

**The Maryland Home  
 Improvement Commission**

**v. Jose Rodriguez  
 t/a Premier Remodelers  
 (Contractor)  
 and the Claim of  
 Rosy Singh  
 (Claimant)**

\* **BEFORE THE**  
 \* **MARYLAND HOME IMPROVEMENT**  
 \* **COMMISSION**  
 \*  
 \* **MHIC No.: 12 (90) 770**  
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**FINAL ORDER**

**WHEREFORE, this 16<sup>th</sup> day of November 2015, Panel B of the Maryland Home**

**Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated July 22, 2015 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated July 22, 2015 are AFFIRMED.**
- 3. The Proposed Order dated July 22, 2015 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date.**
- 5. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

*Joseph Tunney*  
**Joseph Tunney, Chairperson  
 PANEL B**

**MARYLAND HOME IMPROVEMENT COMMISSION**  
 PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE  
 INTERNET: [WWW.DLLR.MARYLAND.GOV](http://WWW.DLLR.MARYLAND.GOV) • E-MAIL: [MHIC@DLLR.STATE.MD.US](mailto:MHIC@DLLR.STATE.MD.US)

IN THE MATTER OF THE CLAIM  
OF ROSY SINGH,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JOSE RODRIGUEZ,  
JR., T/A PREMIER REMODELERS,  
RESPONDENT.

\* BEFORE M. STUART G. BRÉSLOW,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\*  
\* OAH No.: DLR-HIC-02-14-27230  
\* MHIC No.: 12 (90) 770

\* \* \* \* \*

**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 June 17, 2014, Rosy Singh (Claimant) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in alleged actual losses suffered as a result of a home improvement contract with Jose Rodriguez, Jr., t/a Premier Remodelers (Respondent).

I held a hearing on March 25, 2015 at the Office of Administrative Hearings (OAH) in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 and Supp. 2014). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation

(Department), represented the Fund. The Claimant represented herself. The Respondent was also present and represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 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 that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- GF Ex. 1 - Notice of Hearing, February 2, 2014, and Hearing Order
- GF Ex. 2 - Licensing History of Respondent, March 23, 2015
- GF Ex. 3 - Letter from Joseph Tunney, Chairman, MHIC, to Respondent, June 17, 2014, with attached Home Improvement Claim Form

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

- Cl. Ex. 1 - Contract with Respondent, September 21, 2011
- Cl. Ex. 2a, 2b, 2c and, d - Four (4) photographs
- Cl. Ex. 3a, 3b, and, 3c - Three (3) photographs
- Cl. Ex. 4 - Email from Claimant to Respondent and response from Respondent, October 22, 2012

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- Cl. Ex. 5 - Email from Demetri Giakoumatos to Claimant, April 28, 2014
- Cl. Ex. 6 - Contract with Jerry's Siding and Roofing, July 11, 2014
- Cl. Ex. 7a, 7b, 7c, 7d, 7e, 7f, and 7g - Seven (7) photographs
- Cl. Ex. 8 - Letter to MHIC from Claimant, with attached Home Improvement Claim Form, June 13, 2014
- Cl. Ex. 9 - Inspection Report from Scott Pettit, Jerry's Siding and Roofing
- Cl. Ex. 10 - Series of emails from Claimant to Respondent and responses from Respondent, October 7, 2011 through October 12, 2011

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

- RP. Ex. 1 - Breakdown of Singh Contract, undated
- RP. Ex. 2 - Letter from Thomas Marr, MHIC, to Claimant, January 18, 2012
- RP. Ex. 3 - Chargeback Notification, November 12, 2011
- RP. Ex. 4 - not admitted
- RP. Ex. 5 - not admitted
- RP. Ex. 6 - not admitted<sup>1</sup>
- RP. Ex. 7 - Series of emails between Claimant and Respondent between October 7, 2011 and October 16, 2011 and on October 22, 2012
- RP. Ex. 8 - Letter from Respondent to "To Whom it May Concern," undated
- RP. Ex. 9 - Email from Respondent to Claimant, June 30, 2014

### Testimony

The Claimant testified and presented the testimony of Scott Pettit, Jerry's Siding and Roofing, who was admitted as an expert in roofing.

The Respondent testified on his own behalf.

The Fund presented no witnesses.

### **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 42268.
2. On September 21, 2011, the Claimant's husband, Harmohindar Singh, entered into a contract with the Respondent (Contract) to remove and haul away their existing roofing and furnish and install a new CertainTeed Landmark roof on the Claimant's home (Project).
3. The total price of the Contract was \$9,000.00. It was later reduced to \$8,600.00 when the Claimant substituted a different roof shingle than initially specified. Upon acceptance of the Contract, the Claimant paid the Respondent a deposit of \$3,000.00.

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<sup>1</sup> RP. Exhibits 4, 5 and 6 were not admitted into evidence, but are contained in the file for this case.

4. The Project was to be completed in one or two days.
5. Work on the Project began on Saturday, October 1, 2011. It was raining that day, but the work on the Project continued until it started raining harder and work stopped.
6. During the rainstorm, shingles on the roof had been removed exposing the plywood substrate to the water. No tarpaulins were placed on the roof to protect the exposed roof from the rain.
7. Water from the rainstorm infiltrated the house, resulting in leaks flowing down the drywall in the ceiling as well as down the walls.
8. There was damage to the ceiling in the living and dining room and the foyer.
9. Although the Contract provided for the replacement of rotten plywood, if necessary, at an additional cost, no plywood was removed from the roof by the Respondent during the performance of the Project.
10. The Respondent completed work on the Project on Monday, October 3, 2011.
11. Photographs showing the damage to the drywall were sent to the Respondent on October 7, 2011 along with an inquiry from the Claimant as to when the damage would be fixed. (Cl. Ex. 10).
12. Repairs to the drywall were never performed by the Respondent.
13. Another contractor fixed the drywall that was damaged due to leaks.
14. On October 7, 2011, the Claimant paid the Respondent \$5,600.00, which was paid by credit card.
15. On November 12, 2011, a Chargeback Notification was issued by VISA, charging the Respondent \$1,925.00, thereby reducing the amount paid by the Claimant to the Respondent to a total of \$6,675.00.

16. On October 22, 2012, the Claimant sent an email to the Respondent informing him that the entire ceiling in the garage was extremely wet and requesting that he contact her.

17. Later that day, on October 22, 2012, the Respondent informed the Claimant that he would not step foot on her property and that he would be sending her account to collection. (Cl. Ex. 4).

18. On April 28, 2014, the Claimant received an estimate from American Custom Contractors to supply and install GAF Timberline HD shingles and replace the plywood on the entire roof. The cost to perform the work was \$20,698.00.

19. On July 11, 2014, the Claimant obtained an estimate from Jerry's Siding and Roofing to remove the roof installed by the Respondent along with replacing all of the plywood on the roof. The total amount to perform the work was \$13,356.00.

20. The Claimant contracted with Jerry's Siding and Roofing and paid for the work in full.

21. On June 4, 2014, the Claimant obtained a report from Scott Pettit, Jerry's Siding and Roofing, detailing his observations and opinions on the work performed by the Respondent. (Cl. Ex. 9).

22. During his inspection, Mr. Pettit observed that all along the eaves of the Claimant's roof, the plywood was delaminated. In addition, all of the flashing needed to be replaced. A drip edge was not installed with the original roof system. Roof sheathing was delaminated along lead edges of the roof. There was no entry air provided in the roof system that was originally installed.

23. The plywood roofing would not have delaminated in three years. Plywood should have been replaced during the initial installation.

24. On June 30, 2014, the Respondent offered to repair any faulty flashing or area that may be leaking. The Claimant did not accept the Respondent's offer.

25. The Respondent never returned to the Claimant's home and did not perform any further work on the Project.

### DISCUSSION

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. 2014). *See also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). 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). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Contract provided for the replacement of rotten plywood at \$55.00 per 8x4 foot sheet. The Respondent did not replace plywood on the roof. The Respondent argued that it made no sense for his workers to leave rotten plywood in place before the new roof was installed because the Contract provided for replacement at an extra cost. He argued that there was a financial incentive to replace the plywood that was bad rather than leaving it in place. It is unknown whether or not there was a financial incentive, without analyzing the Respondent's costs for replacing the plywood; however, whether there was an incentive or not, the issue must be addressed in the context of what was happening on the day the roof was to be installed. It was raining and the rain increased significantly during the day. Work had to be stopped due to the rain. Mr. Pettit, an expert witness in roofing systems, opined that

the roof should never have been replaced on a rainy day. He testified that if a roof is open, there is an opportunity for water to leak through and damage the drywall below the roof. In fact, this is what happened in this case. There was clear evidence of leakage on the day the Respondent had his workers remove the old roof and install the new roof. In the rush to get the job completed, it is likely that the workers overlooked damaged areas of plywood, considering the time limitations of replacing plywood on a rainy day. Mr. Pettit opined that all along the eaves, the plywood was delaminated. He further stated that he would not expect to see this result three years after the roof was installed, thereby providing further support to the argument that the plywood was bad and should have been replaced when the Project was started on October 1, 2011.

Mr. Pettit further stated that there was nothing in the roofing system to allow for intake air to the roof. Failure to include intake air pathways would result in a lack of ventilation to the roof area. The Respondent argued that the Claimant did not want soffits installed for ventilation and stated that the existing gables were sufficient. The Respondent stated that he offered to install vents, but the Claimant did not want them. The Claimant disputes the Respondent's claim that he ever discussed intake air pathways with her.

I do not find the Respondent's claim to be credible. The Claimant invested a large sum of money in the Project to replace and install a new roof. The Claimant relied on the expertise of the Respondent to install the roof in a workmanlike manner. If there was a need for intake air ventilation, the Respondent had a duty to inform the Claimant of the need and the choices available to address the issue. The Claimant is not an expert in roofing systems. If the Respondent recommended that the Contract be amended to provide a system to allow for intake



air, I find it more likely than not that the Claimant would have approved an addition to the Contract.

The Respondent claims that he acted in good faith by offering to repair any faulty flashing or area that may be leaking even though payment had not been paid in full. This offer was made on June 30, 2014, three years after the Project was performed and more than two years after the Claimant sent an email to the Respondent requesting that he come out to evaluate why the roof of her garage was extremely wet. In response to her email, the Respondent told her that he would not step foot on her property and threatened to send her account to a collection agency for services rendered and not paid. (Cl. Ex. 4). He also stated that the Claimant was a liar and a cheat. (RP. Ex. 7). The offer to repair any faulty flashing, etc., in light of the other emails, did not constitute a genuine effort on the part of the Respondent to repair the work that was not performed in a workmanlike manner. Years had elapsed since the Claimant first made the Respondent aware of the problem. The Claimant had good reason not to take up the offer from the Respondent based upon the previous emails he wrote. Her failure to accept the Respondent's offer is not evidence of bad faith on the Claimant's part.

Finally, the Respondent argues that he should not be subjected to the payment of consequential damages. I agree. The amount of money that the Claimant spent to repair the drywall that was due to leaks is not recoverable from the Fund. These damages are considered consequential damages and they are not reimbursable from the Fund, pursuant to COMAR 09.08.03.03B(1).

I find that the Respondent was a licensed home improvement contractor for the purposes of reimbursement by the Fund. I also find that the Respondent's work was "unworkmanlike, inadequate, or incomplete." Md. Code Ann., Bus. Reg. § 8-401. I therefore conclude that the

Claimant is entitled to recover compensation from the Fund for an actual loss resulting from acts or omissions by the Respondent. Md. Code Ann., Bus. Reg. §8-405(a).

The next issue is to determine the amount of the Claimant's actual loss. The applicable regulation provides in pertinent part as follows:

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)(c).

Using the above formula, the Claimant's actual loss is \$6,675.00, calculated as follows:

\$ 6,675.00	Amount the Claimant paid the Respondent after chargeback
<u>\$+13,356.00</u>	Adding the amount paid to complete Project
\$ 20,031.00	Subtotal
<u>\$ -8,600.00</u>	Minus the original Contract Price and Change Order
\$ 11,431.00	The Claimants actual loss

Nevertheless, because the Claimant can recover no more than the amount she paid to the Respondent, she is eligible to receive only \$6,675.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5).

#### PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,675.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2010 & Supp. 2014).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$6,675.00; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

**Signature on File**

May 27, 2015  
Date Decision Issued

Stuart G. Breslow  
Administrative Law Judge

SGB/cj  
# 156175

**PROPOSED ORDER**

***WHEREFORE, this 22nd day of July, 2015, 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.***

***Michael Shilling***

***Michael Shilling  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**