

IN THE MATTER OF THE CLAIM	* BEFORE JOHN T. HENDERSON, JR.,
OF BRANDON DAVIS,	* 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	*
DANIEL GRANZOW, T/A	*
FAMILY FIRE PROTECTION	*
SYSTEMS, INC.	* OAH No.: DLR-HIC-02-17-15560
RESPONDENT	* MHIC No.: 16 (90) 420

* * * * *

RECOMMENDED DECISION

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STATEMENT OF THE CASE

On November 16, 2016, Brandon Davis (Claimant) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for the reimbursement of \$44,866.00 of actual losses allegedly suffered because of a home improvement contract with Daniel Granzow, t/a Family Fire Protection Systems, Inc. (Respondent).

On June 7, 2017, the Office of Administrative Hearings (OAH) mailed notice of the hearing to the Respondent by certified and regular mail to his address of record on file with the

MHIC. Md. Code Ann., Bus. Reg. § 8-312(d) (2015).¹ The notice advised the Respondent of the time, place, and date of the hearing. On July 24, 2017, the United States Postal Service returned the notice mailed to the Respondent as unclaimed.

I held the hearing on August 14, 2017, at the Prince George's County Office Building, 1400 McCormick Drive, Largo, Maryland 20774. Bus. Reg. §§ 8-312(a), 8-407(a) and (e) (2015). The Claimant appeared and represented himself. Daniel S. Granzow, President of the Respondent corporation, did appear and represented the Respondent and himself at the hearing². Eric B. London, Assistant Attorney General, Department of Labor, Licensing and Regulation (DLLR), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DLLR, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 09.08.02; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund because of the Respondent's acts or omissions?
2. If so, how much is the Claimant entitled to receive from the Fund?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted exhibits on behalf of the Claimant as follows:

- Cl. Ex. 1 Contract with James Smith signed by Claimant, June 1, 2015
- Cl. Ex. 2 Prince George's County construction permit issued September 24, 2015

¹ "The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d) (2015).

² Respondent corporation submitted to the OAH file on August 16, 2017, a Special Power of Attorney authorizing Daniel S. Granzow, President of the corporation, to act for and represent the corporation at the hearing.

- Cl. Ex. 3 Prince George's County Correction Order, October 8, 2015
- Cl. Ex. 4 Response to Complaint narrative undated and unsigned
- Cl. Ex. 5 Video of subject home improvement construction, October 1, 2015
- Cl. Ex. 6 Photograph of home improvement construction, October 8, 2015
- Cl. Ex. 7 Blueprint of home improvement project, September 24, 2015
- Cl. Ex. 8 Estimate from Dover Remodeling Services, Inc., October 14, 2016

I admitted exhibits on behalf of the Respondent as follows:

- Resp. Ex. 1 Example proposal from Family Fire/Protection Systems, Inc., August 17, 2016
- Resp. Ex. 2 Example invoice from Family Fire/Protection Systems, Inc., December 29, 2016

I admitted exhibits on behalf of the Fund as follows:

- GF Ex. 1 Notice of Hearing from the OAH dated June 7, 2017
- GF Ex. 2 HIC Hearing Order, March 23, 2017
- GF Ex. 3 The Respondent's DLLR license history as of July 31, 2017
- GF Ex. 4 Home Improvement Claim Form, November 10, 2016 and received by HIC November 16, 2016
- GF Ex. 5 Letter from HIC to the Respondent, November 22, 2016
- GF Ex. 6 Check No. 0997, payable to the order of J.E. Smith, in the sum of \$7,133.00, June 1, 2015
- GF Ex. 7 Check No. 1000, payable to the order of James Smith, in the sum of \$7,133.00, July 15, 2015
- GF Ex. 8 Civil penalty invoice numbers 580 and 581 from HIC to the Respondent, May 13, 2016; Citation Payment Form, May 13, 2016
- GF Ex. 9 DLLR Complaint Form, September 20, 2015, received by DLLR September 23, 2015

Testimony

The Claimant testified on his behalf. Daniel S. Granzow, (President), testified on behalf of the Respondent and on his behalf. The Fund did not present any witness 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 contractor's license numbers 01-42698 and 05-42697.
2. The Claimant is not related to the Respondent.
3. The Claimant's property subject to this matter is located at 15405 Sir Edwards Drive, Upper Marlboro, Maryland (the Property).
4. The Property is the Claimant's primary residence.
5. The Claimant has not filed other claims against the Respondent outside of these proceedings.
6. On June 1, 2015, the Claimant and James E. Smith (Smith) met at the Property and entered into an agreement (the Contract) whereby Smith agreed to build on the rear of the Property an enclosed porch with a wrap-around deck.
7. The original contract price with Smith was \$21,400.00.
8. The payment terms pursuant to the Contract with Smith were the following:

June 1, 2015	\$ 7,133.33
June 25, 2015	\$ 7,133.33
Due on Completion	<u>\$ 7,133.34</u>
 Total due per Contract	 \$21,400.00
9. The Contract did not provide a completion date for the home improvement.
10. Smith began work on the home improvement on July 16, 2016.

11. The Claimant paid Smith the following:

June 1, 2015	Payable to J.E. Smith	\$ 7,133.00
July 15, 2015	Payable to James Smith	<u>\$ 7,133.00</u>
	Total Payments	\$14,266.00

12. Smith was not an employee, partner, associate, subcontractor, or agent of the Respondent.

13. Smith did not pay over to Respondent any money that Smith received from the Claimant.

14. The Respondent did not agree to build a home improvement, did not contract to build a home improvement, and did not authorize Smith to build a home improvement for the Claimant at any time relevant to these proceedings.

DISCUSSION

In 1985, the Maryland General Assembly enacted legislation that first established the Fund. By this means, the legislature sought to create a readily available reserve of money from which homeowners could seek relief for actual losses sustained because of an unworkmanlike, inadequate, or incomplete home improvement performed by a licensed home improvement contractor. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015).³ Under this statutory scheme, licensed contractors are assessed fees, which subsidize the Fund. Homeowners who sustain losses by the actions of licensed contractors may seek reimbursement for their “actual losses” from this pool of money, subject to a maximum of the lesser of \$20,000.00 or the amount paid by or on behalf of the claimant to the contractor. Md. Code Ann., Bus. Reg. § 8-405(e)(1) and (5). A homeowner is authorized to recover from the Fund when he or she sustains an actual loss that results from an act or omission by a licensed contractor. Md. Code Ann., Bus. Reg. § 8-405(a). When the Fund reimburses a homeowner as a result of an actual loss caused by a licensed

³ Unless otherwise indicated, all references are to the 2015 version.

contractor, the responsible contractor is obligated to reimburse the Fund. Md. Code Ann., Bus. Reg. § 8-410. The MHIC may suspend the license of any such contractor until he or she reimburses the Fund in full with annual interest as set by law. Md. Code Ann., Bus. Reg. § 8-411(a).

Recovery against the Fund is based on "actual loss," as defined by statute and regulation. "[A]ctual 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. "By employing the word 'means,' as opposed to 'includes,' the legislature intended to limit the scope of 'actual loss' to the items listed in section 8-401." *Brzowski v. Md. Home Improvement Comm'n*, 114 Md. App. 615, 629 (1997). The Fund may only compensate claimants for actual losses incurred as a result of misconduct by a licensed contractor. COMAR 09.08.03.03B(2). At a hearing on a claim, the Claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[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." *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).

In this case, there is no actual loss of the Claimant's home improvement caused by the Respondent. The Claimant entered into the Contract with Smith, who was not an employee, agent, subcontractor, or authorized representative of the Respondent. Smith apparently led the Claimant to believe that he was with the Respondent's company, Family Fire Protection Systems, Inc. However, there is no credible evidence tending to show that the Respondent's company contracted with the Claimant. Smith did not use any of the Respondent's letterhead,

contract forms, business cards or other business material to suggest he was affiliated with the Respondent's company.

In addition, Family Fire Protection Systems, Inc., the President testified, only installs home sprinkler systems and has never in its twenty-five years of existence, built decks or sun rooms. Also, according to the testimony of the President, his company is a one person operation. The President solicits the sales, commits to the contracts and performs the labor, all by himself.

The President testified that because he and Smith went to high school together and engaged in friendly conversation during a class reunion, Smith decided to take advantage of the Respondent's company and hold himself (Smith) out as working for Respondent's company. Neither the Respondent nor the President at any time authorized Smith to work for the Respondent company in any capacity. The President never spoke with the Claimant until the day of the hearing.

I find the President's testimony credible that the Respondent did not agree and did not perform a home improvement for the Claimant. Although the Respondent held a valid contractor's license in 2015 when Smith entered into the Contract with the Claimant, the Respondent is not the contractor to be held responsible for the Claimant's home improvement. Md. Code Ann., Bus. Reg. § 8-405(a).

There is no dispute that the Claimant is the owner of the subject property and that there is no procedural impediment barring him from recovering from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a), (f); however, the important issue in this case is whether the Respondent was responsible for performing an unworkmanlike, inadequate, or incomplete home improvement due to misconduct. That answer is no. For the following reasons, I find that the Claimant has not proven eligibility for compensation from the Fund.

Business Regulation 8-405(b) provides that for purposes of recovery from the Fund, the act or omission of a licensed contractor includes the act or omission of a subcontractor, salesperson, or employee of the licensed contractor, whether or not an express agency relationship exists. The evidence, by a preponderance, shows that Smith was not a subcontractor, salesperson or employee of the Respondent at the time of the June 1, 2015, Contract. The Respondent and Claimant were victims of Smith's apparent fraudulent behavior (by allowing the Claimant to believe Smith was associated with the Respondent's company). Nevertheless, the Claimant has not proven eligibility to recover from the fund under the facts found herein.⁴

The Fund agreed that the Respondent should not be held responsible for the acts or omissions of Smith, who was not an employee, agent, salesperson, subcontractor or authorized representative of the Respondent. It concluded that the Claimant did not prove a loss by the acts or omissions of the Respondent.

I agree. The Claimant has not proved by a preponderance that the Respondent caused an actual loss of the Claimant's home improvement contracted with Smith on June 1, 2015.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual loss as a result of the Respondent's acts and omissions. The Respondent did not contract with the Claimant to perform a home improvement. Md. Code Ann., Bus. Reg. §§ 8-401, (2015).

⁴ Although the President paid to DLLR civil penalties amounting to \$2,650.00 pursuant to the complaint filed with DLLR by the Claimant and for the actions of Smith, I do not find such payments made by the President on behalf of the Respondent, to create Claimant's eligibility from the Fund. The President testified that he paid the fine pursuant to the advice of his attorney to not prolong the matter and out of a sense of pity for Smith. Those reasons do not make the Claimant eligible for Fund disbursement.

RECOMMENDED ORDER

I PROPOSE that the Maryland Home Improvement Commission:

ORDER that the Claimant did not contract with Family Fire Protection Systems, Inc. and Daniel S. Granzow for a home improvement on June 1, 2015 or any other time relevant to these proceedings; and

ORDER that the Claimant did not sustain an actual loss caused by the acts or omissions of Family Fire Protection Systems, Inc. and Daniel S. Granzow; and

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

Signature on File

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November 13, 2017
Date Decision Issued

John T. Henderson, Jr.
Administrative Law Judge

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PROPOSED ORDER

WHEREFORE, this 25th day of January, 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.

Joseph Tunney

***Joseph Tunney
Panel B***

MARYLAND HOME IMPROVEMENT COMMISSION