

IN THE MATTER OF THE CLAIM	*	BEFORE DAVID HOFSTETTER,
OF NANA Dr. KOFI A. KOKROKO,	*	AN ADMINISTRATIVE LAW JUDGE
and NANA AFUA D. AFRIYA,	*	OF THE MARYLAND OFFICE
CLAIMANTS,	*	OF ADMINISTRATIVE HEARINGS
AGAINST THE MARYLAND HOME	*	OAH NO.: DLR-HIC-02-14-05476
IMPROVEMENT GUARANTY FUND	*	HIC NO.: 13(75)856
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF ROBERTA MOYER,	*	
T/A PROFESSIONAL WINDOW &	*	
SIDING INSTALLATIONS, INC.,	*	
RESPONDENT	*	

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On July 23, 2013, 2011, Nana Dr. Kofi Kokroko and his wife Nana Afua D Afriye (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of actual losses allegedly suffered as a result of a home improvement contract with Roberta Moyer, t/a Professional Window and Siding Installations, Inc. (Respondent).

I held a hearing on June 17, 2014 at the LaPlata Public Library, LaPlata, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2013). Peter Martin, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimants represented themselves. The Respondent failed to appear after proper notice.<sup>1</sup>

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.

### **ISSUE**

Did the Claimants sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

An Exhibit List is attached to this Proposed Decision.

#### **Testimony**

The Claimants testified in support of their Claim and presented the testimony of Giorgio DiPietri, Contractor, and Thomas Marr, MHIC Investigator. Mr. DiPietri was admitted as an expert in the fields of home construction and home improvement.

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<sup>1</sup> The OAH mailed a notice to the Respondent on April 29, 2014 at her address of record, by both certified and first class mail. The notice stated that failure to appear could lead to a decision against the Respondent. The certified mail envelope was returned to the OAH by the United States Postal Service (USPS) on or about May 22, 2014 with the notation "Return to Sender, Unclaimed, Unable to Forward." Fund Ex. 1. The copy of the notice sent by first class mail was not returned by the USPS, establishing a presumption of receipt. The Respondent did not request a postponement of the hearing. Accordingly, I concluded that the Respondent failed to appear after due notice of the hearing and that the case could properly proceed in her absence. *See Border v. Grooms*, 267 Md. 100, 104 (1972) (discussing the "mailbox rule").

The Fund presented no witnesses.

No witnesses testified on behalf of the Respondent, who failed to appear at the hearing.

### **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 home improvement contractor, licensed by the MHIC.
2. The Claimants own a house located at 1372 Redwood Circle, LaPlata, Maryland (the Property).
3. On or about December 26, 2011, the Claimants and the Respondent entered into a contract (Contract) for home improvement work.
4. The Contract provided for the removal of old structures and the installation of the following: a new roof; new gutters and downspouts; gutter guards; chimney flashing; vinyl shutters; vented vinyl soffits; custom wrapped gutter boards and fascia; sliding glass doors.
5. The agreed-upon Contract price was \$9,009.59.
6. The Claimants paid the Respondent a total of \$9,009.59 under the Contract.
7. The work was completed in February 2012.
8. Beginning in late June 2012, the Claimants began experiencing gutter overflows and leaking into the interior of the home from the soffits and the roof during rainstorms. The Claimants had not experienced similar leaks prior to the Respondent's work.
9. In and around June 2012, the Claimants contacted the Respondent numerous times by email and telephone, explaining the problem and requesting that the Respondent correct the problem. The Respondent eventually agreed to come out and on one occasion attempted to repair gutter guards which it had installed.

10. The Respondent's attempts to repair or correct the problems concerning the leak were unsuccessful, and after one trip to the house, she refused to take any further action to correct defects in the work.

11. Despite more than a dozen further telephone calls or emails, the Respondent failed to offer or perform any further work on the home.

12. The work performed by the Respondent was inadequate, incomplete, or unworkmanlike in that: the gutter guards were constructed of an inferior material and were improperly sealed in all corners; the gutters were sloped improperly, resulting in leaks into the soffits and down interior walls; the shingles installed by the Respondent required a certain pitch to the roof and the roof on the home did not possess such a pitch, resulting in leaking; all shingles were nailed improperly and improperly butted against each other, resulting in rust and leaking; chimney flashing was installed improperly, resulting in leaking; the Respondent failed to install a "cricket" or A-frame to divert water from a larger chimney, resulting in leaking; the Respondent's errors and omissions in the installation of the roof resulted in the voiding of the shingle manufacturer's warranty.

13. After the Respondent failed to return to the home to correct the leaks, the Claimants contacted and received proposals from several other contractors including Georgio DiPietri, t/a DiPietri Contractors, Inc. (DiPietri).

14. In May, June, and October of 2013, the Claimants entered into a series of three contracts with DiPietri for him to correct the work performed by the Respondent.

15. The contracts with DiPietri did not include any work not included in the original contract with the Respondent.

16. The total contract price on the contracts with DiPietri was \$13,635.00 and the Claimants paid him that amount.

17. DiPietri performed the work as specified in the three contracts with the Claimants. Following his work, the Claimants experienced no further leakage.

18. In order to correct or repair the Respondent's work it was necessary for DiPietri to completely remove the Respondent's work and start from scratch.

### 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. ("Bus. Reg.") § 8-405(a) (Supp.2013). *See also* COMAR 09.08.03.03B(2). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010) provides that the Commission may not award from the Fund "more than \$20,000 to one claimant for the acts or omissions of one contractor." In 2010, Maryland's General Assembly amended section 8-405(e), added an additional limit to a claimant's recovery. Under the amended statute, a claimant may not recover "an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is made." Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2010 & Supp. 2013). For the following reasons, I find that the Claimant has proven eligibility for compensation.

In this case, the Respondent simply failed to fulfill her obligations under the Contract. Although the work was begun and completed on schedule, the quality of the work was so poor that it resulted in extensive leakage in the home. As a result, the Claimants were compelled to hire an additional contractor. The errors committed by the Respondent were many and egregious. For example, the wrong type of shingles were used for the pitch of the roof, the gutters were sloped improperly, the chimney flashing was inadequate, and shingles were nailed incorrectly, voiding the manufacturer's warranty. Other than one fruitless attempt to correct the

problem, the Respondent simply ignored the Claimants' repeated requests that the problems resulting in leakage be corrected.

The Claimants' expert, Mr. DiPietro was a strong and credible witness, based on his extensive experience in the field and the clarity and detailed nature of his testimony.<sup>2</sup> In addition to providing comprehensive descriptions of the defects in the Respondent's work, he persuasively explained why virtually none of that work could be save and why it was necessary to rip out the Respondent's work and start over. He testified in detail as to each task he performed, why he used the materials and methods he did, and how he arrived at the pricing structure he offered the Claimants. I find his testimony to be credible and reliable; it establishes that the Respondent's work was indeed inadequate, incomplete, or unworkmanlike and that the Claimants' payments to the Respondent provided them with no significant value.

Having found eligibility for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and the Claimant does not seek such damages. COMAR 09.08.03.03B(1). MHIC's regulations at COMAR 09.08.03.03B(3) offer three formulas for measurement of a claimant's actual loss:

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

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

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<sup>2</sup> Mr. DiPietro has received numerous awards and honors from the home construction industry, including be named twice as "Contractor of the Year."

(c) 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 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.

As the Respondent did perform work under the Contract and the Claimants have sought conclude that the formula at COMAR 09.08.03.03B(3)(c) is an appropriate measure of damages.

Applying the formula set forth above, I find that the Claimants sustained an actual loss as follows:

Amount Paid to or on behalf of the Respondent	\$9,009.50
Cost to Correct	<u>+13,635.00</u>
	22,644.50
Amount of Original Contract	<u>-9,009.50</u>
Claimants' Actual Loss	\$13,635.00

Although the Claimants' actual loss exceeds the Contract price, pursuant to Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2010 & Supp. 2013), the Claimants' recovery is limited to \$9,009.50, the amount which they paid the Respondent under the original Contract.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimants have sustained an actual loss of \$13,635.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010). I further conclude, however, that the Claimants recovery is limited to the amount which they paid the Respondent under the original contract. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2010 & Supp. 2013). The Claimants, therefore, are entitled to reimbursement from the Fund in the amount of \$9,009.50.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$9,009.50; and

**ORDER** that the Respondent be 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 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**

September 15, 2014  
Date Decision Issued

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David Hofstetter  
Administrative Law Judge

DH/cj  
#151616



<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF NANA Dr. KOFI A. KOKROKO,</b></p> <p><b>and NANA AFUA D. AFRIYA,</b></p> <p><b>CLAIMANTS,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF ROBERTA MOYER</b></p> <p><b>T/A PROFESSIONAL WINDOW &amp;</b></p> <p><b>SIDING INSTALLATIONS, INC.,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE DAVID HOFSTETTER,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH NO.: DLR-HIC-02-14-05476</b></p> <p><b>* HIC NO.: 13(75)856</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**FILE EXHIBIT LIST**

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

- Cl. Ex. 1                      Complaint Form, with attachments, dated February 20, 2013
- Cl. Ex. 2                      Letter from Office of the Attorney General to the Claimant, dated February 6, 2013
- Cl. Ex. 3                      Letter to Office of the Attorney General from the Claimant, dated January 29, 2013
- Cl. Ex. 4                      Letter from the Claimants to the Respondent, dated October 30, 2012
- Cl. Ex. 5                      Letter from the Claimants to the Respondent, dated September 13, 2012
- Cl. Ex. 6                      Letter from the Claimants to the Respondent, dated August 28, 2012
- Cl. Ex. 7                      Contract between the Claimants and the Respondent, signed December 26, 2011
- Cl. Ex. 8a-g                    Photographs, undated

- Cl. Ex. 9 Letter from the Claimants to Giorgio DiPietri, dated September 6, 2013; Proposal, dated June 12, 2013
- Cl. Ex. 10 Letter from the Claimants to Giorgio DiPietri, dated October 16, 2013; copy of cancelled check, dated October 16, 2013; Contract between the Claimants and DiPietri Contractors, Inc., signed October 4, 2013
- Cl. Ex. 11 Letter from the Claimants to Giorgio DiPietri, dated November 27, 2013
- Cl. Ex. 12 Contract between the Claimants and DiPietri Contractors, Inc., signed May 7, 2013

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of hearing, dated April 29, 2014; Hearing Order, dated January 29, 2014; certified mail envelope sent to Respondent with USPS notation "Return to Sender, Unclaimed, Unable to Forward,": dated received at OAH, May 22, 2014
- Fund Ex. 2 Letter to the Respondent from Peter Martin, AAG, dated May 22, 2014, with certified mail receipt showing delivery on May 24, 2014
- Fund Ex. 3 Letter from John Papavasiliou, MHIC Assistant Commissioner, dated May 5, 2014
- Fund Ex. 4 Affidavit of Lynn-Michelle Escobar, dated May 22, 2014
- Fund Ex. 5 Licensing History for Respondent, dated May 2, 2014
- Fund Ex. 6 Letter from MHIC to the Respondent, dated August 5, 2013
- Fund Ex. 7 Amendment to Complaint, dated October 17, 2013

**PROPOSED ORDER**

***WHEREFORE, this 21st of October 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.***

***Michael Shilling***

***Michael Shilling  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**