IN THE MATTER OF	*	**MARYLAND HOME**
THE GUARANTY FUND CLAIM OF		**IMPROVEMENT COMMISSION**
KATHERINE NAKAJIMA	*	
AGAINST		
ALEXANDER BARABASH	*	**CASE NO. 1234-2013**
t/a WELSH CONSTRUCTION		
REMODELING, LLC	*	

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STATEMENT OF THE CASE

The above captioned matter was heard on November 21, 2013 by the Maryland Home Improvement Commission ("Commission"). This matter was scheduled for a hearing as a result of a claim filed with the Maryland Home Improvement Guaranty Fund ("Guaranty Fund") by Katherine Nakajima against Alexander Barabash ("Barabash"), t/a Welsh Construction Remodeling, Inc. ("Welsh"). The Claimant, Katherine Nakajima ("Nakajima"), appeared at the hearing and represented herself. The Guaranty Fund was represented by Assistant Attorney General Kris King.

Alexander Barabash, the individual licensee of record, was represented in this matter by David Ellin, Esq. Welsh Construction Remodeling, LLC was represented by John H. Denick, Esq. and Rebecca Daley, Esq. Barabash and Welsh entered into a Consent Order with the Commission concerning this matter, and elected not to appear at the hearing.

FINDINGS OF FACT

After examining all of the evidence and testimony, the Commission makes the following findings:

1) At all times relevant to this matter, Alexander Barabash and Welsh Construction Remodeling, LLC, were licensed by the Maryland Home Improvement Commission to engage in

home contracting under license nos. 01-96580 and 05-49.

2) On or about February 18, 2013, the Claimant, Katherine Nakajima, 104 Dublin Drive, Lutherville, Maryland 21093, entered into a contract with Welsh. The contract called for Welsh to perform to perform certain home improvement work, including bathroom renovations. The Claimant paid a deposit of $15,000.00 to Welsh.

3) Welsh ceased business operations in April 2013. Welsh never started work under the contract with the Claimant, and Welsh never refunded the $15,000.00 which had been paid as a deposit by the Claimant.

CONCLUSIONS OF LAW

Business Regulation Article, §8-405, Annotated Code of Maryland, provides that an owner may recover compensation from the Guaranty Fund "for an actual loss that results from an act or omission by a licensed contractor ..." Business Regulation Article, §8-401, Annotated Code of Maryland defines "actual loss" as " ...the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." When the Guaranty Fund disburses monies as a result of actual losses attributable to a licensee's acts or omissions, the licensee's license is suspended until the Guaranty Fund is reimbursed in full, with interest. Business Regulation Article, §§8-410 and 8-411, Annotated Code of Maryland. At a hearing on a claim against the Guaranty Fund, the claimant has the burden of proof. Business Regulation Article, §8-407(e)(1), Annotated Code of Maryland.

The Commission concludes, as a matter of law, that Welsh failed, without justification, to perform the contract with Claimant Nakajima. The evidence establishes that the Claimant entered into a home improvement contract with Welsh, and paid a deposit of $15,000.00. The evidence further shows that Welsh neither started work on the project, nor refunded the deposit payment to the Claimant.

The Commission concludes, as a matter of law, that the Claimant has met her burden of proof by establishing an actual loss as a result of the acts and omissions of the Respondent contractor. COMAR 09.08.03.03B(3)(a) provides that, if the contractor abandoned the contract without doing any work, the measure of the claimant's actual loss is the amount that the claimant paid to the contractor under the contract. Therefore, Claimant Nakajima's actual loss is $15,000.00.

FINAL ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is this 30th day of January 2015, hereby **ORDERED** by the Maryland Home Improvement Commission that:

1) The Claimant is Awarded $15,000.00 from the Home Improvement Guaranty Fund, to compensate for actual losses sustained as a result of the Respondent contractor's failure to perform the contract with the Claimant.

2) Pursuant to Business Regulation Article, §8-411(a), Annotated Code of Maryland, any home improvement licenses held by the Respondent shall be Suspended at such time as any money is paid from the Home Improvement Guaranty Fund under this Order, and the Respondent shall then be ineligible for any home improvement license until such time as the Home Improvement Guaranty Fund has been reimbursed. The Respondent shall also be liable for 10% annual interest on any unreimbursed balance owed to the Guaranty Fund.

3) This Final Order shall become effective thirty (30) days from this date. During this period, any party may file an appeal of this decision to Circuit Court.

Joseph Tunney
Chairman