

**IN THE MATTER OF THE CLAIM OF  
DAVID HAMMER  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS OF  
MARK DIFILORE T/A MPD  
CONTRACTORS AND  
INSTALLATIONS**

**\* MARYLAND HOME  
\* IMPROVEMENT COMMISSION  
\*  
\* MHIC CASE NO. 22(75)983  
\* OAH CASE NO. LABOR-HIC-  
\* 02-22-19514  
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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 December 5, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on February 3, 2023, concluding that the homeowner, David Hammer (“Claimant”) failed to prove that he suffered a compensable actual loss as a result of the acts or omissions of Mark DiFiore T/A MPD Contractors and Installations (“Contractor”). *ALJ Proposed Decision* p.4. In a Proposed Order dated March 24, 2023, 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 June 15, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Lauren Rutkowski, Esq., represented the Contractor. Assistant Attorney General Catherine Villareale 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. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ or submitted a request to present new evidence. 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 ALJ found that the Claimant failed to prove that he suffered a compensable actual loss because the Claimant did not attend the hearing and, therefore, did not present any evidence in support of his claim. The ALJ found that the Claimant received proper notice of the hearing.

In his written exceptions, the Claimant asserted that an MHIC investigator told him that he would not have an opportunity for a hearing “as long as there is currently a civil suit pending.” During the exceptions hearing, the Claimant asserted that he was told not to attend the OAH hearing by Commission staff, and, alternatively, that he did not know about the OAH hearing.

There is no evidence in the record supporting the Claimant’s assertions that MHIC staff told him that he was not entitled to a hearing or that he did not have to attend the hearing. Nor is there evidence that the Claimant had a civil suit pending against the Contractor. On the other hand, the record supports the ALJ’s finding that OAH mailed a hearing notice to the Claimant at his address of record, which was not returned, and, therefore, that the Claimant received proper notice of the hearing.

Having considered the parties’ arguments, the evidence contained in the record, and the ALJ’s Recommended Decision, it is this 14<sup>th</sup> day of July 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**

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF DAVE HAMMER,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF MARK DIFIORE,</b></p> <p><b>T/A MPD CONTRACTORS &amp;</b></p> <p><b>INSTALLATIONS,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE BRIAN PATRICK WEEKS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-19514</b></p> <p><b>* MHIC No.: 22 (75) 983</b></p> <p><b>*</b></p>
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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 June 29, 2022, Dave Hammer (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 \$30,456.49 for actual losses allegedly suffered as a result of a home improvement contract with Mark DiFiore, trading as MPD Contractors & Installations (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 &

Supp. 2022).<sup>1</sup> On July 28, 2022, the MHIC issued a Hearing Order on the Claim. On August 9, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 25, 2022, the OAH provided a Notice of Hearing (Notice) to the Claimant by United States mail to the Claimant's address on record with the OAH. Code of Maryland Regulations (COMAR) COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for December 5, 2022, at 9:30 a.m., at the OAH in Hunt Valley. COMAR 09.08.03.03A(2). 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. COMAR 28.02.01.03E. The Claimant made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I conclude that the Claimant received proper notice of the hearing. COMAR 28.02.01.05A, C.

On December 5, 2022, neither the Claimant nor anyone authorized to represent the Claimant appeared. Lauren N. Rutkowski, Esquire, was present to represent the Respondent, who was present. Jonathan Phillips, 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. Under COMAR 09.01.03.05B, "[a] . . . dispositive motion may not be granted by the ALJ without the concurrence of all parties." I determined that the Claimant had received proper notice and, after waiting fifteen minutes, I convened the hearing as scheduled.

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<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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; 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**

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

Neither the Respondent nor the Fund offered any exhibits into evidence.

#### **Testimony**

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

Neither the Respondent nor the Fund presented any testimony.

### **PROPOSED FINDINGS OF FACT**

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

1. On June 29, 2022, the Claimant filed a claim for reimbursement of \$30,456.49 from the Fund for losses allegedly incurred as a result of the acts or omissions of the Respondent.

2. On December 5, 2022, the Claimant failed to appear for the scheduled hearing.

### **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); State Gov't § 10-217; 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 Cnty. 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) (Supp. 2022); *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 their claim. The Claimant therefore has not met the burden to prove that they 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 & Supp. 2022).

#### **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.

*Brian Patrick Weeks*

February 3, 2023  
Date Decision Issued

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Brian Patrick Weeks  
Administrative Law Judge

BPW/dlm  
#203278

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF DAVE HAMMER,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF MARK DIFIORE,</b></p> <p><b>T/A MPD CONTRACTORS &amp;</b></p> <p><b>INSTALLATIONS,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE BRIAN PATRICK WEEKS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-19514</b></p> <p><b>* MHIC No.: 22 (75) 983</b></p> <p><b>*</b></p>
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**STATEMENT OF THE CASE**

On June 29, 2022, Dave Hammer (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 \$30,456.49 for actual losses allegedly suffered as a result of a home improvement contract with Mark DiFiore, trading as MPD Contractors & Installations (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 &



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On December 5, 2022, neither the Claimant nor anyone authorized to represent the Claimant appeared. Lauren N. Rutkowski, Esquire, was present to represent the Respondent, who was present. Jonathan Phillips, 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. Under COMAR 09.01.03.05B, "[a] . . . dispositive motion may not be granted by the ALJ without the concurrence of all parties." I determined that the Claimant had received proper notice and, after waiting fifteen minutes, I convened the hearing as scheduled.

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### **ISSUE**

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### **PROPOSED FINDINGS OF FACT**

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

1. On June 29, 2022, the Claimant filed a claim for reimbursement of \$30,456.49 from the Fund for losses allegedly incurred as a result of the acts or omissions of the Respondent.

2. On December 5, 2022, the Claimant failed to appear for the scheduled hearing.

### **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); State Gov't § 10-217; 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 Cnty. 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) (Supp. 2022); *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 their claim. The Claimant therefore has not met the burden to prove that they 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 & Supp. 2022).

#### **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.

*Brian Patrick Weeks*

February 3, 2023  
Date Decision Issued

\_\_\_\_\_  
Brian Patrick Weeks  
Administrative Law Judge

BPW/dim  
#203278

PROPOSED ORDER

*WHEREFORE, this 24<sup>th</sup> day of March, 2023, 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.*

*J Jean White*

*I Jean White*

*Panel B*

**MARYLAND HOME IMPROVEMENT  
COMMISSION**