

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SIMONE JONES,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JUAN BONILLA,</p> <p>T/A B & C CONTRACTORS, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER L. GRESOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-16-25397</p> <p>* MHIC No.: 16 (05) 891</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 28, 2016, Simone Jones (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$19,000.00 in alleged actual losses suffered as a result of a home improvement contract with Juan Bonilla, trading as B & C Contractors, LLC (Respondent).

I held a hearing on June 21, 2017 at The County Office Building in Largo, Maryland. 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. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (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:

- Cl. Ex. 1 - B & C Contractors Estimate, dated January 8, 2015
- Cl. Ex. 2 - Letter from the Respondent to the MHIC, dated February 15, 2016; Prime Contract, dated January 8, 2015; Work Authorization, dated January 8, 2015; B & C Contractors Invoice, dated January 8, 2015; Certificate of Liability Insurance, dated February 3, 2016; Respondent's Break Down Payment, undated; Respondent's Calculation of Work that Wasn't Done and Balance Due, undated
- Cl. Ex. 3 - Photographs A through H, depicting the Claimant's home interior
- Cl. Ex. 4 - Invoice, Abat Construction, LLC, dated November 14, 2016; receipts from The Home Depot, date illegible, and Lowe's, dated November 2, 2016
- Cl. Ex. 5 - Receipts from Lowe's, dated November 1, 2016, December 7, 2016, and May 18, 2015
- Cl. Ex. 6 - Travelers Explanation of Payment for two disbursements, dated November 2, 2015 (\$252.49) and May 10, 2016 (\$1,746.54); Letters from Travelers to the Claimant, dated May 5, 2016, and November 2, 2015, with attached estimate of damages, dated May 5, 2016
- Cl. Ex. 7 - Murphy Contractor's SVC Estimate, dated April 7, 2016

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

- Resp. Ex. 1 - Reico Kitchen & Bath Quotes, dated January 16, 2015, and February 13, 2015

Resp. Ex. 2 - Travelers Explanation of Payment for disbursement, dated January 29, 2015 (\$10,720.31); Reverse side of check endorsed by the Claimant, to Global Public Adjusters, undated; Check issued to B & C Contractors by Global Public Adjusters, dated February 21, 2015

Resp. Ex. 3 - Travelers Estimate of Damages, dated January 29, 2015

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, dated March 7, 2017

Fund Ex. 2 - Hearing Order, dated August 11, 2016

Fund Ex. 3 - MHIC Printout of Respondent's Registration and Professional License History, last updated March 7, 2016

Fund Ex. 4 - Home Improvement Claim Form, dated June 28, 2016 (receipt date)

Fund Ex. 5 - Letter from the MHIC to the Respondent, dated July 25, 2016

Testimony

The Claimant testified on her own behalf and presented the testimony of Alfreda Blue, her sister-in-law, and Kevin Guinyard, her son-in-law.

The Respondent testified on his own behalf and presented the testimony of Dania Mendoza, Adjuster, Global Public Adjusters; and Tauye Harris, Adjuster, Global Public Adjusters.

The Fund did not present any witnesses.

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 01-107526.
2. At all times relevant to this hearing, the Claimant resided in a home located in Hyattsville, Maryland 20785.

3. The Claimant's home has two levels, with a living room, dining room, kitchen, and powder room on the first floor, and three bedrooms and a full bathroom on the second floor.

4. On a day in early January 2015, the Claimant returned home to find that the toilet in the second-floor bathroom was obstructed and had flooded the home, causing damage to the bathroom wall and the carpeting in the hallway and master bedroom on the second floor, as well as to the kitchen and dining room on the first floor. Damage to the kitchen included wet walls, cabinets, and tile flooring. Damage to the dining room included wet wall paneling and laminate flooring. The bar between the kitchen and dining room was also damaged by the water.

5. The Claimant called the Respondent, who had done home improvement work for her in the past, for assistance. The Respondent promptly repaired the toilet in the second-floor bathroom to stop the leak.

6. In order to repair the plumbing, the Respondent needed to remove the kitchen cabinets. He took photographs of the cabinets to document the water damage.

7. The Respondent also immediately removed the kitchen countertop.

8. On January 8, 2015, the Claimant and the Respondent entered into a contract to mitigate the water damage by removing all damaged drywall, insulation, carpeting and carpet padding; cleaning the affected areas; and rebuilding the affected areas in the upstairs bathroom and hallway, as well as the stairs, kitchen, dining room, and living room. The Respondent was also to remove an exhaust fan in the kitchen, patch the hole, and then finish the interior and exterior wall. The contract required the Claimant to purchase the replacement kitchen cabinets and countertop.

9. The contract stated that work would begin on approximately January 8, 2015, and would be completed by March 20, 2015.

10. The original agreed-upon contract price was \$10,950.50.

11. The Respondent began work in January 2015. It continued for the next seven months.
12. On January 13, 2015, the Claimant filed a claim with Travelers, her homeowners' insurer.
13. The Respondent suggested to the Claimant that she use an intermediary to work with Travelers. He referred her to Dania Mendoza, who was employed by Global Public Adjusters (Global). Ms. Mendoza is also the Respondent's wife.
14. The Claimant contracted with Ms. Mendoza, whom she authorized to represent her in the matter with Travelers. The Claimant was to pay 35% of the total disbursement from her insurance policy to Ms. Mendoza.
15. On January 29, 2015, Travelers issued a check in the amount of \$10,972.80 to Global. It also provided a breakdown of its estimate of damages.
16. On February 21, 2015, Global paid the Respondent \$6,968.20.
17. The Claimant and the Respondent disputed whether the dining room flooring the Claimant wanted was available and whether the replacement panels in the dining room matched the other panels.
18. The Respondent's last day of work at the Claimant's home was in August 2015.
19. The Claimant attempted to contact the Respondent by phone and by letter because she wanted him to finish the job, but he did not respond.
20. The Respondent never installed the laminate flooring in the living room and dining room areas.
21. The Respondent never completed the kitchen walls and left loose wires and exhaust tubes hanging from openings in the walls.
22. The Respondent did not install kitchen cabinets or a countertop.

23. From January 2015 through summer 2016, the Claimant's kitchen had no running water and no functioning stove or microwave because the Respondent did not complete the job.

24. Two additional checks were issued by Travelers directly to the Claimant: \$252.49 for drywall repair and painting of the ceiling in the living room and dining room (on November 2, 2015) and \$1,746.54 for the kitchen countertop and cabinets (on May 10, 2016).

25. In April 2016, the Claimant obtained an estimate of \$19,000.00 from Murphy Contractor's SVC to complete the work left unfinished by the Respondent. This estimate included installing the kitchen countertop and cabinets (labor and materials).

26. In November 2016, the Claimant contracted with Abat Construction, Inc. (Abat) to remove the damaged laminate dining room flooring and install new flooring. The cost was \$1,450.00; the Claimant purchased the flooring separately for about \$1,300.15.

27. The Claimant's actual loss is \$7,267.85.

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).¹ “[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*

¹ As noted above, “COMAR” refers to the Code of Maryland Regulations.

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

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. I find that the Claimant has proven eligibility for compensation.

The Claimant testified on her own behalf, explaining that she hired the Respondent because he had done previous home improvement work for her. The Claimant testified that the leak from the second floor toilet caused extensive damage to her home and that the Respondent told her he was accustomed to working with insurance companies and would take care of everything. She explained that he immediately removed the kitchen cabinets, and that they disagreed on whether the cabinets needed to be kept for purposes of the insurance claim. She also contended that he claimed to have difficulty obtaining both the dining room flooring and carpeting, though he had plenty of time to do so. The Claimant also detailed the poor living conditions in her home, stating that her kitchen could not be used to prepare meals and that eating out was expensive and difficult. She emphasized that despite the Respondent’s claim to the contrary, the original contract required him to both obtain and install the kitchen countertops and cabinets; she disputed that she was responsible for purchasing the countertop and cabinets separately.

The Claimant further testified that the Respondent removed both the cabinets and the countertop before a representative from Travelers inspected the damage, and that the Claimant was concerned that their removal would jeopardize her ability to receive insurance funds to replace these items. She stated that the Respondent assured her that he had taken photos of the damaged countertops and cabinets, and that he told her they needed to be removed promptly to avoid the growth of mold. However, she testified that removing these items did turn out to complicate her insurance claim, and that initially Travelers did not agree to include the cost of a

new countertop and new cabinets in its estimate. She acknowledged that she eventually received \$1,746.54 in May 2016, which Travelers indicated was for the cabinets and countertop.

The Claimant also expressed frustration with the Respondent's wife, Ms. Mendoza, who assisted the Claimant in her communications with Travelers. The Respondent referred Ms. Mendoza to the Claimant after the Claimant explained to him that she (the Claimant) had always handled her own insurance matters and that she lacked the financial resources to hire what the Respondent termed a mediator. The Claimant testified that her understanding from Ms. Mendoza was that Travelers would pay for her services; the Claimant was therefore surprised to discover that Ms. Mendoza was entitled to, and retained, 35% of the claim funds disbursed by Travelers.

Two witnesses testified on behalf of the Claimant: her sister-in-law, Alfreda Blue, and her son-in-law, Kevin Guinyard. Both Ms. Blue and Mr. Guinyard attested to the poor condition of the Claimant's kitchen. Ms. Blue also testified that she provided the Claimant with information about Abat, which had done home improvement work in her own home. Mr. Guinyard provided detailed testimony regarding the unfinished state of the Claimant's home.

The Respondent testified on his own behalf. He asserted that it was the Claimant, and not he, who decided to throw the damaged cabinets and countertop away, and that he had told her they should be placed in storage for purposes of the insurance claim. He stated that the Claimant proposed taking photographs instead and acknowledged that he agreed photographs would suffice but still thought it best to retain the cabinets and countertop. He further testified that while the Claimant was unhappy with Travelers' handling of reimbursement for the countertop and cabinets, this was in part due to the depreciation of these items since the time they were first installed (at least a year prior). He explained that the Claimant had expressed that she thought she should receive the full replacement cost for new cabinets and a countertop. Because the

Claimant and Respondent could not agree on what the replacement cabinets and countertop should cost, the Respondent decided that the Claimant should purchase these items separately. For this reason, he contended that the January 8, 2015 contract included only labor, and not materials, related to the countertop and cabinets.

The Claimant and the Respondent also disputed the cost of some of the materials the Respondent used. Specifically, the Respondent noted that the upstairs carpet turned out to be more expensive than he anticipated, but that the Claimant paid the difference. However, when the bathroom flooring turned out to be more expensive than expected, the Claimant refused to pay the difference. The Respondent also contended that as the work progressed, the Claimant asked for additional work, such as the construction of a new wall. In addition, she sought more work on the walls, which she complained were not smooth, and a paint job that was not included in the original contract. With regard to the laminate flooring for the dining room, the Respondent testified that the flooring the Claimant wanted was not available, and that obtaining it by special order would cost more than the contract allowed for. Eventually, explained the Respondent, he stopped work because he and the Claimant could not agree on how to obtain materials that would keep the cost within the parameters of the contract, and that he told her he would complete the agreed-upon installation if she purchased the materials she wanted.

On cross-examination, the Respondent acknowledged that Travelers' calculation of claim reimbursement included both cabinets and a countertop, though he contended that these figures may have related only to the cost of installation, and not the materials. He also acknowledged that the scope of work specified in the January 8, 2015 contract, which was not detailed, was meant to match the work included by Travelers in its consideration of the claim. The Respondent also stated that he stopped work because he believed he was entitled to the \$3,982.30 still due on the \$10,920.00 contract.

The Respondent offered the testimony his wife, Ms. Mendoza, who explained her handling of the insurance claim on the Claimant's behalf. She contended that all of the work was completed except the installation of the countertop and the cabinets. In addition, Tauye Harris, also an employee of Global, testified that she found Travelers' handling of the cabinets unusual, and that she had provided Travelers with photographs of the damaged cabinets numerous times. She contended that Travelers never approved reimbursement for the kitchen cabinets.

After considering the evidence presented by both parties, I conclude that the Claimant has shown that she is eligible to receive reimbursement from the Fund. First, it is not disputed that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Second, I am persuaded that the Respondent performed incomplete home improvements. The contract required that the work be completed by March 20, 2015. The Claimant compellingly testified, and documented through photographs, that the kitchen remains substantially unfinished and that the Respondent did not complete work, including the laminate flooring, in the dining room. She provided the corroborating testimony of her sister-in-law and son-in-law. The Respondent did not dispute that he failed to complete the work specified in the contract. The Respondent argued that he did not complete the job because he was not paid additional money, but as counsel for the Fund noted, the Respondent was not entitled to additional funds under the contract because he failed to complete the job.

Because I found that the Claimant is eligible for compensation from the Fund, I must now determine what, if any, actual loss she sustained. For purposes of the calculations set out below, I also find that the original contract required the Claimant, and not the Respondent, to provide the cabinets and countertop for installation. This is consistent with the explicit terms of the contract. While the estimate from Travelers includes some costs related to the cabinets and

countertop, it is not clear if these costs represent labor, materials, or both. I also note that as explained below, whether the cabinets and countertop are included in calculating the actual loss makes no practical difference, as even excluding them results in an actual loss that exceeds what the Claimant paid to the Respondent, and any award from the Fund is limited to the latter.

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).

This formula requires me to determine the amount the Claimant has paid or will be required to pay to another contractor to have the work specified in the original contract completed. These costs include: \$2,750.15 paid to Abat Construction for replacing the laminate flooring, a task clearly included in the scope of work of the original contract and \$8,500.00 in labor costs for Murphy Contractor's SVC to complete the kitchen (excluding the cost of the cabinets and countertops). These two figures (\$2,750.15 + \$8,500.00) total \$11,250.15. Accordingly, I consider \$11,250.15 the cost the Claimant must pay to have the work specified in the original contract completed.

Using this figure in the formula specified in COMAR 09.08.03.03B(3)(c) results in the following calculation of actual loss:

$$\begin{array}{r} \$6,968.20 \quad (\text{Amount paid to the Respondent under the original contract}) \\ + \quad \underline{\$11,250.15} \quad (\text{Amount required to complete work}) \\ = \quad \$18,218.35 \\ - \quad \underline{\$10,950.50} \quad (\text{Original contract price}) \\ = \quad \$7,267.85 \quad (\text{Actual loss}) \end{array}$$

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 Claimant paid \$6,968.20 to the Respondent, which is less than her actual loss of \$7,267.85 computed using the formula in COMAR 09.08.03.03B(3)(c). Accordingly, the Claimant is entitled to reimbursement of \$6,968.20. Bus Reg. § 8-405(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,968.20 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 \$6,968.20; and

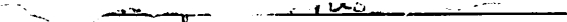
ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed

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

September 12, 2017
Date Decision Issued


Jennifer L. Gresock
Administrative Law Judge

JLG/dlm
#169480

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

PROPOSED ORDER

WHEREFORE, this 13th day of October, 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