

**IN THE MATTER OF THE CLAIM
OF KEITH STOUTEN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MARK LUGENBEEL,
SR., T/A TCM HOME
IMPROVEMENT, LLC,
RESPONDENT**

*** BEFORE PATRICA M. DEMAIO,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-22-10982
* MHIC No.: 20 (75) 862

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PROPOSED DEFAULT ORDER

On June 8, 2020, Keith Stouten (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 \$30,000.00 for alleged actual losses suffered as a result of a home improvement contract with Mark Lugenbeel, Sr. t/a TCM Home Improvement, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On May 6, 2022, the MHIC issued a Hearing Order on the claim. On May 11, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

On June 10, 2022, the OAH mailed a Notice of Hearing (Notice) to the Claimant and the Respondent by certified and first-class mail to their last addresses on record. 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 August 5, 2022, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, MD 21031. The Notice advised the parties that failure to attend the hearing might result in “a decision against you.”

The United States Postal Service did not return the Notice that the OAH sent to the Claimant by first-class mail as undeliverable. The Claimant did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Claimant did not request a postponement prior to the date of the hearing. COMAR 28.02.01.16. Additionally, the Notice was mailed to the Claimant’s address listed on his Home Improvement Claim Form (809 Wise Avenue, Dundalk, MD 21222). I conclude that the Claimant received proper notice of the hearing. COMAR 28.02.01.05A, C.

On August 5, 2022, I convened the hearing as scheduled. Md. Code Ann., Bus. Reg. § 8-407. Neither the Claimant nor anyone authorized to represent him appeared. The Respondent appeared on his own behalf. John Hart, Assistant Attorney General, Department of Labor, was present to represent the Fund. The Fund offered, and I accepted, the following exhibits proving proper service:

Fund Ex. #1- Notice of Hearing, dated June 10, 2022

Fund Ex. #2- Letter to the Respondent from Joseph Tunney, Chairman MHIC, with attached Claim Form, dated June 10, 2020²

Fund Ex. #3- Letter to the Claimant from Tenaea Thomas, MHIC Panel Specialist, dated May 6, 2022

² A copy was mailed to the Claimant at the address of record.

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); Md. Code Ann., State Gov't §10-217 (2021); COMAR 09.08.03.03A(3). After more than fifteen minutes, during which time the Claimant failed to appear, the Fund moved for a default order dismissing the Claim. COMAR 28.02.01.23A.³ I grant that motion.

I therefore **PROPOSE** that the Maryland Home Improvement Commission issue a **DEFAULT ORDER** as follows:

1. The Claimant is in **DEFAULT**; and
2. All further proceedings in the captioned matter are **TERMINATED**, and a disposition of **DISMISSAL** is entered in this case, pursuant to COMAR 28.02.01.23A.

August 17, 2022
Date Order Issued

Patricia M. DeMaio

Patricia M. DeMaio
Administrative Law Judge

PMD/da
#200166

³ "If, after receiving proper notice, a party fails to attend or participate in a . . . hearing, . . . the ALJ . . . may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party."

PROPOSED ORDER

WHEREFORE, this 7th day of October, 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.

J Jean White

I Jean White

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**