

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CHERYL AARON AND RICHARD</p> <p>POLIN,</p> <p>CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF ADAM</p> <p>CANDELORO,</p> <p>T/A VASCO PROPERTY SERVICES,</p> <p>LLC,</p> <p>RESPONDENT</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-02-23-05118</p> <p>* MHIC No.: 21 (75) 1028</p> <p>*</p> <p>*</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 21, 2022, Cheryl Aaron (Claimant)¹ and Richard Polin filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for

¹ Only Ms. Aaron appeared at the hearing so I will refer to her as the Claimant, and where necessary, to Ms. Aaron and Mr. Polin collectively as Claimants.
² The MHIC is under the jurisdiction of the Department of Labor (Department).

reimbursement of \$7,345.50 for actual losses allegedly suffered as a result of a home improvement contract with Adam Candeloro, trading as Vasco Property Services, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).³ On February 3, 2023, the MHIC issued a Hearing Order on the Claim. On February 14, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 26, 2023, I conducted a hearing at the OAH in Salisbury, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, represented the Fund. The Claimant represented herself and Mr. Polin.

After waiting 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. COMAR 28.02.01.23A. On March 9, 2023, the OAH sent a Notice of Hearing (Notice) to the Respondent by regular United States mail and certified mail to the Respondent's address on record with the OAH and the MHIC.⁴ COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for April 26, 2023, at 10:00 a.m. at the OAH in Salisbury, Maryland. COMAR 09.08.03.03A(2). 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 Notice sent by regular mail to the OAH. The certified mailing green card was never returned to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent did not request a postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

⁴ On September 28, 2022, the Respondent changed his address of record with the MHIC. That is the address to which the OAH sent the Notice.

that the Respondent received proper notice, and I proceeded to hear the captioned matter.

COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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 offered by the Claimant:

- Cl. Ex. #1- Photograph of east side of the house⁵
- Cl. Ex. #1(a)- Photograph of north side of the house
- Cl. Ex. #2-⁶ Amended Data Sheets with Page Citations, undated; Maryland Residential Code R703.4 *Flashing*; VSI⁷ Manual, *Basic Installation Rules*; Maryland Code for roof drip edge; IKO⁸ guide to drip edges; CertainTeed Installation Guide; VSI Manual, *Fastening Procedure*; CertainTeed⁹ Vinyl Siding Installation Guide; GreenGuard Fanfold Underlayment Installation Guide, dated September 2015; Kingspan, *Installation as a Water-Resistive Barrier*; CertainTeed Siding Installation Guide, *Introduction*; VSI Manual, *Horizontal Siding Installation*; VSI Manual, *Other Recommendations*; VSI Manual, *Horizontal Siding Installation (use of utility trim)*; CertainTeed Vinyl Siding Installation Guide (fitting over windows and doors)
- Cl. Ex. #3- Delmarva Inspections Group LLC Inspection Report, undated

⁵ The Claimant testified that all of the photographs were taken in November 2020, and they depict the condition of their home today.

⁶ Unless otherwise noted, these documents were all undated.

⁷ Vinyl Siding Institute.

⁸ In a written statement, the Claimant said that IKO was a manufacturer of roofing materials. Cl. Ex. #23.

⁹ The manufacturer of the siding the Respondent installed.

- Cl. Ex. #4- Contract, dated October 22, 2019
- Cl. Ex. #5- Photograph of undersill trim
- Cl. Ex. #6- Photograph of siding top used as failed trim anchor at garage soffit
- Cl. Ex. #7- Photograph of nails driven into siding flange and underlayment at garage soffit
- Cl. Ex. #8- Photograph of garage entrance
- Cl. Ex. #9- Photograph of rippled coil stock
- Cl. Ex. #10- Photograph of vertical panel
- Cl. Ex. #11- Photograph of garage entrance
- Cl. Ex. #12- Photograph of garage
- Cl. Ex. #13- Photograph of overhead garage panels
- Cl. Ex. #14- Photograph of garage light
- Cl. Ex. #15- Photograph of siding, south side of the house over the garage
- Cl. Ex. #16- Photograph of caulk on garage window, north side of the house
- Cl. Ex. #17- Photograph of caulk application
- Cl. Ex. #18- Photograph of rake and window flashing
- Cl. Ex. #19- Photograph of rake flashing
- Cl. Ex. #20- Photograph of north side of house, missing dryer vent
- Cl. Ex. #21- Copies of three checks written from the Claimants to the Respondent; check number 1386 in the amount of \$11,700.00, dated November 6, 2019; check number 1390 in the amount of \$14,300.00, dated November 15, 2019; check number 5382 in the amount of \$2,000.00, dated November 6, 2019
- Cl. Ex. #22- Claimants' statement to the MHIC, dated April 25, 2023, with revisions
- Cl. Ex. #23- Claimants' original statement to the MHIC, certification dated April 24, 2023
- Cl. Ex. #24- Photograph of trim on south side window deck
- Cl. Ex. #25- Photograph of trim on south side second floor

Cl. Ex. #26- Photograph of siding on south side second floor

Cl. Ex. #27- Estimate of Straight Edge Construction (SEC), dated October 13, 2022

Cl. Ex. #28- Estimate of Tiger Roofing, Inc., dated June 21, 2022

The Respondent did not appear or offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. #1- Letter from the MHIC to the Respondent, with Claim attached, dated December 20, 2022

Fund Ex. #2- Hearing Order, dated February 3, 2023

Fund Ex. #3- Notice of Hearing, dated March 9, 2023

Fund Ex. #4- Licensing History, dated April 25, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present any testimony.

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 01-106282, and trade license number 05-13084.

2. On October 22, 2019, the Claimant and the Respondent entered into a contract, wherein the Respondent agreed to furnish and install CertainTeed siding with accessories on the Claimants' home (Contract). The Respondent agreed to remove and replace deteriorated wood as needed, install fanfold leveling board to the entire exterior of the home, trim window in j-channel, clad existing fascia in white custom bent coil stock, and furnish and install white vented soffit throughout the exterior of the home.

3. The original agreed-upon Contract price was \$26,000.00.
4. On November 6, 2019, the Claimants paid the Respondent a deposit of \$11,700.00 and \$2,000.00 for some items that the Contract did not cover. On November 15, 2019, the Claimants paid the Respondent \$14,300.00 for a total of \$28,000.00.
5. Upon execution of the Contract, the Respondent assured the Claimants that two older, experienced employees of his would be performing the work under the Contract. However, two less experienced employees actually ended up doing the work.
6. The Respondent began the work on October 30, 2019 and substantially completed it on November 20, 2019. The Respondent's employees returned on November 27, 2019 to install some lights.
7. The Claimants were not satisfied with the Respondent's work. They met with the Respondent on February 3, 2020. The Respondent agreed that the work was unacceptable and promised to fix it, but he never did.
8. The Respondent did not install the east side rake flashing correctly; it is buckled along the whole length of the flashing.
9. The siding is buckled and dented.
10. The Respondent did not install a drip edge along the roof line which is necessary to prevent moisture from entering behind the fascia. The Respondent never informed the Claimants that a drip edge was required.
11. The Respondent did not include undersill trim to capture and secure the top edge of the siding over the garage and under the windows.
12. The garage door flashing trim was left short of the weather stripping and was dented.

13. The Respondent left a large gap between the garage door trim and the foundation of the house that needs to be sealed to prevent moisture and insects from entering the garage.

14. The attic vent above the garage is screwed directly into the siding which could allow insects and moisture to enter the garage.

15. The second floor roof downspout ends at the sunroom roof instead of being diverted away from the second floor wall to prevent rainwater from running down the j-channel and behind the siding.

16. The Respondent did not install the dryer vent as required.

17. The Respondent mounted outdoor coach lights insecurely.

18. The Claimant obtained an estimate from Straight Edge Construction (SEC) in the amount of \$7,345.50 to repair and replace the Respondent's work.

DISCUSSION

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; 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 Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); COMAR 28.02.01.21K(1), (2)(a).

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) (Supp. 2022); *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 some improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant characterized the scope of work to include the installation of leveling board over the existing cedar siding, and installation of CertainTeed vinyl siding over the leveling board. Then the Respondent was to install flashing around the roof and a dryer vent. The Respondent promised that he would send two, older, experienced employees to do the work under the Contract, but instead, two less experienced employees actually did the work, and their work was inadequate. Originally the Claimants’ dissatisfaction with the Respondent’s work was aesthetic. They were unaware of the installation problems until November 2020, when David Garvey, a certified home inspector from Delmarva Inspections Group LLC, conducted a home inspection. He found that the rake flashing was not installed correctly; there was buckling along the length of the flashing. Cl. Ex. #3. There was no drip edge along the roof line which is necessary to prevent moisture from entering behind the rake. The siding over the garage and under the windows did not include undersill trim to capture and secure the top edge of the siding. Mr. Garvey also found that the garage door flashing trim was short of the weather stripping; therefore the flashing needed to be replaced with the correct length to be captured by the weather stripping. There was a large gap between the garage door trim and the foundation of the house that needed to be sealed to prevent moisture and insects from entering the garage. The attic vent above the garage is screwed directly into the siding which could allow insects and moisture to enter. The second floor roof downspout terminated at the sunroom roof instead of being diverted away from the second floor wall to prevent rainwater from running down the j-channel and behind the siding. The Respondent did not install the dryer vent as required. Mr. Garvey recommended repair or replacement of almost all of the work the Respondent performed.

The Claimant presented numerous photographs of the Respondent's work, which clearly depict inadequate work. Cl. Exs. #1-1(a); 5-20; 24-26. There is buckling in the rake flashing and the drip edge is missing. The undersill trim is missing at the garage soffit, leaving it exposed. At the garage entrance, the trim over the door is rippled, dented and unsightly. There are exposed nails in the garage trim. Around the windows on the south side deck the trim is raised and is not straight. The caulk around the garage window is messy. The rake flashing all around the house is dented and rippled. So is the siding. The work the Respondent performed appears amateurish and unacceptable.

The Claimant presented some data sheets that included Maryland Residential Code standards and manufacturers' installation instructions for vinyl siding. Cl. Ex. #2. She presented these to support her argument that the Respondent did not adhere to code and industry standards. On what the Claimant said was Maryland Residential Code for roof drip edges, as well as the guide to roof drip edges, it clarifies that a roof drip edge is necessary and required to direct water away from the fascia. The Respondent did not install a drip edge, and never advised the Claimant that it was needed. Throughout the data sheets and installation instructions there is a strong emphasis that if nails are drilled too tightly, the siding will buckle. Cl. Ex. #2. The siding needs to have the ability to move due to the expanding and contracting that naturally occurs with temperature changes. The siding is buckled all throughout, which is a clear indication that the nails were drilled too tightly. However, regarding the installation of siding, without expert testimony regarding the exact flaws in the Respondent's work, it is difficult for me to analyze through pictures exactly what the Respondent did and did not do to determine whether he adhered to these standards. Regardless, based on the Claimant's credible testimony, the home inspection report and the pictures which depict extremely poor workmanship, I conclude that the

Claimant has established that the work the Respondent performed was unworkmanlike and inadequate.

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. Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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.

The Respondent performed some work under the Contract, and the Claimant intends to retain 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 obtained two estimates to repair and replace the Respondent's work. The estimate from Tiger Roofing, Inc. was \$6,875.00. The Claimant testified that this estimate did not consider the poorly installed rake flashing on the east side of the house. The other estimate was from Straight Edge Construction (SEC) in the amount of \$7,345.50. This estimate appears to be more complete and accurate. It includes extension of the rake fascia boards beyond the j-channel and siding, replacement of rippled rake flashing/fascia along the roofline, repair of the

siding on the east side of the house, installation of undersill trim on the top siding panels, replacement of the siding under the garage soffit, replacement of the rippled coil stock on the garage entrance and installation of vinyl weather stripping on the door. The estimate also includes proper installation of attic/gable vents, undersill trim on all windows, remounting of coach lights that the Respondent mounted insecurely, and installation of the dryer vent hood that the Respondent never installed. I conclude that this estimate covers the scope of work that the Respondent performed inadequately.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.¹⁰ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. The Claimant paid the Respondent \$28,000.00. The SEC estimate to correct the Respondent's poor work is \$7,345.50. Added together, the total is \$35,345.50. After subtracting the Contract price of \$28,000.00,¹¹ the Claimant's actual loss is \$7,345.50. Therefore, the Claimants are entitled to recover their actual loss of \$7,345.50.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$7,345.50 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

¹⁰ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

¹¹ The original Contract price was \$26,000.00. However, the Claimant's paid an extra \$2,000.00 for some items that were not included in the Contract.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,345.50; 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;¹² and

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

June 27, 2023
Date Decision Issued

Susan Sinrod

Susan A. Sinrod
Administrative Law Judge

SAS/cj
#205872

¹² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 3rd day of August, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***