

IN THE MATTER OF THE CLAIM	*	BEFORE LORRAINE E. FRASER,
OF KEVIN NEEL,	*	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 RODNEY	*	
HAMLETT,	*	OAH No.: LABOR-HIC-02-22-16204
T/A BALTIMORE HOUSE OF STYLE,	*	MHIC No.: 22 (75) 540
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On March 21, 2022, Kevin Neel (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 \$7,367.00 for actual losses allegedly suffered as a result of a home improvement contract with Rodney Hamlett, trading as Baltimore House of Style (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp.

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

On November 1, 2022, I held a hearing at OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the OAH Rules of Procedure 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 Contract between the Claimant and the Respondent, 8/22/19
- Clmt. Ex. 2 Inspection by Fred Hays, Baltimore County, Maryland, 4/16/19
- Clmt. Ex. 3 Inspection of roof exterior with photographs by Roof Right, Inc., 9/7/21
- Clmt. Ex. 4 Two photographs of water damage on interior ceiling
- Clmt. Ex. 5 Single Family Loan Program Rehabilitation Agreement Amortizing Loan, 9/10/19
- Clmt. Ex. 6 Roof Right, Inc., estimate, 9/10/21
- Clmt. Ex. 7 Roof Right, Inc., updated estimate, 9/12/22

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

- Clmt. Ex. 8 Emails between the Claimant and the Respondent, 8/20/21-8/25/21
- Clmt. Ex. 9 Scope of work under the Respondent's Contract, 5/13/19; Contractor Payment Request, 11/19/19; Payment Voucher, 11/26/19
- Clmt. Ex. 10 Emails between the Claimant and the Better Business Bureau re: arbitration with the Respondent, 9/10/21-9/13/21

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Hearing, 7/13/22
- Fund Ex. 2 Hearing Order, 6/24/22
- Fund Ex. 3 Letter to the Respondent from MHIC, 3/24/22; Home Improvement Claim Form, 3/21/22
- Fund Ex. 4 The Respondent's licensing history, 10/31/22

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present any testimony.

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*114538.
2. On August 22, 2019, the Claimant and the Respondent entered into a contract to perform a number of home improvements on the interior and exterior of the Claimant's home (Contract). The Contract included the following repairs to the roof: replacing approximately 900 square feet of asphalt roof shingles; replacing up to 200 square feet of deteriorated sheathing; installing a new synthetic membrane; and installing new pipe boots, flashing, drip edge, and ice and water shield in all valleys and overhangs.

3. The original agreed-upon Contract price for the roof repairs was \$5,760.00.

4. The Respondent completed work on the roof on November 19, 2019.

5. On November 26, 2019, the Claimant paid the Respondent \$5,760.00 for the roof repairs, as well as an additional amount for other repairs.

6. Sometime before August 2021, the Claimant's roof began to leak and he contacted the Respondent to make repairs.

7. The roofing work performed by the Respondent included the following defects in multiple locations throughout the roof: exposed nails; exposed shingle adhesive; exposed upper portions of shingles; missing shingles; torn shingles; exposed and/or crinkled drip edges; old flashing that was not removed and replaced and/or was reused and/or had exposed old nail holes; shingles, underlayment and decking cut too short and that did not cover the edges of the roof; nails popping through the shingles; rusted nails; nails not nailed flat and sticking up (underdriven); nails cutting into the shingles (overdriven); flashing with edges bent up or gaps; a loose pipe boot; and holes in the caulk.

8. On August 25, 2021, the Respondent emailed the Claimant that there were no defects in the roof, that the one-year warranty on labor was past, and that he could install new flashing around the chimney for \$450.00. The Claimant refused to pay additional money to the Respondent.

9. On September 13, 2021, the Claimant agreed to participate in arbitration with the Respondent through the Better Business Bureau. The Respondent declined to participate.

10. The cost to repair the work the Respondent performed on the Claimant's roof is \$8,753.85.

11. The Claimant's actual loss is \$8,753.85.

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 proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. There are no such statutory impediments to the Claimant's recovery from the Fund. *See* Bus. Reg §§ 8-405, 8-408 (2015 & Supp. 2022).

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. Specifically, the Respondent's work on the Claimant's roof contained numerous defects throughout the entire roof. For example, nails were rusty, exposed, under or overdriven, and/or popping through or cutting into the shingles. The upper portions of shingles and adhesive were exposed, shingles were torn or missing, and shingles were lifted up by underdriven nails. Shingles, underlayment, and decking were cut too short and did not cover the edges of the roof. Drip edges were exposed and/or bent and crinkled. Some old flashing was not removed before new materials were added. Other old flashing was reused and had exposed old nail holes. The

edges on some flashing was bent up or had gaps where it was installed. The boot around a pipe was loose and lifted easily. There were holes in the caulk.

The Claimant contacted the Respondent when his roof started leaking into his home and asked him to make repairs. The Respondent denied that there were defects in the roof, said that the one year warranty on labor was past, and offered to install new flashing around the chimney for \$450.00. The Claimant refused to pay additional money to the Respondent. The Claimant also agreed to participate in arbitration but the Respondent declined. Thus, I find the Respondent did not make any good faith efforts to resolve the claim nor did the Claimant unreasonably reject a good faith offer. *Id.* § 8-405(d) (Supp. 2022). Therefore, I find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is 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) (Supp. 2022); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's 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

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

COMAR 09.08.03.03B(3)(c).

The Claimant's actual loss is calculated as follows:

Amount paid under original contract	\$5,760.00
Amount to repair the Respondent's poor work	+8,753.85
	<u>\$14,513.85</u>
Less the original contract price	-5,760.00
Actual loss	<u>\$8,753.85</u>

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor.² In addition, 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) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$8,753.85 is greater than the amount he paid to the Respondent, \$5,760.00. As a result, the Claimant's recovery is limited to the amount he paid the Respondent. Therefore, the Claimant is entitled to recover \$5,760.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,760.00 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(3)(c). I further conclude that the Claimant is entitled to recover \$5,760.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4).

² On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,760.00; 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.

January 17, 2023
Date Decision Issued

Lorraine E. Fraser

Lorraine E. Fraser
Administrative Law Judge

LEF/dlm
#202653

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

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
KEVIN NEEL * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 22(75)540
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
RODNEY HAMLETT AND * 02-22-16204
BALTIMORE HOUSE OF STYLE *

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on November 1, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on January 17, 2023, concluding that the homeowner, Kevin Neel (“Claimant”) suffered an actual loss as a result of the acts or omissions of Rodney Hamlett t/s Baltimore House of Style (collectively, “Contractor”). *ALJ Proposed Decision* p. 7. In a Proposed Order dated February 22, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$5,760.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On May 18, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs 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) Contractor’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) - (1).

The claim in this proceeding relates to a contract between the parties for repairs to the Claimant's home, including, in pertinent part, the replacement of the roof. The ALJ found that the Contractor's performance under the contract was unworkmanlike with respect to the roof installation. *ALJ's Proposed Decision* pp. 5-6.

On exception, the Contractor argued that the ALJ erred in granting the Claimant an award because a government inspector approved his work before he received payment for the contract. The Commission finds no error. The Claimant presented extensive evidence that the Contractor's installation of the roof was unworkmanlike, including photographs of reused nails, flashing that was not removed and replaced, exposed nails, exposed drip edges, nail holes in the flashing, bent flashing, unsecured pipe boots, underdriven nails, failure to utilize a starter shingle, shingles that were cut short of the drip edge, and failure to provide soffit ventilation. (OAH Hearing Claimant's Exhibit 3.) In addition, the Commission is not bound by the outcome of an inspection in any event, but particularly when, as in this case, there is no testimony from the inspector and there is no evidence of the scope or quality of the inspection in the record.

The Contractor also argued that the ALJ erred in finding that the replacement of the entire roof was necessary to correct his defective roof installation. The Commission again finds no error. Each component of a roof is part of a system that keeps water from penetrating the home, and the Contractor's performance was unworkmanlike with respect to almost every component of the Claimant's roof, including the placement of shingles, nailing of shingles, installation of the ridge vent, drip edges, flashing, and pipe vents. Repairing all of these defects likely would cost more than removing and replacing the roof in its entirety. In addition, it is unlikely that another contractor would be willing to attempt to perform such repairs. Finally, even if all of the defects

were repaired, the Claimant's roof system would be significantly compromised and not equivalent to a properly installed new roof, which the Contractor was obligated to provide under the parties' contract.

Last, the Contractor argues that ALJ erred in relying on the estimate that the Claimant presented from Roof Right, Inc., to determine the cost to correct the Contractor's performance because the scope of work in the corrective estimate exceeded the scope of work in the parties' contract. The Commission again finds no error. The Roof Right estimate included only the labor and materials necessary to install a roof in a workmanlike and adequate manner. The Commission finds that, to the extent the Roof Right estimate included items that were not expressly included in the parties' contract, those items were implicitly required by the parties' contract because they were necessary for the workmanlike and adequate installation of a roof.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 23rd day of May 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 is awarded \$5,760.00 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

JOSEPH TUNNEY
Chairperson –Panel
Maryland Home Improvement
Commission

PROPOSED ORDER

WHEREFORE, this 22nd day of February, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***