

IN THE MATTER OF THE CLAIM OF	* BEFORE LORRAINE E. FRASER,
MICHAEL J. DAVIS	* 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-02-09-04570
OMISSIONS OF MARCUS POLLOCK	* MHIC NO.: 07(05)2185
T/A JACKLEGGGS	*

\* \* \* \* \*

**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 August 24, 2007, Michael J. Davis (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$34,708.00 for actual losses allegedly suffered as a result of a home improvement contract with the Marcus Pollock t/a Jackleggs<sup>1</sup> (Respondent).

I held a hearing on January 5, 2010 at the Maryland Department of Agriculture in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(i) (Supp. 2009). Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation

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<sup>1</sup> In July 2006, the Respondent also began trading under the name H & T Enterprises.

(Department), represented the Fund. The Claimant represented himself. The Respondent was not present.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, 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 (2009), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and 28.02.01.

### 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:

- Cl. Ex. 1      Contract, dated 8/12/05
- Cl. Ex. 2      Photographs: two showing completed exterior front and rear of house taken 1/3/10, two showing original exterior of front of house and second floor roof taken 8/12/05, & two showing interior of first and second floors of house during demolition taken 8/05
- Cl. Ex. 3      The Claimant's written statement filed with his claim, dated 8/22/07; letter from the Claimant to the Respondent, dated 2/28/07; letter from the Claimant's attorney to the Respondent, dated 2/1/07; e-mail from the Respondent to the Claimant; telephone numbers for the Respondent
- Cl. Ex. 4      Printout showing permits obtained for the work
- Cl. Ex. 5      Five photographs of the exterior and interior of the second floor roof taken 10/07; contracts with Charis Home Improvements, Inc. (Charis), dated 11/2/07 & 11/19/07; checks paid to Charis \$800.00 on 11/19/07 & \$1,700.00 on 1/3/08; contract with Willie's Roofing, Inc. (Willie's), dated 4/28/09; check paid to Willie's \$1,000.00 on 5/1/09

- Cl. Ex. 6 Ten photographs of interior electrical wiring, taken 2/10/08; estimate from Birkhead Electric, Inc. (Birkhead), dated 10/30/07; checks paid to Birkhead \$1,500.00 on 11/26/07, \$7,895.50 on 1/11/08, \$9,780.00 on 2/19/08, & \$3,961.00 on 4/16/08; three invoices from Birkhead
- Cl. Ex. 7 Letter from World Wide Corp. (World Wide) (for plumbing), dated 5/27/08; invoice from World Wide for \$3,639.01, dated 6/16/08; check paid to World Wide \$3,639.00 on 7/12/08
- Cl. Ex. 8 Estimate from Supreme Heating and Air Conditioning (Supreme), dated 1/4/08; checks paid to Supreme \$1,600.00 on 1/15/08, \$1,700.00 on 2/12/08, \$1,000.00 on 2/24/08, & \$600.00 on 4/24/08
- Cl. Ex. 9 Checks paid to the Respondent \$9,250.00 on 8/12/05, \$6,500.00 on 9/3/05, \$16,400.00 on 9/20/05, \$30,500.00 on 1/11/06, \$12,000.00 on 7/10/06, \$12,950.00 on 8/8/06; & \$18,950.00 on 10/8/06

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

- Fund Ex. 1 Unclaimed certified mail: Notice of hearing, dated 9/3/09
- Fund Ex. 2 Hearing Order, dated 1/16/09
- Fund Ex. 3 The Respondent's licensing history, dated 12/22/09
- Fund Ex. 4 Home Improvement Claim Form, received 8/24/07
- Fund Ex. 5 Letter to the Respondent from John Borz, Chairman, MHIC, dated 9/4/07, with attached claim form, received 2/10/08
- Fund Ex. 6 Notice of hearing, dated 3/26/09, for original hearing date of 9/4/09, with attached signed certified mail receipts from the Claimant and the Respondent

Testimony

The Claimant testified.

**FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

*Facts Concerning the Respondent's Knowledge of the Hearing*

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 87757 (individual) and 122469 (trade name Jackleggs). His most recent license did not expire until February 27, 2010.
2. On March 26, 2009, the OAH mailed to the Respondent a notice scheduling a hearing in this matter for September 4, 2009. The notice was sent to the Respondent's address of record: 721 E. Belvedere Avenue, Baltimore, MD 21212. The Respondent signed the certified mail receipt on April 6, 2009.
3. On August 27, 2009, the parties were notified that the State would be closed on September 4, 2009 for a mandatory furlough of State employees, and that the hearing would be rescheduled.
4. On September 3, 2009, the OAH mailed to the Respondent a second notice of hearing rescheduling the matter for January 5, 2010. The notice was again sent to the Respondent's address of record, noted above.
5. On September 28, 2009, the U.S. Post Office returned the certified mail sent to the Respondent on September 3, 2009 as unclaimed.
6. The Respondent had notice of the hearing in this matter held on January 5, 2010, he failed to appear, and the hearing properly proceeded in his absence.
7. On August 12, 2005, the Claimant and the Respondent entered into a contract to demolish and replace much of the existing structure of a row house located at 2016 Orleans Street, Baltimore, Maryland.

*Facts Related to the Claimant's Home Improvement Contract with the Respondent*

8. Specifically, the contract stated the work was to be completed in five phases:
  - Phase I included: removal of the entire roof; removal of all ceilings, windows, interior finished walls, stairs, flooring where needed, all interior doors, existing wiring, existing plumbing, existing heating, ventilation, and air conditioning (HVAC) systems, all cabinetry and fixtures in the kitchen and bathroom; demolition of the garage and first floor front window; and removal of all debris from the interior.
  - Phase II included: pointing the exterior front and rear walls and the interior east wall; installing roof carpentry, framing walls, ceilings, floors, doors, and windows; installing stairs on the first and second floors; installing rough-in electric and plumbing; and installing HVAC ducts.
  - Phase III included: installing insulation; installing ½" sheetrock and preparing it for painting; installing ½" greenboard in all the bathrooms; dry locking basement walls if needed; installing vinyl double hung windows; and installing exterior doors.
  - Phase IV included: priming and painting the interior, installing baseboards; installing finished flooring in kitchen and bathrooms; and installing all electrical fixtures.
  - Phase V included: installing kitchen cabinetry; installing all interior doors; repairing the exterior cornice; installing carpet; installing all plumbing fixtures in the kitchen and bathrooms; installing a furnace and air conditioning compressor; and stuccoing the rear exterior wall. The contract did not state when work would begin or be completed.
9. The original agreed upon contract price was \$112,650.00.
10. In August 2005, the Respondent began demolition on the property.

11. During Phase II of the project, the Respondent told the Claimant that additional work was necessary for the electric, plumbing, and HVAC. As a result, the Claimant agreed to pay an additional \$1,100 for the work.
12. The total agreed upon contract price was \$113,750.00.
13. From August 2005 through October 8, 2006, the Respondent worked sporadically on the property. He did not perform any work after October 8, 2006.
14. The Claimant made a number of attempts to contact the Respondent and have him complete the contracted work. The Respondent did not respond to the Claimant's attempts.
15. The Respondent performed the following work: demolition; placed stucco on the exterior rear wall; and installed street level exterior doors, a street level bay window, windows on all floors, street level hardwood floors, framing and drywall.
16. The Respondent installed electrical and plumbing rough-ins, and some HVAC ducts; however, these items were not done in accordance with building codes.
17. The Respondent partially installed the bathrooms but mirrors, cabinets, and the Jacuzzi shut off valve were missing.
18. The Respondent installed a metal spiral staircase to the third floor but did not install the railing.
19. The Respondent installed some HVAC ducts but did not install or supply all of the ducts or returns, a gas furnace, a thermostat, a vent pipe, a gas line for a gas appliance, or exhaust fans.

20. The Respondent did not perform the following work: re-point the brick front exterior; repair the small roof over the front door and bay window; and install brick over four small windows and a coal chute in the exterior basement walls, carpeting on the second and third levels, the kitchen including appliances, or a hot water heater.
21. The Respondent was supposed to remove and install an entire new roof. Instead, the Respondent placed tar paper over the existing roof. The roof on the second floor began leaking in June or July 2006; the Claimant later discovered the Respondent had not replaced or repaired the extensive fire damage to the wood structure of the roof. The roof on the third floor began leaking in April 2009. Both roofs had to be replaced.
22. The Respondent obtained permits to install drywall, windows, doors, and kitchen cabinets, and replace the wood on the front exterior. He did not have this work inspected. He performed the other work without permits.
23. The electrical wiring installed by the Respondent had to be completely removed and replaced, including cutting holes in the drywall the Respondent placed over the wiring, because the Respondent did the work without the required permits and inspections.
24. The plumbing installed by the Respondent had to be replaced because the Respondent did the work without the required permits and inspections and there was a leaking pipe.

25. The Claimant made the following payments to the Respondent:

8/12/05	\$9,250.00
9/3/05	6,500.00
9/20/05	16,400.00
1/11/06	30,500.00
7/10/06	12,000.00 <sup>2</sup>
8/8/06	12,950.00
10/8/06	<u>18,950.00</u>
Total	\$106,550.00

26. The Claimant paid \$2,500.00 to replace the second floor roof and \$1,000.00 to replace the third floor roof.
27. The Claimant paid \$23,136.50 to have the electrical work replaced and completed in compliance with building codes.
28. The Claimant paid \$3,639.01 to have the plumbing work replaced and completed in compliance with building codes.
29. The Claimant paid \$4,900.00 to have the HVAC work replaced and completed in compliance with building codes.
30. The Claimant paid a total of \$35,175.51 to licensed contractors to repair, replace, and complete the work the Respondent performed and failed to perform under their contract.
31. The Claimant's actual loss is \$27,975.51.

### 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) (Supp. 2009). *See also* COMAR 09.08.03.03B(2). Actual loss "means the costs of restoration, repair,

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<sup>2</sup> In July 2006, the Respondent asked the Claimant to make his checks payable to H&T Enterprises.



replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401 (2004). 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 and the Claimant entered into the contract.

Second, the Respondent performed an unworkmanlike home improvement. The Respondent performed work without obtaining the required permits and inspections. As a result, much of the electrical, plumbing, and HVAC work had to be removed and reinstalled. Instead of removing and replacing the second and third floor roofs in their entirety, as stated in the contract, the Respondent placed tar paper over the roof with extensive fire damage to the wood structure. Finally, the Respondent did not complete the work specified in the contract.

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). 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).

As detailed in the findings of fact above, the Claimant paid a total of \$35,175.51 to licensed contractors to repair, replace, and complete the roofing, electrical, plumbing, and HVAC work the Respondent performed improperly and failed to complete under the contract.

Using the formula, the Claimant's actual loss is calculated as follows:

\$106,550.00	amount Claimant paid to Respondent
+ 35,175.51	cost of repair
<u>- 113,750.00</u>	original contract price
\$27,975.51	actual loss

Awards from the Fund are limited to a \$20,000.00 maximum per claimant for the acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e) (Supp. 2009). Therefore, the Claimant is entitled to an award from the Fund of \$20,000.00.

### **CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$27,975.51 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2004). However, the Claimant's award from the Fund is limited to the \$20,000.00 maximum. Md. Code Ann., Bus. Reg. § 8-405(e) (Supp. 2009).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411 (2004); and

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

**Signature on File**

March 25, 2010  
Date decision mailed

\_\_\_\_\_  
Lorraine E. Fraser  
Administrative Law Judge

LEF  
# 112641

PROPOSED ORDER

*WHEREFORE, this 26th day of April 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.*

*Marilyn Jumalon*

*Marilyn Jumalon*

*Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**

IN THE MATTER OF THE CLAIM  
OF MICHAEL J. DAVIS  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR ALLEGED VIOLATIONS OF  
MARCUS POLLOCK  
t/a JACKLEGGs

\* MARYLAND HOME  
IMPROVEMENT COMMISSION

\*

\* MHIC CASE NO. 07 (05) 2185

\*

\* \* \* \* \*

**FINAL ORDER**

WHEREFORE, this 30<sup>TH</sup> day of June, 2011, Panel B of the Maryland Home Improvement Commission ORDERS that:

1) The Findings of Fact are Amended as follows:

A) On April 21, 2011, the Commission conducted an additional fact finding hearing. The Claimant and the Respondent were present, and testified under oath. The Respondent was represented by counsel, P. Christian Dorsey, Esq. The original Findings of Fact of the Administrative Law Judge are Affirmed, and the Commission makes the following additional findings of fact.

B) In August 2005, Ham Pollock, brother of Respondent Marcus Pollock, presented the Claimant with a home improvement contract proposal. The contract was under the Respondent's licensed trade name, Jackleggs, and contained the Respondent's Maryland Home Improvement Commission license number. The Claimant checked the online licensing records of the Maryland Home Improvement Commission, and confirmed that Jackleggs was a licensed home improvement contracting business.

C) On or about April 13, 2007, the Maryland Home Improvement Commission mailed to the Respondent, Marcus Pollock, a copy of the complaint filed by the Claimant. Shortly thereafter, Respondent Marcus Pollock telephoned the Claimant regarding the complaint. During their conversation, the Respondent did not deny that he was responsible for the

home improvement contract which the Claimant had entered into with Jackleggs. The Respondent provided his cell phone number to the Claimant, and the Respondent stated to the Claimant that he would call the Claimant back to further discuss the complaint. However, the Respondent never called the Claimant back. Between late April and early June 2007, the Claimant left several messages on the Respondent's cell phone, none of which were returned. (The Respondent testified that he did not recall having the telephone conversation with the Claimant in April 2007. Having had the opportunity to observe the witnesses testify, and to consider the documentary evidence presented by the Claimant, in the form of a telephone log containing the Respondent's cell phone number, the Commission finds credible both the Claimant's testimony that the Respondent telephoned him in April 2007, and the Claimant's testimony concerning the nature of the conversation.)

D) On or about April 13, 2007, the Maryland Home Improvement Commission mailed to the Respondent, Marcus Pollock, at his address of record, a copy of the complaint filed by the Claimant. On or about September 4, 2007, the Maryland Home Improvement Commission mailed to the Respondent, Marcus Pollock, at his address of record, a copy of the Guaranty Fund claim filed by the Claimant. Despite having been put on notice that a complaint and a Guaranty Fund claim had been filed against him, the Respondent never sent any written response to the Commission claiming that he was not the responsible contractor for the contract entered into between the Claimant and Jackleggs.

E) The Respondent, Marcus Pollock, was the sole member of the LLC, Jackleggs.

F) At all times relevant to the transaction between the Claimant and Jackleggs, the Respondent, Marcus Pollock, was the licensed individual contractor in responsible charge of Jackleggs.

- 2) The Conclusions of Law of the Administrative Law Judge are Affirmed.
- 3) The Recommended Order of the Administrative Law Judge is Affirmed.

**Final Order - 07 (05) 2185  
Claim of Michael J. Davis  
June 30, 2011  
Page 3**

**4) This Final Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

***Joseph Tunney***  
\_\_\_\_\_  
**Chair - Panel B  
MARYLAND HOME IMPROVEMENT  
COMMISSION**

MARCUS POLLOCK,  
T/A JACKLEGG'S

Petitioner,

v.

MARYLAND HOME IMPROVEMENT  
COMMISSION

Respondent.

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\*  
\* Case No.: 24-C-11-005067

\* \* \* \* \*

ORDER

Upon reviewing the parties' memorandum and hearing argument, it is this 9<sup>th</sup>  
day of July, 2012, by the Circuit Court for Baltimore City hereby

ORDERED that this case be REMANDED to the Maryland Home Improvement  
Commission in order to determine whether or not Hamilton Pollock had the authority to  
enter into contracts on behalf of Jackleggs, LLC.

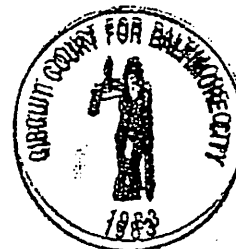
Edward Hargadon  
Judge's signature appears on  
original document only.

~~Judge Edward R. K. Hargadon~~

TRUE COPY  
TEST

*Frank M. Conaway*

FRANK M. CONAWAY, CLERK





**IN THE MATTER OF THE CLAIM  
OF MICHAEL J. DAVIS  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR ALLEGED VIOLATIONS OF  
MARCUS POLLOCK  
t/a JACKLEGGs**

\* **MARYLAND HOME  
IMPROVEMENT COMMISSION**

\*  
\* **MHIC CASE NO. 07 (05) 2185**

\* \* \* \* \*

**ORDER OF THE MARYLAND HOME IMPROVEMENT COMMISSION  
ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE CITY**

On this 12<sup>TH</sup> day of May, 2014, Panel B of the Maryland Home Improvement

Commission **ORDERS** that:

- 1) The Commission issued an order approving an award of \$20,000.00 to Michael J. Davis from the Home Improvement Guaranty Fund, as a result of Davis' claim against contractor Marcus Pollock, t/a Jackleggs.
- 2) Marcus Pollock, t/a Jackleggs filed an appeal to the Circuit Court for Baltimore City. The Circuit Court issued an order (case no. 24-C-11-005067) remanding this matter to the Commission. (copy attached).
- 3) The remand order of the Circuit Court directs the Commission "to determine whether or not Hamilton Pollock had the authority to enter into contracts on behalf of Jackleggs, LLC."
- 4) It is the understanding of the Commission that, under the Circuit Court's remand order, in order for the Commission to affirm the Guaranty Fund award to Michael Davis, there must be a specific finding that Hamilton Pollock had authority, at the time of the contract in question, August 12, 2005, to enter into contracts on behalf of Jackleggs, LLC.

**Order - 07 (05) 2185**  
**Claim of Michael J. Davis**  
**vs. Marcus Pollock, t/a Jackleggs**  
**May 12, 2014**  
**Page 2**

5) Based upon review of the record in this matter, the Commission finds that it has not been proven by a preponderance of the evidence that, on August 12, 2005, Hamilton Pollock had authority, on behalf of Jackleggs LLC, to enter into the contract with Michael Davis.

6) Although there is evidence in the record which casts doubt on the credibility of portions of Marcus Pollock's account of events from 2007 forward, the Commission finds that the evidence in the record does not specifically prove that Hamilton Pollock was authorized to enter into home improvements contracts on behalf of Jackleggs, LLC on or about August 2005. Accordingly, the Commission finds that, pursuant to the Circuit Court remand order, the Guaranty Fund claim of Michael Davis against Marcus Pollock, t/a Jackleggs, must be dismissed.

7) The Guaranty Fund claim of Michael Davis against Marcus Pollock, t/a Jackleggs, is hereby dismissed.

8) This Order shall become effective thirty (30) days from this date. During the thirty (30) day period, any party may file an appeal of this Order to the Circuit Court for Baltimore City.

*Joseph Tunney*

Chair

MARYLAND HOME IMPROVEMENT  
COMMISSION

MARCUS POLLOCK,  
T/A JACKLEGG

Petitioner,

v.

MARYLAND HOME IMPROVEMENT  
COMMISSION

Respondent.

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\*  
\* Case No.: 24-C-11-005067

\* \* \* \* \*

ORDER

Upon reviewing the parties' memorandum and hearing argument, it is this 9<sup>th</sup>  
day of July, 2012, by the Circuit Court for Baltimore City hereby

ORDERED that this case be REMANDED to the Maryland Home Improvement  
Commission in order to determine whether or not Hamilton Pollock had the authority to  
enter into contracts on behalf of Jackleggs, LLC.

Edward Hargadon  
Judge's signature appears on  
original document only.

~~Judge Edward R. K. Hargadon~~

TRUE COPY

TEST

*Frank M. Conaway*

FRANK M. CONAWAY, CLERK

