

IN THE MATTER OF THE CLAIM	*	BEFORE KATHLEEN A. CHAPMAN,
OF JOSHUA A. COOK,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-14-22347
FOR THE ALLEGED ACTS OR	*	MHIC No.: 14 (75) 787
OMISSIONS OF AMY	*	
SHILLINGBURG, t/a	*	
RUSCO HOME IMPROVEMENT	*	
PRODUCTS, LLC	*	
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 April 8, 2014, Joshua A. Cook (Claimant) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,925.00 in alleged actual losses suffered as a result of a home improvement contract with Amy Shillingburg, t/a Rusco Home Improvement Products, LLC (Respondent). The Claimant

amended his claim by increasing the amount of the reimbursement request to \$6,556.85. (See CL Ex. 20.)

On August 18, 2014, I held a hearing at the Office of Administrative Hearings (OAH) located in Cumberland, Maryland.¹ Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (Supp. 2014). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent failed to appear after due notice was sent to her address of record.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the 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

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions? If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- CL Ex. 1 – Contract of Sale, September 10, 2012
- CL Ex. 2 – Cancelled check #2221 in the amount of \$5,000.00; cancelled check #2273 in the amount of \$6,730.00
- CL Ex. 3 – Color photocopy of a picture of a blown off chimney cap
- CL Ex. 4 – Transcripts from voicemails on April 29, 2013, May 15, 2013, and June 7, 2013

¹ The hearing was originally scheduled for September 25, 2014, but was later postponed by the OAH after it learned that the 25th was a religious holiday. (GF Ex. 1.)

- CL Ex. 5 – Color photocopy of a picture of water damaged ceiling tiles
- CL Ex. 6 – Case search for District Court of Maryland, *Cook v. Rusco Home Improvement, Inc.*, Case No. 01C13039741
- CL Ex. 7 – Color photocopy of a picture of damaged fireplace (viewpoint from the roof)
- CL Ex. 8 – Curtis Chimney & Hearth Estimates, November 28, 2013 and December 23, 2013
- CL Ex. 9 – Raines Roofing & Siding Estimate, April 1, 2014
- CL Ex. 10 – MHIC Notice of Complaint Received, January 31, 2014
- CL Ex. 11 – First General Services of Western MD Estimate, February 29, 2014
- CL Ex. 12 – Emails between the Claimant and Kevin Niebuhr, MHIC, January 28, 2014 and February 18, 2014
- CL Ex. 13 – Emails between the Claimant and Respondent, June 13, 2014; color photocopy of a picture showing water damage on ceiling tiles
- CL Ex. 14 – Curtis Chimney & Hearth letter, July 14, 2014; color photocopy of a picture of damaged fireplace (viewpoint from the roof); color photocopy of a picture of repaired fireplace (viewpoint from the roof)
- CL Ex. 15 – Curtis Chimney & Hearth Paid Invoice, July 11, 2014
- CL Ex. 16 – Raines Roofing & Siding Estimate, July 1, 2014
- CL Ex. 17 – Eleven color photocopies of pictures showing progress on repair of roof
- CL Ex. 18 – Letter from Raines Roofing & Siding, August 29, 2014
- CL Ex. 19 – Raines Roofing & Siding Paid Invoice, July 14, 2014
- CL Ex. 20 – Estimate and Actual Cost to Fix Chimney and Roof, prepared by the Claimant
- CL Ex. 21 – Timeline, prepared by the Claimant
- CL Ex. 22 – Emails between the Claimant and Respondent, January 22, 2014 – January 28, 2014

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

- GF Ex. 1 – Notice of Hearing, dated August 18, 2014, with signed green card sent to the Respondent's business address of record, signed for on August 22, 2014; Notice of Postponement, dated August 7, 2014, with signed green card sent to Respondent's business address of record, signed for by Tracy Smith
- GF Ex. 2 – Hearing Order, dated June 12, 2014
- GF Ex. 3 – Licensing history, printout date of October 16, 2014
- GF Ex. 4 – Home Improvement Claim Form, received on April 8, 2014

No documents were admitted on behalf of the Respondent.

Testimony

The Claimant testified on his own behalf. No one appeared to testify on behalf of the Respondent. The Fund did not present any testimony.

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 01-100014 and 05-128202.
2. On June 29, 2012, the Claimant's roof was damaged due to high winds. The Claimant submitted a claim with his homeowner's insurance carrier, Erie Insurance, who recommended that the Claimant obtain estimates for repair. The Claimant did so, calling the Respondent, as well as other contractors, for an estimate.
3. On September 10, 2012, the Claimant and the Respondent entered into a contract (the Contract) to perform the following work:

Remove existing shingles on main house. Provide materials and labor to install new architectural shingles, color to be choice of customer. Includes synthetic roofing underlayment, ice & water shield, chimney flashing, drip edge. Continuous ridge vent on main roof and dormer. Replace sheathing where damaged. Remove existing metal roof on rear of the house. Provide materials

and labor to install new metal roof. Color to be choice of customer. Build up existing framing with 1 x 3. Install 3/8" fanfold insulation prior to roof installation. Install seamless gutter and downspouts to entire house. Clean up and haul away all job related debris.

(CL Ex. 1.)

4. The Contract stated that work would begin within four to six weeks from the date of the Contract, and be completed within five to seven days.

5. The original agreed-upon Contract price was \$12,270.00. (CL Ex. 1.)

6. The Contract provided for a 50-year warranty on the shingles, lifetime warranty on the metal roof, and a 5-year warranty on labor. (CL Ex. 1.)

7. On September 22, 2012, the Claimant paid the Respondent \$5,000.00. (CL Ex. 2.)

8. On November 12, 2012, the Respondent installed the roof per the terms and conditions of the Contract.

9. On November 21, 2012, the Claimant paid the Respondent \$6,730.00, for a total of \$11,730.00.² (CL Ex. 2.)

10. In February 2013, the chimney cap came loose, and eventually came completely off the chimney and landed on the roof. (CL Ex. 3.)

11. The Claimant left numerous telephone messages for the Respondent regarding the chimney cap. On April 29, 2013, May 15, 2013, and June 7, 2013, Danielle, an employee with the Respondent, left the Claimant a voicemail message confirming that the company had ordered a new piece of metal for his roof and that it would be installed soon. (CL Ex. 4.) At no point did the Respondent install the metal piece to the Claimant's roof, as promised.

² For reasons not thoroughly explained by the Claimant, he paid the Respondent \$530.00 less than the Contract price.

12. In addition, in November 2013, the Appellant noticed water coming from the chimney into the fireplace, as well as water damage on ceiling tiles in the sun room. (CL Exs. 5, 13.)

13. On November 12, 2013, the Appellant filed a complaint with the Circuit Court for Allegany County against the Respondent alleging non-performance of the Contract. (CL Ex. 6.)

14. From November 2013 to June 2014, the Appellant remained in contact with the Respondent to work out a solution, including the Respondent returning to the job site to caulk chimney flashing, and payment of money damages. (CL Ex. 22.) The parties were not able to amicably resolve their differences.

15. On November 26, 2013, the Appellant called Curtis Chimney & Hearth (Curtis) to inspect the damage associated with the chimney cap blowing off. The inspection revealed internal and external damage to the chimney. (CL Exs. 7, 14.)

16. On November 28, 2013, the Appellant called Raines Roofing & Siding (Raines) to inspect the roof to ascertain the origin of the water coming into the house. The inspection revealed that the pitch on the rear roof, which is almost flat, was not suitable to accommodate a G ribbed metal roof, such as the one the Respondent installed on the Claimant's house. In addition, the Respondent did not install the correct underlayment, or correctly flash the roof to the shingles or chimney, permitting water to penetrate into the house under the transition trim. (CL Ex. 9.)

17. On February 19, 2014, First General Services of Western MD (First General) also inspected the roof and determined that the roof system needed to be raised up to a suitable slope for drainage to occur. (CL Ex. 11.)

18. The Claimant received five estimates for another contractor to repair the work performed by the Respondent, as follows:

- Curtis (estimate #1) \$425.00
November 26, 2013

- Replace the top terra cotta liners on both flues in this chimney.
- Remove any loose cement and apply a crown saver chimney crown. Repoint the top two mortar joints directly below the cement crown. Reset any loose bricks.
- Reseal the top edge of the flashing with silicone, as needed.
- Seal off any flue, as directed by the Claimant, with trim sheet.
- This price does not include any venting rain caps.

(CL Ex. 8.)

- Curtis (estimate #2) \$680.00
December 23, 2013

- Same work as above, except that it includes the installation of two 13 x 13 Gelco screened stainless steel chimney caps.

(CL Ex. 8.)

- Raines (estimate #1)..... \$4,500.00
April 1, 2014

- Prepare low sloped roof surface on rear of home for overlayment.
- Install insulation baffles. Mechanically attach 1" ISO insulation system.
- Fully adhere .060 Firestone rubber roofing system.
- Remove shingle roof between low sloped roof and windows and reinstall shingles to match.
- Roof will extend up and under shingle system.
- Any wood repair and/or replacement will be done on a time and material basis.
- Fabricate and install white coping system. Strip in such coping.
- Install all necessary flashings and terminations.
- Repair chimney flashings.
- Provide a standard contractor's warranty.
- Inspect remaining shingled roof and repair where necessary.

(CL Ex. 9.)

- Raines (estimate #2)..... \$5,700.00
July 1, 2014

- Remove existing metal roofing system.
- Remove shingle roof between low sloped roof and windows and reinstall shingles to match.
- Prepare low sloped decking.
- Install Flintlastic[®] self-adhering base sheet.
- Install mid-ply self-adhering sheet.
- Install Flintlastic[®] Cap sheet, weather wood in color.
- Install white aluminum coping system.
- Roof will extend up and under shingle system.
- Any wood repair and/or replacement will be done on a time and material basis.
- Install all necessary flashings and terminations.
- Repair chimney flashings.
- Re-shingle area above low sloped roof with CertainTeed.
- Landmark Weather wood shingles to match.
- Provide a standard contractor's warranty.
- Inspect remaining shingled roof and repair where necessary.

(CL Ex. 16.)

- First General \$8,238.48
February 19, 2014

- Remove and replace the roof system, including framing, rafters and sheathing.
- Remove and replace metal roof.
- Remove and replace shingle roof.

(CL Ex. 11.)

19. On January 31, 2014, the Claimant filed a complaint with the MHIC, seeking reimbursement in the amount of \$4,925.00, on the basis that the home improvement performed by the Respondent was unworkmanlike. The Claimant arrived at the \$4,925.00 figure based on the Curtis estimate #1 (\$425.00) and the Raines estimate #1 (\$4,500.00). (See Findings of Fact No. 18.)

20. On April 7, 2014, the Claimant withdrew his Circuit Court complaint against the Respondent. (CL Ex. 6.)

21. On April 25, 2014, the Claimant filed a claim with Nationwide Insurance Company (Nationwide), the Respondent's insurer, for water damage resulting from the leaking roof, as well as the chimney. On June 26, 2014, Nationwide paid the water damage claim, but referred the Claimant back to the Respondent with regard to chimney damage. (CL Exs. 13, 21.)

22. On July 11, 2014, the Claimant paid Curtis \$680.00 to perform the work outlined in Curtis estimate #2. (*See Findings of Fact No. 18.*)

23. On July 14, 2014, the Claimant paid Raines \$5,700.00 to perform the work outlined in Raines estimate #2, plus \$176.85 for the replacement of rotten lumber, for a total of \$5,876.85. (CL Ex. 9; *also see Findings of Fact No. 18.*)

24. After removing the metal roof, Raines discovered that the Respondent installed the metal roofing over rotten lumber; the roofing material used by the Respondent was inappropriate for the pitch of the roof; there was no underlayment; the roof was not flashed correctly to the shingles; and the chimney flashing was installed incorrectly. (CL Ex. 18.)

25. The Claimant's actual loss is \$5,336.85.

26. On August 18, 2014, the OAH sent a Notice of Hearing (Notice) by certified and first class mail to the Respondent's last address of record.

27. The Notice advised the Respondent of the time, place, and date of the hearing. The Respondent signed the green card acknowledging receipt of the certified mailing.

DISCUSSION

I. Respondent's Failure to Appear

Section 8-312(a) of the Business Regulation Article provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a) (Supp. 2014). The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice shall be sent by certified mail "at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." *Id.* § 8-312(d). The procedures for notice applicable to disciplinary proceedings also apply to claims against the Fund. *Id.* at § 8-407(a) (Supp. 2014).

On August 18, 2014, the OAH sent a Notice by certified and first class mail to the Respondent's last address of record. The Notice advised the Respondent of the time, place, and date of the hearing. According to the Fund, the Respondent signed the green card acknowledging receipt of the certified mailing and the green card is contained in the record at GF Exhibit 1.

Under section 8-312 of the Business Regulation article, "[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and determine the matter." Md. Code Ann., Bus. Reg. § 8-312(h) (Supp. 2014). Based upon the record before me, I am satisfied that the OAH properly notified the Respondent of the date, time, and location of the scheduled hearing, as well as the issues to be presented. Accordingly, when the Respondent was still not present after fifteen minutes of the scheduled hearing start time, I directed that the hearing proceed in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h) (Supp. 2014); COMAR 09.01.02.07E.

II. Analysis

For the following reasons, I find that the Claimant has proven eligibility for compensation.

A. Was the Respondent licensed at the time of the contract?

A review of the licensure information for the Respondent (GF Ex. 3) makes it clear that the Respondent was a licensed home improvement contractor at the time she entered into the Contract with the Claimant.

B. Did the Claimant sustain an actual loss?

The Claimant testified that he contracted with the Respondent to install a new roof on his house after high winds damaged the existing roof. The Claimant submitted into evidence a copy of the Contract showing that the Respondent agreed to install new shingles, underlayment, shields, and chimney flashing on his Cape Code style house. (CL Ex. 1.) The Claimant testified that the Respondent completed the work under the Contract in November 2012 and he paid her a total of \$11,730.00. The Claimant stated that he hired the Respondent largely because of a recognizable advertising jingle. The Claimant believed that by hiring a contractor who was well-known in his area, he was certain to receive quality services. The Claimant stated, however, that this is not what occurred.

According to the Claimant, he recalled feeling uneasy or uncomfortable while the work was being performed and, in hindsight, wished that he had not been so dismissive. For instance, the Respondent used a brown drip edge instead of the color that best suited his house (this particularly vexed the Claimant because the most prominent feature of his house is the roof), one worker left the job prematurely because he was frustrated with the Respondent, and the remaining worker brought his 13-year-old daughter to help clean up the job. The Claimant also

believed that it was “very difficult” for the remaining worker to do the job by himself and was unprepared to do so because he asked the Claimant if he could borrow a shingle remover tool.

The Claimant testified that the first sign of troubles occurred in February 2013 when he noticed that the chimney cap was loose. By March 2013, the chimney cap had come completely off. The Claimant testified that he attributed this problem to the Respondent and called her company many times, from March 2013 to June 2013, to redress the issue. According to the Claimant, the Respondent acknowledged to him that her workers were responsible for damaging the chimney cap and agreed to replace it. The Claimant indicated that it was not until November 2013 when he met the Respondent face-to-face to discuss resolutions. By that time, the Claimant testified he began to notice more problems with the roofing than just the chimney cap.

According to the Claimant, “water was coming in the chimney and destroyed my gas fireplace logs. Upon inspecting [the] top of [the] fireplace, it was discovered that the terracotta flue liners were destroyed and bricks knocked loose. The metal roof was also leaking.” (CL Ex. 21.)

The Claimant stated that by November 2013 he filed a lawsuit against the Respondent. Afterwards, he learned that the Respondent’s son had been in a horrific motor vehicle accident and, from November 2013 to January 2014, he gave the Respondent an opportunity to fix the leaky roof by caulking the flashing. When her efforts failed, in January 2014, the Claimant began seeking proposals from other contractors and also filed a claim with the MHIC. The Claimant withdrew the lawsuit without prejudice in April 2014.

Next, the Claimant testified regarding the proposals he received from Curtis, Raines, and First General. According to the Claimant, the Curtis estimates (#1 and #2) represented the cost of fixing the chimney with and without rain caps, respectively. The Claimant testified that Curtis informed him that both terra cotta flue liners were broken, the chimney crown was partially

removed, mortar joints were deteriorating, there were a couple of loose bricks, the flashing needed resealing, and the rain caps had not been installed on the flues. The Claimant testified that he hired Curtis to fix the damage, per Curtis estimate #2, for a total of \$680.00. The Claimant also stated that he sent this information to the Respondent expecting her to pay for the cost of fixing his chimney, but she never did.

The Claimant testified that the Raines estimates (#1 and #2) represented the cost of fixing the roof with a rubber roof as opposed to a Flintlastic® roof, respectively. The Claimant testified that Raines told him that the metal roof the Respondent installed was not suitable for the house because the pitch of the rear roof was nearly flat. In addition, Raines told him that because the Respondent failed to install the right underlayment and failed to correctly flash the roof to the shingles or chimney, the roof was leaking. The Claimant testified that Raines proposed a rubber roof in place of the metal roof, and later modified the proposal to include a Flintlastic® roof system. The Claimant recalled telling the Respondent about the Raines proposal and her response being “BS,” meaning that she disagreed with the assessment that the structure of the house could not accommodate a metal roof.

With regard to the First General estimate, the Claimant testified that First General told him that he needed to raise the roof to a suitable slope for proper drainage if installing a metal roof.

The Claimant testified that he ultimately decided to hire Raines to install a Flintlastic® roof system (*see* estimate #2), because he felt that a “rubber roof would be a mess and make his house look like a commercial property.” The Claimant also believed that the Flintlastic® roof system was cheaper than a metal roof. Furthermore, in support of his presentation, the Claimant presented photographs to show the work being performed by Raines. According to the Claimant,

the photographs demonstrably show that the Respondent's work was unworkmanlike because Raines' crew observed that the Respondent: (1) placed the metal roofing over rotten lumber; (2) used no underlayment; (3) did not correctly flash the metal roof to the shingles; and (4) did not correctly install the chimney flashing. The Claimant testified that he paid Raines a total of \$5,876.85 to remove and replace the metal roof that was installed by the Respondent.

Based on this record, I am persuaded by the Claimant's presentation that the Respondent's work on the roof was unworkmanlike and unsalvageable; however, I am not persuaded that the Claimant proved an "unworkmanlike, inadequate, or incomplete" home improvement with regard to the chimney cap.

The Claimant has the burden of proof to show by a preponderance of the evidence that the work performed by a home improvement contractor was "unworkmanlike, inadequate, or incomplete...." Md. Code Ann., Bus. Reg. §§ 8-401, 8-407(e) (2010 & Supp. 2014); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).

"Workmanlike" is defined as "characterized by the skill and efficiency typical of a good workman." *Merriam-Webster's Collegiate Dictionary* 1443 (11th ed. 2006); *see also Webster's II New Riverside University Dictionary* 1328 (1994) ("Typical of or befitting a skilled workman or craftsman.") "Inadequate" means "not adequate." *Merriam-Webster's* at 627. "Adequate" means "sufficient for a specific requirement." *Merriam-Webster's* at 15; *see also Webster's New Riverside University Dictionary* at 78 ("Able to satisfy a requirement.") "Incomplete" means "not complete" or "unfinished." *Merriam-Webster's* at 630. "Complete" means "having all the necessary parts, elements, or steps." *Merriam-Webster's* at 254.

The Claimant testified that he hired the Respondent to perform work on his home after he suffered high wind damage to his roof. The Claimant presented estimates from two home

improvement contractors (Raines and First General), for a total of three quotes, to address the deficiencies found in the Respondent's work as it pertains to the roof. The evidence included written statements from both Raines and First General indicating that the pitch on the roof was wrong for a metal roof. Moreover, Raines found that the Respondent failed to use the right underlayment and failed to correctly flash the roof to the shingles or chimney, thereby causing the roof to leak. In fact, First General urged the Claimant to remove and replace the roof system, including framing, rafters, and sheathing, so that the roof could accommodate a metal roof. Pursuant to the terms and conditions of the Contract, the Respondent was responsible for building up the existing framing prior to installing the metal roof. Raines also took photographs of the roof as it removed and replaced the metal roof installed by the Respondent. As the old saying goes, "a picture is worth a thousand words." Here, the pictures showed debris left behind by the Respondent such as garbage as well as wet rot and dry rot in the lumber supporting the roof and no underlayment. Clearly, the credible evidence shows that the Respondent's unworkmanlike performance caused the roof failure allowing water to penetrate the Claimant's house.

On the other hand, the Claimant failed to show by a preponderance of the evidence that the Respondent was contracted to perform any work on the chimney cap. The evidence shows that the Contract only included the installation of chimney flashing, which is located at the base of the chimney. By contrast, the chimney cap is a cover for the chimney. Although the evidence presented by the Claimant includes transcripts from telephone conversations with the Respondent where she acknowledged responsibility for the chimney cap and agreed to replace it, and a statement from Nationwide referring the Claimant back to the Respondent to resolve the issue with regard to the chimney, this alone does not show that the Claimant contracted with the

Respondent to remove and replace the chimney cap, or that the installation of a chimney cap, if applicable, was unworkmanlike or insufficient. Even though proceedings before the OAH are more informal than those occurring in a constitutional court, there are still standards of proof that must be met. When I compared the Curtis report against the Contract, the Contract does not mention terra cotta flue liners, chimney crown, bricks, or rain caps. In other words, the likelihood that this damage occurred from the Respondent's "unworkmanlike, inadequate, or incomplete" work is not present. Therefore, I do not find the Respondent responsible for the cost of the chimney or chimney cap. As a result, I deducted \$680.00 from the Claimant's claim.

C. Was there a good faith effort to resolve the contract dispute?

Section 8-405(d) of the Business Regulation Article provides that "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d) (Supp. 2014). I do not find that the Claimant rejected any good faith offers to resolve the claim in this case. I am persuaded by the Claimant's testimony that he tried for months to reach the Respondent to discuss the damage to his house. The Claimant abandoned his lawsuit against the Respondent after he learned that the Respondent's son had been in a horrific car accident and was badly injured. The record also reflects that the Claimant allowed the Respondent to caulk the flashing in November 2013 and thought the Respondent would return in December 2013 to look at the roof while it was dry, but failed to do so. Under these circumstances, I find that the Claimant made every effort to resolve this matter prior to pursuing his Fund claim.

D. Award calculation

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 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).

Having found eligibility for compensation for the roof, I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 Claimant testified that when he initially submitted his Fund claim he sought reimbursement in the amount of \$4,925.00. This amount represented the cost of replacing the chimney cap (Curtis estimate #1, \$425.00) and the roof (Raines estimate #1, \$4,500.00). The Claimant is now, however, requesting a payment from the Fund in the amount of \$6,556.85 for the cost of fixing the chimney cap (Curtis estimate #2, \$680.00) and the roof (Raines estimate #2, \$5,700.00, plus \$176.85 for additional repairs). The Claimant believes that this new amount takes into account that the roof structure on his house cannot accommodate another metal roof and the Flintlastic[®] roof system is cheaper than the First General proposal.

COMAR 09.08.03.02 regulates amending claims before the commission, as follows:

C. Amending of Claims. Once a verified claim has been filed with the Commission, the claimant may not amend the claim unless the claimant can establish to the satisfaction of the Commission that either the:

(1) Claimant did not know and could not have reasonably ascertained the facts on which the proposed amendment is based at the time the claim was filed; or

(2) Claimant's proposed amendment would not prejudice the contractor whose conduct gave rise to the claim.

The record reflects that the Claimant sought three quotes, one from First General and two from Raines to address the damage to his roof. The First General estimate was given in February 2014, and the Raines estimates were given in April 2014 and July 2014. The most expensive quote came from First General in the amount of \$8,238.48 and it provided a quote to "repair poor work done by the original contractor under the original contract and complete the original contract" with a like, kind, and quality metal roof. I also found the Claimant's testimony credible that he was communicating with the Respondent regarding the cost of roof repairs when he received the First General quote and she was aware that the cost to remove and replace the roof could be as much as \$8,238.48. Therefore, I am persuaded by the record that the proposed amendment of the Fund claim from \$4,500.00 to \$5,700.00 will not prejudice the contractor. I also find that the Claimant could not have reasonably known that the cost to fix the roof would include an additional \$176.85 because Raines did not discover the additional damage until it removed the roof, as seen in the photographs.

This amount (\$5,876.85) represents the cost of removing and replacing the metal roof installed by the Respondent with a Flintlastic[®] roof installed by Raines. Since Raines is licensed by the MHIC, I find that the proposal was prepared by a competent contractor. Furthermore, since the Respondent failed to appear at the hearing, never challenged the proposal and presented

no evidence that it exceeds the scope of the work under the Respondent's original contract, I find that the Claimant is entitled to reimbursement from the Fund in the amount of \$5,336.85. I

calculate the Claimant's actual loss as follows:

\$ 11,730.00	The Amount the Claimant paid the Respondent
+ 5,876.85	The Amount required to correct and complete the contract work
\$ 17,606.85	
- 12,270.00	The Contract price
\$ 5,336.85	The Claimant's actual loss

PROPOSED CONCLUSION OF LAW

Based upon the evidence presented and discussion, I conclude as a matter of law that the Respondent failed to appear after proper notice. Md. Code Ann., Bus Reg. §§ 8-312(d) and 8-407(a) (Supp. 2014).

I conclude that the Claimant has sustained an actual and compensable loss \$5,336.85 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2014).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,336.85; 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

December 10, 2014
Date Decision Issued

C _____)
Kathleen A. Chapman /
Administrative Law Judge

KAC/kkc
#152618v1A

PROPOSED ORDER

WHEREFORE, this 15th day of January 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION