

**IN THE MATTER OF THE CLAIM  
OF VLADIMIR ZAJIC**

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**MARYLAND HOME IMPROVEMENT  
COMMISSION**

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**AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS  
OF JEFFREY GRAYBILL t/a  
SECOND NATURE LAWN AND  
LANDSCAPE**

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**MHIC CASE NO. 17(75)1392  
OAH CASE NO. DLR-HIC-02-18-17674**

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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 September 27, 2018. Following the evidentiary hearing, the ALJ issued a Proposed Decision on December 18, 2018, concluding that the homeowner Vladimir Zajic (“Claimant”) failed to prove that he sustained an actual loss as a result of the acts or omissions of Jeffrey Graybill t/a Second Nature Lawn and Landscape (“Contractor”). *ALJ Proposed Decision* p. 6. In a Proposed Order dated January 9, 2019, the Maryland Home Improvement Commission (“MHIC”) affirmed the Proposed Decision of the ALJ to deny an award from the MHIC Guaranty Fund. The Claimant subsequently filed exceptions of the MHIC Proposed Order.

On June 20, 2019, a hearing on the exceptions was held before a three-member panel (“Panel”) of the MHIC. The Contractor was present without counsel. Hope Sachs, Assistant Attorney General, appeared at the exceptions hearing to present evidence on behalf of the MHIC. Despite receiving proper notice, the Claimant did not appear. The hearing had previously been set on March 21, 2019 and then May 16, 2019, but was twice postponed at the request of the Claimant. Two days prior to the hearing on June 20, 2019, the Commission received an email from the Claimant that was followed by a letter received on June 19, 2019, in which the Claimant notified

the Commission that he would not be attending the hearing due to unspecified “recurring health issues” and requested “that the case be reconsidered by the Commission in my absence.” In light of the Claimant’s two previous postponement requests that did not cite any health issues, and the late timing and vague nature of his latest correspondence, the Commission proceeded with the hearing on June 20, 2019 in his absence.

The following six preliminary exhibits were offered by AAG Sachs and admitted into evidence at the exceptions hearing: 1) January 9, 2019 Cover Letter with OAH Proposed Decision and MHIC Proposed Order, 2) February 11, 2019 Notice of Exceptions Hearing to be held March 21, 2019 with Contractor’s Written Exceptions, 3) February 4, 2019 (postmarked March 5, 2019) Claimant’s 1st Postponement Request, 4) April 16, 2019 Claimant’s 2nd Postponement Request, 5) March 12, 2019 Notice of Exceptions Hearing to be held May 16, 2019, and 6) May 20, 2019 Notice of Exceptions Hearing to be held June 20, 2019. Neither the Contractor nor the Claimant produced a copy of the transcript of the hearing before the ALJ, and therefore the Panel’s review was limited to the ALJ’s proposed decision, the exhibits introduced into evidence at the OAH hearing, and the preliminary exhibits offered by AAG Sachs at the exceptions hearing. COMAR 09.01.03.09(G) - (I)

Despite receiving two prior postponements, and proper notice of the June 20, 2019 hearing, the Claimant failed to appear at his hearing on exceptions. Moreover, the Claimant has also failed to raise any specific written exceptions to the OAH Proposed Decision for the Commission to review. *Exceptions Hearing Preliminary Exhibit 2*. The ALJ correctly states in her decision that the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. *OAH Proposed Decision* p. 4. In order to recover from the Fund, the Claimant had to prove at the OAH hearing that he suffered an “actual loss that results from the act or omission by a licensed contractor.” Maryland Annotated Code, Business Regulation Article (“BR”), § 8-

405(a). The ALJ found that although the Claimant provided pictures showing that the grass was sparse in some areas of his lawn, he did not provide sufficient proof showing that the Contractor was the cause of the sparse grass. *OAH Proposed Decision* p. 5. Instead the ALJ found that “there are any number of reasons that might explain why the grass grew sparsely in some areas that are not attributable to the Respondent,” and ultimately held that the Claimant did not meet his burden of proof. *OAH Proposed Decision* p. 5-6. The Commission agrees with the ALJ’s analysis and finds no error in her decision. The ALJ’s decision is thorough, supported by the evidence in the record and correct as a matter of law. Having considered the parties’ arguments, the evidence in the record and the OAH Proposed Decision, it is this **18th** day of **September 2019 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**; AND
- C. That the Proposed Decision and Order of the Administrative Law Judge is **AFFIRMED**;
- D. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

**Joseph Tunney**

**Chairperson –Panel  
Maryland Home Improvement  
Commission**

IN THE MATTER OF THE CLAIM  
OF VLADIMIR ZAJIC,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JEFFREY GRAYBILL,  
T/A SECOND NATURE LAWN AND  
LANDSCAPE,  
RESPONDENT

\* BEFORE LORRAINE E. FRASER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-18-17674  
\* MHIC No.: 17 (75) 1392  
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On October 18, 2017, Vladimir Zajic (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$798.00 in actual losses allegedly suffered as a result of a home improvement contract with Jeffrey Graybill, trading as Second Nature Lawn and Landscape (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On June 4, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on September 27, 2018, at the Tawes State Office Building in Annapolis, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). Shara Hendler, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent represented himself.

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); Code of Maryland Regulations (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**

I admitted the following exhibits on the Claimant's behalf:

- Claimant 1 Contract, 10/17/16
- Claimant 2 Six photographs, taken November 2016
- Claimant 3 Letter from the Claimant to the Respondent, 4/17/17
- Claimant 4 List of the Claimant's home's exterior features
- Claimant 5 Well Completion Report, 9/30/15
- Claimant 6 Letter from Ashley Byron, Pennington Seed, Inc., to the Claimant, 8/16/17; letter from the Claimant to Pennington Seed, Inc., 7/6/17, with three attached photographs
- Claimant 7 The Claimant's complaint with the Better Business Bureau, 8/18/17
- Claimant 8 Invoice from Edward's Lawn & Home, 9/14/17
- Claimant 9 The Claimant's statement of facts
- Claimant 10 Letter from the Respondent to MHIC, 7/15/17

The Respondent did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund 1 Hearing Order, 5/30/18
- Fund 2 Notice of Hearing, 7/5/18
- Fund 3 Home Improvement Claim Form, 10/18/17
- Fund 4 The Respondent's Licensing History, 9/25/18
- Fund 5 Sketch of the yard

Testimony

Both the Claimant and the Respondent testified.

The Fund did not present any testimony.

**PROPOSED FINDINGS OF FACT**

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01 88189.
2. On October 17, 2016, the Claimant and the Respondent entered into a contract to kill the Claimant's grass and weeds, regrade the dirt, cut grooves for seeding, seed the lawn, and apply fertilizer and lime (Contract). The Claimant paid the Respondent a deposit at that time.
3. The original agreed-upon Contract price was \$4,500.00.
4. On October 19, 2016, the Respondent finished the work and the Claimant paid the Respondent the remaining balance due of the \$4,500.00.
5. On November 29, 2016, the Claimant wrote to the Respondent complaining that there were areas of the lawn where the grass did not grow properly and included photographs of those areas.

6. The Claimant called the Respondent two times in December 2016 and once in April 2017. The Claimant asked the Respondent to fix the areas where the grass was not growing properly.

7. The Respondent did not return to the Claimant's property.

8. On September 14, 2018, the Claimant hired Edward's Lawn & Home to aerate, overseed, and fertilize his entire lawn. The Claimant paid Edward's Lawn & Home \$798.00.

### 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)).

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) (2015); *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." Md. Code Ann., Bus. Reg. § 8-401 (2015). For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. However, the Claimant has failed to prove the Respondent performed an unworkmanlike, inadequate or incomplete home improvement.

The Claimant testified and presented photographs showing areas of his lawn where the grass did not grow properly. The photographs showed there were patches of the Claimant's lawn where the grass was very sparse and the soil was showing. In other areas of the Claimant's lawn the grass was growing thicker. The Claimant testified that he watered all of the lawn regularly. He asserted that the sparse areas were the result of the Respondent failing to apply the seed consistently and cross hatch the soil before seeding. He stated that the Respondent used a bunch type seed that did not spread. He complained that the Respondent did not reply to his complaint.

The Respondent testified that the Contract did not state that he would cross seed, or apply mulch or straw. He claimed that the Claimant was responsible for watering the newly seeded lawn daily. He asserted that the Claimant did not water all areas adequately. He stated that he performed everything in the Contract and that he does not warrant grass or grass seed.

The Fund argued that the Claimant did not meet his burden of proof and it was likely that he did not sufficiently water the lawn. The Fund asserted that the Respondent's lack of customer service is not a basis for an award. The Fund did not recommend an award from the Guaranty Fund.

I agree with the Fund, the Claimant did not meet his burden of proof. The fact that the grass was sparse in some areas of the lawn does not prove that the Respondent acted in an unworkmanlike, inadequate or incomplete manner. The Claimant did not introduce an expert witness or any other definitive evidence to prove the Respondent did something wrong to cause the sparse grass. There are any number of reasons that might explain why the grass grew sparsely in some areas that are not attributable to the Respondent. To win his claim against the Fund, the Claimant must prove that the Respondent's performance was unworkmanlike and responsible for the sparse grass. The evidence presented in this case does not demonstrate that the Respondent acted in an unworkmanlike manner. The Respondent's subsequent failure to



correct the sparse areas does not make his original work unworkmanlike, although it may be poor customer service. Moreover, the Claimant paid Edward's Lawn & Home \$798.00 to aerate, overseed, and fertilize his entire lawn. Thus, \$798.00 is not the cost to correct the sparse areas of grass. While I understand the Claimant's dissatisfaction with the Respondent, the facts of this case do not support an award from the Fund. Therefore, I find that the Claimant is not eligible for compensation from the Fund.

**PROPOSED CONCLUSIONS 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 Maryland 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**

December 18, 2018  
Date Decision Issued

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Lorraine E. Fraser  
Administrative Law Judge



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# 177234