

IN THE MATTER OF THE CLAIM
OF EUGENE HENRY,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF HECTOR SARAVIA,
T/A NVA CONSTRUCTION, INC.,
RESPONDENT

* BEFORE MICHAEL D. CARLIS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-19-04035
* MHIC No.: 18 (90) 834

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On August 21, 2018, Eugene Henry (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (Commission)¹ Guaranty Fund (Fund) for an actual loss of \$7,670.00 arising out of a home improvement contract² with Hector Saravia, trading as NVA

¹ The Commission is part of the Department of Labor (Department). Md. Code Ann., Bus. Reg. § 2-108(a)(15) (2015).

² A “home improvement contract” includes a “written agreement between a contractor and an owner for the contractor to perform a home improvement.” *Id.* § 8-101(h) (Supp. 2018). An “owner” includes a “homeowner.” *Id.* § 8-101(k). A “home improvement” includes an “improvement . . . [or] . . . remodeling . . . of a . . . part of a building that is used . . . as a residence . . .” *Id.* § 8-101(g)(1)(i).

Construction, Inc. (Respondent). On February 4, 2019, the Commission ordered a hearing to allow the Claimant an opportunity to prove his Claim. On February 7, 2019, the Commission transmitted the case to the Office of Administrative Hearings (OAH) to conduct a hearing.

On May 24, 2019, I held a hearing at The County Office Building in Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).³ The Claimant represented himself. Richard S. Basile, Esquire, represented the Respondent. Shara Hendler, Assistant Attorney General, and the Office of the Attorney General, 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

The issues are:

- A. Whether the Claimant sustained an actual loss compensable by the Fund as a result of the Respondent's acts or omissions; and, if so,
- B. What is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I entered the following exhibits offered by the Claimant, unless otherwise noted:

Claimant Ex. 1: Letter from the Maryland Department of Housing and Community Development (DHCD) to the Claimant, dated August 11, 2016;

³ All subsequent citations to the Business Regulation Article of the Annotated Code of Maryland shall be to "Bus. Reg." of the 2015 Replacement Volume, unless otherwise indicated.

- Claimant Ex. 2: DHCD Remittance Advice, dated December 20, 2016;
- Claimant Ex. 3: Proposal from the Respondent to the Claimant, dated January 20, 2017;
- Claimant Ex. 4: Prince George's County Permit, issued February 15, 2017, and Inspection Result, dated April 5, 2017;
- Claimant Ex. 5: Documents related to purchases at The Home Depot, including Special Services Customer Invoice and receipt and an Invoice, dated May 3, 2017;
- Claimant Ex. 6: DHCD Remittance Advice, dated March 28, 2017;
- Claimant Ex. 7: Photographs related to water damage, sliding door, and ceiling fan; emails in January 2018; and text messages;
- Claimant Ex. 8: Photographs of washer/dryer placement and cover box over sump pump;
- Claimant Ex. 9: Complaint, dated January 26, 2018;
- Claimant Ex. 10: Not entered;
- Claimant Ex. 11: Not entered;
- Claimant Ex. 12: Not entered;
- Claimant Ex. 13: Letter to the Commission, dated September 4, 2018, with attachment; and Claimant's response; and
- Claimant Ex. 14: Home improvement drawings.

I entered the following exhibit offered by the Respondent:

Respondent Ex. 1: Proposal, dated January 20, 2017.

I entered the following exhibits offered by the Fund:

Fund Ex. 1: Hearing Order, dated February 4, 2019;

Fund Ex. 2: Notice of Hearing, dated March 3, 2019;

Fund Ex. 3: Home Improvement Claim Form, dated August 1, 2018, and

Fund Ex. 4: Respondent's licensing history.

Testimony

The Claimant and Respondent testified for themselves. The Fund offered no witnesses.

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.
2. On January 20, 2017, the Claimant and Respondent entered into a home improvement contract (Contract) for basement remodeling at the Claimant's residence in Prince George's County (County), which included, among other things, installation of a kitchenette, replacement of the ducts for the air conditioning system, and reframing an upstairs closet in which to place a stackable washer and dryer.
3. Pursuant to the Contract, the Claimant agreed to pay \$36,000.00. The Respondent agreed to begin work on February 1, 2017, and finish on or before March 31, 2017.
4. The Respondent began and completed the home improvement on time; and the Claimant paid the Respondent \$36,000.00.
5. Sometime after the completion of the home improvement, the Claimant discovered that a sliding door installed by the Respondent regularly fell from the lower track. The Claimant informed the Respondent, and the Respondent fixed the problem at no charge to the Claimant.
6. Sometime after the completion of the home improvement, the Claimant discovered water leaking from underneath a wall in the basement so that part of the carpet was wet. The Claimant informed the Respondent, and the Respondent fixed the problem at no cost to the Claimant.

7. To fix the problem, the Respondent removed the drywall and discovered a condensate pipe was the source of the leak. The Respondent had not installed that pipe. Nonetheless, the Respondent fixed the leaked and dried the area and carpet.

8. Sometime after the completion of the home improvement, the Claimant discovered an uneven flow of cold air to an upstairs room. The Claimant informed the Respondent of this problem. The Respondent returned to the home to assess that problem. The Respondent's HVAC subcontractor measured the air flow and found nothing improper. The Respondent attributed the problem to inadequate insulation in that room.

9. In addition to the Contract, the Respondent agreed to build a wall to divide an upstairs bedroom into two rooms at no additional cost the Claimant. The undivided room had a ceiling fan that became grossly off-center after the room was divided. The Respondent agreed to center the fan but reneged on that agreement after he discovered it would require more work than he initially anticipated.

DISCUSSION

Summary of the Parties' Cases

The Claimant

The Claimant testified his house, after the Respondent's completion of the home improvement, "is basically a danger zone" because the Respondent's plumbing and electrical work was "not inspected" and permits for that work were not obtained. The Claimant also testified "lights flicker" when he switches them on, and he is "concerned I'm living in a bomb."

The Claimant testified "a major concern" was a leak from behind a wall that saturated part of the carpet. The Claimant testified the Respondent returned to the house, upon the

Claimant's request, found the source of the leak, and fixed it. The Claimant testified the wet carpet was dried and re-installed. The Claimant agreed he incurred no additional cost for this repair.

The Claimant testified the initial reason he hired the Respondent was to address an air circulation problem in his house. The Claimant testified he obtained a DHCD loan for \$30,000.00 (the Be Smart Home Loan Program) to improve energy conservation in his home, and he used this loan to pay for the home improvement.

The Respondent removed and replaced the air ducts for the air conditioning system throughout the home. The Claimant testified his air conditioning system is "inconsistent" because some rooms are cool and some rooms are hot. When asked by the Fund why he believed the uneven air flow was caused by the duct work, the Claimant mentioned the covering of some air vents and the size of the new air ducts.

The Claimant agreed the Respondent, at the Claimant's request, returned to his home to inspect the air flow problem. He testified the Respondent added Freon to the system that corrected the problem for a while but "it stopped working." The Claimant testified McCrea Heating and Air Conditioning Services of Maryland (McCrea) recommended replacing the air conditioning system for \$7,365.88.

The Claimant testified he also had a problem with a sliding door, installed by the Respondent, coming out of its track. He agreed the Respondent returned and corrected that problem without any additional cost to him.

The Claimant additionally testified the Respondent reneged on a verbal agreement to center a ceiling fan. The Respondent had not installed the ceiling fan. The Claimant testified the

Respondent agreed to divide the room with the ceiling fan into two rooms without any additional cost to the Claimant. The ceiling fan became grossly off-center when the Respondent built a wall that divided the single into two separate rooms. The Claimant testified the Respondent change his mind about centering the fan after he learned it "was too much to do."

The Respondent

The Respondent testified he initially agreed to center the ceiling fan before he learned the centering "required a special box," which meant it would be more work than he initially thought when agreed to the work.

The Respondent also testified the water leak from behind a wall in the basement came from an improperly installed "check valve" on a condensate line. The Respondent testified his company had nothing to do with that installation. He testified he fixed the problem without any cost to the Claimant.⁴

The Respondent testified the Claimant's basement had prior unfinished home improvement work done by someone else. He testified that unfinished work included electrical wiring and a light fixture left hanging, a "wide open" pipe from the air conditioning "just blowing air with no connection to anything," and "plenty of holes" in the duct work.

The Respondent testified the replacement duct work corrected an air flow problem about which the Claimant had complained based on a "reader" his HVAC subcontractor used to check the temperature of the air that flowed into the rooms. The Respondent testified the "problem" was a room that lacked insulation; it was just "furring strips and drywall." The Respondent testified his HVAC subcontractor selected and installed the air ducts based on the

⁴ Photographs showed the Respondent removed new dry wall he installed, discovered the source of the leak, and corrected the problem.

subcontractor's measurements and calculations. He agreed some air vents were moved to accommodate the new duct work.

The Respondent testified his subcontractors completed the plumbing and electrical work under the Contract. The Respondent testified he obtained a permit for the egress window and drywall repairs. He testified inconsistently about the need for a permit for the electrical work, at first testifying a permit was necessary and later testifying it was not necessary.⁵

The Respondent testified he moved the washer and dryer from the basement to the second floor at the Claimant's request. He testified he converted an upstairs' bedroom closet to accommodate the stackable washer and dryer and installed them in "the normal way." The Respondent testified the Claimant never complained to him about the installation.

The Respondent testified he enclosed a sump pump that was located at the bottom of the basement stairway within a wooden box that opened at the top, leaving thirty-two inches between the box and the last riser. He testified the enclosure was for safety purposes, and the thirty-two-inch space was the "required distance."

Summary of the Parties' Arguments

The Claimant

The Claimant argued the Respondent's home improvement work "could have been done better," mentioning, without elaboration, the air conditioning and lack of permits. The Claimant was concerned with what might be "going on now" about which he is unaware, referring to "lurking" or "potential" problems. He ascribed the cause of this concern to the absence of any inspection of the home improvement and the problem he had with the water leak.

⁵ It appeared this conflicting testimony was a function of the Respondent answering a question he misunderstood due to not being a native born English speaker. Subsequent to first answering permits were needed, he corrected himself and twice testified no permits were necessary and explained why no electrical permit was needed.

The Respondent

The Respondent argued there was no code or other type of violation. He argued the home improvement was successfully inspected, and the Claimant had failed to prove unworkmanlike or inadequate home improvement work.

The Fund

The Fund argued the Claim was for the replacement of the air conditioning. The Fund argued the Claimant offered no proof that the Respondent's duct work caused the failure of the air conditioner.⁶

Analysis

Legal context

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

Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. A homeowner may receive compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” *Id.* § 8-405(a); *see also* COMAR 09.08.03.03B(2) (The “Fund . . . compensates claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”).

⁶ The Home Improvement Claim Form lists \$7,670.00 as the “amount of claim.” That is about the amount the Claimant testified McCrea said it would cost to replace the air conditioning system.

What were the Claimant's specific complaints?

The Claimant filed a complaint in or about January 26, 2018. He affirmed under penalties perjury that the content of the complaint "is true and correct to the best of my knowledge."

The complaint form asks two, pertinent questions. First, the form asks "Did the contractor complete the work? YES NO[.]" The Claimant checked both yes and no, without further explanation. At the hearing, the Claimant testified the home improvement contract was "substantially" completed. Second, the complaint form asks the complainant to "b]riefly describe the facts that support your complaint" The Claimant wrote:

- Damp areas on my new carpet, sewer water resulting from the installation of vent fixture being installed upside down;
- A door kept falling off the track;
- Relocating my ceiling fan to the center of the room that is now off-center due to the installation of a newly constructed wall; and
- HVAC resizing the duct work[.] I now have a low airflow problem in one room of my house that was not there before.

In addition, at the hearing, the Claimant testified to other problems not mentioned in the complaint. He testified that lights "flicker" when turned on and off. He testified the Respondent failed to obtain permits for the electrical and plumbing work. He also testified the Respondent enclosed the stackable washer and dryer in a room leaving no space to access behind them should the need arise.

What is the content of the parties' home improvement contract?

The parties executed the Contract on January 20, 2017. The total cost to the Claimant was \$36,000.00. The home improvement was to begin on or before February 1, 2017, and be

completed on or before March 31, 2017. There was no dispute that the home improvement began and ended per the Contract stipulations and the Claimant paid the full cost of the Contract.⁷

The Contract is for "basement remodeling." It contains eleven subheadings, under which work is described with varying degrees of specificity and the cost for materials and labor is listed. The relevant subheadings include the following:

- **Re-Framing area**, with four items listed, including frame new laundry closet upstairs.
- **Electric**, listing four items for \$2,000.00 (\$800.00 for materials and \$1,200.00 for labor): (i) run new electric in new kitchenette, (ii) install approximately four recessed lights, (iii) install one light on the side of the rear exit door, and (iv) check existing electric per codes.
- **Plumbing**, listing four items for \$5,000.00 (\$1,500.00 for materials and \$3,500.00 for labor): (i) run plumbing for new kitchen sink, (ii) run drain and water (for kitchenette and new laundry), and (iii) install ice maker water supply.
- **A/C work**, listing two items for \$2,800.00 (\$1,000.00 for materials and \$1,800.00 for labor): (i) run exhaust pipes for new laundry and (ii) rework duct work per new calculation.
- **Other fees in basement**, including two items listed for \$2,000.00: (i) install new carpet trough [sic]-out \$1,500.00 and (ii) permits fees \$500.00.

Did the Respondent perform unworkmanlike, inadequate, or incomplete home improvement?

I review separately below each of the Claimant's complaints.

Installation of "vent fixture" causing water damage

The Claimant testified the source of the leak was "a pipe" the Respondent installed "upside down." The Respondent testified the leak was caused by an improperly installed

⁷ The parties agreed the Respondent gave the Claimant a credit of \$1,500.00 for the Claimant's purchase of carpet. However, the relevant documentation shows the carpet cost \$644.08.

"condensate line." He testified he did not install the condensate line and had nothing to do with this problem. The parties agreed the Respondent diagnosed the problem and fixed it without any cost to the Claimant.

There is no corroborating evidence to support either the Claimant's or Respondent's testimony. As between the Claimant and Respondent, I find the Respondent more trustworthy regarding whether he installed the condensate line for the following reasons. First, the Claimant offered no foundation for his testimony. The Claimant did not testify he observed the Respondent install the "pipe." The Claimant did not testify the Respondent or someone else with personal knowledge told him the Respondent installed the "pipe." Second, I did not find the Claimant credible based on his behavior during cross-examination. He regularly interrupted the examiner before a question was completed, despite my repeated instructions to him not to do so. In addition, his answers to questions were often not responsive. Third, the **Plumbing** section of the Contract does not list installation of a condensate pipe or for any other work from which I reasonably can infer that the Respondent was responsible for the installation of the failed piece of plumbing. Finally, the Claimant offered no corroborating evidence for his testimony that the Respondent was responsible for the improperly installed condensate line. Accordingly, I find the Claimant has failed to satisfy his burden to prove the Respondent engaged in unworkmanlike or inadequate plumbing work by improperly installing plumbing material that leaked and damaged the basement carpet.

In addition, I note here that had I found the Respondent improperly installed plumbing that failed, I would still not find the Claimant suffered an actual loss. An actual loss under section 8-401 of the Business Regulation Article is the cost to restore, repair, or replace unworkmanlike or inadequate home improvement. The Claimant admitted the Respondent

returned to the Claimant's home, removed drywall to access the area from which the leak originated, diagnosed the problem, fixed the problem, and restored the area to its pre-damaged condition at no extra cost to the Claimant. In other words, there was no cost to the Claimant to restore, repair, or replace. For all the reasons discussed above, I do not find the Respondent's acts or omissions caused a water leak that resulted in an actual loss to the Claimant.

The sliding door that fell off the tracks

A photograph shows a sliding door outside the entrance to the new kitchenette. The Claimant testified this door repeatedly fell off the track. However, the Claimant also acknowledged Respondent fixed this problem at no additional cost to him. Therefore, as explained above, the Claimant suffered no actual loss because there was no cost to the Claimant for the repair. For this reason, I do not find the Claimant suffered an actual loss related to the Respondent's unworkmanlike or inadequate installation of the sliding door.

Relocating the ceiling fan

The Respondent agreed he constructed, at the Claimant's request, a wall in an upstairs bedroom that divided the bedroom with a ceiling fan into two separate rooms. This caused the ceiling fan to be grossly off center in the original room.⁸ The Respondent also agreed he agreed to center the fan, but later told the Claimant he changed his mind when he learned it would require more work than he initially anticipated. Neither party addressed whether they had discussed the cost of this work.

⁸ The record includes several photographs of the ceiling fan. On one photograph, the Claimant described the fan's blades as coming within two inches of the wall in the newly constructed room. A copy of an email from the Claimant to the Respondent on January 7, 2018, shows the Claimant believed \$6,000.00 of the Contract price was "to complete all other work as we discussed before you started any work in my home" and considered the "fan location" was part of what the \$6,000.00 covered. The Claimant did not identify anywhere in the Contract that addresses work in an upstairs bedroom.

The division of the bedroom into two rooms is not part of the Contract. However, under section 8-101(h) of the Business Regulation Article, a home improvement contract includes an oral agreement, and a home improvement includes an alteration or remodeling of part of a residence or dwelling space. I find that the Claimant and Respondent had an oral home improvement contract to divide the bedroom and center the ceiling fan. I further find the Respondent left that home improvement incomplete. However, this finding alone does not establish the Claimant suffered a compensable actual loss because the record contains no competent and probative evidence to prove the cost to complete the oral contract nor can such cost be reasonably inferred from evidence in the record.

COMAR 09.08.03.03B regulates the calculation of actual loss and provides four methods to calculate that loss. One method does not apply because it is used when the contractor performs no work under the contract. Even if it were to apply, no calculation would be possible because the loss is the amount of the contract. The record here does not establish the cost of the verbal contract. Two other methods do not apply because those methods require either (i) the cost paid to the contractor minus less the value of materials or services provided by the contractor or (ii) the cost paid to the contractor under the contract, the amount required to pay to complete the contract, and the original price of the contract. The record does not establish any of those costs. The final method is a "unique measurement" based on the nature of the circumstances. The circumstances here do not justify a unique measurement because the enumerated methods for determining the amount of actual loss apply to this case. The inability to determine the amount of actual loss is solely due to the Claimant's failure to offer any evidence that would allow for such a calculation. Accordingly, I find the Claimant has failed

to prove an actual loss as a result of the Respondent's failure to complete the oral home improvement contract to divide the single room into two separate rooms and center the ceiling fan.

Resizing the duct work for the air conditioning system

The Claimant testified the air conditioning system delivers an "inconsistent" amount of cool air to rooms in his home. In the complaint he filed with the Commission about sixteen months earlier, he swore he had "a low airflow problem in one room of [his] house[.]" The Claimant also testified the Respondent returned to the home to assess the complaint and replenished the Freon. The Claimant testified the Freon temporarily fixed the air flow problem but that fix "stopped working."⁹ When asked why he thought the air conditioning system needed to be replaced, the Claimant testified McCrea recommended replacement.¹⁰ The Respondent testified the area about which the Claimant complained was not being adequately cooled because it has no insulation, which causes the uneven effectiveness of the air conditioning. The A/C work section of the Contract lists running exhaust pipes for a new laundry and reworking duct work for \$2,000.00.

For the following two reasons, I find the Claimant failed to prove an actual loss related to the Respondent's removal and replacement of the air conditioning system's duct work. First, the

⁹ The Fund understood the Claimant's testimony to mean the air conditioning system stopped working based, apparently, on the Claimant's affirmative response to the Fund's inquiry of whether the air conditioning stopped working completely. I disagree with this understanding of the testimony. I find the testimony to mean the addition of Freon caused a temporary fix but later stopped working to cool the air flow. Also, I note here that sometime after September 2018, the Claimant stated the following in response to the Respondent's answer to the complaint: "I now have a low airflow problem in one room of my house . . ." Claimant Ex. 13. Based on the full record, I find the alleged problem with the air conditioning system was an inadequate flow of cold air to one room in his home. This difference of understanding of the Claimant's testimony, however, does not change the outcome of this discussion.

¹⁰ I sustained the Respondent's objection to the admissibility of Claimant Ex. 10 that includes an invoice from McCrea for \$303.95 to replace a bad capacitor on June 22, 2018, and a separate proposal to replace the conditioning system for \$7,365.88. The Contract did not address any work on the air conditioning system, except replacing the duct work. I also note here that exhibit contains nothing related to the Respondent's workmanship in the installation of new ducts or the adequacy of the ducts.

record contains no competent and probative evidence to prove the Respondent either selected inadequately sized ducts or installed them in an unworkmanlike or inadequate manner. Some expert opinion evidence would be necessary to establish such misconduct. The record contains no such evidence. Second, the record contains no competent and probative evidence to prove the cost to replace unworkmanlike or inadequate duct work, had those facts been established. Proof of costs is necessary to establish a compensable actual loss. The record contains no such proof.

For the two reasons discussed above, I agree with the Respondent and the Fund that the Claimant failed to prove a compensable actual loss in regard to the Respondent's replacement of the air conditioning system's ducts.

The flickering of the lights when turned on and off

The Contract calls for the installation of "approximately 4 recessed lights" in the new kitchenette and another light at "the rear exit door." The Claimant testified the lights flicker when turned on and off. He offered no evidence to establish which lights flicker, when this problem was first discovered, whether he contacted the Respondent about the lights, or anything other than this brief testimony. In addition, the Claimant did not mention the lights in the complaint he filed with the Commission in January 2018. Also, he offered no evidence to corroborate his testimony. Based on these circumstances, and my previous discussion related to credibility, I find the Claimant's vague and uncorroborated testimony inadequate proof that the Respondent's installation of lighting was unworkmanlike, inadequate, or incomplete.

In addition, assuming unworkmanlike installation of lights, the record contains no competent and relevant evidence related to the cost of repair or replacement. The Claimant did not testify about repair or replacement costs. The Electric portion of the Contract does not include an itemization of costs; it provides only a total cost for materials and labor. Without

such necessary evidence, the Claimant cannot establish a compensable actual loss. For these reasons, I find the Claimant failed to prove an actual loss related to "flickering" lights based on the Respondent's acts or omissions.

The Respondent's failure to obtain permits

The Contract allotted \$500.00 for permits. The Respondent obtained a permit for the following: "egress window, repairs drywall, (install 31" x 44" casement windows in new window well[.]" The record also shows the Inspection Division of the County's Department of Permitting, Inspections and Enforcement inspected and passed the installation of the egress window on April 5, 2017. Neither party offered any evidence related to the cost to obtain this permit.

The Claimant testified the Respondent failed to obtain permits for the electrical and plumbing work contained in the Contract. The Contract lists the following relevant work:

Electric

- Run new Electric in new kitchenette
- Install approximately 4 recessed lights
- Install one light on the side of the rear exit door
- Check existing electric codes

Plumbing

- Run plumbing for new kitchen sink
- Run drain and water (for kitchenette and new laundry)
- Install ice maker water supply

The record also contains print-outs from a Prince George's County website that address permits for electric and plumbing alterations. The pertinent sections are as follows:

Electrical work for alterations of existing dwellings requires an application for an Electrical Permit by a Master Electrician licensed with Prince George's County.

Like electrical work, the installation of plumbing or natural gas piping requires an application by a Registered Master Plumber/Gasfitter licensed by WSSC.¹¹

The Respondent used subcontractors to perform the electrical and plumbing work under the Contract. He testified he was familiar with the building requirements for permits in the County. He agreed no permits were obtained for either the electric or plumbing work. According to the Respondent's testimony, no such permits were required. He testified a permit for electrical work was not required because he did not run any new electric to the electrical service panel box. In his written answer to the Claimant's complaint, he wrote no "electrical or plumbing permits were necessary" and the following:

The only so called "plumbing" work which respondent was obligated to do under the contract was to relocate a kitchen sink two feet from its prior location. Respondent performed this work. The only so-called "electrical" work performed by the respondent was to relocate several necessary lighting fixtures and to relocate six electrical outlets. The only parts installed were outlets and ceiling light covers. Respondent performed this work without any defect. No electrical connections were performed and no work relating to the furnace circuit was performed.

Claimant Ex. 13.

The record contains a Certificate of Completion from the DHCD that is signed by an inspector on March 24, 2017. The Certificate indicates the inspector made a final inspection of the home improvements and noted "all work has been completed in accordance with all local codes, the contract documents, and the governing Regulations." *Id.*

The evidence relevant to the permit issue is mixed. The Claimant testified permits for plumbing and electrical work were required based on the written material from the County's website.

¹¹ WSSC is the abbreviation for Washington Suburban Sanitary Commission.

The Respondent testified no permits were required. He testified an electrical permit was not required because he did not run any new wiring to the electrical service panel. He did not specifically address the reason he believed no plumbing permit was required.¹²

In addition to the testimony discussed above, the record includes photographs that depict electrical wiring running along studs in the roughed-in kitchenette area. On one photograph, the Claimant wrote: "Rough in Electric wiring (and framing)." Two other photographs depict a portion of an empty finished room, with lights and electrical outlets on the walls. On these photographs, the Claimant wrote: "Before NVA Work Kitchenette."¹³ Two other photographs depict a portion of the finished kitchenette. It does not show any wall mounted lights; rather it shows recessed lighting in the ceiling.

Based on the above review of the evidence, I am not persuaded the Respondent was required to obtain a permit for the electrical or plumbing work he performed under the Contract. Although I give some probative weight to the one page print-out from the County's website, the weight is greatly attenuated because the record does not establish whether any additional relevant material from the website exists and, if so, whether such additional material is limiting in nature to the general requirement for electrical and plumbing permits that would make the requirement of permits unnecessary under these circumstances. It does appear from the photographs that electrical wiring had been run to the run converted into a kitchenette long before the Respondent began work. In addition, the Respondent denied permits were required, based on his twenty-five years experience of home improvement work in the County and his familiarity with the permit

¹² I note here the Respondent's answer to the complaint is inconsistent with the Contract. The Contract does not list "so called" plumbing; it lists **Plumbing**. In addition, it lists more than relocating a sink; it lists running plumbing for a new kitchen sink, "run drain and water" for kitchenette and new laundry and installation of a water supply to an ice maker. In addition, the Contract lists more than "so called" electric work; it lists **Electric**. The Contract also requires the installation of "new electric in new kitchenette." Respondent Ex. 1.

¹³ One of these photographs is dated November 27, 2011, years before the Contract was signed.

requirements in the County. This credible testimony effectively balances the probative weight of the Claimant's evidence. Because the Claimant has the burden of proof, if the relevant evidence on an issue is in equipoise, the party with the burden of proof is deemed to have failed to satisfy the burden. Moreover, I note here that had I found the Respondent did not obtain the required permits, the issue here whether inadequate, incomplete, or unworkmanlike home improvement caused a compensable actual loss. There is no insufficient competent and probative evidence to prove an actual loss as a result of the failure to obtain a permit for either the Respondent's electrical or plumbing work. The Claimant's testimony that lights "flickered" when turned on and off was not corroborated, was not specific as to which lights, and did not establish and link between the lack of a permit and inadequate or unworkmanlike electrical work. Finally, as discussed above, the Claimant provided no estimate of the cost to repair the alleged flickering lights, which evidence is necessary to determine actual loss.

The enclosure for the washer and dryer

The Claimant testified the Respondent built a room upstairs in which he installed a stackable washer and dryer that does not leave enough room for him to access the back of the appliances. The record includes a photograph of the washer and dryer on which the Claimant wrote "built too small" and "This is a code issue opening is not large enough." The Claimant did not mention the installation of a washer and dryer in the Complaint.

The photographs show a washer and dryer, one stacked on top of the other, within a small room with a bi-fold closet door. The Respondent testified he moved the washer and dryer, at the Claimant's request, from the basement to a closet in an upstairs bedroom. The Respondent further testified the installation was done in the "normal way" and the Claimant never complained to him about this work.

The Claimant did not refute that he wanted the washer and dryer to be placed into the converted closet or made no complaints about the work to the Respondent. The Claimant also did not mention this work in his complaint and the record shows he both signed a Certificate of Completion [of the home improvement] on March 24, 2017, and praised the Respondent home improvement work on an on-line site as: "Just a really positive experience that I would gladly share with others about the work and overall experience with this company. Top notch A+."

The Claimant offered no competent and probative evidence to prove the Respondent's installation of the stackable washer and drying in the retrofitted closet was unworkmanlike, inadequate, or incomplete. He offered no evidence to prove "this is a code violation." Should the Claimant have a need to access the back of these appliances, he can pull them out from the closet in the same manner that they were placed inside the closet. Moreover, the Claimant offered no evidence of the cost to repair, replace, or complete what he claimed to be unworkmanlike relocation of the washer and dryer. Accordingly, I find the Claimant failed to prove an actual loss that resulted from the Respondent relocation of the washer and dryer.¹⁴

What is the Claimant's Actual Loss?

A homeowner may be entitled to compensation from the Fund for an actual loss caused by a contractor's acts or omissions. To establish entitlement to compensation, there must be proof of a contractor's inadequate, incomplete, or unworkmanlike home improvement work, causation, and the cost to restore, repair, replace, or complete. In this case, I have determined the evidence before me is insufficient to establish unworkmanlike, inadequate, or incomplete home

¹⁴ The Claimant's final complaint was that a wooden box the Respondent built to cover the sump pump at the bottom of the basement stairs was "reckless" because "it's not safe." The Respondent testified he left the "required" thirty-two-inch space between the last riser and the wooded box. A photograph of the stairs and box supports the Respondent's testimony; it does not depict any dangerous condition. For these reasons, I find the Claimant has failed to prove he suffered any actual loss related to this part of the home improvement.

improvement; causation; and/or cost to restore, repair, replace, or complete. Therefore, the Claimant is not entitled to any compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable 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(2).

RECOMMENDED ORDER

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

1. The Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and
2. The records and publications of the Maryland Home Improvement Commission reflect

this decision.

Signature on File

August 19, 2019

Date Proposed Decision Issued

Michael D. Carlis
Administrative Law Judge

MDC/da
#181288

PROPOSED ORDER

WHEREFORE, this 30th 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