

**The Maryland Home  
Improvement Commission**

**v. Carl Dirzuweit  
t/a Sunrise Remodeling  
(Contractor)  
and the Claim of  
Denise Thompson  
(Claimant)**

\* **BEFORE THE**  
\* **MARYLAND HOME IMPROVEMENT**  
\* **COMMISSION**  
\*  
\* **MHIC No.: 13 (90) 206**  
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**FINAL ORDER**

**WHEREFORE, this 23<sup>th</sup> day of March, 2015, Panel B of the Maryland Home**

**Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated January 20, 2015 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated January 20, 2015 are AFFIRMED.**
- 3. The Proposed Order dated January 20, 2015 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.**

*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 • E-MAIL: MHIC@DLLR.STATE.MD.US

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF DENISE M. THOMPSON,</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 CARL F. DIRZUWEIT,</b></p> <p><b>T/A SUNRISE REMODELING,</b></p> <p><b>RESPONDENT</b></p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p><b>BEFORE LORRAINE E. FRASER,</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-02-13-43686</b></p> <p><b>MHIC No.: 13 (90) 206</b></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 November 30, 2012, Denise M. Thompson (Claimant), filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$10,200.00 in alleged actual losses suffered as a result of a home improvement contract with Carl F. Dirzuweit, trading as Sunrise Remodeling (Respondent). By email dated April 5, 2013, the Claimant amended her claim to \$5,150.00.

I held a hearing on September 30, 2014 at the Kent County Circuit Court in Chestertown, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2010 & Supp. 2014). Eric B.

London, 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, 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 (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 Claimant's behalf:

- Clmt. Ex. 1 3 photographs of double windows in kitchen, interior, taken July 2012 (photos A, B, and C)
- Clmt. Ex. 2 2 photographs of basement sliding glass door, interior, taken July 2012 (photos A and B)
- Clmt. Ex. 3 Emails between the Claimant and the Respondent, 12/23/11, 7/23/12
- Clmt. Ex. 4 3 photographs: 2 of exterior of kitchen windows (photos A and B), 1 of interior of kitchen window (photo C), taken July 2012
- Clmt. Ex. 5 4 photographs: 3 of exterior of kitchen windows (photos A, B and D), 1 of exterior of window above basement sliding glass door (photo C), taken July 2012
- Clmt. Ex. 6 2 photographs of exterior of kitchen sliding glass door (top), taken July 2012 (photos A and B)
- Clmt. Ex. 7 2 photographs of exterior of kitchen sliding glass door (bottom), taken July 2012 (photos A and B)
- Clmt. Ex. 8 Photograph of exterior of kitchen sliding glass door (bottom), taken July 2012
- Clmt. Ex. 9 Photograph of exterior of front storm door, taken July 2012
- Clmt. Ex. 10 Photograph of exterior of front door molding, taken July 2012
- Clmt. Ex. 11 Photograph of interior of front storm door, taken July 2012

- Clmt. Ex. 12 Photograph of exterior of front storm door, taken July 2012
- Clmt. Ex. 13 3 photographs of the exterior of the front bay window, taken July 2012
- Clmt. Ex. 14 Email between the Claimant and the Respondent, 8/1/12
- Clmt. Ex. 15 Letter from Joseph Suess, Suess Builders, 11/20/12
- Clmt. Ex. 16 Letter from Chris Redding, RED Contracting, Inc., 10/5/12
- Clmt. Ex. 17 Report, John Laverdiere, AIC, Claims Adjuster, Eagle Adjusting Services, Inc., 10/5/12
- Clmt. Ex. 18 Estimate, RED Contracting, Inc., for rear windows and door, 10/5/12
- Clmt. Ex. 19 Estimate, RED Contracting, Inc., for front bay window, 10/5/12
- Clmt. Ex. 20 Estimate, RED Contracting, Inc., for front storm door, 10/5/12
- Clmt. Ex. 21 Email to MHIC from the Claimant, 4/5/13
- Clmt. Ex. 22 Certified letter to the Respondent from the Main Street America Group, notifying him of the Claimant's claim, 11/28/12

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

- Fund Ex. 1 Notice of Hearing, 7/30/14
- Fund Ex. 2 Hearing Order, 11/4/13
- Fund Ex. 3 The Respondent's licensing history, 8/7/14
- Fund Ex. 4 Home Improvement Claim Form, 11/30/12
- Fund Ex. 5 Letter to the Respondent from John Borz, HIC, 12/5/12
- Fund Ex. 6 Email to the Claimant from the Respondent, 6/10/09; Proposal, 6/11/09; Job Estimate, 6/9/09
- Fund Ex. 7 Emails between the Claimant and the Respondent, 11/23/11-12/10/11
- Fund Ex. 8 Proposal, Suess Builders, 11/13/12

### Testimony

The Claimant testified.

The Respondent testified.

The Fund did not present any witness testimony.

### **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 01-10600.
2. On June 11, 2009, the Claimant and the Respondent entered into a contract to replace nine windows at a home the Claimant owned in Belcamp, Maryland (Belcamp property).

At the time, the Claimant was renting the Belcamp property to a tenant; the Claimant was living in Delaware. The Claimant does not own any other properties.

3. The contract stated that work would begin approximately three weeks later and would be completed in one day.

4. The original agreed-upon contract price was \$3,555.00, which the Claimant paid to the Respondent.

5. The Respondent replaced the nine windows in July 2009.

6. On December 10, 2011, the Claimant and the Respondent entered into a contract to replace a vinyl sliding glass door in the kitchen and install a storm door on the front door of the Belcamp property.

7. The original agreed-upon contract price was \$1,460.00, which the Claimant paid to the Respondent.

8. On December 22, 2011, the Respondent replaced the kitchen sliding glass door and installed the storm door.

9. During 2009 through July 2012, the Claimant rented the Belcamp property to a tenant. In July 2012, the tenant moved out and the Claimant went into the home to inspect the condition of the property. The Claimant discovered water damage on and under the window sill in the kitchen and water damage on the wall in the basement underneath the sliding glass door in the kitchen.

10. On July 23, 2012, the Claimant emailed the Respondent telling him that the windows and sliding glass door were leaking and the storm door would not latch and asking him to meet her at the Belcamp property. The Respondent agreed to meet the Claimant at the Belcamp property on July 27, 2012.

11. On July 27, 2012, the Respondent met the Claimant and her boyfriend at the Belcamp property. The Claimant and her boyfriend showed the Respondent the water damage and the problems with the installation of the front and back windows, the rear sliding glass door, and the front storm door. The Respondent agreed to return the following week to correct the problems.

12. The Respondent did not return the following week to correct the problems with the windows, sliding glass door, or storm door. The Claimant and her boyfriend called the Respondent four times and left messages, and emailed the Respondent on August 1, 2012. The Respondent did not reply.

13. On August 13, 2012, the Claimant filed a complaint with MHIC.

14. Sometime thereafter, the Claimant filed a claim with the Respondent's insurance company, The Main Street America Group.

15. On October 5, 2012, John Laverdiere, AIC, Claims Adjustor, Eagle Adjusting Services, Inc., inspected the Belcamp property on behalf of The Main Street America Group. Mr. Laverdiere did not report on the leaking windows installed by the Respondent because he treated them as a separate occurrence.

16. Also on October 5, 2012, Chris Redding, RED Contracting, Inc., inspected the Belcamp property.

17. Mr. Redding found problems with the installation of the front bay windows, the rear sliding glass door, the rear windows, and the front storm door. He estimated the cost to correct the installation of the rear windows and sliding glass door to be \$3,900.00; the cost to correct the installation of the front bay windows to be \$750.00; and the cost to correct the installation of the front storm door to be \$500.00.

18. Sometime thereafter, The Main Street America Group paid the Claimant \$4,540.52 to correct the improper installation of the kitchen sliding glass door and the resulting water damage.<sup>1</sup>

19. On November 20, 2012, Joseph Suess, Suess Builders, inspected the Belcamp property. Mr. Suess found that the windows and sliding glass door were not installed properly.

20. Mr. Suess removed the old siding, placed a Tyvek water barrier on the entire back side of the house, and replaced all of the siding on the back of the house. Mr. Suess also fixed the water damaged window sill and drywall. In addition, Mr. Suess removed the deck boards that were against the house and installed flashing. There has been no water damage to the rear of the home since Mr. Suess performed the repairs.

21. The Claimant also replaced the damaged basement carpet.

22. No work has been performed on the front bay windows or the front storm door.

23. The Claimant's actual loss is \$1,250.00 (\$750.00 to correct the installation of the front bay windows and \$500.00 to correct the installation of the front storm door).

### 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."

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<sup>1</sup> There is one statement in the report that says "I do not feel the door was installed incorrectly." However, the rest of the report discusses that the door was not flashed properly, that there was a 2"+ gap between the door and the J-channel, that the area was framed but not sealed, that metal trim was not caulked, that the door was not sealed correctly during installation, and that there was missing flashing allowing water to run behind the siding and damage the wood underneath. Thus, I find that the claims adjuster found that the door was installed incorrectly. The one statement appears to be a typographical error and contrary to the rest of the report.

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 and he performed unworkmanlike, inadequate or incomplete home improvements. Specifically, Mr. Laverdiere's report, Mr. Sues's letter, and Mr. Redding's letter and estimate, as well as the Claimant's testimony and photographs, show that the Respondent did not properly install the front bay windows, the rear windows, the rear sliding glass door in the kitchen, and the front storm door. The Respondent installed replacement windows and a sliding glass door that were not the exact size for the openings. The Respondent used shoe molding and caulk to seal the gap around the windows and bent a piece of aluminum to cover the gap between the sliding glass door and the opening. The shoe molding expanded and contracted in the elements, causing the caulk to break loose. On the rear windows, the cracked caulk allowed water to penetrate through the opening, causing damage. Water also penetrated behind the opening around the sliding glass door causing damage. On the front bay windows, the Respondent only used one screw per window and caulk to install the windows. As a result, the windows are not secure, causing a safety hazard. The front storm door is out of square and does not close properly. The Respondent attached the storm door to the decorative molding instead of the door jam and did not caulk it. As a result, the molding is detaching from the brick front of the house, allowing water to penetrate. The Respondent also used blue concrete screws instead of matching white screws to attach the door closer.

The Claimant testified that she and her boyfriend showed the Respondent the problems with his work and the resulting damage, and asked him to fix the problems. The Respondent never returned to make any repairs. I found the Respondent's testimony that he was not given an



opportunity to make repairs not credible and unsupported by the documentary evidence. The Claimant presented emails she sent to the Respondent telling him about the problems and following up after their meeting asking why he had not responded to telephone calls. The Claimant also presented a certified return receipt letter sent to the Respondent from his insurance company advising him of the Claimant's claim. I found the Respondent's claim he never received the letter from his insurance company unconvincing. Further, the MHIC sent notice of the Claimant's claim to the Respondent. Therefore, I find the Respondent was aware of the claim and had the opportunity and obligation to attempt to repair his work. Thus, 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). The 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 Claimant filed a claim with the Respondent's insurer in addition to her claim against the Fund. The Claimant used the funds she received from the insurer to pay

Mr. Suess to remove the old siding on the back of the house, place a Tyvek water barrier on the entire back side of the house, and replace the siding on the back of the house. In addition, Mr. Suess removed the deck boards that were against the house and installed flashing. The Claimant also used the insurance funds to pay Mr. Suess to fix the water damaged window sill and drywall. She also replaced her water damaged carpet in the basement. The Claimant testified that there has been no water damage to the rear of the home since Mr. Suess performed the repairs. The Claimant did not introduce into evidence an estimate showing that any work remained to be done to correct the Respondent's poor workmanship on the rear of the home. Therefore, I cannot award any money from the Fund for the windows and sliding glass door on the rear of the home.

The Claimant has not had any work performed on the front of the home. Thus, she is entitled to an award from the Fund for the cost to correct the Respondent's poor workmanship on the front bay windows and the front storm door, \$750.00 and \$500.00, respectively.

The Claimant's actual loss is calculated as follows:

\$3,555.00	windows
<u>+\$1,460.00</u>	sliding glass door & storm door
\$5,015.00	total contract price
\$750.00	cost to repair front bay windows
<u>+\$500.00</u>	cost to repair front storm door
\$6,265.00	
<u>-\$5,015.00</u>	
\$1,250.00	actual loss.

### PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$1,250.00 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 \$1,250.00; 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**

December 18, 2014  
Date Decision Issued

\_\_\_\_\_  
Lorraine E. Fraser  
Administrative Law Judge

LEF  
# 153398