

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF CALVIN AND SUSIE LEE,</b></p> <p><b>CLAIMANTS<sup>1</sup></b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF ASHLEY JENNINGS,</b></p> <p><b>T/A THE JENNINGS GROUP, LLC,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE EDWARD J. KELLEY,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-21-07300</b></p> <p><b>* MHIC No.: 20 (05) 65</b></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

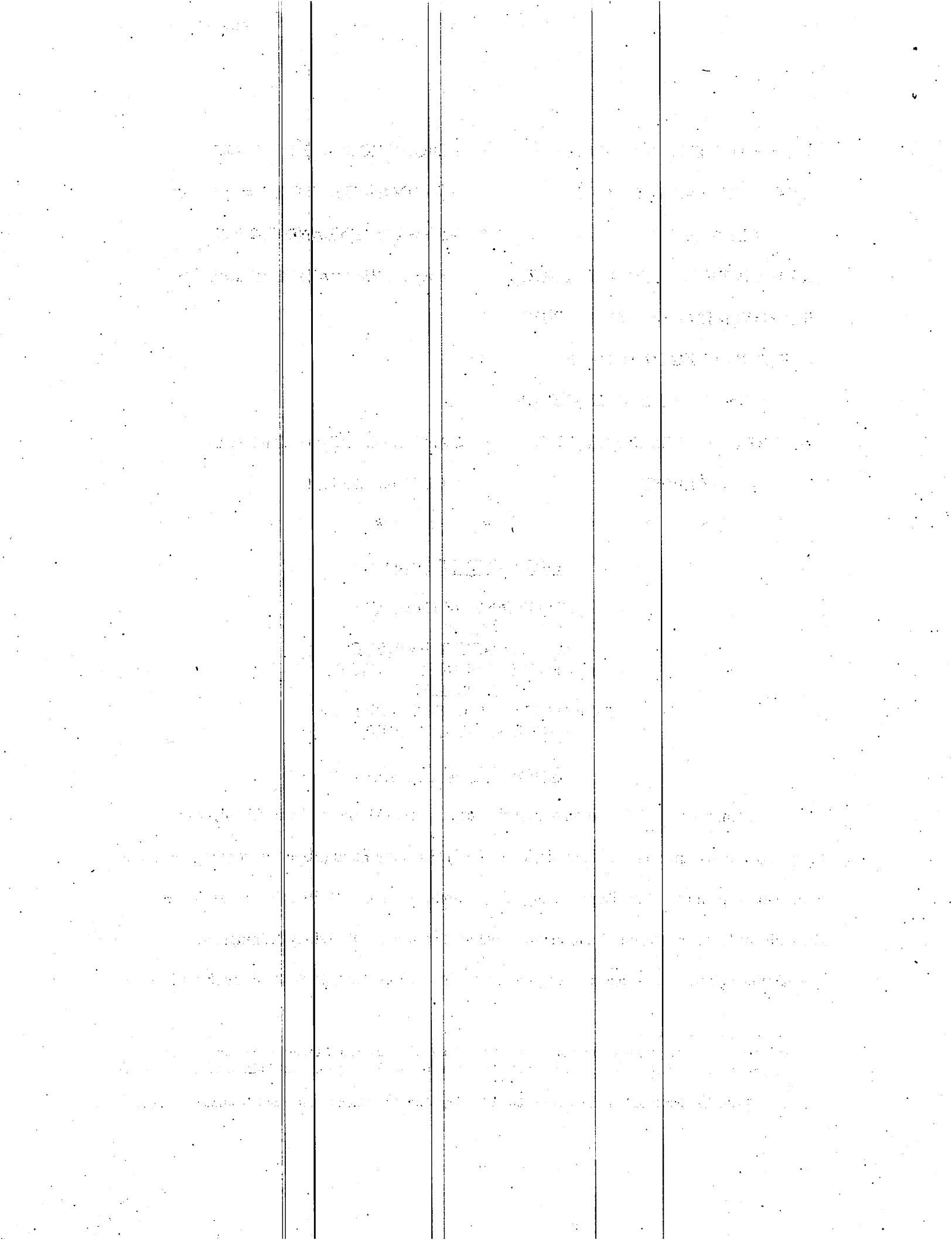
**STATEMENT OF THE CASE**

On January 30, 2020, Calvin and Susie Lee (Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),<sup>2</sup> for reimbursement of \$41,791.63 in actual losses allegedly suffered as a result of a home improvement contract with Ashley Jennings, trading as The Jennings Group, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

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<sup>1</sup> Calvin and Susie Lee jointly signed the claim form filed with the Maryland Home Improvement Commission. Therefore, I refer to them herein as "Claimants," notwithstanding that the hearing transmittal identifies the claimant as Calvin Lee.

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.



(2015).<sup>3</sup> On March 23, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

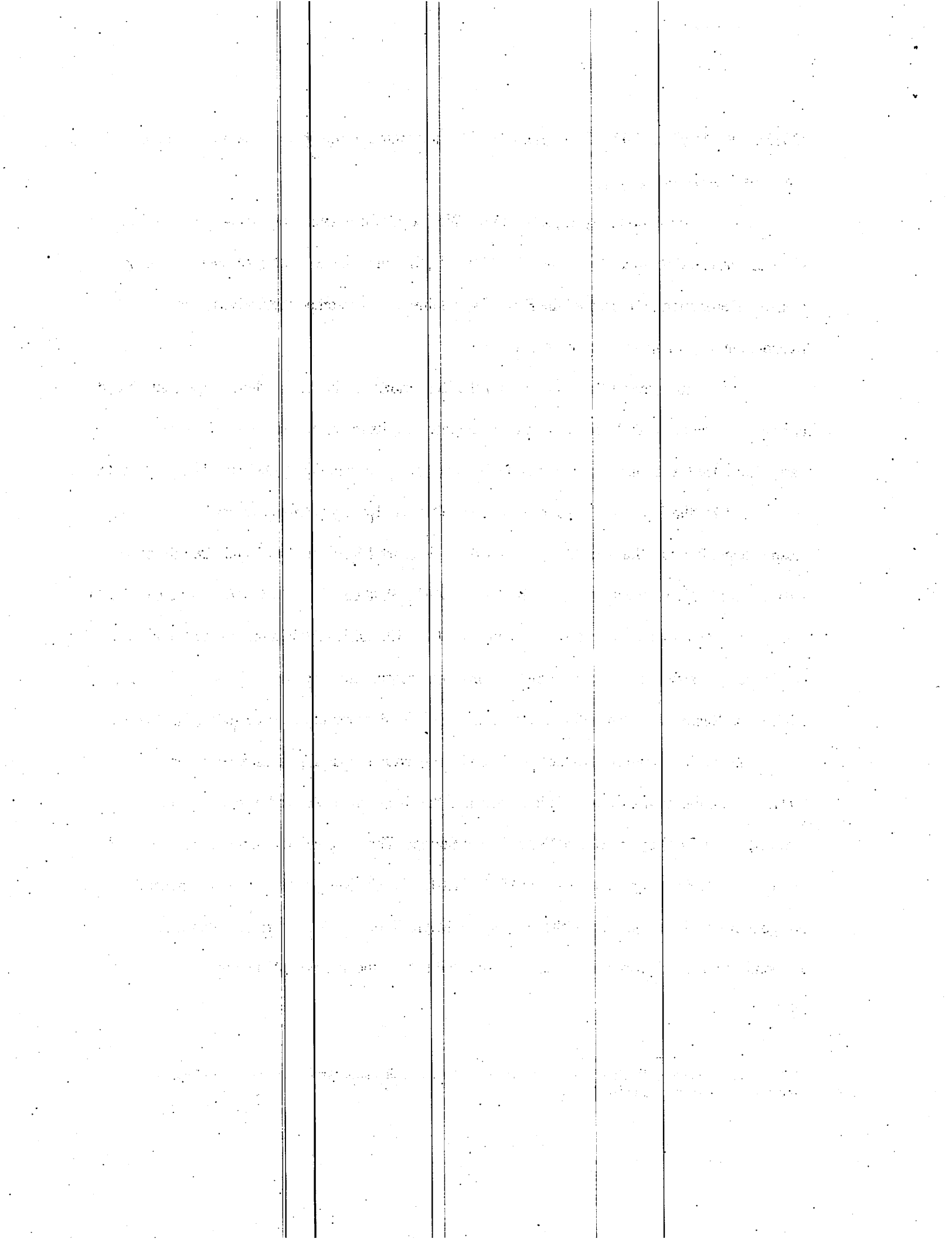
I held a hearing on May 13, 2021 on the Webex platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimants represented themselves. The Respondent did not appear for the hearing.

After waiting over fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. On April 27, 2021, the OAH sent a Notice of Hearing (Notice) by regular mail and certified mail to the Respondent's known addresses: 3432 Ryon Court, Waldorf, Maryland 20601 and 1282 Smallwood Drive, West #230, Waldorf, Maryland 20603. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for May 13, 2021, at 9:30 a.m., on the Webex video conferencing platform and provided instructions for accessing the platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The certified mail sent to the Smallwood Drive address was signed as received on April 30, 2021. The regular mail sent to the Ryon Court and the Smallwood Drive addresses was not returned to the OAH by the United States Postal Service. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the above captioned matter. COMAR 28.02.01.05A, C.

