

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF CONCETTA SCHWENZ-KIRBY,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF MIKE COGHLAN,</b></p> <p><b>T/A MONTGOMERY COUNTY</b></p> <p><b>CONTRACTORS, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JOY L. PHILLIPS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: DLR-HIC-02-16-25332</b></p> <p><b>* MHIC No.: 16 (90) 238</b></p> <p><b>*</b></p>
---	--

\* \* \* \* \*

**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 16, 2015, Concetta Schwenz-Kirby (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$250.00 in alleged actual losses suffered as a result of a home improvement contract with Mike Coghlan, trading as Montgomery County Contractors, Inc. (Respondent).

I held a hearing on February 22, 2017 at the Largo Government Center, 9201 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented herself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or someone to represent him to appear, I proceeded with the hearing in his absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>2</sup>

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings 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:

- |                  |  |
|------------------|--|
| Claimant Ex. 1 - | Written statement of the Claimant, February 20, 2017                       |
| Claimant Ex. 2 - | Complaint, August 19, 2015.  |
| Claimant Ex. 3 - | Contract, January 5, 2013  |
| Claimant Ex. 4 - | Check to the Respondent, January 12, 2013                                  |
| Claimant Ex. 5 - | Proposal and proof of payment to Reliable Roofers, Inc., November 11, 2015 |
| Claimant Ex. 6 - | Two photographs  |

---

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

<sup>2</sup> Notice of the hearing was mailed to the Respondent at the address of record by certified and regular mail on October 19, 2016. COMAR 09.08.03.03A(2). The certified mailing was returned as unclaimed. The regular mailing was not returned as undeliverable.

I admitted no exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Certified mailing to the Respondent, returned as unclaimed  
Fund Ex. 2 - Licensing history for the Respondent, February 16, 2017  
Fund Ex. 3 - Home Improvement Claim Form, November 11, 2015

Testimony

The Claimant testified on her own behalf.

The Fund presented no 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 28521. He has been licensed since 1987. His license will expire in May 2017.
2. On January 5, 2013, the Claimant and the Respondent entered into a contract to replace the existing roof on the Claimant's home. The contract called for removal of the existing roof, examination of all wood for damage, replacement of plywood decking and felt paper, installation of vent pipe collars and flashing, installation of ice shields, cleaning gutters, and removal of debris. The contract stated that work would begin in one to two weeks and would be completed in one day. The contract provided for a three-year warranty.
3. The original agreed-upon contract price was \$6,385.00. An agreed-upon revision to the contract raised the contract price to \$7,305.00.
4. The work was completed by January 12, 2013, at which time the Claimant paid the Respondent in full, \$7,305.00.

5. Around November 11, 2015, a wet spot appeared on the ceiling of an upstairs room in the Claimant's house.

6. The Claimant called the Respondent on his cell phone, but the number had been disconnected. She tried a second telephone number, but no one ever answered that number and there was no voicemail.

7. The Claimant then called another roofer, Reliable Roofers, Inc., and hired it to repair the leaky spot in the roof.

8. Reliable Roofers discovered the source of the leak: debris and old plywood had been left under the shingles in the roof just above the leak. Reliable Roofers removed four to five shingles, cleaned out the debris, installed an ice and snow guard, and reinstalled the shingles. The cost of the project was \$250.00. The Claimant paid the full amount to Reliable Roofers on November 11, 2015.

9. The repair by Reliable Roofers fixed the leaky roof.

10. The Claimant's actual loss is \$250.00.

#### 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). "[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); *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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. He agreed to replace the Claimant’s roof on her home and provided a three-year warranty on the work. He completed the work within the agreed-upon time and the Claimant paid him in full. This occurred in January 2013.

Not quite two years later, a leak developed in the roof, causing water damage on the ceiling of a room on the second floor of the Claimant’s home. The Claimant immediately tried to call the Respondent to arrange for repairs, but she was unable to reach him on either of the telephone numbers she had for him. Knowing that winter was coming and the repairs needed to be made immediately, she called another contractor, Reliable Roofers, Inc. Reliable Roofers assessed the problem and repaired the leak by removing four to five shingles, clearing out some debris that had been left there, installing an ice and snow guard, and reinstalling the shingles. The repair cost only \$250.00 and fixed the problem. The roof has not leaked since then.

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Respondent left a small amount of debris under a few shingles when he replaced the roof in January 2013. This error allowed a leak to develop, which manifested itself in November 2015. I thus find 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 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).

Because the Claimant paid the Respondent in full at the time the roof was installed and then paid to repair the work done by the Respondent, the actual loss, according to this formula, is the amount she paid to repair the work, \$250.00. 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). The Claimant's actual loss is \$250.00, well within the maximum allowed by law. Accordingly, the Claimant is entitled to reimbursement of \$250.00. Md. Code Ann., Bus Reg. § 8-405(a).

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

I conclude that the Claimant has sustained an actual and compensable loss of \$250.00 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(c).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$250.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Maryland Home Improvement Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>3</sup> and

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

**Signature on File**

March 24, 2017  
Date Decision Issued

  
Joy L. Phillips  
Administrative Law Judge

JLP/dlm  
#167331

<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 1<sup>st</sup> day of May, 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**