STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS

In the matter of		
	Docket No.	**2000-29**
Bureau of Commercial Services,		
Petitioner	**Agency No.**	**21-98-6512-00**
v		
Otten's Custom Roofing, Inc.,	**Agency:**	**Bureau of Commercial**
Scott Kenneth Otten, Q.O.,		**Services**
Respondent		
_____/	**Case Type:**	**Sanction**

Issued and entered
this 7th day of February, 2001
by Erick Williams
Administrative Law Judge

HEARING REPORT

Procedural History

Otten's Custom Roofing, Inc., is accused of doing poor work on a roof job in 1998. The state filed a complaint in September 1999, based on a complaint from the homeowner, Lyle Truax in December 1998. A hearing convened in December 2000. Scott Otten represented the builder. Kimball Smith represented the state. Mr. Truax, Mr. Ottens, and the local building inspector, Marshall Burrows, testified.

Issues and Applicable Law

MCL 339.604(c); MSA 18.425(604)(c) reads:

> A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602: ... (c) Violates a rule of conduct of an occupation.

MCL 339.2411(2)(m); MSA 14.825(2411)(2)(m) reads:

> A licensee or applicant who commits 1 or more of the following shall be subject to the penalties set forth in article 6: ... (m) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official.

1979 AC R 338.1551(4) reads:

> If a complaint is justified by the local building inspector or by a person authorized by the department to make inspections, the builder or contractor shall correct the complaint within a reasonable time. Failure or refusal by the licensee to correct a structural matter that is materially deficient, dangerous or hazardous to the owners shall be presumed to be dishonest or unfair dealing.

1979 AC R 338.1551(5) reads:

> Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

Findings of Fact

General

Lyle Truax hired Ottens Roofing to install a new roof on his house in Kentwood. The job involved completely tearing off the old shingles. The job was done in July 1998. Truax paid $4,925. About two months later, after a rainstorm, Mr. Truax recalls that water came in

through the overhang. Mr. Truax called two other roofers for estimates. Grand Rapids Roofing, Inc., looked at the roof and found nothing wrong. That company's letter to Mr. Truax reads:

> I inspected your home on March 23rd after the snow melted. The holes in the fascia have apparently been patched. The roof was laying flat and looked good. The metal drip edge was straight. Overall, I could find nothing wrong with the roof and would have to give it high marks in appearance. My salesman, Jim, also viewed the roof on 3/23 and he stated that it looked good also.... [Exhibit B]

West Michigan Construction Company, Inc., also looked at the roof, presumably found defects, and wrote the following proposal:

> Repair two soft spots in roof with new ½" plywood. Repair wood fascia, 1x8x8, two areas. Replace 4' flashing. Remove and replace approximately 6 square of shingles on eave edge and install ice and water shield. Replace 2 soil pipe boots. Total for this project: $1,750 .... [Exhibit 3]

Mr. Truax, relying on the West Michigan Construction Company estimate, tried to find some replacement shingles but found that they are not available in the Grand Rapids area and need to be shipped from the manufacturer in Texas. The shipping cost is $703.80. Exhibit 4.

Marshall Barrows, the Kentwood building inspector, visited the cite in winter 1998-99. He came back on March 3, 1999, when the weather cleared and wrote a report. Exhibit 2.

Scott Otten examined the roof after the job was complete. He got Marshall Barrow's report and talked to Mr. Barrow about it. He admits there were defects in the job. He recalls offering to make corrections, but Mr. Truax did not return his calls.

Shingle Application

Marshall Barrows, the building inspector, found that the contractor used a "racking" method to install the shingles. The workers started at the edge of the roof and went straight up. Racking is contrary to the manufacturer's specifications and violates the local building code, 1995 CABO Table 903.4.

The shingle manufacturer is GS Roofing Products Company, Inc. Instructions for applying shingles are on each bag of GS shingles. Exhibit 5 is one such bag. Two methods of applying shingles are recommended on the bag:

> 11-A. Random 5" method. Start first course of shingles with a full length strip, 36" flush with gable end of building. Continue courses up the roof the following sequence: 31", 26", 21", 16", 11", 6" lengths; apply in same sequence, repeating pattern as necessary....
>
> 11-B. Standard 6" method. Start first course of shingles with a full length strip, 36" flush with gable end of building. Continue courses up the roof in the following sequence: 30", 24", 18", 12", 6" lengths; apply in same sequence, repeating pattern as necessary. To assure vertical alignment of cutouts using standard application, snap vertical chalk line every 72" along the roof deck ...

