

IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
HAN LEE \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 21(75)697  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
STEVEN HESSLER AND ROCK \* 02-22-24511  
DECKS AND ADDITIONS, LLC \*  
\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on January 11, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on April 27, 2023, concluding that the homeowner, Han Lee (“Claimant”) failed to prove that he suffered an actual loss as a result of the acts or omissions of Steven Hessler and Rock Creek Decks and Additions, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 11. In a Proposed Order dated May 24, 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 September 21, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Richard Hackerman, Esq., represented the Contractor. Assistant Attorney General Nicholas Sokolow 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 OAH 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 construction of a four seasons room addition at the Claimant's home. The ALJ found that the Claimant failed to prove that the Contractor's performance under the contract was unworkmanlike, inadequate, or incomplete. *ALJ's Proposed Decision* p. 6.

On exception, the Claimant argued that the ALJ erred in denying his claim because the ALJ focused on the issue of the rooflines of his existing home and the addition constructed by the Contractor not being aligned. The Commission finds no error. The Claimant argued that he never raised the issue of the differing rooflines at the hearing. However, the Claimant did not provide the Commission with the transcript of the OAH hearing, which would have been the best source of evidence on that point. In addition, the documentary evidence indicates to the Commission that the differing roof lines was the Claimant's primary concern. The Claimant, in his MHIC Complaint Form, alleged that "the gutter system's level of the original building structure and gutter system's level of the new addition . . . do not meet at the same level at all," complained of "two different heights of soffits between the original existing structure and the new . . . structure in the same grade level," and said that "[t]his serious construction defect has been negatively affecting the uniformity and look of my property with the horrendous looking [sic] of the two different levels of gutter and roofing systems in the same grade level for the original building and new structure." (OAH Hearing Claimant's Exhibit 3.) In addition, as the ALJ noted, the proposed work in the estimate that Claimant presented as evidence of the cost to correct the Contractor's alleged deficient performance was to modify the existing roof to conjoin with the addition and match the pitch and roofline of the addition. (OAH Hearing Claimant's Exhibit 4.)

The Claimant also argued that the ALJ made several specific erroneous factual findings.

However, the Claimant did not identify evidence in the record in support of his argument, and the ALJ's findings were supported by documentary evidence in the record and the testimony cited by the ALJ in the Proposed Decision..

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 5<sup>th</sup> day of October 2023, **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.

*Bruce Zuackebush*  
**Chairperson –Panel  
Maryland Home Improvement  
Commission**

IN THE MATTER OF THE CLAIM	* BEFORE ANN C. KEHINDE,
OF HAN LEE,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF STEVEN HESSLER,	*
T/A ROCK CREEK DECKS AND	* OAH No.: LABOR-HIC-02-22-24511
ADDITIONS, LLC,	* MHIC No.: 21 (75) 697
RESPONDENT	*

\* \* \* \* \*

**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 October 28, 2021, Han Lee (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$11,130.00 for actual losses allegedly suffered as a result of a home improvement contract with Steven Hessler, trading as Rock Creek Decks and Additions, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On August 30, 2022, the MHIC issued a Hearing Order

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

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

on the Claim. On September 8, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 11, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Richard Hackerman, Esquire, represented the Respondent, who was 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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 Claimant:

- Clmt. Ex. 1 - Two photographs of the exterior of the back of the Claimant's house before the work was performed by the Respondent (undated)
- Clmt. Ex. 2 - Narrative with pictures of the Claim
- Clmt. Ex. 3 - Complaint Form with contract, March 11, 2019; payments, various dates
- Clmt. Ex. 4 - House Transformers, Inc., estimate, March 29, 2021
- Clmt. Ex. 5 - Email between Claimant and Respondent's Project Manager, May 14, 2019<sup>3</sup>
- Clmt. Ex. 6 - Email between Respondent's Project Manager and Claimant, December 12, 2019

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<sup>3</sup> In the emails and text messages, the Claimant is referred to by the first name "Kevin."

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - OAH Notice of Hearing for January 11, 2023; MHIC Hearing Order, August 30, 2022

Fund Ex. 2 - Respondent's Licensing Information

Fund Ex. 3 - MHIC letter to Respondent, November 5, 2021; Claim Form, received October 28, 2021

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present the testimony of 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. Prior to this contract, the Respondent installed a small porch on the front of the Claimant's house and the Claimant was satisfied with the Respondent's work.
3. On or about March 11, 2019, the Claimant and the Respondent entered into a contract to remove part of an existing deck on the rear of the house (10 feet by 12 feet) and construct a four-season room measuring 12 feet by 12 feet. The contract provided that the room would be built on 30 inch deep footers, a sliding glass door would be installed in the four-season room to exit outside, the ceiling would be vaulted in an A-style frame, the exterior of the room would have vinyl shingles to match the existing house shingles as closely as possible, and gutters and downspouts would be installed.

4. The total price of the contract was \$25,985.00 with a \$1,000.00 discount. The Claimant paid all but \$1,000.00 of the total contract price.

5. When the Respondent began work on the addition, he explained to the Claimant that the building codes had changed since the Claimant's house was built and that to match up the height of the roofline of the new structure with the height of the roofline of the existing structure would be impossible to achieve with a sliding glass door in the exterior wall. The Respondent gave the Claimant two options in order to have the roofline the same height for both the existing structure of the Claimant's home and the addition: the addition could have a six-inch step down to a lower floor; or he could raise the rafters on the existing roof structure to match the roofline of the addition. Both options would cost the Claimant more money than what was provided for in the contract. The Claimant told the Respondent he did not want to pay any additional money to make the roofline the same between the addition and the existing structure.

6. When it was time to install the vinyl siding on the Claimant's house, the Respondent told the Claimant that the roofing center where he bought his supplies, no longer carried the color of the original vinyl siding that was on the Claimant's existing structure. The Respondent showed the Claimant a sample of the new color that was available but different from what the Claimant had. The Claimant told the Respondent he liked the new color and would change the old vinyl siding to match the new siding color. It took three to four days for the Respondent's workers to install the new vinyl siding and the Claimant did not complain during that time that the color of the vinyl siding did not match or that he wanted something different done with the siding.

7. On or about April 11, 2019, the Respondent's project manager contacted the Claimant by text. The Respondent's project manager noted that the shingles had been installed

and the next draw (payment) was due. The Claimant made the next payment and did not state there was any problem with the construction of the new addition's roofline.

8. The Respondent did not install a new vent in the valley between the two roofing systems (of the existing structure and the four-season room). The Respondent extended the existing kitchen vent and put new flashing around it.

9. The Respondent substantially finished the Claimant's addition in April 2019.

10. On May 14, 2019, the Claimant sent the Respondent's project manager an email complaining about structural damage to the existing roof, rainwater getting into the existing roof and property and the installation of the gutter system and downspouts, in addition to other issues not relevant to the Claimant's Claim.

11. In October 2019, the Respondent closed his company and moved with his wife to the United Kingdom. The Respondent left his project manager in charge to address any warranty issues from customers.

12. The Respondent went to work, or directed others to report to work, at the Claimant's project until approximately December 2019.

13. In March of 2021, the Claimant obtained an estimate from House Transformers, Inc., for work that was outside the scope of the work contemplated by the Claimant's contract with the Respondent. In part, the estimate provided for the removal of all of the roofing on the Claimant's existing structure (not the addition built by the Respondent), install cross beams and new rafters on the existing structure and other work to make the existing structure meet the roofline of the Respondent's addition.

### 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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant’s recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

The Claimant has failed to meet his burden to prove that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements on the addition he built for the Claimant. The Claimant presented testimony and pictures of four general areas he claims were performed in an unworkmanlike, inadequate or incomplete manner: the roofline of the addition built by the Respondent does not meet the roofline of the existing structure; the color of the vinyl

siding does not match the color of the existing siding; the gutters and downspouts are inadequate to properly drain water away from the foundation and are aesthetically unpleasing as they are at different levels; and, the Respondent installed a vent in the valley of the roofs which caused water to infiltrate into the existing portion of the Claimant's property. The Claimant did not present any expert testimony or documentation to support his claims.

In contrast, the Respondent testified that there was no way to know how the exterior walls had been constructed until he began demolition on the project. As soon as the exterior walls were opened, the Respondent testified that he became aware that the walls would not meet current code with the addition of a sliding glass door, if the addition was built to match the height of existing structure. The Respondent testified that he explained in detail the problem to the Claimant and offered two options, both of which required extra materials and labor and would cost extra. The first option was to have the floor of the new addition six inches lower than the floor of the existing structure which would have meant that the owners would have to step down one step to a lower floor in the addition. The Claimant told the Respondent that he did not want to do that. The Respondent then explained that the other option was to raise the rafters on the existing roof structure to match the roofline of the addition. The Claimant did not want to pay extra to raise the existing roof structure; therefore, the Respondent proceeded with the original plans which resulted in a different level of roofline between the existing structure and the addition.

The Claimant disputed that the Respondent told him about the difference of the roofline and gave him the two options. He testified that if the Respondent had told him that the roofline would not be the same, he would have probably not gone forward with the project.

I find it is more likely than not that the Respondent did explain the difference in the height of the roofline and the Claimant did not fully appreciate the significance of the difference

until the gutter systems and downspouts were installed. I find this for several reasons. First, the Respondent testified without contradiction that he was a licensed contractor for approximately forty years prior to closing his business and moving to the United Kingdom. He testified that he built at least one hundred and fifty additions during his time as a contractor as well as entire, custom-built homes. In fact, the Respondent built the front porch for the Claimant's house and testified that he did not have any problem making the front roof even with the existing roofline because he did not have the code issues with the front of the house.

I further find that, although the Claimant complained about other aspects of the Respondent's work from April 2019 until December 2019, he did not present any evidence that he sent an email or text complaining about the nonaligned rooflines.

Finally, I find the most significant piece of evidence that substantiates the Respondent's testimony that it would be impossible to match the back roofline of the addition with the existing structure's roofline, is the estimate the Claimant obtained. (Cl. Ex. 4). In that estimate, House Transformers, Inc., proposes to do the second option that the Respondent testified he explained to the Claimant: raise the existing structure's rafters and roof so that it would match the roofline of the four-season room built by the Respondent. In fact, there is no work contemplated in the estimate that covers the same work performed by the Respondent.

The Claimant also argued that the mismatch in the color of the vinyl siding installed by the Respondent is evidence of unworkmanlike, inadequate or incomplete performance by the Respondent. The contract does not provide for the color of the siding; instead, it states, the addition "will have vinyl siding and shingles to match house as close as possible." (Cl. Ex. 3).

The Respondent testified that he told the Claimant at the time the vinyl siding was installed that he was unable to get the color of the existing vinyl siding and showed him a sample of a similar, but not same, color. He testified that the Claimant told him to go ahead and that

they would have the rest of the house re-shingled to match the new addition because they liked the color better. The fact that the Claimant has not provided any contemporaneous complaint to the Respondent, during a time when he made other complaints known to the Respondent, weakens the Claimant's argument that he objected to the Respondent using the other color vinyl siding. The Respondent testified without contradiction that it took his workers three or four days to install the vinyl siding and the Claimant never complained about the color and paid for the work. Therefore, the Claimant has not met his burden in proving that installing a different color vinyl siding, when the contract did not specify there must be an exact match, was unworkmanlike, inadequate or incomplete work on the part of the Respondent.

The Claimant also alleged that the gutters and downspouts were unworkmanlike, inadequate and incomplete because they do not drain all of the water away from the foundation and they are aesthetically displeasing as they are on different levels. The gutter systems are necessarily on different levels because the rooflines are not on the same level. While the overall effect may be unaesthetic, that is not the same as unworkmanlike, inadequate and incomplete. This is especially true because, as discussed above, the Respondent advised the Claimant that it was impossible to make the addition have the same roofline, and therefore gutter systems, as the existing house and the Claimant did not want to spend any additional money to alter the original proposal. The Claimant has not presented any expert opinion to show that the gutter system does not work as intended and is insufficient to drain the water from the roof away from the house. The Respondent testified that originally there was a problem with the gutter system when it was first installed and that they went to the Claimant's house, viewed a videotape of the problem that occurred during a heavy rainfall, and made adjustments to the gutter system. Finally, the Respondent testified that there was work done on the gutter system after he finished and he would not have extended the gutter out for no purpose as it is depicted in the Claimant's pictures.

(Cl. Ex. 2, p. 5). As the Claimant's pictures were undated and he was unable to testify as to exactly when each picture was taken in relation to work performed by the Respondent, I find that the Claimant has not met his burden to show that the gutter system was inadequate without an expert opinion establishing that it was unworkmanlike.

Finally, the Claimant alleged that the Respondent installed a kitchen vent into the valley where the existing structure's roof met with the addition's roof. As a result of this improper installment, the Claimant alleged that water infiltrated the interior of the original structure and damaged it.

The Respondent testified that he did not install a kitchen vent in the valley of the intersecting roofs. Instead, he testified that when the roof he installed overlapped they had to extend the vent, which they did, and they properly flashed around the vent. In the pictures of the vent, the vent does not appear to be in the valley or where the roofs intersect, and it does appear to be flashed. (Cl. Ex. #2, pp. 13-15). Further, the estimate the Claimant obtained regarding the roof work contemplated does not mention anything about the roof work performed by the Respondent; instead, the estimate proposes to lift and install a new roof to match the height of the Respondent's addition.

As the Claimant failed to provide any expert testimony to establish that the Respondent installed (as opposed to extended) the kitchen vent, or that any work the Respondent did in this area lead to water infiltration into the existing part of the Claimant's home, the Claimant has failed to prove that this work by the Respondent was unworkmanlike, inadequate or incomplete.<sup>4</sup>

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<sup>4</sup> The Respondent also testified that the pictures of the water infiltration show mold and rot which would have occurred over time and not just in the few months after the addition was built. As I conclude that the Claimant has not met his burden to show that the Respondent performed an unworkmanlike, inadequate or incomplete job with respect to the vent, it is unnecessary for me to comment on whether the water damage preceded the Respondent's work, or if it was the result of the Respondent's work, whether it should be determined consequential damages.

As the Claimant has not established unworkmanlike, inadequate, or incomplete performance by the Respondent, he is ineligible for any compensation from the Fund.

**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).

**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.

April 7, 2023  
Date Decision Issued

*Ann C. Kehinde*  

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Ann C. Kehinde  
Administrative Law Judge

ACK/ja  
#204376

PROPOSED ORDER

*WHEREFORE, this 24<sup>th</sup> day of May, 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.*

*Joseph Tunney*

*Joseph Tunney*

*Chairman*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**