

IN THE MATTER OF THE CLAIM OF MICHAEL FOX AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF CHRISTOPHER GARLISS AND HIGHPOINT REMODELING, INC.	* MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 19(75)683 * OAH CASE NO. LABOR-HIC- * 02-21-11220 *
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 8, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 8, 2021, concluding that the homeowner, Michael Fox (“Claimant”) failed to prove that he suffered a compensable actual loss as a result of the acts or omissions of Christopher Garliss and Highpoint Remodeling, Inc. (collectively, “Contractor”). *ALJ Proposed Decision* p. 10. In a Proposed Order dated January 28, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On April 21, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Eric London appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Claimant sought to introduce new evidence but failed to demonstrate that the documents he wanted in evidence were not and could not have been discovered before the OAH hearing. Therefore, the Panel’s

review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the replacement of the roofs on the Claimant's home and shed, the removal of skylights, the installation of new skylights, and interior work at the Claimant's home. The ALJ found that the Contractor's performance under the contract was incomplete because it failed to install a starter strip of shingles on one side of the shed roof. *ALJ's Proposed Decision* p.8. However, the ALJ held that the Claimant failed to prove the cost to complete the contracted work because the Claimant presented only an estimate for the replacement of the entire shed roof and failed to demonstrate that the replacement of the entire roof was necessary.

On exception, the Claimant argued that the ALJ erred in denying an award but did not identify evidence in the record demonstrating that the removal and replacement of the shed roof installed by the Contractor was necessary to remedy the missing starter strip. The Commission finds that the Contractor's incomplete performance could have been remedied by the installation of the missing starter strip. Because the Claimants did not present evidence of the cost to install the starter strip, the Commission agrees with the ALJ that the Claimant failed to prove the amount of their actual loss and, therefore, is not entitled to a Guaranty Fund award.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 27th day of April 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is

AFFIRMED;

- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Michael Shilling
Chairperson –Panel
Maryland Home Improvement
Commission

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MICHAEL R. FOX,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF CHRISTOPHER M.</p> <p>GARLISS T/A HIGHPOINT</p> <p>REMODELING, INC.</p>	<p>* BEFORE SUSAN A. SINROD,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-21-11220</p> <p>* MHIC No.: 19 (75) 683.</p> <p>*</p>
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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 April 14, 2020, Michael R. Fox (Claimant)¹ filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$3,100.00 in actual losses allegedly suffered as a result of a home improvement contract with Christopher M. Garliss, trading as

¹Mr. Fox is the only claimant listed in the OAH file because he filed his Claim under his name alone. However, the Claimant's wife also resides in the home and she is named on the Contract and she is technically a claimant as well. I will refer to the Claimant's wife as Ms. Fox throughout this hearing to distinguish her from the Claimant where necessary.

Highpoint Remodeling, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I conducted a hearing on July 8, 2021 via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. 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 OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant submitted the following exhibits which were admitted into evidence:

- Cl. Ex. #1- Document created by the Claimant listing text exchanges with the Respondent and narrative regarding the timeline and interactions with the Respondent, dated June 2021; copies of checks showing payments to the Respondent; Contract, dated September 28, 2017; three photographs, dated November 7, November 8, and December 8, 2017; estimate from Landmark Roofing, dated May 16, 2019
- Cl. Ex. #2- Five photographs of exterior of home, undated

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Cl. Ex. #3- Letter from the Respondent to Richard Neuman, Mediator, Consumer Protection Division, dated February 20, 2018

Cl. Ex. #4- Document created by the Claimant listing inaccuracies in Cl. Ex. #3, undated

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

The Fund submitted the following exhibits, which were admitted into evidence:

Fund Ex. #1- Notice of Remote Hearing, dated June 1, 2021

Fund Ex. #2- Hearing Order, dated April 22, 2021

Fund Ex. #3- Letter from the MHIC to the Respondent, dated May 8, 2020; Home Improvement Claim Form, received by the MHIC on April 11, 2020

Fund Ex. #4- Licensing History, dated June 10, 2021

Testimony

The Claimant testified and presented the testimony of Teresa Fox, his wife.

The Respondent testified and did not present other witnesses.

The Fund did not present any witness testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor.
2. On September 28, 2017, the Claimant, Ms. Fox, and the Respondent entered into a contract wherein the Respondent agreed to replace the roof on the Claimant's and Ms. Fox's home and shed, and to complete some interior work including installation of new skylights in the living room of the home (Contract). The Respondent was also to remove skylights from the upstairs of the home and replace them with drywall and paint.
3. The original agreed-upon Contract price was \$26,527.00.

4. The Claimant paid the Respondent a total of \$26,014.50 in the following installments:

- September 28, 2017- \$7,850.00
- November 16, 2017- \$16,147.00
- December 14, 2017- \$2,017.50

5. The Claimant was initially satisfied with the roof replacement. However, regarding the interior work, the drywall in the bedroom where the Respondent covered the skylights collapsed on November 17, 2017, spreading dust and debris everywhere.

6. As a result, the Claimant's bed frame broke, and the Claimant lost use of the bedroom for approximately three weeks. Extensive cleaning was required.

7. As a result of the problems with the drywall, the Claimant suggested to the Respondent that \$700.00 be deducted from the total Contract price. The Respondent reluctantly agreed to the deduction and accepted the final payment of \$2,017.50 on December 14, 2017.

8. In December 2017, the Claimant noticed that the shed was missing a strip of starter shingles on the bottom edge of one side of the shed. The Claimant waited until the weather got warmer and informed the Respondent in March 2018 that it needed to be repaired.

9. The Claimant tried multiple times to get the Respondent to return to install the starter shingles. The Respondent finally responded by saying he would fix the starter shingles if the Claimant paid the \$700.00 he deducted for the damage caused by the collapsed drywall in the bedroom.

10. In the Contract, the price for replacement of the entire shed roof was \$1,650.00.

11. The Claimant obtained an estimate from Landmark Roofing to fix the missing starter strip of shingles. The estimate was for \$3,800.00 to replace the roof.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for 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." Bus. Reg. § 8-401.

The only issue before me today is whether the Claimant is entitled to recovery from the Fund due to the missing starter strip of shingles. Ms. Fox testified regarding the problems with the interior work the Respondent performed on the home. When the drywall collapsed, it spread spackle, drywall dust and debris everywhere, requiring extensive cleanup. As a result, when the Claimant paid the Respondent the final check for the work, he proposed a \$700.00 deduction, which was comprised of \$75.00 for a bed frame that broke as a result of the collapse, \$199.99 for the repair of scratches to a rail, \$25.00 to dry-clean the bedspread, \$440.00 for a cleaning crew, and \$60.00 for the time Ms. Fox spent cleaning. According to Ms. Fox, the Respondent agreed to the deduction, stating that he just wanted the "nightmare" to be over.

At the end of December 2017, the Claimant and Ms. Fox noticed that shingles were missing from the shed roof. They did not bring it to the attention of the Respondent until March

2018 because it was a cold winter and they did not find the matter so urgent as to have the Respondent fix it during the cold weather. They also had a one-year warranty on the roof from the Respondent, so they knew that as long as they brought the problem to the attention of the Respondent during that year, the problem would be fixed.³ When they did bring it to the Respondent's attention in March 2018, the Respondent said he would fix it once the Claimant paid him the \$700.00 outstanding for the interior work he performed in the home.

The Claimant testified that the wind could not have blown off the starter shingles. It is an eight-foot section that must be installed prior to installation of the remaining shingles. According to the Claimant, in order to fix the missing starter strip of shingles, all of the shingles must be removed from that side of the roof and then re-installed after installation of the starter shingles. The Claimant noted that when the Respondent did his walk-through of the completed work, it was 10:00 at night and he would not necessarily have seen that the starter strip was missing. The Claimant obtained an estimate from Landmark Roofing to fix the shed roof. Cl. Ex. #1, p.16. The estimate was for \$3,800.00. It is unclear from the estimate whether that price was for replacement of the missing shingles or replacement of the whole side of the roof.

The Respondent testified that when he did his walk-through after the he completed the roofing work, the shed roof installation was finished correctly. He admitted that the starter shingles were currently missing but he did not know why. He doubted that the wind blew them off because the shingles are supposed to be able to withstand 135 mile per hour winds. The Respondent agreed that he offered to fix the starter strip of shingles if the Claimant paid him the \$700.00 he deducted from the Contract price.

³ There was testimony at the hearing regarding the Respondent's failure to register the roof for warranty, an item the Claimant paid for as part of the Contract price. However, the Claimant did not further develop this particular issue at the hearing, and it was not part of the amount the Claimant is seeking to recover from the Fund.

The Respondent insisted that the entire side of the roof did not need to be removed in order to install the starter strip. He said it is a simple, inexpensive fix that would only take him ten to fifteen minutes.

This decision ultimately comes down to a credibility determination. If the Respondent did not agree to the \$700.00 deduction for the interior project damage, then it was reasonable for the Respondent to refuse to fix the missing starter strip until the Claimant and Ms. Fox paid the Contract price in full. If, as the Claimant and Ms. Fox testified, the Respondent agreed to the \$700.00 deduction, then the Contract was paid in full and he was obligated under his warranty to fix the starter strip. After my review of the evidence, I conclude that the Respondent reluctantly agreed to the \$700.00 deduction.

According to the Claimant and Ms. Fox's testimony, at the time they made the final payment under the Contract, they suggested to the Respondent that \$700.00 should be deducted to cover the cost of cleaning after the ceiling collapsed and the loss of use of their master bedroom for several weeks. Ms. Fox testified that the Respondent agreed, stating that he just wanted this "nightmare" to be over. On September 27, 2018, in a text message exchange several months after the Claimant contacted the Respondent about the missing starter strip of shingles, the Respondent responded, "Please pay the remaining balance and I will be happy to take care of any issues you may have." Cl. Ex. #1, p. 2. Ms. Fox texted back, "There is no remaining balance-we paid the final balance, which you agreed to, the last time we saw you." Cl. Ex. #1, p. 3. The Respondent never sent the Claimant a bill for any remaining balance, and, in fact, he asked for a list of damages that comprised the \$700.00, which the Claimant sent to him on January 6, 2018. Cl. Ex. #1, p.4. These conversations happened relatively close in time to when the Respondent performed the work and as a result, I found this evidence to be credible.

Considering this evidence and the Claimant and Ms. Fox's testimony, I conclude that the Respondent agreed to accept \$700.00 less than the total Contract price, albeit reluctantly.

The Claimant discovered the missing shingles in December 2017, shortly after the roofing work was completed. He did not contact the Respondent about it until March 2018 as it was a cold winter and the matter was not urgent. There is no evidence in the record of any extreme winds during that time, and the Respondent even doubted that the wind could blow off the starter shingles. Thus, there is no reasonable conclusion other than the Respondent left off the starter shingles on a portion of one side of the shed roof. Based on this analysis, I conclude that the missing starter strip of shingles was the result of incomplete home improvement work on the part of the Respondent, and the Claimant is eligible for recovery from the Fund, if he establishes his actual loss.

I must now determine the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant intends to retain another contractor to complete or remedy that work. Accordingly, the applicable formula is as follows:

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 Respondent testified that fixing the missing starter strip was simple, inexpensive, and would only take him ten to fifteen minutes. He said that it would not require removal and replacement of the entire roof on the side of the shed where the starter strip is missing. The Contract price for the complete replacement of the shed roof with "Grand Sequoia Lifetime Designer" shingles was \$1,650.00. Cl. Ex. #1, p. 12. The Claimant obtained an estimate from Landmark Roofing for \$3,800.00 on May 16, 2019. Cl. Ex. #1, p. 16. The Landmark Roofing estimate described the scope of work as "Grand Sequoia shingles shed roof. Replacement cost \$3,800.00." The estimate does not describe any detail of the scope of the work, but the Claimant testified that all of the shingles on the side of the shed needed to be removed and replaced in order to install the starter shingles. I found the Respondent's testimony to be more credible and knowledgeable in this regard. The Claimant is not a roofer. However, even if I consider the Landmark Roofing estimate to be correct on its face, the record contains no explanation as to why replacement of one side of the shed roof would cost more than twice the amount the Respondent charged to replace the entire shed roof. I simply did not find this estimate to be reliable, based upon the evidence in the record, including the Contract and the Respondent's testimony. I therefore did not give that estimate any weight.

Therefore, the Claimant has not proven his actual loss because he did not establish the "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." COMAR 09.08.03.03B(3)(c). The Landmark Roofing estimate provides no detail as to the scope of work, and there is no evidence in the record regarding the reason for the elevated

price. There is no other estimate in the record. Without another estimate that has a scope of work commensurate with that of the Contract, I have no way to determine the amount of compensation that will be required to replace the starter shingles. The only credible and knowledgeable testimony regarding the work necessary to replace the starter shingles was that of the Respondent, who said he could fix the shingles without replacement of the entire side of the shed roof. Accordingly, the Claimant has failed to prove his actual loss.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has established eligibility for recovery from the Fund but has not established his actual and compensable loss. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(1). Therefore, the Claimant is not entitled to recover from the Fund.

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.

Susan Sinrod

September 8, 2021
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/cj
#193921

PROPOSED ORDER

WHEREFORE, this 28th day of January, 2022, 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*