IN THE MATTER OF THE CLAIM

* BEFORE KIMBERLY FARRELL,

OF RICHARD & LESLIE MELZER,

* AN ADMINISTRATIVE LAW JUDGE

CLAIMANTS,

* OF THE MARYLAND OFFICE

AGAINST THE MARYLAND HOME

OF ADMINISTRATIVE HEARINGS

IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR

OMISSIONS OF CHARLES EVERS,

JR., T/A EVERS HOME

OAH No.: DLR-HIC-02-19-16989

IMPROVEMENTS,

* MHIC No.: 18 (90) 363

RESPONDENT

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 February 12, 2018, Richard and Leslie Melzer (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$27,400.00 in actual losses allegedly suffered as a result of a home improvement contract with Charles Evers, Jr., trading as Evers Home Improvements¹ (Respondent). Md. Code Ann., Bus.

¹ The company is referred to in various ways in different documents in evidence, such as C. Evers Home Improvement Inc., Evers Home Improvements, C. Evers, etc. The variations on the business name do not impact this proposed decision.

	Level of the control		
		- 1	<u>}</u>
-	ademical particles of the second seco		a Attorney Transport
			is Magazifishan S
		() ()	
		. E. A. I	
-			ingerserrence F
	AND		
		21. (C	
		5C	
	「		
	TO THE RESIDENCE OF THE PROPERTY OF THE PROPER		

CONTROL PER SERVICE CONTROL PER CONTROL CONTROL PER CONTROL CONTROL PER CONTROL CONTROL PER CONTROL CONTROL CONTROL PER CONTROL CONTROL CONTROL PER CONTROL CONTROL CONTROL PER CONTROL CONTR

inger of the first and the state of the control of the transfer of the control of

and the filler incompline the number of the first state of the state o

Reg. §§ 8-401 through 8-411 (2015). On May 30, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on August 16, 2018, at OAH's offices at 11101 Gilroy Road in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department of Labor (Department), represented the Fund. Michael J. Moran, Esquire, represented the Claimants, who were present at the hearing. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); 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

Exhibits

I admitted the following exhibits on the Claimants' behalf4:

Exhibit No. 1 Resume of Claimants' expert witness, C. Stephen Klitsch⁵
Exhibit No. 2 Contract between the Claimants and the Respondent, April 27, 2016
Exhibit No. 3 Document entitled, "Changes/Adds/Credits," undated

Exhibit No. 4 Contractor's Invoice, June 22, 2016

Exhibit No. 5 Warranty/Contractor's Invoice, July 5, 2016

Exhibit No. 6 Documents regarding draws and payments, various dates

² References to the Business Regulation Article are to the 2015 volume and the 2019 Supplement.

³ On July 1, 2019, the Maryland Department of Labor, Licensing and Regulation became the Department of Labor. ⁴ The Claimants' exhibits had face sheets and were pre-marked as Exhibit No. 1 through Exhibit No. 12. Claimants' Exhibit No. 13 was offered and admitted at the hearing, but does not have a face sheet. Claimants' Exhibit No. 14 was submitted after the hearing. It had been discussed as a potential exhibit during the hearing. Neither the Respondent nor the Fund objected after I sent correspondence about this exhibit and I have admitted it as well. ⁵ Mr. Klitsch's full name is Charles Stephen Klitsch, but he goes by Steve Klitsch.

	or a manifestation of the second second to the second seco
	The second of
	the most first than the shape a first of the second stability
nya yapı	
	ners (d. 18 later) (12) alle sell toto de monaren ("Armetengeia" rodica su ne espaçado finances
10. 1309 N	The property of the contract o
•	सम्बद्धाः सम्बद्धाः स्थानः वरामेकानेवानं । सम्बद्धाः समिति वर्षाः वर्षाः । स्थानिकान् । स्थानिकान् समिति । समि
file o	er tildt sæme i komme ekknop kin i i ski de malinging i neve. Heft fore hav medteren i som
dar e l	construction of the second second second to the second second second second second second second second second
Marking.	r r-va land on vi side avent i sool ladi. Far i Francas entiet i statio
	the second of th

of Higher Bridge and the collection of the principal continues.

Fig. 1. Constitution of Comments and Comments of Comme

at a fight fill of a second of the second of

Exhibit No. 7	Home Inspection Report authored by Steve Klitsch, Home Improvement
	Consultant, October 28, 2016
Exhibit No. 8	List of work alleged to be "unfinished, sub-standard, or incomplete,"
	December 10, 2016
Exhibit No. 9	Construction Costs Summary, January 15, 2018
Exhibit No. 10	Code Compliance Analysis, July 26, 2019
Exhibit No. 11	Home Inspection Report, May 16, 20176
Exhibit No. 12	Home Inspection Report, April 25, 2017
Exhibit No. 13	Actual Loss Calculation, undated ⁷
Exhibit No. 14	Itemized costs for tasks listed in Exhibit No. 8 August 16, 2019

I admitted two of the three exhibits offered by the Respondent:

RESP No. 1	Letter, "To W	hom it May Co	ncern." on	letterhead c	of RE/MAX First
	Choice, Augus	st 16, 2019°			
RESP No. 2	Not admitted ⁹				
RESP No. 3	A version of the	e contract (im	المسمام		

I admitted the following exhibits on behalf of the Fund:

	FUND No. 1	Hearing Order, May 24, 2019
er.	FUND No. 2	Notice of Hearing, June 21, 2019
	FUND No. 3	Letter from the MHIC to the Respondent, February 22, 2018, with
		attached Home Improvement Claim Form, February 12, 2018
٠.	FUND No. 4	MHIC Licensing records for the Respondent (license #01-83053 and his
		business (license #05-121473)

Testimony

The Claimants presented the testimony of Charles S. Klitsch, whom I accepted as an expert in home improvement, the adequacy and workmanlike nature of home improvement, and costs and estimation of home improvement repair. The Claimants, though both present, did not testify.

The Respondent testified on his own behalf.

The Fund did not call any witnesses.

⁶ Claimants' Exhibits Nos. 11 and 12 were admitted subject to the caveat that they were not admitted for nor should I accept as factual any expert opinions expressed by the authors in the reports.

⁷ In Claimants' Exhibit No. 13, under Roman numeral II, the date of the supplemental report should read July 29, 2019, rather than July 29, 2018.

⁸ This exhibit was admitted subject to striking the portion that indicated that the author was a co-owner of the business named on the letterhead and striking the last paragraph.

⁹ The exhibits that were not admitted are marked for identification and in the file.

	The second of th		िस् अस्ति हार्डास्ट्रिक्ट । इ.स.च्या
- <u>男</u> 15年 -	प्रकृतिकार कार्या के किस्से ने क्षेत्रक हैं के इंग्लेक अध्यक्ष मार्थ के अ		
	the spiritual of the complete of the late of the spiritual of the spiritua	t	Esta Maria de la compansión de la compan
-		างการเ หมือน	
	The state of the s		\$1000000000000000000000000000000000000
	the first state of the first state of the st	ara segrat	
	10 10 10 10 10 10 10 10 10 10 10 10 10 1	config to	Mark British
	The state of the s		
		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
	Control of the Control of the state of the control		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
			- 1000 - 1000 - 1444
	Less the second of the second	1	
			interpretage
-		igen in the second of	
	र को जा करने के पार्ट के प्रतिकृति के लिए हैं के लिए हैं के किया है के लिए हैं कि किया है कि है कि है कि है कि इस्तिकृति कि के क्षानुकार के किया कि किया कि किया किया किया कि किया किया	ກ ໄດ້ ຄຸນຕົນພາຍ	
6:11			
			t en
į	in many consideration with the state of the viscous out of	ns Christain S	
i			:
25 3	ा १ वस प्रमुख्या । स्थानकार्य विकास स्थानिकार, प्रस्तेष्ठ भाषा ६ अन्तर व		
·	and particularly to a significant particular to the control of the	า เค.ชาว การสำหนั	entine i wate to state
	经基础的 1000 · 100	an aga wasan garan sa	
į			
		ra bollikut ka	in and the
		ya samo sisu Min	en filosofieta († 1957) 1964: Springfilosofieta
			ranga and the second of the se

the after an information in the content of the superior of the content in the content of the con

the annument of the control of the c

Stipulations

The parties stipulated that item number 1 on the Code Compliance Analysis in evidence as Claimants' Exhibit No. 10 was part of the scope of work included in the original contract.

The parties further stipulated that the Claimants were not the spouse or other immediate relative of the contractor; employees, officers, or partners of the contractor; or immediate relatives of any employee, officer, or partner of the contractor. They stipulated that at the time they made the claim, the Claimants did not own more than three residences or dwelling places. They stipulated that there were no State or federal actions pending regarding this case; and that the Claimants had not received any insurance monies as the result of a claim arising out of these facts.

I accepted all of these stipulations.

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 01-83053 (for the Respondent as an individual) and 05-121473 (for his business).
- 2. On April 27, 2016, the Claimants and the Respondent entered into a contract for home improvement work at 7554 Battle Grove Circle, Baltimore, Maryland 21222.¹⁰
- 3. The Claimants intended to sell the property and they wanted to strategically make home improvements designed to keep their expenses relatively low while maximizing the price they could get for the property. They made the Respondent aware of their goals. The Respondent walked the entire property with the Claimants and they discussed what work would best fit these goals. The Claimants were either not willing or not able to invest enough money to make all the

The MHIC claim form filed by the Claimants lists July 5, 2016, as the date of the original contract, but the contract document bears a date of April 27, 2016, and Claimants' Exhibit No. 6 documents payment of \$9,500.00 on or about April 28, 2016, so I have determined the contract date to be in April rather than July.

mangalizadi degar Atamelikari kambi mandi Stagar and besi katapa kambi kata to the office of the artem because is soon in, or in entire and a second of the little between the best of the content of the and a free wall one which extress may be articled in the head with material entire and व्यक्तिक है। जिस्सा के जिस्सा कर है जिसे हैं है है जिस है जिस करें के लिए के कि कि के कि कि कर कर है। जिस के अ when the man of the first subjective in the confidence of the parties of the first and the confidence of the parties of the pa The transfer some of the second of the secon radio of the same electrical and a subsequential in the term of the formation and it is thinking my to with the profession of the principal to the profession of the profession of the profession of the profession of Little to be the last of the first

The state of the state of the property of the state of th I all the end of the properties the solution of the base and the delicity which we all the sound make the more of the laces of the collection of Commenced to the state of the contractor

o ordere e confirmação historia de propertiona ambiento de la compressión de

The telegraph constraint line and the constraint of the second se इति । १ वर्षिका विकास के विकास के विकास के लिए किसी प्राविकालिक विद्यालया है कि है विकास के कार्य के सम्बद्धि के विद्यालय to the participation of the pa in a primed with alter primition in many the description of the order of the quantity of the broken are and the first their their light beautiful to the first of the white the first of th Angelijan er vir die Africa ja melan er olde nache gette Kran mill vir krijane. Vir vir sydner i

and the country of the second property of the second of th ोचित्र अस्ति कर्म हर रोत्रे क्षेत्रिय के स्वत् अवस्ता अस्ति के स्वति है । हरी है है हिस्स विद्यानित असूति हर

repairs noted in the walk-through of the property. Additionally, after work began, problems that were not evident at the time of the initial walk-through became apparent. The Claimants were either not willing or not able to invest enough money to repair all the additional items identified during the course of the home improvement project, although the scope of work was expanded to include some of these issues.

- 4. Based on his interaction with the Claimants, the Respondent prepared multiple proposals. The Respondent considered one to be high-end; it included more work and higher-end finishes. There were one or two other proposals. The Claimants chose what the Respondent considered to be a mid-range proposal a three-page document which was eventually signed by both Claimants and the Respondent and came to be the contract.
- 5. The contract was vague in places, making it difficult to determine the precise scope of work contemplated by the parties. It lacked the type of specifics and details generally appropriate for a home improvement contract, such as the names of specific products that were to be used or allowances to be given. There were no products, model numbers, or manufacturers designated for any of the appliances the Respondent was to provide.
 - 6. The contract called for work as follows¹¹:

Exterior

- Replace rotten, peeling paint around garage doors and windows with new trim and bright white exterior paint and caulk \$390 labor and material
- Clean up entire yard (rake, trim, cut, edge), drop fresh stone in [illegible] area and take down fence at water's edge. Remove all things impeding view of water, put fresh mulch in all flower beds \$315
- Reinforce small area of decking used to walk over gulley no charge
- Put matching railings on steps walking into house and stain/seal entire deck \$1,195

¹¹ Some of the work items contained options which affected the price. The contract language in this Proposed Finding of Fact is substantially the same as it appears in the contract, but I have made a few stylistic changes. For example, I have added commas in numbers over \$999 and I have changed some phrasing for clarity.

agrand interpretation of the public parties. The property is the contribution of the time, with preresidente de la proposició de la proposi noting the one to be interested to place to a consequence of the entire of the particular and the parket forto any pic fir, bus which defined to took a primiter or followifts and come is the primite ्रम बर्टी एक देवेंग्रा कर कर ने में में पर्य has been asked be be win his sides to their it with the rediction it will be the control being the control of the control of the clothest of an over the control material control companies 生物的 100 mg 特別 與此時 google 10 17 mg 如此 如此 一种 100 mg na odnik eli jamen ikalahibe gebaleni nya menik lampi siya in kelejang in kelejang in in the account the first and the property of the property of the contract of t Livery at a dishalo to the state of a second state of the contract of the party many the entitless to apply the board to being a fire party of the party respond their exceptions of the coulting expressive to their exception of a could be the first the course of the ્યાં બ્રિકેશ લાલ મુભાવની જાળતીક કેલ ઉજરીકાનો આ ક્ષાણ કો, પ્રાથમ કર્યા જ પછી કે હતા હતું કરી છે સાથે હતું. પોંચ લા કેસ્ટ્રામ કર્ય The control consideration of great to the behavior in the first for the consideration of the consideration of the constant of and the state of t 0.014.39.22 The purple was in the property to the same is the real property. The content of the first of the property of The Lordin temperature of the least and a few temperature becomes the first Below is the graph of the boys teneral week forthe and many of his free within terms of Cities in Instant shallow aged proceeding they are so that a natively year or from the his tracker than as to all the control and reference of the following productions are characteristic to the control of the first to

alen skiller på grønger til den val er nægalder blik blik er er entre ik skille blik er en kommer. Ale skiller flyrige i skiller degal til er en å skille blæden til er en kallen skille blik til til de skille Alegie må grinn i eller er hale en å flyre er en en skiller er en grinner.

- Patch siding and silicone, remove glass block in kitchen and frame up, fill in \$650 labor and material
- Replace rear door with better style and paint/seal, new brushed nickel hardware –
 \$795 labor and material

Interior

- "Demo/clean up-remove carpet wall, we discussed, remove [wainscoting], old lights etc., remove rear wall and bedroom wall \$1,300"12
- Frame minor framing as discussed with master bedroom with wall in closet, remove glass block in kitchen and frame in \$1,175
- Bathroom 1st floor complete gut and install new basic standard tub, 24" vanity and toilet. Use 12"x12" ceramic tile in standard pattern on floor and tub surround, install some matching 6'x8" [sic] tiles with 2 recessed soap boxes approx. 12'x12" [sic] with recess 4"-5", install new toiletries with Nu-Tone vent \$3,895 labor owner to supply tile

Flooring

- Option 1 we will install new sub-floor throughout and level the best we can and install laminate (wood floor look) throughout entire first floor −\$2,900 labor and material + 1,705¹³
- > Option 2 install standard carpet throughout \$1,195 labor and material

• Kitchen

- ➤ Option 1 Gut kitchen in basement and move up to first floor in rear back room. This will require having to level and raise the [illegible, probably the word is "ceiling"], remove window except one large window over sink and use entire rear as wrap around \$7,700 labor and material + 6,210¹⁴
- > Option 2 Leave kitchen in basement but fill in glass block and have cabinets top/bottom added to existing \$1,490

Counters

- > Option 1 Upgrade to granite grade C with under mount sink with new faucet \$1,600 + 850¹⁵
- > Option 2 Formica with sink and faucet install \$750
- Change out floor in kitchen to ceramic tile 18"x18" in standard pattern for new look \$950 labor, owner to supply tile

¹² This bullet point is quoted exactly as it appears in the contract.

¹³ The italicized material is handwritten in what is otherwise a typed document.

¹⁴ The italicized material is handwritten in what is otherwise a typed document.

¹⁵ The italicized material is handwritten in what is otherwise a typed document.

				ne en e	eri egan, viet, i se	ora oraș estă de algenta. To	rything the said to	si ja ka nas
<i>:</i>								
	. •				÷			i da series de la composición de la co
		10 84 20 20				Por E	de	(10 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
				100 mm m	one on the second of the secon			
							andi Nasaya ando Todas	Action of the control
				e e				
							e and a particular section of the se	Company of the state of the company

- Backsplash this will make kitchen look very good but is option 16
- Basement if we move kitchen, I recommend putting new carpet (grade D Berber) and fresh paint - \$1,100¹⁷
- Powder Room 1/4' [sic] drywall over walls and ceiling, standard tile in standard pattern for ceramic tile 12"x12", change out toilet and vanity - \$1,200 labor and material
- Drywall we will hang approx. 38 sheets throughout to include hang, finish, sand and prime ready for paint - \$2,500 (if additional sheets required, price will increase)
- Paint prime out entire house, paint all ceilings, trim and walls (neutral color, same throughout) - \$2,850 labor and material
- Plumbing As discussed, we have to repair or bring to code in utility room, set new toilets, 2 vanities, shower diverter, new faucets, garbage disposal - \$85018
- Electric will have electrician inspect all existing electric, hang new lights as needed, rough in new kitchen if you choose that option, install new GFI's where needed in kitchen/bathrooms - \$1,375 - lights not included
- Misc. install brushed nickel interior door knobs, 2 exterior matching knobs (keyed same), and metal shelving in closet, set toiletries in bathroom and powder room -
- Trim install standard 2 1/4" base throughout, install 6 panel interior doors (4) where they are not matching, bi-fold door on closet openings x3, caulk ready for paint -\$1,600
- After the list of work and options, the contract reads, "Total \$26,150 includes cheapest options in areas that have options to choose from." It then has handwritten:
 - 1) 1,700 upstairs sub floor all laminate
 - 2) 6,200 move kitchen upstairs
 - 3) 850 granite

¹⁸ Emphasis added. This particular provision is discussed below.

¹⁶ No price is listed for labor or material for this line item.

¹⁷ On the contract, there is a handwritten line drawn from this item with a question mark and the word "Stairs."

्रिक्त है		n fri tr∗ Tigan
to established a property of the construction	មួយ ភន ្លាំ បញ្ជាប់	
Secured of Particles over walls the surface of the Secure		
to the configural distance in income code affecting \$1. Transport of The come come on Harmonian decompositions are disting it that the light of the code		
to an analysis of the second o		
The state of the s	2,5000	
the bod on midy two respects motivate from an the troughtion on a process it for a second it for a second in the second second and the second second and the second	14 45	
nage i redeniri gavetra ar antonire. La araderacio estimato esta i esta i el californi en sec - la per refevere fate albor a lorgal esta situat per redefici el ser la la la labara. P	TANCE CONTRACTOR CONTRACTOR	
kalitan (Taranda naharita anema) h Eurand angahan umin meneliki a katan ik kama 	- (1442) - (1442) - (1444) - (1444) - (1444)	
had been de l'est en monte de la company		
region Sus. and and if the refl winds in another a collection is collected.		
edercija oblikacija policija di oblikacija policija di oblikacija di oblikacija oblikacija oblikacija oblikacija Primoce di		
	1 1	

An participation of the property of the distribution of the first control of the property of t

followed by a total of \$34,900.00. This indicated that the Claimants had chosen the more expensive options for these items and that with these options the total contract price was \$34,900.00.¹⁹

- 8. The contract included the following notification:
- *All proposals are estimates and prices may change if additional or unexpected issues arise. Upon agreeing to this proposal, a signature will be required with half of the total amount down to begin the project. The remaining balance to be paid within 24 hours of completion of the job, unless other arrangements are made and signed off on by the Client and C. Evers Home Improvements. Any and all adds requested by Client, not listed on this proposal, must be paid in full in order to begin the work on those items. This proposal is valid for 30 days from receipt of email from C. Evers Home Improvements. We accept payment in the form of cash/check/[Visa]/MC. If paying with Visa/MC, there will be a 3% surcharge in addition to your total. We thank you for your consideration.*

Claimants' Exhibit No. 2.

- Oosely tracked on pre-printed Contractor's Invoice forms that were hand-labeled as "changes/adds/credits," "invoice/warranty," or not labeled. These contained a variety of things—statements of items that had been completed, explanations of why changes were made, either in the scope of the work or the monetary charges, account balances at unspecified times, requests or suggestions for splitting unexpected expenses and labor costs, summaries of findings of master tradesmen who inspected the property, and other notes. Most of these are not signed by either party and most notations do not include any date.
- 10. The cost of the kitchen appliances purchased by the Respondent and installed in the property was \$1,602.72.

¹⁹ The \$1,700.00 and \$6,200.00 were slightly rounded down from the numbers appearing for the options in the scope of work listing.

alicer with no metrodic members of the and accompanies of the confidence before a series of the confidence and regions included in the complete control of the control of the control of the control of the control of Commission of progration making to see out for particular the from state and the trength of the original and the first the state of the state I mallier but grings live male in the place of the live of the live in the liv Harried of Specified in the contribution of the state of the sample of the contribution for the with the principal and a property of the principal and the princip The training the state of the property of the state of th The same of the second Sometimes the flow profit was two business business to be the first for the contribution of the S all Differs against an artindate partition are not be arrestinated in the supermone of this play and all the transfer was an PROBLEM ON THE REAL PROPERTY OF THE PROPERTY O the with aligner or a state religion to a state of a secretary and the second of the second of the second of and the second of the second designs are and of processes, and for example, we had been easily as the second of rak ratingen in de hiskomia jaare, oo ee bedat isaa ah ee hagtige daariin gatee daa hagtiga Takking on samban karlangan dan di Arrombangson, and of the property and the second of the se Electrical professional actions

accompanie from a subject of comment of the mention of the subject of the subject

- 11. When the Respondent delivered a new refrigerator, the Claimants were dissatisfied with it because it was too small and the Respondent returned it to the store and delivered a new one to the property.
- 12. The reasonable cost of the products and fixtures purchased by the Respondent and installed in the property other than kitchen appliances was \$11,000.00.²⁰
- 13. A reasonable estimate of the labor costs to complete the original contract at the time it was signed in 2016 is \$19,958.54.
- 14. The total job costs, including the kitchen appliances, the products and fixtures, and labor costs add up to \$32,561.26. National industry standards for these types of home improvement contracts add 20% to the total job costs to account for overhead and profit. Thus, the amount that would be added to this contract to account for those items would be \$6,512.25.

 Adding these two numbers together yields the selling price of the job, \$39,073.51, which is the figure a reasonable contractor and a reasonable home owner could be expected to
- 16. The Claimants paid the Respondent \$45,500.00 in total.²¹ The last payment was made July 11, 2016. The total payment included money for work that was not contemplated by the original contract.

agree upon for the scope of work contemplated by the original contract.

17. The Claimants hired a well-qualified home improvement consultant to evaluate the work done on the property. He inspected the property sometime on or before October 28, 2016, and he produced reports dated October 28, 2016 and December 10, 2016, identifying fifteen unworkmanlike, inadequate and incomplete conditions existing when the Claimants made their

²⁰ This includes charges for two dumpsters.

²¹ Some of the evidence suggests the total was \$45,400.00, but I find by a preponderance of the evidence that it was \$45,500.00.

	ระทั่ง ของระยะสมเทอร์สท์วิจิตซึ่ง เช่น เขตร้องกำลังแบบ การ โกรไซซรีการ์กูล (ซลา)				
75A	s 64 mylet, composé cascada hasan valtain en 19 anns d	n Hand editar	// I	e Kelawa di P	Herita e Seria
				ngog seli	$\{Y_{i}^{\bullet}(t,i), \varphi_{i}^{\bullet}\}$
i gatisti ini.	to organi Ologija projekte koje koje koje koje koje koje koje koj	raj ad ija <mark>as</mark> ira			
	Wigner and the search of the second of the s	sils offic stu	i ii	Path J.	
	La rougement hungere authori i pulsa ca gracomandandi. ku sial	edjak viçişikel	54 <u>(</u>		
		. 18 4 9400			. Breik .
	and the contraction of the second section of the contraction of	1 1	1	* .	
	e partir suga a matrica signicio que provinci facilistici.	** *	ľ		
	and the problem is a second to record to the contract of the c				
	The News Elite of Republic could be to the control of the course of the				
	्दर्भ ते भूत्र द्वानीत स्वयुक्त होति वर्ष विकास क्षान्य विकास कार्यात्व				
	त्त्र का त्राम्य का द्विता के प्रतिवादक प्रतिवादक का स्थापन के स्थापन के स्थापन के स्थापन के स्थापन के स्थापन क स्थापन के स्थापन के				
\ \	name of the life of interest in the contract.				
	ramenton, by the Papality Avolution of the process of				
.0.	natorania da propinsi bee ali yan miyasiirakwan				
				itur İşti.	ម្នុងកែលស៊ីស៊ី ។ ស
	des granificios de covo disconso. El las el borro	i America in L			
- X	्षर् केरेट अने देशकार है। इस महाराज्य क्षेत्र केरिया है	. A vince			45 A 18 87
	outh anytherin in the the course works of the Alexander			• •	
16)	e garante la granditation de la banko se destituir come titto de problem de la come de l	ំព្រះមួយ នៅ		unitions.	क्षेत्र उप (तृ.
,					

म्ब्रेस राष्ट्रकेल्या विद्याल करेल व निर्मालक देखा विद्यास स्थापन स्थापन है।

last payment to the Respondent. Those items are as follows²² (the numbers following each item are the reasonable costs for labor and materials to repair, correct, or complete the deficiencies):

1. Not within the scope of work contemplated by the original contract.²³

2. The bathroom tile surround in the tub area should have been caulked, and either bullnose tile or metal edging should have been installed to give a properly finished look. Also, the sink top backsplash should have been caulked to the wall. \$551.03

3. Touch-up painting was needed in several areas due to there being wall paint on the ceiling or ceiling paint on the wall. Additionally, touch-up painting

was needed around several electric cover plates. \$470.00

4. Of the four windows in the living room, three included picture frame molding and one had drywall returns. Picture frame molding should have been installed around the window with drywall returns. \$391.19

5. For the middle bedroom window, the drywall return at the top of the window was not level and sloped to the right. The drywall should have been placed in a level position and the paint around it should have been touched up. \$703.15

6. The railing at the stairs was supposed to be stained but was instead painted.

That railing needed to be stripped of paint, properly prepared for staining,

stained, and varnished. \$584.30

7. The glass block window in the basement needed to be remove filled in with solid material and insulation. The exterior show made weather tight, with the interior area finished with drywall and panished. \$2,312.57

8. A missing cover plate from a light switch on a column in lower level needed to be installed. \$45.32

9. The kitchen backsplash should have been caulked to the wall. \$126.84

10. There was some missing shoe molding in the basement bathroom that should have been installed. \$135.24

11. Recessed light trims in the basement ceiling needed to be painted to blend as closely as possible with the ceiling and the light fixtures. \$145.56

12. In several instances, molding details were inconsistent with related molding finishes. These should have been replaced to create a unified look. Also baseboard returns needed to be installed at a bedroom door jamb. \$975.86

13. Some places painted white on the exterior of the home had an uneven look to them (some areas looked lighter than others) and there should have been an

²³ Item one alleged that the front deck entry had a split or broken rail which needed to be replaced and painted to blend in. The cost to repair this would be \$446.95. The Claimants' expert testified that this item was not within the scope of the original contract, but he believed that it was an eyesore that detracted substantially from the curb appeal of the property. He believed that it could have been and should have been addressed given the Claimants' goals. The Respondent advised that he saw it and brought it to the attention of the Claimants, but that they decided to

address other items instead.

²² The Claimants submitted Claimants' Exhibit No. 8 at the hearing. It listed fifteen alleged deficiencies, numbered as 1-15. After the hearing, the Claimants submitted Claimants' Exhibit No. 14. It contained the material from Exhibit 8, as well as an additional page that listed the costs associated with each of the numbered items 1-15. I find that not all of the items were within the scope of the original contract, but for ease of discussion and cross-referencing among the documents, I am leaving the items as originally numbered, rather than shortening the list and changing the ordinal numbers assigned to them in the Claimants' exhibits.

the first of the first section of interesting and the property small strengther than the many the traditional destructive description and the residence of the property of the property of the second te granifica lacificità ada ci frasfigicament frage in court. In addition type and and the brack word brook were for solling brane are stated and one A rode called the first accommodate the said garages because sits who does also color of the state CO. 1884 How by at booking a the lay gate is work most record to when it, the one recording to be questioned and the forgrow Winestinger. It was in a history white to health with a कार्य के अन्तर्भ राज्य विकास कार्य के कार्य कार्य के किए हैं कि उने कार्य के कार्य के कार्य के किए कार्य के कि income and disease same and considerated a same of the course share of their copy is and the fill are disclined reportation for the file of the properties of escondita hit parque del fere dels diferencias del l'abbreva con carbor hitler del parti of Author was want placed there is not back there is a part and the Table in the the theory of the all bloggers beginning to the analysis of the section of क्षेत्रके ए अक्षा के देवने पूर्व विकास अस्ति हो तेला अस्ति होतेला स्थाप हास्तिक है। कि सुनिहित्त कर् Stall de die auf the a general et region station for tradition and a size of wild transfer The confidence of the confiden al Africa i esserto film bourant essertialibra por albertante descentante de con The strewest of marchine of the surface begin signal and before a figure in a The last May the properties are considered the set took, take a market 16. สิริทธิ์ (มือให้สามา กละกุร วิลกุ ซากอสก totalistic and properties the form the position but they shall be an obsert. realised to ment of their mediations of some of superior of the sold of the sold of प्राप्ती । अवस्य विभावित्ते विभावित्व सर्वाद्यावित्ते कार्याच्या विभावत्व कर्मा क्ष्मिक । अस्ति का de la Company de en zince to make the setting and to represent this some time to make the first the termination of the setting the termination of the setting the setti na und a hai chraith a tha na mha taite taite taith thaire i mha taigeil mata Di describat richter wer feit ist her hir grag er ein nacht vergen bereich in beim ber bezeich beim ber trant for superior of the highest and the superior that the superior and a superior of the superior of the superior of ระบัง เราที่ เกิดที่สามารถเมื่องและ โดยที่ เกิดเลือดของ โดยที่ เกิดเลือดได้ เป็นที่ ได้ได้ ได้เกิดเลือดได้ เป็น the configuration with the contract of the contract of the con-के मार्था के काम क्रिकेट के ले के के कार का कार किरोत के का मोहर्ष में का कर कर है के के का है। का किरोत का का and the first of the second of the continue of the second
t hadde to the profession to the last beautiful and the control of the first of the decision of the following the following the first of the first o ar make and a still began it for the given and Sell and the site about the base of a gas of a lite of the last finite in the site of a

with well lightly the contesting

The ore in a single left for all within thingles, have, largered in wroter finger on a more than all and and and an employed

- additional application of white exterior paint to exterior surfaces. There was also some caulking that needed to be completed. \$842.91
- 14. The rear deck was low enough that it did not require a railing, so the railing and the posts supporting it were removed. When the rear deck railing posts were cut, they were not cut flush with the deck, leaving trip hazards and cut posts sticking up. These posts needed to be cut flush with the existing deck planks and should have been stained to blend in with the deck. \$125.00.
- 15. In a certain area of the yard, the contract called for the Respondent to "drop fresh stone." He used aggregate marble chips which was not an appropriate product for this particular area of the yard due to it being a low-lying area that flows into a nearby river. The Respondent should have installed large river rock instead of the marble chips. The marble chips should have been removed and large river rock should have been installed. \$739.65
- 18. The total for repairing, replacing, or completing items 2 14 above is \$8,109.52.24
- In 2017, the Claimants had their home improvement consultant return to the property to conduct an additional inspection because they had come to believe, based on home inspection reports, that there were additional instances of incomplete, inadequate, or unworkmanlike home improvements performed by the Respondent in 2016.
- 20. In 2019, the home improvement consultant produced a Code Compliance
 Analysis, which he based on his 2017 inspection and one of the home inspection reports
 produced in 2017. This listed seven areas the consultant identified as failing to meet relevant
 building code requirements at the time the Claimants made their last payment to the
 Respondent (again, the dollar amount following each is the reasonable amount to repair or
 complete the item):
 - 1. The front entrance stair risers were too high. \$495.90
 - 2. The hot and cold plumbing fixtures in the powder room and the laundry were reversed. They were reversed prior to the Respondent's work and continued to be reversed at the time of the Claimants made their last payment to him. \$549.48
 - 3. There were problems with the sump pump, allegedly including the way discharge was set up, the lack of an accessible full check valve, and a lid that was not sealed. These items were not within the scope of the original contract.

²⁴ The Claimants' total for the repairs is \$8,556.47. The total in this Proposed Finding of Fact is lower because I excluded \$446.95 for item number one on the list – the split or broken front deck rail that was not part of the scope of work included in the original contract.

the through a marketiff, between the policy in the frequency animal to be distributed in the military. Control of the contro him of the first designation of the fifth was sink to primary to the state of the and the last the state of the set of the facilities have been a few ones and the करत है जिल्हा कर राज्य के किया है जिल्हा कर है की उन्हों के किया है कि किया है कि किया है कि किया है कि किया क Teo trave selection weeks needs with an increase medicines of the land many grafit for chappy with a say by the transmitted and the forest and the forest and the forest and the The first the military of the second of the ในเรียง โดย ภูลิที่สู่จะที่ จำรับของอาการ เลย และ โดยภาษารับของ เลย เลย การเกิด การที่ 10 เกี่ยวการ over taken and selection linker associate on space to the legal to be a selection of New liter of the constitution of the part of To mile a tapolico es comité d'in les racconstite The first of the second teles is the second of the contraction of the second of the se 19 . Aug 1 1 . Aug 1 . च्या असी के कार्यके अध्यक्ति में भी कार्यके कार्य प्रदर्म के पाद्धकार तक्षण कर होती अवने केला कर है जिस कर की क an elemphonica per agregative operand tendance by mondities in the decides added After which singulated adopt in windows and a virtualistic in Them the conwheattorned the labor, reconsciptor and property or the one see Attaget gramma selitabilikasi sembai sesistap ogo ilika artopagarin ilitaki sart mai barria, asi a dela titori di sa d To come in let . A. Tale Heard people in the company of the property of the particle of the party of the company of be better our be acquired and the entitle Old ourse distinctive paying an income A solge convenience of the contract of the first of the contract of the contra The figure of the first process with the contract of the contr

and one of the compagnetic content of the content o

The first of the contract of the seal of the seal of the first of the contract of the season of the season of the seal of the season of the se

4. Electrical service conductors cleared the roof by less than three feet, creating a potential safety hazard. This item is not within the scope of the original contract.

5. There were numerous issues in and around the electrical panel, including rust and corrosion, wiring issues, frayed sheathing, and loose wires. This item is not within the scope of the original contract.

6. Four "three-prong" plugs were improperly wired.25

- 7. Certain exterior outlets were not functional and certain outlets in a garage were not GFCI protected. These items are not within the scope of the original contract.
- 21. The original contract did not have a draw schedule or payment plan, other than to require that 50% of the total proposal be paid before work would begin. The Claimants paid the Respondent when he requested that they do so. They did not withhold money or report any deficiencies when making the final payment, nor did they contact the Respondent to complain about any of the alleged deficiencies in his work.
 - 22. The Claimants sold the property.²⁶
- 23. The Claimants did not solicit any contractors to repair or complete the work contemplated under the original contract.

DISCUSSION

In this case, the Claimants have the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).²⁷ "[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)).

²⁵ This item is further discussed below.

²⁶ The date the property was sold is not a part of the evidence or record in this case.

²⁷ As noted above, "COMAR" refers to the Code of Maryland Regulations.

a de code pede se indiferancial comeil acceptance ou exciscion del constitue del const

and the standard of the cold o

्रमें प्राप्त कराने अमेक का कार्य में किया है। <u>इस्</u>

du war stellen para geren en en ind nordaline on til en en en en e

्रा दोष्ट्रांच्य है एतिहरू वृद्धे, पहें एतिहरू हो व्यवस्था

Marine 1

the control of the control printing and the control of the control

Court and of VV from the finance

[ំ]ពី និងសេសនៃនៃ ស្បែកសិក្សាការ សកម្មភាព

a en a profit al la comparto estand for contribución e o de el Cabe de Monte y consecuencia de la contribución a esta de el profit de la contribución de la contribución de la contribución de la contribución de la contribu

Owners may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a); see also COMAR 09.08.03.03B(2) ("actual losses incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss? means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann. Bus. Reg. § 8-401. The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants and he performed unworkmanlike, inadequate or incomplete home improvements. This case is complicated by several factors, but, ultimately, I find that the Claimants have not proven the value of the services provided by the Respondent and accordingly I am unable to determine the amount of any appropriate award.

The Claimants' expert was well qualified. Mr. Klitsch has been in the home improvement industry for forty years and he has been licensed by the MHIC since 1979. He is the owner and founder of a home improvement company. Ninety-five percent of the company's business. involves residential remodeling and approximately 5% of the business involves remediating inadequate, incomplete, or unworkmanlike home improvement left behind by other contractors. Mr. Klitsch is knowledgeable in all phases of residential remodeling, including estimating. He prepares estimates when his company is bidding on home improvement projects. He also teaches and lectures on home improvement issues across the country and he has authored articles for respected journals in the home improvement field. He has held and currently holds leadership positions in well-regarded professional associations. I accepted him as an expert in the adequacy of home improvement repair, the workmanlike character of home improvement work, and costs and estimation of home improvement repair.

Before I get to the heart of his testimony, I note that his reports and his testimony identified several areas where the contract failed to meet statutory requirements – among other

The statement of any order of the field that and the statement of the stat

term of personal colories and selections of a selection of the selection of a large selection of a large selection of the selection of the selection of a large selection of the
and separate and see the contest of the second contest of the second sec

things, it failed to have a start date or a projected completion date for the project; it failed to contain certain consumer protection notifications; and it required a down-payment in excess of that allowed under Maryland law. None of those issues are before me. The MHIC did not bring regulatory charges and there is no evidence that any of these failings prejudiced the Claimants in any way. These issues do not go to the questions of whether the Respondent was a licensed home improvement contractor, whether his work was inadequate, unworkmanlike, or incomplete, or how to calculate the Claimants' actual losses. Accordingly, I will not further address any of these matters.

The expert also testified repeatedly that he thought the Claimants overpaid for the contract, saying, for example, that they "did not get the right value for what they invested"; that the Claimants were disappointed with the home improvement performed by the Respondent; and that in light of the Claimants' goals, the original contract should have addressed different substantive items, such as the split or broken railing at the front of the home. These concerns are also not before me, and, even if true, they do not represent compensable losses as those are defined for Fund cases. I will not address these assertions.

With respect to the original contract, Mr. Klitsch testified persuasively that it was vague by industry standards. Even with his expertise and having visited the property, it was difficult for him to discern what scope of work the original contract intended. It was poorly drafted, poorly organized, and lacking details and specifics. With minor exceptions, it did not name the products to be used in completing the work. For the appliances, it did not specify brand names, model numbers, or allowances. Sometimes descriptions of areas where work was to be done were so cursory that it is impossible to determine from the contract where that particular aspect of the project stopped or started inside the dwelling.

THE TWO IN THE STATE OF THE STA

भें देशने भोली प्रभिन्न हो लिए के महादे पूर्व होन्सा में

me personale de la company de la palife de palife de palife de palife de la company de

dings a bit in book a approximation of the properties of the prope

This was exacerbated by the materials contained in Claimants' Exhibit Nos. 3, 4, and 5. This running series of undated notes, observations, reports, account information, changes to the scope of work and other miscellany, does little to clarify the original contract or illuminate what changes are referenced or agreed upon after the original contract. The Claimants, the parties with the burden of proof in this matter addressed a very small number of entries in the documents contained in Claimants' Exhibit Nos. 3, 4, and 5. The Respondent, the party who drafted the documents, also testified in very cursory fashion about the content of those documents.

As a consequence, in my analysis of what does or does not fall within the scope of work called for by the contract, I consider the original three-page document in evidence as Claimants'. Exhibit No. 2 to be the entire contract under consideration. Further, I consider the original agreed upon contract price of \$34,900 to be the number I should use in making calculations, rather than the total amount paid to the Respondent, which was \$45,500. This is so because the \$45,500 total payment included additional work agreed to by the Claimants but not reflected in the original contract's scope.

Mr. Klitsch testified that the value of the appliances installed in the Claimants' home was \$1,602.72, a figure the Respondent did not dispute. Mr. Klitsch determined this by looking at the appliances installed in the home and then finding the prices for the exact same appliances at H. H. Gregg, because that is where the Respondent purchased the appliances. The Claimants have complaints about the overall quality level of the appliances provided by the Respondent, but the contract does not specify any particular manufacturer, model or features that the appliances are required to have. The appliances that were used were not lacking in functionality, they just were very basic. Further, the evidence shows that when the Claimants saw the first refrigerator delivered to the property, they were dissatisfied about its size and complained to the Respondent. He removed the refrigerator from the property and brought a larger one to replace it. The

Claimants could have also refused other appliances that were not to their satisfaction. I accept \$1,602.72 as the amount the Respondent paid for appliances installed at the Claimants' home.

The Claimant's expert also determined that aside from the appliances, the reasonable cost of the products and fixtures installed in the Claimants' property by the Respondent was \$11,000.00. In his Construction Costs Summary, in evidence as Claimants' Exhibit No. 9, Mr. Klitsch lists the products and fixtures he considered and their costs based on the prices charged at Home Depot around the time of the installation. These included items like kitchen cabinets, flooring, ceiling fans, and many other items. It also included service charges for two dumpsters. Mr. Klitsch was painstaking in all his testimony—about the appliances, about these additional products and fixtures, and about the labor costs I address below—offering details about what reference materials he used, his methodology, and that he was looking at costs and labor for remodeling as opposed to new construction. The Respondent did not dispute any of the figures used by Mr. Klitsch in calculating the costs of the products and fixtures. I accept \$11,000.00 as accurate.

Mr. Klitsch also addressed labor costs. In his Construction Costs Summary, in evidence as Claimants' Exhibit No. 9, Mr. Klitsch details the labor costs associated with the work laid out in the contract, as best he could determine the contract's boundaries. Again, in the exhibit and in his testimony, he meticulously explained the resources and methods he used to make the calculations. He arrived at a figure of \$19,958.54. His testimony was persuasive and logical and was not challenged by the Respondent. I find that the reasonable labor costs associated with the scope of work in the original contract is \$19,958.54.

In his report and in his testimony Mr. Klitsch referenced conversations described to him by the Claimants. First, while acknowledging that there were language barriers complicating communication in these conversations, the Claimants advised Mr. Klitsch that they spoke with workers on their property who identified themselves as day laborers and who advised that they

्युका कि । इत्योक्षित प्रदेश हें के हिला है के अले हैं के अली होता करते हैं है को देवल के स्मी के के बहु असामण कार्योव कर पहुंचे हैं है कि कि कि कि कि कार्या के कि कि के कि कि कि कार्या और कार्या के कि कि कार्या के कि कि e trac Miller de legit seg rejunis od med celes individuis diel en engrossion andis ed CO. ODE | LES AND I BELIEVE PARTY OF THE CONTROL OF THE PROPERTY OF THE STATE OF THE STATE OF THE PROPERTY OF to an entropy of the state of the second respect against the larger the secting are not because also black the forest account and the later which is a egenties with 1912 accordance in the 1912 are a subjicultance of this according that we because and a seal of the compagnetic control countries softens betweet the largest on the design of the section, we to be the best from the grant the energy to many a schooling continue of the larger and the larger characters. The hard of an house a somewhole invertible colleges and a colleges and the source of the spice of the factor such than अपने व विकास माने हैं है है जिस है जा है है है है है है है है जिस के लिए हैं है mainteoir de deutiz ne géan a lemont odito va element di l'agin de les est de l'agin de l'agin de l'agin de l' Controller of the 1990 Charlesing Charles of the statement of the plane of washing of from the Super State of the Construction of the Super State of the Super State of the Super The state few admits translating the locks of standardies of Res low which is no classes. al treation and treation of the contract of th The state of the s केरण अंतर्के निकास स्थापनाच्या अति स्थापनिकालान । मा स्थापनीय कि एक और प्राप्ति केर्ना के विकास अंतर्का केर्ना matini nationes, nicela de descriptiones addición de la companie de conserva the second the second second the second and an extreme and temporary bear bearing the contribute and appropriate to the later and the se And the grown on the control of the

the rolling group first Apartiful this seed were structured by the first or a product of the fundamental and

which will be simble with the recognitivity as commenced the finite of the commence of the com

were being paid \$100.00 per day. I do not accept this as reliable evidence. While it is true that hearsay is admissible in administrative proceedings, I find insufficient indicia of reliability surrounding this information to credit it.²⁸ I am concerned about the degree of the language barrier, about which I know nothing, as well as the circumstances of the discussions. Further, the Respondent directly testified that the workers on the Claimants' job were not day workers.

The Claimants also told Mr. Klitsch that the Respondent told them that he was paying the electrician and the plumber \$300.00 per day for their services, a rate that would be very much below expected market rates. Based on these alleged conversations, Mr. Klitsch prepared a revised estimate of labor costs, determining that the labor costs would be reduced from \$19,958.54 to \$7,000.00. I do not accept \$7,000.00 as an accurate labor estimate for the work contemplated by the original contract first, because I do not accept the evidence it is premised on as reliable, and second, and more importantly, it does not matter what the labor costs actually were. Even if the Respondent was paying various workers less than might be expected, that is not an actual loss to the Claimants. The Claimants are entitled to an award against the Fund, if at all, based on unworkmanlike, inadequate, or incomplete home improvement. Who performed the work or how much they were paid is simply not part of the equation.

In his first set of reports, Mr. Klitsch identified fifteen items that represented unworkmanlike, inadequate, or incomplete home improvement. As noted in the Proposed Findings of Fact, the first item on the list was not part of the contract's scope of work and it would not be appropriate to consider any award based on that item. The other fourteen items are fairly contemplated by the original contract and were, in fact, inadequate, unworkmanlike or

²⁸ "Hearsay is admissible in an administrative proceeding. Indeed, if hearsay is found to be credible and probative, it may be the sole basis for a decision of an administrative body." *Redding v. Bd. of County Comm'rs*, 263 Md. 94, 110–11 (1971), *cert. denied*, 406 U.S. 923 (1972). "Even though hearsay is admissible, there are limits on its use. The hearsay must be competent and have probative force." *Kade v. Charles H. Hickey School*, 80 Md. App. 721, 725 (1989); *see also* Md. Code Ann., State Gov't, § 10–208(b) and (c); COMAR 28.02.01.21B and C.

The transfer of the contract of . Perote i re e igilve metallikan jõuli i lõgulises mek eritabelekimise el elipikkimise ri kommet The state of the state of the property of the state of th करते हें के दिन होते जान अक्टूबर होते हैं के उनके का होते हैं के साथ है कि एक प्रतिकार के किया है कि हम करते क a refrave quis le luirez rejuj prefendicità servine grotomes. Le le tettreval di fetti berine republi with the company of the second को पर स्वापन के निर्देश करों के निर्देश के प्राप्त के कर मुंबर करते. हो के कहा की 12 की करते के करते कि का कि in the property for the large production of the more there were a little of the control of the said a finding of a second of the control beauties Tarder or to the final state, the classification of the St. 1981 (St. 1982). The second of the state of the state of the second the termination of the associated by the property of the content of the second primary of the descent the The state of the second section of the property of the section of and a processing the supplier areas while the control of a say process of the profit of the profit of the the transfer of the rings to a night man be beliefled for the manifest built. I republicate par be seen because the total the first of an bestern in state that the parties of the state his parties in the parties of the grant of the main policita eigene vigare i bar reconguitado vida de la circa vigar esta de la como de la como de la como de So the first and all agrants of the Million half the first of मिल्या कार्या के के के के के के किस्तु के के कार्या के किस्तु के किस कार्या के के किस के किस के किस के किस्तु क the second with a strength of the control of the second the second of the second of the second of the second of one of loui months in the edition and bestines trained to execute the property than the billions. where the factor of the finished was the form of the figure of the factor of the figure of the figur

Leader of the colling of an interest to the second of the colling
incomplete. The Respondent did not seriously dispute any of the items in this list. The labor and material costs for correcting those fourteen items is \$8,109.52.

Much more problematic is the Code Compliance Analysis prepared by Mr. Klitsch more than three years after the project was completed. In the introductory paragraph, Mr. Klitsch advises that the report is intended to identify "deficiencies in and around this property" that represent lack of compliance with relevant building code requirements, particularly with reference to the International Residential Code for One and Two Family Dwellings 2012, commonly known as the IRC. The introduction went on to say:

The purpose of this analysis is to identify the tasks to bring the house to code compliancy based on a written notation made by [the Respondent] where they used the phrase "bring to code" on page 2 of their original contract with a hand written date of April 27, 2016.

Claimants' Exhibit No. 10, pg. 1 (emphasis added).

The Claimants' position, endorsed by Mr. Klitsch in his written compliance analysis as well as his testimony, is that in using the phrase "bring to code" in the contract, the Respondent was affirmatively taking responsibility to bring the entire property into code compliance. This assertion is breathtaking in scope, and strongly refuted by the Respondent. I find the Respondent's position to be more persuasive on this point.

Critically, the contract references "code" only one time. In context, it reads as follows: "Plumbing-As discussed, we have to repair or *bring to code* in utility room, set new toilets, 2 vanities, shower diverter, new faucets, garbage disposal \$850." Claimants' Exhibit No. 2, pg.2, (emphasis added). To suggest, as the Claimants do, that this should be interpreted as the Respondent undertaking to bring all aspects of the property into code compliance is an overly broad and unsupportable reading of the contract language.

To be sure, if the Respondent agrees to perform a certain task in the home improvement contract, it must be workmanlike, adequate, and complete. Further, an implied condition of the

en dem seed legal de seed state and a fail de recasa de de legalement de le departement de legalement de legalemen
The state of the s
where half and problems a cut there complished a convenience as the these states as the
the all and standings of the interpretations of the lightness of the paper of the paper of the paper of the paper.
्रेष्ट विकास विकास के किस्ता के किस के क किस के किस क
metriffer the contract of war works in the sum of the sum of the contract to the contract of t
mount of an english sould well insofter the action in the historian and income and the second
ja kara termineri dili sense di esse mono gilimbili ella relegio socialità accompletario. Li statio producti di selli ella en en gallacci non noniger e no bellacci proliferio.
The state of the production of the first of the state of
The state of the s
and the standard of the contract of the contra
maken to see to all distinct their elegants. The elegants is the second of the terms of
A the market of the second of
The Company of the set the second of the sec
ा की जिस्सा को प्राथम कर सम्बद्धित के प्रियोग महिल्लाहित हो। एसानी 100 जिस्सा कर क्या कि एक है कि जिस्सा के कि जिस्सा के कि
Signal of the father delice to the company of the c
and the balance and and blocker of the financial and a financial and the second
through a complication of the state of the group settled state and a particular particular and industrigation of
Application of the second of t
Commenced and amount of the last control and the last one of the last of the l
The first of the confidence of the first of the first property of the first of the

contract is that work performed under it must conform to applicable building codes. Denice v. Spotswood I. Quinby, Inc., 248 Md. 428, 433 (1968) (addressing new construction rather than remodeling, but standing for the principle that compliance with building codes is an implied condition of contracts involving residences). Item 1 on the code compliance list complains that the riser height on the front entrance stairs was too high based on IRC requirements. The Respondent stipulated that those stairs were within the scope of the original contract. Accordingly, he was obligated to, but did not, conform the stairs to IRC specifications. The reasonable cost of remediating this condition is \$495.90,

Item 2 on the code compliance list reads:

The hot/cold at the powder room and laundry are reversed. This references the hot and cold supply pipes to these locations are in the opposite or reversed locations. It is a plumbing industry standard that the hot inbound water pipe is on the left side of the drain and the cold inbound water pipe is on the right side of the drain.

Claimants' Exhibit No. 10 (some internal punctuation omitted). Mr. Klitsch testified that this is a safety issue as well as an IRC violation. People expect the hot water to be on the left side. Faucets that are reversed and as a consequence produce hot water when an individual is expecting cold can result in burns. Based on the language quoted above, the Respondent specifically mentioned bringing the faucets and the laundry to code, which he failed to do. The hot and cold were reversed before he undertook home improvement work on the property and they remained reversed when he finished home improvement work on the property. The reasonable cost of correcting this is \$549.48.

Item 3 on the code compliance list reads:

Sump pumps cannot be discharged into the public waste water system. They are required to be discharged to daylight or into a storm water management system. According to the IRC, P3303.1.4 Piping. Discharge piping shall include an accessible full check valve. Furthermore, the sump lid is [not] sealed. In an undated document on page 3, titled Changes/Adds/Credits apparently written by

the state of the control of the cont

The second proposed on the second

all successful all the formula content in profit in the first of the f

The first term of the control of the

petaron charactage in close of an Siration

to the large of the figure of the team of the large way to the first

And your in the case the great respect to the case of
C. Evers, the contractor, states; Sump Pump and Pit in the powder room is pumped to is illegal.

Claimants' Exhibit No. 10 (some internal punctuation omitted). Nothing in the original contract references a sump pump or exterior drainage. The Claimants conceded that the code violations complained about under this bullet point pre-existed any work by the Respondent and Mr. Klitsch testified that he did not know if the Respondent had done any work on the sump pump or drainage system. On the evidence presented, it is not reasonable to hold the Respondent accountable for the \$739.00 it would take to bring the sump pump into compliance with the IRC.²⁹

The next two items listed in the compliance analysis read:

- 4. Electrical Service conductors clearance (outside) from the roof is lower than 3 feet, and needs correcting for safety. The inbound conductor service (electric cable for the utility provider) should be greater than 3 feet above and surfaces such as roofing, overhangs, and other such combustible materials.
- 5. The problem(s) discovered in the [electric] panel such as [] rust, corrosion [], Bunched wiring, frayed sheathing, loose breakers... In an undated document on page 4, titled Changes/Adds/Credits apparently written by C. Evers, the contractor . . . states: Master Electrician inspected entire property including the 3 wires (owner) wanted inspected they will be (de-phased). According to the IRC, E3902.12 Arc-fault circuit-interrupter protection. All branch circuits that supply 120-volt, single-phase, 15- and 20-ampere outlets... shall be protected by a combination type arc-fault circuit interrupter installed to provide protection of the branch circuit. This author notes that if a master electrician did inspect the entire property, why were the deficiencies in the electric panel not brought to the attention of the General Contractor, C. Evers?

Claimants' Exhibit No. 10 (some internal punctuation omitted). These are electrical system issues existing on the property prior to the Respondent's arrival. These are not situations created by anything the Respondent did.

Nowhere was disagreement between the Claimants and the Respondent more pronounced than the whole topic of electrical work. The contract states: "Electric-Will have electrician

²⁹ Mr. Klitsch testified that if items 2 and 3 on the code compliance items were bundled together for correction, it would be appropriate to reduce the costs to correct by 20%, as an industry standard accounting for trip charges and some service fees.

			.5 + 15	
•				
	r agrou relicing sit in the try and it could	ļaras ļ	1 . A 11 1 1	
			.jepedii sid	
- 1. 14 : <u>133-3</u>	land to shi district ("Tradia			1 15
	is its sometiment grant of the time and an income			មស៊ីប៉ុស្តិ៍ បែល ដូច ចំព្រឹង្គ ខាន់ បានបញ្ជី
	gen The Civing Consideration and the Constitution			
	the the state of t		olai kongggia	ज्याकः (जनसङ्ख्या रहेका
egasi mus	 अनुस्कर्ण कर्म कर अनुस्कर अनुस्करण /li>			e di made dibere
	at to be able to base the Relature of the property	fish jiliyeyi	o arg pageddy.	र भी वर्षीत्वरी रेसाम्बर्धाः
	All the the main on heigh age.			
;			• •	<u>(</u>
	in the second of			
ាត	ere allega est du la	igi bita kad		
े जुड़	este entitum ca preside california establicada establicada en entre en establicada en establicada en establicada en establicada en establicada en establicada en entre en establicada en entre entr	Delegator Professional		
	and the state of the second second			AND STATE
				3
i de la companya de La companya de la co			istalong to	
ें स्टब्स	# 2 화·하스는 이 교회 회사 회사 회장 성격이 2011년 1일 12 · 생활		A 1 150 A	n e 🛊 🧸 🗼
11.	· 原文 中央基準的 医高加克伯特 计自由的 加州东西 计自由数据数		10.5	
	[10] [20] 역 살다 경우 아니라 요즘 [20] [20] [2] [2] [2]	A GARAGE SANGER	There was a few and	
	Control for the second of the second model of			
`?':		1970		and the second
-	al del di Mercologii (b. 1800) de la compara e di deser	Marie Carl		. 4
14.33. 14.33.		ojeksty si,	्या है।	
		State of the second of the sec		drikasi e. Alik
	to be about the sent of the first persons on the		- 1	
jahjinta ka	The season of the season s	ស៊ី ទាំ (២) និង ()		arjanistraja (ne.
			- របស់ពីពេលខ្លួនសំព័	भारतीय क्षेत्र कर्म
is realign	r - min i co- e regimi gradeline, premiusi u peli prem	w ball Loop	্ৰানুগৰ, চা ন্ নামে জ	
(HE) is	tions that Hwater and the base of		intern ign	i Libraria asid
The second second				
ન સમાર ઘટ્ટી અનેક રાષ્ટ્રિક રહે	The Conference of the Conferen	Marchanica) Nacharana Nacharan	iqui i i i i i i b. (.) I di shidon sa ma	erich war en eine eine
			.	in Kapinan japan L
•				

inspect all existing electric, hang new lights as needed, rough in new kitchen if you choose that option, install new GFI's where needed in kitchen/bathrooms. \$1[,]375-Lights not included." Claimants' Exhibit No. 2.

The Claimants resolutely insist that this contract language meant that the Respondent was agreeing not only to have a master electrician inspect the entire property, but also that the Respondent was obligating himself to correct and bring to code any and all problems revealed by the inspection, all for \$1,375. The Claimants used various forms of the phrase "taking ownership" to express their contention that in specifying that a master electrician would inspect the property, and in mentioning in an unrelated contract provision regarding plumbing that certain things had to be "brought to code," the Respondent was thereby binding himself to correct and bring to code any electrical issue inside or outside of the home.

The Respondent emphatically disagreed with this. His position is supported by a preponderance of the evidence. Despite the expert's impressive credentials, I do not credit his testimony that the contract language should be read as including the correction and bringing to code of any electrical problems that might be uncovered during the course of an inspection.

Accordingly, I find that the work alleged to be code deficient in items 4 and 5 of the Code Complaint Analysis was not within the original contract's scope of work and no Fund award should be made to the Claimants to correct these code deficiencies.

Mr. Klitsch queries in Item 5 (and in other items later in the code analysis), why, if a master electrician actually inspected the entire property, these problems were not brought to the attention of the Respondent. The Respondent directly answered this question, offering unchallenged testimony that the master electrician had brought these things to his attention and that he, in turn, had brought them to the Claimants' attention, but that the Claimants did not have the budget to address everything that could have been or should have been done. He decried the

ne de la company de company de la company Company de la company de l Company de la com

the second of th

and the common and against the control of the contr

The state (state a since and the government of the first of a state of the state of

notion that in having a master electrician inspect the property he (the Respondent) somehow became duty-bound to perform home improvement in areas that the Claimants knew were problematic, but elected not to address due to financial concerns.

Item 6 in the Code Compliant Analysis noted:

At least four "three-prong" plugs are improperly wired (reversed wire). . . Outlets, junction boxes and switches missing covers are a safety hazard... This author notes that if a master electrician did inspect the entire property, as indicated by C. Evers, why were the plugs with reverse polarity not corrected and missing cover plates not installed?

Claimants' Exhibit No. 10. Mr. Klitsch indicated that in preparing the code compliance materials, he was guided by his own visit and by a May 16, 2017 Property Inspection Report (Claimants' Exhibit No. 11). The language of item 6 in the code compliance report is taken directly from the Property Inspection Report. I take "three-prong plugs" to be a reference to the GFI's required by the contract; however; nowhere in the Code Compliant Analysis, the Property Inspection Report, or the testimony at the hearing was there any indication where the problem three-prong plugs were located in or on the property. The contract covered "GFI's where needed in the kitchen/bathrooms." Only if the problem GFIs were in kitchen or the bathrooms would this problem be properly attributed to the Respondent. The Claimants have not adequately proven this allegation.

As for the problems with outlets, junction boxes, and switches with missing covers, only one of the pictures in the Property Inspection Report depicting this problem is labeled as to its location. That picture shows that the problem was located in the garage. The contract does not include any home improvement in the garage. I find that the Claimants have not proved that the problem outlets, junction boxes, and switches were those required by the contract, and therefore no Fund award should be made for them.

yezhoù kar e houte er

	1	1
े एक प्राप्तान ग्रांग्रह्मायुक्तपत्रिक्के अक्षा शतका स्वेताय क्षांत्रकात्वात् क्रीके	tarre, chia	u de la company
en la racció de la composició de la comp		1
The state of the s	~	The state of the s
Alle Court de la propriété de la	wa inio esao. Cilia de la lata	r i i i i i i i i i i i i i i i i i i i
- विकास सुमान्य अवेद्या प्रती स्वति है हुन के नहीं केदता है जिस के आहे.		เปล่า เปล่าได้เกิดเลยเลย
The State of the second of the		
destructions of the second second of the sec		eries Pallisanska stati
प्राप्तिक प्रमुक्ति के किया है के किया है है। इस क्षेत्र के प्रमुक्ति	ाकारीस्ट्राट क	กรี่เลยว่า (มือชายา
al de la		
ें, प्राथमिक है प्राप्त केंद्र के से स्वयंक्रातिको अनुस्त प्रतिम प्रदेश है । महिल्ला पहले में दूर्व है	एस्ट्रीचे समृत्र (द्वारूष	क्षा । अर्डी अस्टब्स्
13 PV Constitute with the which the charge restrict constitutions with the		
The state of the second of the	કેશ રહ્યું સ્ટિલ્ _લ જ ાણ	कर्तुहरू असि (१५) हमा (
		o j Johnstii nemat
. Clare of the an exist difference from buy exact free and exchange	॰ अव <i>ीतं</i> हुन्नु क्र	frod sA
est on at Soi Met "Promition publication and Topic transpose for Indigen. Her	yaj alijora	467 - Mag 40.
ton the problems we also while the galactic terms of the contract of the second		
The last terminal policy and expenses the entrant with the hope and the second		

The final item on the Claimant's code compliance analysis reads in pertinent part:

Exterior GFCI is not covered and is not functional... Garage outlets should be GFCI protected. According to the IRC, E3905.10 Damp or wet locations. In damp or wet locations, boxes, conduit bodies and fittings shall be placed or equipped so as to prevent moisture from entering or accumulating within the box, conduit body or fitting. This author notes that if a master electrician did inspect the entire property, as indicated by C. Evers, why were the GFCI problems not corrected?

Claimants' Exhibit No. 10 (some internal punctuation omitted). No exterior GFCIs and no GFCIs within the garage are part of the home improvement contract under consideration. No Fund award should be made to correct these code deficiencies.³⁰

In his testimony, the Respondent mentioned several times in several ways that the Claimants never reported their dissatisfaction to him. He testified that they paid him when he asked for money, including the final installment paying off the full balance. He further testified that when they complained about the refrigerator, he provided a substitute to address their concerns. Although they were clearly dissatisfied almost immediately with the home improvement work done by the Respondent based on how quickly they engaged the services of Mr. Klitsch, there is not a shred of evidence in the record that the Respondent had any notice of the Claimants concerns until they filed with the MHIC.³¹

The law regarding Fund claims provides that "[t]he [MHIC] may deny a claim if the [MHIC] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d). By failing to notify the Respondent

³⁰ Although I do not recommend any Fund award for the code compliance violations numbered 4 – 7, I note that the reasonable costs associated with correcting the deficiencies would have been \$1,061.27, \$2,775.78, \$448.08, and \$425.77 respectively, subject to a 20% reduction if any two or more had been bundled, due to standard industry practices regarding trip fees and service charges.

Despite the Respondent raising the issue of lack of notice of the alleged deficiencies, the Claimants did not adduce any evidence to counter this testimony, nor did they address it in closing argument. After all parties had had a full and fair opportunity to make closing arguments and any rebuttal argument, I asked about whether the Claimants had unreasonably precluded the Respondent from making good faith efforts to resolve the claim. At that time, the Claimants attempted to make a proffer intended to show efforts to communicate with the Respondent about the matter. I declined to accept the proffer at that point.

about their complaints, the Claimants deprived the Respondent of the opportunity to inspect the work, either as a prelude to correcting the deficiencies or in service of mounting a defense to a claim at hearing.

I note that the Claimants' expert testified that the deficiencies that existed when the Claimants made their last payment to the Claimant in July 2016, were "correctable." In fact, Mr. Klitsch opined in his October 28, 2016 report:

Overall, most of the finishes of the home, both interior and exterior, are within the tolerances of workmanlike performances and current trade practices... However, as noted above, there are unfinished items and inconsistencies with some finishes and some application of products. The client is asking that all finishes that are acceptable and satisfactory within the project scope are consistent throughout the entire project.

(Claimants' Exhibit No. 7, Summary.) There is no evidence to suggest that the overall project was so poorly performed that the Claimants should be excused from allowing the Respondent the opportunity to make good faith efforts to correct the defects. As a practical matter, he could almost certainly make corrections for considerably less than the claim amount sought in this case. There are other very real adverse consequences to a contractor defending a claim in a Fund case. The MHIC considers a contractor ineligible for a home improvement license until the contractor reimburses the Fund for all monies disbursed to a claimant, plus interest. See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09:08.01.20. Awards from the Fund may create a blot on a contractor's record and may impact future business.

These significant consequences warrant giving the Respondent a good faith opportunity to make repairs. The evidence shows that the Respondent acted in good faith while he was performing the Claimant's home improvement. For example, when the Claimants expressed dissatisfaction with the refrigerator the Respondent chose and installed for them, because it was not big enough, he returned it, and purchased a new one that he picked up and delivered. The record suggests that the Respondent would have worked with the Claimants to satisfy them.

ed. In gent of gride interest and in making all the three stages are the Color And septembers and smooth and the state of t and bed hearthele and service interior and original monthly soil I Albert weeken interior, I am to be server to be and the College Confederal (1990) and Londonial College Company to a significant company of the alinear al Ott. Paragon la periodica de la ligitaria All fractions are applicated any regiment retails singularities and climate an electrical seconds. Then you . The world and the second of the content of the property and the second of the best and the books were which is concerned to the man wash and state a description for which which has no The site serviced the early but the supplications and the consulting references a status of free transfer and the state of the state of the first of the first of the state of t Ground and the and the first of the second of off the paper to design with the month of the control of the paper to be a substantial of the control of the co . Lands at a contribution and complete on arrange of real fraction or explicit, via the graph of viated engage V. C. The me regular little to bit made by Joseph was refer to be defined about the fill amount applie there is a first considerable and mississification of the considerable of the considerable of the considerable of the constant and Latinear profession from School and sufficient parameter a section of the effective sec the trial advictor and to a still a still extraint diagonal by the soft solven of the solven and and we are of the second the property of the first second and the first the special and the state of the special marks the project of any four exects of the major is a three such fearing to be set in ome di alicio segolo, a problème congregado di bais avento seguigado e la cita per prese trans and mail out come winds, who is the annument of the state of the state of are a refresh to the set in the religious and analysis where and by the finite of the e i uta di esettotituategio y di endunificiamente a li udigare usa i e timunto, se l'iligiame gidunge and the standard of the standard

Nevertheless, after carefully considering the specific statutes at issue, I have concluded that the Claimants' failure to give the Respondent notice and an opportunity to cure the defects would not bar the Claimants from recovering under a Fund claim. The statutes governing Fund claims contain many specific requirements that Claimants must meet. Most of the requirements were covered by stipulations in this case. The Claimants must not be the spouse or other immediate relative of the contractor. They must not be employees, officers, or partners of the contractor. They cannot be immediate relatives of any employee, officer, or partner of the contractor. The statutes limit the number of properties or dwelling places potential claimants may own. There are considerations dependent on whether there are State or federal actions pending regarding the case, and strictures about insurance monies paid as a result of claims arising out of the same facts.

The legislature and the MHIC have carefully contemplated any number of factors that could bar recovery from the Fund. A claimant who unreasonably rejects good faith efforts by the contractor to resolve a claim is barred from recovering from the Fund. Nowhere does the statute or the regulations require a claimant to notify a contractor of any dissatisfaction with home improvement work, and nowhere does the law bar a claimant from recovery due to having failed to notify a contractor. In this case, if the Claimants' plan had worked out as they hoped, the property would have sold quickly after the home improvements were completed and notifying the Respondent would have been moot, as the Claimants would not have been in a position to have him address any of the incomplete, unworkmanlike, or inadequate home repairs at issue.

Having found that the Respondent was a licensed contractor and that he performed unworkmanlike, inadequate, and incomplete home improvement, 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,

The first of the second control of the second control of the second seco

Less for a straightful acceptable for the control of the control o

attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract and the Claimants did not seek to have other contractors 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 is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

The amount paid to the contractor for the original contract was \$34,900.00. The cost of the materials provided by the Respondent is \$12,602.72 (\$11,000.00 for material expenses and job costs plus \$1,602.72 for the appliances). This brings us to \$22,297.28. From that I must deduct the value of the services provided by the contractor. This is where the problem arises for the Claimants. They did not provide the value of the services provided by the contractor. They have left me unable to calculate an appropriate award.

The Claimants calculations of actual loss vary from mine in several respects. They start with the basic premise that materials and job costs, plus appliances, plus labor estimates of \$19,958.54 total \$32,561.26. Based on an industry standard of a 20% markup for overhead and profit, a reasonable homeowner and a reasonable contractor could be expected to agree on the original contract at a price point of around \$39,073.51. Mr. Klitsch asserted that the Claimants overpaid for a variety of reasons, but an important one was that he considered them to have paid \$45,500.00 for the contract. For the reasons explained above, I find that the figure to be used as the price paid for the contract is \$34,900.00. The numbers actually suggest that rather than overpaying, the Claimants got a good bargain based on the original contract, at least on paper.

The first control of the part of applying the control of the contr or the contraction of the contra rau melicite ci Tu sitali this gradults can be a surgery of the endion series something and committed and ending and Section 11 And the state of the property of the constitution of the property o and want some tring-applied and result for pear though a new figures are the energy find and allowers the surface of circles of a the many factors and market on the first particles present or before term our la como la trajeria e membra propositata de la desembração e la diferiza de la francia de la persona de la francia de l TO CONTROL OF THE WOOD PRODUCTION AND SECTION OF THE SERVICE SECTION OF THE SERVICE OF THE SECTION OF To wood out I will the first per which prints out at more to a less prints of a prints. · Leasure of the finance of the control of the cont ्यको स्थापनः विदेशीक्षण्याच्या प्राप्तित्वाच्या अनुसार्वे अनुसार्वे सेन्तुन्त्री स्थापना क्षास्त्री स्थापना स् with the relative control of the con gadi. I dans do garba baliros, mais va sar bondo i a social a garate con la bonse del dis े वर्षा क्षेत्र प्राप्त का कार्यमुद्ध का पर्वा द्वार कि को को को स्कूरिक को ब्रोह्म के कार के का कार्यकों roman for an appear to regard of a figure of a great each transition for facing the surface of a given in and the state of t han to determ put have an article termina and analysis on the first the Salter Aldrew Andrews All the straight of the straight design design design and designer of the straight of the figure of the straight Street all restricting the purposed by the least of the property to the control of the state of मोहर के कि का सकती है। हो हो कि को स्वाहित को स्वाहित के का साम के कहा है के लिए कि and a supplicative production of the control to the control of the The militar that the property of a property of the contract of राज्यका सर्व अनुसारिक राज्यकार विकासिक वर्षा राज्य है कर है जा है कर है जा अस्तार के किस कर है जा है जा कर है

In calculating actual loss, the Claimants offered three alternatives. Claimants' Exhibit No. 13. Their first calculation assumed \$32,561.26 for materials and labor. It noted that to fix the fifteen items listed in Mr. Klitsch's December 10, 2016 report it would cost \$8,556.47. The Claimants' method of accounting for this was to subtract the repair value of \$8,556.47 from the original labor estimate, reducing the labor estimate to \$11,402.07. With this reduced labor estimate, the total for materials, appliances, and labor was \$24,004.79. Giving credit for 20% overhead and profit brought the contract selling price to \$28,805.74. The Claimants suggested that their actual loss then equaled the difference between the price they paid (which they consider to be \$45,500.00) and the contract selling price of \$28,805.74, or in other words, \$16,694.26.

The second actual loss calculation submitted by the Claimants used the same methodology but rather than addressing the costs to repair the 15 items from the December 2016 report, it addressed costs to bring the seven areas of code-deficient conditions on the property alleged to be the fault of the Respondent into code compliance. Using \$6,495.30 as the cost to correct the deficiencies, the equation yielded \$14,220.85 as the amount the Claimant believed should be considered their actual loss.

The third actual loss calculation submitted by the Claimants used the same methodology, but combined the costs to correct both sets of deficiencies, a total of \$15,051.77. Running these numbers through the equation yielded \$24,488.62 as the amount the Claimants believed represented their actual loss, although they understood that Fund awards are capped at \$20,000.00.

The problem with all of these calculations is that they attempt to define the value of the services provided by the Respondent in terms of what it would cost to complete the scope of work as originally envisioned in the contract. The value of the services provided by the contractor is independent of what it would have cost the Claimants to complete the contract if that is how they decided to proceed. The value of the services provided by the Respondent is a number unto itself.

An established to the control of the

the contract of the contract o

orgalisticasiani aersis esalares esta esta interes esta esta a constructiva de la constructiva de la construct

And the content of the property of the last content of the property of the content of the conten

Bloom man en la rese estitudad especial legis estituda en moderna al lle captur anti-

It could be much higher (yielding a low or even no award), much lower (meriting a higher amount from the Fund), or basically in line with the numbers in the Claimants' calculations (adjusted as they would be for the items I found not to be contained in the original contract), but I have no way of assigning a proper value based on the evidence before me. Mr. Klitsch was surely qualified to opine as to the value of the services that the Respondent actually provided, but he did not, nor did the Claimants provide that number in any other evidence.

For this reason, I am unable to calculate an appropriate award from the Fund and I recommend that no award be made.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have failed to prove that they sustained an actual and compensable loss, or the amount of any such loss 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)(b).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimants' claim; and

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision:

November 14, 2019

Date Decision Issued



KAF/cmg
Document #182016

المائين والموادية السائد بمعيد والأساسات أي المحاري الأساس مواعيد

The control of the fear of the control of the contr

The site of the state of the same of the s

The first of the control of the second secon

and the second of the constraint of the second of the constraint and the second of the

en granden i de la companya del companya del companya de la compan

PROPOSED ORDER

WHEREFORE, this 20th day of December, 2019, 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
Chairman
MARYLAND HOME IMPROVEMENT COMMISSION

MOTES ESTATE TO THE TO A STORE TO THE STORE STOR

IN THE MATTER OF THE CLAIM OF RICHARD & LESLIE MELZER

MARYLAND HOME IMPROVEMENT COMMISSION

AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF CHARLES EVERS, JR. t/a EVERS HOME IMPROVEMENTS

MHIC CASE NO. 18(90)363 OAH CASE NO. DLR-HIC-02-19-16989

FINAL ORDER

This matter was heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on August 16, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 14, 2019, concluding that the homeowners Richard and Leslie Melzer ("Claimants") failed to prove that they sustained an actual loss that is compensable by the Guaranty Fund. *OAH Proposed Decision* p. 28. In a Proposed Order dated December 20, 2019, the Maryland Home Improvement Commission ("MHIC") affirmed the Proposed Decision of the ALJ to deny the claim. The Claimants subsequently filed exceptions of the MHIC Proposed Order.

On February 6, 2020, a hearing on the exceptions was held before a three-member panel ("Panel") of the MHIC. The Claimants were represented by Michael Moran, Esq. Despite receiving proper notice of the hearing, evidenced by a signed certified mail receipt, the contractor, Charles Evers, Jr. t/a Evers Home Improvements ("Contractor"), was not present for the exceptions hearing. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following two preliminary exhibits were offered by AAG Sachs and admitted into evidence at the exceptions hearing: 1) OAH Proposed Decision, MHIC Proposed Order, and Cover letter with Certified Mail Receipts, and 2) Hearing Notice for February 6, 2020 Exceptions Hearing with Certified Mail Receipts. Neither the Contractor nor the Claimants produced a copy of the transcript of the hearing before the ALJ, and therefore the

kollenni og etni flytogrægetet fold livrenden i for å åreligte til bligt fra ædfinklig i sætelle. Deligt gregnættigtette for produktion til flytogrægetet.

the principal section of the section of the principal control of the control of the section of the control of t

Less and your system to restain the state of the control of the control of the state of the stat

Panel's review was limited to the ALJ's proposed decision, the exhibits introduced into evidence at the OAH hearing, and the preliminary exhibits offered by AAG Sachs at the exceptions hearing. COMAR 09.01.03.09(G) - (I).

In their written exceptions, the Claimants challenge the ALJ's conclusion that their actual loss cannot be calculated from the evidence presented at the OAH hearing. The Commission agrees with and affirms the ALJ's findings of fact but differs from the ALJ on how those facts are applied to the calculation of actual loss. The Commission has promulgated by regulation three formulas for calculating actual loss. COMAR 09.08.03.03B(3)(a)-(c). Because the Claimants are not seeking another contractor to correct or complete the work, the ALJ appropriately used the second formula that reads as follows:

If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

COMAR 09.08.03.03B(3)(b). The first figure used in this calculation is the "amount which the claimant paid to the original contractor." The ALJ found based on the preponderance of the evidence that the Claimants paid the Contractor a total of \$45,500.00. *OAH Proposed Decision* p. 9; *Claimants' Exhibit* 6. Based on the plain language of the regulation, the Commission finds that this sum is the appropriate figure to use in the calculation, and not the price of the original contract used by the ALJ. *OAH Proposed Decision* p. 15.

Per the formula, the \$45,500.00 is then reduced by the "value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b). Although the ALJ found that the Claimants proved the value of the materials, she concludes that the Claimants failed to prove the value of the services provided by the Contractor. *OAH Proposed*

general of brought and an energy of the brought of the second of the sec

der tradical de la contradación de CLA militagia cierto, objecto los los los las que en mento e forma de la como en actual de la como dela como de la como dela como de la como dela como de la como dela como

The law of \$1.50 and a second control of the
The control of the second of the second control of the second of the sec

Decision p. 26-28. The ALJ noted that the problem with the Claimants' calculation of actual loss is that they "attempt to define the value of the services provided by the [Contractor] in terms of what it would cost to complete the scope of the work as originally envisioned in the contract." OAH Proposed Decision p. 27. The ALJ ultimately recommended a denial of the claim because, based on the evidence before her, she could not ascertain the value of the services provided by the Contractor and therefore was unable to calculate an appropriate award. OAH Proposed Decision p. 28. The Commission, however, finds that the cost to correct and complete the work of the Contractor can be used to ascertain the value of the materials and services provided by the Contractor, thereby allowing for the calculation of an award from the Guaranty Fund.

The Claimants provided through their expert two lists of items that were allegedly left by the Contractor in an unworkmanlike, inadequate or incomplete state. Claimants' Exhibits 8, 10, and 14. The ALJ reviewed the two lists in her decision and identified those items for which the Contractor was responsible. OAH Proposed Decision p. 17-23. The Claimants' expert also provided estimates for the cost to correct and complete these items. Claimants' Exhibits 8, 10, and 14. The Commission agrees with the ALJ's analysis as to which items were the responsibility of the Contractor, and finds that the total cost to correct and complete these items, based on the estimates provided by the Claimants' expert, is \$9,154.90.\(^1\) OAH Proposed Decision p. 17-23; Claimants' Exhibits 8, 10, and 14. When this cost to correct and complete the work, \$9,154.90, is subtracted from the amount the Claimants paid the Contractor and agreed to pay for the job, \$45,500.00, the resulting figure is the value of the work that was provided to the Claimants by the Contractor, \$36,345.10. In accordance with the regulatory formula used by the ALJ, this value

 $^{^{1}}$ \$8,109.52 (Items 2-15 in Claimants' Exhibits 8, 14) + \$1,045.38 (Items 1-2 in Claimants' Exhibit 10) = \$9,154.90 3 of 4

The state of the control of the cont

The second second of the secon

and the second field and the second of the s

provided, \$36,345.10, can then be deducted from the amount paid to the Contractor, \$45,500.00, to reach the amount of actual loss of \$9,154.90, which in effect is the same amount as the cost to correct or complete the work. The result adheres to the statutory definition of "actual loss" which is "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Business Regulation Article, § 8-401. In this case, the Claimants have proven that amount to be \$9,154.90.

Having considered the parties' arguments, the evidence in the record and the OAH Proposed Decision, it is this 8th day of May 2020 ORDERED:

- A. That the Findings of Fact of the Administrative Law Judge are AFFIRMED;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;
- C. That the Proposed Decision and Order of the Administrative Law Judge is AMENDED;
- D. That the Maryland Home Improvement Guaranty Fund award the Claimants \$9,154.90;
- E. That the Contractor is ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Commission; AND
- F. That the records and publications of the Commission reflect this decision.
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney

Chairperson –Panel Maryland Home Improvement Commission The first test to the contract of the contract

The second of th

Apartina de la compansa de la compaña de Compaña de la
Sussia Buch

City of pace and Europia Stripping and Consumpting Connections