

<p>IN THE MATTER OF THE CLAIM</p> <p>OF YVETTE WAUGH,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JEFFREY SCOTT</p> <p>ENLOW,</p> <p>T/A OLDE PORT HOMES, LLC,¹</p> <p>RESPONDENT</p>	<p>* BEFORE PATRICK E. MAHER,</p> <p>* ADMINISTRATIVE LAW JUDGE,</p> <p>* THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-21-27329</p> <p>* MHIC No.: 21 (75) 667</p> <p>*</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 22, 2021, Yvette Waugh (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$3,972.76 in actual losses allegedly suffered as a result of a home improvement contract with Jeffrey Scott Enlow, trading as Olde Port Home Solutions, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

¹ Although the Home Improvement Claim Form identified the company as Olde Port Homes, LLC, the contract was with Old Port Home Solutions, Inc.

(2015).² On November 17, 2021, the MHIC issued a Hearing Order on the claim. On November 18, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 3, 2022, I held a remote hearing initiated from the OAH in Hunt Valley, Maryland, utilizing the Webex videoconferencing platform. *Id.* §§ 8-407(a), 8-312. Andrew J. Brouwer, Assistant Attorney General, Department, represented the Fund. 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 (2021); COMAR 09.01.03; and Code of Maryland Regulations (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 into evidence for the Claimant:

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| Clmt. Ex. A-1. | Contract between the Claimant and the Respondent, July 9, 2018. |
| Clmt. Ex. A-2. | Invoice from Respondent to the Claimant, July 15, 2018. |
| Clmt. Ex. B-1. | Copy of text messages from the Claimant to the Respondent, March 13, 14, April 3, 2019. |
| Clmt. Ex. B-2 | Copy of text messages from the Claimant to the Respondent, April 4, 7, 2019. |

² Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

- Clmt. Ex. C-1. Copy of text messages to and from the Claimant and the Respondent, April 7, 2019, January 18, 2020.
- Clmt. Ex. C-2. Copy of text messages to and from the Claimant and the Respondent, January 19, 2020.
- Clmt. Ex. C-3. Copy of text messages to and from the Claimant and the Respondent, January 19, 2020.
- Clmt. Ex. D-1. Proposal, page one, Southernwood Roofing & Siding LLC, February 3, 2020.
- Clmt. Ex. D-2. Proposal, page two, Southernwood Roofing & Siding LLC, February 3, 2020.
- Clmt. Ex. D-3. Three photographs of the Claimant's home, undated.
- Clmt. Ex. D-4. Two photographs of the Claimant's home, undated.
- Clmt. Ex. D-5. Photograph of the Claimant's home, undated.
- Clmt. Ex. D-6. Photograph of the Claimant's roof, undated.
- Clmt. Ex. D-7. Photograph of shingles on the Claimant's roof, undated.
- Clmt. Ex. D-8. Photograph of shingles on the Claimant's roof, undated.
- Clmt. Ex. D-9. Photograph of the Claimant's roof, undated.
- Clmt. Ex. E. Photograph of shingles on the Claimant's roof, undated.
- Clmt Ex. F. Photograph of shingles on the Claimant's roof, undated.
- Clmt Ex. G. Photograph of shingles on the Claimant's roof, undated.
- Clmt Ex. H. Email to and from the Claimant and Andy Mudd, President, Southernwood Roofing & Siding LLC, February 7-8, 2022.
- Clmt Ex. I. Complaint Form, Department of Labor, Home Improvement Commission, January 7, 2021

I admitted the following exhibits into evidence for the Fund:

- Fund Ex. 1. Hearing Order, November 17, 2021.
- Fund Ex. 2. Notice of Remote Hearing, January 11, 2022.

Fund Ex. 3. Letter from the MHIC to the Respondent, August 17, 2021; Home Improvement Claim Form, June 30, 2021.

Fund Ex. 4. The Respondent's licensing history with the MHIC, February 2, 2022.

Testimony

The Claimant testified and presented the testimony of Trantina Waugh. The Respondent testified and presented the testimony of Sandra Enlow.

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 08-106770. The Respondent's license is currently inactive, and the Respondent is residing in Florida.
2. The Respondent operated under the trade name Olde Port Home Solutions, Inc.
3. Prior to contacting the Respondent, the Claimant's home experienced water leaks in two areas around the home after it rained.
4. The roof, fascia,³ and soffit⁴ around the home needed to be replaced.
5. On May 28, 2019, the Claimant and the Respondent entered into a contract for the Respondent to replace the roof at the Claimant's home in Newburg, Maryland (Contract).

³ Fascia is the vertical band around the roof edge. www.wikipedia.org

⁴ Soffit is the structure underneath the roof projection. www.wikipedia.org

6. The Contract price, including a subsequent change order, was for \$10,800.00.⁵
7. The Claimant paid the Respondent \$10,800.00 under the Contract and the subsequent change order.
8. The Respondent completed the work on July 15, 2018.
9. The Respondent installed the roof according to the manufacturer's specifications.
10. The Respondent provided a quote for the repair of the damaged and rotting fascia and soffit after the roof had been replaced.
11. The Claimant declined to enter into a contract for the Respondent to repair the fascia and soffit.
12. The soffit and fascia were still in need of repair after the completion of the installation of the roof.
13. In March 2019, the Claimant advised the Respondent that there was a water leak around the chimney on the porch of the home.
14. In March 2019, the Respondent inspected the roof and indicated that he and his employee did not see any problems with the flashing around the chimney, but they did caulk around the chimney as a precautionary measure.
15. On April 3, 2019, the Claimant contacted the Respondent again to advise there was water leaking around the chimney.
16. On April 7, 2019, the Respondent again inspected the roof and poured water from a hose over the roof for over one hour and did not observe any leaks.

⁵ The original contract was for \$11,160.00, less a customer discount in the amount of \$1,260.00 for a total contract price of \$9,900.00. A change order in the amount of \$900.00 was subsequently added to replace twelve sheets of plywood at the cost of \$75.00 per sheet.

17. The Respondent did not observe any new water leaks around the chimney at any time during his inspection visits of the home in March and April 2019.

18. There was no contact between the Claimant and the Respondent from April 8, 2019, through January 18, 2020.

19. On January 18, 2020, the Claimant was contacted by her tenant advising that a water leak was observed on the ceiling over the entry door at the back of the house.

20. On January 19, 2020, the Claimant contacted the Respondent who replied that the one-year warranty for their work had expired.

21. The Claimant had no further contact with the Respondent.

22. On February 16, 2020, the Claimant contracted with Southernwood Roofing & Siding, LLC, (Southernwood) to replace a section of the roof where the January 2020 leak occurred at a cost of \$3,972.16.

23. On a date unknown after January 19, 2020, the Claimant contracted with Southernwood to repair the soffit and fascia around the home for an additional fee.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. *Id.* § 8-407(e)(1); Md. Code Ann., 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 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.

The Position of the Parties

The Claimant presented the testimony of her sister Trantina Waugh (Trantina) to explain the circumstances that led to the filing of the claim. Trantina handled the contract negotiations with the Respondent. She explained that the home belonged to their mother who had recently passed away. The Claimant entered into a contract with the Respondent to replace the roof on July 10, 2018. The Claimant had tenants living in the home at the times relevant to this incident. The installation of the roof was completed on July 15, 2018.

On or about March 7, 2019, the tenant notified the Claimant that there was a leak around the fireplace chimney area that was located on the porch. The Claimant contacted the Respondent who advised they would go out and fix the roof and repair any damage. According to the Claimant, the Respondent advised that they did not observe any new water damage or problem with the flashing on the chimney, but they caulked around the chimney as a precaution.

On or about April 3, 2019, the Claimant contacted the Respondent to advise that there was a water leak in the same area as before. Trantina testified that the Respondent went to the home on April 7, 2019, and inspected the roof and claimed that he ran water over the area with a hose for over an hour with no leaks. The Respondent suggested it was “old water” between the roof and the ceiling. The Claimant had new sheet rock installed in the ceiling around the porch chimney area and the area was re-stuccoed and painted. The Claimant averred that there has not been a lot of water in the area, but the stucco and paint has peeled once again because the area was damp. Trantina testified that “this not the reason we are here today.”

On January 18, 2020, new tenants in the home advised the Claimant that there was a water leak over the back porch door. The door is located on the same side of the house as the

chimney but separate from the original leaks around the chimney. The Claimant contacted the Respondent and sent pictures. (Clmt. Exs. C-1, 2 & 3). The Respondent replied by text and stated that “your roof is not under warranty,” and further responded, “that upon a review of the picture that the leak appears it could be from wind driven rain coming in at the damaged soffit and fascia. Just a possibility.” The Claimant questioned the accuracy of the conclusion as the door was more than four feet from the soffit that was referenced. Trantina expressed a little shock at the reply as she believed they had always worked well with the Respondent, and although there was a history of leaks in the chimney area and the front side of the house prior to the installation of the roof, they had not had a leak over the top of the door of the house. The Claimant had no further contact with the Respondent.

The Claimant then contacted Southernwood to assess the area where the new leak had occurred. The Claimant subsequently entered into an agreement with Southernwood on February 3, 2020, to replace an area of the roof where the January 2020 leak occurred for a contract price of \$3,972.76. (Clmt. Exs. D-1 through 9).

The Claimant presented photographs with commentary provided by representative(s) from Southernwood in support of the claim in this matter. (Clmt. Exs. D-3 through D-9, E, F & G). The photograph in Exhibit D-3 indicated that “flashing is not correct causing fascia to rot,” and opening on right side near gutter missing flashing.” The Claimant also introduced a photograph of a picture of the roof with the statement: “3-tab shingles installed on a 2/12 pitch not recommended by the Manufacturer removed and installed allow slope roofing.” “Previous contractor tried to caulk the transition.” (Clmt. Ex. D-6). The Claimant also submitted close-up photographs of nails in the shingles (Clmt. Exs. D-7, E) and caulking along one section of the roof. (Clmt. Exs. D-8, G). The Claimant also presented an email communication between

Trantina and Andy Mudd, the president of Southernwood, to support the Claimant's position that the work performed by the Claimant was done in an unworkmanlike and unprofessional manner.

The Respondent testified and argued that he replaced the roof in a manner consistent with the manufacturer's guidelines and he performed the work in an adequate and workmanlike manner. He further testified that there was prior damage to the fascia and soffit at the time he replaced the roof and that the damage could be a source of the leaks. The Respondent questioned the accuracy of Southernwood's comments on the pictures and referred to the individual who prepared the contract as a "salesman."

Further, the Respondent stated that in March 2019, he went to the Claimant's home to investigate the first complaint and did not observe any recent water damage. He noted there was evidence of damage from previous leaks prior to the installation of the roof. The Respondent also testified that he went to the Claimant's home in April 2019 and spent over one hour pouring water over the area with a hose and there was "not a drop of water onto the porch." The Respondent testified there were no further complaints or contacts with the Claimant or her sister until she contacted him on January 19, 2020. His response to the Claimant's January 19, 2020 contact about the new water leak was that the company warranty for the roof replacement had expired after one year and that his intention was to convey that the Claimant would have to pay for any additional work performed. The Respondent testified he would have inspected the home at no charge but was never asked to do so.

The Respondent noted that the general maintenance on the house appeared to have been neglected for some time and it needed a lot of work. The fascia and soffit around the roof area were rotted and needed to be replaced. The Respondent denied caulking along the roof line that was identified in Clmt. Exs. D-6 & G, and further noted that roof tar would have been used in that area if deemed necessary.

The Respondent presented the testimony of Sandra Enlow who testified that she prepared a contract to repair the damaged fascia and soffit on the Claimant's home after the roof was installed. There were three visits to the home to review the areas to repair and during each visit, the Claimant added work to be done which increased the cost. On the third visit, the work crew went to the home with the contract to begin the project at which time the Claimant added another section to be worked on. When presented with additional cost, the Claimant did not agree to the contract price and the work to repair the soffit and fascia was not done.

The Fund's position was that the Claimant did not meet her burden of proof by a preponderance of the evidence. Specifically, the Fund argued that the Claimant did not prove causation, that the leak was the result of the faulty installation of the new roof. The Fund referenced the evidence that the fascia and soffit were damaged and not repaired until after the roof was installed and the January 2020 leak was observed.

Analysis

I do not doubt that the Claimant believes that her claim for reimbursement from the Fund is appropriate under the circumstances. I also believe the Claimant and her sister to be credible witnesses. However, they acknowledged that they did not have any expertise in roofing and relied on the Respondent and then Southernwood's recommendations when dealing with matters related to the repair and replacement of the roof. It was uncontradicted that general maintenance had been neglected and the home needed repairs to the roof, soffit, and fascia.

To pursue this claim for reimbursement, the Claimant relied on the written statements on photographs taken by representative(s) of Southernwood who were contacted to assess the leak that was discovered in January 2020. The representative(s) from Southernwood did not testify at this hearing. Accordingly, it was not possible for the Respondent or the Fund to question the basis for their conclusions that the cause of the leak was due to the faulty installation of the roof

or that the roof needed to be replaced. Questioning the representative(s) would be essential in this case to explore any potential bias, motive or credibility issues in what could be argued as self-serving statements by a roofing company who is being hired to potentially fix or replace a roof.

Most importantly, the Claimant did not present expert testimony to prove that the water leak was the result of the unworkmanlike or faulty replacement of the roof by the Respondent. The Fund objected to the admissibility of the descriptions written on the pictures and the email from Andy Mudd, President of Southernwood, as expert opinion testimony.

The written descriptions and email suggested knowledge of roofing not within the realm of the average lay person. The statements included an opinion of the workmanlike manner of the installation of the roof and the cause of the water leak, in other words, expert opinion testimony.

Although evidence in administrative hearings is not to be excluded solely because it is hearsay,⁶ it is inappropriate to consider what is essentially an expert opinion without the opportunity for the opposing party to question both the qualifications of the individual who gave the opinion and the basis for the opinion. This is especially relevant where the qualifications of the individuals, their knowledge, skill, experience, training, or education in the field of roofing, is unknown.⁷

The Claimant did not seek to offer the exhibits as expert opinion testimony, but it was clear that the Claimant sought to have the statements considered as evidence in support of her claim. I will not consider the written statements on the photographs or the email between Andy Mudd, President of Southernwood, and the Claimant, as expert opinion evidence in support of

⁶ COMAR 28.02.01.21(C).

⁷ COMAR 28.02.01.21(D).

the Claimant's claim. It would be unfair to the Respondent and the Fund and contrary to the OAH's Rules of Procedure. (COMAR 28.02.01.12).

It is also important to note that the company who provided the pictures and statements is the same company who was selling a roof replacement job to the Claimant. It could be considered a conflict of interest that invites scrutiny and certainly requires the opportunity for the opposing party to question the individual or company's motive and potential bias. Accordingly, absent the testimony of the individual who took the pictures and provided the comments, I give little evidentiary weight to these exhibits.

The Respondent credibly testified that the roof was installed in accordance with the Manufacturer's specifications and that he was unable to detect any water leaks arising from the installation of the roof when he performed inspections in March and April 2019. He explained in detail how the roof was installed and what additional steps were taken during the installation process.

It is uncontradicted that the home needed additional exterior work on the soffit and fascia areas around the home and that water damage had been detected prior to the installation of the roof. It is certainly reasonable for the Claimant to assume the leak could have come from the installation of the roof by the Respondent, especially when provided the photographs and written comments by Southernwood. However, it is also plausible that the water leak could have been due to other factors not related to the installation of the roof, including the damaged fascia and soffit. In the context of an evidentiary hearing where the Claimant has the burden of proof to prove that the installation of the roof caused the leak, the Claimant has not done so. I do not find the Claimant's evidence, including the pictures presented as exhibits, outweigh the credibility of the Respondent's testimony.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of \$3,972.76 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

May 31, 2022
Date Decision Issued

Patrick Maher

Patrick E. Maher
Administrative Law Judge

PEM/ cj
#198540

PROPOSED ORDER

WHEREFORE, this 20th day of July, 2022, 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.

J Jean White

I Jean White

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***