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| <p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF CHARRISSE CROSBY-THOMAS,</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 EDGAR BRADY,</b></p> <p><b>T/A ABC ROOFERS, INC.,</b></p> <p><b>RESPONDENT</b></p> | <p>* BEFORE WILLIAM F. BURNHAM,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No. DLR-HIC-02-19-23332</p> <p>* MHIC No. 18 (90)<sup>1</sup> 801</p> <p>*</p> <p>*</p> <p>*</p> |
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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On June 21, 2018, Charrisse Crosby-Thomas (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,070.00 in actual losses allegedly suffered as a result of a home improvement contract with Edgar Brady, trading as ABC Roofers, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>2</sup> On July 15, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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<sup>1</sup> The Home Improvement Claim Form entered as Guaranty Fund Exhibit Number Five reflects the MHIC case number as 18 (75) 801. Because 18 (90) 801 is used on more than one document, I use it here as the MHIC case number.

<sup>2</sup> All references to the Business Regulation Article are to the 2015 Replacement Volume and 2019 Supplement.

On August 28, 2019, the OAH issued a Notice of Hearing (Notice I) to the Claimant and the Respondent via certified and first class mail at the parties' last addresses of record. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Respondent's Notice I, addressed to the Respondent on Thistle Road in Baltimore, was returned as undeliverable on September 6, 2019 (first class mail) and September 19, 2019 (certified mail).

On October 30, 2019, the OAH issued a Notice of Hearing (Notice II) to the Claimant and the Respondent via certified and first class mail. The Claimant's Notice II was sent to her address of record, and the Respondent's Notice II to a new address, on South Hilton Street in Baltimore, provided to the OAH by the MHIC. On October 31, 2019, the OAH issued a third Notice of Hearing (Notice III) to the Claimant and the Respondent via certified and first class mail. The Claimant's Notice III was sent to her address of record, and the Respondent's Notice III was sent to the South Hilton Street address, a Clay Lodge Lane address in Catonsville, and to the Respondent's Personal Representative on Keyser Road in Baltimore, Maryland. The MHIC provided the additional addresses to the OAH. All of the notices stated that a hearing was scheduled for November 13, 2019, at 9:30 a.m., at the OAH in Hunt Valley, Maryland, and that failure to attend the hearing might result in "a decision against you."

None of the Claimant's notices were returned, and the Respondent's Notices II and III were not returned as undeliverable, or for any reason. In addition, the OAH did not receive any requests for postponement from the Respondent before the date of the hearing.<sup>3</sup>

I held a hearing on November 13, 2019 at the OAH. Md. Code Ann., Bus. Reg. § 8-407(e). Andrew J. Brouwer, Assistant Attorney General, Department of Labor (Department),<sup>4</sup> appeared and represented the Fund. The Claimant was present and represented herself. Neither the Respondent nor anyone authorized to represent the Respondent appeared.

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<sup>3</sup> Andrew J. Brouwer, Assistant Attorney General, indicated that the Respondent's Personal Representative stated by phone that he would not attend the scheduled hearing because the Respondent's estate was closed in 2014.

<sup>4</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

An Administrative Law Judge can proceed with a hearing in a party's absence if the party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice and failed to appear and, after waiting over fifteen minutes, I convened the hearing as scheduled.

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. 2019); 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 behalf of the Fund:

- GF Ex. 1. MHIC Hearing Order, dated July 9, 2019;
- GF Ex. 2. Notice of Hearing, dated October 31, 2019;
- GF Ex. 3. Notice of Hearing, dated October 30, 2019;
- GF Ex. 4. Notice of Hearing, dated August 28, 2019;
- GF Ex. 5. Letter from Joseph Tunney, Chairman, MHIC, dated July 5, 2018; and attached Home Improvement Claim Form, filed June 21, 2018;
- GF Ex. 6. MHIC I.D. Registration and Occupational/Professional License History, dated October 29, 2019;
- GF Ex. 7. Affidavit of David Brown, dated October 30, 2019;

GF Ex. 8. Register of Wills Estate Record, Baltimore County, re: Edgar R. Brady, dated October 28, 2019;

GF Ex. 9. State Department of Assessment and Taxation (SDAT) General Information, A.B.C. Roofers, Inc., undated; and

GF Ex. 10. Letter from Donald L. Rosenberg, Esquire to Andrew Brouwer, Assistant Attorney General, dated November 6, 2019.

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

CL Ex. 1. Complaint Form, dated December 20, 2017 and attached letter, dated June 1, 2018;

CL Ex. 2. Estimate from Charm City Roofing, dated October 12, 2017;

CL Ex. 3. ABC Roofers, Inc. contract (Contract) and attached Specifications for a Fiberglass Built Up Roof, dated December 30, 2015;

CL Ex. 4. ABC Roofers, Inc., receipt for payment in full, dated December 31, 2015, and copy of a cashier's check, dated January 7, 2016.

The Respondent did not attend the hearing and offered no exhibits for admission.

#### Testimony

The Claimant testified on her own behalf. The Respondent did not attend the hearing or offer any witnesses. The Fund did not present any witnesses.

#### **PROPOSED FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. The MHIC issued the Respondent licenses to operate as a home improvement contractor eighteen times between May 1983 and August 2016 under MHIC registration number 3850.

2. The Respondent died on or about September 8, 2013. Thereafter, someone else continued the Respondent's business.<sup>5</sup>

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<sup>5</sup> The Respondent's son may have continued the Respondent's business. I will refer to the contracting party as the Respondent's business.

3. On December 30, 2015, the Claimant and the Respondent's business entered into a contract (Contract) to install a new ten-year built-up fiberglass roof to the entire main top flat roof at 2414 Oswego Avenue in Baltimore, Maryland (Property); a single family row home. The Contract also provided that the new roof was "guaranteed for a period of 10 (ten) years providing it is coated 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> years at owner's expense by ABC Roofers, Inc." (CL. Ex. 3.) The guarantee covered workmanship and materials only, and was not transferable unless agreed upon by ABC Roofers, Inc.

4. There is at least one other roof on a lower level of the Property that was not included in the Contract, and not repaired by the Respondent's business.

5. The Contract's original agreed-upon price was \$2,070.00.

6. On or about December 30, 2015, the Claimant paid a \$700.00 deposit to the Respondent. On or about December 31, 2015, the Claimant paid the remaining contract price of \$1,370.00.

7. The Respondent began and completed the work on December 31, 2015.

8. The new roof installed by the Respondent did not leak.

9. In October 2017, the Claimant telephoned the Respondent in order to schedule a coating<sup>6</sup> in accordance with the ten-year guarantee. The Claimant was referred to Charm City Roofers and informed by Charm City Roofers that ABC Roofing, Inc. was no longer in business.

10. On October 12, 2017, Charm City Roofing provided an estimate to replace and coat the second floor flat roof using silver-coat, and to install a new architectural shingle roof on the rear porch at the Property.

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<sup>6</sup> There is no explanation or definition of coating in the record. The specifications in the Contract use the phrase "coat of hot asphalt" as a finish to the roof seam.

11. The Claimant did not have any repairs made to the roof after December 31, 2015.
12. The Claimant sold the Property in 2018. Prior to sale, the Property was inspected by the purchaser. The inspection revealed no defects, but the roof needed a new coating. To complete the sale, the Claimant gave concessions to the purchaser, but not specifically for any matter related to the roof.
13. The Claimant filed a claim with the Fund on June 21, 2018 seeking an award of \$2,070.00.

### 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., Bus. Reg. § 8-407(e)(1); 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 make a claim against the Fund only if the owner resides in the home as to which the claim is made. Md. Code Ann., Bus. Reg. § 8-405(2)(i). 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”). “[A]ctual 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 not proven eligibility for compensation from the Fund for an actual loss.

The Claimant and the Respondent's business<sup>7</sup> entered into a home improvement contract on December 30, 2015 to perform some work on the roof of the Property. The Contract provided for the following work to be performed:

Install a new 10 (ten) year built-up fiberglass roof to the entire main top flat roof as per attached specifications.<sup>8</sup>

(CL Ex. 3). There is a handwritten note on the Contract that provides -- "Front Mansard is Fine."

The total cost of the Contract was \$2,070.00 and the Claimant paid \$700.00 immediately and \$1,370.00 after the work was completed on December 31, 2015. The Contract included the following:

The new roof(s) on the above building, located at [the Property] is guaranteed for a period of 10 (ten) years providing it is coated 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> years at owner's expense by ABC Roofers, Inc. This guarantee covers workmanship and materials only. If premature failure occurs before [the] end of guarantee a credit will be applied to the purchase of a new roof from ABC Roofers[, Inc.] only, based on original cost. This contract is not transferable unless agreed upon by ABC Roofers[, Inc.].

The Claimant testified that in 2015 the Property's roof leaked, so she contacted ABC Roofers, Inc. to repair the leaky roof. According to the Claimant, an ABC Roofers, Inc. salesperson wrote the Contract entered as Claimant Exhibit Three.<sup>9</sup> She initialed and signed the Contract, and so did ABC Roofer, Inc.'s representatives. She contracted for a new roof with a ten-year warranty.

According to the Claimant, in order to comply with the requirements of the ten-year guarantee, she called ABC Roofers, Inc. in October 2017 to schedule the first of four coatings. The Claimant testified that when she called ABC Roofers, Inc., she was told via a recording to

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<sup>7</sup> The Respondent was deceased and could not have entered into a contract with the Claimant. The Fund indicated that it treated this claim as one of a claimant who had a contract with a licensed Maryland contractor because ABC Roofers, Inc. had a license.

<sup>8</sup> The specifications describe the process.

<sup>9</sup> The ABC Roofers, Inc. representative signatures and initials are illegible.

call Charm City Roofing, and she did so. According to the Claimant, she was informed by Charm City Roofing that the Respondent was deceased and ABC Roofers, Inc. was managed by the Respondent's son. She was further advised that the son was unable to continue to run ABC Roofers, Inc. At that time, the Claimant decided she had no guarantee from ABC Roofers, Inc., and requested an estimate from Charm City Roofing for replacement of the Property's roof. The Claimant testified that the estimate she obtained was for a roof replacement because she determined she had no warranty on the roof she purchased in 2015. She testified that she did not have the roof replaced.

The Claimant testified that when she sold the property in 2018, she could not obtain a roofing certificate, and the purchaser's home inspection revealed that a coating was necessary. The lack of a roofing certificate and the need for coating did not cause her to lower the price of the Property. The Claimant testified that the concessions she made to the purchaser at the time of sale did not relate specifically to the roof. The Claimant argued that she should recover the cost of the 2015 roof repair because the Respondent was dead when she entered into the Contract and ABC Roofers, Inc. was therefore unlicensed, and because she did not have a ten-year guarantee after the Respondent's business closed.

As an initial matter, if the Respondent's business was not licensed, there could be no recovery. The Fund allows compensation by an owner for an actual loss that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). The Fund treated this matter as if the Respondent's business was a licensed contractor. *See fn.7 supra.*

The Claimant purchased a roof from the Respondent's business. That roof came with a ten-year guarantee for workmanship and materials. The Claimant was obliged to purchase a coating from ABC Roofers, Inc., every two years four times over the life of the guarantee.



There is no dispute that the Claimant attempted to comply with the conditions of the guarantee. There is no dispute that ABC Roofers, Inc., was out of business when she called in October 2017 to schedule the first coating.

However, the Claimant's claim fails for the following reasons. First, the Complainant does not own the Property. An owner may make a claim against the Fund only if the owner resides in the home as to which the claim is made. Md. Code Ann., Bus. Reg. § 8-405(f)(2)(i). If the owner does not reside in the property, an owner must not own more than three residences or dwelling places. *Id.* § 8-405(f)(2)(ii). In either scenario, a claimant must own the property, and here the Claimant does not.

Second, the Fund allows a claimant to recover for an actual loss that results from an act or omission by a licensed contractor. An "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. Here, there was no actual loss due to the act or omission of a licensed contractor.

The Claimant testified that her roof leaked in 2015 and she hired the Respondent's business to fix it. By all accounts, the roof was repaired on December 31, 2015 and did not leak again. When the Claimant sold the Property in 2018, the inspection obtained by the purchaser revealed no defects. The inspection did reveal that the roof needed a coating, but that did not affect the asking price of the home. In addition, none of the concessions<sup>10</sup> the Claimant gave the purchaser related specifically to the roof. Therefore, no unworkmanlike, inadequate, or incomplete home improvement occurred as a result of the Respondent's business's roof repair.

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<sup>10</sup> Whatever the concessions were, they were not identified in the evidence presented at the hearing.

To illustrate the point, the Claimant obtained an estimate for a new roof, but never had the work completed, because it was not necessary. The preponderance of the evidence is that the Respondent's business stopped the roof from leaking in December 2015. The work completed by the Respondent's business was workmanlike, complete and adequate. Therefore, there was no act or omission by a licensed contractor that warranted the roof's restoration, repair, replacement, or completion. Consequently, no actual loss occurred.

Finally, the Claimant's argument that the Fund should compensate her because she was deprived of the ten-year guarantee, due to the fact that she could not purchase the first coating, is not a claim of unworkmanlike, inadequate, or incomplete home improvement. It sounds as a warranty claim and the Commission may not make an award from the Fund for such a claim. *See Md. Code Ann., Bus. Reg. § 8-405(e).*

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405, 8-407 (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.

December 5, 2019  
Date Decision Issued

WFB/sw  
#183326

**CONFIDENTIAL**  
William F. Burnham  
Administrative Law Judge

PROPOSED ORDER

*WHEREFORE, this 28<sup>th</sup> day of January, 2020, 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*

*Chairman*

*Panel B*

*MARYLAND HOME IMPROVEMENT  
COMMISSION*

