

IN THE MATTER OF THE CLAIM  
OF JAMES RINTAMAKI,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF JOHN SWITALA,  
T/A BUILD IT RIGHT, LLC,  
RESPONDENT

\* BEFORE TRACEY JOHNS DELP,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-19-16801  
\* MHIC No.: 18 (90) 1279

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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 7, 2018, James Rintamaki (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$16,000.00 in actual losses allegedly suffered as a result of a home improvement contract with John Switala, trading as Build It Right, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015 & Supp. 2019).<sup>1</sup> On May 28, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

I held a hearing on August 12, 2019 at the Tawes State Office Building in Annapolis, Maryland. Bus. Reg. § 8-407(e). Kris King, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund. The Claimant represented himself. After waiting approximately 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>3</sup>

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. 2019)<sup>4</sup>; 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:

Clmt. Ex. 1 - Proposal, date of acceptance March 15, 2014; Contract, March 15, 2014; Exhibit A, undated; Exhibit B, undated; Exhibit C, undated; Exhibit D, March 15, 2014; Exhibit E, undated; Exhibit F, undated

Clmt. Ex. 2 - Claimant timeline, undated

Clmt. Ex. 3 - Claimant summary of problems, undated

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>3</sup> The OAH mailed a notice of the hearing to the Respondent at the address of record by regular and certified mail on June 21, 2019, COMAR 09.08.03.03A(2), and both were returned indicating that the time for forwarding to a P.O. Box had expired. On July 3, 2019, the OAH mailed a notice of the hearing to the Respondent's P.O. Box by regular and certified mail. The certified mail was returned to the OAH as unclaimed. The regular mail was not returned. 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.

<sup>4</sup> Unless otherwise noted, all references to the State Government Article herein cite the 2014 Replacement Volume of the Maryland Annotated Code.

- Clmt. Ex. 4 - Emails from Claimant to Respondent, July 2, 2015 - September 9, 2015
- Clmt. Exs. 5a - e - Photographs of basement and bathroom, undated
- Clmt. Ex. 6 - MUS Enterprises contract, May 22, 2018
- Clmt. Ex. 7 - Dragon Scale Flooring Statement of Work, July 13, 2018
- Clmt. Ex. 8 - Celestial Handyman Services Estimate, May 24, 2018
- Clmt. Ex. 9 - Beltway Builders, Inc. Agreement, June 26, 2018
- Clmt. Ex. 10 - Scandia Construction Estimate, June 4, 2018
- Clmt. Ex. 11 - Payment spreadsheet, undated
- Clmt. Exs. 12a - f - Copies of Bank of America checks to the Respondent, April 19, 2014 - November 17, 2014

The Respondent was not present and, therefore, did not offer any documents for admission into evidence.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - July 3, 2019 OAH undeliverable mail notice and certified mail to Respondent returned to OAH on July 3, 2019; July 3, 2019 OAH undeliverable mail notice and regular mail to Respondent returned to OAH on July 3, 2019; August 9, 2019 OAH undeliverable mail notice and certified mail to Respondent returned to OAH on August 9, 2019
- Fund Ex. 2 - Hearing order, May 22, 2019
- Fund Ex. 3 - Respondent's MHIC Licensure Information, printed August 9, 2019
- Fund Ex. 4 - Home Improvement Claim Form, received August 7, 2018
- Fund Ex. 5 - Letter from MHIC to Respondent, August 15, 2018

#### Testimony

The Claimant testified.

The Respondent was not present and, therefore, did not present the testimony of any witnesses.

The Fund did not present the testimony of any witnesses.

**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 numbers 01- 87981 and 05-126929. (Fund Ex. 3.)

2. The Claimant is not related to the Respondent or any of his employees, by blood or marriage.

3. At all times relevant, the Claimant was the owner of a home in Linthicum, Maryland.

4. On or about March 15, 2014, the Claimant contracted with the Respondent to construct a second story addition to his home and perform first floor and basement renovations. (Contract). The Claimant produced cancelled checks payable to the Respondent totaling \$77,444.00.

5. The Respondent's progress under the Contract slowed, and then stopped entirely.

6. The Claimant hired Glen DeLorenzo of Delco Contracting to complete Contract work.

7. There is no evidence that Glen DeLorenzo or Delco Contracting is licensed by the MHIC.

## DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. §8-407(e)(1); State Gov't §10-217; 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.” 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. For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The Claimant filed a Home Improvement Claim Form with the MHIC on August 7, 2018 seeking \$16,000.00 as a result of alleged problems with his home renovation project with the Respondent. On this claim form, the Claimant purported that he paid the Respondent \$132,081.50, but that the Respondent’s work had absolutely no value. (Fund Ex. 4.) However, in his hearing testimony, the Claimant stated that the Respondent performed work under the Contract, and only three issues remained outstanding: a bathroom which was never renovated, basement window replacement, and an un-level shower floor. Also inconsistent with his claim form, the Claimant testified that he paid the Respondent \$167,867.47. He produced cancelled checks payable to the Respondent totaling only \$77,444.00. (Clmt. Ex. 12.) On cross-

examination, when asked why he did not bring copies of all alleged payments rendered to the Respondent, the Claimant said he must have left them at home.

The Claimant testified regarding several estimates he received for work which he alleged remained outstanding under the Contract. The estimates are from MUS Enterprises (window replacement estimate), Beltway Builders, Inc. (window replacement and shower repair), Dragon Scale Flooring (shower repair), Celestial Handyman Services<sup>5</sup> (bathroom renovation and window replacement), and Scandia Construction (bathroom renovation). (Clmt. Exs. 6 - 10.) The Claimant testified to his belief that all of these contractors are MHIC licensed. During cross-examination, the Claimant was asked which of these contractors he would choose to complete the remaining Contract work. The Claimant testified the contractors who could perform more than one area of work would be of greater convenience to him. However, later in his testimony, the Claimant conceded that he already contracted with Glen DeLorenzo of Delco Contracting to complete the basement window replacement and bathroom projects. Curiously, the Claimant never offered Mr. DeLorenzo or Delco Contracting's contracts as exhibits. He testified that he was uncertain whether Glen DeLorenzo and Delco Contracting are MHIC licensed. The Fund's counsel, Mr. King, asked the Claimant to perform MHIC licensing searches for both Glen DeLorenzo and Delco Contracting during cross-examination. Using a cell phone, and with Mr. King's assistance, the Claimant accessed the Home Improvement Public Query website and performed searches for Glen DeLorenzo and Delco Contracting. No names matched his queries.

The Claimant did not provide credible testimony. Given the inconsistencies on his claim form and in his hearing testimony, I do not find his \$167,867.47 payment summary (Clmt. Ex. 11) to be reliable evidence of payment. The Claimant produced cancelled checks totaling \$77,444.00, for a Contract valued at \$132,081.50. (Clmt. Ex. 1.)

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<sup>5</sup> This estimate also contains information pertaining to a front porch project which was not part of the Contract.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant testified and produced photographs of three outstanding project areas from the Contract: a bathroom which was never renovated, basement window replacement, and an un-level shower floor. However, even if I find these three areas constituted unworkmanlike, inadequate or incomplete home improvement, the Claimant cannot prevail. The Claimant only proved through reliable evidence that he paid \$77,444.00 towards a Contract with the Respondent that totaled \$132,081.50. Thus, the Claimant failed to meet his burden to establish an actual loss.<sup>6</sup>

Furthermore, as a matter of public policy, payments to MHIC-unlicensed contractors like Glen DeLorenzo and Delco Contracting are not compensable by the Fund. The Claimant admitted at the hearing that he was unaware if Glen DeLorenzo or Delco Contracting was licensed by the MHIC and he did not offer as evidence any proposals, estimates, or contracts from Mr. DeLorenzo or Delco Contracting. During cross-examination, the Claimant performed a search of the Home Improvement Public Query website for Glen DeLorenzo and Delco

<sup>6</sup> Pursuant to COMAR 09.08.03.03B(3)(c),

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

The calculations when applying this formula are as follows:

Amount paid to Respondent:	\$77,444.00
Amount paid to other contractors to repair poor work done by Respondent and complete the Contract	+ 0
	= \$77,444.00
Original Contract price	- \$132,081.50
<b>Claimant's Actual Loss under the Contract</b>	<b>= 0</b>

Contracting which produced no results. Therefore, I find that the Claimant failed to establish that Glen DeLorenzo and Delco Contracting were MHIC licensed contractors when he paid them to finish the Contract.

Legislative policy is designed to encourage contractors to be licensed and to discourage homeowners from using unlicensed contractors. The legislative policy is reflected in a number of ways: A homeowner may recover compensation from the Fund only for an actual loss resulting from an act or omission by a *licensed* contractor. Bus. Reg. §§ 8-401, 8-405(a). If the Respondent had not been licensed by the MHIC, the Claimant would have been barred from asserting its claim against the Fund. Moreover, if the Respondent had been unlicensed when he performed the work, he would have committed a misdemeanor crime and been subject to a fine of \$1,000.00 or imprisonment not exceeding six months, or both, for a first offense. *Id.* § 8-601 (Supp. 2019).

Additionally, Maryland appellate decisions offer some guidance on the treatment of unlicensed home improvement contractors. Because the Maryland home improvement law was enacted for the protection of the public and mandates a licensing system to encourage contractors to be licensed and to discourage home owners from using unlicensed home improvement contractors, the courts, as a matter of public policy, will not enforce contracts made by or with unlicensed contractors. Long ago, in *Goldsmith v. Mfrs. Liability Ins. Co. of N.J.*, 132 Md. 283, 286 (1918), the Court of Appeals held:

[A] contract entered into by an unlicensed person, engaged in a trade, business, or profession required to be licensed, and made in the course of such trade, business, or profession, cannot be enforced by such person, if it appears that the license required by the statute is, in whole or in part, for the protection of the public, and to prevent improper persons from engaging in such trade, business, or profession.



*See also Balt. St. Builders v. Stewart*, 186 Md. App. 684, 706 (2009) (unlicensed contractor cannot enforce a home improvement contract with a homeowner); *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118, 134 (2003) (homeowner can repudiate a contract made with a consultant if the consultant is performing a home improvement without a license). The purpose of the Fund is to compensate a homeowner for an actual loss resulting from an act or omission of a licensed home improvement contractor. Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(2). The licensing of a contractor is an essential element, since as a matter of public policy, home improvement contracts executed by unlicensed individuals or entities are considered unlawful. MHIC dismisses claims filed against the Fund regarding acts or omissions of unlicensed contractors as legally insufficient.

When an award is granted, the Fund is entitled to reimbursement from the original contractor in the amount paid to a claimant, plus interest. Bus. Reg. § 8-410(a)(1)(iii). MHIC is also permitted to suspend a contractor's license until the Fund is reimbursed. *Id.* § 8-411(a). If the Fund were to grant reimbursement for the work performed by unlicensed contractors, it would be rewarding a claimant who was a party to an illegal contract with an unlicensed contractor at the expense of a licensed contractor who, although deficient, observed the licensing requirements of the State. It would be improper for the Fund to act against public policy and condone a contract undertaken by a claimant with a party that the Fund considers in violation of the law.

For all of the above reasons, 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 & Supp. 2019).

**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 21, 2019  
Date Decision Issued

Tracey Johns Delp  
Administrative Law Judge

TJD/sw  
#182468

**PROPOSED ORDER**

***WHEREFORE, this 18<sup>th</sup> day of November, 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.***

***Lawrence Helminiak***

***Lawrence Helminiak***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

SUBJECT: [Illegible]

[Illegible text follows]

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