

The Maryland Home  
 Improvement Commission

\* BEFORE THE  
 \* MARYLAND HOME IMPROVEMENT  
 \* COMMISSION

v. Tonya Conteh  
 t/a Conteh Construction Inc  
 (Contractor)  
 and the Claim of  
 Monique Lindsay  
 (Claimant)

\* MHIC No.: 14 (05) 154  
 \*  
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FINAL ORDER

WHEREFORE, this January 15, 2015, Panel B of the Maryland Home

Improvement Commission ORDERS that:

1. The Findings of Fact set forth in the Proposed Order dated October 21, 2014 are AFFIRMED.
2. The Conclusions of Law set forth in the Proposed Order dated October 21, 2014 are AFFIRMED.
3. The Proposed Order dated October 21, 2014 is AFFIRMED.
4. This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

*Joseph Tunney*  
 Joseph Tunney, Chairperson  
 PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE  
 INTERNET: WWW.DLLR.STATE.MD.US • E-MAIL: MHIC@DLLR.STATE.MD.US

IN THE MATTER OF THE CLAIM  
OF MONIQUE D. LINDSAY,  
CLAIMANT,  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF TONYA CONTEH,  
t/a CONTEH CONSTRUCTION, INC.,  
RESPONDENT

\* BEFORE STUART G. BRESLOW,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: DLR-HIC-02-13-46571  
\* MHIC No.: 14 (05) 154  
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**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On September 16, 2013, Monique D. Lindsay (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$24,069.90 for actual losses allegedly suffered as a result of a home improvement contract with Tonya Conteh, t/a Conteh Construction, Inc. (Respondent).

I held a hearing on June 12, 2014 at the Largo Government Center, 9201 Basil Court, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407 (2010 & Supp. 2013).

Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Claimant was present and was represented by Eliot C. Schaefer, Esquire. The Respondent's husband and co-owner of Conteh Construction, Tejan Conteh, also appeared and represented the Respondent by a Special Power of Attorney, received by the Office of Administrative Hearings (OAH) on June 18, 2014.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013), Code of Maryland Regulations (COMAR) 09.01.03.01; 09.08.02.01; and 28.02.01.01.

### **ISSUE**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

- Claimant Ex. 1: Contract proposal from Respondent, dated December 1, 2012
- Claimant Ex. 2: Copy of check in the amount of \$8,833.33 from Claimant to Respondent, dated December 2, 2012
- Claimant Ex. 3: Copy of a check in the amount of \$6,000.00 from Claimant to Respondent, dated December 5, 2012
- Claimant Ex. 4: Photograph of framing, undated
- Claimant Ex. 5: Photograph of framing, undated
- Claimant Ex. 6: Photograph of framing, undated
- Claimant Ex. 7: Photograph of framing, undated
- Claimant Ex. 8: Copy of a check in the amount of \$8,833.33 from Claimant to Respondent, dated December 15, 2012

- Claimant Ex. 9: Proposal from Respondent to Claimant for the construction of a deck, storage under the deck, soundproofing, and installation of a fence with two gates for a total of \$26,000.00, dated November 27, 2012
- Claimant Ex. 10: Copy of a check in the amount of \$8,000.00 from Claimant to Respondent, dated January 3, 2013
- Claimant Ex. 11: Copy of a check in the amount of \$4,000.00 from Claimant to Respondent, dated January 11, 2013
- Claimant Ex. 12: Copy of a check from the Claimant to the Respondent in the amount of \$1,500.00, dated March 11, 2013
- Claimant Ex. 13: Copy of a check from the Claimant to the Respondent in the amount of \$600.00, dated April 19, 2013
- Claimant Ex. 14: Copy of a check from the claimant to the Respondent in the amount of \$5,907.75, dated March 13, 2013
- Claimant Ex. 15: Photograph of bathroom, May 2013
- Claimant Ex. 16: Photograph of shower head, May 2013
- Claimant Ex. 17: Closeup photograph of shower head, May 2013
- Claimant Ex. 18: Photograph of shower head from a different angle, May 2013
- Claimant Ex. 19: Photograph of pipe without connection to the toilet, May 2013
- Claimant Ex. 20: Photograph of shower stall without door or curtain, May 2013
- Claimant Ex. 21: Photograph of sink without piping connections, May 2013
- Claimant Ex. 22: Photograph of sink from a different angle without piping connections, May 2013
- Claimant Ex. 23: Photograph of grout partially covering drain in shower, May 2013
- Claimant Ex. 24: Photograph of flooring without carpeting, May 2013
- Claimant Ex. 25: Photograph of exhaust pipe, May 2013
- Claimant Ex. 26: Close-up photograph of exhaust pipe, May 2013
- Claimant Ex. 27: Photograph of window frame, May 2013
- Claimant Ex. 28: Photograph of window in walk-in closet, May 2013

- Claimant Ex. 29: Photograph of window in master bedroom, May 2013
- Claimant Ex. 30: Photograph of floor in master bedroom and electric sockets, May 2013
- Claimant Ex. 31: Photograph of wall socket and open socket in master bedroom, May 2013
- Claimant Ex. 32: Photograph of sitting room window and frame, May 2013
- Claimant Ex. 33: Photograph of uncovered wall socket, May 2013
- Claimant Ex. 34: Photograph of media room without carpeting, May 2013
- Claimant Ex. 35: Photograph of electrical panels, May 2013
- Claimant Ex. 36: Photograph of latch on gate, May 2013
- Claimant Ex. 37: Photograph of dent in gate, May 2013
- Claimant Ex. 38: Photograph of gate, May 2013
- Claimant Ex. 39: Photograph of deck steps, May 2013
- Claimant Ex. 40: Photograph of deck posts, May 2013
- Claimant Ex. 41: Photograph of deck steps and railing post, May 2013
- Claimant Ex. 42: Photograph of steps under deck, May 2013
- Claimant Ex. 43: Photograph of entire deck steps to ground, May 2013
- Claimant Ex. 44: Photograph of deck post unfinished, May 2013
- Claimant Ex. 45: Close-up photograph fastener to deck, May 2013
- Claimant Ex. 46: Close-up photograph of fastener to deck post, May 2013
- Claimant Ex. 47: Photograph of fastener to deck post, May 2013
- Claimant Ex. 48: Photograph of missing section of siding, May 2013
- Claimant Ex. 49: Photograph of missing section of siding from another angle, May 2013
- Claimant Ex. 50: Photograph of electrical switch installed in shed, May 2013
- Claimant Ex. 51: Photograph of downspout, May 2013
- Claimant Ex. 52: Photograph of debris, May 2013

- Claimant Ex. 53: Photograph of supplies outside house, May 2013
- Claimant Ex. 54: Bank statements showing cost of materials from December 2012 through May 2013
- Claimant Ex. 55: Contract Proposal from Truhome Builders, Inc., dated August 7, 2013
- Claimant Ex. 56: Copy of a check in the amount of \$3,913.58 from Claimant to Truhome Builders, Inc., dated August 22, 2013
- Claimant Ex. 57: Copy of a check in the amount of \$5,876.25 from Claimant to Truhome Builders, Inc., dated August 26, 2013
- Claimant Ex. 58: Copy of a check in the amount of \$1,175.25 from Claimant to Truhome Builders, Inc., dated September 4, 2013
- Claimant Ex. 59: Photograph of a sprinkler head, May 2013
- Claimant Ex. 60: Design Expo Flooring Sales Drafts, in the amount of \$1,800.00, dated August 24, 2013 and another in the amount of \$3,559.00, dated September 10, 2013
- Claimant Ex. 61: Contract Proposal between The Design Expo, Flooring Center of Bowie and Claimant, dated August 24, 2013
- Claimant Ex. 62: Not offered
- Claimant Ex. 63: Not offered
- Claimant Ex. 64: Window in sitting room, May 2013
- Claimant Ex. 65: Window in master bedroom, May 2013
- Claimant Ex. 66: Picture of shower head, May 2013
- Claimant Ex. 67: Covered exhaust opening, May 2013
- Claimant Ex. 68: Carpeted media room, May 2013
- Claimant Ex. 69: Carpeted bedroom, May 2013

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

- GF Ex. 1: Notice of Hearing, sent certified mail, dated March 3, 2014
- GF Ex. 2: Notice of Hearing, sent first class mail, dated March 3, 2014

- GF Ex. 3: Notice of Hearing, new address, dated May 6, 2014
- GF Ex. 4: Affidavit of Tomas Marr, dated May 21, 2014
- GF Ex. 5: Licensing history of Respondent, dated June 10, 2014
- GF Ex. 6: Letter from Joseph Tunney, Acting Chairman, MHIC, to Respondent, dated September 26, 2013 with attached claim in the amount of \$24,069.90, dated September 13, 2013

### **Testimony**

The Claimant testified on her own behalf, as did Tejan Conteh on behalf of the Respondent. In addition, the Claimant presented the testimony of Ignatius Truman Wathen, owner and President of Truhome Builders, Inc. No testimony was presented on behalf of the Fund.

### **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 licensed by the MHIC as a home improvement contractor, License No. 01-88843. The License was renewed on March 18, 2013, but the Respondent is no longer licensed.
2. Tejan Conteh is the husband of the Respondent and had direct involvement with the Claimant throughout the design phase, the contract phase, and construction during the course of the project agreed to between the parties.
3. On or about December 1, 2012, the Claimant and the Respondent entered into a contract to finish her basement in her home located at 13216 Whitaker Park Drive, Brandywine, Maryland 20613. The total contract price for the work described in the proposal was \$26,500.00 (Contract) (Claimant Ex. 1).
4. The work to be performed was to be compliant with applicable codes. The Claimant did not want architectural plans for the project, but rather a layout instead. Layout plans are

- unacceptable for the purpose of obtaining a permit. The parties agreed that the Claimant would obtain necessary permits, however, she did not.
5. The Claimant selected the Respondent for this work based on a recommendation from a friend.
  6. Upon signing the Contract, the Claimant provided the Respondent with a check in the amount of \$8,833.33 in accordance with the Contract. (Claimant Ex. 2).
  7. The Claimant issued another check in the amount of \$8,833.33 to the Respondent as the second installment under the Contract on December 15, 2012. This check was due after all framing, plumbing, and electrical roughing is complete.
  8. Shortly after the Contract was signed, there were further discussions between the Claimant and the Respondent concerning the addition of a media room to the overall project. No formal written contract was entered into between the parties, but the parties agreed on a price of \$6,000.00 for the additional work. The Claimant paid for this additional work in full on December 5, 2013. (Claimant Ex. 3).
  9. The Claimant and the Respondent further expanded the project by the addition of a deck, storage shed, and soundproofing of the bedroom and media room. The total cost of this work was \$26,000.00, but the parties agreed that the Respondent would only supply the labor for this phase of the work and the Claimant would supply all of the materials. (Claimant Ex. 9).
  10. During the course of construction, the Respondent was provided access to the Claimant's property through a lock box with a code and a key inside for entry to the home. The Respondent was given the code and used the lock box throughout the construction work.
  11. On January 3, 2013, the Claimant paid the Respondent \$8,000.00 as a first installment for the deck, shed, and soundproofing part of the project. (Claimant Ex. 10).



12. On January 11, 2013, the deck was completed and the Claimant paid the Respondent \$4,000.00 in accordance with the contract proposal.
13. The Claimant wanted to upgrade the paint that was originally specified in the Contract. The Respondent and the Claimant agreed to the upgrade and a check was issued by the Claimant to the Respondent in the amount of \$1,500.00 on March 11, 2013 for the full cost of the upgrade.
14. The Claimant also wanted to upgrade the carpeting under the Contract and the Respondent and the Claimant agreed upon a price of \$1,200.00 for this upgrade. One half of the cost of the upgrade, in the amount of \$600.00, was provided by the Claimant to the Respondent by check on April 19, 2013.
15. On March 13, 2013, the Claimant paid the Respondent by check, the amount of \$5,907.75, the remaining balance that was due under the Contract and for the construction of the deck, storage shed, and soundproofing. (Claimant Ex. 14). The Claimant did not pay the Respondent \$600.00 for the remaining half of the balance for the upgrade to the carpeting.
16. The Respondent never installed the carpeting.
17. The Contract did not require the Claimant to pay the remaining balance of the Contract until the project was completed and a final walk-through had taken place.
18. None of the work that was to be performed under the Contract, nor the additional work that was to be performed by the Respondent included the purchase and installation of a shower door in the bathroom. The Respondent did not supply or install a shower door.
19. The Claimant did not express to the Respondent, either orally or in writing, that the work that was performed under the Contract or the additional work agreed upon by the parties

was unworkmanlike or otherwise deficient until after the Respondent was no longer at the site.

