

**IN THE MATTER OF THE CLAIM
OF JACQUELINE ARNOLD,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF WILLIE LEE, JR.,
T/A BUILDING TRADES
SPECIALISTS, INC.,**

*** BEFORE SYEETAH HAMPTON-EL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-19-27604
* MHIC No.: 19 (05) 189**

RESPONDENT

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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 December 13, 2018, Jacqueline Arnold (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,219.00 in actual losses allegedly suffered as a result of a home improvement contract with Willie Lee, Jr., trading as Building Trades Specialists, LLC (Respondent). Md. Code Ann., Bus.

Reg. §§ 8-401 through 8-411 (2015). On August 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on July 9, 2020 at the OAH Headquarters located in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Shari Hendler, Assistant Attorney General, Department of Labor (Department),¹ 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. 2020); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

Clmt. Ex. 1 – A Binder with the following attachments:

- Table of Contents
- Tab 1 –
 - MHIC Claim Form, dated December 13, 2018
 - Email from Kiroma Contracting, Inc. (Kiroma) to the Claimant, dated December 6, 2018
 - Estimate from Kiroma to the Claimant, dated October 23, 2018
 - MHIC Complaint Form, undated
 - Contract between the Respondent and the Claimant, dated July 28, 2017

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

- Chart of items purchased by the Claimant versus amounts paid to the Respondent, undated
- Five color pictures of tile, undated
- Tab 2
 - Floor Inspection Report, pictures, and receipt, dated October 6, 2017
- Tab 3
 - Copy of returned Certified Mail envelope from the Claimant to the Respondent, dated October 23, 2017
 - United States Postal Service (USPS) Tracking, dated October 28, 2017 through September 29, 2017
 - Email from the Claimant to the Respondent, dated October 2, 2017
 - Letter from the Claimant to the Respondent, dated September 29, 2017
- Tab 4
 - Text messages from the Respondent, dated August 18, 2017 through September 27, 2017
 - Chart of items purchased by the Claimant versus amounts paid to the Respondent, undated
 - Receipts from the Home Depot, Floor and Décor, and Home Goods, Costco, various dates
 - PenFed Bank Statements, dated August and September 2017
 - Marriott Rewards Credit Card Statement, dated August 11, 2017 through August 31, 2017
 - Picture of Wood Vanity, undated
 - European Granite Estimate, dated October 26, 2017
 - Floor and Décor drawing and quote, dated October 2, 2017
 - Emails between the Claimant and the Respondent, dated September 26, 2017
 - Respondent Change Order, dated February 15, 2020
- Tab 5
 - Better Business Bureau (BBB) Consumer Complaint Hub, dated October 28, 2017
 - Message from the Business, undated
 - BBB Complaint, undated
 - Letter from the Claimant to the Respondent, dated September 16, 2017
 - Rejection of the Business Response, dated December 9, 2017
 - Floor and Décor Design quote, dated August 7, 2017
 - Receipt from Floor and Décor, dated September 19, 2017
- Tab 6
 - Before Bathroom Picture, undated
 - Twenty-one color pictures of the finished bathroom, undated

Clmt. Ex. 2 – Mileage costs, undated and the following attachments:

- BB&T Bank Loan Statement, dated April 22, 2019
- Copy of Business Cards from various businesses, undated
- USPS Delivery Slip, undated
- Gragan and Sons Glass Co., Inc., (Gragan) Invoice, dated August 31, 2017

- Copy of a Business Card and Inspector Identification Card for Allied Flooring Services, LLC., undated

Clmt. Ex. 3 – Not Admitted²

Clmt. Ex. 4 – Color Pictures of Finished Bathroom, undated and the following attachment:

- Proposal from Kiroma, dated February 17, 2020

Clmt. Ex. 5 – Copies of text messages from the Respondent, dated September 21, 2017 and September 27, 2020.

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

Resp. Ex. 1 – Handwritten list of repairs, undated

Resp. Ex. 2 – Letter from the Claimant to the Respondent, undated

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Hearing Order, dated August 6, 2019

Fund Ex. 2 – Notices of Hearing, dated February 21, 2020 and December 9, 2019

Fund Ex. 3 – Letter from LABOR to the Respondent, dated January 9, 2019 and the following attachment: MHIC Claim filed by the Claimant, dated December 13, 2018

Fund Ex. 4 – Licensing Information for the Respondent, dated January 2, 2020

Testimony

The Claimant testified and did not present any other witnesses.

The Respondent testified and did not present any other witnesses.

The Fund did not present any witnesses.

² I did not admit this exhibit. In writing this decision, I did not review or consider this item.

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 license number 4989224. The license expired on April 4, 2019.

2. On July 25, 2017, the Claimant met the Respondent at Floor and Décor located in Woodbridge, Virginia to select tiles for the bathroom.

3. On August 7, 2017, the Claimant met the Respondent and purchased \$1,585.10 in materials from Floor and Décor. The Claimant also made changes to the proposal regarding the color of the tile, fixtures, and vanity.

4. On August 8, 2017, the Claimant and the Respondent entered into a contract to remodel and update the master bathroom at her residence located in Clinton, Maryland. (Contract). The Respondent agreed to remodel the master bedroom, perform electrical work, install porcelain tiles, and install a new marble threshold at bathroom entry. The Contract price was \$12,235.00.

5. The Contract stated that the remodel would take seventeen days to complete. The Contract identified all materials that would be purchased after consultation and with approval of the Claimant. The Contract identified customer selected items including brushed nickel Moen style bathroom accessories, marble tiles in the shower, almond porcelain tiles on the floor, a marble threshold, and a 72-inch double vanity.

6. The Contract payment schedule required a deposit of \$2,400.00 and three performance payments of \$2,400.00 and a final performance payment of \$1,200.00 as the

Respondent completed portions of the Contract. The remaining \$1,435.00 was due upon completion and final walk through.

7. Between August 7, 2017 and August 31, 2017, the Claimant paid the Respondent \$11,035.00 in the following payments:

- Deposit paid on August 7, 2017 - \$2,400.00
- First Performance payment on August 10, 2017 - \$2,400.00
- Second Performance payment on August 11, 2017 - \$2,400.00
- Third Performance payment on August 22, 2017 - \$2,400.00
- Payment on August 31, 2017 - \$1,435.00

8. On September 4, 2017, the Claimant opened the gray and white double vanity sink she ordered from Wayfair to discover it was damaged. The double vanity had to be returned.

9. The Claimant purchased a double vanity from Costco that was not installed by the Respondent.

10. On September 7, 2017, a \$500.00 deposit was paid to Grgan to measure the shower and install shower glass.

11. On September 16, 2017, the Respondent repaired three tiles and shimmed the toilet or used plastic or porcelain to fill the gap caused when the toilet is not flat to the floor.

12. On September 21, 2017, the Respondent took pictures of lippage and sent the pictures to the Claimant. The Respondent explained lippage is not a defect in tiling but is caused by heat issues with the tile.

13. On September 25, 2017, the Claimant sent the Respondent a certified letter regarding the problems with the bathroom remodel; however, the USPS returned the letter to the Claimant.

14. The Claimant identified the Contract problems as:

- Incorrect piping for a new double vanity
- The shower flooring arrived without the consent or selection of the Claimant
- The Respondent used a yellow threshold in a white doorway
- The glass tiles were discolored and crooked
- The Respondent did not properly grout the flooring
- The Respondent installed the toilet and it was crooked
- Tub fixtures installed without consulting the Claimant. Tub fixtures were to be installed on the side not at the front of the tub.
- The light fixtures were installed before the vanity installation and the light fixtures were off center
- The Respondent did not install the double vanity.

15. The Contract did not provide allowances for painting of the bathroom, towel bars, or other accessories. The Respondent paid for the extra items. The Respondent created a shower niche at no cost to the Claimant.

16. On September 26, 2017, the Claimant sent a change order to the Respondent that totaled \$1,195.00. The change order included the following:

- Installation of cement shower pan
- Installation of CPVC piping to replace polybutylene piping
- Remove almond threshold and replace with white threshold

- Relocate proposed mirror location from one mirror to two mirrors and back to one mirror
- Replace shower trim and tub filler with chrome
- Replace second kitchen chair base (not in Contract)
- Replace two tiles on bathroom floor
- Replace ventilation fan
- Install shower light
- Install vanity
- Touch paint areas in bathroom
- Install single vanity mirror
- Install shower enclosure
- Re-grout tiles in shower and around tub

17. On September 27, 2017, the Respondent sent the Claimant a text message refusing to return to the finish the work without receiving payment for the overages. (Clmt. Ex. 5).

18. On October 6, 2017, Gragan came to the Claimant's home to install the glass shower door.

19. On October 6, 2017, the Claimant hired Arnold Inspection at a cost of \$275.00 to inspect the floor installation. The Claimant learned the Respondent installed the tile flooring incorrectly.

20. On October 11, 2017, the Claimant filed a complaint against the Respondent with the BBB.

21. On October 19, 2017, the Respondent agreed to participate in mediation with BBB and the Claimant.
22. On October 26, 2017, the Claimant obtained an estimate for \$11,400.00 from European Granite to replace the bathroom floor, wall, and shower tiles.
23. The Respondent did not install the double vanity purchased from Wayfair because the waste lines were behind the drawers, preventing the drawers from closing. To fix the waste line location, the Contract permitted rough-in or moving the plumbing once and did not permit three different vanities and movement of plumbing each time. The Claimant would not pay for the Respondent to move the plumbing.
24. The Respondent installed the American Standard toilet and Moen faucets selected by the Claimant.
25. The Respondent relocated the lights and mirrors.
26. The Respondent agreed to fix the crooked tile at no cost.
27. The Respondent agreed to fix issues identified, but the Claimant never permitted a final walkthrough or permitted the Respondent to create a punch list of outstanding issues.
28. On October 23, 2018, the Claimant contracted with Kiroma to complete a total master bathroom renovation for \$19,690.00. The Claimant took out a \$25,000.00 loan with BB&T to pay for the Kiroma renovation.
29. Kiroma completed the renovation and reused the following items provided by the Claimant: two mirrors, vanity, two light fixtures, toilet, faucets, and granite countertop.
30. On December 13, 2018, the Claimant filed a claim with the MHIC seeking \$20,219.00.

31. On February 17, 2020, Kiroma provided the Claimant with a letter detailing the deficiencies and what is required to correct them. The list included patch and paint, relocate GFCI outlet to proper height, repair hole cause by shower niche, install vanity mirrors and lights, replace leaking toilet, enlarge shower and provide glass enclosure, install vanity, granite top, sinks and faucets, correct the vanity plumbing, install baseboards, secure tub, and fix tile flooring. (Clmt. Ex. 4).

DISCUSSION

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) (2015); Md. Code Ann., State Gov't §10-217 (2014); 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)).

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)³; *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

³ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

The Claimant testified she contracted with the Respondent to remodel her master bathroom and create her "dream spa bathroom." She stated the Contract included a complete gutting of the master bathroom. She testified she traveled with her husband from their home in Clinton, Maryland to Floor and Décor located in Woodbridge, Virginia to look at and select tile for the bathroom. She testified she decided on the Respondent because he previously completed work for her.

On August 7, 2017, the Claimant testified she and her husband met the Respondent at Floor and Décor to purchase materials. While at Floor and Décor, she described arguing with the Respondent about grout color, chrome versus brushed nickel, and glass tile versus marble tile. She signed the Contract on August 8, 2017 and the Respondent agreed to remodel the master bedroom. She understood the Contract allowed her to purchase materials and required her approval before the Respondent purchased materials.

She explained she considered purchasing a double vanity from Costco but did not because the Respondent told her it was too heavy. She decided on a double vanity from Wayfair. In September, the Claimant received the double vanity from Wayfair. To her surprise, she discovered it was damaged.

She testified the Respondent agreed to work around a bathroom piping issue and did not discuss it costing additional money. She explained the Respondent selected and ordered shower flooring without her consent. He installed a yellow threshold in a white doorway, although the Claimant purchased a white threshold from Floor and Décor. She noticed the glass tiles were discolored and after installing the floor she cut her foot on some uneven grout. In addition, she said the toilet was installed crooked and not level to the floor. The Respondent also incorrectly installed the tub fixtures. He put them at the front of the tub instead of the middle as the

Claimant requested. She purchased two light fixtures and two mirrors, both of which the Respondent installed before receiving the double vanity. She testified the Respondent failed to tell her that Gragan planned to come on October 6, 2017 to install the shower door. She testified she paid the \$500.00 deposit since the Respondent never paid it.

As a result of the problems with the Respondent, the Claimant explained she entered into a new contract with Kiroma to redo and fix what the Respondent did not finish. In this new contract with Kiroma, the Claimant testified she reused some items she previously purchased such as the two mirrors and two light fixtures.

On cross examination, the Claimant acknowledged making changes to the proposal after August 7, 2017 to the tile, fixtures, vanity and the colors to be used. She agreed she signed the Contract on August 8, 2017 and agreed to chrome instead of brushed nickel.

The Claimant agreed she did not stop the Respondent from doing any work, but they had a disagreement about the amount the Respondent sought for a change order. She agreed she paid Kiroma \$19,690.00 to redo the master bathroom. She explained Kiroma reused some of the items she purchased, and they increased the size of the shower at no additional cost.

The Respondent testified before signing the Contract he had several conversations with the Claimant regarding the master bathroom remodel. Based on the Claimant's request, the Respondent stated they spoke often about the price. It was understood that the Respondent would install the supplies provided by the Claimant and the Claimant would pay for the installation. The Contract terms included an allowance or an amount the Claimant could spend on items. The Contract had an allowance for the initial demolition and initial roughing-in of plumbing for one double vanity. The Respondent explained the Contract did not have allowances for towel bars, accessories or a shower niche, and the Respondent paid for the items

or included them at no cost to the Claimant. The Contract did not permit multiple roughing-in for changes in the double vanity and the Claimant would have to pay the additional cost.

He testified he had never previously been to Floor and Décor located in Woodbridge, Virginia and normally used local vendors like Home Depot. Also, local vendors cut down on the delivery time. Once at Floor and Décor he explained the prices were expensive. He stated the installation of natural tiles or marble tile is more expensive than porcelain tiles. He stated the tiles were purchased and sat on the Claimant's porch for approximately three weeks.

He explained the remodel began with demolishing the old bathroom and reworking or roughing-in the plumbing. Additional work outside of the Contract included painting the bathroom due to a leak caused by a Solar company. He told the Claimant the bathroom could accommodate a 72-inch double vanity, and generally that left 18 inches from each edge of the sink for the waste lines. The Respondent suggested a double vanity from Ferguson and a granite countertop from another company, but the Claimant did not like the vanity. Instead, he explained the Claimant purchased a gray and white double vanity from Wayfair and the sink was off center. Specifically, the sink was 72 inches, but it did not have the 18 inches on each side because the sinks and faucets were too close. As a result, the waste lines or plumbing rough-in sat behind the drawers and the drawers could not fully close. He also noted the Wayfair vanity was broken and he denied agreeing to repair it. As a result of the vanity issue he had to relocate the lights and the mirrors. The Respondent stated he moved the mirrors three times due to issues with the selected double vanity.

The Contract identified specific items such as the American Standard Toilet, but the Claimant wanted a toilet of a higher grade. The Contract allowed for Moen faucets at a cost of \$195.00. The Respondent explained things were moving along fine until the Wayfair double

vanity arrived and the colors were different. The Respondent could not recall the issue with the Costco double vanity, but is certain it had nothing to do with the weight because he had four workers to lift and carry it. He also admitted the Costco double vanity would have fit in the allotted space.

As for the tile, the Respondent explained heating issues with the tile may cause lippage. He defined it as a small lift from the corner of the tile caused because tile dries from the center. He said lippage is not a defect but a condition. On September 16, 2017, the Respondent testified he met with the Claimant's husband. During the meeting he repaired three tiles and shimmed the toilet or used plastic or porcelain to fill the gap caused when the toilet is not flat to the floor. He also reviewed a list of repairs from the Claimant. He explained the grout color would lighten over time as it cures in three to four weeks. On September 21, 2017, after repairing the tiles, he took pictures of lippage and sent the pictures to the Claimant.

On cross examination he addressed other problems identified by the Claimant. He acknowledged the crooked tile and agreed to fix it at no cost. As for the crown molding the Respondent indicated the picture presented shows the molding was not caulked and not finished. He identified other areas not caulked or in need of finishing caulking. The Respondent explained the shower floor had a product on called "sure clean," that is used before the grout cures. He explained the Claimant never allowed him to return to the property to do a final cleaning or complete a punch list after a walkthrough.

He denied "twisting the Claimant's arm" regarding the colors. He had no problem returning to the property to fix items or make repairs, but he refused to once again rough-in the plumbing for free. He further explained that the Claimant denied installation of the glass shower.

Once he learned of the BBB complaint, the Respondent stated he agreed to participate in mediation. After approximately twenty years in business, the Respondent stated he has maintained a good rating on BBB, Angie's List and Home Advisor for approximately fourteen years. He explained he and the Claimant had an impasse over approximately \$1,100.00. He explained the Claimant owes him for the balance of the shower since it was not installed; although he built the shower space.

On cross examination he explained the work completed by Kiroma is mostly his work. He disputed the claim that Kiroma gutted the bathroom or enlarged the shower. From the pictures presented, he did not see the brushed nickel faucets and accessories. He acknowledged the rope design around the tub was not his design.

Based on the evidence presented, I find that the Claimant has met her burden to show she suffered an actual loss caused by the work of the Respondent. The Claimant and the Respondent disagreed from day one while looking at tile at Floor and Décor on August 7, 2017. They disagreed and argued before signing the Contract, so to see it end this way is not surprising. The Claimant wanted her "dream spa bathroom" and the Respondent agreed to install materials purchased by the Claimant.

This Contract derailed again in September 2017 when the double vanity from Wayfair arrived damaged. The Contract stated "install (1) new 72" customer selected vanity..." (Cl. Ex. 1). However, the Contract did not provide additional instructions regarding the 18-inches of space needed on each side for the waste lines and roughed-in plumbing. Therefore, the Claimant selected a double vanity that measured 72 inches, not concerned or even aware of the 18 inches needed on each side.

I believe the Respondent when he testified, he did not agree or offer to repair the Wayfair vanity. He clearly did not like the vanity because while it was 72 inches it did not have the required space on each end for waste lines and plumbing. Therefore, I have no reason to believe he would offer to fix something that he could not use.

The issues seemed to pile up after the Wayfair incident. I do not believe the testimony of the Claimant regarding the Costco double vanity because the evidence does not support that the Respondent was the only worker in the home. In contrast, I believe the testimony of the Respondent that he does not recall why he had a problem with the Costco vanity.

The Contract lists coloring such as satin nickel, almond, brushed nickel, marble threshold; however, it does not include the colors gray and white, which was the color of the Wayfair vanity. Regardless of the dispute, the Respondent and Claimant continued the Contract. There is no dispute that the Claimant paid the Respondent approximately \$11,000.00 in compliance with the Contract payment schedule.

Another Contract issue included the tile for the floor and the shower. Pursuant to the Contract, the Claimant wanted almond porcelain tile and there is no dispute that the Claimant purchased the tile and that the Respondent installed same. The Claimant hired a floor inspector who confirmed the Respondent improperly installed the floor tile. The finished pictures presented by the Claimant show a bathroom renovation completed by Kiroma that differed from the work performed by the Respondent. The Kiroma shower shows a light glass tile without a shower niche or a grab bar versus the shower installed by the Respondent that had tan tiles and a dark brown shower niche and a grab bar. The Kiroma tub had a light-colored tile versus the one installed by the Respondent that had tan and dark tiles installed. Both had the faucet installed at the front of the tub not on the side.

The Kiroma invoice noted a full demolition of the master bathroom, but the letter dated February 21, 2020 did not document the need for a full demo to correct the issues. In addition, the Claimant testified Kiroma enlarged the shower area initially created by the Respondent and she provided documents from Kiroma that support her testimony. Without specific measurements, it is unclear if Kiroma in fact enlarged the shower space; therefore, I do not find the Kiroma contract exceeded the Contract with the Respondent.

There is no dispute that the Claimant reused items initially purchased such as the faucets, mirrors, and accessories. Although the Claimant complained about the toilet used by the Respondent, she reused it in the Kiroma contract. Based on the evidence presented, the Claimant did not directly purchase the toilet as it was included in the Contract price.

The Claimant testified she hired Kiroma to finish the job the Respondent failed to finish; however, the evidence shows the Respondent completed most of the remodel but refused to return without payment for the overages including to once again rough-in the plumbing for another double vanity. The Contract clearly stated what was and was not included in the total cost and the first rough-in was included. Any additional cost would be addressed in a change order. The Claimant and Respondent executed a change order totaling \$1,195.00 to complete a list of items including another rough-in. In the change order, the Respondent also agreed to complete a list of finishing work and other repairs.

I find that the Claimant has met her burden to show that the Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Claimant hired the Respondent to redo a master bathroom that he started but did not complete. I find that both the Claimant and the Respondent provided credible testimony consistent with the evidence. There is no dispute that the Respondent did not complete the bathroom and that it was completed by a

new contractor, Kiroma. The evidence supports the Claimant's testimony that the Respondent refused to return without payment for the items listed in the change order and that the Claimant never told the Respondent he could not return. I find that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant and the license expired on April 4, 2019.

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

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimant has retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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).

The Claimant testified she is neither related to nor a business partner with the Respondent. In addition, she testified there are no other claims, including insurance claims,

involving the Contract performance. In this case, the Claimant paid \$11,035.00 to the Respondent for the Contract. The Respondent also charged an additional \$1,195.00 for a change order to the Contract. The Claimant hired Kiroma to redo the master bathroom renovation and paid \$19,690.00.

Amount paid under Original Contract: \$11,035.00

Amount of Change Order: + \$1,195.00

Amount paid to Kiroma: + \$19,690.00

Subtotal: \$31,920.00

Amount of Original Contract: - \$12,235.00

Total: \$17,295.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$17,295.00. The Claimant is not entitled to any amounts for mileage, postage, copies, or the cost to hire an inspector as the costs are consequential damages and not actual losses as defined by COMAR.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$17,295.00 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(3)(c). I further conclude that the Claimant is entitled to recover

that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$17,295.00 amount; 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;⁴ and

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

October 1, 2020
Date Decision Issued

SAH/kdp
188018

CONFIDENTIAL

By *Stacy Hampton EL*
Administrative Law Judge

1/g

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 13th day of November, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***