

<p>IN THE MATTER OF THE CLAIM</p> <p>OF RONIA GREEN,</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 JOE D. PIRKLE, T/A</p> <p>JDP RESTORATION,</p> <p>RESPONDENT</p>	<p>* BEFORE DAVID HOFSTETTER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH NO.: DLR-HIC-02-12-25944</p> <p>* MHIC NO.: 10(90)73</p> <p>*</p> <p>*</p> <p>*</p>
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RECOMMENDED DECISION

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RECOMMENDED ORDER

STATEMENT OF THE CASE

On November 4, 2009, Ronia Green (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for actual losses allegedly suffered as a result of a home improvement contract with Joe D. Pirkle, t/a JDP Restoration (Respondent).

I conducted a hearing on November 15, 2012 at the Wheaton Park Office Complex, 11510 Georgia Avenue, Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312 and 8-407 (2010 & Supp. 2012). Jessica Kaufman, Assistant Attorney General, Department of Labor,

Licensing and Regulation (Department), represented the Fund. The Claimant represented herself. 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 Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; 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

The Claimant submitted the following exhibits, which were admitted into evidence:

- Cl. Ex. #1- Contract between Claimant and Respondent, dated November 3, 2008
- Cl. Ex. #2- Change Order, dated November 4, 2008
- Cl. Ex. #3- Proposal from Roof Solutions, Inc., dated May 19, 2009; nineteen pages of photographs submitted by Claimant
- Cl. Ex. #4- Cancelled checks dated November 10, 2008 and November 20, 2008
- Cl. Ex. #5- Contract between Claimant and Unicorp, dated May 9, 2010; Unicorp billing statements, dated June 2, 2010 and June 24, 2010; cancelled checks dated May 9, 2010 and June 22, 2010; Proposal, dated March 31, 2010; letter from Unicorp to the Claimant, dated June 8, 2010, including four attached photographs
- Cl. Ex. #6- Proposal, dated July 16, 2010

The Respondent submitted the following exhibits, which were admitted into evidence:

Resp. Ex. #1- Contract between the Claimant and the Respondent, dated November 4, 2008; Change Order, dated November 4, 2008

Resp. Ex. #2- Partial statement of scope of work and itemized price list, dated October 28, 2010

The Fund submitted the following exhibits, which were admitted into evidence:

Fund Ex. #1- Notice of Hearing, dated November 2, 2012

Fund Ex. #2- Hearing Order, dated April 4, 2012

Fund Ex. #3- Licensing History of Respondent dated October 9, 2012

Fund Ex. #4- Letter from HIC to Respondent, dated December 1, 2009; Home Improvement Claim Form, dated November 3, 2009

Testimony

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

The Fund did not present any witnesses.

FINDINGS OF FACT

After considering the evidence presented, 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. On or around November 3, 2008, the Respondent and the Claimant entered into a contract (Contract) for certain home improvement work, including carpeting, painting and ceiling work.
3. On or around November 4, 2008, the parties executed a change order whereby certain carpeting work was deleted from the Contract and roof work was added to the Contract.

4. The change order provided that the Respondent would “replace existing roof with closest match possible. No removal of old existing roof. Replace vent boot as necessary. Two layers of shingles on back slope and one layer of shingles on front slope.” Claimant Ex. 2.
5. The total price for the Contract was \$2,927.00. Of that total, the cost of the roof work was \$1,215.00.
6. The Claimant paid the Respondent a total of \$2,927.00, including \$1,215.00 for the roof work.
7. The Claimant is satisfied with the work done by the Respondent, except for the roof work.
8. Shortly after November 4, 2008, the Respondent’s employees began and completed the roof work in one day.
9. In January 2009, the ceiling in the living room immediately below the roof began sagging. At approximately the same time, the Claimant also discovered water in the attic.
10. The Claimant called the Respondent to report the sagging ceiling and water in the attic and the Respondent said he would send “Reuben,” the same employee who originally performed or oversaw the roof work.
11. Shortly after the Claimant’s telephone call to the Respondent, Rueben arrived and performed some work on the roof.
12. After Rueben’s work on the roof, in or around January 2009, the Claimant continued to suffer leaks and ceiling damage and reported the problems to the Respondent. The

Respondent sent Rueben on various occasions to address the problems, but the problems persisted.

13. In September or October 2009, the Claimant met with the Respondent at the Claimant's home. The Claimant again told the Respondent about ongoing leakage problems and the Respondent said he would again send Rueben out to fix the roof. The Claimant asked the Respondent not to send Rueben but to send "a real roofer," but the Respondent insisted that Reuben could properly do the job.
14. Prior to April 13, 2010, the Claimant met with a representative of Unicorp Home Energy Services (Unicorp) concerning repairs to the roof. Unicorp inspected the roof and determined that most of the plywood forming the base of the roof was rotting and had to be replaced.
15. The rotting plywood was visible and apparent to the Respondent or his employees when they performed work on the roof, but neither the Respondent nor his employees informed the Claimant that the plywood needed to be replaced.
16. On April 13, 2010, the Claimant entered into a contract with Unicorp to replace her roof, including new plywood, shingles, flashing, and ridge vent.
17. Shortly after April 13, 2010, Unicorp completed the roof work. The work was done to the Claimant's satisfaction and there have been no further leaks or other problems with the roof.
18. The Claimant paid Unicorp \$4,275.00 for the roofing work.

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.2012). *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).

In this case, the parties entered into a contract for various home improvement work, including roofing. Early on, there were some changes in the scope of the contract; carpeting work was deleted and roofing work was inserted. While the parties’ memories diverge on certain minor points in the chronology of events, they agree on two points: the Claimant has no complaints about any of the work other than the roofing work, and the Claimant paid the Respondent \$1,215.00 for the roofing work.

In many cases, a contractor may attempt to induce the homeowner to perform work that is not necessary. In this case, by contrast, the Respondent failed to inform the Claimant of work that was absolutely necessary, *i.e.*, replacement of the plywood base of the roof. The Respondent testified that he did not tell the Claimant about problems with the plywood because he thought that she would not want to spend the money to make the necessary repairs and he would lose the job. He testified forthrightly that he now believes that he acted improperly and that he “should have given her a different price and replaced the plywood.”¹ The Respondent also testified that he believed that Unicorp’s contract price, including 17 sheets of plywood, was reasonable and that the scope of work performed by Unicorp to correct the leakage problems was likewise reasonable.

¹ The quoted phrase may not be verbatim.

Based on the continual leaking and sagging after the Respondent supposedly completed his work, as well as the Respondent's own testimony that the job was not performed properly, I conclude that the Respondent's work was unworkmanlike, inadequate, and incomplete.²

Having found that the Claimant is eligible 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. COMAR 09.08.03.03B(1). MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3)(a), (b) and (c). One of those formulas, as follows, provides a basis for determining an award 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. 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).

In this case, the original contract price was clearly too low—the Respondent himself testified that an appropriate contract price would have been the amount charged by Unicorp. In addition, it is clear that none of the work performed by the Respondent was of any value or such that it could reduce the cost of correction. Adjusting for the unrealistically low contract price, and applying the formula set out above, I find that the

² Md. Code Ann., Bus. Reg. § 8-405(d) (Supp.2012) provides that the Commission may deny a claim if the claimant "unreasonably rejected good faith efforts by the contractor to resolve the claim." Although, in this case, the Respondent offered to continue to send Reuben to try and fix the roof, I conclude that it was not unreasonable for the Claimant to reject this offer, given Reuben's past failures to properly repair her roof.

Claimant sustained an actual loss as follows:

Amount Paid to the Respondent	\$1,215.00
Amount Paid to Correct or Complete Work	<u>+\$4,275.00</u>
	\$5,490.00
Realistic Amount of Original Contract	<u>-\$4,275.00</u>
Amount of Actual Loss	\$1,215.00

Because the Claimant paid \$1,215.00 to the Respondent for the roofing work, her recovery, under any formula, may not exceed that amount³

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant suffered an actual loss of \$1,215.00 as a result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401 (2010); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Claimant be awarded \$1,215.00 from the Maryland Home Improvement Guaranty Fund;

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 Commission, Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and,

³ Even if the use of a different formula were to determine an actual loss greater than \$1,215.00, the Claimant's recovery would still be limited to that amount. Sections 8-401 and 8-405(e) of the Fund statute govern the award of compensation from the Fund. Prior to 2010, section 8-405(e) applied the following limits to a claimant's recovery: (1) a claimant could not recover attorney's fees, consequential damages, court costs, interest, personal injury damages or punitive damages; (2) a claimant was limited to the amount of his actual loss; and (3) the maximum recovery was capped at \$20,000.00 for the acts of a single contractor. Md. Code Ann., Bus. Reg. §§ 8-405(a) and (e)(1) and (3) (2010). In 2010, however, Maryland's General Assembly amended section 8-405(e), adding 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. 2012).

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

Signature on File

February 12, 2013
Date Decision Mailed

DH/rbs
140459

David Hofstetter
Administrative Law Judge

IN THE MATTER OF THE CLAIM	* BEFORE DAVID HOFSTETTER,
OF RONIA GREEN,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-25944
FOR THE ALLEGED ACTS OR	* MHIC NO.: 10(90)73
OMISSIONS OF JOE D. PIRKLE, T/A	*
JDP RESTORATION,	*
RESPONDENT	*

* * * * *

FILE EXHIBIT LIST

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Fund Ex. #4- Letter from HIC to Respondent, dated December 1, 2009; Home Improvement Claim Form, dated November 3, 2009

PROPOSED ORDER

WHEREFORE, this 2nd day of April 2013, 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.

Joseph Tunney

*Joseph Tunney
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION