

IN THE MATTER OF THE CLAIM OF	*	BEFORE DEBORAH H. BUIE,
JEFFREY BELL	*	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-02-10-27751
OMISSIONS OF CHRISTOPHER	*	MHIC NO.: 08 <del>75</del> 326
GOTWOLS, T/A POLITZ	*	90
CONSTRUCTION COMPANY, INC.	*	

\* \* \* \* \*

**RECOMMENDED DECISION**

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**STATEMENT OF THE CASE**

On July 23, 2008, Jeffrey Bell (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$3,700.00 for actual losses allegedly suffered as a result of a home improvement contract with Christopher Gotwols, Politz Construction Co., Inc (Respondent).

I held a hearing on January 11, 2011, with continuing hearing dates on January 24 and March 2, 2011, at the Office of Administrative Hearings (OAH) located in Wheaton, Maryland. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The

Claimant represented himself. At his request, the Claimant was provided American Sign Language interpreting services. His brother Mitchell Bell, assisted him with the presentation of his case. The Respondent was present and represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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. 2010); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01; and COMAR 28.02.01.

### **ISSUES**

1. Is the Claimant precluded from obtaining an award from the Fund due to the statute of limitations; and if not,
2. 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. 1 Home Improvement Contract, August 5, 2003
- Cl. 2 Complaint, August 21, 2007
- Cl. 3 Inspection Report, December 22, 2007, with two attachments
- Cl. 4 Respondent's Response to Complaint, undated, with one attachment
- Cl. 5 Letter from Montgomery County Permits, May 22, 2009
- Cl. 6 Contract with Advance Roofing, July 29, 2009
- Cl. 7 Photos (a thru n)

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

- Fund 1        Notice of Hearing, November 10, 2010
- Fund 2        Notice of Hearing, September 20, 2010
- Fund 3        Notice of Hearing, returned undeliverable
- Fund 4        The Respondent's licensing history with the MHIC
- Fund 5        Home Improvement Claim Form, July 23, 2008

The Respondent did not submit any exhibits.

Testimony

The Claimant testified in support of his claim and presented testimony from his brother, Mitchell Bell, and his son, Avery Bell. The Respondent testified in his own behalf.

**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 01-67621.
2.        On August 5, 2003, the Respondent and the Claimant entered into a contract whereby the Respondent agreed to install new roof decking, flashing, shingles, ridge vent, and attic fan cover at the Claimant's residence (the Property).
3.        The contract price was \$3,700.00. Due to the Claimant's requirement for sign language to communicate, Arthur Green, the Claimant's father-in-law, was the contact person and Mr. Green signed the contract. The Respondent never had a conversation with the Claimant; all discussions were with Mr. Green.
4.        The Respondent completed the work in September 2003 and the Claimant paid him in full.

5. Sometime in the spring of the following year, that is, 2004, the Claimant noticed black mold in his attic, on the underside of the roof decking.
6. The Claimant's attic was not properly ventilated due to bathroom vents improperly vented into the attic, creating moisture, as well as insulation blocking the soffit vents.
7. Sometime in 2006, the Respondent returned to the Property in response to the Claimant's complaints about the mold. The Respondent observed insulation covering the soffit vents preventing the flow of air. He advised Mr. Green (Claimant's father-in-law) to contact an insulation company or a plumber because the stagnant air in the attic was not being allowed to ventilate. The Respondent replaced some shingles.
8. The Claimant remained dissatisfied with the roof because the mold was still present in the attic.
9. The Respondent was not responsible for the insulation covering the vents in the attic.
10. On August 21, 2007, the Claimant filed a complaint with MHIC, alleging that the shingles installed by the Respondent were defective, causing water damage and mold.
11. In response to the complaint, on December 22, 2007, George Korb (Korb), a MHIC inspector, inspected the Claimant's attic. Korb recommended, to resolve the mold problem, the Claimant should open the soffit/ridge vents and install a humidistat on the attic fan.
12. The Claimant did not take the recommended action.
13. On July 23, 2008, the Claimant filed a claim for reimbursement from the Fund for the contract price of \$3,700.00.
14. On July 29, 2009, the Claimant contracted with Advance Roof to replace the roof installed by the Respondent at a cost of \$6,090.00.

## DISCUSSION

Section 8-405(a) of the Business Regulation article 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[.]" 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 (2004). A Claimant does not have unlimited time to file a claim with the Fund. "A claim shall be brought against the Fund within 3 years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage." Md. Code Ann., Bus. Reg. § 8-405(g) (Supp. 2009).

The Claimant filed the claim with the Fund because of a concern that the roofing job done by the Respondent was in some way causing mold in his attic. The Claimant testified that he first observed mold in the spring of 2004 and every six months when he would enter the attic to store seasonal items, he would observe larger and larger amounts of mold. He maintained that he concluded that the Respondent was responsible for the mold because there was no mold in his attic before the August 2003 roofing work done by the Respondent. The Claimant further maintained that he initially complained to the Respondent about the mold approximately one year after completion of the work, requested the Respondent return and "fix it," but ultimately the Respondent only agreed to replace a couple of shingles (in 2006). Finally, the Claimant presented an inspection report from Korb in which he concluded that the problem with the mold could be addressed by opening the ridge and soffit vents.

The Respondent argued that his roof work was done in an outstanding manner and that the existing roof was so damaged by humidity that the wood had begun to deteriorate and had to be totally replaced. He further maintained that he never had any conversations with the Claimant;

all of his discussions were with Mr. Green. The Respondent criticized the Claimant's presentation of the case because he argued that Mr. Green should have been present to testify about their discussions. He also stated that he showed Mr. Green where the problem existed, i.e., the bathroom venting and moisture getting trapped because of the insulation blocking the soffit vents. Finally, the Respondent maintained that he brought shingle manufacturers out to the residence to look at the shingle and they found nothing wrong with the shingle.

The Fund argued that the Claimant's claim is barred by the statute of limitations. For the following reasons, I agree with the Fund. By the Claimant's own admission, as of the spring of 2004, the Claimant had concerns with the presence of mold on the underside of the roof decking and a few months later the mold was larger and so he contacted the Respondent. I have taken into consideration that in the August 2007 complaint, the Claimant stated that he noticed the mold approximately two years after completion of the work; however, his testimony before me was straightforward and asserted with confidence and I, therefore, give his sworn testimony more weight than what was stated in the complaint. Thus, he should have filed his claim by the spring of 2007 or, if one takes into consideration that perhaps he did not attribute the mold to the Respondent's work until later in the year when he saw the mold growing, then the claim should have been filed by the end of 2007 or early 2008. Since the Claimant filed the claim in July 2008, his claim is barred from recovery.

Notwithstanding that I have made a dispositive ruling on the issue of timeliness, even if I were to conclude that the Claimant filed a timely claim, he has failed to present evidence that the Respondent's work was unworkmanlike. The Respondent more than sufficiently rebutted the Claimant's allegations, which were consistently vague at best, with his credible denials of poor workmanship. He testified with confidence that the underlying wood of the Claimant's existing

roof showed considerable signs of exposure to moisture over the years, likely due to the bathroom venting issue. The MHIC inspector, Korb, also noted the same issues with insufficient ventilation, in support of the Respondent's testimony, and although Korb summarized his report with a blanket conclusion that the ventilation problem "was evidently caused by the contractor," as a fact-finder, such a broad conclusion, without supporting evidence, would receive very little weight.

In conclusion, considering the absence of credible evidence presented by the Claimant connecting the mold to inferior work done by the Respondent, were I to make a determination on the merits of the Claimant's claim, I could not rule favorably on his behalf. Indeed, the Fund also argued that absent a finding on the issue of the statute of limitations, this matter rises and falls on whether the fact-finder believes mold existed before the roofing job done by the Respondent, i.e., it is a matter of credibility.

While I agree with the Respondent that the evidence presented by the Claimant has failed to establish that the Respondent's work was unworkmanlike or inadequate, I will not address the merits of the case, since I find that the statute of limitations bars any recovery from the Fund.

#### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has failed to establish that he sustained an actual loss as a result of the acts or omissions of the Respondent, since the Claimant's claim was filed more than three years after the Claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage. Md. Code Ann., Bus. Reg. § 8-405(g) (Supp. 2010).

**RECOMMENDED ORDER**


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

**ORDER** that the Claimant's claim against the Maryland Home Improvement Commission Guaranty Fund and the Respondent be denied; and

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

May 16, 2011  
Date decision mailed

DHB/h  
121651

  
Deborah H. Buic  
Administrative Law Judge



PROPOSED ORDER

*WHEREFORE, this 5th day of July 2011, 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.*

*Joseph Tunney*

*Joseph Tunney  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**