

IN THE MATTER OF THE CLAIM	* BEFORE RACHAEL BARNETT,
OF TERRY HARRIS,	* 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 MICHAEL	*
JOHNSON,	* OAH No.: LABOR-HIC-02-23-14120
T/A CAROLINA CARPORTS,	* MHIC No.: 23 (75) 9
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 August 8, 2022, Terry Harris (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$14,632.65 for actual losses allegedly suffered as a result of a home improvement contract with Michael Johnson, trading as Carolina Carports (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).<sup>2</sup> On May 10, 2023, the MHIC issued a Hearing Order on

<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 Volume of the Maryland Annotated Code.

the Claim. On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 10, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Bus. Reg. §§ 8-407(a), 8-312. Hillary Baker, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Boyd Brickey, Carolina Carports, appeared on behalf of the Respondent and the OAH received a Special Power of Attorney designation for his representation.

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 & Supp. 2023); 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. 1a – 1e | Color photographs of the Complainant's garage (interior and exterior), undated |
| Clmt. Ex. 2       | Proposal by Tri-County Roofing & Sheet Metal, Inc., July 22, 2023              |
| Clmt. Ex. 3 -     | Contract with Carolina Carports, July 26, 2020                                 |
| Clmt. Ex. 4 -     | Check to Carolina Carports, April 19, 2021                                     |
| Clmt. Ex. 5 -     | Repair invoice from Carolina Carports, October 27, 2022                        |

Clmt. Ex. 6 - Invoice from Carolina Carports, April 6, 2021

Clmt. Ex. 7 - Video recording, undated

I admitted the following exhibit offered by the Respondent:

- Resp. Ex. 1 Packet of documents including the following:
- Letter from Carolina Carports, August 22, 2022
  - Installation details, April 6, 2021
  - Repair invoices, September 9, 2021, July 28, 2022, October 27, 2022
  - Conditions and warranties, undated
  - Authorization for representation, August 7, 2023
  - Customer notes, various dates
  - Color photographs of interior of the garage, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, June 12, 2023

Fund Ex. 2 - Hearing Order, May 10, 2023

Fund Ex. 3 - Licensure record for the Respondent, November 30, 2007 – November 30, 2023

Fund Ex. 4 - Letter from the MHIC to the Respondent, August 19, 2022, with attached copy of the Home Improvement Claim Form, August 8, 2022

### Testimony

The Claimant testified and did not present other witnesses.

Boyd Brickey testified on behalf of the Respondent and did not present other witnesses.

The Fund did not offer 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 under MHIC license number 01-96299.
2. The Claimant and his wife own a home in Taneytown, Maryland, a rural area.
3. In July of 2022, the Claimant and his wife visited T&T Sheds in New Oxford, Pennsylvania. T&T Sheds is a dealer for the Respondent.

4. On July 26, 2020, the Claimant and the Respondent entered into a contract to erect a 20' x 26' x 9' free-standing garage on the Claimant's property. The contract consisted of a front-side only document with a logo for the Respondent. (Contract).
5. Historically, the backside of the Respondent's contracts have included the warranty terms and conditions; however, the backside was blank for the Claimant's contract.
6. The price of the Claimant's future garage was \$7,192.21.
7. The Claimant paid a down payment of \$1,017.75 at the time he entered into the Contract; the balance was due at the time of installation.
8. On April 6, 2021, at approximately 8:00 p.m., Carolina Carports arrived at the Claimant's home to install the shed; the installers completed the job the next day due to darkness.
9. The Claimant subsequently had lighting installed in the garage by Robert E. Wantz.
10. Shortly after the garage was erected, it rained, causing the garage roof to leak.
11. After the Respondent erected the garage, the Claimant paid the Respondent \$5,000.00, bringing the total payment to \$6,017.75.
12. Due to the months-long delay in delivering and erecting the garage, the Respondent discounted the final price by \$1,107.97. The Respondent therefore considered the Contract paid in full.
13. The garage roof continued to leak when it rained, so the Claimant contacted the Respondent and requested repairs.
14. The Respondent returned approximately six times to make various repairs; however, the roof continued to leak.

15. On May 25, 2022, the Respondent notified the Claimant that it would not make any further repairs because he voided his warranty by installing interior lights. The Respondent has not made any return trips to the Claimant's home since then.

16. The Claimant's garage roof still leaks.

17. The Claimant obtained an estimate from Tri-County Roofing & Sheet Metal, Inc. to install a new garage roof for \$15,400.00; however, the roof style would be different from what the Respondent installed.

### **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. 2023); *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. 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. 2023). 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. 2023). 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. 2023). 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. 2023).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023). In this case, it was the Respondent who opted to cease efforts to repair the Claimant's garage roof when, on May 25, 2022, an employee of the Respondent informed the Claimant that they would no longer work on the roof, because the Claimant voided his warranty by installing lighting in the garage. The Claimant filed his claim a few months later, on August 8, 2022, after the Respondent had refused to do any more work and had not returned to the home.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Respondent began construction of the garage in Taneytown, a rural area, shortly after sunset on April 6, 2021. Visibility would have been limited at this point, making it hard for workers to see what they were doing clearly. The team returned the next day because it became too dark to work. It is unclear how much of the garage was completed after sunset on April 6, 2021, beginning a construction project after dark does not bode well.

Shortly after the Respondent erected the garage on the Claimant's property, it rained and the garage roof leaked. The very basic function of a roof is to keep the elements from permeating the interior of a structure. It was therefore reasonable for the Claimant to expect that

his new roof would not leak; however, it did almost immediately. The Claimant promptly notified the Respondent about the leak and the Respondent initially accepted responsibility for the flaw and made repairs. The Claimant testified that sometimes the Respondent sent work crews that were unprepared to perform the needed repairs and, therefore, had to return another day. The Claimant also testified that one of the Respondent's employees measured the roof's pitch with a level and informed him that the pitch of the roof was insufficient to keep water from pooling. I did not find this testimony sufficiently supported by credible evidence, such as a documented measurement or a work summary, noting the need to return to the job site.

However, the Claimant offered into evidence color photographs and video footage that he testified he had taken recently, showing the roof still leaked. Indeed, these photographs showed water pooling around a chair he kept in the garage and repairmen working on the finished garage. The video showed the roof actively leaking during a rainstorm. At no point during the hearing did the Respondent argue that the garage roof was properly constructed or did not leak.

Rather, the Respondent argued that the Claimant voided the garage's warranty by installing interior lighting for the garage. Mr. Brickey testified that all its contracts include warranty information on the backside of the contract. However, the original copy of the contract is in evidence. The Claimant testified it is the copy he received at T&T Sheds and, indeed, it includes visible ink markings made with a black marker that bled through to the back of the page with the notation "20 x 26 x 9 box". The same black marker was used to draw the location of the door openings on the pre-printed diagram of the garage included in the Contract. The bleed through of the black marker is visible on the back page of the document; however, no other writing appears on the back page of the document. Considering the Claimant's testimony, taken together with the original copy of the Contract in evidence (Claimant Ex. 3), I find that the Contract between the Claimant and Respondent did not include any terms and conditions.

The Respondent offered into evidence a copy of its standard terms and conditions that typically appear on the rear of their contracts. The terms and conditions state in pertinent part, "Warranties shall immediately void if buyer alters the unit in any manner." (Respondent Ex. 1). The Respondent argued that the installation of interior lighting constituted an alteration. When pressed, Mr. Brickey testified that he did not know whether the lighting in the Claimant's garage was installed in a manner that altered the structure of the garage, but that it could have been. It was for this reason that the Respondent stopped making repairs to the Claimant's garage. However, since the Claimant's contract did not include terms and conditions, he would have installed the lighting without knowledge of the possibility that doing so could void his warranty. It was therefore reasonable for the Claimant to expect the Respondent would repair his leaking roof. Furthermore, the Respondent only made this argument after six attempts to repair the Claimant's garage proved unsuccessful. For these reasons, the Respondent's argument, that the warranty was voided, was not compelling. I thus 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. 2023); 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.

In this case, the Claimant has solicited a proposal from Tri-County Roofing & Sheet Metal, Inc. for the replacement of the garage roof. The cost of the replacement is \$15,400.00. The parties agree that the roof style proposed is different from the one the Respondent installed. The Claimant testified that he submitted this proposal into evidence because all the contractors



he consulted with proposed a different roof style from the PA-style roof<sup>3</sup> installed by the Respondent.

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 calculation would therefore be as follows: \$6,017.75, plus \$15,400.00 minus the contract price of \$6,017.75, for a total of \$15,400.00. However, this recovery amount will be modified.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>4</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$15,400.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$6,017.75, the amount paid to the Respondent.

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<sup>3</sup> The metal on a PA-style roof runs front to back. It was unclear whether PA stands for "Pennsylvania" or something else. Furthermore, no one from Tri-County Roofing & Sheet Metal appeared at the hearing to explain exactly how the proposed roof would be constructed, but the parties agreed that the construction style was different from the original roof of the garage.

<sup>4</sup> 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").

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,017.75 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4)

RECOMMENDED ORDER

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$6,017.75; 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;<sup>5</sup> and

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

November 7, 2023  
Date Decision Issued

RAB/at  
#208271

*Rachael Barnett*

\_\_\_\_\_  
Rachael Barnett  
Administrative Law Judge

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 26<sup>th</sup> day of December, 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.***

***Robert Altieri***

***Robert Altieri***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***