

**IN THE MATTER
OF THE CLAIM OF
KAREN DAVIS
AGAINST ABOUT KITCHENS
AND MORE**

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**MARYLAND HOME
IMPROVEMENT
COMMISSION**

CASE NO. 14 (90) 789

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STATEMENT OF THE CASE

The above captioned matter was heard on August 20, 2015 by the Maryland Home Improvement Commission (“Commission”). This matter was scheduled for a hearing as a result of a claim filed with the Maryland Home Improvement Guaranty Fund (“Guaranty Fund”) by Karen A. Davis against contractor “About Kitchens and More.” The Claimant, Karen A. Davis, appeared at the hearing and represented herself. Claimant Davis testified on her own behalf, and presented the testimony of her husband, John Roach. The Guaranty Fund was represented by Assistant Attorney General Peter Martin. The Guaranty Fund presented the testimony of Matthew Trivane. The Respondent contractor failed to appear.

FINDINGS OF FACT

After examining all of the evidence and testimony, the Commission makes the following findings:

1) On or about August 20, 2012, the Claimant, Karen A. Davis entered into a home improvement contract with About Kitchens and More, Inc., which was located at 2 Hudson Street, Annapolis, Maryland 21401. The contract was for tear out and remodeling of a bathroom in Davis’ home at 598 Pinewood Drive, Annapolis, Maryland 21401. The contract listed the

MHIC license number of 30613 for the contractor.

2) At the time of the contract, MHIC license number 30613 was active and listed in the Commission's public records under the trade name About Kitchens and More. The individual licensee of record under the license was Robert Mark Trivane. The license expired on May 11, 2013. (Subsequently, it was determined that Robert Mark Trivane died on October 7, 2010. Matthew Trivane, the son of Robert Mark Trivane, testified that he believed that his mother renewed the license online in 2011 after his father's death, although the Commission is unable to verify that assertion.)

3) About Kitchens and More began work on the bathroom renovation in the fall of 2012. In February 2013, the Claimant and her husband directed About Kitchens and More to cease work on the project, due to delays and poor workmanship.

4) The Claimant retained licensed contractor JNJ Improvements, Inc. (MHIC license no. 214) to prepare a report and repair proposal concerning the work performed by About Kitchens and More. The JNJ report itemized various workmanship defects, and JNJ submitted a proposal to correct the defects at a cost of \$7,100.00. The Commission finds that the JNJ report concerning the workmanship defects on the project is accurate. The Commission finds that the JNJ repair proposal of \$7,100.00 is a fair and reasonable measure of the cost to correct the workmanship defects.

5) The total contract price for the project, as amended, between the Claimant and About Kitchens and More was \$14,349.00.

6) The Claimant did not introduce into evidence canceled checks for the payments made

by her to About Kitchens and More. However, the Claimant did introduce into evidence a collection letter, dated January 8, 2014, from Baldwin-Eagle Consulting Group. That letter itemizes the payments made by the Claimant, with reference to the check number and date of each payment. According to the letter, the Claimant made four separate payments to About Kitchens and More, between August and October 2012, totaling \$11,006.00. The Commission finds that the January 8, 2014 letter accurately states the amount paid by the Claimant to About Kitchens and More.

7) The Claimants' actual loss is \$3,757.00.

CONCLUSIONS OF LAW

Business Regulation Article, §8-405, Annotated Code of Maryland, provides that an owner may recover compensation from the Guaranty Fund “for an actual loss that results from an act or omission by a licensed contractor ...” Business Regulation Article, §8-401, Annotated Code of Maryland defines “actual loss” as “ ...the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” When the Guaranty Fund disburses monies as a result of actual losses attributable to a licensee’s acts or omissions, the licensee’s license is suspended until the Guaranty Fund is reimbursed in full, with interest. Business Regulation Article, §§8-410 and 8-411, Annotated Code of Maryland. At a hearing on a claim against the Guaranty Fund, the claimant has the burden of proof. Business Regulation Article, §8-407(e)(1), Annotated Code of Maryland.

The Commission concludes, as a matter of law, that contractor About Kitchens and More was licensed at the time of its transaction with the Claimant, and that substantial portions of the contract work were performed in an unworkmanlike manner. The Commission concludes, as a matter of law, that the Claimant has met her burden of proof by establishing an actual loss as a result of the cost to repair and complete About Kitchens and More's unworkmanlike work.

Pursuant to COMAR 09.08.03.03B(3)(c), the correct measure of the Claimants' actual loss is as follows:

Amount paid to About Kitchens and More:	\$11,006.00
Reasonable cost to repair and complete unworkmanlike work:	+ <u>\$ 7,100.00</u>
	\$18,106.00
Less original contract price:	- <u>\$14,349.00</u>
Actual Loss	\$ 3,757.00

FINAL ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is this 14th day of September 2015, hereby **ORDERED** by the Maryland Home Improvement Commission that:

1) The Claimant is Awarded \$ 3,757.00 from the Home Improvement Guaranty Fund, to compensate for actual losses sustained as a result of the Respondent's unworkmanlike and incomplete home improvement work.

2) Pursuant to Business Regulation Article, §8-411(a), Annotated Code of Maryland, any home improvement licenses held by the Respondent shall be Suspended at such time as any money is paid from the Home Improvement Guaranty Fund under this Order, and the Respondent shall then be ineligible for any home improvement license until such time as the Home Improvement Guaranty Fund has been reimbursed. The Respondent shall also be liable for 10% annual interest on any unreimbursed balance owed to the Guaranty Fund.

3) This Final Order shall become effective thirty (30) days from this date. During this period, any party may file an appeal of this decision to Circuit Court.

Joseph Tunney _____

Chairman