

**IN THE MATTER OF THE CLAIM  
OF DENISE SKOTEK,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF RAYMOND LIEBRECHT,  
T/A DIVERSIFIED REMODELING, INC.,  
RESPONDENT**

**\* BEFORE LORRAINE E. FRASER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-21-00652  
\* MHIC No.: 19 (05) 1515**

\* \* \* \* \*

**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 October 11, 2019, Denise Skotek (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),<sup>1</sup> for reimbursement of \$8,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Raymond Liebrecht, trading as Diversified Remodeling, Inc. (Respondent). Md. Code Ann., Bus. Reg.

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

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RESEARCH REPORT  
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§§ 8-401 through 8-411 (2015).<sup>2</sup> On December 29, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on April 12, 2021 at 9:30 a.m. via videoconference. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Shara Hendler, Assistant Attorney General, Department, represented the Fund. Christopher Wampler, Esquire, represented the Claimant, who was present.

At the start of the hearing, the Fund presented information from Robert M. Burke, Esquire, the Respondent's former attorney, showing that the Respondent and his wife were both deceased and there was no personal representative or estate.

Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. On January 14, 2021 and March 2, 2021,<sup>3</sup> the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail, both regular and certified, to the Respondent's address on record with the MHIC. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notices were returned to the OAH with the printed notation "vacant, unable to forward" and a hand-written notation "deceased." Neither the Respondent (nor anyone on his behalf) notified the OAH of any change of mailing address. COMAR 28.02.01.03E. Neither the Respondent (nor anyone on his behalf) made any request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that proper notice was sent to the Respondent, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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.

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<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>3</sup> The first hearing date of February 19, 2021 was rescheduled to April 12, 2021 because the Claimant's attorney had a previously scheduled matter that day.

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Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and 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:

- Claimant Ex. 1 Home Improvement Claim Form, 10/8/19
- Claimant Ex. 2 Contract, 12/1/18
- Claimant Ex. 3 Check to the Respondent from the Claimant for \$8,000.00, 12/1/18

The Respondent did not offer any exhibits for admission into evidence.

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

- Fund Ex. 1 Hearing Order, 12/21/20
- Fund Ex. 2 Notice of Remote Hearing, 1/14/21
- Fund Ex. 3 Home Improvement Claim Form, received 10/11/19; letter to the Respondent from the MHIC, 10/22/19
- Fund Ex. 4 The Respondent's licensing history, 2/10/21
- Fund Ex. 5 Affidavit of David Finneran, 3/31/21
- Fund Ex. 6 Email from Robert M. Burke, Esquire, 3/31/21

#### Testimony

The Claimant testified.

The Respondent did not present any witnesses.

The Fund did not present any witnesses.

1950-1951

INDEX

1952-1953

1954-1955

1956-1957

1958-1959

1960-1961

1962-1963

1964-1965

1966-1967

1968-1969

1970-1971

1972-1973

1974-1975

1976-1977

1978-1979

1980-1981

1982-1983

1984-1985

1986-1987

## 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 01 43018.
2. On December 1, 2018, the Claimant and the Respondent entered into a contract to install new siding, windows, doors, shutters, gutters, downspouts, soffit, and fascia, and to repair the front porch on the Claimant's home (Contract).
3. The original agreed-upon Contract price was \$28,500.00.
4. On December 1, 2018, the Claimant paid the Respondent \$8,000.00.
5. From December 2018 through May 2019, the Claimant contacted the Respondent about performing the work under the Contract.
6. The Respondent did not perform any work under the Contract.
7. In May 2019, the Claimant asked the Respondent to refund her deposit. He did not do so.
8. In June 2019, the Respondent died.
9. The Claimant's actual loss is \$8,000.00.

## DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

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) (“The Fund may only compensate claimants for 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.” 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. The Claimant paid the Respondent a \$8,000.00 deposit. The Respondent did not perform any work under the Contract. Further, the Respondent did not refund the \$8,000.00 deposit to the Claimant. Thus, I 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. 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 abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant’s actual loss: “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). Thus, the Claimant’s actual loss is \$8,000.00.

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. Bus. Reg. § 8-405(e)(1), (5); COMAR



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09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is the same as the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$8,000.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$8,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,000.00; 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 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.

June 22, 2021  
Date Decision Mailed

*Lorraine E. Fraser*  
\_\_\_\_\_  
Lorraine E. Fraser  
Administrative Law Judge

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

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**PROPOSED ORDER**

***WHEREFORE, this 6<sup>th</sup> day of September, 2021, 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.***

***Wm Bruce***

***Quackenbush***

***Wm Bruce Quackenbush***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

CONFIDENTIAL

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