

**IN THE MATTER OF THE CLAIM  
OF MAUSEAN CARTER,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF ANTHONY HILL,  
T/A BRC CONSTRUCTION, LLC,  
RESPONDENT**

**\* BEFORE SUSAN H. ANDERSON,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-18-33619  
\* MHIC No.: 18(90)322**

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 31, 2017, Mausean Carter (Claimant) filed a claim (Claim) for reimbursement by the Home Improvement Guaranty Fund (Fund) of the Maryland Home Improvement Commission (MHIC), alleging \$2,400.00 in actual losses suffered as the result of a home improvement contract with Anthony Hill, trading as BRC Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On October 18, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

By letter dated December 18, 2018, 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 Thursday, February 21, 2019, at 9:30 a.m. at the Hunt Valley offices of the OAH at 11101 Gilroy Road, Hunt Valley, MD 21031 and that failure to attend the hearing might result in "a decision against you."

On December 31, 2018, the U.S. Postal Service returned the Notice sent to the Claimant by certified mail with a receipt stating that delivery was "attempted – not known, unable to forward." The Notice sent to the Claimant by first class mail was not returned. The OAH did not receive any requests for postponement from the Claimant prior to the date of the hearing. Neither Notice sent to the Respondent was returned.

On February 21, 2019, neither the Claimant nor anyone authorized to represent the Claimant appeared. Neither the Respondent nor anyone authorized to represent the Respondent appeared. Jessica Kaufman, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

Applicable law permits me to 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 both the Claimant and Respondent had received proper notice and, after waiting 15 minutes, I convened the hearing as scheduled.

The contested case provisions of the Administrative Procedure Act, the Department 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. 2018); COMAR 09.01.03; COMAR 28.02.01.

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 behalf of the Fund:

- Fund Ex. 1 - Notice of Hearing dated December 18, 2018, sent to Kris M. King, Assistant Attorney General; Memorandum dated January 3, 2019 from the OAH docket specialist advising that the Notice sent to the Claimant via certified mail had been returned as undeliverable; the Hearing Order issued by the MHIC on October 18, 2018; the transmittal form dated October 18, 2018, from the MHIC to the OAH, with attachments; the certified mail envelope that was returned by the U.S. Postal Service.
- Fund Ex. 2 - Transmittal Form dated October 18, 2018, from the MHIC to the OAH with attachments.
- Fund Ex. 3 - DLLR MHIC registration records of Anthony Hill t/a BRC Construction, LLC.
- Fund Ex. 4 - Letter dated November 14, 2017, from the MHIC to Respondent advising of the claim and asking for a response to the claim filed by the Claimant.
- Fund Ex. 5 - Personal Financial Power of Attorney from the Claimant designating India Temple as his Agent. The Claimant indicated that his Agent's address was the same as the address on file for him with the MHIC.

The Claimant did not attend the hearing and offered no exhibits into evidence.

The Respondent did not attend the hearing and offered no exhibits into evidence.

Testimony

Neither the Claimant nor the Respondent attended the hearing or presented testimony.

The Fund did not offer any testimony.

## PROPOSED FINDINGS OF FACT

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

1. On October 31, 2017, the Claimant filed a claim for reimbursement of \$2,400.00 from the Fund for actual losses allegedly incurred as a result of the acts or omissions of the Respondent.
2. On December 18, 2018, the OAH sent notices of the hearing to the Claimant and the Respondent 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 Notice sent to the Claimant via certified mail was returned as "attempted – not known, unable to forward"; the Notice sent to the Claimant via first class mail was not returned. Neither Notice sent to the Respondent was returned.
4. No postponement was requested by the Claimant.
5. The Claimant failed to appear for the scheduled hearing on Thursday, February 21, 2019.

## 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) (2015); 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 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 successfully assert 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 and provide sufficient evidence to support his claim. The Claimant therefore has not met the burden to prove that he suffered an actual loss compensable by the Fund.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not 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**

February 25, 2019  
Date Proposed Decision Issued

X  
Susan H. Anderson  
Administrative Law Judge



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**PROPOSED ORDER**

***WHEREFORE, this 2<sup>nd</sup> day of May, 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.***

***Joseph Tunney***

***Joseph Tunney  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**