

**IN THE MATTER OF THE CLAIM
OF MONICA CELADA
CLAIMANT,
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MERRICK MORSE,
T/A CREATIVE EXTERIOR CONCEPTS,
LLC,
RESPONDENT**

*** BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No: DLR-HIC-02-15-30447
* MHIC No: 15 (90) 56
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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 20, 2014, Monica Celada, (Claimant), filed a claim (Complaint) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,500.00 for alleged actual losses suffered as a result of a home improvement contract with Merrick Morse, trading as Creative Exterior Concepts, LLC, (Respondent).

On January 13, 2016, I held a hearing at the Office of Administrative Hearings in Kensington, Maryland. §§ 8-312(a), 8-407(e) (2015).¹ Bryan Sanders, Esq. represented the Claimant who was present. Chris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. The Respondent, even though having actual notice of the hearing, failed to appear.²

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) Is the claim barred by the statute of limitations, and if not,
- 2) Did the Claimant sustain an actual loss compensable by the Fund as a result of the acts or omissions of the Respondent?

SUMMARY OF THE EVIDENCE

Exhibits

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

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| CL #1 | Inspection Report, July 27, 2015 |
| CL #2 | Windows contract, November 9, 2009 |
| CL #3 | Five Color photographs of Claimant's daughter's room, April 2009 |
| CL #4 | Plumber Inspection Notes, December 1, 2011 |
| CL #5 | Global Roofing Invoice, November 20, 2012 |
| CL #6 | Lightfoot, LLC invoice, September 18, 2004 |
| CL #7 | Thompson Creek Window Estimate, August 25, 2014 |

¹ Unless otherwise noted, all citations of the Business Regulation Article hereinafter refer to the 2015 Replacement Volume.

² Notices for the hearing were mailed to the Respondent at his address of record via certified and United States mail. The notices were not returned. I find that the Respondent had actual notice of the hearing under section 8-312(d) of the Business Regulation Article and section 10-209(c) of the State Government Article.

CL #8 Xtreme Windows Product Description brochure
CL #9 Xtreme Windows Product warranty brochure

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

FD #1 Hearing Notice, October 9, 2015
FD #2 Hearing Order, September 4, 2015
FD #3 Respondent Licensure History printout, January 12, 2016
FD #4 Home Improvement Claim Form, August 20, 2014

Testimony

The Claimant testified on her own behalf and presented the testimony of John Roger Overholser, accepted as an expert in home inspection for windows.

The Fund did not call 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 3650297. (FUND #3.)
2. On November 9, 2009, the Claimant and the Respondent, through the Respondent's agent, James Wilson, entered into a contract to install twenty new windows in the Claimant's two story colonial home.
3. The total cost of the contract was \$12,500.00.
4. In accordance with the contract, the Claimant paid a deposit of \$4,200.00.
5. On or about the last week of December 2009, the Respondent completed the work and the Claimant paid the outstanding balance of \$8,300.00.
6. In April 2010, the windows installed in the kitchen and in the Claimant's daughter's bedroom began to leak.

7. In April 2010, some of the installed windows began to show condensation.
8. On August 20, 2014, the Claimant filed a claim with the HIC.

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). 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).

Statute of Limitations

A “claim shall be brought against the Fund within three years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage.” Md. Code Ann., Bus. Reg. § 8-405(g).

For the following reasons, I find that the Claimant has not proven eligibility for compensation.

First, the Claimant testified that she discovered problems with the windows within four months of installation, which would have been the end of April 2010 and made attempts to contact the Respondent. The Claimant, therefore, discovered the damage at least by April 2010 and had until April 2013 to file a claim. Her August 20, 2014 claim falls beyond the three-year limitation period and as a result the Appellant is not eligible for compensation from the Fund. Md. Code Ann., Bus. Reg. § 8-405(g). It is well-settled that timeliness is jurisdictional; if an appeal is not filed within the required time frame, no jurisdiction is acquired and the appeal must be dismissed. *Walbert v. Walbert*, 310 Md. 657 (1987). Having so concluded, I am prohibited from reaching the merits of the case in this decision.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant's claim against the Home Improvement Guaranty Fund is barred by the three year statute of limitations. Md. Code Ann., Bus. Reg. § 8-405(g) (2015);

PROPOSED ORDER

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

ORDER that the Claimant's claim against the Maryland Home Improvement Guaranty Fund be **DISMISSED**.

March 28, 2016
Date Decision Mailed

Signature on File

JWR
Jerome Woods, II
Administrative Law Judge

JW/cj
#161534