

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF KENNETH E. MORRIS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF KENNETH</b></p> <p><b>HARTMAN T/A KCM &amp; SON HOME</b></p> <p><b>IMPROVEMENT,</b></p> <p><b>RESPONDENT</b></p>	<p>* <b>BEFORE M. TERESA GARLAND,</b></p> <p>* <b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p>* <b>OF THE MARYLAND OFFICE</b></p> <p>* <b>OF ADMINISTRATIVE HEARINGS</b></p> <p>* <b>OAH No.: DLR-HIC-02-13-40116</b></p> <p>* <b>MHIC No.: 11 (05) 1276</b></p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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**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 May 9, 2011, Kenneth E. Morris (Claimant) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,395.00 in alleged actual losses suffered as a result of a home improvement contract with Kenneth Hartman t/a KCM & Son Home Improvement (Respondent). The OAH received the appeal request on October 2, 2013, and a hearing was scheduled for March 28, 2014, which date was postponed at the Claimant’s request. The matter was rescheduled for June 18, 2014. The Claimant again requested a postponement, which was denied.

I held a hearing on June 18, 2014 at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013) and § 8-407 (2010). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Jack Costello, Esquire, represented the Claimant. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. 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 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 Claimant's behalf:

- Cl. Ex. 1 - Contract, September 9, 2010
- Cl. Ex. 2 - Contract, September 16, 2010<sup>1</sup>
- Cl. Ex. 3 -17 - Photographs
- Cl. Ex. 18 - Estimated cost to repair/replace Respondent's work from Adamski, printed June 18, 2014

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

- GF Ex. 1 - Rescheduled Notice of Hearing, April 14, 2014; Notice of Hearing, February 4, 2014

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<sup>1</sup> The date on the face of the contract is September 16, 2010. However, because it was executed by both parties on September 17, 2010, I shall hereinafter refer to it as the September 17, 2010 contract.

- GF Ex. 2 - Transmittal; Hearing Order, October 1, 2013; Home Improvement Claim Form, April 22, 2012
- GF Ex. 3 - Licensing information for the Respondent
- GF Ex. 4 - Letter to the Respondent, June 17, 2011, and Home Improvement Claim Form

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

- Resp. Ex. 1 - Contract with Ideal Contracting, September 25, 2010
- Resp. Ex. 2 - Photograph
- Resp. Ex. 3 - Identification only
- Resp. Ex. 4 - Receipt from Sharkins Construction, August 25, 2011

### Testimony

The Claimant<sup>2</sup> testified in his own behalf and presented the testimony of:

1. Katherine Morris, Claimant's wife
2. Daniel Adamski, accepted as an expert in Home Improvement, Roofing, Siding,

and Windows

The Fund did not present any witnesses.

The Respondent testified on his own behalf.

### **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 126627.
2. On September 9, 2010, the Claimant and the Respondent entered into a contract to remove and rebuild a shed on the Claimant's home property. The contract stated that the work would begin on September 9, 2010 and would be completed by September 16, 2010. (Cl. Ex. 1)<sup>3</sup>

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<sup>2</sup> In 2010, the Claimant had significant eyesight impairment and, as of the date of the hearing, he was completely blind. The Claimant's wife and Power of Attorney, Katherine Morris, observed the workmanship deficiencies and filed the claim in this matter on the Claimant's behalf.

<sup>3</sup> This contract and the Respondent's work on the shed project are not in dispute.

3. The Respondent constructed the shed to the satisfaction of the Claimant and, as a result, the Claimant contracted with the Respondent for additional work at his home.

4. On September 17, 2010, the parties entered into a contract to install a 3 tab shingle on the roof, install gutters and downspouts, remove existing siding and install new vinyl siding, and remove old windows and install twenty new double hung vinyl windows on the Claimant's home. The contract stated that work would begin on September 22, 2010 and would be completed by October 27, 2010. (Cl. Ex. 2.)

5. The original agreed-upon contract price of the September 17, 2010 contract was \$23,185.00.

6. On September 17, 2010, the Claimant paid the Respondent \$11,592.50, fifty percent of the contract price. (T. Mrs. Morris.)

7. On September 28, 2010, the Claimant paid the Respondent \$5,796.00, which was due upon completion of the roof. (T. Mrs. Morris.)

8. The Respondent's roof installation had numerous flaws, was not in compliance with industry standards and must be removed and reinstalled. (T. Adamski)

9. The Respondent used new construction windows, which are installed from outside of the house, instead of replacement windows which are installed from inside of the house. The Respondent's use of incorrect windows required the removal of the Claimant's existing, original interior wood trim and sills, which impacted the interior aesthetics of the Claimant's home. The windows were poorly installed and not in compliance with industry standards. (T. Adamski.)

10. Had the Respondent used replacement windows instead of new construction windows, the interior trim and sills would not have been impacted. (T. Adamski.)

11. The Respondent failed to replace two security lights when installing the siding on the house. He also used a vented soffit for the attic vent which is not within industry standards and will cause water to enter the house. (T. Adamski.)

12. The Claimant's actual loss is \$7,210.11.

### 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. 2013). *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 Respondent performed unworkmanlike, inadequate or incomplete home improvements.

The Claimant testified that he initially contracted with the Respondent for the construction of a shed on his property. He and his wife discussed other work that needed to be done around their house and had several contractors submit bids for the work. The Respondent requested to submit a bid as well. Because the Claimant was pleased with the Respondent's work on the shed project and required other work on his home, on September 17, 2010 he accepted the Respondent's bid and contracted with the Respondent for the additional work.

The contract called for the Respondent to install approximately “25 square of 3 tab shingles” on the entire house (roof), approximately one-hundred linear feet of “K Style” gutter

and downspouts,<sup>4</sup> remove existing siding and install 3/8" insulated backer board and approximately "25 square" of new vinyl siding and remove old windows and install twenty new, double hung vinyl windows.

The Claimant paid the Respondent one-half of the contract price (\$11,592.50) on September 17, 2014, the date the contract was signed by the parties. On September 28, 2010, the Claimant paid one-half of the remaining balance, \$5,796.25. The final payment of \$5,796.25 was due upon the Respondent's completion of the work. The work was never completed by the Respondent and the Claimant did not render the final installment payment.

After the Respondent installed the roof, Mrs. Morris expressed concerns to the Respondent that the roof was uneven on the east and west sides of the house. The Claimant requested that the Respondent return in the spring of 2011 to address the roof deficiencies. Despite this discussion, the Respondent did not return in the spring. (T. Mrs. Morris.)

Further, Mrs. Morris testified that when the windows were delivered to her home for the Respondent's installation, a Respondent's employee commented that the type of window delivered was "wrong" and that the windows delivered were "new construction windows, not replacement windows." Mrs. Morris said that the windows, as installed, look fine from the outside, but inside "they are a mess." The original natural wood trim and sills had been torn out when the new construction windows were installed and replaced. In all, trim was removed in four windows, located in the bedrooms and kitchen, and replaced with white trim that was narrow in width and had gaps and improper caulking. The sills of twenty windows were replaced with wood that was "totally different than the original wood and doesn't match the original sills."<sup>5</sup> When Mrs. Morris conveyed her dismay to the Respondent, he responded, "there

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<sup>4</sup> The Respondent did not complete the installation of the gutters and downspouts. The Claimant contracted this work out to Premier Contracting in June 2011.

<sup>5</sup> The four windows with trim issues also had sill issues.

is nothing we can do.” Other areas of objection expressed by Mrs. Morris included the failure of the Respondent to replace a security light outside and the improper re-installment of the BG&E meter.

Daniel Adamski, an expert in home improvement, roofing, siding and windows, with twenty-seven years experience in the home improvement field, reviewed the September 17, 2010 contract and inspected the Respondent’s work on the Claimant’s home. He testified that the roof had an unworkmanlike appearance and was aesthetically poor. He took a number of photographs which demonstrated the Respondent’s poor workmanship, which are marked as Claimant’s Exhibits 3-17. Mr. Adamski testified that the keys on the side of the roof were uneven which affects not only the roof aesthetics, but its performance. (Cl. Ex. 5-6.) The roofing materials are out of square and flashing on the vertical structure is missing. (Cl. Ex. 7.) There was a lack of step flashing. (Cl. Ex. 8.) With respect to the chimney, it had no flashing and was not sealed. Moreover, there was no counter-flashing, which will cause it to fail. (Cl. Ex. 9.) He added that the Respondent’s roof was nailed over another roof. The shingles were not sealed and were buckling and the flashing was “face-nailed” and not caulked. (Cl. Ex. 10.) Mr. Adamski asserted that the Respondent should have “fixed the old roof before nailing over it.” He opined that the Respondent’s workmanship was not in compliance with industry standards and accepted practices in the trade. The entire roof must be removed and reinstalled at an estimated cost of \$9,082.60. (Cl. Ex. 18.)

Mr. Adamski next addressed the Respondent’s window installation. He explained that replacement windows should have been used since they are installed from the inside of the house without disturbing existing casings, sills or trim. New construction windows, on the other hand, are installed from the outside of the house, which would necessarily require the removal of existing sills and trim. At the very least, the Respondent should have preserved the sills. Turning

to the workmanship of the installed windows, Mr. Adamski expressed that one window was not trimmed out, the sill should have protruded by  $\frac{3}{4}$ ", it should have been stained and/or painted and the Respondent used #2 lumber with knots instead of #1 lumber. (Cl. Ex. 11) In one window, there was no "build-out" of the sill or side area at all. (Cl. Ex. 12) Two windows had casings which did not clear the gap of the previously existing casing (Cl. Exs. 13 & 15) and one window had no window jamb, insulation was dropping from the missing jamb area and the sill was raw, without paint and/or stain. Mr. Adamski opined that the Respondent's installation of the windows and the fact that the new construction windows were inappropriate for an existing structure was not in compliance with industry standards and accepted practices in the trade. He estimated the cost to repair the Respondent's work to be \$2,003.54 and the cost to replace the deficient windows to be \$15,000.00.

With respect to the siding, Mr. Adamski testified that it "looked pretty good." However, a security light needed to be set with siding blocks and the attic and gable vents were vented with soffit material, which will cause water to enter the house. The estimated cost to repair these deficiencies is \$1,123.00.

For the Respondent's part, he submitted a number of documents that were of little or no value without an explanation, which the Respondent did not provide. Other than submitting the documents, the Respondent did not testify.

Accordingly, I find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 provide three formulas for measurement of a claimant's



actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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. COMAR 09.08.03.03B(3)(c).

In this case, the correct formula is as follows:

Amount paid by Claimant:		\$17,392.75
Cost to correct:	(+)	\$13,002.36
Original contract price:	(-)	<u>\$23,185.00</u>
Award amount:		\$7,210.11

Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$7,210.11.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$7,210.11 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2013).

**RECOMMENDED ORDER**

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


**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,210.11; 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.

August 26, 2014  
Date Decision Issued

  
**Signature on File**  
\_\_\_\_\_  
M. Teresa Garland  
Administrative Law Judge

MTG/tc  
# 150055

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF KENNETH E. MORRIS,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF KENNETH</b></p> <p><b>HARTMAN T/A KCM &amp; SON HOME</b></p> <p><b>IMPROVEMENT,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE M. TERESA GARLAND,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH No.: DLR-HIC-02-13-40116</b></p> <p><b>* MHIC No.: 11 (05) 1276</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**FILE EXHIBIT LIST**

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- Resp. Ex. 1 - Contract with Ideal Contracting, September 25, 2010
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- Resp. Ex. 3 - Identification only
- Resp. Ex. 4 - Receipt from Sharkins Construction, August 25, 2011

PROPOSED ORDER

*WHEREFORE, this 26th of September 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.*

*Jeffrey Ross*

*Jeffrey Ross  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**

IN THE MATTER OF THE CLAIM  
 OF KENNETH E. MORRIS  
 AGAINST THE MARYLAND HOME  
 IMPROVEMENT GUARANTY FUND  
 FOR ALLEGED VIOLATIONS OF  
 KENNETH HARTMAN, t/a  
 KCM & SON HOME IMPROVEMENT

\* MARYLAND HOME  
 IMPROVEMENT COMMISSION  
 \*  
 \* MHIC CASE NO. 11 (05) 1276  
 \*

\* \* \* \* \*

**FINAL ORDER**

WHEREFORE, this 12<sup>TH</sup> day of March, 2015, Panel B of the Maryland

Home Improvement Commission ORDERS that:

1) The Findings of Fact of the Administrative Law Judge are Amended as follows:

- A) The Claimant sustained an actual loss of \$4,610.11.
- B) The Commission finds that repair estimate of \$9,082.60 provided by Adamski (Claimant Ex. 18) to perform the roofing repairs is excessive and unreasonable. The Commission finds that \$6,482.60 is a fair reasonable estimate of the cost to perform the roof repairs.

2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) Pursuant to the formula set forth in COMAR 09.08.03.03B, the correct calculation of the Claimant's actual loss is as follows:

● Amount paid to Respondent	\$17,392.75
● Reasonable cost to repair	+ \$10,402.36
● Subtotal	\$27,795.11
● Less original contract price	- \$23,185.00
● Actual Loss	\$ 4,610.11

**Final Order - 11 (05) 1276  
In The Matter of the Claim of  
Kenneth E. Morris  
March 12, 2015  
Page 2**

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

**A) The Claimant is awarded \$4,610.11 from the Home Improvement  
Guaranty 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***  
\_\_\_\_\_  
**Chairperson - Panel B  
MARYLAND HOME IMPROVEMENT  
COMMISSION**

IN THE MATTER OF THE PETITION  
OF KENNETH L. HARTMAN

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY  
CASE NO.: 24-C-15-001482

\* \* \* \* \*

ORDER

Upon consideration of the Petition for Judicial Review (Originally Filed in 24-C-15-004884, Docket Entry #1000), Response to Petition for Judicial Review (Docket Entry #1001), the Administrative Agency Record (Docket Entry #3000), Respondent Maryland Home Improvement Commission Memorandum of Law Answering Petitioner Kenneth E. Morris (Docket Entry #10001), and the arguments made in open court on February 1, 2016, it is, by the Circuit Court for Baltimore City, this 11<sup>th</sup> day of February, 2016, hereby

**ORDERED** that the decision of the Maryland Home Improvement Commission is **REVERSED** in regards to Kenneth E. Morris; and it is further

**ORDERED** that the Court is **AFFIRMING** the Administrative Law Judge's decision on August 26, 2014, and awarding Kenneth E. Morris Seven Thousand Two Hundred and Ten Dollars and Eleven Cents (\$7,210.11); and it is further

**ORDERED** that any open court costs are waived.

TRUE COPY  
TEST

Notice to Clerk:

Please send copies to all parties.

LAVINIA G. ALEXANDER, CLERK

ALT.  
Judge

Althea M. Handy  
Judge's Signature Appears  
On Original Document

