IN THE MATTER OF THE CLAIM	*	BEFORE JENNIFER A. NAPPIER,
OF PILAR CHOLLET,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	OAH No.: DLR-HIC-02-15-41731
FOR THE ALLEGED ACTS OR	*	MHIC No.: 14 (75) 99
OMISSIONS OF WAYNE BEVERLY,	*	
T/A ALLPRO PROFESSIONAL	*	
PAINTING INC.,	*	
RESPONDENT	*	

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On October 26, 2015, Pilar Chollet (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC or Commission) Guaranty Fund (Fund) for reimbursement of $83,895.26 in alleged actual losses suffered as a result of a home improvement contract with First St. Properties, LLC (First Street), which she alleges was performed under the

MHIC license number of Wayne Beverly, trading as AllPro Professional Painting, Inc. (Respondent or AllPro). After an investigation, the Commission issued a December 3, 2015 Hearing Order and forwarded the case to the Office of Administrative Hearings (OAH).[1]

I held a hearing on October 3 and 4, 2016 at the OAH in Hunt Valley, Maryland.[2] Md. Code Ann., Bus. Reg. §§ 8-312(a), 8-407(e) (2015). Adam M. Spencer, Esquire, represented the Claimant, who was present. Kris King, Assistant Attorney General, Department of Labor, Licensing and Regulation (Department), represented the Fund. Harold B. Murnane, III, Esquire, 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 Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); Code of Maryland Regulations (COMAR) 09.01.03; COMAR 28.02.01.

ISSUES

1. Is the Respondent responsible for the acts and/or omissions of First Street?
2. If so, did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent and/or First Street's acts or omissions?
3. What is the amount of any actual loss?

---

[1] The December 3, 2015 Hearing Order contained a clerical error, naming the incorrect Respondent. The Commission issued a corrected Hearing Order on August 4, 2016.

[2] The hearing in this matter was originally scheduled for August 4, 2016. However, at that time I granted the Fund's motion for postponement to allow the Fund to issue the corrected Hearing Order and converted the hearing to a prehearing conference.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf:

Cl. Ex. 1	Contract with First St. Properties, LLC[3], signed May 9, 2011; Addendum I, signed August 25, 2011
Cl. Ex 1-B	Plans and drawings for the May 9, 2011 Contract (Attachment B)
Cl. Ex. 2	Application for Permit and Permit Processing Residential Permit Report, dated April 22, 2013; and Baltimore County, Maryland Permits & Licenses Print Details of Archived Records, Permit #B814276, printed June 13, 2016[4]
Cl. Ex. 3	Schedule of Payments Made by the Claimant to First St. Properties LLC, Other Related Payments/Expenses and Requested Money Advances/Payments in Arrears, with attachments
Cl. Ex. 4	Claimant's list of incomplete renovations, untitled and undated
Cl. Ex. 5	Baltimore County Uniform Code Enforcement Correction Notices (4), issued June 20, 2012, April 2, 2013 (2), and April 10, 2013
Cl. Ex. 6	Packet of Emails between various individuals on various dates (69 pages)
Cl. Ex. 7	Excerpts from the Blue Sea Construction Proposal[5]

I admitted the following exhibits on behalf of the Fund:

GF Ex. 1	Notice of Hearing, dated August 5, 2016
GF Ex. 2	Hearing Order , dated August 4, 2016
GF Ex. 3	Home Improvement Commission I.D. Registration printout, dated September 30, 2016
GF Ex. 4	Home Improvement Claim Form, dated October 26, 2015
GF Ex. 5	Letter from the MHIC to the Respondent, dated November 23, 2015

[3] The contract references Attachments A, B, and C; however Attachment B was not included in Claimant's Exhibit 1. Attachment B was later submitted separately and marked as Claimant's Exhibit 1-B.

[4] The Claimant pre-marked this exhibit, indicating that it was a twelve page exhibit. However, the exhibit was ultimately offered and admitted as a five page exhibit, consisting only of the documents described in the Summary of the Evidence.

[5] By agreement of the parties the Blue Sea Construction Proposal, originally marked by the Claimant as a fourteen page exhibit, was reduced to a nine page exhibit consisting of pages six to fourteen.

The Respondent offered no exhibits for admission into evidence.

Testimony

The Claimant testified on her own behalf and presented the testimony of the Respondent and Christopher Gayheart, Jr. of Blue Sea Construction, accepted as an expert in estimation.

The Respondent also testified on his own behalf.

The Fund presented no witnesses.

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 under MHIC license numbers 49083 (corporate license) and 49084 (individual license).
2. Wayne Beverly is the sole owner of AllPro.
3. First Street is not a licensed home improvement contractor.
4. The principal members of First Street are Frank Rittershofer, Steve Nawrocki, Michael Sheldon and Dean Nelson (collectively, members).
5. Mr. Nelson is the Respondent's father-in-law.
6. Mr. Rittershofer and Mr. Nawrocki are acquaintances of the Respondent and have known him for ten and five years, respectively.
7. The Respondent does not have a personal relationship with Mr. Sheldon.
8. The Respondent has no ownership interest in First Street and First Street is not a subsidiary of AllPro.
9. Sometime prior to May 9, 2011, Mr. Rittershofer asked the Respondent if he could use the Respondent's MHIC license and the Respondent responded "sure". The two men did not discuss for what contract(s) or purpose the license would be used.

10. After that conversation, the Respondent never told Mr. Rittershofer that he could not use his license number, nor did he place any conditions or limitations upon the use of his license.

11. Shortly before May 9, 2011, the Claimant met with the members of First Street to discuss making renovations to her primary residence. At that time, she asked that the MHIC license information be included on the contract.

12. On May 9, 2011, the Claimant and First Street, entered into a contract to construct an addition to her residence on Kenilworth Drive in Towson, Maryland. All members of First Street were present. Dean Nelson signed the contract on behalf of First Street.

13. At the time the contract was signed, the Claimant noticed that the contract did not include the MHIC licensing information. When she pointed this out, she asked Mr. Rittershofer for the license number and he wrote "All Pro Subsidiary of 49083" in the upper right corner of the first page of the contract.

14. Under the May 9, 2011 contract, the work to be performed on the Claimant's home was to include the addition and/or renovation of a garage, studio, sunroom, three bedrooms, three bathrooms, stairway, recessed lighting, and moldings, as well as painting, framing, plumbing and electrical systems.

15. The May 9, 2011 contract stated that "phase 1" of the construction would begin on May 9, 2011 and stop when First Street completed all aspects of the job, except for the daughter's bedroom and bathroom, the studio, and sunroom. Those remaining items were to be completed in "Phase 2" of the project, which was scheduled to commence in March 2012 upon receipt of a scheduled payment. The contract did not designate a completion date for Phase 2.

16. The original agreed-upon contract price was $199,000.00.

17. On August 25, 2011, the Claimant and First Street signed an addendum to the May 9, 2011 contract to cover additional work of building an extension on the existing living room that would flow into the new sunroom.[6] The addendum stated that the additional work would cost $35,000.00, making the total cost of the project $234,000.00. The addendum also provided that there would no longer be two phases of the project and all work would be completed without interruption.

18. Various members of First Street and their subcontractors began work on the Claimant's renovations in late May 2011.

19. First Street requested that the Respondent perform the painting work provided for in the contract. The Respondent first performed work on the home in May 2012.

20. The Respondent eventually began to perform work on the claimant's home other than painting. From May 2012 to May 2013, the Respondent also caulked holes in the second floor roof, adding a metal column to the garage, and installed of hardwood flooring, doors, and flashing.

21. Shortly after the Respondent began working in the claimant's home, he learned from the Claimant that Mr. Nawrocki entered AllPro's name and license number on an Application for Permit in connection with the work to be performed on the Claimant's home pursuant to the contract with First Street.

22. On June 20, 2012, an inspector for the Baltimore County Department of Permits and Development Management issued a Correction Notice which indicated that the roof on

[6] The copy of the addendum contained in Claimant's Exhibit 1 is unsigned by the Claimant. However, the Claimant testified that she signed the addendum on August 25, 2011.

the addition was leaking. That notice ordered AllPro and Mr. Nawrocki to make the roof watertight and to remove and replace all affected components, including sheet rock and insulation.

23. In late June 2012, an inspector notified the Respondent of the aforementioned building code violations in connection with the work performed on the Claimant's home and gave the Correction Notice to the Respondent.

24. Upon learning that AllPro's name and license number was used to obtain the building permit for the addition to the Claimant's home, the Respondent approached the members of First Street and demanded that they fulfill their obligations under their contract with the Claimant.

25. After the Respondent became aware of the June 20, 2012 Correction Notice, some work was performed to comply with the orders contained in the notice.

26. Starting in August 2012, the Respondent regularly performed work on the Claimant's home. At times he worked on the job every day. At a minimum he was present one day out of the week.

27. Around early December 2012, the Respondent took the lead in scheduling and general management of the renovations to the Claimant's home. He frequently coordinated the work via emails to the members of First Street and the Claimant.

28. The Respondent had at least one of AllPro's employees perform work on the home, including the installation of siding.

29. The Respondent's brother, Phil, also performed some work in Claimant's home and assisted the Respondent in coordinating the renovations on the Claimant's home.

30. The Respondent sent First Street an invoice for the labor and materials he provided in connection with the renovations to the Claimant's home, but never received payment from First Street.

31. The Respondent eventually began to use his personal funds to buy materials for the Claimant's renovations.

32. On April 2, 2013, an inspector for the Baltimore County Department of Permits and Development Management issued a Correction Notice to AllPro and Mr. Nawrocki, indicating that the Claimant's roof leaked where the new addition met the existing home. The notice also indicated that the fascia coverings were incomplete, siding did not cover the sill plate and that the membrane on the roof was incomplete.

33. The April 2, 2013 Correction Notice ordered AllPro and Mr. Nawrocki to make the roof watertight and remove and replace all affected components, including sheetrock and insulation.

34. On April 10, 2013, an inspector for the Baltimore County Department of Permits and Development Management issued a Correction Notice to AllPro, indicating that AllPro did not have the required permits for the entire scope of work at the Claimant's property. That notice ordered AllPro to secure or amend a permit for the studio bump out on the rear of the home and for the living room extension.

35. Some work was performed to comply with the orders contained in the notices dated April 2 and April 10, 2013. No additional Correction Notices were issued with regard to the renovations on the Claimant's property.

36. As the building permit was about to expire, on April 22, 2013, the Respondent applied for a new permit in connection with work to be performed on the Claimant's home pursuant to the contract with First Street.

37. Under "Applicant Information" on the April 22, 2013 Application for Permit, the Respondent filled in his name, and listed AllPro Painting as the company, using MHIC license #49083.

38. The Respondent last performed work on the Respondent's home on or about May 7, 2013. After that date, neither the Respondent, nor First Street performed any further work on the Claimant's home.

39. The home still floods regularly and the roof has always leaked since installation.

40. The following work was left incomplete and the Claimant obtained an estimate from Blue Sea Construction for completion of the work:

- Flashing was not installed above some of the windows and doors ($3,500)
- The garage door was not installed ($2,150)
- Shelving was not installed in closets ($3,000)
- Door knobs were not installed on interior doors ($2,250)
- Mirrors were not installed in the bathrooms ($1,000)
- Bathroom accessories, such as toilet paper holders, towel bars and grab bars were not installed ($750)
- Interior stair railings were not installed ($1,500)
- Exterior safety rails were not installed across exterior above grade doors and railings were not installed around the flat roof ($3,450)

In addition, some interior doors were not properly installed, as they were not level and/or do not close ($850). The total cost to complete the aforementioned work is $18,450.00.

41. The Claimant made payments totaling $219,761.60 to First St. Properties for performance of the contract as follows:

Date	Amount Paid	Date	Amount Paid
May 9, 2011	$66,000.00	January 3, 2012	$10,000.00
June 21, 2011	$25,000.00	March 2, 2012	$12,000.00
August 25, 2011	$85,000.00	March 15, 2012	$12,000.00
November 4, 2011	$2,100.00	November 13, 2012	$4,279.18
November 10, 2011	$300.00	Unknown date	$3,062.42

42. On April 30, 2013, the Claimant paid $68.80 for a baseboard heater and thermostat which were to be included in the contract.

43. First Street failed to pay one of its subcontractors, Able Contracting Inc., for work performed on the Claimant's home.

44. The Claimant paid Able Contracting the $4,383.00 arrearage owed by First Street, split into four separate payments, on July 7, 2013, September 9, 2013, September 12, 2013 and October 9, 2013.

45. The Claimant's total payments to and on behalf of First Street are $224,193.40.

46. The Claimant made some additional payments to Mr. Nawrocki, Mr. Sheldon, and Able Contracting for work which was outside of the scope of the contract.

47. On October 26, 2016 the Claimant filed her claim with the Fund for reimbursement of $83,895.26 in alleged actual losses suffered as a result of a home improvement contract with First Street Properties.

48. The Claimant's actual loss is $8,643.40.

DISCUSSION

The Claimant has the burden of proving the validity of her claim by a preponderance of the evidence. Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3).[7] "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true." *Coleman v. Anne Arundel Cty. Police Dep't.*, 369 Md. 108, 125 n. 16 (2002), quoting Maryland Pattern Jury Instructions 1:7 (3rd ed. 2000).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a) (2015);[8] *see also* COMAR 09.08.03.03B(2) ("actual losses . . . incurred as a result of misconduct by a licensed contractor"). Actual loss "means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401.

In this case, the Claimant entered into a contract with First Street, which is an unlicensed contractor. However, the Claimant entered into that contract with the belief that First Street was performing the work as a subcontractor under the Respondent's MHIC license. The Respondent was a licensed contractor at the time that the Claimant and First Street entered into the contract. However, the Respondent's position is that at the time the contract was signed, he was unaware that First Street had held itself out as a subsidiary of AllPro authorized to work under the Respondent's license. The Respondent asserts that he did not give First Street permission to perform the renovations to the Claimant's home under his license. Therefore, before I can

---

[7] As noted above, "COMAR" refers to the Code of Maryland Regulations.
[8] Unless otherwise noted, all references to the Business Regulation Article hereinafter cite the 2015 Replacement Volume.

address the merits of the Claimant's claim, I must first determine whether the Respondent should be held responsible for the acts or omissions of First Street.

Should the Respondent Be Held Responsible for the Acts or Omissions of First Street?

The Claimant asserts that when she contracted with First Street, she believed that First Street was a subsidiary of AllPro and operating under AllPro's MHIC license. The Claimant testified that she specifically asked for the licensing information prior to signing the contract and allowing First Street to begin the renovations on her home. She further testified that when she pointed out that the licensing information was absent from the contract, Mr. Rittershofer then indicated that First Street was a subsidiary of AllPro and wrote "All Pro Subsidiary of 49083" in the upper right corner of the first page of the contract. (Cl. Ex. 1).

The Claimant argues that the Respondent knew that First Street was using his license, he felt responsible for the renovations to the Claimant's home and ultimately took on the role of contractor. In support of her argument, the Claimant asserts that upon learning that First Street obtained permits using his license number, the Respondent did not file any complaint to establish that it was not his contract and/or that First Street was using his license without permission. The Claimant emphasizes the Respondent's level of involvement with the job, including his consistent presence on the job for approximately nine months and that he took the lead in coordinating and running the project from December 2012 onward.

The Respondent asserts that the contract in this case is between the Claimant and First Street and he never granted First Street permission to perform the renovations to the Claimant's home under his license. Therefore, the Respondent argues that he should not be in the position of defending himself against a Fund Claim for a contract that he had nothing to do with. He argues that although he performed work on the Claimant's home over several months' time, he initially was brought in as a subcontractor and later took on a larger role because he simply wished to

help mediate the problems between the Claimant and First Street. In support of his argument, the Respondent emphasizes that the Claimant made all checks payable to either First Street or individual members of First Street, and that he never received any payment from the Claimant. He also asserts that the Statement of Particulars filed by the Claimant with the Commission stated that the Claimant contracted with First Street and its members and that at no time did the Claimant believe she was doing business with AllPro. The Respondent argues that this statement is a clear indication that the Claimant knows that he is not responsible for any deficiencies in First Street's performance of the contract.

The Fund did not take a position as to whether the Respondent is responsible for the work performed under the contract with First Street. The Fund acknowledged that the answer to that question relies largely upon credibility determinations to be made after a review of the testimony and evidence in its totality. I agree with the Fund on this point, and have made the necessary credibility determinations after reviewing all of the testimony and evidence presented in this matter. For the reasons that follow, I conclude that the Respondent should be held responsible.

The Claimant's Reasonable Belief

First, I find that the Claimant reasonably believed that First Street was performing the renovations to her home under the Respondent's license. There has been no suggestion that the Claimant forged the note "All Pro Subsidiary of 49083" on the May 9, 2011 contract, or that that notation was made by someone other than Mr. Rittershofer. When Mr. Rittershofer provided the Claimant with AllPro's licensing number and told her that First Street would be working as a subsidiary of AllPro, the Claimant had no reason to disbelieve that representation. The Claimant's belief that First Street was working under the Respondent's license was bolstered by the Respondent's level of involvement in the project during the later stages of the renovations.

The testimony of both parties makes clear that for approximately the last nine months that work was performed under the First Street Contract, the Respondent was present and working on the Claimant's home on a regular basis and that he went so far as to spend his personal funds to purchase materials for the job. Further, despite some comments contained in emails that the Respondent made to members of First Street, stating that it was their contract, starting in October 2012, the Respondent regularly sent emails to the Claimant and members of First Street, to coordinate the work, state what tasks needed to be completed and address the Claimant's concerns. (Cl.Ex. 6). This conduct began in late 2012, months after the Respondent learned that First Street was performing the work using his license number. The Respondent's conduct bolstered the Claimant's belief that First Street was operating under the Respondent's license.

Further, I disagree with the Respondent's argument that the Claimant's statement in the Statement of Particulars, that she never believed she was doing business with AllPro, is an indication that the Claimant knows the Respondent is not responsible for any deficiencies in First Street's performance of the contract.[9] Whatever the Claimant's perspective is as to who she was "doing business with", she clearly has held the constant belief that the Respondent is responsible for the deficiencies in First Street's performance, due to First Street's use of the Respondent's license number.

The Respondent's Authorization of the use of His License

During the Fund's cross-examination of the Respondent,[10] when asked if he ever gave any member of First Street the authority to use his license number, the Respondent testified that he had a "general conversation" with Mr. Rittershofer one day while standing around drinking Dunkin Donuts coffee. Mr. Nawrocki and Mr. Sheldon were also present during the

[9] The Statement of Particulars was not offered as evidence, but the Claimant was questioned as to its contents.
[10] This refers to the Fund's cross-examination of the Respondent during the presentation of the Claimant's case on October 3, 2016. Counsel for the Fund also briefly cross-examined the Respondent after he testified on his own behalf on the October 4, 2016.

conversation.[11] The Respondent testified that Mr. Rittershofer asked if he could use the Respondent's MHIC license, and the Respondent stated "sure". The Respondent testified that he "never thought anything of it." He further testified that at the time, he did not know why Mr. Rittershofer would ask to use his license. When questioned as to when this conversation occurred, the Respondent initially testified that he was unsure when this conversation occurred, and then immediately added that it was probably much later in 2012. When questioned further as to the timeframe, the Respondent stated that this conversation may have predated the formation of First Street and might have occurred when Mr. Rittershofer and Mr. Sheldon were performing work under the business entity "F&M". Counsel for the Fund asked further questions, in an effort to narrow down the timeframe of the conversation. The Respondent was asked "do you recall that it would have been prior to May of 2011, the ... approximate time of the First St. Properties contract with [the Claimant]?", to which he responded "I would think so." The Respondent went on to testify that he told Mr. Rittershofer that he could use his license because he "didn't have a worry then" and that he was under the assumption that Mr. Rittershofer had his own license, which he used for his own business. When asked why he authorized Mr. Rittershofer to use his license, the Respondent stated "I don't have an answer for that". The Respondent further testified that when Mr. Rittershofer asked to use his license, he did not take the request as meaning that Mr. Rittershofer would use the license on his company's jobs. The Respondent asserts that he had no idea what Mr. Rittershofer would use his license for and testified that he did not ask what Mr. Rittershofer would use his license for or what he needed the Respondent's licensing information for, because he did not give it a second thought. The

[11] During the Fund's October 3, 2016 cross-examination of the Respondent, the Respondent only referred to Mr. Nawrocki and Mr. Sheldon as "guys". However, he identified the two men in later testimony.

Respondent admitted that at no time after this conversation did he tell Mr. Rittershofer that he could not use the license.

Respondent's counsel had an opportunity to cross-examine the Respondent after the Funds' questioning on this issue. In response to his counsel's leading question, the "you testified that this was long after this job was contracted?", the Respondent then responded year. However, I find that the Respondent's testimony in response to the Fund's questions to be more credible than his testimony in response to his own attorney's leading questions. Further, in closing, the Respondent argued that he gave Mr. Rittershofer permission to use his license over a year after the Claimant contracted with First Street. This assertion is illogical. This would place that conversation sometime after May 2012. In June 2012, the Respondent became aware that Mr. Narwocki had used his license number to apply for the building permit for the addition the Claimant's home. If the Respondent in fact gave Mr. Rittershofer permission to use his license sometime around or after June 2012, surely he would have been somewhat hesitant agree to allowing Mr. Rittershofer to use his license after being held responsible for code violations connected to the renovations on the Claimant's home.

Also, it is implausible that the Respondent believed that Mr. Rittershofer had his own license, but then gave Mr. Rittershofer permission to use his license, no questions asked. Any reasonable person would question why a licensed individual would need to use another entity's licensing information when they presumably could just use their own. It is also implausible that the Respondent did not expect that Mr. Rittershofer would use his license, after asking permission to do so.

Further evidence that the Respondent gave First Street permission to use his license is a March 27, 2013 email from the Claimant to the Respondent and the members of First Street. In that email, addressed to the Respondent, the Claimant states:

> I am very sorry that, according to what you have told me, the friends and family that you trusted and gave permission to use your company's license to obtain the building permit for the addition in my house… will not cooperate with you despite all your efforts to complete the addition to my house.

(CL. Ex. 6, p. 45). Conveniently, the Respondent testified that he never received this email, and that if he had, he would have responded. The Respondent alleges that he never told the Claimant that he had given First Street permission to use his license. I do not find the Respondent's testimony on this point to be credible. There is no indication that the Claimant fabricated the March 27, 2013 email. It is difficult to imagine that the Claimant would have emailed the Respondent making a false statement regarding a discussion she had with the Respondent; to do so would serve little purpose, since one would expect that the Respondent would simply reply to the email and refute the statement. I also note that the email was written seven months before the Claimant filed her claim with the MHIC Fund. Regardless of whether the Respondent did receive and/or view this email, I find that the Claimant's statement in this email is inherently credible for the aforementioned reasons.

Based on the foregoing, I find that it is more likely than not that the Respondent knowingly gave Mr. Rittershofer general authorization to use his license sometime before First Street entered into the May 9, 2011 contract with the Claimant. Further, I find that the Respondent failed to set any limitations or conditions for use of the license and should have expected that Mr. Rittershofer might use the Respondent's license number in connection with work for any company in which Mr. Rittershofer has an ownership interest.

The Respondent asserts that he was unaware of First Street's contract with the Claimant at the time of its creation and that First Street had held itself out to the Claimant as a subsidiary of AllPro. He argues that he did not give First Street or any member of First Street permission to use his license when performing the renovations to the Claimant's home. However, this argument fails, as I have found that the Respondent granted Mr. Rittershofer general permission to use his license and failed to specify any limitations or conditions for use of the license. Even if the Respondent did not have specific knowledge that First Street contracted with the Claimant under the guise of using the Respondent's licensing number, the Respondent knew or should have known that there was a possibility that Mr. Rittershofer would use the Respondent's licensing number to perform home improvement work. I also note that it was specifically Mr. Rittershofer who provided the Claimant with AllPro's licensing number at the time of the contract.

Further, I find that the Respondent's conduct after he was made aware that First Street was operating under his license amounts to acquiescence to First Street's performance of home improvement work under the Respondent's license. The Respondent made no effort to notify the Commission that his license had been used without authorization, or otherwise take measures to repudiate First Street's use of his license. To the contrary, the Respondent took the lead in coordinating the work to be performed on the Claimant's home, as evidenced by numerous emails sent from the Respondent to the Claimant and members of First Street. (Cl. Ex. 6). In addition, the Respondent testified that for approximately nine months, he personally performed work on the Claimant's home, visiting her home at least once per week during that time, and sometimes as often as every day. The Respondent even went so far as to use his personal funds to buy materials and obtain a permit under his license.

It is not difficult, particularly given the Respondent's familial connection to First Street, to imagine the awkwardness of his position. Once he was aware that the Claimant's job was one of the jobs which First Street, through Mr. Rittershoffer, had contracted to perform under the Respondent's license, he presumably did not want to leave First Street to perform the Claimant's renovations without a license, but he also did not want to assume responsibility for the problems he found at the Respondent's home. However, the Respondent's chosen course of action, as previously stated, constitutes acquiescence to First Street's performance of the renovations under the Respondent's license. For all of the forgoing reasons, I find that the Respondent is responsible for the actual losses suffered by the Claimant as a result of the acts or omissions of First Street.

Were the Home Improvements Unworkmanlike, Inadequate or Incomplete?

The Respondent did not make any specific arguments as to the quality of the home improvements or the costs of any repair, replacement and/or completion. The Respondent's primary position is that he does not believe that I should reach the issue of whether the improvements were workmanlike, inadequate or incomplete, because in his opinion he should not be held responsible for the work performed under First Street's contract with the Claimant. The Respondent generally argues that there has not been any "cohesion or meshing" of what damages were being claimed as it relates to any unfinished work under the contract. However, the Respondent concedes that he was not paying as much attention to this issue as perhaps the Fund would.

The Fund took the position that in order to prove that any of the home improvements were unworkmanlike or inadequate, the Claimant would have had to provide expert testimony regarding the quality of the work. However, the Fund asserts that when considering estimates

provided by Mr. Gayheart, in conjunction with testimony and other evidence, it may be possible to determine that some of the work was left incomplete.

The Claimant hired Christopher Gayheart, Jr. of Blue Sea Construction to inspect the work and prepare a report detailing his findings and estimates for completion and/or repair of work to have been performed under the contract. Mr. Gayheart's report included the estimated cost to complete or repair numerous items of work alleged to be unworkmanlike or inadequately completed. Those items include work to address the following alleged conditions: rain water flowing into the structure; improper installation of a steel support post; leaks in the roof; damaged/improperly installed siding; exterior doors damaged due to water intrusion; plumbing concerns; and damaged drywall and insulation.

The Claimant asserts that an expert is not necessary to determine that some of the work performed by First Street was inadequate or unworkmanlike. For instance, the Claimant testified that the house floods regularly and there has never been a time when the roof did not leak. However, without expert testimony as to the *cause* of those issues, I am unable to determine that they are due to inadequate or unworkmanlike work, rather than some other factor for which the contractor is not responsible, such as defective materials. While I recognize that in April and June 2012 there apparently was some defective work, as evidenced by the Correction Notices issued by the Baltimore County Department of Permits and Development Management, some work was performed in an effort to correct those violations. There is insufficient evidence to establish that the violations were not at some point rectified, and therefore I cannot determine whether any existing problems are a result of a continuing problem with the workmanship, as opposed to a new issue that has arisen due to factors other than workmanship.

I find that in order to determine that the aforementioned conditions are a result of some act or omission of First Street and/or the Respondent, or to otherwise determine the cause of those conditions, I would need the opinion of an expert in home improvement, as these determinations would not be obvious to a layperson. Since the Claimant failed to offer a witness who could be properly qualified as an expert in home improvement, I am unable to determine where any of the aforementioned conditions are the result of an act or omission of First Street, and therefore something for which the Claimant should be compensated.

However, there is sufficient credible evidence that at least some of the work performed under the contract was unworkmanlike, inadequate, or incomplete. As detailed in the Findings of Fact, there were several items that were left incomplete as of May 2013 when work was last performed under the contract. Those items include flashing, a garage door, shelving, door knobs, mirrors, bathroom accessories, interior stair railings and exterior safety railings which all were left uninstalled by First Street. Mr. Gayheart estimated the cost of completing each of those items, as stated in the Findings of Fact.

In addition the Claimant testified that there are doors that never closed properly and Mr. Gayheart indicated in his report that there were interior doors which need to be adjusted in order to operate properly. Mr. Gayheart's report included a photo of one such door which obviously shows that the bottom of the door is not level. (Cl. Ex. 7, p. 7). Although Mr. Gayheart was not accepted as an expert in home improvement and was instead only accepted as an expert in estimation, I find that no expertise is required to determine that a door that is not level and/or does not close properly has not been properly installed. Mr. Gayheart also estimated the cost of making adjustments to the doors, as stated in the Findings of Fact.

In light of the forgoing, I find that the Claimant has suffered a loss as a result of the incomplete work and improper installation of interior doors, as described above. I thus find that the Claimant is eligible for compensation from the Fund.

Amount of Actual Loss

Having found eligibility for compensation I now turn to the amount of the award, if any, to which the Claimant is entitled. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney's fees, court costs, or interest. COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas for measurement of a claimant's actual loss. COMAR 09.08.03.03B(3). The following formula offers an appropriate measurement to determine the amount of actual loss in this case:

> If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c). Using this formula, the Claimant is entitled to a reimbursement of $8,643.40 from the Fund. ($224,193.40 (Amounts paid to/on behalf of First Street) + $18,450.00 (cost to for completion of work) – $234,000.00 (original contract price) = $8,643.40).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent is responsible for the acts and omissions of First St. Properties, LLC. Md. Code Ann., Bus. Reg. § 8-405(b) (2015); COMAR 09.08.03.03B(2). I further conclude that the Claimant has sustained an actual and compensable loss of $8,643.40 as a result of the acts and omissions of the Respondent and/or First St. Properties LLC. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $8,643.40; 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;[12] and

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

Signature on File

January 3, 2017
Date Decision Issued

Jennifer A. Nappier
Administrative Law Judge

JAN/sw
#165993

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

PROPOSED ORDER

WHEREFORE, this 31st day of January, 2017, 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.

Michael Shilling

Michael Shilling
Panel B

MARYLAND HOME IMPROVEMENT COMMISSION