

IN THE MATTER OF THE CLAIM	* BEFORE MARY SHOCK,
OF CHRISTOPHER COOL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No: DLR-HIC-02-17-32277
FOR THE ALLEGED ACTS OR	* MHIC No: 17 (90) 1015
OMISSIONS OF MATTHEW	*
ROZANSKI, T/A ONE DAY	*
ROOFING, LLC,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On August 14, 2017, Christopher Cool (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$21,676.00 in actual losses allegedly suffered as a result of a home improvement contract with Matthew Rozanski, trading as One Day Roofing, LLC (Respondent).

On January 24, 2018, I held a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented

himself. Kris King, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Respondent failed to appear.

The Respondent is currently licensed by the MHIC. (GF #2.) He is required to notify the MHIC of any change of address within ten days of the change. Md. Code Ann., Bus. Reg. § 8-309 (2015). On November 21, 2017, the OAH mailed notice of the hearing to the Respondent at his address of record with the MHIC by regular and certified mail. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The United States Postal Service (USPS) did not return the regular mail as undeliverable. On January 2, 2018, the USPS returned the certified mail with the notation, "Insufficient address, unable to forward." Maryland regulations permit me to proceed in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. Because notice was mailed to Respondent at his address of record with the MHIC and because the USPS did not return the notice sent by regular mail, I find the Respondent received proper notice. I heard the case in the Respondent's absence.

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 (2014 & Supp. 2017); COMAR 09.01.03; 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

- CL #1 Letter from GAF Corporation to Claimant, July 7, 2015
- CL #2 Letter from GAF Corporation to Respondent, February 23, 2017
- CL #3 Letter from Safeco Insurance to Claimant, February 27, 2017
- CL #4 Advanta Clean, Proposal, March 4, 2017
- CL #5 Twenty photographs of Claimant's residence, February 27, 2017
- CL #6 House Transformers, Inc. Contract, May 10, 2017
- CL #7 House Transformers, Inc. Contract, May 18, 2017
- CL #8 Invoices: Mattress Warehouse, March 10, 2017; Carpet One, February 5, 2013; Pods, February 2, 2017, March 3, 2017, and April 3, 2017; Roll Off Rental, February 2, 2017; and Roll Off Rental, February 10, 2017

The Respondent did not appear for the hearing to offer exhibits.

I admitted the following exhibits for the Fund.

- GF #1 Notice of Hearing, November 21, 2017, Certified Mail Return, January 2, 2018
- GF #2 Respondent MHIC licensing record, January 23, 2018
- GF #3 Motor Vehicle Administration, Respondent's Driving Record Information, January 23, 2018
- GF #4 Hearing Order, October 2, 2017
- GF #5 Claim Form, August 14, 2017, and letter from MHIC to Respondent, August 14, 2017

Testimony

The Claimant testified in his own behalf. Neither the Respondent nor the Fund presented 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 05-130765.

2. On March 12, 2015, the Claimant and the Respondent entered into a contract to replace the roof on the Claimant's residence. The Respondent removed the old shingles, replaced up to four sheets of plywood, installed new shingles, and installed new gutters and rainspouts. The new shingles had at least a twenty-five-year warranty.

3. The original agreed-upon contract price was \$9,999.00.

4. The Claimant was not experiencing any leaks or mold in his home before he contracted with the Respondent for a new roof.

5. On March 15, 2015, the Respondent began and completed installation of the roof.

6. On March 15, 2015, the Claimant paid the Respondent \$9,999.00 in cash.

7. Water slowly seeped through the roof around the edge of the roof, causing water to leak into the Claimant's house and basement and mold to grow throughout the house.

8. By February 2017, the plywood sheets under the shingles at the edge of the roof were damp and rotting.

9. In February 2017, the Claimant first observed mold in his home. After his first observation, the mold quickly spread throughout the house.

10. In February 2017, after moving items stored in his basement, the Claimant first observed water marks on the basement wall from water leakage.

11. On May 10, 2017, the Claimant contracted with House Transformers, Inc. to replace the roof, gutters and downspouts for \$8,676.00.

12. Since House Transformers, Inc. completed the work in May 2017, the Claimant has not experienced any leaking or mold in his home.

13. The Claimant spent \$90,235.00 for mold remediation in his home.

14. The Claimant's actual loss is \$8,676.00.

DISCUSSION

The Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). A preponderance of the evidence means such evidence that produces a belief that a fact is more likely true than not true. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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) (2015). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401 (2015). However, there is a limit on the losses a claimant may recover from the Fund. Under Maryland law, the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3). For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund for the replacement of his roof.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. (GF #2.) He installed a roof that leaked or allowed water to enter and slowly seep throughout the Claimant's home. The Claimant testified the Respondent's company came to his home stating its workers were in the neighborhood and were offering to replace the Claimant's roof. The Claimant testified he was not experiencing any leaking in his home when he contracted with the Respondent for a new roof, gutters, and downspouts. Instead, he noticed some of the shingles were old; they had lost their gravel. He stated the new shingles were guaranteed for at least twenty-five years, although he remembers a fifty-year guarantee.

The Claimant did not provide a copy of the contract he entered into with the Respondent and he did not have a receipt for his payment to the Respondent. The Claimant stated he paid the Respondent in cash; he prefers to pay in cash rather than charge his expenses. He remembers the amount of \$9,999.00 because the Respondent wanted to keep the price under \$10,000.00. The Claimant contacted the Respondent for a receipt when he learned of the problem with the roof, but the Respondent did not provide a copy.

I accept the Claimant's testimony concerning the scope of work, the cost of the roof, and his payment of \$9,999.00 to the Respondent. His testimony was detailed and reasonable; he remembered the \$9,999.00 price because the Respondent stated he wanted to bring the contract in under \$10,000.00. The Claimant did not appear to be lying about the cost and his payment, but testified in a straightforward manner. He supported a portion of his testimony with a July 7, 2015 letter from the shingle manufacturer, GAF Corporation, which notes an installation date of March 16, 2015, and identifies the Respondent as the installer. (CL #1.) The document corroborates, at least, the Claimant's testimony that he contracted with the Respondent for a new roof in March 2015. The Respondent did not appear at the hearing to contradict the Claimant's testimony. Based on the Claimant's unrefuted credible testimony and documentary evidence, I find the Claimant contracted with the Respondent in March 2015 for a new roof, gutters, and downspouts and he paid the Respondent \$9,999.00 for the work.

The Claimant further testified that in February 2017, he first observed mold in the corners of a bedroom ceiling. The mold spread quickly throughout the house. When he moved items out of his basement, he observed water marks on the wall. (CL #5, photographs 17 and 18.) He contacted his insurance company. The company sent an inspector. The insurance company subsequently rejected his claim because the policy did not cover this type of loss. (CL #3.)

The Claimant stated that on May 10, 2017, he contracted with House Transformers, Inc. to replace the roof, gutters, and downspouts. He paid \$8,676.00 for the work. (CL #6.) The Claimant testified that when the roofer removed the drip edge of the roof, the Claimant observed the wood underneath was damp and rotting. (CL #5, photograph #3.)

The Claimant further testified he paid over \$100,000.00 for mold remediation, new siding, a Pod for storage, dumpster rental, and mattress replacement; all damages he suffered as a result of the dampness and mold. (CL #4, #7, #8.) The Claimant argued he should be permitted to recover these damages from the Fund.

The Claimant demonstrated the Respondent performed inadequate home improvement work. A roof replaced in 2015 should reasonably be expected to last more than two years and prevent water from seeping into the home for more than two years. The roofing work performed by the Respondent was inadequate because water seeped into the house. The water and resulting dampness caused extensive mold to grow throughout the Claimant's home by 2017 and required the Claimant to replace the roof in 2017. Based on the Respondent's inadequate home improvement, I find the Claimant is eligible for compensation from the Fund.

The damages the Claimant suffered due to the mold are not recoverable from the Fund. The mold was the result or consequence of the inadequate roof. The costs for mold remediation, new siding, storage, trash removal, and mattress replacement are consequential damages. As stated above, Maryland law limits any award from the Fund to direct damages arising to the roof itself, but not to other parts of the house which were not part of the contract with the Respondent. I understand the Claimant's frustration and anger with the law's limit. He was required to pay an enormous amount of money to repair his home and correct damages he did not cause. However,

anyone who files a claim with the Fund is bound by the limitation of the law. I lack the authority to make an exception in the Claimant's case.

Having found eligibility for compensation for the roof, I must determine the amount the Claimant is entitled to recover. The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. COMAR 09.08.03.03B(3). Here, the Respondent performed work under the contract and the Claimant retained House Transformers, Inc. to replace the roof for \$8,676.00. (CL #6.) Accordingly, the appropriate measure of the Claimant's actual loss is the amount the Claimant paid to the Respondent under the original contract, plus the amount the Claimant paid to replace the roof, less the original contract price. His actual loss is \$8,676.00. ($\$9,999.00 + \$8,676.00 = \$18,675.00 - \$9,999.00 = \$8,676.00$.) COMAR 09.08.03.03B(3)(c).

Maryland law 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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5). In this case, the Claimant's actual loss is less than the amount he paid to the Respondent and less than \$20,000.00. The Claimant is, therefore, entitled to recover his actual loss of \$8,676.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,676.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$8,676.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,676.00; 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;¹ and

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

Signature on File

March 29, 2018
Date Decision Issued

Mary Shock
Administrative Law Judge

MKS/dlm
#171999

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

MARYLAND HOME IMPROVEMENT COMMISSION

Panel B

Joseph Tunney

Joseph Tunney

WHEREFORE, this 7th day of May, 2018, 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.

PROPOSED ORDER