

IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
JAMES KOOMSON * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 19(75)926
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
ALAN SANTEZ BOWMAN SR. AND * 02-21-02113
BOWMAN CONSTRUCTION, LLC * *

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on May 17, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 16, 2021, concluding that the homeowner, James Koomson (“Claimant”) was ineligible to make a claim against the Home Improvement Guaranty Fund relating to his home improvement contract with Alan Santez Bowman Sr. and Bowman Construction, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 6. In a Proposed Order dated November 22, 2021, 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 April 7, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. Mark Oakley, Esq., represented the Claimant. The Contractor participated without counsel. Assistant Attorney General Hope Sachs 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, the exhibits offered as evidence at the OAH hearing, and the transcript of the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the renovation of a home located at 504 N. Patterson Park Avenue that the Claimant owned, but in which he has never resided. The ALJ found that “[a]t all time relevant to the subject of this hearing, the Claimant owned more than three residences or dwelling places” and held that the Claimant was disqualified from making a claim against the Guaranty Fund under Md. Code Ann., Business Regulation Art. § 8-405(f)(2). *ALJ’s Proposed Decision* pp. 5-6.

That section provides as follows:

- (2) An owner may make a claim against the Fund only if the owner:
 - (i) resides in the home as to which the claim is made; or
 - (ii) does not own more than three residences or dwelling places.

Md. Code Ann., Bus. Reg. Art. § 8-405(f)(2)

On exception, the Claimant argued that section 8-405(f)(2) prohibits an owner from filing a claim only if they own more than three residences or dwelling places at the time of filing their claim. Therefore, the Claimant argued that the ALJ erred in finding that he owned more than three residences or dwelling places at all times relevant to this proceeding and erred in deeming him ineligible to make a claim against the Guaranty Fund.

The Commission disagrees with the Claimant’s interpretation of section 8-405(f)(2). The purpose of that section is to prevent commercial real estate investors from depleting the Guaranty Fund and leaving homeowners who suffer actual losses relating to improvements to their primary or vacation homes without a remedy. Counting the number of homes owned by a claimant for purposes of section 8-405(f)(2) only at the time a Guaranty Fund claim would facilitate circumvention of the restriction by commercial real estate investors by allowing them to time their

filing of a Guaranty Fund claim or purchase or sale of residential real property to avoid losing eligibility for a Guaranty Fund award. Therefore, the Commission interprets section 8-405(f)(2) as prohibiting claims by persons who simultaneously own more than three residences or dwelling places at any point from the time of execution of the home improvement contract underlying the claim until the filing of the claim.

In this case, the record demonstrates that, on July 17, 2018, when the Claimant entered into the home improvement contract with the Contractor, he owned four residences: the Baltimore City residence that was the subject of the contract, his personal residence in Woodbridge, Virginia, a residential rental property in Richmond, Virginia, and a residential rental property in Upper Marlboro, Maryland. The record further demonstrates that the Claimant owned all of those residences until time he filed his claim on September 30, 2019, except for the Baltimore City residence, which he sold in April 2019. Finally, the record demonstrates that the Claimant did not reside in the Baltimore City residence that was the subject of the home improvement contract. Therefore, the Commission holds that the Claimant is not eligible to make a claim against the Guaranty Fund because he simultaneously owned more than three residences or dwelling places during the period between the execution of the contract and the filing of his claim and he did not reside in the residence that was the subject of his claim.

As noted by the Contractor on exception, the ALJ found that the Claimant owned more than three residences at all times relevant to this proceeding. The Commission agrees with the Contractor that this finding was erroneous, as the Claimant sold the Baltimore City property that was the subject of his claim prior to the filing of his claim. However, this finding has no bearing on his eligibility to make a claim against the Guaranty Fund.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 13th day of April 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- 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.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission

IN THE MATTER OF THE CLAIM
OF JAMES KOOMSON,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ALAN BOWMAN,
T/A BOWMAN CONSTRUCTION,
LLC,
RESPONDENT

* BEFORE TAMEIKA LUNN-EXINOR,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-02113
* MHIC No.: 19 (75) 926
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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 September 30, 2019, James Koomson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),¹ for reimbursement of \$42,891.15 in actual losses allegedly suffered as a result of a home improvement contract with Alan Bowman, trading as Bowman Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401

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

through 8-411 (2015).² On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.³

I held a remote hearing on May 17, 2021. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Andrew J. Brouwer, Assistant Attorney General, 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. 2020); COMAR 09.01.03; and COMAR 28.02.01.

ISSUE

Is the Claimant eligible for an award from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Claim. Ex. 1 Contract, July 17, 2018
- Claim. Ex. 2 Payments to Respondent, various dates
- Claim. Ex. 3 Baltimore City Environmental Citations and Order, December 13, 2018
- Claim. Ex. 4 Baltimore City Code Violation and Order, December 19, 2018
- Claim. Ex. 5 Baltimore City Notice Issuance of a Stop-Work Order, December 13, 2018
- Claim. Ex. 6 Baltimore City Environmental Fine, January 22, 2019
- Claim. Ex. 7 Baltimore City Damage Claim of neighbor from work caused by Bowman Construction, September 25, 2018

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

³ The case was scheduled for hearing on March 16, 2021 and was postponed at the request of the Respondent.

- Claim. Ex. 8 Booth Brothers Construction, LLC, Estimate to repair structural damage caused by Bowman Construction, undated
- Claim. Ex. 9 Junk King Invoice for dirt/debris removal, January 12, 2019
- Claim. Ex. 10 Email between Claimant and Respondent, November 24, 2018
- Claim. Ex. 11 Invoice from Saffer Plumbing and Heating, November 10, 2017
- Claim. Ex. 12 Emails between Claimant and Respondent, September 27, 2018 and October 16, 2018
- Claim. Ex. 13 Payments made to Manufacturers and Traders, December 27, 2018 and January 3, 2019
- Claim. Ex. 14 Settlement Statement for Patterson Park Avenue, October 6, 2017
- Claim. Ex. 15 Various pictures of basement before and after work by Respondent and interior of the property, undated
- Claim. Ex. 16 Correspondence between Claimant and Respondent, August 23, 2018 through January 3, 2019

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

- Resp. Ex. 2⁴ Original Floor Plans and Underpinning Plans, undated
- Resp. Ex. 3 Plans for Underpinning Repairs, undated
- Resp. Ex. 4 Hal Arnold t/a Hace Consultants Invoice, July 7, 2018
- Resp. Ex. 5 Baltimore City Department of Housing and Community Development, Division of Construction and Building Inspection, August 29, 2018
- Resp. Ex. 6 Various correspondence between Claimant and Respondent, July 7, 2018 through January 2, 2019
- Resp. Ex. 7 Photos of Basement Underpinning, undated
- Resp. Ex. 8 Sunbelt Rental Receipt, August 28, 2018
- Resp. Ex. 9 Email between Claimant and Respondent, October 26, 2018
- Resp. Ex. 12⁵ Demolition photos, undated

⁴ Respondent Ex. 1 was not offered as an exhibit.

⁵ Respondent Exs. 10 and 11 were not offered.

- Resp. Ex. 13 Photo of right wall underpinning, undated
- Resp. Ex. 14 Photos of footers, undated
- Resp. Ex. 15 Photos of downspouts, undated
- Resp. Ex. 16 Second set of photos of downspouts, undated
- Resp. Ex. 17 Photos of footer at back wall, undated
- Resp. Ex. 18 Photos of basement supports, undated
- Resp. Ex. 19 Photos of 1st floor and 2nd floor supports, undated
- Resp. Ex. 20 Photos of the collapsed wall and repairs, undated
- Resp. Ex. 21 Photos of wall framing, undated
- Resp. Ex. 22 Photos of collapsed wall and supports, undated
- Resp. Ex. 23 Photos of debris after wall collapse, undated

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

- Fund Ex. 1 Notice of Remote Hearing, February 9, 2021 and Hearing Order, January 20, 2021
- Fund Ex. 2 Respondent's licensing history, undated
- Fund Ex. 3 Letter from Joseph Tunney, Chairman MHIC, October 2, 2019; Claim, September 30, 2019

Testimony

The Claimant testified and presented the testimony of Dennis Anibaba, Engineer.

The Respondent testified on his behalf and did not present other witnesses.

The Fund did not present any witnesses.

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 105560.

2. At all times relevant to the subject of this hearing, the Claimant owned more than three residences or dwelling places.

3. The Claimant has never resided at the house which is the subject of this dispute.

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 (2014); 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). The Fund and the Respondent raised an affirmative defense. They bear the burden to show by a preponderance of the evidence that the Claimant is ineligible for an award from the Fund. COMAR 28.02.01.21K(1), (2)(b), (3).

An owner may recover compensation from the Fund "for 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.

Section 8-405(f)(2) of Business Regulation Article provides:

An owner may make a claim against the Fund only if the owner:

- (i) resides in the home as to which the claim is made; or
- (ii) does not own more than three residences or dwelling places.

A claimant is ineligible for an award from the Fund if any of the disqualifying factors in section 8-405(f)(2) exist. The Claimant testified during cross-examination by the Fund that at all times relevant to the matter he owned properties located in Woodbridge, Virginia, Largo, Maryland, Baltimore City, Maryland, and Richmond, Virginia. The Claimant also testified that

he never lived in the house which is the subject of his Claim. Therefore, he is not eligible for compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant is not eligible for an award from the Fund because he owns more than three residences or dwelling places and has never resided in the house that is the subject of his claim. Md. Code Ann., Bus. Reg. § 8-405(f)(2) (2015).

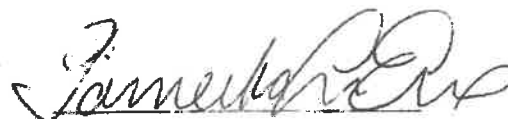
RECOMMENDED ORDER

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.

August 16, 2021
Date Decision Issued


Tameika Lunn-Exinor
Administrative Law Judge

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PROPOSED ORDER

WHEREFORE, this 22nd day of November, 2021, 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.

Michael Newton

Michael Newton

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***