

IN THE MATTER OF THE CLAIM	* BEFORE STEVEN V. ADLER,
OF JAMES R. BRADY,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF JOHN G. SKLERES,	*
T/A INTERIORS BY HELEN, INC.,	* OAH No.: DLR-HIC-02-15-12604
RESPONDENT	* MHIC No.: 15 (90) 216

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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 18, 2014, James R. Brady, (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,650.00 in alleged actual losses suffered as a result of a home improvement contract with John G. Skleres, trading as Interiors by Helen, Inc. (Respondent).

I held a hearing on August 28, 2015 at the Harford County Public Library located in Bel Air, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(e) (2015). The Claimant was present and represented himself. The Respondent was also present and represented himself. Eric

B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund.

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 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 - New World Contractors' Proposal, dated July 23, 2014 (1 page)
- CL Ex. 2 - Photograph of the interior of the Claimant's dwelling, undated (1 page)

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - OAH Notice of Hearing, dated April 23, 2015 (1 page)
- GF Ex. 2 - MHIC Hearing Order, dated April 2, 2015 (2 pages)
- GF Ex. 3 - Department's I.D. Registration and Professional License History, dated August 26, 2015 (2 pages)
- GF Ex. 4 - MHIC Home Improvement Claim Form, dated November 8, 2014 (1 page)
- GF Ex. 5 - Letter from Michelle Escobar, Investigator, MHIC, to the Respondent, dated November 20, 2014 (1 page)
- GF Ex. 6 - Invoice for rear deck installation, dated July 6, 2012, with attached: Deck dimensions, specifications and architectural drawings (9 pages)

GF Ex. 7 - Photographs of exterior of the Claimant's dwelling, undated, with attached:  
Hand-drawn sketch of the exterior of the Claimant's dwelling, indicating the  
placement of the ridge vent and deck, undated (2 pages)

There were no other exhibits offered or admitted.

Testimony

The Claimant testified on his own behalf. The Respondent also testified on his own behalf. 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 registration number 66093.
2. In June 2012, the Claimant and his wife moved into the subject property, a townhome located in Havre de Grace, Maryland.
3. On July 6, 2012, the Claimant and the Respondent entered into a contract to install a rear deck and screened-in porch to the subject property. Work on the project began in October 2012 and concluded in November 2012.
4. The original agreed-upon contract price was \$30,062.50.
5. The Claimant paid the Respondent the full contract price, \$30,062.50, in cash and by check.
6. The Respondent used the same asphalt roof shingles and other materials used by the home's original builder.
7. Before the project was concluded, the work was inspected by the appropriate building inspectors and other county officials and passed all inspections without incident.

8. At the conclusion of the work in approximately November 2012, both the Claimant and Respondent considered the project to be complete and performed to both parties satisfaction.

9. Approximately two months later, in January 2013, the Claimant began to observe water leaking from the roof in two different areas approximately four feet apart.

10. Specifically, the Claimant could see water fall from the soffit system directly to the floor below, discoloring the floor. CL Ex. 2.

11. Steady or driving rain would cause appreciable water leakage; light rains did not have a similar effect.

12. The Claimant contacted the Respondent to inform him of the water leaks.

13. The Respondent dispatched his nephew, Frank<sup>1</sup>, to inspect the roof and ameliorate the leaks.

14. Although the Respondent was not certain what was causing the water leaks he accepted responsibility for the necessary remedial work and did not bill the Claimant for any remedial efforts.

15. Frank went the Claimant's residence on three occasions in an effort to cure the leak. Frank initially caulked a visible hole in the roof and when this did not alleviate the continued leaks, he returned and removed a ridge vent located in the roof and covered the ridge vent with shingles.

16. Sometime thereafter, the Claimant's ceiling began to buckle and Frank returned to repair the buckled ceiling. The Claimant continued to experience water leakage during steady or driving rain.

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<sup>1</sup> The record is silent as to Frank's surname so I will use his first name only in this Decision.

17. In the two years following the completion of the project, Frank returned to the Claimant's home three times, the Respondent between five to six times, and the Respondent's colleague, Brian Sharpe, approximately four times in an effort to cure the continued leaks.

18. Mr. Sharpe installed a new Cobra ridge vent in the roof and replaced between ten to fifteen asphalt roof shingles. After completing this repair, Mr. Sharpe and the Respondent both believed this would resolve the continued water leakage.

19. Despite the efforts of the Respondent, Frank and Mr. Sharpe, the Claimant continued to experience water leakage during steady or driving rain, without any appreciable improvement.

20. The Claimant contacted the Respondent to advise him that the water leaks continued unabated and request that the Respondent pay the Claimant \$800.00 in order for him to obtain the services of a different contractor to complete the repairs.

21. The Respondent agreed and stated that he would tender payment in the sum of \$800.00 to the Claimant upon receipt of an itemized invoice from an MHIC licensed home improvement contractor who performed the repair work.

22. The Claimant did not readily acquiesce to the Respondent's conditions, the Claimant and Respondent began to quarrel, and the exchange grew heated and intemperate.

23. After this exchange, the relationship between the Claimant and Respondent devolved rapidly, and shortly thereafter all communication between the Claimant and Respondent ceased.

24. Sometime thereafter, the Claimant contacted New World Contractors of North East, Maryland (New World) to provide an estimate to perform the necessary curative work to resolve the water leakage.

25. On July 23, 2014, New World prepared a written proposal to replace the shingled roof with a rubber substrate, install metal flashing to create a barrier between the rubber and asphalt shingles and clean up and dispose of all debris. The contract price was \$2,650.00.

26. The work proposed by New World is not an equal replacement in terms of materials utilized, but is instead an upgrade to the work performed by the Respondent.

27. The cost to repair the leaks using materials equivalent to those used by the Respondent is \$1,200.00.

28. As of the date of the hearing, the Claimant's roof continues to leak during any steady or driving rain.

29. The Claimant's actual loss is the original contract price (\$30,062.50) minus the monies paid to the Respondent (\$30,062.50) plus the monies reasonably necessary to remediate the water leakage (\$1,200.00), which yields a sum of \$1,200.00.

## DISCUSSION

### *Governing Law, Controlling Regulations and Burden of Proof*

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) (2015). *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 (2015).

At a hearing on a claim for reimbursement from the Fund, the Claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2015); COMAR 09.08.03.03(A)(3). The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217

(2014). To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so,” when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep’t*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

For the following reasons, I find that the Claimant has proven eligibility for reimbursement from the Fund.

### ***Argument and Testimony of the Parties***

There is little factually in dispute in this matter. The Claimant and Respondent testified in accord and without dispute as to virtually all facts material to the case. The parties agreed that the Claimant entered into a contract with the Respondent for improvements to the Claimant’s home on July 6, 2012. The parties agreed that the home improvement involved the installation of a rear deck and screened-in porch to the Claimant’s home. The parties further testified that work on the project began in October and concluded in November 2012; that the original agreed-upon contract price was \$30,062.50 and was paid in full; and that at the conclusion of the work in approximately November 2012, both the Claimant and Respondent considered the project to be complete and performed to both parties satisfaction. Here the parties’ accounts diverge, but not significantly as to any dispositive matters.

The Claimant testified that approximately two months later, in January 2013, he began to observe water leaking from the roof into two different areas of the interior of his home, approximately four feet apart, and placed more than fifty phone calls to the Respondent in an effort to get the Respondent to return to the Claimant’s home and cure the leak. The Respondent dispatched two of his employees on multiple occasions to cure the leaks, to no avail, and the leaks continue unabated until today.

The Respondent did not disagree with the Claimant's description of the continued water leakage and, in fact, confirmed he had seen water penetrating the interior of the Claimant's home from the roof during a driving rain. The Respondent testified that he was, however, responsive to the Claimant's phone calls, whenever possible, and that despite his wife's ill health that occupied much of the Respondent's time and attention at that time, he made every effort, both by himself and through his colleagues, to cure the water leak. The Respondent stated that although he was unable to determine what was causing the water leak, he accepted responsibility for resolving it and never billed the Claimant for any of the work performed at any of the multiple remedial visits. In addition to these efforts, the Respondent testified that he agreed to pay the Claimant the sum of \$800.00, as the Claimant had requested of him, to employ the services of a different contractor to repair the water leak. The Respondent stated that he conditioned his putative grant of payment on the Claimant providing an invoice in that sum from an MHIC licensed contractor, and when the Claimant refused so to do and began to pour scorn upon him, telephonically, he ceased all communications.

Both the Claimant and Respondent agree that the Claimant continues to experience water leakage from the area of the home improvement work performed by the Respondent—the porch roof—and neither party can say with absolute certainty what is causing the water leaks.

The Fund argued simply that the Claimant contracted with the Respondent for a deck and screened-in porch without water leakage and the Claimant has not received the benefit of that bargain, despite the Respondent's best efforts to cure the leakage. Employing a *res ipsa loquitur* analysis, as discussed below, the Fund argued that the continued water leakage establishes that the Respondent's work was unworkmanlike, inadequate or incomplete, without the need to



establish a direct causal link between the Respondent's work and the continued water leaks; the Fund argued that it can be reasonably inferred from the undisputed facts of record.

I am persuaded that the Claimant and the Fund are correct.

### *Analysis*

There is no dispute that the Respondent held a valid contractor's license in 2012, and at all time relevant to this matter, when he entered into the home improvement contract at issue with the Claimant. Further, there is no dispute that the Claimant is an owner of the subject property and that there is no procedural impediment barring him from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(f) (2015).

There are no further material facts in dispute in this matter. The Claimant and Respondent contracted for the installation of a screened-in porch and deck to the Claimant's home. The Respondent performed the work as specified in the contract but shortly after completion of the work, the Claimant began to experience water leakage from the roof above the screened-in porch, during steady, driving rains. This water penetration, upon rainfall, has continued unabated despite the Respondent's repeated and best efforts to cure the leak.

The Maryland Court of Special Appeals has provided an instructive and detailed analysis on the history, evolution, adoption and applicability of the doctrine of *res ipsa loquitur* in this State:

The rule of *res ipsa loquitur* is limited by the following considerations: (1) The apparatus must be such that in the ordinary instance no injurious operation is to be expected unless from a careless construction, inspection or user; (2) Both inspection and user must have been at the time of the injury in the control of the party charged; and (3) The injurious occurrence or condition must have happened irrespective of any voluntary action at the time by the party injured.

...

It is merely one kind of circumstantial evidence, in which [a fact-finder] may reasonably infer both negligence and causation from the mere occurrence of the event and the defendant's relation to it. As was early suggested by the Court of Appeals, the doctrine serves to supply an inference.

*Chesapeake & Potomac Tel. Co. of Maryland v. Hicks*, 25 Md. App. 503, 515, 526 (1975)

(internal citations and quotations omitted) (emphasis added).

Discussing permitted inferences, the courts of appeal of this State have held that as the finder-of-fact, I am permitted to draw reasonable inferences from evidence in the record, but I may not make conclusions that strain logic or require leaps of reasoning. *See Motor Vehicle Admin. v. Atterbeary*, 368 Md. 480, 499 (2002); *North v. North*, 102 Md. App. 1 (1994); *Neal v. State*, 191 Md. App. 297 (2010).

Applying the fundamental concepts undergirding the doctrine of *res ipsa loquitur* to the facts of the case at bar, I find that it is a reasonable inference to draw that absent negligent installation, a new porch roof ought not to leak; that the Claimant continues to experience water trespass occasioned by water entering the interior of his home through the roof; that the installation of that roof above the screened-in porch was within the exclusive control of the Respondent and his employees; and the water leakage was not caused by any act of the Claimant. Thus, I find that "it is more likely so than not so" that the Claimant's continued water leakage was caused by the Respondent's unworkmanlike, inadequate or incomplete home improvement and, in turn, 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 Claimant may not be compensated for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). Further, the MHIC may deny a claim if it finds that the Claimant unreasonably

rejected good faith efforts by the contractor to resolve the claim. Md. Code Ann., Bus. Reg. § 8-405(d) (2015). Here, the Respondent agreed to pay the \$800.00 the Claimant requested to resolve the claim, with certain caveats. Although the evidence of record tends to suggest that the Claimant did not acquiesce to the Respondent's request for an invoice from an MHIC licensed contractor before he would tender the monies, the Respondent ultimately ceased all contact with the Claimant knowing the water leakage remained ongoing and unresolved. Considering the totality of the circumstances, I cannot conclude the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim, in violation of the controlling statute. *Id.*

MHIC's regulations offer three formulas for measurement of a claimant's actual loss, unless a unique measurement is necessary. COMAR 09.08.03.03B(3)(a)-(c). As explained more fully below, none of those prescribed formulas are appropriate in this case, and thus I shall apply a formula unique to the facts of this matter, as described below. COMAR 09.08.03.03B(3).

On July 23, 2014, the Claimant received a proposal from New World to repair the Claimant's screened-in porch roof and cure the continued water leakage. CL Ex. 1. Although the Claimant indicated the sum provided in the New World proposal, \$2,650.00, as the measure of his loss in his MHIC Claim, at the hearing, the parties agreed that the work proposed by New World is not an equal replacement of the work performed by the Respondent in terms of materials utilized, but is instead an upgrade to the work performed by the Respondent. Therefore, the costs contained in New World's proposal cannot reasonably serve as an accurate measure of the Claimant's loss and so a unique measure must be employed. COMAR 09.08.03.03B(3).

It is undisputed that the work was performed for the full contract price of \$30,062.50 and these sums were tendered by the Claimant to the Respondent at or before the November 2012 completion date. Thus, the Claimant's actual loss must be measured by the cost necessary to remediate the Respondent's roofing work, as the full contract work was performed for the full contract price. At the hearing, the Respondent, who has contracted for the installation of between twenty-five and thirty roofs in his approximately nineteen years of experience as a contractor, testified that the cost to install a replacement roof for the Claimant using materials equivalent to those used by the Respondent—wood laminate, tar paper, and asphalt shingles—would not exceed \$1,200.00. As this sum has not been disputed or refuted, and is the only reasonable measure of loss available to me, I find it is the correct measure of the Claimant's actual loss. COMAR 09.08.03.03B(3).

#### **PROPOSED CONCLUSION OF LAW**

I conclude, as matter of law, that the Claimant has sustained an actual and compensable loss in the sum of \$1,200.00, as a result of the Respondent's acts and omissions. *Chesapeake & Potomac Tel. Co. of Maryland v. Hicks*, 25 Md. App. 503, 515, 526 (1975); Md. Code Ann., Bus. Reg. §§ 8-401 and 8-405 (2015).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,200.00; 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;<sup>2</sup> and

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

**Signature on File**

November 23, 2015  
Date Decision Issued

\_\_\_\_\_  
Steven V. Adler  
Administrative Law Judge

*SVA*

SVA/da  
# 157917

<sup>2</sup> See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 1st day of February, 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.***

***Joseph Tunney***

***Joseph Tunney  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**