

<p>IN THE MATTER OF THE CLAIM</p> <p>OF ALTHEA THOMAS,</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 ROBERT HAINES,</p> <p>T/A MHI GROUP</p> <p>RESPONDENT</p>	<p>* BEFORE KRISTIN E. BLUMER,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-22-01123</p> <p>* MHIC No.: 21 (75) 1106</p>
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On October 4, 2021,¹ Althea Thomas (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 \$11,100.00 for actual losses allegedly suffered as a result of a home improvement contract with Robert Haines, trading as MHI Group, (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015).² On January 12, 2022, the

¹ The Claimant dated the claim form October 4, 2021. The MHIC documented receipt of the claim form on October 5, 2021.

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

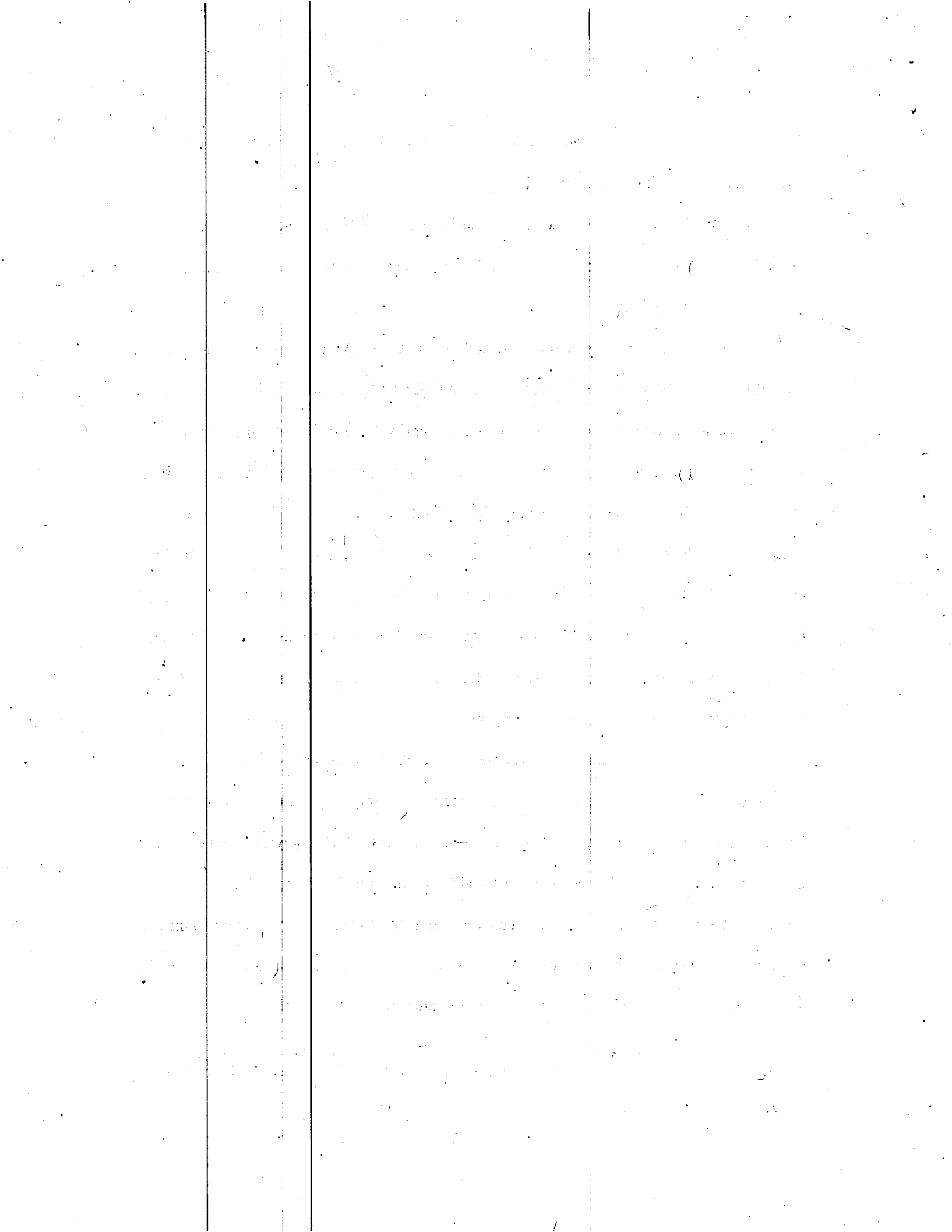
MHIC issued a Hearing Order on the Claim and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On April 8, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(a), § 8-312. Eric London, Assistant Attorney General, represented the Fund. The Claimant represented herself.

The absence of the Respondent was addressed as a preliminary matter, as the Fund possessed information that the Respondent died on May 9, 2021. After waiting fifteen minutes for a representative on behalf of the Respondent 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On January 31, 2022, the OAH sent a Notice of Hearing (Notice) by United States mail and by 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 April 8, 2022, at 9:30 a.m., at the OAH. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Respondent's address is the same as the address for the personal representative of his estate, who is listed in the Estate Record of the Harford County Register of Wills as Teresa Haines.³ (Fund Ex. 2). The United States Postal Service (USPS) did not return the Notice to the OAH. On February 11, 2022, the OAH received the certified mail return receipt for the Notice sent to the Respondent, which reflected a printed name and signature of "Christine Haines" as the person who received the delivery. No one representing the Respondent or his estate notified the OAH of any change of mailing address, email address, or phone number. COMAR

³ A person named Teresa Haines is identified as the Respondent's mother in the Respondent's obituary. (Fund Ex. 2A).



28.02.01.03E. No one representing the Respondent or his estate made a request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent and his estate received proper notice, and I proceeded to hear the matter in their absence. COMAR 28.02.01.05A, C; COMAR 28.02.01.23A.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 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

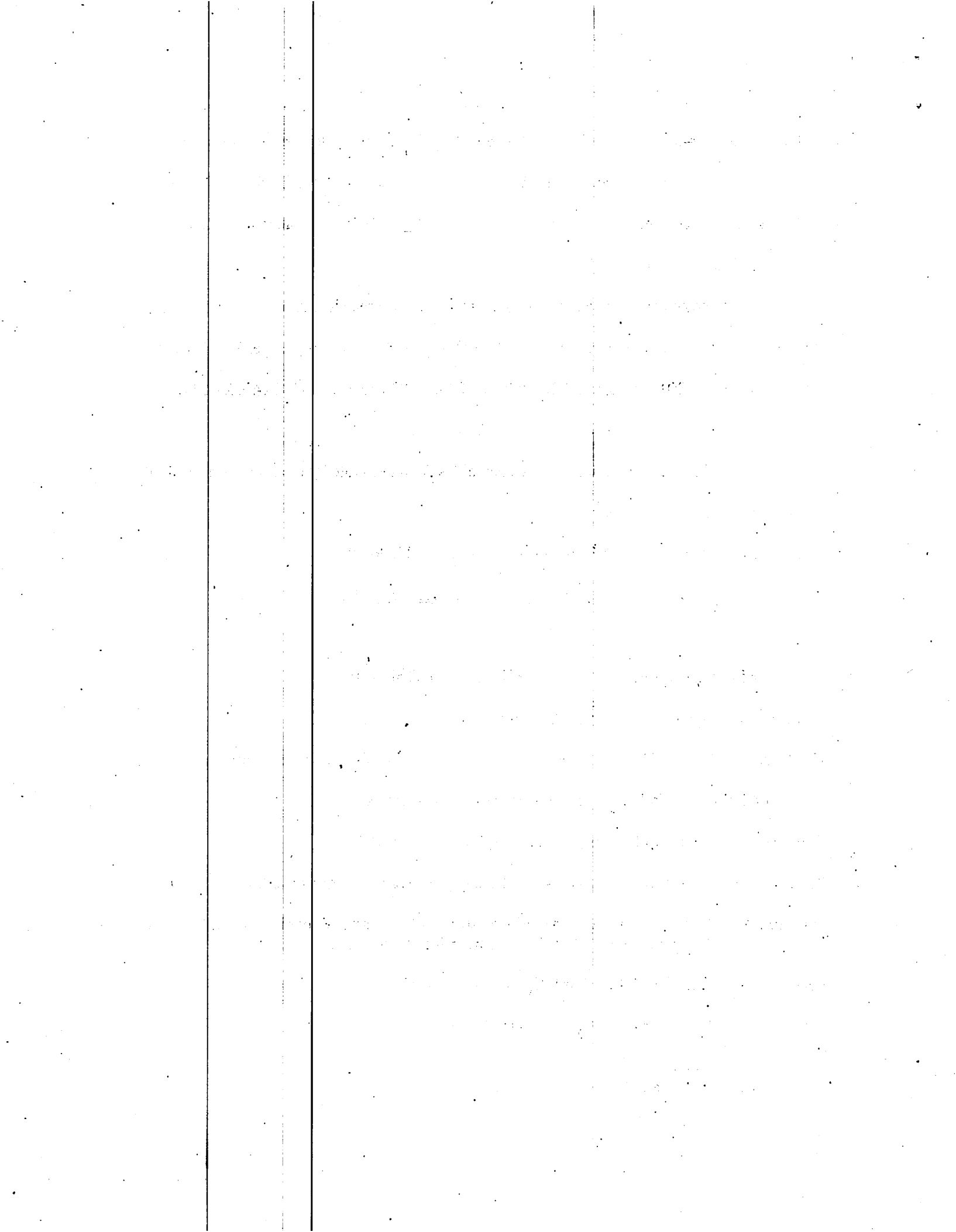
I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 Quote, MHI Group LLC,⁴ April 3, 2021
- Clmt. Ex. 2 City of Aberdeen, Permit Number BR-A-006240-2021, date of issue May 1, 2021

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 Notice of Hearing, January 31, 2022
- Fund Ex. 1A USPS Certified Mail Return Receipt, received February 11, 2022
- Fund Ex. 2 Printout from the Maryland Register of Wills, Estate Record (Harford County), Decedent Robert Clark Haines, Jr., printed March 28, 2022
- Fund Ex. 2A Obituary, Robert Clark Haines, Jr., undated
- Fund Ex. 3 MHIC Hearing Order, January 12, 2022

⁴ Maryland Home Improvement Group, LLC.



Fund Ex. 4 Letter from David Finneran, Executive Director, MHIC, re: Licensing History of Robert Haines t/a MHI Group, March 28, 2022

Fund Ex. 5 Home Improvement Claim Form, October 4, 2021

Fund Ex. 6 Letter from MHIC to the Respondent re: Claim, November 5, 2021

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not present any witnesses.

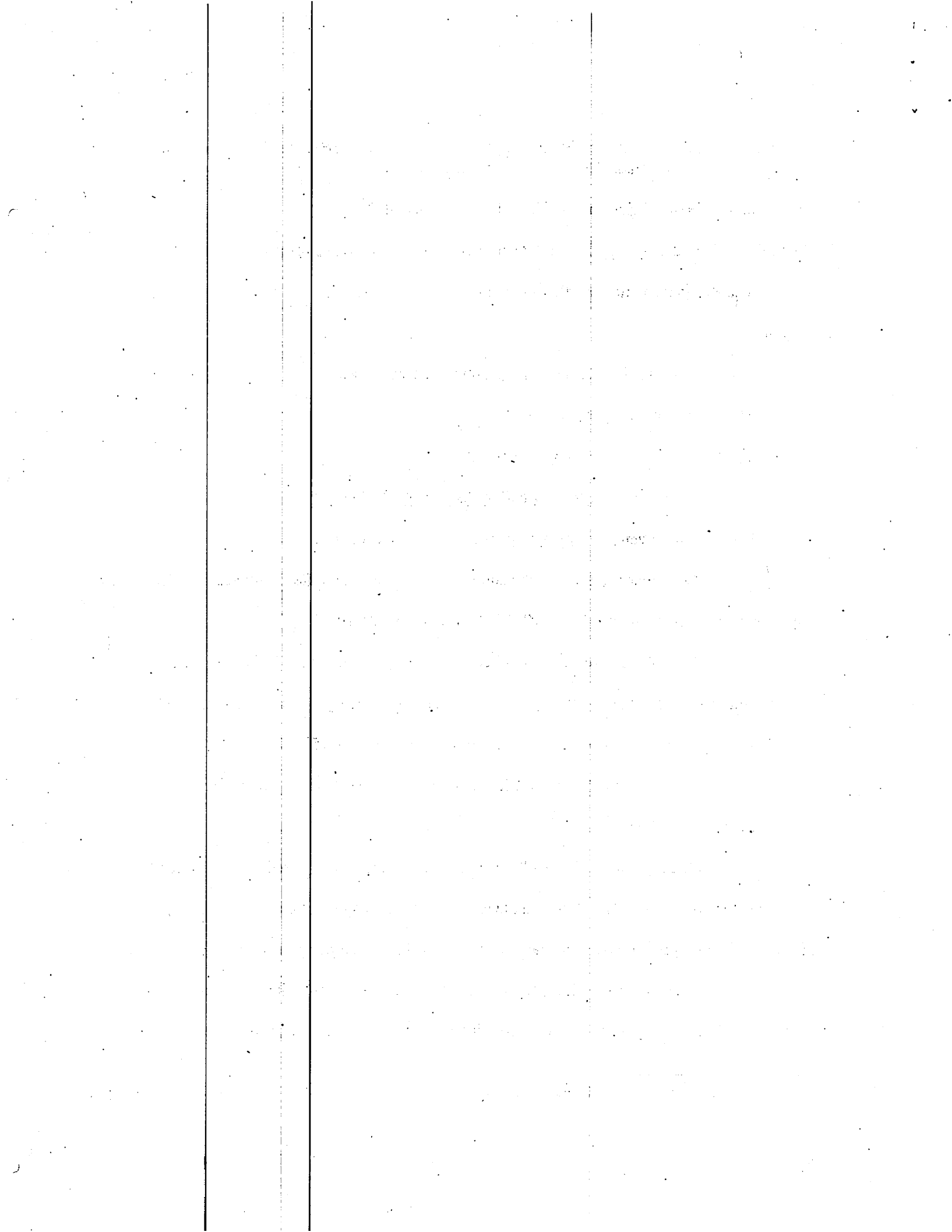
The Fund did not present any witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-108172.
2. Although the Respondent's license expired on January 12, 2021, a renewal moratorium was in effect at that time due to the State of Emergency imposed as a result of the COVID-19 pandemic. The renewal moratorium was lifted on May 15, 2021.
3. At all relevant times, the Claimant owned and resided in a home located in Aberdeen, Maryland (the Residence).
4. On April 10, 2021, the Claimant and the Respondent entered into a contract for the following work to be done at the Residence: remove and dispose of existing deck, rails, and necessary framing; install post and beam framing for a 12x20 sunroom; install a shed-style roof, ceiling fan with light, floor sheathing and insulation in joists with underpinning, insulation to walls and r30⁵ to ceiling, vinyl slider, vinyl windows, outlets per code, drywall to ceiling, interior

⁵ The record does not include an explanation of this term.



of kneewalls,⁶ and interior wall to house; paint; install shingles, soffit, fascia, gutters, downspouts, siding, and flooring; and move and widen a set of steps (Contract).

5. The original agreed-upon Contract price was \$36,960.00.

6. The Contract set forth the following payment terms: (1) a deposit of \$11,088.00 due at the time the Contract was signed; (2) a 30% draw of \$11,088.00 due upon delivery of materials and completion of demolition; (3) a 30% draw of \$11,088.00 due upon completion of framing and shingles; and (4) the remaining 10% balance of \$3,696.00 due within five days of the completion of the work.⁷

7. On April 10, 2021, the Claimant paid the Respondent \$11,100.00 in cash as a deposit.

8. On a date unspecified in the record, the Claimant and the Respondent verbally agreed that the Respondent would start the work pursuant to the Contract in June 2021.

9. On May 1, 2021, the City of Aberdeen issued a permit to the Claimant for the construction of a sunroom at the rear of the Residence. The Respondent applied for the permit and is listed as the contractor on the permit with reference to the Respondent's MHIC license number.

10. The Respondent died on May 9, 2021.

11. At the time of the Respondent's death, he had not started work on the Residence pursuant to the Contract.

12. The Claimant learned of the Respondent's death on an unspecified date when she drove by his home and spoke to one or more unidentified relatives of the Respondent after she left several telephone messages for him and he did not respond.

⁶ The record does not include a definition of "kneewall."

⁷ The Contract makes no reference to any specific dates for the work to begin or be completed.

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13. On August 12, 2021, Teresa Haines, personal representative for the Respondent (personal representative), petitioned for administration of the Respondent's estate in the Harford County Register of Wills.

14. The address for the personal representative who petitioned for administration of the Respondent's estate is the same address for the Respondent that appears on the Contract. This address is also listed in the licensing information for the Respondent with the MHIC and is referenced as the Respondent's address in the permit issued by the City of Aberdeen for work on the Residence.

15. The Claimant has not received a refund of the deposit from the Respondent's estate.

DISCUSSION

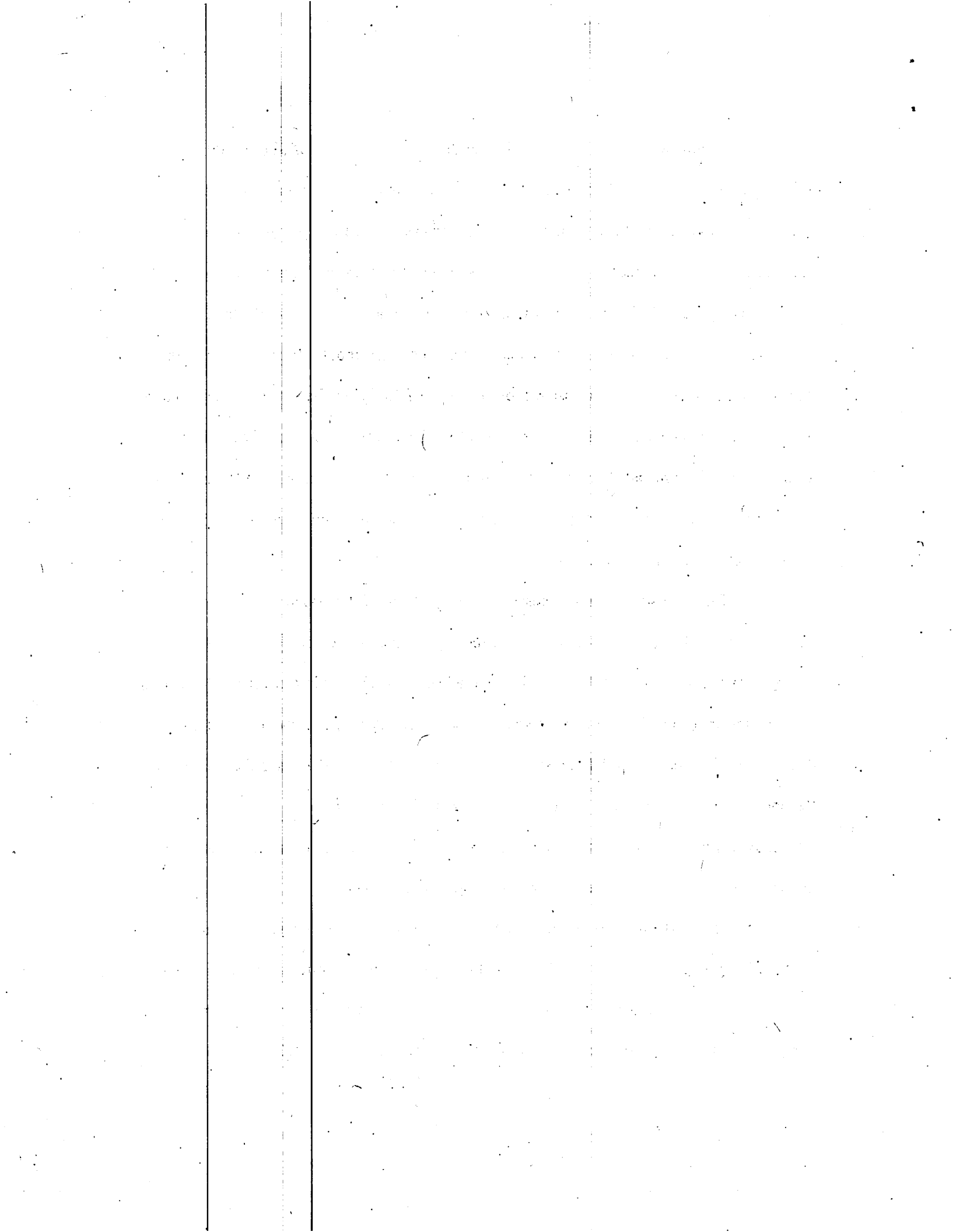
The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when 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.

The Claimant testified that she paid the Respondent a deposit of \$11,100.00 in cash at the time they entered into the Contract. (Clmt. Ex. 1). The Contract includes a handwritten addition, dated April 10, 2021, that a deposit of \$11,100.00 in cash was received with a signature just below it. *Id.* The Claimant testified that the Respondent wrote the addition and signed it. *Id.* I found the Claimant credible in her testimony on this point, as well as in her explanations of what happened after she was unable to reach the Respondent to ask about starting the work. She stated that she left several telephone messages for the Respondent and he did not return her calls, so she went to his residence. At that time, she spoke with two females that she believed to be relatives of the Respondent who advised her that he had passed away. She mentioned that she had paid him to do some work for her which was never done, but did not receive a response from the Respondent's family members.

The Claimant stated that the Respondent never began the work detailed in the Contract. The Respondent died after the Claimant paid the deposit and after he pulled a permit, but before he began the work in June 2021 as they had agreed verbally. Her testimony regarding the timing of their agreement and the fact that the work never started due to the Respondent's untimely death is corroborated by date of the issuance of the permit (May 1, 2021) and the date of the Respondent's death (May 9, 2021). (Clmt. Ex. 2; Fund Ex. 2A). Based on the Claimant's testimony and the exhibits admitted into evidence, I conclude that the work was abandoned and 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). MHIC's



regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent abandoned the Contract without doing any work, due to his untimely death. 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 evidence clearly shows that the Complainant paid the Respondent \$11,100.00. (Clmt. Ex. 1). The Respondent never started the work.

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 equal to the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$11,100.00.

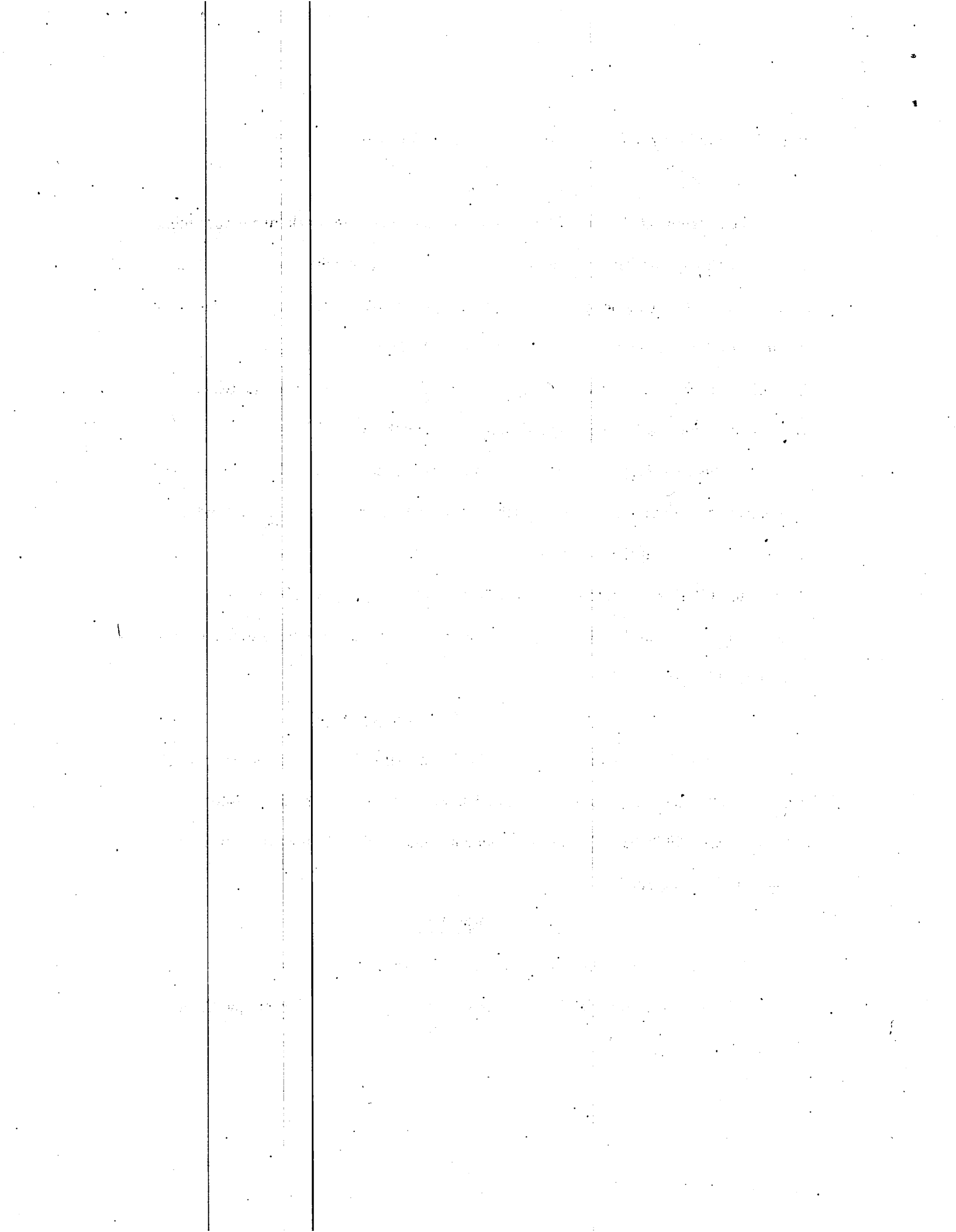
PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$11,100.00 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)(a). I further conclude that the Claimant is entitled to recover that amount from the Fund.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$11,100.00; 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;⁸ and

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

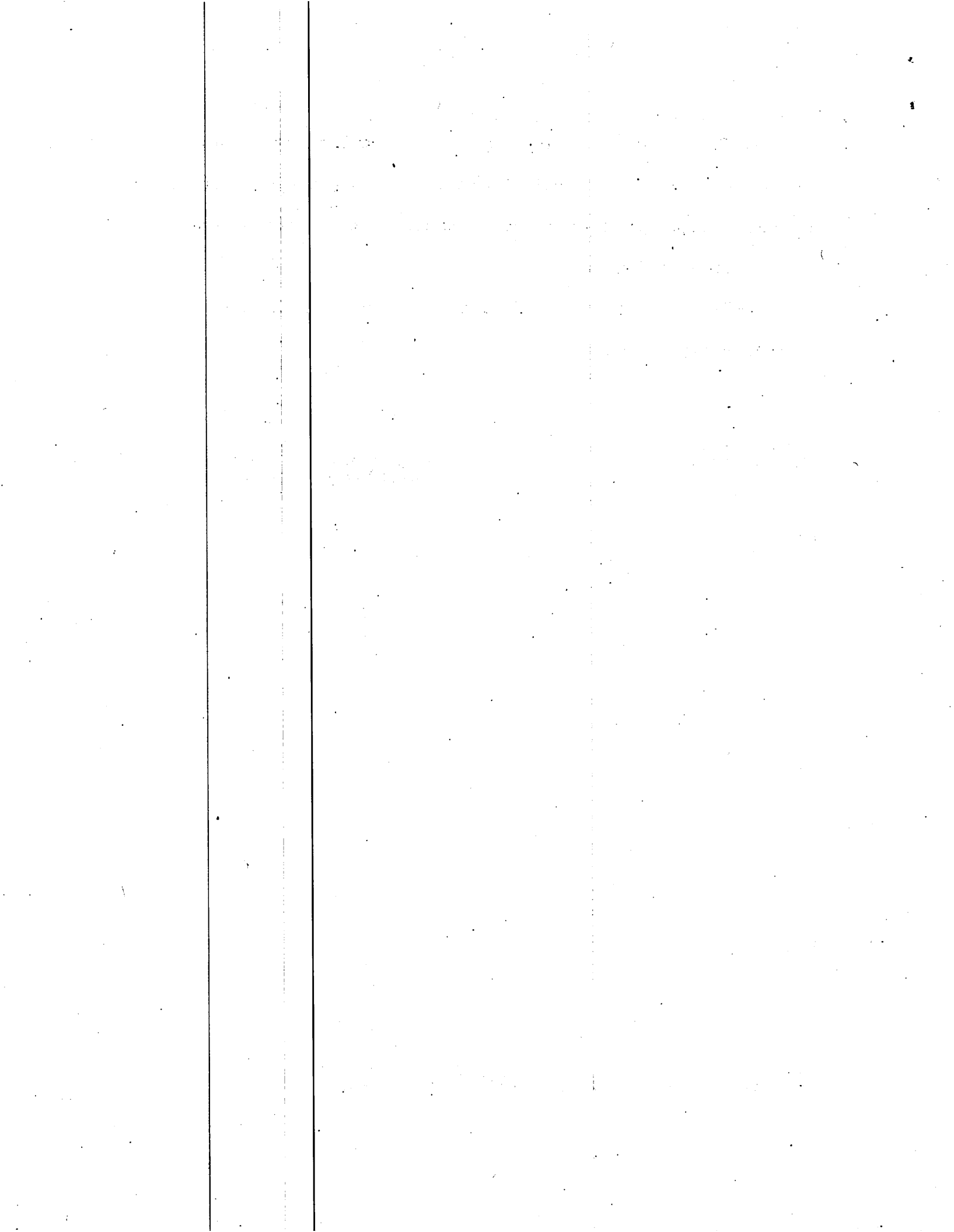
June 28, 2022
Date Decision Issued

Kristin E. Blumer

Kristin E. Blumer
Administrative Law Judge

KEB/dlm
#197633

⁸ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2021); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 19th day of August, 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***

