

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ADRIENNE WILlich,</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</p> <p>DAVIDA RODRIGUEZ,</p> <p>T/A DAVIDA’S KITCHEN & TILES,</p> <p>L.L.C.,</p> <p>RESPONDENT</p>	<p>* BEFORE LEIGH WALDER,</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>*</p> <p>* OAH No.: LABOR-HIC-02-19-34290</p> <p>* MHIC No.: 18 (75) 1086</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On December 17, 2018, Adrienne Willich (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),¹ for reimbursement of \$14,802.00 in actual losses allegedly suffered as a result of a home improvement contract with Davida Rodriguez, trading as Davida’s Kitchen & Tiles, L.L.C. (Respondent). Md. Code Ann., Bus.

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Reg. §§ 8-401 through 8-411 (2015).² On October 21, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 6 and 18, 2020, I held a remote video hearing over WebEx and Google Meet, respectively.³ Bus. Reg. § 8-407(e); Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. Benjamin Klopman, Esquire, represented the Respondent, who was present.

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. 2020); COMAR 09.01.03; and 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 on the Claimant's behalf:

Clmt. Ex. 1 – Complaint Form, dated March 5, 2018

Clmt. Ex. 2 – Not offered

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

³ A hearing in this matter was originally scheduled for May 21, 2020. On January 21, 2020, the Respondent requested a postponement due to previously scheduled travel plans. On January 24, 2020, the request for a postponement was granted and the hearing was rescheduled for May 28, 2020. The May 28, 2020 hearing was rescheduled due to COVID-19. The hearing ultimately proceeded as a remote proceeding on November 6 and 18, 2020.

- Clmt. Ex. 3 – Labor Agreement, dated July 4, 2017; Tile Estimate, dated June 22, 2017; Lighting Estimate, dated May 19, 2017
- Clmt. Ex. 4 – Checks, various dates; Credit card statements, dated for July 2017 transactions
- Clmt. Ex. 5 – Credit card statement, dated for August 2017 transactions; FAB Electric Letter, dated August 4, 2017; FAB Electric Invoice, dated November 7, 2017; Emails between the Respondent and the Claimant, various dates in July 2017
- Clmt. Ex. 6 – Tuckers Invoice, dated August 16, 2017
- Clmt. Ex. 7 – Emails between the Respondent and the Claimant, various dates in July and August 2017; Termination Agreement, dated August 8, 2017
- Clmt. Ex. 8 – Emails between the Respondent and the Claimant, various dates in August and September 2017
- Clmt. Ex. 9 – Emails between the Respondent and the Claimant, various dates in November and December 2017
- Clmt. Ex. 10 – Home Improvement Claim Form, dated December 17, 2018; Calculation, undated; Overview of Claim, undated

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

- Resp. Ex. 1 – List of “credits and freebies,” undated; Respondent Invoices and Credit Memos, various dates; Refund Receipt, dated December 14, 2017; Wood Mode Acknowledgement, dated August 29, 2017 and September 6, 2017; Respondent Design Retainer Agreement and Cabinet Design Services, dated March 24, 2017
- Resp. Ex. 2 – Schematics, undated
- Resp. Ex. 3 – Respondent Contract, dated April 28, 2017
- Resp. Ex. 4 – Respondent Contract, dated May 17, 2017
- Resp. Ex. 5 – Labor Agreement, dated July 4, 2017
- Resp. Ex. 6 – Emails between the Respondent and the Claimant, dated July 21, 2017; FAB Electric Proposal, dated July 20, 2017
- Resp. Ex. 7 – Permitting Services, issued July 14, 2017
- Resp. Ex. 8 – Emails between the Claimant and FAB Electric, various dates in July 2017
- Resp. Ex. 9 – Respondent Invoice, due July 5, 2017
- Resp. Ex. 10 – Not offered

Resp. Ex. 11 – Termination Agreement, dated August 8, 2017

Resp. Ex. 12 – Emails between the Respondent and the Claimant, dated August 10, 2017

Resp. Ex. 13 – Not offered

Resp. Ex. 14 – Checks, various dates

Resp. Ex. 15 – Respondent Invoice, dated May 18, 2017; Stone Action Invoice, dated May 19, 2017; East West Marble Purchase Order, dated August 29, 2017

Resp. Exs. 16 through 19 – Not offered

Resp. Ex. 20 – Not admitted

Resp. Ex. 21 – Emails between the Claimant and the Respondent, various dates

Resp. Ex. 22 – Email from the Respondent to the Claimant, dated March 16, 2017

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

Fund Ex. 1 – Hearing Order, dated October 17, 2019

Fund Ex. 2 – Hearing Notices, various dates

Fund Ex. 3 – Home Improvement Claim Form, dated December 17, 2018; Letter from the Fund to the Respondent, dated January 25, 2019

Fund Ex. 4 – Registration information, undated

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and presented the testimony of Maureen St. Denis, the Respondent's Office Manager.

The Fund did not offer any witness 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 number 101032.

2. On April 28, 2017, the Claimant and the Respondent entered into a contract where the Respondent agreed to furnish and attach kitchen cabinets to the Claimant's home.

3. The total cost, under the contract, to furnish and attach the kitchen cabinets was \$39,649.30.

4. On May 17, 2017, the Claimant and the Respondent entered into a contract where the Respondent agreed to furnish and attach kitchen countertops to the Claimant's home.

5. The total cost, under the contract, to furnish and attach the kitchen countertops was \$13,000.00.

6. On May 19, 2017, the Claimant purchased \$1,472.96 of lighting materials from the Respondent.

7. On June 22, 2017, the Claimant purchased \$2,300.92 of tile materials from the Respondent.

8. On July 4, 2017, the Claimant and the Respondent entered into a labor contract whereby the Respondent agreed to perform the following work in and around the Claimant's kitchen:

- a. Demolition of kitchen to include: kitchen u-shape, island, desk area, oven/countertop, pantry by oven and existing bar to remain.
- b. Tooth in new wood to match as necessary and stain. Change thresholds for the doorways from stair nosing to proper threshold to the marble foyer.
- c. Disconnect and install of customer supplied appliances.
- d. Gas line to be relocated from laundry to new range location.
- e. Duct for downdraft and oven to be removed, along with drywall chase.
- f. Reconnect new plumbing fixtures: supply lines, new eclipse sink, existing faucet, disposal, and dishwasher.
- g. Electrical to include: disconnect and reconnect all electrical appliances, reconfigure and relocate electrical switches and outlets as needed. Remove overhead pendants. Switch dining room and kitchen chandeliers. Install owner supplied ceiling fan in family room.
- h. Install LED under cabinet lights, outlets and in glass door cabinet pucks.
- i. Installation of all cabinetry, fillers, trims pieces per drawings.
- j. Install hardware on new cabinetry.
- k. Drywall removal and repair, as necessary.
- l. Install tile backsplash.

- m. Install countertops.
- n. Painting to include interior areas of the kitchen walls (and ceiling area where pendants are being removed if the Claimant had paint to match that area of the ceiling).
- o. Broom sweep clean up and wipe down of all surfaces.
- p. Debris disposal.

9. The original agreed-upon labor contract price was \$32,500.00, to be paid out as

follows:

- a. \$16,250.00 as a deposit;
- b. \$6,625.00 due at the start of cabinet installation;
- c. \$6,625.00 due at the start of countertop installation; and
- d. \$3,000.00 due upon substantial completion of all work under the contract.⁴

10. Work was to begin on or about July 5, 2017, with substantial completion within twenty-one days.

11. In total, the Claimant anticipated that the entire kitchen renovation, including materials purchased from the Respondent, would cost \$88,923.18.⁵

12. On July 5, 2017, the Claimant paid the Respondent the \$16,250.00 deposit.

13. The Respondent performed the following items set out in the labor contract, to the Claimant's satisfaction:

- a. Demolition of kitchen to include: kitchen u-shape, island, desk area, oven/countertop, pantry by oven and existing bar to remain.
- b. Disconnect appliances.
- c. Gas line to be relocated from laundry to new range location.
- d. Duct for downdraft and oven to be removed, along with drywall chase.
- e. Reconnect new plumbing fixtures: supply lines, new eclipse sink, existing faucet, disposal, and dishwasher.
- f. Install countertops.

14. The electrician the Respondent utilized to perform the electrical work was not a licensed electrician.

⁴ The total of all four of these payments amount to \$31,750.00. This discrepancy was not addressed at the hearing.

⁵ \$39,649.30 (kitchen cabinet costs) + \$13,000.00 (kitchen countertop costs) + \$1,472.96 (lighting material costs) + \$2,300.92 (tile material costs) + \$32,500.00 (labor costs) = \$88,923.18.

15. On July 13, 2017, the Claimant contacted the Respondent to express concern that the electrician was not licensed.

16. On July 21, 2017, the Respondent informed the Claimant that the Claimant should work with a licensed electrician from FAB Electric, Inc. (FAB) to perform the electric work in the kitchen. The Respondent offered the Claimant a \$1,500.00 credit towards the costs incurred by FAB.

17. On July 31, 2017, the Respondent emailed the Claimant an invoice for \$6,625.00 as the next installment payment owed under the labor contract, due at the start of cabinet installation. The invoice explained that all adjustments to the contract will be taken off the final payment.

18. On July 31, 2017, the Claimant emailed the Respondent and explained that she did not feel it was fair for the Respondent to defer applying the \$1,500.00 credit towards the costs incurred by FAB to the final bill.

19. On July 31, 2017 and August 1, 2017, the Respondent responded that the Claimant could hire a carpenter (not affiliated with the Respondent) to complete certain items from the labor agreement and provided the contact details of a carpenter.

20. On August 2, 2017, the Respondent explained to the Claimant that because the Claimant did not wish to pay the next installment under the labor contract, a termination "is in order." (Clmt. Ex. 7, p. 6).

21. On or about August 3, 2017, the Claimant hired FAB to correct the work performed by the Respondent's electrician. FAB made the following corrections:

- a. Rewire the oven hood circuit to have a dedicated circuit.
- b. Remove and rewire all wiring for the under-cabinet task plug molding.
- c. Disconnect and trace out all temporary wiring for a switch by the back door which was incorrectly connected and reengineer light controls to be installed in the cabinets.

22. FAB charged the Claimant \$1,876.00 to correct the work performed by the Respondent's electrician.

23. On or about August 3, 2017, the Claimant hired FAB to complete the remaining electrical work necessary in the kitchen.

24. FAB charged the Claimant \$1,555.78 to complete the electrical work.

25. On or about August 8, 2017, the Respondent sent the Claimant a Termination Agreement, which the Respondent had already signed.

26. The Claimant paid FAB \$2,700.00 to complete the following items from the labor contract:

- a. Tooth in new wood to match as necessary and stain. Change thresholds for the doorways from stair nosing to proper threshold to the marble foyer.
- b. Install customer supplied appliances.
- c. Install LED under cabinet lights, outlets and in glass door cabinet pucks.
- d. Drywall removal and repair, as necessary.
- e. Install tile backsplash.
- f. Painting to include interior areas of the kitchen walls (and ceiling area where pendants are being removed if the Claimant had paint to match that area of the ceiling).

27. On August 16, 2017, the Claimant paid Tuckers Air Conditioning Heating & Plumbing (Tuckers) \$1,950.00 to perform the following HVAC work:

- a. Install range hood;
- b. Install 6 fresh air pipes;
- c. Move two toe kick supply;
- d. Move supply vent; and
- e. Run wire from basement damper to kitchen.

28. The Claimant and the Respondent maintained a professional relationship where the Respondent continued to provide the services necessary to deliver and install the Claimant's countertops.

29. On August 28, 2017, the Respondent emailed the Claimant that a mistake had occurred and the granite slabs that the Claimant chose and paid for were no longer available. The Claimant had to pick out a new granite slab.

30. In total, the Claimant paid the Respondent \$67,718.13 for work performed on the kitchen renovation, as follows:

- a. \$19,824.65 cabinet payment on April 28, 2017;
- b. \$6,500.00 countertop payment on May 17, 2017;
- c. \$16,824.65 cabinet payment on June 23, 2017;
- d. \$16,250.00 labor deposit payment on July 5, 2017;
- e. \$1,876.92 tile payment on July 7, 2017;
- f. \$1,472.96 lighting payment on July 7, 2017;
- g. \$3,250.00 countertop payment on August 17, 2017; and
- h. \$1,718.95 countertop payment on September 7, 2017.

31. After factoring in the amount the Claimant paid the Respondent (\$67,718.13), plus the total amount the Claimant paid FAB (\$6,131.78), plus the \$1,950.00 paid to Tuckers, the Claimant spent \$75,799.91 to complete the kitchen renovation.

DISCUSSION

Applicable Law

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor” Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for 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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov’t § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means

to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

Parties’ Positions

The Claimant argued that the Respondent abandoned the kitchen renovation. Further, the Claimant avers that prior to abandoning the kitchen renovation, the Respondent performed unworkmanlike, inadequate, or incomplete home improvement by bringing in an unlicensed electrician to perform electrical work which needed to be corrected, and by not performing HVAC work necessary to install the new appliances and cabinets. As a result, in the Claim the Claimant argued that she is entitled to receive \$14,802.00 as compensation from the Fund.

To arrive at the \$14,802.00 sum, the Claimant estimated that out of the \$16,250.00 that the Claimant paid the Respondent as an initial deposit on the labor contract, the Respondent performed \$9,530.00⁶ worth of services, leaving \$6,720.00 kept by the Respondent for work not performed. The Claimant then adds up the amount that she expended to complete the kitchen renovation, \$8,082.00, broken down as follows: \$1,876.00 paid to FAB to correct the work performed by the Respondent’s electrician; \$1,556.00⁷ paid to FAB to complete the remaining electrical work necessary in the kitchen; \$1,950.00 paid to Tuckers for HVAC work; and \$2,700.00 she paid to FAB to finish the work necessary in the kitchen. Adding the \$6,720.00, which the Claimant argued was retained by the Respondent for no work performed, plus the \$8,082.00 to complete the kitchen renovations, the Respondent arrives at the amount of Claim, \$14,802.00. At the hearing,

⁶ The Claimant arrived at this number by multiplying the number of hours worked by the Respondent’s workers by their hourly rates as follows:

Carlos worked forty-eight hours on the kitchen renovation at \$85.00 per hour, totaling \$4,080.00;

Denny worked six hours on the kitchen renovation at \$85.00 per hour, totaling \$510.00; and

Luiz worked twenty-four hours on the kitchen renovation at \$60.00 per hour, totaling \$1,440.00.

In total, the Claimant estimated that the Respondent’s workers’ labor costs were \$6,030.00.

Added to this, the Claimant estimated that the Respondent paid a licensed plumber \$3,500.00 to run a gas line.

Adding up the \$6,030.00 in labor costs plus the \$3,500.00 in plumbing costs, the Claimant arrived at the \$9,530.00 sum.

⁷ The Claimant rounded up the actual figure, \$1,555.78.

the Claimant also asserted that she was entitled to reimbursement of an additional \$207.79, which is the price difference between the two granite slabs purchased for the countertops.⁸ Rounding the \$207.79 up to \$208.00, at the hearing the Claimant – in total – argued that she should be reimbursed \$15,010.00.⁹

The Claimant also asserted that the Respondent violated the law by collecting a down payment of fifty percent of the contract price (\$16,250.00), as opposed to a one-third down payment allowable under section 8-617 of the Business Occupations Article.

The Respondent conceded that she charged more than one-third of the contract price as a down payment. However, the Respondent argued that she did not abandon the kitchen renovation project. Rather, the Respondent argued that she performed the necessary components of the labor agreement, prior to the cabinet installation phase, and that the Claimant was not willing to pay the next installment payment, \$6,625.00, so the Respondent chose not to begin the next stage of the kitchen renovation without having the money upfront. Because the Claimant did not pay this installment payment, the Respondent argued that she had a right to stop working under the labor contract. Further, the Respondent argued that she offered the Claimant a \$1,500.00 credit to cover the costs the Claimant paid FAB to correct the electrical work and provided the Claimant with an additional \$2,731.00 of credits and “freebies” during the course of the renovation. (*See Resp. Ex. 1*). Further, the Respondent argued that the \$1,950.00 HVAC work performed by Tuckers was beyond what was to be provided under the labor contract, so the Respondent should not be responsible for reimbursing the Claimant this sum. The Respondent also asserted that the Claimant did not suffer any actual monetary loss as the Claimant was able to complete the kitchen renovation for less than the amount she would have been required to pay

⁸ The Claimant subtracted the cost of the replacement granite slab, \$4,685.40, from the cost of the original granite slab \$4,924.24, minus an additional \$31.05 rebate, which amounts to \$207.79.

⁹ \$14,802.00 plus \$208.00 equals \$15,010.00.

the Respondent had the Respondent completed the work (as set out in the Fund's position, below). Finally, the Respondent argued that the Claimant was the improper party to file the Claim because the Claimant's husband signed the labor agreement, not the Claimant.

The Fund explained that the Fund's purpose is to compensate homeowners who suffer an actual loss and, as a homeowner, the Claimant is eligible to file a Claim. Hence, the Fund argued that the Claimant should not be procedurally barred from seeking recovery from the Fund solely on the basis that her husband was the signatory to the labor agreement. Emphasizing that this is not a contract action, the Fund argued that being a signatory on a contract is not one of the requirements to file a claim for reimbursement from the Fund.

The Fund took the position that the Respondent did not abandon the contract; rather, the Fund argued that it seemed like both the Claimant and the Respondent no longer wanted to continue performance under the labor agreement. However, the Fund recognized that it was unworkmanlike for the Respondent to allow an unlicensed electrician to perform the electrical work in the Claimant's kitchen, and that the work by the unlicensed electrician had to be corrected by FAB. As a result, the Fund argued that the Claimant's actual monetary loss should be calculated under COMAR 09.08.03.03B(3)(c), which sets out:

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.

The Fund applied this formula, as follows: amount the Claimant paid to the Respondent, \$67,718.13,¹⁰ plus amounts the Claimant paid to other contractors to repair poor work and complete original contract, \$8,081.78,¹¹ equals \$75,799.91, subtracted by the original contract price \$88,923.18,¹² equals a net gain of \$13,123.27. Since the Claimant was able to complete the kitchen renovation for \$13,123.27 less than the anticipated amount under the contracts with the Respondent, the Fund argued that the Claimant is not entitled to any reimbursement from the Fund.

Analysis

The evidence in this case establishes there are no legal impediments barring the Claimant from filing a claim under section 8-405 of the Business Occupations Article. The home improvement work was to be performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the Claim. The Claimant timely filed the Claim with the MHIC on December 17, 2018. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

Similarly, section 8-405 of the Business Occupations Article has no requirement that a claimant must be the actual signatory of a contract with a contractor. In fact, as the Fund explained, a claim can even arise out of a verbal or unwritten agreement between a contractor

¹⁰ \$19,824.65 cabinet payment on April 28, 2017, plus \$6,500.00 countertop payment on May 17, 2017, plus \$16,824.65 cabinet payment on June 23, 2017, plus \$16,250.00 labor deposit payment on July 5, 2017, plus \$1,876.92 tile payment on July 7, 2017, plus \$1,472.96 lighting payment on July 7, 2017, plus \$3,250.00 countertop payment on August 17, 2017, plus \$1,718.95 countertop payment on September 7, 2017, equals \$67,718.13 paid to the Respondent.

¹¹ \$6,131.78 paid to FAB, plus \$1,950.00 paid to Tuckers, equals \$8,081.78.

¹² \$39,649.30 (kitchen cabinet costs) + \$13,000.00 (kitchen countertop costs) + \$1,472.96 (lighting material costs) + \$2,300.92 (tile material costs) + \$32,500.00 (labor costs) = \$88,923.18.

and homeowner. Thus, the Claimant is not barred from seeking redress because she is not the signatory of the labor contract.

I cannot find that the Respondent “abandoned” the labor contract, as asserted by the Claimant. *See generally* COMAR 09.08.03.03B(3)(a). The contract required the Claimant to pay \$6,250.00 “at the start of cabinet installation.” (Clmt. Ex. 3, p. 5). Since the Claimant did not pay the Respondent the \$6,250.00 installment, the Respondent was not obligated to continue working under the labor agreement. However, after reviewing the evidence, I agree with the Claimant and the Fund that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Respondent allowed an unlicensed electrician to perform work on the Claimant’s kitchen. Various aspects of this unlicensed electrician’s work had to be corrected by FAB. (*See* Finding of Fact #21). FAB specifically noted in a letter to the Claimant that the work it had to correct were “[i]tems that had to be corrected and/or re-wired that had already been completed by [the Respondent.” (Clmt. Ex. 5, p. 2). To make these corrections, FAB charged the Claimant \$1,876.00. (*Id.*, p. 3). Additionally, FAB had to complete the remaining electrical work necessary in the kitchen that had not been performed by the Respondent. (*Id.*). To complete this work, FAB charged the Claimant \$1,555.78. (*Id.*, pp. 1-3). Although the Respondent testified that the work performed by FAB to complete the remaining electrical work in the kitchen was outside the scope of what would have been provided under the labor contract, the Respondent was vague about what aspects were outside of the labor contract. On the other hand, the Claimant was convincing that the work performed by FAB to complete the electrical work was the work contemplated under the labor contract. In total, the Claimant paid \$5,307.78 to FAB to correct and complete the electrical work under the labor contract. The Claimant also paid FAB an additional \$2,700.00 to complete many of the other items found in the labor contract. (*See* Finding of Fact #26).

The Claimant was unable to demonstrate that the Respondent was responsible to provide the HVAC services ultimately provided by Tuckers. (See Clmt. Ex. 6). The Claimant wrote the following two reasons why she believed the Respondent was responsible for performing the HVAC work:

- [The Respondent] was ignorant of “fresh air makeup” requirement for our range hood (size of <399 cfm) which prevents carbon monoxide backdrafting through the house. Contractor said installing the range hood was like ‘baking a cake’ and her worker would just ‘figure it out as he goes.’
- [The Respondent’s] design also did not contemplate that the three air conditioning vents in the kitchen would end up 1) underneath the new refrigerator and 2) two vents would be in between two of the new cabinets requiring moving of the vents.

(Clmt. Ex. 1, p. 2). After closely examining the scope of work to be performed under the labor contract and the work performed by Tuckers, I find that the Respondent was not required to perform the type of HVAC work performed by Tuckers. (Compare Clmt. Ex. 3, p. 2 with Clmt. Ex. 6). Nowhere in the labor agreement does the Respondent take on the responsibility to perform any of the HVAC work which was performed by Tuckers. As such, I cannot find that the Respondent failed to perform HVAC work.

While I agree with the Claimant that the Respondent technically violated section 8-617 of the Business Occupations Article (“[a] person may not receive a deposit of more than one-third of the home improvement contract price before or at the time of execution of the home improvement contract”), and the Respondent concedes she collected a fifty-percent deposit, such a technical violation does not fall within the ambit of unworkmanlike, inadequate, or incomplete home improvements. As such, the Claimant is not eligible reimbursement from the Fund based on this technical violation. See Md. Code Ann., Bus. Reg. § 8-401 (“‘actual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”).

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. As the Respondent did some work according to the contract and the Claimant hired another contractor to complete the contract, the most appropriate formula to apply is found in COMAR 09.08.03.03B(3)(c) (set out in full, above, under the Fund's position).

I agree with the Fund that in this unique case I need to consider the combined total of the different components of the various contracts the Claimant entered into with the Respondent – those being the \$39,649.30 kitchen cabinet costs, \$13,000.00 kitchen countertop costs, \$1,472.96 lighting material costs, \$2,300.92 tile material costs, and \$32,500.00 labor costs – when determining the total amount of the contract to renovate the Claimant's kitchen. In total, these costs come to \$88,923.18 to complete the renovation. These costs are all intertwined as they encapsulate the labor and materials that the Respondent agreed to provide for the renovation. Applying the formula set out in COMAR 09.08.03.03B(3)(c), the amount the Claimant paid the Respondent, \$67,718.13, is added to the amount the Claimant paid another contractor to repair and complete the work to be performed under the contract, \$6,131.78 (paid to FAB),¹³ equals \$73,849.91, subtracted by the original contract price, \$88,923.18, equals a net gain of \$15,073.27. Because the Claimant was able to renovate her kitchen for \$15,073.27 less than contracted, the Claimant has not suffered an actual loss compensable by the Fund. Md. Code Ann., Bus. Reg. 8-405(a); COMAR 09.08.03.03B(3)(c).

¹³ For the reasons given above, this figure does not include the \$1,950.00 paid to Tuckers. Even if the amount paid to Tuckers was included, the Claimant would still be well below the \$88,923.18 original contract price.

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); 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 deny the Claimant's claim; and

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

February 9, 2021
Date Decision Issued

CONFIDENTIAL

Leigh Walder
Administrative Law Judge

LW/dlm
#190447

PROPOSED ORDER

WHEREFORE, this 1st day of April, 2021, 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

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**