

**IN THE MATTER OF THE CLAIM
OF ROBERT D'ANGELO,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DANIEL ADAMSKI,
T/A REGAL CONSTRUCTION,
RESPONDENT**

*** BEFORE GERALDINE A. KLAUBER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-17-25209
* MHIC No.: 17 (90) 520**

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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
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DISCUSSION
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STATEMENT OF THE CASE

On January 18, 2017, Robert D'Angelo (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$27,750.00 in actual losses allegedly suffered as a result of a home improvement contract with Daniel Adamski, trading as Regal Construction (Respondent).

I held a hearing on January 19, 2018 at the Bel Air Branch of the Harford County Public Library, Bel Air, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Kris King, Assistant Attorney General, Department of Labor, Licensing,

and Regulation (Department), represented the Fund. Marc Minkove, Esquire, represented the Respondent.

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. 2017); Code of Maryland Regulations (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:

- Clmt. Ex. 1 - Photograph of skylight
- Clmt. Ex. 2 - Photograph of great room skylight
- Clmt. Ex. 3 - Photograph of den ceiling
- Clmt. Ex. 4 - Photograph of foyer interior wall as it appeared in January 2017
- Clmt. Ex. 5 - Photograph of foyer interior wall as it appeared in January 2018
- Clmt. Ex. 6 - Photograph of hole in garage roof
- Clmt. Ex. 7 - Photograph of hole in garage roof
- Clmt. Ex. 8 - NextGen Home Improvement LLC estimate, December 31, 2106

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

- Resp. Ex. 1 - Encompass National Catastrophe Center Real Property Claim Report
- Resp. Ex. 2 - Allside invoice, June 9, 2016

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of Hearing, October 19, 2017.
- Fund Ex. 2 - Hearing Order, August 8, 2017
- Fund Ex. 3 - MHIC Respondent's licensing history
- Fund Ex. 4 - Home Improvement Claim Form, January 11, 2017
- Fund Ex. 5 - Notice of Claim to Respondent from MHIC, January 27, 2017
- Fund Ex. 6 - Sketch of Claimant's home
- Fund Ex. 7 - Checks from Claimant made payable to Respondent in amount of \$5,000.00, June 9, 2016 and April 4, 2014

Testimony

The Claimant testified in his own behalf and presented the testimony of Elizabeth D'Angelo, his wife.

The Respondent testified in his own behalf.

The Fund did not offer any 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 through the MHIC.
2. The Respondent and the Claimant have known each other socially for over twenty-five years.
3. In February 2014, the Claimant's home located at 3107 Preakness Drive, Fallston, Maryland sustained roof damage during an ice storm.
4. The Claimant filed a claim with his homeowner's insurance company, Encompass, for the damage sustained during the ice storm. On February 24, 2014, Encompass inspected the damage and prepared a report.

5. The Respondent was present with the Claimant during the inspection by Encompass.
6. Encompass estimated \$462.88 for repair of the roof to the main dwelling and \$1,357.91 for repair to the garage roof.¹
7. In April 2014, the Claimant entered into an oral contract with the Respondent for the replacement of the roof shingles and the installation of new plywood in areas where necessary.
8. On April 4, 2014, the Claimant paid the Respondent \$2,900.00 toward the roof replacement.²
9. In April 2014, the Respondent patched a hole in the roof of the Claimant's garage.
10. Between April 2014 and June 2016, the Claimant and the Respondent had discussions about the replacement of the roof and the price, but no work was performed.
11. In June 2016, the Claimant and the Respondent reached an agreed upon price of \$7,900.00 to replace the roof.
12. In June 2016, the Claimant paid the Respondent the balance of the contract price.
13. The Respondent started work on the roof at the end of June 2016.
14. In July 2016, the Claimant noticed leaks in the roof around the skylight in the great room, the foyer wall.
15. The Claimant contacted the Respondent in July 2016 and notified him about the leaking skylight.
16. The Respondent repaired a leak in the skylight that was caused by deterioration and age.

¹ The garage is attached to the main dwelling.

² The Claimant gave the Respondent a \$5,000.00 check. The Claimant and Respondent agreed that \$2,100.00 would be applied to the cost of the Respondent's clean-up of the Claimant's yard.

17. Several weeks after repair of the skylight, the Respondent received a call from the Claimant regarding other concerns with the roof, including what the Claimant described as waves in the shingles.

18. The Respondent did no further repairs to the roof.

19. In December 2016, the Claimant obtained a proposal from NextGen Home Improvement LLC (NextGen) for replacement of the roof. NextGen's proposal included removal and replacement of the shingles, installation of new felt paper and drip edge, installation of flashing around skylights and where the garage meets the roof of the main dwelling over the entrance foyer.

20. NextGen's proposal for replacement of the roof was \$16,800 plus \$3,500.00 for the replacement of the plywood.

DISCUSSION

In this case, 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).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

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 of the Maryland Annotated Code.

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 Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Claimant and the Respondent have known each other for twenty-five years and the Respondent has performed various jobs for the Claimant over the years. In February 2014, the Claimant's home, including the roof, sustained damage from an ice storm. The Claimant contacted the Respondent about the possibility of him installing a new roof. The Respondent agreed to meet with the Claimant and the adjuster from the Claimant's insurance company, Encompass, to review the damage. Encompass estimated that it would cost \$462.88 to repair the area of the roof that was damaged where tree limbs fell and \$1,357.91 to repair the garage roof. According to the Claimant, the Respondent agreed to replace the shingles and plywood on the roof for \$7,900.00. The Respondent completed the work in June 2016. According to the Claimant, the Respondent did not replace any plywood on the roof and several weeks after the work was completed he noticed leaks. The Respondent stated that he would come back to see about the reported issues but he never returned.

In response to the Claimant's case, the Respondent testified that after the ice storm, as a favor to the Claimant, he met with the Claimant and the insurance company adjuster to review the damage to the property. The adjuster assessed damage to the roof of the home, including the attached garage, and agreed to provide the Claimant with compensation for partial replacement of the roof. The Respondent testified that although he did not plan to make any money off of the job, the Claimant wanted the entire roof replaced and he had to explain to the Claimant that he could not replace the roof with the amount of money the insurance company was allotting for

roof repair.⁵ In April 2014, the Claimant paid him \$5,000.00, \$2,900.00 of which was applied toward roof work and \$2,100.00 was applied toward clean-up of the Claimant's yard. Shortly after receiving the money from the Claimant, he patched a hole in the garage roof. The Respondent explained that no other work was performed on the roof between April 2014 and June 2016, but discussions were had between him and the Claimant. According to the Respondent, he ultimately agreed, as a favor to the Claimant, to replace all of the shingles and the plywood in areas where necessary for the price of \$7,900.00. He completed replacement of the shingles and the installation of five sheets of plywood, at the end of June 2016. The Respondent confirmed that approximately one week later, the Claimant contacted him about a leak in the skylight, but no other leaks. The Respondent explained that the leak was caused by the deterioration of the skylight and he repaired it. Approximately three weeks later, he received another call from the Claimant about additional concerns with the roof, including what the Claimant thought looked like waviness in the shingles and peaks rising up from the roof. The Respondent explained to the Claimant what he was seeing was due to the existing structure of the roof not his work and he could not do anything to correct it. The Respondent testified that the water damage as depicted in the Claimant's photographs existed prior to his work and was due to the age and deterioration of the roof.

For the following reasons, I conclude that the Claimant has failed to meet his burden and establish that he is eligible for reimbursement from the Fund. The Claimant is seeking reimbursement from the Fund in the amount of \$27,750.00 for the Respondent's alleged unworkmanlike installation of the roof. The Claimant asserted that the roof was leaking after the Respondent performed his work, but he offered no evidence to support his assertion that the

⁵ The Claimant received \$11,400.00 in settlement of his claim for the interior and exterior damage to the home. The Claimant wanted to have all the repairs completed, including replacement of the roof out of those funds.

Respondent was responsible for the leaks. The only evidence he offered to support his claim was his testimony and photographs he took approximately one year ago that purportedly depicted water damage due to the leaky roof. The photographs taken by the Claimant depict water damage near the skylight in the great room, water stains on the den ceiling and water stains on the foyer wall. There was no testimony that these leaks and the ensuing damage occurred only after the work done by the Respondent. The Claimant offered no photographs regarding his complaint of the wavy shingles. Additionally, the Claimant offered no evidence, via either expert testimony or report, that the Respondent's work was inadequate, incomplete or unworkmanlike.

The Claimant testified that the Respondent did not install plywood as he represented because he did not see it installed and there was plywood piled up against the home after the job was completed. The oral contract called for the installation of plywood where necessary and the Respondent testified that five sheets were installed. The fact that the Claimant saw remaining plywood at the end of the job does not establish that the Respondent failed to perform work called for in the contract.

The Claimant submitted a proposal from a licensed contractor, NextGen, in support of his claim. The proposal is for replacement of the roof, including installation of new plywood, felt paper, new drip edge and flashing. The proposal includes work outside of the scope of the agreement between the Claimant and the Respondent and does not reflect that any of the work was necessary in order to remedy unworkmanlike, inadequate or incomplete home improvements performed by the Respondent. I thus find that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of \$ 27,750.00 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 deny the Claimant's claim; and

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

Signature on File

February 16, 2018
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/sw
171906

PROPOSED ORDER

WHEREFORE, this 12th day of April, 2018, 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.

Bruce Quackenbush

***Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION