

IN THE MATTER OF THE CLAIM	* BEFORE BRIAN ZLOTNICK,
OF SCOTT ROLLE,	* 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-02-22-24483
T/A FRANKS DRYWALL &	* MHIC No.: 22 (75) 1091
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 May 2, 2022, Scott Rolle (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)¹ Guaranty Fund (Fund) for reimbursement of \$45,662.09 for actual losses allegedly suffered as a result of a home improvement contract with Francisco Ramirez Flores, trading as Frank’s Drywall & Painting, LLC (Respondent). Md. Code Ann.,

¹ The MHIC is under the jurisdiction of the Department of Labor (Department).

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).² On August 30, 2022, the MHIC issued a Hearing Order on the Claim. On September 8, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 23, 2023, and March 10, 2023, I conducted a two-day video hearing via Webex. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jonathan Phillips, 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

The Claimant, unless otherwise noted, submitted the following exhibits which were admitted into evidence:

Claim. Ex. #1-	Contract with Allstate Exteriors, June 28, 2021
Claim. Ex. #2-	United Services Automobile Association (USAA) Claim Summary, May 27, 2021
Claim. Ex. #3-	USAA Claim Details, March 28, 2021
Claim. Ex. #4-	MHIC Order, March 31, 2022
Claim. Ex. #5-	MHIC Home Improvement Claim Form, April 13, 2022

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

Claim. Ex. #6- Contract with Allstate Exteriors, January 6, 2021 – NOT OFFERED INTO EVIDENCE

The Respondent submitted the following exhibits, which were admitted into evidence:

- Resp. Ex. #1- Text messages between the Respondent and Manny Gomez, December 25, 2019
- Resp. Ex. #2- Criminal Summons with attached Application for Statement of Charges filed against the Respondent in the District Court of Maryland for Frederick County, April 21, 2022
- Resp. Ex. #3- Letter from Steve Fraatz, Senior Relationship Banker, Truist, addressed "To Whom it May Concern," April 4, 2022

The Fund submitted the following exhibits, which were admitted into evidence:

- Fund Ex. #1- Notice of Hearing, October 24, 2022
- Fund Ex. #2- Hearing Order, August 30, 2022
- Fund Ex. #3- Letter from the MHIC to the Respondent, May 23, 2022, with attached Claim Form
- Fund Ex. #4- Licensing History, January 11, 2023

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present 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. His contractor/salesperson license number was 01-117207. His corporate license number was 05-136545. (Fund Ex. 4).

2. In 2019, the Respondent and Manny Gomez entered into a partnership agreement in which Mr. Gomez opened a business named All State Exteriors utilizing the Respondent's MHIC license number.³ (Testimony of Respondent).

³ Neither the terms nor the purpose of this partnership agreement is apparent from the record.

3. The Respondent owns Frank's Drywall & Painting, LLC (Frank's). He and Mr. Gomez created Allstate Exteriors as a "doing business as" entity of Franks. The plan was for Mr. Gomez to help the Respondent get involved in insurance restoration and repair through Allstate Exteriors. (Testimony of Respondent).

4. On December 25, 2019, the Respondent texted Mr. Gomez asking him to stop using his MHIC license number. In January 2020, Mr. Gomez informed the Respondent that he would stop using the Respondent's MHIC license number and would use a different MHIC license number for All State Exteriors which ended their business relationship. (Resp. Ex. 1 and Testimony of Respondent).

5. Prior to January 2020, the Claimant paid the Respondent in cash to perform painting work at his home. The Claimant was very satisfied with the Respondent's performance of the painting contract. The Claimant asked the Respondent if he could perform roofing work and the Respondent indicated that he could not, but the Respondent introduced Mr. Gomez to the Claimant as someone who could perform roofing work.

6. On June 28, 2021, the Claimant entered into a contract with Allstate Exteriors to replace his roof, which was damaged in a storm (Contract). The Contract document had the Respondent's MHIC contractor/salesperson license number at the top and on page three listed Frank's Drywall & Painting, LLC d/b/a – AllState Exteriors – MHIC #117207. The Claimant dealt with Mr. Gomez throughout the execution of the Contract. (Claim. Ex. 1).

7. The original agreed-upon Contract price was \$60,429.21. (Claim. Ex. 1).

8. In July or August 2021, the Claimant received a check for \$45,662.09 from his insurance carrier for his damaged roof. The Claimant signed over this check to Mr. Gomez and handed it to him in July or August 2021. (Testimony of Claimant).

9. In February 2022, the Claimant texted Mr. Gomez numerous times inquiring whether he would begin work on the Contract in February 2022. Mr. Gomez's only response was on February 11, 2022, in which he indicated that he had just returned to town and that he would call the Claimant in a few hours once he was settled. On February 14, 2022, the Claimant texted Mr. Gomez that he wanted a full refund of his \$45,662.09 check by February 16, 2022. On February 16, 2022, Mr. Gomez texted the Claimant writing that because of weather issues he would start working on the roof the week of March 21, 2022. The Claimant replied by text to Mr. Gomez that he just wanted his money back. The Claimant last texted Mr. Gomez on February 18, 2022 asking him why he was not replying to his texts. Mr. Gomez had no further communication with the Claimant after February 16, 2022. (Testimony of Claimant).

10. Allstate Exteriors never did any work pursuant to the Contract.

11. The Respondent was aware that the Claimant and Mr. Gomez entered into a contract to repair the Claimant's roof but was unaware that the contract listed the Respondent's business and MHIC license number. The Respondent contacted Mr. Gomez in March 2022, after the Claimant told the Respondent that Mr. Gomez took his money and performed no work under the Contract, to inquire about the situation. Thereafter, the Respondent lost contact with Mr. Gomez and could no longer reach him. (Testimony of Respondent).

12. The Respondent received calls from other homeowners complaining about Allstate Exterior's failure to complete jobs. (Testimony of Respondent).

13. Neither the Respondent nor his company ever received any of the money paid by the Claimant to Mr. Gomez and neither were a party to the Contract.

14. Mr. Gomez opened a bank account in the Respondent's business name with Truist Bank without the Respondent's consent.

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.”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

THE EVIDENCE

The Claimant testified regarding his transaction with Allstate Exteriors. After Allstate Exteriors failed to perform the work, the Claimant had several conversations with Mr. Gomez and requested a refund, but he ignored his request. The Claimant was introduced to Mr. Gomez by the Respondent when he asked the Respondent about replacing his roof. The Respondent acknowledged having a prior partnership with Mr. Gomez in which Mr. Gomez used the Respondent’s business name and MHIC license number on contracts that Mr. Gomez executed with consumers.

Mr. Gomez created the Allstate Exteriors trade name with the Respondent’s permission because Mr. Gomez said they would help the Respondent get involved in insurance work. They

completed several jobs, and then they ended their business relationship in December 2019. The Respondent found out later from the Claimant and other homeowners that Mr. Gomez continued to use his MHIC license number without his consent, and that Mr. Gomez was not doing the work for which they contracted. In December 2019, the Respondent texted Mr. Gomez to stop using the Respondent's MHIC license number. The Respondent never received the Claimant's money paid to Allstate Exteriors.

The Respondent presented a letter from Steve Fraatz, banker at Truist, to establish that in January 2021, Mr. Gomez opened an account under the name of Frank's Drywall & Painting, d/b/a Allstate Exteriors, without the Respondent's knowledge. (Resp. Ex. #3.) The bank issued one debit card associated with the account, in the name of Mr. Gomez. The account listed Mr. Gomez as the owner of the business and the Respondent as a signer on the account. The Respondent showed Mr. Fraatz documentation to establish that the Respondent was the true owner of the business, and Mr. Fraatz acknowledged that the account was opened fraudulently.

ANALYSIS

As set forth above, Section 8-405(a) of the Business Regulation Article allows a homeowner to recover from the Fund for an actual loss that results from an act or omission by a licensed contractor. There is no dispute that the Claimant suffered an actual loss of the money he paid to Mr. Gomez, since Allstate Exteriors never performed the work and the payment was not refunded. The parties agreed that the Respondent introduced Mr. Gomez to the Claimant when the Claimant asked the Respondent if he could replace his roof. The Claimant argued that since Mr. Gomez arrived at his home with a truck with an AllState Exteriors emblem attached and that he was introduced to the Claimant by the Respondent, that Mr. Gomez was associated with the Respondent. However, the Claimant acknowledged that the Respondent did not sign the

Contract and that he only paid Mr. Gomez and not the Respondent. The question to be answered is whether, by failing to cancel the Allstate Exteriors trade name or take further, more decisive action to prevent Mr. Gomez from using his MHIC license, did the Respondent cause the Claimant's actual loss?

Mr. Gomez acted on his own and took the Claimant's money. Mr. Gomez did this to other homeowners as well. I conclude that the Respondent expressly revoked any authorization Mr. Gomez may have had previously to use the Respondent's MHIC license number when he texted Mr. Gomez in December 2019 to stop using the Respondent's MHIC license number. Yet, on June 28, 2021, Mr. Gomez continued to use the Respondent's MHIC license number in the Contract he executed with the Claimant. Further, in March 2022, the Respondent discovered that Mr. Gomez had opened a bank account in the name of Franks, d/b/a Allstate Exteriors. (Resp. Ex. #3.) The Respondent closed that account as soon as he found out about it.

The Claimant and the Respondent are both victims in this case. This is basically a case of stolen business identity. The Claimant lost \$45,662.09, and the Respondent's reputation was damaged due to the actions of Mr. Gomez. I cannot conclude that the Claimant's loss occurred due to an act or omission of the Respondent. The Respondent's business practices may not have been well-organized, and maybe he could have acted faster to cancel the Allstate Exteriors trade name. However, until the time the Claimant and others contacted him, he did not know, nor has it been shown that he could have foreseen, that Mr. Gomez would have continued to use his MHIC license number and defraud homeowners while doing so, after their business relationship ended. The Respondent did not cause the Claimant's loss. I sympathize with the Claimant. The situation arose due to the fraudulent actions of Mr. Gomez. The Respondent was not involved in the business or the transaction. This leaves the Claimant unable to recover from the Fund.

Unfortunately, I can only conclude that, based on the record before me, the Claimant's loss did not occur due to the acts or omissions of the Respondent, as would be necessary to recover from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has sustained an actual loss; however, it was not the result of the acts or omissions of the Respondent. Md. Code Ann., Bus. Reg. §8-405 (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.

June 5, 2023
Date Decision Issued

Brian Zlotnick

Brian Zlotnick
Administrative Law Judge

BMZ/cj
#205468

**IN THE MATTER OF THE CLAIM OF
SCOTT ROLLE
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
FRANCISCO RAMIREZ FLORES
AND FRANK'S DRYWALL
& PAINTING, LLC**

*** MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 22(75)1091
* OAH CASE NO. LABOR-HIC-
* 02-22-24483**

* * * * *

PROPOSED ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on January 23 and March 10, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on June 5, 2023, concluding that the homeowner, Scott Rolle (“Claimant”) failed to prove that he suffered 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 partnership with Manuel Gomez, and they created AllState Exteriors as a “doing business as” entity of Frank’s Drywall & Painting, LLC. Pursuant to the partnership, the Contractor authorized Mr. Gomez to use the Contractor’s MHIC license under the name AllState Exteriors. The Contractor introduced Mr. Gomez to the Claimant as someone who could perform roofing work.

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."

In March 2021, the Contractor discovered that Mr. Gómez had opened a bank account for Frank's Drywall & Painting DBA AllState Exteriors with Mr. Gomez as the owner of the account and Mr. Ramirez Flores as a "signer" on January 19, 2021, and the Contractor immediately closed the account.¹

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 misdemeanor, the Contractor entered into a partnership agreement with Mr. Gomez allowing him to use the Contractor's license to sell home improvements and created a doing-business-as entity of Frank's Drywall & Painting, LLC, to facilitate their agreement. The Contractor was aware in December 2019 that Mr. Gomez continued using his license after he told him to stop because of his receipt of MHIC complaints and Mr. Gomez's admission on December 25, 2019. The Contractor also was aware that Mr. Gomez continued using his license after Mr. Gomez's January 2020 promise to stop because of the Contractor's discovery of the bank account in March 2021. Therefore, the Commission finds that the Contractor was unreasonable to rely on Mr. Gomez's purported January 2020 representation that he would stop selling home improvements using his MHIC license. There is no evidence that the Contractor, who created AllState Exteriors with Mr. Gomez and who introduced the Claimant to Mr. Gomez, told the Claimant that he was no longer affiliated with Mr. Gomez or that Mr. Gomez did not have permission to operate under his MHIC license. There also

¹ The ALJ erroneously found that the Contractor discovered the bank account in March 2022, which would have been after the Claimant contracted with Mr. Gomez and paid a deposit. (Resp. Ex. #3.)

is no evidence that the Contractor notified MHIC or a law enforcement agency that Mr. Gomez was using his license without permission. Finally, there is no evidence that the Contractor cancelled AllState Exteriors as a doing-business-as entity of Frank's Drywall & Painting, LLC.

The Commission finds that the Contractor's (1) entry into an illegal agreement with Mr. Gomez to use his license to sell home improvements, (2) failure promptly to report Mr. Gomez to the Commission or law enforcement upon discovering in December 2019 that Mr. Gomez continued to use his license after he told him to stop doing so or discovering in March 2021 that Mr. Gomez was continuing to use his license after Mr. Gomez promised to stop doing so, which would have enabled the Commission to warn the public about Mr. Gomez and enabled the police to arrest Mr. Gomez or at least deter his conduct by charging him with selling home improvements without a license, failure to perform home improvement contracts, and theft, (4) failure promptly to cancel the trade name owned by Frank's Drywall & Painting, LLC, 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 and discovering in March 2021 that Mr. Gomez was continuing to operate under his license, and (5) failure to advise the Claimant, to whom he had introduced Mr. Gomez as able to perform roof repairs, 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 doing business as entity of Frank's Drywall & Flooring, LLC, \$45,662.09 toward a contract for the repair of the roof, 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 an actual loss of \$45,662.09. Md. Code Ann., Bus. Reg. § 8-405 (e)(1) prohibits Guaranty

Fund awards of “more than \$30,000 to one claimant for acts or omissions of one contractor.” Therefore, the Commission finds that the Claimant suffered a compensable actual loss of \$30,000.00.

Having considered the evidence contained in the record and the ALJ’s Proposed Decision, it is this 3rd 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 **\$30,000.00** 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.

Jean White
Commissioner–Panel B
Maryland Home Improvement
Commission