20. On or about May 24, 2013, the Respondent's husband, Mr. Contech, worked at the site for approximately three hours and met with the Claimant. He was expecting a check in the amount of \$600.00 from the Claimant representing the other half of the payment for the procurement and installation of the carpeting. The Claimant refused to provide him with that check.
21. The Claimant advised Mr. Conteh that if he did not provide a shower door, he would not receive the \$600.00 for the carpeting. Heated words ensued between them. In an attempt to settle the issue, the Claimant's relative<sup>1</sup> offered to pay for the shower door, however, the Claimant would not accept her relative's offer.
22. At the conclusion of the discussion, the Claimant demanded that Mr. Conteh provide her with the code to the lock box, which he did.
23. On Monday, May 27, 2013, Mr. Conteh returned to the property to finish the work on the Contract and the other projects agreed to between the Respondent and Claimant only to find that the code to the lock box was changed and he was no longer able to access the property to complete the work.
24. At the time the Respondent left the job at the end of May 2013, there was additional work that needed to be done, including the installation of the carpet, waterproofing of the shed, and developing a punch list following a walk-through to complete and correct any outstanding construction issues. Once the Respondent left the property, he was never permitted to return and collect any of his property that was left at the site.

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<sup>1</sup> There is some indication in the record that Marcos may be a brother-in-law of the Claimant, but it was not clearly established.

25. On or about August 7, 2013, Ignatius Truman Wathen, owner and President of Truhome Builders, Inc., visited the property to provide the Claimant with an estimate to repair and finish the work of the Respondent. The total cost proposal for this work was \$18,710.90. (Claimant Ex. 55).
26. Truhome Builder's proposal included work to correct and complete the deck as well as the basement. The Claimant asked Truhome to correct and complete the work on the basement, but did not have his company do any of the recommended work on the deck.
27. For the work performed by Truhome, the Claimant paid Truhome \$3,913.58 by check dated August 22, 2013 (Claimant Ex. 56), \$5,876.25 on August 26, 2013 (Claimant Ex. 57), and \$1,175.25 on September 4, 2013 (Claimant Ex. 58) for a total of \$10,965.08.
28. Hot and cold water lines were connected to the plumbing fixtures when the Respondent left the jobsite.
29. Electrical switches were working properly and all sockets were grounded when the Respondent left the worksite.

## **DISCUSSION**

### **Applicable Law**

Section 8-405 of the Business Regulation Article provides that an owner may recover compensation of up to \$20,000.00 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 (Supp. 2013). Section 8-401 defines "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401 (2010). Maryland law provides that a claim against the Fund may be denied if the claimant has "unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d).

If I determine that the Claimant has suffered an actual loss, COMAR 09.08.03.03B governs the calculation of an award from the Fund:

B. Measure of Awards from Guaranty Fund.

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney's fees;
- (d) Court costs; or
- (e) Interest.

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

**(3) Unless it determines that a particular claim requires a unique measurement,** the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) 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.

(c) 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.

**Analysis**

In December 2012, the Claimant wanted to finish the basement in her home. As a result of a referral from a friend, the Claimant selected the Respondent to perform the work and entered into a contract on December 2, 2012 to have the Respondent perform the work. In accordance

with the Contract, the Claimant paid the Respondent the first installment under the Contract in the amount of \$8,833.33. Three days later, after discussions with the Respondent, the Claimant paid the Respondent an additional \$6,000.00 to construct a media room in the basement. The agreement on the media room was an oral contract between the parties and the Respondent was paid in full for this work, even though the work had not yet begun. The second installment payment under the Contract was made on December 15, 2012 in the amount of \$8,833.33.

