

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CHARLES E. BILLINGS,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF JOSE ARGUETA</p> <p>REYES,</p> <p>T/A REYES CONSTRUCTION</p> <p>GROUP LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE NICOLAS ORECHWA,</p> <p>* ADMINISTRATIVE LAW JUDGE</p> <p>* THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-21-11238</p> <p>* MHIC No.: 20 (75) 896</p> <p>*</p> <p>*</p>
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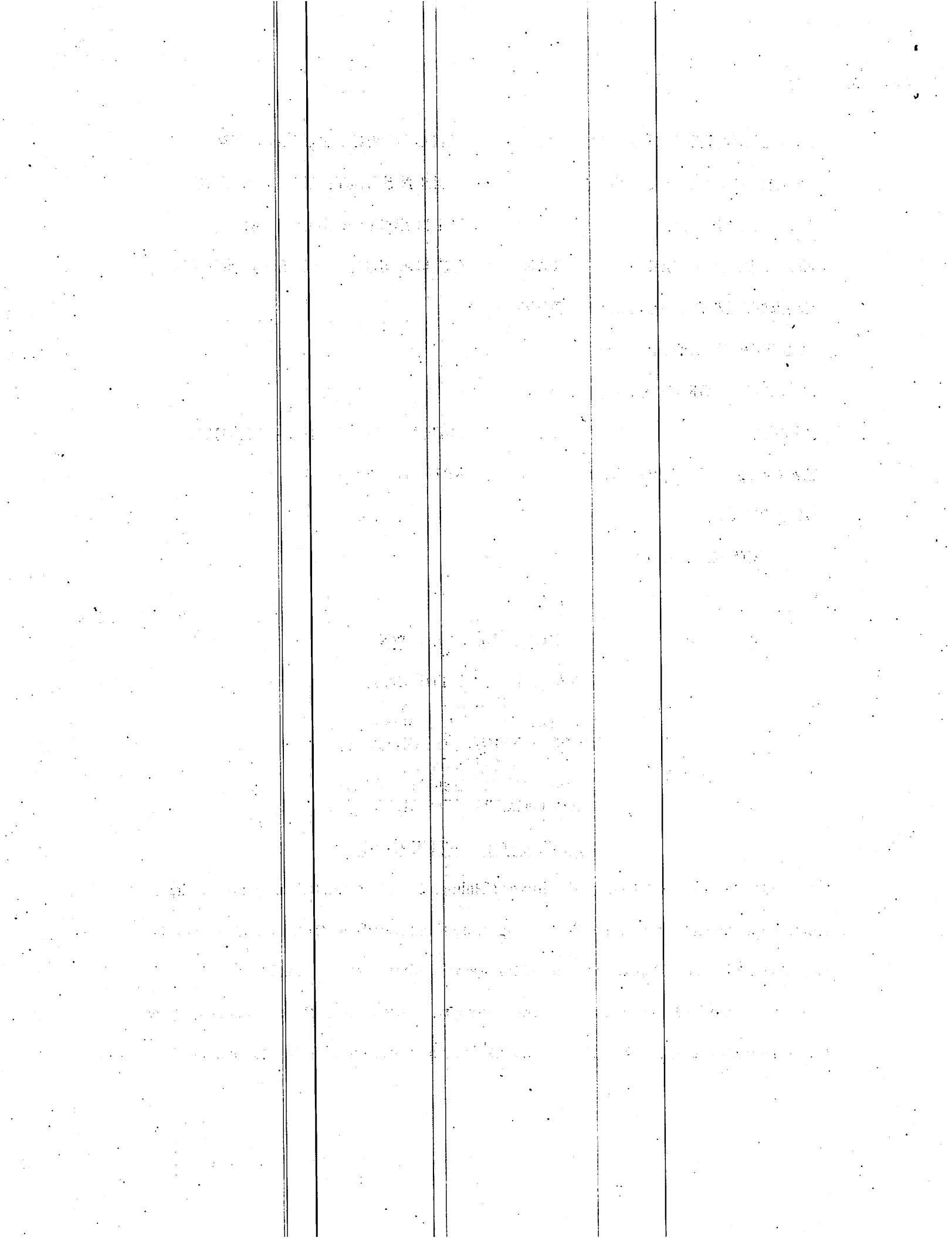
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PROPOSED DECISION

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 May 13, 2020, Charles E. Billings (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 \$9,500.00 in actual losses allegedly suffered as a result of a home improvement contract with Jose Argueta Reyes, trading as Reyes Construction Group LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411



(2015).¹ On May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on July 12, 2021, via the Webex online platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B. Justin Dunbar, Assistant Attorney General, 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

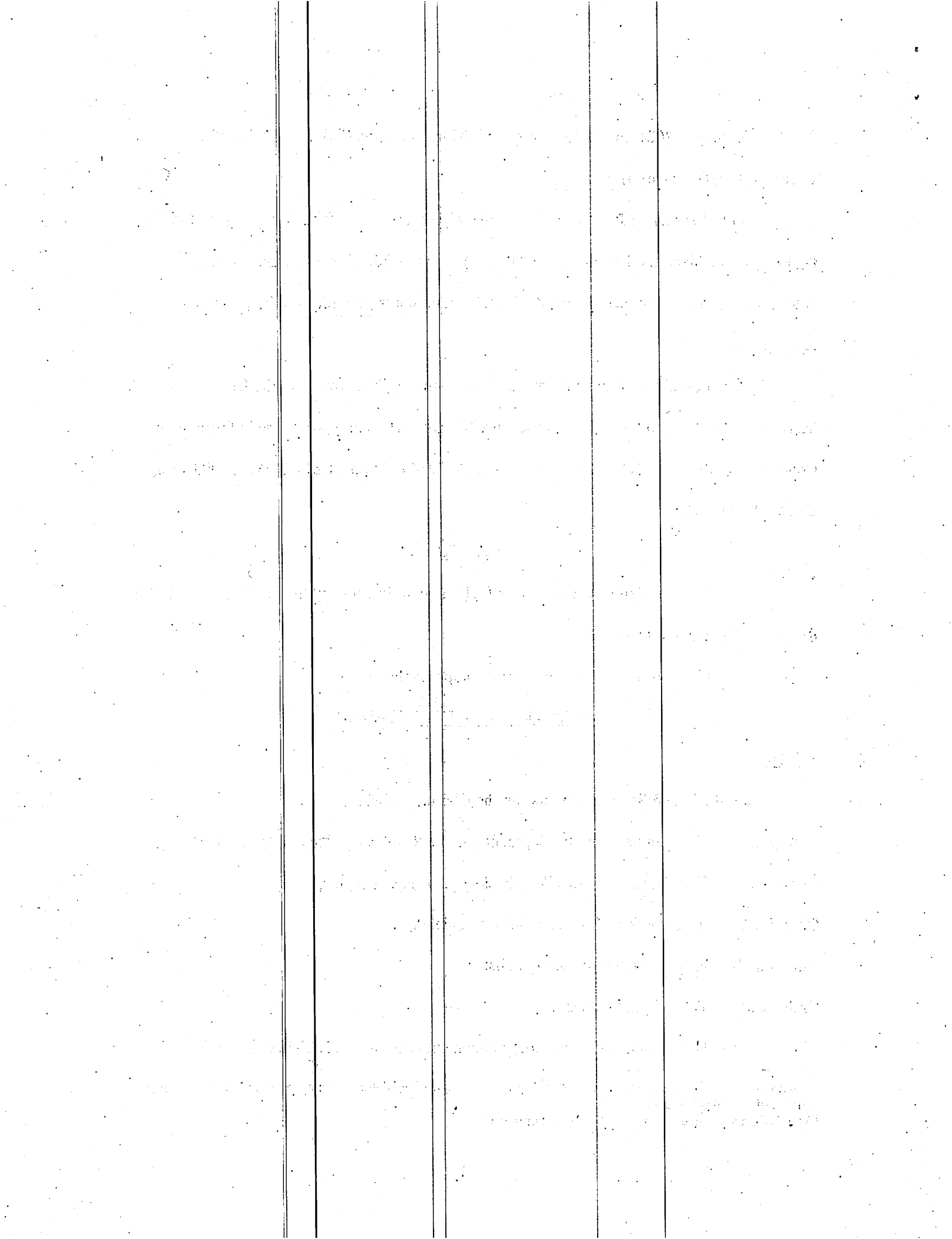
Exhibits

I admitted the following exhibits² on the Claimant's behalf:

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, November 22, 2019;
- Clmt. Ex. 2 - The Claimant's cancelled checks and bank statements;
- Clmt. Ex. 3 - Estimate from J.A. Renovations, undated;
- Clmt. Ex. 4 - Fifty-eight digital photographs;
- Clmt. Ex. 5 - Three digital videos;
- Clmt. Ex. 6a - The Claimant's explanatory attachment to his May 13, 2020 complaint;

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

² The Claimant provided all his exhibits on a thumb drive.



Clmt. Ex. 6b - The Claimant's letter to the MHIC, May 6, 2020;

Clmt. Ex. 6c - The Claimant's online Home Advisor complaint;

Clmt. Ex. 7a - The Claimant's documentation of payment for trash removal;

Clmt. Ex. 7b - The Claimant's documentation of payment for correction of faulty hot water connection.

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

Resp. Ex. 1 - Signed version of the November 22, 2019 contract between the Claimant and the Respondent.

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

Fund Ex. 1 - OAH notice, June 1, 2021;

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

Fund Ex. 3 - Claim form, May 6, 2020;

Fund Ex. 4 - Letter from the MHIC to the Respondent, June 1, 2020;

Fund Ex. 5 - The Respondent's MHIC licensing history.

Testimony

The Claimant testified and presented the testimony of his wife Roberta Billings (Roberta).

The Respondent testified and did not present other witnesses.

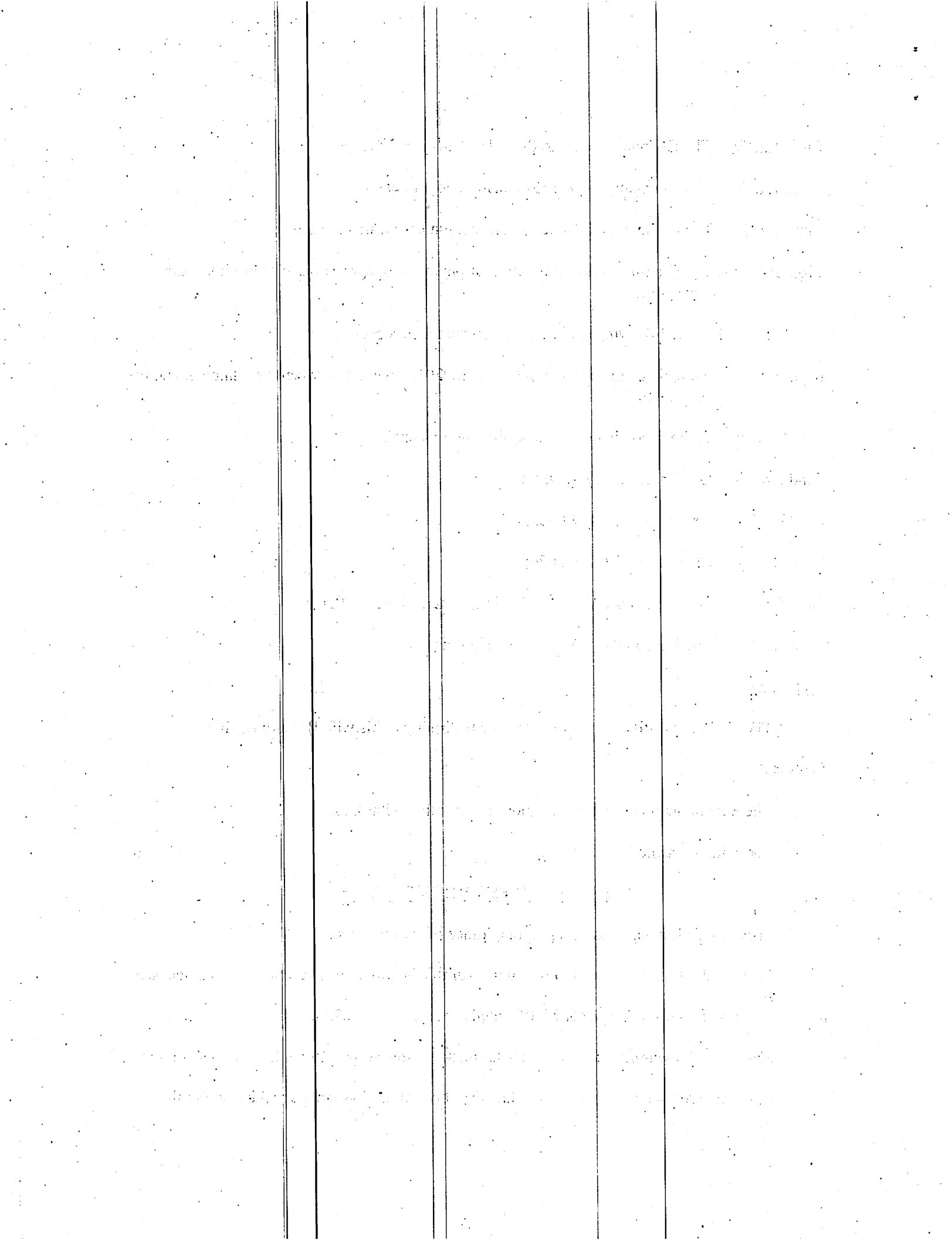
The Fund presented no testimony.

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 01-110225.

2. On November 21, 2019, the Claimant and the Respondent entered into a contract (contract) to remodel two bathrooms and a laundry room at the Claimant's residence. Per the

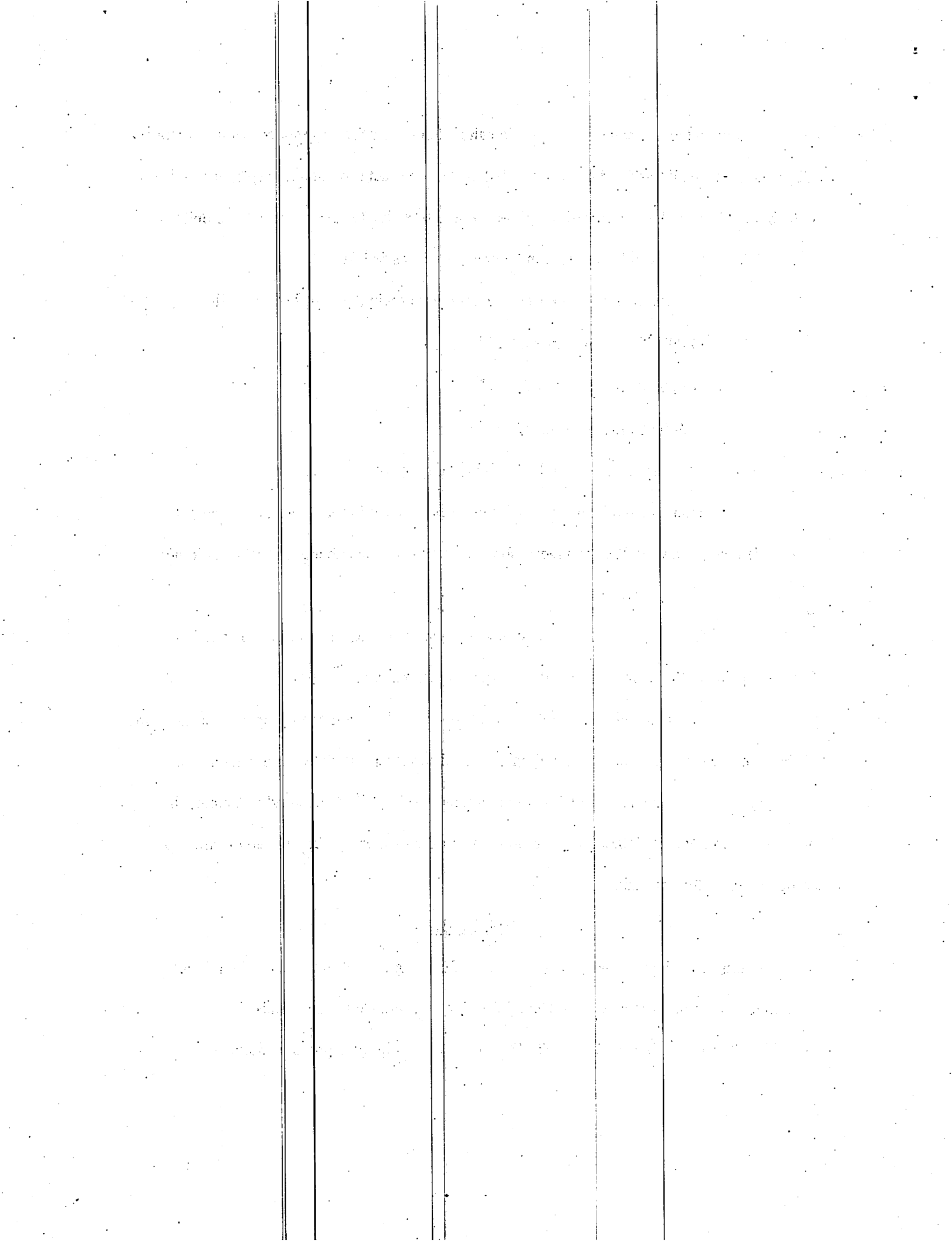


contract's terms, the Claimant would provide all materials and the Respondent would perform all labor and remove all trash and dirt at completion. The contract provided no beginning and end date, but the Respondent estimated the project would take five to seven weeks to complete.

3. The original agreed-upon contract price was \$11,000.00.
4. The Claimant paid the Respondent the following amounts on the following dates:
 - \$4,000.00 on November 22, 2019;
 - \$4,000.00 on December 5, 2019;
 - \$1,500.00 on December 16, 2019.
5. The Respondent started the job in late November 2019.
6. After a dispute with the Claimant over the installation of a light switch, the Respondent stopped work between December 19, 2019 and December 23, 2019 and did not return.
7. The Respondent did not connect hot water per the terms of the contract. The Claimant paid another contractor \$350.00 to connect the hot water.
8. The Respondent did not remove trash from the Claimant's property per the terms of the contract. The Respondent paid a junk removal service \$270.00 to remove the trash.
9. The Claimant hired J.A. Renovations (J.A.), a MHIC licensed contractor. JA provided an estimate of \$10,083.00 to redo the work the Respondent completed or failed to complete under the contract.

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

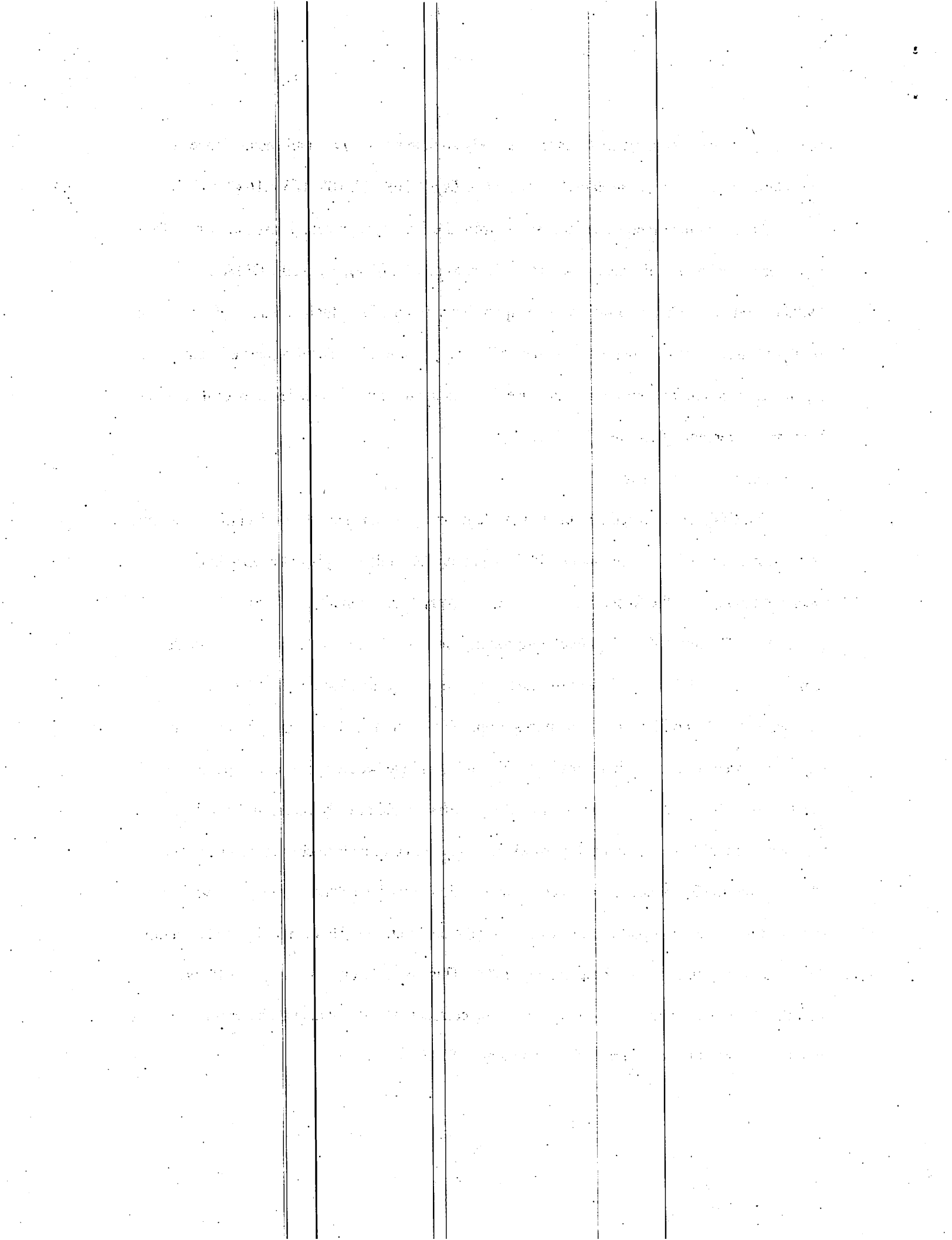


the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

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) ("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 Claimant's case

The Claimant testified that the Respondent timely commenced the project after the parties signed the contract. The Respondent told the Claimant he could complete the work in three weeks. At the outset, the Respondent presented as "very professional" and "everything was going well." However, the Respondent improperly installed the shower tiles. The Respondent removed and reinstalled the shower tiles delaying the project. In addition, the Claimant discovered the Respondent installed an inappropriate switch in the bathroom. The bathroom required a three-function switch for the fan, the light, and the heat to function independently. The Respondent refused to correct this error on the grounds he had already enclosed the ceiling. The Claimant then told the Respondent he would hire another contractor to correct the error. The Claimant and the Respondent then "had a conversation" which was "not a good conversation" and the Respondent quit performing work under the contract. The Claimant attempted to get the Respondent to return, but the Respondent refused. This occurred on or around the fifth week after the Respondent commenced work under the contract. The Respondent's desertion coincided with his receipt of the Claimant's third payment of \$1,500.00.



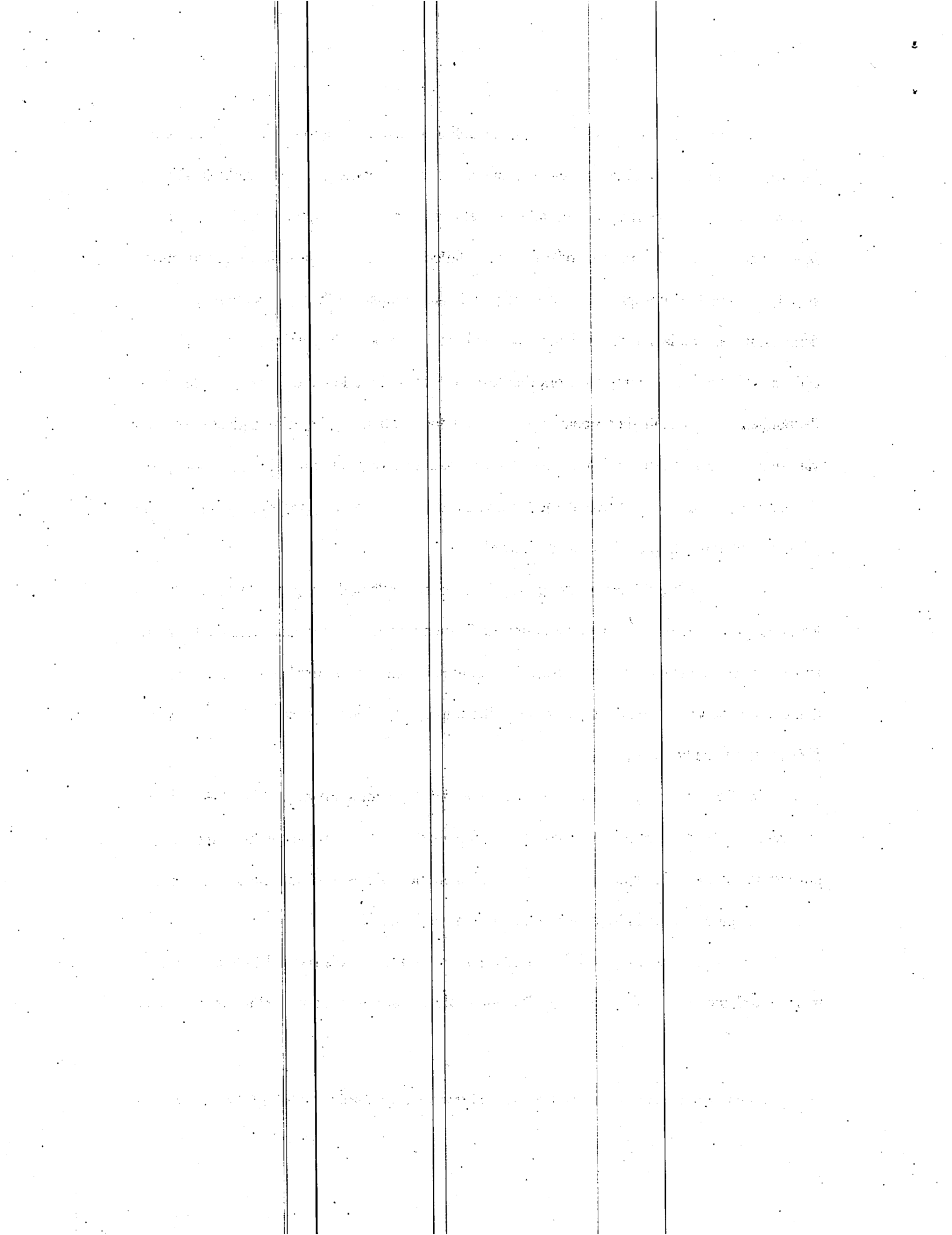
After the Respondent quit, the Claimant solicited J.A. Renovations (J.A.) to finish the job. J.A. advised the Claimant that the Respondent provided a variety of poor workmanship. Among other things, the Respondent failed to waterproof the shower, left a windowsill torn out, failed to complete wiring in some of the vanities, failed to install an appropriate three function switch and failed to appropriately install the jet tub. Accomplishing these tasks required demolishing and replacing drywall and other fixtures the Respondent previously installed. In addition, J.A. needed to complete work the Respondent simply failed to do. For example, the Respondent never installed baseboards, a bathroom doorknob, the toilet, trim, a glass door and a variety of lights and fixtures. J.A. advised the Claimant that they could not simply fix the Respondent's work and complete the job in a workmanlike manner. Appropriately finishing the job meant redoing all of the Respondent's work.

Prior to the Respondent quitting the job, the Claimant's boiler began to leak.³ The Respondent fixed the boiler. However, after the Respondent quit the job, the Claimant began to experience problems with water pressure. The Claimant contacted a plumber who advised him that the Respondent routed the pipes to the boiler improperly. The Claimant paid the plumber \$350.00 to fix the boiler's piping.

The Respondent left a large pile of trash on the Claimant's property. When the Claimant requested the Respondent remove the trash, the Respondent agreed on the condition the Claimant promise to not sue the Respondent or post negative online reviews of his business. The Claimant refused and paid another individual \$270.00 to remove the trash.

Roberta testified and confirmed the Respondent's attempt to strike a deal to collect the trash in exchange for the Claimant agreeing not to file suit or post negative online reviews. When

³ While not clear, neither party disputed that the work the Respondent performed on the boiler fell within the scope of the contract.



the Claimant refused to agree, the Respondent hung up. Roberta testified she obtained a 401K loan to complete the work because her mother planned to move into the residence.

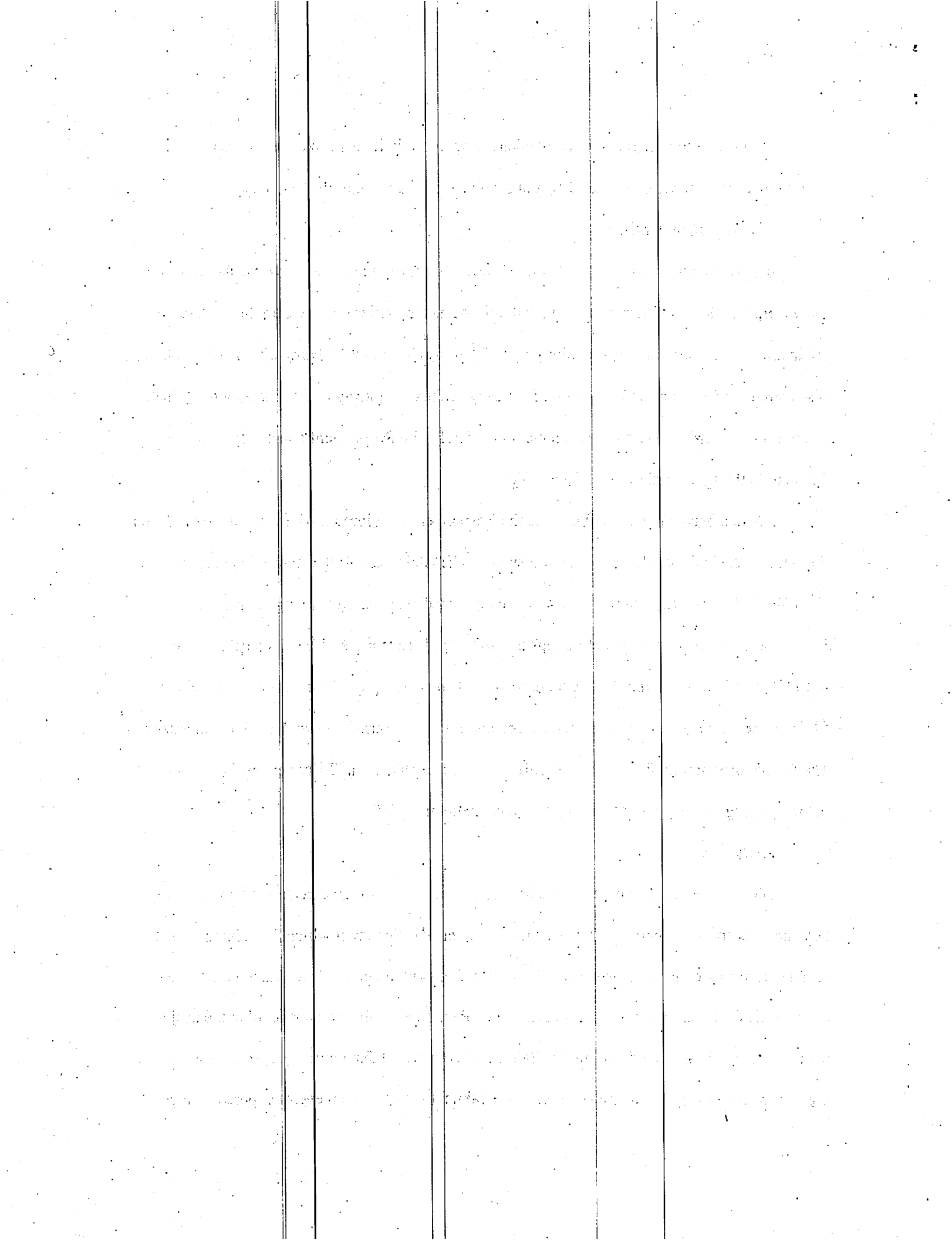
The Respondent's Case

The Respondent testified the Claimant initially only requested a shower installation. However, the Claimant then requested a bathtub. After the parties entered into the contract, the Claimant was "always adding something extra." During the course of his work, the Respondent discovered the Claimant's plumbing was "already broken" requiring him to install a three-inch custom pipe. In order to address problems immediately, the Respondent constantly solicited the Claimant's thoughts on the state of the project.

Matters between the Claimant and the Respondent deteriorated when the Claimant raised the issue of the bathroom's three function switch. The Claimant and the Respondent argued about the switch and the Claimant became "really upset" and started "calling people." The Respondent then collected his belongings and left out of fear for his safety. The Respondent testified "I was fairly scared. He's a taller guy and I'm a short guy." The Respondent told the Claimant he would only return to perform cosmetic work because he "was scared to come back." The Respondent admitted quitting the project with the explanation: "Fifty percent I quit, but before quitting the way he was talking to me he made me quit."

Analysis

The Respondent attempted to muddy the waters by claiming he performed a variety of tasks not present in the contract. He presented an alternative contract which he claimed to be the actual controlling contract. Resp. Ex. 1. However, that contract contains the same terms as the contract the Claimant produced. Clmt. Ex. 1. The Respondent admitted abandoning the project, but claimed he did so out of fear of the Claimant. I do not find that claim credible. At the hearing, while unhappy with the situation, the Claimant testified in an even-tempered manner. In



fact, on more than one occasion he complemented the Respondent stating the Respondent performed professionally up until the third payment and the dispute over the light switch.

The picture and video the Claimant produced support his testimony. Clmt. Exs. 4 and 5. The Respondent left the Claimant's residence in deplorable condition with unfinished, torn out rooms and an unsightly mound of trash outside the residence. Based upon the pictures and video plus the Respondent's admission he abandoned the contract, I find the Claimant met his burden and find him 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). 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.

COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent \$9,500.00 for work under the contract. J.A. provided him with an estimate of \$10,083.00 to complete and correct the Respondent's work under the

Year	Month	Day	Time	Location	Event
1968	Jan	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Jan	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Jan	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Feb	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Feb	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Feb	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Mar	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Mar	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Mar	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Apr	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Apr	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Apr	30	10:00	San Francisco	Meeting of the Board of Directors
1968	May	1	10:00	San Francisco	Meeting of the Board of Directors
1968	May	15	14:00	San Francisco	Meeting of the Board of Directors
1968	May	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Jun	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Jun	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Jun	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Jul	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Jul	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Jul	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Aug	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Aug	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Aug	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Sep	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Sep	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Sep	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Oct	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Oct	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Oct	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Nov	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Nov	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Nov	30	10:00	San Francisco	Meeting of the Board of Directors
1968	Dec	1	10:00	San Francisco	Meeting of the Board of Directors
1968	Dec	15	14:00	San Francisco	Meeting of the Board of Directors
1968	Dec	30	10:00	San Francisco	Meeting of the Board of Directors

contract. In addition, the Claimant paid \$350.00 to connect hot water and \$270.00 for trash removal (tasks to which the Respondent was obligated under the contract.) Accordingly, the Claimant paid or will pay \$10,703.00 as the cost to correct or complete work under the contract. \$9,500.00 plus \$10,703.00 equals \$20,203.00. \$20,203.00 minus the contract price of \$11,000.00 equals \$9,203.00.

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. 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 \$9,203.00.

PROPOSED CONCLUSIONS OF LAW

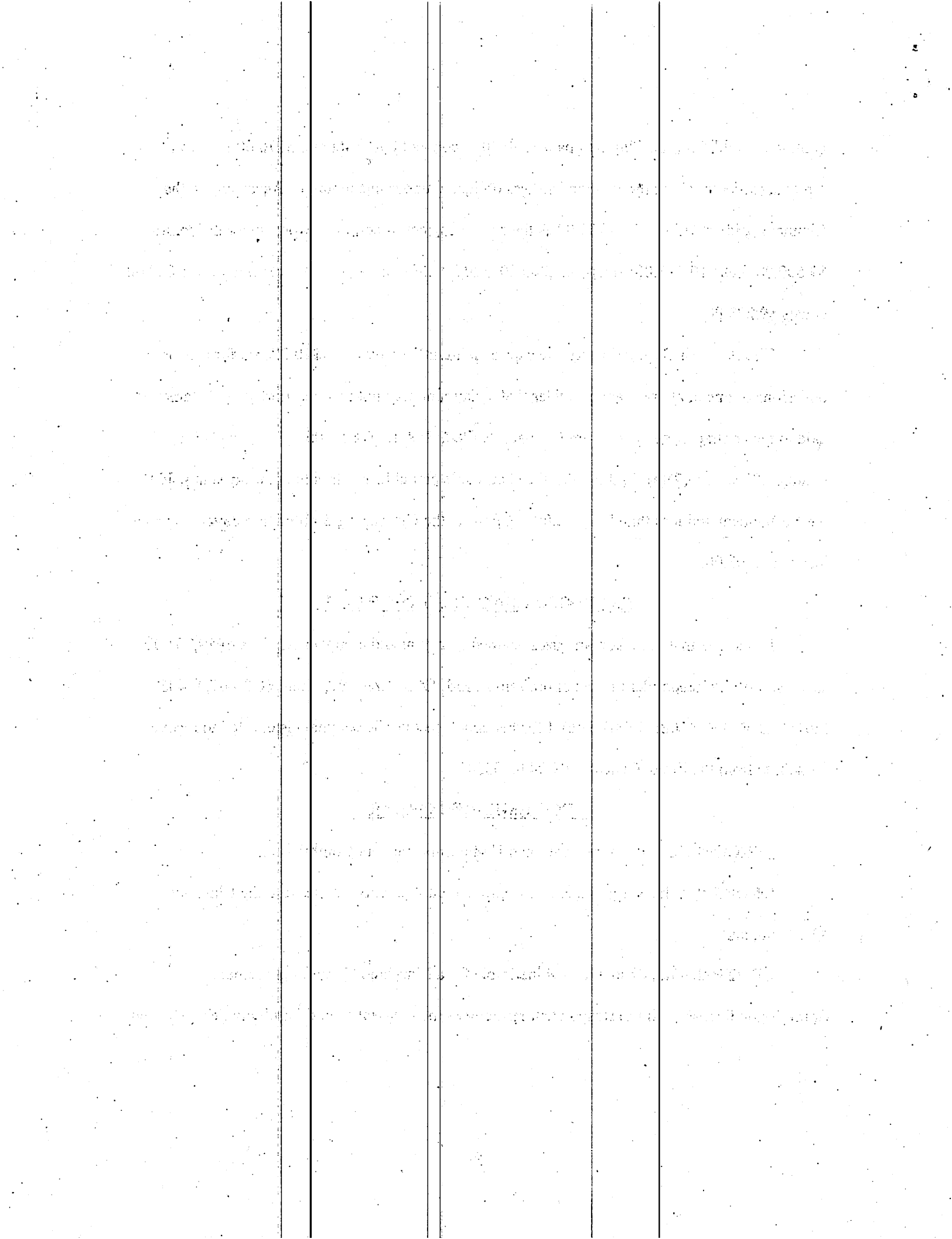
I conclude that the Claimant has sustained an actual and compensable loss of \$9,203.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$9,203.00 from the Fund. COMAR 09.08.03.03D(1).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$9,203.00; 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.

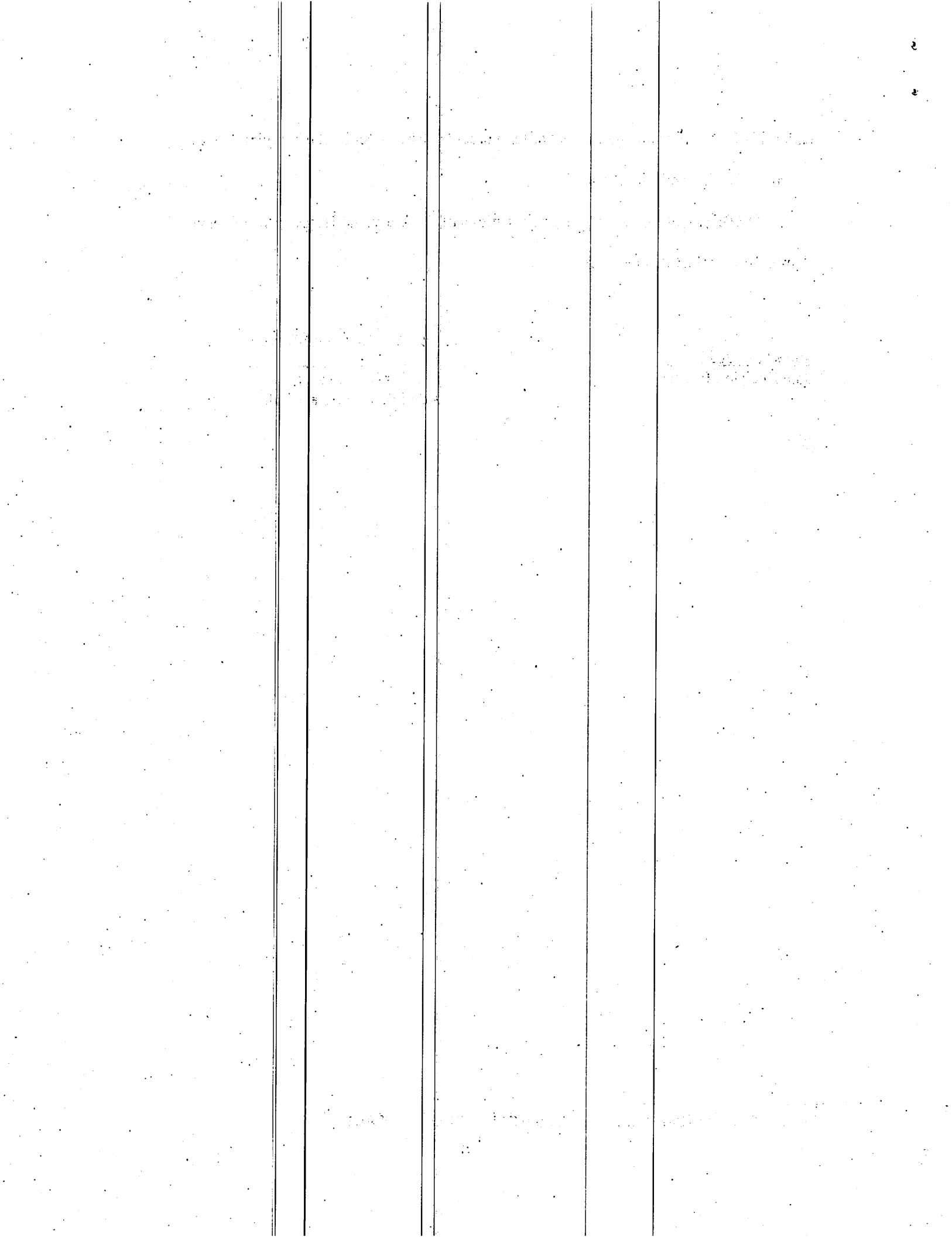
August 26, 2021
Date Decision Issued

Nicolas Orechwa

Nicolas Orechwa
Administrative Law Judge

NO/at
#193581

⁴ 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***

