

IN THE MATTER OF THE CLAIM	* BEFORE LOUIS N. HURWITZ,
OF EVANGELINE DORSEY,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-16-16952
FOR THE ALLEGED ACTS OR	* MHIC No.: 16 (90) 181
OMISSIONS OF REGINALD HEAD,	*
T/A BROTHER HEAD HOME	*
IMPROVEMENT,	*
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On March 21, 2016, Evangeline Dorsey (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$6,487.54<sup>1</sup> in alleged losses suffered as a result of a home improvement contract with Reginald Head, trading as Brother Head Home Improvement (Respondent).

---

<sup>1</sup> In a revised Home Improvement Claim Form signed by the Claimant on April 21, 2016, she amended the amount of her claim to \$6,350.00.

I held a hearing on September 12, 2016 at the Largo Government Center, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>2</sup> The Claimant represented herself. John Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent appeared on her own behalf. The hearing concluded on September 26, 2016, via telephone conference with the same participants as the first day of the hearing.

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, the MHIC hearing regulations, and the Office of Administrative Hearings (OAH) Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; COMAR 28.02.01.

### ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions, and, 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 - Contract with the Respondent,<sup>3</sup> April 20, 2015
- Cl. Ex. # 2 - Addendum to Contract, June 9, 2015
- Cl. Ex. # 3 - Check No. 474; Claimant's \$3,600.00 payment to the Respondent, April 24, 2015; Check No. 475 Claimant's \$4,000.00 payment to the Respondent, June 11, 2015
- Cl. Ex. # 4 - Proposal from Devine Construction Services, Inc., October 28, 2015

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article refer to the 2015 Replacement Volume.

<sup>3</sup> In more than one document, the Respondent refers to the Claimant only as "Ms. Vann," a shortened form of her first name.

- Cl. Ex. # 5 - Receipt from The Home Depot, January 4, 2016
- Cl. Ex. # 6A-D - Photographs
- Cl. Ex. # 7A-D Photographs
- Cl. Ex. # 8 - Chesapeake Service District receipt, December 14, 2015
- Cl. Ex. # 9A-D - Photographs
- Cl. Ex. # 10A-D - Photographs
- Cl. Ex. # 11A-D - Photographs
- Cl. Ex. # 12A-D - Photographs
- Cl. Ex. # 13A-C - Photographs
- Cl. Ex. # 14A-B - Photographs
- Cl. Ex. # 15A-D - Photographs
- Cl. Ex. # 16A-D - Photographs
- Cl. Ex. # 17A-D - Photographs
- Cl. Ex. # 18A-D - Photographs
- Cl. Ex. # 19A-C - Photographs
- Cl. Ex. #20- Kitchen Punch List sent by the Claimant to the Respondent, July 18, 2015
- Cl. Ex. #21- Statement of Janice Kennedy, October 9, 2015
- Cl. Ex. #22- Southern Sales Services receipt, December 6, 2015

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

- R. # 1 - Letter from the Claimant to the Respondent, August 26, 2015
- R. # 2 - Letter from the Respondent to the MHIC, March 29, 2016, with attached photographs #1-9
- R. # 3-9 Photographs

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

- GF Ex. # 1 - Notice of Hearing, July 20, 2016
- GF Ex. # 2 - Hearing Order, May 23, 2016
- GF Ex. # 3 - MHIC letter to the Respondent, March 21, 2016, with attached letter from the Respondent to the MHIC, March 29, 2016
- GF Ex. # 4 - MHIC Claim Form, received by the MHIC on March 21, 2016
- GF Ex. # 5 - Letter from the Claimant to the MHIC, April 26, 2016, with Amended MHIC Claim Form, signed by the Claimant on April 21, 2016
- GF Ex. # 6 - Respondent's Licensing History as of September 12, 2016

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf.

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 this case, the Respondent was a licensed home improvement contractor under MHIC license number 01-89202.
2. On or about April 20, 2015, the Claimant and the Respondent entered into a contract to perform the following at the Claimant's home in Prince George's County, Maryland:
  - a. Remove kitchen cabinets, re-design kitchen for double-wide refrigerator, and move the sink to the center of the kitchen window;
  - b. Remove bulkhead to the ceiling; install recessed lighting while retaining the "main light";
  - c. Remove existing flooring; install the Claimant's choice of flooring; and relocate heating vent;

- d. Lay out kitchen as the cabinetry allows; complete prep work for granite countertop ; install base and wall cabinets;
  - e. Extend closet in the living room to the outside step; convert to a laundry room, with stackable washer/dryer; run drain and supply lines to basement and vent to attic; and
  - f. Haul away all debris.
3. The contract included a start date of April 25, 2015 and an end date of May 20, 2015.
  4. The original contract price was \$10,000.00, which was discounted from \$10,700.00. An addendum, dated June 9, 2015, discounted the original contract price for the kitchen renovation to \$9,000.00. The addendum documented a down payment of \$3,600.00<sup>4</sup> paid to the Respondent on April 24, 2015, and provided for a second payment of \$4,000.00 after the cabinets were installed. The addendum required payment of the "balance of \$1,600.00"<sup>5</sup> upon completion of the job, noting that the contract price does not include countertop installation.
  5. The Claimant did not like the selection of cabinets the Respondent offered. Before signing the contract, the Claimant informed the Respondent that she was going to purchase her own cabinets, which the Respondent was to install.
  6. The Claimant independently purchased kitchen cabinets at a cost of \$3,300.00.
  7. The Claimant paid the Respondent \$3,600.00 on April 24, 2015 and \$4,000.00 on June 11, 2015.
  8. The work began on May 2, 2015, with the demolition of the existing kitchen taking one or two days.

---

<sup>4</sup> The typewritten addendum provides for a \$3,400.00 down payment, which was modified by hand to show a \$3,600.00 amount. The parties initialed the change.

<sup>5</sup> I note that payments addressed in the addendum total \$9,200.00, while the revised contract price noted in the same document is \$9,000.00.

9. As the Respondent began working on the project, he and the Claimant had numerous discussions, as she regularly offered her input and made specific requests about matters related to the work.

10. The Claimant insisted that the Respondent partition the kitchen from the rest of the first floor during the renovation by hanging a plastic barrier. The Claimant also insisted that the Respondent install the tile floor before undertaking the rest of the project. The Respondent complied with the requests.

11. At some point, the Claimant decided that the kitchen pantry area would be a better location for the laundry room than an expanded living room closet. After demolishing the existing kitchen, the Respondent began work by framing the laundry room door, where a former pantry existed. The door frame was installed unevenly, which the Claimant brought to the Respondent's attention.

12. In addition to the uneven door frame to the laundry room, the Respondent installed the laundry room door backwards, in that it folded outward to the kitchen, instead of inward to the laundry room.

13. The Respondent neither provided nor installed a range hood and the contract did not require one.

14. Once the Respondent began installing the kitchen cabinets, the Claimant decided to have the Respondent relocate the refrigerator, which required him to remove and re-hang one of the kitchen cabinets.

15. The Claimant had the Respondent move the sink base cabinet over four inches to center the cabinet to the window. When the Respondent moved the sink base cabinet, another cut had to be made in the cabinet floor, in addition to the hole already placed there.

16. Some of the wall cabinets were installed too far from the ceiling to allow for molding to be installed. The pantry cabinet door is uneven. Two screws were installed in the side of the pantry cabinet, resulting in the wood splitting. A broken pantry cabinet shelf was repaired with a visible nail.

17. The Respondent installed at least one of the base cabinets in a way which left too much space between the cabinet and the wall. One base cabinet was secured with a screw, while another was secured with a nail gun. One of the floor cabinets is not flush with the wall. The two base cabinets are not aligned evenly with each other.

18. The finished wall above one of the cabinets is pitted and other walls are unfinished. In one area, the Respondent installed new drywall and plywood alongside drywall that was installed decades ago.

19. An electrical outlet and a light switch are not flush with the wall, allowing enough room for someone to stick one's fingers behind the switch plate. One of the outlets has some substance, such as paint, drywall mud, or caulk on it.

20. The surface of the tile floor the Respondent installed is not level throughout the kitchen.

21. The transition from the kitchen flooring to the dining room flooring is not unworkmanlike, but it does not conform to the Claimant's expectations.

22. The Claimant provided the Respondent with a punch list itemizing problem areas the Respondent needed to complete by August 8, 2015, before she would make further payment on the job.

23. At or about the same time, the Respondent presented the Claimant with his own punch list.<sup>6</sup>

24. The Claimant and the Respondent each requested the other to sign his or her punch list. Both requests were refused.

25. The Respondent last worked on the project on July 20, 2015, when the Claimant escorted him off the premises.

26. In order to complete his part of the kitchen renovation, the Respondent was waiting for the Claimant to have the new granite countertop installed. The Respondent intended to return to the project to touch up and finish his portion of the kitchen renovation after the countertop was installed.

27. The Claimant did not allow the Respondent to return to the home to complete the project. The Claimant rejected the Respondent's overtures to return to the home to finish the project.

28. The Claimant made no further payment to the Respondent. The Respondent did not refund any prior payment to the Claimant.

29. The Claimant obtained an estimate from Devine Construction Services, Inc. (Devine), an MHIC-licensed contractor, to correct and complete the work performed by the Respondent.

30. In an estimate, dated October 28, 2015, Devine proposed removing all cabinets and installing them properly; removing the tile floor and installing the Claimant-supplied new tile; installing a proper transition to the adjoining room, with strips to match the hardwood flooring; installing a range hood to connect to the existing duct work; installing a new bi-fold door and door trim; and patching and painting the entire kitchen.

---

<sup>6</sup> The Respondent's punch list was not offered into evidence.

31. In addition to providing a non-itemized estimate for the above work in the amount of \$4,150.00, Devine listed the following additional charges: \$1,800.00 for plumbing and \$1,800.00 for electrical work.

32. On January 4, 2016, the Claimant purchased replacement tile at a cost of \$180.73.

33. On March 21, 2016, the Claimant filed a Fund claim in the amount of \$6,487.50.

In a form dated April 21, 2016, the Claimant amended her fund claim amount to \$6,350.00.

34. The Claimant's actual loss is \$180.73.

## DISCUSSION

### Legal Framework

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 (3rd 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); *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. A claim may be denied if the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(b). For the following reasons, I find that the Claimant has proven eligibility for compensation, albeit not in the amount she is seeking.

### Eligibility for Compensation

At all relevant times, the Respondent was licensed by the MHIC. The Respondent and the Claimant agreed to a home improvement contract on April 20, 2015. The work under the contract included the renovation of the kitchen and installation of a laundry area in a living room closet. The work began on May 2, 2015. The Respondent left the work incomplete and last worked on the job on July 20, 2015. The reasons why the Respondent did not return to the property are in dispute and are discussed below.

The evidence shows that the Respondent performed some of the home improvement work in an unworkmanlike fashion, as described below, and the Claimant is eligible for compensation from the Fund on this basis.

### Claimant's Position

The Claimant characterized her experience with the Respondent as being "a nightmare." She explained that she hired the Respondent to renovate her kitchen and alleged that the Respondent's unworkmanlike performance resulted in her being without a functional sink since June 2015. The Claimant attributed many of the problems she had with the Respondent to a lack of communication from the Respondent. She stated that she telephoned the Respondent frequently about when he was coming to work on the project after he had not been to her home for a while.

In addition to asserting that the Respondent failed to complete the project, the Claimant cited numerous shortcomings in the Respondent's workmanship. The Claimant pointed out that the kitchen walls had not been patched, smoothed out and fully painted, as required. The counter area was not completed and ready for the installation of the granite countertop she purchased. The Claimant also referred to problems with the new cabinets she purchased for the Respondent to install in the kitchen. She noted that the floor-based cabinets the Respondent installed were

not flush with each other. The Claimant alleged that the Respondent left holes in the sink area cabinets. The cabinets hung on the wall were likewise not installed properly. She asserted that two floor tiles were cracked and the tile flooring in general was uneven and needed to be replaced. The Respondent installed a new bi-fold door incorrectly because the slats were angled up instead of down. The Claimant also noted that the Respondent failed to install a range hood. Lastly, the Claimant claimed that she cannot have the granite countertop installed next to the sink area, on top of the floor cabinets, because the Respondent did not complete the required work in that area of the kitchen. The Claimant questions the Respondent's competence to complete and correct the job.

The Claimant is seeking a Fund claim in the amount of \$6,350.00 as her actual monetary loss as a result of the Respondent's unworkmanlike, inadequate or incomplete home improvement work on her residence. Aside from the actual monetary loss claimed by the Claimant, she noted that she has had to resort to purchasing carry-out food every day because the kitchen has been unusable since May 2015.

#### Respondent's Position

The Respondent replied to the Claimant's presentation by explaining that he and the Claimant entered into a contract for the renovation of her kitchen, but she interfered by regularly attempting to control how his workers should do the job and by making numerous changes to the work for which she had contracted. The Respondent noted that he is an experienced contractor who goes out of his way to make his customers happy. He stated that he tried to explain to the Claimant that he needs to complete the job in phases. He also pointed out that the Claimant's interference in the project, and her imposition of changes and numerous restrictions are the main reasons why she does not have a fully functional kitchen to date.

The Respondent described as interference the Claimant's requirement that he partition the kitchen from the rest of the first floor. He also noted that the Claimant purchased kitchen cabinets on her own without his assistance, thereby denying him the opportunity to determine whether the cabinets' dimensions would fit the area where they would be installed. The Respondent further maintained that the Claimant did not obtain enough cabinetry for him to install in the renovated kitchen. Further, the Respondent noted that the Claimant criticized his work after he finished his part of the job but before another vendor installed the granite countertop.

The Respondent explained that in purchasing cabinets and transporting them for his customers, he is able to inspect the cabinets in advance to ensure that there are no dents, bowing, or scratches on them before installation. He pointed out that, if he had purchased the cabinets, he would have made sure their dimensions were compatible with the kitchen space and he would not have had to cut a hole in any of the cabinets. The Respondent went on to suggest that the Claimant purchased the cabinets at auction, leading him to believe that the quality of the cabinets was somehow inferior. He also remarked that some of the accessories (scribes, fillers, kick plates, valances, etc.) that should have come with the cabinets to assist with their installation were missing.

The Respondent pointed out that, in the addendum to the original contract, which the Claimant signed on June 10, 2015, he reduced his contract price by \$1,000.00, over the \$700.00 discount he gave her in the April 20, 2015 contract. He explained that he did this in response to criticism the Claimant had of his work prior to that date. The Respondent's position is that he understood that the Claimant, by virtue of making the \$4,000.00 payment to him after the cabinets were installed, was satisfied with both his work and the revised agreement which she signed on June 10, 2015.

The Respondent also explained that he discussed certain issues with the Claimant, such as modifying another cabinet, and adding a hole in the sink base cabinet to accommodate the Claimant's request that he center that cabinet to the window. The Respondent recalled these two examples as instances where the Claimant stated that she "can live with that." The Respondent was then surprised to discover that the Claimant later decided that she could not live with certain imperfections that were not readily apparent.

The Respondent remarked that he made the Claimant aware, at the outset of the project, that she was not going to have a functional kitchen for a while, but he asserted that it was the Claimant's changes to the project, her controlling behavior and interference in his work, and her delay in procuring the countertop that extended the deprivation. Among the changes the Claimant directed were the installation of the laundry room in a pantry area of the kitchen versus in an extended living room closet, and the location of the refrigerator and some cabinets.

The Respondent argued that he did not return to the project to complete the job because the Claimant would not allow him access to the property after July 20, 2015. He maintained that he would have done anything possible to ensure the Claimant's satisfaction with the job.

