IN THE MATTER OF THE CLAIM	*	**BEFORE JENNIFER A. NAPPIER,**
OF CAROLYN PROCTOR,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: LABOR-HIC-02-19-24758**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 19 (90) 216**
OMISSIONS OF DENNIS	*	
WASHINGTON,	*	
T/A WASHINGTON BOYZ	*	
CONSTRUCTION LLC,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

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 December 3, 2018, Carolyn Proctor (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 $6,975.00 in actual losses allegedly suffered as a result of a home improvement contract with Dennis Washington,

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation (DLLR) became the Department of Labor.

trading as Washington Boyz Construction LLC, (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On August 1, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a video hearing on September 29, 2020.[3] Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (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:

CL Ex. 1	Photo of bathroom before start of job
CL Ex. 2	NOT ADMITTED
CL Ex. 3	NOT ADMITTED
CL Ex. 4	Emails between the Claimant and Respondent, various dates
CL Ex. 5	Photo of bathtub fixtures after completion of job

[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[3] The hearing was previously scheduled for March 30, 2020, but was postponed due to the COVID-19 pandemic.

CL Ex. 6 Photo of cracked grout, after completion of job

CL Ex. 7 Photo of tiles, after completion of job

CL Ex. 8 Photos of floor, after completion of job

CL Ex. 9 Bathroom Payment Sheet, November 5, 2017 to December 2, 2017; Bank of America customer receipt, December 21, 2017

CL Ex. 10 Contract, November 5, 2017

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

Resp. Ex. 1 Original Estimate from the Respondent to the Claimant, September 25, 2017

Resp. Ex. 2 Revised Estimate from the Respondent to the Claimant, September 25, 2017

Resp. Ex. 3 Additional Work Order, November 5, 2017

Resp. Ex. 4 Email from The Hartford to the Respondent, December 7, 2017

Resp. Ex. 5 Estimate from The Hartford, October 12, 2017

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

GF Ex. 1 Hearing Order, July 26, 2019

GF Ex. 2 Hearing Notices, August 27, 2020 and January 30, 2020

GF Ex. 3 Home Improvement Claim Form, November 25, 2018

GF Ex. 4 DLLR I.D. Registration, February 25, 2020; DLLR Occupational/Professional License History, February 25, 2020

Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

No other witnesses testified at the hearing.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 5280173.

2. At all relevant times, the Claimant has owned and resided at a home on Gertrude Place in Nanjemoy, Maryland. She does not own any other property.

3. On November 5, 2017 the Claimant and the Respondent entered into a contract to remodel the Claimant's bathroom (Contract).

4. The Contract provided that the Respondent would perform the following work:

- Demolition of the existing bathroom down to the bare studs
- Removal of the subfloor
- Installation of new subfloor
- Replacement of broken/damaged floor joists
- Installation of a new bathtub, toilet, and pedestal sink
- Installation of a new wax ring for the toilet
- Installation of a new bathtub and sink fixtures
- Installation of Durock cement board on the floor and around the bathtub
- Installation of water-resistant sheetrock on walls
- Removal and replacement of the door and doorframe
- Ceramic tile on floor and five feet high around the bathtub
- Finishing the drywall and painting the entire bathroom

5. The original agreed-upon Contract price was $5,200.00.

6. The Contract provided that all workmanship is guaranteed for five years.

7. Also on November 5, 2017, the Claimant and Respondent later agreed upon an Additional Work Order for the following work, at a cost of $1,300.00:

- Removal and replacement of three floor joists ($375.00)
- Repair of the cold water supply line ($175.00)
- Installation of a new shut-off valve and frost proof faucet ($275.00)
- Installation of a new drain assembly for the bathtub ($250.00)
- Dig out and repair the washer drainpipe ($225.00)

8. The total Contract price was $6,500.00.

9. The cost of the bathroom remodel was mostly covered by the Claimant's homeowner's insurance policy.

10. On November 5, 2017, the Claimant paid the Respondent $2,600.00.

11. On November 14, 2017, the Claimant emailed the Respondent to inform him that there were several issues with the work that had been performed up to that date, including:

- The threshold strip in the bathroom doorway needed to be replaced
- A border was needed to hide the wide uneven areas of grout next to the baseboard
- A light switch cover was needed
- The fixtures in the shower were too loose
- The toilet was loose
- Caulk and paint needed to be cleaned off the tile
- The bathroom floor was not level, causing the tile to be uneven
- The medicine cabinet needed to be mounted back on the wall
- The Claimant's floors and carpet were left very dirty and her furniture was left dusty

12. On November 21, 2017, the Claimant paid the Respondent $2,000.00.

13. On December 2, 2017, the Claimant paid the Respondent $1,100.00.

14. On or about December 21, 2017, the Claimant paid the Respondent $625.00.

15. On January 12, 2018, the Claimant emailed the Respondent to express her dissatisfaction with the work performed on her bathroom. She complained that the grout on the wall was cracking, the fixtures were of lesser quality than the original fixtures, the original gold light switch plate was replaced with a plastic plate, and the tile around the shower fixture was cut incorrectly. She also generally stated that there were other issues with the quality of the work and asked that the work be corrected as soon as possible.

16. On January 22, 2018, the Claimant and Respondent discussed the issues with the Respondent's work, including the following:

- Two kinds of trimming were used around the shower area

[illegible]

[illegible]

10. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

11. [illegible]

12. [illegible]

13. [illegible]

14. [illegible]

[illegible]

- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

[illegible]

15. [illegible]

16. [illegible]

[illegible]

17. [illegible]

18. [illegible]

- The painting of the walls was uneven
- Grout was cracking in the corner of the shower
- The toilet was not properly bolted down
- Paint on the bathroom light needed to be removed
- The bathtub was not level
- The bathroom door was dark beige instead of white
- The original gold light switch plate was replaced with a white plastic plate
- The bathtub and sink fixtures were tarnishing
- The bathroom threshold needed to be replaced
- The gold metal threshold strip needed to be fixed

17. On January 24, 2018, the Claimant emailed the Respondent to follow up on their January 22, 2018 conversation.

18. By February 27, 2018, the Respondent had not replied to the Claimant's January 24th email. That day, the Claimant emailed the Respondent to follow up on the January 24th email. She informed the Respondent that his failure to fix the issues set forth in her previous email led to further problems. Specifically, the Claimant explained that due to the unlevel bathtub, water began to stand in the back of the bathtub, resulting in mold. The Claimant asked that the Respondent reply to her email by March 6, 2018.

19. On February 27, 2018, the Respondent replied to the Claimant's email, stating that the issues she complained of were "cosmetic" and not his responsibility. However, he agreed to come out one more time to address the issues.

20. The following issues remained after the Respondent's final visit to the Claimant's home:

- Uneven floor tiles
- The threshold strip was not screwed down
- Missing moulding on floor at base of door frame
- The grout was cracking in the corner of the shower walls
- The new bathtub fixtures were tarnishing
- The bathtub spout was loose and not set flush against the wall
- Improper caulking between the base of the pedestal sink and floor tile
- The bathtub was unlevel

[illegible]

[illegible]

[illegible]

- The toilet was not properly bolted down
- The medicine cabinet was not mounted back on the wall. Instead, a mirror was hung in its place.

21. Despite the Claimant's requests for the Respondent to return to her home to fix the remaining issues after his final visit to her home in early 2018, the Respondent did not return to make the repairs.

22. The value of materials and services provided by the Respondent is $5,184.54.

23. The Claimant is not related to the Respondent, is not an officer or employee of the Respondent, and is not related to an officer or employee of the Respondent.

24. The Claimant has not filed any other claims related to the Respondent's work

DISCUSSION

APPLICABLE LAW

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor . . . ." *Id.* § 8-405(a); *see also* COMAR 09.08.03.03B(2). The governing statute defines "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

At a hearing on a claim, 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 something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[,]" when all of the

evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

THE EVIDENCE

The Contract and Amounts Paid by the Claimant

It is undisputed that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. According to the Contract and Additional Work Order, the total Contract price for the bathroom remodel was $6,500.00. CL Ex. 10; Resp. Ex. 3. The Contract also states that all workmanship is guaranteed for five years.

The parties agree that the Claimant made payments totaling $5,700.00, as reflected on the Bathroom Payment Sheet (CL Ex. 9). However, the Claimant also asserts that she made an additional payment of $625.00 to the Respondent, after receiving a check for that amount from her insurance company. The Respondent alleges that he never received the $625.00 payment.

The Respondent explained that the last $625.00 payment from the Claimant was intended to be payment for the two items on the Additional Work Order that were covered by the Claimant's insurance company—removal and replacement of three floor joists ($375.00) and installation of a new drain assembly for the bathtub ($250.00). The Claimant submitted as evidence a payment stub for the $625.00 check she received from the insurance company and a receipt showing that she deposited the money in her account on December 21, 2017. CL Ex. 9. The Claimant asserts that she made the deposit in her account and withdrew cash to make the $625.00 payment to the Respondent. Although the $625.00 payment is not reflected on the Bathroom Payment Sheet, I do not find the Respondent's testimony that he did not receive the $625.00 payment to be credible, as it contradicts the evidence he submitted. The $375.00 and

$250.00 amounts are circled on the Additional Work Order submitted into evidence by the Respondent, with a handwritten note that states "Circled amounts paid for." Resp. Ex. 3. Thus, I find that Claimant did make the additional $625.00 payment to the Respondent, paying a total $6,325.00 for the work performed on the bathroom remodel.

The Respondent's Workmanship

The Claimant submitted photographs of her major areas of concern with the Respondent's workmanship. CL Ex. 5-8. Although she could not recall exactly when she took the photographs, she testified that they were taken at various times in late-2017 and 2018, after the Respondent remodeled the bathroom. She further testified that the Respondent has not made any repairs to the areas depicted in the photographs since the photographs were taken, and the problems shown in the photographs still existed at the time of the hearing. The Claimant described each of the remaining issues with the work performed on her bathroom. She explained that the bathtub and sink fixtures tarnished soon after they were installed and the bathtub spout was not installed securely. CL Ex. 5. One photo of the spout shows that the spout is not mounted flush against the wall and the gap between the spout and the shower wall is large enough to stick a wooden back scratcher between the spout and the wall. The Claimant also said that the spout is loose and easily moves around, making it difficult to use the diverter lever to start the shower.

In another photo, the grout in one corner of the shower wall is clearly cracked. CL Ex. 6. Additionally, photographs of the floor show multiple problems with the tiling. Because the tile was cut incorrectly, gaps were left around the base of the pedestal sink and between the wall and the tile, and the wall and the bottom of the door frame. CL Ex. 7. The Respondent addressed these issues by taking inadequate corrective measures. At the base of the pedestal sink, the

Respondent applied caulk in gap between the base of the sink and the tile, and the caulk does not wrap around the entire base of the sink, resulting an ununiform appearance. The Respondent placed quarter round moulding at the bottom of the baseboard, in order to cover the gap between the wall and the tile, however, the gap was so large that the moulding did not completely cover it and an easily visible gap remains. Further, the Claimant testified that rather than cut the tile to meet the bottom of the door frame, the Respondent filled in a significant gap between the tile and the bottom of the frame with grout. The photo shows that the grout has worn away and the gap that was filled was substantial. In addition, the threshold strip at the bottom of the doorway is easily lifted because it is not screwed down. CL Ex. 8.

The Claimant further testified that the bathroom floor is not level and stated that if you placed a golf ball by the bathtub, it would roll down into the hallway. She explained that as a result of the bathtub not being leveled, water accumulates in the back of the bathtub and causes mold to grow there. The Claimant also provided a photo which shows that at least one floor tile is not laid flat and flush with the next tile. CL Ex. 8. Instead, one tile sits higher than the other and an excessive amount of grout has been applied to compensate for the error. The Claimant testified that the Respondent did return to her home at some point to address the unlevel floor, but the problems remained after he performed the additional work. Finally, the Claimant testified that the Respondent failed to mount her medicine cabinet back on the wall and did not bolt down the toilet properly, so the toilet shifts when she sits on it.

The Claimant also submitted copies of various emails she sent to the Respondent between November 14, 2017 and March 24, 2018 (CL Ex. 4), in which she repeatedly complained of issues with the quality of the work, including the issues shown in the photographs, as well as the Respondent's failure to properly protect her floors and furniture and clean up behind himself. In

these emails, the Claimant repeatedly asked that the Respondent return to her home to correct the issues. Although the Respondent stated in his responses to the emails that the Claimant kept finding new issues, I note that the issues she complained of were largely the same in each email.

The Respondent testified that he completed the work on the Claimant's bathroom remodel by December of 2017, and after that time, the Claimant constantly complained about "cosmetic" issues. According to the Respondent, he visited the Claimant's home to make additional repairs on several occasions after completing the work, including removing the uneven tiling, sanding down the wood beneath it, and then replacing the tile to make sure it was level. The Respondent was adamant that he had repaired all of the issues shown in the photographs submitted by the Claimant (except for the tarnished fixtures, which he stated he has no control over) and that the Claimant took the photographs prior to him making the repairs. He attributed the cracked grout to the house settling. He asserted that although the house is approximately fifty or sixty years old, it has begun to settle again because there are problems with the foundation as the result of a leaky pipe under the home.

Initially, the Respondent was adamant that he had completed all of the repairs before the end of 2017. However, when confronted with the emails he exchanged with the Claimant in January, February, and March of 2018, the Respondent eventually stated that he did not remember when he made the repairs and that he may have visited the home to make additional repairs as late as April of 2018. I do not find the Respondent's testimony credible that he made all of the repairs by the spring of 2018 and that the Claimant provided photographs of the bathroom that were taken before he made the repairs. The Respondent was inconsistent in his testimony regarding the repairs allegedly made on the home, in addition to his earlier contradictory testimony regarding payment of the $625.00. On the other hand, the Claimant was

consistent in her testimony and if she was unsure of an answer, she made clear that she was unsure, rather than guessing or simply providing an answer that would be advantageous to her case. Further, it was clear that the Claimant was genuinely distressed over the condition of her bathroom and the Respondent's assertion that he had previously completed the repairs. I also note that some of the Claimant's complaints were relatively minor and would be inexpensive to fix, such as the Respondent's failure to nail down the threshold strip. I find it extremely unlikely that a person would fabricate such minor issues.

Based on the credible evidence in the record, I find that the Respondent failed to make the repairs, as I have discussed and set forth in Finding of Fact 20.

ANALYSIS

Based on a preponderance of the credible evidence in the record, I find that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements during the remodeling of the Claimant's bathroom. The problems with the bathtub spout, cracked grout, floor tile, and threshold strip are apparent from simply viewing the Claimant's photographs. I note that, even if the cracked grout is in fact due to the home settling, the Contract provides that the workmanship is guaranteed for five years. In addition, I find the Claimant's testimony regarding the state of the toilet and medicine cabinet to be credible. I thus find that the Claimant is eligible for compensation from the Fund. However, I find that there is no evidence that the Respondent installed the incorrect fixtures or is otherwise responsible for the tarnishing of the fixtures. Therefore, the Claimant shall not be compensated for the tarnished fixtures.

The Claimant's Actual Loss

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.

In this case, the Respondent performed some work under the Contract, and the Claimant has not sought 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 is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

The Value of Materials and Services Provided by the Respondent

I find that had the Respondent completed all of the work in a workmanlike and adequate fashion, the value of the work would have been the total Contract price of $6,500.00. The Respondent generally charged the Claimant based upon the estimate provided by the Claimant's insurance company (Resp. Ex. 5). Therefore, in order to determine the value of the materials and services provided by the Respondent, I will use the estimate as a guide.[4] I find that the following amounts should be subtracted from the Contract price because the work must be redone[5]:

- $215.63 to detach and reset the bathtub faucet[6]
- $ 59.89 to detach and reset the quarter round[7]
- $251.92 to detach and reset the toilet
- $292.97 to detach and reset the pedestal sink

[4] The Fund agreed that the Respondent's work was unworkmanlike and although the Fund did not recommend a specific award to the Claimant, the Fund suggested that using the estimate to calculate the extra loss would be reasonable.
[5] The quarter round, toilet, and pedestal sink must be detached and reset in order for the floor to be properly leveled beneath the tile.
[6] The Respondent suggested that the loose faucet could be remedied by buying a $5.00 can of spray insulation foam and spraying it in the gap between the faucet and the wall. However, I find that the Claimant is entitled to have the work performed properly, rather than to have it essentially "patched up" in the manner the Respondent suggested.
[7] Based upon the cost for detaching and resetting the baseboard.

- $ 20.95 for removal of the flooring
- $ 85.39 for new flooring
- $121.76 for a cleaning technician
- $216.95 floor covering labor
- $ 50.00 to regrout the corner of the shower[8]

Hanging the medicine cabinet and nailing down the threshold strip were not specifically included in the estimate, therefore I unable to determine the labor cost for those tasks. However, presumably the cost of those tasks is minimal. The total amount to be subtracted from the Contract price is $1,315.46. Therefore, I find that the value of the materials and services provided by the Respondent is $5,184.84 ($6,500.00-$1,315.46).

Calculation of Actual Loss

The Claimant's actual loss is computed as follows:

$6,325.00	Paid to the Respondent
+ $5,184.84	Value of materials and services provided by the Respondent
$1,140.16	Actual Loss

The actual loss of $1,140.16 does not exceed the amount the Claimant paid to the Respondent and does not exceed the $20,000.00 statutory cap on recovery from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). There are no statutory impediments to the claim. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g). I thus find that the Claimant is eligible to receive compensation from the Fund in the amount of $1,140.16, which is the entire amount of her actual loss.

[8] The Respondent testified that it would cost approximately $50.00 to regrout the corner of the shower. There was no separate figure in the estimate for the cost of grouting the tile in the shower.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $1,140.16 as a result of the Respondent's acts or omissions and is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $1,140.16; 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;[9] and

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

December 28, 2020
Date Decision Issued

Jennifer A. Nappier
Administrative Law Judge

JAN/da
#189617

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

PROPOSED ORDER

WHEREFORE, this 15th day of March, 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

IN THE MATTER OF THE CLAIM OF	*	**MARYLAND HOME**
CAROLYN PROCTOR	*	**IMPROVEMENT COMMISSION**
AGAINST THE MARYLAND HOME	*	
IMPROVEMENT GUARANTY FUND	*	**MHIC CASE NO. 19(90)216**
FOR THE ACTS OR OMISSIONS OF	*	**OAH CASE NO. LABOR-HIC-**
DENNIS WASHINGTON T/A	*	**02-19-24758**
WASHINGTON BOYZ	*	
CONSTRUCTION, LLC		

* * * * * * *

FINAL ORDER

This matter was originally heard via video before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on September 29, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on December 28, 2020, concluding that the homeowner, Carolyn Proctor ("Claimant") suffered a compensable actual loss of $1,140.16 as a result of the acts or omissions of Dennis Washington t/a Washington Boyz Construction, LLC ("Contractor"). (ALJ Proposed Decision p. 14.) In a Proposed Order dated March 15, 2021, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On June 3, 2021, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. The Contractor did not attend the hearing. Assistant Attorney General Shara Hendler appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant's exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel's review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits admitted as

evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the renovation of a bathroom at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike in several respects and awarded the Claimant compensation for the removal and replacement of a bathtub faucet, quarter round trim, a toilet, and a pedestal sink, removal of the flooring, installation of new flooring, cleaning, labor for the floor work, and regrouting of a corner of the shower. (ALJ Proposed Decision pp. 13-14.) Because the Claimant did not present estimates or invoices from other contractors for the correction of the Contractor's deficient work, the ALJ relied on the claimant's insurance company's allowances and the Contractor's prices for the home improvements performed by the Contractor to determine the value of the Contractor's work and subtracted the allowances for the deficient work from the amount the Claimant paid to the contractor to calculate her actual loss.

On exception, the Claimant argued that the ALJ's recommended award was insufficient. Assistant Attorney General Hendler argued that the ALJ erred by failing to award compensation for the defective installation of the bathtub and by determining the cost of the defective bathroom floor work based upon the Claimant's insurance company's allowance for installing a vinyl floor instead of a tile floor.

The Commission finds that the ALJ erred by excluding the value of several components of the deficient work from the Claimant's award. Because the Contractor's unlevel, and therefore unworkmanlike, installation of the floor, in addition to the cost of removing and replacing the floor awarded by the ALJ, the Commission finds that the Claimant is also entitled to compensation of $75.92 for the removal and replacement of plywood sheathing, and $30.23 for the installation of plywood underlayment, both of which the Commission finds must also be redone to level the floor.

(OAH Hearing Respondent's Exhibit 5.) Although, as noted by Assistant Attorney General Hendler, the insurance company allowance was for the removal and replacement of vinyl flooring, the Contractor installed ceramic tile instead of vinyl for the same price, so the Commission finds that the ALJ properly subtracted the insurance company's allowance for the vinyl floor replacement from the contract price to determine the value of the work performed by the Contractor.

The Commission also finds that the value of the labor and materials provided by the Contractor must be reduced by the cost of the unlevel, and therefore unworkmanlike, installation of the bathtub and the cost of the work that must be redone to install the bathtub properly. Specifically, the Commission finds that the Claimant is entitled to compensation of $864.94 for the removal and replacement of the bathtub (OAH Hearing Respondent's Exhibit 3) and $250.00 for the installation of a drain assembly for the tub (OAH Hearing Respondent's Exhibit 3).

In accordance with the foregoing, the Commission calculates the value of the labor and materials provided by Contractor to the Claimant's actual loss as follows:

$6,500.00	Contract price
-$1,315.96	Cost of work the ALJ found must be redone
-$75.92	Plywood sheathing
-$30.23	Plywood underlayment
-$864.94	Bathtub
-$250.00	Bathtub drain assembly
$3,962.95	

Therefore, the Commission finds the Claimant suffered an actual loss of $2,362.05, which we calculate as follows:

$6,325.00	Amount paid to the Contractor
- $3,962.95	Value of labor and materials provided by the Contractor
$2,362.05	Actual loss

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 9th day of June 2021, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;

C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**

D. That the Claimant is awarded **$2,362.05** from the Maryland Home Improvement Guaranty Fund;

E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement Commission