

IN THE MATTER OF THE CLAIM
OF DANIELLE ROBINSON,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF EDWARD CHMAR,
T/A ALLIED REMODELING
CORPORATION OF CENTRAL
MARYLAND, INC.,
RESPONDENT

* BEFORE BRIAN ZLOTNICK,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-02549
* MHIC No.: 20 (90) 195
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PROPOSED DECISION

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STATEMENT OF THE CASE

On September 26, 2019, Danielle 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),¹ for reimbursement of \$18,750.00 in actual losses allegedly suffered as a result of a home improvement contract with Edward Chmar, trading as Allied Remodeling Corporation of Central Maryland, Inc. (Respondent). Md. Code

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 9, 2021, the OAH issued a notice to the parties that a hearing was scheduled for April 2, 2021, beginning at 9:30 a.m. The notice further advised that the hearing would be held remotely using the Webex videoconferencing platform.

On April 2, 2021, I held a hearing as scheduled using the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. John A. Austin, Esquire, represented the Respondent, who was also present.

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 (2014 & Supp. 2020); 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

I admitted the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 - Contract between the Respondent and the Claimant, January 1, 2018
- Clmt. Ex. 2 - Letter from Liberty Mutual Insurance to the Claimant, August 20, 2018, with attached E-mails between the Claimant and the Respondent, August 1, 15, and 21, 2018
- Clmt. Ex. 3 - Roof Inspection by KRB Contractors (KRB), September 20, 2019

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

- Clmt. Ex. 4 - KRB Proposal, September 20, 2019
- Clmt. Ex. 4A - E-mails between the Respondent and the Claimant, January 13, 2020
- Clmt. Ex. 5 - Photograph of Claimant's fascia board, taken by KRB in August 2019
- Clmt. Ex. 6 - Photograph of Claimant's missing shingles, taken by KRB in August 2019
- Clmt. Ex. 7 - Photograph of Claimant's chimney, taken by KRB in August 2019
- Clmt. Ex. 8 - Photograph of Claimant's shingles, taken by KRB in August 2019
- Clmt. Ex. 9 - Photograph of Claimant's shingles, taken by KRB in August 2019
- Clmt. Ex. 10 - Photograph of Claimant's shingles, taken by KRB in August 2019
- Clmt. Ex. 11 - Photograph of Claimant's shingles, taken by KRB in August 2019
- Clmt. Ex. 12 - Photograph of Claimant's roof ridge vent, taken by KRB in August 2019
- Clmt. Ex. 13 - Photograph of Claimant's roof, taken by KRB in August 2019

I admitted the following exhibits on the Fund's behalf:

- Fund Ex. 1 - Notice of Hearing, February 10, 2021
- Fund Ex. 2 - Hearing Order, January 20, 2021
- Fund Ex. 3 - Letter from the MHIC to the Respondent, October 9, 2019, with attached Home Improvement Claim Form, September 26, 2019
- Fund Ex. 4 - The MHIC Licensing History of the Respondent
- Fund Ex. 5 - Financing Agreement between the Claimant and the Respondent, January 4, 2018
- Fund Ex. 6 - The Claimant's Complaint Form filed with the Department on August 1, 2019

The Respondent did not offer any exhibits into evidence.

Testimony

The Claimant testified and did not present other witnesses. Arthur Gomez, Service Manager, Respondent, testified on behalf of the Respondent. 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.
2. On January 1, 2018, the Claimant and the Respondent entered into a contract (the Contract) for the Respondent to install a new roof on the Claimant's home. The Contract included a thirty-year warranty for parts and labor.

3. The original agreed-upon Contract price was \$6,940.00, which was paid through a finance agreement between the Claimant and the Respondent.

4. The Respondent began working on the roof in mid-January 2018 and completed the roof two to three days later.

5. In April 2018, a windstorm damaged the Claimant's roof resulting in a leak from the roof into the Claimant's bedroom. The Claimant contacted Liberty Mutual Insurance, her homeowner's insurance company, who inspected the roof and informed the Claimant that some of the shingles were improperly installed and caused those shingles to blow off the roof during the windstorm.

6. The Claimant contacted the Respondent in April 2018 after the windstorm, and the Respondent came out to her home, re-inspected the roof, and made repairs.

7. After the Respondent repaired the Claimant's roof in April 2018 she has not experienced any further leaks.

8. Between August 2018 and August 2019, the Respondent inspected the Claimant's roof several times.

9. In September 2019, the Claimant contracted with KRB Contractors (KRB) to install gutters on her roof. On September 20, 2019, Robert Blouse from KRB performed an inspection of the roof and noted the following issues:

- Plywood is in poor condition and needs to be replaced
- Facia boards are rotted out
- The roof sags and dips in areas
- Metal chimney should have been replaced when the roof was installed

10. On September 20, 2019, KRB provided a proposed contract, drafted by Mr. Blouse, to the Claimant to remove the Claimant's existing roof and chimney and install a new roof and chimney for \$18,750.00.

11. The Respondent came out to the Claimant's home in August and September 2019 several times to make repairs to the roof in accordance with KRB's recommendations. Since those repairs, the Claimant has had no issues with the roof leaking or with any faulty shingles blowing off the roof.

12. On or about October 11, 2019, the Respondent notified Arthur Gomez, Service Manager, Respondent, that the Claimant had filed a complaint with the MHIC. Mr. Gomez contacted the Claimant in October 2019 and the Claimant informed him that she would be out of town until October 23, 2019.

13. Mr. Gomez left a voicemail message with the Claimant on October 23, 2019, to schedule an appointment to follow up on the Claimant's Complaint based on the KRB estimate. Mr. Gomez also sent the Claimant a text message on that date but the Claimant did not respond to either the voicemail or text messages. Mr. Gomez left a voicemail and text message with the Claimant on October 24, 2019, but the Claimant did not respond to those messages. Mr. Gomez left another voicemail message with the Claimant on October 25, 2019, and she did not respond.

14. The Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); 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" Md. Code Ann., 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."). "Actual loss" means 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. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

On September 26, 2019, the Claimant filed a claim with the Fund regarding a new roof that was constructed by the Respondent in January 2018. The Claimant testified that after an April 2018 windstorm blew some shingles off the roof, the roof began leaking water into her bedroom. The Claimant called her insurance company who sent out an adjuster to her home. The insurance adjuster informed the Claimant that the April 2018 windstorm that blew off her shingles were the result of those shingles being improperly installed. The Claimant admitted that the Respondent returned to her home to address the damaged roof in April 2018 and that after repairs were made, she has not experienced any further leaking from her roof. The Claimant presented several photographs that purport to reflect a missing shingle, rotten fascia boards and mismatched and uneven shingles. (Clmt. Exs. 5-13). The Claimant further testified that when she hired KRB to install gutters on the roof in August 2019, one of its workers informed her that the roof was in poor condition. The Claimant subsequently obtained a report from KRB on September 20, 2019, which noted that the roof sagged and dipped in areas, the plywood was in poor condition, the fascia boards had rotted out and that her chimney should have been replaced by the Respondent when they installed the roof in 2018. The Claimant also obtained a proposed contract from KRB to remove the existing roof and chimney and install a new roof and chimney. The Claimant insisted that she is entitled to reimbursement from the Fund for the poor workmanship performed by the Respondent which requires her to remove the Respondent's work and install a new roof.

The Claimant seeks reimbursement in the amount of \$18,750.00, the amount that KRB proposed to install a new roof and chimney on the Claimant's home. I find that the Claimant did not present evidence that supported a finding that the Respondent's replacement of the roof was done in an inadequate or unworkmanlike manner. Although the roof leaked shortly after an April 2018 windstorm damaged the shingles, the Respondent responded to the Claimant's complaints and repaired the roof. The Claimant admitted that the roof no longer leaks, but she is convinced that the Respondent performed an unworkmanlike job based on the inspection and proposal offered by Mr. Blouse from KRB. However, there is no evidence that Mr. Blouse was a certified roof inspector. In fact, there is no evidence at all regarding his expertise in the roofing industry. Therefore, I gave little weight to Mr. Blouse's report, which may have been an attempt to persuade the Claimant to hire KRB to install a new roof.

Additionally, the evidence is clear that the Respondent made several repairs to the Claimant's roof and that after the Claimant filed her MHIC claim in late September 2019, it made several attempts to reach the Claimant in October 2019 to address Mr. Blouse's allegations contained in the Claimant's complaint, but the Claimant never responded. "The [MHIC] may deny a claim if the [MHIC] finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d). Because I find that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve her claim, she is ineligible for relief.

For all of these reasons, I find that the Claimant failed to prove by a preponderance of the evidence that she suffered an actual loss and is therefore ineligible for compensation from the Fund.

PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing Proposed Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. I also conclude that the Claimant is not entitled to reimbursement from the Fund for the Respondent's work because she unreasonably rejected good faith efforts by the Respondent to resolve the claim. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2020); COMAR 09.08.03.03B(2). For the reasons stated, I do not recommend an award.

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 28, 2021
Date Decision Issued

BMZ/dlm
#192937

Brian Zlotnick

Brian Zlotnick
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 15th day of September, 2021, 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.

Michael Shilling

Michael Shilling

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***