

<p>IN THE MATTER OF THE CLAIM</p> <p>OF TAFT HYLTON,</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 GREGORY STOTTS,</p> <p>T/A GRELLIS CONSTRUCTION,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE ERIN H. CANCIENNE,</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-02-19-38860</p> <p>* MHIC No.: 19 (05) 739</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On April 2, 2019, Taft Hylton (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,750.00 in actual losses allegedly suffered as a result of a home improvement contract with Gregory Stotts, trading as Grellis Construction, LLC.¹ Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On November 21, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ This decision will use the term Respondent to refer to both Mr. Stotts and Grellis Construction, LLC interchangeably, unless there is a reason to distinguish the individual from the business.

I held a remote hearing on June 4, 2020 through the Google Meet video-conference platform. Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department of Labor (Department),² represented the Fund. Davin Van Eyken, Esquire, represented the Claimant, who was present. Anthony Shore, Esquire, represented the Respondent, who was present.

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.

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

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

- Clmt. Ex. 1 - Formal proposal from the Respondent to the Claimant, undated
- Clmt. Ex. 2 - Contract between the Respondent and the Claimant, dated August 24, 2018
- Clmt. Ex. 3 - Checks from the Claimant to the Respondent, dated August 25, 2018 and October 3, 2018
- Clmt. Ex. 4 - Letter from Reliable Roofers to the Claimant, dated March 20, 2019
- Clmt. Ex. 5 - Proposal from On Target Remodeling to the Claimant, dated July 5, 2019
- Clmt. Ex. A1-6³ - Photographs of the Claimant's roof, undated

The Respondent did not offer any exhibits.

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

³ The Claimant pre-marked exhibits prior to the remote hearing. He did not offer pre-marked exhibit 6. The Claimant pre-marked the photographs as Exhibit A 1-6, instead of Exhibit 7.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Order, dated November 18, 2019
- Fund Ex. 2 - Notice of Remote Hearing, dated May 26, 2020
- Fund Ex. 3 - Notice and Frequently Asked Questions regarding Remote Hearings on Google Meet, undated
- Fund Ex. 4 - Prehearing Conference Report and Scheduling Order, dated May 26, 2020
- Fund Ex. 5 - Letter to the Parties from the OAH, dated May 15, 2020
- Fund Ex. 6 - Notice of Hearing, dated February 28, 2020
- Fund Ex. 7 - Letter from the MHIC to the Respondent, dated April 17, 2019, attaching Home Improvement Claim Form, dated April 2, 2019
- Fund Ex. 8 - License History for the Respondent, as of May 28, 2020

Testimony

The Claimant testified and did not present any other witnesses.

Neither the Respondent nor the Fund presented 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 5315215 for Mr. Stotts and 134418 for Grellis Construction, LLC.
2. Prior to August 24, 2018, the Claimant's roof leaked into the interior of his home causing damage.
3. On August 24, 2018, the Claimant and the Respondent entered into a contract to perform roof work at the Claimant's home (Contract). The terms of the contract specifically state: 1) Remove and haul away six squares of roofing to cover two additions in rear of home; 2) Install synthetic underlayment and ice and water shield; 3) Install 3-tab shingles to match

original/flashing in valley; 4) Install one new skylight, reinstall existing skylight; 5) cleanup debris; and 6) price match guarantee.

4. The Contract did not state a beginning or end date. The Contract also did not state how long it would take to complete the work.

5. The original agreed-upon Contract price was \$3,750.00.

6. On August 25, 2018, the Claimant paid the Respondent \$1,200.00. On October 3, 2018, the Claimant paid the Respondent \$1,550.00. The Claimant made no other payments under the Contract.

7. At some point before the work was complete, the Respondent recommended that the Claimant replace his entire roof.⁴ However, the Contract only included replacing a portion of the roof and a skylight.

8. The Respondent's worker replaced the section of the Claimant's roof shingles as described in the Contract.⁵ The Respondent did not replace the skylight at this time.

9. After the shingles were replaced, the Claimant still experienced leaks, which caused further interior damage to his home. This leak was in the same location as the leak prior to the work being performed.

10. The Claimant called Grellis Construction, LLC regarding the continued leaking. An employee of the Grellis Construction, LLC responded to the Claimant, but Mr. Stotts did not directly respond to the Claimant.

11. On or about January 14, 2019, the Respondent sent a worker to the Claimant's home to measure for the skylight.

⁴ It is unclear when exactly this formal proposal was sent to the Claimant.

⁵ It is unclear when this happened, but the Claimant testified it was before he made the October 2018 payment.

12. On or about January 14, 2019, the Claimant told the Respondent not to replace the skylight. The Respondent did not perform any work on any of the skylights on the Claimant's roof.

13. On March 20, 2019, a worker from Reliable Roofer inspected the Claimant's roof, took pictures of the Respondent's work, and prepared a letter regarding Claimant's roof.

14. In July 2019, the Claimant entered into a contract with On Target Remodeling to replace his entire roof, as well as perform interior painting. The original agreed upon contract price for the entire roof replacement was \$11,522.10.

15. Since the roof replacement, the Claimant's roof does not leak.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); 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 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)⁶; *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."

⁶ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

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 Contract with the Claimant. However, the Claimant did not meet his burden to prove that the Respondent performed unworkmanlike, inadequate or incomplete home improvements. The parties do not dispute that the Claimant's roof leaked both prior to and after the Respondent replaced the section of shingles. Further, the parties do not dispute that under the Contract, only a portion of the Claimant's roof shingles and a skylight were to be replaced. Despite being included in the Contract, the Claimant instructed the Respondent not to replace the skylight. This skylight is in close proximity to the replaced shingles and the leak inside the Claimant's home.

The dispute in this case relates to the cause of the Claimant's leak. While it is general knowledge that a roof should not leak, the Claimant presented no evidence to show that the Respondent's work was unworkmanlike or inadequate and therefore, a cause of the leak. The Claimant did not present any expert testimony at the hearing to establish that the Respondent's work was the cause of the leak. The Claimant introduced a letter from James de Cheubel of Reliable Roofers regarding the results of his inspection of the Claimant's roof (Clmt. Ex. 4); however, the Claimant did not provide any information as to the experience and/or qualifications of Mr. de Cheubel. Further, Mr. de Cheubel's statements in his letter are vague and nonspecific. For example, Mr. de Cheubel does not cite to or quote any specifications or regulations to support his assessment of the Respondent's work. Without further explanation for both the basis for his opinions and his qualifications, Mr. de Cheubel's letter is of little value and I give it no weight.

The Claimant admitted there was a leak in his roof prior to contracting with the Respondent, and that the roof continued to leak in a similar fashion after the Respondent's repairs. He admitted that he did not allow the Respondent to replace the skylight as provided for

in the Contract. The Claimant is not a roofing expert and did not go up to his roof at any time; therefore, he could not provide any opinion as to why the roof continued to leak after the Respondent's repairs.

While the leak stopped after the entire roof was replaced, the Claimant offered no proof to establish whether the leak was coming from the shingles replaced by the Respondent, from the skylight that the Claimant did not allow the Respondent to replace, or from some other portion of the roof entirely. As the leak was in the same place after the Respondent's work as before the Respondent's work, and the Claimant did not allow the Respondent to replace the skylight, a potential cause of the continuing leak, I find that the Claimant did not meet his burden of proof to show that the leak was caused by unworkmanlike or inadequate work of the Respondent.

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

PROPOSED CONCLUSIONS 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 (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.

July 20, 2020
Date Decision Issued

CONFIDENTIAL

Erin H. Cancienne
Administrative Law Judge

EHC/emg
186245

PROPOSED ORDER

WHEREFORE, this 4th day of September, 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*