

<p>IN THE MATTER OF THE CLAIM  OF CHANH NGUYEN,  CLAIMANT  AGAINST THE MARYLAND HOME  IMPROVEMENT GUARANTY FUND  FOR THE ALLEGED ACTS OR  OMISSIONS OF FRANCISCO  RAMIREZ FLORES,  T/A FRANKS DRYWALL &amp;  PAINTING, LLC,  RESPONDENT</p>	<p>* BEFORE CARLTON A. CURRY,  * AN ADMINISTRATIVE LAW JUDGE  * OF THE MARYLAND OFFICE  * OF ADMINISTRATIVE HEARINGS  *  *  *  *  * OAH No.: LABOR-HIC-02-22-24480  * MHIC No.: 22 (75) 1029</p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On April 2, 2022,<sup>1</sup> Chanh Nguyen (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>2</sup> Guaranty Fund (Fund) for reimbursement of \$8,319.72 for actual losses allegedly suffered as a result of a home improvement contract with

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<sup>1</sup> The Home Improvement Claim Form has a signature date of April 14, 2021, but a received date of April 2, 2022. There was no clarification of this discrepancy at the hearing.  
<sup>2</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

Francisco Ramirez Flores (Respondent), trading as Franks Drywall and Painting, LLC, doing business as AllState Exteriors. Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>3</sup> 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. The original hearing date of January 19, 2023 was postponed and rescheduled to March 3, 2023, so that the Respondent could obtain legal counsel.

On March 3, 2023, I held a hearing via Webex, a videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Nicholas C. Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. Michael 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 - Not admitted<sup>4</sup>

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<sup>3</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>4</sup> Exhibits not admitted have been retained in the file for the purpose of judicial review. COMAR 28.02.01.22C.

Clmt. Ex. 2 - Not admitted

Clmt. Ex. 3 - Letter to Claimant from Travelers Personal Insurance Company (Travelers) and check stub, April 27, 2021

Clmt. Ex. 4 - Contract between Claimant and AllState Exteriors, April 16, 2021; Acknowledgement of payment, April 28, 2021

Clmt. Ex. 5 - Not admitted

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - "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 AllState Exteriors, account ending in 4644, April 4, 2022

Resp. Ex. 2 - 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

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - OAH Notice of Remote Hearing on March 3, 2023, issued January 19, 2023

Fund Ex. 2 - Hearing Order, August 30, 2022

Fund Ex. 3 - Licensing History, January 9, 2023

Fund Ex. 4 - Letter from the MHIC to the Respondent, with Claimant's Home Improvement Claim Form attached, May 20, 2022

Fund Ex. 5 - State of Maryland Department of Assessment and Taxation, AllState Exteriors Filing History printout, undated

Fund Ex. 6 - Trade Name Application for AllState Exteriors, filed January 8, 2019

Fund Ex. 7 - Trade Name Cancellation Application, received November 17, 2021; Trade Name Approval Sheet, dated February 16, 2022

Fund Ex. 8 - Email from the Respondent to the Department of Labor, March 15, 2022

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not offer any testimony.

**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.
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 with agreement by the Respondent.
3. Beginning in or around 2019, Respondent Flores authorized Mr. Gomez to perform home improvement work under Respondent Flores's MHIC license using the trade name AllState Exteriors.
4. Blake Martin was an employee of Mr. Gomez, and Respondent Flores was aware of Mr. Martin's employment.
5. At some point in early 2020, Respondent Flores terminated his relationship with Mr. Gomez and Mr. Martin and told them they could no longer use Respondent Flores's MHIC license number. Regardless, Mr. Martin and Mr. Gomez continued to use the Respondent Flores's MHIC license number.
6. On January 19, 2021, a business account was opened with Truist Bank by Mr. Gomez, in the name of Franks Drywall and Painting, LLC, dba AllState Exteriors. Only one

debit card was issued for this account to Mr. Gomez. On March 4, 2021, Respondent Flores closed this account.

7. The Claimant had a homeowner insurance policy with Travelers and filed an insurance claim for roof damage.

8. On April 15, 2021, the Claimant met with Mr. Martin. Mr. Martin told the Claimant that he (Mr. Martin) was a representative of AllState Exteriors. On April 16, 2021, the Claimant signed a written contract with AllState Exteriors to have his roof replaced (Contract).

9. The Contract was on an AllState Exteriors form and bears Respondent Flores's MHIC license number. The Contract was negotiated and executed by the Claimant and Mr. Martin.

10. On April 27, 2021, Travelers issued a property damage estimate to repair the roof in the amount of \$20,161.35.

11. The original agreed-upon Contract price was \$20,161.35.

12. On or about April 29, 2021, the Claimant endorsed a check issued to him by Travelers in the amount of \$8,319.72 to AllState Exteriors as a deposit.

13. Neither Respondent Flores nor Frank's Drywall & Painting, LLC ever received any portion of the \$8,319.72 paid to AllState Exteriors.

14. Mr. Martin, Mr. Gomez, and AllState Exteriors never performed any work under the Contract.

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

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

17. The Claimant filed a claim for reimbursement from the Fund which was received by the MHIC on April 2, 2022.

18. On April 21, 2022, the MHIC filed criminal charges in the District Court of Maryland for Frederick County against Respondent Flores 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.

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

### **DISCUSSION**

#### ***Burden of Proof and the Statutory 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.

### ***No Statutory Bar for Recovery***

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, 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. 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, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

### ***The Parties’ Positions***

The Claimant asserted that he entered into a contract with AllState, which had the Respondent Flores’s MHIC license number on it, therefore, Respondent Flores is responsible for the deposit of \$8,317.72 under the Contract, as no work was performed.

Respondent Flores argues that he was not aware of and did not benefit from the Contract between AllState and the Claimant. Further, Respondent Flores expressly revoked the right for Mr. Gomez and Mr. Blake to use his MHIC license number and the AllState tradename in 2020, which was before the Claimant entered into the Contract.

The Fund took no position as to whether the Claimant is entitled to an award.

### *Analysis*

For the following reasons, I find that the Claimant has not proven eligibility for compensation.

On April 16, 2021, the Claimant entered into a home improvement contract with Mr. Blake to repair the Claimant's roof in accordance with an insurance damage estimate created by Travelers, the Claimant's homeowner insurer. It is undisputed that the Claimant delivered an endorsed check from Travelers in the amount of \$8,319.72 to Mr. Martin and that the new roof promised in the Contract was never installed. It is also undisputed that the Claimant dealt solely with Mr. Martin, and that the Claimant never had any dealings with Respondent Flores.

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, since Allstate Exteriors never performed the work and the payment was not refunded. The parties agreed that Respondent Flores had nothing to do with the Claimant's Contract, or with the transaction between the Claimant and Mr. Martin and Mr. Gomez. 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. Martin and Mr. Gomez from using his MHIC license, Respondent Flores caused the Claimant's actual loss.

Mr. Martin and Mr. Gomez acted on their own and took the Claimant's money. They did this to other homeowners as well. In March 2021, the Respondent discovered that Mr. Gomez had opened a bank account in the name of Franks Drywall and Painting, dba Allstate Exteriors. Resp. Ex. #1. Respondent Flores went to the bank and established that he was the owner of Franks Drywall and Painting and closed that account as soon as he found out about it.



Respondent Flores expressly revoked any authorization Mr. Gomez and Mr. Martin may have had previously to use his MHIC license number. Respondent Flores canceled the Allstate Exteriors trade name in November 2021, once his accountant advised him to do so. Fund Ex. #7.

The Claimant and Respondent Flores are both victims in this case. This is a case of stolen business identity. The Claimant lost \$8,319.72, and Respondent Flores's business was compromised, both resulting from the actions of Mr. Martin and Mr. Gomez. A criminal investigation ensued, and it is possible that charges are pending against them. I cannot conclude that the Claimant's loss occurred due to an act or omission of Respondent Flores. Respondent Flores's business practices may not have been 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 could he have foreseen, that Mr. Martin and Mr. Gomez would have continued to use his MHIC license number and defraud homeowners while doing so, after their business relationship ended. Respondent Flores did not cause the Claimant's loss.

I sympathize with the Claimant. The situation occurred due to the fraudulent actions of Mr. Gomez and Mr. Martin. Respondent Flores 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 Respondent Flores, as would be necessary to recover from the Fund.

#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has not sustained an actual and compensable loss as a result of Respondent Flores'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.

June 1, 2023  
Date Decision Issued

*Carlton A. Curry*  
\_\_\_\_\_  
Carlton A. Curry  
Administrative Law Judge

CAC/ja  
#205402

**PROPOSED ORDER**

***WHEREFORE, this 18<sup>th</sup> 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***

IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
CHANH NGUYEN \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 22(75)1029  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
FRANCISCO RAMIREZ FLORES \* 02-22-24480  
AND FRANKS DRYWALL &  
PAINTING, LLC

\* \* \* \* \*  
**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on March 3, 2023. Following the evidentiary hearing, the ALJ issued a Proposed Decision on June 1, 2023, concluding that the homeowner, Chanh Nguyen (“Claimant”) failed to prove that he suffered an actual loss as a result of the acts or omissions of Francisco Ramirez Flores and Franks Drywall & Painting, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 9. In a Proposed Order dated July 18, 2023, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to deny an award from the Home Improvement Guaranty Fund. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On September 7, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Matthew Dyer, Esq., represented the Contractor. Assistant Attorney General Hope Sachs appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Claimant’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. The Claimant sought to present new evidence, but the Panel denied his

request because he failed to demonstrate that, with the exercise of ordinary diligence, he could not have discovered the proposed evidence before the OAH hearing. Therefore, the Panel's review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract for the replacement of the roof at the Claimant's home, which was never performed, and for which the Claimant paid a deposit of \$8,319.72 that was not returned to him. The ALJ found that, although the Claimant suffered a loss, he failed to prove that an act or omission of the Contractor caused his loss because the Contractor was not aware of or involved in the contract, rather the Claimant was defrauded by two individuals, Manuel Gomez and Mr. Gomez's employee, Blake Martin, who utilized the Contractor's license to contract with the Claimant after the Contractor revoked his authorization for them to use of his license. *ALJ's Proposed Decision* pp. 8-9.

On exception, the Claimant argued that the ALJ erred in denying his claim. For the following reasons, the Commission agrees with the Claimant.

The Contractor authorized Mr. Gomez to utilize his MHIC license and register AllState Exteriors as a trade name for the "[e]xterior renovation division" of his licensed home improvement business, Franks Drywall & Painting. LLC. (OAH Hearing Guaranty Fund Exhibit 6.) The ALJ found that the Contractor expressly revoked his authorization of the use of his license in early 2020, apparently based on the Contractor's testimony, as there is no corroborating documentary evidence.

The documentary evidence demonstrates to the Commission that the Contractor did not revoke his authorization in 2020. First Mr. Gomez opened a bank account for Frank's Drywall & Painting DBA All State Exteriors on January 19, 2021. (OAH Hearing Respondent's Exhibit 1.)

According to the bank, Mr. Gomez should have been “added as a signer” rather than an owner of the account, and the Contractor closed the bank account in March 2021, “because he noticed that Manuel Gomez Garcia was using the account for his own personal gain and not the business.” (OAH Hearing Respondent’s Exhibit 1.) Notably, the bank did not indicate that Mr. Gomez was no longer affiliated with the business in January or March of 2021. This indicates that the Contractor had not revoked his authorization for Mr. Gomez to utilize his license as of March 2021.

Second, despite having clear evidence that Mr. Gomez was continuing to operate Franks Drywall & Painting DBA AllState Exteriors in March 2021, the Contractor did not apply to cancel the AllState Exteriors trade name for Franks Drywall & Painting, LLC, until November 17, 2021 (OAH Hearing Guaranty Fund Exhibit 7) and did not notify the Commission or law enforcement that Mr. Gomez was utilizing his license until March 2022 (OAH Hearing Guaranty Fund Exhibit 8). Therefore, the Commission finds that the Contractor did not revoke his authorization of Mr. Gomez to utilize his license until November 17, 2021.

Accordingly, the Commission finds that Mr. Gomez and Mr. Gomez’s employee were operating AllState Exteriors under the Contractor’s license with the Contractor’s permission and, therefore, their failure to perform the Claimant’s improvement and failure to return his deposit are attributable to the Contractor.

In addition, assuming, *arguendo*, that the Contractor revoked his authorization of Mr. Gomez to utilize his license in early 2020 as found by the ALJ, the Commission finds that the Contractor’s failure to report to law enforcement or notify the Commission that Mr. Gomez was using his license without his authorization upon discovering in or before March 2021 that Mr. Gomez had opened a bank account on behalf of Franks Drywall & Painting DBA AllState

Exteriors constituted an omission that allowed him Mr. Gomez and his employee, Blake Martin, to enter into a contract with the Claimant and thereby caused the Claimant's actual loss. Had the Contractor reported the purported unauthorized use of his license to law enforcement and the Commission in March 2021, it would have enabled the Commission to warn the public about Mr. Gomez, Mr. Martin, and AllState Exteriors, and enabled the police to arrest Mr. Gomez and Mr. Martin or at least deter their conduct by charging them with selling home improvements without a license.

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, \$8,319.72 toward a contract for the repair of the roof, siding, and deck at his home, and AllState, Mr. Gomez, Mr. Martin, 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 \$8,319.72.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 27<sup>th</sup> day of September 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 \$8,319.72 from the Maryland 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. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

*Michael Newton*  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**