

**IN THE MATTER OF THE CLAIM
DANIEL DUGAN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND,
FOR THE ALLEGED ACTS OR
OMISSIONS OF
BRETT SCHOOLNICK,
T/A THE BAYWOOD DESIGN/BUILD
GROUP, INC.,
RESPONDENT**

*** BEFORE LATONYA B. DARGAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: DLR-HIC-02-18-31028
* MHIC No.: 18 (05) 523**

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PROPOSED DEFAULT ORDER

On December 8, 2017, Daniel Dugan (Claimant) filed a claim (Claim) for reimbursement from the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for actual monetary losses allegedly suffered as the result of the inadequate, incomplete, or unworkmanlike conduct of Brett Schoolnick, t/a The Baywood Design/Build Group, Inc. (Respondent), in the performance of a home improvement contract. Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On September 25, 2018, the MHIC ordered the Claimant should have a hearing to demonstrate his eligibility for an award from the Fund. On October 1, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 19, 2018, the OAH issued a Notice of Hearing (Notice) to the parties at their addresses of record, via first class mail and certified mail-return receipt requested.¹ Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Notice advised the parties a hearing was scheduled for Thursday, January 17, 2019 at 9:30 a.m. at the OAH in Hunt Valley, Maryland. The Notice further advised the parties that failure to appear for the hearing could result in a dismissal of the case or an adverse finding against the party failing to appear. None of the parties requested a postponement of the hearing. The Respondent's certified-mail copy of the Notice was returned to the OAH as not deliverable "as addressed" by the United States Postal Service (USPS).² The Claimant's certified-mail copy of the Notice was returned to the OAH by the USPS as "unclaimed." The first class mail copies of the Claimant's and Respondent's notices were not returned to the OAH by the USPS.

On January 17, 2019, I convened the hearing as scheduled. Md. Code Ann., Bus. Reg. § 8-407 (2015). 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) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR-09.08.03.03A(3). Neither the Claimant nor the Respondent nor anyone authorized to represent them appeared. Nicholas Sokolow, Assistant Attorney General, Department of Labor, Licensing and Regulation, appeared on behalf of the Fund.³ After waiting more than thirty minutes, during which time no one appeared on behalf of either the Claimant or the Respondent, the Fund moved for a Default Order as the Claimant failed

¹ A copy of the Notice was also sent to Barton J. Sidle, Esquire, who is listed in the records of the MHIC and the OAH as counsel for the Respondent. At the hearing, the representative on behalf of the Fund, Assistant Attorney General Nicholas Sokolow, advised me that Mr. Sidle contacted the MHIC and the Fund at some point prior to the scheduled hearing date to advise that he no longer represented the Respondent.

² A certified, return receipt requested-copy of the Notice was sent to Mr. Sidle at his business address and he signed the return receipt on November 23, 2018.

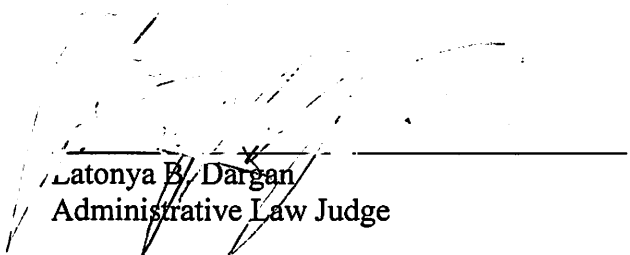
³ As a preliminary matter, the Fund offered four exhibits. As I will propose that the Fund's Motion for Default Order be granted, I have not considered the exhibits, but to preserve the record, they have been entered into the case file.

to appear after proper notice was sent to the Claimant's address of record. The Fund further moved that pursuant to the Default Order, no award from the Fund be ordered, as the Claimant did not sustain his burden of proof because he did not appear to present evidence. COMAR 28.02.01.23A.⁴ I shall grant the Fund's motion.

I therefore **PROPOSE** that the MHIC issue a **DEFAULT ORDER** as follows:

1. The Claimant is in default; and
2. All further proceedings in the captioned matter are **TERMINATED**, and a disposition of **DISMISSAL** is entered in this case, pursuant to COMAR 28.02.01.23A; and in accordance with COMAR 09.01.03.09 and 28.02.01.23C, the Claimant or his representative may file written exceptions with MHIC within twenty (20) days from the postmark date of this Proposed Default Order.

January 28, 2019
Date Decision Mailed



Latonya B. Dargan
Administrative Law Judge

LBD/cmj
#177958

⁴ "If, after receiving proper notice, a party fails to attend or participate in a . . . hearing, . . . the judge . . . may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party."

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

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

SUBJECT : [Illegible]

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[Illegible signature or name]

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