

**The Maryland Home  
Improvement Commission**

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

**v. James A. Cockrell**  
**(Son of James Cockrell, Sr.)**  
**t/a Cockrell & Son Construction, Inc.**  
**(Contractor)**  
**and the Claim of**  
**Anthony V. Adams**  
**(Claimant)**

\* **MHIC No.: 12 (90) 642**  
\*  
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**FINAL ORDER**

**WHEREFORE, this September 29, 2014, Panel B of the Maryland Home**

**Improvement Commission ORDERS that:**

- 1. The Findings of Fact set forth in the Proposed Order dated May 20, 2014 are AFFIRMED.**
- 2. The Conclusions of Law set forth in the Proposed Order dated May 20, 2014 are AFFIRMED.**
- 3. The Proposed Order dated May 20, 2014 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**

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER L. GRESOCK,
OF ANTHONY V. ADAMS,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-13-25930
FOR THE ALLEGED ACTS OR	* MHIC NO.: 2012-642
OMISSIONS OF JAMES COCKRELL,	*
T/A COCKRELL & SON	*
CONSTRUCTION,	*
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 April 9, 2012, Anthony V. Adams, (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$8,000.00 for actual losses allegedly suffered as a result of a home improvement contract with James A. Cockrell t/a Cockrell & Son Construction Inc. (Respondent).

I held a hearing on February 4, 2014, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-312 (Supp. 2013) and § 8-407 (2010). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation

(Department), represented the Fund. The Claimant represented himself. The Respondent was represented by James Cockrell, the son of James A. Cockrell and a principal of the firm.<sup>1</sup>

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. 2013), 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:

- Cl. Ex. 1 Contract, dated August 31, 2009; Order to Proceed, dated August 31, 2009; Cockrell & Son Construction LLC Proposal, dated April 21, 2009; Baltimore City Deferred Loan Agreement, dated August 31, 2009
- Cl. Ex. 2 Handwritten Letter from the Claimant to "Mrs. Katie."<sup>2</sup> undated
- Cl. Ex. 3 Letter from Katie Isbister, Better Business Bureau of Greater Maryland (BBB), to the Claimant, dated March 21, 2012, with attachment; Letter from Ms. Isbister to the Claimant, dated December 29, 2011; Letter from Ms. Isbister to the Claimant, dated April 17, 2012
- Cl. Ex. 4 Letter from John Borz, Chairman, Home Improvement Commission, to the Claimant, dated August 7, 2012; Letter from Michael Miller, Investigator, HIC, dated December 28, 2011; Letter from Mr. Miller to the Claimant, dated December 12, 2011; Letter from Mr. Borz to the Respondent, dated August 19, 2012; Letter from Mr. Miller to the Respondent, dated April 26, 2012; Letter from the BBB to the Claimant, dated January 26, 2012; Letter from Mr. Miller to the Claimant, dated April 5, 2012

<sup>1</sup> James A. Cockrell, who was the owner of Cockrell & Son during the time the work in this case was completed, died in July 2011. His son, James Cockrell, took over ownership of Cockrell & Son. Accordingly, he may represent the interest of the corporation at the hearing, but not his father (or his father's estate) as an individual.

<sup>2</sup> Based on other documents admitted, "Mrs. Katie" is mostly likely Katie Isbister.

Cl. Ex. 5 Letter from the Claimant to the BBB, dated January 20, 2012, with attachments:  
Two Letters from the Claimant to the HIC, undated

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

- Fund Ex. 1 OAH Notice of Hearing, dated November 7, 2013, with mailings attached
- Fund Ex. 2 DLLR HIC ID Registration and Professional License History Computer Printouts for James Alton Cockrell<sup>3</sup>
- Fund Ex. 3 DLLR HIC ID Registration and Professional License History Computer Printouts For James Cockrell<sup>4</sup>
- Fund Ex. 4 DLLR HIC ID Registration and Professional License History Computer Printouts for Corporate License held by James A. Cockrell
- Fund Ex. 5 Letter from Mr. Borz to James Cockrell, dated April 19, 2012

The Respondent did not offer any exhibits for admission into evidence.

#### Testimony

The Claimant testified on his own behalf. The Respondent testified on his own behalf.

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, the Respondent was a licensed home improvement contractor under MHIC license number 05 51982 (as an individual contractor) and number 01 104203 (as a corporation).
2. On August 31, 2009, the Claimant obtained a Rehabilitation Loan/Grant through Baltimore City, acting through the Department of Housing and Community Development (DHCD).
3. ~~Under the Rehabilitation Loan/Grant Agreement (Loan Agreement), the Claimant was~~ granted \$15,260.00, based on a Contractor's Proposal (Proposal) prepared by the

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<sup>3</sup> These documents relate to the elder Mr. Cockrell, now deceased.

Respondent for \$15,000.00 in renovations. The funds were to be placed in escrow to be disbursed to the Respondent in accordance with the specific terms of the Loan Agreement.

4. The Loan Agreement stated that work was to begin within thirty days of August 31, 2009.
5. The Proposal included the following: removal and replacement of specified portions of the porch; removal of the existing tar roof and installation of 1,200 square feet of Mule Hide granular roll roofing; installation of a new pedestal sink and faucet and a new tub faucet in the bathroom; installation of outlets, smoke detectors, various ceiling fixtures and switches; patching and repair of a wall in the rear bedroom; replacement of ceiling drywall in the middle bedroom; application of spackle to the dining room ceiling; replacement of the exterior kitchen door; installation of new kitchen flooring; and replacement of the basement door and stairs.
6. The cost of the roof replacement, as specified in the Proposal, was \$3,350.00.
7. The Respondent completed the work before the end of the 2009 calendar year.
8. David Bitman<sup>5</sup>, an employee of the Respondent, managed the completion of the project.
9. On an unspecified date, \$15,000.00 was disbursed to the Respondent through the escrow account established by the Loan Agreement.
10. About a week after the Respondent completed the work, there was a large rainstorm. Rainwater leaked through the roof and caused damage to the ceiling of the middle bedroom on the second floor, a second floor light fixture, the middle bedroom floor, the bathroom ceiling, and the ceiling of a first-floor room.

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<sup>4</sup> These documents relate to the younger Mr. Cockrell, who appeared for the hearing.

<sup>5</sup> None of the documents in evidence includes Mr. Bitman's name spelled in a consistent manner, and neither party provided further identification of him or the proper spelling of his name. I have spelled it phonetically.

11. The Claimant called Mr. Bitman, who visited the Claimant's home, examined the roof, and patched it.
12. During 2010 and 2011, the roof continued to leak whenever there was a big storm, causing further damage to the ceilings and floors inside the home.
13. On October 3, 2011, James Cockrell (son of James A. Cockrell) visited the Claimant's home and looked at the roof. He observed areas of tar that may have been patches, but no problems that would explain the leaking.
14. On October 12, 2011, James Cockrell (son) visited the home during a rainstorm, but the Claimant did not permit him to observe the roof.
15. The Claimant eventually arranged for another roofer to repair the leaking roof. That roofer put down a tarp and repaired the roof, which no longer leaked after that time.
16. The Claimant was satisfied with all work done by the Respondent, with the exception of the roof.

### DISCUSSION

This case involves renovations to the Claimant's home that were completed through funding provided by DHCD. While the agreed-upon work outlined in the Proposal was extensive, the Claimant's claim involves only his assertion that the roof was not properly done, resulting in extensive interior water damage.

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. 2013). *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 failed to prove eligibility for compensation.

The Claimant argued that the Respondent's work was unworkmanlike, and that as a result, rainwater leaked through the roof and caused extensive damage to the floors, ceilings, and light fixtures in the home. He maintains that he repeatedly asked the Respondent to fix the problem, and that while the Respondent attempted to do so, the roof continued to leak. The Respondent argued that he responded to the Claimant's requests to examine and repair the roof, even patching the roof, but observed no problem when it was not raining. He contended that when he attempted to examine the roof in a rainstorm, he was denied access. Finally, the Fund argued that the Claimant's evidence regarding his loss mostly consisted of consequential damages that are not eligible for an award, that he failed to establish that the Respondent's work was inadequate or unworkmanlike and that he failed to establish the cost of the roof repair or replacement that was eventually performed.

There is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the home improvement contract with the Claimant. However, I find that the Claimant failed to establish that he suffered an "actual loss" for two reasons: first, he did not show that the home improvement work completed by the Respondent was unworkmanlike, inadequate, or incomplete, and second, he was unable to establish the cost of restoration, repair, replacement, or completion due to such work.

The Claimant did not offer any evidence regarding the cause of the roof leak. He stated that the person he ultimately hired to repair it told him the roof "was not done properly," but by the Claimant's own account, the repair was not done until at least 2012, at least two full years after the Respondent completed work on the roof. The Claimant was not able to identify the person who did the repair; his testimony about what that person told him regarding the Respondent's work, at least two years after the Respondent completed it, is not reliable evidence. While the Claimant testified that the roof began leaking about a week after the work was done,

no specific evidence of unworkmanlike or inadequate work was offered; in the absence of such evidence, a range of explanations are possible, from wind damage to defective home improvement materials. Accordingly, I find that the Claimant failed to establish that the roof installed by the Respondent was unworkmanlike or inadequate.

Even if the Claimant had established that the roof leak was due to unworkmanlike or inadequate home improvement, he did not provide any evidence of the cost of the repair. The Claimant testified that he sought \$8,000.00 from the Fund because he estimated that to be the amount needed to repair or replace the interior floors, ceilings, and light fixtures that were damaged by rainwater that leaked through the roof, in addition to the cost of repairing the roof itself. However, as the Fund points out, and I agree, consequential damages are not eligible for compensation by the Fund. In fact, they are specifically excluded. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1)(u). I sympathize with the Claimant's position that but for the roof leak, the interior ceilings and floors would not be damaged. However, relevant law specifies that "actual loss" compensable by the Fund does not include consequential damages.

Even if I had been persuaded that the roof repair itself was necessary as a result of unworkmanlike performance attributable to the Respondent, there is no evidence of the cost of that repair or even any information about what was done in making the repair that might allow for an estimate to be made. It may be that only a small patch was needed, or an entire roof replacement may have been necessary – or something in between. There is simply no evidence regarding the repair to the roof that might permit the determination of the Claimant's actual loss. Accordingly, I find that the Claimant has failed to meet his burden of proof in showing that he ~~suffered an actual loss that arose from an unworkmanlike, inadequate, or incomplete home~~ improvement.



CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual loss compensable by the Fund as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

April 23, 2014  
Date Decision Mailed

Jennifer L. Gresock  
Jennifer L. Gresock  
Administrative Law Judge

JLG/bp  
# 148034

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF ANTHONY V. ADAMS,</b></p> <p><b>CLAIMANT,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF JAMES COCKRELL,</b></p> <p><b>T/A COCKRELL &amp; SON</b></p> <p><b>CONSTRUCTION,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE JENNIFER L. GRESOCK,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH NO.: DLR-HIC-02-13-25930</b></p> <p><b>* MHIC NO.: 2012-642</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**FILE EXHIBIT LIST**

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*Burdsong, Hardy @ Maryland, you  
sent me letter.*

*1/26/2016 9:00 AM*

<sup>7</sup> These documents relate to the elder Mr. Cockrell, now deceased.

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