

IN THE MATTER OF THE CLAIM
OF BARBARA BERGER,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ROLAND
BEDREGAL,
T/A REGAL REMODELING &
RESTORATION, LLC,
RESPONDENT

* BEFORE DEBORAH S. RICHARDSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-37079
* MHIC No.: 16 (90) 1077
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PROPOSED DECISION

STATEMENT OF THE CASE
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DISCUSSION
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STATEMENT OF THE CASE

On May 17, 2016, Barbara Berger (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,065.60 in alleged actual losses suffered as a result of a home improvement contract with Roland Bedregal, trading as Regal Remodeling & Restoration, LLC (Respondent).

I held a hearing on April 21, 2017 at the Kensington location of the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The

Claimant represented herself. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or someone to represent him, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.¹

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 the Claimant's behalf:

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|----------------|--|
| Clmt. Ex. 1A - | Contract between Respondent and Claimant, July 20, 2013 |
| Clmt. Ex. 1B - | Amended Contract between Respondent and Claimant, August 26, 2013 |
| Clmt. Ex. 1C - | Photographs, approximately August 2013 |
| Clmt. Ex. 1D - | Checks from Claimant to Respondent, dates ranging from July 26, 2013 to September 20, 2013 |

¹ Notice of the hearing was mailed to the Respondent at the address of record by certified and regular mail on March 27, 2017, COMAR 09.08.03.03A(2), and both were returned unclaimed. Notice was also sent to an additional address, on Langdon Court, that the Fund believed may have been a good address for the Respondent. That Notice, sent via certified mail, was also returned unclaimed. Therefore, based on the Court of Appeals' holding in *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484 (1988), I conclude that OAH's notice to the Respondent was adequate under section 8-312(d) of the Business Regulation Article and section 10-209(c) of the State Government Article.

- Clmt. Ex. 2A - Letter from Mike Zanville, Carpet & Vacuum Expo, To Whom It May Concern, May 21, 2015 attaching invoices, April 14, 2015 and February 22, 2016 and photographs, May 2015
- Clmt. Ex. 2B - Letter from Mike Zanville, Carpet & Vacuum Expo, To Whom It May Concern, April 19, 2016 attaching estimate, April 19, 2016 and photograph April 2016

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Package of undeliverable mail from OAH to the Respondent, various dates
- Fund Ex. 2 - Hearing Order, November 28, 2016
- Fund Ex. 3 - Department of Labor, Licensing & Regulation I.D. Registration, April 20, 2017
- Fund Ex. 4 - Affidavit of William Banks, April 19, 2017
- Fund Ex. 5 - SDAT Real Property Search, April 20, 2017
- Fund Ex. 6 - Home Improvement Claim Form, May 17, 2016
- Fund Ex. 7 - Letter from MHIC to the Respondent, May 31, 2016

The Respondent did not appear and did not offer any exhibits for admission into evidence.

Testimony

The Claimant testified in her own behalf.

The Respondent did not appear and therefore did not present any testimony.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject matter of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 126561.

2. The Claimant is the owner of a condominium located on South Leisure World Boulevard in Silver Spring, Maryland (Property).

3. In early July 2013, the Claimant met with and explained to the Respondent the renovation work she wanted done on her Property. In particular, with respect to the flooring, the Claimant showed the Respondent samples of hardwood floor she had obtained from another vendor that she wanted used in her Property. The Claimant explained to the Respondent that she wanted a hardwood floor with interlocking planks that were only glued down in the corners of the room, as opposed to having every plank glued down. The benefit of having a hardwood floor only glued down in the corners is to be able to easily replace planks, should the need arise, without further damaging additional planks.

4. On July 20, 2013, the Claimant and the Respondent entered into a contract (Contract) to completely remodel the Property. The Contract work included:

- Painting – throughout entire Property, including foyer, living room, dining room, kitchen, hall bath, master bedroom, master bath, bedroom, laundry room and patio; drywall repair, patches sanded and primed; wallpaper removed where necessary
- Foyer – remove existing doors; install new mirrored doors
- Hardware floors – new hardwood engineered floating floors installed in foyer, halls, living room, dining room and kitchen; quiet walk will be installed under all hardwood floors to serve as vapor barrier and sound batt; all new areas to receive hardwood floors will also have matching shoe molding installed around perimeters
- Crown molding – installed in foyer, living room, dining room, two small halls; all crown molding to be caulked, puttied and painted
- Kitchen – remove existing counter tops, sink and back splash; cabinets leveled out; new counter top installed; new under mount sink installed; pullout knobs installed on kitchen cabinets; granite and mosaic backsplash installed, grouted and sealed
- Master bath – removal of shower and tub; removal of baseboard; new shower/tub hardware installed; flooring replaced with ceramic

tiles; tile installed on bathroom shower and tub walls; removal of faucet; new sink hardware installed; toilet replaced; install shower curtain rod; install new toilet paper holder, towel bars

- Hall bath – remove shower encasement; remove and reinstall baseboard; new shower hardware installed; flooring replaced with ceramic tiles; tile installed on floor and shower walls; existing sink hardware removed; replace toilet; new sink hardware installed
- Carpet – install carpet in master bedroom and hall bedroom
- Wing wall – install new wing wall to divide big area into two areas

5. The Respondent drafted the Contract.

6. The agreed-upon Contract price was \$30,165.00.

7. On August 26, 2013, the Claimant and the Respondent amended the Contract to include the following additional items: remove all closet shelves; patch, prime and paint holes left from shelving removal; remove and reinstall blinds; install additional shower diverter; and install laminate flooring in laundry room. The total of the additional items was \$1,015.00, bringing the total Contract price to \$31,180.00.

8. The Claimant paid the Contract in full with checks in the following amounts:

- July 26, 2013 - \$6,000.00
- July 31, 2013 - \$6,000.00
- August 7, 2013 - \$8,000.00
- August 31, 2013 - \$2,500.00
- September 4, 2013 - \$2,500.00
- September 12, 2013 - \$3,000.00
- September 20, 2013 - \$3,180.00

9. The Respondent started work on the Contract on or about July 31, 2013.

10. The Respondent did not install interlocking hardwood floor planks that were only glued down in the corners of the room. The Respondent glued down each hardwood plank.

11. After the Respondent completed installation of the hardwood floor, but before he completed all of the work under the Contract, the Respondent's plumber damaged one of the planks in the kitchen hardwood floor while installing a garbage disposal. The Respondent had to remove twelve planks of hardwood in order to replace the one damaged plank in the kitchen because removing one damaged plank caused damage to the bordering planks.

12. At that time the Claimant first learned the Respondent had not installed interlocking hardwood floor planks that were only glued down in the corners of the room.

13. Soon after the Respondent replaced the twelve planks in the hardwood floor, the joints in the kitchen floor began to separate. The gaps were large and unsightly.

14. Sometime in mid to late August 2013, the Claimant called the Respondent to inform him that there were large gaps in the hardwood floor.

15. Sometime soon after that call, the Respondent came to the Property and put putty in the gaps in the floor.

16. After the Respondent put putty in the gaps, the Claimant took pictures of the hardwood floor and sent them to the Respondent to show him that the repair work was unacceptable.

17. The Respondent came to the Property in September 2013 to put more putty in the gaps. He looked over the job and said there was nothing more he could do, he did not have the money to replace the floors and told the Claimant not to "sweat the small stuff."

18. Soon after September 2013, the gaps in the hardwood floor spread to areas throughout the Property other than the kitchen.

19. The gaps in the kitchen area became so large the Claimant risked tripping in her home.

20. On April 14, 2015, the Claimant paid Carpet & Vacuum Expo \$1,758.20 to remove the existing hardwood floor in her kitchen and to install a Bruce Turlington Plank Floating floor.

21. The floor installed by Carpet & Vacuum Expo on April 14, 2015 had each plank glued down in order to match the installation method of the remaining hardwood floor.

22. On February 22, 2016, the Claimant paid Carpet & Vacuum Expo \$125.00 to repair gaps in her floor by the entryway to the dining room.

23. On April 19, 2016, the Claimant received an estimate from Carpet & Vacuum Expo to remove and replace the existing hardwood floor in her living room, dining room, hallways, kitchen and library with a Bruce Turlington Plank Floating floor for \$10,182.40. This estimate was for interlocking planks only glued down in the corners of the room.

24. The April 19, 2016 estimate includes removal and replacement of the kitchen floor installed by Carpet & Vacuum Expo in April 2015.

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) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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);² *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.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. There are no *prima facie* impediments barring the Claimant from recovering from the Fund (ownership of more than three homes, being related to or employed by the contractor, refusing to adhere to an arbitration clause in the contract, or unreasonably rejecting good faith efforts to resolve the claim). Md. Code Ann., Bus. Reg. § 8-405(c), (d) and (f). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The language in the Contract regarding the hardwood floors is as follows:

new hardwood engineered floating floors installed in foyer, halls, living room, dining room and kitchen; quiet walk will be installed under all hardwood floors to serve as vapor barrier and sound bat; all new areas to receive hardwood floors will also have matching show molding installed around perimeters

(Clmt. Ex. 1A). The Claimant argues, and the Fund agrees, that the Claimant did not receive the “floating floor” she contracted for. The exact definition of a “floating floor” was not provided to me by any of the parties. The Fund argued that a “floating floor” requires installation of interlocking planks that are only glued in the corners of the room. This notion, however, is belied by the fact that the replacement flooring the Claimant had installed in her kitchen in April 2015, in which the planks were each glued down, just like the installation performed by the

² Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Respondent, was also labelled a “floating floor” by Carpet & Vacuum Expo. (Clmt. Ex. 2A). This suggests that a “floating floor” is a particular product as opposed to a method of installation. The Claimant herself waffled on this issue. At one point she testified that “floating floor” referred to an extra layer of padding that is installed below the hardwood planks. While she contended that she contracted for an installation method that included interlocking planks only glued in the corners of the room, in her opinion the installation method was not a “floating floor.” At another point in the hearing, the Claimant agreed with the Fund, that the “floating floor” referred to the method of installation.

The Contract clearly provides for a “floating floor.” It is unclear whether the method of installation explained by the Claimant is included in the technical meaning of that term. But it is unnecessary for me to make that determination. Whether it is included with the meaning of “floating floor” or not, the Claimant was eminently credible when she explained the method of installation she requested. She showed samples of the product to the Respondent, and explained that she wanted it installed with interlocking planks that were only glued in the corner of the room. She requested this method of installation to avoid the exact problem that occurred in this case – having to remove many planks to repair only a small area.

As the Court of Appeals has held, “it is a basic principle of contract law that, in construing the language of a contract, ambiguities are resolved against the draftsman of the instrument.” *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins. Co.*, 415 Md. 313, 327 (2010) (quoting *Burroughs Corp. v. Chesapeake Petroleum & Supply Co., Inc.*, 282 Md. 406, 411 (1978)). Since the Respondent was the drafter of the Contract, and the meaning of the disputed text regarding “floating floor” is ambiguous, it is proper to interpret the disputed language against the Respondent’s interests.

In addition, "[w]hen a provision in a contract is susceptible to more than one interpretation, a construction which makes the contract fair and reasonable will be preferred to one which leads to either a harsh or unreasonable result." *P.V. Properties, Inc. v. Rock Creek Village Associates Ltd. Partnership*, 77 Md. App. 77, 83 (1988) (ambiguous terms in contract between landlord and tenant would be interpreted to make the contract fair and reasonable as the law implied an obligation to act in good faith and to deal fairly with the other party) (citing *Canaras v. Life Truck Services, Inc.*, 272 Md. 337 (1974); *Baltimore City v. Industrial Electronics, Inc.*, 230 Md. 224 (1962); *Stanbalt Realty Co. v. Commercial Credit Corp.*, 42 Md. App. 538 (1979)). Under this canon, the fair and reasonable outcome of the contract interpretation is that the Claimant receive the installation method she believed she had contracted for. Failure to provide the floor installed in this manner is an inadequate home improvement.

Not only is the method of installation inadequate, under any circumstances the photographs and testimony establish that the hardwood floor has large gaps appearing throughout. The Claimant, the Fund, and I all agree that the Respondent provided an inadequate and unworkmanlike home improvement in that the hardwood floor has very large gaps in it which are extremely unattractive. In fact, the gaps are so large in some places it creates a risk of the Claimant tripping and falling in her own Property. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation 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). The following formula offers an appropriate measurement to determine the amount of 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 filed a Claim alleging she was entitled to \$12,065.60, which represents the cost of the kitchen reinstallation in April 2015, plus the estimate to reinstall the entire hardwood floor throughout the Property, utilizing the proper installation method. The Fund argued that the Claimant is entitled to collect either the cost of replacing the kitchen, or the cost of replacing the entire hardwood installation, that includes the already reinstalled kitchen, but not both. I agree. The Claimant was entitled to ameliorate the unworkmanlike home improvement only once. At the time she contracted to have the kitchen floor removed and reinstalled, she was already aware of the improper installation method and aware that the gaps were spreading throughout the Property. She could have chosen at that time to have the entire hardwood floor replaced. Her choice to replace only the kitchen, utilizing the matching improper installation method, increased the cost to ultimately replace the entire flooring utilizing the proper installation method. Thus, the most reasonable measure of damages is to allow only the reinstallation of the entire hardwood flooring.

I find that the reinstallation estimate presented by the Claimant for the entire hardwood flooring is reasonable. Accordingly, I calculate the award as follows:

\$31,180.00 – amount Claimant has paid under the original amended Contract
+ \$10,182.40 - estimate to reinstall hardwood floating floors
= \$ 41,362.40
- \$31,180.00 – Contract price
= \$10,182.40 – actual damages

Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). The actual damages do not exceed \$20,000.00 and therefore the Claimant is entitled to reimbursement from the Fund in this entire amount.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,182.40 as a result of the Respondent's acts and omissions. 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

..... \$10,182.40; 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;³ and

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

Signature on File

June 9, 2017
Date Decision Issued

1 _____ 7
Deborah S. Richardson
Administrative Law Judge

DSR/cmj
168025

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th day of July, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION