

IN THE MATTER OF THE CLAIM
OF TERESA LAMAR,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF ANTHONY
STURGILL, T/A PREMIER PAINTING
& REMODELING,
RESPONDENT

* BEFORE LORRAINE E. FRASER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: DLR-HIC-02-18-13199
* MHIC No.: 16 (75) 1449
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PROPOSED DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

Sometime on or after August 10, 2017, Teresa Lamar (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$4,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Anthony Sturgill, trading as Premier Painting & Remodeling (Respondent).

I held a hearing on July 11, 2018 at the Talbot County Public Library in Easton, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented herself.

Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (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

I admitted the following exhibits on the Claimant's behalf:

- Claimant 1 Contract between the Claimant and the Respondent, 9/15/15
- Claimant 2 Emails between the Claimant and the Respondent, 9/8/15-3/17/16
- Claimant 3 Check from the Claimant to the Respondent in the amount of \$4,000.00, 9/18/15
- Claimant 4 Contract between the Claimant and Mauro & Sons Painting & Drywall, Inc., 7/9/16
- Claimant 5 Estimate from Cawley Enterprises, 8/25/15

The Respondent did not offer any documents into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund 1 Notice of Hearing, 5/4/18
- Fund 2 Notice of Hearing, 6/13/18
- Fund 3 Hearing Order, 4/20/18
- Fund 4 The Respondent's licensing history, 6/11/18
- Fund 5 Home Improvement Claim Form, 8/10/17
- Fund 6 Letter to the Respondent from the MHIC, 11/13/17
- Fund 7 Complaint Form, 6/21/16

Testimony

The Claimant testified.

The Respondent did not testify.

The Fund did not present any witness testimony.

PROPOSED FINDINGS OF FACT

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

1. From July 19, 2013 to July 19, 2015, the Respondent was a licensed home improvement contractor under MHIC license number 01-103973.
2. On September 15, 2015, the Claimant and the Respondent entered into a contract to paint the exterior of the house she owned in Easton, Maryland.
3. The original agreed-upon contract price was \$9,450.00.
4. On September 18, 2015, the Claimant paid the Respondent \$4,000.00.
5. The Respondent started scraping paint in September 2015 but did not complete the work specified in the contract.
6. The Respondent has not renewed or reinstated his MHIC license since July 19, 2015.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2015); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);¹ *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct 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. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Respondent was not a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent’s home improvement license expired on July 19, 2015 and he did not renew it after that time. The Respondent and the Claimant entered into the contract on September 15, 2015 and the Claimant paid the first payment to the Respondent on September 18, 2015. The Respondent started scraping paint in September 2015 but did not complete the work specified in the contract.

The Respondent performed an incomplete home improvement. However, he was unlicensed at the time. Thus, I find that the Claimant is not eligible for compensation from 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 (2015); COMAR 09.08.03.03B(2). Therefore, I conclude that the Claimant is not entitled to recover any amount from the Fund.

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

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.

Signature on File

October 2, 2018
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

LEF/dlm
#174814

PROPOSED ORDER

WHEREFORE, this 19th day of November, 2018, 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.

Jeffrey Ross

***Jeffrey Ross
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION