

IN THE MATTER OF THE CLAIM
OF DAVID NORRIS and ELLEN
NORRIS,

CLAIMANTS,

AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF JACK WALKER,
T/A HOME PRO ROOFING &
REMODELING LLC,

RESPONDENT

* BEFORE M. TERESA GARLAND,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

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* OAH No.: DLR-HIC-02-17-06449

* MHIC No.: 16 (05) 1371

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On December 22, 2016, David and Ellen Norris (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$17,763.00 in alleged actual losses suffered as a result of a home improvement contract with Jack Walker, trading as Home Pro Roofing & Remodeling LLC (Respondent).

I held a hearing on July 25, 2017, at the Prince Georges' County Office Building, 1400 McCormick Drive, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). Claimant E. Norris represented herself and her husband. Andrew J. Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting more than twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.¹

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 & Supp. 2016); 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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimants' behalf:

Clmt. Ex. 1 - Home Pro work proposal (5 pages)

Clmt. Ex. 2 - Home Pro receipts for payments of \$1950.00 on March 18, April 6, and April 28, 2016 (3 pages)

¹ Notice of the hearing was mailed to the Respondent at his address of record on Priest Bridge Court in Crofton, Maryland, by regular and certified mail on June 23, 2017. COMAR 09.08.03.03A(2). Both mailings were returned to the Office of Administrative Hearings as undeliverable. A prior notice was mailed to another address of record on Eastham Court in Crofton by regular and certified mail on March 29, 2017. The prior notice also was returned as undeliverable. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

Clmt. Ex. 3 - Permit History printout

Clmt. Ex. 4 - Email correspondence between Claimant E. Norris and Respondent, May 4, 2016 through June 6, 2016 (12 pages)

Clmt. Ex. 5 - Two color photographs of roof (2 pages)

Clmt. Ex. 6 - Letter to Claimant D. Norris from State Farm Claims, May 10, 2016

Clmt. Ex. 7 - Angler Carpentry Project Proposal, October 12, 2016 (4 pages)

Clmt. Ex. 8 - Color exterior photographs (patio and patio cover in various states of construction, siding) and interior photographs (leaks, seepage, stains) (22 pages)

Clmt. Ex. 9 - Timeline: March 12, 2016 to November 2016 (3 pages)

The Respondent did not appear and submitted no exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, February 28, 2017 (2 pages)

Fund Ex. 2 - Notice of Hearing, June 23, 2017 (2 pages)

Fund Ex. 3 - Copy of certified mail receipt and envelope postmarked June 23, 2017

Fund Ex. 4 - Notice of Hearing, March 29, 2017 (2 pages)

Fund Ex. 5 - Copy of certified mail receipt and envelope postmarked March 29, 2017

Fund Ex. 6 - Letter to Respondent from Kevin Niebuhr, MHIC, January 6, 2017, attaching Home Improvement Claim Form, December 19, 2016 (2 pages)

Fund Ex. 7 - MHIC I.D. Registration and License History printouts, all dated June 21, 2017 (3 pages)

Fund Ex. 8 - Affidavit of K. Niebuhr, MHIC, June 22, 2017, attaching copy of Driving Record Information printout dated June 22, 2017 (2 pages)

Testimony

The Claimants testified in their own behalf.

The Respondent failed to appear and was not represented.

No witnesses testified on behalf of the Fund.

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 *3304 (September 2, 2014 through September 29, 2016) and/or MHIC license number *1563 (June 12, 2015 through September 29, 2016).
2. On or before March 18, 2016,² the Claimants and the Respondent entered into a contract for demolition of an existing patio roof and construction of a new roof over a patio.
3. The original agreed-upon contract price was \$5,850.00.
4. On March 18, 2016, April 6, 2016 and April 28, 2016 the Claimants paid the Respondent \$1,950.00.
5. The Respondent began work on or about April 6, 2016.
6. On April 9, 2016, water began to leak into the Claimants' home through a sliding glass door on the patio where construction was occurring. The Respondent installed a tarp to ameliorate the water leakage.
7. Approximately one week later, the water leak began again. The Respondent attempted to rectify the leak by caulking a seam in the Claimants' roof.
8. On or about April 30, 2016, water damaged appeared on the ceilings of the Claimants' back room, adjacent to the patio. The Respondent sent an employee to investigate the source of the leak. After the employee cut a hole in the ceiling, he could not determine the source of the leak.

² The printed date on the unsigned contract is March 14, but the first payment is dated March 18. Compare Cl. Ex. 1 at 4 with Cl. Ex. 2 at 1.

9. On May 2, 2016, during a rain storm, water entered the Claimants' home again through the patio's sliding glass door, as well as through the hole in the ceiling previously created by Respondent's employee.

10. On May 3, 2016, the Respondent dispatched another employee to the Claimant's home to investigate the source of the water infiltration into the Claimants' home. This time, the employee was able to identify the cause of the leak and repair it. The cause of the leak was related to the Respondent's work.

11. The Claimant's filed an insurance claim for the water damage caused by the Respondent's poor workmanship.

12. With the exception of sending workers to the Claimants' home related to water leakage, the Respondent stopped work on the Claimants' contract on or about April 26, 2016.

13. When the Respondent stopped work on the Claimants' contract, the following items were incomplete or unworkmanlike (Clmt. Ex. 8):

- There was a visible gap between the patio roof support post and the house;
- There was an exposed beam, installed by the Respondent, above the sliding glass door on the patio;
- The support beams were composed of untreated lumber;
- Siding removed was never replaced, leaving exposed wood;
- The Respondent's employee cut a hole in an interior ceiling, which was not repaired;
- Soffits on the underside of the patio roof began buckling;
- The Respondent did not obtain any of the required building permits.

14. Between May 4, 2016 and June 6, 2016, the Claimants made multiple requests of the Respondent, via telephone calls and emails, to repair defective work and complete unfinished work. (Clmt. Ex. 4). After June 6, 2016, all communication with the Respondent ceased.

15. The Claimants obtained an estimate of \$11,913.00 to demolish the patio roof constructed by the Respondent, obtain required building permits and complete a new roof.

16. The Claimants' actual loss is \$11,913.00..

DISCUSSION

In this case, the Claimants have the burden of proving the validity of their claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).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.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);⁴ *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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimants have proven eligibility for compensation.

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

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. The undisputed testimony of the Claimants, buttressed by photographs, depicts siding removed from the side of the Claimants' home and never replaced, leaving bare wood exposed to the elements; exposed, untreated wood beams; visible gaps between the rear support

³ As noted above, “COMAR” refers to the Code of Maryland Regulations.

⁴ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

beams and the house, and soffit on the ceiling of the porch roof which warped and buckled. (Cl. Ex. 8).

The Claimants contacted the Respondent on numerous occasions to voice their displeasure with the Respondent's incomplete work after the Respondent had declared that the project was complete. When the Respondent began to react angrily to their phone calls, the Claimants resorted to emailing the Respondent. The Claimants sent the Respondent six emails over the course of a month, to which he or an employee of his responded. (Cl. Ex. 4). Initially, the Respondent's responses⁵ were that he was awaiting the arrival of the siding. At some point, when the Claimants discovered that the Respondent had not obtained the necessary building permits for the construction of the patio roof, the Respondent's email responses included his alleged efforts to obtain the building permits. The Respondent failed to respond to any emails or phone calls made to him by the Claimants after June 6, 2016.

As a result of the Respondent's unworkmanlike and incomplete home improvement, the Claimants solicited other contractors to complete or repair the Respondent's work. The Claimants testified credibly that, due to the poor quality of the Respondent's work, as well as the fact that the Respondent failed to obtain the required building permits for the construction of the patio roof, no contractor they contacted would "repair" the Respondent's work. It had to be demolished and the patio roof reconstructed. The Claimants obtained an estimate of \$11,913.00 from Angler Carpentry to demolish the patio roof constructed by the Respondent, obtain required building permits and complete a new roof. (Clmt. Ex. 7).

⁵ The Claimants' emails were responded to by the Respondent, and JT Head and Mary Cates, Respondent's employees.

I thus find that the Claimants are 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 Claimants are 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).⁶ 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).

Applying the above formula, the calculation of the Claimant's actual damages is as follows:

Amount Paid to Respondent:		\$5,850.00
Cost to Replace:	+	<u>\$11,913.00</u>
	=	\$17,763.00
Original Contract	-	<u>\$5,850.00</u>
Actual Damages	=	<u>\$11,913.00</u>

Pursuant to the applicable law, 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 Claimants to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015).

⁶ The water damage the Claimants' home sustained as a result of the water leakage attributed to the Respondent's work was consequential damage for which the Claimants submitted an insurance claim.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimants have sustained an actual and compensable loss \$11,913.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$11,913.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;⁷ and

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

Signature on File

October 13, 2017
Date Decision Issued

M. Teresa Garland
Administrative Law Judge

nd/jn

MTG/sw
169157

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**IN THE MATTER OF THE CLAIM
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AGAINST THE MARYLAND HOME
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FOR THE ACTS OR OMISSIONS
OF JACK WALKER
t/a HOME PRO ROOFING &
REMODELING LLC**

**MARYLAND HOME IMPROVEMENT
COMMISSION**

**MHIC CASE NO. 16(05)1371
OAH CASE NO. DLR-HIC-02-17-06449**

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PROPOSED ORDER

WHEREFORE, this 7th day of December, 2017, Panel B of the Maryland Home

Improvement Commission ORDERS that:

- 1) The Findings of Fact of the Administrative Law Judge are Affirmed.**
- 2) The Conclusions of Law of the Administrative Law Judge are Amended as follows and otherwise Affirmed:**
 - A) The Commission finds that the Administrative Law Judge failed to reduce the recommended award of \$11,913.00 down to the amount paid to the Respondent, \$5,850.00. Pursuant to Maryland Code Annotated, Business Regulation Article, § 8-405(e), the maximum recovery from the Guaranty Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the claimant to the respondent. In addition, pursuant to Code of Maryland Regulations (“COMAR”) 09.08.03.03(B)(4) the Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed. Therefore, the Claimants’ award must be reduced to the amount they paid to the contractor, \$5,850.00**
- 3) The Recommended Order of the Administrative Law Judge is Amended as follows and otherwise Affirmed:**
 - A) Pursuant to Maryland Annotated Code, Business Regulation Article, § 8-405(e), and COMAR 09.08.03.03(B)(4), the Claimants are awarded \$5,850.00.**

- 4) **Unless any party 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, any party then has an additional thirty (30) day period during which they may file a petition for judicial review to Circuit Court.**

Joseph Tunney
Chairperson –Panel B
Maryland Home Improvement
Commission