Another contract between the Claimant and the Respondent was agreed upon for the construction of a deck and a fence. The total amount of this contract proposal was \$26,000.00, however, the Respondent was only to supply the labor for the work and the Claimant would supply the materials for the job. The Claimant paid the Respondent \$8,000.00 at the inception of the project on January 3, 2013 and an additional \$4,000.00 on January 11, 2013. The cost of materials to construct the deck was paid by the Claimant to Lowes on her credit card in the total amount of \$13,114.97. Additional monies paid to the Respondent included \$600.00 for half the price to upgrade the carpet and \$1,500.00 for the cost of a paint upgrade. On March 13, 2013, the Claimant made a payment of \$5,907.75 representing the final payment under the Contract and the agreement to build the fence and the deck.

The total amount the Claimant paid to the Respondent for all work performed by the Respondent is \$56,789.38. The only amount remaining to be paid to the Respondent under the Contract was \$600.00 for the carpeting.

On May 24, 2013, Tejan Conteh was working at the Claimant's home on the project when he saw the Claimant and asked her for the \$600.00 installment for the carpeting. She refused to give it to him and complained that she wanted to have a shower door installed in the bathroom. No shower door was included in the Contract. She said that she would not give him the money unless a shower door was installed. A heated exchange between the Claimant and

Mr. Conteh ensued. In an effort to try and settle the dispute, a relative of the Claimant offered to purchase the shower door so long as the Respondent would install it. Mr. Conteh agreed to install the shower door at no charge. This compromise, however, was still not acceptable to the Claimant and the Claimant demanded that Mr. Conteh and his work crew leave her property and provide her with the lock box code. Mr. Conteh left the site. On the following Monday, he returned only to discover that the codes on the lock box, which he used to access the property, was changed and the key removed. He was unable to access the property and finish the work that the Respondent contracted to perform. There was still work to be done on the overall project. The deck was not complete, the electrical panel had to be secured, and a punch list created to identify work that needed completion or work that needed correction. The parties were unable to create a punch list because the Claimant would not allow the Respondent back on site.

The Claimant argues that the Respondent abandoned the job after demanding that he be paid for the remaining half of the carpet upgrade in the amount of \$600.00. I do not find the Claimant's argument credible. First, the overall job resulted in payments totaling \$56,789.38 made to the Respondent. Many of the payments that comprise the total amount were paid in advance of when they were due. The Claimant did not introduce any documentation, other than the contract proposal from Truhome, to suggest that the work performed by the Respondent was unworkmanlike or inadequate. The documents show that work on the project remained unfinished.

When the Claimant finally did install carpeting, she selected carpeting that cost \$5,184.00 including installation. This was more than four times the cost of the upgrade the parties agreed to previously. Once her relative offered to pay for the shower door and the Respondent agreed to install it for free, there was no logical reason why the Claimant refused to

allow the Respondent to continue working at the site. It is noteworthy that the Claimant never referred to the shower door incident in her testimony, even though she had an opportunity to rebut the claim of the Respondent. It simply appears that the Claimant used the shower door incident as a means to terminate the Contract and the other agreements and pursue other opportunities in an attempt to obtain enhancement of the overall project, such as obtaining a very high grade carpet at the expense of the Respondent.

I find Mr. Conteh, who testified on behalf of the Respondent to be more credible than the Claimant. At the outset of the project, the Respondent testified that the Claimant did not want architectural drawings prepared and only layout drawings. Layout drawings cannot be used for obtaining permits. By requesting that only layout drawings be created, it was apparent that the Claimant did not want permits. The Respondent is able to cut costs by not having permits, regardless of who is required to obtain them. The Respondent testified that while there was work to be done to complete the work, all payments, with the exception of the last installment for carpeting was made. In fact, the payments were made in advance of when they were agreed to be made. This strongly suggests that the Claimant never complained to Mr. Conteh or the Respondent for unworkmanlike work, until after he left the site. If there was \$18,710.99 worth of work to be repaired and/or completed following the departure of Mr. Conteh, as suggested by Truhomes, it seems reasonable that the Claimant would have known of at least some of these shortcomings and notify the Respondent during construction. The failure to submit anything to Mr. Conteh in writing strongly points to the Claimant's satisfaction with the work.

The Claimant testified that the pictures that were entered into evidence were all taken after the Respondent left the site. At that time, the relationship was broken because the Claimant refused to allow Mr. Conteh back on site. The Claimant argues that the Respondent abandoned the project; however, the Claimant made no effort to try and have him return to fix and complete

the work. No documents were introduced into evidence at the hearing requesting that the Respondent return to fix and complete the work that was performed by him.

Instead of allowing the Respondent to make corrections and finish the job, the Claimant hired Truhome to repair and complete the work of the Respondent. Truhome was paid \$10,965.11 to repair and finish the work left to do by the Respondent. The amount paid did not include any work on the deck or the exterior fence. Both Mr. Wathan and Mr. Conteh contradicted each other as to whether it was necessary to pull all of the sockets to test for a ground fault Mr. Wathan said it was necessary in order to obtain a permit and Mr. Conteh stated that the lights were working when he left, stating that if there was a ground fault, none of the lights would work because they are on the same circuit. They also disputed the need to install the supply lines for plumbing fixtures as Mr. Conteh testified that they were installed when he left and Mr. Wahtan observed that they were not installed. Mr. Conteh argued that it was his belief that they were removed after he left the site. Neither Mr. Conteh nor Mr. Wathan were admitted as expert witnesses. Regardless of who is right as to these issues is really of no consequence in this case when the threshold issue is whether the Claimant unreasonably rejected good faith efforts by the contractor (Respondent) to resolve the claim of the Claimant. In this case, the claims arose after the Respondent was removed from the site. At that time, he was unable to retrieve his materials because he was no longer permitted on site. Rather than trying to persuade the Respondent to return to correct and finish the job, which I find is what the Claimant should have done, the Respondent hired another contractor to fix and repair some of the work that needed to be fixed and completed. The Claimant did not hire Truhomes to work on the deck and no evidence was introduced that anyone else worked on the deck after the Respondent left.

The Claimant is claiming \$24,069.90 as her actual loss. She has the burden of proving by a preponderance of the evidence that she is entitled to receive this amount in compensation for



the incomplete and unfinished work of the Respondent. The Fund argues that this case boils down to a question of credibility. Credibility is an important factor, but, it is not the only factor. On the question of credibility, I find that the testimony of Tajen Conteh is more credible than the testimony of the Claimant. If the Claimant disputed Mr. Conteh's version of the events leading up to his departure, the Respondent could have asked her relative to testify and question him on whether she demanded that a shower door be provided by the Respondent even though it was not part of any contract between the Claimant and the Respondent. The Claimant never did. Even more telling is that the Claimant could have refuted Mr. Conteh's testimony on the question of the shower door, but she never did. As a result, I find that Mr. Conteh's recollection of events surrounding the shower door is more likely than not what occurred. As a result of the Claimant's insistence that a shower door be purchased and installed by the Respondent as a *quid pro quo* for allowing him to receive money owed and finish the job, the Claimant unreasonably prevented the Respondent's good faith effort to finish the job.

Ordering the Respondent off the job, hiring another contractor and filing a complaint with the MHIC was not a reasonable response to the Respondent's effort to complete the project in a workmanlike manner. The Respondent acted in good faith to complete the project by returning to the job the Monday after he was dismissed, only to discover that the code on the lock box had been changed and the key removed denying him access to the site. Pursuant to §8-405 (d) of the Business Regulation Article of the Maryland Annotated Code, such actions on the part of the Claimant disqualifies the Claimant for reimbursement from the Fund.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has not sustained an actual loss compensable by the MHIC Fund as a result of the Respondent's alleged acts and omissions. Furthermore, I conclude that the Claimant

unreasonably rejected good faith efforts by the Respondent to complete the Contract in a workmanlike manner, thus, I am unable, for the reasons stated above, to recommend an award. Md. Code Ann., Bus. Reg. §§ 8-401 (2010) and 8-405 (Supp. 2013); COMAR 9.08.03.03B(3)(c).

**RECOMMENDED ORDER**

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

**ORDER**, that the Maryland Home Improvement Guaranty Fund deny the Claimant's September 16, 2013 claim; and

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

**Signature on File**

2-9-14

September 9, 2014  
Date Decision Mailed

\_\_\_\_\_  
Stuart G. Breslow  
Administrative Law Judge

SGBcj  
#150915

**PROPOSED ORDER**

***WHEREFORE, this 21st of October 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.***

***Michael Shilling***

***Michael Shilling  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**