

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DONALD AND PAMELA SELVY,</p> <p style="text-align: center;">CLAIMANTS</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF HENRY TWIST, JR.,</p> <p>T/A HCT HOME REMODELING,</p> <p>LLC,</p> <p style="text-align: center;">RESPONDENT</p>	<p>* BEFORE PATRICK E. MAHER,</p> <p>* AN 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-02-22-08939</p> <p>* MHIC No.: 22 (75) 597</p>
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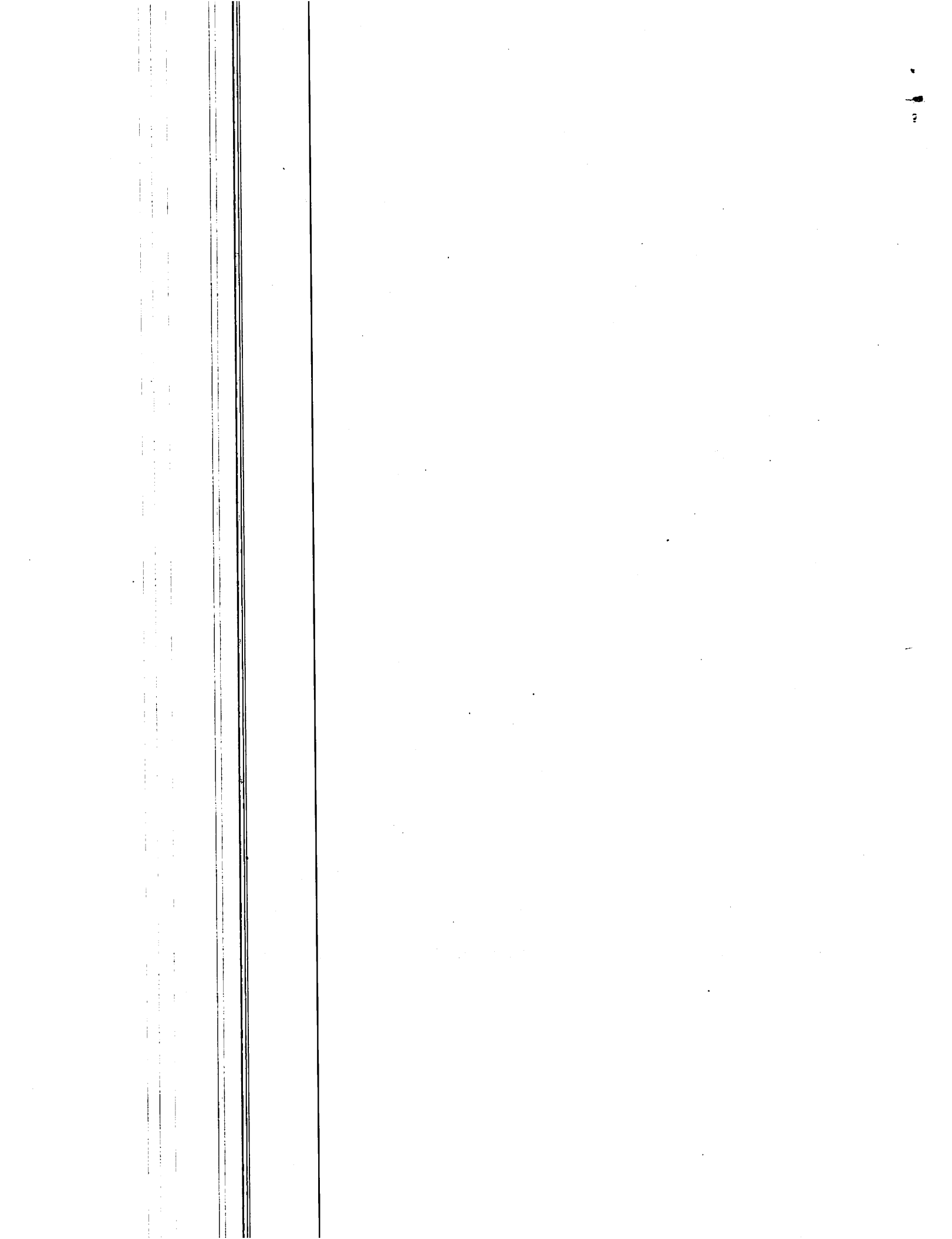
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PROPOSED DECISION

STATEMENT OF THE CASE
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PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
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STATEMENT OF THE CASE

On February 7, 2022, Donald and Pamela Selvy (Claimants) filed a claim with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$16,254.00 for actual losses allegedly suffered as a result of a home improvement contract with Henry Twist,



Jr., trading as HCT Home Remodeling, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015 & Supp. 2022).¹

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

On April 21, 2022, the OAH mailed a Notice of Hearing to the parties and advised that a hearing was scheduled for June 23, 2022, at 9:30 a.m., at the OAH located in Hunt Valley, Maryland. On June 2, 2022, the Office of the Attorney General, on behalf of the Department, sent a letter to the OAH advising that the claim against the Fund involved the Respondent Contractor's estate and requested that the Notice of Hearing and related documents be re-issued to the estate's personal representative and its attorney and provided their contact information. On June 2, 2022, the OAH issued the Notice of Hearing to the personal representative of the Respondent's estate (Robert M. Twist) and its attorney (Anthony J. DiPaula, Esquire).

On June 8, 2022, Anthony J. DiPaula, Esquire, mailed a letter to the OAH and advised that his office represents the Estate of the Respondent and HCT Home Remodeling, LLC, and requested a postponement of the hearing due to a scheduling conflict and for the opportunity to further investigate the claim. On June 10, 2022, the OAH granted the Motion for Postponement. On June 17, 2022, the OAH re-issued hearing notices for the parties and scheduled the matter for September 22, 2022, at 9:30 a.m., in Hunt Valley, Maryland.

On July 6, 2022, the Claimant filed a request for a postponement of the hearing date due to a scheduling conflict. The OAH granted the request and re-issued a Notice of Hearing to all the parties on July 19, 2022. The new hearing date was scheduled for October 18, 2022, at 9:30 a.m., in Hunt Valley, Maryland.

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

On October 17, 2022, the law office of Anthony J. DiPaula, Esquire sent an email to the OAH and advised that “our client has elected not to participate in the hearing tomorrow. We will also not be attending on behalf of the Estate of Mr. Twist.”

On October 18, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, represented the Fund. The Claimants participated without representation. As expected per the email sent on October 17, 2022, no one appeared at the hearing on behalf of the deceased 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 Claimants 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 into evidence the following exhibits offered by the Claimants:

- Cl. Ex. 1. Home Improvement Claim Form, March 10, 2022; Home Improvement Claim Form, February 4, 2022; Complaint Form, Home Improvement Commission, November 12, 2021
- Cl. Ex. 2. Estimate for master bathroom, \$20,416.80, September 1, 2021
- Cl. Ex. 3. Estimate for kitchen refurbishment, \$21,980.00, September 1, 2021
- Cl. Ex. 4. Estimate of kitchen counter replacement, \$6,633.00, September 1, 2021

- Clt. Ex. 5. Photocopy of Claimant's bank statement, October 2021; photocopy of check # 2341 in the amount of \$16,234.00, payable to HCT Home Remodeling, October 12, 2021
- Clt. Ex. 6. Respondent's Obituary, Date of Death, October 25, 2021
- Clt. Ex. 7. Six photographs of Claimant's kitchen and bathroom, November 10, 2021

I admitted into evidence the following exhibits offered by the Fund:

- Fund Ex. 1. Hearing Order, April 15, 2022
- Fund Ex. 2. Notice of Hearing, July 19, 2022; Notice of Hearing, June 17, 2022; Notice of Hearing, June 2, 2022; Notice of Hearing, April 21, 2022
- Fund Ex. 3. MHIC letter to the Respondent, February 16, 2022; Home Improvement Claim Form, February 4, 2022, received by the Department, February 7, 2022
- Fund Ex. 4. The Respondent's licensing history with the MHIC, June 1, 2022
- Fund Ex. 5. Estate Record from the Office of the Register of Wills, May 21, 2022
- Fund Ex. 6. Respondent's Obituary, Date of Death, October 25, 2021

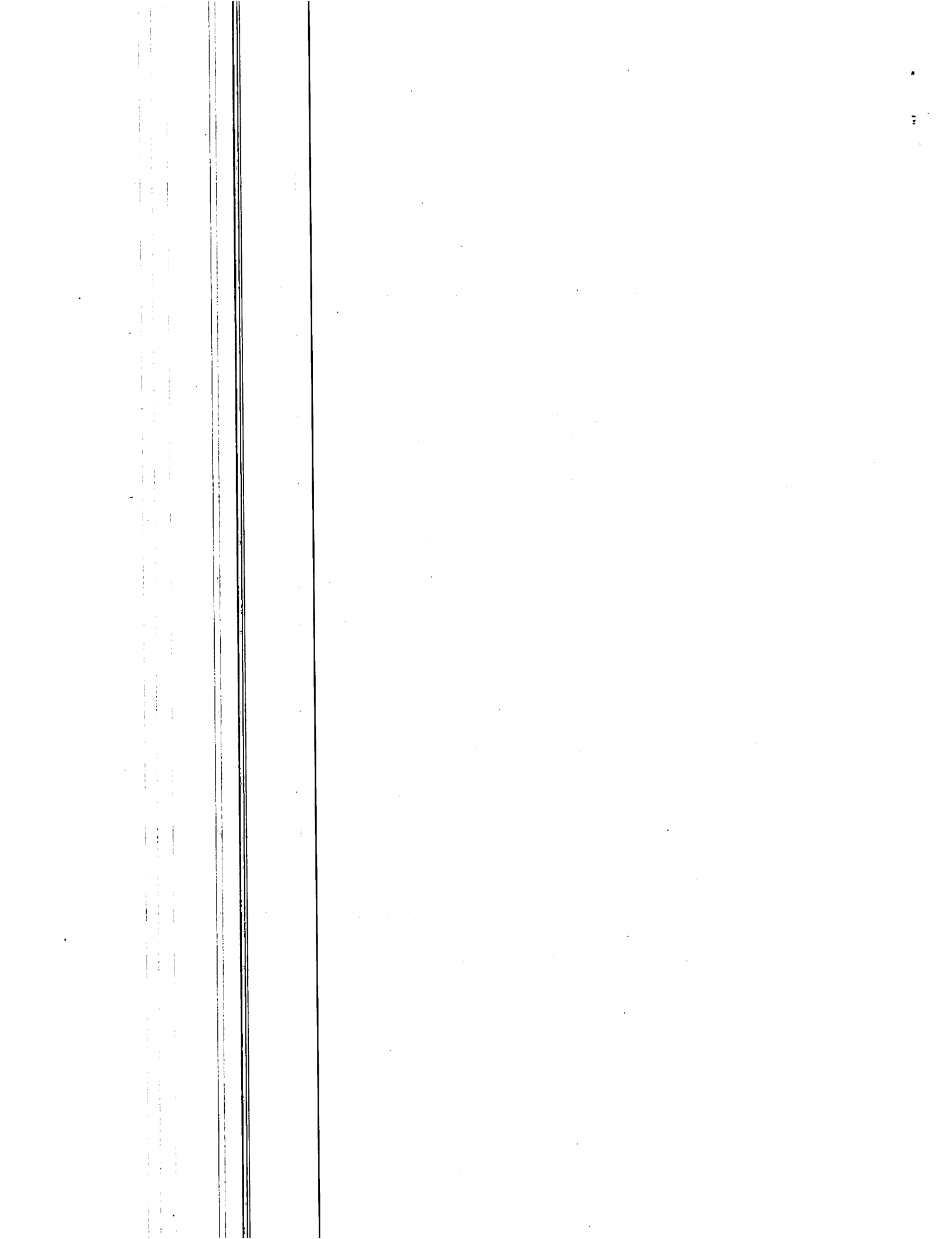
Testimony

Donald Selvy testified on behalf of the Claimants. No other witness testified.

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 01-107650.
2. On September 1, 2021, the Claimants and the Respondent entered into an oral agreement with the Respondent for three home improvement projects consisting of a bathroom remodel, kitchen refurbishment and kitchen counter replacement.



3. The contract price was \$48,759.80.
4. The Claimants paid a deposit of \$16,254.00 to the Respondent on October 12, 2021.
5. The Respondent obtained the necessary building permit to perform the work called for in the contract.
6. The Respondent did not perform any work under the contract.
7. The Respondent died on October 25, 2021.
8. After learning of the Respondent's death, the Claimants called the Respondent's son to obtain a refund of their deposit.
9. The Respondent's son advised that there were no funds available and to contact the Guaranty Fund.
10. The Respondent's estate, through its attorney, elected not to participate in the hearing.

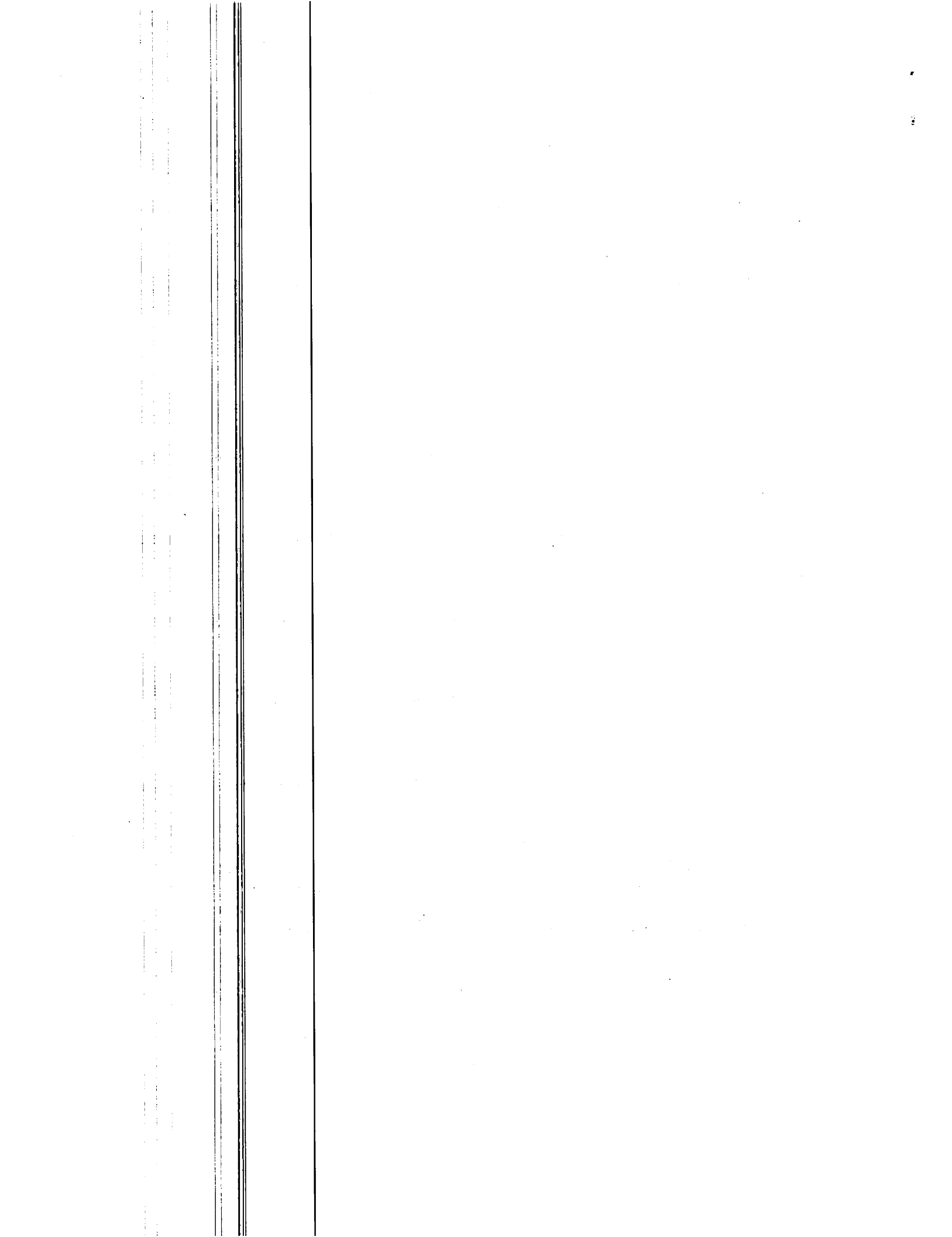
DISCUSSION

Proceeding in the Respondent's Absence

Section 8-312 of the Business Regulation Article, entitled "Hearings," states, in pertinent part, as follows:

(a) Except as otherwise provided in § 10-226 of the State Government Article, before the Commission takes any final action under § 8-311 of this subtitle, or if requested under § 8-620(c) of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Commission or, as provided under § 8-313 of this subtitle, a hearing board.

(b) The Commission shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.



(d) The hearing notice to be given to the person shall be sent at least 10 days before the hearing by certified mail to the business address of the licensee on record with the Commission.

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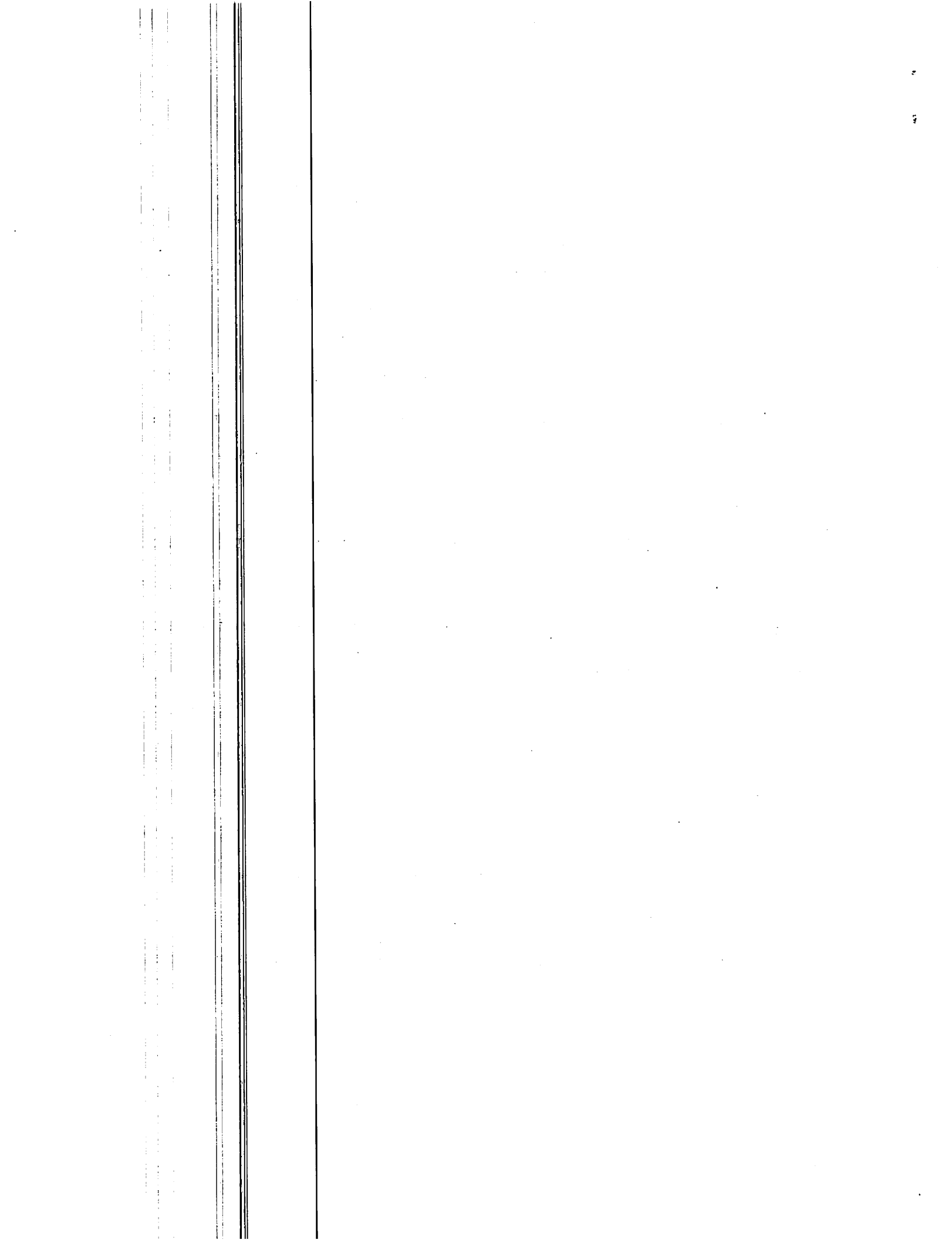
(h) If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Commission may hear and determine the matter.

Bus. Reg. § 8-312.

Although the above statute applies to disciplinary proceedings against licensees, the MHIC uses the same procedures for hearings involving claims against the Fund, such as this case. *Id.* § 8-407(a). These procedures ensure, as much as possible, that a contractor against whom a claim is filed is made aware of the date, time, and place of the hearing.

Although the hearing notices were initially sent to the Respondent who had died, the Office of the Attorney General subsequently notified the OAH that the Respondent was deceased and provided the contact information for both the personal representative of the estate of the Respondent and the attorney representing the estate. The subsequent notices of hearing were mailed to "The Estate of Henry C. Twist, Jr.," both to the care of the personal representative, Robert M. Twist, and its attorney, Anthony M. DiPaula, Esquire, by certified mail and by first-class mail. Mr. DiPaula responded to the first Notice with a request for a postponement and subsequently responded to the second Notice with an email to the OAH advising that "our client" would not be participating, and that he would not appear on behalf of the estate.

I concluded that the OAH provided "due notice" to the Respondent's estate under Business Regulation section 8-312(h), above, and held the hearing in the Respondent's absence after no one appeared on his or the estate's behalf as expected based on the email sent by Mr. DiPaula to the OAH on October 17, 2022.



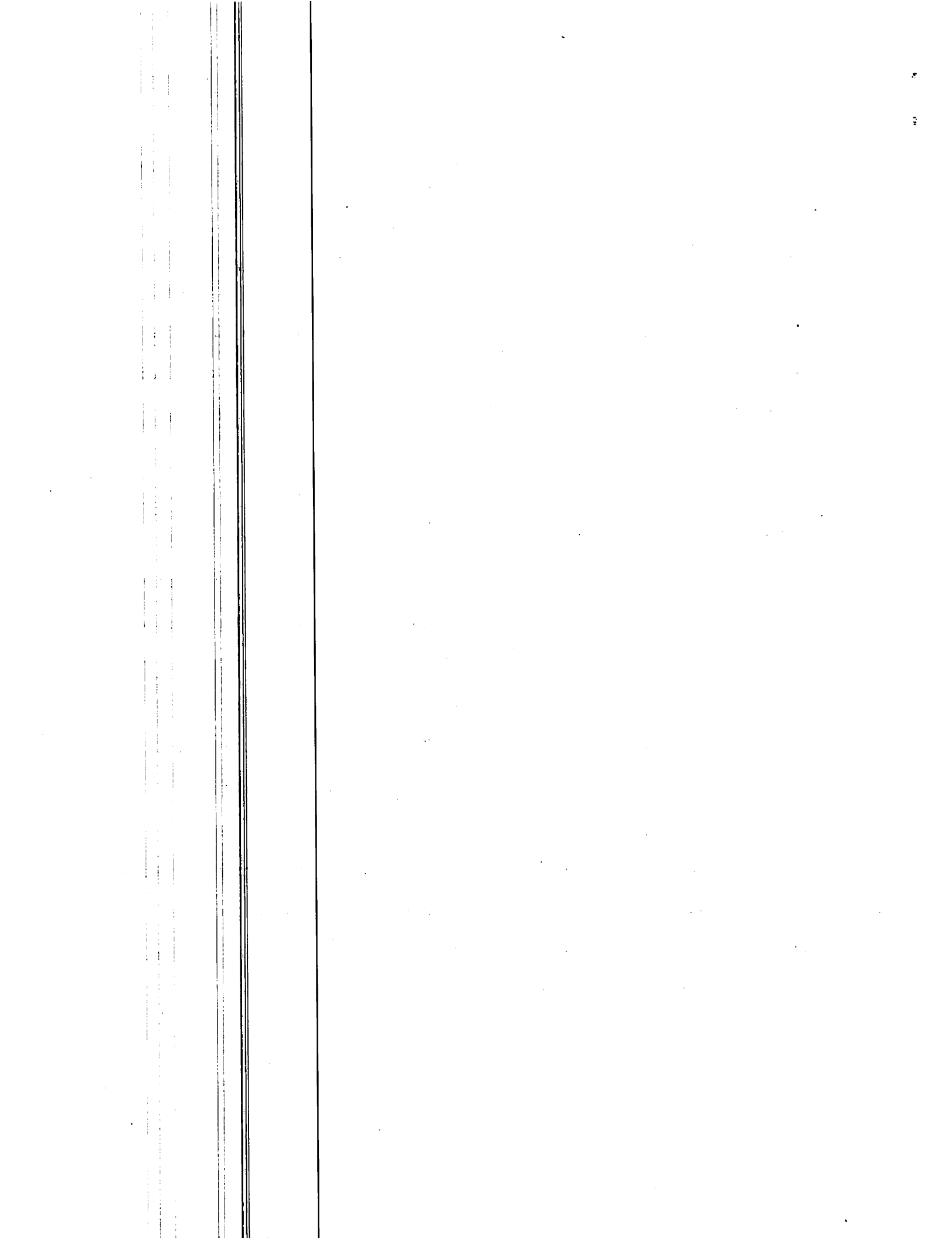
The OAH's Rules of Procedure permit me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A.

The Merits of the Claim

The Claimants have 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).

A homeowner 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 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). For the following reasons, I find that the Claimants have proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the contract with the Claimants. Although the circumstances of this case are tragic for the Respondent's family and friends, and frustrating for the Claimants, the applicable statutes and regulations provide a simple and straightforward resolution.



The Respondent received the Claimant's deposit and performed no work under the contract. Accordingly, the following formula appropriately measures the Claimants' actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a). The Claimants paid the Respondent \$16,254.00, none of which has been refunded. Therefore, their actual loss is \$16,254.00.

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.² In this case, the Claimants' actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$16,254.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$16,254.00 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)(a). I further conclude that the Claimants are entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405 (2015).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$16,254.00; and

² 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").

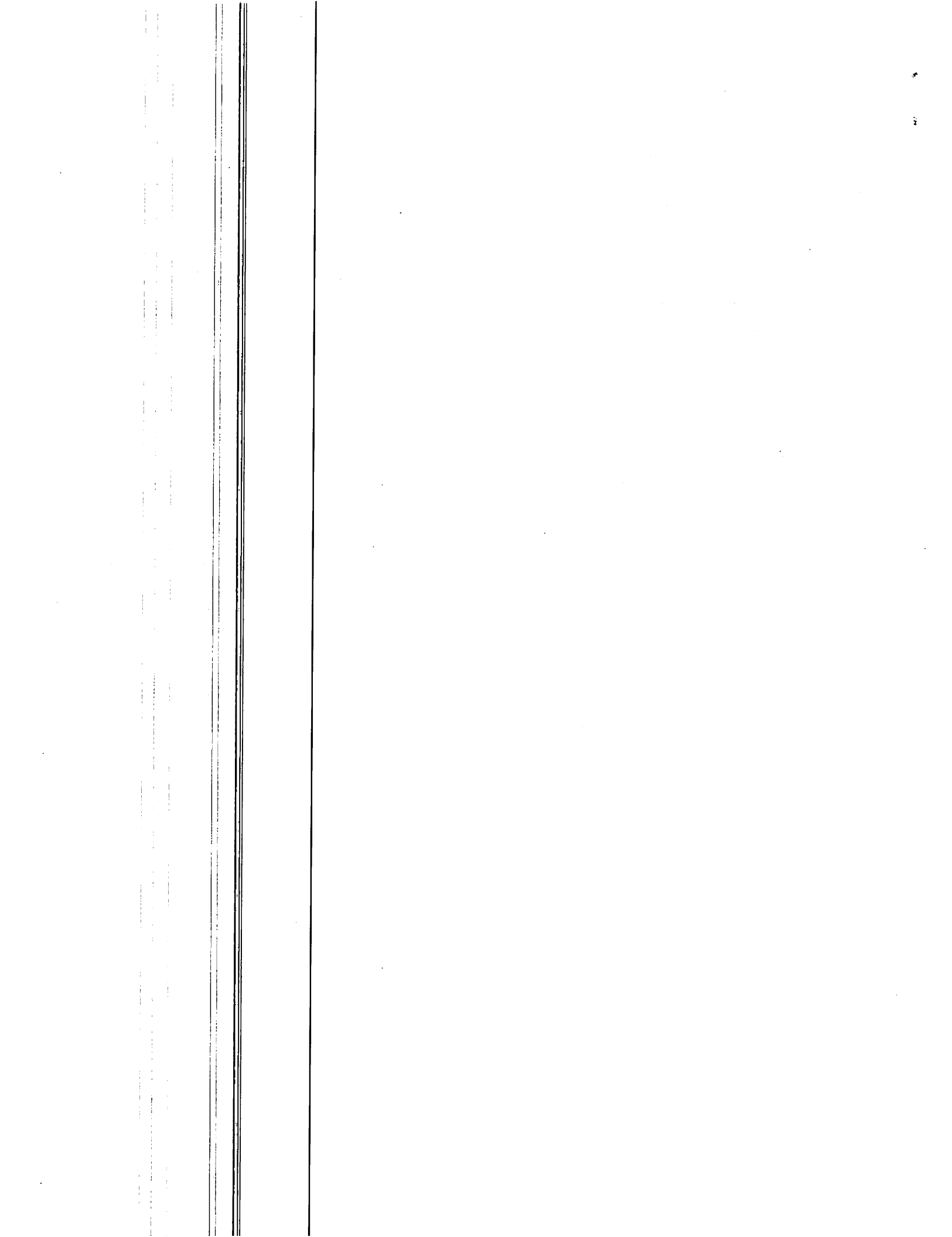
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

December 16, 2022
Date Decision Issued

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#202498

Patrick E. Maher

Patrick E. Maher
Administrative Law Judge



PROPOSED ORDER

WHEREFORE, this 25th day of January, 2023, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Michael Newton

Michael Newton

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

