

<p>IN THE MATTER OF THE CLAIM</p> <p>OF VIRAL SHETH,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF DOUGLAS</p> <p>MORGAN,</p> <p>T/A MORGAN AND MORGAN</p> <p>SOLAR, LLC, RESPONDENT</p>	<p>* BEFORE WILLIS GUNTHER BAKER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: DLR-HIC-02-17-40099</p> <p>* MHIC No.: 16 (05) 1106</p>
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PROPOSED DECISION

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STATEMENT OF THE CASE

On June 7, 2016, Viral Sheth (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$17,250.00¹ in actual losses allegedly suffered as a result of a home improvement contract with Douglas Morgan, trading as Morgan and Morgan Solar, LLC (Respondent).

¹ This amount was amended to \$6,050.00 on August 11, 2017 since the Claimant received some restitution from the Respondent.

I held a hearing on April 16, 2018 at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. § 8-407(e) (2015). The Claimant represented himself. Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.²

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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 & Supp. 2017); COMAR 09.01.03; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
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 - District Court of Maryland for Howard County Notice of Judgment of Restitution in State of Maryland vs. Douglas Morgan, Subpoena of Viral Sheth, Transcript Request, and CD of recording of District Court case

Clmt. Ex. 2 - District Court of Maryland Case Search Information for Defendant Douglas Morgan

²Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on or about March 15, 2018, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice, and proceeded to hear the captioned matter.

- Clmt. Ex. 3 - Contract and Proof of Payment, September 22, 2015
- Clmt. Ex. 4 - Emails and Text messages between Claimant and Respondent from October 6, 2016 through February 17, 2016
- Clmt. Ex. 5 - Certified Letter from Claimant to Respondent, March 5, 2016
- Clmt. Ex. 6 - Complaint Form to Maryland Home Improvement Commission (MHIC), March 14, 2016³
- Clmt. Ex. 7 - Two photographs of the Claimant's roof taken by Roofworks on April 5, 2016
- Clmt. Ex. 8 - Roofworks estimate to complete Respondent's work, April 5, 2016
- Clmt. Ex. 9 - MHIC letter to Respondent, March 29, 2016; Letter from Consumer Protection Division to Claimant, May 3, 2016; Letter from the Better Business Bureau to Claimant, June 11, 2016; Email from MHIC to Claimant, June 2, 2016
- Clmt. Ex. 10 - Letter from Howard County Office of Consumer Affairs to Respondent, May 19, 2016
- Clmt. Ex. 11 - Email from MHIC to Claimant, July 7, 2016
- Clmt. Ex. 12 - Certified Letter from Claimant to Respondent, July 28, 2016
- Clmt. Ex. 13 - Email from Howard County Dept. of Inspections, Licenses & Permits to Claimant, June 10, 2016
- Clmt. Ex. 14 - Emails between Claimant and MHIC, June 1, 2016 and June 14, 2016
- Clmt. Ex. 15 - Email to Claimant from Sunrun Solar, March 16, 2016
- Clmt. Ex. 16 - Email to Claimant from Direct Energy Solar, September 20, 2016
- Clmt. Ex. 17 - Letter from Nationwide Insurance to Claimant, July 6, 2016
- Clmt. Ex. 18 - NUEngineering estimate for truss repair with two photographs, September 14, 2016
- Clmt. Ex. 19 - Standard Energy Solutions Contract, September 22, 2016

³ The Fund offered a different exhibit as the Complaint Form, date received June 7, 2016, which is the verified date the claim was accepted at MHIC.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Notice of Hearing, March 14, 2018

Fund Ex. 2 - MHIC Licensing information of Respondent

Fund Ex. 3 - Letter from MHIC to Respondent, June 30, 2016, with attachment of June 7, 2016 Claim Form; MHIC Claim form, August 11, 2017

The Respondent was not present and offered no exhibits.

Testimony

The Claimant testified on his own behalf and presented the testimony of Brian Desmond, Business Development Manager of Standard Energy Solutions, who was offered as an expert in solar panel installation, but never accepted as an expert.⁴

The Respondent was not present and did not offer any witnesses.

The Fund did not present any witnesses.

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 4705200.

2. Respondent's trade address on file with MHIC was 2633 River Road, Mansquan, New Jersey 08736. It was this address the OAH Notice of Hearing was sent to and not returned by the post office.

3. On September 22, 2015, the Claimant and the Respondent entered into a contract to install a residential solar system on the Claimant's home. The contract stated that work would

⁴ The Claimant offered Mr. Desmond as an expert, but never fully established him as an expert in the installation of solar panels as Mr. Desmond works on the sales side of the industry. I reserved ruling on his qualification as an expert pending the Claimant offering some expert opinion of him. Mr. Desmond was never asked to offer an expert opinion, but only testified as to his observations and actions, which did not require qualification as an expert.

commence within ninety days and would be substantially completed within one hundred twenty days.

4. The original agreed-upon contract price was \$36,000.00.
5. On September 22, 2015, the Claimant paid the Respondent \$17,250.00.
6. The Respondent performed some minimal electrical work and installed clamps on the Claimant's roof in the Fall of 2015, then never returned.
7. The Respondent never applied for nor received any required permits from Howard County for work on the Claimant's property.
8. The Claimant contacted the Respondent repeatedly from October 2015 through February 2016. Respondent stated the work would be complete before the end of 2015, but it was not.
9. On March 5, 2016, the Claimant sent the Respondent a certified letter, which was claimed, demanding completion of the project or return of the funds paid by March 19, 2016. The Respondent did not reply.
10. Sometime after March 5, 2016, the Respondent sent the Claimant a check for \$2,200. On July 28, 2016, the Claimant sent the Respondent a certified letter, which was claimed, advising the Respondent that the Claimant was terminating the contract and demanding \$12,000.00 to settle the matter.
11. In August 2016, the State of Maryland brought numerous criminal charges against the Respondent in the District Court of Maryland for Howard County. In the case regarding the Claimant's property, the Respondent entered into a plea agreement on January 25, 2017, in which he agreed to pay the Claimant \$9,000.00 in restitution over time. The Respondent has satisfied that restitution order.

12. The Respondent has paid a total of \$11,200.00 to the Claimant in restitution for the incomplete contract.

13. The Claimant pursued several other solar companies to have the Respondent's work completed, but several were not interested in picking up where the Respondent left off and another was unacceptable to the Claimant.

14. The Claimant contracted with Standard Energy Solutions (SES) to remove the work done by the Respondent and install a completely different solar system with a different scope and materials at the Claimant's home at a cost of \$25,479.75. SES charged the Claimant \$300.00 to repair the damage to the trusses cause by the Respondent, but also gave the Claimant a credit of \$480.00 for reuse of electrical equipment installed by the Respondent. The total cost to the Claimant for the work completed by SES was \$24,999.75.

DISCUSSION

Under the OAH Rules of Procedure, at COMAR 28.02.01.23A, if a party fails to attend a hearing, after receiving proper notice, the judge may proceed in that party's absence or may issue a default order against the defaulting party. I have determined that the Notice was properly sent to the Respondent's address of record and it was appropriate to proceed in his absence, since the Claimant is still required to demonstrate his right to recover from the Fund.

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).⁵ “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.”

⁵ As noted above, “COMAR” refers to the Code of Maryland Regulations.

Coleman v. Anne Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

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);⁶ *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.” Bus. Reg. § 8-401. 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. Although the Respondent’s Company was in New Jersey, he still maintained a home improvement license in Maryland from May 5, 2011 until it was terminated on May 19, 2016.

The Respondent performed unworkmanlike, inadequate and incomplete home improvements and abandoned the project after performing minimal work. The Respondent accepted about 50% of the contract price upon signing of the contract, came one day to perform minor electrical work and install clamps on the Claimant’s roof that created an eyesore, then strung the Claimant along for months, before walking away from the project.

The Claimant provided credible evidence of the agreement that was made with the Respondent, of all the efforts he made to try to get the Respondent to fulfill the contract and of

⁶ Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume of the Maryland Annotated Code.

all the complaints and claims he pursued against the Respondent with various oversight and consumer agencies. The Respondent was not merely neglectful, his actions were found criminal. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work:

B. Measure of Awards from Guaranty Fund.

(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.

COMAR 09.08.03.03B(3).

The Claimant sought reimbursement from the Fund in the amount of \$6,050. He derived this number by taking the amount he paid to the Respondent, \$17,250, and subtracting the

payments made in restitution and reimbursement, \$11,200, to arrive at his claim amount, arguing the Respondent abandoned the project without doing any work of any value on the contract so his actual loss was the amount he paid to the contractor under the contract, pursuant to COMAR 09.08.03.03B(3)(a). He presented the testimony of Brian Desmond of SES, who indicated that the work done by the Respondent was not useable in their fulfilment of their contract with the Claimant because they utilized a different installation and a different type of solar panel. He testified that SES had to actually remove everything that the Respondent had done and also had to make some repairs to the trusses to repair damage made by the Respondent before they could begin their work. They were able to salvage some of the Respondent's electrical work, however. Mr. Desmond testified that he never saw the Respondent's contract, was unaware of the original scope of work and never intended to complete the original contract. SES looked at the Claimant's project as a new application and did not believe the projects were comparable, calling them an "apples to oranges" comparison.

The Fund agreed that the Claimant suffered actual loss by an inadequate contractor who did an incomplete and unworkmanlike job then disappeared. However, it argued that the Claimant is not entitled to any recovery because the work was completed by another contractor who actually cost \$11,000.00 less than the original contract. Using the formula set forth in COMAR 09.08.03.03B(3)(c), the Fund argued the Claimant actually came out ahead:

Amount paid to the Respondent	\$ 6,050.00 (\$17,250 - \$11,200 repayment)
+ Amount paid to SES to correct	\$24,999.75
- Original contract amount	<u>\$36,000.00</u>
	-\$ 4,050.25

I do not find that either of these formulas provides the appropriate actual loss. In this case, the Respondent performed some work under the contract. The Claimant did solicit other contractors to complete or remedy that work, but to no avail. The Claimant did contract with

SES to install solar panels, but I find it was a completely different scope of work because the job and materials were inherently different based on the passage of time in an ever-evolving field. SES did not “complete” the original contract, it replaced it with a better concept. It also was required to fix errors made by the Respondent, as well utilize a very small portion of the electrical work installed. Accordingly, the following formula appropriately measures the Claimant’s actual loss: “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.” COMAR 09.08.03.03B(3)(b). I find that the Claimant is entitled to \$5,870.00, derived as follows:

Amount paid to the Respondent	\$6,050.00 (\$17,250 - \$11,200 repayment)
- Value of R’s work	<u>\$ 180.00</u> (value of electrical \$480 - \$300 to repair damages caused by R)
Amount owed to Claimant	\$5,870.00

While I also recognize that the Claimant suffered out of pocket expenses such as photocopying and mailing in pursuing this claim, in addition to many hours of his time, these items are not recoverable. However, I find the Fund’s position untenable. The Claimant should be compensated for his loss. Despite the fact that both contracts involved solar panels, the product and completed work were not the same. Indeed, in reviewing the two contracts, there is little language about what is included that is similar, the Respondent’s contract was extremely simple and general, while the SES contract was more descriptive of the panels, battery, conduit and wattage, the actual work to be done to install the panels, and the anticipated energy results. Furthermore, SES did not “complete” the contract, it actually had to repair the damage done by the Respondent and remove all of the work he had done on the Claimant’s roof before they could begin their work. There was only minor electrical work that was salvageable from the original

contract. The Fund's position implies that the Respondent provided some value that the other contractor was utilizing in its "completion" of the job. I find that almost entirely lacking here. Therefore, the award of \$5,870.00 is warranted.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor, and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled recover his actual loss of \$ 5,870.00.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,870.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015) ; COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3)(b).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,870.00; 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 ten percent (10%) as set by the Maryland Home Improvement Commission;⁷ and

⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

Signature on File

July 5, 2018
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/ej
#174635

PROPOSED ORDER

WHEREFORE, this 8th day of August, 2018, 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.

Andrew Snyder

***Andrew Snyder
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION

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