

**IN THE MATTER OF THE CLAIM
OF KARL SCHNEIDER,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF PATRICK
COPERTINO,
T/A SOLAR HOME & ROOF USA,
LLC,
RESPONDENT**

*** BEFORE DEBORAH S. RICHARDSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-11232
* MHIC No.: 20 (75) 1002**

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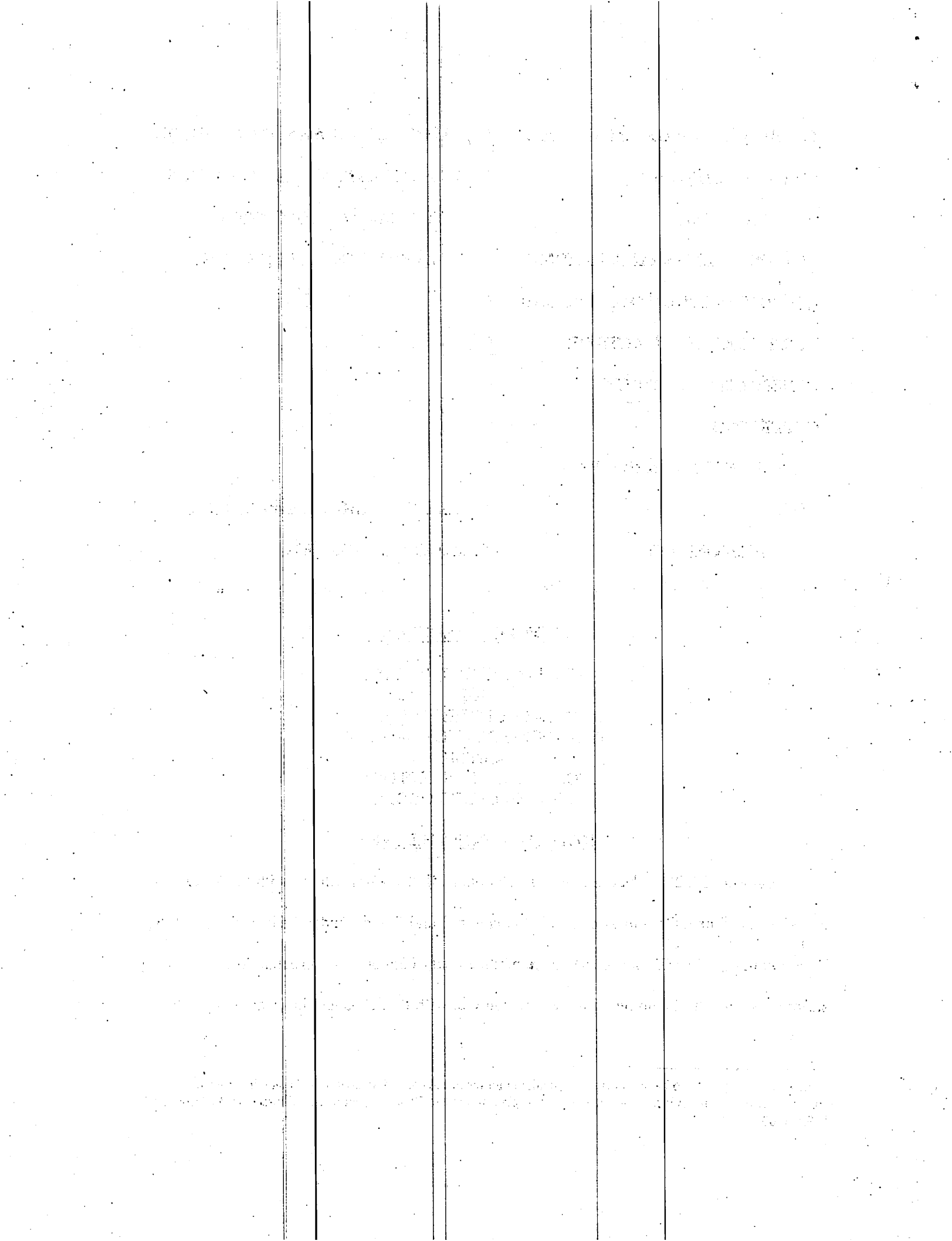
PROPOSED DECISION

**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 May 20, 2020, Karl Schneider (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 \$54,450.00¹ in actual losses allegedly suffered as a result of a home improvement contract with Patrick Copertino, trading as Solar

¹ The Claimant appears to have incorrectly calculated losses in the case of an abandoned home improvement contract. After hearing evidence on the matter, it is clear to me the Claimant claims actual losses in the amount of \$39,450.00.



Home & Roof USA, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a remote hearing on July 9, 2021 using the Webex videoconferencing platform. *Id.* §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Patrick Palmer, Esquire, represented the Claimant, who was present. Eric London, Assistant Attorney General, Department, represented the Fund.

After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. On June 1, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for July 9, 2021, at 9:30 a.m. via the Webex videoconferencing platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. Both counsel for the Fund and the Claimant mailed exhibits to the Respondent at the same address of record, neither of which were returned as undeliverable. Counsel for the Fund searched records from the Motor Vehicle Administration in May 2021, which revealed the same mailing address for the Respondent. I determined that the Respondent received proper notice yet

² All references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

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failed to appear, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

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

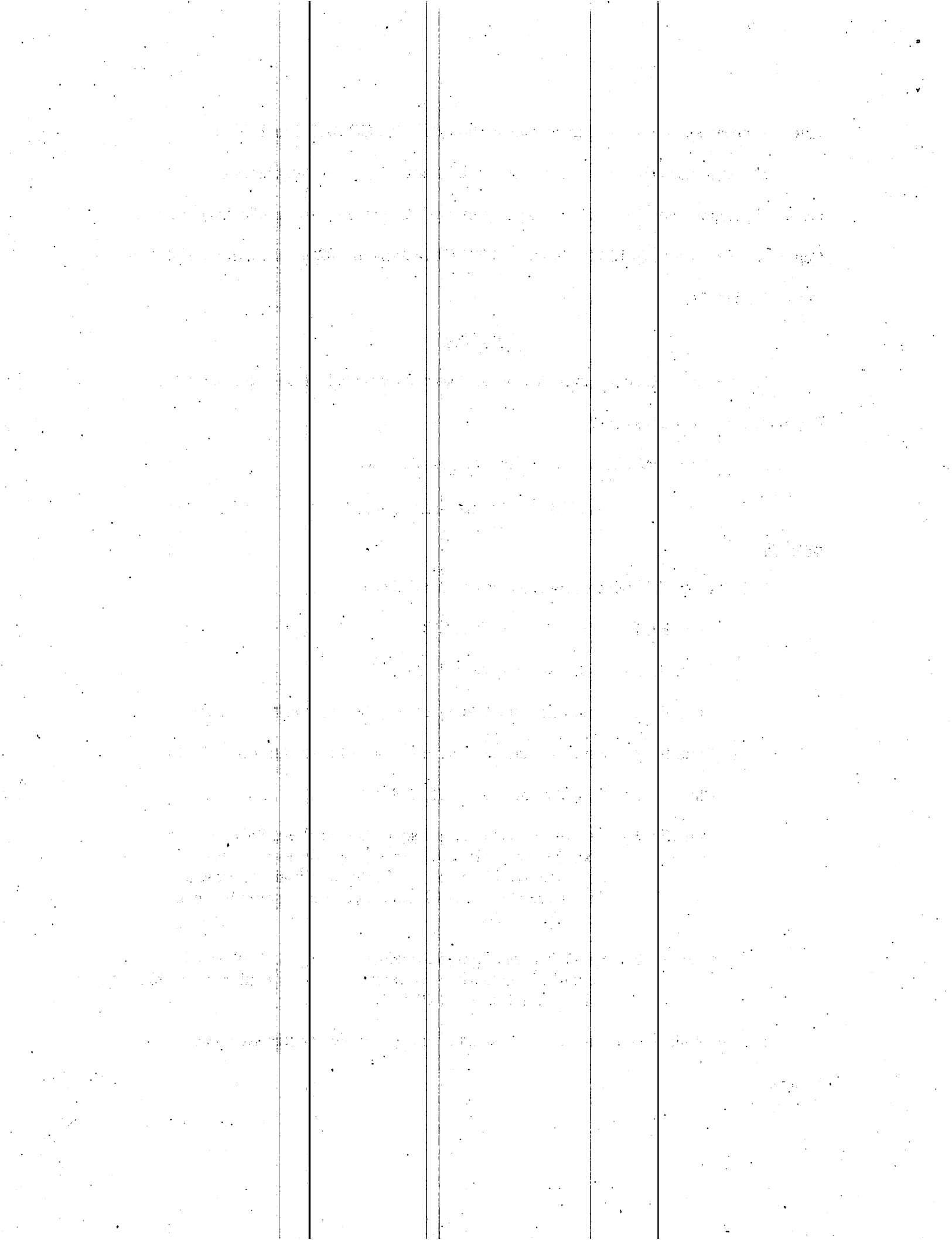
SUMMARY OF THE EVIDENCE

Exhibits

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

- Clmt. Ex. 1 - Contract, March 23, 2018
- Clmt. Ex. 2 - Visa Statement, April 3, 2018
- Clmt. Ex. 3 - Check from the Claimant to the Respondent, May 2, 2018
- Clmt. Ex. 4 - Bank of America Statement, March 14, 2018 to April 13, 2018
- Clmt. Ex. 5 - Visa Statement, July 18, 2018
- Clmt. Ex. 6 - Letter from Justin Hoyt, Esq. to Amanda Kerr, Solar Home & Roof, November 29, 2018; email from Ms. Kerr to Lisa Hachemeister, November 29, 2018; letter from Mr. Hoyt to Ms. Kerr, December 10, 2018; letter from Ms. Kerr to Mr. Hoyt, December 13, 2018
- Clmt. Ex. 7 - Email from Ms. Kerr to Mr. Hoyt, January 21, 2019; email from Mr. Hoyt to Ms. Kerr, January 3, 2019; email from Ms. Kerr to Mr. Hoyt, March 20, 2019

The Respondent did not appear and did not offer any exhibits for admission into evidence.



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

Fund Ex. 1 - Notice of Remote Hearing, June 1, 2021

Fund Ex. 2 - Hearing Order, April 22, 2021

Fund Ex. 3 - Licensing history, June 15, 2021

Fund Ex. 4 - Home Improvement Claim Form, May 20, 2020

Fund Ex. 5 - Letter from Joseph Tunney, Chairman, MHIC, to the Respondent, June 8, 2020

Testimony

The Claimant testified in his own behalf.

The Respondent did not appear and did not offer any testimony.

The Fund did not present any 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 numbers 01-113119 and 05-134279.

2. On March 23, 2018, the Claimant and the Respondent entered into a contract to furnish and install a roof and solar panels at the Claimant's home in Grasonville, Maryland (Contract).

3. The original agreed-upon Contract price was \$32,351.00. The parties agreed upon a change-order in the amount of \$7,099.00 making the agreed-upon Contract price \$39,450.00.

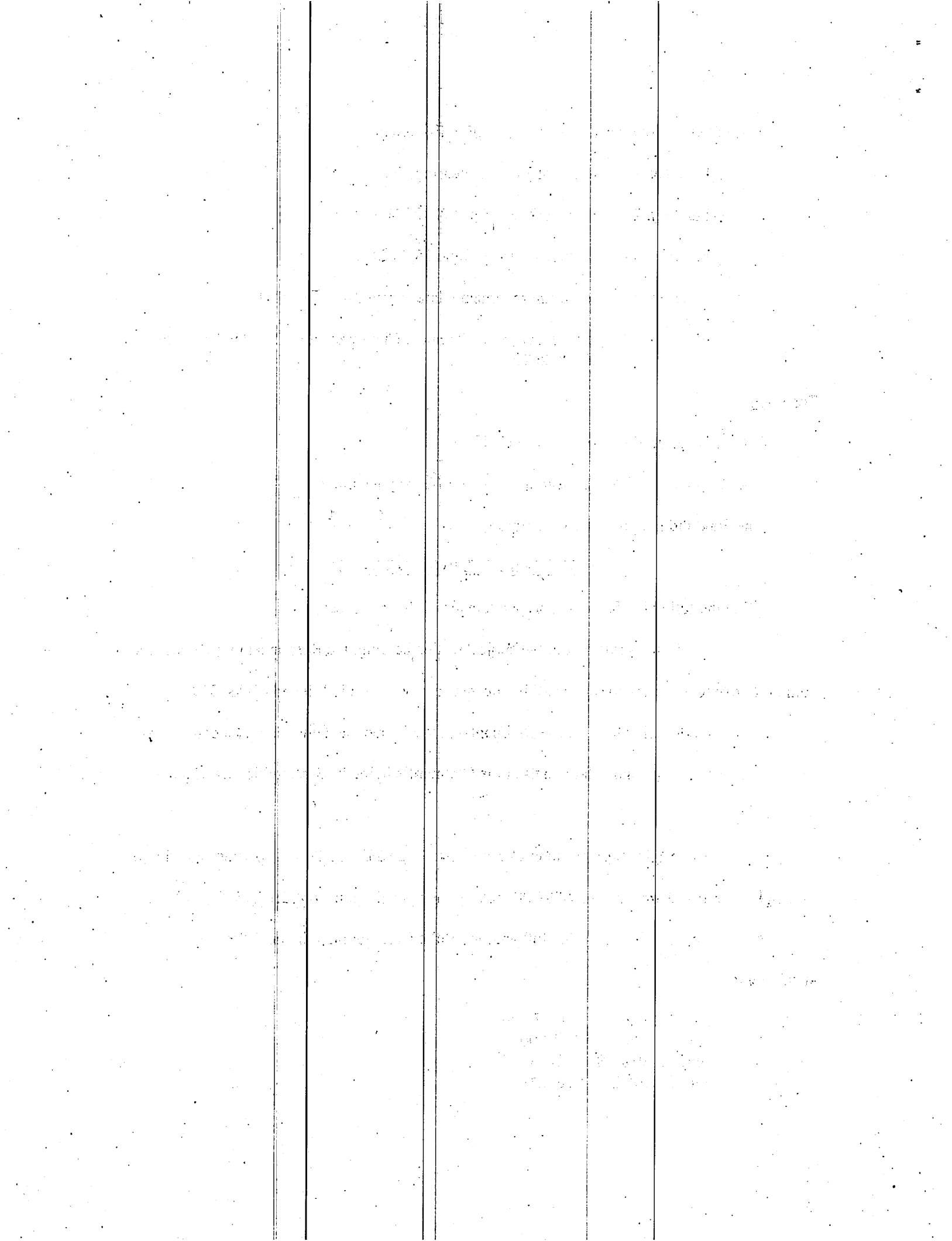
4. The Claimant paid the full amount of the Contract price in the following installments:

March 23, 2018 - \$10,675.00

April 11, 2018 - \$7,813.00

May 2, 2018 - \$17,262.00

June 26, 2018 - \$3,700.00



5. The estimated starting date in the Contract was "6 weeks" and the estimated completion date was "8 weeks."

6. In the months after the parties entered into the Contract, the Claimant contacted the Respondent several times about starting work. The Respondent never did so.

7. The Claimant retained an attorney, Justin Hoyt, who wrote a letter on November 29, 2018 to the Respondent stating that the Claimant had paid the full amount of the Contract but the Respondent had not yet started work.

8. On November 29, 2018, Ms. Kerr, an employee of the Respondent, sent an email to Mr. Hoyt stating that their schedule had been pushed back multiple times due to rain and that they expected to begin work at the Claimant's home in four weeks.

9. On December 10, 2018, Mr. Hoyt sent a letter to the Respondent stating that the delays could not be attributed to weather alone and demanding to know when the Respondent would be starting work.

10. On December 13, 2018, Ms. Kerr sent a letter to Mr. Hoyt stating that the delays were attributable to the Claimant's change in design plans.

11. On January 3, 2019, Mr. Hoyt sent an email to Ms. Kerr asking for an update on the status of the Contract as the Claimant had received no further communication from the Respondent.

12. On January 8, 2019, Ms. Kerr sent an email to Mr. Hoyt stating it had again been delayed because of weather but was working on getting the Claimant's project started as soon as possible.

13. On January 21, 2019, Mr. Hoyt sent an email to Ms. Kerr asking that someone reach out to the Claimant directly to confirm the status of the project. Mr. Hoyt reminded Ms. Kerr the Claimant had paid almost \$40,000.00 for a project that had not yet commenced.

14. On January 21, 2019, Ms. Kerr sent an email to Mr. Hoyt stating it would reach out to the Claimant that week about a start date and that it had his permit on hand.

15. On March 19, 2019, Mr. Hoyt sent an email to the Respondent asking for the status of the project as the Claimant had not heard anything from the Respondent in over two months.

16. On March 20, 2019, Ms. Kerr responded to Mr. Hoyt that she would get an update.

17. On a date after March 20, 2019, the Respondent stopped communicating with the Claimant and Mr. Hoyt.

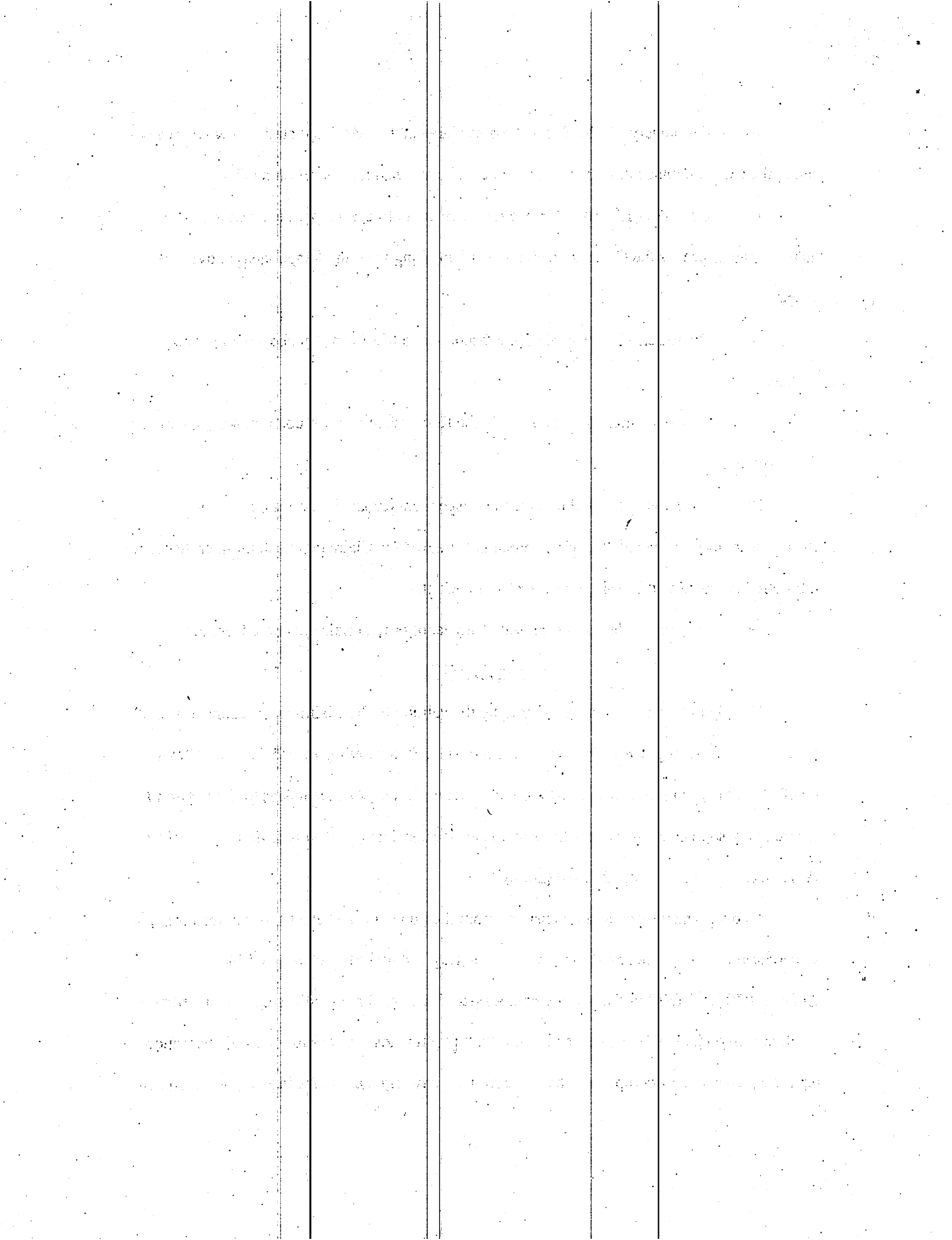
18. Mr. Hoyt attempted to have the Respondent engage in arbitration but the Respondent never answered. The Respondent never asked the Claimant to submit their dispute to arbitration pursuant to the arbitration clause in the Contract.

19. The Respondent never provided any labor or materials under the Contract.

DISCUSSION

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) ("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.

It is undisputed that the Respondent was a licensed home improvement contractor at the time of the events at issue. Likewise, there are no statutory impediments to the Claimant recovering from the Fund. *Id.* §§ 8-405(c), (d), (f), and (g).

The simple facts are that the parties entered into a Contract for the Respondent to furnish and install a roof and solar panels on the Claimant’s home. The Claimant paid the full \$39,450.00 owed to the Respondent under the Contract. The Claimant was eminently credible in explaining the timeline of events and the repeated promises and delays on the part of the Respondent. Ultimately, despite the full Contract amount having been paid, the Respondent did not one bit of work on this Contract. I find that the Respondent did not complete the Contract as required, and thus, abandoned the job, making the Claimant eligible for compensation from the Fund.

