

IN THE MATTER OF
THE CLAIM OF
DAVID LYNN,
CLAIMANT,
AGAINST THE
MARYLAND HOME IMPROVEMENT
COMMISSION GUARANTY FUND
FOR THE ALLEGED ACTS
OR OMISSIONS OF
ROBERT SPERO,
t/a MARYLAND POOLS, INC.,
RESPONDENT

* BEFORE LATONYA B. DARGAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DLR-HIC-02-16-37290
* MHIC No.: 17 (05) 330
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On October 11, 2016, David Lynn (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement in the amount of \$9,500.00 for an actual monetary loss allegedly suffered as the result of the acts or omissions of Robert Spero (Respondent), t/a Maryland Pools, Inc. (MPI).

On March 17, 2017, I conducted a hearing at the Maryland Office of Administrative Hearings (OAH). Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). Eric McLaughlin, Esquire, represented the Claimant, who was present. Andrew Brouwer, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund. The Respondent, who received notice of the hearing date, time, and location via certified mail,¹ failed to appear. After determining the Respondent received proper notice of the hearing, I proceeded in his absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the DLLR's hearing regulations, and the OAH's Rules of Procedure govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 09.01.03 and 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; and, if so,
2. What is the amount of the actual loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits for the Claimant:

Cl. Ex. 1: Contract, signed May 10, 2015

Cl. Ex. 2: Check for \$9,500.00, negotiated by Provident Bank of Maryland

I admitted the following exhibits for the Fund:

Fund Ex. 1: Transmittal from DLLR, with attached October 17, 2016 MHIC Hearing Order

Fund Ex. 2: OAH Notice of Hearing, issued December 29, 2016

¹ The certified mail copy of the Notice of Hearing was sent to the Respondent's address of record on December 29, 2016. The certified mail return receipt was signed by the Respondent or his representative and returned to the OAH on January 3, 2017.

Fund Ex. 3: The MHIC's Letter to the Respondent, September 16, 2016

Fund Ex. 4: The Respondent's MHIC Licensing history

No exhibits were offered for the Respondent.

Testimony

The Claimant testified on his own behalf. The Fund did not present any witnesses. No one testified for the Respondent.

PROPOSED FINDINGS OF FACT

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

1. At all relevant times, the Respondent was licensed by the MHIC as a home improvement contractor.
2. On May 10, 2015, the Claimant entered into a contract with the Respondent for the Respondent to construct a pool at the Claimant's primary residence (the Property).
3. The contract price was \$9,710.00. Under the contract, a deposit of \$9,500.00 was due at the time of signing, with the remaining balance to be paid upon completion of the job.
4. The Claimant wrote a check to the Respondent in the amount of \$9,500.00 on May 10, 2015; the check successfully cleared processing after being deposited by the Respondent.
5. At some point during May 2015 but after May 10, 2015, the Claimant received a call from the construction manager of MPI, who advised the work would begin on June 3, 2015. A short time later, the construction manager called back and advised the Claimant work would begin on June 5, 2015.
6. At some point prior to the proposed start date of June 5, 2015, someone from MPI contacted the Claimant and advised him the company was winding down and it would not commence the work on the project. The Claimant inquired about having the deposit

refunded to him. He was told to direct any questions to the general manager, which he did, but he did not receive a response.

7. The Claimant never received a refund from the Respondent for the amount of the deposit.
8. Neither the Respondent nor any other representative of MPI ever did any work on the Property.
9. The Claimant eventually contracted with Buddy's Pool and Spas, a MHIC-licensed contractor, to perform the work.

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);² *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.

² Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

The Respondent was a home improvement contractor licensed by MHIC on May 10, 2015, the date on which MPI and the Claimant entered into the contract. The contract was for work to be performed at the Claimant's primary residence. The evidence demonstrates the Claimant paid the deposit amount called for by the contract and, despite that payment, the Respondent never performed any work under the contract. According to the Claimant, who was not contradicted on this point, a representative from MPI contacted him sometime after June 5, 2015 and advised him the company was winding down its business. At the point in time the Claimant and the MPI representative had this conversation, no work had started at the Property. When the Claimant inquired about receiving a refund for the deposit, he was advised to contact the company's general manager, which he did to no avail. The Respondent, quite frankly, absconded with the Claimant's money. The Claimant sustained an actual monetary loss as a result of the Respondent's failure to perform under the home improvement contract.

Having found the Claimant eligible for an award from the Fund, I now turn to the question of the award's amount. MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). Specifically, with respect to the facts of this case, the regulations provide that "[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). The Claimant paid a \$9,500.00 deposit to the Respondent by check dated May 10, 2015. The check cleared processing by the Respondent's bank. (Cl. Ex. 2.) Accordingly, the Claimant is entitled to an award from the Fund in the amount of \$9,500.00, the amount actually paid to the Respondent. Md. Code Ann., Bus. Reg. § 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 in the amount of \$9,500.00 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 \$9,500.00;

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;³ and,

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

Signature on File

June 7, 2017
Date Decision Issued


Latonya B. Dargan
Administrative Law Judge

LBD/cmg
#168122

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

PROPOSED ORDER

WHEREFORE, this 10th 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION