

IN THE MATTER OF THE CLAIM
OF DONNA L. STOKES,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF STEPHEN SNYDER,
T/A ALL STATE HOME
IMPROVEMENT CO., INC.,
RESPONDENT

* BEFORE KIMBERLY A. FARRELL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DLR-HIC-02-12-18835
* MHIC NO.: 09 (90) 1588
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RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On July 27, 2010, Donna L. Stokes (Claimant)¹ filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$32,042.00 in actual losses allegedly suffered as a result of a home improvement contract with Stephen P. Snyder t/a All State Home Improvement Co., Inc. (Respondent). The MHIC subsequently permitted the claim to be amended. The amended claim amount is \$21,000.00

¹ The Claimant and her spouse, Alan Stokes, acted together in this matter, but the claim was filed only in one name, which is why I refer to only one Claimant in this recommended decision.

I held a hearing on September 5, 2012 at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Peter Martin, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

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

- CLMT #1 Contract for Home Improvement, November 21, 2007, and Home Improvement Credit Contract, undated
- CLMT #2 Letter from the Claimant to the Respondent, undated
- CLMT #3 Letter from the Respondent to the Claimant, August 27, 2008
- CLMT #4 Slip regarding roof removal, dated November 11, 2008
- CLMT #5 Notes from MHIC staff
- CLMT #6 Complaint Form, with attachments
- CLMT #7 J.V.L. Contracting Inc. Proposal, July 23, 2010
- CLMT #8 Nineteen photographs
- CLMT #9 Overview of Timeline for Work Contracted with [the Respondent], undated

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

FUND #1	Notice of Hearing, July 2, 2012, and Hearing Order, April 25, 2012
FUND #2	Licensing information for the Respondent
FUND #3	Letter from the MHIC to the Respondent, August 4, 2010, with attachment
FUND #4	Letter from the MHIC to the Respondent, February 9, 2011, with attachment
FUND #5	Licensing information for J.V.L. Contracting

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

RESP #1	Email from the Claimant to the Respondent, February 6, 2008
RESP #2	Lynch Contracting, Inc. Proposal, August 25, 2008

Testimony

The Claimant testified on her own behalf and also presented the testimony of Alan Stokes.

The Respondent testified on his own behalf.

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 # 01-71268.
2. Sometime in November or December of 2007², the Claimant and the Respondent entered into a contract to fix a leaking problem with the Claimant's roof and to build a rooftop deck. The contract stated that work would begin on approximately December 15, 2007, and would be completed by approximately January 15, 2008.³

² There is conflicting evidence regarding the date the contract was actually signed. For example, the original claim form lists the date the original contract was signed as November 19, 2007. FUND #3, attachment. The contract has a date on it, although not near the signature lines, of November 21, 2007. CLMT #1. The timeline provided by the Claimant states that the contract was signed on December 15, 2007. CLMT #9. For purposes of this decision, the exact date of the contract is irrelevant.

³ The contract actually pinpoints the approximate completion date as January 15, 2007, but it is clear that the intended date was January 15, 2008.

3. Among other things, the contract specified that the decking material to be used was Trex.
4. The originally agreed-upon contract price was \$19,475.00.
5. The contract price was paid in full.
6. The job was quickly completed.
7. The original plan was to replace the roof first and then to test for leaking before advancing to installation of the deck. The Respondent instead installed the deck without prior testing.⁴
8. The Claimant and her husband were initially pleased with the job and thanked the Respondent for “fixing the on-going problem with our leaking issues” and for building “a beautiful deck,” as well as for finishing the project on time. RESP #1.
9. Shortly thereafter, in March 2008, the Claimant noticed problems with leaking and certain aspects of the deck’s construction.
10. The Claimant began calling the Respondent frequently. Most of the calls were unreturned.
11. Meanwhile, the roof was leaking, causing damage to the interior of the Claimant’s home.
12. In July 2008, the Respondent determined that the leak could not be fixed without removing the Trex decking, so the Trex was removed and thrown down in the Claimant’s garden and on her front lawn. The Claimant made numerous requests for the Respondent to come and remove the decking, but it remained where it was thrown for over a month,

⁴ The Claimant now suspects there was a rush and no testing because the roof may not have been replaced or repaired as called for in the contract, as discussed below.

until the Claimant and another person removed it. A few days after that, the Respondent, sent workers to clear and remove the material, but it was too late.

13. At some point, the Respondent determined that, due to the construction and flatness of the roof, it was impractical to build a rooftop deck with Trex. The Respondent suggested that the Claimant accept a deck built from Dura-Dek, a completely different material. The Claimant did not like the look of the Dura-Dek and felt it was inconsistent with the exterior of her home.

14. In August of 2008, the Claimant sent a letter outlining her problems with the work done by the Respondent. The Claimant noted that she no longer trusted that the Respondent could or would repair the job in a timely matter or to her satisfaction. She demanded a full refund of all monies paid to the Respondent and an additional \$10,000.00 to make repairs and to complete the contract.

15. On August 27, 2008, the Respondent replied in a letter. The letter acknowledged:

First, I am sorry that this job did not turn out as we had planned. Looking back, an attempt to re-pitch the roof and add rubber membrane would have been a better installation method for your roof top deck... We acknowledge a different approach should have been taken.

We propose that the existing structure of the house, the roof, and the room below it, are not designed in a way that is conducive to a flat roof with deck boards nailed or screwed down. Dura-Dek is the only application that will work without major reconstruction.

16. On November 23, 2008, the Respondent, without notice to the Claimant, returned to the property, removed the existing roof and installed a rubber roof.⁵ Despite this, the leaking continued.

⁵ A representative of the Respondent, at some point after things had gone wrong, remarked to the Claimant that he was not sure the original roof work called for in the contract had ever been done. There is insufficient evidence on this point for me to find this was true by a preponderance of the evidence.

17. The Claimant continued to try to obtain satisfaction from the Respondent to no avail. In addition to phone calls and correspondence, the Claimant visited the Respondent's business office and approached a representative of the Respondent at a home improvement exposition.

18. After the filing of the complaint, but before February 9, 2011, the Claimant obtained an estimate from Genovese Home Improvement, a contractor licensed by the MHIC, for repairing and completing the original contract. The proposal price was \$21,000.00.

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.2012). *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). For the following reasons, I find that the Claimant has proven eligibility for an award from the Fund.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. Second, the Respondent performed unworkmanlike, inadequate and incomplete home improvement work. The Claimant had a leaking roof and she wanted a rooftop deck made of a very specific brand of material. Today, after much work by the Respondent, the Claimant still has a leaking roof. The Respondent built her a deck and then acknowledged that it had to be torn off. The Respondent tore the deck off, launching material into the Claimant's garden and front yard, which despite numerous requests and demands from the Claimant that it be removed, the Respondent failed to remove for over one month. The

*called Trex,
+ KTR
agreed to
install it.*

Claimant paid \$19,475.00 and, literally, has nothing to show for it. Despite numerous efforts by the Claimant, which included phone calls, letters, a visit to the business address and a visit to a booth at a home improvement exposition, the Respondent has not refunded the Claimant's money or fixed the problems.

The Respondent reasonably balked at re-installing a Trex roof because the Respondent had come to believe that a Trex roof simply could not be successfully installed without major renovations to re-pitch the roof or otherwise structurally change the area where the deck was supposed to be. Declining to do further work under these circumstances, where the Respondent

is persuaded it absolutely will not be successful, is understandable, but the time to realize these issues is before the contract is signed and the work is completed. Once the work is done,

acknowledged to be inadequate, and torn out, it is simply not acceptable for the Respondent to refuse to refund the amount paid and to take the position that no further work will be done unless the Claimant agrees to materials she considers inferior.

Having found that the Claimant is entitled to an award from the Fund, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following offers an appropriate measurement in this case:

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.

to return money He had paid him for job that was inadequate.

Acknowledged in his 8/27/08

letter to U. ~~15~~ 15 on p. 57 U. 3.

Despite ~~acknowledged~~

acknowledging inadequacy of his work, work he had contracted to do did not perform,

KTR refused

reinstalling Trex rooftop deck

means KTR, after the fact, recognized

Trex work was not appropriate work.

COMAR 09.08.03.03B(3)(c).

This Claimant paid \$19,475.00 to the Respondent. She will be required to pay \$21,000.00 to another contractor to repair poor work by the Respondent and to complete the original contract. The sum of those two numbers is \$40,475.00. That amount less the original contract price is \$21,000.00. The Claimant's actual loss is \$21,000.00. She will recover less, however, because by statute the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. §8-405 (e)(1) and (5) (Supp. 2012). The Claimant paid \$19,475.00 to the Respondent, which is less than her actual loss but is the maximum amount recoverable.⁶

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$21,000.00 but is only entitled to a Fund award of \$19,475.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$19,475.00; and

ORDER that the Respondent be ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed


⁶ The governing statute provides that the "Commission may not award ... more than \$20,000.00 to one claimant ... for acts or omissions of one contractor[.]" The Commission's regulations provide that it may not award more than \$15,000.00 in such circumstances. Compare Md. Ann. Code, Bus. Reg. § 8-405(e)(1) and COMAR 09.08.03.03D(2)(a). The difference between these two enactments constitutes a conflict, as a result of which I am bound to follow the statute. *Thanner Enterprises v. Baltimore Co.*, 414 Md. 265, 276 (2010).

under this Order, plus annual interest of at least ten percent 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

November 30, 2012
Date Decision Mailed



Kimberly A. Warren
Administrative Law Judge

KAF/kkc
Document #138761

IN THE MATTER OF THE CLAIM	* BEFORE KIMBERLY A. FARRELL,
OF DONNA L. STOKES,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-18835
FOR THE ALLEGED ACTS OR	* MHIC NO.: 09 (90) 1588
OMISSIONS OF STEPHEN SNYDER,	*
T/A ALL STATE HOME	*
IMPROVEMENT CO., INC.,	*
RESPONDENT	*

* * * * *

FILE EXHIBIT LIST

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

- FUND #1 Notice of Hearing, July 2, 2012, and Hearing Order, April 25, 2012
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FUND #5 Licensing information for J.V.L. Contracting

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

RESP #1 Email from the Claimant to the Respondent, February 6, 2008
RESP #2 Lynch Contracting, Inc. Proposal, August 25, 2008

PROPOSED ORDER

WHEREFORE, this 20th day of February 2013, 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
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION



STATE OF MARYLAND

DLLR

DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
MARYLAND HOME IMPROVEMENT COMMISSION
500 N. Calvert Street, Room 306
Baltimore, MD 21202-3651

**The Maryland Home
Improvement Commission**

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**BEFORE THE
MARYLAND HOME IMPROVEMENT
COMMISSION**

**v. Stephen P. Snyder
t/a All State Home Improvement CO. Inc.
(Contractor)
and the Claim of
Donna L. Stokes
(Claimant)**

MHIC No.: 09 (90) 1588

FINAL ORDER

WHEREFORE, this (July 22, 2013), Panel B of the Maryland Home Improvement

Commission ORDERS that:

- 1. The Findings of Fact set forth in the Proposed Order dated February 20, 2013 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated February 20, 2013 are AFFIRMED.**
- 3. The Proposed Order dated February 20, 2013 is AFFIRMED.**
- 4. This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

Marilyn Jumalon
**Name of Chairperson, Chairperson
PANEL B**

MARYLAND HOME IMPROVEMENT COMMISSION

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MARTIN O'MALLEY, GOVERNOR • ANTHONY G. BROWN, LT. GOVERNOR • LEONARD J. HOWIE III, SECRETARY