

IN THE MATTER OF THE CLAIM	* BEFORE ERIN H. CANSIENNE,
OF CAROLYN STARKS SAXON, <sup>1</sup>	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF HOWARD	*
RITTENBERG,	*
T/A ROOF MASTERS,	* OAH No.: LABOR-HIC-02-21-20627
RESPONDENT	* MHIC No.: 21 (75) 601

\* \* \* \* \*

**PROPOSED DECISION**

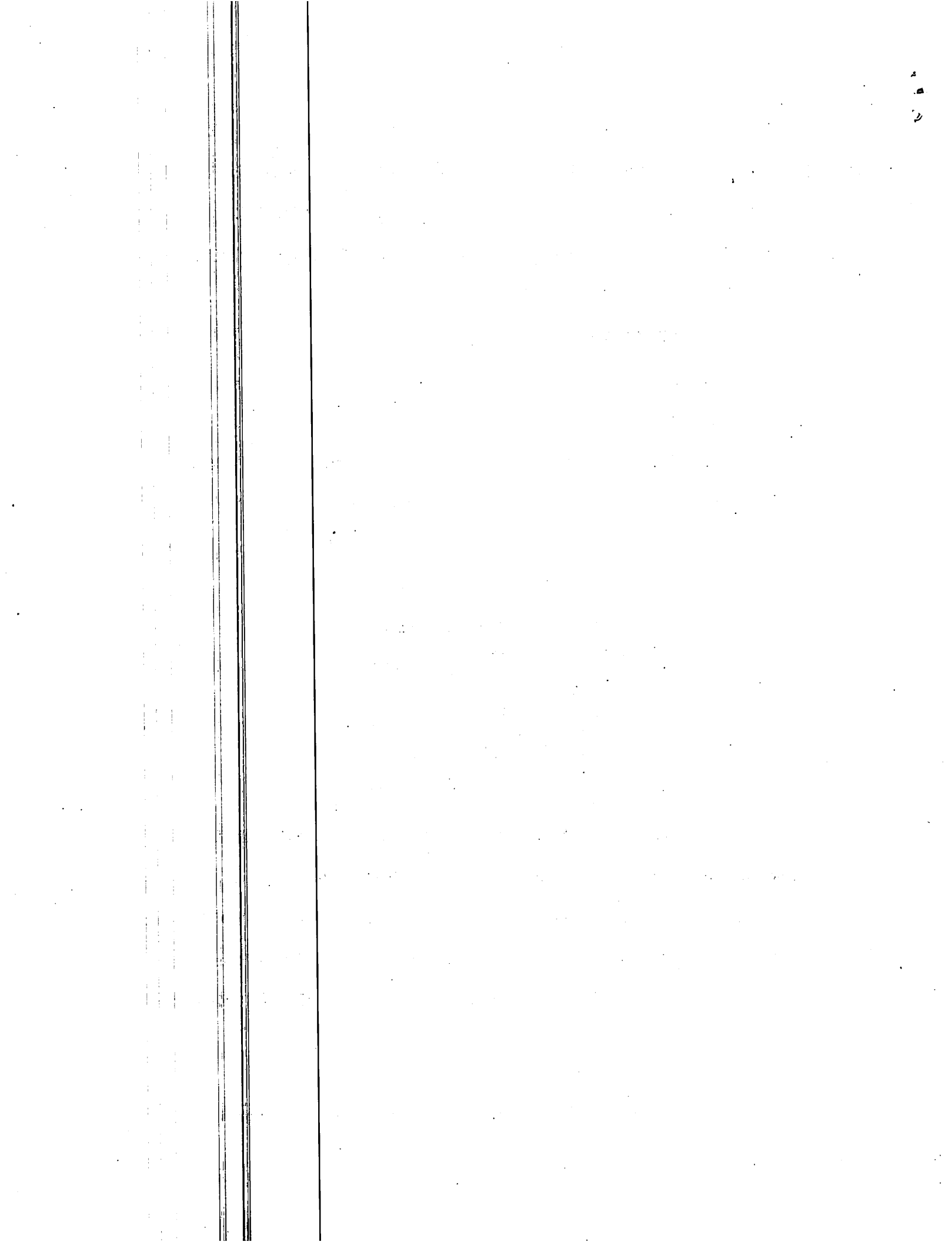
STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On March 15, 2021, Carolyn Starks Saxon (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 \$1,685.00 for actual losses allegedly suffered as a result of a home improvement contract with Harold Rittenberg, trading as Roof Masters (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 &

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<sup>1</sup> At the time of the hearing, the Claimant had changed her name to Ms. Galvin, as she had gotten married.



## SUMMARY OF THE EVIDENCE

### Exhibits

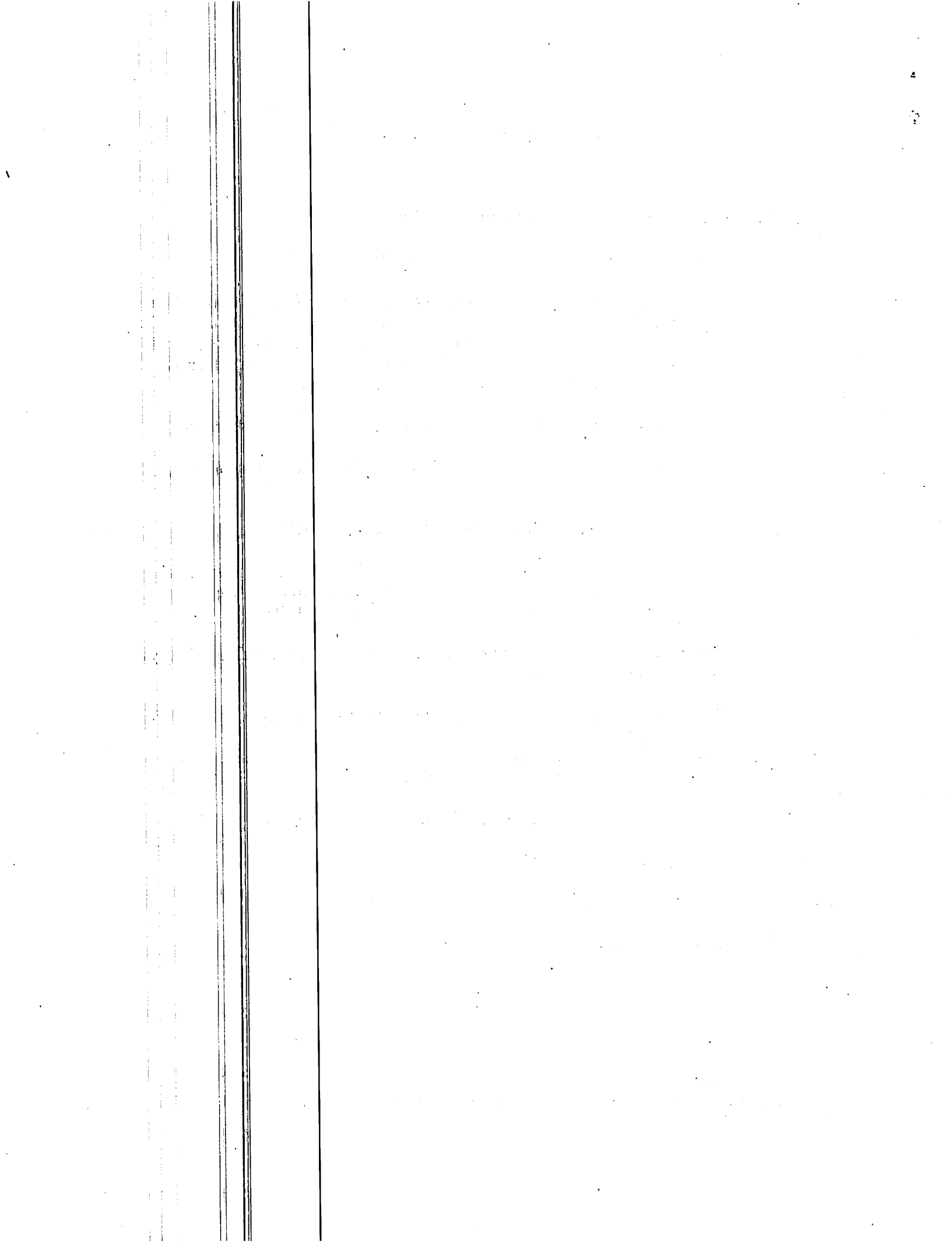
I admitted the following exhibits offered by the Claimant:<sup>3</sup>

- Clmt. Ex. A - Correspondence with Roof Masters, various dates
- Clmt. Ex. B - Roof Masters Roofing Proposal, December 7, 2018; Certificate of Completion, March 13, 2020; Roof Masters Contracts, January 19, 2019 and February 6, 2020, SureStart Plus Certificate, date of registration June 29, 2020; Email from Roof Masters to Claimant, January 22, 2019; Payments to Roof Masters, February 11, 2020 and March 24, 2020; EnerBankUSA Statement, March 4, 2022
- Clmt. Ex. C - MHIC Complaint form, January 24, 2021, and a timeline of events, undated
- Clmt. Ex. D - Correspondence with Mark Yesso, Jr., State Farm Insurance Representative, various dates
- Clmt. Ex. E - State Farm Insurance Evaluation by Mark Yesso, Jr., September 5, 2020
- Clmt. Ex. F - AA Roofing Correspondence, December 11-13, 2020; AA Roofing Statement and receipt for \$1,685.00, December 22, 2020; AA Roofing Proposal, December 8, 2020; Email from AA Roofing with pictures, December 23, 2020
- Clmt. Ex. G - CertainTeed Shingle Applicator's Manual, "Flashing: Valleys, Walls, Chimneys, etc." Flashing Information, undated
- Clmt. Ex. H - Roof Masters Response to MHIC Complaint, February 17, 2021
- Clmt. Ex. I - Stanley Steemer Invoice, April 6, 2022; Invoice from Kevin Cuevas Diaz, undated; Check to Kevin Cuevas, April 18, 2022
- Clmt. Ex. J - Check to Kevin Cuevas, Painter, April 18, 2022 (multiple copies)
- Clmt. Ex. K - Photographs of interior, undated
- Clmt. Ex. L - Flash drive containing four videos and eight photographs

The Respondent did not offer any exhibits.

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<sup>3</sup> The Claimant had previously organized an exhibit binder with lettered tabs. Therefore, throughout this decision, I will reference the exhibits based on their lettered tabs.



7. The Claimant made the following payments:

January 18, 2019	\$2,000.00
February 11, 2020	\$7,000.00
March 24, 2020	\$4,000.00

8. The Claimant financed the remainder of the price through EnerBank, with a loan starting March 27, 2020 for \$5,676.00.

9. From the time of installation by Roof Masters until August 4, 2020, the roof did not leak.

10. On August 4, 2020, water leaked into the Claimant's home during Tropical Storm Isaias. The Claimant notified Roof Masters the same day.

11. On August 6, 2020, three employees of Roof Masters came to the Claimant's residence. The storm collar around the upper part of the HVAC gas furnace pipe had come loose and allowed water to enter the home. Roof Masters applied waterproof flashing cement around the top of the storm collar.

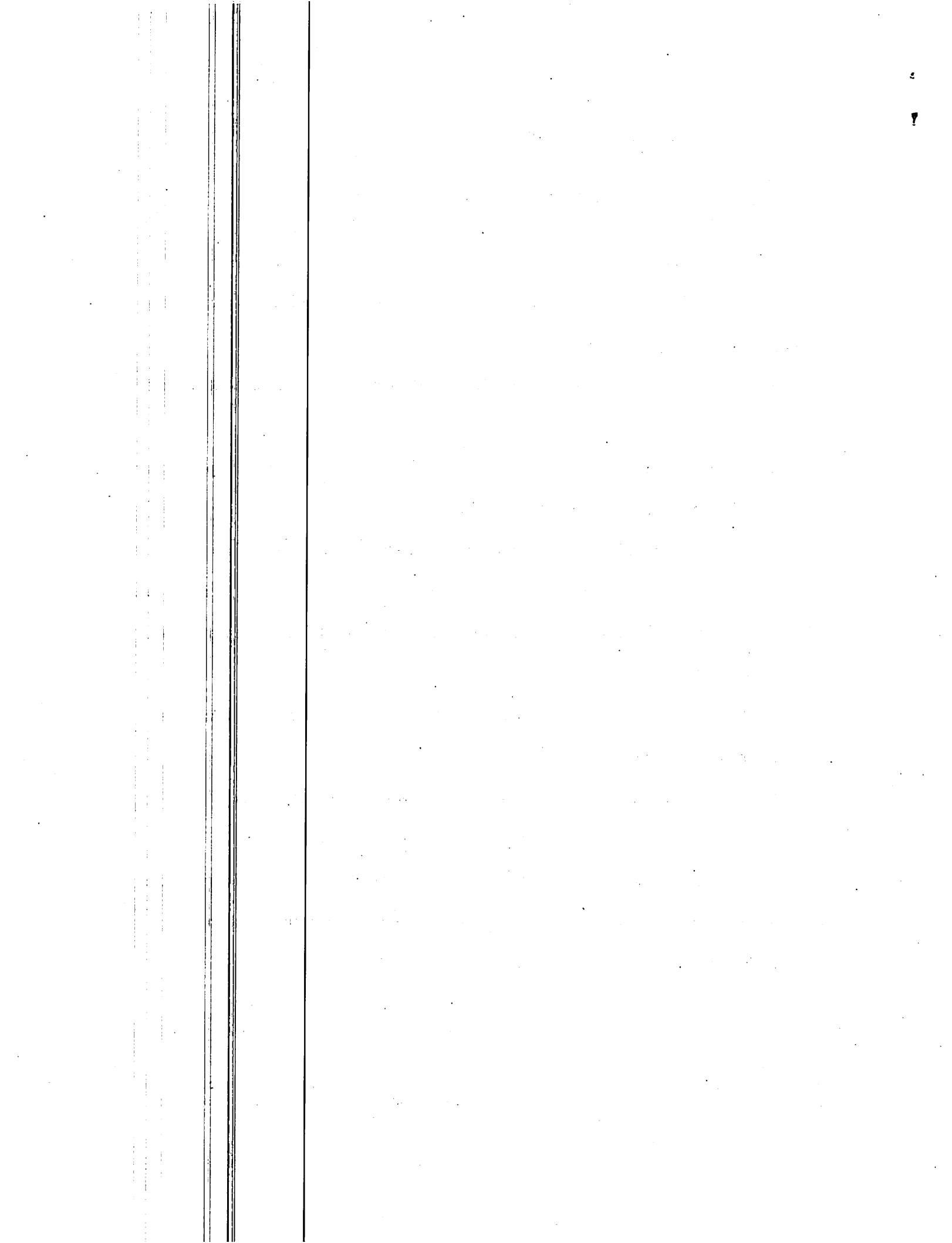
12. Roof Masters asserted the application of the waterproof flashing cement was a permanent fix for the problem.

13. The Claimant filed a claim with her homeowner's insurance company, State Farm Insurance, regarding the damages sustained inside of the home from the water leak.

14. On September 4, 2020, Mark Yesso, Jr. from State Farm Insurance inspected the roof at the Claimant's residence and advised that the leak seemed to be coming from the area where the Claimant's roof and wall meets the neighbor's roof.<sup>4</sup>

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<sup>4</sup> State Farm estimated the costs to repair the interior damage; however, that cost was less than the deductible on the Claimant's homeowner's policy. Therefore, no payment was made by State Farm to the Claimant for the interior damage caused on August 4, 2020. State Farm's estimate did not address any repairs to the roof.



2022). 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) (Supp. 2022).

There is no dispute that the Respondent and the Claimant entered into a contract for the Respondent to perform various work, including to replace the Claimant's roof. The Respondent performed the work, and the Claimant paid \$18,676.00 for the work. There is further no dispute that from February 5, 2020 to August 4, 2020, the roof did not leak. On August 4, 2020, during Tropical Storm Isaias the Claimant's roof did leak. The Respondent contends that the roof leaked due to a storm collar around an HVAC pipe coming loose, and that the contract excluded work on any HVAC pipes. However, on August 6, 2020, the Respondent's employees came to the Claimant's home, placed the storm collar back into the correct position, and applied a waterproof flashing cement in that area.

The Claimant was not satisfied with the Respondent's repair. The Claimant contends that the leak was due to inadequate or unworkmanlike installation of flashing where her unit connects to her neighbor's unit. Mark Yesso, an adjuster who inspected the Claimant's home as a result of the August 4, 2020 leak, testified that he believed the leak was due to a lack of step flashing at the intersection between the Claimant's home and her neighbor's home. He testified that no step flashing was present. However, on cross examination Mr. Yesso could not explain why AA Roofing had to remove flashing if there was no flashing installed as he testified.

Mr. Hector Morales from AA Roofing inspected the roof and performed some repairs to the Claimant's roof. He testified that the flashing could not be seen without removing the siding. When he or his employees removed the siding there was a section of roof that was missing the step flashing. The flashing was only missing in a section, and not from that entire side of the roof. Mr. Morales had taken pictures of the missing flashing and of the flashing after the repairs





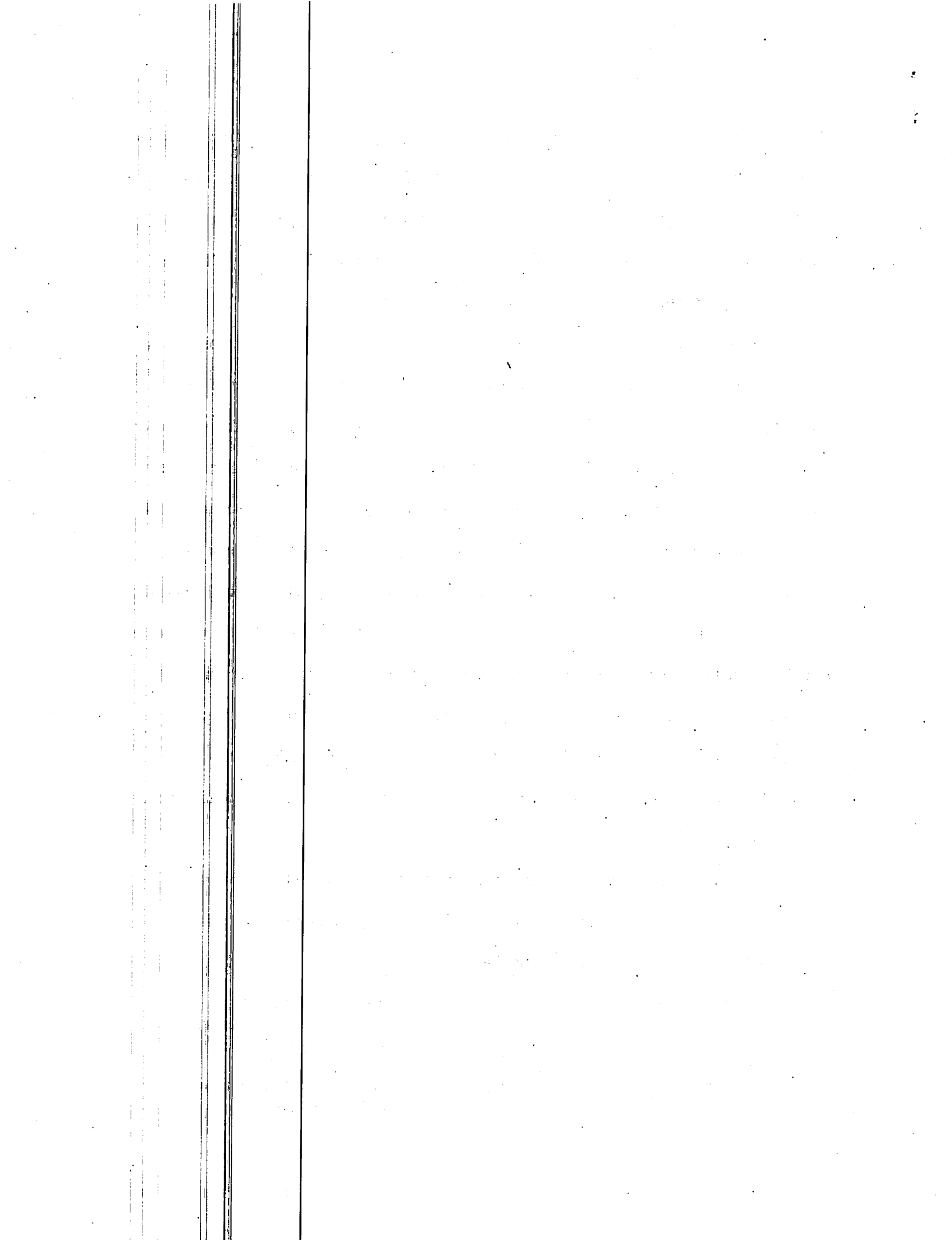
that even though step flashing was present for most of that section, there was a part of the section missing the step flashing. Mr. Morales has been a roofer for fifteen years. He explained that flashing helps to prevent water from getting inside of a house by funneling the water to the gutters. His testimony was consistent with his proposal, invoice and photographs. Clmt. Ex. F and L. I found his testimony regarding the lack of flashing to be credible.

The Respondent did not present any testimony or evidence to refute the purpose of step flashing, or that step flashing was needed in the section indicated. Instead, the Respondent contended that the work was not inadequate or unworkmanlike because step flashing was present in the majority of the section, and there was no evidence of a continuing leak. Neither of these arguments are persuasive. If step flashing is required along the joint between a wall and a roof as an industry standard, then missing flashing in that area is evidence of inadequate or unworkmanlike work. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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 Respondent performed some work under the Contract, and the Claimant retained other contractors 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



Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover their actual loss of \$1,685.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$1,685.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3)(c).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,685.00; 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

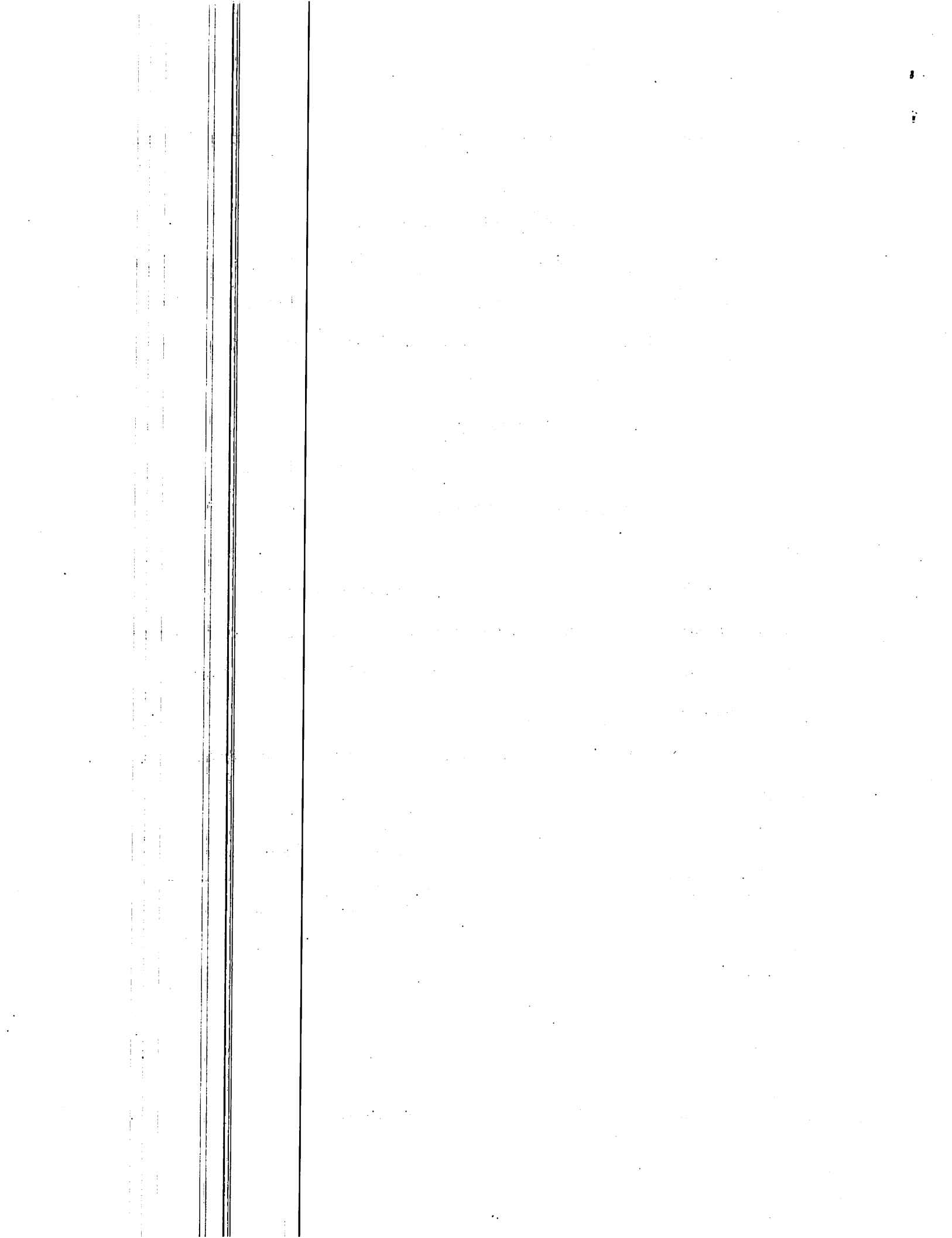
**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

December 9, 2022  
Date Decision Issued

*Erin H. Cancienne*  
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Erin H. Cancienne  
Administrative Law Judge

EHC/emh  
#202208

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



**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of January, 2023, 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.***

***Michael Newton***

***Michael Newton***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

