

IN THE MATTER OF THE CLAIM	* BEFORE CARLTON A. CURRY,
OF EVELYN TURNER AND	* AN ADMINISTRATIVE LAW JUDGE
KENNETH HAUGHTON,	* OF THE MARYLAND OFFICE
CLAIMANTS	* OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	*
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF ZUFAR GAFAROV,	* OAH No.: LABOR-HIC-02-23-11441
T/A PRO HANDYMAN LLC,	* MHIC No.: 22 (75) 1280
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 25, 2022, Evelyn Turner and Kenneth Haughton (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$7,300 for actual losses allegedly suffered as a result of a home improvement contract with Zufar Gafarov, trading as Pro Handyman LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On April 10, 2023, the MHIC issued a Hearing

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Order on the Claim. On April 20, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing. A hearing was initially scheduled for June 23, 2023, but was postponed and rescheduled at the request of the Respondent.

On August 3, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. The Claimants were self-represented. Alex Bender, Esquire, represented the Respondent, who was present. Catherine Villareale, Assistant Attorney General, Department, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### **ISSUES**

1. Did the Claimants 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 - Screenshot of Pro Handyman LLC Invoice #200, dated October 8, 2020
- Clmt. Ex. 2 - Not Admitted<sup>3</sup>
- Clmt. Ex. 3 - Photograph of proposal for kitchen renovation, undated

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<sup>3</sup> Exhibits not admitted are retained with the file for completeness.

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Collection of documents, including the following:

- MHIC Home Improvement Claim Form, page 1, dated August 16, 2022
- MHIC Complaint Form, page 2, dated May 10, 2022
- Various photographs of the work performed, pages 3-29, undated

Resp. Ex. 2 - Kitchen renovation proposal, September 27, 2020

Resp. Ex. 3 - Emails between Respondent and Mr. Haughton, September 26, 2020 to October 8, 2020

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, dated May 12, 2023, and MHIC Hearing Order, dated April 10, 2023

Fund Ex. 2 - MHIC Licensing Database printout and licensing history,

Fund Ex. 3 - MHIC Claim Form, August 16, 2022

### Testimony

The Claimants testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

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 under MHIC license numbers 134278 and 113054.
2. On September 28, 2020, the Claimants and the Respondent entered into a contract to renovate a kitchen (Contract). The scope of work included: removal of existing kitchen base cabinets and kitchen floor to the first level of subfloor; install plywood on floor; install vinyl plank floor; install kitchen cabinets and laminate countertop, using existing sink and faucet.
3. The original agreed-upon Contract price was \$4,600.00.

4. At a date not clear in record, the scope of work under the Contract was expanded to include: removal of additional layers of subflooring; removal of plaster ceiling and replacing with drywall; drywall of kitchen wall, and painting.

5. The additional work was not memorialized in writing.

6. Work pursuant to the Contract was performed from October 5, 2020 through October 8, 2020.

7. On October 8, 2020, the Claimants paid the Respondent \$7,300.00 for the work performed.

8. In April 2022, the Respondent visited the Claimants' home to discuss problems with the work. The Respondent did not perform any repairs.

9. On March 18, 2022, the Claimants filed a complaint with the MHIC.

10. At the time of the hearing, the Claimants' kitchen floor had nailheads protruding upward creating bumps in the vinyl flooring, the floor was uneven, the seams of the drywalling were visible, there were visible cracks and separation of the drywall at the countertop and window.

## DISCUSSION

### ***Burden of Proof and the Statutory Framework***

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; 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 Cnty. 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) (Supp. 2023); *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.

### ***No Statutory Bar for Recovery***

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants’ recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimants reside in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimants are not a relative, employee, officer, or partner of the Respondent, and are not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

The Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the Claim, as there is no evidence that the Respondent ever made such efforts. *Id.* § 8-405(d) (Supp. 2023).

### ***Position of the Parties***

The Claimants testified they were initially happy with the work performed, but within one month, problems with the Respondent’s work emerged. The Claimants stated that drywall seams became visible, along with cracking in the wall. Additionally, the Respondent installed a floor that was not level, with nails protruding through the vinyl flooring, and gaps between the wall and the floor. Moreover, the Claimants stated a sink was improperly installed, causing a

water leak. The Claimants argued that the work performed was unworkmanlike and inadequate, and they are entitled to all monies paid to the Respondent for the project.

The Respondent argued that the work was performed appropriately and as contracted. Further, the Respondent stated that the Claimants failed to meet their burden of establishing that the work performed was unworkmanlike or inadequate, and the Claimants suffered no actual monetary loss.

The Fund asserted that the Claimants established the Respondent's work was unworkmanlike and inadequate and that the Claimants suffered an actual loss; consequently, the Fund recommended an award.

### *Analysis*

For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Complaints testified that they saved up to have a kitchen renovation, but shortly after completion, they noticed several deficiencies. Ms. Turner testified that each seam of the drywall installed was visible, along with cracking in the wall. Ms. Turner further testified that nails from the subfloor protruded upward, creating bubbles in the vinyl flooring. Additionally, the floor slopes downward, creating a gap between the wall and the floor. Mr. Haughton's testimony was consistent with Ms. Turner's.

The Respondent testified that he had to take up several layers of subflooring to get a smooth surface to install the vinyl flooring. A portion of the subflooring was damaged and required additional work. The Respondent stated that this additional work was part of the expanded scope of work to include replacing the plaster ceiling and wall with drywall and painting, acknowledging that the changes to the scope of work in the Contract were not reduced to writing. The Respondent further testified that he informed the Claimants that due to the age of

the home, the floor joists would have to be replaced for the floor to be level and that the Claimants agreed to the installation of an unlevelled floor.

Most persuasive in this case is the documentary evidence, specifically the photographs in Respondent's Exhibit 1. The exhibit identifies several areas where the vinyl flooring installed by the Respondent is pushed up by nails, creating bubbling and cracking in the flooring, confirming the testimony of the Claimants. (Resp. Ex. 1, pgs. 3, 4, 6, 8, 12-16, 20, 27, and 28). The Respondent testified that the stated goal of the project was to "make it look nice" with the limited funds the Claimants had available and testified that he applied plywood as subflooring to create a smooth surface to apply the vinyl flooring. It is clear that the work performed did not create a smooth floor, and the floor is unsightly; the Respondent's assertion that the floor was installed properly with nails protruding upward eighteen months after installation is unconvincing.

I weighed carefully the testimony concerning the unlevel floor. The Respondent, at one instance, testified that the Claimants agreed to an unlevelled floor being installed and, at a different point, testified that the increased cost of the project included additional work related to the subfloor. Section 8-501 of the Business Regulation Article identifies the requirements of a home improvement contract, including that a contract be in writing. The record is devoid of a written contract, and I have only a written proposal drafted and signed by the Respondent. (Resp. Ex. 2). The proposal mentions nothing regarding uneven flooring but does mention the removal of "existing. . . kitchen floor up to the first level subfloor" and "[i]ninstall about 160 sq/ft 7/8 OSB<sup>4</sup> plywood on the floor." (Resp. Ex 2). Both parties agreed that the Contract was amended to include additional work, but the entirety of the scope of work is unclear. The Respondent testified that he went to the Claimants' home in April 2022 to view their concerns. Shortly

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<sup>4</sup> Oriented Strand Board.

thereafter, on May 18, 2022, the Claimants filed a complaint form identifying the uneven floor as a deficiency. (Resp. Ex. 1, pg. 2). After consideration of the testimony of the Claimants, which is supported by Respondent Ex. 1, I do not find credible the Respondent's assertion that the Claimants agreed to an unlevel floor. The Claimants have established that the Respondent's work on the installation of the floor is unworkmanlike and inadequate.

The parties agree that per the Contract, the Respondent was to install cabinets, drywall the ceiling and wall, and paint. The Claimants testified, without contradiction, that the drywall seams were showing and there were cracks in the drywall. As illustrated in Respondent Exhibit 1 on pages 7, 9, 11, and 18, there are visible cracks and drywall separation at the countertop and window. Either the materials themselves were substandard, the application of the materials by the Respondent was substandard, or both. No reasonable person could conclude that the work performed was workmanlike and adequate.

Under the terms of the Contract, the Respondent was to install a new countertop and reinstall the existing sink and faucet. The Claimants testified that the sink and faucet were improperly installed by the Respondent, causing a leak based on water pressure and damaging the cabinet. The Claimants failed to meet their burden of proof regarding any water leaking; there is no evidence in the record that clearly establishes this. However, the Claimants have established that the Respondent performed unworkmanlike and inadequate services with respect to the installation of the countertop. The Respondent acknowledged in his testimony that part of the scope of the work performed was caulking. Respondent Exhibit 1, pages 19 and 21, clearly shows caulking that is cracked or nonexistent surrounding the countertop, separating the wall from the countertop. I conclude that the drywall installation constitutes an unworkmanlike and inadequate home improvement.



After considering the testimony and reviewing the exhibits, I agree with the Claimants and the Fund that the Respondent performed an unworkmanlike, inadequate, and incomplete home improvement. *See* Bus. Reg. § 8-401. Thus, the Claimants are eligible for compensation from the Fund. *See Id.* § 8-405(a); *see also* COMAR 09.08.03.03B(2). Having found eligibility for compensation, I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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) (Supp. 2023) 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.

Here, the Respondent performed some work under the Contract, and the Claimants are not seeking other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

It is without contradiction that the Claimants paid the Respondent \$7,300.00 for the kitchen renovation. (Clmt. Ex. 1). The Fund agreed with the Claimants in that the Respondent provided the Claimants with \$0.00 in value of any materials or services contributed towards the kitchen. The Fund and Claimants base this \$0.00 value on the fact that the Respondent's inadequate workmanship left the kitchen in such a state that it would require another contractor to redo the Respondent's shoddy work using new materials. I agree with the Fund and Claimant. As such, utilizing the formula provided in COMAR 09.08.03.03B(3)(b), the Claimants' actual loss is calculated as the amount paid to the Respondent (\$7,300.00) less the value of any

materials or services provided by the Respondent (\$0.00). For this reason, the Claimants are entitled to recover \$7,300.00 as the amount of their actual loss. *Id.*; Bus. Reg. § 8-405(a).

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>5</sup> In this case, the Claimants' actual loss is less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$7,300.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimants have sustained an actual and compensable loss of \$7,300.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401; 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimants are entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2023).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$7,300.00; 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;<sup>6</sup> and

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<sup>5</sup> H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

<sup>6</sup> *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

October 30, 2023  
Date Decision Issued

*Carlton A. Curry*  
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Carlton A. Curry  
Administrative Law Judge

CAC/at  
#206662

**PROPOSED ORDER**

***WHEREFORE, this 22<sup>nd</sup> day of December, 2023, 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.***

***J Jean White***

***I Jean White***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***