

IN THE MATTER OF THE CLAIM	* BEFORE KIMBERLY FARRELL,
OF WILLIAM D. HILL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-14-38277
FOR THE ALLEGED ACTS OR	* MHIC NO.: 15 (70) 311
OMISSIONS OF PAUL F. WITTMAN,	*
t/a GREENSPRING ENERGY, LLC,	*
RESPONDENT	*

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 9, 2014, William D. Hill (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of actual losses allegedly suffered as a result of a home improvement contract with Paul F. Wittman, t/a Greenspring Energy, LLC (Respondent).

I held a hearing on March 12, 2015, at the Office of Administrative Hearings, located at 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a) (2015).<sup>1</sup>

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<sup>1</sup> All citations to the Business Regulation Article (Bus. Reg.) are to the 2015 volume.

Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant was represented by Tora Mahoney, Esquire. Despite proper notice,<sup>2</sup> the Respondent failed to appear, so I heard the case in his absence. See Business Regulation Article § 8-312(h); Code of Maryland Regulations (COMAR) 09.01.02.09.

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.

### **ISSUES**

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions, and, if so, what was the amount of that loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted into evidence the following exhibits offered by the Claimant:

- CLMT #1 Complaint Form, September 12, 2014, with attached document "Explanation"
- CLMT #2 Greenspring Energy, LLC, Invoice, September 6, 2013, with attachments
- CLMT #3 Contract of Sale, undated
- CLMT #4 Check #8776 paid by the Claimant to the Respondent in the amount of \$13,822.00, September 18, 2013
- CLMT #5 Check #8782 paid by the Claimant to the Respondent in the amount of \$13,822.00, September 27, 2013

I admitted into evidence the following exhibits offered by the Fund:

- GF #1 Notice of Hearing, January 8, 2015
- GF #2 Notice of Hearing, February 3, 2015
- GF #3 Hearing Order, October 24, 2014
- GF #4 MHIC licensing records for the Respondent

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<sup>2</sup> As was detailed on the record at the hearing, certified and regular U.S. mail was sent to the Respondent at each of three addresses the MHIC found for him: his address of record with the MHIC, his address of record with the Maryland Motor Vehicle Administration, and the address associated with his bankruptcy filing in Massachusetts. The certified mailing to the Massachusetts address was signed for on the Respondent's behalf.

- GF #5 Affidavit of Charles Corbin, January 29, 2015
- GF #6 United States Bankruptcy Court, District of Massachusetts, Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines, December 1, 2014
- GF #7 Home Improvement Claim Form, received by the MHIC on October 9, 2014

The Respondent offered no exhibits.

Testimony

The Claimant was the only witness.

**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 home improvement contractor, licensed by the MHIC.
2. The Claimant owns a house located at 12180 Willowind Court in Ellicott City, Maryland (the Property). It is the Claimant's primary residence.
3. On or prior to September 4, 2013, after receiving a brochure in the mail from the Respondent, the Claimant contacted the Respondent to obtain information and an estimate from the Respondent for installation of a solar panel system at the Property.
4. On or about September 4, 2013, the Respondent sent a representative, Larry Chaput, to speak with the Claimant at the Property.
5. After speaking with the Respondent, the Claimant wanted to obtain an estimate.
6. The Respondent insisted that the Claimant pay money up front to show that he was serious and pressured the Respondent to make a large payment. The Respondent made a \$500.00 credit card payment on September 4, 2013.
7. On September 6, 2013, the Respondent provided to the Claimant a document called an invoice. The document was much like a contract proposal. The total job price was listed as \$35,999.00, but the document applied a \$500.00 Labor Day Discount and acknowledged the

\$500.00 deposit, so it listed a balance due of \$34,999.00. The proposal included a solar installation on both the Claimant's home and on his garage.

8. The Respondent agreed to send somebody to the home to assess its location, orientation with respect to the sun, and suitability for a solar installation. The Respondent's assessor told the Respondent that the property was well-situated for a solar installation and that the Respondent would get back to him.<sup>3</sup>

9. On September 18, 2013, the Claimant and the Respondent entered into a home improvement contract that called for the Respondent to install a solar panel system on the roof of the Claimant's home. The Claimant had decided against installing a solar panel system on his garage.

10. The agreed-upon contract price was \$28,204.00. Mr. Chaput, who brought the contract to the Claimant, pressured the Claimant to make payment in full on September 18, 2013. The Claimant did not have the full contract amount readily available, but he paid \$13,822.00 on September 18, 2013.

11. The contract recited that the "Requested Installation Date" was "November 2013" and that the "Approximate Completion Date" was "Mid-Dec '13." CLMT #3.

12. The Respondent told the Claimant that it would take two to three weeks to order the materials and that work would start after that.

13. The Respondent continued to pressure the Claimant for the full amount of the contract price, telling him that the Respondent really could not order materials until receipt of payment in full.

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<sup>3</sup> Although the date of the assessment is not entirely certain, it appears that it was to take place after the presentation of the September 6, 2013 invoice.

14. The Claimant borrowed money from the bank to pay the rest of the contract price and paid the Respondent an additional \$13,882.00 on September 27, 2013. At this point, the Claimant had paid the contract price in full.

15. The Respondent began offering the Claimant a series of excuses about why the job could not start, such as that the materials had not arrived on time, or that other equipment necessary for the job was unavailable or had not been delivered as expected.

16. By December, no materials had been delivered to the Claimant's home and no work had begun.

17. The Claimant spends January and February each year in Florida. The Respondent told the Claimant that although his company might be able to start work in December, it would not finish up until after the New Year. The Claimant did not want the work done while he was absent from the home, so he spoke with the Respondent and they mutually agreed that the work would not take place until March 2014.

18. Upon returning from Florida in March 2014, the Claimant began to try to speak with the Respondent to schedule the work.

19. He could not get Mr. Chapute to answer his calls, so he called the main office number. His first two calls were answered and he was told that his call would be returned. His calls were not returned and when the Claimant later tried to call the main office, his calls were not answered at all.

20. The Claimant contacted another person he knew to be associated with the Respondent and that person told the Claimant that the Respondent was bankrupt and that he (the person called) had left the business.

21. The Respondent had no further contact with the Claimant after late November or early December 2013 and supplied no materials or labor after the signing of the contract.

22. The Respondent did not refund any money to the Claimant nor did the Claimant receive monies from any other source to cover his losses.

### DISCUSSION

A home 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) (Supp.2014). *See also* COMAR 09.08.03.03B(2). 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.

There is little to discuss. The Respondent was a licensed contractor at the time that he and the Claimant entered into their contract. The Respondent’s representatives put a great deal of pressure on the Claimant and extracted \$500.00 from him before they had provided even an estimate, much less any materials or services. Upon signing the contract, the Respondent tried to obtain immediate payment of the remaining balance in excess of \$27,000.00 and, before supplying any materials or labor, successfully obtained payment from the Claimant of the remaining contract balance by September 27, 2013.

After receiving payment in full, the Respondent offered the Claimant a series of excuses as to why the job could not go forward, until mid-December. Having reached the point where the original completion date was now the proposed start date and having received no assurance that the work would actually start at that time, the Claimant asked that the project not be done in his absence and the parties mutually agreed that work would begin in March. The Respondent never performed any part of the contract, never provided any materials, and never refunded any

money. The Respondent also never communicated with the Claimant about anything after agreeing, in late 2013, to postpone the work until March 2014.

Having found eligibility for compensation, I now turn to the amount of the award. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest, and the Claimant is not seeking such damages. COMAR 09.08.03.03B(1). MHIC's regulations at COMAR 09.08.03.03B(3) offer three formulas for measurement of a claimant's actual loss, depending on the facts. The proper measure of the Claimant's actual loss in this case is as follows:

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.

The Claimant paid \$28,204.00 to the Respondent and the Respondent abandoned the contract without doing any work. The Claimant's actual loss is \$28,204.00. His recovery from the Fund, however, is limited to \$20,000.00 because the Commission may not award from the Fund "more than \$20,000 to one claimant for the acts or omissions of one contractor." Md. Code Ann., Bus. Reg. § 8-405(e)(1). Thus, while the Claimant's actual losses in this case are in excess of \$28,000.00, his actual losses compensable by the Fund are \$20,000. I therefore recommend an award in the amount of \$20,000.00.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant has sustained a compensable loss in the amount of \$20,000.00. Bus. Reg. § 8-401 and 405(a); COMAR 09.08.03.03B(3)(a).

**RECOMMENDED ORDER**

I **PROPOSE** 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 be 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 as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a); and

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

**Signature on File**

June 2, 2015  
Date Decision Issued

Kimberly Farrell  
Administrative Law Judge

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Document #156389



PROPOSED ORDER

*WHEREFORE, this 19th day of June, 2015, 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*

*Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**