

CASE NUMBER: CPML000290-17

Complaint submitted by Staff

Document prepared for:

CASE NAME

John Veisz Vs Giovanni Esposito Et Al

DOCUMENT FILED DATE

June 26th, 2017

CASE FILING DATE

June 26th, 2017

COUNTY

Cape may county, NJ

JUDGE

Jsc J Christopher Gibson

CATEGORY

Contract/Commercial Transaction

STATUS

Closed

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CIVIL DIVISION
 SUPERIOR COURT-CAPE MAY COUNTY

JOHN J. VEISZ,

Plaintiff,

v.

GIOVANNI ESPOSITO; IMPERIAL
 HOME REMODELING LLC;
 HOMEADVISOR, INC.; and JOHN DOES
 1-10 (multiple, alternative, fictitious
 persons); and XYZ COMPANIES 1-10
 (multiple, alternative, fictitious
 corporations); individually and jointly,
 severally and in the alternative,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
 : CAPE MAY COUNTY
 : LAW DIVISION

: DOCKET NO. CPM-L-290-17

: Civil Action

: **COMPLAINT AND JURY DEMAND**

Plaintiff, John J. Veisz, by way of Complaint, hereby alleges and avers:

1. Plaintiff John J. Veisz is an individual residing at 615 First Street, Ocean City, Cape May County, New Jersey, 08226.
2. Defendant Giovanni Esposito is the owner of Defendant Imperial Home Remodeling LLC (collectively "Contractor Defendants"), which appears on the contract to be a sole proprietorship, with an address of 28 West Church Street, Blackwood, Camden County, New Jersey, 08012, and an address of 217 North Main Street, Mullica Hill, Gloucester County, New Jersey, 08062.

3. Defendant HomeAdvisor, Inc., with an address of 14023 Denver West Pkwy., Bldg. 64 Golden, CO 80401, is an entity performing “vetting” and recommendation services for building contractors, including but not limited to Defendant Imperial Home Remodeling LLC.
4. Defendant HomeAdvisor, Inc. represents that it provides a “secure way” to identify contractors “who specialize in exactly the type of work” the customer requires, and that they participate in a “comprehensive screening process”.
5. Plaintiff utilized the services of Defendant HomeAdvisor, Inc. to select the Contractor Defendants.
6. Plaintiff entered into a contract with Contractor Defendants for roofing and siding services.
7. Plaintiff and Contractor Defendants entered into a contract for the roofing work on September 15, 2016 for a total contract price of \$8,888.
8. Plaintiff and Contractor Defendants entered into a contract for the siding work on September 15, 2016 for a total contract price of \$37,140.
9. In accordance with the agreement, the work was to be completed, based upon the calculations set forth in the contract, on or before November 6, 2016.
10. However, Contractor Defendants failed to complete the home within the time prescribed, and in fact, portions of the home remain incomplete and unfinished.
11. Other portions of the home were constructed defectively or negligently.

12. Contractor Defendants were given repeated opportunities to cure and/or correct the problems, but have failed to do so.
13. Plaintiff is a licensed architect in the State of New Jersey and prepared an Inspection Report dated March 5, 2017 outlining the defects (Exhibit A).
14. Plaintiff has obtained an estimate from a qualified contractor to correct said defects, and the cost to complete and correct the work performed by Contractor Defendants is \$44,505.
15. The combined contract cost for roofing and siding was \$46,028.
16. The Contractor Defendants have been paid to date a total of \$39,888.
17. The cost to correct and complete the work is \$44,505.
18. There is also a credit of \$1,000 owed to Plaintiff, as well as a \$250 back charge for a dumpster.
19. There is therefore \$5,390 outstanding on the contract with Plaintiff.
20. Therefore, Plaintiff's damages (excluding any consumer fraud claims, attorney's fees, etc.) is \$39,115.

COUNT I

21. Plaintiff repeats and re-alleges all the facts and allegations contained in the prior paragraphs of this Complaint as if the same were set forth herein at length.
22. Contractor Defendants have breached the contract by failing to complete the home in accordance with the contract and in a workmanlike manner.

23. The defects and incomplete work include but are not limited to those set forth in the attached Inspection Report dated March 5, 2017 (Exhibit A).

WHEREFORE, Plaintiff demands judgement against Contractor Defendants, jointly, severally and in the alternative, for compensatory damages, punitive damages, attorney's fees, costs of suit and all other relief deemed equitable and just by the Court.

COUNT II

24. Plaintiff repeats and re-alleges all the facts and allegations contained in the prior paragraphs of this Complaint as if the same were set forth herein at length.

25. Contractor Defendants had a duty to conduct themselves as reasonably prudent builders would conduct themselves, but Contractor Defendants failed to comply with said duty, and negligently and in violation of said duty, damaged Plaintiff.

26. The damages are both direct and consequential, and include but are not limited to those set forth in Exhibit A (Inspection Report), and also include damage to work not performed by Contractor Defendants but performed by others on the jobsite.

WHEREFORE, Plaintiff demands judgement against Contractor Defendants, jointly, severally and in the alternative, for compensatory damages, consequential damages, indirect damages, attorney's fees, costs of suit and all other relief deemed equitable and just by the Court.

COUNT III

27. Plaintiff repeats and re-alleges all the facts and allegations contained in the prior paragraphs of this Complaint as if the same were set forth herein at length.

28. Contractor Defendants participated in the sale of services and products to the consumer Plaintiff such that their activities were regulated by the Consumer Fraud Act and the Home Improvement Practices Act.
29. Contractor Defendants violated the Consumer Fraud Act, N.J.S.A. 56:8-1 et. seq. and N.J.A.C. 13:45A-16.1, et. seq. by committing an unconscionable commercial practice, by committing a material omission of fact, and by making an affirmative false statement of fact, including but not limited to misrepresenting the use of a subcontractor to perform the work, the intention and ability to complete the project in a timely fashion, and the level of experience for the nature of the services and the materials to be utilized.
30. Plaintiff has suffered an ascertainable loss as a result of the violations of the Consumer Fraud Act above described.
31. The aforementioned construction services were subject to the Contractor Registration Act and the Home Improvement Regulations of the Consumer Fraud Act, and Contractor Defendants failed to comply with said Acts resulting in a per se violation of the Consumer Fraud Act.
32. Contractor Defendants violated N.J.S.A. 56:8-151 by failing to include in the Home Improvement Contract (a) the registration number of the contractor, (b) a copy of the certificate of general commercial liability insurance, and (c) an opportunity to cancel the contract before midnight on the third business day.

33. Contractor Defendants violated N.J.S.A. 56:8-144 by failing to include in the Home Improvement Contract the toll free number for the Department of Consumer Affairs as established by N.J.S.A. 56:8-149.
34. Contractor Defendants also violated the Home Improvement Practices Act by committing the following unlawful practices pursuant to N.J.A.C. 13:45A-16.2: misrepresented directly or by implication (a) the products or materials to be used in the home improvement are of a specific size weight, grade, or quality, or possess any other distinguishing characteristics or features; or (b) are of a sufficient size capacity, character, or nature to do the job expected or represented. These actions specifically violate N.J.A.C. 13:45A-16.2(a)(2).
35. Contractor Defendants also committed unlawful practices under the Home Improvement Act by failing to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and failing to identify when the work will begin or be completed, which is a violation of N.J.A.C. 13:45A-16.2(7)(ii) and (iii).
36. Contractor Defendants also committed an unlawful practice under the Consumer Fraud Act by failing to provide clear and definite guarantees and warranties, including applicable exclusions, and failing to provide all warranties for the products and materials installed, all of which were done in violation of N.J.A.C. 13:45A-16.2(11)(i).
37. The contract did not include the dates or time period on or within which the work is to begin and be completed by the seller, as required by N.J.A.C. 13:45A-16.2(12)(iv) or at least did not do so in a clear and definitive manner.

38. The violations of the Consumer Fraud Act, including the misstatements of fact, the omissions of material fact, and the per se administrative violations have a causal nexus to the ascertainable loss suffered by Plaintiff.
39. When it became known to Contractor Defendants that the work had been performed in a defective and unworkmanlike manner, Contractor Defendants requested that Plaintiff omit from his Inspection Report any reference to "Ed W.", and simply blame "the installers".
40. Plaintiff believes this was an effort by Contractor Defendants to conceal the participation of Contractor Defendants, by and through their "site manager" Edward T. Westervelt, so that they may blame the previously undisclosed subcontractor who actually performed the work.
41. It may have also related to an insurance claim by Contractor Defendants, although this is not specifically known to Plaintiff.
42. Either way, Plaintiff refused to participate in said unconscionable commercial practice and misrepresentation.

WHEREFORE, Plaintiff demands judgment against Contractor Defendants jointly, severally and in the alternative for compensatory damages, treble damages, punitive damages, attorneys' fees, cost of suit, as well as the surrender of all proceeds of the contract, consequential damages, and all other damages available pursuant to the Consumer Fraud Act.

COUNT IV

43. Plaintiff repeats and re-alleges all the facts and allegations contained in the prior paragraphs of this Complaint as if the same were set forth herein at length.

