

**IN THE MATTER OF THE CLAIM  
OF EDIE HARDY,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF CLIFFORD  
PETERSON, T/A BAY COUNTRY  
BUILDERS,  
RESPONDENT**

**\* BEFORE SUSAN H. ANDERSON,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-21-07327  
\* MHIC No.: 19 (90) 1539  
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**PROPOSED DECISION**

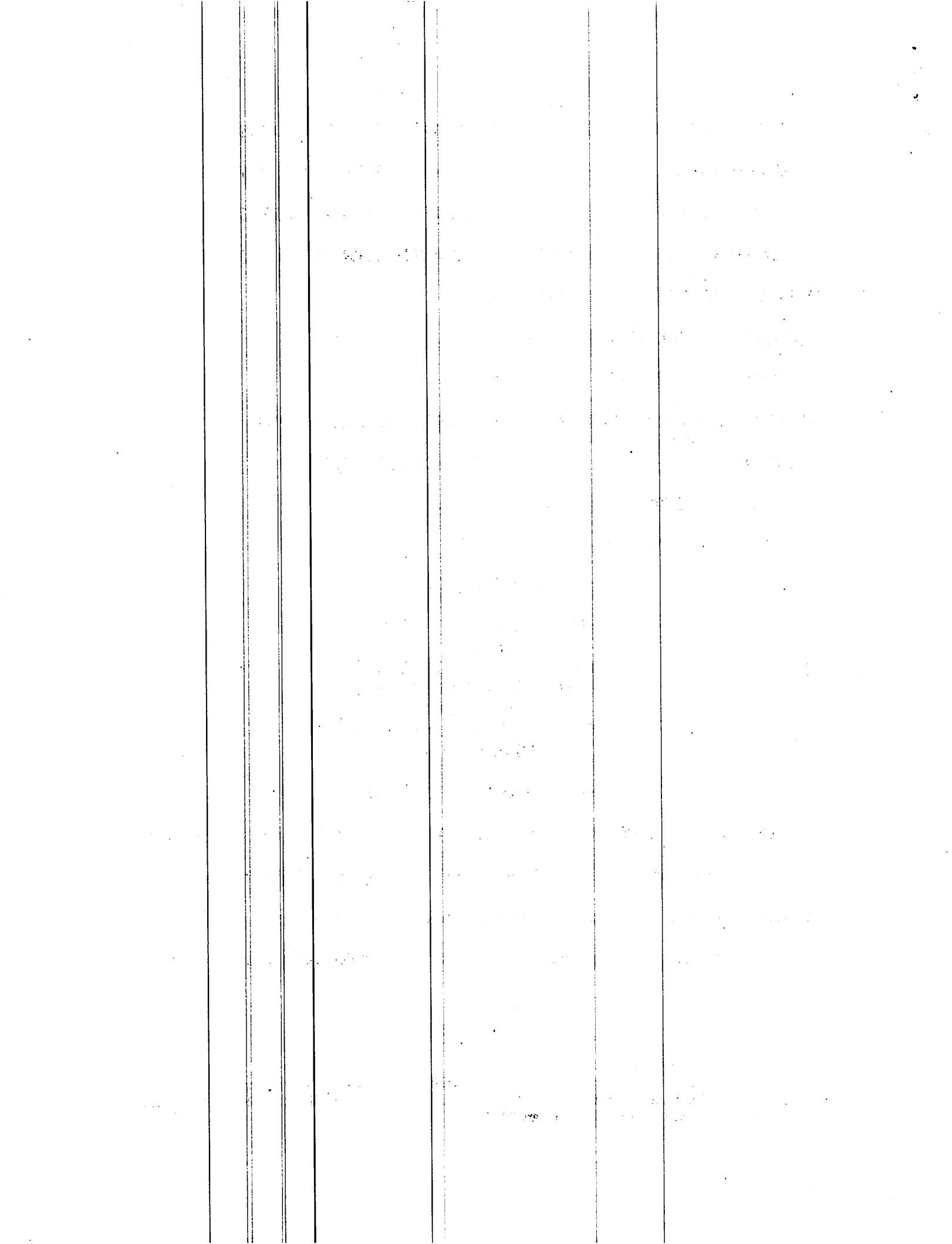
**STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**STATEMENT OF THE CASE**

On February 20, 2020,<sup>1</sup> Edie Hardy (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 \$23,521.21 for alleged actual losses suffered as a result of a home improvement contract with Clifford Peterson, t/a Bay Country

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<sup>1</sup> The date on the Claim appears as February 20, 2019. However, the Respondent was still working on the project at that point and the Claimant did not get the \$19,210.00 estimate to replace the deck until October 2019. Therefore, I infer that the Claim was actually signed on February 20, 2020.



Builders (Respondent).<sup>2</sup> On March 11, 2021, the MHIC issued a Hearing Order on the claim. On March 23, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a video hearing on May 10, 2021 using the Webex videoconferencing platform.<sup>3</sup> Justin Dunbar, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented himself.

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.<sup>4</sup>

### ISSUES

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

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

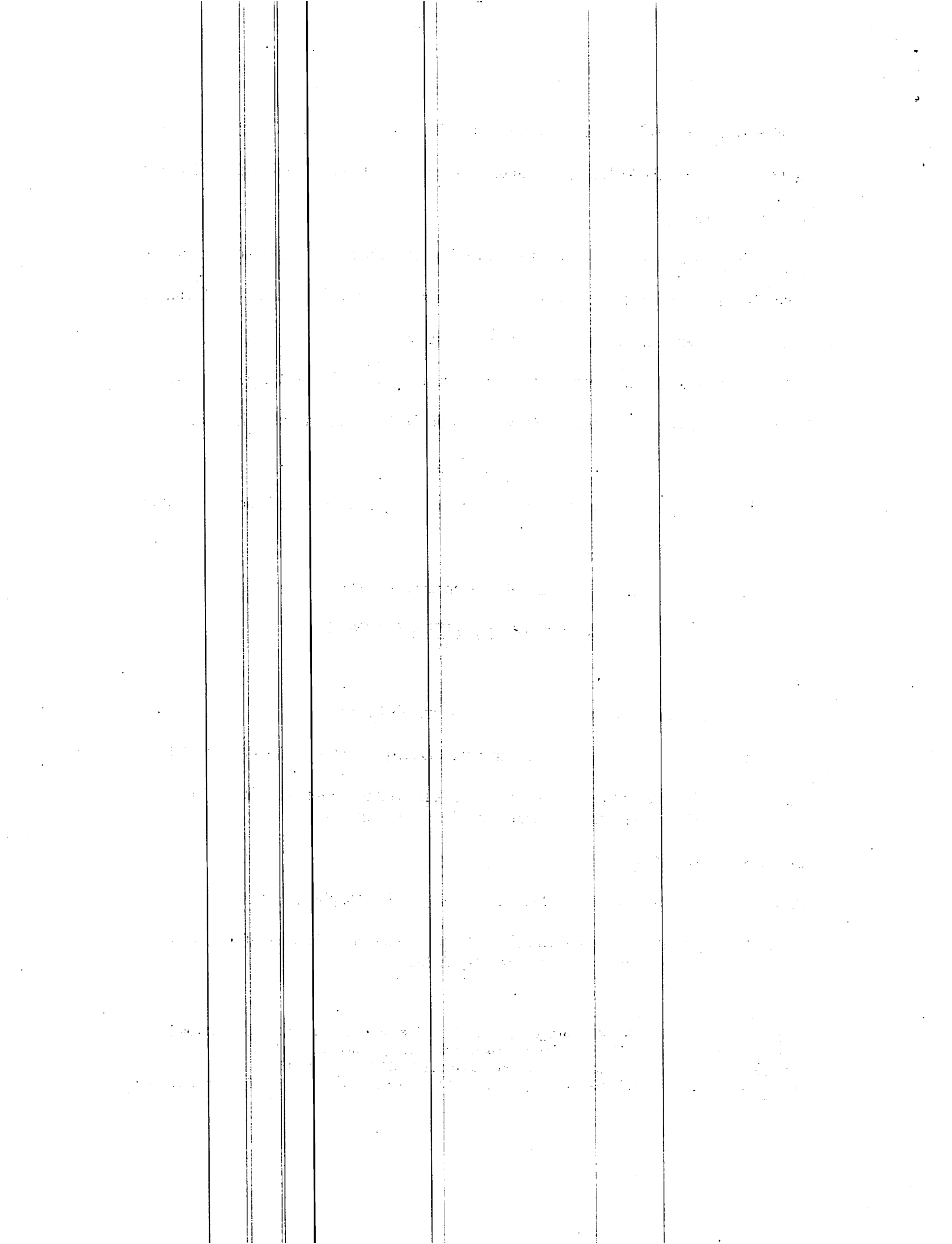
- CL Ex. 1 - Contract between the Claimant and the Respondent, signed January 10, 2019
- CL Ex. 2 - Summary of Payments made by the Claimant to the Respondent and Rodney Hamm, with copies of cancelled checks, various dates
- CL Ex. 3 - Not offered
- CL Ex. 4 - Estimate from CHF Contractors, LTD. (CHF), October 22, 2019
- CL Ex. 5 - Email from Mark Dean, Cecil County Government, Division of Permits & Inspections, to the Claimant, May 7, 2021

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<sup>2</sup> Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>3</sup> Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B.

<sup>4</sup> Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and COMAR 28.02.01.



CL Ex. 6 - Fiberon Residential Limited Warranty, undated

CL Ex. 7 - Photographs taken by the Claimant in April 2019:

- 7A - two photos showing "pie shaped" deck board piece used because deck boards were not square<sup>5</sup>.
- 7B - two photos showing wrong sized joist hangers installed
- 7C - four photos of hinges used to attach some of the deck railings
- 7D - three photos showing deck supports installed by Respondent
- 7E - two photos of separate deck footers not secured with concrete
- 7F - one photo showing bottom of steps do not line up with patio
- 7G - one photo showing stair railing does not extend to the last two bottom deck stairs
- 7H - three photos showing nails countersunk too far and improper spacing between deck boards
- 7I - one photo showing deck boards improperly butted together
- 7J - two photos showing jagged edge of deck boards next to pool
- 7K - three photos:
  - Countersunk nails and improper spacing between boards
  - Empty screw holes
  - Broken deck composite due to improper installation of nail
- 7L - five photos of improper installation of screws in deck
- 7M - photo of chipped vinyl on deck railing

CL Ex. 8 - Zoning Certificate, Office of Planning and Zoning, April 19, 2019; Building Permit #201934792, April 19, 2019

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

GF Ex. 1 - Notice of Remote Hearing, April 12, 2021

GF Ex. 2 - Hearing Order, March 11, 2021

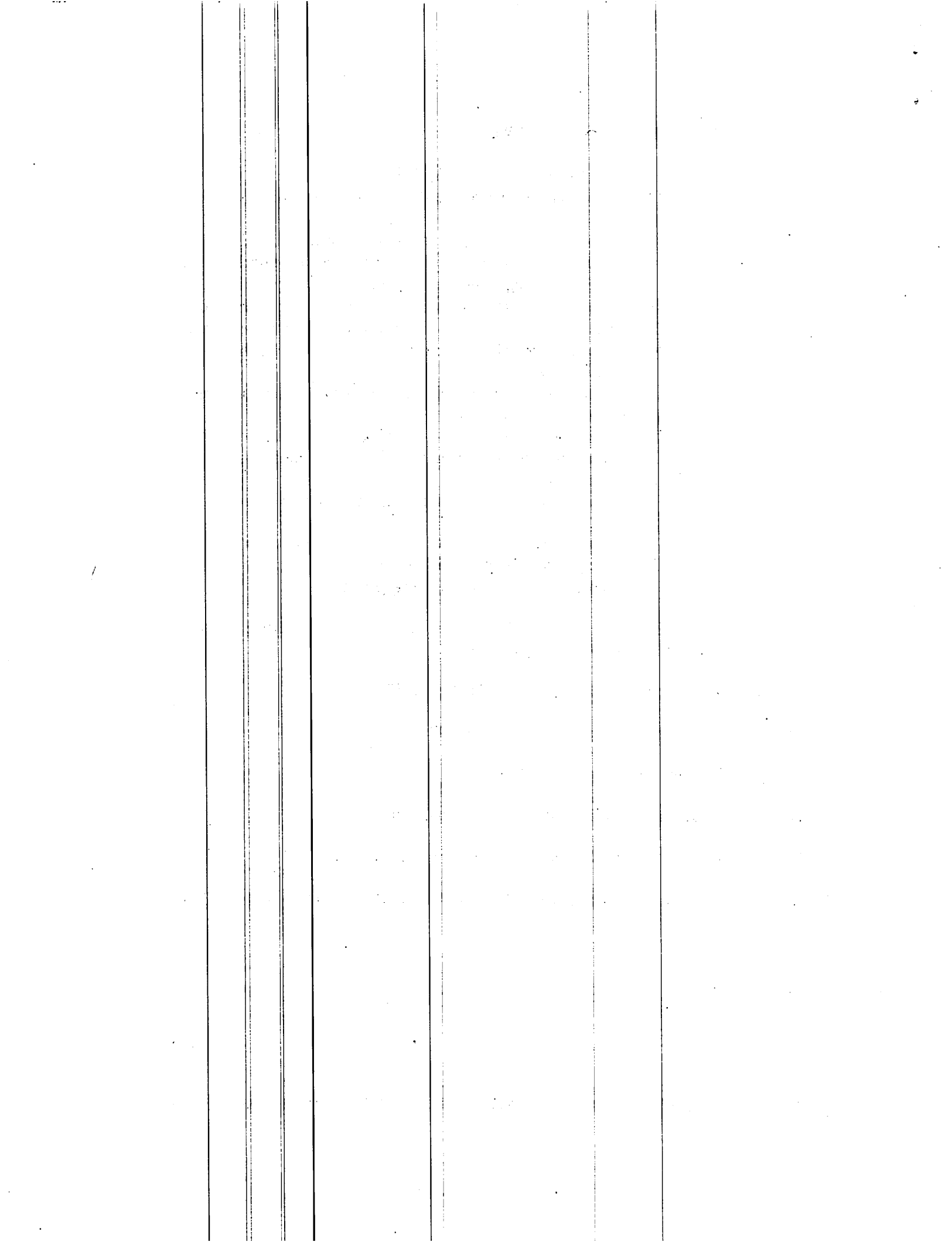
GF Ex. 3 - Home Improvement Claim Form, February 20, 2020

GF Ex. 4 - Letter from MHIC to the Respondent, February 26, 2020

GF Ex. 5 - Department Licensing Information for the Respondent, printed May 6, 2021

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<sup>5</sup> Square means "to make square or rectangular." <https://www.merriam-webster.com/dictionary/square> (last viewed July 14, 2021).



The Respondent did not offer any exhibits into evidence.

Testimony

The Claimant testified and presented the testimony of David Hardy, her husband.

The Respondent testified and presented the testimony of Rodney Hamm.

The Fund presented no testimony.

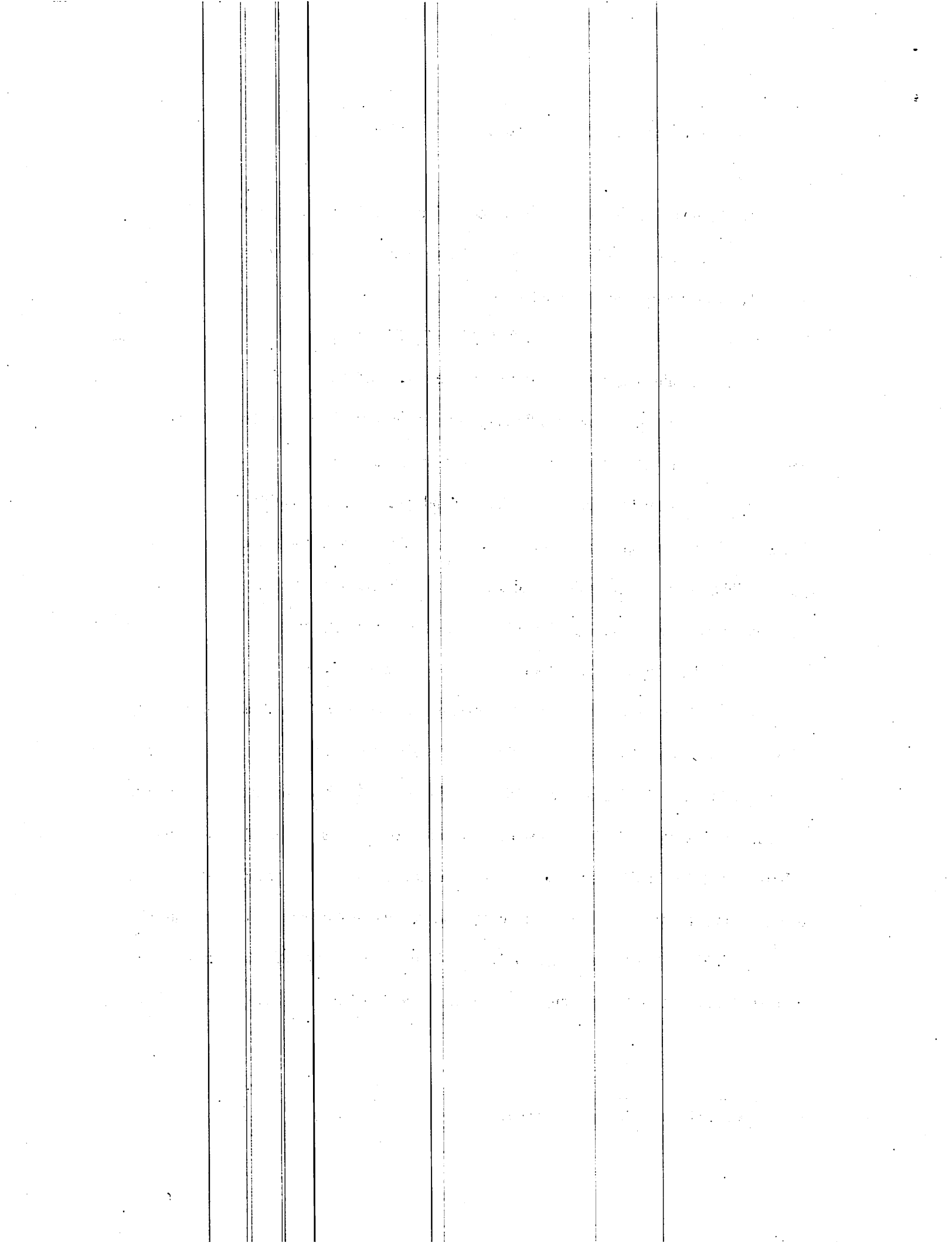
**PROPOSED FINDINGS OF FACT**

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 5561008.
2. On January 10, 2019, the Claimant and the Respondent entered into a contract to construct a deck around the Claimant's pool, build a shed roof over a porch and screen-in the porch, build a small pad off the deck, and complete work in the yard including installation of a water garden along with proper grading of the area. (Contract). (CL Ex. 1.)
3. The original agreed-upon Contract price was \$24,000.00.
4. On January 11, 2019, the Claimant paid Rodney Hamm, the Respondent's cousin who was working on the job with the Respondent, \$7,000.00; on that same date, she paid the Claimant \$7,000.00. On January 16, 2019, the Claimant gave the Respondent \$400.00 in cash. On January 18, 2019, the Claimant gave the Respondent two checks totaling \$7,400.00. On February 14, 2019, the Claimant gave Mr. Hamm a check for \$2,000.00. On February 18, 2019, the Claimant paid Mr. Hamm \$700.00 by check and gave the Respondent \$300.00 in cash. On February 28, 2019, the Claimant paid Mr. Hamm \$2,500.00. On March 28, 2019, the Claimant gave Mr. Hamm \$200.00 in cash and on March 29, 2019, the Claimant gave John<sup>6</sup> \$400.00 in

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<sup>6</sup> John's last name is not reflected anywhere in the record.





cash for Mr. Hamm. The Claimant made payments totaling \$27,900.00, despite there being no written changes made to the Contract. (CL Ex. 2.)

5. The Claimant had chosen the Respondent on the recommendation of Mr. Hamm, who had done odd jobs for her in the past. When she indicated she wanted a deck built around her above-ground pool, Mr. Hamm advised her that he was not a licensed contractor and could not pull the required permit, but he recommended she use his cousin, the Respondent, who was licensed.

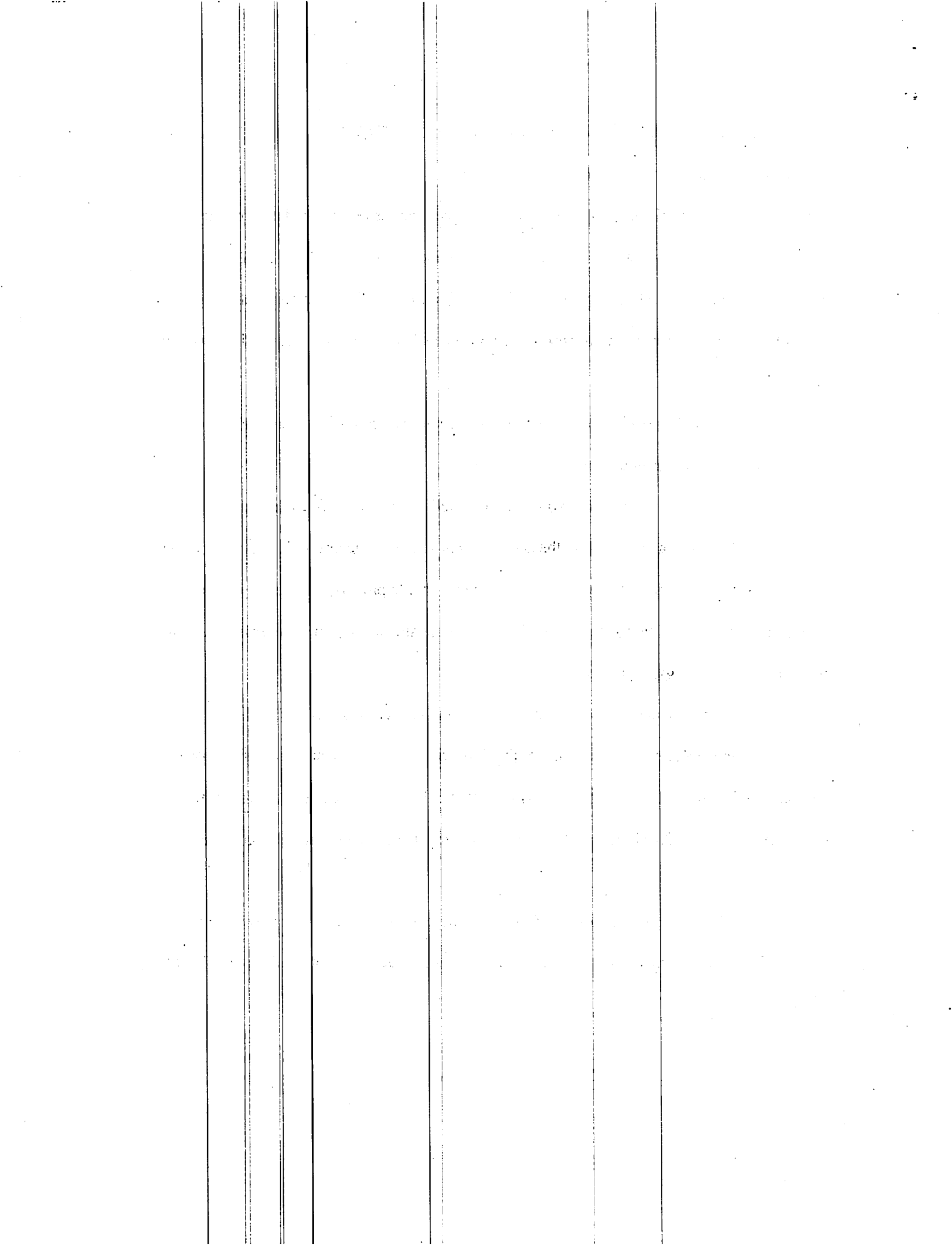
6. The Respondent never obtained the required permit to construct the deck around the Claimant's above-ground pool.

7. There were problems with the construction of the deck from the start. The Claimant and her husband noted that the deck was not square to the house; it was skewed. The Respondent re-did the work three times but was never able to properly square the deck to the house. In addition, the Respondent used pieces of composite decking in a piecemeal fashion so that it resembled a "jigsaw puzzle."

8. The last day the Respondent worked on the deck was March 7, 2019. Thereafter, Mr. Hamm made efforts to correct some of the deficiencies but was unable to do so, in part because the Respondent would promise to make repairs but then later refuse to provide the necessary materials. On March 19, 2019, the Claimant's husband told the Respondent not to return.

9. The Respondent never had the deck inspected to ensure that it was up to code.

10. The Claimant solicited other contractors who advised that the deck could not be fixed.



11. In April 2019, the Claimant's husband asked an inspector in Cecil County's Department of Permits and Inspections to look at the deck. Mark Dean, the building inspector, noted numerous problems with various aspects of the deck, including the following: the Respondent had used 2" x 6" joists instead of the required 2" x 8" joists; the deck was supported by wood deck screws instead of beams as required; the deck was hung incorrectly; the railing was improperly installed and was secured with wood screws rather than deck bolts; and the length of the joists required additional support beams, which the Respondent did not install. Mr. Dean advised the Claimant's husband that the deck was not salvageable because it was not constructed in accordance with the County Code and he needed to tear it down and start over with the proper permits.

12. On October 22, 2019, the Claimant got an estimate from CHF to rebuild the deck to the same specifications that the Respondent was supposed to have used; the estimate totaled \$19,210.00. (CL Ex. 4.)

## DISCUSSION

### THE BURDEN OF PROOF AND LEGAL FRAMEWORK

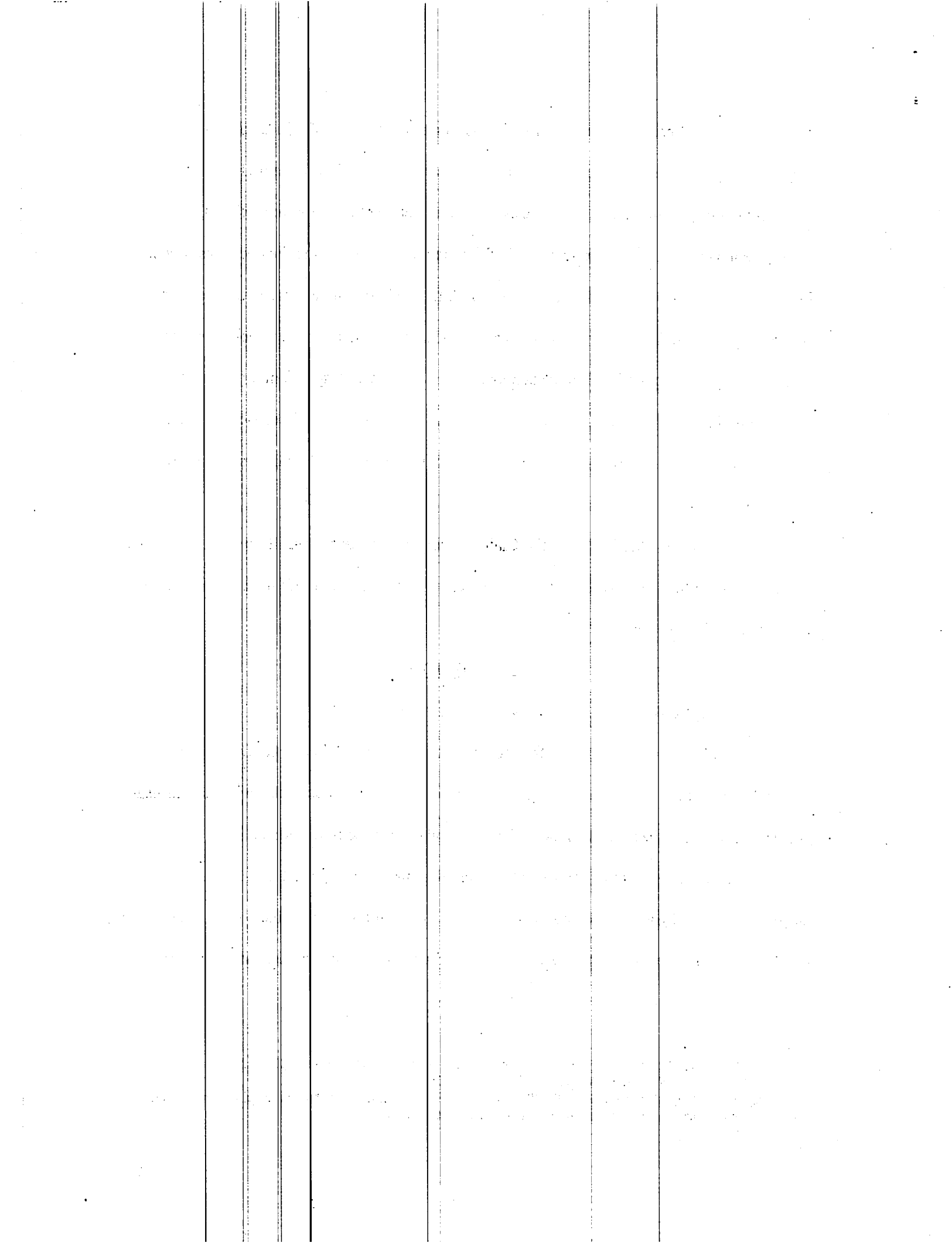
In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>7</sup> To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.<sup>8</sup>

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor . . . ."<sup>9</sup> "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete

<sup>7</sup> Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3).

<sup>8</sup> *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

<sup>9</sup> 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.").



home improvement.”<sup>10</sup> For the following reasons, I find that the Claimant has proven eligibility for compensation.

#### **STATUTORY PRE-REQUISITES**

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant is neither a relative of the Respondent nor an officer, partner, or employee of his company. The Claimant owns the subject property, which is her home, and owns only one other piece of real property in Maryland. The Claimant has no suit pending against the Respondent nor has the Claimant filed any insurance or other claims to compensate her for the Respondent’s defective work. Having met those qualifications, the Claim is therefore a compensable claim against the Fund, subject to its proof.

#### **ANALYSIS**

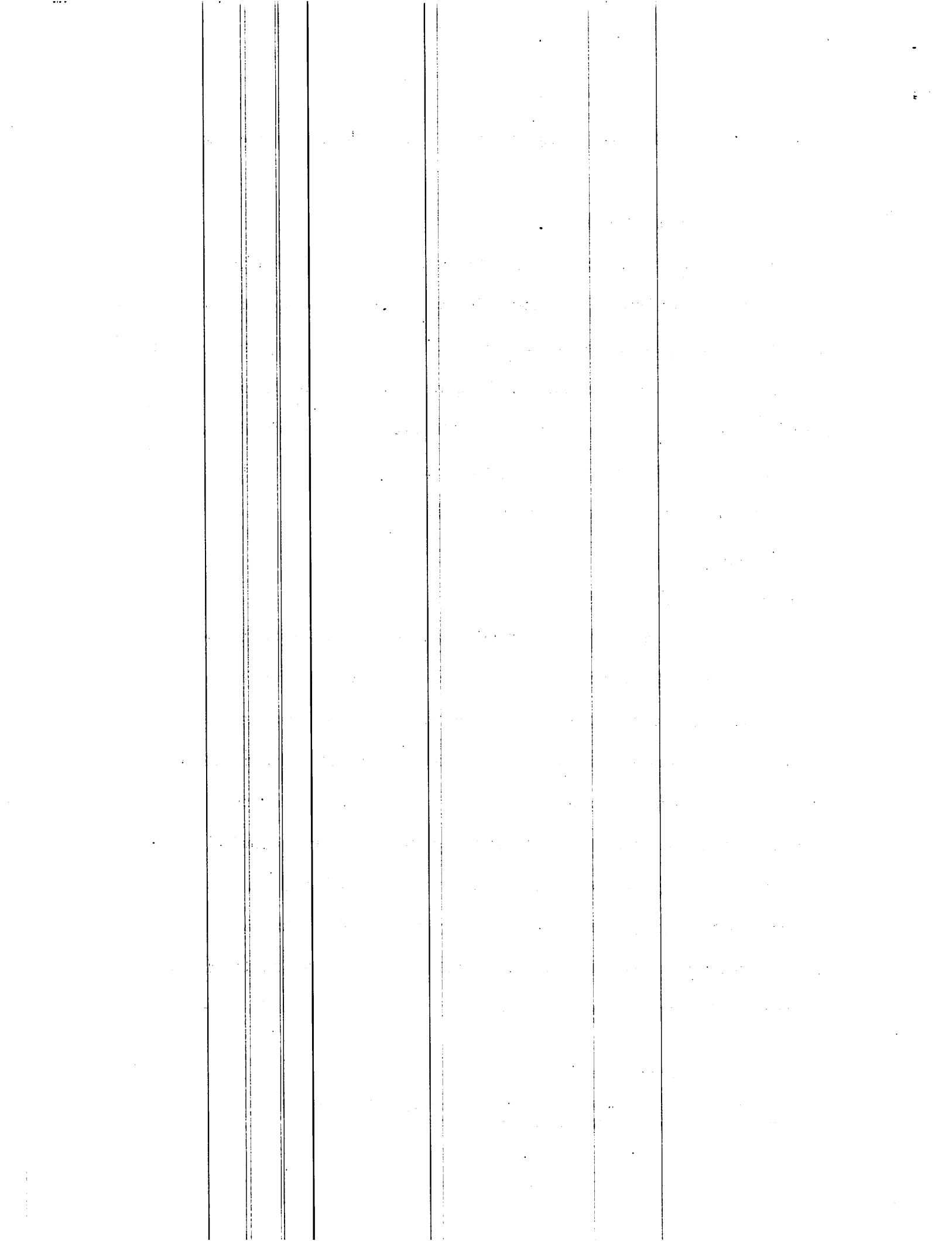
##### **Unworkmanlike Home Improvement**

The Claimant asserted and the Guaranty Fund conceded that the Respondent failed to complete the home improvement in a workmanlike fashion, specifically, the deck around the above-ground pool.<sup>11</sup> The construction of the deck required a permit from the Cecil County Department of Permits and Inspections. Between January and March 2019, the Respondent constructed a deck, including pouring footings and installing a deck and railings, all without the required permit. The Respondent contended that he believed the Claimant had obtained the required permit and that he had told her to call and set up the required inspections. He asserted various reasons for this alleged belief, some of which contradicted others. He indicated that he “assumed” the Claimant would get the permit; he then indicated that she told him that she had “already pulled the permit with the pool” and he did not need to get it; and finally, he stated that

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<sup>10</sup> Bus. Reg. § 8-401.

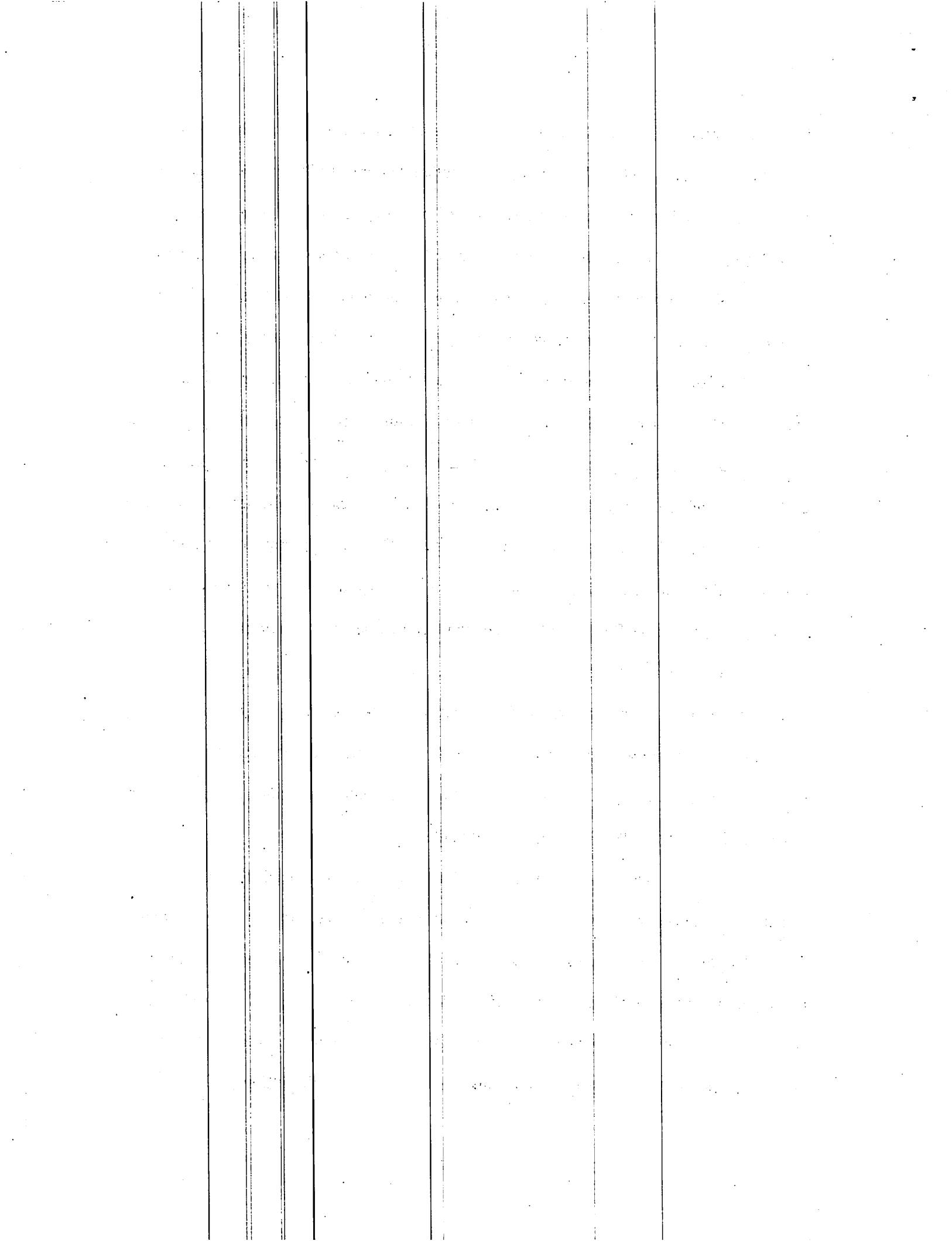
<sup>11</sup> The Claimant’s claim relates only to the portion of the Contract dealing with deck construction. She is not making any claim with regard to the rest of the work delineated in the Contract.



he saw a permit in "the window" and told the Claimant to call and arrange for the appropriate inspections. The Respondent claimed that it was not until after he had started work and asked the Claimant to call and arrange for an inspection of the work done so far that he learned that no permit had ever been pulled. He admitted that he continued the work, even knowing that there was no permit because he had already started. The Respondent alleged that this was his "only mistake" and that he "bent over backwards" trying to make the Claimant happy.

The Claimant firmly denied ever advising the Respondent that she had pulled the required permit for the deck. She denied having any permit in any of the windows of the house or that she had "pulled the permit with the pool" as the Respondent alleged. The Claimant explained that when she and her husband had the pool installed, they told the pool inspector that they planned to put in a deck at some point in the future. The pool inspector advised them that if they did so, they would need to get a permit, which is how they knew one was needed. There is simply no support for the Respondent's contention that the Claimant was responsible for obtaining the permit. Additionally, COMAR 09.08.01.08 clearly states that "[i]n the performance of any Home Improvement Contract it shall be the non-delegable duty and obligation of the prime contractor to secure, or see to the securing of, every permit, license, or special exception necessary to the proper completion of the contract according to applicable state or local building laws." The Respondent clearly failed in this duty.

I did not find the Respondent to be a credible witness. He asserted that all the work he completed complied with the County Code as he has been in business for thirty-four years and he "knows the Codes." The Respondent also insisted that he had installed two beams that are now missing from the photos of the deck and claimed that someone else must have removed them. His assertions are demonstrably false. First, there is a statement from Mr. Dean, the County building inspector, verifying that the work was not in compliance with the County Code, the





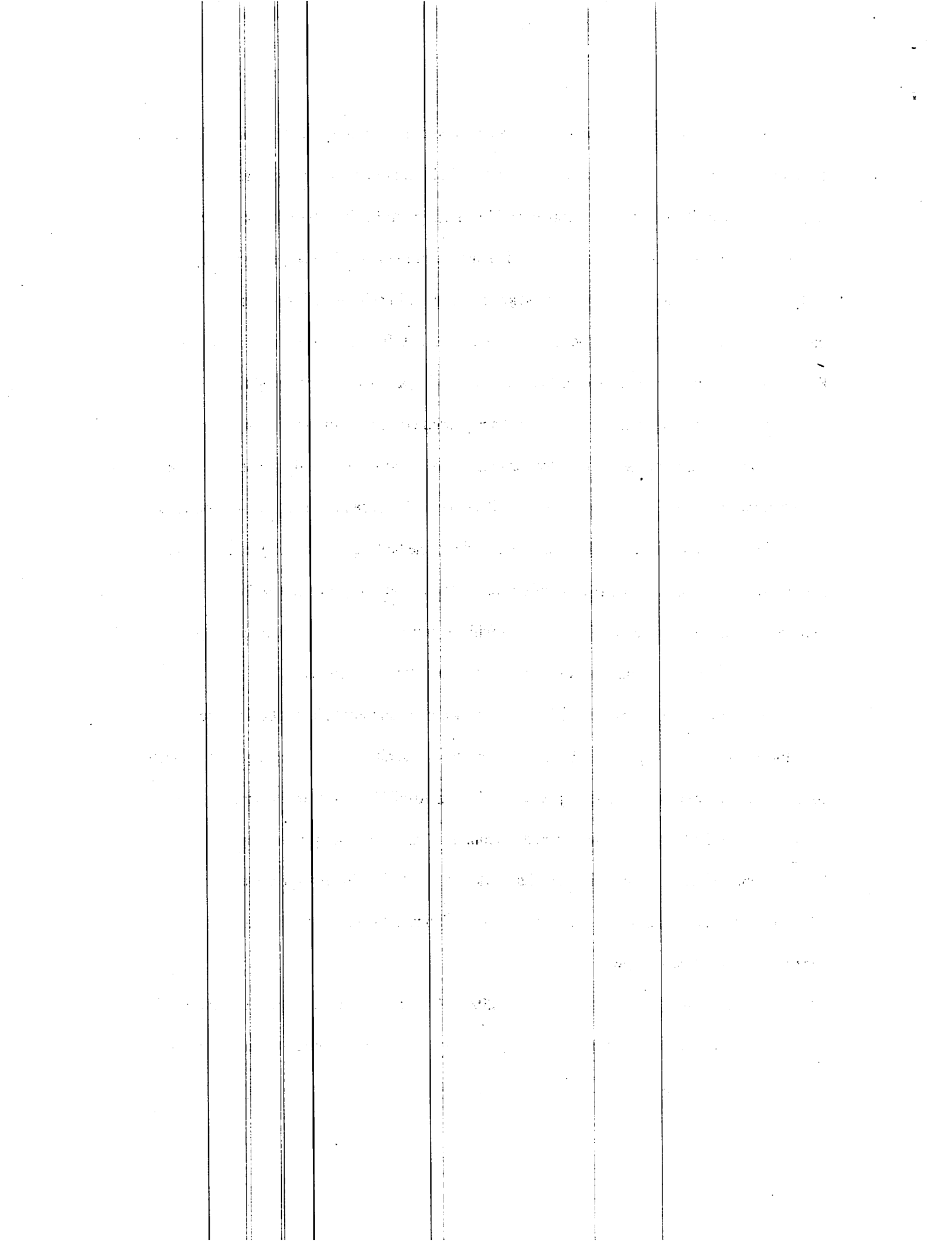
deck was unsafe as constructed, and it therefore needed to be torn down and rebuilt. (CL Ex. 5.)

Second, the Claimant and her husband provided credible testimony that no one has done anything to the deck since the Respondent and Mr. Hamm left the job, with the exception of the Claimant's husband trimming one of the deck boards next to the pool because it was very sharp and they were concerned their young grandson might hurt himself on it. Moreover, the photographs clearly show that no beams were installed. (CL Ex. 7.) Essentially, I found the Respondent's testimony to be inconsistent and self-serving and I give it no weight.

By contrast, the Claimant and her husband presented their testimony in a measured fashion, and the testimony was internally consistent and supported by the documentary evidence. The Claimant explained that she had hired the Respondent because he was a licensed contractor and had been recommended by Mr. Hamm, with whom she had a good working relationship. She stated that she wanted to hire a qualified contractor so that she would not end up in the situation in which she currently finds herself – with an unusable deck because it was so poorly constructed as to be unsafe and that did not meet County Code requirements.

As the Claimant described it, Mr. Dean advised that “shoddy” did not begin to cover the work the Respondent completed. The Claimant's husband testified about the long list of defects that Mr. Dean uncovered when he inspected the deck in April 2019. Among other things, Mr. Dean noted that the Respondent had used the wrong size joists, had not properly hung the deck, had not properly installed the railing, and had failed to install additional required support beams. Mr. Dean advised the Claimant's husband that the deck has not been constructed according to Code and could not be salvaged.

The Claimant explained that on May 6, 2021, Mr. Dean again inspected the deck, which had been unchanged since the Respondent stopped work on it, except for the trimming of a sharp



end of a board, and advised that "the structure has multiple code violations and for safety reasons should be demolished and reconstructed." (CL Ex. 5.)

There is no question that the work performed by the Respondent was unworkmanlike, as evidenced by the fact that it is not in compliance with the County Code and the County inspector advised that it is unsafe and needs to be torn down and rebuilt from scratch. It was the Fund's position that the Claimant has proven her eligibility for an award from the Fund; I agree.

*The Amount of the Actual Loss*

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.<sup>12</sup> The 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 intends to retain 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.<sup>13</sup>

The Claimant paid the Respondent a total of \$27,900.00 for work done under a contract with a price of \$24,000.00. The Claimant presented an estimate from CHF showing that the cost

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<sup>12</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

<sup>13</sup> COMAR 09.08.03.03B(3)(c).



to construct the deck will be \$19,200.00. While the CHF estimate reflects a deck size of sixteen feet by sixteen feet, that is clearly a typo. The Claimant explained that given the parameters of her yard, there is no room to construct a deck of that size. In addition, the Claimant testified that she told CHF that she wanted a quote to replace the deck the Respondent constructed. For those reasons, I find that the CHF estimate is a reliable estimate of the cost to construct the deck the Claimant originally contracted with the Respondent to provide. Accordingly, the Claimant's actual loss is calculated as follows:

Amount paid under the original contract:	\$27,900.00
Amount Claimant will have to pay to demolish the Respondent's work and complete the contract:	<u>+\$19,200.00</u> \$47,100.00
Less original contract price:	<u>-\$24,000.00</u>
Actual loss:	\$23,100.00

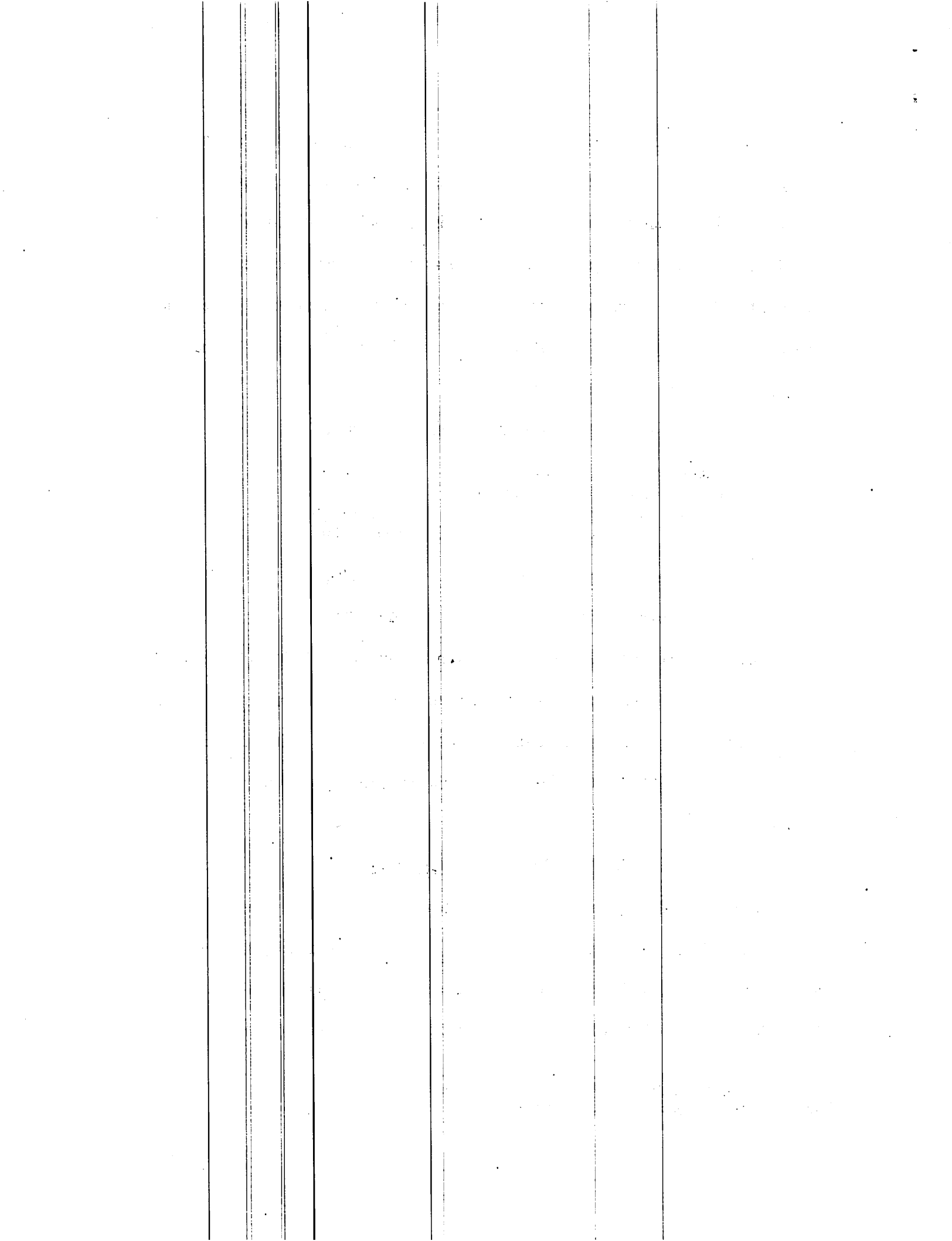
The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>14</sup> In this case, the Claimant's actual loss of \$23,100.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00.<sup>15</sup>

#### PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$23,100.00 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 \$20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

<sup>14</sup> Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

<sup>15</sup> Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).



**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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>16</sup> and

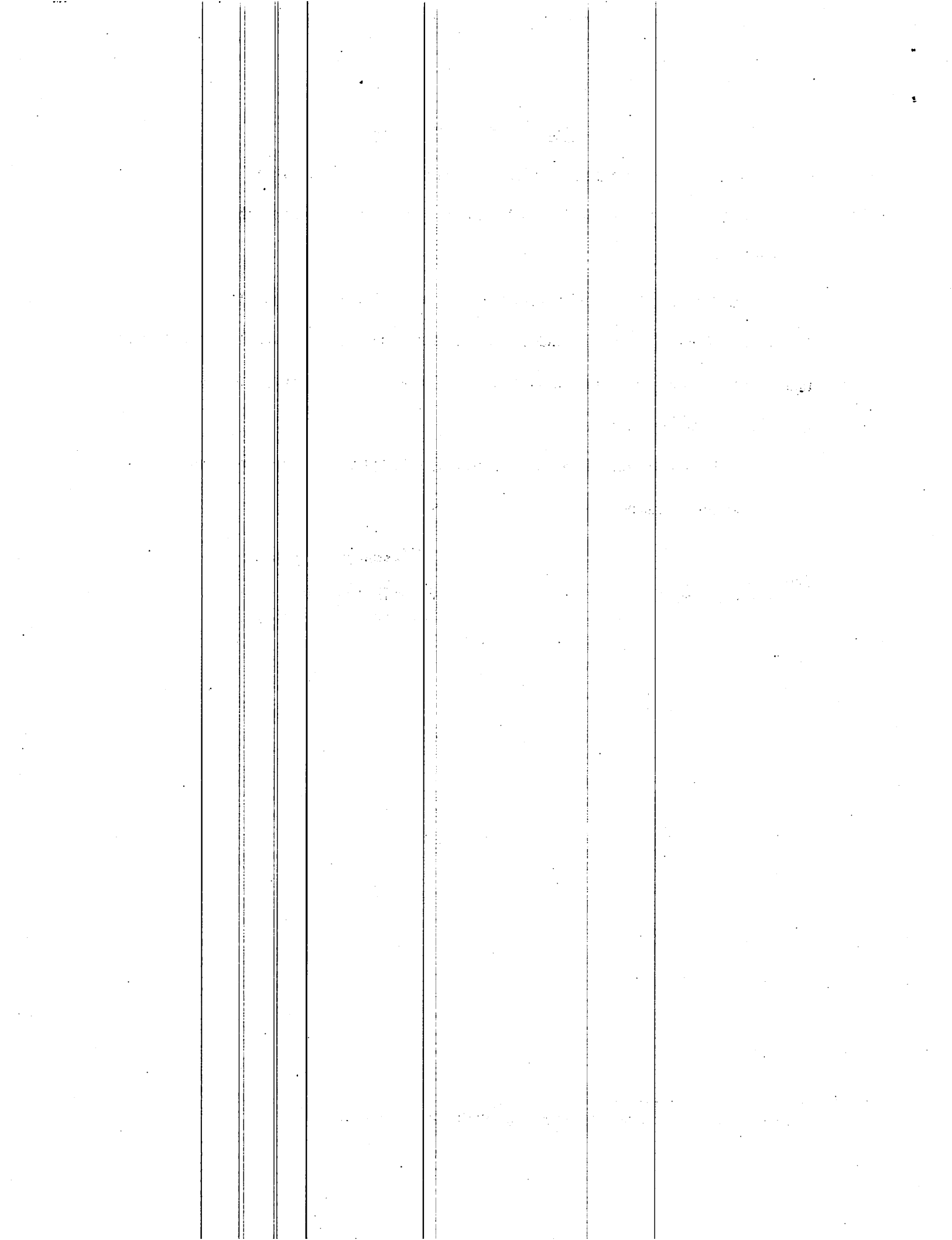
**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

July 19, 2021  
Date Decision Issued

*Susan H. Anderson*  
\_\_\_\_\_  
Susan H. Anderson  
Administrative Law Judge

SHA/da  
#192076

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





**PROPOSED ORDER**

***WHEREFORE, this 13<sup>th</sup> day of October, 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.***

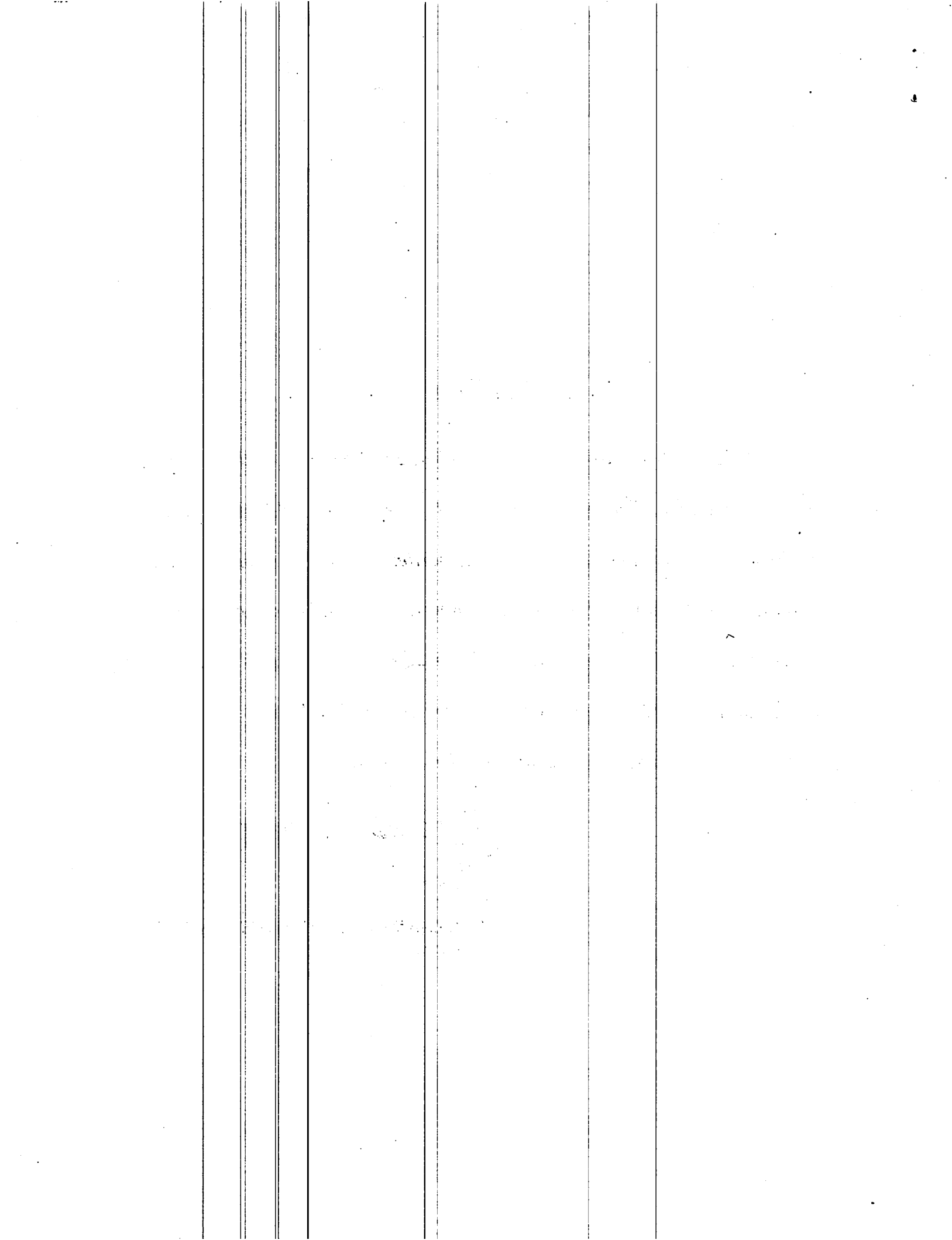
***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***



**IN THE MATTER OF THE CLAIM OF  
EDIE HARDY  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ACTS OR OMISSIONS OF  
CLIFFORD PETERSON T/A CLIFF  
PETERSON'S BAY COUNTRY  
BUILDERS**

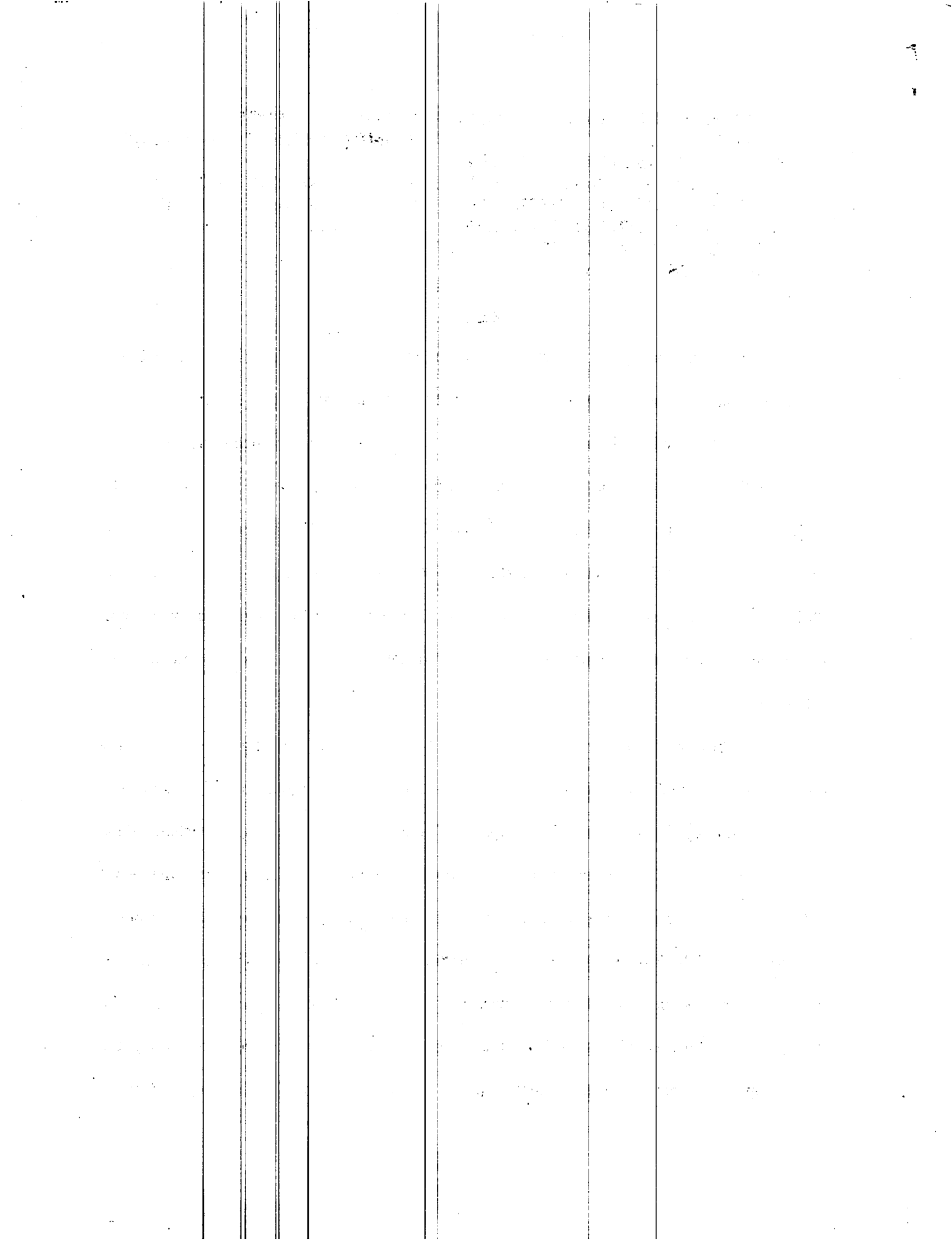
**\* MARYLAND HOME  
\* IMPROVEMENT COMMISSION  
\*  
\* MHIC CASE NO. 19(90)1539  
\* OAH CASE NO. LABOR-HIC-  
\* 02-21-07327  
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\* \* \* \* \*

**FINAL ORDER**

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on May 10, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on July 19, 2021, concluding that the homeowner, Edie Hardy (“Claimant”) suffered an actual loss as a result of the acts or omissions of Clifford Peterson t/a Cliff Peterson’s Bay Country Builders (collectively, “Contractor”). *ALJ Proposed Decision* p. 11. In a Proposed Order dated October 13, 2021, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On February 17, 2022, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General Hope Sachs appeared at the exceptions hearing on behalf of 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; and 3) 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 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 construction of a deck, the enclosure of a porch, and landscaping work at the Claimant's home. The ALJ found that the Contractor's construction of the deck under the contract was unworkmanlike, and that the Claimant suffered an actual loss of \$23,100.00, and recommended that the Commission award the Claimant \$20,000.00 from the Guaranty Fund. *ALJ's Proposed Decision* pp. 7-12.

On exception, the Contractor implicitly argued that he was denied due process because he "didn't receive the paperwork until 3 days before the [OAH] hearing" and because the Claimant had more time to present her case than he had to present his case.

The Commission finds that the Contractor received due process. Under COMAR 09.01.02.11, which governs Guaranty Fund claim hearings, there is no right to prehearing discovery. Therefore, the fact that the Contractor did not receive documents until three days before the hearing did not deprive him of due process. The Commission finds that the Contractor failed to demonstrate that the ALJ allowed the Claimant more time than him to present her case because the Claimant did not provide the transcript of the OAH hearing to the Commission. Assuming, *arguendo*, that the Claimant was allowed more time than the Contractor, the Contractor failed to demonstrate that the allowance of more time to the Claimant denied him due process because, without the transcript, the Commission has no basis to determine whether the allowance of more time to the Claimant was improper.

On exception, the Contractor also argued that the ALJ erred in calculating the Claimant's actual loss because the cost of the construction of the deck was only a small portion of the entire contract cost and the \$19,200.00 estimate to reconstruct the deck obtained by the Claimant was excessive. The Commission agrees that the ALJ erred in calculating the Claimant's actual loss

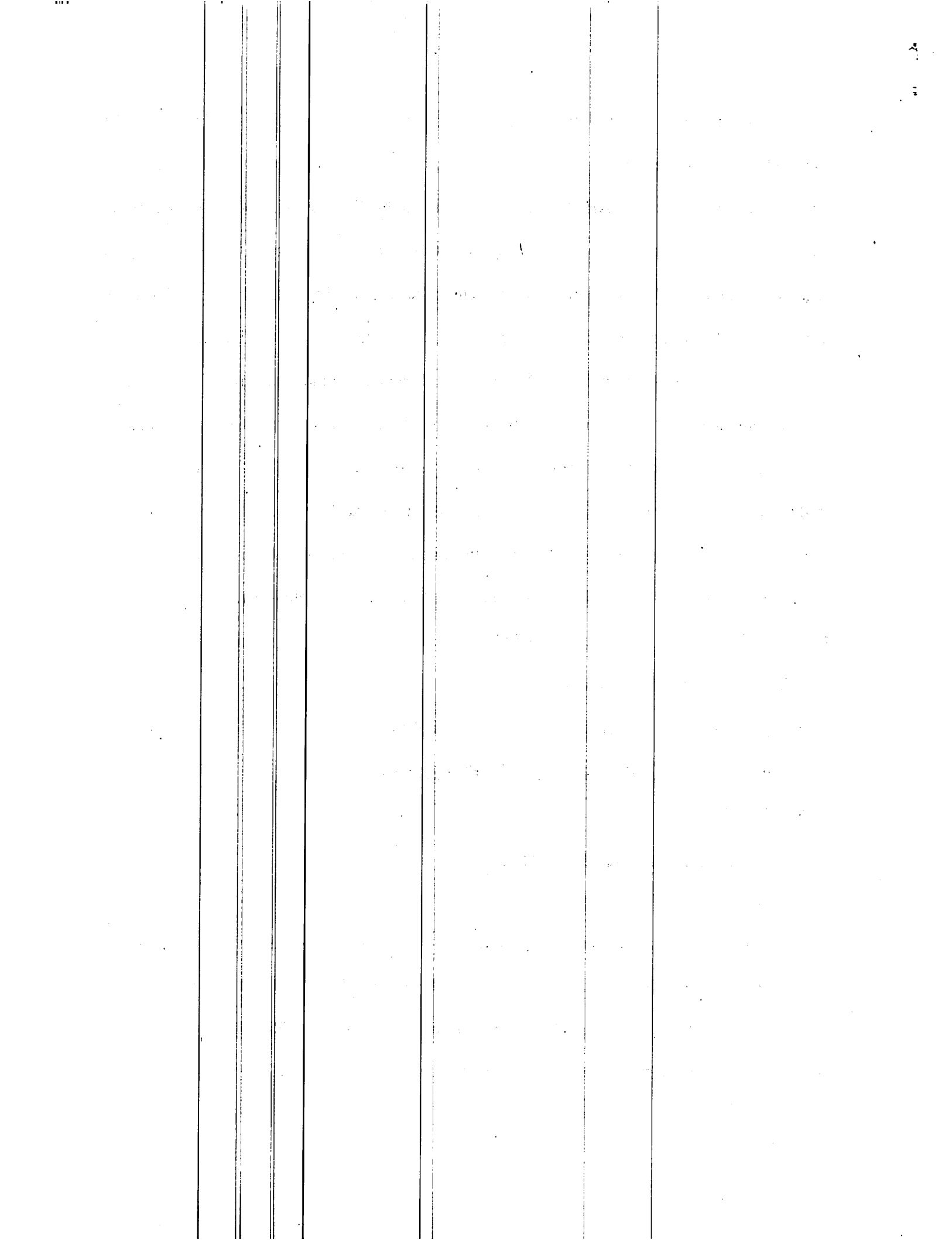


because the corrective estimate that the Claimant presented was for a sixteen feet by sixteen feet deck (OAH Claimant's Exhibit 4), whereas the contract between the parties called for a twelve feet by fourteen feet deck (OAH Hearing Claimant's Exhibit 1). The ALJ found that the sixteen feet by sixteen feet size of the deck in the corrective estimate was a typo. The Commission disagrees with the ALJ, as the corrective estimate includes a drawing of the deck that shows that it measures fifteen feet, ten inches, by fifteen feet, ten inches. (OAH Claimant's Exhibit 4.) Therefore, the Commission finds that, for purposes of calculating the Claimant's actual loss, the cost to construct a new deck to replace the defective deck installed by the Contractor must be reduced by 34.37% because the deck in the corrective estimate was 34.37% larger than the deck in the parties' original contract. The Commission also finds that the ALJ erred by excluding from the amount the Claimant paid to on behalf of the Contractor \$411.21 that the Claimant spent on materials at Lowe's on March 25, 2019, for use by the Contractor's employees to attempt to correct defects with the deck (OAH Claimant's Exhibits 2-3). Accordingly, the Commission calculates the Claimant's actual loss as follows:

\$28,311.21	Amount paid to or on behalf of the Contractor
+ <u>\$12,600.96</u>	<u>Cost to correct the Contractor's work</u>
\$40,912.17	
- <u>\$24,000.00</u>	<u>Original contract price</u>
\$16,912.17	Actual loss

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 24<sup>th</sup> day of February 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;





- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant is awarded \$16,912.17 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.

***Robert Altieri***  
**Chairperson –Panel**  
**Maryland Home Improvement**  
**Commission**

