

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JOYCE FLETCHER,</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 JOSEPH EDWARD</p> <p>GREAVER, T/A HARVIEW ROOFING</p> <p>COMPANY,</p> <p>RESPONDENT</p>	<p>* BEFORE EILEEN C. SWEENEY,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-12-27637</p> <p>* MHIC NO.: 10 (75) 1363</p> <p>*</p> <p>*</p> <p>*</p>
---	---

* * * * *

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 January 5, 2011, Joyce Fletcher (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$14,089.00 for actual losses allegedly suffered as a result of a home improvement contract with Joseph Edward Greaver t/a Harview Roofing Company (Respondent).¹

¹ The Claimant subsequently amended the amount of her claim to \$4,150.00.

I held a hearing on March 4, 2013 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). The Claimant represented herself. Neither the Respondent, nor anyone authorized to represent him, appeared at the hearing.² Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's procedural regulations, and the OAH's Rules of Procedure 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:

- CL Ex.1 October 26, 2009 Roofing Contract (Contract)
- CL Ex. 2 December 12, 2009 cancelled check from the Claimant to the Respondent in the amount of \$2,750.00; October 27, 2009 cancelled check from the Claimant to the Respondent in the amount of \$1,400.00
- CL Ex. 3 March 5, 2010 letter from the Claimant to "To Whom it May Concern"
- CL Ex. 4 May 10, 2010 Complaint Form
- CL Ex. 5 September 7, 2010 Gutter Guys Home Remodeling Sale and Installation Agreement

² After determining that proper service was made, I proceeded to conduct the hearing in the Respondent's absence. COMAR 28.02.01.23A.

- CL Ex. 6 June 1, 2011 Elite Home Design (Elite) contract
- CL Ex. 7 February 2, 2012 letter from the Claimant to the MHIC

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

- Fund Ex. 1 October 3, 2012 Notice of Hearing and certified mail receipts
- Fund Ex. 2 Transmittal from the MHIC to the OAH, with attachments
- Fund Ex. 3 Respondent's licensing information
- Fund Ex. 4 January 10, 2011 letter from the MHIC to the Claimant, with attachment
- Fund Ex. 5 Gutter Guys' licensing information
- Fund Ex. 6 Elite's licensing information

Testimony

The Claimant testified on her own behalf.

The Fund did not present the testimony of any witnesses.

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 #4268371.
2. On October 26, 2009, the Claimant and the Respondent entered into a Contract to repair a flat tar roof, and to repair and clean out gutters on the Claimant's home. Specifically, the

Contract included the following:

7 feet flat roofing	
Tear off down to wood	
Replace up to 60 [square feet] of bad wood at no charge	
\$2.00 additional [square feet] if needed	
Install new wall flashing & drip edge & skylight flashing	
Install [illegible] modified rubber laid in hot asphalt	
[Manufacturer's] full warranty	[\$2,900.00]
Clean out 2 nd story gutters	[\$ 400.00]

Install new fabricated drip edge around front porch to help water go into gutter as shingles are too short

[\$ 850.00]

(CL Ex. 1.)

3. The Contract stated that work would begin and be substantially completed within thirty days after the Respondent's acceptance of the Contract.

4. The total original agreed upon contract price was \$4,150.00.

5. The Claimant made the following payments to the Respondent:

October 27, 2009	\$1,400.00
December 12, 2009	<u>2,750.00</u>
	(Total) \$4,150.00

6. After initially replacing the wrong roof, the Respondent completed work on the correct roof on December 16, 2009. The Respondent performed no work on the gutters.

7. Approximately ten days later, the roof the Respondent allegedly repaired began to leak.

8. The Respondent returned to fix the roof on or about January 12, 2010, pouring tar over the roofing previously installed; however, the roof continued to leak causing the ceiling below it to collapse, and standing water continued to collect on the roof. In addition, the roof was lumpy and spongy in spots, there was tar on the balcony railings, loose asphalt, asphalt curling at the edges, and asphalt patched with tar.

9. Sometime in January 2010, the Claimant made an appointment with the Respondent to look at the roof and gutters; however, no one appeared.

10. The Claimant sent a letter to the Respondent by certified mail on or about March 5, 2010, reiterating the problems with the roof and gutters and requesting that the Respondent fix the roof and perform work on the gutters. When she subsequently spoke

to the Respondent in mid-March, he indicated that he would check things out and get back to her.

11. Although the Claimant subsequently left several messages for the Respondent, he never contacted her again.

12. On January 5, 2011, the Claimant filed a claim for reimbursement from the Fund for losses incurred as a result of the Respondent's conduct.

13. On or about June 1, 2011, Elite performed the work on the roof that the Respondent had agreed to perform, at a cost of \$4,375.00.

14. The Claimant's actual compensable loss is \$4,150.00.

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 compensation.

First, I find that the licensing information submitted into evidence by the Fund established that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

Second, for the following reasons, I find that a preponderance of the evidence established ~~that the Respondent performed unworkmanlike, inadequate and incomplete home improvements~~ on the Claimant's home.

The Claimant's undisputed testimony was that the roof that the Respondent contracted to repair, which did not leak before, leaked just ten days after the Respondent performed the work. Although expert testimony or an expert's report may have been helpful to me as a fact finder, I find a reasonable layperson could conclude that a roof leaking so soon after alleged repairs showed that the Respondent performed an unworkmanlike and inadequate home improvement.

In addition, the Claimant testified, without contradiction, that the Respondent never performed any work on the gutters. Thus, I find that the Respondent failed to complete that home improvement.

Having found eligibility for compensation, I now turn to the amount of the award, if any. 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). One of those formulas, as follows, 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.

COMAR 09.08.03.03B(3)(c).

The Claimant submitted into evidence an invoice from Elite in the amount of \$4,375.00 and testified, without contradiction, that the work performed by Elite was the same work that the Respondent contracted to perform.³ She also submitted into evidence two invoices from Gutter

³ The Fund presented evidence that Elite is a licensed home improvement contractor.

Guys for the installation of new gutters and downspouts and a gutter guard; however, such work went beyond the scope of the Claimant's Contract with the Respondent.

Thus, I find that the Claimant sustained an actual loss in the amount of \$4,375.00, calculated as follows:

Amounts Claimant has paid to Respondent under original contract	\$4,150.00
Plus reasonable amount Claimant has paid another contractor to repair poor work done by Respondent under original contract	<u>+4,375.00</u>
	8,525.00
Less original contract price	<u>-4,150.00</u>
	(Actual loss) \$4,375.00

The Claimant is entitled to only a portion of her actual loss from the Fund, however. Pursuant to section 8-405(e)(1) and (2) of the Business Regulation Article of the Maryland Annotated Code, 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. The Claimant paid \$4,150.00 to the Respondent, which is less than her actual loss computed using the formula noted in COMAR 09.08.03.03(c). Hence, the Claimant is entitled to reimbursement in the amount of \$4,150.00 from the Fund.⁴

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual compensable loss of \$4,150.00 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 \$4,150.00; and

⁴ 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).

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 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

April 9, 2013
Date Decision Mailed

Eileen C. Sweeney ✓
Administrative Law Judge

ECS/emh
#141435

IN THE MATTER OF THE CLAIM	* BEFORE EILEEN C. SWEENEY,
OF JOYCE FLETCHER,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-27637
FOR THE ALLEGED ACTS OR	* MHIC NO.: 10 (75) 1363
OMISSIONS OF JOSEPH EDWARD	*
GREAVER, T/A HARVIEW	*
ROOFING COMPANY,	*
RESPONDENT	

* * * * *

FILE EXHIBIT LIST

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

- CL Ex.1 October 26, 2009 Roofing Contract (Contract)
- CL Ex. 2 December 12, 2009 cancelled check from the Claimant to the Respondent in the amount of \$2,750.00; October 27, 2009 cancelled check from the Claimant to the Respondent in the amount of \$1,400.00
- CL Ex. 3 March 5, 2010 letter from the Claimant to "To Whom it May Concern"
- CL Ex. 4 May 10, 2010 Complaint Form
- CL Ex. 5 September 7, 2010 Gutter Guys Home Remodeling Sale and Installation Agreement
- CL Ex. 6 June 1, 2011 Elite Home Design (Elite) contract
- CL Ex. 7 February 2, 2012 letter from the Claimant to the MHIC

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

- Fund Ex. 1 October 3, 2012 Notice of Hearing and certified mail receipts
- Fund Ex. 2 Transmittal from the MHIC to the OAH, with attachments

Fund Ex. 3 Respondent's licensing information

Fund Ex. 4 January 10, 2011 letter from the MHIC to the Claimant, with attachment

Fund Ex. 5 Gutter Guys' licensing information

Fund Ex. 6 Elite's licensing information

PROPOSED ORDER

WHEREFORE, this 20th day of May 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.

Marilyn Jumalon

*Marilyn Jumalon
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION

**IN THE MATTER OF THE CLAIM
OF JOYCE FLETCHER
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
JOSEPH E. GREAVER
t/a HARVIEW ROOFING COMPANY**

* **MARYLAND HOME
IMPROVEMENT COMMISSION**

*
* **MHIC CASE NO. 10 (75) 1363**

* * * * *

FINAL ORDER

WHEREFORE, this 15TH day of November, 2013, Panel B of the Maryland Home Improvement Commission ORDERS that:

- 1) The Findings of Fact of the Administrative Law Judge are Affirmed.**
- 2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:**
 - A) COMAR 09.08.03.03B(3)(c) provides that, if the Commission determines that the original contract price is too unrealistically high or low to provide a proper basis for measuring actual loss, the Commission may adjust its measurements accordingly.**
 - B) Based on review of the record in this matter, the Commission concludes the original contract price for the roofing work performed by the Respondent is too unrealistically low to provide a proper basis for measuring the Claimant's actual loss. The Claimant's original contract with the Respondent provided for replacement of the roof for a cost of \$2,900.00. (Finding of Fact #2). The Claimant contracted with Elite Home Design to perform the same work for \$4,375.00. (Finding of Fact #13). The Elite roofing contract was approximately 50% more than the Respondent's original price for the same work. The Commission concludes that the**

price disparity of approximately 50% establishes that the original price for roofing work charged by the Respondent was unrealistically low and does not provide a proper basis for measuring the Claimant's actual loss. The Commission concludes that \$4,375.00 reflects the fair market cost of the roofing work performed by the Respondent.

C) Accordingly, the measure of the Claimant's actual loss is amended as follows:

- Amount paid on original contract	\$ 4,150.00
- Amount paid to repair and complete	<u>\$ 4,375.00</u>
	\$ 8,525.00
- Less original (adjusted) contract price (includes cost of \$4,375.00, instead of \$2,900.00, for roofing)	- <u>\$ 5,625.00</u>
- Actual Loss	\$ 2,900.00

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimant is Awarded \$ 2,900.00 from the Home Improvement Guaranty Fund.

B) Pursuant to Business Regulation Article, §8-411(a), any home improvement licenses held by the Respondent shall be Suspended at such time as any money is paid from the Home Improvement Guaranty Fund under this Order, and the Respondent shall then be ineligible for any home improvement license until such time as the Home Improvement Guaranty Fund has been reimbursed. The Respondent shall also be liable for 10% annual interest on any unreimbursed balance owed to the Fund.

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.

Joseph Tunney
Chair - Panel B
Maryland Home Improvement Commission