

IN THE MATTER OF	* BEFORE ROBERT F. BARRY,
THE CLAIM OF	* AN ADMINISTRATIVE LAW JUDGE
JANET L. COCHRANE,	* OF THE MARYLAND OFFICE
CLAIMANT,	* OF ADMINISTRATIVE HEARINGS
AGAINST THE HOME	*
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS	* OAH No.: LABOR-HIC-02-22-21300
OR OMISSIONS OF	* MHIC FILE No.: 20 (75) 833
DALE MILTON FORD,	*
TRADING AS DALE M. FORD	*
CONSTRUCTION, LLC,	*
RESPONDENT	*
* * * * *	* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On April 14, 2022, Janet L. Cochrane (Claimant) filed a claim with the Maryland Home Improvement Commission (Commission) against the Home Improvement Guaranty Fund (Guaranty Fund or Fund) for reimbursement for an actual loss allegedly suffered as a result of a

home improvement contract with Dale Milton Ford, trading as Dale M. Ford Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-405(a), 8-406 (2015 & Supp. 2022).¹

On August 5, 2022, the Commission issued a Hearing Order. On August 16, 2022, the Commission transmitted the case to the Office of Administrative Hearings (OAH). Bus. Reg. § 8-407(c)(2)(i).

On February 28, 2023, I held a remote hearing from the OAH in Hunt Valley, Maryland.² *Id.* The Claimant represented herself. The Respondent represented himself. Jonathan P. Phillips, Assistant Attorney General, Department of Labor (Department), represented the Guaranty Fund.

The contested-case provisions of the Administrative Procedure Act; the Department's and the Commission'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 (2021); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02.01B, and COMAR 28.02.01.

ISSUES

1. Did the Claimant file her claim against the Guaranty Fund within three years after she discovered or, by use of ordinary diligence, should have discovered the relevant loss or damage?
2. Did the Claimant sustain an actual loss arising from the Respondent's unworkmanlike or inadequate performance of a home improvement contract?
3. If so, what, if any, compensation may the Claimant recover from the Guaranty Fund?

¹ All references to sections 8-311 and 8-405 of the Business Regulation Article are to the 2022 Supplement. All other references to the Business Regulation Article are to the 2015 Replacement Volume.

² I postponed a hearing scheduled for January 5, 2023, because the Claimant and the Respondent had not submitted any exhibits for the remote hearing.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted six exhibits into evidence for the Claimant:

- CLAIM. #1 - Summary of Claim, received by the OAH on February 9, 2023
- CLAIM. #2 - Home Improvement Claim Form, signed by the Claimant on March 31, 2022
- CLAIM. #3A - Estimate for Roof Replacement, July 2, 2018
- CLAIM. #3B - Estimate for Repairs and Painting, June 6, 2018
- CLAIM. #4A - Invoice, December 5, 2018
- CLAIM. #4B - Invoice, October 11, 2018
- CLAIM. #5 - Respondent's Response to the Claimant's Complaint to the Commission, February 8, 2020
- CLAIM. #6 - Claimant's Bank of America Statement, August 16, 2019, to September 13, 2019

I admitted one exhibit into evidence for the Respondent:

- RESP. #1 - Respondent's Response to the Claimant's Claim Against the Guaranty Fund, May 7, 2022

I admitted five exhibits into evidence for the Guaranty Fund:

- FUND #1 - Notice of Remote Hearing, issued January 5, 2023
- FUND #2 - Hearing Order, August 5, 2022
- FUND #3 - Letter from the Commission to the Respondent, April 28, 2022, with Home Improvement Claim; received by the Commission on April 14, 2022
- FUND #4 - Commission Licensing History for the Respondent, February 21, 2023
- FUND #5 - Commission Licensing History for Ryan Nesbitt, trading as Dependable Roofing, Inc., February 28, 2023

Testimony

The Claimant and the Respondent testified.

FINDINGS OF FACT

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

1. The Commission has licensed the Respondent as an individual home improvement contractor under registration number 01-41626 since September 12, 1991. The Respondent's current license expires on October 11, 2024.
2. The Respondent trades as Dale M. Ford Construction, LLC, which the Commission licenses as a corporate home improvement contractor under registration number 05-130655.
3. The Claimant owns a home on East Franklin Street in Hagerstown.
4. In 2018, the Claimant decided to have work done on the exterior of her home, with financing from the Neighborhood Facade and Exterior Enhancement Program.
5. The Neighborhood Facade and Exterior Enhancement Program, administered by the Hagerstown Department of Community Development, is a program that provides State-funded, low-interest loans for improvements to home exteriors.
6. On June 6, 2018, the Respondent provided the Claimant an estimate of \$8,400.00 for the following exterior repairs and painting, including labor and materials:
 1. Scrape exterior brick and woodwork, prime and caulk as needed
 2. Remove any loose masonry parging on house foundation, point up
 3. Remove brick steps at front landing and install new brick steps
 4. Paint cement railing on front porch
 5. Relocate rear downspout to front of house and extend away from house
 6. Replace front screen door and entry door
 7. Conduct a modified risk reduction on interior windows and doors, trim and jambs, baseboards, and exterior woodwork.

7. On July 2, 2018, the Respondent provided the Claimant an estimate of \$6,000.00 for roof replacement, including labor and materials:

1. Remove existing shingles on main house roof down to the roof decking
2. Make needed repairs to decking
3. Install ice and water guard on eaves and valleys, synthetic felt on balance of decking
4. Install 30-year architectural shingles in choice of available colors
5. Remove all debris from job site
6. Scrape metal roof and apply fibered aluminum roof coating on rear low-sloped roof.

8. The Respondent priced the scraping of the metal roof and application of fibered aluminum roof coating on the rear low-sloped roof at \$350.00 (\$110.00 for materials and \$240.00 for labor).

9. The Respondent performed the work included in the two estimates, except for the replacement of the entry door and work on the rear low-sloped roof.

10. The rear low-sloped roof was not, as the Respondent believed when he provided the estimate, a metal roof; it was a rubber roof.

11. The Respondent did not perform any work on the rubber rear roof.

12. On October 16, 2018, the Community Development Manager for the Neighborhood Facade and Exterior Enhancement Program paid the Respondent \$10,800.00 for work performed to that date.

13. On December 6, 2018, the Community Development Manager for the Neighborhood Facade and Exterior Enhancement Program, after deducting \$500.00 for non-replacement of the entry door, paid the Respondent \$3,100.00.

14. The Respondent received a total of \$13,900.00 (estimates of \$14,400.00 minus \$500.00 for non-replacement of the entry door) from the Neighborhood Facade and Exterior Enhancement Program.

15. The Claimant was aware no later than early December 2018 that the Respondent was not going to replace or perform any work on the rubber rear roof.

16. The Respondent performed some repair work on the foundation of the Claimant's home in 2019.

17. On August 26, 2019, the Claimant paid \$2,600.00 to Dependable Roofing to replace the rubber rear roof.

18. In January 2020, the Claimant filed a complaint with the Commission against the Respondent.

DISCUSSION

Guaranty Fund Claim/Statute of Limitations

A homeowner "may recover compensation from the Guaranty Fund for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a). An "actual loss" means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Id.* § 8-401. The Commission may not award from the Guaranty Fund an amount for consequential damages, which are losses that result indirectly from any unworkmanlike, inadequate, or incomplete home improvement. Bus. Reg. § 8-405(e)(3). The Commission may deny a claim if it finds that "the claimant unreasonably rejected good-faith efforts by the contractor to resolve the claim." *Id.* § 8-405(d).

A claimant has the burden of proof at a Guaranty Fund hearing. Bus. Reg. § 8-407(e)(1). In the circumstances presented here, the Claimant has the burden to establish that: (1) the Respondent performed an incomplete, inadequate, or unworkmanlike home improvement; (2) the

Claimant had an actual loss due to the costs of completing or repairing the home improvement; and (3) the Claimant did not unreasonably reject the Respondent's good-faith efforts to resolve the claim.

A claim shall be brought against the Guaranty Fund within three years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage. Bus. Reg. § 8-405(g); *see also* COMAR 09.08.03.02G.

The Claimant's claim against the Guaranty Fund is barred by the statute of limitations. On June 6, 2018, the Respondent provided the Claimant an estimate of \$8,400.00 for exterior repairs and painting. On July 2, 2018, the Respondent provided the Claimant an estimate of \$6,000.00 for roof replacement, including scraping a metal rear roof and applying fibered aluminum roof coating. The rear roof was not, as the Respondent believed when he provided the estimate, a metal roof; it was a rubber roof. The Respondent did not perform any work on the rubber rear roof, which the Respondent believed was not in need of replacement or repair. On October 16, 2018, and December 6, 2018, the Community Development Manager for the Neighborhood Facade and Exterior Enhancement Program paid the Respondent a total of \$13,900.00 (estimates of \$14,400.00 minus \$500.00 for non-replacement of the entry door) for the work specified in the home improvement contracts between the Claimant and the Respondent.³ Although the Respondent returned to the Claimant's home in 2019 to perform repairs the foundation, the Respondent had completed his work on the contracts with the Claimant and had declined to perform any work on the rubber rear roof no later than early December 2018.

³ The Respondent testified that he and the Claimant agreed that the Respondent would perform additional work, including closing a crawl space, to make up for the \$350.00 allotted for work on then rubber rear roof.

The Claimant filed a complaint with the Commission against the Respondent in January 2020, which could have resulted in the Commission pursuing regulatory charges and penalties against the Respondent, but which did not affect the statute of limitations for filing a claim against the Guaranty Fund. *See* Bus. Reg. § 8-311. The Claimant, who was aware no later than early December 2018 that the Respondent was not going to replace or perform any work on the rubber rear roof, did not file her claim against the Guaranty Fund until April 14, 2022, several months past the three-year statute of limitations.⁴ I shall propose that the Commission dismiss the Claimant's claim against the Guaranty Fund.

CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Claimant's claim against the Guaranty Fund is barred by the statute of limitations because she did not file her claim within three years after she discovered or, by use of ordinary diligence, should have discovered the relevant loss. Bus. Reg. § 8-405(g); COMAR 09.08.03.02G.

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission dismiss the Claimant's claim against the Maryland Home Improvement Guaranty Fund and **ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Robert F. Barry

May 24, 2023
Date Decision Issued

Robert F. Barry
Administrative Law Judge

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⁴ Any award from the Guaranty Fund to the Claimant would be limited to the \$350.00 included in the contract between the Claimant and the Respondent for work on the rear roof. The Claimant and the Respondent (and the Neighborhood Facade and Exterior Enhancement Program) never contemplated nor contracted for replacement of the rear roof.

PROPOSED ORDER

WHEREFORE, this 26th day of June, 2023, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***