

IN THE MATTER OF THE CLAIM  
OF HOJAT GOUDARZI,

\* BEFORE STUART G. BRESLOW,  
\* AN ADMINISTRATIVE LAW JUDGE

CLAIMANT

\* OF THE MARYLAND OFFICE

AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND

\* OF ADMINISTRATIVE HEARINGS

FOR THE ALLEGED ACTS OR

\*

OMISSIONS OF JOSHUA BYRNE

\*

T/A BYRNE CONTRACTING, LLC,

\* OAH No.: DLR-HIC-02-18-16839

RESPONDENT

\* MHIC No.: 17 (90) 332

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
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**STATEMENT OF THE CASE**

On April 23, 2017, Hojat Goudarzi (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,735.00 in actual losses allegedly suffered as a result of a home improvement contract with Joshua Byrne, trading as Byrne Contracting, LLC (Respondent).

I held a hearing on August 27, 2018 at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented

himself. Shara Hendler, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. 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 (2014 & Supp. 2018); Code of Maryland Regulations (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 on the Claimant's behalf:

- Clmt. Ex. 1A-D Four photographs of the new roof extension and moisture on bricks, taken by the Claimant after the Respondent completed the project
- Clmt. Ex. 2 Contract between the Claimant and Respondent dated June 15, 2015
- Clmt. Ex. 3 Copies of three checks issued by the Claimant and payable to the Respondent, totaling \$4,435.00
- Clmt. Ex. 4 Email from Claimant to Respondent, dated June 25, 2015
- Clmt. Ex. 5A-F Six photographs of the underside of the roof extension as connected to the brick, taken by the Claimant on August 25, 2018
- Clmt. Ex. 6 Proposal from Masterson, L.L.C. to replace and install new roof extension, dated April 5, 2017

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 Hearing Order, dated May 15, 2018

Fund Ex. 2 Notice of Hearing, dated May 30, 2018

Fund Ex. 3 Home Improvement Claim Form, received by MHIC on April 27, 2017

Fund Ex. 4 Licensing history of the Respondent, dated August 23, 2018

Testimony

The Claimant testified and presented no other witnesses.

The Respondent testified and presented no 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 4570433.

2. On June 15, 2015, the Claimant and the Respondent entered into a contract (Contract) to construct an extension of his existing roof to divert rain and water away from his house (Project). The work began on June 15, 2015 and was completed two days later.

3. The original agreed-upon Contract price to complete the Project was \$3,510.00.<sup>1</sup>

4. The Claimant paid the Respondent a total of \$4,435.00, comprised of three checks, for completing the Project and other work not relevant to this claim.

5. Shortly after the Project was completed, a rain event occurred and the roof extension that was installed only days before the storm leaked from all sides.

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<sup>1</sup> In addition to the Project, the Contract included painting in the Claimant's townhouse. This part of the Contract was completed satisfactorily and is not part of the Claimant's claim.

6. On June 25, 2015, the Claimant notified the Respondent that two rain events occurred following the completion of the Project and during each event, the roof leaked.

7. The following day, Mike Byrnes, father of the Respondent, inspected the roof extension and claimed to have fixed the leak problem. The leaking condition continued after Mike Byrnes left the Project.

8. Mike Byrnes visited the Project approximately six times and after each visit, he claimed that the leakage problem was solved. In each case, rain events penetrated the new roof extension and evidence of the leaking roof was apparent to the Respondent and the Claimant.

9. Mike Byrnes last came to inspect the Project on February 24, 2016, and advised the Claimant that since it was winter, he would not be able to try and fix the leaking roof until the weather improved. This was the last time a representative of the Respondent visited the Project site.

10. The Claimant sought the services of several roofing contractors to inspect and prepare a proposal to fix the leaking roof extension. The Claimant selected Masterson, LLC to inspect the Project and prepare a proposal to fix the roof so that it would no longer leak.

11. The Claimant selected Masterson, LLC, an MHIC licensed contractor, because its quote was lower than others and its proposal specifically addressed the reasons for the roof failure.

12. The Respondent is no longer operating as a contractor.

### **DISCUSSION**

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann.,

State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>2</sup> “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it 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)<sup>3</sup>; *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). 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. For the following reasons, I find that the Claimant has proven eligibility for compensation because the Respondent performed unworkmanlike, inadequate or incomplete home improvements.

The Claimant and the Respondent entered into the Contract on June 15, 2015 to specifically address a rainwater drainage problem that was impacting the Claimant’s house. The Project was specifically intended to divert rainwater away from the Claimant’s house. The Claimant and the Respondent discussed several different proposals, but settled on the one outlined in the Contract. The Claimant relied on the Respondent’s expertise that the rainwater drainage issue would be fixed once the Project was completed.

The Respondent testified at the hearing that due to the existing roof structure, another roof design for the extension would have been more appropriate. While a different roof extension may have yielded different results, the Respondent, as the contractor selected to fix the

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<sup>2</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

rainwater drainage issues, had the responsibility to design and build a roof extension that would fix the problem. If the design that was finally agreed upon in the Contract would not have fixed the problem, then the Respondent had a duty to inform the Claimant that the proposed design was inadequate and had an obligation not to enter into the Contract to build the roof extension knowing that it would be inadequate to prevent leaks.

The Respondent testified that part of the problem for the continued rainwater issue was caulking that did not have time to cure before a severe rain event occurred shortly after the Project was completed. While this may have contributed to the problem, the Respondent's father, Mike Byrnes, visited the Project at least a half dozen times claiming each time that he had finally fixed the leaking problem. He could have replaced the caulk and performed other remedial tasks, however, each time he left and another rainstorm occurred, the leaking continued. At some point prior to August 2016, the business ceased to operate. Mike Byrnes told the Claimant that he would return to the Project site after the winter of 2016, but never returned. Evidence of the leaking roof continues today based on photographs taken by the Claimant on August 25, 2018.

The work performed on the Project was inadequate and unworkmanlike. A continuation of the leaking problem and the Respondent's failure to fix the problem, even after repeated visits to the Project site, demonstrates that Respondent's work on the Project was inadequately performed, as it failed to remedy the issue the Contract sought to address. Additionally, the Respondent being unable to fix the problem, even after the Claimant allowed the Respondent many attempts to do so, demonstrates that the work performed was also unworkmanlike. Accordingly, I find that the Claimant is eligible for compensation from the Fund.

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. COMAR 09.08.03.03B(3).

In this case, the Respondent performed inadequate and unworkmanlike work under the Contract, and the Claimant intends to retain another contractor to remedy that work.

Accordingly, the following formula appropriately measures the Claimant's actual loss:

The Claimant has solicited an offer from Masterson, LLC to remove the existing roof extension installed by the Respondent and remediate the water leak problem by installing a new roof extension with appropriate flashing and membranes to eliminate the leaks. The Claimant's actual loss shall be the amounts the Claimant has paid to the Respondent under the Contract, (\$3,510.00) added to any reasonable amounts the Claimant will be required to pay another contractor (\$3,735.00) to repair and replace the poor work done by the Respondent under the Contract, less the original Contract price. Therefore, using this formula, the Claimant's actual loss is \$3,735.00. COMAR 09.08.03.03B(3)(c).

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 is more than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled recover

\$3,510.00, the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$3,510.00 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 \$3,510.00 from the Fund.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,510.00; 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<sup>4</sup>; and

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

**Signature on File**

October 31, 2018  
Date Decision Issued

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Stuart G. Breslow  
Administrative Law Judge

SGB/cj  
#175657

<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 20<sup>th</sup> day of November, 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.***

***Jeffrey Ross***

***Jeffrey Ross  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**