

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JOYCE McDOWELL,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF DANIEL PETERSON,</p> <p>T/A INTEGRITY HOME PRO,</p> <p>RESPONDENT</p>	<p>* BEFORE LAURIE BENNETT,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DLR-HIC-02-15-23348</p> <p>* MHIC No.: 15 (75) 911</p>
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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 June 19, 2015, Joyce McDowell (the Claimant) filed a claim (the Claim) with the Maryland Home Improvement Commission’s guaranty fund (the Fund) for reimbursement of \$20,000.00 in alleged losses suffered as a result of a home improvement contract with Daniel Peterson, t/a Integrity Home Pro (the Respondent).¹ On July 8, 2015, the Department of Labor, Licensing and Regulation (the Department) issued a Hearing Order.

¹ The Claimant alleges that her actual loss is \$120,000.00. She acknowledges that the maximum amount she can recover from the Fund is \$20,000.00. Code of Maryland Regulations 09.08.03.03D(2)(a).

I held a hearing on September 17, 2015 at the Office of Administrative Hearings (OAH), Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. The Respondent represented himself. Kris King, Assistant Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits

Unless otherwise noted, I admitted the following exhibits offered by the Claimant:

1. Complaint Form, February 5, 2015
2. Letter from the Montgomery County Office of Consumer Protection to the Department, December 2, 2014
3. Letter from the Claimant to the Department, February 5, 2015
4. Claimant's complaint (characterized by the Claimant as the "short form"), not dated
5. Complaint (characterized by the Claimant as the "long form"), not dated
6. Claimant's description of violations, not dated
7. Claimant's summary of violations
8. Integrity Home Pro invoice to perform work in accordance with an insurance adjustment, April 8, 2014
9. Letter from the Claimant, not dated
10. Building Permit, October 6, 2014
11. Photocopies of three Wells Fargo checks: April 24, 2014, May 7, 2014, and; July 23, 2014, all payable to the Claimant and the Respondent; two checks, dates illegible, signed by Gregory Kline and made payable to Area Construction
12. NOT ADMITTED Area Construction contact

13. Photograph
14. Photograph
15. Photograph
16. Photograph
17. Photograph
18. Photograph
19. Photograph
20. Photograph
21. Adjuster's worksheet
22. Jenkins Restoration report and estimate
23. E-mail from James Sackett, February 11, 2015
24. Claimant's updated complaint, not dated
25. Photograph
26. Photograph
27. Photograph
28. Photograph
29. Photograph
30. Photograph
31. Photograph
32. Photograph
33. Photograph
34. Photograph
35. Photograph
36. Photograph
37. Photograph
38. Photograph
39. Photograph
40. Photograph
41. Photograph
42. Photograph
43. Paneling
44. Paneling

I admitted the following exhibits offered by the Respondent:

1. USAA adjustment
2. Text from the Claimant, February 15 (no year)
3. Text from the Claimant, January 26 (no year)
4. Photograph
5. Photograph
6. Photograph
7. Photograph
8. Photograph
9. Photograph
10. Text, not dated
11. E-mail from the Respondent, May 21, 2015

I admitted the following exhibits on behalf of the Fund:

1. Notice of Hearing, July 23, 2015
2. Certified mail return cards; returned certified mail addressed to the Respondent
3. Hearing Order, July 8, 2015
4. Home Improvement Claim Form, June 9, 2015

Testimony

The Claimant testified and presented the following witnesses: Jenilee Celeste Farr-Brockman; James Sacket, Acting Manager for Residential Inspections for Permitting and Services, admitted as an expert in residential building codes for Montgomery County;² and Gregory Joseph Klein.³

The Respondent testified.

The Fund did not present any witnesses.

²Mr. Sacket's expertise is based on the following training, education, and experience. He has taken numerous classes and proficiency tests administered by the International Code Council. He has numerous certifications in residential inspections (e.g. plumbing, fire, building residential inspector 1, residential, electrical, mechanical plumbing fire, commercial building, combination inspector – building electrical mechanical plumbing). He worked for seven years as a residential inspector. He advanced to field supervisor where he supervised fourteen inspectors. He is currently Acting Manager of the field supervisors and inspectors for Montgomery County.

³ I refused the Claimant's motion to have Mr. Klein testify as an expert in home improvement. Mr. Klein worked construction for four years in the 1970's, during which time he did "everything from new construction up," according to Mr. Kline. He worked for 30 years as an electrician for the telephone company. He has worked as a plumber's helper. He has done improvement projects in his own house, such as turning his garage into living space. He has a permit of some sort to do electrical work. He does not hold any certificates or licenses related to home improvement. Mr. Klein's training, education, and experience does not qualify him as an expert in home improvement.

Mr. Klein testified about conditions he observed at the Claimant's house, including missing vents, a vent covered over, a vent with a hole in it, and cut support beams. After Mr. Klein finished testifying, he was walking out of the hearing room and bumped into an exhibit that was leaning against the door frame. Mr. Klein apologized and stated that he does not see very well. I asked him if he was serious and he said "very." The Claimant stated that Mr. Klein has retinitis pigmentosa. I did not question Mr. Klein further about his eyesight to determine whether his testimony about his observations was credible. Mr. Klein's testimony was consistent with what other witnesses stated, so his eye condition does not diminish his testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Maryland Home Improvement Commission licensed the Respondent as a licensed home improvement contractor.
2. On or about August 27, 2011, Hurricane Irene caused extensive damage to the Claimant's house. A tree fell onto the house and water penetrated the house from the second floor through to the basement.
3. The Claimant had home owners insurance through USAA, which hired a contractor named Paul Davis to do some emergency repairs, put up a temporary tarp over the hole in the house, and turn off the electricity.
4. Mold developed in the house. USAA paid for mold remediation.
5. A USAA adjuster valued the replacement cost of the Claimant's loss at \$123,416.39. Claimant Ex. 21. In March 2014, after the Appellant's contractor became ill, she turned to the Respondent. The Respondent inspected the property.
6. The Claimant told the Respondent that she wanted the house restored to its pre-hurricane condition and he should do the work consistent with the adjustment.
7. On or about April 8, 2014, the Claimant and the Respondent entered into a home improvement contract in which the Respondent agreed to perform the work in the insurance adjustment, for a total of \$123,416.39.
8. At some point, the Claimant requested insurance reimbursement for non-storm damage work, which USAA denied. The adjustment was nevertheless amended to add the requested items with the caveat that the Claimant would do that work herself. The new replacement cost value was \$139,793.04. (Respondent Ex. 1.)

9. The Respondent observed that the Claimant had a hydrostatic pressure problem. He advised the Claimant that he could not perform work under the contract until the problem was fixed. USAA inspected the problem and determined it was from years of neglect and the Claimant could not seek insurance reimbursement.
10. The hydrostatic pressure problem required repair by a structural engineer. The Respondent is not a structural engineer. The Respondent called Greg Kaski, a structural engineer, who estimated that the repair would cost approximately \$14,000.00. The Claimant could not afford the repair. Her friend, Gregory Klein, agreed to pay half and the Respondent agreed to pay the other half.⁴ The repair was made.
11. The Respondent started work on the contract in May 2014. He last performed work on January 7, 2015, at which time the job was about 90% complete.⁵
12. The Claimant was dissatisfied with the progress and quality of the work. James Sacket is the Acting Manager for Residential Inspections for Permitting and Services for Montgomery County. Mr. Sacket inspected the Claimant's house for county code compliance.
13. Mr. Sacket made about six inspections at the Claimant's home. The last inspection was in May 2015. During the inspections, Mr. Sacket observed conditions and instructed the Respondent to take corrective action, and the Respondent took corrective action, as follows:

⁴ The record does not reveal why the Respondent was so generous. The Claimant said only that the Respondent is a "good Christian." The Claimant is seriously ill from cancer and she is anxious to complete the repairs. Perhaps it is true that the Respondent was reacting to the Claimant's dire situation and wanted to extend a neighborly hand.

⁵ The Claimant rejected this number. Her witness, Mr. Sacket, estimated 90% completion. I have no reason to reject his assessment.

- a. At the first home visit in September 2014, the Respondent had completed 90% of the work, all without construction permits.⁶ Mr. Sacket issued a stop work order and a notice of violation to Respondent to obtain the proper permits, which the Respondent did.
- b. Because most of the work had been completed, Mr. Sacket was unable to observe hidden conditions, such as electrical work behind the paneling in the basement. He observed that the Respondent installed paneling in an unworkmanlike manner, and this made him wonder about the quality of the work behind the paneling. Mr. Sacket removed paneling. Nail plates and receptacles were missing and the area was not insulated.
- c. In the basement, steel beams butted up against the foundation wall; they were supposed to be pocketed into the slab at the bottom and reinforced at top with a wood beam. This would support the compromised foundation wall. The Respondent fixed all but one beam, near the water bib.
- d. Mr. Sacket instructed the Respondent to have an engineer submit a report for the structural work. Mr. Sacket received a report for the roof repair. The engineer noted a broken truss in the attic and the absence of hurricane clips. The Respondent retrofitted the clips and fixed the truss to the engineer's satisfaction.
- e. The Respondent did not install baffles in the bathroom.⁷ The Respondent retrofitted the baffles.

⁶ Mr. Sacket testified without contradiction that a contractor may perform emergency repairs without a permit and the Respondent had far exceeded emergency repairs.

⁷ Mr. Sacket testified that Styrofoam is installed between trusses and goes out to the eave where the soffit is. The eave takes air in. The baffle pushes the insulation down to allow the air to vent properly. If you do not have a baffle, the insulation moves and chokes the air and mold and mildew may develop in the attic.

- f. The Respondent paneled over the HVAC duct that protrudes from the drywall and conditions the room. If paneling covers the duct, air would go into the drop ceiling rather than the room.
- g. The Respondent's choice of building materials met minimum standards for Montgomery County. The Respondent installed low end doors with poor insulation values, but the doors nevertheless met minimum code requirements.
- h. The Respondent did not flash, seal, caulk and/or install doors and/or windows correctly. The Respondent corrected these defects.
- i. The Respondent nailed siding too tightly.⁸
- j. Someone removed HVAC ducts in the basement.⁹
- k. As of the last visit, the framing and "rough wire" passed inspection; the interior was insulated to Mr. Sacket's satisfaction and thus passed inspection.

14. The Respondent installed paneling in accordance with the insurance adjustment. The paneling is made of compressed paper with veneer facing. The veneer is medium brown with a faux wood grain pattern and faux dark brown mortar/grout lines spaced approximately every six inches. To hang the paneling on the wall, the Respondent glued it, hammered nails in the mortar/grout lines, and haphazardly stapled in the wood grain (e.g. in a patch roughly four inches by five inches, the Respondent placed two nails in one mortar/grout line and five staples in the wood grain). Before the Respondent installed the paneling, he texted the Claimant a picture of it and she told him she did not like it and to find something else. The cost to repair and reinstall the paneling is: \$1,994.67 (Line 8 of the adjustment) plus \$516.62 (Line 9 of the adjustment), for a total of \$2,511.29.

⁸ I am unclear whether Mr. Sacket ordered any corrective action.

⁹ I am unclear whether Mr. Sacket ordered any corrective action.

15. The Respondent did not install a light at the back of the house. Line 353 of the adjustment calls for an exterior light fixture at a cost of \$82.60.
16. The Respondent installed double doors that are not to size. Line 64 of the adjustment calls for French double doors in the living room at a cost of \$154.66.
17. The Claimant did not replace a dining room chandelier. Line 58 of the adjustment calls for a chandelier, at a cost of \$353.04.
18. The Respondent did not install trim board around windows and baseboard at a cost of \$401.19 plus \$122.40 for staining, as lines 15 and 16 of the adjustment require.
19. The Respondent did not install window trim at a cost of \$174.08 plus \$69.76 to stain, as lines 13 and 14 of the adjustment require.
20. The Respondent did not reset the suspended ceiling at a cost of \$1,677.84, as line 3 of the adjustment requires.
21. The Respondent did not install batt insulation at a cost of \$635.42, as line 7 of the adjustment requires.¹⁰
22. The Respondent did not install paneling up the stairway at a cost of \$339.02, as line 21 of the adjustment requires.
23. The Respondent did not reset a handrail at a cost of \$31.74, as line 24 of the adjustment requires.
24. The Respondent did not perform a drywall patch and repair in bathrooms at a nominal cost.¹¹
25. At some point during the renovation, the Claimant told the Respondent not to return to her house and she refused his offer to repair conditions and complete the contract. During one contentious interaction, the Claimant called the police, who told the Respondent not to enter

¹⁰ The Respondent admits this item, notwithstanding Mr. Sacket's testimony that insulation passed inspection.

¹¹ The Claimant did not put on evidence of the cost of the repair.

the premises. As a result, in addition to other items, the Respondent has not performed punch list items that are not yet identified.

26. Wells Fargo holds the insurance money in escrow. Wells Fargo has released draws as follows:

a. April 24, 2014	\$25,238.63
b. May 7, 2014	\$15,900.17
c. July 30, 2014	<u>\$41,509.63</u>
TOTAL PAID TO THE RESPONDENT \$82,648.43	

27. Wells Fargo is withholding the next draw pending this decision even though the Respondent has completed 90% of the contract.

DISCUSSION

A home 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) (2015). An “‘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 (2015). Also, the Commission may deny a claim if it finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d) (2015).

A claimant has the burden of proof at a Fund hearing. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2015). In the circumstances presented here, the Claimant has the burden to establish that: (1) the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement; (2) the Claimant had an actual loss due to the costs of restoration, repair, or replacement of the home improvement; and (3) the Claimant did not unreasonably reject the Respondent’s good faith efforts to resolve the claim.

The Respondent performed an unworkmanlike, inadequate, or incomplete home improvement

I found deciphering the Claimant's Fund claim challenging to say the least. She testified for several hours, but her testimony lacked focus, she rambled at times, and she was frequently vague. The Claimant has seemingly countless complaints about the Respondent's work; it may be fair to say that the Claimant did not find any of the work satisfactory. Her overwhelming dissatisfaction with all of the Respondent's work, in the absence of evidence that it was overwhelmingly unworkmanlike, inadequate, or incomplete, calls into question her credibility. The Claimant presented some other testimonial evidence to support some of her claims, but mostly she offered only her own testimony, which as a rule falls short in terms of proving her Fund claim. The proposal she presented from Jenkins Restorations to complete the contract and repair the Respondent's work makes claims that are beyond the scope of the Fund claim and the author purports to render expert opinions (I will discuss the Jenkins report more later). On cross examination, the Claimant was frequently nonresponsive, which also does little for her credibility.

The Claimant testified that she told the Respondent when she first met him that she wanted her house restored to its exact condition before Hurricane Irene extensively damaged it. They contracted to perform the work called for in the insurance adjustment. This fact is crucial because the adjustment does not alert the Respondent to the pre-hurricane condition in a way that the Respondent could meet her expectations. For example, the Claimant testified that she wanted installation of her original brass wall socket plates and the Respondent installed cheap plastic plates. The adjustment does not call for brass. The brass plates may have existed in the home at the time the Respondent started performing the contract. The record does not reveal what

happened to them, although it is possible they were lost during demolition. The Respondent could have had no way of knowing he should save them.

With this backdrop in mind, I will endeavor to address the Claimant's many allegations of unworkmanlike, inadequate, or incomplete home improvement by the Respondent.

The Claimant is dissatisfied with the wood paneling the Respondent installed in the basement. I use the word wood loosely because even to the lay eye the paneling is not wood; rather, it is pressed paper of some sort with a faux wood veneer. It is safe to say that the Claimant correctly characterized the quality as cheap. One could easily peel away the paper layers. Its cheap quality is not tantamount to unworkmanlike or inadequate home improvement, even if the original paneling was of superior quality. The Claimant and the Respondent did not have any agreement about the quality of the paneling the Respondent would install. The only measure of the adequacy of the Respondent's home improvement is the insurance adjustment. The Respondent testified, and the Claimant did not dispute, that the adjustment includes just two pertinent line items: Line 8 states pertains to "Paneling: to incl bar" and Line 9 pertains to "wood shakes – medium (1/2") hand split; on wall." The Respondent admits that he did not install the wood shakes. Other than the Claimant's own testimony that the newly installed paneling was a cheap quality, she did not present any evidence that the Respondent violated the adjustment at Line 8; indeed, Line 8 is silent as to the specific kind of paneling required.

The Claimant essentially asserted that I can assume the Respondent violated the adjustment because the Respondent installed paneling that cost far less than the adjustment at Line 8 allotted. The adjustment allotted \$1,994.67, including labor and materials. Arguably, if the Respondent chose a panel costing far less than the allotment, the Claimant might reasonably complain that the Respondent installed paneling that the adjustment did not contemplate. The

Claimant did not present any evidence to show the value of the paneling the Respondent installed. For these reasons, I cannot find that the Respondent performed inadequate home improvement as to the type of paneling he installed. The Respondent's *installation* of the paneling was unworkmanlike, however.

One witness described the installation as childlike. Even to the lay eye, that is a fair characterization. The Respondent glued, nailed, and haphazardly stapled the paneling. The Claimant testified, and the Respondent does not dispute, that the bigger of the two pieces of paneling in evidence is representative of the installation method. The nail and staple holes are evident. It does not take an expert to conclude that installing paneling with visible staples is unworkmanlike. The Respondent agreed to reinstall the paneling.

The Claimant alleged more serious violations, about which she testified and she presented testimony from Mr. Sacket, an expert in code enforcement for Montgomery County. Mr. Sacket emphasized that he examined the Claimant's house for code violations, not unworkmanlike, inadequate, or incomplete home improvement. The code violations Mr. Sacket observed are tantamount to home improvement violations. Baffles were missing in the bathroom; windows and/or doors needed flashing, caulking, and/or sealing; and the attic needed truss repairs and hurricane clips. Mr. Sacket removed paneling that the Respondent installed to determine what lurked underneath. He observed missing receptacles, missing nail plates, duct work that had been paneled over, and basement ducts that were removed. The Respondent made the repairs.

Mr. Sacket instructed the Respondent to have an engineer submit a report for the structural work. Mr. Sacket received a report for the roof repair. The engineer went into the attic where he encountered a broken truss and an absence of hurricane clips. According to Mr.

Sacket, the Respondent retrofitted the clips and fixed the truss to the engineer's satisfaction. Thus, there is no existing unworkmanlike, inadequate, or incomplete home improvement of the roof.

Likewise, Mr. Sacket testified that the Respondent did not initially install baffles in the bathroom. The Respondent has since retrofitted the baffles. Thus, there is no existing unworkmanlike, inadequate, or incomplete home improvement of the bathroom vent.

Mr. Sacket described a serious violation in the basement. Steel beams butted up against the foundation wall that were supposed to be pocketed into the slab at the bottom and reinforced at top with a wood beam to support the compromised foundation wall. Mr. Sacket testified that all but one beam, near the water bib, has since been installed. The Claimant has not proven the cost of making the repair.

The Claimant alleged that the Respondent flashed and installed the doors and windows incorrectly. The Respondent corrected this defect.

The Claimant questioned whether the Respondent adequately insulated under the siding. Mr. Sacket testified that he removed exterior siding and observed insulation.

The Claimant asserts that the Respondent did not insulate the basement behind the paneling. Mr. Sacket testified that the Respondent did not install insulation under the paneling in the basement. The Respondent testified that his friend who worked in the basement did not add insulation because it was not insulated before the storm. The Respondent reminded the friend that the adjustment calls for insulation. In fact, the adjustment, at Line 7, calls for batt insulation in the recreation room, which I understand is the basement, for a total of \$635.42. Although the record is confusing as to what areas the Respondent may or may not have insulated, the Respondent admits he did not install this insulation.

The Claimant asserted that without removing all of the drywall, she cannot determine whether all of the framing the Respondent installed is acceptable. That may be true, but the Claimant cannot prove unworkmanlike, inadequate, or incomplete home improvement on her fear that the Respondent did not perform the work to industry standards.

The Claimant asserted that the Respondent installed cheap doors. Mr. Sacket testified that the Respondent installed low end doors with poor U value and R values (i.e. insulating properties), but stated that this did not constitute a code violation. I cannot see where the adjustment calls for a particular type or quality of doors. Thus, the Respondent did not perform an unworkmanlike, inadequate, or incomplete home improvement in this regard.

The Claimant asserted that the Respondent cut wires in the attic. She questioned Mr. Sacket about this and he testified that he did not see any cut wires and if they existed, they would need to be terminated and covered with a junction box. The evidence is insufficient to show cut wires.

The Claimant asserts that an antique mirror she had in the house is gone and she wants it back, or reimbursement for its value. I am uncertain whether the Claimant thinks the Respondent stole or disposed of the mirror. In either event, the missing mirror would not constitute an unworkmanlike or inadequate home improvement by the Respondent.

The Claimant asserts that the Respondent scratched her wood floors because he did not cover them. The adjustment calls for floor covering. The Respondent presented a photograph to show the covering. Based on the Respondent's photograph, I find that he covered the floors. I cannot conclude that the Respondent damaged the floors and even if he did, such damage would be consequential. The Claimant is not eligible for reimbursement from the Fund for consequential damages. COMAR 09.08.03.03B(1).

The Claimant asserts the bathrooms were supposed to have green wallboard except behind the bathtub which would have cement board. She is unsure whether the Respondent installed cement board. I cannot conclude based on the Claimant's fear or suspicions that the Respondent did not use cement board.

The Claimant questioned why the Respondent took the first two payment draws that included money for portable toilets and a crane when he did not rent johns or a crane. The Respondent testified that industry standard permits him to gain economies in the budget, and he did not need to rent these items. Saving money by not renting johns or a crane is not tantamount to an unworkmanlike, inadequate, or incomplete home improvement.

The Claimant asserts that the Respondent approached her friend Gregory Klein, who gave the Respondent another \$3,800.00 that the Claimant now owes Mr. Klein. The Claimant did not offer further details and the circumstances of this transaction are thus unclear. Absent more information, I cannot find that this payment represented some amendment to the Claimant's and the Respondent's home improvement contract.

The Claimant asserts that the Respondent did not fulfill their contract in a host of other ways. What follows is a summary of each allegation in italics and my finding:

1. *The Respondent replaced her solid wood dining room doors with cheap metal doors.* The Claimant did not prove that the dining room doors are inconsistent with the adjustment.
2. *One of the two keys he gave her to the dining room door does not work.* Assuming this is the case, the Claimant did not prove the cost of fixing the defect.
3. *He did not move a vent that insurance paid him to move.* The record does not show what vent the Claimant means and why she believes the Respondent did not move it. Assuming the Claimant proved the violation, she did not prove the cost of repairing it.
4. *The Claimant recently noticed that the outside faucets are gone; the Respondent cut the faucet bibs and the pipes are free floating in the basement.* The Respondent has not been on the Claimant's property since January 2015. The record does not prove that the Respondent caused this defect.
5. *The Respondent installed a wall switch that at the same time turns on all of the lights and sockets at the front of the house.* Assuming this condition constitutes unworkmanlike or inadequate home improvement, the Claimant has not proved the cost of repairing it.

6. *The Respondent did not comply with building codes as to the required number of sockets.* While it is reasonable to assume that failing to follow building codes is unworkmanlike, inadequate, or incomplete home improvement, the Claimant did not prove the violation. She did not present sufficient evidence to show where sockets were missing or the cost to install them to code.
7. *The Respondent did not install a light at the back of the house.* Line 353 of the adjustment calls for an exterior light fixture at a cost of \$82.60.
8. *The basement door that the Respondent installed fell off.* The evidence does not show why the door fell off, and I cannot therefore attribute the condition to the Respondent. Assuming the Respondent is at fault, the Claimant did not prove the cost of repairing the item.
9. *The Respondent installed double doors that are not to size.* Line 64 of the adjustment calls for French double doors in the living room at a cost of \$154.66. The Respondent did not dispute that he installed undersized doors.
10. *The Respondent cracked the fireplace block.* Assuming the condition exists, the damage is consequential. A homeowner is not eligible for reimbursement from the fund for consequential damage.
11. *The Respondent installed a vanity that the Claimant did not want.* The evidence is insufficient that the vanity is inconsistent with the adjustment or that the Respondent refused to replace the vanity at the Claimant's request.
12. *The vanity abuts the plumbing, making it impossible to get to the plumbing without damaging wiring.* The Claimant's assertion that moving the vanity would damage the wiring is conjecture on her part and is not support by expert testimony.
13. *The Respondent may not have installed proper insulation in the dining room and bedroom, and the dining room is freezing.* This assertion is also conjecture. The evidence does not reveal whether anyone checked for insulation in these rooms.
14. *The Respondent cut a hole in the drywall in the kitchen ceiling to fix water damage and he did not repair the hole.* Assuming the condition exists, the Claimant did not prove the cost of repair.
15. *The Respondent was supposed to remove the kitchen cabinets to check for mold, and the Claimant is not sure that he did so.* Assuming this action is required by the adjustment, the Claimant's suspicion that the Respondent did not perform the action is insufficient to prove the fact.
16. *The Respondent did not install the carpeting.* I do not see a line item in the adjustment for carpeting.
17. *Screws are popped and hanging down from the ceiling in the upstairs hallway.* Assuming the condition exists, the Claimant did not prove the cost of repair.
18. *The dogs can put their toenails through the cheap bathtubs.* The Claimant did not prove that the tubs are inconsistent with the adjustment.
19. *The Respondent installed cheap prefab floor in the bedroom rather than real oak.* The Claimant did not prove that the floor the Respondent installed is inconsistent with the adjustment.
20. *The Respondent damaged the flagstone porch.* Assuming the condition exists, it is consequential damage.

21. *The Respondent broke a privacy fence around the basement stairwell when he was carrying materials out of the house.* Assuming the condition exists, it is consequential damage.
22. *The Respondent left bare wires exposed in the yard.* Assuming the condition exists, the Claimant did not prove the cost of repair.
23. *The Respondent did not redo the dog pens.* I do not see a line item in the adjustment for the dog pens.
24. *The Respondent did not replace a dining room chandelier.* Line 58 of the adjustment calls for a chandelier, at a cost of \$353.04. The Respondent did not rebut the Claimant's assertion that he did not replace the chandelier. The Claimant has proven incomplete home improvement.
25. *The Claimant asserts the Respondent did not install access panels in the bathroom as she originally had and she now cannot get to the plumbing.* I do not see a line item in the adjustment for access panels.
26. *The Respondent installed doors that had different keys when she wanted one key to operate them all.* The adjustment does not address this issue and the evidence does not show that the Claimant and the Respondent reached an understanding about the lock.
27. *The Respondent installed cheap plastic socket plates rather than brass ones that she had originally.* I do not see an adjustment line item calling for socket plates, much less brass plates.
28. *The Respondent installed a cheap light fixture that did not match the quality of the original fixture.* The evidence does not show the cost of the fixture that the Respondent installed to match it against the adjustment (assuming the 55-page adjustment has such a line item). The evidence does not show any agreement between the Claimant and the Respondent about the fixture he would install. The Claimant testified only that she told him she did not like the fixture he chose. Her distaste for the fixture is insufficient to show unworkmanlike, inadequate, or incomplete home improvement.
29. *The Respondent did not install a marble threshold.* The adjustment at line 223 calls for a natural marble threshold at a total cost of \$128.00. Thus, installing something other than marble was unworkmanlike.
30. *The Respondent broke a light fixture in the back yard.* The evidence does not show who broke the fixture.

The Respondent testified that the Claimant's house was in disrepair before the hurricane and the house lay dormant for a long time after the hurricane (the implication being that conditions worsened before the Respondent started his work). Nevertheless, the Respondent admits that he has not performed the following work called for under the contract:

- a. Install trim board around windows and baseboard at a cost of \$401.19 plus \$122.40 for staining
- b. Install window trim at a cost of \$174.08 plus \$69.76 to stain
- c. Reset the suspended ceiling at a cost of \$1,677.84
- d. Install batt insulation at a cost of \$635.42

- e. Install paneling up the stairway at a cost of \$339.02
- f. Reset a handrail at a cost of \$31.74
- g. Patch drywall and repair in bathrooms at a nominal cost
- h. Correct punch list items at a cost to be determined when the items are identified
- i. The Respondent did not install a light at the back of the house. Line 353 of the adjustment calls for an exterior light fixture at a cost of \$82.60.
- j. The Respondent installed double doors that are not to size. Line 64 of the adjustment calls for French double doors in the living room at a cost of \$154.66.
- k. The Respondent did not replace a dining room chandelier. Line 58 of the adjustment calls for a chandelier, at a cost of \$353.04.

These items constitute unworkmanlike, inadequate, or incomplete home improvement.

As previously discussed, the Claimant did not prove the repair cost of certain alleged defects. The Claimant disagrees that she has not proven the cost of repairing various items. She presented a report from Jenkins Restoration in which Justin Anderson offered opinions about the Respondent's work. Mr. Jenkins did not testify and his qualifications to offer an expert opinion are in doubt. Mr. Anderson estimated that it would cost a minimum of \$120,000.00 to repair and complete the contract. Although his report details a long list of items that he believes need repair or completion, his proposal attributes the entire \$120,000.00 to "finish carpentry/trim." Claimant Ex. 22. The Claimant testified that Mr. Anderson told her it would take a month to itemize the list. Absent an itemized list, Jenkins Restorations' proposal to perform home improvement offers no value.

The Claimant had an actual loss due to the costs of restoration, repair, or replacement of the home improvement.

Having found that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements, I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Home improvement regulations provide three formulas for measurement of a claimant's actual loss.

COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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).

As described in the Discussion, the Claimant proved certain unworkmanlike, inadequate, or incomplete home improvements valued as follows:

Install trim board around windows and baseboard Plus stain	\$ 401.19 \$ 122.40
Installing window trim Plus stain	\$ 174.08 \$ 69.76
Reset the suspended ceiling	\$1,677.84
Install batt insulation	\$ 635.42
Install paneling up stairway	\$ 339.02
Reset a handrail	\$ 31.74
Reinstall the paneling	\$1,994.67 \$ 516.62
Install light at the back of the house	\$ 82.60
Reinstall double doors	\$ 154.66
Replace dining room chandelier	\$ 353.04
TOTAL	\$6,553.04

The Claimant's possible actual loss is calculated as follows:

Amount the Claimant paid to the Respondent	\$ 82,648.43
Plus amount to repair the work	+\$ 6,553.04
<u>TOTAL</u>	\$ 89,201.47
Minus original contract price	<u>-\$123,416.39</u>
Claimant's actual loss	(negative amount)

Thus, the Claimant has not proven an actual loss. Even if I use the higher adjustment figure, \$139,793.04, the Claimant's loss is still less than zero.

The only remaining question is whether the Claimant reasonably rejected the Respondent's good faith efforts to resolve the claim. Because the Claimant has not proven an actual loss, whether she reasonably rejected the Respondent's good faith effort to resolve the claim is a moot point.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant did not sustain an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

DENY the Claimant's Maryland Home Improvement Guaranty Fund claim and **ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

November 18, 2015
Date Decision Issued

✓ Laurie Bennett
Administrative Law Judge

LB/kkc
#159196