

The Maryland Home  
 Improvement Commission

v. Elwyn Hickson  
 t/a Hickson and Sons Home Improvement Inc  
 (Contractor)  
 and the Claim of  
 Roxanne McCray  
 (Claimant)

\* BEFORE THE  
 \* MARYLAND HOME IMPROVEMENT  
 \* COMMISSION  
 \*  
 \* MHIC No.: 14 (90) 375  
 \*  
 \*

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**FINAL ORDER**

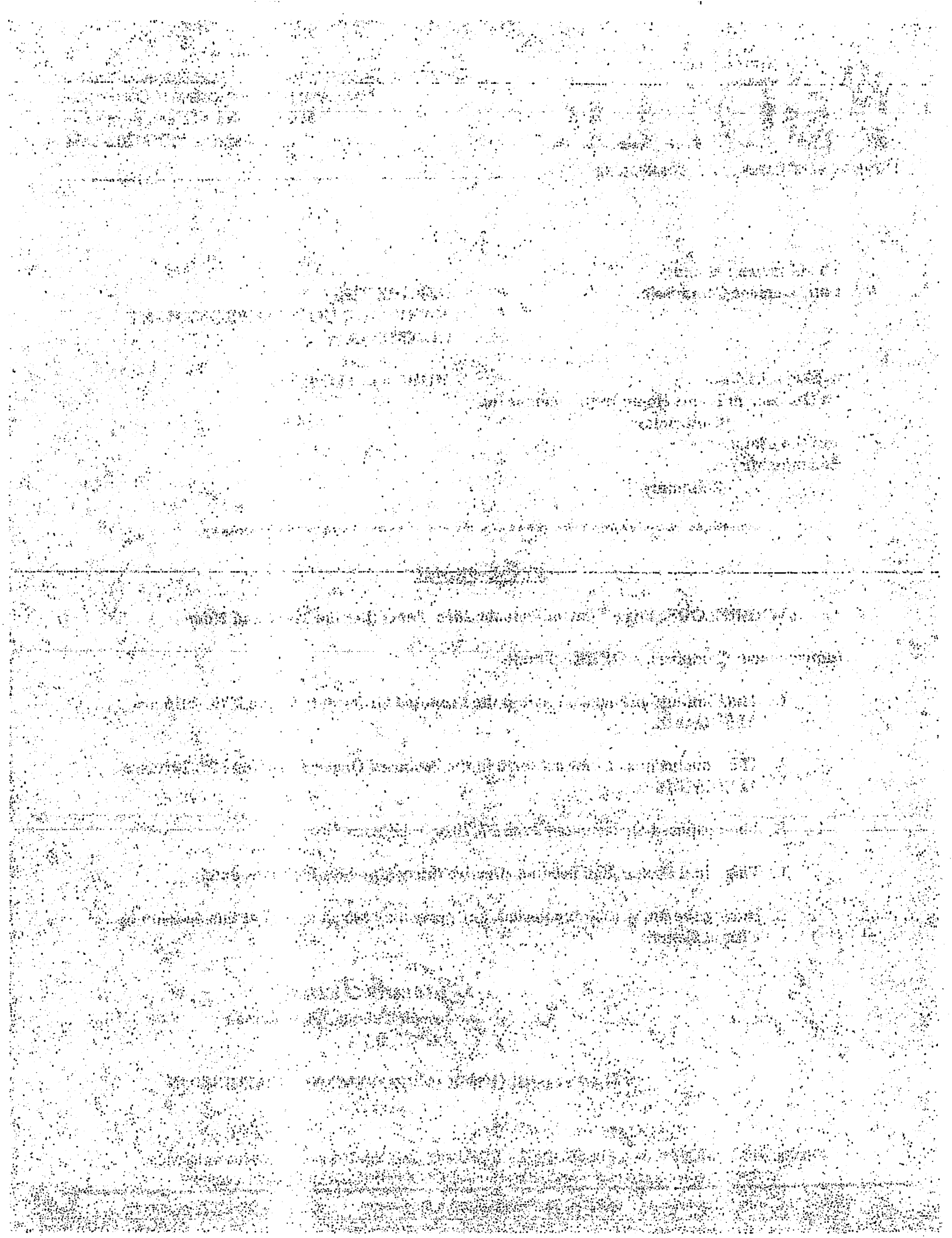
WHEREFORE, this 6<sup>th</sup> day of October 2016, Panel B of the Maryland Home

Improvement Commission ORDERS that:

1. The Findings of Fact set forth in the Proposed Order dated June 27th, 2016 are **AFFIRMED.**
2. The Conclusions of Law set forth in the Proposed Order dated June 27, 2016 are **AFFIRMED.**
3. The Proposed Order dated June 27, 2016 is **AFFIRMED.**
4. This Final Order shall become effective thirty (30) days from this date.
5. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

*Joseph Tunney*  
 Joseph Tunney, Chairperson  
 PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION



IN THE MATTER OF THE CLAIM	* BEFORE TRACEY PARKER-WARREN,
OF ROXANNE MCCRAY,	* 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 ELWYN HICKSON,	*
T/A HICKSON AND SONS LLC	* OAH No.: DLR-HIC-02-15-37187
RESPONDENT	* MHIC No.: 14 (90) 375

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On September 15, 2014, Roxanne McCray (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,960.00 in alleged actual losses suffered as a result of a home improvement contract with Elwyn Hickson, trading as Hickson and Sons LLC, (Respondent). On August 10, 2015, the Claimant filed an amended claim with the MHIC Fund seeking additional reimbursement in the amount of \$980.00.

I held a hearing on March 2, 2016 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented herself. The Respondent represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01B, and 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions of the Respondent?
2. If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, dated December 10, 2012
- Clmt. Ex. 2 Photographs of windows on exterior of home
- Clmt. Ex. 3 Photographs of ceiling
- Clmt. Ex. 4 Photograph of installed wall mount for television
- Clmt. Ex. 5 Photograph of ceiling
- Clmt. Ex. 6 Photographs of floor
- Clmt. Ex. 7 Photograph of ceiling and unit for recessed light

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<sup>1</sup> Unless otherwise noted, all citations of the Business Regulation Article (Bus. Reg.) hereinafter refer to the 2015 Replacement Volume.

- Clmt. Ex. 8 Photograph of ceiling and light
- Clmt. Ex. 9 Estimate, dated February 24, 2016
- Clmt. Ex. 10 Claim Form, filed with MHIC on September 15, 2014, and amended on August 10, 2015
- Clmt. Ex. 11 Check, dated December 9, 2012, posted on December 10, 2012
- Clmt. Ex. 12 Check, dated December 20, 2012, posted on December 20, 2012
- Clmt. Ex. 13 Check, dated January 9, 2013, posted on January 9, 2013
- Clmt. Ex. 14 Letter from the Respondent to the MHIC, dated November 12, 2013.
- Clmt. Ex. 15<sup>2</sup> Copy of images on document (page 22) bearing letterhead from Nationwide Property & Casualty Insurance Company, dated November 28, 2012

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

- Resp. Ex. 1 - Letter from the Respondent to the MHIC, dated November 7, 2013

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

- Fund Ex. 1 -
  - Notice of Hearing (issued by the OAH), dated December 11, 2015
  - Hearing Order (issued by the MHIC), dated October 30, 2015
- Fund Ex. 2 Respondent's License Status and History, March 1, 2016
- Fund Ex. 3
  - Letter from the MHIC to the Respondent, dated October 15, 2015
  - Letter from the MHIC to the Respondent, dated September 17, 2014
  - Completed Home Improvement Claim Form
- Fund Ex. 4 Images of windows, roof, and finished work in bedroom, printed on 8 1/2x11 paper, with handwritten notations

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<sup>2</sup> Several weeks after the hearing concluded, the Claimant sent to me, by way of the U.S. Postal Service, two additional pages from this document. Those two additional pages have not been admitted into evidence and I did not consider the documents in reaching a decision on the Claim.

## Testimony

The Claimant testified on her own behalf and presented the testimony of Derrell Baton, her brother.

The Respondent testified on his own behalf.

The Fund did not present 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 1-98839.

2. The Claimant is not the Respondent's spouse or other immediate relative, employee, officer, partner, or an immediate relative of an employee, officer, or partner.

3. The Claimant resides at 340 Suter Road, Baltimore, Maryland 21228.

4. On December 10, 2012, the Claimant and the Respondent entered into a contract for the Respondent to complete the following:

- Remove existing outdated paneling and replace with sheet rock and paint in a 12x10 room
- Replace ceiling where there is no existing ceiling
- Install lighting to consist of recessed lighting and one ceiling fan
- Install vinyl flooring
- Scrape paint and reseal front windows to house
- Replace bedroom window
- Repair damaged area on roof
- Open adjacent wall into bedroom

5. The agreed-upon contract price was \$5,200.00.

6. On December 9, 2012, the Claimant paid the Respondent \$4,200.00. On December 20, 2012, the Claimant paid the Respondent \$1,000.00. On January 9, 2013, the Claimant paid the Respondent \$400.00.<sup>3</sup>

7. On February 24, 2016, the Claimant obtained an estimate from C.L. McCoy Framing Co., Inc. in the amount of \$3,720.00 for the following scope of services:

- Remove and replace a 32 square foot section of damaged drywall ceiling
- Remove and replace damaged insulation
- Spackle, sand, and finish drywall
- Paint ceiling
- Wrap wood trim with aluminum on back windows
- Have electrician finish trimming out recessed lights, finish wiring, and hang owner-provided ceiling fan

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>4</sup> “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125, n. 16 (2002), quoting Maryland Pattern Jury Instructions 1:7 (3rd. ed. 2000).

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<sup>3</sup> A cancelled check, which I admitted into evidence, indicates that the additional payment of \$400 was for work in a hallway not covered in the initial contract.

<sup>4</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

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) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual 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.

The sole undisputed issue is that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The disputed issues include (1) whether the work performed by the Respondent was unworkmanlike, inadequate, or incomplete and (2) if so, whether the Claimant suffered any actual loss.

During the hearing, the Claimant provided multiple photographs of the work provided by the Respondent. The photographs suggest that the Respondent did not complete the work agreed upon in the contract. The Claimant initially testified that she took the photographs herself on Monday, February 29, 2016, just a few days before the hearing. However, later in the hearing, the Claimant testified that the photographs were not current and that she submitted copies of the photographs along with her claim, which was filed on September 14, 2015.

The Respondent argued that the Claimant’s photographs show work in progress. Further, the Respondent took photographs in 2013, which significantly differ from the Claimant’s photographs and show completed work.

Because the Claimant was not forthcoming concerning the nature of the photographs and the timeframe in which she took the photographs, I find that her credibility is greatly diminished and I also find that the photographs admitted into evidence on behalf of the Claimant have no probative value concerning whether the Respondent’s performance under the contract was workmanlike.



The Claimant presented the testimony of her brother, Mr. Baton. Mr. Baton testified that the Respondent did good work overall, except that it was not finished. On cross examination, Mr. Baton, could not provide answers to questions about the timing of when he saw the work that he characterized as unfinished. I find that Mr. Baton's testimony was credible. However, I do not find his testimony probative concerning the issue of whether the Respondent's performance under the contract workmanlike. There was no evidence presented concerning when he saw the work.

The Respondent testified that a tree fell on the Claimant's home and that she received money from an insurance company to repair the roof. He further testified that, instead of addressing the roof, the Claimant sought to patch it and use the remaining proceeds from the insurance company for interior renovations. The Respondent also testified that he repaired the roof as instructed by the Claimant and while working on the roof, he noticed significant damage to the roof and previous attempts to patch the roof in areas not specified by the Claimant as needing repair under the terms of the contract. Further, the Respondent noted that, when he began the interior renovations, the room had no ceiling and had been stripped down to the joists.

The Claimant provided a recent estimate from February 24, 2016, which I admitted into evidence on her behalf. The estimate does not provide any information to suggest that the scope of work included in that estimate relates to the work performed by the Appellant. The Claimant did not present evidence to show that she has paid another contractor to perform any work not provided by the Respondent under the terms of the contract or to repair any inadequate work performed by the Respondent. The Claimant did not present any expert witness testimony to provide information concerning whether the work performed by the Respondent was or was not workmanlike.

Thus, I find that the Claimant has failed to show that the Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Claimant has not met her burden to show that she sustained any actual loss compensable by the Fund as a result of any acts or omissions of the Respondent. Accordingly, I find that the Claimant is not eligible for compensation from the Fund.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Commission Guaranty Fund deny the Claimant's claim; and

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

**Signature on File**

May 11, 2016  
Date Decision Issued

Tracey Parker-Warren  
Administrative Law Judge

TP-W/emh  
#162372

**PROPOSED ORDER**

***WHEREFORE, this 27th day of June, 2016, 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**

SECRET

Approved for Release by NSA on 05-08-2014 pursuant to E.O. 13526

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