

IN THE MATTER OF THE CLAIM * MARYLAND HOME
OF WILLIAM and SANDRA HASKETT * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND *
FOR ALLEGED VIOLATIONS OF * MHIC CASE NO. 12 (90) 527
JOSEPH L. ROSTEK, t/a *
A B CONTRACTORS, LLC *

* * * * *

FINAL ORDER

WHEREFORE, this 26TH day of February, 2015, Panel B of the Maryland

Home Improvement Commission ORDERS that:

1) The Findings of Fact of the Administrative Law Judge are Amended as follows:

A) Based upon review of the record and the findings of the Administrative Law Judge, the Commission finds that, although the reglazing of the bathtub was not part of the original contract, during the course of the Respondent contractor's work on the Claimants' home, the parties agreed to an addendum to their contract adding the additional work of reglazing the porcelain bathtub. Said work falls within the scope of the Claimants' Guaranty Fund claim.

B) Based upon review of the record and the findings of the Administrative Law Judge, the Commission finds that, shortly after completion of the contract, the new glaze applied by the Respondent began to chip away. The Respondent's work with respect to the glazing of the bathtub was unworkmanlike, due to inadequate preparation of the tub. The cost to reglaze the bathtub is \$647.00.

2) The Conclusions of Law of the Administrative Law Judge are Amended as follows:

A) The Commission finds that the parties agreed to an addendum to their contract adding the additional work of reglazing the porcelain bathtub, and that said work falls within the scope of the Claimants' Guaranty Fund claim.

B) Pursuant to COMAR 09.08.03.03B(3), the Commission finds that the fair and reasonable measure of the Claimants' actual loss is the cost to reglaze the bathtub, \$647.00.

3) The Recommended Order of the Administrative Law Judge is Amended as follows:

A) The Claimants are Awarded \$647.00 from the Home Improvement Guaranty Fund.

B) Pursuant to Bus. Reg. Art. §8-411(a), any home improvement licenses held by the Respondent shall be Suspended at such time as any money is paid from the Home Improvement Guaranty Fund under this Order, and the Respondent shall be ineligible for any home improvement license until such time as the Home Improvement Guaranty Fund has been reimbursed. The Respondent shall be liable for 10% annual interest on any unreimbursed balance owed to the Guaranty Fund.

4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.

**Joseph Tunney
Chairperson - Panel B
MARYLAND HOME IMPROVEMENT
COMMISSION**

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| <p>IN THE MATTER OF THE CLAIM</p> <p>OF WILLIAM AND SANDRA</p> <p>HASKETT,</p> <p>CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOSEPH L. ROSTEK,</p> <p>T/A A B CONTRACTORS, LLC,</p> <p>RESPONDENT</p> | <p>* BEFORE MICHAEL R. OSBORN,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-13-43700</p> <p>* MHIC No.: 12 (90) 527</p> <p>*</p> |
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On September 4, 2013, William and Sandra Haskett (Claimants) filed a claim (claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,547.00¹ in alleged actual losses suffered as a result of a home improvement contract with Joseph L. Rostek t/a A B Contractors, LLC (Respondent).

¹ On January 23, 2014, the Claimants amended their actual loss to \$16,466.00. On February 22, 2014, the Claimants submitted a letter to the MHIC amending their claim to reimbursement of \$7,919.00, the amount paid to the Respondent to perform roofing. The Claimants alleged the roof installed by the Respondent required repair shortly after completion, and that the roof must be completely redone to avoid the cost of future repairs. I determined that the Respondent had been advised of each claim and amendment thereto.

I held a hearing on June 13, 2014 at the Office of Administrative Hearing (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013) and § 8-407 (2010). Jessica Kauffmann, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Mrs. Haskett represented the Claimants. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimants' behalf:

- Cl. Ex. 1 - Contract, signed November 12, 2010 and November 15, 2010
- Cl. Ex. 2 - Work Scope, June 20, 2011
- Cl. Ex. 3 - Claimants' submissions to MHIC (Claim forms, letters)
- Cl. Ex. 4 - Claimants' correspondence to Respondent and MHIC
- Cl. Ex. 5 - Cost of Repair (three receipts from B & W Roofing Co.)
- Cl. Ex. 6 - Photographs of roof turret, bathtub glazing, shower grout, bath tile
- Cl. Ex. 7 - Estimates (Porcelain Tub Restoration and Forbes Home Improvement & Construction)

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

- GF Ex. 1 - Notice of Hearing, April 14, 2014
- GF Ex. 2 - Transmittal, Hearing Order, and Home Improvement Claim Form
- GF Ex. 3 - Licensing Information about the Respondent
- GF Ex. 4 - MHIC Letter to the Respondent, with Claim, September 9, 2013
- GF Ex. 5 - MHIC Letter to the Respondent, with amended claim, February 5, 2014

The Respondent did not offer any exhibits for admission as evidence.

Testimony

Mrs. Haskett testified on behalf of the Claimants.

The Fund did not present any witnesses.

The Respondent testified on his own behalf.

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 4474290.
2. On November 15, 2010, the Claimants and the Respondent entered into a contract for improvements to several areas of the Claimants' Baltimore home (contract). The contract included: improvements to the second floor bathroom; removal and replacement of eleven front windows; repair of the front door; improvements to two rear porches; repair of basement windows; replacement of the shingles on a roof turret; and installation of moldings around a large bath mirror. The contract did not have a specific start or finish date because it was contingent on approval of financing to be arranged by the Claimants. The contract called for a deposit of 33% of the total contract price before work would begin.
3. The contract price was \$70,000.00. The Claimants obtained financing for the contract through the Reservoir Hill Improvement Council, which required a breakdown of the work to be performed and the amount of the contract price attributable to each aspect of the work before it would approve financing for the work. On June 20, 2011, the Respondent provided a "Work Scope" to the Claimants which described each aspect of the work to be performed and the amount of the total contract price attributable to each aspect.

4. The Work Scope included, at Paragraph 11E, "Replace failing roof assembly (shingles) at front turret - \$7,919.00." The Work Scope also included, at Paragraph 11C, "Coat main roof suitable to provide 3 year warranty. See 11E." (*See Claimants' Exhibit 2.*)

5. The Respondent began work on the contract sometime after the contract was executed.² Work on the contract was completed on July 27, 2011. The Claimants paid the Respondent a final installment for work performed, bringing the total they paid the Respondent to \$70,000.00.

6. Following completion of the work the Claimants discovered work that they considered unacceptable. The Claimants brought the unsatisfactory work to the attention of the Respondent and the MHIC. Among the work the Claimants found unacceptable was the grout work in the master bathroom shower. The Respondent agreed to remove and replace all the grout in the master bathroom shower to resolve this complaint. During the course of this repair, the worker who removed the existing grout scored three shower tiles with a grout removal tool and did not replace these scored tiles as part of the repair.

7. Within approximately three months of completion of the work the Claimants discovered shingles from the roof turret on the lawn following a storm. The Claimants paid \$450.00 to a home improvement contractor named Turner to replace the shingles that had been lost in the rain storm. With the assistance of the MHIC, the Claimants were reimbursed for this repair by the Respondent.

8. On November 16, 2013, the Claimants paid contractor Calvin Butler \$450.00 to repair or replace loose, damaged, or missing shingles from the turret.

² The Claimants never saw the Respondent perform any of the work or visit the site during performance of the contract. They saw a variety of subcontractors.

9. The turret has lost at least eight shingles during storm or rain since July 2011. On the evening before the June 13, 2014, hearing at OAH it rained in Baltimore, and the Claimants found two shingles from the turret on their lawn. Typically, the Claimants dispose of shingles they find in the lawn. At times, shingles land in a neighbor's yard, and the neighbor deposits them on the Claimants' lawn.

10. During the course of performance of the work on the Claimants' home the Respondent reglazed a porcelain bath tub. This work was not part of the contract.³

11. Shortly after completion of the contract, the new glaze began to chip away from the surface of the bathtub.

12. The cost to reglaze the bath tub is \$647.00.

DISCUSSION

Legal Framework for Compensation by the Fund

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) (Supp. 2013). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2010).

For reasons that follow I conclude that the Claimants are not entitled to compensation from the Fund.

³ Both parties agree that although reglazing the bathtub was not part of the contract, the Respondent performed this work.

The Claims

The Claimants seek the return of what they paid the Respondent to apply new shingles to the roof turret, minus the cost of applying a seal coating to a portion of their roof; the cost of replacement of three scored bathroom tiles; and the cost of reglazing the bathroom tub.

In support of their claim for return of what they paid the Respondent to shingle the roof turret, the Claimants submitted the Work Scope, (*see* Claimants' Exhibit 2), which reflects they paid the Respondent \$7,919.00 for roof work that included shingling the roof turret and applying a seal coating to another part of their roof.⁴ The Claimants also submitted "before and after" photos of the roof turret that depict the turret before the Respondent replaced the shingles and depict the turret with new shingles, some of which are missing.⁵ Mrs. Haskett testified that she has been unable to obtain an estimate for the cost of repair of the shingles only, as contractors do not want to repair the Respondent's work out of concern they may later be held responsible if shingles they did not repair or replace come off. She testified that a contractor told her that complete reconstruction of the roof turret may cost as much as \$11,000.00. Mrs. Haskett pointed to the \$900.00 the Claimants have paid thus far for repair of shingles that have come loose from the turret - \$450.00 of which the Respondent has covered – as evidence of the unworkmanlike quality of the Respondent's work. The Claimants argued that they paid the Respondent \$7,919.00 for roof work, and that \$7,919.00 is, therefore, a reasonable estimate of the cost of repair.

⁴ The claim does not include any allegation of unworkmanlike performance related to application of the seal coating.

⁵ Claimants' Exhibit 6 includes the "before and after" condition of the shingles on the roof turret. Even an untrained eye can tell that the shingle installation performed by the Respondent was poor. Shingles are not properly aligned and change direction as they traverse the turret from bottom to top. Some shingles do not lay flat. However, the appearance of the shingles does not explain why some shingles came loose. The appearance does, however, explain why the Claimants seek a refund of the entire price paid to the Respondent to perform this work.

The Respondent testified that shortly after completion of the contract some shingles came loose from the roof turret, which he attributed to "Hurricane Irene." He testified that he reimbursed the Claimants in the amount of \$450.00 for replacement of the shingles that initially came loose, though he felt it was hurricane winds, not unworkmanlike installation, that caused the shingles to come loose. The Respondent disclaimed any further responsibility to the Claimants for any shingles that may have come loose and argued he should not be held responsible for possibly faulty repairs performed by others.

The Fund argued that the Claimants' proof is insufficient and that no compensation from the Fund for roof repair or replacement is warranted.

In support of their claim for repair of three shower stall tiles scored by a worker who repaired grout work in the bathroom, the Claimants submitted a \$6,700.00 estimate for a complete tear out and replacement of all tiled surfaces in the bathroom.

The Respondent asserted that even if a workman he hired to regrout tile surfaces scratched some tiles in the process, removal and replacement of all tiled surfaces in the bathroom is unwarranted.

The Fund argued that complete removal and replacement of all tiled surfaces in the bathroom is unwarranted, and that the applicable statute does not contemplate such a remedy. The Fund argued that the appropriate remedy is to compensate the Claimants for the cost of repair of the scored tiles only, and that the Claimants did not submit any estimate for that work.

In support of their claim for reglazing the bathtub, the Claimants submitted photos of areas on the bathtub where glazing applied by the Respondent has chipped or flaked off the tub surface, and an estimate to have the tub completely reglazed in the amount of \$647.00.

The Respondent did not take any issue with the Claimants' proof or argue he should not be responsible for reglazing the tub.

The Fund argued that it should compensate the Claimants in the amount of \$647.00 for reglazing the bathtub.

Analysis

The Claimants have not submitted evidence of actual loss as to the roof turret. Such proof must include the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement. The Claimants did not submit any opinion evidence as to why any shingles came loose, or any evidence that the Respondent's work was unworkmanlike or inadequate. In addition, the Claimants did not submit any evidence as to the cost of repair of the work they claim was unworkmanlike or inadequate. The Claimants' argument that the appropriate remedy is compensation from the Fund in the amount they paid the Respondent to do the work is not supported by the applicable statute. For these reasons, I find that the Claimants have not proven eligibility for compensation from the Fund for repairs to the roof turret.

The Claimants have not submitted evidence of actual loss as to the three scored tiles in the bathroom. They have only submitted evidence as to the cost to have all of the work done by the Respondent torn out and redone. I agree with the Fund's argument that complete tear out and replacement of all tile work in the bathroom is not supported by the applicable statute. Rather, the Claimants are entitled to the cost of repair. They did not submit any proof as to the cost of repair. For this reason, I find that the Claimants have not proven eligibility for compensation.

The Claimants and the Fund agree that the reglazing work on the tub was unworkmanlike. Photos submitted by the Claimants show areas of the bathtub where glazing has come off, which are unsightly. The Respondent did not take issue with the Claimants' proof that the tub reglazing was unworkmanlike. However, reglazing the bathtub was not part of the

contract. The contract, Claimants' Exhibit 1, makes no mention of reglazing the bathtub. Both Mrs. Haskett and the Respondent testified that reglazing the tub was not part of the contract.

MHIC's regulations provide three formulas for measurement of a claimant's actual loss.

COMAR 09.08.03.03B(3). One of those measures may apply here:

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

...

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).⁶

There is no means by which to calculate the loss to the Claimants when there is no evidence that reglazing the bathtub was part of the contract, and there is no evidence that any of the \$70,00.00 the Claimants paid the Respondent was to perform this work. Thus, I find the method of calculation, above, to be inapplicable.

Accordingly, the Claimants are not entitled to reimbursement from the Fund on their claims.

⁶ The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). No such claims are made here.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have not sustained an actual and compensable loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2013).

RECOMMENDED ORDER

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


ORDER that the Maryland Home Improvement Guaranty Fund deny the claim; and

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

Signature on File

July 17, 2014
Date Decision Issued

Michael R. Osborn 
Administrative Law Judge

MRO/kkc
150044

IN THE MATTER OF THE CLAIM * BEFORE MICHAEL R. OSBORN,
 OF WILLIAM AND SANDRA * AN ADMINISTRATIVE LAW JUDGE
 HASKETT, * OF THE MARYLAND OFFICE
 CLAIMANTS * OF ADMINISTRATIVE HEARINGS
 AGAINST THE MARYLAND HOME *
 IMPROVEMENT GUARANTY FUND *
 FOR THE ALLEGED ACTS OR *
 OMISSIONS OF JOSEPH L. ROSTEK, * OAH No.: DLR-HIC-02-13-43700
 T/A A B CONTRACTORS, LLC, * MHIC No.: 12 (90) 527

RESPONDENT

* * * * *

FILE EXHIBIT LIST

Exhibits

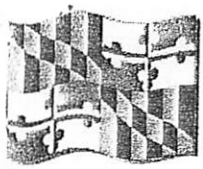
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The Respondent did not offer any exhibits for admission as evidence.



PROPOSED ORDER

WHEREFORE, this 5th of September 2014, Panel B of the Maryland Home Improvement Commission approves the Recommended Decision 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.

W.M. Bruce Quackenbush, Jr.

*W.M. Bruce Quackenbush, Jr.
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION