

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MATTHEW GONZALEZ,</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 ANDREW</p> <p>WEINBERG,</p> <p>T/A T&A CONTRACTORS, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE DANIA AYOUBI,</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>*</p> <p>* OAH No.: LABOR-HIC-02-22-09820</p> <p>* MHIC No.: 21 (75) 940</p>
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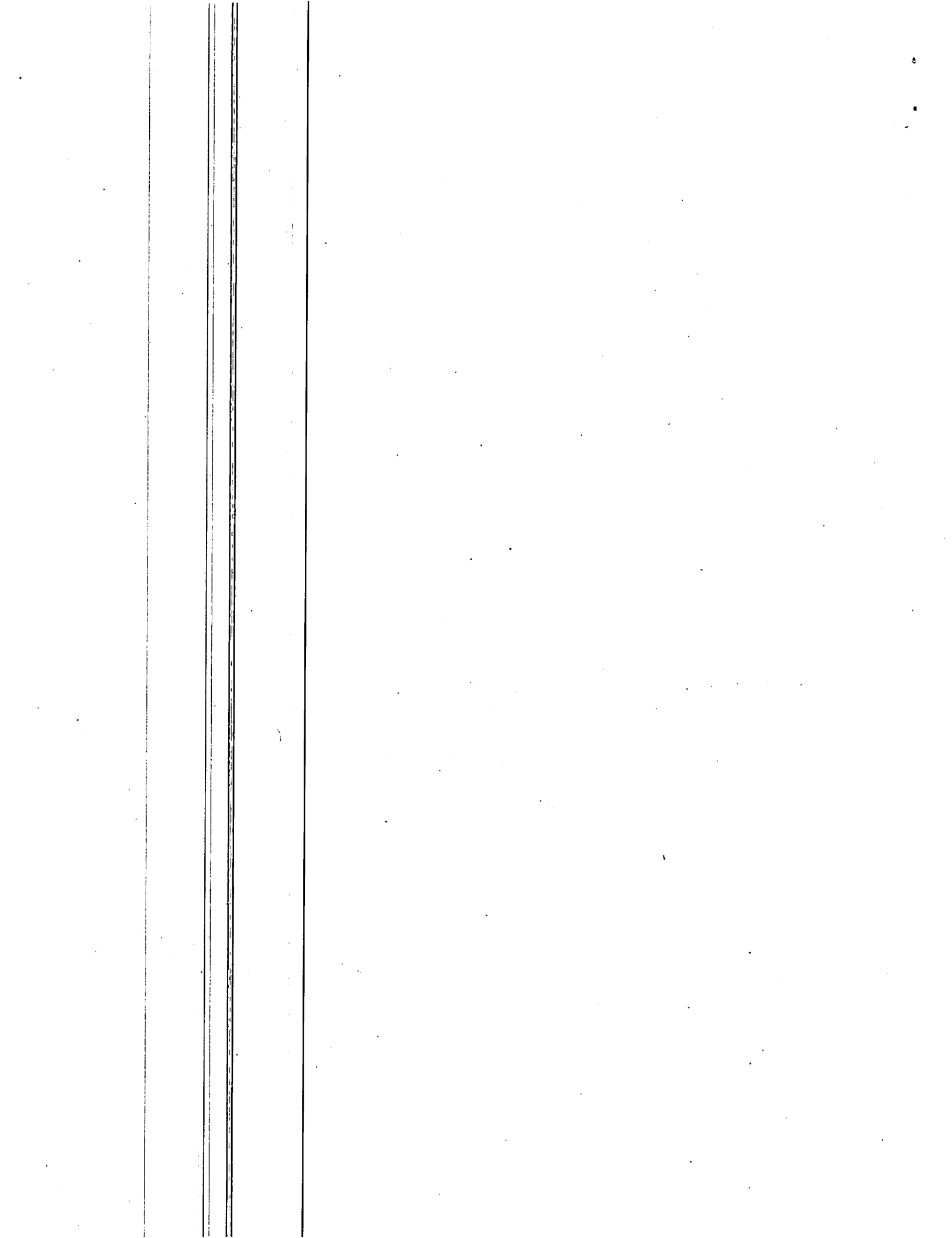
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PROPOSED DECISION

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 September 14, 2021, Matthew Gonzalez (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 \$23,728.00 for actual losses allegedly suffered as a result of a home improvement contract with Andrew Weinberg, trading as T&A Contractors, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401



to -411 (2015).¹ On April 22, 2022, the MHIC issued a Hearing Order on the Claim. On April 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 8, 2022, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. Harrison Bliss, 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); Code of Maryland Regulations (COMAR) 09.01.03; and 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?

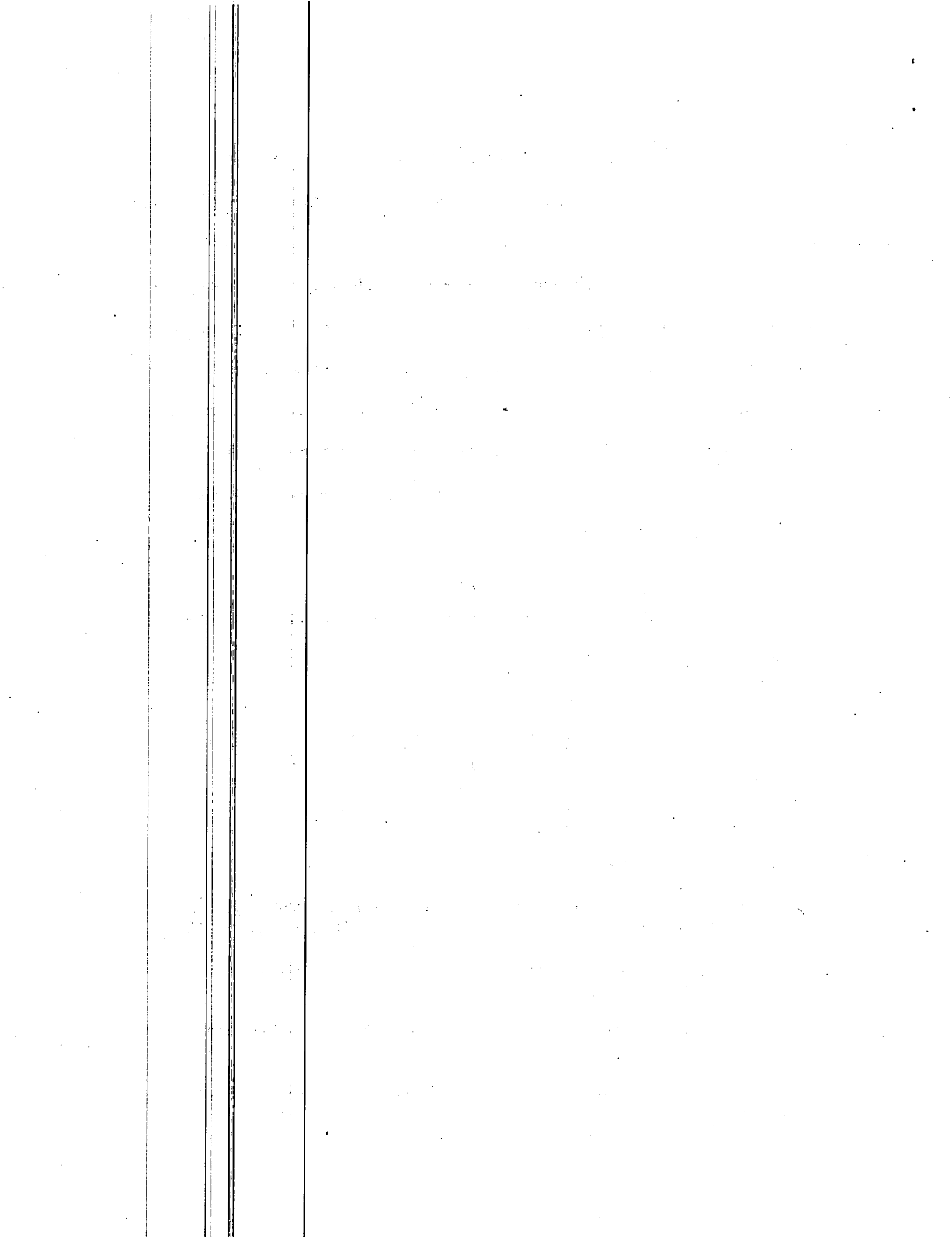
SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Contract, August 8, 2019
- Clmt. Ex. 2 - Screenshots of text message exchanges between the Claimant and Jim Pohlhaus, Sundeck by T&A Contractors, Inc., April 10, 2020 through August 4, 2020
- Clmt. Ex. 3 - Email correspondence between the Claimant and Jim Pohlhaus, August 4 and 7, 2020
- Clmt. Ex. 4 - Email correspondence from the Claimant to the Respondent, December 8, 2020

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



Clmt. Ex. 5 - MHIC Complaint form, April 16, 2021

Clmt. Ex. 6 - Email correspondence from Erin Elliott, Trex, to the Claimant, May 14, 2021, with the following attachments:

- Clmt. Ex. 6-1 - Photograph depicting deck at side of home, undated
- Clmt. Ex. 6-2 - Photograph depicting deck board joints (close up), undated
- Clmt. Ex. 6-3 - Photograph depicting deck railing, undated
- Clmt. Ex. 6-4 - Photograph depicting deck board joints, undated
- Clmt. Ex. 6-5 - Photograph depicting deck board joints and railing, undated
- Clmt. Ex. 6-6 - Photograph depicting deck at side of home (close up), undated
- Clmt. Ex. 6-7 - Photograph depicting deck railing, undated
- Clmt. Ex. 6-8 - Photograph depicting level on deck (close up), undated
- Clmt. Ex. 6-9 - Photograph depicting level at deck board joints, undated
- Clmt. Ex. 6-10 - Photograph depicting level on deck, undated
- Clmt. Ex. 6-11 - Photograph depicting level at deck rear, undated
- Clmt. Ex. 6-12 - Photograph depicting level on deck with tape measure, undated
- Clmt. Ex. 6-13 - Photograph depicting level on deck, undated
- Clmt. Ex. 6-14 - Photograph depicting tape measure on deck, undated
- Clmt. Ex. 6-15 - Photograph depicting tape measure on deck (close up), undated

Clmt. Ex. 7 - Email correspondence between Erin Elliott and the Claimant, May 24, June 15, and June 22, 2021, with the following attachments:

- Email correspondence from Erin Elliott to the Claimant, June 22, 2021
- Email correspondence from the Claimant to Erin Elliott, June 24, 2021

Clmt. Ex. 8 - Quote from Deck Solutions, July 14, 2021

Clmt. Ex. 9 - Quote from Four Seasons Design Build, LLC, August 27, 2021

Clmt. Ex. 10 - MHIC Claim, signed September 7, 2021, with the following attachments:

- Narrative from the Claimant To Whom It May Concern, September 7, 2021

Clmt. Ex. 10-1 - Photograph depicting deck after rain, undated

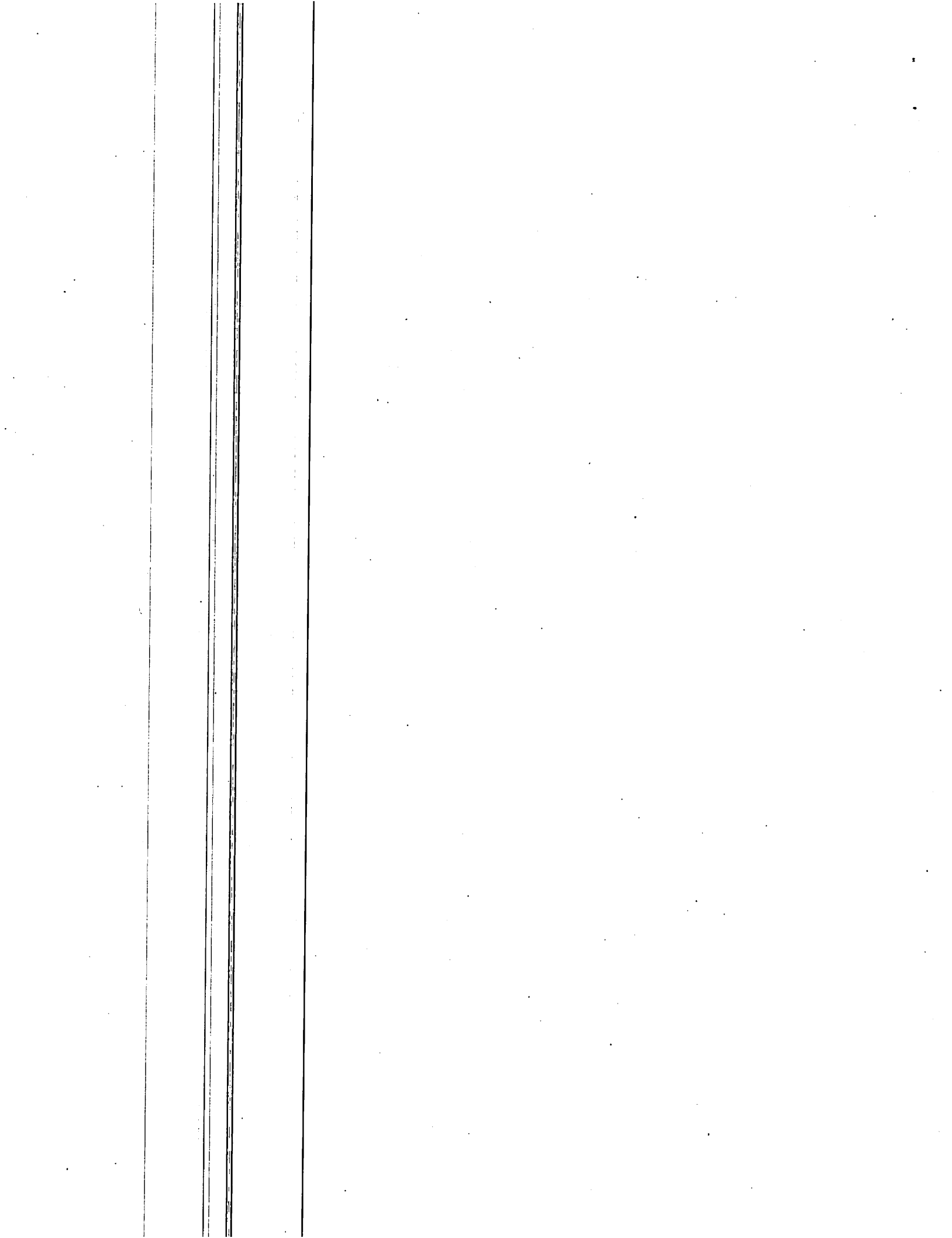
Clmt. Ex. 10-2 - Photograph depicting deck boards (vertical), undated

Clmt. Ex. 10-3 - Photograph depicting deck boards (horizontal), undated

Clmt. Ex. 10-4 - Photograph depicting ceiling under deck, undated

Clmt. Ex. 10-5 - Photograph depicting ceiling under deck (close up), undated

Clmt. Ex. 10-6 - Photograph depicting flooring under deck, undated



Clmt. Ex. 11 - USB drive of video depicting rain under deck, June 30, 2021

Clmt. Ex. 12 - USB drive of video depicting rain under deck, September 8, 2021

Clmt. Ex. 13 - USB drive of video depicting area under deck, July 7, 2022

Clmt. Ex. 14 - Framing Plan, September 17, 2019

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Project Plan and Specifications, September 17, 2019

Resp. Ex. 2 - Inspection Approval, Montgomery County Department of Permitting, October 14 and 24, 2019

Resp. Ex. 3 - Trex Decking Installation Guide, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Home Improvement Claim Form, September 14, 2021

Fund Ex. 2 - Letter from Joseph Tunney, MHIC, to the Respondent, September 29, 2021

Fund Ex. 3 - Hearing Order, April 22, 2022

Fund Ex. 4 - Notice of Hearing, May 4, 2022

Fund Ex. 5 - Respondent's MHIC I.D. Registration, June 17, 2022

Testimony

The Claimant testified and did not present other witnesses.

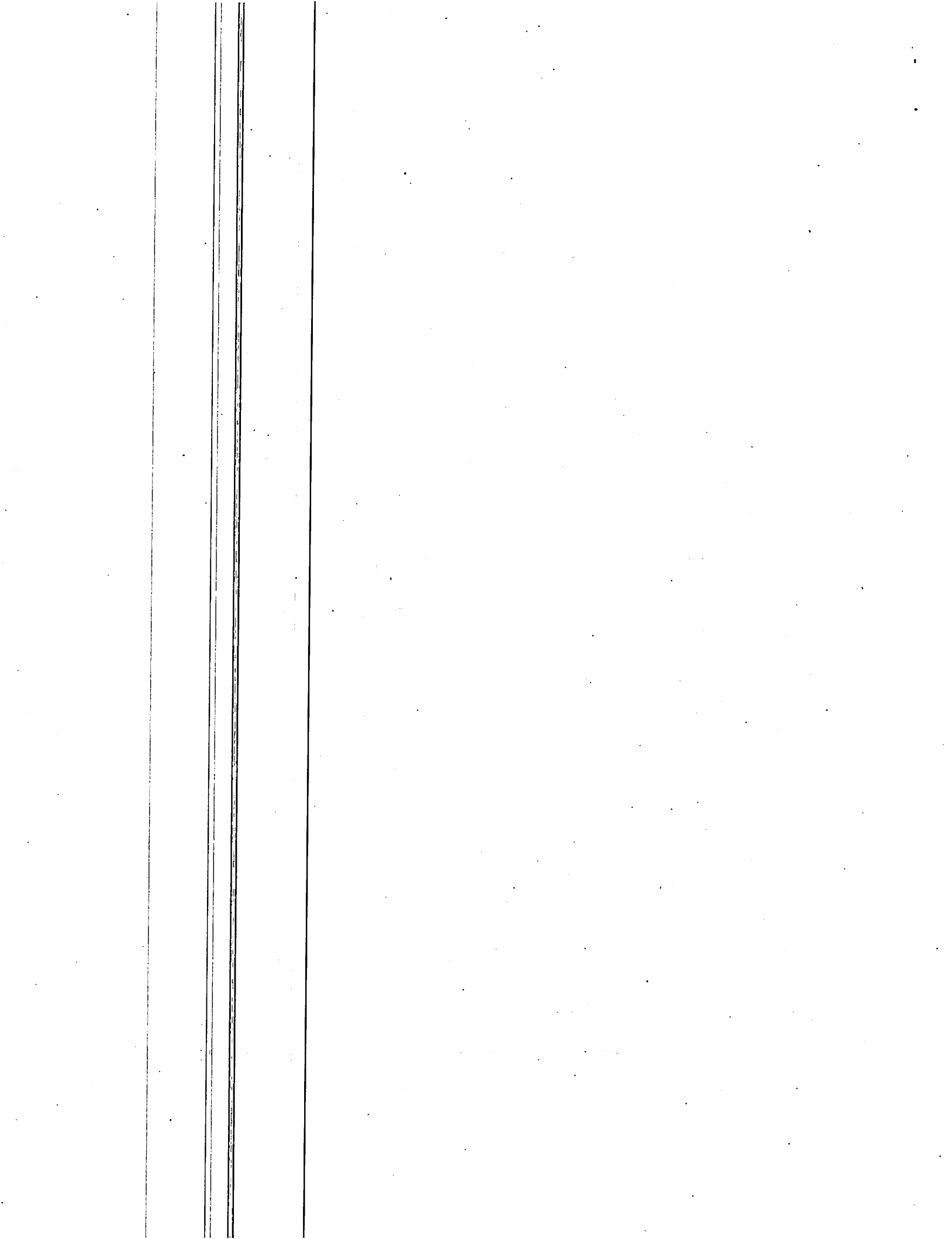
The Respondent presented the testimony of Melissa Ausden, the Director of Operations for T&A Contractors, Inc.

The Fund presented no 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 number 01-17489.



2. On August 8, 2019, the Claimant and the Respondent entered into a contract for the Respondent to install at the Claimant's home a new composite Trex deck (thirty-six feet wide by fourteen feet long), including steps, a pergola (sixteen feet by fourteen feet), and a ceiling system (Contract). The Contract specified installation of a "Trex rain escapes system between each joist bay with gutter system and downspout," (Clmt. Ex. 1, at 1), and underneath the deck, installation of a six-inch beaded white vinyl ceiling to allow for installation of a ceiling fan and seating in the area under the deck.

3. The original agreed-upon Contract price was \$59,033.00, with \$19,678.00 due upon acceptance of the Contract, \$19,678.00 due upon commencement of the work, and \$19,677.00 due upon completion of the work.

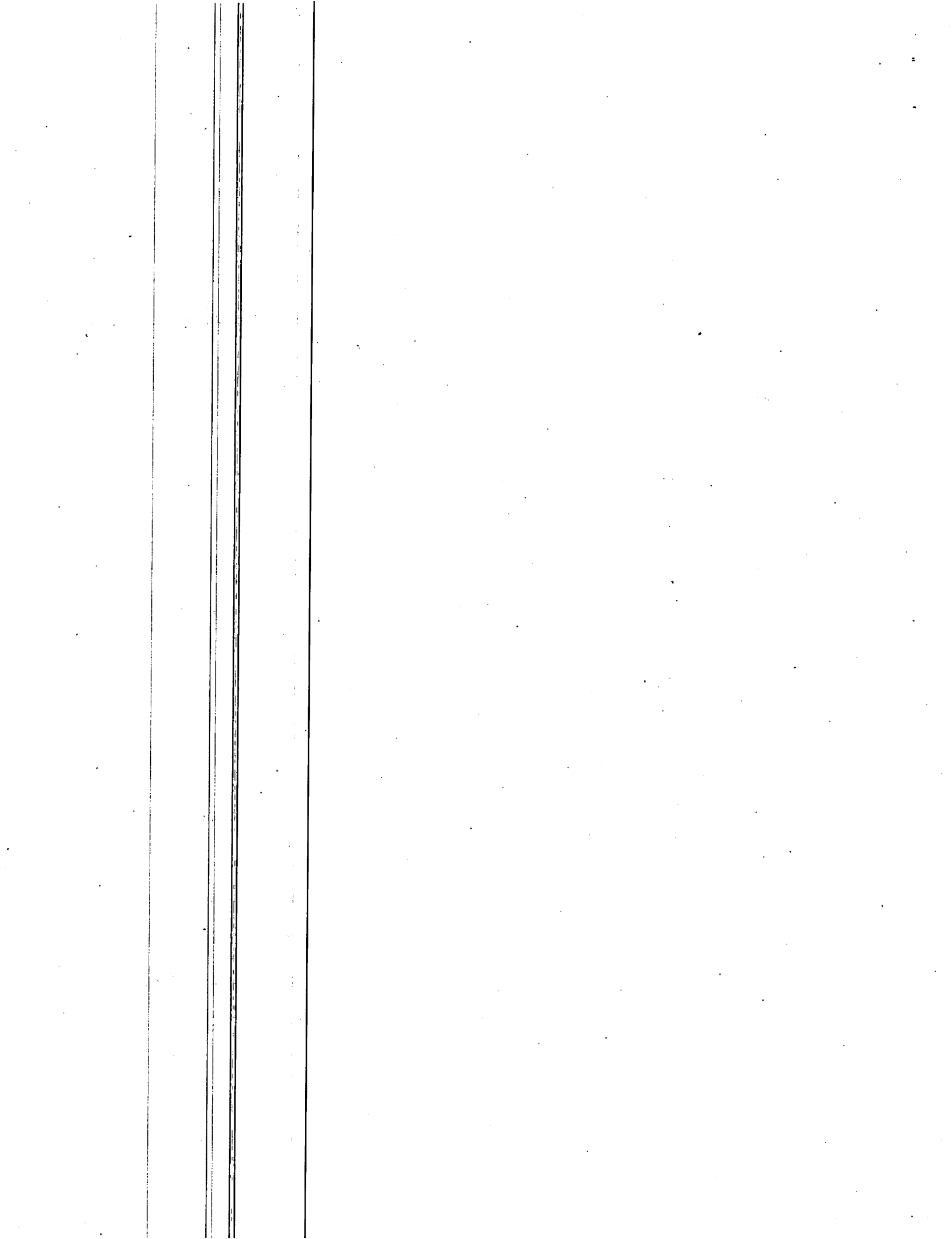
4. On September 17, 2019, the deck specifications, drawings, and plans were prepared, which required the deck be supported by pressure-treated wood joists (two feet high by twelve feet long) placed every sixteen inches.

5. In October 2019, installation began. The deck footing and framing received county inspection approval, respectively, on October 14 and 24, 2019.

6. In November 2019, installation was completed.

7. In March 2020, approximately four months after installation, the Claimant began noticing "waves" or warping in the composite deck boards.

8. In April 2020, at the Claimant's request, the Respondent returned to address the Claimant's concerns regarding the warping deck boards, which Jim Pohlhaus, an employee of the Respondent, described as "not structur[al] damage . . . just bowed framing boards." (Clmt. Ex. 2, at 2). The Respondent's work crew reinforced and leveled the deck joists with steel



plates. To address leaking in the ceiling underneath the deck, the work crew used patch tape on the areas of concern.

9. On July 31, 2020, the Claimant sent a text message to Mr. Pohlhaus stating, "Is there anything we can do about the warped . . . deck boards? I know you said you guys tried everything. But the look is still killing me." (Clmt. Ex. 2, at 6). On August 4, 2020, Mr. Pohlhaus replied "I sent this over to our Trex rep for input. [H]ave not heard back yet, nothing I can do more at this point." (Clmt. Ex. 2, at 6).

10. Replying to an email from the Claimant, on August 7, 2020, Mr. Pohlhaus stated:

[A]fter reviewing this with internal staff and Trex rep – the deck boards are not defective. It is normal for deck boards with a composite finish and texture to hold some water until they dry. The only way to avoid this is by not using [pressure treated] wood framing, and using 100% steel framing with smooth decking boards. The expansion and contraction of [pressure treated] wood is very normal and unavoidable as they are exposed to the elements along with the composite decking.

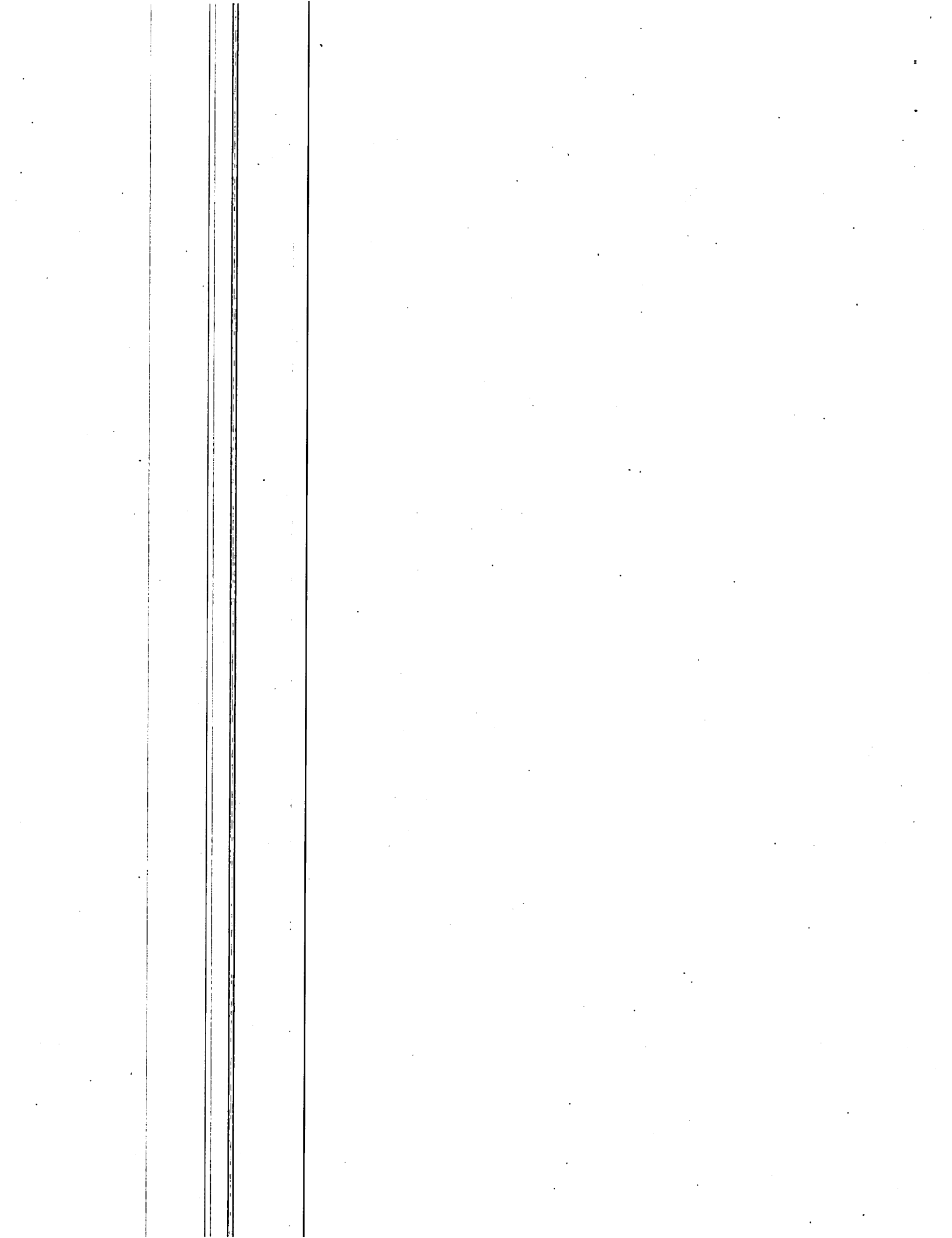
(Clmt. Ex. 3). Despite the Claimant's subsequent reply, the Claimant received no further response or communication from Mr. Pohlhaus.

11. On December 8, 2020, the Claimant emailed the Respondent explaining that he had reached out to two other construction companies that "said the joist[s] should have been installed [twelve] inches and not [sixteen] inches (from what they could tell, not definite)."

(Clmt. Ex. 4, at 1). The Claimant never received a response from the Respondent.

12. In May 2021, the Claimant independently pursued a warranty claim directly through Trex, the manufacturer of the composite deck boards.

13. In June 2021, the Claimant began noticing rain seeping from the deck above through the vinyl ceiling to the area underneath the deck.



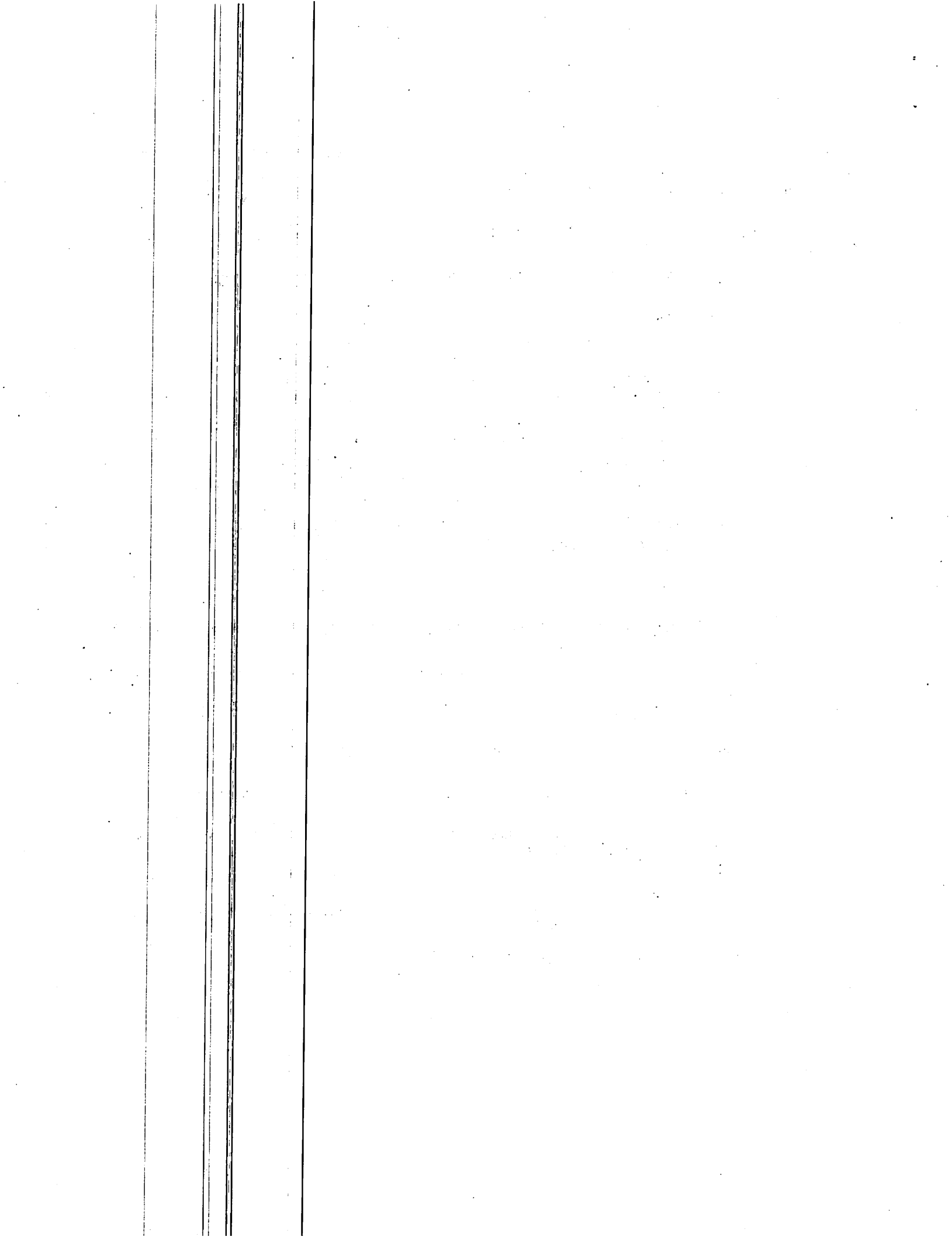
14. On June 22, 2021, Trex denied the Claimant's warranty claim. Though Trex explained that the deck boards indicated warping, "it appears the installation is at issue rather than a warrantable condition with the Trex material. We encourage you to work directly with your installer to resolve any outstanding concerns." (Clmt. Ex. 7, at 3). With respect to proper installation, Trex also explained the following:

When installing boards below 40 degrees Fahrenheit, the gapping requirements are as follows: 3/8" width-to-width, 3/16" end-to-end/end-to-width, and 1/2" when abutting solid objects. When installing boards above 40 degrees Fahrenheit, the gapping requirements are as follows: 1/4" width-to-width, 1/8" end-to-end/end-to-width, and 1/4" when abutting solid objects. Gapping is necessary for drainage, air flow, and natural expansion and contraction of our boards, as well as shrinkage of the wood joist system. A lack of gapping could cause issues related to standing water, bowing/warping, and flared ends.

(Clmt. Ex. 7, at 3).

15. On July 14, 2021, the Claimant obtained a quote from Deck Solutions to demolish the existing composite boards; move existing joists and install additional pressure-treated pine joists at twelve inches; install new Trex composite deck boards; and repair and reinstall the leaking watershed. Deck Solutions quoted the Claimant a total of \$23,728.00.

16. On August 27, 2021, the Claimant obtained a quote from Four Seasons Design Build, LLC, to remove existing decking; install joist wood framing between the existing joists; install new Trex decking, spacing approximately 1/4" for proper water drainage and expansion/contraction; and remove and properly reinstall the leaking watershed. Four Seasons Design Build, LLC quoted the Claimant a total of \$22,841.00.



DISCUSSION

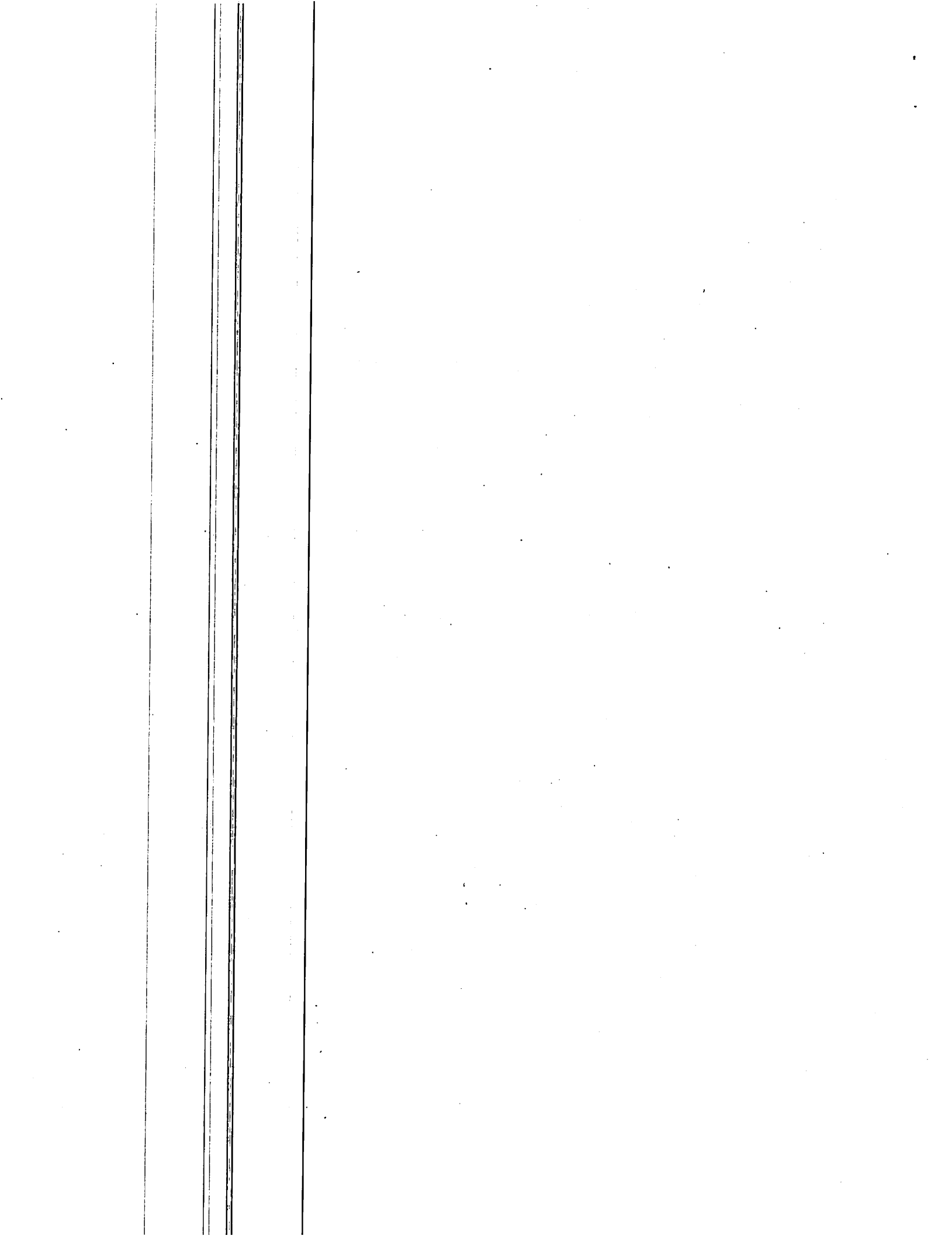
Burden of Proof and the Statutory Framework

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 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); *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.

The Parties’ Positions

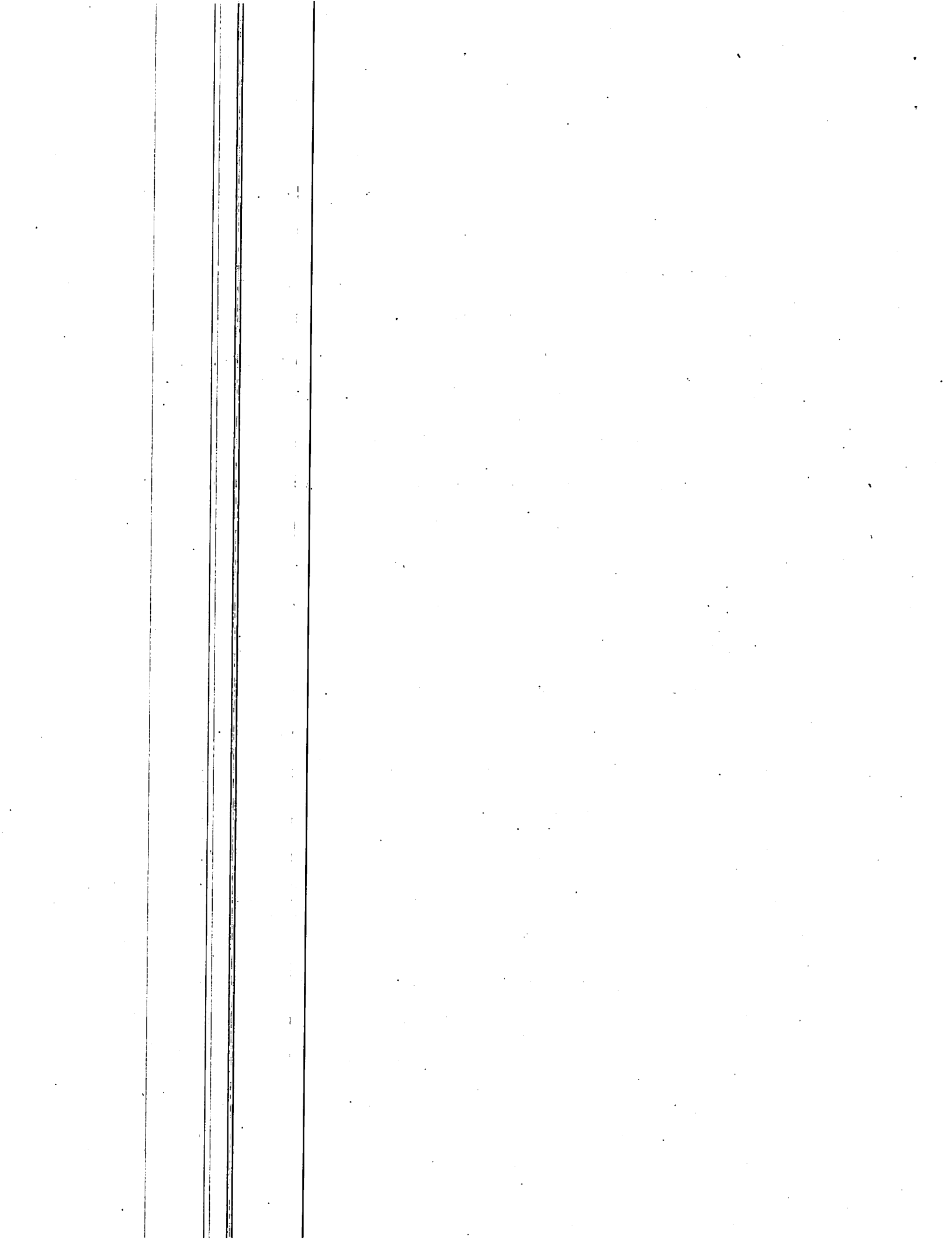
The Claimant argued that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement by improperly installing an exterior deck at the Claimant’s home. The Claimant stated that the deck joists should have been installed every twelve inches instead of every sixteen inches. The Claimant explained that after his attempts to resolve his concerns with the Respondent regarding “wavy” deck boards and “puddling” of rain leaking through the ceiling to the area underneath the deck, the Claimant pursued a warranty claim through the manufacturer, which was ultimately denied due to “incorrect installation.” The Claimant stated that he contracted with the Respondent for installation of a waterproof ceiling underneath the



deck to use when it is raining and that he did not get what he paid for. The Claimant explained that he never requested compensation from the Respondent, only that the Respondent repair the deck and provide what was stipulated to under the Contract.

The Respondent argued that the Claimant failed to meet his burden to demonstrate that the Respondent performed an unworkmanlike, inadequate, or incomplete home improvement. The Respondent argued that the deck installation was performed according to installation guidelines and drawings, applicable county codes, and approved by all county inspectors. The Respondent stated that the installation was performed in a workmanlike manner to completion pursuant to the Contract. The Contract called for Trex deck boards over pressure-treated lumber framing, which, the Respondent argued, was subject to warping by its nature. The Respondent explained that the only alternative would have been steel framing, which the Claimant did not contract for. The Respondent suggested that, though required, the Claimant failed to offer expert testimony as to the causation of the "wavy" deck boards, "puddling" of rain, and the leak to the area below the deck. The Respondent argued that to the extent that a leak may exist, that resulted from other contractors performing work on the deck. The Respondent explained that the work performed by the Respondent after the initial installation was done as a "courtesy measure" to provide the Claimant with responsive customer service. The Respondent explained that though it cannot dispute that the Claimant may be unhappy with the appearance of the Trex decking boards, that does not equate to a finding of inadequate installation or any unworkmanlike conduct by the Respondent.

The Fund argued that the deck ultimately provided by the Respondent does not meet the specifications of the deck that the Claimant contracted for. The ceiling under the deck was leaking though it should not have been; therefore, the Fund argued, the Respondent performed



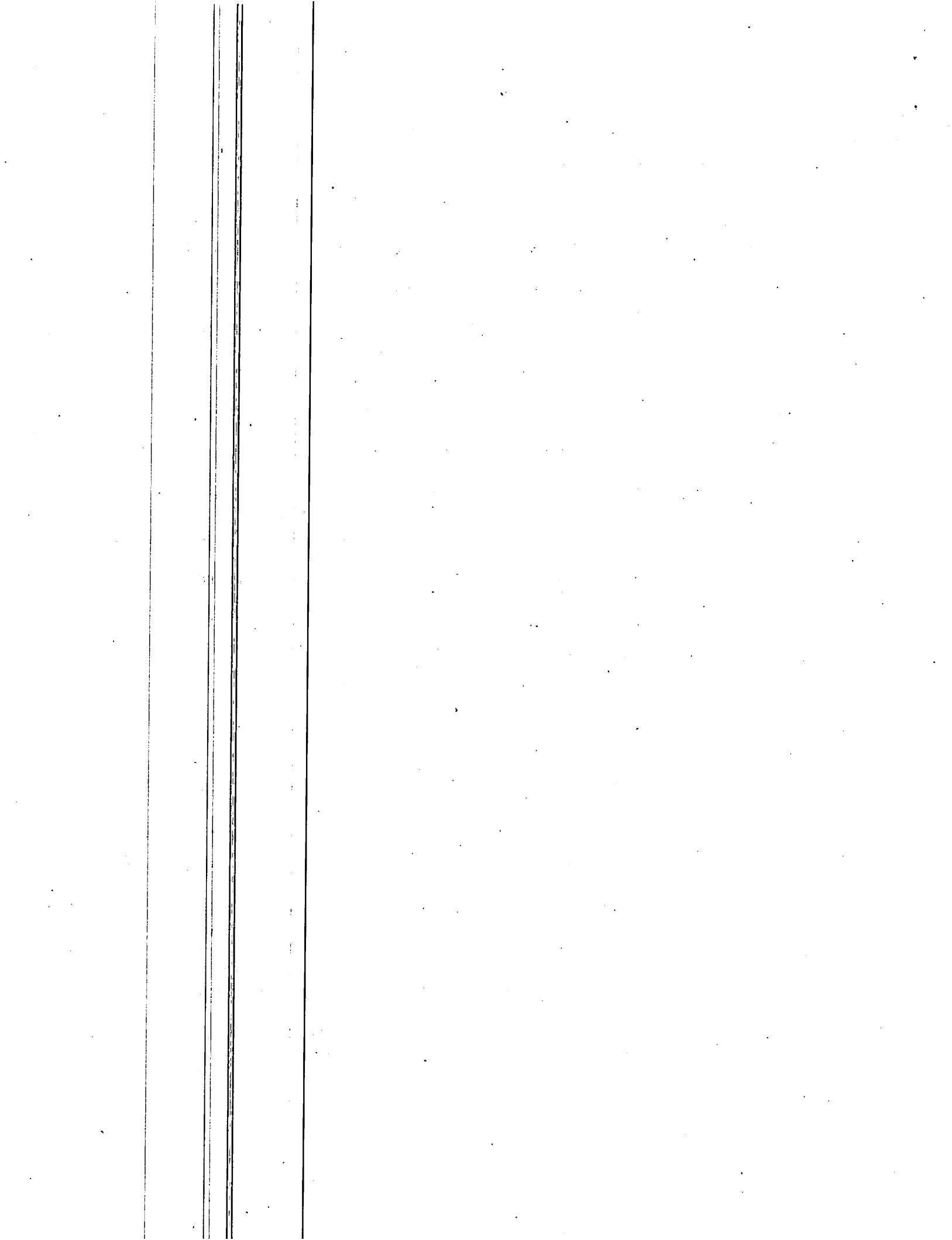
the work in an unworkmanlike or inadequate manner. However, the Fund argued that the Claimant failed to meet his burden to prove his actual loss. With respect to measuring the Claimant's actual loss, the Fund argued that one quote offered by the Claimant (Deck Solutions) did not appear to be from an MHIC-licensed contractor and therefore that quote could not be considered. The Fund argued that with respect to the second quote offered by the Claimant, although Four Seasons Design Build, LLC appeared to be an MHIC-licensed contractor, the Claimant offered no evidence to demonstrate "what needs to be done" to address the Respondent's unworkmanlike or inadequate work or that the proposed work is "necessary and reasonable." Therefore, the Fund argued that no award should be recommended in this case.

For the reasons stated below, I conclude that the Claimant met his burden to demonstrate that the Respondent performed unworkmanlike or inadequate home improvements and that he is therefore eligible for compensation from the Fund. Further, I recommend an award in the amount of the Claimant's actual loss as explained below.

Analysis

No Statutory Bars to Recovery

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). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). The Claimant is not a relative, employee, officer, or

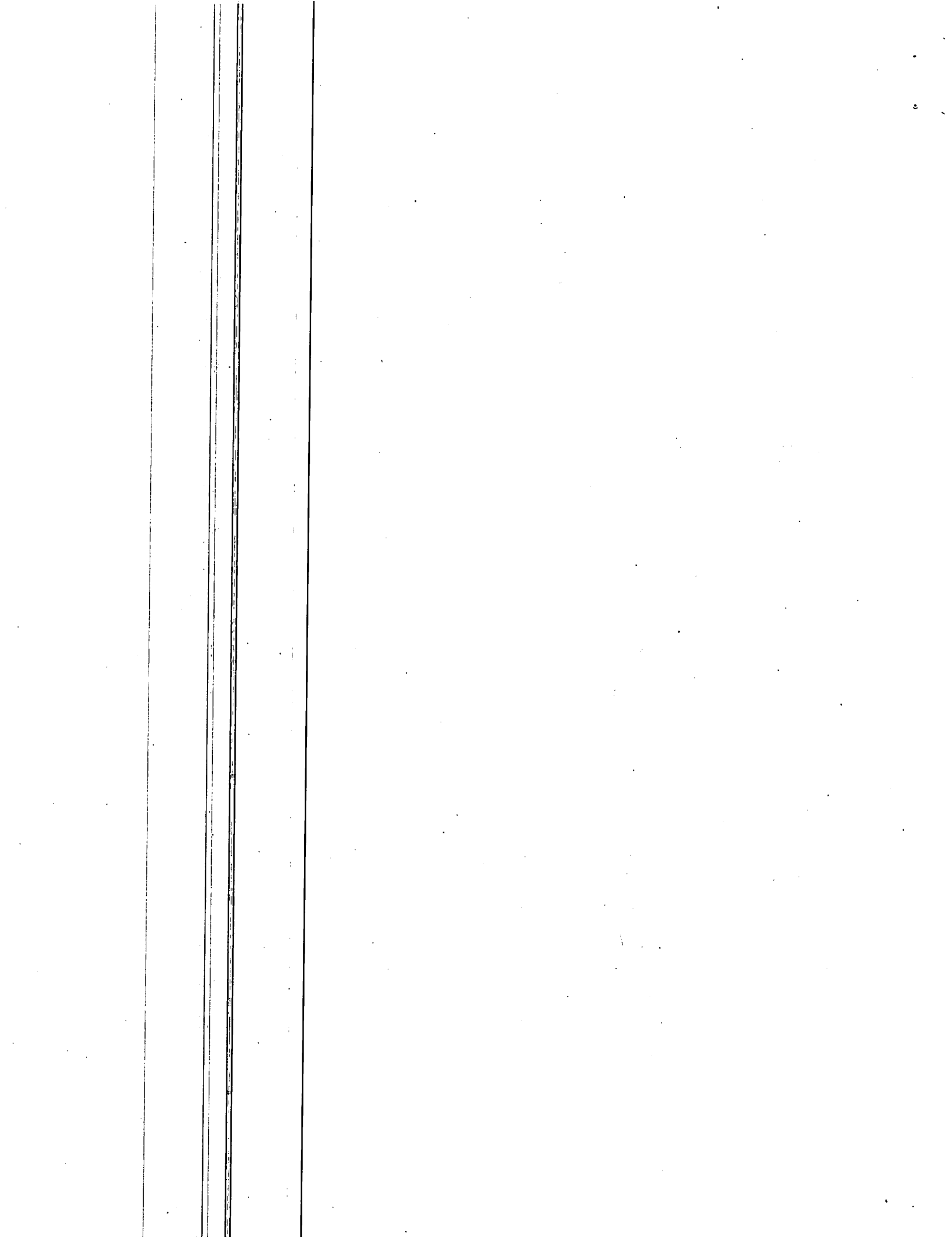


partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1).

The Respondent Performed Unworkmanlike or Inadequate Home Improvements

I find that the Claimant met his burden of demonstrating that the Respondent performed unworkmanlike or inadequate home improvements. Specifically, the Respondent improperly installed a deck and ceiling system as evidenced by the warped deck boards and leaking ceiling underneath the deck. The Claimant offered evidence that he contracted with the Respondent for a new composite decking system to include a Trex rain escapes system and underneath the deck, a six-inch beaded white vinyl ceiling. As clearly depicted in the plan drawings prepared by the Respondent, the Respondent understood that the Claimant intended to install an electrical ceiling fan underneath the deck and to allow for seating in the area under the deck. (Resp. Ex. 1, at 8). Though the Respondent was not responsible for the electrical work, the Respondent further understood that the Claimant had separately retained an electrician to perform all electrical work and as evidenced by the record, the Respondent worked with the Claimant to accommodate the electrician's work at the appropriate stages of the project.

The Respondent's argument that the Claimant got what he contracted for, i.e. composite Trex decking boards over pressure-treated wood joists, ignores that the Contract called for a ceiling system, including a Trex rain escapes system and a six-inch beaded white vinyl ceiling. To suggest that the Claimant contracted for a leaky ceiling is simply disingenuous. Even assuming that the Respondent did not understand that the Claimant intended to use the area below the deck for dry seating during the rain, it is clear that the Respondent certainly understood that the Claimant planned for an electrically wired ceiling fan to be installed under

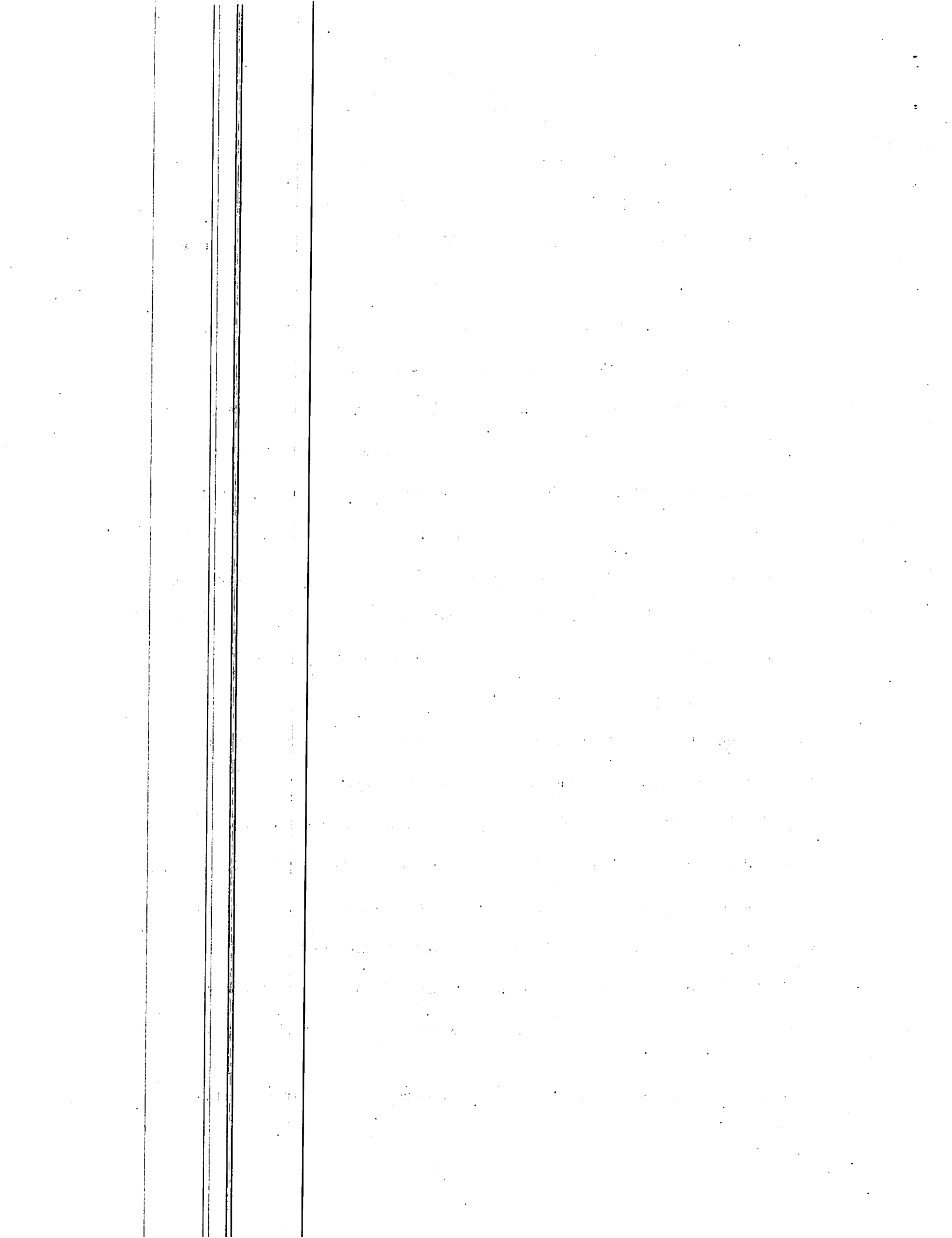


the deck. Simply put – water and electricity do not mix. Therefore, it was unworkmanlike and inadequate for the Respondent to deliver a leaky ceiling as its final product to the Claimant.

The Respondent argued that the Claimant failed to offer expert testimony as to causation of the “wavy” deck boards, “puddling” of rain, and the leak to the area below the deck. As the Fund accurately pointed out in its closing argument, the Business Regulation Article does not require that a claimant offer expert testimony to meet the claimant’s burden to demonstrate that he or she suffered an actual loss as a result of an unworkmanlike, inadequate, or incomplete home improvement. The Claimant suggested that the composite deck boards warped due to the spacing of the joists at twelve rather than at sixteen inches and that contractors he reached out to for repair quotes recommended rebuilding the deck and installing joists at every twelve inches.² The Claimant also offered the manufacturer’s general warnings regarding spacing and proper “gapping requirements” depending on the temperature at the time of installation. And the manufacturer further suggested that “A lack of gapping could cause issues related to standing water, bowing/warping, and flared ends.” (Clmt. Ex. 7, at 3).

Although the record is lacking with respect to the specific installation measures that the Respondent failed to adhere to, as the record is silent as to the gapping of the composite boards installed at the Claimant’s home and the temperature at the time of installation, I conclude that the warped composite deck boards and leaking ceiling support a finding by a preponderance of the evidence that the Respondent performed unworkmanlike or inadequate home improvements. As early as March 2020, approximately just four months after installation, the Claimant began noticing “waves” or warping in the composite deck boards. He notified Mr. Pohlhaus, who, when reassuring the Claimant that it was not structural damage, explained that the problem was

² The Respondent countered that the Trex installation guide calls for installation of joists at every sixteen inches. (Resp. Ex. 3, at 30).

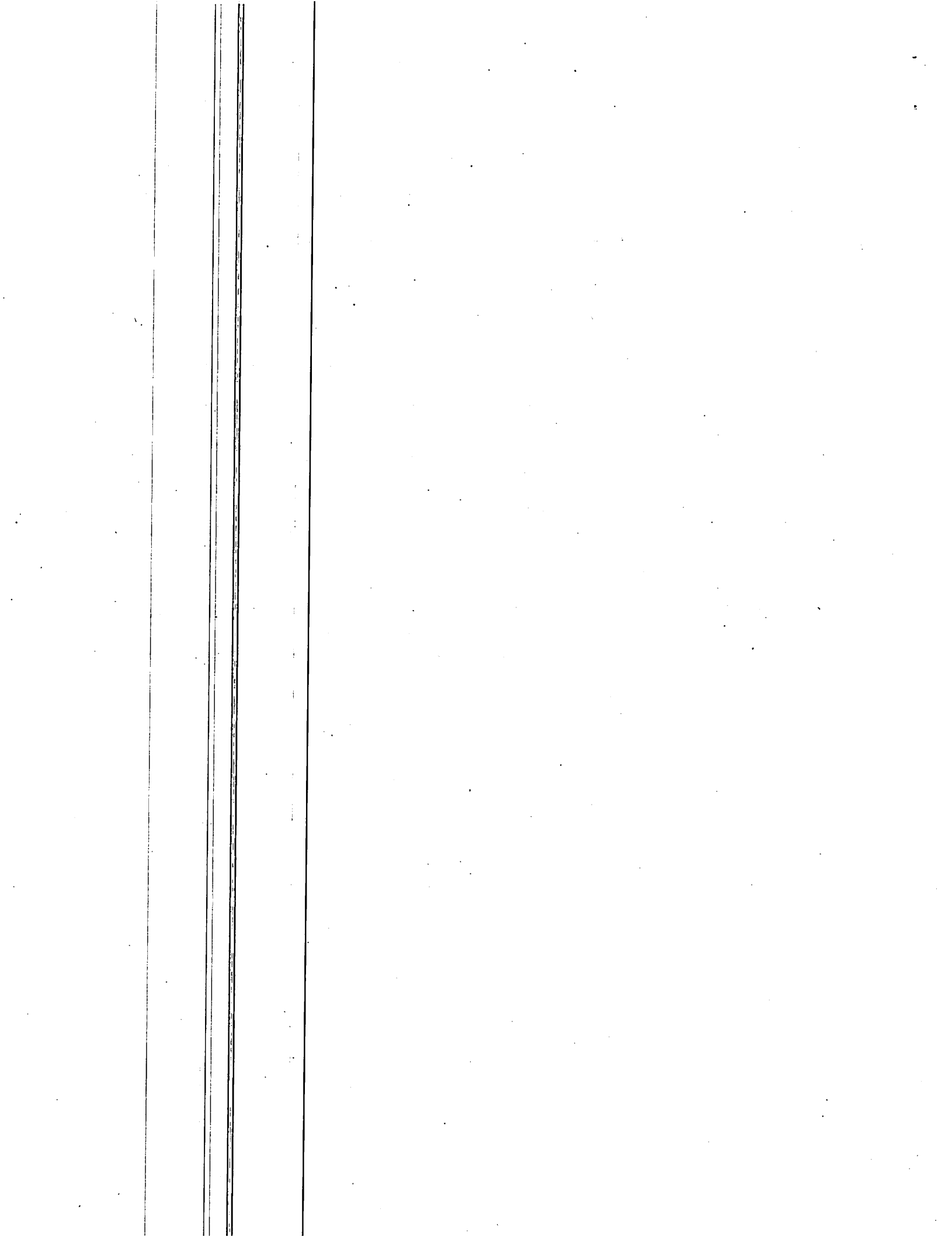


“bowed framing boards.” (Clmt. Ex. 2, at 2). Additionally, the manufacturer confirmed that the Claimant’s photographs “indicate warping deck boards,” and that “it appears the installation is at issue rather than a warrantable condition with the Trex material.” (Clmt. Ex. 7, at 3).

The Respondent argued that to the extent that a leak may exist, that resulted from other contractors performing work on the deck. As the Fund again accurately pointed out in its closing argument, the work performed by any other contractors, namely the electrician separately retained by the Claimant, was not to the structure of the deck. The Claimant testified that no contractor performed work on the deck without the Respondent present. Further, as demonstrated by the Claimant’s conversation with Mr. Pohlhaus, the work by the electrician was performed with the Respondent’s knowledge and consent. In fact, the Respondent reimbursed the Claimant for the additional work the electrician performed in April 2020 when the Respondent attempted to repair the deck at the Claimant’s request. Additionally, the Claimant described difficulty in obtaining a repair quote from another contractor precisely because no other contractor would touch the deck as installed by the Respondent out of liability concerns. Therefore, I conclude that this argument by the Respondent is without merit.

The Respondent also argued that the deck installation was approved by all county inspectors and therefore could not have been unworkmanlike. As the Fund explained in its closing argument, the approval of plans and inspection by the county does not, by operation of law, equate to a finding that the work was completed in an adequate and workmanlike fashion. And clearly that was the case here.

Further, I find that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. Bus. Reg § 8-405(d). The record demonstrates that the Claimant was eager to have the Respondent return to remedy and repair the work. However,



after the Respondent's attempt at a fix in April 2020, it is clear that the Respondent made no further efforts to resolve the claim.

For the reasons stated above, I find that the Claimant is eligible for compensation from the Fund.

Amount of Actual Loss and Recovery

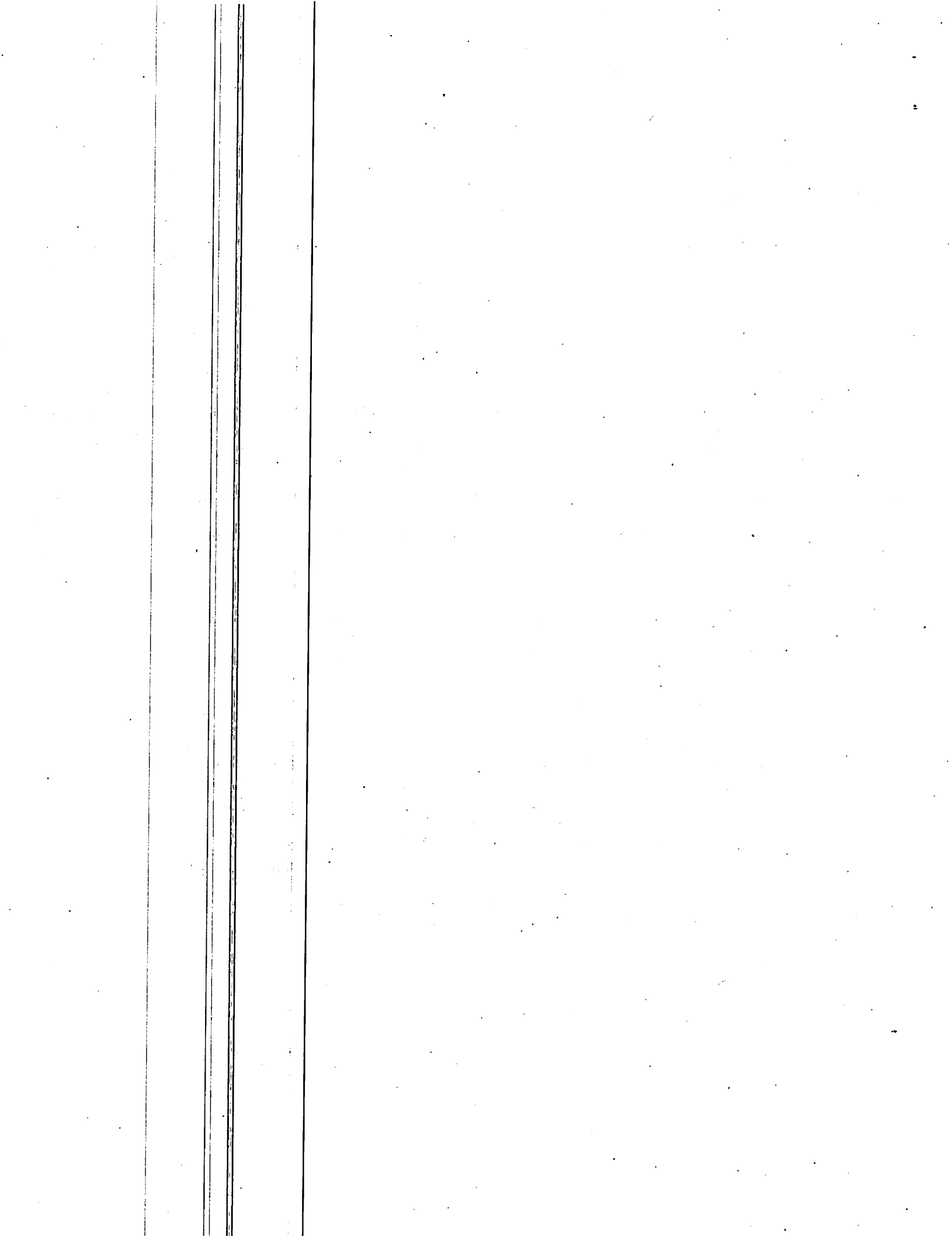
Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. *Id.* § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed work under the Contract and the Claimant intends to retain other contractors to 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).

Though the Fund argued that the Claimant met his burden of demonstrating that the Respondent performed the work in an unworkmanlike or inadequate manner, with respect to the amount of his actual loss, the Fund argued that the Claimant failed to meet his burden and that no

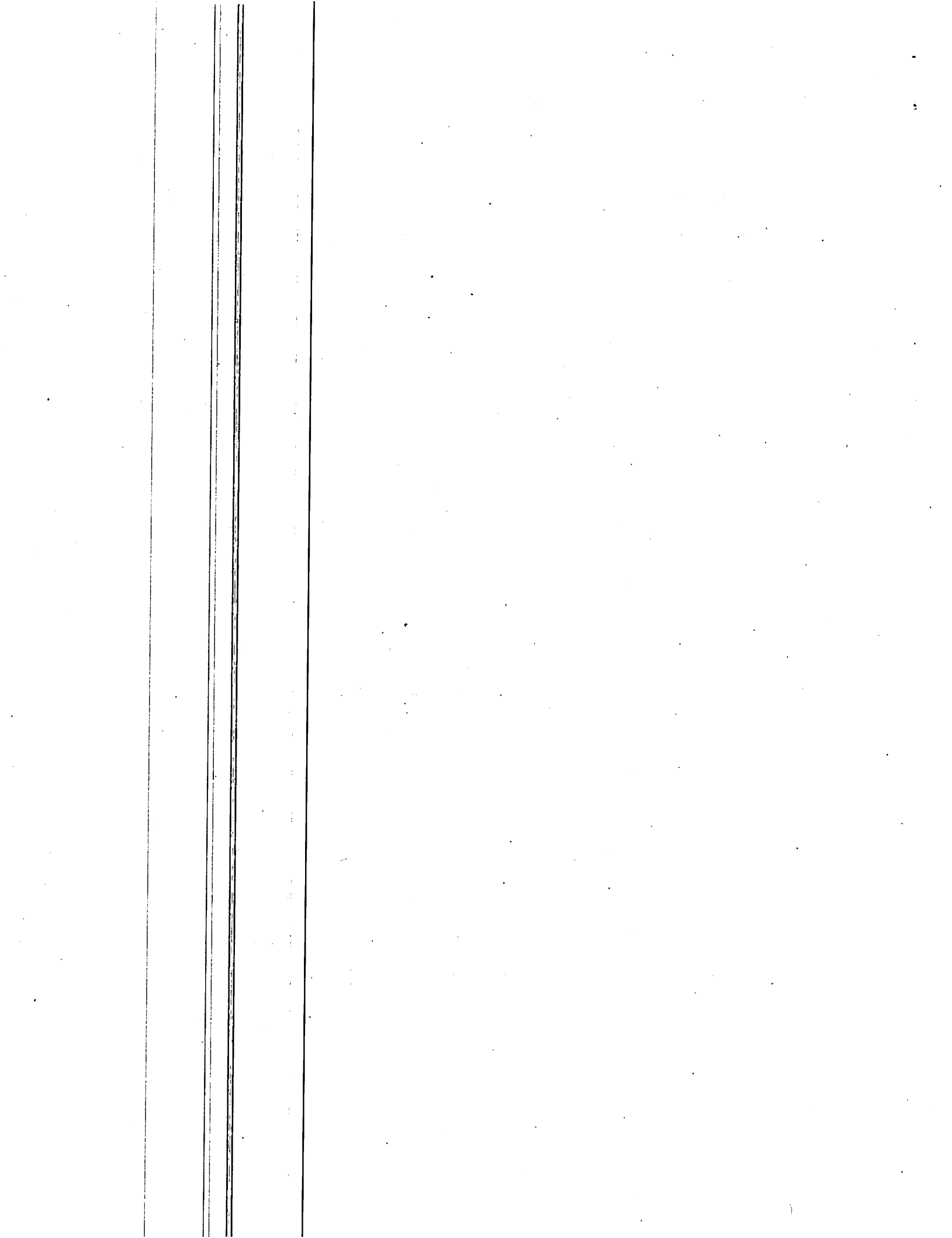


award should be recommended in this case. Specifically, the Fund explained that the Claimant offered no evidence to demonstrate “what needs to be done” to address the Respondent’s unworkmanlike or inadequate work or that the proposed work is “necessary and reasonable.”

In response to this argument from the Fund, the Claimant described the difficulty he faced in obtaining quotes to repair the deck because most contractors he reached out explained that they would rather tear down and rebuild the deck than repair another contractor’s faulty work. Additionally, the Claimant explained his frustration in determining the precise problem with the leaking deck because other contractors would not remove the ceiling underneath the deck installed by another contractor (the Respondent), citing liability reasons.

The Claimant offered quotes from two contractors that would repair the Respondent’s unworkmanlike or inadequate home improvements: the first from Deck Solutions for \$23,728.00; and the second from Four Seasons Design Build, LLC for \$22,841.00. The Fund argued that I not consider Deck Solutions’ quote, as it did not appear to be a MHIC-licensed contractor. Accordingly, I consider the second quote from Four Seasons Design Build, LLC.

I find that the quote prepared by Four Seasons Design Build, LLC does specifically set out the work that would be required to repair the Respondent’s unworkmanlike or inadequate home improvements, including removing the existing decking; installing joist wood framing between the existing joists; installing new Trex decking, with spacing at approximately one-quarter of an inch for proper water drainage and expansion/contraction; and removing and properly reinstalling the leaking watershed. (Clmt. Ex. 9). Therefore, I conclude that the quote by Four Seasons Design Build, LLC constitutes a reasonable amount that the Claimant will be required to pay to repair the Respondent’s unworkmanlike or inadequate home improvements.



Relying on the quote from Four Seasons Design Build, LLC and applying the formula set forth above yields the following:

Amount Claimant paid Respondent under the Contract	\$59,033.00
Amount Claimant will be required to repair Respondent's poor work	+ \$22,841.00
	\$81,874.00
Less the Contract price	- \$59,033.00
Actual Loss	\$22,841.00

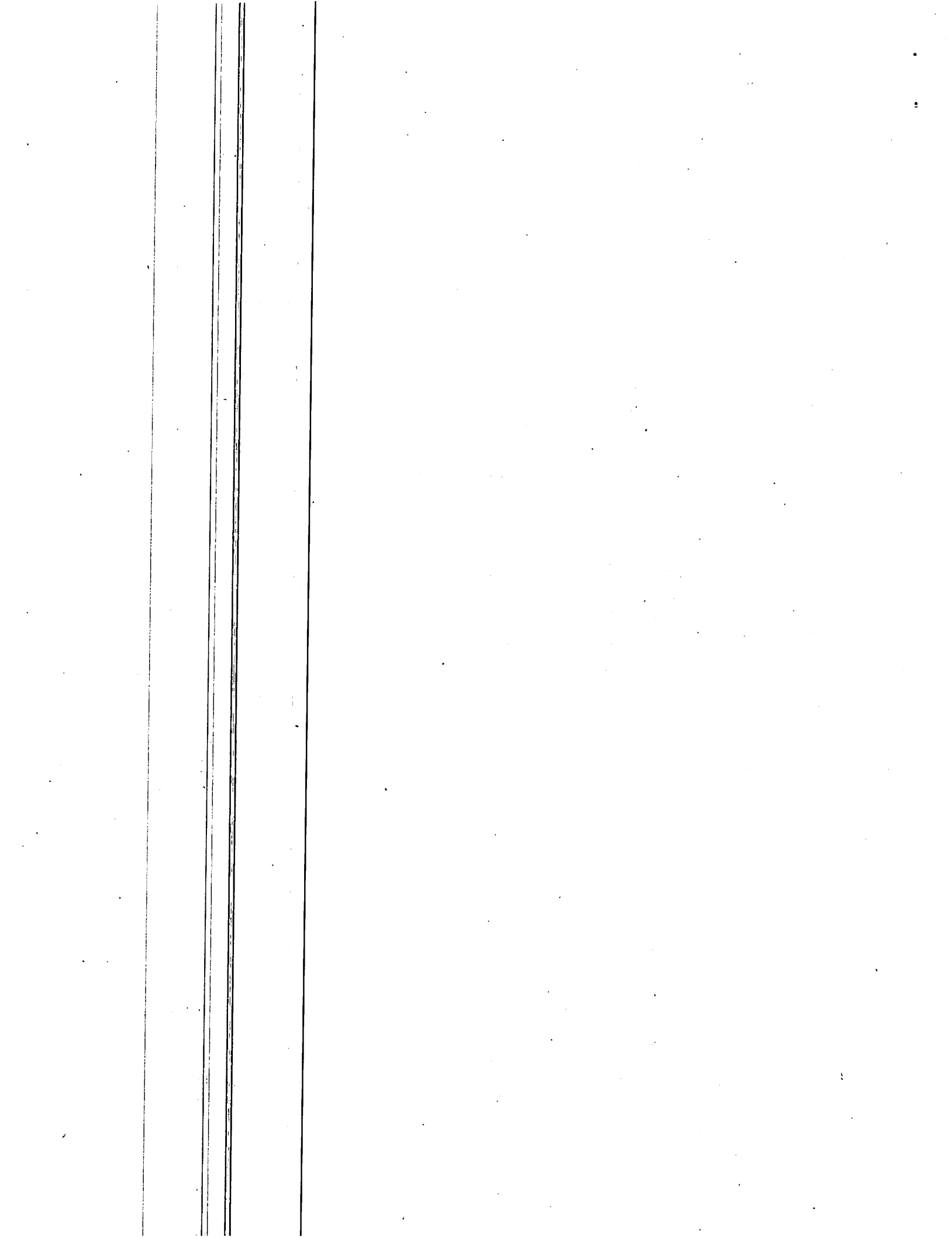
Therefore, I find that the Claimant has demonstrated his actual loss is \$22,841.00 and that he is entitled to recover an award in this amount.

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.³ In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$22,841.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$22,841.00 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 \$22,841.00 from the Fund. Bus. Reg. § 8-405; COMAR 09.08.03.03B(3).

³ Effective July 1, 2022, the cap on Fund awards increased from \$20,000.00 to \$30,000.00. 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 it 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 \$22,841.00; 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;⁴ and

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

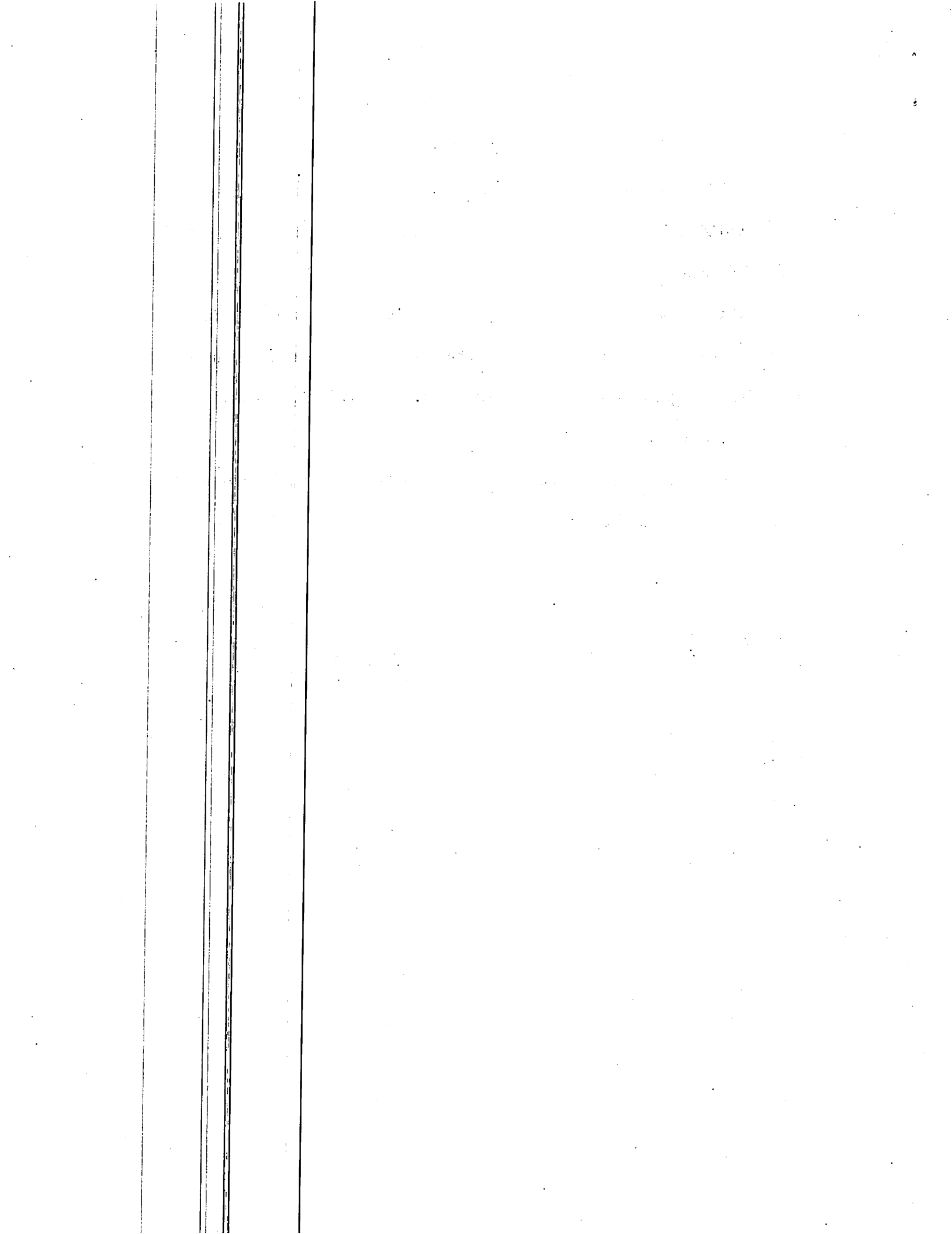
Dania Ayoubi

September 28, 2022
Date Decision Issued

Dania Ayoubi
Administrative Law Judge

DLA/cj
#200725

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

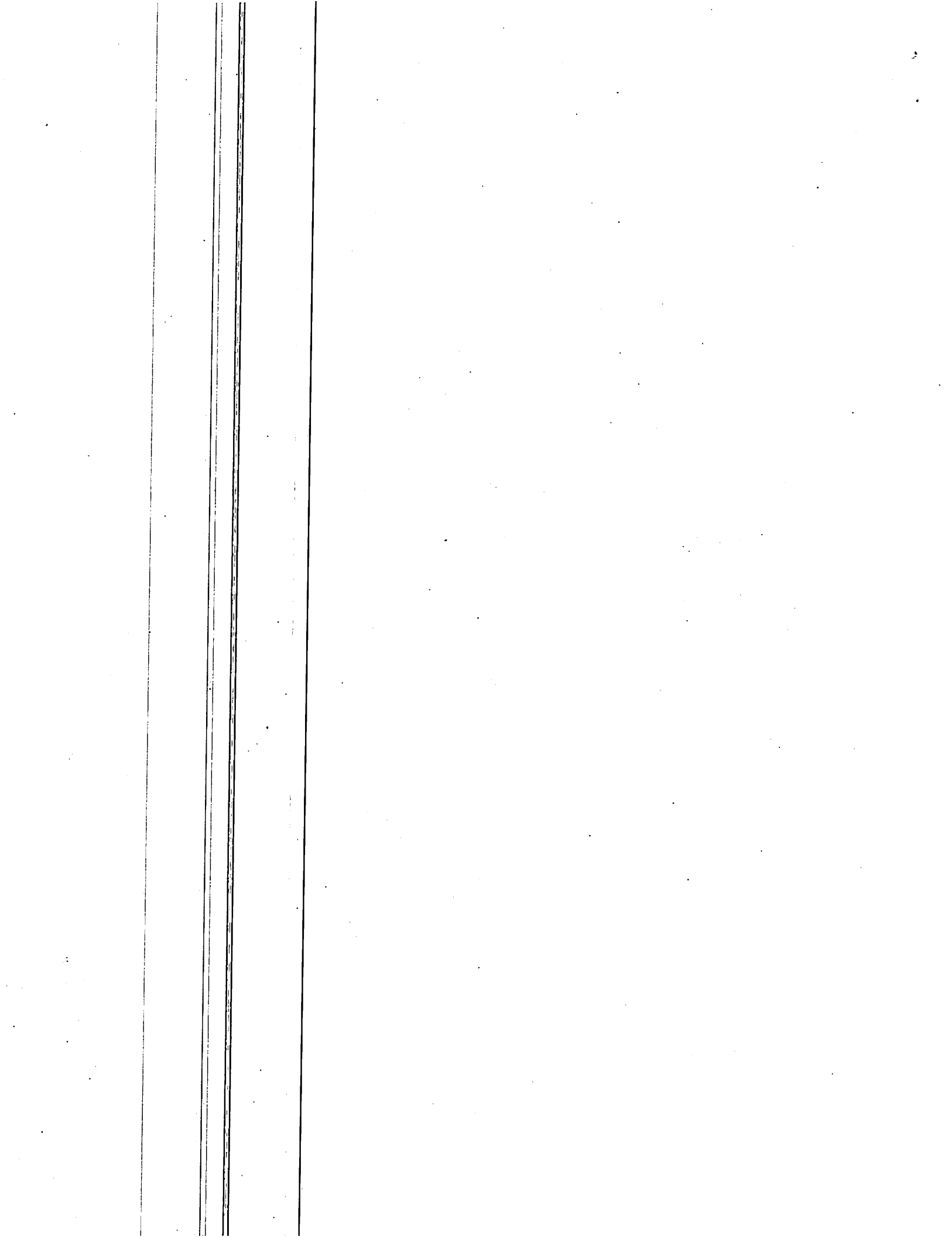
WHEREFORE, this 4th day of November, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, 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***



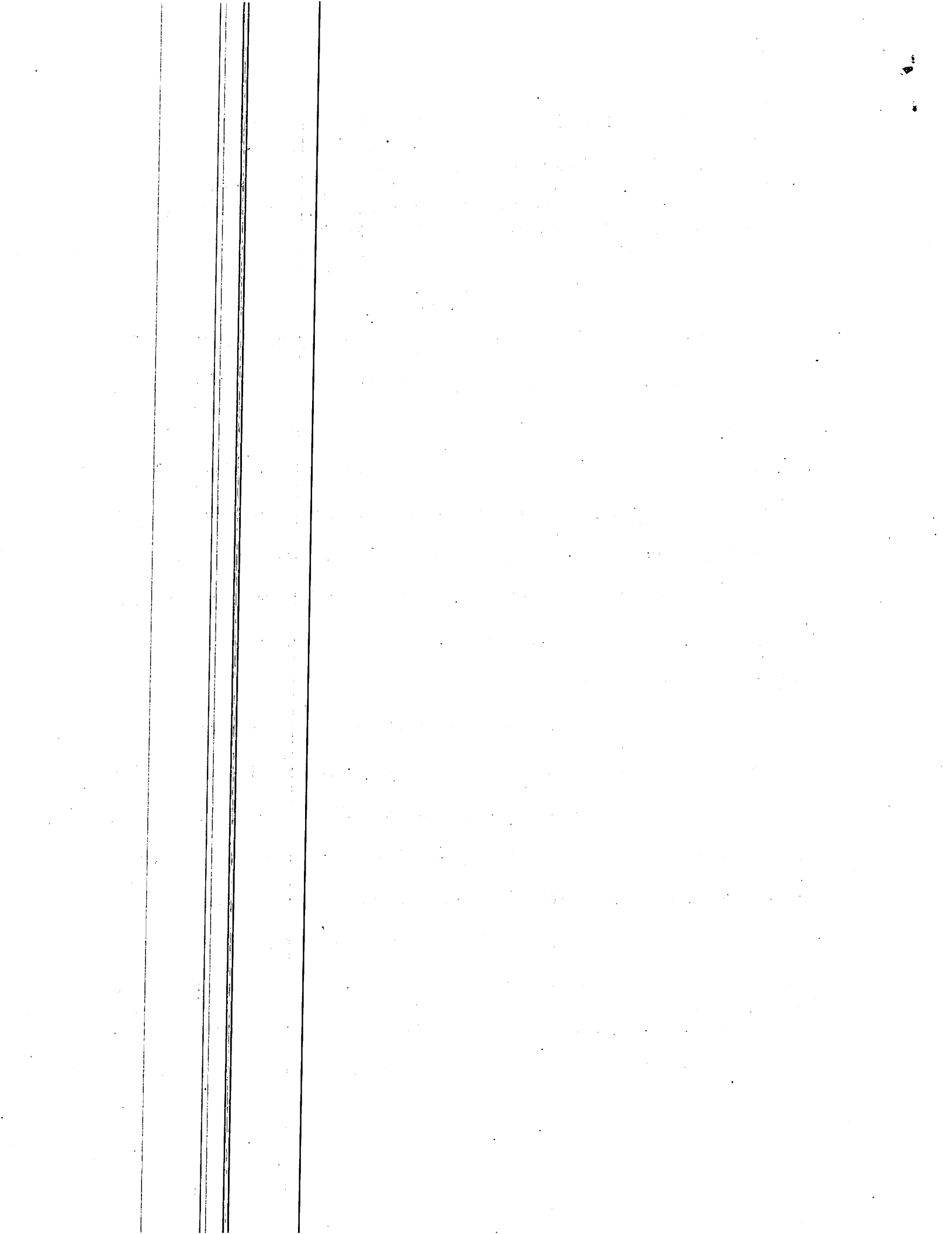
IN THE MATTER OF THE CLAIM OF MATTHEW GONZALEZ AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF ANDREW WEINBERG AND T&A CONTRACTORS, INC.	* MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 21(75)940 * OAH CASE NO. LABOR-HIC- * 02-22-09820 * *
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 8, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 28, 2022, concluding that the homeowner, Matthew Gonzalez (“Claimant”) suffered an actual loss as a result of the acts or omissions of Andrew Weinberg and T&A Contractors, Inc. (collectively, “Contractor”). *ALJ Proposed Decision* p. 16. In a Proposed Order dated November 4, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$22,841.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On February 16, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. G. Harrison Bliss, II, Esq., represented the Contractor. The Claimant participated without Counsel. Assistant Attorney General Catherine Villareal appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; 3) Contractor’s exceptions, and 4) Contractor’s memorandum. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision,



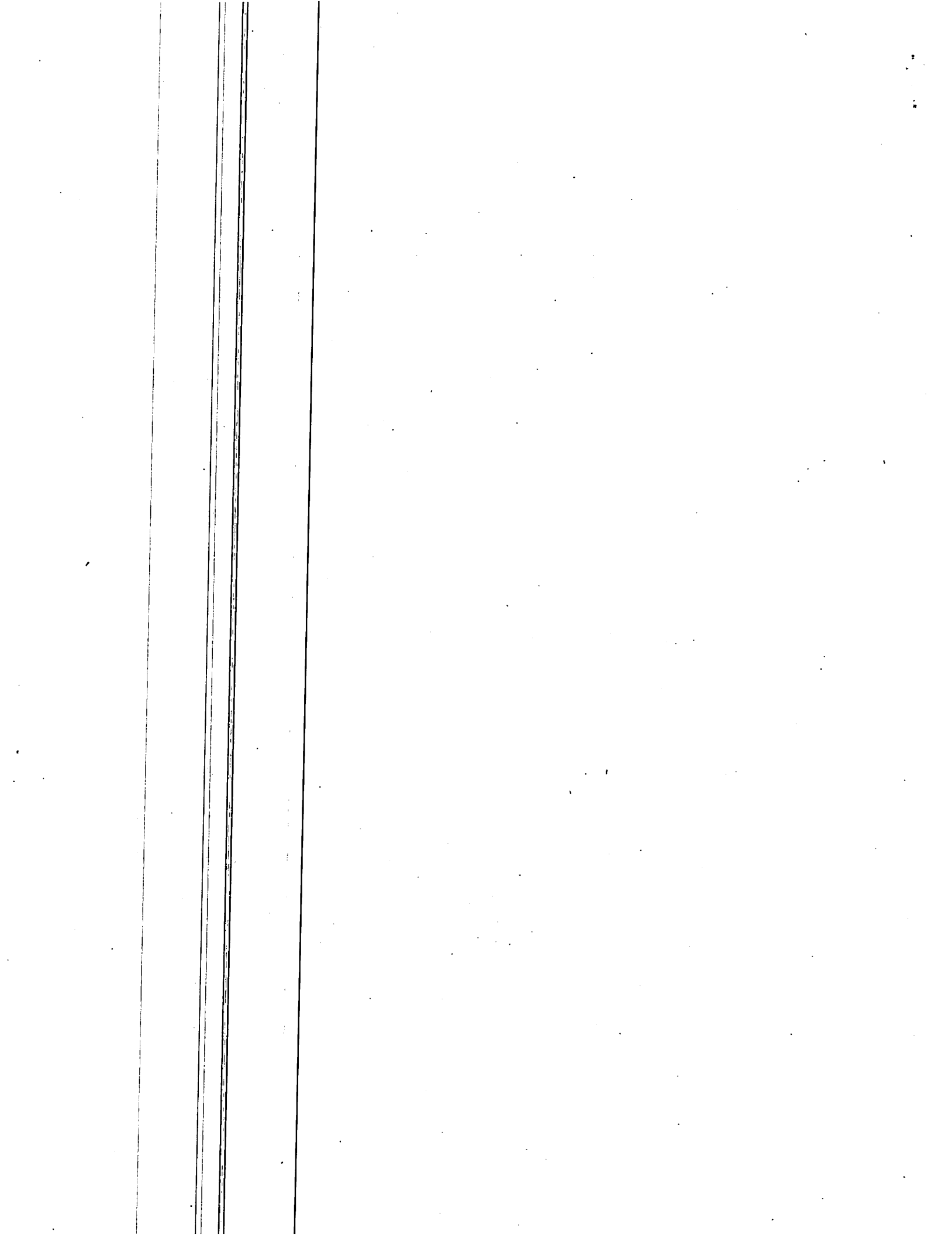
and the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the construction of a deck at the Claimants' home with a Trex rain escapes under-deck system and a beaded vinyl ceiling underneath it. The deck boards became wavy, and the under-deck system leaked. The ALJ found that the Contractor's performance under the contract was unworkmanlike. *ALJ's Proposed Decision* pp. 10-11.

On exception, the Contractor argued that the ALJ erred in finding that the Contractor's installation of the deck boards was unworkmanlike because the Claimant failed to present sufficient evidence on that issue. The Commission finds no error. The Claimant presented an email from Trex, the manufacturer of the deck boards, in response to his warranty claim attributing the waviness to improper installation. In support of his warranty claim, the Claimant provided Trex with several photos that Trex requested to aid in its analysis. Therefore, the Commission finds that the Claimant proved that, more likely than not, the Contractor's installation of the deck boards was unworkmanlike.

The Contractor also argued that the ALJ erred in recommending an award because the Claimant failed to prove the amount of his actual loss. The Commission again finds no error.

First, the Contractor asserted that the estimate from Four Seasons Design Build, LLC, which the ALJ relied upon to calculate the Claimant's actual loss, was deficient because it did not provide an opinion as to what work was performed improper or why the work included in the proposal was necessary. As discussed above, the Commission and the ALJ found that the Contractor's installation of the deck boards was unworkmanlike based on the correspondence from Trex in response to the Claimant's warranty claim, and the Contractor has not challenged the ALJ's finding regarding the installation of the under-decking. The Four Seasons estimate describes the

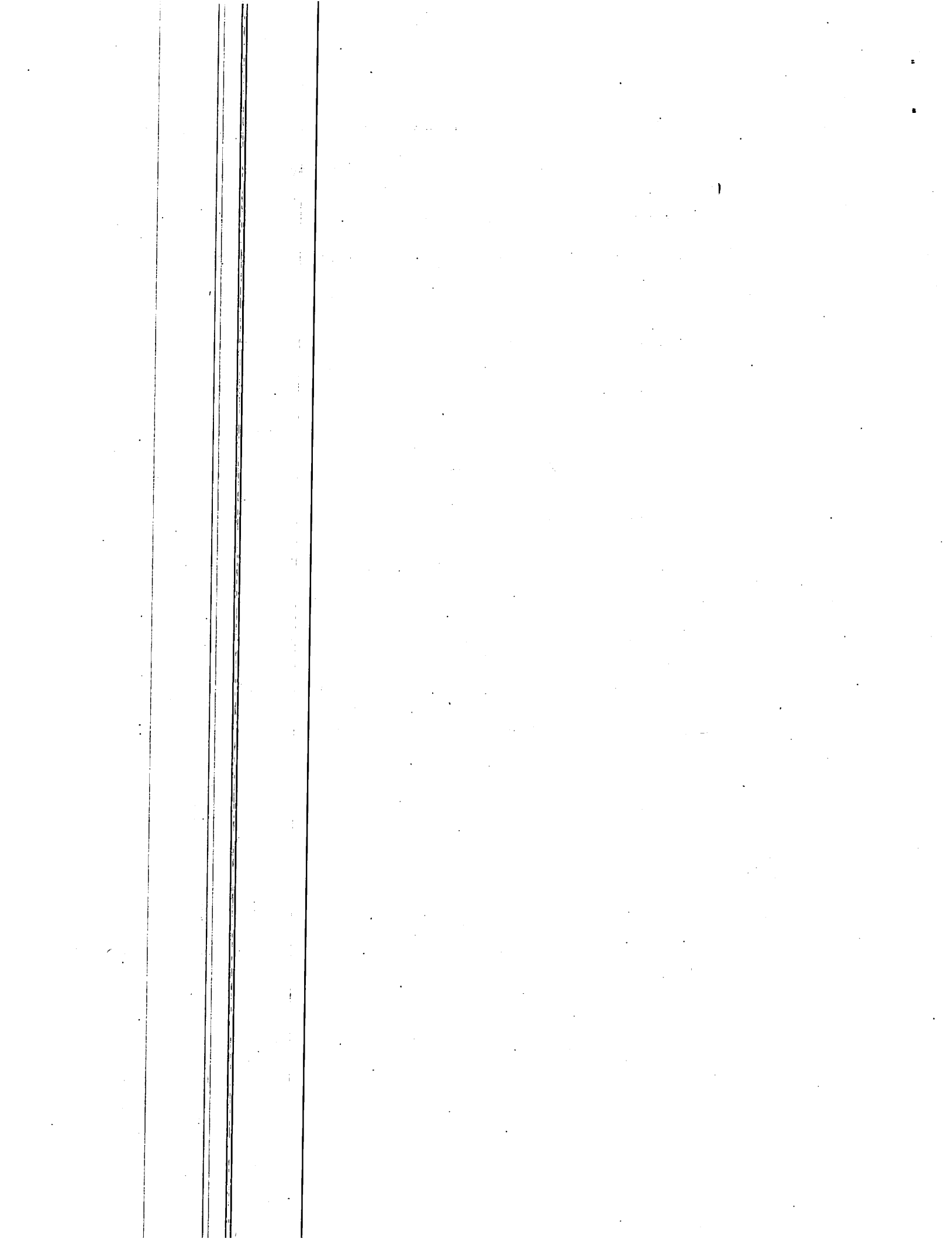


work to be done as installing additional joists, removing the existing decking, installing new decking that matches the existing decking, spacing the decking to allow for water drainage, and removing and reinstalling the leaking under-decking. The Commission finds that the work described in the Four Seasons estimate is necessary to correct the Contractor's deficient installation of the Claimant's deck.

Finally, the Contractor argues that the ALJ erred in relying on the Four Seasons estimate because the estimate was dated August 27, 2021, and provided that the price was valid for only fifteen days. The Commission finds no error. The Four Seasons estimate provides the Commission with a sufficient basis to determine the cost to correct the Contractor's unworkmanlike performance despite the expiration of its 15-day validity period.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 6th day of March 2023, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant is awarded \$22,841.00 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall



reflect this decision; and

- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

Robert Altieri
Chairperson –Panel
Maryland Home Improvement
Commission

