

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MATTHEW MITTLEMAN,</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 JOSE FLORES</p> <p>VASQUEZ,</p> <p>T/A M&J REMODELING, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE RACHAEL BARNETT,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-10988</p> <p>* MHIC No.: 21(75)826</p> <p>*</p>
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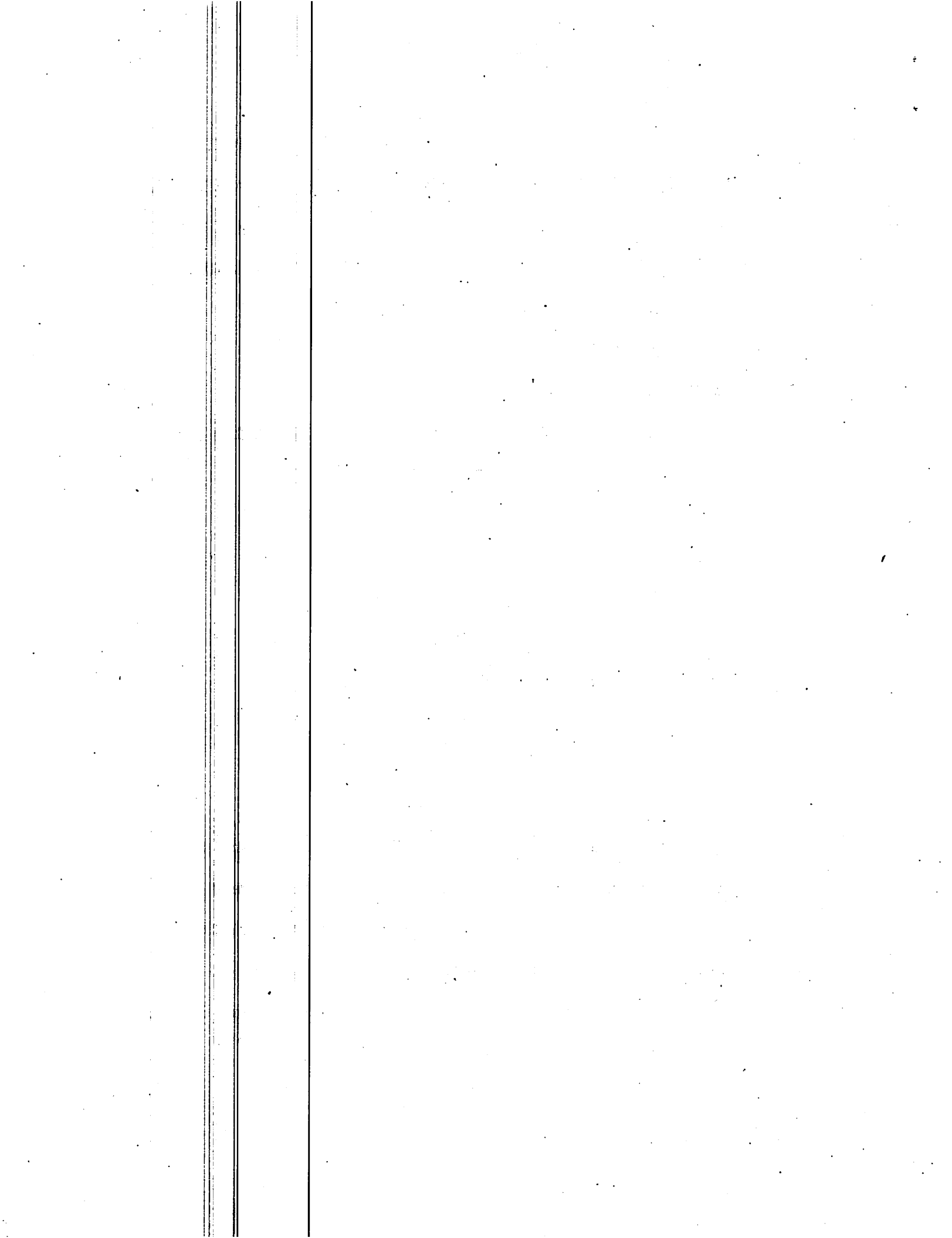
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PROPOSED DECISION

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 19, 2021, Matthew Mittleman (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 \$48,750.00 for actual losses allegedly suffered as a result of a home improvement contract with Jose Flores Vasquez, trading as M&J Remodeling Service, LLC (Respondent). Md. Code Ann., Bus. Reg.



§§ 8-401 to -411 (2015 & Supp. 2022).¹ On May 6, 2022, the MHIC issued a Hearing Order on the Claim. On May 11, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

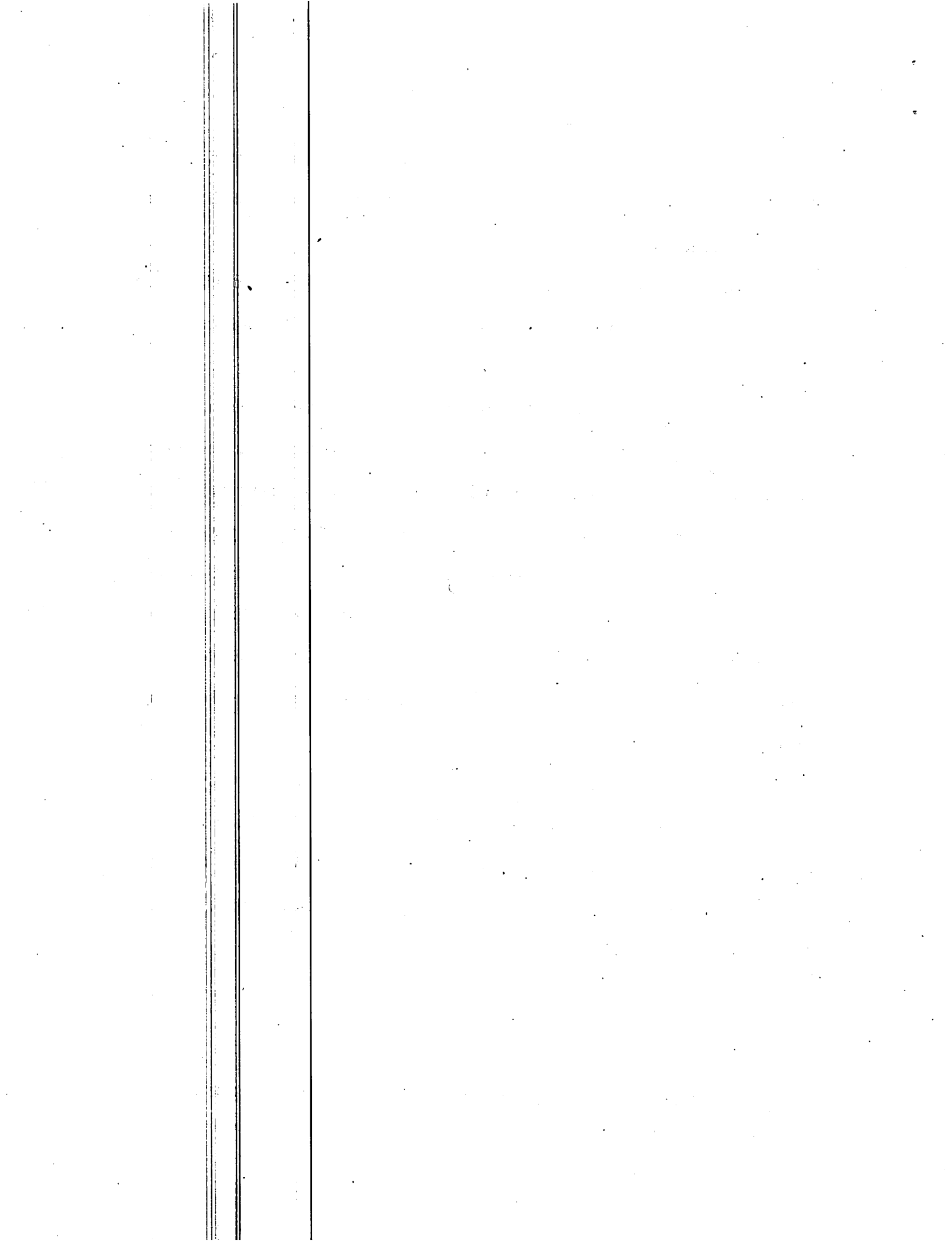
On September 1, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

After waiting more than 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On June 13, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail delivery to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for September 1, 2022, at 9:30 a.m., at the OAH in Hunt Valley. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service (USPS) did not return the Notice to the OAH.² 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 captioned matter. COMAR 28.02.01.05A, C.

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² The Respondent signed the USPS certified mail receipt on June 21, 2022, and the receipt was received by the OAH on June 23, 2022.



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; COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

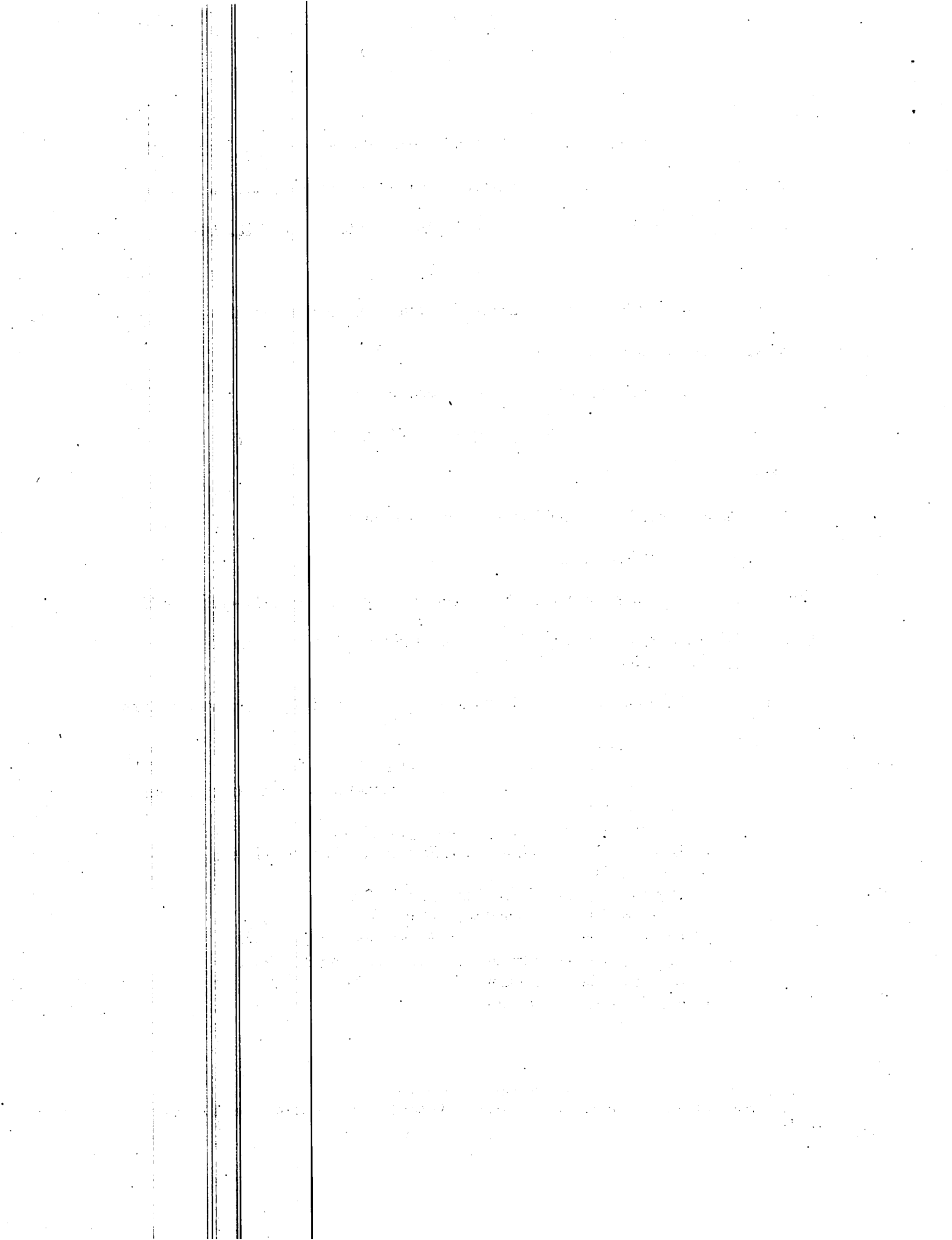
Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Contract, May 22, 2020
- Clmt. Ex. 2 - Photographs³ taken by the Respondent or his spouse, June 2020 – February 2021
- Clmt. Ex. 3- Text message exchanges between the Claimant and the Respondent, June 17, 2020 – June 23, 2021
- Clmt. Ex. 4 - Estimates from Licensed Contractors and related proof of payment, various dates
- Clmt. Ex. 5 - Legal documents:
 - Baltimore County building permit, October 23, 2020
 - Printout from Baltimore County government website of inspection statuses, various dates
 - Baltimore County building permit, April 2, 2021
 - Baltimore County Uniform Code Enforcement Correction Notice, June 2, 2021
 - Home Improvement Claim Form, May 19, 2021⁴
 - Letter from the Department to the Claimant, May 20, 2021
 - Letter from the Department to the Respondent, March 2, 2022
 - Letter from the Department to the Respondent, April 18, 2022
 - Letter from the Department to the Claimant, May 6, 2022
 - Hearing Order, May 6, 2022

³ The photographs were alphabetically marked for identification, a – cc.

⁴ The Claimant dated the completed document May 19, 2021; however, it was not received by the MHIC until July 19, 2021.



The Respondent was not present to offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, June 13, 2022

Fund Ex. 2 - Letter from MHIC to the Respondent, April 18, 2022

Fund Ex. 3 - Hearing Order, May 6, 2022

Fund Ex. 4 - Licensing history of Respondent with the Department, August 30, 2022

Fund Ex. 5 - Home Improvement Claim Form July 19, 2021

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not offer any testimony.

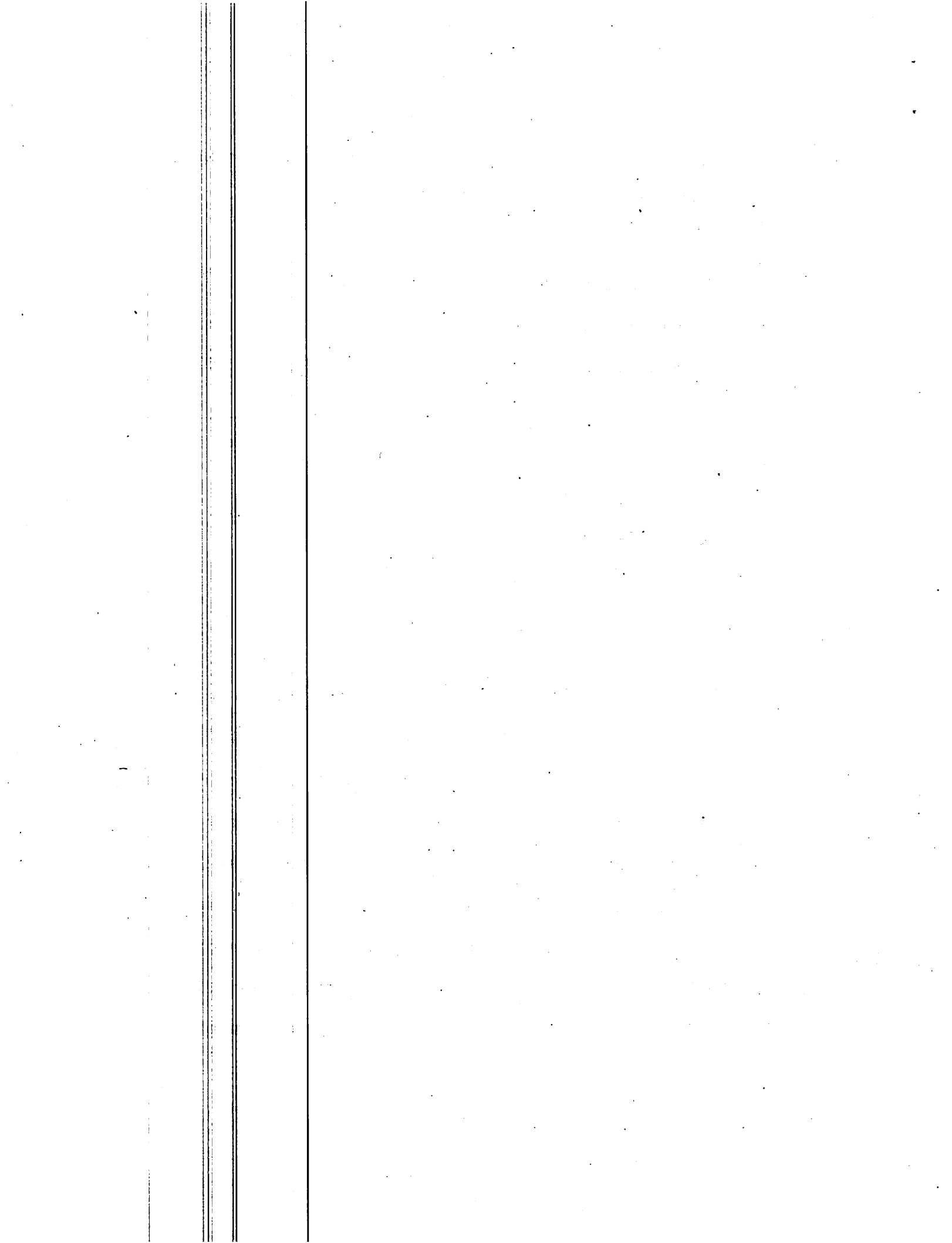
The Fund did not offer any testimony.

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 01-117715 and 05-149099.⁵
2. The Claimant and his spouse are the owners of a single-family home ("the home") in Baltimore County. It is their primary residence, though they own other properties within Maryland. After living in the home for a number of years, the Claimant and his spouse decided they wanted a mudroom. At the time, they had two children and were expecting their third child.
3. On May 22, 2020, the Claimant and the Respondent entered into a contract to construct a first-floor addition to the home that would serve as a mudroom, adjacent to an existing garage. The contract called for the removal of the existing powder room and pantry so

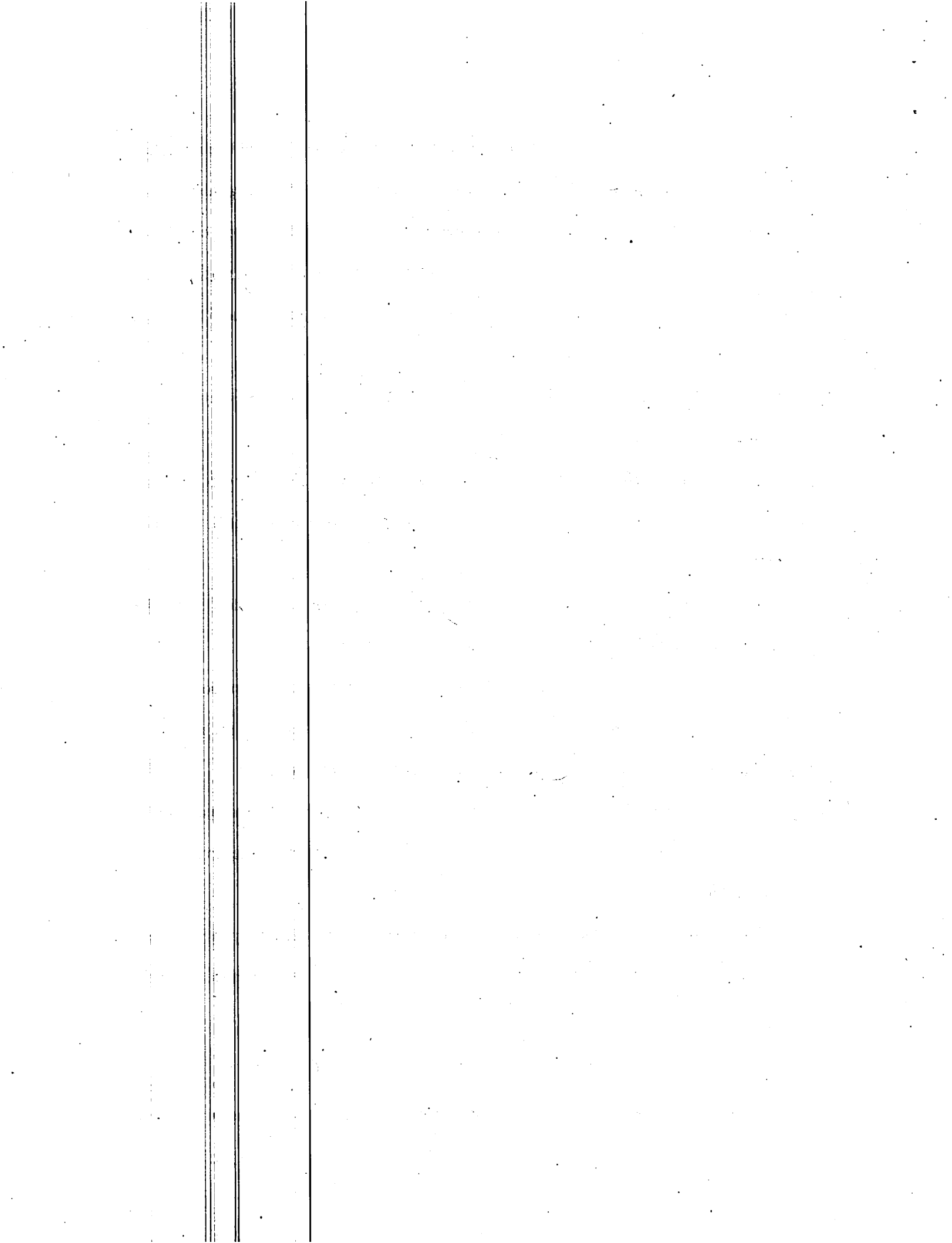
⁵ Fund Exhibit 4 revealed the Respondent has two license numbers. The effective dates are listed but without respect to each license number. The effective dates of licensure are July 23, 2019 - July 23, 2021, and May 27, 2022 - July 23, 2023.



that space could be used for the mudroom. The powder room and pantry would be relocated within the to-be-built space and the existing kitchen would be expanded, adding cabinetry, a new island, and a new backsplash. The contract included the construction of mudroom cubbies and cabinets, as well as stairs going down to the basement, building a foundation for the mudroom, and exterior stucco and roofing to match the home's existing exterior appearance. (Contract).

4. The original agreed-upon Contract price was \$75,000.00.
5. The Contract stated that work would begin on June 22, 2020 and would be completed by October 1, 2020.
6. On June 18, 2020, the Claimant paid the Respondent \$15,000.00 (first draw).
7. The Respondent dug holes for the addition, put in footers and completed the foundation.
8. On December 28, 2020, the Claimant paid the Respondent \$11,250.00 after the Respondent completed the foundation for the addition (second draw).
9. The Respondent installed the framing for the addition and the mudroom and powder room and installed the roof over the addition of the home. The Respondent also removed the original powder room located within the confines of the home.
10. As the work progressed, the Claimant became concerned with workmanship issues, including roofing and plumbing issues. The Claimant brought these issues to the Respondent's attention.
11. On dates unknown,⁶ Baltimore County Department of Permits, Approvals, and Inspections (Baltimore County) inspected the project. The Respondent's work failed the final framing inspection and the final footing inspection.

⁶ Claimant Exhibit 5 includes a printout of the online listing of inspections for the project. The full screen displays the name of the inspection and its status but not the date of inspection.



12. An unlicensed plumber arrived at the home to perform work, giving rise to additional concern by the Claimant and his spouse.

13. The Respondent and the Claimant agreed that the Claimant could hire a licensed plumber, HVAC technician, and licensed roofer to assist with completing the Contract. The Respondent would deduct whatever costs the Claimant paid these tradespeople from the \$75,000.00 contract.

14. On January 25, 2021, the Claimant paid the Respondent \$22,500.00 after Baltimore County initially approved the foundation (third draw)⁷.

15. Following the third draw, the Claimant had paid the Respondent a total of \$48,750.00.

16. After the third draw, the Respondent did not do any additional work on the home.

17. The Claimant and Respondent exchanged several text messages about the quality of the work over a few weeks' time.

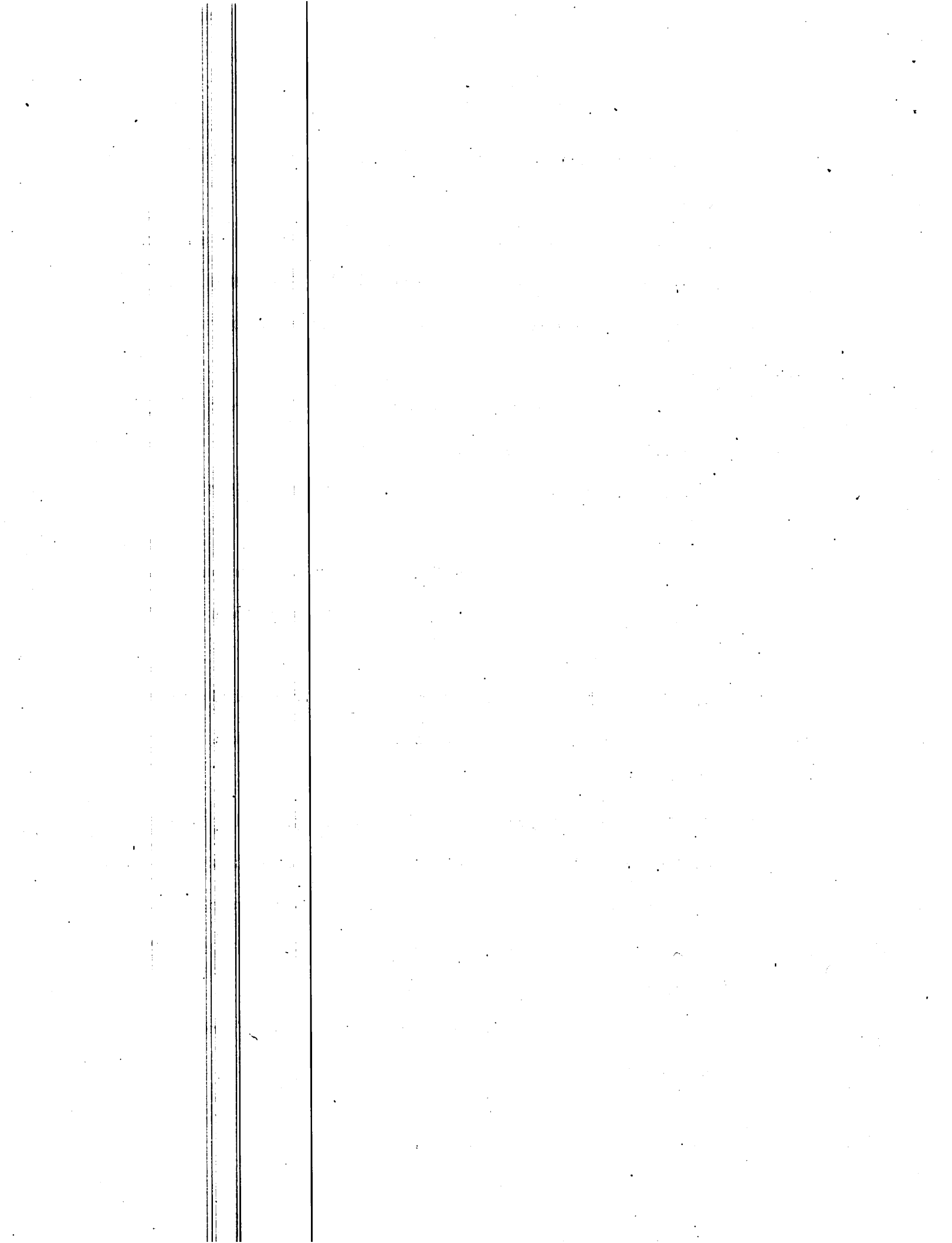
18. The Claimant asked the Respondent to meet in person; however, the Respondent did not agree to do so and claimed bad weather prevented work from being done over a month's time.

19. The Claimant asked the Respondent to refund their money. The Respondent then ceased all communications with the Claimant and did not return to the home to do any work.

20. At the time the Respondent stopped work, there were downed electrical wires, exposed nails, and exposed wood framing without any drywall. These conditions posed a safety risk, especially to the children. The project was incomplete.

21. On April 2, 2021, Baltimore County issued a new permit to the Claimant and his spouse to complete the building project.

⁷ Baltimore County later failed the foundation after observing water intrusion.



22. Also on April 2, 2021, Baltimore County issued the Claimant and his spouse a Uniform Code Enforcement Correction Notice, which directed them to remedy violations concerning the foundation and foundation waterproofing. Water had infiltrated the foundation.

23. The Respondent paid various contractors \$85,716.09.09 in total to repair and complete the work called for under the Contract.

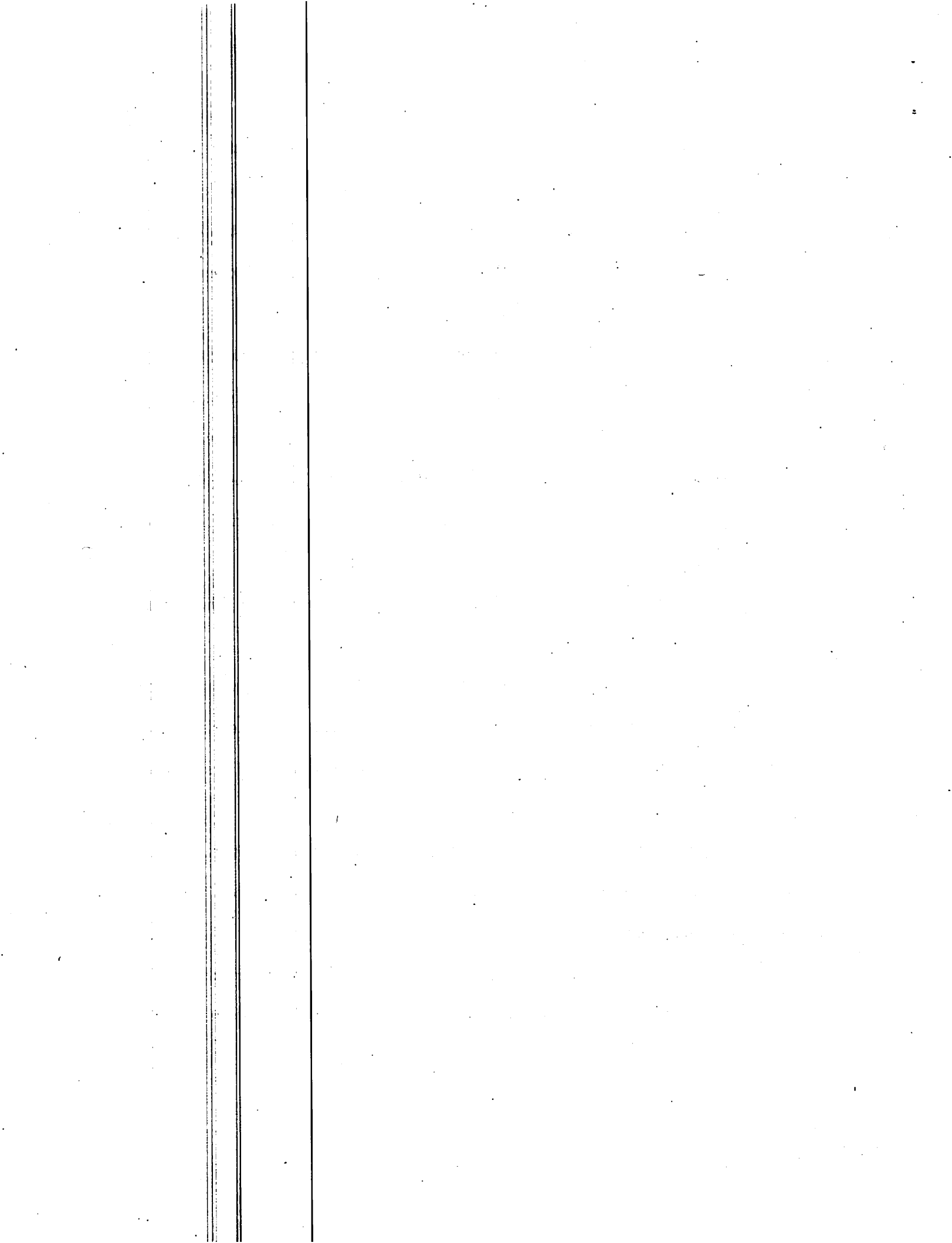
24. AROCON, LLC inspected the roof on March 1, 2021 and took photographs, which its staff labeled to document the deficiencies with the roof. The deficiencies included exposed nail lines, the lack of step flashing, the lack of a valley, and crooked shingle rows. The Respondent failed to cover the roof during winter weather, leading to the formation of mold on the plywood support to the roof. The Respondent had also not used the type of roofing called for in the contract, forty-year black shingle matching the current home's roof.

25. AROCON, LLC removed and replaced the roof over the addition. The Claimant paid AROCON, LLC \$5,417.00.

26. On May 7, 2021, the Claimant sent the Respondent a text message stating, "Matt and I want to continue to give you another opportunity to fix your mistakes with our addition. Another option is to return the last draw of \$22,500 so we can move forward and hire someone else if you can't finish the job..."

27. Toro Services, LLC installed drywall, installed cabinets, repaired drywall where the powder room and pantry were located, repaired hardwood flooring and painted. The Claimant paid Toro Services \$4,200.00.

28. RD Contractors, LLC repaired the mudroom foundation, roofing, mudroom tile, installed mudroom cabinets, and installed windows. The Claimant paid RD Contractors, LLC \$23,293.66.



29. Carroll Insulation installed insulation in the exterior walls of the basement, basement bands, exterior walls and ceiling of the addition. The Claimant paid Carroll Insulation \$8,369.84.

30. Bruce Combs Drywall installed the drywall in the mudroom, powder room and basement and sanded. The Claimant paid Bruce Combs Drywall \$6,041.00.

31. S.M. Mechanical installed a heat pump system. The Claimant paid \$8,269.00 for this work.

32. S.M. Mechanical also installed plumbing in the powder room, which required installing water lines, valve stop, and capping off the plumbing from the old powder room. The Claimant paid \$7,973.00 for this work.

33. Custom Electric, LLC reworked receptacles and installed interior and exterior lighting. The Claimant paid \$4,025.00 for this work.

34. Robey installed stucco on the front and side of the addition. The Claimant paid \$4,120.00 for this work.

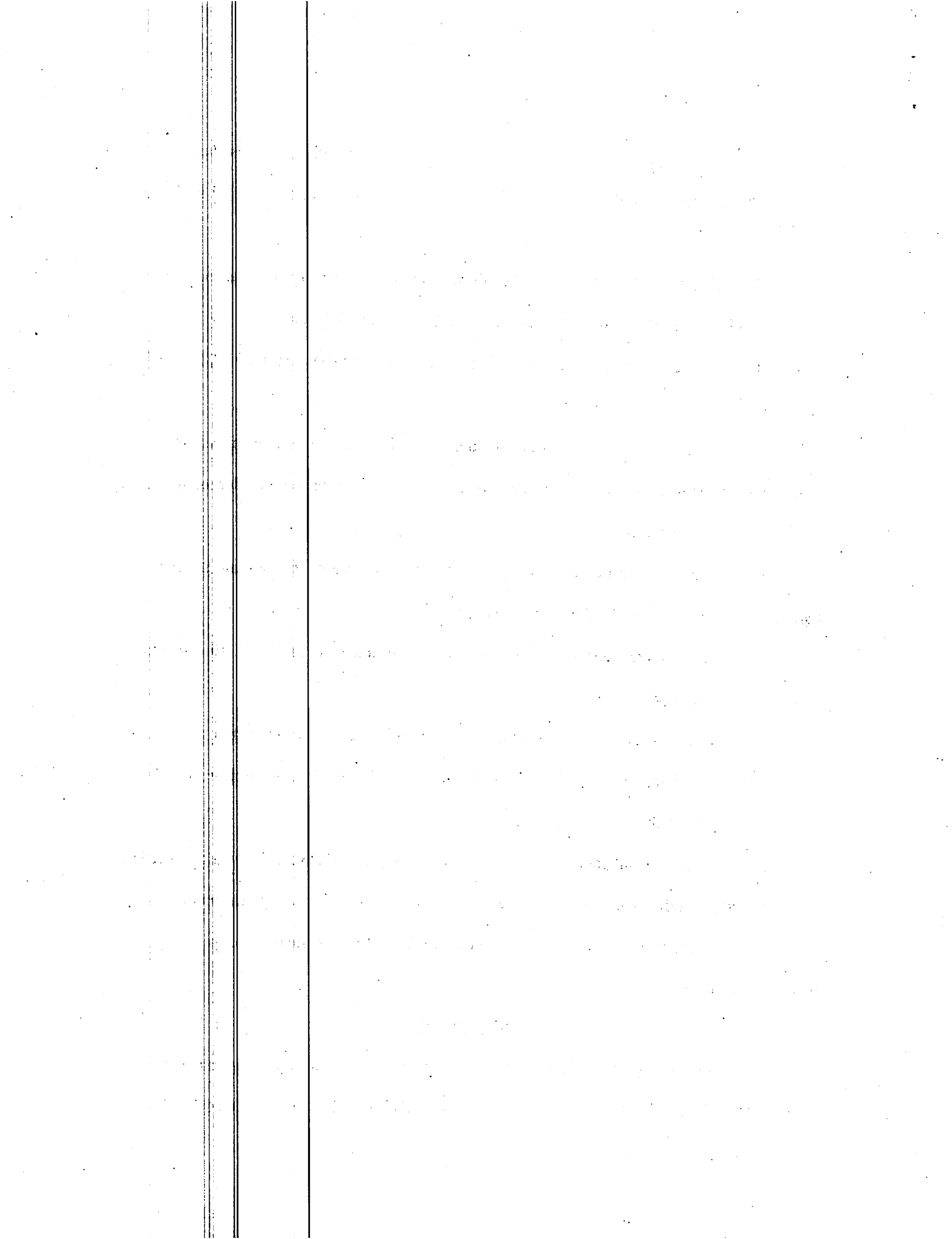
35. Maryland LR Garcia Construction Inc. installed hardy plank siding on the rear of the addition to match the rest of the home (which also has hardy plank siding on the rear). The Claimant paid \$5,555.00 for this work.

36. The Claimant paid National Lumber Company \$7,672.43 for the windows needed for the project, as well a door for the basement level of the addition and one for the mudroom.

37. The Claimant paid Reisterstown Lumber \$780.16 for a fire door between the mudroom and the garage.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; COMAR 09.08.03.03A(3). To

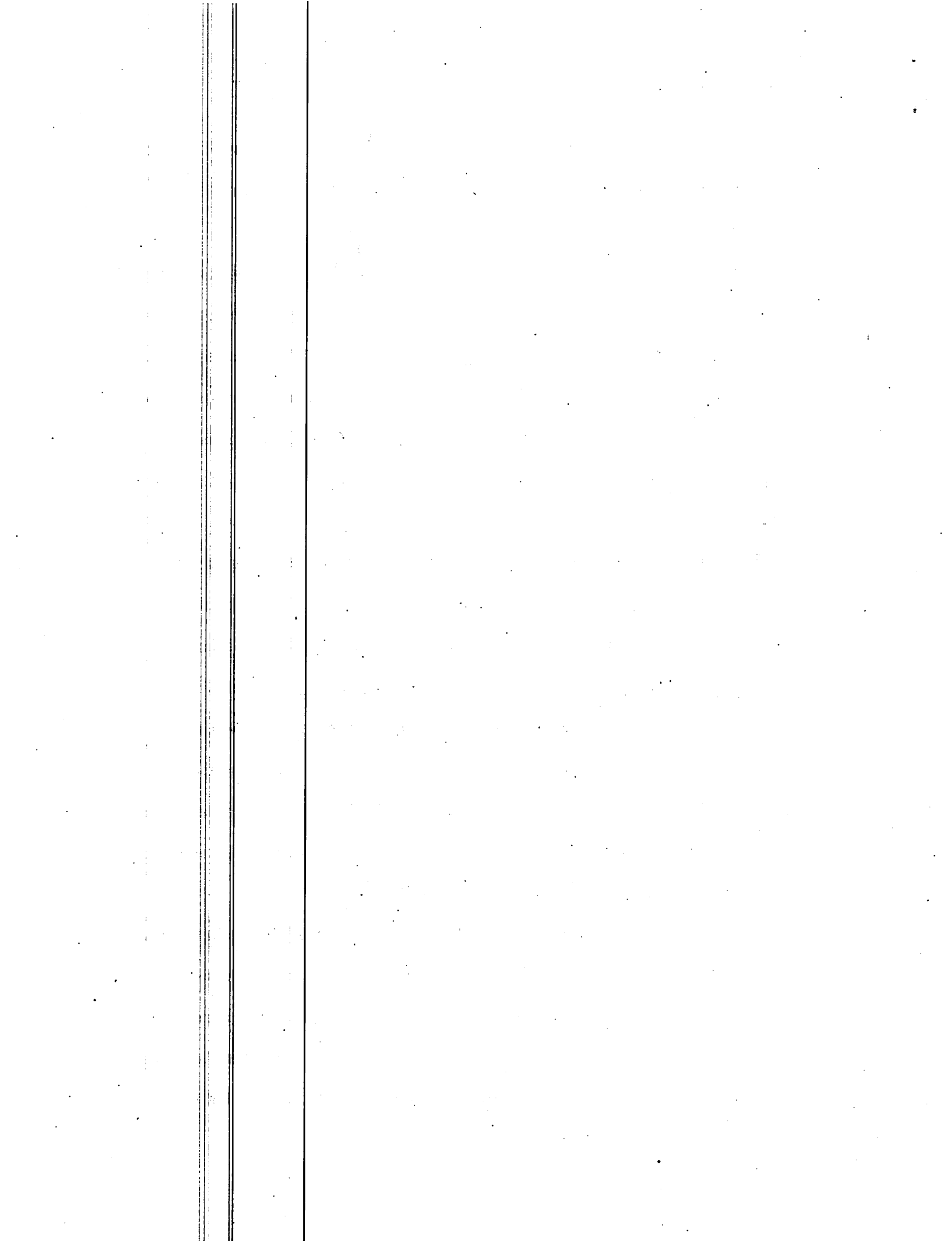


prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

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) (Supp. 2022); *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 Claimant has proven eligibility for compensation.

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) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 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).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). The Claimant sent the Respondent several text messages, asking to meet to discuss the project after Baltimore County failed the inspection of the framing and footing. The Respondent never agreed to meet with the Claimant. Additionally, the Claimant sent the Respondent a text message on May 7, 2021, informing him that the

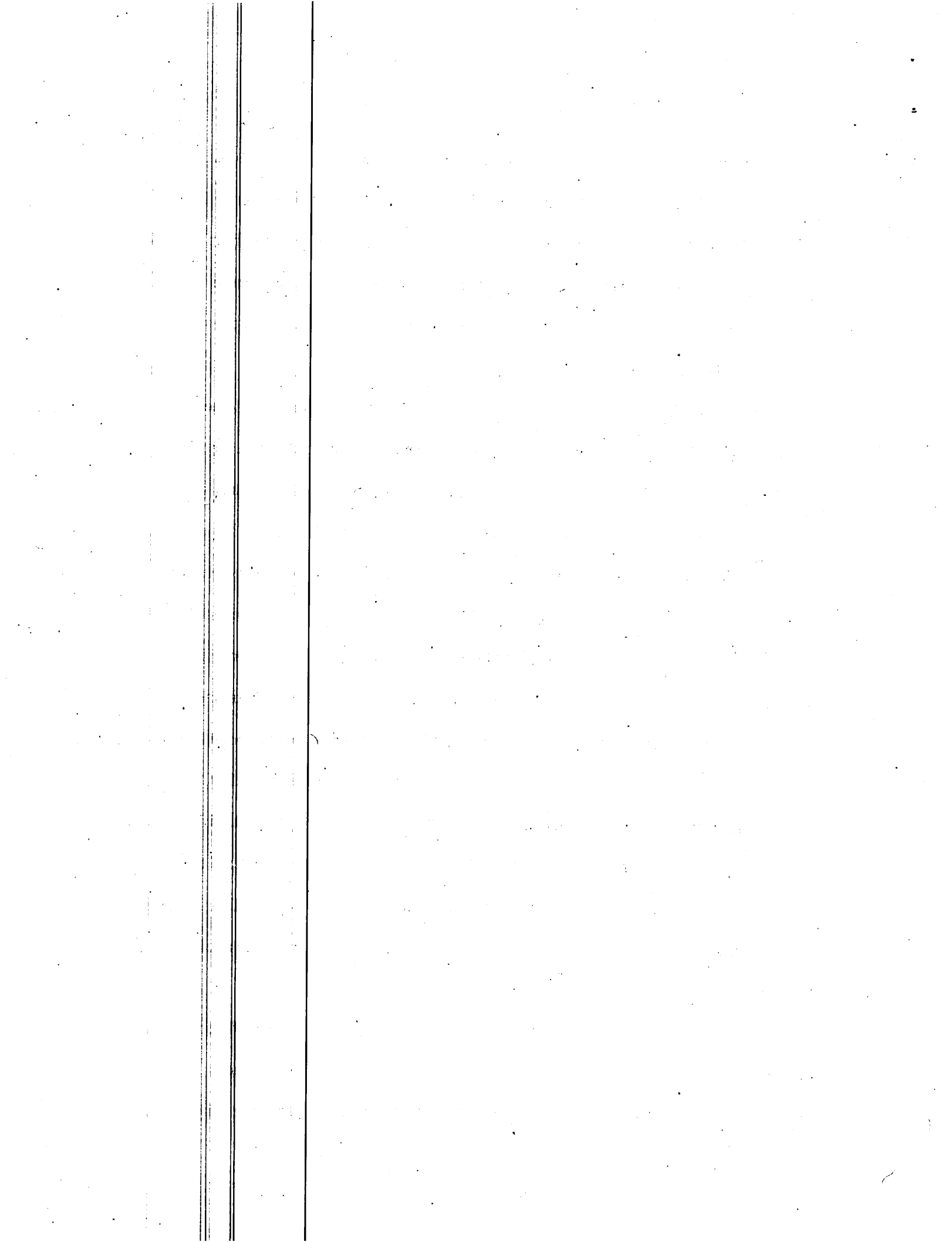


Claimant would be willing to have him to do the work, or if he could not do so, to refund the third draw so the Claimant could hire someone else to move forward with the work. The Respondent informed the Claimant that he had not been at the property in a month since the third draw due to inclement weather, which is a long time not to return to a jobsite, even in the winter. The Respondent kept the third draw and made no efforts to return to the home to do work or to meet with the homeowners.

The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. Most significantly, the construction was mostly incomplete. After receipt of the third draw on January 25, 2021, the Respondent did not return to the home to do any work. He left the project in an incomplete state with exposed wood framing that had failed inspection and no drywall covering it. There were exposed electrical wires, and the plumbing and electrical work (including installing a heat pump) was undone. The insulation had yet to be installed. No work had been done on the exterior finishes of the addition (siding and stonework). The homeowners had to hire contractors to do most of the work required under the Contract.

The work was also unworkmanlike and inadequate. The roof needed to be redone because of its deficiencies. Additionally, it was not the type of roof required by the Contract, "40-year black shingle roof to match current house." (Cl. Ex. 1). The Claimant testified that the roof was such an obvious visible mismatch for the existing roof that his wife noticed the difference while in active labor with their third child. Indeed, the Contract specified the same type of roofing should be used, including the color. For these reasons, replacement of the roof was warranted.

The structural work that was done was so poor in quality that the project failed footing and framing inspections with Baltimore County. There was water leaking into the foundation, which had to be repaired. The plumbing work for the powder room had not been done, because,



as the Claimant testified, the contractor whom the Respondent sent to the home was unlicensed and the Claimant declined to allow an unlicensed plumber to perform plumbing work, which was reasonable.

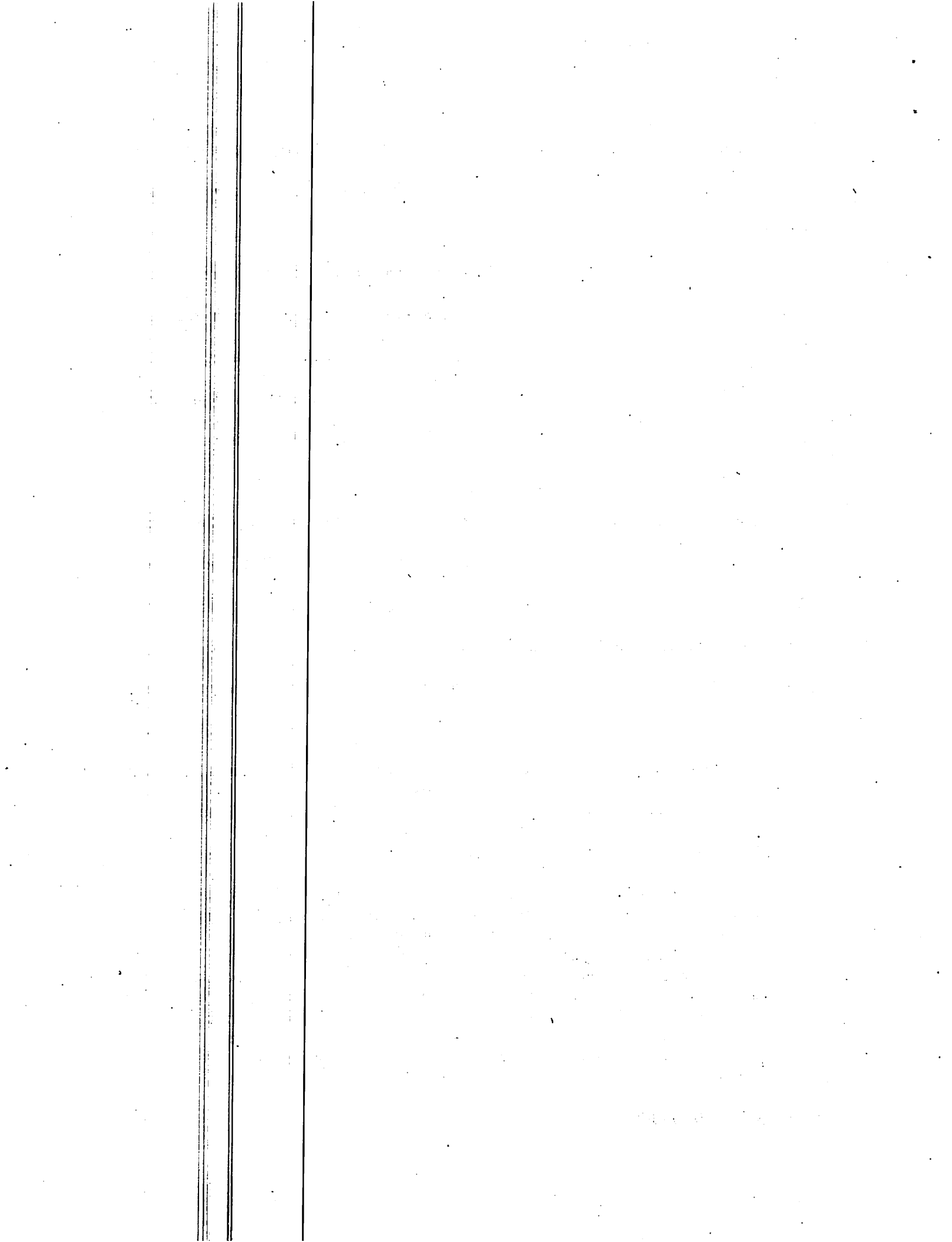
Most of the work called for in the Contract was left undone or had to be redone or repaired. For these reasons, I find the work was unworkmanlike, inadequate and incomplete. I thus find that the Claimant is eligible for compensation from the Fund. The Claimant testified that he and his wife completed the project consistent with the original Contract. Hearing no testimony to the contrary and based on my review of the estimates in Claimant's Exhibit 4, I find his statement credible.

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 has 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 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 paid the Respondent a total of \$48,750.00 over the course of the project. To this amount, one must add what the Claimant paid (\$85,716.09)⁸ to contractors to repair the poor work done by the Respondent and to complete the project. The result is \$134,466.09. From that amount, the original contract amount of \$75,000.00 is deducted for the result of \$59,466.09.

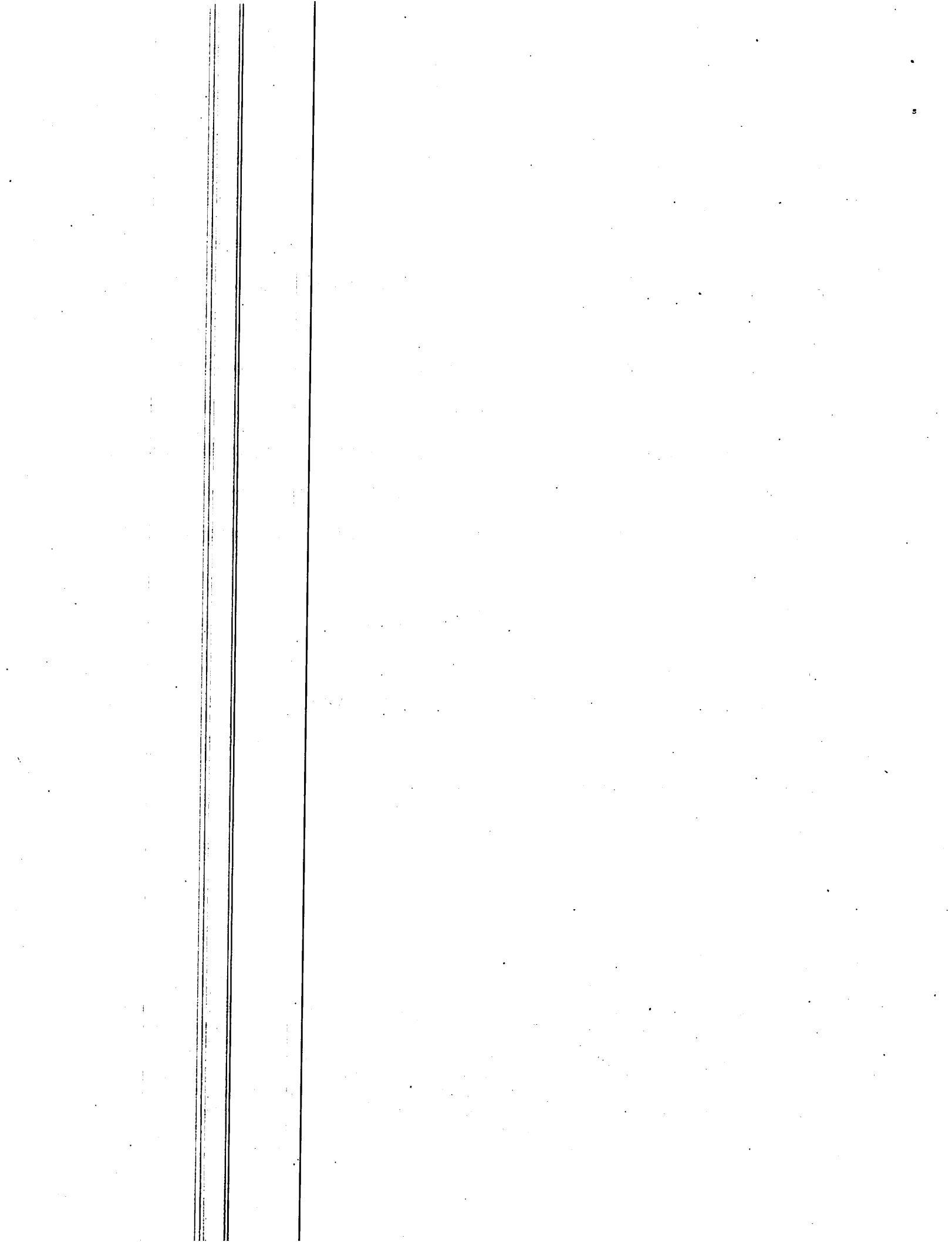
Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.⁹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss of \$59,466.09 amount exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00, the amount paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$30,000.00 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. Md. Code Ann., Bus. Reg. § 8-405(a) (Supp. 2022).

⁸ The Claimant testified the amount was higher; however, this is the amount I arrived at when I tallied the respective checks to the contractors to repair to complete the work under the Contract. I did not consider any consequential damages, which the Claimant testified were damage to the driveway and the sprinkler system. See Bus. Reg. § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).

⁹ On or after July 1, 2022, the increased cap is applicable to any claim 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").



RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00 amount; 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,¹⁰ and

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

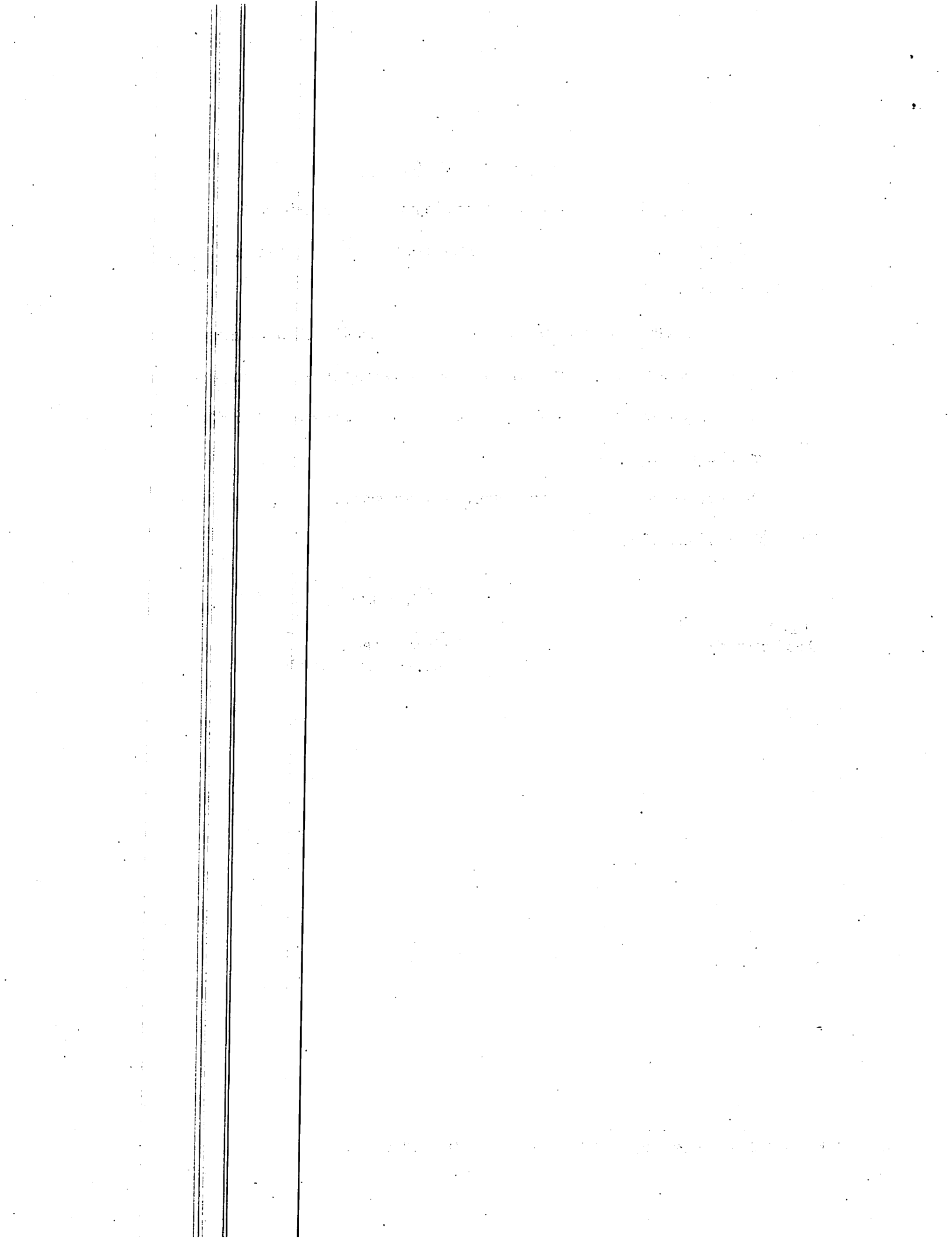
November 16, 2022
Date Decision Issued

Rachael Barnett

Rachael Barnett
Administrative Law Judge

RAB/at
#201659

¹⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 9th 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.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

