

IN THE MATTER OF THE CLAIM
OF MITRA PEDOEEM,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MIGUEL MURILLO,
t/a R & E CUSTOM PAINTING, INC.,
RESPONDENT

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-15-03345
* MHIC No.: 14 (90) 886
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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 July 30, 2014, Mitra Pedoeem (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,500.00¹ for actual losses allegedly suffered as a result of a home improvement contract with Miguel Murillo, t/a R & E Custom Painting, Inc. (Respondent).

¹ The original claim was for \$15,210.00 but was subsequently amended to \$7,500.00.

I held a hearing on June 15, 2015 at the Office of Administrative Hearings (OAH), Kensington, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407 (2010 & Supp. 2014).

Chris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Claimant represented herself. Steven Smitson, Esq. represented the Respondent who was present².

The contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Office of Administrative Hearings (OAH) Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), Code of Maryland Regulations (COMAR) 09.01.03.01; 09.08.02.01; and 28.02.01.01.

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:

- Claimant Ex. 1: Contract between the Claimant's husband (Jeffrey Strum) and the Respondent, December 30, 2011, with attached verification of payment
- Claimant Ex. 2: 12 color photographs of roof and shingles from varying angles, December 22, 2014
- Claimant Ex. 3: Installation Instructions from Sentinel Shingles

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

- GF Ex. 1: Notice of Hearing, May 6, 2015
- GF Ex. 2: Hearing Order, January 27, 2015

² A Spanish interpreter was utilized to assist with communicating with the Respondent.

- GF Ex. 3: Registration printout, June 12, 2015
- GF Ex. 4: Claim Amendment, October 30, 2014
- GF Ex. 5: Letter from Joseph Tunney, MHIC to the respondent, November 3, 2014
- GF Ex. 6: Home Improvement Claim Form, July 27, 2014

I admitted the following exhibits of the Respondent's behalf.

- RSP Ex. 1: Email from the Claimant to the Respondent, February 23, 2014
- RSP Ex. 2: Unsigned contract, October 3, 2011
- RSP Ex. 3: Product Overview (shingles)
- RSP Ex. 4: Black and white photograph, Sovereign Shingle, roofing material
- RSP Ex. 5: Email exchange between the Claimant and the Respondent, for the period
December 2013 through February 2014

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf and presented testimony from his daughter, Raquel Murillo. 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 licensed by the MHIC as a home improvement contractor, License No. 01-97197.
2. On December 30, 2011, the Claimant and the Respondent's husband, Jeffrey Strum³ entered into a contract to repair a leak to the Respondent's roof on his home at 630 Bryans Nursery Road, Silver Spring, Maryland.

³ Mr. Strum is deceased.

3. The Respondent proposed to Mr. Strum that the entire twenty year old roof, including the underlying plywood, needed to be replaced because it was in poor condition, but Mr. Strum did not want the Respondent to replace the whole roof.
4. Mr. Strum informed the Respondent that he wanted him to remove the existing shingles and replace them on top of the existing plywood.
5. The contract called for the following Project to be performed:
 - Remove existing shingles and underlayment from roof of the house;
 - Install new underlayment on roof of the house to prepare to install new shingles
 - Install new 25 year warranty shingles on roof of the house.
6. The Respondent was to provide the materials and labor.
7. The cost to perform the work under the contract was \$7,500.00.
8. The Claimant paid the contract in full on December 30, 2011.
9. Prior to performing the work on the project, the roof would sometimes leak.
10. The Respondent's agents began working on the project on or December 30, 2011 and completed the work on or about the first week of January 2012. Specifically, the Respondent replaced the shingles and underlayment (waterproof barrier) on top of the existing plywood.
11. The Respondent supervised the work on the project.
12. The shingles installed by the Respondent were nailed to the existing plywood on the roof in accordance with the manufacturers specifications.
13. The work completed conformed to the specifications in the contract.
14. In October 2013, part of the roof began to leak and cave in.
15. On or about October 20, 2013, the Claimant attempted to contact the Respondent via

- telephone to complain that the shingle nails were not properly installed and that the supporting plywood was rotted.
16. The Respondent was in El Salvador and was not available when the Claimant initially attempted to contact him in October 2013.
 17. In December 2013, the Respondent returned to Maryland and contacted the Claimant. At that time, the Respondent offered to inspect the work that was done and fix any problems that may have been caused by his work.
 18. On or about December 26, 2013, the Respondent inspected the roof.
 19. At the time the Respondent inspected the roof, there was no damage caused by the Respondent's work. There was however, an area of the roof that, subsequent to the Respondent's work on the roof, that was removed and re-installed by another contractor. The Respondent did not have anything to do with this subsequent work on the roof.
 20. On February 24, 2014, the Claimant sent an email to the Respondent. Part of the email stated, "Our contract with you included the replacement of any rotten plywood." (RSP Ex. 5 page 13).
 21. Replacing the plywood was not part of the contract with the Respondent.
 22. On February 24, 2014, the Claimant informed the Respondent that she wanted him to replace the entire roof because she believed the shingles were not properly nailed and because she believed there were problems with the plywood causing leakage.
 23. The Respondent offered to re-inspect the nails on the shingles and reposition them if necessary.
 24. The Claimant did not want the Respondent to do re-inspect and reposition the nails.

DISCUSSION

Applicable Law

Section 8-405 of the Business Regulation Article provides that an owner may recover compensation of up to \$20,000.00 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 (Supp. 2014). Section 8-401 defines “actual loss” as “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). Maryland law provides that a claim against the Fund may be denied if the claimant has “unreasonably rejected good faith efforts by the contractor to resolve the claim.” Md. Code Ann. Bus. Reg. § 8-405(d).

If I determine that the Claimant has suffered an actual loss, COMAR 09.08.03.03B governs the calculation of an award from the Fund:

B. Measure of Awards from Guaranty Fund.

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney's fees;
- (d) Court costs; or
- (e) Interest.

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) **Unless it determines that a particular claim requires a unique measurement**, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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.

Analysis

The Claimant's deceased husband and the Respondent entered into a contract to replace the shingles on the Claimant's roof at the Claimant's home. The Respondent completed the work in accordance with the contract. Subsequent to completion of the work, the Claimant expressed dissatisfaction with how the Respondent performed the nail work on the shingles and was angry that the plywood was not replaced. In October 2013, the Claimant alleges that part of the roof caved in and leaked. However, despite the damage there is no evidence that the Respondent failed to install the shingles and waterproof barrier properly or not in accordance with the terms of the contract.

Section 8-401 of Maryland's Business Regulation Article defines "actual loss" as "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). In order for the Claimant to establish an actual loss, she must prove that the costs she incurred to complete the Project were a result of unworkmanlike, inadequate or incomplete home improvement on the part of the Respondent. Having reviewed the record, the Claimant has

failed to establish by a preponderance of the evidence that the work performed on the project by the Respondent was incomplete, unworkmanlike or inadequate. No expert testimony was provided during the hearing to establish that the work performed by the Respondent was unworkmanlike or inadequate. Although the Claimant argued that the shingle nails were improperly installed and that the Respondent did not replace the plywood, there is no evidence that the nails were improperly installed. Moreover, there is no evidence that the Respondent was contracted to replace the existing plywood before he installed the shingles. There is, however, evidence that the Respondent explained to the Claimant's husband that the existing roof should be replaced and that the roof leaked prior to the respondent's work. Mr. Strum did not want to replace the entire roof but only wanted the shingles and waterproof underlayment replaced. A review of the photographic evidence does not indicate that the Respondent installed the shingles improperly. Moreover, the photographs were taken after another contractor had removed part of the roof and replaced it.

The Claimant has simply been unable to prove through testimony or documentary evidence that any of the work performed by the Respondent was incomplete, inadequate or unworkmanlike. The Fund agrees that the Claimant failed to meet her burden.

CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has not sustained an actual loss compensable by the MHIC Fund as a result of the Respondent's alleged acts and omissions. For the reasons stated above, I am unable to recommend an award. Md. Code Ann., Bus. Reg. §§ 8-401 (2010) and 8-405 (Supp. 2014); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim originally filed on July 30, 2014; and

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

Signature on File

August 26, 2015
Date Decision Issued

| _____ | J
Jerome Woods, II
Administrative Law Judge

JW/ej
#157764

PROPOSED ORDER

WHEREFORE, this 27th day of October, 2015, 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.

Marilyn Jumalon

***Marilyn Jumalon
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION