

IN THE MATTER OF THE CLAIM
OF BARBARA VALLIMONT,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF BRUCE CHANDLER,
T/A CHANDLER REMODELING, INC.,
RESPONDENT

* BEFORE EMILY DANEKER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-18-29723
* MHIC No.: 18 (90) 361
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On December 14, 2017, the Maryland Home Improvement Commission (MHIC) received a claim filed by Barbara Vallimont (Claimant) seeking reimbursement from the Maryland Home Improvement Guaranty Fund (Fund) for \$16,435.00¹ in actual losses allegedly sustained as a result of the acts or omissions of Bruce Chandler, trading as Chandler Remodeling, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On or about

¹ The Claimant appears to have calculated this part of the claim form incorrectly; based on the information provided in the other portions of the claim form, it appears that the amount being sought is properly calculated as \$16,435.00, and not the \$35,576.00 noted. In any event, the outcome of this decision is not impacted by any inadvertent error in the calculations on the claim form.

² Unless otherwise indicated, all citations to the Business Regulation article of the Annotated Code of Maryland are to the 2015 Replacement Volume.

September 19, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on February 1, 2019 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). The Claimant represented herself. Hope M. Sachs, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. Neither the Respondent, nor anyone authorized to represent him, appeared for the hearing. I waited fifteen minutes past the scheduled hearing time and then proceeded with the hearing in the Respondent's absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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. 2018); 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 the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant offered the following exhibits, which I admitted into evidence:

- Clmt. Ex. 1 - Contract, dated February 18, 2017, and Amendment to Contract, dated March 23, 2017
- Clmt. Ex. 2 - Six photographs, undated, labeled:³ Did not replace; Put roof on first instead of siding; Taped up old windows instead of putting in new ones first; Water between gutter; Ice going down inside; Coming apart

³ In some instances, the descriptions on the photographs have been heavily edited for length and/or clarity.

- Clmt. Ex. 3 - Four photographs, undated, labeled: Cut the roofing; Cut the roofing; Gutter sticks out too far; House before
- Clmt. Ex. 4 - Four photographs, undated, labeled: Ice in j-channel; Water running down side of house; Original trim went to top; J-channel filling with snow
- Clmt. Ex. 5 - Two photographs, undated, labeled: Siding Claimant specified; Siding Respondent installed
- Clmt. Ex. 6 - Two photographs, undated, labeled: Water running between gutter and fascia; Hole put in j-channel
- Clmt. Ex. 7 - Five photographs, undated, collectively labeled: J-channel used instead of a starter strip
- Clmt. Ex. 8 - Two photographs, undated, collectively labeled: Stopped siding and corner cap one course short of roof and instead put up fascia board
- Clmt. Ex. 9 - Two photographs, undated, labeled: House before work; House after work
- Clmt. Ex. 10 - Two photographs, undated, labeled: Windows not right; Windows are not level
- Clmt. Ex. 11 - Packet of documents, containing:
- Summary of payment history, undated
 - PNC Bank account statement, for period February 24 to March 26, 2017
 - Cancelled check, dated March 10, 2017
 - Cancelled check, dated March 24, 2017
 - Cancelled check, dated May 3, 2017
- Clmt. Ex. 12 - Remodeling Proposal, prepared by Propertunity Construction, LLC, dated November 30, 2017

The Fund offered the following exhibits, which I admitted into evidence:

- Fund Ex. 1 - Memo from OAH Docket Specialist to Legal Services, dated November 14, 2018, with attached returned certified mailing
- Fund Ex. 2 - Licensing History for Respondent, printed January 28, 2019
- Fund Ex. 3 - Letter from the MHIC to the Respondent, dated December 19, 2017, with attached Home Improvement Claim Form, received December 14, 2017

No documents were submitted on behalf of the Respondent.

Testimony

The Claimant presented testimony from Wade Vallimont. There were no other witnesses called to testify at the hearing.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to this dispute, the Respondent was a licensed home improvement contractor under MHIC license number 1-30180.
2. The Claimant is the owner of a house located in Dundalk, Maryland (the Residence).
3. On February 18, 2017, the Claimant and the Respondent entered into a contract for work at the Residence, including removing old siding and installing new siding; replacing eight windows; and removing the roofing, installing a new roof with "50-year" shingles, installing a new ridge vent, and caulking and sealing the chimney flashing. Under the contract, the Respondent also was to take down the Residence's existing gutters and downspouts and re-install those same gutters and downspouts once the roofing and siding work was complete.
4. The original agreed-upon Contract price was \$17,641.00.
5. The Claimant paid the Respondent a total of \$19,141.00, which includes a price adjustment, as follows:
 - \$6,600.00 on March 8, 2017, as an initial deposit;
 - \$3,000.00 on March 10, 2017, in response to Respondent's request for additional funds;
 - \$4,541.00 on March 24, 2017, at completion of the roof and siding work;
 - \$5,000.00 on May 3, 2017, at completion of window installation.

6. The work began on or about March 13, 2017. After removing the shingles and siding, the Respondent first installed the new roof, then installed the siding, and lastly, in May 2017, installed the new windows.

7. The Respondent installed a 25-year roof instead of a 50-year roof with sculptured shingles.

8. After completion of the work, the roof leaked. It continues to have two small leaks that were never addressed by the Respondent.

9. Instead of installing the siding up to the roofline, as the prior siding had been, the siding stopped short of the roofline and the Respondent used fascia board to bridge the gap between the siding and the roofline. This created a ledge where the fascia board meets the siding; water pools on the ledge.

10. In installing the siding, the Respondent used j-channel siding where a starter strip should have been used. In the locations where a starter strip should have been used, the j-channel collects debris and water.

11. The Respondent sent a worker to replace the j-channel siding with starter strip, but the worker determined it was too difficult to do by himself and did not complete the replacement. The worker instead tried to resolve the issue by drilling holes in the j-channel to allow for draining, but that was not effective.

12. When the Respondent reinstalled the gutters and downspouts, there were gaps at the corner seams. As a result, water leaks out of the gutter and (depending on the location) drips to the ground or runs down the side of the house when it rains; in cold weather, ice forms where the water runs down the house.

13. When the Respondent reinstalled the front gutter, it was positioned too far out, resulting in water running behind the gutter, instead of into the gutter.

14. The Claimant continued to try and contact the Respondent in an attempt to have the issues resolved, but the Respondent stopped answering the Claimant's calls.

15. On November 30, 2017, Propertunity Construction, LLC (Propertunity), an MHIC licensed contractor, provided an estimate to the Claimant of a total of \$16,935.00 for roofing, siding, window, and gutter work at the Residence.

16. The roofing work covered by Propertunity's estimate was: removing and replacing the existing shingles, installing a drip edge, installing ice and water shields, installing a ridge vent, flashing all areas, replacing pipe collars and boot fittings, and installing a new faux chimney. The estimate also included work to be done on the existing roof deck. The roofing work was estimated at \$5,438.00.

17. The gutter work included in Propertunity's estimate consisted of removing and replacing lengths of gutter and downspout at the Residence. The gutter work was estimated at \$560.00.

18. The siding work included in Propertunity's estimate consisted of removing and replacing all siding on the Residence. The siding work was estimated at \$6,458.00.

19. The window work in Propertunity's estimate consisted of installing eight new windows, converting two of the double hung windows and one picture window into a single three-part slider window, and converting two of the double hung windows in the dining room to a six-foot sliding glass door and installing trim, inside and outside, around the door. The window work was estimated at \$4,479.00.

20. The Claimant is not related to the Respondent, is not an employee or business associate of the Respondent, and is not related to an employee or business associate of the Respondent.

21. The contract between the Claimant and the Respondent does not contain an arbitration provision.

DISCUSSION

I. Notice to the Respondent

In transmitting this matter to the OAH, the MHIC provided the Respondent's home address on Cooper Road in Phoenix, Maryland. Accordingly, on October 22, 2018, the OAH sent the Respondent a Notice of Hearing (Notice) to the Cooper Road address, advising that the hearing was scheduled for 9:30 a.m. on February 1, 2019, at the OAH in Hunt Valley, Maryland. The Notice was sent to the Respondent by both first-class mail and certified mail. The certified mailing was returned to the OAH marked, "DECEASED. Return to Sender; Deceased; Unable to Forward"; the first-class mailing was not returned to the OAH.

By statute, notice of the instant hearing should have been sent to the Respondent at his business address of record with the MHIC. *See* Md. Code Ann., Bus. Reg. § 8-312(d).⁴ However, the MHIC's records reflect that its licensee, Mr. Chandler, has not been in business since at least October 2017. (Fund Ex. 2 at 7.) Thus, although the MHIC's records include the Licensee's last known trade address, 10866 York Road, Suite G, Cockeysville, Maryland 21030, (Fund Ex. 2 at 1), it is no longer valid. (*Id.*)⁵

As noted above, the notice of the hearing sent to Mr. Chandler's home address by certified mail was returned to the OAH with the notation that he was deceased. The MHIC's records likewise reflect that, by October 6, 2017, its licensee, Mr. Chandler, was deceased. (Fund Ex. 2 at 7.) The purpose of the notice requirement is to provide a measure of due process. As the Respondent is out of business and (reportedly) deceased and no new addresses or contact

⁴ These same notice procedures apply to proceedings involving claims against the Fund. Md. Code Ann., Bus. Reg. § 8-407(a).

⁵ A licensee is required to keep his or her address up-to-date with the MHIC. *See* Md. Code Ann., Bus. Reg. § 8-309.

persons have been provided, the MHIC did not have a better means by which to provide the Respondent with notice of the hearing. In these circumstances, notice to the Respondent's home address of record with the MHIC would be more reasonably calculated to reach Mr. Chandler (in the event he is not actually deceased) or any remaining person in interest than would notice sent to a business suite that has not been used for his business in over a year. In these circumstances, the requirements of due process were satisfied and the hearing proceeded. *Maryland State Bd. of Nursing v. Sesay*, 224 Md. App. 432 (2015).

II. Merits of the Claim

Relevant Law

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "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). The statutes governing the Fund define "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.

At a hearing on a claim, a claimant has the burden of proof. Md. Code Ann., Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3). The claimant's burden is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217; *Schaffer v. Weast*, 546 U.S. 49, 56 (2005). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[,]" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). For the reasons explained below, I find that the Claimant has proven eligibility, in part, for compensation from the Fund.

The Respondent Performed a Home Improvement that was in Some Respects Unworkmanlike and Inadequate

Wade Vallimont, the Claimant's husband and a party to the home improvement contract at issue, testified for the Claimant. He had issues with nearly every aspect of the work performed by the Respondent. Much of Mr. Vallimont's testimony was in the nature of expert testimony, but he was never offered, or accepted, as an expert in the field of construction. The Fund did not object to such testimony by Mr. Vallimont. Despite the lack of objection, however, I give little weight to that testimony. Although Mr. Vallimont stated that he has forty-four years of experience in the construction industry, including eight years in home improvement, he did not provide any other information about his experience. I do not know the nature of his role in the construction and home improvement fields; I do not know how recent his experience is; I do not know whether he held, or holds, any required licenses; and I do not know whether he received training in any specifically relevant areas of construction or home improvement. Moreover, at times, he did not adequately explain the basis for his position.

Despite the fact that Mr. Vallimont was not accepted as an expert, it was evident that Mr. Vallimont was very familiar with the work the Respondent performed at the Residence. Mr. Vallimont's testimony was often supported by documents or photographs in evidence. Though his testimony was at times disjointed and it was clear he was not a frequent witness, Mr. Vallimont was sincere and credible, and I gave substantial weight to his factual testimony. As noted above, there were no other witnesses at the hearing.

A. The Roof

Mr. Vallimont testified that the parties agreed on a fifty-year replacement roof. This is documented in the parties' contract as well. (Clmt. Ex. 1 at 2.) Despite that agreement, the Respondent installed a twenty-five-year roof, according to Mr. Vallimont. Mr. Vallimont explained that he raised the issue with the Respondent's workers when they arrived with the

wrong material, but the workers proceeded to remove the roof and siding anyway, and they then replaced the roof using the wrong material. I credited Mr. Vallimont's testimony. While it may seem unusual that the Claimant allowed the work to proceed despite having noticed the mistake in the material at the outset, it was apparent to me from Mr. Vallimont's overall testimony that Mr. and Mrs. Vallimont felt they were largely without options or recourse.⁶ By installing the incorrect roofing, the Respondent, perforce, performed an unworkmanlike home improvement.

Mr. Vallimont also testified that the roof leaked after the Respondent replaced the roof, and the roof still has two small leaks. I accept his testimony. He did not overstate the extent of the leaks and there was no evidence to the contrary. Expert testimony is not required to establish that a full roof replacement is unworkmanlike and inadequate when there are leaks in the roof after the work is complete, which are not corrected.

Mr. Vallimont also testified to other problems with the Respondent's roofing work. Mr. Vallimont testified that the shingles did not overhang the roof sufficiently. He explained that he told the Respondent that he wanted a 1½-inch overhang, but the Respondent left only a ¼-inch overhang, which Mr. Vallimont testified would be insufficient to overhang the j-channel. Mr. Vallimont further explained that because the shingles had insufficient overhang, the Respondent had to use fascia board along the roof and could not take the siding all the way to the roofline. I do not doubt the sincerity of Mr. Vallimont's concerns; however, there was no expert testimony that the amount of overhang did not meet industry standards or that it necessitated the use of fascia board, as Mr. Vallimont asserted. In the circumstances of this case, the adequacy or inadequacy of the ¼-inch shingle overhang is a matter that required expert testimony, which was

⁶ For instance, Mr. Vallimont testified that the original contract price was \$17,641.00, but he and the Claimant paid an additional \$1,500.00 to the Respondent because the Respondent kept asking for additional funds and the Respondent asserted that the contract price did not include the windows. It is difficult to believe that, if the windows were not included in the original contract price, an additional \$1,500.00 would have sufficed to cover the purchase and installation of eight new windows; indeed, the amendment to the contract appears to require \$9,541.00 for the windows. That the Claimant and her husband still paid the additional \$1,500.00 is indicative of their perceived lack of recourse.

not provided. In any event, there was no evidence that the alleged inadequate shingle overhang resulted in any repair or replacement costs beyond the total costs to remedy the incorrect and leaking roof. Thus, any claim that the roof had an insufficient overhang would not present a unique measure of the Claimant's actual loss.

The Claimant also submitted two photographs purporting to show that the shingles were unevenly cut along the edge of the roof. (Clmt. Ex. 3 at 1 & 2.) The photographs are very poor-quality and fail to establish with any assurance that the roofing was unevenly cut. There was little testimony concerning the alleged unevenness in the roofing and there was no testimony expressly linking such unevenness to the leaks in the roof or any other alleged defect, deficiency, or inadequacy.⁷ Again, as I have already found that the Respondent performed an unworkmanlike and inadequate roof replacement because he used the wrong material and installed a leaking roof, any claim that the roofing was unevenly cut would not present a separate or additional measure of loss.

Although I do not accept all of the Claimant's reasons for contending that the roof installed by the Respondent was unworkmanlike and inadequate, as set forth above, I find that the Claimant has established that the roof replacement is an inadequate and unworkmanlike home improvement based upon the Respondent's installation of only a twenty-five-year roof, instead of the agreed-upon fifty-year roof, and the leaks in that new roof.

In terms of the cost to repair the Respondent's inadequate and unworkmanlike roof replacement, Mr. Vallimont testified that he contacted several home improvement contractors and, other than Propertunity, none of those contractors were willing to work on his roof because of the Claimant's ongoing claim over the Respondent's work. According to Mr. Vallimont, Propertunity informed him that all of the Respondent's work would need to be stripped and re-

⁷ Presumably, unevenly cut shingles along the edge of the roof would have worsened any issue with insufficient shingle overhang. However, as discussed above, the Claimant failed to establish that the limited extent of the shingle overhang rendered the roof replacement an inadequate, unworkmanlike, or incomplete home improvement.

done; there was no way to make a more limited repair of the work done by the Respondent. Propertunity estimated that cost to replace the roof with the correct roofing would be \$5,438.00. (Clmt. Ex. 12 at 1, 2-3.) There was no evidence that Propertunity's scope of work or the estimated cost proposed by Propertunity to replace the roof was unreasonable or unnecessary. Given that the Respondent installed a twenty-five-year roof, which leaked, instead of a fifty-year roof, I relied upon the estimate from Propertunity. I find that repair of the roof necessitates replacement of the entire roof and that a reasonable cost to do so is \$5,438.00.

B. The Siding

Mr. Vallimont testified that when the Respondent installed the siding, j-channel siding was used where a starter strip should have been used. Mr. Vallimont explained that in the locations where a starter strip should have been used, the j-channel has become clogged with debris and it fills with water that runs out of the j-channel where it meets the deck roof, resulting in damage to the deck roof. Mr. Vallimont asserted that if a starter strip had been used, this would not have happened. The Claimant submitted several photographs to support Mr. Vallimont's testimony; Mr. Vallimont explained that the photos showed the clogging of the j-channel with water, snow, and debris. (Clmt. Exs. 4 & 7.) The clogged j-channel is visible in the photographs.

Mr. Vallimont also testified that the Respondent initially attempted to correct the problem. Mr. Vallimont explained that the Respondent sent a single worker to the Residence to replace the j-channel with starter strip in certain locations. The worker began the replacement, but ultimately told Mr. Vallimont that it was too difficult to replace without assistance. In an attempt to relieve the collection of debris and water in the j-channel, the worker instead drilled holes in the j-channel. Mr. Vallimont testified that after a short period of time, the holes

themselves clogged and the j-channel again began to clog with debris and water. (*See also* Clmt. Ex. 6.)

There was no expert testimony as to whether a starter strip should have been used in any locations where the Respondent used j-channel siding. However, I considered not only Mr. Vallimont's explanation of the problem and the photographs in evidence, but also the fact that the Respondent attempted to remedy it—first by replacing the j-channel siding with starter strip and then, when that proved too difficult for his worker, by drilling drainage holes in the j-channel. Based on the totality of the evidence, I find that the Respondent effected an unworkmanlike and inadequate home improvement by using j-channel siding in locations where a starter strip should have been used with the siding.

Additionally, Mr. Vallimont testified that instead of taking the siding to the roofline, as it originally had been, the Respondent stopped the siding short of the roofline and installed fascia board to bridge the space between the top of the siding and the roofline. Mr. Vallimont testified that the fascia board was only $\frac{3}{4}$ of an inch thick, but the j-channel used at the terminus of the siding protruded $1\frac{1}{2}$ inches. He explained that because of the difference in thickness, a ledge resulted where the fascia board and siding met and that water collected on the ledge, which must be regularly caulked to prevent sitting water from leaking behind the siding. The Claimant submitted photographs showing that the siding had originally gone to the roofline and that, after the Respondent's work, the siding terminated short of the roofline and fascia board was installed up to the roofline. (*Compare* Clmt. 3 at 4 and Clmt. Ex. 9 at 1, *with* Clmt. Ex. 9 at 2.) The Claimant also submitted photographs showing the ledge formed where the fascia board and siding met. (Clmt. Ex. 8.) The photographs make plain the problem, without the need for expert testimony.

Mr. Vallimont testified that a siding corner channel on the side of the house should have been a single vertical strip, but was instead pieced together from two separate strips. The photographs in evidence support his testimony. (See Clmt. Ex. 7 at 5.)

I find that the Respondent performed an unworkmanlike and inadequate home improvement by using j-channel siding in locations where starter strips should have been used, by creating a ledge where the fascia board and siding met, and by piecing together a siding corner channel.⁸ Nonetheless, the Claimant did not sufficiently establish the reasonable costs to repair the poor siding work done by the Respondent.

Mr. Vallimont testified that Propertunity advised him that all of the siding on the Residence would need to be torn off and replaced; the estimated cost for that work was \$6,458.00. (Clmt. Ex. 12 at 1, 5-6.) The Fund inquired whether any of the Respondent's work could be salvaged, and although Mr. Vallimont maintained that Propertunity told him the house would need to be entirely stripped, he did not provide a meaningful and reliable explanation for why that was; no one from Propertunity was present to answer that question and the estimate does not specifically address that issue. Moreover, the Claimant had originally sought to have the Respondent remedy the issue with the siding by making a more limited repair: removing the j-channel siding and replacing it with starter strip. Although the evidence was that this repair could not be accomplished by a single worker, the evidence did not sufficiently explain why all of the siding would need to be removed, as opposed to resolving the discrete issues with the siding installation (including replacing the j-channel with starter strip where appropriate, removing the fascia board and replacing it with additional siding, and removing and replacing

⁸ There was also testimony from Mr. Vallimont that the wrong siding was used. He explained that the agreed-upon siding was a rigid back, thicker siding with insulation, but the siding initially brought by the Respondent was a flexible back siding. As his testimony progressed, it became clear that the Respondent ultimately obtained and installed the correct siding. Indeed, a photograph submitted by the Claimant appears to show a two-layer (*i.e.* insulated) siding being installed. (See Clmt. Ex. 5 at 2.) I understand Mr. Vallimont's testimony to make the point that he and the Claimant had difficulty working with the Respondent. This is not a claimed basis for recovery from the Fund.

the corner channel siding). There was no evidence as to the cost of a more limited repair of the siding.

In these circumstances, I find the Claimant has not established that removal and replacement of all of the siding on the Residence is reasonably necessary to remedy the problems with the siding and, thus, the Claimant has not established the reasonable cost to repair the Respondent's deficient siding work. Thus, there is an insufficient factual basis to consider the costs of the siding repair in calculating the Claimant's actual loss. *See* COMAR 09.08.03.03B(3)(c); *see also* Md. Code Ann., Bus. Reg. § 8-407(e)(1); COMAR 09.08.03.03A(3).

C. Installation of the Windows

Mr. Vallimont testified that the contract with the Respondent included the installation of eight new windows. He explained that the Respondent was apparently unaware that replacement windows were a part of the contract (which was negotiated with a salesman for the Respondent). Thus, the windows were ordered late and were not available for installation until May 2017, while the remainder of the work commenced in March 2017. Mr. Vallimont testified that even though the new windows were unavailable, the Respondent went ahead and re-flashed the window area, which Mr. Vallimont asserted was improper. Mr. Vallimont further complained that when the Respondent replaced the siding, he left it completely open around the window area until the new windows arrived and the Respondent did not close up the siding to seal the structure from the weather in the meantime. Mr. Vallimont did not testify to any problems to be remedied or repaired as a result of this temporary condition of the siding being left open at the windows.

Mr. Vallimont further observed that the Respondent installed all eight of the new windows in less than one hour, total. He asserted that the Respondent's workers just put the

screws in and caulked the windows and did not check the windows to ensure they were level and plumb. Mr. Vallimont further testified that the windows had large gaps that the Respondent filled with caulk. There was no evidence as to the size of the gaps or that the gaps were larger than would be normal or acceptable. There was no evidence that any ill-effects were occasioned by the gaps: there was no contention that the windows leaked water, there was no contention that the windows were more drafty than would be expected of a properly installed window of that quality, and there was no contention that the windows were made more difficult to open or close as a result of any shoddy installation.

Mr. Vallimont further testified concerning a rise in the sill of one of the new windows and pointed to a photograph labeled as depicting a rise in the window's sill. (Clmt. Ex. 10 at 2.) The rise pictured is so negligible as to leave one wondering if there is a rise visible in the photograph and, if there is, whether it is solely a matter of the angle of the photograph. (Clmt. Ex. 10 at 2.) There was no testimony explaining any ill-effect occasioned by this rise in the sill. Such a rise is too slight to be deemed an unworkmanlike or inadequate home improvement in the absence of any evidence explaining how the rise would impact the window or its functionality or why it would otherwise require repair.

Mr. Vallimont also testified that at least one pair of the new windows was not properly aligned with the mullion strip in between the windows and pointed to a photograph to support his testimony. (See Clmt. Ex. 10 at 1.) The photograph is captioned: "This [is] our new window's [sic] also. That we just notice[d] they are not right. They put a piece of wood or something and just painted over it." (Clmt. Ex. 10.) The photograph does not clearly indicate any misalignment and there was no evidence to explain how this constituted an inadequate or unworkmanlike home improvement.

Although the Claimant established that the windows were hastily installed, I find she has not established that the window replacement work was an unworkmanlike, inadequate, or incomplete home improvement. Moreover, even if I had found the windows to be improperly installed, the Claimant failed to establish the reasonable amount she would be required to pay to repair the work.

The Claimant sought to recover the estimated cost of a full replacement of the new windows installed by the Respondent, in the amount of \$4,479.00, on the basis that Propertunity advised her that all of the work would need to be stripped out and nothing could be reused. (*See* Clmt. Ex. 12 at 1, 7-8.) However, the Claimant did not assert that there was any defect in the windows themselves, as opposed to in the manner of installation. The explanation as to why the eight new windows installed by the Respondent would have to be entirely replaced, as opposed to having any deficiencies in the installation remedied, was lacking. Further, I note that the estimate from Propertunity reflects that its contemplated scope of work was not simply repairing the work performed by the Respondent. Rather, it contemplated converting two double hung windows and one picture window into a single three-part slider window and converting two double hung windows in the dining room to a six-foot sliding glass door and trimming out that door. (Clmt. Ex. 12 at 7.) There was no explanation as to how this change in the scope of the work impacted the estimated costs. Thus, Propertunity's estimate, on its own, would not provide a proper basis for determining the reasonable amount to repair the Respondent's window work; the evidence did not otherwise establish the reasonable cost to remedy any issues with the installation of the windows.

For these reasons, I exclude from the calculation of the Claimant's actual loss any amount for repair or replacement of the windows at the Residence. *See* COMAR 09.08.03.03B(3)(c) (providing, where the claimant wants to have the work remedied that the

actual loss is calculated based on “any reasonable amounts” the claimant will be required to pay to repair the poor work of the respondent contractor).

D. Other

The Claimant’s contract with the Respondent required the Respondent to remove the gutters to perform the siding and roof replacement and then re-install the same gutters. Mr. Vallimont testified that when the Respondent re-installed the front gutter on the Residence, the gutter was placed too far out, leaving a gap between the gutter and the side of the house, and as a result water ran off the roof and behind the gutter instead of into the gutter. The Claimant submitted photographs demonstrating the gap and how the water runs behind the gutter instead of into the gutter. (Clmt. Ex. 6 at 1; *see also* Clmt. Ex. 3 at 3.)

Mr. Vallimont also testified that when the gutters were re-installed, the corner channels no longer matched up so that water leaked out of the gutter at the corners instead of running through the channel to the downspout. The photographs submitted by the Claimant support Mr. Vallimont’s testimony. (Clmt. Ex. 2 at 4, 5; Clmt. Ex. 4 at 2.) Mr. Vallimont explained that these issues did not exist before the Respondent removed and re-installed the gutters. I credit his testimony and find that the evidence establishes that the Respondent’s installation of the gutters constituted an inadequate and unworkmanlike home improvement.

The Claimant’s estimate from Propertunity provided for the replacement of the gutters at an estimated cost of \$560.00. (Clmt. Ex. 12 at 1, 4.) Were the only issue with the gutters a matter of them being installed too far out, there would be a substantial hole in the Claimant’s evidence as to why the problem could not be rectified by a repair (reinstalling the gutters properly) instead of replacement. Here, however, the Claimant’s evidence establishes that the corner channels no longer meet up properly and, thus, are not water-tight. In these circumstances, I find that replacement of the gutter system, as proposed by Propertunity, is

necessary to remedy the inadequate and unworkmanlike gutter work and further that the estimated cost is reasonable.⁹

Mr. Vallimont also testified that the Respondent stripped the roof and siding off the house and installed the new roof before installing the new siding or windows. The photographs in evidence confirm this aspect of Mr. Vallimont's testimony. (Clmt. Ex. 2.) Mr. Vallimont further testified that the sequence of installation should have been windows first, then siding, and finally the roof. Again, Mr. Vallimont was not offered or accepted as an expert in home improvement. Furthermore, although Mr. Vallimont testified that the Respondent left the siding "open" around the windows until the new windows arrived, there was no evidence that this resulted in any continuing problem and there was no evidence that the order of installation, as a whole, resulted in any defect or caused any continuing problem beyond the problem, already addressed above, with the shingles overhang being insufficient as relates to the siding and j-channel. Indeed, it must be noted that many home improvement projects involve only the replacement of one or two of these elements (roof, siding, or windows), not all three; thus it would not always be possible to follow the order of installation identified by Mr. Vallimont. The evidence is not sufficient to establish that the failure of the Respondent to follow the order of installation that Mr. Vallimont preferred resulted in any particular defect or, in and of itself, rendered the home improvement inadequate or unworkmanlike.

The Amount of Claimant's Actual Loss

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work and any repair. In this case, as the Respondent performed the work called for in the contract and the Claimant desires to have the work remedied

⁹ To clarify, even though the contract required only reinstallation, and not replacement, of the gutter, the damage to the gutter itself is not an excluded consequential damage because the work at issue directly involved the gutter. The Fund did not make any argument to the contrary.

by another contractor, the appropriate formula for measuring the Claimant's actual loss is found in COMAR 09.08.03.03B(3)(c):

[T]he . . . 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.

(Emphasis added.) In applying this formula, I also consider that the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). Further, a claimant's recovery is capped at \$20,000.00 for the acts or omissions of one contractor and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

The original price for the Contract work, as adjusted by the parties, was \$19,141.00. The Claimant paid the Respondent a total of \$19,141.00. The Claimant has established the reasonable amounts she will be required to pay another contractor to repair the Respondent's poor roofing work, \$5,438.00, and gutter work, \$560.00. As noted above, the Claimant failed to establish the reasonable amount required to repair the siding. The Claimant also failed to establish either that she is entitled to recover for the Respondent's window work or the reasonable cost required to repair any issues with the windows. Accordingly, the Claimant established a total reasonable amount to repair the Respondent's work of \$5,998.00 (or \$5,438.00 + \$560.00).

Thus, applying the calculation in COMAR 09.08.03.03B(3)(c), the Claimant's actual loss is as follows:

	\$19,141.00	paid to the Respondent
+	<u>\$ 5,998.00</u>	reasonable costs to repair the Respondent's work
	\$25,139.00	
-	<u>\$19,141.00</u>	original contract price (including additional charges Respondent)
	\$ 5,998.00	actual loss

In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than the \$20,000.00 cap on recovery from the Fund. The Claimant is not an excluded claimant, she timely filed her claim, and the contract does not contain an arbitration provision. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), (g), 8-408(b)(1), (2); COMAR 09.08.03.02E, G.

Accordingly, the Claimant is entitled to an award in the amount of her actual loss of \$5,998.00.

It appears that the Fund has paid out other claims against the Respondent. (*See* Fund Ex. 2 at 4-6.) In the event that there are claims against the Respondent exceeding the total amount of \$100,000, the Fund is permitted to pay all the claims on a *pro rata* basis or to pay the claims in the order in which they were filed. *See* Md. Code Ann., Bus. Reg. § 8-405(e)(2); COMAR 09.08.03.03D(3).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has established she sustained an actual and compensable loss of \$5,998.00 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(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,998.00, or an amount as otherwise limited by application of section 8-405(e)(2) of the Business Regulation article; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission,¹⁰ and

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

Signature on File

April 22, 2019
Date: Decision Issued

Emily Daneker
Administrative Law Judge

ED/ej
#178860

¹⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 23rd day of May, 2019, 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.

Robert Altieri

***Robert Altieri
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION