

<p>IN THE MATTER OF THE CLAIM OF GEORGE FRAZIER, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF STEPHANIE PETROVITCH, T/A PETRO'S PAVING AND SEALCOATING, RESPONDENT</p>	<p>* BEFORE JENNIFER L. GRESOCK, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * * OAH No.: LABOR-HIC-02-22-21272 * MHIC No.: 21 (75) 960 *</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On November 5, 2021, George Frazier (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$14,400.00 for actual losses allegedly suffered as a result of a home improvement contract with Stephanie Petrovitch, trading as Petro's Paving and Sealcoating (Respondent). Md. Code Ann., Bus. Reg.

§§ 8-401 to -411 (2015 & Supp. 2022).¹ On August 5, 2022, the MHIC issued a Hearing Order on the Claim. On August 16, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 8, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The hearing was scheduled for 9:30 a.m.; however, neither the Claimant nor the Respondent appeared by 9:45 a.m.

After waiting fifteen minutes for the Claimant and/or the Respondent to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A; COMAR 09.01.02.09.

On September 12, 2022, the OAH provided a Notice of Hearing (Notice) to both the Claimant and the Respondent by certified United States mail to each of their addresses on record with the OAH. COMAR 28.02.01.05C(1). The Notices stated that a hearing was scheduled for December 8, 2022, at 9:30 a.m., at the OAH. COMAR 09.08.03.03A(2). The Notices further advised the parties that failure to attend the hearing might result in "a decision against you."

The Notices sent to both the Respondent and the Claimant were returned to the OAH with the notation "Return to Sender - Unclaimed." Neither party notified the OAH of any change of mailing address. COMAR 28.02.01.03E. Neither party requested a postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that both the Claimant and Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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

No exhibits were offered for admission into evidence.

Testimony

No testimony was offered.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On November 5, 2021, the Claimant filed a claim for reimbursement from the Fund.
2. On September 12, 2022, the OAH scheduled a hearing for December 8, 2022, and notified the Claimant by certified mail sent to his address of record.
3. The Claimant did not request a postponement.
4. The Claimant's Notice was returned to the OAH as unclaimed.
5. The Claimant did not appear for the hearing on December 8, 2022.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; 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 Cnty. 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) (Supp. 2022); *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.

I find that the Claimant has not proven eligibility for compensation. The Claimant did not appear and therefore presented no evidence. Accordingly, the Claimant did not meet his burden to prove the validity of his claim and is not entitled to an award.²

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss of as a result of the Respondent’s acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405, 8-407(e)(1) (2015 & Supp. 2022).

² The Fund’s position was that the Claimant did not meet his burden because he failed to appear and thus presented no evidence. I note that the Fund did not move for dismissal or a default order on the basis of the Claimant’s failure to appear because a motion to dismiss, or any dispositive motion, may not be granted by an administrative law judge without the concurrence of all parties. COMAR 09.01.03.05B.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

February 24, 2023
Date Decision Issued

Jennifer L. Gresock

Jennifer L. Gresock
Administrative Law Judge

JLG/ds
#203483

PROPOSED ORDER

WHEREFORE, this 24th day of May, 2023, 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

Chairman

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**