

<p>IN THE MATTER OF THE CLAIM</p> <p>OF SCOTT REINHARDT,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF KIPP JACOBIN,</p> <p>T/A FOREST HILL KITCHEN &</p> <p>BATH CORPORATION,</p> <p>RESPONDENT</p>	<p>* BEFORE MARY PEZZULLA,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS.</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-29130</p> <p>* MHIC No.: 22 (75) 1177</p> <p>*</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 September 26, 2022, Scott Reinhardt (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$12,223.00 for actual losses allegedly suffered as a result of a home improvement contract with Kipp Jacobin, trading as Forest Hill Kitchen & Bath Corporation (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2022).²

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).
² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

IN THE MATTER OF THE ESTATE OF
JAMES EARL RAY, DECEASED
LAST WILL AND TESTAMENT OF
JAMES EARL RAY, DECEASED
BY AND UNDER THE WILL OF
JAMES EARL RAY, DECEASED
ADMINISTRATOR

REPORT OF THE ADMINISTRATOR

STATEMENT OF THE ASSETS
AND LIABILITIES OF THE ESTATE
AS OF THE DATE OF THE
LAST ACCOUNTING

The following is a statement of the assets and liabilities of the estate of James Earl Ray, deceased, as of the date of the last accounting, to-wit: December 31, 1968.

Assets
Liabilities

On November 21, 2022, the MHIC issued a Hearing Order on the Claim. On November 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing. On January 23, 2023, the Claimant filed an amended claim with the MHIC, amending the amount of his actual loss to \$5,276.80.

On February 21, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hillary Baker, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.³

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; 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 offered by the Claimant:

Clmt. Ex. 1 - Letter from the Claimant to the MHIC, January 23, 2023; Amended Home Improvement Claim Form, January 23, 2023; J. Gerard Contracting LLC proposal, September 12, 2022; Kenwood Kitchens, Inc. proposal, undated; The Tile Shop invoice, January 20, 2023; letter from the Respondent to the MHIC, undated; email from David Finneran, MHIC to the Claimant, January 12, 2023; email from the Respondent to the Claimant, December 3, 2021

³ The Respondent provided a power of attorney stating that he was the President of Forest Hill Kitchen & Bath Corporation and was authorized to represent the business entity. The power of attorney will be retained with the file.

Clmt. Ex. 2 - MHIC Complaint Form, April 13, 2022; Home Improvement Claim Form, September 16, 2022; email from the Respondent to the Claimant, December 3, 2021; email from the Respondent to the Claimant, November 25, 2021; email chain between the Respondent and the Claimant, August 4, 2021 through August 10, 2021; seventeen color photographs taken by the Claimant of the work performed by the Respondent, undated; Respondent's invoice, July 21, 2021; Respondent's invoice, December 13, 2021

Clmt. Ex. 3 - Handwritten note signed by Marcus Lohman, undated

I admitted the following exhibit offered by the Respondent:

Resp. Ex. 1 - Respondent's invoice, December 13, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, December 14, 2022; Hearing Order, November 21, 2022

Fund Ex. 2 - Respondent's licensing history, January 19, 2023

Fund Ex. 3 - Letter from the MHIC to the Respondent, October 5, 2022 with attached Home Improvement Claim Form, September 13, 2022

Testimony

The Claimant testified and presented the testimony of his wife, Denise Reinhardt. The Respondent testified and did not present other witnesses. The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-103460 and 05-129311.
2. On July 21, 2021, the Claimant and the Respondent entered into a contract to renovate the Claimant's bathroom in his home located in Abingdon, Maryland (Contract).
3. The Contract provided for a complete tear-down of the existing bathroom and a rebuild to include a new tub, vanity, sink, tiles for the floor and shower wall, sliding glass shower doors, installing a 48" x 17" window, and building a linen closet.

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4. The original agreed-upon Contract price was \$17,945.88.

5. The Claimant made an initial deposit to the Respondent on July 22, 2021 in the amount of \$5,500.00.

6. On a date not established in the record, the Claimant made a second payment to the Respondent in the amount of \$5,500.00.

7. At some point in approximately August 2021, after an initial inspection, the parties agreed that installing the 48" x 17" window was not structurally feasible.

8. Work began on the project in November 2021.

9. The Respondent initially believed, and the Contract reflects, that the linen closet would be framed into the bathroom wall. This was not possible as the framing would make the closet too small, so the Respondent and the Claimant verbally agreed that the Respondent would build a cabinet custom made to fit the hole he made in the bathroom wall. The agreement to build and install the custom cabinet did not increase the Contract price despite requiring additional work and materials.

10. The Claimant was unhappy with the work being performed as he did not believe a licensed plumber was performing the plumbing work, cuts were made into the ceiling without first checking if wiring was located above, the wrong size bathtub was initially installed, the vanity was delivered in a damaged state, and the vanity top was not drilled properly for the faucet.

11. The Respondent was equally unhappy with the Claimant, stating in an email dated November 25, 2021, "at this point I don[']t see a path forward because I have come to believe that no matter what we do or how we do it[,] [i]t will not make you happy...I will info[rm] Chris not to show up on Monday and there will be no more deliveries of material." (Clmt. Ex. 2).

12. On December 3, 2021, the Respondent sent the Claimant a profanity-laden email, instructing the Claimant to never call the Respondent or his store again, and informing the Claimant that the Respondent would not be returning to the property to complete the project. (Clmt. Ex. 1).

13. As of December 3, 2021, the tub and shower had been installed and the tiles on the shower walls had been installed. The linen closet had not been built or installed, although a hole had been made in the wall where the linen closet was to be installed.

14. At some point after December 3, 2021, the Claimant noticed cracks in three of the glass tiles installed in the shower. (Clmt. Ex. 2).

15. On December 13, 2021, the Respondent sent the Claimant an invoice, noting that the value of the work performed on the Contract was \$12,879.73. (Resp. Ex. 1).

16. The Claimant performed his own repairs to the bathroom in order to be able to use the room, as it is the only full bathroom in his home.

17. On September 12, 2022, the Claimant received a proposal from J. Gerard Contracting LLC to remove the glass tile accent band that contained the cracked tiles and to replace the tiles, which the Claimant planned to provide. This proposal was for \$1,800.00 and called for removing and installing all new glass tiles, not just replacing the three broken tiles.

18. On January 20, 2023, the Claimant purchased tiles from The Tile Shop in the amount of \$226.80 for J. Gerard Contracting LLC to use.

19. On a date uncertain in the record, the Claimant received a proposal from Kenwood Kitchens, Inc. to custom build and install a linen closet cabinet for \$3,250.00.

12. The Board of Directors of the Corporation has approved the proposed amendments to the Charter of the Corporation, which are set forth in the attached exhibits, and has authorized the President of the Corporation to execute and deliver the same.

13. The Board of Directors of the Corporation has approved the proposed amendments to the Charter of the Corporation, which are set forth in the attached exhibits, and has authorized the President of the Corporation to execute and deliver the same.

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20. The Board of Directors of the Corporation has approved the proposed amendments to the Charter of the Corporation, which are set forth in the attached exhibits, and has authorized the President of the Corporation to execute and deliver the same.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(C)(1); State Gov't § 10-217; 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 Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

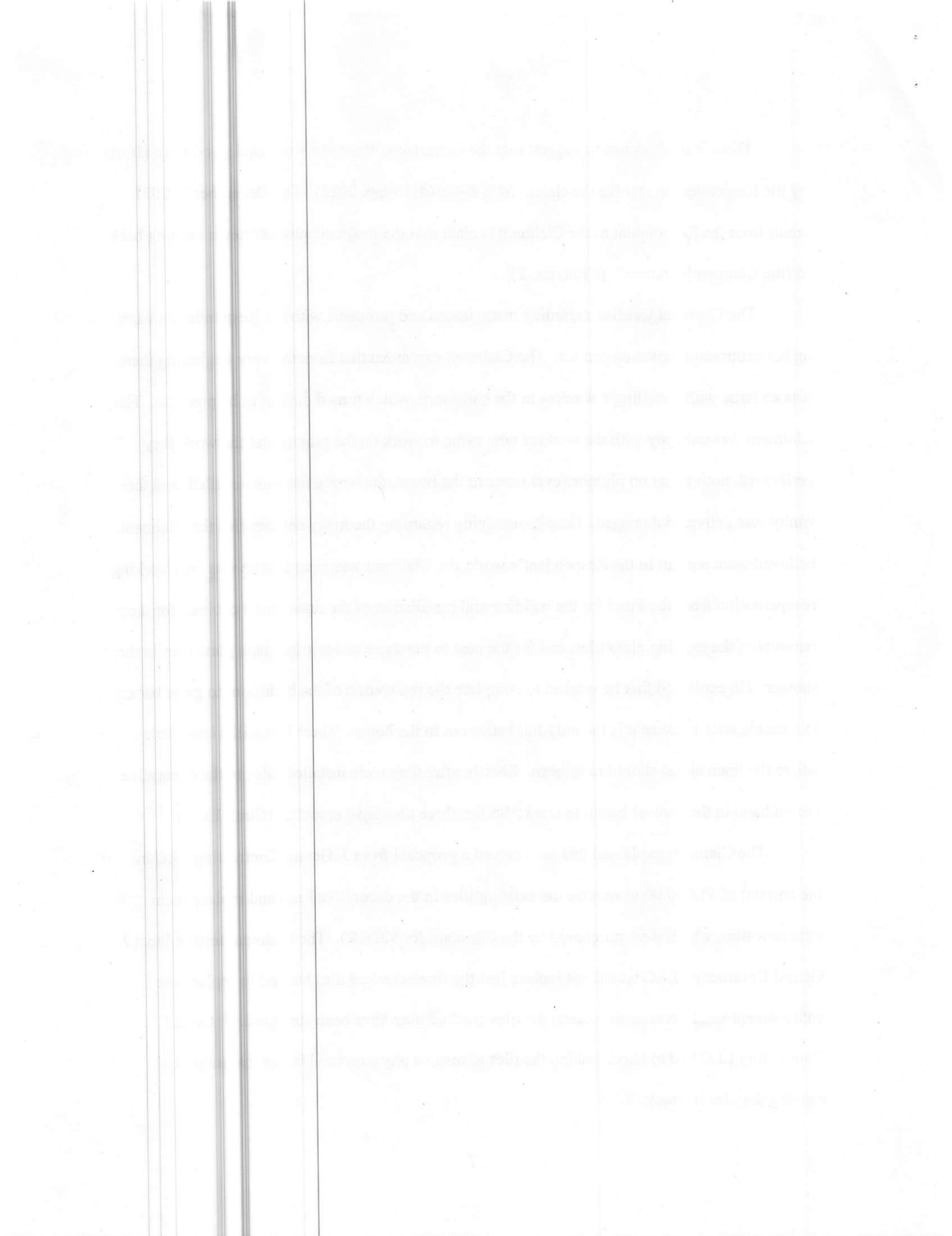
An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by 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 Claimant has proven eligibility for compensation.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery. The claim was timely filed, 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) (2015 & Supp. 2022). 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) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). 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) (Supp. 2022).

There is no evidence to suggest that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The December 3, 2021 email from the Respondent to the Claimant is clear that the Respondent was “never coming back to [the Claimant’s] house.” (Clmt. Ex. 2).

The Claimant testified regarding many issues and problems with the Respondent’s work on his bathroom renovation project. The Claimant explained that from the very beginning there was an issue with installing a window in the bathroom, which turned out not to be possible. The Claimant was unhappy with the workers who came to work on the project and the work they performed, noting that no plumber ever came to the home, the wrong tub was installed, and the vanity was delivered damaged. Despite testifying regarding the many deficiencies the Claimant believed were present in the Respondent’s work, the Claimant was clear that he was only seeking compensation from the Fund for the building and installation of the linen closet cabinet, for the removal of the existing glass tiles, and for the cost to purchase and reinstall new glass tiles in the shower. He explained that he worked to complete the renovation of the bathroom to get it back to a usable state because it is the only full bathroom in the house. There was still a large hole where the linen closet should have been. Shortly after they were installed, tiles in the decorative accent band in the shower began to crack. So far, three tiles have cracked. (Clmt. Ex. 2).

The Claimant explained that he received a proposal from J. Gerard Contracting LLC in the amount of \$1,800.00 to remove the existing tiles in the decorative band and replace them with new tiles, which were purchased by the Claimant for \$226.80. The Claimant testified that J. Gerard Contracting LLC would not replace just the three cracked tiles but had to replace the entire accent band because the reason the tiles cracked may have been structural. J. Gerard Contracting LLC had to check behind the tiles to resolve any structural issues that might be causing the tiles to crack.



Additionally, the Claimant submitted a letter from Marcus Lohman, a manager at The Tile Shop. (Clmt. Ex. 3). Mr. Lohman did not inspect the tiles in person but looked at photographs of the cracked tiles and noted in his letter that since the cracks are not on the surface of the tiles, there is an issue behind the tiles. Mr. Lohman's letter provided general causes for what kind of structural issues could cause the cracks, but did not state specifically what caused the cracks in the Claimant's tiles.

The Claimant testified that it took months for him to perform the work to get the bathroom back to a useable state, but it still has a hole where the linen closet should be. He testified that he obtained a proposal from Kenwood Kitchens, Inc. to build and install the linen closet for \$3,250.00. The Respondent testified that he believed this amount to be abnormally high and that the Claimant could have the work performed for a cheaper amount. I note that the Contract specified the amount to install the linen closet to be \$450.00 plus \$150.00 for materials. However, the Respondent also testified that the linen closet could not be framed and installed as he initially believed and that it would have to be custom built and then installed. Other than stating that the \$3,250.00 from Kenwood Kitchens, Inc. was too high, the Respondent did not specify an amount that he believed would be reasonable based on the need to custom build and then install the closet, nor exactly what that would entail.

The Respondent also testified that he did not believe that the three cracked tiles were because of any unworkmanlike or inadequate installation. He testified that the tiles were not cracked when they were installed, and the fact that three tiles cracked does not reflect that there is structural damage behind them.

The Respondent did not contest that he left the project uncompleted. He explained that the Claimant was difficult to work with and that while there were issues with the wrong tub being installed and the vanity being damaged, he corrected those issues. He stated that his

workers and office staff were not comfortable working with the Claimant, so he decided not to complete the project. The Respondent estimated that when he left the project on December 3, 2021, he had completed \$12,879.73 of work on the project and that he had been paid \$11,000.00 by the Claimant. (Resp. Ex. 1).

Based on the evidence before me, I find that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent left the project uncompleted, leaving the Claimant without a working bathroom. At the time the Respondent abandoned the project, there was a hole in the bathroom wall where the linen closet was supposed to be. Soon after that, the Claimant noticed cracks in the glass tiles in the shower. Although not all the tiles have cracks in them, it is clear that in order to remove and replace the cracked tiles, all of the tiles have to be removed and then reinstalled. This is evidenced by the proposal of J. Gerard Contracting LLC, the Claimant's testimony that he could not obtain a contractor to just replace the three cracked tiles, and by a letter written by the Respondent to the MHIC in which he states that he does not recommend trying to replace a single tile as it could create additional issues. (Clmt. Ex. 1).

Additionally, I find it more likely than not that the tiles cracking did not just occur by happenstance, but due to their unworkmanlike installation. I credit the Claimant's testimony that the tiles did not crack all at once, but over a period of a couple of weeks. The Respondent's assertion that sometimes cracks just happen was unsupported. His contention that cracks can also occur due to extreme temperature changes is likewise not supported by the record before me. The tiles were chosen for and installed in a shower, where various water temperatures can be used. It is not likely that the tiles would not be able to survive such normal or regular temperature changes, nor is there any evidence that the Claimant's bathroom was otherwise

exposed to extreme changes in temperature. 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) (Supp. 2022); 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.

The Fund argued that I should use the formula found at COMAR 09.08.03.03B(3)(c)⁴ in that the Respondent performed some work under the contract and the Claimant has solicited other contractors to complete the work. The Fund further argued that I should not use the Contract amount of \$17,945.88 but should find that there was an amended contract price of \$12,879.73 based on the invoice that the Respondent provided to the Claimant on December 13, 2021 (Resp. Ex. 1). Based on this, the Fund calculated that the Claimant's actual loss was \$3,397.07.⁵

I disagree with the Fund's calculation. The Claimant contested that the value of the work provided by the Respondent was \$12,879.73. This was not a new contract or an amended contract between the parties, but a one-sided statement of what the Respondent believed the Claimant still owed to him under the Contract. The Claimant testified that he did not receive this value from the Respondent and that he had to correct many issues himself in order for his

⁴ "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."

⁵ Amount paid (\$11,000.00) plus the cost to correct (\$1,800.00 + \$3,250.00 + 226.80 = \$5,276.80) equals \$16,276.80. \$16,276.80 minus the Contract price (\$12,879.73) equals \$3,397.07.

bathroom to be operational. This amount also does not reflect the fact that the parties agreed that the linen closet, as first envisioned, could not be framed within the wall and would have to be custom built and installed. It was clear from the testimony that the Respondent agreed to custom build and install the linen closet at no additional cost. I also find that it would not be appropriate to use the full Contract amount of \$17,945.88, as the Claimant made it clear that he was not seeking reimbursement for all of the work left unperformed by the Respondent, but only the linen closet and the repair and replacement of the glass shower tiles.

Therefore, I find that none of the following three regulatory formulas is appropriate in this case:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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)(a)-(c). Accordingly, I shall apply a unique formula to measure the Claimant's actual loss. I find the Claimant's actual loss to be \$5,276.80, which is the cost to complete the custom linen closet (\$3,250.00) plus the cost to correct the Respondent's poor work

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in installing the glass shower tiles (\$2,026.80),⁶ which must be completely redone, even though, at this time, only three of the tiles are cracked.

I considered the Respondent's testimony that the \$3,250.00 to build and install the linen closet was significantly higher than what is noted in the Contract. However, it is apparent from the Respondent's testimony, that what was initially envisioned in simply framing the linen closet and adding shelves and hardware, was not possible. It was likewise clear that the parties agreed that the Respondent would custom build and install the linen closet, and despite these steps requiring additional work and materials, the parties did not increase the Contract amounts. The Respondent agreed to do the additional work without increasing the price. The Claimant found a company who is able to build and install the linen closet. Just because the Respondent believes that the amount should be less, does not mean that the Claimant is bound to find the cheapest option. I additionally note that if the Respondent believed that building and installing the closet could have been completed for a lower cost, he had the opportunity to do it himself, but instead chose to abandon the Contract.

As discussed above, I find that the Claimant's actual loss also includes the cost to remove and reinstall the glass shower tiles. I find it more likely than not that the tiles cracked due to their poor and unworkmanlike installation. Due to the nature of the tiles, and the fact that all of the tiles have to be removed in order to remedy any underlying issues in the shower wall, it is not possible to just remove and replace the three cracked tiles. Because of this, I find it appropriate to include the entire \$1,800.00 from the J. Gerard Contracting LLC proposal in calculating the Claimant's actual loss.

⁶ This includes the \$1,800.00 for the J. Gerard Contracting LLC proposal, as well as the \$226.80 to purchase the tile from the Tile Shop. (Clmt. Ex. 1).

