

IN THE MATTER OF THE CLAIM	* BEFORE ZUBERI WILLIAMS,
OF MICHAEL T. PARKER,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-26102
FOR THE ALLEGED ACTS OR	* MHIC NO.: 10 (75) 1238
OMISSIONS OF HENRY R.	*
HENTZMAN,	*
T/A NATIONS HOME REMODELERS,	*
INC.	*
RESPONDENT	*

\* \* \* \* \*

**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 March 2, 2011, Michael T. Parker (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,261.00 for actual losses allegedly suffered as a result of a home improvement contract with Henry R. Hentzman t/a Nations Home Remodelers, Inc., (Respondent) for the replacement of gutters and siding stemming from problems with mold.

I held a hearing on October 10, 2012 at Largo Government Center #102, Basil Court, Room 102, Largo, Maryland 20774. 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 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 the Claimant's behalf:

- Claim. Ex. 1 – Roofing Proposal and Contract from Kelbie Home Improvement, Inc., dated May 28, 2010
- Claim. Ex. 2 – Work order from Gutter Guardian, not dated
- Claim. Ex. 3 – Contract for roof and gutters from Nations Home Remodelers, Inc., dated August 1, 2005
- Claim. Ex. 4 – Letter from MIA to Claimant, dated December 22, 2011
- Claim. Ex. 5 – Letter from Respondent to Claimant
- Claim. Ex. 6 – Letter from Liberty Mutual to Claimant, dated August 8, 2010
- Claim. Ex. 7 – Photographs of Installed Gutters

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

- Fund Ex. 1 – Notice of Hearing from OAH to the Fund, dated August 8, 2012
- Fund Ex. 2 – Transmittal from DLLR to OAH, not dated
- Fund Ex. 3 – Identification Registration HIC, dated September 19, 2012
- Fund Ex. 4 – Letter from DLLR to Respondent, dated March 10, 2011

I admitted no exhibits on the Respondent's behalf.

### Testimony

The Claimant testified on his own behalf.

The Fund did not present any witnesses.

The Respondent did not appear.

### 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 #4256790. He held the MHIC license for Nations Home Remodelers, which is a corporation.
2. On or about August 1, 2005, the Claimant and the Respondent entered into a contract to furnish, replace, and install roof shingles and gutters on the Claimant's house. The contract included installation of the drip edge.
3. The original contract price agreed upon was \$4,750.00.
4. On August 1, 2005, the Claimant paid the Respondent a \$1,400.00 deposit.
5. On or about August 5, 2005, the Respondent completed the work and the Respondent paid him \$3,350.00, the remaining amount under the original contract.
6. On or about October 2009, the Claimant began to notice leaks coming from the roof and gutters of his house. The leak caused significant damage to the inside of the Claimant's house. He contacted a sales person at the Respondent's company and told him/her about the leak. The Respondent did not fix the problem.
7. In the fall of 2010, the Claimant again called to ask that the Respondent fix the leak. Again, the Respondent did not fix the gutter problem.

8. In the fall of 2010, the Claimant contacted the Department of Labor, Licensing, and Regulation (DLLR) to complain about the Respondent. The DLLR representative, Hubert Lowery, told the Claimant to find two contractors to assess the problem and provide estimates regarding how much it would cost to fix. Mr. Lowery also told the Claimant to contact his home insurance company regarding any damage to the inside of the house.

9. The home insurance company, Liberty Mutual, covered the damage to the inside of the house caused by the leak. In rendering its coverage decision, Liberty Mutual stated that it would not cover the gutters because their installation was "faulty, inadequate, or defective" and, as such, was excluded by the Claimant's home owner's policy.

10. On May 28, 2010, the Claimant received an estimate from Kelbie Home Improvement (Kelbie Home) of Columbia, MD. Kelbie Home concluded that the cause of the leak stemmed from the Respondent's improper installation of the drip edge. Specifically, Kelbie Home stated that the Respondent installed the wrong drip edge. Kelbie Home estimated it would cost \$980.00 to fix the problem.

11. In 2010, the Claimant received an estimate from Gutter Guardian (Gutter Guardian) of Baltimore, MD. Gutter Guardian concluded that the gutters were installed improperly.

12. The gutters were installed improperly and the Respondent's work was unworkmanlike and inadequate.

13. The Claimant's actual loss is \$980.00.

### 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 August 8, 2012, the OAH sent the Respondent a Notice of Hearing (Notice) to the Respondent's 10776 Rhode Island Avenue, Beltsville, MD 20705 address (the address on file with the MHIC) by certified and regular mail. The Fund offered into evidence a copy of a letter, dated June 7, 2012 from Joseph Tunney, Chairman, MHIC, sent to the Respondent informing him of the Claimant's claim. (GF Ex. 1.)

A hearing was scheduled for October 10, 2012, 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 October 10, 2012, at which time neither the Respondent nor anyone authorized to represent him appeared and, therefore, the hearing proceeded in the Respondent's absence.

**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.

Second, the Respondent performed unworkmanlike and inadequate home improvement. Specifically, I find that the Respondent improperly installed the gutter system because he failed to install the proper drip edge (statement by Kelbie Home). I find the opinions set forth by Kelbie Home and Gutter Guardian concerning the installation of the gutters credible because they are consistent with each other and are uncontradicted. Additionally, the estimates from the contractors detail the necessary repair work and the costs to correct the Respondent's Work. 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 (including photos) and the Claimant's testimony clearly convinced me that the Licensee's Work was inadequate and unworkmanlike.

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, but to no avail.

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 abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

**OR**

“If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.” COMAR 09.08.03.03B(3)(b).

**OR**

“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 third formula is appropriate because the Claimant solicited another contractor to fix the problem. The first and second formulas are not appropriate because the Claimant is soliciting another contractor to fix the problem. The Fund argued that the estimate from Kelbie Home of \$980.00 is the only estimate I should consider because the second estimate from Gutter Guardian of \$3,361.00 includes the installation of a fascia board. The Fund further argued that the fascia board was not part of the original work done by the Respondent and allowing for new installation of it would amount to consequential damages, which is prohibited by the law. I agree with the Fund for the reasons stated.

As such, applying the formula set out in COMAR 09.08.03.03B(3)(c) to this case, I conclude that the Claimant, suffered an actual loss of \$980.00, as shown in the equation below:

Amount paid under original contract:	\$4,750.00
Paid to bring Respondent's work to industry standards:	+ \$980.00
Total:	\$5,730.00
Less Original Contract Price (w/ change orders):	- \$4,750.00
<b>Actual Loss:</b>	<b>\$980.00</b>

**CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual/compensable loss of \$980.00 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 \$980.00; 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**

January 7, 2013  
Date Decision Mailed

ZW/emh  
#139069

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



IN THE MATTER OF THE CLAIM	* BEFORE ZUBERI WILLIAMS,
OF MICHAEL T. PARKER,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-26102
FOR THE ALLEGED ACTS OR	* MHIC NO.: 10 (75) 1238
OMISSIONS OF HENRY R.	*
HENTZMAN,	*
T/A NATIONS HOME REMODELERS,	*
INC.	*
RESPONDENT	*

\* \* \* \* \*

**FILE EXHIBIT LIST**

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

- Claim. Ex.1 – Roofing Proposal and Contract from Kelbie Home Improvement, Inc., dated May 28, 2010
- Claim. Ex. 2 – Work order from Gutter Guardian, not dated
- Claim. Ex. 3 – Contract for roof and gutters from Nations Home Remodelers, Inc., dated August 1, 2005
- Claim. Ex. 4 – Letter from MIA to Claimant, dated December 22, 2011
- Claim. Ex. 5 – Letter from Respondent to Claimant
- Claim. Ex. 6 – Letter from Liberty Mutual to Claimant, dated August 8, 2010
- Claim. Ex. 7 – Photographs of Installed Gutters

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

- Fund Ex. 1 – Notice of Hearing from OAH to the fund, dated August 8, 2012
- Fund Ex. 2 – Transmittal from DLLR to OAH, not dated
- Fund Ex. 3 – I.D. Registration HIC, dated September 19, 2012
- Fund Ex. 4 – Letter from DLLR to Respondent, dated March 10, 2011

I admitted no exhibits on the Respondent's behalf.

**PROPOSED ORDER**

*WHEREFORE, this 26th day of February 2013, 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**

**The Maryland Home  
Improvement Commission**

\*  
\*  
\*  
\*  
\*  
\*  
\*

**BEFORE THE  
MARYLAND HOME IMPROVEMENT  
COMMISSION**

**v. Henry R. Hentzman  
t/a Nations Home Remodelers, Inc.  
(Contractor)  
and the Claim of  
Michael T. Parker  
(Claimant)**

**MHIC No.: 10 (75) 1238**

\*\*\*\*\*

**FINAL ORDER**

**WHEREFORE, this January 7, 2014, Panel B of the Maryland Home Improvement  
Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated February 26, 2013 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated February 26, 2013 are AFFIRMED.**
- 3. The Proposed Order dated February 26, 2013 is AFFIRMED.**
- 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*  
Joseph Tunney, Chairperson  
PANEL B**

**MARYLAND HOME IMPROVEMENT COMMISSION**