

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF MATTHEW GRENIS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF</b></p> <p><b>GEORGE EKWUNO,</b></p> <p><b>T/A THE NOBLE HOUSE, L.L.C.,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE STUART G. BRESLOW,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: DLR-HIC-02-16-10177</b></p> <p>* <b>MHIC No.: 15 (90) 1316</b></p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 26, 2015, Matthew Grenis (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,987.88 in alleged actual losses suffered as a result of a home improvement contract with George Ekwuno, trading as The Noble House, L.L.C. (Respondent).

At ten o'clock a.m. on November 22, 2016, I convened the hearing in this matter at the Calvert County Public Library, 850 Costley Way, Prince Frederick, Maryland. Md. Code Ann.,

Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant appeared to represent himself. Hope Sachs, Assistant Attorney General (AAG), Department of Labor, Licensing and Regulation (Department), appeared to represent the Fund. No one appeared on behalf of the Respondent. After waiting more than fifteen minutes for the Respondent to appear, I proceeded with the hearing based on the following reasons.

Section 8-312 of the Business Regulation Article provides that the MHIC shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus Reg. § 8-312(a), § 8-407(a).

On September 2, 2016, the Office of Administrative Hearings (OAH) sent a Notice of Hearing (Notice) by first class and certified mail to the Respondent at the address provided to the OAH by the MHIC.<sup>2</sup> The Notice advised the Respondent of the date, time, and place of the hearing scheduled for November 22, 2016. Bus. Reg. § 8-312(b), (d); Md. Code Ann., State Gov't § 10-208(a)-(b) (2014).<sup>3</sup> The U.S. Postal Service returned the certified mailing to the OAH with the notation "not deliverable as addressed," but the first class mailing was not returned. The address on the Notice is the address in the MHIC database and is the Respondent's address of record. His MHIC license was still active as of the date of the hearing and the Respondent has not submitted a change of address with the MHIC. As such, it was established that the Respondent received adequate notice of the hearing. Parties are entitled to receive "reasonable written notice" of a hearing. Md. Code Ann., State Gov't § 10-208(a). I conclude that the Respondent received timely, adequate, and, therefore, reasonable written notice of the hearing in this case. Furthermore, "[i]f, after due notice, the person against whom the action is

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<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 volume.

<sup>2</sup> Transmittal form is in the OAH file. The hearing was previously scheduled for August 16, 2016, but was rescheduled at the request of the Claimant due to the fact that he was traveling on that date and provided documents to support his request.

<sup>3</sup> Unless otherwise noted, all references to the State Government Article hereinafter cite the 2014 volume.

contemplated does not appear, nevertheless the [MHIC] may hear and determine the matter.”  
Bus. Reg. § 8-312(h); *see also* Code of Maryland Regulations (COMAR) 28.02.01.23A (“If,  
after receiving proper notice a party fails to attend or participate in a . . . hearing . . . , the judge  
may proceed in that party’s absence . . .”). I thus directed that the hearing proceed in the  
Respondent’s absence.

The contested case provisions of the Administrative Procedure Act, the Department’s  
hearing 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); 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?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Notice, dated September 2, 2016
- GF Ex. 2 - Hearing Order, dated March 15, 2016
- GF Ex. 3 - DLR-MHIC Registration and Professional License History printouts for  
Respondent, dated November 21, 2016
- GF Ex. 4 - Letter from Kevin Niebuhr, Investigator, MHIC, with attached Home  
Improvement Claim Form, marked as received October 26, 2015

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

Clmt. Ex. 1 - Seventeen pages of photographs along with four pages of text messages between the Claimant and Respondent beginning April 21, 2015 through June 25, 2015

Clmt. Ex. 2 - Seven pages of photographs showing completed work performed by A1 Granite and Marble along with the following documents:

- Handwritten contract for the removal of existing countertops and installation of new granite countertops in the amount of \$4,650.00, undated
- Invoice to correct leak dated July 5, 2015 in the amount of \$375.00
- Home Depot receipt for new kitchen faucet in the amount of \$262.88, dated July 7, 2015
- Photograph of countertop removed by Respondent, undated
- Contract between A1 Granite and Marble in the amount of \$2,990.00, undated

The Respondent did not attend the hearing and offered no exhibits into evidence.

### Testimony

The Claimant testified in his own behalf.

The Fund presented no witnesses.

### **PROPOSED FINDINGS OF FACT**

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

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor operating under MHIC registration number 71494. GF Ex. 3.
2. On or about April 2015, the Claimant and the Respondent entered into a contract to remove the existing countertops in his home and replace them with granite countertops. The installation also included the replacement of a kitchen faucet and the existing kitchen and bar sink (Project).
3. The parties agreed on a price of \$4,650.00 to complete the Project. The contract required that a deposit of \$2,350.00 be paid by the Claimant upon acceptance of the contract terms and a payment of \$2,300.00 upon completion of the Project.

4. The Claimant paid the Respondent the amount of the deposit and has made no other payment to the Respondent.

5. Work began on the Project in early May 2015.

6. The new countertops were to match the old countertops in terms of dimension and fit.

7. The new countertops that were installed by the Respondent contained overhangs that did not exist with the previous countertops. Overhangs were not uniform and varied in size. In some areas, overhangs were nonexistent and in others, they measured up to two inches.

8. The granite backsplash, which was part of the work to be done under the contract, was not flush against the wall, which left a gap between the backsplash and the wall.

9. Cabinets in areas above the granite were not flush with the countertop, resulting in a space of variable size between the cabinet and the countertop.

10. The Claimant informed the Respondent of his dissatisfaction with the installation of the new countertops and requested that he repair or replace them as necessary so that they conform to the original countertop design in terms of fit.

11. The Respondent came to the Claimant's home on two occasions to try and remedy the problems, but was either unable or unwilling to perform the work. To correct the improperly measured granite countertop so that the overhangs were consistent throughout the Project and the backsplash and cabinets are flush with the wall and countertop, it is necessary to remove the granite countertop and replace it with another countertop that is properly measured.

12. Two days after installation of the kitchen faucet, the faucet became inoperable. The Respondent was made aware of this but did not repair or replace the faucet.

13. The Respondent installed plumbing under the kitchen sink for the drain, however, the piping leaked causing the Claimant to hire a plumber on July 8, 2015, at a cost of \$375.00 to repair the leak.

14. The Respondent demanded that the Claimant pay him the balance under the contract, which the Claimant refused.

15. The Respondent hired A1 Granite and Marble to remove and install the same style of granite as was specified in the contract with the Respondent. The cost to perform this work was \$2,990.00, which the Claimant paid in full upon completion of the work.

16. The Claimant purchased a new kitchen faucet to replace the broken faucet supplied by the Respondent. The cost for the faucet was \$262.68.

17. The countertops installed by A1 Granite and Marble did not contain overhangs of varying lengths and the backsplash and countertops were installed flush with the walls and cabinets. (Clmt. Ex. 2)

18. The Claimant's actual loss is \$1,327.88.

### 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); COMAR 09.08.03.03A(3).

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). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. 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 to perform the Project. He was referred to the Respondent by a family member. The Claimant informed the Respondent that he wanted the granite countertop to have the same dimensions as the countertop it was replacing. The Project started slowly. When it became apparent that the installation of the new countertops did not replicate the measurements of the old countertops, the Claimant brought this to the attention of the Respondent immediately and requested that he correct the problem as soon as possible. The Respondent was given two separate opportunities to correct the problems with the countertop, including the variable overhangs, the space between the backsplash and the wall and the cabinets that were no longer flush as they were previously with the old countertops.

The repairs that the Respondent tried to make did not correct the problems with the countertops. In addition, the faucet that the Respondent supplied under their contract failed shortly after installation and needed to be repaired or replaced. The Respondent failed to do either. In July 2015, the plumbing for the new sink that was supplied by the Respondent under the contract began to leak. The Claimant contracted a plumber to repair the piping that was installed by the Respondent and fixed the leak. The Claimant paid for the new faucet in the amount of \$262.88 and to correct the plumbing in the amount of \$375.00.

The Respondent informed the Claimant at the end of June 2015, that he was entitled to receive the balance of the contract price. The Claimant refused to pay him because the Claimant claimed that the work performed by him was unworkmanlike and needed to be repaired properly before he would pay the balance of the contract price. The Respondent informed the Claimant

that he would not do anymore work on the Project and that he was going to bring suit to collect the amount he claims was due.<sup>4</sup>

It is quite evident, when reviewing the photographs of the work performed by the Respondent, that the overhangs, the backsplash, and the countertops were improperly measured. There were significant gaps between the wall and backsplash and the cabinets and the countertop. Additionally, the overhangs were variable all of which were not present when the original countertops were replaced. Although the Claimant, in good faith, gave the Respondent two opportunities to correct the problems, the Respondent failed to do so. The only solution to correct the problems was to replace the granite countertops with new ones that were properly measured.

The Claimant contracted with A1 Marble and Granite to replace and install new granite countertops with the same style of granite. A1 performed this work at a price of \$2,990.00, which the Claimant paid. The comparison of the work performed by the Respondent and the replacement work performed by A1 is striking. While there were gaps and variability of overhang dimensions in the work performed by the Respondent (Clmt. Ex. 1), none of that exists in the pictures of the work performed by A1. It is readily apparent, especially when the pictures are viewed side by side, that the work performed by the Respondent was unworkmanlike.

Based on the uncontradicted testimony summarized above along with the documentary evidence in the record, I find that the work performed by the Respondent failed to meet industry standards in several material respects, and thus, was both unworkmanlike and inadequate. I conclude, therefore, that the Claimant is eligible for compensation from the Fund.

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<sup>4</sup> Although the Respondent did follow through and brought suit, he failed to obtain a judgement against the Claimant.



I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3).

In the instant case, the MHIC recommended that I apply the following formula that, essentially, reimburses the Claimant for the cost of replacement:

[T]he 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). As the Respondent contractor has done work under the contract, I agree that the above formula should be utilized as it is the most appropriate measure of the Claimant's actual loss.

Specifically, the Business Regulation Article defines an "actual loss" for the purposes of reimbursement 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 (2015) (emphasis added). The Claimant paid \$2,350.00 under the original contract with the Respondent. Added to this figure is the payment to A1 Granite and Marble in the amount of \$2,990.00 to replace the countertop installed by the Respondent. In addition, the Claimant paid \$375.00 to a plumber to repair the plumbing from the kitchen sink that caused it to leak and finally, the Claimant paid \$262.88 to replace the kitchen faucet that was found to be faulty.

Applying the formula found in COMAR 09.08.03.03B(3), the amount paid by the Claimant ( $\$2,990.00 + \$375.00 + \$262.88$ ) is added to the original contract price of \$4,650.00 for a total of \$5,977.88. To this amount, the original contract price of \$4,650.00 is subtracted leaving a total amount of \$1,327.88 as the Claimant's actual loss.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's unworkmanlike and inadequate work. I further conclude that the amount of that actual and compensable loss is \$1,327.88. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,327.88; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>5</sup> and

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

**Signature on File**

February 8, 2017  
Date Decision Issued

Stuart G. Breslow *MRC*  
Administrative Law Judge

SGB/emh  
#166393

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 10<sup>th</sup> day of April, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**