

**IN THE MATTER OF THE CLAIM
OF LAUREN COX,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF BIBI BROWN,
T/A EXQUISITE INTERIORS, LLC,
RESPONDENT**

*** BEFORE KATHLEEN A. CHAPMAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
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* OAH No.: LABOR-HIC-02-19-23274
* MHIC No.: 19 (90) 193**

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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On October 9, 2018, Lauren Cox (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,551.00 in actual losses allegedly suffered as a result of a home improvement contract with Bibi Brown, trading as Exquisite Interiors, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On July 8, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on October 15, 2019 at The County Office Building located at 1400 McCormick Drive, Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Shara Handler, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented herself. The Respondent represented herself.

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. 2019); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 – Hearing Order, dated June 27, 2019
- GF Ex. 2 – Notice of Hearing, dated August 27, 2019
- GF Ex. 3 – Home Improvement Claim Form, dated October 3, 2018 (date-stamped received on October 9, 2018); Letter from Joseph Tunney, Chairman, MHIC, to the Respondent, dated October 16, 2018
- GF Ex. 4 – Licensing History, printout date: September 19, 2019

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

- Clmt. Ex. 1 – Safeco Insurance estimated cost of covered repairs, dated June 7, 2018
- Clmt. Ex. 2 – Letter from the Claimant to the Respondent, dated July 31, 2018

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Clmt. Ex. 3 – Email from the Claimant to Frank Fanning, OPS Group, LLC, dated October 15, 2019

Clmt. Ex. 4 – Pepco Electric Bill for the period from March 7, 2019 to April 4, 2019

Clmt. Ex. 5 – Endorsed check (in the amount of \$2,882.69) from Safeco Insurance to Exquisite Interiors and the Claimant, dated June 27, 2018; Letter from Rashae Olds, Safeco Claims, to the Claimant, dated October 9, 2018

Clmt. Ex. 6 – Authorization for Services, dated June 1, 2018

Clmt. Ex. 7 – Check No. 175 (in the amount of \$12,551.00), dated July 9, 2018

Clmt. Ex. 8 – Letter from the Claimant to the Respondent, dated July 23, 2018

Clmt. Ex. 9 – Email from the Claimant to the Respondent, dated August 9, 2018

Clmt. Ex. 10 – Not admitted³

Clmt. Ex. 11 – Empire Today proposal, dated September 24, 2018

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

Contr. Ex. 1A-Q – A series of color photocopies, undated

Contr. Ex. 2 – Safeco Water Mitigation Unit estimate of repair, dated June 26, 2018

Testimony

The Claimant testified on her own behalf and did not present the testimony of any other witnesses. The Respondent testified and presented the testimony of William Fairfax, Project Manager. The Fund presented no 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 number 116267.

³ Claimant Exhibit 10 consisted of the Perspectives Premier Contractors Project Proposal, dated September 26, 2018. I did not admit the document into evidence on the basis of relevance, because the contractor is not licensed by the MHIC.

2. On May 23, 2018, the Claimant sustained a water loss in the basement of her home caused by an over-worked sump pump. The areas affected included a family room, hallway, two bedrooms, walk-in closet, laundry room, and personal property.

3. On May 29, 2018, the Claimant met with a Safeco Insurance adjuster to discuss the scope of repairs.

4. After a walk-through of the affected areas, the insurance adjuster issued the Claimant a check in the amount of \$12,541.10 for repairs. The breakdown of work to be performed, included:

| | Family Room | Hallway | Middle bedroom | Larger bedroom with walk-in closet | Laundry room |
|-----------------------------------|-------------------|-------------------|-------------------|------------------------------------|-------------------|
| R/R ⁴ plank flooring | \$2,448.04 | \$ 230.55 | \$ 640.85 | \$1,329.49 | \$ 488.66 |
| R/R drywall | \$ 855.54 | \$ 313.98 | \$ 411.41 | \$ 707.53 | \$ 464.43 |
| Seal/prime/ Paint walls (2 coats) | \$ 731.71 | \$ 268.56 | \$ 351.86 | \$ 614.87 | \$ 397.17 |
| R/R baseboard | \$ 364.10 | \$ 133.62 | \$ 175.08 | \$ 301.10 | \$ 197.64 |
| R/R base shoe | \$ 119.44 | \$ 43.84 | \$ 57.43 | \$ 98.77 | \$ 64.83 |
| Move contents | \$ 76.73 | \$ 76.73 | \$ 76.73 | \$ 76.73 | \$ 76.73 |
| Paint baseboard | \$ 107.83 | \$ 39.57 | \$ 51.85 | \$ 89.17 | \$ 58.53 |
| TOTAL | \$4,703.39 | \$1,106.85 | \$1,765.21 | \$3,217.66 | \$1,747.99 |

5. On or about June 1, 2018, the Claimant and the Respondent entered into an oral contract to proceed with mitigation and restoration of the Claimant's home per the Safeco Insurance (Safeco) repair estimate (Contract).

⁴ R/R means remove and replace.

6. Under a separate scope of work, Safeco also provided an estimate for water mitigation services to be performed at the Claimant's home. It was determined that the cost to dehumidify, extract water, and clean floors would be \$2,882.69.

7. The original agreed-upon Contract price was \$12,551.00⁵ (scope of work) plus \$2,882.69 (water mitigation) for a total of \$15,433.69.

8. Any change orders were done orally.

9. On June 27, 2018, Safeco paid in a joint check to the Claimant and Respondent \$2,882.69⁶ for the water mitigation and, on July 9, 2018, the Claimant paid the Respondent \$12,551.00 for the Contract.

10. The Claimant moved out of the house to a hotel for the work to be performed.

11. On a date not specified by the parties, the water mitigation took place first followed by work under the Contract, which began on July 10, 2018.⁷

12. William Fairfax, an employee for the Respondent, served as the project manager and primary contact for the Claimant.

13. At the outset, Mr. Fairfax told the Claimant that instead of removing and replacing the drywall, as per the scope of work, he would treat the walls with Concrobium Mold Control Spray. The spray failed to eliminate the existing mold or prevent mold re-growth.

14. Subcontractors hired by the Respondent installed Core Luxe plank flooring directly onto the concrete floor. No underlayment was installed. After installation, there were large gaps between the concrete and the flooring. The floor made noises when walked on. There were also cracks and chips in the flooring throughout. In other areas, the floor did not reach the

⁵ Neither party explained why the cost for the scope of work was more than \$12,541.10.

⁶ Safeco mailed the check directly to the Respondent who endorsed and deposited the check.

⁷ There is no dispute between the parties that the Respondent provided the services outlined by the water mitigation scope of work. This decision is focused solely on the scope of work pursuant to the Contract.

baseboard and could not be covered by trim. The flooring was also cut and pieced together incorrectly to accommodate beam supports.

15. Subcontractors installed the baseboards, but there were gaps between the wall and the boards. The subcontractors also damaged the drywall and/or paint in several rooms when the old baseboard was ripped off the wall. The base shoe was never installed.

16. The Respondent painted only one coat of paint and, in some areas, the paint job was sloppy.

17. The laundry room was completely untouched.

18. On July 15, 2018, the Claimant returned to the home to find that the flooring was not level in the middle of the family room. The Claimant attempted to reach Mr. Fairfax to express her concern regarding the quality of work, but she did not receive a response. This prompted her to place a stop work notice on her front door.

19. On or about July 17, 2018, Mr. Fairfax saw the stop work order.

20. On July 23, 2018, the Claimant met with the Respondent and Mr. Fairfax to discuss her concerns. The Respondent disagreed with the Claimant regarding her observations about workmanship.

21. On the same day (July 23, 2019), the Claimant wrote an email to Mr. Fairfax asking that he provide receipts for the flooring, baseboards, and paint supplies already purchased, along with an estimate for the labor already performed. The Claimant told Mr. Fairfax that she was "highly unsatisfied" with the work performed thus far and wanted a refund for any remaining monies to hire another contractor to fix and complete the work. Clmt. Ex. 8.

22. A second stop work order was issued on July 26, 2018.⁸

⁸ The record is unclear as to what, if any, work was performed between the first and second stop work notices.

23. In a letter dated July 31, 2018, a text message dated August 8, 2018, and an email dated August 9, 2018, the Claimant again asked the Respondent to return any remaining monies for work not performed or never started. The Claimant included pictures in her letter to underscore her concerns about the unworkmanlike quality of the work performed.

24. The Respondent did not return to the Claimant's home to make repairs or correct any deficiencies.

25. The Respondent refused to refund any monies to the Claimant on the premise that the subcontractors needed to be paid for the work already performed and for materials purchased.

26. On September 24, 2018, the Claimant obtained a repair estimate from Empire Today for the removal and replacement of the plank flooring, to include underlayment, in the amount of \$6,544.00.⁹

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed

⁹ The Claimant also obtained a proposal from another company for the repair work, but the company was not licensed and their quote was not considered in this decision.

contractor”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time of the Contract with the Claimant. The evidence shows that the terms of the agreement to perform the home improvement was oral, as opposed to in writing.¹⁰ Despite the lack of a written contract, the parties are in agreement that the Safeco estimate of repair provided the scope of work to be performed by the Respondent. Specifically, the estimate identified the square footage in each of the affected rooms located in the basement, as well as the unit price, tax, and replacement value for repair. *See* Findings of Fact No. 4. Safeco estimated the cost of repairs to be \$12,541.10. Clmt. Ex. 1.

The credible evidence shows that the Respondent accepted a check from the Claimant in the amount of \$12,551.00 to perform the work as described by the Safeco estimate. Clmt. Ex. 7; *see also* Findings of Fact No. 4. And while I found credible evidence of an oral contract between the parties, the record was less than copasetic for subsequent oral modifications to the Contract. Here, Mr. Fairfax insisted that he and the Claimant made several modifications to the scope of work at or around the time of payment, but he did not provide any documentation to corroborate his testimony. Instead, the record shows that the Claimant sent either Mr. Fairfax or the Respondent letters, emails, and texts describing what she believed to be the scope of work to be performed after the project started. Clmt. Exs. 2, 8, and 9. Neither Mr. Fairfax nor the

¹⁰ I disagree with the Respondent’s characterization that the Authorization for Services, signed by the Claimant on June 1, 2018, amounted to a Contract. This form simply authorizes the Respondent to “proceed with mitigation and restoration” at the Claimant’s property in her absence. Clmt. Ex. 6. The form did not reference the Safeco scope of work or the cost of repairs. In any event, I still found an agreement between the parties based on their respective testimony.

Respondent offered into evidence any reply emails, letters, or texts written to the Claimant to challenge the information she sent to them to say that she was mistaken, or there was a misunderstanding as to the scope of work. This becomes important in terms of the Fund reward, to be described below.

I also find credible evidence that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. The presentation by the Claimant consisted of her testimony, coupled with letters/texts/emails written and photographs taken contemporaneously in time to when the Contract was being performed as well as photographs taken more than a year later. Clmt. Exs. 2, 8, and 9.

As to the initial stop work order, the Claimant testified that when she returned home to check on the status of the repairs she discovered that the flooring was visibly unworkmanlike. She was unhappy to see no underlayment as well as gaps in the flooring. She also noticed that there was only one coat of paint applied to the walls despite the fact that the subcontractors had already installed the baseboards to the wall. This suggested to her that the Respondent had no intention of applying a second coat of paint as required by the Contract. The base shoe was also missing. At or around this same time, the Claimant discovered that the Respondent had not moved any of the contents prior to performing the flooring despite a line item to cover the cost of doing so in the Safeco estimate.

Shortly thereafter, the Claimant met with the Respondent and Mr. Fairfax to discuss her concerns. According to the Claimant, Mr. Fairfax told her that the floor was only one-half complete and needed to be completed. It seems from the parties' respective testimonies that the Respondent continued to work, but to what extent is unclear, until the second stop work order was issued.

The Claimant testified that a few days later she stopped work again after noticing that the floor “slapped the concrete” when she walked on it. After mentioning this to Mr. Fairfax, the Claimant recalled him saying to her “why is that a problem” and then refusing to fix it. The Claimant testified that she has three children who frequently use the basement and the condition was unacceptable to her.

In addition to the previously mentioned issues, the Claimant also began to notice caulking being placed over areas where mold was growing, and the laundry room was untouched. On the topic of mold remediation, the Claimant testified that Mr. Fairfax told her that he would treat the walls with Concrobium Mold Control Spray instead of removing and replacing the drywall. The Claimant understood from Mr. Fairfax’s comments to her that the spray would be effective in removing mold and preventing mold from returning. Despite his assurances, the Claimant stated that she had photographs to show that the mold had reappeared. Clmt. Exs. 2 and 3.

This prompted the Claimant to make a full assessment of the repairs and memorialize her concerns in a letter to the Respondent, dated July 31, 2018. Clmt. Ex. 2. In her letter, the Claimant asked the Respondent to reimburse her \$10,040.80, or eighty percent of the original check, so that she could obtain the necessary repairs. The Claimant arrived at this amount by giving the Respondent credit for having applied one coat of paint and installing the baseboards. However, the Respondent flatly refused to refund her any money, provide receipts, or detail the cost of labor.

On behalf of the Respondent, Mr. Fairfax testified that his company did not contract to do the mold remediation. On the other hand, the company did agree to perform water remediation which Mr. Fairfax insisted was something entirely different than mold remediation – in his words, a “big difference.” Further, in response to the Claimant’s photographs showing mold

development, Mr. Fairfax insisted that the mold she was seeing was pre-existing as a result of the basement being built below grade and moisture seeping in. Mr. Fairfax added that since "mold comes from spores," his company cannot be blamed for the mold returning. He also maintained that it was okay to keep the existing drywall in place because he thoroughly dried out the drywall before starting work on the basement.

I found Mr. Fairfax's explanation on this topic to be less than credible. He neither confirmed nor denied the Claimant's representation that he told her that the Concrobium Mold Control Spray would eliminate any existing mold or prevent mold re-growth; instead, he focused his attention on whether or not the drywall was indeed dry before proceeding with the repairs. Since Mr. Fairfax was not offered as an expert in mold remediation, I find his statements regarding pre-existing conditions not helpful or persuasive. On the other hand, the visual evidence (via the photographs provided by the Claimant) supports a finding that the spray did not work and the mold returned. In addition, I found the Claimant's testimony to be sincere that she believed Mr. Fairfax when he represented to her that the drywall was dry and that there was no need to remove the drywall to begin repairs. By all accounts, supported by the parties' respective testimony, the removal and replacement of the drywall never occurred despite being listed and paid for on the scope of work.

As for the underlayment to the flooring, Mr. Fairfax testified that one was not needed for the type of flooring the Claimant personally picked out. He also indicated that the Safeco estimate lacked a line item for the underlayment. Accordingly, the underlayment was not done. Mr. Fairfax's testimony, however, sidesteps the obvious issue of workmanship in installing the floor. The Claimant presented photographs to show where the floor and the baseboard do not meet as well as gaps between the concrete floor and the flooring material. Though Mr. Fairfax

and the Respondent are correct in their stance that the underlayment was not included in the scope of work, Mr. Fairfax could not explain, or simply failed to rebut, the Claimant's presentation about workmanship which included up-close photographs showing the deficiencies of which she complained. While the Respondent presented photographs as well, her pictures lacked the same level of focus seen in the Claimant's pictures. So it was not possible for me to see if the flooring was fixed – *i.e.*, to see if the floor reached the baseboard throughout the basement; whether gaps remained and not covered by trim, or whether the flooring around the beam support was properly laid. From a distance, the work highlighted in the Respondent's photographs had the appearance of craftsmanship, but they failed to rebut the Claimant's allegations on the specific issues she described and depicted in her pictures. In addition, the sequence of events (as described in the Findings of Fact) suggests that the Claimant's photographs were taken after her meeting with the Respondents.

Mr. Fairfax also testified that his company encountered difficulties with performing some of the work, such as painting, after Pepco shut off the power due to non-payment.¹¹ When that shut off occurred, only one coat of paint had been applied. He further indicated that his company was not able to apply the second coat of paint before the stop work order occurred. I found Mr. Fairfax's comments spurious, at best, because he failed rebut the Claimant's presentation that the baseboards were installed before the second coat of paint was applied. Neither Mr. Fairfax nor the Respondent offered a cogent explanation for why the baseboards were installed if a second coat of paint was still needed. Since the Respondent's claims of being hampered in the performance of the Contract do not explain away the incongruence, I find that the Respondent intentionally failed to apply a second coat of paint. And since the Respondent did not comment

¹¹ The Claimant offered into evidence a Pepco bill showing a large balance owed. The Claimant blamed the Respondent for running up her bill when he operated dryers at the outset of the repairs.

on the workmanship of the painting job, the Claimant's pictures are persuasive as to the quality of the work performed.

Moreover, according to Mr. Fairfax, the Claimant did not want his company to touch the laundry room because there was no flooring in the room and the drywall was unfinished. With reference to the contents, other than removing the couch, he believed that the Claimant agreed to move everything herself in order to save money (*i.e.*, pocket the cash). Mr. Fairfax, however, acknowledged that none of these changes to the scope of work were memorialized in writing. More importantly, the fallacy in Mr. Fairfax's testimony is that he never adequately explained why the Contract price was essentially the same as the Safeco estimate.¹² He also did not testify to providing upgrades to any of the items, other than paint color, listed in the Safeco estimate that might explain the differential in price if the laundry room and contents were purposefully excluded. I find it more likely than not that the Respondent failed to perform this aspect of the Contract and subsequently refused to reimburse the Claimant.

With regard to the stop work order, Mr. Fairfax said that "I couldn't figure it out." His company had performed 99% of the work according to the Contract. As a result of the stop work order, Mr. Fairfax testified that his company was not able to install the quarter-round despite acquiring the materials. He also testified that his flooring guy fixed the issues with the flooring and "made it right, whatever that means..." The Claimant's testimony and photographs, however, dispel any belief that the work was 99% complete at the time of the stop work order. Going back to the scope of work, the Respondent and Mr. Fairfax acknowledged that the drywall was never removed and replaced despite being a line item in the Safeco repair estimate. Mr. Fairfax readily admitted that the second coat of paint was never applied and the base shoe never installed. Because the base shoe was never installed, painting of that item never happened. Mr.

¹² \$12,551.00 versus \$12,541.10.

Fairfax also testified that he did not move any contents. Based on the photographs in evidence, there is also proof of mold returning, poorly installed flooring, and baseboards being placed over areas where the drywall was ripped.

Finally, the Respondent testified that she met with the Claimant during a face-to-face meeting on July 23, 2018. She indicated that after the meeting, "a few things were corrected" and photographs were taken to show the work performed. Contr. Ex. 1A-Q. The Respondent agreed with Mr. Fairfax that since the underlayment was not contained in the Safeco estimate it was not included in the Contract. The Respondent also testified that she responded promptly each time the Claimant reached out to her to discuss the status of the project and she honestly "thought everything worked out." The Respondent exclaimed that "this is a business and I want her to be satisfied." Where there was a conflict between the Contract and the work performed was entirely at the request of the Claimant so that she could keep the money. Accordingly, the Respondent believed that the \$12,551.00 payment represented the difference between the Safeco estimate for repairs and the items the Claimant excluded from the scope of work. In any event, the Respondent testified that her company was not able to complete the repairs or correct any issues due to the stop work order. Finally, the Respondent testified that the monies paid by the Claimant covered the cost of materials and labor paid to the subcontractors.

As I explained above, Mr. Fairfax served as the point person between the Respondent and the Claimant, as well as with the subcontractors. The Respondent's interaction with the Claimant appeared to be peripheral, at best, and her statements sounded like a rubberstamp of Mr. Fairfax's testimony. Therefore, the Respondent's testimony was not helpful or credible in gaining a better understanding of what occurred between the parties.

Therefore, I find that the Claimant presented a cogent case that she is eligible for compensation from the Fund. While there was no written contract or subsequent written change orders, the parties uniformly agreed that the Safeco estimate was used as a template for the work to be performed. For all of the reasons described above, I find that the Respondent failed in many respects to honor the Contract or the work performed needs to be redone.

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. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

(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.

COMAR 09.08.03.03B(3)(c).

Without question, the entire scope of work was affected by poor workmanship by the Respondent and must be redone. Though the Claimant did not present expert testimony from a contractor, or submit into evidence a proposal from a licensed contractor to describe the work

required to repair the poor workmanship, I find it reasonable to infer from a layman's perspective that in order to eliminate the mold the drywall and baseboard must be removed and replaced as per the original scope of work. With the removal of the drywall and baseboard, the paint will need to be redone. As previously mentioned, the Respondent never installed the base shoe and that will need to be supplied, installed, and painted. On the issue of flooring, the Claimant submitted a quote from Empire Today confirming that the floor needs to be removed and replaced due to the poor workmanship. Lastly, the evidence is crystal clear that the Respondent retained repair funds for the contents and the laundry room despite doing no work. The Respondent also did not reimburse the Claimant for the monies paid. These items will need to be completed.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$12,551.00.¹³

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant sustained an actual and compensable loss \$12,551.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

¹³ \$12,551.00 – paid to Respondent
\$12,551.00 – reasonable repair costs
\$25,102.00
\$12,551.00 – minus original contract price
\$12,551.00 – recommended award

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$12,551.00; 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;¹⁴ and

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

January 6, 2020
Date Decision Mailed

CONFIDENTIAL

Kathleen A. Chapman
Kathleen A. Chapman
Administrative Law Judge

KAC/da
#182610v1A

¹⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th day of February, 2020, 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.

Robert Altieri

***Robert Altieri
Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION***