IN THE MATTER OF THE CLAIM OF	*	**BEFORE M. TERESA GARLAND,**
VICTORIA WYCHULIS,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF KEVIN STURM,	*	
T/A RIVERSIDE HOME SERVICES,	*	**OAH No.: LABOR-HIC-02-21-09959**
LLC,	*	**MHIC No.: 20 (75) 52**
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On October 29, 2019, Victoria Wychulis (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),[1] for reimbursement of $19,694.00 in actual losses allegedly suffered as a result of a home improvement contract with Kevin Sturm, trading as Riverside Home Services, LLC (Respondent). Md. Code Ann., Bus. Reg.

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

§§ 8-401 through 8-411 (2015).[2] On April 5, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing via the Webex videoconferencing platform on June 16, 2021. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent did not appear for the hearing.

After waiting more than twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On May 11, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent and the Respondent's then-counsel[3] by United States mail and certified mail to their addresses on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 16, 2021, at 9:30 a.m., via the Webex videoconference platform. The Notice provided the Webex meeting room number, the Webex website and the Office of Administrative Hearings (OAH) website for instructions on using the Webex platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the first-class mail Notice to the OAH. The Notice sent via certified mail was returned to the OAH on July 20, 2021 with the notation "Return to sender. Not deliverable as addressed. Unable to forward." The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I

[2] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[3] Respondent's counsel withdrew his appearance on June 4, 2021. The Notice was mailed to counsel's address of record.

determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C. On June 16, 2021 at 10:27 a.m., well after the hearing began, the Respondent faxed a Request for Postponement, dated June 15, 2021, to the OAH. I denied the Respondent's Request for Postponement, which was communicated to the Respondent on June 16, 2021 at 11:03 a.m.

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

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

Cl. Ex. 1 – Overview of the case, updated May 26, 2021

Cl. Ex. 2 – Timeline of the case, undated

Cl. Ex. 3 – Witness list, undated

Cl. Ex. 4 – Original MHIC Complaint #52-2020, July 10, 2019, with the following attachments:

- 14-page narrative
- Document list
- Respondent's estimate and invoices
- Invoice payments
- List of 24 concerns, emailed with photographs, April 23, 2019
- Email chain, April 23-May 20, 2019
- Email to Respondent, June 27, 2019
- Screenshot of text messages, June 24 and June 27, 2019

- Roof Inspection Report, Anthony Cusato, with attached photographs, June 18, 2019
- Roof Inspection Report, Distinctive Contracting Services, Inc., with attached photographs, July 11, 2019

Cl. Ex. 5 – Amended MHIC Complaint #52-2020 with 21 photographs including a written explanation of each, October 20, 2019

Cl. Ex. 6 – Home Improvement Claim Form, October 29, 2019, with the following attachments:

- 5-page Summary of Complaint, undated
- Document index, undated
- Landmark Roofing estimate, October 11, 2018
- Respondent's estimate, September 9, 2018
- Respondent's invoice, November 2, 2018
- Invoice payment, November 9, 2018
- Respondent's invoice, November 9, 2018
- Invoice payment, May 2, 2019
- Landmark Roofing contracts, June 24, 2019 and September 4, 2019
- Landmark Roofing Certificate of Completion, September 20, 2019
- Landmark Roofing payment receipts, September 20, 2019
- Roof Warranty, October 1, 2019
- Printout of Respondent's web page, printed May 14, 2019

Cl. Ex. 7 – Emails to and from Respondent, April 23-May 20, 2019; Text message screenshots, May 16 and June 24, 2019

Cl. Ex. 8 – Emails to and from MHIC, September 4, 2019-May 10, 2021

Cl. Ex. 9 – Letters from MHIC to Claimant and Respondent, Notice of Hearing, Hearing Order, Corporate Database search, various dates

Cl. Ex. 10 – Email from Claimant to Sandra Sykes, OAH Clerk, with attached updated documents, June 4, 2021

I admitted no exhibits on the Respondent's behalf.

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

Fund Ex. 1 – Hearing Order, April 2, 2021

Fund Ex. 2 – Notice of Remote Hearing, May 11, 2021

Fund Ex. 3 – Letter from MHIC to Respondent with attached MHIC Claim form, December 18, 2019

Fund Ex. 4 – Respondent's licensing history

Fund Ex. 5 – Email from Jessica Shehane to Respondent informing him of the hearing date, June 3, 2021

Testimony

The Claimant testified and presented the testimony of Matthew Pollard, Vice-President of Sales, Landmark Roofing and Anthony Cusato, whom I accepted as an expert in residential roofing.

The Respondent was not present and did not testify.

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 101964.

2. On November 2, 2018, the Claimant and the Respondent entered into a contract to install a new, GAF-certified[4] roof on her home located in Arnold, Anne Arundel County, Maryland (Contract). The scope of work included the following:

- tear off existing roof and haul away
- repair any wood rot found
- install new drip edge
- install new GAF ice and water shield
- install new GAF synthetic underlayment
- install new flashing where needed
- install new GAF cobra hidden ridge vent
- install new pipe collars
- install new GAF timberline architectural shingles
- order and install new skylight flashing kits

3. The original agreed-upon Contract price was $19,694.00.

[4] GAF is a manufacturer of roofing materials. A GAF-certified roof comes with a 50-year warranty that is transferable to subsequent owners of a home.

4. On November 12, 2018 and April 2, 2019, the Claimant paid the Respondent $6,700.00 and $12,994.00, respectively.

5. The Respondent represented to the Claimant that he and his crews held the highest level of certification offered by GAF and attended rigorous GAF training for one week each year.

6. The Respondent did not use its own employees to install the roof, but hired subcontractors who were not GAF-certified.

7. Work began on March 28, 2019 and was completed on April 1, 2019.

8. Shortly after the work was completed, the Claimant noticed spots of mold on the ceiling of the home and water stains in the garage.

9. The Claimant hired an inspector to assess the Respondent's work on the roof. The inspection took place on April 22, 2019 and found a total of thirty-seven significant deficiencies which could not be remedied short of replacing the entire roof.

10. On April 23, 2019, the Claimant emailed the Respondent a list of her concerns regarding the Respondent's workmanship and requested a plan of action to remedy the deficiencies. The email included photographs taken during the April 22, 2019 inspection.

11. Between April 23, 2019 and June 24, 2019, the Claimant contacted the Respondent at least fourteen times, by email or text, requesting a resolution.

12. The Claimant contacted GAF, which recommended an independent roof inspection. That inspection, performed by Anthony Cusato on June 12, 2019, revealed the following deficiencies:

- Starter course shingles improperly installed
- Skylight flashings improperly installed
- Shingles improperly installed in the roof valleys
- Metal flashings improperly installed
- Shingles around the wall flashings improperly installed
- Exposed fasteners at the metal flashings and shingle sections not properly sealed

13. The deficiencies found in the June 12, 2019 inspection could not be remedied short of replacing the entire roof.

14. After the June 12, 2019 inspection, the Respondent proposed a repair plan that, as reviewed by Mr. Cusato, was unacceptable.

15. The Claimant requested a full refund of the contract price, which the Respondent refused.

16. On September 4, 2019, the Claimant contracted with Landmark Roofing (Landmark) to replace the roof the Respondent had installed. In the course of its work, Landmark noted numerous additional deficiencies when removing the roofing the Respondent installed. Those deficiencies were as follows:

- failure to remove old felt paper which covered rotted plywood
- failure to replace flashing kit on one skylight
- failure to seal the valleys
- warped plywood under shingles causing a visual dip in the roof
- holes in plywood
- HardiePlank siding installed too tight to the roof line

17. The Claimant paid Landmark $24,000.00 to remove and replace her roof, which has a GAF warranty.

18. The Claimant's actual loss is $19,694.00.

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); 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." Md. Code Ann., 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." *Id.* § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant on November 2, 2018 to replace her existing roof using GAF materials and to install flashing kits on all existing skylights. The Claimant testified credibly that the Respondent represented itself as a GAF-certified contractor, a fact that was important to her. According to the Claimant and documentation she relied upon at the hearing, a GAF warranty on the roof was for fifty years and was transferrable to any subsequent owner of the home. She asserted that the work crew who installed the roof were not the Respondent's GAF-trained employees, but subcontractors without GAF certification.

The Respondent's work began on March 28, 2019 and was completed on April 1, 2019. Almost immediately, the Claimant began to experience problems with the Respondent's work. She noticed spots of mold on a ceiling. Consequently, she brought in another contractor experienced in roofing to conduct an inspection of the Respondent's work. That contractor, Chad Smith, Distinctive Contracting, LLC, conducted his inspection on April 22, 2019 and found thirty-seven significant deficiencies which would cause the roof to fail. (CL. Ex. 4, pp. 36-37). Each of the thirty-seven deficiencies was supported by photographic evidence. Upon learning of Mr. Smith's findings, the Claimant requested persistently over a one-month period, that the Respondent develop a written plan to remediate all of the deficiencies Mr. Smith found.

After Mr. Smith's inspection, and after trying to work out a remediation plan with the Respondent, the Claimant contacted GAF, which recommended an independent inspector,

Anthony Cusato, Rooftop Inspection Company, LLC, who I accepted as an expert in residential roofing. Mr. Cusato conducted his roof inspection on June 12, 2019 and found deficiencies as noted in Finding of Fact #11. Mr. Cusato's findings were also supported by photographic evidence. (Cl. Ex. 4). Mr. Cusato opined, "[t]his roof system is not properly installed according to industry standards and the manufacturer specifications. Because this roof system is new, if repairs [as noted] are completed other sections of the roof could be damaged. It is recommended that the existing roof system be removed and a new roof system be properly installed." *Id.* The Respondent contacted Mr. Cusato and proposed a repair plan, which Mr. Cusato determined was unacceptable. After Mr. Cusato's findings were issued, the Claimant requested a full refund of the contract price from the Respondent, which was refused.

The Claimant hired Landmark to replace the roof as Mr. Cusato recommended. As Landmark was removing the roof the Respondent installed, it found profound deficiencies and poor workmanship which lay beneath the shingles. *See*, Finding of Fact #14; Cl. Ex. 5. These findings were supported by photographic evidence. Further, Matthew Pollard, Vice-President of Sales, Landmark, testified that he was present when the Respondent-installed roofing was removed, and noted that the problems discovered by Landmark would not have been discovered without removing the roof. He opined that considering the totality and variety of work and material deficiencies, the problems could not be remedied without replacing the entire roof. The work was not up to code and would not have been given a GAF warranty.

Accordingly, I conclude that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and 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. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). 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 work under the Contract, and the Claimant has retained another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's 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). The Claimant paid the Respondent $19,694.00 for an unworkmanlike product. The Claimant was required to retain Landmark to remove and reinstall the roof at a cost of $24,000.00. The Claimant's actual loss is $24,000.00.

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. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of $24,000.00 both exceeds $20,000.00 and the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to $19,694.00, the amount paid to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $19,694.00 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)(4). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $19,694.00; 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;[5] and

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

M. Teresa Garland

September 8, 2021
Date Decision Issued

M. Teresa Garland
Administrative Law Judge

MTG/da
#192965

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

PROPOSED ORDER

WHEREFORE, this 8th day of December, 2021, 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

MARYLAND HOME IMPROVEMENT COMMISSION

CERTIFICATE OF MAILING

IN THE MATTER OF: Wychulis v. Sturm

Case Number: 20 (75) 52

I certify under penalty of perjury that on this 8th day of December, 2021, I sent by first-class regular U.S. mail, postage prepaid, a copy of the Maryland Home Improvement Commission's:

Cover letter, proposed order, odd prop order

To:

Keith Sturm
Riverside Home Services LLC
1533 Mayo Rd Ste 204
Edgewater, MD 21037

Bob Wychulis
Victoria Wychulis
640 Owl Ct
Arnold, MD 21012

Christopher Starti & Diblasio Attorney at Law
401 Headquarters Dr Ste 102
Millersville, MD 21108

Tenaea Thomas
Signature of Certifying Official

Print Name: Tenaea Thomas

Maryland
DEPARTMENT OF LABOR

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Maryland Home Improvement Commission
500 N. Calvert Street, Room 306
Baltimore, Maryland 21202-3651

December 8, 2021

VIA FIRST CLASS MAIL

Kevin Sturm
Riverside Home Services LLC
153 Mayo Road Ste 204
Edgewater, MD 21037

RE: Complaint/Claim # 20 (75) 52

Dear Kevin Sturm:

Enclosed are copies of the Proposed Decision of the Administrative Law Judge and the Proposed Order of the Maryland Home Improvement Commission ("Commission") resulting from the hearing held before the Administrative Law Judge.

Any party to this case has the right, within twenty (20) days of the postmark date of this letter, to file with the Commission written exceptions to this decision. If timely exceptions are filed, a hearing will be scheduled before a panel of the Commission, at which the parties will have an opportunity to present oral argument concerning the exceptions. If no exceptions are filed within the twenty (20) day period, then this Proposed Order becomes final. Once the Commission's order becomes final, the parties, by law, have an additional thirty (30) day period, during which they may file a petition for judicial review in Circuit Court.

If no exceptions or Circuit Court petition are filed within the total fifty (50) day appeal period (20 day exceptions period and 30 day Circuit Court appeal period), then any monetary award from the Guaranty Fund under this order will be processed at the conclusion of the fifty (50) day period. All licensees are advised that, if this order imposes a Guaranty Fund award and/or civil penalty, their licenses(s) will be suspended at the end of the fifty (50) day appeal period, unless, prior to the expiration of the fifty (50) day period, the licensee has either filed timely exceptions or a petition for judicial review, or has reimbursed the Commission in the amount of the Guaranty fund award and/or civil penalty.

Once a license has been suspended as a result of a Guaranty Fund award and/or civil penalty, the license will not be reinstated until that debt has been paid. In addition, licensees are advised that, by law, once their license has been suspended, the Commission may not reinstate the license until they take and pass the Commission's licensing examination.

You are also advised that, if any Guaranty Fund and/or civil penalty debt is not paid within thirty (30) days of the expiration of your appeal period, your account will be transferred to the State Central Collection Unit. You may be assessed 10% annual simple interest on any unpaid Guaranty Fund debt. In addition, the State Central Collection Unit may assess a 17%

collection fee, and you may be liable for attorney fees or court costs related to collection of your debt. The State Central Collection Unit also has authority to intercept any Maryland state income tax refund due to you to apply it to your Guaranty Fund debt. Once your debt has been transferred to the State Central Collection Unit, you must direct all communications about your account to that unit.

Claimants who receive an award from the Guaranty Fund should ordinarily receive their payment from the State Treasurer's Office approximately 6-8 weeks after the expiration of the fifty (50) day appeal period, unless exceptions or a petition for judicial review have been filed.

Sincerely,

Tenaea Thomas

Tenaea Thomas
Panel Specialist
Maryland Home Improvement Commission
410-230-6178
410-230-6231
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Enclosures

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