

IN THE MATTER OF THE CLAIM * **BEFORE RACHAEL BARNETT,**
OF JIM HONSBERGER, * **AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT * **OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME * **OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND *
FOR THE ALLEGED ACTS OR *
OMISSIONS OF RICHARD *
MCKENZIE, * **OAH No.: DLR-HIC-02-18-20850**
T/A METROPOLITAN BATH & TILE, * **MHIC No.: 16(90)115**
RESPONDENT *

* * * * *

PROPOSED DEFAULT ORDER

On March 13, 2018, Jim Honsberger (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$7,078.00 for alleged actual losses suffered as a result of a home improvement contract with Richard McKenzie, trading as Metropolitan Bath & Tile (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015) (Supp. 2018). On March 13, 2018, the MHIC issued a Hearing Order on the claim. On July 2, 2018, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

By letter dated December 18, 2018,¹ the OAH issued a Notice of Hearing (Notice) to the Claimant and to the Respondent via certified and first class mail at their last addresses of record.

¹ The OAH originally scheduled the case for October 10, 2018; however, the matter was postponed and OAH rescheduled the matter for November 7, 2018. The OAH again rescheduled the matter for January 25, 2019 and again postponed this matter, finally rescheduling it for February 13, 2019.

Code of Maryland Regulations (COMAR) 09.08.03.03A(2). The Notice stated that a hearing was scheduled for February 13, 2019 at 9:30 a.m., at the OAH, in Hunt Valley, Maryland, and that failure to attend the hearing might result in “a decision against you.”

The U. S. Postal Service returned the certified mail receipts evidencing delivery on December 20, 2018 to the Claimant and on December 20, 2018 to the Respondent. At approximately 5:00 p.m. on February 12, 2019, the Claimant telephoned a clerk at the OAH and left a message stating he would not be attending his hearing because he had the flu. On the morning of February 13, 2019, a clerk at the OAH returned Mr. Honsberger’s call and informed him of the need to provide documentation of his illness. The Claimant failed to provide before the commencement of the hearing any documentation indicating he could not attend his hearing.

On February 13, 2019, I convened the hearing as scheduled. Md. Code Ann., Bus. Reg. § 8-407 (2015). Neither the Claimant nor anyone authorized to represent the Claimant appeared. Richard McKenzie and Dave Collier appeared on behalf of Metropolitan Bath & Tile of Baltimore, Inc. Eric London, Assistant Attorney General, Department of Labor, Licensing, and Regulation, was present to represent 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). After waiting over fifteen minutes, during which time the Claimant failed to appear, the Respondent moved for a default order

dismissing the Claim. COMAR 28.02.01.23A.² The Fund offered several documents into evidence in support of the default order. I admitted the following motion exhibits:³

- GF #1 - Notice of Hearing, December 18, 2018
- GF #2 - Notice of Hearing, July 10, 2018
- GF #3 - Notice of Hearing, August 30, 2018
- GF #4 - Notice of Hearing, November 16, 2018
- GF #5 - Hearing Order, June 28, 2018
- GF #7 - Home Improvement Claim Form, March 13, 2018
- GF #8 - Notice of Claim, March 14, 2018

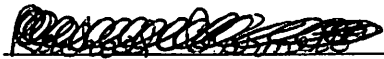
I conclude that the Claimant was properly notified of the hearing but failed to appear. Therefore, I shall grant the motion.

I therefore **PROPOSE** that the MHIC issue a **DEFAULT ORDER** as follows:

1. The Claimant is in default; and
2. All further proceedings in the captioned matter are **TERMINATED**, and a disposition of **DISMISSAL** is entered in this case, pursuant to COMAR 28.02.01.23A; and
3. In accordance with COMAR 09.01.03.09 and 28.02.01.23C, the Claimant or his representative may file written exceptions with MHIC within twenty (20) days from the postmark date of this Proposed Default Order.

February 26, 2019
Date Order Issued

RAB/da
178324



Rachael Barnett
Administrative Law Judge

By
MDC

² "If, after receiving proper notice, a party fails to attend or participate in a . . . hearing, . . . the judge . . . may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party."

³ Guaranty Fund Exhibit 6 was not admitted because it related to the claim on the merits and did not support the default order.

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PROPOSED ORDER

WHEREFORE, this 2nd day of May, 2019, 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