

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF HAROLD POLING,</b></p> <p><b>CLAIMANT,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF JERRY LAWSON,</b></p> <p><b>T/A DONALD WHITE ROOFING</b></p> <p><b>LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE ZUBERI WILLIAMS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH NO.: DLR-HIC-02-12-35134</b></p> <p><b>* MHIC NO.: 12 (90) 424</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**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 December 27, 2011, Harold Poling (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of \$8,500.00 for actual losses allegedly suffered as a result of a home improvement contract with Jerry Lawson T/A Donald White Roofing, (Respondent) to replace a roof on his residence.

I held a hearing on March 8, 2013, at the Department of Agriculture, 50 Harry S. Truman Parkway, Room 110, Annapolis, Maryland 21401. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407

(2010 & Supp. 2012). Jessica Kauffman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent did not appear.

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 & Supp. 2012); Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; 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 behalf of the Fund:

Fund Ex. #1 – Two Notices of Hearing from OAH to the Fund with attachments, dated February 21, 2013 and November 15, 2012

Fund Ex. #2 – Transmittal from Department to OAH with Hearing Order, dated August 9, 2012

Fund Ex. #3 – Respondent's MHIC Identification Registration, dated February 19, 2013

Fund Ex. #4 – Affidavit from MHIC Investigator Thomas Marr, dated February 20, 2013

Fund Ex. #5 – Letters from MHIC to Respondent, dated January 17, 2012 and April 2, 2012

Fund Ex. #6 – Respondent's MHIC Identification Registration, dated February 20, 2013

I admitted the following exhibits on behalf of the Claimant:

Claim. Ex. #1 – Contract between Respondent and Claimant, dated March 13, 2010

Claim. Ex. #2 – 9 Photographs of the result of various roof leaks. (A – I)

- A – Leak over kitchen cabinets
- B – Ceiling over kitchen cabinets
- C – Leak in kitchen
- D – Second floor crawl space where water leaked from roof to kitchen
- E – Second floor crawl space wet with leaked water
- F – Water damage to wood
- G – Bad flashing that was not replaced
- H – Wall that was ruined by the leaking
- I – Roof showing no flashing

Claim. Ex. #3 – Invoice of Colonial Roofing, Co, dated January 20, 2012

Claim. Ex. #4 – Check in the amount of \$5,000.00, dated May 6, 2010

Claim. Ex. #5 – Check in the amount of \$500.00, dated May 21, 2010

Claim. Ex. #6 – Contract proposal with deposit paid, dated March, 13, 2012

Claim. Ex. #7 – 3 Estimates from Contractors to re-install roof.

The Respondent did not appear and did not submit any exhibits.

### Testimony

The Claimant testified on his own behalf and presented the testimony of his son, Jeffrey Poling.

The Fund did not present any witnesses.

The Respondent did not present any witnesses.

### **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 #98395. He held the MHIC license for Donald White Roofing, LLC.

2. At all times relevant to this matter, the Claimant lived in a house located at 28 Governors Gate Lane, Linthicum, Maryland 21090.

3. On or about March 13, 2010, the Claimant and the Respondent entered into a contract to replace the roof to his house. The scope of work included installing shingles, flashings, wood sheathing, tiles, and roof to the main home, rear addition, and garage.

4. The installed roof had a ten year guarantee on workmanship.

5. The original contract price agreed upon was \$8,500.00.

6. On March 13, 2010, the Claimant paid the Respondent \$3,000.00 in cash as a deposit toward the roof installation.

7. On May 6, 2010, the Claimant paid the Respondent \$5,000.00 to begin installing the roof.

8. On May 21, 2010, the Claimant paid the Respondent \$500.00 after the roof installation was complete.

9. A few months later, it rained and the Claimant began to notice water leaking through the ceiling. The Claimant further noticed substantial water damage on the ceiling, walls in the rear addition and in the kitchen cabinets.

10. The water damage was caused by water leaking through the roof and into the house.

11. The Claimant called the Respondent to fix the roof. The Respondent inspected the water damage and located several leaks in the roof. The Respondent caulked several cracks in the roof as a means of repairing the problem.

12. The next time it rained, water continued to leak through the roof and into the house. The Claimant called the Respondent again to fix the roof, but he failed to do so. The Claimant called the Respondent four times, but to no avail.

13. The residence continued to sustain water damage including streaks of paint down the side of the wall in the new addition; water damaged wood in the kitchen and attic crawl

space; and soaked carpet in various places. The water damage continued during the following months: June 2010, December 2010, May 2011, August 2011, and September 2011. (See Pictures, Claim. Ex. #2.)

14. In November and December of 2011, the Claimant received estimates from three different roofing contractors regarding the cost of fixing the roof. One of the Contractors, Colonial Roofing (Colonial), inspected the roof and Respondent's work.

15. Colonial found that the Respondent failed to install flashing in various locations including the front porch and spots in the new addition to the house. Colonial also discovered that the Respondent failed to remove the old cleats used to install the shingles and that the shingles themselves were not installed properly.

16. Colonial determined that the entire roof would have to be replaced and that any manufacturer's guarantee was invalidated by the Respondent's poor workmanship. The Claimant hired Colonial to install a new roof on his residence.

17. The cost of the installation of a new roof by Colonial was \$6,800.00.

18. The Respondent's work was unworkmanlike and inadequate.

## **DISCUSSION**

### **A. The Respondent's Failure to Appear**

Section 8-312(a) of the Business Regulation Article provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a) (2010). On February 21, 2013, the OAH sent the Respondent a Notice of Hearing (Notice) to the Respondent's address of record of 107 Dupont Avenue,

Pasadena, MD 2112, by certified and regular mail.<sup>1</sup> The Fund offered into evidence a copy of a letter, dated August 9, 2012 from Joseph Tunney, Chairman, MHIC, sent to the Respondent informing him of the Claimant's claim. (Fund Ex. 2.)

A hearing was scheduled for March 8, 2013 at 10:00 a.m.; however, the Respondent failed to appear for the hearing. Under Md. Code Ann., Bus. Reg. § 8-312(h) (2010), “[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and determine the matter.”

Based upon the record before me, I am satisfied that the Respondent was properly notified of the date, time, and location of the scheduled hearing in this matter. The hearing was convened as scheduled on March 8, 2013, at which time neither the Respondent nor anyone authorized to represent him appeared, therefore, the hearing proceeded in the Respondent's absence. The Respondent simply failed to appear.

#### B. Eligibility for Compensation

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. 2012). *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.

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<sup>1</sup> On November 15, 2012, the OAH sent the Respondent a Notice of Hearing (Notice) to the Respondent's address of record of 643B Tebbston Drive, Pasadena, Maryland, 21122, by certified and regular mail. Although this is the address the MHIC had in its records for the Respondent, the mail was returned as undeliverable. The MHIC investigator obtained the Respondent's home address from the Motor Vehicle Administration – 107 Dupont Avenue, Pasadena, MD 21122. OAH sent a new notice to that address.

Second, the Respondent performed unworkmanlike and inadequate home improvement. Specifically, I find that the Respondent failed to remove the old cleats before installing the new shingles, and improperly installed the new shingles. The shingles were not able to lay flat and water was able to get underneath them and into the house. Additionally, the Respondent failed to install flashing on the front porch roof and various places on the roof of the new addition. The lack of flashing allowed the water to seep through the roof and into the house. These failures show that that the Respondent did an unworkmanlike and inadequate job.

Although, the Claimant did not call an expert witness to testify to the Respondent's defective workmanship or the reasonableness of the estimated repair costs, the exhibits and the Claimant's testimony clearly convinced me that the Respondent's work was unworkmanlike and inadequate. Additionally, the testimony from his son coupled with the pictures of the Respondent's work bolsters the Claimant's testimony.

Moreover, I find that the Respondent was given a reasonable opportunity to repair the problem because the Claimant contacted his office several times asking that he fix it. Although the Respondent caulked some of the leaks in the roof, the problem persisted and the Respondent stopped responding to the Claimant.

### C. Award Amount

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).

Here, the Claimant paid the Respondent a total of \$8,500.00 to install the roof to his house. This was also the original contract price. As stated above, the installation of the roof was unworkmanlike and inadequate. The Claimant then paid Colonial \$6,800.00 to fix the Respondent's work and install a new roof. Based on the following calculation, the Claimant sustained \$6,800.00 in actual losses.

Amount Paid to the Respondent	\$8,500.00
+ <u>Amount Paid to the New Contractor</u>	<u>\$6,800.00</u>
	\$15,300.00
- <u>Original Contract Price</u>	<u>\$8,500.00</u>
Actual Loss	\$6,800.00

### **CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual loss of \$6,800.00 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 \$6,800.00; 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(a) (2010); and



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

**Signature on File**

June 5, 2013  
Date Decision Mailed

ZW/emh  
#143015

\_\_\_\_\_  
Zuberi Bakari Williams  
Administrative Law Judge

1/s/s

IN THE MATTER OF THE CLAIM	* BEFORE ZUBERI WILLIAMS,
OF HAROLD POLING,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-35134
FOR THE ALLEGED ACTS OR	* MHIC NO.: 12 (90) 424
OMISSIONS OF JERRY LAWSON,	*
T/A DONALD WHITE ROOFING	*
LLC,	*
RESPONDENT	*
	*

\* \* \* \* \*

**FILE EXHIBIT LIST**

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The Respondent did not appear and did not submit any exhibits.

COPIES

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY MARYLAND

JEROME WALKER

\*

Petitioner,

\*

Case No: CAL13-15712

v.

\*

MARYLAND HOME IMPROVEMENT  
COMMISSION

\*

Respondent

\*

\*\*\*\*\*

ORDER

It is on this 27<sup>th</sup> day of January 2014, upon motion of the  
Petitioner, and any response:

**ORDERED**, that the appeal be dismissed.

**IT IS SO ORDERED.**

**Signature on File**

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JUDGE

Hassan A. El-Amin