

IN THE MATTER OF THE CLAIM	* BEFORE WILLIAM F. BURNHAM,
OF BEDEMWE BANAWOYE,	* 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-02-23-29486
T/A FRANKS DRYWALL &	* MHIC No.: 22 (75) 709
PAINTING, LLC, ¹	*
RESPONDENT	*

* * * * *

PROPOSED DECISION

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STATEMENT OF THE CASE

On April 12, 2022, Bedemwe Banawoye (Claimant) filed a Claim with the Maryland Home Improvement Commission (MHIC)² Guaranty Fund (Fund) for reimbursement of

¹ The Home Improvement Claim Form (Claim) completed by the Claimant indicates the Claim is against "Frank Flores" doing business as (d/b/a) "Allstate Exteriors." The Hearing Order from the Home Improvement Commission Guaranty Fund (Fund) indicates the hearing is for reimbursement of losses allegedly incurred as the result of conduct by "Francisco Javier Ramirez Flores and Franks Drywall & Painting LLC." See Fund Ex. 2. The discrepancy is more fully explained below.

² The MHIC is under the jurisdiction of the Department of Labor (Department).

\$9,462.34 for actual losses allegedly suffered as a result of a home improvement contract with Francisco Ramirez Flores, trading as Franks Drywall & Painting, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015 & Supp. 2023).³ On November 15, 2023, the MHIC issued a Hearing Order on the Claim. On November 15, 2023, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On February 6, 2023, I conducted a video hearing via Webex. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Jessica Kaufman, Senior Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. Matthew Dyer, Esquire, represented the Respondent.

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 & Supp. 2023); 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 submitted the following exhibits, which were admitted into evidence:

- Cl. Ex. 1 AllState Exteriors Contract, May 4, 2021; Appointment of AllState Exteriors as Contractor of Record, April 15, 2021

³ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code (Bus. Reg.).

- Cl. Ex. 2 Copy of check for \$9,462.34 from Erie Insurance to the Claimant and his spouse, April 27, 2021
- Cl. Ex. 3 Email from the Claimant to himself with four photographs of his home, January 3, 2024
- Cl. Ex. 4 Estimate from Erie Insurance to the Claimant, April 27, 2021
- Cl. Ex. 5 Letters from Erie Insurance to the Claimant, October 20, 2021; October 6, 2021; August 26, 2021; July 14, 2021; June 2, 2021
- Cl. Ex. 6 Letter from the State's Attorney for Frederick County to the Claimant RE: Case No.: D-111-CR-22-003875, undated
- Cl. Ex. 7 District Court of Maryland for Frederick County, *State v. Blake D. Martin*, D-111-CR-22-003875 Subpoena, April 22, 2022; Notice of Cancellation, March 7, 2022; Subpoena March 7, 2022
- Cl. Ex. 8 Emails between the Claimant and E. Cockey, various dates March to August 2022
- Cl. Ex. 9 Letters from the MHIC to the Respondent and the Claimant, May 20, 2022; April 8, 2022; December 28, 2021
- Cl. Ex. 10 Emails between the Claimant and T. Marr, various dates October 5, 2022 to October 26, 2023
- Cl. Ex. 11 Business cards of two employees of the State's Attorney's Office for Frederick County, undated
- Cl. Ex. 12 AllState Exterior business cards of Manny Gomez and Blake Martin, undated
- Cl. Ex. 13 Email from the Claimant to himself, January 6, 2024; attached texts, various dates between September 7, 2021 and January 6, 2022

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

- Resp. Ex. 1 District Court of Maryland for Frederick County, Notice of Stet, *State v. Francisco Ramirez-Flores*, D-111-CR-22-001820, October 20, 2022; Defendant Trial Summary, October 20, 2022; Criminal Summons on Charging Document, April 21, 2022; Statement of Charges, April 21, 2022; Application for Statement of Charges by T. Marr against Francisco Ramirez Flores aka Frank Flores, April 21, 2022
- Resp. Ex. 2 Text messages between the Respondent and Manny Gomez, December 25, 2019
- Resp. Ex. 3 Letter from Truist Bank, 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, December 19, 2023
- Fund Ex. 2- Transmittal form from the MHIC to the OAH, November 15, 2023; Hearing Order, November 15, 2023; Home Improvement Claim Form, received April 12, 2022
- Fund Ex. 3- Licensing History, January 23, 2024
- Fund Ex. 4- Letter from the MHIC to the Claimant, November 15, 2023; Home Improvement Claim Form, received April 12, 2022

Testimony

The Claimant testified and presented the testimony of the Respondent.

The Respondent testified⁴ 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.
2. The Respondent knows Manuel Gomez and Blake Martin. Manuel Gomez worked with the Respondent from sometime in 2018 until late 2019 or early 2020. Blake Martin was employed by Mr. Gomez.
3. The Respondent allowed Mr. Gomez to use his MHIC License number to conduct business.

⁴ I granted the Respondent's request that he present cross examination/direct testimony following the Claimant's direct exam of the Respondent.

4. Sometime in 2019 or early 2020, Mr. Gomez was no longer the Respondent's employee.
5. The Respondent owns Franks Drywall & Painting, LLC (Franks).
6. In January 2019, a business account was opened with Truist Bank for Franks d/b/a AllState Exteriors (Truist account). Mr. Gomez was identified as the owner and the Respondent as "a signer." *See* Resp. Ex. 2. The only debit card ordered for the account was for Mr. Gomez.
7. The Respondent closed the Truist account on March 4, 2021, after noticing that Mr. Gomez used the account for his "personal gain and not the business." *See* Resp. Ex. 3.
8. At some point, the Respondent informed Mr. Gomez he could no longer use his MHIC license number.
9. On or before April 15, 2021, Messrs. Gomez and Martin conducted a free inspection of the Claimant's roof and told him they could replace it at the expense of his insurer. The Claimant's insurer, Erie Insurance (Erie), agreed to replace the roof and provided the Claimant an estimate. *See* Cl. Ex. 1.
10. On May 4, 2021, the Claimant entered into a contract with Allstate Exteriors (Contract). The Contract contained the following language at the bottom of each page: "Frank's Drywall & Painting, LLC d/b/a – AllState Exteriors – MHIC # 117207." *See* Cl. Ex. 1.
11. The scope of the Contract was to replace the Claimant's roof as described in the Erie estimate. Cl. Exs. 1 and 4. The Contract identified the date of loss as August 7, 2020 and the Erie claim number A00003269807. The Contract had the Respondent's MHIC contractor/salesperson license number at the top. The Claimant dealt with Mr. Martin throughout the execution of the Contract.
12. The original agreed-upon Contract price was \$14,773.31.

13. On May 4, 2021, the Claimant gave a deposit check to Mr. Martin in the amount of \$9,462.34.

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

15. The Claimant never received any of the deposit money back that he paid for the Contact.

16. The Respondent never informed the MHIC that his contractor license number was being used without his 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); Md. Code Ann., Md Code Ann., State Gov't § 10-217 (2021); 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). With regard to weighing the evidence, a trier of fact can accept some, all, or none of the evidence offered. *Sifrit v. State*, 383 Md. 116, 135 (2004); *Edsall v. Huffaker*, 159 Md. App. 337, 341-43 (2004). Demeanor evidence also played a role in this matter. *Bragunier Masonry Contractors, Inc. v. Maryland Comm'r of Labor and Industry*, 111 Md. App. 698, 717, n.7 (1996); *N.L.R.B. v. Dinion Coil Co.*, 201 F.2d 484, 487 (2d Cir. 1952).

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. 2023); *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 and corroborated the testimony with documents admitted as Claimant’s Exhibits 1 through 13. After Allstate Exteriors failed to perform any work, the Claimant had many conversations with Mr. Martin and Mr. Gomez and requested a refund, but they ignored his request and provided excuse after excuse about why they could not perform the Contract. *See* Cl. Ex. 13. The Claimant was identified as a “victim/witness” in a criminal matter filed against Mr. Martin and was subpoenaed to appear at his trial. *See* Cl. Exs. 6 and 7.

The Claimant testified that he always knew he was dealing with Franks because the name was on his Contract, and Mr. Gomez always referred to another individual as the “boss,” and told the Claimant on several occasions he was not the owner of AllState Exteriors. The Claimant identified his own handwriting on the Contract where a telephone number was written. The Claimant wrote Mr. Martin’s telephone number on the document because he could not read what Mr. Martin wrote. The Claimant testified that he and his wife endorsed the Erie check for \$9,462.34 and gave it to Mr. Martin on May 4, 2021. He stated that despite months of contacts with Messrs. Gomez and Martin, no work was ever done, and his deposit was never returned.

The Respondent testified and was not credible. He stated he knew Messrs. Gomez and Martin, and that he employed Mr. Gomez but not Mr. Martin. He testified that he knew Mr. Gomez from church and a car shop, and hired him sometime in 2018. He testified he could prove he hired Mr. Gomez because he paid Mr. Gomez with checks, but he did not have copies of any checks at the hearing. The Respondent claimed Mr. Martin was never his employee, that

he never paid Mr. Martin, and had no "1099" for Mr. Martin. He testified that Mr. Gomez stopped working for him in late 2019 or early 2020 and that, at some point, he allowed Mr. Gomez to use his MHIC license to conduct business. The Respondent also testified he fired "them" after he received complaints that work was not being completed.

The Respondent claimed that he did not know that Mr. Gomez had opened the Truist account. When he discovered the account, he had it closed. He claimed he did not know that Mr. Gomez conducted business using his MHIC license after 2020 because, initially, Mr. Gomez was completing the work he had contracted to do and there were no complaints. The Respondent averred that he only found out about Mr. Gomez using his MHIC license number when Mr. Gomez failed to complete contracts and complaints were made.

The Respondent testified that he immediately contacted the sheriff and police to report Mr. Gomez after being instructed by his friend at the court to do so. He presumed that the court would tell the MHIC, so he did not. The Respondent provided no documentation of any of his supposed actions to support his testimony, although he testified that he was "pretty sure" he had some documentation. He testified that an agreement he entered in order to have his criminal case "stet"⁵ was that he entered into an agreement that he would cooperate with authorities in any case against Mr. Gomez, but he did not have any documentation memorializing the agreement.

At the time of the hearing, the Respondent believed that criminal charges are currently pending against Mr. Gomez. However, the investigators had not been able to locate Mr. Gomez.

The Fund argued that if the Respondent's testimony was not credible, then it recommended an award from the Fund for the entire amount paid by the Claimant because it was

⁵ An agreed upon indefinite postponement offered by a prosecutor of criminal charges. The proper term is stettered.

undisputed that no work was performed, and \$9,462.34 was paid for roof repairs by the Claimant.

For the following reasons, I find the Respondent's testimony was not credible. In addition, I conclude that the Respondent knew more about the activities of Messrs. Gomez and Martin than he admitted at the hearing.

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 deposit he paid to Mr. Martin, because Allstate Exteriors never performed the work, and the payment was not refunded.

The Truist account was closed "by the true owner [the Respondent] due to the account abuse being done by Manuel Gomez Garcia."⁶ Resp. Ex. 3. According to Truist's letter, that was obtained by the Respondent and notarized when written, the Respondent "noticed that [Mr. Gomez] was using the account for his own personal gain and not for the business." *Id.* If, as the Respondent testified, he had no knowledge of Mr. Gomez using his MHIC number and also opening an account, how did he "notice" the account was being misused?

Regarding the Respondent's testimony that he told Mr. Gomez to stop using his MHIC number, the text messages admitted as Respondent Exhibit 2 have a date stamp of December 25, 2019 at 5:32 p.m. There is a "read" message at 2:22 p.m. that is after the texter (identified as Mr. Gomez) wrote "I know you did but I haven't started working with the other person because I been having (sic) a lot of problems now." *Id.* The conversation is abbreviated in this exhibit.

⁶ Mr. Gomez was referred to as Manny, Mr. Gomez and here, Manuel Gomez Garcia. I believe the names refer to one individual and I use Mr. Gomez. No one claimed otherwise.

The underlying context could be different. In the totality of the Respondent's testimony combined with selective information, I give it little weight.

I believe Mr. Martin and Mr. Gomez acted with the Respondent's knowledge or that the Respondent chose to ignore the situation. The Respondent testified that he could not know about AllState Exteriors's endeavors because Mr. Gomez provided the services for which he contracted. I found it unbelievable that he did not know Messrs. Gomez and Martin were operating with his MHIC license. It is more likely he knew and, when he "noticed" that Mr. Gomez was using business money for personal gain, he closed the Truist account. If the Respondent told Mr. Gomez he could not use his MHIC license any longer in early 2020, it is illogical that the Respondent would have access to the Truist account months later to notice Mr. Gomez used it for "personal gain and not the business." The Respondent allowed the Truist letter to be notarized in the form that was admitted into evidence, and therefore it is more likely than not he knew of the account. *See Resp. Ex. 3.* In addition, I find it telling that the Respondent never informed the MHIC that Mr. Gomez used his license number without his permission. I do not believe that the Respondent believed law enforcement would tell the MHIC, and I find it more likely than not he was complicit or ignoring Mr. Gomez's actions for unknown reason(s). Finally, his claim that he was exonerated by law enforcement for his cooperation was not supported.

The Respondent would like me to believe this is a case of stolen business identity, the Claimant lost \$9,462.34 as a result of the actions of Mr. Gomez and Mr. Martin, and a criminal investigation resulted in possible charges that are pending against Mr. Gomez and Mr. Martin. Based on this evidence, I find it more likely than not that, at the time the Claimant entered into the Contract, made payment, and received no benefit, the Respondent had an agreement with Mr.

Gomez which permitted Mr. Gomez to use the Respondent's MHIC license to solicit and perform home improvement work. It is clear that the Respondent was aware that Mr. Gomez was using his MHIC license to solicit additional home improvement work and failed to monitor this activity. Moreover, when he became aware that Mr. Gomez was defrauding clients while using his MHIC license with his permission, he did not contact the MHIC or take any affirmative action to prevent the Claimant's loss. Accordingly, I agree with the Fund and find that because the Respondent's testimony was not credible, the Claimant is eligible for an award from the Fund as a result of the Respondent's acts or omissions that resulted in an abandoned and incomplete home improvement.

Compensation

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3) (Supp. 2023); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

I find the Respondent abandoned the Contract without doing any work. Accordingly, 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). Under the Contract, the Claimant paid \$9,462.34, and he is entitled to an award from the Fund in that amount.

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁷ Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is the amount paid to the Respondent and is less than \$30,000.00. Therefore, the Claimant is entitled to recover the actual loss of \$9,462.34.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$9,462.34 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2023); COMAR 09.08.03.03B(3)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (Supp. 2023); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,462.34; 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;⁸ and

⁷ On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

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

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

April 25, 2024
Date Decision Mailed

WFB/emh
#211306

William F. Burnham

William F. Burnham
Administrative Law Judge

PROPOSED ORDER

WHEREFORE, this 15th day of July, 2024, 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***