

**IN THE MATTER OF THE CLAIM OF
BRANDY DORSEY
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
JARED ARMINGER AND RENEW
HOME DESIGNS, INC.**

*** MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 21(75)1150
* OAH CASE NO. LABOR-HIC-
* 02-22-01055

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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 April 4, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on June 7, 2022, concluding that the homeowner, Brandy Dorsey (“Claimant”) failed to prove the amount of the actual loss she suffered as a result of the acts or omissions of Jared Arminger and Renew Home Designs, Inc. (collectively, “Contractor”). *ALJ Proposed Decision* p. 8. In a Proposed Order dated August 2, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On September 15, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs 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) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Contractor sought to introduce new evidence but he failed to demonstrate that the documents he wanted in evidence were relevant and material and that they could not have been discovered before

the April 4, 2022 OAH hearing. 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 Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, but denied the Claimant's claim because the Claimant failed to present evidence of the cost to correct the Contractor's work or evidence of the value of the labor and materials provided by the Contractor under the contract. *ALJ's Proposed Decision* pp. 8-9.

On exception, the Claimant did not allege that the ALJ's Proposed Decision was erroneous. Instead, she asked the Commission to grant her an award because of the inconvenience, expense, and stress that she suffered as a result of the Contractor's conduct. The Commission has reviewed the record of this proceeding and finds no error with the ALJ's Proposed decision. The Commission holds that the Claimant is not entitled to a Guaranty Fund award because she has not demonstrated the amount of her actual loss, as she did not present evidence of the cost to correct or complete the Contractor's deficient work or the value of the labor and materials provided by the Contractor under the contract. The Commission also agrees with the ALJ's finding that the costs the Claimant incurred repairing water damage to the interior of her home were consequential damages that are not compensable by the Guaranty Fund.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 11th day of October 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is

AFFIRMED;

- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Robert Altieri
Chairperson –Panel
Maryland Home Improvement
Commission

<p>IN THE MATTER OF THE CLAIM</p> <p>OF BRANDY DORSEY,</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 JARED ARMINGER,</p> <p>T/A RENEW HOME DESIGNS, INC.¹</p> <p>RESPONDENT</p>	<p>* BEFORE ROBERT B. LEVIN</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-02-22-01055</p> <p>* MHIC No.: 21(75)1150</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
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DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On August 13, 2021, Brandy Dorsey (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 \$5,812.00 for actual losses allegedly suffered as a result of a home improvement contract with Jason Armingier, trading as Renew

¹ In her Claim, the Claimant named the Respondent as "Jared Armingier, trading as Renew Home Designs, Inc., 6700 Alexander Bell Drive, Suite 26, Columbia, Maryland 21046." (Fund Ex. 3.) The MHIC's Hearing Order, however, identifies the Respondent as "Jared Armingier, trading as Southern National, LLC," located at the same Columbia, Maryland address as that shown in the Claim. Based on the Claimant's designation of the Respondent in her Claim as trading as Renew Home Designs, Inc., and the fact that her contract is with Renew Home Designs, Inc. (see CL. Ex. 1), the Respondent for purposes of this Decision is "Jason Armingier, t/a Renew Home Designs, Inc."

Home Designs, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).² On December 28, 2021, the MHIC issued a Hearing Order on the Claim. On January 4, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 4, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself.

After waiting more than fifteen 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 January 28, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address 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 April 4, 2022, at 9:30 a.m. at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. 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 to the OAH. 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 determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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

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; 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:

- Cl. Ex. 1 - Home Improvement Contract (Contract) between the Claimant and Renew Home Designs, Inc. (Renew), signed by Jared Armingier (Respondent), May 24, 2018
- Cl. Ex. 2 - Claimant's checking account transaction details documentation, statement date June 23, 2021
- Cl. Ex. 3 - (a)-(e) Photographs, undated
- Cl. Ex. 4 - Email chain between the Claimant and Justin Hock, Renew, October 25- November 6, 2020
- Cl. Ex. 5 - Printout of text messages between the Claimant and Justin Hock, November 6, 2020-June 19, 2021
- Cl. Ex. 6 - Claimant's check no. 00005, made payable to Ben Bears, for \$200.00, January 13, 2022
- Cl. Ex. 7 - Email from the Claimant to Mathias Allison, Taffy Palmer and Jared Armingier, June 19, 2018
- Cl. Ex. 8 - Photograph, undated
- Cl. Ex. 9 - Packet of six photographs, undated
- Cl. Ex. 10 - Renew estimate, undated

Cl. Ex. 11 - Renew's Certificate of Liability Insurance, August 17, 2017

The Respondent, who did not appear, did not submit any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, January 28, 2021

Fund Ex. 2 - Hearing Order, December 28, 2021

Fund Ex. 3 - Letter from Joseph Tunney, MHIC Executive Director, to the Respondent, August 24, 2021, with attached Home Improvement Claim Form, dated August 5, 2021, and received by the MHIC, August 13, 2021

Fund Ex. 4 - Certified copy of the MHIC licensing record for the Respondent, March 30, 2022

Testimony

The Claimant testified and did not present other witnesses. The Respondent was not present and did not present any 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 1-96953.³
2. In 2018, the Claimant decided to have a new roof installed on her home because she had a leak in her ceiling.
3. On May 24, 2018, the Claimant and the Respondent entered into a contract for the removal of her existing roof and the installation of a new roof on the Claimant's home.
4. The original agreed-upon Contract price was \$4,608.00.

³ Fund Ex. 4, a certified summary of the MHIC's licensing records for the Respondent, lists his Contractor's license number(s) as "1-96953 & 05-145432 [sic]." The Claimant's contract with the Respondent states that Renew's MHIC license is "96953." By a handwritten interlineation in the "Office Record" portion of the Claimant's Home Improvement Claim Form, the MHIC inserted the Respondent's license number: "01-96953." (Fund Ex. 3.) I find 01-96953 is the Respondent's MHIC license number.

5. The Contract stated that work would begin in approximately four to six weeks from May 24, 2018, and would be completed one to two days after the start date.
6. The Respondent began work on June 18, 2018 and completed the project about two days later.
7. The Claimant paid the Contract price in full.
8. A month after installation, the new roof started leaking. Water came through the Claimant's child's upstairs bedroom ceiling, traveled down the wall of that room, penetrated the ceiling of the first floor dining room and ran down the dining room wall.
9. The area of the leak on the ceilings and walls is approximately eighteen to twenty four inches wide.
10. The Claimant notified the Respondent about the leak in October 2020 and asked him to return and repair the roof in order to avoid further damage.
11. An employee of the Respondent, Justin Houk, responded to the Claimant and offered to schedule a repair appointment.
12. In or about November 2020, the Respondent returned to the Claimant's home. His employee attempted to repair the roof by putting heavy industrial glue on it.
13. For a few weeks the leaks stopped, but several weeks later the leaks returned in the same spot whenever it rained.
14. When the Claimant contacted the Respondent's company again to request they repair damage to her home's interior, Mr. Houk texted her that "Renew MD is closed. I'm sorry but you will have to outsource this with an interior company and send renew [sic] a bill." (Cl. Ex. 5, March 24, 2021 text message.)

15. The Claimant hired Ben Bears, unaffiliated with the Respondent, in January 2022 and paid Mr. Bears \$200.00 to paint over the ceiling in her child's room, fix a bubbling area, and sand it down.

16. Mr. Bears did not go up on the roof.

17. The Claimant subsequently sent photos to contractors that do roofing and water damage repairs and they gave her quotes for interior damage that they said might require them to check inside the wall for mold.

18. The Claimant mainly wanted to resolve the interior damage and did not get any estimates to correct the roof.

19. The Claimant did not want to pay for roof repair because the Contract with the Respondent included fifty-year product and labor warranties.

20. The roof continues to slow-leak from one portion of the roof.

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.

The Respondent’s work was clearly unworkmanlike and inadequate; the roof leaks. His company’s attempted repair of the leak with the application of industrial glue failed and the leak continues. I thus find that the Claimant is eligible for compensation from the Fund.⁴

Nevertheless, although I find that the Respondent performed an unworkmanlike and inadequate home improvement, I must accept the Fund’s argument that the Claimant did not prove the amount of her actual loss. The Claimant offered no evidence of the cost of removing the roof installed by the Respondent and replacing it with a new roof. Nor did the Claimant offer any evidence of the cost of patching, replacing shingles or otherwise fixing the portion of the roof from which the leaks originate.

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). The MHIC’s regulations provide three formulas to measure a claimant’s actual loss, depending on the status of the contract work.

“If the contractor abandoned the contract without doing any work, the claimant’s actual loss shall be the amount which the claimant paid to the contractor under the contract.” COMAR 09.08.03.03B(3)(a). This formula does not apply: the Respondent did not abandon the contract without doing any work.

The Respondent performed work under the Contract, and according to her testimony the Claimant is not seeking other contractors to complete or remedy that work. Accordingly, the

⁴ The Fund argued that although the Claimant discovered the leak in July 2018, and filed her Claim on August 13, 2021, the Claim is timely under Bus. Reg. §8-404(g)’s three-year statute of limitations for claims against the Fund because the three-year period should be deemed to have begun to run in November 2020, at the time of the Respondent’s unsuccessful attempt to fix the leak.

following formula appropriately measures the Claimant's actual loss: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

Here, the Claimant showed that she paid the Contract price of \$4,608.00.⁵ However, she did not offer any evidence to prove the value of the materials and services provided by the Respondent. She did not prove the Respondent's work was completely valueless. The evidence shows that the leaks are coming from only a limited portion of the roof, causing damage to the interior ceilings and walls of about eighteen to twenty-four inches in width. To be clear, by noting the limited scope of the leak, I do not ignore or downplay the adverse impact on the Claimant of the Respondent's shabby conduct in pulling up stakes and closing his business without repairing the roof and interior damage or reimbursing the Claimant for repairs. Despite this, with no evidence of the value of the Respondent's materials and labor and no proof that they are valueless, the Claimant failed to prove the amount of her actual loss under the COMAR 09.08.03.03B(3)(b) formula.

The Respondent also offered no evidence that she either has retained or intends to retain other contractors to remedy the Respondent's deficient work. Accordingly, she failed to prove an actual loss under the third formula:

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

⁵ Though the Contract price was \$4,608.00, the Claimant testified that the price was actually \$5,812.00 and that she paid that amount. She did not explain this discrepancy, which is not material to the outcome of this case.

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).

Therefore, none of the above three regulatory formulas is appropriate in this case. No unique formula was suggested at the hearing that might be appropriate and I do not discern one that might apply to the circumstances of this case.

I must agree with the Fund that the interior damage to the Claimant's home is not compensable from the Fund because it is consequential damage resulting the Respondent's inadequate roof work. As previously noted, 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).

The Fund noted that the interior damage could be the subject of an insurance claim. The Claimant responded that she began an insurance claim but did not move forward because her policy has a \$2,000.00 deductible. The Fund also suggested that the Consumer Protection Division of the Office of the Attorney General of Maryland might provide her with recourse under the Maryland Service Contracts and Consumer Products Guaranty Act, Md. Code Ann., Comm. Law §14-401, *et seq.* (2013). That potential source of redress remains open to the Claimant.

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 (2015).

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.

June 7, 2022
Date Decision Issued

Robert B. Levin

Robert B. Levin
Administrative Law Judge

RBL/cj
#198692

PROPOSED ORDER

WHEREFORE, this 2nd day of August, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**