

the MHIC issued a Hearing Order on the claim. On May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 2, 2021, the OAH provided a Notice of Hearing (Notice) to the Claimant by United States mail delivery to the Claimant's address on record with the OAH. 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 July 8, 2021, at 9:30 a.m., remotely via the Webex videoconferencing platform. The Notice advised the parties to review the Webex Frequently Asked Questions and provided the website for that information. The Notice further 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 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 July 8, 2021, neither the Claimant nor anyone authorized to represent the Claimant appeared. Neither the Respondent nor anyone authorized to represent the Respondent appeared. Hope M. Sachs, 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 over fifteen 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 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

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 behalf of the Fund:⁴

Fund Ex. 1 - Hearing Notice, June 2, 2021; Hearing Order, April 22, 2021

Fund Ex. 2 - HIC Contractor Licensing history, June 29, 2021

Fund Ex. 3 - Home Improvement Claim Form, received April 14, 2020

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

I heard no testimony.

PROPOSED FINDINGS OF FACT

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

1. On April 14, 2020, the Claimant filed a claim for reimbursement of \$35,000.00 from the Fund for losses allegedly incurred as a result of the acts or omissions of the Respondent.
2. On June 2, 2021, 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. None of the notices were returned to the OAH for any reason.
4. The Claimant's certified mail receipt was received at the OAH on June 11, 2021.

⁴ The Fund sent the document to me after being informed off the record that the OAH initially received documents for a different matter.

5. No postponement was requested by the Claimant.
6. The Claimant failed to appear for the scheduled hearing on July 8, 2021.

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); 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 Claimant bears the burden to show he suffered an actual loss due to an act or omission of the Respondent by a preponderance of the evidence: COMAR 28.02.01.21K.

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.” Md. Code Ann., 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.” Md. Code Ann., Bus. Reg. § 8-401.

In this case, the Claimant failed to appear and provide sufficient evidence to support his claim.⁵ 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).

⁵ In actuality, the Claimant is in default. However, to the extent a proposed order of default is “any other dispositive motion,” it may not be issued without the consent of all parties. COMAR 09.01.03.05B; *and see* COMAR 28.02.01.23B. Therefore, I issue this proposed decision. COMAR 09.01.03.08C.

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.

July 12, 2021
Date Decision Issued

William F. Burnham

William F. Burnham
Administrative Law Judge

WFB/at
#193128

PROPOSED ORDER

WHEREFORE, this 23rd day of September, 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.

Robert Altieri

Robert Altieri

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***