

<p>IN THE MATTER OF THE CLAIM</p> <p>OF VALERIE PROCTOR,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF WILLIAM</p> <p>DOWLING T/A MR. HANDYMAN OF</p> <p>FT. WASHINGTON AND CLINTON,</p> <p>RESPONDENT</p>	<p>* BEFORE PATRICIA M. DEMAIO,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-14033</p> <p>* MHIC No.: 22 (75) 723</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On April 29, 2022, Valerie Proctor (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 \$18,290.91 for actual losses allegedly suffered as a result of a home improvement contract with William Dowling, trading as Handyman of Ft Washington and Clinton (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to

8-411 (2015 & Supp. 2022).¹ On June 8, 2022, the MHIC issued a Hearing Order on the Claim. On June 13, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 29, 2022, the OAH mailed a Notice of Remote Hearing (Notice) to the Claimant and the Respondent by certified and first-class mail to their last addresses on record.² Code of Maryland Regulations (COMAR) 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for October 3, 2022, at 9:30 a.m., via Webex. The Notice advised the parties that failure to attend the hearing might result in “a decision against you.”

On October 3, 2022, neither the Claimant nor anyone authorized to represent the Claimant appeared. Eric B. London, Assistant Attorney General, Department, represented the Fund. The Respondent represented himself. The United States Postal Service (USPS) did not return either Notice that the OAH sent to the Claimant as undeliverable. The Claimant did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Claimant did not request a postponement prior to the date of the hearing. COMAR 28.02.01.16.

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. I determined that the Claimant received proper notice of the hearing. COMAR 28.02.01.05A, C. After waiting more than fifteen minutes, during which time the Claimant still failed to appear, I started the hearing. Mr. London argued on behalf of the Fund that a default could not be granted because COMAR 09.01.03.05 provides that dispositive motions cannot be granted without the agreement of all parties; instead, Mr. London argued that a proposed decision should be issued denying the

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

² The Notice was mailed to the Claimant’s address listed on her Home Improvement Claim Form (2085 Natures Way, Prince Frederick, MD 20678).

Claimant's request for an award from the Fund because she failed to provide sufficient evidence to substantiate her claim. The Respondent relied on the Fund's argument.

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); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUE

Did the Claimant meet her burden to prove she is entitled to an award from the Guaranty Fund?

SUMMARY OF THE EVIDENCE

Exhibits

The Claimant did not attend the hearing and offered no exhibits into evidence.

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - Notice of Hearing, dated June 29, 2022
- Fund Ex. 2 - Hearing Order, dated June 8, 2022
- Fund Ex. 3 - MHIC Contractor License History, dated September 8, 2022
- Fund Ex. 4 - Home Improvement Claim Form, received April 29, 2022
- Fund Ex. 5 - Notice letter from the MHIC to the Respondent, dated May 11, 2022

I admitted the following exhibit³ offered by the Respondent:

- Resp Ex. 1 - Copy of email from Respondent to Claimant, undated with the following attachments:
 - Email from Respondent to Claimant, December 17, 2021

³ Prior to submitting his documents to the OAH, the Respondent pre-marked his documents E1 – E2, R1 – R8, P1 – 3, and A1. For ease of reference, the Respondent's documents will be marked R1 with attachments.

- Respondent invoice # 108211, November 11, 2021
- Respondent estimate, November 19, 2021
- Respondent invoice # 108281, November 30, 2021
- Respondent invoice # 108301, December 1, 2021
- Respondent invoice # 108314, December 2, 2021
- Respondent invoice, December 6, 2021⁴
- Respondent invoice # 108344, December 7, 2021
- Respondent estimate, December 14, 2021⁵
- Photographs⁶
- Translink report showing credit card payments received from the Claimant, November 24, 2021

Testimony

The Claimant did not attend the hearing and presented no testimony. The Respondent testified and did not present other witnesses. The Fund did not present any witnesses.

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.
2. On June 29, 2022, the OAH mailed a Notice of Remote Hearing (Notice) to the Claimant and the Respondent by certified and first-class mail to their last addresses on record. The Notice advised the parties that a hearing was scheduled for Monday, October 3, 2022, at

⁴ The invoice number is illegible.

⁵ The estimate number is illegible.

⁶ The Respondent submitted three photographs.

9:30 a.m., via Webex. The Notice further advised the parties that failure to attend the hearing might result in “a decision against you.”

3. On October 3, 2022, the Respondent and the attorney for the Fund, appeared on Webex and were ready to proceed at 9:30 a.m.

4. By 9:45 a.m., on October 3, 2022, the Claimant had not joined Webex and had not contacted the Clerk’s Office to request a postponement or advise of any emergency preventing her attendance at the scheduled hearing.

5. At or around 10:14 a.m., the hearing concluded, and the Respondent and Fund left the Webex hearing room.

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); Md. Code Ann., State Gov’t § 10-217 (2021); 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). The Claimant has the burden to demonstrate that she suffered an actual loss because of the Respondent’s acts or omissions by a preponderance of the evidence. COMAR 28.02.01.21K(1).

In this case, the Claimant failed to appear for the scheduled hearing and therefore failed to present any evidence to prove the validity of her Claim. As noted above, I concluded that the Claimant received proper notice of the hearing because the Notice was addressed to the Claimant at the address she included in her Claim form. Further, there is information to believe the Claimant actually received the Notice that was sent certified mail because the USPS Certified Mail Receipt was signed by Cory Proctor on July 2, 2022.

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.

In this case, the Claimant failed to appear for the scheduled hearing, and failed to present evidence that the Respondent’s work was unworkmanlike, inadequate, or incomplete. Therefore, the Claimant has failed to satisfy her burden to prove that she suffered an actual loss that is compensable by the Fund.

PROPOSED CONCLUSION OF LAW

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

RECOMMENDED ORDER

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

December 27, 2022
Date Decision Issued

PMD/cj
#201800

Patricia M. DeMaio

Patricia M. DeMaio
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 14th day of February, 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**