

| | |
|---|--|
| IN THE MATTER OF THE CLAIM OF LARRY THOMPSON AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF RANDY ROLLINS T/A ROLLINS & ASSOCIATES, INC. | * MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 18(90)1330 * OAH CASE NO. LABOR-HIC- * 02-19-25002 * * |
|---|--|

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on February 20, 2020. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 22, 2020, concluding that the homeowner, Larry Thompson (“Claimant”) failed to prove that he suffered a compensable actual loss as a result of the acts or omissions of Randy Rollins t/a Rollins & Associates, Inc. (“Contractor”). *ALJ Proposed Decision* pp. 10-11. In a Proposed Order dated April 22, 2020, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On November 19, 2020, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) October 9, 2020 hearing notice; 2) May 26, 2020 transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; 3) Claimant’s exceptions; 4) November 9, 2020 virtual hearing notice. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed

Decision, and the exhibits submitted at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the removal and replacement of the siding on the Claimant's home. The ALJ found that the Claimant failed to prove that the amount he paid to the Contractor exceeded the value of the materials and labor provided by the Contractor or the cost to correct the proven minor defects in the Contractor's work and therefore denied the claim. *ALJ's Proposed Decision* pp. 9-11.

On exception, the Claimant asserted that some siding installed by the Contractor fell off of his house after the hearing before the ALJ but did not seek leave to present new evidence to the Commission. The Claimant did not allege any errors in the ALJ's findings of fact or legal conclusions.

The Commission finds no error with the ALJ's Proposed Decision. The Commission agrees with the ALJ's decision not to consider the August 2018 estimate of CS Construction, Inc. (OAH Hearing Claimant's Exhibit 23) as evidence of the cost to correct or complete the Contractor's work because the estimate predated the Contractor's extensive work remedying the defects in his performance. Therefore, the Commission finds that the Claimant failed to prove a compensable actual loss.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 3rd day of December 2020, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the records and publications of the Maryland Home Improvement Commission shall

reflect this decision; and

- E. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Jean White
Chairperson –Panel
Maryland Home Improvement
Commission

| | |
|---|---|
| <p>IN THE MATTER OF THE CLAIM</p> <p>OF LARRY THOMPSON,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF RANDY ROLLINS,</p> <p>T/A ROLLINS & ASSOCIATES, INC.,</p> <p>RESPONDENT</p> | <p>* BEFORE RICHARD O'CONNOR,</p> <p>* ADMINISTRATIVE LAW JUDGE,</p> <p>* THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-19-25002</p> <p>* MHIC No.: 18 (90) 1330</p> |
|---|---|

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On or about February 4, 2019, Larry Thompson (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$10,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Randy Rollins, trading as Rollins & Associates, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On August 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ All references to the Business Regulation Article, Annotated Code of Maryland, are to the 2015 replacement volume.

I held a hearing on February 20, 2020, at the OAH in Hunt Valley, Maryland. *Id.* § 8-407(e). Robert McCray, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant and the Respondent were present and each participated without representation.

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 into evidence on the Claimant's behalf:

- Clt. Ex. 1. Photograph of the front of the Claimant's house.
- Clt. Ex. 2. Photograph of a crack and a chip in asbestos siding.
- Clt. Ex. 3. Photograph of the back of the Claimant's house.
- Clt. Ex. 4. Photograph of a broken piece of siding trim.
- Clt. Ex. 5. Photograph of the same piece of trim.
- Clt. Ex. 6. Photograph of a section of roof.
- Clt. Ex. 7. Photograph of a section of roof and soffit.
- Clt. Ex. 8. Photograph of siding.
- Clt. Ex. 9. Photograph of siding, vent, and pipe.

- Cl. Ex. 10. Photograph of siding.
- Cl. Ex. 11. Photograph of a section of fascia.
- Cl. Ex. 12. Photograph of soffit and a downspout.
- Cl. Ex. 13. Proposal from the Respondent, August 10, 2019.
- Cl. Ex. 14. Photograph of installed vent.
- Cl. Ex. 15. Photograph of vent lying on roof.
- Cl. Ex. 16. Photograph of siding, roof, and fascia.
- Cl. Ex. 17. Photograph of siding, windows, house wrap, soffit, and fascia.
- Cl. Ex. 18. Photograph of siding and soffit.
- Cl. Ex. 19. Photograph of fascia.
- Cl. Ex. 20. Photograph of fascia and wires.
- Cl. Ex. 21. Thirteen photographs of various parts of the exterior of the Claimant's house.
- Cl. Ex. 22. Contract between the Claimant and the Respondent, January 18, 2018; revised and annotated second page of the contract, February 13, 2018.
- Cl. Ex. 23. Estimate from CS Construction, Inc., August 29, 2018.
- Cl. Ex. 24. Handwritten note from the Claimant, undated.
- Cl. Ex. 25. Mechanics Lien by the Respondent, January 4, 2019.
- Cl. Ex. 26. Drawings of the Claimant's house and sheds.