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



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; and COMAR 28.02.01.

### ISSUES

1. Did the Claimants 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 Claimants' behalf:

- Clmt. Ex. 1 - Contract between the Claimants and the Respondent, November 27, 2017
- Clmt. Ex. 2 - Letter from the Claimants to the Respondent, May 23, 2019
- Clmt. Ex. 3 - Bank statements and cancelled checks, various dates; business card for Rose's Electric, undated
- Clmt. Ex. 4 - Pictures of project site at the Claimants' residence, undated
- Clmt. Ex. 5a - Correspondence between the MHIC and the Claimants, July 2019 – January 2020
- Clmt. Ex. 5b - Contract between the Claimants and the American Remodeling Corporation, January 22, 2020.

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

- Fund Ex. 1 - Notice of Hearing, April 27, 2021
- Fund Ex. 2 - Hearing Order, March 11, 2021
- Fund Ex. 3 - Letter from HIC to Respondent with attached Home Improvement Claim Form, January 31, 2020
- Fund Ex. 4 - Respondent's HIC licensing history, April 26, 2021

1. Name of the person  
2. Address  
3. City  
4. State

5. Telephone number  
6. Date of birth  
7. Sex

8. Occupation  
9. Education  
10. Religion

11. Marital status  
12. Number of children  
13. Date of marriage

14. Date of application  
15. Signature  
16. Date of issue

Fund Ex. 5 - Business Entity Search for The Jennings Group LLC, April 26, 2021

The Respondent did not admit any exhibits.

Testimony

Susie Lee testified on behalf of the Claimants; Calvin Lee did not testify. The Claimants did not present any other witnesses. The Respondent did not appear, and therefore, she did not present any witnesses. The Fund did not present 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 01-109911.
2. On November 27, 2017, the Claimants and the Respondent entered into a contract for the construction of a 12' x 16' sunroom addition to the Claimants' residence (Contract). The Contract stated that work would begin on or about November 28, 2017, and would be completed within six to eight weeks.
3. The original agreed-upon Contract price was \$41,000.00.
4. On November 28, 2017, the Claimants paid the Respondent a first installment of \$18,500.00.
5. The Respondent obtained permits and began work on the project in December 2017, by excavating the site and pouring a concrete foundation. As a result of the excavation, there was a substantial amount of excess dirt, which was left on the premises.
6. Between December 2017 and February 2018, the Respondent did not do any work on the project.
7. In February and March 2018, the Respondent began framing the addition.

1	2	3	4	5
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81	82	83	84	85
86	87	88	89	90



8. Between March 2018 and July 2018, the project halted because the Claimants needed to obtain a variance, which was granted in July 2018.

9. Between July 2018 and November 2018, the Respondent did not do any work on the project.

10. In November 2018, the Respondent told the Claimants she needed money to obtain supplies, and, on November 30, 2018, the Claimants paid the Respondent \$10,130.00.

11. Between November 2018 and March 2019, the Respondent came to the property on several occasions to survey the status of the project, but no meaningful work was done.

12. In February 2019, the Respondent removed the excess dirt from the excavation completed in November 2017.

13. In March 2019, the Respondent began constructing walls and did some electric installation. The Respondent requested additional funds, and on March 30, 2019, the Claimants paid the Respondent \$10,130.00.

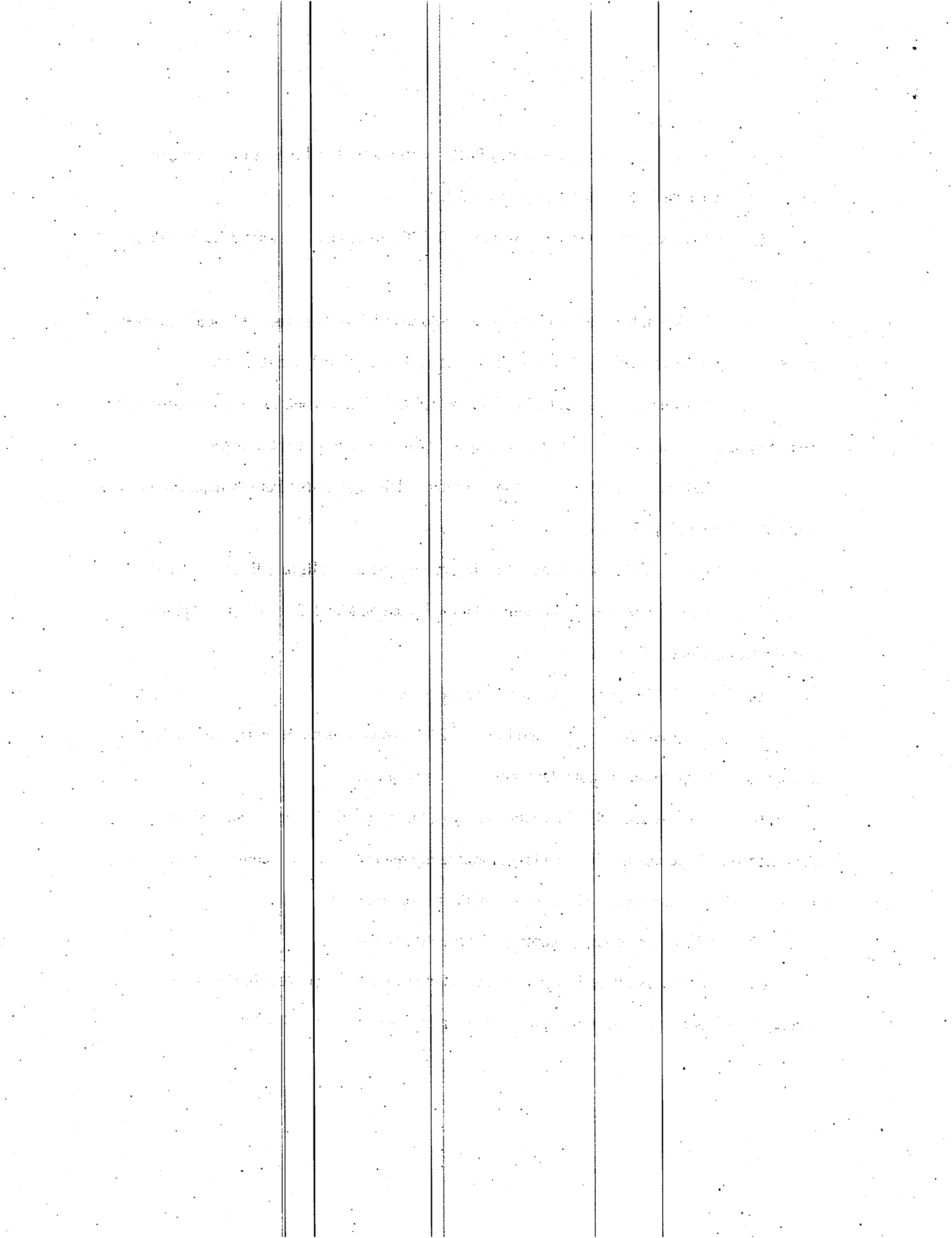
14. The Respondent never returned to the project.

15. Between May 1, 2019, and May 23, 2019, the Claimants called the Respondent five times, and the Respondent did not return any of these phone calls.

16. On May 23, 2019, the Claimants wrote the Respondent a letter stating that the Contract would be terminated if she did not immediately return to work and complete the project pursuant to the Contract terms. The Respondent did not respond to this letter.

17. There was no further contact with the Respondent.

18. In January 2020, the Claimants contracted with American Remodeling Corporation to complete the addition to the same specification in the Contract for \$49,780.79.



19. The Claimants' new contractor demolished the framing constructed by the Respondent because it had rotted.

## **DISCUSSION**

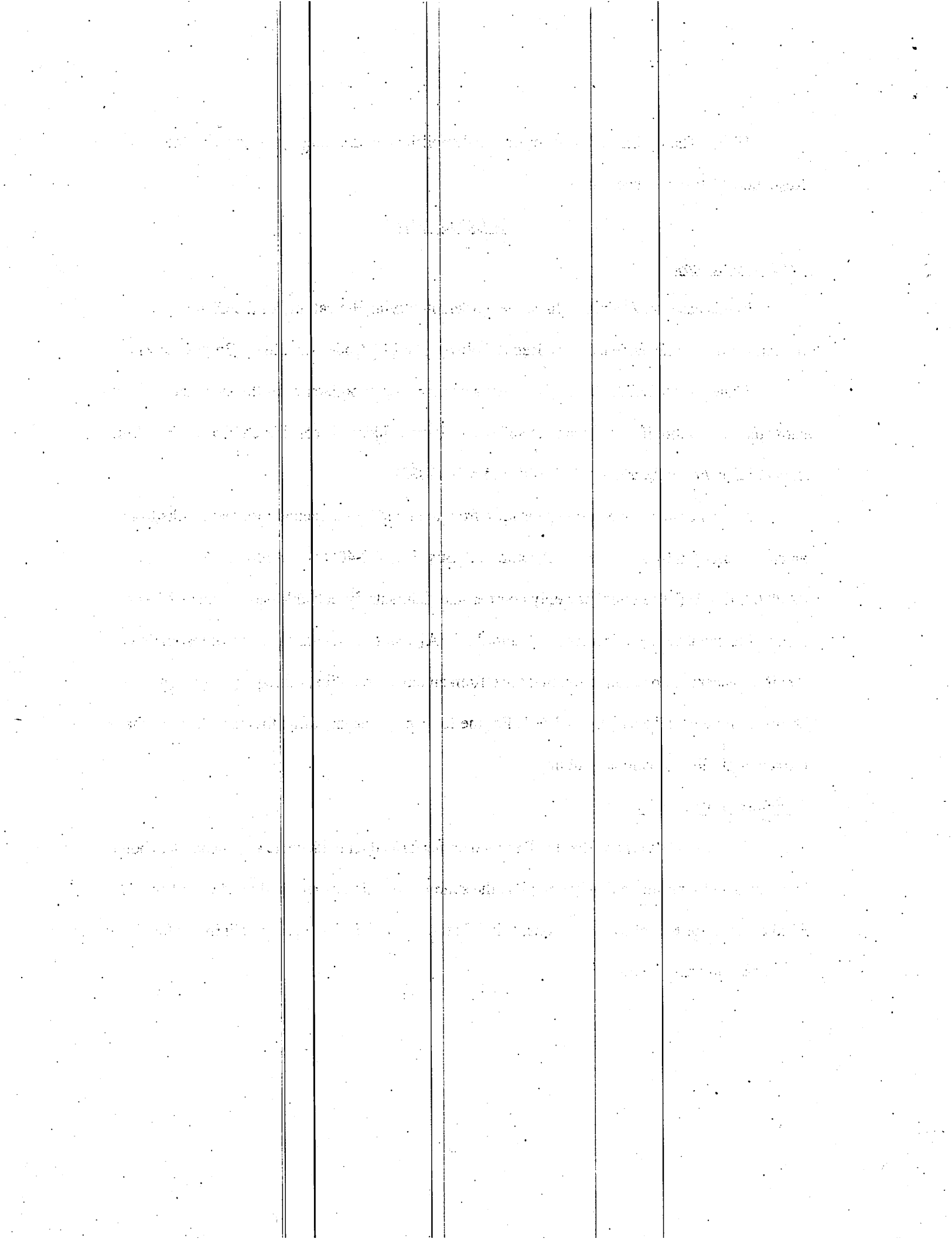
### **Legal Framework**

In this case, the Claimants have 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 Claimants have proven eligibility for compensation.

### **Positions of the Parties**

The Claimants argued that the Respondent performed an inadequate and incomplete home improvement by failing to timely complete the sunroom addition as required by the Contract. The Fund agreed. For the following reasons, I find that the Claimants have proven eligibility for compensation from the Fund.



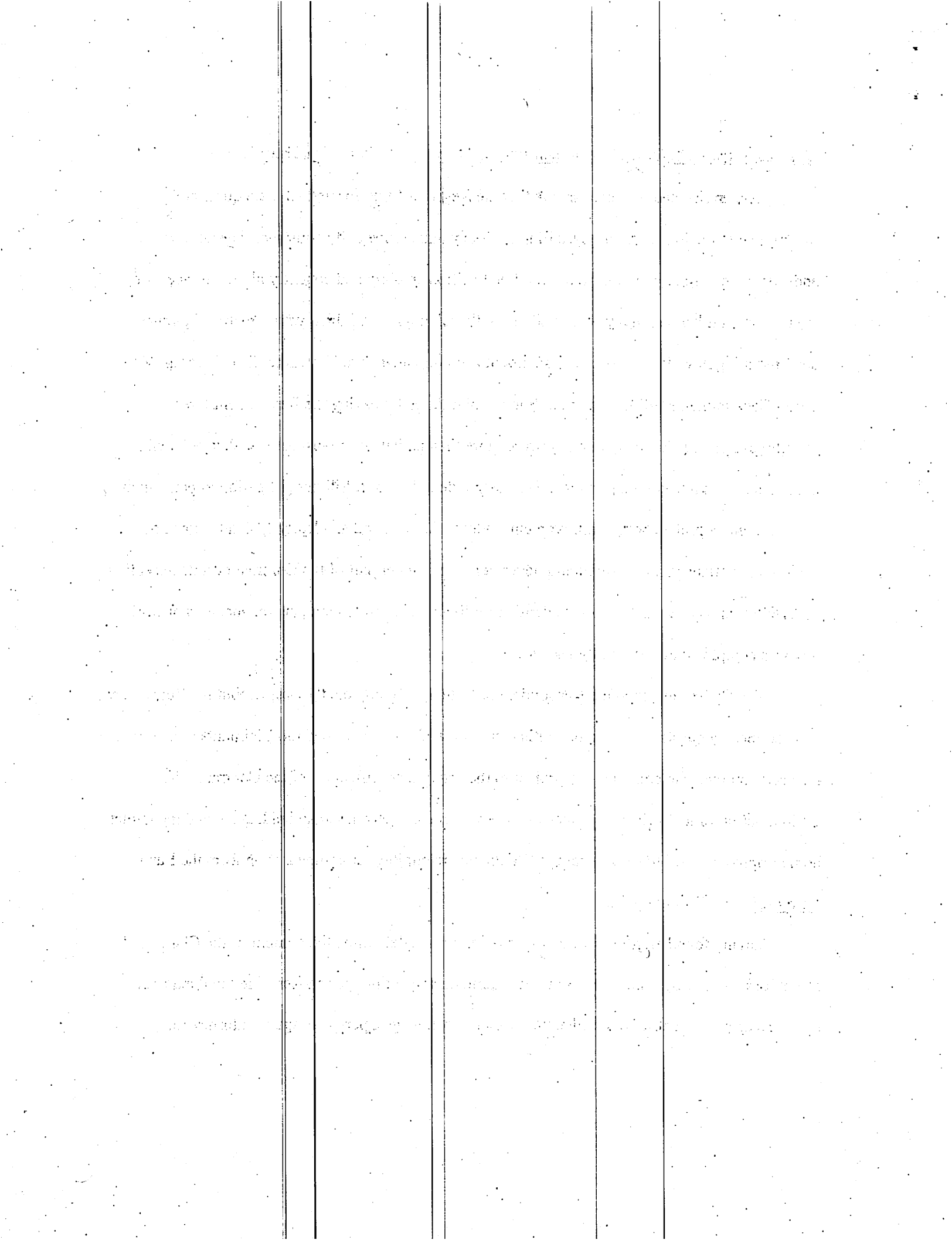
**The Respondent Performed an Inadequate and Incomplete Home Improvement**

The undisputed evidence shows that the Respondent performed an inadequate and incomplete home improvement by failing to timely and competently construct the sunroom addition as required by the Contract. Ms. Lee testified credibly and cogently about all facets of the project, and her testimony was fortified by the Claimants' exhibits, which included pictures demonstrating how little work the Respondent accomplished from November 2017 through May 2019. The Claimants fulfilled their contractual obligation by paying the Respondent three installments on the Contract, and they were more than patient as the project was delayed well beyond a reasonable completion date. The Respondent did not fulfill her obligation to perform an adequate and complete home improvement; indeed, the Respondent clearly took advantage of the Claimants' patience and goodwill and never delivered on her part of the Contract despite accepting \$38,760.00 in payments. The Respondent's inordinate delay and incompetence made what work that was completed almost totally useless.

The Claimants asked the Respondent repeatedly to complete the project, but the Respondent ignored these requests. The Respondent's disregard and inaction forced the Claimants to hire another licensed contractor to complete the project to the original specification of the Contract. The Claimants' unrefuted evidence proves that the Respondent performed an inadequate and incomplete home improvement. I thus find that the Claimants are eligible for compensation from the Fund.

**Calculation of Compensation**

Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are 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 Claimants retained another contractor to complete or remedy that work. 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).

Here, the Claimants paid the Respondent \$38,760.00 of the original Contract price. The Claimants then obtained reasonable estimates to remedy and complete the project for \$49,780.79. When these figures are added together, the total is \$88,540.79. Based on the above-referenced formula, the Claimants' actual loss is the \$88,540.79 minus the original Contract price, \$41,000.00, which comes to \$47,540.79.

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 Claimants' actual loss of \$47,540.79 exceeds \$20,000.00. Therefore, the Claimants' recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

No.	Name	Address	City
1	J. A. Smith	123 Main St	Springfield
2	M. B. Jones	456 Oak Ave	Springfield
3	C. D. White	789 Elm St	Springfield
4	E. F. Black	101 Maple Dr	Springfield
5	G. H. Green	202 Pine Rd	Springfield
6	I. J. Brown	303 Cedar Ln	Springfield
7	K. L. Taylor	404 Birch St	Springfield
8	M. N. Hill	505 Walnut Ave	Springfield
9	O. P. Scott	606 Chestnut St	Springfield
10	Q. R. Adams	707 Spruce Dr	Springfield
11	S. T. Baker	808 Ash Ln	Springfield
12	U. V. Wilson	909 Hickory St	Springfield
13	W. X. Moore	1010 Sycamore Ave	Springfield
14	Y. Z. Lewis	1111 Dogwood Rd	Springfield
15	A. B. Clark	1212 Magnolia St	Springfield
16	C. D. King	1313 Peach St	Springfield
17	E. F. Hall	1414 Plum Ave	Springfield
18	G. H. Young	1515 Cherry Ln	Springfield
19	I. J. King	1616 Peach St	Springfield
20	K. L. Adams	1717 Walnut Ave	Springfield
21	M. N. Baker	1818 Elm St	Springfield
22	O. P. Wilson	1919 Oak Ave	Springfield
23	Q. R. Moore	2020 Maple Dr	Springfield
24	S. T. Lewis	2121 Birch St	Springfield
25	U. V. Clark	2222 Cedar Ln	Springfield
26	W. X. King	2323 Pine Rd	Springfield
27	Y. Z. Adams	2424 Spruce Dr	Springfield
28	A. B. Baker	2525 Ash Ln	Springfield
29	C. D. Wilson	2626 Hickory St	Springfield
30	E. F. Moore	2727 Sycamore Ave	Springfield
31	G. H. Lewis	2828 Dogwood Rd	Springfield
32	I. J. Clark	2929 Magnolia St	Springfield
33	K. L. King	3030 Peach St	Springfield
34	M. N. Adams	3131 Plum Ave	Springfield
35	O. P. Baker	3232 Cherry Ln	Springfield
36	Q. R. Wilson	3333 Walnut Ave	Springfield
37	S. T. Moore	3434 Elm St	Springfield
38	U. V. Lewis	3535 Oak Ave	Springfield
39	W. X. Clark	3636 Maple Dr	Springfield
40	Y. Z. King	3737 Birch St	Springfield
41	A. B. Adams	3838 Cedar Ln	Springfield
42	C. D. Baker	3939 Pine Rd	Springfield
43	E. F. Wilson	4040 Spruce Dr	Springfield
44	G. H. Moore	4141 Ash Ln	Springfield
45	I. J. Lewis	4242 Hickory St	Springfield
46	K. L. Clark	4343 Dogwood Rd	Springfield
47	M. N. King	4444 Magnolia St	Springfield
48	O. P. Adams	4545 Peach St	Springfield
49	Q. R. Baker	4646 Plum Ave	Springfield
50	S. T. Wilson	4747 Cherry Ln	Springfield
51	U. V. Moore	4848 Walnut Ave	Springfield
52	W. X. Lewis	4949 Elm St	Springfield
53	Y. Z. Clark	5050 Oak Ave	Springfield
54	A. B. King	5151 Maple Dr	Springfield
55	C. D. Adams	5252 Birch St	Springfield
56	E. F. Baker	5353 Cedar Ln	Springfield
57	G. H. Wilson	5454 Pine Rd	Springfield
58	I. J. Moore	5555 Spruce Dr	Springfield
59	K. L. Lewis	5656 Ash Ln	Springfield
60	M. N. Clark	5757 Hickory St	Springfield
61	O. P. King	5858 Dogwood Rd	Springfield
62	Q. R. Adams	5959 Magnolia St	Springfield
63	S. T. Baker	6060 Peach St	Springfield
64	U. V. Wilson	6161 Plum Ave	Springfield
65	W. X. Moore	6262 Cherry Ln	Springfield
66	Y. Z. Lewis	6363 Walnut Ave	Springfield
67	A. B. Clark	6464 Elm St	Springfield
68	C. D. King	6565 Oak Ave	Springfield
69	E. F. Adams	6666 Maple Dr	Springfield
70	G. H. Baker	6767 Birch St	Springfield
71	I. J. Wilson	6868 Cedar Ln	Springfield
72	K. L. Moore	6969 Pine Rd	Springfield
73	M. N. Lewis	7070 Spruce Dr	Springfield
74	O. P. Clark	7171 Ash Ln	Springfield
75	Q. R. King	7272 Hickory St	Springfield
76	S. T. Adams	7373 Dogwood Rd	Springfield
77	U. V. Baker	7474 Magnolia St	Springfield
78	W. X. Wilson	7575 Peach St	Springfield
79	Y. Z. Moore	7676 Plum Ave	Springfield
80	A. B. Lewis	7777 Cherry Ln	Springfield
81	C. D. Clark	7878 Walnut Ave	Springfield
82	E. F. King	7979 Elm St	Springfield
83	G. H. Adams	8080 Oak Ave	Springfield
84	I. J. Baker	8181 Maple Dr	Springfield
85	K. L. Wilson	8282 Birch St	Springfield
86	M. N. Moore	8383 Cedar Ln	Springfield
87	O. P. Lewis	8484 Pine Rd	Springfield
88	Q. R. Clark	8585 Spruce Dr	Springfield
89	S. T. King	8686 Ash Ln	Springfield
90	U. V. Adams	8787 Hickory St	Springfield
91	W. X. Baker	8888 Dogwood Rd	Springfield
92	Y. Z. Wilson	8989 Magnolia St	Springfield
93	A. B. Moore	9090 Peach St	Springfield
94	C. D. Lewis	9191 Plum Ave	Springfield
95	E. F. Clark	9292 Cherry Ln	Springfield
96	G. H. King	9393 Walnut Ave	Springfield
97	I. J. Adams	9494 Elm St	Springfield
98	K. L. Baker	9595 Oak Ave	Springfield
99	M. N. Wilson	9696 Maple Dr	Springfield
100	O. P. Moore	9797 Birch St	Springfield



**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimants have sustained an actual and compensable loss of \$47,540.79 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 Claimants are entitled to recover \$20,000.000 from the Fund. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimants \$20,000; 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>4</sup> and

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

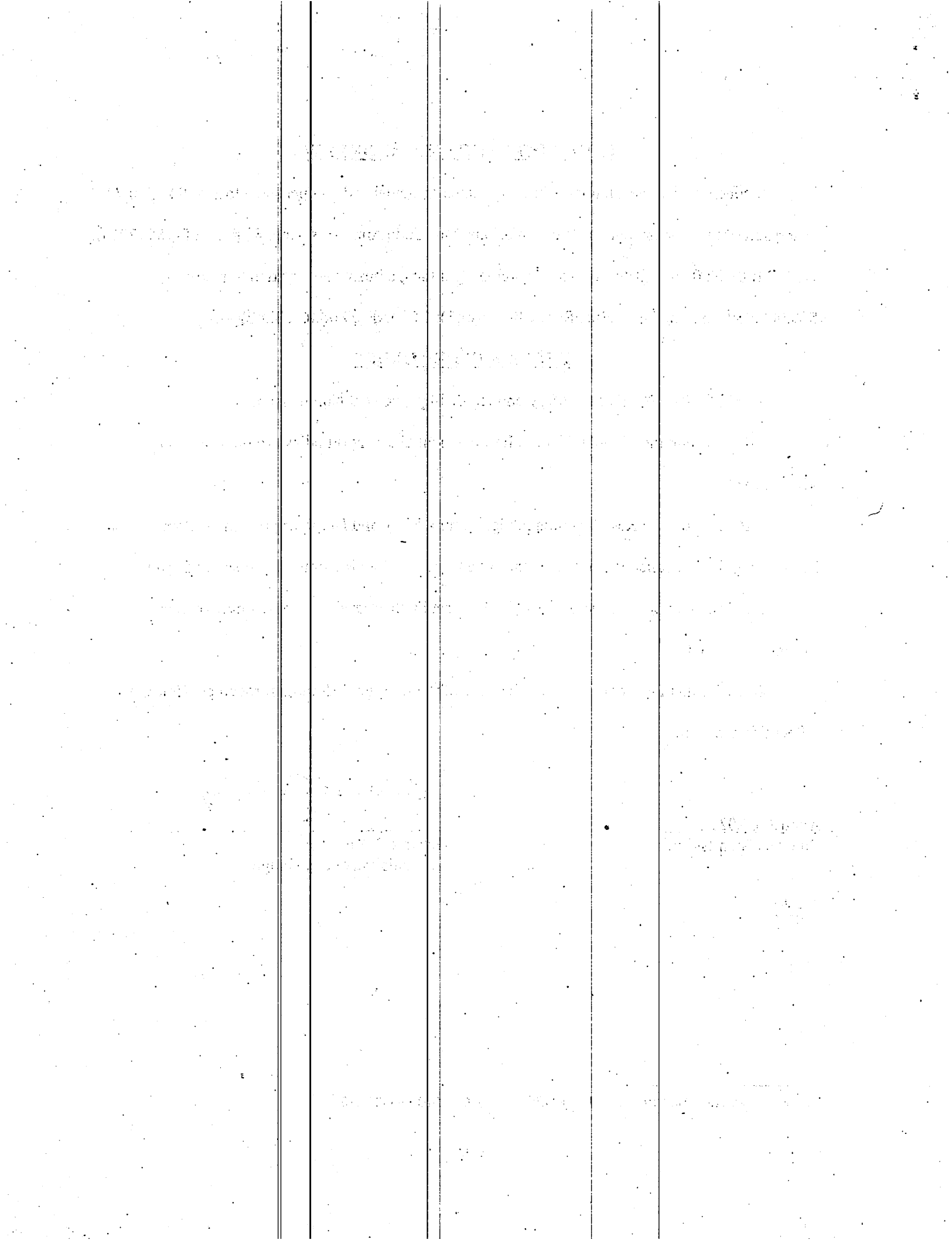
August 3, 2021  
Date Decision Issued

*Edward J. Kelley*

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Edward J. Kelley  
Administrative Law Judge

EJK/dlm  
#193376

<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**

