

**IN THE MATTER OF THE CLAIM  
OF GERALDINE ROSS**

**\* MARYLAND HOME IMPROVEMENT  
COMMISSION**

**AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS  
MICHAEL MOSLEH t/a  
UNITED CARPET, FLOORZ,  
KITCHEN & BATH**

**\* MHIC CASE NO. 18(05)707  
\* OAH CASE NO. LABOR-HIC-02-19-  
16984**

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on August 5, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on July 29, 2019 concluding that the homeowner, Geraldine Ross (“Claimant”) failed to prove that she sustained an actual loss as a result of the acts or omissions of Michael Mosleh t/a United Carpet, Floorz, Kitchen & Bath (“Contractor”). *ALJ Proposed Decision* p. 12. In a Proposed Order dated January 22, 2020, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions of the MHIC Proposed Order.

On July 16, 2020, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. Both the Claimant and the Contractor participated without counsel. Assistant Attorney General Shara Hendler appeared at the exceptions hearing to present evidence on behalf of the Guaranty Fund. The following preliminary exhibits were offered by AAG Hendler and admitted into evidence at the exceptions hearing: 1) December 18, 2019 transmittal letter, OAH Proposed Decision and Proposed Order; 2) January 22, 2020 transmittal letter, OAH Proposed Decision and Proposed Order; 3) Claimant’s exceptions; 4) February 13, 2020 hearing notice; 5) May 15, 2020 hearing notice; 6) Mosleh remote hearing consent; and 7)



Ross remote hearing consent. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Claimant sought to introduce new evidence but she failed timely to submit a request to introduce new evidence before the hearing and failed to demonstrate that the document she wanted in evidence, pages from her 2015 calendar, was not and could not have been discovered before the August 5, 2019 OAH hearing. Therefore, the Panel's review of the record was limited to the preliminary exhibits offered by AAG Hendler at the exceptions hearing, the OAH Proposed Decision and the exhibits introduced into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

In her written exceptions and during her testimony before the Panel, the Claimant listed her disagreements with the ALJ's findings of fact and, without reference to the record, made factual arguments in support of her claim. The Claimant argued, in essence, that the apparent contract between her and the Contractor was not a contract and that the apparent deposit she paid to the Contractor when she executed the apparent contract was not a deposit. To the extent the Claimant's factual arguments on exception are relevant, and assuming, without deciding, that they are based on evidence in the record, the Commission finds them insufficient to demonstrate factual error in the ALJ's findings of fact or legal error in the ALJ's conclusions of law.

The exhibits before the ALJ clearly support the ALJ's findings that the Claimant entered into a contract with the Contractor on January 30, 2015 for the remodeling of her kitchen, including the purchase and installation of made-to-order cabinets (OAH Claimant's Exhibit 2), that the contract provided that orders for made-to-order materials could only be cancelled by submitting written cancellation notice by midnight on the third day following the execution of the contract (OAH Claimant's Exhibit 2), and that the Claimant did not timely submit a written cancellation notice to the Contractor.



The Commission agrees with the ALJ's finding that the \$12,000 payment the Claimant made to the Contractor when she executed the contract on January 30, 2015 constituted a deposit. The Commission, like the ALJ, does not find the Claimant's assertion that she gave the Contractor \$12,000 of hers to hold so that she would not spend it elsewhere to be credible. There is no documentary evidence corroborating the Claimant's testimony on this issue, and the Commission deems the fact that the Claimant made the payment to the Contractor at the time she executed the contract to corroborate the Contractor's assertion that it was a deposit.

Accordingly, the Commission holds that the Claimant failed to prove that she suffered an actual loss as a result of the acts or omissions of the Contractor and is not entitled to an award from the Guaranty Fund.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 27<sup>th</sup> day of July 2020, **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**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant claim against the Maryland Home Improvement Guaranty Fund is denied;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and



F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

**Joseph Tunney**  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**





IN THE MATTER OF THE CLAIM	*	BEFORE JENNIFER A. NAPPIER
OF GERALDINE ROSS,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: LABOR-HIC-02-19-16984
FOR THE ALLEGED ACTS OR	*	MHIC No.: 18 (05) 707
OMISSIONS OF MICHAEL MOSLEH,	*	
T/A UNITED CARPET, FLOORZ,	*	
KITCHEN & BATH	*	
RESPONDENT	*	

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On January 20, 2018, Geraldine Ross (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Michael Mosleh, trading as United Carpet, Floorz, Kitchen & Bath (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On May 30, 2019 the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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<sup>1</sup> Unless otherwise indicated, all citations to the Business Regulation article of the Annotated Code of Maryland are to the 2015 Replacement Volume.

I held a hearing on August 5, 2019 at the Charles County Public Library in LaPlata, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund. The Claimant represented herself. The Respondent represented himself.

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. 2019); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### ISSUE

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

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on the Claimant's behalf<sup>3</sup>:

- CL Ex. 1        Emails between the Claimant and the Respondent, August 1, 2016 to August 31, 2016
- CL Ex. 2        Contract, January 30, 2015; Respondent's business card
- CL Ex. 3        Affidavit Judgment, Civil Case No.: 0402-0000924-2017, dated May 10, 2019
- CL Ex. 4        SunTrust Account Statement, February 18, 2015

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

- Resp. Ex. 1<sup>4</sup>     United Kitchen & Bath estimate sheet, January 29, 2015

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<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>3</sup> The Claimant also offered Claimant's Exhibit 5 (July 24, 2017 letter from Wells Fargo to James J. Gorney, Esq.) and Claimant's Exhibit 6 (a March 9, 2017 letter from James J. Gorney, Esq. to the Claimant), which were not admitted.

<sup>4</sup> Respondent's Exhibit 1 was also marked as Guarantee Fund Exhibit 5. However, the Fund did not offer the exhibit.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1       Hearing Order, May 24, 2019
- GF Ex. 2       Notice of Hearing (Corrected Copy), August 1, 2019; Notice of Hearing, July 3, 2019; Notice of Hearing, June 19, 2019
- GF Ex. 3       Home Improvement Claim Form, January 28, 2018; Letter from MHIC Chairman to the Respondent, January 30, 2018
- GF Ex. 4       Department of Labor I.D. Registration, July 2, 2019; Department of Labor Occupational/Professional License History, July 2, 2019

Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

The Fund did not present any witnesses.

**PROPOSED FINDINGS OF FACT**

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

1.       At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC registration number 88906.
2.       At all relevant times, the Claimant was the owner of a home located on Liverpool Point Road in Nanjemoy, Maryland, which was her personal residence. She owns no other residential properties in Maryland.
3.       The Claimant is not an employee, officer, or partner of the Respondent. Nor is she related related to any of the Respondent's employees, officers, or partners by blood or marriage.
4.       On a date prior to January 29, 2015, the Respondent's salesman, Hessam<sup>5</sup> designed a new kitchen layout for the Claimant, which the Claimant approved.

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<sup>5</sup> Hessam was only identified by his first name.

5. On January 29, 2015, the Claimant visited the Respondent's showroom and met with Hessam. Hessam provided the Claimant with an estimate typed on a proposal sheet, including price quotes for different variations of cabinets, countertops, flooring, and lighting.

6. The Claimant returned to the showroom on January 30, 2015. After speaking with Hessam, they signed a contract for a kitchen remodel (Contract).

7. Hessam noted on the January 30, 2015 Contract "Installation Kitchen Cabinets & Floors based on approved design." The Contract provided for the following:

- The installation of Forevermark SB signature brown and SL signature pearl cabinets, 36" and 42" high
- Sita 6" x 24" White Ancient Panaria porcelain floor tile
- Cambria Windermere Quartz countertops and Laneshaw and pink
- Recess lights and hanging lights
- Installation of customer's appliances, except the gas countertop
- Take up & haul away old materials

(CL Ex. 2.)

8. The industry standard size for cabinets is 30 inches. 36-inch and 42-inch cabinets are custom made.

9. The Contract provides that "in as much as this order is made to special measurements & order, this invoice is not subject to cancellation. A 35% restocking fee may apply for any material ordered for the customer with manager approval. Merchandise held longer than 30 days will incur a minimum \$100/mo. storage fee. All sales final, no refund....You the Buyer may cancel this transaction in writing at any time prior to midnight of the third business day after execution of this contract." (CL Ex. 2.)

10. The back of the Contract lists "Installation Tips and Guidelines." The guidelines include "Cabinet orders will take at minimum 8 to 12 weeks."

11. The Contract does not contain an arbitration clause.

12. The original agreed-upon Contract price was \$30,000.00.

13. On January 30, 2015, the Claimant paid the Respondent a \$12,000.00 deposit.
14. Shortly after January 30, 2015 the Respondent ordered the custom made cabinets, flooring, quartz countertop slabs, and other materials needed for the kitchen remodel. The total price the Respondent paid for the materials exceeded \$12,000.00.
15. The price that the Claimant was to pay for the custom cabinets exceeded \$12,000.00.
16. On a date after February 4, 2015, the Claimant came into the showroom and told Hessam that she could not go forward with the kitchen remodel because she needed to sell her home for financial reasons. Hessam told the Claimant that he would have to speak with the Respondent about the matter.
17. Between February 2015 and August 2016, the Claimant and Respondent discussed the cancelled kitchen remodel job by phone and email. The Respondent explained to the Claimant how his business worked and that materials were ordered when customers made their deposits.
18. The Respondent met with the Claimant about cancelled the kitchen remodel job once, in early August 2016. During this meeting, they discussed the possibility of the cabinets being delivered to the Claimant's home. However, they never reached an agreement on the subject.
19. The Respondent did not perform any of the work provided for in the January 30, 2015 Contract. He did not refund the Claimant any portion of the \$12,000.00 deposit.

## DISCUSSION

### LEGAL FRAMEWORK

A claimant 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 loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401. “For purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists.” Md. Code Ann., Bus. Reg. § 8-405(b).

To recover from the Fund, a claimant may not (i) be related to the contractor by marriage; (ii) be an immediate family member, employee, officer, or partner of the contractor; or (iii) be an immediate relative of an employee, officer, or partner of the contractor.<sup>6</sup> Md. Code Ann., Bus. Reg. § 8-405(f)(1). Further, the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney’s fees, court costs, or interest, and may not compensate a claimant for more than was paid to the original contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(1).

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); Md. Code Ann., State Gov’t §10-217 (2014); COMAR 09.08.03.03A(3). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so,” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

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<sup>6</sup> None of these impediments are present in this case.

For the following reasons, I find that the Claimant has not proven eligibility for compensation.

### **THE MERITS OF THIS CASE**

#### ***The Contract***

The Claimant disputes whether she actually entered into a contract with the Respondent and alleges the document she signed on January 30, 2015 was not a contract. Instead, she asserts that the document was only intended to be a list of tentative selections, so that she would not become confused. She also testified that she decided to pay the \$12,000.00 deposit because she did not trust herself to keep the money in her bank account, and on that same date, she took home more cabinet samples to consider. The Claimant asserts that she had no idea the Respondent would move forward with ordering any of the listed items after she signed the January 30, 2015 document and paid the deposit.

On cross-examination by the Fund, when asked if she was clear with the salesperson that the items listed on the January 30, 2015 document were only tentative selections, the Claimant responded "I can't state that. Because I just wanted them written down...." When first asked how the salesperson would have known that she was not intending to move forward with those selections at that time, the Claimant answered "he would not have known," and then added "well I said to him, please write down the things that I've picked so far so that I, you know, don't get confused." Counsel for the Fund further questioned the Claimant as to how the salesperson would have known that he was not supposed to move forward and order the items listed on the January 30, 2015 document, and the Claimant stated "I suspect he would have told me that ... something was gonna be ordered, because I was told when I came back to say I can't do this, I have to sell the house, I was told the only thing that was ordered was the cabinets." However, the Claimant asserted that she had not made a definite selection on the cabinets at that time,

which was why she had taken the other samples home on January 30, 2015. She then testified that she made it clear to the salesperson that she was not ready to make her final selections—they had a conversation where she said that she would think about which cabinets she wanted, but told him that she wanted to make the deposit because she had to get the money out of her checking account. According to the Claimant, she also told the salesperson that she needed a list of the items she had already selected and he then said “I’m going to tell you what the whole thing is gonna cost and then we’ll put the deposit down.”

The Respondent testified that the January 30, 2015 document is a “service agreement” and was always intended to be so. He pointed out that there are several parts of the document that explain what the company’s position is as to the customer’s project and custom orders. He also noted that his salespeople would not use a service agreement form, which contains a sequential invoice number, unless the parties were ready to move forward with the project. The Respondent explained that if a customer has not settled on his or her selections, there is a separate proposal sheet that the salesperson uses to write down the customer’s options.

I find that the document the Claimant signed on January 30, 2015 was, in fact, a contract to have the Claimant’s kitchen remodeled. (CL Ex. 2.) The document is clear and unambiguous. It references that it is a “contract” in six different places, including a statement written just above the Claimant’s signature which reads “ACCEPTED AND AGREED, SUBJECT TO TERMS AND CONDITIONS SET FORTH ON ABOVE CONTRACT.” (CL Ex. 2, emphasis in original.) The Contract provides for all the elements necessary for a kitchen remodel and includes custom-sized cabinets. In addition, the Contract states “all sales are final, no refund,” and informs the customer that “you the buyer may cancel this transaction in writing at any time prior to midnight of the third business day after execution of this contract.” (*Id.*) It further states “in as much as this order is made to special measurements & order, this invoice is not subject to



cancellation.” (*Id.*, emphasis added.) The back of the Contract also informs the customer that cabinet orders will take eight to twelve weeks.

The Respondent’s company has specific forms (the proposal and estimate sheets) for the purpose of documenting a customer’s potential selections when the customer is not ready to make a final decision. (*See* Resp. Ex. 1.) I find that it is more likely than not that the Respondent’s salesperson would have used one of those forms if the Claimant had told him that she was not ready to make her final decision. While I do not find that the Claimant was intentionally misleading in her testimony, I note that she was unsure of a number of the details surrounding her interaction with the Respondent and his salesperson. The Claimant also admitted that the Contract was signed during an extremely stressful period when her husband had very recently passed away and that she was not sure that she should have been making decisions at that time. I also note the January 29, 2015 estimate sheet, which contains pricing for more than one style of cabinet, countertop, floor tile, and lighting, is more akin to the type of document which the Claimant believes she signed just one day later, on January 30, 2015. (Resp. Ex. 1.) In addition, as previously discussed, the Claimant testified that the salesperson told her that he would give her the total cost of the kitchen remodel before she made her deposit. It is undisputed that the various cabinet selections were priced differently (*see* Resp. Ex. 1.), therefore the salesperson could not have given the Claimant figure for what “the whole thing” would cost without the Claimant having told him which items she wished to have installed.

***The Claimant is Not Eligible for Compensation from the Fund***

It is undisputed that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. It is also undisputed that the Respondent did not perform any work under the Contract. As previously discussed, a claimant may recover compensation from the Fund for the “costs of restoration, repair, replacement, or completion that

arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401; Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2). In this case, the Claimant essentially argues that the Respondent abandoned the Contract after receiving her \$12,000.00 deposit, leaving her with an incomplete home improvement. The Fund did not take a position as to the validity of the Claimant’s Claim.

I find that the Respondent’s failure to perform any work under the Contract does not amount to “incomplete work” or abandonment of the Contract. Rather, when the Claimant informed the Respondent after February 4, 2015 that she could no longer go forward with the kitchen remodel she prevented the Respondent from performing any work under the Contract. Under the Contract, the Claimant was permitted to cancel the Contract “at any time prior to midnight of the third business day after the date of execution of the contract,” or Wednesday, February 4, 2015.<sup>7</sup> (CL Ex. 2.) The Contract is clear that after February 4, 2015, it was not subject to cancellation, all sales were final, and no refunds would be permitted. I note that the Claimant was unclear as to the exact date that she informed the salesperson that she could not move forward with the kitchen remodel—at several points in her testimony she stated that this occurred around February 15, 2015, but then later stated that she thought it must have been a bit earlier than February 15<sup>th</sup>, but sometime within two weeks of having signed the Contract. The Claimant has never alleged that she attempted to cancel the Contract prior to February 5, 2015 and she made no such assertion during the hearing. Therefore, I find that it is more likely than not that the Claimant sought to cancel the Contract sometime after February 4, 2015. The Claimant never permitted the Respondent to move forward with the kitchen model and did not pay the remaining \$18,000.00 balance, therefore breaching the Contract.

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<sup>7</sup> January 30, 2015 was a Friday.

The Respondent testified that the Claimant's deposit was used towards purchasing the materials for the Claimant's kitchen remodel. He explained that it is standard practice in his business to order all of the materials after receiving the deposit and then schedule the start of the job when all of the materials have been received. The Contract only provides the total cost of \$30,000.00 for the kitchen remodel, and does not itemize the cost of materials and labor. (CL Ex. 2.) The Claimant offered no evidence as to how much she expected to pay for any of the materials, or what the going rate for the materials is through other retailers. On the other hand, while the Respondent was unable to provide an exact figure, he credibly testified that the cost of all of the materials he ordered exceeded \$12,000.00. (*See* Resp. Ex. 1.) He further indicated that the cabinets alone would have cost the Claimant \$12,000.00. (*See id.*) The Respondent also submitted as evidence the January 29, 2015 estimate sheet, which include the cost for two other styles of cabinets the Claimant had previously considered—those cabinets, which also measured 36 and 42 inches, were priced at \$12,561.65 and \$13,780.00. The Respondent explained that it was unlikely that he could have sold the cabinets to another customer because the cabinets were custom built for the Claimant's home. He also explained that while it may have been easier to sell the other materials, such as tile and granite, which were ordered for the Claimant's kitchen remodel, this would be dependent on finding a customer who desired the same materials.

I find that any loss suffered by the Claimant was not due to an act, omission, or misconduct by the Respondent. Therefore, although the Claimant might be entitled to recovery under another body of law, I find that she has failed to establish that she is eligible for compensation from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(2).

**RECOMMENDED ORDER**

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

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

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

November 4, 2019  
Date Decision Issued

JAN/emh  
#182660

  
**CONFIDENTIAL**  
Jennifer A. Nappier  
Administrative Law Judge  


PROPOSED ORDER

*WHEREFORE, this 22<sup>nd</sup> day of January, 2020, 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.*

*Lawrence Helminiak*

*Lawrence Helminiak*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**

