

IN THE MATTER OF THE CLAIM	* BEFORE WILLIAM SOMERVILLE,
OF FREDERICK RABIE,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ACTS OR	*
OMISSIONS ALLEGED AGAINST	*
ALI NEECON,	*
T/A HANDY HOME	*
IMPROVEMENTS,	* OAH No.: DLR-HIC-02-18-26912
RESPONDENT	* MHIC No.: 17 (90) 1276

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On December 14, 2017, Frederick Rabie (Claimant) filed a claim (Claim) for reimbursement from the Home Improvement Guaranty Fund (Fund) of the Maryland Home Improvement Commission (MHIC), alleging \$4,470.00 in actual losses suffered as the result of a home improvement contract with Ali Neecon, trading as Handy Home Improvements

(Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On August 22, 2018, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 6, 2018, the OAH issued a Notice of Hearing (Notice) to the Claimant and the Respondent via certified and first class mail at the parties' last addresses of record. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Notice stated that a hearing was scheduled for February 7, 2018, at 10:00 a.m., at the OAH in Kensington, Maryland, and that failure to attend the hearing might result in "a decision against you."

Although hearing Notices were sent to the Claimant and to the Respondent by both certified and first class mail, no Notices were returned. In addition, the OAH did not receive any requests for postponement from the Claimant before the date of the hearing.

On February 7, 2019, neither the Claimant nor anyone authorized to represent the Claimant appeared. The Respondent was present to represent himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), was present to represent the Fund.

An Administrative Law Judge can proceed with a hearing in a party's absence if the party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Claimant had received proper notice and, after waiting at least fifteen minutes, I convened the hearing as scheduled.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 09.01.03; COMAR 28.02.01.

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

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

No party offered exhibits.

Testimony

No witness testified.

PROPOSED FINDINGS OF FACT

I find the following facts² by a preponderance of the evidence:

1. On or about December 14, 2017, the Claimant filed with the MHIC a claim against the Fund for losses he alleged that he incurred as a result of the acts or omissions of the Respondent.
2. On December 6, 2018, the OAH sent notices of the hearing to the Claimant and the Respondent by U.S. Postal Service certified and first class mail. All Notices were sent to the parties' most recent addresses on record with the MHIC.
3. No notices were returned to the OAH.
4. No postponement was requested by the Claimant.
5. The Claimant failed to appear for the scheduled hearing on February 7, 2019.

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); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means

² These facts are merely procedural facts, and are not facts on the merits of the case.

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)).

To prevail on 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); *see also* COMAR 09.08.03.03B(2) (“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; he failed to provide evidence to support the claim. The Claimant therefore has not met his burdens of production and persuasion. He has not shown that he suffered an actual loss compensable by the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not shown by a preponderance of the evidence that he 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).

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.

March 29, 2019
Date Decision Issued

Signature on File

William J.D. Somerville III
Administrative Law Judge

WS/emh
178228

PROPOSED ORDER

WHEREFORE, this 3rd day of May, 2019, 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.

Michael Shilling

***Michael Shilling
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION