

<b>IN THE MATTER OF THE CLAIM</b>	<b>* BEFORE NANCY E. PAIGE,</b>
<b>OF BABLU DCOSTA,</b>	<b>* AN ADMINISTRATIVE LAW JUDGE</b>
<b>CLAIMANT</b>	<b>* OF THE MARYLAND OFFICE</b>
<b>AGAINST THE MARYLAND HOME</b>	<b>* OF ADMINISTRATIVE HEARINGS</b>
<b>IMPROVEMENT GUARANTY FUND</b>	<b>*</b>
<b>FOR THE ALLEGED ACTS OR</b>	<b>*</b>
<b>OMISSIONS OF PAUL BRADY, SR.,</b>	<b>*</b>
<b>T/A BDS DECKS &amp; FENCING CO.,</b>	<b>* OAH No.: DLR-HIC-02-17-25181</b>
<b>RESPONDENT</b>	<b>* MHIC No.: 17 (05) 145</b>

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 14, 2016, Bablu Dcosta (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$20,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Paul Brady, Sr., trading as BDS Decks & Fencing Co. (Respondent).

I held a hearing on November 6, 2017 at the Office of Administrative Hearings (OAH) Kensington, Maryland office. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Andrew J. Brouwer, Assistant Attorney General, Department of Labor, Licensing, and Regulation (Department), represented the Fund. After waiting fifteen minutes for

the Respondent or the Respondent's representative to appear, I proceeded with the hearing.

Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>1</sup>

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 (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- Cl. # 1. August 12, 2015 contract between Claimant and Respondent
- Cl. # 2. August 12, 2015 check from Claimant to Respondent
- Cl. # 3. June 18, 2015 through December 18, 2016 between Claimant and Respondent
- Cl. # 4. August 31, 2015 email from Brent Hutchinson to Claimant and Respondent with attachments

I admitted the following exhibits on behalf of the Fund:

- GF # 1. August 8, 2017 Hearing Order
- GF # 2. September 26, 2017 Notice of Hearing
- GF # 3. October 24, 2016 letter from Thomas Marr, MHIC Investigator, to Respondent
- GF # 4. October 31, 2017 Licensing History
- GF # 5. September 26, 2017 Notice of Hearing with attached return receipt signed by Linda Brady
- GF # 6. October 30, 2017 letter from Pamela Johnson, OAH Postponement Officer, to Respondent

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<sup>1</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on September 26, 2016, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable. On October 30, 2016, OAH received a request for postponement, which it denied the same day, in writing, because no documentation of the reason for the request was provided. 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 Respondent had received proper notice, and proceeded to hear the captioned matter.

## Testimony

The Claimant testified in his own behalf. No other witnesses testified.

### 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 under MHIC license number 4715710.
2. On August 12, 2015, the Claimant and the Respondent entered into a contract for the Respondent to construct an addition to the Claimant's home. The contract stated that work would be completed no later than November 15, 2015.
3. The original agreed-upon contract price was \$70,000.00.
4. On August 12, 2015, the Claimant paid the Respondent \$20,000.00.
5. On August 30, 2015, an architect retained by the Respondent submitted preliminary drawings of the proposed addition to the Respondent and the Claimant. The drawings were not used by the Claimant.
6. The Respondent never performed any work pursuant to the contract and has not returned the \$20,000.00.
7. The Claimant's actual loss is \$20,000.00.

### DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. 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);<sup>2</sup> *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.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. He abandoned the contract without performing any work. Although the Respondent retained an architect who submitted preliminary drawings, the drawings were not used by the Claimant.

I thus find that the Claimant is eligible for compensation from the Fund. I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney’s fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC’s regulations provide three formulas for measurement of a claimant’s actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

“If the contractor abandoned the contract without doing any work, the claimant’s actual loss shall be the amount which the claimant paid to the contractor under the contract.” COMAR 09.08.03.03B(3)(a).

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<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015). In this case, the contractor abandoned the contract without doing any work. Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$20,000.00, the amount actually paid to the Respondent. *Id.* § 8-405(e)(5); COMAR 09.08.03.03B(3)(a).

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015) ; COMAR 09.08.03.03B(3)(a).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>3</sup> and

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<sup>3</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

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

**Signature on File**

December 15, 2017  
Date Decision Issued

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Nancy E. Paige  
Administrative Law Judge

NEP/emh  
# 170730

**PROPOSED ORDER**

***WHEREFORE, this 2<sup>nd</sup> day of February, 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.***

***Andrew Snyder***

***Andrew Snyder  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**