

IN THE MATTER OF THE CLAIM  
OF GEORGE B. SINE,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF DAVID W. WANDEL,  
T/A CHARIS CONTRACTORS, LLC,  
RESPONDENT

\* BEFORE UNA M. PEREZ,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-14-13305  
\* MHIC No.: 14 (90) 212

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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 October 31, 2013, George B. Sine (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$500.00 in alleged actual losses suffered as a result of a home improvement contract with David W. Wandel, trading as Charis Contractors, LLC (Respondent).

I held a hearing on September 18, 2014, at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(e) (2010 & Supp. 2014). Hope Sachs, Assistant Attorney General, Department of Labor,

Licensing and Regulation (DLLR), represented the Fund. The Claimant represented himself. The Respondent was present and represented himself.<sup>1</sup>

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the 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 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. 1A and B Photographs of aluminum siding showing "10-penny" nails
- Clmt. Ex. 2A, B, C Photographs of junction of roof, aluminum siding, and missing trim
- Clmt. Ex. 3 Photograph of left side of dormer on rear of house
- Clmt. Ex. 4 Exterior Proposal, CertaPro Painters, May 23, 2011
- Clmt. Ex. 5 Bid Proposal, Handyman on Call, LLC, October 4, 2013
- Clmt. Ex. 6 Proposal and Invoice from the Respondent, March 23 and 28, 2013
- Clmt. Ex. 7, 8, 9 Additional photographs of exterior of house

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

- Fund Ex. 1 Notice of Undeliverable Mail, August 25, 2014
- Fund Ex. 2 The Respondent's licensing history, printed September 2, 2014

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<sup>1</sup> Mr. Wandel is the President of Charis Contractors, LLC.

Fund Ex. 3 Letter from the MHIC to the Respondent, March 6, 2014

The Respondent did not offer any exhibits.

**Testimony**

The Claimant testified on his own behalf. The Respondent testified on his own behalf. The Fund did not present any witnesses.

**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 01-79341.<sup>2</sup>
2. The Claimant's principal residence is a home at 1721 Newcastle Road, Windsor Mill, Maryland (the Property). The Property has aluminum siding.
3. On March 23, 2013, the Claimant and the Respondent entered into a contract (Contract) to remove the Property's existing roof and replace it, including the following work:
  - Tear off existing roof (except rear back porch);
  - Inspect and replace any bad roof sheathing at an additional cost of \$65.00 per sheet for plywood and /or \$5.00 per foot for plank wood;
  - Install new felt paper;
  - Install ice and snow membrane in valleys and at roof transitions;
  - Install Charcoal Limited Lifetime Timberline shingles;
  - Install new wall flashing as needed;
  - Install new vent collars;
  - Re-flash chimney;

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<sup>2</sup> The license number of Charis Contractors, LLC is 05-128184.

- Clean out gutters; and
- Remove all trash and debris.

4. The original agreed-upon contract price was \$5,900.00. The Claimant paid the Respondent a deposit of \$1,900.00 on March 23, 2013.

5. The Respondent installed the new roof to the Claimant's satisfaction. On March 28, 2013, the parties agreed that the Respondent would wrap the "rake boards"<sup>3</sup> at either end of the house; and would replace nine sheets of plywood at \$65.00 each. The cost of these additional items was \$600.00 and \$585.00, respectively, bringing the total contract price to \$7,085.00.

6. The Respondent re-wrapped the rake boards on March 28, 2013.

7. The Claimant paid the Respondent \$5,185.00 on March 28, 2013, thereby paying the contract price in full.

8. Sometime in June 2013, the Claimant called the Respondent, claiming that the Respondent had removed the "J-channel" or "J-rail"<sup>4</sup> from the dormer on the rear of the house, and had not installed any trim.

9. The Contract did not provide for any work on the rear dormer or siding.

10. The Respondent offered to install the J-channel and trim for an additional \$500.00, but the Claimant declined.

11. On or about October 14, 2013, the Claimant paid another MHIC-licensed contractor, Handyman on Call, \$500.00 to fabricate and install J-channel and white metal covering for the fascia board on the rear top left and right dormer side board.

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<sup>3</sup> The rake boards are identified by red "x" marks on Clmt. Ex. 7.

<sup>4</sup> The Respondent testified that the J-channel is a U-shaped piece of metal into which the siding is inserted.

## 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.” Md. Code Ann., Bus. Reg. § 8-401 (2010). The Claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to be compensated from the Fund. *See* COMAR 09.01.02.16C. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Property is the Claimant’s primary residence, and there are no statutory impediments to the Claim. However, I am not persuaded that the Respondent performed an unworkmanlike, inadequate or incomplete home improvement.

The Contract is very specific with regard to the scope of work agreed to by the parties. It is clearly a contract for the removal of an existing roof and the installation of a new one, encompassing ten items of work involved in that job. *See* Clmt. Ex. 6. The Claimant testified that he was pleased with the roof work, and that the Respondent did a “beautiful job” on the roof. The parties subsequently agreed to two more items of work—the re-wrapping of the rake boards on each end of the house, and the replacement of nine sheets of plywood sheathing. These additional items were also completed to the Claimant’s satisfaction, and he paid the Respondent in full on March 28, 2013.

A few months later, the Claimant called the Respondent and asserted that the Respondent had removed an existing J-channel from the dormer on the back of the house, and had failed to

install trim at the point where the dormer met the roof. *See* Clmt. Ex. 2A and B.<sup>5</sup> The Respondent's position was (and remains) that he did not remove any existing J-channel, and that the installation of trim was outside the scope of the Contract. The Respondent offered to perform work on the dormer for an additional \$500.00, but the Claimant declined this offer. In mid-October 2013, the Claimant paid Handyman on Call \$500.00 to rectify the problems with the dormer. Clmt. Ex. 5.

An examination of the "Scope of Work" in the Claimant's contract with Handyman on Call, as compared to the specifications in the Contract with the Respondent, supports the Respondent's position. The contract with Handyman on Call explicitly provides for the fabrication and installation of missing J-channel; the securing of loose sections of siding;<sup>6</sup> the sealing of exposed siding connections; the fabrication and installation of white aluminum trim to cover the fascia; and the securing of the new metal using white metal screws. Clmt. Ex. 5. Without the assistance of expert testimony, I can only give these words their ordinary meaning, and must conclude that the tasks in this contract are completely different from the tasks specified in the Contract with the Respondent. Clmt. Ex. 6.

I also conclude that the Respondent refuted the Claimant's assertion that the Respondent removed existing J-channel—the Respondent explained that it would be impossible to take the J-channel off without damaging the aluminum siding. The Claimant did not produce any evidence that the *siding* on the dormer was damaged. I am not persuaded that the absence of J-channel on the dormer is attributable to any act or omission by the Respondent. The Fund argued that the Claimant's presentation was confusing, with particular reference to the question of whether work on the J-channel was part of the Contract or not.

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<sup>5</sup> The existing metal trim is marked with red "x" marks on Clmt. Ex. 2A and 2C.

<sup>6</sup> The Claimant complained at the hearing about the use of "10-penny nails" in the siding, as shown in Clmt. Ex. 1A and 1B. There is no evidence that the Respondent worked on the siding or used such nails.

The Claimant himself has acknowledged that the Respondent's work on the roof was satisfactory. He paid the Respondent in full for the roof work and the re-wrapped rake boards and additional sheathing. The Claimant subsequently discovered problems relating to the siding and trim on the rear dormer; but these are not items that were encompassed in the plain language of the Contract between the Claimant and the Respondent, and the Claimant has not asserted that there was any "verbal agreement" with respect to the rear dormer. While the work to correct the siding and trim on the rear dormer may have been necessary, the \$500.00 cost is not an "actual loss" because it is not the cost of "restoration, repair, replacement, or completion that arise[s] from an unworkmanlike, inadequate, or incomplete home improvement [by the Respondent]." Md. Code Ann., Bus. Reg. § 8-401 (2010).

I thus find that the Claimant is not eligible for compensation from the Fund.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of any acts or omissions by the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2014).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guarantee Fund deny the Claimant's claim; and

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

**Signature on File**

December 4, 2014  
Date Decision Issued

Una M. Perez  
Administrative Law Judge

UMP/da  
# 153141

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