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

- Resp. Ex. 1. Response to MHIC complaint, June 26, 2018.
- Resp. Ex. 2. Photograph of cracked asbestos siding.
- Resp. Ex. 3. Photograph of a builder's level laid across furring strips.
- Resp. Ex. 4. Photograph of work in progress on the Claimant's house.

Resp. Ex. 5. Photograph of house wrap on the Claimant's house.

Resp. Ex. 6. Photograph of completed siding work on the Claimant's house.

I admitted the following exhibits into evidence on behalf of the Fund:

Fund Ex. 1. Hearing Order, August 5, 2019.

Fund Ex. 2. Notice of Hearing, January 7, 2020.

Fund Ex. 3. Home Improvement Claim Form, marked received February 4, 2019.

Fund Ex. 4. Letter from the MHIC to the Respondent, January 28, 2019.

Fund Ex. 5. The Respondent's licensing history with the MHIC, produced October 31, 2019 and February 6, 2020.

Testimony

The Claimant testified.

The Respondent testified and presented the testimony of Jonathan Odahara, Project Manager.

The Fund presented no testimony.

Official Notice

With the agreement of the parties, I took official notice of the website of the manufacturer of Fanfold, a product the Respondent used on the Claimant's house:
owenscorning.com/insulation/products/fanfoldfoamboard.

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 numbers 01-35860 (individual) and 05-126872 (corporate).

2. On January 18, 2018, the Claimant and the Respondent entered into a contract to remove the existing aluminum siding from the house, wrap the house in Tyvek,² and install new siding. The contract also called for new soffits, gutters, downspouts, and fascia wrap, as well as installing composite trim boards around the front door. The contract did not contain a time frame for completion.

3. The original agreed-upon contract price was \$15,000.00, revised to \$13,230.00 on February 13, 2018.

4. The Claimant paid the Respondent \$10,000.00 under the contract.

5. The Respondent's work crew started work shortly after the contract was signed.

6. The Respondent removed the existing siding and discovered a layer of asbestos siding underneath.

7. The contract did not include removal of the asbestos siding.

8. The presence of the asbestos siding meant that Tyvek house wrap would not lie flat and could not be used under the new siding.

9. The parties agreed that instead of Tyvek, the Respondent would install Fanfold, a quarter-inch-thick foam insulation product used under siding.

10. The Respondent installed Fanfold, new vinyl siding, soffits, fascia wrap, gutters, downspouts, and trim as called for in the contract.

11. The Respondent asked for the final payment of \$3,230.00 due under the contract.

12. The Claimant did not pay because the Respondent was still working on the back of the house.

² Tyvek is a synthetic material installed under the siding of the house. Tyvek and similar products are often referred to as "house wrap."

13. The Claimant began to experience issues with workmanship almost immediately. A piece of siding trim fell off, the siding had some bulges and was not straight everywhere, and some soffits were installed improperly. Later, some siding blew off in strong winds.

14. The Claimant made a long series of complaints to the Respondent every time he observed a problem with the work.

15. The Respondent made at least two service calls to try to satisfy the Claimant by making repairs.

16. In June 2019, the Claimant filed a complaint with the MHIC.

17. In November or December 2019, the Respondent, with the Claimant's agreement, returned to the house and removed the existing vinyl siding, the Fanfold, and the underlying asbestos siding. The Respondent installed new Tyvek house wrap and re-installed the vinyl siding that had been put on in 2018.

18. The Respondent did not request any additional payment beyond the contract price for this work.

19. The Claimant was not happy that the same vinyl siding was re-used.

20. The siding still bulges somewhat on the rear of the house.

21. That section of the house is not level or plumb. The Respondent put wood furring strips over the Tyvek in an attempt to have the siding lay evenly, which was not entirely successful.

22. The Respondent installed one square vent on the house instead of the round vent that had been removed.

23. After the Claimant complained, the Respondent offered to come back and re-install the round vent, but the Claimant declined the offer.

24. In addition to the bulging siding and the vent, the Claimant still has some minor workmanship issues with trim around the windows and the soffits and fascias.

25. At some point, the Respondent told the Claimant he did not have to pay the final \$3,230.00 due under the contract.

26. The Claimant did not make the final payment.

27. On or about January 4, 2019, the Respondent filed a mechanic's lien against the Claimant's property for \$3,230.00 due and owing.

28. On August 29, 2018, the Claimant obtained an estimate of \$18,000.00 from CS Construction, Inc., to install new Tyvek and vinyl siding, new soffits, and new fascia wrap. The estimate called for re-installing the existing gutters and downspouts but did not include removing the vinyl siding and the Fanfold that the Respondent installed.

DISCUSSION

The Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); 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); *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.” Md. Code Ann., Bus. Reg. § 8-401.

The Claimant is seeking to recover from the Fund the entire \$10,000.00 that he paid to the Respondent. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

Essentially, the situation in this case is that the Respondent remediated almost all the Claimant’s complaints, even going beyond the work called for in the contract, without charging the Claimant any extra money. Admittedly, the Respondent’s original work seems to have been somewhat shoddy, with pieces falling off and the siding not laying straight. But the Respondent generously resolved the issues by removing the new siding, the Fanfold under the siding, and the old asbestos siding under the Fanfold. He then put on Tyvek house wrap and re-installed the vinyl siding.

The Claimant testified that he has never paid the final \$3,230.00 under the contract for two reasons: first, he does not consider the job complete; and second, the Respondent told him at some point that he did not have to pay. As to the second point, the Respondent acknowledged that he did, sometime during the complaint process, tell the Claimant he did not have to pay, but testified that he changed his mind after removing the asbestos siding and installing Tyvek and has taken steps to collect the \$3,230.00. That dispute between the Claimant and Respondent is a contract matter that cannot be resolved in this forum.

The Claimant has not engaged another contractor to remedy the perceived deficiencies in the Respondent’s work, nor has he solicited any estimates or proposals from other contractors. The proposal from CS Construction, Inc., from August 2018 is meaningless because it pre-dates the Respondent’s remediation efforts performed later that year. CS Construction’s estimate did

not include removal of the vinyl siding, Fanfold, or old asbestos siding, all of which the Respondent did. CS Construction's proposal was to put on new Tyvek, new vinyl siding, new soffits, new wrap on the fascias, and new trim for \$18,000.00. How this was to be accomplished without removal of the existing siding is not stated in the estimate, but a reasonable inference is that it would entail an additional charge. Additionally, both the Respondent and Mr. Odahara testified convincingly that Tyvek house wrap could not be placed over the old asbestos siding because it would not lay flat, so CS Construction's proposal to install Tyvek was impractical. At present, the Tyvek and the vinyl siding are on the house and do not need to be replaced.

The photographs in Claimant's Exhibit 21 show that the siding is bulging in at least two places at the rear of the house. However, the Respondent credibly explained that this condition is caused by the fact the house itself is out of plumb in that area. Respondent's Exhibit 3 is a photograph of one of the Respondent's employees laying a builder's level over vertical furring strips at that location. The level is flat over two of the strips but abuts the bottom of the third strip, showing that the wall of the house protrudes outward. The siding follows the curvature of the structure in that area and is not a defect in workmanship.

The Claimant's photographs do show some existing minor workmanship problems, such as a downspout that does not connect to a gutter, a light improperly installed, and some trim separating. The Claimant was also annoyed that the Respondent left the round attic vent lying on the roof and put a square vent in its place. Mr. Odahara testified that he offered to return and install the round vent, but the Claimant declined that offer. The Claimant has not obtained any estimates for fixing the current defects.

The evidence establishes that the Respondent undertook strenuous good-faith efforts to assuage the Claimant's complaints. The Respondent returned to the house and re-did the project,

even going beyond the scope of work stated in the contract by removing the asbestos siding.

Upon completion, the house looked quite nice (*see* Resp. Ex. 6).

To prove a claim when a contractor has performed work under the contract and the homeowner has not solicited another contractor to correct defects, the following formula applies: “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.” COMAR 09.08.03.03B(3)(b). In other words, the Claimant has the burden of proving that the Respondent’s services and materials are worth less than the \$10,000.00 the Claimant paid.

I do not find that the Claimant has met his burden. The contract price was \$13,230.00, and the Respondent performed all the work called for in the contract plus the additional work of removing the asbestos siding. The evidence does not establish a value for the additional work, but I conclude that it has some value because removing the asbestos siding obviously involved labor by workers who were being paid. The Claimant has not provided any evidence of the cost to repair the minor defects that are still present, and I cannot infer that the cost would exceed \$3,230.00. I conclude that the value of the services and materials that the Respondent provided was more than \$10,000.00. Therefore, the Claimant is not entitled to compensation from the Fund.

PROPOSED CONCLUSION 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; COMAR 09.08.03.03B(3)(b).

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.

April 22, 2020
Date Decision Issued

CONFIDENTIAL

Richard O'Connor
Administrative Law Judge

ROC/kdp
185628

PROPOSED ORDER

WHEREFORE, this 26th day of May, 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