### Analysis

This case represents a tangled web of cross-accusations between the Claimant and the Respondent. The Claimant hired the Respondent, an experienced MHIC-licensed contractor who has satisfactorily performed home improvement work for the Claimant's brother, the Respondent's neighbor. After changing the layout of the kitchen and closely monitoring the Respondent's performance of the work at her home, the Claimant questioned the Respondent's competence to perform the balance of the work for which he was contracted. Meanwhile, the Respondent described the Claimant as an interfering, overbearing, mind-changing customer with whom he exercised a great deal of patience.

Both the Claimant and the Respondent came to the hearing armed with numerous photographs to help illustrate what they were attempting to describe in their testimony. Although I allowed the parties to testify and submit documents as a way of providing background and context to the contract between the Claimant and the Respondent and the Claimant's allegations of incomplete and unworkmanlike and inadequate performance, I must focus on the dollar amounts of the Claimant's Fund claim.

The Claimant testified about the damage the Respondent inflicted on the cabinets she supplied for him to install. There is damage to some of the cabinets. Whether the damage was caused by the Claimant changing her mind about the kitchen's layout and/or unworkmanlike or inadequate performance by the Respondent, the Claimant is not seeking to recover for damage to the cabinets.

The Claimant is seeking reimbursement for the cost of removing the kitchen cabinets, installing them properly, and repairing the sink base cabinet. I agree that there were some workmanship issues regarding the alignment and spacing of some of the cabinets and how they were affixed to the wall. Although the Respondent was presented with cabinets that he did not have an opportunity to size for the kitchen, the fact that he chose to continue with the job and install the cabinets obligated him to do so in a workmanlike fashion. I note, however, that the Claimant refused to allow the Respondent to return to the property to correct the unworkmanlike performance with respect to the cabinets.

The Claimant is seeking to have a range hood installed and connected to the existing duct work. The Respondent did not install a range hood. The Fund pointed out that the contract and addendum provide for a renovated kitchen without specifically mentioning that the Respondent was to supply a range hood. It is unreasonable to infer or assume, when a contract for renovating a kitchen lists numerous things for which a contractor will be responsible, but does not provide

that he will supply and install a range hood, that the contractor is obligated to supply and install one. There is insufficient evidence to establish that supplying and installing a range hood was the Respondent's responsibility.

Although the wood strip covering the transition area does not exactly match the hardwood flooring in the dining room, I do not find that to be an example of unworkmanlike performance. Similarly, despite the fact that the transition area is slightly higher than the tile kitchen floor, it does not support a finding of poor workmanship in the construction of the transition area. The current height of the transition area also carries less significance in light of the paragraph below that addresses the tile floor in the kitchen.

The Claimant is seeking reimbursement for the cost of installing new tile, which the Claimant will supply. In addition to two tiles that were cracked, the Claimant asserted that the tile floor is not level in several places and some tiles were "laid crooked." The Respondent denies any workmanship problem with the floor tile installation. Although the photographs do not provide great assistance to me in addressing this point, they support the Claimant's testimony sufficient for me to make a finding that the tile floor is uneven and should be replaced.

Likewise, I find that the Claimant's claim with respect to the trim and door frame of the laundry room has merit because it was completed in an unworkmanlike or inadequate way. The door frame was uneven and the door was installed backwards, as described above.

During her testimony, the Claimant, as noted above, focused on the Respondent's sporadic and unpredictable work schedule during the time he was working on the project. The evidence shows that the Respondent's brother died on June 30, 2015, an event that would impact his work schedule. Regardless, I gave little weight to the Claimant's complaints as the work schedule is immaterial to whether the work was performed in an unworkmanlike manner.

Moreover, the Respondent's work schedule is not relevant to the issue of whether he left the

project and failed to complete it, as the Claimant alleged, or whether the Respondent was improperly not allowed to finish his portion of work on the contract, as the Respondent alleged.

On cross-examination, while addressing the issue of not allowing the Respondent to return to the job, the Claimant stated that “it [the relationship between her and the Respondent] ended” after the Respondent’s other brother (who was also working on the project) “disrespected [her].” This is not a valid reason for a homeowner to refuse entry to a contractor to allow him to finish the job. Thus, I find that the Claimant improperly refused to allow the Respondent to return to the job, as of July 20, 2015, to complete the kitchen renovation.

It is appropriate to note how home improvement projects often come together. It is not unusual, in light of the many components that have to be coordinated in a home improvement project of this magnitude, for many loose ends (smoothing wall surfaces, final painting and touch-up and other miscellaneous items) to be addressed by a contractor before the project can be considered finished. Apparently, the Respondent left a number of these items, such as patching and painting the entire kitchen, intending to complete them after the countertops were installed. I am persuaded by the Respondent’s testimony that he would have completed the wall surface touch-ups, painting and miscellaneous items, despite the Claimant’s delay in obtaining the countertop, had the Claimant allowed him to return to the property to do so.

However, I do not find that the Respondent intended to return to the property to remove and replace the tile floor he installed, because he believed the entire tile floor did not need replacement. With respect to the laundry room frame and door, I am including replacement of the laundry room frame and door in my consideration of the Respondent’s unworkmanlike work because I conclude that the Respondent looked at the two items as minor imperfections that he did not need to address had he been able to return to the property.

To summarize, I will deny most of the Claimant's claims because of her refusal to allow the Respondent to return to the property to complete the project. Md. Code Ann., Bus. Reg. § 8-405(b). I will not deny two of the claims, however, because I am not persuaded the Respondent would have corrected the work even if he had been allowed to return to the home.

#### Amount of Award

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

The final contract price was \$9,000.00. The evidence, including copies of numerous checks, shows that the Claimant paid the Respondent a total of \$7,600.00. The Claimant has obtained an estimate from another contractor, Devine, to correct and complete several items in the Respondent's original contract (and addendum) for \$4,150.00, plus \$1,800.00 for plumbing and \$1,800.00 for electrical work, for a total of \$7,650.00. The Fund noted that the Devine proposal does not describe the scope of the plumbing or electrical work to be performed. I noted at the hearing that the \$4,150.00 estimate covers removing the cabinets and installing them properly; repairing the sink base cabinet; removing the damaged floor and installing new tile (supplied by the Claimant); installing proper transition strips to match the hardwood flooring; installing a range hood and attaching it to existing duct work; installing a new bi-fold laundry room door and trim; and patching and painting the entire kitchen.

Since the Respondent did work according to the contract and the Claimant solicited another contractor to complete the contract, the correct measurement of the Claimant's actual loss is the amount paid to the Respondent under the contract, added to a reasonable amount she paid or would be required to pay another contractor to complete the original contract, less the original contract price. COMAR 09.08.03.03B(3)(c).

In measuring the cost of materials and labor to complete the two remaining items, the tile floor and the trim and door frame to the laundry room, the problem in using the Devine estimate is that neither of those items is itemized. An attempt to subtract those items (materials and labor cost), on my part, would be mere speculation. Thus, based upon the record in this case, I cannot accurately calculate an "actual loss" pursuant to COMAR 09.08.03.03B(3)(c). Nevertheless, because the floor tile claim requires replacement materials, I find that this claim requires a unique measurement, under COMAR 09.08.03.03B, which allows me to recommend an award for the \$180.73 the Claimant paid for the new tile, the only itemized item (supported by a receipt) that corresponds to the work to be corrected and completed as a result of the inadequate work performed by the Respondent.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has established an actual and compensable loss in the amount of \$180.73 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).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$180.73; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>7</sup> and

---

<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**ORDER** that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

## Signature on File

December 23, 2016  
Date Decision Issued

\_\_\_\_\_  
Louis N. Hurwitz      *J T* *YAL*  
Administrative Law Judge

LNH/sm  
#165644

The Board of Directors has reviewed the financial statements of the Corporation for the year ended December 31, 1998, and has approved the same for inclusion in the Annual Report. The financial statements have been audited by the independent accountants, PricewaterhouseCoopers, LLP, who have issued their report thereon.

**PROPOSED ORDER**

***WHEREFORE, this 15<sup>th</sup> day of February, 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.***

***Sachchida Gupta***

***Sachchida Gupta  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**

