IN THE MATTER OF THE CLAIM	*	**BEFORE JENNIFER M. CARTER JONES,**
OF GERALDINE BAILEY,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: DLR-HIC-02-19-00461**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 17 (90) 1040**
OMISSIONS OF FRANK	*	
AMBROSINO T/A ADDITIONS ETC.,	*	
LLC.,	*	
RESPONDENT	*	

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

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
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STATEMENT OF THE CASE

On July 24, 2017, the Maryland Home Improvement Commission (MHIC) received a claim filed by Geraldine Bailey (Claimant) seeking reimbursement from the Maryland Home Improvement Guaranty Fund (Fund) for $3,729.00 in actual losses allegedly sustained as a result of the acts or omissions of home improvement contractor Frank Ambrosino, T/A Additions Etc., LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[1] On December

[1] Unless otherwise indicated, all citations to the Business Regulation article of the Annotated Code of Maryland are to the 2015 Replacement Volume.

31, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on May 3, 2019 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). The Claimant was present and represented herself. The Respondent did not appear on time for the hearing, but appeared shortly after the hearing began. The Respondent represented himself. Eric London, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department),[2] represented the Fund.

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. 2018); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

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

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

SUMMARY OF THE EVIDENCE

Exhibits

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

Cl. 1 - Contract, dated August 16, 2016

Cl. 2 - Copy of a negotiated check, dated October 17, 2016 for $3,466.00, and copy of a negotiated check, dated November 1, 2016 for $2,400.00

Cl. 3 - Spreadsheet of costs, undated

Cl. 4 - Assessments of Home Improvements, undated

[2] Subsequent to the hearing date, the Department changed its name to the Department of Labor.

I admitted the following exhibit on behalf of the Respondent:

Resp. 1 - Response to MHIC Complaint, dated April 14, 2017

I admitted the following exhibits on behalf of the Fund:

GF Ex. 1 - Notice of Hearing, dated March 1, 2019

GF Ex. 2 - Hearing Order, dated December 21, 2018

GF Ex. 3 - MHIC Licensing History for the Respondent, dated April 24, 2019

GF Ex. 4 - Claimant's Home Improvement Claim Form, dated July 19, 2017

Testimony

The Appellant testified and presented the testimony of her son-in-law, Jeffrey Faust, whom I accepted as an expert in home improvement.

The Respondent, whom I accepted as an expert in home improvement, testified on his own behalf.

PROPOSED FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-10532 and 05-130542.

2. At all relevant times, the Claimant owned and resided in a home on Dunleer Road (Residence), in Baltimore, Maryland. She owns six properties in Maryland.

3. The Claimant lives exclusively at the Residence.

4. On August 16, 2016, the Claimant and the Respondent entered into a contract to remove and replace a balcony, remodel a screened room,[3] close off an attic opening with doors, repair concrete around the left side porch and house area, and install a designated electrical circuit in the basement for a sump pump and dehumidifier (the Contract).

[3] Documents in the record refer to this as a sunroom and a screen room. As it appears the room did not have walls, but rather a series of screens, I have referred to the room as a screen room for consistency.

5. Specifically, regarding the balcony, the Respondent and Claimant agreed the Respondent would complete the following work:

> Remove balcony wood railing and sand. Replace any sections "in kind" to keep original look. Repair all areas as proper and possible. Prep for paint. Paint, using Sherwin Williams Pro 200 in semi-gloss white.
>
> Remove all surfaces of balcony deck down to rafters. Inspect insulation. Replace if compromised.
>
> Install new plywood subfloor using glue and screw application.
>
> Install moisture barrier to cover entire floor area.
>
> Install hardy backer board over subfloor. Install customer chosen tile. Finish tile edge. Grout.
>
> Install asphalt shingles (best match to existing) around the outer perimeter of balcony.
>
> Re-install railing after balcony floor is refinished.
>
> (Cl. 1)

6. Regarding the screen room, the Respondent and Claimant agreed the Respondent would complete the following work:

> Remove any furniture, decorations, etc. in sunroom. Trim back any vegetation.
>
> Remove approximately 10 sections of screens. Power wash sunroom, both interior and exterior as well as side deck. Apply wood brightener as needed. Stain using Cabot, TWP or equivalent transparent stain. Make adjustments to screen doors as best as possible. Add weather stripping if required to close gaps. Install new screen using cap and lock system or similar to existing. Customer's choice. Install white vinyl soffit along front overhang of screen room.
>
> (Cl. 1)

7. Regarding the attic, the Respondent and Claimant agreed the Respondent would complete the following work:

> Install Traffic Master rolled flooring in attic area being 13' x 15'. Install one set of hollow core 3-panel doors to close of attic stairway.
>
> (Cl. 1)

8. The Claimant wanted the Respondent to install the doors to the attic opening hatch-style. This means the doors were to be hinged to the outside of the attic opening and open inward from the middle.

9. The Claimant and the Respondent agreed the Claimant would pay the Respondent a total of $10,350.00 to complete the work. The Contract only included the total amount for all the work the Respondent was to perform. It did not include specific line-item costs for any aspect of the work the Respondent was to perform or the cost of any materials.

10. The Claimant began working on the attic in September or October 2016.

11. The Claimant paid the Respondent $3,466.00 on October 17, 2016. She paid the Respondent $2,400.00 on November 1, 2016. In total, the Claimant paid the Respondent $5,866.00.

12. The Respondent installed the Traffic Master rolled flooring to the attic area.

13. Bi-fold doors have two sections with hinges in the middle that allows them to fold.

14. The Respondent installed the doors to the attic opening using a bi-fold door. To install the bi-fold door, the Respondent removed the hinges from the middle of the two bi-fold door sections and installed the hinges to the opposite side of each respective door section. This allowed the doors to swing, hatch-style, inward toward the attic.

15. As a result of moving the hinges from the inside of the bi-fold sections to the outside of those sections, there were holes in the interior portions of the door sections where the hinges used to be.

16. The Respondent did not immediately fill the holes left in the door sections left by the hinges he moved.

17. Although the Respondent was going to use standard trim to frame the attic doors, he used more expensive decorative trim at the Claimant's request. The Respondent did not charge the Claimant any more money for the decorative trim.

18. The Respondent failed to properly install all of the nails necessary to secure the decorative trim. The heads of some of the nails stood out above the surface of the trim.

19. The Respondent cut out a piece of the decorative trim around the attic opening to accommodate a light switch. He applied a small piece of trim on the side of the light switch that did not properly join with the rest of the decorative trim.

20. Also at the Claimant's request, the Respondent installed a railing around the attic opening. The Claimant already had most of the railing pieces necessary for the attic opening railing. The Respondent purchased additional pieces to complete the railing.

21. When the Respondent installed the railing around the attic opening, he did not use a fastener on one area of the railing.

22. The Respondent left a small gap between the doors he installed to close the attic opening.

23. The Claimant's son repaired the railing around the attic opening and the trim work.

24. The Respondent completed the following screen room work:

- He removed and replaced all of the screens.
- He power washed the interior and exterior of the screen room and the side deck.
- He stained the porch.

25. Instead of making an adjustment to the screen room doors as required in the Contract, the Respondent purchased new doors for the screen room. These doors were unstained.

26. The Respondent did not stain the doors to the screen room before installing them.

27. When staining the screen room, the Respondent inadvertently sprayed the wood in a manner that resulted in stains to the adjacent white walls.

28. As of February 11, 2017, there were small orange-colored stains on the deck of the porch, near metal chairs, at least one of the screen room vertical beams displayed excess stain buildup on a portion of the beam, and some of the screens the Respondent installed were loose.

29. The Respondent installed an electrical circuit in the Claimant's electrical box for her sump pump.

30. The Contract did not include any work related to securing the Claimant's electrical box or connecting it to a main electrical box in the basement.

31. The Claimant paid another individual $200.00 to secure her electrical box and any wiring to the main electrical box in the basement.

32. The Respondent did not complete any work on the Claimant's balcony.

33. The Claimant's son, Greg Bailey, is a Construction Manager.

34. On February 11, 2017, Mr. Bailey reviewed the work completed by the Respondent. Mr. Bailey completed a report, with photographs, detailing the aspects of the Respondent's work he found to be unworkmanlike.

35. Mr. Bailey also created a chart detailing the costs the Claimant would incur to repair the Respondent's work. Mr. Bailey determined those costs as follows:

Carpentry to repair trim and door at attic	$195.00	3 hours carpenter labor @ $65.00 per hour
Secure attic opening railing system	$81.00	1 hour carpenter labor at $65.00 and $16.00 in fasteners
Prepare and repaint overspray stain at screen room	$310.00	5 hours painter labor @ $45.00 and $85.00 in material
Sand out stains on floor and re-stain areas at screen room	$67.50	1.5 hours painter labor @ $45.00
Repair screen trim and tighten screening at screen room	$515.00	6 hours painter labor @ $65.00 and $125.00 in material
Remove, prepare, and stain 2 screen doors at screen room	$135.00	3 hours painter labor @ $45.00
Remedy unsafe electrical receptacle at basement	$280.00	3 hours electrician labor & $85.00 and $25.00 in material
Repair Estimate	**$1,583.50**	

36. The Claimant's son-in-law, Jeffrey Faust, is a contractor.

37. Mr. Faust advised the Respondent how to fix the gap in the attic doors and the Respondent made that fix.[4]

38. As of the hearing date, the following repairs needed to be made with the following related costs:

Prepare and repaint overspray stain at screen room	$150.00
Repair screen trim and tighten screening at screen room	$515.00
Remove, prepare, and stain 2 screen doors at screen room	$135.00
Repair Estimate	**$800.00**

39. The Claimant did not ask for the Respondent to return any of the money she paid him.

40. The Claimant is not related to the Respondent and is not a business affiliate of the Respondent.

[4] It is unclear exactly when the Respondent made this repair. As there was still a gap between the attic doors as of Mr. Bailey's February 11, 2017 inspection, it is reasonable to conclude the Respondent made the repair after that time. Regardless, there is no dispute that the Respondent installed a strip of wood to close the gap between the doors.

41. The Claimant has not brought any other action against the Respondent to recover for the acts or omissions raised in the claim.

42. The Claimant is entitled to reimbursement from the Fund in the amount of $2,816.00.

DISCUSSION

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor . . . ." Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2). The statutory scheme governing the Fund defines "actual loss" as "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.

At a hearing on a claim, a claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8–407(e)(1); COMAR 09.08.03.03A(3). The claimant's burden is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[,]" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund in the amount of $2,816.00.

There is no dispute that the Claimant entered into a contract with the Respondent to complete work on her attic, screen room and balcony. There is also no dispute the Respondent performed work on the attic and screen room, but did not complete any work on the balcony. The

Claimant essentially has two bases for her claim that she is entitled to reimbursement from the Fund. First, the Claimant asserts a portion of the work the Respondent performed on the screen room and the attic was unworkmanlike and will require repairs. Accordingly, the Claimant asserts she is entitled to reimbursement for the costs of these repairs. Second, the Claimant argues a portion of the money she paid to the Respondent should have been used for the work he was contracted to perform on the balcony. Because the Respondent did not perform any work on the balcony, she believes she is entitled to reimbursement of the amount the Respondent should have used on the balcony work.

The Attic and the Screen room

The Claimant testified that shortly after the Respondent began working on the attic, she noticed that several aspects of the Respondent's work appeared to be unworkmanlike. As a result, she had her son, Greg Bailey, a construction manager, inspect the Respondent's work. Mr. Bailey verified that a number of aspects related to the Respondent's work on the attic and the screen room were insufficient and he created a report, including photographs (Cl. 4), detailing the aspects of the Respondent's work he believed were unworkmanlike. Pointing to this report, regarding the attic, the Claimant asserted the Respondent failed to properly countersink nails into the decorative trim around the attic doors, leaving nails sitting above the surface of the trim; he left hammer marks in the decorative trim and he used common nails when he should have used small head-finishing nails. The Claimant also asserted the Respondent did not properly trim the area directly next to the attic doors, installing the trim upon which the attic doors rested unevenly and leaving gaps in the trim around a light switch. The Respondent also left a 3/8" – 1/2" –inch gap between the two attic doors and left holes where hinges were removed from the doors unfilled, making the doors visually unappealing. According to Mr. Bailey's report, the Claimant also failed to properly assemble the railing around the attic opening, using an improper type and

length of fastener and failing to insert any fastener in one of the railing fastener holes.

Regarding the screen room, Mr. Bailey reported the Respondent over-sprayed stain he used on the porch railings, resulting in the stain being sprayed onto a white portion of the porch. Mr. Bailey also noted that the Respondent dripped a different color stain on the newly-stained porch floor, marring that portion of the porch flooring. Furthermore, Mr. Bailey reported that the Respondent installed trim unevenly and poorly in a number of areas on the porch, and the screens were loose. According to Mr. Bailey, the Respondent used rough interior-grade pine lathe strips for the exterior porch screen bead, he left wood unstained that was covered by some of the screens, and he left the doors to the screen room completely unstained.

Finally, Mr. Bailey reported the Respondent improperly secured the Claimant's electrical box. Mr. Bailey created a chart detailing the costs he believed the Claimant would incur to repair the Respondent's work. (See Finding of Fact number 35). Ultimately, based upon Mr. Bailey's report and estimate to repair the Respondent's work, the Claimant asserts, she is entitled to reimbursement in the amount of $1,583.50.

The Claimant's son-in-law, Mr. Faust, who was accepted as an expert in home improvement, testified that he went to the Claimant's residence after Mr. Bailey inspected the Respondent's work and drafted his report. According to Mr. Faust, he told the Respondent the attic door work and railing was substandard. He told the Respondent what to do to fix the attic doors, and the Respondent complied, following Mr. Bailey's advice. Mr. Faust further testified that he returned to the Claimant's Residence at a later date and fixed the attic opening railings and the trim around the attic door opening.

Mr. Faust agreed with the problems Mr. Bailey outlined in his report and testified that although he may have estimated that the cost of some of the repair work would be higher than

Mr. Bailey calculated, he agreed with Mr. Bailey's estimate of the cost to repair the Respondent's inferior work.[5]

The Respondent testified that when he first met with the Claimant, she advised him she wanted a simple solution to close off her attic space and to keep out the cold air. The Respondent suggested that bi-fold doors would accomplish that goal and he testified he expected that the Claimant wanted basic work done. The Claimant, however, requested more extensive work than he had contemplated, including decorative trim, which he purchased and installed for no additional cost. The Respondent testified that when he installed the attic doors, he discovered the opening for the doors was not square. He acknowledged the doors did not sit plumb on the opening, but because the doors functioned to keep cold air from seeping out of the attic, he believed he had done what the Claimant requested. The Respondent further testified he did not need Mr. Faust to explain to him how to fix the gap between the attic doors. To the contrary, the Respondent asserted he already knew he could place a wood strip to eliminate the gap between the doors, but did not initially believe it was necessary because as installed, the doors served the purpose sought by the Claimant. Nevertheless, he did install a length of wood along the opening between the attic doors, eliminating the gap.

Regarding the attic area railing, the Respondent testified that he agreed to install the railing as the Claimant requested even though it was not included in his contract. Furthermore, the Respondent testified that although the Claimant told him she already had all of the railing pieces he would need, she did not, and he had to purchase additional pieces to complete the railing. According to the Respondent, the Claimant did not reimburse him for the cost of the additional railing pieces.

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[5] Mr. Bailey was not present at the hearing; therefore, I could not verify if he had sufficient expertise in home improvement to offer an opinion on the quality of the Respondent's work. Mr. Faust, however, was present at the hearing and testified as an expert in home improvement. As later becomes apparent, Mr. Faust agreed with Mr. Bailey's conclusions and estimates. Accordingly, Mr. Bailey's report and estimates gain validity via Mr. Faust's expert review.

The Respondent also reported that the Claimant's sump pump did not have a designated circuit in her electrical box and he added the circuit as required by the Contract. The Respondent stated that after he finished installing the circuit, there were no loose wires and no other problems with the Claimant's electrical box.

Regarding the stains on the porch flooring, the Respondent testified he only used one color of stain so there could not have been any orange stain on the floor as a result of his work. Rather, the Respondent testified the marks are rust from the Claimant's metal chairs, which are depicted in Mr. Bailey's photographs.

The Respondent conceded that some of the stain he used on the porch ended up on the unstained white portion of the porch, but he testified he intended to repaint that area. The Respondent agreed the Claimant would incur a cost to repaint the porch over the errant stain marks, but offered it would take no more than two hours to repaint that portion of the porch, for a total of $150.00. The Respondent also agreed it would cost approximately $500.00 to tighten the screens on the Claimant's sun porch and agrees the two screen doors must be removed and stained at a cost of approximately $135.00. The total the Respondent agreed the Respondent would reasonably have to spend to complete the work on the screen room is $780.00.

Ultimately, the Respondent argued that the Claimant had unreasonable expectations about the work she expected him to perform. He reported he tried to work with the Claimant but her demands frustrated him so he decided he would not perform any other work at the residence until he could arrange a meeting with the Claimant and the Dundalk Renaissance Corporation.[6]

I conclude the Claimant is not entitled to reimbursement for repairs to the attic door and trim or the attic railing system, as Mr. Faust testified he made those fixes and neither the

[6] At the hearing, the Claimant testified that she became aware of the Respondent through the Dundalk Renaissance Corporation. In his Response to the Claimant's MHIC Complaint, the Respondent stated that the Dundalk Renaissance Corporation provided a matching grant for the Claimant's home improvements. No other information was provided about this organization.

Claimant nor Mr. Faust offered evidence of what it cost him to make those repairs. Furthermore, I conclude the Claimant has not proven the orange-colored stains on the deck porch resulted from any action of the Respondent. To the contrary, having reviewed the photograph of the stains, it is clear the Claimant has metal furniture on the porch that could have caused the discoloration. Furthermore, the Respondent testified, without challenge, that he used only one stain color. Therefore, any drips would not have resulted in the orange stain depicted in the photograph. Accordingly, the Claimant is not entitled to reimbursement for this discolored area of the porch floor.

Finally, I conclude the Claimant has not proven the Respondent is responsible for any insecure fastening of the electrical box. The Respondent testified he installed a circuit for the Claimant's sump pump and there were no loose wires when he finished that work. Furthermore, the contract does not call for fastening the electrical box to any structure. Accordingly, the Claimant has failed to prove she is entitled to reimbursement for this portion of her claim.

The Claimant has proven, however, that the Respondent never painted the white areas of the porch where he over sprayed the stain in the screen room, he did not sufficiently secure the screens and he did not stain the screen room doors. The Respondent conceded those items were outstanding. Furthermore, the Respondent generally agreed the estimates provided by Mr. Bailey represented reasonable costs to make all of those repairs.

I note the Respondent did not assert he attempted to return to the Residence to fix any of the problems the Claimant reported. To the contrary, according to his Response to the MHIC Complaint, the Respondent declined to complete any more work on the property until he was able to arrange for a meeting with the Dundalk Renaissance Corporation and the Claimant. The Claimant testified the Respondent did not return to the property after late January 2017. I conclude, therefore, that the Respondent did not complete these items even though he was paid

to do so. The Respondent agreed with Mr. Bailey's estimate of what it would cost to tighten the screens ($515.00) and to remove, stain and replace the screen room wood doors ($135.00). He disagreed that the cost to paint over the overspray would cost $310.00 because the space was no more than twenty square feet. The photos the Respondent submitted depicting stains on the white portion of the porch support the Respondent's position estimate. Accordingly, I will use his estimate ($150.00) as the amount it will cost the Claimant to paint over the overspray. Accordingly, I conclude it will cost the a total Claimant $800.00 to complete these outstanding repairs.

I find the Respondent performed unworkmanlike, inadequate, or incomplete home improvements regarding the Claimant's screen room and the Claimant is eligible to recover her actual loss from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a).

The Balcony

There is no dispute the Respondent did not complete any work on the balcony. The Claimant testified that as the Respondent completed work on the attic and the screen room, she consistently told the Respondent she was unsatisfied with the quality of the work. Eventually, she became frustrated and decided she did not want him to return to continue work on the Residence. Mr. Faust testified that after seeing the quality of the Respondent's work on the attic and the screen room, he agreed that the Claimant should not allow the Respondent to complete any work on the balcony. The Claimant further testified she did not want to hurt the Respondent's feelings, so she told him she had changed her mind about having any work on replacing the balcony but she did not ask the Respondent to return any of the money she had paid him. According to both parties, they mutually agreed that no further work would be done.

The Claimant is entitled to compensation from the Fund if the Respondent completed unworkmanlike, unprofessional or incomplete home improvements through his acts or

omissions. Indeed, I have concluded that such compensation is due to the Claimant regarding the Respondent's incomplete work on the Claimant's screen room. The Respondent did not do *any* work on the Claimant's balcony because the Claimant verbally rescinded the portion of the contract that required the Respondent to complete the balcony work.

Accordingly, the Claimant did not suffer any loss as a result of the Respondent's acts or omissions as it pertains to the balcony and she is not entitled to reimbursement from the Fund as it relates to the balcony.

Actual Loss

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). Additionally, a claimant may not recover more than the amount paid to the original contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5).

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

> (3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:
>
> (a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.
>
> (b) 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.
>
> (c) If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the

> claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(a)-(c). In this case, the Claimant did not offer any evidence she has solicited another contractor to complete the work. Therefore, the most appropriate option is (b). Under that option, in order to determine the appropriate remedy, the *value* of the Respondent's materials and services must be identified before it can be subtracted from the amount the Claimant paid the Respondent. Usually, home improvement contracts include costs related to specific work the contractor anticipates completing and the expenses for materials related to that specific work. This allows the homeowner and, potentially, an adjudicator to rely on objective amounts to determine the value of the work completed (or omitted as the case may be). In this instance, however, the contract did not list the amounts the Respondent expected to be paid for specific aspects of the project. Accordingly, I must determine the value of that work based upon reasonably reliable estimates.

The Claimant testified when discussing the scope of the contract, the Respondent verbally informed her he estimated the amount to complete the balcony work would be $6,500.00. Likewise, Mr. Bailey reported the reasonable cost for the Balcony work would have been $6,500.00. Mr. Faust testified the reasonable cost would have been closer to $7,000.00 and the Respondent testified he believed the reasonable cost for the balcony work would have been $5,500.00-$6,000.00. Ultimately, I conclude the appropriate measure of the cost of the balcony is $6,500.00. To reach that conclusion, I have considered that one expert, Mr. Faust, values the work at $500.00 above the amount stated by the Claimant, and the Respondent values the work at $500.00 below the amount stated by the Claimant. Splitting the difference, it is reasonable to determine the number in the middle, $6,500.00, is the appropriate measure.

Having determined that $6,500.00 is the appropriate value of any balcony work the Respondent might have completed, the maximum potential value of the balance of the work contained in the contract (screen room, attic opening, and sump pump) is $3,850.00. Therefore, I find that the actual value of the Respondent's work is determined by subtracting the amount the Claimant would have to pay another contractor to complete the work the Respondent completed related to the screen room ($800.00) from the value of the work had the Respondent completed it in a workmanlike fashion ($3,850.00) resulting in an actual value of $3,050.00.

Subtracting that actual value from the amount the Claimant paid the Respondent ($5,866.00), the Claimant is entitled to reimbursement in the amount of $2,816.00 ($5,866.00 - $3,050.00).

There are no statutory impediments to the claim. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant sustained an actual and compensable loss of $2,816.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $2,816.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;[7] and

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

Signature on File

July 26, 2019
Date Decision Issued

Jennifer M. Carter Jones
Administrative Law Judge

JCJ/emh
#181216

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

PROPOSED ORDER

WHEREFORE, this 23rd day of October, 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.

Michael Shilling

Michael Shilling
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION