

IN THE MATTER OF THE CLAIM	* BEFORE THOMAS G. WELSHKO,
OF CECIL E. MARTIN, JR.,	* 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 PAUL WITTEMANN,	*
T/A GREENSPRING ENERGY,	* OAH No.: DLR-HIC-02-15-37206
LLC,	* MHIC No.: 14 (75) 855
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On April 16, 2014, Cecil E. Martin, Jr. (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,094.00 in alleged actual losses suffered as a result of a home improvement contract with Paul Wittemann, t/a Greenspring Energy, LLC (Respondent).

I held a hearing on April 1, 2016 at the Harford County Public Library in Bel Air, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015).¹ Cecil E. Martin III, Attorney-at-Law, represented the Claimant who was present. The Respondent failed to appear for the hearing. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

Mr. King offered documentation to show that the Respondent had been properly notified of the hearing. On January 6, 2016, the Office of Administrative Hearings (OAH) sent the notice of the hearing by first class and certified mail to the Respondent's Baltimore City address that the Commission supplied to the OAH. The notice advised the Respondent of the time, place, and date of the hearing. The U.S. Postal Service returned the certified and first class mailings to the OAH with the notation "Return to Sender – Undeliverable as Addressed." (An inquiry by the MHIC revealed that the Baltimore City address supplied to the OAH was the most recent address for the Respondent on file with the Maryland Motor Vehicle Administration.) Because the OAH sent the Notice by U.S. Mail to the Respondent's last known address, based on the Court of Appeals' holding in *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 503 – 04 (1988), I conclude that the OAH's notice to the Respondent was reasonable and adequate. Bus. Reg. § 8-312(d); Md. Code Ann., State Gov't § 10-209(c) (2014). Therefore, I directed that the hearing proceed in the Respondent's absence.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

¹ Unless otherwise noted, all citations of the Business Regulation Article (Bus. Reg.) from this point forward refer to the 2015 Replacement Volume.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions committed by the Respondent(s)?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted four exhibits on behalf of the Claimant, no exhibits on behalf of the Respondent, and eight exhibits on behalf of the Fund. (I have attached a complete Exhibit List as an Appendix to this decision.)

Testimony

The Claimant testified on his own behalf. The Respondent and the Fund did not offer 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 4327216 (Registration No. 01-98155). (Fund Ex. 3.)
2. On November 10, 2013, the Claimant met with Larry Kaput, the Respondent's sales representative, to discuss the installation of solar energy panels on the Claimant's Bel Air, Maryland home. (Test. Cl.)
3. On November 10, 2013, the Claimant and Mr. Kaput discussed the cost and schedule for the installation of the solar panels. The Claimant did not enter into a contract with the Respondent at that time, but agreed in principle that the Respondent would be installing solar panels on the roof of his home. (Test. Cl.)

4. On November 22, 2013, the Claimant gave the Respondent a \$500.00 deposit using his credit card. (Test. Cl.; Cl. Ex. 4.)

5. On November 26, 2013, the Claimant and the Respondent entered into a contract to install twenty-seven solar energy panels on the roof of the Claimant's home. The contract stated that work would begin in mid-December 2013 and would be completed by December 31, 2013. (Test. Cl.; Cl. Ex. 1.)

6. The original agreed-upon contract price was \$28,889.00. (Test. Cl.; Cl. Ex. 1.)

7. The Claimant made two payments to the Respondent. On November 26, 2013, the Claimant made a payment by check to the Respondent of \$14,194.00. On December 23, 2013, the Claimant made a second payment by check to the Respondent of \$12,000.00. All totaled, the Claimant paid the Respondent \$26,694.00. (Test. Cl.; Cl. Ex. 2.)

8. As of December 23, 2013, the Respondent had not performed any part of the contract. As a condition of giving the Respondent the \$12,000.00 payment on that date, the Claimant insisted that the Respondent deliver the solar panels to be installed as collateral. The Respondent complied with this request on or about that same date. (Test. Cl.)

9. The value of the solar panels delivered by the Respondent was approximately \$7,000.00. (Test. Cl.)

10. As of February 2014, the Respondent had not performed any of the contracted work. (Test. Cl.)

11. In February 2014, the Claimant went to the Respondent's place of business in Timonium, Maryland to inquire why no work had been done pursuant to the November 26, 2013 contract. There, he met with Mr. Kaput, who told the Claimant that the Respondent had closed his business. (Test. Cl.)

12. After informing Mr. Kaput that he would be taking legal action against the Respondent, the Claimant asked Mr. Kaput if the Respondent could supply him with some of the hardware needed to install the solar panels on his roof, such as rails and inverters. Mr. Kaput replied that it was “very unlikely” that the Respondent could supply these materials. (Test. Cl.)

13. The Respondent never supplied any additional hardware to the Claimant other than the solar panels. (Test. Cl.)

14. Shortly after his February 2014 meeting with Mr. Kaput, Chad J. Perkins, master electrician, and owner of A. M. P. Electric, LLC, called the Claimant and inquired whether he might be interested in getting an estimate from his firm for completing the Respondent’s contract. The Claimant expressed his interest in obtaining an estimate from Mr. Perkins’s firm, and he set up a meeting to do so. (Test. Cl.; Cl. Ex. 3.)

15. On February 19, 2014, Mr. Perkins provided an estimate for \$22,289.00 to the Claimant for installing the twenty-seven solar panels in the Claimant’s possession. The work proposed by Mr. Perkins paralleled that contemplated by the Respondent. (Test. Cl.; Cl. Ex. 3.)

16. The Claimant’s actual loss is \$20,097.00. (Test. Cl.; Cl. Ex. 3.)

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. 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 (3rd. 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.” Bus. Reg. § 8-405(a). *See also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. There is no *prima facie* impediment to the Claimant’s recovery from the Fund (being related to or employed by the Respondent; recovering damages from the Respondent in court or through insurance stemming from the same facts that are the basis of his claim; not occupying the property that is the subject of the contract; or owning more than three houses). Bus. Reg. §§ 8-405(f) and 8-408(b)(1).

The salient facts are straightforward. In late November 2013, the Claimant and the Respondent entered into a \$28,886.00 contract, which required the Respondent to install solar energy panels on the Claimant’s roof. On November 22, 2013, the Claimant gave the Respondent’s sales representative, Larry Kaput, a deposit of \$500.00 using his credit card. The Claimant subsequently paid the Respondent an additional \$26,194.00 by means of two checks, for a total payment to the Respondent of \$26,694.00. Although at the Claimant’s request, the Respondent delivered twenty-seven solar panels to the Claimant’s home in late December 2013, the Respondent never performed the solar panel installation work specified under the contract. When the Respondent had done no work as of February 2014, the Claimant went to the Respondent’s place of business, spoke with Mr. Kaput, and learned that the Respondent’s company had gone out of business. Upon learning this information from Mr. Kaput, the Claimant

filed a complaint with the MHIC, and two months later, filed the claim, which is the subject of this proceeding.

The Claimant testified that shortly after he learned that the Respondent had gone out of business, Chad Perkins of A. M. P. Electric, LLC, made an unsolicited telephone call to him. During that call, Mr. Perkins indicated that he was willing to complete the work abandoned by the Respondent. The Claimant theorized that because Mr. Perkins made an unsolicited call to him, Mr. Perkins had some connection with the Respondent. Possibly, he had worked for the Respondent as an electrical subcontractor, but the Claimant had no definitive information about how the two entities were related. In any event, the Claimant allowed Mr. Perkins to provide him with an estimate for completing the solar panel installation work left unfinished by the Respondent. That estimate, dated February 19, 2014, was for \$22,289.00. The Claimant assumed that the solar panels delivered by the Respondent—and still in his possession—would work and, therefore, Mr. Perkins and A. M. P. Electric, LLC would only be responsible for the installation of those panels.

The Fund had some concerns about A. M. P. Electric, LLC's licensing status with the MHIC. The estimate the Claimant offered from that entity lacked an MHIC license number. Nevertheless, the Fund noted that even if Mr. Perkins is not licensed by the MHIC, he is licensed as a master electrician and, therefore, the estimate he gave could, nonetheless, serve as a valid measure of the cost of completing the contracted work abandoned by the Respondent.

I accept the Fund's view of the validity of the A. M. P. Electric, LLC estimate. Additionally, it is clear that the Claimant sustained an actual loss compensable by the Fund, because the Claimant paid the Respondent almost the full contract price, but the Respondent never performed any work. The Respondent, at the Claimant's request, supplied the solar panels that he wanted installed, and the Claimant is hopeful that these solar panels are still operable. If

they work, it would allow A. M. P. Electric, LLC, or another capable contractor, to install them, without the Claimant having the additional expense of purchasing new panels.

Having found eligibility for compensation, I now turn to the amount of the award to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of the actual loss in this case:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent \$26,694.00, and the Respondent did no work, except deliver the solar panels. The solar panels that the Respondent delivered have a value of \$7,000.00; the Claimant estimated this amount by searching on the Internet, pricing panels of a similar make and model and averaging the prices he found. Those panels, however, have no value to the Claimant unless someone installs them. As noted, the Claimant sought an estimate from A.M.P. Electric, LLC to do that installation work. That estimate was for \$22,289.00. For the reasons noted above, I conclude this is a valid estimate by which to compute the Claimant's actual loss.

I have performed the following calculations to compute the Claimant's actual loss:

\$26,694.00	Amount paid by the Claimant to or on behalf of the Respondent
<u>+22,289.00</u>	Reasonable cost of repair and completion
48,983.00	
-28,886.00	Original contract price
\$20,097.00	Actual loss by the Claimant

The actual loss computed above is \$20,097.00, which exceeds the maximum compensable \$20,000.00 award from the Fund by \$97.00. Accordingly, the Claimant is entitled to reimbursement from the Fund of only a portion of his actual loss, or \$20,000.00. Bus. Reg. § 8-405 (e)(1).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts and 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 award the Claimant \$20,000.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of at least ten percent (10%) as set by the Maryland Home Improvement Commission;² and

² See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

ORDER that the records and publications of the Maryland Home Improvement
Commission reflect this decision.

April 18, 2016
Date Decision Issued

Signature on File
Thomas G. Welshko
Administrative Law Judge

TGW

TGW/slm
#161651

PROPOSED ORDER

WHEREFORE, this 16th day of May, 2016, 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.

Marilyn Jumalon

***Marilyn Jumalon
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION