

IN THE MATTER OF THE CLAIM	* BEFORE JEFFREY T. BROWN,
OF ADAM MAIR,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF EUGENE	*
RINGGOLD, t/a INTELLECT	* OAH No.: LABOR-HIC-02-23-13713
DEVELOPMENT LLC	* MHIC No.: 23 (75) 335
RESPONDENT	*

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
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PROPOSED CONCLUSION OF LAW  
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**STATEMENT OF THE CASE**

On January 24, 2023, Adam Mair (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 \$18,900.00 for alleged actual losses suffered as a result of a home improvement contract with Eugene Ringgold t/a Intellect Development LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015 and

Supp. 2022).<sup>1</sup> On May 10, 2023, the MHIC issued a Hearing Order on the claim. On May 22, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 12, 2023, the OAH mailed a Notice of Hearing (Notice) to the Claimant by certified and first-class mail to his last known addresses on record. Code of Maryland Regulations (COMAR) 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notices stated that a hearing was scheduled for August 8, 2023, at 9:30 a.m. in person at the OAH. The Notices further advised the parties that “FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF YOUR CASE OR A DECISION AGAINST YOU.”

The United States Postal Service did not return the Notices that the OAH sent to the Claimant by Certified Mail and first-class mail 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. Additionally, the Notices were mailed to the Claimant’s address listed on his Home Improvement Claim Form. I confirmed with Ernie Dominguez, Assistant Attorney General, Department of Labor, who represented the Fund, that the address to which the Notices were mailed was the same address the Fund had on record for the Claimant. The Claimant did not notify the OAH of a reason that he did not appear for the hearing. I conclude that the Claimant received proper notice of the hearing. COMAR 28.02.01.05A, C.

On August 8, 2023, neither the Claimant nor anyone authorized to represent the Claimant appeared. The Respondent was present and was self-represented. As previously noted, Ernie

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume and 2022 Supplement of the Maryland Annotated Code.

Dominguez, AAG, was present to represent the Fund. Mr. Dominguez moved for a default on behalf of the Fund, and the Respondent joined in the motion.

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. Upon consideration of the motion for default, under COMAR 09.01.03.05B, "[a] . . . dispositive motion may not be granted by the [Administrative Law Judge] without the concurrence of all parties." On the premise that a motion for default is a dispositive motion, I thus deny the motion for a default. Instead, I find that the Claimant received proper notice and proceed upon the evidence presented at the hearing.

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);<sup>2</sup> COMAR 09.01.03; COMAR 28.02.01.

### ISSUE

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

The Respondent was present and offered no exhibits into evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. #1- Notice of Hearing, dated June 12, 2023

Fund Ex. #2- Hearing Order, dated May 10, 2023

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<sup>2</sup> Unless otherwise noted, all references hereinafter to the State Gov't Article are to the 2021 Replacement Volume and 2022 Supplement of the Maryland Annotated Code.

Fund Ex. #3- Home Improvement Claim Form, dated January 24, 2023

Fund Ex. #4- Licensing History of the Respondent, dated August 2, 2023

Testimony

The Claimant did not attend the hearing and presented no testimony.

The Respondent did not testify or present other witnesses.

The Fund did not offer testimony.

**PROPOSED FINDINGS OF FACT**

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

1. On January 24, 2023, the Claimant filed a claim for reimbursement of \$18,900.00 from the Fund for losses allegedly incurred as a result of the acts or omissions of the Respondent.
2. On August 8, 2023, the Claimant failed to appear for the scheduled hearing.
3. The Claimant presented no evidence in support of his claim.

**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).

To successfully assert a claim against the Fund, a claimant must show "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 and provide sufficient evidence to support his claim. The Claimant therefore has not met the burden to prove that he suffered an actual loss 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**

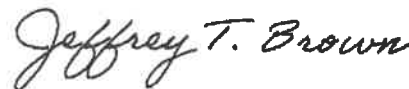
I **RECOMMEND** that the Maryland Home Improvement Commission:

**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.

August 9, 2023  
Date Decision Issued

  
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Jeffrey T. Brown  
Administrative Law Judge

JTB/dim  
#206714

PROPOSED ORDER

*WHEREFORE, this 3<sup>rd</sup> day of October, 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**