

IN THE MATTER OF THE CLAIM	* BEFORE JENNIFER A. NAPPIER,
OF DONZELL & MAE LITTLEJOHN,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANTS	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	* OAH No.: LABOR-HIC-02-21-25361
FOR THE ALLEGED ACTS OR	* MHIC No.: 21 (75) 1005
OMISSIONS OF RICHARD	*
KAUFMAN, T/A AMERICAN HOME	*
AND HARDSCAPE, LLC	*
RESPONDENT	*

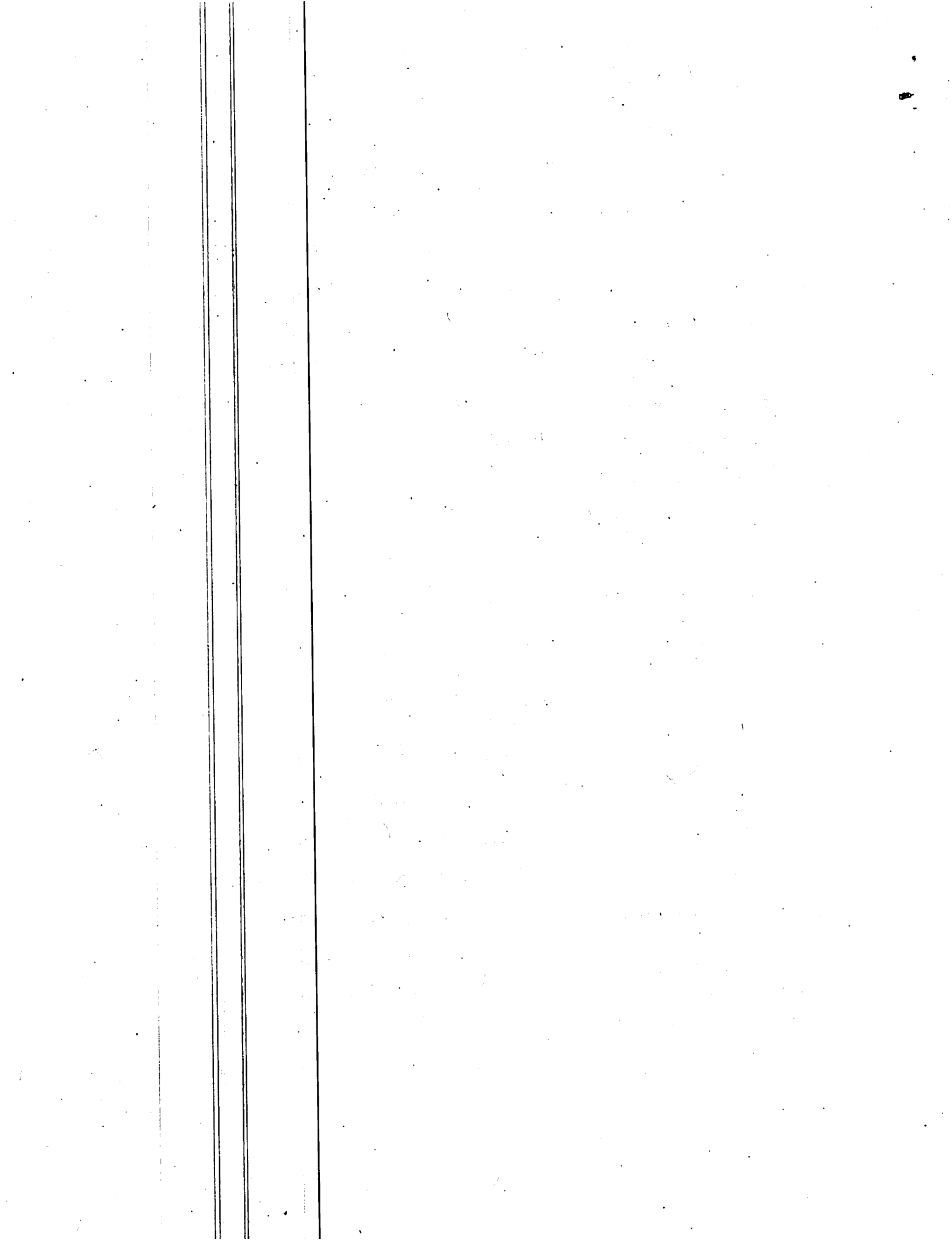
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**PROPOSED DECISION**

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 July 21, 2021, Donzell and Mae Littlejohn (Claimants) 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 \$50,709.00 for actual losses allegedly suffered as a result of a home improvement contract with Richard Kaufman, trading as American Home and Hardscape, LLC (Respondent). Md. Code Ann., Bus.



Reg. §§ 8-401 to 8-411 (2015).<sup>1</sup> On October 22, 2022, the MHIC issued a Hearing Order on the Claim. On November 2, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a video hearing on March 3, April 21, and June 13, 2022. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). John Hart, Assistant Attorney General, Department, represented the Fund.<sup>2</sup> Mr. Littlejohn represented the Claimants. Louis P. Tanko, Jr., Esquire, represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; 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**

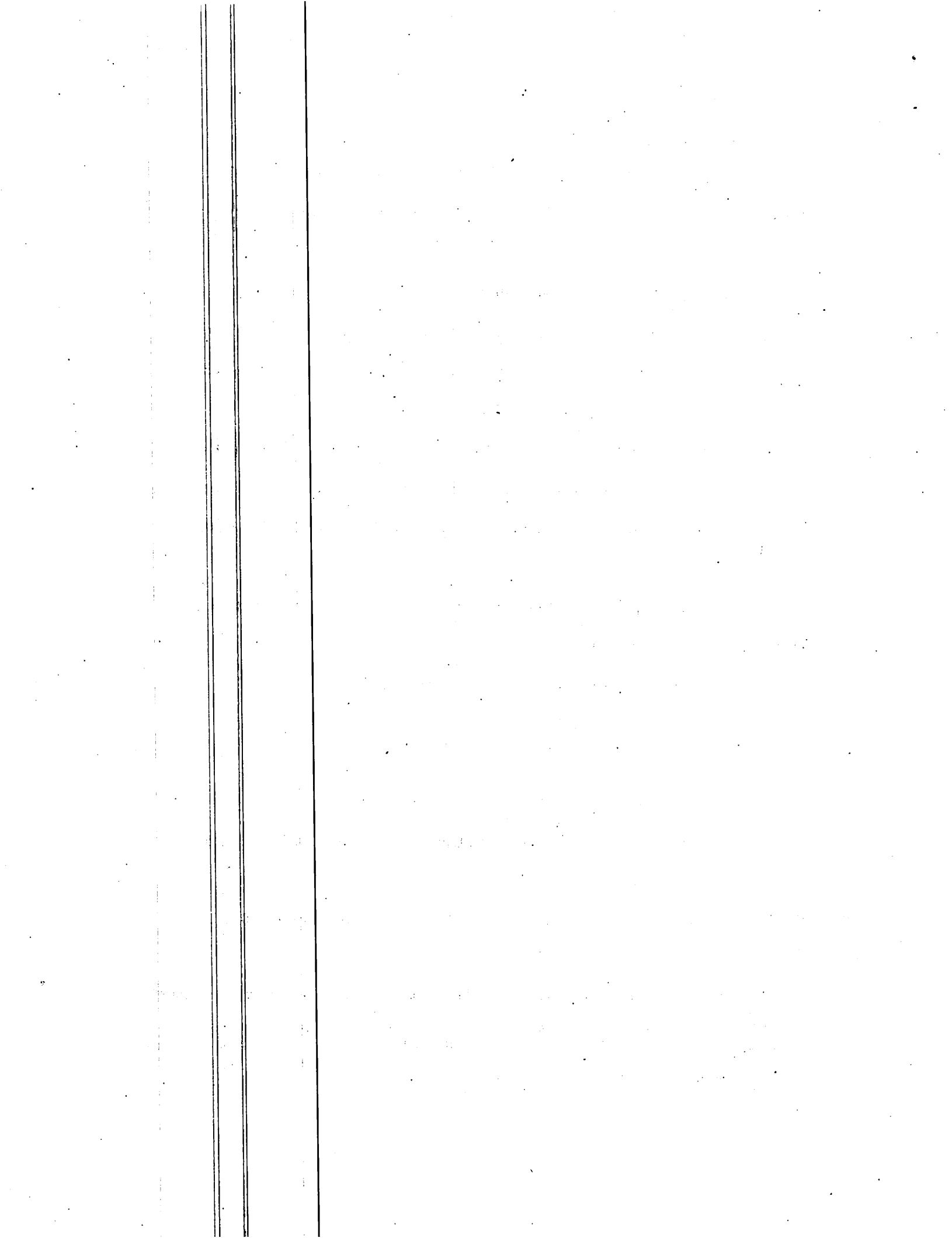
I admitted the following exhibits offered by the Claimant:

- CL Ex. 1 Architectural Plans completed by Stephen L. White, approved June 25, 2020
- CL Ex. 2 Contract, April 14, 2020
- CL Ex. 3 Emails between Mrs. Littlejohn and Anthony P. Morris, June 12, 2020

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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.

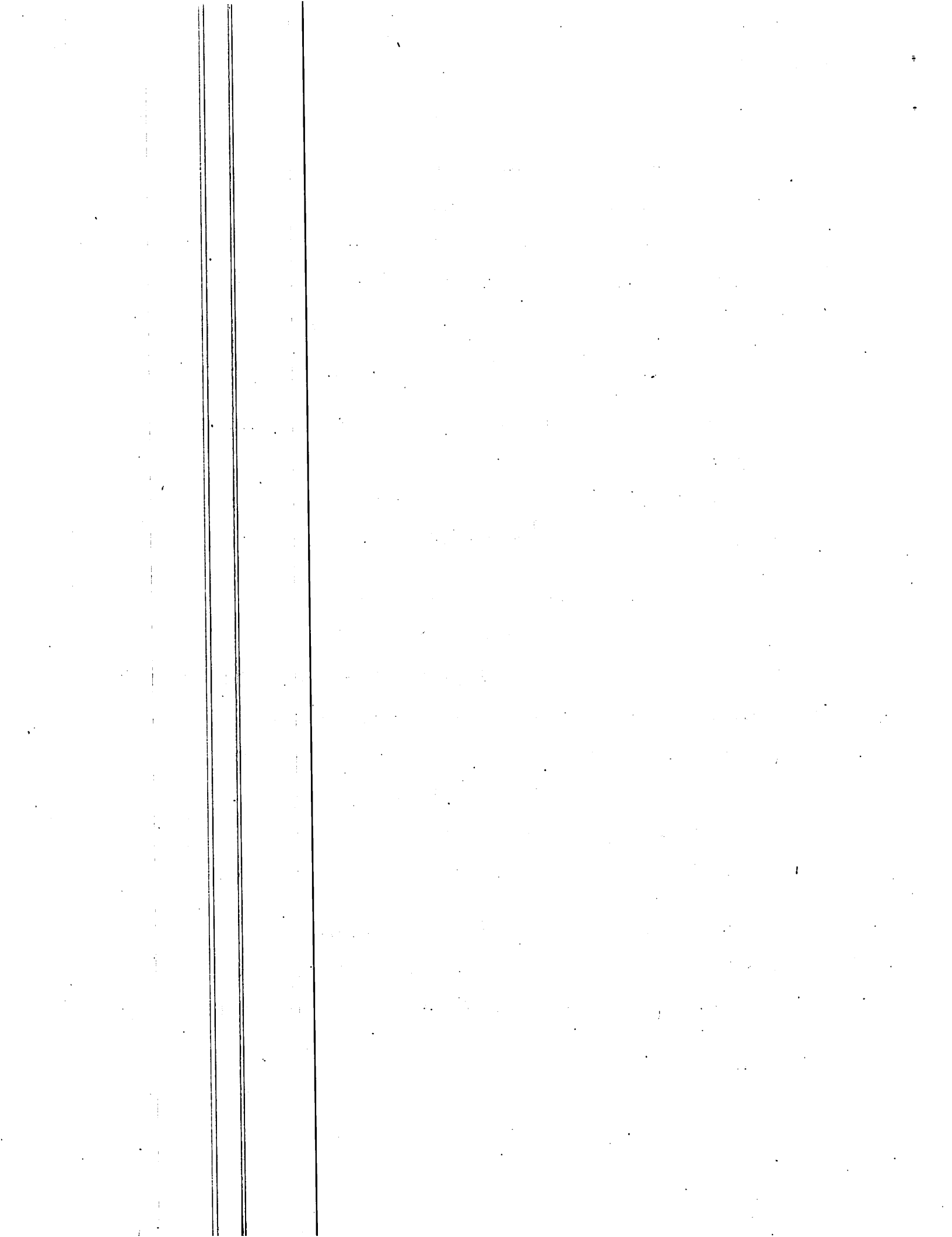
<sup>2</sup> March 3, 2022, Hilary Baker Assistant Attorney General, represented the Fund. On that date, I addressed a preliminary matter concerning the Respondent's failure to respond to a subpoena request and continued the hearing to April 21, 2022 to allow the Respondent additional time to respond to the subpoena request. Mr. Hart represented the Fund during the merits hearing on April 21 and June 13, 2022.



- CL Ex. 3B Emails between Michael Middledorf and Anthony P. Morris, June 23, 2020
- CL Ex. 4 DPIE<sup>3</sup> Payment Receipt, June 24, 2020
- CL Ex. 4A Prince George's County Building Permit, June 26, 2020
- CL Ex. 5 DPIE Inspection printout, June 30, 2020 through February 26, 2021
- CL Ex. 6 Email between Mr. Middledorf and the Claimants, July 7, 2020
- CL Ex. 7 Emails between Mr. Middledorf and the Claimants, July 3, 2020 to August 6, 2020
- CL Ex. 7A Emails between Mr. Middledorf and the Claimants, August 6 and 7, 2020
- CL Ex. 7B Email from Mr. Middledorf to the Claimants, August 13, 2020
- CL Ex. 8 Emails between Mr. Middledorf and the Claimants, September 18, 2020
- CL Ex. 8A Emails between Mr. Middledorf and the Claimants, September 30 and October 1, 2020
- CL Ex. 9 Letter from Kenneth Reed, September 21, 2020
- CL Ex. 10 DPIE Correction Order, September 25, 2020
- CL Ex. 10A Emails between Mr. Middledorf and DPIE, October 9, 2020 to October 13, 2020
- CL Ex. 11 Roof framing plan created by David Wallace, October 3, 2020
- CL Ex. 11A Emails between DPIE and Mrs. Littlejohn, October 6 and 7, 2020
- CL Ex. 12 Emails between Mr. Middledorf and DPIE, October 9, 2020
- CL Ex. 12A Emails between Mr. Middledorf and DPIE, October 9, 2020
- CL Ex. 13 Emails between Mr. Middledorf and the Claimants, October 23, 2020 to October 26, 2020.
- CL Ex. 14 Email from Mr. Middledorf to the Claimants, November 2, 2020
- CL Ex. 14A Email from the Claimants to Mr. Middledorf, November 15, 2020
- CL Ex. 14B Emails between Mr. Middledorf and the Claimants, November 13, 2020 to November 15, 2020.

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<sup>3</sup> Department of Permitting, Inspections and Enforcement.

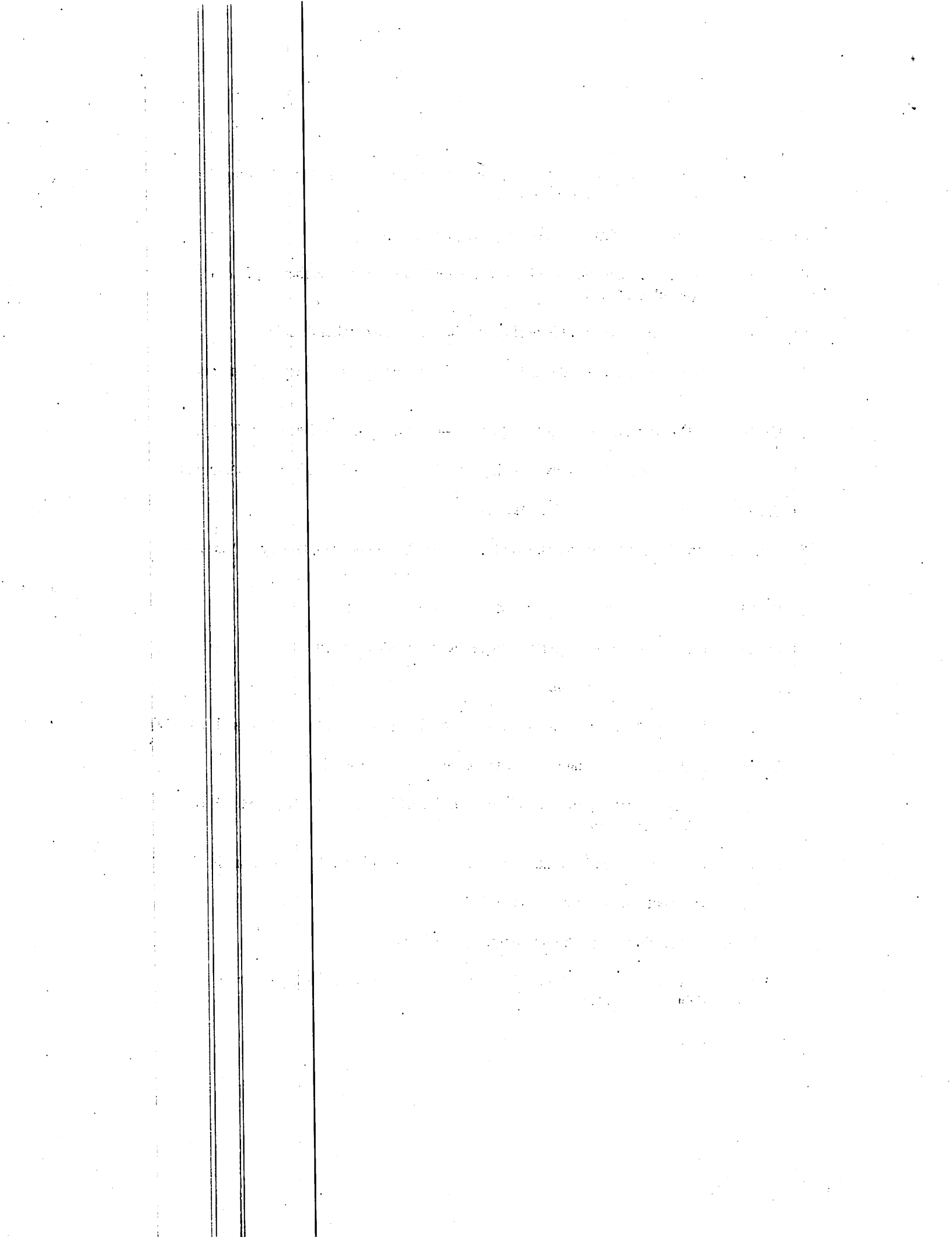


- CL Ex. 15 Letter from Social & Structure Consulting, Inc., addressed to "Building Plan Reviewer," November 20, 2020
- CL Ex. 15A Partial Remedial Roof Framing Plan, November 12, 2020
- CL Ex. 16 Emails between Mr. Middledorf and the Claimants, November 13, 2020 to November 15, 2020.
- CL Ex. 17 Emails from Mr. Middledorf to the Claimants, December 8, 2020
- CL Ex. 18 Email from Mr. Middledorf to the Claimants and William Moran, December 11, 2020
- CL Ex. 19 C D Construction & Capitol Wood Works, Inc. Contract, December 23, 2022
- CL Ex. 19A Prince George's County Building Permit, December 5, 2020, with attachment
- CL Ex. 20 Check log, undated with attachments
- CL. Ex. 20A Receipt and Check Logs, undated; packet of various receipts for purchases made by the Claimants
- CL Ex. 21 Home Improvement Claim and Claim Form, undated
- CL Ex. 22 Nine photos of work performed by the Respondent, undated
- CL Ex. 23 Project Work Schedule
- CL Ex. 24 Letter to the Respondent and Mr. Middledorf from the Claimants, March 10, 2021
- CL Ex. 24A Letter to the Claimants from the Respondent, April 12; 2021
- CL Ex. 24B Letter to the Respondent and Mr. Middledorf from the Claimants, March 10, 2021, May 6, 2021
- CL Ex. 25 Letter from the MHIC addressed to "To Whom It May Concern," March 25, 2022

The Respondent did not offer any exhibits

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Letter from Administrative Law Judge Jennifer A. Nappier to the parties, February 18, 2022
- Fund Ex. 2 Hearing Order, October 22, 2021





- Fund Ex. 3 Home Improvement Claim Form, July 30, 2021
- Fund Ex. 4 Department I.D. Registration, printed March 1, 2022
- Fund Ex. 5 Notice of Hearing, March 9, 2022

Testimony

The Claimants each testified and presented the testimony of Omobola Okoya, DPIE Area Supervisor for Northern Area Construction Standards for Prince George's County, DPIE.

The Respondent presented the testimony of Michael Middledorf, Senior Project Manager for the Respondent.

The Fund did not present any witnesses.

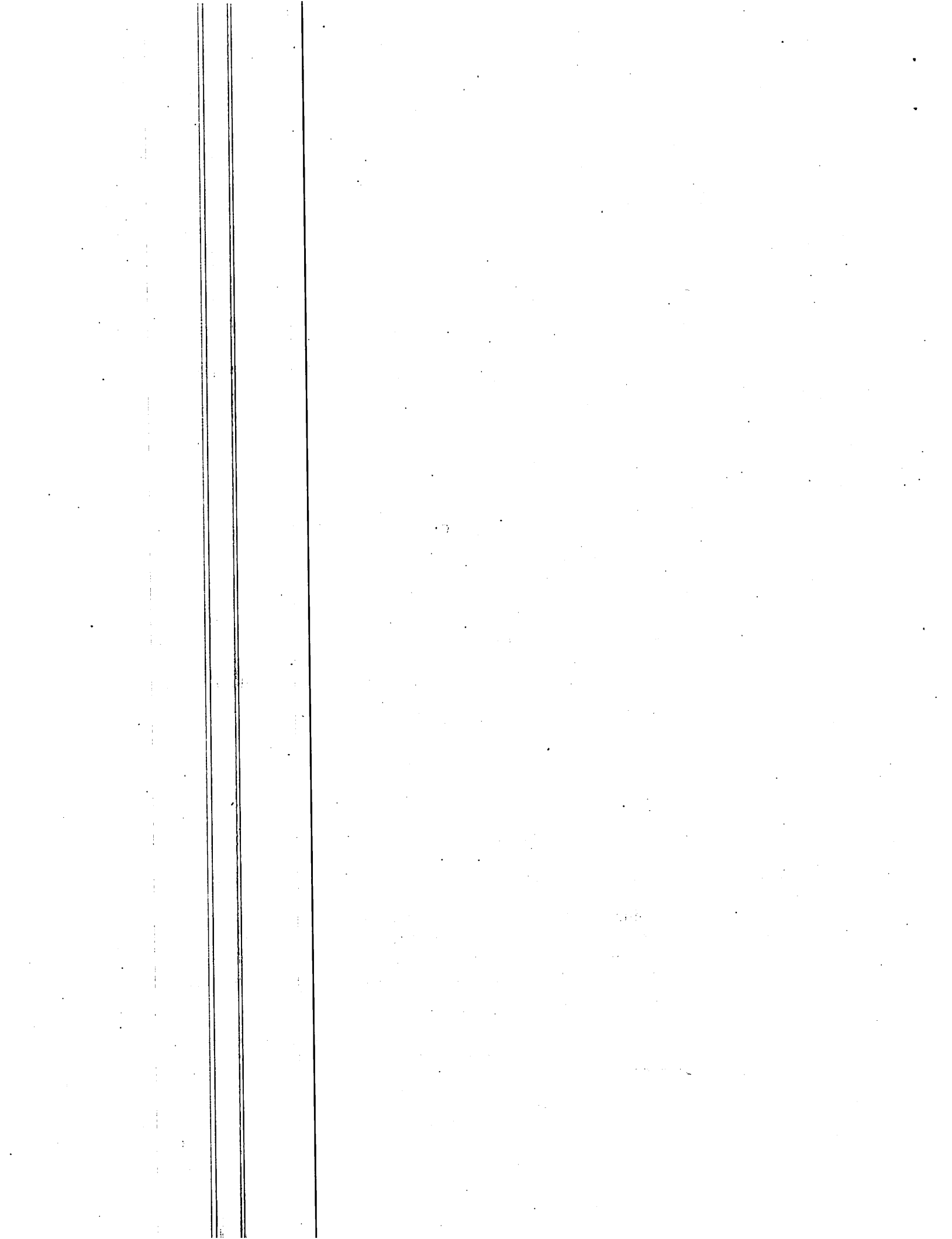
**PROPOSED FINDINGS OF FACT**

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 95416.
2. At all relevant times, the Claimants were the owners of a home located on South Osborne Road in Upper Marlboro, Maryland, which is their personal residence.
3. The Claimants do not own any other residences.
4. On April 14, 2020, the Claimants and the Respondent<sup>4</sup> entered into a contract for Construction of a 22-foot by 22-foot one-story addition to their home above an existing crawl space, consisting of a bedroom and bathroom (Contract). The Contract included the following:
  - Demolition and disposal of the rear sunroom and wooden deck
  - Concrete/concrete masonry unit foundation
  - Wood frame work with ½" plywood walls/ceilings and ¾" T/G flooring
  - Brick exterior walls and matching asphalt architectural grade shingles tied into the existing house

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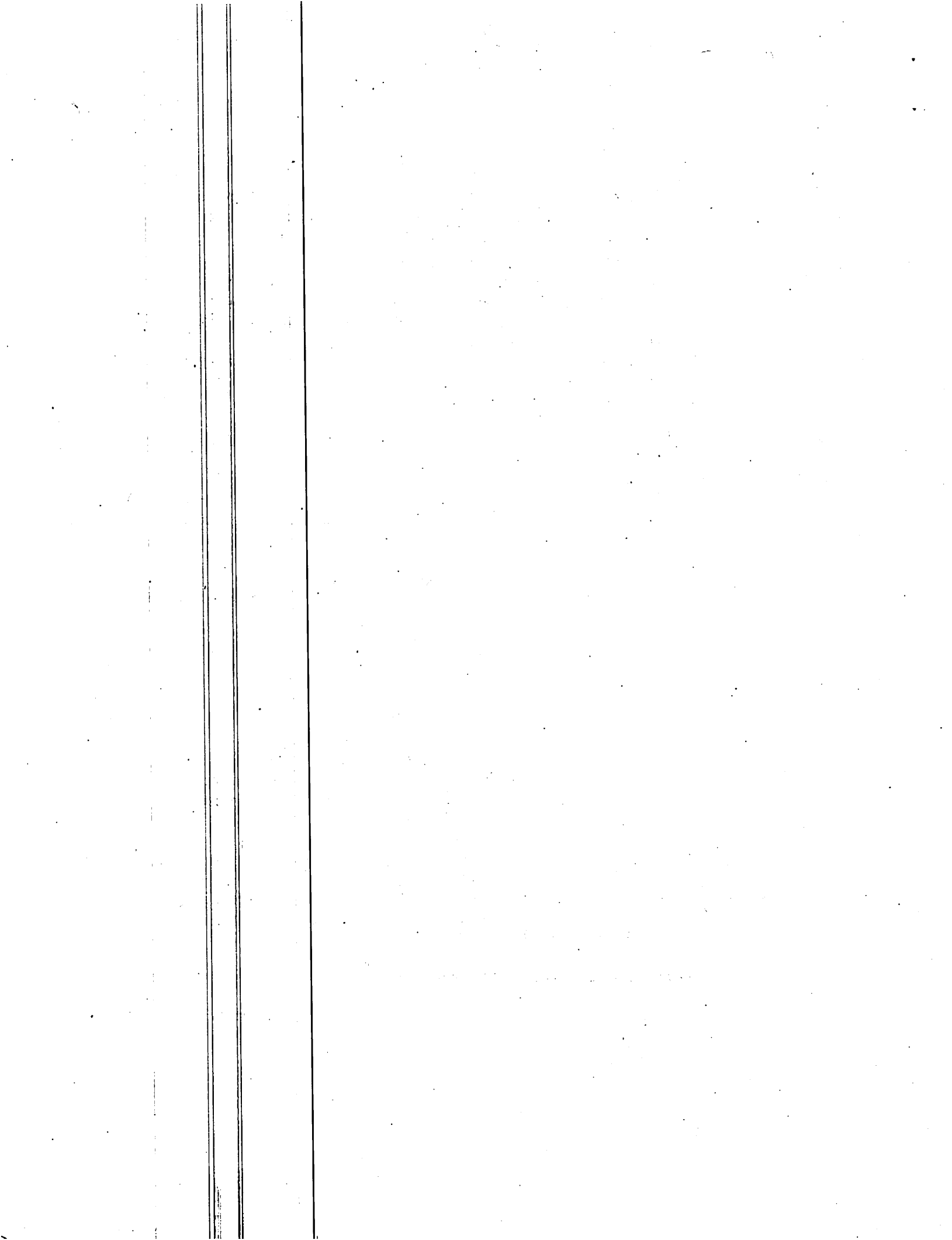
<sup>4</sup> Going forward, all references to the Respondent in the Findings of Fact are to the company, American Home and Hardscape, LLC and not to Mr. Kaufman as an individual. Mr. Kaufman was not personally involved with the Claimants' home improvement project.



- Tying all utilities in the existing services
- Interior finishes, including drywall ceilings and moldings to match the existing living space and paint, and ¾" T/G oak floors to match the existing floors.
- A double entry door into the bathroom (if the space is appropriate)
- Installation of two windows and one slider/French door
- Heating, Ventilation, and Air Conditioning (HVAC) consisting of a Mitsubishi mini-split system with three wall set units and an outdoor compressor
- The construction of one area to become passthrough or doorframe opening to access the new addition from the existing house
- A concrete patio to tie into the existing back porch and beyond the sliding/French doors (approximately 300 square feet)
- A v-type ceiling in the master bedroom

The total allowance for purchase of bathroom materials, electrical fixtures, two windows, French doors and flooring was \$8,480.00.

5. The Contract provided that the Claimants were to hire an architect and pay for all architectural fees.
6. The original agreed-upon Contract price was \$108,650.00. This price included all labor, materials, permits, and inspections.
7. The Contract set forth a payment schedule as follows:
  - \$16,300.00 due upon execution of the Contract
  - \$21,700.00 due after demolition/disposal and approval of the permit
  - \$27,200.00 due after completion and inspection of the foundation
  - \$27,200.00 due after construction of the shell and the exterior were complete
  - \$16,250.00 final payment due after completion of the project, final inspections, and final approval.
8. The Contract included an arbitration clause, stating that the Claimants and Respondent agreed that any and all disputes, claims or controversies arising from the Contract would be resolved through arbitration, at the sole discretion of the Respondent.
9. The arbitration clause does not contain a disclosure that under section 8-405 of the Business Regulations Article, a claim against the Fund shall be stayed until completion of any mandatory arbitration.



10. The Contract stated that demolition would occur from April 29, 2020 to May 15, 2020. The Contract further stated that the Respondent anticipated the project would be completed within ten to twelve weeks of receiving county approval for the construction.

11. All of the Claimant's dealings with the Respondent occurred through the Respondent's Senior Project Manager, Michael Middledorf.

12. The Claimants paid the Respondent a total of \$59,826.48, as follows:

- \$16,300.00 on April 14, 2020
- \$21,700.00 on June 16, 2020
- \$21,826.48 on July 17, 2020

Additionally, on June 24, 2020, the Claimants paid \$995.05 for a permit on behalf of the Respondent.

13. The Claimants paid a total amount of \$60,821.53 to and on behalf of the Respondent, in furtherance of the Contract.

14. On a date not in the record, the Claimants obtained an architectural plan for the project from Stephen L. White of Residential Architectural Services, and provided the plan to Mr. Middledorf.

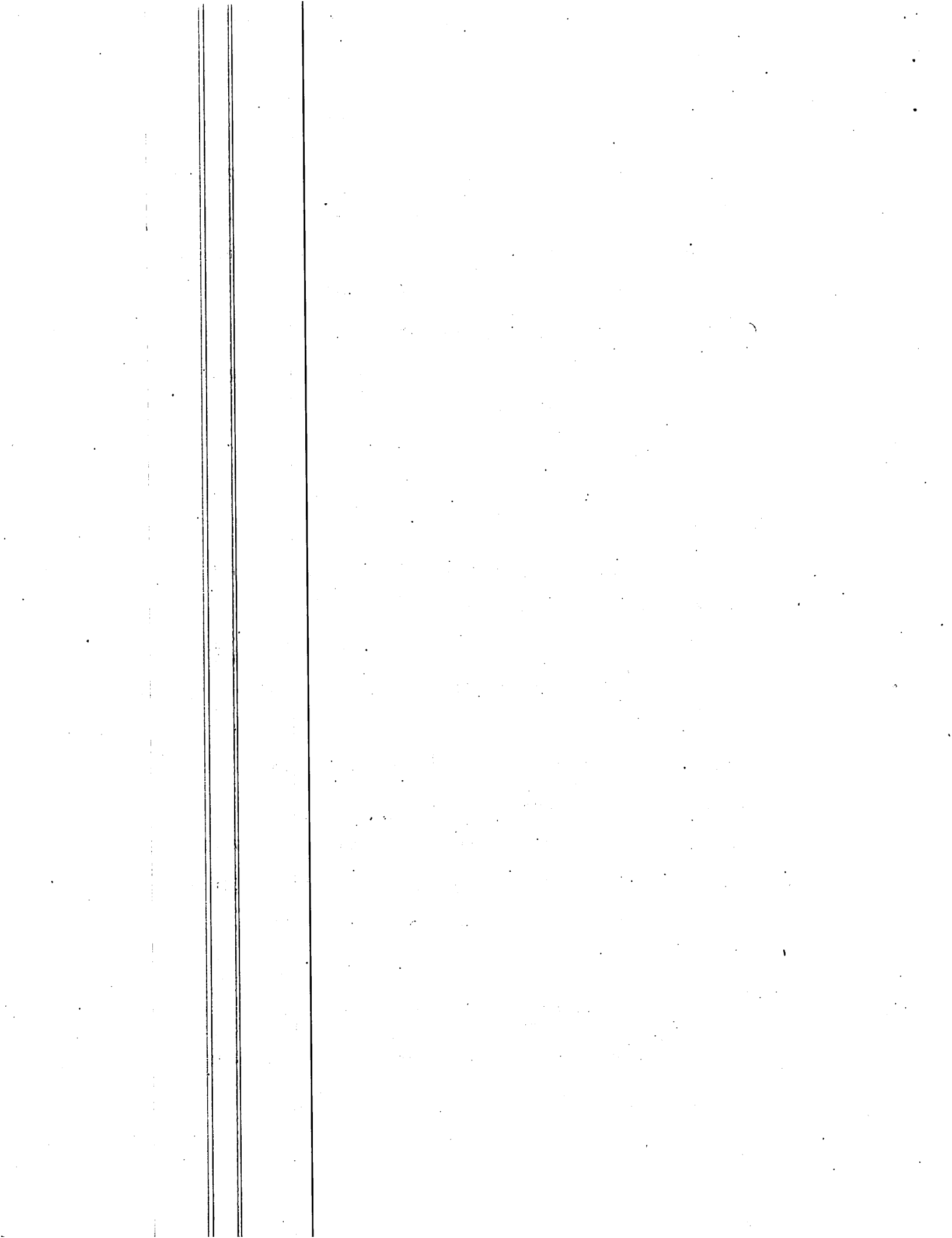
15. On or about June 16, 2020, the Respondent completed demolition of the sunroom and deck, and disposal of the demolished materials.

16. The Respondent performed further work on the project on June 17 and 18, 2020.

17. On June 26, 2020, DPIE<sup>5</sup> approved the permit for the project based upon the architectural plans created by Residential Architectural Services.

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<sup>5</sup> "DPIE provides inspection oversight of construction, development and grading activities for residential and commercial construction and renovations to verify Code compliance" in Prince George's County, Maryland. *Permitting, Inspections and Enforcement*, PRINCEGEORGESCOUNTYMD.GOV, <https://www.princegeorgescountymd.gov/1024/Permitting-Inspections-and-Enforcement>, last visited September 9, 2022.



18. While constructing the addition to the Claimant's home and in an effort to save time, Mr. Middledorf significantly deviated from the requirements of the approved architectural plan without first submitting a revised plan to DPIE for approval. Mr. Middledorf made changes to the foundation layout, floor structural system, wall framing details, wall bracing details, and roof construction details.

19. On a date not in the record, the Claimants asked Mr. Middledorf if the Respondent could construct a roof that would accommodate a vaulted ceiling, instead of the roof design provided for in the architectural plan. Mr. Middledorf stated that the Respondent could build a V-shaped roof, under the belief that it was acceptable to change the plan in this manner without seeking further approval of the plan, so long as the roof was built to code.

20. Mr. Middledorf deviated from the plan for floor framing because the type of beam specified in the plans was unavailable.

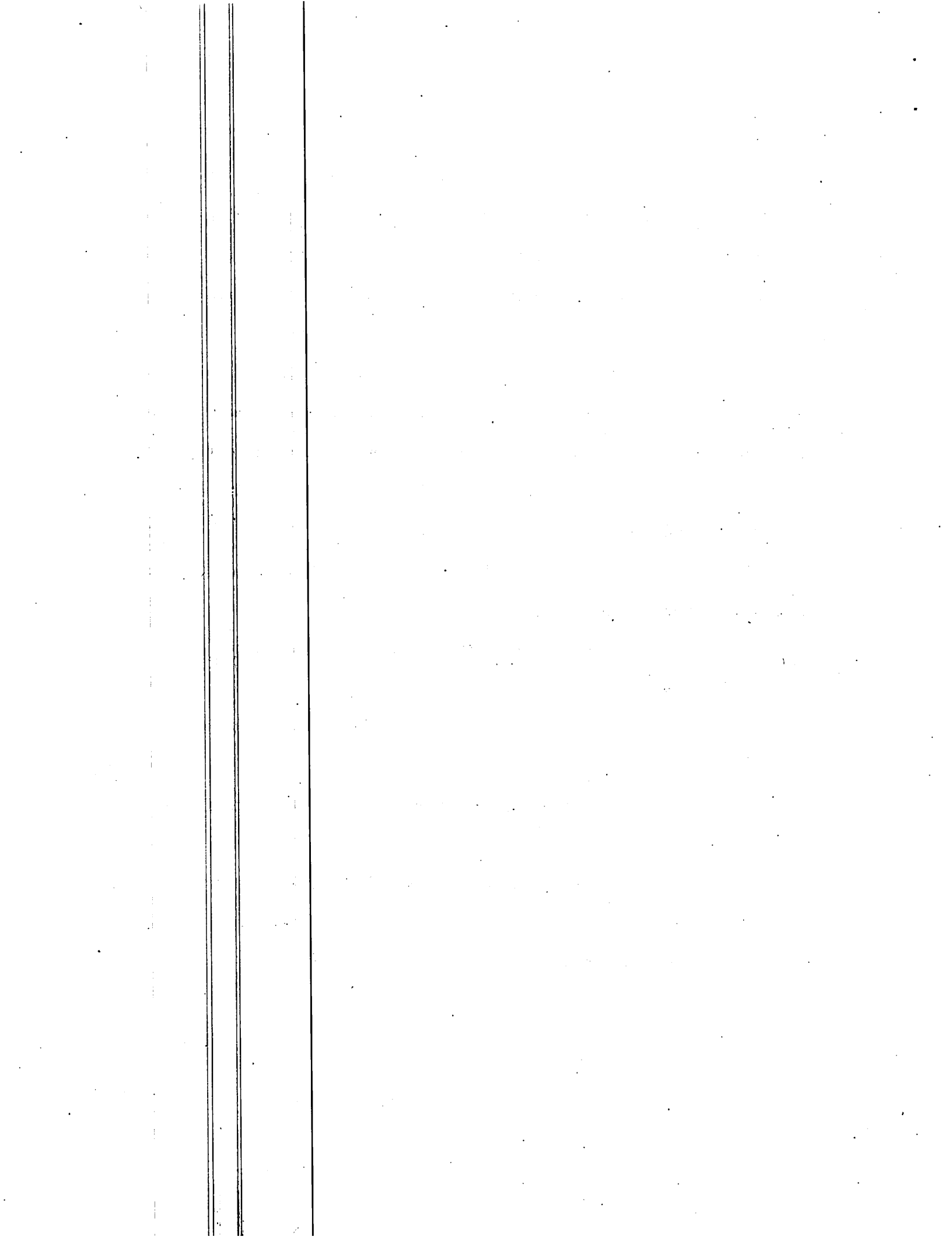
21. On June 30, 2020, a DPIE inspector inspected the foundation wall and masonry. The work did not pass inspection.

22. On July 1, 2020, a DPIE inspector inspected the foundation and spread footing. The work passed inspection.

23. The Respondent performed work on numerous days during the latter half of July 2020.

24. On July 17, 2020, the foundation for the addition passed a DPIE inspection.

25. July 29, 2020 an inspector from DPIE inspected the wood framing and determined that an engineer's certification would be required for approval.





26. In early August 2020, Mr. Middledorf informed the Claimants that he was waiting for his architect to revise the plans for submission to DPIE and that the Respondent would pay for the new plans since Mr. Middledorf had deviated from the plans in an effort to save time.

27. The Respondent performed additional work on the project in late August 2020 and throughout September 2020.

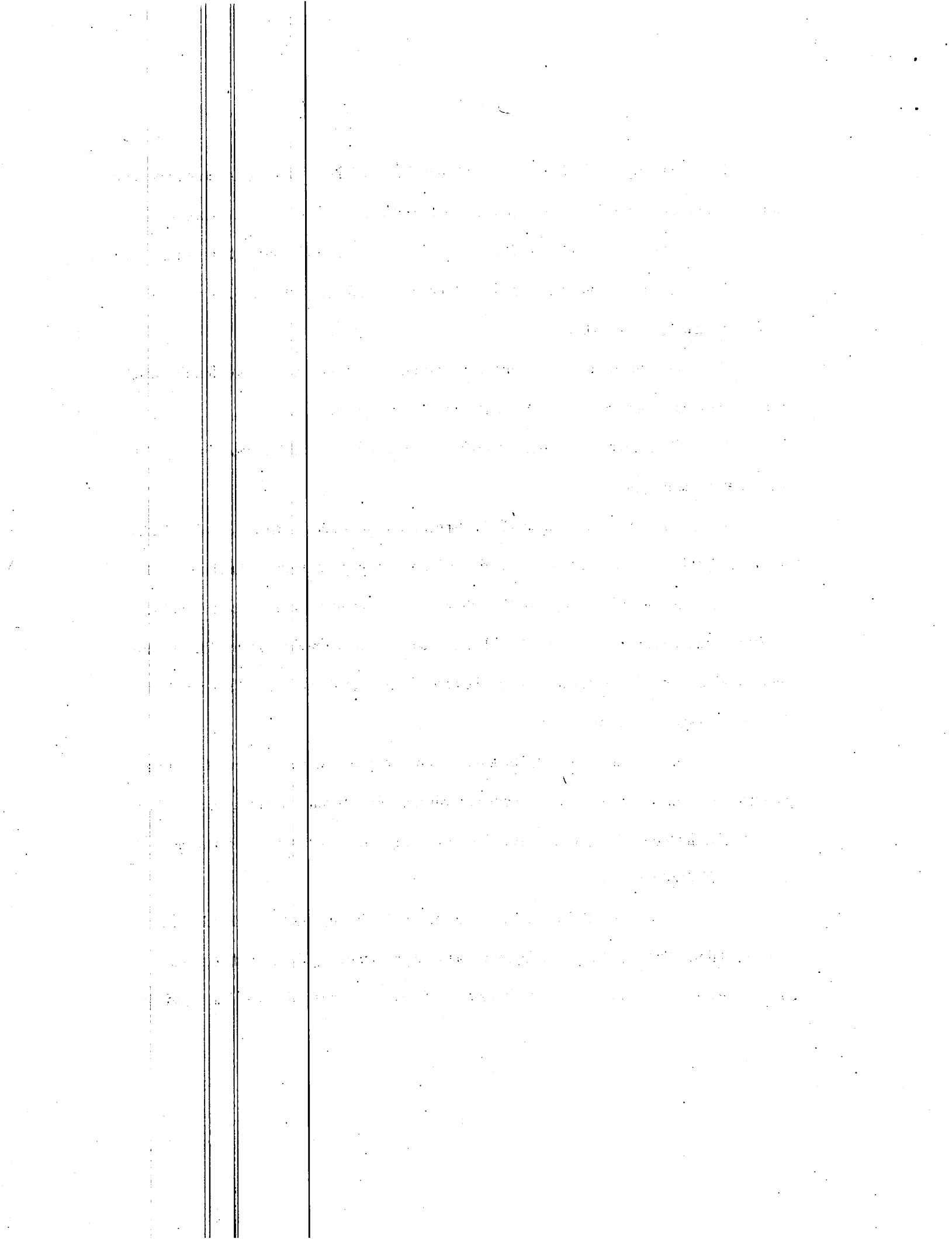
28. On August 26, 2020, an inspector from DPIE reinspected the wood framing and again determined that an engineer's certification would be required for approval.

29. On September 23, 2020, two DPIE inspectors reinspected the wood framing. The work was partially approved.

30. On September 25, 2020, DPIE inspector Edward Scott issued a Stop Work Order for the project because the Respondent failed to adhere to the approved architectural design with respect to the framing and roofing. The Stop Work Order stated that in order to pass inspection, the Respondent needed to provide DPIE with approved plans and/or revisions that reflected the actual work performed by the Respondent. The order further stated that certified structural drawings and specification were required.

31. On or about October 3, 2020, the Respondent received the revised roof framing plan from its engineer David Wallace. However, when the Respondent submitted the new plans to DPIE, Mr. Scott did not approve the revisions because he found they were inadequate and were not sufficiently detailed.

32. On October 9, 2020, a DPIE employee, Naresh Badu, sent Mr. Middledorf an email, explaining that any changes to approved plans require approval of a revised plan and DPIE inspectors will not approve any changes without approved plans. Mr. Badu instructed Mr.



Middledorf to submit all drawing of items that had changed since the architectural plan was originally approved.

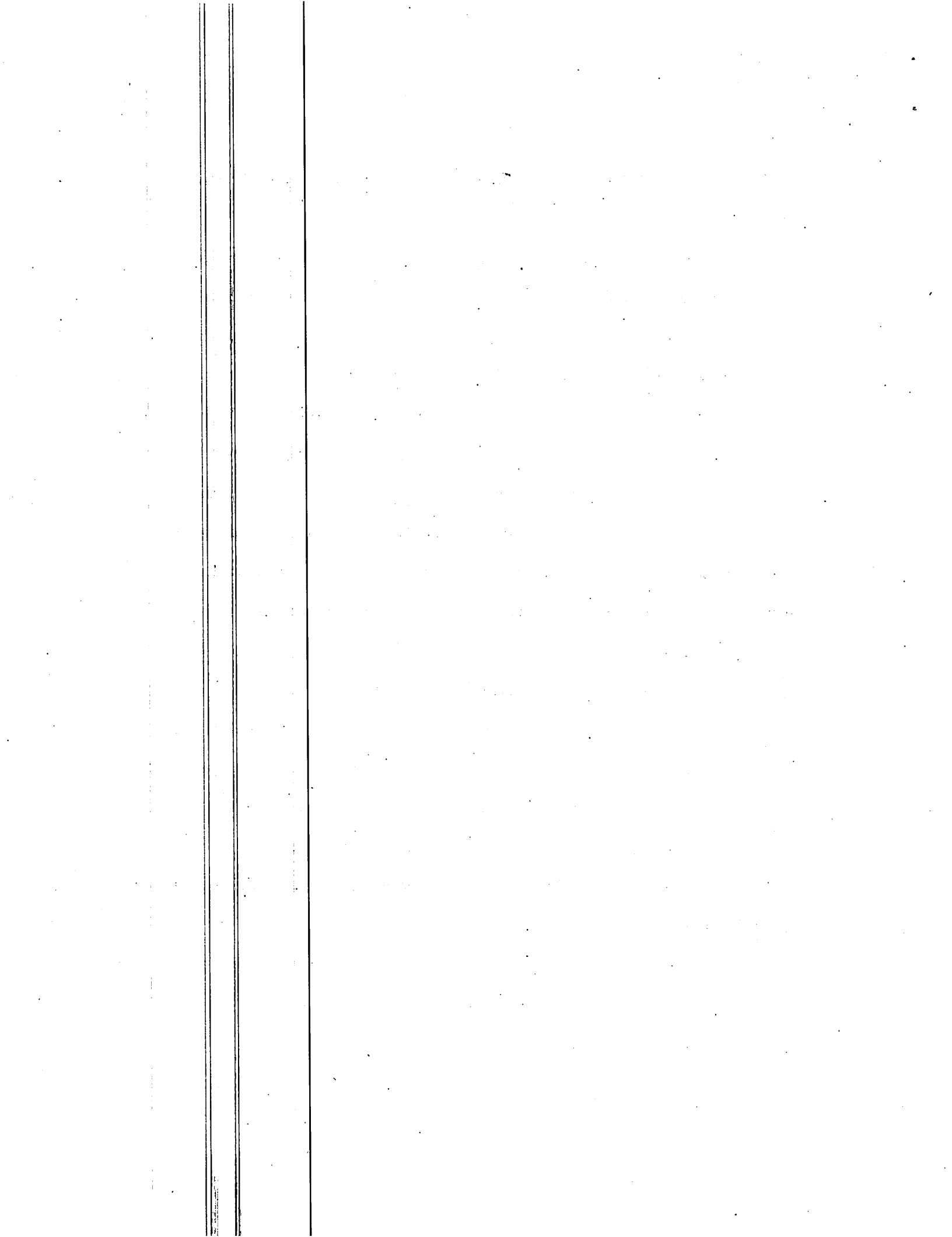
33. On October 13, 2020, DPIE Inspector Edward M. Scott emailed Mr. Middledorf and reiterated that the overwhelming issue with the project was the Respondent's lack of compliance with the County reviewed and approved plans and permits. He explained that he could not inspect and approve work that deviated from those plans.

34. Mr. Scott also informed Mr. Middledorf that the proper procedure when making changes to approved plans is to submit revisions for approval before initiating the work. He told Mr. Middledorf that the Respondent was required to revise the approved plans and permits for the Claimants' project by providing appropriate documentation, including a detailed engineer's verification and certification of the work installed and/or proposed. Until the Respondent complied, the only new work allowed to be performed was to secure the new addition from weather exposure by installing the roofing to code and wrapping the house, exterior windows, and doors. A lift stop work inspection was required before resuming work.

35. On October 23, 2022, Mr. Littlejohn emailed Mr. Middledorf and requested that the Respondent dismantle the roof frame and side walls and reconstruct them in accordance with the approved plans, as to avoid further delays on the project. Mr. Middledorf replied and denied the Claimants' request, because "redoing the entire project [was] out of the question."

36. On November 2, 2020, Mr. Middledorf emailed the Claimants and provided three options for how to move forward:

- (1) The Respondent would submit revised plans the DPIE for review and then proceed with the job after the review as completed;



- (2) The Respondent would submit revised plans to the DPIE for review and request that DPIE allow the Respondent to proceed with brick work, installation of French doors and the framing for the bathroom while they waited for the plans to be approved; or
- (3) The Respondent and Claimants could meet and decide on a “possible separation of the customer/contractor” and discuss what ending the Contract would entail.

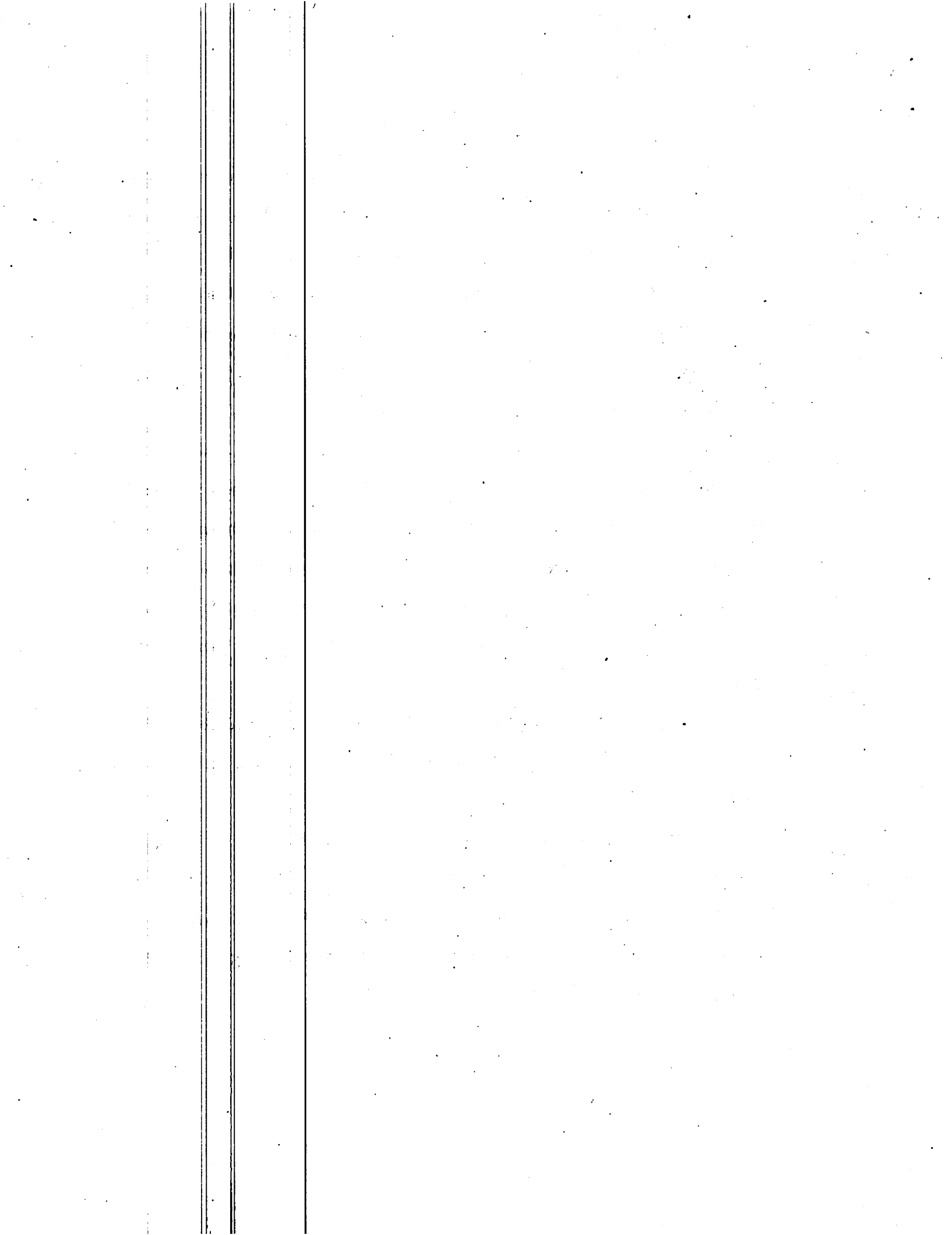
Mr. Middledorf went on to say that he only mentioned the possibility of ending the Contract because he felt that the Claimants had lost faith in him. (CL Ex. 14.)

37. Mr. Middledorf met with the Claimants on November 4, 2020. During that meeting, the Claimants asked again if the Respondent would be willing to reconstruct the roof in accordance with the approved plan and Mr. Middledorf indicated that the Respondent did not have the funds to dismantle the roof and rebuild it. The Claimants and Respondent agreed that they would attempt to negotiate ending the Contract after the Claimants obtained bids from other contractors to finish the job. Mr. Middledorf also stated he would look for a subcontractor to complete the job.

38. On or about November 20, 2020, the Claimants obtained a revised roof framing plan from Soil & Structure Consulting. They shared a copy of the design to Mr. Middledorf and submitted it to DPIE for approval.

39. DPIE approved the Soil & Structure Consulting plan on December 5, 2020 and lifted the Stop Work Order.

40. On December 10, 2020, the Claimants met with Mr. Middledorf and William Moran of Better Times America, LLC to discuss the possibility of Mr. Moran taking over and completing the work under the Contract.



41. At the conclusion of the December 10, 2020 meeting, the Claimants did not accept Mr. Middledorf's offer to have Mr. Moran complete the work because it was their understanding that Mr. Middledorf had asked Mr. Moran to complete the work for \$10,000.00, which they knew was not sufficient given the amount of work needed to complete the addition.

42. At 6:03 a.m. on December 11, 2020, Mr. Middledorf sent the Appellant and Mr. Moran an email to confirm that Mr. Moran would complete the remainder of the work under the Contract. The Claimants did not respond because they no longer trusted the Respondent and were frustrated with the delays in completing the addition to their home.

43. Mr. Moran was not satisfied with the amount of money Mr. Middledorf offered him to take over the Contract. On December 11, 2020, Mr. Moran called the Claimants and informed them that he could not complete the job for the amount that he was offered.

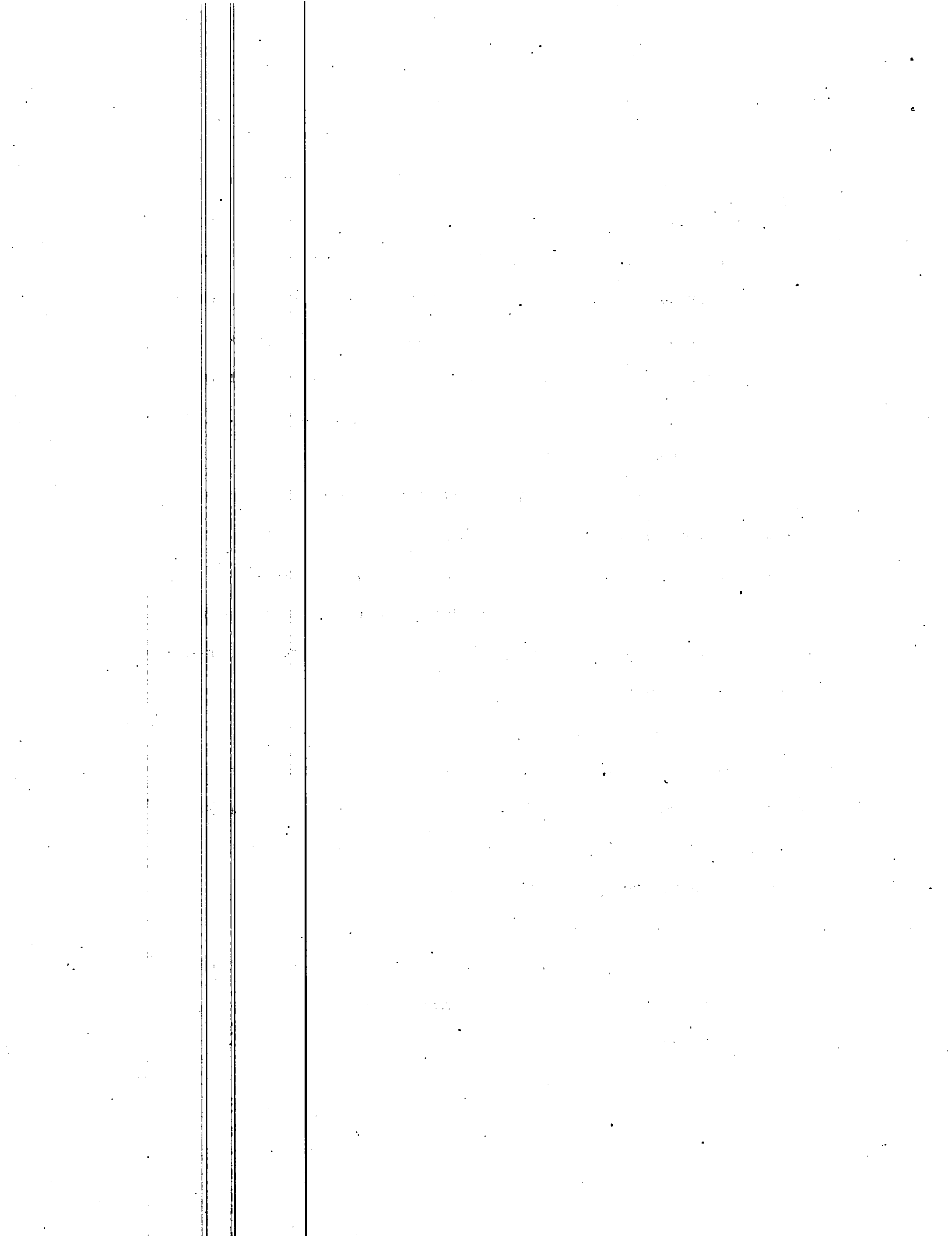
44. After the Respondent's final day on the job, a door and ceiling to the addition was out of plumb and the addition was left unsecured, without windows or doors, allowing rodents to enter the Claimants' home.

45. On December 23, 2020, the Claimants obtained an estimate from C D Construction & Capitol Wood Works, Inc. (C D Construction) for completing construction of the addition to their home in accordance with the Contract. The total estimated cost was \$90,000.00.

46. On December 23, 2020, the Claimants contracted with C D Construction to complete the addition to their home for the price of \$90,000.00.

47. C D Construction is a licensed contractor.

48. Neither Claimant is an officer or employee of the Respondent, related to the Respondent, or related to an officer or employee of the Respondent.





49. The Claimants have no other pending claims related to this matter and have not otherwise recovered for any losses connected to the Claim.

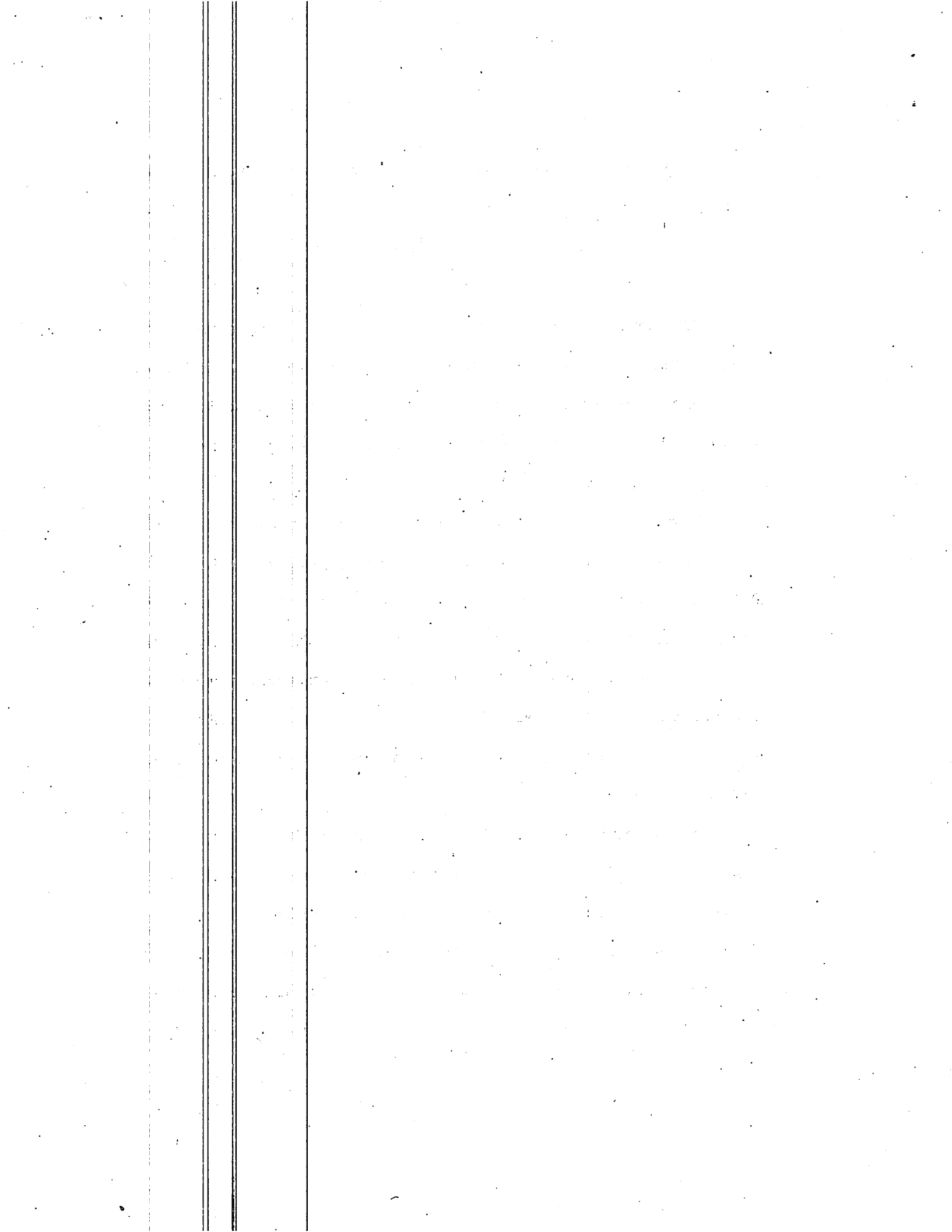
## DISCUSSION

### LEGAL FRAMEWORK

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); 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).

A claimant 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. 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).

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2); COMAR 09.08.01.25A. The Contract did not contain a mandatory arbitration



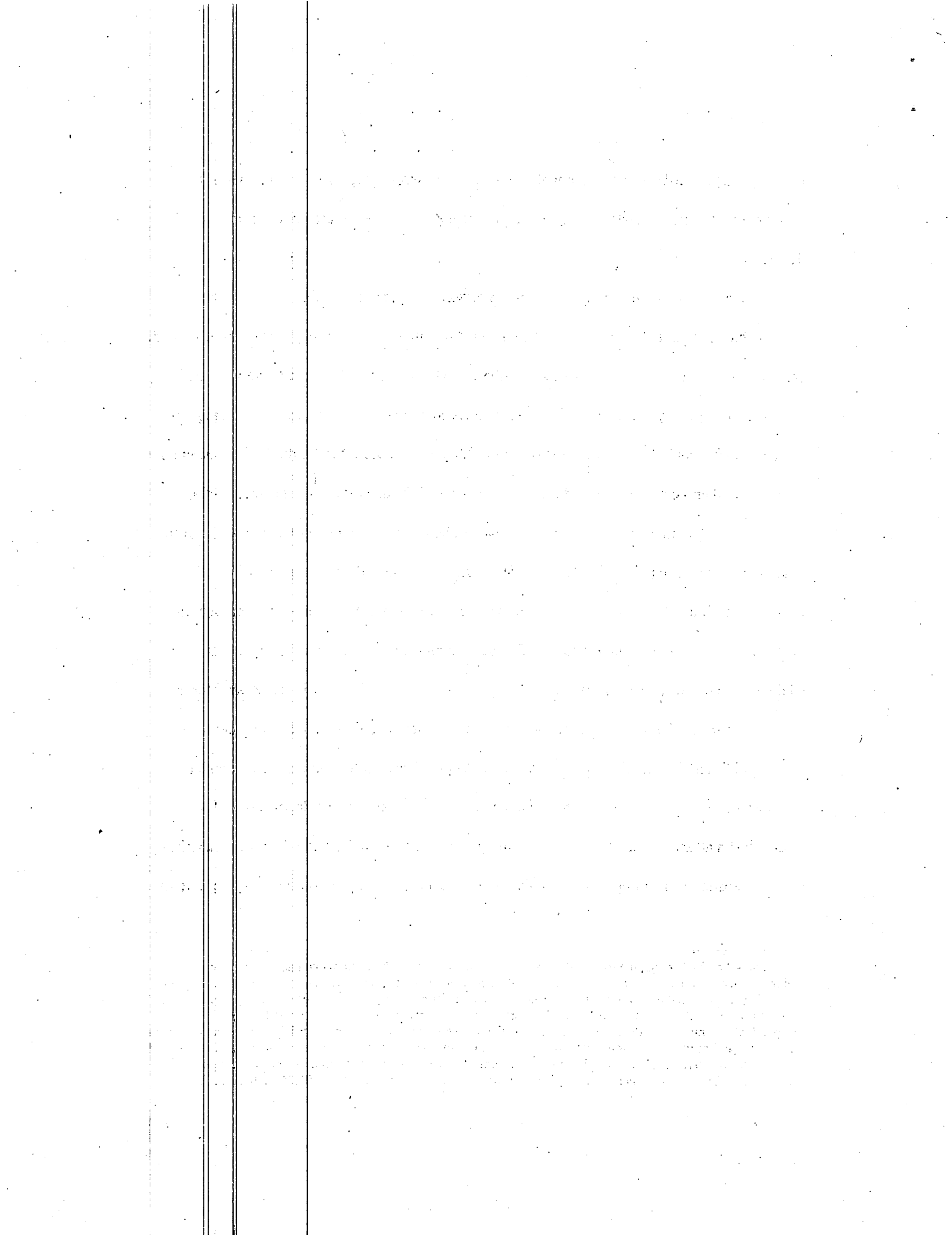
clause.<sup>6</sup> *Id.* §§ 8-405(c). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1).

I also find that the Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim when they decided that they would no longer communicate with Mr. Middeldorf in December 2020. *Id.* § 8-405(d). The Respondent's last contact with the Claimants before they contracted with another licensed contractor to have the outstanding work corrected and completed, was the December 11, 2020 email that he sent to the Claimants, in an effort to get them to agree to Mr. Moran taking over the job and completing the outstanding work. Mr. Littlejohn testified that he knew that Mr. Moran could not complete the work for the amount of money offered by the Respondent, so the Claimants did not accept the offer. The Claimants each testified that Mr. Moran called them the day after they met to inform them that he would not be able to complete the job for the amount offered by the Respondent. The Claimants were clearly reasonable in not accepting the offer, particularly because Mr. Moran himself confirmed that the Respondent had not offered him enough money to complete the job.

Additionally, the Claimants tolerated substantial delays in having the work completed over the course of almost six months. The majority of the delays were a direct result of Mr. Middeldorf's attempt to cut corners by deviating from the approved plan without first submitting revised plans to DPIE for approval and his failure to submit revised plans after being repeatedly

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<sup>6</sup> At the outset of the hearing, the Respondent raised the issue of whether the Contract contained a mandatory arbitration clause which would require that the claim against the Fund be stayed until completion of an arbitration proceeding. I ruled on the record that the arbitration clause set forth in the Contract is not *mandatory*, because the clause repeatedly states that the parties agreed to participate in arbitration "at the sole discretion of the [Respondent]." Thus, under the terms of this clause, the parties are only compelled to participate in arbitration if the Respondent desires to do so. Further, the arbitration clause does not include a disclosure that under section 8-405 of the Business Regulations Article, a claim against the Fund shall be stayed until completion of any mandatory arbitration, which is a requirement of a mandatory arbitration clause, pursuant to COMAR 09.08.01.25A. CL Ex. 2.

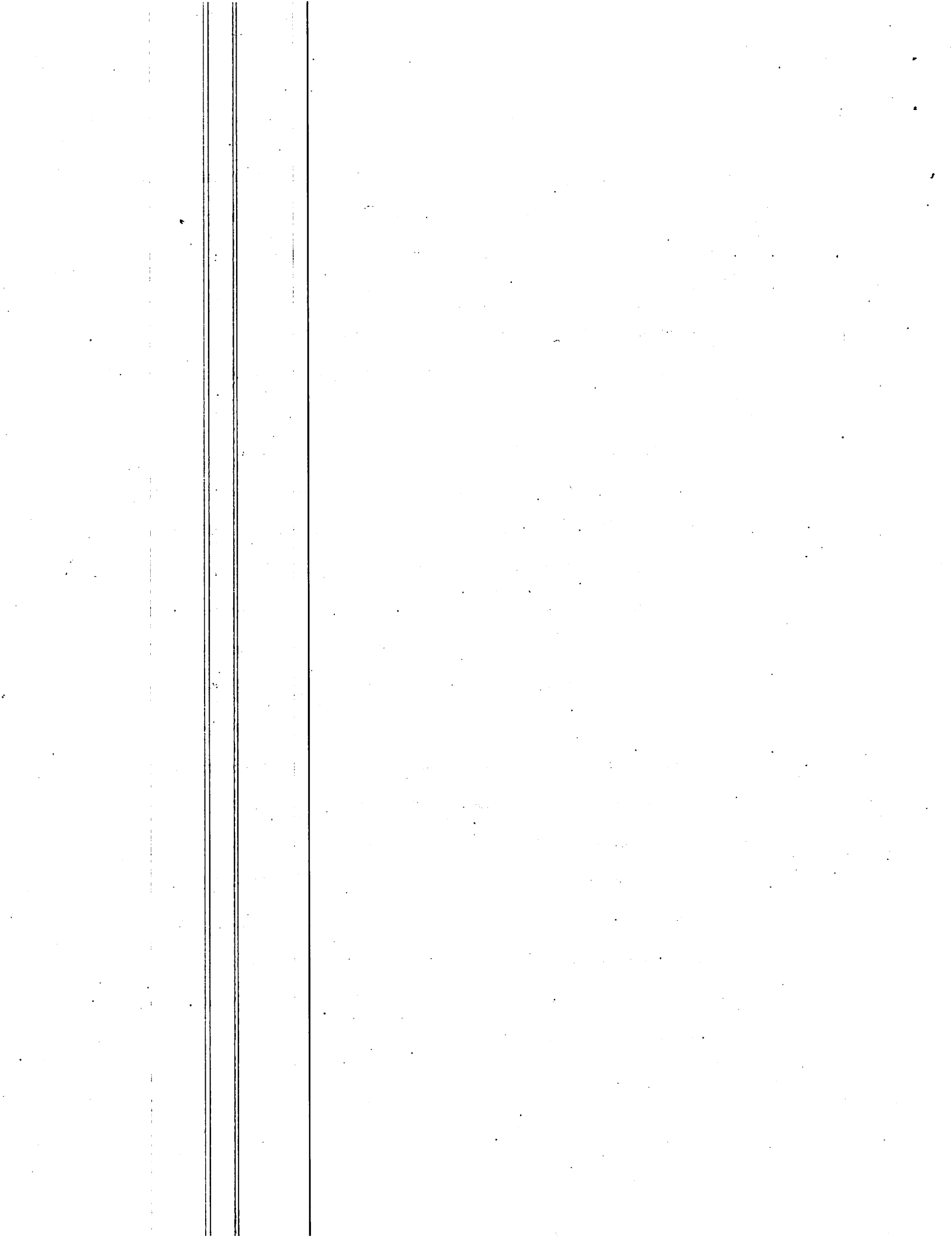


informed by DPIE that a revised plan was required in order to lift the Stop Work Order. Given these delays and the Claimants' consistent efforts to continue to work with the Respondent leading up to December 2020, I find the Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim when they decided that they would no longer communicate with Mr. Middledorf in December 2020. *Id.* § 8-405(d).

For the following reasons, I find that the Claimants have proven eligibility for compensation.

#### **THE MERITS OF THIS CASE**

It is undisputed that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants. The preponderance of the evidence establishes that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. It is undisputed that the Mr. Middledorf, on behalf of the Respondent, deviated from the approved architectural plans, resulting in an inability to get the work approved by DPIE so that the work could continue. Mr. Middledorf failed to submit an appropriate set of revised plans to DPIE, even after being advised that it was absolutely necessary in order to continue the work. Even if the work itself was structurally sound, I find that the failure of a contractor to perform work that is able to pass a county inspection amounts to inadequate and/or unworkmanlike home improvements. Further, the Claimants entered into evidence photographs demonstrating through the use of a level that after the Respondent's last day on the job, a door and the ceiling to the addition were out of plumb. CL Ex. 22. This is further evidence of unworkmanlike and inadequate work. It is also uncontested that the work was incomplete—there were no windows or doors, and the Tyvek Homewrap was still exposed. Essentially, the Respondent only completed a frame and roofing.



I thus find that the Claimant is eligible for compensation from the Fund. The Fund agrees. Having found eligibility for compensation I must now determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover.

MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work. The first formula is applicable when a contractor abandons the contract without performing any work. COMAR 09.08.02.03(a). In this case the Respondent performed some work, and thus the first formula is clearly not applicable here.

The second formula applies when "the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract...." COMAR 09.08.03.03B(3)(b). Under this circumstance, "the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." *Id.*

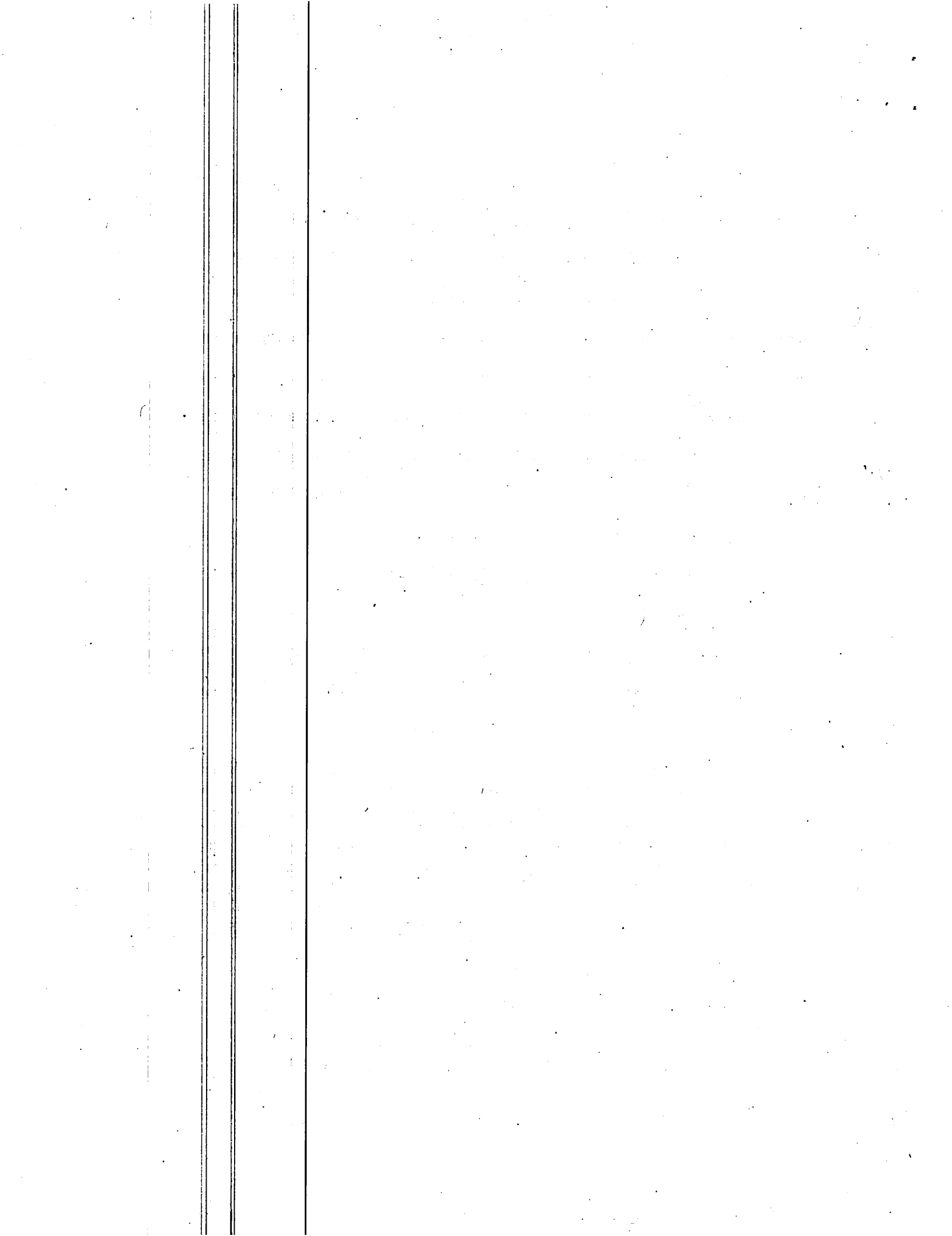
In this case, the Respondent performed some work under the Contract, and the Claimants retained other contractors to complete and remedy that work. Accordingly, the following formula appropriately measures the Claimants' actual loss:

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).

The Claimant's actual loss is as follows:

\$60,821.53 paid to and on behalf of the Respondent under the Contract  
+ \$90,000.00 estimate by C D Construction to complete the work per the Contract





\$150,821.53  
- 108,650.00 amount of the original contract  
\$ 42,171.53 proposed actual loss

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>7</sup> In this case, the Claimant's actual loss of \$42,171.53 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

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

I conclude that the Claimant has sustained an actual and compensable loss of \$42,171.53 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 \$30,000.00 from the Fund.

#### **RECOMMENDED ORDER**

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

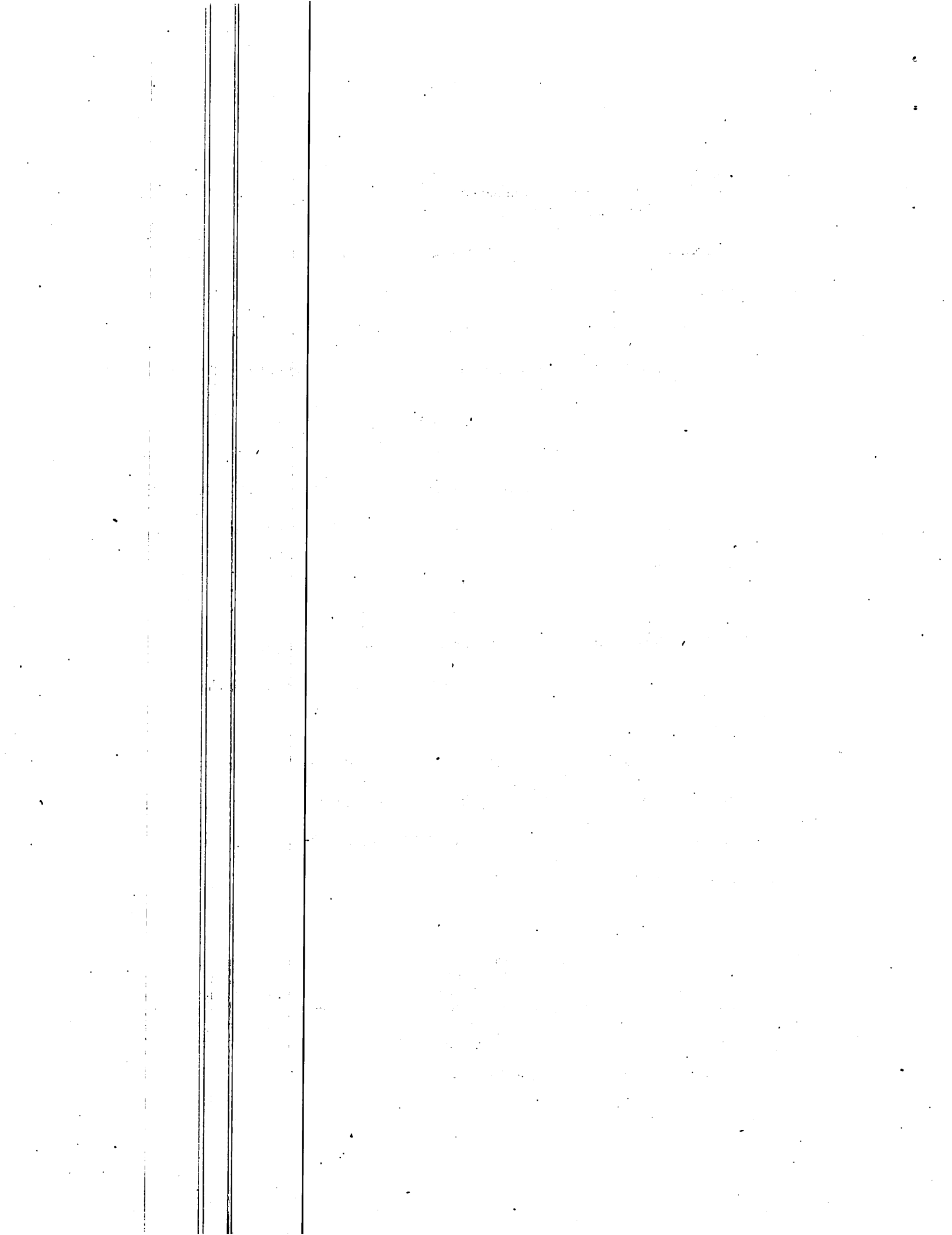
**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; and

**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>8</sup> and

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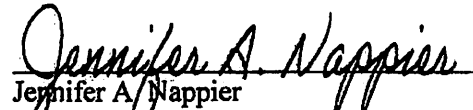
<sup>7</sup> H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

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

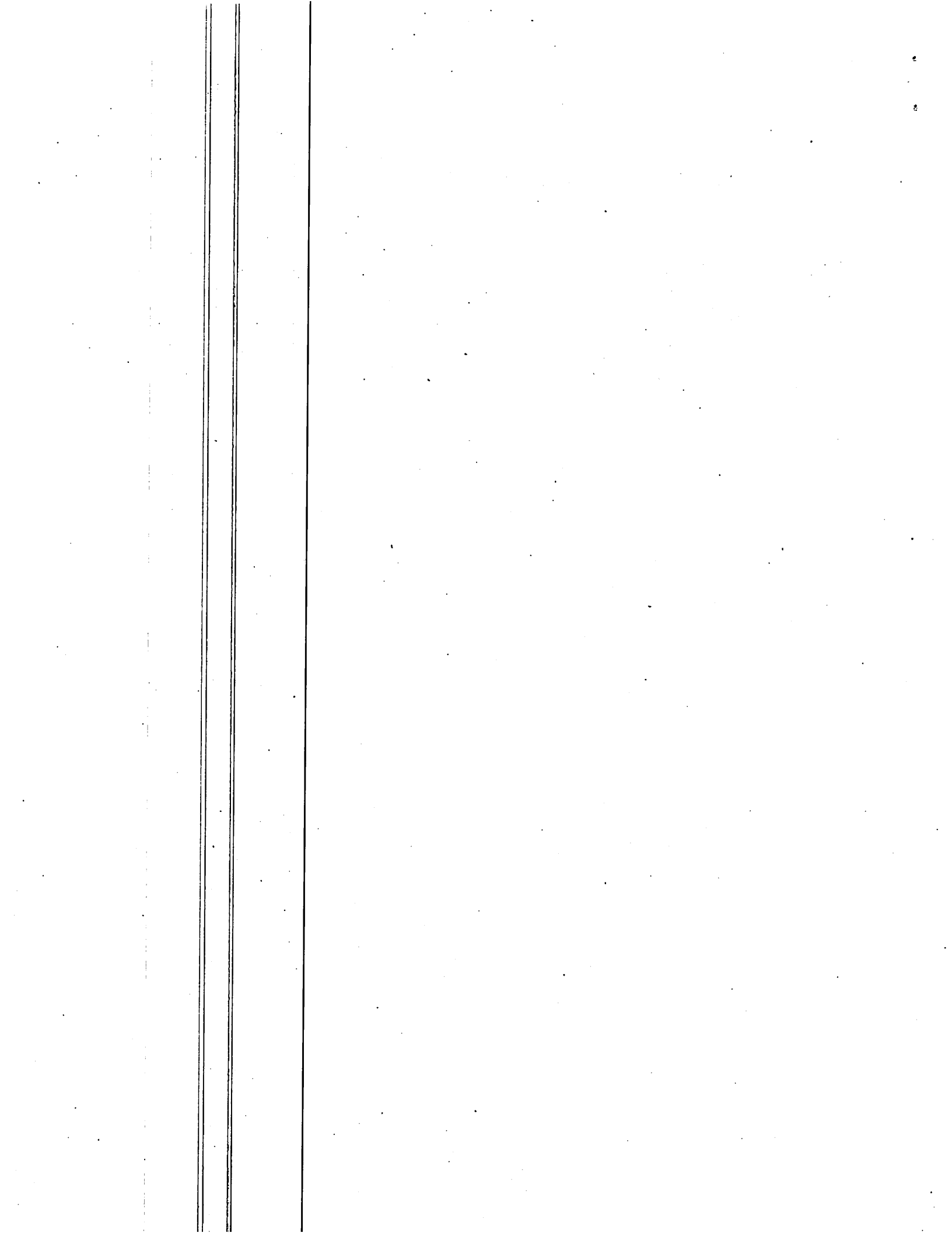


**ORDER** that the records and publications of the Maryland Home Improvement  
Commission reflect this decision.

September 12, 2022  
Date Decision Issued

  
Jennifer A. Nappier  
Administrative Law Judge

JAN/ja  
#200684



**PROPOSED ORDER**

***WHEREFORE, this 21<sup>st</sup> day of October, 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***

