

IN THE MATTER OF THE CLAIM	* BEFORE LAURIE BENNETT,
OF LYNN DESAUTELS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-16-09338
FOR THE ALLEGED ACTS OR	* MHIC No.: 16 (90) 12
OMISSIONS OF JAMES CONLON,	*
T/A ELYSIAN ENERGY, LLC,	*
RESPONDENT	*

\* \* \* \* \*

**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 January 16, 2016, Lynn Desautels (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement in the amount of \$30,866.97 in alleged actual losses suffered as a result of a home improvement contract with the Respondent.

I held a hearing on August 5 and September 15, 2016 at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup>

The Claimant represented herself. Andrew L. Schwartz, Esquire, represented the Respondent, who was present. John D. Hart, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural regulations, 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 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B; COMAR 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**

Unless otherwise noted, I admitted the following exhibits on the Claimant's behalf:

1. The Claimant's summary, not dated
2. Contract, June 29, 2011
3. Invoice, August 24, 2011
4. Report from Vannoy & Associates, June 8, 2015
5. Professional history for Donald W. Vannoy, Ph.D., P.E., and Thomas M Krauth, P.E.

---

<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

6. Chronology of Key Events, not dated
7. Email from the Respondent to the Claimant and others, June 10, 2014
8. Email from Thomas Krauth to the Respondent and others, June 5, 2014
9. Email from the Claimant to Thomas Krauth and others, July 30, 2014
10. Email from the Respondent to the Claimant and one other person, July 16, 2014
11. Email strand starting with one from the Claimant to Thomas Krauth and one other person, July 30, 2014
12. Email from the Claimant to the Respondent and one other person, October 5, 2014
13. Email conversation starting with one from the Respondent to the Claimant, October 17, 2014
14. Email conversation starting with one from the Respondent to the Claimant and one other person, January 28, 2015
15. Email from the Respondent to the Claimant and one other person, May 5, 2015
16. Email from the Claimant to the Respondent, July 19, 2011; Proposal, Quality Control Construction, July 20, 2011
17. Invoice, Argent Heating and Cooling, LLC, July 5, 2011; Work Order, Argent Heating and Cooling, June 27, 2011
18. NOT ADMITTED Invoice, Edge Energy, January 5, 2015
19. Remediation Protocol, Environmental Solutions, Inc., with letter, August 26, 2014
20. Drawing, prepared at hearing
21. Drawing, prepared at hearing
22. Resume for Thomas M. Krauth, P.E.

I admitted the following exhibits on behalf of the Fund:

1. Notice of Hearing, June 21, 2016

2. Hearing Order, March 15, 2016
3. Respondent's licensing history for Elysian Energy LLC, August 3, 2016
4. Respondent's licensing history for Elysian Energy Solutions LLC, August 3, 2016
5. Home Improvement Claim Form, received by the MHIC on January 6, 2016
6. Letter from the MHIC to the Respondent, January 27, 2016

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

1. Email conversation from the Claimant to Thomas Krauth and one other person, April 22, 2014
2. Email conversation from the Claimant to Thomas Krauth and one other person, April 22, 2014, plus attachment
3. Letter from the Respondent's attorney to the Claimant, March 31, 2016
4. Letter from Environmental Solutions, Inc., August 26, 2014, with attachment
5. Email strand ending with email from Thomas Krauth, May 26, 2014

#### Testimony

The Claimant testified for herself and presented Thomas M. Krauth, P.E., an expert in roof insulation and ventilation.

The Respondent testified for himself.

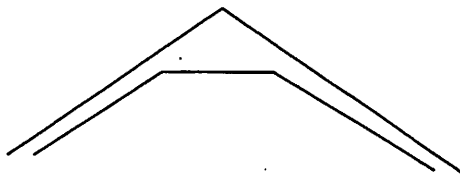
The Fund did not present witnesses.

#### **PROPOSED FINDINGS OF FACT**

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

1. At all times relevant, the Respondent was a licensed home improvement contractor in Maryland.

2. The Claimant is not the Respondent's spouse or other immediate relative; the Respondent's employee, officer, or partner; or an immediate relative of the Respondent's employee, officer, or partner.
3. The Claimant and her husband live in a single-family residence circa 1948.
4. A new roof was installed in 1994.
5. The Claimant bought the house in 1995 or 1996. She did regular maintenance on the roof and never observed dripping water, water stains or other evidence of water infiltration before April 2014.
6. The Claimant had her home tested for mold in 2001. The test was negative.<sup>2</sup>
7. The Claimant's house has a pitched roof. The attic is finished with drywall, leaving a small cavity between the drywall and the roof rafters. The drywall in the finished room does not completely follow the lines of the peaked roof; rather, the drywall includes a plateau that connects the two sides of the V, roughly as follows (the inside line is the drywall and the outside line is the roof):



8. In June 2011, before the Claimant first contacted the Respondent, she installed a “mini split” with a programmable thermostat in the finished attic.<sup>3</sup> A mini split provides heating

---

<sup>2</sup> The Claimant testified that she performed (or had someone perform) the mold testing ten years before she contacted the Respondent. She was not more specific about when the testing was done, who did the testing, and what type of testing. The Respondent did not challenge her testimony.

<sup>3</sup> The Claimant's expert, Thomas Krauth, wrote in his report that the mini split was installed in October 2011, after the Respondent's work. Clmt. Ex. 5, p. 2. According to the Claimant, Mr. Krauth's belief was based on her mistaken recollection. The evidence shows, and the Respondent does not assert otherwise, that she installed it before contacting the Respondent. Clmt. Ex. 17.

and cooling in the attic and, if used properly, helps maintain a consistent temperature and humidity level.

9. In June 2011, the Claimant consulted the Respondent about installing insulation in the attic at her residence. The Claimant's attic was not vented. Traditionally, venting is installed in an attic space or cavity with air running through it to allow moisture to be vented out of the house. Moisture in a house rises up and if it is not vented out, it can cause deterioration of materials and mold. Because the Claimant's attic cavity is small and she has environmental allergies, her insulation options were limited. Also, the Claimant has chemical sensitivities. The Respondent worked with her to identify insulation that would meet her health needs.
10. One option for dealing with a small cavity is to install a "hot roof." A hot roof is not vented and thus does not depend on air movement to move moisture out of the house. Rather, a hot roof relies on proper air sealing to ensure that moisture does not get into the roof assembly, come into contact with a cold surface and condense, and thus cause moisture damage.
11. A hot roof uses dense pack cellulose and rigid foam board as insulating materials. To ensure that moisture does not accumulate in the attic, the cellulose must be properly packed and the foam boards properly sealed. Dense packing can settle and voids can form, causing a loss of air sealing capacity, resulting in pockets where moisture can flow and condense. A hot roof tends to be air permeable. Densely packed cellulose is not solely reliable to prevent moisture even when perfectly installed and over time it loses its air sealing potential. The most common source of air infiltration is a light fixture, which the Claimant had in the finished attic ceiling.

12. On June 29, 2011, the Claimant and the Respondent entered into a contract in which the Respondent would, among other items, create a hot roof to improve the comfort and energy efficiency of the Claimant's residence. This insulation method entailed installing dense pack cellulose covered by a foam board skin.<sup>4</sup>
13. The Claimant paid the Respondent \$4,890.00, the full amount due under the contract.  
(Stipulation of the parties.)
14. The Respondent completed the work in August 2011. The Respondent did not observe any mold in the cavity when he performed his work.
15. At some unspecified time, the Respondent told the Claimant to run the mini split consistently to minimize condensation and maintain a consistent temperature. The Respondent, however, did not give more specific instruction, such as a proper temperature range, and he did not tell the Claimant that the insulation might fail and cause mold if she used the mini split in a specified manner. The Claimant did not run the mini split consistently.
16. Before the Respondent performed his work, the Claimant removed a whole house attic fan and bricked over the resulting hole. The Respondent did not tell the Claimant to re-install it.
17. The Claimant was initially satisfied with the Respondent's work. She perceived feeling more comfortable in the home and her utility bills were reduced. She made a favorable testimonial on the Respondent's website.
18. On April 1, 2014, the Claimant noticed moisture around a light fixture in the finished part of the attic and along the adjacent ceiling. She believed the roof was leaking.

---

<sup>4</sup> Claimant Exhibit 2 describes the specific scope of work.

19. The Claimant called her insurance company and advised that she had water damage from a leaky roof.<sup>5</sup>
20. The insurance company dispatched Key Cleaning to the property. Key Cleaning eventually removed about one-third of the drywall in the finished part of the attic as well as cellulose and foam board insulation due to widespread insulation dampness. Removal of the insulation material revealed mold in the attic cavity. Key Cleaning installed industrial dehumidifiers until the attic cavity was bone dry; when Key Cleaning removed the dehumidifiers, the moisture returned.
21. Because the ceiling was now open (*i.e.* drywall was removed), it was impossible to contain moisture in the attic and mold continued to grow.
22. On April 18, 2014, the Respondent inspected the property and agreed that the insulation system he installed failed and required replacement.
23. On April 21, 2014, the Claimant engaged Thomas Krauth, P.E., of Vannoy & Associates, to determine what was causing the attic moisture, and she introduced him to the Respondent via email.
24. On April 25, 2014, Mr. Krauth inspected the property. He observed voids in the cellulose, improperly sealed foam board and dampness and mold. By then, however, Key Cleaning had already disturbed the area and removed insulation materials. Mr. Krauth observed a ridge line that was stained, wet, and moldy as a result of moisture in the attic cavity. There was also discoloration due to decay fungi.
25. Discoloration does not happen in two weeks; rather, it develops over time. Thus, the discoloration was present before Key Cleaning did its work.

---

<sup>5</sup> Mr. Krauth wrote in his report that "water leakage through the attic ceiling was discovered and believed related to a roof leak." Clmt. Ex. 4. Mr. Krauth did not examine the roof for a leak. He based his report on the Claimant's report of a roof leak.



26. On an unspecified date, the Claimant had a roofer inspect the property. The roofer did not find any leaks. Subsequent investigations revealed no leaks in the roof.

27. In an email dated June 10, 2014, the Respondent wrote: "We tried a hot roof by dense packing between the rafters with cellulose, and it's not working. In short, I am paying to make this right. ...Access to the eaves is tight, but as the hot roof strategy did not work, [the Claimant and her husband] are interested in exploring a vented roof strategy." Clmt.

Ex. 7.

28. By November 24, 2014, the Respondent had not yet fixed the failed insulation strategy, although he continued to express his intention to. In an email dated November 24, 2014, the Respondent told the Claimant:

Things have been very challenging over the last few months. I'm sorry this is delaying reconciling this issue.

I am still in cost cutting mode, and waiting on payments from clients. We also start a large project Monday which will help with cash-flow, but we won't get paid until January. So, in terms of commitment, that's what I can promise. My hope is that it will be sooner, but I am fearful of missing payroll through the end of the year. Please keep that confidential (not that I suspect you'd tell anyone, it's more for me to declare).

In summary, I would like this to be behind us as I am sure you would as well. The end of January is the worse case, and sooner if my budget permits.

Clmt. Ex 13.

29. The Respondent did not respond to several follow-up emails from the Claimant until January 28, 2015, when he wrote to apologize for the delay occasioned by an unspecified organizational change that started in September 2014. He acknowledged he was trying the Claimant's patience but said he could do no more until his cash flow changed. He advised the Claimant that he set monthly reminders to continue their conversation.

30. On May 5, 2015, the Respondent emailed the Claimant, stating “I have struggled reconciling misgivings about your project for close to a year now. While they are several, I have one indisputable reason to consider the matter closed; our contract carried a one-year warranty.”<sup>6</sup> Clmt. Ex. 15. From that day forward, the Respondent refused to honor his commitment to fix the failed insulation strategy.
31. Damage in the attic cavity, including dampness and resulting mold, was initially caused by the failed insulation strategy and later by the removal of the drywall and insulation.
32. The Claimant paid \$4,890.00 or more to remove the insulation strategy and install a new one.
33. On January 6, 2016, the Claimant filed the Claim.

### DISCUSSION

The Claimant is seeking reimbursement from the Fund for losses she allegedly suffered as a result of a home improvement contract with the Respondent. 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), quoting Maryland Pattern Jury Instructions 1:7 (3rd. ed. 2000).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a); *see also* COMAR

---

<sup>6</sup> The Claimant is not pursuing a cause of action under the warranty. Rather, the Claimant is pursuing a claim under the Fund and in doing so she had three years from the date she “discovered or, by use of ordinary diligence, should have discovered the loss or damage.” Bus. Reg. § 8-405 (a), (d), (g). The attic cavity damage happened out of plain sight and she could not have discovered the damage sooner unless she removed the drywall for no obvious reason. The Claimant filed a timely Fund claim on January 6, 2016, within three years of first noticing a problem.

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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant proved that the Respondent was a licensed home improvement contractor. She further proved that he performed unworkmanlike or inadequate home improvement when he installed an insulation strategy at her house. My decision turns on two key factual determinations. First, assuming the success of the hot roof was dependent on the proper use of the mini split, the Respondent gave the Claimant inadequate instructions for running the machine. Second, a hot roof is an inadequate insulation strategy for the Claimant’s attic and even if it was an adequate strategy, it failed, causing mold damage.

As to the first factual determination, the Respondent testified that the Claimant needed to run the mini split consistently to reduce the accumulation of moisture in the cavity and he told her so. The Claimant testified that the Respondent told her to run the mini split consistently to minimize condensation. I do not find the Respondent’s instruction sufficient. If, as the Respondent claims, the success of his insulation strategy was dependent on the mini split, he needed to tell her more than simply that she needed to run it consistently. He needed to emphasize how crucial the mini split was and define exactly what consistent usage meant (*i.e.* 24/7 365 days per year, only during certain times when the attic or outside temperature or humidity is high, etc.).

After mold was discovered in the attic cavity, the Respondent installed a data logger near the mini split to measure the temperature, relative humidity, and the dew point in the attic. The Respondent wrote about the results in a May 22, 2014 email to the Claimant:

The x-axis is time, and Temperature (solid black line), Relative humidity (blue line) and dew point (dashed line) are tracked. The side’s y axis is Temp in F. The

right side is relative humidity. The quick building science tutorial is that relative humidity is the amount of moisture a given volume of air can hold at a given temperature. RH is a percentage. So, when it's really soupy, that's an indication of that the air is nearly saturated, sometimes even 100% RH. Also of note is that a given volume of air can hold more water at a higher temperature. Lastly, the dew point is the (surface) temperature at which water vapor will condense.

So, that shared, what we are looking for are times when the temperature in your attic = the dew point.

My \$0.02:

The outside data isn't telling me too much. We live in a mixed humid climate, and typical air exchange rates in our area mean a home's air is being replaced with outside air every two hours (or so).

The rafter data isn't telling me too much either.

When I compare the data from the data logger near the mini-split with the data from the logger I put over the desk (LOD), I notice a couple of things:

1. That the mini-split is not conditioning the entire space uniformly. If you line up both images you'll notice the Temp reading over the desk spikes over 80 after 5/1 (when you note you set AC to 74 and left it). However, the data from the logger across from the mini split (LAMS) shows the mini-split keeping that area at or under 74. What's germane is that the mini split needs to run a while to dehumidify. Typically we see short run times creating issues for homes that have grossly oversized AC. (It's called short cycling, and these homes feel cold and clammy.) I'd be interested in seeing if you could relocate a temperature control (basically move the thermostat) so that the call for heat or AC is coming from a spot away from the mini split. I also think conditioned air from below is coming up and falsely telling the mini-split that the attic is ok (more on that later).
2. If you look at May 2 and 3, you see the mini-split is doing a good job of managing the dew point. (See the dew point well below the temp consistently for the LAMS.) However, you look at the same time just a few feet away at the LOD, the dew point is above the temp. This is where your condensation is coming from.

Great [Respondent], I know I have condensation, What does that mean?

Here's what I think is happening. I think the natural air changes (*i.e.* the air infiltration in the form of drafts, open doors, like cracks, etc...) is bringing in moist outside air. This air is then rising up through your home (see good article on this "Stack Effect") and getting sequestered longer in your attic than it was before we did the air sealing. It's still leaking out, but couple that warm, moist air with a heat pump that doesn't run sufficiently long to uniformly condition the attic and you have problems.

I think we all agree the moisture isn't bulk from outside. It's possible the roof has deteriorated sufficiently to be holding water that then gets pushed into the attic. (A bunch of research has documented this phenomenon in frame walls with brick

vener. [sic] This article touches on it. While I can't rule that out, my opinion is that the stack effect + mini split = your problem.

Next steps:

1. The easiest solution would be a dehumidifier with a humidistat. You could connect that to the mini-split's condensate drain, and set it and forget it (maybe clean the bucket every now and then.[sic])
2. The next solution would be to investigate a control for the mini-split that includes a humidistat (I can't recall your model, but I know some mini-splits e.g. Mitsubishi's Mr. Slim has a very low AC setting that is effectively just a dehumidification setting). Ideally, this could be located toward one end of the attic, away from the mini-split.

...

Resp. Ex. 2, pgs. 1-2.

First, the record contains no evidence to suggest that the roof was in fact leaking or in any other way contributed to the moisture, resulting in mold in the attic. The Claimant initially thought the roof was leaking and she conveyed that thought to Mr. Krauth, who said as much in his report, but it turned out the roof was not leaking.

Second, the Respondent installed the data logger after Key Cleaning removed one-third of the drywall and thus the results were skewed. The Respondent testified that when Key Cleaning did its work, it changed the environment and invited moisture into the new cavity. Mr. Krauth opined that the data was irrelevant because the attic was open and any previous air sealing was gone, allowing moisture to accumulate in the attic on a "grand scale."

Third, the clear takeaway from the Respondent's explanation of the data logger is that the mini split is crucial to the insulation strategy and effectively using the mini split is far more complicated than just telling the homeowner to run it consistently. One does not need to understand the intricacies of the science and the data logger results to understand that.

In sum, the Respondent believes the insulation strategy failed because the Claimant did not run the mini split consistently, whatever that means. The Respondent is responsible for the Claimant's failure to properly use the mini split. For this reason alone, the Claimant has proven that the Respondent performed unworkmanlike and inadequate home improvement.

As to the second factual determination, the Respondent testified that he properly installed the dense pack cellulose and rigid foam board, making the insulation strategy airtight and thus effective. Mr. Krauth testified when he examined the attic, he observed voids where the cellulose had settled and breaks in the foam board joints. He opined that these failures meant that the insulation strategy was not air tight and that moisture could accumulate, causing mold to flourish. Mr. Krauth observed the attic cavity after Key Cleaning disturbed the area by removing damp insulation and foam board. Mr. Krauth testified that he observed voids and joint breaks in areas that a Key Cleaning employee could not have reached by hand. That may be true, but it is unknown whether Key Cleaning employees used hand tools to access hard to reach areas. No one from Key Cleaning testified to say what he observed when he first removed the drywall or exactly what he disturbed. I cannot conclude, based strictly on what Mr. Krauth observed, that the strategy was poorly installed.

That said, I do infer from the presence of moisture and mold in the cavity, in combination with the Respondent's assertion to the Claimant that his strategy was not working, that the strategy failed either because the Respondent did not properly pack the cellulose and/or seal the rigid foam boards, because he did not give the Claimant proper instruction on the mini split, or because the strategy is generally air-permeable.

The evidence shows that a hot roof is at best a risky proposition in an unvented attic. Mr. Krauth wrote:

The problems experienced at the subject property, including condensation, microbiological growth, and water damages, result from the deficient insulation/ventilation strategy recommended and installed by [the Respondent]. The widespread dampness, staining and mold growth at the underside of the roof sheathing is characteristic of air/vapor leakage through the attic ceiling/insulation and condensation on the roof sheathing. There is no evidence supporting other substantial sources of damage at the property.

...

A critical component to unvented enclosed rafter assemblies is the prevention of moisture laden interior air penetrating through the ceiling and into the rafter spaces where it can condense on cold surfaces. ...

Prior studies have shown that dense-pack assemblies are air-permeable. Prior failures have shown that even with the best attempts at air sealing, a perfect air seal and properly performing dense-pack insulated assembly is difficult to achieve. Studies have shown that even very small amounts of air leakage can carry enough moisture into the roof assembly to result in elevated moisture contents. Dense-pack insulation voids, seal failures at rigid insulation board joints and the ineffective insulation/air sealing behind the kneed walls can all contribute to air leakage of the roof assembly.

Clmt. Ex. 4, pgs. 2-3

On the other hand, the Respondent testified that the hot roof is a legitimate insulation strategy. Mr. Krauth testified as an expert in roof insulation and ventilation. His testimony was consistent with his written reports. I accept Mr. Krauth's opinion that the system failed because it is air-permeable even under the best circumstance. Air in fact infiltrated the attic cavity as evidenced by the dampness and mold that Key Cleaning observed when it opened the drywall.

The Respondent questions whether the Claimant's HVAC system is to blame for the attic moisture and mold. Mr. Krauth resolved this question:

There is no evidence of additional substantial contributing causes of the damages at the home. Roof leakage has been theorized however there was no evidence of roof leakage (despite significant precipitation) for over nine months while the roof framing was open and visible. Additionally, roof leakage is typically a localized occurrence that would not be expected to result in the widespread moisture and microbiological growth present with the roof assembly. There is no evidence of abnormally high interior moisture levels with the home. If this were a factor, it would have been expected to create condensation problems at earlier times. Lastly, it has been theorized that HVAC performance issues contributed to the issues however, there again should have been problems at earlier times and condensation reportedly formed when the attic unit was not even in operation.

Clmt. Ex. 4, p. 3. A preponderance of the evidence does not show that the HVAC was a significant contributing factor, if a factor at all.

There was evidence about whether the Respondent's insulation strategy met local building code requirements. Mr. Krauth opined that the strategy did not meet code. The

Claimant testified at first that the Respondent did not tell her to add venting to meet code and later that he probably did say so. The Respondent emphasized that he chose the hot roof strategy in part because the attic was not vented and the hot roof could withstand such a condition. If the Respondent believed that his chosen strategy required venting to meet code, he should not have installed the strategy until the attic was vented.

The Respondent testified that it is possible the attic fan changed his work. The Claimant testified that she had the attic fan removed before the Respondent installed the insulation strategy. She presented a July 20, 2011 proposal from Quality Control Construction to remove the fan and an email to the company advising that she needed the fan removed and the hole sealed before the Respondent did his work. The Claimant paid in full on the contract to remove the fan on August 11, 2011. Clmt. Ex. 16. I find it more likely than not that the Claimant removed the fan before the Respondent did his work.

The Respondent asserts that mold growth behind the mini split is evidence that the Respondent is not to blame because he did not work by the mini split. The evidence is insufficient to prove the point. A preponderance of the evidence shows that air permeated the attic cavity and caused dampness and mold that developed over time. Mr. Krauth testified that mold does not grow in an instant. Thus, I do not find that the mold instantly appeared when Key Cleaning removed the drywall.

For all of these reasons, the Claimant is eligible for compensation from the Fund. 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). 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. 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.

COMAR 09.08.03.03B(3)(c). In any event, 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.

Bus. Reg. § 8-405(e)(1), (5).

The Claimant asserts that she paid approximately \$30,866.97 to abate the mold, install a new insulation strategy, etc. The Claimant concedes, and the Respondent does not dispute, that she paid more than the amount she paid to the Respondent just to install a new insulation strategy, albeit a different system than the Respondent installed.<sup>7</sup> Using the formula under COMAR 09.09.03.03B(3)(c), the calculation is as follows:

Amt. paid to Respondent	\$4,890.00
Amt. paid for a new strategy	\$4,890.00
TOTAL	\$9,780.00
Less the orig. contract price	\$4,890.00
TOTAL LOSS	\$4,890.00

Thus, the Claimant's actual loss, for which she is eligible for compensation from the Fund, is \$4,890.00.

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

I conclude that the Claimant has sustained an actual and compensable loss of \$4,890.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

---

<sup>7</sup> The record does not disclose the actual figure, but I find as fact it was at least \$4,890.00.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,890.00; 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>8</sup> and

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

**Signature on File**

November 4, 2016  
Date Decision Issued

Laurie Bennett  
Administrative Law Judge

LB/sm  
#163777

---

<sup>8</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 8<sup>th</sup> day of December, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**