

**IN THE MATTER OF THE CLAIM  
OF TRACY K. FRY,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF ANTHONY LASH,  
T/A ALASHEK GENERAL  
CONTRACTOR,  
RESPONDENT**

**\* BEFORE WILLIAM F. BURNHAM,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\*  
\*  
\*  
\* OAH No.: LABOR-HIC-02-21-10618  
\* MHIC No.: 20 (75) 646**

\* \* \* \* \*

**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 March 12, 2020, Tracy K. Fry (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),<sup>1</sup> for reimbursement of \$16,526.00 in actual losses allegedly suffered as a result of a home improvement contract with Anthony Lash, trading as Alashek General Contractor (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).<sup>2</sup>

---

<sup>1</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.  
<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.



On May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 25, 2021, I conducted a remote hearing via the Webex video conferencing platform. Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b); Md. Code Ann., Bus. Reg. § 8-407(e). Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. Neither the Respondent nor anyone authorized to represent the Respondent attended the hearing, and I proceeded with the hearing in his absence. COMAR 28.02.01.23A.<sup>3</sup>

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); 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

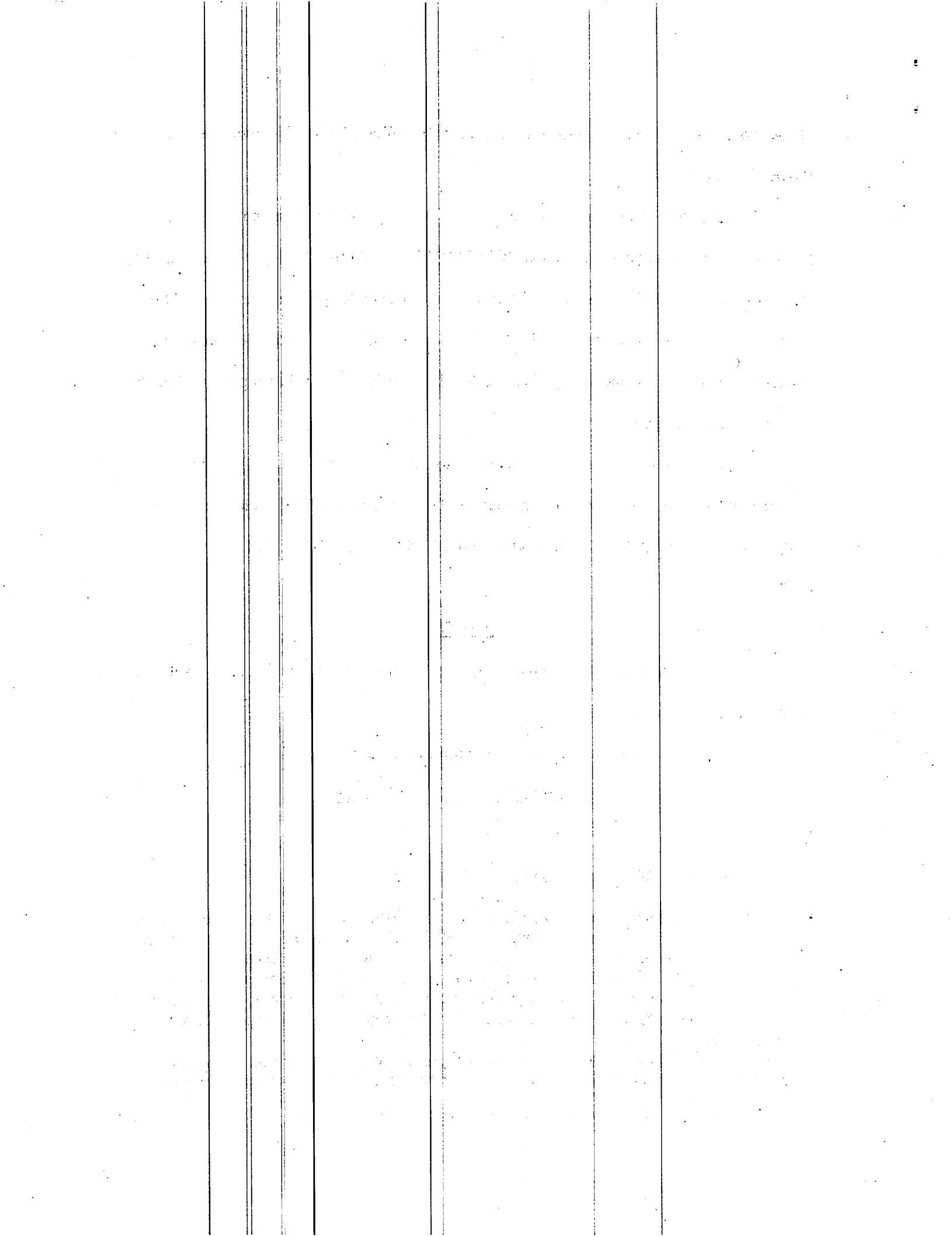
I admitted the following exhibits on the Claimant's behalf:<sup>4</sup>

- CL. Ex. 1 Complaint form, received November 14, 2019; timeline, photographs/descriptions of work, various dates August 26, 2019 to October 20, 2019; Contract, September 14, 2019; email between the Claimant and the Respondent, September 3, 2019; text message printouts, undated; call details, various dates September 4, 2019 to October 15, 2019; notice from the Department of Public Works, undated; pay receipt for payment to the Respondent, September 14, 2019; copies of checks

---

<sup>3</sup> Notice was sent to the Respondent at his address of record by both regular and certified mail. No notice was returned to the OAH as undeliverable for any reason, and the return receipt for the certified mailing was signed and returned to the OAH on May 19, 2021.

<sup>4</sup> The Claimant provided nine attachments totaling 148 unnumbered pages to the OAH.



from the Claimant to the Respondent, September 19 and 26, 2019; Lowe's receipts, various dates; Amazon receipts, various dates; letter from Kohler to the Claimant, October 21, 2019; Lowe's purchases and running Lowe's totals, various dates; HIC Licensing information for the Respondent, November 18, 2019.

- CL. Ex. 2 Claimant's case summary and timeline of events, June 25, 2021
- CL. Ex. 3 Email between Saffer Plumbing and the Claimant, January 29, 2020
- CL. Ex. 4 Email between the Claimant and Arcade Floors, January 20, 2020
- CL. Ex. 5 Saffer Plumbing Estimate for \$10,651.00, January 21, 2020
- CL. Ex. 6 Saffer Plumbing Estimate for \$6,072.00, January 21, 2020
- CL. Ex. 7 Copies of text exchanges between the Claimant and Saffer Plumbing, June 25, 2021
- CL. Ex. 8 Copies of texts from Tom Berg, June 25, 2021
- CL. Ex. 9 Photographs/Descriptions of work completed by Saffer Plumbing, undated.

The Respondent did not offer any exhibits into evidence.

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

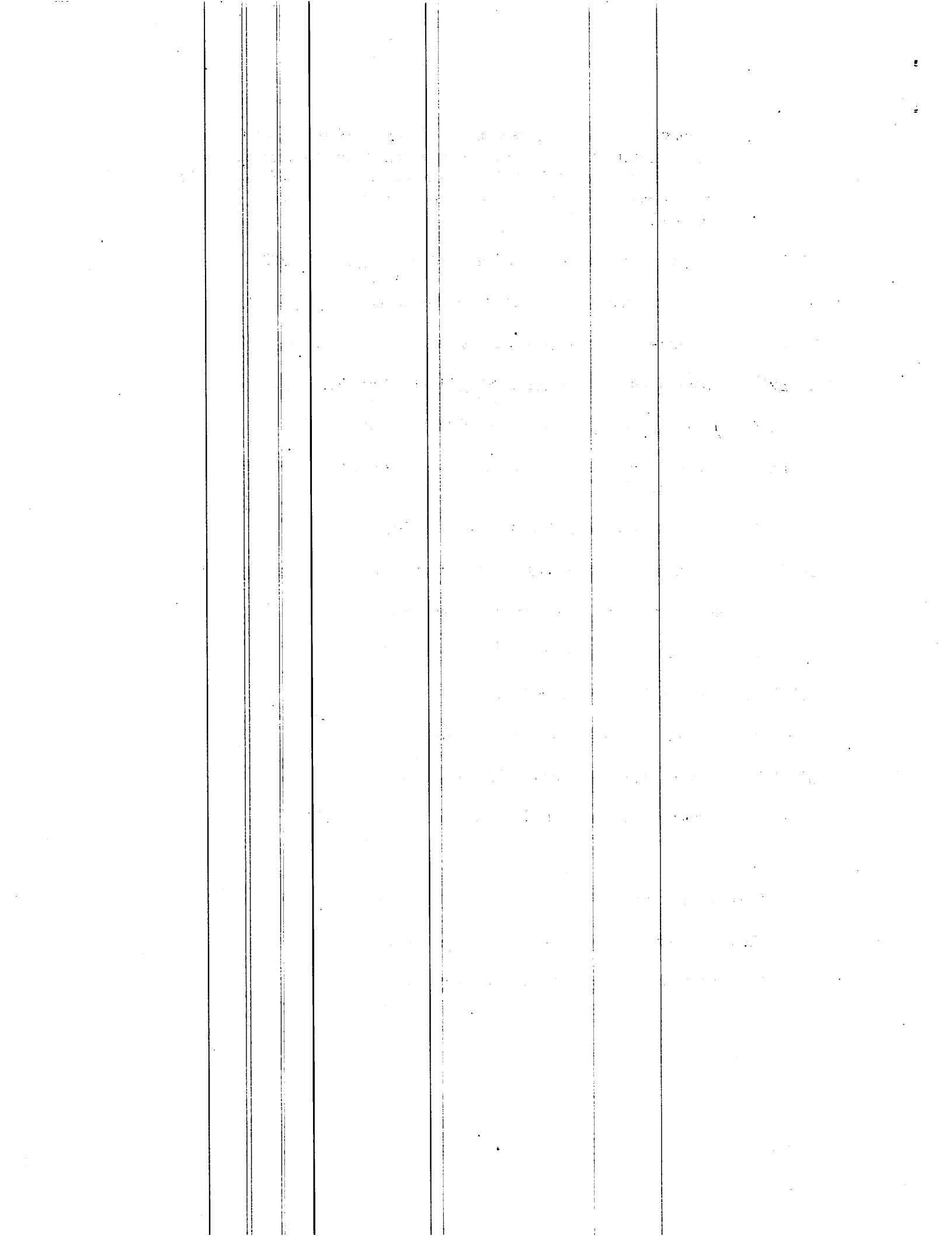
- MHIC Ex. 1 Hearing Order, April 22, 2021
- MHIC Ex. 2 Notice of remote hearing, May 13, 2021
- MHIC Ex. 3 HIC Claim Form, received March 12, 2020
- MHIC Ex. 4 Letter from J. Tunney to the Respondent, April 29, 2020

Testimony

The Claimant testified.

The Respondent did not present the testimony of any witnesses.

The Fund did not present the testimony of any witnesses.



