

**IN THE MATTER OF THE CLAIM  
OF KRISTIA L. THOMPSON,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF LUIS CASTILLO,  
T/A CASTLE ROCK  
CONSTRUCTION, INC.,  
RESPONDENT**

**\* BEFORE MARC NACHMAN,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-21-08274  
\* MHIC No.: 20 (90) 45  
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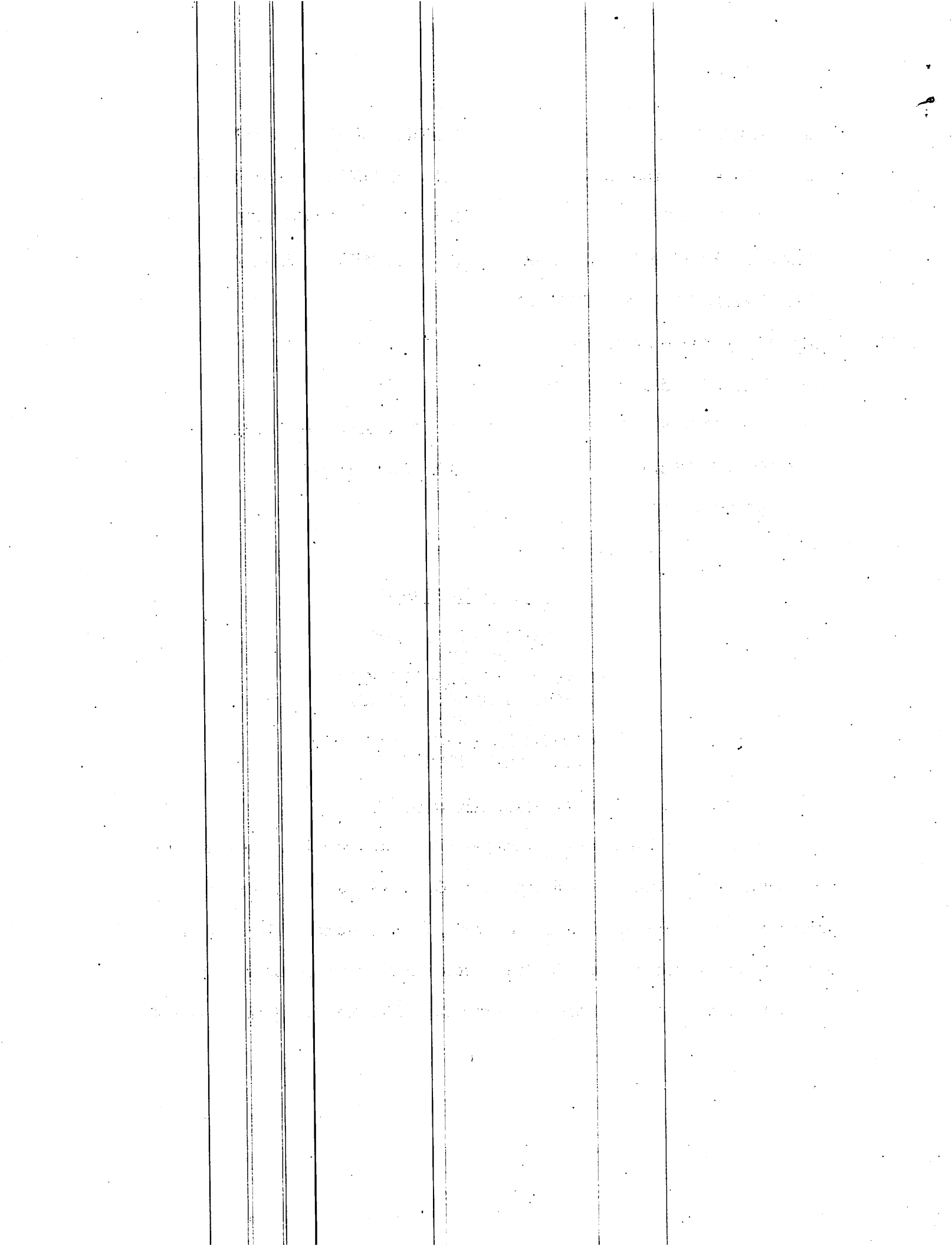
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**PROPOSED DECISION**

**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 February 10, 2020, Kristia L. Thompson (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$10,336.00 in actual losses allegedly suffered as a result of a home improvement contract (Contract) with Luis Castillo, T/A Castle Rock Construction, Inc., (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401



through 8-411 (2015).<sup>1</sup> On March 29, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on May 25, 2021, remotely over the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312. Hope M. Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (COMAR) 09.01.03; and 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

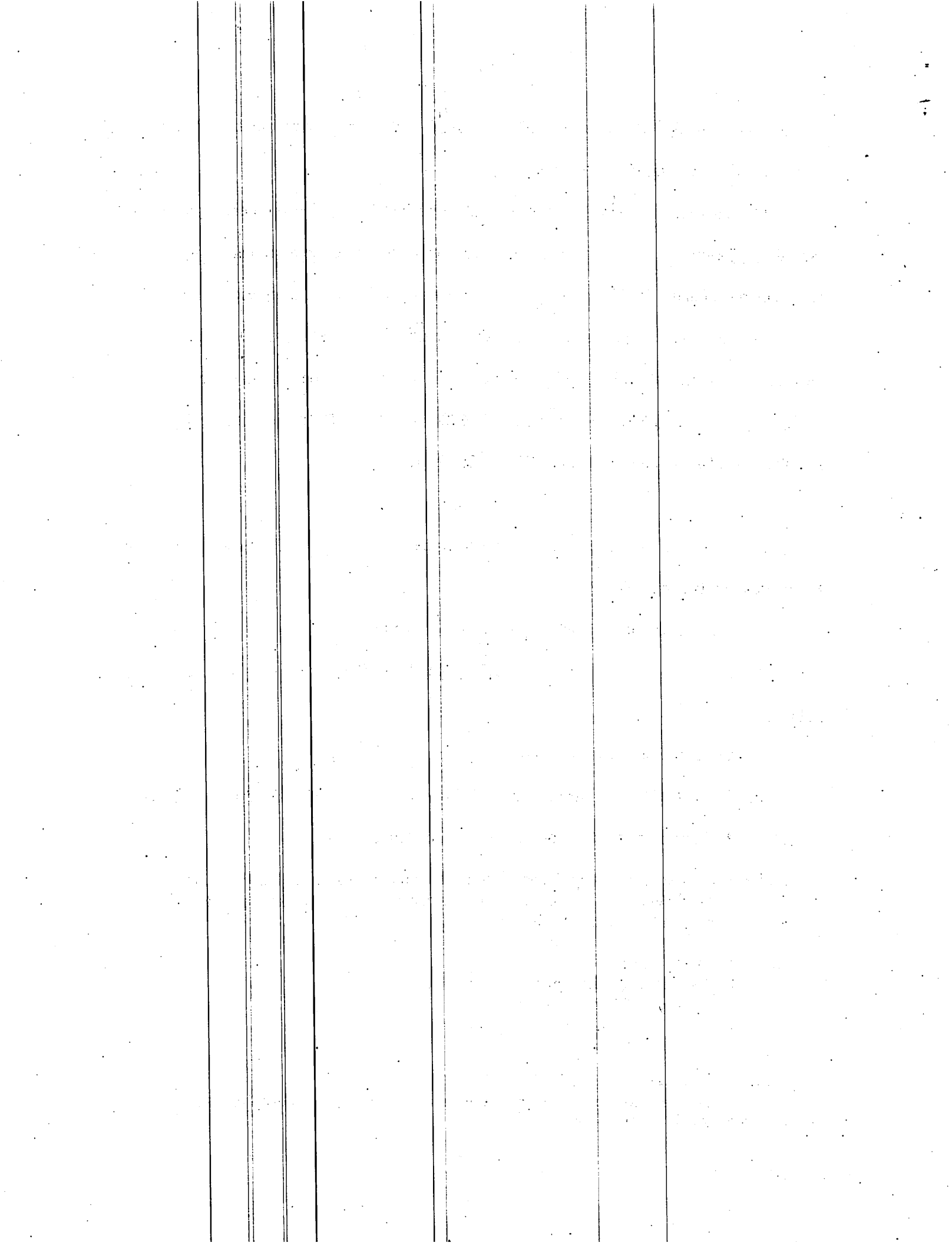
#### Exhibits

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

- Cl. Ex. 1 MHIC Complaint form filed by Claimant on July 2, 2019 and January 13, 2020
- Cl. Ex. 2 Claimant's narrative concerning her complaints
- Cl. Ex. 3 Contract emailed by Respondent to Claimant on September 1, 2017; Contract dated September 14, 2017; Claimant's check register evidencing payments to the Respondent totaling \$4,300.00
- Cl. Ex. 4 Photographs:
  - a. "Old deck" (1 photograph)
  - b. "New deck" (3 photographs)
  - c. "Damaged deck" (6 photographs)

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<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.



Cl. Ex. 5 Repair estimates from

- a. Deck Ready estimate dated August 10, 2019, for \$10,366.00
- b. Beltway Builders estimate dated August 3, 2019, for \$4,930.00

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

GF. Ex. 1 OAH Notice of Remote Hearing, dated April 15, 2021, with MHIC Hearing Order, dated March 25, 2021

GF. Ex. 2 Respondent's licensing information

The Respondent did not submit any exhibits to be admitted into evidence.

### Testimony

The Claimant testified and presented the testimony of Morgan Arvaneh.

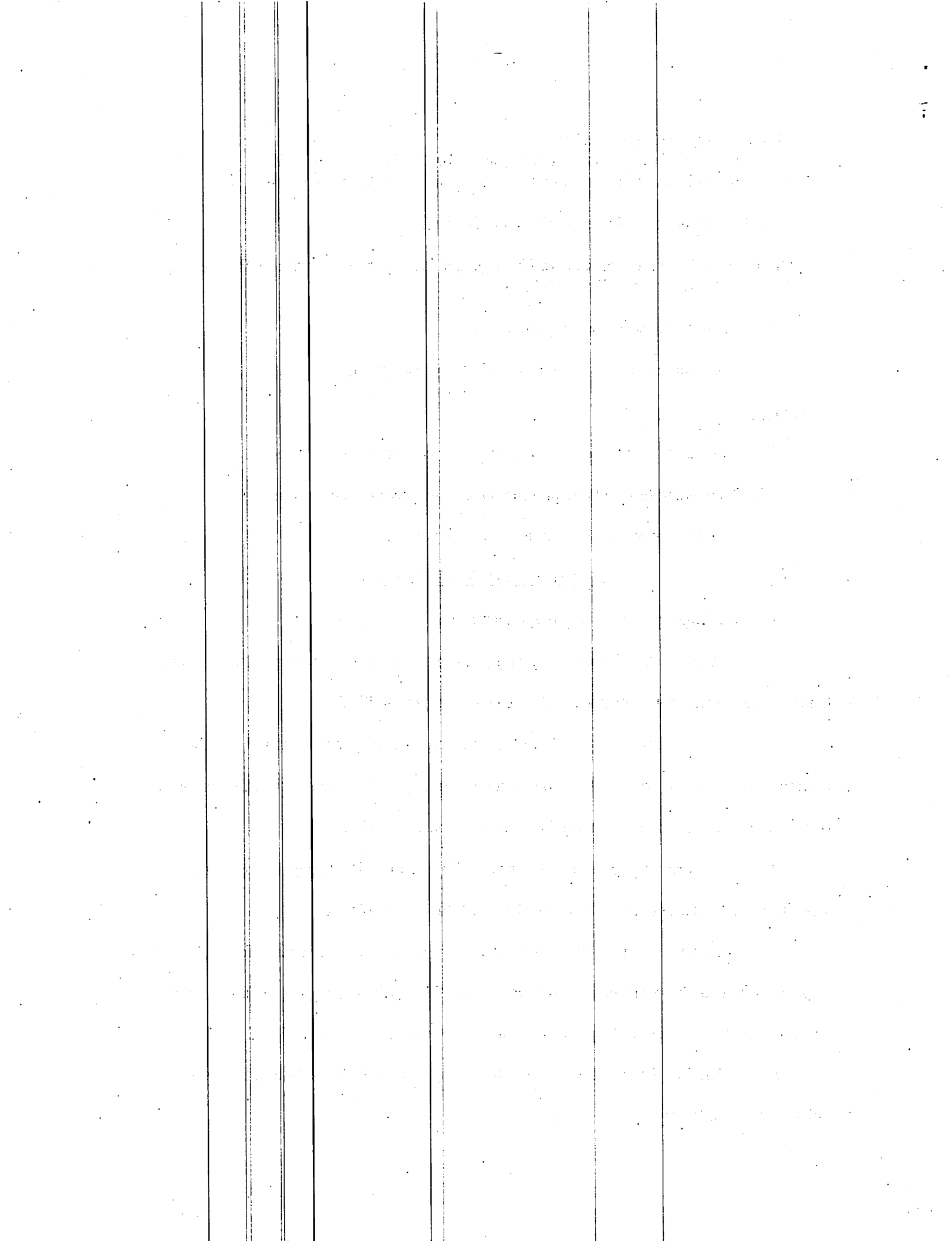
The Respondent testified and presented the testimony of Brandon Castillo.

The Fund did not present the testimony of any 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 number 01-99457.
2. On September 14, 2017, the Claimant and the Respondent entered into the Contract to remove the existing deck boards and install new deck boards at the Claimant's home, with 24 linear feet of railing, staining the entire deck on completion.
3. The original agreed-upon Contract price was \$3,100.00, payable by an initial deposit of \$1,600.00, with the balance of \$1,500.00 due on completion.
4. On September 15, 2017, the Respondent presented an addendum for \$1,200.00, to "replace railings on top and steps down at end. Everything will be new once deck is completed." The new total for the work to be performed under the Contract was now \$4,300.00.
5. The Respondent charged the Claimant an additional \$300.00 for stair risers, which she agreed to pay.



6. The Claimant paid the Respondent \$4,600.00 for the full contract price and the charge for step risers requested by the Respondent by making the following payments:

Date of payment	Payment amount
September 14, 2017	\$1,600.00
September 15, 2017	\$1,500.00
September 30, 2017	\$ 750.00
October 1, 2017	\$ 750.00

7. The Respondent started construction on or about September 15, 2017, and completed the work two days later, on September 17, 2017. The Respondent stained the deck on or about October 1, 2017, touching up the staining on or about October 28, 2017.

8. Within a year of the decking completion, the Claimant noticed that the wood decking installed by the Respondent was splitting and that putty had been applied to some portions of the deck where splitting had occurred.

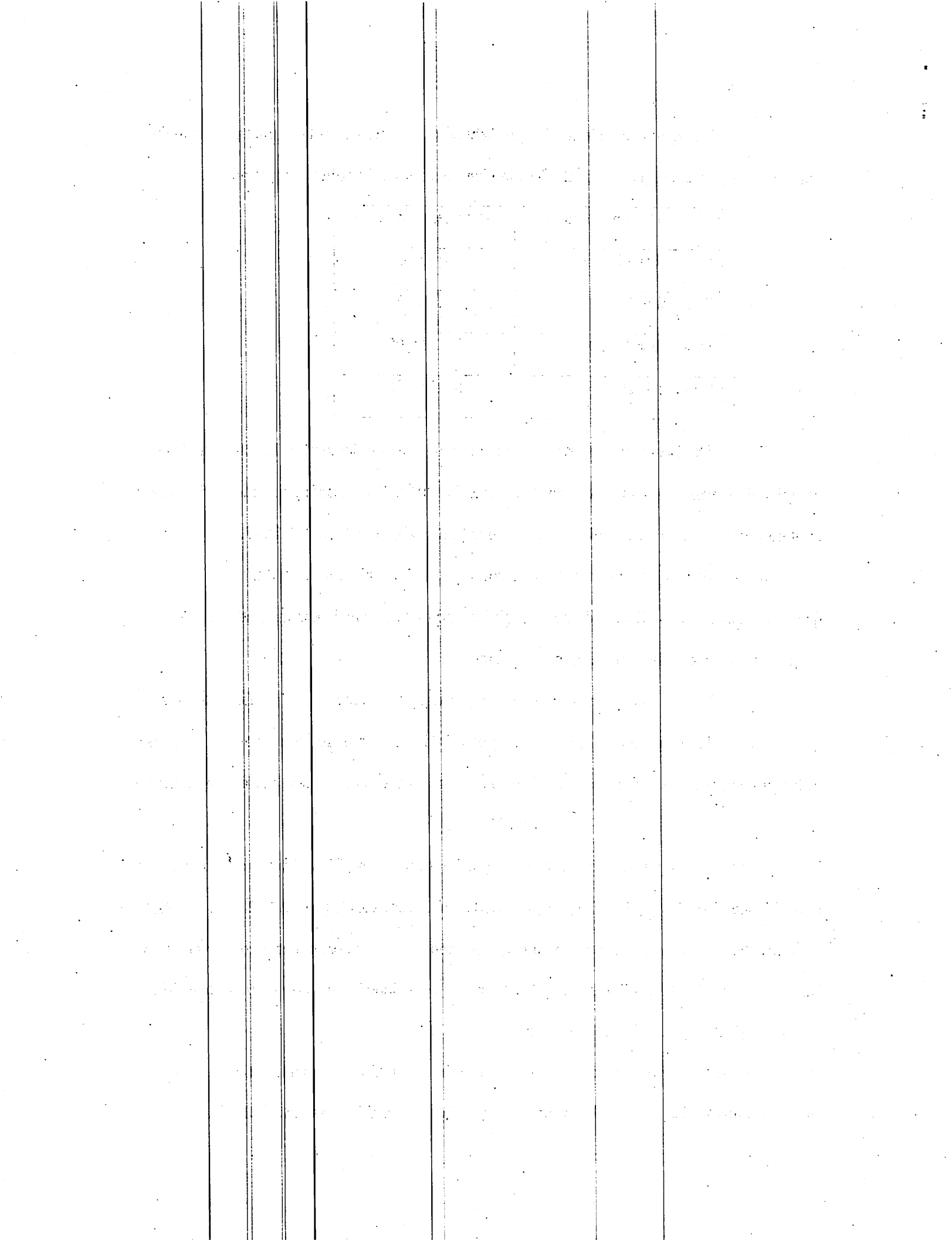
9. The Respondent was given the opportunity to make repairs, but failed to do so.

10. To repair the deck, the decking board will have to be replaced, costing in excess of the price paid by the Claimant to the Respondent under the Contract and any addenda thereto.

#### DISCUSSION

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., State Gov't § 10-217 (2014); 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 Cty. 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); *see also* COMAR



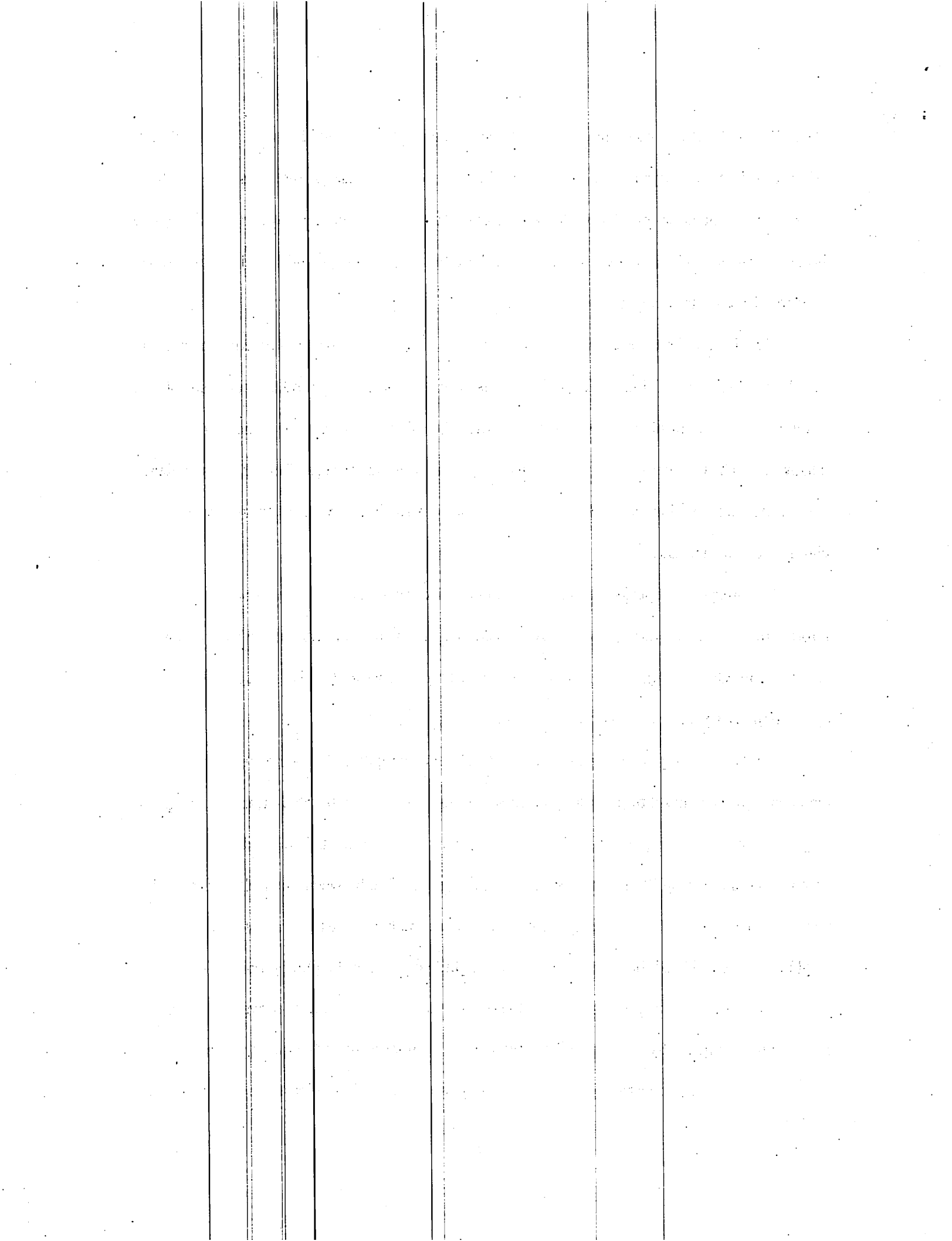


09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant is not related to the Respondent, nor is she an employee or owner of his business. She only owns the subject property where the work was performed. The Claimant has not filed suit in any court seeking damages from the Respondent, and has not filed any insurance claims regarding the construction. She is therefore a proper claimant under the Fund.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The pictures provided by the Claimant show the condition of the deck before construction (CL. Ex. 4a), as well as immediately after construction (Cl. Ex. 4b), and then approximately a year after construction was completed.

The first photograph shows the condition of the decking boards that needed to be replaced. The second set of photographs show the work that was completed prior to staining; the original frame was not replaced – only the decking boards and railings. The third set of photographs showed splitting deck boards and misaligned joints between the deck railing, with remnants of wood putty identified by both the Claimant and her witness, Mr. Arveneh, a neighbor who confirmed the presence of the wood putty evident in the photographs. The photographs of the decking also show that the boards the Respondent replaced were unevenly spaced, with significantly wider gaps between the boards than show in the initial photograph of the deck taken prior to construction. The photographs also show that at least one of the balusters

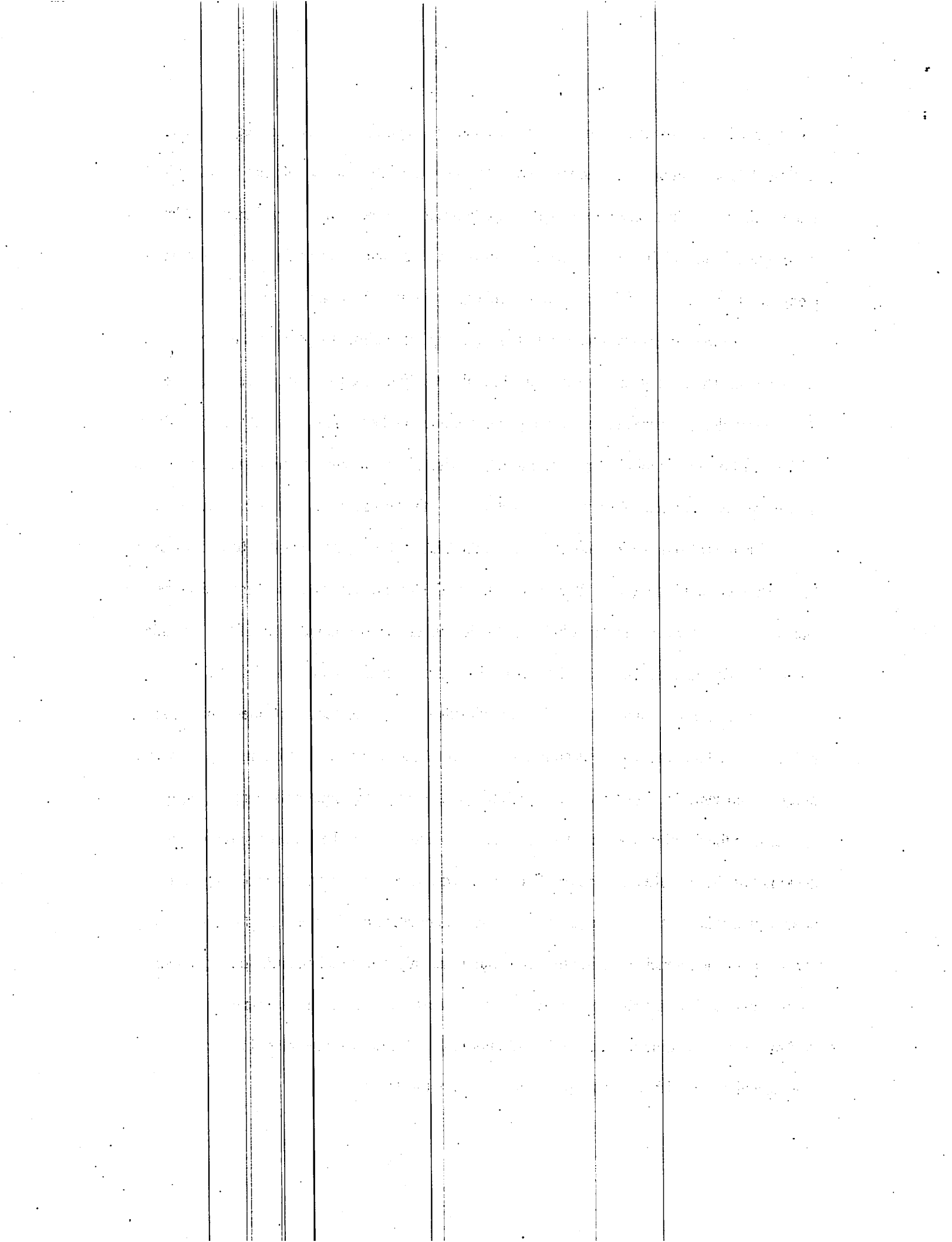


was crooked. The boards appear to be cupped and show splitting. It does not require expert testimony to see that the Respondent's work was unworkmanlike and would not pass within the trade, as it was aesthetically inferior – the gaps between the boards were significantly wider than the original deck, and the stain covering the surface did not extend down the sides of the boards, a deficit that was clearly visible due to the wide gaps between the boards.

There was also no serious contention regarding the Claimant's payments to the Respondent. The only question was an additional \$300.00 upcharge for stair risers, that the Respondent claimed were needed, although not included in the Contract. I find that, regardless of whether they were included in the Contract, the risers were purchased and installed, and must now be removed when a subsequent contractor makes the necessary repairs to the entire deck.

There is also no serious contention that the Claimant requested that the Respondent repair his work, inviting him to do so. She then contacted the local television station for assistance, the Better Business Bureau to set up arbitration (which never occurred), and the MHIC to file this claim. The Claimant did not deny the Respondent an opportunity to cure the defects.

To counter the Claimant's testimony, witness and exhibits, the Respondent and his son merely testified that the work was completed – he made no comments to explain why the wood putty was present, the baluster was crooked, the gaps between the boards were significantly greater than the decking it replaced, or the staining failed to cover the exposed sides of the decking boards. The Respondent testified that he was not responsible for the splitting of the boards, as that is a natural process. However, he attempted to disclaim any responsibility for correcting the deficiencies, stating that he would have only warranted an entire deck (including the framing), and would not have warranted the replaced boards. I find that this claimed difference has no distinction – even if he did not replace the deck frame, he did replace the boards, and did so with either inferior products or poor techniques.



The Respondent further claimed that he did not make any profit on the construction as he priced it low as a concession to the Claimant's supervisor, for whom he did work. Whether or not the Respondent adequately priced the construction is of no consequence – he poorly performed the work that he contracted for and agreed to perform. All told, the Respondent's work was unworkmanlike, inadequate, and incomplete.

I thus find that the Claimant is eligible for compensation from the Fund.

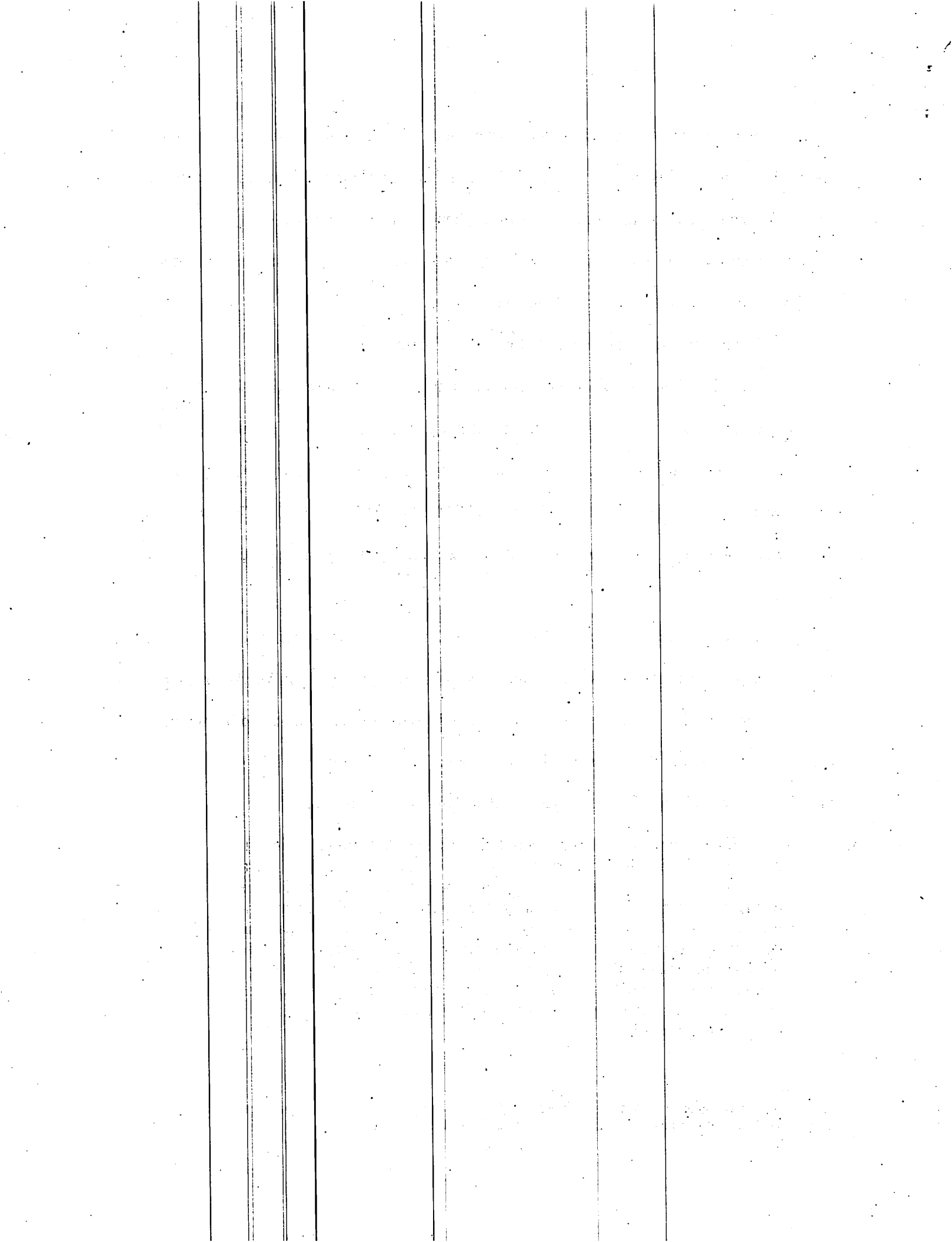
Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.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

In this case, the Respondent performed some work under the Contract, and the Claimant intends to retain other contractors to complete or remedy that work. (Cl. Ex. 5). Although the scope of work provided in both estimates was within the scope of the Contract, both estimates exceeded the amount of the Contract (\$10,336.00<sup>2</sup> and \$4,930.00, respectively). Accordingly, the following formula appropriately measures the Claimant's actual loss:

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.

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<sup>2</sup> The estimate was higher for replacing the decking surface with composite material; I have ignored this part of the estimate, as the use of composite materials exceeds the scope of the Contract.



COMAR 09.08.03.03B(3)(c). The calculation is as follows:

\$4,300.00	Amount paid by the Claimant to the Respondent under the Contract, plus
\$300.00	Amount paid by the Claimant to the Respondent under any addendum equals
<u>\$4,600.00</u>	Total Amount paid by the Claimant to the Respondent, plus
\$4,930.00	Fair market cost to make corrections and complete Respondent's work <sup>3</sup> equals
\$9,530.00	Subtotal, less
<u>\$4,600.00</u>	Original contract price (including the price of any addendum) equals
\$4,930.00	Amount of the Actual Loss to the Claimant

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss claimed exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to what she paid to the Respondent - \$4,600.00. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

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

I conclude that the Claimant has sustained an actual and compensable loss of \$4,600.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund.

#### **RECOMMENDED ORDER**

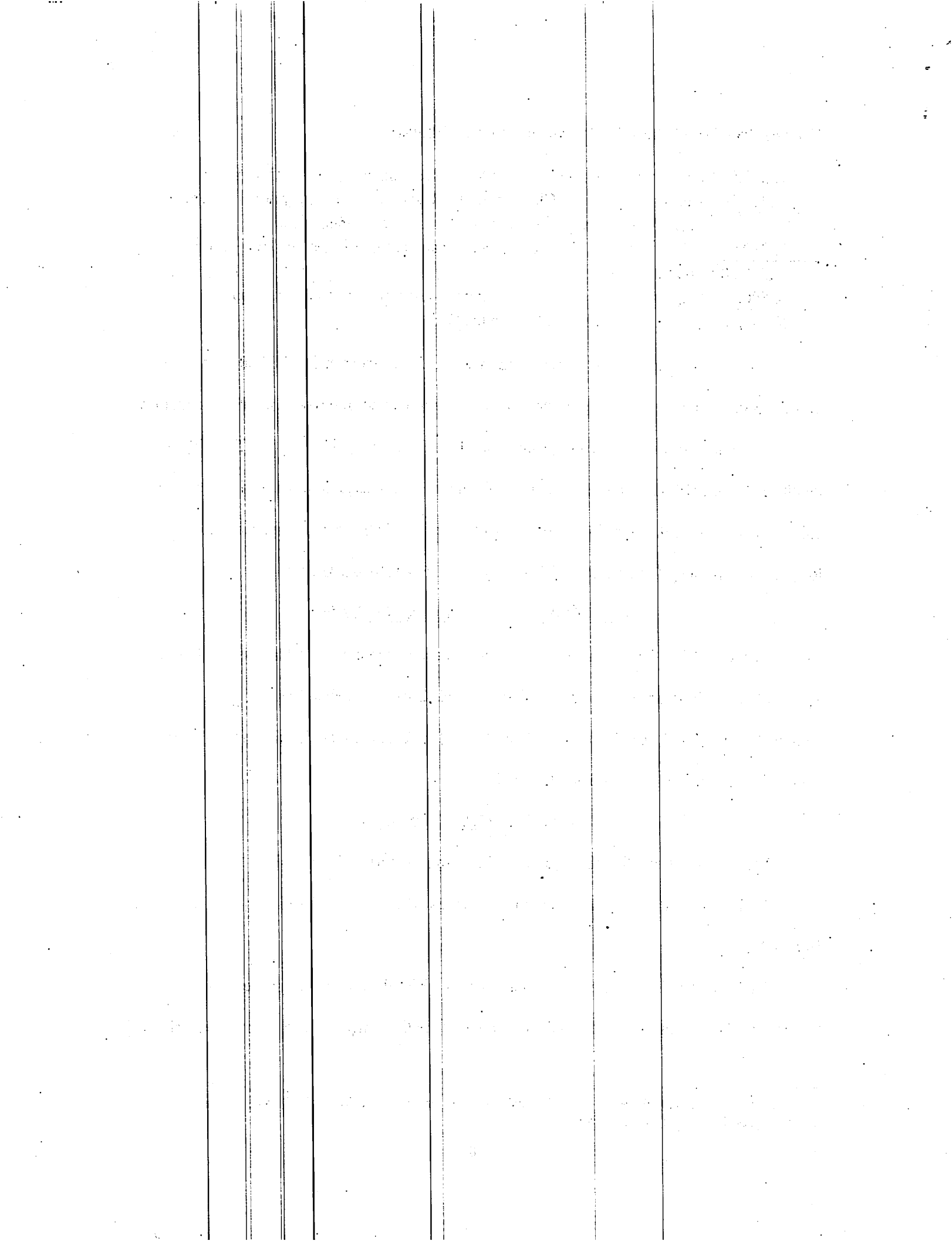
I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$4,600.00; 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.

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<sup>3</sup> Even if I were to have calculated the actual loss using the greater estimate, the award would be the same for the reasons expressed in the following paragraph.





under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>4</sup> and

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

August 20, 2021  
Date Decision Issued

*Marc Nachman*  

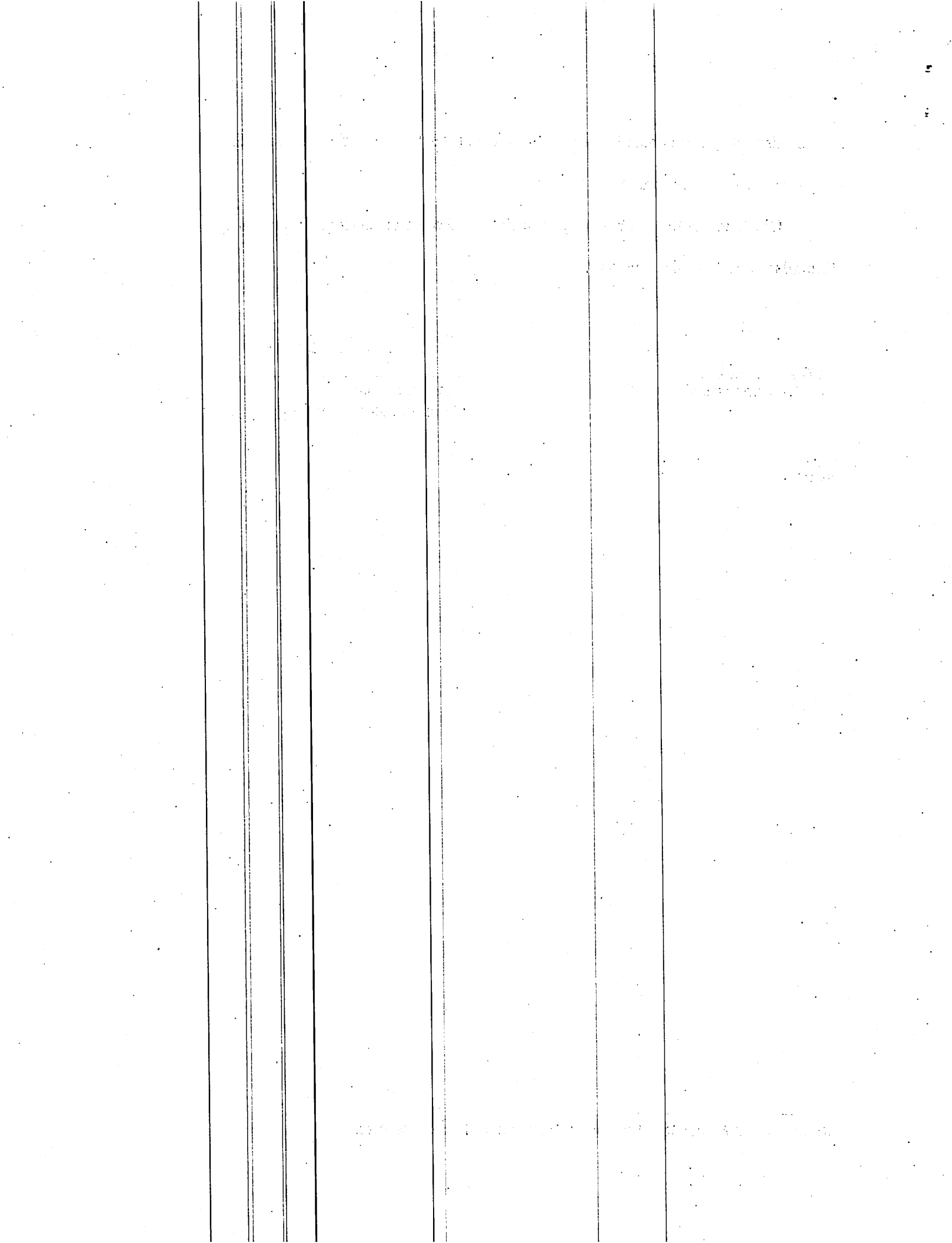
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Marc Nachman  
Administrative Law Judge

MN/at  
#193855

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<sup>4</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 4<sup>th</sup> day of November, 2021, 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.***

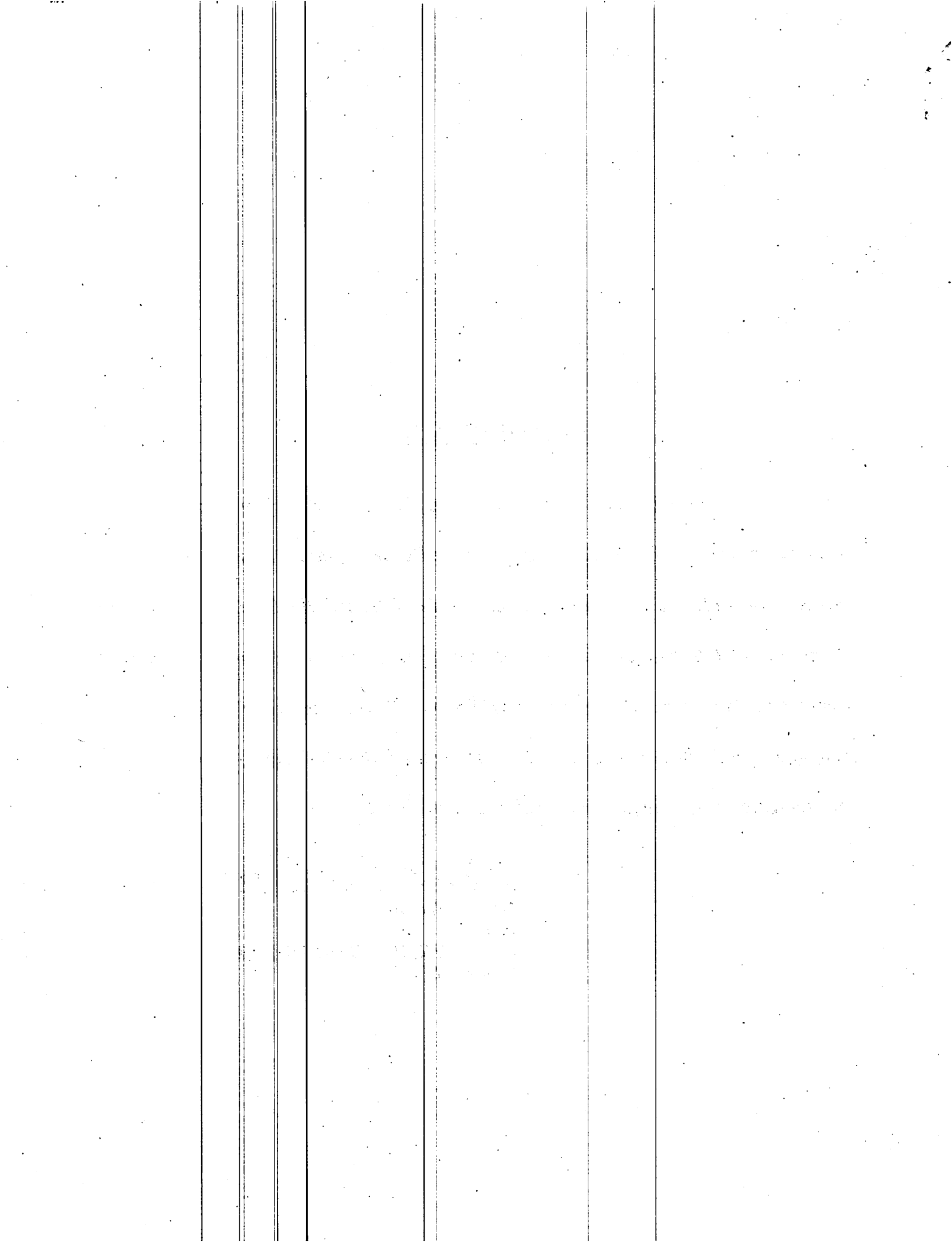
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***Michael Newton***

***Michael Newton***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***



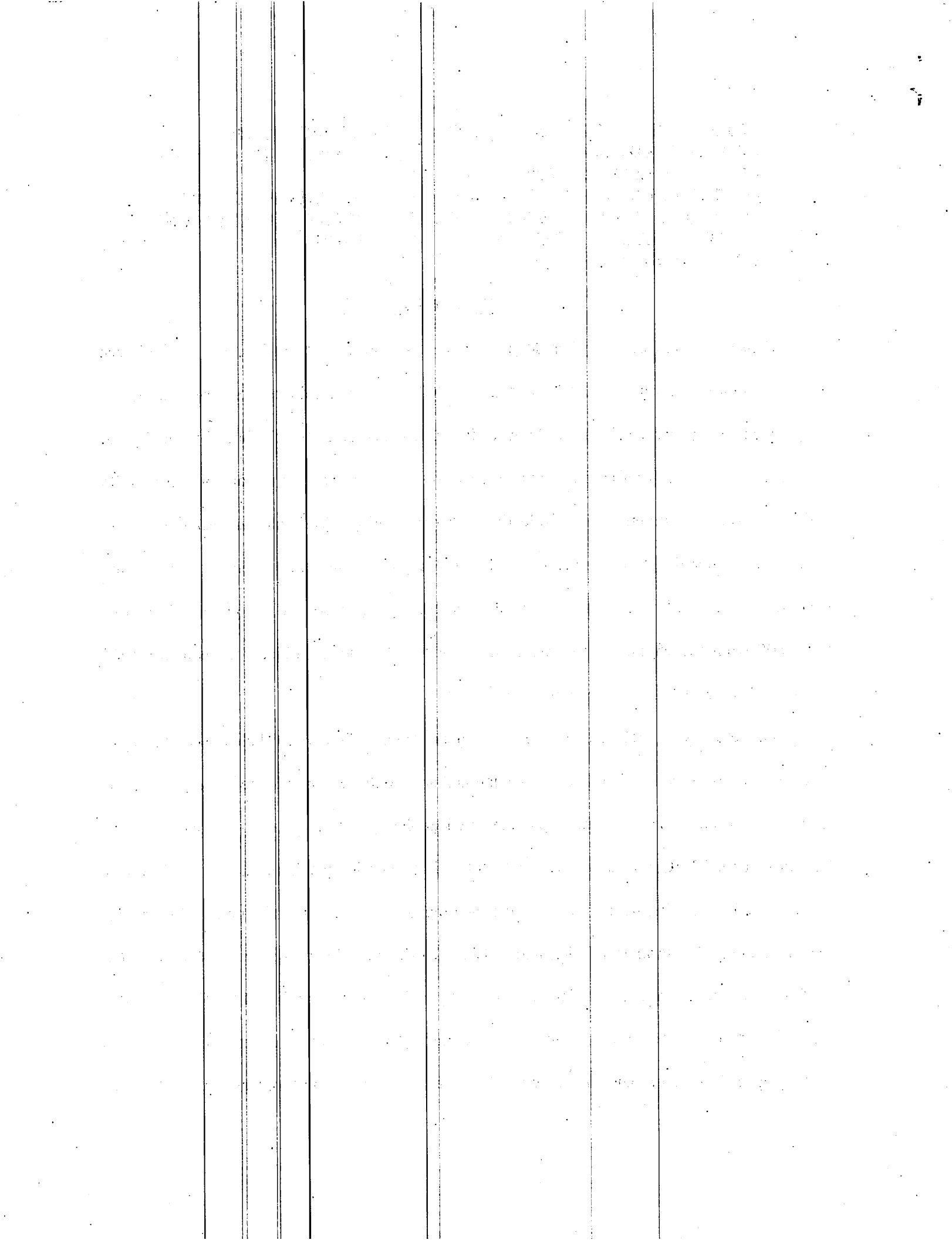
**IN THE MATTER OF THE CLAIM OF \* MARYLAND HOME  
KRISTIA THOMPSON \* IMPROVEMENT COMMISSION  
AGAINST THE MARYLAND HOME \*  
IMPROVEMENT GUARANTY FUND \* MHIC CASE NO. 20(90)45  
FOR THE ACTS OR OMISSIONS OF \* OAH CASE NO. LABOR-HIC-  
LUIS CASTILLO AND CASTLE \* 02-21-08274  
ROCK CONSTRUCTION, INC. \***

\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on May 21, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 20, 2021, concluding that the homeowner, Kristia Thompson (“Claimant”) suffered an actual loss as a result of the acts or omissions of Luis Castillo and Castle Rock Construction, Inc. (collectively, “Contractor”). *ALJ Proposed Decision* p. 8. In a Proposed Order dated November 4, 2021, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$4,600.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On February 17, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. 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) Contractor’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. 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 between the parties for the restoration of a deck at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike. *ALJ's Proposed Decision* pp. 5-6.

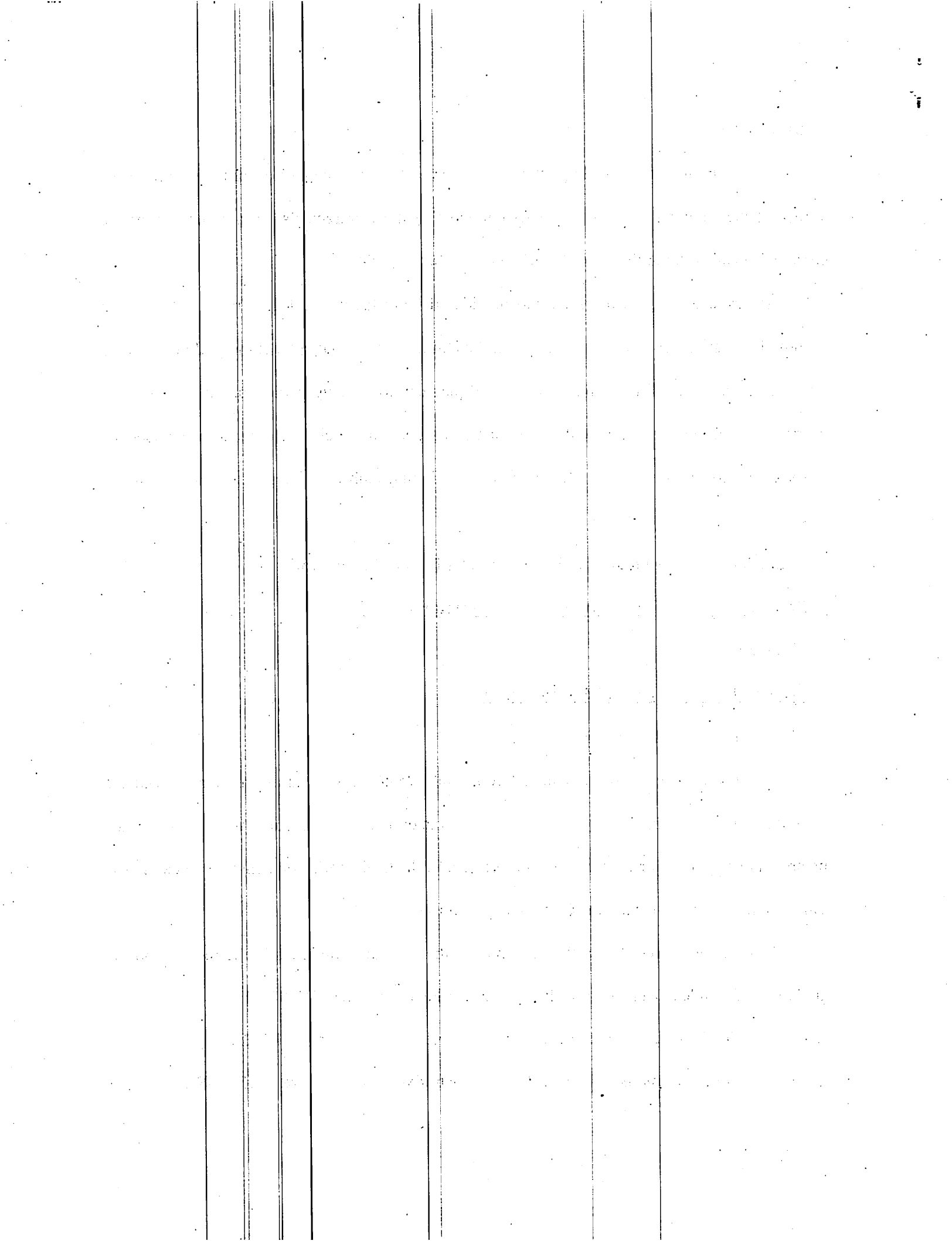
On exception, the Contractor did not identify any factual or legal errors in the ALJ's Proposed Decision. However, at the hearing, the Homeowner explained that the ALJ erroneously found that she had paid the Contractor \$300.00 pursuant to a change order for stair risers. The record does not include evidence that the Claimant agreed to the change order for stair risers or that she paid for the stair risers. Accordingly, the Commission calculates the Claimant's actual loss as follows:

\$4,300.00	Amount paid to or on behalf of the Contractor
+ \$4,930.00	<u>Cost to correct the Contractor's work</u>
\$9,230.00	
- \$4,300.00	<u>Original contract price</u>
\$4,930.00	Actual loss

Because the Home Improvement Law prohibits Guaranty Fund awards that exceed the amount a claimant has paid to or on behalf of a contractor, and the Claimant's actual loss exceeds the amount she paid to or on behalf of the contractor, the Claimant's compensable actual loss is limited to the amount she paid the Contractor, \$4,300.00.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 24<sup>th</sup> day of February 2022, **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 **\$4,300.00** 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.

***Robert Altieri***  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

