IN THE MATTER OF THE CLAIM	*	**BEFORE ABENA Y. WILLIAMS,**
OF PATRICIA ROBEY,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	**OAH No.: LABOR-HIC-02-21-07304**
FOR THE ALLEGED ACTS OR	*	**MHIC No.: 20 (75) 518**
OMISSIONS OF DAVID ADAMSON,	*	
T/A ASPEN HOME IMPROVEMENTS,	*	
INC.,	*	
RESPONDENT	*	

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PROPOSED DECISION

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ISSUES
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
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STATEMENT OF THE CASE

On January 20, 2020, Patricia Robey (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 $18,000.00 in actual losses allegedly sustained as a result of a home improvement contract with David Adamson, trading as Aspen Home Improvement, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through

8-411 (2015).[1] On March 23, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a video hearing on May 17, 2021 via Webex. Bus. Reg. §§ 8-407(a), 8-312; Md. Code Ann., State Gov't § 10-211(a). Shara Hendler, 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. State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (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. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

CL Ex. 1 Chronological list of events, undated

CL Ex. 2 Emails between Claimant and the Respondent, November 30, 2018 through August 8, 2020; Five pictures depicting portions of ceiling, undated; Bresla Painting and Plastering Proposal, March 27, 2019

CL Ex. 3 Erie Insurance Claim Correspondence, June 11, 2020; Property Damage Release, undated; Email Correspondence between Claimant and Yvette Diggs of Erie Insurance, July 21, 2020; Signed Property Damage Release, July 24, 2020; Bresla Painting and Plastering Estimate, March 27, 2019; Underwood Construction, Inc. Estimate, December 11, 2019

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

The Respondent did not offer any exhibits to be admitted into evidence.

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

Fund Ex. 1 Hearing Order, March 11, 2021

Fund Ex. 2 Hearing Notice, April 12, 2021

Fund Ex. 3 Home Improvement Claim Form, January 20, 2020; Letter from MHIC to Respondent, January 29, 2020

Fund Ex. 4 Respondent MHIC License and License History, April 29, 2021

Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

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 5180159.

2. At all relevant times, the Claimant was the owner of a home located on Smallwood Church Road in Charles County, Maryland, which was her personal residence.

3. 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.

4. The Claimant owns one other residential property.

5. On June 15, 2018, the Claimant contracted with the Respondent (Contract) for a full roof replacement, geodesic dome structure.

6. The Contract did not contain an arbitration clause.

7. The original agreed-upon Contract price was $18,000.00.

8. The Respondent began work under the Contract on November 19, 2018 and completed the work using subcontractors.

9. The old roof had ventilation vents, flashing in every joint, and a vent cap at the top of the roof. The mechanisms allow the roof to "breathe" and/or provide ventilation.

10. The Claimant's husband, Mr. Robey, gave specific instructions for the Respondent to construct the new roof with ventilation vents, flashing joints, and a vent cap, like the old roof, and provided drawings to the Respondent's subcontractor. The instructions also required thirty square shingles that measured fifty feet by ten feet each. The Respondent's subcontractor did not install the ventilation vents or flashing joints; he used smaller shingles and sealed off the vent cap at the top of the roof.

11. Soon after the work was completed the Claimant began to notice leaking in the roof, particularly around the front door and middle of the ceiling.

12. On January 21, 2019, the Claimant contacted Tammy Harrison via email, the Respondent's representative, to inform her that the roof was leaking, and sent pictures of stained drywall by the front door and on portions of the ceiling. She asked that someone respond regarding the leaking roof.

13. On January 28, 2019, the Claimant sent a follow-up email to the Respondent, stating she did not receive a response to her email.

14. On April 17, 2019, the Respondent's subcontractor came to look at the roof but he did not make any repairs.

15. On May 9, 2019, the Claimant sent an email to the Respondent informing him that the roof was still leaking by the front door.

16. The Respondent advised the Claimant to contact her homeowner's insurance company, Erie Insurance.

17. Erie Insurance refused to fix the drywall and complete the claim due to the condition of the roof.

18. On August 2, 2019, Susan Geib, another of the Respondent's representatives, sent an email to the Claimant to schedule roof repairs.

19. The Respondent and the Claimant agreed that the Respondent would make repairs to the roof on certain dates including September 3-6, 2019 and October 14, 2019.

20. The Respondent did not appear on September 3-6, 2019 nor October 14, 2019.

21. On September 25, 2019, the Respondent sent an email to the Claimant informing her he would give her a call to make plans to have the old work repaired.

22. The Respondent never appeared to complete any repairs.

23. On December 11, 2019, the Claimant arranged to have Underwood Construction, Inc. (Underwood) inspect the work performed by the Respondent and provide an estimate. The following issues remained with the roof work performed by the Respondent: "(1) roof leaks and sweats due to improper installation; (2) the shingles need to be removed and replaced properly with vent flashing, (3) damage inside the structure/home: drywall damage and stains." (CL Ex. 3).

24. Also, on December 11, 2019, the Claimant contracted with Underwood to repair the roof. Pursuant to the contract, Underwood "removed and replaced thirty square on dome home with thirty year architectural shingles, install[ed] 360 feet metal flashing on all triangle sections for proper ventilation, install[ed] drip edge around all bottom edges on house, install[ed] 200 feet metal flashing in all valleys with minimum of eighteen overlap (per plans) [...] install[ed] 150 square feet of rubber roofing...install metal cap on dome (per plans)." (CL Ex. 3).

25. Underwood completed the work on April 25, 2020.

26. The total Underwood contract price for the roof was $21,500.00 plus $2,800.00 to repair drywall damage.

27. Underwood is a licensed home improvement contractor.

28. Erie Insurance, the Claimant's homeowner's insurance company, paid the $2,800.00 for the drywall repair.

29. The Claimant has no other pending claims related to this matter and has not otherwise recovered for any losses connected to the Claim.

DISCUSSION

LEGAL FRAMEWORK

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 (2014); 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).

A claimant 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); *see also* COMAR 09.08.03.03B(2) ("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." Md. Code Ann., Bus. Reg. § 8-401.

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) the claimant is not an employee, officer or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor's

employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2019).

The undisputed evidence in this case establishes there are no *prima facie* impediments barring the Claimant from recovering from the Fund. *Id.* For the following reasons, I find that the Claimant has proven eligibility for compensation.

THE PARTIES' POSITIONS

The Claimant asserts that the Respondent's work was unworkmanlike, inadequate, and/or incomplete and as a result, she has sustained an actual loss. The Claimant avers the Respondent failed to follow Mr. Robey's explicit instructions regarding the installation of the roof which resulted in leaks in her home and damage to her drywall. The Claimant's Claim Form indicates that she seeks to recover $18,000.00 from the Fund, which is the amount that she paid the Respondent. (Fund Ex. 3). The Claimant asks that I recommend she be awarded this amount.

The Respondent asserts that he has been in the roofing business for over thirty years, that the dome roof on the Claimant's home was unique, and there were underlying issues with the structure of the roof. The Respondent noted that the last communication with the Claimant was in June 2020 when he offered to pay to fix the roof. He noted the Claimant never got back to him and instead paid for a new contractor who installed twenty percent more material than he

would have. He admitted he "didn't look at the construction issues prior to providing an estimate to the Claimant [and] that he should have done a little bit of research upfront." Respondent's Testimony. He also emphasized that he had good intentions and tried to work with the Claimant throughout the process. The Respondent argued he was never given an opportunity to fix the vent cap and the new roofer could have placed vents at the top rather than replacing the entire roof.

The Respondent asked that I consider that he never abandoned the job and tried to work with the Claimant.

The Fund recommended that I find that the Respondent's work was unworkmanlike, inadequate, and incomplete, and that I recommend an award to the Claimant

THE MERITS OF THIS CASE

The Unworkmanlike, Inadequate, and Incomplete Home Improvements

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. (Fund Ex. 4). The preponderance of the credible evidence establishes that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent admitted that he did not follow the plans or instructions specified by the Claimant, and the Claimant submitted into evidence numerous photos which displayed unworkmanlike, inadequate, and incomplete work performed by the Respondent. The photos displayed stained drywall around the front door and portions of the ceiling (CL Ex. 2). Though it is clear the Respondent made multiple attempts to work with the Claimant to repair the roof by communicating with the Claimant and returning to her home to review the leak, the Respondent never actually made appropriate repairs. The Respondent did not have the expertise required of this specific roof type and admittedly did not install ventilation vents, flashing joints,

and a vent cap, contrary to the terms of the contract and the documents provided by the Claimant's husband.

The Claimant hired Underwood to replace the roof installed by the Respondent to include the required ventilation vents, flashing joints, and vent cap. (*Id.*). According to the Claimant, she has not had any issues since Underwood's installation.

Underwood's estimate included commentary regarding the Respondent's work and noted that the roof leaks and sweats were due to improper installation; the shingles needed to be removed and replaced properly with vent flashing, and the drywall needed to be repaired. (CL Ex. 3).

The Fund noted that a newly installed roof that leaks is, by its own virtue, unworkmanlike, inadequate, and incomplete. Clearly there was a venting issue in addition to the leaks. Further, I find the Respondent completed the job, albeit improperly, and intended to fix his work, but failed to do so. It was reasonable for the Claimant to hire someone else in 2020 to repair the inadequate work that the Respondent started in 2018 and she was not required to wait indefinitely for the Respondent to return. Based on the photos, evidence, and testimony presented by the Claimant and the admissions of the Respondent, I find that the Claimant is eligible for compensation from the Fund.

The Claimant's Actual Loss

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent completed the work under the Contract but failed to complete the work to the specifications of the Claimant. The Claimant retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

> 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).

The Claimant made payments to the Respondent, and also incurred costs paid over and above the Contract to have the Respondent's work remedied and completed by another licensed contractor. I find that all the work performed by Underwood was within the scope of the original Contract including the drywall repair. (CL Ex. 3). The drywall repair, however, was paid for by Erie Insurance under a homeowner's insurance claim and will not be included as an actual loss to the Claimant. (*Id.*).

The Claimant's actual loss is as follows:

Amount paid to Respondent	$ 18,000.00
Amount necessary for other contractors to remedy the work	+ $ 21,500.00
TOTAL	$ 39,500.00
Contract Price	- $ 18,000.00
Actual Loss	$ 21,500.00

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of $21,500.00 exceeds the

amount paid to the Respondent. Therefore, the Claimant's recovery is limited to $18,000.00, the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4). The Claimant is entitled to recover that amount.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $18,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover $18,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

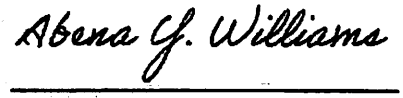
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $18,000.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;[2] and

[2] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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



August 6, 2021
Date Decision Issued

Abena Y. Williams
Administrative Law Judge

AYW/emh
#193550

PROPOSED ORDER

WHEREFORE, this 4th day of November, 2021, 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.

Michael Newton

Michael Newton
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION