

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE D. HARRISON PRATT,</b>
<b>OF MARK P. SHORES,</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT,</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>* OAH NO.: DLR-HIC-02-14-02378</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>* MHIC NO.: 13 (90) 398</b>
<b>OMISSIONS OF CULLEN HOFMANN,</b>	<b>*</b>
<b>T/A MARYLAND WINDOWS, DOORS</b>	<b>*</b>
<b>&amp; FLOORS INC.,</b>	<b>*</b>
<b>RESPONDENT</b>	<b>*</b>

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On October 9, 2013, Mark P. Shores, (Claimant), filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for losses he claims he suffered as a result of a home improvement contract with Cullen Hofmann, trading as Maryland Windows Doors & Floors, Inc. (Respondent).

I held a hearing on June 17, 2014, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). Matthew Lawrence, Assistant Attorney General, Department of Labor, Licensing and Regulation

(Department), represented the Fund. The Claimant represented himself. Although duly served with the Notice of Hearing, the Respondent failed to appear.<sup>1</sup>

The provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the 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**

The issues are:

1. Whether the Claimant sustained an actual loss as a result of the Respondent's acts or omissions, and if so
2. What if any monetary award from the MHIC Fund is appropriate.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

1. Contract between the Claimant and Respondent, May 14, 2010
2. Seventeen pictures showing unworkmanlike actions of the Respondent
3. Letter from Brian Russoniello of Home Guard Doors and Windows to the Claimant, May 24, 2012
4. Copies of checks from the Claimant to the Respondent, May 15, 2010 and October 13, 2010
5. Letter and estimate from Wertz Construction, September 5, 2013

The MHIC Fund submitted the following documents that I admitted into evidence:

1. Respondent's licensing history

---

<sup>1</sup> The OAH mailed two Notices of Hearing to the Respondent at his address of record, one by certified mail, return receipt requested, and one by first class mail, postage prepaid. The Respondent failed to claim the certified mail. However, the Notice sent by first class mail was not returned by the post office. I find therefore that the Respondent was properly served with the Notice of Hearing.

2. Home Improvement Claim Form, October 7, 2013

Testimony

The following persons testified on behalf of the Claimant:

1. The Claimant
2. The Claimant's wife, Wendy Shores
3. Lewis Wertz

The MHIC Fund did not call 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 4003530. The license expired on June 13, 2012. The Respondent conducted business as Maryland Windows Doors & Floors, Inc.
2. On May 14, 2010, the Claimant hired the Respondent to perform home improvement work on the Claimant's residence. The contract called for the Respondent to replace all of the windows in the house, install new siding, install a carport, install storm doors, and install entry doors. The contract price was \$29,100.00. On October 18, 2010, there was an addendum to the original contract and the Respondent was contracted to wrap the carport posts in aluminum and install a ceiling in the carport. The contract price for this additional work was \$3,150.00. The total contract price was \$32,250.00, which the Claimant paid in full.
3. The Respondent performed the work under the contract between June 1, 2010 and June 30, 2010. He returned in late 2010 and early 2011 in an unsuccessful attempt to correct problems.
4. During the winter of 2010 – 2011, the Claimant noticed that air was coming

through or around the newly installed windows. The Claimant called the Respondent who came to inspect the windows. The Respondent informed the Claimant that the problem was in the manufacturing of the windows.

5. The Claimant contacted the manufacturer of the windows, Home Guard – Doors & Windows and on March 29, 2012, a representative of the manufacture inspected the windows. The representative informed the Claimant that the problem resulted from improper installation of the windows. Specifically, the problems resulted from improper shimming of the windows when installed. Additionally, none of the windows locked properly.

6. Door hinges were not properly aligned, having only two screws when four are called for. The Respondent also used the wrong length screws.

7. Doors were not properly aligned and air came through the space between walls and the doors.

8. The handle on the storm door was improperly installed and frequently comes off.

9. The roof on the carport was not installed properly and has waves in it and is not level. The Respondent came and inspected the roof and agreed it was not properly installed. He did the roof again and it was still improperly installed.

10. The carport was to have eight posts but only had four. The posts were improperly set on four-inch slabs and should have been set in concrete. Additionally, the carport had no gutters and the Respondent used improper shingles.

11. The trim on the carport warped.

12. Because the windows were not properly installed they sometimes leaked.

13. When problems were noted, the Claimant made several calls to the Respondent to have him come and make corrections or repairs. The Respondent came at times but the problems

were not resolved. After May 2011, the Claimant never heard from the Respondent even though problems had not been resolved and the window and door leaks became worse.

14. On or about May 24, 2012, the Claimant obtained an estimate from Lewis Wertz of Wertz Construction to repair and complete the work initially required of the Respondent. Mr. Wertz confirmed the improper work performed by the Respondent and provided the Claimant with an estimate of \$15,950.00 to repair and complete the work. Mr. Wertz is a licensed Maryland home improvement contractor.

15. The Claimant has not yet hired anyone to repair or complete the Respondent's work but anticipates hiring Lewis Construction to do so should an award from the Fund be made.

### **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 Claimant testified that he first started noticing that the windows were leaking and that air was coming through them in the winter of 2010, just a few months after the Respondent stopped working. At about the same time, the Claimant's neighbor pointed out that the carport roof was not level and had waves in it. When the Respondent came to look at the roof he acknowledged that that is was not level. He replaced the roof but it was still not level. The Respondent also told the Claimant that the problem with the windows was the result of something done in the manufacture. A representative of the window manufacturer inspected the

windows and found that they had not been installed properly in that they were not shimmed as required.

Mr. Lewis of Lewis Construction, who is a Maryland licensed home improvement contractor, inspected the Respondent's work and determined that it was not done properly. He agreed to repair what the Respondent had done for \$15,950.00. This was in September 2013. The Claimant will be hiring Mr. Lewis for this work should he be granted an award from the Fund.

The Respondent was a licensed home improvement contractor at the time he entered into the contract. He went out of business at some time in 2012. The evidence is very clear that his work was not performed correctly or in a workmanlike manner. The evidence is unrefuted. Furthermore, the poor condition of the Respondent's work has been corroborated by Mr. Lewis, a licensed home improvement contractor. The carport roof was not level, had improper shingles, had no gutters; the windows were not properly shimmed and allowed air and rain to leak through; doors were not properly aligned; windows would not lock properly; and posts for the carport were installed improperly.

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

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).

The Claimant paid \$32,250.00 to the Respondent. The Claimant has an estimate from Lewis Construction for \$15,950.00 to repair the poor work the Respondent was required to do under the original contract. This estimate was provided in September 2013. The sum of those numbers is \$48,200.00. That sum less the original contract price is \$15,950.00, which represents the Claimant's actual loss. Thus in this case, the Claimant is entitled to reimbursement from the Fund in the amount of \$15,950.00, which is less than the amount he actually paid to the Respondent.

**CONCLUSIONS OF LAW**

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

**PROPOSED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund approve an award to the Claimant in the amount of \$15,950.00; and I further,

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

**Signature on File**

September 9, 2014  
Date Decision Issued

\_\_\_\_\_  
D. Harrison Pratt  
Administrative Law Judge

DHP/tc  
#150021

PROPOSED ORDER

*WHEREFORE, this 10th of October 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.*

*Andrew Snyder*

*Andrew Snyder*  
*Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**