IN THE MATTER OF THE CLAIM	*	BEFORE MICHELLE W. COLE,
OF STEVE FANGMANN,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF CHRISTOPHER	*	
TOLEMAN, T/A AROCON ROOFING	*	OAH No.: LABOR-HIC-02-22-24312
& CONSTRUCTION,	*	MHIC No.: 20 (75) 566
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On August 1, 2022, Steve Fangmann (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)[1] Guaranty Fund (Fund) for reimbursement of $10,381.49 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Toleman, trading as Arocon Roofing & Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).[2] On August 30, 2022, the MHIC issued

[1] The MHIC is under the jurisdiction of the Department of Labor.
[2] Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

a Hearing Order on the Claim. On September 8, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 12, 2023, I held a remote hearing by videoconference. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jonathan Phillips, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant represented himself. 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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 an inadequate, unworkmanlike or incomplete home improvement by the Respondent?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted fifty-two exhibits on behalf of the Claimant, three exhibits on behalf of the Respondent and four exhibits on behalf of the Fund. All exhibits are listed in the Appendix attached to this decision.

Testimony

The Claimant testified on his own behalf and did not present other witnesses.

The Respondent testified on his own behalf and presented the testimony of Adam Nefferdorf, his business partner and consultant on the Claimant's home improvement.

The Fund did not present any witness 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 the MHIC.

2. On May 17, 2018, the Claimant and the Respondent entered into a contract (Contract) to repair and replace the roof of the Claimant's home and to install a new basement door and screen door.

3. The original agreed-upon Contract price was $10,708.00, which the Claimant paid in full. (Cl. Ex. 2).

4. The Respondent agreed to perform the following work under the Contract:

- Tarp and protect all landscaping, driveways, decks, railings, and walkways to protect against tear off debris
  - Customer to remove personal belongings from the job site prior to project commencement
  - Customer to protect valuables in attic prior to project commencement
- Remove one layer of existing roofing material including felt paper, flashings, and drip edge if applicable
- Inspect the roof deck and repair/replace any rotten sheathing or plank boards. Includes 2 sheets of plywood
  - 4x8 ½ CDX plywood and ½ OSB replacement cost is $60/sheet
  - 4x8 7/16 OSB replacement cost is $60/sheet
  - #2 Grade 1x6 plank board replacement cost is $6/linear
  - Sheathing other than specified above will be billed at $75/man hour
- Re-nail the roof deck if applicable
- Install two new Broan bath fan vents to ventilate moisture filled air from the bath fans out the roof
- Install new aluminum drip edge to the roof perimeter (eaves and rakes)
- Install Owens Corning Weatherlock Mat moisture guard to all eaves, valleys, chimneys, walls, and applicable roof penetrations
- Install Owens Corning ProArmor synthetic underlayment to the roof deck
- Install new Owens Corning asphalt starter shingles on all eaves and rakes
- Install new Owens Corning Lifetime architectural asphalt shingles overtop of the roofing underlayment
- Install new step flashing and apron metal to all roof to wall interfaces
- Install new counter flashing to brick walls
  - Metal will be cut into the mortar joint
- Install new plumbing pipe flashings with repair collars

- Install new lifetime HVAC pipe roof flashings
- Install new Owens Corning Vent Sure rigid ridge vent with Owens Corning ProEdge ridge cap shingles to all ridge lines
- Caulk all roof flashings with high density roofing cement
- Clean up and dispose of all job related debris

(Cl. Ex. 1).

5. Under the Contract, the costs associated with the door installations were as follows:

> * Labor Pricing for door and screen door install: Install customer provided door and casing - $975.00/each; Install customer provided screen door - $375.00/each

(Cl. Ex. 1).

6. On October 22, 2018, the Respondent installed the roof.

7. The Respondent's employee recorded incorrect measurements for the basement door and provided them to the Claimant, who used the measurements to order the basement door.

8. The cost for the basement door that was installed at the Claimant's home by the Respondent was $588.49.

9. On January 10, 2019, the Respondent installed the basement door and screen door. A visible gap between the basement door and the ground remained when the Respondent stopped working at the Claimant's property. The screen door would not remain closed and did not latch. The Respondent added a piece of wood to the door frame because the latch for the screen door did not function.

10. On January 11, 2019, the Claimant contacted the Respondent and reported the gap under the basement door. The Respondent's employee and the Claimant discussed contacting Home Depot regarding replacing the existing door. However, no actions were taken to correct the problem.

11. On August 22, 2019, following a rainstorm, the Claimant observed water flowing from the ceiling and light fixtures on multiple floors of his home. At that time, he contacted the Respondent to report a leak in the roof.

12. On August 24, 2019, the Respondent inspected the roof and reported that the following work had been completed:

- Inspected roof in the area of the leak in [the Claimant's] home
- Removed the shingles and underlayment in this area
- No noticeable water damage to the plywood underneath
- Crew found [one] nail that did not look to be sealed. Crew resealed the nail head
- Crew replaced the shingles and underlayment in this area

(Cl. Ex. 21).[3]

13. The Respondent returned to the Claimant's home on August 27, 2019 and noted that the following work had been completed:

- Inspected roof in the area of the leak in [the Claimant's] home
- Removed the shingles and underlayment in this area
- No noticeable water damage to the plywood underneath
- Crew found [one] nail that did not look to be sealed. Crew resealed the nail head
- Crew replaced the shingles and underlayment in this area
- One piece of plywood was broken around the ridge vent area, due to the removal of the ridge vent
- Step flashing was removed around the dormer area
- New ice and water shield and step flashing was installed
- The crew did not find any noticeable issues that would cause the roof to continue to leak

(Cl. Ex. 22).

14. On September 10, 2019, the Respondent sent two letters to the Claimant describing the work completed on August 24 and 27, 2019.

[3] The Claimant reported that no work was completed on August 24, 2019: that the Respondent's workers only placed a tarp on the roof.

15. There has not been any visible leaks or additional water damage since the Respondent performed work on August 27, 2019.

16. On an unknown date, the Claimant contacted the Respondent's insurance carrier and reported damage to the interior of his home resulting from the roof leak.

17. The Respondent informed his insurance carrier that he would settle the claim for damages "out of pocket." The Respondent's insurance carrier informed the Claimant of this intention.

18. On September 20, 2019, Mr. Neffordorf came to the Appellant's home to inspect the interior of the Claimant's home and informed the Claimant that he believed the damage was caused by condensation.

19. As of the date of the hearing, the Respondent has not paid any amount towards the costs incurred by the Claimant to repair damage to the interior of his home following the August 2019 water damage.

20. On an unknown date, the Claimant removed drywall, including portions of drywall covered in what appeared to be mold and replaced it with new drywall. He finished and repainted the replaced drywall.

DISCUSSION

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); Md. Code Ann., State Gov't § 10-217; COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

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.

2022); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

Actual Loss – Prima Facie Impediments

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Md. Code Ann., Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022). The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022).

Actual Loss - Unworkmanlike, Inadequate, or Incomplete Home Improvement by the Respondent

The Claimant presented evidence showing that he entered into the Contract with the Respondent to repair and replace the roof on his home and to install a basement door and screen door. He argues that the Respondent failed to remove all rotten wood from the roof, which resulted in a leak that caused significant damage to the interior of his home. He also reported a large gap under the basement door which allowed the elements and outdoor creatures to enter the home. He reported paying the Contract price in full when the Respondent completed the work

under the Contract. At that time, he observed a gap under the basement door, which he reported to the Respondent. He explained that he discussed this problem with the Respondent, but that the Respondent did nothing to correct this problem. He also described damage to the interior of his home resulting from a leak in August 2019. He stated that he reported this problem to the Respondent and the Respondent's insurance carrier, and that the Respondent performed additional work on the roof and promised to pay for the water damage out of pocket. The Claimant stated that one of the Respondent's employees told him that they replaced a metal backsplash and rotten wood during the August 2019 work. However, when Mr. Neffordorf came to inspect the damage to the interior of the home, he informed the Claimant that there was no roof leak and that condensation caused the damage. Ultimately, the Claimant removed damaged drywall and paid another contractor to assist him with replacing the drywall and painting. He asks to be compensated for the costs associated with this loss.

Basement Door and Screen Door

When the Respondent stopped working at the Claimant's property, there was a large gap under the basement door and the screen door did not properly latch. Both parties agreed that the installation of the basement door was unworkmanlike and inadequate. Through testimony and photographs, the Claimant has established an actual loss as a result of an unworkmanlike and inadequate home improvement of the basement door and screen door. I thus find that the Claimant is eligible for compensation from the Fund based on the Respondent's unworkmanlike and inadequate home improvement of the basement door and screen door.

Roof

Within one year of the roof home improvement by the Respondent, the Claimant's home sustained significant water damage from a leak that began in the area of the roof and continued through the lower floors of the home. The Claimant presented photographs showing the state of

the home improvement during the work performed by the Respondent in August 2019 and after repairs were made to the interior of the home. He stated that one of the workers who performed work in August 2019 told him that they replaced a metal backsplash and rotten wood. The Respondent disputed this contention, and reported that the roof home improvement was sound and that the leak resulted from moisture and condensation caused by poor insulation in the attic.

The Claimant did not offer expert testimony regarding standard practices in the home improvement field or on the competence of the Respondent's work. Rather, he relied on photographs that were taken during the August 2019 work and information that he was provided by an unnamed employee who worked for the Respondent, indicating that the Respondent removed rotten wood and a metal backsplash during the 2019 roof repair. This individual was not called to testify at the hearing. Absent expert testimony on this point, I must rely on my evaluation of the photographs and testimony. Based on this evidence, I find that the Claimant has not sustained his burden on this issue.

From the perspective of an individual with no experience in roof repairs, I noted some flaws in the appearance of the wood in the Claimant's photographs. Moreover, the photograph of the metal piece that the Claimant reports was removed from the roof during the August 2019 work shows wear and rust. However, there was no expert testimony to explain whether these observations are any indication of poor workmanship or error by the Respondent, and I am unable to make any conclusion regarding the cause of the leak.

Further, while Mr. Neffordorf appears to have specialized knowledge in this area, I had significant concerns regarding his testimony, and did not place great weight on his opinions regarding the cause of the leak and subsequent damage. He denied any responsibility for the damages to the Claimant's property and gave self-serving explanations regarding the Claimant's

evidence. He denied being aware of the gap under the basement door even though the gap is clearly visible in the photographs taken by the Respondent after the home improvement work was completed, and the evidence shows that the Claimant contacted the Respondent one day after the work was completed to report the problem with the door. He also denied seeing the metal piece that the Claimant reported was removed from the roof. He reported that the interior damage was a result of the initial roof leak prior to the Respondent's home improvement work in 2018 and that the condensation over time caused the damage. This explanation is illogical considering the photographs and the timing of repairs. He reported observing certain damage when he initially negotiated the Contract with the Claimant, yet had no specific recollection regarding his subsequent inspection of the property except that he recalled seeing condensation, which he explained was reflected in photographs presented at the hearing. There was no testimony regarding where this was observed.[4] He acknowledged informing the Respondent's insurance carrier that the Respondent would pay the claim "out of pocket," but gave no more detail regarding the reason why he would make such an assertion and then refuse to make any payment.

In weighing opposing testimony, I find the evidence to be equally weighted in support of the parties' contentions regarding the quality of the home improvement and the cause of the 2019 leak. As such, I cannot conclude by a preponderance of the evidence that the Claimant sustained an actual loss as the result of an unworkmanlike, inadequate or incomplete home improvement of the Claimant's roof by the Respondent. The Claimant has not established eligibility for compensation on this issue.

[4] Under the Contract, the Respondent agreed to install ventilation to prevent moisture accumulation from the bathroom, and would have been responsible for correcting this problem depending on the location.

Compensation

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. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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:

> (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 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)(a)-(c). However, none of the following three regulatory formulas is appropriate in this case.

The Respondent did not abandon the contract without doing any work, so that formula is inapplicable. COMAR 09.08.03.03B(3)(a). The Claimant paid the total amount due under the Contract plus the cost of the door that was purchased using the incorrect measurements provided by the Respondent. It is unclear how this matter will be resolved regarding replacing the two doors and completing installation. As such, I do not find the formulas under subsections (b) and (c) to be applicable to this circumstance. COMAR 09.08.03.03B(3)(b); COMAR

09.08.03.03B(3)(c). Accordingly, I find the appropriate measure of the Claimant's compensable actual loss to be the cost to replace and install the two doors as reflected in the Contract and Home Depot receipt: (Cost of installation of basement door) $975.00 + (Cost of installation of screen door) $375.00 + (Cost of replacement basement door) $588.49 = $1,938.49.

Effective July 1, 2022, a claimant's recovery is capped at $30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.[5] Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than $30,000.00. Therefore, the Claimant is entitled to recover his actual loss of $1,938.49.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $1,938.49 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015 & Supp. 2022); COMAR 09.08.03.03B(3); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $1,938.49; and

[5] On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

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;[6] and

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

Michelle W. Cole

April 11, 2023
Date Decision Issued

Michelle W. Cole
Administrative Law Judge

MWC/dlm
#204457

[6] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 24th day of May, 2023, 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