

IN THE MATTER OF THE CLAIM	* BEFORE WILLIAM SOMERVILLE,
OF SULAMITA LIMA,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ACTS OR	*
OMISSIONS ALLEGED AGAINST	*
BRUCE CHANDLER,	*
T/A CHANDLER REMODELING,	* OAH No.: LABOR-HIC-02-19-22817
RESPONDENT	* MHIC No.: 18 (75) 715

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On February 7, 2019, Sulamita Lima (Claimant) filed a claim for reimbursement from the Home Improvement Guaranty Fund (Fund) of the Maryland Home Improvement Commission (MHIC), alleging \$26,415.38 in "actual losses" suffered as the result of a home improvement contract with Bruce Chandler, trading as Chandler Remodeling, Inc. (Respondent). Md. Code

Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On July 8, 2019, the MHIC referred the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 20, 2019, the OAH issued a Notice of Hearing (Notice) to the Claimant and the Respondent via certified and first class mail at the parties' last addresses of record. Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Notice stated that a hearing was scheduled for October 11, 2019, at 9:30 a.m., at the Administrative Law Building in Hunt Valley, Maryland, and that failure to attend the hearing might result in "a decision against you."

A hearing Notice was sent to the Claimant by both certified and first class mail, and neither of those Notices were returned. In addition, the OAH did not receive any requests for postponement from the Claimant before the date of the hearing.

On October 11, 2019, neither the Claimant nor anyone authorized to represent the Claimant appeared. Eric London, Assistant Attorney General, Department of Labor (Department), was present to represent the Fund.

An Administrative Law Judge can proceed with a hearing in a party's absence if the party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Claimant had received proper notice and, after waiting at least fifteen minutes, I convened the hearing as scheduled.

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); COMAR 09.01.03; COMAR 28.02.01.

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

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

No party offered exhibits into evidence.

Testimony

No witness testified.

PROPOSED FINDINGS OF FACT

I find the following facts² by a preponderance of the evidence:

1. On or about February 7, 2019, the Claimant filed with the MHIC a claim against the Fund for losses the Claimant alleged that were incurred as a result of the acts or omissions of the Respondent.
2. On August 20, 2019, the OAH sent notices of the hearing to the Claimant, among others, by U.S. Postal Service certified and first class mail. All Notices were sent to the parties’ most recent addresses on record with the MHIC.
3. The Claimant did not request a postponement.
4. The Claimant was properly notified but failed to appear for the scheduled hearing.

DISCUSSION

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); 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

² These facts are merely procedural facts and are not facts on the merits of the case.

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)).

To prevail on a claim against the Fund, a claimant must show “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.

In this case, the Claimant failed to appear; the Claimant failed to provide evidence to support the claim. The Claimant therefore has not met the burdens of production and persuasion. The Claimant has not shown that the Claimant suffered an actual loss compensable by the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not shown by a preponderance of the evidence that the Claimant 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(a) (2015).

RECOMMENDED ORDER

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

ORDER that the 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 11, 2019
Date Decision Issued

William J.D. Somerville III
Administrative Law Judge

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PROPOSED ORDER

WHEREFORE, this 23rd 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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