

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF TAMMY PATTERSON,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF SAMANTHA</b></p> <p><b>LOGAN, T/A ALB CONSTRUCTION,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE STEPHEN W. THIBODEAU,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-21-02354</b></p> <p><b>* MHIC No.: 19 (90) 1372</b></p>
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**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On August 27, 2019, Tammy Patterson (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 \$5,515.00 in actual losses allegedly suffered as a result of a home improvement contract with Samantha Logan, trading as ALB Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411



(2015).<sup>1</sup> On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 10, 2021, from the OAH in Hunt Valley, Maryland, via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Shara Hendler, Assistant Attorney General, Department, represented the Fund. Bernice A. Harleston, Esquire, represented the Claimant, who was present. David B. Shapiro, 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 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, unless otherwise noted:

Clmt. Ex. 1 - Page One of the Contract between the Claimant and the Respondent, November 8, 2018

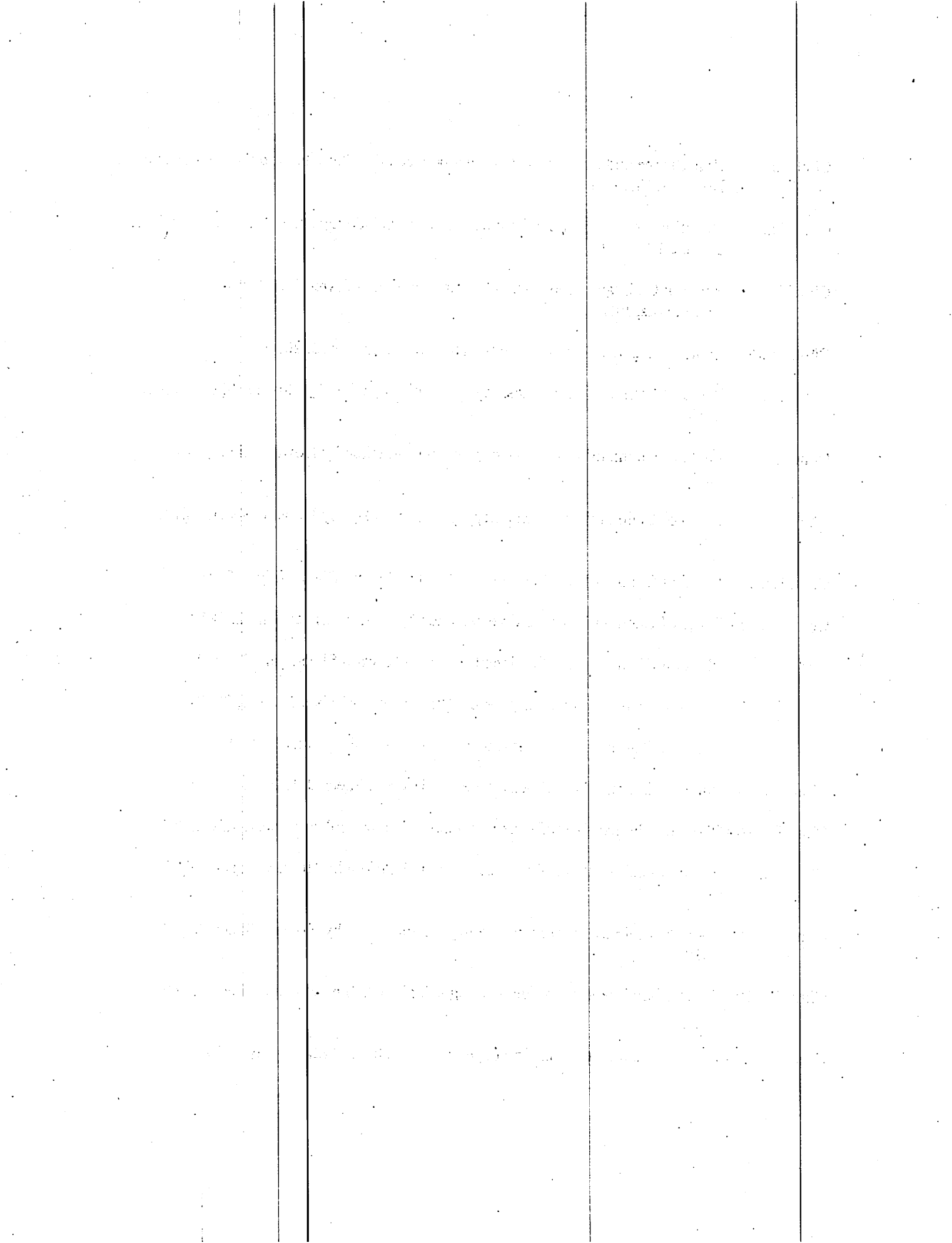
Clmt. Ex. 2 - Page Two of the Contract between the Claimant and the Respondent, November 8, 2018

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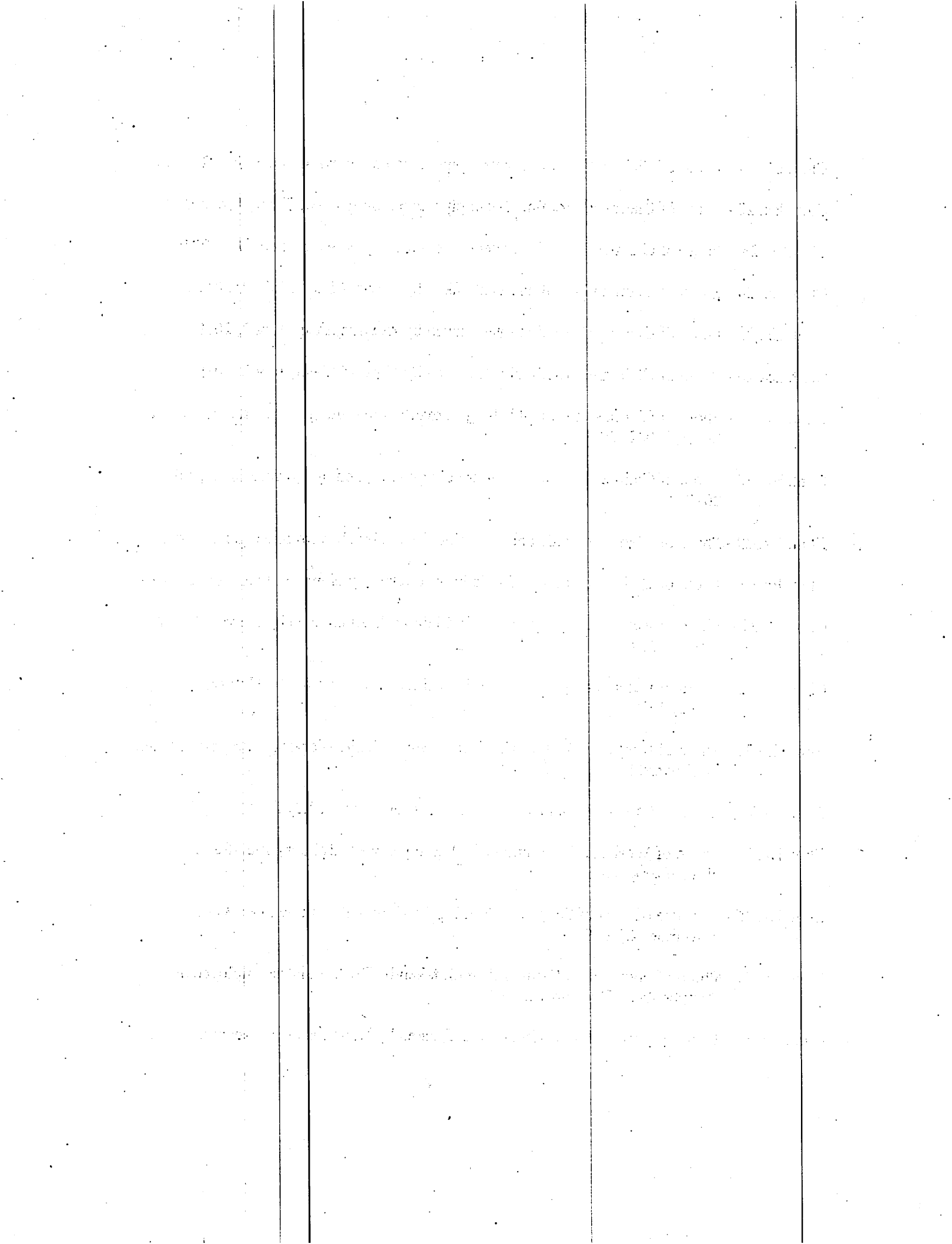
<sup>1</sup> Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.



- Clmt. Ex. 3 - Pages Three and Four of the Contract between the Claimant and the Respondent, November 8, 2018
- Clmt. Ex. 4 - Violation Report from the Greencastle Lakes Condo Owner's Association, printed on June 17, 2019
- Clmt. Ex. 5 - Photo of Claimant's roof, taken by Howard Sheer of American Home Contractors, July 2, 2019
- Clmt. Ex. 6 - Photo of Claimant's roof, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 7 - Photo of Claimant's roof, flashing, and molding, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 8 - Photo of Claimant's roof near step-up on roof, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 9 - Photo of Claimant's roof near step-up on roof, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 10 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 11 - Photo of Claimant's roof and vents, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 12 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 13 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 14 - Photo of Claimant's roof peak, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 15 - Photo of Claimant's roof peak, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 16 - Photo of Claimant's roof peak and vents, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 17 - Photo of Claimant's roof and peeling shingle, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 18 - Photo of Claimant's roof and peeling shingle, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 19 - Photo of Claimant's roof and peeling shingle, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 20 - Photo of Claimant's roof drip edge, taken by Howard Sheer, July 2, 2019



- Clmt. Ex. 21 - Photo of Claimant's roof near vent pipe, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 22 - Photo of Claimant's roof near vent pipe, taken by Howard Sheer, July 2019
- Clmt Ex. 23 - Photo of Claimant's roof near vent pipe, taken by Howard Sheer, July 2019
- Clmt. Ex. 24 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 25 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 26 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 27 - Photo of Claimant's roof and shingles overlapping into gutter, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 28 - Photo of Claimant's roof on corner near gutter, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 29 - Photo of Claimant's attic and vent pipes, taken by Howard Sheer, July 2, 2019
- Clmt. Ex 30 - Photo of Claimant's attic and hole in roof, taken by Howard Sheer, July 2, 2019
- Clmt Ex. 31 - Photo of water damaged plywood in Claimant's attic, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 32 - Photo of water damaged plywood in Claimant's attic, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 33 - Photo of front of 3332 Tapestry Circle, Burtonsville, Maryland (Property), taken by Howard Sheer, July 2, 2019
- Clmt. Ex 34 - Invoice from American Home Contractors, on or about July 2, 2019
- Clmt. Ex. 35 - Scope of Work for the Claimant from Semper West Builders, Inc. (Semper West), November 4, 2019
- Clmt. Ex. 36 - Estimate of Cost of Scope of Work for the Claimant from Semper West, November 4, 2019
- Clmt. Ex. 37 - Photo of plywood on Claimant's roof, taken by Robert Bialas, employee of Semper West, December 2, 2019
- Clmt. Ex. 38 - Photo of plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019





- Clmt. Ex. 39 - Photo of newly installed ice and water shield on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 40 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 41 - Photo of newly installed plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 42 - Photo of plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 43 - Photo of missing plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 44 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 45 - Photo of newly installed drip edge on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 46 - Photo of newly installed drip edge on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 47 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 48 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 49 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 50 - Letter from Semper West to the Claimant, December 4, 2019
- Clmt. Ex. 51 - Not offered or admitted
- Clmt. Ex. 52 - Not offered or admitted
- Clmt. Ex. 53 - Photo of Claimant's chimney pipe of roof, taken by "Daniel," an employee of the Respondent, July 25, 2019
- Clmt. Ex. 54 - Not offered or admitted
- Clmt. Ex. 55 - Not offered or admitted

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Clmt. Ex. 56 - Copy of Claimant's Bank Statement, undated

Clmt. Ex. 57 - Receipt from the Respondent to the Claimant, December 9, 2018

Clmt. Ex. 58 - Text message from the Respondent to the Claimant, November 4, 2018

Clmt. Ex. 59 - Signed Contract between the Claimant and Semper West, November 19, 2019

Clmt. Ex. 60 - Letter from the Respondent in response to the MHIC Complaint, September 16, 2019

I admitted the following exhibits on the Respondent's behalf, unless otherwise noted:

Resp. Ex. 1 - Offered but not admitted (same as Claimant's Exhibit 1)

Resp. Ex. 2A - Claimant's Complaint to the MHIC, May 6, 2019

Resp. Ex. 2B - Not offered or admitted (same as Claimant's Exhibit 60)

Resp. Ex. 3 - Offered by not admitted (same as Fund Exhibit 4)

Resp. Ex. 4 - Letter from The Main Street America Group to the Respondent, with attachments, August 30, 2019

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

Fund Ex. 1 - Notice of Remote Hearing, March 29, 2021

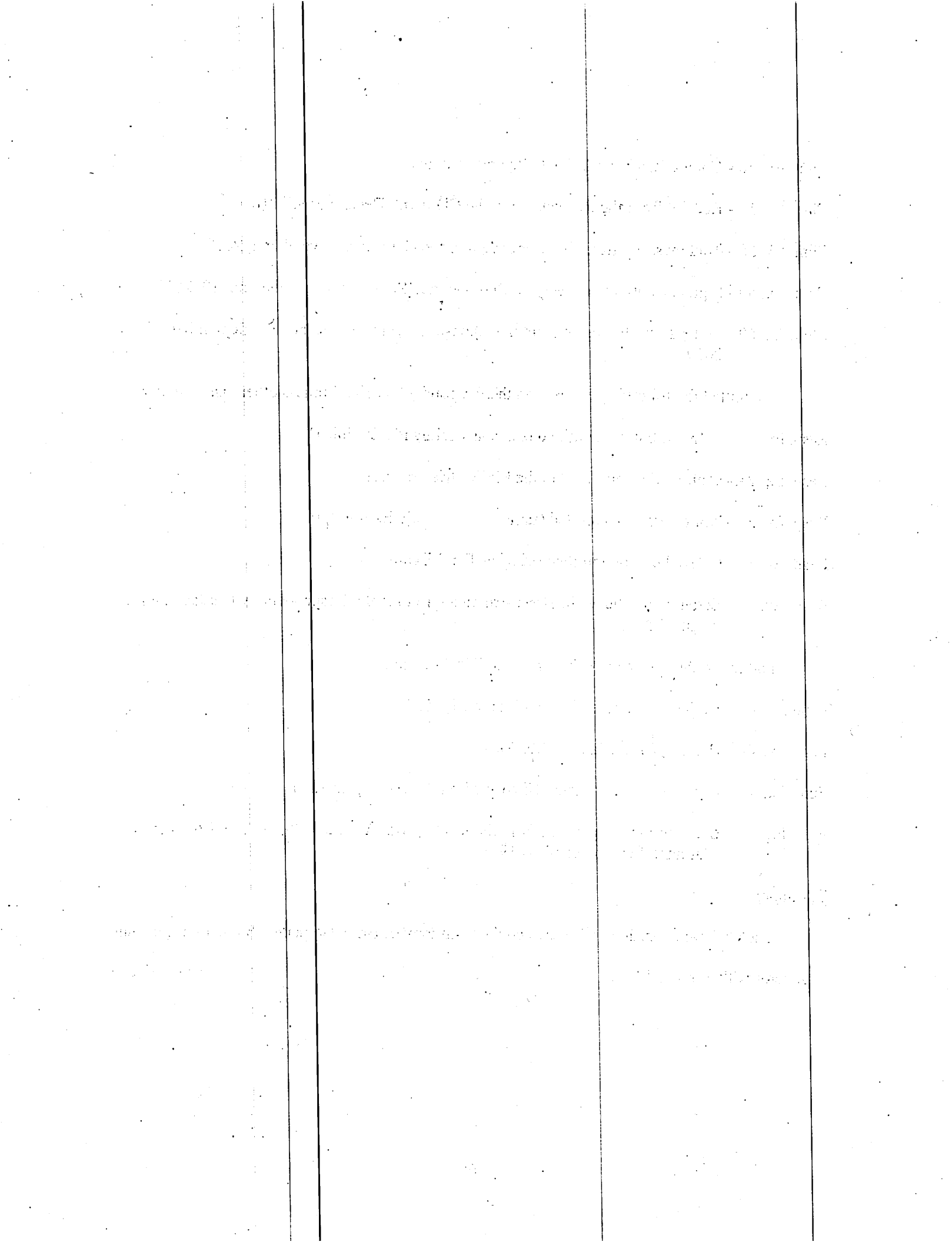
Fund Ex. 2 - Hearing Order, January 20, 2021

Fund Ex. 3 - Respondent's Licensing History with the MHIC, printed on June 4, 2021

Fund Ex. 4 - Letter to the Respondent from the MHIC, with Attached Claim Form from the Claimant, September 10, 2019

#### Testimony

The Claimant testified and presented the testimony of Brian Carpenter, home improvement contractor with Semper West.



The Respondent testified and presented the testimony of the Claimant and Andre Burton,<sup>2</sup> employee of the Respondent.

The Fund did not present any witnesses.

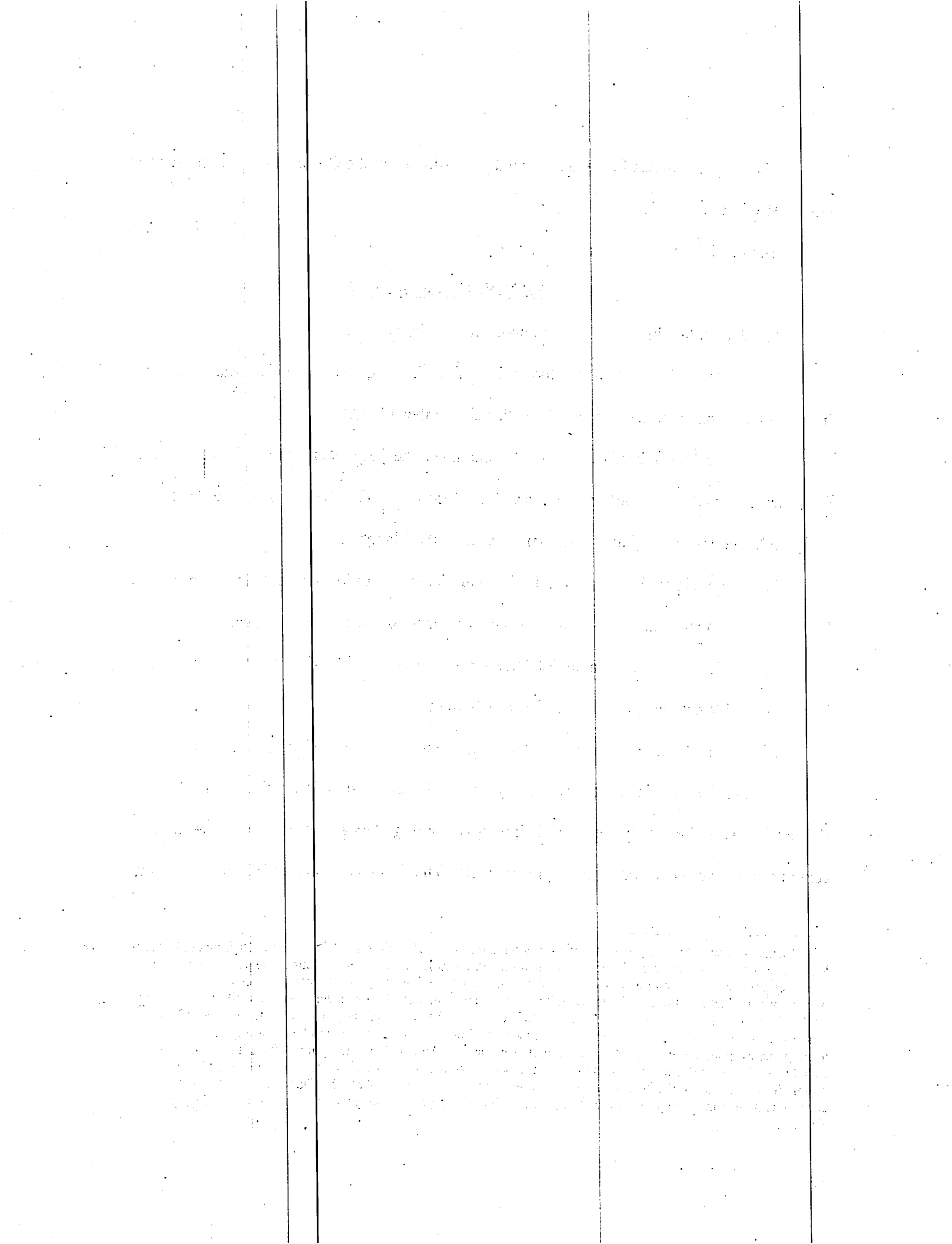
### **PROPOSED FINDINGS OF FACT**

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 133572.
2. On November 28, 2018, the Claimant and the Respondent entered into a contract (Contract) to install a new roof and gutters at 3332 Tapestry Circle, Burtonsville, Maryland (Property), a rental property and townhome owned by the Claimant.
3. On November 28, 2018, the Claimant met with Andre Burton, Respondent's husband and employee, at her home in Elkridge, Maryland to execute the Contract.
4. Prior to the November 28, 2018 meeting, Mr. Burton visited the Property to look it over to provide details of an estimate for the Contract.
5. The Contract provided for the complete tear off of the existing upper main roof; replacement of the upper main roof with thirty-year architectural shingles; replacement of four sheets of plywood free of charge as needed; removal of all gutters and installation of two new complete gutter systems; and removal of any debris. The Contract also provided for installation

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<sup>2</sup> Mr. Burton was called in Respondent's case-in-chief and gave brief testimony. However, the Claimant objected to Mr. Burton's testimony early in his direct examination. Specifically, by prior agreement of the parties, a rule on witnesses preventing potential witnesses from attending the proceedings to prevent bias in any testimony of a fact witness was not instituted due to the fact that it was represented that all witnesses who were to testify were present on the videoconference at the beginning of the conference, and the only non-party witness on the videoconference was Brian Carpenter, who the Claimant called as the very first witness in her case-in-chief. During most of the hearing, the Respondent was on the videoconference but had her camera and microphone off until Mr. Burton was called as a witness, and it was revealed that Mr. Burton was riding in a vehicle with the Respondent and had been present for the totality of the hearing up until that point, unbeknownst to myself, the Claimant, the Claimant's counsel, and the Fund's counsel. On that basis, I sustained the objection and prevented any further testimony from Mr. Burton.



of "15 weight base paper and weather watch moisture blocker" and a C-3 ½ drip edge around the perimeter of the home.

6. The Contract did not provide an itemized cost for the scope of work or materials.

7. The original agreed-upon Contract price was \$3,195.00. The Contract price added an additional \$120.00 after the initial estimate due to the height of the property. The total contract price was \$3,315.00.

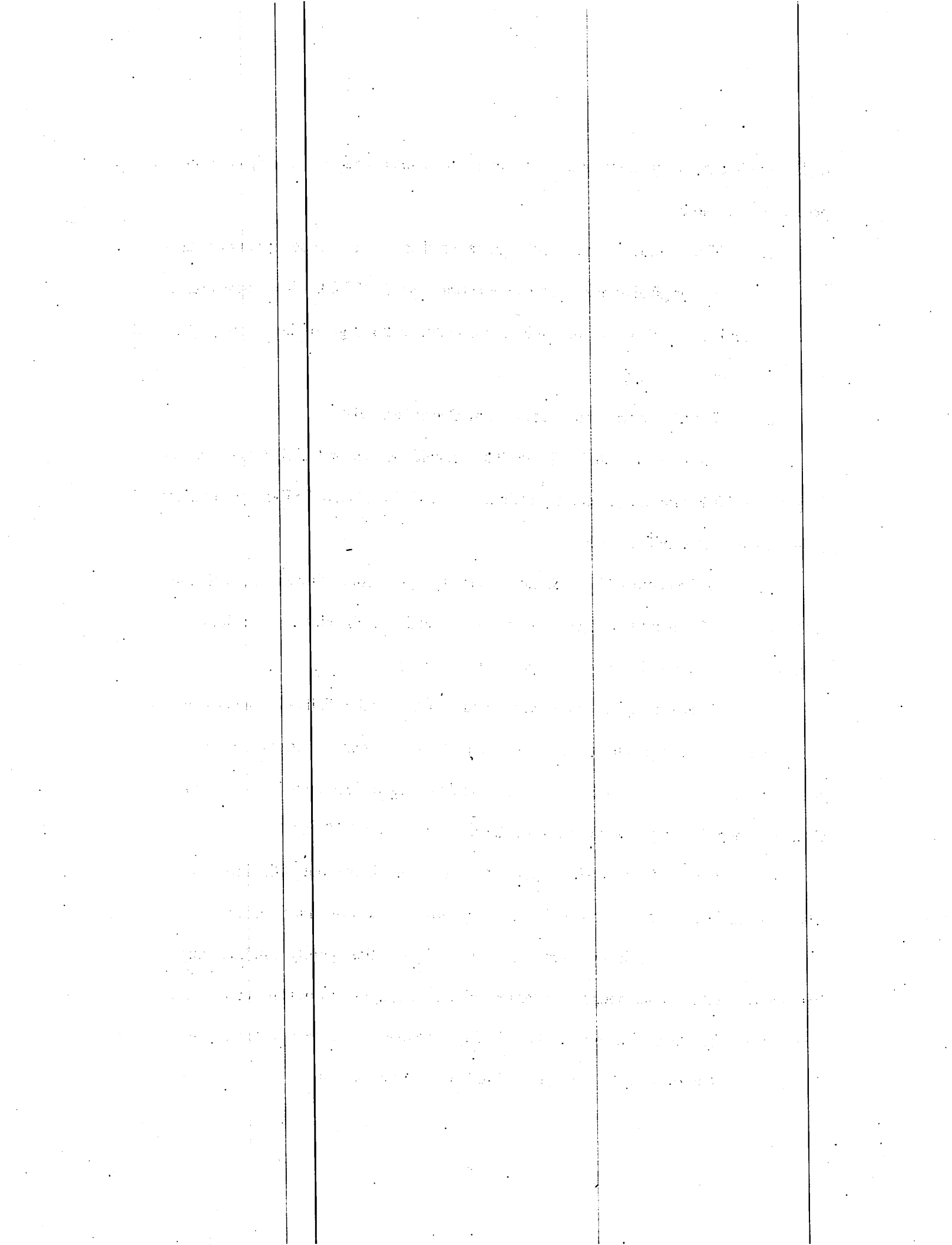
8. The project was completed in early December, 2018.

9. On November 28, 2018, the Claimant paid the Respondent \$1,600.00, and on December 9, 2018, after the project was completed, the Claimant paid the Respondent a total of \$1,700.00, for a total of \$3,300.00.

10. On December 12, 2018, the Greencastle Lakes Condo Owner's Association (COA) cited the Claimant for violations of the COA's code, specifically for the color of the gutters and shingles installed by the Respondent at the Property.

11. After visiting the Property, on January 10, 2019 the Claimant contacted Mr. Burton to resolve issues related to the project, in particular to clean up debris on the Property and to address the COA's citations. Mr. Burton and the Respondent did not respond, and the Claimant stopped attempting to contact the Respondent on May 7, 2019.

12. On July 2, 2019, after reports of leaking water in the roof of the Property, the Claimant had the roof of the Property inspected by Howard Sheer of American Home Contractors. Mr. Sheer took several photos of the roof and noticed poorly installed shingles, improperly installed vents, poor seals near the chimney, a lack of new base paper and water shield around the edges of the roof, and an old drip edge that had not been replaced. The Claimant paid American Home Contractors \$149.00 for the inspection.





13. On July 25, 2019, the Respondent returned to the Property to address some of the issues related to their work, including vent replacements and debris cleaning. The visit was unscheduled and the Claimant was not aware of the Respondent's visit at the time it occurred and told the Respondent to leave the Property.

14. The Respondent never installed the base paper, moisture block, or drip edge as required by the Contract, and never took any steps to remedy this incomplete work.

15. In August 2019, the Respondent's liability insurer, The Main Street America Group, paid the Claimant \$2,417.18 for property damage arising out of the Respondent's work at the Property, specifically damage to the Property's siding, debris left at the work site, a set of shutters, and the cover of the Property's heat exchanger. The payment, and the Respondent's policy, specifically did not cover any damages related to the Respondent's workmanship on the project.

16. On November 4, 2019, the Claimant hired Semper West to replace the roof and gutters at the Property. The Claimant paid a total of \$5,052.00 to Semper West for the work as follows: \$4,390.00 for the roof, and \$662.00 for the gutters.

### 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).

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)

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(“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.

**Unworkmanlike, Inadequate, or Incomplete Home Improvement**

There is no dispute the Respondent was a licensed home improvement contractor at the time she entered into the Contract with the Claimant. Therefore, the only issues I need determine are whether the Respondent performed unworkmanlike, inadequate, or incomplete home improvements, and what, if any, actual loss the Claimant is entitled to recover as a result of the Respondent’s actions.

As to the first issue, the Respondent admitted in her own testimony that the Respondent did not perform the work as required by the Contract. Specifically, the Respondent admitted that no watershield base paper, nor any drip edge, was installed along the perimeter of the roof as required by the Contract. By definition, this failure is an incomplete home improvement, because the Respondent did not install what was required under the Contract and did not complete the job. As the Respondent did nothing to remedy this issue, nor testified to any intent to remedy this issue even when the Respondent returned to the Property unannounced in July 2019, I must find that the Respondent’s work was incomplete and subsequently find that the Claimant is eligible for compensation from the Fund.

I note, for the sake of completeness, that the parties spent a significant amount of time during the hearing as to whether there was an agreement regarding the color of the shingles, gutters, and downspouts that were to be installed by the Respondent. The Contract itself is silent



as to this issue. The Claimant maintained she told Mr. Burton that she wanted to replace the roof and the gutters with exactly the same materials and color as existed with every other house in the community to ensure she was in compliance with the COA's requirements. The Respondent maintained that the Claimant picked the specific color for the shingles and the gutters and they delivered the materials with the color the Claimant picked, as requested. The Claimant argued throughout that the Respondent's work was unworkmanlike and inadequate because of the wrong color. While this fact is in dispute, I need not resolve it to determine whether the Respondent's work was unworkmanlike and inadequate. It is enough, based upon the Respondent's admission at the hearing, to establish the Respondent's work was incomplete because they did not install the base layer and drip edge as required under the Contract.

#### **Actual Loss and Award**

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 retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the

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original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent a total of \$3,300.00. The Claimant then retained Semper West to remedy the Respondent's incomplete workmanship to replace the roof and gutters at the Property for a total of \$5,052.00. The cost of the roof was \$4,390.00, and the cost of the gutters was \$662.00. Because the issue with the gutters was related to the color of the gutters, and I have not found by a preponderance of the evidence that the Respondent's work related to those gutters based solely on their color was unworkmanlike, inadequate, or incomplete, I give the Claimant credit only for the \$4,390.00 paid for a new roof. The Claimant also paid American Home Contractors \$149.00 for the inspection of her roof to determine issues related to the roof. Therefore, the total amount the Claimant paid to other contractors to remedy the Respondent's poor workmanship was \$4,539.00 (\$4,390.00 to Semper West plus \$149 to American Home Contractors equals \$4,539.00).

The Contract price was a total of \$3,315.00.<sup>3</sup> Therefore, the Claimant's actual loss – the amount paid to the Respondent plus the amount paid to remedy the Respondent's poor workmanship, minus the original contract price – is \$4,524.00 (\$3,330 paid to Respondent plus \$4,539.00 paid to other contractors minus \$3,315.00 original contract price equals \$4,524.00).

At the hearing, the Respondent argued the Claimant's actual loss should be a lesser, unspecified amount for two reasons. First, the Claimant received \$2,417.18 from the Respondent's insurer for property damage caused by the Respondent and the Claimant should not be unjustly enriched by an award from the Fund because she was already compensated by the

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<sup>3</sup> It is unclear from the record why the Claimant paid \$15.00 less to the Respondent than the Contract price.

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Respondent's insurer. Second, the Respondent argued that the cost of the replacement of the water barrier underlayment and drip edge would be substantially less than a full roof replacement. Neither argument is availing for the Respondent.

First, as was established in the notice sent by the Respondent's insurer, the payment to the Claimant was made for property damage at the Property, not for any poor workmanship. Indeed, the Respondent's insurer specifically excluded any payment related to the Respondent's workmanship. As such, that payment was for collateral issues that had nothing to do with the Respondent's incomplete work. Further, these types of consequential damages are not recoverable from the Fund. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

Second, while it is entirely possible that the cost to install the water underlayment and drip edge around the perimeter would be less than a full roof replacement as performed by Semper West, that cost is entirely speculative. Indeed, the Contract did not itemize the cost for those items, nor did the Semper West estimate. Moreover, the Respondent did not produce any evidence of what the cost for those items would be, or what the limited labor cost to pull up only a portion of the roof to install those items might be. Nor was any evidence introduced that such a remedy would require only limited work on the perimeter of the roof as opposed to a whole tear off and replacement. As such, I am left only with the Contract and the Semper West estimate to calculate an award.<sup>4</sup>

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

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<sup>4</sup> The same can be said for another argument alluded to in the Respondent's case: that the Contract only provided for a new roof on the "upper main roof" and did not include the "portico" area of the roof. As no evidence was introduced as to the respective costs, either in materials or labor, for the different parts of the roof, I have not considered this argument as relevant to the calculation of the award in this case.

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09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$4,524.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$3,300.00, the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$3,300.00 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 \$3,300.00 from the Fund. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,300.00; 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.

*Stephen W. Thibodeau.*

September 1, 2021  
Date Decision Issued

\_\_\_\_\_  
Stephen W. Thibodeau  
Administrative Law Judge

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

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**PROPOSED ORDER**

***WHEREFORE, this 29<sup>th</sup> day of December, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***



<b>IN THE MATTER OF THE CLAIM OF TAMMY PATTERSON AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF SAMANTHA LOGAN T/A ALB CONSTRUCTION</b>	* MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 19(90)1372 * OAH CASE NO. LABOR-HIC- * 02-21-02354 *
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\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on June 10, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on September 1, 2021, concluding that the homeowner, Tammy Patterson (“Claimant”) suffered an actual loss as a result of the acts or omissions of Samantha Logan t/a ALB Construction (“Contractor”). *ALJ Proposed Decision* p. 14. In a Proposed Order dated December 29, 2021, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$3,300.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On April 21, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. David Shapiro, Esq., represented the Contractor. Bernice Harleston, Esq., represented the Claimant. Assistant Attorney General Eric London represented the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; 3) Contractor’s exceptions; and 4) Claimant’s response to Contractor’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and

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the exhibits offered as evidence at the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the installation of a new roof and gutters at the Claimant's home. The ALJ found that the Contractor's performance under the contract was incomplete. *ALJ's Proposed Decision* pp. 10.

On exception, the Contractor argued that the ALJ erred in finding that the Contractor failed to respond to the Claimant's attempt to resolve the problems with its performance of the contract. The Contractor did not identify evidence in the record in support of its argument, and the Commission finds no error.

The Contractor also argued that the ALJ erred in finding that the Contractor made an unscheduled visit to the Claimant's home to address some of the issues with its performance and that the Claimant was unaware that the Contractor was coming to her home. Again, the Contractor did not identify evidence in the record in support of its argument, and the Commission finds no error.

The Contractor further argued that the Claimant, by refusing to allow the Contractor to work on her home during the unscheduled visit, prevented it from remedying its defective performance. Under Md. Code Ann., Bus. Reg. § 8-405, "[t]he Commission may deny a claim if the Commission finds that the claimant unreasonably rejected good faith efforts by the contractor to resolve the claim." The Contractor did not identify any evidence in the record indicating that it offered to correct the fundamental defects with its performance—the failure to install drip edges and ice and water shields. Therefore, the Commission finds that the Claimant did not reject good faith efforts by the Contractor to resolve her claim.

Finally, the Contractor argued that its insurance company reimbursed the Claimant for her actual loss, so the ALJ erred in granting an award to the Claimant. Again, the Contractor does not

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identify evidence in the record in support of its argument. The record makes it clear that the Contractor's insurance company compensated the Claimant for damages that the Contractor caused to the Claimant's property, not for the defects in the work the Claimant hired the Contractor to perform. (OAH Hearing Respondent's Exhibit 4.) Therefore, the Commission finds no error with the ALJ's recommended award.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 27<sup>th</sup> day of April 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AFFIRMED**;
- D. That the Claimant is awarded \$3,300.00 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

***Michael Shilling***  
**Chairperson – Panel**  
**Maryland Home Improvement**  
**Commission**

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<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF TAMMY PATTERSON,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF SAMANTHA</b></p> <p><b>LOGAN, T/A ALB CONSTRUCTION,</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE STEPHEN W. THIBODEAU,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-21-02354</b></p> <p><b>* MHIC No.: 19 (90) 1372</b></p>
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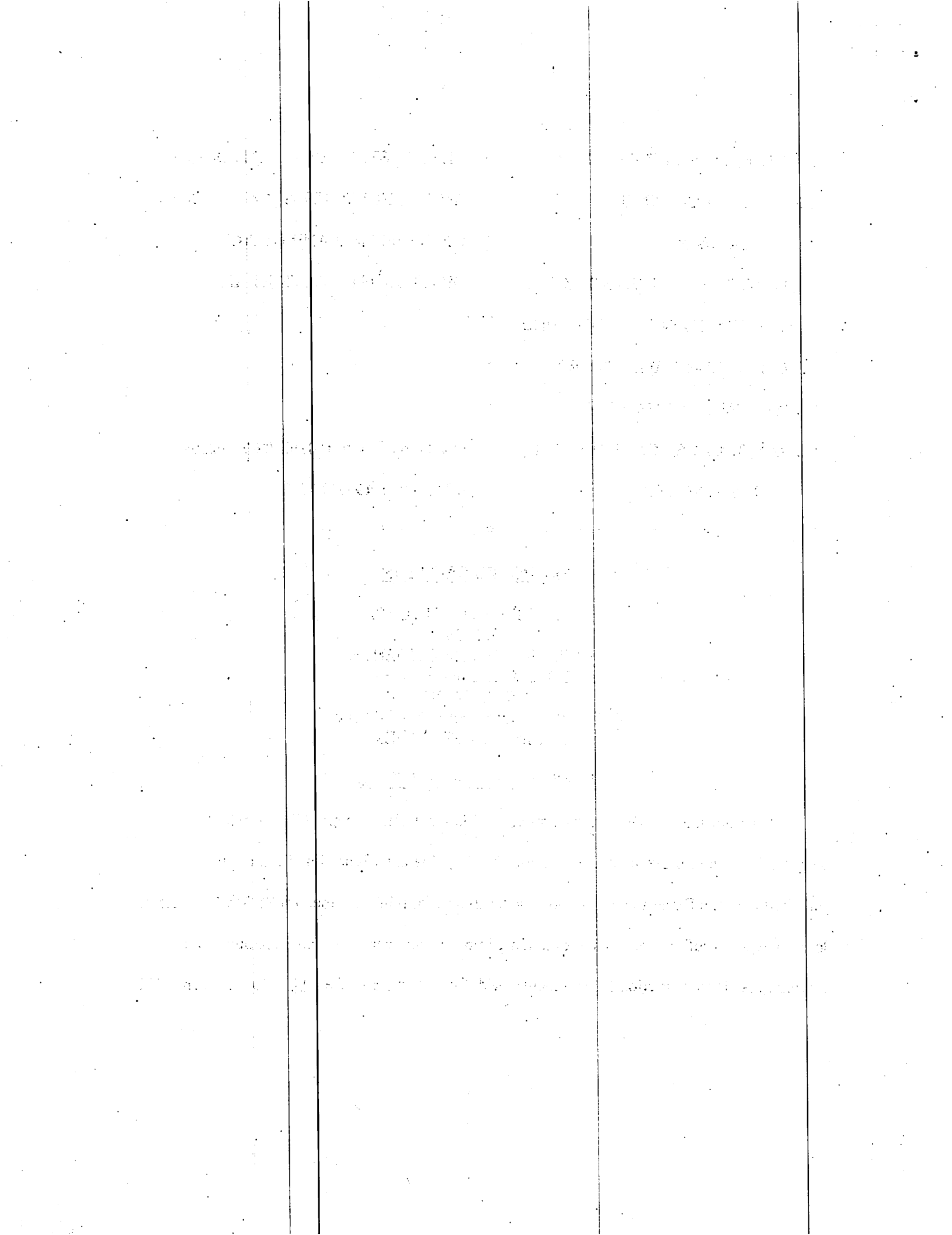
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**PROPOSED DECISION**

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 August 27, 2019, Tammy Patterson (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 \$5,515.00 in actual losses allegedly suffered as a result of a home improvement contract with Samantha Logan, trading as ALB Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411



(2015).<sup>1</sup> On January 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 10, 2021, from the OAH in Hunt Valley, Maryland, via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Shara Hendler, Assistant Attorney General, Department, represented the Fund. Bernice A. Harleston, Esquire, represented the Claimant, who was present. David B. Shapiro, 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 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, unless otherwise noted:

Clmt. Ex. 1 - Page One of the Contract between the Claimant and the Respondent, November 8, 2018

Clmt. Ex. 2 - Page Two of the Contract between the Claimant and the Respondent, November 8, 2018

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





- Clmt. Ex. 3 - Pages Three and Four of the Contract between the Claimant and the Respondent, November 8, 2018
- Clmt. Ex. 4 - Violation Report from the Greencastle Lakes Condo Owner's Association, printed on June 17, 2019
- Clmt. Ex. 5 - Photo of Claimant's roof, taken by Howard Sheer of American Home Contractors, July 2, 2019
- Clmt. Ex. 6 - Photo of Claimant's roof, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 7 - Photo of Claimant's roof, flashing, and molding, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 8 - Photo of Claimant's roof near step-up on roof, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 9 - Photo of Claimant's roof near step-up on roof, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 10 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 11 - Photo of Claimant's roof and vents, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 12 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 13 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 14 - Photo of Claimant's roof peak, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 15 - Photo of Claimant's roof peak, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 16 - Photo of Claimant's roof peak and vents, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 17 - Photo of Claimant's roof and peeling shingle, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 18 - Photo of Claimant's roof and peeling shingle, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 19 - Photo of Claimant's roof and peeling shingle, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 20 - Photo of Claimant's roof drip edge, taken by Howard Sheer, July 2, 2019

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- Clmt. Ex. 21 - Photo of Claimant's roof near vent pipe, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 22 - Photo of Claimant's roof near vent pipe, taken by Howard Sheer, July 2019
- Clmt Ex. 23 - Photo of Claimant's roof near vent pipe, taken by Howard Sheer, July 2019
- Clmt. Ex. 24 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 25 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 26 - Photo of Claimant's roof and vent, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 27 - Photo of Claimant's roof and shingles overlapping into gutter, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 28 - Photo of Claimant's roof on corner near gutter, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 29 - Photo of Claimant's attic and vent pipes, taken by Howard Sheer, July 2, 2019
- Clmt. Ex 30 - Photo of Claimant's attic and hole in roof, taken by Howard Sheer, July 2, 2019
- Clmt Ex. 31 - Photo of water damaged plywood in Claimant's attic, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 32 - Photo of water damaged plywood in Claimant's attic, taken by Howard Sheer, July 2, 2019
- Clmt. Ex. 33 - Photo of front of 3332 Tapestry Circle, Burtonsville, Maryland (Property), taken by Howard Sheer, July 2, 2019
- Clmt. Ex 34 - Invoice from American Home Contractors, on or about July 2, 2019
- Clmt. Ex. 35 - Scope of Work for the Claimant from Semper West Builders, Inc. (Semper West), November 4, 2019
- Clmt. Ex. 36 - Estimate of Cost of Scope of Work for the Claimant from Semper West, November 4, 2019
- Clmt. Ex. 37 - Photo of plywood on Claimant's roof, taken by Robert Bialas, employee of Semper West, December 2, 2019
- Clmt. Ex. 38 - Photo of plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019

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- Clmt. Ex. 39 - Photo of newly installed ice and water shield on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 40 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 41 - Photo of newly installed plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 42 - Photo of plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 43 - Photo of missing plywood on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 44 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 45 - Photo of newly installed drip edge on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 46 - Photo of newly installed drip edge on Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 47 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 48 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 49 - Photo of replaced plywood from Claimant's roof, taken by Robert Bialas, December 2, 2019
- Clmt. Ex. 50 - Letter from Semper West to the Claimant, December 4, 2019
- Clmt. Ex. 51 - Not offered or admitted
- Clmt. Ex. 52 - Not offered or admitted
- Clmt. Ex. 53 - Photo of Claimant's chimney pipe of roof, taken by "Daniel," an employee of the Respondent, July 25, 2019
- Clmt. Ex. 54 - Not offered or admitted
- Clmt. Ex. 55 - Not offered or admitted



Clmt. Ex. 56 - Copy of Claimant's Bank Statement, undated

Clmt. Ex. 57 - Receipt from the Respondent to the Claimant, December 9, 2018

Clmt. Ex. 58 - Text message from the Respondent to the Claimant, November 4, 2018

Clmt. Ex. 59 - Signed Contract between the Claimant and Semper West, November 19, 2019

Clmt. Ex. 60 - Letter from the Respondent in response to the MHIC Complaint, September 16, 2019

I admitted the following exhibits on the Respondent's behalf, unless otherwise noted:

Resp. Ex. 1 - Offered but not admitted (same as Claimant's Exhibit 1)

Resp. Ex. 2A - Claimant's Complaint to the MHIC, May 6, 2019

Resp. Ex. 2B - Not offered or admitted (same as Claimant's Exhibit 60)

Resp. Ex. 3 - Offered by not admitted (same as Fund Exhibit 4)

Resp. Ex. 4 - Letter from The Main Street America Group to the Respondent, with attachments, August 30, 2019

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

Fund Ex. 1 - Notice of Remote Hearing, March 29, 2021

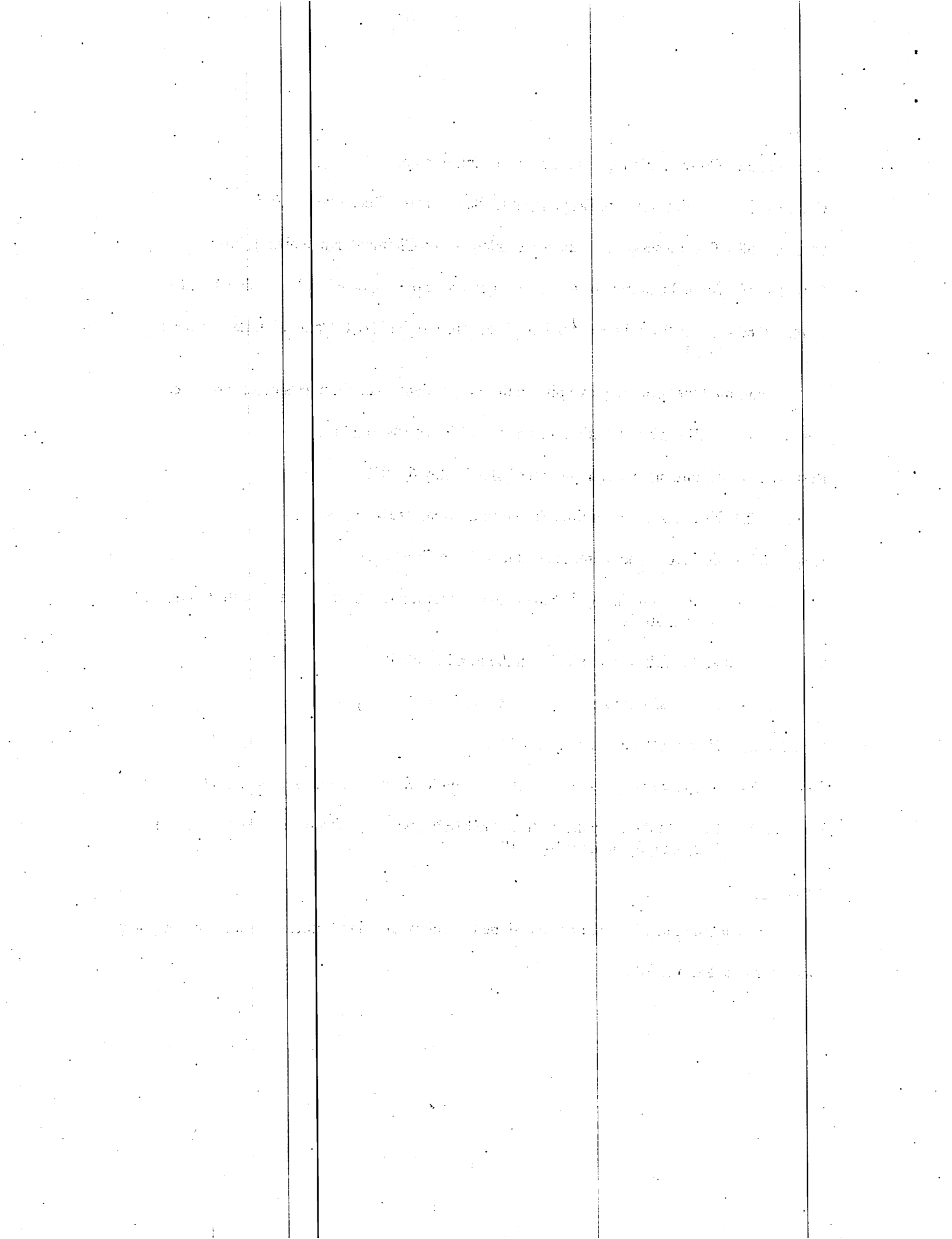
Fund Ex. 2 - Hearing Order, January 20, 2021

Fund Ex. 3 - Respondent's Licensing History with the MHIC, printed on June 4, 2021

Fund Ex. 4 - Letter to the Respondent from the MHIC, with Attached Claim Form from the Claimant, September 10, 2019

### Testimony

The Claimant testified and presented the testimony of Brian Carpenter, home improvement contractor with Semper West.





The Respondent testified and presented the testimony of the Claimant and Andre Burton,<sup>2</sup> employee of the Respondent.

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 133572.

2. On November 28, 2018, the Claimant and the Respondent entered into a contract (Contract) to install a new roof and gutters at 3332 Tapestry Circle, Burtonsville, Maryland (Property), a rental property and townhome owned by the Claimant.

3. On November 28, 2018, the Claimant met with Andre Burton, Respondent's husband and employee, at her home in Elkridge, Maryland to execute the Contract.

4. Prior to the November 28, 2018 meeting, Mr. Burton visited the Property to look it over to provide details of an estimate for the Contract.

5. The Contract provided for the complete tear off of the existing upper main roof; replacement of the upper main roof with thirty-year architectural shingles; replacement of four sheets of plywood free of charge as needed; removal of all gutters and installation of two new complete gutter systems; and removal of any debris. The Contract also provided for installation

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<sup>2</sup> Mr. Burton was called in Respondent's case-in-chief and gave brief testimony. However, the Claimant objected to Mr. Burton's testimony early in his direct examination. Specifically, by prior agreement of the parties, a rule on witnesses preventing potential witnesses from attending the proceedings to prevent bias in any testimony of a fact witness was not instituted due to the fact that it was represented that all witnesses who were to testify were present on the videoconference at the beginning of the conference, and the only non-party witness on the videoconference was Brian Carpenter, who the Claimant called as the very first witness in her case-in-chief. During most of the hearing, the Respondent was on the videoconference but had her camera and microphone off until Mr. Burton was called as a witness, and it was revealed that Mr. Burton was riding in a vehicle with the Respondent and had been present for the totality of the hearing up until that point, unbeknownst to myself, the Claimant, the Claimant's counsel, and the Fund's counsel. On that basis, I sustained the objection and prevented any further testimony from Mr. Burton.

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of "15 weight base paper and weather watch moisture blocker" and a C-3 ½ drip edge around the perimeter of the home.

6. The Contract did not provide an itemized cost for the scope of work or materials.

7. The original agreed-upon Contract price was \$3,195.00. The Contract price added an additional \$120.00 after the initial estimate due to the height of the property. The total contract price was \$3,315.00.

8. The project was completed in early December, 2018.

9. On November 28, 2018, the Claimant paid the Respondent \$1,600.00, and on December 9, 2018, after the project was completed, the Claimant paid the Respondent a total of \$1,700.00, for a total of \$3,300.00.

10. On December 12, 2018, the Greencastle Lakes Condo Owner's Association (COA) cited the Claimant for violations of the COA's code, specifically for the color of the gutters and shingles installed by the Respondent at the Property.

11. After visiting the Property, on January 10, 2019 the Claimant contacted Mr. Burton to resolve issues related to the project, in particular to clean up debris on the Property and to address the COA's citations. Mr. Burton and the Respondent did not respond, and the Claimant stopped attempting to contact the Respondent on May 7, 2019.

12. On July 2, 2019, after reports of leaking water in the roof of the Property, the Claimant had the roof of the Property inspected by Howard Sheer of American Home Contractors. Mr. Sheer took several photos of the roof and noticed poorly installed shingles, improperly installed vents, poor seals near the chimney, a lack of new base paper and water shield around the edges of the roof, and an old drip edge that had not been replaced. The Claimant paid American Home Contractors \$149.00 for the inspection.

1. Name	2. Address	3. City	4. State	5. Zip
John Doe	123 Main St	New York	NY	10001
Jane Smith	456 Elm St	Los Angeles	CA	90001
Bob Johnson	789 Oak St	Chicago	IL	60601
Alice Brown	101 Pine St	San Francisco	CA	94101
Charlie White	202 Cedar St	Houston	TX	77001
Diana Green	303 Birch St	Phoenix	AZ	85001
Frank Black	404 Spruce St	Philadelphia	PA	19101
Grace King	505 Willow St	San Diego	CA	92101
Henry Lee	606 Ash St	Dallas	TX	75201
Ivy Clark	707 Hickory St	San Antonio	TX	78201
Jack Adams	808 Sycamore St	Fort Worth	TX	76101
Karen Baker	909 Magnolia St	Columbus	GA	31901
Liam Miller	1010 Poplar St	Indianapolis	IN	46201
Mia Wilson	1111 Chestnut St	San Jose	CA	95101
Noah Moore	1212 Walnut St	San Jose	CA	95101
Olivia Taylor	1313 Elm St	San Jose	CA	95101
Peter Hall	1414 Oak St	San Jose	CA	95101
Quinn King	1515 Pine St	San Jose	CA	95101
Rachel Green	1616 Cedar St	San Jose	CA	95101
Samuel White	1717 Birch St	San Jose	CA	95101
Tina Black	1818 Spruce St	San Jose	CA	95101
Uma King	1919 Willow St	San Jose	CA	95101
Victor Lee	2020 Ash St	San Jose	CA	95101
Wendy Clark	2121 Hickory St	San Jose	CA	95101
Xavier Adams	2222 Sycamore St	San Jose	CA	95101
Yara Baker	2323 Magnolia St	San Jose	CA	95101
Zoe Miller	2424 Poplar St	San Jose	CA	95101

13. On July 25, 2019, the Respondent returned to the Property to address some of the issues related to their work, including vent replacements and debris cleaning. The visit was unscheduled and the Claimant was not aware of the Respondent's visit at the time it occurred and told the Respondent to leave the Property.

14. The Respondent never installed the base paper, moisture block, or drip edge as required by the Contract, and never took any steps to remedy this incomplete work.

15. In August 2019, the Respondent's liability insurer, The Main Street America Group, paid the Claimant \$2,417.18 for property damage arising out of the Respondent's work at the Property, specifically damage to the Property's siding, debris left at the work site, a set of shutters, and the cover of the Property's heat exchanger. The payment, and the Respondent's policy, specifically did not cover any damages related to the Respondent's workmanship on the project.

16. On November 4, 2019, the Claimant hired Semper West to replace the roof and gutters at the Property. The Claimant paid a total of \$5,052.00 to Semper West for the work as follows: \$4,390.00 for the roof, and \$662.00 for the gutters.

### 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).

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)

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("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.

**Unworkmanlike, Inadequate, or Incomplete Home Improvement**

There is no dispute the Respondent was a licensed home improvement contractor at the time she entered into the Contract with the Claimant. Therefore, the only issues I need determine are whether the Respondent performed unworkmanlike, inadequate, or incomplete home improvements, and what, if any, actual loss the Claimant is entitled to recover as a result of the Respondent's actions.

As to the first issue, the Respondent admitted in her own testimony that the Respondent did not perform the work as required by the Contract. Specifically, the Respondent admitted that no watershield base paper, nor any drip edge, was installed along the perimeter of the roof as required by the Contract. By definition, this failure is an incomplete home improvement, because the Respondent did not install what was required under the Contract and did not complete the job. As the Respondent did nothing to remedy this issue, nor testified to any intent to remedy this issue even when the Respondent returned to the Property unannounced in July 2019, I must find that the Respondent's work was incomplete and subsequently find that the Claimant is eligible for compensation from the Fund.

I note, for the sake of completeness, that the parties spent a significant amount of time during the hearing as to whether there was an agreement regarding the color of the shingles, gutters, and downspouts that were to be installed by the Respondent. The Contract itself is silent





as to this issue. The Claimant maintained she told Mr. Burton that she wanted to replace the roof and the gutters with exactly the same materials and color as existed with every other house in the community to ensure she was in compliance with the COA's requirements. The Respondent maintained that the Claimant picked the specific color for the shingles and the gutters and they delivered the materials with the color the Claimant picked, as requested. The Claimant argued throughout that the Respondent's work was unworkmanlike and inadequate because of the wrong color. While this fact is in dispute, I need not resolve it to determine whether the Respondent's work was unworkmanlike and inadequate. It is enough, based upon the Respondent's admission at the hearing, to establish the Respondent's work was incomplete because they did not install the base layer and drip edge as required under the Contract.

#### **Actual Loss and Award**

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 retained other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

**If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the**



original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent a total of \$3,300.00. The Claimant then retained Semper West to remedy the Respondent's incomplete workmanship to replace the roof and gutters at the Property for a total of \$5,052.00. The cost of the roof was \$4,390.00, and the cost of the gutters was \$662.00. Because the issue with the gutters was related to the color of the gutters, and I have not found by a preponderance of the evidence that the Respondent's work related to those gutters based solely on their color was unworkmanlike, inadequate, or incomplete, I give the Claimant credit only for the \$4,390.00 paid for a new roof. The Claimant also paid American Home Contractors \$149.00 for the inspection of her roof to determine issues related to the roof. Therefore, the total amount the Claimant paid to other contractors to remedy the Respondent's poor workmanship was \$4,539.00 (\$4,390.00 to Semper West plus \$149 to American Home Contractors equals \$4,539.00).

The Contract price was a total of \$3,315.00.<sup>3</sup> Therefore, the Claimant's actual loss – the amount paid to the Respondent plus the amount paid to remedy the Respondent's poor workmanship, minus the original contract price – is \$4,524.00 (\$3,330 paid to Respondent plus \$4,539.00 paid to other contractors minus \$3,315.00 original contract price equals \$4,524.00).

At the hearing, the Respondent argued the Claimant's actual loss should be a lesser, unspecified amount for two reasons. First, the Claimant received \$2,417.18 from the Respondent's insurer for property damage caused by the Respondent and the Claimant should not be unjustly enriched by an award from the Fund because she was already compensated by the

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<sup>3</sup> It is unclear from the record why the Claimant paid \$15.00 less to the Respondent than the Contract price.



Respondent's insurer. Second, the Respondent argued that the cost of the replacement of the water barrier underlayment and drip edge would be substantially less than a full roof replacement. Neither argument is availing for the Respondent.

First, as was established in the notice sent by the Respondent's insurer, the payment to the Claimant was made for property damage at the Property, not for any poor workmanship. Indeed, the Respondent's insurer specifically excluded any payment related to the Respondent's workmanship. As such, that payment was for collateral issues that had nothing to do with the Respondent's incomplete work. Further, these types of consequential damages are not recoverable from the Fund. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

Second, while it is entirely possible that the cost to install the water underlayment and drip edge around the perimeter would be less than a full roof replacement as performed by Semper West, that cost is entirely speculative. Indeed, the Contract did not itemize the cost for those items, nor did the Semper West estimate. Moreover, the Respondent did not produce any evidence of what the cost for those items would be, or what the limited labor cost to pull up only a portion of the roof to install those items might be. Nor was any evidence introduced that such a remedy would require only limited work on the perimeter of the roof as opposed to a whole tear off and replacement. As such, I am left only with the Contract and the Semper West estimate to calculate an award.<sup>4</sup>

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

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<sup>4</sup> The same can be said for another argument alluded to in the Respondent's case: that the Contract only provided for a new roof on the "upper main roof" and did not include the "portico" area of the roof. As no evidence was introduced as to the respective costs, either in materials or labor, for the different parts of the roof, I have not considered this argument as relevant to the calculation of the award in this case.

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09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$4,524.00 exceeds the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$3,300.00, the amount paid to the Respondent. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$3,300.00 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 \$3,300.00 from the Fund. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,300.00; 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.

*Stephen W. Thibodeau.*

September 1, 2021  
Date Decision Issued

\_\_\_\_\_  
Stephen W. Thibodeau  
Administrative Law Judge

SWT/dlm/kkc  
#194004

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





**PROPOSED ORDER**

***WHEREFORE, this 29<sup>th</sup> day of December, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***
