

IN THE MATTER OF THE CLAIM OF \* BEFORE DAVID HOFSTETTER,  
THOMAS CHEN \* AN ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND HOME \* OF THE MARYLAND OFFICE  
IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS  
FOR THE ALLEGED ACTS OR \* OAH NO.: DLR-HIC-02-09-09069  
OMISSIONS OF ILDIKO DOBOS, \* MHIC NO.: 08 (90) 412  
T/A GALAXY CONTRACTING, LLC \*

\* \* \* \* \*

**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On December 3, 2009, Thomas Chen (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of actual losses allegedly suffered as a result of a home improvement contract with Ildiko Dobos, t/a Galaxy Contracting, LLC (Respondent).

I held a hearing on August 9, 2010 at the Office of Administrative Hearings (OAH), 2730 University Boulevard, West, Wheaton, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Peter Martin, Assistant Attorney General, Department of Labor, Licensing and

Regulation, represented the Fund. The Claimant represented himself. The Respondent failed to appear after due notice to his address of record.<sup>1</sup>

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010), Code of Maryland Regulations (COMAR) 09.01.03.01–09.01.03.10; 09.08.02.01–09.08.01.02; and 28.02.01.01–28.02.01.27.

### **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:

- Cl. #1. Contract, dated March 6, 2007
- Cl. #2. Spreadsheet of payments and activity, various dates
- Cl. #3. Cancelled check, dated March 13, 2007
- Cl. #4. Cancelled check, dated April 20, 2007
- Cl. #5. Cancelled check, dated April 27, 2007
- Cl. #6. Cancelled check, dated April 27, 2007

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<sup>1</sup> A threshold question in this case is whether the Respondent received timely notice of the hearing. If the Respondent was properly notified of the hearing, the case could proceed in his absence. A Notice of Hearing was mailed to the Respondent by certified and regular mail on May 21, 2010, to the address that the MHIC had on record for the Respondent. Both the certified and regular mailings were returned as "not deliverable as addressed." (Fund. Ex. 1). The MHIC made a diligent effort to discover any other addresses for the Respondent, but was unable to find any. (Fund Ex. 3.) I therefore conclude that due notice was sent to the Respondent. See Md. Code Ann., Bus. Reg. §§ 8-312(h) (2010).

- Cl. #7. Cancelled check, dated June 1, 2007
- Cl. #8. Cancelled check, dated June 22, 2007
- Cl. #9. Cancelled check, dated June 22, 2007
- Cl. #10. Cancelled check, dated July 13, 2007
- Cl. #11. Cancelled check, dated July 13, 2007
- Cl. #12. List of payments, various dates
- Cl. #13. Cancelled checks to contractors, various dates

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

- GF #1. Notice of Hearing, dated May 21, 2010, with envelopes and certified mail receipts attached
- GF #2. Licensing History, dated July 19, 2010
- GF #3. Affidavit of Jeffrey Tuer
- GF #4. Letter from MHIC to the Respondent, dated January 23, 2008
- GF #5. Letter from MHIC to "Whom It May Concern," dated August 2, 2010
- GF #6. Letter from MHIC to "Whom It May Concern," dated August 9, 2010
- GF #7. Letter from MHIC to "Whom It May Concern," dated August 2, 2010
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- GF #10. Letter from MHIC to "Whom It May Concern," dated August 2, 2010

#### Testimony

The Claimant testified on his own behalf.

The Respondent failed to appear for the hearing and no witnesses testified on his behalf.

The Fund did not call any witnesses.

## 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 home improvement contractor licensed by the MHIC.
2. On March 6, 2007, the Claimant and the Respondent entered into a contract (Contract) to renovate and construct a large addition to the Respondent's home at 10807 Burbank Drive, Potomac, Maryland.
3. The agreed upon contract price was \$385,000.00.
4. On March 13, 2007, the Claimant paid the Respondent an initial installment of \$38,500.00 under the Contract.
5. In early April 2007, the Respondent began work by demolishing the exterior of the existing house and pouring a foundation.
6. Work continued sporadically in April and May 2007, and in June 2007, the Respondent began framing work.
7. Because the house would be uninhabitable while the construction was ongoing, the Claimant and his wife moved into an apartment in or around March 2007.
8. On two consecutive days in mid-July 2007, the Claimant went to his home and noted that there were no workers present and no sign of recent work.
9. In mid-July 2007, after discovering that no work was taking place at his home, the Claimant called the Respondent several times and left messages for him. The Respondent did not return any of the calls.
10. Shortly thereafter, the Claimant drove to the Respondent's home in Alexandria, Virginia, where the Respondent's wife told him that the Respondent was out of town.

11. The Respondent called the Claimant around the end of July 2007 and told him that the Respondent's mother had been in an accident and that he had been caring for her, but that he would start work again soon.

12. When no work was performed after this visit, the Claimant went back to the Respondent's house on two occasions in early August 2010 and was told by the Respondent's daughter and wife that the Respondent had left the country and would not be coming back.

13. The Respondent performed no work after early or mid-July 2007.

14. Between the time the Contract was signed and mid-July 2007, the Claimant and the Respondent entered into verbal agreements for three change orders, including a change order for converting a crawl space into a basement. The total amount of the three verbal change orders was \$47,140.00.

15. The Respondent repeatedly requested payments at a rate beyond that specified in the Contract, and the Claimant paid the Respondent the amounts requested.

16. The Claimant paid the Respondent a total of \$326,142.00.

17. After the Respondent abandoned the work, the Claimant hired numerous contractors to complete the work described in the Contract.

18. The Respondent paid the contractors hired to complete the work a total of \$209,287.00.

19. The Claimant's actual loss is \$107,289.00.

### **DISCUSSION**

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) (2010). *See*

also COMAR 09.08.03.03B(2). 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 (2010). For the following reasons, I find that the Claimant is eligible for compensation from the Fund.

First, the Respondent was a licensed home improvement contractor at the time the Claimant secured his services for his residence. (Fund Ex. 2.) Second, the Respondent’s work at the residence was incomplete, as he simply abandoned the job after performing demolition and some foundation and framing work. (Claimant Exs. 2 and 12; Testimony of Claimant.) Despite the Claimant’s repeated efforts to contact the Respondent and persuade him to finish the job, the Respondent walked away from the project (apparently leaving the country, as well) and did not refund any monies to the Claimant.

Following the Respondent’s abandonment of the job, the Claimant contracted with numerous other construction and home improvement contractors to complete the work. (Claimant Ex. 12 ; Testimony of Claimant.) 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). Although certain of the expenses claimed by the Claimant are not allowable (for example, attorney’s fees), even without such items, the Claimant paid in excess of \$200,000.00 to finish the work described in the Contract. (Claimant Ex. 12; Testimony of the Claimant.)

As I find that the Claimant is eligible for compensation from the Fund, I now turn to the amount of the award, if any. MHIC’s regulations offer three formulas for measurement of a claimant’s actual loss. COMAR 09.08.03.03B(3). One of those formulas, as follows, offers an appropriate measurement in this case:

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.

COMAR 09.08.03.03B(3)(c).

Using the formula set forth in COMAR 09.08.03.03B(3)(c), I calculate the Claimant's actual loss as follows:

Amount Paid to the Respondent <sup>2</sup>	\$326,142.00
Amount Paid to Correct and Complete Work	<u>+\$209,287.00</u>
	\$539,429.00
Amount of Original Contract, plus change orders	<u>-\$432,140.00</u>
<b>Amount of Loss</b>	<b>\$107,289.00</b>

Based on the above calculations, the Claimant's actual loss is in excess of \$20,000.00.

The statute limits Fund recovery to \$20,000.00 for the acts or omissions of one contractor and, therefore, that is the amount the Claimant is entitled to receive from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (2010).

### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant has sustained an actual loss in excess of \$20,000.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010). I further conclude that the maximum amount which a claimant can receive for a claim against the Fund for the acts or omissions of one contractor is \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2010). The Claimant, therefore, is entitled to reimbursement from the Fund in the amount of \$20,000.00.

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<sup>2</sup> This figure includes amounts paid for various change orders.

**RECOMMENDED ORDER**

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

**ORDER** that the Claimant be awarded \$20,000.00 from the Maryland Home Improvement Guaranty Fund; and

**ORDER** that the Respondent be 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 Commission.

Md. Code Ann., Bus. Reg. § 8-411 (2010); and

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

October 27, 2010  
Date Decision Mailed

  
\_\_\_\_\_  
David Hofstetter  
Administrative Law Judge

DH/rls  
# 117637



IN THE MATTER OF THE CLAIM OF \* BEFORE DAVID HOFSTETTER,  
THOMAS CHEN \* AN ADMINISTRATIVE LAW JUDGE  
AGAINST THE MARYLAND HOME \* OF THE MARYLAND OFFICE  
IMPROVEMENT GUARANTY FUND \* OF ADMINISTRATIVE HEARINGS  
FOR THE ALLEGED ACTS OR \* OAH NO.: DLR-HIC-02-09-09069  
OMISSIONS OF ILDIKO DOBOS, \* MHIC NO.: 08 (90) 412  
T/A GALAXY CONTRACTING, LLC \*

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**FILE EXHIBIT LIST**

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PROPOSED ORDER

*WHEREFORE, this 6th day of December 2010, 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**