

**IN THE MATTER OF
THE CLAIM OF JUAN HERRERA,
CLAIMANT,
AGAINST THE MARYLAND
HOME IMPROVEMENT
GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
MURAT OZER, d/b/a
METROPOLITAN CONSTRUCTION
SERVICES,
RESPONDENT**

*** BEFORE LATONYA B. DARGAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-19-04000
* MHIC No.: 18 (90) 267**

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PROPOSED DEFAULT ORDER

On February 4, 2019, the Maryland Home Improvement Commission (MHIC) issued an order granting a hearing to Juan Herrera (Claimant) to give the Claimant the opportunity to demonstrate eligibility for an award from the MHIC's Guaranty Fund (Fund) as a result of actual monetary losses allegedly suffered because of the acts or omissions of Murat Ozer, d/b/a Metropolitan Construction Services (Respondent), a home improvement contractor licensed by the MHIC. Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On February 7, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) to hold the required hearing.

On April 23, 2019, the OAH issued a Notice of Hearing (Notice) to the Claimant, the Respondent, and the Fund at their addresses of record. Code of Maryland Regulations

¹ Unless otherwise noted, all references to the Business Regulation Article of the Maryland Annotated Code are to the version published in the 2015 replacement volume.

(COMAR) 09.08.03.03A(2). The Notice advised the parties the matter was scheduled for hearing on Tuesday, June 11, 2019² at 10:00 a.m. at the OAH's offices in Rockville, Maryland. The Notice was issued to the Claimant and the Respondent via both first class mail and certified mail-return receipt requested. The Notice further advised all parties that failure to appear for the hearing could result in dismissal of the case or an adverse decision for the party failing to appear.

The Claimant's signed, certified mail return receipt for the Notice was received at OAH headquarters in Hunt Valley, Maryland on May 10, 2019; the regular mail copy of the Notice sent to the Claimant was not returned to the OAH by the United States Postal Service (USPS) as undeliverable, or for any other reason. The Respondent's certified mail copy of the Notice was returned to the OAH by the USPS with a label stating "not delivered as addressed; unable to forward."³ A handwritten notation indicated "Not Here 4/25". Working in conjunction with the USPS, the MHIC was able to obtain an updated mailing address for the Respondent at 345 State Highway 7, Sidney, New York 13838. The OAH sent a copy of the Notice to the Respondent at the Sidney, New York address via regular, first class mail and certified mail-return receipt requested. The regular mail copy of the Notice was not returned to the OAH as undeliverable by the time of the scheduled hearing.⁴ None of the parties requested a postponement of the hearing.

On June 11, 2019, I convened the hearing as scheduled at the OAH's Rockville office. Md. Code Ann., Bus. Reg. § 8-407. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing, and Regulation, appeared on behalf of the Fund and was prepared to proceed. Neither the Claimant nor the Respondent, nor anyone authorized to represent them, appeared.

² The matter was originally scheduled in error to be conducted on Monday, May 20, 2019. By letter dated April 18, 2019, the parties were notified of the scheduling error and advised a new notice of hearing with the rescheduled hearing date would be issued to their attention. The corrected notice rescheduling the hearing to June 11, 2019 is the one issued on April 23, 2019.

³ The Notice was sent to the Respondent at 7550 Mandan Road, Greenbelt, Maryland 20770, which was the address on file with the MHIC for the Respondent.

⁴ The certified mail copy of the Notice was returned to the OAH on June 10, 2019, with a stamp indicating the time to forward the mail had expired.

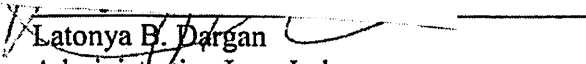
In this case, the Claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). After waiting approximately twenty minutes, during which time the Claimant and the Respondent failed to appear, the Fund moved for a default order dismissing the Claim. COMAR 28.02.01.23A.⁵ I shall grant that motion.

I therefore **PROPOSE** that the MHIC issue a **DEFAULT ORDER** as follows:

1. The Claimant is in default; and
2. All further proceedings in the captioned matter are **TERMINATED**, and a disposition of **DISMISSAL** is entered in this case, pursuant to COMAR 28.02.01.23A; and
3. In accordance with COMAR 09.01.03.09 and 28.02.01.23C, the Claimant or his representative may file written exceptions with the MHIC within twenty (20) days from the postmark date of this Proposed Default Order.

Signature on File

June 18, 2019
Date Order Issued


Latonya B. Dargan
Administrative Law Judge

LBD/cmg
#180494

⁵ "If, after receiving proper notice, a party fails to attend or participate in a . . . hearing, . . . the judge . . . may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party."

PROPOSED ORDER

WHEREFORE, this 24th day of July, 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.

W. Bruce Quackenbush

***W. Bruce Quackenbush
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION