

**IN THE MATTER OF THE CLAIM \* BEFORE TAMEIKA LUNN-EXINOR,**  
**OF NEVADA WILLIAMS \* AN ADMINISTRATIVE LAW JUDGE**  
**AGAINST THE MARYLAND HOME \* OF THE MARYLAND OFFICE**  
**IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS**  
**FOR THE ALLEGED ACTS OR \* OAH NO.: DLR-HIC-02-10-35739**  
**OMISSIONS OF \* MHIC NO.: 09 (75) 1742**  
**RICHARD TADLOCK, T/A \***  
**RICHARD TADLOCK \***

\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
 ISSUE  
 SUMMARY OF THE EVIDENCE  
 FINDINGS OF FACT  
 DISCUSSION  
 CONCLUSIONS OF LAW  
 RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On January 5, 2010, Nevada Williams (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$15,272.62 for actual losses allegedly suffered as a result of a home improvement contract with Richard Tadlock t/a Richard Tadlock (Respondent).

I held a hearing on March 16, 2011 at the Largo Government Center, 9201 Basil Court, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent failed to appear for

the hearing after proper notice was sent to all addresses of record, and I proceeded to conduct the hearing in his absence. COMAR 28.02.01.23A.

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. 2010), Code of Maryland Regulations (COMAR) 09.01.03.01-09.01.03.10; 09.08.02.01; and 28.02.01.01-28.02.01.27.

### **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**

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

- Claimant Ex. #1 - Construction Contract between Claimant and the Respondent dated October 20, 2008
- Claimant Ex. #2 - Construction Drawings and Specifications for the Williams Residence prepared by Brittany Homes, Inc.
- Claimant Ex. #3 - Various payment documents from Nevada Williams
- 3A - \$1,000.00 cancelled check dated October 14, 2008
  - 3B - \$11,320.00 cancelled check dated October 20, 2008
  - 3C - \$6,160.00 cancelled check dated November 26, 2008
  - 3D - \$6,160.00 cancelled check dated December 5, 2008
  - 3E - \$6,160.00 cancelled check dated December 8, 2008
  - 3F - \$6,160.00 cancelled check dated December 18, 2008
  - 3G - \$6,160.00 cancelled check dated December 18, 2008
  - 3H - \$700.00 change order
  - 3I - \$6,860.00 cancelled check dated February 11, 2009
  - 3J - \$6,160.00 cancelled check dated February 25, 2009
  - 3K - Handwritten invoice in the amount of \$5,996.70

3L - \$1,351.00 cancelled check dated May 6, 2009  
 3M - \$600.00 cancelled check dated May 8, 2009  
 3N - Lowes Receipt totaling \$20.49  
 3O - Receipt for installation of headers for \$54.00  
 3P - \$662.74 cancelled check dated May 14, 2009  
 3Q - \$600.00 cancelled check dated May 15, 2009  
 3R - \$1,200.00 cancelled check dated May 20, 2009  
 3S - \$600.00 cancelled check dated May 27, 2009  
 3T - Various Home Depot Receipts totaling \$888.96  
 3U - Photos of a door frame

- Claimant Ex. #4 - Invoices and checks for additional work to complete the construction project totaling \$13,835.00
- Claimant Ex. #5 - Photos of the Williams' Construction Project from November 2008 – May 2009
- Claimant Ex. #6 - Photos of the Williams' Construction Project from October 2009 – November 2009
- Claimant Ex. #7 - Prince George's County Department of Environmental Resources Permits and Review Division - Certificate of Occupancy dated November 9, 2009

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

- Guaranty Fund Ex. #1 - Correspondence from OAH to Legal Services dated December 27, 2010 re: certified mail unclaimed for Respondent's Delaware address
- Guaranty Fund Ex. #2 - Correspondence from OAH to Legal Services dated November 29, 2010 re: certified and regular mail returned by postal service as undeliverable as addressed for Respondent's Virginia address
- Guaranty Fund Ex. #3 - DLLR Hearing Order dated September 17, 2010
- Guaranty Fund Ex. #4 - DLLR ID Registration, Home Improvement Commission Inquiry information for Respondent dated March 15, 2011
- Guaranty Fund Ex. #5 - Affidavit of Michael Miller, investigator with the MHIC dated December 8, 2010
- Guaranty Fund Ex. #6 - Home Improvement Claim Form dated January 5, 2010 with attachments
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The Respondent failed to appear and no exhibits were admitted for the Respondent.

Testimony

The Claimant testified on his own behalf.

The Fund did not present testimony.

The Respondent failed to appear and there was no testimony presented on his behalf.

**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 #3599868.
2. On October 20, 2008, the Claimant and the Respondent entered into a contract to construct a 588 square foot, one-story addition onto the Claimant's home according to construction plans.
3. The work under the contract began in November 2008 and was to be completed by May 2009.
4. Due to the winter weather, progress on the project slowed with sporadic construction work from February 2009 through May 2009.
5. The original agreed-upon contract price was \$61,600.00.
6. There was also a flooring allowance of \$1,600 given to the Respondent. The flooring was not completed by the Respondent.
7. On February 5, 2009, the Claimant and the Respondent agreed to a change order in the amount of \$700.00.
8. As of May 27, 2009, the Claimant paid the Respondent and Respondent's subcontractors a total of \$62,136.70.

9. The Respondent ceased work on the construction project in May 2009 and the project was not complete.
10. In May 2009, the Claimant tried to make contact with the Respondent via email, telephone and certified mail with no response. The Respondent's subcontractors were unpaid and could not make contact with the Respondent.
11. The cost to complete the construction project was \$13,835.00.
12. The Claimant's actual loss is \$15,272.40.

### 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) (2010). *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). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent became a licensed home improvement contractor in Maryland in 2005. The Respondent's most recent license was obtained on September 10, 2007, license number 3599868. This license expired on September 16, 2009 and no further licenses were issued.

Second, the Respondent performed incomplete home improvement. The Claimant testified that he contracted with Richard Tadlock to construct a 588 square foot addition to his home. The Claimant found the contractor on Angie's List, a website used by the public to locate contractors, laborers, repairmen, etc. The contract was entered into on October 20, 2008 in the

amount of \$61,600.00. A change order was approved in February 2009 for an additional \$700.00 which increased the contract price to \$62,300.00. The contracted work was supposed to take five months. The Claimant testified that the contractor began work on the project in November 2008 and worked daily from November 2008 until February 2009. Due to the winter weather, progress on the project slowed with sporadic construction work from February 2009 through May 2009. The Claimant testified that the Respondent failed to return to the house to complete the project in May 2009. The last communication Claimant had with the Respondent was on the Friday before Memorial Day 2009. The Claimant tried to make contact with the Respondent via email, telephone and certified mail with no response. The Respondent had subcontractors working on the project in May 2009 so the Claimant asked the subcontractors if they had any contact with the Respondent. The subcontractors informed the Claimant that the Respondent owed them money and they could not contact him.

The contract between the parties had a payment schedule and the Claimant testified that he paid ahead of schedule. The Claimant also testified that the Respondent never argued that money was owed him in order to complete the work. The Claimant paid the Respondent a total of \$62,136.70 and the total contract price was \$62,300.00. The Claimant testified that any time the Respondent requested payments, he gave Respondent the requested amount of money and almost paid the contract in full when the Respondent disappeared.

The Respondent failed to respond to any of the Claimant's attempts to make contact after May 2009. The Claimant testified that the following work was incomplete: gutters, downspouts, back fill of dirt, flooring, baseboards, trim, electrical work, plumbing work and HVAC work. In October 2009, the Claimant hired GPC Electric, Rush Evans, Stephen P. Farmer and Beltway Plumbing to complete the construction project. The price the Claimant paid to complete the

work abandoned by the Respondent was \$13,835.00. The Contract with the Respondent also included a \$1,600 flooring allowance and the flooring was not completed by the Respondent. The Claimant testified that he spent more than \$1,600 on his flooring but he is only including the contract amount as actual loss.

The Claimant did not present expert testimony regarding the status of the construction project once the Respondent abandoned the work. However, the Claimant did provide estimates from the contractors who completed the work as well a photo timeline which clearly shows the work performed by the Respondent and what was left undone once the Respondent left. This project was scheduled to be completed in May 2009, but the Claimant did not receive a certificate of occupancy until November 2009. There was a six month delay on the project due to the Respondent's actions.

Counsel for the Fund agreed that this was a case of contractor abandonment and that the Claimant met his burden.

Having found eligibility 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). The MHIC's regulations offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement 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, I calculated the Claimant’s actual loss as follows:

1) Amount Claimant paid under the original contract -	\$ 62,136.70
2) Plus amount paid for another contractor to repair -	+ <u>\$ 13,835.70</u>
3) Total -	\$ 75,972.40
4) Minus original contract price -	- <u>\$ 62,300.00</u>
5) Total -	\$ 13,672.40
6) Flooring Allowance -	+ <u>\$ 1,600.00</u>
7) <b>Total Actual Loss -</b>	<b>\$ 15,272.40</b>

The maximum amount recoverable from the Fund is \$20,000.00. Md. Code Ann., Bus.

Reg. § 8-405(e)(1) (2010).

### CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$15,272.40 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

### RECOMMENDED ORDER

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


**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,272.40; 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 as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and



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

June 6, 2011  
Date Decision mailed

  
Faniarka Lunn-Exnor  
Administrative Law Judge

TLE/kkc  
# 123434

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**FILE EXHIBIT LIST**

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The Respondent failed to appear and no exhibits were admitted for the Respondent.

PROPOSED ORDER

*WHEREFORE, this 5th day of August 2011, 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.*

*J. Jean White*

*I. Jean White  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**