

**IN THE MATTER  
OF THE CLAIM OF  
RONALD L. MARCHITELLI**

**\* BEFORE YVETTE N. DIAMOND,  
\* AN ADMINISTRATIVE LAW JUDGE**

**AGAINST THE MARYLAND HOME  
IMPROVEMENT COMMISSION  
GUARANTY FUND**

**\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS**

**FOR THE VIOLATIONS OF  
DANIEL A. RUPPERT T/A  
RUPPERT FAMILY BUILDERS**

**\* OAH NO.: DLR-HIC-02-07-39750  
\* MHIC NO.: 07 (75) 436**

\* \* \* \* \*

**RECOMMENDED DECISION**

**STATEMENT OF THE CASE  
ISSUE**

**SUMMARY OF THE EVIDENCE**

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**STATEMENT OF THE CASE**

On January 25, 2007, Ronald L. Marchitelli ("Claimant") filed a claim against the Maryland Home Improvement Commission ("MHIC") Guaranty Fund ("Fund") for reimbursement of \$40,000.00 for actual losses suffered as a result of home improvement work performed by Daniel A. Ruppert t/a Ruppert Family Builders ("Respondent").

A hearing was convened on March 13, 2008, at the Office of Administrative Hearings ("OAH") in Wheaton, Maryland, before Yvette N. Diamond, Administrative Law Judge, ("ALJ"), on behalf of the MHIC. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2) (2004). Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation ("D.L.L.R."), represented the MHIC Fund. The Claimant was present and represented himself. The Respondent failed to appear after being properly notified of the hearing.

The OAH mailed notice of the hearing to the Respondent by certified and regular mail to the Respondent's two addresses of record on file with the MHIC. The notices advised the Respondent of the time, place and date of the hearing. Counsel for the MHIC verified that the Respondent's last known address on file with the MHIC was current as of the date of the hearing. Initially, both notices sent by certified mail were returned undelivered by the United States Postal Service. Another notice was sent by certified mail to the Respondent's address shown on his Maryland driving record, which was received and signed for by the Respondent on January 25, 2008. The notices sent by regular mail were not returned. Accordingly, the Respondent was deemed to have notice of the hearing. Therefore, the hearing proceeded in the Respondent's absence pursuant to Md. Code Ann., Bus. Reg. § 10-209 (2004) and Code of Maryland Regulations ("COMAR") 28.02.01.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2007); COMAR 09.01.03, 09.08.02, and 09.08.03; and COMAR 28.02.01.

### **ISSUE**

Is the Claimant precluded from recovering from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Fund submitted the following exhibits, which were admitted into evidence:

- |         |   |
|---------|---|
| Fund #1 | Notice of Hearing, dated January 17, 2008, mailed to Respondent at second address |
| Fund #2 | Notice of Hearing, dated January 2, 2008; Hearing Order, dated September 12, 2007 |

- Fund #3 Licensing information, dated February 26, 2008
- Fund #4 Affidavit of Thomas Marr IV, dated January 18, 2008; Respondent's driving record, dated January 15, 2008
- Fund #5 Transmittal, undated; Hearing Order, dated September 12, 2007 .
- Fund #6 Letter from MHIC to Respondent, dated February 26, 2007; Home Improvement Claim Form, dated January 25, 2007
- Fund #7 Notice of Hearing sent by certified mail to Respondent, received January 25, 2008
- Fund #8 MHIC Complaint Form, dated August 14, 2006
- Fund #9 Checks from Claimant to Respondent for work performed at listed property:
- |                   |             |                      |
|-------------------|-------------|----------------------|
| February 4, 2005  | \$5,000.00  | 1275 Sargent Street  |
| February 14, 2005 | \$10,000.00 | 1275 Sargent Street  |
| February 8, 2005  | \$10,000.00 | 1275 Sargent Street  |
| February 21, 2005 | \$10,000.00 | 1275 Sargent Street  |
| June 30, 2005     | \$10,000.00 | 1121 S. Carey Street |
| September 1, 2005 | \$9,000.00  | 1121 S. Carey Street |

The Claimant submitted the following exhibits, which were admitted into evidence:

- Claimant #1 Check for \$15,000.00 from Claimant to Respondent, dated February 28, 2005
- Claimant #2 Check for \$10,000.00 from Claimant to Respondent, dated March 7, 2005
- Claimant #3 Check for \$5,000.00 from Claimant to Respondent, dated March 15, 2005
- Claimant #4 Check for \$10,000.00 from Claimant to Respondent, dated March 17, 2005
- Claimant #5 Check for \$15,000.00 from Claimant to Respondent, dated March 23, 2005
- Claimant #6 Check for \$10,000.00 from Claimant to Respondent, dated March 31, 2005
- Claimant #7 Check for \$20,000.00 from Claimant to Respondent, dated April 8, 2005
- Claimant #8 Check for \$15,000.00 from Claimant to Respondent, dated April 26, 2005
- Claimant #9 Check for \$10,000.00 from Claimant to Respondent, dated June 20, 2005
- Claimant #10 Photographs (9) of property taken by Claimant in June 2005 after Respondent ceased work

Claimant #11 Not admitted.

No documents were submitted on behalf of the Respondent.

Testimony

The Claimant testified in his own behalf. No testimony was presented on behalf of the Fund or the Respondent.

**FINDINGS OF FACT**

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this proceeding, the Respondent was a licensed home improvement contractor operating under license number 01-65664. The Respondent's license expired on January 23, 2006.
2. The Claimant owns and resides at the property known as 12 Plum Grove Way in Gaithersburg, Maryland.
3. At all times relevant to the subject of this proceeding, the Claimant also owned the following three investment properties: 1275 Sargent Street, Baltimore, Maryland; 1121 S. Carey Street, Baltimore, Maryland; and 118 Monroe Street, Rockville, Maryland.
4. In early 2005, the Claimant entered into an oral contract with the Respondent to perform home improvement work at 1175 Sargent Street and 1121 S. Carey Street, for approximately \$95,000.00.
5. At the time of the contracts, and at all times relevant to the home improvement claim at issue in this case, the Claimant owned more than three properties in the State of Maryland.
6. In January 2007, when the Claimant filed his claim with the Fund, he continued

to own four properties.

7. The Claimant did not live in any of the properties that are the subject of his home improvement claim.

### DISCUSSION

Section 8-405(a) of the Business Regulation Article provides that an owner may recover compensation from the Guaranty Fund, "for an actual loss that results from an act or omission by a licensed contractor...." Actual loss means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement. Md. Code Ann., Bus. Reg. § 8-401 (2004). Section 8-405(f), however, specifically excludes certain claimants from being reimbursed by the Fund. It provides:

(f) Excluded claimants. –

- (2) An owner may make a claim against the Fund only if the owner:
- (i) resides in the home as to which the claim is made; or
  - (ii) does not own more than 3 residences or dwelling places.

Md. Code Ann., Bus. Reg. §8-405(f)(2).

The Claimant candidly admitted that he owned four residential properties from the time the contract for home improvement work was entered into through the time he made the claim against the Fund. The Claimant further acknowledged that the Sargent Street and Carey Street properties are not his primary residence. Consequently, under Business Regulation Article § 8-405(f)(2), the Claimant is clearly precluded from recovering an award from the Fund.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant is precluded from recovering from the Fund because he owns more than three dwelling places and because he does not reside in the property that is the subject of the claim.

Md. Code Ann., Bus. Reg. § 8-405(f)(2)(2004).

**PROPOSED ORDER**

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

**ORDER** that the claim filed by the Claimant be **denied and dismissed**, Md. Code Ann., Bus. Reg. §§ 8-405(f); 8-101(g)(1)(i) and (3)(v) (2004); and

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

June 9, 2008  
Date Decision Issued

  
\_\_\_\_\_  
Yvette N. Diamond  
Administrative Law Judge

YND/cmb  
#97789

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OF THE CLAIM OF  
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**FILE EXHIBIT LIST**

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- Claimant #11 Not admitted.

No documents were submitted on behalf of the Respondent.

PROPOSED ORDER

*WHEREFORE, this 29th day of July 2008, 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  
Panel B*

**MARYLAND HOME IMPROVEMENT COMMISSION**



**IN THE MATTER OF THE CLAIM OF  
RONALD L. MARCHITELLI**

v.

**DANIEL A. RUPPERT  
t/a RUPPERT FAMILY BUILDERS**

\*

\*

\*

**MARYLAND HOME  
IMPROVEMENT COMMISSION**

**MHIC CASE NO. 07 (75) 436**

\* \* \* \* \*

**FINAL ORDER**

**WHEREFORE, this 6<sup>th</sup> day of April, 2011, Panel B of the Maryland Home Improvement Commission ORDERS that:**

- 1) The Findings of Fact of the Administrative Law Judge are Affirmed.**
- 2) The Conclusions of Law of the Administrative Law Judge are Affirmed.**

**A) The Administrative Law Judge found that, at the time of the Claimant's contract with the Respondent, the Claimant owned four residential properties in Maryland. The Administrative Law Judge found that the Claimant owned and resided at the property known as 12 Plum Grove Way, Gaithersburg, MD, and that the Claimant also owned residential properties at 118 Monroe Street, Rockville, MD, 1275 Sargeant Street, Baltimore, MD, and 1121 S. Carey Street, Baltimore, MD. As a result, the Administrative Law Judge found that the Claimant's claim against the Home Improvement Guaranty Fund was barred under Business Regulation Article, Sec. 8-405(f)(2), Annotated Code of Maryland. After review of the record, and consideration of the exceptions filed by the Claimant, the Commission affirms the finding of the Administrative Law Judge.**

**B) The original complaint filed by the Claimant with the Commission (Fund Exhibit 8), on August 14, 2006, which was certified by the Claimant to be true and correct to the best of the Claimant's knowledge, information and belief, stated the following:**

**1) "I had an oral agreement with a Mr. Daniel A. Ruppert on 02/05/05 to construct two row homes located at 1275 Sargeant Street & 1125 South Carey Street in Baltimore Maryland." (emphasis added).**

**2) "Mr. Ruppert agreed to accept \$94,000 to complete the home on Sargeant St., and \$70,000 to complete the home on South Carey Street. A total of \$164,000 was paid to Mr. Ruppert by the end of June 2005 to complete the construction on both homes ... I terminated him in September 2005 for failure to manage both projects properly ..." (emphasis added).**

**(C) The Claimant testified, under oath, before the Administrative Law Judge, on March 13, 2008, as follows:**

**Q. Now, on your complaint you said that the last date that work was performed was in September of 2005. Is that on the Sargeant Street property, or was that the Carey Street property?**

**A. Actually – actually, he was working on the Carey Street property at that time. He left that place on Sargeant Street in June. There was no work done after June on the property.**

**(emphasis added). (Tr. at p. 71).**

**(D) In his exceptions, the Claimant argues that his deed to the property at 1121 S. Carey Street was not recorded until March 30, 2006 and, as a result, his Guaranty Fund claim is not barred under Business Regulation Article, Sec. 8-405(f)(2), Annotated Code of Maryland. Even if it is assumed that, for some reason, the deed was not recorded until March 30, 2006, the record contains clear and substantial evidence to support the finding that the Claimant, in fact, had an ownership interest in the property at 1121 S. Carey Street during the period of his transaction with the Respondent contractor**

in 2005. In his August 2006 certified written complaint, and in his March 2008 testimony under oath, the Claimant unambiguously stated that he entered into contracts with the Respondent in February 2005 to renovate both the Sargeant Street and S. Carey Street properties. The Claimant further stated that, by the end of June 2005, he had paid the Respondent \$70,000 to renovate the S. Carey Street property. It is implausible that the Claimant paid \$70,000 to renovate a property (1121 S. Carey Street) in which he did not have an ownership interest. The Home Improvement statute (Business Regulation Article, Sec. 8-101(k), Annotated Code of Maryland, defines an owner to include a person who contracts for a home improvement. The evidence in the record clearly establishes that, in February 2005, the Claimant contracted for home improvement work at 1121 S. Carey Street.

- 3) The Recommended Order of the Administrative Law Judge is Affirmed.
- 4) During the thirty (30) day period from the date of this Order, any party may file an appeal to Circuit Court.

**Andrew Snyder**  
Chair - Panel B  
Maryland Home Improvement Commission