

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CONSTANCE SIMPSON-</p> <p>LIVINGSTON,</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 ARTHUR</p> <p>KARGMAN T/A KARGMANS, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE EILEEN C. SWEENEY,</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>*</p> <p>* OAH No.: DLR-HIC-02-16-30508</p> <p>* MHIC No.: 16 (90) 569</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 25, 2016, Constance Simpson-Livingston (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$27,839.00 in alleged actual losses suffered as a result of a home improvement contract with Arthur Kargman, trading as Kargmans, Inc. (Respondent).

I held a hearing on March 23, 2017 and April 26, 2017 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland.¹ Md. Code Ann., Bus. Reg. § 8-312(a) (2015). The Claimant represented herself. Krista Barlow, Office Manager, represented the Respondent on the first day of the hearing pursuant to a Power of Attorney; Arthur Kargman, President, represented the Respondent on the second day of the hearing. John Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation (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 in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf, which were pre-labeled:

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|--------------|--|
| Clmt. Ex. 1A | October 29, 2015 MHIC Complaint Form |
| Clmt. Ex. 1B | The Claimant's Notes, with attachments |
| Clmt. Ex. 1C | Credit card statement showing payments to the Respondent on August 21, 2015 (\$3,580.00) and September 11, 2015 (\$3,580.00) |
| Clmt. Ex. 2A | No exhibit offered |

¹ A hearing previously scheduled for January 20, 2016 was postponed at the Claimant's request after some time taken for settlement negotiations, due to the depleted supply of oxygen for an oxygen tank used by her for a documented medical condition.

Clmt. Ex. 2B	Photographs
Clmt. Ex. 2C	No exhibit offered
Clmt. Ex. 3A	No exhibit offered
Clmt. Ex. 3B	No exhibit offered
Clmt. Ex. 4A	No exhibit offered
Clmt. Ex. 4B	Photographs
Clmt. Ex. 4C	Photographs
Clmt. Ex. 4D	Photographs
Clmt. Ex. 4E	No exhibit offered
Clmt. Ex. 5A	November 9, 2015 Order from the MHIC to the Respondent
Clmt. Ex. 5B	Undated letter from the Respondent to "To Whom it May Concern," with attachments
Clmt. Ex. 5C	November 29, 2015 letter from the Claimant to the MHIC, with attachments
Clmt. Ex. 6A	No exhibit offered
Clmt. Ex. 6B	June 6, 2016 letter from the MHIC to the Respondent; November 30, 2015 letter from the MHIC to the Claimant; February 24, 2016 letter from the MHIC to the Claimant
Clmt. Ex. 6C	June 14, 2016 letter from Erin Dukes, Office Manager, to the MHIC, with attachments
Clmt. Ex. 7A	No exhibit offered
Clmt. Ex. 7B	Photographs
Clmt. Ex. 7C	October 13, 2015 Angie's List review and response
Clmt. Ex. 7D	No exhibit offered

Clmt. Ex. 7E	February 26, 2016 Baltimore City Department of Housing and Community Development (DHCD) Division of Construction and Building Inspection Permit
Clmt. Ex. 7F	Not admitted
Clmt. Ex. 8A	No exhibit offered
Clmt. Ex. 8B	No exhibit offered
Clmt. Ex. 9A	No exhibit offered
Clmt. Ex. 9B	No exhibit offered
Clmt. Ex. 9C	Photographs
Clmt. Ex. 9D	Photographs
Clmt. Ex. 9E	Photographs
Clmt. Ex. 9F	No exhibit offered
Clmt. Ex. 10A	No exhibit offered
Clmt. Ex. 10B	February 29, 2016 DHCD Division of Construction and Building Inspection Permit; March 2, 2016 DHCD Const. & Bldgs. Inspection form
Clmt. Ex. 10C	March 18, 2016 DHCD Division of Construction and Building Inspection Permit; March 22, 2016 DHCD Const. & Bldgs. Inspection form
Clmt. Ex. 10D	March 1, 10, and 15, 2016 emails between the Claimant and Erin Dukes
Clmt. Ex. 11A	No exhibit offered
Clmt. Ex. 11B	March 8, 2016 DHCD Division of Construction and Building Inspection Permit; undated City of Baltimore DHCD Notice
Clmt. Ex. 11C	No exhibit offered
Clmt. Ex. 12A	No exhibit offered
Clmt. Ex. 12B	No exhibit offered
Clmt. Ex. 12C	Photographs
Clmt. Ex. 12D	No exhibit offered

- Clmt. Ex. 12E Undated Proposal from Advance Remodeling, Inc.; April 30, 2016 Proposal/Contract from BathKrafters; April 4, 2016 Customer Contract Agreement from Alashek General Contractor
- Clmt. Ex. 13 May 23, 2016 letter from the Claimant to the MHIC, with attachments
- Clmt. Ex. 14A No exhibit offered
- Clmt. Ex. 14B June 15, 2016 DHCD Division of Construction and Building Inspection Permit; July 7, 2016 DHCD Division of Construction and Building Inspection Permit; June 17, 2016, June 30, 2016, August 31, 2016, and September 2 and 6, 2016 DHCD Const. & Bldgs. Inspection form; July 8, 2016 DHCD Electrical Inspection Section Notice to Builder; June 28, 2016 DHCD Mech./Plum. Inspection Notice to Builder
- Clmt. Ex. 14C Photographs
- Clmt. Ex. 14D September 14, 2016 M&T Bank Official Check (\$2,667.36); credit card receipt showing two payments to "M Tuttle" on July 7, 2016 (\$2,854.66 each); June 11, 2016 cancelled check from the Claimant to The Olive Group (\$5,709.33); July 28, 2016 cancelled check from the Claimant to The Olive Group (\$2,583.62)
- Clmt. Ex. 15 Withdrawn
- Clmt. Ex. 16 October 13, 2015 Proposal from the Respondent to the Claimant; August 17, 2015 Proposal from the Respondent to the Claimant
- Clmt. Ex. 17 December 28, 2015 correspondence between Angie's List and the Respondent
- Clmt. Ex. 18 May 30, 2016 revised proposal from The Olive Group

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

- Resp. Ex. 1 October 6, 2015 email from Erin Dukes to the Claimant and the Claimant's husband

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 October 13, 2016 Notice of Hearing
- Fund Ex. 2 February 2, 2017 Notice of Hearing
- Fund Ex. 3 September 27, 2016 Hearing Order

- Fund Ex. 4 March 22, 2016 MHIC licensing information
- Fund Ex. 5 May 25, 2016 Home Improvement Claim Form
- Fund Ex. 6 June 6, 2016 letter from the MHIC to the Respondent
- Fund Ex. 7 Maryland Department of Assessments and Taxation (DAT) Business Services printout, printed on January 19, 2017
- Fund Ex. 8 August 5, 2014 Corporate Charter Approval Sheet; August 3, 2004 Articles of Incorporation for Kargmans, Inc.

Testimony

The Claimant testified in her own behalf and presented the testimony of the following witnesses:

- Matthew Tuttle, Owner, The Olive Group, who was accepted as an expert witness in residential home improvements
- David Brown, Investigator, MHIC
- Darryl Martel, President, Freedom Electric, Inc.
- Erin Dukes, former Office Manager, Respondent
- Peter Colonell, former Project Manager/Site Salesman, Respondent
- Arthur Kargman, President, Respondent

The Respondent also presented Mr. Kargman's testimony in his behalf.

The Fund did not present the testimony of 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.
2. On August 17, 2015, Peter Colonell, then-Project Manager/Site Salesman for the Respondent, met with the Claimant at her home to discuss potential remodeling work to her second floor bathroom, kitchen, crafts room (small bedroom), master bedroom, and stairway to the second floor.

3. The Claimant pointed out to Mr. Colonell, among other things, a bowed wall in the stairway that she wanted corrected with drywall. Mr. Colonell recommended “freezing”² the wall instead.

4. The Claimant and Mr. Colonell also discussed, among other things, laminating walls and the installation of a vanity sink and countertop purchased by the Claimant. Mr. Colonell discouraged lamination of the walls and suggested the installation of a pedestal sink instead of a vanity sink. The Claimant and Mr. Colonell also discussed demolishing (demoing) the bathroom and replacing the tub with a pre-fab shower stall; however, Mr. Colonell indicated that a pre-fab shower stall would be difficult to get up the stairs and suggested the installation of a 30” x 48” shower pan instead. He also suggested the installation of glass block to the shower.

5. The Claimant indicated to Mr. Colonell that she wanted a two-foot closet bump out in the bathroom.

6. On August 19, 2015, the Claimant received a Proposal (#3126) from the Respondent. The Proposal indicated that the job was to begin on September 8, 2015; it contained no completion date. The total proposed cost was \$11,640.00.

7. On August 20, 2015, the Respondent’s employee, Krista Barlow,³ submitted a revised Proposal (#3126) to the Claimant. Some of the items the Claimant had discussed with Mr. Colonell, which had not previously been included in the Proposal, had been added; however, the revised Proposal did not include the aforementioned closet bump out or a 10% Angie’s List discount.

² None of the parties or witnesses defined this term.

³ It was not clear what Ms. Barlow’s position was with the Respondent at that time.

8. On August 21, 2015, the Claimant “verbally committed” to the Proposal and made a first payment of \$3,580.00 with the understanding that the Respondent would apply a 10% Angie’s List discount and add a closet bump out to the Proposal. (Clmt. Ex. 1B.)

9. On August 21, 2015, Ms. Barlow emailed the Claimant another revised Proposal, which included the discount but not the closet bump out. Ms. Barlow stated, “Peter [Colonell] is new and we are breaking him in.” (Clmt. Ex. 5B.)

10. The revised Proposal (#3126) provided that the Respondent would perform the following home improvements on the Claimant’s home:

- I. Bathroom Remodel
 - A. Demo bathroom
 - B. Install new handicapped toilet
 - C. Bump out wall 2” to accept shower stall
 - D. Install acrylic pan in shower 30X48
 - E. Glass Doors (Economical)
 - F. Tile floor
 - G. Ceiling demo, drywall and insulation
 - H. New hardwood door
 - I. Lighting: 1 high hat and vanity light
 - J. Homeowner has option to supply items

- II. 2nd Floor
 - A. Kitchen 9.5 X 15 0.00
 - 1. Remove plaster and insulation
 - 2. Sister and support ceiling joist
 - 3. Re drywall to paint ready
 - 4. Remove and replace upper cabinets
 - 5. Drywall the wall 1/4” to paint ready

- III. Little Bedroom and Hall Ceiling
 - A. Point up and sand

- IV. Master Bedroom
 - A. Paint walls and ceiling – Point up

- V. Kitchen, Little Bedroom and Master Bedroom
 - A. Paint walls and ceiling

- VI. Freezing and painting staircase 425.00

VII. Add glass block to shower	300.00
VIII. Add 4 high hat lights to kitchen	400.00
IX. Paint kitchen cabinets	150.00
X. Install kitchen floor (To be determined) homeowner to finalize product for a true cost	
Total including material unless otherwise noted	10,365.00
10% Angie[']s List Discount on Labor only	- 900.00
Total	\$10,740.00

(Clmt. Ex. 1B.)

11. The Revised Proposal further provided: "Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate." (*Id.*)

12. On September 2, 2015, the Claimant emailed Ms. Barlow a list of materials to be used in the project. The Claimant also advised Ms. Barlow that the Claimant had purchased bathroom accessories including a vanity mirror, vanity light, shower kit, towel bar kit, and sink fixtures.

13. On September 4, 2015, the Claimant telephoned Mr. Colonell to remind him that she was awaiting documentation for the agreed-upon two-foot closet bump out and to obtain confirmation of the workers' arrival time. Mr. Colonell agreed to bring a revised Proposal for review and signatures on the start date.

14. The Respondent began work on September 8, 2015.

15. Mr. Colonell did not bring the revised Proposal with him on the first day of the job; he promised to come back with the revised Proposal but never did. Therefore, the Claimant did not sign the revised Proposal #3126.⁴

16. On September 9, 2015, the parties entered into a change order adding the closet bump out (“1 Remodeling (+425.00)).” (Clmt. Ex. 5B.)

17. On September 10, 2015, Erin Dukes, Office Manager, emailed the Claimant that the Respondent “would be ready for a second payment as we are at the 50% completion.” (Clmt. Ex. 1B.)

18. On September 11, 2015, the Claimant advised the Respondent’s workers and Mr. Colonell that kitchen appliances had not been covered during the demolition process.

19. On September 11, 2015, the Claimant paid the Respondent \$3,580.00. (Clmt. Ex. 5B.)

20. On September 15, 2015, the Claimant’s husband discovered damaged ceiling tiles, waste fluid, and dirt on the first floor bathroom floor. He could see through the ceiling to the second floor. The Claimant immediately texted pictures to Mr. Colonell.⁵

21. The Claimant’s husband cleaned the first floor bathroom at the end of each day and removed fallen/wet ceiling tiles and utilized construction bags to cover the ceiling.

22. On September 17 and 18, 2015, the Claimant became aware of additional water coming from the first floor bathroom and advised Mr. Colonell. The Respondent’s worker addressed the issue and Mr. Colonell advised the Claimant that she would be compensated for the mess.

⁴ As discussed below, the Claimant and the Respondent finally signed a copy of a revised Proposal in February 2016.

⁵ I note that the Claimant testified Mr. Colonell did not respond, but stated in her closing argument that he visited the home on September 15, 2015.

23. On September 16, 2015, the Claimant became aware that the Respondent's workers had damaged a wall while carrying a cast iron soaking tub down the stairs and advised Mr. Colonell.

24. The Respondent's workers indicated to the Claimant that an inspector would be coming to the site. On September 16, 2015, the Claimant advised Mr. Colonell that she was still awaiting an inspector on site. He laughed and stated that the workers were referring to him and that he was too busy.

25. On September 17 and 18, 2015, the Claimant complained to Mr. Colonell that there were fewer workers on the job and about poor workmanship.⁶ He assured the Claimant that a new team was forthcoming, promised completion within a week, and stated that the Claimant "would be compensated for stress and additional time."⁷ (Clmt. Ex. 1B.)

26. Sometime in September 2015, "Lenny," the painter, left marks in the ceiling drywall; poorly applied wood glue; used the wrong color paint in the stairwell; and did not paint over screws. He painted over fixtures in the second floor entryway; left the stairwell wall discolored and uneven after "freezing;" and inserted a nail in the drywall that went through to the wall of the adjacent room. In addition, "Lenny" failed to finish painting the kitchen cabinetry; applied paint unevenly to kitchen cabinets; damaged the surface of a cabinet; and left primer on the inside of cabinet door.⁸

27. On or about September 19, 2015, the Claimant was dissatisfied with the tile on the bathroom wall and with the bedroom drywall. She noticed that the shower pan installed by the

⁶ It was not made clear what specific poor workmanship the Claimant discussed with Mr. Colonell on that date.

⁷ Neither party provided additional details about the "poor workmanship" the Claimant reported or about any promised or forthcoming compensation.

⁸ It was not made clear when "Lenny" worked on the property; however, photographs of the relevant areas are dated September 30, 2015.

Respondent was damaged and the nail protruding through the bathroom wall unit. The Claimant informed the Respondent's worker of those conditions.

28. On September 23, 2015, the Claimant noticed additional water/ceiling damage to the first floor bathroom. She called Mr. Colonell twice on September 24, 2015 and left messages, with no response from him.

29. When Ms. Dukes called the Claimant on September 24, 2015, to inquire about the status of the job, the Claimant told her she was not happy with the work and the lack of communication. Ms. Dukes indicated that shower doors were currently being installed and offered the Claimant a discount. Ms. Dukes stated that she would call the Claimant the next day. The shower doors were not installed on that date, and Ms. Dukes did not call the Claimant the next day.

30. On September 25, 2015, the Respondent's workers worked on installing the pedestal sink. The Claimant texted Mr. Colonell a picture of the pedestal sink, stated she was dissatisfied with its installation, and informed him that she had purchased a new vanity sink. He did not respond to her text.

31. On or about September 25, 2015, the Respondent's worker installed the new vanity sink.

32. On September 26, 2015, the Claimant noticed that more water had come from the second floor bathroom into the first floor bathroom and that when the Respondent's worker left the home on September 25, 2015, he had shut off the water. The Claimant texted Mr. Colonell about the additional water damage and to express her frustration; he did not reply to her text.

33. As of September 28, 2015, the second floor bathroom had still not been completely demoed. Mr. Colonell texted the Claimant that he was also upset with progress on

the project and that he would visit the site. Upon his arrival, he stated that the Respondent would replace the tiles in the first floor bathroom.

34. The last date the Respondent performed work on the Claimant's home was September 30, 2015 when one worker worked for half a day.

35. On or about September 30, 2015, the Claimant observed that the wall in the second floor entryway where the Respondent performed "freezing" was not smooth; the wall near the tub area was not smooth; the work areas were left cluttered and dirty; the side moulding on the shower wall was sloppy; the bathroom floor lacked grout and was uneven; the wall around the bathroom light switch was uneven; and a door frame was patchy.

36. When the Claimant called Mr. Colonell on October 2, 2015 to ask when the work would be finished, he stated that the Respondent was still working on the schedule and that Mr. Colonell would get back to her. He did not.

37. On October 2, 2015, Ms. Dukes emailed the Claimant a list of work that the Respondent considered to be outstanding (Proposal #3296) and asked the Claimant to sign off that it was the only work remaining. The list provided as follows:

Tasks to finish jobs

1. Install glass blocks (roughly 30" x 84")
2. Install shower door (model #5976-59S, SKU 813242 – in stock at [H]ome [D]epot)
3. Fix leak in vanity
4. Reinstall upper cabinets and doors and lower cabinet drawers & doors (in kitchen)
5. Install new ceiling tiles in lower bath and clean
6. Install closet pole and shelf in new closet

(Clmt. Ex. 5B.)

38. On October 2, 2015, Ms. Dukes emailed the Claimant "the original estimate with the change orders listed on the bottom" and asked the Claimant to "[p]lease confirm you agree with the changes." (Clmt. Ex. 1B.)

39. The Claimant did not sign the list or the estimate.

40. When the Claimant and Mr. Colonell spoke on the telephone on October 5, 2015, the conversation became "quite 'heated,'" with Mr. Colonell calling the Claimant and her husband "poor people," and Ms. Dukes had to intervene. (Clmt. Test.; Clmt. Ex. 5B.) The Claimant asked for Mr. Kargman to call her but he did not.

41. On October 6, 2015, Ms. Dukes emailed the Claimant that the Respondent was willing to negotiate the pricing of "the extras but per the conversation [with the Claimant] yesterday and lack of response for negotiations for the extras," Ms. Dukes stated that the Respondent had been forced to put the Claimant's job on hold until the Claimant "reasonably responded" and asked that she respond that day. (Clmt. Ex. 1B.) The Claimant again requested that Mr. Kargman intercede.

42. On October 7, 2015, Mr. Colonell called the Claimant and apologized for calling the Claimant and her husband "poor people." (Clmt. Test.) The Claimant informed Mr. Colonell of her attempts to speak with Mr. Kargman and sent Mr. Colonell additional pictures of work she considered to be unsatisfactory.

43. On October 7, 8 and 9, 2015, the Claimant or her husband called the Respondent's office asking to speak with Mr. Kargman. Ms. Barlow gave excuses why Mr. Kargman could not come to the phone.

44. On October 12, 2015, the Claimant emailed Ms. Dukes requesting that Mr. Kargman intercede or "return all monies rendered." (Clmt. Ex. 5C.)

45. Mr. Kargman was aware of the Claimant's calls and requests to intercede but did not do so because he believed that Mr. Colonell and Ms. Dukes had the matter under control and could resolve it.

46. On October 13, 2015, Ms. Dukes emailed the Claimant a Proposal (#3311), indicating that she was sending it “to show [the Claimant] the original contract that was agreed upon, change orders and credits back to [the Claimant] along with a punch list.” (Clmt.Ex. 1B.) Ms. Dukes requested that the Claimant and her husband sign and date the document. “Once this has been done and received by [the Respondent,] we will schedule your punch list as quickly as possible.” (Clmt. Ex. 1B.) The total balance shown was \$5,182.38.

47. The Claimant did not accept the Proposal because it contained charges for additional work to which she had not agreed.

48. On or about October 13, 2015, the Claimant contacted her credit card company regarding her complaints about the Respondent.

49. On or about October 16, 2015, the Claimant filed a complaint with Angie’s List requesting that the Respondent remit/cancel the contract and refund \$7,430.00. The Respondent responded by requesting that the Claimant allow it to “complete the work as proposed” and that the Claimant “provide payment in the amount of \$5,182.38.” (Clmt. Ex. 5B.)

50. On October 29, 2015, the Claimant filed a complaint with the MHIC against the Respondent.

51. On January 15, 2016, David Brown, Investigator, MHIC, encouraged the Claimant to allow the Respondent to complete the renovations and the parties resumed communication.

52. The Claimant spoke by telephone to Mr. Kargman on January 29, 2016. He indicated that he had fired Mr. Colonell.

53. On February 16, 2016, Mr. Kargman and James (Jim) Sainsing, an estimator for the Respondent, conducted a walk-through inspection of the Claimant’s home. The Claimant’s

husband pointed out the damaged first floor bathroom ceiling, bowed wall in the stairway, uneven second floor bathroom walls, poorly installed shower wall tile, uneven bathroom floor, damaged shower pan, and other conditions about which the Claimant had complained.

54. Mr. Kargman and Mr. Sainsing both agreed that “it was not quality work.” (Clmt. Test.) Mr. Kargman apologized and said that his worker, Salvatore, would be assigned to complete the project. The Claimant reiterated her initial desire for drywall rather than “freezing and point up.” (*Id.*)

55. In February 2016, Ms. Dukes sent three documents to the Claimant for signature: Proposal #3126, Proposal #3311, and a typewritten list of dates and costs.⁹ (CL Ex. 16.)

56. Proposal #3311 provided as follows¹⁰:

Original Contract

1. Freezing and then painting staircase	425.00
2. Add glass block to shower	300.00
3. Add 4 high hat lights to kitchen	400.00
4. Paint kitchen cabinets	150.00
5. Install kitchen floor (was to be determined)	0.00
Total for job (including materials unless otherwise noted)	10,365.00
Angie’s List Discount	- 900.00
Total on the above lines - \$10,740.00 that was agreed upon by paying deposit on August 21st	

Change Orders to your original contract:

Add vinyl floor to kitchen ¹¹	600.00
Purchase of counter top in kitchen	115.00
Additional painting of kitchen cabinets (3 coats) ¹²	250.00
Additional tile work	400.00
Additional freezing and extension of shower pan	830.00
Move closet in second bedroom ¹³	425.00
Total for change orders - \$2,620.00	

⁹ Mr. Kargman testified that the List was prepared by the Claimant.

¹⁰ I have italicized portions of this Proposal that were not included in the version emailed to the Claimant on October 13, 2015.

¹¹ The Claimant handwrote and initialed next to this item: “Cost provided and declined.” (Clmt. Ex. 16.)

¹² The Claimant handwrote and initialed next to this item: “Unauthorized.” (*Id.*)

¹³ The Claimant handwrote and initialed next to this item: “Actual bump out existing closet 2nd floor [illegible].” (*Id.*)

Credits Kargmans is applying	
1. Credit for lights	- 400.00
2. Credit for door	- 300.00
3. Customer purchasing fixtures for bathroom	-317.00 ¹⁴
4. <i>Credit that Kargmans, Inc did not/will not install vinyl floor (if upon initial walk through it was discovered that Kargmans, Inc. purchased and installed vinyl floor – customer is responsible for charges)</i> ¹⁵	- 600.00
5. <i>Credit applied for extra painting to kitchen cabinets</i>	- 250.00
6. <i>Partial credit applied for additional freezing and extension of shower pan</i>	- 830.00
7. <i>Credit for additional tile work</i>	- 400.00
8. <i>Credit for vanity</i>	- 150.00
9. <i>Agreed upon deduction (to rectify/close the situation)</i>	- 1,207.00

Payments applied	
Deposit (paid on 8/21/15)	- 3,580.00
2nd payment applied (paid 9/11/15)	- 3,580.00

Additional Charges

<i>Permit charges – to be used for permit process for any and all permits being pulled on property</i>	525.00
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***Pre-inspection walk through prior to punch list being completed – date to be determined)*

Punch list

1. Install glass block on shower walls
2. Install shower door – *framed shower door only (size to be determined after glass block is install[ed]) – allowance \$250.00*
3. *Fix leak in vanity*
4. *Repair ceiling and walls in master bath – prime and paint 2 coats on ceiling, walls and trim*
5. *Install towel rack (customer supplied)*
6. *Install (1) light in shower with switch*
7. Install upper cabinets and doors¹⁶
8. *Repair wood glue residue on lower cabinets*
9. Install new ceiling tiles in lower bath
10. *Clean lower bath – construction clean (wipe down surfaces and sweep)*
11. Install closet pole and shelf in new closet

¹⁴ The original amount was slightly more: \$317.62.

¹⁵ The Claimant handwrote and initialed four question marks next to this item.

¹⁶ For unexplained reasons, “install lower cabinet drawers and doors” does not appear in this version of the document.

12. Clean kitchen – construction clean (wipe down surfaces and sweep)
13. Remove and replace base molding in kitchen – caulk/fill and paint two coats
14. Mold remediation in lower/upper bath: treat surface mold with Sporcidin and properly seal
15. Reskim stairwell wall, reskim craft room wall, reskim closet wall and master Bedroom wall¹⁷
16. Replace broken light in kitchen
17. Final walk through/construction clean up

**Upon agreeing to the proposed[,] a pre-inspection walk through will be scheduled with Arthur Kargmans (date to be selected). Upon the walk through, proposal #3311 will be signed by customer and Arthur Kargmans prior to any work/permit process is scheduled. Once the proposal is signed, Kargmans, Inc will begin permit process and schedule work accordingly (date not yet determined). Customer will be made aware the amount of \$2,271.00 will be made upon the completion of punch list lines 1-15 (not to be done in any certain order – only to completion)*

	Total	\$2,271.00
 (Clmt. Exs. 5B and 16.)		

57. The Claimant accepted and signed the Proposals on February 21, 2016, as well as the list.

58. Mr. Kargman, Salvatore, and Lucas returned to the job on February 23, 2016. Mr. Kargman reviewed both Proposals and List and signed Proposal #3126 and the List.¹⁸ He assured the Claimant that Salvatore would complete the job in a satisfactory manner.

59. Salvatore subsequently attempted to point up and paint the master bedroom, crafts room, and kitchen. He put mud on the second floor bathroom wall in an attempt to make it even with the ceramic tile.

¹⁷ The Claimant handwrote and initialed next to this item: “and paint to finish.” (Clmt. Ex. 16.)

¹⁸ In her closing argument, the Claimant indicated that Ms. Dukes returned Proposal #3311 on February 22, 2016, with Mr. Kargman’s stamped signature.

60. Salvatore applied paint unevenly on the wall near the light switch in the master bedroom; left an uneven surface when he attempted to reskim the wall in the master bedroom; failed to completely paint; left an uneven surface and poorly painted the wall in the stairwell to the second floor; installed the toilet tissue holder crookedly; and left an uneven surface around the electrical socket in the second floor master bedroom. He did not use a drop cloth in the stairway to the second floor, leaving the carpet dirty; left an uneven surface around a light fixture in the bathroom; left an uneven drywall surface near the windowsill in the kitchen; did not fix the bowed wall in the entryway; and left an uneven wall surface after skimming around the telephone wires in the crafts room. Salvatore tried unsuccessfully to make the corner of the shower even with the end of the shower wall; left an uneven surface in the drywall in the second floor kitchen around the light switch; and poorly painted around the light fixture in the crafts room.

61. Salvatore removed the dropped ceiling tile in the first floor bathroom and determined that water was coming from under the newly installed second floor toilet into the first floor bathroom. He stated that nails from a prior coworker penetrated the second floor PVC pipes and that he was going to ask the Respondent to get a plumber. There was also leakage from the commode. Salvatore stated he did not feel comfortable making the plumbing repairs but then performed the task on March 1, 2016. Salvatore then replaced only some of the damaged ceiling tiles in the first floor bathroom, and the new replacement tiles were not uniform with the old.

62. A Baltimore City Inspector passed the bathroom for a rough in and final on March 2, 2016 but failed the second floor kitchen sink plumbing.

63. On or about March 2, 2016, electrician Darryl Martel examined the electrical work performed by the Respondent.

64. On March 8, 2016, the Claimant sent an email to Ms. Dukes and Mr. Kargman expressing her dissatisfaction with the work performed by the Respondent. Ms. Dukes emailed the Claimant that there was nothing left for Salvatore to do.

65. On or about March 10, 2016, Ms. Dukes enlisted Chuck Moffett, a licensed plumber, to assess the plumbing work. She advised the Claimant that she was awaiting a return call from Mr. Moffett about going to the home. The Claimant's husband subsequently spoke to Mr. Moffett who stated that Ms. Dukes had not called him.

66. On March 11, 2016, Mr. Moffett went to the Claimant's home. He indicated that the Respondent had not asked him to work on the kitchen sink and that he was just there to make sure the work had been done correctly.

67. On March 11, 2016, Mr. Martel returned to look at the Respondent's electrical work in the kitchen.

68. On March 17, 2016, an electrical inspection failed because of a missing ground-fault circuit-interrupter (GFCI) outlet(s)¹⁹ in the bathroom and two switches installed in reverse.

69. On or about March 23, 2016, Mr. Moffett returned to the home. He repaired the second floor kitchen sink plumbing, and the plumbing subsequently passed inspection.

70. On March 29, 2016, Mr. Kargman emailed the Claimant that permits and dealing with subcontractors take time. He stated that Ms. Dukes was on vacation and would be returning the next day. Salvatore was working to complete the project. "Furthermore, you picked the

¹⁹ It was not clear how many GFCI outlets were missing.

work apart as if it wasn't done correctly on a daily basis. As soon as Erin is back in the office, she will continue on resolving the inspectors and work schedule." (Clmt. Ex. 6B.)

71. On March 29, 2016, the Claimant sent an email to the Respondent stating that she "refuse[s] to succumb to any more tactics, nor waste anymore months awaiting a satisfying resolution. We know (sic) longer require your company services. As a 'valued' paying customer we should have been prioritized considering the lengthy delay, per your verbal commitment. ITS (sic) APPARENT THAT ERIN'S VACATION AND NEEDS EXCEEDS (sic) THE [CLAIMANT'S] CONCERNS, SCHEDULING, FAILED INSPECTION, HEALTH/DUST EXPOSURE AND COMPLETION OF PROJECT." (*Id.*)

72. After the Claimant sent the March 29, 2016 email, Mr. Martel went back to the home but the Claimant would not let him in because she had terminated the contract and because he had previously failed to notice the missing GFCI outlets.

73. On April 4, 2016, Ms. Dukes emailed Mr. Brown that she had made four attempts to schedule work to resume on April 5, 2016 with no response and that if the Claimant did not respond Ms. Dukes needed to cancel the remaining sub-contractor. She stated that if electrical, plumbing, and building permits expired, the Respondent would not be responsible for any additional permitting fees.

74. The Claimant filed a claim against the Fund on May 25, 2016.

75. The Respondent performed the following unworkmanlike, inadequate, or incomplete home improvements, which it did not remedy:

- Failed to properly install shower wall tile: the wall in the tub area was not smooth and the corner of the shower was not even with the end of the shower wall
- Failed to properly install the bathroom floor: the floor was uneven and lacked some grout
- Failed to install a shower door, glass block wall, and towel rack

- Failed to properly drywall and/or paint walls and ceilings: the drywall in the bathroom was not even and had a shaved effect and the wall was not even near adjacent ceramic tile and a light switch. The stairway wall still bowed and the paint on the wall in the stairway and other rooms was unevenly applied
- Installed a damaged shower pan
- Failed to install GFCI outlets and installed switches in reverse
- Failed to paint kitchen cabinetry
- Installed a patchy door frame
- Installed the toilet tissue holder at a crooked angle
- Failed to install new and uniform ceiling tiles first floor bathroom
- Failed to remove debris and otherwise clean up
- Failed to install a closet pole and shelf in a closet
- Failed to repair wood glue residue in the lower cabinets
- Purchased the wrong color counter top
- Failed to perform mold remediation²⁰

76. On or about May 30, 2016, the Claimant contracted with The Olive Group to remediate the following pertinent work, which the Respondent performed in an unworkmanlike, inadequate, or incomplete manner:

- Remove existing ceramic tile in shower surround, existing tile on bathroom floor. Remove existing toilet and vanity; save for re-use. Remove existing plastic shower base. Remove existing subfloor down to joists. Remove existing wall shelving. **Price: \$770.00**
- Upon removal of subfloor add 2x6 nailers to existing floor joists to make subfloor area level as possible. Install new 23/32" x 4' x 8' OSB tongue and groove plywood subfloor after new plumbing utility installations. **Price \$936.20**
-
- Frame (1) 2x4 stud wall at end of shower to create end shower wall and toilet area. **Price \$250.00**
- Install new ½" moisture resistant drywall in walk-in shower area and on newly framed shower end wall. Drywall to be taped, mudded, sanded, and primed to a ready to paint state. **Price: \$180.00**
-

²⁰ As discussed below, the Claimant may not recover from the Fund for some of these deficiencies based on her failure to prove the cost to repair or complete.

- Install new Owner selected ceramic tile on walk in shower tub surround walls, walk in shower floor and on main bath floor only. All other bathroom walls to remain drywall. Owner to select grout color. There is a \$3 per square foot tile allowance built into price; this covers ceramic tile, mortar, grout, and marble threshold at bath entry and shower entry door. **Price: \$1,020.00**
- Install (1) Owner selected shower door. Shower door allowance \$380.00 included in price. **Price: \$530.00**
-
- Miscellaneous point-up of existing drywall in (2) 2nd floor bedrooms, and (1) 2nd floor kitchen. Paint each room respectively. **Price: \$1,800.00**
-
- Install ½" drywall on kitchen ceiling and on common wall between bathroom and bedroom. Drywall to be taped, mudded, sanded, and primed to a ready paint state. **Price: \$860.00**
-
- Obtain building and trade permits. **Price: \$700.00**

(Clmt. Ex. 18.). Total cost of above: \$7,046,20.

77. On or about September 10, 2016, the Claimant's husband repainted the kitchen cabinets.

78. The Claimant's credit card company reimbursed her for the second payment of \$3,580.00 she paid to the Respondent with her credit card.

79. The Claimant's actual loss is \$1,195.20.

DISCUSSION

An 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);²¹ *see also* COMAR 09.08.03.03B(2)²² (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

A claimant against the Fund has the burden of proving the validity of his/her claim by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2014); Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

In this case, the Claimant contended that the work done by the Respondent on the home, owned by the Claimant and her husband, was unworkmanlike, inadequate, and incomplete.²³

The Respondent contended that its work was workmanlike and adequate. The Respondent did not dispute that the job was not completed, e.g., the work area was left dusty, a wall was not fully smooth, and the shower pan was damaged. The Respondent contended,

²¹ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

²² As noted above, “COMAR” refers to the Code of Maryland Regulations.

²³ I note that the Claimant also complained that the Respondent delayed in the performance of the work; however, that is not an issue before me.

however, that if its workers and subcontractors had been allowed inside the Claimant's home to complete the requested items, the job would have been completed.

For the following reasons, I find that the Claimant has proven eligibility for compensation.

Licensing

The evidence submitted by the Fund showed that at all relevant times, Arthur Kargman was licensed individually. He notified the MHIC in 2004 that he had incorporated the business but for unknown reasons, the MHIC failed to issue a license in the corporate name.

Thus, I find that a preponderance of the evidence established that for purposes of the claim against the Fund, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

Unworkmanlike; Inadequate; Incomplete

Claimant

The Claimant testified that she contacted the Respondent after she saw that it received a high rating on Angie's List. She described her first meeting with the Respondent's representative, Peter Colonell, on August 17, 2015. At that time, they discussed the Claimant's desire to have her second floor bathroom and kitchen, a small bedroom (crafts room), master bedroom, and a stairway remodeled. She recalled Mr. Colonell recommending "freezing" the stairway wall instead of dry walling; pointing up, sanding, and painting walls instead of laminating; installing a shower pan instead of a pre-fabricated shower stall; and installing a pedestal sink instead of a vanity sink. The Claimant also indicated that she wanted a two-foot closet bump out.

The Claimant testified regarding discussions about the terms of the Respondent's Proposal and numerous revisions. The Claimant did not sign the revised Proposals when they were submitted to her, however. Instead, she "verbally committed" to a contract with the Respondent, with the understanding that certain changes would be made, and paid the Respondent a first payment of \$3,580.00 on August 21, 2015. On September 11, 2015, the Claimant made a second payment in the same amount by credit card after the Respondent's employee, Krista Barlow, advised her that the job was 50% complete.

The Claimant testified regarding complaints she had throughout the job, including dust, dirt and debris, the failure to complete the job within two weeks as promised by Mr. Colonell, and deficiencies in the work performed. She also described leakage from the second floor into the first floor bathroom.

According to the Claimant, she complained repeatedly to Mr. Colonell and the Respondent's Office Manager, Erin Dukes; however, they put her off or were slow to respond. At one point, she had a heated conference call with Mr. Colonell and Ms. Dukes, during which Mr. Colonell referred to the Claimant and her husband as "poor people." (Clmt. Test.) The owner of the business, Arthur Kargman, would not get involved until after the Claimant filed a complaint with the MHIC, despite her repeated requests.

The Claimant testified that after she filed a complaint with the MHIC, she worked with the Respondent to resolve this matter, even though she disagreed with the Respondent's representation to MHIC Investigator, David Brown, that only 10% of the job was left to complete. The Claimant testified that when Mr. Kargman and his estimator finally came to the home and inspected the work in February 2016, they both agreed "it was not quality work." Mr. Kargman apologized and said that his worker, Salvatore, would be assigned to complete the

project, and the Respondent enlisted a plumber and electrician to review and complete the work performed.

The Claimant testified about and submitted into evidence the following documents signed by the parties in February 2016, after the Claimant filed a claim with the MHIC: (1) one of the early revised Proposals that had been submitted to the Claimant on August 21, 2015 (#3126) (Total contract price: \$10,740.00); (2) another revised Proposal (#3311) that had been submitted to the Claimant on October 13, 2015, showing a summarized version of the above, as well as “change orders,”²⁴ credits applied by the Respondent, payments applied, additional permit charges, and a punch list to which the Claimant added handwritten notations (Total balance of \$2,271.00); and (3) a list prepared by the Claimant purportedly showing the costs associated with the original Proposal, revisions, change orders, and permits, as well as payments rendered.

According to the Claimant, the delays, excuses, and poor workmanship continued. The plumbing passed inspection but the electrician did not address a missing GFCI outlet(s) that had resulted in a failed electrical inspection. Salvatore left abruptly on March 8, 2016. Finally, the Claimant had had enough and emailed Mr. Kargman on March 29, 2016 that she no longer required his services. Shortly thereafter, the electrician, apparently unaware of her email, arrived at her home and she denied him entrance.

The Claimant filed a claim against the Fund and in June 2016 hired The Olive Group to repair or complete the Respondent’s shoddy and incomplete work. According to the Claimant, “everything needed to be redone.” (Clmt. Test.)

Master Card subsequently reimbursed the Claimant for the second payment she made to the Respondent in the amount of \$3,580.00. According to the Claimant, Master Card advised her

²⁴ The Claimant disputed that some of the items were actually “change orders.”

that it would probably not attempt to recover that amount from the Respondent and that the reimbursement should have no effect on her MHIC claim.

Matthew Tuttle

Matthew Tuttle, Owner, The Olive Group, and a licensed MHIC contractor, testified as an expert witness in residential home improvements on behalf of the Claimant.²⁵ He presented as intelligent and well qualified.

Mr. Tuttle described the work he performed on the Claimant's home as reflected in his proposal and in photographs taken by the Claimant's husband.

Mr. Tuttle testified that he removed a section of the wall in the stairway and found a door behind the wall, a 2x4 that was not on center as it should be, and one stud that was missing. This was significant because the bow in the wall was due to the improper framing for the drywall. Therefore, he installed the additional framing needed to reinstall drywall so that it was straight and without a bow. When asked if the bowing of the wall could have been corrected with "freezing," he testified that he did not know what that term means.

Mr. Tuttle testified that he obtained building, plumbing and electrical permits, and inspection certificates. When asked on cross-examination what work the Respondent did that was deficient, which Mr. Tuttle had to repair, Mr. Tuttle did not seem to be aware of what work had been originally contracted for by the Respondent. Mr. Tuttle testified, however, that the whole second floor bathroom had to be redone. He noted that some of the framing was missing and that some nailers were not straight at the corners or where two sheets of material meet.

²⁵ I did not consider a proposal from Advance Remodeling, Inc. because it did not reflect an MHIC license number, was unsigned, and no one from that business testified at the hearing. I did not consider proposals from BathKrafters, LLC, and Alashek General Contractor because they were unsigned by the contractors and no one from those businesses testified at the hearing.

There were no GFCI outlets. In addition, when Mr. Tuttle tore up the bathroom floor, some of the joists had been cut almost all the way through, a condition which could lead to failure.

David Brown

David Brown, Investigator, MHIC, testified that when a homeowner files a complaint with the MHIC, the MHIC attempts to get the parties to negotiate. In this case, after the Claimant filed a complaint with the MHIC, the Respondent advised Mr. Brown that only 10% of the work on the Claimant's home remained to be done. Mr. Brown subsequently learned that the Claimant very much disagreed. He understood that the parties attempted to resolve the matter but was later advised by Ms. Dukes that the Claimant sent the Respondent a letter on March 29, 2016, stating that she no longer wanted the Respondent's services.

Peter Colonell

Peter Colonell testified that he had only been a project manager/salesman with the Respondent for approximately a month and was still in training when he met with the Claimant in August 2015. According to Mr. Colonell, however, he was "absolutely qualified to sell to the Claimant" because he had been a licensed contractor for thirty-five years. He testified that he went to the site three times but denied that he was responsible for supervising the work.

Mr. Colonell testified that he had no recollection of his discussions with the Claimant on August 17, 2015 about the work she wanted done on her home, except that he offered her the installation of a glass block wall and the Claimant accepted. Mr. Colonell did not recall that the Claimant asked for drywall of the bowed wall in the stairway or that he recommended freezing. He testified that he would have recommended removing all of the casing trim and putting on new sheetrock but that was not within the Claimant's budget.

Mr. Colonell testified that 80-90% of the contract work was done pursuant to change orders and that the job was based on the Claimant's budget. He recalled that the Respondent removed base cabinets in the second floor kitchen and that the Claimant agreed to pay extra for that. In addition, there was a change order to paint the cabinets and that work was completed.

According to Mr. Colonell, the Claimant wanted more and more work done but the money was not there. Mr. Colonell was not sure if the parties put in writing the extra work agreed to and he described the relationship with the Claimant as "a disaster." (Colonell Test.) Mr. Colonell denied calling the Claimant and her husband "poor people" during a telephone conference.

Mr. Colonell recalled that the Claimant complained that freezing had not resolved the bowing of the stairway wall, but testified that the house is old and the Respondent did the best he could. He had no recollection of the Claimant complaining about a damaged shower pan. He recalled that she complained about the poor installation of a pedestal sink but disagreed with her assessment. According to him, the Claimant contracted for a vanity but wanted a pedestal sink. She was trying to get a modern thing in an old house, and it could not be done correctly on her budget.

Mr. Colonell recalled being advised of a problem with the first floor bathroom ceiling, but testified that he sent someone to fix it the next day. He did not recall the Claimant complaining to him about the wrong countertop, and testified that, in any event, the Claimant was supposed to supply the countertop.

When shown photographs of cluttered and dirty areas by the Claimant, Mr. Colonell acknowledged that workers should not have left the home in that condition.

Erin Dukes

Erin Dukes, former Office Manager for the Respondent, testified that her duties included moving jobs forward and assisting with coordination. She recalled that she had several telephone conversations with the Claimant but had little recall of specific complaints, dates, or Proposals.

When asked by the Claimant at the hearing why she sent an email to the Claimant on September 10, 2015 indicating the job was 50% complete, Ms. Dukes testified that Mr. Kargman or a foreman would have reported that status to her. Typically, she would call the customer to verify that information but she did not recall calling the Claimant.

On cross-examination by the Fund, Ms. Dukes testified that the Claimant began having issues with the Respondent's work approximately one week after the start of the job. When conversations between the Claimant and Mr. Colonell got "heavy," Ms. Dukes intervened.

Ms. Dukes testified that the Respondent ceased work when the Claimant sent an email on March 29, 2016 ending the contract and denied the electrical contractor entry to her home. She testified that the Claimant never paid over \$3,000.00 owed under the contract with the Respondent.

Arthur Kargman

Arthur Kargman, President, testified that he was aware of the ongoing dispute with the Claimant but did not intervene because Ms. Dukes and Mr. Colonell told him they had the situation under control. He did not know who made the determination conveyed to Mr. Brown that only 10% of the job remained to be done. He initially did not recall why the project had not been completed and then testified that it was not completed because of all the change orders. He

testified that as of 2016, the only items remaining to be performed were those on a February 2016 punch list.

When asked his opinion of the work performed by his workers when he visited the property in February 2016, Mr. Kargman testified that “there was work that had to be finished.” He agreed that more skim work needed to be done on the walls, as well as clean up, and finishing the block wall in the bathroom.

Mr. Kargman could not recall if he was aware that the electrical inspection had failed. He testified that the job would have been completed if the Claimant had not terminated the relationship.

Mr. Kargman emphasized that the scope of the work performed by The Olive Group exceeded the scope of the work under the Respondent’s contract, e.g., Mr. Tuttle poured a concrete shower base instead of installing a shower pan, and the Respondent did not contract to install a subfloor or doors. In addition, according to Mr. Kargman, the proper way to fix uneven walls is to skim more, not to laminate.

Darryl Martel

Darryl Martel, President, Freedom Electric, Inc., had little recollection of this matter. He testified that he went to the Claimant’s home at the Respondent’s request on March 2, 2016. He could not recall if he noticed then that GFCI outlets were missing and could not recall if he did any work on the property. He testified that when he went back to the Claimant’s home for repairs after an electrical inspection showed a missing GFCI outlet(s) and reversed switches, no one answered the door on two occasions, and on a third occasion, the Claimant would not let him in. He was unaware that the Claimant had severed her ties with the Respondent at the time of the last visit.

Analysis

The Claimant presented as genuinely frustrated with the Respondent's treatment of her throughout the course of their dealings. She kept copious notes, and her testimony established a history of poor customer communication on the Respondent's part, as well as poor business practices relating to obtaining signed contracts.

Mr. Colonell presented as fast-talking, flippant, and glib. I got the impression, as did the Claimant, that he, Ms. Dukes, and Mr. Kargman did not take the Claimant's complaints seriously. In testifying about attempts to work with the Claimant, Mr. Colonell and Ms. Dukes seemed oblivious to the lack of manpower on the job and the delays in performance, as described by the Claimant. Ms. Dukes could not explain why she told the Claimant she owed a second payment because the project was 50% complete, when clearly it was not. Furthermore, the Respondent stopped working on the home on September 30, 2015 and then again on March 8, 2016, without explanation or notification. Mr. Kargman chose to put his head in the ground and to let his employees deal with the Claimant despite the Claimant's repeated requests that he get involved.

Accordingly, I found the Claimant to be much more credible than Mr. Kargman and the Respondent's (now former) employees. For that reason and the following reasons, I find that the Claimant met her burden of proof with regard to some of the alleged unworkmanlike or inadequate or incomplete home improvements performed by the Respondent. She failed, however, to meet that burden as to others.

Entitlement to recovery for unworkmanlike, inadequate, incomplete home improvements

Initially, I note that the contractual process in this case was convoluted. Considering the Claimant's testimony and all of the signed documents together, however, I find that the Claimant

proved by a preponderance of the evidence that the Respondent agreed to perform the following work, which was unworkmanlike, inadequate, or incomplete, and that she is entitled to recover from the Fund for those items.

(1) The Proposals in evidence show that the Respondent was to install shower wall tile. The Claimant testified without dispute that the wall in the tub area was not smooth after the Respondent installed tile in that area. The Claimant testified and a photograph showed an unsuccessful attempt by the Respondent to make the corner of the shower even with the end of the shower wall;

(2) The Claimant's undisputed testimony, corroborated by Mr. Tuttle's proposal and photographs, shows that the Respondent installed the bathroom floor unevenly and failed to install grout in certain places;

(3) Mr. Tuttle's proposal showing that he installed a shower door supports the Claimant's contention that the Respondent failed to do so;

(4) The Claimant observed that the drywall installed by the Respondent was not even and had a shaved effect. In addition, the Claimant testified without dispute that Salvatore unsuccessfully applied mud on the second floor bathroom wall to make it even with the adjacent ceramic tile, and photographs show an uneven wall area around a light switch in the bathroom;

(5) The Claimant's undisputed testimony established that the Respondent failed to install glass block in the second floor bathroom;

(6) The Claimant's undisputed testimony established that she told Mr. Colonell before she hired the Respondent that she wanted to get the bowed wall in the stairway fixed. She wanted it dry walled but Mr. Colonell recommended "freezing." She did not dispute that the Respondent performed "freezing" of the wall, but her testimony, corroborated by photographs

and Mr. Tuttle's testimony, established that the wall still bowed. She further testified and photographs showed that the Respondent poorly painted the wall in the stairwell to the second floor;

(7) The Claimant's testimony and the proposals submitted into evidence further show that the Respondent agreed to point up and paint the walls and ceiling in the bathroom, crafts room, master bedroom, and kitchen, and later agreed to reskim the walls. The Claimant's testimony and photographs submitted into evidence by her showed that the surfaces of the walls and ceilings remained uneven and/or that the walls were poorly painted, including an accent wall in the master bedroom, as well as the drywall surfaces near a window sill and around a light switch in the kitchen.

Unfortunately, the Claimant can recover only part of the cost for this deficiency. Mr. Tuttle included in his quote of \$500.00 the cost to remove existing drywall ceiling in the second floor kitchen and existing drywall completely along the wall that separates the second floor bedroom from the bathroom. However, he also included in that item the cost of removing drywall to allow a Baltimore City inspector to see repairs previously completed by others. Mr. Tuttle did not adequately explain why that inspection was necessary. He included in his quote of \$835.00 the installation of drywall on the bowed stairway but also dry walling of the first floor bathroom, which was not called for by the contract with the Respondent.

(8) The photographs submitted into evidence and even Mr. Kargman's testimony corroborate the Claimant's testimony that the Respondent's workers should have, but did not, clean up after themselves.

No entitlement to recovery for unworkmanlike, inadequate, or incomplete home improvements

I find that the Claimant failed to prove by a preponderance of the evidence that the Respondent agreed to perform the following work, which was unworkmanlike, inadequate, or incomplete, and/or that she is entitled to recover from the Fund for those items:

(1) The Claimant testified that although she wanted a vanity sink installed in the second floor bathroom, Mr. Colonell recommended a pedestal sink. The parties agreed on the installation of a pedestal sink, even though Mr. Colonell acknowledged at the hearing that it was inappropriate for the Claimant's old home. The evidence established that the pedestal sink leaked after the Respondent installed it. Nonetheless, the evidence also established that after the Respondent's plumber performed remedial work, all plumbing passed inspection. Thus, I find that the Claimant failed to prove by a preponderance of the evidence that she is entitled to recover from the Fund for this item;

(2) The Claimant testified that Mr. Colonell recommended she install a shower pan instead of replacing the tub in the second floor bathroom with a pre-fabricated shower. She testified without dispute, however, that the shower pan the Respondent installed was damaged.

The Claimant cannot recover for this item, however, because the evidence shows that Mr. Tuttle subsequently installed a concrete shower floor instead of a shower pan as called for by the contract between the Claimant and the Respondent. There was, therefore, no evidence as to the cost of replacing the damaged shower pan;

(3) The Claimant testified that water was leaking into the first floor bathroom from the second floor. She testified that Salvatore removed the dropped ceiling tile in the first floor bathroom and determined that water was coming from under the newly installed second floor toilet. He told the Claimant that a prior co-worker had penetrated the second floor PVC pipes

with nails and that he was going to ask the Respondent to get a plumber. The Claimant cannot recover for the repair of those PVC pipes, however, since the evidence shows that plumbing issues were resolved. I note also that much of Mr. Tuttle's charge for plumbing related to relocation of the toilet and the installation of a different type of shower;

(4) Baltimore City permit documents show that a March 17, 2016 electrical inspection failed because of a missing GFCI outlet(s) in the second floor bathroom and the installation of two switches in reverse. The Claimant did not dispute that she would not allow the Respondent's electrician into her home to perform this work, but as discussed below, I find that she had good reason.

The Claimant contended that the Respondent also failed to install new electrical wiring as required for an additional 4" recessed light and relocation of an existing bathroom exhaust fan. She also contended that the Respondent failed to install a new owner-provided light at the vanity. I saw no provision, however, in the various Proposals for that work. Furthermore, the Claimant may not recover for the electrical work relating to the missing GFCI outlet(s) or the reversed switches as Mr. Tuttle failed to separate in his proposal the cost of that work from the cost of performing the other electrical work;

(5) The Claimant's testimony and photographs established that the Respondent did not complete or properly paint kitchen cabinetry; however, the Claimant cannot recover for that failure because her husband subsequently painted the cabinets himself;

(6) A photograph of the bathroom door shows patchy unsightly wood; however, the Claimant presented no evidence of the cost to repair that item;

(7) The Claimant's undisputed testimony and photographs show that the Respondent installed a toilet tissue holder crookedly; however, the Claimant presented no evidence of the cost to correct that item;

(8) The Claimant submitted into evidence photographs showing incomplete and mismatched ceiling tile in the first floor bathroom, but she may not recover for this item because Mr. Tuttle's proposal indicates he installed a drywall ceiling instead of replacing tiles;

(9) The Claimant may not recover for the Respondent's failure to install a closet pole and shelf in new closet; failure to repair wood glue residue in lower cabinets; and failure to install a towel rack because she failed to establish the associated costs to complete that work. She also failed to establish the costs associated with the purchase of the wrong color counter top and the mold remediation the Respondent agreed to;

(10) The Claimant may also not recover amounts relating to installing a kitchen exhaust fan, shower bench, first floor bathroom ceiling fan and vent fan, first floor foyer ceiling light and switch, doors on the existing furnace closet, and bathroom doors, as she did not clearly establish that the Respondent contracted to make those installations. For the same reason, she cannot recover for dry-walling and painting of the first floor entry foyer and closet;

(11) The Claimant cannot recover for damage to a wall from cast iron tub or damage to the surface of a cabinet as these are consequential damages. COMAR 09.08.03.03B(1) (The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest).

Good Faith

The Respondent did not deny that the job was incomplete, but contended that the Claimant would not allow his workers to return to finish. Under section 8-405(d) of the Business

Regulation Article, “[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.” Bus. Reg. § 8-405(d).

The evidence shows that after the Claimant filed her claim with the MHIC, Mr. Kargman went to the home and the parties signed a new agreement. The Respondent began to work on the home again on February 23, 2016, and the Claimant admitted that in March 2016 she stopped the Respondent from continuing to work at the home.

The evidence also shows, however, that Salvatore, the worker assigned by the Respondent to complete the job, left the job on March 8, 2016. Ms. Dukes emailed the Claimant that there was nothing left for Salvatore to do although the evidence is clear that was not the case.

Thus, I find that the Respondent did not make good faith efforts to resolve the claim and that the Claimant was justified in terminating her dealings with the Respondent in March 2016.

Accordingly, I find that the Claimant is eligible for compensation from the Fund.

Remedy

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. COMAR 09.08.03.03B provides in pertinent part as follows:

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

(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.

COMAR 09.08.03.03B(3)(c).²⁶

In this case, the Respondent and the Claimant signed Proposal #3126 in February 2016. That Proposal reflects an original contract price of \$10,740.00. They also signed Proposal #3311 in February 2016, even though the Claimant testified and made notations on the Proposal that she disagreed with or questioned some items labeled “change orders” and a conditional credit for the installation of a vinyl floor. Proposal #3311 reflects the original contract price of \$10,740.00 but also reflects the addition of \$2,620.00 for change orders, an additional permit charge of \$525.00, and credits totaling \$4,454.00. Thus, I find that a preponderance of the evidence indicates that the total original contract price was \$9,431.00.

The evidence further shows that the Claimant paid the Respondent \$7,160.00. The Claimant’s and Mr. Tuttle’s testimony establish that the Claimant paid The Olive Group \$7,046.20 to repair poor work done by the Respondent under the original contract and complete the original contract.

Using the formula set forth above, the Claimant’s loss would ordinarily be calculated as follows:

²⁶ Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Bus. Reg. § 8-405(e)(1), (5).

Amounts Claimant has paid to or on behalf of the contractor under the original contract	\$ 7,160.00
Plus reasonable amounts Claimant has paid or will be required to pay another contractor to repair poor work done by original contractor under the original contract and complete original contract	+7,046.20
	\$14,206.20
Minus original contract price	-9,431.00
Total:	\$ 4,775.20

In this case, however, because the Claimant's testimony established that her credit card company has already reimbursed her for the second payment to the Respondent of \$3,580.00, I find that this particular claim requires a unique measurement pursuant to subsection COMAR 09.08.03.03B(3). Accordingly, I find that the amount of \$3,580.00 should be deducted from the total amount above, resulting in an actual loss of \$1,195.20. To hold otherwise would result in a windfall to the Claimant from the Fund.²⁷

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$1,195.20 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,195.20; 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

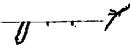
²⁷ The issue of whether Master Card or the Claimant can recover \$3,580.00 from the Respondent pursuant to a civil suit is not before me.

under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;²⁸ and

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

Signature on File

July 19, 2017
Date Decision Issued

Eileen C. Sweeney 
Administrative Law Judge

ECS/emh
#168739

²⁸ See Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 21st day of August, 2017, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION