

IN THE MATTER OF THE CLAIM
OF JOHN GLEZEN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF MICHAEL JACOBS,
T/A JACOBS LADDER HOME
IMPROVEMENT,
RESPONDENT

* BEFORE ROBERT B. LEVIN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
*
*
* OAH No.: LABOR-HIC-02-21-10830
* MHIC No.: 20 (75) 1092
*

* * * * *

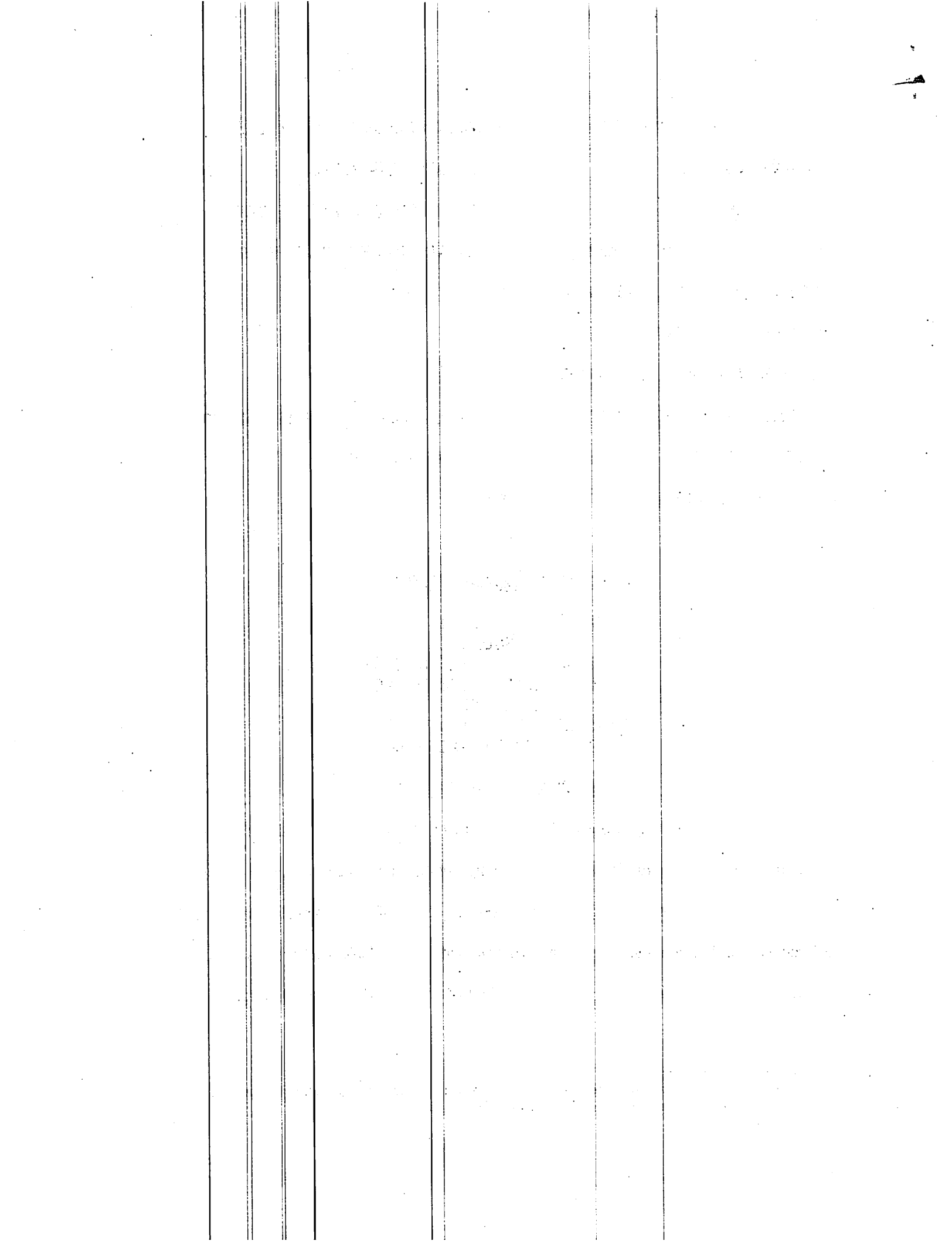
PROPOSED DECISION

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 18, 2020, John Glezen (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 \$3,200.00¹ in actual losses allegedly suffered as a result of a home improvement contract with Michael Jacobs, trading as Jacobs Ladder Home Improvement (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411

¹ At the hearing, the Claimant proposed to amend his claim by \$640.00, for a total amended claim amount of \$3,840.00. I will address the amendment in the Discussion below.



(2015).² On May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 1, 2021, I held a remote hearing from the OAH using Webex video conferencing. Bus. Reg. § 8-407(e); *see also* Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. 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. 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 exhibit on the Claimant's behalf:

- Clmt. Ex. 1 - Document titled "The Case Against Michael Jacobs MHIC #104312," undated, with the following attached photocopied items:
- "Points 1 & 2" page with photocopied excerpt from Master Bathroom Proposal, undated
 - "Points 3 & 4" page with two photographs, undated
 - "Point 4" page with one photograph, undated
 - "Point 5" page with excerpt from Master Bathroom Invoice, March 20, 2018
 - "Point 5" page with copy of Warranty, undated
 - "Point 5" page with Timeline of Events, undated
 - "Point 6" page with two photographs, undated

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

- "Point 7" page with copies of twelve checks, various dates
- "Point 7" page with copies of statement from and check paid to Midland Glass Co., March 12, 2018, and March 23, 2018 respectively
- "Point 7" page with copy of JV Decorating, LLC estimate, February 4, 2020

I admitted the following exhibit on the Respondent's behalf:

Resp. Ex. 1 - Letter from Respondent to MHIC, April 27, 2020, with the following attachments:

- Attachment #1: Photocopies of "RedGard Liquid Waterproofing and Crack Prevention Membrane," undated
- Attachment #2: Photograph of shower floor, undated
- Photograph of shower, undated
- Attachment #1 [sic]: The Tile Shop quote, May 16, 2017
- Attachment #2 [sic]: Photograph of Flexible Grout Admixture bottle, undated
- Attachment #3: Email chain among Complainant, Respondent and Eva Glezen (Complainant's spouse), March 14, 2018³
- Attachment #1 [sic] Master Bathroom Invoice, March 20, 2018
- Attachment #1 [sic]: Midland Glass Co. Invoice, June 22, 2018
- Attachment #2 [sic]: Email from Eva Glezen to Respondent, February 7, 2019
- Photograph of bathtub and shower seat, undated
- Attachment #3 [sic]: Warranty, December 1, 2017
- Punch Lists (two pages), undated
- Email chain among Eva Glezen, Complainant, and Respondent, October 22, 2017
- Email chain among Complainant, Respondent and Eva Glezen, March 14, 2018
- Complainant's check no. 1089 payable to Respondent, March 20, 2018
- Master Bathroom Proposal, May 25, 2017
- Email chain between Eva Glezen and Respondent, December 14-16, 2015
- Certificate of Liability Insurance, April 21, 2020

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

MHIC Ex. 1 - Hearing Order, April 22, 2021

MHIC Ex. 2 - Notice of Remote Hearing, May 20, 2021

MHIC Ex. 3 - Letter from Joseph Tunney, Chairman, MHIC, to Respondent, June 8, 2020, with attached Home Improvement Claim Form, May 9, 2020

MHIC Ex. 4 - Licensing information printout for the Respondent, June 17, 2021

³ This email chain is included twice in Resp. Ex. 1.

Testimony

The Claimant testified and did not present other witnesses.

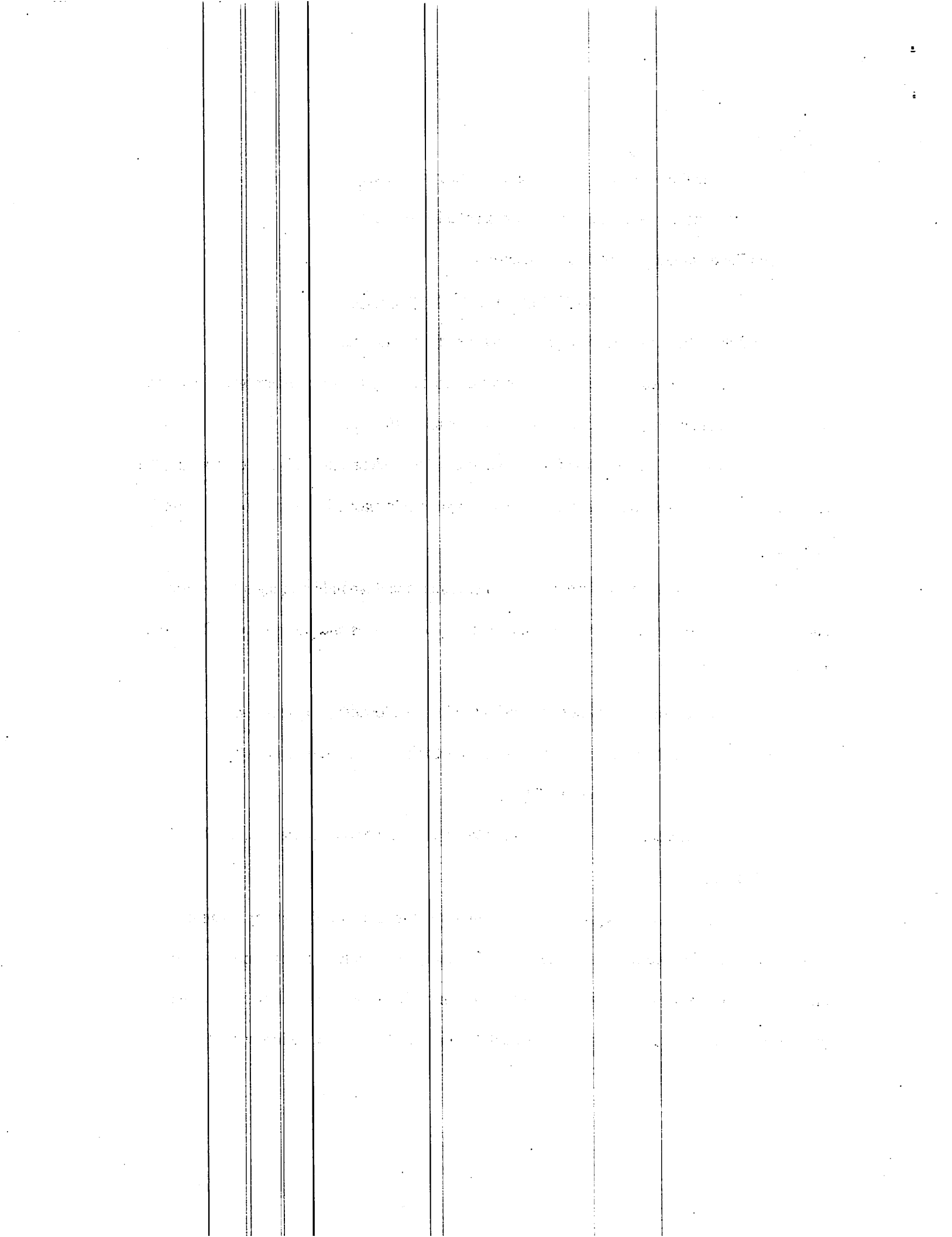
The Respondent testified and did not present other witnesses.

The Fund did not present witness 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 104312.
2. On May 25, 2017, the Claimant and the Respondent entered into a contract for the Respondent to extensively remodel the Claimant's residence's master bathroom for \$21,470.00 (Contract).
3. The Contract required, among other things, the Respondent to install new green board on the tub wall and the shower walls, and to "[s]eal all seams and waterproof." (Resp. Ex. 1, page marked "Encl 2".)
4. Green board is a type of drywall used in moist locations to prevent mold.
5. The Contract also required, among other things, the Respondent to "[i]ninstall new cement board on floors and shower seat." (*Id.*).
6. The Respondent's work pursuant to the Contract began on May 25, 2017, and ended on March 20, 2018.
7. The Respondent provided the Claimant a written, express warranty document by which the Respondent warranted that for a period of one year from the date of completion, the master bathroom would remain free from all defects in workmanship and materials provided by the Respondent. This warranty document stated that that the date of completion was December 1,



2017. However, as a result of the Respondent's providing additional work and materials pursuant to a punch list, the actual date of completion was March 20, 2018.

8. On March 20, 2018, the Respondent submitted his Final Bathroom Invoice in the amount of \$24,395.00 to the Claimant.

9. The Claimant paid the full contract price of \$24,395.00 to the Respondent. The contract price had increased from \$21,470.00 to \$24,395.00 as a result of changes to which the Claimant and the Respondent verbally agreed, which increased the overall cost for the bathroom project.

10. The Respondent installed new green board on the shower walls.

11. The Respondent sealed the shower walls, floor and shower seat with RedGard Liquid Waterproofing and Crack Prevention Membrane (RedGard.)

12. The Respondent did not install green board in or on the shower seat.

13. The Respondent installed the shower seat using cement board, with particle board over the cement board and RedGard.

14. In February 2019, the Claimant first noticed a crack in the shower seat caused by swelling of the wood from water.

15. On February 7, 2019, the Claimant notified the Respondent of water damage in the shower.

16. The Respondent responded that his express warranty had expired and he would not do anything to remedy the water damage unless the Claimant made an additional payment.

17. The Claimant refused to make an additional payment.

18. The shower was unusable due to water damage.

Year	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100																																																																																																																																																																	
Population	150,000,000	155,000,000	160,000,000	165,000,000	170,000,000	175,000,000	180,000,000	185,000,000	190,000,000	195,000,000	200,000,000	205,000,000	210,000,000	215,000,000	220,000,000	225,000,000	230,000,000	235,000,000	240,000,000	245,000,000	250,000,000	255,000,000	260,000,000	265,000,000	270,000,000	275,000,000	280,000,000	285,000,000	290,000,000	295,000,000	300,000,000	305,000,000	310,000,000	315,000,000	320,000,000	325,000,000	330,000,000	335,000,000	340,000,000	345,000,000	350,000,000	355,000,000	360,000,000	365,000,000	370,000,000	375,000,000	380,000,000	385,000,000	390,000,000	395,000,000	400,000,000	405,000,000	410,000,000	415,000,000	420,000,000	425,000,000	430,000,000	435,000,000	440,000,000	445,000,000	450,000,000	455,000,000	460,000,000	465,000,000	470,000,000	475,000,000	480,000,000	485,000,000	490,000,000	495,000,000	500,000,000	505,000,000	510,000,000	515,000,000	520,000,000	525,000,000	530,000,000	535,000,000	540,000,000	545,000,000	550,000,000	555,000,000	560,000,000	565,000,000	570,000,000	575,000,000	580,000,000	585,000,000	590,000,000	595,000,000	600,000,000	605,000,000	610,000,000	615,000,000	620,000,000	625,000,000	630,000,000	635,000,000	640,000,000	645,000,000	650,000,000	655,000,000	660,000,000	665,000,000	670,000,000	675,000,000	680,000,000	685,000,000	690,000,000	695,000,000	700,000,000	705,000,000	710,000,000	715,000,000	720,000,000	725,000,000	730,000,000	735,000,000	740,000,000	745,000,000	750,000,000	755,000,000	760,000,000	765,000,000	770,000,000	775,000,000	780,000,000	785,000,000	790,000,000	795,000,000	800,000,000	805,000,000	810,000,000	815,000,000	820,000,000	825,000,000	830,000,000	835,000,000	840,000,000	845,000,000	850,000,000	855,000,000	860,000,000	865,000,000	870,000,000	875,000,000	880,000,000	885,000,000	890,000,000	895,000,000	900,000,000	905,000,000	910,000,000	915,000,000	920,000,000	925,000,000	930,000,000	935,000,000	940,000,000	945,000,000	950,000,000	955,000,000	960,000,000	965,000,000	970,000,000	975,000,000	980,000,000	985,000,000	990,000,000	995,000,000	1,000,000,000																																																																																																																																													
GDP	100,000,000,000	110,000,000,000	120,000,000,000	130,000,000,000	140,000,000,000	150,000,000,000	160,000,000,000	170,000,000,000	180,000,000,000	190,000,000,000	200,000,000,000	210,000,000,000	220,000,000,000	230,000,000,000	240,000,000,000	250,000,000,000	260,000,000,000	270,000,000,000	280,000,000,000	290,000,000,000	300,000,000,000	310,000,000,000	320,000,000,000	330,000,000,000	340,000,000,000	350,000,000,000	360,000,000,000	370,000,000,000	380,000,000,000	390,000,000,000	400,000,000,000	410,000,000,000	420,000,000,000	430,000,000,000	440,000,000,000	450,000,000,000	460,000,000,000	470,000,000,000	480,000,000,000	490,000,000,000	500,000,000,000	510,000,000,000	520,000,000,000	530,000,000,000	540,000,000,000	550,000,000,000	560,000,000,000	570,000,000,000	580,000,000,000	590,000,000,000	600,000,000,000	610,000,000,000	620,000,000,000	630,000,000,000	640,000,000,000	650,000,000,000	660,000,000,000	670,000,000,000	680,000,000,000	690,000,000,000	700,000,000,000	710,000,000,000	720,000,000,000	730,000,000,000	740,000,000,000	750,000,000,000	760,000,000,000	770,000,000,000	780,000,000,000	790,000,000,000	800,000,000,000	810,000,000,000	820,000,000,000	830,000,000,000	840,000,000,000	850,000,000,000	860,000,000,000	870,000,000,000	880,000,000,000	890,000,000,000	900,000,000,000	910,000,000,000	920,000,000,000	930,000,000,000	940,000,000,000	950,000,000,000	960,000,000,000	970,000,000,000	980,000,000,000	990,000,000,000	1,000,000,000,000																																																																																																																																																																																																																													
Per Capita GDP	666.67	709.68	750.00	787.03	823.53	860.00	896.43	932.84	969.23	1,005.62	1,042.00	1,078.37	1,114.71	1,151.00	1,187.31	1,223.53	1,259.72	1,295.87	1,331.97	1,368.03	1,404.06	1,440.06	1,476.03	1,511.97	1,547.88	1,583.75	1,619.58	1,655.37	1,691.12	1,726.83	1,762.50	1,798.13	1,833.72	1,869.27	1,904.78	1,940.25	1,975.68	2,011.07	2,046.42	2,081.73	2,117.00	2,152.23	2,187.42	2,222.57	2,257.68	2,292.75	2,327.78	2,362.77	2,397.72	2,432.63	2,467.50	2,502.33	2,537.12	2,571.87	2,606.58	2,641.25	2,675.88	2,710.47	2,745.02	2,779.53	2,814.00	2,848.43	2,882.82	2,917.17	2,951.48	2,985.75	3,019.98	3,054.17	3,088.32	3,122.43	3,156.50	3,190.53	3,224.52	3,258.47	3,292.38	3,326.25	3,360.08	3,393.87	3,427.62	3,461.33	3,495.00	3,528.63	3,562.22	3,595.77	3,629.28	3,662.75	3,696.18	3,729.57	3,762.92	3,796.23	3,829.50	3,862.73	3,895.92	3,929.07	3,962.18	3,995.25	4,028.28	4,061.27	4,094.22	4,127.13	4,160.00	4,192.83	4,225.62	4,258.37	4,291.08	4,323.75	4,356.38	4,388.97	4,421.52	4,454.03	4,486.50	4,518.93	4,551.32	4,583.67	4,615.98	4,648.25	4,680.48	4,712.67	4,744.82	4,776.93	4,809.00	4,841.03	4,873.02	4,904.97	4,936.88	4,968.75	4,999.58	5,030.37	5,061.12	5,091.83	5,122.50	5,153.13	5,183.72	5,214.27	5,244.78	5,275.25	5,305.68	5,336.07	5,366.42	5,396.73	5,427.00	5,457.23	5,487.42	5,517.57	5,547.68	5,577.75	5,607.78	5,637.77	5,667.72	5,697.63	5,727.50	5,757.33	5,787.12	5,816.87	5,846.58	5,876.25	5,905.88	5,935.47	5,964.92	5,994.33	6,023.70	6,053.03	6,082.32	6,111.57	6,140.78	6,169.95	6,199.08	6,228.17	6,257.22	6,286.23	6,315.20	6,344.13	6,373.02	6,401.87	6,430.68	6,459.45	6,488.18	6,516.87	6,545.52	6,574.13	6,602.70	6,631.23	6,659.72	6,688.17	6,716.58	6,744.95	6,773.28	6,801.57	6,829.82	6,858.03	6,886.20	6,914.33	6,942.42	6,970.47	6,998.48	7,026.45	7,054.38	7,082.27	7,110.12	7,137.93	7,165.70	7,193.43	7,221.12	7,248.77	7,276.38	7,303.95	7,331.48	7,358.97	7,386.42	7,413.83	7,441.20	7,468.53	7,495.82	7,523.07	7,550.28	7,577.45	7,604.58	7,631.67	7,658.72	7,685.73	7,712.70	7,739.63	7,766.52	7,793.37	7,820.18	7,846.95	7,873.68	7,900.37	7,927.02	7,953.63	7,980.20	8,006.73	8,033.22	8,059.67	8,086.08	8,112.45	8,138.78	8,165.07	8,191.32	8,217.53	8,243.70	8,269.83	8,295.92	8,321.97	8,347.98	8,373.95	8,400.88	8,426.77	8,452.62	8,478.43	8,504.20	8,529.93	8,555.62	8,581.27	8,606.88	8,632.45	8,657.98	8,683.47	8,708.92	8,734.33	8,759.70	8,785.03	8,810.32	8,835.57	8,860.78	8,885.95	8,911.08	8,936.17	8,961.22	8,986.23	9,011.20	9,036.13	9,061.02	9,085.87	9,110.68	9,135.45	9,160.18	9,184.87	9,209.52	9,234.13	9,258.70	9,283.23	9,307.72	9,332.17	9,356.58	9,380.95	9,405.28	9,429.57	9,453.82	9,478.03	9,502.20	9,526.33	9,550.42	9,574.47	9,598.48	9,622.45	9,646.38	9,670.27	9,694.12	9,717.93	9,741.70	9,765.43	9,789.12	9,812.77	9,836.38	9,859.95	9,883.48	9,906.97	9,930.42	9,953.83	9,977.20	10,000.53

19. The Claimant paid a total of \$3,840.00 to two contractors (he paid \$3,200.00 to JV Decorating, LLC (JV) and he paid \$640.00 to Midland Glass Co. (Midland Glass)), to repair the shower area and shower seat.

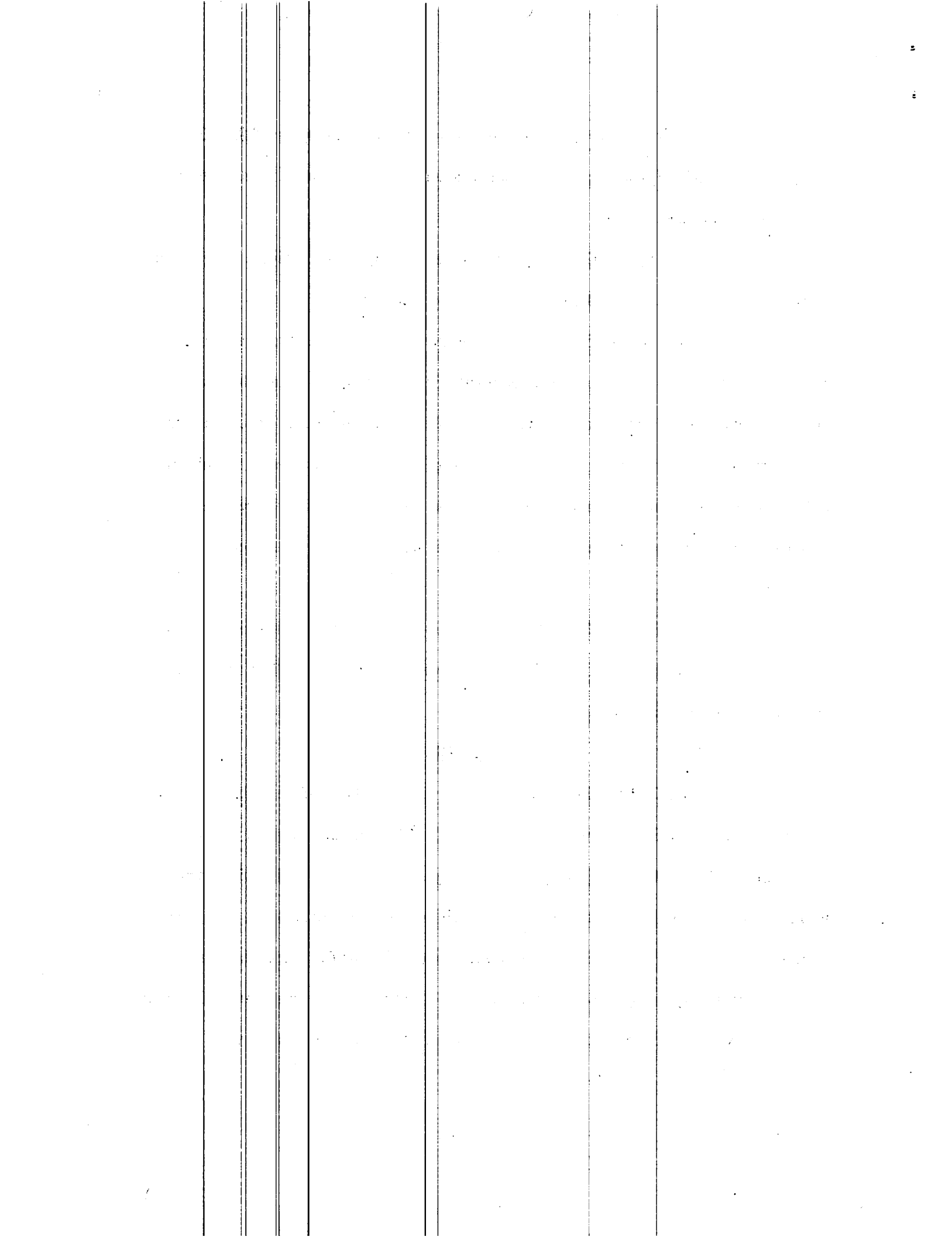
20. On February 4, 2020, the Claimant contracted with JV to repair the shower and shower bench for the total price of \$3,200.00, which the Claimant paid.

21. JV performed the following repair work: demolition of the shower and shower bench; removal and disposal of the shower floor and 36 inches of the tile around the shower; installation of a new bathroom shower floor and 36 inches of wall tile and the bench (shower seat); installation of a liner on the shower floor (18 inches on the walls and bench to avoid any leaks); installation of Durock (cement board) on the wall where the ceramic was removed; installation of new ceramic on the walls and bench; and application of grout and sealer, as necessary.

22. On March 23, 2020, the Claimant paid \$640.00 to Midland Glass to remove and then reinstall the glass shower panels and door, which was necessary so that JV would have access to the shower area to perform its work.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). The Respondent bears the burden to establish by a preponderance of the evidence his affirmative defense that the Claimant should not be awarded any amount from the Fund because the Respondent claims that his



express warranty expired before the Claimant notified the Respondent of the water damage in the shower area. COMAR 28.02.01.21K(1), (2)(a) and 2(b).

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.

The Parties' Contentions

The Claimant argued that the Contract required the Respondent to use green board, not the RedGard waterproofing material the Respondent used. He contended this substitution was an unapproved change in the work required under the Contract, and resulted in water damage to the shower area, including the shower seat. He argued that the alleged lack of waterproofing could not have been discovered until February 7, 2019, when the water damage became visible and he notified the Respondent of this problem.

The Claimant argued that the Respondent's work was actually completed on March 20, 2018, the date of the Respondent's final invoice, so that the one year express warranty had not yet expired by February 7, 2019, when the Claimant notified the Respondent of the water damage.

The Claimant further argued that the demolition of the shower area was required to remedy the water damage and prevent any future leaks. He paid and sought recovery of \$3,840.00 from the Fund for the repairs (\$3,200.00 he paid to JV for the physical repairs and \$640.00 he paid to Midland Glass to remove and reinstall the glass shower panels and door so JV could access the shower area for its repairs.)

The Respondent responded that RedGard is an acceptable waterproofing material and that he appropriately used both RedGard and green board in the Claimant's shower. He testified that the express warranty period started on December 1, 2017, so that the warranty had expired by February 2019 when the Claimant brought the water damage to his attention.

The Respondent testified that he went to the Claimant's house and examined the crack in the shower seat, but determined that the express warranty had expired. The Respondent further testified that he would have taken the shower area apart if the Claimant had submitted a warranty claim within the one year warranty period which, he argued, began on December 1, 2017. He testified that if the issue had been brought to his attention during the warranty period he would have addressed it, but after the warranty period expired he was entitled to an additional payment before performing repairs.

The Fund argued that whether or not the Respondent's one-year express warranty expired before the Claimant notified the Respondent of the water damage is legally irrelevant. The Fund reasoned that even if the expressly warranty *had* expired, the instant claim is *not* based on the Respondent's express warranty. Rather, the claim arises statutorily, under section 8-405(a) of the Business Regulation Article, which provides that a homeowner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor...." Further, the Fund asserted, section 8-401 defines "actual loss" as "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."

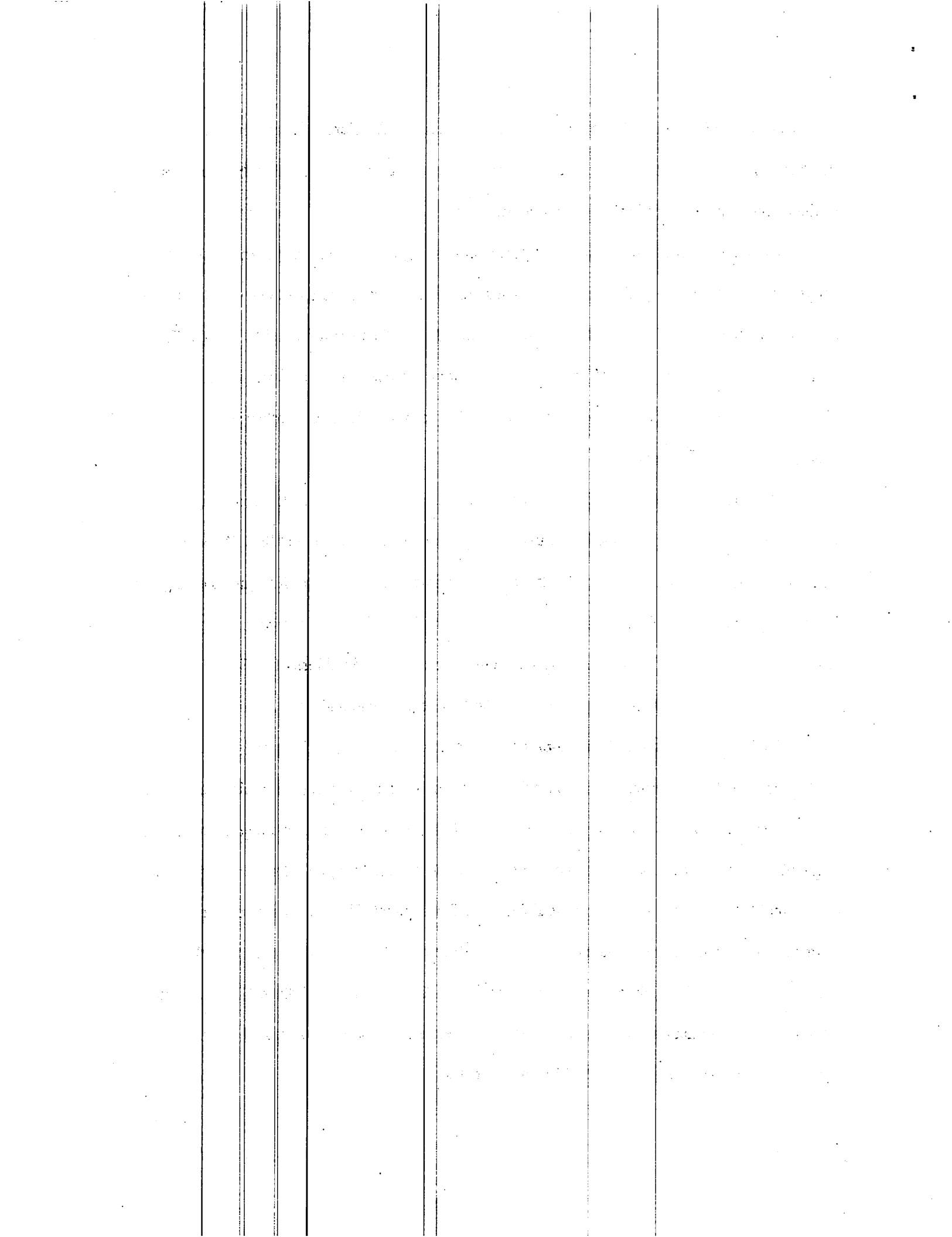
The Fund argued that the express warranty's one-year duration is also irrelevant because, under section 8-405(g), a claim must be brought against the Fund within three years after a claimant discovered, or should have discovered, the loss or damage. Here, the Claimant discovered the damage on February 7, 2019, and timely filed his claim on May 28, 2020, within

three years of the Claimant's discovery of the loss or damage. The Fund pointed out that notwithstanding the existence of an express warranty, section 8-103 provides that the provisions of the Home Improvement Law "may not be waived."

The Fund argued that whether the Respondent used green board or RedGard in the shower was used is also legally irrelevant, because the Contract required the Contractor to "[s]eal all seams and *waterproof*." (Resp. Ex. 1, page marked "Encl 2," emphasis added.) Thus the Fund argued that the Respondent was obligated to ensure that the shower area was waterproofed, regardless of which particular waterproofing material or technique he used to attempt to waterproof the shower area.

The Fund argued that the Claimant proved that the water damage resulted from the Respondent's unworkmanlike and inadequate work. The Fund pointed out that the Claimant offered photographic evidence of the buckling of the shower seat from water infiltration and, importantly, that the Respondent himself testified he would have fixed the shower if it was still under warranty. The Fund concluded that the Claimant proved an actual loss of \$3,840.00, consisting of the \$3,200.00 he paid JV plus the \$640.00 he paid Midland Glass.

During the hearing the Claimant proposed to amend his claim by adding the \$640.00 he paid to Midland Glass to remove and reinstall the glass shower panels and door, which he argued was necessary to give JV access to the area to repair it. The Fund asserted that under COMAR 09.08.03.02C(2), a claim may be amended if the Respondent is not prejudiced thereby. The Fund argued that the amendment was not prejudicial to the Respondent. The Respondent did not suggest that he would have defended this claim any differently had he known at the time the claim was filed that the Claimant would also seek the \$640.00 he paid to Midland Glass. He did not request a postponement or suggest he desired to seek legal representation or call any additional witnesses in light of the \$640.00 amendment.



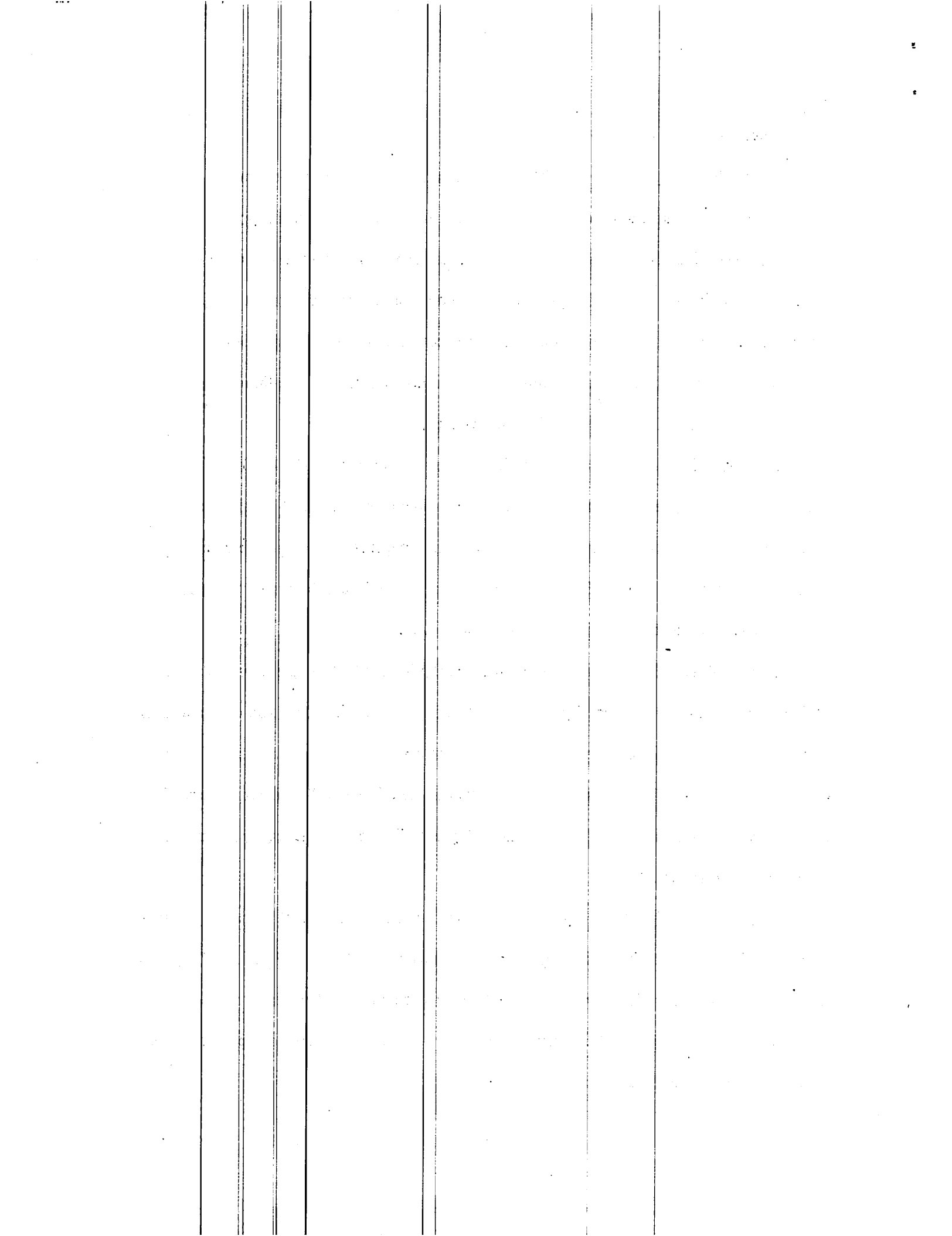
Analysis

For the following reasons, I find that the Claimant has proven eligibility for compensation. The Claimant's photographs show buckling of the shower seat from water penetration. The Claimant's testimony and his photographs establish that the Respondent performed unworkmanlike and inadequate home improvements, in that the contractually-required waterproofing of the shower area failed. The conclusion that the Respondent's work was unworkmanlike and inadequate is buttressed by the Respondent's own testimony that he would have fixed the shower if it was still under warranty.

JV's demolition and reinstallation of the shower area at a cost of \$3,200.00 was reasonably necessary, because further water damage could only be prevented by taking the shower area apart and installing more effective waterproofing. It was also reasonably necessary for the Claimant to pay Midland Glass \$640.00 to remove and reinstall the shower's glass panels and doors so JV could access the area and repair the shower.

I agree with the Fund's argument that whether the Respondent's express warranty had expired is irrelevant here, because this claim is a statutory claim against the Fund, not a claim for breach of a contractor's express warranty. The Claimant's May 18, 2020 claim against the Fund was timely filed within the Fund's three-year limitations period, as the Claimant discovered the water damage in February 2019. The Claimant thus proved the elements necessary in order to receive an award from the Fund.

I also agree with the Fund's argument that the Claimant's amendment to add the \$640.00 he paid Midland Glass to his claim was properly permitted under COMAR 09.08.03.02C(2). The Respondent did not show that he was prejudiced by the amendment, in that he did not request a postponement, state that he needed to regain counsel or indicate that he needed to call additional witnesses to respond to the amendment.



I thus find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

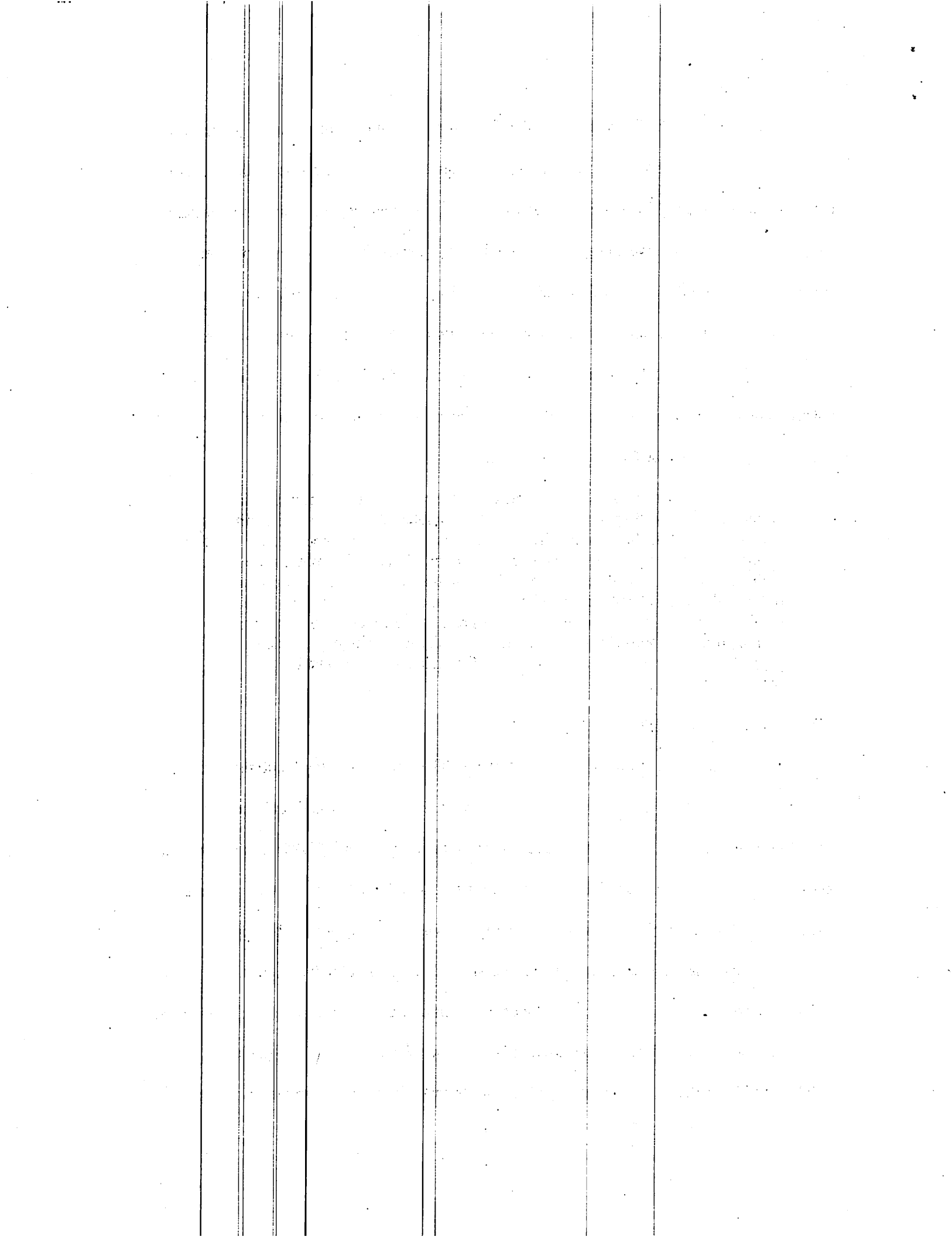
In this case, the Respondent performed some work under the Contract, and the Claimant did retain other contractors to remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

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).

Application of this formula is straightforward. The sum of the \$24,395.00 the Claimant paid the Respondent plus the \$3,840.00 the Claimant paid in total to JV and Midland Glass is \$28,235.00. Subtracting the \$3,840.00 in repairs from the Claimant's \$23,395.00 payment to the Respondent under the Contract yields an actual loss amount of \$3,840.00. The Claimant's actual loss is \$3,840.00. This is the same amount of actual loss as recommended by the Fund.

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



the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$3,840.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$3,840.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B(3)(c).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,840.00; 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;⁴ and

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

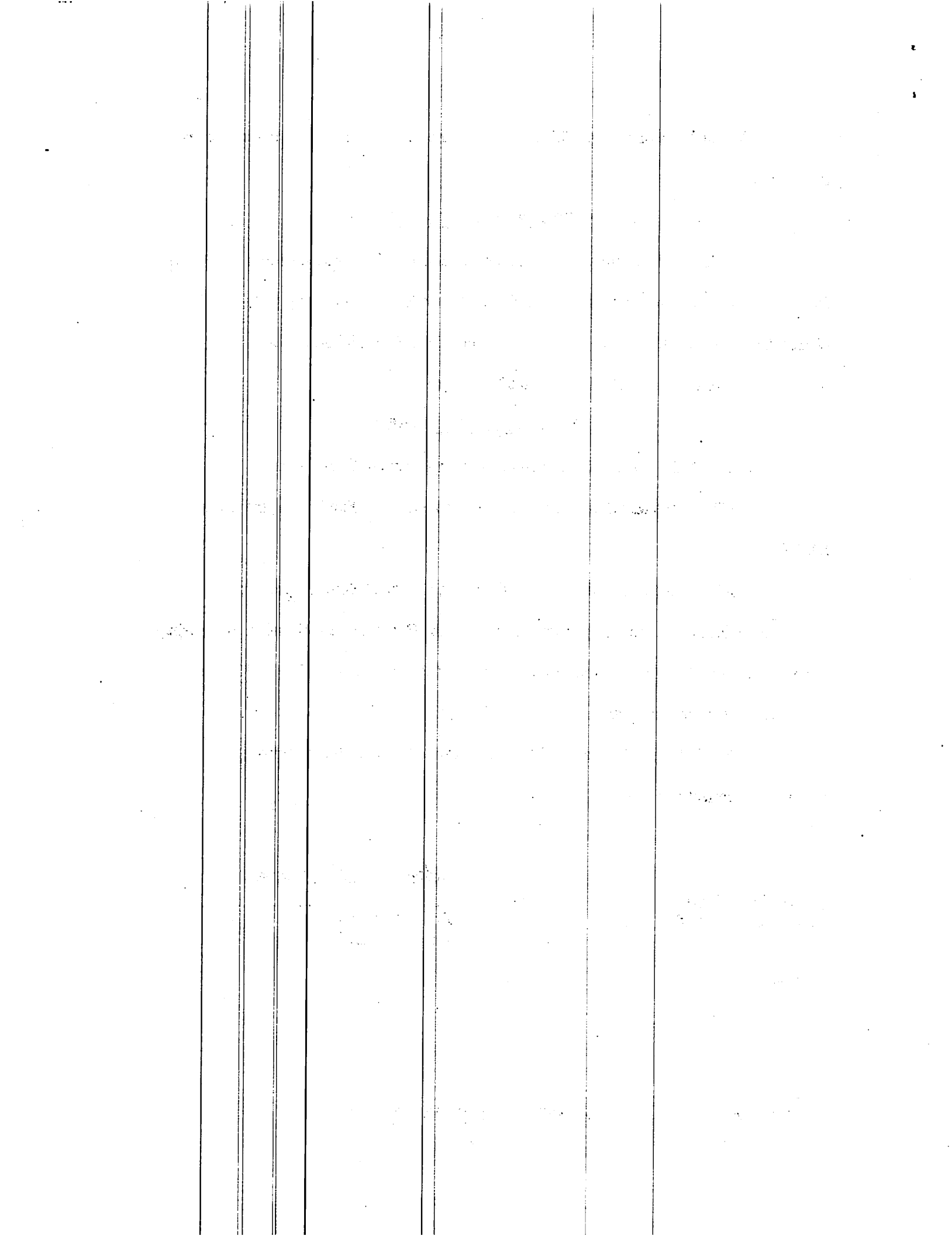
September 16, 2021
Date Decision Issued

RBL/emh
#194232

Robert B. Levin

Robert B. Levin
Administrative Law Judge

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 28th day of January, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

