

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF HEINRICH J. WESTPHAL,</b></p> <p><b>CLAIMANT,</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF JOHN WOLOHAN,</b></p> <p><b>T/A HALSEY HOME</b></p> <p><b>CORPORATION,</b></p> <p><b>RESPONDENT.</b></p>	<p><b>* BEFORE ZUBERI WILLIAMS,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>* OAH NO.: DLR-HIC-02-12-26042</b></p> <p><b>* MHIC NO. 10 (05) 1179</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**RECOMMENDED DECISION**

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

**STATEMENT OF THE CASE**

On June 15, 2010, Heinrich Westphal (Claimant), filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,448.56 for actual losses allegedly suffered as a result of a home improvement contract with James J.

Wolohan, t/a Halsey Home Corporation<sup>1</sup> (Respondent), to construct an addition to his home.

I held a hearing on January 14, 2013 at the Wheaton Park Office Complex, 11510 Georgia Avenue, Suite 190, Wheaton, Maryland 20902. Md. Code Ann., Bus. Reg. §§ 8-312,

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<sup>1</sup> Formerly known as Windsor Construction Group.

8-407 (2010 & Supp. 2012). Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Claimant represented himself. The Respondent did not appear.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012), Code of Maryland Regulations (COMAR) 09.01.03; 09.08.02; and 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 the Claimant's behalf:

Claimant Ex. #1 – Summary of Events, with attachments  
Claimant Ex. #2 – Bankruptcy Court Notice  
Claimant Ex. #3 – Letter From the Claimant to Respondent, dated March 8, 2010  
Claimant Ex. #4 – Building Permit

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

Fund Ex. #1 – Notice of Hearing from OAH to the Fund, dated August 28, 2012  
Fund Ex. #2 – Notice of Hearing from OAH to the Fund, dated August 28, 2012  
Fund Ex. #3 – Letter from DLLR, dated November 13, 2012  
Fund Ex. #4 – Affidavit of Thomas Marr, IV, dated September 26, 2012  
Fund Ex. #5 – Corrected Notice of Hearing from OAH to the Fund, dated December 7, 2012  
Fund Ex. #6 – Corrected Notice of Hearing from OAH to the Fund, dated December 7, 2012  
Fund Ex. #7 – Hearing Order from DLLR, dated June 8, 2012  
Fund Ex. #8 – Home Improvement Commission Claim, June 1, 2010  
Fund Ex. #9 – Letter from DLLR to Respondent, dated June 23, 2010

I admitted no documents on behalf of the Respondent.

## Testimony

The Claimant testified on his own behalf. The Fund did not present any witnesses.

The Respondent did not appear.

## 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 #128058.
2. At all times relevant to this matter, the Claimant lived at the house located at 5104 Wickett Terrace, Bethesda, MD 20814.
3. On or about February 9, 2010, the Claimant and the Respondent entered into a contract to construct an addition to the Claimant's house.
4. The original contract price was \$89,462.00.
5. The Respondent made a down payment of \$8,946.00, which constituted 10% of the contract price.
6. The work under the contract was supposed to begin on or about February 9, 2010.
7. The Respondent never did any work under the contract.
8. The Respondent abandoned the contract.
9. The Respondent subsequently filed for bankruptcy.
10. The Claimant called and wrote the Respondent many times to start the work or refund the down payment, but to no avail.
11. The Claimant's actual loss is \$8,946.00.

## DISCUSSION

### A. The Respondent's Failure to Appear

Section 8-312(a) of the Business Regulation Article provides that the Commission shall give the person against whom the action is contemplated an opportunity for a hearing. Md. Code Ann., Bus. Reg. § 8-312(a) (2010). On December 20, 2012, the OAH sent the Respondent a Corrected Notice of Hearing (Notice) to the Respondent's 408 Great Falls Road, Rockville, MD 20850, address (the address on file with the MHIC) by certified and regular mail.<sup>2</sup> The Fund offered into evidence a copy of a letter, dated June 8, 2012, from Joseph Tunney, Chairman, MHIC, sent to the Respondent informing him of the Claimant's claim.

The Corrected Notice of Hearing was returned as undeliverable. The Fund's counsel offered into evidence a letter verifying the Respondent's business address and certified by the Department of Licensing and Regulation. Additionally, counsel stated that he spoke with the Respondent the week before the hearing and he stated that he was not sure if he would appear at the hearing.

A hearing was scheduled for January 14, 2013 at 10:00 a.m.; however, the Respondent failed to appear for the hearing. Under Md. Code Ann., Bus. Reg. § 8-312(h) (2010), "[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and determine the matter."

Based upon the record before me, I am satisfied that the Respondent was properly notified of the date, time and location of the scheduled hearing in this matter. The hearing was convened as scheduled on January 14, 2013, at which time neither the Respondent nor anyone authorized to represent him appeared and, therefore, the hearing proceeded in the Respondent's absence.

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<sup>2</sup> The address of the Hearing location changed and, as such, a Corrected Notice of Hearing was mailed.

**B. Eligibility for Compensation**

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) (Supp.2012). *See also* COMAR 09.08.03.03B(2). Actual loss “means 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). For the following reasons, I find that the Claimant has proven eligibility for compensation.

First, the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimant.

Second, the Respondent performed incomplete home improvement services on the Claimant’s home. Specifically, I find that the Respondent entered into a contract to construct an addition to the Claimant’s home, received \$8,946.00, 10% of the contract price, as a down payment, and did not perform any work under the contract. I find the Respondent’s testimony credible because it is consistent with the documentary evidence, uncontradicted by the Respondent, and the Claimant’s demeanor during his testimony was truthful and straightforward.

Moreover, I find that the Claimant tried to contact the Respondent by phone and by regular mail asking him to start the work under the contract or refund the down payment. The Respondent failed to do either. As such, I find that the Respondent was given a reasonable opportunity to fix the problem.

**C. Award Amount**

Having found eligibility for compensation, I now turn to the amount of the award, if any. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney’s fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC’s regulations provide, “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).

Here, the Respondent abandoned the contract without doing any work. The Fund agreed that the Claimant is entitled to the full \$8,946.00 paid as a down payment to the Respondent.

As such, applying the formula set out in COMAR 09.08.03.03B(3)(a) to this case, I conclude that the Claimant, suffered an actual loss of \$8,946.00 because that was the amount paid to the Respondent under the contract.

**CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual/compensable loss of \$8,946.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,946.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010); and

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

**Signature on File**

January 17, 2013  
Date Decision Mailed

Zuberi Bakari Williams  
Administrative Law Judge

ZW/emh  
#139806

IN THE MATTER OF THE CLAIM	* BEFORE ZUBERI WILLIAMS,
OF HEINRICH J. WESTPHAL,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH NO.: DLR-HIC-02-12-26042
FOR THE ALLEGED ACTS OR	* MHIC NO. 10 (05) 1179
OMISSIONS OF JOHN WOLOHAN,	*
T/A HALSEY HOME	*
CORPORATION,	*
RESPONDENT	*
	*

\* \* \* \* \*

**FILE EXHIBIT LIST**

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