IN THE MATTER OF	*	**MARYLAND HOME**
THE CLAIM OF JANIE GINSBURG		**IMPROVEMENT COMMISSION**
AGAINST THE	*	
MARYLAND HOME IMPROVEMENT		
GUARANTY FUND ON ACCOUNT OF	*	**Case No. 19(90)423**
ALLEGED VIOLATIONS OF		
MARK LUGENBEEL SR. t/a T.C.M.	*	
HOME IMPROVEMENT, LLC	*	

* * * * * * * * *

FINAL ORDER

On this 26th day of October 2020, Panel B of the Maryland Home Improvement Commission ORDERS that:

1. Pursuant to Business Regulation Article, §8-408(b)(3)(i), Annotated Code of Maryland, the Claimant has provided the Commission with a copy of a final arbitrator's decision dated August 6, 2019, in which the arbitrator found on the merits that the conditions precedent to recovery, as set forth in Business Regulation Article, §8-405(a), Annotated Code of Maryland, have been met, and found that the Claimant sustained an actual loss of $6,100.00.

2. The Commission, in a letter dated April 6, 2020, advised Respondent that the Commission intended to award the Claimant $6,100.00 and that the Respondent had 21 days to submit to the Commission any reasons why the Commission should not pay the award to the Claimant.

3. The Respondent did not reply to the Commission's letter.

4. The Commission directs payment from the Home Improvement Guaranty Fund of $6,100.00 to the Claimant, Janie Ginsburg.

5. Pursuant to Business Regulation Article, §8-411(a), Annotated Code of Maryland, any home improvement licenses held by the Respondent, Mark Lugenbeel Sr. t/a, T.C.M. Home Improvement, LLC, shall be suspended, and the Respondent shall be ineligible for any home

improvement licenses until the Respondent has repaid any money paid from the Home Improvement Guaranty Fund pursuant to this Order, with 10 percent annual interest.

6. The records and publications of the Maryland Home Improvement Commission shall reflect this decision.

Joseph Tunney
Chair

CLAIMANTS Larry and Janie Ginsburg 14520 Old York Road Phoenix, Maryland 21131, v. RESPONDENT TCM Home Improvement LLC 8137 Del Haven Road Baltimore, Maryland 21222.	IN THE CONSUMER PROTECTION DIVISION OFFICE OF THE ATTORNEY GENERAL STATE OF MARYLAND CASE NO: 2019-011

ARBITRATION DECISION

INTRODUCTION

An Arbitration Hearing in the above-captioned matter was duly scheduled and held at 9:30 am on June 13, 2019, pursuant to the written agreement of the parties and upon written notice to each of them. The Hearing was held at the Claimants' home in Phoenix, Maryland. Following the Hearing, the parties were afforded the opportunity to resolve their issues through an agreement. On June 23, 2019, Respondent reported that it has "been working to contact a local representative for the flooring company regarding the hickory flooring to provide their manufacturers information on the flooring. We are still waiting for a response from them." It also provided Claimants with three vendors for the shower enclosure. On July 21, 2019, Claimants reported that Respondent had failed to respond to three emails seeking an update on this matter and that settlement was no longer an option.

Present on behalf of Claimants: Larry and Janie Ginsburg, and Stephen Godoff, Esq.

Present on behalf of Respondent: Mark Lugenbeel, President; Michael Butler, Master Carpenter; and Clifford Little.

All persons present and intending to testify or otherwise offer evidence were administered the oath and were duly sworn.

The parties each affirmed, under oath, their understanding that:

1. This Arbitration Proceeding is a voluntary method of resolving their dispute, in lieu of all other remedies and actions (including court action, except as may be involved in the limited rights of appeal which are referred to below), to which each party has agreed;
2. The Arbitrator is to serve as a neutral and is to evaluate impartially the testimony and such other evidence as each party may present;
3. Each party has been advised, prior to the day of the Hearing (see Notice of Hearing), that it is the duty of each such party to produce, at the time of the Hearing, any witnesses and all such evidence (verbal, documentary, or otherwise) as they would or could to support their respective contentions;
4. The Decision rendered by the Arbitrator will be guided by Maryland law and principles of equity, as applied to the facts established by the testimony and other evidence presented; and
5. The Decision rendered will be legally binding upon the parties, subject only to such limited rights of appeal as are specified in the Maryland Uniform Arbitration Act (Maryland Code, Courts & Judicial Proceedings, §§ 3-201 - 3-234).

Mr. Lugenbeel also stated, under oath, that the Respondent/business:

a) is operating under Maryland law as a limited liability corporation, presently in good standing with the State of Maryland, the correct name of which is as shown above;
b) is the proper party to the subject dispute and to this proceeding;
c) would be the proper party against whom any adverse Decision rendered would be legally enforceable; and,
d) that he is duly authorized to represent the named business in this proceeding.

The parties were each advised that should either party, intentionally or unintentionally, indicate that they are representing a corporation, limited liability company, or other entity which either never did or does not now exist, for whatever reason, that they may incur individual liability as a result thereof, should the Decision in this proceeding so warrant.

NATURE OF CLAIM

Claimants contend that Respondent has failed to complete a home remodeling contract, failed to follow their requirements, and installed defective flooring. They are seeking payment of $49,000.00.

Respondent contends that it stopped working when Claimants filed a formal complaint against it.

TESTIMONY AND EVIDENCE

The parties offered oral testimony and documentary evidence in support of their respective contentions. The parties and the Arbitrator inspected Claimants' home.

The parties do not dispute that on November 27, 2017, they entered into a home remodeling contract that has not yet been completed.

The Claimants:

Claimants Larry and Janie Ginsburg testified that in November of 2017, based on recommendations from friends, they contacted Respondent for a remodeling project. The project has three phases: Phase One - demolition of areas of the master bathroom, kitchen, living room and dining room, and the installation of underlayment; Phase Two – installation of flooring, tiles, lighting, shower glass doors and other items; and Phase Three – removal and replacement of the fireplace, and removal and replacement of railing on deck.

Claimants texted Respondent with a photo of the wire deck railing they wanted. Respondent replied that it would not be a problem. On November 20, 2018, Respondent had contacted the supplier of the wire for the deck railing and with the additional labor and materials increased the proposal cost from $45,000.00 to $48,000.00. On November 27, 2017, the parties signed an Agreement detailing the project to be performed by Respondent for a total cost of $48,000.00 (later increased to $49,000.00). The scope of work included (numbering added by Arbitrator):

Phase One - Demo Floor Leveling.
1. Demo master bathroom.
2. Remove existing countertops in kitchen.
3. Level out existing master bathroom floor.
4. Remove carpeting from living room.
5. Remove tile from dining room and kitchen.
6. Install underlayment in living room, dining room and kitchen area.

Phase Two – Flooring & Interior Works
(Allowance of $20,000.00 for tiles and flooring material and the labor for install – items 7 - 9)
7. Install ¾" prefinished hardwood pine flooring in living room and dining room.
8. Install ceramic tile in kitchen floor.
9. Install ceramic tile bathroom floor and shower walls.
10. Install custom shower glass door.
11. Install exhaust vent fan in master bathroom.
12. Install 2 6" LED canister lights in bathroom with shower covers.
13. Install 2 shower diverter in master bath shower (Owner to provide diverters).
14. Insulate water pipes under existing master bathroom.
15. Remove and relocate return vent in kitchen area.

Phase Three – Fireplace and Deck
(Fireplace portion of the project was successfully completed.)
16. Remove existing wood rails from deck.
17. Replace with cable wiring rails.
18. Install trek decking on top cap.

The work was to take approximately three months. Except for the tiles and flooring material, Claimants were to design the areas and purchase all the items to be installed. Respondent delayed the project many times and some items were not completed as Claimants expected.

In December, the Claimants were ordering tiles and a fireplace insert. Work was getting behind schedule. In January, Respondent said everything would be back on track, but Claimants saw little progress being made. On January 17, 2018, Claimants reported that their cabinets would take six to seven weeks to be ready. On February 7, 2018, the wrong size flooring was delivered and had to be reordered. In February, the parties were discussing cabinet choices and the fireplace was not yet delivered. In March, there was a disagreement as to how much was already paid for the project, with Claimants contending they paid $39,000.00 of the total owed of $48,000.00 and Respondent contending he was still owed $15,000.00. On March 30, 2018, the parties discussed new trim for the bathroom windows. On April 17, 2018, the bathroom tile was finished, and Claimants asked if the project would be completed by May 12. The fireplace insert was not picked up by Respondent until May 1, and Claimants asked if the project would be completed by June 1. Respondent replied, "And for sure we will be done [by] your June date." Claimants again expressed their concern that work was not progressing. It was reported that a Kohler piece would not be ready until July. In July, Claimants told Respondent that they did not like the wire that was going into the deck rail posts. They had requested stainless steel wire. Also, Respondent installed vertical boards at the top and bottom of the railing that obstructed the view and did not match the photograph of railing Claimants sent Respondent prior to signing the Agreement. On August 24, 2018, Respondent left the incomplete and defective project.

On January 24, 2019, water was leaking from the master bathroom. **Kelly Plumbing Services, Inc.** responded to Claimants' home and found "the cartridge in the shower faucet was frozen. Upon taking off the faceplate, there was a draft of cold air coming from behind the wall." Upon Kelly's suggestion, Claimants had the cartridge replaced by the manufacturer as defective. The leak caused damage to the basement carpet below. Kelly charged $195.00 for the service call. Claimants provided a copy of the **2015 International Residential Code** which states in part: "In localities having a winter design temperature of 32°F (0°C) or lower … a water, soil or waste pipe shall not be installed outside of a building, in exterior walls, in attics or crawl spaces, or in any other place subjected to freezing temperature unless adequate provision is made to protect it from freezing by insulation or heat or both."

The major issues are that the floor Respondent installed is warped, the deck railing is not in accordance with the Agreement and the glass shower enclosure was never installed. The current uncompleted or defective items are:

1. Vent in bathroom was hooked up to the wrong switch.
2. Switch plate in kitchen needs to be secured to wall.
3. Glass shower enclosure needs to be installed. Respondent was to recommend a manufacturer and guide us in this process.
4. Basement mudroom heat vent needs to be completed. This area was taken apart when the new plumbing and heat vents were installed. The contract states that Respondent was to ensure that the heat went into that room while installing the bath above.
5. Fill in gaps in living room floor (crayon). When the flooring was put in there appeared to be gaps between the boards. Mr. Butler said not to worry, he would use some "crayons" and they would look as they should. Now the floor needs to be replaced, *see* # 18.
6. Replace bad looking board in floor by backdoor. *But see* # 18.
7. Molding is cracked under the dishwasher and next to it, and another piece next to it is not connected.
8. There is a gap between the floor tile and molding to the left of the stove which needs to be repaired. The floor tile does not go up to the edge of the counter.
9. Round molding needs to be put down in the living room like in the kitchen.
10. Finish painting the living room ceiling.
11. Dining room wall needs to be repaired where the thermometer between the windows was removed.
12. The faucet and handle in the master bathtub are loose. They need to be tightened.
13. Glass shelf in shower is missing. This shelf was promised by Respondent when it made the cutout in the shower wall too large.
14. Sand and stain wood around bathroom windows. The wood was taken down around the window as they did the demolition and Mr. Lugenbeel said he was going to sand it down. In the last conversation he said he would replace all the wood, including wood around both windows. The old trim with moldy stains was then put back on the windows without it being sanded down or being replaced. Respondent purchased only a part of the new wood (circular squares).
15. Finish staining all door frames.
16. Finish bulkhead in bathroom and fill the hole behind the tile at the end of the shower.
17. Replace cracked floorboard next to doorway going into living room (*see* # 18.). Molding next to it is also cracked and needs to be replaced.
18. Floor buckling throughout the whole living room. The flooring follows the floor joists, rather than across the joists for support.
19. Back deck railing needs to be completed as per pictures and discussion prior to signing contract and several times since.
20. Remove the many piles of trash from the premises, basement, family room, and outside.
21. Drain stopper in bathroom sink does not work.
22. Carpet in basement needs rust stains to be gotten out of it or replaced (attempted cleaning at time of leak).
23. Two to three boxes of hickory wood flooring were taken and not returned.

Claimants provided estimates, dated May 30, 2019, from **Steve Kimball** of **Kimball Cabinet**, a general contractor, for repairs. Mr. Kimball writes that "a nautical stainless steel rail system is pricey." He estimates $8,000.00 for the materials and $11,000.00 for the labor (to include deck wash and staining). For the master bathroom he states: "The problem is with the design of the shower. This design really doesn't give you any easy ways to resolve the issues. I am sorry to say that it might have to be redone. Both sides of the shower have serious design flaws…I would recommend demolition of most of the shower and fabricate it correctly. Estimated cost $7,000.00 to $10,000.00. For the flooring he states: "We cannot see what is going on, as per our meeting, we should find out more about the flooring and then we will need to demolition some of it to make a decision."

Claimants also provided an estimate, dated May 15, 2019, from **Charles Ott** of **Blonde Crow Enterprizes** [sic], Lowell Massachusetts. Mr. Ott is Mrs. Ginsburg's brother. He estimates the cost for the railing is $4,920.00 for the materials and $16,900.00 for the labor.

In total, Claimants paid Respondent $49,000.00 and seek a full refund. They contend repairs would exceed this amount.

The Respondent:

Mark Lugenbeel testified that he is the President of Respondent. The Agreement with Claimants was basically for labor and base building materials only. Claimants were responsible for supplying materials, except for the tiles and flooring material. Many delays were caused by Claimants' materials not being available. For example, the shower enclosure has never been ordered by Claimants. During the project the parties discussed additional work. Although outside the scope of the Agreement, Respondent, as a curtesy, agreed to perform some work for Claimants, and the parties agreed to terms for other work. Respondent is not responsible for work outside the scope of work, unless additional terms were agreed to. Respondent stopped work on the project when Claimants filed a formal complaint against it.

Respondent replies to the current punch list as follows:

1. Respondent agrees that the vent in bathroom was hooked up to the wrong switch.
2. The switch plate in kitchen just needs to be screwed in.
3. The Agreement includes installation of a glass shower enclosure provided by Claimants. Claimants have never provided the enclosure.
4. Respondent agrees that the basement mudroom heat vent needs to be completed.
5. – 8. *See* below.
9. Respondent contends that round molding for the living room is outside the scope of the Agreement.
10. Respondent contends that painting the living room ceiling was outside the scope of the Agreement. One coat was completed.
11. This is a small (2" x 2") patch. See #9.
12. The faucet and handle in the bathtub just need to be tightened.
13. Respondent agreed, as a curtesy, to install a glass shelf in shower because it would look better. This is outside the scope of the Agreement.
14. Respondent sanded and stained the wood around the bathroom window. This was outside the scope of the Agreement.
15. Finish staining all door frames. This is outside the scope of the Agreement.
16. Respondent contends that Claimants designed and ordered the cabinets in the bathroom. It is their responsibility if the cabinet does not reach the bulkhead. This is outside the scope of the Agreement.
17. – 18. *See* below.
19. Respondent contends that Claimants' requested design for the deck railing would violate building code. Vertical support planks are required unless the railing is moved inside of the deck edge. Respondent was to install galvanized steel cable wiring for the deck railing, but Claimants decided they wanted a stainless-steel type instead. This is outside the scope of the Agreement.
20. Respondent agrees that it would have been required to remove all construction debris when the project was completed.
21. Respondent agrees that the drain stopper in the bathroom sink needs to be adjusted.
22. Respondent contends that it is not responsible for the bathroom leak. The pipes in the bathroom are on the interior side of a double wall, both of which are insulated. The pipes are also wrapped. There is no evidence that any of the pipes froze. Respondent contends that the faucet cartridge malfunctioned, causing the leak. The

manufacturer accepted responsibility when it replaced the cartridge under its warranty. As a curtesy, Respondent had Stanley Steamer clean the carpet, but is not responsible for any damages to the carpet.
23. Respondent agrees to return unused boxes of hickory wood flooring.

5. To finish the floor installation, Respondent would fill gaps with a special crayon, made by the manufacturer for that purpose.
6. Respondent agrees that one flooring board needs to be replaced.
7. – 8. Respondent agrees that molding needs to be repaired near the dishwasher and to the left of the stove.
17. Respondent agrees that one cracked floorboard should be replaced in the living room.
18. Respondent contends that the floor buckling is a manufacturer's defect. Respondent installed new ¾" subflooring, 30lb felt, ¼ plywood, second layer of 30lb felt, the manufacturer's white foam underlayment, and then the hickory flooring. When the flooring was complete, there was no buckling. If the floor is buckling, it is the manufacturer's responsibility.

Michael Butler testified that he is a Master Carpenter for Respondent. He installed the deck railing according to building code. He was not aware of Claimants' pictures sent to Respondent. Respondent was replacing wooden railings with wire railing, with the posts being replaced in the same positions, at the edge of the deck. The top vertical board is to support the top rail. The posts are too far apart for an unsupported horizontal top rail. If additional posts were installed, a horizontal top rail would be possible. Additional posts are outside the scope of the Agreement. The bottom vertical board is required by code to prevent a foot sliding under the wire. If the posts were move inward, the vertical board would not be required. That would require cutting the deck to accommodate the new post position and would leave a gap behind the posts where they were previously. This additional work is outside the scope of the Agreement.

Respondent contends that, because of Claimants' formal complaint, it never had the chance to resolve a final punch list. The items on Claimants' current punch list are minor, or outside the scope of the Agreement and therefore, not Respondent's responsibility.

FINDINGS AND DECISION

The Arbitrator makes the following findings as to the above issues. Claimant has the burden of proving that Respondent failed to complete a home remodeling contract, failed to follow their requirements, and/or installed defective flooring. They also have the burden of proving damages. They have partially met that burden in this case. There is sufficient evidence that Respondent is responsible for some, but not all, of the incomplete or defective items claimed by Claimants.

It is unfortunate that Claimants expected more assistance from the contractor than was given. Claimants were looking for professional advice, guidance and input on selections and designs. It seems that Respondent considered this project as a basic labor/install only agreement. This lack of agreement as to Respondent's role in the project may have contributed to the problems between the parties and finally led to Respondent not completing the project.

The primary remedy for incomplete or defective items in home remolding is to allow the contactor to cure the defects. In this matter the Respondent originally delayed completion from the expected three months to eight months, and even then left items incomplete. At the Hearing it appeared that Respondent would be amenable to curing defects, but after over a month there has been no progress. Based on this history, and Claimants' request for a final decision in this matter, The Arbitrator determines that specific performance, *i.e.* requiring Respondent to cure any defects, is inappropriate. A monetary award is the only practical solution to this matter.

The parties' Agreement is a contract. Claimants contend Respondent breached the contract by not completing, or completing in a defective fashion, various items required by the Agreement. Therefore, they contend they are entitled to damages. In *Hoang v. Hewitt Ave. Associates, LLC*, 177 Md. App. 562, 594, 936 A.2d 915, 934 (2007), the Court found "in a breach of contract action, upon proof of liability, the non-breaching party may recover damages for 1) the losses proximately caused by the breach, 2) that were reasonably foreseeable, and 3) that have been proven with reasonable certainty. *Impala Platinum, Ltd. v. Impala Sales, Inc.*, 283 Md. 296, 330, 389 A.2d 887 (1978); *Stuart Kitchens, Inc. v. Stevens*, 248 Md. 71, 74, 234 A.2d 749 (1967) (citing to *Restatement (First) Of Contracts* §§ 330, 331)." Therefore, for each incomplete or defective item, Claimants must first prove that Respondent was contractually obligated to complete the item and that the item has not been completed or is defective. Once liability has been proved, Claimants must prove, with reasonable certainty, what they have lost.

The usual measure of damages is what it will cost to complete or repair the item. *See, Hall v. Lovell Regency Homes Ltd. P'ship*, 121 Md. App. 1, 12–13, 708 A.2d 344, 349 (1998) (In a breach of contract action for defective performance of a real estate construction contract, the primary measure of damages is the cost of repairing or remedying the defect. *Andrulis v. Levin Construction*, 331 Md. 354, 370, 628 A.2d 197 (1993); *Gilbert Const. Co. v. Gross*, 212 Md. 402, 411, 129 A.2d 518 (1957); *Ray v. Eurice*, 201 Md. 115, 129, 93 A.2d 272 (1952).) Claimants contend that rather than the reasonable cost to complete or repair an item, they should be awarded a refund of the contract cost because the reasonable cost would exceed the contract cost. The Arbitrator finds that, except for estimates from Mr. Kimball and Mr. Ott for the wire railing and the design of the shower, no estimates to compete or repair the remaining items were submitted. There is insufficient evidence that the cost to complete or repair would exceed the original contract cost. Each of Claimants' 23 items listed on their Punch List, dated April 25, 2019, must be independently determined as to whether Claimants have proved that Respondent is obligated to complete or repair the item, and what the appropriate measure of damages is.

The Arbitrator finds that Respondent conceded the following items were not completed or are defective:

1. The vent in bathroom was hooked up to the wrong switch.
2. The switch plate in kitchen needs to be screwed in.
3. The glass shower enclosure was not installed, although the manufacturer may install the enclosure as included in the purchase price.
4. The basement mudroom heat vent needs to be completed.
5. The floor gaps need to be filled with a special crayon.
6. One flooring board needs to be replaced.
7. – 8. Molding needs to be repaired near the dishwasher and to the left of the stove.
12. The faucet and handle in the bathtub need to be tightened.
17. Respondent agrees that one cracked floorboard should be replaced in the living room.
20. All construction debris should be removed.
21. The drain stopper in the bathroom sink needs to be adjusted.

Claimants did not provide any estimates to repair these items. The Arbitrator finds that all the items listed here can be completed in two days. A typical charge for a contractor is $300 - $500 a day. The Arbitrator finds, based on a totality of the evidence that $500 per day is fair and reasonable amount for these items. Claimants' claim for these items is **Granted** in the amount of **$1,000.00.**

Respondent contends that the following items are outside the scope of the Agreement:

9. Round molding for the living room.
10. Painting the living room ceiling.

11. Painting the patch in the dining room.
13. The glass shelf in shower.
14. Sanding and staining the wood around the bathroom window.
15. Staining door frames.
16. Extending the bathroom bulkhead.

The Arbitrator finds, based on a totality of the evidence, that Items 9 – 11, 14 and 15, are not within the scope of work detailed in the Agreement. Although Respondent may have started these items, it was as a courtesy to Claimants and did not create an obligation for Respondent under the Agreement. As to Item 16, Claimants ordered a cabinet that does not reach the bulkhead installed by Respondent. Although it may not be ascetically pleasing, it is not Respondent's responsibility to remedy. Claimants' claim for these items is **Denied**. As to Item 13, the Arbitrator finds that Respondent make the shower cutout too large and offered a glass shelf as an accommodation. Therefore, Respondent is responsible for its cost. The Arbitrator finds that $100.00 is a fair and reasonable cost for the purchase and installation of the glass shelf and the repair of the bulkhead drywall above the shower. Claimants' claim for these items is **Granted** in the amount of **$100.00**.

Respondent contends that it is not responsible for the bathroom leak (Item 22) or the damage to the basement carpeting. The Arbitrator finds, based on a totality of the evidence, that there is insufficient evidence that the faucet cartridge froze or otherwise malfunctioned due to Respondent's negligence. Kelly Plumbing Services' conclusion that "the cartridge in the shower faucet was frozen" is offset by Respondent's description of the insulation of the pipes; the fact that the pipes themselves have never frozen; and the manufacturer replacing the cartridge under warranty. Claimants' claim for Item 22 is **Denied**.

Item 18. – Flooring.
Claimants contend that the floor is buckling throughout the whole living room. They contend the flooring follows the floor joists, rather than across the joists for support. Yet on January 17, 2018, Claimants requested the wood flooring be installed from front to back of the house to match the sunken living room. Claimants' contractor, Mr. Kimball, states: "We cannot see what is going on, as per our meeting, we should find out more about the flooring and then we will need to demolition some of it to make a decision." Claimants' evidence is inconclusive as to the cause of the buckling. Respondent contends that the floor buckling is a manufacturer's defect but has been unable to have a manufacturer's representative inspect the floor. There is no opinion from a flooring expert as to whether the flooring is defective, or if it was improperly installed, or if it was damaged after installation. The Arbitrator finds that there is insufficient evidence to determine that there is a defect or damage that Respondent is responsible for. Claimants' claim for Item 18 is **Denied**.

Item 19. – Deck Railing.
It is undisputed that the wire for the deck railing has not been installed and that the wooden railing installed does not match the railing in pictures sent to Respondent. Respondent had replied to Claimants that the railing would not be a problem and amended the Agreement to include an extra $3,000.00 to account for the increased labor and materials cost of the railing. Mr. Butler, Respondent's Master Carpenter, testified that he was unaware of Claimants' pictures and that the requested design for the deck railing would violate building code. The Arbitrator finds, based on a totality of the evidence, that there was a disconnect in the communication stream from Claimants to Respondent's carpenter. This disconnect, which led to the current unfinished and unacceptable condition of the railing, is Respondent's responsibility. If Respondent could not install the railing as Claimants wanted, it had the obligation to discuss that with them. Whether Claimants can, under the building code, have the railing they want or not, it remains that as to the railing, Respondent did not complete the Agreement. Respondent is responsible for the installation of cable wiring rails and trek decking on the top cap.

Mr. Kimball estimates $3,800.00 for the cabling and hardware. His costs for cedar newels and top rails, and deck washing and staining, are beyond the scope of the Agreement. His total cost for labor, including labor

which is beyond the Agreement, is $11,000.00. Mrs. Ginsburg's brother's estimates the cost for the railing is $4,920.00 for the materials and $16,900.00 for the labor. His estimate includes the cost of materials and labor for posts every four feet. The Arbitrator finds that the posts are already installed on the deck. Any change or upgrade to the posts would be beyond the scope of the Agreement. The Arbitrator finds that neither estimate is a fair representation of the cost to install the wire railing into the existing posts. Additionally, a spool of wire was on the deck at the time of the Hearing.

The Agreement does not break down individual item costs. There is an email from Respondent to Claimants concerning an adjustment to the original project cost from $45,000.00 to $48,000.00. The email states: "Mark provided me with the supplier you had suggested for the wire hand railing and with material and labor cost for those items, the estimate had to be readjusted." The Arbitrator finds that Respondent increased the original cost for the deck railing by $3,000.00. Based on this increase, the Arbitrator finds $2,000.00 to be a reasonable estimate of the original cost of the railing. Since Respondent did not install the railing, Claimants are entitled to a refund of the base cost of $2,000 plus the increase of $3,000.00 for a total of **$5,000.00.**

Item 23. Respondent agreed that the unused boxes of hickory wood flooring should be returned.

The testimony and evidence in this Proceeding having been duly considered, the Decision in this Arbitration Proceeding is that Claimants have partially proved that they are entitled to a monetary award from Respondent. Their claim for an award is **Granted**. Respondent is **Ordered** to pay directly to Claimants the sum of **$6,100.00**, within thirty (30) days from the date of this Arbitration Decision. Respondent is **Further Ordered** to return the unused boxes of hickory wood flooring directly to Claimants, within thirty (30) days from the date of this Arbitration Decision.

This Decision is determinative of all the claims that either party may have against the other arising out of the subject transaction, known or which reasonably should have been known by them at the time of this Hearing, whether or not asserted herein. Jurisdiction over the parties hereto (including but not limited to the right to reconvene the Hearing), and over the subject matter hereof, is reserved in the undersigned Arbitrator until the terms of this Decision have been fully complied with. Failure to comply with the terms of this Decision may result in the implementation of enforcement proceedings in the appropriate Circuit Court of the State of Maryland.

The Arbitrator reserves the right to modify any performance related aspect of this Decision to reduce the same to a monetary equivalent, which would be payable as then directed.

Dated this 6th day of August, 2019.

CONFIDENTIAL

Hy David Rubenstein
Chief Arbitrator

I, Teena M. Hallameyer, do hereby certify that I sent copies of this decision and appeal rights to both parties, Claimant and Respondent, on this 6 day of August, 2019, by certified mail.

CONFIDENTIAL

Teena M. Hallameyer
Arbitration Clerk
Office of the Attorney General
200 St. Paul Place, 16th Floor
Baltimore, Maryland 21202