

IN THE MATTER OF THE CLAIM OF \* BEFORE NEILE S. FRIEDMAN,  
GORDON C. RUMENAP \* AN ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND HOME \* OF THE MARYLAND OFFICE  
IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS  
FOR THE VIOLATIONS OF \* OAH NO.: DLR-HIC-02-08-46283  
GILBERT GOLDBERG, \* MHIC NO.: 08 (05) 240  
T/A CHESAPEAKE WINDOW & \*  
BUILDING, INC. \*

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On January 7, 2008, Gordon C. Rumenap (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$39,597.62 for actual losses allegedly suffered as a result of the acts or omissions of Gilbert Goldberg t/a Chesapeake Window & Building, Inc. (Respondent).

I conducted a hearing on behalf of the MHIC on August 18, 2009 at the Maryland Department of Agriculture in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2004 and Supp. 2008). Jessica Berman Kaufman, Assistant Attorney General,

Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Claimant appeared and represented himself. The Respondent appeared and represented himself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, 09.08.03; and COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent; and if so,
2. What is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The Fund submitted the following exhibits that I admitted into evidence:

Fund Ex. #1 Hearing Notice

Fund Ex. #2 Transmittal and DLLR Hearing Order

Fund Ex. #3 DLLR Registration History

Fund Ex. #4 Letter from DLLR to Respondent, with attached Home Improvement Claim Form

Fund Ex. #5 Contract between Claimant and Respondent

Fund Ex. #6 Photocopies of checks

Fund Ex. #7 Contract between Claimant and Scardina Plumbing and Heating

The Claimant submitted the following exhibits that I admitted into evidence:

Claimant Ex. #1 Book of photographs

The Respondent submitted the following exhibits that I admitted into evidence:

Respondent Ex. #1 Building Permit

Respondent Ex. #2 Letter from Anne Arundel County, Maryland to Respondent

Respondent Ex. #3 Photocopies of checks

### Testimony

The Claimant testified on his own behalf.

The Respondent testified on his own behalf and called as a witness David Knight, his business partner.

### **FINDINGS OF FACT**

I find the following 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.
2. The Claimant lives in a home that was built 30 years ago. The house had structural problems such as sagging floors, walls and headers. Because of the structural problems, over the years the house experienced weatherization problems and damage to windows. On April 20, 2007 the Respondent entered into a contract with the Claimant to perform the following work:
  - Remove awning and reinstall
  - Remove deck and reinstall
  - Remove 12' patio door and install new one
  - Remove drywall around door
  - Remove bow window and install new bay window
  - Remove all rotten studs and replace
  - Left side remove window and replace with new
  - Remove all paneling from downstairs family room and dining room and sheet rock

- Jack floor from basement then install beam and jack to raise top floor
  - Break up concrete in basement then install sump pump then finish concrete floor
  - New insulation on 1<sup>st</sup> floor in panel area
  - Replace 4-sliders
  - Remove all trash and clean up
3. The contract price was \$22,300.00.
  4. By checks dated April 25, 2007, May 11, 2007, June 1, 2007 and June 2, 2007, the Claimant paid a total of \$13,433.00 to the Respondent for work under the contract.
  5. The Respondent performed the work under the contract. As the work proceeded, the Claimant had a series of complaints with the work, which he brought to the Respondent's attention.
  6. He wanted a larger window in the dining room, but after consulting with the Respondent, he agreed that the Respondent was supposed to install a window of the exact size as the one being replaced. The Claimant is satisfied with the dining room window.
  7. The window in the living room leaked after it was installed but the Respondent fixed it and the Claimant is now satisfied with it.
  8. The Claimant was not happy with the sump pump because the Respondent put it in the wrong location. The Respondent offered to move it, but the Claimant wanted to hire another contractor to do the work. The Claimant hired Scardina Plumbing & Heating, Inc. to perform the work and he paid Scardina \$1,680.00.
  9. The Claimant's contract with the Respondent did not include any siding installation.
  10. The Claimant has no problems with the deck installed by the Respondent.

11. The sliding doors in the living room leaked at first, but the Respondent fixed any problems that were causing leakage. The Claimant has no problem with the sliding doors.
12. The Respondent attempted to fix any problem that the Claimant brought to his attention, even problems that were not part of the scope of work outlined in the parties' contract. The Respondent cooperated even though the Claimant never paid the balance of the amount due under the contract.
13. When the Respondent stopped agreeing to perform extra work, the Claimant told him not to come to the house again. At this point the Respondent's partner came to finish the job.
14. The Claimant unreasonably rejected the Respondent's good faith efforts to resolve problems connected with the work.

### DISCUSSION

The relevant statute provides that an owner may recover compensation up to \$20,000.00 from the Guaranty Fund, "for an actual loss that results from an act or omission by a licensed contractor...." Md. Code Ann., Bus. Reg. § 8-405(a) and (e) (Supp. 2008). The statute defines "actual loss" 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 (2004).

Here, the Claimant testified about his frustration in dealing with repairs he contracted with contractors to make to his home. He expressed a great deal of anger and suspiciousness that certain parties were somehow behaving inappropriately. However many of these concerns had nothing to do with the Respondent. For example, he complained bitterly about dry rot in the walls and siding. However, he had contracted with another contractor to handle siding work—

siding was not part of the scope of work contained in his contract with the Respondent.

Similarly, the Respondent was very angry that a certain Anne Arundel County building inspector had approved his deck without “coming by” to inspect it. The Respondent did not express any displeasure with the Respondent’s craftsmanship of the deck—only that it had been suspiciously inspected, in his view.

On cross examination by the Fund, the Claimant admitted that he was generally pleased by the Respondent’s work that was not corrected, with the exception of the sump pump, which the Claimant explained had been relocated by another contractor. However, still, inexplicably, the Claimant maintained at the hearing that he was “suing for” what he claimed was the amount he paid other contractors to “finish the job” (\$13,630.00)—plus he wanted the Respondent to “cancel” the remaining balance he owed under the contract.<sup>1</sup>

The Claimant did not explain to me why, when he was generally pleased with the work performed by the Respondent, he needed contractors to “finish the job” at a cost that exceeded the amount he had already paid the Respondent, or at any cost for that matter. Nor did he provide documentation that he had paid anywhere near \$13,630.00 to complete the job. In fact, the Claimant did not provide any documentation at all, except for a book of photographs that was unaccompanied by any specific explanation as to what each photograph depicted, when it was taken, by whom it was taken or whether the photographs had any connection whatsoever to the work performed by the Respondent.

The Respondent and his partner were credible witnesses. The Respondent explained that when his crew started the job they were struck by the poor structural condition of the house. The Respondent felt it had not been built according to the local building code—and maybe without

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<sup>1</sup> He never explained why his initial claim for reimbursement was in the amount of \$39,597.62.

building permits, and that the house needed extensive work to bring it up to code. The Respondent and his partner testified that they performed the work they were contracted to do, plus more work, in order to attempt to fix some of the house's problems and to satisfy the Claimant. They also explained that the Claimant had hired a siding contractor to do siding work, but that he had not done a workmanlike job, so that the Respondent's crew spent some time fixing it.

The Respondent had a difficult time with the Claimant because the Claimant kept asking the Respondent to complete work that was not part of the original contract. At first the Respondent did a lot of the work just to keep the Claimant happy. Finally, when he stopped agreeing to this, the Claimant told him not to come to the house again. At this point the Respondent's partner came to finish the job and satisfy the Claimant. Yet, never did the Claimant pay the Respondent any balances due under the contract.

Under these facts, I must find that the Claimant failed to prove that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. I simply have no evidence of any problem with the work, other than with the misplacement of the sump pump-- which the Respondent offered to fix. Md. Code Ann., Bus. Reg. § 8-401 (2004). Moreover, I find that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim, further barring the Claimant from receiving any award. Md. Code Ann., Bus. Reg. § 8-405 (2004).

Even if I were to find that it was reasonable to allow the Claimant to recover for the misplacement of the sump pump, he would not receive any award from the Fund. With respect to determining the amount of an award owed to a Claimant, COMAR 09.08.03.03B(3)(c), provides:

B. Measure of Awards from Guaranty Fund.

.....  
(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

.....  
(c) 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.

Accordingly, pursuant to COMAR 09.08.03.03B(3)(c), the appropriate measure to calculate the Claimant's recovery, if any, from the Fund is:

Amount paid to the Respondent	\$13,433.00
Cost to correct/complete the work	<u>+\$1,680.00</u>
Total	\$15,113.84
Amount of original contract	<u>-22,300.00</u>
Actual Loss	\$-7,187.00

Applying the formula, it is apparent that the Claimant is not entitled to an award from the Fund. Because he was able to hire a contractor to complete the sump pump job for \$1,680.00, and that amount, when added to the sum paid to the Respondent, is less than the Respondent's contract amount, the regulations do not permit a recovery. Accordingly the Fund claim must be denied.

**CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has not sustained an actual loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2004).





**RECOMMENDED ORDER**

I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Claim of Gordon C. Rumenap be **DENIED** and **DISMISSED**;

**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

September 3, 2009  
Date Decision Mailed

  
Neile S. Friedman  
Administrative Law Judge 

NSF/kke  
#107960

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GORDON C. RUMENAP	*	AN ADMINISTRATIVE LAW JUDGE
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FOR THE VIOLATIONS OF	*	OAH NO.: DLR-HIC-02-08-46283
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T/A CHESAPEAKE WINDOW &	*	
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\* \* \* \* \*

**FILE EXHIBIT LIST**

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PROPOSED ORDER

*WHEREFORE, this 28th day of October 2009, 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.*

*Rossana Marsh*

*Rossana Marsh  
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION