

**The Maryland Home
Improvement Commission**

* **BEFORE THE**
* **MARYLAND HOME IMPROVEMENT**
* **COMMISSION**

v. Anna J. Lewis
t/a Bob's Siding & Roofing Company
(Contractor)

* **MHIC No.: 10 (75) 322**

and the Claim of
Daniel L. Shanholtz
(Claimant)

*
*

FINAL ORDER

WHEREFORE, this July 15, 2014, Panel B of the Maryland Home Improvement

Commission ORDERS that:

- 1. The Findings of Fact set forth in the Proposed Order dated March 5, 2014 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated March 5, 2014 are AFFIRMED.**
- 3. The Proposed Order dated March 5, 2014 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

Joseph Tunney
Joseph Tunney, Chairperson
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

CIRCUIT COURT FOR BALTIMORE CITY

Lavinia Alexander
Clerk of the Circuit Court
Courthouse East

111 North Calvert Street - Room 462

Baltimore, MD 21202-

410-333-3722 TTY for Deaf: (410)-333-4389

May 28, 2015

Case Number: 24-C-14-004774 / AA /

In The Matter Of The Petition Of Bob's Siding &

Joel A Jacobson Esq
Assistant Attorney General
500 N Calvert Street
Suite 406
Baltimore, MD 21202-3651

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RECEIVED
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OFFICE OF THE
ATTORNEY GENERAL

BOB'S SIDING & ROOFING, INC.

Petitioner

v.

**MARYLAND HOME IMPROVEMENT
COMMISSION**

and

DANIEL L. SHANHOLTZ

Respondents

* * * * *

* IN THE
*
* **CIRCUIT COURT**
*
* **FOR BALTIMORE CITY**
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* **CASE NO. 24-C-14-004774 AA**
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ORDER

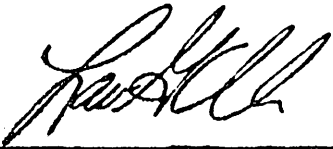
UPON CONSIDERATION of Respondent's Motion to Dismiss, ^{to which no response has been filed,} and having found that [^] the Petitioner has failed to comply with the Order of this Court dated April 10, 2015, it is this 26th day of May, 2015, by the Circuit Court for Baltimore City,

ORDERED, that the above appeal be, and the same is hereby **DISMISSED**, with prejudice, *costs to be paid by petitioner*

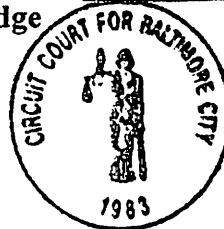
W. Michel Pierson
Judge's Signature Appears
On Original Document

Judge

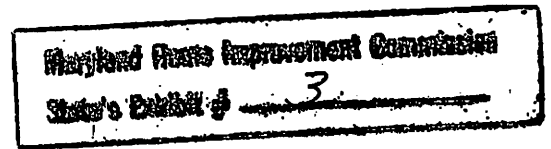
**TRUE COPY
TEST**



LAVINIA G. ALEXANDER, CLERK



IN THE MATTER OF THE CLAIM * BEFORE JOY L. PHILLIPS,
 OF DANIEL L. SHANHOLTZ, * AN ADMINISTRATIVE LAW JUDGE
 CLAIMANT * OF THE MARYLAND OFFICE
 AGAINST THE MARYLAND HOME * OF ADMINISTRATIVE HEARINGS
 IMPROVEMENT GUARANTY FUND * OAH NO.: DLR-HIC-02-13-11776
 FOR THE ALLEGED ACTS OR * MHIC NO.: 10 (75) 322
 OMISSIONS OF ANNA J. LEWIS, t/a *
 BOB'S SIDING & ROOFING CO., *
 RESPONDENT¹ *



* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On August 30, 2011, Daniel L. Shanholtz (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$13,160.00 in actual losses allegedly suffered as a result of home improvement work contracted to be performed at the Claimant's property in Worcester County, Maryland by Anna J. Lewis, trading as Bob's Siding & Roofing Co. (Respondent).

¹ Anna Lewis' son, Kerry Lewis, the vice-president of Bob's Siding and Roofing Co., oversees the day-to-day operations of the company and was the sole company representative in its dealings with the Claimant. Kerry Lewis also does the hands-on work for the company. He signed the contracts on behalf of the company and testified at the hearing on behalf of the company. Accordingly, I will refer to Anna Lewis, the company and Kerry Lewis collectively throughout this decision as the Respondent and will use the pronoun "he."

I convened a hearing on August 28, 2013 at the Worcester County Free Library, Ocean Pines, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent was represented by her son, Kerry Lewis, the Vice President of the Respondent's company.²

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

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

- Fund Ex. 1: Notice of Hearing, dated April 18, 2013
- Fund Ex. 2: Hearing Order, dated March 11, 2013
- Fund Ex. 3: The Respondent's Licensing History, dated June 26, 2013
- Fund Ex. 4: Home Improvement Claim Form, dated August 30, 2011
- Fund Ex. 5: Letter to the Respondent from MHIC, dated September 14, 2011
- Fund Ex. 6: Photograph

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

- Claimant Ex. 1: Contract with the Respondent, dated February 24, 2009
- Claimant Ex. 2: Inspection notes by T. Hughes, dated August 27, 2009
- Claimant Ex. 3: Notes written by the Claimant from August 27 to September 1, 2009
- Claimant Ex. 4: Checks written by the Claimant to the Respondent, dated February 26 to April 16, 2009

² Mr. Lewis submitted a signed power of attorney authorizing him to represent the Respondent within five days of the hearing, as directed.

- Claimant Ex. 5: Email from Ted Hogue to the Claimant, dated July 29, 2011
- Claimant Ex. 6: Email from Kevin Sullivan, HomeRite, to the Respondent, dated June 24, 2010
- Claimant Ex. 7: Notice of Building Inspection, dated August 27, 2010
- Claimant Ex. 8: Photographs
- Claimant Ex. 9: Letter from David Sandford to the Claimant, dated August 26, 2013
- Claimant Ex. 10: Checks to Trey Stokely, dated December 14 and 20, 2012
- Claimant Ex. 11: Check to Window World of Delmarva, Inc., dated June 25, 2012
- Claimant Ex. 12: Contract, dated June 8, 2010, Center for Conflict Resolution letterhead

I admitted the following exhibits on the Respondent's behalf, unless otherwise noted:

- Respondent Ex. 1: Photographs
- Respondent Ex. 2: Invoice, dated April 30, 2009
- Respondent Ex. 3: Invoice, dated July 30, 2009
- Respondent Ex. 4: Letter to the Claimant from the Respondent, dated August 31, 2009
- Respondent Ex. 5: Letter to the Respondent from the Claimant, dated September 15, 2009
- Respondent Ex. 6: Revised Official Building Permit, dated March 12, 2009
- Respondent Ex. 7: (Not admitted) Email from MI Windows and Doors to the Claimant, dated March 13, 2009

Testimony

The Claimant testified on his own behalf and presented the testimony of Ted Hogue, a builder licensed with the MHIC, and Donald DiDominico, an equitable owner of the Property.

The Respondent testified on his own behalf and presented the testimony of Michael Dize, his helper.

The Fund did not present the testimony of any witnesses.

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 # 01-10281.
2. The Claimant owns rental property in Ocean City, Maryland (Property).
3. On February 24, 2009, the Claimant and the Respondent entered into a contract (First Contract) in which the Respondent was contracted to replace an existing deck at the Property, install new vinyl siding on each end of the house, install vinyl soffit under the

deck area, replace sliding glass doors and install transom windows over the sliding doors.

No building permit was called for by the First Contract.

4. The Respondent later learned that a permit was required for the work required under the First Contract.

5. The price of the First Contract was \$38,000.00.³

6. The work commenced on the First Contract and was inspected on August 27, 2009.⁴

Numerous deficiencies were noted at the inspection:

- a. A grab handrail needed to be installed;
- b. Light fixtures needed to be reinstalled;
- c. Some I-beams needed to be reattached;
- d. The vinyl soffit needed to be replaced and reinstalled to withstand high winds; and
- e. The front doors needed to be installed as per the manufacturer's instructions

7. The First Contract was paid in full by May 6, 2009.

8. On August 27, 2010, the Claimant and the Respondent entered a second contract (Second Contract), as a result of participating in mediation. In the Second Contract, the Respondent agreed to repair or replace the front door to prevent water leakage; correct the slider doors; correct some problems with the deck; install grab rails on stairs; add wiring for exterior lights and install lights; replace two cracked windows; add an ice and water shield to existing flashing; and replace soffits and make custom gutters for the soffits. The work was required to pass inspection.

9. The Second Contract required the parties to cooperate and communicate. It required both parties to be present at the Property when the work was being done. It required the Respondent to work at the Property September 7 through 10, 2010 and October 26 to 29, 2010, with the work to be completed by November 1, 2010.

³ This amount was later orally changed by the parties to \$38,310.00, but this change is not relevant to the decision.

⁴ I believe but cannot confirm that the inspection was performed by an Ocean City, MD, inspector.

10. The price of the Second Contract was \$2,500.00. Nothing was paid on the Second Contract.
11. After the Second Contract was signed, the Respondent and his helper appeared at the Property one time, September 7, 2010, and worked for about four hours. On that date, they corrected the back doors and replaced handles. They straightened up the front door. They removed and replaced four deck boards and some siding in order to add ice and water shield over the deck boards in an effort to prevent water leakage. They removed soffits and left them on the Property grounds with the intention of replacing them the next day.
12. When the Respondent mentioned returning the next day, the Claimant informed him that he was going out of town on a vacation and would be unable to be present.
13. The Respondent never returned to complete the work required by the Second Contract.
14. The Claimant called the Respondent several times in an effort to get him to return to the Property, but the calls were not answered.
15. On July 29, 2011, the Claimant received an estimate to complete the work covered by the Second Contract. The cost for completion is \$13,160.00, which includes a \$180.00 up-charge for using metal rather than vinyl soffits. The estimate called for adding or replacing furring strips, metal soffits, gutters and downspouts; correcting or adding handrails; removing and replacing some siding and Tyvek to repair a leakage problem; installing some lights and receptacles; replacing broken windows; correcting sliding glass doors; and correcting some issues with the deck. The reasonable cost to complete the work the Respondent agreed to perform under the Second Contract is \$12,980.00 (\$13,160.00 minus the up charge for the metal soffits, \$180.00).
16. The Claimant's actual loss is \$10,480.00.

DISCUSSION

A homeowner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor...” Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2013). *See also* COMAR 09.08.03.03B(2). An “actual loss” is defined as “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.

First, the Respondent was a licensed home improvement contractor at the time he entered into the Second Contract with the Claimant. Second, I conclude that the Respondent performed unworkmanlike and incomplete home improvement on the Claimant’s Residence.

The parties entered into two different Contracts, the first of which was paid in full despite a lengthy punch list of unfinished or unworkmanlike items. The Respondent disputed many of the allegations lodged by the Claimant regarding his unworkmanlike work under the First Contract. However, it is undisputed that the project did not pass inspection. Because of this, the Respondent agreed, in 2010, to attend mediation in an attempt to finish the project and satisfy the Claimant. At mediation, the parties entered into the Second Contract, which is at issue in this case.⁵ The Second Contract called for the Respondent to appear on two sets of days in September and October 2010 to complete a list of jobs. The Claimant was to be present when the work was done. The Second Contract acknowledged that there were leaks around the front door and on the walls under the deck, problems with the slider doors, two cracked picture windows, and problems with the vinyl soffits. The work was to be completed by November 1, 2010.

⁵ The Claimant’s claim form referred only to the June 8, 2010 Second Contract, although he erroneously used the contract price of the First Contract. At the hearing, the Fund agreed that the case was limited to the Second Contract and I concur.

On September 7, 2010, the Respondent appeared at the Property as required to start the work pursuant to the Second Contract. He and his helper worked for about four hours and he expected to return the next day. The Respondent testified that the Claimant told him that he would be out of town for two weeks on vacation and would call him when he returned, but he never did. The Respondent conceded that he never returned to finish the job. He believed the Claimant "broke the timeline" by going on vacation at the time the Respondent was required by the Second Contract to be at the Property doing the work. He also agreed that had he returned to the Property from October 26 to 29, 2010, as required by the Second Contract, he could have finished all of the work by the deadline. He said he simply got "sick and tired of it all."

The evidence shows that the Respondent abandoned the Second Contract when he failed to return to the Property after September 7, 2010. I do not understand why the Claimant agreed to be present at the Property during the September dates when the Claimant knew he was going to be away on vacation at that time. However, that does not absolve the Respondent from fulfilling his end of the agreement. Furthermore I found the Claimant credible in his assertion that he called the Respondent numerous times to get him to return to the Property, despite the Respondent's protest that he never received a call from the Claimant. The Claimant showed me his detailed diaries that he keeps regarding everything that happens to him each day. Although they were not introduced into evidence, I reviewed them at the hearing. By contrast, it was evident the Respondent wanted to be rid of the Claimant and was no longer interested in completing the Second Contract. It is believable to me that he never returned the Claimant's calls, particularly in light of the fact, as noted by the Fund, that he did not return to the Property even after receiving a letter from the MHIC regarding the claim. Thus, I conclude that the Claimant was credible in his assertions that he tried to reach the Respondent after he returned from vacation.

The Respondent could have completed the Second Contract had he returned to the Property during the agreed upon October dates, when the Claimant was back in town. Because the Respondent failed to return to the Property and finish the job, I conclude that he abandoned the Second Contract, making the Claimant eligible for compensation.

Once the Respondent abandoned the Second Contract, the Claimant turned to Ted Hogue for an estimate on completing the work. Mr. Hogue's estimate was \$13,160.00, which included an up charge for metal soffits. The evidence regarding whether metal was actually required under applicable code was not clear enough for me to conclude that the up charge should be included as a reasonable cost of completing the contract. Therefore, I have disregarded that amount and deducted \$180.00 from the estimate total, \$180.00 representing the amount used by the parties at the hearing as the additional cost for metal soffits. The Respondent questioned the amount of Mr. Hogue's estimate, but agreed that it covered all of the work he would have done had he completed the Second Contract. I have addressed the difference between the price of the Second Contract and the estimate below.

Having found eligibility for compensation, 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). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

Using the above formula, I agree with the Fund's following computation of the

Claimant's actual loss:

Amount paid to the Respondent under the Second Contract:	\$ 00.00
<i>Plus</i> amount estimated to complete the Second Contract:	<u>\$12,980.00</u>
Total:	<u>\$12,980.00</u>
<i>Minus</i> Contract price	<u>\$ 2,500.00</u>
Actual Loss:	\$10,480.00

Because there is such a disparity between the price of the Second Contract, \$2,500.00, and the price of the estimate to complete that contract, \$12,980.00, I have considered whether the price of the Second Contract was unrealistically low and thus, should be adjusted for a fairer measure of the Claimant's actual loss, as permitted by COMAR 09.08.03.03B(3)(c). I have decided that it should not be adjusted because the Respondent agreed to the \$2,500.00 contract price to complete the job as a result of a lengthy mediation which took place in June and August 2010. The Respondent testified that he believed he was owed \$5,000.00 for work that went above and beyond the terms of the First Contract, but agreed to the contract amount of \$2,500.00 in an effort to have the matter closed. The Second Contract permitted the parties to have an attorney review the agreement before signing it. It was an extremely detailed document—far more detailed than the original contract. It is clear to me from the terms of the Second Contract and the Respondent's testimony that he fully understood his obligations and the amount of work that was required under the Second Contract. The Respondent did not challenge Mr. Hogue's list of jobs required to complete the work left unfinished by the Respondent, but only the cost of the work. Furthermore, the Fund did not recommend an adjustment. Taking all of these factors into consideration, I conclude that the contract price for the Second Contract should not be adjusted.

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained a compensable loss of \$10,480.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER.

I PROPOSE that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,480.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

December 3, 2013
Date Decision Mailed

Joy L. Phillips
Administrative Law Judge

JLP/brp
146448

IN THE MATTER OF THE CLAIM	* BEFORE JOY L. PHILLIPS,
OF DANIEL L. SHANHOLTZ,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-13-11776
FOR THE ALLEGED ACTS OR	* MHIC NO.: 10 (75) 322
OMISSIONS OF ANNA J. LEWIS, t/a	*
BOB'S SIDING & ROOFING CO.,	*
RESPONDENT	*

* * * * *

FILE EXHIBIT LIST

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- Respondent Ex. 7: Email from MI Windows and Doors to the Claimant, dated March 13, 2009



DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

IN THE MATTER OF
ANNA J. LEWIS
t/a BOB'S SIDING & ROOFING CO.
IMPROVEMENTS
AND THE CLAIM OF
DANIEL L. SHANHOLTZ

* MARYLAND HOME
IMPROVEMENT COMMISSION

* MHIC CASE NO. 10 (75) 322

* * * * *

Maryland Home Improvement Commission
Sub's Debt # 2

PROPOSED ORDER

WHEREFORE, this 5TH day of March, 2014, Panel B of the Maryland Home Improvement Commission ORDERS that:

1) The Findings of Fact of the Administrative Law Judge are Amended as follows:

- A) The original contract between the Claimant and the Respondent was entered into on or about February 24, 2009 and the contract price was \$38,310.00. (Findings of Fact Nos. 3 & 5). (The original February 24, 2009 contract is referred to as the "First Contract" in the Administrative Law Judge's recommended decision. It is referred to hereafter as the "original contract.")
- B) The Claimant paid a total of \$38,310.00 to the Respondent under the original contract. (Claimant Exhibit 4).
- C) On or about August 27, 2010, the Claimant and the Respondent entered into an addendum to the original contract, and the price of the addendum was \$2,500.00. (The August 27, 2010 addendum is referred to as the "Second Contract" in the Administrative Law Judge's recommended decision. It is referred to hereafter as the "addendum.")
- D) The August 27, 2010 addendum was not a separate contract from the original contract. The addendum was a modification of the original contract to provide for repair and completion of work included in the scope of the original contract.

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

MARTIN O'MALLEY, GOVERNOR • ANTHONY G. BROWN, LT. GOVERNOR • LEONARD J. HOWIE III, SECRETARY

E) The fair and reasonable cost to complete the work which the Respondent agreed to perform under the addendum was \$12,980.00.

F) The Claimant's actual loss under the original contract and the addendum is \$10,480.00.

2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) Pursuant to COMAR 09.08.03.03B(3), the Commission concludes that the correct measure of the Claimant's actual loss is as follows:

Amount paid by Claimant to Respondent under original contract and addendum	\$38,310.00
Reasonable cost to repair and complete work under original contract and addendum	+ \$12,980.00
Total	<u>\$51,290.00</u>
Less price of original contract and addendum	- <u>\$40,810.00</u>
Actual Loss	\$10,480.00

3) The Recommended Order of the Administrative Law Judge to award the Claimant \$10,480.00 from the Guaranty Fund is Affirmed.

4) Unless any party 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, any party then has an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Marilyn Jumalon
Chairperson - Panel B
Maryland Home Improvement Commission