

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LAUREN DAVIS,</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 ERIC DURKEE, T/A</p> <p>DURKEE WOODWORKS, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE JEFFREY T. BROWN,</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-02-22-01121</p> <p>* MHIC No.: 20 (90) 254</p>
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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 July 22, 2020, Lauren Davis (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 \$7,892.50 for actual losses allegedly suffered as a result of a home improvement contract with Eric Durkee, trading as Durkee Woodworks, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 and Supp. 2021).¹ On January 12, 2022, the MHIC issued a Hearing Order on the Claim. On January 12,

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code and 2021 Supplement and will be abbreviated "Bus. Reg."

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DECLARATION OF THE
COMMISSIONERS OF THE
LAND OFFICE
IN RESPONSE TO
A RESOLUTION PASSED BY
THE HOUSE OF REPRESENTATIVES
ON FEBRUARY 28, 1907

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2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 20, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Nicholas C. Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting twenty 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On February 9, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by Certified Mail, return receipt requested, and by United States mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for Wednesday, April 20, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

A Certified Mail receipt was executed by or on behalf of the Respondent on February 14, 2022, and was returned to the OAH. The United States Postal Service did not return the regular mail Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

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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:

- Clmt. Ex. 1 - Respondent's Proposal, signed by the Claimant on December 17, 2017
- Clmt Ex. 2 - Respondent's Addendum to Contract: Flooring, January 11, 2018
- Clmt Ex. 3 - Photograph of a tiled floor and grouting, undated
- Clmt. Ex. 4 - Photograph of a tiled floor and cracked grouting, undated
- Clmt Ex. 5 - Photograph of a tiled floor and cracked grouting, undated
- Clmt Ex. 6 - Photograph of a tiled floor and cracked grouting, undated
- Clmt Ex. 7 - Estimate, JEHM Tile Contractors, July 1, 2020

The Respondent did not appear or offer any exhibits.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, February 9, 2022
- Fund Ex. 2 - Hearing Order, January 12, 2022
- Fund Ex. 3 - Department letter to Respondent, July 24, 2020, with attached Home Improvement Claim Form, July 12, 2020
- Fund Ex. 4 - Department certification of records review concerning Respondent's license status, March 30, 2022
- Fund Ex. 5 - Affidavit of Charles Corbin, April 13, 2022

Testimony

The Claimant testified and did not present other witnesses.

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The Respondent did not appear.

The Fund 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 number 01-12175.²
2. On December 19, 2017, the Claimant and the Respondent entered into a contract to completely remodel the Claimant's kitchen, except for the flooring (Contract).
3. On January 11, 2018, the Claimant and Respondent executed an "Addendum to Contract" to add the installation of tile flooring in the Claimant's kitchen to the Contract (Addendum).
4. The original agreed-upon Contract price was \$27,969.00. The price of the Addendum was \$4,160.00. The total Contract price was \$32,129.00.³
5. The Claimant paid the Respondent \$32,129.00 pursuant to the Contract.
6. The Respondent performed the Contract work by approximately March 1, 2018.
7. During the first half of 2018, the Claimant observed that the grout on the tiled kitchen floor was cracking, and contacted the Respondent to address this issue.
8. In mid-2018, the Respondent's employees returned to the Claimant's home and patched grout where it had cracked.
9. During the remainder of 2018, the Claimant observed further cracking of the grout on the kitchen floor and requested that the Respondent address this issue.

² The Respondent's license was effective at the time of contract and during the performance of any work under the Contract. The Respondent's license expired on June 25, 2021.

³ The Home Improvement Claim Form executed by the Claimant on July 12, 2020 noted that the amount paid to the Respondent was \$32,853, and noted on the Claim Form that there was an additional addendum between the parties for a backsplash. However, the Claimant offered no testimony about this item, and concurred that the amount paid to the Respondent was for the Contract and Addendum, which amounts to \$32,129.00.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for ensuring the integrity of the financial data and for facilitating audits.

2. The second part of the document outlines the various methods used to collect and analyze data. It describes how different types of information are gathered and how they are processed to identify trends and patterns.

3. The third part of the document provides a detailed overview of the results of the analysis. It includes a summary of the key findings and a discussion of their implications for the organization's operations and strategy.

4. The fourth part of the document discusses the challenges faced during the data collection and analysis process. It highlights the difficulties of obtaining complete and accurate data and the potential for bias in the results.

5. The fifth part of the document describes the steps taken to address these challenges. It details the measures implemented to ensure the reliability of the data and the validity of the analysis.

6. The sixth part of the document provides a final summary of the findings and conclusions. It reiterates the key points of the analysis and offers recommendations for future research and action.

7. The seventh part of the document discusses the broader context of the research. It places the findings in relation to existing literature and identifies areas for further investigation.

8. The eighth part of the document provides a detailed description of the methodology used in the study. It explains the rationale for the chosen methods and the steps involved in their implementation.

9. The ninth part of the document discusses the limitations of the study. It acknowledges the constraints of the data and the methods used and explains how these may have affected the results.

10. The tenth part of the document provides a final conclusion and a list of references. It summarizes the main findings and provides a list of the sources used in the research.

11. The eleventh part of the document discusses the implications of the findings for practice. It offers suggestions for how the results can be used to improve organizational performance and decision-making.

12. The twelfth part of the document provides a final summary of the research. It reiterates the key findings and offers a final thought on the importance of the study.

13. The thirteenth part of the document discusses the future directions of the research. It identifies areas where further study is needed and suggests potential topics for future research.

14. The fourteenth part of the document provides a detailed description of the data used in the study. It includes information on the source of the data, the time period covered, and the variables measured.

15. The fifteenth part of the document discusses the statistical methods used in the analysis. It explains the choice of these methods and how they were applied to the data.

16. The sixteenth part of the document provides a detailed description of the results of the analysis. It includes a summary of the key findings and a discussion of their implications.

17. The seventeenth part of the document discusses the limitations of the study. It acknowledges the constraints of the data and the methods used and explains how these may have affected the results.

18. The eighteenth part of the document provides a final conclusion and a list of references. It summarizes the main findings and provides a list of the sources used in the research.

19. The nineteenth part of the document discusses the implications of the findings for practice. It offers suggestions for how the results can be used to improve organizational performance and decision-making.

20. The twentieth part of the document provides a detailed description of the methodology used in the study. It explains the rationale for the chosen methods and the steps involved in their implementation.

21. The twenty-first part of the document discusses the limitations of the study. It acknowledges the constraints of the data and the methods used and explains how these may have affected the results.

22. The twenty-second part of the document provides a final conclusion and a list of references. It summarizes the main findings and provides a list of the sources used in the research.

23. The twenty-third part of the document discusses the future directions of the research. It identifies areas where further study is needed and suggests potential topics for future research.

24. The twenty-fourth part of the document provides a detailed description of the data used in the study. It includes information on the source of the data, the time period covered, and the variables measured.

10. In the Spring or Summer of 2019, the Respondent's employees removed all existing grout and installed new grout throughout the Claimant's kitchen floor.

11. After the entire kitchen floor was regouted, cracks continued to appear, grout loosened, and some floor tiles cracked.

12. The Claimant attempted on multiple occasions over a period of months to call and email the Respondent to return to the home and correct the condition of the failed grout, but she was not able to speak to the Respondent or any employee of the Respondent, nor were any of her calls or emails answered.

13. In the Spring of 2020, the Claimant drove to the Respondent's showroom location to address the failed grout, but it was closed, and did not appear to be actively doing business.

14. On July 1, 2020, the Claimant obtained an estimate (Estimate) from JEHM Tile Contractors (JEHM), to fully remove and replace the tiled kitchen floor, at a cost of \$7,892.50.

15. The Claimant accepted the Estimate, had the work completed by JEHM during the Summer of 2020, and paid the full price of the Estimate. JEHM removed the tile and grout installed by the Respondent, reinforced the subflooring in the kitchen, and then installed new tile and grouting. The work performed by JEHM fully resolved all of the grout and tile problems that had persisted after the Respondent's installation in 2019.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); 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 Cnty. Police Dep't*; 369 Md. 108, 125 n.16 (2002).

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the success of any business or organization. The text then moves on to describe the various methods used to collect and analyze data, including surveys, interviews, and focus groups. It also discusses the challenges associated with data collection and analysis, such as ensuring the reliability and validity of the data. The document concludes by highlighting the benefits of using data to make informed decisions and improve performance.

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” 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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was performed on the Claimant’s property in Maryland and the Claimant does not own more than three properties. 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 Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed the Claim with the MHIC on July 20, 2020. Finally, the Claimant has not taken any other legal action to recover monies. Md. Code Ann., Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1).

The Respondent Performed an Inadequate and Unworkmanlike Home Improvement

The Respondent performed an inadequate and unworkmanlike home improvement. The record demonstrates that the Respondent failed to properly install a tiled and grouted kitchen floor. It sent employees to attempt to repair cracks in the grouting, which appeared within months of initial completion of the work. However, this failed to resolve the problem. When further cracking of the grout recurred and worsened over time, the Respondent sent employees to completely regrout the kitchen floor tiles. Even this failed to resolve the problem, suggesting that something other than

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the adequacy of the grouting was the cause of the failure. However, when the Claimant pursued further assistance from the Respondent, she received no response at all.

The Claimant was required to seek the assistance of another contractor to either cure the defects in the Respondent's workmanship or replace the work entirely. She contracted with JEHM, which removed the tile and grout installed by the Respondent, and then reinforced the subfloor of the Claimant's kitchen, before installing new tile and grout. The approach taken by JEHM fully resolved the problem of cracking grout or tiles, and no further problems have arisen since JEHM completed its work in 2020.

I find the Respondent performed an inadequate and unworkmanlike home improvement. It installed a tile floor in such a way that the original installation failed, and all subsequent attempts to repair the installation by repairing only the grout failed to adequately address the underlying and ongoing cause of the cracking grout and tiles. The Claimant diligently raised the defective condition of the tiled floor with the Respondent and sought to allow him to return and repair the condition of the floor, even after two attempts to do so had failed. Eventually, those ongoing efforts were ignored by the Respondent. By refusing to communicate with the Claimant, and by declining further opportunities to remedy the problem as a result, the Respondent abandoned the project. Therefore, the Claimant suffered an "actual loss" and is entitled to "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. The Claimant hired another contractor to complete the work set forth in the Addendum. JEHM completed the scope of the work in the Addendum, repaired the unworkmanlike construction, and installed a tiled floor which has not failed. Thus, the Claimant has proven that she is eligible for compensation.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the smooth operation of any business and for the protection of the interests of all parties involved. The document outlines the various methods and procedures that should be followed to ensure that all financial data is recorded correctly and in a timely manner.

The second part of the document focuses on the role of the accounting department in the overall management of the organization. It highlights the need for the accounting department to provide accurate and reliable financial information to the management team, which is used to make strategic decisions. The document also discusses the importance of the accounting department in ensuring compliance with all applicable laws and regulations.

The third part of the document discusses the various financial statements that are prepared by the accounting department, including the balance sheet, income statement, and cash flow statement. It explains how these statements provide a comprehensive overview of the organization's financial performance and position. The document also discusses the importance of these statements in attracting investors and lenders to the organization.

The fourth part of the document discusses the various financial ratios and metrics that are used to evaluate the organization's financial performance. It explains how these ratios and metrics provide valuable insights into the organization's profitability, liquidity, and solvency. The document also discusses the importance of these ratios and metrics in identifying areas of weakness and opportunities for improvement.

The fifth part of the document discusses the various financial risks that are faced by the organization and the strategies that should be used to manage these risks. It highlights the need for the organization to have a comprehensive risk management strategy in place to protect its financial interests. The document also discusses the importance of regular risk assessments and the need to update the risk management strategy as the organization's financial position evolves.

The sixth part of the document discusses the various financial trends and forecasts that are used to guide the organization's financial planning. It explains how these trends and forecasts provide valuable insights into the organization's future financial performance and position. The document also discusses the importance of these trends and forecasts in making informed financial decisions.

The seventh part of the document discusses the various financial challenges that are faced by the organization and the strategies that should be used to overcome these challenges. It highlights the need for the organization to have a comprehensive financial strategy in place to address these challenges. The document also discusses the importance of regular financial reviews and the need to update the financial strategy as the organization's financial position evolves.

The eighth part of the document discusses the various financial opportunities that are available to the organization and the strategies that should be used to take advantage of these opportunities. It highlights the need for the organization to have a comprehensive financial strategy in place to identify and capitalize on these opportunities. The document also discusses the importance of regular financial reviews and the need to update the financial strategy as the organization's financial position evolves.

The ninth part of the document discusses the various financial best practices that should be followed by the organization to ensure its long-term financial success. It highlights the need for the organization to have a comprehensive financial strategy in place that is based on sound financial principles and practices. The document also discusses the importance of regular financial reviews and the need to update the financial strategy as the organization's financial position evolves.

The tenth part of the document discusses the various financial lessons that can be learned from the organization's financial history. It highlights the need for the organization to have a comprehensive financial strategy in place that is based on sound financial principles and practices. The document also discusses the importance of regular financial reviews and the need to update the financial strategy as the organization's financial position evolves.

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. 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.

As discussed above, the Respondent performed an inadequate and unworkmanlike home improvement and the Claimant hired another contractor to complete the project. Accordingly, 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). The Claimant paid the Respondent \$32,190.00 pursuant to the Contract. The Claimant paid \$7,892.50 to complete the Contract correctly.

Using the COMAR 09.08.03.03B(3)(c) formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	\$ 32,129.00
+ Amount paid to correct or complete the work	<u>\$ 7,892.50</u>
	\$ 40,021.50
- Amount of original contract	<u>\$ 32,129.00</u>
Amount of actual loss	\$ 7,892.50

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“The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.” COMAR 09.08.03.03B(4). In this case, the Claimant’s actual loss is less than she paid to the Respondent. Therefore, the Claimant is entitled to recover her actual loss of \$7,892.50.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$7,892.50 as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2021); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

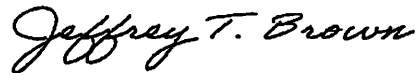
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,892.50; 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;⁴ and

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

April 28, 2022
Date Decision Issued



Jeffrey T. Brown
Administrative Law Judge

JTB/dlm
#197776

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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PROPOSED ORDER

WHEREFORE, this 21st day of June, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

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