

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SHANITA HARRIS,</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 EFRAIN CONTRERAS,</p> <p>T/A G.E.A. CONSTRUCTION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE SUSAN H. ANDERSON,</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>* OAH No.: LABOR-HIC-02-23-05107</p> <p>* MHIC No.: 22 (75) 313</p>
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PROPOSED DECISION

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RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 12, 2022, Shanita Harris (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$28,250.00 for actual losses allegedly suffered as a result of a home improvement contract with Efrain Contreras, t/a G.E.A. Construction, LLC (Respondent).¹ On February 3, 2023, the MHIC issued a Hearing Order on

¹ Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

the Claim. On February 14, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 24, 2023, I held a hearing at the OAH in Hunt Valley, Maryland.² Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent did not appear.

After waiting approximately fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice.³ On March 30, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address on record with the OAH, by both certified and regular mail.⁴ The Notice stated that a hearing was scheduled for May 24, 2023, at 9:30 a.m. at the OAH in Hunt Valley, Maryland.⁵ The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service returned both Notices to the OAH as "attempted - not known/unable to forward." On May 11, 2023, Mr. London provided the OAH with an alternate address for the Respondent which the chief investigator for the MHIC had retrieved from the Maryland Motor Vehicle Administration database. On May 15, 2023, the OAH provided another Notice via both certified and regular mail to the new address. Neither were returned to the OAH as undeliverable or for any other reason. Neither the Respondent nor anyone authorized to represent him notified either the OAH or the Department of any change of mailing address

² Bus. Reg. §§ 8-407(a), 8-312.

³ COMAR 28.02.01.23A.

⁴ COMAR 28.02.01.05C(1).

⁵ COMAR 09.08.03.03A(2).

and/or phone number.⁶ Neither the Respondent nor anyone authorized to represent him made any request for postponement prior to the date of the hearing.⁷ I determined that the Respondent received proper notice as required by the regulation, and I proceeded to hear the captioned matter.⁸

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.⁹

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 offered by the Claimant:

- CL Ex. 1 - Claimant's MHIC Complaint Form, signed September 3, 2021
- CL Ex. 2 - Claim Form, signed September 3, 2021¹⁰
- CL Ex. 3 - Contract between the Claimant and the Respondent, February 23, 2021
- CL Ex. 4 - Emails between the Claimant and the Respondent, April 12, 2021; April 13, 2021; May 31, 2021; and August 12, 2021
- CL Ex. 5 - Job Invoice from W.R. Scott to the Claimant, April 20, 2021; Job Invoice from WRS Mechanical (WRS)¹¹ to the Claimant, April 15, 2021
- CL Ex. 6 - Email from Manny Gomes at HGH Mechanical to the Claimant, April 11, 2022

⁶ COMAR 28.02.01.03E. *See also* COMAR 09.08.01.11.

⁷ COMAR 28.02.01.16.

⁸ COMAR 28.02.01.05A, C. The Respondent is required notify the MHIC of any change of address. Bus. Reg. §8-309. In this case, the Respondent did not provide the MHIC with a new address.

⁹ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

¹⁰ This is a duplicate of GF Ex. 6, below.

¹¹ Although the invoices list two different names for the contractor, W.R. Scott and WRS Mechanical, I infer that both refer to the same company. I will refer to the company as WRS throughout this decision.

- CL Ex. 7 - Invoice from Aguina Brothers Contracting to the Claimant, August 28, 2021
- CL Ex. 8 - Estimate from Strong Wall Construction to the Claimant, April 20, 2022
- CL Ex. 9 - Invoice from Ben Franklin Plumbing & One Hour A/C and Heating to the Claimant, July 30, 2021
- CL Ex. 10 - Copies of checks from the Claimant to the Respondent, January 26, 2021; February 2, 2021; February 26, 2021; and February 27, 2021
- CL Ex. 11 - Photographs taken by the Claimant¹²:
 - a. Claimant's kitchen showing ceiling, before August 2021
 - b. Exposed post in kitchen wall, after August 2021
 - c. Ceiling beam, after August 2021
 - d. Crack in wall between kitchen and hallway, after August 2021
 - e. Exposed beam in kitchen ceiling, after August 2021
 - f. Exposed beam in kitchen ceiling, after August 2021
 - g. Exposed beam and post in kitchen, after August 2021
 - h. Exposed post, after August 2021
 - i. Hall bathroom, March 2021 or April 2021
 - j. Recessed lights in hallway, after August 2021

I admitted the following exhibits offered by the Fund:

- GF Ex. 1 - Notice of Hearing, March 30, 2023
- GF Ex. 2 - Affidavit of Tom Marr, May 23, 2023
- GF Ex. 3 - Notice of Hearing, May 15, 2023
- GF Ex. 4 - Certification of Custodian of Records or Other Qualified Individual, May 23, 2023
- GF Ex. 5 - Hearing Order, February 3, 2023
- GF Ex. 6 - Claim Form, received October 12, 2022
- GF Ex. 7 - Letter from the MHIC to the Respondent, November 21, 2022

The Respondent did not appear and did not offer any exhibits.

¹² The Claimant was unable to recall exactly when she took the photographs. She offered an estimate as to the dates they were taken, and those dates are reflected in the list with the photographs.

Testimony

The Claimant testified and did not present other witnesses.

The Fund presented no witnesses.

The Respondent did not appear and did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-117294 and 05-136510.¹³
2. In or around January 2021, the Claimant and the Respondent entered into a verbal contract to remodel the Claimant's kitchen; cut back most of the wall between the kitchen and living room, which required the installation of a support beam; install new flooring in the dining room; remodel the Claimant's hallway and master bathrooms; demolish the kitchen and dining room "popcorn" ceilings and install new drywall; and install new flooring in the basement. On or about February 23, 2021, the Claimant and the Respondent formalized this agreement with a signed contract (Contract).¹⁴
3. The original agreed-upon Contract price was \$28,250.00.¹⁵ The Respondent assured the Claimant that the work would be completed by February 28, 2021.
4. The Claimant agreed to provide the materials needed for the work, such as the appliances, cabinets, vanities, toilets, and light fixtures.

¹³ GF Ex. 4.

¹⁴ CL Ex. 3.

¹⁵ *Id.*

5. The Claimant made payments by check totaling \$28,250.00 to the Respondent as follows: \$9,100.00 on January 26, 2021; \$9,100.00 on February 2, 2021; \$8,000.00 on February 26, 2021; and \$2,050.00 on February 27, 2021.¹⁶

6. At some point during the renovation, the Respondent removed most of the wall between the kitchen and living room and installed a beam and posts to support the beam in its place.

7. The Respondent completed most of the work under the Contract in or around March 2021, on a date not clearly specified in the record. There was still some remaining work to be done under the Contract, as well as some completed work which needed to be corrected. The Claimant gave the Respondent a list of items that needed to be either completed or fixed.

8. As soon as the work in the hallway bathroom was completed, the Claimant discovered that there was a leak. She advised the Respondent of the issue and he assured her that he would get it fixed.

9. On three occasions on or before April 12, 2021, the Respondent advised the Claimant that a crew was scheduled to complete and correct the work under the Contract on a particular date; however, all three times, no one showed up.¹⁷

10. On April 17, 2021, the Respondent sent WRS out to fix the leak in the hallway bathroom.¹⁸ The worker attempted to repair the leak; however, this attempt was unsuccessful. The Respondent sent the WRS worker out again on April 22, 2021¹⁹ and again, despite his

¹⁶ CL Ex. 10.

¹⁷ CL Ex. 4.

¹⁸ CL Ex. 5.

¹⁹ *Id.*

efforts, the leak continued. The Claimant advised the Respondent that the leak had not been resolved; however, he took no further action to try and solve the issue.²⁰

11. The Claimant also noted cracking in the grout in the master bathroom around the shower and flooring tile and that grout was coming up from between the newly installed kitchen floor tiles. The Respondent sent the tiler out to fix it, but it soon started cracking again. The Respondent then sent someone else to repair the grout and that person used caulk instead of grout.

12. On a date not reflected in the record but before August 2021, the Claimant noted that the kitchen and living room ceiling adjacent to where the Respondent had installed the new beam was sagging.²¹

13. The Claimant was dissatisfied with the painting the Respondent did as he used flat paint instead of eggshell and used the wrong color in the kitchen. In addition, she noted that there was a crack in the wall between the kitchen and the hallway where the Respondent had installed one of the columns to support the new beam.²²

14. In July 2021, after the earlier unsuccessful attempts to fix the issues to the Claimant's satisfaction, the Respondent told the Claimant to have another company repaint and he would pay for it.

15. No one from the Respondent's company went to the property or attempted to make any additional repairs after June 22, 2021.

16. On a date unclear in the record but during July 2021, the Claimant accepted an estimate of \$1,200.00 from Aguina Brothers Contracting, LLC (Aguina Brothers) for the

²⁰ CL Ex. 4.

²¹ CL Ex. 11a.

²² CL Ex. 11d.

painting. However, when the painter started preparing the drywall for painting, he investigated the crack in the wall and discovered that it resulted from a post the Respondent had installed to support the new beam shifting out of its original position and pushing into the drywall. He further discovered that the beam had not been properly constructed or installed correctly.²³

17. On July 29, 2021, the Claimant got an updated estimate from Aguina Brothers to replace the beam and the posts in addition to painting the kitchen, foyer, hallway, and living room ceiling in the amount of \$5,600.00.²⁴

18. The Claimant sent the invoice to the Respondent, who then did not reply to the Claimant's calls or emails asking for payment so that the work could be completed, as well as asking about other work that still needed to be repaired (i.e., the leak in the hallway bathroom).²⁵

19. On July 30, 2021, the Claimant had to have the air conditioning's capacitor replaced at a cost of \$233.50.²⁶ The technician who came to diagnose the problem of the air conditioning blowing warm air, discovered that the Respondent had taken out a return vent when he removed the wall in the kitchen to create the open floor plan and then failed to install a new one. The insufficient return of air put stress on the system and caused the capacitor to have to work harder. In addition, the technician found that the Respondent had removed three vents from the kitchen/living room area that released air into the area but did not install new ones. As a result, there was not enough air circulating in the kitchen and living room area.

²³ CL Exs. 11c, 11e, 11f, and 11g.

²⁴ CL Ex. 7.

²⁵ CL Ex. 4.

²⁶ CL Ex. 9. Although not explicitly stated on the record, it appears the Claimant had a service plan with a local HVAC contractor who installed the new capacitor, so the only charge was for the cost of the capacitor itself.

20. On April 11, 2022, the Claimant got a quote of \$1,645.00 from HGH Mechanical, Inc. (HGH) to run two new ducts to the kitchen/dining room area and add a floor return to the living room floor.

21. The Claimant was concerned about the safety issues presented by the improperly constructed and installed beam as well as the structural implications. Accordingly, she opted to have an architect review the situation and provide a quote to replace the beams and posts, hang new drywall in the kitchen and living room ceilings as needed to correct the sagging, and prime and then apply two coats of paint to the kitchen and living room. The quote she received from Strong Wall Construction (Strong Wall) on April 20, 2022 was for \$19,922.92 to perform this work.

22. Other than replacing the capacitor, the Claimant has not been able to afford to have any work done to make the necessary repairs to the Respondent's work or to fully complete the work under the Contract.

DISCUSSION

BURDEN OF PROOF AND STATUTORY FRAMEWORK

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.²⁷ 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.²⁸

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor."²⁹ "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete

²⁷ Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3).

²⁸ *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

²⁹ Bus. Reg. § 8-405(a) (Supp. 2022); *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.").

home improvement."³⁰ For the following reasons, I find that the Claimant has proven eligibility

for compensation.

STATUTORY PRE-REQUISITES

By statute, certain claimants are excluded from recovering from the Fund altogether. In

this case, the Claim was timely filed,³¹ the Claimant did not recover the alleged losses from any other source,³² the Claimant resides in the home that is the subject of the claim,³³ the parties did not enter into a valid agreement to submit their disputes to arbitration,³⁴ and the Claimant is not a

relative, employee, officer, or partner of the Respondent, and is not related to any employee,

officer, or partner of the Respondent.³⁵

ANALYSIS

The Respondent Performed an Unworkmanlike, Inadequate, and Incomplete Home

Improvement

The Claimant asserted that while she was satisfied with the Respondent's work installing

flooring in the basement, the rest of the work he performed under the Contract was

unworkmanlike and not done to her satisfaction. In the kitchen, the Contract involved removal of all cabinets, appliances, flooring, the bulkhead above the cabinets; cutting back a wall to

create an open space among the kitchen, living room, and dining room; installing new cabinets,

appliances, flooring; and then painting the area. In the dining room, the Contract included the

installation of new flooring. For the two bathrooms, the Contract called for the Respondent to

essentially gut the bathrooms and then install new floors, tiling, a new tub and shower, new

³⁰ Bus. Reg. § 8-401.

³¹ *Id.* § 8-405(g).

³² *Id.* § 8-408(b)(1).

³³ *Id.* § 8-405(f)(2).

³⁴ *Id.* §§ 8-405(c), 8-408(b)(3).

³⁵ *Id.* § 8-405(f)(1).

vanities, new toilets, new mirrors, new light fixtures and then prime and paint both rooms. The Contract also included the demolition of the kitchen and dining room “popcorn” ceilings and installing new drywall in its place.³⁶

In support of her case, the Claimant presented photographs of the kitchen, her hallway, and the hallway bathroom. These photographs, most of which were taken after the Respondent had stopped working on the project, plainly demonstrate some of the problems with the Respondent’s work, specifically with regard to the support beam he installed in the kitchen, and the posts he installed to hold the beam up. The photographs show that the support beam was apparently created out of approximately five boards somewhat haphazardly nailed together.³⁷ Two of the photographs show that at least in one spot, one of the boards is too short and stops at least a few feet from the kitchen wall.³⁸

A photograph of one of the posts between the kitchen and the hallway shows that the post shifted, causing a crack in the drywall.³⁹ The Claimant explained that she was unaware of the problems with the beam and the post until she had a painter come to give an estimate to paint the kitchen in July 2021. The Claimant testified that she had been dissatisfied with the way the Respondent painted the kitchen, as, among other things, he used flat paint instead of eggshell, and so the Respondent told her to hire a painter, give him the estimate, and he would pay for it. When the painter came out, he took off the bottom of the drywall sheet where the crack was so he could determine the cause of the crack. The Claimant indicated that when he did that, he saw that the post had shifted outward, which caused the crack. The painter then uncovered parts of the support beam and saw that it appeared to be unsafe due to its construction. The photographs

³⁶ CL Ex. 3.

³⁷ CL Exs. 11e., 11f., 11g.

³⁸ CL Ex. 11f.

³⁹ CL Ex. 11d.

clearly support the Claimant's testimony on this point and plainly demonstrate that the Respondent performed an unworkmanlike and inadequate home improvement in this area; no expert opinion is needed to see the problems with the support beams and posts the Respondent installed when he removed walls as part of the renovation.

The Claimant presented photographs of the recessed lights in the hallway that do not appear to be properly aligned.⁴⁰ She also presented photographs showing the leak in the hallway bathroom, as well as documents showing that the Respondent unsuccessfully tried to fix the leak twice.⁴¹ The Claimant offered compelling testimony that there was no leak in the hallway bathroom before the Respondent started work but that it leaked as soon as the work was completed; the reasonable conclusion is that his unworkmanlike and inadequate work in this area is the cause of the leak. As with the support beams and posts, no expert testimony is needed to show that the Respondent's work in these areas was unworkmanlike; the pictures speak for themselves.

In addition, the Claimant presented evidence showing that the Respondent failed to properly complete the work relating to adjusting the HVAC vents where he removed the wall.⁴² On July 31, 2021, the Claimant had to have the capacitor on the air conditioning unit replaced; the technician who completed the repair indicated that since the Respondent did not reinstall the return vent to the kitchen and living room space, there was a decrease in air return, which added stress to the Claimant's HVAC system.⁴³ The technician also pointed out that the Respondent had removed three vents from the kitchen/living room area but did not reinstall them, which resulted in insufficient air circulation in those areas.

⁴⁰ CL Ex. 11j.

⁴¹ CL Exs. 11i, 5.

⁴² CL Ex. 9.

⁴³ CL Ex. 9.

The Claimant also noted that the grout for the floor and shower tile in the master bathroom and the kitchen floor tile cracked within a few months of the Respondent completing the work; she also noted that the caulk the Respondent applied loosened. Although the Respondent sent someone to fix the grout in the master bathroom, it cracked again after only a short period of time. The Respondent also addressed the grout cracking in the kitchen, first by having the tiler attempt to fix it, and then by sending someone else to try to fix it. However, the problem with the cracking grout continued.

The Claimant did not, however, present any testimony as to the problems with the dining room floor, photographs of her dining room floor, or an estimate showing what needed to be repaired. Without such evidence, I am unable to conclude that the Respondent performed an unworkmanlike or inadequate home improvement with regard to the dining room floor installation.

The unrefuted evidence in this case shows that the Respondent performed an unworkmanlike and inadequate home improvement with regard to the installation of the kitchen and hallway support beam and posts, the work in the hallway bathroom, the venting of the HVAC system in the kitchen and living room, the installation of the recessed lighting in the hallway, and the grouting of the tile in the master bathroom and in the kitchen. Accordingly, I find the Claimant is eligible for compensation from the Fund.

The Amount of the 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.⁴⁴

The 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 retained other contractors to complete or remedy that work. Therefore, the Claimant's situation falls within COMAR 09.08.03.03B(3)(c) and the following formula appropriately measures her actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.⁴⁵

The Claimant is seeking \$28,250.00 in compensation, the entire amount she paid under the Contract. In support of her claim, she presented estimates for various aspects of work under the Contract. She presented an estimate from Strong Wall, an MHIC licensed contractor, showing what it would cost to repair the beams and posts in the kitchen and living room, seal, paint and prime the walls and ceiling in the kitchen and living room, and obtain the necessary permits. This estimate is \$19,922.92.⁴⁶ She also presented a competing estimate from Aguina Brothers to remove and replace the beam and posts in the kitchen and paint the kitchen, foyer, hallway, and living room ceiling in the amount of \$5,600.00. In addition, she presented an estimate from HGH Mechanical for running two new HVAC supply lines to the kitchen/dining

⁴⁴ Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).

⁴⁵ COMAR 09.08.03.03B(3)(c).

⁴⁶ CL Ex. 8.

room area and adding a floor return to the living room floor in the amount of \$1,645.00, and a bill for \$233.50 that she paid to have the capacitor on the air conditioning replaced.

The Fund asserted and I agree that I cannot use the estimate from HGH in calculating the Claimant's actual loss because there is no evidence that HGH is a MHIC-licensed contractor. The Commission has a long-standing policy against paying compensation to a claimant who used an unlicensed home improvement contractor to correct or complete a home improvement contract.⁴⁷ The estimate from Aguina Brothers suffers from the same problem. Accordingly, while the Respondent clearly performed an unworkmanlike and inadequate home improvement when he removed the return vent and three other vents in the kitchen/living room area and did not reinstall them somewhere else, and when he improperly installed the beam and supporting posts in the kitchen/living room area, I am unable to consider the estimates from either Aguina Brothers or HGH when calculating the Claimant's actual loss in this case.

The Fund also argued, and I also agree, that the failure of the A/C's capacitor cannot be directly linked to the Respondent's work, and even if it could, it would not be compensable as it would be a consequential damage. First, there was no evidence as to how old the capacitor was, the condition it was in when the Claimant purchased the house, or anything else to show that it had not reached the expected end of its natural life and simply needed to be replaced due to age.

⁴⁷ See Guaranty Fund FAQs – Home Improvement Commission, Question #9 (<https://www.dlrr.state.md.us/license/mhic/mhicfaqgf.shtml#costs>) (last viewed July 17, 2023). Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage homeowners from using unlicensed home-improvement contractors, the courts, as a matter of public policy, will not enforce contracts made by or with unlicensed contractors. *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118 (1997) (homeowner can repudiate a contract made with a consultant if the consultant is performing a home-improvement without a license); *Baltimore Street Builders v. Stewart*, 186 Md. App. 684 (2009) (an unlicensed contractor cannot enforce a home-improvement contract with a homeowner); *Harry Berenter, Inc. v. Berman*, 258 Md. 290 (1970) (unlicensed home-improvement contractor cannot enforce a mechanic's lien against a homeowner). The statutory provisions governing the administration of the Fund, which limit payments from the Fund only to those claims that establish that a homeowner has suffered actual loss due to the act or omission of a licensed contractor, also indicate that the Fund's remedial purpose only extends to those homeowners who deal with licensed contractors. See *Brzowski v. Maryland Home Improvement Commission*, 114 Md. App. 615 (1997).

Second, even if the capacitor's demise was due to the Respondent's failure to reinstall return vents, it would constitute a consequential damage, which is not compensable by the Fund. Though neither the statute nor the regulation defines the term consequential, it commonly refers to something "indirect."⁴⁸ This is in line with the Black's Law Dictionary definition which provides that consequential damages are "[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act."⁴⁹ Assuming that the capacitor would not have needed to be replaced but for the Respondent's failure to reinstall a return vent, the damage to it is a classic example of a consequential damage: if the Respondent's failure to reinstall the return vent did cause the capacitor to fail, the cost the Claimant incurred to replace it was not paid to repair inadequate or unworkmanlike work of the Respondent, instead, this cost would have been to repair damage *caused* by that poor work.

The Claimant, however, presented a detailed estimate from Strong Wall, a contractor which is licensed by the MHIC, showing the costs to replace the beam, the posts, repair the sagging ceiling in the kitchen and living room that resulted from the improperly installed beam, and paint the walls and ceilings in the kitchen and living room. The Fund argued that there were items on the estimate that appeared to be outside the scope of the Claimant's Contract with the Respondent. Counsel for the Fund specifically took issue with items 4 (floor protection for the kitchen), 5 (protection for the cabinets in the kitchen), 14 (blown in insulation for the kitchen ceiling), 18 (a content manipulation charge in the living room), 19 (floor protection for the living room), and 20 (blown in insulation for the living room ceiling). He argued that the costs for floor protection and cabinet protection (4, 5, 19) were not included in the Contract, there was no mention in the Contract of installing insulation in the ceilings before installing the new drywall

⁴⁸ *Merriam-Webster's Collegiate Dictionary* 365 (Eleventh Ed. 2003).

⁴⁹ *Black's Law Dictionary* 195 (Fourth Pocket Ed. 1996).

(14, 20), and questioned what “content manipulation” meant (18). Accordingly, he contended that these were not costs that were part of the Claimant’s actual loss in this case and could not be factored into her recovery. I disagree.

First, there was no need for floor and cabinet protection in the Contract because the Respondent was going to demolish the kitchen before installing new flooring and cabinetry in the kitchen and new flooring in the living room, presumably after the beam and posts had been installed. Second, while the Respondent’s Contract did not mention blowing in insulation before drywalling the ceilings after demolishing them, that is not dispositive. The Contract the Respondent drafted was not as detailed as the Strong Wall estimate; the Contract called for demolishing the ceilings in the kitchen and dining room and installing new drywall. The Claimant offered credible testimony that Strong Wall included the cost of insulation because they anticipated that when they took down the kitchen/living room ceiling to repair it, the existing insulation would fall out and would need to be replaced. In addition, the estimate from Strong Wall clearly states that it is an estimate “of the cost to repair said damages.”⁵⁰ I find it reasonable to include the cost of insulation for this repair and replacement work.

Finally, the “content manipulation” charge refers to the costs to move the contents out of a room so that repairs can be made and then moving it back into place once the repairs are complete.⁵¹ The evidence is clear that the beam between the kitchen and the living room needs to be replaced in order to make the home structurally sound. To do that, and to make the repairs to the ceiling where it was dropping due to the improper installation of the beam, it is reasonable

⁵⁰ CL Ex. 8.

⁵¹ See SIAA The Agent Alliance (“In general, content manipulation charge is an estimate of the costs related to moving contents out or around to do a construction job, and the cost to move the contents back to their original place after the repairs are complete.”) (<https://www.propertycasualty360.com/2018/08/15/how-to-claim-the-cost-of-contents-manipulation/?slreturn=20230617091441>) (last viewed July 17, 2023).

that the contents of that room would need to be moved so that the work could be done.

Moreover, the Respondent would have also had to move the furniture in order to take out the wall and install the new beam and posts. Therefore, I find that "content manipulation," whether expressly outlined in the Contract or not, was necessarily included in the Contract.

For those reasons, I accept the \$19,922.92 estimate from Strong Wall as the reasonable cost to repair and complete the items under the Contract that arose due to the unworkmanlike and inadequate home improvement performed by the Respondent.

The Claimant is also seeking compensation to fix the leak in the hallway bathroom, the grout in the master bathroom and on the kitchen floor tile, and the recessed lighting alignment for the hallway lights. Moreover, the Claimant argued that since she obtained these estimates, prices have risen and it is likely that the estimate prices she presented are no longer valid. The Claimant asked that I take that into consideration when calculating her actual losses.

I am unable to take any of that into consideration. I am sympathetic to the Claimant. Her photographs speak to the extent of the poor workmanship and inadequacy of the home improvements the Respondent completed at her home. Moreover, her testimony established that he eventually stopped responding to her messages and then finally simply "ghosted" her in August 2021, leaving her with an improperly installed beam and supporting posts in her kitchen/living room area, a leak in the hallway bathroom, misaligned recessed lighting, and cracking grout in the kitchen and master bathroom. The Claimant presented heartfelt testimony expressing her disappointment that she and her husband have not been able to enjoy their home because of these unresolved problems. However, the Claimant presented no estimates or invoices to demonstrate the cost to repair the leak in the hallway bathroom, the grout in the master bathroom and on the kitchen floor, or the recessed lighting in the hallway. She did not

present updated estimates to show the current cost to replace the beam and posts or to do the painting. The law is very clear that it is the Claimant's burden to demonstrate with specificity her actual losses.⁵² I am not allowed to speculate what those losses may be, either by estimating the cost to make repairs or estimating how much the cost of work may have increased over time.

Using the figures from the Strong Wall estimate that the Claimant supplied, the regulatory formula is applied in this manner:

Total Payments:	\$ 28,250.00 ⁵³
Estimate to Repair:	+\$ <u>19,922.92</u>
Total:	\$ 48,172.92
Less Total Contract Price: \$	- \$ <u>28,250.00</u>
Actual Loss:	\$ 19,922.92

Accordingly, I find that the Claimant has demonstrated that she suffered \$19,922.92 in actual losses as a result of the poor workmanship and inadequate home improvements performed by the Respondent, and she is entitled to recover that amount from the Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$19,922.92 as a result of the Respondent's acts or omissions.⁵⁴ I further conclude that the Claimant is entitled to recover \$19,922.92 from the Fund.⁵⁵

⁵² Bus. Reg. § 8-407(e)(1). *See also* Bus. Reg. § 8-401 (“[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”).

⁵³ \$9,100.00 + \$9,100.00 + \$8,000.00 + \$2,050.00 = \$28,250.00.

⁵⁴ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c).

⁵⁵ MD. Code Ann., Bus. Reg §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$19,922.92; 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,⁵⁶ and

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

July 27, 2023
Date Decision Issued

Susan H. Anderson

Susan H. Anderson
Administrative Law Judge

SHA/ds
#205305

⁵⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 14th day of September, 2023, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***