

IN THE MATTER OF THE CLAIM	*	BEFORE PATRICK E. MAHER,
OF MELVIN STIFFLER, JR.,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF THE ESTATE OF	*	
GARRY LAVENSTEIN,	*	OAH No.: LABOR-HIC-02-24-01753
T/A ALL AMERICAN WINDOWS &	*	MHIC No.: 24 (75)422
SIDING INC.,	*	
RESPONDENT	*	

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On November 14, 2024, Melvin Stiffler, Jr., (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$10,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Garry Lavenstein,² trading as All American Windows & Siding, Inc. (Respondent). Md.

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

² Mr. Lavenstein died on September 1, 2023.

Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2023).³ On January 16, 2024, the MHIC issued a Hearing Order on the Claim. On January 17, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.⁴

On May 8, 2024, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting fifteen minutes for the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. For the reasons set forth below, I determined that the Respondent's representative received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); 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 the compensable loss?

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Volume of the Maryland Annotated Code.

⁴ On the Transmittal, the MHIC included the contact information for "Michelle Lavenstein," and the "Estate of Garry Lavenstein."

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 – Contract, July 6, 2023

Clmt. Ex. 2 – Check, July 6, 2023

Clmt. Ex. 3 – Back of Check, July 6, 2023

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 – MHIC Letter to Respondent, November 17, 2023; Home Improvement Claim Form, November 14, 2023

Fund Ex. 2 – Hearing Order, January 16, 2024

Fund Ex. 3 – Notice of Hearing, February 14, 2024

Fund Ex. 4 – The Respondent's licensing history with the MHIC, report run date, April 30, 2024

Testimony

The Claimant testified and presented the following witness: Jean Stiffler, the Claimant's wife.

The Fund did not present any witnesses.

PROPOSED 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 22277.
2. On July 6, 2023, the Claimant and the Respondent entered into a contract to perform home improvements on the Claimant's home, including remodeling the two upstairs bathrooms and installing new doors and flooring on the second floor (Contract).
3. The original agreed-upon Contract price was \$30,000.00.

4. The Contract stated that work would begin and be substantially completed approximately ninety days after the execution of the contract by the parties.
5. On July 6, 2023, the Claimant paid the Respondent \$10,000.00.
6. The Respondent did not perform any work under the Contract.
7. The Respondent died on September 1, 2023.
8. On or about September 9, 2023, after being unable to reach the Respondent, the Claimant contacted the Respondent's employee, Stan Sirody.
9. Mr. Sirody informed the Claimant that the Respondent had died, the business had closed, and there was nothing he could do for them.
10. On a date not in the record, the MHIC determined that Michelle Lavenstein was the personal representative for the Estate of Garry Lavenstein and forwarded her contact information to the OAH in the Hearing Transmittal.

DISCUSSION

Proceeding in the Respondent's Representative's Absence

Section 8-312 of the Business Regulation Article, entitled "Hearings," states, in pertinent part, as follows:

(a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.

(b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

...

(d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.

...

(h) If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.

Bus. Reg. § 8-312.

Although the above statute applies to disciplinary proceedings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. *Id.* § 8-407(a). These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

Prior to submitting the Hearing Transmittal to the OAH, the MHIC was made aware that the Respondent had died, and Michelle Lavenstein had been appointed his personal representative in an estate that was opened in Baltimore County, Maryland. The MHIC forwarded this information to the OAH, and included both the contact information for the company, now identified as “The Estate of Garry Lavenstein, T/A All American Windows & Siding, Inc.,” and the Respondent’s personal representative, Michelle Lavenstein, at her address of record in the Baltimore County Register of Wills. Ms. Lavenstein also confirmed her appointment as personal representative to an investigator for the MHIC.

On February 14, 2024, the OAH sent Notices of Hearing to both the Estate of Garry Lavenstein, T/A All American Windows & Siding, Inc., and to Michelle Lavenstein, c/o The Estate of Garry Lavenstein. The Notices of Hearing were sent by first-class mail and certified mail. Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1). The Notices stated that a hearing was scheduled for May 8, 2024, at 9:30 a.m., at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Vally, MD 21031. COMAR 09.08.03.03A(2). The Notices further advised the parties that failure to attend the hearing might result in “a decision against you.”

With respect to the Notices of Hearing sent to The Estate of Garry Lavenstein, T/A All American Windows & Siding, Inc., the return receipt for the certified mail was signed and returned to the OAH with the notation "P.O. Box closed. He's dead." The Notice of Hearing sent by first-class mail was returned by the United States Postal Service with the notation "Return to Sender-Deceased,".

With respect to the Notices of Hearing sent to Ms. Lavenstein by first class mail and certified mail, she did not claim the certified letter and it was returned to the OAH as unclaimed. The Notice of Hearing sent by first-class mail was not returned to the OAH. Ms. Lavenstein did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. A presumption exists under Maryland law that material properly mailed is delivered to the intended recipient. *Brenner v. Nationwide Mut. Ins. Co.*, 93 F. 3rd 1228, 1234 (4th Cir. 1996); *Border v. Grooms*, 267 Md. 100 (1972).

I concluded that the OAH provided "due notice" to the Respondent's personal representative, Ms. Lavenstein, and the Respondent's estate under Business Regulation section 8-312(h), above, and held the hearing in the Respondent's absence after no one appeared on his or the estate's behalf.

The OAH's Rules of Procedure permit me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A.

The Merits of the Claim

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3).

To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a) (Supp. 2023); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for 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. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time the Respondent entered into the Contract with the Claimant. Although the circumstances of this case are tragic for the Respondent’s family and friends, and frustrating for the Claimant, the applicable statutes and regulations provide a simple and straightforward resolution.

The Respondent received the Claimant’s deposit and performed no work under the contract. Accordingly, the following formula appropriately measures the Claimants’ actual loss: “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.” COMAR 09.08.03.03B(3)(a). The Claimants paid the Respondent \$10,000.00, none of which has been refunded. Therefore, their actual loss is \$10,000.00.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁵ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover their actual loss of \$10,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; and

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

July 29, 2024
Date Decision Issued

PEM/sh
#211748

Patrick E. Maher

Patrick E. Maher
Administrative Law Judge

⁵ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

PROPOSED ORDER

WHEREFORE, this 27th day of November, 2024, 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.

W. Bruce

Quackenbush

W. Bruce Quackenbush

CHAIRMAN

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***