

IN THE MATTER OF THE CLAIM \* BEFORE TAMEIKA LUNN-EXINOR,  
OF ZSOLT SZABO \* 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-02-10-31445  
OMISSIONS OF \* MHIC NO.: 07 (90) 2099  
ZYG MUNT W. WAPINSKI, T/A  
Z.W. CONSTRUCTION, 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 March 23, 2007, Zsolt Szabo (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$25,857.00 for actual losses allegedly suffered as a result of a home improvement contract with Zygmunt W. Wapinski, t/a Z.W. Construction, LLC (Respondent).

I held a hearing on March 10, 2011 at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland 21031. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010). Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Wayne Goddard, Esquire, represented the Claimant. The

Respondent failed to appear for the hearing after proper notice was sent to all addresses of record and I proceeded to conduct the hearing in his absence. COMAR 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, and the Rules of Procedure of the OAH 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; 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:

Claimant Ex. #1 - Z.W. Construction, LLC Proposal dated September 27, 2004

Claimant Ex. #2 - Proof of Payments made to Respondent by Claimant:

2A - Check made payable to Respondent in the amount of \$20,000.00 dated October 27, 2004 and Cash withdrawal from Bank of America in the amount of \$10,000.00 dated October 26, 2004

2B - Check made payable to Respondent in the amount of \$10,000.00 dated February 8, 2005

2C - Signed handwritten note from Respondent confirming payment of \$20,000.00 dated June 27, 2005

2D - Check made payable to Respondent in the amount of \$13,550.00 dated July 8, 2005

2E - Check made payable to Respondent in the amount of \$20,000.00 dated August 6, 2005

2F - Check made payable to Respondent in the amount of \$20,000.00 dated August 6, 2005

Claimant Ex. #3 - Signed handwritten note from Respondent dated January 9, 2006 re: completion date of project

- Claimant Ex. #4 - Correspondence from Claimant to Respondent dated December 20, 2006 re: request to complete project
- Claimant Ex. #5 - Correspondence from Respondent to Claimant dated December 26, 2006 re: response to Claimant's December 20, 2006 correspondence
- Claimant Ex. #6 - Correspondence from Claimant to Respondent dated December 29, 2006 re: completing construction project
- Claimant Ex. #7 - Renovation Bid Proposal from Brinton Building Services, Inc. dated January 24, 2007
- Claimant Ex. #8 - Expert Report from JJH Consultant prepared by John J. Heyn dated February 23, 2007
- Claimant Ex. #9 - Picture of unfinished construction

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

- Guaranty Fund Ex. #1 - Correspondence from OAH to Legal Services dated December 7, 2010 re: certified and regular mail returned by postal service for Respondent's Maryland address
- Guaranty Fund Ex. #2 - Correspondence from OAH to Legal Services dated November 29, 2010 re: certified and regular mail returned by postal service for Respondent's Florida address
- Guaranty Fund Ex. #3 - DLLR Hearing Order dated August 25, 2010
- Guaranty Fund Ex. #4 - DLLR ID Registration, Home Improvement Commission Inquiry information for Respondent dated March 8, 2011
- Guaranty Fund Ex. #5 - Affidavit of Michael Miller, investigator with the MHIC dated December 18, 2010
- Guaranty Fund Ex. #6 - Home Improvement Claim Form dated March 20, 2007
- Guaranty Fund Ex. #7 - Correspondence from MHIC to Respondent dated April 12, 2007 re: receipt of claim lodged against Respondent

The Respondent failed to appear and no exhibits were admitted for the Respondent.

### Testimony

The Claimant testified and presented the testimony of John J. Heyn, who qualified as an expert witness in home improvement.

The Fund did not present testimony.

The Respondent failed to appear and there was no testimony presented on his behalf.

### **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 #3376216.
2. On September 27, 2004, the Claimant and the Respondent entered into a contract to construct a library and pool area at the Claimant's home according to construction plans.
3. The contract began on November 27, 2004 and was to be completed by April of 2006.
4. The original agreed-upon contract price was \$132,550.00.
5. As of January 9, 2006, the Claimant paid the Respondent a total of \$118,550.00.
6. The Respondent ceased work on the construction project in March of 2006.
7. The cost to complete the construction project is \$39,857.00
8. The Claimant's actual loss is \$25,857.00.

### **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 has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Respondent became a licensed home improvement contractor in Maryland in 1982. The Respondent's most recent license was obtained on April 18, 2006, license number 3376216. This license expired on April 28, 2008 and no further licenses were issued.

Second, the Respondent performed incomplete home improvement. The Claimant testified that he chose the Respondent for the project because the Respondent was a neighbor and had performed other jobs in the neighborhood. The Claimant testified that the contract work began in November 2005 and stopped in March 2006. In March 2006, the construction was not complete and the Claimant was unable to locate the Respondent to complete the work as the Respondent moved to Florida. The Respondent had promised to complete the project by April, 2006. The Claimant testified credibly that all materials and the project area were available to the Respondent as of the date the project began. The Claimant admitted that there was a pool delivery delay in 2005 and that he was on vacation sporadically during the project, however, the Claimant testified credibly that the pool delay did not affect the Respondent's work for a lengthy period of time and that when he was on vacation, the Respondent had full access to the construction area. The Claimant testified that the work progress slowed during the time that the Respondent was in the process of relocating to Florida.

The Claimant paid the Respondent a total of \$118,550.00 and the total contract price was \$132,550.00. The Claimant testified that any time the Respondent requested payments, he gave Respondent the requested amount of money.

When the Respondent failed to complete the project, the Claimant sent the Respondent correspondence on December 20, 2006 requesting that the Respondent complete the contracted work. On December 26, 2006, the Respondent replied to the Claimant's correspondence, in writing, stating various reasons for the delay and a willingness to resolve the matter. On December 29, 2006, the Claimant sent a final letter to the Respondent indicating that he had tried unsuccessfully to call him and giving the Respondent a deadline of "Saturday" to respond as to whether he wanted to complete the project. The Respondent did not respond to the Claimant's December 29, 2006 letter.

In January 2007, the Claimant hired Brinton Building Services, Inc., to prepare a proposal to complete the project. The proposal price for completion of the project was \$39,857.00. The Claimant's expert, John Heyn, an expert in home improvement, testified that the Respondent completed 80% of the contracted work. He stated that some work was incomplete and some work was unsatisfactory. Mr. Heyn also testified that the proposal price of \$39,857.00 from Brinton Building Services, Inc., to complete the job was fair and reasonable according to the 2010 HIC Estimating Manual and his experience in the field.

Counsel for the Fund agreed that this was a case of contractor abandonment and that the Claimant met his burden.

Having found eligibility for compensation, I now turn to the amount of the award, if any. 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). The 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. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly." COMAR 09.08.03.03B(3)(c).

In this case, I calculated the Claimant's actual loss as follows:

1) Amount Claimant paid under the original contract -	\$118,550.00
2) Plus amount paid for another contractor to repair -	+ \$ <u>39,857.00</u>
3) Total -	\$158,407.00
4) Minus original contract price -	- <u>\$132,550.00</u>
5) <b>Total Actual Loss -</b>	<b>\$ 25,857.00</b>

The maximum amount recoverable from the Fund is \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(c)(1) (2010).

#### CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$25,857.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

**RECOMMENDED ORDER**


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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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 at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

May 6, 2011  
Date Decision mailed

  
Tameika Lunn-Exinor  
Administrative Law Judge

TLE/kkc  
# 122650



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**FILE EXHIBIT LIST**

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The Respondent failed to appear and no exhibits were admitted for the Respondent.

PROPOSED ORDER

*WHEREFORE, this 5th day of July 2011, 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*