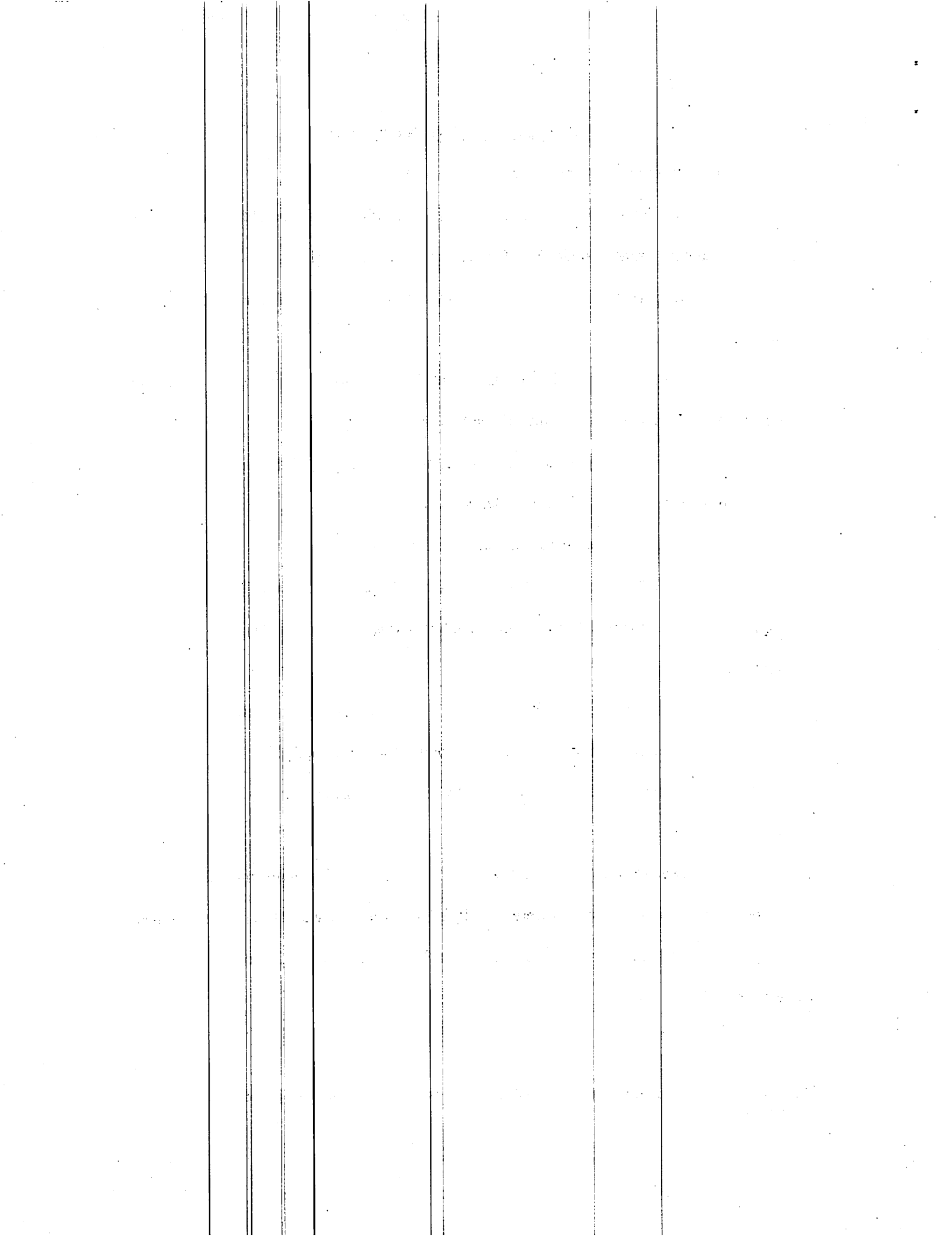
### **PROPOSED FINDINGS OF FACT**

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\*96941.
2. At all relevant times, the Claimant owned and resided in a home located in Baltimore, Maryland.
3. On September 14, 2019, the Claimant and the Respondent entered into a contract (Contract) for the remodel of the Claimant's bathroom.
4. The Contract included, among other things, demolition of the bathroom, installation of a tub and fixtures, lighting, tile, walls and painting.
5. The Claimant purchased tile for the Contract.
6. The total Contract price was \$5,875.00<sup>5</sup> to be paid as follows: \$1,958.00 at signing; \$1,958.00 upon completion of demolition and drywall installation; \$1,959.00 upon completion.
7. The Claimant paid the Respondent \$1,958.00 via PayPal on September 14, 2019.
8. The Respondent began work on or about September 16, 2019.
9. The Claimant paid the Respondent \$1,958.00 via Check #1291 on September 19, 2019.
10. Between September 20 and October 1, 2019, the Claimant informed the Respondent that the tiles he installed were misaligned and that there were water pressure issues.
11. The Claimant paid the Respondent \$1,959.00 via Check #1294 on September 26, 2019.

---

<sup>5</sup> The prices contained in the Contract actually add up to \$6,050.00. No information was provided to account for the discrepancy.





12. The Claimant paid the Respondent a total of \$5,875.00.

13. The faucet in the bathroom had a steady drip after installation. The Respondent installed the subfloor for the tub without mortar. The tub made noises when used as if there was no support under it and began breaking underfoot. The Respondent screwed grab bars, towel racks, towel rings, a toilet roll holder, and a shower rod directly into the tile. The tile pulled away from the edges of the wall creating gaps. By October 2019, the tiles were cracking. The paint the Respondent used flaked within a month of application.

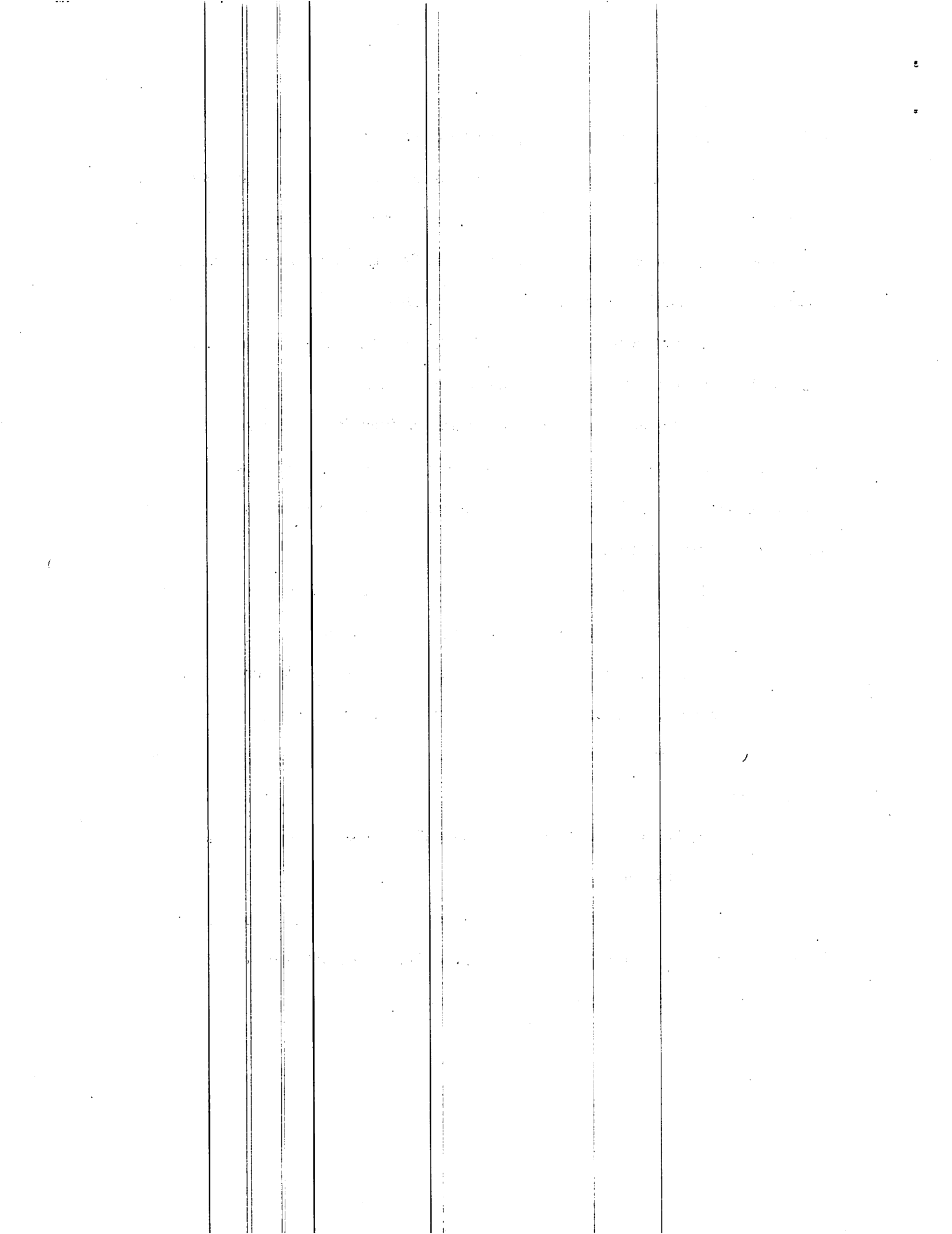
14. The Respondent returned and addressed the faucet leak. The Respondent reinstalled the tub/shower diverter incorrectly reversing hot and cold water. Caulking pulled away from the tub and the tiles required grout. The Respondent refused to reinstall the tub and offered to add foam underneath it.

15. The Respondent blamed the water pressure problems on the water from the main line. Baltimore City inspected the line and found the pressure was proper.

16. On or about October 14, 2019, the Respondent returned a final time and walled off the access to the plumbing access panel. In response to Claimant's attempts to have the Respondent return to address his workmanship, the Respondent asked the Complainant to "stop harassing" him.

17. The Claimant hired Saffer Plumbing (Saffer) to inspect and provide an estimate to repair the Respondent's work.

18. Among many defects, Saffer found tiles that could be pulled off by hand. Saffer found that the tub was not installed correctly and needed cement board to avoid cracking. Saffer replaced water pipes and corrected the water pressure issue.



19. The Claimant and Saffer entered into a Contract (Saffer Contract) to correct the deficiencies in the Claimant's bathroom. The Saffer Contract provided that it Saffer would:

- remove the toilet, tub, and sink and reinstall;
- reinstall shower and faucet correctly;
- Correctly install a Kohler tub in a bed of mortar
- Remove tile from walls and floor
- Run new plumbing from basement to second floor bathroom;
- Repair electric for bathroom as needed
- Install tile.

20. The agreed upon Saffer Contract price was \$10,651.00.

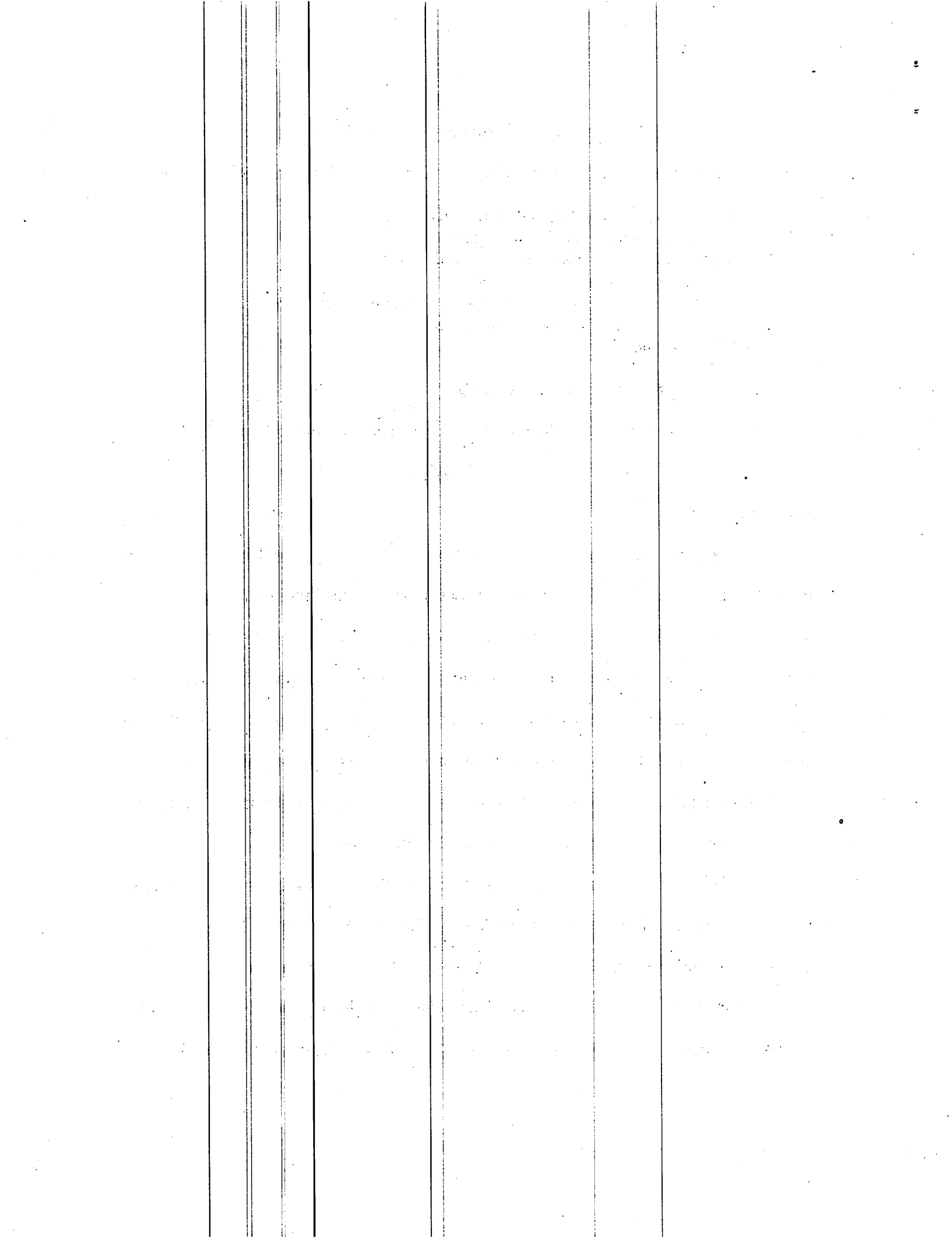
21. The Claimant paid Saffer \$10,651.00 to complete the Saffer Contract.

### DISCUSSION

#### Legal Framework

The Maryland General Assembly created the Fund to provide an available pool of money from which homeowners could seek relief for losses sustained at the hands of incompetent or unscrupulous home improvement contractors. Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411. A homeowner is authorized to "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); *see also* COMAR 09.08.03.03B(2). The statutes governing the Fund define "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401.

At a hearing on the claim, the claimant has the burden of proving the validity of the claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). "[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 (3d ed. 2000)).

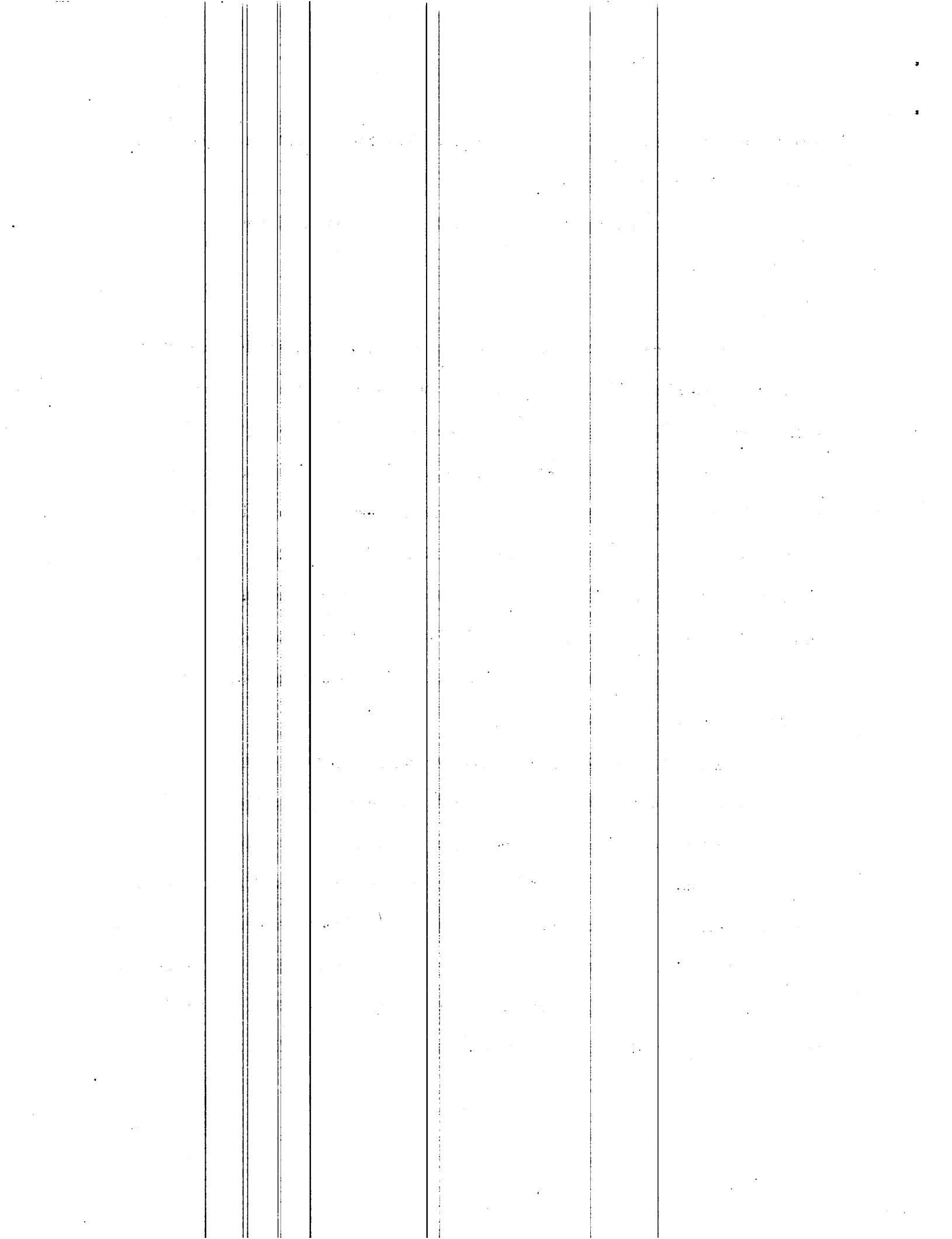
For the reasons explained below, I find that the Claimant has proven eligibility for compensation from the Fund.

*Statutory Eligibility*

The evidence in this case establishes there are no impediments barring the Claimant from recovering from the Fund. The home improvement work was performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the claim, as the Respondent ultimately asked the Claimant to "stop harassing" him. The Contract between the Claimant and the Respondent does not contain an arbitration provision. The Claimant timely filed her Claim with the MHIC on March 12, 2020. Finally, the Claimant has not taken any other legal action to recover monies. Md. Code Ann., Bus. Reg. §§ 8-101(g)(3)(i), 8-405(c), (d), (f), and (g), 8-408(b)(1) (2015 & Supp. 2020).

*The Respondent Performed an Inadequate and Unworkmanlike Home Improvement*

The Respondent performed an inadequate and unworkmanlike home improvement. The record demonstrates that the Respondent failed to properly install the tub, plumbing, tiles and fixtures in the bathroom. All of his work had to be torn out and redone. Plumbing had to be fixed, and the tile repurchased and reset. The photographs taken of the Property and the project document numerous issues with poorly laid tile, gaps in tiles, and cracking. *See* CL. Ex. 1. Photographs show spray foam all over the plumbing that leaked after the Respondent installed it. CL. Ex. 9. The fiberglass tub was cracked from improper installation. *Id.* Accordingly, I find the Respondent



performed an inadequate and unworkmanlike the Claimant hired another contractor to complete the Contract.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); 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.

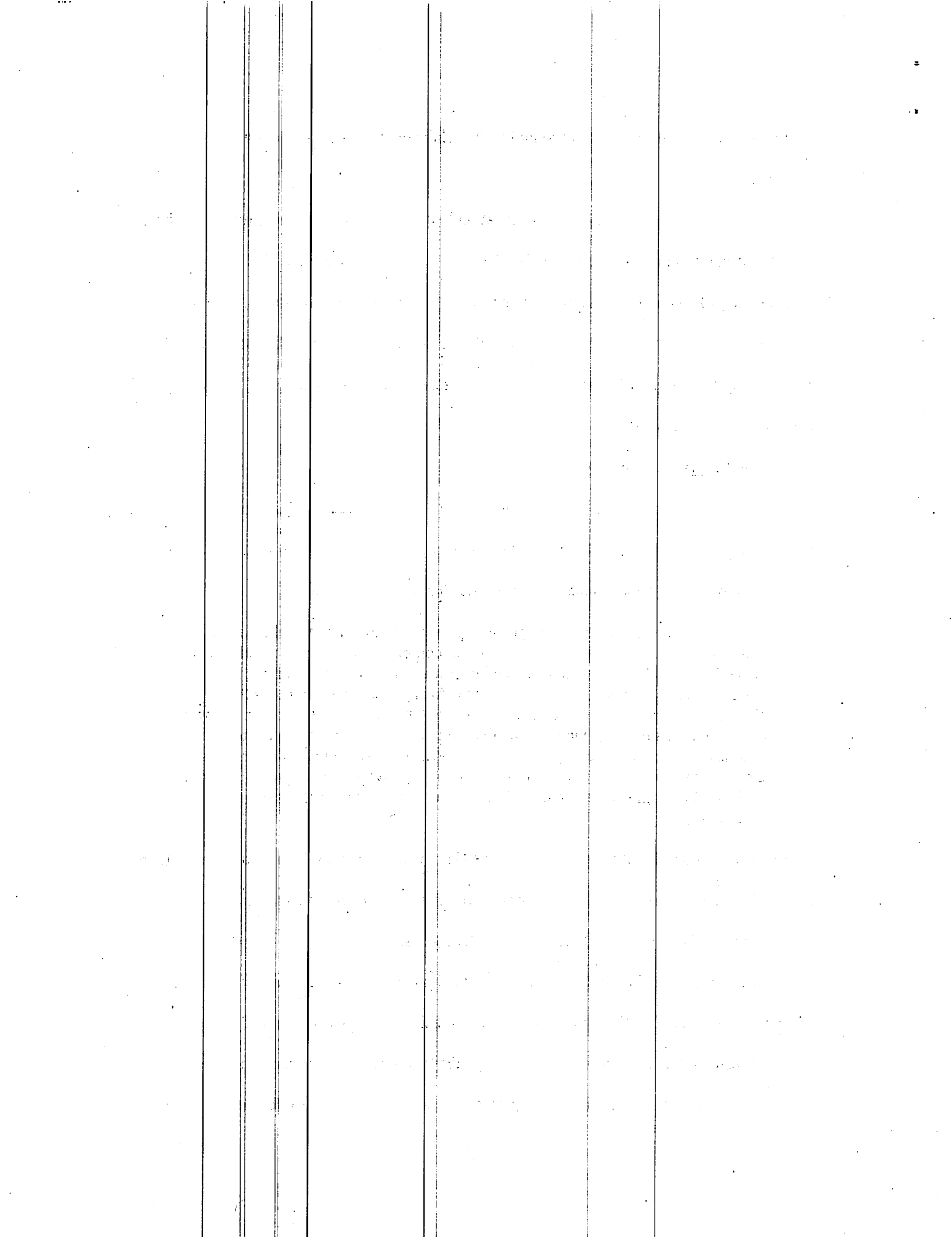
*The Amount of the Claimant's Actual Loss*

As discussed above, the Respondent performed an inadequate and unworkmanlike home improvement and the Claimant hired another contractor to complete the project. 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.

COMAR 09.08.03.03B(3)(c). Additionally, the Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." COMAR 09.08.03.03B(3)(c) and (4).

The Claimant paid the Respondent \$5,875.00 pursuant to the Contract. (See CL. Ex. 1). The Claimant paid Saffer \$10,651.00 to complete the Contract correctly. In addition, the Claimant testified that she paid for tile to replace the tiles which the Respondent ruined. However, the Claimant's exhibits do not provide the amount that she paid for the tiles. She





testified that the receipts included in Claimant's Exhibit 1 show pricing for materials not related to the Contract. The Claimant's exhibits contain checks that corroborate her testimony that she paid the Respondent \$5,875.00. CL. Ex. 1. In any event, the Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

Using the COMAR 09.08.03.03B(3)(c) formula, I calculate the Claimant's actual monetary loss as follows:

Amount paid to the Respondent	\$ 5,875.00
+ Amount paid to correct or complete the work	<u>\$ 10,651.00</u>
	\$ 16,526.00
- Amount of original contract	<u>\$ 5,875.00</u>
<b>Amount of actual loss</b>	<b>\$ 10,651.00</b>

"The Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is more than she paid to the Respondent. Therefore, the Claimant is entitled to recover her actual loss of \$5,875.00.

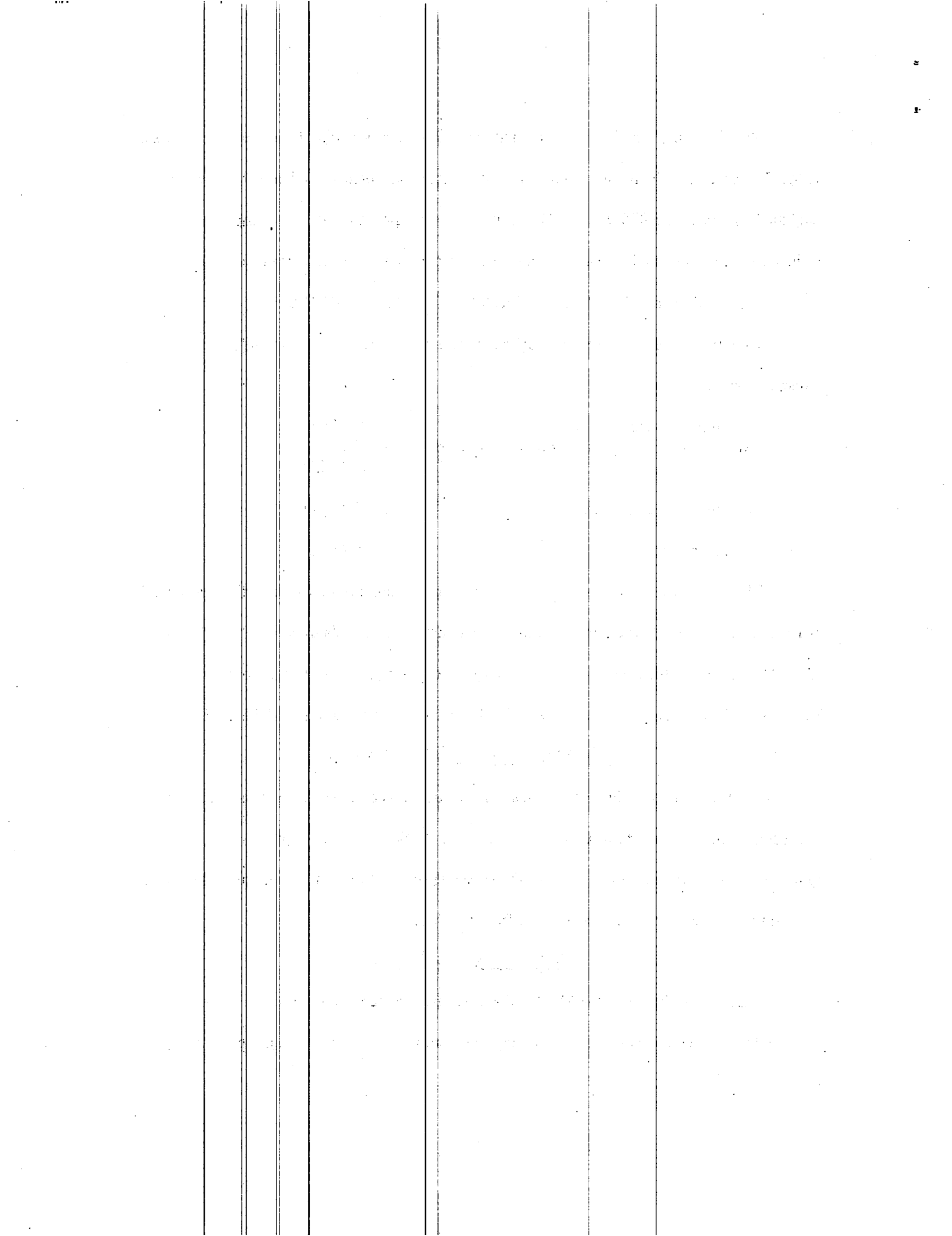
#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$5,875.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2020); 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 \$5,875.00; 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 under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>6</sup> and

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

September 14, 2021  
Date Decision Issued

*William F. Burnham*

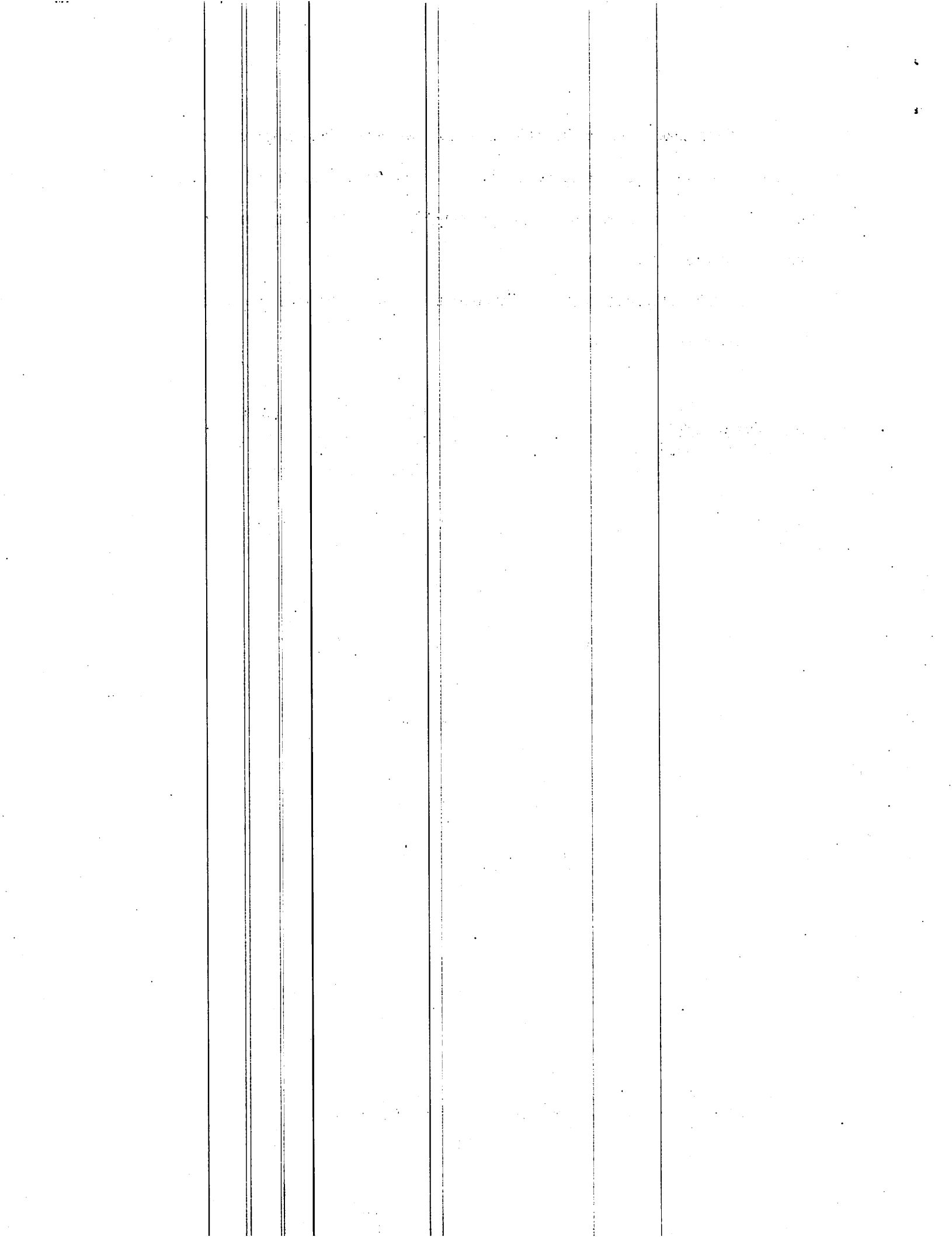
---

William F. Burnham  
Administrative Law Judge

WFB/gt  
#194247

---

<sup>6</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 28<sup>th</sup> day of January, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

