

**IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
KOSTIA BRETON * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 21(75)892
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
JULIO RECINOS AND BAY BRIDGE * 02-22-09835
CONSTRUCTION GROUP, LLC ***

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 13, 2023. Following the hearing, the ALJ issued a Proposed Decision on September 29, 2022, concluding that the homeowner, Kostia Breton (“Claimant”) failed to prove that he suffered an actual loss as a result of the acts or omissions of Julio Recinos and Bay Bridge Construction Group, LLC (collectively, “Contractor”). *ALJ Proposed Decision* pp. 5-6. In a Proposed Order dated September 29, 2022, 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 February 16, 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. Richard Bittner, Esq., represented the Contractor. Assistant Attorney General Catherine Villareal 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. 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 claim in this proceeding relates to a home improvement contract executed by the Claimant. The Claimant failed to attend the evidentiary hearing at OAH and present evidence, so the ALJ found that he failed to prove his entitlement to an award.

On exception, the Claimant argued that he should be granted a new hearing because, at the evidentiary hearing, the Contractor argued that he did not enter into a contract with the Claimant, rather, a former employee had misappropriated his business name. The Commission disagrees. The Contractor's allegation that another person utilized his business name to contract with the Claimant does not excuse the Claimant's failure to appear at the hearing.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 9th day of March 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

IN THE MATTER OF THE CLAIM	* BEFORE ANN C. KEHINDE,
OF KOSTIA BRETON,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF JULIO RECINOS T/A	*
BAY BRIDGE CONSTRUCTION	*
GROUP, LLC,	* OAH No.: LABOR-HIC-02-22-09835
RESPONDENT	* MHIC No.: 21 (75) 892

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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 November 8, 2021, Kostia Breton (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 \$26,017.150 for actual losses allegedly suffered as a result of a home improvement contract with Julio Menjivar Recinos, trading as Bay Bridge Construction Group, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411

(2015).¹ On April 22, 2022, the MHIC issued a Hearing Order on the Claim. On April 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 5, 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 July 13, 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 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 (63 Bellchase Court, Baltimore, MD 21208). I conclude that the Claimant received proper notice of the hearing. COMAR 28.02.01.05A, C.

On July 13, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric B. London, Assistant Attorney General, Department, represented the Fund. Richard C. Bittner, Esquire, represented the Respondent. At the Respondent’s request, a Spanish-language interpreter was present to provide interpretation to the Respondent. The Claimant did not appear.

After waiting more than fifteen minutes, during which time the Claimant still failed to appear, I started the hearing. Mr. London argued on behalf of the Fund that a default could not be granted because COMAR 09.01.03.05 provides that dispositive motions cannot be granted without the agreement of all parties; instead, Mr. London argued that a proposed decision should

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

be issued denying the Claimant's request for an award from the Fund because he failed to provide sufficient evidence to substantiate his claim.

Counsel for the Respondent argued that the case should be dismissed with prejudice because the Claimant failed to prove his case. He noted that a former employee of the Respondent Contractor misappropriated the identity of the Respondent company.

At approximately 10:45 a.m., on July 13, 2022, a Docket Specialist with the OAH received a telephone call from the Claimant. The Claimant stated he misread his Notice. The Docket Specialist advised the Claimant to put his statement in writing and submit it to the OAH. As of the date of this Proposed Decision, nothing has been received from the Claimant.

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); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUE

Did the Claimant meet his burden to prove he is entitled to an award from the Guaranty Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant failed to appear and therefore did not offer any exhibits.

The Respondent did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, dated May 5, 2022

Fund Ex. 2 - Hearing Order, dated April 22, 2022

Fund Ex. 3 - MHIC Contractor License History, dated June 26, 2022

Fund Ex. 4 - Home Improvement Claim Form, dated July 8, 2021

Fund Ex. 5 - MHIC Letter to Respondent regarding Claim Form, November 15, 2021

Testimony

No testimony was offered by any party.

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.

2. On May 5, 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. The Notice advised the parties that a hearing was scheduled on the matter on Wednesday, July 13, 2022, at 9:30 a.m., at the OAH. The Notice further advised the parties that failure to attend the hearing might result in "a decision against you."

3. On July 13, 2022, the Respondent, his attorney, a Spanish-language interpreter, and the attorney for the Fund, appeared at the OAH and were ready to proceed at 9:30 a.m.

4. By 9:45 a.m., on July 13, 2022, the Claimant had not arrived at the OAH and had not contacted the Clerk's Office to advise of any emergency preventing his attendance at the scheduled hearing.

5. At or around 10:05 a.m., the hearing concluded and the parties left the OAH.

6. At or around 10:45 a.m., the Claimant called the Clerk's Office of the OAH and stated that he misread his Notice. The Clerk informed the Claimant to put his statement in writing and send it to the OAH. Nothing has been received from the Claimant.

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 (2021); 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 has the burden to demonstrate that he suffered actual losses because of the Respondent's acts or omissions by a preponderance of the evidence. COMAR 28.02.01.21K(1).

In this case, the Claimant failed to appear for the scheduled hearing and therefore failed to present any evidence to prove the validity of his Claim. As noted above, I concluded that the Claimant received Notice of the Hearing because the Notice was addressed to the Claimant at the address he included in his Claim form. Further, there is information to believe the Claimant actually received the Notice because on July 13, 2022, at approximately 10:45 a.m. the Claimant contacted the Clerk's Office to state that he misread the Notice.

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.

As the Claimant failed to appear for the scheduled hearing, and as he failed to present evidence that the Respondent's work was unworkmanlike, inadequate, or incomplete, he has failed to prove an actual loss that is compensable by the Guaranty Fund.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss because of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

I conclude that the Claimant is not eligible for reimbursement from the Fund. 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.

September 29, 2022
Date Decision Issued

Ann C. Kehinde

Ann C. Kehinde
Administrative Law Judge

ACK/emh
#201011

PROPOSED ORDER

WHEREFORE, this 9th day of January, 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

*MARYLAND HOME IMPROVEMENT
COMMISSION*