

IN THE MATTER OF THE CLAIM

OF THOMAS DELA GARZA,

CLAIMANT

AGAINST THE MARYLAND HOME

IMPROVEMENT GUARANTY FUND

FOR THE ALLEGED ACTS OR

OMISSIONS OF BRUCE CHANDLER

T/A CHANDLER REMODELING,

INC.,

RESPONDENT

\* BEFORE SUSAN H. ANDERSON,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

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\* OAH No.: DLR-HIC-02-19-16805

\* MHIC No.: 18 (75) 692

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**PROPOSED DECISION**

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PROPOSED CONCLUSIONS OF LAW  
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**STATEMENT OF THE CASE**

On February 8, 2018, Thomas Dela Garza (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$10,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Bruce Chandler t/a Chandler Remodeling, Inc. (Respondent).<sup>1</sup> Md. Code Ann., Bus. Reg.

<sup>1</sup> Mr. Chandler died on May 17, 2017, and was deceased at the time his company entered into the home improvement contract with the Claimant. However, his business continued to operate under his MHIC License after his death until shutting down sometime in or around October 2017.

§§ 8-401 through 8-411 (2015). On May 22, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on August 8, 2019 at The County Office Building in Largo, Maryland. Bus. Reg. § 8-407(e). Shara Hendler, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund. The Claimant represented himself. After waiting fifteen minutes for the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.

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. 2018); 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

Clmt. Ex. 1 - Contract, dated September 19, 2017

Clmt. Ex. 2 - Chase Sapphire Credit Card Statement, dated October 10, 2017

Clmt. Ex. 3 - Letter from JBR Remodeling To Whom It May Concern, undated

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

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, May 22, 2019

Fund Ex. 2 - Notice of Hearing, July 9, 2019; Notice of Hearing, June 21, 2019

Fund Ex. 3 - Home Improvement Claim Form, received February 8, 2018, with attached letter from MHIC to Respondent, dated February 14, 2018.

Fund Ex. 4 - Licensing History for Respondent, printed July 3, 2019

Fund Ex. 5 - Printout from the Baltimore County Office of the Register of Wills, printed July 3, 2019

Testimony

The Claimant testified on his own behalf and presented no other witnesses. There were no other witnesses called to testify at the hearing.

**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 4901836.
2. On September 19, 2017, the Claimant and the Respondent entered into a contract to remodel the Claimant's kitchen (Contract).
3. The original agreed-upon Contract price was \$42,762.00.
4. On September 21, 2017, the Claimant paid the Respondent a \$10,000.00 deposit via credit card.
5. Thereafter, the Claimant never heard from the Respondent again. The Claimant repeatedly called the Respondent's offices but no one ever returned his calls. Finally, sometime in or around the second week of November 2017, the Claimant drove to the Respondent's offices

in Cockeysville, Maryland. He discovered that the Respondent had gone out of business and JBR Remodeling occupied the space formerly occupied by the Respondent.

6. The Claimant learned that the Respondent had died and the Respondent's wife had shut down the business and filed for bankruptcy.

7. The Claimant is not related to the Respondent, is not an employee or business associate of the Respondent, and is not related to an employee or business associate of the Respondent.

8. The Claimant owns and resides in the home where the kitchen remodel was to take place; he does not own any other homes in Maryland.

9. The Claimant has no other actions pending against the Respondent and has received no compensation of any kind.

## DISCUSSION

### **I. Notice to the Respondent**

In transmitting this matter to the OAH, the MHIC provided the Respondent's home address on Cooper Road in Phoenix, Maryland. Accordingly, on June 21, 2019, the OAH sent the Respondent a Notice of Hearing (Notice) to the Cooper Road address, advising that the hearing was scheduled for 10:00 a.m. on August 8, 2019, at The County Office Building in Largo, Maryland. The Notice was sent to the Respondent by both first-class mail and certified mail. The certified mailing was returned to the OAH marked, "Return to Sender; Not Deliverable as Addressed; Unable to Forward"; the first-class mailing was not returned to the OAH.

On July 9, 2019, Shara Hendler, Assistant Attorney General for the Department, notified the OAH that Mr. Chandler was deceased and requested that all notices be sent to the attorney of

record for the estate, Edwin G. Fee, Jr. On July 9, 2019, the OAH sent notices via first class and certified mail to Mr. Fee. Someone in Mr. Fee's office signed for the certified mailing on July 9, 2019.

The purpose of the notice requirement is to provide a measure of due process. As the Respondent is deceased and MHIC provided notice to the attorney of record for the Respondent's estate, the requirements of due process were satisfied and the hearing proceeded. *Maryland State Bd. of Nursing v. Sesay*, 224 Md. App. 432 (2015).

## II. Merits of the Case

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "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 statutes governing the Fund define "actual loss" as "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.

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). "[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)).

For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant testified persuasively that the Respondent performed no work under the Contract. The Claimant's unrefuted testimony is that after the Claimant signed the Contract and gave the Respondent's representative a down payment of \$10,000.00, neither the Respondent nor anyone from his company returned to perform any of the work outlined in the Contract. The Claimant explained that he was unable to reach the Respondent despite calling at least three times per week which eventually prompted him to drive to the Respondent's offices in Cockeysville, Maryland to try and speak to someone in person. The Claimant described his surprise when he learned that the Respondent was no longer in business and another contractor had taken over his office space. The new contractor advised the Claimant that the Respondent had died and the Respondent's wife had fired all of the employees and shut down the business. As the Claimant presented compelling, uncontested evidence showing that the Respondent performed no work under the Contract and there are no statutory impediments to the Claim, Md. Code. Ann., Bus. Reg. §§8-405(c), (d), (f), and (g), 8-408(b)(1), I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. In this case, the Respondent abandoned the Contract without doing any work. The attorney for the Fund agreed and indicated in her closing argument the evidence shows the Respondent abandoned the Contract without justification.

Accordingly, the following formula appropriately measures the Claimant's actual loss: "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). Using this formula, the actual loss sustained by the Claimant was the full amount he paid to the Respondent, \$10,000.00.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is the actual amount paid to the Respondent which is less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$10,000.00.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$10,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund.

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; 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

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

**Signature on File**

August 12, 2019  
Date Decision Issued

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Susan H. Anderson  
Administrative Law Judge

SHA/da  
#181481

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



**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> day of October, 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**

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