IN THE MATTER OF THE CLAIM	*	**BEFORE JENNIFER L. GRESOCK,**
OF NYOKI AND BRYANT ROGERS,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANTS[1]	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF EDWARD CHMAR,	*	
T/A HOMELIFE REMODELING,	*	**OAH No.: LABOR-HIC-02-21-06598**
INC.,	*	**MHIC No.: 20 (75) 402**
RESPONDENT	*	

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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On January 3, 2020, Nyoki Rogers, on behalf of herself and her husband Bryant Rogers (Claimants), 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 $11,296.00 in actual losses allegedly suffered as a result of a home improvement contract with Edward Chmar, trading as Homelife Remodeling, Inc. (Respondent). Md. Code

[1] While Ms. Rogers listed only her own name on the claim, she and Mr. Rogers both appeared at the hearing and agreed, without objection from the other parties, that Mr. Rogers was also a claimant.

Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[2] On April 8, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 7, 2021, via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Justin Dunbar, Assistant Attorney General, Department, represented the Fund. The Claimants represented themselves. The Respondent also 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 Claimants 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 Claimants' behalf, except where noted:

Clmt. Ex. 1 Better Business Bureau online complaint, printed April 13, 2021

Clmt. Ex. 2 Contract, Homelife Remodeling, dated April 13, 2018

Clmt. Ex. 3 Jiffy Plumbing, Heating & Cooling Invoice, dated August 3, 2019

Clmt. Ex. 4 Check ($7,990.00), dated July 19, 2018

Clmt. Ex. 5 Text messages between the Claimant and the Respondent, various dates

Clmt. Ex. 6 Emails exchanged regarding MHIC complaint, various dates

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

Clmt. Ex. 7 Emails between the Claimant and the Respondent, various dates

Clmt. Ex. 8 Letter from the Respondent to the MHIC, undated

Clmt. Ex. 9 Zion Home Remodeling, LLC, Estimate, dated January 2, 2020

Clmt. Ex. 10 Emails between the Whiting Company and the Claimant, dated January 3 and 4, 2020, with attached estimate

Clmt. Ex. 11 Innovative Solutions Contracting Architectural Roof Estimate, dated December 23, 2019

Clmt. Ex. 12 Professional Building and Renovations, LLC, Estimate, dated January 2, 2020

Clmt. Ex. 13 Long Roofing Estimate, dated December 27, 2019

Clmt. Ex. 14 Arocon Proposal, dated December 18, 2019

Clmt. Ex. 15 Emails between the Claimant and Jimmy & Son, dated December 24 through December 27, 2019

Clmt. Ex. 16 Fichtner Services Proposal, dated December 26, 2019

Clmt. Ex. 17A Photograph, ceilingdamage(2)[3]

Clmt. Ex. 17B Photograph, ceilingdamage(6)

Clmt. Ex. 18 Photograph, Jchanneldamage(1)

Clmt. Ex. 19 NOT ADMITTED (yarddamage(2))

Clmt. Ex. 20 Photograph, atticabovegarage(2)

Clmt. Ex. 21 Photograph, atticabovegarage(7)

Clmt. Ex. 22 Video, ceilingdamage(14)

Clmt. Ex. 23 Video, ceilingdamage(5)

Clmt. Ex. 24 Video, ceilingdamage(16)

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

[3] I have used the file names to refer to exhibits 17A through 24. The photographs and video files included on this exhibit list are on the USB flash drive that is part of the record.

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

GF Ex. 1 Notice of Remote Hearing, dated March 25, 2021

GF Ex. 2 Hearing Order, dated March 11, 2021

GF Ex. 3 Letter from the HIC, dated March 3, 2021

GF Ex. 4 Home Improvement Claim Form, dated January 3, 2020

GF Ex. 5 Letter from the HIC to the Respondent, dated January 13, 2020

Testimony

The Claimants each testified and did not present other witnesses.

The Respondent testified and did not present 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.

2. At all times relevant, the Claimants owned a single-family home in Bowie, Maryland. The Claimants have lived in the home since 2001.

3. Because of the age of the home, the Claimants sought to replace the roof even though the home had never had any water leakage.

4. The Claimants selected the Respondent for the roof replacement because the Respondent offered a lifetime warranty.

5. On or about April 13, 2018, the Claimants and the Respondent entered into a contract to replace the roof of the home (Contract). The Contract stated that work would begin on May 14, 2018.

6. The original agreed-upon Contract price was $8,240.00.

7. After delays, work began in July 2018, while the Claimants were traveling outside of the United States.

8. On or about July 19, 2018, the Claimants paid the Respondent $7,990.00.

9. The Respondent considered this payment in full under the Contract.

10. In August 2019, the Claimants observed what appeared to be water leaking inside the home. Specifically, they noticed a water stain around the ceiling fan in the living room.

11. In early August 2019, the Claimants contacted a plumber, who came to the home and examined the plumbing. The plumber caulked the second-floor shower, but this did not resolve the water leakage.

12. The plumber determined that the water leakage was not due to any plumbing problems in the home.

13. On August 7, 2019, the Claimants contacted the Respondent and spoke with Artie,[4] an employee of the Respondent, regarding the leak.

14. On or about August 10, 2019, another employee of the Respondent, Gary,[5] went to the Claimants' home to evaluate the leak. Gary did not observe the leaking at that time, but made a minor fix to seal an area of the roof.

15. On or about August 21, 2019, a heavy rainstorm occurred, causing significant water leakage into the Claimants' home.

16. To minimize water damage, the Claimants taped plastic bags to the ceiling and placed buckets beneath the leaks to catch the water.

17. The Claimants again contacted the Respondent regarding the water leakage. Ms. Rogers explained that the problem had not been resolved and attached photographs.

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[4] Sometimes spelled Arty and sometimes spelled Artie in the record. The record does not reflect his surname.
[5] The record does not reflect Gary's last name.

18. Gary returned to the Claimants' home twice more, on August 24, 2019, and September 14, 2019, in an effort to resolve the water leakage, but Ms. Rogers was unhappy with his manner and behavior, including alleged damage he did to the home to assess the source of the leak. She told the Respondent that she would no longer allow Gary on the property unless he was monitored by a supervisor.

19. The Claimants requested an evaluation of the problem and an estimate for repair from five different roofing companies.

20. The water leakage was caused by the Respondent's improper installation of shingles and step-flashing next to the home's siding.

21. One of the roofing companies, Arocon, recommended a complete roof replacement and provided an estimate of $9,001.09 for a complete roof replacement with a warranty. As an alternative, Arocon provided an estimate of $3,000.00 for more limited repairs to resolve the water leakage.

22. The Claimant hired Arocon to repair the improperly installed shingles and flashing at a cost of $3,000.00.

23. After Arocon completed the repairs, the roof no longer leaked.

24. The estimated cost to repair the damage to the interior of the home, including drywall repair and finishing, replacement of the ceiling fan, and painting is $2,892.73.

25. There is no barrier, such as familial or business relationship, that would prevent the Claimants from being reimbursed by the Fund.[6]

DISCUSSION

In this case, the Claimants have 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

[6] *See* Bus. Reg. § 8-405(f)(1).

(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. For the following reasons, I find that the Claimants have proven eligibility for compensation.

I note that there is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants.

I further find that the Respondent performed unworkmanlike and inadequate home improvements. Mr. Rogers provided compelling, uncontradicted testimony that after the Respondent replaced the roof of the home, which had never had a leak before, the roof would routinely leak after a heavy rainstorm, and that the Claimants were forced to tape plastic bags to the ceiling and keep buckets in the living room to minimize damage from the leakage. The Claimants provided photographs and video footage clearly showing these efforts, as well as the accumulation of water inside the plastic, water streaming from the ceiling, and damage to the ceiling and ceiling fan.

The evidence further shows that the Claimants contacted the Respondent about a year after the roof replacement, and that despite three different visits by the Respondent's employee, Gary, the Respondent was unable to resolve the problem. The Claimants provided documentation from two contractors, the Whiting Company and Arocon, reflecting their determination that the leakage was

due to incorrectly installed step-flashing, along with repair estimates. The Respondent, who was apologetic about his handling of the matter, acknowledged in his testimony that the step-flashing did appear to be the likely culprit, though he maintained that he would have fixed it if given the opportunity and that the full roof replacement recommended by Arocon was not necessary.

Based on the evidence, it is clear that the Respondent did not properly install the step-flashing, that this was very likely the cause of the water leakage, and that despite three visits to the property, the Respondent's employee, Gary, was unable to resolve the problem. This is sufficient to establish that the Respondent's work was unworkmanlike and inadequate, and that the Claimants gave him sufficient opportunity to remedy the work. I thus find that the Claimants are eligible for compensation from the Fund. I note that the Fund was in agreement that the Claimants met their burden and are eligible for compensation.

Having found eligibility for compensation, I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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). Here, the inadequate and unworkmanlike work performed by the Respondent caused water to leak into the home, into the living room ceiling and ceiling fan. The Fund agrees that the Respondent performed inadequate and unworkmanlike work. Further, the Fund contended that the damage to the ceiling and fan flowed directly from the improperly installed shingles and flashing and should therefore not be excluded as consequential damages. I agree, and my calculations thus do not exclude the cost of repairing the ceiling and replacing the ceiling fan. MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed all work under the Contract, and the Claimants later hired another contractor to remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss:

> 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).

There was some confusion about the actual amount paid to the Respondent. Ms. Rogers testified that she paid the full $8,240.00 but could only find a check reflecting payment of $7,990.00. The Respondent mentioned some kind of $250.00 discount but could not recall exactly what he was paid. He noted that the invoice, whatever amount it reflected, was paid in full by the Claimants. As the Contract reflects an agreed-upon cost of $8,420.00, and the Claimants, who bear the burden of proof, documented payment of $7,990.00, I use these figures in my calculation. The calculation is thus as follows: the amount paid under the original contract, or $7,990.00, plus $5,892.73, or the amount the Claimants have paid or will pay to remedy the work (which is the sum of the $3,000.00 payment to Arocon and the $2,892.73 estimate to fix interior damage) equals $13,882.73, from which the original contract price of $8,240.00 is subtracted. This results in $5,642.73.

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimants' actual loss is less than the amount paid to

the Respondent and less than $20,000.00. Therefore, the Claimants are entitled to recover their actual loss of $5,642.73.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants sustained an actual and compensable loss of $5,642.73 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimants are entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants $5,642.73; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;[7] and

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

Jennifer L. Gresock

August 31, 2021
Date Decision Issued

Jennifer L. Gresock
Administrative Law Judge

JLG/dlm
#193365

[7] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

IN THE MATTER OF THE CLAIM OF NYOKI AND BRYANT ROGERS AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF EDWARD CHMAR AND HOMELIFE REMODELING, INC.	* * * * * *	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 20(75)402** **OAH CASE NO. LABOR-HIC-02-21-06598**

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PROPOSED ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on June 7, 2021, via WebEx videoconference. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 5, 2021, concluding that the homeowners, Nyoki and Bryant Rogers ("Claimants") suffered an actual loss as a result of the acts or omissions of Edward Chmar and Homelife Remodeling, Inc. ("Contractor") and recommended an award of $5,642.73 from the Home Improvement Guaranty Fund ("Guaranty Fund"). (ALJ Proposed Decision p. 10.) A Panel of the MHIC reviewed the ALJ's Proposed Decision in accordance with COMAR 09.01.03.08, and the Proposed Decision is incorporated herein and amended as set forth below.

The Commission finds that the ALJ erred by including the $2,892.73 estimated cost to repair interior damage resulting from the water leak caused by the Contractor's unworkmanlike installation of a roofing system on the Claimants' home in the recommended Guaranty Fund award. *Md. Code Ann.*, Bus. Reg. § 8-405(e)(3) prohibits the award of any amount from the Home Improvement Guaranty Fund for consequential damages. Under Maryland law, consequential damages are "losses suffered by the non-breaching party other than the loss in value of the other party's performance." *Simard v. Burson*, 197 Md. App. 396, 414–15, (2011), *aff'd*, 424 Md. 318, (2012) (citing Restatement (Second) of Contracts § 347 cmt. c (1981)). Because the damages caused by the water leak were not a loss in the value of the Contractor's performance—the

installation of a roofing system—the Commission holds that they are not compensable by the Guaranty Fund.

Having considered the evidence contained in the record and the ALJ's Proposed Decision, it is this 20th day of December 2021, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;

C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**

D. That the Claimant is awarded **$2,750.00** from the Home Improvement Guaranty Fund;

E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

G. Unless, within twenty days of the date of this Proposed Order, any party files with the Commission written exceptions or a request to present argument, then this Proposed Order will become final. By law, the parties then have an additional thirty days to file a petition for judicial review in Circuit Court.

Joseph Tunney
Chairperson –Panel B
Maryland Home Improvement Commission

IN THE MATTER OF THE CLAIM OF NYOKI AND BRYANT ROGERS AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF EDWARD CHMAR AND HOMELIFE REMODELING, INC.	* * * * * * *	**MARYLAND HOME IMPROVEMENT COMMISSION** **MHIC CASE NO. 20(75)402** **OAH CASE NO. LABOR-HIC-02-21-06598**

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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 June 7, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 31, 2021, concluding that the homeowners, Nyoki and Bryant Rogers ("Claimants") suffered an actual loss of $5,642.73 as a result of the acts or omissions of Edward Chmar and Homelife Remodeling, Inc. (collectively, "Contractor"). *ALJ Proposed Decision* p. 10. In a Proposed Order dated December 20, 2021, the Maryland Home Improvement Commission ("MHIC" or "Commission") amended the Proposed Decision of the ALJ, reducing the Claimants' actual loss to $2,750.00 and granting an award of that amount from the Home Improvement Guaranty Fund. The Claimants subsequently filed exceptions to the MHIC Proposed Order.

On June 2, 2022, a three-member panel ("Panel") of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimants 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) Claimants' exceptions. Neither the Claimants nor the Contractor produced a copy of the transcript of the hearing before the ALJ. 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 roof at the Claimants' home. The ALJ found that the Contractor's performance under the contract was unworkmanlike and found the Claimants to have suffered a compensable actual loss of $5,642.73, which included the cost of repairing damage to the interior of the Claimants' home resulting from the Contractor's unworkmanlike roof installation. *ALJ's Proposed Decision* pp. 8-10.

On exception, the Claimants argued that the Commission erred by not allowing them to recover the cost of repairing interior damage caused by the roof leak. The Commission disagrees. The cost of repairing the interior damage caused by the roof leak was a consequential damage resulting from the Contractor's unworkmanlike installation of the roof, and Md. Code Ann., Bus Reg. § 8-405(e)(3) prohibits the award of any amount from the Home Improvement Guaranty Fund for consequential damages.

Having considered the parties' arguments, the evidence contained in the record, the ALJ's Recommended Decision, and the Commission's Proposed Order, it is this 8th day of June 2022, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AMENDED;**

B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED;**

C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**

D. That the Claimant is awarded $2,750.00 from the Maryland Home Improvement Guaranty Fund;

E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Lauren Lake
Chairperson –Panel
Maryland Home Improvement Commission