

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF RYAN MURRAY,</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 CHAD LANE T/A</b></p> <p><b>DUNNE WRIGHT SERVICES LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE EILEEN C. SWEENEY,</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>*</b></p> <p><b>* OAH No.: DLR-HIC-02-17-08963</b></p> <p><b>* MHIC No.: 16 (90) 939</b></p>
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
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PROPOSED CONCLUSION OF LAW  
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**STATEMENT OF THE CASE**

On June 23, 2016, Ryan Murray (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$6,332.40 in alleged actual losses suffered as a result of a home improvement contract with Chad Lane, trading as Dunne Wright Services LLC (Respondent).

I held a hearing on June 28, 2017 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312(a) (2015). The Claimant represented himself. Andrew Brouwer, Assistant Attorney General, Department of Labor,

Licensing and Regulation (Department), represented the Fund. The Respondent failed to appear. After waiting fifteen minutes for the Respondent or someone to represent him, I proceeded with the hearing in the Respondent's absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>1</sup>

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); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### **ISSUE**

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

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|----------------|---|
| Clmt. Ex. 1    | August 11, 2014 Renovation Summary, with attachments                  |
| Clmt. Ex. 2    | September 18, 2014 Recap of Totals                                    |
| Clmt. Ex. 3    | Work Write-Up, revised September 16, 2014                             |
| Clmt. Ex. 4A-E | Photographs   |
| Clmt. Ex. 5    | January 13-28, 2016 emails between Melissa Murray and the Respondent  |
| Clmt. Ex. 6    | January 14, 2016 Certified Mail Receipt                               |
| Clmt. Ex. 7    | April 21, 2016 Roof Proposal from Nations Roof, LLC (Nations Roof)    |
| Clmt. Ex. 8    | June 21, 2016 letter from the Claimant and Melissa Murray to the MHIC |

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<sup>1</sup> Notice of the hearing was mailed to the Respondent at the address of record by certified mail on April 17, 2017, COMAR 09.08.03.03A(2), and not returned unclaimed.

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The Respondent failed to appear at the hearing. Thus, no exhibits were submitted on his behalf.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 March 23, 2017 Hearing Order
- Fund Ex. 2 April 17, 2017 Notice of Hearing
- Fund Ex. 3 July 7, 2016 letter from the MHIC to the Respondent, with attachment
- Fund Ex. 4 June 5, 2017 licensing information relating to the Respondent
- Fund Ex. 5 June 20, 2017 letter from the MHIC to "To Whom It May Concern" relating to Nations Roof
- Fund Ex. 6 June 21, 2017 letter from the MHIC to "To Whom It May Concern" relating to Michael Etsen

Testimony

The Claimant testified in his own behalf and presented the testimony of Melissa Murray (Claimant's wife).

The Respondent was not present. Thus, he did not present the testimony of any witnesses in his behalf.

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.

2. On or about September 16, 2014, the Claimant and his wife entered into a contract with the Respondent (Contract) for renovations to a home they had purchased.<sup>2</sup> The Contract included, among other things, the installation of exhaust fans in two bathrooms.

3. The agreed-upon Contract price was \$114,703.40, which included \$103,594.00 for labor and materials, a reserve of \$10,359.40 for anticipated change orders, \$450.00 for architectural and engineering plans, and \$300.00 for permits.

4. The total cost under the Contract for the exhaust fans was \$645.00 (labor and materials).

5. The Contract did not contain start or completion dates.

6. The renovations were financed by First Home Mortgage.

7. The Respondent began work on the renovations sometime in September or October 2014.

8. The Respondent applied a mud or tar-like sealant to the roof around the vents for the exhaust fans.

9. The costs relating to change orders entered into by the parties consumed the \$10,359.40 reserve.

10. First Home Mortgage paid the Respondent in draws, totaling \$114,703.40.

11. The Respondent completed the renovations and the Claimant and the Claimant's wife moved into the home sometime in June 2015.

12. After a heavy rain, sometime in December 2015 or January 2016, the Claimant and his wife noticed water dripping from the vent lights in the ceilings of the master bathroom and the adjacent bathroom.

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<sup>2</sup> The Claimant testified that he planned to move into the home as soon as the renovations were complete and an occupancy permit was obtained.

13. On January 13, 2016, the Claimant's wife emailed the Respondent advising him of the leaks in the bathrooms and resulting water damage. The Claimant's wife further advised the Respondent that she and the Claimant "had someone look at the roof [who] stated that the two new exhaust fans were improperly installed. [That person] stated that the boots were placed over the vent and exhaust vent without flashing them to the existing roof. Instead[,] they were installed with only roofing tar over them, causing the leaks in both bathrooms." (Clmt. Ex. 5.)

14. On January 14, 2016, the Claimant sent a letter to the Respondent by certified mail advising him of the aforementioned issues with the Respondent's work.

15. On January 17, 2016, the Respondent emailed the Claimant's wife asking her to forward the report from the roofing company that looked at the roof and stating that he would be happy to send someone to look at the vents. The Respondent further stated, "The vents have been in place for over a year so I am questioning if they were installed incorrectly why it took this long to leak." (Clmt. Ex. 6.)

16. On January 18, 2016, the Claimant's wife emailed the Respondent that the roofer had not given her a report – he had just given a verbal explanation of the alleged deficiency and taken photographs of the vents.

17. On January 19, 2016, the Claimant's wife emailed the photographs of the roof to the Respondent and asked him to contact her to set up a time for him to look at the roof. On the same date, the Respondent emailed the Claimant's wife that he was sending his roofer in the next day or two to perform any needed repairs on the roof.

18. The Respondent did not send a roofer and the Claimant did not hear from him again.

## DISCUSSION

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);<sup>3</sup> *see also* COMAR 09.08.03.03B(2)<sup>4</sup> (“The Fund may only compensate claimants for 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.

A claimant against the Fund has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2014); Bus. Reg. § 8-407(e)(1); 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)).

In this case, the Claimant contended that the work done by the Respondent on the home, owned by the Claimant and his wife, was unworkmanlike and inadequate.

The Respondent did not appear at the hearing to dispute the Claimant’s assertions.

Based on the licensing information submitted into evidence by the Fund, I find by a preponderance of the evidence that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. I find for the following reasons, however, that the Claimant has not proven eligibility for compensation.

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

<sup>4</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

The Claimant testified that the Respondent completed work on the home sometime in June 2015 and that First Home Mortgage paid the Respondent in draws totaling \$114,703.40. After a heavy rain, sometime in December 2015 or January 2016, the Claimant and his wife observed a steady drip of water coming from the vents for the exhaust fans installed by the Respondent in two bathrooms.

The Claimant submitted into evidence photographs showing that a mud or tar-like sealant had been applied around the vent pipe the Respondent installed in the roof above the master bathroom. According to the Claimant, the Respondent should have instead installed shingles. The Claimant submitted a photograph of the vent pipe to the other bathroom, also surrounded by a mud or tar-like sealant. According to the Claimant, the Respondent did not properly install flashing around that vent pipe.

The Claimant testified that he sent a letter to the Respondent by certified mail on January 14, 2016, advising the Respondent of the aforementioned issues with his work.<sup>5</sup> In addition, the Claimant submitted into evidence emails from the Claimant's wife to the Respondent reporting the leaks and the Respondent's response indicating that he would send a roofer to the property. According to the Claimant, the Respondent never sent a roofer and never fixed the leaks.

The Claimant testified that Mike Etsen of Nations Roof,<sup>6</sup> looked at the roof and at the exhaust fans and vents installed by the Respondent and advised the Claimant that the vents had been improperly installed. Specifically, the Respondent improperly applied a mud or tar-like sealant around the vents where they passed through the roof.

The Claimant's wife's testimony essentially corroborated the Claimant's.

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<sup>5</sup> The Claimant did not submit a copy of the letter into evidence.

<sup>6</sup> As discussed below, the Claimant did not provide Mr. Etsen's title or position.

For the following reasons, I find that the Claimant failed to prove by a preponderance of the evidence that the Respondent performed unworkmanlike and inadequate home improvements.<sup>7</sup>

The Claimant submitted into evidence a Proposal from Nations Roof, which included removing the shingles from around the two leaking vents; replacing deteriorated sheathing with plywood and adding nails as needed; installing a new underlayment over the exposed wood decking; installing two new air vents and sealing with an application of cement and fabric; and installing new shingles. The Claimant did not present the testimony of any expert witness, however, including a representative from Nations Roof.

I did not place weight on the Claimant's testimony as to what Mr. Etsen told him regarding deficiencies in the Respondent's work. The Claimant testified that his wife called Nations Roof during a break in the hearing and was advised by the secretary with whom she spoke that Nations Roof was licensed under license no. 02108411. However, the Fund submitted into evidence a letter from the MHIC indicating that Nations Roof has never been licensed with the MHIC.

Furthermore, the Claimant did not provide information about Mr. Etsen's position at Nations Roof or Mr. Etsen's expertise relating to roofing/vent installation. The Fund submitted into evidence a letter from the MHIC indicating that Mr. Etsen was a licensed salesman for another roofing company from May 22, 2012 through May 22, 2016. I find, however, that the salesman licensure did not establish that Mr. Etsen was qualified to render an opinion regarding the quality of the Respondent's work. Thus, I can only speculate as to the cause of the leaks.

The Fund argued in closing that an award is appropriate in this case, even without an expert's testimony or report. The Fund suggests that I may infer unworkmanlike or inadequate

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<sup>7</sup> The Claimant did not allege that the Respondent's work was incomplete.



work simply from the fact that water was leaking from the vent approximately six months after work on the job was completed.<sup>8</sup> I disagree as there could be other causes of the leaks. Indeed, Nations Roof's Proposal refers to deteriorated sheathing, which could have conceivably been the cause of the leaks. The removal of the deteriorated sheathing may have been the Respondent's responsibility at the time of the installation of the vent, but I cannot make that determination without the benefit of expert testimony or an expert's report.

Accordingly, I find that the Claimant is not eligible for compensation from the Fund.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not proven by a preponderance of the evidence that he sustained an actual and compensable loss 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 deny the Claimant's claim; and

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

**Signature on File**

August 1, 2017  
Date Decision Issued

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Eileen C. Sweeney  
Administrative Law Judge

ECS/emh  
#169114

<sup>8</sup> Although the Respondent did not appear at the hearing to testify, I note that he indicated in a January 17, 2016 email that the vents had been in place for over a year.

**PROPOSED ORDER**

***WHEREFORE, this 21<sup>st</sup> day of August, 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**