

IN THE MATTER OF THE CLAIM \* BEFORE RICHARD O'CONNOR,  
 OF MARY DUKES, \* ADMINISTRATIVE LAW JUDGE,  
 CLAIMANT \* THE MARYLAND OFFICE  
 AGAINST THE MARYLAND HOME \* OF ADMINISTRATIVE HEARINGS  
 IMPROVEMENT GUARANTY FUND \*  
 FOR THE ALLEGED ACTS OR \*  
 OMISSIONS OF FREDERICK HAASE, \*  
 T/A HAASE CONTRACTING, INC., \* OAH No.: DLR-HIC-02-18-24259  
 RESPONDENT \* MHIC No.: 17 (75) 1044

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On September 6, 2017, Mary Dukes (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,022.84 in actual losses allegedly suffered as a result of a home improvement contract with Frederick Haase, trading as Haase Contracting, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On August 1, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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<sup>1</sup> Unless otherwise noted, subsequent references to the Business Regulation article of the Annotated Code of Maryland are to the 2015 Replacement Volume.

I held a hearing on November 20, 2018 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant participated without representation. The Respondent did not appear for the hearing.

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. 2018); 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits into evidence on the Claimant's behalf:

- Cl. Ex. 1. Contract, August 31, 2016; email from the Respondent to the Claimant, January 26, 2017.
- Cl. Ex. 2. Inspection report with twenty-four photographs by Mark Brown of Carpet Arts, June 22, 2017.
- Cl. Ex. 3. Email from the Claimant to the Respondent, February 28, 2017, with responses from the Respondent, undated.<sup>2</sup>
- Cl. Ex. 4. Estimate from ServPro with twenty-eight photographs,<sup>3</sup> May 26, 2016.
- Cl. Ex. 5. Emails between the Claimant and Mark Brown, September 20, 2018.

<sup>2</sup> The right side of this document is cut short, so neither the original email nor the responses can be seen completely.

<sup>3</sup> Twenty-seven of the photographs were taken on February 24, 2017; the last was taken May 26, 2016.

- Cl. Ex. 6. Letter from Christopher S. Young, Esquire, to the Claimant, July 10, 2017; emails from the Claimant to Mr. Young, July 18, 2017; part of an American Express billing statement, transactions dated December 12, 2016 and February 23, 2017; first page of the contract, August 31, 2016; revised final invoice, March 20, 2017; invoice, December 1, 2016.
- Cl. Ex. 7. Estimate from Liberty Mutual Insurance Company, June 28, 2016.
- Cl. Ex. 8. Estimate from Floor Gem Services, Inc., August 11, 2017.
- Cl. Ex. 9. Estimate from Liberty Mutual Insurance Company, June 26, 2016.
- Cl. Ex. 10. Detail Calculation for Home Improvement Claim Form, undated.

I admitted the following exhibits into evidence on behalf of the Fund:

- Fund Ex. 1. Notice of Hearing, September 26, 2018, with receipt for certified mail signed by the Respondent on October 3, 2018.
- Fund Ex. 2. Hearing Order, July 30, 2018.
- Fund Ex. 3. The Respondent's licensing history with the MHIC, October 24, 2018.
- Fund Ex. 4. Home Improvement Claim Form, received September 6, 2017.
- Fund Ex. 5. Letter from the MHIC to the Respondent, June 28, 2018.
- Fund Ex. 6. Invoice, February 17, 2017.
- Fund Ex. 7. The Respondent's reply to the Claimant's complaint to the MHIC, April 15, 2017.
- Fund Ex. 8. MHIC Complaint Form, with attachments, received March 21, 2017.
- Fund Ex. 9. Change Order, December 22, 2016.

Testimony

The Claimant testified. 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 of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-49181 (personal) and 05-49180 (corporate).
2. On or about May 25, 2016, the Claimant's home was damaged by fire.
3. Liberty Mutual Insurance Company (Liberty Mutual) covered most of the damage under the Claimant's homeowner's insurance policy.
4. As part of the insurance claim, the Claimant entered into a contract with the Respondent on or about August 31, 2016 to effect repairs and painting throughout the home.
5. Included in the contract was furnishing and installing laminate flooring in the living room, dining room, office, and foyer (also referred to as the hallway).
6. The original Contract price was \$16,947.46.
7. Subsequent changes to the contract increased the contract price to \$20,550.12, primarily for replacement of kitchen cabinets as part of the insurance claim.
8. The Liberty Mutual claim included \$6,325.51 to remove existing laminate flooring and replace it with new laminate flooring.<sup>4</sup>
9. The Claimant ordered higher quality pet-resistant flooring at an additional cost of \$370.00, bringing the total cost of the flooring to \$6,722.51.
10. Liberty Mutual and the Claimant paid the Respondent a total of \$17,216.87 under the contract.

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<sup>4</sup> This amount does not include "content manipulation" listed in the estimate, which I take to mean moving furniture and furnishings. This charge related to the entire repair and restoration, not exclusively to the flooring.

11. The Respondent completed work under the contract, including the flooring, by January 2017.

12. The Claimant refused to pay the final \$3,333.25 of the contract price<sup>5</sup> because she was dissatisfied with the installation of the flooring.

13. The flooring is Pergo XP Peruvian Mahogany laminate.

14. Pergo's instructions for installation state that the product should be left in the home to acclimate before beginning installation.

15. The Respondent did not leave the flooring in the home to acclimate before installing it.

16. The laminate "floats" above a wood subfloor; i.e., it is not attached to the subfloor.

17. The laminate flooring cannot be nailed, and the installer must leave sufficient room between the flooring planks and the walls or other barriers to allow for possible expansion.

18. Nailing the laminate or failing to leave expansion room can cause the planks to "tent," meaning that expansion pressure pushes the edges of the planks together until they rise up from the subfloor along the seams.

19. The completed flooring installation contained the following defects:<sup>6</sup>

- Tenting along some planks in the foyer and dining room;
- Some planks had short areas where the edges had bent slightly upward and backward;
- Planks were cut too short at two door jambs;
- One plank has a small hole in it near the wall;
- A transition strip between the kitchen and dining room was not installed;

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<sup>5</sup> The Respondent's final invoice of February 17, 2017 shows a balance due of \$3,332.85, an insignificant discrepancy.

<sup>6</sup> The inspection by Mr. Brown of Carpet Arts also noted a "monkey face" on one of the planks in the foyer, but the Claimant did not know what this means.

- Quarter-round molding trapped the coaxial cable for the television; and
- At least one nail was driven into the laminate or across the end of the laminate.

20. The dining room flooring has a swale that is raised three-sixteenths of an inch over ten feet. This is within industry standards and is probably caused by unevenness in the flooring joists or a beam (the house is about 100 years old).

21. The Claimant complained to the Respondent about the flooring beginning in February 2017.

22. The Respondent considered any defects in the flooring installation cosmetic. He eventually offered a reduction in the final bill of \$300.00 to \$400.00 to resolve the complaint, but would not consider paying to have another contractor remove and replace the flooring.

23. The Respondent offered to return to the home to inspect the flooring and repair any defects related to the installation.

24. The Claimant would not allow the Respondent to return to the home to inspect the flooring or attempt to address the complaints.

25. The Claimant obtained an estimate of \$7,079.65 from Floor Gem Services, Inc., on August 11, 2017 to remove the existing flooring and replace it with an identical product.

26. The OAH sent a notice of hearing to the Respondent on September 26, 2018 stating the date, time, and place of the hearing.

27. The Respondent received the notice of hearing and signed the "green card" receipt for certified mail in October 3, 2018.

## DISCUSSION

### The Respondent's Failure to Appear

Section 8-312 of the Business Regulation article, entitled "Hearings," states, in pertinent part, as follows:

(a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.

(b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

(d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.

(h) If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.

Md. Code Ann., Bus. Reg. § 8-312.

Although the above statute applies to disciplinary proceedings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. Md. Code Ann., Bus. Reg. § 8-407(a). These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

The notice of hearing in this case went to the Respondent's address of record with the MHIC on September 26, 2018 by certified mail and by first-class mail. On October 3, 2018, the Respondent signed a receipt for the notice sent by certified mail. The notice informed the

Respondent of the date, time, and place of the hearing. I concluded that the Respondent received actual notice of the hearing and chose not to attend. Therefore, the hearing proceeded in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h).

The Merits of the Case

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); 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); *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). "[A]ctual 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 not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. There is no doubt, based on the Claimant's testimony, the inspection report from Mr. Brown, and the photographs of the completed floor, that the Respondent's work was defective in certain respects. The underlying issues are whether the



defects are curable, whether the Claimant unreasonably prohibited the Respondent from trying to cure the defects, and the amount of the actual payments the Respondent received for the flooring.

The Claimant did not present any testimony from an expert in installation of laminate floors and demonstrated no particular knowledge of that subject herself. The Respondent chose not to appear, so I do not have his perspective on the problems with the floor. The Claimant hired Mr. Brown of Carpet Arts to inspect the floor in June 2017, but Mr. Brown's training and experience are unknown, and his report (Cl. Ex. 2) cannot be considered that of an expert. Nevertheless, section 10-213 of the State Government article instructs that I "may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence." Md. Code Ann., State Gov't § 10-213(b) (2014). Therefore, I accept Mr. Brown's report, although not as convincing evidence, and shall give it the evidentiary weight that I find it deserves.

The defects that Mr. Brown found are listed in Finding of Fact 19, above. The tenting between the planks seems to have been a defect in installation, as were the boards cut too short and the other small areas of damage. A transition piece between the kitchen and the dining room was never installed. The Claimant also complained about gaps between the edges of some boards and the walls, but it is unclear from the evidence whether the walls or the boards (or perhaps both) were not straight. The raised swale in the dining room was, according to Mr. Brown, within industry standards and may have been attributable to the age of the house.

Mr. Brown's proposed solutions are found on the last page of his report, as follows:  
"Issues associated with tenting are likely addressable by creating additional expansion space, removing any nails pinching the floor, or removing any effects of pinching by the molding being

tight. Overcuts and planks damaged during installation can be removed and replaced if there is material available to do so.<sup>7</sup> This may require significant removal and re-assembly.” Clt. Ex. 2. The report does not conclude that removal and replacement of the floor is the only possible solution.

Yet the latter was the only remedy that the Claimant would accept, and she insisted that it be performed by someone other than the Respondent. The Claimant consulted with Floor Gem Services, Inc., which provided an estimate of \$7,079.65 to remove the existing flooring and replace it with an identical Pergo laminate product.

The Claimant started complaining to the Respondent in February 2017. On February 28, 2017, she emailed a list of demands to the Respondent, including “Professionally replace/repair laminate flooring by a contractor approved by the homeowner.” Fund Ex. 8. The Respondent rejected that request but agreed to “repair any installation issues for which we are responsible. By our own forces, or by a vendor of our choosing.” As an alternative, the Respondent offered a discount of \$300.00 or \$400.00 “in lieu of doing anything further.” Fund Ex. 8.

The situation between the Claimant and Respondent had reached an impasse by mid-March 2017. On March 14, 2017, the Respondent emailed: “If we can see our faults in our work outside of industry standards we will address them.” Fund Ex. 8. The Claimant, however, would not allow the Respondent into the home to inspect the work for possible repairs. The Claimant testified that she stopped talking to the Respondent because she did not trust him and was dissatisfied with his work. The Claimant filed a complaint with the MHIC on March 21, 2017 and the Respondent replied that, among other things, “The Complainant has not allowed us

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<sup>7</sup> The Claimant testified that no flooring material remains.

access to the residence to inspect her complaints following our most recent efforts to resolve any issues pertaining to the floor product and/or its installation.” Fund Ex. 7.

Section 8-405(d) of the Business Regulation article states: “The Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Nothing in the record suggests that the Respondent was not acting in good faith to resolve the claim. He had offered to inspect the floor and correct any installation defects that were “outside of industry standards.” Apparently, the Complainant had other grievances about the Respondent before the flooring problems appeared, notably excessive dust, damage to a window casement, and failure to furnish and install a faucet. Still, the evidence establishes that the Respondent was making a good faith effort to resolve the Claimant’s complaints. Her lack of trust in the Respondent did not provide a reasonable basis for barring him from the home and preventing him from inspecting the floor.

In fact, the Claimant had absolutely nothing to lose by allowing the inspection. Quite obviously, there were some defects in the Respondent’s work. If the Respondent had been allowed to see the condition of the floor, it is entirely possible that the parties could have reached an acceptable solution. If not, the Claimant still would have had the same avenues of complaint and claim against the Respondent.

I thus find that the Claimant is not eligible for compensation from the Fund because she unreasonably rejected the Respondent’s good faith efforts to resolve the claim. Accordingly, there is no need to calculate the amount of the flooring contract or the payments the Respondent received under the contract.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. § 8-405(d).

**RECOMMENDED ORDER**

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

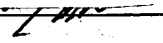
**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

January 31, 2019  
Date Decision Issued

ROC/kp  
# 177863

**Signature on File**

  
Richard O'Connor  
Administrative Law Judge

**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of March, 2019, 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.***

***Michael Shilling***

***Michael Shilling  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**