IN THE MATTER OF THE CLAIM	*	**BEFORE KRYSTIN J. RICHARDSON,**
OF JOHN MILLER,	*	**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 PATRICIA DUNLAP,	*	
T/A DUNLAP & SONS ROOFING,	*	**OAH No.: LABOR-HIC-02-19-36209**
INC.,	*	**MHIC No.: 19 (90) 936**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 18, 2019, John Miller (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $2,250.00 in actual losses allegedly suffered as a result of a home improvement contract with Patricia Dunlap, trading as Dunlap &

[1] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Sons Roofing, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On November 1, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on November 6, 2020 at the OAH in Hunt Valley, Maryland.[3] Code of Maryland Regulations (COMAR) 09.01.03.05A. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent failed to appear for the hearing.

After waiting more than fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. On September 1, 2020, notice of the hearing (Notice) was mailed to the Respondent at the address of record by regular and certified mail. COMAR 09.08.03.03A(2). The Notice sent by regular mail was not returned by the United States Postal Service. The Notice sent by certified mail was returned as unclaimed on September 29, 2020.[4] The Respondent did not notify the OAH of any change of address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. Accordingly, I determined that the Respondent had received proper notice, and I proceeded to hear the captioned matter.

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.

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[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

[3] This matter was previously scheduled for a hearing at the OAH on March 24, 2020 and July 1, 2020, but was postponed due to the COVID-19 pandemic.

[4] On January 8, 2020, notice of the March 24, 2020 hearing was sent by certified mail to the Respondent at the same address of record. The OAH received the return receipt reflecting that the Respondent received that notice of hearing on January 11, 2020.

Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and 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 Summary, undated

Clmt. Ex. 2 Complaint Form, dated January 7, 2019

Clmt. Ex. 3 Contract, dated December 19, 2018, with attached Invoice, dated December 21, 2018

Clmt. Ex. 4 Proof of payment, printed on January 7, 2019

Clmt. Ex. 5 Eight photographs of completed work, dated December 23, 2018

Clmt. Ex. 6A Photograph of front bedroom, dated December 28, 2018

Clmt. Ex. 6B Photograph of rear bedroom, dated December 28, 2018

Clmt. Ex. 6C Photograph of front bedroom, dated December 28, 2018

Clmt. Ex. 6D Photograph of rear bedroom, dated December 28, 2018

Clmt. Ex. 6E Photograph of rear bedroom, dated December 28, 2018

Clmt. Ex. 6F Photograph of front bedroom, dated December 28, 2018

Clmt. Ex. 7 Text messages between the Claimant and the Respondent, dated December 21, 2018 through January 4, 2019

Clmt. Ex. 8 Email exchanges between the Claimant and the Respondent, dated December 19, 2018 through January 7, 2019

Clmt. Ex. 9 Email from Matt Robinson to the Claimant, dated February 20, 2019, with attached estimate from Amazing Home Contractors, Inc., dated February 27, 2019

The Respondent did not offer any exhibits into evidence.

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

Fund Ex. 1 Memo from the OAH regarding undeliverable mail, dated September 29, 2020, with attached Notice of Hearing, dated September 1, 2020

Fund Ex. 2 Hearing Order, dated October 28, 2019

Fund Ex. 3 Respondent's MHIC Licensure Information, dated October 22, 2020

Fund Ex. 4 Letter to the Respondent from Joseph Tunney, dated June 26, 2019, with attached Claim, received on June 18, 2019

Testimony

The Claimant testified and did not present other witnesses. The Fund presented no witness testimony. The Respondent did not appear and thus, presented no 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 92787.

2. At all relevant times, the Claimant owned residential property located in Baltimore City, Maryland (Property).

3. On December 19, 2018, the Claimant and the Respondent entered into a contract (Contract) for installation of a new roofing system at the Property.

4. The original agreed-upon Contract price was $2,250.00.

5. On December 21, 2018, the Claimant paid the Respondent a deposit of $1,100.00 by two separate payments: $600.00 and $500.00.[5] (Clmt. Ex. 4.)

[5] The payments were made using a cash app.

6. Work began on December 22, 2018 and was completed on December 23, 2018.

7. On December 23, 2018, the Claimant paid the Respondent $1,150.00, the balance of the Contract price.[6] (Clmt. Ex. 4.)

