

CLAIM OF MATTHEW W. GILBERT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND,  
REGARDING THE ALLEGED ACTS  
AND OMISSIONS OF ANTHONY  
DARPINO, IV, T/A PRO-LINE  
CONTRACTING, LLC,  
  
THE RESPONDENT

\* BEFORE MARLEEN B. MILLER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO.: DLR-HIC-02-15-20062  
\* MHIC NO.: 15 (90) 716  
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**PROPOSED DECISION**

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SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On April 21, 2015, Matthew W. Gilbert (the Claimant) filed a claim (the Claim) with the Maryland Home Improvement Commission (the MHIC or the Commission) Guaranty Fund (the Fund), for reimbursement of the actual losses he allegedly suffered as a result of the acts and omissions of Anthony Darpino, IV, t/a Pro-Line Contracting, LLC, (the Respondent). After investigation, the Commission issued a June 2, 2015 Hearing Order and, on June 5, 2015, forwarded the case to the Office of Administrative Hearings (OAH).

On September 14, 2015, I conducted a hearing at OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to section 8-407(a) (incorporating the hearing provisions of section 8-312) of the Maryland Annotated Code's Business Regulation Article (the Business

Regulation Article). The Claimant represented himself, and Assistant Attorney General John Hart appeared on the Fund's behalf.

Despite adequate notice from OAH, neither the Respondent nor anyone acting on his behalf appeared at the hearing or requested a postponement. Accordingly, I conducted the hearing in the Respondent's absence. *See* Business Regulation Article § 8-312(h); Code of Maryland Regulations (COMAR) 09.01.02.09.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); the Commission's Hearing Regulations, COMAR 09.01.03, 09.08.02.01, and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

### **ISSUES**

Did the Claimant sustain an actual loss as a result of the Respondent's acts or omissions and, if so, what amount is he entitled to recover from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Claimant submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. December 17, 2014 letter from the Claimant to the Respondent
2. The Respondent's PayPal "Activity" for November 20 and December 3, 2014
3. April 6, 2015 Estimate from Signature Hardboard Floors, Inc.
4. April 12, 2015 Statement from Tower Federal Credit Union
5. Undated text message from the Respondent to the Claimant
6. Photographs (A-Z)
7. Undated text messages between the Claimant and the Respondent

The Respondent submitted no documents for admission into evidence.

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. July 17, 2015 Notice of Hearing
2. The Commission's June 2, 2015 Hearing Order
3. The Respondent's licensing history
4. The April 21, 2015 Claim
5. The Commission's May 5, 2015 letter to the Respondent

Testimony

The Claimant was the only witness who testified at the hearing.

**FINDINGS OF FACT**

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

1. Between March 11, 2013 and March 8, 2015, the Respondent was a licensed home improvement contractor (license number 01-101815) and salesman (license number 05-130584).
2. In or around the Fall of 2014, the Claimant and his wife were living in a townhouse at 9200 H Bridle Path Lane in Laurel, Maryland (the Laurel property) when they entered into a contract of sale for property located at 14 Dungarrie Road in Catonsville, Maryland (the Catonsville property).
3. Before listing the Laurel Property and moving to the Catonsville Property, the Claimant's real estate agent recommended that the Claimant employ the Respondent to perform certain repairs and renovations to both the Laurel and the Catonsville properties.

4. On or about November 20, 2014, the Claimant and the Respondent entered into a verbal contract (the Contract) for the Respondent to perform the following work (the Work) on the Laurel and Catonsville properties, at a total price of \$6,080.00:

- The Laurel property (\$1,280.00) – replacement of all carpet and padding.
- The Catonsville property (\$4,800.00)
  - replacement of hardwood floors in the kitchen/family room/powder room addition (the Addition) with the same type of wood on the floors in the remainder of the house (the Main House);
  - installation of sub flooring in the Addition to bring the hardwood flooring level with the floors in the Main House; and
  - machine sanding and staining of all the hardwood flooring throughout the Addition and the Main House so that all of the flooring throughout the house would match.

5. Although the Respondent advised the Claimant that all of the Work would be completed by November 25, 2014, after numerous extensions and inadequate attempts to complete the Work, by mid-December of 2014, the Responded had yet to complete the Work to the Claimant's satisfaction.

6. The Respondent's Work on the Laurel property was inadequate/defective in the following ways:

- The padding was not replaced;
- The carpet was not kicked to the tack strips;
- The carpet covered the air vents;
- The closet floors were not carpeted as agreed; and

- During the carpet installation, the workers broke and did not repair the storm door.

7. To allow the Claimant and his wife to move out of the Laurel property and into the Catonsville property, the Claimant was compelled to buy and to install by himself temporary flooring for the Catonsville property, at a cost of \$1,467.43.<sup>1</sup>

8. On his own, the Claimant fixed the carpet in the Laurel property.

9. The Respondent's Work on the Catonsville property was inadequate/defective in the following ways:

- The Respondent installed a different type of hardwood (maple) in the Addition to the Catonsville property than the type that had been installed in the Main House (red oak).
- The Respondent's workers installed overly-short, leftover hardwood planks (with cracks and excessive knot holes) in the Addition, which planks were noticeably different in size from the planks used in the Main House.
- The Respondent's workers glued the hardwood flooring directly to the Addition's concrete foundation, failing to provide a subfloor moisture barrier and flash/leveler (to raise the Addition's flooring to the level of the flooring in the Main House).
- Instead of machine sanding the hardwood flooring with a drum sander, the Respondent's workers unevenly sanded the floor by hand.
- The staining of the hardwood flooring was sloppy, uneven and too dark.

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<sup>1</sup> Although the Claimant and his wife had intended to move into the Catonsville property toward the end of November of 2014, the Respondent's delays and inadequate work left them unable to do so until the end of December of 2014.

- The Respondent's workers failed to reinstall or replace the quarter-round molding that they had removed from the Addition to install the hardwood flooring.

10. The Claimant paid the Respondent a total of \$2,000.00 for the Work.

11. If and when the Claimant receives an award from the Fund he intends to employ Signature Hardwood Floors, Inc. (Signature), a licensed home improvement contractor, to perform the following corrective work for the Catonsville property, at the April 12, 2015 estimated prices indicated below:

➤ Demo and dispose of glued-down flooring	\$ 800.00
➤ Flash up to 60 sq. ft. self-level compound	\$ 350.00
➤ Install proper flooring and molding	<u>\$4,620.00</u>
<b>TOTAL</b>	<b>\$5,770.00</b>

12. The Claimant intends to but has yet to receive an estimate from Signature or any other contractor to machine sand and stain the hardwood floors to match throughout the Catonsville house.

13. In or around late December 2014, the Claimant moved to the Catonsville property and filed with the Commission a Complaint against the Respondent.

14. In May of 2015, the Claimant sold the Laurel Property.

15. On April 21, 2015, the Claimant filed his Claim against the Fund.

### DISCUSSION

Pursuant to Business Regulation Article §§ 8-405(a) and 8-407(e)(1), to recover compensation from the Fund, the Claimant must prove, by a preponderance of the evidence, that he incurred an actual loss, which resulted from a licensed contractor's acts or omissions.

Business Regulation Article § 8-401 defines an "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home

improvement.” For the reasons set forth below, I conclude that the Claimant has met this burden, by proving that the Respondent failed to properly perform the Work required under the Contract and that the Claimant incurred an actual loss entitling him to an award of \$2,000.00.

The Fund presented unrefuted evidence that the Respondent was a licensed home improvement contractor at all times relevant to this case. The Claimant testified and/or presented documentary evidence establishing the Contract terms, his payment of \$2,000.00 to the Respondent, the deficiencies in the Respondent’s Work, and the sums the Claimant expended and will be required to pay to repair/replace the Respondent’s defective Work. Although no expert testified at the hearing, the numerous photographs presented by the Claimant are sufficient to demonstrate to any laymen that the Respondent’s Work was performed in an unworkmanlike manner and did not conform to the Contract requirements. Moreover, the Respondent failed to appear at the hearing to dispute any of the Claimant’s evidence.

I agree with the Fund’s representative that the following formula, set forth in COMAR 09.08.03.03B(3)(c), should be used to calculate the amount of the Claimant’s actual loss:

Measure of Awards from Guaranty Fund.

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

.....  
(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 and complete the original contract, less the original contract price. . . .

