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| <p>IN THE MATTER OF THE CLAIM</p> <p>OF LOUSASHA DENIS,</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 ANDREW BLATE,</p> <p>T/A BEAUTIFUL HOME SERVICES,</p> <p>LLC,</p> <p>RESPONDENT</p> | <p>* BEFORE ALECIA FRISBY TROUT,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-21-24135</p> <p>* MHIC No.: 20 (75) 1265</p> <p>*</p> |
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On March 2, 2021, Lousasha Denis (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$8,331.00 for actual losses allegedly suffered as a result of a home improvement contract with Andrew Blate, trading as Beautiful Home Services, LLC. (BHS or Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411

(2015).¹ On September 29, 2021, the MHIC issued a Hearing Order on the Claim. On October 15, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 10, 2022, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Esquire, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent was present and represented by Hayes Edwards, Esquire

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (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?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Email chain titled, "Warranty Items," May 3 – May 16, 2020²

Clmt. Ex. 2 - Consulting Services and Inspections LLC inspection report, July 17, 2020³

Clmt. Ex. 3 - Kustom Floors, LLC., Estimate, February 4, 2021

Clmt. Ex. 4 - DB Genesis Hardwood Flooring, LLC., Flooring Proposal, July 29, 2020

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² This email is also included in Resp. Ex. 3.

³ This report was also admitted as Resp. Ex. 5.

- Clmt. Ex. 5 - Declaration of Condominium, [REDACTED] the title page; Table of Contents; and pages 25 – 27, December 20, 2006⁴
- Clmt. Ex. 6 - Email chain titled, “Warranty Items,” May 13 – May 21, 2020⁵
- Clmt. Ex. 7 - Claimant’s cost estimate, undated
- Clmt. Ex. 8 - Email chain titled, “MHIC Complaint, No. 20-1256 [IWOV-PaleyDocs.FID634766], July 10 – July 14, 2020

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 Contract between Respondent and Claimant, March 28, 2020
- Resp. Ex. 2 *There is no Respondent’s Ex. 2.*
- Resp. Ex. 3 Claimant’s MHIC Complaint Form, signed May 26, 2020 including the following attachments:
- Narrative explanation by the Claimant, May 26, 2020
 - TecWood by Mohawk Installation Instructions for ¾” TecWood Flooring, 2019
 - Email titled, [REDACTED] Estimate, March 20 – March 24, 2020
 - Westfield Group repair estimate, March 10, 2020
 - Email titled, “Estimate—Denis,” March 24, 2020
 - Beautiful Homes Service, LLC, Services Proposal, unsigned, March 23, 2020
 - Email chain titled, “Estimate—Denis NON insurance,” March 24 – March 28, 2020
 - Beautiful Home Service, LLC, Services Proposal, signed, March 28, 2020
 - Email titled “Denis project,” March 28, 2020
 - Email titled “Welcome,” March 29, 2020
 - Email titled, “Beautiful Home Services,” March 24, 2020
 - Email chain titled, “COVID Concerns,” March 31 – April 6, 2020
 - Email chain titled, [REDACTED] Rules,” March 30, 2020
 - Email titled, [REDACTED] April 28, 2020
 - Email titled, “Your Project,” April 10, 2020
 - Email chain titled, “T Molding,” April 16 – April 17, 2020
 - Email chain titled, [REDACTED] April 24 – April 27, 2020
 - Email chain titled, “Fwd: Base Cabinets,” April 30 – May 1, 2020
 - Email chain titled, “Warranty Items,” May 3 – May 16, 2020
 - Email chain titled, “Warranty Items,” May 13 – May 16, 2020
 - Email chain titled, “Project Manager Pre-Project Walk Through – Denis,” March 31 – April 16, 2020

⁴ This document is included in its entirety as Resp. Ex. 8.

⁵ This email is also included in Resp. Ex. 3.

- Email chain titled, "Warranty Items," May 13 – May 21, 2020
- Beautiful Home Service, LLC., Invoice, April 24, 2020
- Payment Confirmations, March 28, 2020 (\$5,617.00); May 1, 2020 (\$5,128.00)
- Email chain titled, "FW: HBLLC: Proposal," May 27, 2020 with Home Breakthrough, LLC, Proposal, May 27, 2020, attached

Resp. Ex. 4 *Not offered*

Resp. Ex. 5 Consulting Services and Inspections LLC inspection report, July 17, 2020

Resp. Ex. 6 *Not offered*

Resp. Ex. 7 *Not offered*

Resp. Ex. 8 Declaration of Condominium, [REDACTED] printed December 28, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, October 25, 2021

Fund Ex. 2 - Hearing Order, September 29, 2021

Fund Ex. 3 - Home Improvement Claim Form, signed February 26, 2021

Fund Ex. 4 - Maryland Department of Labor, I.D. Registration Home Improvement Commission Inquiry for Respondent, printed January 7, 2022

Testimony

The Claimant testified and did not present other witnesses. The Respondent testified and presented the testimony of Craig Schneibolk, co-owner of Beautiful Home Service, LLC. The Fund did not present any 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 with the MHIC under license number 01-89878.

2. In 2020, the Claimant owned and occupied a condominium in Silver Spring, Maryland (Condo). The Condo was in a multi-story building.

3. In February 2020, the Condo flooded due to a burst pipe in an upstairs unit. The Claimant required rehabilitative work in the Condo after the flood.

4. Initially, a damage restoration company, ServPro performed mitigation work in the Condo including, among other things, removing all of the flooring in the Condo, leaving the exposed concrete slab. At the time of the flood, the Condo's bedroom and hallway floors were carpeted.

5. In March 2020, the Claimant contacted BHS to provide an estimate. On the date they visited, the flooring had already been removed and the concrete slab was visible.

6. On March 28, 2020, the Claimant and the Respondent entered into a contract (Contract) under which the Respondent agreed to perform the following work in exchange of \$16,850.00:

Kitchen: Install additional blocking under cabinets to provide support; install new toe kick to match cabinets

Foyer/kitchen: including hallway; install insulation in ceiling, replace missing drywall and prepare for paint; paint walls and ceiling two coats in foyer/kitchen/hallway, including closet

Living room, bathroom and bedroom: Replace base board molding, prepare for paint; paint walls and trim two coats; includes hallway by bathroom and closets. Includes cutting base board by vanity and mitering in. Doesn't include removing vanity

Living room, hallway, and master bedroom including closet: Install engineered flooring in standard lay, install ¼ round if desired by customer

Install two curtain pulleys

[Beautiful Home Service, LLC] to move furniture

[Beautiful Home Service, LLC] to provide Mohawk "city vogue" "Santa Barbara" or "Weathered Vintage" engineered flooring.

[Beautiful Home Service, LLC] to provide all other materials

[Beautiful Home Service, LLC] to begin work week of April 13, [2020], barring any materials delay out of [Beautiful Home Service, LLC]'s control.

7. The Claimant did not stay at the Condo while the work was being completed.

8. BHS worked at the Condo from April 14, 2020 through May 1, 2020.

9. On April 24, 2020, Sergio Benitez, the project manager, completed a mid-project walk-through with the Claimant. During that walk-through, he pointed out one uneven area of flooring in the hallway leading into the bedroom. He said the floor was sloping, but told the Claimant she did not have to worry about it.

10. On April 28, 2020, the Claimant noticed that two curtain pulls that the Respondent had installed appeared to not have been new when installed. They were mismatched, dirty and installed improperly such that the cords were not taut. The Claimant emailed BHS President of Production and Customer Service, Craig Schneibolk, and co-owner of BHS, Andrew Blate, about her concerns. Mr. Schneibolk responded that Mr. Benitez was aware of the problem and had "it under control."

11. At the final walk-through, the Claimant also raised concerns about the levelness of the floor. Mr. Benitez mentioned those concerns to Mr. Schneibolk and the two of them measured the floor with a two-to-three-foot bubble level and concluded it was within tolerance.

12. The Claimant paid the Respondent \$16,362.00 reflecting the total contract price minus \$524.00 in agreed upon credits for painting that was not completed, damaged toe kicks in the kitchen and the removal of mismatched shoe molding.

13. The Claimant began moving back into the Condo on May 2, 2020. Upon her return, she noted several punch list items that required repair. This included a cracked t-molding that BHS had installed, scratched floorboards in the bedroom, dented boards in the hallway, an improperly installed shelf and uneven trim in the foyer area. The Claimant reached out to the Respondent via email and asked that BHS repair these items.

14. On May 8, 2020, the Claimant noticed several additional deficiencies.

Specifically, the Claimant noticed that seven trims had not been painted per the Contract and two curtain pulleys that the Respondent had installed were broken. The Claimant reached out to the Respondent via email and asked that BHS repair these items

15. On May 8, 2020, Mr. Benitez responded and agreed to repair the items the Claimant had listed including replacing the pulley in the living room, and painting the trim.

16. On May 13, 2020, the Claimant noticed that there were four areas of the bedroom and hallway floor that were not flat. The Claimant reached out to Mr. Schneibolk, Mr. Benitez and Mr. Blate via email and asked, "Aren't the guys supposed to ensure that the subfloor is level before installing hardwood over it?" Mr. Schneibolk responded, "we do not level floors and are not responsible for the existing levelness of the floor."

17. In his response, Mr. Schneibolk also pointed to several portions of the contract that state:

- Floor refinishing: BHS is not responsible for levelness of pre-existing subfloor, creaks/pops and/or stiffness of floors. 'Tightening' will not eliminate all squeaks, creaks, or pops.
- BHS is not responsible for unforeseen conditions that may change the scope of work. Further, BHS assumes all pre-existing work is done to code and industry standards when preparing the Service Proposals. Upon recognition of an unforeseen condition or code violations, BHS will discuss the situation with the customer and agree upon resolution. If a resolution cannot be reached, BHS reserves the right to cancel the contract without penalty.

18. The conversations between the Claimant and the Respondent about repairs to the various items, and the levelness of the floor reached a point of disagreement and the Claimant suggested filing a claim with the MHIC. After that, the Respondent referred the Claimant to their attorney and further conversations between the Claimant and the Respondent ceased.

19. On July 17, 2020, the Claimant hired Consulting Services and Inspections LLC (CSI) to complete a flooring inspection at the Condo.⁶ That report took into consideration the manufacturer specifications for the specific flooring installed in the Condo, Mohawk TecWood by Mohawk Industries, and utilized a laser level to conduct his measurements. Among other findings, CSI noted the following in its report:

- The bedroom was more problematic and was the main focal point by the end user. ... [T]he substrate was unlevelled by ¼" in a 10' span. This exceeded the industry tolerance of 3/16".
- Again, in the bedroom, the laser marker covering the length of the room shows the substrate was unlevelled ¼" in a 10' span and exceeded industry tolerance.
- [On the] far side of the bedroom towards the window. The laser marker revealed the substrate was 1/2" (8/16") unlevelled in a 10' span exceeding the industry standards of 3/16" by 5/16", more than double the limit set forth by both the manufacturer and NWFA (Northern Wood Flooring Association).

20. The Mohawk Industries manufacturer's specifications for TecWood state:

- Subfloor must be flat within 3/16" in 10' radius (5 mm in 3 m) and/or 1/8" in 6' radius.

21. The Claimant sent the CSI report to the Respondent.

22. The Claimant got two proposals to repair the flooring. On July 29, 2020, DB Genesis Hardwood Flooring, LLC (Genesis)⁷ provided the Claimant with a proposal of \$6,178.32 to correct the flooring problems. Of that \$6,178.32, \$1,500.00 was for leveling the subfloor. On February 4, 2021, Kustom Floors, LLC (Kustom)⁸ provided the Claimant with a proposal of \$10,772.50 to correct the flooring problems. Of that \$10,772.50, \$2,791.00 was for leveling the subfloor.

⁶ CSI is based in Waynesboro, Pennsylvania, and during the hearing, the Claimant was not able to show that they are licensed with the MHIC. However, the Respondent stated that they did not dispute the findings or measurements of CSI, rather, their dispute was over liability. I accepted the report for the undisputed information it provided, but did not rely on it in a determination of damages.

⁷ Genesis is licensed by the MHIC.

⁸ It was not clear whether Kustom is licensed by the MHIC. KK Kustom Flooring at the same address is licensed by the MHIC. Kustom originally provided the estimate in mid-2020, but updated it in February 2021 to account for rising materials costs.

23. On January 11, 2021, the Claimant hired a handyman and paid him \$195.00 to reinstall new curtain pulleys. The handyman was not licensed by the MHIC.

DISCUSSION

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 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means 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 proven eligibility for compensation.

The parties agreed with the measurements taken by CSI showing the subfloor in the Condo was unlevel in several places, and out of tolerance per the manufacturer specifications for Mohawk TecWood. The Respondent argued that it was not liable for the unlevel floor that resulted from installing Mohawk TecWood onto an unlevel subfloor, because leveling the subfloor was not in the contract, and may not have even been an option as it would have required Homeowner Association (HOA) approval. The Respondent relied on two provisions in the Contract. First:

- Floor refinishing: BHS is not responsible for levelness of pre-existing subfloor, creaks/pops and/or stiffness of floors. ‘Tightening’ will not eliminate all squeaks, creaks, or pops.

During cross examination, Mr. Blate agreed that floor refinishing was different than floor installation. He explained that floor refinishing involves sanding and applying stain, and sealant to existing floors. During floor refinishing, the contractor never sees the subfloor. With floor installation, as in this case, the contractor installs new flooring on top of a bare subfloor. There is not a similar provision in the Contract dealing with floor installation. In one instance, the contractor does not have the advantage of evaluating the subfloor prior to performing work, while in the other, he does. Here, the bare subfloor was exposed from the first time BHS visited the Condo, when they evaluated the floor in order to create an estimate for the work, and just prior to them installing the Mohawk TecWood chosen by the Claimant. I find the provision cited by the Respondent referencing floor refinishing inapplicable to this scenario other than to stress the value BHS places on the contractor having access to a bare subfloor versus not having that access.

Mr. Schneibolk testified that BHS would not have accepted a contract that required leveling to this type of subfloor because BHS does not handle concrete and subfloors. Mr. Blate stressed that leveling the subfloor was not in the contract, and pointed to the following provision in the contract:

- BHS is not responsible for unforeseen conditions that may change the scope of work. Further, BHS assumes all pre-existing work is done to code and industry standards when preparing the Service Proposals. Upon recognition of an unforeseen condition or code violations, BHS will discuss the situation with the customer and agree upon resolution. If a resolution cannot be reached, BHS reserves the right to cancel the contract without penalty.

Mr. Blate explained that the main reason he included this provision in his standard contract is that he is generally unable to inspect every inch of a room, and that if upon further engaging in a project BHS learns something is not up to code or industry standard, they can stop and have a discussion with the homeowner about it. Mr. Schneibolk agreed and testified that had the Claimant asked that the subfloor be leveled, BHS would have stopped work and asked the

homeowner to remedy it first. But BHS never told the Claimant that the subfloor was not level per the Mohawk manufacturer specifications. When Mr. Benitez did the mid-project walk-through with the Claimant, he told her not to worry about the unlevelness of the floor. BHS did not stop the project and have a conversation with the Claimant about how she wished to proceed, but rather indicated there was no concern and continued work despite the identified problem.

Mr. Blate confirmed that BHS follows manufacturer's guidelines when installing flooring. Mr. Schneibolk testified that the relevant Mohawk manufacturer guidelines required that the floor be flat, and that BHS checked the subfloor with a two-to-three-foot bubble level "like you can buy at Home Depot." On cross examination, Mr. Schneibolk agreed that BHS could not have properly measured per the manufacturer guidelines using a two-to-three-foot level, as the guidelines specify levelness over a ten-foot span. Mr. Schneibolk asserted that using such a level was within industry standard, and sarcastically referred to the tools used by CSI, a BOSH laser level, as something inaccessible, or absurdly high-tech that was not required.

The Claimant agrees with BHS that leveling the subfloor was not included in the Contract. She does not seek reimbursement for the cost of leveling the subfloor, but for the cost of removing the current flooring such that the subfloor can be leveled in order to conform with the Mohawk manufacturer specifications, and then reinstalling the flooring over a level subfloor such that the end result is a flat floor. The Claimant argued that it was the Respondent's responsibility to ensure the subfloor met manufacturer specifications before installing the flooring, and if it did not, to inform her of the problem before going ahead and installing the flooring such that the end result was an unlevel floor.

The Claimant has shown that the floor in her Condo, installed by BHS, is not level and not in compliance with the manufacturer's specifications. BHS was not responsible, under the Contract, for leveling the sub-floor, but BHS was responsible for ensuring that the flooring it

installed was done in compliance with the manufacturer's specifications, and that the result was a reasonably flat floor. I find that it was unreasonable for BHS to fail to ensure the subfloor met manufacturer specifications prior to beginning work. Mr. Blate testified that BHS has approximately eight-million dollars in annual gross revenue and that he alone completes roughly 350-450 estimates a year. If a two-to-three-foot bubble level was insufficient to make the requisite measurements for this flooring, BHS should have either refused to work with that flooring, or purchased a laser level to take the correct measurements. BHS had a second opportunity to mitigate damages upon learning mid-project that the floor was unlevel, but rather than stopping and reevaluating the levelness of the subfloor, BHS reassured the Claimant that she did not need to worry about it. I find that the work BHS did on the floor was unworkmanlike and inadequate. The Fund argued, and I agree, the Claimant has proven actual loss for the flooring as defined by statute. Bus. Reg. § 8-401.

Following the completion of the project, the Claimant noticed a number of defects that she asked BHS to remedy. In her MHIC complaint, in addition to the flooring, she also seeks reimbursement for seven pieces of unpainted trim, a cracked t-molding and two broken curtain pulleys. The Respondent supplied the curtain pulleys and installed them. The Respondent argued that the broken curtain pulleys were the responsibility of the manufacturer, and not BHS.

The Respondent argued that the trim was painted. The Claimant stated that the trim had been painted prior to the project, but that, per the Contract, it was to be painted a different color to match other trim in the Condo, and it was not.

There was extensive email communication between the Claimant and the Respondent concerning the broken t-molding, but little to no mention of it during the hearing.

The Claimant first brought the curtain pulley to the Respondent's attention via email mid-project, and the Respondent indicated that Mr. Benitez would correct the problem. In later back-

and-forth emails about the Claimant's list of concerns, the Respondent agreed to paint the trim, replace the cracked t-molding and the broken curtain pulleys.

I do not find that the Claimant produced sufficient evidence to prove that the trim was not painted per the Contract, or that the cracked t-molding was due to the workmanship of BHS. I do, however, find that the Claimant has shown that the broken curtain pulleys were due to poor workmanship. The Claimant first brought the defective curtain pulleys to the Respondent's attention via email mid-project. They were not functioning even prior to her moving back into the Condo. At that time, the Respondent assured her the issue would be corrected. While the post-project back-and-forth emails between the Claimant and Respondent about many of the alleged deficiencies appear to be more akin to settlement negotiation than actual acceptance or denial of liability, the issue with the curtain pulleys was raised well before the end of the project, and before the breakdown of the relationship between the Claimant and the Respondent. BHS supplied the curtain pulleys and installed them, and they were never functional. I find that the work BHS did on the curtain pulleys was unworkmanlike and inadequate. The Fund argued that the Claimant did not prove an actual loss for any of these additional items, but I disagree. I find that the Claimant has proven actual loss for the curtain pulleys as defined by statute. Bus. Reg. § 8-401.

In accordance with Bus. Reg. § 8-405(d), "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Although the Claimant and the Respondent initially attempted to resolve many of the problems, the Respondent eventually stopped communicating with the Claimant. The Claimant was unhappy with the resolution offered by the Respondent that addressed many of the smaller concerns, but denied all liability for the flooring. The Respondent did not offer to address or correct the problems with the flooring, which led to the breakdown of negotiations

between the Claimant and the Respondent. I find that the Claimant did not unreasonably reject the Respondent's offers. The Respondent did not offer to correct the flooring, which was arguably the largest concern, and that led to the parties seeking assistance from the MHIC. Therefore, the Claimant is not barred from recovering from the Fund pursuant to § 8-405(d), and the evidence does not support any other statutory prohibition. Bus. Reg. § 8-405(d) and (f)-(g).

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed work under the Contract, and the Claimant has solicited estimates from other contractors to correct that work. Accordingly, the Fund argued, and I agree, the following formula appropriately measures the Claimant's actual loss:

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).

Under the original Contract, the Claimant paid Respondent a total of \$16,362.00. This was undisputed. The Claimant got two estimates for the flooring repair. The first was from Genesis in the amount of \$4,678.32 [$\$6,178.32 - \$1,500.00$ (leveling work) = \$4,678.32]. The second was from Kustom in the amount of \$7,981.50 [$\$10,772.50 - \$2,791.00$ (leveling work) =

\$7,981.50]. The Respondent refused to provide the Claimant with the cost break-down in terms of the remaining items. However, in a May 12, 2020 email, Mr. Blate stated that it would charge “one day of work” to repair the curtain pulleys, and provided that one day of work was \$350.00. The Fund argued, and I agree, that the estimate from Genesis should control as Genesis is licensed by the MHIC. This would make the actual loss \$5,028.32, calculated as follows:

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|--------------------------------|---|
| Amount paid to the Respondent: | \$16,362.00 |
| Added to | + |
| Estimate to repair: | <u>\$4,678.32 + \$350.00 = \$5,028.32</u> |
| | \$21,390.32. |
| Less | - |
| The original contract price: | <u>\$16,362.00</u> |
| | \$5,028.32 |

The Business Regulation Article caps a claimant’s recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant’s actual loss of \$5,028.32 does not exceed \$20,000.00. Therefore, the Claimant’s recovery is \$5,028.32. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,028.32 as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c), (4), and D(2)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,028.32; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁹ and

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

Alecia Frisby Trout

April 4, 2022
Date Decision Issued

Alecia Frisby Trout
Administrative Law Judge

AFT/ja
#197541

⁹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 13th day of June, 2022, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***