

IN THE MATTER OF THE CLAIM	* BEFORE DOUGLAS E. KOTEEN,
OF RUBY TANG,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No. DLR-HIC-02-15-27363
FOR THE ALLEGED ACTS OR	* MHIC No. 15 (90) 811
OMISSIONS OF EDSON DA SILVA,	*
T/A DA SILVA GENERAL	*
CONTRACTOR, LLC,	*

RESPONDENT

* * * * *

PROPOSED DECISION

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RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 2, 2015, Ruby Tang (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$32,650.00 in alleged actual losses suffered as a result of a home improvement contract with Edson Da Silva, t/a Da Silva General Contractor, LLC (Respondent).

I held a hearing on December 1, 2015 at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented herself. The Respondent represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Interpretation services were provided by a Mandarin Chinese interpreter and a Portuguese interpreter.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the OAH Rules of Procedure 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 Claimant 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 Claimant's behalf:

- CL Ex. 1. Floor Plan of Claimant's Residence, undated;
- CL Ex. 2. Email proposal from Respondent to Claimant, dated September 13, 2014, with attached HIC License/Registrations for Respondent, expires April 28, 2016; and W-9 Request for Taxpayer Identification Number and Certification, undated;
- CL Ex. 3. Contract from Castro Property Management, Inc. (Castro) to Respondent, dated September 22, 2014; with attached Certificate of Insurance for Castro, dated September 18, 2014; and Master Electrician License for Paul Castro, expires December 7, 2014;
- CL Ex. 4. Draft Contract from Claimant to Respondent, dated September 18, 2014;
- CL Ex. 5. Home Improvement Contract from Respondent and Castro to Claimant, dated September 22, 2014;

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

- CL Ex. 6. Notice to Cancel Optional Phase from Claimant to Respondent and Castro, dated November 7, 2014;
- CL Ex. 7. Legal Statement from Division of Occupational and Professional Licensing Home Page, undated;
- CL Ex. 8. Eleven Photographs, undated;
- CL Ex. 9. Sixteen Photographs, undated;
- CL Ex. 10. Cover sheet of check payments, with cancelled checks, dated September 22, 2014 (No. 176); September 23, 2014 (No. 178); September 23, 2014 (No. 179); September 25, 2014 (No. 180); September 26, 2014 (No. 181); October 5, 2014 (No. 182); October 28, 2014 (No. 102); and October 28, 2014 (No. 104);
- CL Ex. 11. Six photographs, undated;
- CL Ex. 12. Eight photographs, undated;
- CL Ex. 13. Five photographs, undated;
- CL Ex. 14. One photograph, undated;
- CL Ex. 15. Five photographs, undated;
- CL Ex. 16. Three photographs, undated;
- CL Ex. 17. Two photographs, undated;
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- CL Ex. 18. Two photographs, undated;
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- CL Ex. 19. One photograph, undated;
- CL Ex. 20. Two photographs, undated;
- CL Ex. 21. Four photographs, undated;
- CL Ex. 22. Four photographs, undated;
- CL Ex. 23. Contract/Invoice from Jiffy Plumbing, Heating & Cooling (Jiffy) to Claimant, dated July 24, 2015; with attached cancelled check, dated July 24, 2015 (No. 116); Contract/Invoice from Alex Mendoza to Claimant, dated August 27, 2015; and cancelled check, dated August 27, 2015 (No. 118);
- CL Ex. 24. Invoice from Pro Spex, Inc., to Claimant, dated October 23, 2015;
- CL Ex. 25. Pro Spex, Inc., Inspection Report, dated October 23, 2015;
- CL Ex. 26. Repair Estimates, from GBC Floors, Kitchen and Bath Corp. (GBC), undated; with attached GBC HIC License/Certification, expires November 20, 2014; Estimate from House to Home Solutions, LLC (HHS), dated October 5, 2015; and Proposal from Elegant Floor Services, dated November 25, 2014;
- CL Ex. 27. Receipt Statement, from Claimant, dated December 22, 2014;
- CL Ex. 28. DLLR MHIC Order, dated February 10, 2015;
- CL Ex. 29. Letter from Christopher R. Wampler, Esquire, counsel for Respondent, to MHIC, dated March 10, 2015; with attached Respondent and Castro Home Improvement Contract with Claimant, dated September 22, 2014; and Section 106 Permits Statement, undated; and
- CL Ex. 30. Email from Claimant to Respondent, dated November 19, 2014; with attached Work Review document, dated November 19, 2014.

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

- Resp. Ex. 1. Final Walk-Through Confirmation Agreement, dated November 19, 2014.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1. Notice of Hearing, dated September 3, 2015 for December 1, 2015 hearing, with attached MHIC Hearing Order, dated August 7, 2015;

- GF Ex. 2. MHIC Occupational/Professional License History documents, dated November 30, 2015; and
- GF Ex. 3. Letter from Joseph Tunney, Chairman, MHIC, to Respondent, dated May 26, 2015; with attached Home Improvement Claim Form, dated April 2, 2015.

Testimony

The Claimant testified on her own behalf and presented testimony from Paul Castro, owner of Castro Property Management, Inc. The Respondent testified on his own behalf. No other testimony was presented.

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 4545146.
2. On or about September 22, 2014, the Claimant and the Respondent entered into a contract for the Respondent to renovate the Claimant's residence in Chevy Chase, Maryland as follows: remodel two bathrooms; install lighting and other electrical work throughout residence; renovate two closets; install six doors in bathrooms, bedroom, and closets; perform drywall work in hallway; paint walls and ceilings in bedroom, hallway, and closets; and clean and remove construction debris. Initially, the contract also called for the removal of wood floors and the installation of porcelain tile with side tile moldings throughout the home, except for the kitchen. (CL Ex. 2, 5).
3. The total cost of the home improvement work to be performed by the Respondent under his contract with the Claimant was \$13,053.00. This included electrical work in the amount of \$3,050.00 to be performed by the Respondent through an electrical subcontractor, Castro Property Management, Inc. The Respondent provided a three-year warranty for all labor performed under the contract. (CL Ex. 5).

4. The contract called for the Respondent to provide only labor for the home improvement work to be performed at the Claimant's residence. The Claimant was responsible for purchasing all of the materials required for the contract. The contract also provided that if the contractor or subcontractor were to purchase any materials, they would be reimbursed by the Claimant. (CL Ex. 5).

5. On November 7, 2014, the Claimant and the Respondent agreed that the portion of the contract which called for the Respondent to perform flooring work would be cancelled. The cost of the cancelled flooring work was \$3,648.00. The total cost of the contract, after exclusion of the flooring work, was \$9,405.00. (CL Ex. 5, 6).

~~6. The Claimant made the following payments to the Respondent for the labor work performed under the contract:~~

September 22, 2014	Check No. 176	\$1,960.50;
September 23, 2014	Check No. 178	\$ 915.00;
September 26, 2014	Check No. 181	\$2,135.00; and
October 28, 2014	Check No. 104	<u>\$4,307.36</u>
Total		\$9,263.86.

(CL Ex.10). The Claimant made total payments to the Respondent for the labor performed under the contract in the amount of \$9,263.86. (CL Ex. 10).

7. The Respondent and Paul Castro (Castro), the owner of Castro Property Management, Inc., the electrical subcontractor, performed work in the Claimant's residence under the home improvement contract. Castro performed electrical work in the two bathrooms that were renovated. He also installed about seventeen recessed lights throughout the Claimant's residence and installed other light switches and electrical outlets.

8. Castro returned to the Claimant's residence after performing the electrical work to repair a recessed light that fell and to straighten a crooked plate for a light switch.

9. The Respondent performed work at the Claimant's residence under the contract beginning in about late September 2014 and continuing until early to mid-November 2014.

10. The Respondent failed to perform home improvement work under the contract in a complete and workmanlike manner in a number of areas.

11. The Respondent improperly installed bedroom and bathroom doors, which resulted in the doors not closing tightly and with unwanted space remaining between the doors and door frames. The Respondent also damaged molding on a bathroom door and cracked one of the doors when failing to properly install and fasten a door hinge. The Respondent's attempt to repair or replace the cracked door was inadequate and unsightly when he applied caulking to the crack. The Respondent also incorrectly used over-sized screws at the door hinges, which also prevented the doors from closing properly. (CL Ex. 11; 25, p. 8).

12. Respondent also failed to professionally finish and paint the door edges on the bathroom doors and the closet door in the master bedroom. The Respondent painted with a roller instead of a brush, which left an unprofessional finish on the doors. (CL Ex. 25, p. 9).

13. The Respondent failed to properly install and patch drywall and failed to paint the walls and ceiling in a uniform and professional manner. Drywall in the hallway was not installed evenly and the joint compound was not applied smoothly. Drywall work and painting near the closet in the master bedroom was not professionally finished and sanded, and did not match the color and texture of the existing walls. The Respondent also failed to repaint after patching certain areas, left unsightly bumps and defects on painted surfaces, and failed to ensure that repaired areas were repainted to match the color and texture of existing walls. (CL Ex. 12; 13; 16; 25, pp. 5-7).

14. The Respondent applied plaster and joint compound in a sloppy and improper manner after fixing a leaking pipe. (CL Ex. 14). The poor workmanship with the plaster obstructed access to the shut-off valves near the hall bathroom access panel and was likely to compromise the concrete wall board connections. (CL Ex. 25, p. 6)

15. The Respondent installed crown molding along the ceilings in both bathrooms in a sloppy and unworkmanlike manner. He failed to cut the crown molding properly, and left unsightly seams in the middle of the molding. (CL Ex. 15; 25, pp. 4-5). He also failed to properly install and paint floor molding around doorways and closets. (CL Ex. 16).

16. The Respondent failed to properly install pipes in both bathrooms. Due to the poor installation, the Respondent had to improperly cut the flooring beneath the pipes so the pipes could fit under the vanities. (CL Ex. 17).

17. The Respondent failed to clean the tile after he installed and caulked the tile in the master bathroom. (CL Ex. 18). He also failed to properly apply and seal the caulking in the master bathroom tile. The caulking began to crack and fall off the wall. (CL Ex. 19).

18. The Respondent failed to properly install the shower doors and door frame in the master bathroom. As a result, the shower doors did not close properly. The Respondent had to intentionally bend the shower door when trying to make it close properly. (CL Ex. 20; 25, p. 9).

19. The Respondent failed to properly install the toilet in the master bathroom. He failed to correctly install the wax ring, and failed to properly fasten the toilet to the floor, which caused it to leak. (CL Ex. 21). The Respondent also failed to correctly install the pipes under the vanity in the master bathroom. The pipe broke and began to leak, damaging walls and flooring. (CL Ex. 22; 25, pp. 7, 11).

20. The Claimant requested that the Respondent return to correct the painting work and repair water-damaged tile floors. The Respondent told the Claimant he would return, but he did not. When the Claimant showed the Respondent the leaking toilet in January 2015 and asked him to fix it, he told her to call a plumber. In July 2015, the Claimant requested that the Respondent return to fix a leaking pipe. He never did.

21. The Claimant contracted with Jiffy Plumbing & Heating, Inc. (Jiffy) on July 24, 2015 to repair a leaking pipe in the bathroom. The Claimant paid Jiffy \$275.00 on July 24, 2015 for the cost of the repair. Jiffy is MHIC-licensed and a licensed plumbing contractor. (CL Ex. 23).

22. The Claimant also contracted with Alex Mendoza (Mendoza) on August 27, 2015 to make repairs regarding the Respondent's poor installation of bathroom pipes. Mendoza patched and painted drywall in a closet to cover the repaired pipes from the master bathroom, replaced damaged floor tiles, and installed baseboard and shoe molding. The Claimant paid Mendoza \$200.00 on August 27, 2015 for these repairs. (CL Ex. 23).

23. The Claimant obtained estimates for other contractors to make repairs to the Respondent's poor work. The Respondent obtained an estimate from GBC Floors, Kitchen and Bath Corp. (GBC) in January 2015 to redo both bathrooms at a cost of \$32,650.00. (CL Ex. 26).

24. The Claimant obtained another estimate from House to Home Solutions, LLC (HHS) on October 5, 2015 to redo both bathrooms, and to prepare and paint the hallway, master bedroom ceiling, the walls around the master bedroom closet doors, and all doors. HHS proposed to perform this work at a cost of \$33,829.00. (CL Ex. 26).

25. The GBC and HHS proposals both provided for the contractors to provide all labor and materials on the home improvement project. Neither proposal itemized the separate costs for labor and materials, and neither proposal itemized any other costs.

26. The Claimant also obtained a proposal from Elegant Floor Service (Elegant) on November 25, 2014 to remove and dispose of damaged flooring in the living room, hallway, and one bedroom, caused by water damage from leaking pipes. The proposal also called for Elegant to install, sand, and stain new flooring in those areas. The total price of the Elegant proposal was \$9,278.00. (CL Ex. 26).

27. The Claimant hired Pro Spex, Inc. (Pro Spex) on October 23, 2015 to inspect the Respondent's work and prepare an inspection report. The Claimant paid Pro Spex \$325.00 on October 23, 2015 for the cost of the inspection and preparation of the report. (CL Ex. 24, 25).

28. Michael Burns, a home inspector with Pro Spex, inspected the Claimant's residence on October 23, 2015, and prepared an inspection report shortly thereafter. The inspection report identified numerous areas of the Respondent's unworkmanlike home improvement. (CL Ex. 25).

29. The Claimant's actual loss is \$6,688.86.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her 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 Cty. Police Dep't*, 369 Md. 108, 125, n. 16 (2002).

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). *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." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven that she is eligible for compensation from the Fund based on the Respondent's unworkmanlike and incomplete home improvement work under the contract.

The Respondent was a licensed home improvement contractor when he entered into the contract with the Claimant and performed the home improvement work. The Claimant

contracted with the Respondent on September 22, 2014 to perform home improvement work at her residence in Chevy Chase, Maryland, which included remodeling two bathrooms; renovating two closets; installing doors in the bathrooms, a master bedroom, and two closets; installing lighting and other electrical work throughout the residence; performing drywall work in a hallway; painting walls and ceilings in the bathrooms, master bedroom, hallway, and closets; and cleaning and removing construction debris. Initially, the contract also called for the Respondent to remove wood floors and install porcelain tile with side tile molding throughout the home, except for the kitchen. The total cost of the contract, including the flooring work, was \$13,053.00. (CL Ex. 2, 5). The contract called for the Respondent to provide only the labor for the home improvement work, and stated that the Claimant was responsible for providing all materials under the contract. The Respondent also provided a three-year warranty for all work performed under the contract. (CL Ex. 5).

On November 7, 2014, the parties agreed to cancel the portion of the contract that called for the Respondent to perform the additional flooring work. The cost of this additional flooring work was \$3,648.00. After this portion was removed from the contract, the remaining contract price, including the electrical work, was \$9,405.00. (CL Ex. 5, 6). The Respondent hired an electrical subcontractor, Paul Castro, to perform all of the electrical work under the contract. The cost of the electrical work under the contract was \$3,050.00. The Respondent and the Claimant signed the contract on September 22, 2014, and Castro signed it on September 23, 2014. (CL Ex. 5).

The Claimant paid the Respondent a total of \$9,263.86 for the labor he performed under the contract. The Claimant made these payments with four checks she wrote to the Respondent on September 22, 23, 26, 2014; and on October 28, 2014, respectively. (CL Ex. 10).²

The Claimant did not challenge the quality of any of the electrical work that was performed. However, she did contend that the Respondent performed other home improvement work under the contract in an incomplete and unworkmanlike manner. She identified numerous problems with the Respondent's work in the areas of painting walls, ceilings and doors; drywall installation; installation of bedroom, bathroom, and shower doors; installation of a toilet and pipes; installation of crown molding; and application of plaster around a repaired pipe. All of the areas that the Claimant identified as incomplete and unworkmanlike were within the scope of the contract.

The Claimant testified in detail regarding the work she believed was performed poorly and she supplemented her testimony with numerous photographs and a detailed written summary of the poor work. The evidence presented by the Claimant showed that the Respondent failed to install the bedroom and bathroom doors properly, including the door hinges. They did not close tightly and the Respondent left unwanted space between the doors and door frames. The Respondent also damaged some molding on one door and caused a crack in a door when he failed to properly install and fasten the door hinges. In addition, the Respondent's attempt to repair the cracked door was inadequate when he simply applied some caulking material to the crack. This attempted repair was unsightly and failed to correct the problem. The Claimant submitted several photographs depicting the Respondent's improper installation of the bedroom

² The evidence reflects that the Claimant also made other payments in the form of checks to the Respondent and to Castro. (CL Ex. 10). However, the testimony and documents establish that these additional payments by the Claimant to the Respondent and Castro were strictly as reimbursement for materials they had purchased. As the contract clearly provides that the Claimant is responsible for all materials, these additional payments are not considered to be payments made by the Claimant to the Respondent under the original contract. COMAR 09.08.03.03B(3)(c). The parties did not explain the discrepancy between the contract price (\$9,405) and the amount the Claimant paid the Respondent under the contract (\$9,263.86).

and bathroom doors. (CL Ex. 11). The inspection report from Pro Spex also confirmed the Respondent's poor workmanship on the doors. (CL Ex. 25, p. 8).

The Claimant also stated that the Respondent failed to install the shower doors correctly in the master bathroom. The shower door did not close properly and the Respondent intentionally bent the door, attempting to make it close properly. The Claimant supported this testimony with photographs of poor workmanship involving the shower door. (CL Ex. 20). The Pro Spex inspection report also confirmed the improper installation of the shower door. (CL Ex. 25, p. 9).

The Claimant explained that the Respondent did a poor job installing crown molding in both bathrooms. He did not cut the molding strips properly and left unsightly seams in the middle of the molding, rather than at the corners. The Claimant supported this testimony with clear photographs depicting this sloppy work. (CL Ex. 15). The Pro Spex inspection report also confirmed the poor workmanship on the crown molding. (CL Ex. 25, p. 4). The Respondent blamed the Claimant for this problem because he stated that she failed to provide him with proper materials so he could perform the work correctly. However, the Respondent could not explain why he did not instruct the Claimant to purchase additional materials so he could complete this work in a proper and professional manner.

The Claimant also addressed the Respondent's failure to properly install the toilet and pipes in the master bathroom. The poor installation caused the toilet and pipes to leak. The Claimant supported this testimony with photographs showing water damage from the leaking toilet and leaking pipes. (CL Ex. 21, 22). The Claimant also submitted documentation demonstrating that she had a licensed plumber from Jiffy repair the leaking pipe in July 2015. (CL Ex. 23). The Respondent acknowledged that he was not a licensed plumber and initially denied that he performed any work on the toilet or pipes in the Claimant's residence. I did not find the Respondent's denials persuasive. The Respondent subsequently admitted on cross-examination that his son installed the toilet. In addition, the contract clearly shows that the Respondent

contracted to install toilets, diverter valves, shut off valves, supply lines, shower heads, and spouts in both bathrooms. (CL Ex. 5). Additionally, the Claimant submitted photographs showing the Respondent's sloppy and incorrect installation of pipes under the vanity in both bathrooms. Due to his poor workmanship, the Respondent was forced to cut the flooring under both vanities so the pipes could fit in those areas. (CL Ex. 17). The inspection report confirmed the Respondent's poor workmanship regarding installation of bathroom pipes. (CL Ex. 25, p. 11).

The Claimant also addressed the Respondent's poor workmanship in applying plaster to the area near the concrete wall board and plumbing shut-off valves at the access panel for the ~~hall bathroom. The sloppy application of plaster partially obstructed the plumbing shut-off valves and was likely to compromise the concrete wall board connections.~~ The Claimant submitted a photograph depicting this problem and the Pro Spex inspection report confirmed this poor workmanship. (CL Ex. 14; 25, p. 6).

The Claimant also testified regarding the Respondent's poor workmanship in performing drywall work in the hallway and painting the walls and ceilings in many areas throughout the Claimant's residence. Drywall was not installed evenly and was not professionally finished and sanded. Furthermore, the Respondent failed to paint certain areas after completing patchwork, left unsightly bumps and defects on painted areas, and failed to ensure that repaired areas were repainted to match the color and texture of the existing walls. In addition, the Respondent failed to professionally finish and paint door edges on bathroom and closet doors. The Claimant again supported her testimony regarding the Respondent's poor workmanship in performing drywall and painting work with numerous photographs that were consistent with her testimony, which showed sloppy, defective, bumpy, and unfinished painting and drywall work. (CL Ex. 12, 13, 16). In addition, the Pro Spex inspection report confirmed the Respondent's poor workmanship in completing drywall and painting work on walls, ceilings, and doors throughout the Claimant's residence. (CL Ex. 25, pp. 5-7, 9).

In addition, the Claimant asserted that the Respondent failed to clean the bathroom tiles after installation in the master bathroom, and failed to properly apply caulking in the master bathroom. The Claimant explained that the caulking began to crack and crumble off the wall. She also supported these additional examples of poor workmanship with photographs. (CL Ex. 18, 19).

The Respondent argued that the Claimant's photographs were misleading because he claimed they were taken before the Respondent completed his work. I did not find this argument persuasive because most of the examples of the Respondent's poor workmanship were confirmed in the Pro Spex inspection report. The inspection was undertaken and the accompanying report was completed by Pro Spex in October 2015, which was almost one year after the Respondent performed the home improvement work at the Claimant's residence. This time line refutes the Respondent's claim that the issues raised and the revealing photographs identified problems prematurely before the Respondent had completed his work. The Respondent also claimed that his work was performed adequately because both he and the Claimant signed a document on November 19, 2014, which purported to confirm that the work was completed in accordance with the contract. (Resp. Ex. 1). Although curious, I do not find this document persuasive because the Claimant presented substantial testimonial and documentary evidence of the Respondent's poor workmanship that refutes this document. In addition, on the same date that the Claimant purportedly confirmed the adequacy of the Respondent's work, she sent the Respondent a lengthy document she identified as a contract work review, which set forth a detailed list of the Respondent's unworkmanlike and incomplete work under the contract. (CL Ex. 30).

For the foregoing reasons, I conclude that the Claimant has proven that the Respondent performed home improvement work in an incomplete and unworkmanlike manner in violation of sections 8-401 and 8-405 of the Business Regulation Article. I must now determine the amount of the Claimant's actual loss as a result of the acts and omissions of the Respondent.

The Claimant submitted two invoices for repairs that were already completed and three proposals for repairs that the Claimant is seeking from contractors to correct the Respondent's incomplete and unworkmanlike home improvement work. The Claimant submitted an invoice from Jiffy, a licensed home improvement contractor and licensed plumber, who repaired a leaking pipe in the Claimant's residence on July 24, 2015. The Claimant paid Jiffy \$275.00 on July 24, 2015 for this repair work. (CL Ex. 23). The Claimant submitted another invoice from Alex Mendoza, who patched and painted drywall in the closet in the master bedroom to cover the pipes from the master bathroom, replaced damaged floor tiles, and installed baseboard and shoe molding. The Claimant paid Mendoza \$200.00 on August 27, 2015. (CL Ex. 23). I find by a preponderance of the evidence that the work performed by Jiffy and Mendoza was necessary to complete or correct the Respondent's incomplete and unworkmanlike home improvement at the Claimant's residence. Although the Claimant did not submit proof that Mendoza was licensed by the MHIC, I shall infer that he was because all other work performed at the Claimant's residence, and all other estimates submitted by the Claimant, were from MHIC-licensed contractors.

The Claimant also submitted three proposals for work to repair, complete, or redo the home improvement work performed by the Respondent. The Claimant submitted an estimate from GBC, a home improvement contractor licensed by the MHIC, to completely renovate the two bathrooms in the Claimant's residence. Although it was undated, the Claimant stated that she obtained this estimate in January 2015. The total cost of this proposal was \$32,650.00. (CL Ex. 26). This proposal included both labor and materials and there was no itemized breakdown in the proposal to allow for a determination of the cost of labor and the cost of materials. In addition, this proposal did not provide any itemized costs for any of the work to be performed. This proposal did not include any other work aside from renovation of the two bathrooms.

The second proposal was from HHS, another MHIC-licensed home improvement contractor. This proposal, dated October 5, 2015, called for the renovation of both bathrooms, and for the preparation, patching, and painting of the hallway and master bedroom walls and ceilings, and the painting of all doors. The total cost of this estimate was \$33,829.00. The HHS proposal was also for all labor and materials, and the proposal included no listing of any itemized costs, and no separation of the cost for labor and the cost for materials. (CL Ex. 26).

As the Claimant's contract with the Respondent was for labor only, these proposals from GBC and HHS fail to provide sufficient information to allow me to reasonably determine the appropriate labor cost to repair or complete the Respondent's incomplete and unworkmanlike home improvement work at the Claimant's residence. The proposals also contain no breakdown of any itemized costs for any of the work to be performed to allow me to reasonably determine the cost to repair the specific aspects of the Respondent's poor work.

The Claimant submitted a third proposal from Elegant, dated November 25, 2014, which provided for the removal and disposal of flooring in the living room, hallway, and one bedroom, and the installation, sanding and staining of new flooring in those areas. (CL Ex. 26). The Claimant explained that this flooring proposal was to replace flooring that she claimed was water-damaged as a result of the Claimant's poor work. As section 8-405(e)(3) of the Business Regulation Article, prohibits the Fund from awarding any amount for consequential damages, I find that this proposal from Elegant for installation of new flooring to replace flooring that was purportedly damaged by water leaks arising from the Respondent's poor work is barred by the statute. Additionally, I find that reimbursement for the Pro Spex invoice in the amount of \$325.00 for the cost of the inspection and report is also barred as consequential damages. (CL Ex. 24).

The regulations governing the calculation of awards from the Fund permit me to determine that a particular claim requires a unique measurement. COMAR 09.08.03.03B(3). I find that the Claimant suffered an actual loss as a result of the incomplete and unworkmanlike

home improvement work performed by the Respondent. However, because the Claimant's contract with the Respondent was for labor only, I am unable to use the non-itemized proposals from GBC or HHS, which provide for both labor and materials, to determine the Claimant's costs to repair, and therefore, to determine the amount of her actual loss.

I have determined that the Claimant's original labor-only contract with the Respondent will provide a unique and appropriate measurement so that I can reasonably determine the Claimant's cost to repair and complete the Respondent's poor work. The cost of the Respondent's contract with the Claimant was \$9,405.00. (CL Ex. 5). Of that total, the contract reflects that the total cost for the electrical work was \$3,050.00. (CL Ex. 5). The Claimant has ~~not alleged any problems with the Respondent's performance (or that of his subcontractor) of~~ electrical work under the contract. Therefore, to determine the cost to repair and complete, I find it appropriate to reduce the total contract price by the cost of the electrical work. This provides a remaining total for all other work under the original contract of \$6,355.00. (CL Ex. 5). The contract does not itemize the costs of any of the remaining bathroom renovation, drywall, and painting work. Although the Respondent did not perform all other work under the contract in an unworkmanlike manner, because his work was poor in so many areas of the contract as addressed above, aside from the electrical work, I find that the remaining cost of the original contract (\$6,355.00) provides a unique and appropriate measurement of the labor cost to repair or complete the Respondent's work. (CL Ex. 5).

The Claimant has also established by a preponderance of the evidence that additional work performed by Jiffy and Mendoza, in the total amount of \$475.00, is properly considered part of the cost to repair or complete the Respondent's inadequate work. (CL Ex. 23).

Having found eligibility for compensation, and having addressed the need for a unique measurement of the actual loss, I will now address the amount of the award 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). The statute also provides that an award from the Fund may not exceed \$20,000.00 for the acts or omissions of one contractor, and the award may not exceed the amount that the Claimant paid to the Respondent under the contract. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5). The MHIC regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers the most appropriate measurement to determine the amount of the Claimant's actual loss in this case.

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. 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 measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is calculated as follows:

Amount paid to the Respondent	\$ 9,263.86
Cost to repair work (from contract)	+ 6,355.00
(from Jiffy & Mendoza)	<u>+ 475.00</u>
Subtotal	\$16,093.86
Amended contract price	<u>- 9,405.00</u>
Actual loss	\$ 6,688.86

In accordance with the formula set forth in the regulations, as modified by the unique measurement discussed above, I conclude that the Claimant's actual loss as a result of the acts or omissions of the Respondent in performing incomplete and unworkmanlike home improvement work under the contract is \$6,688.86. Md. Code Ann., Bus. Reg. § 8-405 (e)(1).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,688.86 as a result of the Respondent's acts and omissions. 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 Guaranty Fund award the Claimant \$6,688.86; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission;³ and~~

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

Signature on File

February 29, 2016
Date Decision Issued

Douglas E. Koteen
Administrative Law Judge

DEK/da
160992

³ See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 29th day of March, 2016, 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.

Marilyn Jumalon

***Marilyn Jumalon
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION