

**IN THE MATTER OF THE CLAIM
OF NEIL SEITCHIK
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR ALLEGED VIOLATIONS OF
GEORGE R. ROGERS
t/a ROBS JOBS, INC.**

* **MARYLAND HOME**
* **IMPROVEMENT COMMISSION**
*
* **MHIC CASE NO. 05 (90) 2974**
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FINAL ORDER

WHEREFORE, this 16TH day of December, 2010, Panel B of the Maryland Home

Improvement Commission ORDERS that:

1) Having reviewed the Findings of Fact of the Administrative Law Judge are Amended as follows:

A) The Respondent did not use 3/4 inch decking boards. The contract between the Claimant and Respondent provides for the Respondent to use either 5/4 inch or 2 inch decking boards. The photographic evidence in the record indicates that the decking boards used were 5/4 inch or greater in size. As a result, the decking boards installed do not require replacement.

B) The Claimant's actual loss does not include the cost of removal and replacement of the decking boards. The Commission finds that the Claimant has established reasonable repair costs of \$1,190.00. Taking into consideration that the repairs estimate was issued in 2007, the Commission finds that an allotment of an additional \$310.00 for inflation is reasonable, and finds that the Claimant's proven actual loss is \$1,500.00.

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Claim of Neil A. Seitchik
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2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) The Claimant sustained an actual loss of \$1,500.00.

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimant is Awarded \$1,500.00 from the Home Improvement Guaranty Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

Andrew Snyder

Chair - Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**

IN THE MATTER OF THE CLAIM OF * BEFORE CHARLES R. BOUTIN
 NEIL A. SEITCHIK * AN ADMINISTRATIVE LAW JUDGE
 AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
 IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
 FOR THE ALLEGED ACTS OR * OAH NO.: DLR-IHC-02-09-26578
 OMISSIONS OF GEORGE R. ROGERS * MHIC NO.: 05 (90) 2974
 T/A ROBS JOBS INC. * * * * *
 * * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
 ISSUE
 SUMMARY OF THE EVIDENCE
 FINDINGS OF FACT
 DISCUSSION
 CONCLUSIONS OF LAW
 RECOMMENDED ORDER

STATEMENT OF THE CASE

On September 27, 2006, Neil A. Seitchik (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,321.00 for actual losses allegedly suffered as a result of a home improvement contract with George R. Rogers t/a Robs Jobs Inc. (Respondent).

I held a hearing on April 9, 2010 at Laurel Executive Center, MOSI Training and Education, 312 Marshall Avenue, Room 600, Laurel, MD 20707, Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (2010). Peter Martin, Esquire, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and COMAR 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

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

Cl. No. 1. Job Proposal dated February 11, 2004

Cl. No. 2. Photocopy of five checks including #885 paid to Respondent

Cl. No. 3. Photocopy of fourteen checks including #916 and #892 paid to Respondent

Cl. No. 4. Hand drawing of deck design.

Cl. No. 5. Letter to Department from Claimant dated June 9, 2005

Cl. No. 6. Inspection Report from Frank J. Kaiss & Associates to William Banks, Investigator, dated May 20, 2010

Cl. No. 7. Letter to Frank Kaiss from William Banks, dated April 16, 2007

Cl. No. 8. Letter to George Rogers from William Banks, dated April 29, 2008

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

Fund No. 1. Notice of Hearing

Fund No. 2. Certificate of Licensee Record dated March 18, 2010

Fund No. 3. Home Improvement Claim Form dated September 22, 2006

Fund No. 4. Nine pages of photographs.

The Respondent did not offer any exhibits for admission.

Testimony

The Claimant testified on his own behalf

The Respondent testified and presented the following witness:

1. Jame McQuarry
2. Bobby Bowman

The Fund did not present any witnesses

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 numbers 01-6733 and 05-51069
2. On February 11, 2004, the Claimant and the Respondent entered into a contract to construct a new deck and railings, 10 feet off the ground at the rear of the Claimant's townhouse. The contract stated that work would begin within thirty days of receipt of the signed contract and be completed in ninety days.
3. The original agreed-upon contract price was \$6,625.00
4. On February 11, 2004, the Claimant paid the Respondent \$2,186.25.
6. The Respondent told the Claimant that the wood used was a "bad batch", but that this "was the quality of the wood available this year."

7. The quality of the lumber used and the lengths ordered for the construction of joists, decking, and beams were not well selected or planned prior to ordering.
8. Deck rails are separating and are not attached to the house.
9. Pressure treated lumber will warp and curl if not treated.
10. There was no evidence of sealer being applied to the deck
11. The cost of additional work necessary to correct the deck is \$4,466.00.

DISCUSSION

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) (2010). *See also* COMAR 09.08.03.03B (2). 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 (2010). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he and the Claimant entered into the contract.

Second, the Respondent performed unworkmanlike, inadequate or incomplete home improvement.

Third, the decking installed was not 2"x 6" per contract requirements.

Fourth, 2"x 6" joists were used and not 2"x 8" per contract.

Fifth, the independent inspection done concluded that all spliced 2"x 6" joists should be doubled from the wall mounted ledger board at least three feet past the 2"x 10" double beam for added stability.

These items show that the deck construction did not contain the size requirements per the contract. There was also a stability issue due to the wall mounted ledger board not being at least three feet past the 2" x 10" double beam for stability.

Having found eligibility for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B (1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B (3). One of those formulas, as follows, offers an appropriate measurement in this case:

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 is as follows:

Amount paid under the original contract	\$6,625.00
Plus additional amount necessary to correct deck	<u>4,466.00</u>
	\$11,091.00
Less original contract price	<u>\$ 6,625.00</u>
Amount of Award	\$ 4,466.00

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$4,466.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

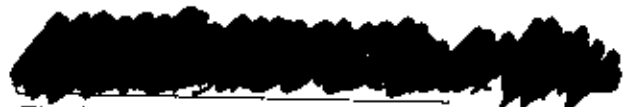
I PROPOSE that the Maryland Home Improvement Commission;

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,466.00

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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

June 28, 2010
Date decision mailed



Charles R. Boutin
Administrative Law Judge

CRB# 114561

IN THE MATTER OF THE CLAIM OF	* BEFORE CHARLES R. BOUTIN,
NEIL A. SEITCHIK	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	* OF ADMINISTRATIVE HEARINGS
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FILE EXHIBIT LIST

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The Respondent **did** not offer any exhibits for admission.

PROPOSED ORDER

WHEREFORE, this 26th day of July 2010, 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
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION