



On May 13, 2014, I conducted a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). The Claimants represented themselves. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing, and Regulation (DLLR), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the OAH govern 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.

### **ISSUE**

Did the Claimants sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

A complete exhibit list is attached as an appendix.

#### **Testimony**

The Claimants presented the following witnesses:

- Jennifer Barnhart
- Neil Teitelbaum, whom I accepted as an expert in Home Improvement and in Home Inspections

The Respondent testified on his own behalf and did not present other witnesses. The Fund did not present any witnesses.

## FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed as a home improvement contractor under MHIC registration number 95699. His most recent license was issued on May 28, 2013 and expires on June 8, 2015.
2. On or around October 15, 2009, the Claimants entered into a contract with the Respondent for the Respondent to perform home improvement work at the Claimants' residence, 2312 Pheasant Run Drive in Finksburg, Maryland (Property). As part of the contract, the Respondent was to build an addition onto the existing Property and, among other things, tie the new roof on the addition into the existing roof on the Property.
3. The original contract price was \$39,500.00. The Claimants were to pay in installments as follows:
  - \$7,900.00 at the commencement of the project
  - \$3,950.00 upon the completion of the foundation for the addition
  - \$11,850.00 upon the completion of the framing for the addition
  - \$5,975.00 upon completion of the drywall for the addition
  - \$9,825.00 at completion of the addition
4. The Claimants paid the Respondent a total of \$40,900.00 under the contract, including the original contract price and the cost of certain change orders.<sup>1</sup> The specifications of the change orders were never reduced to writing.
5. Under the contract terms, the project was to commence on October 16, 2009 and be substantially completed by January 6, 2010.

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<sup>1</sup> The change orders involved the siding materials used on the addition.

6. The contract specified the roof system was to be prefabricated roof trusses with conventional framing as required.
7. Prior to commencing the work, the Respondent advised the Claimants he believed the best practice was to replace the entire roof on the existing portion of the Property so the new roof on the addition could be tied into a new roof on the Property. The Claimants did not wish to replace the existing roof on the Property at the time.
8. Although the Respondent believed best practice called for the replacement of the Property's old roof, he built the addition according to the contract, and tied the new roof of the addition into the shingles of the old roof on the Property.
9. The Respondent commenced the project on or around October 16, 2009 and completed it sometime in May 2010.
10. In July 2010, the Claimants noticed that during periods of heavy rain fall, the ceilings in the addition sustained water damage because the roof was leaking. The Claimants contacted the Respondent to advise him of the leaks and to give him an opportunity to correct the problem.
11. The Respondent came to the Property sometime in July 2010 to determine the source of the leak and, where necessary, perform repairs. The Respondent caulked different valleys of the new roof section, but he did not ascertain the actual source of the leak.
12. The Respondent's remedial caulking prevented leaks for a few months, but the Claimants noticed water damage again in the late summer/early fall of 2011. The Claimants observed water damage to the ceiling in the same location as July 2010 and also in new locations, which suggested new compromised areas of the addition roof. The Claimants contacted the Respondent, who came to the Property and once again, caulked certain areas of the addition roof.

13. The Respondent's remedial measures proved unsuccessful and during periods of heavy rain over the next year, the Property continued to experience leaks from the roof of the addition. By fall 2012, there were several areas of visible water damage to the ceiling of the addition, primarily located in the kitchen and the bedroom. On or around October 2, 2012, the Claimants contacted the Respondent and advised him they needed him to provide a more permanent solution to the problem, to including locating and repairing the source(s) of the problem. The Respondent did not return the Claimants' calls.
14. In response to the Respondent's failure or refusal to return their calls after October 2012, the Claimants contacted American Inspection Group, Inc. (AIG) to conduct a formal inspection at the Property to ascertain the source of the leaks and what work, if any, was needed to repair the problem. Neal Teitelbaum, AIG's president and a licensed home improvement inspector and licensed home improvement contractor, performed an on-site inspection on February 4, 2013.
15. During his inspection, Mr. Teitelbaum noted the following deficiencies with the work the Respondent performed on the addition:
- The roof framing cause gulleys at the intersection where the old roof met (was "tied in to" ) the new roof, causing water to lie in that area which is then subject to being blown under the shingles in strong winds.
  - The ventilation from the new roof to the old roof was inadequate, causing condensation in the attic. There needed to be better air flow between the new roof and the old roof.
  - There are areas of the roof where the new, architectural shingles were installed over existing standard three-tab shingles, which is in contravention of manufacturer specifications. Architectural shingles are a heavier weight than three-tab shingles and they should not be placed directly on top of three-tab shingles. Additionally, as the shingles do not lie flush against one another, water can be blown under the shingles during periods of wind and rain.
  - The new shingles were not installed all the way to the peak of the roof.

- The valleys between the shingles did not have flashing or any other type of leak barrier between them which overlapped and thus would prevent leakage.
16. Based on his inspection, Mr. Teitelbaum concluded the addition roof should be completely stripped down to the wood sheathing underneath and new roof shingles should be placed in a manner that did not create gulleys between where the new roof and old roof meet.
  17. As a result of Mr. Teitelbaum's inspection, the Claimants obtained proposals for the roof repair work. Aspen Contracting, Inc. (Aspen) proposed a repair that incorporated Mr. Teitelbaum's recommendations at a total cost of \$9,300.00 for work on the addition roof. Phil DiBello Family Roofing submitted a proposal totaling \$14,600.00 to replace the entire roof, and \$9,000.00 to replace the roof on the addition. The Claimants also obtained a proposal prior to Mr. Teitelbaum's inspection from The Thomas Roofing Company, Inc., which quoted the Claimants a price of \$11,865.00 to replace the entire roof.
  18. The Aspen proposal represents a reasonable solution for repairing the deficiencies of the addition roof.

### 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 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). The Claimants bear the burden of proof by a preponderance of the evidence to show entitlement to an award from the Fund.

COMAR 09.08.03.03A(3). For the following reasons, I find that the Claimants have proven eligibility for compensation.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants and during the time he performed work at the Property. Through the testimony of Mr. Teitelbaum, whom I accepted as an expert in Home Inspections and in Home Improvement, the Claimants demonstrated the Respondent's installation of the new addition roof was unworkmanlike and inadequate. According to Mr. Teitelbaum, the following deficiencies in the installation were visible at the time he conducted his inspection in February 2013: new shingles were placed atop existing shingles rather than placed flush to existing shingles, which creates a susceptibility to wind damage because the new shingles do not lay completely flat; the installation was done in such a manner that when the shingles settled, gulleys between them were formed, which traps water and allows it to pool rather than run off the roof, and water can be blown *under* the shingles during windy and rainy periods; and, the pipe drain on the roof was not properly installed, which also allowed water to access the interior of the property. Based on his observations, Mr. Teitelbaum believed the only way to prevent continued leakage is to remove and replace the existing addition roof.

The Respondent argued that the problems were due to the old shingles on the existing roof, but he did not produce any expert testimonial or documentary evidence to support this position. His own supposition of the source of the leaks is necessarily self-serving; without some corroborating evidence from a reliable and credible witness with knowledge of home improvement work, I give little weight to the Respondent's theory as to the source of the leakage. The Respondent has not satisfactorily refuted the Claimants' evidence demonstrating his installation of the addition roof was inadequate and unworkmanlike. Accordingly, I find the Claimants are entitled to an award from the Fund.

Having found that the Claimants are eligible for compensation, I now turn to the amount of the award. 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). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3)(a), (b) and (c). One of those formulas, as follows, offers an appropriate measurement 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. 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)(c).

Applying the formula set out above, I find that the Claimants sustained an actual loss as follows:

Amount Paid to the Respondent	\$40,900.00
Amount Paid to Correct or Complete Work	<u>+\$ 9,300.00<sup>2</sup></u>
	\$50,200.00
Amount of Original Contract	<u>-\$39,500.00</u>
<b>Amount of Actual Loss</b>	<b>\$ 10,700.00</b>

Under Business Regulation § 8-405(e)(5) (Supp. 2013), the amount of an award to a claimant is limited to the amount the claimant paid the contractor whose work was inadequate, incomplete, or unworkmanlike. Accordingly, I recommend an award to the Claimants in the amount of \$10,700.00.

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<sup>2</sup> Mr. Teitelbaum reviewed the various proposals the Claimants obtained. He testified that in his opinion, the \$9,300.00 proposal from Aspen represents the most reasonable solution, in terms of both the scope of proposed work *and* the proposed cost, for correcting the Respondent's work.



## CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimants suffered an actual loss of \$10,700.00, and they are entitled to be compensated in the amount of \$10,700.00 as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405(e)(5) (Supp. 2013); COMAR 09.08.03.03B(3)(c).

## PROPOSED ORDER

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$10,700.00; 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 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**

August 8, 2014  
Date Decision Mailed

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Latonya B. Dargan  
Administrative Law Judge

LBD/kkc  
#150822



STATE OF MARYLAND

**DLLR**  
IN THE MATTER OF,

DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
MARYLAND HOME IMPROVEMENT COMMISSION

\* BEFORE LATONYA B. DARGAN, 500 N. Calvert Street, Room 306  
Baltimore, MD 21202-3651

\* AN ADMINISTRATIVE LAW JUDGE

JENNIFER BARNHART,

\* OF THE MARYLAND OFFICE

CLAIMANTS

\* OF ADMINISTRATIVE HEARINGS

AGAINST THE

\* OAH Case No.: DLR-HIC-02-13-46693

MARYLAND HOME IMPROVEMENT

\* MHIC Case No.: 13 (90) 479

COMMISSION GUARANTY FUND

\*

FOR THE ACTS OR OMISSIONS OF

\*

BRIAN TOMLIN,

\*

t/a TOMLIN HOMES, LLC,

\*

RESPONDENT

\*

\* \* \* \* \*

APPENDIX

I admitted the following exhibits for the Claimants:

- Cl. Ex. 1: Plan drawings
- Cl. Ex. 2: October 15, 2009 Contract
- Cl. Ex. 3: Cancelled checks
- Cl. Ex. 4: November 2009 Photograph of the addition foundation
- Cl. Ex. 5: November 2009 Photograph of the addition roof
- Cl. Ex. 6: Photograph of Stop Work Order
- Cl. Ex. 7: July 2010 Photograph of ceiling water damage
- Cl. Ex. 8: September 2011 Photograph of ceiling water damage
- Cl. Ex. 9: November 2011 Photograph of pipe drain on roof
- Cl. Ex. 10: October 2012 Photographs of ceiling water damage

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE  
INTERNET: WWW.DLLR.MARYLAND.GOV • E-MAIL: DLOPLMHIC-DLLR@MARYLAND.GOV

- Cl. Ex. 11: Excerpt of Manufacturer's Specifications for roof shingle installation
- Cl. Ex. 12: Timothy Barnhart's October 22, 2012 letter to the Respondent
- Cl. Ex. 13: The Claimants' October 30, 2012 MHIC Complaint
- Cl. Ex. 14: May 2014 Photographs of leaks in kitchen ceiling
- Cl. Ex. 15: The Respondent's November 23, 2012 letter, addressed "Dear Sirs"
- Cl. Ex. 16: The Claimants' January 1, 2013 letter addressed "To Whom It May Concern"
- Cl. Ex. 17: The Claimants' May 19, 2013 Claim form, with attached proposals
- Cl. Ex. 18: Photographs taken in Fall 2013, showing water damage and leaks
- Cl. Ex. 19: September 2011 Photograph
- Cl. Ex. 20: Neil Teitelbaum's February 4, 2013 Home Inspection Report
- Cl. Ex. 21: February 4, 2013 Photograph of the addition roof
- Cl. Ex. 22: February 4, 2013 Photographs of the attic
- Cl. Ex. 23: Plan drawings
- Cl. Exs. 24-29: February 4, 2013 Inspection photographs

I admitted the following exhibits for the Fund:

- Fund Ex. 1: February 27, 2014 Notice of Hearing
- Fund Ex. 2: The Respondent's MHIC Registration and Licensing History
- Fund Ex. 3: The MHIC's May 22, 2013 letter to the Respondent, with attached claim form

The Respondent did not submit any exhibits.

IN THE MATTER OF,  
TIMOTHY and  
JENNIFER BARNHART,  
CLAIMANTS  
AGAINST THE  
MARYLAND HOME IMPROVEMENT  
COMMISSION GUARANTY FUND  
FOR THE ACTS OR OMISSIONS OF  
BRIAN TOMLIN,  
t/a TOMLIN HOMES, LLC,  
RESPONDENT

\* BEFORE LATONYA B. DARGAN,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH Case No.: DLR-HIC-02-13-46693  
\* MHIC Case No.: 13 (90) 479  
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**FILE EXHIBIT LIST**

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PROPOSED ORDER

*WHEREFORE, this 26th of September 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.*

*W.M. Bruce Quackenbush, Jr.*  
*William Bruce Quackenbush, Jr.*  
*Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**