44. Defendant HomeAdvisors, Inc. made false representations and breached its actual and implied contract to perform the services represented, including but not limited to its false claim that it had vetted the contractor adequately and that the contractor was able to perform the specialized work required.
45. By way of example and not limitation, Defendant HomeAdvisors, Inc. did not perform the simple service of insuring that the contract utilized by its recommended contractors were in compliance with the New Jersey Home Improvement Practices Act, and further, knew or should have known that its contractor was utilizing subcontractors rather than the recommended contractor's own skill and expertise in the field.
46. As a result of the above conduct, including but not limited to its negligent conduct, its breach of its actual and implied duties, and its violation of the Consumer Fraud Act, Plaintiff has been damaged.
47. The acts of Defendant HomeAdvisors, Inc. include material misrepresentations and intentional omissions of material fact in violation of N.J.S.A. 56:8-1 et seq.
48. In addition, Defendant HomeAdvisors, Inc. conspired with Contractor Defendants in the above conduct, and as a civil co-conspirator, is responsible for the actions of the Contractor Defendants.

WHEREFORE, Plaintiff demands consequential damages, treble damages, punitive damages, attorney's fees, costs of suit and all other relief deemed equitable and just by the Court, including but not limited to those under the New Jersey Consumer Fraud Act.

COUNT V

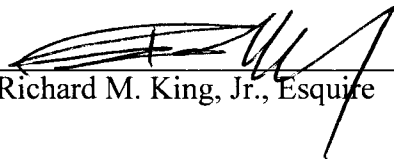
49. Plaintiff repeats and re-alleges all the facts and allegations contained in the prior paragraphs of this Complaint as if the same were set forth herein at length.
50. Plaintiff alleges an insufficient amount of time has passed within which to determine the identity of any other persons, individuals, or business entities whose actions may be responsible in whole or in part in the within matter, or alternatively, that said information is not available without commencing litigation.
51. This includes other parties working with or for Defendant HomeAdvisor, Inc. in the vetting process, as well as other persons who performed services at the property.
52. For the purposes of the within Complaint, said individuals and business entities have been denominated as JOHN DOES 1-10 (Multiple, Alternative, Fictitious Entities) and XYZ COMPANIES 1-10 (multiple, alternative, fictitious corporations).
53. Plaintiff, pursuant to the Rules of Court for the State of New Jersey, reserve the right to amend the within Complaint to add additional defendants when and if the identity of said individuals or business entities becomes known.

WHEREFORE, Plaintiff demand compensatory damages, punitive damages, attorney's fees, costs of suit, and all other relief deemed equitable and just by the Court.

LAW OFFICE OF RICHARD M. KING, JR., LLC
Attorney for Plaintiff, John J. Veisz

DATED: June 20, 2017

By:


Richard M. King, Jr., Esquire

CERTIFICATION

Plaintiff hereby certifies the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated, and to the best of plaintiffs' knowledge, no other parties should be joined in the within action.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues so triable.

**DESIGNATION OF TRIAL COUNSEL
PURSUANT TO R. 4:25-4**

Plaintiff herewith designates Richard M. King, Jr., Esquire of the Law Office of Richard M. King, Jr., LLC, as trial counsel.

RULE 1:38-7 CERTIFICATION OF REDACTION

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

LAW OFFICE OF RICHARD M. KING, JR., LLC
Attorney for Plaintiff, John J. Veisz

DATED: June 20, 2017

By:


Richard M. King, Jr., Esquire

615 FIRST STREET, OCEAN CITY, NJ 08226

ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #4

Condition: Water table and drip cap is not level and drops 1-1/2" from southeast corner. Dimension of bottom of water table to masonry joint is only 5-1/8" and is not acceptable.

Action Required: Remove and reinstall water table and siding from the west side of the front door to around the corner to the opposite side of the entry addition by the rear sliding door. Installation to be level to match the southeast front elevation. Siding



Photo #5

Condition: Inside corner in southwest corner by kitchen window. Note poor, unlevel, irregular siding installation in variance with manufacturer's printed instructions. Siding on left continued to be installed lower and lower around each turn.

Action Required: Remove and reinstall level in accordance with James Hardi installation requirements.

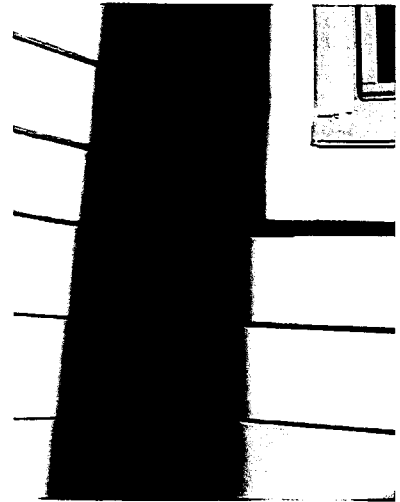


Photo #6

Condition: Northeast corner of east deck. Installation of siding and PVC base at deck is acceptable. The installers started the installation on the north side of the north side of the house, along the rear towards the west. The General Contractor noticed the installers did not set-up/survey level corner marks and had offered to assist with same but was advised that it was not needed. The siding drops as it moves to the west. Installation is poor. Note siding under the window.

Action Required: To be determined



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #1

Condition: James Hardi plank siding on the southeast corner of the house (closest to corner of First St. and Ocean Ave.) Installation is level and relatively neat. The position of the water table and drip cap allowed for the required installation of a PVC base on the deck to the right below the siding as designed and contracted.

Note siding installation below and above windows.

Action Required: Clean and touch up construction marks, scrapes, nail holes and all other defects with paint; typical over entire house.



Photo #2

Condition: Close-up photo of bottom of water table at southeast deck. Note dimension from bottom of water table to top of masonry joint at 6-3/8".

Action Required: Completion of PVC trim at lower deck and upper front porch deck.

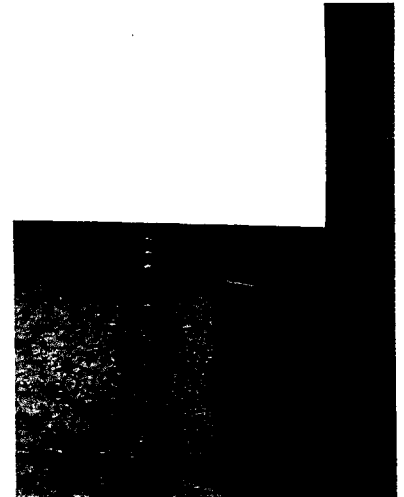


Photo #3

Condition: James Hardi plank siding on the southwest corner of the house (closest to garage). The installers did not install the siding level and in variance with printed installation instructions of manufacturer. The siding begins to slope starting at the front door. The position of the water table and drip cap drops 1-1/2" from south east corner of the house and is unacceptable. The drop in siding only allowed for a sliver of pvc trim to be installed under the siding on the west deck, in variance with the design.

Note siding installation below and above windows.

Action Required: Remove and reinstall siding level as contracted.



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #7

Condition: Siding installation from northeast corner to north west corner drop down; note siding under the typical double hung windows.

Action Required: To be determined

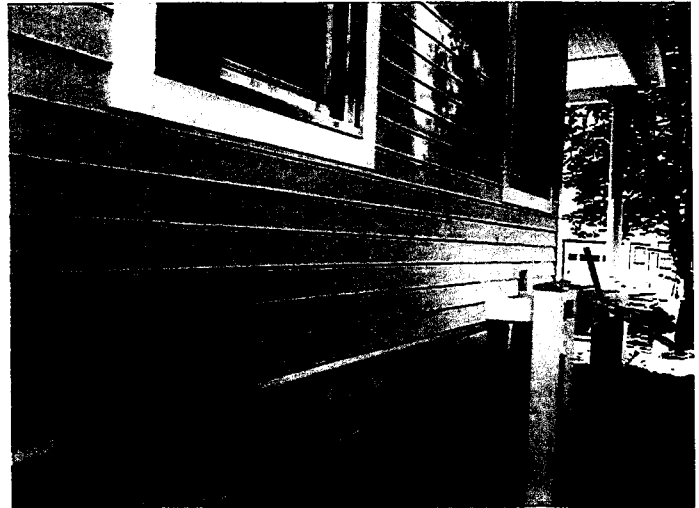


Photo #8

Condition: Typical example of siding installation out of level

Action Required: To be determined

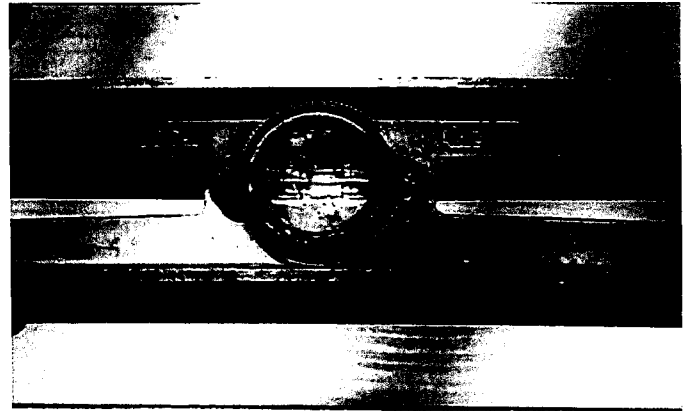


Photo #9

Condition: Siding installation at northwest corner is not level and drops. Note restricted dimension between deck and bottom of siding allowing sliver of PVC trim. Bottom course of siding projects out past the corner trim.

Action Required: To be determined



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #10

Condition: Drip edge around the entire house does not comply with Detail 1A/A-4 Typical Eave Edge Detail. Design Spec requires .040" vynal coated aluminium drip that completely covers the roof edge. Details shows 1 x 4 pvc over fascia board.

Action Required: Remove and replace drip edge to comply with construction drawings and completely covers underside of roof sheathing and joint with fascia board in a straight, undamaged condition.

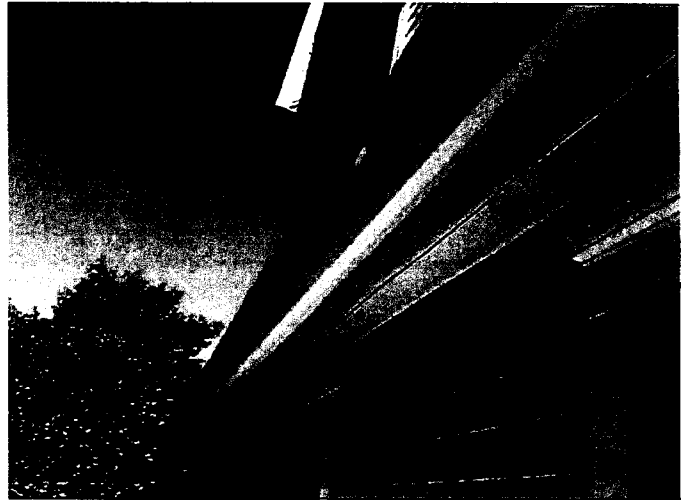


Photo #11

Condition: Irregular siding installation at north side of house.

Action Required: Previously discussed with installers and Ed W. when the work was in progress. Nothing was done.

Action to be determined

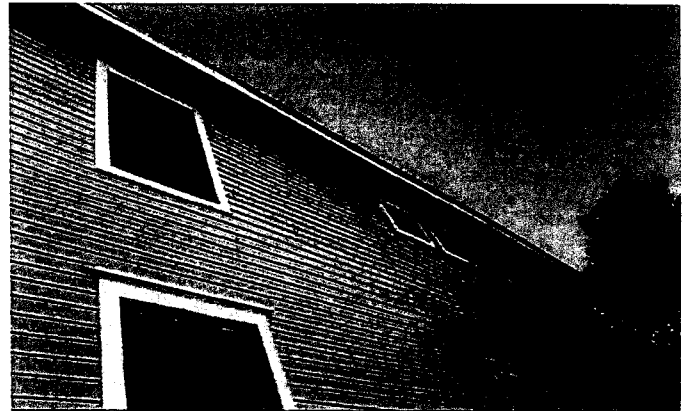


Photo #12

Condition: Irregular siding installation at north side of house.

Installers used 1 x 3 grey batten trim in lieu of 1 x 2 Azek batten called for on drawings sent to Ed W. on (2) occasions and discussed. Horizontal bottom trim is only 1 x 3; 1 x 6 shown on drawing.

Action Required: Remove and replace with materials called for on contract drawings Notes [AD], North Elevation #2 on Drawing A-3. Note: 3/4/17—Noted grey stock was removed and 1/2" x 4 white pvc was installed. Condition is acceptable on North side. On South side, complete installation of pvc sheathing and trim near eave edge at step in wall.



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #13

Condition: Typical damaged surfaces are unacceptable. Previously discussed with installers and Ed W. when work was in progress. Nothing was done. Note position of siding under window sill is lower at northwest end of house compared to northeast end of house. Siding is not level.

Action Required: Clean, fill all nail holes with matching sealant and repaint in accordance with manufacturer's printed instructions.



Photo #14

Condition: Siding is not installed in accordance with manufacturer's printed instruction and siding construction standards.

Action Required: Remove and replace all siding improperly installed.

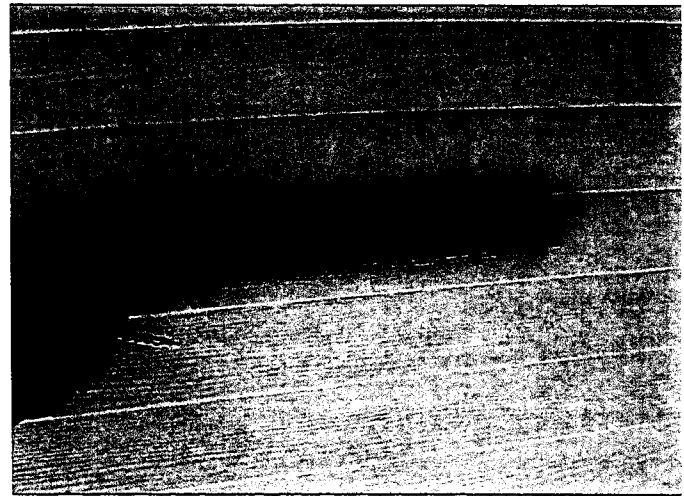


Photo #15

Condition: Fascia board at southeast and north east corner of second floor deck was too long and not installed square. As such soffit was installed to match deck. Fascia travels out towards outer corner

Action Required: Remove and replace to create square condition—all locations.



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #16

Condition: Joint in soffit was not installed as discussed with Ed W. and Installers on site. Condition was to be moved to column Center line to disguise break between sloping and level soffit

Action Required: Remove and reinstall.



Photo #17

Condition: Siding at south side of fireplace enclosure on east porch is not provided with uniform painted finish.

Action Required: Apply matching touch up paint from Hardi typical around the house

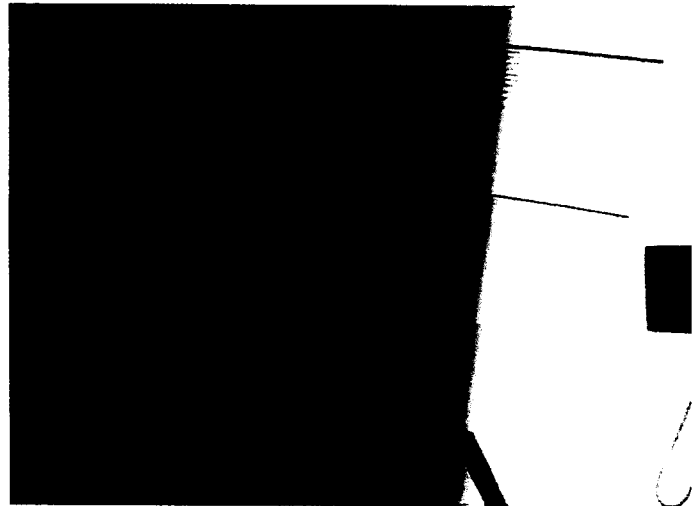


Photo #18

Condition: Siding to the right of the front door was cracked during the process of installing pvc trim under the siding above the decl.

Action Required: Remove and replace all damaged siding, typical.



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #19

Condition: Roof drip edge at west dormer is detached

Action Required: Confirm installation of drip edge on entire house as previously noted. Remove and replace.

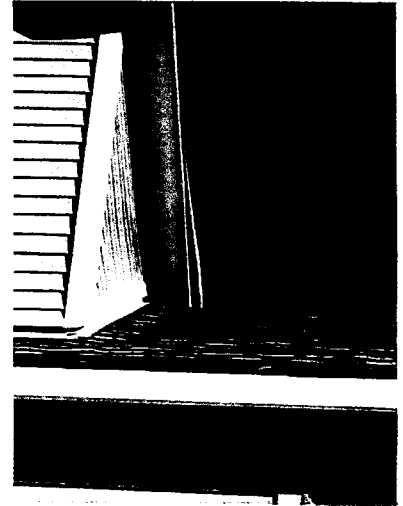


Photo #20

Condition: Soffit was not installed with receiver channel. Irregular gap is unacceptable.

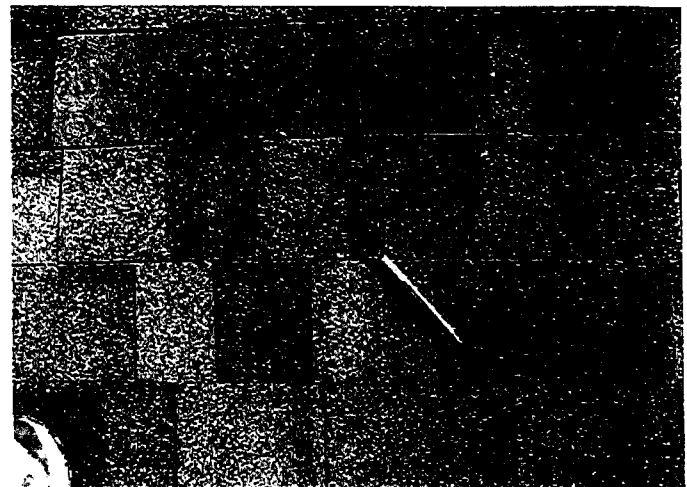
Action Required: Remove and reinstall to correct condition. Typical at all decks.



Photo #21

Condition: Damage shingles on lower west roof due to foot traffic by siding and soffit installers.

Action Required: Remove and replace all damaged shingles



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #22

Condition: Damaged roof shingles on lower west shed due to foot traffic of siding and soffit installers

Action Required: Remove and replace all damaged shingles

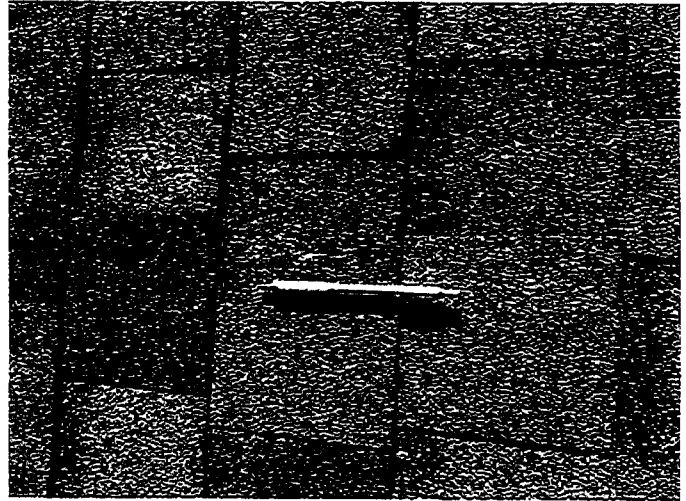


Photo #23

Condition: Damaged roof shingles on west shed roof. Sealant and debris along upper shed due to siding and soffit installers

Action Required: Remove and replace damaged shingles. Complete installation of 1/2 x 4 trim at upper rake board as indicated on contract drawings. Seal at edge of rake board a vertical wall to right beyond photo edge.

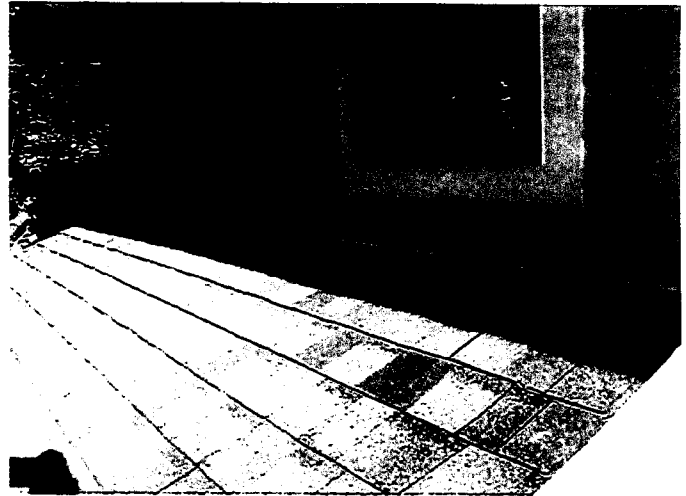


Photo #24

Condition: Debris from siding installation remains all over the project site. Materials are thrown all over the yard.

Action Required: All debris related to siding, soffit and roof construction is to be removed from the project site pursuant to our contract.



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #25

Condition: Damaged shingles due to siding construction. Missing 1 x 4 at rake edge.

Action Required: Remove and replace damaged shingles. Install 1 x 4 at rake edge. As a 5/4 fascia trim was installed, use 1/2 x 4 trim to create shadow line.

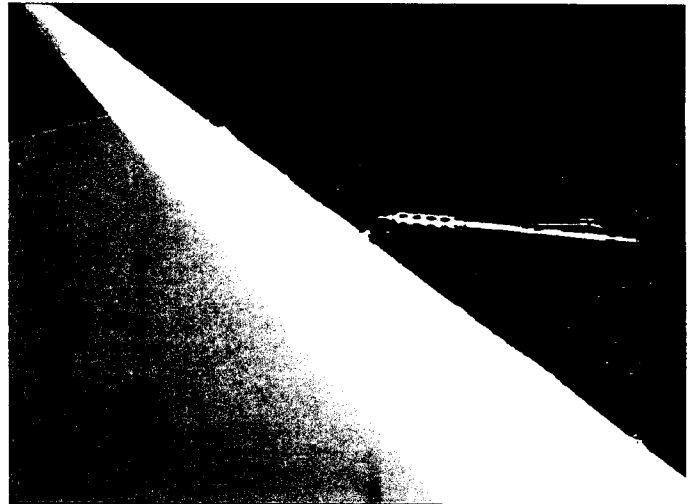


Photo #26

Condition: Failed to install sheathing and underlayment behind pvc trim and sheathing previously reported on numerous occasions. Wood Shakes were not installed in accordance with Malbec printed installation instruction. Exposure is not 5-1/2". Net result is raw edge of shakes were not touched up as specified and extends beyond outer face of pvc corner trim; typical

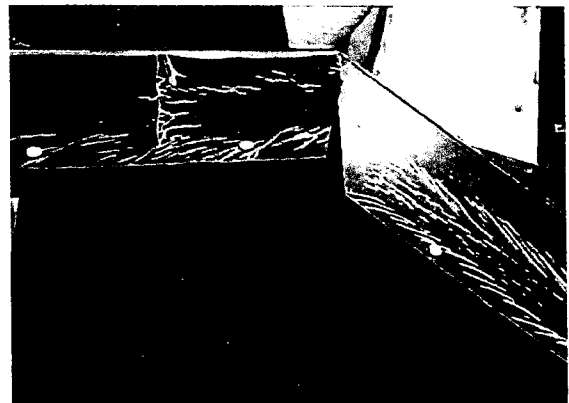
Action Required: Touch up paint all raw shakes



Photo #27

Condition: Previously reported in 3/5/17 E-mail. Metal roofing is not installed in accordance with Union Corrugating Inc. printed specifications and details

Action Required: Confirm roof sheathing / nailers are extended out to eave edge to all proper attachment of drip edge with fasteners required by the manufacturer. Strip in edge metal as required by the manufacturer.



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ROOF—SIDING PUNCH LIST FOR IMPERIAL SIDING AND HOME IMPROVEMENTS, INC.

Photo #28

Condition: Metal roof edge metal is not parallel to fascia below leaving underside of roof sheathing exposed on both side of the octagon.

Action Required: Remove and replace edge metal with proper fasteners.

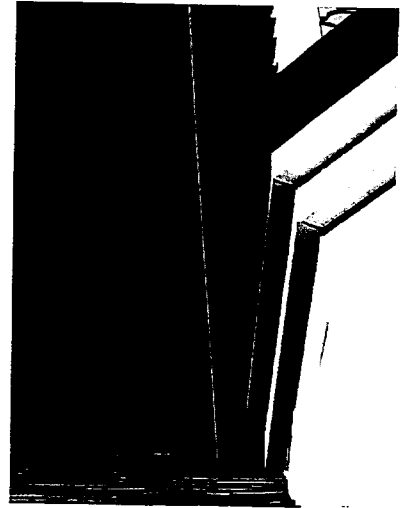


Photo #29

Condition: Metal standing seam roof is not completed as of 3/5/17.

Action Required: Remove and replace all flashing and prefinished counter flashing in accordance with manufacturer's printed installation instructions and details.

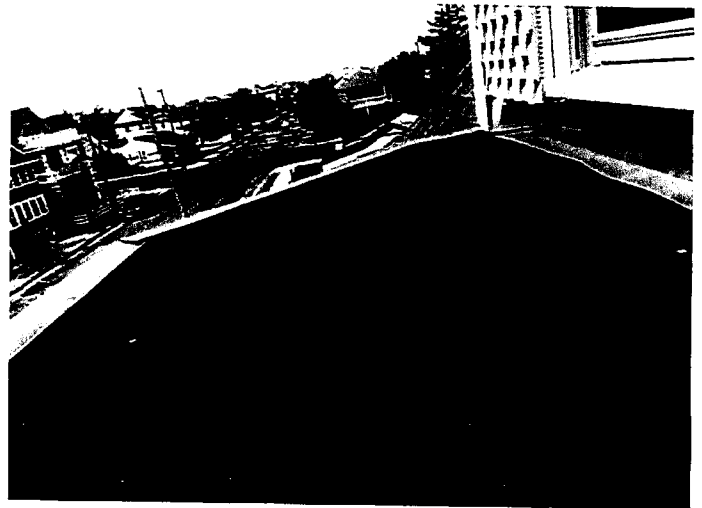


Photo #30

Condition: PVC fascia trim on upper and lower decks are incomplete.

Action Required: Complete installation of all outstanding pvc fascia trim on upper and lower decks; typical as contracted.

