

IN THE MATTER OF THE CLAIM
OF MOZELL WILSON,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF LEROY MANNING,
T/A MANNING HOME
IMPROVEMENT,
RESPONDENT

* BEFORE KERWIN A. MILLER, SR.,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-17-06448
* MHIC No.: 16 (75) 1299
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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DISCUSSION
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On September 1, 2016, Mozell Wilson (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,335.00 in alleged actual losses suffered as a result of a home improvement contract with Leroy Manning, (now deceased) trading as Manning Home Improvement (Respondent).

I held a hearing on June 23, 2017 at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland 21031 (OAH). Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e)

(2015). The Claimant represented herself.¹ Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing.² Code of Maryland Regulations (COMAR) 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing 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); COMAR 09.01.03; 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

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

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|----------------|---|
| Clmt. Ex. 1 – | Contract between the Claimant and the Respondent, with Baltimore City guaranteeing payment to the Respondent on the Claimant's behalf, dated October 31, 2007 |
| Clmt. Ex. 2 – | Contract between the Claimant and the Respondent, dated July 26, 2007 |
| Clmt. Ex. 3 – | Loan and Grant Permit Requirement Form, undated |
| Clmt. Ex. 4 – | Wallace Roofing Company, Inc. Estimate, dated August 5, 2016 |
| Clmt. Ex. 5 – | Arocon Roofing and Construction, LLC, dated August 12, 2016 |
| Clmt. Ex. 6a – | Photo of front overview, dated June 25, 2016 |
| Clmt. Ex. 6b – | Photo of front overview, dated June 25, 2016 |

¹ The Claimant initially participated in-person. However, she left with her mobility van after we took our morning break and participated via telephone for the remainder of the hearing.

² Notice of the hearing was mailed to the Respondent at his only address of record by regular and certified mail on March 22, 2017, COMAR 09.08.03.03A(2). The regular mail was not returned but the certified mail was returned as unclaimed/return to sender on April 18, 2017. The Fund provided a Beverly D. Cromartie Funeral Home Obituary for the Respondent that indicated the Respondent's date of death was November 27, 2015. The obituary also contained a photo of the decedent which the Claimant identified as the Respondent. I determined that the Respondent passed away on November 27, 2015. I further determined that all reasonable attempts have been made to notify all interested parties and proceeded to hear the above-captioned matter.

- Clmt. Ex. 6c – Photo of front overview, dated June 25, 2016
- Clmt. Ex. 6d – Photo of left overview, dated June 25, 2016
- Clmt. Ex. 6e – Photo of rubber membrane, dated June 25, 2016
- Clmt. Ex. 6f – Photo of skylight, dated June 25, 2016
- Clmt. Ex. 6g – Photo of prior repair, dated June 25, 2016
- Clmt. Ex. 6h – Photo of pipe boot, dated June 25, 2016
- Clmt. Ex. 6i – Photo of gutter, dated June 25, 2016
- Clmt. Ex. 6j – Photo of gutter, dated June 25, 2016
- Clmt. Ex. 6k – Photo of prior repair, dated June 25, 2016
- Clmt. Ex. 6l – Photo of prior repair, dated June 25, 2016
- Clmt. Ex. 6m – Photo of left overview, dated June 25, 2016
- Clmt. Ex. 6n – Photo of fiber matting, dated June 25, 2016
- Clmt. Ex. 6o – Photo of fiber matting, dated June 25, 2016
- Clmt. Ex. 6p – Photo of inside damage, dated June 25, 2016
- Clmt. Ex. 6q – Photo of inside damage, dated June 25, 2016
- Clmt. Ex. 6r – Photo of inside damage, dated June 25, 2016
- Clmt. Ex. 6s – Photo of inside damage, dated June 25, 2016
- Clmt. Ex. 6t – Photo of inside damage, dated June 25, 2016
- Clmt. Ex. 7 – Hancock Claims Consultants Inspection, dated June 25, 2016

No documents were offered on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 – Hearing Order, dated February 28, 2017
- Fund Ex. 2 – Notice of Hearing, dated March 22, 2017
- Fund Ex. 3 – Home Improvement Complaint Form, with cover letter, dated September 22, 2016
- Fund Ex. 4 – Licensing History, dated June 6, 2017
- Fund Ex. 5 – Affidavit of Thomas Marr, dated June 8, 2017
- Fund Ex. 6 – Obituary, dated November 30, 2015 – December 7, 2015

Testimony

The Claimant testified in her own behalf and presented the testimony of Gloria Sullivan, the Claimant's sister.

The Fund did not present any 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 01-17305.

2. The Claimant is paraplegic as a result of several strokes she suffered in 2004 and utilizes a mobility van for transportation.

3. The Claimant participated in a program where the Mayor and City Council of Baltimore, acting through the Department of Housing and Community Development (DHCD) for the purpose of performing lead paint intervention and/or rehabilitation work, provided rehabilitation loan/grant money for property located in the geographical boundaries of Baltimore City.

4. On October 31, 2007, the Claimant and the Respondent entered into a contract to perform the following work:

Main Roof and Mansard Roof:

- Strip main roof and mansard roof to existing sheathing. Provide and install new sheathing as needed. Install new roof base over sheathing surface.
- Install a mop down rubberized membrane roof system over main roof. Remove all debris from roof and yard. Provide 10 year warranty (minimum).
- Install fiberglass roofing shingle, 3 tab square butt, self-seal, 225 lb., 25 years, over mansard roof surface approx. 1 ½ sq., as per specs.

Exterior Front:

- Remove and haul defective gutter and downspout. Install new white aluminum gutter and new white aluminum downspout with run away. Install one (1) new cap over brick chimney at main roof.

Exterior Front 2nd Floor:

- Encase cornice trim with white aluminum and vinyl at 2nd floor approx. 20 L/ft.

Exterior Front, Rear and Basement:

- Remove and haul (11) defective windows, provide and install (11) new white vinyl double-hung replacement windows, dual glazed, pivoting sash, half screen, wrap all exterior window trim with white aluminum per specs.

Exterior Front and Rear:

- Remove and haul (2) existing damage storm doors. Provide and install (2) new steel security doors, with knob lock, dead bolt, all necessary hardware as per specs.

Exterior Front:

- Install concrete forms at porch floor and pour new concrete (4") over existing porch floor, broom finish surface and tool finish edges approx. 80 sq. ft. Re-install existing porch railing, as per specs.
- Remove (3) existing concrete steps at front porch and haul from site. Provide and install (3) prefabricated concrete steps to match the dimensions of the existing steps secured to concrete porch, provide and install one new wrought iron handrail as per specs.
- Walkway – Breakup and remove existing concrete walkway to property entrance and haul debris from site. Pour new concrete slab (4") thick, broom finish surface, tool finish or feather edges. Remove all debris and clean entire work area at completion of concrete placement approx. 45 sq. ft. as per specs.
- Remove (4) concrete steps at main sidewalk and haul from site. Form and pour (4) new concrete steps at main sidewalk, provide and install one new wrought iron handrail as per specs.

- Main sidewalk - Breakup 2 concrete blocks and haul from site. Form and pour 2 concrete blocks at main sidewalk approx. 40 sq. ft. as per specs.

Exterior Rear:

- Break up concrete walkway, build a concrete access ramp for a wheel chair approx. 42"x72" as per specs.

2nd Floor Rear Bedroom (Right side):

- Remove and haul ceiling. Frame with 2"x4" ceiling joists at 16" o.c. over ceiling insulate R-11. Install 1/2" drywall, tape and spackle three times, sand to a smooth finish approx. 195 sq. ft. as per specs.

1st - 2nd Floors, Basement:

- Provide and install three (3) hardwired battery back-up smoke detectors (interconnected).

1st Floor Kitchen:

- Provide and install one (1) new GFCI duplex receptacle at sink.

2nd Floor Bathroom:

- Provide and install one (1) new GFCI duplex receptacle at sink.

Obtain Baltimore City Building Permit.

Remove from premises all debris accumulated as a result of work being done.

5. The contract stated that the work would commence within thirty (30) days of receipt of an Order to Proceed and proof that necessary lead intervention and/or rehabilitation funds have been placed in escrow.
6. The contract provided that the work be completed within sixty (60) days of the Order to Proceed.
7. The original agreed-upon contract price was \$19,590.00.

8. Between October 31, 2007 and December 25, 2007, the DHCD paid the Respondent \$19,590.00 on behalf of the Claimant.

9. The Respondent commenced and completed the work on the contract between October 31, 2007 and December 2007.

10. The Respondent did not install a rubberized membrane roof system over the Claimant's main roof.

11. The Claimant's roof started leaking in 2009 and continued to leak on and off during periods of heavy rain until 2016.

12. The Respondent patched up the Claimant's leaking roof on several occasions until approximately 2015, after which time the Claimant was no longer able to make any contact with the Respondent.

13. The Respondent passed away on November 27, 2015.

14. Liberty Mutual Home Insurance (Liberty) inspected the Claimant's roof in 2015 and the Claimant was made aware for the first time that the Respondent did not install a rubberized membrane roof system over her main roof.

15. The Claimant's roof was inspected by Hancock Claims Consultants (Hancock) on June 25, 2016. Hancock indicated that the Claimant's roof was comprised of asphalt roll out with seams sealed with tar. It also noted that there were repairs on the flat slope of the roof made by using a rubber membrane sealed with tar.

16. The Claimant entered into a contract with Arocon Roofing and Construction, LLC (Arocon) to repair and complete the work the Respondent performed on the Claimant's roof. Arocon performed its work on the Claimant's roof on or about August, 2016.

17. The cost of the Arocon contract with the Claimant was \$7,335.00. This amount included a \$570.00 skylight replacement cost that was not part of the original contract between the Claimant and the Respondent.

18. Arocon is a licensed home improvement contractor with the MHIC.

19. On September 1, 2016, the Claimant filed a claim with the MHIC, requesting reimbursement of \$7,335.00

20. The Claimant's actual loss is \$6,765.00.

DISCUSSION

In this case, 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).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* (3d 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.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);⁴ 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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

The Claimant and the Respondent entered into a home improvement contract in October, 2007 to renovate and rehabilitate the Claimant's home located at 114 Wicklow Road, Baltimore, Maryland 21229. The total contract price was \$19,590.00 and the Respondent was paid \$19,590.00 on the contract by the DHCD on the Respondent's behalf. It is undisputed that the contract required that the Respondent install a rubberized membrane roof system over the Claimant's main roof and failed to do so. It is also undisputed that, as a result of the Respondent's failure to install a rubberized roof system over the Claimant's main roof, the roof began to leak from 2009 to 2016. The Claimant testified credibly that although the Respondent attempted to patch the leaks several times from 2009 to 2015, the roof was never adequately repaired and continued to leak after periods of substantial rain.

The Claimant and her sister Gloria Sullivan both testified credibly and consistently that the Respondent entered into a contract with Arocon in August 2016 to repair and complete the work performed by the Respondent. Work on the Arocon Contract was performed on or about August 2016 at a cost of \$7,335.00. The work on the Arocon Contract included the same roof work contracted for under the contract with the Respondent. However, the Arocon Contract included a skylight replacement at a cost of \$570.00 that was not included in the original contract with the Respondent. Other than the \$570.00 cost for the skylight replacement that was not contracted for with the Respondent, the Fund did not contest the cost of the Arocon Contract and found it to be otherwise reasonable. Accordingly, I am satisfied that the Claimant established a compensable actual loss because of the Respondent's inadequate or incomplete home improvement.

I thus find that the Claimant is eligible for compensation from the Fund. Before I discuss the specifics of an award, I will briefly detour to discuss the statute of limitations in this type of case. The Business Regulation Article provides: "A claim shall be brought against the Fund

within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage.” Md. Code Ann., Bus. Reg. § 8-405 (2015). Upon hearing that the Claimant filed a claim in 2016 related to a contract signed in 2007, it would seem that the statute of limitations might bar the claim. After hearing the Claimant’s testimony, however, I find that her 2016 filing was within the three-year period after which she discovered, or should have discovered her loss.

At the hearing, the Claimant testified that she first became aware that the roof was leaking in 2009, however, she did not become aware that the Respondent did not install a new rubberized membrane roof system on her main roof until Liberty inspected her roof in 2015. The Claimant is paraplegic and could not have reasonably been expected to go up on her roof and discover the lack of a new rubberized membrane roofing system until she was notified by Liberty in 2015. Therefore, her claim is not barred by the statute of limitations because she filed her claim with the MHIC on September 1, 2016, within three years of when she discovered, or should have discovered, her loss.

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). 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).

Using the above formula, I have determined the Claimant's actual loss to be \$6,765.00 as shown below:

Amount paid to the Respondent:	\$19,590.00
<u>Plus amount paid to complete the project:</u>	<u>\$ 7,335.00</u>
	\$26,925.00
<u>Minus the original contract price:</u>	<u>\$19,590.00</u>
	\$ 7,335.00
<u>Minus the skylight replacement cost:</u>	<u>\$ 570.00</u>
Actual Loss:	\$ 6,765.00

Pursuant to the applicable law, 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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). Therefore, I recommend that the Fund award the Claimant for an actual loss sustained in the amount of \$6,765.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,765.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$6,765.00; 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;⁵ and

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

Signature on File

September 20, 2017
Date Decision Issued

Kerwin A. Miller, Sr.
Administrative Law Judge

KAM/cmg

KAM/cmg
#169998

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 7th day of December, 2017, 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