

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF VIRGILIO LOPES,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF ALFONSO DAVID</b></p> <p><b>LANDEO, T/A L &amp; L FLOOR AND</b></p> <p><b>INTERIOR SPECIALISTS, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE SUN E. CHOI,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-10989</b></p> <p><b>* MHIC No.: 20(75)824</b></p>
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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 March 7, 2022, Virgilio Lopes (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$16,682.00 for actual losses allegedly suffered as a result of a home improvement contract with Alfonso David Landeo, trading as L&L Floor Interior Specialists, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411

(2015).<sup>1</sup> On May 6, 2022, the MHIC issued a Hearing Order on the Claim. On May 11, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 1, 2022, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

### **ISSUES**

1. Is the Claim barred by the three-year statute of limitations?
2. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
3. Did the Claimant unreasonably reject good faith efforts by the Respondent to resolve the claim?
4. What is the amount of the compensable loss, if the Claimant is eligible for compensation from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Photographs of hardwood floors with circular marks, undated

Clmt. Ex. 2 - Text messages between Claimant and Respondent, various dates

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Clmt. Ex. 3 - Photographs of finished hardwood floors, undated

Clmt. Ex. 4 - USQ Home Improvement, LLC, (USQ) Estimate, August 8, 2018

Clmt. Ex. 5 - L&L Floor and Interior, LLC Estimate, July 17, 2018

Clmt. Ex. 6 - Home Improvement Contract between Claimant and Respondent, July 18, 2018

Clmt. Ex. 7 - Photographs of double drum sander, undated

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Letter from Steven C. Barnard, Fine Home Remodeling, August 1, 2022<sup>2</sup> with attachments:

- Text messages between Respondent and Steven C. Barnard
- Letter from Seven C. Barnard, Fine Home Remodeling, unsigned, August 1, 2022

Resp. Ex. 2 - Not admitted

Resp. Ex. 3 - Letter from Respondent's former attorney Suzanne L. Capriotti, LLC,<sup>3</sup> to David Dennis, Better Business Bureau (BBB), with attachments, September 19, 2018

- ex. 1 - Check from LCCI<sup>4</sup> Construction Management, LLC, to Respondent, in the amount of \$7,500.00, July 21, 2018, and Cashier's Check from Claimant for \$5,000.00, date illegible
- ex. 2 - Text messages and photograph of stain color between the parties, undated
- ex. 3 - Text message from Claimant to Respondent regarding color match, undated
- ex. 4 - Text message from Respondent, undated, and email from Claimant regarding circular marks, August 5, 2018
- ex. 5 - Photograph of hardwood floor without finish, undated, and photograph of hardwood floor with one coat of finish applied by Claimant, undated
- ex. 6 - Text message from Claimant to Respondent regarding test section, undated

Resp. Ex. 4 - Letter from Respondent's former attorney, Suzanne L. Capriotti, LLC, to MHIC regarding Claimant's Complaint, February 19, 2020, with attachments:

- ex. 1 - MHIC Order for Respondent to Respond, January 16, 2020

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<sup>2</sup> I left the record open until 4:30 p.m. on August 2, 2022, to allow the Respondent to produce either a signed copy of the letter or a text from Mr. Barnard acknowledging that the letter was his.

<sup>3</sup> The Respondent was not represented at this hearing.

<sup>4</sup> LCCI was not defined.

- ex. 2 – Home Improvement Contract between Claimant and Respondent, July 18, 2018, signed by the parties on July 20, 2018.
- ex. 3 – MHIC License for Respondent, expiration date July 7, 2021
- ex. 4 – Certificate of Liability Insurance, September 11, 2019
- ex. 5 – Check from LCCI Construction Management, LLC, for \$7,500.00, July 21, 2018, and Cashier’s Check from Claimant to Respondent for \$5,000.00, date illegible
- ex. 6 – Text messages and black and white photograph of stain color, undated
- ex. 7 – Text message from Claimant, undated
- ex. 8 – Text message from Respondent, undated, and email from Claimant, August 5, 2018
- ex. 9 – Two black and white photographs of hardwood, undated
- ex. 10 – Text message, undated
- ex. 11 – USQ Invoice, August 9, 2018, with check number 12927, from LCCI Construction Management, LLC, to USQ for \$10,000.00, September 7, 2018

Resp. Ex. 5 - Cashier’s Check Number 30092577, from Claimant to Respondent, \$5,000.00, date illegible

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, June 2, 2022

Fund Ex. 2 - Hearing Order, May 6, 2022

Fund Ex. 3 - MHIC Letter to Respondent regarding Claim Form, March 14, 2022

Fund Ex. 4 - MHIC Contractor License History, July 31, 2022

Fund Ex. 5 - MHIC Letter to Claimant including Claim Packet, July 6, 2020

Fund Ex. 6 - Complaint Form, Received January 7, 2020

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other 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 license numbers 4720416, 5032966, 5394691, and 5697057. (Fund Ex. 4).
2. At all times relevant to the subject of this hearing, the Claimant's home was located at 4402 Saul Road, Kensington, Maryland (home).
3. On July 17, 2018, the Claimant and the Respondent entered into a home improvement contract (Contract) to install, sand, stain, and finish hardwood floors on three levels of the Claimant's home (work or project). Specifically,
  - a. On the main and upper levels, install 2,240 square feet of new Brazilian White Oak hardwood floors over existing plywood, sand, and refinish with:
    - i. apply one coat of stain,
    - ii. apply one coat of BONA<sup>5</sup> sealer, and
    - iii. apply three coats of BONA HD<sup>6</sup> finish.
  - b. On the twenty-nine existing stair treads and risers comprised of American Yellow wood, sand, and refinish with:
    - i. apply one coat of stain,
    - ii. apply one coat of BONA sealer, and
    - iii. apply three coats of BONA HD finish.

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<sup>5</sup> BONA was not defined.

<sup>6</sup> HD was not defined.

- c. In the lower level or basement, install 360 square feet of American White Oak glue down engineered hardwood floors over existing concrete, sand, and refinish hardwood floors with:
          - i. apply one coat of stain, and
          - ii. apply one coat of BONA sealer, and
          - iii. apply three coats of BONA HD finish.
4. The original agreed-upon Contract price was \$38,980.00.<sup>7</sup> (Resp. Ex. 2, ex. 2).
5. The Claimant and his business paid to the Respondent the sum of \$12,500.00 as follows:
  - a. On July 21, 2018, the Claimant paid to the Respondent the sum of \$7,500.00 from the Claimant's business, LCCI Construction Management, LLC, and not from a personal bank account.
  - b. On a date uncertain, the Claimant paid to the Respondent the sum of \$5,000.00 in the form of a cashier's check.<sup>8</sup> (Resp. Ex. 3, ex. 1).
6. The stairs in the home were comprised of American Yellow wood. The Claimant selected American White engineered wood for the basement and Brazilian White Oak for the main and upper levels of the home. He also selected the same stain Special Oak for all three different species of wood. (Resp. Ex. 3, ex. 2).
7. The Claimant did not confirm how each species of wood would absorb the stain, or whether there would be color differences among them.

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<sup>7</sup> This amount includes work involved regarding kitchen cabinets and painting of the interior of the home. Those aspects of the Contract are not involved in this matter.

<sup>8</sup> The date of the cashier's check is illegible.

8. On or about July 18, 2018, the Respondent began work, installed the new hardwood floors, and sanded all of the levels of the home.
9. The Respondent applied the Claimant's chosen stain to all of the floors. Because of the difference in absorption between the various species of wood, the colors were different on the stairs, basement, and the main and upper levels of the home. (Resp. Ex. 3, ex. 3).
10. After the hardwood floors were installed, sanded, and stained, the Respondent met with the Claimant and his wife. The Claimant's wife became upset with the Claimant and demanded that the colors be changed so that the three levels' colors were the same.
11. The Claimant requested a change order from the Respondent for the additional work to create stain samples to ensure a closer color match. *Id.*
12. On August 5, 2018, the Claimant complained to the Respondent regarding sanding or circular marks on the main and upper-level floors. (Resp. Ex. 3, ex. 4).
13. There were no circular marks on the basement floor and/or the stairs.
14. The Respondent reassured the Claimant that the circular marks would disappear once he applied all the coats of finish.
15. The Claimant offered to the Respondent an opportunity to prove that the circular marks would disappear by applying the coats of finish to a test section. (Resp. Ex. 4).
16. The Claimant agreed to pay for re-sanding and the application of a different color stain for all of the floors, plus a bonus, if the circular marks disappeared on the test section. *Id.*
17. The Respondent agreed to bear the costs of re-sanding the floors, if the circular marks did not disappear on the test section. *Id.*

18. The parties agreed to a scheduled time for the Respondent to work on the test section to show whether the circular marks would disappear, as the Respondent claimed. *Id.* The date was not provided by either party.

19. On August 7, 2018, at 6:46 a.m., the Claimant gave the Respondent until the end of the day to prove that the circular marks would disappear and finish the project. (Clmt. Ex. 2).

20. On August 7, 2018, at 1:34 p.m., the Claimant terminated the Contract and advised the Respondent to not come back to his home.

21. The Claimant hired a subsequent contractor, USQ, to re-sand all of the levels, including areas where there were no circular marks on the basement floors and stairs; USQ also re-stained all of the levels with a different stain color.

22. The Claimant paid to USQ the sum of \$10,900.00 to re-sand and stain all of the hardwood floors in the main and upper levels, basement, and stairs.

23. On July 6, 2020, the MHIC notified the Claimant that he must file his Claim against the Fund within three (3) years from the date the Claimant discovered, or, by use of ordinary diligence, should have discovered the loss or damage. (Fund Ex. 5).

24. The Claimant discovered the alleged deficiencies on August 5, 2018.

25. The Claimant filed his Claim with the Fund on March 7, 2022.

## **DISCUSSION**

### **Burden of Proof and Legal Framework**

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty.*

*Police Dep't*, 369 Md. 108, 125 n.16 (2002). The Claimant has the burden to demonstrate that he suffered actual losses because of the Respondent's acts or omissions by a preponderance of the evidence. COMAR 28.02.01.21K(1).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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 Claim is barred by the three-year statute of limitations, the Claimant did not sustain an actual loss because of the Respondent's acts or omissions, the Claimant unreasonably rejected the Respondent's good faith offer to resolve the alleged deficiencies, and the Claimant is not eligible for reimbursement from the Fund.

### **Parties' Positions**

The Claimant alleged that after the installation of the new hardwood floors, the Respondent damaged the surfaces during the sanding process because he used the wrong sander, which left permanent circular scratches (circular marks) on the hardwood. When the stain was applied after sanding, the circular marks were quite noticeable. The Claimant contended that the only way to repair the circular marks was to re-sand all the affected surfaces, which is what he hired a subsequent contractor to do.

The Respondent adamantly denied that the circular marks are scratches on the surfaces. Rather, they are buffing marks, which are part of the sanding process and will disappear after the required coats of finish are applied. The Respondent asserted that the Claimant is using the

circular marks as an excuse to make him bear the costs of re-sanding all the floors, including the basement and stairs, which have no circular marks, because the Claimant's wife was very upset about the mismatch of colors on the different levels of the home. The Respondent explained that the mismatch of colors resulted from the Claimant selecting different species of wood; to match the color of all of levels and the stairs, the hardwood floors would need to be re-sanded and then a new stain applied. The Respondent asserted that he was prevented from finishing the work and demonstrating that the circular marks would disappear.

### Analysis

The Claimant and Respondent entered into a Contract on or about July 18, 2018. (Clmt. Ex. 6). The relevant portion of the Contract involved installing, sanding, and staining hardwood floors in the Claimant's home. (FOF No. 3). At the time the Contract was entered into, the Respondent was a licensed contractor with the MHIC, since July 7, 2015, through July 7, 2023, without any gaps. (Fund Ex. 4).

By statute, certain claimants are excluded from recovering from the Fund altogether. Of the statutory impediments to the Claimant's recovery, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1). The Claimant resides in the home that is the subject of the Claim or does not own more than three dwellings. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). The Claimant is not a relative, employee, officer, or partner of the Respondent and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1). However, the Fund raised the issue that the Claim may be barred the three-year statute of limitations.

*Claim Barred by Statute of Limitations*

The Fund argued that pursuant to Maryland law, the Claimant may not be eligible for an award from the Fund because the Claim was filed beyond the three-year statute of limitations period. *See* Bus. Reg. § 8-405(g). Section 8-405(g) provides that “[a] claim shall be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage.” *Id.* The statute of limitations is generally a legislative recognition that memories fade over time and prevents effective defense against a claim. The Court of Appeals addressed the reason for such a limitation in *Haas v. Lockheed Martin Corporation*, 396 Md. 469 (2007). In *Haas*, the court observed that:

One principal purpose of statutes of limitations is to provide defendants with notice of a claim within a sufficient period of time to permit the defendant to take necessary steps to gather and preserve the evidence needed to defend against the suit. From the defendant’s perspective, the statute of limitations is remedial. Once the limitation period passed, the statute, which once provided opportunity, closes the window and the claim is barred thereafter. The legislature, in drafting such legislation, implicitly recognizes that as time passes, difficult evidentiary issues arise, such as proof of the cause of injury, faded memories, and the availability of witnesses. Statutes of limitation are also meant to eliminate, after the allotted time, the financial uncertainty defendants experience while potential claims remain unlitigated. The time allotted usually has little, if any, specific grounding in empirical logic, but simply represents the legislature’s judgment about the reasonable time needed to institute suit.

396 Md. at 498-99 (internal quotation marks and citations omitted).

The Claimant filed a complaint with the MHIC on December 28, 2019; a complaint is not the same as a Claim. On July 6, 2020, the MHIC sent to the Claimant a Guaranty Fund Claim form and advised the Claimant:

Please be advised that the time limitation for filing a claim for compensation from the Guaranty Fund is established by law at Business Regulations Article, Section 8-405(g), which provides that a claim must be filed within three (3) years from the date the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damaged.

(Fund Ex. 5).

The Claimant acknowledged that he filed his Claim with the Fund on March 7, 2022. (Fund Ex. 3). However, he testified that he had mailed the Claim and supporting documents (package) to the Fund by regular U.S. mail on or about June 29, 2021. Shortly thereafter, according to the Claimant, it was only when he followed up with the Fund to confirm receipt of the package, that he discovered the package was missing. At the hearing, the Claimant was unable to produce any exhibits that supported his position that he had mailed the package prior to the three-year statute of limitations. I left the record open for twenty-four hours, until 4:30 p.m., on August 2, 2022, to give the Claimant time to submit his evidence. The Claimant did not submit any other exhibits after the hearing.

On August 5, 2018, the Claimant emailed the Respondent regarding the circular marks stating, "Despite your reassurances that the sanding marks throughout the floor will disappear after the finish coat is applied I don't think that is an accurate statement." (Resp. Ex. 3, ex. 4). Based on the evidence before me, I find that the Claimant knew of the alleged deficiencies in the Respondent's work beginning on August 5, 2018. As such, the Claimant had until August 5, 2021, to file his Claim with the Fund. The only evidence before me is that the Claimant's Claim was filed on March 7, 2022, which is past the three-year statute of limitation period. (Fund Ex. 3).

Accordingly, I find by a preponderance of the evidence that the Claimant has failed to adhere to the three-year limitation period and as a result, the Claim is barred, and the Claimant is not eligible for compensation from the Fund. Bus. Reg. § 8-405(g). In the interest of completeness, I will also address the other reasons the Claimant is not eligible to recover from the Fund.

**Respondent Did Not Perform An Unworkmanlike, Inadequate, or Incomplete Home Improvement**

Even if the Claim was filed timely, there is no evidence that the Respondent's work was unworkmanlike, inadequate, or incomplete. Although the Claimant is a general contractor, he conceded that he does not specialize in hardwood floors. The Claimant did not present the testimony of an expert or any other witness to establish that the Respondent's work on the hardwood floors was unworkmanlike, inadequate and/or incomplete. Rather, the Claimant presented photographs of the circular marks on the hardwood floors, taken a day after the Respondent sanded the floors. (Clmt. Ex. 1). The Claimant explained that the sanding process is simple, but that the Respondent used the wrong equipment which damaged the wood and left permanent circular marks which were highlighted when the stain was applied. He asserted that the Respondent should have used a belt sander, not a circular sander. The Claimant contended that the correct method should have been to sand the floors by following the grain of wood. To support his position, the Claimant testified that he took a portion of the floor that he alleged was scratched, put tape around it, and applied finish on the inside of the taped off area, which highlighted the scratches. (Clmt. Ex. 1). He insisted that the damage is in the wood itself, and that his complaint is not about a difference in the color match after the floors were stained by the Respondent.

To bolster his position, the Claimant testified that he sought help from three other professionals: a vendor wholesaler, another contractor, and Hugo.<sup>9</sup> The Claimant testified that all three stated that the circular marks were damages due to scratches to the wood, and the only fix was to re-sand all the affected areas. According to the Claimant, the wholesaler indicated that the Brazilian White Oak which was installed in the main and upper levels is sensitive, the proper

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<sup>9</sup> A last name was not provided.

process must be used, and the only way to remove the circular marks was to re-sand it. The Claimant testified that USQ also indicated to the Claimant that the damage must be remedied by re-sanding. The Claimant did not provide exhibits to support his testimony and no witness was called on his behalf to corroborate his testimony.

The Respondent has been in the flooring business since 1998 and testified that he is considered an expert in the field. In support, he presented a letter, dated August 1, 2022, from Steven C. Barnard, Production Manager, at Wentworth, Inc. Mr. Barnard indicated that Wentworth, Inc., has “utilized the services of L&L Floor and Interiors for the past 12 years. During the past 12 years we have come to rely on David and his crew to provide all our interior flooring installation and finishing needs.” (Resp. Ex. 1). Based on the Respondent’s testimony regarding his background and his specialty in hardwood floors, I gave significant weight to the Respondent’s testimony, particularly in light of the fact there was no competing testimony to contradict the Respondent’s assertion that buff marks are not scratches. I found the Respondent’s testimony credible as he explained in detail how the circular marks would eventually disappear if he were allowed to finish the process. The Respondent explained that the process involved first sealing the floors, buffing them, and then applying three coats of finish. After that process, the circular marks would disappear.

The Respondent disputed the Claimant’s position that the vendor wholesaler and Hugo stated that the circular marks were signs of damage. The Respondent testified that when he spoke to Hugo, he did not make that statement. Additionally, the wholesaler agreed with him that the circular marks were normal.

The Respondent further explained and contradicted allegations that he used the wrong equipment. The Respondent used a ten-inch drum sander for large areas and a smaller edger for the stairs to sand the surfaces. The same machine was used everywhere. After he sanded the different species of wood, he applied the same stain to the entire house. This resulted in differences in appearances in the various floors due to the way the stain absorbed into the three different species of wood.

According to the Respondent, when the Claimant's wife saw the floors, she screamed and became upset with the Claimant. The Respondent understood her reaction because there was clearly a difference in the colors. And the only way to change it was to re-sand all the surfaces and apply a new color.

The Respondent explained that if a job takes ten days, it takes eight days to sand and two days to finish. The process is simple, but the sanding portion is the bulk of the job. The Respondent testified that the Claimant wanted the floors to be re-sanded because he and his wife did not like the color difference. The Claimant wrote to the Respondent, "David there is no way. The entire is getting sanded again. My wife is not approving it." (Clmt. Ex. 2)."

By alleging that the Respondent damaged the surfaces, requiring it to be re-sanded, the Claimant was trying to take advantage of the Respondent so that he would bear the additional cost of re-sanding all the surfaces. The Respondent was unwilling to accept the allegation that he provided poor work. I agree with the Respondent as the Claimant's own exhibits contradict his testimony that his complaint extends only to the circular marks on the flooring. On July 30, 2018, the Claimant wrote, "We are not proceeding with the floors until we have a plan on how to incorporate the stairs. I'm even considering replacing the threads." (Clmt. Ex. 2). Then, on or about August 4, 2022, the Claimant wrote,

We are going to start over again. Get a darker stain and this time we have to make a complete sample with oil poly finish on the different wood types to make sure it works. If we go over this wood with another stain we will never be able to match the stairs and the white oak because this is not a true color.

(Clmt. Ex. 2).

Finally, the Claimant admitted to the Respondent, on August 4, 2018, that he rushed through the process and made a bad judgment call regarding the stain color he selected without testing how the stain would be absorbed by the three different species of wood. The Respondent also pointed out that USQ re-sanded the basement and stairs, which did not have any circular marks and applied a new stain color to match the main and upper levels. If the Claimant was truly upset about the circular marks on the floors, which did not exist on the basement floor and the stairs, there was no need to re-sand those areas. As such, I am persuaded that the evidence clearly establishes that the Claimant had USQ re-sand all the hardwood floors for the sole purpose of matching the color of all of the levels of the home. Despite admitting to his own errors, the Claimant sought reimbursement of the cost of re-sanding the entire house by filing claims with the Respondent's insurance company and the BBB against the Respondent, all of which were denied.

Based on the evidence before me, I find that the Claimant failed to establish by a preponderance of the evidence that the Respondent performed work that was unworkmanlike, inadequate, and/or incomplete. As a result, the Claimant did not suffer an actual loss due to the Respondent's acts or omissions. The evidence clearly established that the only reason the Claimant wanted the Respondent to re-sand the entire house was to match the color of the stain applied to the levels of the home.

**The Claimant Unreasonably Rejected the Respondent's Good Faith To Remedy The Alleged Deficiencies**

Even if the Claim was filed timely, and the Claimant sustained an actual loss due to the Respondent's acts or omissions, based on the evidence, I find that the Claimant unreasonably rejected the Respondent's good faith effort to resolve the alleged deficiencies.

The Claimant proposed that if the Respondent applied all three coats to a test section of the floor, and the circular marks were unnoticeable, then he would pay the Respondent the entire cost to re-sand and to re-stain all three levels, including the areas without any circular marks, with a different stain, plus pay a bonus. (Resp. Ex. 3, ex. 6). In the alternative, if the circular marks did not disappear in the test section, then, the Respondent would bear the cost of re-sanding all three levels and apply the new stain color chosen by the Claimant. The Respondent agreed to the proposition. The Respondent testified that he wanted to demonstrate that he stood by his word that the circular marks would disappear if he was allowed to continue the work as planned. The parties scheduled a time for the Respondent to work on a test section to apply the three coats of finish. Surprisingly, on August 7, 2018, at 6:46 a.m., the Claimant wrote, "David, you have until the end of today to prove to me that you are able to finish the floor and the marks will not be visible." (Clmt. Ex. 2). Then, the Claimant wrote on August 7, 2018, at 1:34 p.m., "I sent you a termination letter / Stop Order effective immediately." *Id.* In less than seven hours, the Claimant expected the Respondent to drop all the other work previously scheduled to satisfy his unreasonable demands.

I was not persuaded by the Claimant's testimony that the Respondent ignored his messages and abandoned the job. The evidence that the Claimant offered, the text messages between the Claimant and Respondent, clearly established the Respondent's overwhelming

willingness to tolerate the Claimant's vacillation between moving forward with the job or starting all over and his readiness to resolve the Claimant's concerns.

The evidence is also clear that the Respondent made efforts to prove to the Claimant that the circular marks would disappear if he was allowed to finish the process. However, before the scheduled meeting, the Claimant canceled the scheduled work, terminated the Contract, and advised the Respondent to not return to his home. The Respondent did not have the opportunity to remedy the alleged deficiencies because it was the Claimant who summarily terminated the Contract before the Respondent had the chance to resolve the alleged deficiencies. (Resp. Ex. 3). As such, I find that the Claimant unreasonably rejected the Respondent's good faith effort to remedy the alleged deficiencies.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant's Claim against the Home Improvement Guaranty Fund is barred by the three-year statute of limitations. Md. Code Ann., Bus. Reg. § 8-405(g) (2015); *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435 (2000).

I further conclude that the Claimant has not sustained an actual and compensable loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

I further conclude that the Claimant unreasonably rejected the Respondent's good faith effort to remedy the Claim. Md. Code Ann., Bus. Reg. § 8-405(d) (2015).

I further conclude that the Claimant is not eligible for reimbursement from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

**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.

September 28, 2022  
Date Decision Issued

*Sun E. Choi*

Sun E. Choi  
Administrative Law Judge

SEC/da  
#199955

PROPOSED ORDER

*WHEREFORE, this 4<sup>th</sup> day of November, 2022, 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**