck. (Clmt. Exs. 9, 10, & 22 B.) As a result, the header is visibly sagging and there are cracks in the drywall. Trident measured a slope of 0.7 degrees at the upper right corner of that second floor window and no slope at the center of the window. This work was unworkmanlike and inadequate.

The Respondent constructed a balcony off of the third floor addition and stairs leading from the balcony to the rooftop deck. Mr. Walkley opined in his written evaluation of the Residence that the stairs improperly bear on a single cantilevered floor joist. (Clmt. Ex. 10.) Likewise, Mr. O'Brien opined that for sufficient support, the stair load must be shared by four cantilevered joists and the stairs require reinforcement. (Clmt. Ex. 11.) Thus, this work is inadequate.

Ms. Plachez testified that when the Respondent installed the staircase leading from the balcony to the rooftop deck he used welding equipment, but failed to protect the newly installed

glass door. As a result, the glass door leading onto the balcony from the addition is covered with burn marks from the welding sparks. (Clmt. Ex. 19B.) Additionally, Ms. Plachez testified that the door was not properly framed and daylight was visible between the framing for the door and the wall above. (*See also* Clmt. Ex. 19A.) The work done on the balcony and staircase was clearly unworkmanlike.

The stucco siding was improperly supported between the original and new sections of the Residence. Trident observed protrusions at joints and cracking in the stucco at the tie-in between the old and new sections, which allowed water to enter the wall. (Clmt. Ex. 9.) Mr. Walkley also observed cracking and bulging in the stucco at the third floor, and explained that this could lead to weather penetration and cause the framing to rot. (Clmt. Ex. 10.) The Homeowners documented the cracking of the stucco and water intrusion with photographs. (Clmt. Ex. 14.) The uncontested evidence establishes that this work was inadequate and unworkmanlike.

Roofing material was installed by the Respondent with the wrong side facing outward to the elements. This was plainly visible in photographs provided by the Claimant. (Clmt. Ex. 17A.) In its March 12, 2014 report to Erie, Trident noted that bare plywood was observed under the left elevation, rear third floor bedroom window and that the plywood was weathered and deteriorating. Trident also noted that water stains and degradation were observed on the interior sill and the wall below. (Clmt. Ex. 9.) The Claimant also documented the use of untreated lumber, which is visibly different in color, and water intrusion with photographs. (Clmt. Exs. 19B & 22C.) Finally, flashing was missing or improperly installed throughout the exterior of the home. (*See, e.g.*, Clmt. Ex. 17C.) This is inadequate and unworkmanlike.

Ms. Plachez testified that the Respondent never completed the third floor bathroom. Her testimony was supported with photographs of the bathroom. (Clmt. Ex. 24.) The evidence establishes that the work the Respondent performed in the bathroom was not workmanlike. For

example, he used broken and cracked tiles. The Respondent also damaged the waterproof coating on the drywall in the bathroom. Further, throughout the addition, finishing work remained incomplete. For instance, Mr. Miller testified that the moulding was not complete and there were loose floorboards. The uncontested evidence establishes that the bathroom and finishing work were incomplete and unworkmanlike.

The Claimant Sustained an Actual Loss

Ms. Plachez testified in detail about the dates and amounts of the payments made to the Respondent. Her testimony was supported by documents signed by all parties acknowledging the various payments. The payments made by the Homeowners to the Respondent totaled \$34,201.00. Although the Homeowners also paid \$5,000.00 for the application of stucco siding, the evidence indicates that this amount was paid directly to BT Stone, not the Respondent, by the Homeowners. (Clmt. Ex. 4.) Further, the amount paid does not appear to have been a part of the contract price.

The Claimant produced ample evidence, which is undisputed, that the Respondent's work was unworkmanlike, inadequate, and incomplete. The deficiencies in the Respondent's work were so pervasive that the work he performed had essentially no value. The Claimant provided estimates of the amount it would cost to remedy all of the deficiencies in the Respondent's work. Those estimates total \$76,840.00, which far exceeds the amount the Claimant paid to the Respondent. As a result of the money the Claimant will be required to pay in the future to remedy the Respondent's poor workmanship and complete the contract work, I find that the Claimant has sustained an actual loss.

Turning to the amount of the actual loss, the applicable law provides that the MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR

09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case:

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

COMAR 09.08.03.03B(3)(c). The calculations under the above formula are as follows:

\$34,201.00	paid to the Respondent
+ \$76,840.00	to repair poor work done under the contract
\$111,041.00	
- \$47,052.00	original contract price (including price for rooftop deck & change order)
\$63,989.00	actual loss

However, the Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor. Bus. Reg. § 8-405(e)(1). Accordingly, the Claimant's recovery is limited to \$20,000.00 and he cannot recover more than that amount.

The Claimant is not an Excluded Claimant.

The testimony and evidence established that the work concerned remodeling the Homeowners' existing, primary residence in Baltimore, Maryland. In addition, the Homeowners owned fewer than three dwelling places. Although the Homeowners and Respondent were personal acquaintances and lived in the same neighborhood, the parties were neither related nor associated in business.

Initially, the Homeowners attempted to resolve their concerns with the Respondent, but he was not responsive. When the Homeowners questioned him about the noticeable slope to the floor in the upstairs hallway, the Respondent replied that this was just the way old homes were. When the Respondent encountered the vent for the furnace, he stated that he had no idea what

the vent was for, but was going to re-route it “to be safe.” The manner in which it was re-routed caused carbon monoxide to collect in the house and the Respondent never resolved that issue. As a result, the Homeowners were left with no solution other than discontinuing use of the furnace. Ultimately, the Respondent pled guilty to criminal charges arising from his work at the Residence. (Clmt. Ex. 30.) Mr. Miller similarly testified that he tried to facilitate a resolution of the claim between the parties, but the Respondent did not reply to him. The evidence is clear and undisputed that the Claimant did not reject good faith efforts by the Respondent to resolve the claim.

The contract between the Homeowners and Respondent did not contain an arbitration clause, and the Homeowners did not file any other action to recover for the Respondent’s acts or omissions. The Claimant filed his claim on June 4, 2014, less than two years after the Respondent began work and, thus, within the three-year limitation for filing a claim. Thus, the Claimant is not statutorily prohibited from recovering from the Fund for his actual losses.

I thus find that the Claimant is eligible for compensation from the Fund. Accordingly, the Claimant is entitled to reimbursement from the Fund of \$20,000.00, the amount of his actual loss that does not exceed the statutory limitation on recovery from the Fund. Md. Code Ann., Bus. Reg. § 8-405 (e)(1).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$ 20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405.

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

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

Signature on File

June 1, 2015
Date Decision Issued

_____)
Emily Daheker
Administrative Law Judge

ED/da
#156174

PROPOSED ORDER

WHEREFORE, this 19th day of June, 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