

**IN THE MATTER OF THE CLAIM
OF GALE A. MADDOX,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF TROY PULLIAM, t/a
T.R. CONTRACTING,
RESPONDENT**

*** BEFORE DANIEL AN DREWS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-15-24668
* MHIC No.: 13(05)1242
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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 27, 2013, Gale A. Maddox (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with Troy Pulliam, trading as T.R. Contracting (Respondent).

On July 27, 2015, the Office of Administrative Hearings (OAH) mailed a Notice of Hearing (Notice) to the parties, which informed the parties of a hearing scheduled for October 13, 2015. The hearing was postponed, however, with good cause being presented by the Claimant. On December 1, 2015, the OAH mailed another Notice to the parties. The Notice

informed the parties of a hearing scheduled for January 29, 2016, at 10:00 a.m., at the St. Mary's County Library, 23250 Hollywood Road, Leonardtown, MD 20659.

I held the hearing on January 29, 2016 as scheduled. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The Claimant represented herself. The Respondent did not appear. Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, 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 any acts or omissions committed by the Respondent?
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 - MHIC Claim Form, dated August 20, 2013
- Cl. Ex. 2 - Explanation of complaint against Respondent, undated
- Cl. Ex. 3 - Respondent's Proposal, dated August 30, 2012
- Cl. Ex. 4 - Respondent's Proposal, dated August 31, 2012
- Cl. Ex. 5 - Contract between Claimant and Respondent, dated November 30, 2012
- Cl. Ex. 6 - Claimant's deposit and final checks, dated December 1 and 15, 2012, in the amounts of \$1,700.00 and \$1,250.00
- Cl. Ex. 7 - Emails between Claimant and Respondent's wife, Rachel Pulliam, from August 17 through August 31, 2013
- Cl. Ex. 8 - Abell's Home Improvements, Home Repair Proposal, dated August 18, 2013
- Cl. Ex. 9 - Abell's Home Improvements, Home Repair Proposal, dated August 18, 2013

¹ Unless otherwise noted, all citations to the Business Regulation Article refer to the 2015 Replacement Volume.

- Cl. Ex. 10 - Two photographs of Claimant's outside roof, attic, and bedroom ceiling
Cl. Ex. 11 - Photograph of water damage on attic ceiling

No documents were offered on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - OAH Notice, dated December 1, 2015
GF Ex. 2 - OAH Notice, dated December 1, 2015, mailed by certified mail with envelope
GF Ex. 3 - Respondent's MHIC Licensing History, dated September 17, 2015, Motor Vehicle Administration (MVA), Driving Record Information, dated September 17, 2015, and State Department of Taxation and Assessment (SDAT), Real Property Search, dated September 17, 2015
GF Ex. 4 - MHIC Hearing Order, dated July 8, 2015
GF Ex. 5 - Claimant's Claim Form, received by MHIC August 27, 2013
GF Ex. 6 - MHIC letter to Respondent, dated September 5, 2013

Testimony

The Claimant testified on her own behalf and presented the testimony of her husband, Roy Maddox.

No one testified on behalf of the Respondent.

The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. Prior to November 2012, as a result of a hurricane, the rear roof portion of the Claimant's residential home sustained damage.
2. On or about November 30, 2012, the Claimant and Respondent entered into a home improvement contract to re-shingle the rear roof. The total contract price was \$2,750.00.
3. At the time of the contract, the Respondent was licensed as a home improvement contractor by the MHIC under license number 01-90959.²

² The Respondent's MHIC license was suspended on April 11, 2013 due to an unrelated claim which resulted in a payment from the Fund but was reinstated before his contract with the Claimant.

4. On December 1, 2012, the Claimant paid the Respondent a deposit of \$1,700.00.
5. On December 12, 2012, the Respondent started the home improvement work required by the contract.
6. After starting the work, the Claimant and Respondent entered into an oral agreement to install additional roof shingles to the front portion of the Claimant's roof at a cost of \$200.00. This agreement increased the total contract price to \$2,950.00.
7. On December 14, 2012, the Respondent completed all work under the contract.
8. On December 14, 2012, the Claimant paid the Respondent \$1,250.00. As of this date, the Claimant paid the Respondent a total of \$2,950.00.
9. In February 2013, the Claimant's husband, Roy Maddox, discovered roof shingles replaced by the Respondent on the rear roof had fallen off of the roof.
10. The Claimant contacted the Respondent to reattach the shingles that had fallen off of the roof. The Respondent indicated he would come to the Claimant's home by the end of the week but did not do so.
11. For the next month, the Claimant made several attempts to contact the Respondent to reattach the shingles but got no response.
12. By email on April 17, 2013, Rachel Pulliam, the Respondent's wife, informed the Claimant that the Respondent's business was closed and he would not be able to do any work for the Claimant.
13. The Respondent installed roof shingles which were misaligned or improperly installed at the roof flanges. As a result, in addition to several shingles falling off the rear portion of the roof, the Claimant's home also sustained water damage to the attic and master bedroom ceiling.

14. On August 18, 2013, the Claimant obtained a proposal from Abell's Home Improvements, a MHIC licensed contractor, to repair work performed by the Respondent.

15. The proposal was to replace the roof flanges, blown off roof shingles, shingle over the front cut in ridge vent, and supply all materials at a cost of \$3,240.00.

16. The Respondent's business address of record with the MHIC is 45464 Stoney Run Drive, Great Mills, Maryland 20634.

17. On December 1, 2015, the OAH mailed a Notice to the Respondent which informed him of a hearing scheduled for January 29, 2016, at 10:00 a.m., at the St. Mary's County Library, 23250 Hollywood Road, Leonardtown, MD 20659.

18. The Notice was mailed to the Respondent's business address of record by regular first class mail and certified mail.

19. The Notice mailed to the Respondent by first class mail was not returned by the United States Postal Service (USPS). The USPS, however, returned the Notice sent by certified mail to the OAH indicating that Notice was unclaimed and was unable to be forwarded.

DISCUSSION

The Respondent's Failure to Appear

On January 29, 2016, when the hearing in this matter was convened, neither the Respondent nor anyone authorized to represent him appeared. On December 1, 2015, the OAH sent a Notice by first class and certified mail to the Respondent's business address of record, which is 45464 Stoney Run Drive, Great Mills, Maryland 20634. The Notice advised the Respondent of the time, place and date of the hearing. The Notice further specified that failure to appear at the hearing could result in an adverse decision against the non-appearing party.

On January 8, 2016, the USPS returned the Notice delivered by certified mail with the notations "Return to Sender, Unclaimed, Unable to Forward." The USPS did not return the

Notice delivered by first class mail.³ The Notice delivered by certified and first class mail was mailed to the Respondent's business address of record, as required by section 8-312(d) of the Business Regulation Article. With this background, I determined that the Respondent received due notice of the hearing and had an opportunity to participate in the hearing, but failed to appear. Md. Code Ann., Bus. Reg. § 8-312(h). Consequently, I found it appropriate to proceed with the hearing in the Respondent's absence. *Id.*, COMAR 09.01.02.09.

Applicable Law

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125, n. 16 (2002).

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). *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. For the reasons discussed in this Proposed Decision, I conclude that the Claimant established that she sustained an actual loss as a result of an unworkmanlike home improvement performed by the Respondent in the amount of \$2,750.00.

³ Under COMAR 09.01.02.07E, a document served by mail is presumed to have been received by the addressee three days after the date the document was mailed.

Merits of Claim

The Claimant and Respondent entered into a home improvement contract on November 30, 2012 to re-shingle the rear portion of her residential home located in Great Mills, Maryland. At the time, the Respondent was a MHIC licensed contractor under license number 01-90959. The original contract price was \$2,750.00. The Respondent began performing the contract on December 4, 2012. While performing the contract, the Claimant and the Respondent agreed to replace additional roof shingles on the front portion of her roof at a cost of \$200.00. The additional work increased the total contract price to \$2,950.00. The Respondent completed the work on or about December 14, 2012. The Claimant paid the Respondent, through two checks, a total of \$2,950.00.

Sometime in February 2013, the Respondent's husband, Roy Maddox, observed that several shingles installed by the Respondent on the rear portion of the roof had fallen off. Between February and April 2103, the Claimant requested that the Respondent return to her home and repair the roof shingles. Initially, the Respondent promised to make the repair but eventually the Respondent's wife informed the Claimant that the Respondent was no longer in business and would not return to the Claimant's home to correct the work performed.

Mr. Maddox explained that since the Respondent did not repair the roof, he observed water damage to the attic and master bedroom ceiling. In addition, the Claimant presented photographs which depicted the area where several shingles had fallen of the rear portion of the roof. Other photographs presented by the Claimant revealed water damage to the attic and master bedroom ceiling.

Because the Respondent was not going to repair any work performed, the Claimant obtained work proposals from other MHIC licensed contractors. One proposal was from Abell Home Improvements, dated August 18, 2013, in the amount of \$3,240.00. Abell Home

Improvements explained to the Claimant and her husband that the shingles installed by the Respondent were improperly aligned and need replacement. As a result, Abell Home Improvements proposed to replace roof flanges and blown off roof shingles, reshingle the front cut in ridge vent, and supply all materials.

The Fund's attorney examined the Claimant and her husband about the work performed by the Respondent and the required repair proposed by Abell Home Improvements. Afterward, the local department did not contest that the Claimant's evidence demonstrated an unworkmanlike home improvement performed by the Respondent requiring the repair work proposed by Abell Home Improvements.

Having considered all the evidence, I am persuaded the Respondent performed an unworkmanlike home improvement, which later caused several shingles on the Claimant's rear portion of the roof to become displaced. Additionally, the evidence established that other shingles were improperly installed or misaligned, resulting in water damage in the Claimant's attic and bedroom ceiling. For these reasons, I find that Claimant established an actual loss. Md. Code Ann., Bus. Reg. § 8-401.

Actual Loss

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The formula in COMAR 09.08.03.03B(3)(c) 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. 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.

Applying this formula, the Claimants' actual loss should be calculated as follows:

Amount paid to the Respondent	\$2,950.00
Repair Costs	<u>+\$3,240.00</u>
Total	\$6,190.00
Minus original contract price	<u>-\$2,950.00</u>
Actual loss	\$3,240.00

Monetary awards from the Fund are limited. 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), (5); COMAR 09.08.03.03B(4). The actual loss as calculated above is \$3,240.00, which exceeds the \$2,950.00 the Claimant paid to the Respondent. Thus, the actual award from the Fund is limited to \$2,950.00.

The Fund argued that the Claimant's evidence focused on the need to repair and replace the work performed by the Respondent on the rear portion of the Claimant's roof. Additionally, the Fund asserted there was no evidence demonstrating that the additional work to replace roof shingles on the front portion of the Claimant's roof, at the cost of \$200.00, required repair or was included in the proposal by Abell Home Improvements. For these reasons, the Fund argued that the appropriate actual loss to be paid by the Fund should be the original contract price paid to the Respondent in the amount of \$2,750.00. I find the Fund's position to be correct and agree that the actual loss established by the Respondent relates to the work performed by the Respondent on the rear portion of the Claimant's roof, for which the Claimant paid the Respondent \$2,750.00. As a result, the Claimant's actual loss is limited to \$2,750.00. Accordingly, I recommend that the Fund award the Claimant a reimbursement for an actual loss sustained for an unworkmanlike home improvement performed by the Respondent in the amount of \$2,750.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant sustained an actual and compensable loss of \$2,750.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,750.00; 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 as set by the Maryland Home Improvement Commission.⁴ Md. Code Ann., Bus. Reg. § 8-411(a) (2015); and

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

April 28, 2016
Date Decision Issued


Signature on File

Daniel Andrews
Administrative Law Judge

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160598

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 3rd day of June, 2016, 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.

J. Jean White

***I. Jean White
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION