

**CLAIM OF ERICA MURPHY  
AGAINST THE MARYLAND  
HOME IMPROVEMENT  
GUARANTY FUND FOR THE  
ALLEGED ACTS AND OMISSIONS  
OF DANNY SIMPSON, T/A  
TEKOA GENESIS, INC.  
(RESPONDENT)**

**\* BEFORE WILLIAM C. HERZING,  
\* ADMINISTRATIVE LAW JUDGE  
\* MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No. DLR-HIC-02-10-39809  
\* MHIC No. 08 (05) 1220  
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**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 14, 2008, Erica Murphy (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of losses allegedly suffered as a result of home improvement work performed by Danny Simpson, T/A Tekoa Genesis, Inc. (Respondent).

William C. Herzing, Administrative Law Judge from the Maryland Office of Administrative Hearings (OAH), heard the above-captioned case on February 14, 2011. Md. Code Ann., Bus. Reg. §§ 8-312(a) and 8-407(c)(2)(2010 & Supp. 2010).<sup>1</sup>

Hope Sachs, Assistant Attorney General, represented the Fund and the Claimant appeared on her own behalf. The Respondent failed to appear after proper notice of the hearing was sent to

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<sup>1</sup> All further references to the Business Regulation Article will be to the 2010 Replacement volume and the 2010 Supplement unless otherwise indicated

him by regular and certified mail at his address of record. I ruled that the hearing would proceed in the Respondent's absence. Md. Code Ann., Bus. Reg. § 8-312(h); Code of Maryland Regulations (COMAR) 09.01.02.09.

Procedures in this hearing are governed by the contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010) and the Rules of Procedure of the Office of Administrative Hearings, found at COMAR 28.02.01.

### **ISSUE**

The issue is whether the Claimant sustained an actual loss compensable by the Maryland Home Improvement Guaranty Fund because of the acts or omissions by the Respondent.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Claimant presented a Contractor Agreement and a cancelled check, dated October 15, 2007, which were entered into evidence as Claimant Exhibit 1.

The Fund submitted the following documents which were entered into evidence as Fund Exhibits:

1. Notice of Hearing and Hearing Order; certified mail envelope and green card
2. Affidavit of Michael Miller, December 8, 2010
3. Respondent's licensing history with the MHIC
4. Letter to the Respondent, April 11, 2008, from John Borz, Chairman MHIC; Home Improvement Claim Form, date received March 14, 2008; Contractor Agreement and cancelled check, dated October 15, 2007

## Testimony

The Claimant testified on her own behalf. The Fund did not offer any witness testimony.

## **FINDINGS OF FACT**

After considering all of the evidence presented, I find by a preponderance of the evidence that:

1. On September 28, 2007, the Claimant entered into a contract with the Respondent to renovate property she owned located at 2121 Chelsea Terrace, Baltimore, Maryland. The contract price was \$30,215.00.
2. The Claimant paid a deposit of \$7,500.00 to the Respondent on October 17, 2007.
3. Work on the project was to begin on or before October 15, 2007 and be substantially completed on or before November 30, 2007, with a one week grace period.
4. The Respondent started work by demolishing the kitchen. He removed the kitchen cabinets and threw the debris in the back yard.
5. The Claimant returned to the property approximately one week after the start of the project and the debris from the kitchen was still in the yard.
6. The Claimant returned approximately one week later and the Respondent still had not done any further work or removed the debris from the yard.
7. The Claimant attempted to contact the Respondent but he did not return her calls or emails.
8. The Respondent did not perform any additional work and the Claimant has had no further contact from the Respondent.
9. At the end of November 2007, the Claimant hired other contractors to finish the renovations.
10. The Respondent was licensed as a home improvement contractor at all times relevant to this proceeding.

## **DISCUSSION**

Sections 8-401 through 8-411 of the Business Regulation Article of the Maryland Annotated Code establish the Fund to compensate homeowners for actual losses sustained by them due to acts or omissions by licensed contractors.

Actual loss is defined as follows:

In this subtitle, "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.

The burden of proof to establish the unworkmanlike or inadequate home improvement and any actual loss suffered is on the Claimant. Md. Code Ann., Bus. Reg. § 8-407(e)(1).

The evidence established that on September 28, 2007, the Claimant entered into a contract with the Respondent to renovate property she had purchased for her son. The Claimant's detailed testimony established that after the Respondent performed some initial demolition in the kitchen, he abandoned the job and failed to complete the project. She went to the property approximately a week after work started and the debris from the kitchen was still in the back yard. The Claimant returned a week later and the Respondent had not done any further work or removed the debris. The Claimant testified that she attempted to call and email the Respondent but her calls and emails were not returned. The Respondent failed to perform any further work and never returned to complete the job. Finally, the Claimant hired other contractors to complete the project.

The "cost of restoration, repair, replacement, or completion that arises from an unworkmanlike, inadequate, or incomplete home improvement" is an actual loss. Md. Code Ann., Bus. Reg. § 8-401.

COMAR 09.08.03.03B(3) establishes the methods for determining actual loss:

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) 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.

(b) If the contractor did work under the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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, 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.

(Emphasis added.)

The Claimant testified that she hired another contractor to complete the renovations and eventually had to hire a third contractor to finish the job. However, she did not produce any evidence of the amounts she paid to those either of those contractors. Furthermore, the Claimant did not have any evidence regarding the scope of work performed by the subsequent contractors or whether their performance corresponded to the Claimant's contract with the Respondent. Therefore, to determine the Claimant's actual loss, I have used the formula set forth in COMAR 09.08.03.03B(3)(b).

Amount paid the Respondent under original contract	\$ 7,500.00
Value of work performed by the Respondent	\$ <u>0</u> <sup>2</sup>
Claimant's actual loss	\$ 7,500.00

The maximum amount recoverable from the Guaranty Fund is \$20,000.00 under Md. Code Ann., Bus. Reg. § 8-405(c)(1). The Claimant has established that she is entitled to reimbursement from the Fund in the amount of \$7,500.00 as a result of the actions of the Respondent.

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<sup>2</sup> There was no evidence of the value of the kitchen demolition in relation to the subsequent contracts.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Claimant has established that she sustained an actual loss under Section 8-401 of the Business Regulation Article as a result of the Respondent's abandonment of the contract. Therefore, the Claimant is entitled to reimbursement from the Maryland Home Improvement Guaranty Fund pursuant to Section 8-405 of the Business Regulation Article and COMAR 09.08.03.03B(3)(c).

**RECOMMENDED ORDER**


On the basis of the foregoing Findings of Fact, Discussion and Conclusions of Law, I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Claimant be awarded \$7,500.00 from the Maryland Home Improvement Guaranty Fund for actual losses sustained as a result of the conduct of the Respondent; and be it further

**ORDERED** that the Respondent, pursuant to Md. Code Ann., Bus Reg. § 8-411, shall 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 as set by law; and be it further

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

April 8, 2011  
Date Decision Mailed

  
William C. Herzing *mec*  
Administrative Law Judge

WCH/rbs  
#121804

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**FILE EXHIBIT LIST**

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4. Letter to the Respondent, April 11, 2008, from John Boza, Chairman MHIC; Home Improvement Claim Form, date received March 14, 2008; Contractor Agreement and cancelled check, dated October 15, 2007

PROPOSED ORDER

*WHEREFORE, this 31st day of May 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.*

*Rossana Marsh*

*Rossana Marsh  
Panel B*

MARYLAND HOME IMPROVEMENT COMMISSION