STATE OF MARYLAND
DLLR
DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

The Maryland Home Improvement Commission	*	**BEFORE THE**
	*	**MARYLAND HOME IMPROVEMENT**
	*	**COMMISSION**
	*	
v. Mervin Bertrand	*	**MHIC No.: 13 (75) 862**
t/a Home Contractors Plus LLC		
(Contractor)	*	
and the Claim of		
Malaika Green-Brown	*	
(Claimant)		

****

FINAL ORDER

WHEREFORE, this 29th day of April, 2015, Panel B of the Maryland Home Improvement Commission ORDERS that:

1. **The Findings of Fact set forth in the Proposed Order dated February 19, 2015 are AFFIRMED.**

2. **The Conclusions of Law set forth in the Proposed Order dated February 19, 2015 are AFFIRMED.**

3. **The Proposed Order dated February 19, 2015 is AFFIRMED.**

4. **This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

Joseph Tunney
Joseph Tunney, Chairperson
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM	*	**BEFORE TARA K. LEHNER,**
OF MALAIKA GREEN-BROWN,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: DLR-HIC-02-14-18682**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 13 (75) 862**
OMISSIONS OF MERVIN	*	
BERTRAND,	*	
T/A HOME CONTRACTORS PLUS,	*	
LLC,	*	
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 March 10, 2014, Malaika Green-Brown (Claimant), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $3,974.00 in alleged actual losses suffered as a result of a home improvement contract with Mervin Bertrand, trading as Home Contractors Plus, LLC (Respondent).

I held a hearing on November 13, 2014, at the Prince George's County Office Building, 1400 McCormick Drive, Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2014) and § 8-407 (2010). Jessica B. Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), appeared and represented the Fund. The Claimant also appeared and represented herself. Timothy Leahey, Esquire, represented the Respondent, who appeared at the hearing.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

Clmt. Ex. 1 - Liberty Mutual Claim for October 30, 2012 Loss, with Dwelling Line Item Detail
Clmt. Ex. 2 - Emails between Claimant and Respondent dated January 11 to January 13, 2013
Clmt. Ex. 3 - Contract between Claimant and Respondent, dated December 19, 2012
Clmt. Ex. 4 - Photographs A through F
Clmt. Ex. 5 - Response to Claim, from Respondent to MHIC, dated March 14, 2013
Clmt. Ex. 6 - Notice of Termination for Material Breach from Claimant to Respondent, dated January 23, 2013
Clmt. Ex. 7 - Photographs A through F
Clmt. Ex. 8 - Emails between Claimant and Respondent dated between December 19, 2012 and January 3, 2013
Clmt. Ex. 9 - Emails between Claimant and Respondent dated January 23, 2013

Clmt. Ex. 10 - Checks written by Claimant to Respondent, December 21, 2012 and December 22, 2012, totaling $1,452.00
Clmt. Ex. 11 - Labor & Cost Agreement between Karibu Contractors, LLC and Claimant

I admitted the following exhibits on the Respondent's behalf:

Resp. Ex. 1 - Emails between Claimant and Respondent, dated between January 3 and January 13, 2013

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 - Notice of Hearing
Fund Ex. 2 - HIC Claim Form, received March 10, 2014, and MHIC Hearing Order
Fund Ex. 3 - Respondent's MHIC Contractor Registration and Professional License History
Fund Ex. 4 - Letter, dated March 19, 2014 to Respondent, with Claim Form attached

Testimony

The Claimant testified on her own behalf and called no other witnesses. The Respondent testified, and was accepted as an expert in Home Improvement. The Respondent also presented the testimony of Gilbert Garraway. The Fund did not call any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 4457872.

2. At all relevant times, the Claimant owned the home located at 3509 Evans Mill Court, Bowie, Maryland (Residence). The Claimant did not own any other homes in Maryland, and was not an employee, officer or partner of the Respondent, nor an immediate relative of the Respondent, his spouse or any of his partners, officers or employees.

3. Some time before December 2012, the Residence sustained wind-driven rain damage.

4. The Claimant filed a claim for damages to the residence with her homeowners' insurer, Liberty Mutual. Liberty Mutual found that the policy covered the damage to the Residence and paid the claim.

5. On December 19, 2012, the Respondent offered a contract for services for work to be completed at the Residence. On December 20, 2012, by email, the Claimant clarified that the scope of services of the contract included all of the items detailed on the Liberty Mutual claim repair estimate, and accepted the contract based on that clarification (Contract). That same day, the Respondent acknowledged the Claimant's email.

6. The scope of work for the Contract was as follows:

- removing and replacing of one-foot by six-foot deck planking;
- screwing additional deck boards where needed and removal of loose nails;
- sealing, priming and painting surface area around bedroom window that was water stained;
- removing and replacing exterior foyer door, remove and reattach the lockset and deadbolt, and prime and paint new door;
- removing, replacing and painting casing inside of front door that was water damaged and falling apart;
- removing and replacing, including hanging, taping, floating, sealing and painting, a four-foot by eight-foot section of drywall damaged by wind driven rain;
- and removing and replacing insulation and baseboard damaged by rain water.

7. The scope of work did not include the purchase and installation of a storm door.

8. A builder-grade storm door costs between $99 and $200. Installation labor costs for installing a storm door costs is between $200 and $500 dollars.

9. The Contract terms provide that any amendment must be in writing.

10. The original agreed-upon contract price was $2,177.08.

11. The Claimant paid the Respondent $1.452.00.

12. On December 21, 2012, the Respondent began work at the Claimant's home. Over the next few days the Respondent completed much of the work under the Contract. However, the Respondent patched, rather than replaced, the drywall in the foyer. He also repaired, rather than replaced, the deck planking. These deviations were observable and known by the Claimant at that time. The Claimant did not object to these deviations until January 11, 2013.

13. On December 29, 2012, the Respondent advised the Claimant that the weather was too cold to paint the exterior side of the foyer door and that it would be completed on a warm day.

14. Painting a surface that is below fifty degrees Fahrenheit will cause the paint to perform inadequately. The outdoor temperature at the Claimant's home was below fifty degrees Fahrenheit during late December 2012 and early January 2013.

15. On January 3, 2013, the Claimant sent an email to the Respondent asking when he intended to finish the work. The Respondent wrote back that same day asking if he could come on Saturday, January 5, 2013. Ultimately, because of the Claimant's schedule, the parties agreed that Sunday, January 6, 2013 was a better date for the Respondent to come to the Claimant's home.

16. On January 7, 2013, the Respondent emailed the Claimant, asking if he could get access to the house to complete the work. The Claimant advised him he could come Saturday or Sunday, January 12 or 13, 2013.

17. Sometime before January 11, 2013, the Claimant and the Respondent discussed amending the Contract to modify some of the work, and to apply the cost savings from the amendment to the purchase and installation of a storm door. The model and price of the storm door was never agreed upon. No written amendment to the Contract was executed by the parties.

18. As of January 11, 2013, the following work under the Contract had not been completed by the Respondent:

- the removal and replacement of the deck planking;
- the painting of the exterior of the foyer door;
- the reattaching of the foyer door's strike and kick plates;
- the removal and replacement, including the sealing and painting, of the four-foot by eight-foot section of foyer drywall; and
- removing and replacing insulation.

19. No additional work was completed under the Contract after January 11, 2013.

20. On January 11, 2013, the Claimant and Respondent came to an impasse regarding the potential storm door amendment. The Claimant demanded the Respondent complete the contracted work, but for an amount that was less than the Contract amount. The Respondent did not agree to this Contract amendment.

21. On January 11, 2013, the Respondent offered to come to the house to complete the work under the Contract. The Claimant could not meet that day, and told the Respondent to come on Sunday, January 13, 2013.

22. The Respondent went to the Claimant's home on January 13, 2013; however, the Claimant did not answer the door. The Respondent advised the Claimant via email and text message that he had arrived at the Residence. He expressed his intention to complete the Contract.

23. The Respondent returned to the Claimant's home a second time on January 13, 2013. The Claimant demanded that the Respondent complete the Contract, but only if the

Respondent agreed to a reduction in the Contract price. She demanded that the Respondent provide his receipts and an accounting for his costs in completing the Contract thus far. The Claimant offered to let the Respondent complete his work on the foyer door, but the Respondent was unable to do so because of the cold temperature.

24. On January 23, 2013, the Claimant sent a "Notice of Termination for Material Breach" (Termination Letter) to the Respondent. In the Termination Letter, the Claimant confirmed that she had previously given the Respondent the opportunity to: (1) complete the already started repairs under a new contract price; or (2) cease all work under the Contract, and refund and "unearned" money to her. The Claimant did not give the Respondent the option of completing the work under the terms of the Contract for the full Contract price. She demanded reimbursement of $885.76 for money paid for work not completed. She also demanded $442.82 for damaged and missing property.

25. The Claimant unreasonably rejected the Respondent's good faith efforts to perform the work stated in the Contract.

26. The Claimant filed her claim with the MHIC less than three years after entering into the Contract with the Respondent. The Claimant has not filed a claim for reimbursement or damages in any other forum and has not recovered for her loss from any source.

DISCUSSION

An owner bears the burden of proof with regard to a claim against the Fund by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e) (2010); COMAR 09.08.03.03A(3); Md. Code Ann., State Gov't § 10-217 (2014). An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2014). *See also* COMAR

09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). A claimant may not recover from the Fund if he or she has unreasonably rejected good faith efforts on the part of a respondent to resolve the matter. Md. Code Ann., Bus. Reg. § 8-405(d) (Supp. 2014).

For the reasons stated below, I find that the Fund may deny the Claimant's Claim based on the Claimant's unreasonable rejection of the Respondent's good faith efforts to perform the work stated in the Contract.

The Contract and the potential amendment

The terms of the written Contract entered into between the parties is unambiguous. The Claimant received a repair cost estimate from her Liberty Mutual homeowners insurance after filing a claim for damage caused to her home by wind-driven rain. The Liberty Mutual claim cost estimate provided the scope of work for the Contract. The written Contract provided that the Respondent would be paid "as per [the Liberty Mutual] claim," that being $2,177.08.

Both parties agree that at some point prior to January 11, 2013, the parties discussed the Respondent purchasing and installing a storm door for the foyer entrance. The Claimant alleges that the purchase and installation of the storm door was agreed to orally by the parties prior to the parties entering into the written Contract, and that the Respondent intended to purchase and install this door without any additional consideration and without any amendments or deletions to the Contract's scope of work. The Respondent, however, asserts that his discussion of the storm door with the Claimant concerned only a potential amendment to the Contract that had the goal of saving the Claimant money. Specifically, the parties contemplated that by changing

some of the items under the scope of work to repair instead of replacement, the savings realized by the Respondent performing less costly repairs versus more costly replacements would be sufficient to fund the storm door purchase and installation. The Respondent maintains, however, that he and the Claimant never finalized that agreement because they did not agree on the cost of the storm door.

I find by a preponderance of the evidence that the Respondent's version of the events regarding the storm door purchase and installation is credible. By contrast, the Claimant's version of what occurred is not at all plausible, and I reject it outright. The Claimant asserts that the agreement about the storm door was reached prior to entering into the Contract. However, the written Contract, as agreed to by the Claimant, has no provision for the purchase and installation of a storm door. The Contract repeatedly states that the work to be performed was to be "as per claim." In the body of the Contract there is also a list of services to be performed that loosely follows the Liberty Mutual claim cost estimate. This list does not include the purchase and installation of a storm door.

The Claimant also asserts that the Respondent agreed to purchase and install the storm door for no additional consideration, and for no reductions in the services to be performed under the written Contract. This simply is not believable. The Respondent's uncontroverted testimony during the hearing is that a builder-grade storm door would have cost somewhere in the range of $99 to $200, as well as another $200 to $500 in labor to install. The Claimant's allegation that the Respondent agreed to complete this additional work for no additional payment is not realistic or probable.

The Claimant's assertion that the January 11, 2013 email exchange between the parties supports her position is also not persuasive. The Claimant highlights a portion of the email

exchange wherein the Respondent states that he will not charge her or the insurance company for the purchase or installation of a storm door. However, this statement was taken out of context. In an email just three hours earlier, the Respondent advised the Claimant that he repaired, rather than replaced, the deck planking in order to apply the cost savings towards a storm door.

Additionally, I find that the parties' actions are consistent with the Respondent's version of the events. Both parties agree that the Respondent deviated from the Contract's description of work by repairing, rather than replacing, the deck planking. He also repaired, rather than replaced, the drywall in the foyer. Both of these deviations in the scope of work happened sometime on or around December 21, 2012. As evidenced by the emails between the parties, and the photos offered into evidence by the Claimant, the Claimant knew about these observable deviations in the work at the time it was performed, and did not object to them until it became evident to her that there was no agreement as to the storm door. Had she truly not expected the Respondent to perform less work than the Contract required in order to create a cost savings for the purchase and installation of the storm door, she would have clearly objected to the lesser work being done at the time it was done.

Even if I were to believe the Claimant's version, I would not find that the Respondent's agreement to purchase and install the storm door created a legally binding contract. The Contract itself provides that all "alterations or modifications" to the Contract will be "only upon written request." Neither party provided any evidence of any written amendment to the Contract.

Finally, I also find that the potential amendment never became a legally enforceable agreement due to vagueness. The parties never had a meeting of the minds as to a key term, *i.e.*, the style/cost of the storm door. This is evidenced by the Claimant's January 11, 2013 email to the Respondent where she first identified the security glass storm door that she wished to have

installed, and the Respondent's immediate reply that the door was over budget and that he had only agreed to a less expensive door. Neither party provided any evidence that a particular model or cost for the storm door was ever agreed upon. As the Court of Appeals held in *Strickler Eng'g Corp. v. Seminar, Inc.*, 210 Md. 93, 101 (1956), in order to constitute a valid agreement, the parties must express themselves in such terms so that it can be ascertained to a reasonable degree of certainty what the agreement meant, and any vagueness which results in an inability to determine the full intention of the parties renders the contract void. *See also Quillen v. Kelley*, 216 Md. 396, 407 (1958).

The Respondent's reasonable attempts to complete the Contract

Once the discussions regarding the Contract amendment came to an impasse, the relationship between the parties soured. The subsequent discussions between the parties are chronicled through an email exchange occurring mostly on January 11, 2013; I received copies of that email exchange as evidence. (Claimant Exhibit Nos. 2, 8 and 9.) The Claimant, frustrated that she was not receiving the storm door, accused the Respondent of not completing the work as required by the Contract. She demanded an accounting from the Respondent of all of his expenses and material costs. This was to determine the Respondent's actual costs in performing the work he completed, so she could then demand a refund of the money she already paid the Respondent that the Claimant believed the Respondent did not earn. The Claimant told the Respondent:

> We can discuss you completing the work under a readjusted estimate since you have already received $1,452.00, refund what services were not performed/earned, or we can move a step further[1] if you don't agree.

The Respondent immediately replied and asked for an opportunity to discuss the matter

[1] During the hearing, the Claimant clarified that by "move a step further" she meant that the parties would pursue their legal options.

in person. The Claimant responded that she would not "entertain a discussion of [his] now premium fees." She explained that some of the work he completed was not as described in the Liberty Mutual claim cost estimate, and stated:

> This entire back and forth is too much for my liking. I have presented you the options to move forward from this point. You let me know which option you plan to choose as we will move forward from there.

The Respondent asked the Claimant to restate the options, and the Claimant repeated the above quoted language regarding the readjusted estimate verbatim, adding:

> A readjusted estimate will be done regardless per insurance allotment. Now if you choose not to finish the work that you have started (front door), I will power up my drill and do it myself. Seek recovery of any unearned funds as well as my window treatments[2] (including my labor rates).

That same day, the Respondent asked if the Claimant was available to "finalize this." The Claimant responded that the Respondent could come to her house on January 13, 2013.

The Respondent went to the Claimant's home on January 13, 2013 and the Claimant did not answer the door. He tried to contact her via text message and email. He advised her that he had come to the home but that it was too cold outside to paint the exterior of the front door, and stated, ". . .hopefully your schedule will permit for the completion of this job."

Later on January 13, 2013, the Claimant invited the Respondent to meet her at her home. At the meeting the Claimant again demanded that the Respondent complete the work under the Contract at a readjusted price, and refund her money that she believed she was owed. The Respondent left that day without completing any additional work.

On January 23, 2013, the Claimant sent a "Notice of Termination for Material Breach" (Termination Letter) to the Respondent. She stated she was terminating the Contract because the

[2] The Claimant also sought reimbursement for a window treatment that was damaged in the course of the work being done by the Respondent.

work under the Contract was not complete. In the Termination Letter, the Claimant repeated the "options to cure" that she had previously offered to the Respondent. She stated:

> You were given the following two options to complete the contract:
>
> Option 1:
> - Complete the already started repairs
> - Create an adjustment to the insurance claim estimate based on actual services performed
> - Remedy outstanding damages and missing material
> - Refund all money that was not earned per insurance claim work breakdown
>
> Option 2:
> - Do not perform any additional repairs or services
> - Create an adjustment to the insurance claim estimate based on actual services performed
> - Remedy outstanding damages and missing material
> - Refund all money that was not earned per insurance claim work breakdown
>
> After discussions with you, it has been determined that you have no intent to remedy this breach of contract.

The Claimant, concluding that the Respondent did not remedy the breach as per either of the above-stated options, demanded reimbursement of $885.76 of the $1,452.00 she had paid to the Respondent, as well as an additional $422.82 for additional losses she alleged she suffered as a result of the Respondent.[3] The Claimant computed these numbers by performing her own arbitrary estimation of the value of the Respondent's work completed, versus the amount she had paid.

It is true that not all of the work completed by the Respondent was in accordance with the Contract's scope of work. The Respondent did not replace the deck planking; but rather screwed down the planking that was already present. The Respondent also did not replace the foyer

[3] The Claimant was demanding additional money to replace a damaged window treatment, to reimburse her for purchasing a warranty for the new front door, and the replacement cost for the missing strike and kick plates.

drywall and the associated insulation; but instead repaired the drywall in patches and left the existing insulation in place. Finally, the Respondent did not paint the exterior of the new front door, or reinstall the strike and kick plates.

The Respondent testified that he had valid reasons for not completing the Contract. As for the front door, the Respondent provided evidence regarding the outdoor temperature during that time period, and offered the well-supported and reasoned expert opinion of an experienced contractor that it would have been imprudent for him to paint the exterior of the door in the cold temperatures as the paint would not have performed appropriately. He explained that he was waiting for the painting to be completed before he installed the strike and kick plates. As for the deck planking, the Respondent explained that he was attempting to save some money to put toward the potential amendment for the storm door purchase and installation. As to his decision to patch the damaged drywall, he explained that in his opinion the drywall and insulation only suffered limited damage and that it was more prudent for him to patch it, rather than replace the whole wall.

I find that the Respondent's failure to complete the work as per the Contract prior to January 11, 2013 was justified. The parties entered into the Contract on December 20, 2012. The Claimant performed work at the house on December 21 and 22, 2012. The Christmas and New Year's holidays passed. On January 3, 2013, the Claimant asked the Respondent when he planned to return to the home. The Respondent wrote back that same day asking if he could come on Saturday, January 5, 2013. Ultimately, because of the Claimant's schedule, the parties agreed that Sunday, January 6, 2013 was a better date for the Respondent to come to the home. Then on January 7, 2013, the Respondent emailed the Claimant looking to get access to the house to complete more work. The Claimant advised him he could come Saturday or Sunday,

January 12 or 13, 2013. The Respondent was in constant contact with the Claimant seeking to gain access to her home to perform work under the Contract. In no way can his actions be deemed as an abandonment of the Contract.

Additionally, I find that since the parties were working toward an amendment to the Contract, it was not unreasonable for the Respondent to repair, rather than replace, the deck planking and drywall. He was attempting to save costs doing the job so that he could apply the savings towards the potential storm door amendment. I find that the Claimant implicitly authorized the Respondent's actions by failing to object to the work he was doing. The Respondent did the drywall and deck planking repair on or around December 21, 2012. The pictures the Claimant offered into evidence establish that this modified work was clearly observable and should have been obvious to the Claimant at that time. The Claimant provided no evidence that she in any way advised the Respondent that she objected to him doing this lesser work before January 11, 2013. It was only on January 11, 2013, when the parties came to an impasse regarding the storm door, that Claimant expressed alarm that the work had not been completed as per the Contract.

Finally, I find that the cold outdoor temperatures at the time prohibited the Respondent from completing the work on the foyer door. The evidence demonstrates that the Respondent repeatedly advised the Claimant that he was unable to complete the work on the foyer door due to the cold temperatures. The Claimant provided no proof that before January 11, 2013, she expressed any concern regarding this to the Respondent.

However, once the conversations regarding the contract amendment came to an impasse, and it was clear that there would be no modifications to the Contract, the Respondent became responsible for completing the Contract as written. The legal obligation of the Respondent at that

point would have been to replace the deck boards, to replace the entire eight-foot by four-foot section of drywall and the associated insulation, to paint the foyer door when weather conditions permitted, and to complete any other items of the Contract that had yet to be completed. I find that the Respondent expressed on numerous occasions a clear intention to complete the work as required by the Contract. He stated on January 11, 2013 that he wanted to "finalize the matter," and on January 14, 2013 that he hoped the Claimant would be available so that he could "complete the job." He went to the Claimant's home in an attempt to work the issues between the parties out. However, the Claimant's actions prevented the Respondent from being able to complete the work.

The back and forth email exchange beginning January 11, 2013, coupled with the demand for receipts and the Termination Letter, demonstrate that as of January 11, 2013, the Claimant had no intention of permitting the Respondent to complete the Contract for the full Contract price. The Claimant clearly intended to receive a refund from the Respondent even if the Respondent eventually completed all of the work exactly as stated in the Contract. Her stated purpose for demanding receipts from the Respondent detailing his out-of-pocket costs was so that she could add up the Respondent's costs and determine an amount that *she alone* deemed the Respondent owed her. The Claimant's position was that the Respondent could finish the work only in accordance with a "readjusted estimate," or more specifically, a reduction in Contract price.

Because I find that the Claimant did not offer the Respondent the ability to come and finish the work as per the terms of the Contract, I find that the Claimant unreasonably prevented the Respondent from completing the contracted work. A claimant may not recover from the Fund if she has unreasonably rejected good faith efforts on the part of the Respondent to resolve

the matter. Md. Code Ann., Bus. Reg. § 8-405(d). Therefore, because I find that the Claimant did unreasonably reject the Respondent's good faith efforts to complete the Contract, I also find that the Claimant's is barred from collecting any money from the Fund.

Alleged inadequate or unworkmanlike work

The Claimant also alleges that some of the work performed by the Respondent was inadequate and unworkmanlike. She alleges that the Respondent primed and painted over visible mold in the second floor window. However, she provides no corroborating evidence to support her allegation. She also alleges that when the Respondent removed and replaced the casing for the foyer door, that the Respondent ignored significant evidence of rotten wood. In both instances she alleges that the Respondent neglected his duty to contact Liberty Mutual to request additional funds to remedy the observed problems. She demands money from the Fund for the additional costs she encountered hiring a new contractor to complete the work she believes the Respondent should have completed.

The Respondent states that neither he nor his employee saw any evidence of mold in the bedroom window. He states that had he or his employees identified the presence of mold, that he would have taken the issue very seriously and would have taken the necessary steps to remediate the issue immediately. He also provided an explanation as to why he and his employees did not observe the rotten wood above the foyer door. He stated that it was not necessary to remove the siding or house wrap to complete the work he was contracted to complete, and because he didn't remove the siding or house wrap, he could not observe the rotten wood.

As discussed above, the Claimant is not entitled to recover from the Fund due to her unreasonable rejection of the Respondent's good faith efforts to complete the Contract. However, even if I were to find in the alternative, I do not find that the Claimant met her burden

of proving that the work completed by the Respondent was inadequate or unworkmanlike. The Claimant's allegation that the Respondent primed and painted over visible mold in the second floor window is not supported by any corroborating evidence. It is simply her word against his. It is the Claimant's burden to prove her case. Any uncertainty on my part as to whether the work was completed inadequately or in an unworkmanlike manner must be resolved against the Claimant. Additionally, the pictures the Claimant offered into evidence of the rotten wood above the front door were taken in 2014, a year after the Claimant performed the work. There is no way to identify what the condition of the wood was at the time the Respondent completed the work. And in fact, the Respondent's clear explanation discussed above as to why he did not observe any rotten wood, if any rotten wood was even present at the time, is supported by the pictures offered into evidence by the Claimant.

Therefore, I find that there is no evidence that the Respondent performed any work inadequately. As stated above, however, the potential inadequate or unworkmanlike nature of the Respondent's work is not at issue when the threshold issue is whether the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. And because I find that the Claimant clearly rejected the Respondent's good faith offers, I find she is not entitled to collect from the Fund.

CONCLUSIONS OF LAW

I conclude that the Claimant is not entitled to an award from the Fund because she unreasonably rejected good faith efforts on the part of the Respondent to resolve the matter. Md. Code Ann., Bus. Reg. § 8-405 (d).

RECOMMENDED ORDER

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

ORDER that the Claimant's March 10, 2014 claim against the Respondent for $3,974.00 be **DENIED** and **DISMISSED**; and

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

Signature on File

January 20, 2015
Date Decision Issued

Tara K. Lehner
Administrative Law Judge

TKL/lc
#153359

PROPOSED ORDER

WHEREFORE, this 19th day of February, 2015, 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.

W. Bruce Quackenbush

W .Bruce Quackenbush
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION