

IN THE MATTER OF THE CLAIM	* BEFORE NANCY E. PAIGE,
OF KAREN A. SANDERS,	* 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 HAROLD MIKULES,	*
T/A INSURANCE REPAIR	* OAH No.: DLR-HIC-02-17-02464
SPECIALISTS, INC.,	* MHIC No.: 15 (90) 1293
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On October 28, 2015, Karen Sanders (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$1,306.00 in alleged actual losses suffered as a result of a home improvement contract with Harry Mikules, trading as Insurance Repair Specialists, Inc. (Respondent).

I held a hearing on April 25, 2017 at the Tawes State Office Building in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself. Eric B. London, Assistant Attorney General, Department of Labor, Licensing and

Regulation (Department), represented the Fund. Richard F. Walsh, Esquire, represented the Respondent, who was present.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following joint exhibit:

- Jt. #1. February 25, 2014 Insurance Repair Specialists, Inc., Estimate, with attached
March 7, 2014 Contract

I admitted the following exhibits on the Claimant's behalf (except as indicated):

- Cl. #1. Sketch
- Cl. #2. July 22, 2016 memorandum "To Whom it May Concern"
- Cl. #3. Not admitted
- Cl. #4. Photograph
- Cl. #5. Not admitted
- Cl. #6. Photographs

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

Resp. #1. April 9, 2014 Completion Certificate

Resp. #2. February 15, 2015 email from Claimant to Respondent

Resp. #3. January 19, 2015 email from Claimant to Respondent

I admitted the following exhibits on behalf of the Fund:

GF #1. March 2, 2017 Notice of Hearing

GF #2. January 3, 2017 Hearing Order

GF #3. April 24, 2017 licensing history

GF #4. October 23, 2016 Home Improvement Claim Form – received October 28, 2017

GF #5. November 6, 2015 letter from Michael Miller, HIC Investigator, to Respondent

GF. #6. Undated note from G.R. Moreland Contractor to Claimant

Testimony

The Claimant testified in her own behalf.

The Respondent did not offer any testimony.

The Fund did not offer 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 4972714.

2. On March 7, 2014, the Claimant and the Respondent entered into a contract to repair a portion of the Claimant's roof and replace a gutter and downspout.

The original agreed-upon contract price was \$1,264.00.¹

¹ The Respondent did additional work on the downspout to prevent ice build-up, and the Claimant paid for that work separately. She agreed that work is not part of her claim.

3. The Respondent finished the work in April 2014 and the Claimant paid the full contract price.

4. In or about June 2014, the gutter fell down and the Respondent replaced it. At about the same time, the roof leaked again. The Respondent's employee came out and advised the Claimant that she needed a new roof. The Claimant did not accept the employee's suggestion to replace the roof at that time.

5. The Claimant's roof continued to leak as a result of a defect in an area not included in the Respondent's work.

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).² “[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 (3d ed. 2000)).

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) (2015);³ *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.”

² As noted above, “COMAR” refers to the Code of Maryland Regulations.

³ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Claimant's home has a shingled roof in the area worked on by the Respondent. The shingled roof adjoins a flat metal roof over a carport. The Respondent replaced some shingles in an area in the Claimant's roof around a skylight, but the roof continued to leak. After the roof continued to leak, the Respondent's employee advised the Claimant that she needed a new roof, but the Claimant declined to contract for that work because of the cost. She consulted with another roofer. The consultant did not find any fault with the work performed by the Respondent, but opined that the leak was the result of improper joinder of the two roofs by the contractor who installed the flat roof over the carport. The Respondent did not perform any work in that area.

The Claimant did not offer an expert opinion that the Respondent performed unworkmanlike, inadequate or incomplete home improvement. She argues, however, that she retained the Respondent to fix a leak and the leak was not fixed. She therefore wants her money back.

Clearly the work performed by the Respondent did not serve the Claimant's purpose. Arguably, the Respondent performed "inadequate" home improvement because it did not resolve the problem. The Respondent contends, however, that it is difficult to identify the source of roof leaks and that the work covered by the contract was properly performed. Moreover, while the contract includes a warranty for complete roof replacement, it specifically excludes "any patch work or repairs to existing roofs or existing flashing." Jt. #1. There is no undertaking in the contract to "fix the leak."

While I understand the Claimant's frustration, the evidence does not support a finding that the Respondent performed the work specified in the contract in an unworkmanlike or inadequate manner. Moreover, although the roof continued to leak, there is no evidence from which I can conclude that the repair proposed by the Respondent was based upon poor judgment or incompetence, or that the Respondent misrepresented the likely success of that repair. (The Claimant testified that she could not remember whether the Respondent said the work would fix the leak.) The Respondent's employee recommended a new roof after the fact; there is no evidence as to what was discussed before the contract. I have no basis for concluding that a reasonably competent roofer would have known that the proposed patch would not stop the leak, or that the patch was of no value (more than one source may contribute to a leak; the patch may have been a partial but incomplete repair). The problem was apparently resolved by a subsequent roof replacement, as ultimately recommended by the Respondent. I must therefore conclude that the Claimant has failed to meet her burden of proof that she has suffered an actual loss as a result of an act or omission by the Respondent. I therefore propose that her claim be denied.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not proved that she sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(2).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement 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

July 3, 2017
Date Decision Issued

Nancy E. Paige
Administrative Law Judge

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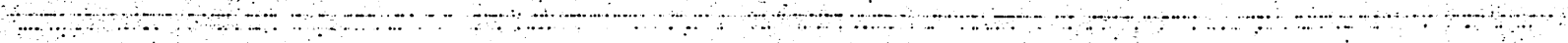
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PROPOSED ORDER

WHEREFORE, this 21st day of August, 2017, 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