

IN THE MATTER	* BEFORE DEBORAH H. BUTE,
OF THE CLAIM OF	* AN ADMINISTRATIVE LAW JUDGE
DONNA E. DITTA	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT COMMISSION	*
GUARANTY FUND	*
FOR THE VIOLATIONS OF	*
DENVER G. RESH, T/A	* OAH NO.: DLR-HIC-02-10-30715
DENVER G. RESH BUILDING	*
CONTRACTOR	* MHIC NO.: 09 (05) 1798

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On December 3, 2009, Donna Ditta (the Claimant) filed a claim for reimbursement from the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for losses allegedly incurred as a result of the conduct of Denver G. Resh, t/a Denver G. Resh Building Contractor (Respondent).

I held a hearing on February 4, 2011 at the Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland under sections 8-312 and 8-407(c)(2) of the Business

Regulation Article, Annotated Code of Maryland (2010) on behalf of the MHIC. Jessica Kauffman, Assistant Attorney General, represented the Fund. The Respondent was present and represented himself¹. The Claimant was not present.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland (2009 & Supp. 2010); the procedural regulations of the Department of Labor, Licensing and Regulation, Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 09.08.03; and the Rules of Procedure of the OAH, COMAR 28.02.01.

ISSUES

1. Was the Claimant properly notified of the hearing?
2. Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent and, if so, what is the amount of the loss?

SUMMARY OF THE EVIDENCE

Exhibits:

The Fund submitted the following into evidence:

GF #1: Notice of Hearing, dated October 7, 2010 mailed by certified mail to the Claimant and Respondent, signed by both the Claimant and Respondent

GF #2: Transmittal Form with attached Hearing Order

GF #3: MHIC licensing information for the Respondent, printed January 18, 2011

GF #4: Letter of December 7, 2009 to the Respondent, with attached Home Improvement Claim Form

No exhibits were submitted on behalf of the Respondent or Claimant.

¹ He was accompanied by Richard Flotz, an attorney who is Vice President of Respondent's company. Mr. Flotz, however, was not participating as legal counsel.

Testimony:

No testimony was taken. The Fund presented only argument.

FINDINGS OF FACT

1. On December 3, 2009, the Claimant filed a claim for reimbursement of \$1,000.00 from the Fund for losses allegedly incurred as a result of the conduct of the Respondent.
2. On October 7, 2010, the OAH sent the Claimant and the Respondent certified mail and regular mail notices of the hearing scheduled for February 4, 2011, in Annapolis. Both notices were sent to the correct addresses.
3. The Claimant's certified mail notice was received at her mailing address and returned to OAH on October 25, 2010, with the Claimant's signature.
4. The Claimant failed to appear for the February 4, 2011 hearing.
5. The Respondent appeared at the February 4, 2011 hearing.

DISCUSSION

In this case, the Respondent was present but the Claimant failed to appear for the hearing. The hearing was scheduled to commence at 10:00 a.m., but did not begin at that time because, although the assistant attorney general for the Fund was present, as well as the Respondent, the Claimant was not. When the Claimant was still not present by 10:15 a.m., I commenced the hearing in her absence.

Preliminarily, the Fund presented documents purporting to show that the hearing notice sent by certified mail to the Claimant's address of record was received and signed for by the Claimant. The Fund maintained that in light of the fact that the Claimant had been given proper notice of the hearing and the Claimant did not appear to present any evidence, no award to the Claimant from the Fund should be made and that her claim should be dismissed.

Section 8-312 of the Business Regulation Article, Annotated Code of Maryland (2010) requires that a hearing notice be given to a person at least ten days before the hearing by certified mail to the business address of the licensee on record with the MHIC. That provision also applies to proceedings to recover from the Fund. Md. Code Ann., Bus. Reg. § 8-407(a) (2010). The requirements under the contested case provisions of Maryland's Administrative Procedure Act are similar. *See*, Md. Code Ann., State Gov't § 10-209 (2010). Those notice requirements were met in this case.

When notice has been provided in the manner required by statute or regulation, the party to whom the notice has been directed has no legitimate claim that the notice given was inadequate or defective. *State v. Barnes*, 273 Md. 195 (1974), *Bock v. Insurance Comm'r*, 84 Md. App. 724, 733 (1990). The facts and circumstances of this case show that notice of this hearing was mailed to the Claimant as required by statute and received with a signature acknowledgement. Thus, I conclude the Claimant was properly notified of the instant proceeding and that the hearing could properly proceed in her absence. COMAR 28.02.01.23.

The burden of proof to establish a valid claim against the Fund rests with the Claimant. Md. Code Ann., Bus. Reg. § 8-407(c) (2010). In this case, the Claimant filed a claim for reimbursement of \$1,000.00 from the Fund, but did not appear for the hearing. The Claimant, therefore, presented no evidence in support of her claim of an actual loss. In fact, she presented no evidence of a home improvement contract with the Respondent or that she was even legally entitled to receive an award from the Fund if there had been a contract. Md. Code Ann., Bus. Reg. § 8-405 (2010).

Accordingly, I find that the Claimant is not entitled to an award from the Fund.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Claimant is not entitled to payment from the Fund as a result of inadequate work, poor workmanship or incomplete work on the part of the Respondent. Md. Code Ann., Bus. Reg. § 8-401 (2010). She is also not entitled to an award from the Fund because she did not establish that she is a proper claimant. Md. Code Ann., Bus. Reg. § 8-405 (2010).


RECOMMENDED ORDER

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

ORDER that the Claimant not be awarded reimbursement from the Maryland Home Improvement Guaranty Fund; and

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

April 13, 2011
Date Decision Mailed


Deborah H. Buie
Administrative Law Judge

DHB/ah
#120942

PROPOSED ORDER

WHEREFORE, this 2nd day of June 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