



I held a hearing on January 10, 2013 at the Wheaton Park Office Complex, 11510 Georgia Avenue, Wheaton, Maryland 21502. Md. Code Ann., Bus. Reg. §§ 8-312, 8-407 (2010 & Supp. 2012). Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation, represented the Fund. The Claimants represented themselves. Neither the Respondent, nor any representative, appeared for the hearing.

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 (OAH) 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.

### **ISSUES**

1. Did the Respondent fail to appear after proper notice?
2. Did the Claimants 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 Claimants' behalf:

- Cl. #1. January 19, 2012 Addendum to Agreement and January 7, 2012 Addendum to Agreement
- Cl. #2. November 17, 2009 letter from Windsor Construction to 1<sup>st</sup> Mariner Mortgage with attachments
- Cl. #3. December 14, 2009 O'Para Residence Punch List
- Cl. #4. Section II List Submitted by Home Owner
- Cl. #5. Photographs (A-N)

Cl. #6. Undated Proposal, Edward Martin Construction, Inc.

Cl. #7. December 18, 2009 Application for Payment on Contract

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

GF #1. December 26, 2012 memorandum from Sandra L. Sykes to Legal Services with attachments

GF #2. December 26, 2012 memorandum from Sandra L. Sykes to Legal Services with attachments

GF #3. September 26, 2012 Affidavit of Thomas Marr, IV

GF #4. Licensing history printed January 9, 2013

GF #5. September 1, 2010 letter from Respondent to MHIC

GF #6. March 17, 2010 Order Converting from Chapter 11 to a Case Under Chapter 7 on the Motion of Debtor(s), United States Bankruptcy Court for the District of Maryland

GF #7. August 26, 2010 letter from MHIC to Respondent with attachment

GF #8. Licensing History, printed February 26, 2013<sup>1</sup>

I did not admit any exhibits on behalf of the Respondent since he failed to appear.

### Testimony

The Claimants testified on their own behalf. No other testimony was offered.

### **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. His most recent MHIC license number was 3962151.

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<sup>1</sup> Record opened March 4, 2013 to admit this document. Copy provided to Claimants.

2. On or about February 19, 2008, the parties entered into a contract for major renovations to the Claimants' home, in accordance with architect's drawings and specifications. These called for substantial reconstruction of the home, leaving only a portion of the basement intact in order to meet historic preservation requirements.
3. The original contract price was \$560,545.00, which was subsequently reduced by change orders to \$547,715.11.
4. The Respondent began work in January 2009.
5. In or about May 2009, the Respondent abandoned the work.
6. The Respondent subsequently filed for bankruptcy, but did some additional work on the home.
7. The Respondent failed to properly complete drywall and painting in a number of areas of the home, including caulking and filling holes and gaps in drywall and trim, failed to fully complete electrical work and failed to fully complete plumbing and carpentry. Kitchen cabinetry is missing. Tubs do not drain properly and hot water does not work properly. Respondent also failed to properly complete the driveway and failed to properly grade the lawn to prevent backflow of water.
8. The cost to complete the contract work and to repair deficiencies is \$76,005.00.
9. The Claimants paid the Respondent \$542,711.00.

## **DISCUSSION**

### **I. 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) (Supp. 2012). The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice shall be sent by certified mail to "the

business address of the licensee on record with the Commission.” *Id.* § 8-312(d) (Supp. 2012).

The procedures for notice applicable to disciplinary proceedings also apply to claims against the Fund. *Id.* at § 8-407(a) (2010).

On December 7, 2012, the OAH sent a Notice of Hearing (Notice) by certified and first class mail to the Respondent’s last address of record, 408 Great Falls Road, Rockville, MD 20850.<sup>2</sup> The Notice advised the Respondent of the time, place and date of the hearing. The U.S. Postal Service (USPS), however, returned both Notices as “not deliverable as addressed.” GF ## 1 and 2.

On September 26, 2012, Tom Marr, an investigator for the Department, accessed the Maryland Vehicle Administration’s computer system to ascertain the Respondent’s most recent residential address and found the same address. This is also the return address on the Respondent’s response to the letter from MHIC notifying him of the Claimants’ claim against him (which was sent to the same address, and apparently received by the Respondent), and the address for Windsor Construction Group, Inc., on the March 17, 2010 Order of the United States Bankruptcy Court. Although the MHIC records reflect the trade name of the Respondent as Halsey Home Corporation, Windsor Construction Group is the name under which the Respondent conducted business with the Claimants.

Under section 8-312 of the Business Regulation article, “[i]f, after due notice, the person against whom the action is contemplated does not appear . . . the Commission may hear and determine the matter.” Md. Code Ann., Bus Reg., § 8-312(h) (Supp. 2012). Based upon the record before me, I am satisfied that the OAH properly notified the Respondent of the date, time and location of the scheduled hearing, as well as the issues to be presented. Accordingly, when

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<sup>2</sup> The licensing record submitted by the Fund at the hearing, GF #4, carried a different address. Upon my advice to it of the discrepancy, the Fund submitted an updated record, which I admitted as GF #8, reflecting this address.

the Respondent was still not present after fifteen minutes of the scheduled hearing start time, I directed that the hearing proceed in the Respondent's absence under section 8-312(h) of the Business Regulation Article, section 10-209 of the State Government Article, and COMAR 09.01.02.07E.

## II. Merits

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 Claimants have proven eligibility for compensation.

First, a review of the licensure information for the Respondent makes it clear that the Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants.

Furthermore, it is clear from the evidence that the Respondent not only abandoned the home improvements for which he contracted with the Claimants, but that portions of the work he performed were unworkmanlike.

Mr. O'Para testified to poor carpentry on the main stairwell, unfinished painting and preparation of walls throughout the house, incomplete kitchen carpentry and cabinetry, and poorly functioning plumbing. He also described flooding of his basement as a result of leaks and poor grading. Mrs. O'Para testified that fumes escape from the bathroom plumbing and that the Claimants have been unable to correct the problem. She also testified that some bathrooms have hot water and some do not.

Mr. O'Para presented a December 14, 2009 eight-page punch list by the architect who prepared the specifications for the work, as well as his own supplemental punch list. The testimony is further supported by photographs that show unfinished painting and poorly finished carpentry, as well as a missing apron for the driveway. I therefore conclude that the Claimants have suffered an actual loss as a result of incomplete and/or unworkmanlike home improvement by the Respondent.

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 offer three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3).

One of those formulas, as follows, offers an appropriate measurement in this case:

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.

COMAR 09.08.03.03B(3)(c).

The Claimants testified and presented evidence to establish that they paid the Respondent \$542,715.11 (acknowledged by the Respondent. *See* GF #5). They also presented a proposal from Edward Martin Construction, Inc., which reflects that it would cost \$76,005.00 to complete and correct defective work. This company is licensed by MHIC and Mrs. O'Para testified that it was a subcontractor on the job, to do framing. I therefore find that the proposal is prepared by a competent contractor. Because the Respondent failed to appear there is no challenge to the proposal and no evidence that it exceeds the scope of the work under the Respondent's contract.

I calculate the Claimants' actual loss as follows:

\$ 542,715.00	Amount the Claimant paid the Respondent
<u>76,005.00</u>	Amount required to correct and complete the contract work
\$ 618,720.00	
<u>- 547,715.00</u>	Contract price
\$ 71,005.00	The Claimants' actual loss

The maximum award from the Fund, however, is \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2012). I will therefore recommend an award in that amount.

### **CONCLUSIONS OF LAW**

Based upon the evidence presented and discussion, I conclude as a matter of law that the Respondent failed to appear after proper notice. Md. Code Ann., Bus Reg. §§ 8-312(d) and 8-407(a) (2010 and Supp. 2012).

I further conclude that the Claimants have sustained an actual/compensable loss of \$71,005.00 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. § 8-401 (2010). I further conclude that they are entitled to recover \$20,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1) (Supp. 2012).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$20,000.00; 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**

March 12, 2013  
Date Decision Mailed

Nancy E. Paige  
Administrative Law Judge

NEP/emh  
# 140791

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF KINGSLEY AND JOSEPHINE</b></p> <p><b>O'PARA,</b></p> <p style="padding-left: 40px;"><b>CLAIMANTS,</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 JAMES JOHN</b></p> <p><b>WOLOHAN, T/A WINDSOR</b></p> <p><b>CONSTRUCTION GROUP</b></p> <p style="text-align: center;"><b>RESPONDENT</b></p>	<p><b>* BEFORE NANCY E. PAIGE,</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-02-12-26100</b></p> <p><b>* MHIC NO.: 10 (05) 1239</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p>
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**EXHIBITS LIST**

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PROPOSED ORDER

*WHEREFORE, this 18<sup>th</sup> day of April 2013, 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