

<p>IN THE MATTER OF THE CLAIM</p> <p>OF VIJALAH VANGARA,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF WILLIAM YOST,</p> <p>T/A W YOST CONTRACTING,</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER A. NAPIER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: LABOR-HIC-02-21-27304</p> <p>* MHIC No.: 21 (75) 495</p> <p>*</p> <p>*</p> <p>*</p>
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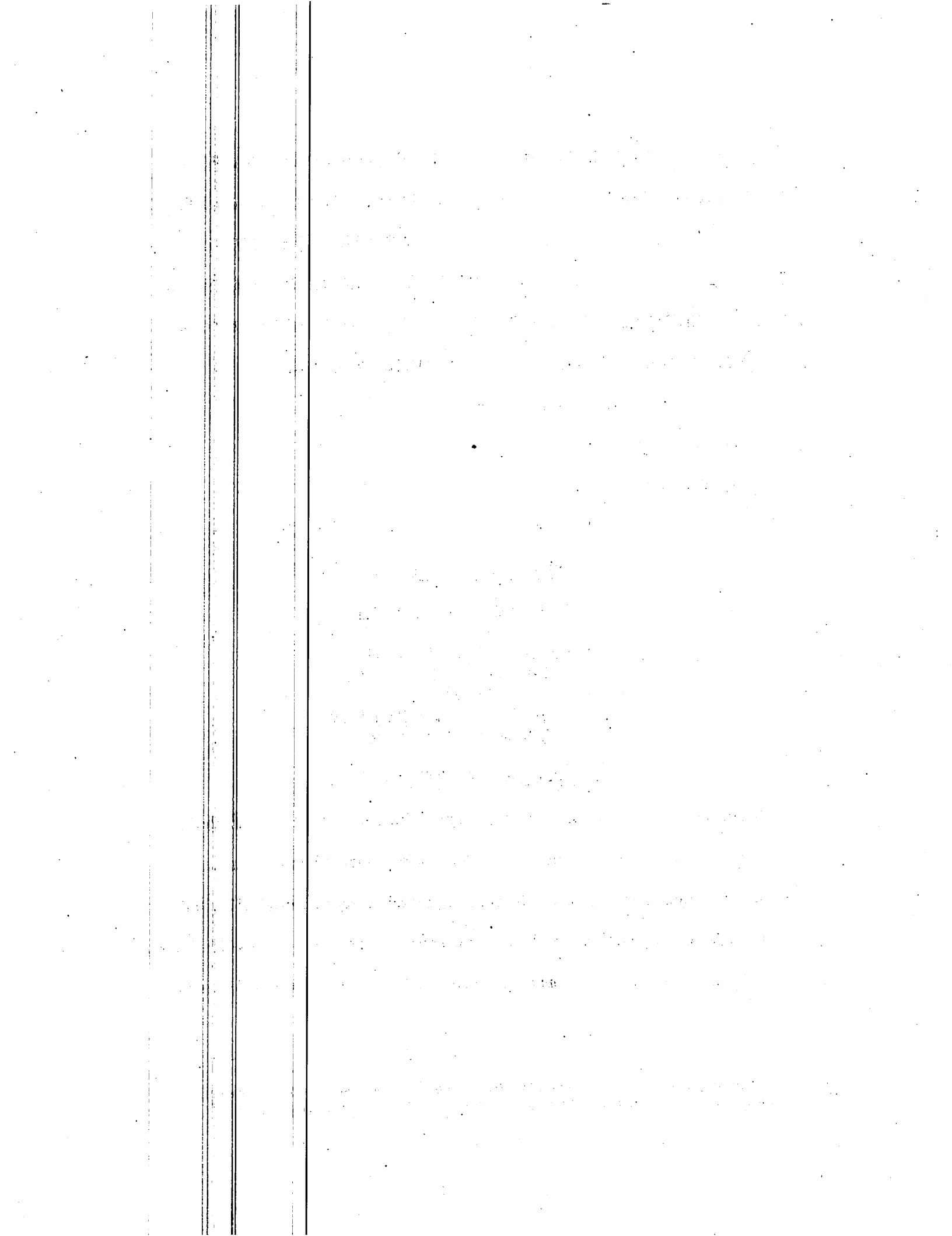
PROPOSED DECISION

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 August 16, 2021, Vijalah Vangara (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 \$15,527.00 for actual losses allegedly suffered as a result of a home improvement contract with William Yost, trading as W Yost Contracting (Respondent).¹ On November 17, 2021, the MHIC issued a

¹ Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015). (Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.)



Hearing Order on the Claim. On November 18, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On December 3, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by certified United States mail delivery to the Respondent's address on record with the OAH.² The Notice stated that a hearing was scheduled for January 21, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against [him]." The Notice was delivered to the Respondent on December 6, 2021.³

By a letter dated January 12, 2022, I informed the parties that due to the health and safety concerns associated with the COVID-19 pandemic, the hearing would be held remotely via Webex, instead of in person. The letter was sent by regular mail to the Respondent at his address of record and included detailed instructions for participating in the hearing via Webex. The Respondent did not notify the OAH of any change of mailing address and the United States Postal Service did not return the January 12, 2022 letter to the OAH.⁴

On January 21, 2022, I held a hearing by video.^{5,6} The Claimant represented himself. Andrew Brouwer, Assistant Attorney General, Department, represented the MHIC Fund. The Respondent failed to appear. The Respondent made no request for postponement prior to the date of the hearing.⁷

² Code of Maryland Regulations (COMAR) 09.08.03.03A(2); COMAR 28.02.01.05C(1).

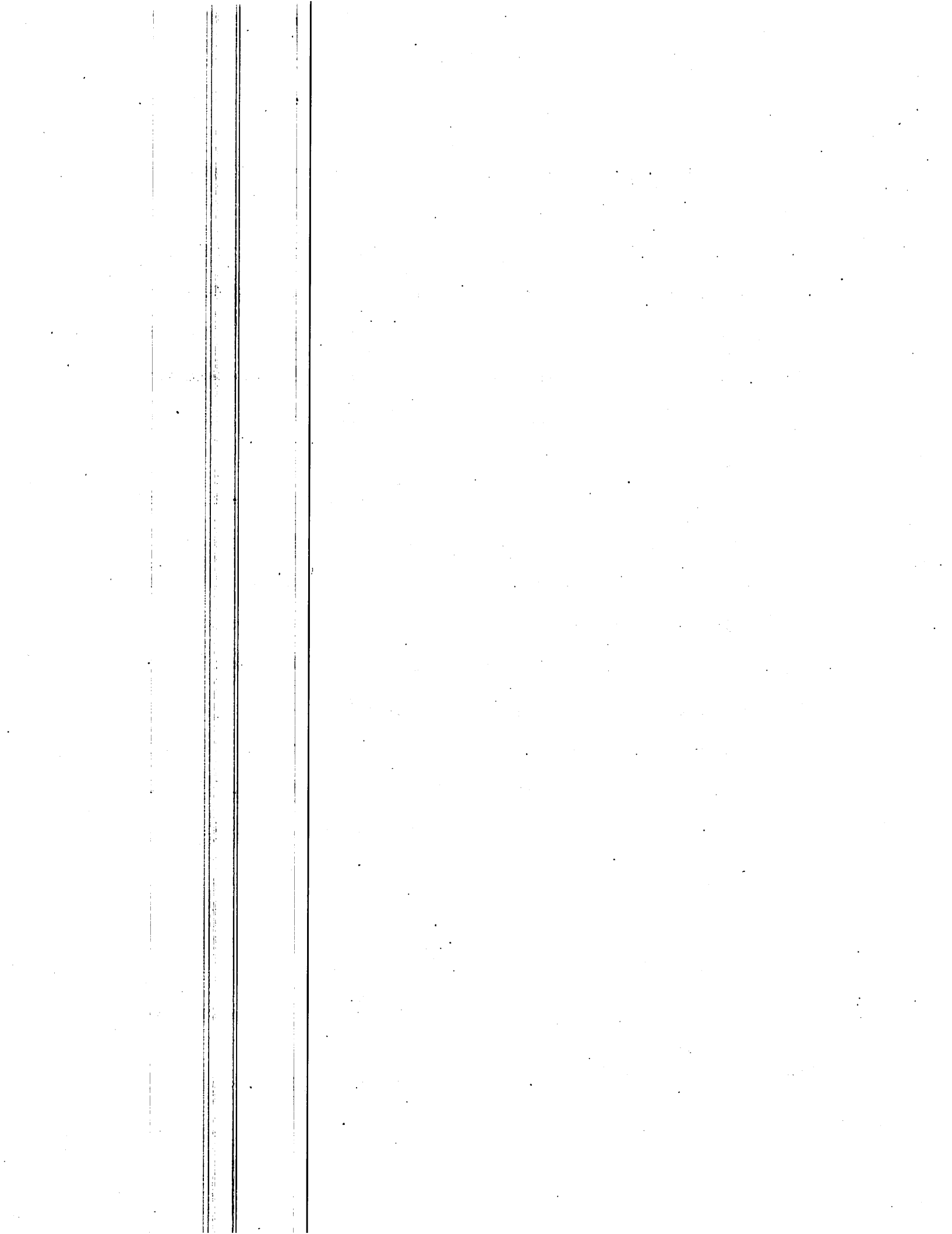
³ The Certified Mail® article number for the copy of the notice sent to the Respondent is 9414726699042972350553. See OAH file, docket entry #2.

⁴ COMAR 28.02.01.03E.

⁵ Bus. Reg. §§ 8-407(a), 8-312; COMAR 28.02.01.20B(1)(b).

⁶ This matter was originally scheduled for an in-person hearing at the OAH in Hunt Valley, Maryland on January 21, 2022.

⁷ COMAR 28.02.01.16.



Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice.⁸ I determined that the Respondent received proper notice. After waiting over twenty minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing.^{9,10}

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.¹¹

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 offered by the Claimant:

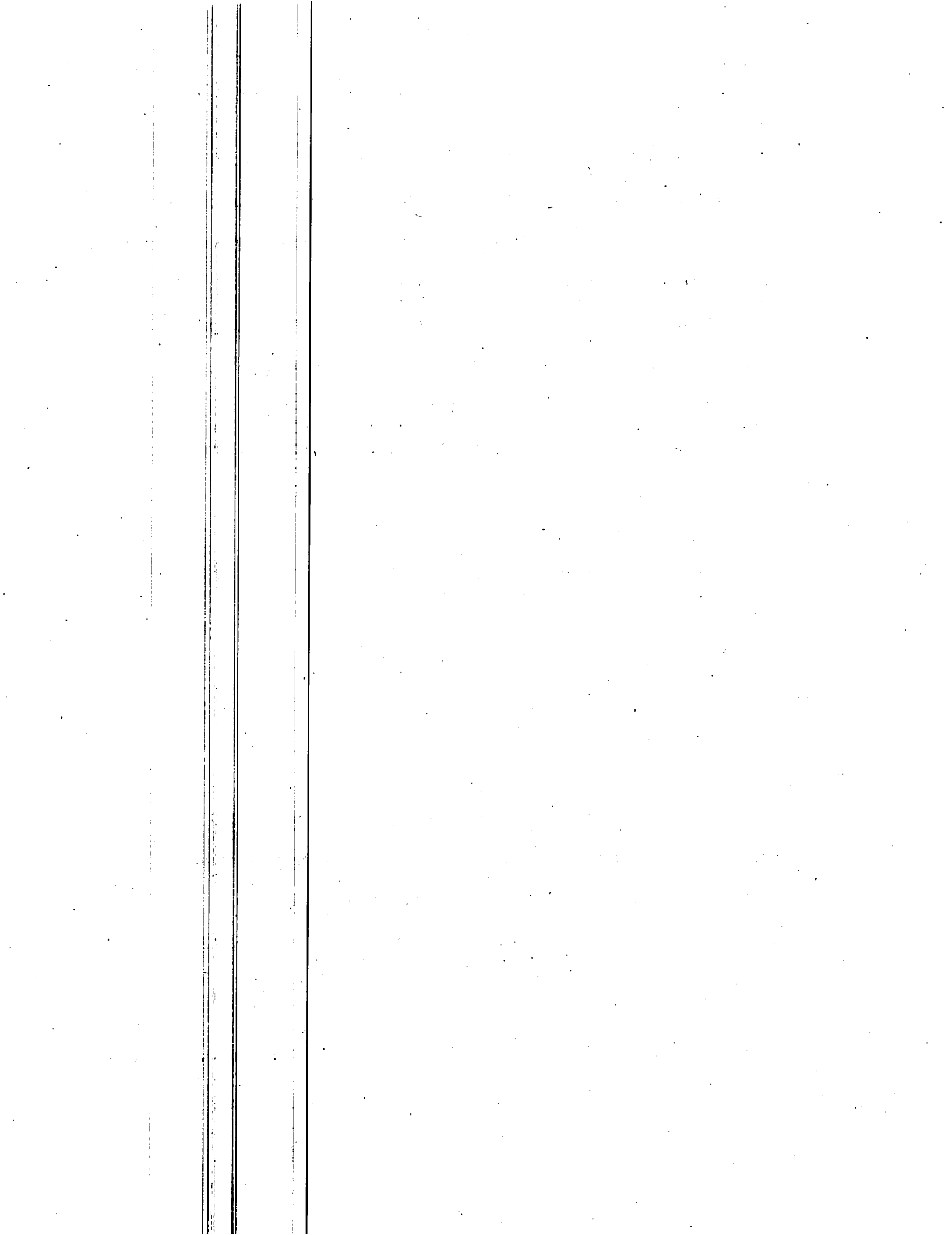
- CL Ex. 1 Deck plan, undated
- CL Ex. 2 Contract, January 13, 2020
- CL Ex. 3 Building Permit, January 27, 2020
- CL Ex. 4 Personal check from the Claimant to the Respondent, January 13, 2020
- CL Ex. 5 Cashier's check from the Claimant to the Respondent, January 28, 2020
- CL Ex. 6 Personal check from the Claimant to 84 Lumber, August 26, 2020
- CL Ex. 7 Personal check from the Claimant to Baltimore County, October 6, 2020

⁸ COMAR 28.02.01.23A.

⁹ The Respondent did not access the Webex conference, nor did he appear in person at OAH, per the original hearing notice.

¹⁰ COMAR 28.02.01.05A, C.

¹¹ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.



CL Ex. 8 Custom Design & Build Invoice, July 28, 2021; Personal check from the Claimant to Custom Design & Build, August 2, 2021

CL Ex. 9 Estimate from 84 Lumber, July 23, 2021

I admitted the following exhibits offered by the MHIC Fund:

MHIC Ex. 1 Hearing Order, November 17, 2021

MHIC Ex. 2 Notice of Hearing, December 3, 2021

MHIC Ex. 3 Letter from MHIC to the Respondent, August 24, 2021; Home Improvement Claim Form, August 2, 2021

MHIC Ex. 4 Department I.D. Registration and Licensing History, January 8, 2022

The Respondent did not participate in the hearing.

Testimony

The Claimant testified on his own behalf and was accepted as an expert in deck construction.¹²

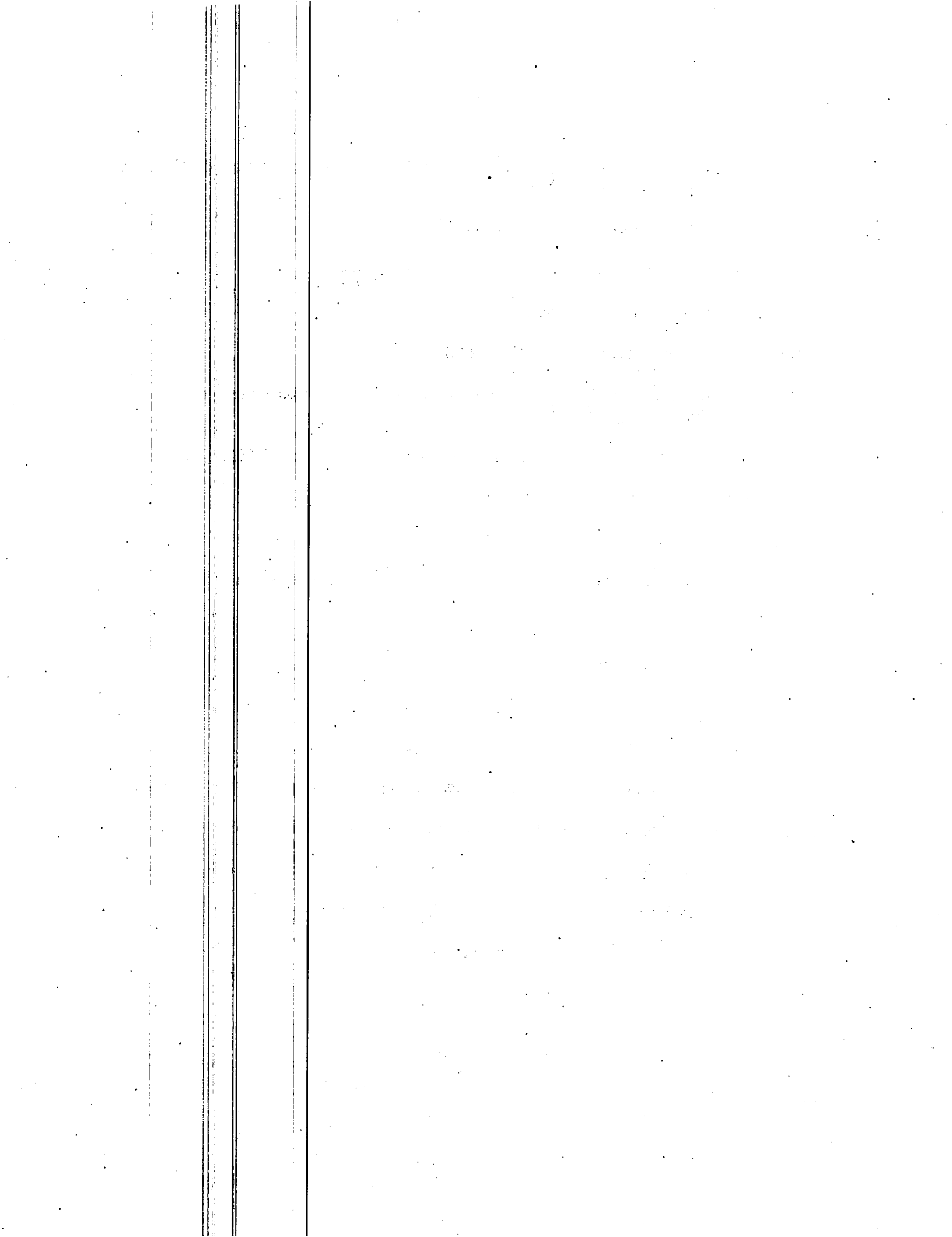
The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

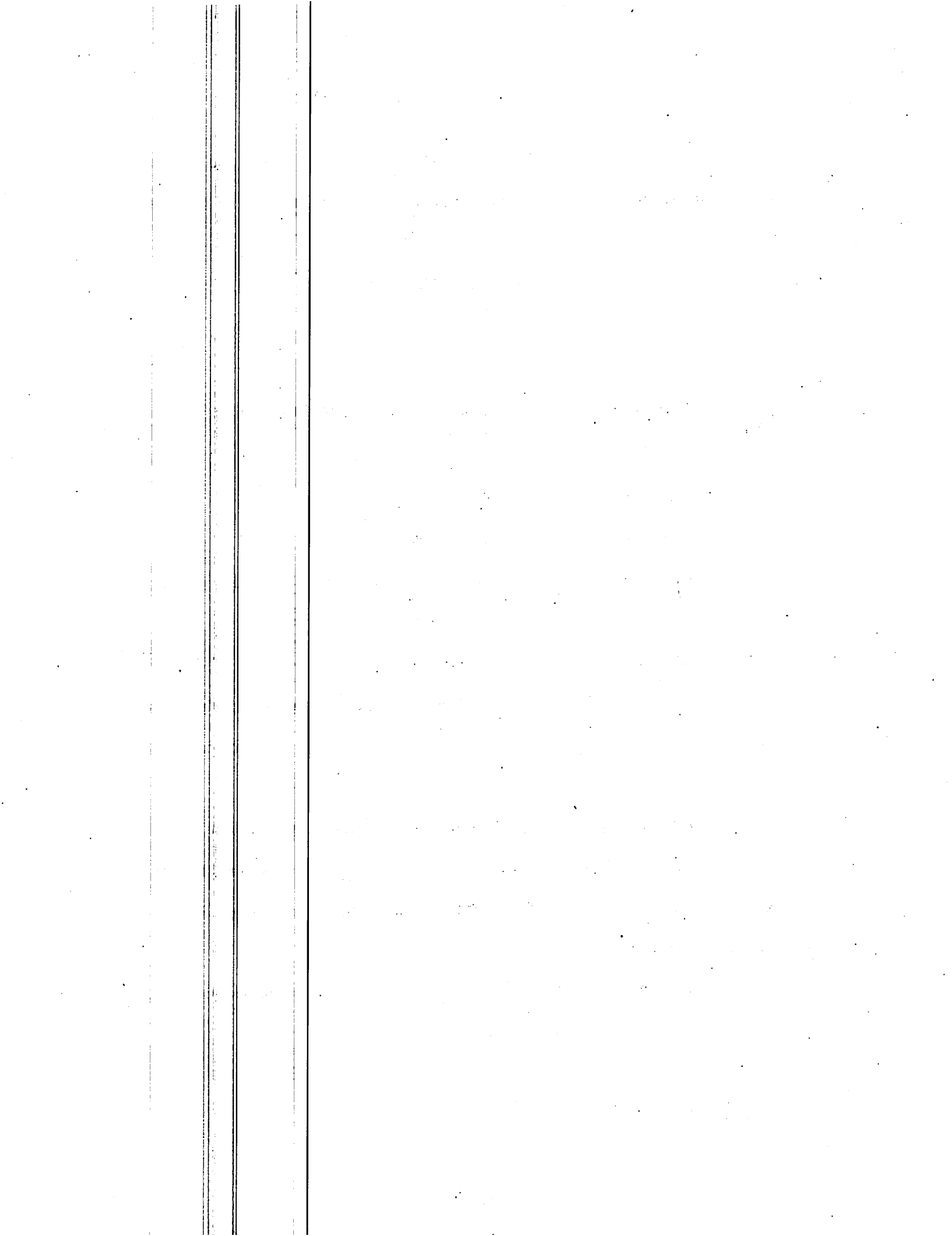
I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 0180972 and 5385669.
2. At all relevant times, the Claimant was the owner of a home located on Jarrettsville Pike in Phoenix, Maryland (Property), which was his personal residence.
3. The Claimant does not own any other residences.

¹² The Fund had no objection the Claimant being accepted as an expert in deck construction.



4. On January 13, 2020, the Claimant and the Respondent entered into a contract for construction of a 1,600 square-foot deck with ten-foot-wide steps on the Property (Contract), including:
 - Trex clamshell flooring, with saddle/border seam;
 - White trim/facia; and
 - White vinyl rail
5. The original agreed-upon Contract price was \$18,000.00, to be paid as follows:
 - \$4,000.00 deposit;
 - \$10,000.00 at the start of the work; and
 - \$4,000.00 upon completion of the work.
6. The Contract did not specify what type of material would be used for the deck framing.
7. The Contract did not contain an arbitration clause.
8. On January 13, 2022, the Respondent drew a plan for construction of the deck under the Contract. Based upon the plan, the Respondent was to dig seventeen footer holes for the decking posts.
9. The Claimant paid the \$4,000.00 deposit to the Respondent on January 13, 2020.
10. On January 28, 2020, the Claimant paid the Respondent \$10,000.00. That day, the Respondent informed the Claimant that he had obtained County approval for the deck and he dug seventeen footer holes.
11. The seventeen holes dug by the Respondent were not spaced close enough together per Baltimore County's Building Code.



12. The two holes which were dug within three feet of the house were too shallow and not in compliance with Baltimore County's Building Code.

13. In March of 2020, the Respondent installed part of the ledger board, using 2' x 8' boards.

14. To ensure the structural integrity of the deck, 2' x 10' boards should have been used for the ledger board.

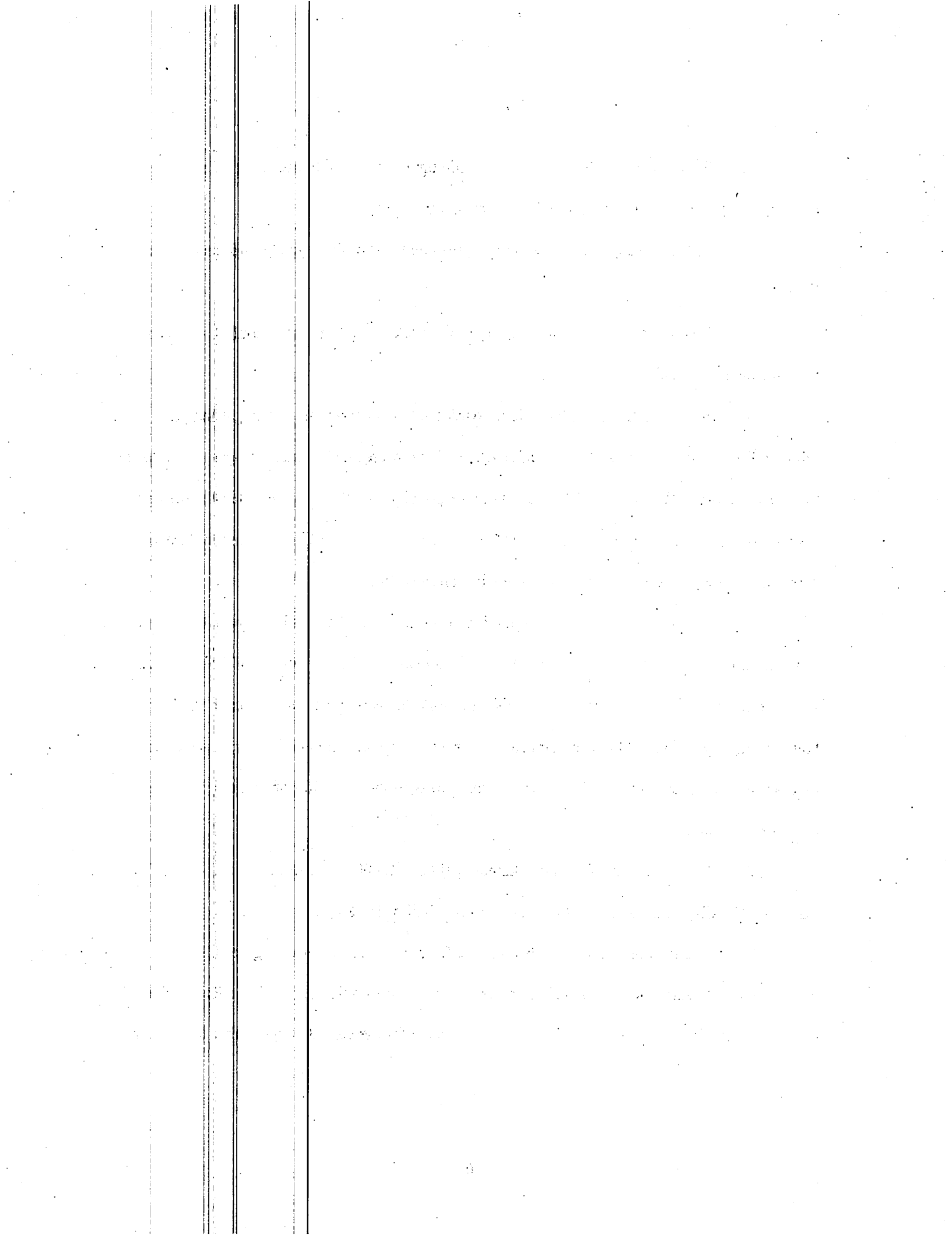
15. After installation of the ledger board, the Claimant was unable to get in touch with the Respondent for about three months, despite his repeated calls, text messages, and emails to the Respondent. When he finally reached the Respondent, the Respondent stated that he and his wife had been ill. The Claimant told the Respondent to take care of himself and let him know when he was recovered and ready to resume work on the deck.

16. In August of 2020, the Respondent came to the Claimant's home with two 6' x 6' posts and a couple 4' x 4 posts. After the Respondent questioned the adequacy of the materials and whether the Respondent intended to finish the work, the Respondent stated that he did not have any money and asked the Claimant for assistance. The Claimant and Respondent agreed that in the future Claimant would pay for the materials directly. The Respondent did not perform any work that day.

17. On August 26, 2020, the Claimant paid \$1,000.00 for materials directly to 84 Lumber. The Claimant purchased the materials on behalf of the Respondent.

18. The Respondent has not been to the Claimant's home since August 2020.

19. In early October of 2020, the Claimant discovered that although the Respondent had applied for the building permit, he never paid the fee for the permit. On October 6, 2020, the



Claimant paid \$119.00 to Baltimore County for the building permit that otherwise should have been paid for by the Respondent.

20. In October of 2020, the Claimant ran into the Respondent as he was leaving 84 Lumber. The Claimant asked the Respondent when he would come to his home to continue work on the deck. At that time, the Respondent informed the Claimant that he did not think he would be able to complete the construction of the deck

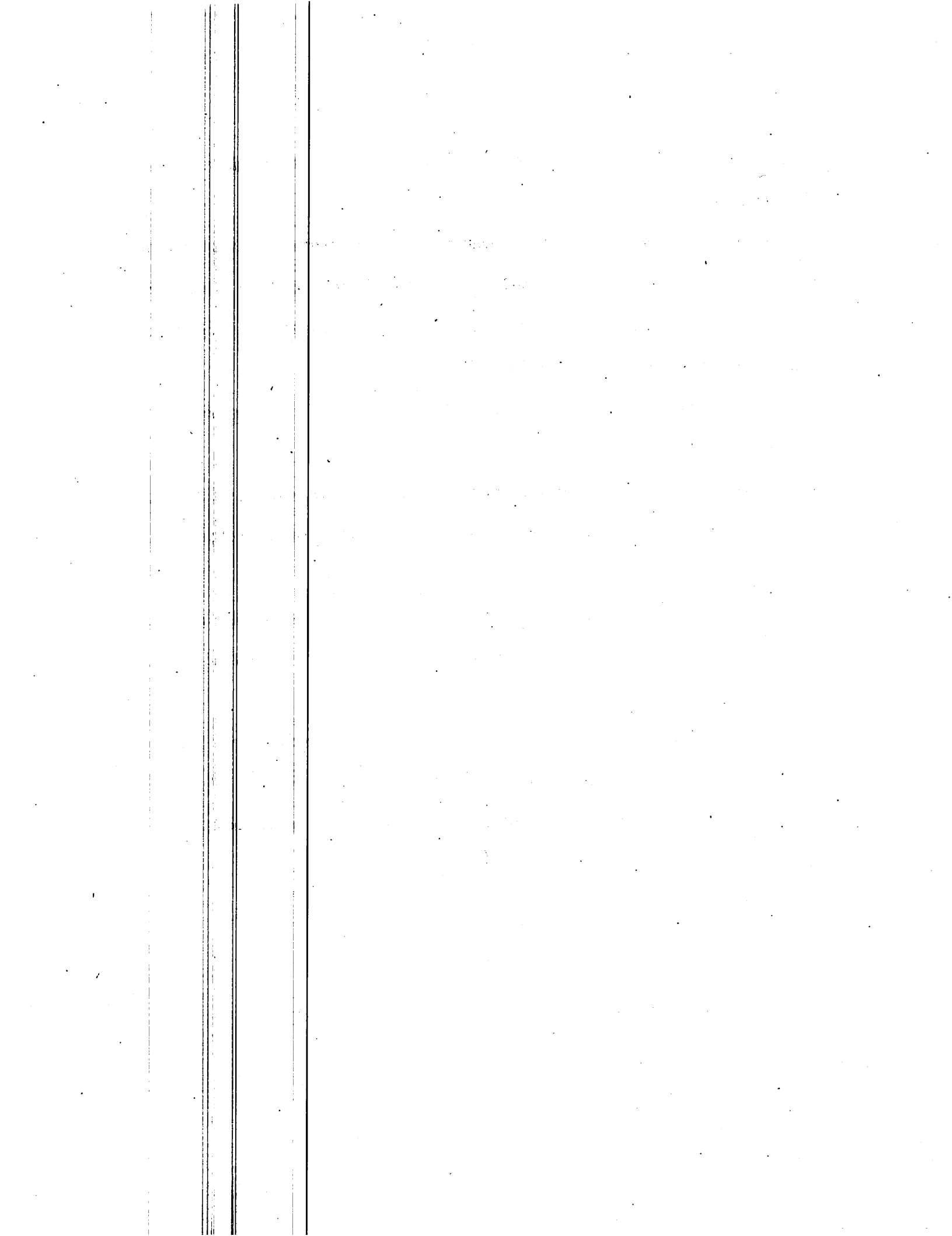
21. The Claimant paid a total of \$15,119.00 to the Respondent and on the Respondent's behalf in furtherance of the Contract.

22. The value of the work performed by the Respondent was \$72.00, which represents the cost associated with removing the vinyl siding in preparation for installation of the ledger board.

23. Once the Respondent indicated that he would not be able to complete construction of the Deck, the Claimant decided that he would complete the project on his own and has worked toward doing so for the last two years.

24. The Claimant is not an officer or employee of the Respondent, related to the Respondent, or related to an officer or employee of the Respondent.

25. The Claimant has no other pending claims related to this matter and has not otherwise recovered for any losses connected to the Claim.



DISCUSSION

LEGAL FRAMEWORK

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.¹³ 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.¹⁴

A claimant may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor”¹⁵ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹⁶ The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.¹⁷

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (a) the claimant resides in the home as to which the claim is made, or owns no more than three dwelling places; (b) the claimant is not an employee, officer, or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor’s employees, officers or partners; (c) the work at issue did not involve new home construction; (d) the claimant did not unreasonably reject the contractor’s good faith effort to resolve the claim; (e) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (f) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (g) the

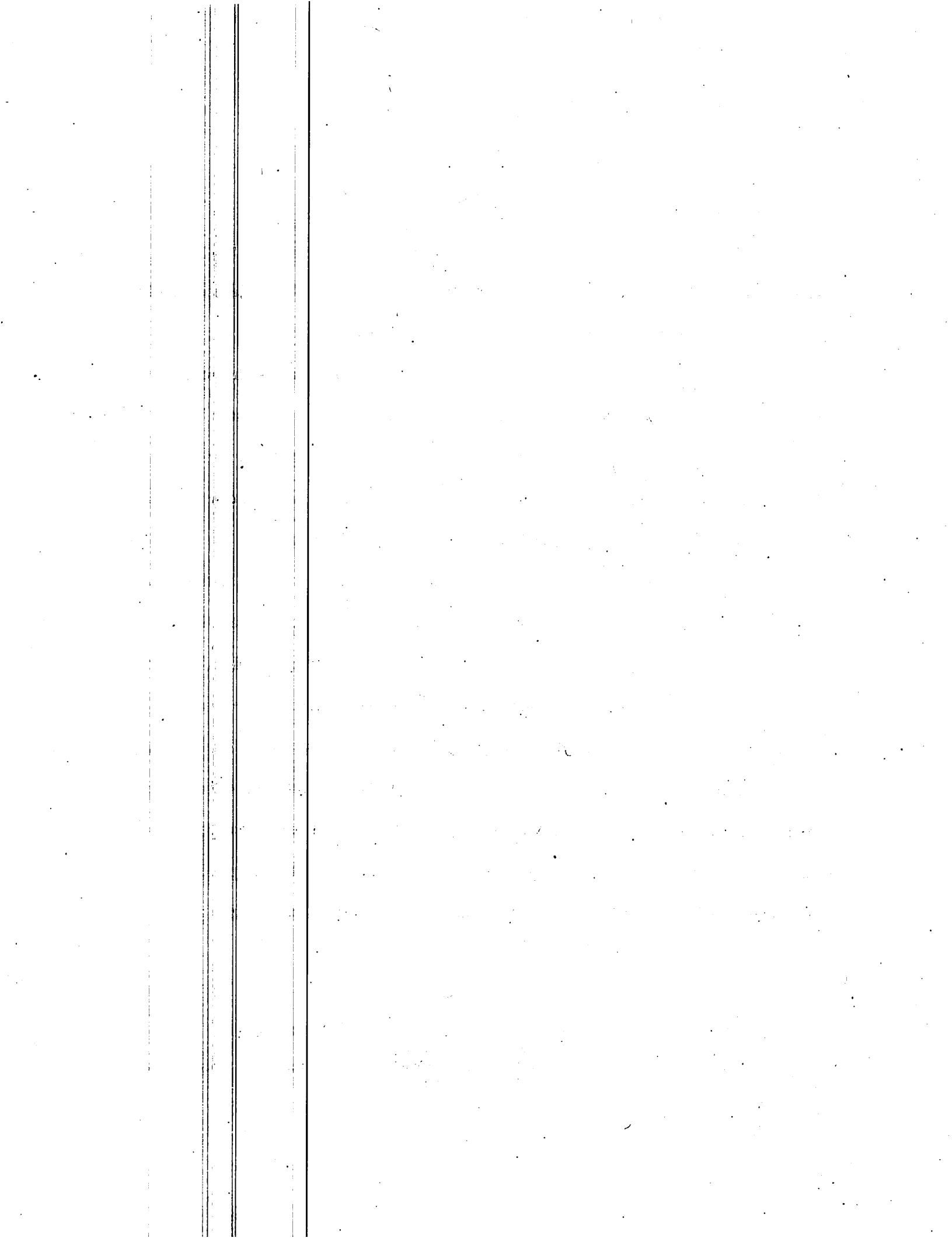
¹³ Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov’t § 10-217 (2014); COMAR 09.08.03.03A(3).

¹⁴ *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

¹⁵ 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.”).

¹⁶ Bus. Reg. § 8-401.

¹⁷ Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).



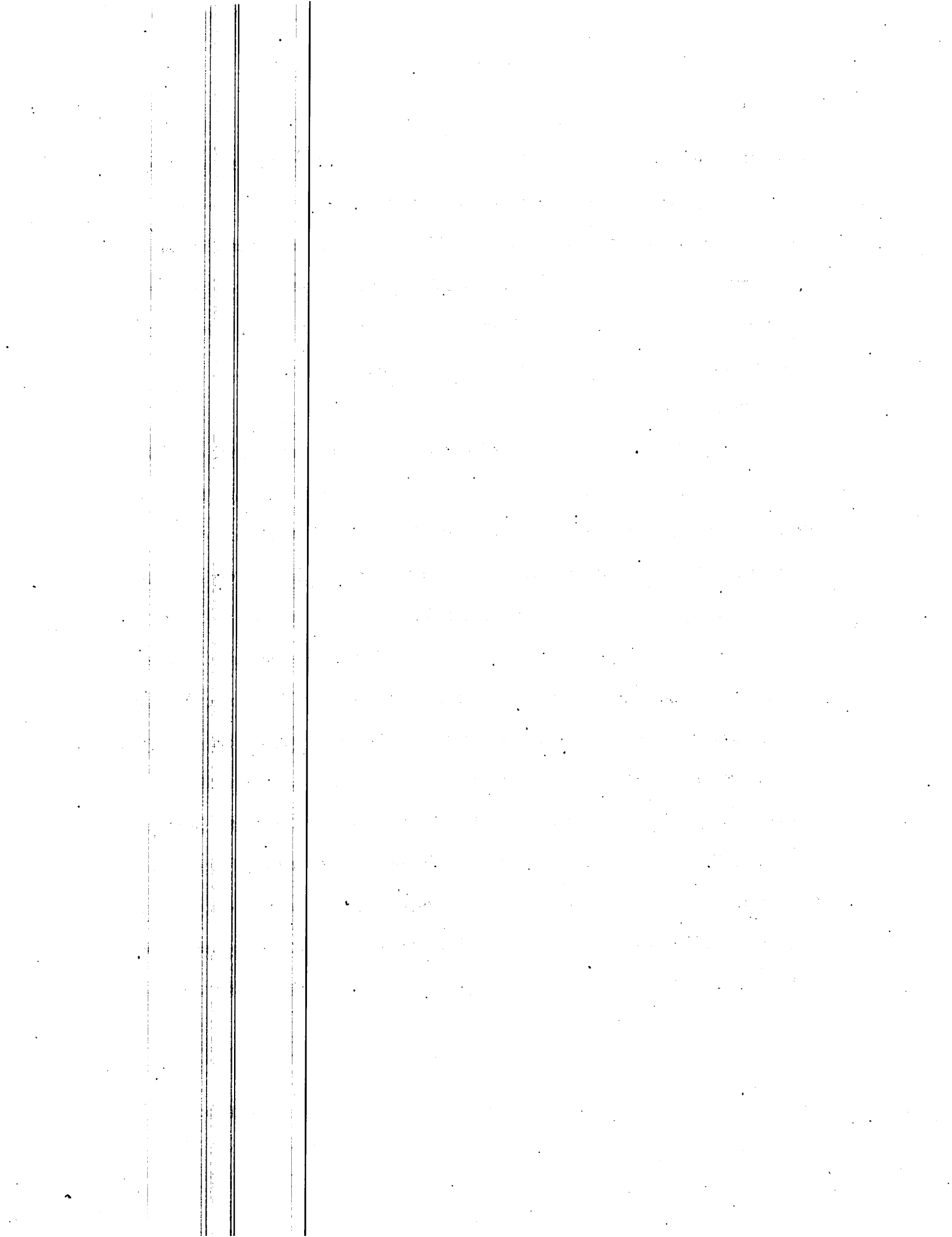
claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage.¹⁸

The undisputed evidence in this case establishes that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant and, there are no *prima facie* impediments barring the Claimant from recovering from the Fund. *Id.* For the following reasons, I find that the Claimant has proven eligibility for compensation.

THE MERITS OF THIS CASE

Although the Claimant is not a licensed contractor, he demonstrated extensive knowledge of deck construction, which he acquired over approximately two years—first, while the Respondent performed work under the Contract and then, when the Claimant undertook construction of the deck once the Respondent abandoned the job. The Claimant explained that he spent an extensive amount of time gathering knowledge from contractors he met at home improvement stores, as well as a Baltimore County building inspector. Additionally, over the past two years the Claimant has spent nearly every night after work watching hours of videos on professional deck construction and has personally worked on his deck every weekend during that time. His detailed testimony made evident his comprehensive knowledge of the building standards, county regulations, and techniques for deck construction. I found that the Claimant was unbiased, honest, and credible in his testimony—he showed great sympathy for personal issues the Respondent shared with the Claimant, did not disparage the Respondent, and did not exaggerate any of his testimony. I found that the Respondent’s knowledge and experience was sufficient to qualify him as an expert in deck construction; that expert testimony regarding the

¹⁸ Bus. Reg. §§ 8-405(c), (d), (f), and (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2020).



proper construction of a deck was appropriate; and there was a sufficient factual basis to support his testimony.¹⁹

The Respondent failed to complete construction of the deck. The Claimant testified that the only work the Respondent performed was digging seventeen footer holes and installation of some 2' x 8' deck ledger board. The Claimant explained that the seventeen footer holes were inadequate because they were not properly spaced in accordance with Baltimore County's building code and two of the footers were not dug deep enough to comply with the building code. As a result, the Claimant had to dig seventeen additional footer holes and dig two deeper down into two of the existing footer holes. With regard to the deck ledger board, the Claimant credibly testified that the use of 2' x 8' boards was unworkmanlike and, instead, 2' x 10' boards were required to ensure the structural integrity of the deck. The Claimant explained that he obtained knowledge of these requirements directly from a Baltimore County building inspector.

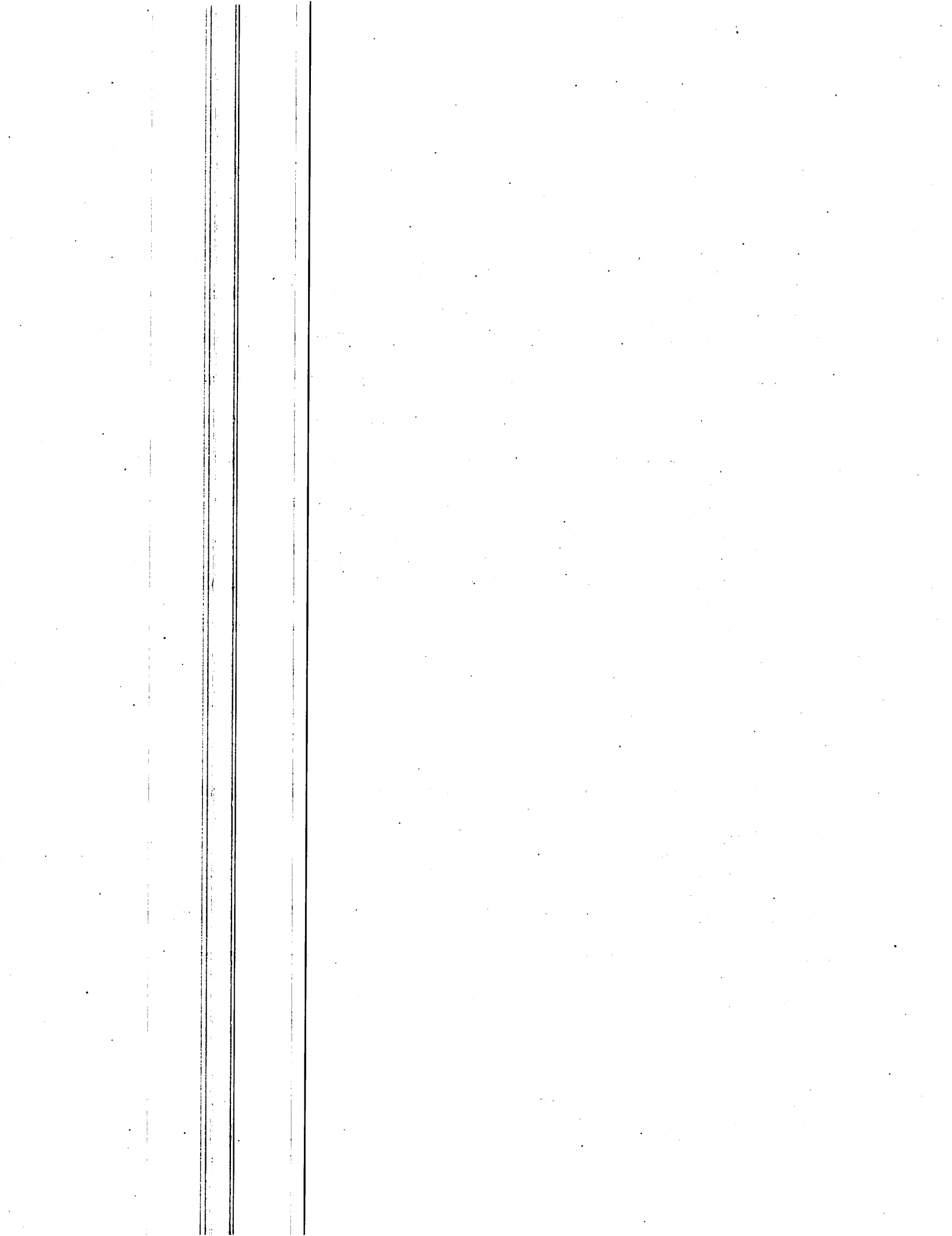
Based on the foregoing, I find that the Respondent performed incomplete, inadequate, and unworkmanlike home improvements. I thus find that the Claimant is eligible for compensation from the Fund. The Fund agrees.

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.

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.²⁰ In this case the Respondent performed some work, and thus the first formula is clearly not applicable here.

¹⁹ COMAR 28.02.01.21D(1); *see also* Md. Rule 5-702.

²⁰ COMAR 09.08.02.03(a).



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....”²¹ 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.”²²

Finally, the third formula applies “the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract....”²³ Under this circumstance, “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.”²⁴

If I find none of the three regulatory formulas are appropriate, I may apply a unique formula to measure the Claimant’s actual loss.²⁵

The Respondent performed some work under the Contract, and the Claimant is not seeking other contractors to complete or remedy that work. Instead, the Claimant took it upon himself to remedy the Respondent’s work and complete construction of the deck himself. On its face, the second formula applies in this case (“the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract....”).²⁶ However, the Fund argues that it “generally would not” compensate a homeowner who is not a licensed contractor for his labor when he has performed work on his own home. Under these

²¹ COMAR 09.08.03.03B(3)(b).

²² *Id.*

²³ COMAR 09.08.03.03B(3)(c).

²⁴ *Id.*

²⁵ COMAR 09.08.03.03B(3).

²⁶ COMAR 09.08.03.03B(3)(b).

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circumstances, the Fund asserts it would be appropriate to compensate the Claimant for the materials that were necessary for him to complete work on the deck and suggests that I recommend an award based upon the third regulatory formula, as follows:

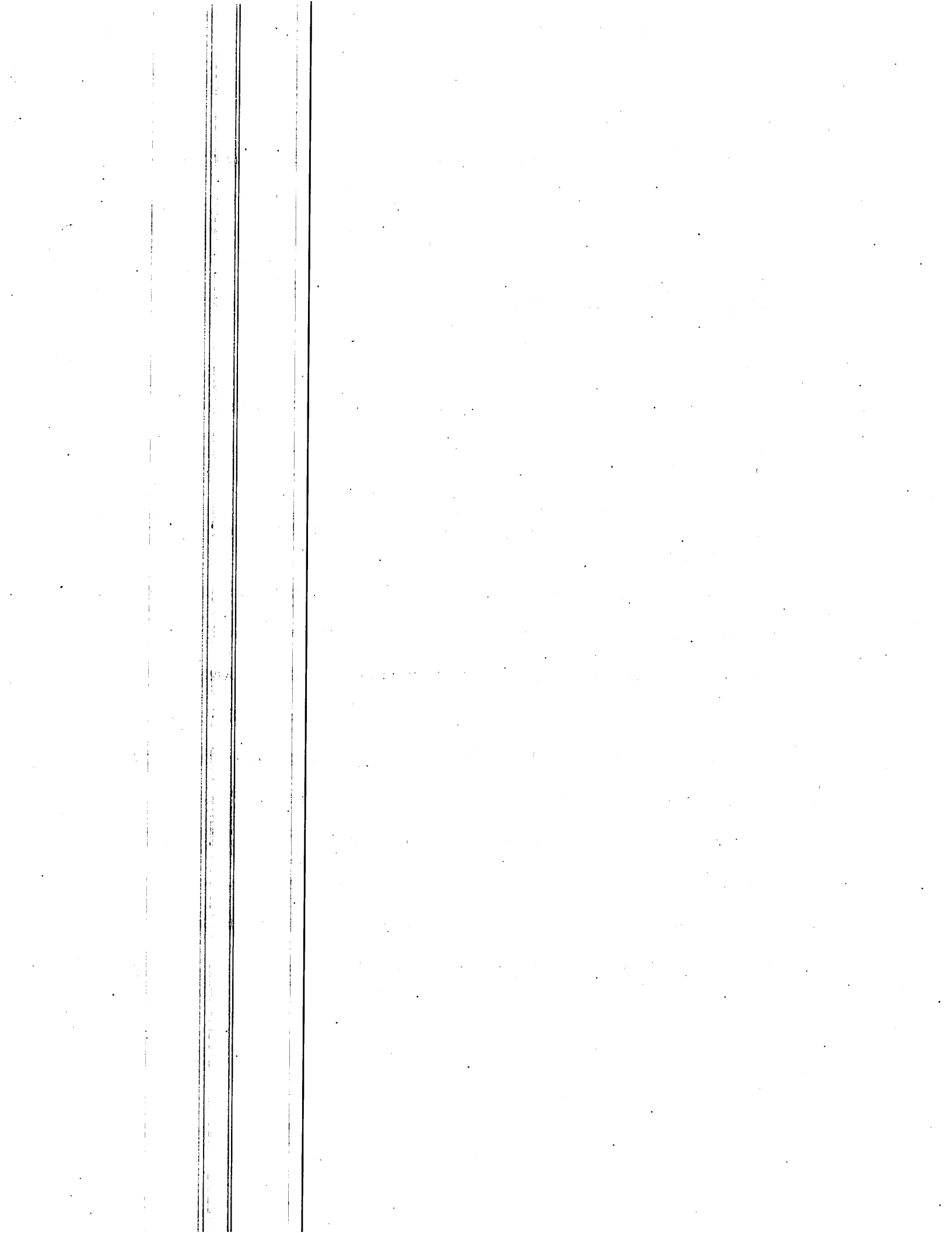
\$15,119.00	paid to and on behalf of the Respondent under the Contract
<u>+ \$11,422.91</u>	paid for materials to complete the work
\$26,541.91	
<u>- \$18,000.00</u>	amount of the original contract
\$ 8,541.91	proposed actual loss

I disagree with the Fund's recommendation. As previously discussed, the second regulatory formula, found at COMAR 09.08.03.03B(3)(b) provides:

If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, 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.

The Fund did not cite any authority which would prohibit a homeowner from recovery under this formula simply because the homeowner performed the work on his home himself. The purpose of the Fund is to protect homeowners from incurring losses due to a licensed contractor's incomplete, unworkmanlike, or inadequate work. The Claimant testified that the value of the work performed by the Respondent was \$72.00 and he supported his testimony with an estimate of the work performed by the Respondent, obtained from Custom Design & Build which is a licensed contractor.²⁷ The \$72.00 represents the Respondent's removal of vinyl siding in preparation to install the deck ledger. The Claimant's decision to complete his own deck does not increase the value of the work performed by the Respondent and lessen his actual loss. Therefore, I recommend that the Claimant's actual loss be calculated as follows:

²⁷ Claimant Exhibit 8.



\$15,119.00 paid to and on behalf of the Respondent under the Contract
- \$ 72.00 the value of materials and services provided by the Respondent²⁸
\$15,047.00 recommended actual loss

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.²⁹ In this case, the Claimant's actual loss is both less than \$20,000.00 and less than the amount paid to the Respondent. Therefore, the Claimant is entitled to recover his actual loss of \$15,047.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$15,047.00 as a result of the Respondent's acts or omissions.³⁰ 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 \$15,047.00; and

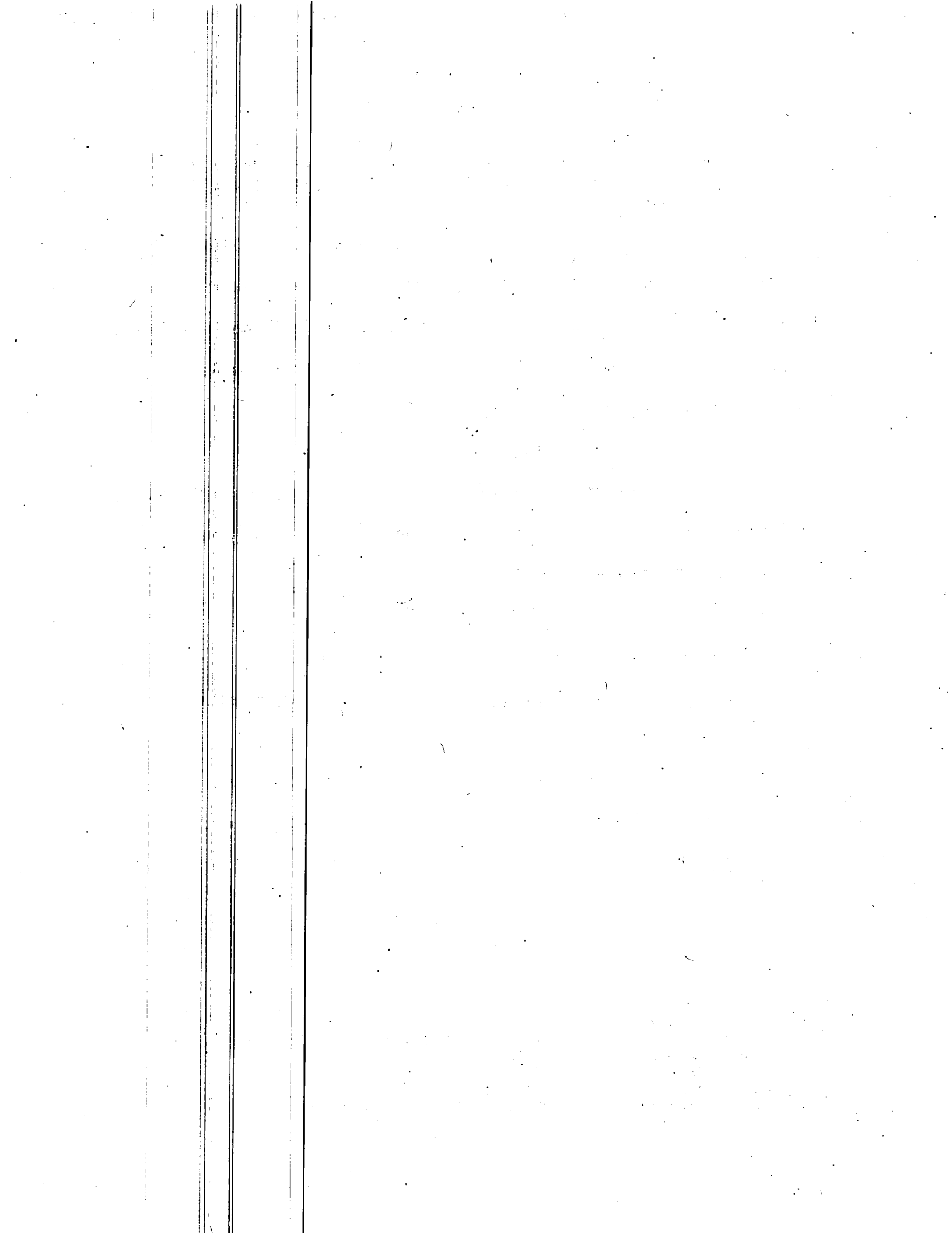
ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent as set by the Maryland Home Improvement Commission;³¹ and

²⁸ There is not value for the materials provided by the Respondent/purchased on his behalf because the 2' x 8' boards selected by the Respondent were inadequate.

²⁹ Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

³⁰ Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3).


³¹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



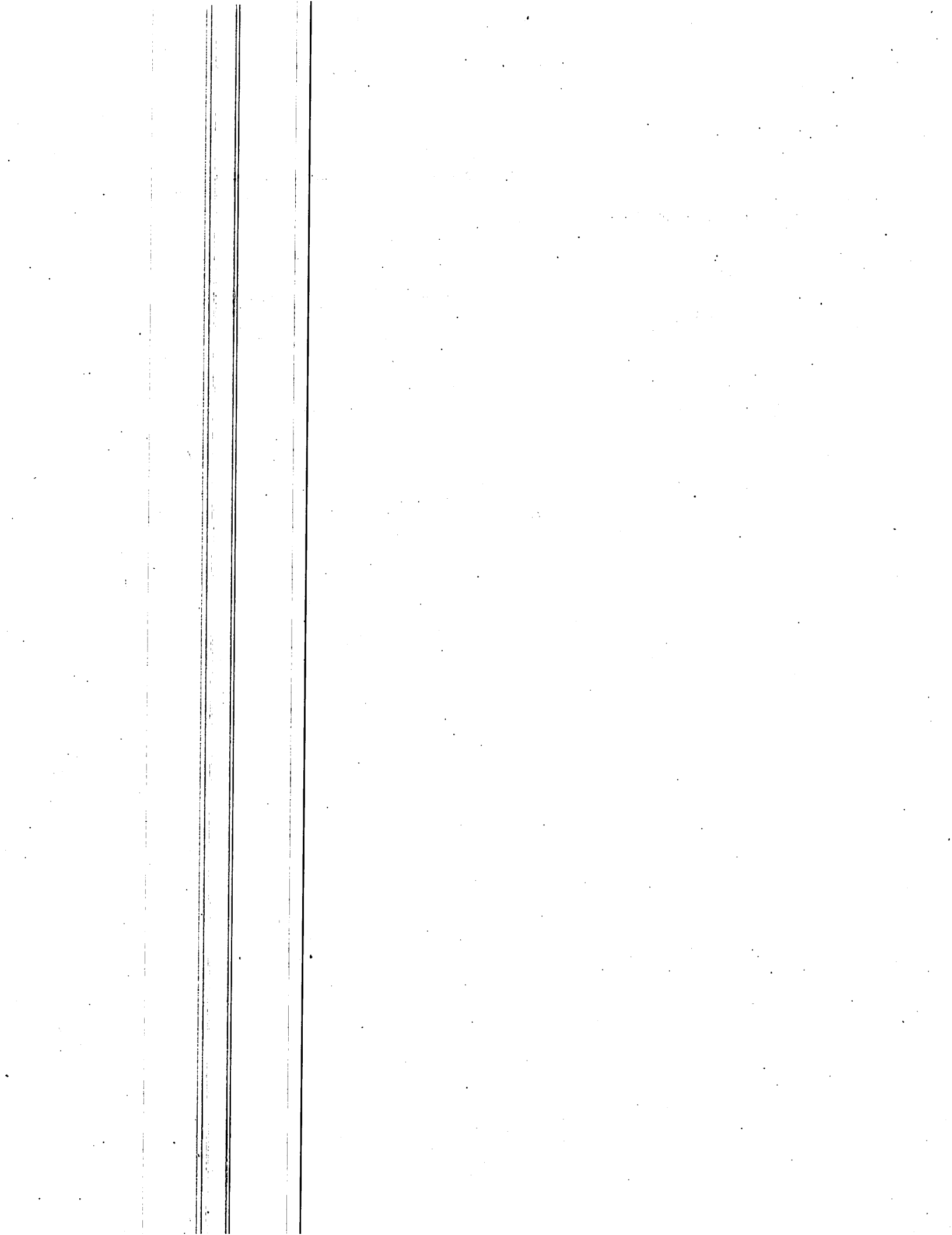
ORDER that the records and publications of the Maryland Home Improvement

Commission reflect this decision.

April 21, 2022
Date Decision Issued


Jennifer A. Nappier
Administrative Law Judge

JAN/emh
#197668



PROPOSED ORDER

WHEREFORE, this 13th day of June, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

