

<p>IN THE MATTER OF THE CLAIM</p> <p>OF LADELL CARTER,</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 JOSEPH ROSTEK,</p> <p>T/A A B CONTRACTORS LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE PATRICK E. MAHER,</p> <p>* ADMINISTRATIVE LAW JUDGE,</p> <p>* THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-08019</p> <p>* MHIC No.: 21 (75) 121</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 9, 2020, Ladell Carter (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$28,680.00 in actual losses allegedly suffered as a result of a home improvement contract with Joseph Rostek, trading as A B Contractors, LLC. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹

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

On March 29, 2022, the MHIC issued a Hearing Order on the claim. On April 4, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 13, 2022, I conducted a hearing at the OAH in Hunt Valley, Maryland. *Id.* §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. 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 in this case. 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

Except where noted, I admitted the following exhibits into evidence for the Claimant:

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| Clmt. Ex. 1. | Not Offered |
| Clmt. Ex. 2. | Not Offered |
| Clmt. Ex. 3. | Document, Allstate Capital Property Market Claim Office, September 22, 2020 |
| Clmt. Ex. 4. | Document, Paul Davis Restoration of Greater Baltimore, November 9, 2020 |
| Clmt. Ex. 5. | Various email correspondence, June 5, 2020, through October 2, 2020 |
| Clmt. Ex. 6. | Photographs of Claimant's roof, July 29, 2020 |
| Clmt. Ex. 7. | Contract Bid by Respondent, April 5, 2019 |

- Clmt. Ex. 8. Document, Thomasville Homes Restoration, August 19, 2020
- Clmt. Ex. 9. Document, Fax from Allstate Insurance Company to Claimant, April 18, 2019
- Clmt. Ex. 10. Offered - Not Admitted - Internet Registration Document, Consumer Protection Division

I admitted the following exhibits into evidence for the Respondent.

- Resp. Ex. 1. Letter from Allstate Insurance Company to the Respondent, October 6, 2020, Letter from Respondent to Ms. Sperger, October 21, 2020
- Resp. Ex. 2. Letter from Respondent to Ms. Rosenthal, September 8, 2020
- Resp. Ex. 3. Letter from Respondent to Ms. Sperger, October 21, 2020
- Resp. Ex. 4. Letter from MHIC to the Respondent, March 10, 2022, Letter from Respondent to MHIC, March 11, 2022
- Resp. Ex. 5. Certificate of Completion/Final Inspection/Release and Waiver of Liens, August 22, 2019
- Resp. Ex. 6. Handwritten document, March 11, 2020
- Resp. Ex. 7. Neighborhood Housing Services of Baltimore, Authorization for Disbursement, September 11, 2019

I admitted the following exhibits into evidence for the Fund:

- Fund Ex. 1. Notice of Hearing, April 12, 2022
- Fund Ex. 2. Hearing Order, March 29, 2022
- Fund Ex. 3. Letter from MHIC to Respondent, March 10, 2022, Home Improvement Claim Form, November 9, 2020
- Fund Ex. 4. The Respondent's licensing history with the MHIC, May 9, 2022

Testimony

The Claimant and the Respondent both testified.

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 01-69602.
2. The Respondent operates under the trade name A B Contractors LLC.
3. The Claimant had home improvement work done on her residence in Baltimore City arranged through the Neighborhood Housing Services of Baltimore (NHS).
4. NHS is a local administrator for the Maryland Department of Housing and Community Development Special Loans Programs. NHS offers specialized financing to its customers who meet specific criteria including income level and residence in Baltimore City.²
5. NHS provided the Claimant with a list of pre-approved home improvement contractors. The Respondent's company was on the list.
6. On or about April 22, 2019, the Claimant, Respondent and NHS entered into a contract for the Respondent to perform extensive home improvements on the Claimant's home which included repairs and improvements to the windows, concrete slab and steps, living room, dining room, kitchen, electrical work and the replacement of the roof, for a total contract price of \$26,680.00.
7. The Respondent was paid by NHS through a series of four quarterly draws of approximately 25% of the contract amount, less a 10% hold back, which was to be paid upon the completion and final inspection of the project by NHS.

² <https://www.nhsbaltimore.org/get-a-loan/rehab-loans>.

8. On August 22, 2019, the home improvement work was completed, and the Claimant, Respondent and the NHS Rehabilitation Specialist signed a Certificate of Completion/Final Inspection/Release and Waiver of Liens.
9. On or about July 2020, the Claimant experienced a leak in the front portion of her house that resulted in water on her floor and damage to her drywall.
10. The Claimant contacted NHS, the Respondent, and Allstate Insurance, her homeowner's insurance company.
11. On a date not specified on the record, the Respondent sent out a crew to inspect the roof and did not find any issues with the installation of the roof.
12. The crew requested that they be allowed to enter the Claimant's home to inspect the origin of the leak. The crew observed a water mark on the drywall that was not conclusive of damage from a leaky roof and could have been due to a plumbing issue.
13. The crew then went upstairs to inspect the second-floor area but were not permitted to inspect the bedroom.
14. The Respondent made a subsequent appointment for the following day for a roofing crew to inspect the bedroom.
15. The Claimant did not answer the door when the inspection crew arrived the following day, and they eventually left without entering the Claimant's home.
16. The Respondent also went to the Claimant's home on the morning of the second inspection and the Claimant did not answer the door.
17. There were no further communications between the Claimant and the Respondent about the leak or the roof.

18. At a date not specified on the record, but after the home improvement work had been completed, the Claimant experienced an electrical outage that included the loss of power to her refrigerator.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. *Id.* § 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 Position of the Parties

The Claimant filed a claim with the Fund for \$26,680.00. The claim was for the entire value of the home improvement contract that she entered into with the Respondent and NHS. The Claimant alleged that NHS was responsible because of their role in the process. The Claimant testified that she had to use a contractor on their roster and that NHS makes the payments and are the mediators and have final say of the home passing inspection. The Claimant testified that NHS inspected and approved the home improvement project that was completed by the Respondent. The Claimant appeared to want to cancel the obligation or otherwise not be responsible for the financial arrangement that she entered into with NHS. She

wanted to “make it clear that [she] never had the funds.” She also testified that she contacted Allstate Insurance Company, with whom she had a homeowner’s insurance policy, and they came out and “repaired the leak.” The Claimant presented photographs and a claim document from Thomasville Homes Restoration and a claim document from Paul Davis Restoration of Greater Baltimore (Paul Davis Restoration).

The Claimant also testified that the power to her refrigerator went out. She testified that she was advised it was due to a faulty installation of the electrical box. The Claimant concluded her testimony by stating that due to the emergency, she contacted her insurance company.

Other than the \$26,680 amount listed on the Home Improvement Claim Form, the Claimant did not specify what actual costs she incurred for the roof replacement and electrical work due to the Respondent’s alleged unworkmanlike or incomplete home improvement.

The Respondent testified that he has been a licensed home improvement contractor for forty years. He stated that payment for a home improvement contract through NHS is done through a series of four draws which are requested at quarterly phases of the job. The draw is 25% of the contract price less 10% which is held back until the conclusion and final approval of the project. At the completion of each quarterly phase of the job, the Respondent makes a draw request and the inspector from NHS and the homeowner both sign off prior to its approval. The Respondent testified that all draw requests were approved. In addition, upon completion of the job, the project was inspected by NHS and the work was approved by both NHS and the Claimant and final disbursement was made. The Claimant then submitted requests for additional work to be done when the project had been completed. The Respondent testified that his crew went to the Claimant’s home several times and eventually met with the Claimant and a supervisor from NHS to get a comprehensive list of issues to be addressed. The parties reviewed the list, and all of the

issues were resolved to the Claimant's satisfaction and signed off by the Claimant, Respondent and the representative from NHS.

The Respondent further noted that he was subsequently contacted by the Claimant about the leak and sent a crew to inspect the roof and the leak. His crew did not find anything wrong with the roof and requested to go inside to inspect the second floor. The crew was not permitted to inspect the upstairs bedroom and arrangements were made to return the following day. The crew returned the following day, and the Claimant was not home. The Respondent testified that he also went to the home the following day and the Claimant did not answer the door. The Respondent noted that he spoke to the Claimant's neighbor who confirmed that the inspection crew was unable to enter the home as the Claimant did not answer the door. The Respondent testified that he did not hear anything further from the Claimant about the leak or the roof until he received a letter from Allstate Insurance Company dated October 6, 2020, advising him that they are investigating the loss and placing him on notice of damages and requesting his assistance.

The Fund's position was that the Claimant did not meet her burden of proof by a preponderance of the evidence. Specifically, the Fund argued that the Claimant did not prove causation, that the leak was the result of the faulty installation of the new roof. In addition, the Claimant did not put into evidence any testimony of damages. With respect to the electrical work that was done, once again the Fund argued that absent expert testimony, the Claimant did not prove her case by a preponderance of the evidence that the loss of power to the refrigerator was the result of unworkmanlike or incomplete home improvement by the Respondent.

Analysis

The Claimant did not have a clear understanding of the nature of the MHIC Guaranty Fund and the hearing process. She initially placed blame on NHS for approving the work done under the contract and appeared to want to void the financing agreement that she secured for the

entire home improvement project, which included work not related to the claim for the roof and electrical work. She did not offer into evidence the financing agreement that she arranged with NHS to support what if any actual costs she may have incurred arising from the home improvement project.

In support of her claim for actual losses from the leak in her home, the Claimant submitted photographs taken by representative(s) of Paul Davis Restoration on July 9, 2020, and their claim document dated November 9, 2020. The Claimant also submitted a claim document from Thomasville Homes Restoration. The representative(s) from Paul Davis Restoration did not testify at the hearing. Accordingly, it was not possible for the Respondent or the Fund to question the basis for their conclusion that the “roof failed causing damages to the home.” Questioning the representative(s) would be essential in this case to explore any potential bias, motive, or credibility issues in what could be argued as self-serving statement by a company who may be hired to potentially fix or replace a roof.

The Claimant did not present expert testimony to prove that the water leak was the result of the unworkmanlike, inadequate, or incomplete home improvement by the Respondent.

The conclusory statement contained in the claim form suggested an investigation of the roof that was not documented or explained in any of the materials provided by the Claimant, and a knowledge of roofing not within the realm of the average lay person. The statement included a conclusory opinion of the workmanlike manner of the installation of the roof and the cause of the water leak, in other words, expert opinion testimony.

Although evidence in administrative hearings is not to be excluded solely because it is hearsay,³ it is inappropriate to consider what is essentially an expert opinion without the opportunity for the opposing party to question both the qualifications of the individual who gave

³ COMAR 28.02.01.21(C).

the opinion and the basis for the opinion. This is especially relevant where the qualifications of the individuals, their knowledge, skill, experience, training, or education in the field of roofing, is unknown.⁴

It is also important to note that the company who provided the pictures and statement is the same company who was involved in potentially profiting from a roof replacement job. It could be considered a conflict of interest that invites scrutiny and certainly requires the opportunity for the opposing party to question the individual or company's motive and potential bias. Accordingly, absent the testimony of the individual who took the pictures and provided the comment, I give little evidentiary weight to these exhibits.

The Respondent credibly testified that the home improvement project was inspected by NHS at the conclusion of the project in August 2019, and his work crew was unable to find any defects in the installation of the roof when they went out to inspect the roof at the Claimant's request in July 2020. The Respondent further noted that he was unable to enter the home the following day with his crew to further investigate the source of the leak. He further testified that he has been in business a long time and if there were any issues with the roof that needed to be addressed, he and his team would have done so.

The Claimant advised that she "doesn't remember" if the Respondent's crew went to her home to inspect the roof and that they were unable to inspect the bedroom and had to come back the following day. I do not find this testimony credible, as I find it difficult to believe that the Claimant would not have recalled the Respondent's crew investigating the roof and the inside of her home when this was the crux of her complaint and in direct response to her telephone calls to NHS and the Respondent.

⁴ COMAR 28.02.01.21(D).

It is reasonable for the Claimant to assume the leak could have come from the installation of the roof by the Respondent, especially when provided the photographs and the claim form prepared by Paul Davis Restoration. However, it is also plausible that the water leak could have been due to other factors not related to the installation of the roof, including interior plumbing that the Respondent was unable to investigate. The leak discovered in July 2020 occurred over eleven months after the project was completed, inspected, and approved by NHS and the Claimant in August 2019.

Even had the Claimant proven eligibility for compensation from the Fund, the Claimant did not present sufficient testimony of damages. The Claimant initially wanted to be clear that she was not responsible for the payment to the Respondent. She did not offer any details of the financial agreement that she had with NHS. She then testified that as she described the situation as an emergency, she referred the matter to Allstate, her homeowner's insurance company. She then stated she paid for the repairs through a "loan." She did not provide any documentation of a loan or any other information to prove actual loss in this matter. When asked how much she paid for the roof repair, the Claimant stated: "I am not sure exactly." When questioned why she filed a claim for \$26,680.00, and whether she wanted all her money back, she replied: "Yes, for the roof and all the other problems." In addition, the document prepared by Thomasville Homes Restoration clearly identifies the matter as an Allstate claim and addresses repairs to the living room area. These damages are consequential and not compensable from the fund. In addition, the document prepared by Paul Davis Restoration is itemized and identified as a claim and includes repairs that would be considered consequential damages not eligible for reimbursement from the Fund.⁵ Allstate Insurance Company sent a letter to the Respondent advising him of a

⁵ See Bus. Reg. § 8-401.

claim and identified a loss of \$7,935.58. Once again, it was not clear from the evidence what if any amount this loss was attributed to or for what type of repair, but obviously Allstate was involved in the payment of a claim involving the Claimant's home.

In the context of an evidentiary hearing where the Claimant has the burden of proof to prove that the Respondent performed unworkmanlike, inadequate, or incomplete home improvement work in the replacement of the roof and electrical work, and that she sustained an actual loss, the Claimant has not done so. I do not find the Claimant's evidence, including the documents presented as exhibits, outweigh the credibility of the Respondent's testimony and his exhibits.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of \$26,680.00 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 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

Patrick E. Maher

Patrick E Maher
Administrative Law Judge

PEM/ da
#200521

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**