

IN THE MATTER OF THE CLAIM	*	BEFORE LEIGH WALDER,
OF CARRIE WEAKLAND,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	OAH No.: DLR-HIC-02-18-28930
OMISSIONS OF BENJAMIN GEHRIG,	*	MHIC No.: 18 (75) 1004
T/A THE HOME DOCTOR	*	
EXTERIOR, L.L.C.,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES**

SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On June 12, 2018, Carrie Weakland (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$548.49 in actual losses allegedly suffered as a result of a home improvement contract with Benjamin Gehrig, trading as The Home Doctor Exterior, L.L.C. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On September 12, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ All citations to the Business Regulations Article are to the 2015 volume.

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
DIVISION OF THE PUBLIC PROSECUTOR
GENERAL INVESTIGATIVE DIVISION
MANILA

INVESTIGATION REPORT
ON THE
ACTS OF
REVENUE OFFICERS OF THE
INTERNAL SECURITY DIVISION
OF THE BUREAU OF CUSTOMS
AND EXCISE

On the 15th day of March 1964, the undersigned, Attorney General, in accordance with the provisions of Article XVIII, Section 5, of the Constitution of the Philippines, and in compliance with the provisions of the Act entitled "An Act to Amend Section 10 of the Act entitled 'An Act to Organize the Bureau of Customs and Excise', as amended, and to provide for the appointment, removal and suspension of revenue officers of the Bureau of Customs and Excise, and for other purposes," approved on March 18, 1956, and for other purposes, Chapter 10, Act No. 1564, of the Laws of the Philippines, did cause to be conducted an investigation into the acts of the revenue officers of the Bureau of Customs and Excise, and the results thereof are hereby reported to the Commission on Appointments, and to the Senate and the House of Representatives of the Philippines, for their consideration and approval.

I held a hearing on April 25, 2019 at the Prince George's County Office Building in Largo, Maryland. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor² (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 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 09.01.03; 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 on the Claimant's behalf:

Clmt. Ex. 1 – Home Improvement Contract, dated March 5, 2018; Cancellation Form, dated March 8, 2019

Clmt. Ex. 2 – Email from the Claimant to the Respondent, dated March 7, 2018

Clmt. Ex. 3 – Check image, printed February 13, 2019

Clmt. Exs. 4A - 4G – Photographs, taken March 12, 2018

Clmt. Ex. 5 – Email from the Respondent to the Claimant, dated March 7, 2018

Clmt. Ex. 6 – Email from the Respondent to the Claimant, dated March 7, 2018

Clmt. Ex. 7 – Email thread between the Claimant and the Respondent, dated March 7 and 8, 2019

Clmt. Ex. 8 – Email thread between the Claimant and the Respondent, dated March 7 and 8, 2019

Clmt. Ex. 9 – Email from the Respondent to the Claimant, dated March 8, 2018

² As of July 1, 2019, the Department of Labor, Licensing, and Regulation became the Department of Labor.

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

Resp. Ex. 1 – C&C Construction Invoice, dated March 7, 2018

Resp. Ex. 2 – The Respondent's Invoice, undated

Resp. Ex. 3 – Email thread between the Claimant and the Respondent, dated March 8, 2018

Resp. Ex. 4 – Report Summary, dated March 6, 2018

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 – Hearing Order, dated September 10, 2018

Fund Ex. 2 – Notice of Hearing, dated February 27, 2019

Fund Ex. 3 – The Claim, dated June 7, 2018; Letter from the MHIC to the Respondent, dated June 20, 2018

Fund Ex. 4 – Licensing printout, dated January 29, 2019

Testimony

The Claimant testified.

The Respondent testified.

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 5063801
2. Prior to March 5, 2018, a seventy mile-per-hour windstorm damaged the Claimant's roof, as well as many roofs in the Claimant's area.
3. As a result of the windstorm, the Respondent had a large backlog of customers who needed their roofs repaired. Because so many customers needed roofing repairs, the Respondent agreed to install tarping, free of charge, on their roofs until his company could actually come out to make the repairs.

1. The first step in the process is to identify the problem.

2. The second step is to define the objectives of the study.

3. The third step is to design the research methodology.

4. The fourth step is to collect and analyze the data.

5. The fifth step is to interpret the results.

6. The sixth step is to draw conclusions.

7. The seventh step is to report the findings.

8. The eighth step is to evaluate the research.

9. The ninth step is to disseminate the results.

10. The tenth step is to reflect on the process.

11. The eleventh step is to plan for the future.

12. The twelfth step is to conclude.

13. The thirteenth step is to summarize.

14. The fourteenth step is to re-examine.

15. The fifteenth step is to re-evaluate.

RESEARCH METHODOLOGY

1. The first step in the methodology is to identify the research question.

2. The second step is to determine the research design.

3. The third step is to select the research instruments.

4. The fourth step is to collect the data.

5. The fifth step is to analyze the data.

6. The sixth step is to interpret the results.

7. The seventh step is to draw conclusions.

8. The eighth step is to report the findings.

9. The ninth step is to evaluate the research.

4. The tarping would keep rain and the elements from seeping into the Respondent's customers' roofs during the interim.

5. On March 5, 2018, the Claimant and the Respondent entered into a contract in which the Respondent agreed to repair the Claimant's roof (Contract).

6. The terms of the Contract were: "22sq Owens Corning Roofing & ice + water & synthetic underlayment & new flashing & ridge vent & 25 [year] warranty & new pipe collars (insurance pending)." (Clmt. Ex. 1).

7. The Claimant agreed to pay the Respondent a total of \$10,890.00 for the work set out in the Contract.

8. On March 5, 2018, the Claimant paid the Respondent a \$500.00 down payment on the Contract.

9. On March 6, 2018, the Respondent dispatched a subcontractor, C&C Construction, L.L.C. (C&C), to install tarping on the Claimant's roof.

10. The Claimant's roof required more extensive tarping than normal.

11. The tarping job required C&C to use three pieces of plywood.

12. Instead of using its own plywood, C&C used three pieces of plywood purchased by the Claimant.

13. The three pieces of plywood cost the Claimant a total of \$48.49.

14. C&C billed the Respondent \$900.00 for the tarping work.

15. The tarping was not properly secured to the Claimant's roof and it ripped off with the wind.

16. The tarping did not adequately shield the roof underlayment from water, and the underlayment got wet.

17. To prevent any further damage, the Claimant and her husband purchased their own tarping materials and tarped the roof themselves.

18. On March 7, 2018, the Claimant and the Respondent got into a verbal dispute about the services to be provided under the Contract.

19. As a result of the verbal dispute, the Respondent told the Claimant he was cancelling the Contract.

20. On March 8, 2018, the Claimant signed a form cancelling the Contract, writing "Cancellation per owner's . . . request on 3/7/18." (Clmt. Ex. 1).

21. After the cancellation, the Respondent sent the Claimant an invoice for \$1,600.00 for the tarping job.

22. The \$1,600.00 figure contained a built-in profit for the Respondent.

23. The Respondent deducted the Claimant's \$500.00 down payment off the invoice, leaving \$1,100.00 as the balance due.

24. The Claimant refused to pay the \$1,100.00 balance on the invoice.

25. The Respondent kept the Claimant's \$500.00 down payment to partially cover the tarping expenses billed by C&C.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true."

Coleman v. Anne Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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) (“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. For the following reasons, I find the Claimant has proven eligibility for compensation.

Statutory Eligibility

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was to be performed on the Claimant’s residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent’s employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim, as the Respondent cancelled the Contract. The Claimant timely filed her Claim with the MHIC on June 12, 2018. Finally, the Claimant has not taken any other legal action to recover monies.

The Respondent Performed Unworkmanlike, Inadequate, or Incomplete Home Improvement

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements to the Claimant’s roof. Pursuant to the Contract, the Respondent agreed to repair the Claimant’s roof, yet the only work the Respondent performed was getting C&C to tarp the roof. It is clear the tarping job was done in a rushed manner, as the Respondent testified the job was done “quickly” because it was slated to rain later on the date of installation. Further, C&C did not anticipate how much tarping was necessary, and this added more pressure to finish the job in a timely manner. The Respondent also recognized C&C did a poor job at tarping the Claimant’s roof when he wrote C&C is “not a professional tarping company” and he did not “expect [the] roof installers to be great at laying down tarps when they do not do this on a regular

... (faint, illegible text) ...

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basis.” (Clmt. Ex. 7). The Respondent further acknowledged C&C is “not a tarping company and this . . . was the first time in company history [C&C] ever tarped a roof[.]” (Clmt. Ex. 8). In its inexperience and haste, C&C failed to properly secure the tarp to the Claimant’s roof, causing the tarp to rip off with the wind and the underlayment of the roof to become wet.

In addition to the Respondent’s admissions, it is apparent C&C did not properly tarp the Claimant’s roof. The Claimant convincingly testified the tarping job was performed so poorly she and her husband had to purchase their own tarping materials and tarp the roof themselves. The Claimant also provided photographs to demonstrate the haphazard state of the roof after C&C completed the job. (Clmt. Exs. 4A through 4G). As a result, I find the Respondent provided an unworkmanlike, inadequate, or incomplete home improvement. Bus. Reg. § 8-401. Thus, the Claimant is eligible to recover the amount of her actual loss from the Fund.

The Amount of the Claimant’s Actual Loss

~~Having found eligibility for compensation I must determine the amount of the Claimant’s~~
actual loss and the amount, if any, 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). The MHIC’s regulations provide three formulas to measure a claimant’s actual loss, depending on the status of the contract work.

The Fund argued the Claimant is not entitled to compensation measured under COMAR 09.08.03.03B(3)(a) because the Respondent did not abandon the project but, rather, cancelled the Contract after tarping the Claimant’s roof. The Claimant argued the Respondent’s cancellation of the Contract was abandonment because the Respondent did not perform any repair work on the roof after he cancelled the Contract. I agree with the Fund. The term “abandonment,” as contemplated in the regulations, presumes a “contractor abandoned the contract *without doing*

any work[.]” COMAR 09.08.03.03B(3)(a) (emphasis added). That is not the case in this matter as the Respondent hired C&C to perform some preliminary work tarping the Claimant’s roof to protect the house from more damage before work could start; he subsequently canceled the Contract. As such, the Respondent did not “abandon” the project. Thus, the Claimant is not eligible to collect an actual loss under the formula stated in COMAR 09.08.03.03B(3)(a).

However, the Claimant is entitled to recover her actual loss through the alternate formula in COMAR 09.08.03.03B(3)(b) because the Respondent did work according to the contract and the Claimant is not soliciting another contractor to complete the contract and the work conducted was an unworkmanlike, inadequate, or incomplete home improvement. *See* Bus. Reg. § 8-401. COMAR 09.08.03.03B(3)(b) sets out as follows: “[i]f 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.” COMAR 09.08.03.03B(3)(b).

The Claimant’s \$500.00 deposit

As discussed above, the Respondent cancelled the Contract after C&C tarped the Claimant’s roof. The Respondent did not do any other repair work laid out in the Contract. The Contract itself was unspecific regarding the value to be attributed to tarping, though C&C did bill the Respondent \$900.00 for the work. Nevertheless, I find there was no inherent value connected to the tarping job as the work was inadequate and required the Claimant to purchase her own tarping materials and tarp the roof herself.

The Respondent and Fund argued it would be unfair for the Claimant to receive a free tarping job when the Claimant never utilized the Respondent’s roof repair services. As discussed above, I am not persuaded the Claimant received any benefit from the tarping job since the tarp was inadequately installed on the Claimant’s roof. It was the Respondent’s choice to use C&C,

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which had no experience tarping roofs. Had the Respondent not cancelled the Contract, it is likely the Respondent would have had to send somebody out to re-tarp the roof since the wind eventually ripped the tarp off. Further, it was the Respondent who chose to cancel the Contract instead of repairing the roof. Had the Respondent performed the work set out in the Contract, he would have received full remuneration.

While the Respondent never collected any additional money from the Claimant after cancelling the Contract, the Respondent withheld the Claimant's \$500.00 deposit as reimbursement for the tarping job. The tarping job added no value to the Claimant's roof and in no way benefited the Claimant's endeavor to tarp the roof herself as she had to purchase new tarping materials. For this reason, the Claimant is entitled to the return of her \$500.00 deposit.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a). In this case, the Claimant's actual loss is not in excess of the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$500.00.

\$48.49 worth of plywood

The Claimant requested reimbursement for the three pieces of plywood C&C used when tarping her roof. These pieces of plywood personally belonged to the Claimant and were not meant for the tarping job. Even though the Respondent acknowledged C&C should not have used the plywood when he wrote "there is no excuse for [C&C] using your wood," (Clmt. Ex. 7), the Business Regulations Article sets out 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 filed." Bus. Reg. § 8-405(e)(5); *see also* COMAR 09.08.03.03B(4). The total amount the Claimant paid the Respondent was \$500.00 and, as discussed above, the Claimant is entitled to the return of this

sum. As the \$48.49 is “an amount in excess of the amount paid by . . . the claimant to the contractor,” the Claimant is not entitled to this sum. *Id.*

PROPOSED CONCLUSIONS OF LAW

I conclude the Claimant sustained an actual and compensable loss of \$500.00 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)(b).

I further conclude the Claimant is entitled to recover \$500.00 from the Fund. COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$500.00; and further

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;³ and

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

July 16, 2019
Date Decision Issued



Leigh Walder
Administrative Law Judge

LW/cmg
#180958

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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PROPOSED ORDER

WHEREFORE, this 8th day of August, 2019, 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