

IN THE MATTER OF THE CLAIM OF
WILLIAM WERNER
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
WILLIAM CULLER AND TCG
DEVELOPMENT, INC.

* MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 20(75)561
* OAH CASE NO. LABOR-HIC-
* 02-22-06857
*

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FINAL ORDER

This matter was originally heard via Webex videoconferencing before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 22, 2022. Following the hearing, the ALJ issued a Proposed Decision on August 16, 2022, concluding that the homeowner, William Werner (“Claimant”) failed to prove that he suffered an actual loss as a result of the acts or omissions of William Culler and TCG Development, Inc. (collectively, “Contractor”). *ALJ Proposed Decision* p.5. In a Proposed Order dated September 16, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On February 16, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and the Contractor participated without counsel. Assistant Attorney General Catherine Villareal appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. The Claimant produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The Claimant failed to appear at the hearing before the ALJ on June 22, 2022. The ALJ found that the Claimant received proper notice of the hearing and proceeded without the Claimant. Therefore, the Claimant did not present any evidence in support of his claim, and the ALJ found that the Claimant failed to prove his entitlement to an award. *ALJ's Proposed Decision* pp. 5.

On exception, the Claimant sought a new evidentiary hearing because he had trouble logging into the remote hearing. The Commission finds that the Claimant received proper notice of the hearing and that a new hearing is not justified. The evidentiary hearing was originally scheduled for May 27, 2022. The Claimant requested that the hearing be rescheduled, and the ALJ granted his request and set the hearing for June 22, 2022, to be conducted in-person at the OAH in Hunt Valley, Maryland. The Claimant requested that the hearing be conducted remotely, and the ALJ granted the Claimant's request and sent the parties an email on June 17, 2022, with login instructions, a meeting number, a dial-in number to participate via telephone, notice that the parties could also participate in-person at the OAH in Hunt Valley, Maryland, and a phone number to call if they had trouble joining the remote hearing. The Claimant did not contact OAH on June 22, 2022, prior to, during, or after the hearing to advise that he was unable to connect to the hearing. In an email dated June 23, 2022, the Claimant acknowledged receiving the June 17 email from the ALJ.

Under these circumstances, the Commission finds that the ALJ was proper to proceed with the evidentiary hearing in the Claimant's absence and that the Claimant is not entitled to a new hearing.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 6th day of March 2023, **ORDERED:**

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

- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant's claim is **DENIED**;
- E. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- F. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Robert Altieri
Chairperson –Panel
Maryland Home Improvement
Commission

IN THE MATTER OF THE CLAIM	* BEFORE ERIN H. CANCIENNE,
OF WILLIAM WERNER,	* 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 WILLIAM CULLER	*
T/A TCG DEVELOPMENT, INC.,	* OAH No.: LABOR-HIC-02-22-06857
RESPONDENT	* MHIC No.: 20 (75) 561

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PROPOSED DECISION

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

STATEMENT OF THE CASE

On January 26, 2021, William Werner (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$14,621.00 for actual losses allegedly suffered as a result of a home improvement contract with William Culler,¹ trading as TCG Development, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411

¹ In the Claim, the Claimant identified the Respondent only as TCG Development, Inc. However, the MHIC Hearing Order identifies the Respondent as William Culler, trading as TCG Development, Inc.

(2015).² On March 16, 2022, the MHIC issued a Hearing Order on the Claim. On March 21, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 6, 2022, the OAH provided the initial Notice of Hearing to the parties and set the hearing for May 27, 2022. On April 11, 2022, the Claimant requested a postponement as he was unable to find care for his “special needs” child on that date.³ On April 21, 2022, the postponement request was granted, and the hearing was postponed.

On April 22, 2022, the OAH provided a Notice of Hearing (Notice) to the Claimant by United States mail. Code of Maryland Regulations (COMAR) 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 22, 2022, at 9:30 a.m. at 11101 Gilroy Road, Hunt Valley, Maryland 21031. The Notice further advised the Claimant that failure to attend the hearing might result in “a decision against you.” The United States Postal Service did not return the Notice to the OAH. The Claimant did not notify the OAH of any change of mailing address, or phone number. COMAR 28.02.01.03E. The Claimant made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16.

On June 7, 2022, the Claimant requested that the June 22, 2022 hearing be converted from an in-person hearing to a telephone hearing so that he could continue to care for his child. On June 17, 2022, I granted the Claimant’s request for a remote hearing to occur on June 22, 2022 via the Webex videoconferencing platform (Ruling on Motion). I notified the parties of the Ruling on Motion via email and informed them that they could attend via video conference, telephone, or in person. In the Ruling on Motion, I explained what equipment was necessary. I provided the website for Webex, the meeting information that needed to be entered, and what

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

³ No specific information was provided as to the needs of the child; however, the motion was taken on its face that the Claimant’s child was in need of supervision at all times.

needed to be done after entering the meeting number. Similarly, I provided a call-in number, with the access code to attend by telephone. Additionally, I instructed the parties regarding whom to call at the OAH and a phone number for the OAH, if they had any technical difficulties accessing Webex. The OAH did not receive any notification that the email was undeliverable. I conclude that the Claimant received proper notice of the hearing. COMAR 28.02.01.05A, C.

On June 22, 2022, neither the Claimant nor anyone authorized to represent the Claimant appeared. Neither the Respondent nor anyone authorized to represent the Respondent appeared. Catherine Villareale, Assistant Attorney General, Department, was present to represent the Fund.

Applicable law permits me to proceed with a hearing in a party's absence if that 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 more than twenty 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

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 offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, June 7, 2022
- Fund Ex. 2 - Hearing Order, March 16, 2022
- Fund Ex. 3 - Letter from MHIC to Respondent, February 22, 2021, enclosing Home Improvement Claim Form, received January 26, 2021

Fund Ex. 4 - License history for Respondent, April 26, 2022

Fund Ex. 5 - Affidavit of Thomas Marr IV, April 29, 2022

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

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

Testimony

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

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

The Fund presented no testimony.

PROPOSED FINDINGS OF FACT

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

1. On January 26, 2021, the Claimant filed a claim for reimbursement of \$14,621.00 from the Fund for losses allegedly incurred as a result of the acts or omissions of the Respondent.
2. On June 7, 2022, the OAH sent notices of the hearing 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.
3. The Claimant filed a request to have the June 22, 2022 hearing converted from an in-person hearing to a remote hearing.
4. On June 17, 2022, the in-person hearing was converted to a remote hearing. However, the parties were allowed to choose to attend in-person, via Webex or via telephone. This information was sent via email to the Claimant, and the email was not returned.
5. No postponement was requested by the Claimant.
6. The Claimant failed to appear for the scheduled hearing on June 22, 2022.
7. The Claimant did not contact the docket specialist or the OAH on June 22, 2022 to notify anyone of any difficulties with appearing at the scheduled hearing.

8. On June 23, 2022, the Claimant emailed an apology, acknowledging that he received the June 17, 2022 email. Further, he acknowledged that the meeting number needed to log into the hearing was contained in the attachment.⁴

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

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) ("The Fund may only compensate claimants for 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 his claim. The Claimant therefore has not met the burden to prove that he 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).

⁴ This email was considered a Motion to Reopen the Record, and it was denied on June 30, 2022. The Claimant's email and OAH's response are maintained with the file.

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.

August 16, 2022
Date Decision Issued

Erin H. Cancienne

Erin H. Cancienne
Administrative Law Judge

EHC/dlm
#199801

PROPOSED ORDER

WHEREFORE, this 16th day of September, 2022, 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.

Chandler Louden

Chandler Louden

Panel B

*MARYLAND HOME IMPROVEMENT
COMMISSION*