

IN THE MATTER OF THE CLAIM	* BEFORE LORRAINE E. FRASER,
OF BIREN PATEL,	* 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 WILLIAM MIGUEL	*
FERREIRA, T/A FERREIRA & SONS	* OAH No.: LABOR-HIC-02-24-09051
CONTRACTOR, LLC	* MHIC No.: 24 (75) 326
RESPONDENT	*

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On November 14, 2023, Biren Patel (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$17,499.00 for actual losses allegedly suffered as a result of a home improvement contract with William Miguel Ferreira, trading as Ferreira & Sons Contractor, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).²

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

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

On April 1, 2024, the MHIC issued a Hearing Order on the Claim. On March 24, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 16, 2024, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1). Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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 & Supp. 2023); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 Contract, 11/14/22
- Clmt. Ex. 2 Payments via Zelle and check, 11/17/22-12/17/22
- Clmt. Ex. 3 Text messages between the Claimant and the Respondent, 11/12/22-12/20/22
- Clmt. Ex. 4 Photographs (36); written descriptions corresponding to photographs
- Clmt. Ex. 5 Receipts for items purchased using the Claimant's credit card, 11/16/22-12/14/22
- Clmt. Ex. 6 Receipt for laminate flooring, 11/18/22
- Clmt. Ex. 7 District Court of Maryland for Frederick County, \$5,028.00 judgment against the Respondent, 5/22/23

- Clmt. Ex. 8 Waterproof Laminate Wood Flooring Residential Installation Guide
- Clmt. Ex. 9 Lowe's estimate for flooring, \$6,897.83, 3/17/23
- Clmt. Ex. 10 Home Depot estimate for flooring, \$7,297.33, 3/19/23
- Clmt. Ex. 11 Innovation Painting estimate, \$8,521.64, 3/8/23
- Clmt. Ex. 12 DiCola Builders estimate, \$3,950.00, 3/6/23
- Clmt. Ex. 13 Innovation Painting estimate, \$8,521.64, 3/8/23 (same as exhibit 11)
- Clmt. Ex. 14 Freshcoat estimate, \$2,788.00, 3/9/23
- Clmt. Ex. 15 Innovation Painting estimate, \$8,521.64, 3/8/23 (same as exhibit 11)
- Clmt. Ex. 16 Freshcoat estimate, \$2,788.00, 3/9/23 (same as exhibit 14)
- Clmt. Ex. 17 Photographs and messages re: framing for shower, 11/20/22
- Clmt. Ex. 18 Diagram and messages re: outlets and switches, 11/18/22

I admitted the following exhibits offered by the Respondent:³

- Resp. Ex. 1 Photograph window access
- Resp. Ex. 2 Photograph framing exterior wall
- Resp. Ex. 3 Photograph framing exterior wall
- Resp. Ex. 4 Photograph framing exterior wall
- Resp. Ex. 5 Photograph framing living room area
- Resp. Ex. 6 Photograph framing living room area
- Resp. Ex. 7 Photograph framing mechanical area
- Resp. Ex. 8 Photograph framing, drywall ready to hang
- Resp. Ex. 9 Photograph framing, flooring in boxes
- Resp. Ex. 10 Photograph framing, flooring in boxes
- Resp. Ex. 11 Photograph framing complete
- Resp. Ex. 12 Photograph drywall hanging
- Resp. Ex. 13 Photograph drywall hanging
- Resp. Ex. 14 Photograph drywall hanging and recessed lights in small room
- Resp. Ex. 15 Photograph bathroom framing
- Resp. Ex. 16 Photograph bathroom framing
- Resp. Ex. 17 Photograph bathroom framing, rough plumbing, electric
- Resp. Ex. 18 Photograph cement board in shower
- Resp. Ex. 19 Photograph cement board in shower
- Resp. Ex. 20 Photograph shower reframed
- Resp. Ex. 21 Photograph framing, flooring in boxes
- Resp. Ex. 22 Photograph drywall hung, recessed lights, outlets

³ All photographs were taken in November and December 2022.

- Resp. Ex. 23 Photograph window boxed
- Resp. Ex. 24 Photograph window boxed
- Resp. Ex. 25 Photograph shower cement board, recessed light
- Resp. Ex. 26 Photograph drywall with tape and joint spackle
- Resp. Ex. 27 Photograph stair treads
- Resp. Ex. 28 Photograph shower interior cement board, exterior drywall with tape and spackle
- Resp. Ex. 29 Photograph framing around sump pump
- Resp. Ex. 30 Photograph framing around sump pump
- Resp. Ex. 31 Photograph framing around sump pump
- Resp. Ex. 32 Photograph flooring, walls painted green and white
- Resp. Ex. 33 Photograph flooring, walls painted green and white, rough-in for wet bar
- Resp. Ex. 34 Photograph wall painted green
- Resp. Ex. 35 Photograph closet
- Resp. Ex. 36 Photograph three interior doors painted white
- Resp. Ex. 37 Photograph installing tile on bathroom floor
- Resp. Ex. 38 Photograph installing tile on bathroom floor
- Resp. Ex. 39 Photograph bathroom vanity, mirror, light fixture
- Resp. Ex. 40 Photograph installing shower wall tile, waterproof paint, recessed light
- Resp. Ex. 41 Photograph wall painted green, recessed lights
- Resp. Ex. 42 Photograph installing shower wall tile
- Resp. Ex. 43 Photograph finished, painted stairs
- Resp. Ex. 44 Photograph three interior doors and handles installed, recessed light, painted walls
- Resp. Ex. 45 Photograph finished bedroom
- Resp. Ex. 46 Photograph finished hallway
- Resp. Ex. 47 Photograph finished bathroom, tile, vanity, toilet, light
- Resp. Ex. 48 Photograph finished walls, doors, floor, steps
- Resp. Ex. 49 Photograph finished shower, glass door, toilet
- Resp. Ex. 50 Video ducts, vents, framing
- Resp. Ex. 51 Video drywall taped and spackled
- Resp. Ex. 52 Video stained step treads
- Resp. Ex. 53 Video walls and ceiling primed white
- Resp. Ex. 54 Video flooring
- Resp. Ex. 55 Video finished bathroom
- Resp. Ex. 56 Video finished basement

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Remote Hearing, 4/15/24; Hearing Order, 4/1/24
- Fund Ex. 2 The Respondent's MHIC licensing history, 7/3/24
- Fund Ex. 3 Letter to the Respondent from the MHIC, 11/17/23; Home Improvement Claim Form, received 11/14/23

Testimony

The Claimant testified.

The Respondent testified.

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 141169.
2. On November 14, 2022, the Claimant and the Respondent entered into a contract to renovate the Claimant's basement and perform some work on the main levels of the home (Contract). The Contract included installing throughout the basement: framing, drywall on walls and ceiling, baseboard and shoe molding, LVT plank flooring, seven doors, new stair treads and risers (to the upper level and to the basement), a handrail, and priming and painting the walls and ceiling. The Contract included installing a bathroom, including shower cement board, mud pan, waterproof liner, ceramic tile on the walls and floor, glass door and panel, and a vanity. The Contract included installing plumbing: a new toilet water line, a new shower water line, a new vanity water line, a new toilet and shower drain line, a wet bar rough-in. The Contract included installing: a bathroom GFCI outlet, an exhaust fan, three bathroom lights, eighteen recreation room recessed lights, four bedroom recessed lights, two hallway recessed lights, a storage recessed light, four bedroom outlets, six recreation room outlets, a hallway outlet, twelve second floor bedroom recessed lights, three electrical boxes in each bedroom for future fan connection, four main level office recessed lights, and an electrical box for a future fan connection. The Contract included installing a new air conditioning duct line and vent covers. The Contract was for labor only and the Claimant was to supply all materials.

3. The original agreed-upon Contract price was \$14,000.00.
4. From November 16, 2022 through December 20, 2022, the Respondent performed work at the Claimant's home.
5. Between November 17, 2022 and December 17, 2022, the Claimant paid the Respondent a total of \$12,798.00.
6. The shower floor installed by the Respondent does not drain water fully. Standing water remains in places that are lower than the drain.
7. The labor cost to repair the shower floor is \$2,980.00.
8. On May 22, 2023, the Claimant obtained a default judgment against the Respondent in the District Court of Maryland for Frederick County in the amount of \$5,028.00; however, he has not received any payment under that judgment.

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); 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).

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) (Supp. 2023); *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 in part.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. The Claimant obtained a default judgment against the Respondent in the District Court of Maryland for Frederick County in the amount of \$5,028.00; however, he has not received any payment under that judgment. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). On December 20, 2022, the Respondent asserted that the work was complete and requested the final payment from the Claimant. The Claimant refused to pay the Respondent the remaining \$1,202.00 because he felt the work was not complete. Then, the Respondent made statements the Claimant perceived as threatening; the Respondent admitted at the hearing that he was angry and said "bad stuff." Both the Claimant and the Respondent called the police and the police told the Respondent to leave the property.

I find the Respondent performed unworkmanlike work when he installed the shower floor. The shower floor is not properly sloped to ensure all the water drains. Rather, water remains standing on the floor. In the photographs submitted by the Claimant, standing water is visible and the drain appears to be higher than where the water is standing.

Regarding the Claimant's other claims, he failed to show that the Respondent's work was unworkmanlike or that his claim is compensable by the fund.

First, the Claimant alleged that the Respondent failed to install the vinyl plank flooring properly. The Claimant testified that the floor moves up and down when one walks on it, the concrete floor was not leveled before installation, and there are twelve spots that bounce. He referred to the flooring installation guide that the subfloor must be leveled. He also testified there are scratches and dents on the flooring because the Respondent did not cover the floor while he was working.

The Respondent testified that that the Claimant chose the flooring, which is floating and cannot be nailed or glued. The Respondent stated that he suggested the Claimant buy an underlayment pad. The Respondent said he could not level the whole basement floor.

The Contract states: "Install 950 sq. ft. LVT Plank Flooring." Clmt. Ex. 1. The Contract does not state that the Respondent will level the entire concrete basement floor. The flooring installation guide states: "Remove bumps or peaks in subfloor and fill depressions with floor leveling compound to ensure no more than 3/16" unevenness per 10-foot span." Clmt. Ex. 8. The Claimant's photographs do not show whether there is more than 3/16" unevenness per ten-foot span. The photographs do not show any measurement. The Claimant's estimates for the floor do not show the Respondent installed the flooring improperly. The estimate from Innovation Painting states: "The concrete floor will be demolished because it's not leveled correctly." Clmt. Ex. 13:

Demolition and installation of a new concrete subfloor was not in the Contract. Further, the photographs depict three small scratches. There was no evidence that the entire floor needed to be replaced to fix these scratches. The evidence does not show that the Respondent installed the flooring improperly or that the entire floor needs to be replaced. In addition, the estimate to demolish and level the concrete floor contains work that exceeds the scope of the Contract.

Second, the Claimant alleged that the Respondent did not caulk the toilet or shower door correctly. The Claimant submitted one photograph that shows the base of the toilet. I cannot see what the Claimant asserts to be incorrect. Moreover, the Claimant did not present any estimate that states caulking needs to be repaired. Thus, there is no evidence that supports this claim.

Third, the Claimant alleged that the basement's walls and ceilings have an uneven color. He asserted that the Respondent only painted one coat of paint instead of two coats. The Respondent testified that he painted two coats of paint and that the Claimant chose the paint.

The Contract does not specify the color of paint to be used. The photographs show some of the Claimant's walls are painted an off white, other walls are painted a shiny dark green. A glossy, dark color is likely to highlight even minor imperfections in the texture of the wall more than a flat, lighter color paint would. The photographs show two small spots on the ceiling where the drywall needs to be smoothed and then repainted. The photographs also show a few spots where the paint needs to be corrected/touched-up. The Claimant offered two estimates for repainting the entire basement. The estimates do not say there is anything wrong with the Respondent's work. The photographs do not show the entire basement needs to be repainted. Thus, the evidence does not show the Respondent's painting work was unworkmanlike.

Fourth, the Claimant alleged that the Respondent stained the stair treads on both sets of stairs the wrong color. The Claimant testified that the Respondent stained the upper level stairs black but they were supposed to be dark brown to match the handrail. He stated that the Respondent was supposed to stain the basement stairs to match the vinyl flooring but that they do not match. He also claimed that the stairs make a squeaky sound and the trim on the stairs needs to be touched up. The Respondent testified that the Claimant chose the stain colors for the stairs.

The Contract does not specify the color of stain to be used on the steps. It is unclear to me how the Respondent used the wrong color if the Claimant selected the stain colors. It is more likely than not that the Respondent used the stain he was told or given to use. Further, it is highly unlikely that it would be possible to stain the wood stair treads the exact same color as the vinyl flooring. There are no visible defects in the manner in which the stair treads are stained. The estimate submitted by the Claimant only mentions correcting the color. Thus, the evidence does not show the Respondent's work was unworkmanlike.

Fifth, the Claimant alleged that the Respondent purchased tools using the Claimant's credit card but that the Respondent was only authorized to purchase materials. If true, the Respondent would have committed theft by making unauthorized purchases on the Claimant's credit card. Theft is not a loss compensable by the Fund.

Finally, the Contract was for the Respondent's labor only. Estimates or receipts for materials are outside the scope of the Contract and not compensable by the Fund.

Therefore, I find that the Claimant is eligible for compensation from the Fund to repair the shower floor. Since the Contract was for the Respondent's labor only, the Claimant's compensation is limited to the cost of the labor to repair the floor.

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) (Supp. 2023); 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.

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

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).

Amount the Claimant paid to the Respondent	\$12,798.00
Cost of labor to repair the shower floor	+2,980.00
Original Contract price	<u>-14,000.00</u>
Actual loss	\$1,778.00

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁴ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$1,778.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$1,778.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$1,778.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,778.00; 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;⁵ and

⁴ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

⁵ *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

October 7, 2024
Date Decision Issued

LEF/sh
#214194

Lorraine E. Fraser
Lorraine E. Fraser
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 26th day of February, 2025, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***