

<p>IN THE MATTER OF THE CLAIM OF DONALD J. SCHMITT, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF DAVID BRYANT, T/A AMISH BUILT SHEDS & MORE, RESPONDENT</p>	<p>* BEFORE JOY L. PHILLIPS, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * OAH No.: DLR-HIC-02-15-10858 * MHIC No.: 14 (05) 916 * *</p>
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On October 8, 2014, Donald J. Schmitt (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$2,909.00 in alleged actual losses suffered as a result of a home improvement contract with David Bryant, t/a Amish Built Sheds & More (Respondent).

I held a hearing on July 13, 2015 at Maryland Department of Agriculture. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented himself. The Respondent did not appear and was not represented. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund.

The Respondent's address of record with the MHIC is 8236 Veterans Highway, Millersville, MD 21108. The notices of hearing, sent by regular and certified mail, were returned by the United States Postal Service (USPS) as undeliverable. An expired forwarding address for the Respondent, P.O. Box 585, Millersville, MD, 21108-0585, was provided by the USPS and replacement notices of hearing were sent to that address, again by regular and certified mail, but those notices were also returned as undeliverable and unable to forward. As the Respondent has a duty to provide an up to date address to the MHIC and he failed to do so, I proceeded with the hearing in his absence.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department, 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 (2014), Code of Maryland Regulations (COMAR) 09.01.03, 09.08.02, and 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of any acts or omissions committed by the Respondent?
2. If so, what is the amount of that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1 - Sales Contract, signed by the Respondent June 23, 2013
- Clmt. Ex. 2 - Pinetree Woodworks Garage Price List, undated
- Clmt. Ex. 3 - Better Business Bureau Online Complaint, filed September 17, 2013
- Clmt. Ex. 4 - Response from Better Business Bureau, dated November 22, 2013
- Clmt. Ex. 5 - MHIC Complaint Form, dated December 5, 2013
- Clmt. Ex. 6 - Letter from MHIC to the Claimant, dated April 22, 2014

I admitted no exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Memo from Sandra L. Sykes, dated May 6, 2015, with attached undeliverable certified mail sent to 8236 Veterans Highway, Millersville, MD 21108
- Fund Ex. 2 - Memo from Sandra L. Sykes, dated May 6, 2015, with attached undeliverable regular mail sent to 8236 Veterans Highway, Millersville, MD 21108
- Fund Ex. 3 - Memo from Sandra L. Sykes, dated May 21, 2015, with attached undeliverable certified mail sent to P.O. Box 585, Millersville, MD 21108-0585
- Fund Ex. 4 - Memo from Sandra L. Sykes, dated May 21, 2015, with attached undeliverable regular mail sent to P.O. Box 585, Millersville, MD 21108-0585
- Fund Ex. 5 - Registration Inquiry and Licensing History, printed July 10, 2015
- Fund Ex. 6 - Letter from MHIC to the Respondent, with claim form, dated October 27, 2014

Testimony

The Claimant testified and called no witnesses.

The Respondent was not present and presented no testimony.

The Fund presented no testimony.

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 01-101077.
2. On June 23, 2013, the Claimant and the Respondent entered into a contract to install a 12 x 20-foot shed on the rear side of the Claimant's yard at the home where he lived at the time. The shed was to be installed by the end of August 2013.
3. The original agreed-upon contract price was \$5,817.95.
4. On June 23, 2013, the Claimant paid the Respondent \$2,909.00, by check, as a deposit. The Respondent cashed the check.
5. On an unknown date, someone from the Respondent's business went to the Claimant's home to survey the property.
6. The Respondent made two appointments to deliver the shed. Each time, the Respondent failed to appear at the Claimant's property.

7. On an unknown date, the Claimant went to the Respondent's office and talked to a sales person who assured the Claimant that someone would call him to schedule a delivery date. The Respondent never called him.

8. The Respondent never installed the shed on the Claimant's property.

9. On September 9, 2013, the Claimant returned to the Respondent's office to seek reimbursement of his deposit. The same sales person told him that the deposit would be returned and that someone would call him. Neither occurred.

10. The Claimant's actual loss is \$2,909.00.

DISCUSSION

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) (2015). *See also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). 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 (2015). 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 he entered into the contract with the Claimant. He entered into a sales contract with the Claimant under which he agreed to install a 12 x 20-foot shed on the Claimant's property. The shed constitutes "a structure adjacent to that building" and thus, is covered by the home improvement guaranty fund statute. Md. Code Ann., Bus. Reg. §8-101g(1)(i) (2015).

The undisputed evidence has established that the Respondent entered into a contract to install a shed in the Claimant's backyard and failed to take any steps toward completing that contract beyond having someone survey the property. Nevertheless, the Respondent cashed the

deposit check written by the Claimant in the amount of \$2,909.00. Thus, I find that the Respondent abandoned the contract and that the Claimant is eligible for compensation from the Fund.

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 three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case.

"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). In this case, the contractor abandoned the contract without doing any work. Accordingly, the Claimant is entitled to reimbursement from the Fund in the amount of \$2,909.00, the amount actually paid to the Respondent. Md. Code Ann., Bus. Reg. § 8-405 (e)(5) (2015); COMAR 09.08.03.03B(3)(a).

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$ 2,909.00 as a result of the Respondent's acts and omissions. Md, Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,909.00; 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 (10%) as set by the Maryland Home Improvement Commission;¹ and

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

Signature on File

September 15, 2015
Date Decision Issued

Joy L. Phillips *JL*
Administrative Law Judge

JLP/dlm
#158083

¹ See Md. Code Ann., Bus. Reg. § 8-410(a) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 27th day of October, 2015, 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.

Marilyn Jumalon

***Marilyn Jumalon
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION