

The Maryland Home
 Improvement Commission

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**BEFORE THE
 MARYLAND HOME IMPROVEMENT
 COMMISSION**

v. Joseph J. Lamb, Sr.
 t/a Lamb Contracting LLC
 (Contractor)
 and the Claim of
 Leonard Thomas
 (Claimant)

MHIC No.: 08 (90) 97

FINAL ORDER

WHEREFORE, this February 24, 2011, Panel B of the Maryland Home

Improvement Commission **ORDERS** that:

1. The Findings of Fact set forth in the Proposed Order dated October 5, 2010 are **AFFIRMED.**
2. The Conclusions of Law set forth in the Proposed Order dated October 5, 2010 are **AFFIRMED.**
3. The Proposed Order dated October 5, 2010 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.

I. Jean White
 I. Jean White, Chairperson
 PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM OF	*	BEFORE MICHAEL D. CARLIS,
LEONARD S. THOMAS,	*	AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	*	OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND	*	OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED MISCONDUCT OF	*	
JOSEPH J. LAMB, SR.,	*	OAH No.: DLR-HIC-02-09-19998
RESPONDENT	*	COMPLAINT No.: 08 (90) 97

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
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RECOMMENDED ORDER

STATEMENT OF THE CASE

On July 10, 2008, Leonard S. Thomas (Claimant) filed a claim before the Maryland Home Improvement Commission (MHIC) for compensation from the Guaranty Fund (Fund). The claim was against Joseph Lamb, Sr., trading as Lamb Contracting, LLC, for an actual loss of \$11,575.00. On May 1, 2009, the MHIC ordered a hearing, naming Joseph J. Lamb, Sr. (Respondent) as the alleged responsible contractor.

On May 3, 2010, and May 27, 2010, I held a hearing at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) & 8-407(c)(2) (2010).¹ The Claimant represented himself. The Respondent represented himself.

¹ All subsequent references to the Business Regulation Article of the Annotated Code of Maryland are to sections only.

Hope M. Sachs, Assistant Attorney General, and the Office of the Attorney General, represented the MHIC Fund.

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 OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); Code of Maryland Regulations (COMAR) 09.01.03 and 09.08.03; COMAR 28.02.01.

ISSUES

The issues are (1) whether the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement² that caused the Claimant an actual loss; and, if so, (2) whether the amount of the compensable actual loss is the amount that the Claimant has claimed.

SUMMARY OF THE EVIDENCE

Exhibits

The following were admitted for the Claimant:

- Claimant #1: Contract, dated January 20, 2007;
- Claimant #2: Addendum, dated January 26, 2007;
- Claimant #3: Addendum, dated February 2, 2007;
- Claimant #4: Addendum, dated March 2, 2007;
- Claimant #5: Addendum, dated March 9, 2007;
- Claimant #6: Six invoices, dated from March 13, 2007, to June 7, 2007;
- Claimant #7: Proposal, dated January 14, 2008;
- Claimant #8: Proposal, dated sometime in 2008;
- Claimant #9: Contract, dated November 12, 2009;

² A "home improvement" is "the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building[.]" Section 8-101(g)(1)(ii).

Claimant #10: Payments, including checks dated from January 20, 2007, to March 22, 2007; and
Claimant #11: List of complaints.

In addition to the above exhibits, photographs labeled A1 through A23 were entered for the Claimant.

The following were admitted for the Respondent:

Licensee #1: Photograph;

Licensee #2: Photograph;

Licensee #3: Estimate Information Sheet;

Licensee #4: Letter to the MHIC, dated September 11, 2007;

Licensee #5: Written list of items related to claim;

Licensee #6: Photograph;

Licensee #7: Photograph;

Licensee #12:³ Photograph;

Licensee #13: Sales Invoice from ABC Supply Co., Inc.;

Licensee #14: Sales Order Invoice from The Roof Center;

Licensee #15: Billing Document, with attachments, from Capstone ISG, Inc.;

Licensee #16: Insurance letter, dated November 8, 2008;

Licensee #17: Leonard Thomas Notes;

Licensee #18: Baltimore County ESL invoices;

Licensee #19: Baltimore County ESL invoices;

Licensee #20: Letter, dated November 5, 2007;

Licensee #21: Statement, dated December 18, 2007; and

Licensee #22: Photographs.

³ Licensee ## 8-11 were not admitted.

The following were entered for the MHIC Fund:

- Fund #1: Notice of Hearing and Hearing Order;
- Fund #2: Licensing information; and
- Fund #3: Letter, dated October 28, 2008, with claim form.

Testimony

The Claimant testified for himself and presented the testimony of Linda Christine Mooney, a neighbor.

The Respondent testified for himself and presented the testimony of : Stuart Rosenzwog, a distributor of building materials; Andrew Wells, an Insurance Adjuster for Capstone ISG, Inc.; George Chaney, III, a roofer employed by the Respondent; Tisha Lynn Brubach, an Office Manager employed by the Respondent from 2006 to 2008; Linda Maria Taylor, Receptionist for the Respondent; and Howard Prough, accepted as an expert in the installation of vinyl siding.

The MHIC Fund did not offer any witnesses.

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. At all times relevant herein, the Respondent was licensed as a home improvement contractor under registration number 68926.
2. On January 20, 2007, the Claimant and Respondent entered into a home improvement contract⁴ (Contract) for major renovations to the Claimant's house in Baltimore, Maryland, for \$43,696.00.

⁴ A "home improvement contract" is "an oral or written agreement between a contractor and owner for the contractor to perform a home improvement." Section 8-101(h). An "owner" is a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement. Section 8-101(k).

3. From January 26, 2007, through March 2007, the Claimant and Respondent agreed to five addendums to the Contract and twice agreed to additional payments for work for a total cost of \$8,174.00. The total final cost of the Contract was \$51,870.00.⁵
4. The Respondent began the home improvement on or about January 27, 2007, and completed the home improvement on or about March 15, 2007. The Claimant paid \$51,586.00 to the Respondent.
5. On September 6, 2007, the Claimant unreasonably rejected the Respondent's good faith effort to resolve the Claimant's complaints about poor workmanship, including complaints about the roof.
6. The Claimant did not complain to the Respondent about his installation of vinyl siding.
7. The roof that the Respondent installed leaked during heavy rain and caused water damage to the inside of the Claimant's house.
8. In January or February 2008, the Claimant paid Horizon Construction Co., Inc., (Horizon) \$5,500.00 to remove and replace the roof that was installed by the Respondent.
9. On or about February 4, 2009, the Claimant paid Gem Construction Co., Inc., (Gem) \$6,700.00 to remove and replace the vinyl siding that was installed by the Respondent.
10. The Claimant's actual loss is not calculable.

DISCUSSION

The Law

Under section 8-405(a), the MHIC Fund may compensate an "owner . . . for an actual loss that results from an act or omission by a licensed contractor[.]" Compensation is "only . . . for actual losses [an owner] incurred as a result of misconduct by a licensed contractor."

COMAR 09.08.03.03B(2). "Actual loss" is "the costs of restoration, repair, replacement, or

⁵ Hereinafter, "Contract" refers to the original contract and the addendums, unless indicated otherwise.

completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”

Section 8-401. “The Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim.” Section 8-405(d).

COMAR 09.08.03.03B governs the calculation of actual loss, as follows:

B. Measure of Awards from Guaranty Fund.

...

(2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

...

(c) 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 measurements accordingly.

Evidence related to the price of the Contract and payments

The parties do not dispute some of the material facts. The Claimant signed the Contract on January 20, 2007. The Respondent agreed, among other things, to remove “formstone pattern from the entire house,” remove and replace the shingles on the roof, remove and replace fourteen windows, enclose a porch, and install vinyl siding. The Claimant agreed to a payment of \$43,696.00. The Respondent worked on the home improvement from January 27, 2007, until completion on March 15, 2007.

The parties agreed to four change orders: (i) on January 26, 2007, for an additional payment of \$4,951.43; (ii) on February 2, 2007, for a reduction of payment of \$369.50; (iii) on March 2, 2007, for an additional cost of \$1,700.64; and (iv) on March 9, 2007, for an additional cost of \$738.32. The total cost of these addenda was \$7,020.89.

The parties disputed two other significant charges: (i) charge for additional work on a foundation; and (ii) for overweight dumpster fees.

Ms. Brubach testified about the additional charge for the foundation. She kept the Respondent's log of daily business activity, including telephone calls. She testified that the Claimant agreed on March 13, 2007, to pay \$809.00 to complete work on the foundation. She identified a log entry at 12:15 p.m. on March 13, 2007, that memorialized the agreement.

The Claimant twice testified about this charge. He testified, "I agreed with [the Respondent] that the work needed to be done." Later, he testified that he agreed to pay only the \$265.00 for the materials, but not the \$544.00 for the labor.

Because Ms. Brubach was a more credible witness than the Claimant,⁶ I find that the Claimant agreed to pay \$809.00 for the additional work to the foundation.⁷

The record also includes two invoices from Container Services Inc., for dumpster overage charges: one on January 26, 2007, for \$155.10, and the other on February 23, 2007, for \$189.00. The Respondent billed these charges to the Claimant. The Claimant denied he agreed to pay these extra charges. Ms. Mooney testified that she observed the Respondent unload debris from other construction projects into the dumpsters at the Claimant's residence. This testimony formed the basis of the Claimant's belief that the Respondent had "cheated" him. I do not

⁶ At the time of the hearing, Ms. Brubach was no longer employed by the Respondent. I found her a credible witness also based on her demeanor during her testimony, and her reliance on contemporaneous log entries.

⁷ When there was a dispute between the Claimant's testimony and another witness' testimony, I have credited the other witness, because, more than once during his testimony, the Claimant changed his testimony when confronted with persuasive contrary evidence.

consider this testimony sufficient evidence to establish that the Respondent used the dumpsters at the Claimant's for disposal of debris from other construction projects.

On the other hand, entries from the log kept by Ms. Brubach support finding that the Claimant had agreed to pay these additional charges. An entry on January 26, 2007, indicates the Claimant agreed to pay extra for the removal of a fourth layer of shingles on his roof.⁸ A February 13, 2007, entry shows that the Claimant "does not want all the scrap metal he piled up in the yard and he wants to throw it in the dumpster, he said he will pay the difference."

Licensee #17.

Based on this evidence, and my credibility finding discussed above, I find that the Claimant agreed to pay total overage charges of (\$344.10) on the dumpsters. Therefore, based on the original contract price, the price for the addenda, and the extra charges, I find that the total cost of the Contract was \$51,870.00 ($\$43,696.00 + \$4,951.43 + 1,700.64 - \$369.50 + \$738.32 + \$809.00 + \$344.10 = \$51,869.99$).

The Claimant's total payment to the Respondent was not disputed. The record includes copies of checks for a total payment of \$51,586.00, as follows: (i) January 20, 2007, for \$15,214.41, (ii) January 26, 2007, for \$10,00.00, (iii) February 5, 2007, for \$8,000.00, (iv) February 9, 2007, for \$8,000.00, (v) March 1, 2007, for \$4,000.00, (vi) March 9, 2007, for \$2,000.00, (vii) March 14, 2007, for \$3,353.91, and (viii) March 22, 2007, for \$1,017.55.

Evidence related to the Respondent's misconduct

The Claimant alleged that he paid other contractors \$12,200.00 to replace the roof and vinyl siding. According to the Claimant, in or about January 2008, he paid Horizon \$5,500.00 to replace the roof because the roof that the Respondent had installed about one year earlier leaked

⁸ The original contract was for the removal and disposal of three layers of shingles.

water into the house. Also according to the Claimant, in December 2009, he paid Gem \$6,700.00 to replace the vinyl siding that the Respondent had installed in 2007.

Horizon charged \$5,500.00 to replace the roof. The Claimant offered no evidence to establish the separate costs for material and labor.⁹ The following is part of an addendum to Horizon's proposal: "[The Claimant] was advised that the original contractor should be the ones [sic] correcting the problems, but [the Claimant] does not want them back[.]" Claimant #7.

Horizon replaced the roof with "30 year Timberline shingle[s]"; removed siding from the dormers, re-flashed around the dormers, and replaced the siding; and added a vent. The Claimant testified that he paid Horizon \$5,500.00. He offered no documentary evidence to support the payment.

Horizon provided a list of "problems" it found with the Respondent's installation of the roof. The problems on the front roof were:

1. The starter shingles were not installed properly.
2. The valley shingles were nailed to close to the center of the valley.
3. The flashing at the bottom of the dormers were [sic] not installed correctly.
4. The shingles were not aligned correctly from the left to the right [sic] side around the dormer. Someone started on the left side nailing and someone started on the right side and the shingles did not meet properly in the middle.
5. The top row of shingles were [sic] not installed correctly, shingles were nailed over top of one another.
6. The ridge vent was not cut open. The purpose of ridge vent is to allow excessive heat to escape through the vents to prevent condensation. The ridge vent was installed without being cut open.

The problems on the rear roof were:

⁹ Horizon's proposal (Claimant #7), dated January 14, 2008, is the only documentary evidence of the Claimant's cost to replace the roof that the Respondent had installed. Claimant #7 lists a total cost of \$5,500.00. It does not separately allocate the cost to labor and material.

1. Front piece of metal around dormers were [sic] missing.
2. The last piece of wall flashing where the water dumps off into the valley were [sic] missing on both sides.
3. The shingles on the left dormer were face nailed into the valley.
4. The starters courses at the bottom of roof were not installed properly. Customer added pieces of metal so that water would not drain into the decking on the roof.
5. Water leaking around windows on dormers in rear of home.
6. Water lines on shingles were not properly aligned correctly [sic] on the far right side of the house.
7. Shingles around the boot flanges were not installed correctly.

Claimant #7.

According to the Claimant, on March 3, 2007, he filed a claim with the Respondent's insurance company for water damage to his kitchen and upstairs bedrooms caused by the Respondent's faulty installation of the roof. On October 29, 2008, Mr. Wells investigated the claim. His report is part of the record at Licensee 15, which includes pictures that are described as documenting water damage to the kitchen ceiling and at least one bedroom.¹⁰ Mr. Wells recommended the cost to repair the water damage at \$4,256.13. According to Mr. Wells, his investigation did not include a determination of fault.

Mr. Rosenzweg testified that Horizon used a roofing shingle that cost about thirty percent more than the shingle that the Respondent had used.

The Respondent testified that opening the roof vent was not part of the Contract at the Claimant's request because he thought that opening the vent would make his house colder in the winter. According to the Respondent, the Claimant, however, wanted to retain the unopened

¹⁰ The images on the pictures themselves are not discernable. There is no reason, however, to think that Mr. Wells incorrectly described what the pictures depict.

ridge vent to conform to the appearance of the other houses in the neighborhood. The

Respondent's log shows the following entry on January 10, 2007:

Existing roof has three layers, ridge vent is not functional. Does not want the roof cut open for ridge vent because house is cold now and does not want to loose [sic] any more heat. He wants a ridge vent for cosmetic reasons only because the rest of the homes in the neighborhood has [sic] them. He has two vents already and one in the front for a third that is boarded shut because of cold.

Licensee #17.

The Respondent testified about photograph A12. He acknowledged that the shingles did not appear "evenly spaced," but claimed it was "an aesthetic issue," not a workmanship issue.

Based on the evidence reviewed above, I find that the Respondent's installation of the roof was inadequate because it failed to prevent water damage to the interior of the Claimant's house. For the following two reasons, however, I cannot find a reasonable cost either to repair or to replace the roof.

First, the evidence does not establish whether the roof needed to be repaired or replaced. No one from Horizon testified to explain why the entire roof needed to be replaced. No expert offered an opinion about the extent of the Respondent's inadequate or unworkmanlike installation of the roof. Therefore, I cannot find \$5,500.00 a reasonable cost to correct the Respondent's misconduct.

Second, assuming replacement was necessary, I cannot find that \$5,500.00 was a reasonable cost for the replacement. Mr. Rosenzwoog's testimony established that Horizon used shingles that cost thirty percent more than the Contract shingles. In addition, Horizon's price apparently included opening the ridge vent, which was outside the scope of the Contract. Because Horizon listed only a total cost on its proposal -- not separate costs for labor and materials -- it is impossible reasonably to adjust the total cost (\$5,500.00) to account for the more expensive shingles and for the additional work.

On November 12, 2009, Gem offered to replace the vinyl siding for \$6,700.00. Gem's contract did not list separate costs for materials and labor. The Claimant testified that he paid Gem's full contract price, but he offered no documents or other evidence to corroborate the payment. The Claimant also offered no evidence to establish the separate costs of labor and materials.

On December 4, 2009, Gem completed the replacement of the vinyl siding. Gem also reported the following about the Respondent's workmanship:

1. Removed and replaced all siding. Nails that were used by the original installer were 1-1 fourth roofing nails. There [sic] nails were to [sic] short and inadequate to penetrate the framing of the house.
2. Remove all window trim and flash windows properly. Original installer did not flash windows trim or chalked [sic] as needed.
3. Company removed and replaced all J channels around windows and rakes. Original installer used too many pieces at curial areas that could cause leakage in these curial areas. J. channels were to [sic] short on windows and too many unnecessary pieces.
4. Company to caulk around all windows and J trim after replacing with new. Original installer did not caulk any windows trim or J channels.
5. Company to replace approx. 20 feet of gutters that were installed to [sic] short and installed downspouts straps that were needed. Downspout straps were not screwed properly to framing and were improperly spaced out.

Other deficiency [sic] that were found and fixed[:]

1. The nails were to [sic] short and were spaced out improperly they were any were [sic] from 24 on center to 36 in and some were space [sic] 5 ft. apart.
2. There were not enough straps on downspouts.
3. We replaced 2 gable vents that were improperly size [sic].
4. We installed flashing on the entire house to cover expose [sic] edges on the bottom rim at starter strip.

Claimant #9.

On May 21, 2008, Mr. Prough also gave the Claimant an estimate to replace the vinyl siding. Mr. Prough's estimate was \$5,995.00. Mr. Prough testified, but he did not explain why

siding needed to be replaced, except to indicate that he could not be responsible for his workmanship unless he replaced all the siding.

Mr. Prough identified the following inadequacies of the Respondent's work: First, pieces of siding were uneven and the siding "didn't line up at the corners." Second, the downspouts did not have any brackets to hold them in place against the house. Third, the J channels needed to be replaced because the miters were not correctly cut or not cut at all. Fourth, the outside of the windows needed to be re-caulked because the existing caulk had discolored, and water was getting behind the J channel. Fifth, metal needed to be placed around the bottom of the whole house to keep out water and air, which he described as his "preference": "It doesn't have to be done. It's my standard."

The Claimant submitted four photographs that showed some obvious inadequacies of the Respondent's installation of the vinyl siding. Photographs A5 and A21 show where two separate pieces of siding had come off of the house. Photograph A4 shows two pieces of siding that did not extend completely within the adjacent window casing. Finally, Photograph A15 shows where a window frame had been inadequately covered.

The Respondent testified that he used one and one-half inch nails to install the vinyl siding, not the one and one-quarter inch nails listed by Gem. An invoice from ABC Supply Company (ABC) shows the purchase of vinyl siding and one and one-half inch nails on February 1, 2007.¹¹

Based on this evidence, I find that part of the Respondent's installation of the vinyl siding was inadequate or unworkmanlike. This finding is based on the photographs and Mr. Prough's testimony. I am unable to find, however, that the entire installation was inadequate or unworkmanlike and needed to be replaced. Mr. Prough did not testify to that effect. The only

¹¹ Mr. Rosenzweig identified this invoice as being from his company.

probative evidence of the need for replacement of the entire siding is Gem's report that the Respondent used nails that were too short to adequately hold the siding in place. This report is not reliable because Mr. Prough's testimony directly contradicted part of the report. For example, Gem reported that the Respondent had not caulked the windows. Mr. Prough testified that he saw that the windows had been caulked but needed to be replaced because it was yellowing. Furthermore, the Respondent refuted Gem's report about the nails by his testimony that he had used one and one-half inch nails, not the shorter nails listed in Gem's report. The Respondent's testimony was partially corroborated by the invoice from ABC. Accordingly, the evidence does not support finding that the entire vinyl siding needed to be replaced.

Summary of evidence related to good faith effort to resolve

The Respondent testified, "We were prevented from making any repairs to [the Claimant's] home." According to the Respondent, on several occasions, he went to the Claimant's house "to go over some of his issues."

The Respondent specifically testified about September 6, 2007. On that date, he had dispatched two work trucks to meet him at the Claimant's house. According to the Respondent, when he arrived, the Claimant was outside, across the street, at Ms. Mooney's house. He told the Claimant that he was there to discuss the Claimant's complaints, and asked the Claimant to go with him to the house to discuss the concerns.

According to the Respondent, the Claimant started to walk across the street, inviting him to inspect a window, but then said, 'No, stay the fuck there. I don't want you on my fucking property.' The Respondent testified that he told the Claimant that he could not "evaluate" the problems without examining them. The Respondent then was able to look at a window, and agreed to "replace all the trim around the window and . . . caulk it up."

The Respondent further testified that he told the Claimant, "Whatever it is that's wrong, just give me an opportunity to fix it but I need to get on the roof to see what exactly is going on." According to the Respondent, the Claimant never mentioned any concerns about the siding.

At some point, one of the Respondent's trucks arrived at the house. When an African-American employee exited the truck, the Claimant became "belligerent," called him a "nigger,"¹² and threatened to punch the Respondent in his face if he did not leave.¹³ The Respondent left.¹⁴

On cross-examination, the Claimant was asked why he did not give the Respondent a chance to fix the roof. He testified,

I called you one night and left a message on your phone that I needed my [sic] roof insurance because my roof was so bad and it was leaking so bad that I needed your insurance company and that's what I left the message for. I did get a message back on my phone the next day and I did get a message from you telling me . . . I did not leave my phone number -- that you would not be able to come down to my house right now at the time because they're very busy and if I wanted my roof to be come down [sic] and checked out for the leaks then I would have to make an appointment.

The following exchange also took place on cross-examination:

Q. Did [the Respondent] ever come out and fix what you thought was wrong?

A. No.

Q. Did you ask them?

A. Asked them to come down and look at my roof.

Q. When the men were working there during the time of construction, did you ever say to the men, "The shingles are crooked, and I would like them fixed?"

A. When they were working on my house, one time, one place in the back, I turned around and told the roof was off and you [Respon-

¹² The Claimant admitted the use of this racial slur.

¹³ The Claimant admitted that he threatened the Respondent.

¹⁴ According to the Respondent, the Claimant was inebriated. Mses. Brubach and Taylor and Mr. Chaney also testified that the Claimant was often very inebriated.

dent] fixed the shingles. And, on the front of the house, the fourth row from the top was double layered the same row all across and . . . one of your employees . . . reset them.

Q. When you actually had water in your house, leaking in your house, did you at that point call [the Respondent] and say, 'Hey, I have water coming in my house?'

A. [The Respondent] did get a call, and Lamb told me he would come down and look at the house, but right now, they were very busy, and I would have to make an appointment.

Q. And when he said you would have to make an appointment, did you say, 'Okay, when can I have an appointment?'

A. Well, no[.].

Q. Would you say you gave [the respondent] a chance to fix the issues you had with the roof and the siding and the work that they did?

A. Somewhat not. I would say I gave them a slim chance. I think I not say I gave them a very good chance because [the Respondent] tells me he cannot do any more work on my house until I finally pay the final bill that I knew that I didn't owe [the Respondent] nothing. So that's where I thought it was not very good.

Q. Is it that you wanted them to fix the work but you didn't think it was fair for you to have to pay any more money . . . Or that you just didn't want them to fix the work because you thought they didn't do good work?

A. I'll explain it another way then. One was the money. And 2, [the Respondent] did come to the house and we went over a couple of things in the house . . . and I did show [the Respondent] where five shingles were wrong and [the Respondent] said I did not know what I was talking about and also the shingles being loose on roof and [the Respondent] said you have to understand because of the weather we have they could not be straight and why should I have to pay [to have someone to fix it].

Q. Did they say we'll fix the roof but first you have to pay the final bill?

A. That's in the paperwork we sent to the MHIC[.]

Q. Did he say it to you?

A. In the answering machine, yes.

Did the Claimant suffer a compensable actual loss?

On July 10, 2008, the Claimant filed a claim for \$11,575.00:¹⁵

1. Date of original contract:	<u>1/27/2007</u>
2. Date work done by contractor:	<u>1/29/2007</u>
3. Amount of original contract:	<u>\$43,696.00</u>
4. Amount of any changes to the original contract:	<u>\$ 7,020.89</u>
5. Total amount of lines 3 and 4:	<u>\$50,716.89</u>
6. Amount paid to or on behalf of the contractor:	<u>\$51,585.87</u>
7. Estimated value of the work done by the contractor:	_____
8. Subtract line 7 from line 6:	_____
If the contractor did not do any work on your contract, or if you do not intend to contract with another contractor to correct or complete the work done in the original contract, then this is the Amount of your claim. Enter this amount on line 11. If you have contracted or intend to contract with another contractor, go to line 9.	
9. Amount paid or payable to restore, repair, replace or or complete work done by the original contractor, which is poor or unworkmanlike or otherwise inadequate or incomplete:	<u>\$11,575.00</u>
10. Amount of claim. Add amounts on line 6 and 9 and subtract the amount on line 5:	_____
11. Enter claim amount from either line 8 or 10:	<u>\$11,575.00</u> ¹⁶

Fund #3.

The Fund recommended denial of the claim based on section 8-405(d): The Commission may deny a claim when "the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." I agree with this recommendation for the following reasons.

The Respondent credibly testified that he went to the Claimant's house on September 6, 2007, to discuss the Claimant's concerns about poor or inadequate workmanship. While there, the Claimant did not complain about the vinyl siding. The Respondent agreed to repair one

¹⁵ The calculation is on the MHIC's standard claim form.

¹⁶ The Claimant testified that he paid Gem and Horizon a total of \$12,200.00. On the claim form, he reports that he paid \$11,575.00 to replace the work done by the Respondent. This discrepancy was not explained at the hearing. The Claimant also failed to follow the directions on the claim form. At line 10, a claimant is to add the amounts on line 6 (amount paid to the contractor) and line 9 (amount paid to replace work done by the contractor) and place the sum on line 10. The Claimant left line 10 blank. If the Claimant had followed the instructions, the amount on line 10 (amount of claim) would have been \$12,443.98, based on his figures.

window, and requested permission to examine the roof. The Claimant refused and then became belligerent, using a racial epithet and threatening to assault the Respondent. The Respondent left, although before this, I find that he was willing to try to resolve the Claimant's complaints. Furthermore, the Claimant admitted that he had given the Respondent only a "slim chance" and not "a very good chance" to resolve problems with the home improvement. The Claimant's excuse that he did not do more because the Respondent had told him he would not do more work until his bill was fully paid is not supported by the evidence. The Claimant made his final payment on March 27, 2007. Yet, more than five months later -- in September 2007 -- the Respondent went to the Claimant's house to try to resolve the Claimant's complaints. Moreover, the Claimant's belief that the Respondent would not cooperate because of an unpaid balance does not justify his failure to give the Respondent an opportunity to resolve the complaints. I find, therefore, that the Claimant unreasonably rejected the Respondent's good faith efforts to resolve the claim. Based on this finding, I recommend that the Commission deny the claim.

Assuming the Commission disagrees with this recommendation, I will briefly explain why the evidence does not prove a compensable actual loss. While some part of the Respondent's work was inadequate or unworkmanlike, the Claimant failed to prove a reasonable amount to repair or replace the roof and vinyl siding. The Claimant paid Gem \$6,700.00 to replace the siding. Based on the findings discussed above, the Claimant failed to prove that the entire siding needed to be replaced. The Claimant paid Horizon \$5,500.00 to replace the roof. Based on the findings discussed above, the Claimant failed either to prove that the entire roof needed to be replaced or, assuming full replacement was necessary, a reasonable cost to replace the roof.

COMAR 09.08.03.03B(3)(c) sets forth the correct method to calculate the Claimant's actual loss. Under this method, the contract price is subtracted from the sum of the amount a

claimant has paid to or on behalf of the contractor plus “any reasonable amounts the claimant has paid . . . another contractor to repair poor work done by the original contractor[.]” (Emphasis supplied). As discussed above, the Claimant has failed to prove the “reasonable amounts [he] paid to repair poor work done by [Respondent].” As a result, the Claimant’s compensable actual loss is unknown.

CONCLUSIONS OF LAW

I conclude the following:

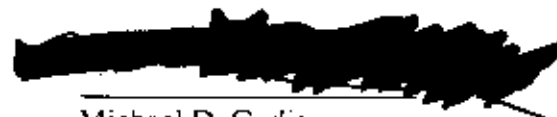
- A. The Claimant unreasonably rejected good faith efforts by the Respondent to resolve the claim. Section 8-405(d).
- B. The Claimant’s actual loss is not calculable. COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

- A. **ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant’s claim; and
- B. **ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

August 24, 2010
Date Decision Mailed



Michael D. Carlis
Administrative Law Judge

MDC/ch
116063

IN THE MATTER OF THE CLAIM OF	* BEFORE MICHAEL D. CARLIS,
LEONARD S. THOMAS	* AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME	* OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND,	* OF ADMINISTRATIVE HEARINGS
FOR THE ALLEGED MISCONDUCT OF	*
JOSEPH J. LAMB,	* OAH No.: DLR-HIC-02-09-19998
RESPONDENT	* COMPLAINT No.: 08 (90) 97

* * * * *

FILE EXHIBIT LIST

The following were admitted for the Claimant:

- Claimant #1: Contract, dated January 20, 2007;
- Claimant #2: Addendum, dated January 26, 2007;
- Claimant #3: Addendum, dated February 2, 2007;
- Claimant #4: Addendum, dated March 2, 2007;
- Claimant #5: Addendum, dated March 9, 2007;
- Claimant #6: Six invoices, dated from March 13, 2007, to June 7, 2007;
- Claimant #7: Proposal, dated January 14, 2008;
- Claimant #8: Proposal, dated sometime in 2008;
- Claimant #9: Contract, dated November 12, 2009;
- Claimant #10: Payments, including checks dated from January 20, 2007, to March 22, 2007; and
- Claimant #11: List of complaints.

In addition to the above exhibits, photographs labeled A1 through A23 were entered for the Claimant.

The following were admitted for the Respondent:

- Licensee #1: Photograph;
- Licensee #2: Photograph;
- Licensee #3: Estimate Information sheet;
- Licensee #4: Letter to the MHIC, dated September 11, 2007;
- Licensee #5: Written list of items related to claim;
- Licensee #6: Photograph;
- Licensee #7: Photograph
- Licensee #12:¹⁶ Photograph;
- Licensee #13: Sales Invoice from ABC Supply Co., Inc.;
- Licensee #14: Sales Order Invoice from The Roof Center;
- Licensee #15: Billing Document, with attachments, from Capstone ISG, Inc.;
- Licensee #16: Insurance letter, dated November 8, 2008;
- Licensee #17: Leonard Thomas Notes;
- Licensee #18: Baltimore County ESL invoices;
- Licensee #19: Baltimore County ESL invoices;
- Licensee #20: Letter, dated November 5, 2007;
- Licensee #21: Statement, dated December 18, 2007; and
- Licensee #22: Photographs.

The following were entered for the MHIC Fund:

- Fund #1: Notice of hearing and Hearing Order;
- Fund #2: Licensing information; and
- Fund #3: Letter, dated October 28, 2008, with claim form.

¹⁶ Licensee #8-11 were not admitted.

PROPOSED ORDER

WHEREFORE, this 5th day of October 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.

James Chiracol

James Chiracol
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION