

IN THE MATTER OF THE CLAIM	*	BEFORE DANIEL ANDREWS,
OF JOHN KARVOUNIS,	*	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 STEPHEN	*	
COLEMAN, T/A BASEMENT	*	OAH No.: DLR-HIC-02-19-01140
WATERPROOFING	*	MHIC No.: 18 (90) 190
TECHNOLOGIES,	*	
RESPONDENT	*	

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On April 6, 2018, John Karvounis (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement for an actual loss allegedly suffered as a result of a home improvement contract with Stephen Coleman, trading as Basement Waterproofing Technologies (Respondent). Md. Code Ann.,

Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>1</sup> On January 9, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on April 17, 2019 at the Prince George's County Office Building, Room 306, 1400 McCormick Drive, Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. The Claimant represented himself.<sup>2</sup> The Respondent failed to appear or participate in the hearing.<sup>3</sup>

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. 2018); 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

Clmt. Ex. 1 – Letter from Claimant to MHIC, dated April 3, 2018

Clmt. Ex. 2 – Contracts and Receipts, including:

- Respondent's original proposal, dated December 10, 2013
- Contract between Claimant and Respondent, dated December 16, 2013
- Contract Addendum, dated January 28, 2014
- Respondent's pamphlet, undated

<sup>1</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>3</sup> As set forth in further detail below, the Fund introduced evidence during the hearing that the Respondent is deceased.

- All Aspects Waterproofing proposal, dated January 29, 2018
- Original contract between Claimant and All Aspects Waterproofing, dated February 14, 2018
- Amended Contract between Claimant and All Aspects Waterproofing, dated February 19, 2018
- All Aspects Waterproofing Invoice, dated February 19, 2018
- Photocopy of Claimant's personal check paid to All Aspects Waterproofing, dated February 22, 2018

Clmt. Ex. 3 – Timeline and Correspondence with Respondent, including:

- Emails from Claimant to Respondent, dated January 28, February 20, and February 27, 2017, with attached photographs
- Better Business Bureau of Greater Maryland, Complaint Activity Report for dates March 9, 2017 through May 24, 2017
- Letter from MHIC to Claimant, dated August 11, 2017
- Letter from MHIC to Claimant, dated August 30, 2017
- Letter from Respondent to MHIC, dated September 28, 2017
- Letter from MHIC to Claimant, dated January 10, 2018

Clmt. Ex. 4 – Series of several photographs of the Claimant's basement including:

- Two photographs, dated February 25, 2017
- Two photographs, dated July 28, 2017
- Eight photographs, dated February 19, 2018
- Two photographs of the work performed by All Aspects Waterproofing taken on February 19, 2018

The Respondent did not offer any exhibits.

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1 - Hearing Order, dated January 4, 2019
- GF Ex. 2 - Notice of Hearing, dated January 30, 2019
- GF Ex. 3 - Affidavit of Keyonna Penick, Panel Specialist, MHIC, dated March 21, 2019
- GF Ex. 4 - Home Improvement Claim Form, dated April 6, 2018
- GF Ex. 5 - MHIC licensing history for Respondent, dated March 27, 2019

### Testimony

The Claimant testified on his own behalf.

There was no testimony presented on behalf of the Respondent or the Fund.

## **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 93411.

2. Prior to December 16, 2013, the Claimant's home experienced water intrusion in the basement. For this reason, he sought home improvement contracts to waterproof the basement.

3. On December 16, 2013, the Claimant entered into a home improvement contract with the Respondent to install a sub-floor pressure relief system including a 4-inch flexible perforated piping and large washed or blue stone along all four walls of the basement with a linear foot total of 136 feet (Contract). The sub-floor pressure relief system is also known as a "French drain."<sup>4</sup> The Contract contained a life-time warranty on the work performed by the Respondent.

4. The Contract also required the Respondent to install two sump pumps.

5. The total cost of the contract was \$8,244.00.

6. On or about January, 28, 2014, after the Respondent completed the contract, the Claimant paid the Respondent \$8,244.00.

7. On January 28, 2017, by an email, the Claimant notified the Respondent that water was seeping into the basement. The Claimant attached two photographs to the email which showed water damage in the basement.

8. On February 20, 2017, the Claimant again emailed the Respondent requesting that someone return his calls or schedule an appointment to inspect the basement.

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<sup>4</sup> During the hearing, the Claimant referred to the system described in the contract as a "French drain," which is a common solution for waterproofing a basement that redirects surface and groundwater away from the foundation of a home. See [https://en.wikipedia.org/wiki/French\\_drain](https://en.wikipedia.org/wiki/French_drain), last visited April 18, 2019.

9. On February 27, 2017, by an email and in response to a request by the Respondent, the Claimant informed the Respondent that the water seepage was increasing, that the sump pump was dry, that the water seeping into the basement contained dirt, and attached five photographs which showed the conditions he described in the email.

10. On March 9, 2017, the Claimant filed a complaint with the Better Business Bureau of Greater Maryland (BBB) regarding the Respondent's failure to respond to his complaint and honor the life-time warranty.

11. On or about April 6, 2017, an employee of the Respondent went to the Claimant's home and inspected the basement and took photographs; however, the Respondent did not offer to perform any repair work.

12. On May 24, 2017, after being unable to get a response from the Respondent, the BBB closed the complaint filed by the Claimant.

13. On or before August 11, 2017, the Claimant filed a complaint with the MHIC regarding the work performed by the Respondent to waterproof the basement of his home.

14. Some of the deficiencies in the Respondent's work included installing the French drain with the wrong materials, at an insufficient depth, and at an improper pitch. The Respondent also failed to install a wall barrier for a section of the French drain system.

15. On September 30, 2017, by a letter to the MHIC, the Respondent filed a response to the complaint filed by the Claimant through which he indicated that he would contact the Claimant to evaluate the basement drain and that he will honor the Contract.

16. The Respondent did not perform any repair work.

17. On February 14, 2018, the Claimant entered into a contract with All Aspects Waterproofing (AAW), a home improvement contractor licensed by the MHIC, to repair the French drain system installed by the Respondent, at a total cost of \$11,900.00 (Repair Contract).

18. The Repair Contract required AAW to install 130 linear feet of sub-floor pressure relief system with four-inch perforated pipe and stone, with two sump pumps.
19. On February 19, 2018, AAW performed the Repair Contract.
20. On February 22, 2018, the Claimant paid AAW \$11,900.00.
21. Since repairing the French drain system, the Claimant's basement has not had any water seepage problems.

### DISCUSSION

#### *The Respondent's Failure to Appear*

On January 31, 2019, by certified and first-class mail, the OAH delivered a Notice of Hearing (Notice) to the Respondent's address of record. The Notice informed the Respondent of a hearing scheduled for April 17, 2019 at 10:00 a.m. at the Prince George's County Office Building, Room 306, 1400 McCormick Drive, Largo, Maryland. The Notice also informed the Respondent that the issue to resolve was whether the Claimant sustained an actual loss compensable by the Fund as a result of the Respondent's acts or omissions as a licensed home improvement contractor. After waiting for approximately fifteen minutes, neither the Respondent nor anyone authorized to represent him appeared for the hearing.

During the hearing, the Fund presented information that the Respondent's failure to appear or participate in the hearing was due to his death. By affidavit, an employee of MHIC explained that the Respondent was reported to the Maryland Motor Vehicle Administration as deceased as of November 5, 2017. (GF 3). Furthermore, in an effort to determine whether anyone was authorized to represent the Respondent's interest in this matter, Assistant Attorney General Shara Hendler reported that she searched the Maryland Register of Wills for an estate opened on behalf of the Respondent and found none.

Under these circumstances, I find that after due notice of the scheduled hearing and the issue to resolve, neither the Respondent nor anyone authorized to represent him appeared for the hearing; nevertheless, it was appropriate to proceed with the hearing. Md. Code Ann., Bus. Reg. § 8-312.

***The Merits of the Case***

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) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>5</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. 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); *see also* COMAR 09.08.03.03B(2) (“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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

On December 16, 2013, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The uncontested evidence demonstrates that the Claimant sought to install a French drain to waterproof his residential basement. The

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<sup>5</sup> As noted above, “COMAR” refers to the Code of Maryland Regulations.

Respondent completed the work in January 2014, and provided a lifetime guarantee for that work. Per the contract, the Respondent was paid \$8,244.00 for the work performed.

On January 28, 2017, the Claimant contacted the Respondent via electronic mail concerning water infiltration; included with the electronic mail was photographic evidence which demonstrated water in the basement. (Clmt. 3). The Claimant testified that the Respondent visited and inspected the property in April 2017, after the Claimant filed a complaint with the Better Business Bureau. Even after indicating in correspondence to the MHIC in September 2017 he would honor the warranty, the Respondent failed to perform any repair work.

Having no further communication with the Respondent, the Claimant entered into a Repair Contract with AAW in February 2018, which required the complete reinstallation of the French drain. Per the Repair Contract, the Claimant paid AAW \$11,900.00 to repair the work of the Respondent.

The Claimant presented dated photographic evidence of water infiltration after the Respondent performed waterproofing services, as well as the work that was completed under the Repair Contract. (Clmt. 4). Two photographs, dated February 25, 2017, show water seepage from the floor and cracks in the concrete along the drainage system installed by the Respondent. Two additional photographs, dated July 28, 2017, show water seeping into the basement, in addition to clay sediment.

Further, the Claimant provided ten photographs, dated February 19, 2018, showing the deficiencies of the Respondent's work, and the repair process by AAW. Five photographs show that the French drain installed by the Respondent was placed at an insufficient depth, the drain was at an improper pitch, and the wrong materials were used. Three additional photographs show that Respondent failed to install a wall barrier for a section of the French drain system; and on the section where the Respondent did install a wall barrier, the barrier was infiltrated with clay



mud. Finally, the Claimant presented two photographs showing the repair work and proper installation of the French drain by AAW.

Based on the evidence presented, I am persuaded that the Respondent performed an inadequate or unworkmanlike home improvement when he installed the French drain waterproofing system. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the contract, and the Claimant has retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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). I conclude that the Claimant paid the Respondent \$8,244.00 for installation of a French drain waterproofing system required under the Contract. To repair the work performed by the Respondent, the Claimant paid another contractor, AAW, \$11,900.00. Accordingly, I conclude that the actual loss to the Claimant is \$8,244.00.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is the amount he paid to the Respondent, which is less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$8,244.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant sustained an actual and compensable loss of \$8,244.00 as a result of the Respondent's acts or omissions. I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,244.00:

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

**Signature on File**

July 15, 2019  
Date Decision Issued

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Daniel Andrews  
Administrative Law Judge

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DA/kdp  
#179352

**PROPOSED ORDER**

***WHEREFORE, this 8<sup>th</sup> day of August, 2019, 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.***

***J. Jean White***

***I. Jean White  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**

MEMORANDUM

TO : SAC, [illegible]

FROM : [illegible]

SUBJECT: [illegible]

[illegible text follows]

[illegible text follows]

[illegible text follows]