

IN THE MATTER OF THE CLAIM	* BEFORE LEIGH WALDER,
OF BLONDELL TAYLOR,	* 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 WAGNER REYNOSO	*
PEREZ,	*
T/A AGUILAR REMODELING, LLC,	* OAH No.: LABOR-HIC-02-22-24807
RESPONDENT	* MHIC No.: 22 (75) 59

\* \* \* \* \*

**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 May 23, 2022, Blondell Taylor (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$2,842.31 for actual losses allegedly suffered as a result of a home improvement contract with Wagner Reynoso Perez, trading as Aguilar Remodeling, LLC (Respondent). Md. Code Ann.,

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<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor (Department).

PROPOSED DECISION

STATEMENT OF THE CASE

ISSUE

RELEVANT FACTS OF THE EVIDENCE

RELEVANT FINDINGS OF FACT

DISCUSSION

RELEVANT CONCLUSIONS OF LAW

RECOMMENDED ORDER

FINAL COMMENT ON THE CASE

On the 1st day of August 1982, the respondent was charged with the offence of...  
The respondent pleaded guilty to the offence...  
The facts of the case are as follows...  
The respondent was charged with the offence of...  
The respondent pleaded guilty to the offence...

For the respondent, the respondent's counsel, the respondent's counsel, the respondent's counsel.

Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup> On September 16, 2022, the MHIC issued a Hearing Order on the Claim. On September 23, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 30, 2023, I held a hearing on the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(a). Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. Jude Wikramanyake, 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); 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 – Photograph, undated

Clmt. Ex. 2 – Photographs, undated

Clmt. Ex. 3 – Text messages between the Claimant and the Respondent's worker, various dates

Clmt. Ex. 4 – Letter from Friedman, Framme & Thrush, P.A. to the Respondent, dated January 27, 2021

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<sup>2</sup> Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

INDEX

INDEX OF THE VOLUME

1	Introduction
2	Chapter I
3	Chapter II
4	Chapter III
5	Chapter IV
6	Chapter V
7	Chapter VI
8	Chapter VII
9	Chapter VIII
10	Chapter IX
11	Chapter X
12	Chapter XI
13	Chapter XII
14	Chapter XIII
15	Chapter XIV
16	Chapter XV
17	Chapter XVI
18	Chapter XVII
19	Chapter XVIII
20	Chapter XIX
21	Chapter XX
22	Chapter XXI
23	Chapter XXII
24	Chapter XXIII
25	Chapter XXIV
26	Chapter XXV
27	Chapter XXVI
28	Chapter XXVII
29	Chapter XXVIII
30	Chapter XXIX
31	Chapter XXX
32	Chapter XXXI
33	Chapter XXXII
34	Chapter XXXIII
35	Chapter XXXIV
36	Chapter XXXV
37	Chapter XXXVI
38	Chapter XXXVII
39	Chapter XXXVIII
40	Chapter XXXIX
41	Chapter XL
42	Chapter XLI
43	Chapter XLII
44	Chapter XLIII
45	Chapter XLIV
46	Chapter XLV
47	Chapter XLVI
48	Chapter XLVII
49	Chapter XLVIII
50	Chapter XLIX
51	Chapter L
52	Chapter LI
53	Chapter LII
54	Chapter LIII
55	Chapter LIV
56	Chapter LV
57	Chapter LVI
58	Chapter LVII
59	Chapter LVIII
60	Chapter LIX
61	Chapter LX
62	Chapter LXI
63	Chapter LXII
64	Chapter LXIII
65	Chapter LXIV
66	Chapter LXV
67	Chapter LXVI
68	Chapter LXVII
69	Chapter LXVIII
70	Chapter LXIX
71	Chapter LXX
72	Chapter LXXI
73	Chapter LXXII
74	Chapter LXXIII
75	Chapter LXXIV
76	Chapter LXXV
77	Chapter LXXVI
78	Chapter LXXVII
79	Chapter LXXVIII
80	Chapter LXXIX
81	Chapter LXXX
82	Chapter LXXXI
83	Chapter LXXXII
84	Chapter LXXXIII
85	Chapter LXXXIV
86	Chapter LXXXV
87	Chapter LXXXVI
88	Chapter LXXXVII
89	Chapter LXXXVIII
90	Chapter LXXXIX
91	Chapter LXXXX
92	Chapter LXXXXI
93	Chapter LXXXXII
94	Chapter LXXXXIII
95	Chapter LXXXXIV
96	Chapter LXXXXV
97	Chapter LXXXXVI
98	Chapter LXXXXVII
99	Chapter LXXXXVIII
100	Chapter LXXXXIX
101	Chapter LXXXXX

Clmt. Ex. 5 – Letter from the Respondent to the Claimant, dated February 4, 2021; Letter from the Claimant to the Respondent, dated February 15, 2021

Clmt. Ex. 6 – Invoice, dated October 19, 2020

Clmt. Ex. 7 – Beltway Builders, Inc. Estimate, dated June 4, 2021

Clmt. Ex. 8 – Complaint Form, received by the MHIC on July 15, 2021

Clmt. Ex. 9 – Letter from the MHIC to the Respondent, dated July 5, 2022; Proposed Order, dated July 5, 2022; Letter from the MHIC to the Claimant, dated September 1, 2021

Clmt. Ex. 10 – Photocopy of business cards, undated

I admitted the following exhibit offered by the Respondent:

Resp. Ex. 1 – Bank Statement, spanning October 1 through 31, 2020

I admitted the following exhibits offered by the Fund:

GF Ex. 1 – Notice of Remote Hearing, dated October 25, 2022; Memorandum from the OAH to the Department, dated November 22, 2022, including returned Notice of Remote Hearing

GF Ex. 2 – Transmittal, undated; Hearing Order, dated September 16, 2022

GF Ex. 3 – Licensing History, printed December 21, 2022

GF Ex. 4 – Letter from the MHIC to the Respondent, dated May 23, 2022; Claim, received by the MHIC on May 23, 2022

### Testimony

The Claimant testified and presented the testimony of her husband, Shawn Alexis.

The Respondent testified on his own behalf.

The Fund did not offer any witness testimony.

1. The Board of Directors of the Corporation is authorized to issue shares of common stock of the Corporation in accordance with the following terms:

2. The Board of Directors is authorized to issue shares of common stock of the Corporation in accordance with the following terms:

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15. The Board of Directors is authorized to issue shares of common stock of the Corporation in accordance with the following terms:

### 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 01-120413 (individual) and 05-138611 (corporate).
2. Around October 2020, the Claimant and her husband began shopping around to find a contractor willing to install an outdoor patio onto their home.
3. The Claimant met with Eduardo Aguilar Macho who informed the Claimant that he was willing to install the patio. Mr. Aguilar Macho gave the Claimant a business card that contained a company name: "Aguilar Remodeling, LLC"; listed two names: "Wagner & Eduardo"; listed an MHIC licensing number: "LIC # 138611"; and contained both the Respondent's and Mr. Aguilar Macho's cellular telephone numbers. (Clmt. Ex. 10).
4. On a date uncertain, the Respondent gave the Claimant an identical business card.
5. On October 19, 2020, the Claimant and Mr. Aguilar Macho entered into a contract where the Respondent's business agreed to install a 20 x 21 brick patio (including retention wall for sitting and five columns), and the Claimant agreed to pay \$11,750.00 to the Respondent's company for the labor and materials.
6. Between October 19 and October 29, 2020, the Claimant used Zelle to wire \$7,588.69 to the Respondent. This money was deposited into a checking account designated for the Respondent's business.
7. On a date unknown, the Claimant paid Mr. Aguilar Macho \$3,000.00 in cash towards the contract.

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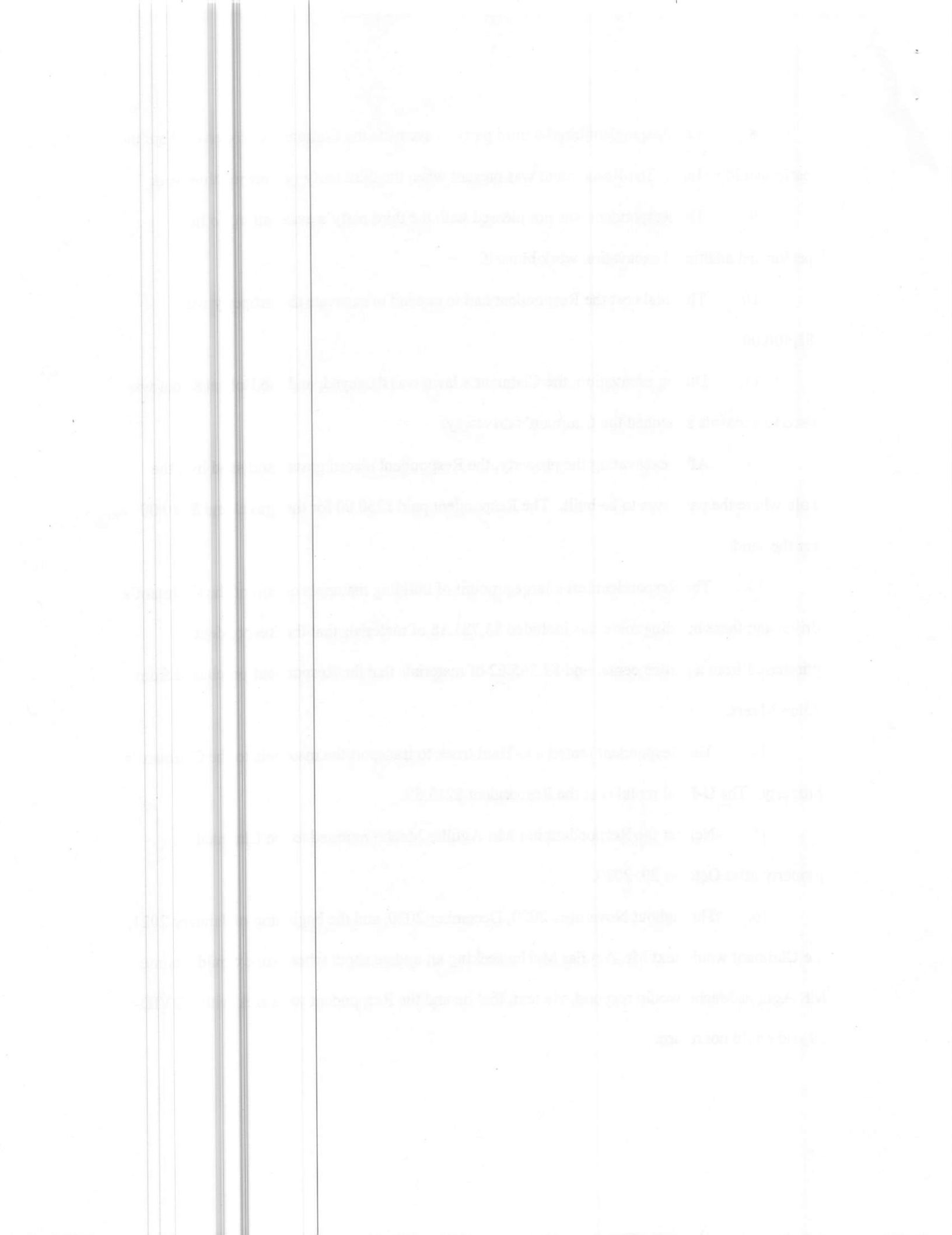
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8. The Respondent hired a third party to excavate the Claimant's property where the patio would be built. The Respondent was present when the third party performed this work.
9. The Respondent was not pleased with the third party's excavation, so he performed additional excavation work himself.
10. The total cost the Respondent had to expend to excavate the property was \$1,400.00.
11. During excavation, the Claimant's lawn was damaged, and the Bobcat® that was used to excavate scratched the Claimant's driveway.
12. After excavating the property, the Respondent placed gravel and sand into the hole where the patio was to be built. The Respondent paid \$250.00 for the gravel and \$180.00 for the sand.
13. The Respondent left a large amount of building materials on top of the Claimant's driveway; these building materials included \$3,721.38 of materials that the Respondent purchased from a garden center and \$2,345.62 of materials that the Respondent purchased from Allan Myers.
14. The Respondent rented a U-Haul truck to transport the materials to the Claimant's property. The U-Haul rental cost the Respondent \$213.59.
15. Neither the Respondent nor Mr. Aguilar Macho returned to the Claimant's property after October 29, 2020.
16. Throughout November 2020, December 2020, and the beginning of January 2021, the Claimant would text Mr. Aguilar Macho seeking an update about when work would resume. Mr. Aguilar Macho would respond, via text, that he and the Respondent were sick with COVID-19 and could not return.



17. On January 27, 2021, the Claimant's attorney sent a letter to the Respondent seeking a refund of \$2,361.62.

18. On February 4, 2021, the Respondent sent a response letter to the Claimant's attorney. The response letter contained a letterhead containing the same logo as seen on the business cards, along with the names "Wagner Reynoso & Eduardo Aguilar," along with both the Respondent's and Mr. Aguilar Macho's cellular telephone numbers.

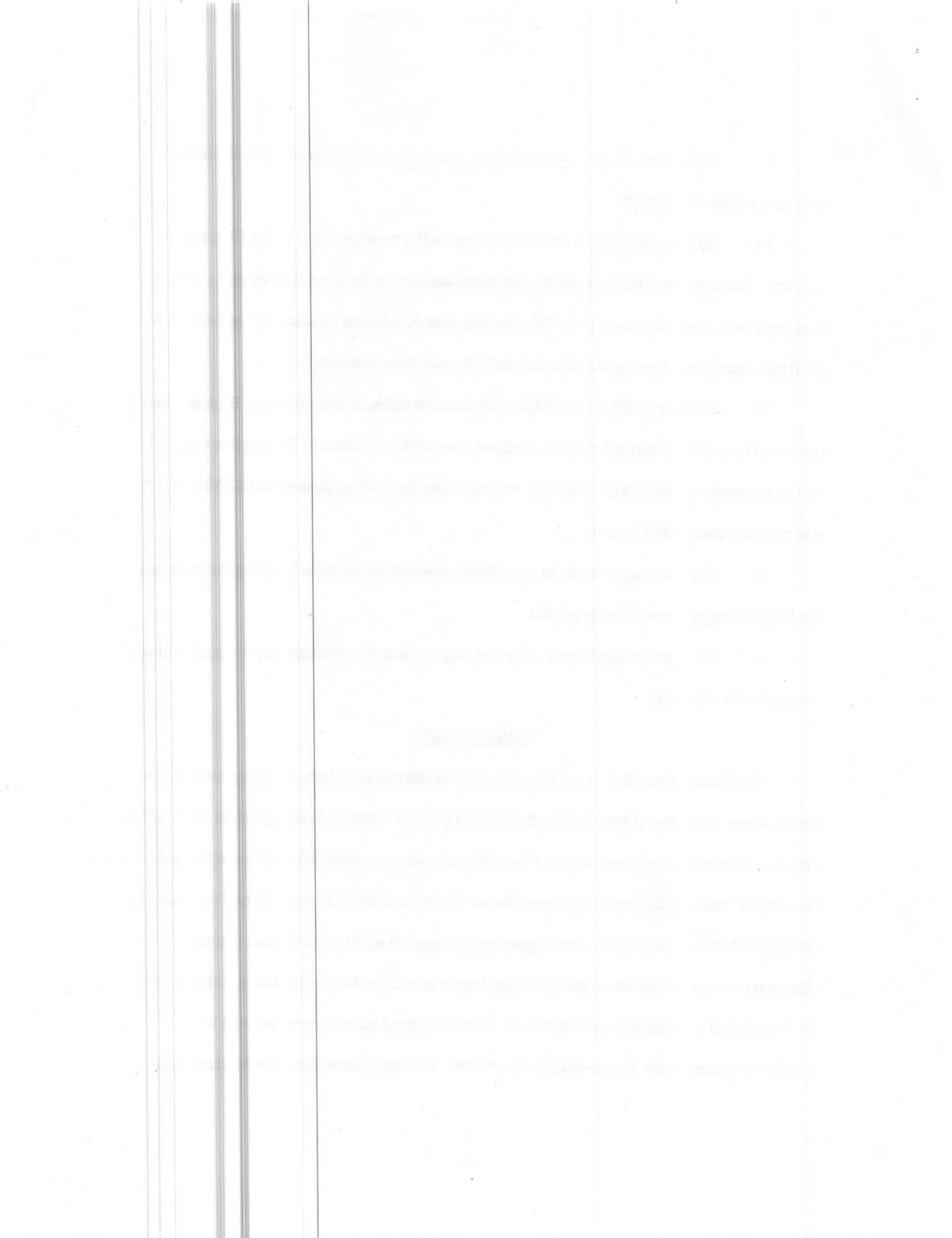
19. On June 4, 2021, the Claimant received an estimate from Beltway Builders, Inc. (Beltway) to reseal her entire driveway. Beltway quoted the Claimant \$1,300.00 if it was paid during the week of June 4, \$1,400.00 if it was paid after the week of June 4, and \$1,500.00 if it was paid one month after June 4.

20. The Claimant's husband completed constructing the patio by using the materials the Respondent purchased for the project.

21. Mr. Aguilar Macho was either an employee or an authorized representative of the Respondent's company.

### 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 (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). The Respondent asserted an affirmative defense that the Claimant contracted with Mr. Aguilar Macho, who was neither the Respondent's employee nor the Respondent's authorized representative. Therefore, the Respondent argued that he is improperly named as the Respondent in this matter. The Respondent bears the burden to show



that he is the wrong named respondent in this matter by a preponderance of the evidence.

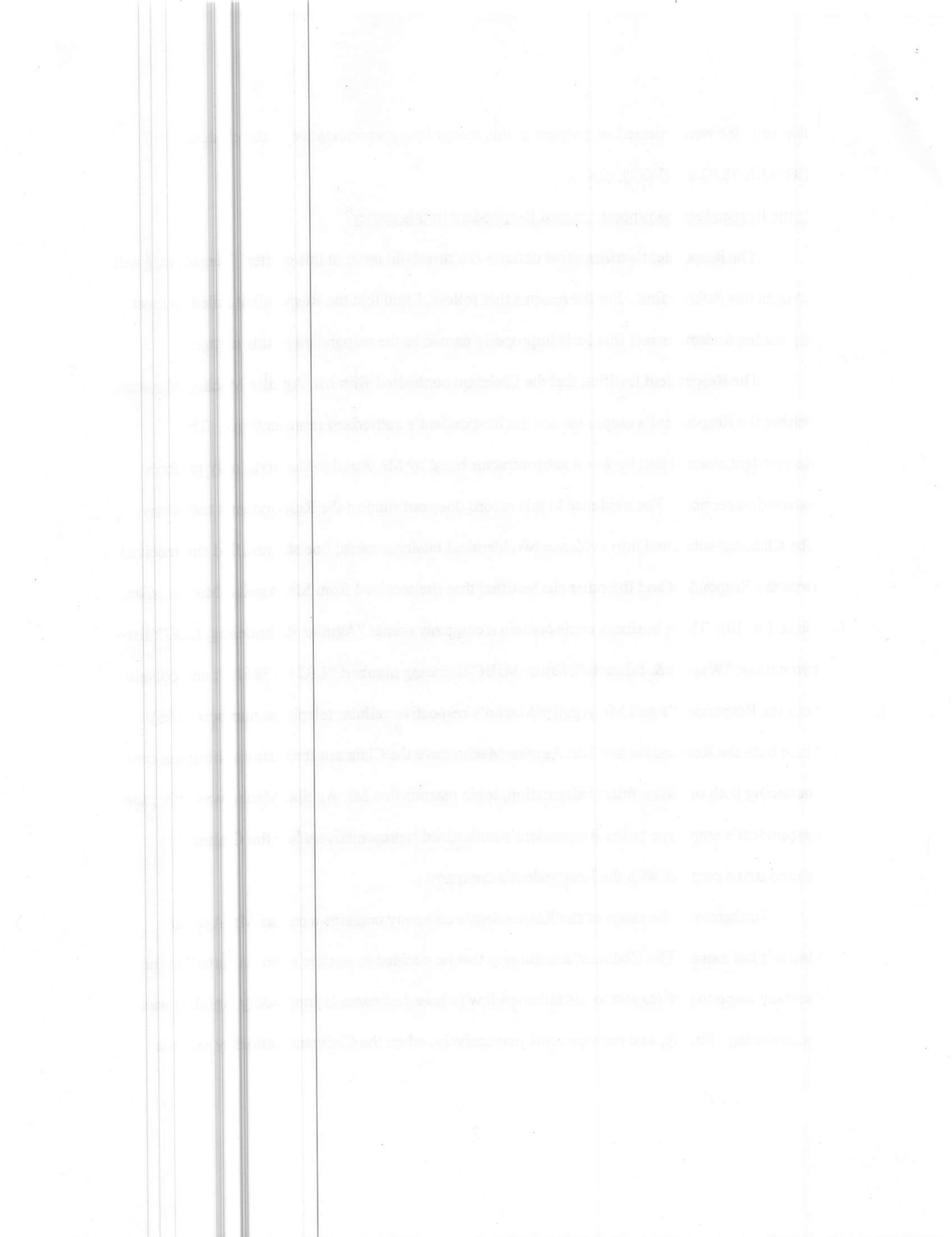
COMAR 28.02.01.21K(1), (2)(b).

Is the Respondent the properly named Respondent in this matter?

The Respondent's affirmative defense is a threshold issue in this matter. Therefore, I will address this defense first. For the reasons that follow, I find that the Respondent failed to meet his burden to demonstrate that he is improperly named as the respondent in this matter.

The Respondent testified that the Claimant contracted with Mr. Aguilar Macho, who was neither the Respondent's employee nor the Respondent's authorized representative. The Respondent claimed that he was a subcontractor hired by Mr. Aguilar Macho to only perform excavation services. The evidence in this record does not support the Respondent's testimony. The Claimant submitted into evidence two identical business cards; one she testified she received from the Respondent and the other she testified that she received from Mr. Aguilar Macho. (See Clmt. Ex. 10). These business cards contain a company name: "Aguilar Remodeling, LLC"; list two names: "Wagner & Eduardo"; list an MHIC licensing number: "LIC # 138611"; and contain both the Respondent's and Mr. Aguilar Macho's respective cellular telephone numbers. (*Id.*). Since both the Respondent and Mr. Aguilar Macho gave the Claimant the identical business card, containing both of their contact information, logic reasons that Mr. Aguilar Macho was either the Respondent's employee or the Respondent's authorized representative when the Claimant entered into a contract with the Respondent's company.

Furthermore, the name of the Respondent's company contains a part of Mr. Aguilar Macho's last name. The Claimant's testimony that he decided to use the word "Aguilar" in the company name to pay respect to his father-in-law (whose last name is supposedly Aguilar) was unconvincing. Finally, and perhaps most persuasively, when the Claimant's attorney sent the



Respondent a letter, the Respondent sent a letter in response which contained letterhead with the same logo as seen on the business cards, along with the names "Wagner Reynoso & Eduardo Aguilar," along with both the Respondent's and Mr. Aguilar Macho's cellular telephone numbers. Therefore, I find, by a preponderance of the evidence standard, that Mr. Aguilar Macho was either an employee or an authorized representative of the Respondent's company. For these reasons, I find the Respondent's affirmative defense unpersuasive as the evidence contradicts the Respondent's testimony that the Claimant did not enter into a contract with his company.

Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

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.

The evidence in this case establishes there are no legal impediments barring the Claimant from filing a claim under sections 8-405 and 8-408 of the Business Occupations Article. The Respondent was a licensed home improvement contractor at the time of the contract. The home improvement work was to be performed on the Claimant's residence in Maryland. The Claimant is not a relative, employee, officer, or partner of the Respondent; and the Claimant is not related to any of the Respondent's employees, officers, or partners. The Claimant did not reject any efforts by the Respondent to resolve the Claim. The Claimant timely filed the Claim with the

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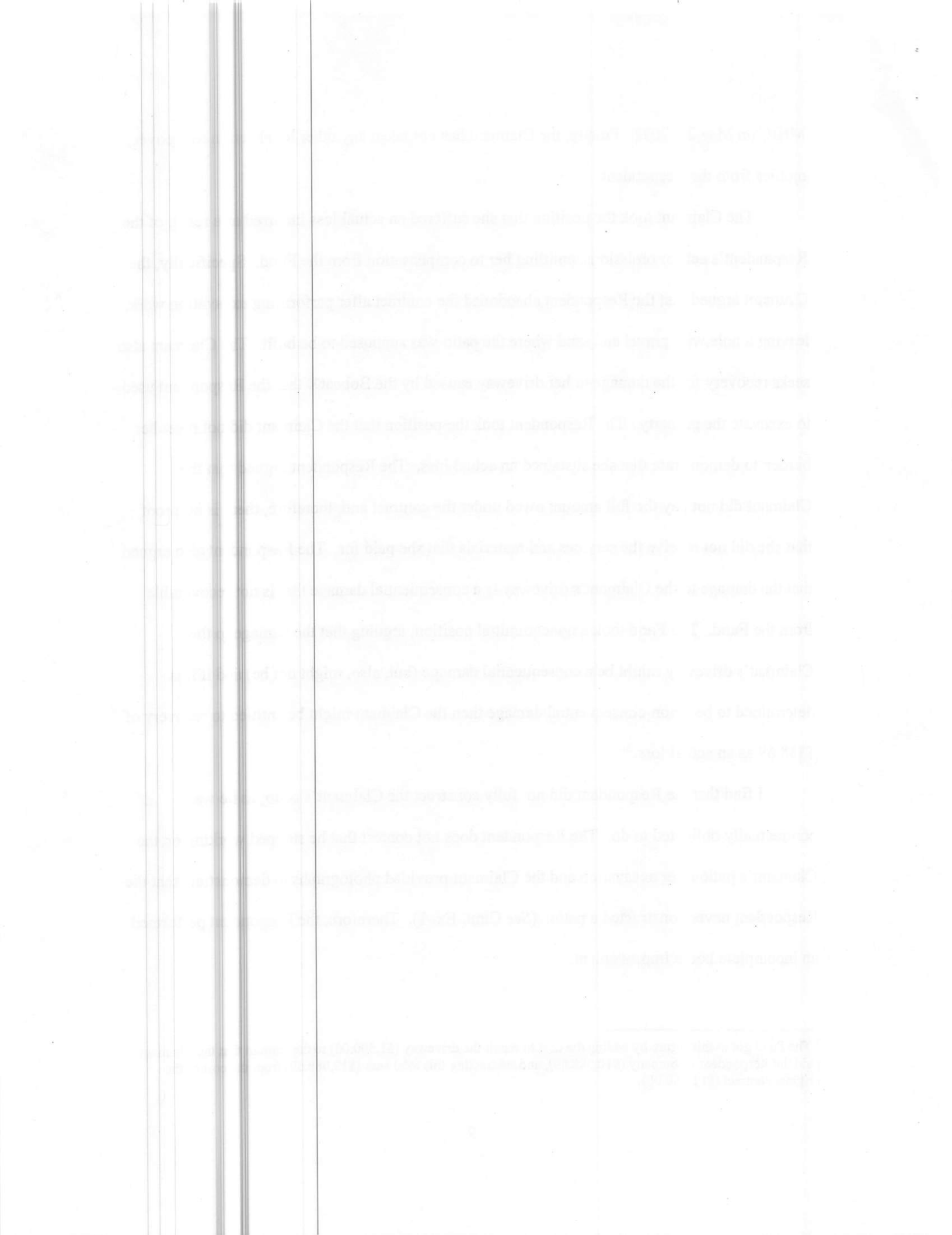
MHIC on May 23, 2022. Finally, the Claimant has not taken any other legal action to recover monies from the Respondent.

The Claimant took the position that she suffered an actual loss incurred as a result of the Respondent's acts or omissions, entitling her to compensation from the Fund. Specifically, the Claimant argued that the Respondent abandoned the contract after performing excavation work, leaving a hole with gravel and sand where the patio was supposed to be built. The Claimant also seeks recovery for the damage to her driveway caused by the Bobcat® that the Respondent used to excavate the property. The Respondent took the position that the Claimant did not meet her burden to demonstrate that she sustained an actual loss. The Respondent argued that the Claimant did not pay the full amount owed under the contract and, therefore, there is no proof that she did not receive the services and materials that she paid for. The Respondent also argued that the damage to the Claimant's driveway is a consequential damage that is not recoverable from the Fund. The Fund took a noncommittal position, arguing that the damage to the Claimant's driveway might be a consequential damage (but, also, might not be) and if it is determined to be a non-consequential damage then the Claimant might be entitled to recovery of \$338.69 as an actual loss.<sup>3</sup>

I find that the Respondent did not fully construct the Claimant's patio, as he was contractually obligated to do. The Respondent does not contest that he stopped working on the Claimant's patio after excavation and the Claimant provided photographs to demonstrate that the Respondent never constructed a patio. (See Clmt. Ex. 1). Therefore, the Respondent performed an incomplete home improvement.

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<sup>3</sup> The Fund got to this figure by adding the cost to repair the driveway (\$1,500.00) to the amount that the Claimant paid the Respondent's company (\$10,588.69), and subtracting this total sum (\$12,088.69) from the cost of the original contract (\$11,750.00).



In a situation where a home improvement contractor performed some work under the contract, and a claimant is not seeking other contractors to complete or remedy that work, the following formula appropriately measures a claimant's actual loss: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

In total, the Claimant paid the Respondent's company \$10,588.69, which consisted of wire payments of \$7,588.69 made through Zelle, and a \$3,000.00 cash payment.<sup>4</sup> The Respondent provided a breakdown of the costs of the materials and services that were provided to the Claimant, which consisted of: \$3,721.38 of materials purchased from a garden center; \$2,345.62 of materials purchased from Allan Myers; \$1,400.00 for property excavation; \$250.00 for gravel; \$180.00 for sand; and \$213.59 to rent a U-Haul truck to transport all materials to the Claimant's property. Therefore, the value of materials or services provided by the Respondent was \$8,110.59.<sup>5</sup> Using the formula provided in COMAR 09.08.03.03B(3)(b), the Claimant's total loss is calculated by subtracting the value of any materials or services provided by the Respondent (\$8,110.59) from the amount paid to the Respondent (\$10,588.69). Therefore, the Claimant's actual loss amounts to \$2,478.10. Despite the Respondent's argument, I do not find that the Claimant needed to present expert testimony to substantiate her claim. The Respondent does not contest that he failed to fully construct the Claimant's patio and the figures I have used

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<sup>4</sup> Although the Respondent testified that he only received \$7,588.69 in payments made through Zelle, he did not dispute that the Claimant may have paid Mr. Aguilar Macho a \$3,000.00 cash payment.

<sup>5</sup> This amount is almost in line with the sums the Claimant placed on the Claim form, where she estimated that the Respondent provided \$7,196.38 in materials and \$1,000.00 in labor. (See GF Ex 4).

The first part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter discusses the proposed construction of a dam on the Colorado River and the impact it would have on the surrounding area. It mentions the need for a comprehensive study to be conducted before any final decision is made. The letter also refers to the various reports and studies that have been prepared and the need for a final report to be submitted to the Secretary of the Army.

The second part of the document is a report titled "A Study of the Colorado River Dam Project." This report provides a detailed analysis of the project, including the proposed design of the dam, the estimated cost, and the potential benefits and drawbacks. It also discusses the environmental impact of the project and the need for a comprehensive study to be conducted before any final decision is made. The report concludes by recommending that the project be approved, subject to the completion of the study and the approval of the Secretary of the Army.

to determine the value of the materials and services that the Respondent provided come directly from the Respondent who was responsible for providing those materials and services.

I agree with the Respondent that the damage caused to the Claimant's driveway is a consequential damage that is not recoverable from the Fund. 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). The Claimant acknowledged that the Respondent was not obligated to perform any home improvement on her driveway under the contract. While unfortunate, the damage to the Claimant's driveway was a consequence of the Respondent's poor workmanship but is not a damage that includes the cost of restoration, repair, replacement, or completion that arise from the Respondent's work that would be compensable by the Fund.

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.<sup>6</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). 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 her actual loss of \$2,478.10.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$2,478.10 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405

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<sup>6</sup> 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").

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(2015 & Supp. 2022); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover \$2,478.10 from the Fund. Md. Code Ann., Bus. Reg. 8-405(a), (e)(1) (Supp. 2022).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,478.10; 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>7</sup> and

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

May 1, 2023  
Date Decision Issued

*Leigh Walder*  
\_\_\_\_\_  
Leigh Walder  
Administrative Law Judge

LW/cj  
#204826

<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

1. The first part of the document is a letter from the President of the United States to the Congress, dated September 17, 1787. It is a very important document, as it sets out the reasons for the creation of the Constitution and the powers of the new government.

2. The second part of the document is the Constitution itself, which was signed on September 17, 1787. It is a very important document, as it sets out the structure of the government and the powers of each branch.

3. The third part of the document is the Declaration of Independence, which was signed on July 4, 1776. It is a very important document, as it sets out the reasons for the American Revolution and the principles of the new nation.

4. The fourth part of the document is the Bill of Rights, which was signed on September 12, 1791. It is a very important document, as it sets out the rights of the citizens and limits the powers of the government.

5. The fifth part of the document is the Preamble to the Constitution, which is the opening sentence of the Constitution. It is a very important document, as it sets out the purpose of the Constitution and the powers of the government.

6. The sixth part of the document is the first ten amendments to the Constitution, which were signed on September 12, 1791. They are a very important document, as they set out the rights of the citizens and limit the powers of the government.

7. The seventh part of the document is the rest of the Constitution, which was signed on September 17, 1787. It is a very important document, as it sets out the structure of the government and the powers of each branch.

8. The eighth part of the document is the Declaration of Independence, which was signed on July 4, 1776. It is a very important document, as it sets out the reasons for the American Revolution and the principles of the new nation.

9. The ninth part of the document is the Bill of Rights, which was signed on September 12, 1791. It is a very important document, as it sets out the rights of the citizens and limits the powers of the government.



**PROPOSED ORDER**

***WHEREFORE, this 26<sup>th</sup> day of June, 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.***

***Lauren Lake***

***Lauren Lake***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

PROPOSED ORDER

WHEREAS the Court has received the petition of the respondent for a writ of habeas corpus and for an order directing the respondent to be released from custody and to be restored to his former position of employment; and

WHEREAS the respondent has established that he is entitled to the writ and order sought; and

WHEREAS the respondent has established that he is entitled to the writ and order sought; and

WHEREAS the respondent has established that he is entitled to the writ and order sought; and

James L. [Name]  
[Title]  
[Address]  
[City, State, Zip]