

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DOMINICA BOWSER,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF HUGH WILSON,</p> <p>T/A H.G.WILSON CONTRACTING,</p> <p>RESPONDENT</p>	<p>* BEFORE MARC NACHMAN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-23-29534</p> <p>* MHIC No.: 23 (75) 1371</p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 11, 2023, Dominica Bowser (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$7,300.00 for actual losses allegedly suffered as a result of a home improvement contract with Hugh Wilson, T/A H.G.Wilson Contracting (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2023).<sup>2</sup> On November 15, 2023, the MHIC issued a Hearing Order on the

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).  
<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

Claim. On that same date, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 4, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear and no one appeared at the hearing to represent him.

After waiting fifteen minutes for the Respondent or anyone representing the Respondent 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 December 22, 2023, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified mail and first-class mail at his address of record with the MHIC. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for March 4, 2024, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the certified mail Notice to the OAH; the registered mail receipt was signed, indicating its receipt. However, the Notice sent by regular mail was returned to the OAH with the notation "Return to Sender. Not at this address. Not deliverable as addressed. Unable to forward." The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. Nor did he advise the MHIC of any change in his address of record. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

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**

The complete list of exhibits follows this decision as an appendix.

#### **Testimony**

The Claimant testified and did not present other witnesses.

The Respondent failed to appear and presented no witnesses.

The Fund presented no witnesses.

### **PROPOSED FINDINGS OF FACT**

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-11573.
2. The Claimant owned a house in Baltimore City which had a rubberized flat roof.
3. Prior to April 8, 2022, the roof of the house sustained wind damage, causing part of the roof to peel up which caused water leaks inside the house.
4. The Claimant placed a green tarp over the exposed portion of the roof to prevent more water from entering the house.

5. On April 8, 2022, the Claimant and the Respondent entered into a contract to repair her roof (Contract).

6. The original agreed-upon Contract price was \$1,800.00.

7. The scope of the Contract was to:

- Repair around pipes
- Repair the flashing
- Patch open seams
- Heat and reseal roof
- Install new section of rubber along back of home where which was wind damaged and
- Fiber coat the entire surface of the roof

8. In the Contract, the Respondent warranted his work for three years.

9. The Claimant paid the Respondent \$1,800.00 for materials and labor.

10. The day after the Respondent completed the repair, the roof continued to leak.

11. The Claimant contacted the Respondent who came to the house two or three times in April and May 2022, but he failed to stop the roof from leaking.

12. The Claimant called the Respondent ten times between April 19 and September 28, 2022; the Respondent failed to return most of these phone calls.

13. On September 29, 2022, the Claimant emailed, texted and mailed (by certified mail) a letter advising the Repondent that he had breached the Contract by failing to fix the roof properly.

14. The Claimant also saw the green tarp, that she placed on the roof before the Respondent's repairs, was still in the place she left it, indicating to her that the Respondent never repaired the roof as he contracted to do.

15. The Claimant contacted CRC for an estimate to fix the roof for \$5,500.00.

## DISCUSSION

### **Applicable law**

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 (2021); 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. 2023); *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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2023). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2023). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2023). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2023).

The Respondent was a licensed home improvement contractor (MHIC # 01-115753) at the time the Respondent entered into the Contract with the Claimant. Fund Ex. 3.

### **Respondent's work on the roof of the Claimant's house**

The Claimant testified that she owned a house in Baltimore City that sustained wind damage to its flat roof. The wind caused the covering of the roof to peel back, exposing the house to the elements and allowing rain to leak into the house. CL. Ex. 2A and 2B. To address that damage, on or about April 8, 2022, the Claimant and Respondent entered into the Contract to repair the roof on the Claimant's house. CL. Ex. 1. The Contract listed the scope of the work to be done as follows:

#### **Repairing flat roof**

- Repair around pipes
- Repairing flashing
- Patch open seems
- [H]eating and resealing roof
- Installing new section of rubber along back of home where is [sic] wind damaged
- Fibered coating entire surface of flat roof

The Contract price was \$1,800.00,<sup>3</sup> which included "all labor & materials." The Respondent warranted his work for three years.

The Claimant testified that the day after the repairs were completed the roof still leaked. The Claimant testified that she called the Respondent, who was initially responsive, coming to the house two or three times in April and May to attempt to repair the roof. However, the roof continued to leak. The Claimant continued to call the Respondent, who was generally

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<sup>3</sup> Although the Appellant did not produce documentary proof of payment, she presented documentary evidence that supported the payment. Her letter to the Respondent dated September 28, 2022, read in pertinent part, "At the cost of \$1,800.00 which included all labor and materials, *the bill was paid in full on the date of service....*" Cl. Ex. 4 (emphasis added). I am therefore convinced that the Claimant paid the Respondent \$1,800.00, the amount called for in the Contract:

unresponsive to her calls. She listed her contacts or attempts to contact the Respondent on the following dates in 2022:

April 19  
April 28  
April 29  
May 4

May 6  
August 11 and  
September 1  
September 12

September 25  
and  
September 28

Cl. Exs. 3 and 3A. Some of these calls to the Respondent were returned, but most were not. The Respondent told the Claimant that he could not respond to her in June or July due to his mother's death; the Claimant did not press him during those months. The Claimant did not unreasonably reject the limited good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2023).

On September 29, 2022 the Claimant texted, emailed and sent by certified mail a letter telling the Respondent that she considered him to be in breach of the Contract because of his "unwillingness to rectify the problems of the leaking roof." CL. Ex. 4.

In September, the Claimant climbed onto the roof to take pictures of the condition of the roof left by the Respondent. CL Ex. 5 and A. It was obvious from the pictures that the covering was not properly adhered to the roof, and it was also questionable whether the Respondent actually did any work at all, as the tarp that the Claimant placed on the roof to stop the leak before the Respondent started his work was still in place even after the Respondent performed work under the Contract. Cl. Ex. 6 is a picture that supports the Claimant's testimony that the Respondent performed no work on the roof.

Based on the condition of the roof evident in the post-repair pictures, the continued roof leak, and the failure of the Respondent to repair the roof, the Respondent's work on the Claimant's house was unworkmanlike, inadequate, or incomplete. Bus. Reg. § 8-401.

**Subsequent contractor**

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.

On or about April 2, 2023, the Claimant asked for and received a proposal from CRC, a licensed MHIC contractor. CL. Ex. 7 and 7A. CRC estimated the removal and replacement of "approx.. 15 x 18" section of the roof as follows:

1. Remove existing roofing membrane down to wood decking (substrate) and prepare to accept new roofing system.
2. Remove and replace any deteriorated or inadequate wood decking at a cost of: Plank Boards \$10.00 per foot, 4 x 8 sheathing \$ 120.00 per sheet, above and beyond contract price.
3. Install 1/2 inch rigid fiberboard insulation, equal thickness to match existing roof, mechanically fastened.
4. Install base ply of self-adhering weather barrier base sheet.
5. Install top ply of white granulated modified bitumen, torch applied.
6. Flash all walls using 1 ply of white granulated modified bitumen, torch applied.
7. Flash all vertical penetrations (chimneys, vents, curbs, etc.) using 1 ply of white granulated modified bitumen, torch applied
8. Flash all pipes using lead collars or the 'field flashing' method.
9. Fabricate and install 24 gauge, kynar finished steel copings, counter flashings, drip edge and slag stop as necessary.
10. Install new 6" seamless aluminum gutters, down pipe and related accessories.
11. Remove all work related debris.

Both the Contract and the CRC proposal sought to repair leaks in the roof. But the scope of the Claimant's Contract with the Respondent was limited, and the scope of the work proposed by CRC appears to be more comprehensive. Nevertheless, the CRC proposal would correct the



work contracted by the Respondent and I have considered this in calculating the Fund award, as discussed below.

In her MHIC claim, the Claimant sought the return of her payments to the Respondent (\$1,800.00) as well as the cost to repair the work estimated by CRC (\$5,500.00), for a total claim award of \$7,300.00. For the reasons expressed below, I will recommend an award from the Fund of \$1,800.00, the money she paid to the Respondent under the Contract.

#### **Actual loss and proposed Fund award**

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(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1).

The MHIC promulgated regulations establishing three formulas to measure a Fund award for an actual loss. None of these formulas fully apply in this case, and a "unique" combination of those formulas would be the most appropriate means of establishing an award recommendation from the Fund.

The first formula applies if I found that the Respondent abandoned the Contract without doing any work. The following formula would measure the Claimant's actual loss in that instance: *"If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract."* COMAR 09.08.03.03B(3)(a) (emphasis added). The Respondent did not abandon the Contract, but his work had no value and had to be redone, a situation not covered by this formula.

The second formula applies if I found that the Respondent performed some work under the Contract, and the Claimant is not seeking other contractors to complete or remedy that work.

Accordingly, the following formula would measure the Claimant's actual loss: "If the contractor did work according to the contract and the *claimant is not soliciting another contractor* to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor *less the value of any materials or services provided by the contractor.*" COMAR 09.08.03.03B(3)(b) (emphasis added). The formula does not recognize the hiring of another contractor to complete the work, but it does allow me to recognize that the Respondent's work has no value.<sup>4</sup>

The third formula applies if I found that the Respondent performed some work under the Contract, and the Claimant has retained or intends to retain another contractor to complete or remedy that work. Accordingly, the following formula 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). This formula, however, does not allow me to devalue the Respondent's work, as the second formula does.

As none of the following three regulatory formulas are appropriate in this case, I shall apply a unique formula to measure the Claimant's actual loss:

\$1,800.00	Total Amount paid by the Claimant to the Respondent, plus
<u>\$5,500.00</u>	Fair market cost to make corrections and complete Respondent's work
\$7,300.00	Subtotal, less
\$0.00	Value of work adequately performed by the Respondent

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<sup>4</sup> AAG London suggested that I consider the CRC contract a separate contract, as it provided services that were outside the scope of the Contract. Although this argument is compelling, the scope of the CRC contract did address some of the deficiencies left by the Respondent's work.

~~(\$1,800.00)~~ Original contract price, equals  
\$5,500.00 Amount of the Actual Loss to the Claimant

I too take issue with the scope of the CRC contract as expressed in footnote 4, above. But because the Fund award is limited to the amount paid to the Respondent, its inclusion does not make a material change in the award, as 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) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$5,500.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$1,800.00, the amount paid to the Respondent.

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

I conclude that the Claimant has sustained an actual loss of \$5,500.00, which is limited to a compensable loss of \$1,800.00, 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). 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 \$1,800.00; 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;<sup>5</sup> and

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<sup>5</sup> 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.

May 31, 2024  
Date Decision Issued

*Marc Nachman*  
Marc Nachman  
Administrative Law Judge

MN/lp

#212108

**PROPOSED ORDER**

***WHEREFORE, this 12<sup>th</sup> day of September, 2024, 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***