

**IN THE MATTER OF THE CLAIM \*  
OF KATHRYN AND DAVID NEWMAN \***

**MARYLAND HOME IMPROVEMENT  
COMMISSION**

**AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \*  
FOR THE ACTS OR OMISSIONS \*  
OF ROBERT MENEFEE t/a \*  
CARPET COUNTRY, LTD. \***

**MHIC CASE NO. 17(90)1124  
OAH CASE NO. DLR-HIC-02-18-03763**

\* \* \* \* \*

**FINAL ORDER**

This matter was heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 18, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 26, 2018, concluding that the homeowners Kathryn and David Newman (“Claimants”) sustained an actual and compensable loss of \$3,054.01 as a result of the acts and omissions of Robert Menefee t/a Carpet Country, Ltd. (“Contractor”). *OAH Proposed Decision* p. 12. In a Proposed Order dated November 19, 2018, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to award the Claimants \$3,054.01 from the MHIC Guaranty Fund. Robert Wickline with Flooring America/FA Design Build subsequently filed exceptions of the MHIC Proposed Order.

On March 7, 2019, a hearing on the exceptions was held before a three-member panel (“Panel”) of the MHIC. The Claimant, Kathryn Newman, was present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. Robert Wickline appeared on behalf of Flooring America.

The ALJ notes in his decision that no one on behalf of the Contractor appeared at the July 18, 2018 evidentiary hearing despite receiving proper notice. *ALJ's Proposed Decision* p. 2-3. The licensing records of the MHIC at the time of the hearing reflect that the company, Flooring

America, was operating under the MHIC corporate license number 05-122345 with the trade name, Carpet Country, Ltd. *OAH Hearing GF Exhibit 4*. The business address, and resident agent address, reported to the MHIC by the company was 4390 Crain Hwy., White Plains, MD 20695. *OAH Hearing GF Exhibit 4*. The records also reflect that at the time of the hearing, the individual licensed contractor for Flooring America t/a Carpet Country, Ltd was Robert Menefee operating under license number 01-86975.<sup>1</sup> *OAH Hearing GF Exhibit 4*. The business address on record for Mr. Menefee's individual license was the same 4390 Crain Hwy address used by Flooring America t/a Carpet Country, Ltd. *OAH Hearing GF Exhibit 4*.

The ALJ found that two notices of the July 18, 2018 hearing were sent to the Contractor in this case. *ALJ's Proposed Decision* p. 2-3. The first was sent on May 30, 2018, via regular mail and Certified Mail Return Receipt Requested, to the 4390 Crain Hwy business address. *Id.* The ALJ notes that neither mailing was returned, and that OAH received a Certified Mail Receipt indicating that the mail was received at the address of record. *Id.* The second notice was sent on June 12, 2018 to Mr. Menefee's home address of record with the MHIC, again by both certified and regular mail. *Id.* Although, the ALJ reported that prior to the hearing neither mailing was returned, it does appear from the file that the certified mail sent to Mr. Menefee's home address was later returned as unclaimed. *Id.* The Commission's statute requires that the hearing notice "be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Annotated Code of Maryland, Business Regulation ("BR"), § 8-312(d). Moreover, licensees are required to notify the Commission within 10 days of any changes to their address. BR § 8-309. Therefore, the Commission finds that the notices sent via both

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<sup>1</sup> Pursuant to Code of Maryland Regulations ("COMAR") 09.08.01.04, a corporation must obtain its own corporate contractor license, but must also "employ one individual licensed contractor who shall be in responsible charge of the corporation's or partnership's home improvement work." Both the corporate licensee and the individual licensee are jointly and severally liable for the repayment to the MHIC of an award from the Guaranty Fund. COMAR 09.08.01.04(C).

regular and certified mail to the business address on record for the company and the individual licensee, as well as the home address of the individual, constituted sufficient notice of the July 18, 2018 OAH hearing.

At the outset of the March 7, 2019 exceptions hearing, Mr. Wickline was asked about his position with the company Flooring America. Mr. Wickline responded that he was the Director of Operations, but was not a corporate officer, owner or attorney for the company. Because he is not an attorney, Mr. Wickline could not represent the individual licensee in this case, Robert Menefee, who was not present at the exceptions hearing. As to whether Mr. Wickline could represent the corporate licensee, Flooring America t/a Carpet Country, Ltd, the Commission looks to the statute governing representation in cases heard before OAH. Pursuant to Annotated Code of Maryland, State Gov't Article, § 9-1607.1(a)(4)(i), a non-attorney may represent a corporation in a home improvement case before OAH if "the individual is an officer of a corporation, an employee designated by an officer of a corporation, a general partner in a business operated as a partnership or an employee designated by a general partner, or an employee designated by the owner of a business operated as a sole proprietorship while the officer, partner, or employee is appearing on behalf of the corporation, partnership." Mr. Wickline admitted that he was not an owner or corporate officer of Flooring America or Carpet Country, Ltd., and did not present at either the OAH hearing below or the exceptions hearing, documentation from a corporate officer authorizing him to represent the company in this matter. At the exceptions hearing, the Commission informed Mr. Wickline that he could not represent the licensees in this case.

Even if Mr. Wickline were permitted to represent the licensees, his written exceptions are untimely and without merit. Copies of the Commission's Proposed Order and the ALJ's underlying Proposed Decision were sent to the parties on November 19, 2018 along with a cover letter explaining that they had 20 days from the postmark date of the letter to file written

exceptions. Although Mr. Wickline dated his written exceptions January 16, 2019, his packet was stamped as received by the Commission on January 29, 2019. Both dates are well beyond the 20-day appeals period for exceptions provided in COMAR 09.01.03.09.

Even if the exceptions had been timely filed, the arguments they raise are without merit. Mr. Wickline alleges “[w]e never received notification of the hearing as noted in the Statement Of The Case Document.” For the reasons stated above, it is clear that both the individual licensee and the corporate licensee on record with the Commission received proper notice of the OAH hearing. Mr. Wickline goes on to present a “settlement offer” that is less than the amount recommended for award by the ALJ and attaches a number of documents in support of this offer. With the exception of a contract dated August 26, 2015 that was admitted as Claimant’s Exhibit 2, the documents attached to Mr. Wickline’s written exceptions were not offered into evidence at the OAH hearing below. COMAR 09.01.03.09(K) provides that additional evidence may not be presented on exceptions unless the administrative unit finds that the evidence, “(1) Is relevant and material; (2) Was not discovered before the ALJ hearing; and (3) Could not have been discovered before the ALJ hearing with the exercise of due diligence.” The photographs of the convector covers, “Receipt History,” and various printouts providing pricing and specifications for materials, were discovered or could have been discovered with the exercise of due diligence prior to the OAH hearing. Therefore, this additional evidence could not be accepted on exceptions pursuant to COMAR 09.01.03.09(K).

The licensees were provided the opportunity to present their testimony and evidence at the July 18, 2018 hearing before OAH, but despite proper notice, failed to appear. The Commission agrees with the ALJ’s analysis and finds no error in his decision. The ALJ’s decision is thorough, supported by the evidence in the record and correct as a matter of law. Having considered the evidence in the record and the OAH Proposed Decision, it is this **4th** day of **June 2019**

**ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**; AND
- C. That the Proposed Decision and Order of the Administrative Law Judge is **AFFIRMED**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

**Andrew Snyder**

**Chairperson –Panel  
Maryland Home Improvement  
Commission**

IN THE MATTER OF THE CLAIM  
OF KATHRYN AND DAVID  
NEWMAN,  
CLAIMANTS  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF ROBERT MENEFEE,  
T/A CARPET COUNTRY, LTD.,  
RESPONDENT

\* BEFORE DANIEL ANDREWS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-18-03763  
\* MHIC No.: 17 (90) 1124

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 14, 2017, Kathryn and David Newman (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of an actual loss suffered as a result of a home improvement contract with Robert Menefee, trading as Carpet Country, Ltd. (Respondent).<sup>1</sup>

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<sup>1</sup> The original claim was signed only by Kathryn Newman. At the hearing on July 18, 2018, without objection by the Fund, the claim was amended to include Ms. Newman's husband, David Newman.

On January 26, 2018, the Department of Labor, Licensing, and Regulation (Department), MHIC, issued a Hearing Order and referred the matter to the Office of Administrative Hearings (OAH) to hold a hearing.

On May 30, 2018, the OAH issued a Notice of Hearing (Notice) to all parties which informed the parties that a hearing was scheduled for July 18, 2018, at 10:00 a.m., at the LaPlata Public Library, 2 Garrett Avenue, LaPlata, MD 20646. The Notices were delivered to the Claimants and Respondent through the United States Postal Service (USPS) by regular first class mail and Certified Mail Return Receipt Requested. On June 7, 2018, the OAH received the Certified Return Receipt for the Notice mailed to the Respondent indicating that the Notice was received at the Respondent's address of record.<sup>2</sup> The Notice mailed to the Respondent by regular first class mail was not returned by the USPS as undeliverable.

On June 11, 2018, the MHIC notified the OAH of an alternative address for the Respondent. On June 12, 2018, the OAH sent a second Notice to the Respondent by regular first class mail and Certified Mail Return Receipt Requested.<sup>3</sup> As of the hearing date, the USPS did not return any Notice mailed to the Respondent as being undeliverable. Additionally, the OAH did not receive any requests from the Respondent or by anyone authorized to represent him to postpone the scheduled hearing.

On July 18, 2018, I convened the hearing as scheduled. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>4</sup> The Claimants represented themselves. Shara Hendler, Assistant Attorney General, represented the Fund. Neither the Respondent nor anyone authorized to represent him appeared for the hearing. Based on the procedural record described, I determined

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<sup>2</sup> Since August 2015 and through July 18, 2018, the date of the hearing in this matter, the Respondent's address of record with the MHIC has been 4390 Crain Hwy., White Plains, Maryland 20695.

<sup>3</sup> The second notice was mailed to the Respondent, Carpet Country Ltd., 900 N. Washington St., #403, Alexandria, Virginia 22314.

<sup>4</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 volume.

that the Respondent was provided with proper notice of the hearing and failed to participate without good cause. For this reason, the hearing proceeded in the Respondent's absence. See Md. Code Ann., Bus. Reg. §8-312(h) (2015), Code of Maryland Regulations (COMAR) 09.01.02.09.

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. 2017); COMAR 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimants sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on behalf of the Fund:

- GF 1 MHIC Hearing Order, dated January 26, 2018
- GF 2 OAH Notices of Hearing, dated May 30 and June 12, 2018, with attached Certified Mail Return Receipts
- GF 3 Claimants' Home Improvement Claim Form, dated August 7, 2017
- GF 4 MHIC Licensing History for Respondent, dated June 11, 2018

I admitted the following exhibits on behalf of the Claimants:

- CL 1 Respondent's advertisement, undated
- CL 2 Contract between Claimants and Respondent, dated August 26, 2015
- CL 3 Photograph of Claimants' bathroom tile floor and uncovered heat convactor before work was performed by the Respondent, undated



- CL 4 Photograph of white tile and grout installed by Respondent, undated
- CL 5 Email from Robbie Wickline, Director of Operations, Flooring America, to Thomas Marr, Fund Investigator, dated June 13, 2017
- CL 6 Job Invoice, Griffin's Flooring America, dated June 24, 2017
- CL 7 Home Depot advertisement for LifeProof™ wood-look tile floor, undated
- CL 8 Photograph of large scrape in fruitwood paneling, undated
- CL 9 Photograph of damaged heat convector covers, undated
- CL 10 Photograph of damaged heat convector covers, undated
- CL 11 Invoice, Vulcan Engineering and Manufacturing, Inc., dated June 19, 2017, with attached photograph of remanufactured heat convectors covers
- CL 12 Claimants' personal check paid to Cynthia Griffin, dated April 6, 2016
- CL 13 Respondent's Acknowledgement (Invoice), dated August 28, 2015, with attached contract

No exhibits were entered into evidence on behalf of the Respondent.

### Testimony

The Claimants testified on their own behalf.

There was no testimony presented on behalf of the Respondent or Fund.

### **PROPOSED FINDINGS OF FACT**

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

1. At all times relevant, the Respondent was a licensed home improvement contractor operating under MHIC registration number 01-86975.
2. The Respondent's business trade name is Carpet Country, Ltd., which is a subsidiary of Flooring America.
3. Due to their age and fall risk, the Claimants sought to remodel a full bath in their home for the purpose of installing a slip-resistant floor and other safety hardware.

4. On August 26, 2015, the Claimants and the Respondent entered into a contract to remodel the full bathroom. The contract was sold to the Claimants through the Respondent's salesman, Dwayne Robinson.

5. The contract required the Respondent to remove 140 square feet of existing subfloor and ceramic tile and install a new subfloor and tile.<sup>5</sup>

6. The contract required the Respondent to install Daltile 6x6 white matte ceramic tile over a one-half inch Dura-rock subfloor. The tile was selected by the Claimants with the assistance and advice of the Respondent's salesman, Mr. Robinson.

7. The total contract price was \$8,660.00.

8. The Respondent began to perform the contract in December 2015.

9. The Respondent removed the existing ceramic tile and subfloor and installed the new subfloor and ceramic tile.

10. Because of damaged caused by the Respondent to paneling in the Claimants' bathroom, the Claimants paid Cynthia Griffin \$225.00 to repair the damage.

11. The Respondent provided a credit on the total contract price to the Claimants in the amount of \$225.00 to address the damage. As a result, the total balance due to the Respondent under the contract was \$8,435.00.

12. After all work was performed, the Respondent was paid in full by the Claimants in the amount of \$8,435.00.

13. The ceramic tile installed was not floor tile but was wall tile. Due to the characteristics of the tile, including having a smooth matte finish and being 6x6 inches in dimension, the tiles presented a substantial slip and fall risk to the Claimants. The use of a wall tile as a floor tile caused the floor to flex with weight, resulting in the tile grouting breaking.

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<sup>5</sup> The contract also required the Respondent to perform other work, however, none of the other work is a part of the Claimants' claim against the Fund. For this reason, my findings of facts and discussion only address the work performed to install the new floor.

14. The contract is silent on any work required regarding the heat convectors. During the installation of the floor tiles, the Respondent was required to remove two heat convector covers. The heat convectors were originally installed in the Claimants' home in 1963. The heat convector covers have two metal end pieces which snap onto a long metal center piece. When removing the convector covers, the Respondent dented and twisted the covers, which prevented the convector end caps from being able to snap back into place. In an attempt to connect these metal pieces the Respondent drilled holes into the end caps, which caused further damage to the convector covers.

15. After receiving the Claimants' complaint regarding the work performed, the Respondent's salesman went to the Claimants' home, observed the work performed, and agreed that the floor installation was terrible. The Respondent came back to the Claimants' home several times in an attempt to repair the work but failed to do so. Eventually, the Respondent stopped responding to the Claimants' requests to repair the work and closed the office space he operated.

16. On June 24, 2017, the Claimants contracted with Griffin's Flooring of America (Griffin's) to repair the tile floor. The total contract price was \$1,798.01.

17. Griffin's removed the ceramic tile and subfloor installed by the Respondent and installed a new plywood board subfloor over which a waterproof, slip-resistant linoleum floor was installed.

18. To repair or replace the damaged heat convectors, the Claimants attempted but could not locate replacement parts for the convector covers due to the age of the covers. As a result, the Claimants paid Vulcan Engineering and Manufacturing, Inc. (Vulcan) \$1,256.00 to remanufacture the metal convector covers.

19. The Claimants actual loss is \$3,054.01.

## DISCUSSION

The Claimants have the burden of proving the validity of their claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>6</sup> “[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 (3rd ed. 2000).

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); *see also* COMAR 09.08.03.03B(2) (“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.” *Id.* at § 8-401. For the following reasons, I find that the Claimants have proven an actual loss and are eligible for compensation from the Fund.

On August 26, 2015, the Respondent was a licensed home improvement contractor when his salesman, Dwayne Robinson, sold a home improvement contract to the Claimants. The uncontested evidence demonstrates that the Claimants sought to remodel a full bathroom in their home with safety features including a slip-resistant floor. Based on the advice of Mr. Robinson, the Claimants selected a Daltile 6x6 white matte ceramic tile for the floor. However, the tile selected was not a floor tile but was a wall tile. The Claimants brought several samples of the tile installed by the Respondent to the hearing. I did not admit the tile into evidence but had an opportunity to examine the tile. The Claimants both testified that the tile was very unsafe to walk on because its finish was smooth, which caused the tile to be slippery when wet. After

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<sup>6</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

examining the tile, I observed the smooth finish of the tile. Based on the characteristics of the tile, the Claimants' testimony regarding its risk to their safety when wet was credible. The Claimants also testified that because the tile was a wall tile it did not have the same strength as a floor tile and caused the tiled floor to have a lot of flex. As a result, the grouting used to install the tile cracked when walking on the tile.

The Claimants testified that they complained to the Respondent, through his salesman, Mr. Robinson, regarding the condition of the floor. They explained that Mr. Robinson came out to inspect the work and acknowledged that it was installed terribly. The Respondent attempted several times to have the work repaired but failed to correct the work. Eventually, the Respondent stopped responding to their calls and closed his business location.

I have no reason to question the credibility of the Claimants testimony regarding the issues they experienced with the floor installed by the Respondent. Additionally, the admission by Mr. Robinson that the floor was installed improperly corroborated the Claimants' complaint about the floor tile installation. Altogether, the floor installed by the Respondent, using a standard matte finished wall tile was inadequate to use as a slip-resistant floor tile.

On June 24, 2017, the Claimants contracted with Griffin's to replace the floor installed by the Respondent. The invoice entered into evidence from Griffin's indicates that Griffin's is a MHIC licensed contractor under registration number 125480. Griffin's removed the ceramic tile installed by the Respondent and installed a new subfloor and slip-resistant Rigidlock linoleum tile floor at a cost of \$1,798.01.

The Claimants also testified about damage caused to two heat convector covers. These heat convectors are located in the full bathroom remodeled by the Respondent. The Claimants explained that the convector cover has two metal end pieces which fit over and snap onto a metal center piece. A photograph entered into evidence shows the heat convectors are located just

above floor level and were required to be removed by the Respondent to create space to install the new floor. Another photograph showed that when the convector covers were removed the covers were dented and twisted. The Claimants testified that due to the damage the end caps would no longer snap back into place. The Claimants explained that the Respondent attempted to connect the end pieces onto the main convection piece by drilling holes into the end pieces. However, the attempt failed and caused more damage to the convection covers.

In an email from Mr. Wickline, Director of Operations, Flooring America, to the MHIC, Mr. Wickline agreed that the convector covers required repair but all that was needed was to patch two holes on the end caps and that the Respondent already provided a credit to the Claimants in the amount of \$225.00 for this issue. The Claimants disagreed with Mr. Wickline's position as to the reason the Respondent provided a \$225.00 credit toward the contract price. In support of their position, the Claimants presented a check paid to another individual, Kathryn Griffin, in the amount of \$225.00, to repair a large scratch caused by the Respondent to fruitwood paneling in the full bathroom. The Claimants further explained that the Respondent provided a credit toward the total contract price in the amount of \$225.00 to reimburse the Claimants' cost of repairing the paneling. The Claimants also entered into evidence an exhibit, described as an Acknowledgment from the Respondent, which contains the reference of \$225.00 and indicates that after a payment of \$4,330.00 and a payment of \$4,105.00, for a total amount of \$8,435.00, the contract was paid in full. The difference between the original contract price of \$8,660.00 and \$8,435.00, the amount paid by the Claimants, is \$225.00. As a result, \$8,435.00 represents the adjusted amount of the original contract price. Additionally, the Claimants testimony regarding the \$225.00 established that the credit provided for the total contract price was not for the damage caused to the convection covers but for the damage caused to the paneling.

Based on the evidence presented, I am persuaded that the Respondent performed an inadequate or unworkmanlike home improvement when he removed and damaged the convector covers while installing the floor. Although removing the convection covers was not expressly addressed by the contract, the Respondent was required to remove the convection covers in order to install the Claimants' new floor. In the process of removing the convection covers, the Claimants' photographic evidence demonstrated that covers were bent and twisted. The Claimants' testimony that the damage caused by the Respondent prevented the convection covers from being reassembled was credible because the Respondent attempted to fix that issue by drilling holes into the end caps in order to reconnect the end caps to the convection cover center piece, which did not work and which caused more damage to the convection covers.

Because the convection covers were originally installed in the Claimants' home in 1963, they could not find comparable replacement parts for the convection covers. As a result, the Claimants paid Vulcan to remanufacture the two convection covers at a cost of \$1,256.00.

Having found that the Respondent performed an inadequate or unworkmanlike home improvement when he installed the Claimants' new floor in their full bathroom, including the damage caused to the heat convection covers, I find that the Claimants have sustained an actual loss which is compensable by the Fund. I note that that Ms. Hendler, the Assistant Attorney General representing the Fund, had an opportunity to cross examine the Claimants regarding their claim against the Fund and she did not dispute that the Claimants are entitled to a reimbursement from the Fund for acts or omissions of the Respondent when performing the home improvement contract. Ms. Hendler also recommended an award in the amount of \$3,054.01 as representing the amount of the Claimants' actual loss.

Having found that the Claimants are entitled to compensation from the Fund for the actual loss sustained when the Respondent inadequately or in an unworkmanlike manner

installed the Claimants' bathroom floor and removed the convection covers, I now must address what is the amount of the actual loss. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest.

COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

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).

Without dispute, the Claimants contracted with Griffin's to repair the tile floor at a cost of \$1,798.01. Additionally, the Claimants paid Vulcan \$1,256.00 to remanufacture the convection covers. Using the above formula, the actual loss suffered by the Claimant is calculated as follows:

Amount paid by the Claimant to the Respondent:	\$ 8,435.00
Cost to replace the inadequate work:	+\$ 1,798.01
Cost to repair the convection covers:	<u>+\$ 1,256.00</u>
	\$11,489.01
Less adjusted original contract price:	<u>-\$ 8,435.00</u>
Actual Loss:	\$ 3,054.01

I therefore conclude that the Claimants actual loss is \$3,054.01. *Id.* at § 8-405(a).



**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimants have sustained an actual and compensable loss as a result of the Respondent's acts and omissions. I further conclude that the amount of the actual and compensable loss is \$3,054.01. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).

**RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,054.01; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>7</sup> and

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

September 26, 2018  
Date Proposed Decision Issued

  
Daniel Andrews  
Administrative Law Judge

DA/da  
#174921

<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 19<sup>th</sup> day of November, 2018, 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.***

***Jeffrey Ross***

***Jeffrey Ross  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**