

IN THE MATTER OF THE CLAIM	* BEFORE SUSAN A. SINROD,
OF THOMAS AND JANICE TYDINGS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANTS	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF KEVIN McCARTHY,	*
SR., T/A/ McCARTHY AND SON	* OAH No.: LABOR-HIC-02-21-25207
CONTRACTING,	* MHIC No.: 21 (75) 729
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 June 25, 2021, Thomas and Janice Tydings (Claimants) 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 \$13,690.00 for actual losses allegedly suffered as a result of a home improvement contract with Kevin McCarthy, Sr., trading as McCarthy and Son Contracting. Md. Code Ann., Bus. Reg. §§ 8-401

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to -411 (2015).¹ On October 22, 2021, the MHIC issued a Hearing Order on the Claim. On November 2, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 7, 2022, I conducted a hearing at the OAH in Salisbury, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimants represented themselves. The Respondent did not appear for the hearing.

After waiting twenty 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. Code of Maryland Regulations (COMAR) 28.02.01.23A.

On November 3, 2021, the OAH sent a Notice of Hearing (Notice) to the Respondent by certified and regular mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for February 7, 2022, at 10:00 a.m. at the OAH-Salisbury, 201 Baptist Street, Salisbury, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service returned both Notices to the OAH with the notation "Not Deliverable as Addressed, Unable to Forward." The Fund noted that the address used was the Respondent's current address of record, and as a current licensee, the Respondent was required to keep his address updated with the MHIC. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent did not request a

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

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2	The second part of the report...	...the conclusions drawn from the data...
3	The third part of the report...	...the implications of the findings...
4	The fourth part of the report...	...the recommendations for future research...
5	The fifth part of the report...	...the overall summary of the project...
6	The sixth part of the report...	...the final thoughts on the study...
7	The seventh part of the report...	...the acknowledgments and references...
8	The eighth part of the report...	...the appendices and supporting documents...
9	The ninth part of the report...	...the glossary and index...
10	The tenth part of the report...	...the final review and approval...
11	The eleventh part of the report...	...the distribution and dissemination...
12	The twelfth part of the report...	...the final report and conclusions...
13	The thirteenth part of the report...	...the final report and conclusions...
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15	The fifteenth part of the report...	...the final report and conclusions...
16	The sixteenth part of the report...	...the final report and conclusions...
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24	The twenty-fourth part of the report...	...the final report and conclusions...
25	The twenty-fifth part of the report...	...the final report and conclusions...

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; and COMAR 28.02.01.

ISSUES

1. Did the Claimants 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

The Claimants submitted the following exhibits, which were admitted into evidence:

- Cl. Ex. #1- Contract between the Claimants and the Respondent, executed on June 9, 2018; Statement of Account, Hamilton Bank, undated; receipt for electronic payment, dated July 18, 2018; M&T Bank check #3175
- Cl. Ex. #2- Twelve photographs, varying dates
- Cl. Ex. #3- Email from Mr. Tydings to the Respondent, dated November 23, 2020
- Cl. Ex. #4- Timeline of communications between the Claimants and the Respondent, from June 2018 through November 23, 2020
- Cl. Ex. #5- Report of Lifestyle Home Inspections, dated December 7, 2020
- Cl. Ex. #6- Contract between the Claimants and Chesapeake Roofing, dated February 19, 2021; Invoice, dated May 12, 2021; receipt of electronic payment, dated May 27, 2021

The Respondent did not appear for the hearing; therefore he did not offer any exhibits.

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The Fund submitted the following exhibits, which were admitted into evidence:

Fund Ex. #1- Hearing Order, dated October 22, 2021

Fund Ex. #2- Notice of Hearing, dated November 3, 2021

Fund Ex. #3- Letter from the MHIC to the Respondent, dated July 8, 2021; Home Improvement Claim Form, received June 25, 2021

Fund Ex. #4- MHIC licensing history for the Respondent, dated December 22, 2021

Testimony

Mrs. Tydings testified on behalf of the Claimants and did not present other witnesses.

The Respondent did not appear or offer any witnesses.

The Fund did not offer any witnesses.

PROPOSED FINDINGS OF FACT

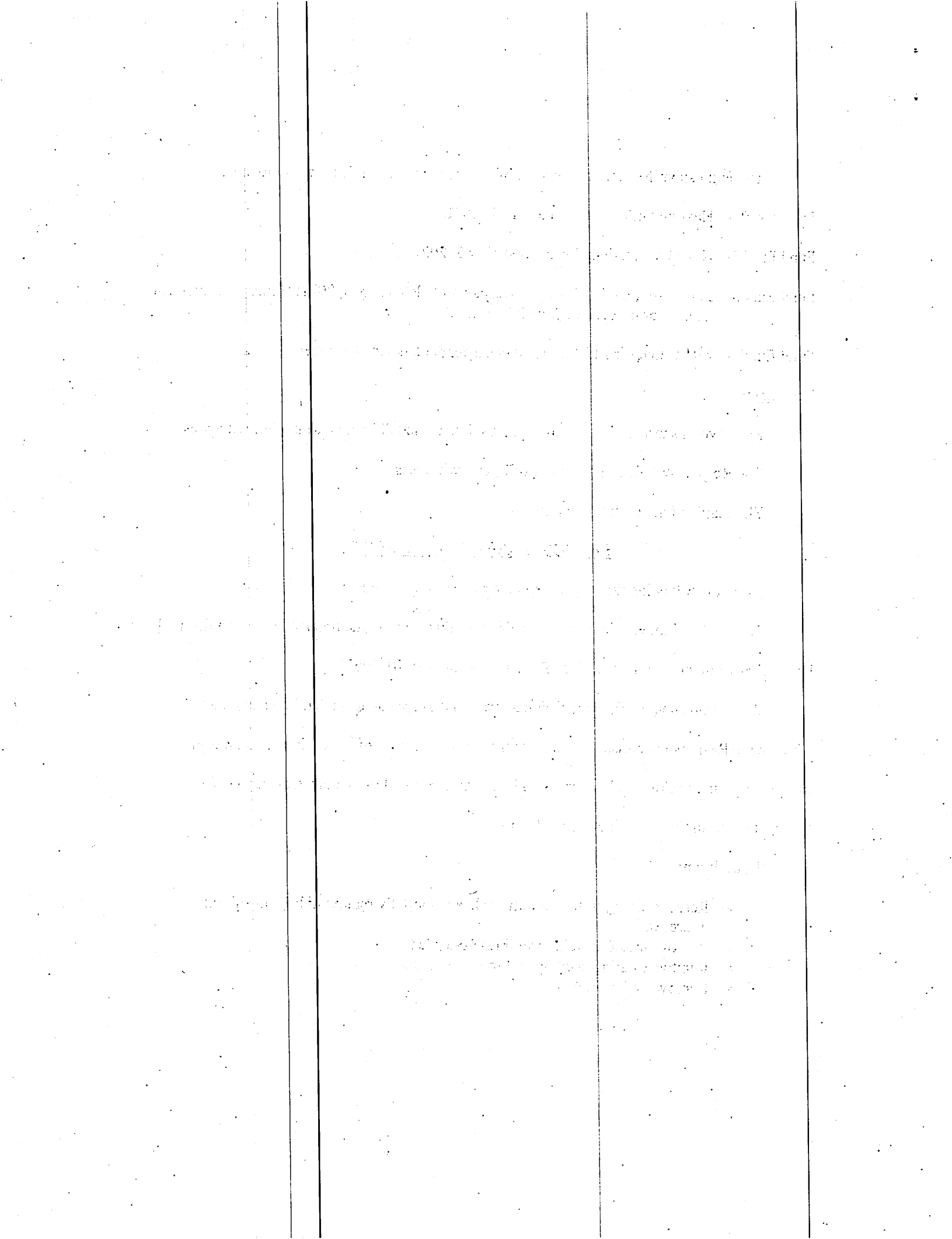
I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-99621.

2. On June 9, 2018, the Claimants and the Respondent entered into a contract, wherein the Respondent agreed to demolish the third-floor deck of the Claimants' home and install composite decking and handrails and reset gutters and downspouts (Contract). The Contract set forth the following scope of work:

Demolition:

- Remove siding from handrail walls and partially remove siding on adjoining house walls
- Remove handrail walls (framing) as needed
- Remove existing decking and roof membrane
- Remove and reset door



Decking:

- Repair damage to plywood (if any).
- Install new treated 4x4 post bolted to floor framing
- Install IPO waterproofing membrane on deck surface and up the walls @ 1 ft. and drip edge
- Install new treated 2x4 sleepers @16" on center
- Install new flash pan at the door and reset and seal the door
- Install Trex or Wolf composite decking to match existing (hidden fastener system)

Handrails and other:

- Install or repair west facing handrail wall and angled wall (the two that are to remain)
- Install white vinyl handrails with clear panels to match existing on the other two sides
- Install Azek trim as needed and install new aluminum wall cap to remaining walls
- Remove and reset gutters and downspouts
- Make necessary adjustments or repairs to the siding as needed

Cl. Ex. #1.

3. The original agreed-upon Contract price was \$13,620.00.
4. The Claimants paid the Respondent \$4,620.00 on June 12, 2018, \$4,500.00 on July 18, 2018, and \$4,340.00 on August 3, 2018 for the total amount of \$13,460.00.²
5. The Respondent completed the work on August 3, 2018.
6. In May 2019, the Claimants discovered water streaks coming down the second-floor deck exterior siding and ceiling. The water was leaking from the third floor deck, traveling across the second floor deck ceiling and down the second floor exterior siding. Water was trapped on the top side of a second-floor ceiling panel.

² It is unclear why the total amount the Claimants paid differed from the Contract price. There did not appear to be any dispute that the Claimants paid the Contract in full, nor were there any change orders. I consider the amount the Claimant paid, \$13,460.00 to have been the ultimate Contract price.

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7. The Respondent came to the Claimants' home to inspect the situation and advised the Claimants to caulk the screw heads on the third floor sliding door track. At that time, the Respondent did not remove any ceiling panels to inspect the underside of the third-floor deck.

8. In October 2019, the water again leaked onto the second-floor deck ceiling and exterior siding. The Claimants sent an email to the Respondent asking him to come inspect but received no response.

9. In September 2020, the Claimants set up an appointment with the Respondent to evaluate the leak. The Respondent agreed to repair the leak within a few weeks.

10. On October 22, 2020, the Respondent began the repair work. He removed some wood panels and used a water hose to re-create the problem but could not identify the source of the leak. He used spray foam to seal the area. However, that made the situation worse and the leaking continued.

11. In November 2020, the Respondent agreed to return to the Claimants' home to put up scaffolding to try to assess the cause of the leak. The Claimants called and emailed the Respondent with pictures of the underside of the third floor deck. The Respondent responded by saying he would do the work as soon as he returned from a trip out-of-town.

12. The Respondent never returned to repair the leak. The Claimants contacted the Respondent by telephone and email in an effort to get the Respondent to come back and fix the leak. The Respondent told the Claimants several times that he would return, but never did.

13. The leak occurred because the seams in the roofing membrane the Respondent installed failed; water, carrying debris, saturated the entire subfloor. When the Respondent installed the new roofing membrane, he had trouble removing the old roofing membrane. Instead,

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice to ensure transparency and accountability.

2. The second section outlines the various methods used for data collection and analysis. It details the process of gathering information from multiple sources and how this data is then processed to identify trends and patterns.

3. The third part of the report focuses on the implementation of new software systems. It describes the challenges faced during the transition and the steps taken to ensure a smooth rollout and user adoption.

4. The final section provides a summary of the key findings and recommendations. It highlights the areas where performance has improved and offers suggestions for further optimization and future research.

he installed subfloor over the old membrane and then a new membrane over the new subfloor.

The roofing membrane is supposed to be sealed and water tight.

14. The Claimants entered into a contract with Chesapeake Roofing, a MHIC licensed contractor, on February 19, 2021. Per the contract, Chesapeake Roofing agreed to remove and reinstall deck material, remove and replace rotted and damaged plywood, all which needed to be repaired because of the leaking caused by the Respondent's failed roofing membrane.

15. Chesapeake Roofing originally quoted a price of \$6,300.00 to complete the repair work. That price specifically included the re-use of the old deck boards. However, when the Respondent had gone back to attempt to diagnose the leak, he cut the synthetic deck boards, damaging them to the extent that they could not be reused. The exact deck material had been discontinued; therefore, Chesapeake Roofing had to purchase entirely new synthetic decking material. This cost an additional \$3,165.00.

16. Additionally, once Chesapeake Roofing removed the roofing material, it discovered that the leaks caused damage to the plywood underneath. The Respondent had installed the plywood over the old roofing system, which had been damaged and needed to be removed. This cost an additional \$1,525.00.

17. The Respondent installed clear plastic railing panels. However, this was not proper according to code. Chesapeake Roofing replaced the plastic panels with the required tempered glass. This cost an additional \$1,500.00.

18. Chesapeake Roofing had to remove the slider door and interior plantation shutters in order to install new flashing. This cost an additional \$1,200.00.

19. With the addition of these changes, the entire contract price with Chesapeake Roofing was \$13,690.00.

20. On May 27, 2021, the Claimants paid Chesapeake Roofing \$13,690.00 to complete the repair work.

DISCUSSION

THE BURDEN OF PROOF AND THE LEGAL STANDARD

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); 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." 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."). "[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.

EVIDENCE

The Claimants presented a very well-organized case. Mrs. Tydings testified as to the timeline of communications with the Respondent, and their attempts to have him come back and repair the leak. They presented photographs depicting water damage on the new subfloor the Respondent installed. Cl. Exs. #2, photos 2, 3, 4 and 5. The pictures also depict water streaks coming down the exterior siding to the second-floor deck, traveling over the second-floor deck ceiling. Cl. Exs. #2, photos 6, 7. One photograph shows the seams of the roofing membrane, which are loose, and not water tight. Cl. Ex. #2, photo 8. Under the faulty roofing membrane,

the subfloor is saturated, and the water flowing between the membrane and the subfloor carried dirt and debris. Cl. Ex. #2, photos 9, 10.

The Chesapeake Roofing contract provided an adequate explanation of why it was unable to use the existing deck boards. Cl. Ex. 6. The boards were damaged when the Respondent tried to do repairs by cutting the “existing synthetic deck in the manner that didn’t allow us to reuse existing boards.” This cost an additional \$3,165.00. Cl. Ex. #6. Chesapeake Roofing needed to replace plywood, which had been compromised due to the water leakage, and for the same reason, Chesapeake removed the old roof system, which was also compromised. This cost an additional \$1,525.00. Chesapeake’s contract explained why it needed to remove and reinstall the slider door and plantation shutters for an additional \$1,200.00. It also noted that the clear plexiglass railing panels were not up to code specifications; tempered glass was required for an additional \$1,500.00. Mrs. Tydings testified that she spoke to the supplier of the plexiglass, who said that if it had known the plexiglass was being used for a deck, it would not have recommended it. The Claimants also employed Lifestyle Home Inspections, who came and inspected the third level deck on December 4, 2020. It reported the problem in a manner similar to Mrs. Tydings’ testimony, and that depicted by the photographs. The report of Lifestyle Home Inspections corroborated the explanation of the repair work as set forth in the contract between the Claimants and Chesapeake Roofing. Cl. Ex. #5.

ANALYSIS

The Fund agreed that the Claimants met their burden of establishing their entitlement to an award. The Fund noted that the Claimants worked with the Respondent in attempt to get him to come back and repair the leak. The Respondent did not return. The Fund agreed that the Respondent installed the roofing membrane improperly. The Respondent did not initially

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice to ensure transparency and accountability.

2. The second section outlines the procedures for handling discrepancies between the recorded amounts and the actual cash received. It states that any such variance must be investigated immediately and reported to the appropriate authority.

3. The third part of the document details the process of reconciling the accounts at the end of each month. It requires that the total amount recorded in the ledger matches the total amount shown on the bank statement.

4. The fourth section describes the requirements for the physical custody of the cash. It mandates that the cash must be stored in a secure, fireproof safe and that access to the safe is restricted to authorized personnel only.

5. The fifth part of the document discusses the frequency of audits. It specifies that the accounts should be audited quarterly by an independent auditor to verify the accuracy of the records and the proper handling of the cash.

6. The sixth section outlines the consequences of non-compliance with these procedures. It states that any failure to follow the established protocols may result in disciplinary action, including suspension or termination of employment.

7. The seventh part of the document provides a summary of the key points and reiterates the commitment to maintaining the highest standards of financial integrity and honesty.

8. The eighth section contains the signature of the responsible officer and the date of the document's issuance.

9. The final part of the document includes a list of the relevant departments and individuals involved in the implementation and monitoring of these procedures.

remove any deck boards to look at the subfloor, and the Fund argued that, had the Respondent been more responsive, Chesapeake Roofing would have been able to use the old deck boards.

The evidence overwhelmingly established that the work the Respondent performed under the Contract was inadequate and unworkmanlike. As set forth above, the photographs depicted saturated subflooring, water streaks running down the second-floor deck exterior siding and across the deck ceiling. The seams of the roof membrane were separated, not water tight. The Claimants tried to get the Respondent to come back and fix it, but the Respondent failed to do so. I conclude that the Claimants have established that they suffered an actual loss as a result of the Respondent's unworkmanlike and inadequate work, and they are therefore, eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover. 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). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed the work under the Contract, and the Claimants retained another contractor to remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss:

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

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proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimants paid the Respondent \$13,460.00 for the work the Respondent performed under the Contract. The Claimants paid \$13,690.00 to Chesapeake Roofing to repair the Respondent's inadequate work. Added together, the total is \$27,150.00. After subtracting the Contract price from that total, the Claimants' actual loss is \$13,690.00 ($\$27,150.00 - \$13,460.00 = \$13,690.00$).

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimants' actual loss of \$13,690.00 exceeds the amount the Claimants paid to the Respondent. Therefore, the Claimants' recovery is limited to \$13,460.00, the amount they paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$13,690.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimants are entitled to recover \$13,460.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$13,460.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;³ and

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

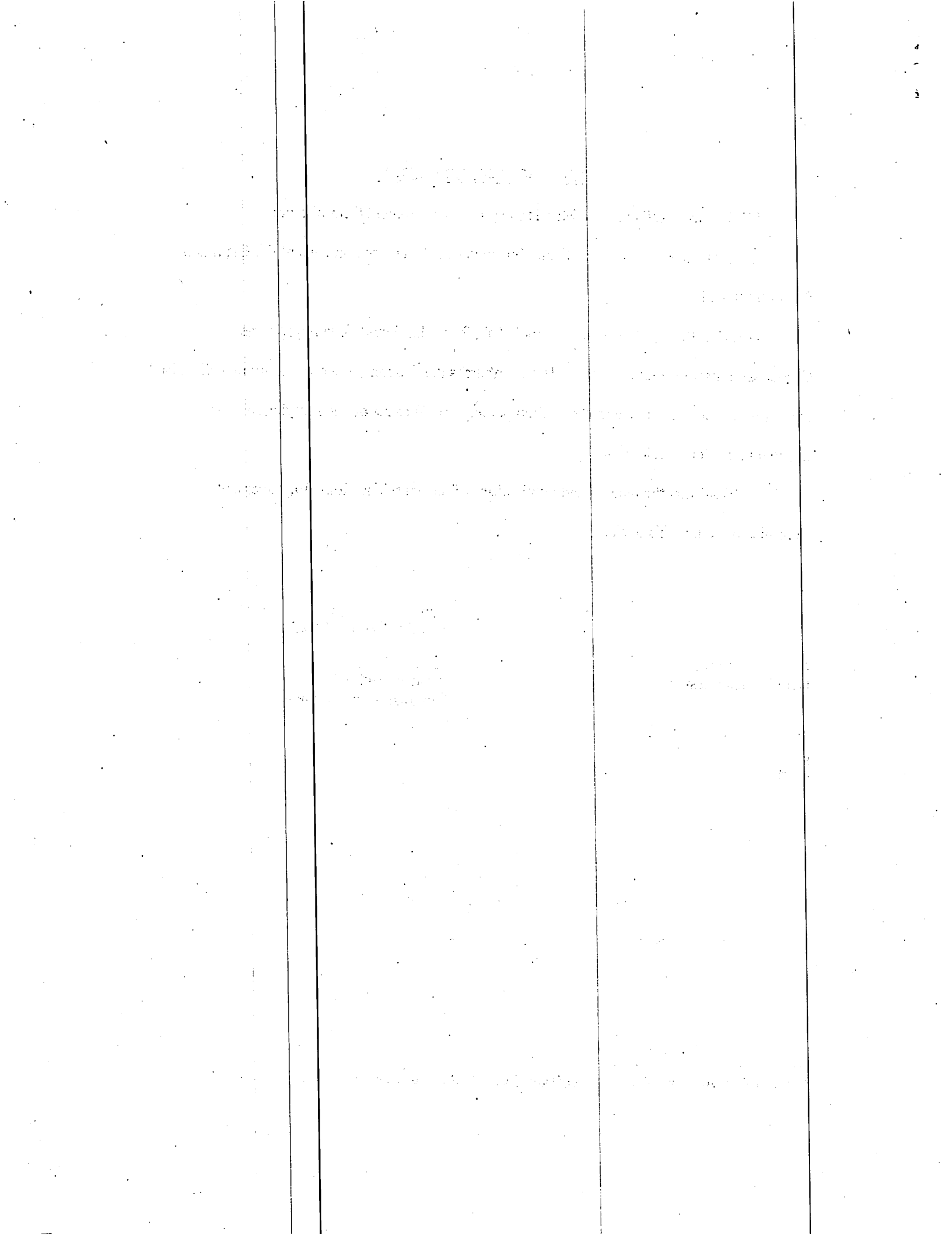
Susan Sinrod

March 28, 2022
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/cj
#197288

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 23rd day of May, 2022, 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.

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Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the information gathered is both reliable and comprehensive.

The third part of the document focuses on the results of the analysis. It shows that there are significant trends in the data, particularly in the areas of sales and customer behavior. These findings are crucial for making informed business decisions.

Finally, the document concludes with a series of recommendations for future work. It suggests that further research should be conducted to explore the underlying causes of the observed trends. This will help in developing more effective strategies for the organization.

The following table provides a summary of the key data points discussed in the report. It shows the overall performance metrics and the specific areas where improvements are needed.

Category	Value	Notes
Total Sales	\$1,200,000	Up 5% from last year
Customer Satisfaction	85%	Target is 90%
Operational Efficiency	92%	Consistent performance
Employee Retention	98%	High morale and loyalty

The data indicates that while sales are growing, customer satisfaction remains a key area for improvement. Addressing these issues will be essential for long-term success.

The final section of the document provides a detailed breakdown of the financial data. It includes a comparison of actual results against the budget and identifies the reasons for any variances.

It is noted that the budget was exceeded in several key areas, primarily due to increased marketing expenses and higher production costs. However, the overall financial performance remains strong, with a healthy profit margin.

The document also highlights the importance of continued investment in research and development. This will be necessary to stay competitive in a rapidly changing market.