

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
SHELIA JOHNSON * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 22(75)1432
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
CLIFFORD WISE AND NATIONAL * 02-23-13707
REMODELERS SPECIALISTS, LLC *

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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 August 2, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on October 20, 2023, concluding that the homeowner, Shelia Johnson (“Claimant”) failed to prove that she suffered an actual loss as a result of the acts or omissions of Clifford Wise and National Remodelers Specialists, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated December 22, 2023, 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 February 1, 2024, 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. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the ALJ 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 installation of siding, windows, and gutters at the Claimant's home. The ALJ found that the Claimant was ineligible for a Guaranty Fund award because the Claimant did not pay anything to or on behalf of the Contractor under their contract. *ALJ Proposed Decision* p. 7.

On exception, the Claimant expressed her disagreement with the ALJ's Proposed Decision, but did not identify any specific alleged errors. The Commission finds no error. Md. Code Ann., Bus. Reg. § 8-405(e)(5) prohibits the payment of a Guaranty Fund award "in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." In this case, the Claimant did not pay any amount to the Contractor or pay others for materials or labor that the Contractor was required to provide under the parties' contract. Therefore, the Commission holds that the Claimant is ineligible for an award.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 7th day of February 2024, **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.

Jean White
**Chairperson –Panel
Maryland Home Improvement
Commission**

<p>IN THE MATTER OF THE CLAIM OF SHEILA JOHNSON, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF CLIFFORD WISE, T/A (NATIONAL REMODELERS SPECIALISTS, LLC), RESPONDENT</p>	<p>* BEFORE SYEETAH HAMPTON-EL, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * OAH No.: LABOR-HIC-02-23-13707 * MHIC No.: 22 (75) 1432</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 28, 2022, Sheila Johnson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$29,565.33 for actual losses allegedly suffered as a result of a home improvement contract with Clifford Wise, trading as National Remodelers Specialists, LLC. (Respondent). Md. Code

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).² On May 10, 2023, the MHIC issued a Hearing Order on the Claim. On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 2, 2023, 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. The Claimant was self-represented. The Respondent was self-represented.

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 & Supp. 2023); Code of Maryland Regulations (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 Fund:

Fund Ex. 1 – Letter from the MHIC to the Respondent, dated January 11, 2023 and the MHIC

Claim Form, dated December 28, 2022

Fund Ex. 2 – MHIC Hearing Order, dated May 10, 2023

Fund Ex. 3 – OAH Notice of Hearing, dated June 9, 2023

Fund Ex. 4 – Licensing Information, dated August 2, 2023

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

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 – Signed Contract between the Claimant and the Respondent, dated May 6, 2021

Clmt. Ex. 2 – EnerBank USA Loan Documents, dated January 5, 2022

Clmt. Ex. 3 – Sixteen Color Photographs and three Black and White Photographs, undated

Clmt. Ex. 4 – Firestone Complete Auto Care Initial Work Order, dated July 16, 2021

Clmt. Ex. 5 – Email communication between the Claimant and the Respondent, dated July 27, 2023

Clmt. Ex. 6 – Property Inspection Pros Invoice and Report, dated March 14, 2022

Clmt. Ex. 7 – Aspen Home Improvements Estimate (Aspen), dated October 20, 2022

I admitted the following exhibits offered by the Respondent:³

Resp. Ex. 1 – Charter Oak Energy Elite Vinyl Siding Sample

Resp. Ex. 2 – Gutter and Leaf Guard Model

Resp. Ex. 3 – Charter Oak Reinforced Premium Vinyl Siding Sample

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other 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 5859702.

2. On May 6, 2021, the Claimant and the Respondent entered into a contract to remove all siding at the Claimant's residence, located in Baltimore Maryland, and replace with

³ The Respondent provided actual samples and products as exhibits.

Charter Oak Energy Elite Vinyl Siding; remove and replace nine windows; and remove and replace all gutters with Soffit gutters. (Contract).

3. The original agreed-upon Contract price was \$11,188.00 to be paid upon completion of the Contract.

4. Beginning in July 2021 and concluding on April 27, 2022, the Respondent removed and replaced all windows, removed and replaced all siding, and removed and replaced all gutters.

5. The Claimant identified problems with the work performed by the Respondent including incorrectly measured windows, gaps between windows and window frames, a cracked kitchen window, a bent window sash, a missing screen in dining room window, nails left around the house causing two flat tires, a large trash bag left outside, a flooded basement, and improper removal of an outside light fixture.

6. The Claimant and Respondent communicated via text message and email regarding the Contract issues.

7. On March 14, 2022, the Claimant hired Property Inspection Pros to review the windows, siding, and gutters installed by the Respondent.

8. On December 28, 2022, the Claimant obtained an estimate from Aspen Home Improvement (Aspen) for a contract price of \$26,608.80. The Aspen estimate did not include the removal or replacement of the gutters installed by the Respondent.

9. On July 27, 2023, the Claimant deemed the Contract as null and void and declined to permit the Respondent to correct any of the issues.

The Claimant never paid the Respondent \$11,188.00 upon completion of the Contract.

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); 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).

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 home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant.

The Claimant testified that she contracted with the Respondent to remove and replace all windows; remove and replace all siding; and remove and replace all gutters. She did not dispute the Contract price of \$11,188.00 was due at the completion of the project. The Claimant also acknowledged not paying the Respondent for supplies, materials, or the agreed upon Contract price. The Claimant explained that she hired Property Inspection Pros to review the work performed by the Respondent because of the issues she observed. Property Inspection Pros noted issues with the installation of the siding, gutters, and windows. The inspection report suggested corrections but not complete removal and replacement of the siding. The inspection report suggested the addition of additional downspouts and downspout extensions. The

inspection report identified the window issues and suggested a contractor remeasure and replace the windows. To support her concerns, the Claimant photographed the issues and shared them with the Respondent. The issues included a cracked window, improperly measured windows creating a gap between the window and the window frame, a large trash bag left outside, and nails all over the property. The nails left at the property caused her daughter to have two flat tires and required replacement by Firestone Complete Auto Care. The large trash bag left outside blocked the basement door and caused the basement to flood, damaging the sofa.

Initially, the Claimant allowed the Respondent to return to correct the issues, but after an argument, the Claimant told the Respondent to not return to her property. Because the Claimant remained dissatisfied with the work performed by the Respondent, the Claimant obtained an estimate from Aspen. Aspen agreed to remove and replace all siding; and remove and replace all windows installed by the Respondent at a cost of \$26,608.80. The Aspen estimate differs from the scope of work identified in the Contract.

The Respondent testified that he contracted with the Claimant but did not require a deposit or consideration. He explained a deposit is only required for a "cash job" and this Contract involved financing through Enerbank; therefore, a deposit was not required. The Respondent explained the products used and even offered the actual products as evidence to be admitted on his behalf. The Respondent testified that he purchased and installed Charter Oak siding with insulation as identified in the Contract. In addition, the Respondent purchased and installed custom wrap windows, soffit gutter guards, and downspouts as noted in the Contract. The Respondent did not dispute issues raised by the Claimant such as the improperly measured windows. The Respondent acknowledged that he is not a "measure guy" and reordered replacement windows and screens. He further acknowledged his workers removed an outside

lamp to install the siding, but he could not replace the lamp because he is not an electrician. Although the Respondent did not dispute several issues raised by the Claimant, he disputed that the lamp caused a fire or that he was told about a fire. The Respondent also reviewed the report from Property Inspection Pros and disagreed with the finding that the siding was too tight. Lastly, the Respondent recalled conversations with the Claimant, but denied threatening the Claimant. However, the Claimant did not allow the Respondent to correct the issues identified in the inspection report or have them repaired by another contractor.

Based on the evidence presented, I do not find that the Respondent abandoned the Contract. Assuming arguendo that the Respondent performed incomplete work because he installed the siding and gutters, but improperly measured and installed the windows, the Claimant did not permit the Respondent to attempt to correct the work. I also find that the Claimant is not eligible for compensation from the Fund because the Fund is prohibited from awarding an amount in excess of the amount paid by the claimant to the contractor or on behalf of the contractor. COMAR 09.08.03.03B(4). Here it is undisputed that the Claimant did not pay any monies toward the Contract price to the Respondent or to anyone on his behalf.

Even if I found unworkmanlike conduct, which I do not, pursuant to COMAR 09.08.03.03B(4), I am prohibited from awarding the Claimant more than she paid to the Respondent. In this case, the Respondent installed the siding and gutters without issue. The Respondent did not deny that he improperly measured the windows, he offered to fix the issue and repurchase new windows, but the Claimant declined. I find the Respondent provided credible testimony regarding his multiple attempts to have the new windows installed. Although the Claimant shared the Property Inspection Pros report with the Respondent, the Respondent was prohibited from correcting any issues. The Property Inspection Pros report did not require

removal and replacement of the siding, windows, or gutters. Instead, the Property Inspection Pros Report only identified windows or siding to be repaired or replaced by a qualified contractor, or by the Respondent, a licensed contractor. Lastly, the Claimant obtained an estimate from Aspen and that Aspen estimate did not include replacement of the gutters, further indicating they were properly installed.

In addition, I find that the Claimant did not suffer any actual loss. Actual loss is defined as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. §8-401. It is undisputed that the Claimant did not pay the Respondent any portion of the Contract price. In addition, the Claimant did not prepay or purchase the materials used in the home improvement project. Finally, the Claimant sought recovery of \$29,565.33 based on the estimate from Aspen. However, the estimate from Aspen is for \$26,608.80 after a discount of \$2,956.53 and it includes removal and replacement of the siding and all windows. The Aspen estimate differs from the original Contract because it does not include removal and replacement of the gutters installed by the Respondent.

In addition, 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). In this case, the Claimant paid \$225.00 to Property Inspection Pros to have the Respondent’s work reviewed. In addition, the Claimant provided a receipt to show that her daughter paid Firestone \$1,347.20 to replace four tires. The costs are consequential damages and are specifically excluded and not eligible for compensation.

Therefore, based on the evidence presented I do not find that Claimant has met her burden that the Respondent provided unworkmanlike, inadequate, or incomplete home

improvements. I further find that the Respondent did not abandon the Contract. I further find that the Claimant did not suffer any actual loss. COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS 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 & Supp. 2022); 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.

October 20, 2023
Date Decision Issued



Syeeta Hampton-EL
Administrative Law Judge

SAH/ac
#206970

PROPOSED ORDER

WHEREFORE, this 22nd day of December, 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.

J Jean White

I Jean White

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**