

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE ERIN H. CANSIENNE,</b>
<b>OF DAVID KIRWAN,</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>*</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>*</b>
<b>OMISSIONS OF GEORGE B. EDGE,</b>	<b>*</b>
<b>T/A ALLSTATE BUILDING CO., LLC,</b>	<b>* OAH No.: LABOR-HIC-02-19-23150</b>
<b>RESPONDENT</b>	<b>* MHIC No.: 18 (75) 925</b>

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On June 12, 2018, David Kirwan (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$11,800.00 in actual losses allegedly suffered as a result of a home improvement contract with George B. Edge, trading as Allstate Building Co., LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On July 1, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on October 29, 2019 at the Kent County Circuit Court, 103 N. Cross Street, Chestertown, Maryland. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney

General, Department of Labor (Department),<sup>1</sup> represented the Fund. The Claimant represented himself. The Respondent represented himself.<sup>2</sup>

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. 2019); 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 the compensable loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

- Clmt. Ex. 1 - Photographs by Ann Kirwan (marked A – X), taken between April 2016 and April 2017<sup>3</sup>
- Clmt. Ex. 2 - Photographs by Hancock Claims Consultants, taken on April 10, 2018
- Clmt. Ex. 3 - Bay Breeze Home Improvements, LLC Estimate/Proposal, dated June 3, 2018
- Clmt. Ex. 4 - Allstate Building Company, LLC Proposal, date February 23, 2016

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

- Resp. Ex. 1 - Photographs taken by Brooke Creighton (marked A-V), taken between March 2016 through an unknown date<sup>4</sup>

---

<sup>1</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>2</sup> The Claimant's claim form was unclear regarding whether George B. Edge or Allstate Building Company, LLC was the Respondent; therefore, a Special Power of Attorney for Designation of Non-attorney Representation was obtained from George B. Edge to represent Allstate Building Company, LLC.

<sup>3</sup> The exact date was not known by Ms. Kirwan, but she indicated they were taken during the year.

<sup>4</sup> Ms. Creighton took all of the photographs between the day the work first began, and the last time the Respondent went to the Claimant's house to attempt to repair the problem. However, Ms. Creighton could not state the exact date that she took any of the pictures.

Resp. Ex. 2 - Written Statement from Allstate Building Co., undated

Resp. Ex. 3 - Letter from George B. Edge, June 25, 2018

Resp. Ex. 4 - Drawing of roofline by Respondent, drawn at hearing October 29, 2019

I admitted the following exhibits on behalf of the Guaranty Fund:

GF Ex. 1 - Hearing Order, dated July 1, 2019

GF Ex. 2 - Notice of Hearing, dated September 3, 2019

GF Ex. 3 - Home Improvement Claim Form, dated June 6, 2018

GF Ex. 4 - Licensing Information for Respondent, Registration # 91972

### Testimony

The Claimant testified and presented the testimony of his wife, Ann Kelly Kirwan.

The Respondent testified and presented the testimony of Brooke Creighton, Manager of Allstate Building Co., LLC.

The Fund did not present any testimony.

### 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 5173983 and registration number 91972.
2. Prior to entering into any contract, the Claimant and the Respondent were aware of water leaking through the Claimant's front porch. At that time, the cause of the leak was not known by either Claimant or Respondent.
3. On or before March 2, 2016, the Claimant and the Respondent entered into a contract to replace the roof of the Claimant's residence with a "GAF Timberline HD Architectural Shingle." and to tear down a chimney to the second floor (Contract).

4. The original agreed-upon Contract price was \$11,900.00, with half to be paid as a draw for materials and the remaining amount to be paid at the completion of the roof.

5. On March 2, 2016, the Claimant paid the Respondent \$5,950.00. On March 17, 2016, the Claimant paid the Respondent \$5,950.00.

6. The Respondent replaced the whole roof on the Claimant's house, including the front porch.

7. The Respondent began to tear down the chimney, but was stopped by the Claimant due to the mess that this process was causing inside of the Claimant's home.<sup>5</sup>

8. The tar paper on the Claimant's original roof was wet when the roof was replaced by the Respondent.

9. Approximately four months after the Respondent installed the roof, the Claimant reported leaks on the front porch to the Respondent.

10. The Respondent went to the Claimant's home six times to attempt to address the problems, but water still was present on the front porch.

11. The Respondent's efforts to address the Claimant's water issues included: re-nailing and relaying shingles, replacing two rows of shingles on the transition, soaking the roof on the porch in an attempt to determine the source of leak, replacing and installing flashing on the porch transition, replacing the roof ridge vents to a flat cap<sup>6</sup> and then back to ridge vents, and removing shingles to put Ice and Water Shield on a part of the roof.

12. After the sixth attempt to address the leak, the Claimant no longer wanted the Respondent to work on the roof.

---

<sup>5</sup> The Claimant did not provide the date that he requested the Respondent to stop working with the chimney. Neither party provided testimony as to the whether this stop work request affected the price/cost for the Contract, or as to the condition of the chimney at the time the work was stopped and at the time the Respondent had finished his other work at the Claimant's house.

<sup>6</sup> Flat cap and roof vents are two way to finish the roof ridge (top of the roof). On the Claimant's roof, the Respondent initially installed roof vents.

13. During the visits to attempt to repair the roof, there was evidence of water under the shingles and rusted nails under the shingles on the front side of the Claimant's house.

14. The Claimant's home has cinder block walls and no insulation. In the attic, there is a knee wall, a short wall, where the roof slopes down to meet the attic floor.

15. Between the roof of the front porch and the soffit ceiling of the front porch is open, uninsulated space.

16. Water was dripping from the soffit ceiling of the front porch.

17. The Claimant uses a woodstove to warm the house.

18. The Respondent installed the Zip System on the Claimant's roof as part of the initial installation. A Zip System is a water-proof system that can be placed on a roof instead of plywood.

19. After the first complaints of a leak, the Respondent removed shingles and installed a Tiger Paw System on the Claimant's roof. It also is a water proofing system that is applied between the plywood or Zip System and the roof shingles. It allows condensation to escape from the roof. The Respondent paid for the Tiger Paw System to be installed, which included removing shingles, installing the Tiger Paw System, the materials for the Tiger Paw System and new shingles over that system.

20. After the Claimant had raised continued concerns about the water in the porch area, Ice and Water Shield was also added to the transition area. Ice and Water Shield is generally used under shingles in locations where ice or water may pool or collect (such as valleys near dormer windows). This is a different water shield that is designed to heat the area to melt ice or evaporate water.

21. Despite repeated attempts to resolve the water issues, water still drips on the front porch.

## 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). “[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>7</sup> *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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

The Claimant did not provide sufficient evidence that the Respondent performed unworkmanlike, inadequate or incomplete home improvements. There is no dispute that prior to the work performed by the Respondent, the Claimant had a water leak on the front porch. There is similarly no dispute that the Respondent replaced the Claimant’s entire roof, including the roof over the front porch. Since the original replacement of the entire roof, the Claimant continued to see water leaks on the front porch, and the Respondent went out to the Claimant’s house at least

---

<sup>7</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

six times to attempt to repair the problem. Despite the repeated visits to the Claimant's home, the water problem on the front porch continued.

Generally, the back side of the house does not have any leaks. During the hearing, there was very limited testimony that a chimney may be leaking on the back side of the roof. However, the testimony was uncontroverted that the Claimant and/or his wife told the Respondent not to finish the contracted work regarding removal of the chimney to the second floor. I also find that the Claimant had not notified the Respondent of any leak by the chimney prior to the date of the hearing. Further, the Claimant did not provide any evidence of the cost to either repair the chimney or the cost to repair any leak from the chimney. Therefore, the evidence is insufficient to conclude that the Claimant is entitled to any recovery from the Fund for any leak around the chimney.

The Claimant did not present any expert testimony to explain what was causing the water leaks on the front porch. The Claimant and his witness, Ms. Kirwan, both testified as to the location of the water. Both the Claimant and Ms. Kirwan testified that they believed the only possible cause for the water leak was the Respondent's faulty roof installation. However, neither provided specific evidence to establish what part of the roof installation was unworkmanlike, inadequate, or incomplete. The Claimant's case relied on the argument that if the roof was installed properly, there would not be a leak on the front porch. Further, the Claimant argued that if the Respondent performed work properly, there would be no water issues on his front porch after six attempts to repair the problem.

Ms. Creighton is a manager for the Respondent. The term manager means both a project manager as well as an office manager for the Respondent. Ms. Creighton has gone through various trainings from manufacturers to know about certain roofing products, such as Zip System, Tiger Paw System, and Ice and Water Shield. She explained the differences among the three

products, how the products are used, and why all three were used eventually on the Claimant's home to try to resolve the water leaks on the front porch. She further described all of the pictures that she took during the initial installation and the attempts to repair the leak after the Claimant had complained. (Resp. Ex. 1A-V).

According to Ms. Creighton, the location of water and ice on the shingles and roofing materials in the various pictures indicate that the water was coming from the inside of the structure, instead of water coming from the roof through a leak. Ms. Creighton's testimony regarding the various attempts at repairs and the timing of the various pictures was muddled at times. While I do not find that Ms. Creighton was trying to be deceitful, I do find that she was unsure of the order or dates of the various pictures taken, and that she sometimes testified based on her personal knowledge, and other times based on what other workers for Allstate Building Co., LLC had told her. However, even with the inconsistencies in timeline, I find that the Respondent went to the Claimant's home multiple times after the initial installation. By the end of the attempts to repair, the Respondent had installed Zip System, Tiger Paw System and Ice and Water Shield, and that all three of those items constitute water proofing to allow for aeration of the roof. In addition, I find that during the attempts to repair the roof, the Respondent removed the ridge vents and then replaced those vents, as the removal did not fix the problem of water on the porch.

The Respondent also testified regarding the job. He was the person that sold the job to the Claimant. When the Respondent first discussed the job with the Claimant, the Respondent and the Claimant were both aware that there was a water problem on the front porch. At the time the parties executed the contract, the Respondent did not know what was causing the water problem on the front porch. He believed that the problem could have been a leak at the transition, and that replacing the roof in that area would fix the water issue. In addition, the Respondent thought that adding ridge vents to the Claimant's home could also help to allow heat



to escape the roof area. At the time of execution of the contract, there was no recommendation to insulate any portion of the Claimant's home.

The Respondent testified that he has thirty years of experience in the industry and that his company has installed over 20,000 roofs since it has been in business. The Respondent provided both an explanation and a diagram to show the mechanics of heat and water condensation.<sup>8</sup> The Claimant's home has no insulation and is instead a cinderblock home. The porch overhang is similarly uninsulated. The Respondent testified that the interior of the home is heated by a wood stove, and the heat rises to the upper level/attic area. According to the Respondent, this heat gets trapped in an area where the roof tapers down in the attic and a "knee wall," which is a half wall, creates a triangle shaped area. The area between the porch roof and the porch ceiling is not insulated in any way. Further, the air over and under the porch overhang can be much colder or much hotter than the air inside the house. According to Respondent's testimony, when the air inside the house becomes surrounded by the variation in the temperature outside, it causes condensation, which then will eventually leak out. The Respondent testified that during inspections of the Claimant's house and attempts to repair the problem, every nail on the front portion of the attic and front porch was rusted and had a droplet of water hanging on it. The Respondent testified if there was a leak, the rust and water droplets would not be on every nail, but, instead, on a specific area where the leak was located. For the rust and water droplets to be on every nail, the Respondent testified that it would mean the entire roof of the front porch area is leaking. The Respondent claims that the rust and water droplets are signs that the water is not from a leak, but due to the lack of insulation and the variations in temperature. When asked why this doesn't happen on the back side of the house (where there is no porch), the Respondent explained that it was because the other side of the house has a roofline with conditioned air

---

<sup>8</sup> At the hearing, this was drawn on a large white board, but the Respondent also made a smaller version of the drawing on paper to be included with the exhibits. See Resp. Ex. 4.

below it. Therefore, any difference in the temperature is only on one side versus the porch having variations on both the top and bottom of the roof/soffit. Essentially, the Respondent explained that the air in the uninsulated portion of the porch gets trapped in an area surrounded by non-airconditioned air, but the air in the uninsulated back side of the house can escape through the ridge vent or through steam on the roof.

The Respondent was not offered as an expert witness by any party; however, his testimony provides a possible explanation for the water problem on the Claimant's front porch that would refute the Claimant's argument that only a leaky roof could cause the problem.

It is the Claimant's burden to show that the Respondent's work was unworkmanlike, inadequate or incomplete. However, the Respondent offered a plausible explanation for why the water condition was occurring on the Claimant's porch. I find that the Claimant did not meet his burden of proof. The Claimant did not provide an expert witness to establish that the Respondent's work was unworkmanlike. Nor did the Claimant present an expert opinion as to the cause of the water dripping on his porch. The fact that water was dripping does not necessarily mean that the water was from an improperly installed roof. Further, the Respondent went out to the site multiple times, and tried to remedy the Claimant's roof. He provided additional water proofing at no cost to the Claimant. He advised the Claimant that insulating the house could alleviate the problem, but the Claimant did not want to take that step. Based on my analysis herein, I conclude that the Claimant is not eligible for compensation from the Fund.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss 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(2).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

January 17, 2020  
Date Decision Issued

**CONFIDENTIAL**

Erin H. Cancienne  
Administrative Law Judge

EHC/cmj  
#183791



**PROPOSED ORDER**

***WHEREFORE, this 3<sup>rd</sup> day of March, 2020, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

