

IN THE MATTER OF THE CLAIM
OF CHRISTINE RODGERS,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MELONIE MATTISON,
T/A HOUSEFROS LLC,
RESPONDENT

* BEFORE LORRAINE E. FRASER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-15-28604
* MHIC No.: 15 (90) 284

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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 15, 2015, Christine Rodgers, (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,300.00 in alleged actual losses suffered as a result of a home improvement contract with Melonie Mattison, trading as HousePros LLC (Respondent).

I held a hearing on November 25, 2015 at the Queen Anne’s County Library in Stevensville, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ The

¹ Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

Claimant represented herself. The Respondent represented herself. Eric London, 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 (2014), 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 any acts or omissions committed by the Respondent?
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. Ex. 1 Estimate for Services, 5/23/14; Contract Change Order, 7/14/14; check for \$2,100.00, 5/28/14; check for \$2,200.00, 7/16/14
- Cl. Ex. 2 Letter to the Respondent from the Claimant, 7/20/14, with handwritten note dated 7/21/14; certified mail receipt, 7/22/14; text messages between the Claimant and the Respondent's husband, 7/19/14-7/21/14
- Cl. Ex. 3 Roof Inspection Report, Anthony J. Cusato, Rooftop Inspection Company, LLC, 8/19/14
- Cl. Ex. 4 Complaint Form, 9/3/14
- Cl. Ex. 5 Letter from Nina Arnold, Community Mediation Upper Shore, to the Claimant, 11/18/14; emails between the Claimant and MHIC, 1/20/15-1/22/15; letter to the Respondent from the Claimant, 1/22/15; certified mail receipt, 1/23/15; email to MHIC from the Claimant, 2/12/15
- Cl. Ex. 6 Letter from Ms. Arnold, Community Mediation Upper Shore, to the Claimant, 3/20/15; agreement of the Claimant and the Respondent, 4/9/15
- Cl. Ex. 7 Email from MHIC to the Claimant, 5/27/15; Letter to the Respondent from the Claimant, 6/6/15; photograph of certified mail "Return to Sender Refused Unable to Forward Return to Sender" 6/10/15
- Cl. Ex. 8 Home Improvement Claim Form, 7/6/15; letter to MHIC from the Claimant, 7/11/15
- Cl. Ex. 9 Fichtner Services Agreement, 9/11/15

- Cl. Ex. 10 Charis Contractors, LLC, Proposal, 10/13/15; check for \$2,000.00, 10/13/15; Invoice, 10/31/15; check for \$5,600.00, 11/3/15
- Cl. Ex. 11 The Claimant's written statement
- Cl. Ex. 12 Curriculum Vitae of Anthony J. Cusato
- Cl. Ex. 13 Email from David Wandel, Charis Contractors, to Anthony Cusato with attached photographs, 11/2/15

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

- Resp. Ex. 1 Emails among the Respondent's husband and Tim Seidel and Steve Hern, both of CertainTeed Roofing, 2/13/15-2/20/15
- Resp. Ex. 2 Letter from the Respondent to the Claimant, 7/23/14; Berger Roof Edgings and Trim Profiles specifications, certified mail envelope

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Notice of Hearing, 10/7/15
- Fund Ex. 2 Hearing Order, 8/18/15
- Fund Ex. 3 Licensing History for the Respondent, 11/4/15
- Fund Ex. 4 Home Improvement Claim Form, received 7/15/15
- Fund Ex. 5 Letter to the Respondent from MHIC, 7/22/15

Testimony

The Claimant testified and presented the testimony of Anthony J. Cusato, Rooftop Inspection Company, LLC, who was accepted as an expert in commercial and residential roofing.

The Respondent testified and presented the testimony of her husband Ian Mattison.

The Fund did not present any witness testimony.

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 numbers 01-93621 and 05-130114.
2. On May 23, 2014, the Claimant and the Respondent entered into a contract to replace the Claimant's roof and install gutter screens on the rear of the house. The contract

stated that work would begin within forty-five days and would be substantially completed in one week.

3. The original agreed-upon contract price was \$6,500.00.

4. On May 28, 2014, the Claimant paid the Respondent \$2,100.00.

5. On July 5, 2014, the Respondent's workers installed the new roof on the Claimant's home; however, they did not install the contracted for drip edge.

6. On July 16, 2014, the Claimant paid the Respondent \$2,200.00.

7. On July 19, 2014, the Respondent's workers installed the new drip edge.

8. On July 20, 2014, the Claimant noticed problems with the drip edge's installation. She contacted the Respondent regarding the problems.

9. On July 21, 2014, the Respondent's husband came to the Claimant's home unannounced. The Respondent's husband demanded the remaining payment and threatened the Claimant that his workers may tear off her roof if she did not pay. The Claimant was frightened, left her property, returned to work, and called police.

10. On August 9, 2014, Anthony J. Cusato inspected the roof installed by the Respondent's workers. He issued his report on August 19, 2014.

11. There were multiple problems with the roof installed by the Respondent's workers, as follows: The shingles at the starter edge were not properly installed; too few fasteners were used and all the shingles were loose. The drip edge was missing in places and was not installed according to the manufacture's specifications. The nails in the shingles were not installed properly. The nails should have been flush with the top side of the shingle. Instead, some nails were nailed through the shingles, other nails were at an angle, making them prone to tearing. Most of the shingles were not installed properly. The shingles were to have a five-inch exposure but most had an exposure of more than five inches and were not lined up and properly

sealed to each other. The metal flashings on the front dormers and rear wall were not installed properly. As a result, the flashings were not water tight. The roofing and flashings on the front left dormer valley were not installed properly or water tight. There was a large opening under the valley that allowed water to enter the house. Approximately one quarter of the shingles were damaged and missing granules. The existing aluminum gutters were dented and damaged during the installation of the roof. Gutter screens were not installed on the rear of the house. Also, the gutter fasteners were broken and no longer supporting the gutters. Several areas of the existing siding were damaged.

12. The roof installed by the Respondent's workers was not repairable because of the extent of the defects and poor workmanship and required a complete replacement.

13. After the Claimant received Mr. Cusato's report, she sent a copy to the Respondent and asked her to replace the roof. The Respondent insisted she could repair the roof.

14. In early September 2014, the Claimant filed a complaint regarding the Respondent's work with the MHIC.

15. Sometime thereafter, the MHIC referred the Claimant to Community Mediation Upper Shore (CMUS). On November 18, 2014, CMUS contacted the Claimant and the Respondent regarding scheduling mediation. The Respondent did not respond to CMUS.

16. On January 20, 2015, the MHIC advised the Claimant that she must pursue arbitration because there was an arbitration clause in her contract with the Respondent.

17. On January 23, 2015, the Claimant sent a letter to the Respondent via regular and certified mail asking that they start the arbitration process.

18. On April 9, 2015, the Claimant and the Respondent participated in mediation (not arbitration) and reached an agreement. The Respondent agreed to contact CertainTeed, the roof shingle manufacturer, and get a letter that would identify the name and position of an employee

who would inspect the Claimant's roof, whether the inspection would be visual or detailed, and whether CertainTeed would "make specific commitments and recommendations."² The specific commitments and recommendations were not further identified in the agreement. The Claimant would then decide if she would allow CertainTeed to inspect her roof.

19. The Respondent did not provide a letter from CertainTeed to the Claimant or communicate to the Claimant the response the Respondent received from CertainTeed.

20. On June 6, 2015, the Claimant sent another letter to the Respondent via regular and certified mail asking to proceed with the arbitration.

21. The Respondent refused to accept the certified letter from the Claimant.

22. The Respondent did not communicate with the Claimant in any way after the April 9, 2015 mediation.

23. On October 12, 2015, there was water in the Claimant's attic and the beam was wet near the ridge vent installed by the Respondent's workers.

24. On October 15, 2015, the Claimant hired Charis Contractors, LLC, to install a new roof on her home to replace roof installed by the Respondent.

25. When Charis Contractors removed the shingles installed by the Respondent, Charis Contractors found that there was no ice and snow barrier installed in the roof valley.

26. The Claimant paid Charis Contractors \$6,100.00 for the new roof.

27. The Claimant's actual loss is \$3,900.00.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. 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

² Cl. Ex. 6.

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 (3rd. 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.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). 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 (2015). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time she entered into the contract with the Claimant.

The Respondent’s workers, including her husband, performed an unworkmanlike, inadequate or incomplete home improvement. The Respondent herself did not perform any work on the Claimant’s home. The Claimant testified that the Respondent’s workers installed the new roof on her home on July 5, 2014 but did not install the drip edge. She stated that the workers returned on July 19, 2014 and installed the drip edge. She described the incomplete and poor workmanship of the drip edge installation she observed on July 20, 2014, and stated that she contacted the Respondent regarding the problems. She testified that on July 21, 2014, the Respondent’s husband came to her home unannounced and demanded the remaining payment. She said he threatened her that his workers may tear off her roof if she did not pay. She explained that she had been home from work for lunch and needed to return to work. She stated that she did not feel safe and called police once she got to work. The Claimant said that because

the drip edge was such a mess she was concerned about the rest of the roof and noted that she had paid for a whole new roof with a warranty. The Claimant stated that Mr. Cusato inspected her roof on August 9, 2014 and that she sent his report to the Respondent. She said she asked the Respondent to replace the roof but that the Respondent wanted to fix the roof. The Claimant detailed her attempts to mediate and arbitrate the dispute with the Respondent, and stated that the Respondent did not comply with the mediation agreement or respond to her request for arbitration. The Claimant described finding water in her attic in October 2015 and stated that she hired Charis Contractors to install a new roof on her home, replacing the roof installed by the Respondent.

Mr. Cusato described the problems he saw when he inspected the Claimant's roof on August 9, 2014, which I detailed in the findings of fact above. His report included photographs of the problems. Mr. Cusato testified that there were extensive problems throughout the roof. He stated that the roof installed by the Respondent needed to be ripped off and a new roof installed. He explained that the way the roof was installed was not water tight and would not last thirty years. He stated that the nails that were nailed through the shingles would void the warranty on the shingles. He explained that the warranty would only be valid if the shingles were installed according to the manufacture's specifications, and that in this case the shingles were not installed properly. He estimated that repairing the roof would cost more than \$10,000.00, which is more expensive than ripping off the roof and starting over. He stated that the Charis Contractors' estimate was reasonable.

The Respondent testified that the problems with the drip edge were caused by the Claimant's request for a drip edge that they had not used before. She said that her husband told the Claimant that the drip edge she wanted would have to be cut down. She explained that her workers did not complete the drip edge that day because they ran out of material and that they

made some mistakes because they were not familiar with the drip edge. The Respondent stated that “we” asked to inspect the roof, but the Claimant did not want “us” to come out. The Respondent said that her husband offered to do it himself, but the Claimant said no. The Respondent stated that during mediation the Claimant wanted someone from CertainTeed higher up than a field representative to inspect the roof, but CertainTeed would not provide someone higher up. The Respondent said that she sent Mr. Cusato’s report to CertainTeed and that CertainTeed said that if the problems were localized the roof could be repaired. The Respondent testified that she kept asking the Claimant to allow “us” to inspect and repair the roof but that the Claimant refused. The Respondent stated that she communicated with the Claimant by email and phone calls and that her husband was on the job site and communicated with the Claimant directly. The Respondent claimed that her husband did not threaten the Claimant and that his statement was misconstrued. The Respondent said that after the mediation she asked CertainTeed for someone “higher up” to inspect the Claimant’s roof but that CertainTeed said no. The Respondent admitted that she did not communicate CertainTeed’s response to the Claimant and said that she did not have any communication with the Claimant since April 2015. The Respondent offered into evidence an email she received from Tim Seidl, Territory Manager, CertainTeed Roofing, which forwarded an email from Steve Hern, Field Technical Manager, CertainTeed Roofing. Mr. Hern’s email states:

I have reviewed the report you forwarded to me. Clearly, there are items that are in need of remediation in order to bring this roof up to industry standards and CertainTeed application protocols.

I cannot tell from the report if these deficiencies are widespread or localized. For instance, if only a few shingles were overlapped on their end joints, I would suggest repairing those particular shingles. If, however, this condition exists on the entire roof, the contractor might find it more expeditious to replace all the shingles.

Flashing is an important component of a roof system. It is critical to install step flashing and headwall flashing in accordance with the application instructions shown on each bundle of *Landmark* shingles to prevent leaks.

Mechanical damage (scuffing) to shingles will displace granules and thus shorten the life expectancy of those shingles. If this occurred in localized areas, then the roofer might consider replacing those shingles which exhibit this condition.

The decision to repair or replace is an economic and aesthetic decision and is dependent upon the extent of the work to be done.

Resp. Ex. 1.

The Respondent's husband testified that the Claimant's roof could be repaired in one to two days. He claimed that Mr. Cusato's report was exaggerated. He agreed that his workers did a bad job installing the drip edge but claimed that this was because the Claimant wanted a 5 ½ inch drip edge even though he recommended a 3 ½ inch drip edge. He admitted his workers may have broken the gutter supports. He claimed the flashing and the shingle exposure were acceptable. He agreed the shingles were scarred but asserted this was unavoidable. He said that he could "pop" the nails in the shingles and the black tar would reseal itself. He agreed that his workers probably did a lot of damage trying to install the drip edge. He denied the water and ice shield was missing. He complained that the Claimant stopped payment on her last \$4,000.00 check. He admitted telling the Claimant that his workers might rip her roof off. He stated that "those guys have done it before." He said his workers' checks were going to bounce because the Claimant stopped payment on her check. He claimed that he was not threatening the Claimant or trying to upset her.

I agree with the Claimant that the Respondent's husband's statement that the workers might rip her roof off was a direct threat. The Respondent and her husband are responsible for paying their workers and their responsibility to their workers is independent of whether a customer pays for the work performed. The Respondent and/or her workers have other means to obtain payment owed to them, but they may not rip off someone's roof or threaten to do so.

Obtaining money through force or threats is known as extortion. Further, I found the Respondent's husband's testimony revealing. He was very dismissive of the Claimant and Mr. Cusato. At one point during the hearing, the Respondent's husband said the Claimant "seems to be an unstable person." At another point, he described the Claimant as "not being rational at all." The Respondent's husband also minimized his own behavior, claiming his threat was an acceptable way to conduct business. Moreover, the Respondent's husband's demeanor was aggressive and hostile. As a result, I find the Respondent's husband's testimony lacked credibility and was self-serving.

In contrast, I found the Claimant to be reasonable and credible in her testimony. Her statements were consistent with the documents in evidence and Mr. Cusato's testimony and report. She understandably did not trust the Respondent's offers to repair the roof. The Claimant was under no obligation to allow the Respondent's husband to return to her property after he threatened her. Also, the Respondent failed to communicate at all with the Claimant after the April 2015 mediation. Thus, I find that the Claimant did not unreasonably reject the Respondent's offer of repair. Further, I find that the Respondent failed to comply with the mediation agreement and refused the Claimant's offer of arbitration.

In addition, I find that Mr. Hern's letter is consistent with Mr. Cusato's testimony, namely, that the shingles and flashing needed repair and that replacing all the shingles would be more expeditious to repair widespread deficiencies. Mr. Hern stated in his letter that he could not tell from the report if the deficiencies were widespread or localized. I am not sure why Mr. Hern said he could not tell. In his report Mr. Cusato stated that "all" the starter shingles were loose, a "majority" of the nails were not installed correctly, "most" of the shingles were installed improperly, and "approximately 25%" of the shingles were scarred and damaged. Cl. Ex. 3. I find the deficiencies described in Mr. Cusato's report are widespread. Thus, complete

replacement of the roof was warranted. Therefore, I find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 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. 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).

The Claimant's actual loss is calculated as follows:

Amount paid to the Respondent	\$4,300.00
Cost to repair the work	<u>+6,100.00</u>
	10,400.00
Original contract price	<u>-6,500.00</u>
Actual loss	\$3,900.00

Pursuant to the Business Regulation Article, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(1), (5). The Claimant paid \$4,300.00 to the Respondent, which is greater than her actual loss of \$3,900.00 computed using the formula in

COMAR 09.08.03.03(c). Accordingly, the Claimant is entitled to reimbursement of \$3,900.00. Md. Code Ann., Bus. Reg. § 8-405 (e)(5).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$3,900.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,900.00; 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;³ and

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

February 16, 2016
Date Decision Issued

Signature on File 

Lorraine E. Fraser
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 18th day of March, 2016, 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