

IN THE MATTER OF THE CLAIM
OF MARK GRIEP,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF LASZLO HEGEDUS,
T/A HOME ART REMODELING,
LLC,
RESPONDENT

* BEFORE KRISTIN E. BLUMER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-22-00911
* MHIC No.: 19 (75) 1317
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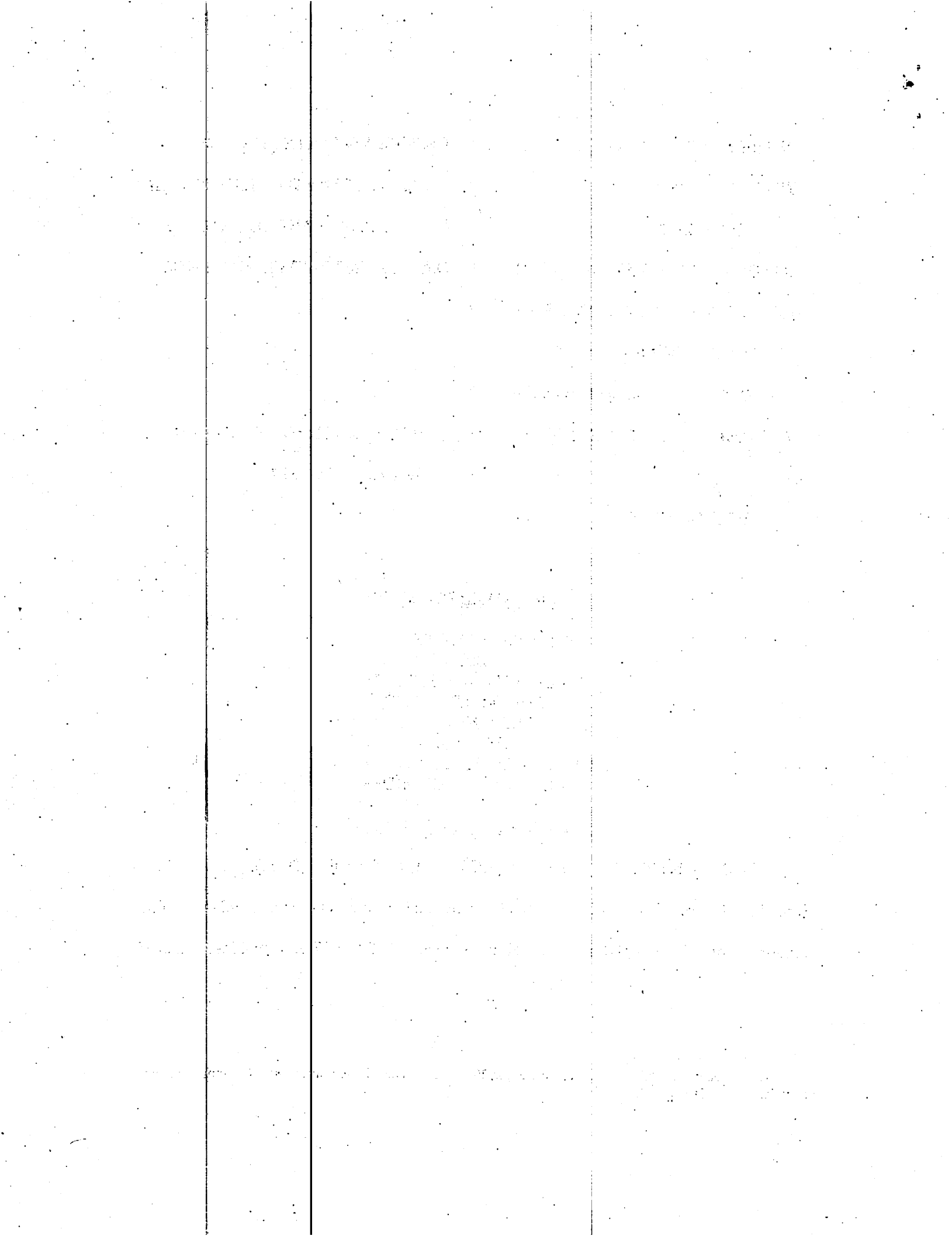
PROPOSED DECISION

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

STATEMENT OF THE CASE

On December 29, 2020,¹ Mark Griep (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 \$43,654.37 for actual losses allegedly

¹ The Claimant dated the claim form December 29, 2020. The Maryland Home Improvement Commission received the claim form on January 14, 2021.



suffered as a result of a home improvement contract with Laszlo Hegedus, trading as Home Art Remodeling, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 8-411 (2015).² On December 6, 2021, the MHIC issued a Hearing Order on the Claim. On December 6, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 26, 2022, I held a remote hearing using the Webex videoconferencing platform from the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).³ Andrew J. Brouwer, Assistant Attorney General, represented the Fund. The Claimant represented himself. Maria Caruso, Esquire, represented the Respondent, who was present.

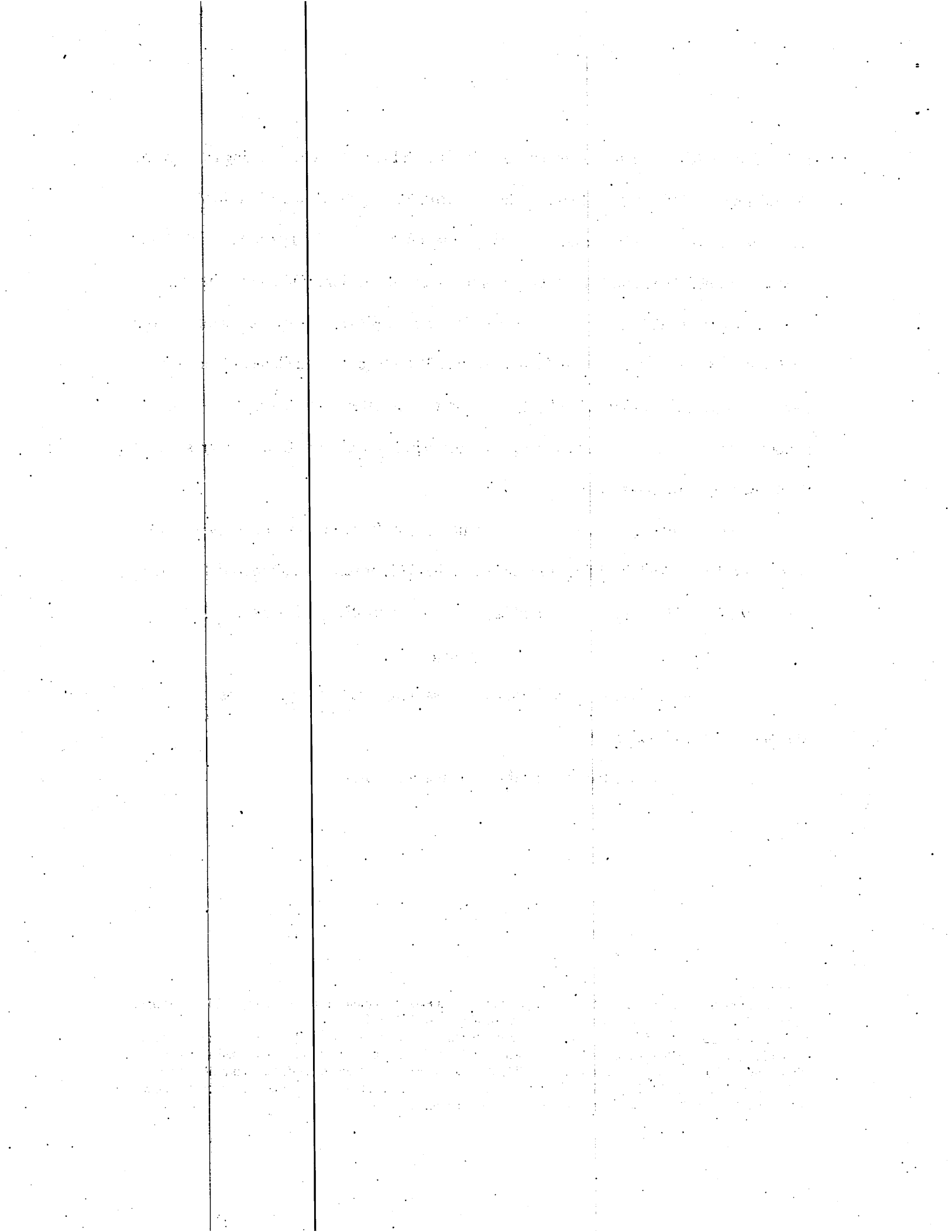
The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondents' acts or omissions?
2. If so, what is the amount of the compensable loss?

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code, and shall be abbreviated "Bus. Reg."

³ A prior hearing, scheduled for March 11, 2022, was postponed at the request of the Respondent's counsel due to a scheduling conflict. COMAR 28.02.01.16C. On May 25, 2022, the Respondent's counsel requested a postponement of the May 26, 2022 hearing in order to have additional time to respond to a subpoena duces tecum filed by the Claimant on May 15, 2022. The Claimant objected to further postponement of the matter and withdrew his subpoena request. On May 25, 2022, I denied the Respondent's postponement request. *Id.*



SUMMARY OF THE EVIDENCE

Exhibits⁴

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1:⁵ Owner and Contractor Agreement, January 12, 2018; Annie Mac Home Mortgage 203K Contractor Acknowledgement, January 12, 2018 (pp. 5-8)⁶

Clmt. Ex. 2: Amended Estimate, January 19, 2018, with the following attachments (pp. 9-14):

- Modification Agreement, Change Order 1, June 6, 2018
- Modification Agreement, Change Order 2, June 6, 2018
- Modification Agreement, Change Order 3, June 6, 2018
- Modification Agreement, Change Order 4, June 6, 2018

Clmt. Ex. 3: Photographs of exterior of the Residence prior to renovations, undated (pp. 15-16 only)⁷

Clmt. Ex. 4 - 5: *Not offered* (pp. 23-32)

Clmt. Ex. 6: Office of Planning and Zoning, Cecil County, Maryland; Zoning Certificate Number 201829752 (pp. 33-34 only)⁸

Clmt. Ex. 7: Report, Zink Home Consultants, March 16, 2019 (pp. 47-63)

Clmt. Ex. 8 - 10: *Not offered* (pp. 64-100)

Clmt. Ex. 11: Emails between the Claimant and the Respondent, December 11, 2018, with the following attachment (pp. 101-03):

- Defect drain assembly material specification sheet, undated

Clmt. Ex. 12 - 14: *Not offered* (pp. 104-12)

⁴ The OAH received the Claimant's first set of proposed exhibits on February 25, 2022. The OAH received the Claimant's second set of proposed exhibits on May 12, 2022. At the hearing, the Claimant stated that he intended to introduce exhibits from the second submission. The OAH received the Respondent's proposed exhibits on May, 24, 2022. All proposed exhibits submitted by the parties but not admitted into evidence will be retained in the file. See COMAR 28.02.01.22C ("All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall be retained for purposes of judicial review."). The proposed exhibits were not considered in reaching this proposed decision.

⁵ The first page of each exhibit is a divider page with only the exhibit number listed.

⁶ Pages one through four of the Claimant's submission were not proposed exhibits.

⁷ Page 17 was offered but not admitted; I sustained the objections of the Respondent and the Fund to this document's admission, as the witness was unable to testify as to a proper foundation for the photographs. Pages 18-22 were not offered.

⁸ Pages 35-46 were not offered.

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Clmt. Ex. 15: Emails⁹ between the Claimant and the Respondent and between the Claimant and Brittany Detwiler, Trex Company, Inc., various dates (pp. 113-23 only)¹⁰

Clmt. Ex. 16 - 23: *Not offered* (pp. 126-63)

Clmt. Ex. 24: Original Estimate, December 16, 2017; Emails between the Claimant and the Respondent, various dates (pp. 164-70)

Clmt. Ex. 25: HUD¹¹ Feasibility Estimate, undated; Emails between HUD inspector, the Claimant, and the Respondent, various dates (pp. 171-86)

Clmt. Ex. 26: Respondent's correspondence to the Claimant, undated¹²

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - 3: *Not offered*

Resp. Ex. 4: Emails between the Claimant and the Respondent, various dates

Resp. Ex. 5: *Not offered*

Resp. Ex. 6: Reply correspondence from the Respondent to the Claimant, undated

Resp. Ex. 7: *Not offered*

I admitted the following exhibits offered by the Fund:

Fund Ex. 1: MHIC Hearing Order, December 6, 2021

Fund Ex. 2: Notice of Remote Hearing, January 21, 2022

Fund Ex. 3: Claimant's Home Improvement Claim Form, December 29, 2020

Fund Ex. 4: Letter from William Banks, Investigator, MHIC to the Respondent re: Complaint, July 22, 2021, with attached Certificate of Mailing, July 23, 2021

Fund Ex. 5: Letter from Carolyn W. Evans, Esquire, to Mr. Banks, re: withdrawal of representation of the Respondent, July 28, 2021; and Letter from Mr. Banks to the Respondent re: Complaint, July 22, 2021

⁹ Some of the emails indicate the sender attached one or more documents to the email; however, none of the attachments were included in this exhibit.

¹⁰ Pages 124-125 were not offered.

¹¹ United States Department of Housing and Urban Development.

¹² This exhibit was not included in the Claimant's submission dated May 12, 2022 and does not reflect any page numbers.

- Fund Ex. 6: Letter from David Finneran, Executive Director, MHIC, to Whom It May Concern, re: the Respondent's licensing information, February 24, 2022
- Fund Ex. 7: Letter from Mr. Banks to Ms. Caruso re: Complaint, March 14, 2022, with attached Certificate of Mailing, March 14, 2022
- Fund Ex. 8: Notice of Remote Hearing, March 17, 2022

Testimony

The Claimant testified and presented the testimony of Raymond H. Zink, whom I accepted as an expert in the field of home inspection.

The Respondent testified and did not present other witnesses for testimony.

The Fund did not present any witnesses for testimony.

STIPULATED FACTS

The parties stipulated that the original date of the contract between the Claimant and the Respondent was January 19, 2018 and the original contract price was \$132,028.00.

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 01-10184 and 05-130779.
2. On a date prior to December 2017, unspecified in the record, the Claimant purchased the property located at 20 Cherry Lane, Perryville, Maryland 21903 (Residence). The Claimant purchased the Residence at foreclosure. At the time the Claimant purchased the Residence, it was unfinished and had been unoccupied for some time.
3. The Claimant obtained a renovation loan through the Federal Housing Administration (FHA) sometime in late 2017. The loan officer recommended the Respondent to the Claimant to renovate the Residence.

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4. On December 16, 2017, the Respondent generated a proposed estimate for the renovations.

5. After review and consultation between the Claimant, the Respondent, and the HUD inspector, the Respondent generated a revised estimate on December 19, 2017.

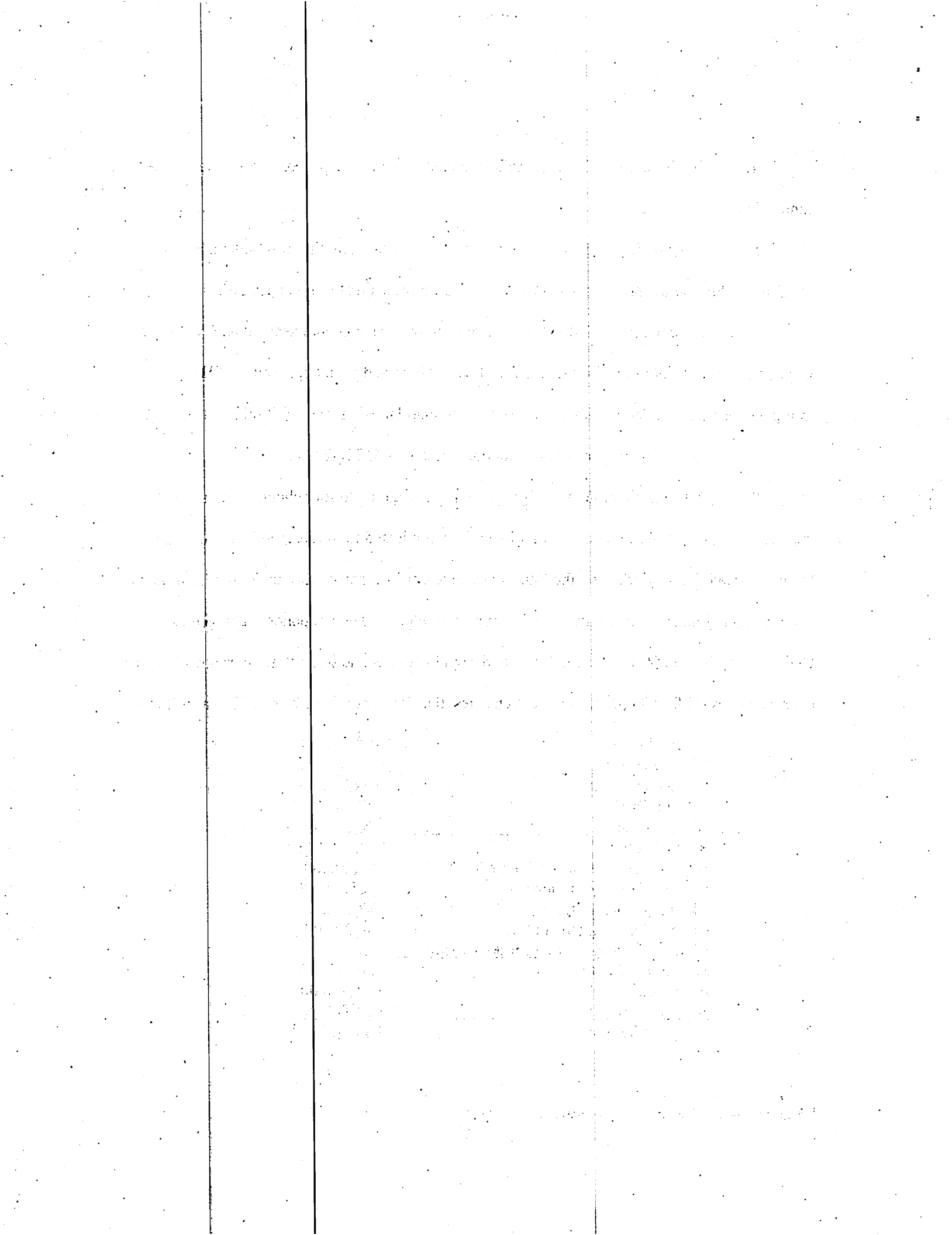
6. On January 12, 2018, the Claimant and the Respondent executed an Owner and Contractor Agreement to rehabilitate the Residence, which had been approved for FHA mortgage insurance under Section 203(k) of the National Housing Act.¹³ (Clmt. Ex. 1, pp. 6-7).

7. The original agreed-upon Contract price was \$132,028.00.

8. After the Contract was signed, the parties agreed to four change orders that increased the price. Subsequently, the Claimant communicated to the Respondent that he decided to eliminate adding a window on the first floor and to perform some work under the Contract on his own, including some demolition, which reduced the price. The Respondent charged the Claimant \$1,400.00 for use of an architect to design the decks and one bathroom renovation was over budget by \$1,800.00. Based on these changes, the Contract price was modified as follows:

Original price:	\$132,028.00
Change Order 1:	+ \$5,571.20
Change Order 2:	+ \$4,312.00
Change Order 3:	+ \$670.00
Change Order 4:	+ \$837.23
<u>Revised total:</u>	<u>\$143,418.43</u>
Elimination of window line item:	- \$1,200.00
Claimant's work on flooring:	- \$15,785.00
Claimant's demolition:	- \$2,100.00
Claimant's work on painting:	- \$4,000.00
Claimant's work on interior doors/trim:	- \$3,500.00
<u>Second revised total:</u>	<u>\$116,833.43</u>
Architect:	+ \$1,400.00
<u>Bathroom overage:</u>	<u>+ \$1,800.00</u>
FINAL TOTAL:	\$120,033.43

¹³ This document did not include any citation for this statute.



9. Under the terms of the renovation loan, the Respondent would “only be paid for work that is already completed.” (Clmt. Ex. I, p. 8).

10. The Contract did not specify a start date or completion date. The Owner and Contractor Agreement required the work to begin within thirty days of the loan closing date. The completion date for the work on the Owner and Contractor Agreement is blank. (Clmt. Ex. 1, p. 6).

11. The Contract set forth the following work to be performed by the Respondent in nineteen line items, each with costs: repair existing siding and install siding on the front and side of the porch; furnish and install new fascia; furnish and install six-inch gutter; install the owner’s bathroom, to include cement board, tile shower floor, bathroom floor, shower walls, vanity, toilet, and faucet; repair plumbing as needed throughout the Residence; repair electrical as needed throughout the Residence, including furnishing new outlet and switches and missing light fixtures; furnish and install new kitchen cabinets; furnish and install granite countertop with sink and faucet; furnish and install kitchen appliances; furnish and install wrap-around front porch, including stairway; furnish and install wood deck on the front of the house above the garage; install trim to cover bead boards for decks to be installed later and columns for porch; center front porch window to align with second floor window, to include furnishing and installing a new window; furnishing and install vinyl flooring; demolition of flooring on the first floor; install a “J&J”¹⁴ bathroom, to include drywall, cement board, tile tub surround, vanity, and toilet; frame a non-bearing wall on the second floor and install drywall; paint interior walls and ceiling; and furnish and install interior doors and trims.

12. On an unspecified date in February 2018, the Respondent began work pursuant to the Contract.

¹⁴ Neither the Claimant nor the Respondent explained the meaning of this notation.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the various methods used to collect and analyze data. It describes the use of statistical techniques to identify trends and anomalies in the data, and the importance of using reliable sources of information.

3. The third part of the document discusses the role of the auditor in the process. It explains that the auditor's primary responsibility is to provide an independent and objective assessment of the financial statements. This involves a thorough review of the records and a comparison of the results with the applicable accounting standards.

4. The fourth part of the document discusses the importance of transparency and accountability in the financial system. It argues that the public has a right to know how their money is being spent, and that this information should be made available in a clear and accessible format.

5. The fifth part of the document discusses the need for ongoing monitoring and evaluation of the financial system. It argues that the system should be regularly reviewed to ensure that it remains effective and efficient, and that any necessary changes should be implemented in a timely manner.

13. On or about July 17, 2018, the Claimant noticed that deck boards were popping up. The Claimant notified the Respondent, who came to the Residence the following day to address the problem.

14. On an unspecified date prior to July 27, 2018, the Claimant notified the Respondent that one or more bathroom sink drains were malfunctioning. The Respondent conceded that the drain assembly mechanisms were faulty and agreed to replace them, but never corrected the problem.

15. On July 27, 2018, the Claimant approved the final payment to the Respondent through the renovation loan.

16. The Respondent received full payment for the work as contemplated by the Contract and the subsequent modifications to the price as agreed to by the parties.

17. The Claimant discovered problems with the Respondent's work on the deck, as well as some plumbing issues between July and December 2018 and notified the Respondent of the problems. The Respondent last went to the Residence to attempt to resolve the problems sometime in January 2019.

DISCUSSION

Legal 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 Cty. 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.

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 and does not own more than three dwellings. *Id.* § 8-405(f)(2). The parties entered into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c). However, the parties mutually agreed to proceed to hearing in this case based on a provision in the agreement that stated that the parties could agree to resolve any dispute between them by “other methods.” (Cl. Ex. 1, ¶6). 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).

For the following reasons, I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. However, I further find that the Claimant has only proven eligibility for compensation in the amount of \$204.42, for replacement of three bathroom sink drain assembly mechanisms.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice to ensure transparency and accountability.

2. The second section outlines the procedures for handling discrepancies between the recorded amounts and the actual cash received. It states that any such variance must be investigated immediately and reported to the appropriate authority.

3. The third part of the document details the process of reconciling the accounts at the end of each month. It requires that the total amount recorded in the books must match the total amount shown on the bank statements.

4. The fourth section discusses the role of the internal audit department in monitoring the financial records. It notes that the audit team should conduct regular reviews to identify any potential areas of concern or fraud.

5. The fifth part of the document describes the process of preparing the annual financial statements. It requires that all transactions for the year be properly classified and summarized in accordance with the relevant accounting standards.

6. The sixth section outlines the requirements for the external audit. It states that the external auditors should have access to all necessary records and should be provided with a clear and concise explanation of the accounting policies used.

7. The seventh part of the document discusses the importance of maintaining the confidentiality of financial information. It requires that all records be stored securely and that access be restricted to authorized personnel only.

8. The eighth section outlines the process of archiving financial records. It states that all records should be retained for a minimum of seven years to ensure that they are available for future reference.

9. The ninth part of the document discusses the importance of staying up-to-date with changes in accounting standards and regulations. It requires that the accounting department should regularly review and update its policies and procedures.

10. The tenth and final section of the document discusses the importance of maintaining a strong internal control system. It states that the internal control system should be designed to prevent and detect errors and fraud, and to ensure the accuracy and reliability of the financial records.

The Positions of the Parties

The Claimant asserted that the Respondent's renovation of the Residence was unworkmanlike, inadequate, or incomplete because numerous defects were discovered after the work was alleged to have been completed. Specifically, the Claimant argued that electrical work and plumbing work was faulty. The Claimant argued that the Respondent installed the front porch and garage deck improperly. The Claimant averred that the Respondent struck the side of the house with equipment, causing a crack in the siding, which was improperly repaired but never replaced.

The Respondent argued that his work was satisfactory. The Respondent asserted that faulty electrical work was not attributable to the Respondent's efforts, as the Claimant performed that work. He conceded that the bathroom sink drains needed to be replaced but stated that the Claimant would not allow him to fix the drains. The Respondent also acknowledged problems with the deck but disputed that the installation was improper. The Respondent asserted that the Claimant rejected the Respondent's good faith efforts to correct the defects.

The Fund argued that the Respondent's work on the deck was defective but noted that the Claimant had not proven what work was required to fix it nor the cost of any such work. The Fund also argued that the Claimant met his burden as to the faulty bathroom sink drains and noted that the Respondent conceded this point. The Fund asserted that the Claimant had not otherwise met his burden as to the allegations in the Complaint and that any rejection by the Claimant of the Respondent's good faith efforts to resolve the issues was not unreasonable in light of the circumstances between the parties.

Analysis

The Claimant hired Raymond Zink, a home inspector, to conduct an inspection of the Residence, which Mr. Zink conducted on March 16, 2019. (Clmt. Ex. 7). In the report and in his testimony, Mr. Zink noted numerous inadequacies that he observed in the work done at the Residence.

Mr. Zink examined the front porch steps, front porch decking, and the deck over the garage. He testified that that the decking supports were improperly constructed. He explained that the undercarriage of the deck should be anchored to the support posts. He noted that under the front porch deck, he observed that the deck was only nailed to the posts in some areas; in other areas, bolts were used improperly. (Clmt. Ex. 7, p. 49). Mr. Zink further explained that the outer rim board for the front porch was a single board instead of a double board to perform as a support beam. (*Id.*, p. 50). The outer rim board for the garage deck was not properly secured. (*Id.*, p. 54). He testified that the steps to the front deck porch flexed and/or lifted up at points when he went up and down them. He further noted that the rise of the steps was uneven. Both of these conditions created a trip hazard. In his report, he further noted that that two of the steps had filler boards to close the gap at the back of the step; the third step in the middle had only a partial filler board, which also created a trip hazard. (*Id.*).

Mr. Zink further explained defects in the installation of the decking boards. Specifically, he noted that boards were not flush to each other in many areas and the varying width of the gaps between boards was problematic. He testified that the gap between boards should be a fine gap to allow for some movement of the boards; if they are too close together, the boards will buckle. He found the workmanship of the spacing of the boards to be sloppy and improper. Additionally, the boards were uneven in some places, creating a wavy effect on the deck, indicating that incorrect

fasteners had been used in underpinning the boards. (*Id.*, pp. 51, 54). Mr. Zink opined that the undercarriage of the garage deck was improperly installed. (*Id.*, pp. 55-57). Mr. Zink also explained that the footers for the front porch deck appeared to be filled with rubble, instead of back fill of the soil removed to create the hole, which can allow for water to enter the holes and damage the posts. (*Id.*, p. 52). Mr. Zink noted that the railing for the garage deck was loose, reflecting poor installation quality. (*Id.*, p. 53).

Mr. Zink examined the gutters installed on the Residence. He explained that the gutters should be installed with fasteners at every thirty inches; in his inspection, he noted that the fasteners appeared to be about forty-eight inches apart. (*Id.*, p. 59). This type of improper installation can result in sagging gutters; Mr. Zink testified that the gutters on the Residence were beginning to sag when he conducted his inspection. He also noted that the downspouts were incorrectly configured and insufficient to carry water off of the garage roof without overspill. (*Id.*, p. 59).

Mr. Zink opined that the electrical work he observed was improper. Panel covers were missing, which creates a fire hazard, and some of the wiring that he observed was improperly connected. (*Id.*, p. 60). He noted that the toilets in both new bathrooms were not fully secured to each floor flange. (*Id.*, p. 61). He explained that the garbage disposal was not fully secured to the bottom of the sink. (*Id.*). He testified that the bathroom sink drain stoppers did not function properly. (*Id.*).

The Claimant testified that he and his father did some of the initial electrical work by adding four outlets to a circuit. The Claimant admitted that he taped off wires that were sticking out of walls or outlets. He explained that after the Contract was signed, he decided to do some of the floor demolition himself, along with the painting, installation of the vinyl flooring, and

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5. The fifth part of the document discusses the role of the government in the financial system. It explains that the government has a responsibility to ensure that the financial system is stable and that the interests of the public are protected. This involves a number of measures, including the regulation of financial institutions and the monitoring of the money supply.

6. The sixth part of the document discusses the role of the private sector in the financial system. It notes that the private sector is a major source of capital and that it plays a vital role in the economy. It also discusses the importance of maintaining a level playing field for all participants in the financial system.

7. The seventh part of the document discusses the role of the international community in the financial system. It explains that the financial system is increasingly global and that the actions of one country can have significant effects on other countries. It discusses the importance of international cooperation and coordination in the financial system.

8. The eighth part of the document discusses the role of the media in the financial system. It notes that the media plays a vital role in providing information to the public and in holding the financial system accountable. It discusses the importance of maintaining high standards of journalistic integrity and of providing accurate and unbiased reporting.

9. The ninth part of the document discusses the role of the academic community in the financial system. It explains that the academic community plays a vital role in advancing the understanding of the financial system and in providing a critical perspective on the actions of the government and the private sector. It discusses the importance of maintaining high standards of academic integrity and of providing rigorous and objective research.

10. The tenth part of the document discusses the role of the public in the financial system. It notes that the public has a right to participate in the financial system and to have a say in how their money is being spent. It discusses the importance of providing the public with the information and tools they need to make informed decisions about their financial future.

installation of the interior doors and trim. He stated that his father helped him with some of the work that he did on his own.

On July 17, 2018, the Claimant emailed the Respondent about the popped-up deck boards. (Clmt. Ex. 15, p. 114). He stated that the Respondent came to the Residence on July 18, 2018 and shot pin nails into the deck boards to get them to lie flat. The Claimant stated that prior to approving the final draw on July 27, 2018, there were still a few items that needed to be completed, including the issues with the deck, which had not been properly addressed; problems with the electric work in the kitchen, where the microwave, dishwasher, garbage disposal, and outlets were all running on the same circuit; inability to seal the drains in the bathroom sinks; and cracked siding that had not been properly repaired. The Claimant testified that even though these issues were outstanding, he signed off on the approval for the final draw. He stated that he did so because he trusted the Respondent to fix the problems and because the bank was pushing to finalize the loan in a six-month period.

The Claimant testified that in November 2018, he noticed that the garbage disposal was leaking water; he notified the Respondent, who came out and tightened the garbage disposal. However, the problem continued. The Respondent had told the Complainant that the bathroom sink drains were faulty and that would order and install new drain assembly mechanisms; this work was never completed. In December of 2018, the Complainant and the Respondent communicated over email regarding the drain assembly mechanisms, which had still not been replaced. (Clmt. Ex. 11, pp. 102-03). On December 11, 2018, the Respondent stated in an email that he expected to deliver the drains that week or the next. (*Id.*, p. 102).

Additionally, in December 2018 the Complainant was in touch with representatives from Trex Company, Inc. (Trex), the manufacturer of the decking boards. (Clmt. Ex. 15, pp. 118-19). The Complainant stated that, according to Trex, the deck installation was improper and therefore, Trex voided the warranty on the decking. The Complainant was in communication with the Respondent in December 2018 and January 2019 to solve the problem and bring the deck under warranty. (*Id.*, pp. 118, 120-23). Although the Respondent stated his intention to address the issue, the Claimant testified that the Respondent never fixed the problem; some of the work he did was not in line with the recommendations made by Trex and made the problem worse.

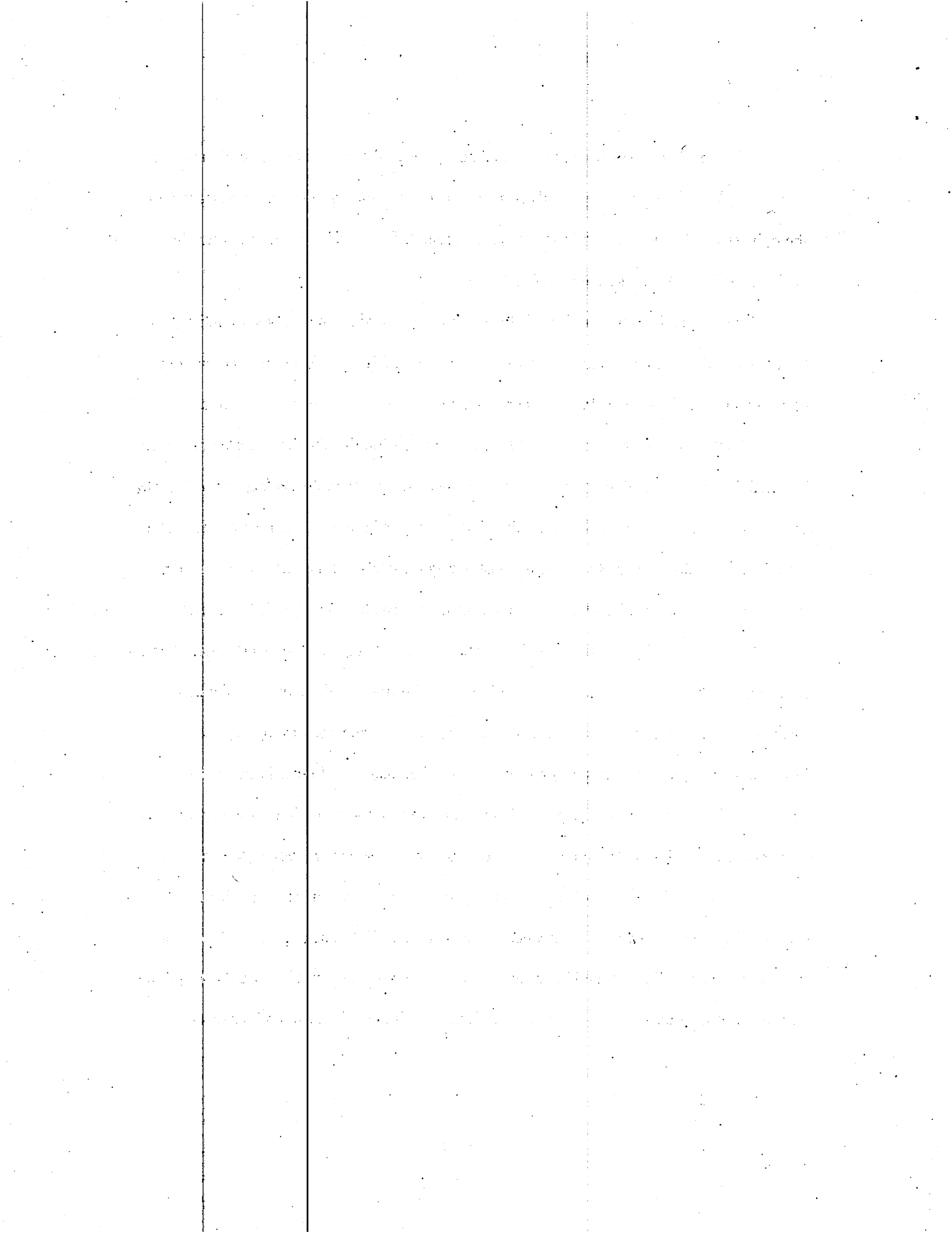
The Respondent disputed that there was still work to be done at the time of the approval for final payment on July 27, 2018. He testified that the Claimant emailed him at the beginning of June 2018 with a punch list prior to the final approval. (Resp. Ex. 4). The Respondent stated that everything was completed at the time of the final approval of payment, with the exception of the deck. The Respondent testified that he next heard from the Claimant in April 2019 when the Claimant forwarded to him Mr. Zink's report and demanded that the Respondent pay him \$31,000.00 to correct flaws in the Respondent's work. The Respondent sent a line-by-line response to the issues raised in Mr. Zink's report, indicating what he was willing to address and what he disputed. (Resp. Ex. 6; Clmt. Ex. 26). The Respondent stated that the Claimant never responded to that communication or contacted him again; he stated that he reached out to the Claimant to try to follow up but did not get a response. He further testified that he never went back to the Residence after that communication.

The Respondent conceded that he had not replaced the bathroom sink drain assembly mechanisms. He stated that he initially received the parts in the wrong color and had to reorder them; he stated that he failed to follow up on that issue after the relationship between the Claimant and himself broke down in April 2019.

The Respondent further disputed the Claimant's assertion on cross-examination that that his work failed to pass inspection for permits. Although the Respondent conceded that two permits were failed, he argued that those permits related to work done by the Claimant.

The Respondent disagreed with Mr. Zink's conclusion that the decks were improperly installed. The Respondent testified that county inspectors approved the deck construction. He denied using pin nails to hold down decking that had popped out of place. He asserted that he used the correct fasteners and spacing in constructing the deck and that the "work was done in accordance with the Trex installation guidelines." (Resp. Ex. 6, p. 2; Clmt. Ex. 26, p. 2).

I find that the Claimant has met his burden to show that the Respondent's work as to the decks and porch steps, the plumbing (including the bathroom sink drains), and the gutters and downspouts was unworkmanlike and inadequate. Mr. Zink's testimony as to the gutters, downspouts, and plumbing was uncontested, and his explanations of those issues in his testimony and written report have persuaded me that the work was not done properly. I am also persuaded by Mr. Zink's testimony and written report as to the construction of the decks and porch steps. Mr. Zink has worked as a home inspector since 1985 and estimated that he has inspected five homes on average, per week, since that time. The basis of his knowledge and expertise were unchallenged, and his testimony was reasonable and credible. I did not find the Respondent's testimony on this issue to be credible. The Respondent's assertions that the deck



was installed correctly were uncorroborated. He could not offer specific details on this work during cross-examination, and I found his denials to be vague.

I am unpersuaded that the Respondent's electrical work was deficient, as the Claimant testified that he did some of that work himself; the Claimant failed to produce sufficient evidence on this point with respect to what the Respondent did or did not do that was inadequate or unworkmanlike.

I do not find that the Claimant unreasonably reject good faith efforts by the Respondent to resolve the claim. Bus. Reg. § 8-405(d). The Claimant's testimony and documentary evidence on this point was persuasive; he identified the problems and gave the Respondent many opportunities to rectify them identified in the latter half of 2018 into 2019. (Clmt. Exs. 11, 15, 26). Again, the Respondent's testimony as to this issue was unconvincing; he merely denied that these events occurred despite some documentary evidence to the contrary. Given the deficiencies that came to light after the work concluded and the Respondent's failure to appropriately address those deficiencies, the Claimant's decision to terminate any further interactions after April 2019 was reasonable and appropriate.

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. COMAR 09.08.03.03B(3)(a)-(c). Here, the Respondent performed work under the Contract, but the Claimant provided no evidence to establish the value of the materials and services provided by the Respondent, nor did he provide any evidence to prove what it will cost

to remediate the Respondent's work, other than the cost of the replacement drain assemblies for the bathroom sink. COMAR 09.08.03.03B(3)(b), (c). I find that the Claimant has met his burden regarding eligibility for compensation as to that point only. (Clmt. Ex. 11).

The Claimant must pay for the replacement drain assembly mechanisms. Accordingly, the following formula appropriately measures the Claimant's actual loss:

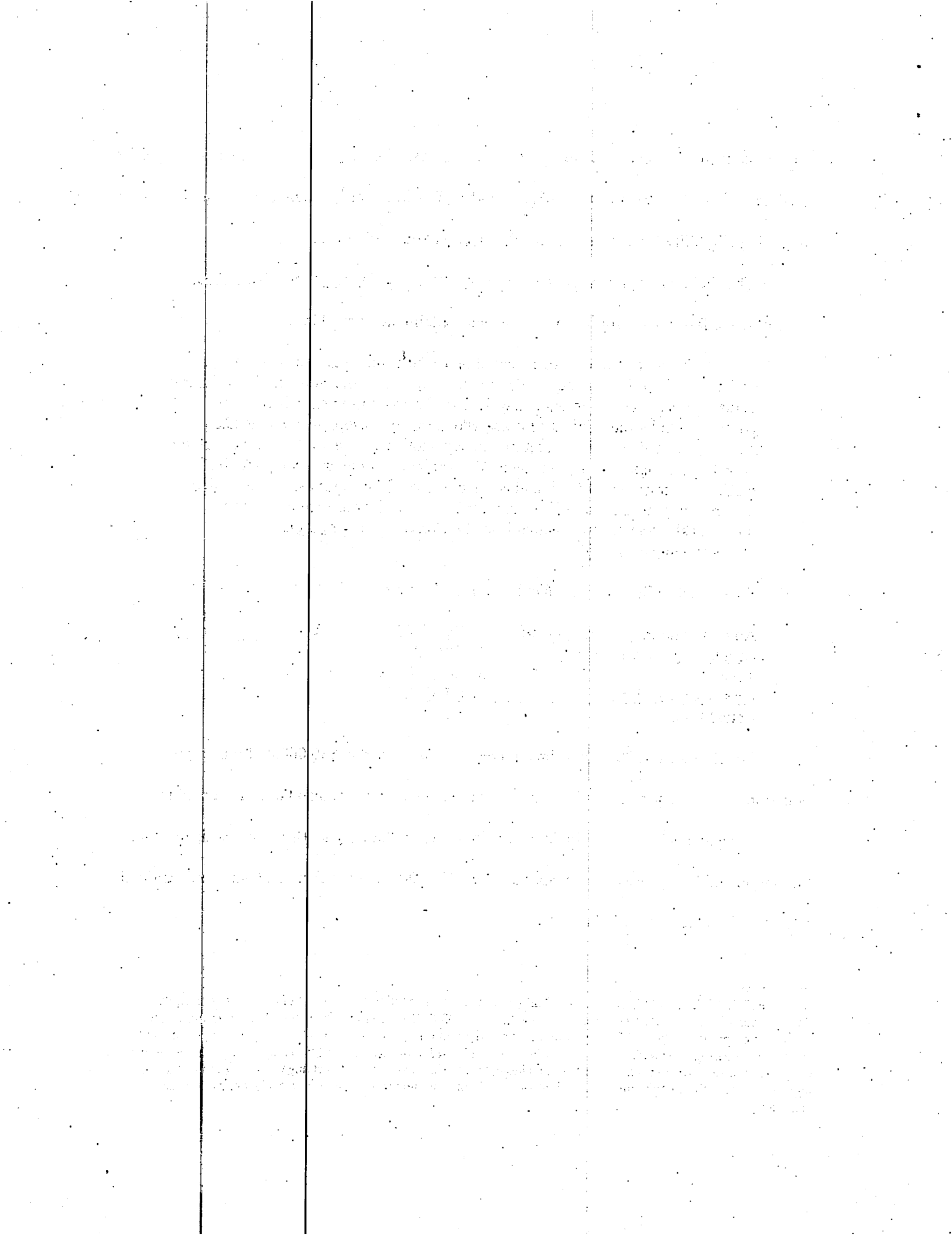
If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable 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 calculation is as follows:

Amount Paid to the Respondent:	\$120,033.43
<u>Cost to repair faulty work:</u>	<u>+ \$204.42</u>
Total:	\$120,237.85
<u>Less contract price:</u>	<u>- \$120,033.43</u>
Actual loss:	\$204.42

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.¹⁵ 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 \$204.42.

¹⁵ 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. MHC*, 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").



PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$204.42 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 \$204.42; 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;¹⁶ and

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

August 11, 2022
Date Decision Issued

Kristin E. Blumer

Kristin E. Blumer
Administrative Law Judge

KEB/sw
#200078

¹⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 16th day of September, 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.

Chandler Louden

Chandler Louden

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