8. On December 28, 2018, the Claimant discovered roof water seepage in the Property. In the front bedroom, water droplets and areas of wetness were observed in the ceiling's plywood. (*See* Clmt. Exs. 6A and 6F.) Water stains were also observed on the front bedroom's flooring. (*See* Clmt. Ex. 6C.) In the rear bedroom, areas of wetness and water stains were observed on the plywood in the ceiling and on the flooring. (*See* Clmt. Exs. 6B, 6D, and 6E.)

9. On December 28, 2018, the Claimant contacted the Respondent via text message to inform her about the roof leakage. The Respondent replied that she was out of town, but she would contact her worker to see if he could respond to the Property on Saturday (December 29, 2018) or Sunday (December 30, 2018). (Clmt. Ex. 7, p. 8.)

10. On December 30, 2018, the Claimant contacted the Respondent via text message to see if anyone was able to respond to the Property. The Respondent replied on January 2, 2019, advising that her worker would respond that afternoon. (Clmt. Ex. 7, p. 10.)

11. The Respondent's worker never responded to the Property on January 2, 2019.

12. On January 4, 2019, the Claimant contacted the Respondent via text message inquiring about an update. (Clmt. Ex. 7, p. 11.) The Claimant did not receive any response.

13. In addition to texting the Respondent, the Claimant emailed the Respondent concerning the water leak on January 2, January 3, and January 7, 2019. (Clmt. Ex. 8.) The Claimant also called the Respondent on various dates.

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[6] This payment was made using a cash app.

14. The Respondent never returned to complete any repairs to remediate the water seepage issue at the Property.

15. In March 2019, the Claimant retained the services of Amazing Home Contractors, Inc. to repair the roofing. The Claimant paid Amazing Home Contractors, Inc. $6,240.00 for this work. (Clmt. Ex. 9.)

16. At all times relevant, Amazing Home Contractors, Inc. was a licensed contractor under MHIC license number 93684.

17. On June 18, 2019, the Claimant filed a claim against the Respondent with the MHIC.

DISCUSSION

Legal Framework

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor . . . ." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2). The statutes governing the Fund define "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

At a hearing on the claim, the claimant has the burden of proving the validity of the claim by a preponderance of the evidence. 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)).

For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was performed on a residential property owned by Claimant in Maryland. The Claimant does not own more than three residences or dwelling places. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed his Claim with the MHIC on April 17, 2019. Finally, the Claimant has not taken any other legal action to recover monies. Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1) (2015 & Supp. 2020).

The Respondent Performed Unworkmanlike or Inadequate Home Improvement

The Respondent performed unworkmanlike or inadequate home improvement work. Just five days after the installation of the new roofing system, evidence of roof water seepage was found in the Property. Notably, the Claimant offered a series of photographs showing areas of wetness and water droplets in the ceilings' plywood of two separate bedrooms in the Property. The photographs also depict water stains on the flooring of both bedrooms. Based on the photographs, I find that the Respondent performed inadequate or unworkmanlike home

improvement and, as a result, there was water intrusion to two separate bedrooms causing obvious, visible damage.

I note that the Claimant contacted the Respondent repeatedly via telephone, text message, and emails, informing her of the water leak and requesting someone return to the Property to resolve it. Although the Respondent claimed that she would send a worker to the Property, she failed to do so and stopped communicating with the Claimant after January 2, 2019. As a result, the Claimant was forced to hire another contractor, Amazing Home Contractors, Inc., to make the roof repairs. Thus, 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.

In this case, the Respondent performed some work under the Contract, and the Claimant has retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss[7]:

> 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

[7] The Fund noted that this is the appropriate approach.

proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

Using the above formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	$ 2,250.00
+ Amount paid to correct or complete the work	$ 6,240.00
	$ 8,490.00
- Amount of original contract	$ 2,250.00
Amount of actual loss	$ 6,240.00

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 of $6,240.00 exceeds the amount he paid the Respondent ($2,250.00). As the Claimant's recovery cannot exceed the amount paid to the Respondent, the Claimant's recovery is limited to $2,250.00. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $6,240.00 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 $2,250.00 from the Fund. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $2,250.00; 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;[8] and

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

January 22, 2021
Date Decision Issued

Krystin J. Richardson
Administrative Law Judge

KJR/dlm
#190092

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

PROPOSED ORDER

WHEREFORE, this 7th day of April, 2021, 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