

IN THE MATTER OF THE CLAIM	* BEFORE ROBERT B. LEVIN
OF CYPRIAN EKWUNAZU,	* 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 GENE HAYNES,	*
T/A HAYNES CONSTR.	* OAH No.: DLR-HIC-02-15-42483
RENOVATORS/BUILDERS,	* MHIC No.: 14 (05) 1123
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On May 20, 2015, Cyprian Ekwunazu (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,750.00 in alleged actual losses suffered as a result of a home improvement contract with Gene Haynes, trading as Haynes Constr. Renovators/Builders (Respondent).

I held a hearing on September 20, 2016 at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031.¹ Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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. 2016); Code of Maryland Regulations (COMAR) 09.08.02.01B; COMAR 09.01.03; 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?

¹ Preliminarily, I note that approximately thirty minutes after the hearing began, following all parties' opening statements, the Claimant for the first time requested a postponement of the hearing on the ground that he had lost or misplaced his file that contained a number of documents that he said would have supported his case. The Claimant indicated that he noticed the loss of his file on or shortly after August 10, 2016, the date on which the case had originally been scheduled for hearing. I had continued the August 10, 2016 hearing that day and rescheduled it for September 20, 2016, following the joint request of the Claimant and the Fund, because the notice of the August 10, 2016 hearing date had not been sent to the Respondent's address of record with the MHIC, and he did not appear at the OAH on August 10, 2016.

Counsel for the Fund objected to the Claimant's request for postponement of the September 20, 2016 hearing. Fund counsel further stated that he had made the complete MHIC file in this case available to the Claimant and the Respondent on September 20, 2016, before the hearing began. On September 20, 2016, the Claimant offered no information on which I could have found that any likelihood existed that he would have found the missing file if I postponed the September 20, 2016 hearing.

I denied the requested postponement, on the basis that good cause to postpone the hearing had not been demonstrated. COMAR 28.02.01.16A requires that all requests for postponement "shall be made in writing and filed not less than 5 days before the scheduled hearing." COMAR 28.02.01.16D allows requests for postponements to be made within this five day window only in the case of emergency. COMAR 28.02.01.16D(1) defines "emergency" as "a sudden, unforeseen occurrence requiring immediate attention . . ."

In this case, Petitioner requested a postponement on the day of the hearing, after it began. He did not demonstrate that the loss of his documents was a "sudden, unforeseen occurrence requiring immediate attention." The Claimant misplaced his file on or soon after August 10, 2016—much more than five days before the hearing. He never brought the matter to the attention of OAH until all parties assembled for and commenced the hearing on September 20, 2016.

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 – Proposal, signed by Claimant and Respondent, undated

Clmt. Ex. 2 – Letter from Claimant to Respondent, March 31, 2014

Clmt. Ex. 3 – Letter from Claimant to Respondent, April 15, 2014

Clmt. Ex. 4 – Photograph labeled “Picture 1 – Gene lays Tiles on old black & white carpet,”
undated

Clmt. Ex. 5 – Photograph labeled “Picture 2. Gene Paints on walls with old pilling [sic] paints,”
undated

Clmt. Ex. 6 – Independent Contractor Agreement between Claimant and Raphael Villalobos,
May 3, 2014

Clmt. Ex. 7 – Letter from Robert L. Croxton, Jr. to Claimant, July 3, 2014

Clmt. Ex. 8 – Claimant's document entitled “Explanation of the facts and Circumstances
Leading to my Claim,” undated

Clmt. Ex. 8A – Photocopies of Win-Win Realty Enterprise check no. 1541, payable to
Respondent, and Respondent's receipt, both dated December 2, 2014

Clmt. Ex. 8B – Photocopy of Win-Win Realty Enterprise check no. 1551, payable to
Respondent, December 18, 2014

Clmt. Ex. 8C – Photocopy of Win-Win Realty Enterprise check no. 1552, payable to Samuel
Marshall, December 18, 2014

Clmt. Ex. 8D – Photocopy of Win-Win Realty Enterprise check no. 1564, payable to
Respondent, February 3, 2014

Clmt. Ex. 8E – Photocopy of Win-Win Realty Enterprise check no. 1563, payable to Samuel
Marshall, February 3, 2014

I admitted the following exhibits on the Respondent's behalf²:

Resp. Ex. 1 – Win-Win Realty Enterprise check no. 1541, payable to Respondent, and receipt, both dated December 2, 2014 (a duplicate of Clmt. Ex. 8A)

Resp. Ex. 2 – Proposal, undated, signed by Claimant and Respondent, (a duplicate of Clmt. Ex. 1 except for the addition of handwritten notations)

Resp. Ex. 3 – Letter from Respondent to MHIC Chairman Joseph Tunney, June 1, 2015

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – OAH Notice of Hearing, August 16, 2016

Fund Ex. 2 – Hearing Order, December 3, 2015

Fund Ex. 3 – Department of Labor, Licensing & Regulation, Home Improvement Commission (HIC) I.D. Registration document for Respondent, September 19, 2016

Fund Ex. 4 – Claimant's Home Improvement Claim form, received May 20, 2015

Fund Ex. 5 – Letter from Joseph Tunney to Respondent, May 28, 2015

Fund Ex. 6 – Letter from MHIC Executive Director David Finneran, "To Whom it May Concern," September 20, 2016

Testimony

The Claimant testified in his own behalf.

The Respondent testified in his own behalf.

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 102088.

² During the hearing, the Respondent's exhibits were sometimes referred to as "Contractor's" exhibits; however, they are marked as "Resp. Ex. 1" *et seq.*

2. In 2012, the Claimant acquired a 1,300-1,400 square foot, brick, three bedroom townhome, approximately fifty years old, located at 4043 Cedardale Avenue, Baltimore, Maryland (Property). It has a basement, first floor, and second floor.

3. The Claimant purchased the Property with the intention of renovating and then leasing it.

4. On December 2, 2013, the Claimant and the Respondent met. That day they entered into a contract, the terms of which are set forth in a document entitled "Proposal," that calls for the renovation of the Property. The Claimant and the Respondent each signed the contract.

5. The Respondent drafted the contract.

6. Pursuant to the contract the Respondent agreed to perform both exterior and interior work.

7. The Respondent agreed to replace the exterior shutters and basement windows.

8. On the first floor, the Respondent agreed to relocate the kitchen, "install cabinetry and counter, demo[lition] included," fabricate the kitchen pantry, laminate the first floor ceiling, repair the bath "as needed," repair floors "as needed," and refinish the first floor "as necessary." (Clmt. Ex. 1.)

9. On the second floor, the Respondent agreed to repair the ceilings "as necessary," install carpeting, "fabricate master bath 3 fixtures," "repair existing bath as necessary," "tile toilet," laminate the hallway, and close up exposed duct work. (*Id.*)

10. In the basement, the Respondent agreed to install drywall in the "main area plus ceiling," install dryer vent outlet, and install new laundry tub and shutoff. (*Id.*)

11. The contract also required the Respondent to "tile main floor" and "repaint house interior." (*Id.*)

12. The Respondent was not responsible for performing electrical work, as confirmed in the following contract provision: "Electrical extra cost." (*Id.*)

13. The agreed-upon, total stated contract price was \$18,500.00 for labor and materials, with "one third deposit required." (*Id.*) However, the contract further provided that if the Claimant desired to provide his own materials, the cost of labor would be \$9,200.00, with a required deposit of \$3,066.00. On December 2, 2013, the parties signed the contract after agreeing that it would be a labor-only contract, *i.e.*, they agreed that the Claimant would provide the materials and the Respondent would be responsible only for the provision of labor.

14. The statement in the top portion of the contract provided the cost of labor would be \$9,200.00, with a required one-third deposit of \$3,066.00.

15. The parties orally amended the contract and agreed that the cost of the labor-only portion of the contract was \$9,000.00, instead of \$9,200.00.

16. On December 2, 2013, the Claimant delivered, and the Respondent accepted, a one-third deposit check in the amount of \$3,000.00. The contract did not include a start date or a completion date for the Respondent's work.

17. The Respondent began work by the end of December 2013.

18. During the course of the Respondent's performance, he demolished the old kitchen and started building the new kitchen. He renovated the first floor bathroom including its walls, ceiling, and floor. He applied the first coat of paint to the first floor bathroom but not to the second floor bathroom.

19. The Respondent received \$4,900.00 in payments from the Claimant, in the form of a December 2, 2013 check for \$3,000.00; a December 18, 2013 check for \$1,000.00; and a February 3, 2014 check for \$900.00.

20. The Claimant paid a plumber, Samuel Marshall, \$1,400.00 for plumbing work, pursuant to Claimant's December 18, 2013 check for \$500, and his February 3, 2014 check for \$900.00.

21. The Respondent did not substantially complete the work required of him under the parties' agreement. He completed approximately one half of the work required. His last work was undertaken around March or April 2014.

22. On March 31, 2014, the Claimant notified the Respondent in writing that the Respondent had abandoned the contract.

23. On April 15, 2014, the Claimant demanded in writing that the Respondent pick up his tools from the Property and return the Claimant's keys.

24. On May 3, 2014, the Claimant entered into a written agreement with a new contractor, Raphael Villalobos (Villalobos Contract), for Mr. Villalobos to provide labor only in order to correct and complete the townhome renovation project, at a total, labor-only price of \$8,000.00.

25. In addition to requiring Mr. Villalobos to correct and complete certain work that the Respondent failed to properly perform or complete under his December 2, 2013 contract with the Claimant, the Villalobos Contract called for Mr. Villalobos to perform the following work that was *not* required to be performed by the Respondent under his December 2, 2013 contract with the Claimant: repair/paint exterior window, door frame, and wall; cover the outside kitchen window with bricks similar to the building's exterior walls and fix the window and door trim; install a gas line and hook up the gas cooker, dishwasher, and garbage disposer; fix vents, windows, and blinds; reinstall second floor handrails; and fix second floor light fixtures.

26. The Villalobos Contract did not apportion or allocate the \$8,000.00 contract price to any particular work item(s) required thereunder.

27. Pursuant to the Villalobos Contract the Claimant paid Mr. Villalobos \$8,000.00.

28. From 1989 to September 20, 2016, the date of the hearing in this case, Mr.

Villalobos was not licensed with MHIC as a salesperson, subcontractor, or contractor.

29. The Claimant paid \$1,750.00 to Robert L. Croxton, Jr., an electrician, for electrical work that was outside the scope of the Respondent's obligations under his December 2, 2013 contract with the Claimant.

30. The Claimant paid \$1,000.00 to the Respondent's brother, John Haynes, for electrical work that was also outside the scope of Respondent's contractual obligations under the December 2, 2013 contract.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); Code of Maryland Regulations (COMAR) 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

Background

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) (2015);³ *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

³ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”

Bus. Reg. § 8-401.

COMAR 09.08.03.03B(1) governs the calculation of awards from the Fund:

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney’s fees;
- (d) Court costs; or
- (e) Interest.

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(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, 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 measurements accordingly.

The evidence establishes that on December 2, 2013, the Claimant entered into a home improvement contract with the Respondent, a licensed home improvement contractor. The contract provided that the Respondent would provide the labor only for the renovation of the Claimant’s Property. The Claimant agreed to provide all renovation materials.

The Parties' Contentions

The Claimant contended that the Respondent orally promised to complete the job in three weeks, failed to do so, and abandoned the project by March 31, 2014. The Claimant further asserted that the majority of the work performed by the Respondent was unacceptable. As a result, the Claimant contracted with and paid Mr. Villalobos to correct and complete the renovation. He also paid Mr. Croxton, an electrician, for electrical work. The Claimant seeks reimbursement from the Fund of \$7,750.00, representing his payments to Mr. Villalobos and Mr. Croxton.

The Respondent denied orally agreeing to a deadline for completion of the work, pointing out that the December 2, 2013 written agreement contains neither a start date nor a completion date. His understanding of his performance obligation was that he was required to perform in phases, the timing of which would depend on when the Claimant purchased and delivered to the site the particular materials required for each phase. He testified that the initial down payment of \$3,000.00 that he received on December 2, 2013 was earmarked for the installation of kitchen cabinets and painting, and that he was not required to perform additional work until the Claimant directed and paid for it.

The Respondent acknowledged receiving \$4,900.00 from the Claimant. He testified that the last payment he received was a \$900.00 payment on February 3, 2014 (Clmt. Ex. 8D), and that he stopped work in March 2014 because the Claimant made no further payments. He denied improperly performing any work. He denied receiving the Claimant's March 31, 2014 and April 15, 2014 letters in which the Claimant accused him of abandoning the contract and demanded that he remove his tools from the Property and return the Claimant's keys.

The Fund's counsel noted that although the December 2, 2013 contract is not abundantly clear with respect to the scope of work and the time required for completion, the evidence

suggests that the Respondent did not complete the work. The Fund's counsel argued, however, that the Claimant did not meet his burden of proving "actual loss." No part of the \$8,000.00 payment to Mr. Villalobos is reimbursable by the Fund in light of what Fund counsel identified as a "long-standing policy of the MHIC" not to permit recovery of payments to unlicensed contractors like Mr. Villalobos. Additionally, the work performed by Mr. Villalobos included items such as installation of a gas line that are beyond the scope of the Claimant's contract with the Respondent. The Villalobos Contract does not break down the work performed by Mr. Villalobos to correct or complete the Respondent's work as distinguished from Mr. Villalobos' work (such as the gas line) that is outside the scope of the Respondent's obligations under his contract with the Claimant. Finally, the Fund argued that the Claimant's \$1,750.00 payment to Mr. Croxton, an electrician, is not reimbursable by the Fund because electrical work was clearly not included in the contract.

For the reasons set forth below, I conclude that although the Respondent failed to substantially complete his contractual undertakings, the Claimant did not meet his burden of proving an actual loss. The Claimant seeks reimbursement of payments he made to Mr. Villalobos and to an electrician, Mr. Croxton. Neither payment is properly reimbursable by the Fund. Public policy precludes reimbursement of the payment to Mr. Villalobos because he is an unlicensed contractor. The payment to the electrician is non-reimbursable because electrical work was not within the scope of the Respondent's contractual obligations.

Analysis

Although the Claimant asserted that most of the Respondent's work was unacceptable, and had a value of only \$1,000, he provided insufficient evidence upon which I could find the work was predominantly deficient. I admitted the two photographs offered by the Claimant: Clmt. Ex. 4 shows that the Respondent laid tiles on old carpet, and Clmt. Ex. 5 depicts peeling

paint applied by Respondent. The two photographs represent only a minuscule fraction of the total job. The only other evidence presented in support of the Claimant's contention that the majority of the Respondent's work was deficient was the Claimant's testimony that that the work was deficient work; specific details were not provided. I find that the two photographs and the Claimant's conclusory testimony are insufficient to support a finding that the majority of the Respondent's work was unacceptable.

The evidence does establish, however, that the Respondent failed to substantially complete the work for which he was responsible under the contract. The Respondent began the work but completed only approximately one half of the work required under the parties' contractual arrangement. The Claimant's testimony that the Respondent did not complete 45% of the job is credible given the Claimant's personal familiarity with the project and his contracting with and paying Mr. Villalobos to complete the renovation.

It is true, as the Respondent pointed out, that the contract did not include a completion date. "When an agreement is silent as to duration, a reasonable duration will be implied by the court. In determining what constitutes a reasonable duration, reference should be made to the subject matter of the agreement." *Lerner v. Lerner Corp.*, 132 Md. App. 32, 45 (2000). "When the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court." *Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.*, 559 U.S. 662, 685 (2010) (quoting *Restatement (Second) of Contracts* § 204 (1979)).

Here, the Respondent failed to complete the contract within a reasonable time. Though he claimed that he was not required to perform until the Claimant paid him for each phase and provided the materials needed for that phase, the evidence shows that the Claimant readily

provided materials and paid him at least \$4,900.00 but that the Respondent abandoned the job around March or April 2014.

I do not credit the Respondent's denial of receipt of either the Claimant's properly addressed March 31, 2014 abandonment notice (Clmt. Ex. 2) or the Claimant's April 15, 2014 letter demanding that he remove his tools and return the Claimant's keys. The Respondent produced no credible evidence that due to the Claimant's purported nonpayment for a particular phase, the Respondent ever communicated to the Claimant that he was unwilling to complete that phase. I conclude that by stopping work in March or April 2014, the Respondent failed to complete his contractually due performance within a reasonable time after the execution of the December 2, 2013 contract.

As noted previously, the Claimant seeks recovery of \$7,750.00 from the Fund for an alleged actual loss sustained as a result of the Respondent's failure to complete the project. The \$7,750.00 claimed is composed of two items: (1) \$6,000.00 of the \$8,000.00 paid by the Claimant to Mr. Villalobos to complete and/or correct the Respondent's work;⁴ and (2) \$1,750.00 paid by the Claimant to Mr. Croxton, an electrician. Neither amount is compensable from the Fund.

First, as a matter of public policy, payments to an MHIC-unlicensed contractor like Mr. Villalobos are not compensable by the Fund. The Fund produced a certification from the MHIC

⁴ The Claimant's MHIC Claim Form (Clmt. Ex. 4, lines 3 and 4) states that the amount of the contract with Respondent was \$9,500.00. However, I find that the contract price was actually \$9,000.00. See Finding of Fact No. 15. The Claim Form states in line 6 that the Claimant paid \$7,000.00 to or on behalf of the Respondent. While the Claimant may have paid the Respondent \$7,000.00, the evidence of record only shows payments of \$4,900.00 to the Respondent; \$1,100.00 paid to a plumber, Mr. Marshall; \$1,000.00 paid to the Respondent's electrician brother; and \$1,750.00 paid to Mr. Croxton, another electrician. In line 7 of his Claim Form, the Claimant estimated the value of the Respondent's work to be \$1,000.00, an estimate that the evidence of record does not substantiate with reasonable probability. Although the Claimant stated that the amount of his claim was \$7,250.00, I understand him to seek recovery of \$7,750.00 (consisting of \$6,000.00 of his \$8,000.00 payment to Mr. Villalobos plus his \$1,750.00 payment to Mr. Croxton, the electrician). The \$500.00 difference between my computation of the amount of the claim and the Claimant's computation is not material to my conclusion that, as a matter of law and undisputed fact, the Claimant's payments to Messrs. Villalobos and Croxton are not reimbursable by the Fund regardless of their amount.

reflecting that Mr. Villalobos was not licensed from 1989 through the date of the hearing. The Claimant testified that he did not attempt to determine whether Mr. Villalobos was licensed by the MHIC.

The evidence is undisputed that Mr. Villalobos lacked a MHIC license when he performed home improvement work for the Claimant. Legislative policy is designed to encourage contractors to be licensed and to discourage homeowners from using unlicensed contractors. The legislative policy is reflected in a number of ways: A homeowner may recover compensation from the Fund only for an actual loss resulting from an act or omission by a *licensed* contractor. Bus. Reg. §§ 8-401, 8-405(a). If the Respondent had not been licensed by the MHIC, the Claimant would have been barred from asserting his claim against the Fund. Moreover, if the Respondent had been unlicensed when he performed the work, he would have committed a misdemeanor crime and been subject to a fine of \$1,000.00 or imprisonment not exceeding six months, or both, for a first offense. *Id.* § 8-601 (Supp. 2016).

Additionally, Maryland appellate decisions offer some guidance on the treatment of unlicensed home improvement contractors. Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage home owners from using unlicensed home improvement contractors, the courts, as a matter of public policy, will not enforce contracts made by or with unlicensed contractors. Long ago, in *Goldsmith v. Mfrs. ' Liability Ins. Co. of N.J.*, 132 Md. 283, 286 (1918), the Court of Appeals held:

[A] contract entered into by an unlicensed person, engaged in a trade, business, or profession required to be licensed, and made in the course of such trade, business, or profession, cannot be enforced by such person, if it appears that the license required by the statute is, in whole or in part, for the protection of the public, and to prevent improper persons from engaging in such trade, business, or profession.

See also Balt. St. Builders v. Stewart, 186 Md. App. 684, 706 (2009) (unlicensed contractor cannot enforce a home improvement contract with a homeowner); *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118, 134 (2003) (homeowner can repudiate a contract made with a consultant if the consultant is performing a home improvement without a license).

The purpose of the Fund is to compensate a homeowner for an actual loss resulting from an act or omission of a licensed home improvement contractor. Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2). The licensing of a contractor is an essential element, since as a matter of public policy, home improvement contracts executed by unlicensed individuals or entities are considered unlawful. MHIC dismisses claims filed against the Fund regarding acts or omissions of unlicensed contractors as legally insufficient.

When an award is granted, the Fund is entitled to reimbursement from the original contractor in the amount paid to a claimant, plus interest. Bus. Reg. § 8-410(a)(1)(iii). MHIC is also permitted to suspend a contractor's license until the Fund is reimbursed. *Id.* § 8-411(a). If the Fund were to grant reimbursement for the work performed by unlicensed contractors, it would be rewarding a claimant who was a party to an illegal contract with an unlicensed contractor at the expense of a licensed contractor who, although deficient, observed the licensing requirements of the State. It would be improper for the Fund to act against public policy and condone a contract undertaken by a claimant with a party that the Fund considers in violation of the law.

The home improvement law requires contractors to be licensed; the Fund's position is based on policies designed to encourage homeowners to hire licensed contractors if they seek remedies under the law and to discourage contractors from working without a license. For these

reasons, I must conclude that as a matter of law the Claimant's payment to Mr. Villalobos, an unlicensed contractor, is not compensable from the Fund. *Id.* §§ 8-401, 8-405(a) and 8-601 (2015 & Supp. 2016).

In addition to this public policy-based bar to reimbursement of the Villalobos payment, it is noteworthy that the Villalobos Contract does not include a breakdown of what portions of the \$8,000.00 contract price are allocable to correction or completion of the Respondent's work as distinguished from work that was not the Respondent's responsibility. It is clear that some portions of Mr. Villalobos's work are outside the scope of work set forth in the agreement between the Claimant and the Respondent. For example, the Villalobos Contract required Mr. Villalobos to install a gas line and to cover the outside kitchen window with bricks. These items are not included in the contract with the Respondent. Accordingly, I cannot ascertain with reasonable probability which portions of Mr. Villalobos's work were for correction or completion of the Respondent's work as distinguished from items that were not the Respondent's responsibility.

As electrical work was expressly excluded from the Respondent's obligations under the December 2, 2013 contract, the Claimant's \$1,750.00 payment to electrician Robert Croxton is also not reimbursable from the Fund. In his testimony, the Claimant conceded that electrical work was not part of his contract with the Respondent. Thus, it is undisputed that the payment to Mr. Croxton is not compensable.

Although some of the work performed by the Respondent was inadequate (see the photographs admitted as Clmt. Exs. 4 and 5), and he abandoned the job before it was substantially completed, the Claimant's use of an unlicensed contractor to correct or complete the project, as well as the Claimant's claim for reimbursement of his payment for electrical work excluded from the Respondent's contractual obligations, preclude recovery.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of \$7,750.00 or any other amount as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a) (2015); COMAR 09.08.03.03B(2).

RECOMMENDED ORDER

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

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

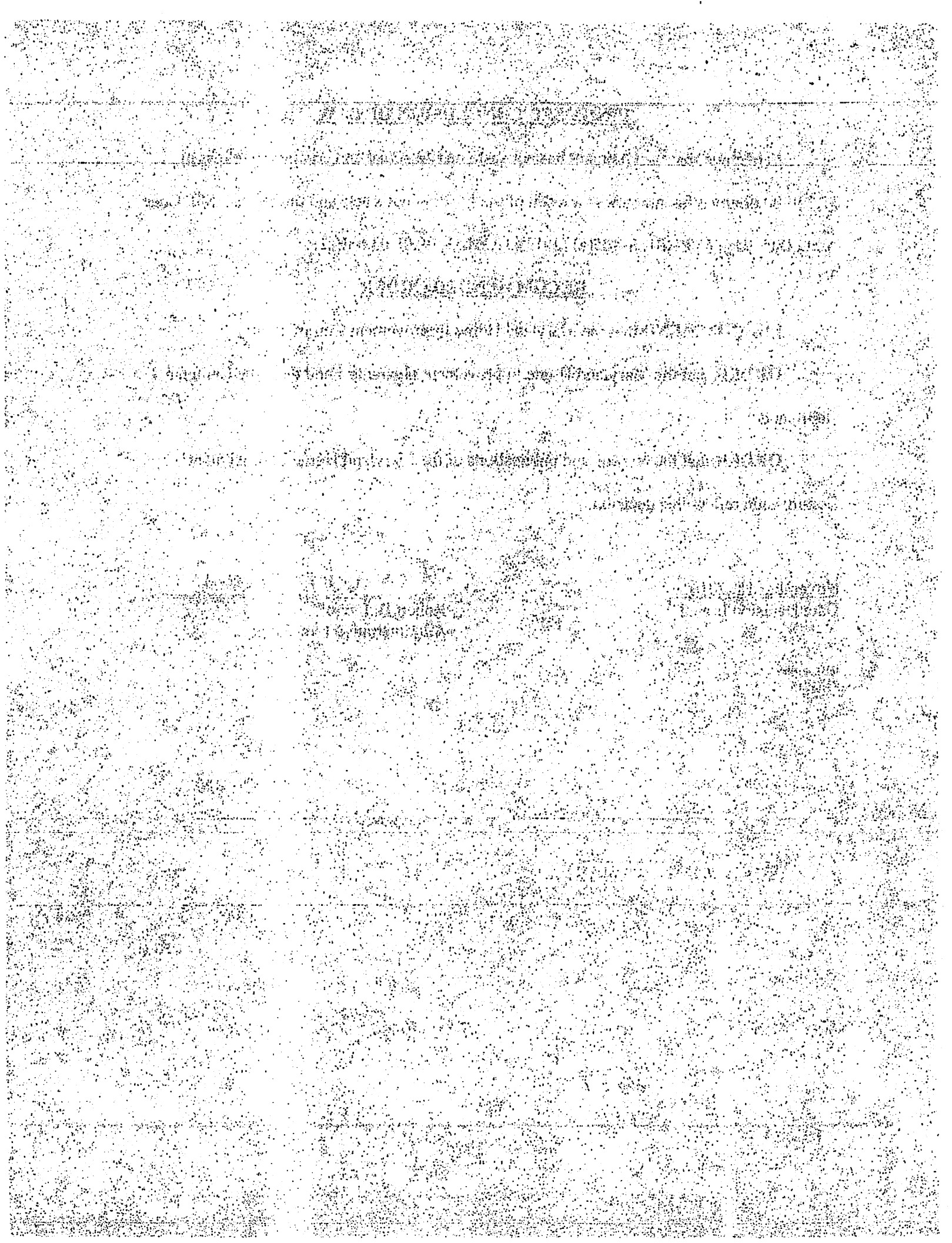
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

November 18, 2016
Date Decision Issued

Robert B. Levin
Administrative Law Judge

RBL/emh
#165213



PROPOSED ORDER

WHEREFORE, this 15th day of February, 2017, 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.

Sachchida Gupta

***Sachchida Gupta
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