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Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁷ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$5,276.80.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,276.80 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,276.80; 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;⁸ and

⁷ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

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

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RECOMMENDATIONS

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CONCLUSIONS

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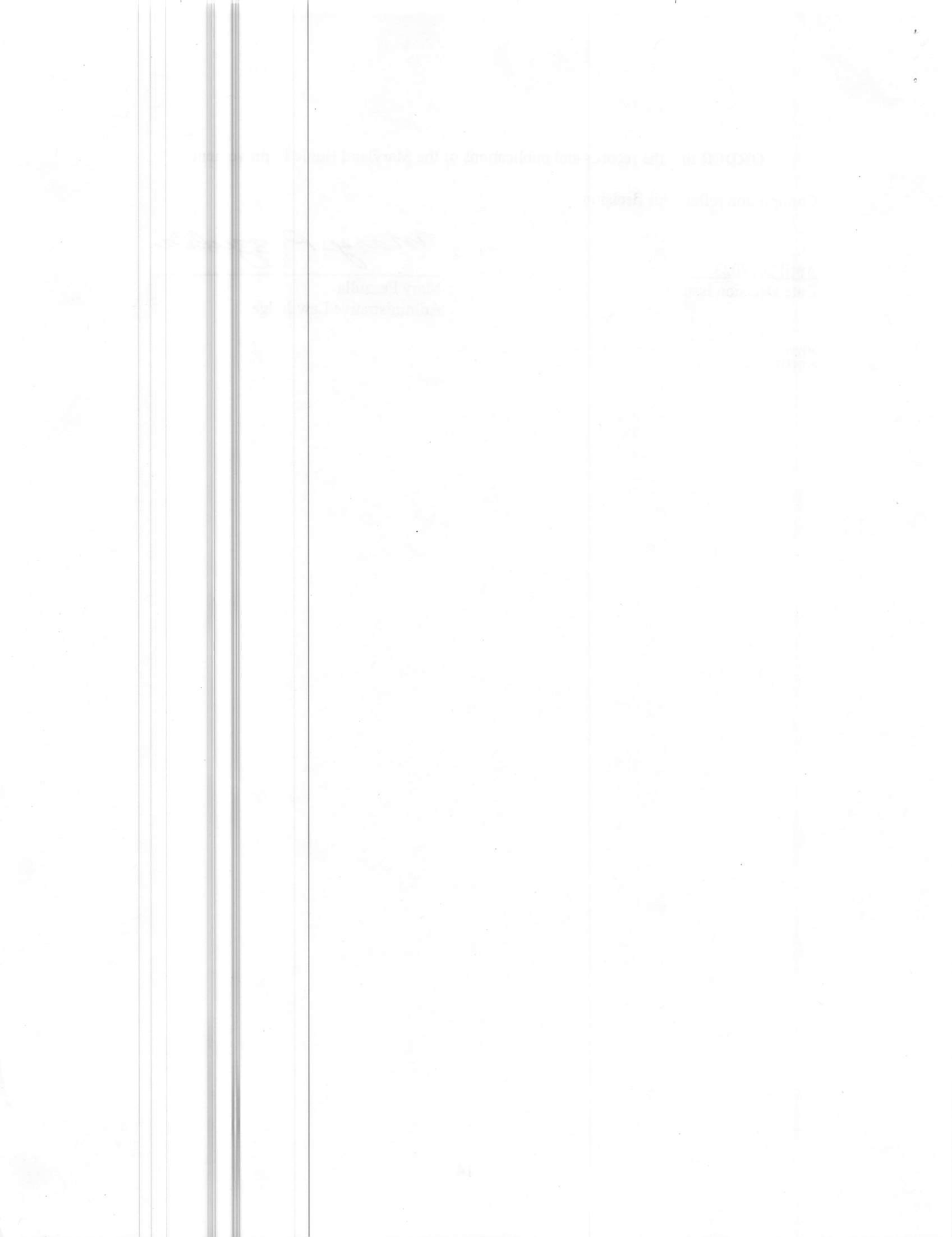
ORDER that the records and publications of the Maryland Home Improvement
Commission reflect this decision.

April 20, 2023
Date Decision Issued

Mary Pezulla

Mary Pezulla
Administrative Law Judge

MP/sh
#204337



PROPOSED ORDER

WHEREFORE, this 26th day of June, 2023, 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***

