

IN THE MATTER OF THE CLAIM OF * BEFORE GERALDINE A. KLAUBER,
 GERALDINE PRICE * AN ADMINISTRATIVE LAW JUDGE
 AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
 IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
 FOR THE ALLEGED ACTS OR * OAH NO.: DLR-HIC-02-14-13139
 OMISSIONS OF * MHIC NO.: 13 (90) 1080
 STANLEY STEVENSON T/A HUNNY *
 DO, LLC *

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
 ISSUE
 SUMMARY OF THE EVIDENCE
 FINDINGS OF FACT
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 PROPOSED CONCLUSIONS OF LAW
 RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 28, 2013, Geraldine Price (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$15,174.34 for an actual loss suffered as a result of home improvement work performed by Stanley Stevenson t/a Hunny Do, LLC (Respondent).

A hearing was held on September 23, 2014, at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland, before Geraldine A. Klauber, Administrative Law Judge (ALJ), on behalf of the MHIC. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010). The Claimant represented herself. The Respondent represented himself. Eric London, Assistant

Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 09.08.03; COMAR 28.02.01.

ISSUES

Did the Claimant sustain an actual loss compensable by the Fund as a result of acts or omissions of the Respondent? If so, is the Claimant entitled to reimbursement from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following exhibits, which I admitted into evidence:

- Cl #1 Respondent's Invoice, dated June 13, 2012
- Cl #2 Claimant's check to Respondent in the amount of \$3,437.00, dated June 11, 2012
- Cl #3 Claimant's check to Respondent in the amount of \$2,385.02, dated June 19, 2012
- Cl #4 Demand email, dated February 11, 2013
- Cl #5 Email from Claimant's daughter to Respondent, dated January 14, 2013
- Cl #6 Letter from the Claimant to the Respondent sent by certified mail, February 1, 2013; Confirmation from United States Postal Service of delivery of certified mail on February 4, 2013
- CL #7 Home Improvement Complaint Form, dated March 28, 2013 with continuation sheet
- Cl #8 Email from DLLR to Respondent regarding mediation, dated April 3, 2013
- Cl #9 Email from DLLR to Claimant, dated April 2, 2013
- Cl #10 Letter from DLLR to Claimant, dated June 5, 2013

Cl #11 Home Improvement Claim Form with attachment, dated October 22, 2013

Cl #12 Email chain between DLLR and the Claimant, date February 21, 2014

Cl #13 Mid-Atlantic Construction (MAC-VA) Invoice, September 18, 2013

Cl #14 Ten photographs of the interior and exterior of the Claimant's home

The Fund submitted the following exhibits, which I admitted into evidence:

Fund #1 Notice of Hearing, dated April 15, 2014

Fund #2 Hearing Order, dated August 16, 2013

Fund #3 Respondent's licensing history

Fund #4 February 22, 2013 letter from MHIC to Respondent

The Respondent offered the following into evidence:

Resp #1 Photograph of kitchen ceiling

Resp #2 Photograph of ceiling corner in family room

Resp #3 Photograph of window in master bedroom

Resp #4 Photograph of roof prior to Respondent's work

Resp #5 Two photographs of skylights prior to Respondent's work

Resp #6 Two photograph of rotten plywood near skylight

Resp #7 Photograph of removed piece of plywood and photograph of replaced plywood

Resp #8 Two photographs of repaired skylight

Resp #9 Letter from the Respondent to MHIC, dated March 5, 2014

The Fund offered no exhibits into evidence.

Testimony

The Claimant and the Claimant's daughter testified on behalf of the Claimant. The Respondent testified on his own behalf.

The Fund offered no witnesses.

FINDINGS OF FACT

Having considered the evidence, 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 licensed with the MHIC as a home improvement contractor.
2. At all times relevant to the subject of this hearing, the Claimant owned the property known as 8716 Clemente Court, Jessup, Maryland 20794 (the Property).
3. On June 12, 2012, the Claimant contracted with the Respondent to replace the roof on her home. The work to be performed under the contract was as follows:
 - Inspect and remove damage (sic) plywood sheeting. Replace with OSB roofing sheeting as needed. Install new 3-tab shingles on entire roof, including (2) additions over existing. Inspect all penetrations (vent and skylights) and valleys for possible leak. Repair, caulk and seal.
 - Remove 1st and 2nd row of shingles from perimeter of roof to install ice and water shield.
 - Remove and dispose of all debris from property. (Cl. #1)
4. The total contract price for the roof was \$5,791.00, with a down payment of \$3,437.00.
5. The Respondent completed the work on or about June 19, 2012.
6. The Claimant paid the Respondent the full contract price. (Cl. #2 and #3)
7. Several days after the Respondent completed the work it rained, and leaks appeared in the kitchen, master bedroom and upstairs hallway where, prior to the Respondent's work, there had been no leaks.
8. The Claimant immediately contacted the Respondent regarding the leaks.

