



DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

The Maryland Home
Improvement Commission

\* BEFORE THE
\* MARYLAND HOME IMPROVEMENT
\* COMMISSION

v. David Rutch
t/a David Rutch's Precision Remodeling LLC
(Contractor)
and the Claim of
David Panowitz
(Claimant)

\* MHIC No.: 13 (90) 386
\*
\*

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FINAL ORDER

WHEREFORE, this February 19, 2015, Panel B of the Maryland Home

Improvement Commission ORDERS that:

- 1. The Findings of Fact set forth in the Proposed Order dated November 25, 2014 are AFFIRMED.
2. The Conclusions of Law set forth in the Proposed Order dated November 25, 2014 are AFFIRMED.
3. The Proposed Order dated November 25, 2014 is AFFIRMED.
4. This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

Joseph Tunney
Joseph Tunney, Chairperson
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE
INTERNET: WWW.DLLR.MARYLAND.GOV • E-MAIL: MHIC@DLLR.STATE.MD.US

IN THE MATTER OF  
DAVID PANOWITZ,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT COMMISSION  
GUARANTY FUND  
FOR THE ACTS OR OMISSIONS OF  
DAVID RUTCH,  
t/a DAVID RUTCH'S PRECISION  
REMODELING, LLC,  
RESPONDENT

\* BEFORE TAMEIKA LUNN-EXINOR,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH Case No.: DLR-HIC-02-14-05466  
\* MHIC Case No.: 13 (90) 386  
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**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
**RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On September 18, 2013, the Claimant filed a claim against the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for monetary losses allegedly suffered due to the acts or omissions of the Respondent. On February 3, 2014, the MHIC ordered a hearing to give the Claimant the opportunity to establish entitlement to an award from the Fund.

On August 22, 2014, I conducted a hearing at the Bel Air Branch Library located at 100 E. Pennsylvania Avenue, Bel Air, MD 21014. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2014). The Claimant represented himself. Kris King, Esquire, Assistant Attorney General, represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

### **ISSUE**

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits for the Claimant:

- Cl. Ex. 1: July 7, 2011 Proposal, David Rutch's Precision Remodeling, LLC, Change Order dated August 15, 2011
- Cl. Ex. 2: Pictures a through c, Photos of tile work in master bathroom in November 2011
- Cl. Ex. 3: Pictures a through g, Photos of tile in master bathroom in August 2014
- Cl. Ex. 4: Pictures a through d, Photos of floor tile in hallway bathroom in August 2014
- Cl. Ex. 5: September 13, 2013 Residential Estimate, K.A.R., Inc., t/a Churchville Tile and Marble

I admitted the following exhibits for the Fund:

Fund Ex. 1: May 29, 2014 Notice of Hearing

Fund Ex. 2: The Respondent's MHIC registration and licensing history

Fund Ex. 3: MHIC Home Improvement Claim Form, received January 14, 2013

Fund Ex. 4: MHIC (Amended) Home Improvement Claim Form, received September 18, 2013

No other exhibits were offered into the record.

### Testimony

The Claimant and the Respondent testified. The Fund did not present any witnesses.

### **FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was licensed with the MHIC as a home improvement contractor under registration number 98177.
2. The Respondent has been a licensed home improvement contractor since 2004.
3. The Respondent and the Claimant are neighbors.
4. On or around July 7, 2011, the Claimant and the Respondent entered into a contract for the Respondent to perform home improvement work at the Claimant's residence at 803 Benjamin Road, Bel Air, MD 21014 (the Property).

5. Under the contract, the Respondent was to perform the following work at the Property:

Master Bathroom -

- Remove all existing bathroom fixtures
- Install tile shower floor system and shower walls with 1 nook and 1 shelf
- Install tile bathroom floor
- Install shower door (door not included)
- Prep walls for wallpaper

- Plumbing provided by B&G Plumbing
- Install bathroom fixtures (fixtures not included)
- Install trim

Total: \$7,000.00

Hall Bathroom –

- Remove all existing bathroom fixtures
- Install 2 white corner shelves and tile shower walls
- Tile bathroom floor
- Install shower door (door not included)
- Prep walls for wallpaper
- Install trim
- Plumbing provided by B&G Plumbing
- Install bathroom fixtures (fixtures not included)
- Install by pass door

Total: \$6,035.00

6. The original contract price was \$13,065.00, to be paid in four installments as follows: \$4,355.00 deposit, 2<sup>nd</sup> payment of \$2,900.00 after 1<sup>st</sup> week of work, 3<sup>rd</sup> payment of \$2,900.00 after 2<sup>nd</sup> week of work, and final payment of \$2,910.00 plus any charge for change orders at completion of the work.

7. On August 15, 2011, the Claimant and the Respondent agreed on a Change Order.

The following items were additions or changes to the original contract:

- Respondent will tile walls in both bathrooms approx. 3' high using same tile as used in shower or bathtub areas. White decorative tile and coordinating counter rail tile will be used as the "chair rail." Grout and caulk. Total: \$2,635.00
- Respondent will provide a plumber to supply bathtub and install powder room toilet. Total: \$1,125.00
- Claimant's Progress payments #2 and #3 plus plumber fee of \$1,125.00 paid on August 26, 2011 which totals a payment of \$6,925.00
- Respondent will purchase counter rail tiles for decorative accent in hall bath. Total: \$140.00
- Claimant will make a progress payment of \$3,000.00 on 9/13/11
- Claimant will receive a credit for not installing 5-1/4 inch base and shoe in both bathrooms. Total credit: \$395.00
- Claimant will make a final payment of \$2,290.00 on 9/27/11

8. The revised contract amount increased to \$16,570.00.
9. The Respondent began work at the Property in August 2011. The Respondent completed the work on September 27, 2011.
10. The Claimant paid \$16,570.00 to the Respondent.
11. The Claimant noticed problems with the Respondent's work in November 2011, shortly after the job was completed. Among the deficiencies the Claimant noted in the Respondent's work were the following: the shower tiles in the master bathroom were lifting and shifting and the grout used for the floor tiles in the hall bathroom was causing a white film to appear on the tiles when the floor was cleaned.
12. The Respondent returned to the Claimant's home in November 2011 and repaired the tiles around the drain in the master bathroom by caulking the drain again and re-grouting the tiles at no charge to the Claimant.
13. The Claimant continued to have problems with the grout in both bathrooms.
14. In January 2012, the Respondent returned to the Claimant's home to caulk the drain for the third time in the master bathroom and put a sealant on the floor grout in the hall bathroom at no charge to the Claimant.
15. Despite the Respondent's repair efforts, the tile in the master bathroom worsened resulting in numerous tiles coming off of the shower floor. (*See Cl. Ex. #3*)
16. The Respondent refused to return to the Claimant's home due to a verbal confrontation between them that took place after his second time repairing the tile.
17. On September 13, 2013, the Claimant had K.A.R., Inc. t/a Churchville Tile and Marble come to his home and prepare an estimate to repair the tiles in the master bathroom shower as well as the floor tiles in the hall bathroom.

18. K.A.R., Inc. estimated \$250.00 to seal the ceramic tile in the hall bathroom.

19. K.A.R., Inc. estimated \$650.00 to remove and dispose of the existing shower floor and waterproof pan, and \$1,700.00 to furnish and install a new pan, waterproof, re-install existing tiles, drain and plumbing. The total estimate from K.A.R., Inc. is \$2,600.00

20. The Claimant has not yet contracted with K.A.R., Inc. to make the repairs in his home.

### 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 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). The Claimant bears the burden of proof by a preponderance of the evidence to show entitlement to an award from the Fund. COMAR 09.08.03.03A(3). For the following reasons, I find that the Claimant has proven eligibility for compensation.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant and during the time he performed work at the Property. Through photographs and his testimony, the Claimant demonstrated that the work the Respondent performed was inadequate and unworkmanlike. (*See also*, Cl. Exs. 2, 3 and 4.) The Claimant testified that the Respondent completed the contracted work in his home on or about September 27, 2011. He stated that he noticed problems with the tile in the shower of the master bedroom bathroom within a month of the work being completed. He testified that the grout was crumbling in the shower and the tiles were lifting. In the hallway bathroom, he

testified that the grout on the floor was leaving a white film on the tiles when they cleaned the floor. He made contact with the Respondent about these issues and in November 2011, the Respondent returned to the Claimant's home, caulked the drain in the master bathroom, and grouted the tiles. In January 2012, the issues in the master bathroom persisted so the drain and the tiles were repaired once again and the Respondent also applied a sealant to the grout in the hall bathroom. The Respondent testified that when he left the Claimant's home in January 2012, the Claimant indicated that the hallway bathroom grout issue was 90% repaired and that the remaining point of concern for the Claimant was the tiles in the master bathroom. The parties agreed that after the Respondent returned in January 2012 to make repairs that their relationship diminished and became extremely hostile. Therefore, the Respondent refused to return to the Claimant's home.

The Claimant provided non-expert testimony with regard to his conclusion that the shower pan in the master bathroom was improperly installed, which, in turn, caused the tiles to lift and come up. The photos provided by the Claimant of the master bathroom shower show various stages of the tiles coming up and the Claimant stacking them in the corner of the shower. The Respondent argued that the shower pan was installed correctly and testified to the method of installation that he has used since 2004 involves pulling out the old pan, inspecting the subfloor, hiring a plumber to put in extensions for shower drain and fixtures, gluing the pan to the subfloor (prevents the pan from shifting) and gluing the membrane to the pan and up the walls around the pan. The Respondent argued that the problem with the master bedroom shower could be that the Claimant did not allow the caulking around the drain to cure for three days as required. The Claimant denies that he or any of his family used the shower in the master bedroom before the caulk cured around the drain.



The Claimant was adamant during his testimony that the shower pan was not properly set before it was glued and that this unworkmanlike performance by the Respondent caused the grout to crack and the tiles to lift up. The Claimant testified that three contractor who gave him estimates to repair the master bathroom shower told him that the shower pan was installed incorrectly. The Claimant argues that the Respondent ripped the bathrooms out and rebuilt them; therefore, any problems that arose were due to the faulty workmanship of the Respondent. I agree with the Claimant.

I find the Claimant's testimony to be credible because of the consistency of his testimony and the photos he provided corroborate his testimony. The Claimant successfully refuted the Respondent's primary argument that the Claimant or his wife failed to wait three days to allow time for the caulk to cure around the drain in the master bathroom. The Respondent came to the Claimant's home two times after the initial installation to caulk the drain and repair tiles, so it is unlikely that the Claimant did not allow the caulk to cure on three separate occasions. This is especially since the Claimant wanted his bathrooms to be perfect upon completion. The fact that the caulking of the drain did not repair the problems with the tiles leads me to conclude that the main problem with the master shower was not the drain but the shower pan. As for the Claimant's tile concerns in the hallway bathroom, I find that the testimony of the Claimant supports that the problems with the floor tiles have been resolved. When the Respondent returned in January 2012, he put a sealant on the floor tiles which corrected the problem with the chalky residue when the floor was cleaned. Therefore, the floor tiles in the hallway bathroom are no longer in need of repair.

Having found that the Claimant is eligible for compensation for the master bathroom, I now turn to 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). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3)(a), (b) and (c). One of those formulas, as follows, offers an appropriate measurement 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).

Applying the formula set out above, I find that the Claimant sustained an actual loss as follows:

Amount Paid to the Respondent	\$16,570.00
Amount Paid to Correct or Complete Work	+\$ 2,350.00 <sup>1</sup>
	<u>\$18,920.00</u>
Amount of Original Contract	<u>-\$16,570.00</u>
<b>Amount of Actual Loss</b>	<b>\$ 2,350.00</b>

Accordingly, I recommend an award to the Claimant in the amount of \$2,350.00.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant suffered an actual loss of \$2,350.00 and he is entitled to be compensated in the amount of \$2,350.00 as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405(e)(5) (Supp. 2014); COMAR 09.08.03.03B(3)(c).

<sup>1</sup> K.A.R., Inc.'s contract price to seal the tile in the hallway bathroom was \$250.00. The total contract amount for both bathrooms was \$2,600.00. \$2,350.00 is \$2,600.00 minus the \$250.00 to seal the hall way bathroom floor. The hallway bathroom repair is no longer necessary.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,350.00; 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 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**

October 29, 2014  
Date Decision Mailed

Tameika Lunn-Exinor  
Administrative Law Judge

TLE/kkc  
#152401

**IN THE MATTER OF**  
**DAVID PANOWITZ,**  
**CLAIMANT**  
**AGAINST THE MARYLAND HOME**  
**IMPROVEMENT COMMISSION**  
**GUARANTY FUND**  
**FOR THE ACTS OR OMISSIONS OF**  
**DAVID RUTCH,**  
**t/a DAVID RUTCH'S PRECISION**  
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**\* BEFORE TAMEIKA LUNN-EXINOR,**  
**\* AN ADMINISTRATIVE LAW JUDGE**  
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**FILE EXHIBIT LIST**

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- Cl. Ex. 5: September 13, 2013 Residential Estimate, K.A.R., Inc. t/a Churchville Tile and Marble

I admitted the following exhibits for the Fund:

- Fund Ex. 1: May 29, 2014 Notice of Hearing

Fund Ex. 2: The Respondent's MHIC registration and licensing history

Fund Ex. 3: Home Improvement Claim Form, received by MHIC January 14, 2013

Fund Ex. 4: Amended Home Improvement Claim Form, received by MHIC September 18, 2013

PROPOSED ORDER

*WHEREFORE, this 25th day of November 2014, 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.*

*Andrew Snyder*

*Andrew Snyder  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**