Scott Otten testified that roofers in the Grand Rapids area have used the racking method for years. The warranty is still good. The roof looks the same. The shingles did not

leak. Mr. Otten has a letter from GS Roofing Products saying that it is all right to apply shingles using the racking method:

> This letter is in regards to the Lyle Truax residence at 5905 Kalamazoo Ave, SE, Kentwood, MI, specifically the concerns of racking as an application method. Though this is not the GS Roofing Products preferred method of application, as there are many application methods, it will not affect the limited shingle warranty as it is written.... [Exhibit A]

1995 CABO 903.4 reads:

> Asphalt shingles shall be fastened according to the manufacturer's printed instructions and Table 903.4.

1995 CABO Table 903.4 reads:

> Asphalt shingle application ... Method: Per manufacturer's instructions included with packages of shingles.

The local building code requires that roofers follow the installation directions on the shingle bag. Otten's Custom Roofing, failing to follow the directions on the shingle bag, violated the local building code.

Ice Shield and Drip Edge

The ice shield is a 3-foot wide extra-thick membrane along the lower edge of the roof that extends one foot outboard and two feet inboard of the wall line. The drip edge is a metal strip around the perimeter of the roof.

The building inspector noted that Otten's Custom Roofing had not installed the ice and water shield correctly on the Truax house, thus violating the local building code, 1995

CABO 903.4. Mr. Barrow testified that the ice shield in some places runs under drip edge and in other places over it. He argues that the ice shield should always be over the drip edge, otherwise, water can run down the felt, under the drip edge and seep into the eaves.

The 1997 Residential Asphalt Roofing Manual, Chapter VII, p 43, also describes the method for installing ice shields and drip edges:

> Eaves flashing may be constructed with self-adhered eave and flashing membranes ... or by applying a double underlayment of asphalt saturated felt cement to each other with plastic cement. Eaves flashing should be installed from the eaves and rakes to a point of at least 24" inside the interior wall line. The eave flashing material should overhang the drip edge by 1/4" to 3/4". Follow the manufacturer's recommendations for installation requirements. [Exhibit 6(1)]

Exhibit 7 is a photo of the roof over the garage. In the area covered by the photo, there is a gap between the ice shield and the drip edge. It is obviously a bad job when the ice shield does not overlap the drip edge.

Scott Otten argued that, for years, roofers in Grand Rapids have installed drip edges over ice shields. Otten's Custom Roofing always puts drip edges over ice and water shields. Often roofs are felted before the drip edge is installed. Mr. Otten's letter from GS Roofing Products also addresses the ice shield/drip edge issue:

> ... the use of ice and water guards have more than one edge detail that is acceptable in the industry. The use of ice and water over or under the drip edge is acceptable application. [Exhibit A]

The local building code, 1995 CABO 903.4, reads:

> Asphalt shingles shall be fastened according to the manufacturer's printed instructions and Table 903.4.

1995 CABO table 903.4 reads:

> Asphalt shingle application ... Method: Per manufacturer's instructions included with packages of shingles.

The GS Roofing Products shingle bag recommends that shingles and ice shield overhang the drip edge. Exhibit 5, item 5, says, "... Overhang of 3/8" should be provided at eaves of drip." That implies that the ice shield be installed over the top of the drip edge.

Failing to follow the instructions on the shingle bag, which recommend that ice shields overhang drip edges by 3/8", Ottens Custom Roofing violated the local building code. This problem has structural implications, since in at least one place, visible on Exhibit 7, the ice shield is altogether short of the drip edge, which creates a space for water to leak.

Southeast Valley

The building inspector found rotted fascia in the area near the southeast valley. The roofers had installed shingles and underlayment without replacing rotted fascia, which was poor workmanship. Mr. Barrow noted that, normally when fascia is in poor repair, a roofer will replace it; it looks better.

Exhibit 9 is a photo of the roof at the lower end of the southeast valley. It shows rotten fascia. Also, on the portion of the roof below the valley, there is no flashing between the shingles and the vertical wall.

Lyle Truax testified that the roof leaked in this area.

Scott Otten testified that wood work is done on a time and material basis. There is an additional charge for replacing wood. He concedes that, in this case, there might have been bad wood that someone overlooked.

Otten's Custom Roofing did poor work on the southeast valley, failing to replace rotting wood which caused a leak.

Northeast Valley

The building inspector found that shingles and underlayment were installed over rotted wood in the northeast valley, which is a violation of the local building code. The roof deck is poor; it should have been replaced. 1995 CABO 902.1 reads:

> Roofing shall be applied only when the supporting roof construction is clean and dry.

Mr. Otten did not comment on this allegation.

Otten's Custom Roofing failed to replace rotting wood in the northeast valley, in violation of the local building code.

Northwest Valley

The building inspector found a gap between the roof deck and the roofing materials in the northwest valley. There was a hump in the roofing materials causing the gap. In a valley, the roofing should be in contact with the roof deck. Mr. Barrows cited violations of 1995 CABO 902.2 and 1995 CABO 903.4.

Scott Otten admitted that there might have been a void.

1995 CABO table 903.4 reads:

> Asphalt shingle application ... Method: Per manufacturer's instructions included with packages of shingles.

1995 CABO 903.4 reads:

> Asphalt shingles shall be fastened according to the manufacturer's printed instructions and Table 903.4

1995 CABO 902.2 reads:

> When a single ply of underlayment is required, it shall be laid parallel to the eaves with a 2-inch (51 mm) top lap and 4-inch (102 mm) end lap nailed sufficiently to hold in place.

The GS Roofing Products shingle bag instructions read:

> 4. Valley underlayment: In valleys, center a 36" width of precoated base sheet nailed 12" on center at the outer edges of the sheet.

The northwest valley has a hump in the roofing materials, in violation of the local building code.

Soil Stack

Mr. Barrows found that the boot flashing around the soil stack was not installed correctly, in violation of 1995 CABO 903.7. The top of the boot did not go underneath the shingles.

Scott Otten testified that the roofers installed a neoprene boot around soil stack, and the top is okay.

1995 CABO 903.7 reads:

> Flashings against vertical front wall, as well as soil stack, vent pipe and chimney flashing, shall be applied according to asphalt shingle manufacturer's printed instructions.

The shingle bag reads:

> 13. Vent pipe flashing. Where projections extend through the roof surface, install sheet metal flashing with a minimum 4" wide continuous flange. Nail flange with four nails 3/4" from perimeter. Apply a collar of plastic cement around the base prior to and after application of shingles.

There is not enough evidence of a violation here. Perhaps I misunderstand, but it makes no sense that the top of a boot flashing around a soil stack be underneath the shingled surface.

Conclusions of Law

Shingle Application

The local building code requires that roofers follow the installation directions on the shingle bag. Otten's Custom Roofing, failing to follow the directions on the shingle bag,

violated the local building code, MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(5).

Ice Shield and Drip Edge

Failing to follow the instructions on the shingle bag, which recommend that ice shields overhang drip edges by 3/8", Ottens Custom Roofing violated the local building code, MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(5).

This problem has structural implications. Failure to correct the problem is a violation of MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(4).

Southeast Valley

Otten's Custom Roofing did poor work on the southeast valley, failing to replace rotting wood, in violation of MCL 339.2411(2)(m); MSA 14.825(2411)(2)(m).

This problem has structural implications. Failure to correct the problem is a violation of MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(4).

Northeast Valley

Otten's Custom Roofing failed to replace rotting wood in the northeast valley, in violation of the local building code, MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(5).

This problem has structural implications. Failure to correct the problem is a violation of MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(4).

Northwest Valley

The northwest valley has a hump in the roofing materials, in violation of the local building code, MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(5).

Soil Stack

There is not enough evidence of a violation regarding flashing around the soil stack.

Decision

Otten's Custom Roofing did not comply with the local building code with respect to the ice shield and drip edge, and the northeast and northwest valleys, in violation of MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(5).

Otten's Custom Roofing failed to correct problems with the ice shield and drip edge, and in the southeast and northeast valleys, in violation of MCL 339.604(c); MSA 18.425(604)(c) and 1979 AC R 338.1551(4).

Otten's Custom Roofing work on the southeast valley was poor, in violation of MCL 339.2411(2)(m); MSA 14.825(2411)(2)(m).

Proposed Sanctions

MCL 339.602; MSA 14.825(602), reads:

§ 602. A person, school, or institution which violates a section of this act or a rule or order promulgated or issued under this act shall be assessed one or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) A civil fine to be paid to the department, not to exceed $10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made.

The Bureau of Commercial Services has recommended restitution in the amount of $1,750 for partial replacement of the roof, plus $703 shipping cost.

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Erick Williams
Administrative Law Judge