

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Howard Rittenberg
Petitioner

v.

Maryland Home Improvement
Commission
Respondent

Case No: 433853-V

ORDER

Upon review of the Petitioner's Request for Judicial Review of Final Order of the Maryland Home Improvement Commission, any opposition and support thereto, and a hearing having been held in this matter, it is this 25 day of April, 2018, by the Circuit Court for Montgomery County hereby:

ORDERED, Petitioner's Request for Remand of Final Order of the Maryland Home Improvement Commission is hereby DENIED; and it is further

ORDERED, the Final Order of the Maryland Home Improvement Commission in this matter is hereby AFFIRMED.

Signature on File

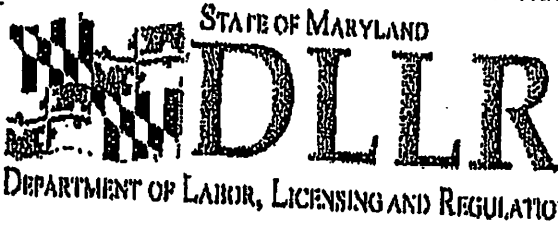
Judge David A. Boynton
Circuit Court for
Montgomery County Maryland

ENTERED

APR 27 2018
Clerk of the Circuit Court
Montgomery County, Md.

Office of Attorney General
RECEIVED

APR 30 2018



DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
 MARYLAND HOME IMPROVEMENT COMMISSION
 500 N. Calvert Street, Room 306
 Baltimore, MD 21202-3651

The Maryland Home
 Improvement Commission

v. Howard Rittenberg
 t/a Roofmasters
 (Contractor)
 and the Claim of
 Charles Gant
 (Claimant)

* BEFORE THE
 * MARYLAND HOME IMPROVEMENT
 * COMMISSION
 *
 * MHIC No.: 16 (75) 535
 *
 *

FINAL ORDER

WHEREFORE, this 8th day of June 2017, Panel B of the Maryland Home Improvement Commission ORDERS that:

1. The Findings of Fact set forth in the Proposed Order dated January 27, 2017 are **AFFIRMED.**
2. The Conclusions of Law set forth in the Proposed Order dated January 27, 2017 are **AFFIRMED.**
3. The Proposed Order dated January 27, 2017 is **AFFIRMED.**
4. This Final Order shall become effective thirty (30) days from this date.
5. 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

PHONE: 410-230-6309 • FAX: 410-962-8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE
 INTERNET: WWW.DLLR.MARYLAND.GOV • E-MAIL: DLOPLMHIC-DLLR@MARYLAND.GOV

LARRY HOGAN, GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY

IN THE MATTER OF THE CLAIM	* BEFORE NEILE S. FRIEDMAN,
OF CHARLES GANT,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: DLR-HIC-02-16-21533
FOR THE ALLEGED ACTS OR	* MHIC No.: 16 (75) 535
OMISSIONS OF	*
HOWARD RITTENBERG t/a	*
ROOFMASTERS,	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On March 17, 2016, Charles Gant (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of alleged actual losses suffered as a result of a home improvement contract with Howard Rittenberg t/a Roofmasters (Respondent).

I held a hearing on October 27, 2016, at the Largo Government Center, 9201 Basil Court, Largo, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant was

represented by Elizabeth D. MacCay, Esq. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent did not appear after proper notice.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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); Code of Maryland Regulations (COMAR) 09.08.02.01B; 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 Claimant's behalf:

1. Contract, March 13, 2015
2. Photograph
3. Photograph
4. Copy of check, March 16, 2015
5. Copy of check, August 7, 2015
6. Roof Inspection Report, undated
7. Proposal, February 18, 2016
8. Proposal, January 28, 2016

I admitted the following exhibits that the Fund offered:

1. The Respondent's licensing history
2. Home Improvement Claim Form, March 7, 2016
3. Letter from MHIC to the Respondent, March 29, 2016

Testimony

The Claimant testified and called as a witness Pauline Joyner, his fiancé.

The Fund called no 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 50664.
2. The Claimant is not the Respondent's spouse or other immediate relative; the Respondent's employee, officer, or partner; or an immediate relative of the Respondent's employee, officer, or partner.
3. On November 26, 2014, the Claimant entered into a contract with the Respondent to replace the roof on his residence, located in Capitol Heights, Maryland. The contract price was \$17,868.00,¹ of which \$10,000.00 was to be paid as a deposit upon approval of the contract, and the balance, \$7,868.00, was to be financed by Enerbank, a bank that finances construction projects. Under the terms of the financing, the Claimant was to pay the bank \$143.97 for 36 months.
4. The scope of work involved the tearing down, to the substructure, of the existing roof and replacing it with a new roof. Some sections of the existing plywood, which supported

¹ The original contract price was \$15,183.00, but the price increased due to later verbal change orders in that more plywood and facing was needed. The additional amount was financed by the bank.

the roof's underlayment and shingles, would be re-used; where sections of plywood were not usable, they would be replaced.

5. On or about March 13, 2015, the Claimant paid the Respondent the deposit of \$10,000.00.

6. The Respondent started work on the roof on April 16, 2015; the work was completed on April 19, 2015.

7. Just after the work was completed, the Claimant noticed that parts of the roof were buckling and uneven instead of lying flat and smooth. The Claimant called the Respondent and complained about the buckling, and the Respondent came to inspect the roof on April 21, 2015. He told the Claimant that the buckling was normal and the roof would lay flat in a couple months due to the heat from the sun.

8. On July 3, 2015, with parts of the roof still buckling, the Respondent responded to the Claimant's many phone calls by coming out to inspect the roof. He told the Claimant that he needed to replace five more plywood sheets under the shingles. The Claimant paid the Respondent \$800.00, by check, for this work, which was completed on July 15, 2015.

9. Since July 2015, parts of the roof continue to be soft, wavy and buckled, and, with the exception of one phone call in which the Respondent offered to replace the roof if the Claimant would pay in full for materials and labor, the Respondent has not responded to the Claimant's numerous phone calls to address the matter.

10. The Respondent failed to use "H" clips to connect securely the new sheets of plywood on the substructure of the roof. These clips hold the pieces of plywood together so they do not shift and become unstable.

11. The shingles that the Respondent used on the Claimant's new roof are discontinued and unavailable.
12. The cost to replace the roof is \$8,715.00.
13. The Claimant's actual loss due to the Respondent's unworkmanlike home improvement is \$8,715.00.

DISCUSSION

The first issue is whether the Respondent, who did not appear for the hearing, was issued proper notice of the hearing. "If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter." Md. Code Ann., Bus. Reg. § 8-312(h) (2015). MHIC's regulations further state that the hearing may proceed in a respondent's absence if the respondent has been served and has not obtained a postponement. COMAR 09.01.02.09.

On July 20, 2016, the OAH issued notice to the Respondent at his address of record via first class and certified mail. The Respondent or someone on his behalf signed for the certified mail. The United States Postal Service did not return the first class mail as undeliverable. I find that the OAH issued proper notice. The Respondent did not request a postponement. I proceeded in the Respondent's absence.

Turning to the merits of case, 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.

The Claimant has the burden of proving the validity of his 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 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)). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant argued that the Respondent performed unworkmanlike, inadequate, or incomplete home improvement because he was hired to install a new roof that would be sturdy and have an overall attractive appearance. Instead the Respondent installed a roof that is, in part, soft, buckling, and uneven. In addition, the roof lacks “H” clips to tie many of the plywood pieces together. The Claimant testified credibly as to the buckling, uneven nature of parts of his new roof, and he provided photographs that corroborated his testimony. He also testified about the absence of “H” clips, which are supposed to connect securely the new sheets of plywood that form the substructure of the roof. These clips are used to hold the pieces of plywood together so they do not shift and become unstable. However, the Respondent did not use the clips—the Claimant presented photographs and explained that he can see the plywood that supports his roof from his attic, and the plywood sections that were newly installed by the Respondent lacked “H” clips, whereas the plywood sections that had not been replaced by the Respondent were connected by “H” clips.

I find that the Claimant’s testimony was compelling. He established that the Respondent was required by the Contract to install a new roof with a stable substructure and a uniform, smooth and level appearance. What he installed instead was an unstable substructure and a roof

that, in part, buckled and was wavy and uneven within just days of installation. In addition, the Respondent benefitted from his own failure to provide a stable substructure at the outset. After the job was completed, the Respondent charged the Claimant an additional \$800.00 to replace additional plywood when he was required at the outset to ascertain that the roof would be supported by a stable plywood substructure. Because the Respondent did not appear for the hearing, I infer that he does not dispute the Claimant's assertions.

For this and all of the reasons stated above, I find that the Claimant has met his burden of proof.

The MHIC may deny a claim if it finds that the "claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." Md. Code Ann., Bus. Reg. § 8-405(d) (2015). The Respondent offered to replace the roof only if the Claimant paid the full cost of labor and materials. I do not find that this was a good faith effort to resolve the claim. The Respondent never made any repairs and stopped communicating with the Claimant.

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). Of the three, 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 obtained two estimates from Braxx Roofing, which recommends replacing the roof in its entirety—not just the wavy, buckling parts. This is because the shingles that the Respondent used on the roof are no longer available, and so all new shingles must be installed. One estimate, to install new shingles over the existing substructure, is for \$5,875.00. The second estimate of \$8,715.00 is to remove the existing shingles and underlayment down to the substrate, address issues with the substrate, and then install a new roof. The Claimant asserts, and the Fund agrees, and I find, that the larger estimate is more appropriate because removing materials down to the substrate, and then ensuring that the substrate is stable, is what the Claimant had contracted for in the first place. Based on the Braxx estimate, and in accordance with COMAR 09.08.03.03B(3)(c), the Claimant's loss is calculated as follows:

Amount paid to Respondent under original contract	\$18,668.00 ²
+ Reasonable amount to repair	<u>\$8,715.00</u>
TOTAL	\$27,383.00
- Less the original contract price	<u>\$18,668.00</u>
TOTAL/ACTUAL LOSS	\$8,715.00

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,715.00 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).

² This includes the original contract price of \$17,868.00 plus \$800.00 to install new plywood substrate in July 2015.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,715.00; 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 Maryland Home Improvement Guaranty Fund grant the Claimant's claim; and

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

Signature on File

November 18, 2016
Date Decision Issued

Nelle S. Friedman
Administrative Law Judge

NSF/sm
#165204

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

PROPOSED ORDER

WHEREFORE, this 27th day of January, 2017, 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.

Michael Shilling

***Michael Shilling
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION