

<p>IN THE MATTER OF THE CLAIM OF SHIRLEY OVERSTREET AND KEITH DEMBY,  CLAIMANTS<sup>1</sup>  AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF WILLIAM PATE, T/A T &amp; T NEW LIFE ROOFING COMPANY,  RESPONDENT</p>	<p>* BEFORE KRISTIN E. BLUMER, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * * OAH No.: LABOR-HIC-02-23-06663 * MHIC No.: 23 (75) 649 * *</p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On December 28, 2022, Shirley Overstreet (Claimant) filed a claim (Claim)<sup>2</sup> with the Maryland Home Improvement Commission (MHIC)<sup>3</sup> Guaranty Fund (Fund) for reimbursement of \$8,489.00 for actual losses allegedly suffered as a result of a home improvement contract with

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<sup>1</sup> Ms. Overstreet filed the claim form. Mr. Demby is Ms. Overstreet's nephew.

<sup>2</sup> Claimant Overstreet dated the Claim form December 13, 2022. The Maryland Home Improvement Commission received the Claim form on December 28, 2022.

<sup>3</sup> The MHIC is under the jurisdiction of the Department of Labor.

William Pate, trading as T & T New Life Roofing Company (Respondent).<sup>4</sup> On February 3, 2023, the MHIC issued a Hearing Order on the Claim. On February 14, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 30, 2023, I conducted a remote<sup>5</sup> hearing using the Webex videoconferencing platform.<sup>6</sup> MacKenzie Read, Assistant Attorney General, represented the Fund. The Claimants represented themselves, with Mr. Demby taking the primary role. The Respondent represented himself.

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.<sup>7</sup>

### ISSUES

1. Did the Claimants 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<sup>8</sup>

I admitted the following exhibits offered by the Claimants, except as noted:

Clmt. Ex. 1: *not admitted*

Clmt. Ex. 2: *not admitted*

Clmt. Ex. 3: *not admitted*

Clmt. Ex. 4: *not admitted*

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<sup>4</sup> Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>5</sup> The hearing was originally scheduled to be held in person. On May 24, 2023, the Claimants requested that the hearing be converted to a remote hearing because Mr. Demby lives in California and wished to participate remotely. I granted the request on May 25, 2023.

<sup>6</sup> Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).

<sup>7</sup> Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

<sup>8</sup> All exhibits were marked for admission; those exhibits which were not admitted will be retained in the file for the purposes of judicial review. COMAR 28.02.01.22C.

Clmt. Ex. 5: *not admitted*

Clmt. Ex. 6: *not admitted*

Clmt. Ex. 7: *not admitted*

Clmt. Ex. 8: Copy of photograph, undated

Clmt. Ex. 9: Copy of photograph, undated

Clmt. Ex. 10: Copy of photograph, undated

Clmt. Ex. 11: Copy of photograph, undated

Clmt. Ex. 12: Copy of photograph, undated

Clmt. Ex. 13: Copy of photograph, undated

Clmt. Ex. 14: Copy of photograph, undated

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1: *not admitted*

Resp. Ex. 2: *not admitted*

Resp. Ex. 3: Respondent Proposal, November 7, 2019

Resp. Ex. 4: *not admitted*

Resp. Ex. 5: *not admitted*

Resp. Ex. 6: *not admitted*

Resp. Ex. 7: Emails between Marianne Navarro, Lifebridge Health, and Respondent, various dates

Resp. Ex. 8: Respondent Proposals, July 22, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1: Notice of Hearing, April 7, 2023; MHIC Hearing Order, February 3, 2023

Fund Ex. 1A: Notice of Remote Hearing, May 25, 2023

Fund Ex. 2: MHIC Licensing Information for the Respondent, April 20, 2023

Fund Ex. 3: Letter to Respondent from MHIC, January 4, 2023

Testimony

Claimant Overstreet testified. The Claimants did not present other witnesses.

The Respondent presented the testimony of Nicole Pate.

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 times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-67389.
2. At all relevant times, the Respondent's corporate entity was a licensed home improvement contractor under MHIC license number 05-51152.
3. At all relevant times, the Claimants owned a home located in Baltimore, Maryland (the Residence) and Claimant Overstreet resided there. The Claimants do not own any other residential properties in Maryland.
4. In 2019, the Claimants sought to have the roof of the Residence repaired because at least one area of the roof was leaking.
5. In September 2019, the Claimants met with a social worker who was working on behalf of Housing Upgrades to Benefit Seniors (HUBS), a program offered by the Baltimore City Department of Housing and Community Development in partnership with nonprofit agencies, including LifeBridge Health/Sinai Hospital, with respect to having HUBS coordinate the repairs to the roof.
6. HUBS contacted the Respondent, who responded to the Residence and evaluated the roof.

7. The Respondent worked exclusively with HUBS staff in contracting for repair work on the roof to be completed.
8. By December 23, 2019, the Respondent completed repairs to the roof.
9. The Claimants did not make any payments to the Respondent for the work done on the roof.
10. The Respondent received payment for the work through HUBS.
11. The Claimants experienced additional leaks in other areas of the roof subsequent to the Respondent's repair work.
12. The Respondent responded to the Residence several times after 2019, on dates not specified in the record, to evaluate the need for further work on the roof.
13. On July 22, 2021, the Respondent submitted two proposals to HUBS. One proposal specified partial replacement of the roof and the other specified total replacement of the roof.<sup>9</sup>
14. HUBS declined to accept either of the Respondent's proposals after July 22, 2021.<sup>10</sup>

### **DISCUSSION**

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>11</sup> 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.<sup>12</sup> An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed

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<sup>9</sup> Resp. Ex. 8.

<sup>10</sup> Resp. Ex. 7.

<sup>11</sup> Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3).

<sup>12</sup> *Coleman v. Anne Arundel Crty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

contractor.”<sup>13</sup> “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”<sup>14</sup>

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants’ recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source.<sup>15</sup> Claimant Overstreet resides in the home that is the subject of the claim.<sup>16</sup> The parties did not enter into a valid agreement to submit their disputes to arbitration.<sup>17</sup> The Claimants are not relatives, employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent.<sup>18</sup>

For the following reasons, I find that the Claimants have not proven eligibility for compensation. The Claimants did not offer any evidence to show that the work completed by the Respondent in 2019 was unworkmanlike, inadequate, or incomplete. It is unclear why the roof developed additional leaks after December 2019, but the Claimants failed to offer any evidence that those leaks were caused by the quality of the Respondent’s work. Moreover, the Claimants failed to prove an actual loss, as there was no evidence or testimony provided to establish the cost to restore, repair, replace, or complete the work done by the Respondent. The Claimants acknowledged that they have contracted with another contractor to replace the roof but did not submit any evidence documenting this agreement or the scope of the work.

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<sup>13</sup> 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.”).

<sup>14</sup> *Id.* § 8-401.

<sup>15</sup> *Id.* §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).

<sup>16</sup> *Id.* § 8-405(f)(2) (Supp. 2022).

<sup>17</sup> *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022).

<sup>18</sup> *Id.* § 8-405(f)(1) (Supp. 2022).

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of an act or omission of the Respondent.<sup>19</sup>

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

August 8, 2023  
Date Decision Issued

*Kristin E. Blumer*

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Kristin E. Blumer  
Administrative Law Judge

KEB/dlm  
#206636

<sup>19</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022).

PROPOSED ORDER

*WHEREFORE, this 25<sup>th</sup> day of October, 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.*

*Joseph Tunney*

*Joseph Tunney*

*Chairman*

*Panel B*

*MARYLAND HOME IMPROVEMENT  
COMMISSION*