

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER M. CARTER JONES,
OF JESSICA TRUESDALE,	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE	* OF THE MARYLAND OFFICE
MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-14-11859
FOR THE VIOLATIONS OF	* MHIC NO.: 13 (90) 51
WILLIAM BROADDUS, T/A	*
BROADDUS & BROADDUS	*
CONTRACTING GROUP	*

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
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ORDER

STATEMENT OF THE CASE

On or about June 27, 2013, Jessica Truesdale (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$26,276.26 for actual losses suffered as a result of home improvement work performed by William Broaddus, t/a Broaddus and Broaddus Contracting Group (Respondent). In or about August 2014, the Claimant filed an amended claim with the Fund asserting a loss of \$60,895.00.

I held a hearing on September 3, 2014 and October 29 and 30, 2014, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014). The Claimant was represented by Kimberly Starz,

Esquire. Kim Parker, Esquire, represented the Respondent. Eric B. London, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation (DLLR), 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), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

- Fund #1 OAH Notice of Hearing, dated April 30, 2014
- Fund #2 OAH Notice of Hearing, dated June 26, 2014
- Fund #3 DLLR Hearing Order, dated March 27, 2014
- Fund #4 Licensing History for the Respondent as of June 4, 2014
- Fund #5 Home Improvement Claim Form, received on June 27, 2013
- Fund #6 Letter from the MHIC to the Respondent, dated July 3, 2013
- Fund #7 Complaint form, received on July 13, 2012, with attached narrative

I admitted the following exhibits on behalf of the Claimant:

- Cl. #1 Copy of personal check number 2838 for \$4,500.00, dated November 25, 2009
- Cl. #2 Accounting for 203(k) rehabilitation funds
- Cl. #3 Copy of escrow rehabilitation check number 3000121163 for

\$1,483.40, dated February 12, 2010

- Cl. #4 Contract between the Claimant and the Respondent, dated November 19, 2009, with attached Proposal of Work
- Cl. #5 Retainer and Consulting Agreement, dated November 25, 2009
- Cl. #6 Contract for the addition of a front porch, undated and unsigned.
- Cl. #7 Copy of photographs of the front of the house with rectangular roof, with attached advertisement photograph of a house with an A-frame roof.
- Cl. #8 (A-P) Photographs of the house siding, foundation and window framing – 8A, B and E taken on June 28, 2010; 8C, G, and J-P taken May 24, 2014; 8D taken November 19, 2012; 8F taken August 17, 2010; and, 8H & I taken October 17, 2012
- Cl. #9 Estimates from Baltimore Siding and Window Company, dated January 14, 2013; Adkins Contracting Company, dated July 30, 2014; Garner Roofing, dated July 31, 2014; and Smithouse Construction, LLC, dated August 9, 2014
- Cl. #10(A-G) Photographs of the door jambs, door trim, and floor trim, taken in June 2014
- Cl. #11 Copy of personal check number 2978 for \$1,675.00, dated October 31, 2012
- Cl. #12(A-H) Photographs of floors, stairs, stair trim, and handrails, taken in August 2010
- Cl. #13 Estimates from Apex Tile Company, dated July 31, 2014; and Creative Finishes, dated August 4, 2014
- Cl. #14 Photographs of tile work in the kitchen and master bath, taken in June 2014
- Cl. #15 Estimate from Mahon Plumbing, dated February 6, 2013
- Cl. #16(A-E) Photographs of the basement plumbing, stairs, and plumbing under the kitchen sink, taken in June 2014
- Cl. #17 Estimate from A Plus Carpet and Flooring, dated January 24, 2013
- Cl. #18(A&B) Photographs of doorway floor carpeting, taken in June 2013
- Cl. #19 Estimate from Bayside Handyman, dated August 6, 2014

- Cl. #20(A-D)¹ Photographs of the property front and back doors, taken June 2014
- Cl. #21 Proposal from Clinton Electric, Inc., dated July 29, 2014
- Cl. #22(A-G) Photographs of the basement circuit box and circuit breakers, and electrical wiring in a kitchen cabinet, taken on October 17, 2012
- Cl. #23 Proposal from Pipco Air Conditioning and Heating Co., Inc., dated February 6, 2013
- Cl. #24(A-D) Photographs of insulation and trusses in the attic, taken October 17, 2012
- Cl. #25 Store printout of cost and specifications for a Frigidaire Premier Gallery 30" slide-in gas range, printed on March 10, 2013
- Cl. #26(A-D) Photographs of scratches and marks on the Claimant's range, taken on October 17, 2012
- Cl. #27(A-E) Photographs of the Claimant's porch – 27A-D, taken on December 3, 2013; 27E taken on March 12, 2014
- Cl. #28 Email from Nicholas Trey from Classic Remodeling Inc., to the Claimant with attached personal check, number 3068, for \$357.00, dated March 13, 2014
- Cl. #29(A-D) Photographs of flooded basement
- Cl. #30(A-E) Photographs of kitchen cabinets and trim – 30A & B taken on May 24, 2014; 30C-E taken on August 27, 2010
- Cl. #31(B-C) Photographs of the external water heater vent and internal tankless water heater, taken on October 17, 2012
- Cl. #32 Copy of personal check number 2883, for \$1,687.26 to Allied Building, dated November 23, 2010
- Cl. #33 Contracts, change orders, statements, invoices and checks between the Claimant and the Respondent
- Cl. #34 Statements, change orders and copies of personal checks between the Claimant and the Respondent
- Cl. #35 Copy of check number 2895 for \$125.00, dated March 12, 2011
- Cl. #36 Amended Home Improvement Claim form, dated August 2, 2014

¹ B was not admitted.

- Cl. #37 Claimant's accounting of the amounts paid to the Respondent
- Cl. #38 List of photographs offered/admitted into evidence for the Claimant
- Cl. #39 List of license numbers for Air, Plumbing & Heating Solutions, Clinton Electric, and Baltimore Siding and Window Company
- Cl. #40 Curriculum Vitae for Michael Picarello
- Cl. #41 Letter from Michael A. Picarello, dated October 17, 2012
- Cl. #42 Drawings/plans for the Claimant's house renovation
- Cl. #43(A-B) Recent photographs of the Claimant's house.

I admitted the following exhibits into evidence on behalf of the Respondent:

- Resp. #1 Letter from Michael Picarello to the Claimant and her husband, dated October 17, 2012
- Resp. #2 Email from the Claimant to Mr. Picarello, dated July 13, 2012
- Resp. #3 Email from the Claimant to Mr. Picarello, dated June 10, 2014
- Resp. #4 Email from the Mr. Picarello to the Claimant, dated October 19, 2012
- Resp. #5 Handwritten list from the Claimant to "Mike"
- Resp. #6 Photograph of the Claimant's home, taken in 2014
- Resp. #7 Photograph of the Claimant's home, taken in 2014
- Resp. #8 U.S. Department of Housing and Urban Development draw request list, drawn on M&T Bank, dated July 22, 2010
- Resp. #10 Home Depot Special Services Customer Invoice, with illegible date

Testimony

The Claimant testified on her own behalf and presented the testimony of Michael A. Picarello, who was accepted as an expert in certified home inspection.

The Respondent testified on his own behalf and was accepted as an expert in general contracting. He did not present any other witnesses.

The Fund presented the testimony of the Claimant.

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 Claimant owned 63 Cinder Road, in Timonium, MD (the property).
2. On November 19, 2009, the Respondent contracted with the Claimant to complete a significant renovation of the Claimant's property for \$75,400.00. The contract stipulated that the Respondent would be compensated via a draw schedule from the account the Claimant established with M&T bank via a 203K loan.
3. A 203K loan is a construction loan. The loan is established with a bank or lending institution and payments are remitted to the contractor after he completes a portion of the work and the lending institution verifies that the work has been completed.
4. The Respondent contracted to complete the renovation within approximately 60 working days from the date of settlement. He also guaranteed that work for one year.
5. The Respondent contracted with the Claimant to renovate the first floor of the property, to replace the second floor and replace a roof. The scope of work included the following items:

Kitchen

Tear out existing cabinets and appliances
Remove wall between kitchen and dining room
Tear out existing paneling
Install electrical outlets to code
Install microwave circuit
Install 8 recessed lights
Install 2 new switches
Install refrigerator circuit
Install outlet in island
Install chandelier in dining area
Re-sheetrock all walls and ceilings
Plumb sink and range as necessary
Supply and install new cabinets
Supply and install new laminate top
Supply and install new appliances

Paint walls as necessary
Prepare floor in kitchen area for tile
Supply and install tile floor in kitchen area
Supply and install new stained trim on baseboards and windows
Supply and install new sink and faucet

First Floor Bath

Demo all walls, floors and fixtures
Remove all walls between bath and closet
Rework electrical as necessary
Supply and install new bath fan/light combo
Install new light fixture over vanity
Supply and install new moisture resistant sheet rock.
Supply and install new tub, toilet, vanity and faucets
Paint as necessary

Front Door

Supply and install new mahogany door (Owner to select door)
Supply and install new door knob
Stain and urethane door and trim
Supply and install new pine door trim

Back Door

Supply and install new mahogany door (Owner to select door)
Supply and install new door knob
Stain and urethane door and trim
Supply and install new pine door trim
Supply and install new storm door (Owner to select door)

Basement Door

Supply and install new steel door (Owner to select door)
Supply and install new door knob
Supply and install new pine door trim
Paint door as necessary

Supply and install new HVAC
Supply and install new 13 seer air conditioning
Supply and install new gas furnace
Install main trunk line alongside steel beam
Install floor registers

Supply and install 5 vinyl replacement windows in basement
Scrape and paint steel railing
Install gutters and rework downspouts
Install gutter on dormer
Rework existing downspouts
Install corrugated pipe in existing trench for down spout

Install Hand Rails

Supply and install hand rails and basement indoor stair rail
Supply and install hand rails at basement outdoor stair rail
Supply and install hand rails in attic stair rail

Repair termite damage to joists in basement

Sister both sides of existing joint
Repair sill plate as necessary

Fix broken window in dormer

Tear out basement walls and ceiling

Miscellaneous Electric
Supply and install new circuits for HVAC
Supply and install new smoke detectors per code
Demo electric in basement
Supply four 15 amp circuits for future second floor
Supply permits for electrical work

2nd floor addition

Demo existing roof and wall
Install new flooring ¾ plywood
Create three bedrooms and one master bath within area 26' x 38' 998 square feet
Install a new A-Frame roof
Install new 20-year architectural shingles
Install 6 new vinyl double hung replacement windows
Install new 5-ft. patio door on rear of building
Area to be drywalled and finished
Install baseboards, (3) interior doors, wood trim and paint – customer to choose color

(Cl. #4).

6. At the time of the contract, the Claimant gave the Respondent a general overview of the renovations she and her husband sought.
7. In addition to the scope of the work related to the 203K loan, the Respondent completed the following additional work and charged the Claimant the following amounts via change orders and invoices: additional siding (\$7,100.00), porch installation

(\$20,650.00),² Window Trim (\$2,850.00), interior wood doors (\$2,248.26), baseboards (\$840.00), pocket door (\$550.00), carpet (\$2,046.00), hardwood floors (\$3,378.00), countertop upgrade (\$1,498.00), and tree and bush removal (\$700.00). The Claimant and the Respondent also entered into an agreement that the Claimant would pay the Respondent \$2,200.00 for unidentified work.³

8. The total amount for the change orders was \$42,060.00. The total amount of the contract for the home renovation, inclusive of the 203k contract and the change orders, was \$117,460.00.
9. The Claimant paid the Respondent \$61,725.00 of the 203k draw amount. The Claimant also paid \$8,392.80 to purchase items from Home Depot, which was applied to the 203k contract amount.
10. Including the amounts the Claimant paid the Respondent via the 203k contract and the amount the Claimant paid for items from Home Depot, the Claimant effectively paid the Respondent \$70,117.80 from or related to the 203k loan.
11. The Claimant paid the Respondent an additional \$22,124.00 from her personal bank account.
12. The Claimant did not pay the Respondent for the porch, the baseboards, the hardwood floors, or the kitchen countertops.
13. The total amount the Claimant paid the Respondent for the work he performed on the property was \$92,241.80.

² The contract the Claimant provided (Cl. #6) regarding the porch was unsigned and undated and neither party established when this contract was completed. A change order submitted by the Claimant as Cl. #34 for the porch listed an amount of \$11,450.00. Neither the Claimant nor the Respondent testified regarding whether the charge for the porch was \$20,650.00 or \$11,450.00. Because the Claimant alleges that the contract (Cl. #6) was entered into by the parties, I shall rely on the \$20,650.00 amount as the cost of the porch addition.

³ Although the Claimant submitted a check negotiated by the Respondent for \$2,200.00, neither party was clear what work that amount covered. Because both parties agreed that it was an amount the Claimant paid the Respondent for work he completed, I have accepted that check as verification of additional work performed by the Respondent.

14. The Respondent began work on the property in January 2010.

ROOF⁴**

15. Before the Respondent began the renovation to the property, the Claimant provided him with a photograph depicting how she wanted her new roof to look. The photograph showed a pitched roof in an A-frame style.

16. Toward the beginning of the renovation project, the Respondent framed the roof incorrectly in a rectangular style. He removed it and installed an A-frame roof at the Claimant's request.

SIDING

17. The Respondent installed the siding on the exterior of the Claimant's home close to the middle of the renovation project.

18. Pursuant to the 203k contract, the Claimant and the Respondent agreed that the Respondent would affix siding to the property on the second floor only.

19. Before the Respondent began the siding, the Claimant and the Respondent agreed that the Respondent would apply siding to both the first and the second floors.

20. The Claimant did not advise the Respondent that she did not want the siding to cover the foundation.

21. After agreeing that the Respondent would apply siding to both floors of the home, the Respondent initially installed siding in a manner that covered the home completely, including the foundation.

22. The Claimant requested that the Respondent remove the siding that covered the foundation and the Respondent did so. When the Respondent removed the siding from

⁴ Headings marked with an asterisk indicate work the Respondent completed but the Claimant did not include in her claim. The Claimant offered evidence regarding these areas to establish a pattern of the Respondent's alleged inferior work.

the foundation of the house, indentations remained where the Respondent had nailed the siding to the foundation.

23. When he installed the siding, the Respondent staggered every other section of the siding.
24. The Respondent installed casing around the Claimant's windows that matched the siding. When he did so, he left a small gap in the casing of one window. He also left a gap in the siding where a railing met the house.
25. When the Respondent installed the siding he left approximately twelve nail holes in a portion of the siding.
26. The Respondent installed an air conditioner as part of the renovation and left gaps in the siding around the air conditioner hose and box.
27. In June 2012, a piece of the siding came off of the house during a storm.
28. The Claimant received estimates to replace the siding from the following contractors on the stated dates and for the corresponding amounts:
 - Baltimore Siding and Window Company, January 14, 2013, \$19,500.00
 - Adkins Contracting Company, July 30, 2014, \$8,400
 - Garner Roofing, July 31, 2014, \$15,830.00
 - Smithouse Construction, August 19, 2014, \$14,911.00
29. Each of the contractors who provided estimates for the siding repair included removal of the siding installed by the Respondent and replacement.

WOOD TRIM* AND FINISHING

30. The Respondent installed 1" x 2.5" wood trim around the Claimant's windows.
31. The Respondent left five visible nail holes in a piece of wood trim.
32. The Respondent left floors unevenly finished in areas and with visible swirls in other areas.

33. The Respondent left a can-shaped mark in the floor finish in the living room.
34. The Claimant hired Prestige Floors, LLC, and paid it \$1,675.00 from her personal funds to refinish the wood floors.
35. The Claimant replaced the wood trim herself.
36. The Claimant did not pay the Respondent for the refinishing of the floors.

TILE

37. A few months after the Respondent installed tile in the Claimant's master bathroom, guest bathroom, and kitchen, a small crack developed in a tile in the master bathroom.
38. The grout along the bottom seal of one tile in the master bath was slightly wavy.
39. As of June 2014, the grout between a few of the slate tiles in the kitchen and first floor bath began to erode.
40. The Respondent's assistant went to the Claimant's home at least one time to repair the cracks in the grout in the kitchen.
41. As of June 2014, there was a small hole in the tile near the shower head.
42. As of June 2014, in the master bathroom, a crack had developed in one of the floor tiles and the grout was cracked between one or two tiles.

DOORS and CARPETING

43. The Respondent installed two custom doors, one at the front of the house, and one at the rear of the house. The Claimant selected the doors.
44. After the Respondent installed the doors, a gap remained between the doors and the door jamb so that outside light could be seen surrounding the entirety of both doors.
45. Air and inclement weather penetrates the gap surrounding the doors and enters the home.

46. When the Claimant washed the front of the house with a hose, water entered the house through the gaps in the door.
47. On August 6, 2014, the Claimant obtained an estimate from Bayside Handyman, for \$5,350.00, to remove part of the existing front and rear door jambs and \$1,700 to replace the front and rear doors.
48. The Respondent left the staples he used to affix carpeting near the doorway of the Claimant's two-year-old child's bedroom exposed.
49. The Claimant obtained an estimate from A Plus Carpet and Flooring to remove and replace the carpet in three bedrooms and closets for the amount of \$2,830.00.

RANGE

50. The Respondent provided and installed a Frigidaire stainless steel range in the property.
51. Shortly after the Respondent installed the range, the Claimant noticed scratches on the face of the range near the knobs and on the face of the broiler. She also noticed that the broiler drawer was off the track.
52. As of the hearing date, a Frigidaire stainless steel range identical to the one installed by the Respondent would cost approximately \$2,099.00.

PORCH/LATTICE

53. The Respondent built a new porch on the front of the Claimant's property. By November 2013, the wood the Respondent used and to which lattice was affixed was rotting.
54. The Claimant paid Allied Building \$357.00 to replace the lattice work.⁵

⁵ The Claimant represented that the porch floor manufacturer replaced most of the porch under its warranty and, therefore, she is only pursuing recompense for the lattice work.

PLUMBING

55. The Claimant installed a sump pump in the Claimant's basement. The installation of the sump pump was not included in the 203k contract with the Respondent.
56. The Respondent ran the hose from the sump pump to a sink in the Claimant's basement, which meant that the water the sump pump pulled from the ground near the basement emptied into the sink.
57. The Respondent did not attach the sump pump to the property electrical panel on its own ground fault circuit interrupter (GFCI).
58. In October 2010, the Claimant's basement flooded.
59. The Respondent installed a new tankless water heater in the basement of the Claimant's home. The water heater vent was not externally situated at least twelve feet above the mulch on the ground outside the Claimant's home.
60. Shortly after the Respondent's renovations, it took approximately two minutes for the Claimant to have hot water in the kitchen once she turned on the hot water faucet.
61. On or about February 6, 2013, the Claimant obtained an estimate for plumbing repairs from Mahon Plumbing for \$2,623.00.⁶
62. The Mahon Plumbing estimate included the installation of a new sump pump with new discharge line (\$599.00); supply and installation of one battery backup sump pump (\$850.00); removal of water pipe lines in the basement as necessary to eliminate excess unused pipes (\$275.00); raising the water heater vent so it is at the correct height (\$899.00).

⁶ The estimate was actually \$3,873.00, but the Claimant subtracted items that were not included in her contract with the Respondent.

ELECTRICAL

63. The Respondent did not identify the circuit breakers in the property circuit breaker box.
64. The Respondent installed the kitchen sink garbage disposal and left the coated electrical line for the disposal hanging in the sink cabinet.
65. The Respondent ran a coated electrical wire through one of the lower kitchen cabinets; he also did not replace a circuit/plug in the electrical panel, or recess an outlet for the washing machine.
66. The Claimant obtained an estimate from Clinton Electric Co., Inc., for \$521.00, broken down as follows: install GFCI outlet in kitchen island: \$116.00; fix improper wire sizing on breakers, mark wires at breakers, and identify the circuits on the panel cover: \$116.00; fix porch lights to come on separately: \$57.00; sleeve wire running through island to outlets: \$116.00; and install GFCI in basement for sump pump: \$116.00.

KITCHEN*

67. The Respondent installed a countertop in the kitchen that was not flush with the adjacent wall.

WINDOW CAPS*

68. In November 2010, the Claimant gave the Respondent a check for \$1,687.26 payable to Allied Building for the purchase of window caps for the windows on the front of the property.
69. The Claimant never received the window caps she ordered and they were never installed.
70. The Respondent later installed different window caps.

TREE REMOVAL

71. At the Claimant's request, the Respondent removed a small tree in the rear area of the property, and a large tree and some bushes at the front of the property. The Respondent did not remove the tree stumps.
72. The removal of the trees and bushes were not included in original 203k contract between the Claimant and the Respondent, and the Respondent charged the Claimant \$700.00 to remove the trees and bushes.
73. The Claimant did not pay the Respondent for this service.
74. The Claimant paid Allen and Sons Tree Services \$125.00 to remove tree stumps.

HVAC and INSULATION

75. The Respondent installed a new HVAC system in the Claimant's home and insulated the attic.
76. After the Claimant moved into the home, the second floor was hotter than the first floor despite the fact that the air conditioner was on.
77. The Claimant continuously complained to the Respondent regarding the heat on the second floor.
78. The Claimant last spoke with the Respondent in February 2013 regarding the air conditioner.
79. The Respondent installed insulation that was six inches thick in portions of the Claimant's attic.
80. On February 6, 2013, Pipco Air Conditioning and Heating Company gave the Claimant a proposal for \$4,200.00, for the following work: replace supply air plenum with new; replace first floor main duct with properly sized duct; fabricate tee for 1st floor branch ducts; three manual dampers; new RA drop from panning to furnace; replace missing

insulation on duct c11 in attic; correct attic flex runs as necessary; and fabricate and install above items.

81. Pipco also estimated that it could install a zone system for air conditioning the home for an additional \$2,600.00.
82. The Claimant filed a complaint with the Department on or about July 13, 2012 and attached a narrative detailing the problems with the property. The Claimant did not mention the porch lattice or the siding in her narrative.
83. Prior to July 2012, the Claimant hired Mr. Picarello, a licensed home inspector, to inspect the property.
84. The Claimant was familiar with Mr. Picarello because he had performed inspections on her behalf related to the Claimant's real estate transactions as a realtor.
85. On July 13, 2012, the Claimant sent Mr. Picarello a detailed email explaining the problems she alleged with the Respondent's home improvements and directing Mr. Picarello to inspect those items. The Claimant also advised Mr. Picarello that he should ". . . go over every inch of that place and document anything you see (even cosmetic), I want to nail this asshole to the wall." (Resp. #2)
86. Michael Picarello, a licensed home inspector, inspected the Claimant's property in September 2012.
87. The Claimant left Mr. Picarello a list of items to inspect at the property. At the bottom of her list, the Claimant stated as follows: "I want to nail this asshole. I want to go in court w/a huge list to show the MHIC person how bad he really is." (Resp. #5).
88. Mr. Picarello completed an inspection report, dated October 17, 2012.
89. On October 19, 2012, Mr. Picarello sent the Claimant an email with the subject "Cinder Road Report." That email stated as follows:

OK, I know I'm on your s%*#-list but I'll explain when I see you . . . been a long stretch for me. Read the attached and let me know what you need added or deleted. I held back on the cosmetics since typically that is outside the inspector's purview. Once you are OK with the text, I will add pictures to the final. (THIS WEEK!!!)

(Resp. #4)

90. On or about June 27, 2013, the Claimant filed a claim with the Fund, claiming a loss of \$26,276.26 as a result of the acts or omissions of the Respondent.
91. On June 10, 2014, the Claimant sent Mr. Picarello an email. The subject of that email was "report revision" and it stated as follows:

The front handrails have since been fixed, but we can leave it in there since this report was supposed to have been completed in 2012. The last bullet point . . . maybe you can add at the end 'and other miscellaneous cosmetic defects (see pictures)'. This could be for like how they knocked off all my brick faces on basement windows, damaged range and stuff like that . . . instead of listing everything out I can just use pictures.

Can you mention the following as well:

kitchen island is not secured to the floor and can be moved
wood trim was all installed wrong causing damage to wood upon opening and closing doors

maybe exaggerate the HVAC issue, stating how it is noticeably a higher temperature as you proceed up the stairs.

I have the HVAC stuff but maybe if they hear it from you as well it will help?

In regards to loose tile, mention master bath too . . . it is cracking in several places as well, I will take pics. Even the marble threshold cracked in the master.

Loose plumbing on shower heads, don't know how to capture that with a pic so may be worth mentioning.

I have a ton of pics of all the cosmetic things that I will bring.

Do you want to send me all of your pics? I can get them printed to take to the hearing in addition to all of mine. Let me know!

Thanks Mikey, you rock!!!!!!!!!!!!!!

(Resp. #3)

92. In or about August 2014, the Claimant filed an amended claim with the Fund, asserting a loss of \$60,895.00 as a result of the acts or omissions of the Respondent.

DISCUSSION

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 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 claim may be denied if “the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Md. Code Ann., Bus. Reg. § 8-405(d) (Supp. 2014).

The Claimant has the burden of proof at a hearing to establish entitlement to recovery from the Fund. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (Supp. 2014).

The Claimant asserts that she paid the Respondent for the renovations to her home, including the 203K draws and additional funds she paid the Respondent for changes and additions to the original contract. The Claimant also asserts that the Respondent performed unworkmanlike home improvements related to the installation of tile in the Claimant’s kitchen and bathrooms; the installation of aluminum siding on the exterior of the house; the installation of carpet; the refinishing of the hardwood floors in the living room and on the stairs; the installation of the exterior doors; HVAC and electrical installation; plumbing; and the lattice work on the Claimant’s front porch. As a result, the Claimant argues that she is entitled to reimbursement from the Fund in the amount of \$60,060.00. In support of her contentions, the Claimant submitted photographs, evidence of payment to the Respondent for work she asserts was inadequate, estimates to repair the alleged inadequate work, and the testimony of Michael Picarello, whom I accepted as an expert in certified home inspection.

The Respondent counters that he completed the renovations to the Claimant's property in a workmanlike fashion and that the Claimant is not entitled to reimbursement from the Fund. I shall address each of the bases for the Claimant's claim for reimbursement in turn.

CREDIBILITY OF THE EXPERTS

As an initial matter, I must address the expertise and credibility of Mr. Picarello and the Respondent. After I accepted Mr. Picarello as an expert in certified home inspection, during cross examination, it became clear that Mr. Picarello has obtained home inspection work opportunities from the Claimant, a realtor. To that end, Mr. Picarello testified that he performs approximately five home inspections per year for the Claimant. Therefore, although Mr. Picarello may be a competent home inspector, in this matter, he clearly has an interest beyond the compensation he received from the Claimant for his inspection of her home and his report. Indeed, as he conceded that the Claimant uses his services for real estate transactions in her work as a realtor, he has an ongoing pecuniary interest in appeasing the Claimant, which calls his credibility into question.

Furthermore, it is clear from the Respondent's exhibits that the Claimant made clear to Mr. Picarello the areas she intended to focus upon regarding her claim with the MHIC. Although such communication does not, alone, lead me to conclude that Mr. Picarello's report is skewed or his testimony biased, in June 2014, prior to the hearing before OAH, the Claimant clearly urged via email that Mr. Picarello revise his report to include new items in, and/or amplify aspects of, his original 2012 report, and she intended that the report be accepted as the one Mr. Picarello created independently and contemporaneously with his inspection in 2012. Indeed, in the June 2014 email the Claimant noted that railings she alleged the Respondent installed improperly had been fixed, but asked that Mr. Picarello nevertheless include them in the report as the report was "supposed to have been completed in 2012." (Resp. #3.) The Claimant also requested that Mr.

Picarello add items to the report that he did not include in his original October 17, 2012 report, including that the kitchen island is loose, that there is loose tile in both the master bath and the hallway bath, and that a marble threshold in the master bath is cracked, in addition to other cosmetic issues. Mr. Picarello did include those items in a revised report and he testified, under oath, that Cl. #41 was the report he created after inspecting the Claimant's property in 2012. It is patent that Cl. #41 is not Mr. Picarello's original report, but rather a revised report reflecting amendments and additions the Claimant requested in June 2014 prior to the hearing.

I conclude that although Mr. Picarello may be a competent home inspector, his familiarity with the Claimant, his dependence on the Claimant as a source of continuing income, and his willingness to amend his report to comply with the Claimant's desire to prove her claim with the MHIC Fund lessen his credibility.

I also acknowledge that the Respondent certainly has a vested interest in the outcome of this matter, and I have considered that interest in weighing the credibility of the two admitted expert witnesses in this matter. In light of the competing credibility concerns, I have relied upon the expert testimony when supported by objective non-biased evidence of the state of the Claimant's property.

WOOD FLOORS and TRIM

The Claimant asserted that there were numerous problems with the Respondent's installation of wood trim throughout the house. Particularly, the Claimant testified that she told the Respondent that she wanted the baseboard wood trim to measure 1" x 6" but he installed 1" x 4". Furthermore, the Claimant asserts that at least one piece has come loose and is no longer fastened to the floor. The Claimant also presented evidence that the Respondent left nail holes in some of the baseboards without filling them in with wood putty; he installed trim around doors so that the doorknobs strike the wood, causing damage; he installed the wood trim along the

staircase unevenly and improperly; his finish on the handrail was insufficient; he left swirls in the finish on the floor in some areas, and uneven finish in other areas; and that he left a can-shaped ring on the floor in the living room. The Claimant asserted that she personally paid Prestige Floors, LLC \$1,675.00 to remedy the problems with the floor and trim and presented a negotiated check to Prestige to corroborate her testimony.

The Respondent asserted that he did not personally stain and refinish the Claimant's wood floors, but that he subcontracted the work to another company. The Respondent did not dispute that the finish was imperfect, but asserted that he was never paid for the work, and thus, the Claimant cannot seek compensation from the Fund. According to Cl. #34, the Respondent charged the Claimant \$840.00 to install and finish the first floor baseboards, \$1,035.00 to sand, stain and refinish the first floor living and dining rooms, and \$175.00 to refinish the lower level staircase. The Claimant agreed that she did not pay the Claimant for his work on the hardwood floors.

I find credible the Claimant's position that the Respondent improperly installed trim along the staircase and failed to properly finish portions of the wood floor, as she submitted photographs from August 2010, which clearly depict areas of uneven or poorly-finished wood. Considering the proximity in the dates of the photos to the completion of the work, I must conclude that the state of the finish and trim was insufficient after the Respondent completed the work. The same is true of the swirls in a portion of the wood floor and a can-shaped mark in the floor finish in the living room. The Claimant has failed to prove, however, that she is entitled to compensation from the Fund for these items. Although the Claimant submitted evidence that she paid a contractor, Prestige Floors, \$1,675.00 to remedy the Respondent's poor finish work, she admitted that she did not pay the Respondent any amount for the trim and the floors. As the

amount she paid to Prestige is less than what she owed to the Respondent, I find that she is not entitled to compensation for the hardwood floors.

RANGE

According to the Claimant, shortly after the Respondent installed the Frigidaire range, she noticed that it had scratches on the face of the range, near the knobs and on the broiler face. She also noticed that the range bottom drawer was misaligned and hit an adjacent cabinet when it was opened and closed. The Claimant asserted that she asked the Respondent about the scratches and he accused her of causing the scratches by using an abrasive cleanser, which the Claimant denies.

Mr. Picarello submitted that he did not inspect or mention the range in his reports because it was a cosmetic issue.

The Respondent asserted that although the drawer fell off the track on the range, he fixed it immediately, and the Claimant has not complained about it since then. He further asserted that he did not deliver the range with scratches and maintained that the defects must have been due to the Claimant using abrasive cleaner on the stainless steel.

I find that the Claimant has submitted insufficient evidence of the Respondent's culpability for the scratches on the range. Although the Claimant argued that the Respondent delivered the range with the scratches, the Respondent disagrees and asserts that the scratches appeared after the range was in the Claimant's possession. After considering the positions of the Claimant and the Respondent, I am unable to assign culpability for the range scratches to either party. As the Claimant maintains the burden in this case, I find that she has failed to sustain that burden of proving by a preponderance of the evidence that the Respondent caused the scratches on the range and thus, she is ineligible for compensation from the Fund for this item.

TILE

The Claimant testified that the tile the Claimant installed is in disrepair and must be removed and replaced. In support of that position, the Claimant submitted photographs of the tile work in the bathrooms and the kitchen.

Mr. Picarello testified that he observed cracks in the kitchen and bathroom tiles, and that some of the tile in the hall bathroom on the first floor actually moved. Mr. Picarello opined that the cracks and moving tile could have resulted from improper foundation, improperly attaching of the subfloor, or lack of adhesive. Mr. Picarello initially testified that the tile in each of the bathrooms and the kitchen must be removed and reinstalled and believed that the estimate the Claimant received from Apex Tile Company of \$17,780 was reasonable.

Upon further questioning, however, Mr. Picarello explained that he only actually observed two or three tiles loose in the hallway bathroom in an area close to the door, and three or four tiles loose and moving close to the island in the kitchen. He could not recall the state of the tile in the master bathroom.

The Respondent conceded that a few tiles may have come loose in the Claimant's hallway bathroom and the kitchen and he believed that the reasonable cost to replace those tiles is \$200.00 – \$300.00. He further testified that he sent his assistant to the Claimant's home to remedy the eroding grout and he received no further complaint from the Claimant after that work.

Based upon the evidence, I conclude that the Claimant has not proven that the entirety of the tile work in the kitchen, the hallway bath, and the master bath must be replaced. To the contrary, although Mr. Picarello testified that the tile may have come loose and grout may have begun to crack because of a larger foundational or adhesive problem, the Claimant offered no evidence to substantiate that the problems with the tile extended beyond the few loose tiles. The

photos the Claimant offered into evidence do not support the contention that all of the tile must be removed and replaced at significant expense. Indeed, although some of those photos show cracks in white porcelain tile and a few bricks in the shower area that are slightly misaligned, neither the number of the tiles affected nor the overall appearance of the tile merit the conclusion that the tile in both bathrooms and in the kitchen must be completely replaced.

Furthermore, the Claimant admitted that the photos of the tile were taken in 2014, almost four years after the Respondent performed the work. During that time, there are myriad possibilities of how the tiles depicted in the photographs became damaged.

Additionally, the estimates the Claimant received to remove and replace the tile do not indicate that the Respondent improperly installed the tile. Without more, the Claimant has not proven that the few cracks in the tile floor are attributable to the Respondent. For these reasons, I find that the Claimant is entitled to the reasonable cost to repair the loose tiles, which, based upon Mr. Picarello's and the Respondent's testimony, is \$250.00.

PLUMBING

The Claimant testified that, once she moved into the property, she experienced a number of problems relating to the Respondent's plumbing work. The Respondent installed a sump pump in the basement but routed the waste water discharge into a basement sink and otherwise failed to properly install the sump pump. As a result, the Claimant's basement flooded during a storm.

Additionally, the Claimant testified that it takes two minutes for her to get hot water in the kitchen. The Claimant learned that the Respondent had installed and/or utilized excess piping, which required the hot water to travel a circuitous route to the kitchen.

Finally, the Claimant testified that she learned, after she moved into the property, that the Respondent improperly installed her water heater vent less than twelve inches above the ground, which requires her to move the water heater at her expense.

Mr. Picarello corroborated the Claimant's testimony that the property plumbing was deficient in these three areas. The improperly installed outside water heater vent, explained Mr. Picarello, was hazardous because of its proximity to combustible material on the ground. Furthermore, Mr. Picarello explained that the vent must be situated at least twelve inches above snow level, which Mr. Picarello explained, was thirty-two inches from the ground, to avoid the possibility that snow could clog the vent.

Mr. Picarello also testified that the sump pump the Respondent installed should be replaced with a new, properly installed sump pump that channels waste water outside of the property rather than into a sink in the basement. Mr. Picarello did not believe, however, that a backup sump pump system was required.

Regarding the water pipes, Mr. Picarello testified that the excess water pipes needed to be removed to facilitate the travel of hot water throughout the house. According to Mr. Picarello, Mahon Plumbing submitted a reasonable estimate of the cost to complete these three items, for a total of \$1,773.00 (vent repositioning: \$899.00 + sump pump: \$599.00 + removal of excess water pipes: \$275.00).

The Respondent countered that the Claimant does not require a new sump pump. Although he acknowledged that he initially ran the discharge line from the sump pump he installed to the Claimant's basement utility sink, he only did so because he was initially unable to run the discharge line outside of the house due to snow. The Respondent testified that he told the Claimant's husband that the discharge line should eventually lead outside of the home.

The Respondent further testified that with a proper GFCI outlet and the installation of a discharge line that leads outside of the home, the sump pump he installed will work fine and there is no need to install a new one. According to the Respondent, in addition to the cost for

installing the proper GFCI for the sump pump,⁷ the cost to make the sump pump operable is \$250.00

Regarding the Claimant's complaint that it takes two minutes to get hot water to travel from the hot water heater to the kitchen due to excess pipes, the Respondent asserts that removal of excess pipes will not fix the problem. Pointing to the fact that the Claimant has an "instant hot" option on her water heater, once the Claimant complained of the hot water problem, she raised the instant hot heat level and she never complained to the Respondent about the problem again.

Regarding the water heater and vent, the Respondent testified that he installed the water heater according to the manufacturer's specifications and a plumbing inspector approved the installation. The Respondent conceded that the external vent should be at least twelve inches off the ground and that he installed the water heater and vent at that height, but the Claimant placed mulch on the ground after he installed the vent, which may have reduced the distance between the ground and the vent. The Respondent argues that he should not be responsible for the actions of the Claimant.

I find that the Claimant has proven that she has suffered a compensable loss in the amount of \$250.00 related to the plumbing, which reflects the reasonable amount to run a discharge line to the outside of the house. The Claimant offered insufficient evidence that she needs a new sump pump. The Respondent's un rebutted testimony was that the sump pump failed to work because it was not plugged in to a proper GFCI outlet with a dedicated circuit breaker. The Respondent admits that the Claimant is entitled to an amount to install the GFCI and circuit breaker (see below).

⁷ I address the cost for the installation of the sump pump GFCI in the next section of this decision.

Additionally, the Claimant has failed to prove that the water heater vent is improperly positioned. The photograph the Claimant submitted clearly shows the water heater vent within somewhat close proximity to the ground. As the Respondent asserted, on the ground beneath the vent is mulch, and I am unable to determine the depth of that mulch. Accordingly, I am unable to attribute the error to the Respondent.

Furthermore, although the Claimant asserts that the water takes two minutes to get to the kitchen, the Respondent testified that he remedied the situation by turning up the heat on the Claimant's water heater. Although the Claimant offered rebuttal testimony, she did not dispute the Respondent's testimony. Accordingly, I conclude that the Claimant is not entitled to compensation for this item.⁸ Neither the Claimant nor her expert, Mr. Picarello, testified about the cost breakdown for the individual work related to the sump pump. Therefore, I will rely on the Respondent's testimony regarding this matter that the cost to install the discharge line is \$250.00.

ELECTRICAL

The Claimant and Mr. Picarello also testified that the some of the Respondent's electrical work was also faulty. Particularly, Mr. Picarello explained that the Respondent improperly omitted identifying circuits on the circuit box panel; he neglected to screw in a wire along one of the circuit breakers and used wires that were undersized, creating a potential fire hazard; he left coated wires exposed in a cabinet; he failed to replace a circuit/plug in the electrical panel, creating a potential fatal hazard if someone stuck his or her finger in the gap; he failed to recess a GFCI outlet box dedicated to the washing machine; and he failed to install a GFCI in the kitchen island, which is essential to protect people from electrocution near a water source (sink). Mr.

⁸ Furthermore, although the length of time the hot water takes to arrive in the kitchen may be an inconvenience, I do not have sufficient evidence to conclude that it constitutes a compensable loss as she actually enjoys the benefit of the hot water, though the wait for that water may be longer than she would prefer.

Picarello opined that the proposal from Clinton Electric Co. for \$521.00 was reasonable to complete all of the necessary electrical repairs.

The Respondent testified that he did, indeed, install a GFCI in the kitchen island, which is depicted in Claimant's exhibit 22E. To that end, the Respondent testified that he initially failed the final electrical inspection because he hadn't installed a GFCI in the island. After that failure, he installed a GFCI and he passed the electrical inspection.

The Respondent denied that the wire he used for the circuits in the basement were too small, but conceded that they needed to be replaced and retightened. Furthermore, although he did not think it was necessary to move the coated wires in the cabinets under the sink and under the island, it would be very easy to do so.

The Respondent also conceded that he did not properly recess into the wall the outlet box for the washing machine or install a GFCI outlet in the basement with a dedicated circuit breaker.

The Respondent further testified that the estimate the Claimant received from Clinton Electric Company was reasonable regarding the estimated charges for rewiring the circuit breakers, completing the identification of the circuits on the basement panel door, and marking wiring at the breakers (\$116.00); charges for rerouting the wire running through the island to the outlets (\$116.00); and charges for installing a GFCI in the basement for a sump pump (\$116.00). Because the Respondent did not mention any concerns about the porch lights, and because he maintains that he installed a GFCI in the kitchen island, the Respondent asserted that the Claimant is not entitled to reimbursement for those amounts (\$57.00 and \$116.00 respectively). The proposal from Clinton Electric Company did not include an amount to properly recess the GFCI outlet for the washing machine, but the Respondent testified, without challenge, that the reasonable cost for that work was \$105.00, for a total amount of \$453.00 for all electrical repairs.

I am unable to conclude that the Claimant is entitled to reimbursement for a missing GFCI in the kitchen island. The Claimant testified that the Respondent failed to install GFCI outlets in the kitchen island. In his report, Mr. Picarello reported that the Respondent failed to install GFCI outlets “for all kitchen outlets” (Cl. #41). Mr. Picarello was not specific regarding the lack of a GFCI outlet in the island. During his testimony, however, Mr. Picarello stated that the kitchen island was missing a GFCI outlet. The Claimant did not submit any photographs of the kitchen island outlets or other objective evidence to support her claim. To the contrary, as I have explained, the only photo of any outlet on the kitchen island the Claimant submitted supports the Respondent’s contention that he did install at least one GFCI outlet. I find the Claimant’s position unsupported by the evidence in this matter.

Conversely, I found the Respondent’s testimony that he ensured that GFCI outlets were installed in the kitchen island after he initially failed the electrical inspection credible. The Respondent admitted that aspects of the electrical installation were inadequate and he conceded that \$453.00 was a reasonable amount for another electrician to charge for those items. I find that the Respondent’s concession that aspects of his electrical work were insufficient and his acknowledgment of the cost to replace those items bolster his credibility and I find that the Claimant has proven a compensable loss of \$453.00 for the Respondent’s unworkmanlike electrical installation.⁹

HVAC/INSULATION

The Claimant testified that the second floor of the property was significantly warmer than the first floor and that she complained continuously to the Respondent for months about the

⁹ In so finding, I note that the Claimant did not testify that she told the Respondent about any problem with the porch lights and the Respondent testified that she did not discuss it with him. Accordingly, the Claimant has not proven that she is entitled to reimbursement of \$57.00 for rewiring of the porch lights.

problem but he never returned to address it. Ultimately, she obtained a proposal from Pipco Air Conditioning and Heating for \$4,200.00.

Mr. Picarello testified that he inspected the insulation in the attic and discovered that it was not twelve inches thick, as was mandated by the building code in 2010 when it was installed; rather, the Respondent had installed insulation that was six inches thick. The Claimant provided photographs of the insulation with a measuring tape positioned next the insulation to corroborate Mr. Picarello's testimony. Mr. Picarello explained that the paucity of insulation, coupled with the fact that the flexible air ducts in the attic were sometimes pinched and were not insulated, was very likely a reason for the difference in temperature between the first and the second floors.

The Respondent disagreed with Mr. Picarello regarding the insulation and testified that although the 2010 building code required twelve-inch insulation directly beneath the roof, only six-inch insulation was required along the sides of the structure. According to the Respondent, he installed the insulation according to those specifications. Simply because Mr. Picarello measured a section of insulation that was six inches thick is not dispositive regarding whether it complied with the building code. To that end, the Respondent offered that a Baltimore County housing inspector inspected the Claimant's attic and the insulation and determined that it was properly installed. The Respondent further testified that none of the flexible ducts in the attic were pinched or angled in such a manner as to prevent adequate air flow.

Neither the Claimant nor the Respondent provided me with a copy of the building code in 2010; therefore, I am unable to conclude that the Respondent improperly installed the insulation. Furthermore, although I sympathize with the Claimant that the second floor of the property is much warmer than the first floor, I find that she simply has not proven that any act or omission of the Respondent caused the heat disparity. In so finding, I note that it is unclear whether the difference in the heat is as significant as the Claimant asserts. Neither of the estimates for repair

of the air conditioning state that the HVAC system the Respondent installed was inadequate. Furthermore, I am unable to assign much significance to Mr. Picarello's testimony and report because, according to the correspondence between the Claimant and Mr. Picarello, he amplified his concerns about the HVAC system at the Claimant's request. Indeed, in his updated report (Resp. #1), Mr. Picarello offered more explanation than he did in his original October 2012 report (Cl. #41) regarding the deficiencies of the HVAC system the Respondent installed. Those further explanations mirror the Claimant's suggestions in her June 10, 2014 email to Mr. Picarello for what to include in his report regarding the HVAC. As Mr. Picarello was accepted as an expert based upon the presumption that he reported his findings according to his own expertise, I cannot give weight to his report when it is based, even in part, on the Claimant's beliefs, as the Claimant is not an expert.

In fact, Mr. Picarello is not an expert in HVAC as he noted in his report. In both iterations of the report regarding HVAC, Mr. Picarello noted "The reasons for diminished air flow are best determined by a licensed HVAC contractor" (Cl. #41 and Resp. #1).

Finally, I have reviewed the photographs that display the flexible ductwork in the attic and none of those ducts appear to be pinched or angled in such a way that would restrict airflow. Accordingly, I find that the Claimant has not proven that the Respondent improperly installed the HVAC system or the insulation and she has not proven that she is entitled to reimbursement for those items.

SIDING

The Claimant further argued that the siding on the house was improperly installed. In particular, the Claimant testified that the siding was installed in a manner that left it wavy and uneven, which she attributed to the fact that the Respondent failed to stagger the siding seams as is typical. The Claimant also testified and offered corroborative photographic evidence that the

Respondent left small gaps where a handrail met the siding, along a window, and where the air conditioner meets the house, leaving the house vulnerable to water and pest infiltration. The Claimant further testified that the Respondent initially installed the siding all the way down to the foundation, which was not her preference. Although she conceded that she was not specific with the Respondent about how far the siding should extend along the sides of the house, she testified that she had never seen siding applied in such a manner. Finally, the Claimant testified that in June 2012, during a storm, a piece of the siding became detached from the upper side of the house.

In support of the Claimant's position, Mr. Picarello testified that the Respondent did not properly align the seams of the siding, leaving open gaps, which must be addressed.

Approximately one-third of the siding was affected by the Respondent's improper installation. In this same area, explained Mr. Picarello, were holes where the Respondent must have used nails to secure the siding to the property structure. Using nails and/or leaving nail holes is improper because the holes could allow water to seep inside. He did not, however, observe any evidence of water penetration. Mr. Picarello also did not observe that any siding had blown off the side of the property. Mr. Picarello further explained that when siding is installed improperly, it is more economical to remove and replace the siding than to repair isolated areas of the siding. Mr. Picarello opined that of the three estimates that Claimant received to remove and replace the siding, the most reasonable estimate of the cost for the work was that of Smithouse Construction at \$14,911.00.

The Respondent conceded that there were some problems with the siding installed on the Claimant's home. He acknowledged that he used a nail to secure a piece of the siding but testified that he removed that nail. He also conceded that there were approximately a dozen nail holes in the siding that could be easily remedied by covering them with silicone or cutting the

section out and replacing it with new siding at a cost of \$400.00. Furthermore, according to the photographs submitted by the Claimant (Cl. #8), the Respondent conceded there was a gap in one of the window casings, a gap between the house and the air conditioner box, and a gap near where a railing enters the home. The Respondent argued, however, that the Claimant never notified him of those gaps, and if she had, he would have filled them with foam or cork. In fact, the Respondent asserted that the Claimant never notified him of any problem she had with the siding at all. After the Claimant filed her claim with the MHIC in 2013, the Respondent asserted that he twice requested to come back to inspect the siding and she would not allow him on her property to see or address any of the issues she raised in her claim. Ultimately, the Respondent argued that he recently visited the property and took photographs from twenty-five feet away (Resp. #6 and #7) and he did not observe any buckling or deficiency in the siding.

It may be true that the Respondent's installation of the siding on the Claimant's house was imperfect. Photographs (Cl. #8) that show the Claimant's property indicate that there was some initial buckling in the siding along the sides of the house. Furthermore, the photographs show an area where nail holes were left in the siding and that the Respondent left gaps in the siding around a railing, the air conditioner, and in a window casing. It is reasonable to conclude that these holes and gaps leave the siding vulnerable to water and pest penetration. However, the Respondent testified that the Claimant never advised him of any issue with the siding other than her early complaint that he she did not want the siding extended to the ground, over the foundation of the home.

The Claimant represented that the photographs of the buckling siding were taken in June 2010. According to her own testimony, after she moved into the property in August 2010, she gave the Respondent a "punch list" of items that she wanted him to fix. The Claimant further testified that she complained about the siding to the Respondent multiple times but then

immediately testified that she could not remember when she first complained to the Respondent about the siding or if she complained to the Respondent at all about the nail holes in the siding. I found the Claimant's testimony to be uncertain about whether or when she advised the Respondent about her problems with the siding. In light of that uncertainty, it is reasonable to conclude that the first time the Respondent learned of the problem was sometime after June 2013, when the Claimant filed her claim with the Fund.

In fact, the detailed narrative the Claimant filed attached to her complaint to the Department in July 2012 makes no mention of any problems she had with the siding, which corroborates the Respondent's testimony that he was never advised of the alleged problems. The Respondent's uncontroverted testimony was that the Claimant refused to allow the Respondent to enter her property to inspect or address any of the issues she claimed. Section 8-405 (d) of the Business Regulation article precludes a "claimant from receiving compensation from the fund if she unreasonably rejected good faith efforts by the contractor to resolve the claim." As the Claimant has failed to prove that she ever advised the Respondent of the issues with the siding, any efforts the Respondent would have made to inspect (and perhaps, remedy, if given the opportunity) the siding would have been in good faith. The Claimant either prevented any potential efforts to remedy the problem or rejected those efforts. Accordingly, she is not entitled to reimbursement from the Fund for any losses she may have experienced related to the siding.

DOORS

The Claimant testified that the Respondent installed her custom front and back doors in a manner that allowed daylight to show around the entire periphery of each of the doors. Indeed, the Claimant testified that there was an actual gap between the doors and the door jambs and when she washed the front of her house with a hose, water seeped into the house through the gaps. The Claimant submitted photographs and the testimony of Mr. Picarello to support her

claim. The Claimant testified that she did not recall if she addressed the problem regarding the front and back doors with the Respondent, but she did discuss weather stripping on the doors.

Mr. Picarello testified that \$4,500.00 was an excessive amount to repair the doors and that \$200.00-\$250.00 was a reasonable cost to remedy the gaps around the doors with weather stripping.

The Respondent does not dispute the fact that there existed observable gaps around the periphery of the front and back doors, and agreed that weather-stripping would remedy the gaps.

I conclude that the gap around the front and back doors did indeed exist once the Respondent completed the renovation work on the house and that it resulted from the Respondent's improper installation of the doors. I conclude, however, that the Claimant is not entitled to reimbursement for the entire amount she seeks for the doors. On her breakdown of the reimbursement amounts she seeks, the Claimant indicates that she received two estimates to remove and replace the doors; one for \$10,664.00 and one for \$4,500.00. The Claimant represented that she took the average of those two amounts and seeks \$7,582.00 as replacement cost.

The Claimant did not submit the estimate that provided the door replacement would cost \$10,664.00; therefore, I could only consider the \$4,500.00 amount when determining the appropriate amount of reimbursement from the Fund. Nevertheless, I find that the Claimant has not proven that she is entitled to reimbursement of even the \$4,500.00 she claims. According to both the Respondent and Mr. Picarello, the Claimant's own expert witness, the gap around the Claimant's door could be remedied by the installation of weather stripping. As Mr. Picarello testified that \$200.00-\$250.00 would be sufficient to complete the weather stripping, I find that the Claimant experienced a loss of \$225.00, the cost of weather stripping the front and back doors.

PORCH

The Claimant asserted that the Respondent installed the porch in an unworkmanlike manner to the extent that all of the wood he used for the porch began to rot and the lattice the Respondent used was not properly secured and became separated from the rotted wood. Because the manufacturer of the floor materials replaced most of the porch under its warranty, the Claimant paid \$357.00 to replace the lattice the Respondent installed.

The Respondent does not dispute that the Claimant's porch began to fall apart, but argues that she never advised him of the problem, and thus, deprived him of the chance to provide a remedy.

According to Cl. #28, the Claimant paid for the replacement lattice work on March 13, 2014, long after the Respondent completed the home improvement work. The Claimant testified that, as of that date, she had lost faith in the Respondent because he failed to address other problems that had developed as a result of his work. Indeed, the Respondent admitted that the sump pump was improperly installed because it was not connected to a GFCI outlet with a dedicated circuit. The Respondent surmised that this error caused a malfunction that in turn led to flooding of the Claimant's basement. Furthermore, the Claimant testified without contest that she had numerous issues with the Respondent's work, which she did not include in her claim. For instance, she paid for and ordered window caps for the front windows and the Respondent did not deliver them for a significant period of time, and when he did deliver window caps, they were not the ones she ordered. The Claimant also submitted evidence of insufficient work on her hardwood floors and the carpet. I find it reasonable that the Claimant did not give the

Respondent an opportunity to fix the lattice by 2014 because she was frustrated and had lost faith in his ability to do so.¹⁰

For these reasons, I find that the Claimant suffered a compensable loss of \$357.00 as a result of the Respondent's unworkmanlike installation of the porch lattice.

STUMP REMOVAL

The Claimant asserted that she asked the Respondent to remove a few trees and shrubs from her property as part of the renovation project and he agreed to do so. When he removed the trees, however, he was unable to remove the remaining stump of the larger tree and the Claimant had to pay a tree removal company \$125.00 to remove it, which constitutes a loss. The Claimant asserted that she believed that the removal of the trees was a part of the original 203k loan, and was surprised when the Respondent handed her an invoice for \$700.00. She did not pay the Respondent the \$700.00 for the tree removal.

The Respondent asserts that the amount for the tree removal was not included in the original contract, and that he was entitled to \$700.00, but he was never paid. Therefore, the Claimant benefitted from his work and did not experience an actual loss in her payment to Allen and Sons Tree Services.

My review of the initial contract between the Claimant and the Respondent does not reveal any work promised by the Respondent to remove trees and shrubs. Therefore, it is logical to conclude that the removal of the trees constituted an additional agreement between the Claimant and the Respondent. Accordingly, the Claimant was required to pay the Respondent for

¹⁰ I note that the lattice issue differs from that of the siding because, according to the Claimant, she knew or had reason to know of the problems with the siding as early as 2010. Therefore, she had ample time to advise the Respondent of the siding problems and allow him an opportunity to address it. Because the Claimant did not know about the problems with the porch until sometime later, apparently, after she filed her claim with the Fund, I find it reasonable that she did not offer an opportunity to the Respondent to install the lattice.

the work he performed removing the trees.¹¹ She did not, and she has not, therefore, suffered an actual loss of the \$125.00 she paid to Allen and Sons Tree Service.

CARPETING

The Claimant also claimed that the Respondent improperly installed her carpet, leaving visible seams and nails exposed in thresholds between rooms. A MHIC license is not required for carpet installation and is not included within the definition of “home improvement” and thus, is not compensable by the Fund. Even if I considered the full amount the Claimant seeks for the carpeting (\$2,830.00), using the appropriate calculation for determining an award from the Fund (discussed below), she would not be entitled to compensation.

MEASURE OF AWARD

MHIC’s regulations offer three formulas for measurement of a claimant’s actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The total contract price for the original 203k contract (\$75,400.00) plus the change orders (\$46,214.26) is \$121,614.26. The Claimant does not dispute that the Respondent completed the work delineated in the change orders, regardless of whether it was workmanlike. Although the

¹¹ Although the Respondent was unable to remove the stump of the larger tree in the front of the property, presumably, the Claimant would have had to pay more than \$125.00 to remove the tree.

Claimant asserts that she believed that much of the Respondent's additional work should have been covered by the 203k contract, a review of that contract reveals that the work related to the change orders was clearly not within the original scope of work. Therefore, the change orders must be included when calculating the total amount of the contract between the Claimant and the Respondent and \$121,614.26 is the appropriate contract amount.

The Claimant submitted evidence that the Respondent received \$61,725.00 from the draws from the 203k loan. The Claimant retained the 203k final balance of \$12,875.00 and paid the Respondent from her personal funds an amount of \$22,124.00 for a total of \$83,849.00. The Claimant also paid \$8,392.80 to Home Depot for items the Respondent agreed to provide in the 203k contract. In total, the amount the Claimant paid to or on behalf of the Respondent was \$92,241.80.

I calculate the reasonable amounts the Claimant has proven she paid or will have to pay to remedy the Respondent's relevant unworkmanlike or incomplete home improvements as follows:

Range	\$0.00
Stump	\$0.00
Siding	\$0.00
Wood Floors/Trim	\$0.00
Tile	\$250.00
Plumbing	\$250.00
Electrical	\$453.00
<u>Lattice</u>	<u>\$357.00</u>
Total Reasonable Cost:	\$1,310.00

Applying the appropriate formula for measuring the Claimant's actual loss yields the following:

Amount paid to the Respondent	\$92,241.80
Reasonable amount paid to complete	<u>+\$ 1,310.00</u>
	\$93,551.80
Original contract price (inclusive of 203k contract and change orders)	<u>-\$121,614.26</u>
	-\$ 28,062.46

CONCLUSIONS OF LAW

I conclude that the Claimant has not established that she is entitled to reimbursement from the Fund because she did not incur an actual loss as a result of the Respondent's unworkmanlike or incomplete home improvement work. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(d) and 8-407(e)(1) (2010 & Supp. 2014).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund not award the Claimant reimbursement; and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect the Department's final decision.

Signature on File

January 28, 2015
Date Decision Issued

Jennifer M. Carter Jones
Administrative Law Judge

JCI/emh
#154203

PROPOSED ORDER

WHEREFORE, this 25th day of March 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.

Joseph Tunney

Joseph Tunney
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION