

CLAIM OF ROBERT HUEBSCHMAN \* BEFORE A. J. NOVOTNY, JR.,  
AGAINST THE MARYLAND HOME \* AN ADMINISTRATIVE LAW JUDGE  
IMPROVEMENT GUARANTY FUND, \* OF THE MARYLAND OFFICE  
REGARDING THE ALLEGED ACTS AND \* OF ADMINISTRATIVE HEARINGS  
OMISSIONS OF GLEN A. TAYLOR, SR., \* OAH NO.: DLR-HIC-02-10-24084  
T/A G & G TAYLOR & SONS ROOFING \* MHIC NO.: 08 (75) 871  
COMPANY \*

\* \* \* \* \*

**RECOMMENDED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On January 6, 2009, Robert Huebschman, (also identified as 3617 Saint Victor L.L.C., Owner) (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of the actual losses allegedly suffered as a result of the acts and omissions of Glen H. Taylor, Sr., t/a G & G Taylor & Sons Roofing Company (Respondent). On August 3, 2009, after investigation, the MHIC issued a Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH), where it was received on June 10, 2010.

Following a Notice of Hearing (Notice) issued by the OAH on September 13, 2010, on November 19, 2010, I conducted a hearing at the OAH, 11101 Gilroy Road, Hunt Valley,

Maryland. Md. Code Ann., Bus Reg. § 8-407(a) (2010). Assistant Attorney General Jessica Kaufman appeared on behalf of the Fund. Although properly notified<sup>1</sup> of the hearing, neither the Claimant nor the Respondent appeared.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); the MHIC Hearing Regulations, Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01 and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

### **ISSUES**

Did the Claimant sustain an actual loss as a result of the Respondent's acts or omissions and, if so, what amount is the Claimant entitled to recover from the Fund?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I adopted into the record the OAH file which contained the following relevant documents:

- MHIC claim form, received January 1, 2009 (front side only)
- MHIC Hearing Order, dated August 3, 2009
- Transmittal for Hearing, received June 29, 2010
- OAH office copy of Notice, dated September 13, 2010
- Post Office notices of returned mail, received back Sept 17 and 21, 2010

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<sup>1</sup> The Notice (Fund Ex. #1) had been mailed to the both the Claimant and the Respondent at their respective addresses of record with the MHIC. The Notice was sent by both certified and regular mail to both the Claimant's residential address of record, which is the same address as registered with the Maryland Department of Assessments and Taxation for the L.L.C. The Notices sent to the Claimant were returned to OAH by postal authorities with the notation, "Not Deliverable as Addressed...Unable to forward." The Notices sent to the Respondent's address as listed with the MHIC (See Fund Ex. # 2), were not returned to OAH. After scrutinizing closely all of the documents in the record and offered as preliminary exhibits relating to notice, I concluded that both the Claimant and the Respondent were afforded proper notice of the hearing. Code of Maryland Regulations (COMAR) 09.01.02.07. Although they failed to appear, I proceeded with the hearing without them. COMAR 09.01.02.09.

The Fund submitted the following documents, which I admitted into evidence:

Fund Ex. #1: OAH Hearing Notice, issued March 25, 2010, along with the MHIC Hearing Order and returned Notices

Fund Ex. #2: Transmittal for hearing, undated along with the MHIC Hearing Order and MHIC claim form (received January 1, 2009)

Fund Ex. #3: Respondent's licensing history with the MHIC, printed October 28, 2010

Fund Ex. #4: Letter from MHIC to the Claimant advising of referral to the OAH for a hearing, dated June 25, 2010

Fund Ex. #5: On-line State Department of Assessments and Taxation real property and corporation information, printed October 28, 2010

Neither the Claimant nor the Respondent offered any documents into evidence.

### Testimony

The Fund did not present any witnesses. Ms. Kaufman argued that the Claimant has not met his burdens and that the claim should be denied.

### **FINDINGS OF FACT**

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

1. At all relevant times, the Respondent was a licensed home improvement contractor with the MHIC under registration number 3974042. The license is valid until June 3, 2012.
2. On January 6, 2009, the Claimant filed a claim with the Fund for reimbursement of \$1,225.00 in actual losses allegedly suffered as a result of the acts and omissions of the Respondent.
3. The Claimant has not suffered any actual losses as a result of acts or omissions, unworkmanlike, inadequate or incomplete home improvement by the Respondent.

## DISCUSSION

Section 8-405 of the Business Regulation article provides that 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 (2010). Section 8-401 defines “actual loss” as “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). The burden of proof to establish the unworkmanlike, inadequate or incomplete home improvement and any actual loss suffered is on the Claimant. Md. Code Ann., Bus. Reg. § 8-407(e)(1) (2010).

In calculating the amount of an actual loss, COMAR 09.08.03.03B governs the calculation of awards from the Fund and provides as follows:

- (1) The Commission may not award from the Fund any amount for:
  - (a) Consequential or punitive damages;
  - (b) Personal injury;
  - (c) Attorney’s fees;
  - (d) Court costs; or
  - (e) Interest.
  
- (2) The Fund may only compensate claimants for actual losses they incurred as a result of misconduct by a licensed contractor.
  
- (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 according to 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 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.

The Notices carried the required warning of the possible adverse effects of failure to appear. COMAR 28.02.01.05B(6). "If, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other state of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default<sup>2</sup> order against the defaulting party." COMAR 28.02.01.23A. *See also* COMAR 09.01.02.07 & .09. In this matter, although every effort was made to notify the Claimant of the time, date and place of the hearing and mailing of Notices was made to both the Claimant's residential address of record and the L.L.C. address of record<sup>3</sup> as listed by the Department of Assessments and Taxation, the Claimant failed to appear. The Claimant knew that the OAH would be scheduling a hearing (Fund Ex. # 4), yet he did not update his address or the L.L.C.'s address when that address was no longer valid for mail delivery. The Claimant did not request any delay or postponement and did not waive appearance in advance. COMAR 28.02.01.20D. Thus, the Claimant is required to attend if he wishes to present evidence and meet his burden in order to prevail in his claim.

Additionally, section 4A-302 of the Corporations and Associations article states: "A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company." Md. Code Ann., Corps. & Ass'ns § 4A-302 (2007). Further, section 9-1607.1 of the State

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<sup>2</sup> "A motion to dismiss or any other dispositive motion may not be granted by the ALJ without the concurrence of all parties." COMAR 09.01.03.05B. I consider that this includes a motion for default.

<sup>3</sup> See generally section 10-209 of the Administrative Procedure Act relating to notices to licensees and others required to notify an agency of their addresses and changes of addresses of record. Md. Code Ann., State Gov't § 10-209 (2009).

Government article identifies the situations in which an individual who is not licensed to practice law may represent a party in proceedings before the Office of Administrative Hearings. Md. Code Ann., State Gov't § 9-1607.1 (2009). Business entities against which the MHIC is taking action may be represented by non-attorneys; however, the statute does not contain any such exemption for entities filing claims against the Guaranty Fund. *Id.* Therefore, Saint Victor L.L.C. could only file a claim with the MHIC through an attorney. Further, Saint Victor L.L.C. could only appear in the hearing in this matter if represented by an attorney. Mr. Huebschman did not identify himself as an attorney. Thus, I find Saint Victor L.L.C. not only failed to appear at the hearing, but failed to properly file a Fund claim.

I find that the Claimant has presented no evidence in support of his claim. Although the Claimant's claim form (part of Fund exhibit # 2 and as in the OAH file) is signed under the penalty of law, I conclude that it is merely an allegation and, in and of itself, is not probative evidence supporting the Claimant's claim. *See* Md. Code Ann., State Gov't § 10-213(2009); *See also* COMAR 28.02.01.11B. The claim form is unsupported by competent evidence concerning any Respondent act or omission, unworkmanlike, inadequate or incomplete home improvement and the Claimant was not present to attest to the allegations of an actual loss. The basis for the allegations and calculations on the claim form are not subject to explanation, validation or cross-examination. COMAR 28.02.01.20A. Therefore, I assign no probative value to the claim form found in Fund exhibit #2 or in the OAH case file. Md. Code Ann., State Gov't § 10-213(i)(2009); *See also* COMAR 28.02.01.21B.

The Claimant has failed to meet his burden to show that he sustained an actual loss that is compensable by the Fund as a result of any unworkmanlike, inadequate or incomplete home improvement by the Respondent.

**CONCLUSIONS OF LAW**

For the reasons discussed above, I conclude that the Claimant has not established by a preponderance of the evidence that the Respondent committed any act or omission or that the Respondent performed a home improvement contract in an unworkmanlike, inadequate or incomplete manner, or that the Claimant suffered an actual loss compensable by the Guaranty Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 and 8-407(c)(1) (2010).


**RECOMMENDED ORDER**

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

**ORDER** that the claim be dismissed, and

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

January 18, 2011  
Date Decision Mailed

  
A. J. Novotny, Jr.  
Administrative Law Judge

#118268

CLAIM OF ROBERT HUEBSCHMAN \* BEFORE A. J. NOVOTNY, JR.,  
AGAINST THE MARYLAND HOME \* AN ADMINISTRATIVE LAW JUDGE  
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Maryland. Md. Code Ann., Bus Reg. § 8-407(a) (2010). Assistant Attorney General Jessica Kaufman appeared on behalf of the Fund. Although properly notified<sup>1</sup> of the hearing, neither the Claimant nor the Respondent appeared.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2010); the MHIC Hearing Regulations, Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02.01 and 09.08.03; and OAH's Rules of Procedure, COMAR 28.02.01, govern procedure in this case.

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

1. At all relevant times, the Respondent was a licensed home improvement contractor with the MHIC under registration number 3974042. The license is valid until June 3, 2012.
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## DISCUSSION

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  - (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.
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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.

The Notices carried the required warning of the possible adverse effects of failure to appear. COMAR 28.02.01.05B(6). "If, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other state of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default<sup>2</sup> order against the defaulting party." COMAR 28.02.01.23A. *See also* COMAR 09.01.02.07 & .09. In this matter, although every effort was made to notify the Claimant of the time, date and place of the hearing and mailing of Notices was made to both the Claimant's residential address of record and the L.L.C. address of record<sup>3</sup> as listed by the Department of Assessments and Taxation, the Claimant failed to appear. The Claimant knew that the OAH would be scheduling a hearing (Fund Ex. # 4), yet he did not update his address or the L.L.C.'s address when that address was no longer valid for mail delivery. The Claimant did not request any delay or postponement and did not waive appearance in advance. COMAR 28.02.01.20D. Thus, the Claimant is required to attend if he wishes to present evidence and meet his burden in order to prevail in his claim.

Additionally, section 4A-302 of the Corporations and Associations article states: "A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company." Md. Code Ann., Corps. & Ass'ns § 4A-302 (2007). Further, section 9-1607.1 of the State

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<sup>2</sup> "A motion to dismiss or any other dispositive motion may not be granted by the ALJ without the concurrence of all parties." COMAR 09.01.03.05B. I consider that this includes a motion for default.

<sup>3</sup> See generally section 10-209 of the Administrative Procedure Act relating to notices to licensees and others required to notify an agency of their addresses and changes of addresses of record. Md. Code Ann., State Gov't § 10-209 (2009).

Government article identifies the situations in which an individual who is not licensed to practice law may represent a party in proceedings before the Office of Administrative Hearings. Md. Code Ann., State Gov't § 9-1607.1 (2009). Business entities against which the MHIC is taking action may be represented by non-attorneys; however, the statute does not contain any such exemption for entities filing claims against the Guaranty Fund. *Id.* Therefore, Saint Victor L.L.C. could only file a claim with the MHIC through an attorney. Further, Saint Victor L.L.C. could only appear in the hearing in this matter if represented by an attorney. Mr. Huebschman did not identify himself as an attorney. Thus, I find Saint Victor L.L.C. not only failed to appear at the hearing, but failed to properly file a Fund claim.

I find that the Claimant has presented no evidence in support of his claim. Although the Claimant's claim form (part of Fund exhibit # 2 and as in the OAH file) is signed under the penalty of law, I conclude that it is merely an allegation and, in and of itself, is not probative evidence supporting the Claimant's claim. *See* Md. Code Ann., State Gov't § 10-213(2009); *See also* COMAR 28.02.01.11B. The claim form is unsupported by competent evidence concerning any Respondent act or omission, unworkmanlike, inadequate or incomplete home improvement and the Claimant was not present to attest to the allegations of an actual loss. The basis for the allegations and calculations on the claim form are not subject to explanation, validation or cross-examination. COMAR 28.02.01.20A. Therefore, I assign no probative value to the claim form found in Fund exhibit #2 or in the OAH case file. Md. Code Ann., State Gov't § 10-213(i)(2009); *See also* COMAR 28.02.01.21B.

The Claimant has failed to meet his burden to show that he sustained an actual loss that is compensable by the Fund as a result of any unworkmanlike, inadequate or incomplete home improvement by the Respondent.

**CONCLUSIONS OF LAW**

For the reasons discussed above, I conclude that the Claimant has not established by a preponderance of the evidence that the Respondent committed any act or omission or that the Respondent performed a home improvement contract in an unworkmanlike, inadequate or incomplete manner, or that the Claimant suffered an actual loss compensable by the Guaranty Fund. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 and 8-407(e)(1) (2010).


**RECOMMENDED ORDER**

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

**ORDER** that the claim be dismissed, and

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

January 18, 2011  
Date Decision Mailed

  
A. J. Novotny, Jr.  
Administrative Law Judge

#118268

**PROPOSED ORDER**

***WHEREFORE, this 9th day of March 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.***

***J. Jean White***

***I. Jean White  
Panel B***

**MARYLAND HOME IMPROVEMENT COMMISSION**

IN THE MATTER OF  
THE CLAIM OF CHRISTINE A. SMITH  
AGAINST THE  
MARYLAND HOME IMPROVEMENT  
GUARANTY FUND ON ACCOUNT OF  
ALLEGED VIOLATIONS OF  
KELLY WILD.  
t/a CHAMPION HOME IMPROVEMENT

\* MARYLAND HOME  
\* IMPROVEMENT COMMISSION

\* Case No. 10 (75) 46

\* \* \* \* \*

**FINAL ORDER**

On this 31<sup>ST</sup> day of March, 2011, Panel B of the Maryland Home Improvement Commission ORDERS that:

1) Pursuant to Business Regulation Article, §8-408(b)(3)(i), Annotated Code of Maryland, the Claimant has provided the Commission with a copy of a final civil judgment, dated October 20, 2009 with all rights of appeal exhausted, in which the District Court for Baltimore County found on the merits that the conditions precedent to recovery, as set forth in Business Regulation Article, §8-405(a), Annotated Code of Maryland, have been met, and found that the Claimant sustained an actual loss of \$3,389.00.

2) Pursuant to Business Regulation Article, §8-405(e)(5), Annotated Code of Maryland, which was enacted by the Maryland Legislature, effective October 1, 2010, the Commission may not award to a Guaranty Fund claimant an amount greater than the amount paid by or on behalf of the claimant to the original contractor against whom the claim is filed. Said amendment to the statute applies to any pending Guaranty Fund claim for which the adjudication of the Commission is not yet final as of October 1, 2010.