

IN THE MATTER OF THE CLAIM * BEFORE JAMES W. POWER,
OF ROBERT TAYLOR * AN ADMINISTRATIVE LAW JUDGE
AGAINST THE MARYLAND HOME * OF THE MARYLAND OFFICE
IMPROVEMENT GUARANTY FUND * OF ADMINISTRATIVE HEARINGS
FOR THE VIOLATIONS OF * OAH NO.: DLR-HIC-02-09-34749
CHARI MALKIN, T/A * MHIC NO.: 08(05)821
MALKIN ENTERPRISE *

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On June 2, 2008, Robert Taylor (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$18,411.00 for actual losses suffered as a result of home improvement work performed by Chari Malkin, t/a Malkin Enterprise (Respondent).

I held a hearing on October 27, 2010 at the Office of Administrative Hearings in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2010). Matthew Lawrence, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Claimant represented himself. The Respondent appeared and was represented by Kent Greenberg, Esq.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations of DLLR, and the Rules of Procedure of the Office of Administrative Hearings (OAH). 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, and 09.08.03; COMAR 28.02.01.

ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent?

SUMMARY OF THE EVIDENCE

Exhibits

See attached exhibit list.

Testimony

The Claimant testified on his own behalf.

Neither the Fund nor the Respondent presented any testimony.

FINDINGS OF FACT

Having considered all of the evidence presented, 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.
2. In June 2007, the Claimant and Respondent entered into a contract for the Respondent to restore a townhouse at 1260 Carroll Street in Baltimore City. The house was not habitable and required total restoration. It was not the Claimant's residence.
3. The Claimant jointly owns nine other other properties in Baltimore City with his brother. The Claimant's name appears on the deeds and mortgages. These properties are:

800 Chancey Avenue
3819 Patterson Avenue
107 W. Lanvale Street
1009 W. Lanvale Street
1828 Madison Avenue
2002 Madison Avenue
3607 Plateau Avenue
3208 Piedmont Avenue
1003 McCullough Street

4. On June 2, 2008 the Claimant filed a claim against the Fund for an actual loss involving the Respondent's work at 1260 Carroll Street.

DISCUSSION

Maryland law provides that an owner may recover compensation from the Guaranty 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). Section 8-401 of the Business Regulation article defines "actual loss" as "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 burden of proof to establish the unworkmanlike or inadequate home improvement and any actual loss suffered is on the Claimant. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2010).

However, there are certain situations and individuals which by law are precluded from receiving compensation from the Fund. This list includes individuals who own more than three residential properties and the property in dispute is not the claimant's residence. Md. Code Ann., Bus. Reg. § 8-405(f)2 (Supp. 2010).

The purpose of the home improvement law is to protect homeowners against violations by licensed contractors. It is not intended to protect individuals engaging in business endeavors. Individuals who rehabilitate houses for resale reap the reward upon resale, but they also bear the

risk of loss. In this case, the Claimant undertook a business transaction which obviously did not turn out as expected. However, he cannot recover from the Fund for any loss.

The Claimant testified that he jointly owns nine other properties with his brother. The Claimant's name is on the deeds and mortgages. He also listed these properties on his loan application. Although he does not actively manage these properties, he is still an owner and the house on Carroll Street in this case was not his residence. Therefore, he is barred from recovery from the Fund.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant is legally barred from recovery from the Fund for his claim filed on June 2, 2008. Md. Code Ann., Bus. Reg. § 8-405(f)(2) (2010).


PROPOSED ORDER

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

ORDER that the Claim be denied; and

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

November 10, 2010
Date Decision Mailed



James W. Power
Administrative Law Judge

JWP/tc
117769

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EXHIBIT LIST

The Fund submitted two exhibits:

1. Licensing information for Respondent
2. Claim Form

The Respondent submitted one exhibit:

1. Loan application

The Claimant submitted the following exhibits:

1. Contract
2. Specification of Repairs
3. Rehab Narrative
4. Good Faith Estimate
5. Copy of Check
6. Permits
7. Deed
8. Invoice
9. Invoice
10. Bank Record
11. Electric Bill
12. Electric Bill
13. Permit
14. Permit
15. Electric Bill
16. Electric Bill
17. Bank Statement

18. Tax Bill
19. Bank Statement
20. Tax Assessment
21. Property Listing
22. Letter from Claimant
23. Letter from Claimant
24. Returned Mail
25. Returned Mail
26. Bank Statement
27. Letter from HIC
28. Bank Statement
29. Electric Bill
30. Carpentry Bill
31. Bank Statement
32. Bank Statement
33. Truth in Lending Disclosure
34. Bank Statement
35. Letter from MHIC
36. Deed of Trust
37. Electric Bill
38. Copy of Check
39. Letter from MHIC
40. Copy of Check
41. Returned Mail
42. Letter from American Arbitration Association
43. Letter from MHIC
44. Loan Document
45. Brokerage Agreement
46. Copy of Check
47. Listing Agreement
48. Letter from H.U. Dove, Inc.
49. Loan Document
50. Proposal from Rausch Home Improvements
51. Estimate for Repairs
52. Estimate from American Quality
53. Letter from bank
54. Permits
55. Permits
56. Judiciary Case Search
57. Estimate for Repairs
58. Deposit Slip
59. Letter from bank
60. Roofing Invoice
61. Photographs

PROPOSED ORDER

WHEREFORE, this 10th day of February 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.

Joseph Tunney

*Joseph Tunney
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION