

<p>IN THE MATTER OF THE CLAIM OF DOROTHEA RODDA, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF DAVID ZOLLINHOFFER, T/A PAX CONTRACTING, RESPONDENT</p>	<p>* BEFORE BRIAN ZLOTNICK, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * * OAH No.: LABOR-HIC-02-23-11547 * MHIC No.: 22 (75) 1165</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 18, 2022, Dorothea Rodda (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$6,501.21 for actual losses allegedly suffered as a result of a home improvement contract with David Zollinhofer, trading as Pax Contracting (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).² On April 10, 2023, the MHIC issued a Hearing Order

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

on the Claim. On April 20, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

The hearing was originally scheduled for July 19, 2023 but was postponed at the request of the Claimant. The hearing was rescheduled for September 8, 2023 at the OAH in Hunt Valley, Maryland. The Respondent did not appear for that hearing and after accepting preliminary exhibits into evidence from the Fund, I discovered that the OAH Notice of Hearing (Notice) was defective because it was mailed to Owings Mills, Maryland instead of Owings, Maryland, which is the Respondent's address of record. The Claimant and the Fund did not object to another postponement to allow for a corrected notice to be mailed to the Respondent's Owings, Maryland address.

On October 2, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent failed to appear.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On September 8, 2023, the OAH provided Notices of Hearing (Notices) to the Respondent by United States mail.³ COMAR 28.02.01.05C(1). The Notices stated that a hearing was scheduled for October 2, 2023, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notices further advised the Respondent that failure to attend the hearing might result in "a decision against you."

³ Notices were mailed to the Respondent's addresses of record at Decoy Drive in Owings, Maryland and Glenarm Road in Edgewater, Maryland.

The United States Postal Service returned the Notice mailed to the Owings, Maryland address to the OAH, but did not return the Notice mailed to the Edgewater, Maryland address. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the matter. COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); 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

I admitted the following exhibits offered by the Claimant:

- Cl. Ex. 1 - Proposal/Contract (Contract), August 28, 2018
- Cl. Ex. 2 - Copies of cancelled checks paid by Claimant to Respondent, dated September 24, 2018, October 30, 2018, and November 15, 2018
- Cl. Ex. 3 - Respondent's Licensing Status, printed on April 5, 2022
- Cl. Ex. 4A - Photograph of attic roof, taken in 2021 or prior to February 2022
- Cl. Ex. 4B - Photograph of attic roof, taken in 2021 or prior to February 2022
- Cl. Ex. 4C - Photograph of roof interior, taken in 2021 or prior to February 2022
- Cl. Ex. 4D - Photograph of roof interior, taken in April 2022

- Cl. Ex. 4E - Photograph of pipe collar in roof interior, taken in February 2022
- Cl. Ex. 4F - Photograph of roof skylight, taken in 2021 or prior to February 2022
- Cl. Ex. 5 - Letter from the Better Business Bureau to Claimant, March 29, 2022
- Cl. Ex. 6 - Complaint Form, April 14, 2022
- Cl. Ex. 7 - Email from Laura Zollinhofer to Kimberly Rosental, May 12, 2022
- Cl. Ex. 8 - Roof-Pro Inspection Report, April 6, 2022
- Cl. Ex. 9 - Roof-Pro Contract to replace Claimant's skylights, February 16, 2022
- Cl. Ex. 10 - Roof-Pro Contract to repair Claimant's roof, March 26, 2022
- Cl. Ex. 11A - Photograph of roof exterior, taken in 2021 or prior to February 2022
- Cl. Ex. 11B - Photograph of roof and chimney, taken in 2021 or prior to February 2022
- Cl. Ex. 11C - Photograph of roof line and chimney, taken on February 14, 2022
- Cl. Ex. 11D - Photograph of roof line and chimney, taken in 2021 or prior to February 2022
- Cl. Ex. 11E - Photograph of roof, taken in February 2022
- Cl. Ex. 11F - Photograph of roof, taken on February 14, 2022
- Cl. Ex. 12 - Text messages between Claimant and Carlos, August 21, 2023
- Cl. Ex. 13 - Printout of various customer reviews for 888-Roofers – **NOT OFFERED INTO EVIDENCE**
- Cl. Ex. 14 - Email from Laura Zollinoffer to Claimant, May 2022
- Cl. Ex. 15 - Photograph of a truck's tailgate, taken on June 2, 2023
- Cl. Ex. 16 - Advertisement for 3 Brothers Home Improvement LLC, undated
- Cl. Ex. 17 - Printout of Respondent's Business Contact Information for Contact Contractor Consulting, LLC, printed in 2021
- Cl. Ex. 18 - Printout of Respondent's Business Contact Information for 888-Roofers, LLC, printed in 2021

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, July 13, 2023
- Fund Ex. 2 - Hearing Order, April 10, 2023
- Fund Ex. 3 - Claim Form, July 18, 2022
- Fund Ex. 4 - Licensing history for the Respondent, September 8, 2023
- Fund Ex. 5 - Notice of Hearing, July 13, 2023, with attached certified mail receipts.
- Fund Ex. 6 - Notice of Hearing, September 8, 2023
- Fund Ex. 7 - Affidavit of David Finneran, September 26, 2023

The Respondent failed to appear and did not offer any exhibits.

Testimony

The Claimant testified on her own behalf.

The Fund and the Respondent did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. The Respondent was a licensed home improvement contractor under MHIC license number 5611999⁴ at all times relevant to the subject of this hearing.
2. On or about September 4, 2018,⁵ the Claimant and the Respondent entered into a contract to install a new roof to the Claimant's residence (Contract).
3. The original agreed-upon Contract price was \$16,750.00.
4. The Respondent reduced the Contract price to \$14,699.50 because of delays in starting the project.

⁴ License #5611999 was effective from December 6, 2020 to November 11, 2023. The Respondent's license #4931115 was effective from November 23, 2016 to November 23, 2018, the period of time in which the Respondent executed a contract to build a new roof for the Claimant and completed the work.

⁵ The Contract was dated August 28, 2018 and was accepted by the Claimant by email within a week of that date.

5. The Claimant made the following payments to the Respondent:

- September 24, 2018 - \$5,575.00
- October 30, 2018 - \$5,312.50
- November 15, 2018 - \$3,812.00

- Total payments - \$14,699.50

6. On November 15, 2018, the Respondent installed and finished a new roof at the Claimant's residence.

7. In 2020, the Claimant went into her attic to replace a furnace filter and noticed mold and water stains on the roof's supporting beams. The Claimant called the Respondent's salesperson, Derrick Drummund, to report the water damage. Mr. Drummund came to the Claimant's home a week later and went into the attic to take pictures of the roof's supporting beams. Two weeks later an employee of the Respondent came to the home and made repairs to the roof.

8. In 2021, the Claimant went into the attic to replace a furnace filter and noticed that the water stain she saw in 2020 had grown and the Claimant noticed nails popping through the roof into the attic. The Claimant emailed Mr. Drummund to report the continued roof leak and sometime in 2021 and or prior to May 2022, the Respondent came to the home and made repairs to the roof on two occasions.

9. The Claimant went into the attic after the Respondent's latest repairs and noticed that the roof was still leaking.

10. The Claimant contacted Roof Pro to conduct an inspection of his roof. On March 26, 2022, T.J. Ritchie from Roof Pro inspected the Claimant's roof and found the following:

- Roof was replaced with water damaged sheathing and was leaking in master bedroom and near the chimney;
- No flashing on siding and near the chimney;

- Attic is not properly ventilated;
- Pipe collars are ripped and leaking; and
- Shingles are degrading, ripped and broken.

11. On February 16, 2022, the Claimant entered into a contract with Roof Pro to repair the skylight by detaching and resetting the existing skylight, caulking and sealing vulnerable areas, and removing existing flashing to replace with new flashing. The total contract cost was \$2,221.76.

12. On March 26, 2022, the Claimant entered into a contact with Roof Pro that called for the following work to be done:

- Remove eighteen rows of shingles
- Remove underlayment
- Install synthetic underlayment
- Install GAF Oyster shingles
- Remove seven rows of damaged siding
- Install Mainstreet Dutch lap six in colonial white siding
- Install eight linear feet of flashing
- Remove pipe collar
- Install ultimate life warranty pipe collar

13. The total price for the March 26, 2022 Roof Pro contract was \$6,501.21

14. In April 2022, Roof Pro repaired the Claimant's roof and the skylight and was paid in full by the Claimant for both projects.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for 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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant testified that he hired the Respondent to construct a new roof. The Respondent completed the work in 2018, and the Claimant first noticed issues with the Respondent’s work in 2020 when she went into the attic and noticed mold and water stains on the roof’s supporting beams. The Respondent made repairs to the roof, but in 2021 the Claimant noticed that the water stains and mold in the attic had spread, and she saw nails popping through the roof into the attic. The Claimant contacted the Respondent who again went to her home and attempted to fix the roof on two more occasions. After the Respondent made his latest repairs, the Claimant noticed that the roof continued to leak. Then in March 2022, Roof Pro inspected the roof and determined that the Respondent had replaced the Claimant’s roof with water damaged sheathing, the underlayments of the roof exhibited multiple leaks, no flashing or siding was installed near the chimney, the attic was not properly ventilated, and the pipe collars were ripped and leaking.

Both the Claimant and the Fund argued that the Claimant met her burden to show entitlement to compensation from the Fund. Based on the above credible and uncontested evidence of unworkmanlike, inadequate and incomplete home improvements, I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(c)(3) (Supp. 2023); 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.

The Respondent performed some work under the Contract, and the Claimant has retained other contractors to complete or remedy that work. The Claimant paid Roof Pro to install a new skylight, however, that work was beyond the scope of the Contract. Therefore, I will not consider the skylight work in any award calculations. 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). The Claimant paid a total of \$14,699.50 to the Respondent, and then paid \$6,501.21 to Roof Pro to repair the poor work done by the Respondent, which totals \$21,200.71. Accordingly, \$6,501.21 ($\$21,200.71 - \$14,699.50$) is the Claimant's actual loss.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for 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.⁶ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$6,501.21 does not exceed the recovery cap and is less than the amount paid to the Respondent. Therefore the Claimant's recovery amount remains \$6,501.21.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,501.21 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$6,501.21 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2023).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant the amount of \$6,501.21; 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;⁷ and

⁶ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

⁷ *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

December 4, 2023
Date Decision Issued

BMZ/at
#208722

Brian Zlotnick

Brian Zlotnick
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 26th day of December, 2023, 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***