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| IN THE MATTER OF THE CLAIM | * | BEFORE LATONYA B. DARGAN, |
| OF AARON WEXLER, | * | AN ADMINISTRATIVE LAW JUDGE |
| CLAIMANT, | * | OF THE MARYLAND OFFICE |
| AGAINST THE MARYLAND | * | OF ADMINISTRATIVE HEARINGS |
| HOME IMPROVEMENT | * | |
| GUARANTY FUND FOR THE ALLEGED | * | |
| ACTS OR OMISSIONS OF | * | |
| FRANCISCO JAVIER RAMIREZ FLORES, | * | |
| T/A FRANK'S DRYWALL & | * | |
| PAINTING, LLC, | * | OAH No.: LABOR-HIC-02-22-24350 |
| RESPONDENT | * | MHIC No.: 22 (75) 939 |

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## PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
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DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

## STATEMENT OF THE CASE

On March 23, 2022, Aaron Wexler (Claimant) filed a claim for reimbursement (Claim) with the Maryland Home Improvement Commission (MHIC) for actual monetary losses allegedly suffered as a result of the acts or omissions of Francisco Javier Ramirez Flores (Respondent), t/a Frank's Drywall & Painting, LLC, the responsible home improvement

contractor.[1] On August 30, 2022, the MHIC ordered the Claimant should have a hearing to establish eligibility for an award from its Guaranty Fund (Fund). On September 8, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for hearing.

On February 28, 2023, I conducted a hearing at the OAH's headquarters in Hunt Valley, Maryland.[2] The Claimant appeared and represented himself. The Respondent, who also appeared, was represented by Matthew J. Dyer, Esquire. Nicholas Sokolow, Assistant Attorney General, Maryland Department of Labor (Department), represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the OAH Rules of Procedure govern procedure.[3]

## ISSUES

1. Did the Claimant sustain an actual monetary loss compensable by the Fund as a result of the Respondent's acts or omissions in a home improvement project; and

2. If so, what is the amount of the award from the Fund?

## SUMMARY OF THE EVIDENCE

I admitted the following exhibits for the Claimant:

CL Ex. 1: Representation Agreement between Allstate Exteriors and Aaron Wexler, June 16, 2021
CL Ex. 2: Contract, September 23, 2021; Check Stub, September 15, 2021
CL Ex. 3: USAA Insurance Estimate, June 20, 2021
CL Ex. 4: Cashed Check, negotiated on September 23, 2021
CL Ex. 5: Email from Blake Martin to Aaron Wexler, June 18, 2021
CL Ex. 6: Estimate, Frank's Drywall & Painting, LLC; June 10, 2021; Text messages, June 9 and 10, 2021
CL Ex. 7: Email Summary of Events, prepared by Aaron Wexler, January 27, 2022

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[1] Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.
[2] *Id.* §§ 8-407(a), 8-312.
[3] Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

CL Ex. 8: MHIC Complaint Form, undated and unsigned
CL Ex. 9: MHIC Home Improvement Claim Form, March 21, 2022
CL Ex. 10: Not Admitted[4]
CL Ex. 11: Not Admitted
CL Ex. 12: Not Admitted
CL Ex. 13: Photo of Home, taken February 25, 2023
CL Ex. 14: Pre-Inspection Photo, undated
CL Ex. 15: Not Admitted
CL Ex. 16: Deed, November 21, 2020

I admitted the following exhibits for the Respondent:

R. Ex. 1: Letter from Steve Fraatz, Senior Relationship Banker, Truist Bank, April 4, 2022

I admitted the following exhibits for the Fund:

GF Ex. 1: Notice of Hearing, issued January 16, 2023
GF Ex. 2: MHIC Hearing Order, issued August 30, 2022
GF Ex. 3: MHIC Letter to the Respondent, advising of the Claim, April 4, 2022
GF Ex. 4: Certification of the Respondent's MHIC licensure status, December 14, 2022
GF Ex. 5: Trade Name filing history for Allstate Exteriors, printed January 25, 2023
GF Ex. 6: Trade Name Application for Allstate Exteriors, filed January 8, 2029
GF Ex. 7: Trade Name Approval Sheet, February 16, 2022; Trade Name Cancellation Application, February 16, 2022
GF Ex. 8: Email from Respondent to the 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 witnesses.

[4] Where an exhibit is marked as "Not Admitted" it means the exhibit was offered, an objection was made to its admissibility based on relevancy grounds, and the objection was sustained. I have retained the exhibits to preserve the record, but I did not consider them in rendering this Proposed Decision.

## PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent held a home improvement contractor license, ending in #117207, originally issued by the MHIC on or about December 18, 2018.

2. At all relevant times, the Respondent was the owner of Frank's Drywall & Painting, LLC (Frank's Drywall).

3. At some point in late fall 2018, the Respondent entered into a professional relationship with Manuel Gomez, whom the Respondent has known since the Respondent was a child. Mr. Gomez worked with an insurance company that serviced policy holders who experienced water and other damages to their homes. Mr. Gomez proposed that the Respondent, through Frank's Drywall, perform the painting and drywall repair work when needed.

4. Mr. Gomez had a business associate named Blake Martin, with whom the Respondent was also familiar.

5. Mr. Gomez and Mr. Martin operated a business called Build Pro Exteriors (Build Pro).

6. At some point after December 18, 2018, Mr. Gomez asked the Respondent to send him a picture of the Respondent's MHIC license, which the Respondent did.

7. On or about January 8, 2019, Mr. Gomez, with the Respondent's permission, registered the trade name Allstate Exteriors (Allstate) with the Maryland State Department of Assessments and Taxation. On the Trade Name Application, the full legal name of the owner of the business or individual using the trade name was listed as "Frank's Drywall & Painting, LLC." (GF Ex. 6.)

8. At some point after January 4, 2019, the Respondent entered into a written agreement with Mr. Gomez for Build Pro and Allstate to work together on home improvement projects. Either Build Pro or Allstate was responsible for, among other types of work, roof repair.

9. At some point in 2019, the Claimant hired the Respondent, through Frank's Drywall, to perform painting and drywall work at a property owned by the Claimant in Poolesville, Maryland (Poolesville Property). The Claimant was satisfied with the Respondent's work on the Poolesville Property.

10. At some point during November or December 2020, the Respondent began receiving phone calls from different property owners, complaining that Mr. Gomez had not performed any work on their ~~contracts with Allstate or Build Pro. The property owners reached~~ out to the Respondent because his MHIC license number was on their contracts with Mr. Gomez.

11. At some point during late spring/early summer 2021, the Claimant needed work done on the roof of a property he owns on Meadows Farm Road in Lothian, Maryland (Lothian Property).[5] Based on his prior experience, the Claimant contacted the Respondent about performing the work.

12. On or about June 10, 2021, the Claimant and the Respondent met at the Lothian Property. The Respondent explained that he did not perform roof repairs, but he introduced the Claimant, via telephone, to Blake Martin, who could perform the roof work through Allstate. The Respondent introduced Mr. Martin to the Claimant as either the Respondent's employee or business associate.

[5] This property is the subject of the Claim.

13. All repair work at the Lothian Property was subject to approval by the Claimant's insurance company.

14. On June 16, 2021, the Claimant entered into a representation agreement with Allstate for Allstate to act on the Claimant's behalf for "all matters related to the restoration, rehabilitation, and renovation of damages sustained at [the Lothian Property]." (CL Ex. 1, p. 1.) The Respondent's MHIC license number, #117207, was printed at the top of the agreement. The following text appeared in print at the bottom of the agreement: "Frank's Drywall & Painting, LLC d/b/a -Allstate Exteriors- MHIC #117207." (*Id.*)

15. Based on approval from the Claimant's insurance company, the contract price for any work to be performed at the Lothian Property was $16,010.11.

16. On or about September 15, 2021, the Claimant's insurance company issued a check in the amount of $16,010.11, payable to Ngozi Wexler[6] and Old Line Bank.

17. On September 23, 2021, the Claimant entered into a contract with Allstate for Allstate to completely replace the roof at the Lothian Property, which included weatherproofing, the installation of an ice shield, water shield and drip edge, and new chimney flashing. The Respondent's MHIC license number, #117207, was printed at the top of the contract. The following text appeared in print at the bottom of the contract: "Frank's Drywall & Painting, LLC d/b/a -Allstate Exteriors- MHIC #117207."

18. On or about September 23, 2021, the Claimant and Mrs. Wexler signed the check over to Mr. Martin.

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[6] Ngozi Wexler is the Claimant's wife and the person in whose name the insurance policy for the Lothian Property is issued.

19. Either Mr. Gomez or Mr. Martin wrote the following on the back of the check, "Endorsed to Build Pro Exterior," (CL Ex. 4), and deposited the check at Truist Bank on September 24, 2021.

20. Under the contract, the work was scheduled to start on October 14, 2021.

21. Throughout September and October 2021, the Claimant contacted Mr. Martin to ask when the work would begin. Mr. Martin claimed work was delayed due to a materials shortage. Eventually, after October 29, 2021, Mr. Martin stopped responding to the Claimant.

22. No work was performed at the Lothian Property by Allstate, Build Pro, or Frank's Drywall.

## DISCUSSION

### LEGAL FRAMEWORK AND THE PARTIES' POSITIONS

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.[7] 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.[8] A party asserting an affirmative defense bears the burden to prove the defense by a preponderance of the evidence.[9]

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor."[10] An "owner" under the statute includes "a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement."[11] "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."[12]

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[7] Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3).
[8] *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).
[9] COMAR 28.02.01.21K(1), (2)(b).
[10] 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.").
[11] Bus. Reg. § 8-101(k).
[12] *Id.* § 8-401.

By statute, certain claimants are excluded from recovering from the Fund altogether. Here, there are no such 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.[13] The Claimant does not own more than three dwellings.[14] The parties did not enter into a valid agreement to submit their disputes to arbitration.[15] The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent.[16]

There is no dispute that at all relevant times, the Respondent was a licensed home improvement contractor. Further, neither the Respondent nor the Fund dispute that the Claimant contracted with Allstate for Allstate to perform work at the Lothian Property, or that after being paid to perform the work, Allstate did not do so and did not reimburse the Claimant for the contract amount. The dispute between the Claimant and the Respondent turns on the question of whether the Respondent committed acts or omissions which make the Claimant eligible for an award from the Fund. For the reasons articulated below, I find the Claimant is eligible for an award from the Fund as a result of the Respondent's acts or omissions.

The Claimant argued that Allstate was the Respondent's company and Blake Martin was the Respondent's business associate. The Claimant entered into a contract with Allstate, through Mr. Martin, to replace the roof at the Lothian Property. After either Mr. Martin or Mr. Gomez deposited the check into an account at Truist Bank, neither Allstate, Build Pro, nor Frank's Drywall performed the roof repair. According to the Claimant, the Respondent introduced him

[13] *Id.* §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022).
[14] *Id.* § 8-405(f)(2) (Supp. 2022).
[15] *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022).
[16] *Id.* § 8-405(f)(1) (Supp. 2022).

to Mr. Martin and recommended Mr. Martin for the roof repair work. Throughout the Claimant's dealings with Mr. Martin, he was under the impression that Mr. Martin worked for or with the Respondent.

In the Respondent's testimony, he conceded that Mr. Martin and Mr. Gomez used his MHIC license number in connection with business dealings engaged in by Allstate and Build Pro. The Respondent acknowledged that under a written agreement he had with Mr. Gomez, he received 10% of the money from any contracted projects of Allstate or Build Pro. Further, the Respondent admitted that at some point in late 2020, he began receiving phone calls and complaints from property owners who entered into contracts with Mr. Gomez that Mr. Gomez did not fulfill. According to the Respondent, at some point, he told Mr. Gomez and Mr. Martin to stop using his MHIC license number when entering into home improvement contracts. He argued that he advised them to stop doing so before the Claimant entered into the September 23, 2021 contract with Mr. Martin and Allstate. The Respondent maintained that Mr. Gomez and Mr. Martin colluded with each other to defraud people, but they did so without his knowledge, consent, or involvement. Finally, the Respondent questioned whether Aaron Wexler could even be reimbursed by an award from the Fund, as the check from the insurance company was payable to Ngozi Wexler and Old Line Bank, but Mrs. Wexler was not the person who filed the Claim.

For its part, the Fund recommended the Claimant receive an award in the amount of the contract price. The Fund argued the Claimant is an "owner" within the meaning of the Business Regulation Article; Mr. Martin was, at the very least, the Respondent's business associate at the time of the contract; and Mr. Martin – whom the Respondent recommended to the Claimant – used the Respondent's MHIC license on the contract documents. The Fund further pointed out

the Respondent was aware at some point that Mr. Martin and Mr. Gomez were holding themselves out as home improvement contractors under the Respondent's MHIC license number; he conceded as much when he admitted he eventually asked them to stop doing so.

**ANALYSIS**

The Claimant's and the Fund's theories of the case are persuasive. As a threshold matter, I find the Claimant may recover an award from the Fund. He testified without contradiction that he is the owner of the Lothian Property. The documentary evidence demonstrates he is the one who contracted for home improvement work at the Lothian Property. The Claimant is an "owner" within the meaning of the Business Regulation Article.

The evidence further demonstrates that the Respondent had a business relationship with Mr. Martin and Mr. Gomez that found them engaged in business dealings with each other across three home improvement companies – Allstate, Build Pro, and Frank's Drywall. However Mr. Gomez and Mr. Martin began using the Respondent's MHIC license in connection with Alistate and Build Pro, I find it is more likely than not that they did so with the Respondent's permission. By his own admission, the Respondent had a written agreement with Mr. Gomez that entitled the Respondent to a percentage of the money from projects for which Allstate and Build Pro contracted. It is not difficult to believe that the Respondent's MHIC license number lent an air of legitimacy to the entire arrangement. In fact, the Claimant testified that part of the reason he was willing to work with Mr. Martin was because Mr. Martin and the Respondent created the impression Mr. Martin was, essentially, operating under the Respondent's license.

There was some back and forth between the parties about Mr. Martin's status relative to the Respondent. According to the Claimant, the Respondent introduced Mr. Martin to the Claimant as either "an employee or a business partner" and the Respondent advised the Claimant

that Mr. Martin handled "the part of the business" that did roof repair work. The Respondent could not recall how he introduced Mr. Martin to the Claimant. I give more weight to the Claimant's testimony on this point. The Claimant has a recollection of the Respondent actually describing his connection to Mr. Martin, while the Respondent has no recollection of how he explained his relationship with Mr. Martin to the Claimant. I find it more likely than not that the Respondent, in introducing the Claimant and Mr. Martin, gave the Claimant the impression that Mr. Martin worked with the Respondent in some capacity. This impression is compounded by the fact that Allstate was a "d/b/a" entity of Frank's Drywall. The arrangement between Frank's Drywall and Allstate was made with the Respondent's knowledge and permission. Further, the connection between Frank's Drywall and Allstate was affirmed by the contract documents, where Allstate's status as a "d/b/a entity" of Frank's Drywall was printed on the pages, along with the Respondent's MHIC license. The Respondent asserted that he did not have anything to do with the agreement signed by the Claimant and Mr. Martin on June 16, 2021, or the contract signed on September 23, 2021. This assertion contradicts his concession, made on cross-examination: he had an agreement with Mr. Gomez that identified and included Allstate as a "d/b/a" entity of Frank's Drywall. It is difficult to believe the Respondent was aware of an entity that was set up directly under his business, but he did not keep track of what that entity did while operating, at least partly, under his business's name.

I do not find to be credible the Respondent's assertion that he told Mr. Martin and Mr. Gomez to stop using his MHIC license prior to the September 23, 2021 contract with the Claimant, for two reasons. First, the Respondent contradicted himself about when he advised Mr. Gomez and Mr. Martin to stop using his MHIC license. He initially testified it was sometime shortly after he received complaints about Mr. Gomez in November/December 2020.

Then, in response to questions on cross-examination, he testified that at some point in May 2021, he texted Mr. Gomez and asked Mr. Gomez to stop using his MHIC license. Finally, in response to my questions, the Respondent claimed he first told Mr. Gomez and Mr. Martin to stop using the license in February or March 2022. The inconsistency in the Respondent's statements makes his testimony on this point too self-serving to be reliable.

Second, the timing of the Respondent's introduction of the Claimant to Mr. Martin undercuts any assertion that he told Mr. Gomez and Mr. Martin to stop using his MHIC license at any point prior to September 2021. The Respondent introduced the Claimant to Mr. Martin in June 2021. It is simply not reasonable that if the Respondent was aware, as of June 2021, Mr. Martin and Mr. Gomez were using his MHIC license in an fraudulent manner – and if the Respondent was at all troubled by this – he would introduce Mr. Martin to the Claimant and recommend Mr. Martin to perform the roof repair at the Claimant's property. The more likely circumstance is that the Respondent was aware Mr. Gomez and Mr. Martin were using his MHIC license, and he did not become concerned enough about it to tell them to stop doing so before recommending Mr. Martin to the Claimant.

In recommending Mr. Martin to the Claimant and introducing Mr. Martin as someone who worked with and for him, the Respondent created the impression that he was responsible for Mr. Martin's conduct relative to the home improvement contract for the Lothian Property. The Respondent was aware that Mr. Martin, along with Mr. Gomez, used his MHIC license in connection with home improvement contract negotiations, and he did not stop that practice before the Claimant engaged Allstate, through Mr. Martin, to perform work at the Lothian Property. The Claimant relied on the representation that Mr. Martin was operating under the

Respondent's license, to the Claimant's detriment. I find the Claimant is eligible for an award from the Fund as a result of the Respondent's acts or omissions.

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, 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.[17] MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. Here, the contract was abandoned without any work being performed. 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."[18] Under the contract, the Claimant paid Allstate $16,010.11, and he is entitled to an award from the Fund in that amount.[19]

## PROPOSED CONCLUSIONS OF LAW

Based on the Proposed Findings of Fact and Discussion, I conclude as a matter of law that the Claimant sustained an actual and compensable loss of $16,010.11 as a result of the Respondent's acts or omissions.[20] I further conclude as a matter of law that the Claimant is entitled to recover $16,010.11 from the Fund.[21]

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[17] Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).
[18] COMAR 09.08.03.03B(3)(a).
[19] *See* Business Regulation § 8-405(e)(1), (5) (Supp. 2022) and COMAR 09.08.03.03B(4), which caps a claimant's recovery at $30,000.00 for the acts or omissions of one contractor, and limits recovery to the amount paid to the contractor against whom the claim is filed.
[20] Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(a).
[21] Bus. Reg. § 8-405(a) (Supp. 2022).

## RECOMMENDED ORDER

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant $16,010.11; 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;[22] and

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

May 30, 2023
Date Decision Mailed

Latonya B. Dargan
Administrative Law Judge

LBD/kdp
#205263

[22] *See* Bus. Reg. § 8-410(c)(1)(iii) (2015); COMAR 09.08.01.20.

## *PROPOSED ORDER*

***WHEREFORE, this 18th day of July, 2023, 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.***

Heather Connellee

***Heather Connellee***
***Panel B***
***MARYLAND HOME IMPROVEMENT COMMISSION***