

IN THE MATTER OF THE CLAIM	* BEFORE MARY R. CRAIG,
OF ASHLEIGH AND ROBERT KING,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANTS	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF ROBERT PICKETT,	*
T/A PICKETT'S CHOICE HOME	* OAH No.: DLR-HIC-02-15-24675
IMPROVEMENTS,	* MHIC No.: 15(05)405
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 18, 2015, Ashleigh C. King, (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,376.00 in alleged actual losses suffered as a result of a home improvement contract with Chris Pickett, trading as Pickett's Choice Home Improvements (Respondent). Mrs. King signed the Claim on behalf of herself and her husband, Robert King. In its Hearing Order, the MHIC

indicated that it accepted the claim from Mr. and Mrs. King (Claimants). Consistent with the MHIC Hearing Order, I have denoted the Kings as the Claimants.

I held a hearing on October 29, 2015 at 100 East All Saints Street, Frederick, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimants represented themselves. The Respondent represented himself. Jessica Kauffman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (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, 09.08.02, and 28.02.01.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimants' behalf:

- Clmt. Ex. 1 Photo of front of Claimants' residence before painting, September 15, 2014
- Clmt. Ex. 2 Photo of front of residence after Respondent applied one coat of semi-transparent stain, September 26, 2014
- Clmt. Ex. 3 Photo of front of residence after CertaPro Painting applied solid stain, October 22, 2014
- Clmt. Ex. 4 Photo of rear of residence showing stain applied around windows and doors, September 26, 2014

¹ Unless otherwise noted, all citations of the Business Regulation Article refer to the 2015 Replacement Volume.

- Clmt. Ex. 5 Photo of back deck showing stain applied around sliding door, windows and edges of siding, September 26, 2014
- Clmt. Ex. 6 Photo of bay window showing stain applied to siding, September 26, 2014
- Clmt. Ex. 7 Photo of bay window showing stain applied to siding, September 26, 2014
- Clmt. Ex. 8 not offered
- Clmt. Ex. 9 Photo of side of house showing one coat of stain applied to siding, September 26, 2014
- Clmt. Ex. 10 Photo of cracked/loose board not repaired by Respondent, September 26, 2014
- Clmt. Ex. 11 not offered
- Clmt. Ex. 12 Photo of top of garage door, not caulked by Respondent, September 26, 2014
- Clmt. Ex. 13 not offered
- Clmt. Ex. 14 Photo of rough-in closet, September 26, 2014
- Clmt. Ex. 15 Photo of interior hall and pocket door framing, September 26, 2014
- Clmt. Ex. 16 Contract between Respondent and Claimants, unsigned
- Clmt. Ex. 17 Contract between Respondent and Claimants, signed September 22, 2014 by Respondent
- Clmt. Ex. 18 Check from Claimants to Respondent, September 15, 2014
- Clmt. Ex. 19 Check from Mrs. King to Respondent, August 12, 2014
- Clmt. Ex. 20 CertaPro Painting contract proposal, June 24, 2014
- Clmt. Ex. 21 Bank statement showing Claimants' check for \$2449.00, October 22, 2014
- Clmt. Ex. 22 Contract proposal from Mike's Home Improvement, March 14, 2015
- Clmt. Ex. 23 Checks (3) from Claimants to Mike's Home Improvements, various dates
- Clmt. Ex. 24 Texts and phone messages between Mr. King and Mr. Pickett, various dates
- Clmt. Ex. 25 Call log and texts between Mrs. King and Mr. Pickett, various dates
- Clmt. Ex. 26 Emails between Mr. Pickett and Mrs. King, various dates

Clmt. Ex. 27 Claim, signed by Mrs. King, October 1, 2014

Clmt. Ex. 28 Letter from Lake Linganore Homeowners Association (HOA) to Claimants, October 2, 2014

Clmt. Ex. 29 Claimants' timeline of events

I admitted the following exhibit on the Respondent's behalf:

Resp. Ex. 1 - Letter from Respondent to MHIC, June 13, 2015

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, July 28, 2015

Fund Ex. 2 - Transmittal from MHIC, July 8, 2015 Hearing Order, and Claim filed February 18, 2015

Fund Ex. 3 - Respondent's licensing history

Fund Ex. 4 - Letter from HIC to Respondent, March 13, 2015, enclosing Claim

Testimony

The Claimants testified. The Respondent testified. The Fund presented no witness.

PROPOSED FINDINGS OF FACT

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

1. The Respondent was at all relevant times licensed as a home improvement contractor by the MHIC under license number 96623. He operated under the trade name Pickett's Choice Home Improvements.

2. The Claimants own and reside in a house located at 6617 Edgewood Road, New Market, Maryland, in the Lake Linganore subdivision.

3. The Claimants' property and house are subject to restrictions enforced by the HOA, including a requirement that the Claimants obtain approval from the HOA before altering the exterior of their house.

4. The exterior of the Claimants' house is constructed in natural cedar wood; it had been previously coated with a semi-transparent stain.

5. In June 2014, the HOA notified the Claimants that they were required to paint or stain the exterior of the house or be subject to a fine by the HOA.

6. The Claimants needed to have the exterior of the house stained or painted in order to comply with the HOA requirements. In addition, the Claimants also wanted to make some minor interior changes to the house.

7. After searching for contractors on the internet, Mrs. King found the Respondent and asked the Respondent to come to the house to give her an estimate for work to improve the interior first floor of the house by installing a closet and reconfiguring the interior to construct a hallway. The Claimants also obtained estimates from two other contractors.

8. The Respondent was at the house discussing the interior renovation project with Mrs. King when she mentioned to the Respondent that she was also planning to have the exterior of the house stained. The Respondent told Mrs. King that he was experienced in staining home exteriors.

9. The Respondent has general experience in home improvement work; he is not a professional painting contractor.

10. The Respondent and Mrs. King discussed the exterior staining project. Mrs. King told the Respondent that the Claimants had not chosen the stain color or the type of stain. After further discussions, Mrs. King told the Respondent that the Claimants chose a semi-transparent stain to preserve the rustic look of the house. The Claimants had not chosen a stain color yet.

11. On August 11, 2014, the Respondent presented the Claimants with a contract proposal drafted by him which became the agreement between the parties when it was signed by Mrs. King and the Respondent on or about August 12, 2014. (Clmt. Ex. 16 (Contract)).²

12. In the Contract, the Respondent agreed to perform the following work on the Claimants' house:

A. Master Bedroom Closet Renovation

Build a new closet in bedroom 102" long by 36" deep

1. Cut out existing flooring to install on top of subfloor;
2. Install new wood studs and drywall (install, tape, block, skim, sand and prime drywall);
3. Install a new 72" wide double bypass closet door;
4. Install new base trim and door casing;
5. Paint inside and outside of closet, doors and trim;
6. Install closet light using existing electrical connections and standard ceiling light; and
7. Install one white metal shelving unit with cloth rod hanger. (Clmt. Ex. 16, p. 1).

B. Garage Entrance Hallway

Build a new entrance hallway from garage

1. Cut out existing flooring to install on top of subfloor;
2. Construct new hallway approximately 5' wide by 82" long;

² Claimants' exhibit 16 is an unsigned version of the Contract. The parties agree that this document contains the same information as the document signed by Mrs. King on behalf of the Claimants on or about August 12, 2014.

3. Install new wood stud walls and drywall (install, tape, block, skim, sand and prime drywall);
4. Remove the existing door from the second floor staircase entrance;
5. Install a pocket bedroom entrance door;
6. Install new base trim and door casing;
7. Paint hallway, bedroom side of hallway, doors and trim;
8. Install ceiling fan/light combination in bedroom with new electrical; and
9. Remove existing den entry door and finish door jamb trim. (Clmt. Ex. 16, pp. 1-2).

C. Exterior Painting

1. Apply 2 coats Sherwin Williams exterior grade stain and sealer to entire house, including all siding and trim;
2. Paint front door and garage door;
3. Replace existing garage door exterior trim casing;
4. Pressure wash exterior of entire house;
5. Properly prepare the entire house before applying any exterior coating;
6. Match existing house color or whatever HOA requires; and seal all windows and doors as needed with exterior silicone. (Clmt. Ex. 16, p. 2).³

³ I shall refer to the "exterior painting" portion of the Contract as the exterior work and the rest of the Contract as the interior work.

13. The Claimants agreed to pay the Respondent the total amount of \$9,027.00, which included all material, labor, delivery, disposal, county permits, inspections and taxes according to the following schedule:

- A. \$3,009.00 upon Contract signing;
- B. \$3,009.00 at job commencement;
- C. \$1,505.00 upon drywall being hung; and
- D. \$1,504.00 upon completion. (Clmt. Ex. 16, p. 2).

14. The Respondent agreed to commence work under the Contract on Monday, September 8, 2014 and to substantially complete it one month from commencement of work. (Clmt. Ex. 16, p. 3).

15. The Claimants paid the Respondent a total of \$6,018.00 under the Contract as follows: \$3,009.00 on August 12, 2014; and \$3,009.00 on September 15, 2014. (Clmt. Ex. 18, 19).

16. The Claimants selected the color and type of stain for the exterior of the house after much discussion between themselves and conversations with the Respondent. The parties agreed that the Respondent would apply a semi-transparent Sherwin Williams stain on the exterior of the house. The Claimants chose a semi-transparent stain rather than a solid stain because they liked the rustic look of the natural cedar showing through the stain and because solid stain would cost more than semi-transparent.

17. The Claimants chose the color of the stain, after changing their choice many times. The Claimants submitted the color to the HOA for approval prior to the Respondent commencing work. The Respondent was not involved with the HOA in any way.

18. The HOA approved the color of the stain prior to the commencement of the Respondent's work. The Claimants did not inform the HOA whether they planned to use semi-transparent or solid stain, and the HOA did not specify the type of stain (semi-transparent or solid) required prior to commencement of the Respondent's work.

19. Work was delayed slightly due to the weather. The Respondent's staff worked inside and outside of the house from September 15, 2014 through Friday, September 19, 2014, completing a portion of the work under the Contract, including the following:

- A. Removed the exterior shutters from all windows;
- B. Power washed the entire exterior;
- C. Taped and covered all windows;
- D. Applied one coat of transparent Sherwin Williams stain to the entire exterior and two coats of the same to the front and part of the side of the exterior;
- E. Framed one interior closet and hall; and
- F. Installed one pocket door. (Clmt. Ex. 29).

20. During the weekend of September 19-21, 2014, the Claimants decided that they did not like the look of the stain. The Claimants were concerned that the semi-transparent stain was not covering the exterior siding sufficiently, and they became concerned that the HOA would require them to repaint the house in a few years. The Claimants reviewed the other contract proposals they had obtained prior to engaging the Respondent, which were based on solid stain and were for higher prices than the Contract.

21. On Sunday, September 21, 2014 Mr. King texted the Respondent and told him to stop working on the exterior stain portion of the project. Mr. King told the Respondent that the Claimants were satisfied with the interior portion of the work and they would like him to

complete that work. The Respondent offered to apply one additional coat of semi-transparent stain to the exterior, but the Claimants rejected the offer.

22. The Respondent requested that Mr. King cancel the Contract in writing; the Respondent told Mr. King that once the Claimants cancelled the Contract in writing, he would draft a new agreement to cover the interior work.

23. On September 22, 2014, the Respondent's staff, Justin and Gary, returned to the Claimants' home and removed most of the construction materials left there by the Respondent's staff. At that time, either Justin or Gary gave Mrs. King a document, drafted by the Respondent entitled "Contract Cancellation" signed by the Respondent (Cancellation). (Clmt. Ex. 17).

24. The Cancellation was identical to the Contract, except that it included provisions specifying that the \$6,018.00 paid by the Claimants' was nonrefundable. The Respondent did not verbally alert the Claimants to this change.

25. Mrs. King signed the Cancellation without reading it carefully. Mr. King gave it to Gary on September 22, 2014.

26. Mr. King became concerned about why the Respondent's staff was removing materials and ladders from the property if the Respondent intended to finish the job. Mr. King took the Cancellation back from one of the Respondent's staff members and called the Respondent, who promised that he would complete the interior work after he had the Cancellation and a new agreement signed by the Claimants. Mr. King gave the Cancellation back to Gary based on the Respondent's promise.

27. The Respondent never offered the Claimants another written agreement.

28. Despite requests from the Claimants that he return to finish the interior work, the Respondent failed to return to the property. He never completed the work on the interior of the house.

29. On September 25, 2014, the Respondent sent Mr. King an email stating that he would not be returning to the property to finish the work.

30. On October 22, 2014, the Claimants hired CertaPro Painters to perform the following work: power wash the exterior of the entire house; caulk where necessary around windows and doors; scrape loose and peeling paint; sand the existing surface to promote adhesion of the top coat of stain; and apply two coats of Sherwin Williams solid stain on the foundation, cedar siding, wood trim, basement door, and door frames of the house. The Claimants agreed to pay CertaPro \$4,499.00 for all materials and labor. (Clmt. Ex. 20).

31. On October 22, 2014, the Claimants paid CertaPro Painters to perform the work specified above. (Clmt. Ex. 22).

32. On March 14, 2015, the Claimants hired Mike's Home Improvement, Inc. (Mike's) to finish the interior work on the house and to perform additional work. The portion of the work performed by Mike's to finish the interior work covered by the Contract cost the Claimants \$3,482.00. The Claimants paid Mike's and that contractor performed the work necessary to finish the interior repairs left unfinished by the Respondent.

DISCUSSION

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a). *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 completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

The Claimants must prove their claim by a preponderance of the evidence. Md. Code Ann., State Gov’t §10-217 (2014); 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 County Police Dep’t.*, 369 Md. 108, 125, n. 16 (2002), quoting MPJI 1:7 (3rd. ed. 2000). For the following reasons, I find that the Claimants have not proven eligibility for compensation from the Fund.

The Claimants acknowledge that, when they signed the Contract, they intended to have a semi-transparent stain applied to the house. They also concede that they chose the color of the stain. It is further undisputed that the Respondent applied the stain selected by the Claimants to the house. The dispute between the Claimants and the Respondent started when the Respondent’s staff had completed applying one complete coat of stain and were in the process of applying a second coat.

The dispute regarding the exterior work revolves around whether the Respondent improperly *recommended* a semi-transparent stain to the Claimants. There is one text message from Mr. King asking the Respondent whether they should use semi-transparent or solid stain. (Clmt. Ex. 24, text message from Mr. King, August 21, 2014). The Respondent responded, “I would use semi-transparent.” *Id.*

The Claimants testified that before they signed the Contract, they told the Respondent – after a period of indecision on their part – that they wanted to use a semi-transparent stain to

allow the natural characteristics of the cedar to show through the stain.⁴ The Respondent drafted the Contract which calls for Sherwin Williams exterior grade stain and sealer. The Contract does not specify whether the stain will be semi-transparent or “solid” stain. As the parties used these terms, semi-transparent stain, when applied to a surface such as natural cedar wood, allows the natural variations of the cedar to show through. It produces a rustic appearance. Solid stain, on the other hand, presents a uniform appearance, covering all natural variations in the wood as paint would do on any surface.

The difference between a house painted with semi-transparent stain and solid stain is demonstrated by the photographs in evidence. Before the Respondent began work on the house, the exterior was a light, faded grey color. The cedar siding on the house was discolored in places from exposure to the elements, and some of the siding was slightly damaged. (Clmt. Ex. 1). After the Respondent’s workers applied semi-transparent stain to the front of the house, the siding was a darker color of gray with blue tones. Some of the discolorations and the natural variations in the siding were visible through the stain. (Clmt. Ex. 2).

After the Claimants fired the Respondent, they hired CertaPro to apply solid stain to the house. The solid stain gave the house the appearance of a uniform bluish grey color. (Clmt. Ex. 3). None of the imperfections or natural characteristics of the cedar show through the solid stain. (Clmt. Ex. 3). Upon completion of the CertaPro work, the house looks as if it has been painted blue.

The difference between the semi-transparent stain and the solid stain are largely aesthetic. The color of the former is more subtle and the look of the texture of the wood stands out. The

⁴ The Respondent told the Claimants in a text on September 4, 2014 before the work started that “transparent stain is meant to show the wood grain. A solid is meant to cover.” (Clmt. Ex. 24, text message from Respondent to Mr. King).

color in the solid stain is more striking, and the exterior surface is hard to distinguish from vinyl or other man-made surfaces.

It is clear that the Claimants were indecisive when choosing between a solid and semi-transparent stain. Mr. King exchanged texts with the Respondent in which he wrote, seemingly in exasperation, that, “Dude, she picked a wedding dress faster than this. I’m so sorry.” (Clmt. Ex. 24, text message from Mr. King, August 29, 2014). After notifying the Respondent on August 31, 2014 that they had chosen colors, Mr. King texted the Respondent on September 1, 2014, “We have changed the primary color to the solid stain Driftwood. I’m so sorry.” *Id.* The Respondent texted back the following day, “That’s fine, no worries. I just worked the pricing around semi-transparent staining to match the existing color and overall look.”⁵ *Id.* This text exchange confirms two things: 1) the Claimants contracted with the Respondent and he priced the work to apply semi-transparent stain; and 2) the Claimants at one time wanted a final product that would protect the rustic wood look of the house. However, it is also apparent that, once they made a decision, the Claimants had great difficulty sticking with it. This was the source of the dispute between the parties.

The Respondent also texted Mr. King that it was fine if the Claimants changed the stain type to solid, but there would be an additional price involved for more labor and stain. (Clmt. Ex. 24, text from Respondent, September 4, 2014). Mr. King responded, “Dammit, we’ll probably stick with the semi-transparent in that case.” (Clmt. Ex. 24, text from Mr. King, September 4, 2014). The Respondent replied, “I think your house will look better in semi-transparent anyway.” (Clmt. Ex. 24, text from Respondent, September 4, 2014). After this exchange, the Claimants

⁵ After being informed by the Respondent that he could apply solid stain, but that would cost more, the Claimants decided to use semi-transparent stain.

decided to stick with the semi-transparent stain. The Claimants cannot shift the fault for their choices onto the Respondent just because they need money to help pay for re-staining the house.

The text messages from the Respondent stating that the Claimants should use semi-transparent stain must be read in context. The Respondent knew from prior discussion that the Claimants' goal was a finished product that showed the beauty of the cedar siding. In order to accomplish their preference for the look of the house, the Respondent recommended a semi-transparent stain. He was not expressing an opinion about the suitability of the stain for the siding.

On the evidence before me, I have no basis to conclude that the use of semi-transparent stain on the house was unworkmanlike or inadequate in the words of the statute. Bus. Reg § 8-401.

The HOA's requirements were also the subject of dispute between the parties. The Contract provides that the Respondent will apply stain to "match existing House color or whatever HOA requires." (Clmt. Ex. 16, p. 2). Mrs. King testified that she submitted the stain color to the HOA. The HOA approved the color in advance of the start of the Respondent's work, but not the type of stain to be used on the house. The Respondent testified that he knew the HOA had requirements for exteriors of houses in the neighborhood, but he was not familiar with the specifics. He also testified that he had never applied stain or paint to a house exterior in the Lake Linganore subdivision prior to this project. He contends that it was the Claimants' responsibility to ascertain the HOA's requirements and to obtain clearance or prior approval from the HOA for the color and type of stain to be used on the house.

The Claimants testified that the semi-transparent stain did not satisfy the Contract because the look of that stain was not acceptable to the HOA. After the Claimants fired the Respondent

from the exterior portion of the job, the Claimants asked the HOA for a letter stating that the semi-transparent stain did not meet the HOA requirements. (Clmt. Ex. 38). I have not given this letter any weight for the following reasons. First, Mrs. King testified that she requested the letter from the HOA; it was not issued on the HOA's initiative. The letter was dated October 2, 2014, after the dispute between the Claimants and the Respondents arose. This suggests that it may have been sought by the Claimants in anticipation of litigation.

Significantly, the letter was also written before the Respondent finished applying two coats of stain to the house and while the windows and doors were taped. The Respondent did not intend to leave the house looking unfinished; he did so because the Claimants fired him.

Second, the whole issue of what the HOA required was within the control of the Claimants. The Claimants must have had possession of or access to the rules or other written documents at the time they purchased or built the house specifying the exterior requirements. This information was not in the possession of the Respondent or readily accessible to the Respondent. The Claimants, who are members of the HOA and are subject to its rules, did not offer any evidence about the HOA requirements at the time the Contract was entered into between the parties. The only evidence is the letter dated October 2, 2014, which I have not relied upon for the reasons stated above.

In support of their argument, Mrs. King testified that, after the Claimants fired the Respondent, someone from CetraPro Painters told the Claimants that semi-transparent stain should only be applied to virgin cedar, *i.e.*, cedar that has never been stained with any other product. I have not given this testimony any weight.

First, this individual did not testify and was not subject to cross-examination. Second, other than the fact that the hearsay was spoken by an owner or employee of a competing

contractor, there is no evidence in the record that the individual possesses any special skill, training, or experience in the application of stain to cedar siding. Neither of the Claimants has that type of background either. Third, I am unable to tell whether that statement was made in order to discredit the Respondent and gain work from the Claimants. For these reasons, I have given that statement no weight. There is no competent evidence in the record that the application of semi-transparent stain under the circumstances of this case was *per se* improper.

For these reasons, I conclude that the Claimants did not prove by a preponderance of the evidence that the type of stain applied to the house was unworkmanlike or incompetent. That portion of their Claim was not proven by a preponderance of the evidence.

The Claimants have proven that the Respondent's work was incomplete or unworkmanlike in some minor respects. For example the Claimant saw some loose boards that should have been nailed before the stain was applied. Also, the Claimants demonstrated that some areas such as above the garage door were not properly caulked. The Respondent testified that he would have come back to the house and fixed these items had he not been fired from the job. He also testified that he offered to apply a third coat of stain.⁶ The Claimants did not allow him to do so because they were dissatisfied with the way the stain looked after the first and partial second coat and they decided to use CertaPro for the exterior staining rather than the Respondent.

The Respondent's offer to repair the broken siding and caulk or re-caulk the areas of concern was reasonable. The Claimants unreasonably refused to allow the Respondent to correct the problems identified by the Claimants or to improve the appearance of the agreed stain by applying another coat. For this reason, section 8-405(d) of the Business Regulations Article

⁶ There was no discussion of additional cost for the third coat.

precludes the Claimants from recovery for the stain portion of the Claim. The law states that “[t]he [MHIC] may deny a claim if the [MHIC] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” This precludes the Claimants from recovery for the stain portion of the Contract.

The Contract spelled out three areas of work, two of which involved interior modifications of the house. The Claimants terminated the Respondent’s services regarding the staining portion of the Contract, but they wanted him to finish the interior work. The Respondent, who felt the Claimants’ actions about the stain were unreasonable, believed that the Claimants breached the Contract and he had no further obligation to them. Therefore, he chose to collect his supplies and refused to finish the interior work. This raises the issue of whether the Respondent left the interior portion of the Contract incomplete. Bus. Reg. § 8-401; COMAR 09.08.03.03B(3)(a).

Under the facts as I have found them, the Claimants’ termination of the Contract resulted in a breach of the Contract on the part of the Claimants. The Respondent applied the stain to the house and would have finished applying the stain and repaired the minor items needing further work if the Claimants had permitted him to do so. The Claimants cannot pick and choose the portions of the Contract that they will honor. Having wrongfully terminated the Contract, the Claimants cannot now accuse the Respondent of abandoning the portion of the Contract that the Claimants remained willing to honor.

A final issue arose involving the Respondent’s demand that the Claimants sign the Cancellation and his promise that he would submit a new agreement covering the interior work once the Cancellation was signed. It is unclear whether the Claimants were required to sign anything once they breached the Contract. It is true that the Respondent told the Claimants that

he would tender a new written agreement and that he inserted forfeiture provisions in the Cancellation without discussing them with the Claimants. However, it is also accurate that Mrs. King signed the cancellation without reading it. The Cancellation and the forfeiture provisions are not relevant to the issues in this case. The threshold issue before me is whether the Claimants sustained an actual loss that is compensable by the Fund. Based on the evidence presented, I find that the Claimants did not sustain an actual loss compensable by the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have not sustained an actual and compensable loss. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guarantee Fund deny the Claimants' claim; and

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

Signature on File

January 19, 2016
Date Decision Issued

Mary R. Craig
Administrative Law Judge

MRC/ej
#159006