IN THE MATTER OF THE CLAIM	*	**BEFORE KATHLEEN A. CHAPMAN,**
OF JUANITA JACKSON,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF ANGEL HERRERA,	*	
T/A ANGELES H. CONSTRUCTION,	*	**OAH No.: LABOR-HIC-02-20-03212**
RESPONDENT	*	**MHIC No.: 20 (05) 255**

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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STATEMENT OF THE CASE

On November 8, 2019, Juanita Jackson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $3,120.00 in actual losses allegedly suffered as a result of a home improvement contract with Angel Herrera, trading as Angeles H. Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

(2015).[2] On January 21, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I began a remote hearing on November 30, 2020, as scheduled.[3] Shara Hendler, Assistant Attorney General, represented the Fund. The Claimant represented herself. Code of Maryland Regulations (COMAR) 09.08.03.03A(1). After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing in his absence. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A.

At 10:40 a.m., the Respondent arrived at the OAH for the 10:00 a.m. hearing;[4] he was to participate remotely while stationed at the OAH utilizing a computer provided to him by the OAH. He did not contact the OAH prior to his arrival to indicate that he was running late. After acquiring a Spanish interpreter and getting the Respondent set up in a hearing room with an OAH-provided computer, I resumed the hearing at approximately 11:39 a.m. The hearing ended abruptly at 12:15 p.m. when the Respondent encountered technical difficulties with the computer by inadvertently muting and turning off his microphone. I was not able rectify the situation since the Spanish interpreter, who was participating remotely, had no way of communicating with the Respondent to turn his microphone back on. The parties were told the hearing would be

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[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

[3] On June 25, 2020, the OAH issued a notice for an in-person hearing to be held at OAH-Rockville on November 30, 2020. On July 8, 2020, the Claimant filed a request for the hearing to be held remotely. Kris King, Assistant Attorney General, representing the Fund, joined in on the request. The Respondent did not reply. In a letter dated July 21, 2020, I granted the remote hearing request converting the November 30th in-person hearing to a remote hearing. On July 21, 2020, the OAH issued new notices. On August 6, 2020, the Respondent requested a postponement of the hearing on the basis that he requires a Spanish interpreter, he has no access to a computer or a cell phone that would allow him to participate in a remote hearing, and his health is compromised making an in-person hearing not feasible due to COVID-19. On August 7, 2020, I denied the postponement as being premature in nature and, instead, offered him the opportunity to appear in person at the OAH while the other participants participated remotely. In other words, I would convene a hybrid hearing. No new notices were issued by the OAH.

[4] At 10:15 a.m., I had marked the Respondent as a failure to appear and excused the Spanish interpreter. When he arrived, the Claimant was in the process of presenting her case.

continued.[5] New notices were issued and a follow-up letter was mailed to the parties on December 1, 2020 informing them of the continued hearing date to be held on December 11, 2020.

On December 11, 2020, I held a hybrid hearing with myself, the Respondent, and the Spanish interpreter participating at the OAH and the Claimant and Shara Hendler, Assistant Attorney General, participating remotely via Google Meet. COMAR 09.08.03.03A(1); COMAR 28.02.01.20B(1)(b). Ms. Hendler represented the Fund. The Claimant represented herself. The Respondent represented himself.

On December 24, 2020, the Claimant asked that I issue an expedited decision on the basis that she was experiencing "extra financial and medical expenses." In a letter dated January 4, 2021, I informed the parties that I lacked the authority to grant such a request.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

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

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

[5] The OAH has a Spanish-speaking clerk that had been assisting me in setting up the room for the Respondent, but she was not available when the snafu occurred. She later communicated to the Respondent that the hearing would be continued.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:[6]

Clmt. Ex. A – Handyman Connection, Proposal/Agreement, October 31, 2019[7]

Clmt. Ex. B – Marshall Blair, Contractor's Invoice, August 6, 2018

Clmt. Ex. C – Gomez Contractor Estimate, October 30, 2019

Clmt. Ex. D – A 138-page packet of documents, including:[8]

- Complaint Form, July 30, 2019 (pp. 1-3)[9]
- Complaint Form, July 31, 2019 (pp. 5-10)
- Contract, March 26, 2018 (pp. 11-15)[10]
- Emails to/from the Claimant and the Respondent, June 1, 3, and 5, 2018 (pp. 16-17)
- Copy of a check from MGM National Harbor to the Claimant, February 17, 2018 (p. 18)
- Various forms of payment, including cash and checks, various dates (pp. 19-21)
- Typewritten statement, undated (p. 22)
- Diagram of a Floor Plan by Home Depot, April 15[11] (p. 23)
- State of Maryland, Department of Assessments and Taxation, June 18, 2019 (p. 24)
- Maryland Business Express Business Entity Search for the Respondent's company, undated (pp. 25-27)
- Emails to/from the Claimant and the Respondent, February 23, 2018 and June 1, 3, and 5, 2018 (pp. 28-30)[12]
- Various Home Depot and Lowe's receipts, various dates (pp. 31-35)[13]
- Photocopy of an envelope sent by certified mail with handwritten notations by the Claimant and marked return to sender, date stamps: May 31, 2018 and June 15, 2018 (p. 36)
- Advertisement for ROXUL® insulation, undated (p. 36)[14]

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[6] The page markings on the Claimant's exhibits are very confusing – there are different page numbers noted for the same page, there are different numeric and alphabetical notations on the exhibits without indicating whether the material is intended to be in that sequence, and there are stamps with the word "Exhibit" without a number. The most logical page numbering sequence is the one I am applying in the list of exhibits for Claimant Exhibit D.
[7] The portion of the Proposal/Agreement outlining the scope of work is not discernible.
[8] The packet was marked as containing 138 pages, but some pages are missing and some are marked with the same page number.
[9] Page 4 is missing.
[10] Pages 12-15 are not fully legible.
[11] The year was cut off.
[12] Pages 16 and 17 are duplicates of 29 and 30.
[13] Pages 31 and 35 are duplicate receipts. Pages 32 and 34 are duplicate receipts. Page 33 is missing.
[14] There were two pages marked page 36.

- Various Home Depot and Lowe's receipts, various dates (pp. 37-44)
- Certified mailing cards, undated, and photocopy of an envelope sent certified mail with handwritten notations by the Claimant and marked unclaimed, date stamp: May 15, 2018 (pp. 45-47)
- Dismissal, District Court of Maryland for Prince George's County, civil case no.: 0502-0033306-2018, June 20, 2019 (p. 48)
- Blank page (p. 49)
- Not discernible (pp. 50-72)[15]
- Black and white photocopies of pictures of the shower pan and enclosure, with handwritten notations, undated (pp. 73-82)[16]
- Black and white photocopies of pictures of the work in progress in the basement, with handwritten notations, undated (pp. 83-90)[17]
- Blank and white photocopy of a picture of the Respondent's license plate from his work van, undated (p. 91)
- Black and white photocopies of pictures of the shower pan and enclosure, undated (pp. 92-97)[18]
- Black and white photocopies of pictures of the work in progress in the basement, with handwritten notations, undated (pp. 98-117)[19]
- Licensing History, printout on August 28, 2019 (pp. 118-120)
- Not discernible (p. 121)
- Contract, March 12, 2018 (p. 122)
- Handwritten notations regarding payment made on various dates and in varying amounts (p. 123)
- Blueprint of basement project, undated (p. 124)
- Email from the Respondent to the Claimant, February 23, 2018 (p. 125)
- Picture of cash with handwritten notations, undated (pp. 126-127)[20]
- Pictures of trash bags in the basement and a worker with a shovel in his hand near the truck bed, undated (pp. 128-129)[21]
- Black and white photocopies of pictures of the work in progress in the basement, with handwritten notations, undated (pp. 130-135)[22]
- Letter of Explanation by the Claimant, November 5, 2019 (pp. 136-138)

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[15] Most, if not all text messages, are not legible.

[16] Pages 74, 76, 78, 80, and 82 are blank. In addition, some of the handwritten notations are cut off at the bottom of pages 73, 75, 79 and 81.

[17] Page 89 is blank. In addition, some of the handwritten notations are cut off at the bottom of pages 88 and 90.

[18] Page 93 is blank. Page 92 had some handwritten notations on it.

[19] Pages 102, 104, 109, 111, 113 and 117 are blank. Pages 115 and 116 depict, among other things, trash bags in the bed of a truck; a worker with a shovel in his hand near the truck bed; and trash on the ground.

[20] Page 126 is a duplicate picture of page 20, and page 127 is a duplicate picture of page 21; a notable difference in each case are the handwritten notations describing the pictures.

[21] Pages 128 and 129 are duplicate pictures of page 116.

[22] Page 132 is blank. Some of the handwritten notations are cut off. Except for page 130, all other photographs are blurry.

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

Resp. Ex. 1 – Typewritten statement by the Respondent, received on November 30, 2020

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

Fund Ex. 1 – Hearing Order, January 15, 2020

Fund Ex. 2 – June 25, 2020 Notice of Hearing; August 21, 2020 letter to the parties from Administrative Law Judge (ALJ) K. Chapman; August 7, 2020 letter to the parties from ALJ K. Chapman; July 21, 2020 letter to the parties from ALJ K. Chapman

Fund Ex. 3 – Home Improvement Claim Form, received on November 13, 2019

Fund Ex. 4 – Licensing History, printout on January 5, 2020

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and presented the testimony of Elcar Morales.

The Fund presented no witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 5316940.

2. On March 12, 2018, the Claimant and the Respondent entered into a contract to renovate the Claimant's basement (First Contract), specifically providing:

> First I will close a small wall in front of the stairs. As well install sheetrock both sides and baseboard. We also will paint it, in the bigger section we will make bathroom walls, is about 17x28 the big area including ceiling. Will be build a wood wall and install drywall around the walls, wherever is necessary according to the owner. Baseboard installation around and everything finished accordingly. Last primer and two coats of pain (from Sherwin Williams, top of the line). In the bathroom floor tile installation around the walls, shower and tub installation and plumbing will be about $5,600.00.

> Note: I will install 2 doors (one 32" and the other one 28" of width) ...
>
> ***We propose hereby to furnish material and labor – complete in accordance with the above specifications for the sum of $10,200.00[.]**

Clmt. Ex. D, p. 122 (syntax errors and emphasis in original).

3. The original agreed-upon First Contract price was $10,200.00.[23]

4. On March 26, 2018, the Claimant and the Respondent entered into a second contract to furnish labor only in the bathroom and kitchen in the Claimant's home (Second Contract), specifically providing:

> Plumbing in the bathroom and kitchen only.
>
> Note: Owner will purchase and furnish plumbing material: Pvc pipes, braces, cement board, thick set faucets, shower fixtures, tile, grouts, toilet, sink and sink cabinet. ...
>
> **We propose hereby to furnish labor – complete in accordance with the above specifications for the sum of: $1,500.00[.]**

Id., p. 11 (emphasis in original).

5. The original agreed-upon price for the Second Contract was $1,500.00.

6. The total agreed-upon price for the Project (collectively, I will refer to both contracts as the "Project") was $11,700.00.

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[23] The Claimant alleged that:

> [the First Contract] fraudulently states that Contractor will furnish material, when in fact he asked me for my "credit card" to so he could buy the materials. I refused to give him my credit card, but I purchased all of the materials myself and had accompanied the Contractor to Home Depot and Lowes. ... I believe that the Contractor wrote this contract in a manner in order that he could submit fraudulent business tax deductions by claiming building materials expenses he did not incurred.

Clmt. Ex. D, p. 8 (syntax errors in original). Yet, on the Claim form, the Claimant listed the First Contract price to be $10,200.00. Fund Ex. 3. In reference to the receipts in evidence totaling $1,270.54, I am not persuaded that they correspond to the work outlined in the First Contract; instead, the receipts appear to be in reference to the Second Contract. *See* Clmt. Ex. D, pp. 31-25, 37-44.

7. The Claimant made the following payments to the Respondent to perform the work on the Project:

DATE	EXHIBIT #s	METHOD	AMOUNT
First Contract			
March 9, 2018	Clmt. Ex. D, p. 19	official check	$3,400.00
March 26, 2018	Clmt. Ex. D, pp. 20 & 123[24]	cash	$ 500.00
April 6, 2018	Clmt. Ex. D, pp. 20 & 123[25]	cash	$1,000.00
April 20, 2018	Clmt. Ex. D, p. 123[26]	cash	$ 600.00
April 20, 2018	Clmt. Ex. D, p. 123[27]	check	$1,300.00
Second Contract			
March 26, 2018	Clmt. Ex. D, pp. 11 & 21[28]	cash	$ 500.00
April 27, 2018	Clmt. Ex. D, p. 11[29]	check no. 1131	$ 500.00
		TOTAL PAID:	**$7,800.00**[30]

8. The Respondent, by and through subcontractors, began work on the Project on March 12, 2018.

9. Throughout the pendency of the Project, the Claimant took pictures of the work progress and shared the photographs with the Respondent, who fixed any workmanship issues contemporaneous in time to them being brought to his attention.

10. On or about May 3, 2018, the Respondent, by and through a subcontractor, installed the shower pan in an unworkmanlike manner. The Claimant brought this to the attention of the Respondent, who agreed to demolish the work. The Respondent also paid Elcar Morales, a licensed contractor, to re-install the shower pan to the Claimant's satisfaction.

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[24] *Supra.* fn 20.
[25] *Supra.* fn 20.
[26] The Claimant did not produce a photocopy of the cash she paid the Respondent on this date; however, the payment was noted in handwriting on Claimant Exhibit D, p. 123, and initialed by the Respondent's son.
[27] The Claimant did not produce a photocopy of the check nor did she list the check number, but the payment was noted in handwriting on Claimant Exhibit D, p. 123, and initialed by the Respondent's son.
[28] *Supra.* fn 20.
[29] The Claimant did not produce a photocopy of check no. 1131, but the payment was listed on the Second Contract that was initialed by the Respondent or one of his workers. *See* Clmt. Ex. D, p. 11.
[30] On March 16, 2018, the Claimant paid $1,659.00 directly to Tyrone Suston, Jr., who was the electrician on the Project. Clmt. Ex. D, p. 19. The Claimant also purchased $1,270.54 in materials. Clmt. Ex. D, pp. 31-25, 37-44. These amounts are not included in the Project payment schedule.

11. Mr. Morales performed the re-installation of the shower pan in a workmanlike manner.

12. Because of the shower pan snafu and for other reasons, the Claimant's and the Respondent's interactions became acrimonious. The Respondent felt he was unable to continue working on the Project.

13. On or about May 4, 2018, the Respondent communicated to the Claimant that he was no longer able to complete the Project due to health reasons. He offered to forgive the outstanding balance owed under the Project, in the amount of $3,900.00, provided the Claimant agreed to enter into a contract with Mr. Morales to perform the remaining elements of the Project. The Claimant declined.

14. The Claimant texted the Respondent's daughter and sent certified mailings to the Respondent complaining that the Respondent breached the contract.[31]

15. On June 1, 3, and 5, 2018, the Respondent emailed the Claimant offering to find workers to finish the Project. He believed he needed only an additional four days to complete the Project. He also asked the Claimant to not sue him and to sign a document acknowledging satisfaction with his performance under the Project.

16. On or about June 17, 2018, Mr. Morales emailed the Claimant offering to complete the remainder of the Project.[32] The Claimant declined.

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[31] The Claimant did not offer into evidence a copy of the Breach of Contract letter, but the Respondent did not challenge that such a letter was mailed and received by him. Moreover, the text messages in evidence are not legible. *See* Clmt. Ex. D, pp. 50-72.

[32] The Claimant did not offer into evidence a copy of the email from Mr. Morales regarding the terms and conditions of his proposal to finish the work.

[illegible]

17. On October 24, 2018, the Claimant filed a complaint against the Respondent in the District Court of Maryland for Prince George's County. On June 20, 2019, the case was dismissed.

18. The Claimant paid a total of $5,158.00 to three licensed contractors to complete the Project, as follows:

a. On August 6, 2018, the Claimant hired Marshall Blair to finish the drywall; skim and tape, where needed; sand and caulk; prime drywall; and paint three rooms. Mr. Blair completed the work on October 6, 2018 for which the Claimant paid him $1,800.00.

b. On November 1, 2019, the Claimant hired Gomez Contractor to install and patch/sand/prime/paint drywall in the basement bathroom. Mr. Gomez completed the work on November 2, 2019 for which the Claimant paid him $1,200.00.

c. On November 11, 2019, the Claimant hired Handyman Connections to install tile in the basement shower stall in the basement bathroom; install drain and tile shower stall floor in the basement bathroom; install basement bathroom flooring; install a vanity and toilet; install all vanity and shower fixtures; install baseboard in that basement bathroom; and install a new basement bathroom entry door.[33] Handyman Connections completed the work on November 18, 2019 for which the Claimant paid $2,158.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means

[33] The scope of work in Claimant Exhibit A was not legible. *See* Clmt. Ex. D, pp. 136-138, instead.

to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the two contracts with the Claimant. The purpose and scope of the Project was to renovate the Claimant's basement, as well as provide labor only to plumb the bathroom and kitchen only. Other than a resolved question of workmanship pertaining to a shower pan, the Claimant is not alleging any unworkmanlike performance under either contract. Therefore, the question presented in this hearing is whether the Respondent performed an incomplete home improvement.

The Claimant argues that the Respondent abandoned the Project causing her to find alternative licensed contractors to finish the work under both contracts. More specifically, on the Complaint Form filed with the MHIC on July 30, 2019, in reference to the First Contract, the Claimant wrote that the "Contractor abandoned the job on May 5, 2018 and never replied to the Breach of Contract letter date May 11, 2018 that gave him 10 days to remedied. Contractor attempted to pressure me to sign documen[t]."[34] Clmt. Ex. D, p. 1 (syntax errors in original). On

[34] A portion of the page was cut off on the right side.

the Complaint Form filed with the MHIC on July 31, 2019, in reference to the Second Contract, the Claimant further wrote:

> Contractor did not complete a majority of the bathroom and kitchen plumbing; did not complete installation of drywall in upper level and ceiling; did not complete installation of cement board in shower; did not install tile, faucets, shower fixtures, toilet and was negligence [sic] in the initial installation of shower pan liner.

Id., p. 5. The Claimant additionally alleged:

> Due to the Contractor's failure to perform and abandonment [sic] of the project remains to date unfinished and I the owner have incurred additional expenses to hire others to complete the drywall mudding, primer, and interior painting (See Evidence). The bathroom remains unfinished installation of cement board, drywall in ceiling and upper wall; no tiling on floors and shower; no bathroom fixtures, faucets, toilet, sink/sink cabinet. The Contractor's failure to perform has delayed more than a year the electrician's final work to closeout his job for the lighting, electrical outlet and bathroom lighting, which he has completed 70% of his work (See Electrical Contract).

Id., p. 10 (syntax errors in original).

In support of these contentions, the Claimant produced a series of black and white photocopies of photographs to illustrate that the Project remained a work in progress and, in many instances, in a state of disarray. *Id.*, pp. 73-117, pp. 130-135. The Claimant testified that she took the pictures contemporaneous in time as the Project was ongoing. She further explained that she sent the same pictures to the Respondent throughout the time he worked on the Project asking him to redo any unworkmanlike items. The Claimant pointed out that she was home for the duration of the Project and kept a close eye on the work being performed by the Respondent. She believed that she made "every attempt to work with the Contractor" to finish the Project.

To illustrate this point, the Claimant added handwritten notations on various pictures to highlight what she believed to be the unworkmanlike errors committed by the Respondent or to underscore the point that he abandoned the Project. Many of those handwritten notations were cut off and illegible. In others, the Claimant wrote "soapy concrete base in shower," (*Id.*, p. 75);

"improperly by installed shower pan liner & soupy concrete base," (*Id.*, p. 77); "Contractor never return to complete the job after 3rd party subcontractor he paid $300 to redo the shower pan liner & concrete bas[sic]. No cement board. No shower head cover. No toilet installed," (*Id.*, p. 79); "Contractor never returned to install tile in shower or floor in basement bathroom," (*Id.*, p. 81); "Contractors had wife install ceiling drywall in theatre which was install wrong. Gaps in drywall install by contractor wife," (*Id.*, p. 101); "Unfinish drywall/No mud, tape or paint," (*Id.*, p. 105); "drywall incomplete. No mud tape or paint," (*Id.*, p. 107); "Incompl[] drywall. No mud there to paint. Hole in ceili[]," (*Id.*, p. 108); "No drywall. Paint and debris left. Hole in ceiling. No drywall. Hole. No mud or tape," (*Id.*, p. 110); "Access hole in kitchen ceiling not finished," (*Id.*, p. 112); and "[Sh]ower Pan. Negligence [i]nstalled or late demolished," (*Id.*, p. 130) (syntax errors in original).

The Claimant explained that when the Respondent told her he would no longer perform any additional work on the Project, she sent him a breach of contract letter. She spoke about how he did not accept service for the letter, but knew he was aware of the letter because the Respondent's daughter emailed her referencing the contents of the letter. Moreover, the Claimant recalled that the Respondent wanted her to forgive his performance under the two contracts and further asked her to promise not to sue him. While she acknowledged that the Respondent offered to have Mr. Morales finish the Project, she declined the offer because when Mr. Morales emailed her personally he did not mention the transfer of the Respondent's responsibility under the contracts. He also wanted more money than she owed to the Respondent under the two contracts. Overall, the Claimant found the Respondent's position "improper" and sued him in the District Court for Prince George's County. The suit was later dismissed.

For damages, the Claimant is asking for reimbursement stemming from the out-of-pocket cost of hiring three licensed contractors (Handyman Connection, Marshall Blair, and Gomez Contractor) to finish the work. *See* Clmt. Exs. A, B, and C. The total value of the work performed by the three contractors was $5,158.00. The Claimant provided copies of the proposals or contracts from the contractors, and also offered a letter of explanation outlining the work each of the contractors performed at her home. *See* Clmt. Exs. A, B, C, and D, pp. 136-138.

The Respondent does not dispute that on or about May 1, 2018 he told the Claimant that he was no longer able to perform the remaining work under the two contracts. His health was suffering and he complained that working for the Claimant had become difficult. Specifically, he had trouble collecting payments from her and her attitude toward him was "very rude, haughty, and arrogant." Resp. Ex. 1. He also indicated that the Claimant made many statements to him about her employment in the legal profession which he perceived to be threatening.

According to the Respondent, he offered to sever the two contracts with the Claimant by having Mr. Morales take over the Project with the Respondent giving Mr. Morales the remaining monies paid to him by the Claimant. The Respondent agreed that he asked the Claimant to hold him harmless in the event such an agreement was entered into between the Claimant and Mr. Morales. When she said no, he also tried to resume work on the Project, finding other subcontractors, but that, too, was not agreed upon by the Claimant.

The Respondent was also upset to find that the Claimant filed the claim with the Fund when it was his understanding that the District Court of Maryland for Prince George's County dismissed the claim filed against him. He was also disturbed by the Claimant's persistent

reference to the shower pan issue when he paid Mr. Morales money to fix the issue. According to the Respondent, the redo was done in a workmanlike manner.

The record, as a whole, supports a finding that the Claimant and the Respondent began experiencing discord over the terms and conditions of payment under the two contracts sometime in April 2018. From the Claimant's perspective, the Respondent kept asking for money for work not yet performed. She was also wary of the Respondent's demand to be paid in cash as opposed to a certified check or personal check citing that he told her that his bank account was overdrawn. From the Respondent's perspective, when it was time for the second installment payment to be made, the Claimant refused to answer his calls and texts. It took approximately two weeks to get a response from her but she finally paid him. The payment records reflect that the last payment was made on April 27, 2018. At or about this same time, both parties agree that one of the Respondent's subcontractors installed the shower pan poorly. Nevertheless, both parties agree that the Respondent appropriately and timely responded to the shower pan issue and paid Mr. Morales, a licensed contractor, to demolish the improperly installed pan and install it anew. The Claimant agreed that the subsequent installation was workmanlike. But this was the tip of the iceberg for the Respondent – he felt up to this point that the Claimant had been disrespectful to him and he could no longer work under these circumstances in light of his ailing health. Clearly, as noted by the Fund, the end result was an incomplete home improvement as opposed to an abandonment.[35]

In closing remarks, the Fund argued that a case could be made that the Claimant rejected a good faith effort by the Respondent to resolve the matter. While the Fund appreciates that a

[35] The Respondent did not abandon the Contract because he had performed work under the Project. *See* COMAR 09.08.03.03B(3)(a).

homeowner has wide discretion as to who they have work on their homes, the undisputed credible evidence shows that the Respondent had been utilizing various subcontractors to perform the work under the Project. When one of those subcontractors failed to install the shower pan correctly, the Respondent enlisted the help of Mr. Morales to fix the error. No one disputes that the Claimant was pleased with the end result. When it became apparent, as least from the Respondent's perspective, that he could no longer perform the remaining work for the Project, all witnesses concurred that he offered to have Mr. Morales complete the terms and conditions of the two contracts. The only proviso was to have Mr. Morales and the Claimant enter into a contract holding the Respondent harmless going forward. Mr. Morales' recollection of that conversation is similar to the Respondent's. The Claimant's recollection of that conversation, however, is skewed; she was of the opinion that Mr. Morales was going to charge her more to finish the work. The Claimant testified that Mr. Morales emailed her directly with his offer; however, she did not present a copy of that email to corroborate her testimony. While Mr. Morales acknowledged sending the Claimant an email, he testified that he was "not sure" it was the amount the Claimant testified to or $4,500.00. The Claimant also resisted giving the Respondent a quality review on Home Advisor.

I am persuaded by the Fund's position that the Claimant "unreasonably rejected good faith efforts by the contractor to resolve the claim." Bus. Reg. § 8-405(d). Although the term "good faith" is not defined in the applicable regulation or statute, it generally refers to "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or seek unconscionable advantage." *Black's Law Dictionary* 836 (11th ed. 2019). Applying this standard, I find that the Respondent acted in good faith.

As outlined above, the Respondent offered to transfer his responsibility under the two contracts to Mr. Morales, a licensed contractor. The Claimant was familiar with Mr. Morales by virtue of his work removing and replacing the botched shower pan installation. Furthermore, there appears to be no discrepancy in the record below to suggest that anyone other than unnamed subcontractors were performing the hands-on labor for the Project. As such, the Respondent was not substituting himself for someone else. He was substituting various unnamed subcontractors for a known entity – Mr. Morales. As the Fund pointed out, the Claimant had no problem with Mr. Morales until it reached the point of finishing the job. Furthermore, the record reflects that when it became apparent to the Respondent that the Claimant rejected his proposal to have Mr. Morales take over, on June 1, 3, or 5, 2018, he emailed the Claimant asking for time to locate workers to finish the work. Clmt. Ex. D, pp. 16-17. The Respondent also suggested another contractor, other than Mr. Morales. The Claimant said no.

With that backdrop, I find it more likely than not that the Claimant unjustifiably refused all overtures by the Respondent to resolve what led to their impasse over the completion of the Project. The key elements of her claim that the Respondent abandoned the Project without just cause are inextricably tied to a Breach of Contract letter that is not in evidence and an email from Mr. Morales that is not in evidence.[36] The Claimant needed to corroborate her testimony with these documents for me to find her statements credible and her position reasonable; because the Respondent, for his part, had Mr. Morales present to testify and the Claimant ironically submitted into evidence the emails sent by the Respondent that showed his good faith intentions.

[36] In his June 1, 2018 email, the Respondent acknowledged that Mr. Morales may be more expensive than another contractor by the name of Jose and the choice between the two was up to the Claimant to decide; however, the Respondent further indicated "Please let's not complicate life is simple let Mr. Morales finish the work & you pay him the balance if he is not satisfied I will take care him ..." Clmt. Ex. D, p. 17 (syntax errors in original).

Therefore, because the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim, she is not entitled to an award by the Fund. Bus. Reg. § 8-405(d).

Lastly, the Claimant had other various and sundry grievances outlined in her two complaints, but none of the additional issues pertained to a claim under the Fund and will not be addressed in this decision. *See* Clmt. Ex. D, pp. 2-3, 7-10. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

I thus find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of $3,120.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(d) (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

February 11, 2021
Date Decision Issued

Kathleen A. Chapman
Administrative Law Judge

KAC/kdp
#190198v1A

PROPOSED ORDER

WHEREFORE, this 2nd day of June, 2021, 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
Chairman
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION