

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE MICHAEL R. OSBORN,</b>
<b>OF MAURICE MOORE,</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>* OAH No.: DLR-HIC-02-16-37550</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>* MHIC No.: 15 (90) 823</b>
<b>OMISSIONS OF ARTHUR TURNER,</b>	<b>*</b>
<b>T/A AWT &amp; ASSOCIATES,</b>	<b>*</b>
<b>RESPONDENT</b>	<b>*</b>

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On May 27, 2016, Maurice Moore (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,000.00<sup>1</sup> in alleged actual losses suffered as a result of a home improvement contract with Arthur Turner, trading as AWT & Associates (Respondent).

On April 27, 2017, I held a hearing at the Largo Government Center in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation

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<sup>1</sup> The Claimant later revised the claim to \$5,150.00 without objection by the Fund.

(Department), represented the Fund. After waiting fifteen minutes for the Respondent or someone to represent him, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); 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 that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered as evidence by the Claimant:

Clmt. Ex. 1 – Spreadsheet, dated March 11, 2014 and April 21, 2014

Clmt. Ex. 2 – Damage Estimate, printed on March 3, 2014

Clmt. Ex. 3 – Email from the Claimant, dated June 18, 2014

Clmt. Ex. 4 – Email from the Claimant, dated May 19, 2014, with the following attachment:

- Punch List, undated

Clmt. Ex. 5 – Photographs, undated

Clmt. Ex. 6 – Total Floors Estimate, dated June 10, 2015

Clmt. Ex. 7 – FloorGem Service, Inc. Estimate, dated May 4, 2015

Clmt. Ex. 8 – Photographs, undated

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<sup>2</sup> Notice of the hearing was mailed to the Respondent at the address of record by certified mail on January 13, 2017, COMAR 09.08.03.03A(2), and was returned unclaimed with the notation "vacant" on the Certified Mail receipt form and the outside of the First Class Mail envelope.

Clmt. Ex. 9 – Gideon’s Wood Floor Service Inc. Estimate, dated March 24, 2016

Clmt. Ex. 10 – Memorandum, undated

The Respondent did not appear for the hearing and did not offer any exhibits.

I admitted the following exhibits offered as evidence by the Fund:

Fund Ex. 1 – Memorandum from the OAH, dated January 27, 2017, with the following attachments:

- Notice of Hearing, dated January 13, 2017
- Hearing Order, dated November 23, 2016
- Inserts, undated

Fund Ex. 2 – Registration information, printed on February 13, 2017

Fund Ex. 3 – Home Improvement Claim Form, dated May 21, 2016

Testimony

The Claimant testified on his own behalf.

The Respondent failed to appear and did not present the testimony of any witnesses. 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 100105, trading as AWT & Associates.

2. Prior to March 2014, the Claimant’s home suffered extensive water damage. The Claimant’s home was insured by The Standard Fire Insurance Company, which estimated the cost of repair to be \$17,822.02.

3. On March 11, 2014, the Claimant and the Respondent entered into a contract (the contract) to perform restoration work in the Claimant’s home. One point of negotiation of the

contract was that the final cost must be within the repair estimate set by The Standard Fire Insurance Company.

4. The original agreed-upon contract price was \$17,440.67. The contract did not state when the work would begin, or when it would be completed.

5. The scope of the work to be performed was as follows:

- Install fiberglass insulation between wall studs
- Install all drywall, including tape and compound, and finish for painting
- Repair drywall ceilings as necessary, with swirl-pattern or sponge-pattern drywall compound finish
- Install base moldings and shoe moldings
- Apply smooth finish veneer plaster
- Paint home interior
- Install carpet in the basement
- Install carpet on steps to basement

6. Each element of the contract had a separate price, with a total price of \$17,440.67.

The itemized price to install carpet and carpet pad was \$3,707.09.

7. Work under the contract began on or about March 17, 2014.

8. After work on the contract began, and after some deliberation, the Claimant and his wife decided that they would rather install something other than carpet in the basement. The Claimant and his wife were influenced, in part, to make this decision because the basement floor is concrete. The Claimant's wife did some research, and determined that an appropriate product may be a floating laminate floor designed to look like hardwood when installed. The Claimant and his wife then selected a style and color of floating laminate floor that suited them.

9. The Claimant and his wife consulted with the Respondent and asked him for his advice as to whether a floating laminate floor would be appropriate for the basement. The Respondent endorsed the style of floating laminate floor the Claimant and his wife selected as a good choice and said he and his crew had the skills to install such a floor.

10. The Respondent agreed that he could install the floating laminate floor selected by the Claimant in the basement for the same price as the carpet and pad. The Claimant and the Respondent made a verbal modification to the contract to substitute floating laminate floor for the carpet and pad.

11. The floating laminate floor selected by the Claimant was not designed to be affixed to the concrete floor below. The floating laminate floor had tongues and grooves at the seams that snapped together. The floating laminate floor selected by the Claimant was designed, when finished, to cover the entire basement floor, with edges masked by shoe molding.

12. On or about April 15, 2014, the Respondent completed all work under the contract, following which the Claimant, through The Standard Fire Insurance Company, paid the Respondent the final payment due under the contract, for a total paid to the Respondent of \$17,440.67.

13. On or about May 2014, the floating floor began to buckle and form large humps. The buckling caused the floor to rise well above floor level, causing a trip hazard and causing the floor to be unsightly. The floating laminate floor also began to separate at some seams.

14. The Claimant called the Respondent, who repaired the floating floor where it buckled and bulged by driving cement screws through the floating floor at the affected areas to affix the floating laminate floor to the concrete. Forcing the floating laminate floor back into place by driving screws through it also closed most of the seams that had opened.

15. The Respondent's repairs worked briefly, but within two weeks, the floating laminate floor began to buckle and bulge at new locations, again causing large humps in the floating laminate floor, which created trip hazards and an unsightly appearance. The floating floor also began to separate at the seams.

16. The Claimant did some on-line research from which he determined that affixing a floating laminate floor to the concrete below with concrete screws was an improper remedy. The Claimant sought advice from three flooring companies. Employees or estimators from each of the three companies opined that the floating laminate floor had been improperly installed, and the Respondent's repairs were inappropriate. All of the companies told the Claimant that the floating laminate floor installed by the Respondent would have to be removed.

17. On or about July 15, 2014, the Claimant again contacted the Respondent, by email. The Respondent met the Claimant at the Claimant's home on July 17, 2014. The Respondent proposed to repair the problems with the floating laminate floor by driving more screws and nails into the face of the floor to hold it in place. This was unsatisfactory to the Claimant.

18. On July 17, 2014, the Claimant demanded the Respondent remove the faulty floating laminate floor and replace it at the Respondent's expense. The Respondent declined.

19. The Respondent's installation of the floating laminate floor was unworkmanlike. The Respondent's repair of the floating laminate floor was unworkmanlike. The Respondent's agreement to repair the floating laminate floor by affixing it to the concrete with more screws and nails was properly rejected by the Claimant. The Respondent refused, when provided an opportunity by the Claimant, to effect proper repairs to the faulty floor by removing the floating laminate floor and replacing it at the Respondent's expense.

20. On May 4, 2015, the Claimant obtained an estimate in the amount of \$8,400.83 from FloorGem Service, Inc, to remove and replace the floating laminate floor, including all labor and materials. Of this estimate, \$1,135.00 was for removal of the faulty floor.

21. On June 10, 2015, the Claimant obtained an estimate in the amount of \$8,543.27 from Total Floors, Inc., to remove and replace the floating laminate floor, including all labor and materials. Of this estimate, \$1,062.96 was for removal of the faulty floor.

22. On or about July 2015, the Claimant and others in the family removed the floating laminate floor and disposed of the floating laminate floor at the landfill.

23. On March 24, 2016, the Claimant obtained an estimate in the amount of \$5,150.00 from Gideon's Wood Floor Service to supply and install COREtec Plus 5" Plank Luxury Vinyl Tile and transition strips in the Claimant's basement. The Claimant and his wife have determined that among possible products that may be installed in their basement, this product is most preferred.

24. The Claimant's actual loss is \$5,150.00.

25. On January 13, 2017, the OAH mailed a Notice of Hearing to the Respondent by both Certified Mail and First Class Mail to the Respondent's address of record on file with the MHIC. After proper notice of the hearing was mailed to the Respondent at the address of record with the MHIC, the Respondent failed to appear.

### **DISCUSSION**

#### **The Respondent's failure to appear**

As discussed in the Findings of Fact above, the OAH mailed the Notice regarding the date, time and location of this hearing, via both First Class and Certified Mail, to the Respondent. The First Class Mail and Certified Mail Notices were returned as undeliverable by the U.S. Postal Service.

On April 27, 2017, at 10:00 a.m., I convened a hearing in this case at the Largo Government Center. By 10:20 a.m., neither the Respondent, nor anyone claiming to represent

the Respondent, appeared for the hearing. The OAH did not receive any request for postponement of the hearing.

The Respondent was properly notified of the date, time and location of this hearing. The Notice was mailed over three months before the scheduled hearing by both First Class Mail and Certified Mail to the address the Respondent provided to the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (the hearing notice shall be sent at least ten days before the hearing by certified mail to the business address of the licensee on record with the MHIC); *see also id.* § 8-407(a). Despite proper notice being sent, the Respondent failed to appear for the hearing. As a result, I proceeded with the hearing in the Respondent's absence. COMAR 28.02.01.23A.

The merits of the claim

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

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);<sup>3</sup> *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a . . . licensed contractor”). Actual 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.

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.



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

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. He installed a floating laminate floor in the Claimant's basement that buckled, bulged and separated at the seams just a few weeks after installation. The installation was unworkmanlike because the floor was not supposed to buckle and cause large bulges, and was not supposed to separate at the seams. The Respondent's repair was unworkmanlike because the floating laminate floor was not supposed to be affixed to the concrete beneath with screws and nails. The Respondent's offer to repair the additional bulges and separations with more screws and nails was properly rejected by the Claimant. The Respondent did not offer to repair the faulty floor properly, and rejected the Claimant's demand that the Respondent remove and replace the faulty floor at the Respondent's expense.

The Claimant removed the faulty floor with self-help at no cost.

The cost to replace the faulty floating laminate floor with an alternative acceptable to the Claimant is \$5,150.00.

I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

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).

Application of this measurement results in the following:

Amount paid to the Respondent:	\$17,440.67
Plus -Amount to repair:	<u>\$ 5,150.00</u>
	\$22,590.67
Minus – contract price	<u>\$17,440.67</u>
Actual loss:	\$ 5,150.00

Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). The Claimant paid \$17,440.67 to the Respondent, which is more than his actual loss of \$5,150.00 computed using the formula in COMAR 09.08.03.03B(3)(c). Accordingly, the Claimant is entitled to reimbursement of \$5,150.00. Md. Code Ann., Bus Reg. § 8-405(a).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss \$5,150.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,150.00; 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;<sup>4</sup> and

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

## Signature on File

June 16, 2017  
Date Decision Issued

\_\_\_\_\_  
Michael R. Osborn  
Administrative Law Judge

MRO/sm  
#167889

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

PROPOSED ORDER

*WHEREFORE, this 10<sup>th</sup> day of July, 2017, 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  
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION