

<p>IN THE MATTER OF THE CLAIM</p> <p>OF TODD LUNDBERG,</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 CARLOS LOPEZ,</p> <p>T/A C&K HOME IMPROVEMENT,</p> <p>RESPONDENT</p>	<p>* BEFORE NICOLAS ORECHWA,</p> <p>* ADMINISTRATIVE LAW JUDGE</p> <p>* THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-08919</p> <p>* MHIC No.: 22 (75) 374</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 January 13, 2021, Todd Lundberg (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 \$63,850.00 for actual losses allegedly suffered as a result of a home improvement contract with Carlos Lopez, trading as C&K Home Improvement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).¹ On

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

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April 15, 2022, the MHIC issued a Hearing Order on the Claim. On April 18, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 21, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Catherine Villareale, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent did not appear.

After waiting 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 April 21, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for June 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 you."

The United States Postal Service (USPS) did not return the Notice to the OAH. On April 29, 2022, the OAH received a green USPS return receipt from the Respondent. The Respondent or someone on his behalf signed the receipt on April 27, 2022. 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. After waiting fifteen minutes,² I determined that the Respondent received proper notice, and proceeded to hear the above captioned matter. COMAR 28.02.01.05A, C.

² By the time the proceeding concluded at 12:05 p.m., the Respondent had neither appeared nor contacted the OAH to request a postponement.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial operations.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It highlights the need for consistent and reliable data collection processes to support effective decision-making.

3. The third part of the document focuses on the analysis and interpretation of the collected data. It discusses the various statistical and analytical tools used to identify trends, patterns, and anomalies in the data.

4. The fourth part of the document addresses the challenges and limitations of data analysis. It notes that while data analysis provides valuable insights, it is not without its own set of challenges, such as data quality and bias.

5. The fifth part of the document discusses the importance of data security and privacy. It emphasizes that organizations must implement robust security measures to protect sensitive data from unauthorized access and disclosure.

6. The sixth part of the document concludes by summarizing the key findings and recommendations. It stresses the need for ongoing monitoring and evaluation of data analysis processes to ensure their continued effectiveness and relevance.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the 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

I have attached a complete Exhibit List as an Appendix.

Testimony

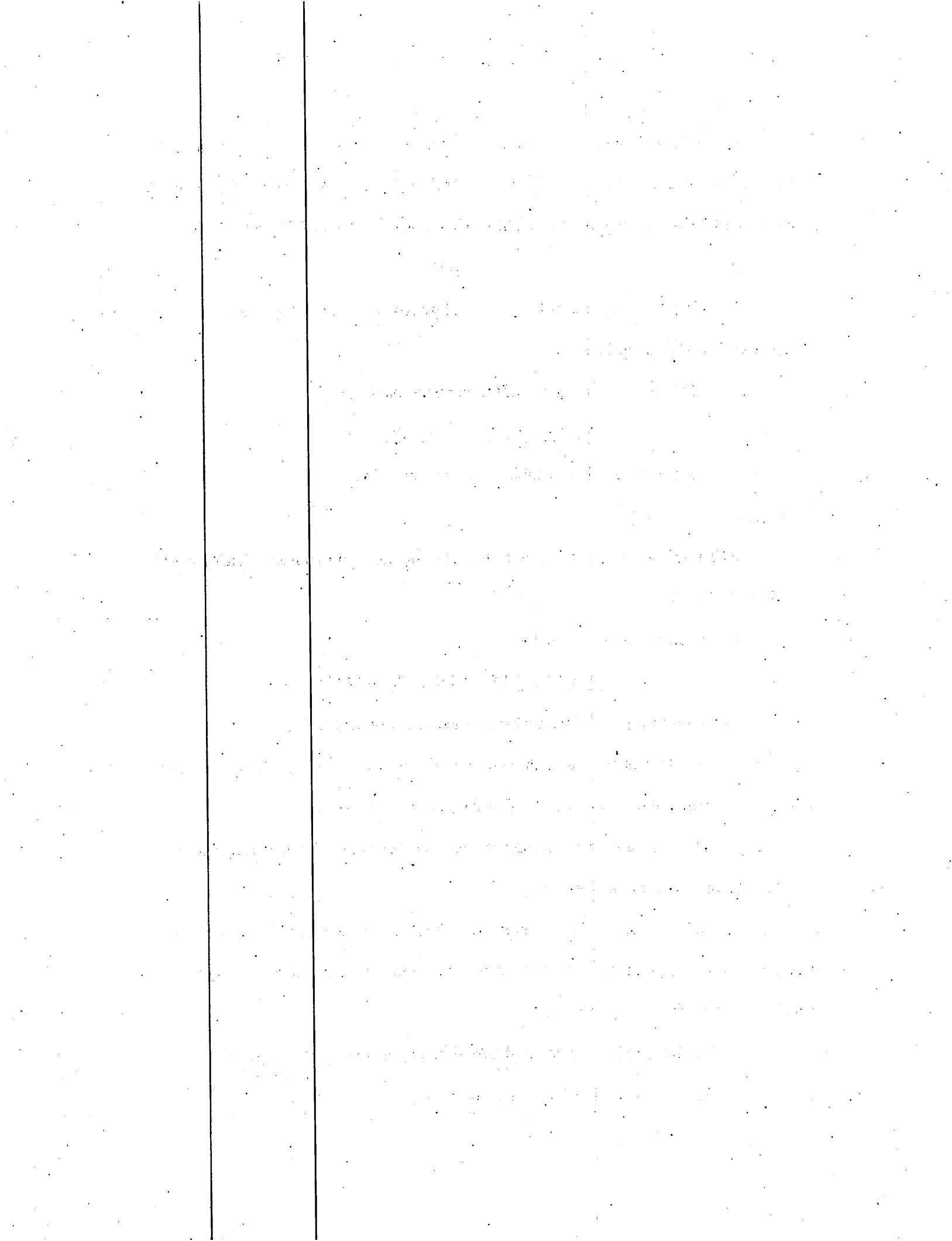
The Claimant testified and presented the testimony of Erin Lundberg (Erin) and Alan Barkdoll (Barkdoll).

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 01-84699.
2. The Claimant owns a residence located at 1830 Shore Drive in Edgewater, Maryland (Shore Drive or the Residence).
3. On June 11, 2019, the Claimant and the Respondent entered into a contract (Contract) for the Respondent to complete remodeling work on Shore Drive. The Contract included the following major terms:
 - The Respondent would build an addition in the rear of Shore Drive;
 - Build a new deck off the master bedroom;



- Remove walls and perform various major remodeling work in the kitchen and first floor;

- Repair a leak under an existing bathroom and install an exhaust fan.

4. Per the Contract's terms, the Claimant agreed to pay the Respondent \$102,500.00.

5. The Contract contained no terms as to when the Respondent would commence and complete the work.

6. The Respondent commenced work in August of 2020. When the Respondent poured the foundation for the addition, he accidentally drove a framing stake through a sewer line. The Claimant paid a plumber \$7,460.00 to repair the Respondent's mistake.

7. The Respondent did not complete the work under the contract. Much of the work the Respondent did complete was unworkmanlike. This included, but was not limited to, the following: The Respondent installed windows that were the wrong size. The Respondent failed to properly install junction boxes. The Respondent constructed a closet in the addition which could not accommodate clothing.

8. The Claimant paid the Respondent \$80,850.00 toward the Contract price.

9. The Claimant has paid or will need to pay other contractors \$92,960.00 to either finish the Respondent's work under the Contract or rectify the Respondent's poor workmanship.

DISCUSSION

The Claimant's case

After the parties signed the Contract, the Respondent discovered a well in the rear of the Residence which impeded his ability to construct the addition. First, the Respondent sought permits from the county to move the well. Delays in obtaining the permits delayed commencement of the work. The Claimant paid the Respondent \$13,000.00 to move the well.³

³ The parties did not execute a change order or contract addendum concerning this modification to the price.

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After obtaining the permits, the Respondent changed his mind and opted to install the addition in the front of the residence.⁴ The Respondent told the Claimant he would apply the \$13,000.00 to future payments under the existing contract. “Months and months” later, the Claimant learned the Respondent spent the \$13,000.00 on “something else.”

The pandemic delayed approval of certain required permits and the Respondent did not officially begin work until August of 2020. County inspectors did not approve the Respondent's work several times. After the Respondent poured the concrete for the addition's foundation, one of the toilets in the residence began “having issues.”⁵ The Claimant contacted a plumber who snaked the problematic toilet initially resolving the issues. A month later, the issues returned. The plumber inspected the piping with a scope and discovered an object obstructing the sewer pipe beneath the addition's foundation. To further investigate, the plumber dug through the concrete and discovered the Respondent erroneously placed a framing stake through the sewer pipe. The Claimant paid the plumber \$7,460.00 to repair the sewer pipe. Although the Respondent took “complete ownership” of the error, the Claimant offered to cover 25% of the plumber's bill if the Respondent expedited completion of the work under the Contract.

However, the delays continued. The Respondent encountered “a lot of issues” finding workers to complete the electrical work on the addition. Sometimes a worker only appeared for half a day. Sometimes no one appeared. At times, the Respondent failed to reply to the Claimant for days and sometimes weeks. Finally, the Claimant reached the Respondent who stated he was going through a “hard time” and needed an advance. The Claimant gave the Respondent an advance of \$10,000.00 on the condition the Respondent credit that payment toward the Claimant's third installment payment under the Contract when the work was 70% complete.

⁴ Although not testified to explicitly, the Claimant evidently agreed to this change. The parties did not execute a change order or contract addendum concerning this modification.

⁵ Erin testified as to this aspect of the Respondent's work. She did not specify the exact “issues” emanating from the toilet other than it failed to function properly.

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The second part of the report deals with the specific details of the work done during the year. It is followed by a summary of the results, and a list of the publications issued during the year. The report is divided into four main sections: (1) General Situation, (2) Progress of Work, (3) Results, and (4) Summary. The first section deals with the general situation of the country and the progress of the work. It is followed by a detailed account of the work done during the year, and a summary of the results. The report is divided into four main sections: (1) General Situation, (2) Progress of Work, (3) Results, and (4) Summary.

The Respondent's delays caused the Claimant and his family to endure terrible living conditions. The Respondent's work on the roof near the addition caused a leak in the ceiling of the children's room. Erin testified the leak "actually exploded in the middle of the night when [the children] were sleeping" traumatizing the children. The Claimant texted the Respondent numerous times requesting he fix the leak. The Respondent's delays in fixing the leak culminated in the "explosion" of the ceiling. Afterwards, the Respondent placed plastic around the "exploded" ceiling hole but never completed the repair.

The Respondent completed electrical work in the addition which county inspectors ultimately approved. However, the Respondent failed to complete the electrical work in other areas of the Residence. In the kitchen, the Respondent left live wires hanging in the open. Erin testified she got "a little electrocuted" by the wires on one occasion. The Respondent left a vent cover open in the new addition. When the Respondent came to paint the new addition, a worker accidentally placed the ladder leg in the open vent and fell. Erin testified the accident caused paint to go "everywhere" and the worker "snapped his arm" requiring hospitalization. The Respondent never finished painting the addition.

The Respondent failed to complete moving a half bath on the first floor and failed to finish installing the flooring and a medicine cabinet. The Respondent removed some walls on the first floor, but never completed remodeling the first floor and left live wires hanging. The Respondent failed to properly reseal the residence after removing the back deck causing water infiltration.

The Claimant eventually stopped hearing from the Respondent altogether. When the Respondent did communicate, he advanced a variety of excuses such as supply chain issues or seasonal affective disorder. The Claimant retained counsel who sent the Respondent a demand letter. The Respondent replied to the letter once, but then remained silent. However, at one point,

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the Respondent demanded an additional \$50,000.00 above the Contract price despite performing little work under the Contract. At that point, the Claimant filed his claim with the Fund.

Barkdoll⁶ is a MHIC licensed contractor who has been in the contracting business for over fifty-five years. He works primarily in Anne Arundel County⁷ and knows the county code provisions well. After reviewing the Respondent's work, Barkdoll concluded the Respondent "disgraced the construction industry" and "should not be able to buy a hammer." Barkdoll noticed numerous deficiencies in the Respondent's workmanship (in addition to what Claimant testified.) The Respondent failed to construct a closet at the proper depth. This caused the clothing to actually hang outside the door. The flooring (which the Respondent did not complete) needed replacement because it did not match other existing flooring. The Respondent improperly installed HVAC vents throughout the house. The Respondent left a vacuum cleaning unit at the Residence. When Barkdoll removed the unit, he discovered a gaping hole to the sewer. Barkdoll needed to hire a licensed plumber to cap the hole. The Respondent improperly covered junction boxes in violation of county code. The Respondent removed a vent on the roof but failed to patch that area to protect the inside of the house from the elements. As a result, rain infiltrated the house. The Respondent improperly installed the plumbing for the washing machine. Barkdoll needed to reinstall the plumbing.

The Respondent installed the wrong sized windows on the second floor causing them to fail to meet the means of egress. This meant if a fire occurred first responders could not easily enter and exit the windows. Barkdoll needed to replace and resize the windows. The Respondent failed to use lumber of sufficient strength in a load bearing wall. To make matters worse, he failed to properly screw in and affix that lumber. The roof on the addition is flat. Barkdoll

⁶ The Claimant did not move to have Barkdoll accepted as an expert in any area. However, Barkdoll provided numerous opinions about the shortcomings in the Respondent's work and the work required to fix those shortcomings. The Fund did not object to Barkdoll providing that opinion testimony.

⁷ The Residence's location.

testified the Respondent installed shingles, which do not belong on a flat roof. This miscue led to the hole and the leak that appeared in the children's room.

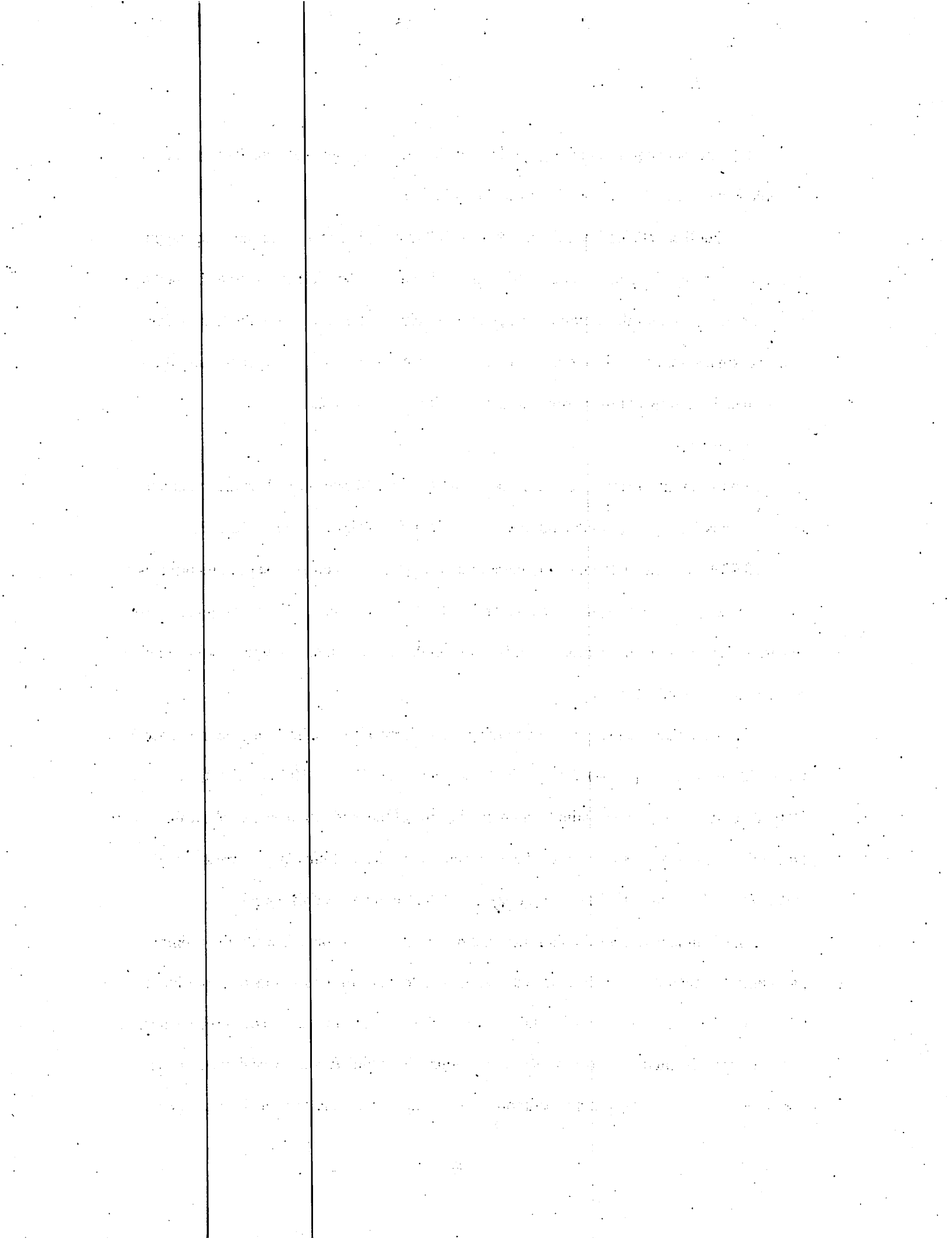
Barkdoll concluded it would cost \$85,500.00 to complete and repair the Respondent's poor workmanship. On December 29, 2021, the Claimant and Barkdoll executed a contract to complete the repairs for that amount. The contract solely addresses repairing the Respondent's poor workmanship. Barkdoll calculated the contract price on time and material and also drafted a spreadsheet breakdown of the various tasks and their associated costs.

Analysis

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.

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). I find the Claimant met his burden.

The Claimant presented a thorough and persuasive case. I found Barkdoll's testimony particularly compelling. Barkdoll drafted and testified to plans for both floors of the residence. Clmt. Exs. 12 and 13. He provided detailed explanations of his observations of the Respondent's poor workmanship and supported those explanations with building code provisions or industry standards. He did not waver in his testimony. For example, when the assistant attorney general



asked him to repeat his opinion of the cause of the leak in the children's room, he did not deviate from his previous testimony. The Claimant supported his allegations with pictures which starkly depict the Respondent's abysmal workmanship. For example, one picture depicts the live wires the Respondent left hanging in the Claimant's kitchen like overgrown jungle vines.

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); 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 signed a contract with Barkdoll 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 and the Respondent contracted for the following amount: \$102,500.00. The Claimant paid the Respondent the following amounts, totaling \$80,850.00:

- \$26,525.00 on September 24, 2019, for the first installment payment⁸ under the Contract;

⁸ Per the Contract, the Claimant agreed to pay three installments of \$25,325.00. It is unclear why the actual first and second installment payments differ slightly from the agreed upon payments in the Contract.

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- \$13,000.00 on November 11, 2019, as payment toward work on the Contract;⁹
- \$25,325.00 on August 4, 2020, for the second installment payment under the Contract;
- \$10,000.00 on September 19, 2020, as an advance on the third installment payment under the Contract;
- \$6,000.00 on April 26, 2021, as an advance on the third installment payment under the Contract.

To rectify the Respondent's poor workmanship, the Claimant paid the plumber \$7,460.00 to repair the sewer line the Respondent damaged and will need to pay Barkdoll \$85,500.00 to repair the balance of the Respondent's poor workmanship. This totals \$92,960.00. Thus, the calculation per the formula set forth above is as follows: $(\$80,850.00 + \$92,960) - \$102,500.00 = \$71,310.00$ as the Claimant's actual loss.

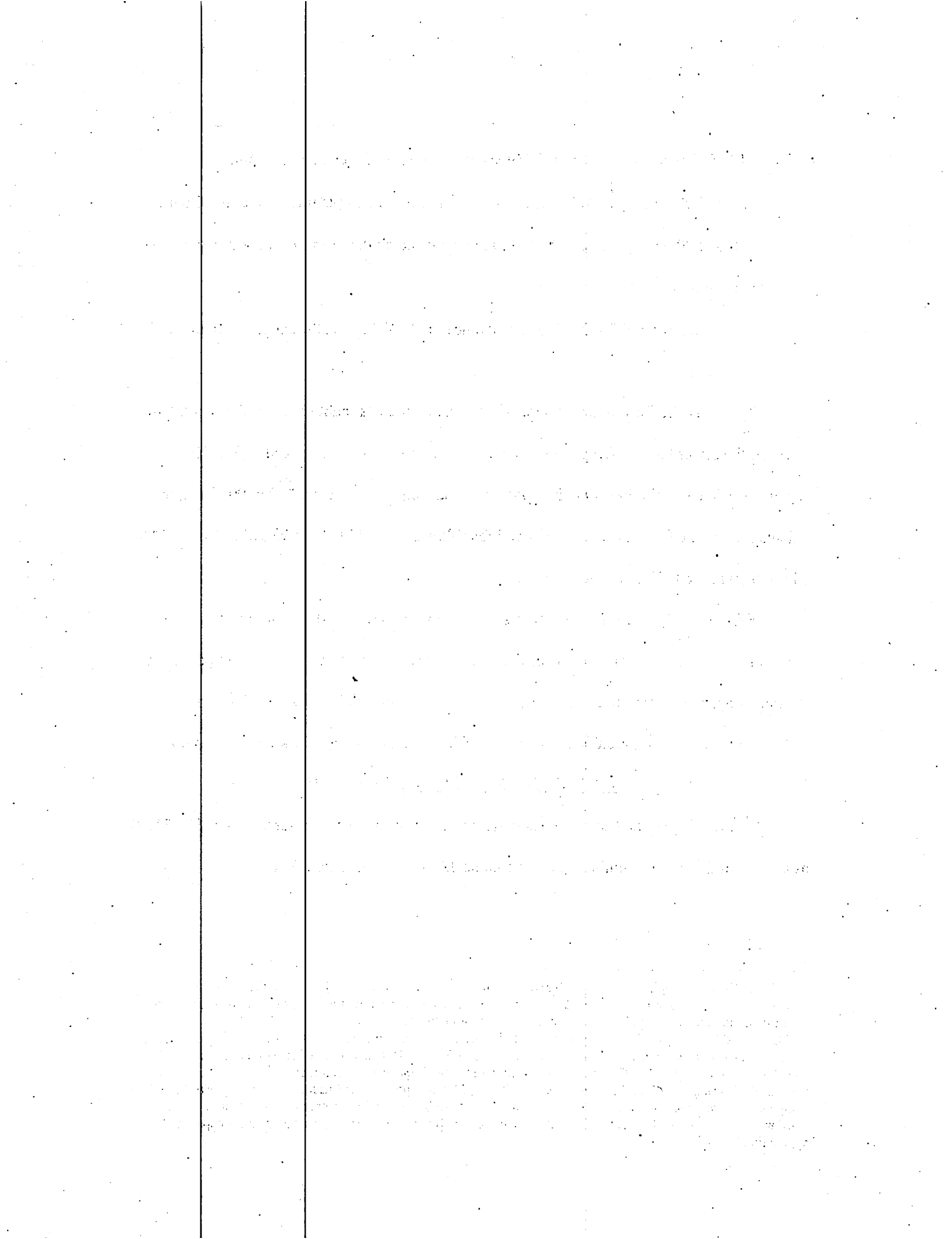
Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.¹⁰ In this case, the Claimant's actual loss of \$71,310.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$71,310.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg.

⁹ While the Claimant originally paid the Respondent this amount to move the well, I found the Claimant's un rebutted testimony credible that the Respondent agreed to credit this amount toward the overall contract price after the parties agreed to build the addition in the front of the house.

¹⁰ H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). See also Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").



§§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$30,000.00 from the Fund.

RECOMMENDED ORDER

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

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

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;¹¹ and

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

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

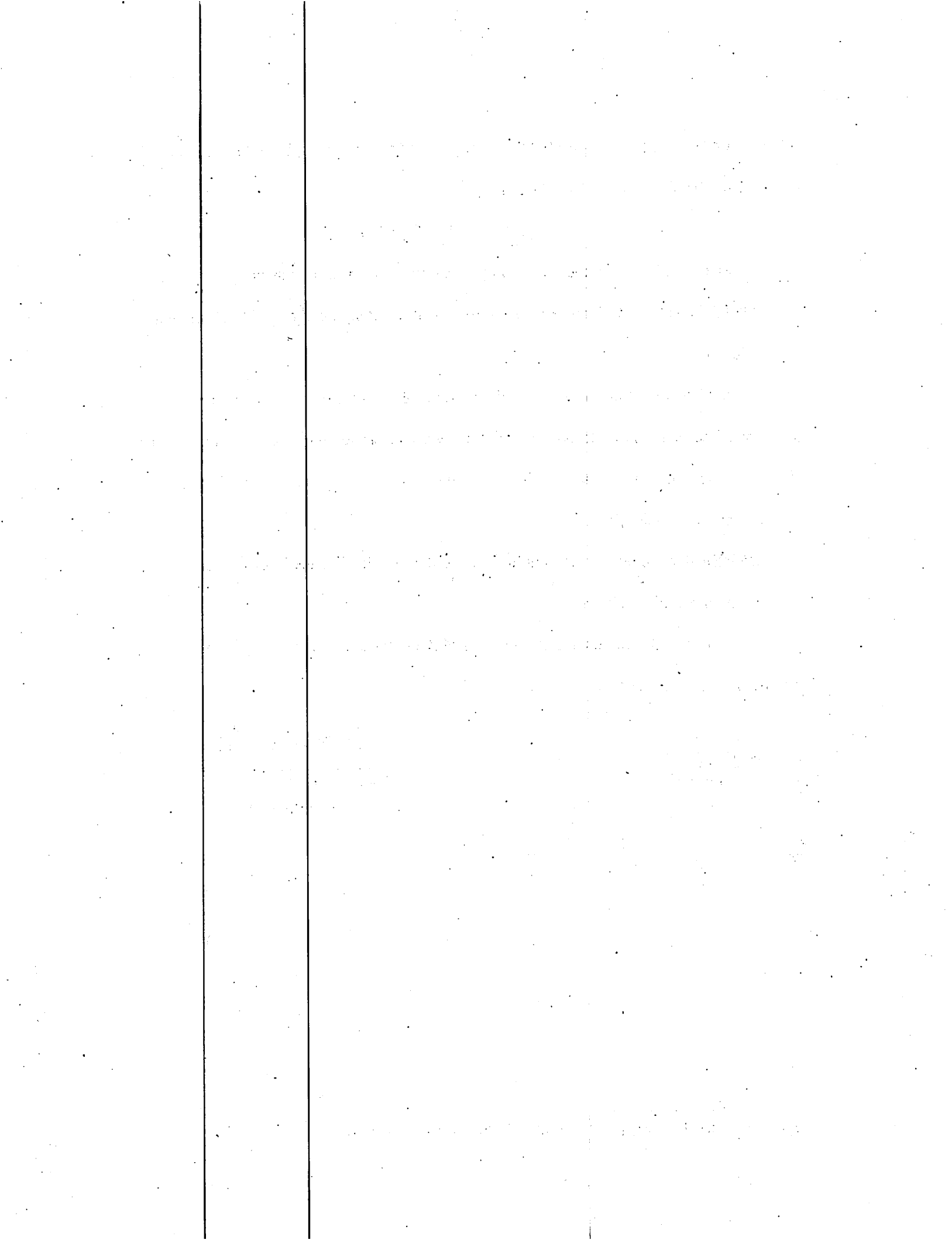
September 12, 2022
Date Decision Issued

Nicolas Orechwa

Nicolas Orechwa
Administrative Law Judge

NO/at
#200540

¹¹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 21st day of October, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