I note that the Contract contains a mandatory arbitration provision. (Clmt. Ex. 1). The Respondent did not respond to the Claimant’s request for arbitration, never demanded that the Claimant submit the dispute to arbitration, and he did not appear for the hearing. Therefore, I conclude that the Respondent’s right to insist on mandatory contractual arbitration was waived.

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 abandoned the Contract without doing any work.

Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR

09.08.03.03B(3)(a). The Claimant paid the full \$39,450.00 to the Respondent under the Contract, and that is therefore his actual loss.

The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$39,450.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual loss of \$39,450.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a).

I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(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;³ and

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

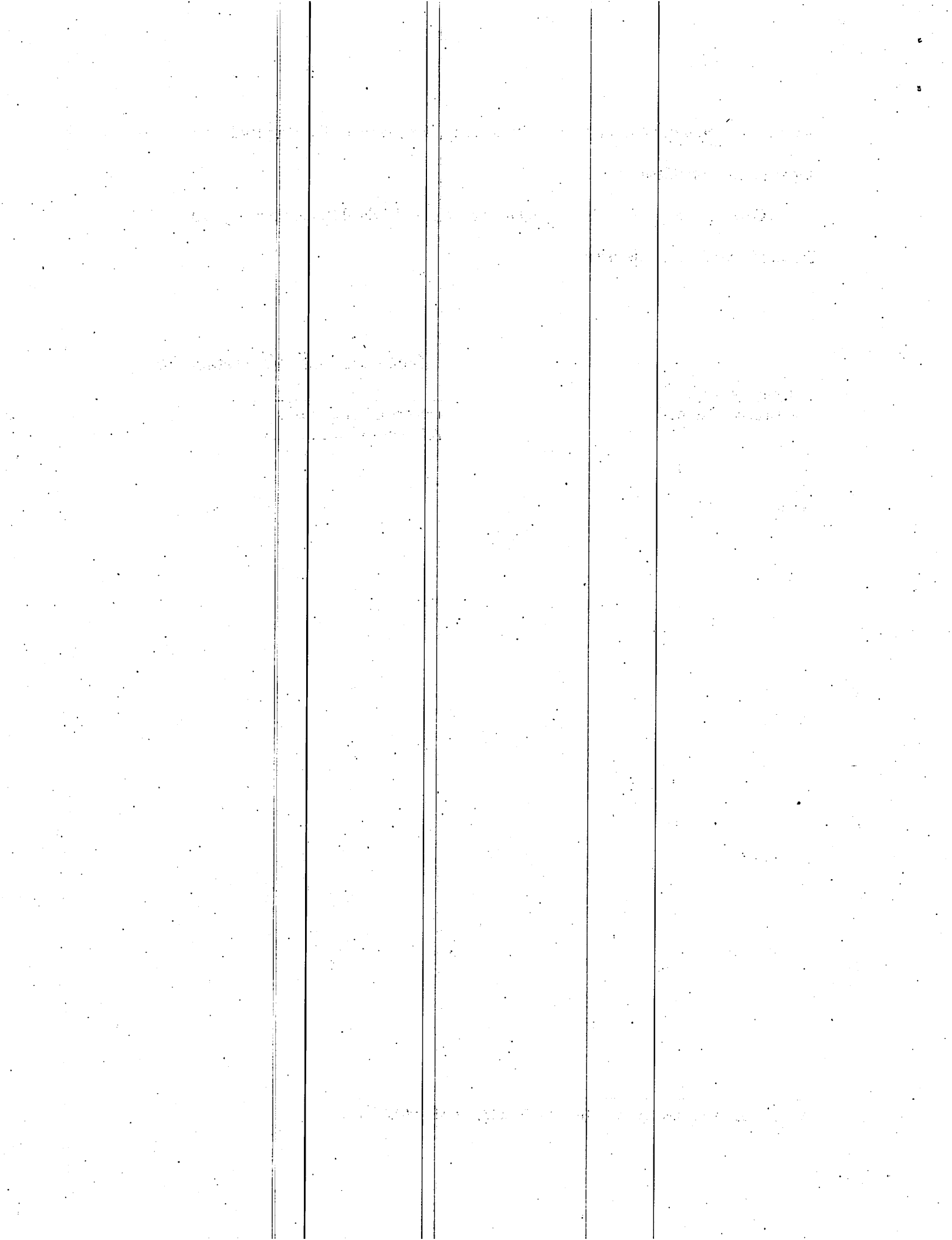
Deborah S. Richardson

September 7, 2021
Date Decision Issued

Deborah S. Richardson
Administrative Law Judge

DSR/emh
#193920

³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 8th 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***

