

**IN THE MATTER OF THE CLAIM OF  
CLARA CHANEY  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS OF  
JOSEPH JENNINGS**

**\* MARYLAND HOME  
\* IMPROVEMENT COMMISSION  
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\* MHIC CASE NO. 20(75)1262  
\* OAH CASE NO. LABOR-HIC-  
\* 02-21-16420  
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**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on September 2, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on November 15, 2021, concluding that the homeowner, Clara Chaney (“Claimant”) was not entitled to an award from the Home Improvement Guaranty Fund as a result of the acts or omissions of Joseph Jennings (“Contractor”). *ALJ Proposed Decision* p. 11. In a Proposed Order dated March 4, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On June 2, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Eric London appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR

09.01.03.09(G) - (I).

The claim in this proceeding relates to two contracts between the parties for the repair of the Claimant's roof and the pressure washing and staining of her deck. The ALJ found that the Contractor's performance under the contracts was unworkmanlike, but denied the Claimant an award because (1) the Claimant unreasonably rejected the Contractor's good faith efforts to resolve her claim and (2) the Claimant failed to prove the amount of her actual loss. *ALJ's Proposed Decision* p. 11.

On exception, the Claimant argued that the ALJ erred in finding that she rejected the Contractor's good faith effort to correct his unworkmanlike performance and erred in finding that she failed to prove the amount of her actual loss, but did not identify any evidence in the record in support of her arguments and did not specify any alleged legal errors. The Commission finds no error with the ALJ's decision. In support of the finding that the Claimant rejected good faith efforts by the Contractor to resolve the claim, the ALJ cited testimony by the Claimant, the Claimant's son, and the Contractor that the Contractor returned to the Claimant's home, offered to repair the roof leak, and told her he had workers coming to perform the repairs, that the Contractor offered to strip and reseal the deck, and that the Claimant told the Contractor to leave. Regarding the amount of the Claimant's actual loss, the Claimant did not present any estimates or invoices demonstrating the cost to correct the Contractor's work. In addition, the ALJ noted that although the Claimant testified about a \$9,200.00 estimate for repair work, the estimate she described was not itemized and included repairs beyond the scope of the original contract. Therefore, the Commission agrees that the Claimant failed to prove the amount of her actual loss.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 15<sup>th</sup> day of June 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

*Lauren Lake*  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

IN THE MATTER OF THE CLAIM  
OF CLARA CHANEY,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JOSEPH JENNINGS,  
RESPONDENT

\* BEFORE H. DAVID LEIBENSPERGER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\*  
\* OAH No.: LABOR-HIC-02-21-16420  
\* MHIC No.: 20 (75) 1262

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On September 8, 2020, Clara Chaney (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$9,200.00 in actual losses allegedly suffered as a result of a home improvement contract with Joseph Jennings (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On July 9, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

I held a hearing on September 2, 2021 via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 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. Did the Claimant unreasonably reject good faith efforts by the Respondent to resolve the Claim?
3. Is the Claimant eligible for reimbursement from the Fund for any compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Claimant<sup>2</sup>:

Clmt. Ex. 1 - Photograph of the Claimant's roof shingles and siding, 7/18/20

Clmt. Ex. 2 - Photograph of the Claimant's deck boards, 7/18/20

Clmt. Ex. 3 - Photograph of the Claimant's kitchen ceiling, 7/18/20

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<sup>2</sup> The Claimant did not submit her exhibits to OAH or serve them on the opposing parties prior to the hearing. Claimant was given several opportunities during the hearing to email her exhibits to this Administrative Law Judge (ALJ), and the other parties. I took two recesses to allow the Claimant to accomplish this, the second of which was 30 minutes in length. There was also a separate 30-minute lunch break during the hearing. No exhibits were received by this ALJ or the other parties prior to when the record was closed at the conclusion of the hearing. The exhibits that were offered by the Claimant were held up to the video camera during the hearing and I took screenshots, which I then emailed to the parties and admitted into evidence.

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, 7/21/21

Fund Ex. 2 - Hearing Order, 7/9/21

Fund Ex. 3 - Letter from the Department to the Respondent, 9/15/20, with a copy of the Claimant's Claim Form, 8/31/20

Fund Ex. 4 - Letter from the Department regarding status of the Respondent's license, 8/13/21

Testimony

The Claimant testified and presented the testimony of her son, Paul Thompson.

The Respondent testified and did not present other witnesses.

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 01-113748.
2. The Claimant owns and resides at the property located at 24804 Dargan School Road, Sharpsburg, MD 21782. The Claimant does not own any other residential properties.
3. On unspecified dates, the Claimant and the Respondent entered two separate contracts, one to repair Claimant's roof, and one to pressure wash and stain her deck (Contracts).
4. There were no arbitration clauses in the Contracts.
5. The original agreed-upon Contracts price was \$20,500.00; \$18,500.00 to repair the roof, and \$2,000.00 to pressure wash and stain the deck.
6. On an unspecified date, the Claimant paid the Respondent \$20,500.00.
7. The Respondent began work on the roof on or about August 3, 2018 and completed the work on or about August 20, 2018.

8. After the roof work was completed, the Claimant hired the Respondent to pressure wash and stain her deck. The Respondent began work on the deck shortly after the work on the roof was completed on or about August 20, 2018.

9. Work on the deck was started and completed in a single day, on or about August 26, 2018. The Claimant was not home on that day because she took her son to a medical appointment.

10. On an unspecified date, after the completion of the work, the Respondent moved to New Jersey due to his son's medical condition.

11. Shortly after the completion of the roof work, there was a rain storm and the Claimant noticed a leak coming from the ceiling in her kitchen. The leaking resulted in damage to the Claimant's ceilings and drywall.

12. On an unspecified date, the deck stain began to peel. On two unspecified dates, the Respondent returned to the Claimant's home and sanded and re-stained the deck. However, the deck stain continued to peel.

13. There came a time when the Claimant could no longer contact the Respondent, and so she contacted the MHIC and obtained new contact information for the Respondent, who had moved to New Jersey.

14. The Claimant eventually reached the Respondent who agreed to return to the Claimant's home on July 18, 2020. On that date, the Respondent drove from New Jersey to the Claimant's home to discuss the problems with the roof and the deck, and how those problems could be resolved. The Claimant's son, Paul Thompson was also present at the Claimant's home when the Respondent arrived.

15. The Respondent drove approximately four hours to the Claimant's home from New Jersey, and arrived at approximately 8:00 a.m.

16. The Respondent also arranged for laborers to be available on the same day, July 18, 2020, to begin repairs on the Claimant's roof.

17. At the meeting at the Claimant's home, the Respondent agreed that there was a roof leak, and he was willing to fix it. The Respondent offered to make repairs to the roof at no charge. The Respondent also offered to climb onto the roof to assess what repairs were needed.

18. At that meeting, the Respondent offered to strip the deck and reseal it at no charge; alternatively, the Respondent offered to return half of the deck contract price (\$1,000.00) to the Claimant.

19. During the conversation between the Claimant, the Respondent and the Claimant's son, Mr. Thompson, an argument began. The Claimant began insisting that the Respondent had never pressure-washed her deck to begin with; the Respondent replied that he had. Mr. Thompson also accused the Respondent of stealing materials from the roofing job. The Claimant and Mr. Thompson became angry during the argument. The Claimant told the Respondent to leave, to which the Respondent replied that he had not made this trip to just leave.

The Claimant ultimately told the Respondent, "it's in your best interest to just go ahead and leave." (T. Claimant)

20. The Respondent left before getting onto the roof to assess any needed roof repairs.

21. The Claimant has not yet had the roof or deck repaired.

22. The Claimant received an estimate to repair her roof, deck, and interior damaged ceilings and drywall, from Colonial Woodwrights Custom Contractor, an MHIC licensed contractor, for \$9,200.00. The estimate was not itemized and included estimates for work not performed by the Respondent, namely repairs of the interior ceilings and drywall.

23. The Claimant still experiences leaking in her ceiling during heavy storms.



24. The Claimant is not an employee, officer, or partner of the Respondent, nor is she related to any of the Respondent's employees, officers, or partners.

25. The Claimant has no other pending suits or insurance claims related to this matter and has not otherwise recovered for any losses connected to this matter.

26. The Claimant filed her Claim with the MHIC on September 8, 2020.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is, "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund, "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

"The [MHIC] may deny a claim if the [MHIC] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d). The Respondent bears the burden to establish by a preponderance of the evidence the defense that this Claim should be denied on the basis that the Claimant unreasonably rejected the Respondent's good faith efforts to resolve the Claim. COMAR 28.02.01.21K(2)(b).

For the following reasons, I find that, although the Respondent's home improvement to the roof and deck were unworkmanlike, the Claimant unreasonably rejected the Respondent's

good faith efforts to resolve the Claim, and the Claimant is therefore ineligible for compensation from the Fund.

It is undisputed that the Respondent was a licensed home improvement contractor at the time he entered into the Contracts with the Claimant. It is also undisputed that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements.

Although the Claimant did not present any direct evidence of causation, i.e., specific proof demonstrating how Respondent's inadequate work resulted in her continued roof leaks,<sup>3</sup> it is reasonable to conclude that had the Respondent properly performed the roof repairs, the Claimant's roof would not have leaked within a matter of weeks after the Respondent finished his work. At the hearing, the Respondent conceded that the continued leaks were more likely than not the result of his work because those leaks should not have occurred after he completed the work to the roof.

The same is true of the deck. The Claimant did not present any direct evidence of causation, i.e., why the deck peeled, but it is reasonable to conclude that had the Respondent properly performed the deck repairs, the Claimant's deck would not have continued to peel.

Even though I can conclude that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements, the Claimant unreasonably rejected the Respondent's good faith offers to resolve the Claim.

First, I find that the Respondent made offers to resolve the Claim, and those offers were made in good faith. Once the Respondent arrived at the Claimant's home there is no dispute that the Respondent agreed that there was a roof leak, and he was willing to fix it. Although the Claimant initially testified that the Respondent did not make an offer to fix the roof, she later

<sup>3</sup> Although the Claimant urged that the photograph that is Clmt. Ex. 1 demonstrates that the Respondent did not install flashing, the Respondent testified that flashing can be seen in the photograph. From this conflicting testimony and the photograph itself, it cannot be determined whether the photograph shows that flashing was installed or not.

Strip Replace  
Roofing



testified that the Respondent agreed that the roof was leaking and said he would fix it. Despite testifying that the Respondent did not say when he would fix the roof, the Claimant also testified that the Respondent told her he had laborers on the way. Mr. Thompson's testimony also confirmed that the Respondent offered to make repairs. The Respondent and Mr. Thompson both testified that the Respondent intended to get up onto the roof to assess the needed repairs.

With regard to the deck repair, there is also no dispute that the Respondent offered to return half of the deck contract price (\$1,000.00) to the Claimant. Although the Claimant disputed that the Respondent alternatively offered to strip the deck and reseal it at no charge, Mr. Thompson agreed that the Respondent had indeed offered to strip the deck and reseal it.

I find that the Respondent's offers were made in good faith based on the efforts taken by the Respondent in making them. The Respondent drove a long distance, approximately 4 hours, early in the morning from New Jersey to arrive at the Claimant's home at 8:00 a.m. The Respondent also arranged for laborers to be available on that same date to begin repairs to the Claimant's roof. Further demonstrating the Respondent's good faith in making these offers, he first toured the home with the Claimant and Mr. Thompson as they identified the various leaks in the ceiling (which the Respondent photographed), and the problems with the deck.

Second, there is no dispute that the Claimant rejected these offers; she testified that she told the Respondent to leave her property after these offers were made. Mr. Thompson's testimony confirmed the Claimant's statements that she asked the Respondent to leave her property before he could start making any repairs.

Third, I find that the Claimant's rejection of the Respondent's good faith offers was unreasonable. While the Respondent toured the home, the Claimant began insisting that the Respondent had never pressure-washed her deck when he originally performed the work, and Mr. Thompson accused the Respondent of stealing materials from the roofing job. The

Respondent disagreed with these accusations and was justifiably insulted by them. The Respondent credibly explained at the hearing that he had in fact pressure-washed the deck, and this claim is buttressed by the fact that he had previously acted in good faith by taking the time and effort to return to the Claimant's home on two occasions to reseal the deck. The Respondent also credibly explained that he originally brought extra materials to perform the work on the Claimant's roof to avoid trips to his materials distributor because the materials distributor was located 40 minutes away; he credibly testified that he did not steal materials the Claimant had purchased.

Given the clarity and consistency of the Respondent's testimony throughout the hearing, as well as his calm testimonial demeanor, I find his challenges to these accusations to be credible. Also, the Claimant presented no evidence to establish that the Respondent had purchased materials with the Claimant's money and took them from her. The Claimant's credibility was weakened by her internally inconsistent testimony and because her testimony was inconsistent with that of Mr. Thompson.

The Claimant's and Mr. Thompson's accusations resulted in the parties becoming upset, the Claimant demanding that the Respondent leave the property before he could perform any of the necessary repairs, and the Claimant thereby rejecting the Respondent's good faith offers. Because the accusations against the Respondent have no evidentiary basis, they were unreasonable. The ensuing argument and the Claimant's rejection of the Respondent's good faith offers on the basis of these accusations were likewise unreasonable. The Respondent did nothing to evoke the Claimant's and her son's irrational response to the Respondent's good faith offer; their response was baseless and therefore unreasonable.

It is also apparent the Claimant's rejection of the Respondent's offers was unreasonable when juxtaposed with the time and effort the Respondent invested in going to the Claimant's

home and arranging for same-day repairs to begin. It is clear that in response to the Respondent's good faith offers of repair and/or partial refund, the Claimant made no attempt to negotiate a resolution, and instead chose to start and remain mired in an argument. Indeed, even after the Claimant told the Respondent to leave, the Respondent made another attempt at reconciliation, stating to the Claimant that he had not made such a long trip just to turn around and return home. This offer, too, was unreasonably rejected.

Even though the Respondent conceded that his work was unworkmanlike, inadequate, or incomplete, the Complainant unreasonably rejected his offer to correct the work. Therefore, I conclude that the Claimant is not eligible for compensation from the Fund.

Even had I found the Claimant to be eligible for compensation from the Fund, the Claimant did not prove the amount of her actual loss. In a case such as this, where the Respondent performed the work under the Contracts and the Claimant has retained another contractor to complete or remedy that work, the Claimant's actual loss must be based on, "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....*" COMAR 09.08.03.03B(3)(c) (emphasis added). Here, the Claimant received an estimate from Colonial Woodwrights Custom Contractor for \$9,200.00 to repair not only the deck and roof, but also interior ceiling panels and drywall. No copy of the estimate was offered by the Claimant into evidence. Moreover, the Claimant conceded that the estimate she received was not itemized. Therefore it is impossible to determine how much of the \$9,200.00 would be within the scope of the Contracts to, "repair poor work done by the original contractor under the original contract." An undetermined amount of the \$9,200.00 estimate is for the repair of the interior ceiling and drywall work, which was not part of the Contracts in this case.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

I conclude that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the Claim. Md. Code Ann., Bus. Reg. § 8-405(d) (2015).

I conclude that the Claimant is not eligible for reimbursement from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

*H. David Leibensperger*

November 15, 2021  
Date Decision Issued

\_\_\_\_\_  
H. David Leibensperger  
Administrative Law Judge

HDL/da  
#194706

PROPOSED ORDER

*WHEREFORE, this 4<sup>th</sup> day of March, 2022, 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.*

*Joseph Tunney*

*Joseph Tunney*

*Chairman*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**