

**IN THE MATTER OF THE CLAIM**  
**OF CAROL VOGEL,**  
**CLAIMANT**  
**AGAINST THE MARYLAND HOME**  
**IMPROVEMENT GUARANTY FUND**  
**FOR THE ALLEGED ACTS OR**  
**OMISSIONS OF MICHAEL T.**  
**MASTERSON,**  
**T/A MASTERSON, L.L.C.,**  
**RESPONDENT**

\* **BEFORE STUART G. BRESLOW,**  
\* **AN ADMINISTRATIVE LAW JUDGE**  
\* **OF THE MARYLAND OFFICE**  
\* **OF ADMINISTRATIVE HEARINGS**  
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\* **OAH No.: DLR-HIC-02-17-18404**  
\* **MHIC No.: 17 (90) 648**

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On February 25, 2017, Carol Vogel (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,050.00 in actual losses allegedly suffered as a result of a home improvement contract with Michael T. Masterson, trading as Materson L.L.C. (Respondent).

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

herself. Kris M. King, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Respondent represented himself.

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 (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (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 except where noted:

- Clmt. Ex. 1 Offered but not admitted
- Clmt. Ex. 2 Letter from Kiet T. Nguyen, P.E., Global Forensic Investigations, Inc., to Voretta Gray, Property Field Adjuster, USAA, dated November 8, 2012
- Clmt. Ex. 3 Letter from Carol Belock, Warranty Services Department, GAF, to Claimant, dated January 17, 2013
- Clmt. Ex. 4 Letter from Respondent to the MHIC, dated February 7, 2017
- Clmt. Ex. 5 Proposal from Respondent to Claimant, dated February 26, 2013 with invoice and copy of credit card statement showing payment of \$642.00 to Respondent and copy of check in the amount of \$1,283.00 to Respondent
- Clmt. Ex. 6 Email chain between Claimant and Respondent from April 3, 2013 through April 25, 2013
- Clmt. Ex. 7 Email from Claimant to Robert Nelson, Managing Principal, Ener G, dated July 25, 2016 and response from Robert Nelson dated that same day

- Clmt. Ex. 8 Proposal from Respondent to Claimant, dated December 2, 2013
- Clmt. Ex. 9 Photograph of recessed light near skylight
- Clmt. Ex. 10 Proposal from Respondent to Claimant to install board around skylights, dated January 28, 2016 along with email chain between Respondent and Claimant from January 28, 2016 through February 8, 2016
- Clmt. Ex. 11 Email from Claimant to Respondent, dated March 9, 2016
- Clmt. Ex. 12 Letter from Claimant to Respondent, dated August 15, 2016
- Clmt. Ex. 13 Energy Inspection Report from Ener G, L.L.C. to Claimant, dated May 10, 2016
- Clmt. Ex. 14 Email from Robert Nelson, Ener G, to Claimant, dated February 22, 2017

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, dated July 3, 2017
- Fund Ex. 2 Hearing Order, dated June 9, 2017
- Fund Ex. 3 Licensing History of Respondent, printed September 7, 2017
- Fund Ex. 4 Home Improvement Claim Form, received by MHIC on February 25, 2017
- Fund Ex. 5 Letter from Michael Miller, Investigator, MHIC to Respondent, dated March 23, 2017

Testimony

The Claimant testified in her own behalf and presented no other witnesses.

The Respondent testified in his own behalf and presented no other witnesses.

The Fund did not present 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 51122.

2. In February 2009, the Respondent, through his predecessor company, installed a new roof on the home owned by the Claimant. The roof shingles were supplied by GAF.

3. The roof was sold with a warranty from GAF. The roof began to leak and in September 2012, the roof was replaced by GAF which contracted with Harry and Sons for the roof installation.

4. After the new roof was installed by Harry and Sons, the roof, once again, began to leak. GAF inspected the roof and determined that the leak was not caused by improper shingles, but was due to inadequate ventilation that resulted in condensation. GAF refused the Claimant's warranty claim.

5. The Claimant hired Kiet T. Nguyen, P.E. (professional engineer) of Global Forensic Investigations, Inc., in November 2012 to inspect the roof and try to determine the cause of the water infiltration in the Claimant's home. As part of his investigation, a high intensity water attack to the roof was conducted. The roof was intact and no leakage occurred. Mr. Nguyen ultimately concluded that the water stains in the ceiling were a result of high humidity in the attic and the lack of sufficient air circulation.

6. As a follow-up to the report issued by Forensic Investigations, Inc., the Claimant contacted the Respondent to prepare a proposal to improve the ventilation in the attic so as to improve airflow and reduce the humidity in the attic which caused condensation build-up and leakage through the ceiling.

7. On February 26, 2013, the Respondent provided a proposal to install roof vents and round vents in the roof for a total price of \$1,925.00. The Claimant accepted the proposal and paid the Respondent in full in April 2013.

8. The Claimant did not receive all of the vents that were contained in the proposal due to a mistake in calculation by the Respondent. The Respondent was able to install three inch vents and explained to the Claimant that due to the improper framing design of the roof, he could not install the six inch vents as originally envisioned.

9. On December 2, 2013, the Respondent provided a proposal to the Claimant for the installation of four new model 1750 roof vents into the roof. This proposal was accepted and the roof vents were installed in early May 2014 at a price of \$650.00.

10. In December 2015, water appeared on the floor which seemed to be coming from recessed lights in the ceiling.

11. Water that may appear in one part of a ceiling may not originate in the area immediately above the water leak. Water may often travel down trusses and materialize at a low point in the ceiling.

12. The Claimant, believing that the water may be coming from the nearby skylights contracted with the Respondent in January 2016 to inspect and fix the skylights by adding one by six inch boards around the skylights that had been removed by Harry and Sons when it installed the roof. The total cost for this work was \$475.00 which was paid by the Claimant in early February 2016.

13. On March 9, 2016, the Claimant notified the Respondent that the skylights must not have been the cause of the leak since she observed water in her recessed lights and water damage to the ceiling.

14. The Claimant contacted Mr. Nguyen and on March 24, 2016, the Claimant, the Respondent, and Mr. Nguyen met to inspect the roof and determine the cause of the water leak.

15. Mr. Nguyen was perplexed and did not offer a course of action to correct the leakage problem.

16. On May 10, 2016, following an inspection of the Claimant's home, the Claimant received a report from Robert Nelson, P.E., which included a number of recommendations including installation of a continuous vented soffit to replace round vents.

17. One of the recommendations from Ener G was to have the ceiling penetration for the recessed lights caulked between the fixture and the drywall. He also recommended new sealed light fixtures to replace the old ones.

### 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).<sup>1</sup> “[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);<sup>2</sup> 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.”

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<sup>1</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the several contracts with the Claimant.

The Respondent did not perform unworkmanlike, inadequate or incomplete home improvements. In this case, the Respondent and the Claimant have had a long standing business relationship since February 2009 when the Respondent's predecessor company installed a new roof on the Claimant's home. Several years later, the Claimant experienced water leaks in the roof and contacted the roofing shingle supplier, GAF, to honor its warranty and fix the roof. GAF replaced the roof in September 2012, but instead of using the Respondent to do the work, it hired Harry and Sons to replace the roof.

Once again, the Claimant noticed that the roof showed evidence of water leakage. She contacted Global Forensic Investigations, Inc. in November 2012 to investigate the cause of the leak. The investigator, Kiet T. Nguyen, concluded that the attic lacked sufficient air circulation.

She then contacted GAF in January 2013 and, after sending an inspector to inspect the roof, determined that its shingles were not the cause of the leak and advised the Claimant that the cause of the leaks was due to inadequate ventilation.

Having a previous business relationship with the Respondent when he installed a roof for the Claimant in 2009, the Claimant, based on the GAF letter and the report from Mr. Nguyen, asked the Respondent to install roof vents and round vents in the roof to improve the ventilation and stop the leaks. A proposal was offered at a cost of \$1,925.00, accepted, and work completed by the Respondent in April 2013.

An additional four roof vents were proposed in the Respondent's proposal dated December 13, 2013, which was accepted and installed by the Respondent in May 2014 at a cost of \$650.00.

When water appeared to be leaking from the recessed lighting adjacent to the skylight, the Claimant asked the Respondent to inspect the situation. When Harry and Sons installed the roof, it removed the one by six inch board around the skylights. Since water can travel in a roof system, the Respondent recommended that new boards be installed to allow a better fit on the frames. A proposal to do this was presented by the Respondent to the Claimant on January 27, 2016 and the project was completed in February 2016 at a cost of \$475.00.

The water leak issues continued after the installation of the boards around the skylights. In a meeting with the Claimant, the Respondent, and Mr. Nguyen held in March 2016, Mr. Nguyen was unable to suggest any further recommendations to address the water leak problem. He did not state that the work performed by the Respondent was unworkmanlike or inadequate.

The Claimant, who was not satisfied with Mr. Nguyen's inability to make further recommendations to fix the leak, contacted Ener G to conduct an inspection and prepare a report to address the water leak issue. The report was issued on May 10, 2016 in which many recommendations were made including having an electrician install sealed can lights to prevent air leakage. He stated that using can lighting that is not air tight allows conditioned air to migrate up into the attic areas that allows condensation to form and drip from the lights. He made eight other recommendations, only one of which involved having a continuous vented soffit installed to replace the two inch round vents. Although the report states that the vents were only two inches, the Respondent testified, under oath, that they were, in fact, three inches. I find



the testimony of the Respondent more credible than the unsworn statement of the Ener G representative, who was not present at the hearing to provide testimony.

The Claimant has the burden of proving that she sustained an actual loss as a result of unworkmanlike, inadequate, or incomplete home improvement. There was no evidence introduced that the Respondent performed an unworkmanlike or incomplete home improvement. The Respondent performed the work that he was contracted to do by the Claimant. Although the total number of vents he installed was fewer than specified in the proposal, this shortfall was due to a calculation mistake by the Respondent. He installed the vents that he intended to install although the amount was incorrectly written in the proposal.

The Claimant hired a professional engineer to assess the issue, Mr. Nguyen, and based on his report, the Respondent made his proposal. The work was performed in a workmanlike manner. Prior to undertaking the work, the Respondent advised the Claimant that the roof design was improper and that limited his ability to adjust the ventilation in the attic; however, he used his best efforts to do so, despite these restrictions. When the leakage reappeared in the recessed lights, he examined the skylights and determined that the previous roofer, Harry and Sons, did not install the boards around the frame of the skylights that would insure a better fit. Since water can travel in a roofing system, the Respondent, in good faith, fixed the skylights to its original condition, which did not cure the leak problem because it subsequently reappeared. Mr. Nguyen met with the Claimant and Respondent in March 2016, but Mr. Nguyen was unable to determine why the venting that was installed did not cure the leak problem and was perplexed by the situation because the Respondent had done exactly what he had recommended. Mr. Nguyen is a licensed professional engineer.

Finally, a representative from Ener G issued a report containing many recommendations, including the replacement of the existing recessed lights for sealed lights. This would prevent conditioned air to migrate in the attic areas that allows condensation to form and drip from lights. Since leaking from the recessed lights is an issue in this case, it would not have been the responsibility of the Respondent to replace the lights as that is an electrical issue and not a roofing issue. The Claimant cannot claim that the Respondent performed an inadequate job if there is evidence that other factors, unrelated to roofing, may have been the cause of the leakage problem. Again, the burden of proof is on the Claimant to prove that the work was inadequate. If there are recommendations that were made to fix the leak that were not related to roofing issues, then the Claimant cannot establish that the work performed by the Respondent, who only worked on the roof, was inadequate. Finally, the evidence is clear that the Respondent performed the work that he agreed to do and, therefore, the Claimant cannot establish that the work performed by the Respondent was incomplete.

I thus find that the Claimant has not sustained an actual loss and is not eligible for compensation from the Fund. The Fund concurs with this finding.

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

I conclude that the Claimant has not sustained an actual and compensable loss of \$3,050.00 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(2).

#### **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**

November 28, 2017  
Date Decision Issued

Stuart G. Breslow  
Administrative Law Judge

SGE/cj  
#170529



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 311

PHYSICS 311

PHYSICS 311

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