

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CHELE ROBINSON,</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 CHRISTOPHER</p> <p>TOLEMAN, T/A AROCON ROOFING</p> <p>& CONSTRUCTION,</p> <p>RESPONDENT</p>	<p>* BEFORE STEPHEN W. THIBODEAU,</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-02-22-16212</p> <p>* MHIC No.: 22 (75) 880</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On May 31, 2022, Chele Robinson (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 \$5,372.00 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Toleman, trading as Arocon Roofing and Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411

(2015 & Supp. 2022).¹ On June 24, 2022, the MHIC issued a Hearing Order on the Claim. On June 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 2, 2022, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting 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. COMAR 28.02.01.23A. On July 13, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for November 2, 2022, at 9:30 a.m., via the Webex videoconferencing platform. 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 to the OAH. 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.

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.

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

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 Claimant²:

- Clmt. Ex. 1 - The Claimant's Contract with the Respondent, October 23, 2020
- Clmt. Ex. 2 - Invoice from the Respondent, November 30, 2020; Billing Statement from the Respondent, January 27, 2021
- Clmt. Ex. 3 - Emails between the Claimant and the Respondent, August 12 through August 15, 2021
- Clmt. Ex. 4 - Several photos, identified as follows:
- Two photos of the Claimant's roof and gutters, taken September 2020 (pg. 1);
 - Two photos of the Claimant's roof and gutters, taken by the Respondent, August 2021 (pg. 2)
 - Photo of the Claimant's roof and gutter, taken by the Respondent, August 2021 (pg. 3)
 - Photo of the Claimant's roof and gutter, taken by the Respondent August 2021 (pg. 4)
 - Photo of the Claimant's roof and gutter, taken by the Respondent, August 2021 (pg. 5)
 - Photo of the Claimant's exposed ceiling, taken by the Claimant, August 10, 2021 (pg. 6)
 - Photo of debris in the Claimant's living room, taken by the Claimant, August 10, 2021 (pg. 7)
- Clmt. Ex. 5 - Report from Mike Holmes of MH Handyman, LLC, February 28, 2022, with attached photos
- Clmt. Ex. 6 - Claimant's Bank Statement, Cancelled Check, and Quickbooks Statements showing payments to the Respondent, printed September 23, 2021

² At the hearing, the Claimant submitted several potential exhibits by email. Many of those exhibits were not ultimately offered; however, those exhibits are saved on a flash drive and retained as part of the record. The exhibits that were offered and admitted were printed as hard copies, and marked and identified in the file as reflected below.

Clmt. Ex. 7 - Claimant's Contract with Samuel Norman d/b/a Dynamic Contracting Ralda Construction LLC, September 26, 2021

Clmt. Ex. 8 - Photos of the rear of the Claimant's home, taken May 2019

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, July 13, 2022, and Hearing Order, June 24, 2022

Fund Ex. 2 - Licensing History for the Respondent, printed October 27, 2022

Fund Ex. 3 - Letter from the MHIC to the Respondent, June 6, 2022, with attached Claim Form from the Claimant

Testimony

The Claimant 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 01-99436.
2. On October 23, 2020, the Claimant and the Respondent entered into a contract (Contract) to replace the roof at the Claimant's home at 11500 Nevis Drive, Beltsville, Maryland (Property).
3. The original estimate for the Contract was \$11,119.54. However, due to the need to replace several pieces of plywood on the roof, as well as other costs of work as the Contract proceeded, the agreed upon Contract price was \$15,574.34.
4. The Claimant financed \$10,000.00 of the Contract through Synchrony Bank, and made additional out-of-pocket payments on the Contract of \$1,855.00, for a total of \$11,855.00 paid to the Respondent. The Claimant did not pay the full amount of the Contract because she

was not satisfied with the Respondent's work, and the Respondent wanted to charge her even more than the agreed upon Contract price.

5. The Respondent installed the new roof on December 3, 2020. However, the Respondent improperly installed flashing and drip edges on the roof and left portions of the seams on the roof unsealed.

6. Ultimately, on August 9, 2021, during a severe thunderstorm, the interior ceiling of the Property began to leak. The interior ceiling caved in, scattering debris inside the home causing damage.

7. On September 26, 2021, the Claimant contracted with Samuel Norman (Norman) to fix the roof for a total of \$1,388.00. Norman also cleaned up the interior of the home and repaired the ceiling for an additional \$5,584.00.

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.

There is no dispute that the Respondent was a licensed MHIC contractor at the time of the Contract, or that the Respondent’s work on the Property was unworkmanlike. Indeed, the Claimant provided ample evidence of the Respondent’s poor workmanship on the roof, including several photos of the roof’s lack of seams and inadequate flashing. Most directly, the leak the Claimant experienced causing a substantial cave-in of her interior ceiling only nine months after the roof’s installation is the most direct evidence of the Respondent’s poor workmanship.

However, while the Claimant is technically eligible for compensation from the Fund due to the Respondent’s unworkmanlike home improvement, she did not have an actual loss compensable from the Fund.

As a threshold matter, 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). Here, the Claimant suffered damage to the interior of her home due to the Respondent’s poor workmanship. As a result, the Claimant had to pay Norman \$5,584.00 to remedy the interior issues, including the installation of a new ceiling. However, the Claimant testified that the Respondent did not do any work to the interior of her home under the original Contract. While unfortunate, the damage to the interior of the Claimant’s Property was a consequence of the Respondent’s poor workmanship but not a damage that includes the cost of restoration, repair, replacement, or completion that arise from the Respondent’s work that would be compensable by the Fund.

The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. In this instance, the applicable formula to appropriately measure the Claimant's actual loss is as follows:

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).

Applying the formula above, the Claimant paid the Respondent \$11,855.00 to install the new roof, and paid Norman an additional \$1,388.00 to fix the issues with the roof due to the Respondent's poor workmanship. As a result, the Claimant paid a total of \$13,243.00 for her roof. However, the agreed-upon Contract price was \$15,574.54. As a result, the Claimant paid less money than she originally contracted for in the installation of a new roof, and therefore suffered no actual loss ($\$13,243.00 - \$15,574.54 = -\$2,331.54$). Put another way, the Claimant saved \$2,331.54 that she would have had to pay if she paid the full amount of the Contract to the Respondent.³ Because the Claimant suffered no actual and compensable loss from the Fund, her Claim should be denied.

³ At the hearing, the Claimant testified that the work performed by Norman was partially paid by her homeowner's insurance policy, minus her deductible. However, the amount paid by the Claimant's insurance company was disregarded in this case because it does not affect the ultimate outcome that the Claimant does not have an actual loss compensable 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 (2015 & Supp. 2022); COMAR 09.08.03.03B(1), COMAR 09.08.03.03B(3)(c).

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.

January 24, 2023
Date Decision Issued

Stephen W. Thibodeau

Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
#202725

PROPOSED ORDER

WHEREFORE, this 24th day of March, 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*