

IN THE MATTER OF THE CLAIM	* BEFORE DANIEL ANDREWS,
OF MADAN DUBEY,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	* OAH No.: DLR-HIC-02-17-40103
OMISSIONS OF DOUGLAS	* MHIC No.: 16 (75) 1423
MORGAN, T/A MORGAN and	*
MORGAN SOLAR, LLC,	*
RESPONDENT	*

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On June 27, 2018, Madan Dubey (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,000.00 in alleged actual losses suffered as a result of a home improvement contract with Doug Morgan, trading as Morgan and Morgan Solar, LLC (Respondent).<sup>1</sup>

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<sup>1</sup> On June 26, 2016, the Claimant originally filed a claim against the Fund in the amount of \$19,000.00 which was the full deposit money paid the Respondent to perform a contract with a total cost of \$38,000.00. However, after obtaining a Judgement of Restitution ordered by the Howard County District Court against the Respondent for failure to perform the contract with the Claimant in the amount of \$12,000.00, the Claimant amended his claim against the Fund to \$7,000.00.

I held a hearing on April 17, 2018 at the Office of Administrative Hearings located in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).<sup>2</sup> The Claimant represented himself. Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes, during which time neither the Respondent nor anyone authorized to represent him appeared, I proceeded with the hearing in the Respondent's absence, having determined that he was provided with proper notice and opportunity to participate in the hearing.<sup>3</sup> Md. Code Ann., Bus. Reg. §§ 8-312(h), 8-407(a); Code of Maryland Regulations (COMAR) 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted in evidence on behalf of the Claimant, the following exhibits:

- CL 1 Contract between the Claimant and Respondent, September 22, 2015

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<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

<sup>3</sup> On March 14, 2018, a Notice of Hearing (Notice) was mailed to the Respondent's address of record with the MHIC. The Notice was delivered by both regular first class mail and by certified mail return receipt. COMAR 09.08.03.03A(2). The Notice informed of the date, time, and location of the hearing. The Notice that was sent by certified mail was returned to the OAH as unclaimed on or about April 12, 2018. The Notice that was mailed using regular first class mail was not returned. Based on this record, I determined that the Appellant was provided with proper notice and opportunity to participate in the hearing.

- CL 2 Series of emails between the Claimant and Respondent, August 14 through November 16, 2015
- CL 3 Series of text messages between the Claimant and Respondent, September 29 through December 5, 2015
- CL 4 Letter from Claimant to Respondent, August 12, 2016, with attachments including contractual warranties and guarantees, photocopy of Claimant's personal check, photographs, proposal by Beltway Builders, Inc., letter from Howard County Office of Consumer Affairs, and certified mail return receipt
- CL 5 Letter from Howard County Office of Consumer Affairs to Respondent, May 19, 2016 and to the Claimant, May 21, 2016
- CL 6 Letter from Claimant to the Office of the Attorney General, June 9, 2016
- CL 7 Letter from Associa Community Management Corporation to Claimant, July 27, 2016, with attached inspection notice
- CL 8 Standard Energy Solutions Proposal, August 30, 2016
- CL 9 Power Factor Solar Proposal, September 16, 2016
- CL 10 Beltway Builders, Inc. Proposal, June 27, 2016
- CL 11 Standard Energy Solutions Proposal, September 2, 2016
- CL 12 Letter from Claimant to Paul E. Mac, Esquire, October 4, 2016
- CL 13 Claimant's MHIC Complaint Form, June 21, 2016, with attachments
- CL 14 District Court of Maryland for Howard County, State of Maryland vs. [Respondent], Notice of Judgment of Restitution, January 25, 2017, with attachments

The Respondent did not submit any exhibits to be admitted into evidence.

I admitted into evidence on behalf of the Fund the following exhibits:

- GF 1 Notice of Hearing, March 14, 2018
- GF 2 Respondent's response to MHIC Proposed Order, undated
- GF 3 Licensing History, April 16, 2018
- GF 4 MHIC Hearing Order, December 11, 2017

GF 5 Claimant's original Home Improvement Claim Form, June 20, 2016 and amended form, undated

GF 6 MHIC letter to Respondent, July 7, 2016

Testimony

The Claimant presented the testimony of Michael Miller, MHIC Investigator and also testified in his own behalf.

The Fund presented no witnesses.

**PROPOSED 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 01-103407.
2. On September 22, 2015, the Claimant entered into a home improvement contract to install a Solar Photovoltaic System of forty-four solar panels and all standard installation components at the Claimant's house.
3. The total contract price was \$38,000.00.
4. The contract required the Claimant to make a fifty percent payment<sup>4</sup> at initiation, a twenty-five percent payment upon delivery of materials, and the balance due upon completion.
5. The contract required the Respondent to begin installation within ninety days of September 22, 2015 and complete the contract within 120 days of September 22, 2015.
6. The contract required that any dispute be decided by the Better Business Bureau Arbitration Program.
7. On September 22, 2015, the Claimant paid the Respondent \$19,000.00, by personal check, which was deposited by the Respondent.

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<sup>4</sup> Fifty percent of \$38,000.00 is \$19,000.00.

15. On September 2, 2016, the Claimant obtained a proposal from Standard Energy Solutions (SES) to repair any work performed by the Respondent and to install solar panels. SES conducted an analysis of the work performed by the Respondent which it supported by several photographs.

16. The roof anchors installed by the Respondent were insufficient or unworkmanlike because:

- existing anchors and rails did not comply with County code setback requirements, and required removal, and reinstallation of a new seal and flashing in all areas roof penetration;
- shingle damage required replacement;
- incorrectly installed flashing required removal and replacement; and
- installed anchor lags missed roof trusses and split other roof trusses, which required removal and a structural engineer consult to repair the split trusses.

17. In the District Court of Maryland for Howard County (District Court), Case No. 6T00096088, the Respondent was criminally charged with a failure to perform a contract on charged on September 22, 2015.<sup>5</sup>

18. On January 25, 2017, after the criminal charges were resolved, the Claimant obtained a Judgement of Restitution against the Respondent in the amount of \$12,000.00.

19. The Claimant's actual loss is \$7,000.00.

### DISCUSSION

The Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with

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<sup>5</sup> A contractor may not abandon or fail to perform, without justification, a home improvement contract. Md. Code Ann., Bus. Reg. § 8-605 (1). The criminal penalty for this violation is a fine not exceeding \$1,000.00 or imprisonment not exceeding six months or both. Md. Code Ann., Bus. Reg. § 8-623 (b).

8. On or about September 22, 2015, the Respondent began to perform the contract by installing roof anchors to support the solar panel structure.

9. After the roof anchors were installed the Respondent performed no other work.

10. Between September and December 2015, the Claimant sent several emails and text messages to the Claimant seeking to determine when the Respondent would complete the contract. The Claimant also requested a full refund of the \$19,000.00 deposit money.

11. By email dated December 9, 2015, the Respondent informed the Claimant that his business was closing and that another contractor, East West Solar, would complete the work.

12. On May 19, 2016, the Howard County Office of Consumer Affairs (HCOCA) notified the Respondent that the Claimant filed a complaint with its office, which was authorized by law to resolve disputes involving consumer complaints. The HCOCA informed the Respondent that the Claimant paid a \$19,000.00 deposit to have solar panels installed but after the installation of roof anchors no other work was performed. The HCOCA also informed the Respondent that the Claimant sought the return of the full deposit and requested the Respondent to respond with ten days.

13. On June 21, 2016, the HCOCA notified the Claimant that it was unable to resolve his complaint because on two occasions, the Respondent stated that he would have completed the contract but did not because the Claimant did not make the required payments.

14. On August 12, 2016, by certified mail, the Claimant sent the Respondent a letter to terminate the contract and demanded a full refund of the deposit because the Respondent violated the contract by not completing the contract within 120 days of September 22, 2015 and that the only work performed, the installation of roof anchors, were installed incorrectly, causing damage to his roof. The Claimant received the letter on August 18, 2016.

the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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); *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

In support of his claim, the Respondent presented the testimony of Michael Miller, an investigator with the MHIC. Mr. Miller explained that because the MHIC received several complaints about the Respondent, which involved receiving deposits in excess of the Home Improvement law permitted deposit amount of one-third of the total contract price and also involved little to no work being performed, he requested the prosecutor in Howard County to pursue criminal charges in the District Court for failing to perform a contract. Mr. Miller explained that he was present in court when the Respondent appeared with counsel and pled guilty to the charges and the District Court awarded restitution to the Claimant and other victims.

The Claimant also testified about the contract between himself and the Respondent. The Claimant explained that after entering into the contract to install solar panels on the roof of his home on September 22, 2018, at a cost of \$38,000.00, he paid the Respondent a deposit of \$19,000.00. The Claimant explained the Respondent began to perform the contract by installing roof anchors but then never came back to finish the contract. The Claimant offered several documents into evidence to demonstrate he attempted many times through emails and text messages to determine when the Respondent would finish the contract and or return the deposit

monies. The Claimant testified further that in a December 2015 email, the Respondent informed the Claimant that he was going out of business and would not finish the contract. He added that even though the Respondent stated that another company, East West Solar, would finish the work, no one from that company ever contacted him and the Claimant speculated that the company does not exist.

The Claimant testified that he contacted several other contractors and obtained proposals to complete the installation of solar panels. One of the contractors, SES, took photographs of the work performed by the Respondent, which demonstrated that the work performed by the Respondent caused damage to his roof and required removal to repair the roof before new roof anchors and rails can be installed. As a result, the Claimant contends that the work performed by the Respondent had no value.

The Claimant also testified about his efforts to resolve his dispute with the Respondent and to seek a return of his deposit money by filing a complaint with the HCOCA. However, the HCOCA could not get the Respondent to cooperate with the complaint resolution process. The Claimant also explained how he obtained a Judgment of Restitution in the amount of \$12,000.00 through the criminal prosecution of the Respondent.

Based on the failure of the Respondent to complete the contract with any work performed being of no value, the Claimant requested that the Fund reimburse him for his loss which originally was in the amount of \$19,000.00. However, after obtaining a Judgment of Restitution in the amount of \$7,000.00, the Claimant reduced his claim against the Fund to that amount.

The Fund presented no witness testimony and after an opportunity to cross-examine the Claimant, the Fund agreed that the Claimant established an actual loss and is eligible for compensation from the Fund.



Analysis

A claimant who seeks compensation from the Fund shall file a claim with the MHIC. COMAR 09.08.03.02. Generally, the MHIC will process a claim according to established procedures. One of those procedures concerns a home improvement contract which contains a compulsory binding arbitration clause. In relevant part, the applicable regulation provides:

**Compulsory Binding Arbitration.** When a contract between a claimant and a contractor requires that all contract disputes be submitted to binding arbitration, the claimant shall either:

- (1) Submit their dispute to binding arbitration as required by the contract;  
or
- (2) Provide evidence to the Commission that the claimant has made good faith efforts to bring the dispute to binding arbitration which the contractor has either rejected or not responded to. The Commission shall then give the contractor written notice that, if the contractor does not agree to binding arbitration, the Commission will consider the compulsory arbitration clause to be void and process the claimant's claim pursuant to this chapter.

COMAR 09.08.03.02E

In this case, the contract required any dispute to be resolved through arbitration. The evidence demonstrates that the Claimant presented a complaint about the Respondent's contractual performance and failure to return the \$19,000.00 with the HCOCA. Without success, HCOCA attempted to resolve the dispute, but the Respondent refused based on an allegation that the Claimant failed to make required payments. However, the evidence demonstrates that the Claimant paid a \$19,000.00 deposit in compliance with the contract and therefore demonstrates that the Respondent's allegation is patently false. Even though the contract required the Claimant to submit the dispute to the Better Business Bureau Arbitration Program, the evidence demonstrates that the Claimant attempted to resolve the dispute in good faith, which the Respondent rejected. The Claimant sent several emails and text messages to resolve the dispute

on his own without success. The Claimant then used the HCOCA, a third party mediator, to resolve the dispute. By contrast, the Respondent's false representation to the HCOCA regarding the Claimant's alleged failure to make required payments, demonstrates bad faith to resolve the dispute. After considering the circumstances presented by the evidence, I find that the Claimant substantially complied with the contract provision for arbitration, which was rejected by the Respondent, and the Claimant's claim for reimbursement from the Fund in the amount of \$7,000.00 is properly before me for consideration.

The uncontested evidence demonstrates that on September 22, 2015, the Claimant entered into a contract with Respondent to install solar panels onto the roof of his home, with a total contract price of \$38,000.00. On the same date, the Claimant paid the Respondent \$19,000.00. The Respondent was to complete the contract within 120 days of September 22, 2015. The Respondent began to perform the contract by installing roof anchors to support the solar panel structure on the Claimant's roof. However, after doing so, the Respondent performed no other work and told the Claimant by an email on December 9, 2015 that he would not complete the contract. After several efforts to seek a return of his deposit money went unresolved, including through the HCOCA, the Claimant sent a final demand letter by certified mail, which was received by the Respondent on August 18, 2016. The Claimant's demand letter also was unsuccessful. The Claimant also presented photographic evidence which demonstrated that roof anchors installed by the Respondent to support the solar panels were installed in violation of county code, without proper flashing, and damaged roof tiles and roof trusses. As result, all work performed by the Respondent had no value because the work required removal and replacement with properly installed roof anchors and rails. Based on these circumstances, I am satisfied by preponderance of the evidence that the Claimant established an actual loss by an

incomplete and inadequate home improvement performed by the Respondent and is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award to which the Claimant is entitled. MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

COMAR 09.08.03.03B(3)(b).

Using this measurement, because I found that the work performed by the Respondent had no value, the Claimant is entitled to the \$19,000.00 deposit paid to the Respondent. However, as noted earlier, because the Claimant obtained a Judgment of Restitution against the Respondent in the amount of \$12,000.00, the Claimant amended his claim against the Fund to \$7,000.00. For this reason, I find that the amount of the Claimant's actual loss is \$7,000.00

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$7,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$7,000.00; and



**PROPOSED ORDER**

***WHEREFORE, this 8<sup>th</sup> day of August, 2018, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**

PROCEEDINGS

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