

CLAIM OF JERRY W. BLOOMER \* BEFORE MICHAEL J. WALLACE,  
 AGAINST THE MARYLAND HOME \* AN ADMINISTRATIVE LAW JUDGE  
 IMPROVEMENT GUARANTY FUND, \* OF THE MARYLAND OFFICE  
 REGARDING THE ALLEGED ACTS \* OF ADMINISTRATIVE HEARINGS  
 AND OMISSIONS OF STANLEY JONES \*  
 T/A DRESS IT UP CONTRACTING \* OAH NO.: DLR-HIC-02-14-13091  
 COMPANY, \* MHIC NO.: 14 (90) 70

RESPONDENT \*

\* \* \* \* \*

**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 January 23, 2014, Jerry W. Bloomer (the Claimant) filed a claim with the Maryland Home Improvement Commission (the MHIC or the Commission) Guaranty Fund (the Fund), for reimbursement of the actual losses he allegedly suffered as a result of the acts and omissions of Stanley Jones t/a Dress It Up Contracting Company (Respondent). After investigation, the Commission issued a March 31, 2014 Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH) on April 11, 2014.

On June 27, 2014, I conducted a hearing at OAH's office in Hunt Valley, Maryland, pursuant to section 8-407(a) (incorporating the hearing provisions of Business Regulation Article § 8-312) of the Maryland Annotated Code's Business Regulation Article. Assistant Attorney

General Jessica Kaufman appeared on the Fund's behalf, and the Claimant was present and was represented by David Preller, Esquire.

Despite adequate notice from OAH, neither the Respondent nor anyone acting on his behalf appeared at the hearing or requested a postponement.<sup>1</sup> Accordingly, I conducted the hearing in the Respondent's absence. *See* Md. Code Ann., Business Regulation Article § 8-312(h); Code of Maryland Regulations (COMAR) 09.01.02.09.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); the Commission's Hearing Regulations, COMAR 09.01.03, 09.08.02.01, and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

### **ISSUES**

Did the Claimant sustain an actual loss as a result of the Respondent's acts or omissions and, if so, what amount is the Claimant entitled to recover from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Claimant submitted five exhibits, which I admitted into evidence as Claimant's Exhibits No. 1 through 5 as follows:

- |                 |  |
|-----------------|--|
| Claimant Ex. 1. | Proposal Contract, dated September 26, 2011  |
| Claimant Ex. 2. | Home Improvement Claim Form signed by the Claimant, dated January 17, 2014                                     |
| Claimant Ex. 3. | Series of nine photographs of the exterior of the Claimant's house   |
| Claimant Ex. 4. | Email from John Burke at McCormick Paints to the Claimant, dated May 30, 2014, with attached paint information |

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<sup>1</sup> OAH sent its Notice of Hearing, dated May 13, 2014, by certified and first class mail, to the Respondent's addresses of record with the Commission and the Maryland Motor Vehicle Administration (MVA). The Respondent claimed the certified mailing. In light of the Respondent's receipt of this Notice, he was deemed to have received proper notice of the hearing.

Claimant Ex. 5. Estimate from Duke's Painting, LLC, dated January 14, 2014

The Fund submitted the following documents, which I admitted into evidence as the exhibits numbered below:

1. May 13, 2014 Notice of Hearing, with cover letter and attached Hearing Order and Notices of Receipt
2. Hearing Order, dated March 31, 2014, with attached Home Improvement Claim Form, received on January 23, 2014
3. The Respondent's licensing history
4. Home Improvement Claim Form filed by Claimant on January 23, 2014, with cover letter to the Respondent, dated February 5, 2014

No documents were submitted on the Respondent's behalf.

#### Testimony

Jerry Bloomer (Claimant) was the only witness who testified at the hearing.

#### FINDINGS OF FACT

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

1. At all relevant times, the Respondent was a licensed home improvement contractor, License # 01-99481. He is currently licensed as a subcontractor and has been since March 10, 2009. His license is valid until March 10, 2015.

2. In September 2011, the Claimant entered a contract (Contract) with the Respondent for the preparation and painting of the exterior of the Claimant's house (asbestos shingles) and recaulking seventeen windows. The Claimant's house is located at 5708 Phillips Street, Brooklyn Park, Maryland (the Property).<sup>2</sup> The cost for this work was set at \$2,600.00.

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<sup>2</sup> Ordinarily, under 8-405(f)(2) the claim would be excluded unless Claimant resides in the residence or does not own more than three residences. The Claimant clarified that this property is not an investment property and that he is currently living in the structure as his sole residence.

3. The Claimant still lives at this address.
4. The Claimant paid a deposit of \$1,300.00 to the Respondent on September 26, 2011, and the balance at the time the work was completed in November 2011.
5. The Respondent began working on the project in September 2011, and completed the work in November 2011.
6. The manufacturer of the paint used requires that surfaces, such as the shingles painted in this case, be properly cleaned, such as with a power washer and detergent, before applying paint. In addition, the Respondent was to apply two coats of paint to the shingles.
7. The Respondent failed to clean the surface of the asbestos shingles prior to applying the paint and only applied one coat of paint.
8. Several weeks later, the Claimant noticed bubbles forming on the paint at the front of the house.
9. The Claimant contacted the Respondent, who came back on several occasions to scrape the bubbled paint off and to reapply paint to the scraped areas.
10. Up until November 2013, the problem persisted and paint continued to bubble up on the front of the house.
11. Ultimately, in November 2013, the Respondent stated to the Claimant that he would no longer come to the Claimant's house to make any repairs.
12. On January 14, 2014, the Claimant obtained an estimate from Duke's Painting, LLC, a licensed home improvement contractor, to make repairs to the Respondent's faulty work at the front of the house. This contractor agreed to scrape the paint blisters on the shingles on the front of the house, sand, spot prime and repaint all of the front shingles at a cost of \$975.00.
13. On January 23, 2014, the Claimant filed his Claim against the Fund in the amount of \$975.00.

## DISCUSSION

Pursuant to Md. Code Ann., Business Regulation Article §§ 8-405(a) and 8-407(e)(1), to recover compensation from the Fund, the Claimant must prove, by a preponderance of the evidence, that he incurred an actual loss, which resulted from a licensed contractor's acts or omissions. Md. Code Ann., Business Regulation Article § 8-401 defines an "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." For the reasons set forth below, I conclude that the Claimant has met this burden by proving that the Respondent failed to provide a workmanlike product that required the Claimant to seek another contractor who would repair the Respondent's poor work. In addition, the Claimant established that he incurred an actual loss entitling him to an award of \$975.00.

The Fund presented conclusive evidence that the Respondent was, at all relevant times, a licensed home improvement contractor. The Claimant presented credible testimony and extensive documentation establishing the Contract terms, his payments to the Respondent, and the Respondent's failure to satisfactorily complete the agreed-upon work. The Respondent did not appear at the hearing to place any of the Claimant's evidence in dispute, and the Fund's representative acknowledged that the evidence clearly established the Claimant's entitlement to an award from the Fund under a formula set forth in COMAR 09.08.03.03B(3).

In order to have the Respondent's unworkmanlike work repaired and completed, the Claimant solicited another contractor to perform the necessary repairs and to complete the work initially contracted to the Respondent. On January 14, 2014, the Claimant received an estimate from Duke's Painting LLC to scrape the existing paint where needed, to spot prime bare spots, to sand and otherwise prepare the surface for painting and to apply another coat of paint to the front of the house. This contractor quoted a price of \$975.00 to perform this repair work. The price

quoted by Duke's Painting LLC appears to be a legitimate quote by an established licensed home improvement contractor.

The Claimant has the burden of proof to not only show that he has sustained an actual loss, but also to establish that he is entitled to recover from the Fund. The Claimant provided an estimate for repair work to correct the work that the Respondent was contracted to do. Therefore, the Claimant is entitled to recover from the Fund the estimated cost of work proposal from Duke's Painting LLC.

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).

Using this formula, the computation is as follows:

Amount paid to or on behalf of the Respondent:	\$ 2,600.00
<i>Plus</i> amount to be paid to repair and complete:	+ \$ <u>975.00</u>
Total:	\$ 3,575.00
<i>Minus</i> original contract price	- \$ <u>2,600.00</u>
Actual Loss:	\$ 975.00

The Commission is empowered to award from the Fund no more than \$20,000.00 to one claimant for acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5) (Supp. 2013). In this case, the Claimant's actual loss is calculated at \$975.00 under COMAR 09.08.03.03B(3)(c). Because the Respondent provided an unworkmanlike home improvement, refused to make complete and final repairs to his faulty work and the Claimant anticipates hiring another contractor to complete the work, I agree with the recommendation of the Fund's representative that the Commission should award to the Claimants the amount of \$975.00.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has met his burden of proving that he incurred an actual loss as a result of the Respondent's poor work. Md. Code Ann., Business Regulation Article §§ 8-405(a) and 8-407(e)(1). The total amount of that loss is \$975.00, which the Claimant should be awarded from the Fund. COMAR 09.08.03.02C, 09.08.03.03B(3)(c).

### RECOMMENDED ORDER

Upon due consideration, I **RECOMMEND** as follows:

1. The **MHIC ORDER** that the Claimant, Jerry Bloomer, be awarded \$975.00 from the MHIC Fund, for the actual losses he sustained as a result of the Respondent's unworkmanlike work;
2. The Respondent, Stanley Jones t/a Dress It Up Contracting Company, be ineligible for an MHIC license, under Business Regulation Article § 8-411(a), until the Fund is reimbursed for the full amount of the award paid pursuant to its Order, plus annual interest of at least ten percent; and

3. The records and publications of the MHIC reflect this decision.

August 22, 2014

Date Recommended Decision Issued

MJW/kkc  
#150649

**Signature on File**

Michael J. Wallace  
Administrative Law Judge



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COMPANY,	* MHIC NO.: 14 (90) 70

**RESPONDENT**

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**FILE EXHIBIT LIST**

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