IN THE MATTER OF THE CLAIM	*	**BEFORE JOCELYN L. WILLIAMS,**
OF CARI SCHEMM,	*	**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 WILLIAM SMITH,	*	
T/A WILLIAM SMITH,	*	**OAH No.: LABOR-HIC-02-20-02718**
RESPONDENT	*	**MHIC No.: 19 (75) 285**

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PROPOSED DECISION

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STATEMENT OF THE CASE

On February 14, 2019, Cari Schemm (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of $2,655.00 in actual losses allegedly suffered as a result of a home improvement contract with William Smith, trading as William Smith (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).[1] On December 20, 2019 the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

[illegible]

On August 12, 2020, I held a hearing, the entirety of which was conducted using the Google Meet audio-visual platform. Code of Maryland Regulations (COMAR) 28.02.01.20B. The hearing was initiated from the OAH in Hunt Valley, Maryland, and the parties participated from their respective locations. Bus. Reg. § 8-407(e). Nicholas Sokolow, Assistant Attorney General, Department of Labor (Department),[2] represented the Fund. The Claimant represented herself. The Respondent represented himself. While addressing the preliminary issues in the case, it was brought to my attention that there had not been an exchange of proposed exhibits between all parties. I continued the hearing for an exchange of exhibits to take place.[3]

On September 25, 2020, I held a hearing, the entirety of which was conducted using the Google Meet audio-visual platform. COMAR 28.02.01.20B. The hearing was initiated from the OAH in Hunt Valley, Maryland, and the parties participated from their respective locations. Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department, represented the Fund.[4] The Claimant represented herself. The Respondent represented himself.

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. 2020); 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?

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[2] On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.
[3] The Respondent participated in the hearing by telephone and did not have access to a computer to review the proposed exhibits. He needed to have them printed at an office supply store to be able to review them.
[4] As Mr. Brouwer was substituted as counsel for the Fund, I convened the hearing as a new hearing, without objection from the parties.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 - MHIC Complaint Form, undated; Contract with the Respondent for $2,000.00, dated March 1, 2018; Photographs of the roof taken before the roofing work, undated; Email Exchange between the Claimant and the Respondent, dated March 1, 2018, March 5, 2018, and July 25, 2018; Text Messages between the Claimant and the Respondent, dated March 1, 2018, March 9, 2018, March 10, 2018, and July 31, 2018; Chase Sapphire account activity showing payment to Respondent, dated March 10, 2018

Clmt. Ex. 2 - Addendum to Sales Contract, dated July 25, 2018, with attachments of Contract with the Respondent, dated March 1, 2018; Photographs of the roof taken before and after the roofing work, undated

Clmt. Ex. 3 - Department website printout "About Warranties- Home Improvement Commission," undated

Clmt. Ex. 4 - Contract between the Claimant and Four Twelve Roofing for $2,655.00, dated August 17, 2018

Clmt. Ex. 5 - Payment Invoice for Four Twelve Roofing for $885.00, dated August 17, 2018; Payment Invoice for Four Twelve Roofing for $1,770.00, dated August 17, 2018; Chase Sapphire account activity showing payments to Four Twelve Roofing, dated August 17, 2018 and August 21, 2018

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing for September 25, 2020 hearing

Fund Ex. 2 - Licensing Certification for Respondent, dated September 16, 2020

Fund Ex. 3 - Hearing Order, dated December 10, 2019

Fund Ex. 4 - Ten Day Letter to the Respondent from the Fund, dated February 25, 2019; with a copy of the Claim attached, dated February 12, 2019

The Respondent did not offer any exhibits to be admitted into evidence.

Testimony

The Claimant testified and did not offer any additional witnesses.

The Respondent testified and did not offer any additional witnesses.

The Fund did not present 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 01-94367.

2. On March 5, 2018, the Claimant and the Respondent entered into a contract to patch with Elastomeric Roof cement around the flashing, chimney and seams as needed and coat entire upper and lower flat roofs with two coats of white Elastomeric Roof coating (Contract) on her house in Baltimore, MD (property). The Contract did not state the date when work would begin. The work began on March 10, 2018 and was completed the same day. (Clmt. Ex 1).

3. The original agreed-upon Contract price was $2,000.00.

4. On March 10, 2018, the Claimant paid the Respondent $2,000.00.

5. On July 25, 2018, during a final walk through prior to settlement for sale of the property, moisture was observed on the ceiling in a top floor bedroom.

6. The Claimant entered into an addendum of sale for the property in which she agreed to correct and cover all cost for repairs.

7. The Claimant attempted to contact the Respondent by phone, email and text message to discuss repair of the roof at the property, without success.

8. On August 17, 2018, the Claimant entered into a contract with Four Twelve Roofing for $2,655.00 to coat the upper roof of the property, to repair the same work originally performed by the Respondent.

9. On August 17, 2018, Four Twelve Roofing performed the work at the property.

10. As of August 21, 2018, the Claimant paid in full the contract entered with Four Twelve Roofing.

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); 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).

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); *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 Claimant provided overwhelming and uncontroverted evidence that the Respondent's work was unworkmanlike, inadequate and incomplete. A roof coating which leaks is an unworkmanlike home improvement because it does not serve its intended purpose of providing protection from moisture and water intrusion into the property.

The Claimant testified she hired the Respondent to coat the roof to provide preventive maintenance from leaks. She was aware of a previous leak to a lower roof, however; the leak that was visible on the final walk through prior to the sale of the property was a new leak to the upper third floor roof. The Claimant stated that both she and her realtor attempted to contact the Respondent by phone, email and text message and that they received no responses. She further

explained that she entered into a contract addendum with the buyer agreeing to be responsible for making any repairs to the roof to prevent further leaks and as a result she entered into a contract with Four Twelve Roofing to repair and correct the work performed by the Respondent. I found the Claimant's testimony to be credible and it was uncontroverted.

The Respondent, while apologetic to the Claimant for any miscommunication or misunderstanding, provided no evidence that he attempted to repair or otherwise remedy the work he performed. The Respondent testified he was unsure if he received the Claimant's email in July 2018 and he stated he believes he spoke to the Claimant and returned to the property to look at the roof.

The Respondent acknowledged that the purpose of coating a roof is to provide preventive maintenance and provide a water seal. He opined the Claimant's leak was caused by storm damage which may have occurred between March 2018 and July 2018. However, he could point to no specific weather event or anything out of the ordinary and stated the weather had been typical Baltimore weather. The Respondent further acknowledged that he provided a three-year warranty on his work. I find the Respondent made no attempts to honor that warranty with the Claimant.

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). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed work under the contract, and the Claimant has paid another contractor to remedy the Respondent's unworkmanlike, inadequate, and incomplete work. 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).

Applying the formula in this case results in the following calculation:

Amount Claimant paid to Respondent:	$2000.00
Amount Claimant paid to another contractor to repair:	$2,655.00
Less the contract price:	$2,000.00
Claimant's actual loss:	$2,655.00

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. Md. Code Ann., 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 $2,655.00 exceeds the amount she paid the Respondent ($2,000.00). Therefore, the Claimant's recovery is limited to $2,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss 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)(c). I further conclude that the Claimant is entitled to recover $2,000.00 from the Fund. 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 $2,000.00; 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.

December 4, 2020
Date Decision Issued

Jocelyn L. Williams
Administrative Law Judge

JLW/dlm
#188091

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

PROPOSED ORDER

WHEREFORE, this 10th day of March, 2021, 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

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