

IN THE MATTER OF THE CLAIM	* BEFORE DANIEL ANDREWS,
OF GERALD HARRIS,	* 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 FRANCISCO	*
RAMIREZ FLORES,	* OAH No.: LABOR-HIC-02-22-24411
T/A FRANK'S DRYWALL &	* MHIC No.: 22 (75) 990
PAINTING, LLC,	*
RESPONDENT	*

\* \* \* \* \*

**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 April 11, 2022, Gerald Harris (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$12,120.75 for actual losses allegedly suffered as a result of a home improvement contract with Francisco Ramirez Flores (Respondent), trading as Frank's Drywall & Painting, LLC, doing

---

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

business as (dba) AllState Exteriors. Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On August 30, 2022, the MHIC issued a Hearing Order on the Claim, and on September 8, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 27, 2023, I held a hearing using the Webex videoconferencing platform.<sup>3</sup> Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Matthew Dyer, Esquire, represented the Respondent, who was present.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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 the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Business Card, Manny G., Allstate Exteriors, 12410 Milestone Center Drive, Germantown, Maryland 20876, MHIC 117207

Clmt. Ex. 2 - Travelers, The Standard Fire Insurance Company (Travelers) insurance damage estimate for windstorm loss, date of loss January 16, 2020, January 23, 2020

---

<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>3</sup> Two prior hearing dates, January 25 and March 6, 2023, were postponed because of court conflicts or health issues for either the Respondent's attorney or the Fund's attorney.

- Clmt. Ex. 3 - Travelers letter to Claimant, January 23, 2020
- Clmt. Ex. 4 - Email between Travelers and Claimant, March 22, 2022
- Clmt. Ex. 5 - Correspondence from Travelers to Claimant, January 23, 2020, with check issued by Travelers payable to Claimant, in the amount of \$12,120.70, January 23, 2020, showing endorsement to AllState Exteriors (undated)
- Clmt. Ex. 6 - AllState Exteriors contract with the Claimant, January 30, 2020
- Clmt. Ex. 7 - Claimant's MHIC Complaint Form, March 8, 2022, MHIC letter to Respondent requiring a response to the complaint, March 12, 2022, response due April 19, 2022, MHIC letter to Claimant regarding the filing of claim against the Fund, April 1, 2022
- Clmt. Ex. 8 - Series of emails sent by the Claimant to Manny Gomez (Mr. Gomez) from February 28, 2020 to April 13, 2022
- Clmt. Ex. 9 - Not Offered into Evidence<sup>4</sup>
- Clmt. Ex. 10 - Emails from Frederick County Sheriff's Office to Claimant, July 27, 2022 to August 10, 2022

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 - District Court of Maryland for Frederick County records for State of Maryland v. Francisco Ramirez-Flores, Case No. D-111-CR-22-000076: Notice of Stet Docket, October 20, 2022, Defendant Trial Summary, October 20, 2022; Criminal Summons on Charging Document, April 21, 2022; Statement of Charges, April 21, 2022; and Application for Statement of Charges, April 21, 2022
- Resp. Ex. 2 - "To Whom It May Concern" letter from Steve Fraatz, Senior Relationship Banker, Truist Bank regarding bank account in the name of Franks Drywall and Painting, dba as AllState Exteriors, account ending in 4644, April 4, 2022
- Resp. Ex. 3 - Text messages between the Respondent and Mr. Gomez, December 25, 2019

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - MHIC letter to Respondent regarding claim filed Claimant, April 18, 2022, with attached claim filed by Claimant, dated as received on April 11, 2022
- Fund Ex. 2 - Hearing Order, August 30, 2022
- Fund Ex. 3 - MHIC Licensing History for the Respondent, April 14, 2022

---

<sup>4</sup> Claimant Exhibit 9 is a copy of the Claimant's MHIC Claim Form, dated April 8, 2022.

- Fund Ex. 4 - OAH Notice of Remote Hearing on March 27, 2023, issued March 8, 2023
- Fund Ex. 5 - Maryland Department of Assessments and Taxation Records, including Trade Name Application for AllState Exteriors, filed January 4, 2019; Trade Name Cancellation Application, stamped as received by the Department of Assessments and Taxation on November 17, 2021; Trade Name Approval Sheet, February 16, 2022; email from Respondent to Kim Rosenthal (MHIC), March 16, 2022
- Fund Ex. 6 - MHIC letter regarding record search of licensing records for Manuel A. Gomez-Garcia, April 14, 2023
- Fund Ex. 7 - MHIC letter regarding record search of licensing records for Blake Daniel Martin, April 14, 2023
- Fund Ex. 8 - "To Whom It May Concern" letter from Steve Fraatz, Senior Relationship Banker, Truist Bank regarding bank account in the name of Franks Drywall and Painting, dba as AllState Exteriors, account ending in 4644, April 4, 2022
- Fund Ex. 9 - Email from Respondent to MHIC, March 16, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

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, the Respondent was a licensed home improvement contractor under MHIC license number 01-117207. His corporate license number was 05-136545. The Respondent's address of record with the MHIC is 9032 Hollow Road, Middletown, Maryland 21769.<sup>5</sup>

---

<sup>5</sup> On April 5, 2022, on an emergency basis, due to multiple complaints related to deposits being paid with no work being performed, the MHIC suspended the Respondent's MHIC license.

2. On January 4, 2019, the trade name AllState Exteriors was registered with the Maryland Department of Taxation and Assessments. This registration was done by Manuel Gomez (Gomez) with agreement by the Respondent.

3. The Respondent authorized Gomez to execute home improvement contracts and to perform home improvement work under the Respondent's MHIC license, using the Respondent's trade name AllState Exteriors.<sup>6</sup> The arrangement included the Respondent receiving ten percent of the profit from the contracts executed and performed by Gomez.

4. On December 25, 2019, by text message to Gomez, the Respondent told Gomez that he was no longer permitted to use the Respondent's MHIC license number to obtain or perform home improvement contracts. On that same day, by text message response, Gomez acknowledged the Respondent's position.

5. At all times relevant, Gomez was unlicensed by the MHIC as a home improvement contractor, subcontractor, or salesman.

6. On January 16, 2020, the Claimant's home sustained windstorm property damage to the roof and siding.

7. At the time, the Claimant had a homeowner insurance policy with Travelers. On January 23, 2020, Travelers issued a property damage estimate to repair the roof and siding in the amount of \$12,120.70.

8. On January 30, 2020, the Claimant entered into a contract with AllState Exteriors to repair or replace the damaged roof to the Claimant's home as described on the insurance damage estimate (Contract). The Contract was executed on behalf of AllState Exteriors by Gomez. The total contract price was \$16,819.11 and required a deposit of \$12,120.70.

---

<sup>6</sup> Although not directly relevant to this case, the Respondent similarly authorized another individual, Blake Martin, to use his MHIC license number when executing home improvement contracts.

9. The Contract provided no specific start date but instead provided that the start date was to be determined by the weather.

10. The Contract form contained the following identifying information: at the top of the Contract, AllState Exteriors; and on the bottom of the Contract, Frank's Drywall & Painting, LLC, dba AllState Exteriors, MHIC 117207.

11. On the same day, the Claimant paid AllState Exteriors by endorsing the check issued by Travelers payable to AllState Exteriors and gave the check to Gomez.

12. Neither AllState Exteriors nor Gomez performed any work required by the contract.

13. On January 19, 2021, a business account was opened with Truist Bank by Gomez, in the name of Franks Drywall and Painting, LLC, dba AllState Exteriors. Only one debit card was issued for this account to Gomez. On March 4, 2021, the Respondent closed this account.

14. On November 17, 2021, Respondent filed a Trade Name Cancellation Application with the Maryland State Department of Assessments and Taxation to terminate the AllState Exteriors trade name.

15. Through series of emails from the Claimant to Gomez, beginning November 2021, the Claimant was asking when AllState Exteriors was going to perform the Contract or to return the deposit monies.

16. Sometime between January and March 16, 2022, the Respondent filed a police report with the Frederick County Sherriff's Office complaining about Gomez's misuse of his MHIC license number.

17. As of March 8, 2022, neither AllState Exteriors nor Gomez ever performed the Contract or returned the deposit monies.

18. On March 8, 2022, the Claimant filed a complaint with the MHIC. The Claimant complained that Gomez and AllState Exteriors, contracted to repair the damage to his home including the roof, siding, and deck, received \$12,120.70, but never completed the work and is not responding to any phone calls, text messages, or emails.

19. On March 16, 2022, the Respondent sent an email to the MHIC to inform the MHIC that he was the owner of Franks Drywall and Painting, LLC dba AllState Exteriors but that Gomez was not allowed to use his MHIC license and that a police report was filed with the Frederick County Sheriff's Office.

20. The Claimant filed a claim for reimbursement from the Fund which was received by the MHIC on April 11, 2022.

21. On April 21, 2022, the MHIC filed criminal charges in the District Court of Maryland for Frederick County for the failure to perform a home improvement contract involving the Claimant. The criminal case was placed on the Stet docket on October 20, 2022.

22. The Respondent never met and never had any communication with the Claimant. Equally, the Claimant did not know of Respondent until a criminal charge was filed against the Respondent on April 21, 2022.

## DISCUSSION

### **LEGAL FRAMEWORK**

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”). 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. Bus. Reg. § 8-405(b). 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.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no statutory impediments to the Claimant’s recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimant is not a relative, employee, officer, or partner of the Respondent; also, the Claimant is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

#### ANALYSIS

It is undisputed that, on January 16, 2020, the Claimant entered into a home improvement contract with Gomez to repair his roof and siding in accordance with an insurance damage estimate created by Travelers, the Claimant’s homeowner insurer. It is also undisputed that the Claimant paid Gomez \$12,120.70 to perform the Contract and that Gomez never performed the



home improvement and abandoned the Contract. Additionally, it is undisputed that Gomez has never been licensed by the MHIC as a home improvement contractor, subcontractor, or salesman.

What makes this case difficult is that the Respondent, a licensed MHIC contractor, engaged in a reckless agreement with Gomez to permit Gomez to use his MHIC license number and trade name, AllState Exteriors, to execute and perform home improvement contracts. The Respondent testified that through this agreement he would receive ten percent of the profits from home improvement contracts performed by Gomez. In his testimony, the Respondent admitted that during two months of this agreement he supervised the performance of the home improvements by Gomez but after May 2019 that he did not supervise any work being performed. The Respondent also testified and presented email evidence that on December 25, 2019, he informed Gomez that Gomez was no longer permitted to use his MHIC license when entering into home improvement contracts, and after this point in time was unaware of any home improvement contracts entered into by Gomez using his MHIC license, until he started to receive complaints from the MHIC. To prevent further misuse of his MHIC license number and his business tradename, the Respondent explained that he told Gomez to stop using his MHIC license, closed a bank account opened by Gomez with Truist, canceled the trade name used by Gomez, and filed a report with the Frederick County Sherriff's Office.

The Respondent argues that the Claimant has the burden of proof to establish an actual loss and has not met that burden. The Respondent asserts that the uncontroverted testimony is that the Respondent had no knowledge of the home improvement contract between the Claimant and Gomez and never received any proceeds from that the Contract. The Respondent argues that the evidence demonstrated that Gomez was told by the Respondent to stop using his MHIC license which was acknowledged by Gomez. To the extent that the Claimant and MHIC assert

that the Respondent should have provided more supervision and oversight over the conduct of Gomez, the Respondent had no ability to do so over any home improvement contract of which that he had no knowledge. The Respondent contends that Gomez was using the his MHIC without permission and any award from Fund should be denied.

The Claimant argues that he feels victimized by the conduct of Gomez and the Respondent. The Claimant asserts that the Respondent engaged in a negligent and deliberate fraud with Gomez which caused his actual loss in the amount of \$12,120.70.

The Fund argues that at all times relevant, the Respondent was a MHIC licensed home improvement contractor. The Fund further argues that the Respondent entered into an agreement with Gomez and permitted Gomez to use his license and trade name. Essentially, the Fund asserts that the Respondent rented out his MHIC license to Gomez in exchange for ten percent of the profits. The Fund contends that even though the Respondent told Gomez to stop using his MHIC license in December 2019, he made no attempts to stop Gomez from engaging in an unauthorized use of his MHIC license until he closed the Truist bank account in 2021 or filed a police report in 2022. The Fund asserts that, as a MHIC licensee who knowingly allowed others to operate under his MHIC license, the claim filed by the Claimant is valid claim against the Fund, and an award for an actual loss should be awarded by the Fund. As a result, because the home improvement contract was abandoned by the Gomez, with no work being performed, the Fund recommended an award equaling the amount paid to Gomez, totaling \$12,120.70.

The Fund may be correct that the Respondent should bear some responsibility for the loss sustained by the Claimant. However, that responsibility is not through a claim against the Fund. I acknowledge that the Fund may reimburse a claimant for an actual loss that results from an act or omission by a licensed contractor.

I also understand that an 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. Perhaps, the Respondent and Gomez engaged in such a relationship. However, the evidence demonstrates that any agency was terminated in December 2019 before Gomez entered into the Contract with the Claimant. Importantly, actual loss means the costs that arises from an incomplete home improvement, in this case, the abandoned contract. But that abandonment must be by a licensed contractor, which Gomez was not. I agree with the Claimant that he is a victim of the business dealings of Gomez and the Respondent played a role in the Claimant's loss. Unfortunately, the law that applies to claims against the Fund does not provide compensation for the misconduct of licensed contractors for the reasons presented by the facts of this case.

#### **PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022).

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

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

May 23, 2023  
Date Decision Issued

DA/sh  
#205225

*Daniel Andrews*  
\_\_\_\_\_  
Daniel Andrews  
Administrative Law Judge

IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
GERALD HARRIS \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 22(75)990  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
FRANCISCO RAMIREZ FLORES \* 02-22-24411  
AND FRANK'S DRYWALL \*  
& PAINTING, LLC \*

\* \* \* \* \*

**PROPOSED ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on March 27, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on May 23, 2023, concluding that the homeowner, Gerald Harris (“Claimant”) did not suffer an actual loss as a result of the acts or omissions of Francisco Ramirez Flores and Frank’s Drywall & Painting, LLC (“Contractor”). In accordance with COMAR 09.01.03.08, a Panel of the Maryland Home Improvement Commission (“MHIC” or “Commission”) reviewed the ALJ’s Proposed Decision, which is incorporated herein and amended as set forth below.

The Commission rejects the ALJ’s finding that the Claimant failed to prove that the acts or omissions of the Contractor caused him to suffer an actual loss.

The Contractor entered a business relationship with Manuel Gomez in which the Contractor authorized Mr. Gomez to sell and perform home improvements using the Contractor’s MHIC license and registered trade name, AllState Exteriors, in exchange for ten percent of the profits for the contracts sold and performed by Mr. Gomez. Mr. Gomez has never held an MHIC home improvement contractor or salesperson license. The AllState Interiors trade name was established on January 4, 2019. The Contractor supervised Mr. Gomez’s conduct for two months, but after May 2019 he stopped supervising Mr. Gomez.

The Contractor sent a series of text messages to Mr. Gomez on December 26, 2019,

asserting that he had orally told him to stop using his license, asking him why he keeps using his license without his permission, and advising him that MHIC was receiving complaints about contracts about which he had no knowledge. Mr. Gomez responded, "I know you did but I haven't start [sic] working with the other person because I [sic] been having a lot of problems now."

On March 16, 2022, the Contractor advised the MHIC that he had notified the Frederick County Sheriff's Office that Mr. Gomez and another individual were using his license without his authorization.

Based on the foregoing, the Commission finds that the Contractor's acts and omissions caused the Claimant's actual loss. First, although Md. Code Ann., Bus. Reg. § 8-301 requires that a person hold an MHIC contractor or salesperson license to sell home improvements, and Md. Code Ann., Bus. Reg. § 8-601 makes the unlicensed sale of home improvements a crime, the Contractor entered into an agreement with Mr. Gomez, who does not hold a license, to sell home improvements using his license in exchange for a share of the profits. The Contractor was aware in December 2019 that Mr. Gomez continued using his license after he told him to stop, and that Mr. Gomez intended to continue doing so because he had not started working with another person. However, there is no evidence that the Contractor took any action to prevent Mr. Gomez from continuing to use his license until November 17, 2021, when he filed a Trade Name Cancellation Application with the Department of Assessments and Taxation. The Contractor did not notify MHIC that Mr. Gomez was using his license without permission until March 16, 2022, despite receiving notice of MHIC complaints against his license in December 2019, presumably because of his unlawful license-lending agreement with Mr. Gomez.<sup>1</sup>

The Commission finds that the Contractor's (1) entry into an illegal agreement with Mr.

---

<sup>1</sup> In his March 16, 2022, email notifying the Commission that Mr. Gomez was using his license, the Contractor stated that had notified the police about the situation, but did not say when.

Gomez to allow him to sell home improvements without a license, (2) failure promptly to report Mr. Gomez to the Commission, which could have warned the public about Mr. Gomez, (3) failure promptly to report Mr. Gomez to a law enforcement agency, which could have arrested Mr. Gomez or at least charged him with selling home improvements without a license, failure to perform home improvement contracts, and theft, and (4) failure promptly to cancel the trade name he owned under which Mr. Gomez was operating, despite knowing as of December 2019 that Mr. Gomez had not heeded his directive to stop using his license, caused the Claimant to suffer an actual loss.

Under COMAR 09.08.03.03, if a “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.” In this case, the Claimant paid AllState Exteriors, a trade name owned by the Contractor, \$12,120.70 toward a contract for the repair of the roof, siding, and deck at his home, and AllState, Mr. Gomez, Mr. Ramirez Flores, and Frank’s Drywall & Painting, LLC, never performed any work under the contract. Accordingly, the Commission finds that the Claimant suffered a compensable actual loss of \$12,120.70.

Having considered the evidence contained in the record and the ALJ’s Proposed Decision, it is this 3<sup>rd</sup> day of August 2023, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED;**
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED;**
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**
- D. That the Claimant is awarded **\$12,120.70** from the Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies

disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);

- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Unless, within twenty days of the date of this Proposed Order, any party files with the Commission written exceptions or a request to present argument, then this Proposed Order will become final. By law, the parties then have an additional thirty days to file a petition for judicial review in Circuit Court.

***Joseph Tunney***  
**Chairperson –Panel B**  
**Maryland Home Improvement**  
**Commission**