

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF JULIE LORENZO,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF HAYRIYE GUR,</b></p> <p><b>T/A HAINES REMODELING,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE M. TERESA GARLAND,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>*</p> <p>*</p> <p>*</p> <p>* <b>OAH No.: DLR-HIC-02-17-21655</b></p> <p>* <b>MHIC No.: 17 (75) 810</b></p>
---	---

\* \* \* \* \*

**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 April 4, 2017, Julie Lorenzo (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,943.23 in actual losses allegedly suffered as a result of a home improvement contract with Hayriye Gur, trading as Haines Remodeling (Respondent).

I held a hearing on April 20, 2018<sup>1</sup> at the Bel Air Branch Library in Bel Air, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented herself. Andrew J.

---

<sup>1</sup> A hearing set for January 4, 2018 was rescheduled.

Brouwer, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. After waiting more than fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

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 (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); 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:

- Clmt. Ex. 1 - Initial Complaint, January 1, 2017
- Clmt. Ex. 2 - Photographs – A through I
- Clmt. Ex. 3 - "Learn About the Ceramic Tile Education Foundation"
- Clmt. Ex. 4 - Invoice from L.B. Tile Company, January 18, 2017; check to L.B. Tile, January 23, 2017; Acknowledgement form from Top Notch Floors, January 2, 2017; Receipt history from Top Notch Floors, printed January 9, 2017

No documents were admitted on the Respondent's behalf.

---

<sup>2</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on March 14, 2018, COMAR 09.08.03.03A(2), and the certified mail was returned as unclaimed on April 4, 2018. The Respondent's address was provided to the Department by the Respondent on or about March 30, 2018 and was verified through records of the Motor Vehicle Administration. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Order, July 3, 2017
- Fund Ex. 2 - Notice of Hearing, March 30, 2018
- Fund Ex. 3 - Letter from Joseph Tunney, HIC Chairman, to Respondent, April 12, 2017
- Fund Ex. 4 - Licensing information about the Respondent
- Fund Ex. 5 - Affidavit of Kevin Niebuhr, April 10, 2018

Testimony

The Claimant testified in her own behalf and presented the testimony of Lance Burke, Remodeler, accepted as an expert in bathroom remodeling and tile.

No witnesses testified on behalf of the Respondent.

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 102085.
2. On January 28, 2012, the Claimant and the Respondent entered into a contract to perform work in her master bathroom. The contract stated that work would begin within fifteen days and would be completed within thirty days of the start date.
3. The original agreed-upon contract price was \$9,085.00.
4. On February 8, 2012, the Claimant paid the Respondent \$2,725.00. On February 14, 2012, the Claimant paid the Respondent \$5,435.00.
5. The scope of work pursuant to the terms of the contract consisted of removing existing tile on the floor, shower walls and tub platform and installing new tile; extending the shower wall tile to the ceiling; installing perimeter framing for the shower, installing rubber

membrane and new adjustable drain, installing concrete pan and mosaic tile; and installing tile around the perimeter of the bathroom, chair rail height.

6. In December 2016, the Claimant noticed a bullnose tile attached to the shower was loose in the bathroom remodeled by the Respondent. Upon further inspection, the Claimant noted extensive mold damage behind the loose tile.

7. The Claimant attempted to contact the Respondent regarding the loose tile and damage to her bathroom without response.

8. In February 2016, the Claimant hired Lance Burke, t/a L.B. Tile Company, to assess and remedy the damage to her bathroom.

9. Mr. Burke found that the Respondent failed to properly install the rubber liner on the shower base and also put nail holes in the liner, which caused water leakage into the plywood base. The plywood swelled, which caused tiles to pop off.

10. The water leakage in the floor of the shower wicked up the walls of the shower and throughout the bathroom walls, which caused extensive mold damage.

11. The Respondent used an organic adhesive material to secure the tiles when he should have used an appropriate mortar specifically designed to secure wall tiles.

12. The Claimant engaged Lance Burke, t/a L.B. Tile Company, to demolish the shower walls and floor, as well as the bathroom floor where damage had been sustained. He installed a new rubber pan and shower floor, shower wall and bathroom tile floor. Mr. Burke fixed the bullnose tile on the tub, installed a toilet, re-installed the shower door and trimmed out the vanity.

13. Because the tile originally installed by the Respondent was no longer available, the Claimant had to purchase tile in sufficient quantity to tile the entire bathroom.

14. As a result of the Respondent's unworkmanlike home improvement and the damage repair required, the Claimant sustained an actual loss of \$7,643.31.

### DISCUSSION

#### *The Respondent's Failure to Appear*

On numerous occasions between October 19, 2017 and March 14, 2018, the Notice of Hearing and the Department's Hearing Order were sent to the Respondent's address(es) of record with the Department by both regular and certified mail, which were returned as "undeliverable as addressed" and "unclaimed," respectively. On or about March 30, 2018, the Respondent informed the Department of her new address on Moonshadow Road in Bel Air, Maryland. On March 30, 2018, the OAH sent the Respondent the Notice of Hearing and the Department's Hearing Order to the Respondent's most recent address of record with the Department by both regular and certified mail, which were returned as "undeliverable as addressed" and "unclaimed," respectively. On April 10, 2018, an MHIC investigator determined, through Motor Vehicle Administration records, that the Respondent's current address is on Moonshadow Road in Bel Air, Maryland, which is the same address the Respondent gave the Department on March 30, 2018.

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 Department's procedures for contested case hearing state, in pertinent part, the following on the issue of notice:

A. Except as provided in §B of this regulation or by prior agreement of the parties, the administrative unit shall serve all notices, orders, and other documents in one of the following ways:

- (1) By personal delivery;
- (2) By mailing a copy of the document, first class, postage prepaid, to the person's last known business or home address; or
- (3) If the person is represented by counsel, by delivering or mailing a copy of the document, first class, postage prepaid, to the person's attorney.

B. The administrative unit shall send the hearing notice to the person against whom the action is contemplated by certified mail to the person's last known address:

- (1) At least 20 days before the hearing; or
- (2) If the parties have agreed to a date for which 20 days notice cannot be given, at the earliest time possible.

COMAR 09.01.02.07A, B. This regulation permits notice by first-class mail to a party's last known address, rather than to the business address on file with the agency. In this case, the

Respondent provided the Department an updated address on March 30, 2018 and the OAH immediately sent the Notice of Hearing and Department's Hearing Order to the Respondent at her most recent address on Moonshadow Road.

I am convinced that the Notice of Hearing had been sent to the Respondent's last known address and that she rejected the correspondence. Therefore, the hearing proceeded in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h).

*The Merits of the Claim*

In this 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) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>3</sup> “[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);<sup>4</sup> *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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

---

<sup>3</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>4</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

The Respondent performed unworkmanlike, inadequate or incomplete home improvements.

The Claimant testified credibly that she entered into a contract with the Respondent in January 2012 to renovate her master bathroom. The scope of work included, among other things, removing and replacing the shower pan, installing a rubber membrane and a new shower drain and tiling the bathroom floor. In December 2016<sup>5</sup>, the Claimant noticed a loose bullnose tile on the outer edge of the shower. When the tile easily came off of the surface, the Claimant observed black growth beneath the area where the tile had been. The adjacent tile was also loose and upon the Claimant's further inspection, she saw that several other tiles were loose.

The Claimant called the Respondent several times to report the condition of the Respondent's work, but the Respondent did not return the Claimant's calls.

The Claimant sought the opinion of three licensed professional contractors and chose L.B. Tile Company to assess and repair the Respondent's deficient work.

Lance Burke, whom I accepted as an expert in bathroom remodeling and ceramic tiling, has renovated in excess of 10,000 bathrooms over the course of thirty-five years and has extensive knowledge of the acceptable standards for ceramic tile installation in the industry. He testified credibly and in detail about the quality of the Respondent's work. During his inspection,

---

<sup>5</sup> Md. Code Ann., Bus. Occ. §8-405(g) provides: "A claim shall be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage." I find the Claimant's claim to be timely brought since she only discovered the damage in December 2016, when she noticed the loose tile.



Mr. Burke removed the mud bed which holds the shower pan to the shower base and discovered that there was a leak in the rubber shower liner. The leak was caused because the shower liner was improperly "pitched." In order to have the shower drain, the shower floor must incline toward the center of the shower, where the water then flows out through the center drain. The pitch of the shower floor, as installed by the Respondent, was toward the outer edges of the shower. It should have been properly pitched prior to installing the rubber liner. Moreover, there were nail holes in the rubber shower liner, which further exacerbated the water leakage. Mr. Burke testified that, as a result of the Respondent's poor workmanship, water seeped through the shower floor, was absorbed by the plywood base and developed extensive mold. But, the mold was not contained to the shower flooring. The water was wicked up into the walls of not only the shower, but the surrounding walls and subflooring, all of which resulted in extensive mold damage. Further, the Respondent used an inappropriate organic adhesive to set the tiles (which were now falling off) when industry standards require the use of thin-set "Portland" adhesive to secure the tiles.

In order to repair the damage to the Claimant's bathroom, Mr. Burke demolished the shower walls and floor, as well as the surrounding floor and walls where damage had been sustained. He installed a new rubber pan and shower floor, shower wall and bathroom tile floor. Mr. Burke fixed the bullnose tile on the tub, installed a toilet, re-installed the shower door and trimmed out the vanity. The total cost of repairs was \$7,134.00. Further, because the floor tile the Respondent installed was no longer available and could not be matched, the Claimant was required to purchase tile in sufficient quantity for the entire bathroom floor, not just the damaged areas. The tile cost \$509.31.

I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3).

In this case, the Respondent performed some work under the contract, and the Claimant has retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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 Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled recover her actual loss of \$7,643.31.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss \$7,643.31 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,643.31; 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>6</sup> and

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

**Signature on File**

July 18, 2018  
Date Decision Issued

o  
M. Teresa Garland  
Administrative Law Judge

MTG/sw  
# 173690

<sup>6</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



The undersigned hereby certifies that the above is a true and correct copy of the original as the same appears in the files of the undersigned.

WITNESSED my hand and the seal of the said office this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

**PROPOSED ORDER**

***WHEREFORE, this 20<sup>th</sup> day of November, 2018, 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.***

***Jeffrey Ross***

***Jeffrey Ross  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**