



STATE OF MARYLAND

**D L L R**

DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
MARYLAND HOME IMPROVEMENT COMMISSION  
500 N. Calvert Street, Room 306  
Baltimore, MD 21202-3651

October 4, 2018

Claire Shapiro  
10028 Woodhill Road  
Bethesda, MD 20817

RE: Complaint/Claim: 16 (75) 931

Dear Claire Shapiro:

The Maryland Home Improvement Commission has completed adjudication of a total of 11 Guaranty Fund claims against contractor Richard Stearns t/a Honest Exteriors. The awards in those 11 cases total \$106,008.14.

As you were previously advised, under the Maryland Home Improvement Law, the Commission may not pay a total of more than \$100,000.00 in Guaranty Fund Claims against any one contractor. Because the total of the approved claims exceeds the \$100,000.00 limit, it is necessary for the Commission to pay the claims on a "pro-rated" percentage basis. Based on the total award amount of \$106,008.14 and the \$100,000.00 payment limit under the law, the Commission may pay 93.85% of each approved claim award.

You will receive a *pro-rated* payment from the Guaranty Fund totaling 93.85% of your approved claim award. Therefore, you will receive a payment in the amount of \$18,770.76.

Please allow six (6) to eight (8) weeks from the date of this letter to receive the award from the State Treasury. If you have any questions concerning this matter, please feel free to contact this office at 410-230-6178.

Very truly yours,

*Keyonna Penick*

Keyonna Penick  
Panel Specialist  
Maryland Home Improvement Commission

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE  
INTERNET: WWW.DLLR.MARYLAND.GOV • E-MAIL: DLOPLMHIC-DLLR@MARYLAND.GOV

LAWRENCE J. HOGAN JR, GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY

**IN THE MATTER OF THE CLAIM  
OF CLAIRE SHAPIRO,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF RICHARD STEARNS,  
T/A MASTER HONEST EXTERIORS,  
RESPONDENT**

**\* BEFORE BRIAN ZLOTNICK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: DLR-HIC-02-16-30776  
\* MHIC No.: 16 (75) 931  
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**PROPOSED DECISION**

**STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On April 13, 2016, Claire Shapiro (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for alleged actual losses suffered as a result of a home improvement contract (Contract) with Richard Stearns, trading as Honest Exteriors. (Respondent).

I held a hearing on March 3, 2017, at the Office of Administrative Hearings (OAH), in Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant

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

The Respondent failed to appear. After waiting twenty minutes for the Respondent or someone to represent him, and after determining that proper service had been made, I proceeded with the hearing.<sup>1</sup> 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

The Respondent did not submit any exhibits into evidence.

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

- CL #1 - Contract, dated January 22, 2015
- CL #2 - Cancelled check for \$16,557.00, dated January 25, 2015
- CL #3 - Cancelled check for \$8,000.00, dated July 15, 2015
- CL #4 - Cancelled check for \$8,577.00, dated July 24, 2015
- CL #5 - Cancelled check for \$7,000.00, dated September 2, 2015
- CL #6 - Photograph of siding, taken in August 2015
- CL #7 - Photograph of warped siding on house, taken in August 2015
- CL #8 - Photograph of siding beside front door, taken in August 2015
- CL #9 - Photograph of warped siding, taken in August 2015
- CL #10 - Photograph of uneven siding, taken in November 2015

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<sup>1</sup> A November 21, 2016 Notice of Hearing was mailed by the OAH to the Respondent by certified mail to his last address of record with the State Department of Assessments and Taxation (SDAT) (22835 Avenmar Drive, Leonardtown, Maryland 20650-2636) and was returned marked "vacant unable to forward." Code of Maryland Regulations (COMAR) 09.08.03.03A(2).

- CL # 11 - Green Guys Remodeling Proposal, dated December 6, 2015
- CL # 12 - Email form Brian Thomas to Respondent, dated January 23, 2015
- CL # 13 - Cancelled check for \$2,500.00, dated December 4, 2015
- CL # 14 - Cancelled check for \$5,000.00, dated December 11, 2015
- CL # 15 - Cancelled check for \$5,000.00, dated December 31, 2015
- CL # 16 - Cancelled check for \$2,800.00, dated January 8, 2016
- CL # 17 - Cancelled check for \$500.00, dated July 11, 2016
- CL # 18 - Photograph of sheathing, taken in December 2015
- CL # 19 - Purchase Order, dated December 2, 2015
- CL # 20 - Purchase Order, dated December 17, 2015
- CL # 21 - Contract with Oscar Ceron, dated September 8, 2015 – NOT ADMITTED
- CL # 22 - Invoice, dated December 27, 2015, - NOT ADMITTED
- CL # 23 - Contract with Oscar Ceron, dated January 4, 2015 – NOT ADMITTED
- CL # 24 - Proposal from Jim Motran, dated December 23, 2016
- CL # 25 - Letter from Austin Shay, dated June 4, 2016

I admitted the following exhibits on behalf of the Fund:

- GF # 1 - OAH Notice of Hearing, dated January 21, 2016
- GF # 2 - State Department of Assessments and Taxation (SDAT) printout
- GF # 3 - Hearing Order, dated September 22, 2016
- GF # 4 - Letter from David Finneran, dated February 13, 2017
- GF # 5 - Home Improvement Claim Form, dated April 17, 2016
- GF # 6 - Letter from Michael Miller to Respondent, dated April 13, 2016
- GF # 7 - Certified Mail Receipt, dated November 30, 2016, with attachments

Testimony

The Claimant testified on her own behalf and called Brian Burbage, Owner of Green Guys Remodeling, who was accepted as an expert in the field of siding installation and home remodeling, who testified on her behalf. The Respondent did not appear to testify or present the testimony of any witnesses. The Fund did not present the testimony of 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 103677. The Respondent's MHIC license expires on July 29, 2017. (GF #4).

2. On January 22, 2015, the Claimant and the Respondent entered into a Contract for the Respondent to remove her home's existing siding and underlayment and inspect for damaged or rotten wood. The Contract further specified the installation of new underlayment with vapor barrier insulation. Next, the project involved the installation of new eight inch tongue and groove heat treated Cambria wood siding. The Contract also specified extending the roof soffit with a new six inch Cambria fascia board with an ice and water-shield drip edge. The Contract also called for replacing two office windows and two living room windows. Finally, the Contract included re-installation of all gutters and downspouts. (CL #1).

3. The Contract price was \$49,670.00. (CL #1).

4. The Claimant paid the Respondent \$16,557.00 as a down payment for the Contract on January 25, 2015. (CL #2).

5. The Respondent began work on the Contract on or about July 15, 2015. Three different work crews worked on the Contract. Crew #1 began work in July 2015 by tearing down the existing siding and installing new siding. The siding boards were not flush with the windows and nails were exposed. The Claimant expressed her concerns to the Respondent who then inspected the project a few days later in July 2015 and agreed that the work was unacceptable. The Respondent removed Crew #1 from the project and placed Crew #2 on the job.

6. Crew #2 began performing work in July 2015 but did not fully inspect the sheathing underneath the existing siding. Within a week after Crew #2 had installed the siding, a couple of the siding boards were warped and a couple of the boards had fallen off the house.

7. During the project, the Claimant paid the Respondent \$8,000.00 on July 15, 2015 and \$8,577.00 on July 24, 2015. (CL #s 3 & 4)

8. In August 2015, some areas of the replaced siding had shifted, buckled and were warped. (CL #s 6,7,8, & 9)

9. The Claimant paid the Respondent \$7,000.00 on September 2, 2015. (CL #5).

10. The Claimant paid the Respondent a total of \$40,134.00.

11. Crew #2 stopped working on the Contract in September 2015. The project was not complete as there were still parts of the house that had the original siding.

12. In October 2015 the Respondent came to the project and indicated he would replace warped boards. Crew #3 came to the home in October 2015 and started replacing the warped siding. The siding was installed in an uneven manner. (CL #10).

13. The Claimant fired the Respondent in November 2015.

14. The Respondent failed to properly seal the siding to the existing windows and failed to allow for an air gap behind the siding in accordance with the siding manufacturer's specifications. (Testimony of Brian Burbage).

15. The work performed by the Respondent was unworkmanlike, inadequate and incomplete. (Testimony of Brian Burbage).

16. In December 2015, the Claimant hired Green Guys Remodeling to replace and fix the siding work performed by the Respondent. Green Guys used very little of the siding installed by the Respondent. (Testimony of Brian Burbage).

17. The Claimant paid Green Guys a total of \$15,800 for labor costs to replace the Respondent's work. (CL #s 13,14,15,16, & 17). The Claimant purchased the siding for Green Guys for a total cost of \$12,842.56. (CL #s 19 & 20).

18. On December 23, 2016, Jim Motran, a licensed roofer, provided a proposal to repair the roofing work performed by the Respondent at a cost of \$2,400.00. (CL #24).

19. The Claimant paid a total of \$31,042.56 to repair and replace the work performed by the Respondent.

### DISCUSSION

The first issue is whether the Respondent, who did not appear for the hearing, was issued proper notice of the hearing. "If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter." Md. Code Ann., Bus. Reg. § 8-312(h) (2015). MHIC's regulations further state that the hearing may proceed in a respondent's absence if the respondent has been served and has not obtained a postponement. COMAR 09.01.02.09.

The Respondent's MHIC license is current. Numerous attempts to notify the Respondent about this action have been made by the OAH, to his address of record, without success. Most recently, on November 30, 2016, a Notice of Hearing was mailed by the OAH to the Respondent by certified mail at his last address of record with the SDAT (22835 Avenmar Drive, Leonardtown, Maryland 20650) and it was returned marked "unclaimed unable to forward." COMAR 09.08.03.03A(2). An earlier Notice of Hearing was mailed by the OAH to the Respondent on November 21, 2016 by certified mail at the address listed on the Respondent's Contract with the Claimant (22835 Avenmar Drive, Leonardtown, Maryland 20650) and it was returned marked "not deliverable as addressed unable to forward." Under these circumstances I proceeded to hear the case absent the Respondent.

Turning to the merits of the case, 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).

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)). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant argued that the Respondent performed an inadequate home improvement because he was hired to replace the cedar siding on her home but was unable to complete the contract in an adequate manner. The project involved removing her home’s existing siding and underlayment, inspecting for damaged or rotten wood and the installing new eight inch tongue and groove heat treated Cambia wood siding. The Contract also involved replacing four windows, extending the roof soffit with a new fascia board and ice/water shield as well as reinstalling all gutters and downspouts.

Instead, the Respondent’s work resulted in warped and uneven siding boards with a few of the boards falling off the home. Further, the siding boards were not sealed and flushed with the windows. The Respondent recognized the poor nature of the work performed by the first work crew he assigned to the project, but the problems persisted even after a second and third work crew was assigned to fix these issues. The Claimant testified credibly regarding the poor workmanship performed by the Respondent and provided photographs that corroborated her testimony. She testified that she orally fired the Respondent from the project in November 2015 after he made several unsuccessful attempts to fix these deficiencies.



I find that the Claimant's testimony was compelling. Further, Brian Burbage, owner of Green Guys Remodeling and accepted as an expert in the installation of siding and home remodeling, testified that he observed warped siding around the windows and that when he pushed on the siding water would leak out. Mr. Burbage also noticed that water was dripping behind the gutter which indicated that the roof work performed by the Respondent was not done properly. Mr. Burbage opined that the Respondent's work was unworkmanlike, inadequate and incomplete which resulted in his company removing all of the siding installed by the Respondent and starting the project over from scratch.

For this and all of the reasons stated above, I find that the Claimant has met her burden of proof.

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). I do not find that the Respondent made any good faith efforts to resolve the claim as he sent three different crews to fix the problems with the siding and none of those crews were successful, thus I find that the Claimant acted reasonably in terminating the Respondent's contract since he had more than four months to correct his mistakes.

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). Of the three, 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).

The Claimant hired Green Guys Remodeling to correct the Respondent's mistakes and complete the Contract. The Claimant also received a proposal from Jim Motran, a licensed roofing contractor, to correct the roof overhang work performed by the Respondent. The Claimant paid Green Guys a total of \$15,800.00 for labor costs to replace the Respondent's work. The Claimant purchased the siding for Green Guys for a total cost of \$12,842.56. In addition, Mr. Motran's proposal was \$2,400.00 to fix the roof. Based on the above costs to correct and replace the Respondent's work, and in accordance with COMAR 09.08.03.03B(3)(c), the Claimant's loss is calculated as follows:

Amount paid to Respondent under original contract	\$40,134.00
+ Reasonable amount to repair	<u>\$31,042.56</u>
TOTAL	\$71,176.56
- Less the original contract price	<u>\$49,670.00</u>
TOTAL/ACTUAL LOSS	\$21,506.56

However, the MHIC may not award from the Fund more than \$20,000.00 to one claimant for acts or omission of one contractor. COMAR 09.08.03.03D(2)(a). In this case, the Claimant has proven that her total actual loss is \$21,506.56. Accordingly, the Claimant is entitled to reimbursement of \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(3)(c).

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$21,506.56 as a result of the Respondent's acts and omissions. The Claimant's compensable loss due to the statutory limit is \$20,000.00. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03D(2)(a); and COMAR 09.08.03.03B(3)(c).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 Maryland Home Improvement Guaranty Fund grant the Claimant's claim; and

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

**Signature on File**

May 24, 2017  
Date Decision Issued

BMZ/emh  
#168244

\_\_\_\_\_  
Brian Zlotnick  
Administrative Law Judge

<sup>2</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 5<sup>th</sup> day of July, 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.***

***Sachchida Gupta***

***Sachchida Gupta  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**