

**The Maryland Home
Improvement Commission**

* **BEFORE THE**
* **MARYLAND HOME IMPROVEMENT**
* **COMMISSION**

v. James Gerard Blair
t/a Blair Construction LLC
(Contractor)

* **MHIC No.: 09 (75) 721**

and the Claim of
Earl & Winterlee Ray
(Claimant)

*
*

FINAL ORDER

WHEREFORE, this September 22, 2011, Panel B of the Maryland Home

Improvement Commission ORDERS that:

- 1. The Findings of Fact set forth in the Proposed Order dated July 5, 2011 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated July 5, 2011 are AFFIRMED.**
- 3. The Proposed Order dated July 5, 2011 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.**

Marilyn Jumalon
Marilyn Jumalon, Chairperson
PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

PHONE: 410.230.6309 • FAX: 410.962.8482 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE
INTERNET: WWW.DLLR.STATE.MD.US • E-MAIL: MHIC@DLLR.STATE.MD.US

IN THE MATTER OF THE CLAIM OF	* BEFORE NEILE S. FRIEDMAN,
EARL RAY AND WINTERLEE RAY,	* 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-02-10-30711
OMISSIONS OF JAMES BLAIR	* MHIC NO.: 09 (75) 721
T/A BLAIR CONSTRUCTION LLC	*

* * * * *

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 August 10, 2009, Earl Ray and Winterlee Ray (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of losses allegedly suffered as a result of a home improvement contract with James Gerard Blair t/a Blair Construction LLC (Respondent).

I held a hearing on March 3, 2011 at the Maryland Department of Agriculture located in Annapolis, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department or DLLR), represented the Fund. The Claimants represented themselves. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, 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 28.02.01.

ISSUE

Did the Claimants 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 Claimants' behalf, unless otherwise noted:

Cl. #1 Notebook containing Memorandum from Ray Alcorn to the Claimants dated July 29, 2009 and photographs

Cl. #2 Not admitted

Cl. #3 Not admitted

Cl. #4 Contract

Cl. #5 Sale Invoice

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

Fund #1 Notice of Hearing

Fund #2 Hearing Order

Fund #3 Respondent's Licensing Record

Fund #4 Letter from MHIC to Respondent with MHIC Claim Form

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

Resp. #1 Residential Lead Sheet dated July 14, 2008

Resp. #2 Residential Lead Sheet dated October 2, 2006

Resp. #3 Letter from the Respondent to the Claimant Winterlee Ray dated August 19, 2008

Testimony

The Claimant Earl Ray testified on behalf of the Claimants.

The Respondent testified on his own behalf and called Ronald Savage, who was noted as an expert in roofing.

The Fund 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 01-69102.
2. In October 2006, the Claimants and the Respondent entered into an agreement for the repair of the Claimants' shingle roof, the purpose of which was to correct leaking. The repair involved removal of the existing shingle layer roof down to plywood decking around sides and cricket area of chimney, including step flashing, and the installation of new GAF Weather Watch Ice and Water Shield shingles and aluminum step flashing. The Claimants agreed to pay \$735.00 for these services, and they did pay the Respondent in full.
3. The repairs were made in October 2006. The work performed by the Respondent cut the leaking by about 90%. After the job was performed, Claimant Winterlee Ray commented that the leaks were reduced to a trickle.
4. Some time after the repairs were made as agreed, the roof leaked, and the Claimants called the Respondent and asked him to fix the leaks. The Respondent came to the

Claimants' home multiple times and made further repairs,¹ at no additional cost. The Respondent finally discovered that the leaking was caused by the fact that the chimney, when the house was built, was never wrapped with house wrap. Nor was there any flashing in the chimney. In order to completely stop the roof from leaking, the siding would need to be removed from the chimney, and the house wrap would have to be installed before the siding could be replaced.

5. For this additional work, which was not within the scope of the work originally contemplated by the contract between the Claimants and the Respondent, the Respondent would normally charge \$1,400.00. However, on July 14, 2008, the Respondent offered to perform this work at cost, for \$900.00. The Claimants rejected this offer, demanding that the Respondent perform the work at no cost.

DISCUSSION

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. 2010). *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).

The Respondent is a licensed contractor; however, from the evidence presented, I cannot find that the Claimant has proven an actual loss that results from his acts or omissions, according to Maryland law.

Claimant Earl Ray was the only witness for the Claimants, and he is not and was not certified as an expert in roofing. He testified that the Respondent's work was inadequate and

¹ At one point the Respondent had to replace shingles damaged when some other contractor for the Claimants damaged the roof by placing a ladder onto the newly shingled roof.

unworkmanlike because he did not stop the roof from leaking. He complained that the Respondent, instead of using 3" step flashing, should have installed step flashing of a size adequate to compensate for the high pitched roof. He also indicated that the Respondent's work was inadequate because he should have noticed that the chimney did not have house wrap under the siding and fixed that. He stated that he had the work performed properly by another contractor, Ray Alcorn, but that Mr. Alcorn was unavailable to explain how the Respondent's work was deficient.

Without the testimony of an expert, I cannot find that the Respondent performed an unworkmanlike or inadequate home improvement. I cannot rely on the opinions of Mr. Ray alone as to why his roof leaked following the Respondent's performance of work under the contract.

On the other hand, the Respondent did call an expert in roofing, Mr. Savage. Both the Respondent and Mr. Savage agreed that the roof leaked because the chimney was never wrapped in house wrap by the original home builder. They both indicated that the house wrap would have prevented the leaks, even with standard-in-the-industry 3" step flashing. And the Respondent credibly explained that there was no way for him to have known about the house wrap problem without removing the chimney siding, which he was never contracted to do.

I found the Respondent to be credible, professional and reasonable. Specifically, I note that he offered to remove the chimney siding, to install house wrap, and then to replace the siding at cost to him. I find that the Claimants unreasonably rejected this offer, instead demanding that the Respondent perform the work at no cost. Md. Code Ann., Bus. Reg. § 8-405(d) (Supp. 2010); COMAR 09.08.03.02D(3)(c).

Consequently, I must find that the Claimants have not met their burden to prove that the Respondent performed an unworkmanlike, inadequate or incomplete home improvement, and therefore their claim must be denied and dismissed.

CONCLUSIONS OF LAW

I conclude that the Claimants have not sustained an actual loss 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 Claimants' Fund claim be **DENIED**; and

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

May 5, 2011
Date Decision Issued



Neil S. Friedman
Administrative Law Judge

NSF/kkc
#122596

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FILE EXHIBIT LIST

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19, 2008

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.

Rossana Marsh

*Rossana Marsh
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION