

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CATHERINE HADDON,</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 HUGH WILSON, T/A</p> <p>H.G. WILSON CONTRACTING,</p> <p>RESPONDENT</p>	<p>* BEFORE JEFFREY T. BROWN,</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-02-22-09816</p> <p>* MHIC No.: 21 (75) 1119</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 11, 2022, Catherine Haddon (Claimant) 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 \$9,430.84 for actual losses allegedly suffered as a result of a home improvement contract with Hugh Wilson, trading as H.G. Wilson Contracting (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On April 22, 2022, the MHIC issued a Hearing Order on the Claim. On April 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 6, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. Tina Hall, Esquire, represented the Claimant, who was present. The Respondent 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (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 offered by the Claimant:

- Clmt. Ex. 1 - H.G. Wilson Contracting Estimate No. 000024, dated April 14, 2020, signed April 16, 2020; Check No. 153 from the Claimant to the Respondent, May 9, 2020
- Clmt. Ex. 2 - H.G. Wilson Contracting Estimate No. 000132, September 3, 2020, signed September 15, 2020; Check No. 156 from the Claimant to the Respondent, October 10, 2020
- Clmt. Ex. 3 - All American Home Inspections, LLC (All American) Property Inspection Report (excerpted), undated, with photographs taken on November 16, 2021
- Clmt. Ex. 4 - Roof Right, Inc. (Roof Right) Quote for Deck Removal and Duro-Last with Paver (Quote), September 3, 2021

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Letter from the MHIC to the Respondent with attached Home Improvement Claim Form, January 28, 2022.
- Fund Ex. 2 - Notice of Hearing, May 4, 2022
- Fund Ex. 3 - Hearing Order, April 22, 2022
- Fund Ex. 4 - MHIC Licensing Data concerning the Respondent, June 17, 2022

The Respondent did not offer any exhibits into evidence.

Testimony

The Claimant testified and presented the testimony of Craig Mott, General Manager, Roof Right.

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 under MHIC license number 5235476 (expiration September 6, 2020), and MHIC license number 5559819 (expiration September 9, 2022).
2. The Claimant experienced water leakage and visible water damage in the garage beneath her deck prior to April 14, 2020.
3. On April 14, 2020, the Claimant and the Respondent entered into a contract to stain and repair the Claimant's deck, remove five sections of the deck floor, patch the roof beneath the decking, and replace floorboards where removed (Contract). See Clmt. Ex. 1.
4. The original agreed-upon Contract price was \$1,400.00.
5. The Respondent completed work under the Contract by May 9, 2020, and the Claimant paid the Respondent \$1,400.00.

6. After the Respondent performed the Contract, the Claimant continued to observe leaks into her garage.

7. The parties entered into a supplemental agreement on September 15, 2020 that the Respondent would replace the garage roof (Supplement). *See* Clmt. Ex. 2.

8. The agreed-upon Supplement price was \$5,500.00, reduced to \$4,000.00 after a \$1,400.00 credit for the previous Contract, and a \$100.00 discount.

9. The Respondent completed the Supplement work by October 10, 2020 and the Claimant paid the Respondent \$3,750.00.²

10. The total amount paid by the Claimant to the Respondent for the Contract and Supplement was \$5,150.00.

11. The Claimant experienced water leakage into the garage beneath the deck after the Respondent completed work under the Supplement.

12. The Respondent returned to the Claimant's house several times at her request to make additional repairs through November 2020. These visits were not documented.

13. In February 2021, the Claimant requested that the Respondent return to see and repair continued leaks into the garage when it rained. The Respondent went to the Claimant's home on March 1, 2021 during a heavy rain and they jointly inspected the interior of the garage. Neither the Claimant nor the Respondent observed rainwater leaking inside the garage at that time.

14. The Respondent performed no additional work after March 1, 2021.

15. The Claimant obtained a Quote from Roof Right on September 3, 2021 to remove and replace the deck and roof over the garage. *See* Clmt. Ex. 4.

² The Claimant withheld \$250.00 pending completion of the work.

16. The Claimant had her property inspected on November 16, 2021 by All American. *See* Clmt. Ex. 3.

17. The Claimant entered into a contract with Roof Right³ in the amount of the Quote, of which she had paid \$3,260.00 as of the date of the hearing. The work remained incomplete at that time.

DISCUSSION

The Claimant has 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 (2021); 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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to

³ The Roof Right contract was not offered into evidence.

arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1).

The Claimant's Evidence

The Claimant testified extensively about her ongoing desire to stop the water leaks into her garage, possibly due to the roof and deck system over the garage. The Claimant retained the Respondent to perform work, which she hoped would resolve the leaks. She acknowledged that the work under the Contract was specified as "Deck staining and Repair." The Claimant testified that the parties understood that the repair may not resolve the leak, and it did not. This was evident because leaks into the garage continued after the repairs under the Contract. She stated that she conferred with the Respondent, and he agreed to perform further work, which the Supplement identified as "Roof replacement." The Claimant testified that the Respondent completed this work in October 2020, but water continued to leak into the garage.

After initially testifying that the Respondent was almost completely unresponsive to her requests for him to return to the house and address the leak, the Claimant acknowledged that the Respondent did return repeatedly from October to November 2020, and continued to perform work presumably intended to stop leaks. The Claimant testified that in November 2020, the Respondent said that he would return after the winter if the problem continued. Initially, the Claimant testified that this was the last time that the Respondent came to her home. However, additional testimony made clear that in February of 2021, the Claimant asked the Respondent to return and he did so on March 1, 2021. On cross-examination, testimony was elicited from the Claimant that the Respondent came to her home on that date, during a heavy rain, and that they opened the garage and entered it. The Claimant was asked to confirm that on March 1, 2021,

during heavy rain, she did not observe any water leaking into the garage from any source. She agreed this was correct.

The Claimant testified that on March 1, 2021, she discussed with the Respondent additional work that could be done to identify the cause of the leaks and repair it, and that he agreed to such work. However, no further agreement with the Respondent was reduced to writing and no additional work was performed by the Respondent after his visit on March 1, 2021. The Claimant testified that leaks continued after March 1, 2021, so she contacted Roof Right, which provided her with the Quote to demolish the existing deck, remove existing roofing materials, install a new waterproof membrane, and install pavers over the membrane. The cost of work by Roof Right would be \$9,780.84 after a cash discount was applied. *See Clmt. Ex. 4.*

The Claimant called Craig Mott, General Manager of Roof Right, to testify as a fact witness. Mr. Mott confirmed that Roof Right is a MHIC licensed home improvement contractor. His contact with the Claimant began on September 28, 2021 when he went to her home to move Roof Right's project forward. Mr. Mott testified that he did not inspect the deck to determine a cause for any leaks that may have been occurring by that time. He also testified that he was not familiar with any prior efforts by others to repair leaks. The Roof Right Quote included the removal of the existing deck and roof system and replacement of the roof system, topped by pavers instead of a wood deck. The Quote did not identify leaks or any attempt to detect their source or cause.

Mr. Mott inspected the deck and roof on September 28, 2021 solely for the purpose of confirming measurements. He did not inspect the deck or roof to identify leaks or diagnose the cause of leaks. He testified that he did not look for water damage above or below the existing deck. In addition, Mr. Mott testified that the existing deck and roof were not removed because they had been determined to be unworkmanlike or inadequate, but because it was not possible to

install the new roof system without removing the existing one. Mr. Mott stated that he spoke with the Roof Right technician who prepared the Quote, but they only discussed the scope of materials needed, and Mr. Mott's measurements were to determine the correct amount of materials. They did not address the occurrence of leaks or their causes, including whether the technician had seen leaks, or had attempted to identify a source of leaks or any alleged failure of the Respondent to identify or correct them. Mr. Mott acknowledged that he was not at the Claimant's home on September 28, 2021 for any purpose other than to obtain measurements and move the project forward.

In addition to obtaining the Quote from Roof Right, the Claimant retained All American Home Inspections, LLC (All American), to perform a whole house inspection. She testified that she understood that she could not pursue a claim with the Fund unless her deck was inspected by a certified inspector. She also acknowledged that even though she only required an inspection of the deck and garage roof for this matter, she anticipated selling her home and she would benefit from having a whole home inspection done, as well. Following an inspection on November 16, 2021, All American produced an inspection report, excerpts of which comprise Clmt. Ex. 3.⁴ The inspector who conducted the inspection, took photographs, and stated his observations did not testify at the hearing.

The Respondent's Evidence

The Respondent testified on his own behalf. He agreed that after the work was completed, he went back to the Claimant's property several times until his final visit on March 1, 2021. He did not discuss any of his prior visits or what he observed other than on March 1, 2021. He testified that he chose to return to the Claimant's home on that date because there was

⁴ The original report by All American was 42 pages long. Clmt. Ex. 3 consisted of certain pages from the report, including a cover page, a Report Summary, conclusions by the inspector, and photographs on pages 30 – 37 of 42.

a substantial rain. The Respondent testified that components of the garage roof, beneath the deck, showed signs of prior water damage before his work, which damage still remained. He explained that he and the Claimant entered the garage to see if any active leaks could be observed inside, but there was no visible evidence of moisture or water anywhere leaking into the garage from the deck or garage roof at that time, despite the heavy rainfall. The Respondent was asked if he tried to determine the source of leaks during his visit on March 1, 2021, and he testified that since there were no leaks, there was nothing to locate or identify. The Respondent agreed that as contracted in the Supplement, he had replaced the roof and membrane.

The Respondent testified that the Claimant did make suggestions about other things that could be done, but he did not consider them contractual. The Respondent testified that as of March 1, 2021, when no leak could be detected inside the garage during a heavy rain by either the Claimant or himself, his work had been completed and there was nothing else under the contract that he believed he was required to do. He said that he elected to move on at that time and did not contract with the Claimant to perform additional work.

Analysis

For the following reasons, I find that the Claimant has not proven eligibility for compensation. The Claimant had a pre-existing water leak into her garage before she retained the Respondent. No evidence was offered which identified the specific locations of leaks or causes of leaks, whether before or after the Respondent's work. There was no evidence presented that the Respondent or any other person identified the cause of water leaking into the garage before he performed the first deck work under the Contract. The Contract did not specify that the Respondent would identify and correct the source, or all sources, of any leaks into the garage, whether due to the roof or from some other structural cause. The Respondent was not asked if he attempted to identify the cause of the leak. It is not alleged that he identified any

cause of leaks or identified the wrong source of leaks. In fact, there is no evidence in this case, despite all the persons who observed or worked on the deck and garage roof, that any person has ever identified the actual cause of leaks into the garage, either before or after the Respondent performed his work there.

The premise underlying the Claimant's arguments is that the cause of prior leaks must have been something to do with the roof, and the inference that arises from this premise is that because the leaks continued after the Respondent replaced the roof, his work must be the reason there are still leaks, thus making his work inadequate and unworkmanlike. However, reasonable inferences cannot be drawn from premises that are not founded in facts. In order to find that a defect in the roof was the original cause of the leaks, and that the Respondent's replacement failed to correct that problem because it was inadequate and unworkmanlike, the burden is upon the Claimant to demonstrate by some form of evidence that this is not merely an assumption. She has not done so.

The Claimant did not testify that the original roof or a defect in it was ever identified by anyone as the cause of water leaking into the garage. She did not present evidence that the Respondent did so, either. Neither contract specifies that its purpose was to determine and repair an identifiable cause of water leaking into the garage. The Respondent was not asked and never testified that he agreed to determine the cause or source of prior leaks. There is not even evidence that the Respondent was ever present while leaking occurred before the Contract, or that he ever observed water leaking into the garage from any point and tried to determine its source. No evidence in this case provides an explanation of the source or cause of any leaks, at any time. If the Respondent replaced the roof but leaks still continued, then it is just as possible that the cause of the leak was some other defect in the structure that remained undetected. It is the Claimant's burden to show that that the Respondent performed inadequate, unworkmanlike

or incomplete work, as a result of which the leaks were not corrected or continued. She did not do so.

Neither the Claimant's witness, Mr. Mott, nor the All American inspection report provided factual information from which the cause of any leaks could be determined, or that the Respondent's work was inadequate or unworkmanlike and produced subsequent leaks. Mr. Mott was not offered as an expert, and he did not possess factual knowledge specific to the leaks that are the reason for all work performed in the past and in the present, whether above or inside the garage. The inspector who prepared the All American report did not testify. The extent of his professional expertise or knowledge of decks, roofs, construction, or applicable standards of care was not established. There is no evidence to suggest that the All American inspector reviewed the two contracts involving the Respondent, or compared the conditions he observed to the express scope of either the Contract or the Supplement to determine that the Respondent failed to provide adequate or workmanlike performance of what he contracted to do. There is no evidence that even if the All American inspector had done this, he was qualified to do so.

Despite this, the Claimant argued that her case was proved by the All American report. The home inspector noted in his summary that the deck leaks, perhaps based on prior water damage to the garage ceiling and/or roof, which he photographed. The home inspector took several photos of the ceiling of the garage showing water damage, though none of the photos appear to show active leaks when they were taken. The Claimant argued that the home inspector determined that the roof membrane had not been installed correctly and, significantly, that it was not the Claimant's obligation to show why it failed.

However, the home inspector was not called to testify. He was not offered or qualified as an expert. Even his license number is omitted from the report. He was not subjected to cross-examination. He could not be questioned whether he determined that the water damage he

observed and photographed predated the work done by the Respondent, or whether he assumed that it came after. He could not be asked whether he observed active leaking on any occasion after completion of the Respondent's work or determined its source. He could not be questioned about how the membrane had allegedly failed, and how it was due to the Respondent's workmanship. He could not correlate an alleged failure of the membrane attributable to the Respondent with an identifiable location of current leaks in the roof, or rule out other possible explanations for leaks. In lieu of such testimony, the Claimant argued that it was "obvious" that the roof membrane did not work.

In contrast to the Claimant's arguments as to what may be inferred from leaks that no witness observed, located or documented, I must consider the testimony by both the Claimant and the Respondent that on March 1, 2021, during a substantial rain, both parties stood inside the garage and purposefully looked for leaks, but none could be found. The Claimant has testified without specificity that there are continued leaks, but they have not been photographed, quantified, or documented in any way. Weighing against this void in the evidence is the documented absence of leaks during a heavy rain as testified to by both the Respondent and the Claimant. The Claimant argues that it was unreasonable for the Respondent not to perform additional work after March 1, 2021, for leaks neither of them could see, and criticizes him for not returning to do more. However, the experience of having returned to the house at the Claimant's request, and seeing no leaks during a rainstorm, supports the Respondent's reasonable conclusion that if the garage roof was not leaking under the pressure of heavy weather, his work at the property was concluded and the contracts were fulfilled, whatever their scope.

The Claimant has not shown by a preponderance of the evidence that the Respondent performed inadequate, unworkmanlike or incomplete work which resulted in continued leaks in

her garage. She has not shown by a preponderance of the evidence what caused the leaks that predated the Respondent's work. She has not shown by a preponderance what caused leaks after the Respondent completed his work. She presented no evidence concerning the leaks other than to say they continue, except on March 1, 2021 during a heavy rain. The Claimant has presented no testimony or evidence which correlates the Respondent's work with a clear defect or failure, or that the defect is the cause of ongoing leaks which no witness or evidence in the record documented.

The Claimant has failed to prove that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. I thus find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSION 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(a) (2015); COMAR 09.08.03.03B(2).

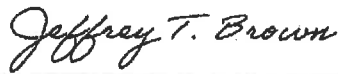
RECOMMENDED ORDER

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.

September 2, 2022
Date Decision Issued



Jeffrey T. Brown
Administrative Law Judge

JTB/da
#200501

PROPOSED ORDER

WHEREFORE, this 7th day of October, 2022, 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.

J Jean White

I Jean White

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**