

IN THE MATTER OF THE CLAIM OF \* BEFORE GERALDINE A. KLAUBER,  
DAWN TEIXEIRA \* AN ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND HOME \* OF THE MARYLAND OFFICE  
IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS  
FOR THE VIOLATIONS OF \* OAH NO.: DLR-HIC-02-13-46815  
DAVID W. WANDEL T/A CHARIS \* MHIC NO.: 11 (90) 278  
CONTRACTORS, LLC \*

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On May 20, 2011, Dawn Teixeira (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,200.00<sup>1</sup> for an actual loss suffered as a result of home improvement work performed by David William Wandel, t/a Charis Contractors, LLC. (Respondent).

A hearing was held on May 12, 2014, at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland, before Geraldine A. Klauber, Administrative Law Judge (ALJ), on behalf of the MHIC. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010). The Claimant represented herself. Peter Martin, Assistant Attorney General, Department of Labor,

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<sup>1</sup> On June 26, 2013, the Claimant filed an amended claim form but the amount of the claim remained unchanged.

Licensing and Regulation (DLLR), represented the Fund. John H. Michael, Esquire, represented the Respondent.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 09.08.03; COMAR 28.02.01.

### **ISSUES**

Did the Claimant sustain an actual loss compensable by the Fund as a result of acts or omissions of the Respondent? If so, is the Claimant entitled to reimbursement from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Claimant submitted the following exhibits, which I admitted into evidence:

Cl #1 Contract dated March 1, 2008

Cl #2 Four photographs taken by the Claimant depicting water damage

Cl #3 Emails from the Claimant to the Respondent, dated March 9 and 17, 2010

Cl #4 Proposal from Brother Service Company, dated July 9, 2011

Cl #5 Proposal from George Korb Co., Inc., dated August 17, 2011

The Respondent submitted the following exhibits,<sup>2</sup> which I admitted into evidence:

Resp # 2 HIC Complaint Form with attachments, received by HIC on August 31, 2010

Resp #8 Email exchange between William Banks, DLLR Investigator, and John Michael, dated January 3, 2011

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<sup>2</sup> The Respondent pre-marked the exhibits offered into evidence. The documents were marked as exhibits 2, 8, 10, 11 and 13. The Respondent did not offer into evidence any additional documents.

Resp #10 Correspondence from Marc N. Pietersen to John Michael, dated February 4, 2011

Resp #11 Correspondence from John Michael to Marc Pietersen, dated February 14, 2011

Resp #13 Email from John Michael to William Banks, date February 14, 2011; email from William Banks to Claimant and John Michael, dated March 3, 2011

Resp #14 Correspondence from William Banks to Respondent, dated May 25, 2011 with attachments.

The Fund submitted the following exhibits, which I admitted into evidence:

Fund #1 Notice of hearing to Respondent, dated February 27, 2014 and November 20, 2013 Hearing Order, certified mail envelope marked by postal service as "unclaimed"

Fund #2 Certified statement of Respondent's licensing and complaint histories

Fund #3 Correspondence from William Banks to Respondent, dated May 25, 2011

Fund #4 Home Improvement Claim Form, dated March 12, 2011

Fund #5 Home Improvement Claim Form, dated June 26, 2013

### Testimony

The Claimant testified on her own behalf and presented the testimony of Darryl Bankhead, her fiancé.

The Respondent testified on his own behalf.

The Fund offered no witnesses.

## FINDINGS OF FACT

Having considered the evidence, 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 licensed with the MHIC as a home improvement contractor.

2. At all times relevant to the subject of this hearing, the Claimant owned the property known as 3622 Langrehr Road, Windsor Mill, Maryland 21244 (the Property).

3. On March 1, 2008, the Claimant entered into a contract with the Respondent. The Respondent agreed to furnish materials and perform the labor necessary to complete the following work:

- Tear off back flat roof
- Inspect and replace any bad wood
- Install new insulation board
- Install new base sheet
- Install new torch down rubber roof
- Install new drip edge
- Flash all walls
- Remove all trash and debris

4. The total contract price was \$4,200.00. The Claimant paid the total contract price.

5. The contract provided a ten-year manufacturer's warranty and a five-year workmanship warranty. The Claimant declined the option of the silver roof coat, which for an additional \$400.00 would extend the manufacturer's warranty an additional twelve years.

6. The Respondent completed the roof construction in March 2008.

7. In February 2010, the Claimant noticed leaks in the center of the ceiling and at the seams.
8. In February and March 2010, the Claimant sent emails to the Respondent that reported the leaks in the roof and requested that the Respondent come and inspect the roof.
9. The Respondent visited the Property and attributed the leaks in the roof to gutters that were installed improperly and the accumulation of snow on the flat roof.
10. Through mediation with the Better Business Bureau, the Respondent offered to replace the roof membrane if the Claimant paid \$1,000.00 for the cost of materials. The Claimant declined the offer.
11. In or about December 2010 or January 2011, through his attorney, the Respondent offered to install a new membrane overlay on the roof at the Respondent's expense for both material and labor. The Respondent would honor his unexpired warranty obligations.
12. The Respondent's offer was conveyed to the attorney representing the Claimant at the time.
13. The Claimant's response through counsel was that, in addition to the Respondent's offer to replace the membrane, the Claimant would require an extended warranty at no additional cost to the Claimant.
14. The Respondent refused to extend the warranty as requested by the Claimant.
15. On July 9, 2011, the Claimant obtained a proposal from Brothers Service Company (Brothers) to tear off and replace the roof. The proposed work was more substantial than the work provided for in the Respondent's contract. The total contract price was \$8,841.00 (CI #4)
16. On August 17, 2011, the Claimant received a proposal from George Korb Co. to replace the roof. Mr. Korb did not get on the roof to examine the workmanship. The total contract price was \$2,950.00.

17. In October 2013, the Claimant's then boyfriend and some of his friends, none of whom are licensed home improvement contractors, performed some remedial work to the roof. They sealed gaps with a tar like product and put down some flashing.

18. As of the date of the hearing, the Claimant had not performed any additional repairs to the roof.

### **DISCUSSION**

The Claimant seeks reimbursement from the Fund for the alleged actual loss she sustained as a result of the Respondent's replacement of a flat roof on her home. 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. 2013). *See also* COMAR 09.08.03.03B(2). Actual 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 (2010). Maryland law provides that a claim against the Fund may be denied if the claimant has "unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d) (2012).

#### **Issues Regarding Allegedly Unworkmanlike Performance**<sup>3</sup>

The Claimant contracted with the Respondent to replace the flat roof of her home. The contract required that the Respondent tear off the back flat roof, inspect and replace any bad wood, install new insulation board, install new base sheet, install new torch down rubber roof, install new drip edge and flash all the walls. Shortly after installation, the Claimant contacted the Respondent about gutters which were not installed properly<sup>4</sup> and bubbling that was appearing in the back of the roof. Although the gutters were not part of the contract, the Respondent returned

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<sup>3</sup> Throughout this discussion I will at times use the word "unworkmanlike" to include the concepts of inadequate or incomplete performance.

<sup>4</sup> The gutters were already in place at the time the Respondent performed his work.

to the Property and repaired them and he resealed the back flat roof. In late February or early March 2010, the Claimant noticed leaks in the center of her ceiling around the ceiling fan and at the seams. The Respondent examined the roof and informed the Claimant that he believed the problem was due to the excessive amount of snow that remained on the flat roof over the course of the winter. He argued that the leaks were caused by the lack of pitch on the roof as well as the frozen gutters that were unable to dispel the water. It is the Claimant's argument that it was the Respondent's poor workmanship and not the amount of snow that caused the leaks. She argued that regardless of the amount of snow that sat on the roof over the course of the years, the Respondent's performance must be considered unworkmanlike simply because a leak *did* occur.

The Claimant offered no evidence regarding the unworkmanlike aspects of the Respondent's work that resulted in the leaks. She provided no expert testimony or reports that referred to any deficiencies in the Respondent's work. She offered into evidence two proposals from two different home improvement contractors, but neither proposal cited issues with the Respondent's work that required repair or replacement. In fact, the Claimant admitted that the one contractor, Mr. Korb, did not even get up on the roof to examine it prior to providing his proposal. The second proposal, from Brothers, also does not cite any issues with the Respondent's work that could account for the leaks. Additionally, the Brothers' proposal provided for much more extensive roof work than what was required by the terms of the Respondent's contract. There is simply insufficient evidence in the record in order for me to find that the roof work performed by the Respondent was inadequate, incomplete or unworkmanlike.

#### **Good Faith Efforts To Resolve The Claim**

After the appearance of the leaks, the Claimant and the Respondent engaged in mediation with the Better Business Bureau to try and resolve the matter. The Respondent offered to replace the roof provided that the Claimant paid for the cost of the materials, \$1,000.00. The Claimant

declined the offer because she did not want to pay for the cost of the materials. Subsequently, the Claimant retained an attorney and the Respondent's attorney provided to him a proposed settlement wherein the Respondent would overlay the entire roof with a new layer of rubber membrane at no cost to the Claimant. The Claimant's attorney notified the Respondent's counsel that in order to settle the matter, the Respondent would need to overlay the entire roof with a new layer of rubber membrane and provide a free extended warranty at no additional cost, even though the original warranties were still in effect. (Resp #8, 10, 11 and 13)

As set forth above, a claimant may not recover from the Fund if he or she has unreasonably rejected good faith efforts on the part of a respondent to resolve the matter. Md. Code Ann., Bus. Reg. § 8-405(d) (2012). Here, there is no question that the Respondent acted in good faith. Even though the cause of the leaks was uncertain, the Respondent agreed to abide by the existing warranty and replace the rubber membrane at no cost to the Claimant. The Claimant's rejection of the offer because she wanted an extended warranty at no additional cost even though the original warranty was still in effect was unreasonable. Therefore, even were I to find that the Respondent's work was unworkmanlike, incomplete, or inadequate (and I make no such finding), I would nevertheless deny the Claimant's claim on the basis that she rejected good faith efforts on the part of the Respondent to resolve the matter.

#### **CONCLUSIONS OF LAW**

I conclude that the Claimant has not proven that she sustained an actual loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 and 8-405(d) (2012). I further find that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Maryland law provides that a claim against the Fund may be denied if the claimant has "unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d) (2012).



**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny an award to the Claimant and **DISMISS** her claim; and I further,

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

**Signature on File**

June 10, 2014  
Date Decision Issued

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Geraldine A. Klauber  
Administrative Law Judge

GAK/tc  
# 149619

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**FILE EXHIBIT LIST**

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