

**IN THE MATTER OF THE CLAIM
OF CHARLES ANGELOS,
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JEFFREY
WEISSBERG
T/A CROWN REMODELING,
RESPONDENT**

*** BEFORE MARY PEZZULLA,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-19-06999
* MHIC No.: 18 (90) 818

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On September 11, 2018, Charles Angelos (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$34,800.00 in actual losses allegedly suffered as a result of a home improvement contract with Jeffrey Weissberg,¹ trading as Crown Remodeling, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On March 5, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ On his Home Improvement Claim Form, the Claimant initially listed Randy Holden instead of Jeffrey Weissberg, as Mr. Holden had been his point of contact at Crown Remodeling, LLC.

I held a hearing on May 8, 2019 at the Hunt Valley location of the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Eric B. London, Assistant Attorney General, Department of Labor, Licensing, and Regulation² (Department), represented the Fund. The Claimant represented himself. Mr. Weissberg provided an executed Special Power of Attorney permitting him to represent Crown Remodeling, LLC at this proceeding.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (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 on the Claimant's behalf:

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, signed July 11, 2015
- Clmt. Ex. 2 - Copy of check payable to the Respondent in the amount of \$5,000, dated August 4, 2015 and handwritten note evidencing a payment of \$5,000, dated August 4, 2015, signed by Randy Holden
- Clmt. Ex. 3 - Roof Leak Survey completed by The Durable Slate Company, dated November 9, 2017
- Clmt. Ex. 4 - Estimate from The Durable Slate Company for \$34,800, dated June 7, 2018
- Clmt. Ex. 5 - Photograph

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Clmt. Ex. 6 - Photograph

Clmt. Ex. 7 - Complaint Form, dated January 12, 2018

Clmt. Ex. 8 - Not Admitted

Clmt. Ex. 9 - Photograph

Clmt. Ex. 10 - Not Admitted

Clmt. Ex. 11 - Letter from the Respondent to David R. Finneran, MHIC, dated April 22, 2016

I admitted the following exhibits on the Respondent's behalf:

Resp. Ex. 1 - Letter from the Respondent to David R. Finneran, MHIC, dated February 26, 2018 with attachments

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, dated March 11, 2019

Fund Ex. 2 - Hearing Order, dated February 27, 2019

Fund Ex. 3 - Letter from MHIC addressed To Whom It May Concern, dated April 24, 2019

Fund Ex. 4 - Home Improvement Claim Form, dated June 7, 2018 by Claimant and received September 11, 2018 by MHIC

Fund Ex. 5 - Letter from MHIC to the Respondent, dated September 11, 2018

Fund Ex. 6 - Estimate and Contract 1 between Five Star Remodeling, LLC and Claimant, dated November 11, 2017

Testimony

The Claimant testified and presented the testimony of Donald Scharf, whom I accepted as an expert in slate roofing.

The Respondent testified.

The Fund did not offer any testimony.

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 131554.
2. The Claimant is the owner of a home located at 508 Surrey Road, Lutherville, Maryland 21093.
3. On July 11, 2015, the Claimant and the Respondent entered into a contract to remove and replace two sections of slate roofing on the Claimant's home, one section over the garage and one section over the main portion of the house in the rear (Contract). The work pursuant to the Contract was completed on or about August 4, 2015.
4. The original agreed-upon Contract price was \$20,000.00.
5. The Claimant paid the Respondent an initial deposit of \$10,000.00 on or about July 11, 2015 and paid the remaining \$10,000.00 upon completion on August 4, 2015.
6. After the first rainstorm after the completion of the roof, the Claimant noticed a leak in his home and called the Respondent. Randy Holden, an employee of the Respondent who had been the Claimant's point of contact with the Respondent, came to the house and fixed a leak in the rear roof over the main portion of the house.
7. Approximately two months after the first leak, the Claimant noticed a new leak in his home. The Claimant again called Mr. Holden, who responded to the property and fixed this leak in the rear roof.
8. A third leak occurred in the home within six months of the first leak. This leak was in yet another location, although still under the rear roof that had been replaced by the Respondent. The Claimant called Mr. Holden, who responded to the property and fixed the leak.

9. The Claimant continued to have problems with the rear roof, including additional leaks, cracked slate tiles, and broken snow guards. The Claimant did not experience any leaks with the roof over the garage.

10. The last date the Respondent worked on the Claimant's roof for any repairs was March 15, 2016.

11. The Claimant attempted to contact the Respondent at some point after March 15, 2016, regarding continuing problems with the rear roof, but was unable to get the Respondent to return to the property.

12. At some point between March 2016 and November 2017, the Claimant hired Fick Brothers Roofing and Exterior Remodeling Company (Fick Bros.) to make unspecified repairs to his roof.

13. On November 9, 2017, after continuing to experience problems with the replaced portion of his rear roof, the Claimant hired The Durable Slate Company (Durable Slate) to complete a Roof Leak Survey (Survey) of the portion of the roof that had been replaced by the Respondent.

14. The slate roof installed by the Respondent, over both the rear and the garage, did not have the proper, industry standard head or side lap and did not have a felt underlayment beneath the ice and water shield underlayment.

15. The Claimant hired Donald Scharf to make repairs to the rear roof. Mr. Scharf owns Five Star Remodeling, LLC, which is not licensed by the MHIC. Mr. Scharf also works for Amberg Design and Carpentry, LLC, which is licensed by the MHIC. All the work completed by Mr. Scharf on the Claimant's rear roof was performed as an unlicensed contractor.

16. Beginning in January or February 2018 through March or April 2018, Mr. Scharf fixed leaks around three vent pipes that leaked when the phalanges had stretched, by removing

and replacing eight to ten slates around each pipe; inserted sheet metal bibs under and between the slates in the full course or row above the snow guards in order to prevent leaks where there was insufficient head and side lap; replaced broken snow guards; corrected existing snow guards; and replaced cracked slates.

17. In the fall of 2018, Mr. Scharf replaced an additional eight to ten cracked slates on the rear roof.

18. The main cause of the leaks in the interior of the Claimant's home were due to gaps between slates, which were caused by a lack of proper head and side lap. Since Mr. Scharf slid sheet metal bibs under and between the slates in the full course above the snow guards, the Claimant has not experienced any additional leaks inside of his home.

19. On June 7, 2018, the Claimant obtained an estimate from Durable Slate to remove and replace the slate roof that the Respondent installed over the rear of the house and the garage. The cost to replace the rear roof was quoted as \$27,700.00 and the cost to replace the garage roof was \$7,100.00, for a total of \$34,800.00. Durable Slate is a licensed Maryland Contractor, MHIC license number 105029.

DISCUSSION

In this case, 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). "[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)).

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) (2015)³; *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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The Claimant testified that in July 2015 he entered into a Contract with the Respondent for the Respondent to install slate roofing over two sections of his roof, one section in the rear of the home and one section over the garage. The Respondent completed the work, pursuant to the contract, on August 4, 2015. The Claimant paid a total of \$20,000 to the Respondent for the work done on his roof. Although he could not remember the exact date, the Claimant testified that immediately after the first large rainstorm after the Respondent completed the work, his roof began leaking into his home. He testified the leak was underneath the rear roof, which the Respondent had just replaced. The Claimant stated that he contacted his point of contact with the Respondent, Randy Holden, who returned to the home and fixed the leak in the roof. Within two months of this fix, the Claimant experienced another leak in his home coming from the rear roof. Following the same procedure, the Claimant contacted Mr. Holden, who came and fixed the leak. This occurred yet another time within six months of the roof installation. Again, although the Claimant did not know the exact date, he

³ Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

was clear that he contacted Mr. Holden who came to the home, on this occasion with a tool that appeared to the Claimant to be a large caulk gun, and fixed the roof. The Claimant testified that he continued to experience problems with the roof, including leaks and broken slates and the Respondent came one additional time to the home, on March 15, 2016, to make repairs to the rear roof. After March 15, 2016, the Claimant, despite calling the Respondent, was unable to get the Respondent to return to the home. The Claimant was clear in his testimony that all of the leaks and broken slates were on the rear roof.

The Claimant became increasingly frustrated with the leaks in his roof and with his inability to get the Respondent to return to the property, so at some point between March 15, 2016 and November 2017, the Claimant hired Fick Bros. to make repairs to his roof. The Claimant could not testify with any specificity as to the scope of the work performed by Fick Bros. on the roof. He testified that he gave general instructions to Fick Bros. to “just fix” the roof. The Claimant did not know the amount he paid to Fick Bros. for their work.

Based on statements from Fick Bros. that there were problems with the roof, the Claimant hired Durable Slate to complete a survey of the portion of the roof that the Respondent had replaced. The Survey (Claimant Ex. 3), the inspection for which was completed on November 9, 2017, shows that the slate was inadequately installed in that it does not have adequate head or side lapping. The Survey identified the roof as having a pitch of 5/12, which means that in order to meet industry standards there should be a head lap of 4 inches and a side lap of 3 inches. (*Id.* at 2-4). The Survey notes the portions of the roof replaced by the Respondent has head laps of between 1 inch and 2.5 inches and a side lap of 2 inches. (*Id.* at 6). The Survey further states that “[r]ubber gasketed, soil pipe flashings for shingle roofs were also used causing inadequate laps” and copper flashing was used, but the installation did not account for “thermal movement

of the copper.” (*Id.* at 6). Finally, the Survey indicates that the “saddle pan has been nailed and soldered over, causing the joints to break.” (*Id.*).

After Durable Slate completed the Survey, the Claimant continued to have problems with the rear roof. Beginning in January or February 2018, the Claimant hired Donald Scharf to complete repairs on the roof. The Claimant initially hired Mr. Scharf in November 2017 to complete work on a different portion of the roof and then began hiring him for additional roof repairs on the portions of the roof replaced by the Respondent. The Claimant could not recollect any exact dates when Mr. Scharf made repairs to the roof, but knew Mr. Scharf had been at his home at least five times and made repairs to the rear roof, including replacing broken slates, replacing three vent pipes that had been leaking, as well as the slates around them, putting metal underneath of slates to reduce leaks, and replacing snow guards. The Claimant did not know how much he paid to Mr. Scharf for these repairs.

On June 7, 2018, the Claimant elicited an estimate from Durable Slate for the replacement of his roof. The cost to replace the rear roof was quoted as \$27,700.00 and the cost to replace the garage roof was \$7,100.00⁴. (Claimant Ex. 4).

Mr. Scharf testified on behalf of the Claimant as expert in slate roofing. Mr. Scharf was open and honest that although he sometimes works for Amberg Design and Carpentry, LLC, which is licensed by the MHIC, he also owns and works for Five Star Remodeling, LLC, which is not licensed by the MHIC. He acknowledged that the work that he completed on the Claimant’s roof was performed as an unlicensed contractor. Despite his performance of unlicensed contracting work, I found Mr. Scharf’s testimony to be earnest and reliable as it evidenced a clear understanding and expertise regarding the installation and maintenance of slate

⁴ The estimate also included an amount of \$1,500.00 for work to be done on the front roof, which is not a part of the roof that was replaced by the Respondent.

roofing. Mr. Scharf has worked in the roofing industry for over twelve years. He began as an apprentice, then became a project leader, and then a project manager before starting his own business. He estimated that he has worked on thousands of roofing projects and that eighty percent of those projects have involved slate roofing.

Mr. Scharf was knowledgeable about the repairs he made to the rear roof. Beginning in early 2018 until the spring of 2018, Mr. Scharf made at least four repairs to the rear roof. First, he replaced three vent pipes on the rear roof. He testified that he noticed the phalanges were stretched out and that water was getting underneath the slates, although the leak was not yet into the interior of the home. During this repair he observed that the slate had been placed directly onto the ice and water shield with no felt in between. This means that the slates cracked more easily. Also during this repair, Mr. Scharf had to replace approximately eight to ten slates around each pipe because of the way they were stuck to the ice and water shield. His next repair was to slide sheet metal bibs underneath of two courses of slates in order to address leaks that were occurring above the snow guards. Mr. Scharf explained that because there was insufficient head and side laps there were gaps where no slates were meeting or overlapping. This was one of the main reasons the roof was leaking. Mr. Scharf explained that sliding in metal bibs is a remedial measure. It is not meant to be a permanent fix as the metal will eventually slide out. Mr. Scharf also made repairs to the snow guards on the rear of the roof where they were lifting up and, during this repair, he had to replace damaged slates. Mr. Scharf came back to the property in the spring of 2018 and replaced cracked slates on the rear roof, as well as over the garage. Mr. Scharf explained that slate roofs always require upkeep and while it is not unusual to have one or two cracked slates, the number of cracked slates he continued to see on the rear roof was abnormally high. In the fall of 2018, Mr. Scharf replaced another eight to ten slates on

the rear roof and garage roof. He estimated that in a two year period on the two portions of the roof that had been replaced by the Respondent, he replaced fifty to sixty slate tiles.

It was Mr. Scharf's expert opinion that the roof was poorly installed over the rear of the home and over the garage. Although the roof is not currently exhibiting any leaks, the fixes done on the roof were only meant to be temporary. Mr. Scharf testified that the way in which the slate was installed, directly onto the ice and water shield and with insufficient head and side lap, would continue to give rise to leaks and a high number of cracked slates.

The Respondent testified on his own behalf. He testified that after the roof was initially installed the Claimant was happy with the work and even recommended the company to his sister to repair her roof. The Respondent adamantly stated that the Claimant never called his office to complain about the work done on the rear roof or garage. The only complaint the Claimant ever made to his company was about a portion of the roof on which the Respondent did not work. During his testimony the Respondent became increasingly angry, hostile and recalcitrant. Despite looking at the photographs included in the Survey, which clearly show a ruler next to slates indicating the amount of head lap to be 1 inch and side lap to be 2 inches, (Claimant Ex. 3, pp. 3-4), he testified that he believed all the slates were installed with a 4 inch head lap and a 3 inch side lap.

The Respondent stated that he was unaware of Mr. Holden returning to the property at any time for repairs. I do not find this to be credible. Although the Claimant could not remember exact dates, his testimony was clear that Mr. Holden returned to the property three separate times to make repairs. The Claimant's testimony included the detail of the type of tool that Mr. Holden brought with him to be one that looked like a large caulk gun. This detail lends the Claimant's testimony credibility that the Respondent's flat denials lack. Additionally, the

Respondent's statement that he knew of no leaks in the roof is directly contradicted by Claimant's Ex. 11. Claimant's Ex. 11 is a letter from the Respondent to David R. Finneran, MHIC, dated April 22, 2016. The letter is regarding a prior MHIC complaint that the Claimant had filed, but not pursued, but that specifically references roof leaks. At least as of April 22, 2016, the Respondent had knowledge that the Claimant believed his roof to be leaking.

Based on the evidence before me, it is clear that the work done by the Respondent, a licensed home improvement contractor, was inadequate, incomplete, and unworkmanlike. A newly replaced roof, if competently installed, should not allow rainwater to leak into the home. The Claimant required multiple repairs to his roof. In closing, the Fund argued that since there is not a current leak in the roof, the roof is functioning. I disagree.

I credited Mr. Scharf's testimony that these repairs, while currently keeping the water out of the home, are temporary or stop-gap measures, but not a long term solution. The lack of proper head and side lap means that water will not properly run off of the roof and will seep underneath the slates. Mr. Scharf's installation of sheet metal underneath two courses of slate is not a fix that is feasible for the whole of the rear roof. Page 6 of Claimant Ex. 3 shows waviness to the roof that is noticeable even to a lay person. Mr. Scharf explained that this waviness indicates the lack of proper head and side lap, which indicates that the roof is not structurally sound. Additionally, I find that the unworkmanlike installation continues to lead to an excessive amount of slates breaking and needing to be replaced. 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(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

(a) 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.

(b) 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.

(c) 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)(a)-(c).

I conclude that none of the three regulatory formulas is appropriate in this case.

Accordingly, I shall apply a unique formula to measure the Claimant's actual loss. COMAR 09.08.03.03B(3). Based on the testimony, the Respondent did install new slate roofing on two sections of the Claimant's house. However, the roof was installed in such an unworkmanlike manner that it needs to be fully replaced. The Claimant provided an estimate from Durable Slate for the amount of \$34,800.00 to replace the rear roof and the roof over the garage (\$27,700.00 to replace the rear roof and \$7,100.00 to replace the roof over the garage). The Fund argues that this estimate is no longer valid since additional repairs were performed on the roof after the estimate was obtained. As explained above, I find the repairs completed on the roof, both by Fick Bros. and by Mr. Scharf to have been temporary fixes, more akin to a Band-Aid than a permanent solution. Because of this, any remedial work performed after the June 7, 2018

estimate does not invalidate the need for a new roof. The Fund also argued that it is against public policy to allow a claimant to recover from the fund for repairs that were made by an unlicensed contractor. In this case, although the Claimant did have repairs made by an unlicensed contractor, Mr. Scharf, he did not present testimony regarding the amount of the repairs and is not seeking compensation for the cost of those repairs. He is seeking compensation from the Fund of cost of a new roof, which he estimates to be \$34,800.00. I find the Claimant's actual loss to be the amount the Claimant paid to Respondent, which is \$20,000.00.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for 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). In this case, the Claimant's actual loss of \$20,000.00 also happens to be the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4). There are no statutory impediments to the Claim. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2018).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss \$20,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015) COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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.

July 23, 2019
Date Decision Issued

CONFIDENTIAL

Mary Pezzulla
Administrative Law Judge

MP/da
#179888

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 29th day of June, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
CHARLES ANGELOS * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 18(90)818
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
JEFFREY WEISSBERG T/A * 02-19-06999
CROWN REMODELING *

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on May 8, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on July 23, 2019, concluding that the homeowner, Charles Angelos (“Claimant”) suffered an actual loss of \$20,000.00 as a result of the acts or omissions of Jeffrey Weissberg t/a Crown Remodeling (“Contractor”). (*ALJ Proposed Decision* p. 14.) In a Proposed Order dated June 29, 2020, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On December 3, 2020, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Eric Lickstein, Esq., represented the Contractor. Assistant Attorney General Justin Dunbar appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) July 16, 2020 hearing notice; 2) June 29, 2020 transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; 3) Contractor’s exceptions; 4) November 24, 2020 virtual hearing notice. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the

exceptions hearing, the OAH Proposed Decision, and the exhibits offered into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the replacement of two sections of the slate roof at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike and awarded the Claimant \$20,000.00. (*ALJ Proposed Decision* pp. 12-15.)

On exception, the Contractor argued that the record did not include evidence that his acts or omissions caused the Claimant's loss, that the ALJ erred by allowing Donald Scharf, who is not a licensed home improvement contractor, to testify as an expert, and that ALJ erred in finding that the Claimant suffered an actual loss because there were no active leaks in the Claimant's roof at the time of the hearing.

The Commission finds no error with the ALJ's qualification of Donald Scharf as an expert. Holding a Maryland home improvement contractor's license is not a prerequisite for qualification as an expert in a Home Improvement Guaranty Fund claim proceeding. To obtain a home improvement contractor license, an individual must demonstrate knowledge of the law of home improvement contracting and competence to perform home improvements, COMAR 09.08.01.16, two years of trade experience, COMAR 09.08.01.23, and financial solvency, COMAR 09.08.01.19. However, a contractor's license is not required of an individual who performs home improvements as an employee of a licensed home improvement contractor, who performs new home construction work, or who teaches building construction methods. Individuals who have such experience may be experts in various aspects of home improvement despite not holding a license. And individuals who hold a home improvement contractor license may not be experts in certain home improvement matters, such as slate roofing. The record contains evidence that Mr.

Scharf has twelve years of experience working on slate roofs with increasing levels of responsibility, and Mr. Scharf testified convincingly about the proper installation of slate roofing. Therefore, the Commission finds that he qualifies as an expert on slate roofing.

The Commission also agrees with the ALJ's finding that the Contractor's performance was unworkmanlike and the ALJ's related conclusion that the unworkmanlike performance caused the Claimant to suffer an actual loss. First, the absence of an active roof leak does not preclude the finding of an actual loss. The documentary evidence and testimony demonstrates that the Claimant suffered a series of roof leaks following the Contractor's work on his roof. (*ALJ Proposed Decision* pp. 7-11; OAH Hearing Guaranty Fund Exhibit 6.) Leaks in a newly installed section of roof are indicative of improper installation. Although the Claimant had the leaks repaired by one licensed contractor and one unlicensed contractor, and the Claimant's roof was not leaking at the time of the OAH hearing, the Claimant's expert testified convincingly that the leak repairs were temporary measures. (*ALJ Proposed Decision* p. 12.) Moreover, the record includes photographs of shingles with insufficient head and side lapping and shingles that were not installed in straight lines. (OAH Hearing Claimant's Exhibit 3.) This demonstrates to the Commission that the Contractor's work was unworkmanlike and has caused the Claimant to suffer an actual loss, regardless of whether there are or ever were any leaks in the areas of the Claimant's roof where the Contractor performed work.

The Commission disagrees with the ALJ's characterization of the proper method of calculating the Claimant's actual loss, however. The Commission finds that the Claimant's actual loss should be calculated in accordance with COMAR 09.08.03.03(B)(3), which provides as follows:

[i]f 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.

The formula can be expressed as the following equation:

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

The Commission deems the temporary repairs performed by other contractors, for which the Claimant has not sought reimbursement, to have no bearing on the calculation of the Claimant's actual loss. With or without the temporary repairs performed by others, the Contractor improperly installed the shingles on the rear section of the Claimant's house, and the Claimant's garage and the shingles and related flashing installed by the Contractor must be removed and replaced.

In this case, the amount the Claimant paid to or on behalf of the Contractor is \$20,000.00. (ALJ Proposed Decision p. 4.) The Commission finds, based on the proposal of The Durable Slate Company, that the cost to correct and complete the work by removing and properly installing the roof over the Claimant's garage and the rear of the roof over the Claimant's house is \$34,800.00. (OAH Hearing Claimant's Exhibit 4.) The original contract price was \$20,000.00. (OAH Hearing Claimant's Exhibit 1.) Accordingly, the Commission's calculation of actual loss is as follows:

\$20,000.00	Amount paid to or on behalf of the contractor
+ \$34,800.00	<u>Cost to complete the work</u>
\$54,800.00	
- \$20,000.00	<u>Original contract price</u>
\$34,800.00	Actual Loss

Under *Md Code Ann.*, Bus. Reg. §§ 8-405(e)(1), the Commission may not award more than \$20,000.00 to a claimant for the acts or omissions of a single contractor, so the Commission will award the Claimant \$20,000.00.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 22nd day of December 2020, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- 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 \$20,000.00 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.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission