

IN THE MATTER OF THE CLAIM	* BEFORE RACHAEL BARNETT,
OF KENNETH ROSENBOROUGH,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF CLIFFORD WISE,	*
T/A NATIONAL REMODELERS	* OAH No.: LABOR-HIC-02-24-11882
SPECIALISTS,	* MHIC No.: 24(75)575
RESPONDENT	*

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
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STATEMENT OF THE CASE

On January 5, 2024, Kenneth Rosenborough (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$12,036.00 for actual losses allegedly suffered as a result of a home improvement contract with Clifford Wise, trading as National Remodelers Specialists, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2024).² On May 1, 2024, the MHIC issued a

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 Volume of the Maryland Annotated Code.

Hearing Order on the Claim. On May 1, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 5, 2024, I held a hearing by video. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Ernie Dominguez, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

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. 2024); 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:

- | | |
|--------------------------------|------------------------------------------------------------------------------------------------------------------|
| Clmt. Ex. 1 - | Contract (with handwritten terms), January 15, 2018 |
| Clmt. Ex. 2a - | Typewritten Contract Terms, January 20, 2018 |
| Clmt. Ex. 2b - | Installation Photographs of The Ultimate Pipe Flashing System and the Invincible Ultimate Pipe Flashing, undated |
| Clmt. Ex. 3a - | Estimate from Shingle Kings, October 24, 2023 |
| Clmt. Ex. 3b-
Clmt. Ex. 4 - | Repair Estimate from Shingle Kings, September 18, 2023
Photographs of Roofing, undated |
| Clmt. Ex. 5 - | Text Message Exchange Between the Claimant and the Respondent, various dates |

Clmt. Ex. 6 - Metro Public Adjustment, Inc. Photographs, April 28, 2023

Clmt. Ex. 7- Letter from the Respondent to the MHIC, undated

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - The GAF Lifetime Roofing System Product Information and Limited Warranty, undated

Resp. Ex. 2 - Shingle Kings Estimate, September 18, 2023

Resp. Ex. 3 - Email Exchange Between Clifford Wise and Joseph Schwenk, August 1, 2024

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, May 20, 2024

Fund Ex. 2 - Hearing Order, May 1, 2024

Fund Ex. 3 - Home Improvement Claim Form, January 2, 2024

Fund Ex. 4 - Home Improvement Commission licensure data, July 29, 2024

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other 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 5859702.

2. On January 15, 2018, the Claimant and the Respondent entered into a contract to remove and replace the Claimant's roof with shingle roofing, ice shield, drip edge, step flashing in the valley, eaves and chimney, lifetime pipe collars, GAF Timberline Ultra HD Lifetime shingles, cobra ridge vent and ridge caps. The Respondent would also readjust the gutters and clean up at the conclusion of the project. (Contract).

3. The Contract came with a lifetime warranty for the shingles; however, other roofing materials used had shorter warranties.
4. The original agreed-upon Contract price was \$5,400.00.
5. There was an additional line item with the notation "as deemed needed" for plywood at the cost of \$1,152.00 and dump charges of \$300.00.
6. The Claimant paid in full for the completion of the job.
7. The Respondent replaced the roof but did not install a drip edge along the entire perimeter of the roof. The Respondent did not install drip edge along the eaves or rakes of the roof. Doing so would have required eight additional pieces of ten-foot drip edge.
8. On December 22, 2022, the Claimant noticed a leak in the roof.
9. Soon thereafter, the Claimant contacted the Respondent.
10. The Respondent promptly sent an employee, Elladio³, to the Claimant's home to inspect the roof. Elladio hosed down the roof but could not detect any leaks, so he concluded there were no flaws in the roof.
11. On September 18, 2023, Shingle Kings employee, Joe Schwenk, inspected the Claimant's roof and wrote an estimate for replacing all the existing vent collars with lifetime vent collars and new lifting vent boots, installing and caulk a new storm collar on the metal flue, installing two-inch pipe flashing and installing drip edge on the areas of the roof where it was missing. The Contract total was \$4,166.62, with the cost of the drip edge (supplying and installing) at \$2,570.20.
12. After the Claimant learned about the missing areas of drip edge, the Claimant communicated this deficit to the Respondent and the Respondent sent employees out to the

³ Elladio's last name is not in the record.

Claimant's home to install white drip edge along the eaves and rakes; however, the Claimant did not allow the repair because his wife did not like the color of the drip edge.

13. On October 24, 2023, Shingle Kings employee, Joe Schwenk, inspected the Claimant's roof and wrote an estimate for replacing the entire roof. The estimated cost was \$12,557.47, and it included the use of a different type of shingle from what the Respondent installed in 2018.

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 (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. 2024); *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. The Claimant is seeking the removal of the old roof and the installation of a new one for \$12,557.47.⁴

For the following reasons, I find that the Claimant has not proven eligibility for compensation.

⁴ This amount is slightly higher than the original claim amount. It was explained at the hearing that the cost of roofing materials has increased.

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. 2024). 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. 2024). 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. 2024). 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. 2024).

At the hearing, the Claimant testified (and the Respondent did not dispute) that the Claimant paid him in full for the completion of the roofing project in 2018. The Claimant did not produce evidence of payment, in the form of a check or a receipt of some kind, to demonstrate exactly how much he paid. The original Contract price was \$5,400.00; however, a separate line item indicated there may be additional costs for dump fees and plywood, if needed. It is clear that the Claimant paid at least \$5,400.00 to the Respondent for the completion of the roof, but it is unclear whether he paid more.

The Claimant argued that the Respondent failed to install drip edge along the entirety of the roofline, as called for in the Contract. The Claimant produced evidence in the form of an estimate from Shingle Kings that indicated there was no drip edge along two areas of roofline, which meant that the Respondent failed to install it. The Contract clearly included the installation of a drip edge along the roofline and made no exceptions. For this reason, the failure to install the drip edge along the entirety of the roofline amounted to an incomplete job.

The Claimant experienced a leak in his roof. The Respondent's employee, Elladio, attempted to detect the source of the leak but was unable to replicate the leak upon inspection. It

is unknown whether the lack of a drip edge was the source of the leak.⁵ Regardless, the Claimant was entitled to get a drip edge since it was included in the Contract. The Claimant correctly contacted the Respondent after learning there were two areas that did not have drip edge and asked for one to be installed. Approximately eighty feet of drip edge was needed.

The Respondent sent employees to the Claimant's home to install drip edge; however, the Claimant refused to allow the installation to proceed because he said his wife would not want white drip edge. Neither the original Contract, nor the typed contract terms include a color specification for drip edge, and white is a common color for building trim materials. For this reason, I conclude that the Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2024). The Claimant is not entitled to any award. The Respondent offered to remedy the incomplete work, but the Claimant unreasonably refused to allow the repair to proceed.

There is no dispute that the Claimant paid the Respondent in full for the work; however, it is unclear exactly what sum the Claimant paid, because neither party produced any evidence of payment. The Respondent is seeking not only the cost of the drip edge, but the cost of replacing the entire roof, without any expert testimony that the roof requires replacement.

The Respondent performed an incomplete home improvement, because the job was not completed according to the Contract. However, since the Claimant rejected the Respondent's reasonable offer to repair the condition by installing the missing drip edge, the Claimant is not eligible for compensation from the Fund.

⁵ There was evidence in the record that the Claimant and Shingle Kings investigated the lack of insulation in the roof/attic area as a potential cause of the leak, due to condensation. However, Shingle Kings did not reach a conclusion.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2024).

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.

October 24, 2024
Date Decision Issued

Rachael Barnett

Rachael Barnett
Administrative Law Judge

RAB/emh
#214614

PROPOSED ORDER

WHEREFORE, this 20th day of March, 2025, 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.

Michael Shilling

Michael Shilling

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**

IN THE MATTER OF THE CLAIM OF
KENNETH ROSEBOROUGH
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
CLIFFORD WISE AND NATIONAL
REMODELERS SPECIALISTS, LLC

* MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 24(75)575
* OAH CASE NO. LABOR-HIC-
* 02-24-11882
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FINAL ORDER

This matter was originally heard via video conference before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”). Following the evidentiary hearing, the ALJ issued a Proposed Decision concluding that the homeowner, Kenneth Roseborough¹ (“Claimant”) failed to prove that he suffered a compensable actual loss as a result of the acts or omissions of Clifford Wise and National Remodelers Specialists, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 8. In a Proposed Order, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On May 15, 2025, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Jonathan Phillips appeared at the exceptions hearing on behalf of the Guaranty Fund. The Panel entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. No party produced a copy of the transcript of the OAH hearing. The Claimant timely filed a request to present new evidence seeking to add complete pictures of text messages that he submitted to OAH prior to his video

¹ Mr. Roseborough’s name was misspelled as “Rosenborough” in the ALJ’s Proposed Decision.

hearing but that were incomplete when admitted into evidence. AAG Philips objected to the admission of the new evidence on the grounds of relevance. The Contractor consented to the admission of the new evidence. The Panel found that the new evidence was relevant to the issue of whether the Claimant rejected the Contractor's offer to resolve the claim, and that, although the evidence was available to the Claimant at the time of the hearing, the Claimant attempted to submit them prior to the hearing but portions of the exhibits were not entered into evidence through no fault of the Claimant. Accordingly, the Commission admitted the new evidence. Therefore, the Panel's review of the record included the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, the exhibits offered as evidence at the OAH hearing, and the text messages admitted as new evidence at the exceptions hearing. COMAR 09.01.03.09(G) - (K).

The claim in this proceeding relates to a contract between the parties for the replacement of the roof at the Claimant's home. The ALJ found that the Contractor's performance under the contract was incomplete because the Contractor failed to install drip edging on portions of the perimeter of the Claimant's home as required by the contract. *ALJ's Proposed Decision* p. 6. However, the ALJ held that that the Claimant was ineligible for an award because she found that the Claimant unreasonably rejected good faith efforts by the Contractor to resolve the claim. Specifically, the ALJ found that the Claimant refused the Contractor's offer to install drip edging because the color of the drip edging did not match the Claimant's siding, but the contract did not specify the color of the drip edging.

On exception, the Claimant argued that the ALJ erred in finding that he unreasonably rejected good faith efforts by the Contractor to resolve his claim. The Panel agrees with the Claimant. First, the record reveals that the Contractor required the Claimant to pay a \$300 service fee for the installation of the drip edging. (OAH Hearing Claimant's Exhibit 5.) Because the

Contractor was required to install the drip edging under the Claimant's contract, the Panel finds that the Contractor's offer to install the drip edging for a fee did not constitute a good faith effort to resolve the claim and that the Claimant, had he rejected the offer, would have been reasonable to do so. Second, Panel finds that the Claimant did not reject the Contractor's offer to install the drip edging. Although the Claimant did ask that the Contractor get the drip edge to match his siding on February 15, correspondence between the Contractor and the Claimant reveal that, despite the Claimant's request for drip edging that matched the siding, the Contractor attempted to find someone to install the drip edging but was unable to do so at least through March 15. (OAH Hearing Claimant's Exhibit 5.) There is no evidence that the Contractor actually had someone attempt to install the drip edging or that the Claimant refused to allow the Contractor to install the drip edging.

Having found that the Claimant is eligible for an award, the Panel must now calculate the Claimant's actual loss. As the ALJ found, the Contractor performed an incomplete home improvement because he failed to install drip edging on the entire perimeter of the Claimant's roof as required by the contract. The Claimant solicited another licensed contractor, Shingle Kings, to complete the Contractor's performance, and the Shingle Kings estimate included a line item for the installation of drip edging for a price of \$2,579.20. Because the Contractor did work under the contract and the Claimant solicited another contractor to complete the contract, the Commission will calculate the Claimant's actual loss in accordance with COMAR 09.08.03.03(B)(3), using the following equation:

Amount paid to or on behalf of the contractor + Cost to correct and complete the work - Original contract price = Actual Loss

In this case, the Claimant paid the contractor the entire contract price of \$6,852, and the

cost to complete the contract by installing drip edging was \$2,579.20. Therefore, the Commission calculates the Claimant's actual loss as follows

\$6,852.00	Amount paid to or on behalf of the contractor
+ \$2,579.20	<u>Cost to complete the work</u>
\$9,431.20	
- \$6,852.00	<u>Original contract price</u>
\$2,579.20	Actual Loss

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 3rd day of June 2025, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant is awarded \$2,579.20 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and

G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Robert Altieri
Chairperson –Panel
Maryland Home Improvement
Commission