

IN THE MATTER OF THE CLAIM	* BEFORE KIMBERLY FARRELL,
OF MARIA LUCAS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-13-43697
FOR THE ALLEGED ACTS OR	* MHIC No.: 12 (90) 1276
OMISSIONS OF THEODORE RYDER,	*
JR., T/A AERO RESIDENTIAL	*
CONTRACTORS, INC.,	*
RESPONDENT	*

\* \* \* \* \*

**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 December 4, 2012, Maria Lucas (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,900.00 in alleged actual losses suffered as a result of a home improvement contract with Theodore Ryder, trading as Aero Residential Contractors, Inc. (Respondent).

I held a hearing on June 19, 2014, at the Office of Administrative Hearings located at 11101 Gilroy Road in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013)

and § 8-407 (2010). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. Robert Stahl, Esquire, represented the Respondent.

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 (2009 & Supp. 2013), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 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 that loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

- FUND 1 Notice of hearing, June 3, 2014, with attached Hearing Order, November 4, 2013
- FUND 2 Department licensing information for the Respondent
- FUND 3 Letter from the MHIC to the Respondent, January 8, 2013, with attachments
- FUND 4 Contract between the Claimant and the Respondent, April 3, 2012
- FUND 5 Photocopies of checks written by the Claimant to the Respondent
- FUND 6 Letter from the Claimant to the Respondent, April 17, 2012
- FUND 7 Arocon New Roofing Proposal, November 29, 2012
- FUND 8 Black and white printout copies of photographs (5)

Neither the Claimant nor the Respondent offered additional exhibits.

#### **Testimony**

The Claimant testified on her own behalf. The Respondent did not testify, but offered a proffer through counsel. Had the Respondent taken the stand he would have stated that 2014

Orems Road, Gwynn Oak, Maryland, 21207 is not his address and that he did not receive the letter the Fund sent to him on January 8, 2013 or the Home Improvement Claim Form that was attached to it. No other testimony was offered.

### **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 95854.
2. On April 3, 2012, the Claimant and the Respondent entered into a contract that called for the Respondent to remove the existing roof and install a new one on the Claimant's home located at 2618 Poplar Drive in Woodlawn, Maryland.
3. The contract contained this statement: "NEW WORK GUARANTEED 12 YEARS AGAINST LEAKS AND DEFECTS IN WORKMANSHIP AND MATERIAL BY THIS COMPANY." Fund #4 (emphasis as in original).
4. The original agreed-upon contract price was \$3,900.00.
5. On April 3, 2012, the Claimant paid the Respondent a deposit of \$1,300.00.
6. The roof was installed in the next couple of days.
7. The Claimant selected the material to be used on her roof prior to the signing of the contract. She made her selection from samples provided by the Respondent.
8. The Respondent used a different material for the Claimant's roof without consulting her about the change.
9. The Complainant was unhappy with the roof as soon as it was installed. The roofing material was not what the parties had agreed upon. In addition to the problems with the roof, the Respondent broke a lamp post belonging to the Claimant. The lamp post had a

photosensitive eye that caused the lamp to turn on and off automatically. The eye was broken and the lamp no longer worked.

10. The Claimant called the Respondent immediately to discuss these issues.

11. Despite her dissatisfaction with the job, the Claimant was concerned that she would be charged interest if she did not pay the balance right away. She paid the remaining \$2,600.00 to the Respondent on April 6, 2012, after assurances that all problems would be promptly addressed.

12. Within a day or two of installation, pieces of shingles were falling off the roof.

13. Some shingles were raised or elevated from those around them. Black caulk was left on window ledges. Very large nails (approximately six inches in length) were left exposed and were unsightly.

14. The roof leaked. The ceiling inside developed a crack or split due to leaking.

15. Someone went to the Claimant's home on behalf of the Respondent on April 10, 2012. Cardboard was placed over the broken or missing eye of the lamp post and caulk was used to hold it in place. The Respondent left a note at the Claimant's home on April 10, 2012 which said that some shingles that had not previously been sealed were now sealed with caulk and that some shingles that had been knocked down were now nailed in place.

16. The Claimant called numerous times to try to discuss problems with the roof and get the roof fixed. The Respondent did not respond to the calls. The Claimant subsequently wrote a letter to the Respondent. When there was no response, she contacted the MHIC. She was advised that she should send a certified letter to the Respondent, which she did. There was no response to the certified letter.

17. The MHIC arranged a meeting at the Claimant's home to try to resolve the matter. Although the Respondent agreed to the date and time, he did not appear for the meeting and did not give any notice that he did not intend to attend. The Respondent agreed to reschedule the meeting and a new date and time was set, but he failed to come to the appointment again.

18. The Claimant obtained an estimate from Arocon, an MHIC licensed company, to remove the roof installed by the Respondent and install a new roof. The proposal, dated November 29, 2012, was for \$5,256.00.

19. Due to financial constraints, the Claimant has not been able to replace the roof installed by the Respondent.

20. The Claimant's actual loss is \$5,256.00; however her recovery is limited to the amount she paid to the Respondent, which is \$3,900.00.

### **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. 2013). *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). I find that the Claimant has proven eligibility for compensation: the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant and the Respondent performed inadequately in installing the roof.

The Claimant needed a new roof on her home. She learned of the Respondent by going online. The individuals that met with the Claimant on behalf of the Respondent were William Shipley and another man the Claimant knew only as Mr. Dennis. The men looked over the roof and offered to replace it for \$3,900.00. They brought sample roofing material with them from which the Claimant made a selection. She paid her deposit the day the contract was signed, April 3, 2012. The roof was installed in the next few days. The Respondent considered the work completed by April 6, 2012, and demanded the balance on the contract. The Claimant knew that the Respondent had not used the roofing material called for in the contract. She also knew that part of the roof did not look right to her and that her lamp post had been damaged by the Respondent. Nevertheless, the Claimant paid the balance because she was concerned that she would be charged interest on the outstanding bill.

In another day or two, pieces of the roof began falling off. The Claimant was diligent in calling the Respondent's offices to try to get the problems with her roof resolved. The Respondent sent somebody to the Claimant's home on April 10, 2014. A note was left suggesting that the original installation was not properly sealed, at least in some areas, and that shingles were not properly secured in some areas. Some repairs were made. The Claimant was not satisfied with the workmanship of the roof even after the April 10, 2012 repairs. She tried to make contact with the Respondent by calling, but her messages were not returned. In the meantime, some pieces of shingles were blowing off the roof. The Appellant sent a letter to the Respondent on April 17, 2014. The letter was not returned to the Appellant by the United State Postal Service, but the Respondent failed to respond. After making contact with the MHIC, the Claimant sent a certified letter. Someone at the Respondent's address signed for that letter, but the Claimant's complaints were ignored.

After the Claimant filed her claim with the MHIC, the MHIC sent a letter to the Respondent, dated January 8, 2013. A copy of the claim and the Claimant's supporting letter were attached. Although the address the Respondent had on file with the MHIC was 2014 Orems Road, Baltimore MD, 21220, the correspondence was sent to 2014 Orems Road, Gwynne Oak, Maryland, 21207. The Respondent proffered that he did not receive this piece of mail. Accepting the proffer that the Respondent did not receive this letter from the MHIC, he was still on notice from the Claimant's many efforts to reach him that there were problems with the roof and with the damaged lamp post. It is also the case that once he had actual contact with the MHIC regarding the case, the Respondent did nothing to address the problems with the roof and wasted other people's time agreeing to appointments which he did not keep.

The Claimant obtained an estimate from a licensed home improvement company. When Arocon came to look at the roof and prepare an estimate, the Arocon representative told the Claimant that old roofing material had been used by the Respondent in installing the roof. This could help explain why the material used was not the material chosen by the Claimant and why pieces fell and blew off. It would not explain why the roof was not properly sealed and secured, why huge nails were left visible, or why the roof leaked.

The Respondent did not elect to testify or offer documentary evidence, so the Claimant's testimony is not contradicted by any evidence. The Respondent argued several points, however. He argued that the gravamen of the Claimant's complaint was that she did not like the way the roof looked. It is true that the Claimant was upset with the appearance. She picked out a particular roofing material from samples provided by the Respondent and one or two days later the Respondent installed a completely different roof without the Claimant's consent. That in

itself is a legitimate complaint. The Claimant's issues with the roof did not end there, though. The other problems, not the least of which was leaking, are catalogued above.

The Respondent argued that the Claimant was not an expert and that she had never been up on the roof, so the evidence she presented in support of her claim was insufficient to sustain her burden of proof. I find that the evidence as recounted above is sufficient to sustain the Claimant's burden as it relates to the Respondent performing inadequate home improvement work. The Claimant was entitled to receive the roofing material she selected that was offered by the Respondent. Further, the least one should expect from a new roof is that it does not leak. The Claimant should also not be stuck with a roof that is in her estimation an embarrassing eyesore in her neighborhood. The Fund took the position that an expert was not required in view of the facts in this case. I agree.

The Respondent also argued that if there was really a problem with the roof, the Claimant should have had it fixed by now. The Claimant wrote in the 2012 document she submitted to the MHIC in support of her Fund claim, "I worked very hard as well as made many sacrifices to save for a roof that I thought would have a 20 year warranty; free from leaks and not an eyesore due to poor workmanship." Fund #3. The Claimant added at the hearing that she has a child in college and is unable to simply pay the extra money for another new roof.

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

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 Claimant paid \$3,900.00 to the Respondent. She has an estimate from Arocon for \$5,256.00 to repair the poor work the Respondent performed under the original contract. The sum of those numbers is \$9,156.00. That sum less the original contract price is \$5,256.00, which represents the Claimant's actual loss. Pursuant to the Business Regulation Article, though, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. §8-405 (e)(1), (5) (Supp. 2013). Thus in this case the Claimant is entitled to reimbursement from the Fund in the amount of \$3,900.00, the amount she actually paid to the Respondent.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual loss of \$5,256.00, but the amount of her loss compensable by the Fund as a result of the Respondent's acts and omissions is \$3,900.00. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2013).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,900.00; 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

**ORDER** that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

**Signature on File**

September 5, 2014  
Date Decision Issued

  
\_\_\_\_\_  
Kimberly Farrell  
Administrative Law Judge

KAF/kkc  
Document #151325

IN THE MATTER OF THE CLAIM	* BEFORE KIMBERLY FARRELL,
OF MARIA LUCAS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-13-43697
FOR THE ALLEGED ACTS OR	* MHIC No.: 12 (90) 1276
OMISSIONS OF THEODORE RYDER,	*
JR., T/A AERO RESIDENTIAL	*
CONTRACTORS, INC.,	*
RESPONDENT	*

\* \* \* \* \*

**FILE EXHIBIT LIST**

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

- FUND 1 Notice of hearing, June 3, 2014, with attached Hearing Order, November 4, 2013
- FUND 2 Department licensing information for the Respondent
- FUND 3 Letter from the MHIC to the Respondent, January 8, 2013, with attachments
- FUND 4 Contract between the Claimant and the Respondent, April 3, 2012
- FUND 5 Photocopies of checks written by the Claimant to the Respondent
- FUND 6 Letter from the Claimant to the Respondent, April 17, 2012
- FUND 7 Arocon New Roofing Proposal, November 29, 2012
- FUND 8 Black and white printout copies of photographs (5)

Neither the Claimant nor the Respondent offered additional exhibits.

PROPOSED ORDER

*WHEREFORE, this 10th of October 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.*

*Andrew Snyder*

*Andrew Snyder  
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION