

IN THE MATTER OF THE	* BEFORE ROBERT F. BARRY,
CLAIM OF HELMUT RIGG	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED VIOLATIONS	* OAH No.: DLR-HIC-02-15-07569
OF RICHARD DUNN,	* MHIC No.: 14(90)839
LIC. No.: 01-99758	*
AND	*
RAD CONSTRUCTION, INC. ,	*
LIC. No. : 05-131468	*
	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On October 14, 2014, Helmut Rigg (Claimant) filed a claim with the Maryland Home Improvement Commission (Commission) Guaranty Fund (Fund) for reimbursement for an actual loss allegedly suffered as a result of a home improvement contract with Richard Dunn (Respondent), trading as RAD Construction, Inc. On February 12, 2015, the Commission issued

a Hearing Order, and on February 19, 2015, the Commission transmitted the case to the Office of Administrative Hearings (OAH).

On June 12, 2015, I held a hearing at the Department of Agriculture, Room 110, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(a) and (c)(2)(i) (2015). The Claimant represented himself. Attorney James Emche, of Marvel & Emche, P.A., represented the Respondent, who was present. John Hart, Staff Attorney, Department of Labor, Licensing, and Regulation, represented the Fund.

The contested-case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); and the Rules of Procedure of the OAH, Code of Maryland Regulations (COMAR) 28.02.01, govern procedure in this case.

ISSUE

Did the Claimant sustain an actual loss as a result of the Respondent's acts or omissions in connection with a home improvement contract?

SUMMARY OF EVIDENCE

Exhibits

I admitted twelve exhibits into evidence on behalf of the Claimant:

CLAIM #1 - Complaint, signed by the Claimant on February 11, 2014

CLAIM #2 - Fund Claim Form, signed by the Claimant on October 10, 2014

CLAIM #3 - E-mails between the Claimant and the Respondent, May 23, 2013, June 3 and 4, 2013, and July 24, 2013, with:

- Lowe's quote for countertops, March 26, 2013
- Drawings for kitchen, including countertop and cabinets
- Undermount Sink Options, Thos. Somerville Co.

CLAIM #4 - E-mails between the Commission and the Claimant, June 16 and 17, 2014, with a letter from the Respondent to the Commission, March 12, 2014

CLAIM #5 - E-mail from the Claimant to the Commission, September 25, 2014, with:

- Proposal, Kitchen Fancy, undated
- Estimate, Robert's Coastal Construction, September 11, 2014
- Shopping Cart, Kitchen Cabinet Kings, with e-mails between the Claimant and Kitchen Cabinet Kings, September 24 and 25, 2014
- Job Specifications to complete the home improvement contract
- E-mail from OC Real Estate Management to the Claimant, June 17, 2014

CLAIM #6 - Bill Pay Confirmation, M&T Bank, August 20, 2013

CLAIM #7 - E-mails between the Claimant and the Respondent, October 14 and 29, 2013

CLAIM #8 - Observations of Work Done, James A. Manning, Sands Board Member, March 28, 2015

CLAIM #9 - (A through JJ) Photographs of the Claimant's condominium

CLAIM #10 - E-mails between the Claimant and the Respondent, November 22, 2013 and December 3, 2013

CLAIM #11 - Final Bill, August 17, 2013; Estimates, May 23, 2013, June 4 and 9, 2013, and August 1, 2013

CLAIM #12 - Material Selection Form, MSI Premium Natural Stones, July 10, 2013

I admitted ten exhibits into evidence on behalf of the Respondent:

RESP #1 - Material Selection Form, MSI Premium Natural Stones, July 10, 2013, with the Claimant's signature

RESP #2 - Final Bill, October 14, 2013, with Three Options

RESP #3 - E-mail from the Claimant to the Respondent, November 22, 2013

RESP #4 - Drawings for kitchen, including countertop and cabinets

- RESP #5 - Estimate, May 20, 2013
- RESP #6 - Estimate, May 23, 2013
- RESP #7 - Estimate, July 17, 2013
- RESP #8 - Estimate, August 1, 2013
- RESP #9 - E-mails between the Claimant and the Respondent, December 3, 4, 13, and 22, 2013 and January 3, 7, 9, and 10, 2014, with:
- Respondent's breakdown of cost of materials and labor
 - Claimant's concerns with work on the home improvement contract
- RESP #10 - E-mails between the Claimant and the Respondent, June 4, 2013

I admitted eight exhibits into evidence on behalf of the Fund:

- FUND #1 - Notice of Hearing for April 30, 2015
- FUND #2 - Notice of Hearing for June 12, 2015
- FUND #3 - Hearing Order, February 12, 2015
- FUND #4 - Respondent's licensing history with the Commission, June 10, 2015
- FUND #5 - RAD Construction, Inc.'s corporate licensing history with the Commission, June 10, 2015
- FUND #6 - Fund Claim Form, October 14, 2014
- FUND #7 - Letter, October 15, 2014, from the Commission to the Respondent
- FUND #8 - Final Bill, October 14, 2013

Testimony

The Claimant testified on his own behalf.

The Respondent testified on his own behalf. He also presented brief testimony from his wife, Jessica Dunn, who assists with the administration of the Respondent's business.

The Fund did not present any witnesses.

FINDINGS OF FACT

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

1. The Respondent has been licensed by the Commission as an individual home improvement contractor under registration number 01-99758 since April 24, 2009. (FUND #4).
2. The Respondent has been the individual in responsible charge of home improvement work performed by RAD Construction, Inc., which is licensed by the Commission as a corporate home-improvement contractor under registration number 05-131468, since March 31, 2014. (FUND #5).
3. At all times relevant to this case, the Claimant owned but was not living in a condominium in The Sands in Ocean City, Maryland.
4. During the work on the home improvement contract at issue in this matter, the Claimant and the Respondent only met in person perhaps one time, during an inspection in August 2013. The Claimant and the Respondent communicated primarily by e-mail.
5. The Claimant and the Respondent never entered into a traditional home improvement contract. Instead, the Respondent provided the Claimant estimates for the work that the Claimant wanted done. There were five such written estimates, four related to work on the Claimant's kitchen and one for work on the Claimant's bathroom. The Claimant and the Respondent also agreed, either verbally or in e-mails, that the Respondent would perform additional work on the Claimant's condominium.
6. On May 20, 2013, the Respondent provided the Claimant an estimate of \$1,000.00 to supply labor to remove and dispose of old base and wall cabinets in the Claimant's kitchen and to install new base and wall cabinets to be provided by the Claimant. The

Respondent also provided the Claimant an estimate of \$400.00 to remove and then reinstall the old countertop, sink, and faucet if the Claimant decided to use those items. (RESP #5).

7. On May 23, 2013, the Respondent provided the Claimant an estimate of \$2,793.75 to supply materials and labor to install a grade-A granite countertop with grade-C edge, counter-balance supports, a sink (with a \$150.00 allowance), and a faucet (with a \$150.00 allowance). (RESP #6). The estimate included two overhangs for the granite countertop.

8. On June 4, 2013, the Respondent provided the Claimant an amended estimate of \$3,593.75¹ to supply materials and labor to remove and dispose of old base and wall cabinets in the Claimant's kitchen and to install new base and wall cabinets to be provided by the Claimant; to install a granite countertop with standard edge, counter-balance supports, and a sink (with a \$150.00 allowance), and a faucet (with a \$150.00 allowance). (CLAIM #11).

9. In an e-mail on June 4, 2013, the Claimant accepted the Respondent's estimates. The Claimant chose a single bowl under-mount stainless steel sink and a single-lever style Moen faucet in a chrome finish. (CLAIM #3). The Claimant did not tell the Respondent that he wanted a particular sink from Thomas Somerville Co., a S60U Sonetto Kitchen Sink, which is significantly smaller than a standard single bowl sink.

10. On June 9, 2013, the Respondent provided the Claimant a more detailed estimate for the \$3,593.75: \$1,000.00 to supply materials and labor to remove and dispose of old base and wall cabinets in the Claimant's kitchen and to install new base and wall cabinets to be provided by the Claimant; \$1,773.75 to purchase and install a grade-A granite countertop with standard

¹ It is unclear from the record why this estimate is not \$3,793.75, as represented by the earlier \$1,000.00 and \$2,793.75 estimates. Ultimately, the parties agreed to the amount of the home improvement contract, so I have not had to resolve this \$200.00 difference.

edge; \$120.00 to install counter-balance supports; \$300.00 for allowance for a sink and a faucet; and \$400.00 to install the sink and faucet. (CLAIM #11).

11. None of the three estimates provided by the Respondent included a granite backsplash for the sink.

12. On June 14, 2013, the base and wall cabinets that the Claimant had ordered from Kitchen Cabinet Kings arrived at the Respondent's office.

13. The Claimant had provided the Respondent drawings that had been made for the Claimant by two cabinet providers, one being Cliq Cabinets. The drawings showed three of the wall cabinets as being forty-two inches high, but the three wall cabinets ordered by the Claimant were only thirty-six inches high. (CLAIM #3).

14. The drawings appeared to show that the wall cabinets were to be installed flush with the ceiling. (CLAIM #3). The Claimant told the Respondent to install the wall cabinets as depicted on the drawings, and the Respondent installed the wall cabinets flush with the ceiling.

15. When he installed the new base cabinets, the Respondent discovered that the footprint for the new base cabinets was slightly different than the footprint for the existing base cabinets. Consequently, some of the kitchen's sub-flooring was exposed in the gap between the linoleum flooring and the bottom of the base cabinets. The Respondent communicated with the Claimant, who chose to remove the linoleum flooring and to install tile flooring in the kitchen.

16. On July 7, 2013, the Respondent provided the Claimant an estimate of \$750.00 to supply materials and labor to remove and dispose of the existing linoleum kitchen flooring and to install tile flooring. (RESP #7).

17. On July 10, 2013, the Claimant chose the granite for the countertop. He selected sixty-seven square feet of Ferro Gold Slabs 3cm from MS International, Inc. (CLAIM #12; RESP #).

18. The Respondent was the one who decided that the Claimant needed sixty-seven square feet of granite. The Respondent had used the measurements of the existing countertop when he measured for the granite countertop. Because, as noted above, the footprint for the new base cabinets was slightly different than the footprint for the existing base cabinets, the Respondent's calculation of sixty-seven square feet of granite was short by approximately two square feet. Consequently, when the granite countertop was installed by the fabricator, Counter Intelligence, Inc., there was only one overhang and not two as the Claimant and the Respondent had agreed to.

19. In an e-mail on July 24, 2013, the Claimant asked the Respondent to perform additional work on the bathroom, bedroom, and living room of the condominium. The work included extensive work in the bathroom, the painting of the ceiling and two walls in the bedroom, and the repair of a crack in the living room above the door to the balcony. (CLAIM #3).

20. On August 1, 2013, the Respondent provided the Claimant an estimate of \$665.00 for work on the bathroom: remove the existing vanity and replace with new vanity and top provided by the Claimant; remove existing toilet and replace with new toilet provided by the Claimant; disconnect and reinstall existing faucet; paint bathroom walls and trim; install new mirror provided by the Claimant. (RESP #8). The estimate did not include any work on the bedroom or living room. The Respondent subsequently installed a new faucet in the bathroom at a cost of \$88.00. (RESP #9).

21. The Respondent cut a large opening in one side of the vanity to accommodate pipes. (CLAIM #9S and CLAIM #9T). The alternative to cutting the large opening would have required extensive plumbing work, involving temporarily shutting down the water source to the entire condominium and cutting a pipe at an approximate cost of \$400.00 to \$500.00.

22. In August 2013, the Claimant, in the presence of the Respondent, conducted an inspection of the work that the Respondent had performed. The Claimant observed that the wall cabinets; having been installed flush with the ceiling, were too high above the countertop, that the countertop had no second overhang, and that the interior of the bathroom vanity had a large opening cut in it to accommodate pipes.

23. The Respondent agreed to lower the wall cabinets at no additional charge.

24. In the process of lowering the wall cabinets, which required removing screws from a concrete wall and then reinstalling the wall cabinets with screws into other parts of the concrete wall, there were holes made in the interior of the wall cabinets. (CLAIM #9F, CLAIM #9L, and CLAIM #9M).

25. On August 17, 2013, the Respondent provided the Claimant a final bill for \$6,246.75, which, in addition to the \$5,208.75 in the estimates (\$1,000.00 + \$2,793.75 + \$750.00 + \$665.00), included the following additional items, totaling \$1,038.00:

installed new soap dispenser -	\$65.00
re-tacked carpet -	\$150.00
rewired electrical for microwave outlet -	\$200.00
installed new microwave -	\$100.00
disconnected and installed new faucet in bathroom -	\$88.00
painting bedroom wall and kitchen wall; painting area in closet; applied popcorn to ceiling -	\$150.00

removed curtain rods and fixed slider; removed vertical blinds and replaced with new -	<u>\$285.00</u>
Total	\$1,038.00

(CLAIM #11).

26. On August 20, 2013, the Claimant paid the Respondent \$4,000.00. (CLAIM #6).

27. On or after the date of the inspection, the Claimant asked the Respondent to perform some additional work on the bathroom and living room in the condominium.

28. The Respondent completed work on the condominium on October 1, 2013. On October 14, 2013, the Respondent provided the Claimant another final bill for \$6,706.75, which, in addition to the \$6,246.75 itemized above, included an additional \$460.00 for caulking the bathroom ceiling, installing bathroom knobs, cleaning carpets, and repairing a leak in the dishwasher. (FUND #8).

29. On October 19 and 26, 2013 the Claimant privately inspected the work that the Respondent had performed.

30. In an e-mail on November 22, 2013, the Claimant provided the Respondent with a list of twenty-one alleged deficiencies with the Respondent's work and three options to resolve the differences between the Claimant and the Respondent. (RESP #3).

31. The Claimant cited the following alleged deficiencies:

Problems list includes: (1) granite overhang missing, one side; (2) granite 4" backsplash missing; (3) S60U sink ordered, S190U installed, damaged; (4) new faucet drips; (5) in-sink-erator install not level; (6) base cabinet filler missing by dishwasher; (7) base cabinet filler doesn't match, stool side; (8) corner cabinet shelf damaged; (9) cabinet over sink patched with two plates; (10) first installation screw holes and microwave mistake bolt holes not filled; (11) several door and drawer handles, not straight, centered or loose and shift; (12) cove base not glued tight; (13) cove base cutout off at corner; (14) new vanity pipe holes square cut, inadequate support for loose pipe – lazy installation on expensive custom cabinet; (15) bathroom mirror wall, poor prep, missing paint; (16) bedroom highway wall spackle

not painted; (17) living room vertical blind replacement incomplete; (18) work dust not cleaned out of cabinets and vanity; (19) slider wall prep and paint incomplete; (20) dirty and stained carpet; (21) dishwasher leaks.

(RESP #3).

32. The three options offered by the Claimant were: (1) remove incorrect granite countertop, sink, faucet, and soap dispenser, return an unused base cabinet, and refund \$1,697.00; (2) install a new granite countertop, granite backsplash, and a S60U sink for \$1,161.75, and return an unused base cabinet; (3) return an unused base cabinet and accept a final payment of \$161.75. (RESP #3).

33. The Respondent declined the Claimant's options and retained an attorney to handle the matter.

34. After he filed his complaint and claim with the Commission, the Claimant obtained estimates from Mills Creek Builders & Companies, Inc. (or Kitchen Fancy) and Robert's Coastal Construction, Inc. to repair the alleged deficiencies with the Respondent's work and to complete the home improvement contract. (CLAIM #5).

35. The estimate from Mills Creek Builders & Companies, Inc. (or Kitchen Fancy) was for \$8,035.03, and included kitchen and bathroom cabinets, a grade-B granite countertop, a garbage disposal, a S60U sink, and labor of \$3,234.00. (CLAIM #5).

36. The estimate from Robert's Coastal Construction, Inc. was for \$8,509.14, and included balcony carpet removal, painting of two ceilings, kitchen cabinets, a granite countertop, a backsplash, a small sink, painting, repair of the leaking dishwasher, skin to repair the hole in the vanity, and installation of vertical blinds. (CLAIM #5).

DISCUSSION

Fund Claim

A home owner may recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a) (2015). An “‘actual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2015). Also, the Commission may deny a claim if it finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d) (2015).

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

Unworkmanlike, inadequate, or incomplete home improvement

The Claimant’s assertion that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement consists essentially of five alleged deficiencies: (1) the improper installation of the kitchen wall cabinets and the damage to those cabinets upon reinstallation; (2) the improper measurement for the granite countertop, which resulted in there

² None of the parties argued the good-faith issue. After he received the Claimant’s list of alleged deficiencies, the Respondent asked to see the photographs that the Claimant had mentioned in his November 22, 2013 e-mail. The Claimant refused to send the photographs to the Respondent and would not permit the Respondent to enter the condominium. Shortly thereafter, the Respondent retained an attorney to deal with the matter. On this record, I conclude that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim because the parties never engaged in any serious effort to resolve the claim.

being only one overhang, rather than two; (3) the ordering and installation of a standard single bowl under-mount stainless steel sink, rather than a particular sink from Thomas Somerville Co., a S60U Sonetto Kitchen Sink, which is significantly smaller than a standard single bowl sink; (4) the improper installation of a bathroom vanity by cutting into a large part of one of the sides of the vanity; and (5) miscellaneous problems such as loose or non-functioning cabinet handles, uneven floor trim, and uneven or splotchy painting.

The Respondent argued that the Claimant was at fault for the improper installation of the kitchen wall cabinets because the Claimant ordered him to install the cabinets according to drawings provided the Claimant that appeared to show that all of the wall cabinets were to be installed at ceiling height. The Respondent conceded that he was responsible for the incorrect measurement for the granite countertop and there being only one overhang. The Respondent denied the Claimant's assertion that he had selected a S60U sink. The Respondent argued that his installation of the vanity was reasonable under the circumstances. The Respondent did not specifically address the miscellaneous problems cited by the Claimant; he did note that he did not have an opportunity to return to the condominium to make repairs.

The Fund agreed that the Respondent was responsible for the incorrect measurement for the granite countertop and there being only one overhang. The Fund, however, argued that the Claimant was responsible for the improper installation of the wall cabinets and that the Claimant had not proved that he had selected a S60U. The Fund left it to me to decide whether the Respondent's installation of the vanity was workmanlike. The Fund did not specifically address the miscellaneous problems cited by the Claimant, other than to suggest that these were minor problems.

Kitchen Wall Cabinets

The improper installation of the kitchen wall cabinets was the result of miscommunication between the Claimant and the Respondent. Because the Claimant shares a large portion of the blame for the improper installation of and consequent damage to the kitchen wall cabinets, I concur with the Respondent and the Fund that the Claimant failed to prove that the Respondent performed unworkmanlike home improvement in regard to the kitchen wall cabinets. The Claimant ordered three or four base cabinets and six wall cabinets from Kitchen Cabinet Kings, and he provided drawings to the Respondent that showed where the cabinets were to be installed. The drawings appeared to show that all of the wall cabinets were to be installed at ceiling height. According to the Claimant, the drawings were “conceptual” and not meant to indicate that the wall cabinets were to be installed at ceiling height or any other particular height. The Claimant testified that the Respondent stated that he did not need the drawings because he knew where to install the wall cabinets. The Claimant also testified that he ordered the Respondent to install the wall cabinets as shown on the drawings, which is what the Respondent thought he was doing when he installed the wall cabinets at ceiling height. The record does not include any photographs of the wall cabinets as they were initially installed by the Respondent, but I can surmise that they were simply too far above the countertop to be functional, especially considering that three of the wall cabinets ordered by the Claimant were thirty-six inches in length and the drawings showed these cabinets as being forty-two inches in length. On this record, I do not agree with the Claimant’s assertion that the Respondent misread the drawings. If the Claimant had not ordered the Respondent to install the kitchen cabinets as shown in the drawings, which do appear to show that the wall cabinets at ceiling height, I would

blame the Respondent for the improper installation, but that is not the situation presented in this case. The Claimant asserted that even after he had ordered the Respondent to install the cabinets as shown in the drawings, the Respondent should have contacted the Claimant to explain that the installation height of the cabinets appeared to be wrong. Again, absent the Claimant's order to the Respondent to install the cabinets as shown in the drawings, I would fault the Respondent for not communicating with the Claimant. The evidence indicates that the Claimant and the Respondent, who were communicating primarily by e-mail, simply miscommunicated about the placement of the wall cabinets.

The wall cabinets were damaged significantly in the process of being lowered. The cost of the cabinets, which was not part of the contract between the Claimant and the Respondent, would not be reimbursable from the Fund, which does include awards for consequential damages. As I have found that the Respondent did not perform unworkmanlike home improvement in regard to the kitchen wall cabinets, the Claimant is not entitled to reimbursement of any of the \$1,000.00 in the home improvement contract that is attributable to the installation of kitchen cabinets.

Granite Countertop

As noted above, the Respondent conceded that he was responsible for the incorrect measurement for the granite countertop and there being only one overhang. On May 23, 2013, the Respondent provided the Claimant an estimate of \$2,793.75 to supply materials and labor to install a grade-A granite countertop with grade-C edge, counter-balance supports, a sink (with a \$150.00 allowance), and a faucet (with a \$150.00 allowance). The footprint for the new base cabinets was slightly different from the footprint for the existing base cabinets. Unfortunately, the Respondent used the measurements for the existing countertop when he measured for the

granite countertop. Because of the different footprint for the new base cabinets, the Respondent's calculation that the Claimant needed sixty-seven square feet of granite was short by approximately two square feet, which, as a practical matter, eliminated one of the overhangs that the Claimant had requested and the Respondent had agreed to provide. The Claimant proved that the Respondent performed unworkmanlike home improvement in regard to the granite countertop.

Kitchen Sink

As noted above, the Respondent's May 23, 2013 estimate included a sink with a \$150.00 allowance. In an e-mail on June 4, 2013, the Claimant accepted the Respondent's estimate and chose a single bowl under-mount stainless steel sink and single-lever style Moen faucet in a chrome finish. At the hearing, the Claimant insisted that he requested a particular sink from Thomas Somerville Co., a S60U Sonetto Kitchen Sink, which is significantly smaller than a standard single bowl sink. According to the Claimant, the smaller sink is appropriate for the condominium's kitchen's small size and less intensive use. The Claimant presented a photocopy of a picture of the S60U sink from a Thomas Somerville Co. catalog or website, and implied that he had provided this picture to the Respondent. The Claimant's June 4, 2013 e-mail does not mention the S60U sink and the Claimant did not present any other document to show that he ever communicated his desire for a S60U sink to the Respondent. The Respondent testified that the Claimant never mentioned any particular sink, and thus he installed a standard single bowl sink. I concur with the Respondent and the Fund that the Claimant failed to prove that he requested a specific sink and, therefore, failed to prove that the Respondent performed unworkmanlike home improvement in regard to the sink.

Bathroom Vanity

On August 1, 2013, the Respondent provided the Claimant an estimate of \$665.00 for work on the condominium's bathroom, including the installation of a new vanity provided by the Claimant. When he installed the vanity, the Respondent cut a large opening in one side of the vanity to accommodate pipes. The Respondent testified that the alternative to cutting the large opening would have required extensive plumbing work, involving temporarily shutting down the water source to the entire condominium and cutting a pipe at an approximate cost of \$400.00 to \$500.00, or most of the \$665.00 estimate. The Claimant did not dispute this part of the Respondent's testimony; nor did the Claimant present any expert testimony that the Respondent's performance, considering the alternatives and the financial constraints, was outside the standards for workmanlike home improvement. On this record, I find that the Claimant failed to prove that the Respondent performed unworkmanlike home improvement in regard to the vanity.

Miscellaneous

The miscellaneous items included in the Claimant's list of problems fall roughly into two categories: items needing to be repaired and items needing to be completed. The items needing to be repaired included a leaking faucet and dishwasher; a not-level garbage disposal; base cabinets requiring filler; wall cabinets requiring repair; door and drawer handles requiring straightening, centering, or tightening; and cabinets, a vanity, and a carpet that required cleaning. The items needing to be completed included a vertical blind replacement; a slider wall requiring preparation and painting; a bathroom mirror wall requiring preparation and painting; and a bedroom highway wall requiring spackling and painting. I concur with the Fund that these are minor issues. Moreover, the Claimant never gave the Respondent an opportunity to repair or

complete these items. Thus, the Claimant is partially responsible for these items remaining unrepaired or incomplete and he has failed to prove that the Respondent performed unworkmanlike home improvement in regard to these miscellaneous items.

Actual loss due to the costs of restoration, repair, or replacement

COMAR 09.08.03.03B, which governs the calculation of awards from the Fund, provides, in pertinent part, as follows:

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:

...

(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.

(4) The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

COMAR 09.08.03.03B.

The parties agreed that the total amount of the home improvement contract was \$6,706.75:

Install cabinetry	\$1,000.00
Supply and install granite countertop, sink, and faucet	\$2,793.75
Kitchen flooring	\$750.00
Bathroom	\$665.00
Soapdish	\$65.00
Microwave outlet	\$200.00
Install microwave	\$100.00
Bathroom faucet	\$88.00
Paint bedroom and kitchen	\$150.00
Curtain rods and slider	\$285.00
Caulking bathroom	<u>\$460.00</u>
	\$6,706.75

The parties also agreed that the Claimant paid the Respondent \$4,000.00.

The Fund was the only party that addressed the regulatory formula for an award from the Fund. The Fund concluded that the Claimant was not entitled to any award from the Fund

because the amount of the reimbursable deficiencies did not exceed the difference between the total contract price of \$6,706.75 and the \$4,000.00 that the Claimant paid to the Respondent. The only reimbursable items included by the Fund were the cost of the granite countertop and related labor to reinstall it, and, perhaps, the repair to the vanity, which Robert's Coastal Construction, Inc. estimated to be \$350.00 including plumbing work.

The Claimant argued that I should consider the estimates that he received from Mills Creek Builders & Companies, Inc. (or Kitchen Fancy) and Robert's Coastal Construction, Inc. The estimates provided by the Claimant are not helpful to my determination as to the amount of the reimbursable deficiencies. The estimate from Mills Creek Builders & Companies, Inc. (or Kitchen Fancy) provides an estimate of \$2,258.55 for grade-B granite, a higher-grade granite than provided for in the contract between the Claimant and the Respondent, and an unspecified amount of labor for removing the old countertop and installing the new countertop. The estimate from Robert's Coastal Construction, Inc. provides an estimate of \$4,200.00 for an unspecified grade of granite, a backsplash that was not in the contract between the Claimant and the Respondent, and a sink for which the Respondent is not entitled to an award. The amount of \$4,200.00 far exceeds the Respondent's estimate of \$2,793.75 for the granite countertop, sink, and faucet. The only objective, reliable measure of the cost of replacing the granite countertop is the amount of the contract between the Claimant and the Respondent that is attributable to the granite countertop and the labor related to its installation. That amount is \$2,493.75 (\$2,793.75 minus the \$300 allowance for the sink and faucet).

Based on the formula, the Claimant is not entitled to an award from the Fund:

Amount paid by the Claimant to the Respondent - \$4,000.00

plus

Reasonable amount the Claimant will be required
to pay another contractor to repair poor work done
by the Respondent under the original contract - \$2,493.75
\$6,493.75

less

The original contract price - \$6,706.75
(\$213.00)

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Claimant did not suffer an actual loss as a result of the Respondent's acts and omissions, and that he is not entitled to recover an award from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405(a) and (e) (2015).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission **ORDER** that the Claimant's claim for reimbursement from the Maryland Home Improvement Commission Guaranty Fund be dismissed; and **ORDER** that the records and publications of the Maryland Home Improvement Commission reflect the final decision in this case.

September 9, 2015
Date Decision Issued

Signature on File

Robert F. Barry *MRC*
Administrative Law Judge

RB/ac
#157736

**The Maryland Home
 Improvement Commission**

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

v. Richard Dunn
t/a R A D Construction Inc
(Contractor)
and the Claim of
Helmut Rigg
(Claimant)

* **MHIC No.: 14 (90) 839**
 *
 *

FINAL ORDER

WHEREFORE, this 11th day of February 2016 , Panel B of the Maryland Home

Improvement Commission ORDERS that:

- 1. The Findings of Fact set forth in the Proposed Order dated October 27, 2015 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated October 27, 2015 are AFFIRMED.**
- 3. The Proposed Order dated October 27, 2015 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date.**
- 5. 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

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LARRY HOGAN, GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY