

**IN THE MATTER OF THE CLAIM  
OF TRUC LE<sup>1</sup>,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF NESTOR GOMEZ,  
T/A G. O. CONTRACTORS GROUP,  
LTD.,  
RESPONDENT**

**\* BEFORE NANCY E. PAIGE,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-21-04001  
\* MHIC No.: 18 (90) 913  
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\* \* \* \* \*

**PROPOSED DECISION**

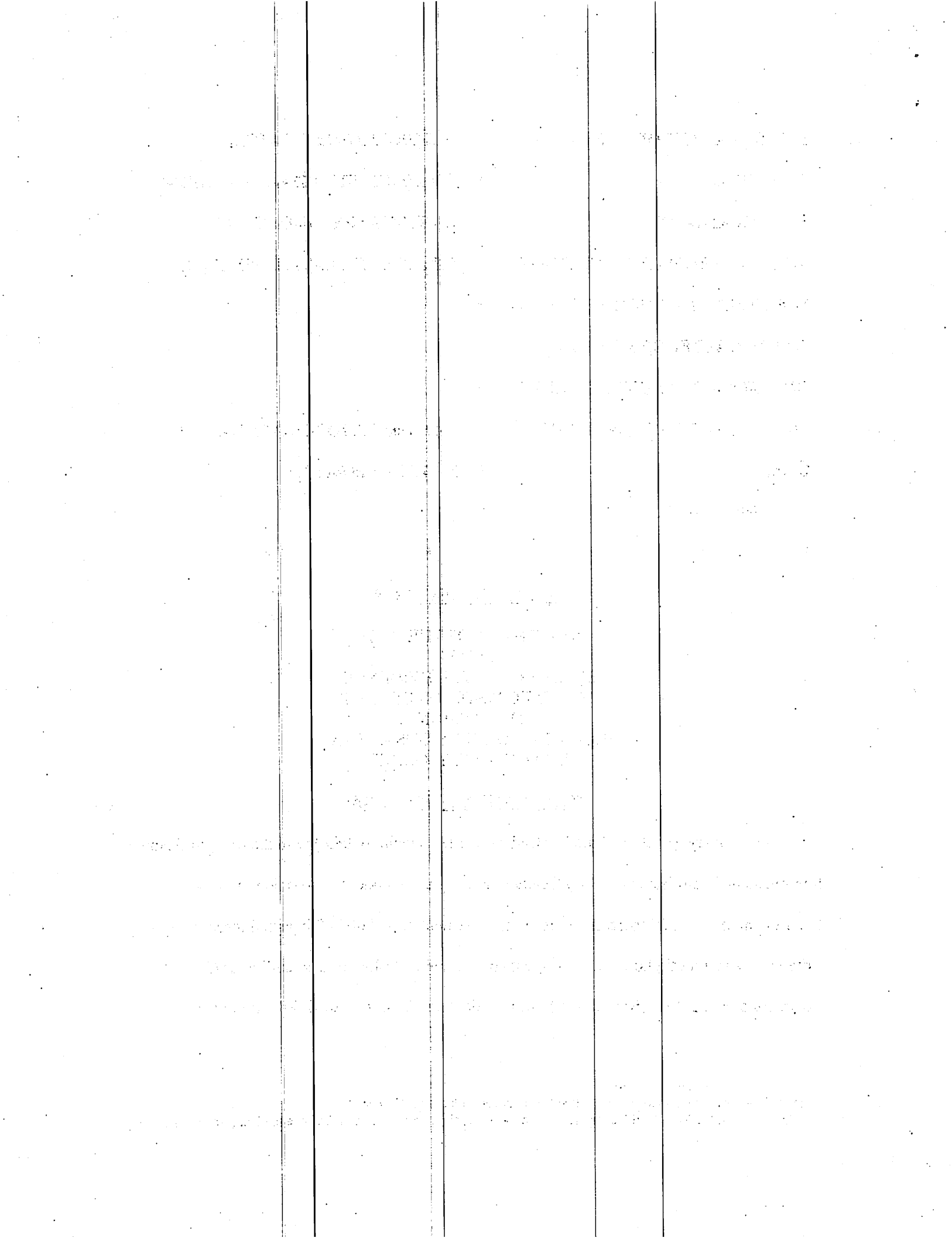
**STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On January 23, 2020, Truc Le (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),<sup>2</sup> for reimbursement of \$17,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Nestor Gomez, trading as G. O. Contractors Group, Ltd. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

<sup>1</sup> The Claimant's name is incorrectly spelled Lee in several places in the record.

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.



(2015).<sup>3</sup> On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I convened a hearing on April 22, June 8, and June 16, 2021. Bus. Reg. §§ 8-407(a), 8-312. Shara Hendler, Assistant Attorney General, represented the Fund. The Claimant represented himself. After waiting more than fifteen minutes on April 22 for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Because of inadequate interpreter assistance, I continued the hearing to June 8. On June 8, the Respondent again failed to appear. The hearing was continued to June 16 again because the interpretation was inadequate. The parties present on June 8 agreed to the continued date and the hearing was concluded on June 16, 2021.

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 March 4, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first class and certified mail to the Respondent's address on record with the OAH and to his attorney. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for April 22, 2021, at 9:30 a.m., via Webex, and provided the Webex website and the hearing room number. COMAR 28.02.01.20B. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you." The Respondent and his attorney both signed the certified mail return receipts. On April 9, 2021, however, the attorney notified OAH that he no longer represented the Respondent.

On April 29, the OAH again sent notices to the Respondent and his former attorney via first class and certified mail, stating that a hearing was scheduled for June 8, 2021 at 9:30 a.m.

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<sup>3</sup> 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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via Webex. The Notice again provided the Webex website and hearing room number. The attorney signed the certified mail receipt; the Respondent did not. Neither the first class mail to the attorney nor to the Respondent was returned as undeliverable by the postal service, and on May 11, 2021, the attorney acknowledged receipt of the April 29, 2021 Notice and again notified OAH that he no longer represented the Respondent.

Because of the short time between the June 8 hearing and the June 16 continued date, and because the parties who attended the June 8 hearing agreed to the continued date and time, notice of the June 16 hearing was not sent by mail, but was confirmed by email to all parties.

The Respondent made no request for postponement prior to any of the hearing dates. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to conclude the hearing in the captioned matter on June 16, 2021. COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); 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 on the Claimant's behalf:

- Cl. #1. Not admitted
- Cl. #2. Not admitted

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- Cl. #3. Not admitted
- Cl. #4. Not admitted
- Cl. #5. May 1, 2017 – December 27, 2017 records of payments to Respondent
- Cl. #6. May 14, 2017 Respondent's Proposal, signed by Claimant September 5, 2017;  
December 7, 2017 Extra Job Proposal, signed by Claimant December 11,  
2017
- Cl. #7. July 31, 2017 Prince George's County permit
- Cl. #8. July 31, 2017 receipt for permit payments
- Cl. #9. Not admitted
- Cl. #10. October 29, 2018 Prince George's County Inspections Division failed  
inspection notice
- Cl. #11. Undated Next Step Contracting, LLC, Estimate
- Cl. #12. August 14, 2018 Modern Interiors & Exteriors Design LLC proposal
- Cl. #13. Not admitted
- Cl. #14. Not admitted
- Cl. #15. Not admitted

The Respondent did not appear and did not submit any exhibits.

I admitted the following exhibits on the Fund's behalf:

- Fund #1. March 4, 2021 Notice of Remote Hearing
- Fund #2. March 29, 2021 licensing history
- Fund #3. January 28, 2020 letter from MHIC to Respondent

Account 101	General	101	101	101
Account 102	General	102	102	102
Account 103	General	103	103	103
Account 104	General	104	104	104
Account 105	General	105	105	105
Account 106	General	106	106	106
Account 107	General	107	107	107
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Account 114	General	114	114	114
Account 115	General	115	115	115
Account 116	General	116	116	116
Account 117	General	117	117	117
Account 118	General	118	118	118
Account 119	General	119	119	119
Account 120	General	120	120	120



Testimony

The Claimant testified and did not present other witnesses.

The Fund did not present any witnesses.

**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 105528.

2. In May 2017, the Claimant and the Respondent entered into a contract to add a sunroom and deck to the Claimant's home (Contract). (The Contract was in writing dated May 14, 2014. It was not signed until September 5, 2017 but the Claimant paid \$1,000.00 for permits on May 30, 2017.)

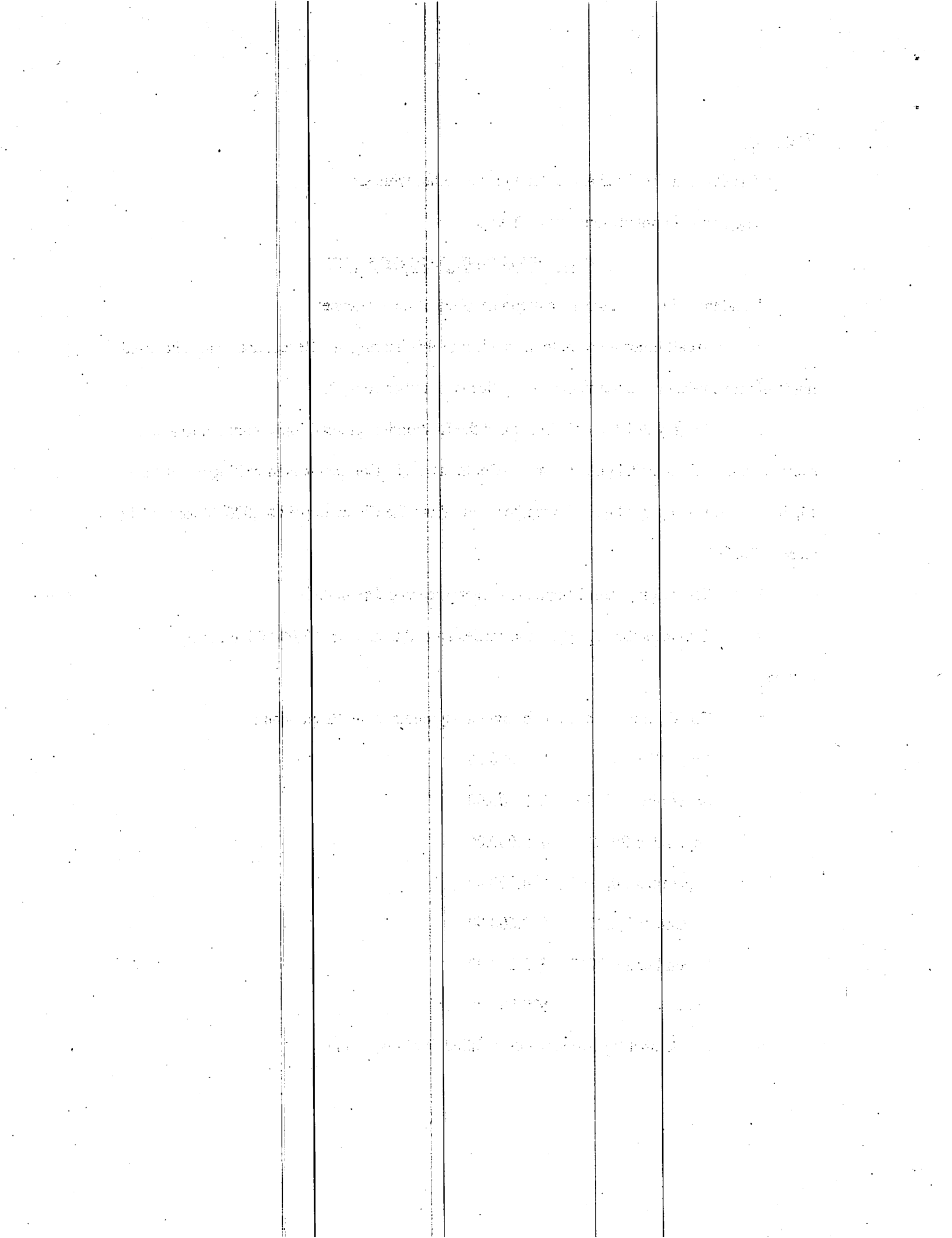
3. The original agreed-upon Contract price was \$43,000.00.

4. On December 17, 2017, the parties agreed to an extra \$2,000.00 to build a walkway.

5. The Claimant made the following payments to the Respondent:

May 30, 2017	\$ 1,000.00
September 5, 2017	\$13,000.00
September 29, 2017	\$ 9,000.00
September 30, 2017	\$ 4,000.00
December 2, 2017	\$ 8,600.00
December 27, 2017	<u>\$ 2,200.00</u>
Total	\$37,800.00

6. On October 29, 2018, the deck failed final inspection.



7. The Respondent did not correct the deficiencies in the deck and performed no other work on the Contract.

8. The Claimant paid \$18,000.00 to repair and complete the Contract work.

### DISCUSSION

In this case, 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 (2014); 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 claimant 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 Respondent's license has since lapsed but he was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The deck failed final inspection. The Claimant's testimony that the Respondent failed to correct the deficient work on the deck, offer to correct it, or perform any other work on the Contract is uncontradicted.

The Claimant produced estimates to repair and complete the Contract work from two licensed contractors, one for \$18,885.00 and the other for \$21,041.00. He testified that he did not use either of these contractors because they were recommended by the Respondent, and he

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did not trust the recommendation. Instead, he had the work done by an unlicensed, unidentified contractor and testified that he paid this contractor \$18,000.00. Counsel for the Fund agreed that, because this cost was close to and less than the two estimates the Respondent received, this cost was fair for the required work.<sup>4</sup>

I find that the failure to pass inspection reflects that the work done by the Respondent was unworkmanlike and I therefore find that the Claimant is eligible for compensation from the Fund.

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.

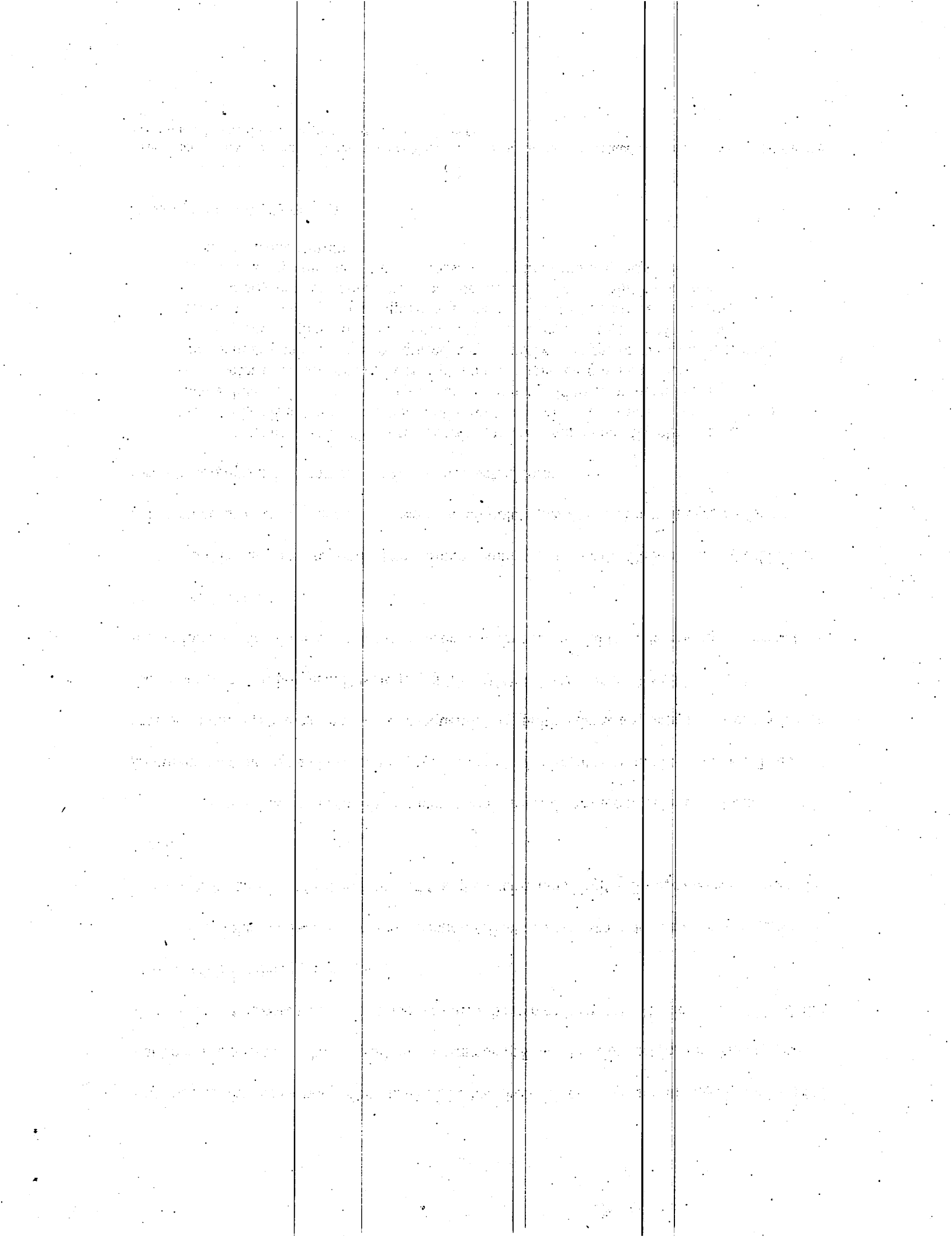
In this case, the Respondent performed some work under the Contract, and the Claimant has retained another contractor to remedy and complete that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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).

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<sup>4</sup> The Claimant testified that he brought suit against the Respondent and they settled his claim for \$8,000.00, but the Respondent has not made any payments on the settlement.



Based upon this formula, the Claimant's loss is calculated as follows:

Amount paid to the Respondent:	\$37,800.00
Amount paid to repair and complete the work:	<u>\$18,000.00</u>
Total paid for the Contract work	\$55,800.00
Original Contract price	\$43,000.00
Additional price for walkway	\$ <u>2,000.00</u>
Total Contract price	<u>-\$45,000.00</u>
Actual loss	\$10,800.00

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$10,800.00.

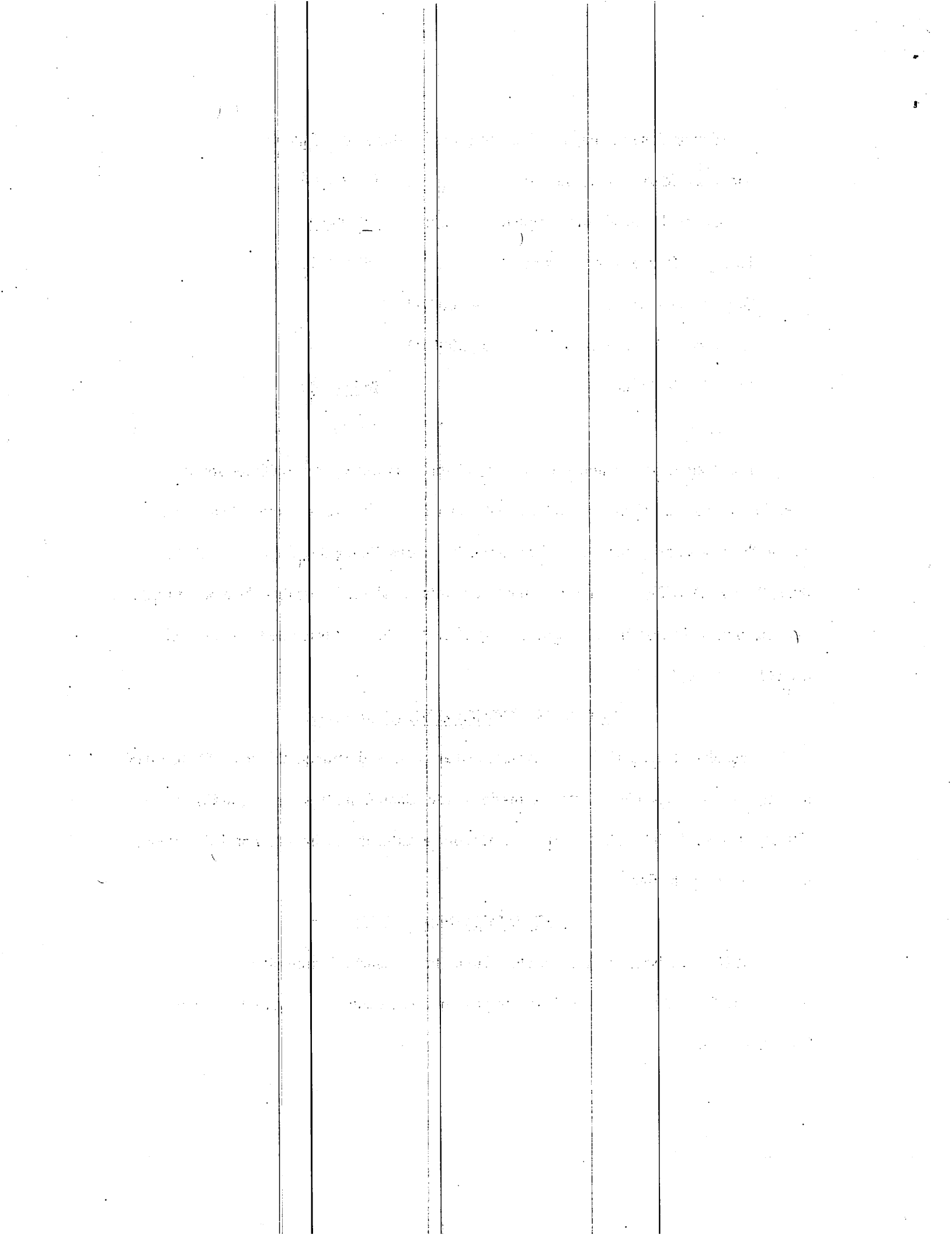
#### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$10,800.00 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 that amount from the Fund.

#### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,800.00; 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;<sup>5</sup> and

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

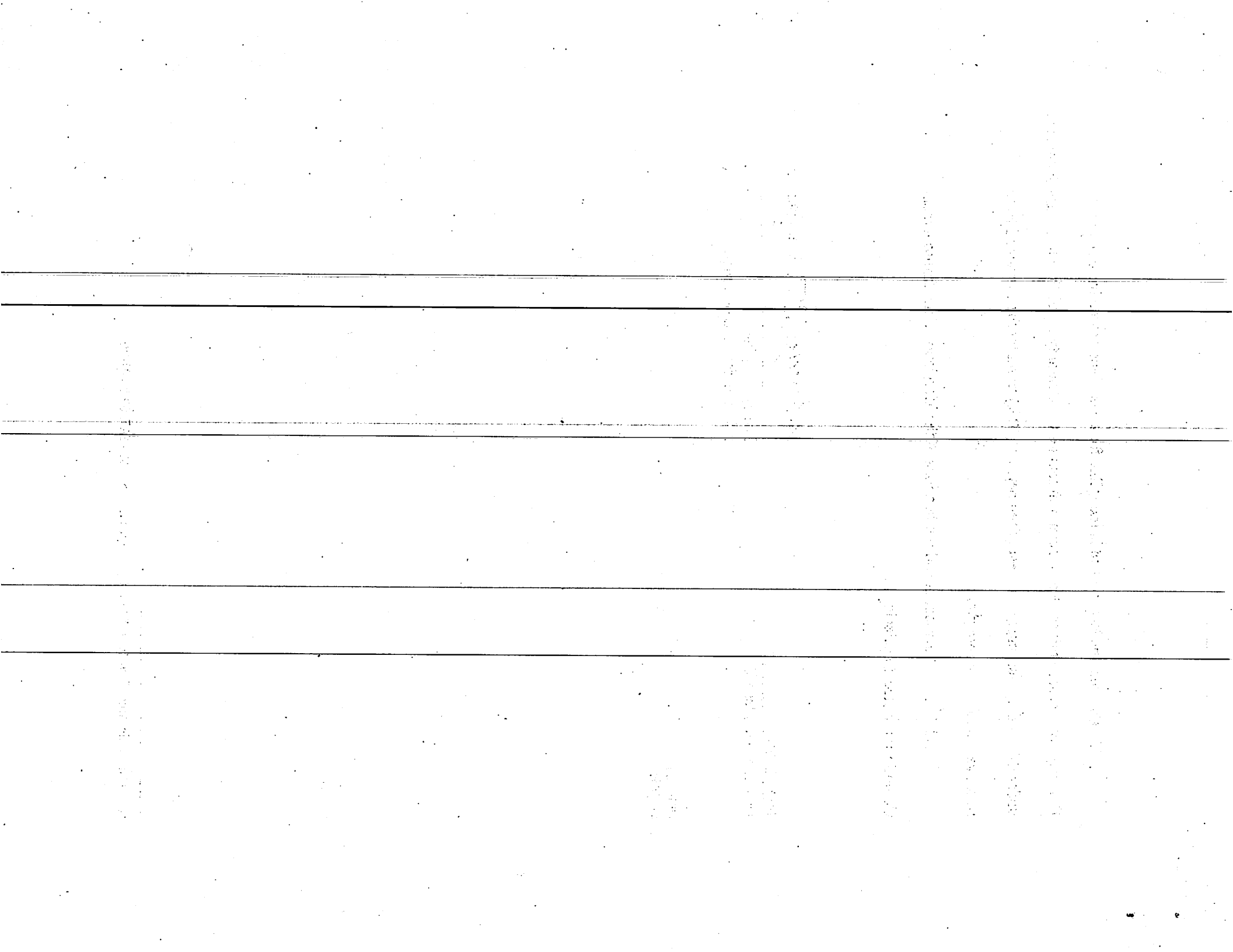
July 28, 2021  
Date Decision Issued

*Nancy E. Paige*

Nancy E. Paige  
Administrative Law Judge

NEP/emh  
#192864

<sup>5</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 4<sup>th</sup> day of November, 2021, 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.***

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***Michael Newton***

***Michael Newton***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

