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November 6, 2015

Via Fax: (410) 962-8482

Division of Occupational and Professional Licensing  
Maryland Home Improvement Commission  
500 N. Calvert Street, Room 306  
Baltimore, MD 21202-3651

RE: Complaint #11 (90) 1267  
Claimants: Katrina and Eric Wright  
Respondent: Kraig E. Rebstock t/a KER Remodling

Gentleman:

As evidenced by the signatures below of the attorneys for the claimants and the respondent, the full and final settlement between the parties which was put on the record on November 5, 2015 when this complaint was called for argument, the agreed amount has been paid to the claimants by the respondent.

The settlement has been consummated and the complaint dismissed. The claim against the guaranty fund is withdrawn.

Thank you.

Sincerely,

**Signature on File**

**Signature on File**

Joseph H. Rouse  
Attorney for Claimants

Russell J. Bennett  
Attorney for the Respondent

cc: Kris King  
Assistant Attorney General  
via email: kris.king@maryland.gov

Keyonna Penick, Panel Specialist  
via email: keyonna.penick@maryland.gov

Kraig Rebstock  
KER Remodeling

IN THE MATTER OF THE CLAIM	* BEFORE MICHAEL R. OSBORN,
OF KATRINA AND ERIC WRIGHT,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANTS	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF KRAIG E.	*
REBSTOCK t/a KER REMODELING,	* OAH No.: DLR-HIC-02-13-38676
RESPONDENT	* MHIC No.: 11 (90) 1267

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 23, 2013, Katrina and Eric Wright (Claimants) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$30,420.88 in alleged actual losses suffered as a result of a home improvement contract with Kraig E. Rebstock t/a KER Remodeling (Respondent).

I held a two-day hearing beginning on October 27, 2014 at 50 Harry S. Truman Parkway, Annapolis, Maryland and concluding on December 8, 2014 at the Law Office of Joseph H. Rouse, 7433 Baltimore Annapolis Boulevard, Glen Burnie, Maryland. Md. Code Ann., Bus.

Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014). Peter Martin, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Joseph H. Rouse, Esquire, represented the Claimants. The Respondent was represented at the October 27, 2014 hearing by Russell J. Bennett, Esquire. The Respondent represented himself at the December 8, 2014 hearing.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

### **ISSUES**

1. Did the Claimants 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 that loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits offered as evidence by the Claimants:

- Cl. Ex. 1 - Contract, January 17, 2011
- Cl. Ex. 2 - Subpoena in the District Court of Maryland for Anne Arundel County, Case No. 0702-0008879-2011, June 26, 2013, with attachments
- Cl. Ex. 3 - Hand drawn floor plans, undated
- Cl. Ex. 4a - Hand drawn floor plans, undated
- Cl. Ex. 4b - Hand drawn floor plans, undated
- Cl. Ex. 5 - Facsimile from Tammy to Katrina Wright, August 25, 2011, with attachments
- Cl. Ex. 6 - Floor plans with permit office approval, February 4, 2011
- Cl. Ex. 7 - Building Permit, February 2, 2011
- Cl. Ex. 8 - Photograph, January 13, 2011
- Cl. Ex. 9 - Photograph, undated
- Cl. Ex. 10 - Photograph, May 2, 2011
- Cl. Ex. 11 - Photograph, May 2, 2011
- Cl. Ex. 12 - Photograph, May 15, 2011

- Cl. Ex. 13 - Photograph, undated
- Cl. Ex. 14 - Final Checklist before Completion, undated
- Cl. Ex. 15 - Photograph, undated
- Cl. Ex. 16a - Photograph, March 5, 2011
- Cl. Ex. 16b - Photograph, March 5, 2011
- Cl. Ex. 16c - Photograph, March 5, 2011
- Cl. Ex. 17 - Photograph, undated
- Cl. Ex. 18 - Photograph, undated
- Cl. Ex. 19 - Boulevard Flooring estimate, May 4, 2011
- Cl. Ex. 20 - Qualifications of John J. Heyn, JJH Consultant, undated
- Cl. Ex. 21 - JJH Consultant report, February 6, 2012, with attachments
- Cl. Ex. 22 - Sewer flies, carcasses taped to plain sheet of paper, undated
- Cl. Ex. 23 - Hand drawn floor plans, undated
- Cl. Ex. 24 - Lowe's internet ad for a jetted tub, July 10, 2012
- Cl. Ex. 25 - Able Electrical Services, Inc., invoice, April 30, 2011
- Cl. Ex. 26 - Letter from Daniel L. Kane, Director, Inspections and Permits, to Joseph Rouse, P.A., December 5, 2014, with attachments
- Cl. Ex. 27 - B G & M, LLC Receipt, April 6, 2011
- Cl. Ex. 28 - DeVere Insulation Company Receipt, March 22, 2011
- Cl. Ex. 29 - Able Electrical Services, Inc., Bid Proposal, March 9, 2011
- Cl. Ex. 30 - Little Plumber Boy, LLC, Proposal, August 14, 2012

I admitted the following exhibits offered as evidence by the Fund:

- Fund Ex. 1 - Notice of Hearing, January 24, 2014
- Fund Ex. 2 - Rescheduled Notice of Hearing, March 20, 2014
- Fund Ex. 3 - Rescheduled Notice of Hearing, July 28, 2014
- Fund Ex. 4 - Licensing Information about the Respondent, undated
- Fund Ex. 5 - Letter to the Respondent from the DLLR, September 5, 2013, and attached Home Improvement Claim Form
- Fund Ex. 6 - Letter To Whom It May Concern from the DLLR, October 7, 2014<sup>1</sup>
- Fund Ex. 7 - Letter To Whom It May Concern from the DLLR, October 20, 2014
- Fund Ex. 8 - Letter To Whom It May Concern from the DLLR, October 7, 2014

I admitted the following exhibit offered by the Respondent:

Resp. Ex. 1, which contained the following:

- Respondent's Interrogatories to Claimants, undated<sup>2</sup>

<sup>1</sup> Fund Exhibits 6 through 8 relate to HIC records relating to Boulevard Flooring, Troy Glover of Boulevard Flooring, and Tonya Glover. Collectively, they say that the HIC license number reflected on a flooring estimate provided to the Claimants by Troy Glover d/b/a Boulevard Flooring is the HIC number of a sub-contractor's license issued by the HIC to Tanya Glover,

<sup>2</sup> At some point in 2011, the Respondent (Plaintiff) sued the Claimants (Defendants) in the District Court of Maryland for Anne Arundel County, seeking \$8,400.00. Following discovery, the Respondent/Plaintiff and Claimants/Defendants agreed to address the matter only through the Claimants' Fund claim.

- Defendants' Answers to Interrogatories, November 18, 2011
- Respondent's proposal, January 17, 2011
- Len the Plumber Receipt for repair estimate, May 26, 2011
- Boulevard Flooring estimate, May 4, 2011
- B G & M, LLC Receipt, April 6, 2011
- Anne Arundel County Building Permit Application, undated
- Standard Grading Plan Application, undated
- Change Permit Information and Cash Receipt, January 25, 2011
- Smoke Detectors regulations and hand drawings, undated
- Five (5) cancelled checks signed by Katrina Wright, totaling \$35,000

### Testimony

Katrina Wright testified and presented the testimony of:

1. John J. Heyn, JJH Consultant, accepted as an expert in general contracting and construction;
2. Michael R. Griffith, Little Plumber Boy, LLC, accepted as an expert in plumbing; and
3. Eric Wright

The Respondent testified and presented the testimony of:

1. Jeffrey Edelblute;
2. Scott Bond;
3. Walter E. Marsh, accepted as an expert in home improvement contracting; and
4. David W. Livingston.

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 number 01-97680.
2. On January 17, 2011, the Claimants and the Respondent entered into a contract to build an addition to the Claimants' home with a contract price of \$40,000.00. The addition was to be a 37 foot by 16 foot addition to the back of the Claimants' existing home, consisting of a family room adjoining the existing kitchen, and an expansion of the existing master bedroom to

include a larger bedroom, master bath, and walk-in closet. The addition included a French door exit to the rear, and a single door exit to the driveway side of the house.

3. The scope of the work to be performed included:

#### Exterior

- Repair and extend the right rear side of the slab foundation of the house;
- Tear down the rear of the house and build a new 37' by 16' rear addition with a master bathroom, master bathroom, and family room with walk-in closet;
- Install a new header beam across the kitchen and bedroom where the addition joins the house;
- Install a new roof on the existing house and the addition;
- Remove any bad plywood found during work on the roof and replace it with oriented strand board (OSB) at an additional cost of \$30.00 per sheet;
- Install new siding on the house, and exterior soffits and gutters to the addition; and,
- Install a new slider and two new doors, and remove the bay window and rear entry door for re-use.

#### Interior

- Tear out the existing kitchen and bedroom at the wall where the addition will be built;
- Install insulation;
- Install drywall;
- Install electric baseboard heaters; and
- Install a new bathroom in the new addition with a tub, shower, toilet, and sink, with the Claimants' to supply all of the fixtures such as the tub, shower doors, sink, vanity, toilet, fans, and light fixtures and the Respondent to supply all other materials.

4. The January 17, 2011 contract stated that the Respondent would supply all drawings and obtain permits for an initial payment of \$500.00. In addition: \$9,500.00 was due on signing the contract; \$10,000.00 was due on completion of framing, roofing and windows; \$10,000.00 was due when siding, insulation, and drywall were complete; \$5,000.00 was due when all tile and trim was complete; and, \$5000.00 was due on full completion. All work was to be performed within ninety days.

5. On the following dates, the Claimant paid the Respondent as follows:

January 21, 2011	\$ 500.00
January 31, 2011	\$ 9,500.00
March 1, 2011	\$10,000.00
March 11, 2011	\$10,000.00
March 28, 2011	<u>\$5,000.00</u>
	\$35,000.00 (total payments)

6. On January 25, 2011, the Respondent applied for a building permit at the Anne Arundel County Permit Application Center in Annapolis (permit office). The Respondent described the work to be performed as a 16 by 37 addition for a bedroom and family room. The Respondent did not include a bathroom or plumbing work in the permit application or in the drawings of the work to be performed that he submitted to the permit office. He described the contract cost of the work to be performed as \$8,000.00.

7. Anne Arundel County charges for residential building permits based, in part, on the cost of the work to be performed – the less the cost of work to be performed the less the cost of the permit. The building permit cost the Respondent \$192.89, comprised of a single family dwelling permit fee of \$167.89, and a \$25.00 building application fee.

8. Design of the interior was based largely on a hand-drawing the Claimants provided to the Respondent, discussions between the Claimants and the Respondent as to what the Claimants wanted, and recommendations by the Respondent as to the interior layout.

9. Demolition, and new foundation, new framing, new roof sheathing, new roofing, and new electrical work were performed without relevant incident.<sup>3</sup> Demolition included removal of a bay window from the existing home, and setting it aside for later re-use.

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<sup>3</sup> There was an incident in which wind caused roof sheathing to come loose. Two vehicles were damaged by falling building materials. These damages are not part of the claim against the Fund.

10. Initial work performed by the Respondent passed inspections by Anne Arundel County foundation, framing, and electrical inspectors. However, as there was no bathroom in the drawings submitted to the permit office, inspections did not include plumbing inspections in the new master bathroom.

11. On March 9, 2011, the Claimants and the Respondent entered into an additional contract, which included work in both the addition and in the existing part of the Claimants' home.<sup>4</sup> In this contract, the Respondent agreed to install all of the electrical lines and fixtures in the master bedroom and master bathroom, to install a dedicated circuit for the jetted tub, to install an exterior light and outlet, to install an electric sub-panel, and to install smoke detectors. The Respondent also agreed to replace exterior electric supply cables, to reconnect the exterior power supply lines to the existing main breaker panel, and to install a meter guard over the electric meter. As part of this contract, the Claimants were required to supply two ceiling fans (one with a light kit), smoke detectors, baseboard heaters, a wall heater, vanity lights, wall-mounted lights, and exhaust fans. The contract price for the additional work to be performed was \$3,650.00.

12. The last day the Respondent was present on the Claimants' property was approximately April 26, 2011. The Respondent requested a final \$5,000.00 payment on the contract, which the Claimants refused to pay until the Respondent corrected several items on a punch list. The Respondent walked through the Claimants' property to review the punch list

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<sup>4</sup> See Cl. Ex. 29, which is entitled "Bid Proposal" and includes the signatures of both claimant Katrina Wright and the Respondent. Ms. Wright testified that the additional contract was designed to more specifically articulate what the Respondent had already agreed to do. In the Claimants' (Defendants') Answers to Plaintiff's (Respondent's) Interrogatories, Ms. Wright stated that she denied owing the Respondent an additional \$3,400.00 beyond the initial contract price because the additional contract was to correct mistakes the Respondent had already made. My conclusion, based upon the description of the work to be performed in Claimants' Exhibit #29, the testimony of the parties, and the interrogatory responses, is that the Claimants and the Respondent entered into an additional contract.



items and agreed to correct the problems identified; however, the walk-through was very contentious. Following this meeting, the Respondent never returned to the property.

### **RESPONDENT'S WORK ON THE EXTERIOR**

13. Along a portion of the edge of the roof no drip edge was installed. The drip edge protects the rake board along the roof line from water damage. Failure to install a drip edge was unworkmanlike. The cost of materials to install the necessary drip edge is \$15.00.

14. A rough-edged hole was cut or punched through the vinyl siding. The main electrical supply line from outside the house to the breaker box inside the house was run through this rough hole. The hole through which the electrical supply line was run was not sealed, which allows weather and insects to intrude at the hole. Punching or roughly-cutting a hole in the siding, then running the electrical supply line through the hole and failing to seal the hole against intrusion of water or insects was unworkmanlike. The cost of materials to repair the siding and properly seal the hole through which the electrical supply line runs is \$15.00

15. New vinyl siding was installed on the addition. The addition included a new exit door to the driveway. When siding along the new exit door was installed, the siding channel at the base of the door was cut short and, though short, was installed. This caused a gap where the siding channels meet at the base of the exit door. The gap in the siding channel allows water to intrude at the gap, which will cause rot and damage beneath the gap in the siding channel. Installation of the siding channel with such a gap was unworkmanlike. The cost of materials to repair the gap in the siding channel is \$15.00.

16. A set of French doors was installed at the rear exit of the house. The French doors were hung out of square. The French doors are very snug at the top, which causes the doors to catch against each other when closing them, and have a gap at the bottom which allows

light through, allows heat to escape, and allows cold in. Hanging the French doors out of square was not workmanlike. To correct this problem, casings on both sides of the French doors must be removed, door jamb nails must be removed, jamb shims must be removed, and the jamb must be realigned and installed properly squared with nails and shims. The door casings on both sides must be reinstalled, holes and any damage to the door casings must be repaired, and the door casings must be repainted. The cost of materials to repair the out-of-square French doors is \$15.00.

17. The metal trim at the top of the side-exit door is dented. Installation of dented metal trim at the top of the door was unworkmanlike. The cost of materials to replace the metal trim is \$50.00.

18. A single eight-inch-high precast concrete step was installed on the driveway outside the new side exit door. The steps are not equal. The first step from driveway to step tread is eight inches. The distance from the surface of the tread on the precast step to the surface of the door threshold is almost ten inches. The result is one step – from driveway to the tread of the precast step – of eight inches, with a second step - into the house from the precast step - of nearly ten inches. Installation of the precast step with a higher second step than the first, and installation of the precast step with a nearly ten-inch drop when exiting, creates a trip hazard, and was unworkmanlike. The cost of materials to properly install the step at the side exit is \$50.00.

19. A used bay window removed during the demolition was re-installed.<sup>5</sup> Vinyl siding was installed around the bay window. The gap between the siding J-channel surrounding the bay window was excessive, and not properly sealed, which allows weather to intrude between the siding J-channel and the window frame. Installation of the siding with an excessive gap that will allow weather to intrude was unworkmanlike. The cost of materials to repair the excessive gap between the siding J-channel and the bay window is \$50.00.

20. The aluminum end cap of the soffit over the bay window was cut improperly and does not meet the siding, resulting in a gap between the aluminum end cap and the siding. This allows weather and insects to intrude and cause damage. Installation of an improperly cut aluminum end cap on the soffit was unworkmanlike. The cost of materials to replace the improperly cut aluminum soffit end cap is \$15.00.

21. The cost of materials to repair unworkmanlike exterior work is \$225.00. (\$15.00 -drip edge; \$15.00 - siding; \$15.00 - siding channel; \$15.00 - French door repairs; \$50.00 - side door metal trim; \$50.00 – step at side door; \$50.00 – bay window J-channel repair; \$15.00 – soffit)

22. The cost of labor for all exterior repairs is \$800.00.<sup>6</sup>

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<sup>5</sup> Ms. Wright testified that she asked the Respondent to use care when removing a bay window during demolition so that it could be reused. The Claimants planned to donate the bay window to a neighbor who said he would like to have it. However, during construction, the Claimants agreed that the Respondent could reuse the bay window in the Claimants' home. Ms. Wright testified that the contract called for three new windows to be purchased at the Respondent's expense, and that he did not give her any credit against the contract when he did not have to buy a large window for the space in which he installed the used bay window. Ms. Wright also testified that although three new windows were called for in the contract, the Respondent installed only the used bay window and one other window. However, no evidence was offered as to the cost of purchase or installation of the two new windows the Claimants did not receive.

<sup>6</sup> Mr. Heyn initially testified about the cost to repair various exterior problems, one problem at a time. These estimates often included a minimum labor charge by a qualified contractor, making the cost to repair the drip edge, for instance, \$150.00. Mr. Heyn testified that a qualified contractor could repair all exterior problems, including the out-of-square French doors in approximately one day. My findings take into account the cost of materials for each necessary external repair, and the cost of hiring a qualified contractor to make all necessary repairs in one day. None of the external repairs require two men to perform.

23. The total cost to repair all exterior unworkmanlike work, including labor and materials, is \$1,025.00.

24. Construction of the addition required the electric meter to be removed from the existing house and, when new electrical connections to the house were complete, to be reattached to the addition. The Respondent left the electric meter on the ground, and damaged the main electric service cable running into the house. On April 30, 2011, the Claimants' paid Able Electric \$750.00 to replace the damaged main electrical service line and to reattach the electric meter to the house.

#### **RESPONDENT'S WORK ON THE INTERIOR**

25. The new master bathroom has a pocket door entry, with the entry door sliding from left to right into the pocket. The light switch for master bathroom lighting is mounted outside the bathroom, to the right of the entry door, beyond the far end of the pocket door rail system. The result is that someone entering the master bathroom must turn on the lights by reaching to a switch on the bedroom wall located approximately three feet from the bathroom entry. Installation of a light switch outside the bathroom, three feet away from the bathroom door, was unworkmanlike. The cost to re-wire the bathroom lighting and to relocate the switch to an appropriate location inside the bathroom is \$500.00.

26. Inside the master bathroom is a wide jetted tub set into a wooden framework. The tub has a water pump and electrical connections in a cavity near the tub, inside the wooden framework. The water pump and electrical connections are not accessible for servicing from outside the tub through an access panel. The tile backer board and ceramic tile were installed on the walls of the wooden frame into which the tub was set, sealing off the water pump and electrical connections from external access. The Respondent did not explain to the Claimants

where the jetted tub water pump or electrical connections were located, or provide the Claimants a drawing identifying their location. Enclosing the water pump and electrical connections behind tile backer board and ceramic tile with no access to them was unworkmanlike. Repair will require a complete tear out and reinstallation of one face of the vertical tile surrounding the tub, and installation of an access panel.

27. Ceramic tile was installed on the horizontal surfaces that surrounded the jetted tub. However, no round-edge ceramic tile was installed at the joint where the horizontal and vertical tiles enclosing the jetted tub meet. As a result, there is an exposed sharp tile edge where an individual sits on the jetted tub ledge to get in to or out of the jetted tub. Installation of exposed ceramic tile edges at the ledge of the jetted tub was unworkmanlike. Repair of this unworkmanlike installation will require a complete tear out and reinstallation of the vertical and horizontal tile surfaces that meet at the lip of the jetted tub.

28. Installation of ceramic tile on the vertical and horizontal surfaces surrounding the jetted tub included uneven tile, uneven vertical and horizontal joints, and uneven grout lines. The tile work on the tubs surrounding vertical and horizontal surfaces was unworkmanlike. Repair of this unworkmanlike tile work will require a complete tear out and reinstallation.

29. Installation of ceramic tile on the bathroom floor included uneven tile, uneven joints, irregular tile cuts that resulted in long, narrow-to-wide shaped triangular fill pieces, and uneven grout installation. The bathroom floor tile installation was unworkmanlike. Repair of this unworkmanlike bathroom floor tile will require a complete tear out and reinstallation.

30. Some parts of the shower floor were installed running away from the drain, which causes water to pool on the shower floor. Installation of the shower floor so that water pools

away from the drain was unworkmanlike. Repair of this unworkmanlike shower floor will require a complete tear out and reinstallation.

31. The jetted tub and shower are divided by a large glass panel installed into a three-sided frame, open at the top. The frame is covered by ceramic tile. The surface of the tile installed on the glass panel frame is irregular, the edges of the tile on the frame are irregular, and the grout lines on the tile surrounding the glass panel frame are irregular. The installation of the ceramic tile on the frame of the glass panel separating the tub from the shower was unworkmanlike. Repair of this unworkmanlike ceramic tile on the glass panel frame will require a complete tear out and reinstallation.

32. A large glass panel was installed to separate the tub from the shower using only clear silicone caulk. Installation of this large glass panel with silicone caulk, only, and no other mechanical support such as clips or rails, was unworkmanlike. Repair of this unworkmanlike installation will require a complete tear out and reinstallation, although the glass panel may be salvaged.<sup>7</sup>

33. After the jetted tub was set in place in its frame, holes were drilled in the lip of the tub into which tub fixtures would later be installed. The holes were drilled along the far wall on the side of the tub away from where an individual enters and exits the jetted tub, which requires those without long arms to step into the tub to turn on and adjust the temperature of the water before taking a bath. Drilling holes in the tub lip for fixtures that require some users to step into

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<sup>7</sup> Reinstallation of the glass panel cannot be done until the frame to accept the glass panel has been repaired.

the tub to turn on and adjust the water temperature was unworkmanlike. To correct this unworkmanlike tub fixture installation, the jetted tub must be removed and replaced.<sup>8 9</sup>

34. The toilet was installed so that the back of the toilet tank is four inches from the wall. The toilet drain line is set into the new concrete slab foundation of the addition. Installing a toilet so that the back of the toilet tank is four inches from the wall was unworkmanlike. To repair this unworkmanlike work, the toilet must be removed, the tile floor must be opened, the concrete slab must be altered, and the drain line must be altered so that the toilet is in the correct location, with the toilet tank within one to two inches of the wall.

35. The shower head is not aligned and centered directly above the shower water controls, but is approximately two inches left of a line directly above the center of the shower controls. The shower head and shower controls are loose, allowing them to move left to right on the shower wall. Installation of the shower head off center of the controls below the shower head, and installation of the shower head and shower controls so that they move left or right, was unworkmanlike. To repair this unworkmanlike installation, part of the shower wall must be demolished to gain access to the shower head and shower head water supply line, the shower head and water supply line must be moved to the right, the shower head and shower controls must be firmly affixed to prevent any movement when adjusted, and the shower wall must be repaired.

36. The shower water supply lines were installed in reverse. The result is that the shower water controls are backward – with hot water when it should be cold, and cold water

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<sup>8</sup> The Respondent suggested chrome disk caps would suffice to fill the holes drilled to install the tub fixtures. However, this is a cosmetic repair, only, that would only serve to highlight the unworkmanlike work and reduce the overall appeal of the jetted tub and bathroom.

<sup>9</sup> Claimants' Exhibit #24 is a printout of an on-line price for a jetted tub like that purchased by the Claimants for installation by the Respondent. The print-out is dated July 10, 2012, with a price for a jetted tub of \$1,198.00. A current price for this item was not offered as evidence.

when it should be hot. Installation of reversed water supply lines was unworkmanlike. To repair this unworkmanlike installation, the hot water supply lines must be reversed by gaining access to the lines from a crawlspace below the shower floor, or by gaining access by going through a drywall closet wall behind the shower, or by removing the ceramic tile on the shower head and shower control wall.

37. A hot water supply line was attached to the toilet. The result is that the toilet tank fills with hot water when the toilet tank refills after flushing and, if the toilet tank contents do not rest until the water reaches room temperature, flushing the toilet fills the toilet bowl with hot water. Connecting the toilet to a hot water supply line was unworkmanlike. To repair this unworkmanlike work, the toilet water supply valve must be attached to a cold water supply line accessible in the crawlspace beneath the house.

38. The master bath sink or shower was not vented to the exterior of the house. The result is that vent gasses have nowhere to escape. A further result is that sewer flies, which commonly breed in sewer lines and in decaying materials in drain lines, have no way to escape a drain system and make their way into homes through drain openings. Failure to vent the master bath sink and shower was unworkmanlike. Repair of this unworkmanlike installation requires opening the wall behind the master bath sink and shower to install proper vent lines, and continuing the vent lines through the roof of the house.

39. The jetted tub drain line was installed without a P-trap. A P-trap catches water and sediment in a drain line, and when a P-trap has water in it, insects such as sewer flies that reside in sewers and drain lines cannot pass through the P-trap and through the drain of the tub and into the house. Installation of the jetted tub drain line without a P-trap was unworkmanlike. Repair of the drain line to install a P-trap will require, at a minimum, access to the drain line



from a crawlspace beneath the tub to install a P-trap or, at a maximum if the crawlspace method is impossible, removal of the jetted tub to install a P-trap.

40. For much of the time since its installation, the Claimants' master bathroom has been infested with sewer flies.<sup>10</sup> The infestation is a result of the failure of the Respondent to install a master bathroom sink vent, the Respondent's failure to install a P-trap on the jetted tub drain line, or both. The infestation is also a result of the Respondent's unworkmanlike installation of plumbing drain lines. The flies will continue to infest the Claimants' home until the sink is vented and the jetted tub P-trap is reinstalled.<sup>11</sup>

41. An alcove was installed in the shower wall for soap and shampoo. The alcove was installed so that water runs to the rear of the alcove, and does not run to the shower floor and drain. Installation of the shower wall alcove so that water in the alcove runs to the back of the alcove instead of running to the front of the alcove and to the shower floor and drain was unworkmanlike. To repair this unworkmanlike installation, the horizontal ceramic tile surface of the alcove must be removed, the pitch below the tiles must be altered so that the tiles in the floor of the alcove run toward the floor and drain, and the ceramic tiles of the horizontal surface of the alcove must be replaced and re-grouted.

42. The poured slab foundation of the addition is not at the same level as the floors it adjoins. The result is an abrupt change in elevation under foot when walking to or from the

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<sup>10</sup> Claimants' Exhibit #22 is a blank sheet of standard typing paper onto which Mr. Heyn taped over two dozen dead sewer flies taken from the ledge of the bay window in the Claimants' master bedroom. The fly carcasses were lifted simply by laying down a ten-inch long by two inch wide piece of box tape. Mr. Heyn produced the flies to demonstrate the extent of infestation.

<sup>11</sup> Claimant Katrina Wright testified that she and her husband are unable to watch TV in the master bedroom because sewer flies are drawn to the light of the TV or lamp light. She testified that to contain the sewer flies they must completely block off the bathroom.

addition into the existing parts of the home.<sup>12</sup> The installation of the subfloor of the addition lower than the subfloor of the existing floors the addition adjoins was unworkmanlike. To repair this unworkmanlike installation, the carpet in the addition must be taken up, and new underlayment of an appropriate thickness must be installed throughout the addition to bring the subfloor of the addition to the level of the subfloor of the existing house, or new cement-type floor leveling material must be used to change the transition between rooms to a gradual upslope instead of an abrupt change. Following the installation of a new subfloor or cement-type product, the carpet must be reinstalled.

43. The master bathroom vanity and sink was installed too close to the toilet. This installation was unworkmanlike. To repair this unworkmanlike installation, the vanity and sink will have to be detached from the wall, plumbing supply and drain lines will have to be altered, and the sink and vanity will have to be reinstalled.

44. Insufficient baseboard heaters were installed to warm the master bedroom, the master bedroom walk-in closet, and the master bathroom. The addition, including the new family room and master bedroom suite is, generally, colder than the rest of the house, and the

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<sup>12</sup> The Respondent poured a concrete slab foundation for the addition. The addition adjoined the existing kitchen, and existing master bedroom. The concrete subfloor of the addition was not at the same elevation as the subfloor of the kitchen floor it adjoins, or at the same elevation as the existing master bedroom subfloor it adjoins. The result is a difference in elevation of the new family room and bedroom floors where they meet the existing bedroom and kitchen floors. The Respondent installed carpet pad and carpeting in the addition, which adjoins a hardwood kitchen floor and adjoins a carpeted existing master bedroom floor. The final result is an abrupt floor level change at the union of the new family room and kitchen floors, and an abrupt floor level change at the union of the master bedroom addition and the existing master bedroom. The Respondent used a cement-type product and additional layers of carpet padding to try to build up the transition point between the kitchen and the addition, and the transition between the master bedroom addition and the existing master bedroom, but there remains a very noticeable downgrade when stepping from the existing home floors to the addition floors. Due to the use of excessive carpet pad to correct the difference in elevation between old and new, the carpet in the addition is also much softer under foot at the new floor/old floor transition point when stepped on than the rest of the floor. This makes the difference in the level of the subfloor in the addition from the level of the subfloor in the existing house even more noticeable. When walking from the addition to the existing parts of the home, the Claimants frequently trip when they forget about the abrupt change in floor levels and the extent to which the carpet at the transition point gives way under their weight.

master bedroom, master bathroom, and master bedroom closet are always much colder than the rest of the house in winter. Failure to install sufficient baseboard heaters to warm the addition was inadequate performance. To correct this inadequate installation, additional electrical supply lines will have to be installed, and additional baseboard heaters will have to be installed.

45. Following construction of the new addition, the Claimants hired DeVere Insulation to add attic insulation to the existing house. However, DeVere Insulation was unwilling to perform any work until it was paid for the insulation work it performed on the addition. The Respondent hired DeVere Insulation to do this work but did not pay DeVere. The Claimants paid \$561.00 to DeVere Insulation for the work it performed on the addition and to add insulation to the attic of the existing home.

46. The cost to repair the unworkmanlike bathroom work, exclusive of the plumbing work, is \$7,500.00. The repair includes a complete tear-out and reinstallation of all wall, floor, tub surround, glass tub/shower divider frame, and shower tile.

47. The cost to repair the Respondent's unworkmanlike plumbing in the master bathroom is \$17,000.00. This repair includes tear out and reinstallation of all plumbing supply lines and drain lines, moving the toilet and vanity so they comply with applicable building codes and reinstallation of all fixtures including the shower, and installation of a new jetted tub.<sup>13</sup>

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<sup>13</sup> Claimant's exhibit #24 is a July 10, 2012 print out of the on-line price of a tub identical to that purchased by the Claimants and installed by the Respondent. The price of the item is \$1,198.00. Claimants' Exhibit #30 is an August 14, 2012 estimate provided by Michael Griffith, d/b/a Little Plumber Boy, LLC., for plumbing work to repair the master bathroom. This estimate is \$17,000.00, and includes "supply and install a new soaker tub" as part of the estimate. To determine the amount of an award in this matter I used the Little Plumber boy, LLC., estimate, and did not use the separate Lowe's price for the tub.

48. The total cost to repair all of the Respondent’s unworkmanlike work and to compensate DeVere Insulation for the work it performed is as follows:

▪ Exterior supplies	\$225.00 <sup>14</sup>
▪ Exterior labor	\$800.00
▪ Exterior electric (labor and materials)	\$750.00
▪ Interior electric (labor and materials)	\$500.00
▪ Insulation (labor and materials)	\$561.00
▪ Master bathroom not including plumbing (labor and materials)	\$7,500.00
▪ Master bathroom plumbing	\$17,000.00
	\$27,336.00 <sup>15</sup> (total)

**DISCUSSION**

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor . . . .” Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2014). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimants have proven eligibility for compensation.

**Claimants’ Witnesses**

Mr. Heyn, accepted as an expert accepted as an expert in general contracting and construction, testified that the ceramic tile work was of poor quality throughout the bathroom – the floor, the tub surround, the glass divider frame, the shower walls, and the shower floor –

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<sup>14</sup> Drip edge, siding, siding channel, French door, side entry step, side door trim, bay window J-channel, and soffit.  
<sup>15</sup> Claimants’ Exhibit #19 is an estimate for flooring work in the bedroom addition and family room obtained by the Claimants from Boulevard Flooring in the amount of \$2,075.00. The Fund submitted evidence that the MHIC number used by Boulevard Flooring in its estimate was that of a person not affiliated with the company. No one from Boulevard Flooring or any other qualified person was called as a witness to provide evidence of the cost to repair these floors. None of the Claimants’ witnesses testified about the cost to repair the floors. Thus, I do not have a reliable estimate of the cost to repair the bedroom and family room floors, and cannot recommend the Fund compensate the Claimants for the cost to repair what is clearly unworkmanlike floor installation.

were all unworkmanlike. The Claimants' photos, and the photos made a part of Mr. Heyn's report, bear out the poor workmanship. These photos show uneven surfaces, uneven grout lines, poor tile cuts, exposed tile edges, and generally poor aesthetics. Simply put, the ceramic tile installation throughout the bathroom leaves much to be desired. In Mr. Heyn's opinion, the only way to repair the unworkmanlike quality of installation is to tear out the tile and perform the work again, the second time by a qualified craftsman. This tile work alone, Mr. Heyn testified, would cost \$7,500.00.

According to the Claimants' plumbing expert, Michael Griffith, the quality of installation of the plumbing was so poor that he would have no confidence in any of the work concealed behind walls. He testified that the plumbing supply lines were reversed – something that could have been discovered and corrected very simply if the Respondent had simply tested the water supply lines after initial installation. Mr. Griffith testified that plumbing is concealed and that the nature and number of fundamental errors was so great there may be more errors hidden behind walls. His only solution was to remove what the Respondent installed and start over with installation by a qualified plumber. Mr. Griffith testified that a permit for the plumbing work done on this project should have been obtained and that if a permit was obtained, three plumbing inspections from rough-in through final installation would have been required. Had there been the inspections, the problems with improper installation of the toilet, vanity and sink, and improper installation of the shower head and controls would have been caught and corrected before the plumbing work passed inspection. Mr. Griffith also testified that the reversed supply lines in the shower and the connection of the toilet to the hot water supply line would not have passed an inspection.

As to the vent line, jetted tub P-trap, and control access panel, Mr. Griffith testified that had the Respondent obtained a plumbing permit, a plumbing inspector would have noticed the absence of a vent line from the sink and shower as well as the absence of a P-trap on the jetted tub drain lines, and the Respondent would have failed the plumbing inspection. Mr. Griffith also testified that access to the jetted tub water pump and electrical connections is absolutely required by plumbing codes, and that there is no access to the jetted tub water pump and electrical connections. He testified that in his experience he had never seen an access panel for a jetted tub hidden behind ceramic tile in a fashion that required someone who wants to use to use the access panel to dig through grout lines to find access panel screws, or that required someone who wants to access the pump to remove several grout lines to get to it.

As for the jetted tub, Mr. Griffith testified that plumbing codes require someone who uses the tub to be able to adjust the water from outside the tub. He testified that where the Respondent originally drilled holes in the tub lip would require a user to step into the tub to adjust the water. This, Mr. Griffith testified, violated code and is unworkmanlike. He testified that he may be able to find someone who can patch the improper faucet and spigot holes the Respondent drilled into the lip of the tub, but if he cannot, the tub must be replaced. The cost of tub lip repair, if possible, is not part of his estimate of the cost of repair.<sup>16</sup>

Mr. Griffith testified that to correct just the plumbing work on this project, he would have to rip out what is there and start over. His repairs include: obtaining the proper permits; tearing out walls and floors to gain access to plumbing and drain lines; demolishing concrete to expose drain systems and install them correctly; removing and reinstalling supply lines and drain lines; and, installing required drain vent lines. For this work he would charge \$17,000.00. He testified

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<sup>16</sup> Claimants' Exhibit #30 is a Proposal by Little Plumber Bot, LLC, dated August 14, 2012, in the amount of \$17,000.00. This estimate includes "supply and install a new soaker bath tub."

that neither he nor other contractors would guarantee work they did not do, and to guarantee the quality of work here, he would have to do it over. Mr. Griffith testified that another craftsman would have to install new ceramic tile backer board and new ceramic tile where he had to tear it out to access plumbing lines.

Claimant Katrina Wright testified that when she wanted to discuss problems with the quality of the work she called the Respondent, who told her when he would stop by the house. The Respondent, she testified, would not show up when arranged, but would show up unannounced as she was leaving the house for work, which she explained to the Respondent was inconvenient. She testified that she composed a list of problems and that the Respondent went through the home with her and promised to fix each problem on the list, but then he never returned to her property.

Ms. Wright testified that she had to pay some subcontractors the Respondent failed to pay. For example, after the Respondent left the property for the last time, the Claimants hired Able Electric – a subcontractor the Respondent had hired to do work - to replace a damaged main electrical service line running into the house and to do some electrical work not part of their contract with the Respondent. Ms. Wright discussed the responsibility for reattaching the electric meter to the house with the Able Electric technician. The technician told Ms. Wright that he was unwilling to discuss the full terms of the contract with the Respondent as Able Electric had not been paid. However, the technician told Ms. Wright, the Able Electric contract with the Respondent included reattaching the electric meter to the house. Ms. Wright testified that she paid Able Electric what the Respondent owed for project. The electrician repaired the damaged cable and reattached the electric meter to the house.

When Ms. Wright called a dumpster company to remove the dumpster the Respondent had arranged, she had to pay the dumpster company to retrieve its dumpster because the Respondent failed to pay the company.

When Ms. Wright wanted additional insulation added to the existing home, she first had to pay DeVere Insulation what the Respondent failed to pay in order to convince the insulation company to do the additional work.

Ms. Wright testified that although she did not have a contract with these subcontractors, she paid them for the work they did on the Claimants' home because it was the right thing to do.

Ms. Wright testified that she and her husband selected and bought the jetted tub installed by the Respondent. She stated that when she arrived home from work, the tub was installed and holes had been drilled for faucets and a spigot on the far side of the tub, away from her reach, along the back wall. Ms. Wright testified that she did not discuss with the Respondent where to drill holes for fixtures, and that when she objected to the location of the holes for the fixture and insisted the Respondent replace the tub, the Respondent adamantly refused.

Claimant Eric Wright testified that the Respondent tasked the Claimants with buying tile for the bathroom but gave them no instructions about bullnose tile or other smooth-edged tile for the edge of the jetted tub where users get in and out. He testified that had the Respondent told him to get such tile, he would have, but he relied on the Respondent to tell him what to get.

### **Respondent's Witnesses**

Jeffrey Edelblute testified that he worked on the project, and had worked on and off for the Respondent for ten to fifteen years. He testified that he drilled the holes for faucets and a spigot where the homeowners had marked, and installed some of the plumbing. He stated that he is not a licensed plumber.



Scott Bond testified that he did some of the demolition on the project and that, in his view, the project site was cleaned up at the end of each day.

Walter E. Marsh, accepted as an expert in home improvement contracting, did not take issue with the exterior repairs Mr. Heyn testified are necessary. He testified that all of the items on the exterior punch list could be repaired in three days at a cost of \$2,000.00 to \$3,000.00.

Regarding the bathroom, Mr. Marsh testified that he would not have done any of the bathroom work without a permit, and that a plumbing permit could still be obtained for the project. He stated that all of the plumbing would have to be exposed for a plumbing inspector to pass the work. He said that in his experience, a contractor must always ask homeowners where they want holes drilled for fixtures in a jetted tub and that, if necessary, he informs homeowners that a desired placement does not comply with plumbing codes. He did not take issue with the repairs that Mr. Heyn testified must be done on the interior, but thought those repairs could be done for \$3,500.00. He conceded that his estimate may go up after he is on the site and starts working. Connecting the toilet to a hot water supply line was, he testified, unworkmanlike, and installing a glass panel between the shower and tub with silicone caulk, only, was also unworkmanlike. He also testified that he would never have left the electric meter lying on the ground as the Respondent did.

The Respondent testified that an individual known as "John," last name unspecified, was supposed to obtain a plumbing permit for the project but never did, and the Respondent was never able to reach him. He described Claimant Katrina Wright as "having a lot of gripes," and testified that "she never wanted to meet with me." Most of the problems with the project were, the Respondent claimed, caused by the Claimants. The Respondent said he knew the plumbing lines were reversed as he did the hook-up work himself, but he meant to get back to it later to

change it. He conceded there was no vent line for the sink and shower drains, but claimed he had installed a vent line that was vented to the attic where no one could see it. He agreed that he did not tell the Claimants how they could access the pump and electric line on the jetted tub. The Respondent said he was willing to fix everything on the Claimants' punch list, but they would not allow him back on the property. The Respondent claimed he did thousands of dollars worth of work on the project without compensation, and claimed the Claimants owe him \$5,000.00. The Respondent argued that \$5,000.00 was a reasonable amount for the Fund to pay the Claimants, and at most, \$5,000.00 is the cost to repair any problems on the project.

As to his representation to the permit office that the cost of the work to be performed was \$8,000.00, the Respondent's explanation was that "everybody does that."

I found the Claimants and their evidence far more credible than the Respondent. The Claimants were clearly unsatisfied with the work on the project, and the testimony of Mr. Heyn and Mr. Griffith support the Claimants. The Respondent's claims that the Claimants are at fault and would not let him return to the property are without merit, and are contradicted by much of the other evidence, including some of the testimony of the Respondent's witnesses. The Respondent submitted a permit application to the permit office which described the cost of the work to be performed under the contract as \$8,000.00, when the cost of the work was \$40,000.00. The Respondent understated the cost of the work to be performed so the permit would cost less. Most importantly, the Respondent failed to get a permit for the bathroom, thereby saving himself the cost of a qualified plumber and saving himself the inconvenience of three plumbing inspections. He failed to pay several subcontractors.

The Respondent performed an unworkmanlike and inadequate home improvement. As my findings make clear, the repair of the unworkmanlike and inadequate interior work will

require a complete tear out and reinstallation of the master bath, at a cost of over \$25,000.00. The exterior repairs, while mostly small by comparison, will nevertheless cost over \$2,000.00 to complete.

I thus find that the Claimants are eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimants are entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

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.

COMAR 09.08.03.03B(3)(c).

The Claimants have already paid \$561.00 for insulation work and \$750.00 for electrical work to repair a damaged main electrical supply cable and to attach the electric meter to the house.

The Claimants have not had any of the remaining work done. They are entitled to an award from the Fund to cover the cost of the work already done, and to cover the cost of future repairs.

The Claimant's actual loss is calculated as follows:

Plus	\$35,000.00	amount paid to the Respondent
	<u>\$27,336.00</u>	cost to repair all unworkmanlike work
	\$62,336.00	
Minus	<u>\$43,650.00</u>	contract price (\$40,000 initial contract plus \$3,650 additional contract)
Equals	\$18,686.00	actual loss.

### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimants have sustained an actual and compensable loss of \$18,686.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$18,686.00; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and



PROPOSED ORDER

*WHEREFORE, this 16h day of April 16, 2015, 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.*

*I. Jean White*

*I. Jean White*  
*Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**