

IN THE MATTER OF THE CLAIM \* BEFORE JAMES W. POWER,  
OF GINA GLADIS AGAINST THE \* AN ADMINISTRATIVE LAW JUDGE  
MARYLAND HOME \* OF THE MARYLAND OFFICE  
IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS  
FOR THE VIOLATIONS OF \* OAH NO.: DLR-HIC-02-09-34627  
THOMAS HARRIGAN, T/A \* MHIC NO.: 07 (75) 1160  
AQUATEK IRRIGATION & \*  
LANDSCAPING \*

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On September 25, 2008, Gina Gladis (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,375.00 for actual losses suffered as a result of the acts or omissions made by Thomas Harrigan, v/a Aquatek Irrigation and Landscaping (Respondent).

I conducted a hearing on August 11, 2010 at the Harford County Public Library in Bel Air, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2004). Eric London, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the MHIC Fund. The Claimant was present and represented herself. The Respondent appeared for the hearing and represented himself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 09.08.03; COMAR 28.02.01.

### ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The Fund submitted the following exhibits, which I admitted into evidence:

Fund Ex. #1	Notice of Hearing
Fund Ex. #2	Notice of Hearing
Fund Ex. #3	Hearing Order
Fund Ex. #4	MHIC Licensing Printout
Fund Ex. #5	Claim Form
Fund Ex. #6	Letter from MHIC to Respondent

The Claimant submitted the following exhibits:

Cl. Ex. #1	Copy of contract
Cl. Ex. #2	Credit card statement
Cl. Ex. #3	Note from Hillside Lawn Service
Cl. Ex. #4	Estimate from TLC, Inc.
Cl. Ex. #5	Note to Respondent
Cl. Ex. #6	Estimate from TLC, Inc.
Cl. Ex. #7	Estimate from TLC, Inc.

The Respondent did not submit any exhibits.

#### Testimony

The Claimant testified on her own behalf.

The Respondent testified on his own behalf.

The Fund did not present any witnesses.

## FINDINGS OF FACT

I find the following 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 license number 01-90127 *via* Aquatek Irrigation and Landscaping.
2. On September 20, 2005, the Claimant and the Respondent entered into a contract for the Respondent to install an irrigation system at the Claimant's house. The contract price was \$8,375.00.
3. The Claimant paid the full contract amount.
4. The contract called for installation of a controller, rain sensor, fifty-six rotors, nine pop up sprayers, a valve box, plus all necessary tubing.
5. The tubing used to install the system is a plastic type which is installed using glue and can be cut with a saw.
6. The contract did not contain any space limitations about where to install the system.
7. The Respondent installed the system according to the contract. The pipe is not laid into an open trench and therefore not visible after it is installed under the surface. Rather, the Respondent used a machine designed for installation of irrigation systems. The machine is designed to dig six to twelve inches into the ground. As the machine moves along the surface, the pipe is slid into the ground and the earth is then covered up as the machine moves along.
8. Due to rocks or hard areas of earth, the machine may not always dig the full six inches but will dig to whatever depth it can and then lay the pipe.
9. The system worked properly the first year after installation and had no leaks.
10. The following year, the Claimant hired Hillside Lawn Service to aerate the lawn. Hillside used a mechanical aeration machine. Upon aerating the lawn, Hillside struck some of the

irrigation pipe, which was about three inches under the surface. As a result, the system started leaking in a few places.

11. The Claimant then told Hillside to stop the aeration, because Hillside's machines were breaking when striking the pipe.

12. Hillside currently aerates the lawn and uses a manual device which makes it easier to avoid the pipe.

13. The frost line in Maryland is three feet below the surface. It would be impossible to install a working irrigation system below the frost line.

### **DISCUSSION**

Maryland law provides that an owner may recover compensation from the Guaranty Fund "for an actual loss that results from an act or omission by a licensed contractor..." Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2009). Section 8-401 of the Business Regulation article defines "actual loss" as "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 (2004). The burden of proof to establish the unworkmanlike or inadequate home improvement and any actual loss suffered is on the Claimant. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (Supp. 2009).

Based on the evidence presented by the Claimant, I cannot find that she is entitled to an award in this case.

The Claimant hired the Respondent to install an irrigation system on her property. The basis of her complaint is that the Respondent installed it over an area where she was going to build a patio and the entire system was not installed deep enough. When the Claimant hired another company, Hillside, to aerate the lawn, that company broke several of the pipes, which it maintains were three inches below the surface.

With respect to the first part of the claim, a contractor is not allowed to deviate from the plans of the contract. However, the contract in this case makes no reference to exclusion of any area due to a patio being built. The contract has detailed provisions for the number of valves, boxes, rotors and a controller. There is no indication that part of the property was to be excluded.

Additionally, the Claimant certainly could see where the system was being installed at the time. She made no complaint in 2005 when the system was being installed and paid the balance of the contract. The Claimant submitted an estimate to remove part of the system for a patio, but this estimate was not provided until 2007, two years after the Respondent did the work.

With respect to the depth of the pipes, the Claimant had no expert testimony or evidence showing that the system was improperly installed. The Claimant admitted that the system worked properly for the first year. After the first year, she hired Hillside to aerate the lawn. Hillside used a mechanical aerating machine and struck the pipes at several spots, causing leaks.

A representative from Hillside told the Claimant at the time that the system had been improperly installed and was not deep enough. After several leaks, the Claimant told Hillside to stop the aeration.

According to the Claimant, the worker from Hillside told her that the pipes, at a depth of three inches, were too shallow and that they should have been installed below the frost line. This makes little sense, as the Respondent indicated in his testimony. According to the Respondent, the freeze level in Maryland is three feet. It would be impossible to install an irrigation system at that depth.

The Claimant submitted a brief report from Hillside at the hearing. This report had been faxed to the Claimant ten minutes prior to the hearing. It simply indicates that Hillside had

encountered problems with the pipes in 2005 and the Claimant told them to stop. There is no explanation for how the irrigation system was improperly built.

The Claimant also submitted a proposal from TLC, Inc. to redo the entire system at a cost of \$10,000.00. However, this proposal provides no explanation about why the system has to be replaced nor does it specify at what depth the pipe would be installed.

The Respondent testified that the machines used to install the irrigation system are designed to install the pipe between six and twelve inches below grade. However, the pipes are not installed in an open trench where they are visible. The machine burrows the ground, lays the pipe and then covers it up with earth. Consequently, one cannot see exactly how deep the pipe is being installed. If there are rocks or the ground is too hard, the machine will not dig to the desired level.

The Claimant stated that there were several leaks. The repair estimate only cites two locations that were leaking. These leaks can be fixed with new pipe and glue. The Claimant submitted an estimate from Hillside for \$985.00, which included removing part of the system for a patio. That is not a compensable expense, and winterizing the system is likewise routine maintenance and not compensable. The \$985.00 does include the cost to repair two leaks. Without an itemized breakdown of these costs, I cannot ascertain the cost to fix these two leaks. However, these two leaks were caused by Hillside and not by the Respondent. Further, the Claimant has indicated that she is not seeking that type of repair.

There is no basis to redo the entire job. Indeed, the facts of the case suggest that it may well have been Hillside that performed the poor work. It now uses a hand made aerating device instead of the mechanical one previously used and there have been no problems. It was aware that an irrigation system was on the Claimant's property and was the party that caused the damage.

For these reasons, I find that the Claimant has not established a claim based on the Respondent's work.

**CONCLUSIONS OF LAW**

For the reasons discussed above, I conclude that the Claimant has not established by a preponderance of the evidence that the Respondent performed a home improvement contract in an unworkmanlike manner, and that the Claimant suffered an actual loss compensable by the Guaranty Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(1) and 8-407(e)(1) (2004 & Supp. 2009).


**RECOMMENDED ORDER**

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

**ORDER** that the claim be dismissed, and

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

September 13, 2010  
Date Decision Mailed

  
James W. Power  
Administrative Law Judge

IWP/te  
#116473

**IN THE MATTER OF THE CLAIM \* BEFORE JAMES W. POWER,**  
**OF GINA GLADIS AGAINST THE \* AN ADMINISTRATIVE LAW JUDGE**  
**MARYLAND HOME \* OF THE MARYLAND OFFICE**  
**IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS**  
**FOR THE VIOLATIONS OF \* OAH NO.: DLR-HIC-02-09-34627**  
**THOMAS HARRIGAN, T/A \* MHIC NO.: 07 (75) 1160**  
**AQUATEK IRRIGATION & \***  
**LANDSCAPING \***

\* \* \* \* \*

**SUMMARY OF THE EVIDENCE**

Exhibits

The Fund submitted the following exhibits, which I admitted into evidence:

- Fund Ex. #1 Notice of Hearing
- Fund Ex. #2 Notice of Hearing
- Fund Ex. #3 Hearing Order
- Fund Ex. #4 MHIC Licensing Printout
- Fund Ex. #5 Claim Form
- Fund Ex. #6 Letter from MHIC to Respondent

The Claimant submitted the following exhibits:

- Cl. Ex. #1 Copy of contract
- Cl. Ex. #2 Credit card statement
- Cl. Ex. #3 Note from Hillside Lawn Service
- Cl. Ex. #4 Estimate from TLC, Inc.
- Cl. Ex. #5 Note to Respondent
- Cl. Ex. #6 Estimate from TLC, Inc.
- Cl. Ex. #7 Estimate from TLC, Inc.

The Respondent did not submit any exhibits



PROPOSED ORDER

*WHEREFORE, this 25th day of October 2010, 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.*

*Andrew Snyder*

*Andrew Snyder*

*Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**

PROPOSED ORDER

*WHEREFORE, this 25th day of October 2010, 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.*

*Andrew Snyder*

*Andrew Snyder  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**