

IN THE MATTER OF THE CLAIM OF * BEFORE GERALDINE A. KLAUBER,
 CYNTHIA L. MORFE * AN ADMINISTRATIVE LAW JUDGE
 AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
 IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
 FOR THE VIOLATIONS OF * OAH NO.: DLR-HIC-02-13-35451
 ERIC CHAMISH T/A MARYLAND * MHIC NO.: 13 (90) 573
 WINDOW & SIDING SERVICES¹ *

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On February 13, 2013, Cynthia L. Morfe (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,900.00 for an actual loss suffered as a result of home improvement work performed by Eric Gregory Chamis, t/a Maryland Window and Siding Services (Respondent).

A hearing was held on June 10, 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. Kris King, Assistant

¹ The Hearing Order names the Respondent as Eric Chamish t/a Maryland Window and Siding Systems, Inc. The Respondent's contract with the Claimant contains the business name Maryland Energy Corp t/a Maryland Window and Siding Services. The licensing history of the Maryland Home Improvement Commission lists Eric Chamish and Maryland Home Energy Corporation.

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. 2013); 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 Roofing Contract, dated October 12, 2010
- Cl #2 Statements dated October 13, 2010 with attached credit card receipts
- Cl #3 Manufacturer's Certification Statement
- Cl #4 Home Improvement Claim Form
- Cl #5 Home World, LLC Proposal, dated November 1, 2012
- Cl #6 Two checks from Claimant made payable to Home World LLC

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 no exhibits into evidence.

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf.²

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 1700 Weston Avenue, Baltimore, Maryland 21234 (the Property).
3. On October 12, 2010, the Claimant contracted with the Respondent to replace the roof on her home. The work to be performed under the contract was as follows:
 - Tear off and haul away all old roofing shingles from roof
 - Fix or replace any damaged or rotten wood up to 3 sheets. Add wood \$75.00 sheet
 - Replace all flashing, drip edge, pipe collars, step flashing
 - Snow and ice shield included
 - Furnish and install new 15ft black water proof paper to home
 - 30 year shingle warranty
 - 5 year labor warranty
 - Job must be completed to [the Claimant]'s complete satisfaction per terms
4. The total contract price for the roof was \$2,900.00, with a down payment of \$900.00.
5. The Respondent completed the work on November 6, 2010.
6. The Claimant paid the Respondent the full contract price.

² Over the objection of the Fund's counsel, I accepted the Respondent as an expert in roof installation.

7. The Claimant's roof did not leak prior to the Respondent's work.
8. Several days after the Respondent completed the work, shingles blew off of the Claimant's roof.
9. The Claimant contacted the Respondent regarding the missing shingles. On or about November 11, 2010, the Respondent came to the Property and replaced fewer than ten shingles.
10. A few days later, more shingles blew off the roof. Within two days, the Respondent came to the Property and replaced several more shingles.
11. In October 2012, the Claimant noticed water spots on her bedroom ceiling and bubbling paint on the basement walls.
12. A plumber came to the Claimant's home and told her the water source was most likely the roof.
13. In or about May 2011, the Respondent went out of business. The Respondent did not notify the Claimant that he was going out of business. In October 2012, the Claimant unsuccessfully attempted to contact the Respondent by telephone.
14. On November 1, 2012, Home World, LLC (Home World) inspected the Claimant's roof. The representative from Home World showed the Claimant several areas where wood was missing and where water was leaking into the attic.
15. Shingles were missing around the chimney area and the Respondent had not replaced the pipe collars.
16. The Claimant paid Home World \$5,750.00 to perform the following work:
 - remove shingles, reflash and reshingle chimney
 - remove pipe collar on front roof and install ice shield and new collar
 - replace felt paper and install ice shield and install new hearth gray 30 year shingle.

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. 2013). *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. On October 12, 2010, the Claimant and the Respondent entered into a written contract for the roof work. The Respondent agreed to tear off the roof shingles, replace any damaged or rotting wood, and replace all flashing, drip edge, pipe collar and step flashing. The contract called for the installation of CertainTeed X-T 30-year shingles. The contract terms included a 30-year shingle warranty and a 5-year labor warranty. The total contract price was \$2,900.00, which the Claimant paid in full.

The Claimant testified that shortly after the completion of the roof in November 2010, shingles blew off on two separate occasions. She contacted the Respondent about the issue and he sent the subcontractor to the Property to replace some shingles. The Claimant noticed no other problems with the roof until October 2012, when she noticed wet spots on her bedroom ceiling and on the basement walls. The Claimant attempted to contact the Respondent by telephone but the phone number for his business was no longer in service. In fact, the Respondent had shut down the business in or about May 2011.

In order to address her concerns with the roof, the Claimant solicited another home improvement contractor, Home World, to inspect the roof and provide a proposal for necessary work. Home World assessed the problem and pointed out to the Claimant areas on the roof

where pieces of wood were missing and where the wood was damp splitting. The Claimant testified she was able to see where the wood was missing and could also see the felt paper under the shingles in those areas. The Home World representative informed her that some of the wood needed to be replaced and that new shingles needed to be attached to the roof. The Claimant hired Home World to replace the roof at a cost of \$5,750.00.

The Respondent testified in response to the Claimant's complaint. He denied that his work was the cause of the leaks in the Claimant's home. Although the Respondent performed none of the work on the Claimant's roof and never returned to the Property after he provided her with the contract, he asserted that prior to the work none of the wood on the Claimant's roof was rotting or needed to be replaced. According to the Respondent, New World's assessment that wood was rotten and needed to be replaced was fraudulent because one cannot determine if wood needs to be replaced until all of the shingles are off the roof. The Respondent asserted that the cause of the shingles blowing off of the roof was the fact that the work was performed in November in cool weather and shingles require heat to seal to the roof. He further argued that there are many reasons for a wet basement, none of which are related to roof work. He suggested that because the Claimant's home is a townhome and the Claimant noticed leaking at the seams of the house, the cause may be attributed to her neighbor's leaking roof.

The Respondent's arguments were not convincing. The Claimant has not had any leaks since Home World performed the roof work. If the leaks in the Claimant's home were due to the neighbor's faulty roof, then one would expect that the Claimant would have continued to experience leaks after Home World's roof work. Although the Respondent contends that none of the wood on the roof was rotten or needed to be replaced, the Claimant testified very convincingly that the Home World representative showed her through the door leading to her attic where several pieces of wood were rotted.

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 shingles blew off twice within days of the job being completed and some of the wood underlayment on the roof was rotted and needed replacing. The Respondent provided a five-year labor warranty but was unavailable to fulfill his warranty and fix any of the problems with the roof because he dissolved the business without notifying the Claimant or providing her with any alternatives to having the problems with the roof fixed.

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). 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.

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	\$2,900.00
Plus amount paid to repair or replace	<u>\$5,750.00</u>
	\$8,650.00
Less the original contract price	- <u>\$2,900.00</u>
	\$5,750.00

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. 2013). The Claimant is statutorily precluded from recovering more than the amount paid to the Respondent for the original work performed. Additionally, the work performed by Home World to replace the roof installed by the Respondent included some work beyond the scope of the original contract. However the evidence established that the work performed by the Respondent needed to be entirely redone and that the cost of that repair and replacement was at least \$2,900.00, the amount paid to the Respondent. Therefore, the Claimant is entitled to reimbursement from the Fund in that amount.

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 \$2,900.00, 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 \$2,900.00. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (Supp. 2013).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,900.00; 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

August 18, 2014
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/tc
#150105

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FILE EXHIBIT LIST

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