IN THE MATTER OF THE CLAIM	*	**BEFORE EMILY DANEKER,**
OF AMY & JASON ROWE,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANTS	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: LABOR-HIC-02-22-01225**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 22 (75) 50**
OMISSIONS OF ANDREW	*	
TSOTTLES, T/A CAPITAL CUSTOM	*	
BUILDERS, LLC,	*	
RESPONDENT	*	

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

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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STATEMENT OF THE CASE

On November 12, 2021, the Maryland Home Improvement Commission (MHIC) received a claim from Amy and Jason Rowe (collectively, Claimants) seeking to recover $4,722.21 from the Maryland Home Improvement Guaranty Fund (Fund) for actual losses allegedly sustained as the result of the acts or omissions of contractor Andrew Tsottles,[1] trading

[1] In transmitting this matter to the Office of Administrative Hearings (OAH), the MHIC identified the contractor as "Joseph" Tsottles, trading as Capital Custom Builders, LLC. In all other documents, including the MHIC Claim Form and Hearing Order and the licensing information moved into evidence by the Fund, the responsible contractor is identified as Andrew Tsottles; accordingly, I use the name "Andrew" Tsottles as well.

as Capital Custom Builders, LLC. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On January 4, 2022, the MHIC forwarded the matter to the OAH for a hearing.

On March 24, 2022, I held a hearing in this matter at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimants represented themselves. Robert Kahoe, Esquire, represented the Respondent. Andrew Brower, Assistant Attorney General, Department of Labor (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department of Labor'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); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimants 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

Testimony

Each of the Claimants testified; they did not present any other witnesses.

Andrew Tsottles testified on behalf of the Respondent and was accepted as an expert in the building trade and joist repair. The Respondent also presented testimony from Dane Holliday.

The Fund did not present any witnesses.

[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Exhibits

The Claimants offered the following exhibits,[3] which I admitted into evidence:

Clmt. Ex. 1	-	Respondent's response to Claimants' claim, undated
Clmt. Ex. 1A	-	Top Notch Flooring America Invoice, May 5, 2021
Clmt. Ex. 1B	-	Email chain, re: Invoice CG100285, May 5, 2021
Clmt. Ex. 1C	-	Photographs, tile installation, April 12 & 13, 2021
Clmt. Ex. 1D	-	Emails, re: Kohler representative, April 26, 2021
Clmt. Ex. 1E	-	Photographs of shower pan, April 8 & 16, 2021
Clmt. Ex. 1F	-	Text messages, June 11, 2021
Clmt. Ex. 2	-	Emails between Dane Holliday and Claimants, re: Completion of the contract, June 9, 2021
Clmt. Ex. 2A to 2E	-	Claimants' response to June 9, 2021 email from Dane Holliday, undated, with supporting documentation and photographs attached
Clmt. Ex. 3	-	Photographs of toilet flange and joist, undated
Clmt. Ex. 4	-	Photographs of hall bathroom, undated
Clmt. Ex. 5	-	Photographs of kitchen and dining area, undated
Clmt. Ex. 6	-	Photographs of en suite bathroom, undated
Clmt. Ex. 7	-	Photographs of joists, sewage lines, and shower pan, undated
Clmt. Ex. 8	-	Photograph of shower pan, April 16, 2021
Clmt. Ex. 9	-	Text messages between Claimants and Respondent's employees, between March 19, 2021 and June 11, 2021
Clmt. Ex. 10	-	Photographs of walls and floor in en suite bathroom
Clmt. Ex. 12	-	Contract, February 16, 2021

[3] I upheld an objection to the admissibility of Claimants' Exhibit 11. Additionally, a photograph included in Claimants' Exhibit 10 (marked 10-8) was not admitted into evidence as the supporting witness could not recall what the photograph depicted. Though not admitted into the evidentiary record, the Claimants' exhibit number 11 and the photograph are retained as part of the administrative record. COMAR 28.02.01.22C.

Clmt. Ex. 13 - Krause Renovations, Inc. (Krause) Estimate, July 21, 2021

Clmt. Ex. 14 - Krause Flooring Estimate, July 26, 2021

Clmt. Ex. 15 - Lowe's Home Centers, LLC Receipt, August 3, 2021

Clmt. Ex. 16 - Krause Invoice, July 22, 2021

The Respondent offered the following document, which was admitted into evidence:

Resp. Ex. 1 - Invoice, Capital Custom Builders, February 15, 2021

The Fund offered the following documents, which were admitted into evidence:

Fund Ex. 1 - MHIC Hearing Order, December 28, 2021

Fund Ex. 2 - OAH Notice of Hearing, January 27, 2022

Fund Ex. 3 - Letter from the MHIC to the Respondent, November 22, 2021, with Home Improvement Claim Form attached

Fund Ex. 4 - Respondent's MHIC licensing information, printed March 15, 2022

PROPOSED FINDINGS OF FACT

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

Background

1. The Claimants own and reside in a home on Sweetbriar Lane in Bel Air, Maryland (the "Residence"). The Claimants do not own any other residential property.

2. At all times relevant to the subject of this hearing, Capital Custom Builders LLC held a corporate home improvement contractor license with the MHIC, license number 05-134732, and Andrew Tsottles, the responsible individual listed for Capital Custom Builders LLC, held an individual home improvement contractor license, MHIC license number 01-104900.

The Contract & Payments

3. In February 2021, the Respondent provided water damage mitigation services to the Claimants after a plumbing leak in the upstairs main bathroom led to flooding at the Residence.[4] The mitigation work was completed by February 15, 2021.

4. After the mitigation work was complete, on or about February 16, 2021, the Respondent and Claimants entered into a second contract (Contract) to remodel the en suite bathroom and a secondary bathroom at the Residence and to perform restoration work needed as a result of the water leak.

5. The Contract work included:

- Removing and replacing the en suite shower and modifying the plumbing for it, relocating the en suite toilet plumbing and installing a new toilet, and relocating the en suite vanity plumbing and installing a vanity, with a Contract price of $4,027.45
- Removing and replacing baseboards in kitchen and hallway, with a Contract price of $725.00
- Patching the drywall in the kitchen ceiling, with a Contract price of $350.00
- Removing existing bathroom door, trimming out the doorframe, and installing new bathroom door casing, with a Contract price of $250.00
- Building and framing new wall to separate the main bedroom from the vanity area,[5] with a Contract price of $1,250.00
- Replacing flooring in the vanity area and the en suite bathroom, with a Contract price of $850.00
- Replacing the shower in the secondary bathroom with a tub and tub surround, modifying the plumbing, and installing new flooring, with a Contract price of $1,775.00
- Installing new flooring in the kitchen, hallway, and lower bathroom, including removing and replacing baseboards and molding, with a Contract price of $3,883.00

[4] The Respondent fully performed these services and the Claimants paid in full for the services. This work is not included within the Claimants' claim but is set out above as providing context to the parties' relationship.
[5] The Contract referred to the vanity area as the "powder area" or "powder room." (Clmt. Ex. 12, at 2, 3.)

6. The Contract did not include any painting work, permits, or the purchase of a shower head and plumbing fixtures for the bathrooms.

7. The total Contract price was $13,110.45.

8. The Claimants paid a deposit of $4,370.15 at the time of contracting.

9. With the agreement of the Respondent's project manager, Dane Holliday, the Claimants began to purchase some of the material for the work themselves because materials were becoming difficult to find due to shortages caused by the COVID-19 pandemic.

10. The Claimants were to receive a credit against the Contract price for the following flooring, fixtures, and trim materials that they purchased, as follows:

- Shower pan, $499.26
- Shower surround, $802.76
- Flooring, $3,292.43
- Molding, $282.43[6]

Total: $4,876.88

11. The total amount paid by the Claimants toward the Contract price, as a deposit and for their purchase of materials that the Respondent was to provide under the Contract, was $9,247.03 (or $4,370.15 + $4,876.88).

The Contract Work

12. The Contract work started on or about March 15, 2021 and proceeded sporadically.

13. The Respondent's worker often arrived at the Residence much later than the Claimants were advised he would. (*See, e.g.,* Clmt. Ex. 9, at 2, 5, 9.) At times, the worker cancelled or changed his workdays at the Residence at the last minute. (*See, e.g.,* Clmt. Ex. 9, at

[6] This is the amount reflected on Claimants Exhibit 15, less the cost and tax of two Red Bull drinks that appear on the receipt.

6, 7.) As a result of the sporadic work and the last-minute scheduled changes and late arrivals, the Claimants had difficulty coordinating their own work schedules with the Respondent's worker.

14. The Respondent started the Contract work with the en suite bathroom renovation.

15. The shower pan for the bathroom arrived from the manufacturer with a crack on one side. The other side of the shower pan was subsequently cracked.

16. The shower pan was out of stock and the Respondent sought to remedy the issue by installing a tile floor in the shower instead; this would have been an upgrade and the Claimants were pleased with that offer.

17. The tile shower floor installed by the Respondent's worker was uneven and water did not flow toward the drain.

18. The Respondent determined that the tile would need to be ripped out and the parties agreed to seek a manufacturer's repair of the original shower pan and use the repaired shower pan.

19. After installation, the shower pan had gaps between it and the subfloor, and it flexed and bowed when used.

20. After installation, the shower surround was not flush to the walls, by visual inspection.

21. Initially the toilet in the en suite bathroom was moved only 18 inches instead of the 23 inches it was supposed to be moved; this error occurred despite the proper location being marked on the wall. The Respondent's worker notched a joist at the 18-inch location for the toilet flange. Upon learning the toilet was in the wrong location, the worker reattached the notch to the joist and laminated the joist using ¾ of an inch of plywood.

22. The toilet plumbing was not glued together when it was installed by the Respondent's worker, as a result sewage later leaked into the kitchen ceiling below.

23. After installation of the toilet, the toilet rocked when used.

24. The Respondent constructed a wall to separate the vanity area and bathroom from the bedroom area. The wall was framed and drywalled. The door, which had been removed and saved from another area, was not installed.

25. The Respondent requested that the Claimants sign a Certificate of Satisfaction, stating that the bathroom work had been completed to their satisfaction, before the Respondent would begin performing the remainder of the Contract work. (Clmt. Ex. 9, at 7, 8.)

26. The Claimants believed the Respondent would not perform the remaining Contract work if they did not sign the certificate. In order to keep the project work going, both of the Claimants signed the Certificate of Satisfaction and returned it to the Respondent along with a list of items that still needed to be addressed in the en suite bathroom. The Certificate of Satisfaction was signed and returned to the Respondent between May 14 and May 19, 2021.

27. On or about May 31, 2021, the Respondent's worker performed demolition work in the secondary bathroom at the Residence. However, some amount of debris was not cleared out of the bathroom.

28. The Respondent's worker also installed the tub in the secondary bathroom and one wall of the tub surround.

29. On at least one occasion during the project, the Respondent's worker smelled of alcohol while working on the site and was observed sleeping in his truck outside the Residence when he was supposed to be working. The worker at times did not bring the necessary tools and searched for and borrowed the Claimants' tools without asking.

Termination of the Contract

30. After June 4, 2021, the Respondent did not perform any further work at the Residence.

31. On June 11, 221, the Respondent advised the Claimants that the Contract was "terminated." (Clmt. Ex. 1F.)

32. When the Respondent terminated the Contract, the issues in the en suite bathroom had not been resolved: the toilet still rocked, the gaps between the shower and the wall remained, the shower pan still bowed and flexed when used, and the door was not installed in the new wall between the vanity and the bedroom.

33. As of the time the Respondent terminated the Contract, there was still debris in the secondary bathroom and only one of the three tub surround walls was installed; the tub and shower fixtures had not been installed and the new flooring had not been installed.[7]

34. At the time of the Contract termination, the following work had not been performed at all:

- Removing and replacing baseboards and molding in kitchen and hallway
- Patching the drywall in the kitchen ceiling
- Installing flooring in the kitchen, hallway, and lower bathroom

35. The Claimants did not make any payments for the work that was incomplete or partially incomplete.

Loss

36. The Claimants obtained estimates from Krause, an MHIC licensed contractor, to complete the Contract work, making use of the materials the Claimants had previously purchased.

[7] The new flooring was to be installed directly over the old flooring.

37. The cost to complete the renovation of the secondary bathroom (installing the remaining walls of the tub surround, installing the tub fixtures and shower fixtures, repairing drywall and readying for paint, and installing flooring and baseboards) is $4,125.00, which is in addition to the cost of the materials previously purchased by the Claimants.

38. The cost of installing the flooring and baseboards on the first level of the Residence is $2,037.00, which is in addition to the cost of the materials previously purchased by the Claimants.

39. The joist that was damaged when the toilet was relocated was not sufficiently repaired by the Respondent.

40. The cost of repairing the joist using four ½-inch strips of plywood on each side (for a total of 2 inches of plywood on each side of the joist), relocating a water line to accommodate the repair, and repairing the existing hole in the kitchen ceiling is $1,275.00.

41. On or about November 12, 2021, the Claimants filed their claim with the MHIC; they have not pursued any other claims against the Respondent.

42. Neither of the Claimants is related to the Respondent by blood or marriage, neither of them is an employee, officer, or partner of the Respondent, and neither of them is related to an employee, officer, or partner of the Respondent.

DISCUSSION

Applicable Law

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "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 governing statute defines "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. For purposes of recovery from the Fund, the contractor is responsible for the acts or omissions of its employees. *Id.* § 8-405(b). The Commission may deny a claim, however, if the claimant unreasonably rejected good faith efforts to resolve the claim. *Id.* § 8-405(d).

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. *Id.* § 8-405(e)(3); COMAR 09.08.03.03B(1). In addition, a claimant may not recover from the Fund more than was paid to the original contractor. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

At a hearing on a claim, a claimant has the burden of proof. Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3). The claimant's burden is by a preponderance of the evidence. State Gov't § 10-217 (2021). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[,]" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

For the reasons set forth below, I find that the Claimants have proven eligibility for compensation from the Fund in the amount of $2,323.58.

Analysis

I. Eligibility to Recover from the Fund

As noted above, a claimant may recover from the Fund for an unworkmanlike, inadequate, or incomplete home improvement by a licensed contractor. Bus. Reg. §§ 8-401, 8-405(a). The Respondent was licensed at all relevant times. (Fund Ex. 4.) The Contract detailing

the scope of the work the Respondent was to perform is in evidence. (Clmt. Ex. 12.) There was no dispute on these points. The weight of the evidence also establishes that the Respondent's performance of the Contract work was unworkmanlike, inadequate, or incomplete.

Claimant Amy Rowe testified in detail about the problems the Claimants experienced with the Respondent's workers and work—including workers who showed up late or failed to show at all and who made very basic mistakes—and the incomplete status of the work. I credited her testimony; not only was it detailed and thorough, but it was also supported by contemporaneous text messages discussing the issues and by photographs depicting the problem areas and the incomplete work. The testimony from Claimant Jason Rowe, though much briefer, was consistent with and supported Ms. Rowe's testimony. Moreover, the Respondent's own witnesses acknowledged some of the problems that Ms. Rowe testified about and they agreed that the Contract work was incomplete, as described below.

Mr. Holliday, the Respondent's project manager, acknowledged that originally the Respondent's on-site worker relocated the toilet to the wrong spot, even though the wall was marked to indicated where the toilet was supposed to go. Mr. Holliday further acknowledged that as a result of the improper relocation of the toilet, a joist which had been cut into needed to be repaired. Mr. Holliday also testified that the tile shower floor, which was intended to resolve the issue of the damaged shower pan, did not drain properly and had to be taken out. Mr. Holliday further acknowledged that determining whether the subsequently installed shower pan was properly put in would have been done by standing or walking on it to test it out. Mr. Holliday had no personal knowledge that contradicted the Claimants' testimony that the shower pan bowed and flexed when walked on. Mr. Holliday agreed that he was only at the Residence

three or four times after the Contract work started. He acknowledged that when the Respondent terminated the work, the Contract work was not completed.

Mr. Tsottles, the sole owner of Capital Custom Builders, LLC, also testified. Mr. Tsottles' testimony revealed that at the time of contracting, the Respondent had six employees, including him, and approximately 24 jobs on which it was working. Mr. Tsottles agreed that the Contract work was incomplete when he terminated the Contract. He explained that after work began on the secondary bathroom, it became apparent that the relationship between the Claimants and the Respondent could not be salvaged and, accordingly, he instructed his worker to get the secondary bathroom to a clean stopping point. Mr. Tsottles largely blamed the Claimants, who he described as difficult to satisfy, for the disintegration of the relationship. He acknowledged, however, that he was not very involved with the project and that he was learning about some of his worker's mistakes for the first time at the hearing. Mr. Tsottles' testimony, along with the text messages in evidence, also made plain that he was aware of scheduling issues and failure of workers to show up but did not resolve those issues.

In terms of the quality of the work, it must be noted that Mr. Tsottles testified that he was primarily involved only at the tail end of the relationship. He explained that he went to the Residence after the work in the en suite bathroom was largely done. At that time, he inspected the shower wall panel and advised the Claimants that it was installed correctly and explained that the walls of houses are typically not entirely flat, which made it appear as if it had gaps.[8]

In terms of his expert opinion testimony, Mr. Tsottles testified that based on the photographs of the joist repair performed by the Respondent, the repair was adequate. He further

[8] Although the Claimants maintained that the shower surround was improperly installed, they did not submit documentation of any costs to repair the shower surround. Accordingly, it does not factor into the calculation of the Claimants' actual loss, though the photographs demonstrate the problem described by Ms. Rowe.

testified that he never inspected the joist or approved of the repair work, but he did instruct the worker on how to make the repair.

As noted above, I credited the testimony of Claimant Amy Rowe and gave it substantial weight. It was clear the Claimants were very involved with the project and that they paid careful attention to the quality of the work once problems became apparent. On the other hand, Mr. Holliday and Mr. Tsottles had minimal first-hand knowledge of the work at the Residence. I did not rely on the testimony from Mr. Tsottles that the joist was properly laminated by the Respondent's worker. First, I note that Mr. Tsottles, though qualified as an expert in the repair of joists, is an interested witness and a party to the proceeding. Further, he never inspected the joist to ensure the repair work was properly done, and the worker assigned to make the repair had already demonstrated an inability to follow basic instructions and properly perform work. Finally, I note that Mr. Rowe testified that the Claimants were told by Krause and other contractors that the joist repair was insufficient, and they were cautioned about using the toilet due to the defect in the joist. Krause included this work in its estimate.

It is clear that the Contract work was incomplete—the Respondent's own witnesses both conceded as much: the secondary bathroom was unfinished and none of the work on the first floor had been started when the Respondent walked off the job. I further find that the joist repair was inadequate and unworkmanlike.

There are no statutory impediments to the Claimants' eligibility to recover from the Fund. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1). The Claimants reside in the home that is the subject of the claim and do not own any other dwellings. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their

disputes to arbitration. *Id.* §§ 8-405 (c), 8-408(b)(3). Neither of the Claimants is a relative, employee, officer, or partner of the Respondent, and neither of them is related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1).

Finally, there was no rejection of good faith efforts to resolve the claim. The Respondent terminated the Contract and did not thereafter offer to resolve the claim. Clearly the relationship between the parties had deteriorated to the point that they were unable to work together. The Respondent was identified in Claimant Amy Rowe's phone as "Andrew Dickhead." (Clmt. Ex. 9, at 7, 8.) The Respondent told the Claimants that he had "zero interest in sending any of [his] guys back to [the Claimants'] house." (Clmt. Ex. 9, at 11.) Errors were being made by the Respondent's workers at a very basic level and there was a consistent lack of supervision and adequate resolution. This does not present a bar to recovery.

Accordingly, I conclude that the Claimants are eligible to recover from the Fund for an unworkmanlike, inadequate, and incomplete home improvement performed by the Respondent. Bus. Reg. §§ 8-401, 8-405.

II. Amount of Recovery from the Fund

Having found that the Claimants are eligible for compensation from the Fund, I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover. In making their claim, the Claimants' identified their actual loss as $4,722.21; they documented much, though not all, of their alleged actual loss. (Fund Ex. 3.) The Respondent asserted that the Claimants owed the Respondent $3,500.

The Claimants obtained estimates from Krause to complete the work in the secondary bathroom and the downstairs bath, hallway, and kitchen and repair the joist. (Clmt. Exs. 13, 16, and 14.) The work to be performed is described in the estimates and, with the exception of

painting work, is within the scope of the Contract with the Respondent. As the Contract with the Respondent did not include painting and the Fund does not allow recovery for consequential damages, Bus. Reg. §8-405(e)(3), I have excluded the $625.00 cost that Krause allocated to the painting work in its estimate. (*See* Clmt. Ex. 13.) The estimates from Krause contemplated using the materials that the Claimants had already purchased, or which had been retained during the demolition stage for reuse.

The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3). Where, as in this case, a respondent performed some work under the contract, and the claimant retained or intends to retain a replacement contractor to complete and remedy that work, the loss is typically measured by the following formula:

> 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 that formula, the Claimants' actual loss would be computed as follows:

$4,370.15	deposit paid to the Respondent
+ $4,876.88	Claimants' purchase of materials that were the Respondent's obligation
$9,247.03	total paid to or on behalf of the Respondent
+ $7,437.00	amount required to complete Contract & repair the Respondent's work
$16,684.03	total paid and to be paid by the Claimants
- $13,110.45	original Contract price
$3,573.58	actual loss per formula.

However, this calculation does not account for the fact that the Respondent provided additional work under the Contract that it was not paid for, but which had some value to the Claimants.

As noted above, the Respondent asserted that the Claimants owed *it* approximately $3,000.00. Mr. Tsottles did not go into detail as to how the Respondent calculated this amount, but other testimony, documents, and argument reflected that the sum was based on the construction of the wall and the work in the secondary bathroom.

The testimony elicited on behalf of the Respondent established that the wall separating the vanity area from the en suite bedroom had been framed and built, and the Contract price for that work was $1,250.00. Although the door had not been installed yet, that was covered under a separate $250.00 line item on the Contract. (Clmt. Ex. 12, at 2.)[9] The Claimants noted concerns about the wall. However, they had no expert evidence to establish that the wall is defective or that the issues they noted were not simply the result of expected settling. Further, the Claimants had no documentation specific to the repair of the wall. Accordingly, I find that the Claimants received the full $1,250.00 value for the framing and building of the wall but made no payment for that work.

There was also testimony about work performed in the secondary bathroom; however, I find that it did not confer value on the Claimants. The evidence established that demolition work

[9] That item stated: "Remove bathroom door and save. Trim out door frame with 1x4 and install new door casing." (Clmt. Ex. 12, at 2.)

was performed for the secondary bath, but the debris was not entirely removed. The demolition work in the secondary bath was not specifically referenced in the Contract work, which stands in contrast to the demolition work in the vanity area of the en suite bathroom. The lack of a line item that referenced this demolition work in the secondary bathroom leads me to conclude that the demolition work was relatively negligible, meaning there was not substantial value to it. Moreover, even that negligible amount of work was not completed by the Respondent. Although the tub was installed, that was also incomplete—the tub fixtures needed to be installed, as well as the bulk of the tub surround, and drywall around the tub needed to be repaired. Indeed, Mr. Tsottles' testimony was that he instructed his worker to merely get the secondary bath to a point where the plumbing was secure so that the work could be stopped. Accordingly, I find that the Claimants did not receive a measurable value from the Respondent's work in the secondary bathroom. Thus, I do not consider that work in determining the amount of the Claimant's actual loss.

However, the Claimants did receive value from the construction of the wall between the en suite vanity and the bedroom. The above loss calculation does not take that added value into consideration, and therefore it is not an adequate measure of the Claimant's actual loss. Therefore, I find it appropriate to apply a unique formula that also accounts for the value of the wall that the Respondent constructed. *See* COMAR 09.08.03.03B(3) and (3)(b). Accordingly, I have subtracted the value of the wall from what would otherwise be the Claimant's actual loss:

	$3,573.58	actual loss per COMAR 09.08.03.03B(3)(c)
-	$1,250.00	value received for construction of wall
	$2,323.58	actual loss

The Claimants' actual loss of $2,323.58 is less than the statutory cap on recovery from the Fund. *See* Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a). Their actual loss is also

less than the amount the Claimants paid to the Respondent. *See* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4). As a result, the Claimants are entitled to recover the full amount of their actual loss, or $2,323.58.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of $2,323.58 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). I further conclude that the Claimants are entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants $2,323.58; 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;[10] and

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

Emily Daneker

June 15, 2022
Date Decision Issued

Emily Daneker
Administrative Law Judge

ED/cj
#198703

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

PROPOSED ORDER

WHEREFORE, this 2nd day of August, 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