

The Maryland Home
 Improvement Commission

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**BEFORE THE
 MARYLAND HOME IMPROVEMENT
 COMMISSION**

v. Edem Dunyoh
 t/a CDC Construction & Remodeling LLC
 (Contractor)
 and the Claim of
 Abdul Mohmand
 (Claimant)

MHIC No.: 14 (05) 741

FINAL ORDER

**WHEREFORE, this 6th day of September 2017, Panel B of the Maryland Home
 Improvement Commission ORDERS that:**

1. **The Findings of Fact set forth in the Proposed Order dated April 19, 2017 are AFFIRMED.**
2. **The Conclusions of Law set forth in the Proposed Order dated April 19, 2017 are AFFIRMED.**
3. **The Proposed Order dated April 19, 2017 is AFFIRMED.**
4. **This Final Order shall become effective thirty (30) days from this date.**
5. **During the thirty (30) day period, any party may file an appeal of this decision to Circuit Court.**

Joseph Tunney
 Joseph Tunney, Chairperson
 PANEL B

MARYLAND HOME IMPROVEMENT COMMISSION

IN THE MATTER OF THE CLAIM

BEFORE GERALDINE A. KLAUBER,

OF ABDUL MOHMAND,

* AN ADMINISTRATIVE LAW JUDGE

CLAIMANT

* OF THE MARYLAND OFFICE

AGAINST THE MARYLAND HOME

* OF ADMINISTRATIVE HEARINGS

IMPROVEMENT GUARANTY FUND

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FOR THE ALLEGED ACTS OR

*

OMISSIONS OF EDEM DUNYOH,

*

T/A CDC CONSTRUCTION AND

* OAH No.: DLR-HIC-02-16-13692

REMODELING, LLC,

* MHIC No.: 14 (05) 741

RESPONDENT

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES

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PROPOSED FINDINGS OF FACT
DISCUSSION

PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On January 12, 2015, Abdul Mohmand (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$18,000.00 in alleged actual losses suffered as a result of a home improvement contract with Edem Dunyoh, trading as CDC Construction & Remodeling, LLC (Respondent).

I held a hearing on February 2, 2017 at the Office of Administrative Hearings (OAH), Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). Bill Baer, Esquire, represented the Claimant. John Hart, Assistant Attorney General, Department of Labor,

Licensing and Regulation (Department), represented the Fund. The Respondent represented himself.

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. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf¹:

- Clmt. Ex. 1 - Service Contract Agreement, July 1, 2010
- Clmt. Ex. 2 - Claimant's accounting of payments to Respondent and Claimant expenses with attached checks and invoices
- Clmt. Ex. 3 - Eleven photographs of work done by Respondent
- Clmt. Ex. 4 - List of incomplete work and permit expenses; Estimate from Ace Builder Group

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

- Resp. Ex. 1 - Notes of meeting held on July 19, 2012
- Resp. Ex. 2 - Unsigned and undated Change Order
- Resp. Ex. 3 - Second page of Change Order

¹The record was closed at the conclusion of the hearing on February 2, 2017. On February 15, 2017, I received a letter and attachment from the Claimant dated February 9, 2017. The correspondence has not been entered into evidence and I did not consider it in rendering my decision.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of Hearing, July 27, 2016
- Fund Ex. 2 - Notice of Hearing, July 27, 2016; Hearing Order, April 22, 2016
- Fund Ex. 3 - Fax cover sheet with letter from John Hart, Assistant Attorney General, to OAH requesting postponement, October 21, 2016
- Fund Ex. 4 - Notice of Hearing, October 25, 2016
- Fund Ex. 5 - Notice of Hearing addressed to Respondent, October 25, 2016 sent by certified mail and returned by postal service as unclaimed
- Fund Ex. 6 - Home Improvement Claim Form, December 15, 2014
- Fund Ex. 7 - Hearing Order, April 22, 2016
- Fund Ex. 8 - Letter from MHIC to Claimant, April 22, 2016
- Fund Ex. 9 - Certified Statement from David Finneran, Executive Director of MHIC regarding Respondent's licensing history
- Fund Ex. 10 - Respondent's licensing history
- Fund Ex. 11 - Maryland State Department of Assessment and Taxation (MSDAT) information regarding ABM 1 LLC
- Fund Ex. 12 - MSDAT information regarding ABM Properties, LLC
- Fund Ex. 13 - Commonwealth of Virginia State Corporation Commission information regarding Automaxx, Inc.
- Fund Ex. 14 - Real Property search result for ABM 1, LLC and ABM Properties, LLC
- Fund Ex. 15 - Real Property search results for Mohmand Abdul
- Fund Ex. 16 - MSDAT information regarding 24846 Prairie Grass Dr.
- Fund Ex. 17 - MSDAT information regarding Nelson Ave.

Testimony

The Claimant testified in his own behalf.

The Respondent testified in his own behalf.

The Fund offered no witnesses.

PROPOSED FINDINGS OF FACT

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

1. The Respondent was a licensed home improvement contractor from April 21, 2006 through April 21, 2008. The Respondent was not licensed again until March 17, 2011 and is currently licensed.²
2. The Claimant is one of three principals of ABM 1 LLC.
3. The business purpose of ABM 1 LLC is in to purchase, rehab and rent properties.
4. ABM 1 LLC owns 3413 Paton Avenue, Baltimore, Maryland (the Property).
5. ABM 1 LLC owns the following additional properties located in Baltimore Maryland: 2918 Boarman Avenue, 5139 Nelson Avenue, and 2815 Hilldale Avenue.
6. The Respondent individually owns the following property in Maryland: 2814 Norfolk Avenue, Baltimore 21215
7. On July 1, 2010, the Claimant and the Respondent entered into a contract to perform the following work at 3413 Paton Avenue, Baltimore, Maryland:

Repair soffit, roof and gutter; rebuild front step and rails with treated lumber; install drywalls and ceiling; close in the HVAC with door; install laundry area; install new window and glass block basement; install new roof to rear in addition to front upper and lower roofs; install cabinet and laminate counter tops; install dry wall and new walls and ceilings/all new repairs and basement bedroom; install hot water tank/install all pipes, gas, water and drains/install sinks (3), toilets (2); install bathtub, all faucets (3) and exterior hose bibs (2), connect new gas line to furnace; repair front door and install new rear and basement doors; install base molding and casing as needed new windows and have drywall return; paint all paintable surfaces inside include basement and cement walls (rear) and as needed exterior; install

² The MHIC licensing history computer printout reflects that the Respondent was licensed April 20-21, 2010.

electric service panel & drop 200 amp & new electrical outlets, switches 3 way @ steps; install front and back lighting and lighting fixtures; gfcı (ground fault circuit interrupter) in each bath and kitchen; install interior prehung doors and knobs; install backer and tile all kitchen floor and bath floors; install shower wall and kit acrylic tub; furnish and install heat and air conditioning and all duct work and returns; remove all trash related to the job

8. The original agreed-upon contract price was \$25,000.00.
9. The contract provided for an estimated start dated of July 5, 2010 and an estimated completion date of August 16, 2010.
10. The Claimant paid the Respondent \$25,500.00.³ The last payment was made on August 14, 2010. At the time of the final payment, the work was not completed.
11. The Respondent began work on the Property in July 2010.
12. The Respondent had already installed the roof on the Property in 2010 when the roof on the row home next door collapsed, causing the water to leak into the Property and mold to form. In 2010, the Respondent notified the Claimant of the collapsed roof and the mold.
13. On some date uncertain in 2010, BGE cut off electricity to the Property because it had been illegally hooked up. The electricity was off for several months.
14. The Property was broken into several times during the time that the Respondent was working at the site.
15. On or about July 19, 2012, the Respondent presented the Claimant with a list of work to be completed according to the original scope of work with a change order for the original work with an additional balance of \$6,200.00. The Respondent listed the remaining work as follows: install cabinets and counter tops, install kitchen door, install interior doors,

³ It was not clear from the Claimant's case why he paid the Respondent \$500.00 more than the total contract price.

install rear exterior steps, complete base molding; install toilet and vanity, install plastic tub surround, install light fixtures, install exterior HVAC unit, connect gas lines, complete interior paint. The Claimant did not dispute the Respondent's list of the incomplete work.

16. The Respondent did not return to the property after July 2012.

17. On December 18, 2014, the Claimant's claim was received by the Fund.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of his claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).⁴ "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more 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 (3rd ed. 2000).

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) (2015);⁵ see also COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. The Claimant does not meet the statutory requirements for recovery from the Fund for the following reasons.

⁴ As noted above, "COMAR" refers to the Code of Maryland Regulations.

⁵ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

Section 8-405 of the Business Regulation article sets forth the requirements for a

claimant's recovery of the Fund. The law states, in relevant part:

- (a) In general.- Subject to this subtitle, an owner may recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor or a violation of §8-607(4) of this title as found by the Commission or a court of competent jurisdiction. (emphasis added)

The documentary evidence submitted by the Fund established that the Respondent was not a licensed home improvement contractor at the time he entered into the contract with the Claimant. The Fund submitted a certified statement from David Finneran, the Executive Director of the MHIC, and a true test copy of the licensing records of the MHIC reflecting that the Respondent was not licensed between April 21, 2008 and March 17, 2011 (Fund # 9). The Fund also presented a copy of the computer screen that reflects that the Respondent was licensed for one day in April 2010, specifically April 20, 2010 (Fund #10). The Fund had no explanation regarding this one-day anomaly; nevertheless the licensing history is clear that the Respondent was not licensed on July 1, 2010, the date the contract was entered into as well as during the time that the Respondent performed the work.

COMAR 09.08.03.02, which concerns processing of claims, expounds on the requirement that a contractor be licensed and states:

D. (3)(d) The hearing board may dismiss a claim as legally insufficient if the contractor was unlicensed when the contract was entered into but licensed during the performance of the contract unless:

- (i) The claimant establishes by a preponderance of the evidence that the claimant did not know that contractor was unlicensed at the time the contract was entered into; and
- (ii) A substantial portion of the contractor's alleged misconduct occurred after the contractor became licensed.

The Claimant testified that at all times relevant to the home improvement contract, he believed that the Respondent was licensed by the MHIC. I found that the Claimant was credible on this issue and there was no reason for me to believe that the Claimant knew that the

Respondent was not licensed, so the Claimant meets the first requirement of the regulation. It is the second requirement of the regulation that disqualifies the Claimant from reimbursement.

The Claimant testified when he made payments to the Respondent, there was nothing wrong with the quality of the Respondent's work and that the issue was that the work was incomplete.

It was not clear from the presentation of the Claimant's case what work transpired after August 14, 2010, when the Claimant made the last payment to the Respondent. Because the Claimant paid the Respondent \$25,500.00 as of August 14, 2010, which exceeded the contract price by \$500.00, I infer that the majority of the work under the contract had been performed by that date. The Respondent's testimony was consistent with this inference. He testified that a majority of the work required under the contract was completed in 2010, including the installation of a new roof. Additionally, he had completed some work beyond the scope of the contract, including additional plumbing work, installation of privacy fence due to illegal dumping on the property and repairs due to break-ins at the Property (Resp. #2). He further testified that in July 2012, he met with the Claimant with a list of the remaining work needed to be done under the scope of the contract, but that an additional \$6,200.00 was needed to complete the work. Comparing this list (Finding of Fact 14) to the scope of work contained in the contract (Finding of Fact 2), I conclude that the majority of the work required under the contract had been completed prior to 2012. Thus, a substantial portion of the work had been completed while the Respondent was unlicensed and the Claimant is not entitled to reimbursement pursuant to Section 8-405 of the Business Regulation Article and COMAR 09.08.03.02.

The second reason that the Claimant is not eligible for reimbursement from the Fund is that the Claimant owns too many properties to be statutorily eligible for reimbursement. The unrefuted evidence offered by the Fund is that the Claimant owns four properties through ABM I LLC and one property individually. Section 8-405 (f) of the Business Regulation Article permits

a property owner to make a claim against the Fund if the "owner resides in the home as to which the claim is made; or does not own more than three residences or dwelling places." The Claimant does not reside in the property that is the subject of the claim and the Fund presented data from the MSDAT that reflects ABM 1 LLC owns four properties and the Claimant individually owns one additionally property. Based on the Claimant's ownership of these properties, he is precluded from filing a claim against the Fund.

The final reason that the Claimant is barred from recovery is that he failed to file his claim in a timely fashion. Section 8-405 (g) of the Business Regulation Article, which requires that a claim be brought against the Fund within three years after the claimant discovered or, by the use of ordinary diligence, should have discovered the loss or damage. The crux of the Respondent's complaint is that the Respondent failed to complete the work as required by the July 1, 2010 contract. The contract provided an estimate start date of July 5, 2010 and a completion date of August 16, 2010. As of August 14, 2010, the Claimant had paid the Respondent \$500.00 more than the total contract price, and at that time the Respondent was aware, or should have been aware, that the work was not completed. The Claimant also testified that he also knew of the water seepage into the Property in 2010 and the resulting mold. According to the Claimant, the last day that the Respondent worked at the site was April 25, 2012, yet the Claimant waited until December 2014 to file a claim, which is outside of the three year statute of limitations.

Based on the Claimant's failure to meet several statutory requirements for successfully filing a claim with the Fund, his claim against the Fund must be denied.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant is barred from reimbursement from the Fund because the Respondent was not a licensed contractor. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (a) (2015).

I further conclude that the Claimant is barred from filing a claim against the Fund because the Claimant owns more than three residences or dwelling places. Md. Code Ann., Bus. Reg. §8-405 (f)(2) (2015).

I further conclude that the Claimant is barred from reimbursement by the Fund because he failed to file his claim within three years from the date that he discovered the loss or damage. Md. Code Ann., Bus. Reg. §8-405 (g) (2015) and COMAR 09.08.03.02D.

RECOMMENDED ORDER

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

ORDER that the Maryland 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

March 20, 2017
Date Decision Issued

Geraldine A. Klaüber
Administrative Law Judge

GAK/sw
#166628

PROPOSED ORDER

WHEREFORE, this 19th day of April, 2017, 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION