IN THE MATTER OF THE CLAIM OF TAVA HOME SOLUTIONS, LLC	*	**MARYLAND HOME IMPROVEMENT COMMISSION**
	*	
AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMMISSIONS OF GENE HAYES t/a HAYES CONST. RENOVATORS/ BUILDERS, INC.	* * * *	**MHIC CASE NO. 16(05)1395** **OAH CASE NO. DLR-HIC-02-19-08641**

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FINAL ORDER

This matter was originally heard before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings ("OAH") on June 4, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 26, 2019, concluding that the homeowner, Tava Home Solutions, LLC ("Claimant") was eligible to make a claim against the fund and proved that it sustained an actual loss as a result of the acts or omissions of Gene Hayes t/a Hayes Const. Renovators/Builders, Inc. ("Contractor"). *ALJ Proposed Decision* p. 11. In a Proposed Order dated October 30, 2019, the Maryland Home Improvement Commission ("MHIC") affirmed the Proposed Decision of the ALJ to grant an award from the MHIC Guaranty Fund ("Fund"). The Contractor subsequently filed exceptions of the MHIC Proposed Order.

On December 5, 2019, a hearing on the exceptions filed in the above-captioned matter was held before a three-member panel ("Panel") of the MHIC. Both the Claimant and the Contractor were present. The Claimant was represented by Craig Holcomb, Esq. The Contractor was unrepresented. Nicholas Sokolow, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. The following preliminary exhibits were offered by AAG Sokolow and admitted into evidence at the exceptions hearing: 1) October 30, 2019, cover letter for the OAH Proposed Decision and MHIC Proposed Order, 2) OAH Proposed Decision, 3) MHIC Proposed Order, 4) Contractor's Written Exceptions, and 5) Notice of Exceptions Hearing.

Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ, and, therefore, the Panel's review of the record was limited to the preliminary exhibits offered by AAG Sokolow at the exceptions hearing, the OAH Proposed Decision and the exhibits introduced into evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The Commission does not find that the ALJ erred in his conclusion that the Claimant in this case suffered an actual loss. Based on the testimony of the Claimant's witnesses and the documents submitted into evidence, the ALJ found that the Contractor did some work under the contract but then effectively abandoned the project. *ALJ Proposed Decision* p. 8. Because the Claimant sought another contractor to correct and complete the original Contractor's work, the ALJ used the correct regulatory formula found at COMAR 09.08.03.03B(3)(c) to calculate the actual loss. *ALJ Proposed Decision* p. 10. Although the actual loss calculated was $46,022.92, the ALJ correctly limited the award from the Guaranty Fund to $20,000.00 pursuant to the cap on awards set forth in Md. Code Ann., Bus. Reg. § 8-405(e)(1).

The Commission, however, finds that the ALJ erred in his finding that "[o]n or about November 10, 2016, (well after the Respondent's corporation had been fired form the project), the Claimant's Corporation simultaneously owned four residential properties for a period." *ALJ Proposed Decision* p. 7. This finding of the ALJ is preceded by a list of properties and the range of dates that the ALJ found the Claimant owned the properties. *Id.* The ALJ specifically found that the "Ellerslie" property was owned from "March 2016 to January 2017." *Id.* A review of the State Department of Assessments and Taxation ("SDAT") record for this property shows that the Claimant, Tava Home Solutions, LLC, owned the property for a single day, March 7, 2016, before selling it to another LLC which would later sell the property on January 26, 2017. *OAH Hearing Guaranty Fund Exhibit* 4. Therefore, when the Claimant eventually purchased the "E. Lanvale"

property on November 10, 2016, the evidence in the record shows that the Claimant only owned the "S. Robinson" and "Birchwood" properties. *OAH Hearing Guaranty Fund Exhibits* 1-5. Based on the evidence in the record, the Commission cannot find that the Claimant owned more than three properties at one time, and therefore the claim is not barred pursuant to Md. Code Ann., Bus. Reg. § 8-405(f)(2).[1]

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Proposed Decision, it is this **6th** day of **March 2020 ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;

B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;

C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**

D. That the Claimant is awarded **$20,000.00** from the Maryland Home Improvement Guaranty Fund;

E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, Md Code Ann., Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a) (2015);

F. That the records and publications of the Maryland Home Improvement Commission shall

[1] Section 8-405(f)(2) provides that a homeowner may make a claim against the Fund only if the owner "resides in the home as to which the claim is made" or "does not own more than three residences or dwelling places." The ALJ in this case interpreted this provision to mean that it is only at the time the owner files a claim that they must own no more than three properties. Therefore, even though the ALJ mistakenly found that the Claimant at one time owned more than three properties, he did not find this was a bar to recovery from the Fund because the Claimant owned less than four properties at the time the claim was filed. Because the record does not show that the Claimant owned more than three properties at once, the Commission need not reach in this case the proper interpretation of § 8-405(f)(2). The Commission's affirmation of the award from the Guaranty Fund, however, is not an affirmation of the ALJ's interpretation of § 8-405(f)(2).

reflect this decision; AND

G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement Commission