

IN THE MATTER OF THE CLAIM * BEFORE TRACEY JOHNS DELP,
OF CAROLINA SALVAT, * AN ADMINISTRATIVE LAW JUDGE
CLAIMANT * OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME * OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND * *
FOR THE ALLEGED ACTS OR *
OMISSIONS OF VINCENT *
CULPEPPER, T/A VC * OAH No.: DLR-HIC-02-19-12886
CONSTRUCTION LLC, * MHIC No.: 17 (75) 317
RESPONDENT *

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On December 13, 2016, Carolina Salvat (Claimant) filed a claim (Claim) for reimbursement by the Home Improvement Guaranty Fund (Fund) of the Maryland Home Improvement Commission (MHIC), alleging \$32,842.00 in actual losses as the result of a home improvement contract with Vincent Culpepper, trading as VC Construction LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On April 24, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 3, 2019, the OAH issued a Notice of Hearing (Notice) to the Claimant and the Respondent via certified and first class mail at the parties' last addresses of record. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Notice stated that a hearing was scheduled for July 16, 2019 at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland 21031, and that failure to attend the hearing might result in "a decision against you."

The certified mail receipts show delivery of the Notice to the Claimant¹ on May 20, 2019, and to Craig Holcomb, Esquire² on May 7, 2019. The Notices sent to the Claimant and Mr. Holcomb by first class mail were not returned. Prior to the date of the hearing, the OAH did not receive any requests for postponement from the Claimant or anyone authorized to represent the Claimant.

On July 16, 2019, neither the Claimant nor anyone authorized to represent the Claimant appeared. The Respondent was present to represent himself. Eric London, Assistant Attorney General, Department of Labor,³ was present to represent the Fund.

Applicable law permits me to proceed with a hearing in a party's absence if the party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Claimant had received proper notice and, after waiting fifteen minutes, I convened the hearing as scheduled.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 09.01.03; COMAR 28.02.01.

¹ The Claimant's Notice was mailed to the address provided by the Claimant on her Claim, 12646 SW 95 Court, Miami, Florida 33176.

² Mr. Holcomb was identified in the MHIC's transmittal to the OAH as the Claimant's attorney. The OAH did not receive an entry of appearance from Mr. Holcomb.

³ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

ISSUE

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of Hearing, with certified mail receipts showing delivery to the Claimant on May 20, 2019, and to Craig Holcomb, Esquire on May 7, 2019
- Fund Ex. 2 - Hearing Order, dated April 19, 2019
- Fund Ex. 3 - Letter To Whom It May Concern from David Finneran, Executive Director, MHIC, dated June 19, 2019
- Fund Ex. 4 - Home Improvement Claim Form, received December 13, 2016
- Fund Ex. 5 - Letter to the Respondent from the MHIC, dated December 15, 2016
- Fund Ex. 6 - State Department of Assessment and Taxation Real Property Data Search, printed July 10, 2019
- Fund Ex. 7 - Emails among the Claimant, Craig Holcomb, Esquire, and the MHIC, dated October 27, 2017 – July 24, 2018

The Claimant did not attend the hearing and offered no exhibits into evidence.

The Respondent offered no exhibits into evidence.

Testimony

The Claimant did not attend the hearing and presented no testimony.

Neither the Respondent nor the Fund offered any testimony.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On December 13, 2016, the Claimant filed a Claim for reimbursement of \$32,842.00 from the Fund for losses allegedly incurred as a result of the acts or omissions of the Respondent. (Fund Ex. 4.)

2. The Claimant has a limited liability company titled Coral Sands Holdings, LLC.⁴

3. At the time the Claim was filed on December 13, 2016, Coral Sands Holdings, LLC owned the following real property in Maryland:

	Property Address	Purchase Date	Sale Date
1)	4 Railroad Avenue, Baltimore, MD	01/14/2016	06/20/2017
2)	300 Evesham Avenue, Baltimore, MD	04/13/2016	06/30/2017
3)	122 Lincoln Avenue, Lutherville, MD	06/14/2016	05/24/2017
4)	5840 Bellona Avenue, Baltimore, MD	08/02/2016	11/26/2018

(Fund Exs. 6 and 7.)

4. On May 3, 2019, the OAH sent Notices to the Claimant and the Respondent by U.S. Postal Service certified and first class mail. All Notices were sent to the parties' most recent addresses on record with the MHIC. (Fund Ex. 1.)

5. The certified mail receipts show delivery of the Notice to the Claimant on May 20, 2019, and to Craig Holcomb, Esquire on May 7, 2019. The Notices sent to the Claimant and Mr. Holcomb by first class mail were not returned. (Fund Ex. 1.)

6. No postponement was requested by the Claimant.

7. The Claimant failed to appear for the scheduled hearing on July 16, 2019 at 9:30 a.m.

⁴ In Fund Exhibit 7, the Claimant refers to Coral Sands Holdings, LLC as "[her] LLC".

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); 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 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)).

To successfully assert a claim against the Fund, a claimant must show “an actual loss that results from an act or omission by a licensed contractor.” 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”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

In this case, the Claimant failed to appear and provide sufficient evidence to support her Claim. The Fund posited that the Claimant may have chosen not to appear because she owned more than three properties at the time she filed the Claim.⁵ Regardless of the reason, the Claimant has not met the burden to prove eligibility and that she suffered an actual loss compensable by the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a) (2015).

⁵ “An owner may make a claim against the Fund only if the owner... does not own more than three residences or dwelling places.” Bus. Reg. § 8-405(f)(2).

RECOMMENDED ORDER

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

ORDER that the Home Improvement Guaranty Fund deny the Claimant's claim; and

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

Signature on File

July 18, 2019
Date Decision Issued

Tracey Johns Delp
Administrative Law Judge

TJD/sw
#181055

PROPOSED ORDER

WHEREFORE, this 10th day of September, 2019, 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.

Wm. Bruce
Quackenbush

Wm. Bruce Quackenbush
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION

RECEIVED
OCT 17 2019