

IN THE MATTER OF THE CLAIM  
OF SILVIA PINEIRO,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF DANIEL KREIS,  
T/A PETRA CONTRACTORS, INC.  
RESPONDENT

\* BEFORE SUSAN H. ANDERSON,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-18-30883  
\* MHIC No.: 17 (90) 843

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**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 February 13, 2018, Silvia Pineiro (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$6,709.00 in actual losses allegedly suffered as a result of a home improvement contract with Daniel Kreis, trading as Petra Contractors, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On September 25, 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, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on March 6, 2019 at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent represented himself.<sup>2</sup>

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. Did the Claimant unreasonably reject good faith efforts on the part of the Respondent to resolve the claim?
3. What is the amount of the compensable loss, if any?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- Clmt. Ex. 1 - Contract between Claimant and Respondent (Contract) with Travelers Home and Marine Insurance Company's (Travelers) estimate of damages as a result of a burst water heater which flooded the Claimant's basement
- Clmt. Ex. 2 - Photographs 2(A) through 2(I):  
2(A) (1) – Photographs of views under plywood floor in dancing room during demolition, taken by Respondent

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<sup>2</sup> The Respondent appeared at the hearing without counsel and without a Special Power of Attorney authorizing him to represent the corporate entity in this matter. I permitted him to file a belated Special Power of Attorney. On March 7, 2019, the Respondent filed a Special Power of Attorney to designate himself as the non-attorney representative for the corporation. Md. Code Ann., Bus. Reg. § 8-312.

- 2(A) (2) – Photographic views of floor in dancing room taken by Claimant during floor removal in January 2017
- 2(A) (3) – Diagrams prepared by Claimant purporting to show differences between components of the original flooring of the dancing room and the flooring installed by the Respondent
- 2(A) (4) – Picture of sample of generic plastic underlayment from an Internet search Claimant contends was part of the original flooring of the dancing room
- 2(B) (1), (2), (3), (4), (5), (6) – Photographs of the dancing room flooring at various stages during the removal in January 2017, taken by Claimant
- 2(C) – Photograph showing plywood installed directly over concrete in dancing room during floor removal in January 2017, taken by Claimant
- 2(D) – Photograph showing plywood that had been in contact with the concrete floor in the dancing room purporting to show fungal growth, taken by Claimant during floor removal in January 2017
- 2(E) – Photograph of floor in dancing room taken just prior to removal in January 2017, taken by Claimant
- 2(F) – Photographs showing drink spill stains on the left-hand baseboard of the dancing room taken by Claimant just prior to and during removal of dance floor in January 2017
- 2(G) – Photographs of the baseboard and flooring on the right-hand side of the dancing room taken by Claimant prior to the removal of the dance floor in January 2017
- 2(H) – Photographs of the baseboard and concrete floor on the right-hand side of the dancing room taken by Claimant after the removal of the dance floor in January 2017
- 2(I) – Photographs of the “clean out” sewage pipe situated under the bench seat on the right-hand side of the dancing room

- Clmt. Ex. 3 - Printouts from the Aquabar “B” manufacturer’s website describing use and installation
- Clmt. Ex. 4 - Bid Proposal from Weyer’s Floor Service, Inc., February 22, 2017 for \$6,709.00
- Clmt. Ex. 5 - Photograph of uneven flooring taken by Marcelo Amador prior to the removal of the dance floor in January 2017
- Clmt. Ex. 6 - Photographs of baseboard and flooring on the right-hand side of the dancing room taken prior to and after removal of the flooring in January 2017
- Clmt. Ex. 7 - Bid Proposal from Ultimate Flooring Design Center, Inc., October 23, 2017 for \$5,396.05

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

- Resp. Ex. 1 - Photographs of views under plywood floor in dancing room during demolition, taken by Respondent

- Resp. Ex. 2 - Photographs of floor in dancing room facing the right-hand wall with bench seat showing floor buckling, October 14, 2016, taken by employee of Respondent
- Resp. Ex. 3 - Photographs of baseboards on corner near bench seat in dancing room, January 13, 2017, taken by employee of Respondent
- Resp. Ex. 4 - Photographs of concrete slab flooring under plywood near bench seat, January 13, 2017, taken by employee of Respondent
- Resp. Ex. 5 - Perfect Plumbing Invoice to Respondent for inspection on January 17, 2017 of Claimant's dancing room for cause of probable leak; photographs of the "clean out" connection to the main sewer pipe in the bench seat, January 17, 2017
- Resp. Ex. 6 - Close up photographs of damage to baseboards
- Resp. Ex. 7 - Moisture Investigation Report from Residential Restorers, November 9, 2016
- Resp. Ex. 8 - Letter from Don Fenex, Key Kleaning Services, Inc., March 5, 2019
- Resp. Ex. 9 - Photographs of moisture readings taken on October 14, 2016, taken by employee of Respondent

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of Hearing, December 31, 2018; Hearing Order, September 25, 2018
- Fund Ex. 2 - Home Improvement License inquiry printout, printed March 5, 2019
- Fund Ex. 3 - Letter from MHIC to Respondent, February 22, 2018; letter from Claimant to MHIC with the following attachments: Home Improvement Claim Form, dated January 5, 2018 and received February 13, 2018; detailed explanation of facts and circumstances giving rise to the claim, undated

### Testimony

The Claimant testified and presented the testimony of Avelardo Silva<sup>3</sup>, Christian Amador (Son), and Marcelo Amador (Husband).

The Respondent testified and presented the testimony of Steve Strahotsky and Benjamin Paul.

The Fund presented no testimony.

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<sup>3</sup> Mr. Silva is a neighbor and friend of the Claimant who spends time at the Claimant's home each week.

## **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 49960.

2. On August 4, 2015, the water heater in the Claimant's basement malfunctioned and flooded the basement.

3. On that same date, the Claimant filed a claim under her homeowner's policy with Travelers. On August 13, 2015, Travelers provided the Claimant with a detailed list of repairs and remediation to be completed along with an estimated cost for those repairs. Travelers estimated the entire loss at \$15,995.09. This amount included \$2,292.27 for work to be completed in the Claimant's dance room.

4. On September 28, 2015, the Claimant and the Respondent entered into a Contract to perform the repairs to the Claimant's basement as outlined in the Travelers' estimate.

5. In the dance room specifically, the Travelers' estimate called for the removal and replacement of the pre-finished solid wood flooring, the installation of 15# felt vapor barrier, the removal and replacement of the plywood sheathing, the removal and replacement of quarter round and reducer strip for the flooring, as well as removal and replacement of some of the drywall and painting the walls and the baseboards.

6. The Respondent opted to use Aquabar "B," a different vapor barrier, rather than the felt vapor barrier because it is of slightly higher quality.

7. The Respondent completed the work in November 2015 and on November 25, 2015, the Claimant and her Husband signed off on the Certificate of Completion for the job.

8. In September 2016, the Husband contacted the Respondent and indicated that the wood floor in the dance room was buckling and appeared warped.

9. On October 14, 2016, the Respondent sent one of his estimators out along with a representative from the flooring company to inspect the floor. They saw that the floor was very badly buckling, to the point that it raised the pool table sitting on top of it. The estimator took a moisture reading of the area where the wood was buckling the worst and got readings of 53.8% and 58.1%. The estimator also took a reading of a nearby carpeted area and got readings between 1.6% and 6.8%.

10. On November 9, 2016, in response to a request from the Respondent, Benjamin Paul of Restoration Restorers<sup>4</sup> investigated the moisture issue in the Claimant's basement. Mr. Paul, who has worked in the mitigation industry for thirty-three years, collected moisture readings from the dance room and determined they were all within the expected range of 7-8%. In his report to the Respondent, Mr. Paul indicated that he had found water damage to the entire hardwood floor and a small area of the baseboards in the dance room. Mr. Paul observed that the floor was starting to "buckle and raise up" and the baseboard was separating from the wall near the corner in the room. Mr. Paul concluded that "there was a substantial amount of water introduced to those building materials at a certain time."

11. The Claimant contended that the Respondent had improperly installed the hardwood floor which resulted in the buckling. The Respondent did not believe that the problems with the floor stemmed from improper installation but rather from an incursion of water from an unknown source. However, in an effort to rectify the situation, he offered the Claimant the following options: 1) remove the flooring and refund them \$2,186.00 (the actual

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<sup>4</sup> Paul worked for Restoration Restorers at the time; he has since come to work for the Respondent as a project manager.

cost of the flooring, less the cost of demolition of the original flooring, plus the 25% overhead profit his company had received from Travelers); 2) install an engineered wood floor at no cost to the Claimant; or 3) install a new hardwood floor at no cost to the Claimant, if she agreed to sign a waiver acknowledging that the Respondent would not be responsible for future damage to the floor due to water issues.

12. On January 13, 2017, the Respondent took out the flooring. During the removal process, it became apparent that the Aquabar "B" moisture barrier had not been uniformly installed over the plywood as there were gaps where it did not fully cover the plywood, particularly on the floor nearest the left-hand wall (across from the bench seat). The worst of the moisture damage was contained to an area near the bench seat.

13. On January 17, 2017, the Respondent sent a plumber from Perfect Plumbing to inspect the Claimant's dance floor space to try and determine the cause of any possible leak. The plumber found no active leaks at the time of the inspection. The plumber found signs that a sewer back up had occurred at some point in the past because there was visible staining from sewage in, on, and around the "clean out" connection to the main sewer pipe that was housed in the wall bench.

14. The Claimant and her Husband selected an engineered wood to replace the hardwood and the Respondent placed the order for the materials. Two days later, Husband contacted the Respondent and cancelled the order and refused further dealings with the Respondent.

15. On February 22, 2017, the Claimant obtained a proposal (Proposal) from Weyer's Floor Service, Inc. in the amount of \$6,709.00. This Proposal was not for the same scope of work as described in the Traveler's estimate. The Proposal called for installing one layer of

Versa Shield moisture barrier, 1/8" closed cell foam, two layers of 3/8" plywood, topped with unfinished engineered red oak flooring.

16. On October 23, 2017, the Claimant obtained an estimate (Estimate) from Ultimate Flooring Design Center, Inc. in the amount of \$5,396.05. This Estimate also differed from the scope of the Traveler's estimate. It called for installing a cork underlayment in addition to the vapor lock moisture barrier and provided for white oak hardwood, rather than the red oak hardwood the Respondent had used. The Estimate also listed the removal and disposal of a carpet in the area for \$46.50. The Claimant had put down a carpet in the area to cover the concrete after the Respondent removed the flooring in January 2017.

#### DISCUSSION

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); 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"). The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. "[A]ctual 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 not proven eligibility for compensation.

*The Parties' Contentions*

The Claimant argued strenuously that the warping of the floor the Respondent installed in her dance room was due to the fact that the flooring was not installed properly. The Claimant asserted that the problems were as follows: 1) the Respondent did not use the moisture barrier listed in Traveler's Estimate; 2) the Respondent did not follow the manufacturer's instructions when he installed the Aquabar "B" moisture barrier because he did not first lay down a vapor retardant as recommended on the manufacturer's website; and 3) the Respondent did not replace the flooring with the equivalent of what the Claimant had before because he did not install a plastic underlayment between the plywood subfloor and the concrete slab.

The Claimant maintained that there had never been a leak or water in her basement (with the exception of the failure of the hot water heater in August 2015), and thus any water issues the Respondent noted must have been due to improper installation of the floor that allowed moisture from the concrete to infiltrate the new flooring. The Claimant further maintained that she had "experts" come and investigate the flooring and they had advised her that the damage stemmed from improper installation. Therefore, she feels she is entitled to compensation from the Fund due to the unworkmanlike installation of the flooring and she is asking for either \$6,709.00 or \$5,394.55 (\$5,396.05 less the \$46.50 charge to replace the carpet), as these are the amounts her estimates show are necessary to rectify the matter.

The Respondent, on the other hand, maintained that the high moisture readings and the extensive damage to the flooring strongly suggested an acute event, such as a leak that went undetected for a period of time or a sewage spill. The Respondent sent out several different

people to try and determine the cause of the warping. The Respondent testified that he was very interested in finding the source of the moisture for two reasons: he wanted to make sure the moisture issue was not the fault of his company, and he wanted to be able to fix whatever the issue was so that it would not repeat. If the problem in fact stemmed from an acute event, the Respondent believed the proper course of action was for the Claimant to file a claim with Travelers. However, despite his efforts, no one was able to determine with certainty exactly what had caused the problem.

The Respondent explained that although he did not believe he had improperly installed the floor and that he was therefore not responsible for the damage, he wanted to make the client happy so he offered three different solutions. First, he offered to remove the flooring and refund the Claimant the money he attributed to the flooring project, less the removal of the original flooring, plus the 25% overhead profit he had received from Travelers. In the alternative, the Respondent offered to replace the floor with engineered wood, which in his opinion is a better option for a basement floor due to traditional moisture issues in basements, at no cost to the Claimant. Third, the Respondent offered to replace the exact same floor he had originally installed at no cost to the Claimant, if the Claimant agreed to sign a waiver absolving him of responsibility if the water problems persisted.

After the Respondent removed the flooring in January 2017, the Claimant and her Husband initially agreed to have the Respondent install flooring of engineered wood. However, after they made their selection and two days after the Respondent had placed the order for materials, Husband contacted the Respondent and indicated they did not want to go forward with the project and that they were pursuing resolution of the matter through the MHIC. The

Respondent argued that he had done everything in his power to resolve the matter, but the Claimant unreasonably rejected his good faith efforts to do so.

The Fund asserted that the Claimant is not eligible for compensation for three different reasons. The Fund argued that proof for the Claimant's assertion that the moisture issues are attributable to the improper installation of the floor requires the support of expert testimony, which she did not provide. Second, the estimates the Claimant provided are not for the same scope of work that the Respondent performed and so are not useful to determine actual loss. And finally, the Claimant unreasonably rejected the Respondent's good faith efforts to resolve the claim. For the following reasons, I find the Claimant has not proven eligibility for compensation from the Fund as she has failed to prove that she suffered an actual loss as the result of an act or omission on the part of the Respondent. Bus. Reg. §8-405(a).

#### *Analysis*

The crux of this case is the source of the moisture issue in the Claimant's basement that caused the flooring installed by the Respondent to warp and buckle and whether it resulted from the Respondent's alleged improper installation or an independent (and still undetermined) event, such as a flood or a sewage spill. The Claimant contended that when the Respondent removed the original damaged flooring, she personally observed that there was a plastic underlayment between the plywood sub flooring and the concrete.

There is no dispute that the Respondent did not install a plastic underlayment when he installed the new flooring. There is also no proof that such an underlayment existed with the original flooring. The Claimant points to pictures taken during the demolition for insurance purposes as proof that such an underlayment had been there. (Claimant's Ex. 2(A)(1); Respondent Ex. 1.) However, those pictures do not clearly show an underlayment. In fact, the

Respondent testified that they show the plywood being lifted up from the concrete slab with no underlayment between the two layers.

Moreover, even if such an underlayment had been there, the scope of the work to be done by the Respondent did not include installing one when he put in the new flooring. The Traveler's estimate contains the scope of the work to be done in the dance room and it clearly provides only for plywood sheathing, a vapor barrier, and a pre-finished solid wood floor. There is no dispute that the Respondent installed those components. Regardless of whether the flooring previously had an additional underlayment between the concrete and the plywood, the Respondent contracted for and installed the flooring called for in the Travelers estimate, so I find no merit in the Claimant's contention that his failure to install an additional underlayment amounts to an inadequate, unworkmanlike, or incomplete home improvement.

The Claimant also contended that the moisture problem could have stemmed from the Respondent's failure to use the vapor barrier listed in the Traveler's estimate. However, both the Respondent and Steve Strahotsky, who works as a project manager for the Respondent and has eighteen years of experience performing water damage mitigation, testified that the Aquabar "B" barrier they used was a better quality product than the 15# felt called for in the Traveler's estimate. I accept the experience of the Respondent's witnesses and find no merit in the Claimant's contention that failure to install the 15# felt listed in the Traveler's estimate amounts inadequate, unworkmanlike, or incomplete home improvement; the Respondent installed a better quality product.

In addition, the Claimant argued that the Respondent did not properly install the Aquabar "B" barrier because he did not follow manufacturer's instructions as set forth on the manufacturer's website because he did not first install a vapor retarder over the concrete before

putting down the plywood and he did not position the Aquabar "B" so that it overlapped each seam by the suggested four inches. The Claimant pointed out that the manufacturer's website recommends the use of an underslab vapor retarder such as Moistop Ultra<sup>5</sup> on top of the slab. (Claimant Ex. 3, p. 2.) However, that portion of the instructions is specifically for concrete sub-floors, floated and nailed. The Respondent pointed out during his testimony that the Claimant did not have a floating floor. He and Mr. Strahotsky also independently testified that it is not their practice to install a vapor retarder between the plywood and the concrete slab because the plywood is nailed to the concrete and any nails would therefore create holes in the vapor retarder, which would defeat the purpose of having a vapor retarder installed in the first place. Given that the plywood was fastened to the concrete with nails, I found the Respondent's explanation for the lack of a vapor retarder credible.

The Claimant pointed to pictures taken during the removal of the flooring in January 2017 in support of her claim that the Respondent had not properly positioned the Aquabar "B" vapor barrier. (Claimant Ex. 2 (B)(1-6).) The pictures depict sections of the flooring with the hard wood removed and plywood beneath with no Aquabar "B." Pictures (B)(1), (2), (3), (4), and (6) show an entire section of plywood directly abutting the left-hand wall without any Aquabar "B" on it. Picture (B)(5) shows a section where the Aquabar "B" ends an inch or so before the baseboard, which left the plywood underneath uncovered in that section, which is on the far wall that connects the right-hand and left-hand walls. The Respondent conceded that it appeared, at least from picture (B)(5), that his employees had in fact "missed a few spots." He further conceded that it was possible they had missed the entire section directly abutting the left-hand wall, although he speculated that it was possible the Aquabar "B" from that section had

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<sup>5</sup> Moistop Ultra is a vapor retarder made from polyolefin film. Henry Company, <http://henry.com/residential-and-light-commercial/foundation-and-below-grade/moistop-ultra-15> (last visited March 16, 2019).

come up when the hard wood on top was removed. However, the Respondent, Mr. Strahotky, and Benjamin Paul, the Respondent's product manager who has thirty-three years of experience in the water damage mitigation industry, all testified that the worst moisture damage was on the side of the room with the bench seat, which is on the right-hand wall directly opposite the portion of the floor without the Aquabar "B" coverage. Therefore, the Respondent argues, any failure to properly install the Aquabar "B" in the space was clearly not the cause of the moisture problems.

Neither side was able to prove what actually caused the floor to warp and buckle. The Claimant asserted that the moisture came from up from the concrete slab. However, the Respondent and Mr. Paul both explained that the high moisture readings obtained in October 2016 strongly suggested an acute event. Mr. Paul testified that in his many years in the water damage mitigation industry, he has never seen a floor buckle due to concrete moisture. He admitted that perhaps concrete moisture seeping into the floor could have caused the high moisture readings but stated that he had never heard of it doing so. Moreover, he described seeing cracked trim and the baseboard separating from the wall near the corner of the room on the side where the bench seat with the "clean out" was. This indicated to him a sign of water damage. In the report he prepared after his inspection of the room on November 9, 2016, he concluded that it was "obvious" that "there was a substantial amount of water introduced to those building materials at a certain time," although he was unable to state exactly what had happened or when.

In addition, Respondent had asked Don Fenex, the operations manager for a fire and damage restoration company with thirty years of experience, to review the photos of the damage to the Claimant's dance room floor and the moisture readings and give an opinion as to the source of the water damage based on his many years of experience in the industry. Mr. Fenex

wrote that a single level basement would typically have a five to eight percent variance in moisture across the entire basement. The photos of the moisture readings taken in October and November 2016 show a forty-seven percent variance. To Mr. Fenex, with his experience, this suggests a water incursion that is unseen or unknown and any kind of plumbing nearby would be suspect and should be further inspected. (Resp. Ex. 8)

The Claimant and her Husband conceded that there was a bathroom directly next to the right-hand wall of the dance room where the toilet “ran” constantly necessitating the shutting off of the water valve to the toilet. They strenuously denied that the “running” toilet could be the cause of the moisture. They also denied having any kind of a sewage spill at the site of the clean out under the bench seat.

Despite the Claimant’s contentions to the contrary, the evidence simply fails to show that the problems with the flooring the Respondent installed stemmed from an improper installation. The evidence shows that it is highly unlikely the water damage and high moisture readings stemmed from moisture seeping upward from the concrete slab. While the Claimant contended that “experts” she had consulted advised her that it was possible, none of those experts either testified at the hearing or submitted a report detailing their findings and opinions. The Respondent offered testimony from individuals knowledgeable and experienced in the water damage mitigation field showing that a possible undetected leak or sewage spill was more likely to have caused the moisture problems. Accordingly, I find the Claimant has failed to prove the Respondent performed unworkmanlike, inadequate, or incomplete home improvement.

However, even if the Claimant had proven that the Respondent’s installation of the flooring resulted in the problems the Claimant experienced, she would still not be entitled to compensation from the Fund. The Respondent offered credible testimony showing that, despite

not believing he was responsible, the Respondent still wanted to satisfy the customer and offered three different solutions in an effort to resolve the issue, but the Claimant rejected all three. Bus. Reg. § 8-405(d). The Claimant indicated that she rejected his offer to refund the money for the flooring, less the cost of demolition and plus the 25% overhead profit he had received, because it was not enough for her to then purchase the type of floor of her choice. The Claimant and her Husband also rejected the offer of the Respondent to either redo the job with engineered wood or with hardwood, at no cost to them. The Claimant stated that she did not want engineered wood and she did not want the Respondent to redo the job the same way because she believed he had done shoddy work the first time.

The Claimant may have been justified in fearing that if the Respondent reinstalled a hardwood floor again she would experience the same problem, particularly as the exact cause of the moisture was never definitively determined. However, the Respondent offered two other reasonable options in a good-faith effort to resolve the issue. The Claimant may desire a different and "better" floor; however, the Traveler's estimate is what controlled the flooring the Respondent installed. Moreover, he offered to refund her not only the portion of what he received from Travelers attributable to the materials and installation costs of the flooring, but also his 25% overhead profit as well. In addition, the estimates the Claimant provided at the hearing are not for the same scope of work contained in the Travelers estimate. Therefore, the Claimant's estimates cannot be used to show that the Respondent's offer of a \$2,186.00 refund was inadequate. For all of these reasons, I recommend that the Claimant's Claim be denied because she has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions.



**PROPOSED CONCLUSION 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. §§ 8-401, 8-405 (2015).

**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.

**Signature Signature on File**

March 25, 2019  
Date Decision Issued

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Susan H. Anderson  
Administrative Law Judge

SHA/da  
# 178682

**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of May, 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**