

IN THE MATTER OF	* BEFORE LATONYA B. DARGAN,
THE CLAIM OF TEENA SIGGERS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE	* OF ADMINISTRATIVE HEARINGS
MARYLAND HOME IMPROVEMENT	* OAH Case No.: DLR-HIC-02-15-12626
COMMISSION GUARANTY FUND	* MHIC Case No.: 15 (90) 425
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF	*
MARK CARTHORNE,	*
RESPONDENT,	*
d/b/a DILIGENCE HOME	*
IMPROVEMENT	*

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On February 2, 2015, the Claimant filed a claim against the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for actual monetary losses allegedly suffered as a result of the Respondent's inadequate, incomplete or unworkmanlike home

improvement at her residence. On April 2, 2015, the MHIC ordered the Claimant should have a hearing to establish eligibility for an award from the Fund.

On August 10, 2015, I conducted a hearing in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>1</sup> The Claimant represented herself. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. Neither the Respondent nor anyone authorized to represent the Respondent appeared. The Office of Administrative Hearings (OAH) issued a Notice of Hearing (Notice), via first-class and certified mail, to the parties at their addresses of record on June 3, 2015. The Notice advised the parties that a failure to appear could result in an adverse decision against the party failing to appear. The signed receipt for the Respondent's certified copy of the Notice was returned to the OAH by the United States Postal Service on June 9, 2015. Neither party requested a postponement of the hearing. As the Notice was issued well in advance of the hearing date, and the Respondent's certified copy of the Notice was received by him, I find the Respondent had notice of the hearing and he failed to appear. I conducted the hearing in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h); Md. Code Ann., State Gov't § 10-209 (2014); and, Code of Maryland Regulation (COMAR) 09.01.02.07.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), COMAR 09.01.03, 09.08.02, and 28.02.01.

### **ISSUES**

1. Did the Claimant sustain an actual monetary loss compensable by the Fund as a result of the Respondent's acts or omissions; and, if so,

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

2. What is the amount of the loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits<sup>2</sup>**

I admitted the following exhibits for the Claimant:

Cl. #1: July 2, 2014 Photograph

Cl. #2: July 2, 2014 Photograph

Cl. #3: June 7, 2014 Roof Inspection Report, prepared by J&B Material Management

Cl. #5: April 21, 2014 Contract, prepared by Diligence Home Improvement

Cl. #6: Cancelled check

Cl. #7: August 7, 2014 Contract, prepared by Roofworks

I admitted the following exhibits for the Fund:

Fund #1: June 3, 2015 Notice of Hearing

Fund #2: April 2, 2015 Hearing Order

Fund #3: The Respondent's MHIC Licensing Information

Fund #4: January 29, 2015 Home Improvement Claim Form

Fund #5: The MHIC's March 2, 2015 Letter to the Respondent

No exhibits were admitted for the Respondent.

#### **Testimony**

The Claimant testified and she did not present any other witnesses. The Fund presented argument only. No one testified on behalf of the Respondent.

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<sup>2</sup> Claimant Exhibit No. 4 was not offered.

## PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was licensed by MHIC as a home improvement contractor, under registration number 86131.
2. On April 21, 2015, the Claimant and the Respondent entered into a contract for the Respondent to perform various improvements<sup>3</sup> at the Claimant's residence in Severn, Maryland (the Property). The most significant improvement the Respondent was expected to perform was the complete replacement of the Property's roof.  
  
Specifically, he was to replace the existing roof with 3-tab, 20-year composite shingles, and to install gutter guards on the front and rear gutters. The replacement of the roof included ensuring the sub-deck was in good condition.
3. The total contract price was \$42,948.00. Under the contract, the Claimant was to pay the Respondent in three installments of \$14,316.00. The first installment, which was due at the time the contract was signed, covered the cost of the roof replacement, as well as other items in the scope of work. The portion of the first installment which covered the cost of replacing the roof was \$7,000.00.
4. The Claimant paid the Respondent \$14,316.00 by check dated April 21, 2014.
5. Under the contract, work was to commence on April 21, 2014 and be completed by June 21, 2014.
6. The Respondent hired a subcontractor to perform the roof work.
7. The entire project was completed on or around May 24, 2014.

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<sup>3</sup> The claim in this matter relates only to the work performed by the Respondent on the roof at the Property, although the scope of work under the contract was for more than the roof.

8. On or around June 3, 2014, the Claimant noticed bulges and bumps on the roof that did not look right to her. She contacted the Respondent for him to inspect the roof.
9. On or around July 2, 2014, the Respondent finally came to the Property to inspect the roof. As part of the inspection, the Respondent lifted an area of shingles to inspect the sub-decking underneath and discovered there were several holes and areas of rotted wood in the sub-decking. Instead of notifying anyone that the sub-decking needed to be replaced before new shingles were placed atop it, the Respondent's subcontractor simply placed the new shingles on top of the deteriorating sub-decking.
10. The Respondent offered to repair/replace the roof for \$6,200.00. The Claimant was dissatisfied with this offer because the Respondent had already been paid approximately \$7,000.00 to install a new roof, and this subsequent repair was only necessary because the subcontractor did not properly perform the initial roof replacement.
11. On August 7, 2014, the Claimant entered into a contract with Roof Works, an MHIC-licensed home improvement contracting company, to replace the roof. The total cost of the replacement was \$9,800.00, which the Claimant paid in full by August 25, 2014.

### **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); *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. The Claimant bears the burden of proof by a preponderance

of the evidence to show entitlement to an award from the Fund. COMAR 09.08.03.03A(3). For the following reasons, I find that the Claimant has proven eligibility for compensation.

There is no dispute the Respondent was a licensed home improvement contractor at the time the Claimant contracted with him to, among other things, completely replace the roof at the Property. There is also no dispute the Respondent failed to adequately and competently perform the work he was hired to do. The Respondent hired a subcontractor to do the roofing work, but this does not absolve him of responsibility. Business Regulation Article § 8-405(b) specifically provides that “[for] purposes of recovery from the Fund, the act or omission of a licensed contractor *includes the act or omission of a subcontractor*, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists” (emphasis supplied).

The evidence clearly demonstrates the roof work was wholly inadequate, incomplete, and unworkmanlike. The Claimant testified the original contract with the Respondent contemplated the replacement of the existing roof; it was old and in need of replacement, which included any required work to the roof sub-decking. The Claimant took photographs of the roof on July 2, 2014, when the Respondent inspected it and, upon removing some of the shingles, discovered the sub-decking was deteriorated, with hole-filled, rotten wood. The poor condition of the sub-decking is obvious even to an untrained, layman’s eye. There are three large holes in the planks of wood which comprise the sub-decking, and the wood itself is rotted out in places. (*See Cl. #2.*) There is simply no excuse for the subcontractor’s failure to alert the Respondent and the Claimant of the condition of the sub-decking, and to ascertain how they wanted to proceed with the roof replacement *before* putting new shingles atop it. It was unreasonable for the subcontractor to think it acceptable to place shingles on top of a sub-decking *with holes in it*. Additionally, I am troubled by the Respondent’s attempt to get the Claimant to pay him an

additional \$6,200.00 to repair the subcontractor's poor workmanship. As it was the Respondent's job to *replace* the Claimant's existing roof, which includes the sub-decking, the subcontractor's failure to do so is, in fact, the Respondent's failure to do so; it was not reasonable for the Respondent to ask the Claimant to pay him twice to perform work he failed to properly perform initially.

Having found that the Claimant is eligible for compensation, I now turn to the amount of the award. 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)(a), (b) and (c). One of those formulas, as follows, offers an appropriate measurement in this case:

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).<sup>4</sup>

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<sup>4</sup> At the hearing, counsel for the Fund argued COMAR 09.08.03.03B(3)(b) applies, but my review of the evidence demonstrates the Claimant solicited another contractor – Roof Works – to repair the poor work performed on the roof by the Respondent (via his subcontractor). The facts of this case more closely track the situation contemplated by Regulation .03B(3)(c).

Applying the formula set out above leads to the following result:

Amount Paid to the Respondent	\$ 14,316.00
Amount Paid to Correct or Complete Work	<u>+\$ 9,800.00</u>
	\$ 24,116.00
Amount of Original Contract	<u>-\$ 42,950.00</u>
<b>Amount of Actual Loss</b>	<b>-\$ 18,834.00</b>

The formula result is inadequate given the facts of this case. However, COMAR 09.08.03.03B(3) also provides that one of the formulas shall be used “[u]nless [MHIC] determines that a particular claim requires a unique measurement.” The Claimant paid the Respondent 1/3<sup>rd</sup> of the contract price, of which \$7,000.00 went towards the cost of replacing the roof, which the Respondent did not do in an adequate or workmanlike manner. In the hearing, the Claimant sought an award in the amount of \$7,000.00, which is what she paid the Respondent for the roof work under the contract. Under Business Regulation § 8-405(e)(5), the amount of an award to a claimant is limited to the amount the claimant paid the contractor whose work was inadequate, incomplete, or unworkmanlike. COMAR 09.08.03.03B(4) further clarifies that an award from the Fund may not be “an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed.” Accordingly, as the Claimant seeks an award that equals the amount she paid to the Respondent, I recommend an award to the Claimants in the amount of \$7,000.00. COMAR 09.08.03.03B(3).

#### **PROPOSED CONCLUSIONS OF LAW**

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Claimant suffered an actual loss of \$7,000.00, and she is entitled to be compensated in the amount of \$7,000.00 as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(5); COMAR 09.08.03.03B(3).



**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,000.00; 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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a); and,

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

November 6, 2015  
Date Decision Mailed

**Signature on File**

  
Katoriya B. Dargan  
Administrative Law Judge

LBD/kkc  
#159008



MARK CARTHORNE, t/a  
DILIGENCE HOME IMPROVEMENT, LLC

Petitioner

v.

MARYLAND HOME IMPROVEMENT  
COMMISSION

and

TEENA SIGGERS

Respondents

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IN THE

CIRCUIT COURT

FOR MONTGOMERY COUNTY

CASE NO. 421790 - V

\* \* \* \* \*

ORDER

On this *18* day of *October*, 2016, this Court **ORDERS** that the Order issued by this Court on September 1, 2016 is **REVISED**, and the Petitioner's petition for judicial review is **DISMISSED WITH PREJUDICE**.

**ENTERED**

OCT 20 2016

Clerk of the Circuit Court  
Montgomery County, Md.

**Signature on File**

JUDGE

**PROPOSED ORDER**

***WHEREFORE, this 2nd day of February, 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**

**The Maryland Home  
Improvement Commission**

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**BEFORE THE  
MARYLAND HOME IMPROVEMENT  
COMMISSION**

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**v. Mark Carthorne  
t/a Diligence Home Improvement LLC  
(Contractor)**

\*

**MHIC No.: 15 (90) 425**

\*

**and the Claim of  
Teena Siggers**

\*

**(Claimant)**

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**FINAL ORDER**

**WHEREFORE, this 27<sup>th</sup> day of April 2016 , Panel B of the Maryland Home**

**Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated February 2, 2016 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated February 2, 2016 are AFFIRMED.**
- 3. The Proposed Order dated February 2, 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**