IN THE MATTER OF THE	*	**BEFORE ROBERT F. BARRY,**
CLAIM OF LINDA BROWN,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT,	*	**OF THE MARYLAND OFFICE**
AGAINST THE HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS	*	
OR OMISSIONS OF	*	**OAH No.: LABOR-HIC-02-21-20062**
WESLEY WYATT,	*	**MHIC FILE No.: 21 (75) 111**
TRADING AS	*	
MILLION HEIR HOMES, LLC,	*	
RESPONDENT	*	

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

PROPOSED DECISION

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STATEMENT OF THE CASE

On January 24, 2021, Linda Brown (Claimant) filed a claim with the Maryland Home Improvement Commission (Commission) against the Home Improvement Guaranty Fund (Guaranty Fund) for reimbursement for an actual loss allegedly suffered as a result of a home improvement contract with Wesley Wyatt, trading as Million Heir Homes, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-405(a), 8-406 (2015).[1]

[1] Unless otherwise noted, all references to the Business Regulation Article cite the 2015 Replacement Volume.

On August 16, 2021, the Commission issued a Hearing Order; on August 30, 2021, the Commission transmitted the case to the Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. § 8-407(c)(2)(i).

On October 20, 2021, I held a hearing at the OAH in Hunt Valley, Maryland. *Id.* The Claimant represented herself. The Respondent, after receiving notice of the hearing, did not appear. Nicholas Sokolow, Assistant Attorney General, Department of Labor (Department), represented the Guaranty Fund.

The contested-case provisions of the Administrative Procedure Act; the Department's and the Commission'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 (2021); Code of Maryland Regulations (COMAR) 09.08.02.01B, COMAR 09.01.03, and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss arising from the Respondent's incomplete performance of a home improvement contract?

2. If so, what, if any, compensation may the Claimant recover from the Guaranty Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted twelve exhibits into evidence for the Claimant:

CLAIM. #1 - Timeline of Events

A. Remodeling Contract between the Claimant and the Respondent, June 14, 2019

B. Scope of Work

C. Results for Active Licensed Home Improvement, August 18, 2019

D. Certificate of Liability Insurance

CLAIM. #2 - (A)-(I) Photocopies of canceled checks – payments made by the Claimant to the Respondent: June 19, 2019; July 5, 2019; July 16, 2019; July 19, 2019; July 30, 2019 (two checks); and August 5, 2019; Receipt, August 22, 2019; Draw Schedule

CLAIM. #3 - (A)-(T) Twenty photographs of work performed by the Respondent

CLAIM. #4 - Estimate, Patrick Moving & Storage Co., Inc., August 5, 2019

CLAIM. #5 - (A)-(D) Four photographs of condition of apartment

(The Claimant did not submit an Exhibit #6)

CLAIM. #7 - Invoice, Eleven Slade Apartment Corp., November 14, 2019

CLAIM. #8 - (A)-(D) Four photographs of work performed by the Respondent

CLAIM. #9 - (A) Cregger Construction Proposal (date is illegible)

(B) Proposal, RMC Services, LLC, December 13, 2019

(C) Invoice, DAAQ Plumbing & Heating, September 22, 2019

(D) Invoice, DAAQ Plumbing & Heating, May 10, 2020

(E) Contract between the Claimant and Tutt Painting and Remodeling, March 14, 2020

(F) Contract between the Claimant and Tutt Painting and Remodeling; February 5, 2020

(G) Discoveries/Findings and Corrections, Tutt Painting and Remodeling, March 2020

(H) Photocopies of canceled checks – payments made by the Claimant to Tutt Painting and Remodeling: March 14, 2020, March 19, 2020, March 20, 2020, April 3, 2020, April 28, 2020, April 30, 2020, and May 7, 2020 (two checks); canceled check for tiles from The Home Depot, March 14, 2020

(I) (a)-(j) Ten photographs of work performed by Tutt Painting and Remodeling

CLAIM. #10 - Contract between the Claimant and John K. Eareckson Hardwood Flooring & Company, January 5, 2021

CLAIM. #11 - Proposal, Elegant Floor Service, December 31, 2020, with (A)-(D) four photographs of work performed by Elegant Floor Service; Mastercard Statement with payment to Elegant Floor Service, January 27, 2021

CLAIM. #12 - Photocopy of canceled check – payment made by the Claimant to Hector Franco: August 3, 2021; (A)-(H) eight photographs of work performed by Hector Franco

The Respondent did not appear for the hearing.

I admitted five exhibits into evidence for the Guaranty Fund:

FUND #1 - Notice of Hearing

FUND #2 - Hearing Order, August 16, 2021

FUND #3 - Home Improvement Claim, January 24, 2021

FUND #4 - Respondent's licensing history with the Commission, September 14, 2021

FUND #5 - Affidavit of Kevin Niebuhr, September 20, 2021

Testimony

The Claimant was the only witness.

FINDINGS OF FACT

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

1. The Commission licensed the Respondent as an individual home improvement contractor under registration number 01-93890 almost continuously from March 13, 2008, through January 7, 2021, when the Commission suspended his license due to his failure to respond to a complaint. The Respondent's license also expired on February 1, 2021.

2. In or about June 2019, the Claimant, who was then living in New York, purchased a condominium located on Slade Avenue in Baltimore County.

3. On June 14, 2019, the Claimant and the Respondent signed a home improvement contract whereby the Respondent agreed to perform work at the Claimant's home for

$62,500.00. The work was to be substantially complete by August 5, 2019, just before the Claimant's anticipated move-in date.

4. The scope of work included complete renovation of two bathrooms, one in a hallway and one in the master bedroom; complete renovation of the kitchen, including recessed lighting, countertops, cabinets, flooring, and a storage closet; renovation of a hall closet; and renovation of the master bedroom, including vinyl flooring, new closet doors, removal of a partition wall, and installation of lighting and a ceiling fan.

5. The scope of work included installation of recessed lighting in the living room and dining room, and painting throughout the condominium.

6. On June 19, 2019, the Claimant paid the Respondent a deposit of $10,000.00.

7. The Claimant made additional payments to the Respondent under the contract:

July 5, 2019 -	$12,000.00
July 16, 2019 -	$12,000.00
July 19, 2019 -	$12,000.00
July 30, 2019 -	$12,000.00
August 22, 2019 -	$2,500.00

8. The Claimant and the Respondent agreed that the Respondent would perform additional work to a fireplace and a second-floor bedroom for $800.00 and for a water line for the refrigerator for $700.00. The Claimant paid those amounts on July 30, 2019, and August 5, 2019, respectively.

9. The Claimant paid the Respondent a total of $64,000.00

10. When the Claimant arrived with her furniture to move into her home on August 5, 2019, the renovation work was incomplete. The Respondent had to return her furniture to storage at an additional cost of $2,000.00.[2] (CLAIM. #4).

11. The Respondent promised to complete the work by August 23, 2019.

12. Although the Claimant moved into her home on August 23, 2019, the work was still incomplete.

13. Between August 23, 2019, and late November 2019, the Respondent continued to perform work at the Claimant's condominium.

14. When the Respondent stopped working on the contract, the work remained incomplete and most of the work performed by the Respondent was inadequate and unworkmanlike.

15. The two bathrooms had to be significantly redone. The tile in both showers was uneven, with discolored grout. The laminated flooring in both bathrooms was peeling. (CLAIM. #9G).

16. The floor pan in the master bathroom shower was sloped incorrectly, which did not allow for drainage. The Respondent did not install the sink/vanity in the master bedroom according to the plumbing code: it was too close to the toilet and shower. (CLAIM. #9G).

17. A bench in the hall bathroom shower had sharp, dangerous edges, and the Respondent improperly installed the shower head extension. (CLAIM. #9G).

18. On March 14, 2020, the Claimant hired Tutt Painting and Remodeling to correct the deficiencies in the bathrooms for $8,800.00 ($1,300.00 for demolition and $7,500.00 for correction). (CLAIM. #9E, #9F).

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[2] This is not compensable from the Guaranty Fund.

19. The Claimant eventually paid Tutt Painting and Remodeling $11,171.95 to correct the deficiencies in the Respondent's work:

March 14, 2020 -	$279.00
March 14, 2020 -	$3,056.00
March 19, 2020 -	$484.00
March 20, 2020 -	$279.00
April 3, 2020 -	$355.00
April 28, 2020 -	$4,771.00
April 30, 2020 -	$547.95
May 7, 2020 -	$871.00
May 7, 2020 -	$529.00

(CLAIM. #9H).

20. On May 10, 2020, the Claimant paid DAQQ Plumbing & Heating $300.00 to repair the shower head extension in the hall bathroom. (CLAIM. #9D).

21. The Respondent improperly installed the water line for the ice maker in the refrigerator. (CLAIM. #9D).

22. On May 10, 2020, the Claimant paid DAQQ Plumbing & Heating $250.00 to properly install the water line for the ice maker in the refrigerator. (CLAIM. #9D).

23. On December 31, 2020, Elegant Floor Service provided the Claimant a proposal to sand, finish, and stain parquet floors in the living room, dining room, foyer, and bedroom hall for $1,656.90 (CLAIM. #11).

24. The Claimant paid Elegant Floor Service $1,756.90, with a $1,420.90 payment on January 7, 2021, and a $236.00 payment on January 11, 2021. (CLAIM. #11).

25. On January 5, 2021, John K. Eareckson Hardwood Flooring & Company provided the Claimant an estimate of $7,170.50: $2,040.00 to sand and finish parquet flooring in the living room, dining room, hall, and foyer; and $4,981.50 to supply and install hardwood flooring in the master bedroom. (The balance of $149.00 was for a delivery charge and a dump run.) (CLAIM. #11).

26. On August 3, 2021, the Claimant paid Hector Franco $900.00 to replace flooring in the television room of the Claimant's condominium. (CLAIM. #12).

27. On September 7, 2021, the OAH sent a Notice of Hearing to the Respondent by certified mail at his address of record with the Commission. (FUND #1).

28. On September 9, 2021, the Respondent signed the receipt of certified mail delivery.

DISCUSSION

The Respondent's Notice of Hearing

The procedures for notice and hearings for disciplinary actions against home-improvement contractors also apply to proceedings to recover compensation from the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-407(a). Section 8-312 of the Business Regulation Article requires the Commission to give the person against whom disciplinary action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a). The Commission is required to send a hearing notice to the person against whom disciplinary action is contemplated at least ten days before the hearing by certified mail to the business address on record with the Commission. *Id.* § 8-312(d). If, after due notice, the person against whom disciplinary action is contemplated does not appear, nevertheless the Commission (or by delegation the OAH) "may hear and determine the matter." *Id.* § 8-312(h).

In this case, the Respondent signed the receipt of certified mail delivery on September 9, 2021. I am satisfied that the Respondent received actual notice of this proceeding and simply declined to attend. Therefore, it is appropriate for me to hear and determine this claim against the Guaranty Fund even in the Respondent's absence.

Guaranty Fund Claim

A homeowner "may recover compensation from the Guaranty Fund for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a). An "'actual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Id.* § 8-401. The Commission may not award from the Guaranty Fund an amount for consequential damages, *id.* § 8-405(e)(3), which are losses that result indirectly from any unworkmanlike, inadequate, or incomplete home improvement, such as the cost of restoration of a flooded basement. The Commission may deny a claim if it finds that "the claimant unreasonably rejected good-faith efforts by the contractor to resolve the claim." *Id.* § 8-405(d). The Commission may not award from the Guaranty Fund more than $20,000.00 to one claimant for acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

A claimant has the burden of proof at a Guaranty Fund hearing. *Id.* § 8-407(e)(1). In the circumstances presented here, the Claimant has the burden to establish that: (1) the Respondent performed an incomplete, inadequate, or unworkmanlike home improvement; (2) the Claimant had an actual loss due to the costs of completing or repairing the home improvement; and (3) the Claimant did not unreasonably reject the Respondent's good-faith efforts to resolve the claim.[3] As explained below, I find that the Claimant only partially met her burden of proof as to her claim against the Guaranty Fund.

[3] There was no issue of good-faith efforts to resolve the claim generated by the evidence.

Incomplete Home Improvement

The Claimant asserted and the Guaranty Fund conceded that the Respondent failed to complete the home improvement and performed unworkmanlike home improvement. The Guaranty Fund also conceded that the Claimant was entitled to the statutory maximum compensation of $20,000.00, based on an actual loss of $21,759.35. The Guaranty Fund included all payments made by the Claimant to Tutt Painting and Remodeling, DAQQ Plumbing & Heating, Elegant Floor Service, and Hector Franco, and the proposal from John K. Eareckson Hardwood Flooring & Company. While I concur with the Claimant and the Guaranty Fund that the Respondent failed to complete the home improvement and performed unworkmanlike home improvement, I find that the Claimant failed to prove significant aspects of her claim against the Guaranty Fund, primarily due to her claiming reimbursement for items and services that were not part of her contract with the Respondent.

I concur with the Guaranty Fund that the Claimant is entitled to reimbursement for the costs of correcting the Respondent's work on both bathrooms. Tutt Painting and Remodeling detailed the deficiencies with the Respondent's work and the need to essentially redo both bathrooms. Another contractor from whom the Claimant received a proposal, Cregger Construction, reached the same conclusion. (CLAIM. #9A). The Claimant is entitled to compensation for the amounts she paid to Tutt Painting and Remodeling and DAQQ Plumbing & Heating to correct the deficiencies in the Respondent's work on the two bathrooms.

On this record, however, the payments the Claimant made to Elegant Floor Service and the proposal the Claimant received from John K. Eareckson Hardwood Flooring & Company are not compensable by the Guaranty Fund because those payments or prospective payments are not

for work contained in the Claimant's contract with the Respondent.[4] The Guaranty Fund accepted the Claimant's testimony that the scope of work in her contract with the Respondent included sanding and finishing existing hardwood floors (or installing new hardwood floors, it was confusing) in the living room, dining room, hall, foyer, and master bedroom. The scope of work, however, does not mention work on or replacement of any hardwood floors; nor does it include flooring in the living room, dining room, hallway, or foyer. The scope of work includes vinyl flooring in the master bedroom. It is also significant that none of the photographs the Claimant presented of work performed by the Respondent depict work on any living room, dining room, hallway, foyer, or bedroom floor. Additionally, the Claimant testified that Hector Franco repaired flooring in one of her bedrooms, but the memo on the Claimant's check to Mr. Franco indicates that he repaired flooring in a television room, not the master bedroom, so it is clear that Mr. Franco repaired flooring that was not in the original scope of work. The Claimant's evidence does not corroborate her testimony concerning the scope of work in her contract with the Respondent.

The Claimant also presented but did not testify about a proposal she received from RMC Services, LLC, on December 13, 2019. That proposal includes an estimate of $5,200.00-$7,000.00 to perform work "necessary to correct defects" in the Respondent's work on the Claimant's kitchen, and an estimate of $4,150.00 to paint the Claimant's condominium. (CLAIM. #9B). Tutt Painting and Remodeling provided the Claimant a list of "Discoveries/Findings and Corrections" concerning the kitchen that only listed replacement of vinyl flooring and reinstallation of a dishwasher. (CLAIM. #9E). Tutt Painting and Remodeling did not provide an estimate of the cost of those repairs. The evidence concerning repairs to the Claimant's kitchen and painting is not

[4] The Guaranty Fund also failed to note that the Claimant paid Elegant Floor Service for work on her living room floor and that same work was included as part of the proposal the Claimant received from John K. Eareckson Hardwood Flooring & Company. In any event, the Claimant would not be entitled to double reimbursement for the living room floor.

specific enough for me to find that the Claimant is entitled to compensation concerning the kitchen and painting. The deficiencies in the Respondent's work are either unspecified or the amount to repair any deficiencies is unspecified.

Actual loss due to the costs of restoration, repair, or replacement

COMAR 09.08.03.03B, which governs the calculation of awards from the Guaranty Fund, provides, in pertinent part, as follows:

> B. Measure of Awards from Guaranty Fund.
>
> . . .
>
> (2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.
>
> (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:
>
> . . .
>
> (c) 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.
>
> (4) The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

The Claimant paid the Respondent a total of total of $64,500.00 for his work. The Claimant paid Tutt Painting and Remodeling and DAQQ Plumbing & Heating a total of $11,721.95 to repair and complete portions of the home improvement contract.

I am recommending an award under COMAR 09.08.03.03B(3)(c). The calculation under B(3)(c) is as follows:

Amount Paid to the Respondent -	$64,500.00
Plus	
Amount paid by the Claimant to complete -	$11,721.95
Subtotal -	$76,221.95
Less	
Amount of contract -	$64,500.00
Claim	$11,721.95

The Claimant's award from the Guaranty Fund is $11,721.95.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude:

(1) the Claimant suffered an actual loss as a result of the Respondent's acts and omissions, specifically his incomplete performance of a home improvement. Md. Code Ann., Bus. Reg. § 8-401;

(2) the Claimant is entitled to recover an award of $11,721.95 from the Guaranty Fund. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Claimant be awarded $11,721.95 from the Home Improvement Guaranty Fund; and

ORDER that the Respondent remain 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 at least ten percent (10%) as set by the Commission, Md. Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a); and

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

Robert F. Barry

January 18, 2022
Date Decision Issued

Robert F. Barry
Administrative Law Judge

RFB/dlm
#195057

PROPOSED ORDER

WHEREFORE, this 27th day of April, 2022, 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.

Lauren Lake

Lauren Lake
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF LINDA BROWN AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF WESLEY WYATT AND MILLION HEIR HOMES, LLC	* * * * * *	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 21(75)111** **OAH CASE NO. LABOR-HIC-02-21-20062**

* * * * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on October 20, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on January 18, 2022, concluding that the homeowner, Linda Brown ("Claimant") suffered an actual loss as a result of the acts or omissions of Wesley Wyatt and Million Heir Homes, LLC (collectively, "Contractor"). *ALJ Proposed Decision* p. 13. In a Proposed Order dated January 18, 2022, the Maryland Home Improvement Commission ("MHIC" or "Commission") affirmed the Proposed Decision of the ALJ to grant an award of $11,721.95 from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On July 7, 2022, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant, who was ill and had trouble speaking, was assisted by her daughter. The Contractor participated without counsel. Assistant Attorney General John Hart 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. The Claimant sought to introduce new evidence, but she failed to demonstrate that the documents she wanted in evidence were not and could not have

been discovered before the October 20, 2021, OAH hearing.[1] 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 offered 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 remodeling of the Claimant's condominium. The ALJ found that the Contractor's performance under the contract was unworkmanlike, incomplete, and inadequate with respect to the renovation of two bathrooms and the installation of a water line for an ice maker. *ALJ's Proposed Decision* p. 6. The ALJ found that the Claimant's cost to correct and complete the contracted work was $11,721.95, which included $11,171.95 paid to Tutt Painting and Remodeling and $550 paid to DAQQ Plumbing and Heating. The ALJ found that the Claimant failed to prove that the Contractor's performance was unworkmanlike, incomplete, or inadequate with respect to work relating to any floors other than the bathroom floors, noting that the Claimant did not present photographs of the Contractor's work on the bedroom floors and that the Contract did not call for any work relating to hardwood floors. The ALJ also found that the Claimant failed to prove the cost to correct or complete the allegedly deficient bedroom flooring work because the corrective estimates included work that was beyond the scope of the original contract. The ALJ referenced the Claimant's contract with Elegant Floor Service for work in the hall closet, foyer, living room, dining room, and bedroom hall, an estimate from John K. Eareckson Hardwood Flooring for sanding and finishing the parquet floor in the living room, dining room, hall, and foyer, and installing "Manhattan adura max parisan oak . . . over the existing Luxury vinyl," and a check from the Claimant to Hector Franco for $900.00 for "TV Room Floor replacement."

[1] The Claimant submitted several documents with her request to present new evidence, all but two of which were presented to the ALJ and, therefore already part of the record. At the exceptions hearing, an April 22, 2020, invoice for a mirror was identified as new evidence, and the Claimant asserted that her failure to present it to the ALJ was an oversight. The other new document was a November 10, 2020, estimate from Traynor's Floors & Carpet.

On exception, the Claimant argued that the ALJ erred by denying her an award relating to the installation of flooring in the master and second bedrooms of her condominium, citing OAH Hearing Claimant's Exhibit 2H, 9B and 9G in support of her argument.

Claimant's Exhibit 2H is a check from the Claimant to the Contractor for "fireplace & 2nd bed floor." Exhibit 9B is an estimate from RMC Services, LLC, with a section entitled "Hardwood Floors," which included repairs to hardwood flooring and the repair and installation of LVT vinyl plank flooring in the bedroom and office for $4,600.00. Claimant's Exhibit 9G is a list of defects in the Claimant's condominium observed by Duwayne Tutt of Tutt Painting and Remodeling. Mr. Tutt did not identify any defects relating to the flooring in the bedrooms of the condominium.

The Commission agrees with the ALJ that the Claimant failed to prove that the Contractor's work was unworkmanlike, incomplete, or inadequate with respect to the bedroom flooring. The ALJ did not reference testimony regarding alleged deficiencies in the bedroom flooring work in the Proposed Decision (and the Claimant did not provide the Commission with the hearing transcript), the Claimant did not identify any evidence that supports her position, and the Commission did not discover any such evidence upon reviewing the record. The Commission also agrees with the ALJ that, even if the Claimant had demonstrated that the Contractor's work with respect to the bedroom floors was deficient, the Claimant failed to prove the cost to correct or complete the bedroom flooring work. Exhibits 2H and 9B do not break out the cost of the bedroom flooring work. Exhibit 9G does not relate to that work in any way. Although not referenced by the Claimant on exception, the Commission notes that OAH Claimant's Exhibit 10, the estimate from John K. Eareckson Hardwood Flooring, includes the installation of 629 square feet of Adura Max flooring, which the Commission recognized to be vinyl rather than wood flooring, which the ALJ erroneously found to be wood flooring. However, the estimate does not indicate where the

vinyl flooring was to be installed, so the Commission is unable to determine whether the work is consistent with the scope of the original contract.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 22nd day of September, **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 **AFFIRMED**;

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

D. That the Claimant is awarded $11,721.95 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.

Jean White
Chairperson –Panel
Maryland Home Improvement Commission