IN THE MATTER OF THE CLAIM OF	*	**BEFORE LATONYA B. DARGAN,**
SHA'RON ROBINSON,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ACTS OR OMISSIONS	*	
OF DARRYL L. MORGAN	*	
t/a MORGAN RESIDENTIAL	*	
CONTRACTING, LLC,	*	**OAH No.: LABOR-HIC-02-19-24785**
RESPONDENT	*	**MHIC No.: 19 (90) 464**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On October 25, 2018, Sha'Ron Robinson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement in the amount of $6,795.00 for actual losses allegedly suffered as a result of a home improvement contract with Darryl L. Morgan, t/a Morgan Residential Contracting, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On July 29, 2019, the MHIC ordered that the Claimant should have a hearing to establish her eligibility for an award from the Fund. On August 1, 2019, the MHIC transmitted the matter to the Office of Administrative Hearings (OAH) for the hearing.

On January 29, 2020, I conducted a hearing in Largo, Maryland. Bus. Reg. § 8-407(e). Barry Tapp, Esquire, represented the Claimant, who was also present. The Respondent represented himself. Shara Hendler, Assistant Attorney General, Department of Labor,[1] represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department of Labor's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); Code of Maryland Regulations (COMAR) 09.01.03 and 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

I admitted the following exhibits for the Claimant:[2]

CL Ex. 1:	Contract, Amended Contract, and Addendum, March 13, 2017, June 1, 2017, and December 15, 2017, respectively
CL Ex. 2A-K:	Photographs, taken in September 2018
CL Ex. 3:	Email correspondence between the Claimant and the Respondent, August 2017 through December 15, 2017
CL Ex. 4:	Cancelled checks, March 13, 2017 through July 20, 2018
CL Ex. 6:	Invoice and Photographs, taken October 2018
CL Ex. 7:	Quotations from Kolb Electric and Photograph, October 2018
CL Ex. 8:	Proposal, Invoices, and Payment Confirmations, Tolson General Contractor, various dates; Photographs, taken in 2018
CL Ex. 9:	Photograph, Utility room door, taken November 2018
CL Ex. 10:	Photograph, Bathroom vanity, taken November 2018
CL Ex. 11:	Photograph, Right side of the sink/vanity, taken November 2018
CL Ex. 12:	Photograph, Medicine cabinet door, taken November 2018

[1] On July 1, 2019, the Maryland Department of Labor, Licensing & Regulation became the Maryland Department of Labor.

[2] Claimant Exhibit 5 was offered, but I sustained an objection to its admission. I retained the exhibit to preserve the record, but I did not consider it in rendering this Proposed Decision.

I admitted the following exhibits for the Respondent:

R Ex. 1:	Contract, November 14, 2016
R Ex. 2:	Email correspondence between the Respondent and the Claimant, March 1, 2018 and March 2, 2018
R Ex. 3:	Respondent's letter to the Claimant, August 31, 2018
R Ex. 4:	Respondent's letter to the Claimant, September 19, 2018

I admitted the following exhibits for the Fund:

GF Ex. 1:	MHIC Hearing Order, July 29, 2019
GF Ex. 2	OAH Notices of Hearing, issue dates January 15, 2020 and December 9, 2019
GF Ex. 3:	Home Improvement Claim Form, signed by the Claimant, October 22, 2018, received at the Fund, October 25, 2018
GF Ex. 4:	MHIC Occupational/Professional License History for the Respondent, print date December 18, 2019

Testimony

The Claimant and Respondent testified and they did not present other witnesses. The Fund did not present any witnesses.

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 the MHIC as a home improvement contractor.

2. On November 14, 2016, the Claimant entered into a contract (Contract) with the Respondent for the Respondent to perform work at the Claimant's residence (Residence) in Capitol Heights, Maryland.

3. The Residence was constructed in Cape Cod style and situated on a corner lot. It had a closed-in front porch with its own flat roof. The roof which covered the remaining living space of the Residence was slanted and comprised of shingles.

4. The total Contract price was $8,625.00, to be paid by the Claimant as follows: $3,500.00 due at signing; $4,000.00 due once the roof was complete; and $1,125.00 due upon completion of the office.

5. The Contract called for the Respondent to "install [a] new roofing system for the [Residence]." The specific scope of work was as follows:

- Remove current shingles on home and dispose
- Install new 30 weight underlayment and ice shield
- Install new shingles approx. (1400 square feet) selected by home owner
- Install new vent boots and lashing as required
- Install new drip edge
- Remove ceiling in the home office and replace with new insulation and drywall; paint the room in color selected by Home Owner
- Clean and remove all trash.

6. Subsequent to entering into the Contract, the Claimant determined additional work was required to the interior of the Residence. She entered into Contract additions with the Respondent on March 13, 2017, June 1, 2017, and December 15, 2017 for the Respondent to perform the additional work.

7. Under the Contract, the estimated start date for the roof work was November 22, 2016, with a completion date of November 29, 2016.

8. The Claimant paid the Respondent the full amount due under the original November 14, 2016 Contract.

9. The Respondent worked at the Residence under the Contract and its additions from November 2016 through approximately June 2018.

10. At some point in February 2018, the Claimant began having marital problems. As the Respondent had a friendly relationship with the Claimant and her husband, tensions arose in the Claimant's and Respondent's relationship related to both the Claimant's marital problems and concerns she had about the Respondent's progress completing the interior renovation of the Residence.

11. At some point in mid to late summer 2018, the Claimant became uncomfortable with one of the Respondent's subcontractors and advised the subcontractor she no longer wanted him at the Residence.

12. On August 31, 2018, the Respondent sent a letter to the Claimant in which he advised her that because of the continuing tensions between the Claimant and her husband, he found it extremely difficult to continue working on the project. Additionally, the Respondent was unhappy with the Claimant's treatment of his subcontractor. As a result, the Respondent notified the Claimant he was terminating the Contract.

13. The Claimant did not receive the August 31, 2018 letter.

14. At some point in mid to late summer 2018, the Claimant noticed water leaks in different areas of the Residence, including areas covered by the flat porch roof.

15. In September 2018, the Claimant arranged for a home inspection performed by a licensed inspector.

16. As a result of the home inspection, the Claimant hired Tolson General Contractor's, Inc. (Tolson), a licensed contractor, to perform certain work at the Residence, including work on the main roof and flat porch roof as follows:

- Install metal counter-flashing where the front porch joins the brick wall of the house
- Install new metal flashing at eave of roof into gutter that is now missing
- Remove and install new metal counter-flashing at bay window that was not properly installed
- Prime existing porch roof with asphalt primer
- Install new shingle ply membrane granule surface over entire front porch
- Re-fasten metal board where loose, and seal with butyl caulking sealant on both sides
- Re-flash all vents and pipe collars on rear upper shingle roof
- Replace and or repair any missing shingles
- Install any missing gutter guards on entire house.

17. The total cost of Tolson's proposal for the roof work was $6,795.00, with half due as a deposit at signing and the balance due upon completion of the work.

18. The Claimant paid Tolson the full amount for the roof work.

DISCUSSION

Legal Framework

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3) and 28.02.01.21K. "[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)). Under this standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Id.*

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 losses . . . incurred as a result of misconduct by a licensed contractor"). "'[A]ctual 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. After considering the evidence, I find the Claimant is eligible for an award from the Fund.

The Merits of the Case

The evidence demonstrates and the parties do not dispute that the Respondent was a licensed contractor at the time they entered the Contract, and the work was performed at the Claimant's primary residence. The dispute between the parties centers on the Respondent's obligations under the Contract with respect to the roof of the Residence.

Under the Claimant's theory of the case, the Respondent was responsible for the entire roof, including both the slanted portion which covered the main house (Main Roof) and the flat portion covering the front porch (Porch Roof). The Claimant argued that a plain reading of the Contract and a common sense understanding of the term "roof" means the entire structure that covers the interior of a house. It does not make sense to read the Contract as only including the slanted portions of the Main Roof and not the flat portions of the Porch Roof. According to the Claimant, by failing to replace the Porch Roof, the Respondent failed to complete the Contract. When the Porch Roof failed in 2018 and water leaked into the Residence as a result, the Respondent was responsible for correcting the problem. He did not do so and the Claimant eventually had to hire another contractor, Tolson, to perform the work. The Claimant sought an award from the Fund in the amount of the Tolson contract for the roof work. *See* CL Ex. 8.

The Respondent contended the Porch Roof was "was never part of the contract" and he took exception to any assertion that he was in any way responsible for replacing or repairing the Porch Roof. He acknowledged he drafted the Contract and he maintained he was only responsible for replacing the shingles of the Main Roof, including the ones which came all the way down and ended at the juncture between the Main Roof and the Porch Roof. He conceded the Main Roof shingles extended all the way down to the Porch Roof, but the Porch Roof was comprised of tar and other materials, and not shingled. The Respondent disputed that he failed to complete the original Contract and argued that Tolson's work on the roof was not within the scope of the Contract.

The Fund argued that if the Porch Roof is included in the scope of the Contract, then the Respondent's work under the Contract was incomplete. As a result, the Claimant had to hire another contractor, Tolson, to do the work on the Porch Roof that should have been performed by the Respondent. The Fund left to me the ultimate determination of whether the Porch Roof

was within the scope of the Contract. It acknowledged that if I found the Porch Roof was within the Contract's scope, then the award from the Fund should be based on the formula used when a homeowner must hire another contractor to complete work that was the responsibility of the original contractor.

The November 14, 2016 Contract, in the section titled "Proposal" reads as follows:

> This proposal is for the [Claimant] located at [the Residence]. Morgan Residential Contracting, LLC, "MRC", is proposing to *install new roofing system for the above listed home*. MRC will provide building and finish materials, labor and management of the project.

R. Ex 1, p. 1 (emphasis supplied).

The scope of work is reproduced verbatim at Finding of Fact No. 5 and does mention the removal of the current shingles and installation of new ones. The Porch Roof, as noted by the Respondent and not challenged by the Claimant, was not comprised of shingles. The proposal, however, indicates the Respondent is responsible for installing a new roofing system for the Residence and it does *not* draw a distinction between the Main Roof and the Porch Roof. I agree with the Claimant that a common sense layperson's understanding of the word "roof" means the entire structure that covers the interiors of a house. The porch is part of the Residence and it has a roof. It was reasonable for the Claimant, as the other party to the Contract, to believe that if the Contract proposed the installation of a new roofing system, then that proposal contemplated the *entire* roofing structure, including the roof over the porch. Further, under Maryland law, "An inquiry into the intent of the parties, where contractual language is unambiguous, is based on what a reasonable person in the position of the parties would have understood the language to mean and not 'the subjective intent of the parties at the time of formation.'" *Credible Behavioral Health Inc. v. Johnson*, 466 Md. 380, 393 (2019) (quoting *Ocean Petroleum Co., Inc. v. Yanek*, 416 Md. 74, 88 (2010)). I find the Porch Roof was included within the scope of the Contract and, as a result, the Respondent failed to complete the Contract when he did not replace the

Porch Roof in November 2016. The Claimant ultimately had to hire Tolson to replace the Porch Roof to address the water leaks. She is entitled to an award from the Fund.

The Claimant is not related to the Respondent or any of his employees by blood or marriage, nor has she ever been employed by or in business with the Respondent. Bus. Reg. § 8-405(f)(1). She is therefore not precluded by law from receiving an award from the Fund. Having found the Claimant to be eligible for an award, I must determine the amount of the Claimant's actual loss and the amount, if any, the Claimant is entitled to recover. The Fund may not compensate the Claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. Here, the Respondent performed some work under the Contract, and the Claimant hired another contractor to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

> 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).

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

Amount paid to the Respondent	$ 8,625.00[3]
+ Amount paid to correct or complete the work	$ 6,795.00[4]
	$15,420.00
- Amount of original contract	$ 8,625.00
Amount of actual loss	**$ 6,795.00**

[3] CL Ex. 4
[4] CL Ex. 8

The Respondent challenged the amount quoted by Tolson as the estimate to perform roof work. Specifically, the Respondent argued that based on the size of the Porch Roof, which he maintained was approximately 120-140 square feet, a reasonable estimate was approximately $800.00 to $1,200.00, including materials and labor costs. I give little weight to the Respondent's estimation of reasonable labor costs. He has a vested and self-serving interest in keeping the Claimant's potential award amount as low as possible because he is required to pay the award back to the Fund. Further, he produced no documentary evidence to support a finding that the numbers he believes are reasonable costs of labor and materials are, in fact, reasonable.

The Business Regulation Article caps a claimant's recovery at $20,000.00 for the acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). Here, the Claimant's actual loss is less than the amount paid to the Respondent and less than the statutory maximum of $20,000.00. Therefore, the Claimant is entitled to an award from the Fund in the amount of $6,795.00.

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law the Claimant has sustained an actual and compensable loss of $6,795.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).

I further conclude the Claimant is entitled to recover an award in the amount of $6,795.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $6,795.00; 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 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.

March 25, 2020
Date Decision Issued

Latonya B. Dargan
Administrative Law Judge

LBD/cmg
#185204

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

PROPOSED ORDER

WHEREFORE, this 13th day of May, 2020, 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

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