

**IN THE MATTER OF THE CLAIM  
OF WILLIAM HOLT,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JACK WALKER, T/A  
HOME PRO ROOFING &  
REMODELING, LLC,  
RESPONDENT**

**\* BEFORE TARA K. LEHNER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-17-02476  
\* MHIC No.: 17 (05) 186  
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**PROPOSED DECISION<sup>1</sup>**

**STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On September 22, 2016, William Holt (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement

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<sup>1</sup> Code of Maryland Regulation (COMAR) 09.08.02.01B provides that “[a]ll contested case hearings delegated to the Office of Administrative Hearings shall be governed by COMAR 09.01.03.” COMAR 09.01.03.08 states:

- A. Upon completion of the hearing, the ALJ shall submit a proposed decision to the administrative unit.  
...
- C. The proposed decision shall comply with the requirements of the Administrative Procedure Act and COMAR 28.02.01.22, and shall include:
  - (1) Written findings of fact;
  - (2) Proposed conclusions of law; and
  - (3) A recommended order.

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of \$2,730.00 in alleged actual losses suffered as a result of a home improvement contract with Jack Walker (Respondent), trading as Home Pro Roofing & Remodeling, LLC (Home Pro).

I held a hearing on May 16, 2017, at the Largo Government Center, 9201 Basil Court, Room 102, Largo, Maryland 20774. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(a) (2015).<sup>2</sup> The Claimant appeared and represented himself. The Respondent did not appear for the hearing. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Fund did not send a party representative.

The contested case provisions of the Administrative Procedure Act, the MHIC procedural 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); Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01B, and 28.02.01.

### **ISSUES**

Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions of the Respondent, and if so, what amount may the Claimant receive from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the Fund:

- GF Ex. 1      MHIC Hearing Order, January 3, 2017
- GF Ex. 2      Notice of Hearing, February 3, 2017
- GF Ex. 3      Letter from the Respondent to David Finnerman, undated, with a letter from the MHIC to the Respondent, November 14, 2016, and mailing envelope, attached

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<sup>2</sup> All citations to the Business Regulation Article are to the 2015 volume.

- GF Ex. 4 District Court of Maryland Case Information report, undated
- GF Ex. 5 Mail to the Respondent returned to the MHIC as undeliverable, various dates
- GF Ex. 6 Letter from the MHIC to the Respondent, September 28, 2016, with Claimant's Claim Form, received by the MHIC, September 22, 2016, attached
- GF Ex. 7 MHIC Licensing Information for the Respondent and Home Pro, printed April 10, 2017
- GF Ex. 8 Affidavit of Kevin Niebuhr, April 20, 2017, with Respondent's Motor Vehicle Administration Driving Record attached

I admitted the following exhibits on behalf of the Claimant:

- Cl. Ex. 1 Claimant's Explanation, August 1, 2016
- Cl. Ex. 2 Contract between Claimant and Respondent, signed by Claimant March 22, 2016
- Cl. Ex. 3 Check from Claimant to Home Pro, March 23, 2016
- Cl. Ex. 4 MHIC Complaint Form, August 1, 2016
- Cl. Ex. 5 Photographs, undated
- Cl. Ex. 6 Invoice to Claimant from Roofworks, October 19, 2016

No exhibits were offered by the Respondent.

### Testimony

The Claimant testified on his own behalf. He did not call any other witnesses.

The Respondent was not present to testify or present witnesses.

The Fund did not present any witnesses.

**FINDINGS OF FACT**

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

1. At all times relevant to the subject matter of this hearing, the Respondent, who traded as Home Pro, was licensed as a home improvement contractor under MHIC license number 102337.
2. On January 12, 2016, the Respondent signed a contract offering to repair the Claimant's roof at the Claimant's home in Brentwood, Maryland, for \$8,190.00. On March 22, 2016, after speaking with the Respondent and confirming that the offer was still valid, the Claimant accepted the Respondent's offer and signed the contract (Contract).
3. On March 23, 2016, the Claimant paid Home Pro \$2,730.00. Home Pro cashed the check on March 29, 2016.
4. Neither the Respondent, nor anyone on behalf of Home Pro, completed any of the Contract work at the Claimant's home.
5. The Claimant called the phone number he had for Home Pro in mid-July 2016 to inquire about when the Contract work would begin. The voicemail was full and the Claimant could not leave a message.
6. On July 27, 2016, the Claimant went to the Respondent's office and the office was vacant. The Respondent did not leave a forwarding address with the leasing company.
7. In September 2016, Roofworks installed a roof at the Claimant's home
8. On September 22, 2016, the Claimant filed the Claim with the MHIC.
9. On September 28, 2016, the Fund notified the Respondent that the Claim had been filed against him by the Claimant.

10. On November 23, 2016, the Respondent wrote to the MHIC. His letter updated his address as 902 Eastham Court, T-4, Crofton, Maryland 21114 (MHIC Address).

11. On February 3, 2017, the OAH mailed a Notice of Hearing (Notice) by United States Postal Service (USPS) Certified Mail Return Receipt and by First Class Mail to the Respondent's MHIC Address. This Notice advised the Respondent that a hearing was scheduled for May 16, 2017, at 10:00 a.m., at the Largo Government Center.

12. The Certified Mail copy of the Notice to the Respondent was returned to the OAH by the USPS on March 6, 2017 as "Unclaimed, Unable to Forward." The First Class Mail copy of the Notice to the Respondent was not returned to the OAH by the USPS.

13. No party made a request to postpone the May 16, 2017 hearing.

14. The Claimant and his spouse are not: a spouse or other immediate relative of the Respondent; an employee, officer, or partner of the Respondent; or an immediate relative of an employee, officer, or partner of the Respondent.

15. The Claimant has not taken any action to recover monies for the Respondent's and/or Home Pro's failure to complete the Contract work, other than the instant Claim.

16. The property where the Contract work was to be performed is the only residential property owned by the Claimant in Maryland and it is his primary residence.

### **DISCUSSION**

#### **The Respondent's failure to appear**

As discussed in the Findings of Fact above, the OAH mailed the Notice regarding the date, time and location of this hearing to the Respondent to his MHIC Address of record via both First Class and Certified Mail. The Certified Mail copy was returned by the USPS as unclaimed. The First Class Mail Notice was not returned to the OAH by the USPS.

On May 16, 2017, at 10:00 a.m., I convened a hearing in this case at the Largo Government Center. By 10:20 a.m.; neither the Respondent, nor anyone claiming to represent the Respondent, appeared for the hearing. The OAH did not receive any request for postponement of the hearing.

The Respondent was properly notified of the date, time and location of this hearing. The Notice was mailed over three months before the scheduled hearing by both First Class and Certified Mail to the address the Respondent provided to the MHIC. Md. Code Ann., Bus. Reg. § 8-312(d); *see also* Md. Code Ann., Bus. Reg. § 8-407(a) (the hearing notice shall be sent at least ten days before the hearing by certified mail to the business address of the licensee on record with the MHIC). Despite proper notice being sent, the Respondent failed to appear for the hearing. As a result, I proceeded with the hearing in the Respondent's absence. COMAR 28.02.01.23A.

**Merits of the Claim**

A claimant bears the burden of proof, by a preponderance of the evidence, that the claimant is entitled to an award from the Fund. Md. Code Ann., Bus. Reg. § 8-407(e); COMAR 09.08.03.03A(3); Md. Code Ann., State Gov't § 10-217 (2014).

A claimant 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); *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."). 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. However, 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), and may not compensate a claimant for more than was paid to the original contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(5).<sup>3</sup> 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. The Respondent performed an incomplete home improvement when he failed to perform any of the Contract work despite receiving and cashing the Claimant's deposit check of \$2,730.00. The Claimant did his best to try to get the Respondent to meet his contractual obligations. He tried calling and he even attempted to visit the Respondent's office; however, the Respondent had vacated his office, leaving no forwarding address, and his voicemail was not permitting messages. Ultimately, the Claimant had to hire another roofer to replace his roof.

In accordance with COMAR 09.08.03.03B(3)(a), I determine that the Claimant has suffered an actual loss of \$2,730.00. *See also* Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a). The regulations states:

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>3</sup> A claimant must also prove that at all relevant times: (a) the owner owned fewer than three dwelling places or resides in the home as to which the claim is made; (b) the owner was not an employee, officer or partner of the contractor or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the owner did not unreasonably reject the contractor's good faith effort to resolve the claim; (e) there is no pending claim for the same loss in any court of competent jurisdiction and the owner did not recover for the actual loss from any source; and (f) the owner filed the claim with the MHIC within three years of the date the owner knew or with reasonable diligence should have known of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-401(g)(3), 8-405(d), (f), and (g); 8-408(b)(1) and (2). The Claimant provided uncontroverted evidence that he meets all of the above-enumerated requirements, and the Fund did not challenge any of the Claimant's evidence.

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). The Claimant's actual loss of \$2,730.00 is not limited by these provisions of law.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss as a result of the Respondent's acts and omissions, and that an appropriate award in this case is \$2,730.00. 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 \$2,730.00; 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 at least ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>4</sup> and

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

**Signature on File**

May 22, 2017  
Date Decision Issued

Tara K. Lehner  
Administrative Law Judge

TKL/sw  
#168133

<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 10<sup>th</sup> day of July, 2017, 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.***

***Sachchida Gupta***

***Sachchida Gupta  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**