

**IN THE MATTER OF THE CLAIM
OF KATHERINE HARRIS,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ROSS EHUDIN
T/A G & E CONTRACTORS,
RESPONDENT**

*** BEFORE LAURIE BENNETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: DLR-HIC-02-18-14897
* MHIC No.: 18 (75) 114
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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 24, 2017, the Claimant filed a claim (Claim) for reimbursement by the Home Improvement Guaranty Fund (Fund), of the Maryland Home Improvement Commission (MHIC), Department of Labor, Licensing and Regulation, alleging actual losses suffered as the result of a home improvement contract with the Respondent. On May 2, 2017, following an investigation, the MHIC ordered a hearing and, on an unspecified date, transmitted the matter to the Office of Administrative Hearings (OAH).

The OAH scheduled a hearing for August 9, 2018, at 9:30 a.m. at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. After waiting fifteen minutes past the schedule start time, neither

the Claimant nor the Respondent nor anyone on their behalf appeared. The OAH's procedural regulations provide that, "If, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." Code of Maryland Regulations (COMAR) 28.02.01.23A. I proceeded with the hearing, where Scott B. London, Assistant Attorney General, represented the MHIC.

The contested case provisions of the Administrative Procedure Act, the Department of Labor, Licensing and Regulation's regulations for hearings delegated to the OAH, 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. 2017); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

Was the Claimant issued proper notice of the hearing?

If so, did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent acts or omissions?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Fund:

1. Notice of Hearing, May 30, 2018
2. Certified Mail return receipt, signed by the Claimant, June 1, 2018
3. Memorandum from Sandra L. Sykes, Docket Specialist with the OAH, July 6, 2018, with returned certified mail addressed to the Respondent
4. Affidavit of Thomas Marr, July 19, 2018
5. Hearing Order, May 2, 2018
6. Affidavit of David R. Finneran, July 25, 2018

7. Licensing history, June 22, 2018
8. Home Improvement Claimant Form, dated August 21, 2017, filed August 24, 2017
9. Letter from MHIC to Respondent, September 8, 2017

Neither the Claimant nor the Respondent offered exhibits.

Testimony

The Fund did not offer testimony.

PROPOSED FINDINGS OF FACT

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

1. On August 24, 2017, the Claimant filed a claim for reimbursement of \$2,400.00 from the Fund for losses allegedly incurred as a result of the Respondent's acts or omissions.
2. By notice dated May 30, 2018, the OAH advised the Claimant, the Respondent, and the MHIC that a hearing would convene on August 9, 2018, at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland, at 9:30 a.m., and that failure to attend the hearing might result in "a decision against you." The OAH issued the notice to the Claimant and the Respondent by first class and certified mail to their addresses of record.
3. The United States Postal Service (USPS) did not return any of the first class mail.
4. On June 1, 2018, the Claimant signed for the certified mail.
5. The USPS returned the Respondent's certified mail marked return to sender, unclaimed, and unable to forward.
6. No party requested a postponement.
7. I convened the hearing as scheduled. After waiting fifteen minutes past the schedule start time, neither the Claimant nor the Respondent nor anyone on their behalf appeared.

DISCUSSION

I. The Claimant received notice of the date, time, and location of the hearing.

The OAH issued a notice of hearing to the Claimant by first class and certified mail. The USPS did not return the first class mail and the Claimant signed for receipt of the certified mail. I therefore find that she received proper notice of the hearing.

II. The Claimant did not meet the burden of proof to establish the Claim.

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”). 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.

The Claimant failed to appear and provide evidence to support her claim. She therefore has not met the burden of proving 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 (2015).

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

September 26, 2018
Date Decision Issued

Laurie Bennett
Administrative Law Judge

LB/cmg
175316

PROPOSED ORDER

WHEREFORE, this 19th day of November, 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.

Jeffrey Ross

**Jeffrey Ross
Panel B**

MARYLAND HOME IMPROVEMENT COMMISSION