

**IN THE MATTER OF THE CLAIM
OF DELORES LINCOLN-WILLIS
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF RICARDO SALAZAR,
T/A F.G. SALAZAR PAINTING, INC. ,
RESPONDENT**

*** BEFORE MARY SHOCK,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No: DLR-HIC-02-14-02382
* MHIC No: 13 (90) 144
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On August 27, 2013, Delores Lincoln-Willis (Claimant) filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$19,422.20 for alleged actual losses suffered as a result of a home improvement contract with Ricardo Salazar, trading as F.G. Salazar Painting, Inc. (Respondent).

On August 7, 2014, I held a hearing at the offices of the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013) and § 8-407 (2010). The Claimant was represented by Kimberly Lincoln-Stewart, Esquire. The

Respondent represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the Office of Administrative Hearings (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 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- CL #1 Roofing Spec Sheet, Description of the Work, July 22, 2012
- CL #2 Twenty-six photographs of Claimant's residence, undated

The Respondent did not offer any exhibits.

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

- FUND #1 Hearing Notice, May 9, 2014, and Hearing Order, December 30, 2013
- FUND #2 Affidavit of Thomas Marr, MHIC Investigator, July 10, 2014
- FUND #3 Respondent's Licensing History, June 25, 2014
- FUND #4 Letter from MHIC to Respondent, September 5, 2013, with Claim, August 27, 2013, and letter from Claimant to MHIC, August 22, 2013, with attachments:
 1. Respondent's Proposal, April 1, 2010
 2. Checks from Claimant to Respondent, April 6, 2010, April 14, 2010, May 12, 2010, and June 2, 2010
 3. Inspection Report, Robin duBois, Roofing Sales Consultant, Home Depot, July 26, 2012

4. Home Improvement Contract, Home Depot, July 22, 2012
5. Home Depot, Customer Invoice, August 13, 2013
6. Four photographs of Claimant's roof, undated

Testimony

The Claimant testified on her own behalf. The Respondent testified on his own behalf.

The Fund did not call 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 3809430. (FUND #3.)
2. On April 1, 2010, the Claimant and the Respondent entered into a contract for the Respondent to install a new flat roof system on the Claimant's residence for \$8,000.00. (FUND #4, Attachment 1.)
3. In May 2010, the Respondent completed the work.
4. The Claimant paid the Respondent \$8,000.00 (FUND #4, Attachment 2.)
5. On February 21, 2011, the Claimant observed water leaking in a back bedroom and the kitchen. She contacted the Respondent. (FUND #4.)
6. On February 21 and 28, 2011, and on March 1, 2011, the Respondent returned to the residence to repair the roof.
7. In June 2011, the Claimant contacted the Respondent because she observed leaks in the back bedroom and kitchen again and she also noticed leaks in the master bedroom, bathroom, and living room.
8. On June 27, 2011 and July 5 and 7, 2011, the Respondent returned to the residence to repair the roof.

9. On August 17 and 27, 2011, the Respondent returned to the residence to repair leaks in the roof causing damage in the living room and kitchen and traveling to the basement game room and light fixture.

10. In June 2012 and July 2012, the Respondent returned to the residence to repair the roof because his previous repairs failed to stop the leaks.

11. None of the Respondent's repairs stopped the leaking.

12. On July 22, 2012, the Claimant contracted with Home Depot to replace the roof for a cost of \$20,033.00. Home Depot replaced the roof and, with a discount, the Claimant paid Home Depot \$19,422.20 for the work. (FUND #4, Attachments 4 and 5.)

13. On August 27, 2013, the Claimant filed a claim with the HIC. (FUND #4.)

DISCUSSION

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). 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). A "claim shall be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage." Md. Code Ann., Bus. Reg. § 8-405(g).

For the following reasons, I find that the Claimant has proven eligibility for compensation.

Preliminarily, I find that the Claimant's August 27, 2013 claim is within the three-year limitation period. The Claimant testified that she discovered leaks in her home in February 2011.

Thus, she met the February 2014 deadline to file the claim. Md. Code Ann., Bus. Reg. § 8-405(g).

The Respondent admitted that the roof leaked and that he was unable to satisfactorily repair the defects. He testified that when he went onto the roof it was like a swimming pool, water was everywhere. He stated that he replaced eighteen to twenty pieces of plywood. He stated that there was a small dent or depression in the roof that caused the problem; there was nowhere for the water to run out. He stated that he was not supposed to fix the problem of the depression. That repair was not in the contract.

Additionally, the Respondent noted that trees overhang the roof and may have caused the roof's drainage system to become blocked. In response, the Claimant testified that the tree that overhangs the roof is a pine tree which does not have leaves that would block the drainage system.

I find that the Respondent performed an inadequate and unworkmanlike home improvement. The Claimant hired the Respondent to install a new roof. If there was a depression in the roof where water was collecting, the Respondent knew or should have known that that condition would cause problems. He was required to tell the Claimant about the condition and charge more for the contract if additional work was required. Similarly, if debris from a tree was blocking the drainage system, the Respondent should have seen that tree and that possibility from the beginning and accounted for that condition in the work he agreed to perform. The Claimant, like any homeowner, needs a roof that does not leak. In contracting to install a new roofing system, the Respondent agreed to lay a roof that did not leak. The Respondent's installation of the Claimant's roof was inadequate and unworkmanlike because it leaked.

I recognize that the Respondent returned to the Claimant's home numerous times and attempted to correct the situation. At the hearing, he was apologetic and even stated that refunding the Claimant \$8,000.00 was fair. However, the Respondent has not refunded the Claimant any money.

Having found eligibility for compensation, I now turn to the amount of the award to which the Claimant is entitled. First, 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). Second, MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case: "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." COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent \$8,000.00. She paid Home Depot \$19,422.20 to replace the roof the Respondent installed, which is the amount of her actual loss. ($\$8,000.00 + \$19,422.20 = \$27,422.20 - \$8,000.00 = \$19,422.20$.) However, in accordance with the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by the Claimant to the Respondent. Md. Code Ann., Bus. Reg. §8-405 (e)(1), (5) (Supp. 2013). Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$8,000.00, the amount she actually paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401 (2010), 8-405 (Supp. 2013).

PROPOSED ORDER

I Propose that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,000.00; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

Signature on File

August 20, 2014
Date Decision Mailed

Mary Shock
Administrative Law Judge

MKS/kkc
#151091

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DELORES LINCOLN-WILLIS</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 RICARDO SALAZAR,</p> <p>T/A FG SALAZAR PAINTING, INC. ,</p> <p>RESPONDENT</p>	<p>* BEFORE MARY SHOCK,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No: DLR-HIC-02-14-02382</p> <p>* MHIC No: 13 (90) 144</p> <p>*</p> <p>*</p> <p>*</p>
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FILE EXHIBIT LIST

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PROPOSED ORDER

WHEREFORE, this 26th 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.
William Bruce Quackenbush, Jr.
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION