

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MATTHEW AND JULI</p> <p>PALLOTTA,</p> <p>CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF ROBERT HAINES,</p> <p>T/A MHI GROUP LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE RICHARD O'CONNOR,</p> <p>* ADMINISTRATIVE LAW JUDGE,</p> <p>* THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-07994</p> <p>* MHIC No.: 22 (75) 193</p>
--	--

* * * * *

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 November 16, 2021, Matthew and Juli Pallotta (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$7,200.00 for actual losses allegedly suffered as a result of a home improvement contract with Robert Haines, trading as MHI Group LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹

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

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical tools employed.

3. The third part of the document presents the results of the study, showing the trends and patterns observed in the data. It includes several tables and graphs to illustrate the findings.

4. The fourth part of the document discusses the implications of the results and provides recommendations for future research. It highlights the areas that need further investigation and the potential applications of the findings.

5. The fifth part of the document concludes the study and summarizes the key findings. It reiterates the importance of the research and the need for continued efforts in this field.

6. The sixth part of the document provides a list of references and sources used in the study. It includes books, articles, and other relevant materials that have informed the research.

7. The seventh part of the document contains the author's contact information and a statement of acknowledgment. It expresses gratitude to the individuals and organizations that supported the research.

8. The eighth part of the document is a declaration of the author's originality and integrity. It states that the work is the author's own and has not been plagiarized or otherwise misappropriated.

9. The ninth part of the document is a statement of the author's consent to publish the work. It indicates that the author agrees to make the research available to the public and to the scientific community.

10. The tenth part of the document is a final statement of the author's commitment to the field of research. It expresses a desire to continue contributing to the advancement of knowledge and to the benefit of society.

7. The Respondent died on May 9, 2021.
8. After learning of the Respondent's death, the Claimants called the funeral home mentioned in his obituary in an attempt to reach someone with the authority to refund their deposit.
9. The Respondent's mother left the Claimants a voice mail message telling them not to contact her again and that the lawyers would handle the matter.

DISCUSSION

Proceeding in the Respondent's Absence

Section 8-312 of the Business Regulation Article, entitled "Hearings," states, in pertinent part, as follows:

(a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.

(b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

...

(d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.

...

(h) If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.

Bus. Reg. § 8-312.

1. The first part of the document is a letter from the Secretary of the State to the Governor, dated 10th day of January, 1888.

2. The second part is a report of the Board of Education, dated 10th day of January, 1888.

3. The third part is a report of the Board of Agriculture, dated 10th day of January, 1888.

4. The fourth part is a report of the Board of Health, dated 10th day of January, 1888.

5. The fifth part is a report of the Board of Charities, dated 10th day of January, 1888.

6. The sixth part is a report of the Board of Prisoners, dated 10th day of January, 1888.

7. The seventh part is a report of the Board of Lunatics, dated 10th day of January, 1888.

8. The eighth part is a report of the Board of Probation, dated 10th day of January, 1888.

9. The ninth part is a report of the Board of Corrections, dated 10th day of January, 1888.

10. The tenth part is a report of the Board of Pardon, dated 10th day of January, 1888.

11. The eleventh part is a report of the Board of Pardons, dated 10th day of January, 1888.

12. The twelfth part is a report of the Board of Pardons, dated 10th day of January, 1888.

Although the above statute applies to disciplinary proceedings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. *Id.* § 8-407(a). These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

The notices of hearing in this case went to “The Estate of Robert Haines” at the Respondent’s address of record with the MHIC on April 11, 2022, by certified mail and by first-class mail. Neither notice was returned undelivered. The Respondent was deceased at the time the notices were sent, but the notices were sufficient to inform the Appellant’s estate, personal representative, or whoever was handling his affairs that a hearing was scheduled for June 3, 2022. The Respondent held no corporate license from the MHIC,² and no one had provided an alternate address or any information about the Respondent’s estate. The situation in this case is unlike an attempt to serve process on a defendant in civil litigation, since the claim here is against the Fund, not the Respondent. Although the Fund may ultimately have a claim against the Respondent’s estate, that matter has no bearing on this proceeding. I concluded that the OAH provided “due notice” to the Respondent’s estate under Business Regulation section 8-312(h), above, and held the hearing in the Respondent’s absence after no one appeared on his behalf or requested a postponement. The OAH’s Rules of Procedure permit 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.

The Merits of the Claim

The Claimants have 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 (2021); COMAR

² Fund Exhibit 4 indicates that the Respondent was a sole proprietor.

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).

A homeowner 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. 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). For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants. Although the circumstances of this case are tragic for the Respondent and frustrating for the Claimants, the applicable statutes and regulations provide a simple and straightforward resolution.

The Respondent received the Claimant’s deposit and performed no work under the contract. Accordingly, the following formula appropriately measures the Claimants’ 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). The Claimants paid the Respondent \$7,200.00, none of which has been refunded. Therefore, their actual loss is \$7,200.00.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.³ In this case, the Claimants' actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$7,200.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$7,200.00 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 Claimants are entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$7,200.00; 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;⁴ and

³ H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

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

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

August 16, 2022
Date Decision Issued

ROC/sh
#200095

Richard O'Connor

Richard O'Connor
Administrative Law Judge

Vertical line on the left side of the page.

Faint, illegible text at the top of the page, possibly a header or title.

Main body of faint, illegible text, appearing to be a list or series of entries.

PROPOSED ORDER

WHEREFORE, this 16th day of September, 2022, 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.

Chandler Louden

Chandler Louden

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**

1917

... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..