The Claimant's loss would therefore be calculated as follows:

Amount paid to Respondent:	\$2,000.00
Amounts paid or to be paid for repairs & replacement:	<u>+7,237.43</u>
	\$9,237.43
Original Contract price:	\$ 9,237.43
	<u>- 6,080.00</u>
	\$ 3,157.43

Nevertheless, as the Claimant is prohibited from recovering more than the \$2,000.00 he paid to the Respondent, COMAR 09.08.03.03B(4), I recommend that he be awarded that amount from the Fund.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has met his burden of proving that he incurred an actual loss as a result of the Respondent's inadequate home improvement work. Business Regulation Article §§ 8-405(a) and 8-407(e)(1). I further conclude that the total amount of that loss is \$3,157.43, \$2,000.00 of which the Claimant should be awarded from the Fund. COMAR 09.08.03.03B(3)(c), 09.08.03.03B(4).

### PROPOSED ORDER

Upon due consideration, I **PROPOSE** the following:

1. The MHIC **ORDER** that the Claimant, Matthew W. Gilbert, be awarded \$2,000.00 from the MHIC Fund, for the actual losses that he sustained as a result of the Respondent's inadequate and unworkmanlike performance of agreed-upon home improvement work;
2. The Respondent, Anthony Darpino, IV, t/a Pro-Line Contracting, LLC, be ineligible for an MHIC license, under Business Regulation Article § 8-411(a),

until the Fund is reimbursed for the full amount of the award paid pursuant to its Order, plus annual interest of at least ten percent; and

3. The records and publications of the MHIC reflect this decision.

December 9, 2015  
Date Decision Issued

**Signature on File**

Marleen B. Miller  
Administrative Law Judge

MBM/ej  
#158205

**IN THE MATTER OF THE CLAIM \* MARYLAND HOME  
OF MATTHEW W. GILBERT \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \*  
FOR ALLEGED ACTS OR OMISSIONS \* MHIC CASE NO. 15 (90) 716  
OF ANTHONY DARPINO, IV \*  
t/a PRO-LINE CONTRACTING, LLC \***

\* \* \* \* \*

**FINAL ORDER**

**WHEREFORE, this 15<sup>TH</sup> day of April, 2016, Panel B of the Maryland**

**Home Improvement Commission ORDERS that:**

**1) The Findings of Fact of the Administrative Law Judge are Amended as follows:**

**A) The Claimant paid the Respondent a total of \$4,000.00, which included \$1,280.00 for the installation wall-to-wall carpet at the Claimant's Laurel property, and \$2,720.00 for the installation of hardwood flooring at the Claimant's Catonsville property.**

**2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:**

**A) The installation of wall-to-wall carpet is not within the jurisdiction of the Maryland Home Improvement Commission, and therefore the Claimant is not eligible to recover from the Home Improvement Guaranty Fund for the work performed at the Laurel property.**

**B) The installation of hardwood flooring is within the jurisdiction of the Maryland Home Improvement Commission, and the Claimant is eligible to recover from the Home Improvement Guaranty Fund for the work performed at the Catonsville property.**

C) Pursuant to the formula set forth in COMAR 09.08.03.03B(3)(c), the correct calculation of the Claimant's actual loss is as follows:

● Amount paid to Respondent for work at Catonsville property	\$ 2,720.00
● Reasonable cost to repair Catonsville property (FOF 7 & 11)	<u>\$ 7,237.43</u>
	\$ 9,957.43
● Less original contract price for Catonsville property (FOF 4)	<u>-\$ 4,800.00</u>
● Actual Loss	\$ 5,157.43

D) . Pursuant to Business Regulation Article, §8-405(e)(5), Annotated Code of Maryland, the Claimant may not receive from the Home Improvement Guaranty Fund an award in excess of the amount paid by or on behalf of the Claimant to the Respondent. Therefore, the Claimant has sustained a compensable loss of \$2,720.00 for the home improvement work performed by the Respondent at the Catonsville property.

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimant is awarded \$2,720.00 from the Home Improvement Guaranty Fund.

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.

W. Bruce Quackenbush

Chairperson - Panel B  
MARYLAND HOME IMPROVEMENT  
COMMISSION