

**IN THE MATTER OF THE CLAIM**  
**OF THOMAS PAUGH,**  
**CLAIMANT**  
**AGAINST THE MARYLAND HOME**  
**IMPROVEMENT GUARANTY FUND**  
**FOR THE ALLEGED ACTS OR**  
**OMISSIONS OF DAVID MANSFIELD, JR.,**  
**T/A SAND RENOVATIONS,**  
**RESPONDENT**

**\* BEFORE LORRAINE E. FRASER,**  
**\* AN ADMINISTRATIVE LAW JUDGE**  
**\* OF THE MARYLAND OFFICE**  
**\* OF ADMINISTRATIVE HEARINGS**  
**\* OAH No.: DLR-HIC-02-16-30813**  
**\* MHIC No.: 17 (75) 50**  
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**PROPOSED DECISION**

**STATEMENT OF THE CASE**  
**ISSUES**  
**SUMMARY OF THE EVIDENCE**  
**PROPOSED FINDINGS OF FACT**  
**DISCUSSION**  
**PROPOSED CONCLUSION OF LAW**  
**RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On July 14, 2016, Thomas Paugh (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$15,450.00<sup>1</sup> in alleged actual losses suffered as a result of a home improvement contract with David Mansfield, Jr., trading as Sand Renovations (Respondent).

I held a hearing on March 29, 2017, at the Calvert County Public Library in Prince Frederick, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant

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<sup>1</sup> The correct amount is \$15,455.00, which is contained in the exhibits. Thus, the Claim is amended to the undisputed amount of \$15,455.00.

represented himself. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

### **ISSUES**

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

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 Contract, 11/7/15, signed 11/9/15
- Clmt. Ex. 2 Cancelled check paid to the Respondent for \$15,455.00, 11/9/15

I admitted the following exhibit on the Respondent's behalf:

- Resp. Ex. 1 Proposal, 2/26/16

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 Hearing Order, 9/27/16
- Fund Ex. 2 Notice of Hearing, 11/14/16
- Fund Ex. 3 Letter to the Respondent from MHIC, 7/14/16
- Fund Ex. 4 Home Improvement Claim Form, signed 5/28/16, received 7/14/16
- Fund Ex. 5 The Respondent's licensing information, 2/14/17

## Testimony

The Claimant's wife Shauna Paugh testified.

The Respondent testified.

The Fund did not present 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 98758.
2. On November 9, 2015, the Claimant and the Respondent entered into a contract to build a garage and family room.
3. The original agreed-upon contract price was \$67,726.00.
4. On November 9, 2015, the Claimant paid the Respondent a deposit of \$15,455.00.
5. The Claimant was unable to get a permit to build the addition from the health department after going through the appeal process and asked for his deposit back.
6. The Respondent did not perform any work under the contract and did not return the \$15,455.00 deposit.
7. The Claimant's actual loss is \$15,455.00.

## 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).<sup>2</sup> “[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.*

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<sup>2</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

*Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d 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.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);<sup>3</sup> *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 facts of this case are not in dispute. The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Claimant and the Respondent signed the contract on November 9, 2015 and the Claimant paid a \$15,455.00 deposit to the Respondent. The Claimant was unable to get a permit to build the addition from the health department after going through the appeal process and asked for his deposit back. The parties agreed that the project could not go forward without the permit and that the Respondent should have returned the deposit to the Claimant. The Respondent did not perform any work on the project and he did not return the deposit.

The Respondent stated that he used the Claimant’s deposit on other jobs. He explained that he was working as a contractor for Home Advisor but lost his contract with that company, which caused him to lose his business. He said that he hoped this hearing would help the Claimant get his money back.

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Therefore, I find that the Respondent received money for a home improvement but did not perform any work under the contract. As a result, I find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, 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 actual loss in this case.

"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." COMAR 09.08.03.03B(3)(a). Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015).

In this case, the Respondent agreed he could not perform work under the contract without the required permit. The Claimant paid the Respondent a deposit of \$15,455.00 and the Respondent did not return the deposit. Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$15,455.00, the amount actually paid to the Respondent. *Id.* § 8-405(e)(5); COMAR 09.08.03.03B(3)(a).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$15,455.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a).

**RECOMMENDED ORDER**

I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,455.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>4</sup> and

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

**Signature on File**

June 20, 2017  
Date Decision Issued

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Lorraine E. Fraser *JLG*  
Administrative Law Judge

LEF/sm  
#168579

<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 10<sup>th</sup> day of July, 2017, 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**