IN THE MATTER OF THE CLAIM	*	**BEFORE LEIGH WALDER,**
OF JULIA ALEXANDER,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF ERIC NYONATOR,	*	
T/A ESTABLISH N POWER, LLC,	*	**OAH No.: LABOR-HIC-02-20-25284**
RESPONDENT	*	**MHIC No.: 19 (75) 503**

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On February 5, 2019, Julia Alexander (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $20,886.43 in actual losses allegedly suffered as a result of a home improvement contract with Eric Nyonator, trading as Establish N Power, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On August 19, 2019, the MHIC issued a Hearing Order informing the parties that the merits of the

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[2] All references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Claim would be decided at a hearing. On November 2, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.[3]

On February 4 and March 2, 2021, I held a remote video hearing over Webex. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Eric B. London, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 – Correction Order, dated February 3, 2018

Clmt. Ex. 2 – Contractor Service Agreement, dated August 11, 2017

Clmt. Ex. 3 – Check, dated August 15, 2017

Clmt. Ex. 4 – Check, dated September 13, 2017

Clmt. Ex. 5 – Check, dated August 23, 2017

Clmt. Ex. 6 – Check, dated October 15, 2017

[3] The record is devoid of any procedural history between August 19, 2019 and November 2, 2020.

Clmt. Ex. 7 – J&J Aluminum Co., Inc. Estimate, dated January 25, 2019

Clmt. Ex. 8 – The Home Depot receipt and invoice, dated November 17, 2017

Clmt. Ex. 9 – Burgess Lighting invoices and photograph, dated October 17 & 18 and December 5 & 11, 2017

Clmt. Ex. 10 – Hunter General Contracting and HVAC invoice, dated January 14, 2018

Clmt. Ex. 11 – Multiple receipts from The Home Depot and Sherwin-Williams, various dates

Clmt. Ex. 12 – Kitchen photographs, undated

Clmt. Ex. 13 – Salon photographs, undated

Clmt. Ex. 14 – Dining room photographs, undated

Clmt. Ex. 15 – Basement photographs, undated

Clmt. Ex. 16 – Handyman Services, LLC Estimate, dated January 14, 2021

Clmt. Ex. 17 – Not admitted

Clmt. Ex. 18 – Letter from the Claimant to the MHIC, dated October 2, 2018

The Respondent did not submit any exhibits into evidence.

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

Fund Ex. 1 – Notice of Remote Hearing, dated January 4, 2021

Fund Ex. 2 – Hearing Order, dated August 19, 2019

Fund Ex. 3 – Letter from the MHIC with Licensing History, dated February 4, 2020

Fund Ex. 4 – Claim, dated February 5, 2019

Fund Ex. 5 – Letter from the MHIC to the Respondent, dated February 25, 2019

Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

The Fund did not call any witnesses to testify.

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 01-108275 and 05-132491.

2. The Claimant owns a property in Temple Hills, Maryland.

3. On August 11, 2017, the Claimant and the Respondent entered into a Contractor Service Agreement (Agreement) whereby the Respondent agreed to perform the following services on the Claimant's home in exchange for $43,600.00:

- Minor demolition / alterations to receive the new work;
- 2"x4" stud framing @16' O.C. on ceiling;
- Provide and install R-insulation in extended wall;
- Provide and install ½" drywall on wall panel, tape and finish with joint compound;
- Provide and install 5/8" drywall ceiling;
- Install floor tiles in basement living area and storage room (labor only);
- Provide and install 2402 nylon-close knitted carpet in basement bedroom;
- Prepare all general surfaces of drywall and wood and apply one coat primer and two coats finish paint;
- Open wall between dining and kitchen and install an island cabinet;
- Provide labor and materials to construct rooms for salon shop;
- Provide labor and materials to construct new bathroom suite, W.C., sink and all accessories, including all associated plumbing work;
- Electrical work in connection recessed lights in the basement in the basement living area and kitchen, pendant light fixtures in the kitchen island and fixing switches and outlets; and
- Remove and fix wallpaper in all the bathrooms and paint.

(Clmt. Ex. 2).

4. The $43,600.00 was to be paid out in five draw payments, as follows:

- First draw, $10,900.00, to be paid as a deposit;
- Second draw, $10,900.00, to be paid after demolition, framing, and drywall installation;
- Third draw, $10,900.00, to be paid after electrical rough-in, plumbing rough-in, and areas ready for paint;
- Fourth draw, $5,450.00, to be paid after interior tile installation; and

- Final draw, $5,450.00, to be paid after final walk through and completion of punch list items.

(*Id.*).

5. The Claimant paid the Respondent a total of $37,200.00 towards the contract, paid out as follows:

   a. $10,900.00 paid on August 15, 2017, as the first draw payment;

   b. $10,900.00 paid on August 23, 2017, as the second draw payment;

   c. $10,000.00[4] paid on September 13, 2017, as the third draw payment; and

   d. $5,400.00[5] paid on October 15, 2017, as the fourth draw payment.

6. The Respondent completed the following work under the contract:

   a. Minor demolition / alterations to receive the new work;

   b. 2"x4" stud framing @16' O.C. on ceiling;

   c. Install floor tiles in basement living area and storage room (labor only);

   d. Provide and install 2402 nylon-close knitted carpet in basement bedroom;[6] and

   e. Open wall between dining and kitchen and install an island cabinet.

7. The Resondent did not complete the following work under the contract:

   a. Provide and install R-insulation in extended wall;

   b. Provide and install ½" drywall on wall panel, tape and finish with joint compound;

   c. Provide and install 5/8" drywall ceiling;

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[4] When the Claimant issued the Respondent the third draw payment, the Claimant's bank informed her that she could not issue a check over $10,000.00.

[5] It is unknown why the Claimant paid the Respondent $5,400.00 when the fourth draw payment was supposed to be $5,450.00.

[6] The Claimant requested that the Respondent substitute this work item with installing a tile floor in the basement bedroom, which the Respondent completed to the Claimant's satisfaction.

d. Prepare all general surfaces of drywall and wood and apply one coat primer and two coats finish paint;

e. Provide labor and materials to construct rooms for salon shop;

f. Provide labor and materials to construct new bathroom suite, W.C., sink and all accessories, including all associated plumbing work;

g. Electrical work in connection recessed lights in the basement in the basement living area and kitchen, pendant light fixtures in the kitchen island and fixing switches and outlets; and

h. Remove and fix wallpaper in all the bathrooms and paint.

8. In February 2018, the Respondent stopped performance under the contract after many of the Respondent's workers quit working for him and he claimed to have a family emergency.

9. As to the contract item to "Provide and install R-insulation in extended wall," the Respondent completed approximately seventy percent of this task but failed to close up the wall in the Claimant's bathroom and salon, and did not install insulation in many of the walls he built around these areas.

10. As to the contract item to "Provide and install 1/2" drywall on wall panel, tape and finish with joint compound," the Respondent opened up certain walls in the Claimant's downstairs so that he could install pipes to connect to the upstairs bathroom. The Respondent installed approximately thirty percent of the drywall on the wall panel after he installed the piping.

11. The Respondent did not properly install drywall around one of the Claimant's existing basement doors, making it uneven.

12. The installation of the drywall on the wall panels, that was not performed by the Respondent, can be performed by Handyman Services, LLC (Handyman), for $4,990.00.

13. Handyman can install molding around the basement door to make it even for $150.00.

14. As to the contract item to "Provide and install 5/8" drywall ceiling," the Respondent provided and installed drywall throughout most of the basement ceiling; however, the Respondent did not install the drywall ceiling in the basement directly below the upstairs bathroom, leaving the pipes he installed exposed.

15. The Respondent's workers cut a hole in the Claimant's basement for a vent and affixed a crooked vent using a spray foam to keep it from falling. A floor tile was damaged in the process.

16. The installation of the drywall ceiling, that was not performed by the Respondent, can be performed by Handyman for $2,220.00.

17. Handyman can repair the crooked vent and floor tile for $425.00.

18. As to the contract item to "Prepare all general surfaces of drywall and wood and apply one coat primer and two coats finish paint," the Respondent's workers never painted the salon, the areas the Respondent's workers painted in the basement were not properly prepared beforehand whereby bubbles formed, and the kitchen and dining room was not properly painted.

19. The Respondent's workers continuously ran out of paint and other materials to perform the work necessary under the contract and would ask the Claimant to purchase these additional materials. The Respondent explained that he would deduct the cost of the paint and other materials from the contract price.

20. The Claimant frequently went to The Home Depot to purchase materials for the Respondent. In total, the Claimant spent $1,928.41 purchasing materials for the Respondent at The Home Depot.

21. The Claimant frequently went to Sherwin-Williams to purchase paint and materials for the Respondent. In total, the Claimant spent $4,539.43 purchasing items from Sherwin-Williams.

22. Handyman can repair the Claimant's drywalls and paint the areas that need painting for $7,640.00.

23. As to the contract item to "Provide labor and materials to construct rooms for salon shop," the Respondent was tasked with putting up dividing walls so that the Claimant could have a room to do pedicures, a room to do manicures, and a room to do eye lashes. The Respondent did not put up a wall to partition off the rooms.

24. The Claimant solicited J&J Aluminum Co., Inc. (J&J) to perform the same scope of work required to "Provide labor and materials to construct rooms for salon shop." J&J performed this work for $1,942.00.

25. As to the contract item to "Provide labor and materials to construct new bathroom suite, W.C., sink and all accessories, including all associated plumbing work," the Respondent put up drywall to create a structured room for a bathroom, but he did not provide the W.C., sink, or all of the bathroom accessories, and did not complete all associated plumbing work.

26. The Claimant spent $510.98 at The Home Depot to purchase the W.C., sink, and all the bathroom accessories that the Respondent was supposed to supply.

27. The Claimant paid Hunter General Contracting and HVAC (Hunter) $1,800.00 to perform some of the associated plumbing work that was not performed by the Respondent.

28. The remaining plumbing work that was not performed by the Respondent can be provided by Handyman for $7,690.00. This plumbing work includes connecting pipes to the basement drains, modifying the drains in the basement to code, installing a drain, connecting the drains to the main drain, and modifying the pipes to be placed into the framing of the floor. Handyman can also reconnect a pipe that was not properly installed by the Respondent for $200.00.

29. As to the contract item for "Electrical work in connection recessed lights in the basement in the basement living area and kitchen, pendant light fixtures in the kitchen island and fixing switches and outlets," the Respondent installed the recessed lighting, but one of the light fixtures in the laundry room does not work requiring a new fixture to be installed. The Respondent installed the pendant light fixtures. The Respondent did not fix the wall switches or outlets.

30. Handyman can install a new light fixture for $250.00 in the laundry room.

31. As to the contract item for "Remove and fix wallpaper in all the bathrooms and paint," the Respondent left one of the bathrooms completely untouched where he never removed the wallpaper or painted.

32. Although the Respondent installed floor tiling, the tiling around one of the doors is too high which keeps the door from fully opening.

33. Handyman can fix the door so that it can fully open for $75.00.

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). To prove a claim by a preponderance of the

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

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) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

<u>The Claimant's, Respondent's, and Fund's positions</u>

The Claimant argued that she contracted with the Respondent to perform a home renovation. The scope of the work was set out in the Agreement. (Clmt. Ex. 2). In total, the Claimant paid the Respondent $37,200.00 of the $43,600.00 contracted price. (Clmt. Exs. 2-6). The Claimant argued that the Respondent either did not perform, or improperly performed, many items set out in the Agreement. The Claimant submitted multiple photographs to demonstrate the quality of the Respondent's work or to demonstrate when the Respondent failed to perform certain items from the Agreement. (Clmt. Exs. 12-15). The Claimant also contends that the Respondent continuously ran out of materials that he was obligated to provide and had her purchase these materials from The Home Depot, Sherwin-Williams, and Lowes. (Clmt. Ex. 11). The Claimant testified that the Respondent promised to deduct the cost of these materials from the contract price. Further, the Claimant argued that the Respondent failed to purchase certain materials he was responsible to provide under the Agreement, such as materials to construct a new bathroom suite, W.C., sink and all accessories, as well as light fixtures. Ultimately, the Claimant had to purchase these items herself for the Respondent to install. (Clmt. Exs. 8-9).

Finally, the Claimant argued that she had to (or will have to) bring in other contractors to fix and/or finish certain work items the Respondent performed (or failed to perform). (Clmt. Exs. 7, 10 & 16). In total, the Claimant seeks to be reimbursed the $20,000.00 statutory maximum from the Fund.

The Respondent argued that he performed almost all work required under the Agreement. The Respondent argued that the Claimant seeks compensation for certain items not within the scope of the Agreement. The only item from the Agreement the Respondent conceded he did not perform was to provide labor and materials to construct rooms for a salon shop. The Respondent testified that he was unable to perform this item because a "problem arose." Otherwise, the Respondent explained that all items from the Agreement were performed and that he even performed additional work outside the scope of the Agreement.

The Fund took the position that the Claimant demonstrated that she suffered an actual loss due to the Respondent's acts or omissions and that the Claimant has demonstrated that she is entitled to reimbursement of the statutory maximum, $20,000.00, from the Fund.

Analysis of eligibility for compensation

The evidence in this case establishes there are no legal impediments barring the Claimant from filing a claim under section 8-405 of the Business Occupations Article. The home improvement work was to be performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the Claim. The Claimant timely filed the Claim with the MHIC on February 5, 2019. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

The Claimant went line-by-line through the Agreement and specified areas that she contended were not properly performed by the Respondent. As the Claimant conceded that the Respondent appropriately performed the following areas of the Agreement, I need not provide an analysis of these items: "(a) Minor demolition / alterations to receive the new work; (b) 2"x4" stud framing @16' O.C. on ceiling; (c) Install floor tiles in basement living area and storage room (labor only);[7] (d) Provide and install 2402 nylon-close knitted carpet in basement bedroom; and (e) Open wall between dining and kitchen and install an island cabinet." (Clmt. Ex. 2). On the other hand, the Claimant argued that the Respondent did not properly perform the following areas of the Agreement:

> (a) Provide and install R-insulation in extended wall;
> (b) Provide and install ½" drywall on wall panel, tape and finish with joint compound;
> (c) Provide and install 5/8" drywall ceiling;
> (d) Prepare all general surfaces of drywall and wood and apply one coat primer and two coats finish paint;
> (e) Provide labor and materials to construct rooms for salon shop;
> (f) Provide labor and materials to construct new bathroom suite, W.C., sink and all accessories, including all associated plumbing work;
> (g) Electrical work in connection recessed lights in the basement in the basement living area and kitchen, pendant light fixtures in the kitchen island and fixing switches and outlets; and
> (h) Remove and fix wallpaper in all the bathrooms and paint.

(*Id.*). I will address each of these items individually.

(a) Provide and install R-insulation in extended wall

The Claimant demonstrated that the Respondent only performed seventy percent of this task. The Claimant detailed that the Respondent failed to install insulation in multiple walls and failed to properly close the walls. As proof, the Claimant submitted photographs which depict unenclosed wall areas without insulation. (Clmt. Ex. 15). Although the Respondent proclaimed

[7] *See* FN #6. The only issue the Claimant had with the tiling was that it was installed in a way that made it difficult for one of the doors to close where the tiling was too high. (Clmt. Ex. 15). The Respondent did not contest this.

that he satisfactorily performed this task, the Claimant's convincing testimony paired with photographic evidence established that the Respondent did not fully complete this task under the Agreement. As such, the Claimant demonstrated that the Respondent's provision and installation of R-insulation in the extended wall was unworkmanlike, inadequate, and incomplete. *See* Md. Code Ann., Bus. Reg. § 8-401.

(b) Provide and install ½" drywall on wall panel, tape and finish with joint compound

The Claimant testified that the Respondent had to install pipes in the downstairs walls to connect into the upstairs bathroom. In doing so, the Respondent had to open the downstairs walls. The Claimant persuasively testified that the Respondent only installed approximately thirty percent of the drywall on the wall panel after he installed the piping. He also failed to properly install drywall around one of the Claimant's basement doors, making it uneven. As additional support, the Claimant supplied an estimate from Handyman that sets out that the drywall needs to be repaired. (Clmt. Ex. 16). Although the Respondent testified that he completed the drywall, I found this testimony unconvincing. The Respondent couched his testimony in this regard by stating that he completed this task "to the best of his knowledge" which made his testimony dubious. As such, the Claimant demonstrated that the Respondent's provision and installation of ½" drywall on wall panel, tape and finish with joint compound was unworkmanlike, inadequate, and incomplete. *See* Md. Code Ann., Bus. Reg. § 8-401.

(c) Provide and install 5/8" drywall ceiling

The Claimant demonstrated that the Respondent failed to fully provide and install a 5/8" drywall ceiling. The Claimant produced multiple photographs that show open spaces in the Claimant's ceiling. (Clmt. Exs. 13 & 15). These photographs depict portions of the Claimant's ceiling with no drywall and visible wooden beams (the home's frame) and piping. (*Id.*). Additionally, the Claimant supplied an estimate from Handyman that sets out that new drywall

needs to be installed to the Claimant's ceiling. (Clmt. Ex. 16). The Claimant's photographs also show that when the Respondent's workers cut a hole in the Claimant's basement ceiling to create a vent they affixed the vent in a haphazard way using spray foam to keep it from falling. (Clmt. Exs. 13 & 15). Although the Respondent testified that this item from the Agreement was "complete," the Claimant's photographs demonstrate otherwise. (*Id.*). As such, the Claimant demonstrated that the Respondent's provision and installation of 5/8" drywall ceiling was unworkmanlike, inadequate, and incomplete. *See* Md. Code Ann., Bus. Reg. § 8-401.

(d) Prepare all general surfaces of drywall and wood and apply one coat primer and two coats finish paint

The Claimant demonstrated that the Respondent did not adequately prepare the surfaces of drywall and wood and apply primer and paint. The Claimant believably testified that the Respondent never painted the salon (only applying primer) and did not properly paint the kitchen and dining room. The areas the Respondent's workers painted were not properly prepared beforehand, causing the paint to bubble. To corroborate her testimony, the Claimant produced several photographs depicting the condition of the walls. (Clmt. Exs. 12-15). Although many of these photographs are difficult to interpret,[8] I accept the Claimant's testimony that the walls were not adequately painted and, when painted, bubbled. Additionally, the Claimant explained how she continuously had to purchase paint and associated materials for the Respondent's workers. (Clmt. Ex. 11). I believe the Claimant's testimony that the Respondent promised to deduct the cost of these materials from the price of the Agreement.

As to this item, the Respondent generally testified "the work was done." I did not find this brief and dismissive testimony credible compared to the Claimant's detailed recounting of what occurred. Additionally, the Respondent testified that he believed the Claimant brought in another

[8] Photographs of the wall look like unremarkable monotone surfaces.

painter to work in the house while his men were also working in the house. I found this testimony confusing and it was entirely rebuffed by the Claimant in rebuttal. Finally, the Respondent did not challenge that he promised to deduct the cost of the purchases the Claimant made from the cost of the Agreement. As such, the Claimant demonstrated that the Respondent's preparation of all general surfaces of drywall and wood to apply one coat primer and two coats paint was unworkmanlike, inadequate, and incomplete. *See* Md. Code Ann., Bus. Reg. § 8-401.

(e) Provide labor and materials to construct rooms for salon shop

The Respondent conceded that he did not properly perform this item under the Agreement because a "problem arose." The Respondent did not elaborate on what this "problem" was. On the other hand, the Claimant detailed that the Respondent failed to put up a wall to partition off the rooms for the salon shop. As such, the Claimant demonstrated that the Respondent's provision of labor and materials to construct rooms for salon shop was incomplete. *See* Md. Code Ann., Bus. Reg. § 8-401.

(f) Provide labor and materials to construct new bathroom suite, W.C., sink and all accessories, including all associated plumbing work

The Claimant demonstrated that the Respondent failed to both provide all the materials necessary to construct a new bathroom suite, W.C., sink, and all accessories, and also failed to perform all associate plumbing work. As to the provision of all materials, the Claimant referred to the plain language of the Agreement under which the Respondent agreed to provide the materials necessary to construct the new bathroom, W.C., sink, and accessories. Although the Respondent agreed to provide these materials, he never did so. The Claimant conclusively testified that she had to purchase these materials for the Respondent to install. This testimony was supported by a receipt from The Home Depot which shows that the Claimant purchased these materials herself. (Clmt. Ex. 8). As to this point, the Respondent denied that he failed to

provide these materials testifying that he did "everything" and "it was done." As the Claimant provided an itemized receipt from The Home Depot showing that she had to purchase these materials herself, I find the Claimant's testimony more persuasive. (*See Id.*).

As to the performance of all associated plumbing work, the Claimant demonstrated that the Respondent did not adequately complete all plumbing. The Claimant clearly testified that the Respondent did not correctly perform the plumbing, requiring her to contract with Hunter to fix the plumbing in the salon, (Clmt. Ex. 10), and requiring her to retain Handyman to perform plumbing work which will include connecting pipes to the basement drains, modifying the drains in the basement to code, installing a drain, connecting the drains to the main drain, and modifying the pipes to be placed into the framing of the floor as well as reconnecting a pipe that was not properly installed. (Clmt. Ex. 16). Although the Respondent denied not adequately performing the plumbing, I am persuaded to the contrary considering that the Claimant had to retain Hunter to partially complete the plumbing work and will have to retain Handyman to finish completing the plumbing work. (*See* Clmt. Exs. 10 & 16). As such, the Claimant demonstrated that the Respondent's provision of labor and materials to construct new bathroom suite, W.C., sink and all accessories, including all associated plumbing work, was unworkmanlike, inadequate, and incomplete. *See* Md. Code Ann., Bus. Reg. § 8-401.

(g) Electrical work in connecting recessed lights in the basement, in the basement living area, and kitchen, pendant light fixtures in the kitchen island and fixing switches and outlets

The Claimant explained that the Respondent installed the lighting, but one of the light fixtures in the laundry room did not work. The Respondent testified that he properly installed all the fixtures. I credit the Claimant's testimony that one of the fixtures did not work, as she

provided an estimate from Handyman which demonstrates that it will have to install a light in the laundry room. (Clmt. Ex. 16).

The Claimant also alleged that the Respondent failed to put insulation in the attic to avoid condensation from forming around the kitchen lighting, that the Respondent failed to provide pendant light fixtures, and that the Respondent did not adequately perform electrical work in her kitchen causing her microwave to blow a fuse when it is turned on when other electricity is running throughout the house. I was persuaded by the Respondent's testimony that he was not obligated to provide insulation in the Claimant's attic above the kitchen as this is not spelled out in the Agreement. I am also persuaded that it was not the Respondent's responsibility to provide pendant light fixtures as this is not dictated by the language of the Agreement. The language of the Agreement just requires the Respondent to *connect* these fixtures. Although the Claimant testified that the Respondent verbally said he would provide these fixtures, I found the Respondent more convincing that he made no such promise. Finally, I am also not persuaded that the Respondent was obligated to perform electrical work as it relates to the circuitry around the Claimant's microwave. The plain language under the Agreement pertains to electrical work for lighting, not electrical work for kitchen appliances.

Similarly, although Handyman will be installing a threshold between the Claimant's kitchen and dining room, the Respondent was not obligated to install any threshold under the Agreement. The Claimant conceded as much in her testimony.

(h) Remove and fix wallpaper in all the bathrooms and paint

The Claimant demonstrated that the Respondent never removed the wallpaper or painted in one of her bathrooms. This is evidenced by photographs that the Claimant submitted. (Clmt. Ex. 15). The Respondent never testified directly as to this item of the Agreement except when he broadly testified that he completed most of his obligations under the Agreement. As such, the

Claimant demonstrated that the Respondent's provision of labor to remove and fix wallpaper in all bathrooms and paint was incomplete. *See* Md. Code Ann., Bus. Reg. § 8-401.

Analysis of the amount of the Claimant's actual loss

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the Contract, and the Claimant has both retained and intends to retain other contractors to complete or remedy that work. Accordingly, the Fund took the position that the following formula appropriately measures the Claimant's 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.

COMAR 09.08.03.03B(3)(c).

Applying this formula, the amount that the Claimant paid to the Respondent under the Agreement was $37,200.00. (Clmt. Exs. 2-6). The Claimant also had to expend her own funds to provide the Respondent with materials that he was supposed to provide under the Agreement. The Claimant paid the following sums on behalf of the Respondent: (a) $510.98 to The Home Depot to purchase the W.C., sink, and all the bathroom accessories, (Clmt. Ex. 8); (b) $1,928.41

to the Home Depot for various construction materials the Respondent's workers needed, (Clmt. Ex. 11); and (c) $4,539.43 to Sherwin-Williams for paint and supplies, (*Id.*).[9] Adding up these sums, the total the Claimant paid to or on behalf of the Respondent under the Agreement was $44,178.82.

The Claimant has already solicited two other contractors to correct or complete the Respondent's work under the Agreement. The Claimant paid Hunter $1,800.00 to perform some of the associated plumbing work that was not performed by the Respondent. (Clmt. Ex. 10). The Claimant paid J&J $1,942.00 to provide labor and materials to construct rooms for the salon shop. (Clmt. Ex. 7). So, in total, the Claimant paid these two contractors $3,742.00.

The Claimant is soliciting Handyman to correct or complete the Respondent's work under the Agreement. The work Handyman will perform, that is within the scope of the Agreement, is as follows: (a) $7,690.00 to complete the remaining plumbing work that was not performed by the Respondent as well as an additional $200.00 to reconnect an improperly installed pipe; (b) $2,220.00 to install the drywall ceiling; (c) $425.00 to repair the crooked vent and floor tile; (d) $75.00 to fix a door so that it can fully open above the installed tile; (e) $150.00 to install molding around the basement door to make it even with the previously installed drywall; (f) $7,640.00 to repair the Claimant's drywalls and paint the areas that need painting; (g) $250.00 to install a new light fixture in the laundry room; and (h) $4,990.00 to install the drywall on the wall panels. Adding these different figures, the Claimant will have to

[9] During closing, the Claimant asserted that she paid more money to The Home Depot and Sherwin-Williams for supplies. I came to the $1,928.41 and $4,539.43 amounts by adding up the receipts the Claimant submitted into evidence as Claimant Exhibit 11, as these were the amounts the Claimant demonstrated she paid. The Home Depot receipts were broken down as follows: $202.05, $69.00, $121.10, $410.75, $159.25, $141.72, $145.35, $81.79, $96.18, $123.21, $52.97, $39.99, $156.32, and $128.73. I did not include The Home Depot receipt for $124.78 as a refund was subsequently issued for this purchase. (Clmt. Ex. 11, p. 23). I also did not include The Home Depot receipt for $82.38 as the Claimant testified that this amount was also subsequently refunded. The Sherwin-Williams receipts were broken down as follows: $136.37, $87.78, $292.54, $199.10, $251.46, $75.31, $2,801.12, $512.55, and $183.20. The Claimant did not produce any receipts from Lowes even though she asserted she made purchases there.

pay Handyman $23,640.00 to correct or complete the Respondent's work pertinent to the Agreement.[10]

Using the formula set out in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is calculated as follows: the total amount the Claimant paid to or on behalf of the Respondent under the Agreement ($44,178.82), plus any reasonable amounts the Claimant has paid to another contractor to repair poor work by the Respondent ($3,742.00), plus any reasonable amounts the Claimant will be required to pay another contractor to repair poor work by the Respondent ($23,640.00), subtracted by the original contract price ($43,600.00), which comes out to $27,960.82.[11]

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 of $27,960.82 exceeds $20,000.00. Therefore, the Claimant's recovery is limited to $20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $20,000.00 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 $20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (2015).

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[10] This figure does not include $300.00 to provide insulation in the attic, $250.00 to install a kitchen threshold, or $3,620.00 to perform electrical work in the kitchen so that the microwave would function. I have not included these items as they are outside the scope of what the Respondent was responsible for under the Agreement.

[11] For a simpler equation: $44,178.82 + $3,742.00 + 23,640.00 = $71,560.82 – $43,600.00 = $27,960.82.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $20,000.00; 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;[12] and

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

Leigh Walder

May 28, 2021
Date Decision Issued

Leigh Walder
Administrative Law Judge

LW/dlm
#192233

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

PROPOSED ORDER

WHEREFORE, this 9th day of July, 2021, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION