

**IN THE MATTER OF THE CLAIM
OF WARREN STEVENS**

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**MARYLAND HOME IMPROVEMENT
COMMISSION**

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**AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS
OF WILLIAM SAULSBURY t/a
TOWN & COUNTRY ROOFING**

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**MHIC CASE NO. 16(05)641
OAH CASE NO. DLR-HIC-02-16-30578**

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on April 6, 2017. Following the evidentiary hearing, the ALJ issued a Recommended Decision on June 20, 2017, concluding that the homeowner Warren Stevens (“Claimant”) sustained an actual and compensable loss of \$9,280.55 as a result of the acts and omissions of William Saulsbury t/a Town & Country Roofing (“Contractor”). *ALJ Recommended Decision* p. 12. In a Proposed Order dated July 10, 2017, the Maryland Home Improvement Commission (“MHIC”) affirmed the Recommended Decision of the ALJ to award the Claimant \$9,280.55 from the MHIC Guaranty Fund. The Contractor subsequently filed exceptions of the MHIC Proposed Order. On May 17, 2018, a hearing on the exceptions filed in the above-captioned matter was held before a three- member panel (“Panel”) of the MHIC.

In order to recover from the Guaranty Fund the Claimant had to prove at the OAH hearing that he suffered an “actual loss that results from the act or omission by a licensed contractor.” Maryland Annotated Code, Business Regulation Article (“BR”), § 8-405(a). The term “actual loss” is defined in the statute as “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” BR § 8-401. The ALJ states in his decision that the Contractor did not dispute at the hearing that

he failed to complete the original contract he had with the Claimant. *ALJ Recommended Decision* p. 9. Furthermore, the Contractor did not dispute at the OAH hearing the evidence the Claimant submitted to establish the amount of his actual loss that resulted from the incomplete work. *ALJ Recommended Decision* p. 9. The Panel finds that the ALJ's decision is otherwise thorough, supported by the evidence in the record and correct as a matter of law. The Panel does not find that the ALJ erred in his decision and will not overturn it on exceptions.

Having considered the documentary evidence contained in the record and the ALJ's Recommended Decision, it is this 15th day of August 2018 **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED;**
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED;** AND
- C. That the Recommended Decision and Order of the Administrative Law Judge is **AFFIRMED;**
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Bruce Ouackenbush
Chairperson –Panel
Maryland Home Improvement
Commission

IN THE MATTER OF THE CLAIM
OF WARREN STEVENS,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF WILLIAM SAULSBURY
T/A TOWN AND COUNTRY ROOFING
AND SIDING, INC.

* BEFORE DANIEL ANDREWS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-16-30578
* MHIC No.: 16 (05) 641

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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 July 6, 2016, Warren Stevens (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with William Saulsbury, trading as Town and Country Roofing and Siding, Inc. (Respondent). On September 30, 2016, the MHIC transmitted the matter to the Office of Administrative Hearings (OAH) to hold a hearing.

On January 5, 2017, the OAH mailed a Notice of Hearing (Notice) to the Claimant, Respondent, and the MHIC using the address of record for each party.¹ The Notice was mailed by regular first class and certified mail. The Notice informed the parties that a hearing was scheduled on April 6, 2017, at 10:00 a.m., at the Talbot County Public Library, 100 W. Dover Street, Easton, Maryland 21061. The Notice mailed to the Respondent was returned by the United States Postal Service (USPS) as “unclaimed unable to forward.” Subsequently, the MHIC notified the OAH of an alternate address for the Respondent.² As a result, on February 13, 2017, a second Notice with the same hearing date, time and location was mailed to the Respondent again by first class and certified mail. The second Notice was not returned to the OAH as undeliverable.

On April 6, 2017, I held a hearing as scheduled. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. The Respondent represented himself. Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department’s hearing 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 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

¹ The Respondent’s address of record was located on Ocean Gateway, Easton, Maryland 21601. For confidentiality purposes full addresses of record are not provided.

² The Respondent’s alternate address of record was located on Window Clusters Drive, Moorestown, New Jersey, 08057.

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 exhibits on the Claimant's behalf:

- CL Ex. 1 Contract between Respondent and Claimant, April 12, 2015, with a supplemental description of work to be completed, September 2, 2015
- CL Ex. 2 Claimant's timeline of events, handwritten
- CL Ex. 3 Respondent's Job Invoice, August 16, 2015
- CL Ex. 4 Fax Cover Sheet with written notes from Respondent, August 16, 2015
- CL Ex. 5 Rear view photograph of Claimant's home, October 24, 2015
- CL Ex. 6 Side view photograph of Claimant's home, October 24, 2015
- CL Ex. 7 Photograph of porch area, October 24, 2015
- CL Ex. 8 Rear view photograph of Claimant's home, October 24, 2015
- CL Ex. 9 Claimant's letter to Respondent, October 30, 2015
- CL Ex. 10 Contract for Completion of Exterior Work, between K. W. Davis, Inc. and Claimant, November 21, 2015
- CL Ex. 11 Davis Invoice, March 26, 2016, \$8,908.41, with attachment's including:
 - Allied invoice, December 7, 2015
 - The Roof Center invoice, December 16, 2015
 - The Roof Center invoice, December 28, 2015
 - The Builders First Source, January 4, 2016
 - Allied, March 1, 2016
 - Builders First Source, March 3, 2016
 - Warren's Wood Works, March 8, 2016
 - Easton Hardware, March 8, 2016
- CL Ex. 12 Claimant's Summary of Facts, June 20, 2016

The Respondent did not submit any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 OAH Notice, February 13, 2017
- Fund Ex. 2 MHIC Hearing Order, September 27, 2016
- Fund Ex. 3 MHIC Licensing History for Respondent, February 13, 2017
- Fund Ex. 4 MHIC Claim Form submitted by Claimant on July 6, 2016
- Fund Ex. 5 MHIC Letter to Respondent, August 15, 2016
- Fund Ex. 6 Claimant's handwritten notes of materials purchased from Allied, with attachments including:
- Allied invoice, November 2, 2015
 - Claimant's American Express Statement, November 17, 2015, with payment to Allied in the amount of \$5,247.00
 - Claimant's personal check paid to Allied, December 2, 2015, in the amount of \$2,698.31
 - Allied invoice, January 1, 2016, with Claimant's personal check paid to Allied, January 7, 2016, in the amount of \$3,634.52
 - Allied invoices, January 11, 2016
 - Claimant's personal check paid to Allied, January 22, 2016, in the amount of \$521.96
- Fund Ex. 7 MASCO Contractor Services, Work Agreement, April 20, 2016

Testimony

The Claimant testified in his own behalf.

The Respondent testified in own behalf.

The Fund did not present the testimony of any witnesses.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant, the Respondent was a MHIC licensed home improvement contractor under license number 01-44575. His most current MHIC license was issued October 28, 2015 and was not due to expire until November 25, 2017.

2. On or about April 12, 2015, the Claimant and Respondent entered into a home improvement contract (Original Contract), which required the Respondent to:

- Remove cedar siding and dispose of all material
- Close up door at rear of garage, install one course block at base of door, and frame balance of door
- Remove shutters and put in garage
- Remove cupola and put in garage, reinstall cupola after repair by owner
- Close up access at top end of garage and eliminate and frame out
- Reinstall new wind anemometer and temperature gauge
- Install Tyvek wrap on house and tape seams
- Replace soffits
- Remove and replace gutters and downspouts
- Replace any bad plywood on exterior (cost to be determined)
- Install Backer board as needed by lights on house, soffits, etc.
- Install rough split cedar impression siding, with mitered corners
- Remove all trash, clean up, and haul away

3. The total cost of the Original Contract was \$29,800.00.

4. The Original Contract required the Claimant to pay one-third of the contract price when all the siding had been removed, another one-third of the contract price when the Tyvek wrap was installed, and a final one-third of the contract price when the contract was completed.

5. The Original Contract required the Respondent to start work by May 1, 2015 and complete all work by June 21, 2015.

6. The Original Contract required the Respondent to provide all materials and labor to perform the contract.

7. On an unspecified date, the Respondent began work required by the Contract.

8. On June 22, 2015, the Claimant paid the Respondent \$5,000.00.

9. On July 10, 2015, the Claimant paid the Respondent \$10,000.00.

10. On August 16, 2015, the Respondent submitted an invoice to the Claimant requesting an additional draw of \$15,000.00 and billed the Claimant for the removal and

replacement of ninety sheets of OSB³ board at a cost of \$4,050.00. The Respondent also informed the Claimant that the full draw payment was required to order siding and materials for the job.

11. By the end of August 2015, the Respondent had removed the siding, installed the OSB board, installed the Tyvek wrap, and partially installed some siding. However, due to employee problems and some health issues, the progress of work on the contract stalled.

12. On October 14, 2015, the Claimant paid the Respondent for the OSB plywood materials and labor in the amount of \$4,050.00.

13. As of October 14, 2015, the total Original Contract price, including the cost of OSB board and labor was \$33,850.00.

14. As of October 14, 2015, the Claimant had paid the Respondent a total of \$19,050.00.

15. On October 14, 2015, the Respondent removed his ladders from the worksite and left the job.

16. On October 30, 2015, the Claimant sent a letter to the Respondent which informed the Respondent that he had already paid the Respondent a total of \$15,000.00 and paid him \$4,050.00 for the OSB board. The Claimant informed the Respondent that it has taken the Respondent almost six months to complete the contract and since the Respondent was abandoning the contract, the Claimant would have to seek recovery from the Fund. The Claimant, however, offered to pay the material supplier directly which would be deducted from the balance of the contract price, if the Respondent was able and willing to complete the contract within thirty days. The Claimant gave the Respondent five days to respond to the letter.

³ OSB stands for "Oriented Strand Board."

17. The Respondent did not respond to the Claimant's letter. However, on or about November 15, 2015, the Respondent informed the Claimant that he would not finish the contract.

18. On November 21, 2015, the Claimant entered into a contract with K.W. Davis, Inc. to complete the remaining exterior work on the Claimant's home (Subsequent Contract).

19. The Subsequent Contract required the contractor to:

- Finish installation of siding
- Install mounting brackets for exterior lights and front bell, etc.
- Reinstall the exterior lights and bell
- Remove existing soffits and install new soffits
- Place cupola on roof
- Correct any defects in current installation, including siding, if any
- Tape and caulk around openings, as necessary
- Install three vents with screens
- Remove all debris from worksite

20. The total Subsequent Contract price was \$6,400.00. The Subsequent Contract required the Claimant to pay for or immediately reimburse the contractor for all materials needed to complete the described work. The Subsequent Contract only included work required by the Original Contract.

21. To complete the described work, K.W. Davis Inc. purchased a total of \$1,628.41 of materials from the suppliers list below and at the cost indicated:

- Allied - \$66.47
- The Roof Center - \$1,087.44
- Builders First Source - \$43.88
- Warren's Wood Works - \$412.09
- Easton Hardware - \$19.03

22. On March 26, 2016, K.W. Davis, Inc., issued an invoice to the Claimant for \$6,400.00 to complete the Subsequent Contract. The invoice included the costs of material purchased by K.W. Davis, Inc., in the amount of \$1,628.41. The invoice also included a total additional cost of \$880.00, which was required to close gables, at a cost of \$320.00, to wrap the

porch header and post, at a cost of \$400.00, and to repair rot in the flat roof area, at a cost of \$160.00. The total invoice price was \$8,908.41.

23. The invoice by K.W. Davis, Inc. acknowledged that the Claimant had already paid K.W. Davis, Inc. a total of \$6,400.00, by personal check, leaving a balance due in the amount of \$2,508.41, which the Claimant has paid in full.

24. To complete the Original Contract, the Claimant also purchased material directly from several suppliers. The total cost of materials purchased by the Claimant was \$13,347.14.

25. The following list includes the materials purchased by the Claimant, including the date on which payment was made, the material supplier, and the associated cost:

- November 2, 2015 - Allied - \$5,247.00
- December 7, 2015 - Allied - \$36.10
- December 16, 2015 - The Roof Center - \$383.06
- December 22, 2015 - Allied - \$2,698.31
- December 28, 2015 - The Roof Center - \$321.32
- January 4, 2016 - Builders First Source - \$37.59
- January 7, 2016 - Allied - \$3,634.52
- January 22, 2016 - Allied - \$521.96
- March 1, 2016 - Allied - \$30.37
- March 3, 2016 - Builders First Source - \$5.79
- March 8, 2016 - Warren's Wood Works - \$412.09
- March 8, 2016 - Easton Hardware - \$19.03

26. On April 20, 2016, the Claimant obtained an estimate to install aluminum gutters and downspouts onto the Claimant's home. The total estimate was \$1,825.00. The installation of gutters and downspouts was a part of the Original Contract.

27. The Claimant's actual loss is \$9,280.55.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[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).

The Claimant 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);⁴ *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 proven eligibility for compensation from the Fund.

Merits of Claim

There is no dispute that the Respondent failed to complete the Original Contract. The Respondent testified that the progress to complete the contract stalled because both he and his sister became ill. The Respondent also did not dispute any of the Claimant’s evidence to establish an actual loss, including that the Subsequent Contract included the same scope of work as required by the Original Contract. The Respondent did not dispute the cost of any materials purchased by the Claimant or K.W. Davis, Inc., which were required to complete the Original Contract. The Respondent also agreed that installing gutters and downspouts was included in the Original Contract and that the estimate provided by MASCO Contractor Services was reasonable. The Claimant’s evidence contained photographs which also demonstrated that the Respondent left the contract incomplete. Those photographs, which contained views of the

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Claimant's home from a variety of perspectives, depict the home with Tyvek wrapping and much of the home without any siding installed. Based on the evidence, I am persuaded that the Claimant sustained an actual loss because the Respondent, a licensed contractor with the MHIC, failed to complete a home improvement contract.

Mr. London, the attorney representing the Fund, had an opportunity to cross-examine both the Claimant and Respondent as to the incomplete work performed by the Respondent. Mr. London also examined the parties as to scope of the work required by the Subsequent Contract, which established that the Subsequent Contract contained the same scope of work as required by Original Contract. Mr. London examined the Claimant on the evidence to support any payments made by the Claimant to the Respondent, K.W. Davis, Inc., and to any material suppliers. After all the evidence was presented, Mr. London agreed that the Claimant established an actual loss which is compensable by the Fund.

The Fund Award

The MHIC's regulations provide three formulas for measurement of a Claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss 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).

As I apply the above formula, the evidence demonstrated that the Claimant paid the Respondent a total of \$19,050.00. The evidence also demonstrated that to complete the Original

Contract, the Claimant paid K. W. Davis, Inc. a total of \$8,908.41. I have also considered that to complete the Original Contract the Claimant was required to personally purchase materials so that K. W. Davis, Inc. could perform the Subsequent Contract. The total cost of materials purchased by the Claimant was \$13,347.14. I have also considered that the Original Contract included the installation of gutters and downspouts. To complete this work, the Claimant obtained an estimate from another contractor in the amount of \$1,825.00. Since all these costs have been or will be incurred for the purposes of completing the Original Contract, I have considered all these costs as being appropriately within the formula's phase of "any reasonable amounts the claimant has paid or will be required to pay another contractor to ... complete the original contract." Therefore, the total cost to complete the Original Contract was \$24,080.55. Finally, the evidence demonstrated that the total Original Contract price was \$33,850.00. Based on this analysis, I calculate the Claimant's loss as follows:

Amount Claimant paid Respondent	\$ 19,050.00
Plus amount "to complete Original Contract"	<u>+24,080.55</u>
	\$ 43,130.55
Less Original Contract price with Respondent	<u>- 33,850.00</u>
	\$ 9,280.55

Accordingly, based on the above formula, the Claimant is entitled to reimbursement from the Fund in the amount of \$9,280.55.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$9,280.55 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); 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 award the Claimant \$9,280.55; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;⁵ and

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

Signature on File

June 20, 2017
Date Decision Issued

Daniel Andrews JLG
Administrative Law Judge

DA/da
#168254

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 10th day of July, 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