

<p>The Maryland Home Improvement Commission</p> <p>v. David Wandel t/a Charis Home Improvements, Inc. (Contractor)</p> <p>and the Claim of Elizabeth Smith (Claimant)</p>	<p>* * * * * * *</p>	<p>BEFORE THE MARYLAND HOME IMPROVEMENT COMMISSION</p> <p>MHIC No.: 07 (75) 1076</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------	------------------------------------------------------------------------------------------------------------------------------

FINAL ORDER

**WHEREFORE, this February 1, 2011, Panel B of the Maryland Home
 Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated August 31, 2010 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated August 31, 2010 are AFFIRMED.**
- 3. The Proposed Order dated August 31, 2010 is AFFIRMED.**
- 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
 Joseph Tunney, Chairperson
 PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF * BEFORE MARY SHOCK,
ELIZABETH S. SMITH * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED ACTS OR * OAH No: DLR-HIC-02-09-29634
OMISSIONS OF DAVID WANDEL, * MHIC No: 07 (75) 1076
T/A CHARIS HOME IMPROVEMENTS, *
INC. *

* * * * *

RECOMMENDED DECISION

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

STATEMENT OF THE CASE

On December 8, 2008, Elizabeth S. Smith (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,400.00 for actual losses allegedly suffered as a result of a home improvement contract with David Wandel, t/a Charis Home Improvements, Inc. (Respondent).

I held a hearing on July 14, 2010 at the Office of Administrative Hearings in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Jerry McCarragher, Esquire, represented the Claimant, who was present. 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 of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and 28.02.01.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

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

- CL #1 Contract, March 25, 2006
- CL #2 Checks from Claimant to Respondent, March 28, 2006 and April 7, 2006
- CL #3 Photograph of ceiling in residence, March 29, 2007
- CL #4 Photograph of ceiling in residence, January 1, 2010
- CL #5 Letter from Claimant to Respondent, September 20, 2006
- CL #6 Phil Dibello Roofing, Inc., Proposal, November 13, 2008
- CL #7 Photograph of ceiling in residence, January 1, 2010

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

- RSP #1 Letter from William Banks, MHIC, to Claimant, April 17, 2007
- RSP #2 Letter from Anthony J. Cusato, Rooftop Inspection Company, Inc., to Respondent, December 27, 2006
- RSP #3 Letter from Anthony J. Cusato, Rooftop Inspection Company, Inc., to Respondent, February 23, 2007
- RSP #4 Curriculum Vitae, Anthony J. Cusato, undated

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

- MHIC #1 Notice of Hearing, May 21, 2010
- MHIC #2 Hearing Order, August 13, 2009
- MHIC #3 Respondent's Licensing History, October 28, 2003 through October 28, 2011
- MHIC #4 Letter from MHIC to Respondent, January 12, 2009, Home Improvement Claim Form, December 8, 2008

Testimony

The Claimant testified and did not present any other witnesses.

The Respondent testified and presented the testimony of Anthony Cusato, Rooftop Inspection Company, Inc. Mr. Cusato was accepted as an expert in roofing.

The Fund did not present any witnesses.

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 numbers 3321837, 3614335, 3894555, and 3978305.
2. The Claimant owns her own home and one other house, a row house, that she rents to a tenant. In 2006, the roof in the house the Claimant rents was leaking and the water had damaged the ceiling in the second floor middle room.
3. On March 25, 2006, the Claimant and the Respondent entered into a contract to install a new rubber roof on the Claimant's house for a price of \$2,400.00.
4. The Claimant paid the Respondent in full as follows: March 28, 2006 - \$600.00; and April 7, 2006 - \$1,800.00.
5. The Respondent completed the work on or about April 7, 2006.

6. In approximately July 2006, the Claimant complained to the Respondent that the roof was leaking.

7. On December 23, 2006, the Respondent hired Anthony Cusato, Rooftop Inspection Company, Inc., to inspect the roof. Mr. Cusato inspected the roof and examined the ceiling in the second floor middle room.

8. On December 23, 2006, the ceiling was damaged but dry. The roof system was in satisfactory condition with no leaks.

9. On February 21, 2007, Mr. Cusato returned to the home and examined the ceiling in the second floor middle room. The ceiling was damaged but dry.

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) (2010). *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.” Md. Code Ann., Bus. Reg. § 8-401 (2010). For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Claimant testified that the ceiling in the middle upstairs room of the rental house was leaking. As a result, on March 25, 2006 she contracted with the Respondent for a new roof. Approximately three months after the Respondent installed the roof, her tenant complained that water was still leaking into the second floor middle room. The Claimant stated that she went to the house herself and examined the ceiling. She entered into evidence three photographs of the ceiling, one dated March 29, 2007, and two dated January 1, 2010. The photographs show cracks in the ceiling, and in the later photographs, a plastic patch over a hole. The Claimant testified that

she had the ceiling painted after the Respondent installed the roof and that the current damage, as shown in the photographs, was the result of further leaks. The Claimant also stated that she attempted to contact the Respondent numerous times, but he was never available and did not call her back.

Anthony Cusato, Rooftop Inspection Company, Inc., qualified as an expert in roofing. He testified that the Respondent hired him to inspect the Claimant's roof. On December 23, 2006, he inspected the roof and the bedroom ceiling. He examined the entire roof system including the flashing and the buildings on each side of the house. The system was satisfactory with no leaks. Mr. Cusato also observed damage to the ceiling in the upstairs bedroom. He stated that the plaster was dry. He concluded that the damage had occurred before the Respondent installed the new roof. Mr. Cusato also stated that the tenant told him that the roof was not leaking, but she was concerned about repairing the ceiling. Finally, Mr. Cusato testified that he returned to the house on February 21, 2007. Again, the tenant told him that the roof was not leaking. He did not go onto the roof on that date because of the tenant's report.

The Claimant was unable to prove that the damage to the ceiling was caused by leaking after the Respondent installed the roof, rather than damage that pre-dated the work. The Claimant acknowledged that water had been leaking into the bedroom and that is why she had the roof replaced. The Claimant also stated that she had the ceiling repainted after the Respondent completed work; she failed, however, to submit any work orders or receipts to document what work had been done and when. Mr. Cusato, on the other hand, testified that the ceiling damage was dry when he examined it on December 23, 2006 and February 21, 2007. If the roof had been leaking, the damaged areas would have been damp. Further, Mr. Cusato stated in his report to the Respondent and testified at the hearing, that both times he went to the house the tenant told him

that the roof was not leaking; instead she wanted to know when the ceiling was going to be repaired. (RES #2 and #3).

I recognize that the tenant's statement is hearsay, but I find it reliable. Although the Respondent hired Mr. Cusato to inspect the roof and Mr. Cusato was paid for his work, he is a professional with many years in the roofing industry. (RSP #4). The Claimant failed to elicit any testimony or present any other evidence to establish that Mr. Cusato would jeopardize his professional reputation by lying for the Respondent. Also, Mr. Cusato testified in a straightforward manner and I believed his testimony. Thus, Mr. Cusato's report of the tenant's statements and his personal observations of the roof and ceiling on December 23, 2007, and of the ceiling on February 21, 2007, disprove the Claimant's position that the damage shown in the photographs occurred after the Respondent installed the new roof.

As stated above, the Claimant has the burden of proof in this case to show that it is more likely than not that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. Because she failed to establish that the roof the Respondent installed was and is leaking, she failed to meet her burden of proof.

CONCLUSIONS OF LAW

I conclude that the Claimant failed to prove that she sustained an actual loss as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).


RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim.

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

July 19, 2010
Date Decision Mailed



Mary Shock
Administrative Law Judge

MKS/gr
#115308

IN THE MATTER OF THE CLAIM OF * BEFORE MARY SHOCK,
 ELIZABETH S. SMITH * AN ADMINISTRATIVE LAW JUDGE
 AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
 IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
 FOR THE ALLEGED ACTS OR * OAH No: DLR-HIC-02-09-29634
 OMISSIONS OF DAVID WANDEL, * MHIC No: 07 (75) 1076
 T/A CHARIS HOME IMPROVEMENTS. *
 INC. *

* * * * *

FILE EXHIBIT LIST

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

CL #1 Contract, March 25, 2006
 CL #2 Checks from Claimant to Respondent, March 28, 2006 and April 7, 2006
 CL #3 Photograph of ceiling in residence, March 29, 2007
 CL #4 Photograph of ceiling in residence, January 1, 2010
 CL #5 Letter from Claimant to Respondent, September 20, 2006
 CL #6 Phil Dibello Roofing, Inc., Proposal, November 13, 2008
 CL #7 Photograph of ceiling in residence, January 1, 2010

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

RSP #1 Letter from William Banks, MHIC, to Claimant, April 17, 2007
 RSP #2 Letter from Anthony J. Cusato, Rooftop Inspection Company, Inc., to
 Respondent, December 27, 2006
 RSP #3 Letter from Anthony J. Cusato, Rooftop Inspection Company, Inc., to
 Respondent, February 23, 2007
 RSP #4 Curriculum Vitae, Anthony J. Cusato, undated

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

MHIC #1 Notice of Hearing, May 21, 2010
 MHIC #2 Hearing Order, August 13, 2009
 MHIC #3 Respondent's Licensing History, October 28, 2003 through October 28,
 2011

MHIC #4 Letter from MHIC to Respondent, January 12, 2009, Home Improvement
Claim Form, December 8, 2008

PROPOSED ORDER

WHEREFORE, this 31st day of August 2010, 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