

**IN THE MATTER OF THE CLAIM  
OF HENY SUZANNAH,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF DENNIS JONES,  
T/A FEDERAL STATE  
CONSTRUCTION,  
RESPONDENT**

**\* BEFORE M. TERESA GARLAND,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: DLR-HIC-02-16-16936  
\* MHIC No.: 16 (05) 842  
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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 March 26, 2016, Heny Suzannah (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$12,855.23 in alleged actual losses suffered as a result of a home improvement contract with Dennis Jones, trading as Federal State Construction (Respondent).

This matter was originally scheduled for a hearing on November 29, 2016. On that date, I learned that the Respondent was deceased and the Personal Representative of his estate had not

been notified of the hearing. I postponed the hearing to allow the OAH to notify the Personal Representative of the hearing, and the hearing was rescheduled for February 9, 2017.

I held a hearing on February 9, 2017 at the Office of Administrative Hearings (OAH) located in Hunt Valley, Maryland. Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). The Claimant represented herself.<sup>1</sup> Hope Sachs, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. After waiting more than twenty minutes for the Respondent's Personal Representative to appear on behalf of the Respondent's estate, I proceeded with the hearing.<sup>2</sup> Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>3</sup>

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. 2016); 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 - Contract, undated

<sup>1</sup> The Claimant was assisted by an Indonesian translator as well as her daughter.

<sup>2</sup> The Personal Representative of the Respondent's estate was his sister, Anastasia Jones, who resides in Boise, Idaho. The Claimant and the Fund's counsel were present in the hearing room at 9:25 a.m. At that time, I determined that the chances of Ms. Jones appearing on behalf of the Respondent's estate were remote and I began the hearing. Ms. Jones did not appear at any time during the hearing.

<sup>3</sup> Notice of the hearing was mailed to the Respondent's estate Personal Representative at the address of record by certified mail on December 12, 2016, COMAR 09.08.03.03A(2), and not returned unclaimed.

Clmt. Ex. 2 - Check from Geico Property Insurance Program to the Claimant and her daughter, dated September 4, 2015, endorsed by the Claimant, her daughter and the Respondent

There were no exhibits offered by the Respondent's Personal Representative since she failed to appear for the hearing.

I admitted the following exhibits on behalf of the Fund:

Fund Ex. 1 - Hearing Order, dated May 18, 2016, returned by the US Postal Service as undeliverable

Fund Ex. 2 - Respondent's MHIC licensing history

Fund Ex. 3 - Letter from the MHIC to the Respondent with attached Home Improvement Claim Form, dated April 11, 2016

Fund Ex. 4 - Hearing Notice, dated December 12, 2016, sent by certified mail and signed for by Anastasia Jones

Testimony

The Claimant did not testify, but presented the testimony of her daughter, Aru Warsito, and Joseph Poe, the Respondent's friend and employee.<sup>4</sup>

No one appeared on behalf of the Respondent.

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 4652250.
2. In June 2015, parts of Maryland experienced a hail storm which caused property damage to some houses throughout the State.

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<sup>4</sup> The Claimant was assisted by an Indonesian translator and appeared quite nervous. Her daughter, who testified, was present with the Claimant during all relevant transactions with the Respondent in this matter.

3. In August 2015, the Respondent contacted the Claimant and offered to inspect her roof for hail damage. Upon inspection, the Respondent found that her roof had sustained hail damage and conveyed this to the Claimant.

4. Between August 2015 and September 2015, the Claimant contacted her homeowner's insurance company, Geico Property Insurance Program (Geico), to ascertain if her insurance would cover the cost of the roof repair. After inspecting the Claimant's roof, Geico agreed to pay the Claimant \$12,855.23 to correct the damage to her roof.

5. On or about September 24, 2015, the Claimant and the Respondent entered into a contract to replace the Claimant's roof. The contract stated that work would begin within seven to ten days of the signing of the contract and would be completed in one day. The original agreed-upon contract price was \$16,115.98.

6. On or about September 24, 2015, the Claimant paid the Respondent \$12,855.23, which he promptly deposited into his bank account.

7. Shortly after the Claimant paid the Respondent \$12,855.23, the Respondent passed away.

8. Upon the Respondent's death Joseph Poe, the Respondent's employee and friend, determined that the Claimant had paid the Respondent \$12,855.23 and no work had been performed. Mr. Poe contacted the Respondent's sister, Anastasia Jones, who was the Personal Representative of his estate, and informed her that the Claimant's \$12,855.23 should be returned to her. Ms. Jones agreed to return the Claimant's money, but she never did so.

9. Mr. Poe, on the Claimant's behalf, called Ms. Jones on numerous subsequent occasions without response.

10. The Claimant's actual loss is \$12,855.23.

## DISCUSSION

In this case, the Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).<sup>5</sup> “[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)).

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);<sup>6</sup> *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.

The Respondent performed unworkmanlike, inadequate or incomplete home improvements. After a hail storm occurred on or around June 22, 2015,<sup>7</sup> the Respondent went “door-to-door” offering to inspect homeowners’ roofs for damage from the hail storm. In August 2015, the Respondent came to the Claimant’s door and offered to inspect her roof for damage.

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

<sup>6</sup> Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

<sup>7</sup> This is the noted date of loss on the check from Geico.

When the Respondent determined that the Claimant's roof had sustained hail damage, the Claimant agreed to engage his services. The Claimant then contacted Geico which sent an estimator to inspect the Claimant's roof and determined that her claim was valued at \$12,855.23 which it paid her by a check in that amount. Thereafter, the Claimant and the Respondent entered into a contract for the Respondent to replace her roof for \$16,115.95.<sup>8</sup> (Cl. Ex 1). The Claimant, her daughter and the Respondent counter-signed the Geico check and the Respondent deposited the funds into his bank account. (Cl. Ex. 2).

The Claimant never saw or heard from the Respondent after she paid him with the insurance check. She subsequently learned, several weeks after signing the contract and paying the Respondent, he had died.

When the Respondent's family came to the Baltimore area for his funeral, Joe Poe, the Respondent's friend and employee, went through all of the Respondent's paperwork in order to contact customers who may have signed contracts with the Respondent so that he could notify them of the Respondent's death and return any deposit money paid for work which would now not be done. Mr. Poe determined that the Claimant was the only person who paid the Respondent a deposit. He contacted the Respondent's sister and Personal Representative, Anastasia Jones, and informed her that the Claimant had paid the Respondent \$12,855.23 and that the funds must be reimbursed to the Claimant. Ms. Jones initially agreed to refund the Claimant's deposit, but thereafter closed all of the Respondent's bank accounts and went back to her home in Idaho. Despite numerous attempts to contact Ms. Jones, Mr. Poe never heard from her again. After

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<sup>8</sup> While the contract was undated, I infer that the contract was signed on approximately September 24, 2015, since the deposit paid by the Claimant pursuant to the contract was \$12,855.23, exactly what Geico paid her, and the check was deposited by the Respondent on September 24, 2015.

researching the process for filing a claim with the MHIC, Mr. Poe re-contacted the Claimant and assisted her with the filing of her claim.

The Claimant entered into a contract with the Respondent and paid a deposit of \$12,855.23,<sup>9</sup> and the Respondent died before he fulfilled the terms of the contract. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. 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 Respondent, although not through his own volition, abandoned the contract without doing any work.

Pursuant to the applicable law, the maximum recovery from the Fund is limited to the lesser of \$20,000.00 or the amount paid by or on behalf of the Claimant to the Respondent. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015).

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 \$12,855.23, the amount actually paid to the Respondent. *Id.* § 8-405(e)(5); COMAR 09.08.03.03B(3)(a).

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<sup>9</sup> Deposits are limited to thirty percent of the contract price.

**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss \$12,855.23 as a result of the Respondent's acts and omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a).

**RECOMMENDED ORDER**<sup>10</sup>

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


**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$12,855.23; 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;<sup>11</sup> and

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

**Signature on File**

March 21, 2017  
Date Decision Issued

\_\_\_\_\_  
M. Teresa Garland   
Administrative Law Judge

MTG/sw  
#166637

<sup>10</sup> It would appear obvious that the last two paragraphs of this Order are inapplicable to the matter at hand.

<sup>11</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 19<sup>th</sup> day of April, 2017, 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**