

**IN THE MATTER OF THE CLAIM
OF BERNADETTE THOMAS,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF TUCKER ROONEY
T/A DIG M INSTALLERS, INC.
RESPONDENT**

*** BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
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* OAH No.: LABOR-HIC-02-20-02716
* MHIC No.: 19 (05) 1391

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PROPOSED DECISION

**STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On November 16, 2017, Bernadette Thomas (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (DOL)¹ for reimbursement of \$10,000.00 in alleged actual losses suffered as a result of a home improvement contract with Tucker Rooney, T/A Dig M Installers, Inc., (Respondent). On December 19, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the DOL.

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I held a hearing on November 10, 2020 over a videoconferencing platform. Bus. Reg. § 8-407(e). Nicholas C. Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent failed to appear for the hearing.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On October 5, 2020, notice of the hearing was mailed to the Respondent at his address of record in Florida and Maryland by regular and certified mail. COMAR 09.08.03.03A(2).² The regular mailing sent to the Respondent's Maryland address was returned as undeliverable, and the certified mailing was unclaimed. The regular mailing sent to the Respondent's Florida's address was not returned. The Respondent did not notify the OAH of any change of address. COMAR 28.02.01.03E. The Fund verified the Respondent's current mailing record and used it prior to the hearing to send correspondence to the Respondent. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, 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. 2020); COMAR 09.01.03; and COMAR 28.02.01.

² The hearing was originally scheduled to be heard at the OAH Rockville office. The original notice was mailed on June 25, 2020. Because of COVID-19, the hearing was rescheduled to be conducted by video. The new notice was sent October 5, 2020.

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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:

- Cl. #1 Criminal Complaint Filing, June 24, 2019
- Cl. #2 Letter from the Claimant to the Respondent, April 24, 2019
- Cl. #3 Letter from the MHIC to the Respondent, July 17, 2019
- Cl. #4 MHIC Order, May 20, 2019.
- Cl. #5 Chase Card Member Services Invoice, June 29, 2019
- Cl. #6 MHIC Complaint Form, undated
- Cl. #7 Marriott Reward invoices, September 2018 through January 2020
- Cl. #8 Contract, July 17, 2018
- Cl. #9 Pool Blueprints and Photograph Descriptions

I admitted the following exhibits on behalf of the Fund:

- Fund #1 Notice of Remote Hearing, October, 19, 2020
- Fund #2 Hearing Order, December 10, 2019
- Fund #3 Home Improvement Claim Form, July 12, 2019
- Fund #4 Licensing History Notice, October 16, 2020
- Fund #5 Registration, October 15, 2020
- Fund #6 Registration Overview, October 15, 2020
- Fund #7 Letter to the Respondent from the MHIC, October 28, 2020

SECRET

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CONFIDENTIALITY

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Testimony

The Claimant testified on her own behalf.

No one appeared to testify on behalf of the Respondent.

The Fund presented no 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 numbers 01-38309 and 38308.
2. On July 17, 2018, the Claimant and the Respondent entered into a contract (Contract) for the Respondent to construct a backyard pool at her residence.
3. The agreed-upon contract price for the project was \$17,853.40.
4. The Claimant gave the Respondent's sale representative Marie Rooney, a check for Respondent's company in the amount of \$10,000.00 on July 22, 2018 for the pool, as required by the Contract.
5. The Claimant paid \$10,000.00 to the Respondent's company. The company is listed on the Claimant's bank statement as "Dig M Installers, Inc." (Cl. #5).
6. At the time the Respondent and the Claimant entered into the contract, the Claimant told the Respondent's sale representative that work should not begin on the pool construction until the Claimant had a guarantee that her employment would continue.
7. The sales representative on behalf of the Respondent agreed to wait to begin construction until the Claimant informed the Respondent about the status of her employment.
8. Construction on the pool was to begin during the spring of 2019, if the Claimant had employment.

Subject: [Illegible]

Date: [Illegible]

Reference: [Illegible]

MEMORANDUM FOR THE DIRECTOR

Re: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

4. [Illegible]

5. [Illegible]

6. [Illegible]

7. [Illegible]

8. [Illegible]

9. [Illegible]

10. [Illegible]

11. [Illegible]

12. [Illegible]

13. [Illegible]

14. [Illegible]

15. [Illegible]

16. [Illegible]

17. [Illegible]

9. In or about March 2019, the Claimant informed the sales representative that she did not secure employment and could not have the pool constructed.

10. On three separate occasions, the Claimant spoke with the sales representative and the representative agreed to refund the \$10,000.00.

11. As of April 24, 2019, Ms. Rooney had not refunded the \$10,000.00 on behalf of the Respondent, despite her promises to do so.

12. The Claimant made numerous phone calls to the Respondent but was unsuccessful in speaking with him.

13. The Respondent did not return any of the funds the Claimant paid him for the work.

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). “[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); *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.”

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Md. Code Ann., Bus. Reg. § 8-401 (2015 & Supp. 2020). For the following reasons, I find that the Claimant has proven eligibility for compensation.

Based on the unrefuted evidence, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Respondent took money from the Claimant and performed no work on the Contract. The Claimant informed the Respondent she could not have the pool constructed because she did not have employment. The Respondent was aware that the pool would only be constructed if the Claimant was employed. The Claimant informed the Respondent as required and requested her money be refunded. The Claimant made numerous attempts to have her money refunded. The Respondent's agent assured the Claimant that the \$10,000.00 she paid the Respondent would be returned. It was not. Accordingly, I conclude that the Claimant suffered an actual loss as a result of the Respondent's misconduct.

The following formula appropriately measures the Claimant's actual loss: "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).

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 was the amount paid to the Respondent, which was less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$10,000.00. The Fund agrees with the recovery amount.

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PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,000.00 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)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00; 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;³ and

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

January 27, 2021
Date Decision Issued

JW/emh
#190162

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Jerome Woods, II
Administrative Law Judge

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 7th day of April, 2021, 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

Chairman

Panel B

MARYLAND HOME IMPROVEMENT

COMMISSION

RECORDS SECTION

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