9. In September 2012, the Respondent and his subcontractor inspected the roof. The subcontractor discovered rotten plywood near the skylight and a leak around the skylight.
10. In September 2012, the Respondent's subcontractor removed and replaced a piece of rotten plywood and repaired a leak around the skylight.
11. In October 2012, the Respondent returned to the Property to perform interior repairs, which consisted of applying a stain blocker to the water stains in the kitchen.
12. In December 2012, the roof continued to leak and, via a December 10, 2012 email to the Respondent, the Claimant demanded that the Respondent refund the contract price. (Cl #4)
13. On January 14, 2013, the Claimant's daughter sent the Respondent an email on behalf of the Claimant demanding that the Respondent refund \$6,791.00 to the Claimant. (Cl #5)
14. On February 1, 2013, the Claimant sent the Respondent a letter by certified mail that demanded the Respondent remit to the Claimant \$6,791.00, which represented the contract price plus \$1,000.00 for interior repairs. (Cl #6 and Cl #7)
15. On or about March 28, 2013, the Claimant filed a complaint with the MHIC. (Cl #7)
16. The Claimant agreed to give the Respondent an opportunity to repair the roof. An appointment was scheduled for June 6, 2013, for the Respondent to inspect the roof and address the necessary repairs. On June 5, 2013, the Respondent informed the Claimant that he would not be able to make the June 6, 2013 appointment.
17. The Claimant declined to reschedule the appointment and provide the Respondent with any further opportunities to repair the roof.
18. On or about September 18, 2013, the Claimant obtained an estimate from MAC-VA, a licensed home improvement contractor, to remove and replace the roof installed by the Respondent. MAC-VA's estimate to remove and replace the roof was \$7,622.51. (Cl #13)

19. MAC-VA also provided an estimate for repairs to the ceiling of the dining room, living room and upstairs bedroom. (Cl #13)

20. On or about October 22, 2013, the Claimant filed a claim with the MHIC. (Cl #11)

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 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 Claimant has proven eligibility for compensation.

The Claimant hired the Respondent to replace the roof on her home. In June 2012, the Claimant and the Respondent entered into a written contract for the roof work. The Respondent agreed to inspect and remove damaged plywood sheathing and replace it with roof sheathing as needed. The contract required the Respondent to install new shingles on the entire roof and repair any leaks in vents, skylights or valleys. Furthermore, the contract required the installation of ice and water shield around the perimeter of the roof. The total contract price was \$5,971.00, which the Claimant paid in full.

The Claimant testified that shortly after the completion of the roof, the roof began to leak in certain areas of the kitchen, master bed room and upstairs hallway where there previously had not been any leaks. She contacted the Respondent about the issue. The Respondent and his subcontractor inspected the roof and the subcontractor made some minor repairs, including sealing the skylight and replacing a piece of plywood. The Claimant and her daughter testified that after the Respondent made the repairs to the roof and the interior, the leaks continued. In

support of the her claim, the Claimant presented photographs of stains in the kitchen, master bedroom and hallway that resulted from the leaks after the Respondent had installed the new roof. After the leaks developed and continued unabated, the Claimant and her daughter sent letters to the Respondent in December 2012, January and February 2013, demanding return of the contract price due to his unsatisfactory roof work and the ensuing leaks. The Claimant testified that the Respondent ignored the correspondences. After she filed her complaint with the MHIC, the investigator, Mr. Banks, set up the date of June 6, 2014 for the Respondent to go to the Property to inspect the roof and try and resolve the issues, but the Respondent failed to appear. The Claimant explained that after the Respondent's failure to respond to their demand letters and then failed to appear for the arranged June meeting, she no longer had any faith in the Respondent and did not want him to do any repairs.

In order to address her concerns with the roof, the Claimant solicited another home improvement contractor, MAC-VA, to inspect the roof and provide a proposal for necessary work. MAC-VA also provided an estimate for interior repairs. MAC-VA's estimate for removal and replacement of the roof totaled \$7,622.51. According to the Claimant, the scope of the work required in the contract with the Respond was the same as that provided for in MAC-VA's estimate.

The Respondent testified in response to the Claimant's complaint. He voiced skepticism that the photographs offered by the Claimant documented new leaks. The Respondent offered photographs that he took prior to his work that showed water stains in the kitchen, corner of the family room and by the window in the master bedroom. He testified that he did not learn of the additional leaks until late August 2012, two months after the work was completed. He stated that upon his inspection, he discovered a piece of damaged plywood that he removed and replaced

and one leak by the skylight that he repaired. He further testified that he returned in September 2012 to do some interior repairs. He planned to return in October 2012 to do further interior repairs after he was certain that the leaks had been repaired. He testified that he called the Claimant in November 2012 to inquire if there were any new leaks, but the Claimant did not tell him that there were still existing leaks. According to the Respondent, the Claimant agreed that he could return around the time of Thanksgiving to address her concerns, but she never provided him with a firm date. According to the Respondent, after the Claimant filed her complaint, he agreed to mediate the matter, but never sat down in the same room with the Claimant to discuss the issues. The Respondent asserted that he was willing to make any necessary repairs to the roof, but the Claimant refused to provide him the opportunity to do so. Regarding his failure to make the June 6, 2013 meeting arranged by the MHIC, the Respondent testified that he was unavailable that day because his father-in-law's funeral was on the same date.

The Respondent's arguments were not convincing. The Claimant established the facts necessary in order to be eligible for compensation from the Fund based on the Respondent's roof installation. First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Second, it is clear from the evidence that the Respondent's installation of the roof was not done in a workmanlike manner. The contract called for the Respondent to inspect and remove damaged plywood sheathing, yet just several months later, the Respondent had to replace a section of rotten plywood. The contract also required that the Respondent inspect the skylights and repair any leaks. The Respondent admitted that in September 2012, when he replaced the rotten plywood, he also took care of a leak in the skylight. Thus, it is clear that the work performed by the Respondent was poor and these noted deficiencies lend support to the Claimant's assertions that new leaks appeared and continued

after the Respondent completed his work and made the repairs in September. The Claimant and her daughter's testimony was consistent that shortly after the work was completed, leaks appeared in areas where previously there had been no leaks. Despite the Respondent's assertions that leaks were present prior to his work, the photographs offered by the Claimant show areas different than those areas depicted in the Respondent's photographs taken prior to his work.

The Respondent's argument that the Claimant did not allow him the opportunity to make repairs is not supported by the evidence. When the new leaks appeared, the Claimant immediately contacted the Respondent to report them. In September 2012, the Respondent allegedly made the necessary repairs, yet the Claimant testified credibly that the leaks continued. The evidence further established that after the Respondent applied some stain blocker to the interior walls in October 2012, he made no effort to address the Claimant's complaints. The Claimant's assertions in this regard are supported by the emails sent by the Claimant to the Respondent in December 2012 and January and February 2013, demanding reimbursement of the contract price. Even after the Complainant filed her complaint with the MHIC, the Respondent was given the opportunity to meet with the Claimant in June 2013. A meeting was arranged to take place on June 6, 2013, but the Respondent failed to make that meeting. The Respondent even admitted that he was not proactive in addressing the Claimant's concerns after she filed her complaint because he was going to "let the process play itself out."

The preponderance of the evidence supports a finding that the Respondent's installation of the roof on the Claimant's home was done in an unprofessional and workmanlike manner and that she is eligible for compensation from the Fund. Having found the Claimant eligible for compensation from the Fund based on the Respondent's roof installation, I now turn to the amount of the award, if any. 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). Thus, although the Claimant obtained an estimate from MAC-VA to repair the interior walls that were damaged by the leaks from the roof, those damages are consequential damages resulting from the leaking roof and she is not entitled to reimbursement from the Fund for those repairs.

MHIC's regulations offer three formulas for measurement of a claimant's actual loss.

COMAR 09.08.03.03B(3):

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

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

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

(c) If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor 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.

In this case, the Respondent performed work under a contract and the Claimant solicited another contractor to do the work performed by the Respondent; therefore, I conclude that the formula at COMAR 09.08.03.03B(3)(b) is an appropriate measure of damages.

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

Amount paid to or on behalf of the Respondent	\$5,791.00
Plus amount paid to repair or replace	<u>\$7,622.51</u>
	\$13,413.51
Less the original contract price	- <u>\$5,791.00</u>
	\$7,622.51

The home improvement law places limitations on amounts recoverable from the Fund and paragraph (e)(5) specifically states that the Commission may not award from the Fund:

An amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.

Md. Code Ann., Bus. Reg. §8-405(e)(5) (Supp. 2014). The Claimant is statutorily precluded from recovering more than the amount paid to the Respondent for the original work performed. Therefore, the Claimant is entitled to reimbursement from the Fund in the amount of \$5,791.00.

PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss in the amount of \$5,791.00, as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010); COMAR 09.08.03.03B(3)(b)

I further conclude that the Claimant is entitled to reimbursement from the Fund in the amount of \$5,791.00. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (Supp. 2014).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,791.00; and

ORDER that the Respondent be 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

November 25, 2014
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/tc
#152767

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