IN THE MATTER OF	*	**BEFORE LATONYA B. DARGAN,**
THE CLAIM OF	*	**AN ADMINISTRATIVE LAW JUDGE**
NATALIA BASSFORD,	*	**OF THE MARYLAND OFFICE**
CLAIMANT	*	**OF ADMINISTRATIVE HEARINGS**
AGAINST THE MARYLAND	*	
HOME IMPROVEMENT	*	
COMMISSION GUARANTY FUND	*	
FOR THE ACTS OR OMISSIONS OF	*	
RONNIE CANTER,	*	
t/a E & C CONSTRUCTION,	*	**OAH No.: LABOR-HIC-02-19-39698**
RESPONDENT	*	**MHIC No.: 19 (90) 394**

* * * * * * * * * * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On February 10, 2019, Natalia Bassford (Claimant) filed a claim for reimbursement (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for actual monetary losses allegedly sustained as a result of the acts or omissions of Ronnie Canter, t/a E & C Construction (Respondent), a licensed home improvement contractor. Md. Code Ann.,

Bus. Reg. §§ 8-401 through 8-411 (2015).[1] By order dated November 18, 2019, the MHIC directed that the Claimants have a hearing to establish eligibility for an award from the Fund. On November 21, 2019, the MHIC transmitted the matter to the Office of Administrative Hearings (OAH).

On October 15, 2020, I conducted a remote hearing via video-conference on the Google Meet platform under Code of Maryland Regulations (COMAR) 28.02.01.20B. The Claimant represented herself. The Respondent represented himself. Justin Dunbar, Assistant Attorney General, Department of Labor, represented the Fund.

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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03 and 28.02.01.

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[2]

Exhibits

I admitted the following exhibits for the Claimant:

CL #1: Photograph, Section of the Roof, August 12, 2018
CL #2: Photograph, Front of the Property, August 12, 2018
CL #3: Estimate, Allied Remodeling, August 27, 2020

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[2] At the time of the hearing, neither the Claimant nor the Respondent had submitted their documentary evidence to the OAH prior to the hearing. I ordered the parties to file any exhibits admitted during the hearing with me no later than October 21, 2020. The Claimant filed her exhibits on October 21, 2020. The Respondent did not offer any exhibits.

CL #4:	Exclusive Lifetime Labor Warranty, Allied Remodeling, print date October 14, 2020
CL #5:	Cancelled check, April 13, 2018
CL #6:	Contract, E & C Contracting, April 11, 2018

I admitted the following exhibits for the Fund:

FUND #1:	Notice of Remote Hearing, August 28, 2020
FUND #2:	MHIC Hearing Order, November 18, 2019
FUND #3:	The MHIC's Letter to the Respondent, March 11, 2019, with attached Home Improvement Claim Form, February 10, 2019
FUND #4:	The Respondent's MHIC Licensing History, print date October 13, 2020

The Respondent did not submit exhibits.

Testimony

The Claimant testified and did not present other witnesses. The Respondent testified and did not present other witnesses. The Fund did not present witnesses.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed contractor.

2. In or about December 2017, the Claimant and Respondent initially negotiated for the Respondent to perform home improvement work at a residential property owned by the Claimant[3] in Davidsonville, Maryland (the Property).

3. The Claimant and the Respondent entered into an additional contract (Contract) on or about April 11, 2018. Under the Contract, the Respondent was to perform the following projects at the Property:

- Demolish and remove old deck
- Install a new 16' x 16' deck with treated wood
- Supply labor and materials for the replacement deck
- Tear off and remove old roof
- Install new 3-tab shingles and tar paper for new roof.

[3] The Claimant's nephew resides at the Property.

4. Under the Contract, the cost for the roof work was $8,200.00 and the cost for the deck work was $4,200.00.[4]

5. Under the Contract, the removal and replacement of any rotted wood in the roof's understructure would be an additional cost.

6. The Claimant paid the Respondent $12,400.00 on April 13, 2018.

7. The Respondent began the roof work at the Property on or about April 13, 2018 and completed the work within approximately two days.

8. The Respondent did not install a drip edge along the portion of the roof that met the gutters of the Property. As a result, during periods of rainfall, water infiltrated under the roof shingles and reached the wood substructure.

9. At the beginning of August 2018, the Claimant's nephew climbed up to the roof of the Property to clean the gutters. At that time, he noticed several shingles were not properly attached to the roof substructure and certain sections of the plywood that comprised the substructure were rotted and wavy. The nephew took photographs and notified the Claimant.

10. On or about August 7, 2018, the Claimant contacted the Respondent and requested that he return to the Property, inspect, and if necessary, correct the issues with the roof.

11. The Respondent made an appointment to come to the Property on August 7, 2018, but he did not show for the appointment. The Claimant contacted the Respondent later that same day via email to inquire why he missed the appointment and to ask if it was possible to reschedule. The Respondent did not respond to the email. The Claimant attempted to contact the Respondent again on or about August 10 and 12, 2018, but he did not respond to her messages.

---

[4] The deck work is not in dispute.

12. The Claimant eventually contracted with Allied Remodeling of Central MD, Inc. (Allied) for Allied to inspect the roof and, where necessary, make repairs.

13. Allied performed the following work on the roof:

- Removed and disposed of one layer of existing roofing
- Removed, disposed of, and replaced any damaged or rotted sections of the roof's wooden substructure
- Inspected and replaced damaged sheathing
- Furnished and installed shingles and matching ridge caps to all roofing areas
- Installed drip edge.

14. The Claimant paid $9,659.00 to Allied for the repairs to the roof. As of the date of the hearing, the Claimant has not experienced any further issues with the roof.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); 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 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 . . . ." Bus. Reg. § 8-405(a); *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.

There is no dispute that at all relevant times, the Respondent was a licensed home improvement contractor. The Claimant does not have any relationship with the Respondent that operates as a legal impediment to her receiving an award from the Fund. Bus. Reg.

§ 8-405(f)(1). The remaining question, then, is whether the Claimant is entitled to such an award. Based on the evidence, I find that she is.

The Claimant presented evidence demonstrating that the scope of the Contract included the Respondent performing work on the Property's roof. The Contract specifies that if, upon removing the roof overlay, there were any areas of the roof that were rotted, there would be additional cost for the Respondent to perform replacement or repair of the understructure. (CL #6.) I draw the reasonable inference that the Claimant agreed to this specification, as she reviewed and signed the Contract. The Claimant testified that within four months of the completion of the Respondent's work, deficiencies were noted with the roof. Specifically, in early August 2018, her nephew observed the shingles near the gutters had lifted from the wooden substructure and the plywood of the substructure was wet and rotted in certain areas. (CL #1 and #2). The Claimant contacted the Respondent and asked him to come back to the Property to inspect roof, determine the source of the problem and, where necessary, repair it. According to the Claimant, the Respondent agreed to perform an inspection, then failed to do so and stopped communicating with her. As a result, she was forced to hire another contractor to make the roof repairs.

The Respondent explained that he did not install a drip edge when he replaced the roof because to do so would have required removing the gutters and then re-installing them once the drip edge was in place. The Respondent conceded that he did not advise the Claimant of this possibility; he simply did not install a drip edge. The Respondent further argued that the areas of rotted plywood were located in the substructure of the fascia boards rather than the roof substructure, and the fascia boards and their substructure were not part of the Contract. The

Claimant, on the other hand, produced photographs which demonstrated that the damaged areas of plywood were part of the roof's substructure. (CL #1 and #2.)

I am not persuaded by the Respondent's assertion that the areas containing rotted plywood were not part of the roof. The photographs produced by the Claimant clearly demonstrate damage to both the new roof shingles and to the wood substructure beneath the roof shingles. I am, frankly, stymied by the Respondent's failure to notify the Claimant that if she wanted a drip edge, it would require the removal and subsequent re-installation of the gutters. Even as a layperson looking at the photographs, it seems abundantly clear to me that a drip edge was required at the junction where the roof met the gutters. The Respondent appears to have installed an incomplete roof product and, as a result, there was water incursion to the wooden substructure which ultimately caused obvious, visible damage. This is unworkmanlike conduct. The appropriate step under the Contract would have been to alert the Claimant of the issue, quote her the additional cost associated with the removal and subsequent re-installation of the gutters, and, if the Claimant agreed, perform the repair. When the Claimant contacted the Respondent and asked him to return to the Property to inspect and fix the problem areas of the roof, she was acting in a manner that was consistent with the Contract and giving the Respondent the opportunity to correct his questionable workmanship. As a result of the Respondent's refusal to return to the Property, the Claimant had to hire another contractor to inspect and repair the roof. The Claimant paid $9,659.00 for the repairs. I find the Claimant is eligible for an award from the Fund as a result of the Respondent's unworkmanlike home improvement.

Having found eligibility for compensation, I must now 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 some work under the Contract, and the Claimants retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimants' 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).

Using the above formula, I calculate the Claimants' actual monetary loss as follows:

Amount paid to the Respondent	$ 12,400.00[5]
+ Amount paid to correct or complete the work	$ 9,659.00[6]
	$ 22,059.00
- Amount of original contract	$ 12,400.00
Amount of actual loss	**$ 9,659.00**

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). Here, although the Claimant paid $9,659.00 to have the Respondent's

[5] CL Ex. 6.
[6] CL Ex. 4

work corrected, she paid the Respondent $8,200.00 for the roof work. Accordingly, I recommend an award in the amount of $8,200.00 from the Fund.

PROPOSED CONCLUSIONS OF LAW

Based on the Proposed Findings of Fact and Discussion, I conclude as a matter of law that the Claimant sustained an actual and compensable loss of $9,659.00 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)(c). I further conclude that the Claimant is entitled to recover $8,200.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $8,200.00; 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;[7] and

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

January 12, 2021
Date Decision Issued

Latonya B. Dargan
Administrative Law Judge

LBD/da
#189906

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

PROPOSED ORDER

WHEREFORE, this 17th 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