

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MARK PANAGGIO,</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 JOSEPH VAN</p> <p>METER,</p> <p>T/A PRECISE HOME</p> <p>IMPROVEMENTS,</p> <p>RESPONDENT</p>	<p>* BEFORE NANCY E. PAIGE,</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-02-22-01041</p> <p>* MHIC No.: 21(75) 389</p> <p>*</p> <p>*</p>
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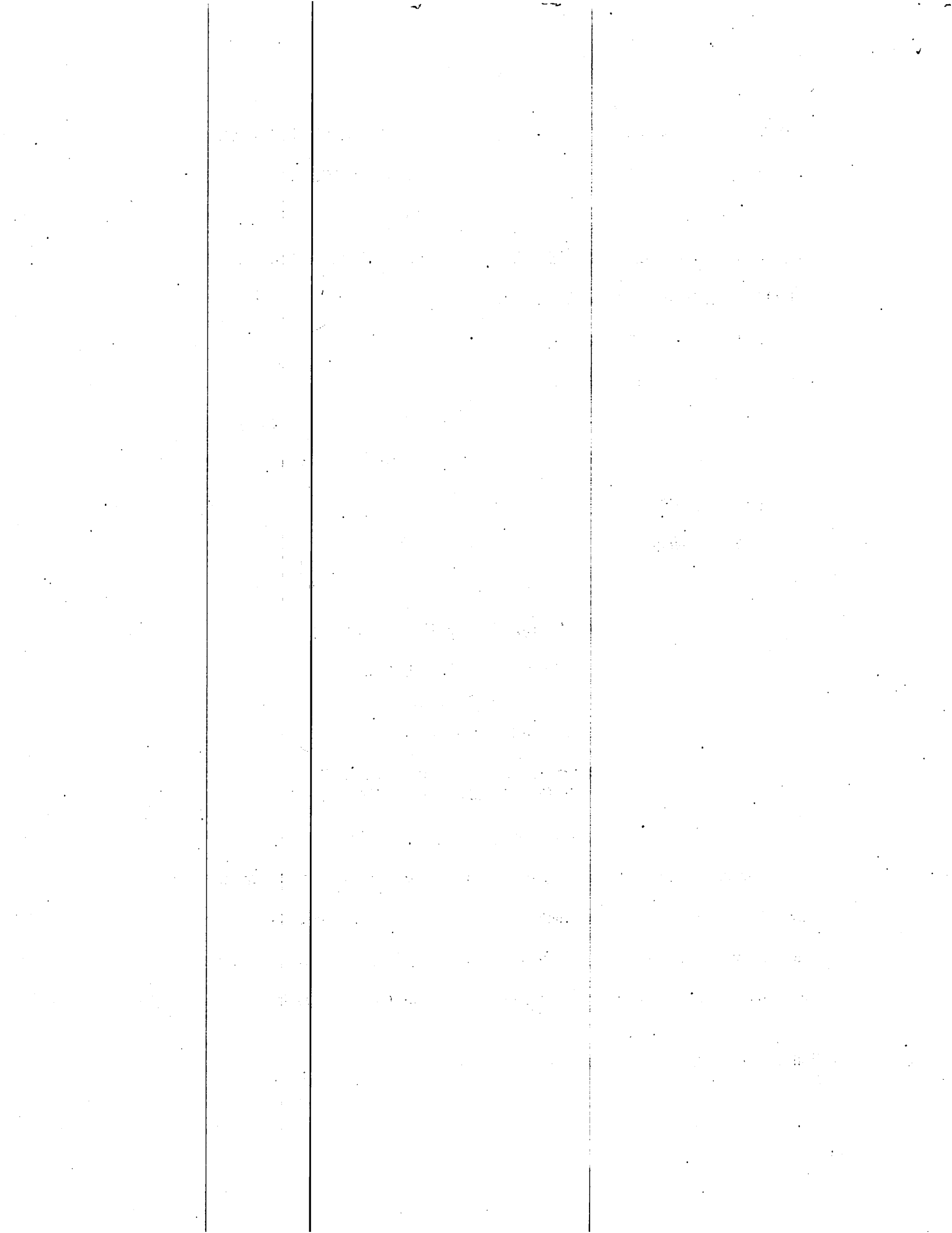
AMENDED PROPOSED DECISION¹

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On July 30, 2021, Mark Panaggio (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 \$2,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Joseph Van Meter, trading as Precise

¹ GF. #4. March 20, 2022 Licensing History added to Exhibit list.



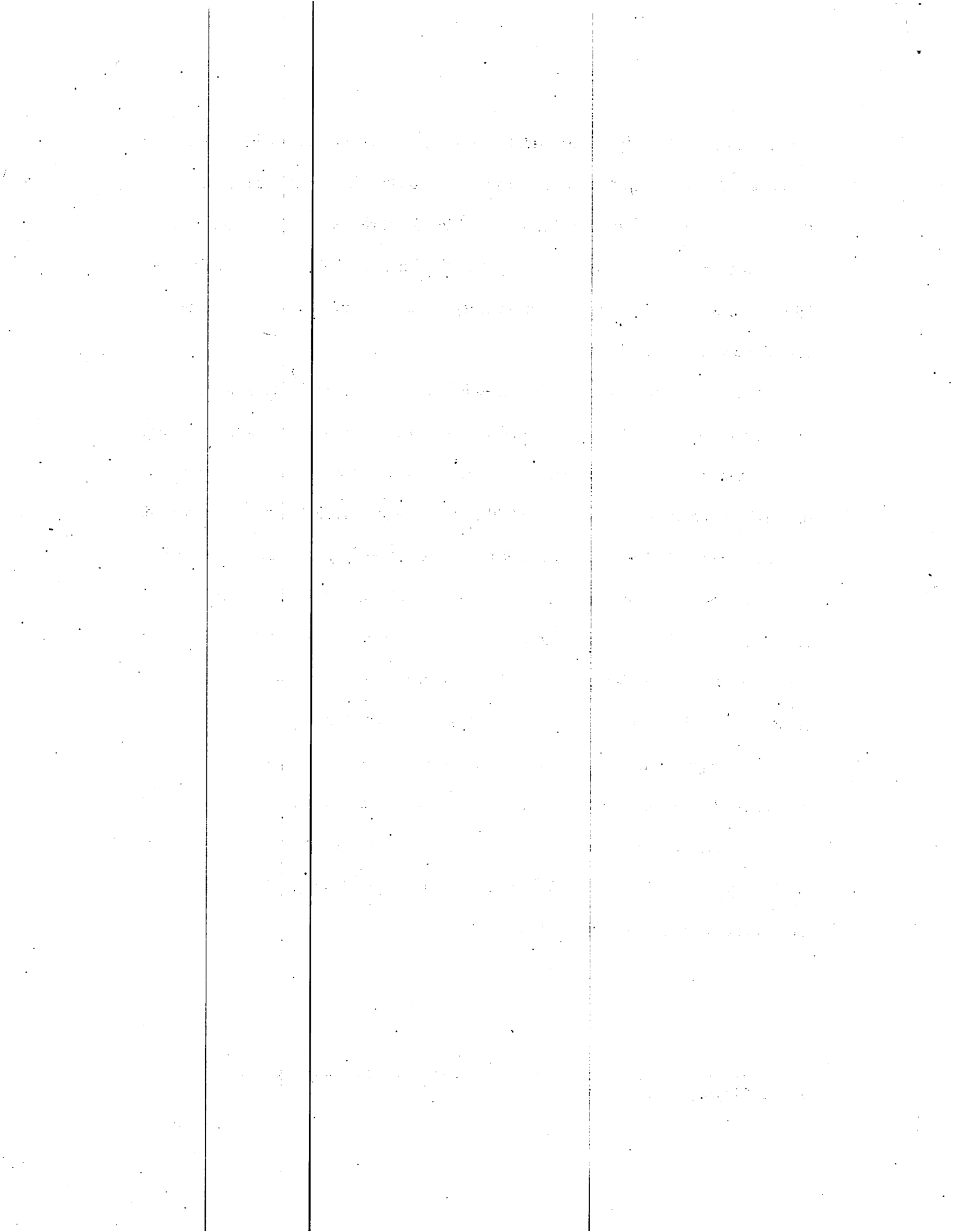
Home Improvements (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).² On December 28, 2021, the MHIC issued a Hearing Order on the Claim. On December 28, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On March 21, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

After waiting more than 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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On January 26, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first class 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 March 21, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

Both copies of the Notice were returned to the OAH with the notation "unclaimed." 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. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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



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 exhibit(s) offered by the Claimant:

- Cl. #1. April 8, 2020 Precise Home Improvements Estimate
- Cl. #2. May 5, 2020 Lowe's Receipt
- Cl. #3. May 16 through June 15, 2020 Chase bank statement
- Cl. #4. September 27, 2020 Alliance Contracting, LLC, Estimate
- Cl. #5. September 1 to October 15, 2020 Chase for Business credit card statement
- Cl. #6. September 14, 2020 text messages
- Cl. #7. October 25, 2020 complaint

The Respondent did not submit any exhibits.³

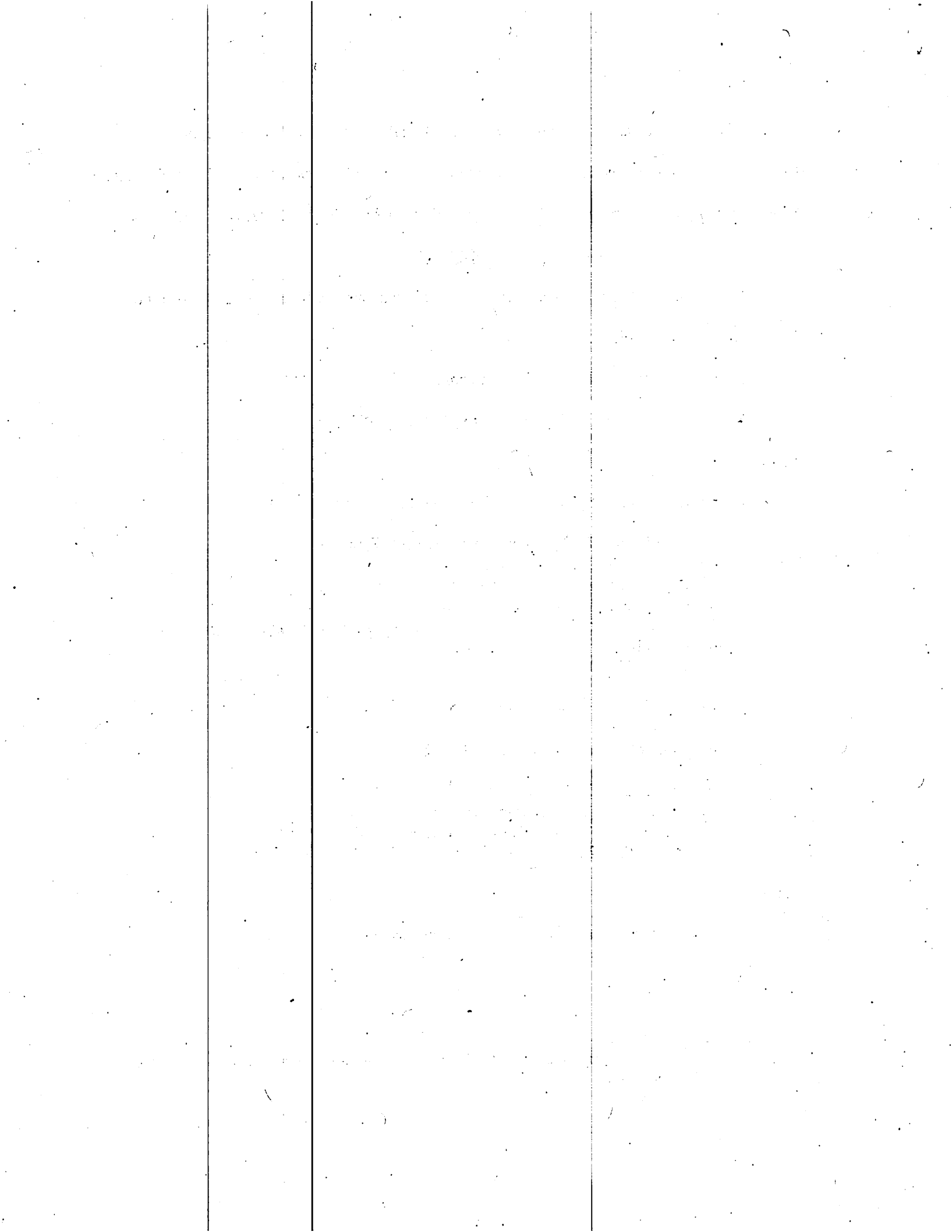
I admitted the following exhibits offered by the Fund:

- GF. #1. January 26, 2022 Notice of Hearing
- GF. #2. December 28, 2021 Hearing Order
- GF. #3. August 10, 2021 letter from MHIC to Respondent
- GF. #4. March 20, 2022 Licensing History

Testimony

The Claimant testified and did not present other witnesses.

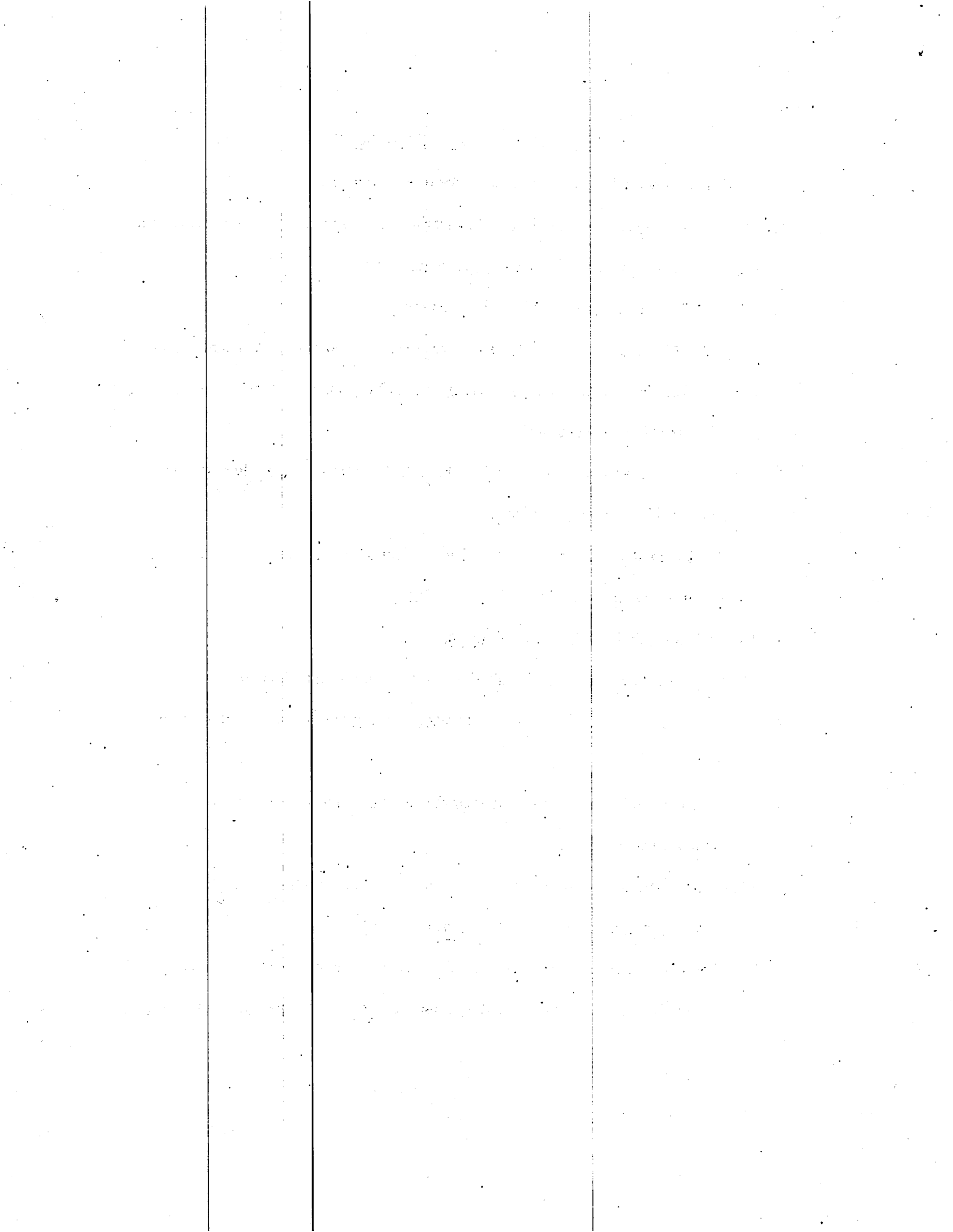
³ The Respondent did not appear for the hearing, but the file includes a response to the complaint received by the MHIC December 10, 2020.



PROPOSED FINDINGS OF FACTS

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 01-119666.
2. In April 2020, the Claimant and his wife entered into an oral contract with the Respondent for installation of fixtures in a basement bathroom that had plumbing but no fixtures. The Claimant and his wife were living in Michigan at the time and planning to move into the home in Maryland.
3. The original contract price was \$2,300.00, but the Claimant subsequently agreed to pay an additional \$2,000.00 for materials.
4. On May 18, 2020, the Claimant paid the Respondent \$2,000.00. The Respondent did not submit any further invoices for work or materials.
5. The Claimant paid Lowe's \$1,611.66 for materials.
6. The Respondent performed the installation between May 4 and 14, 2020.
7. On August 19, 2020, the Claimant noticed water coming into the next room from the bathroom.
8. On August 29, 2020, the Respondent attempted to realign the shower drain by hammering it with a mallet.
9. Water continued to leak into the next room. The Respondent refused to perform any further repairs despite the Claimant's requests.
10. The Claimant paid Alliance Contracting, LLC, \$2,165.00 to remove and replace the fixtures and flooring installed by the Respondent and to realign/repair the shower drain.



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).

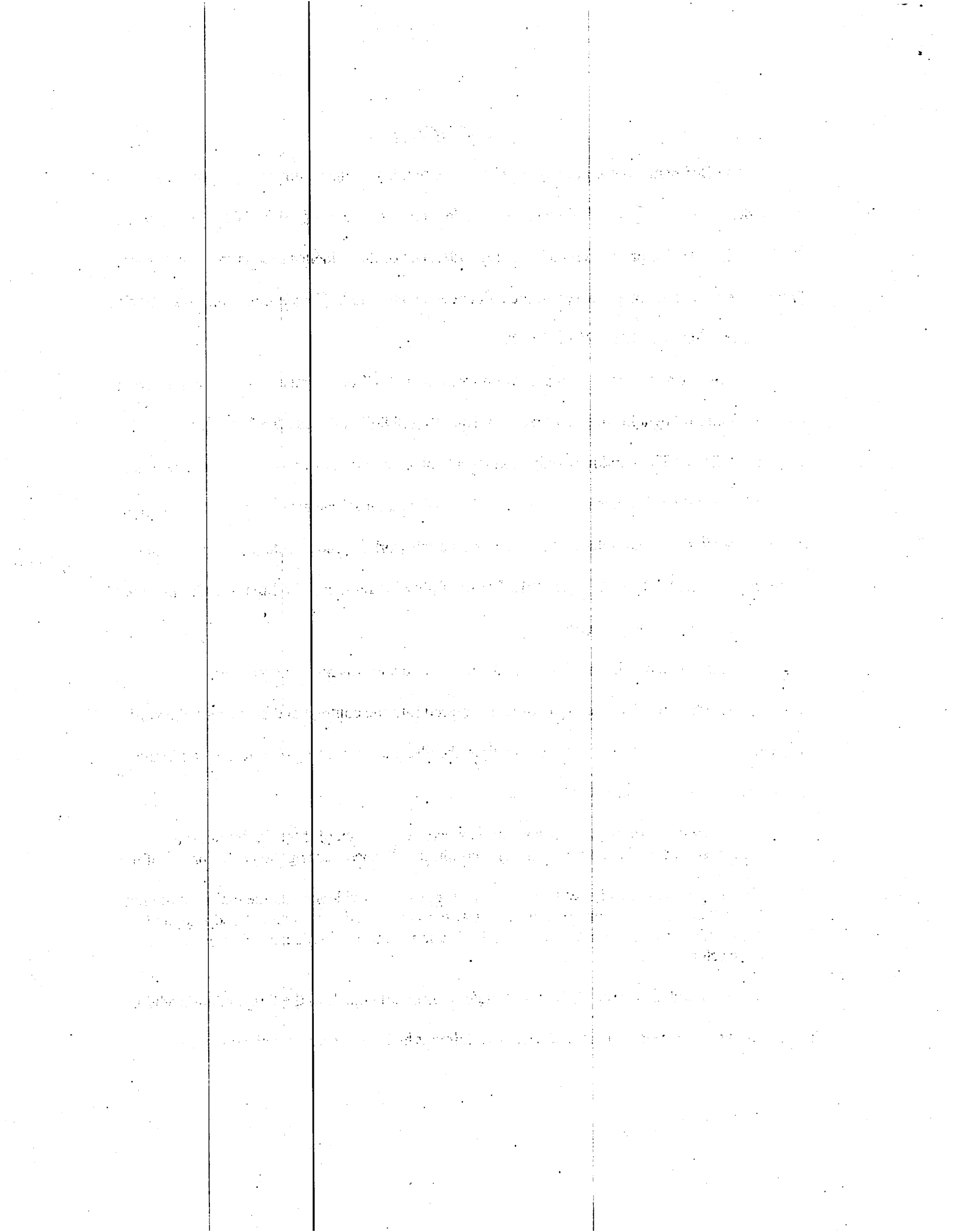
An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed 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 Respondent's license lapsed in January 2020 and was not renewed until June 3, 2020. He was thus not licensed at the time he entered into the contract and performed the work in issue, but had renewed his license by the time the Claimant's notified him of the leak in the bathroom. COMAR 09.08.03.02D(3)(d) provides:

The hearing board may dismiss a claim as legally insufficient if the contractor was unlicensed when the contract was entered into but licensed during the performance of the contract unless:

- (i) The claimant establishes by a preponderance of the evidence that the claimant did not know that the contractor was unlicensed at the time the contract was entered into; and
- (ii) A substantial portion of the contractor's alleged misconduct occurred after the contractor became licensed.

The Respondent's April 8, 2020 Estimate prominently displays the Respondent's MHIC license number. There is no evidence that the Claimant had any reason to believe that the



Respondent was not licensed at that time. The Respondent's attempt to correct a major leak by hammering the shower drain with a mallet, and his subsequent refusal to perform any other repair constituted a substantial portion of his misconduct and occurred after he renewed his license. Because of the intervening pandemic, and because the Respondent was licensed at the time he refused to repair the work he had done, the MHIC took the position that it would not raise the gap in licensure against the Claimant's claim.

The Respondent performed unworkmanlike, inadequate, or incomplete home improvements.

The Claimant testified that he and his wife were living in Michigan at the time they contracted with the Respondent to install fixtures in the basement bathroom of the Maryland home which they were planning to move to. According to the Claimant, the original contract was for \$2,300.00 including work and materials. Subsequently, the Claimant testified, he and his wife agreed to pay an additional \$2,000.00 for materials.

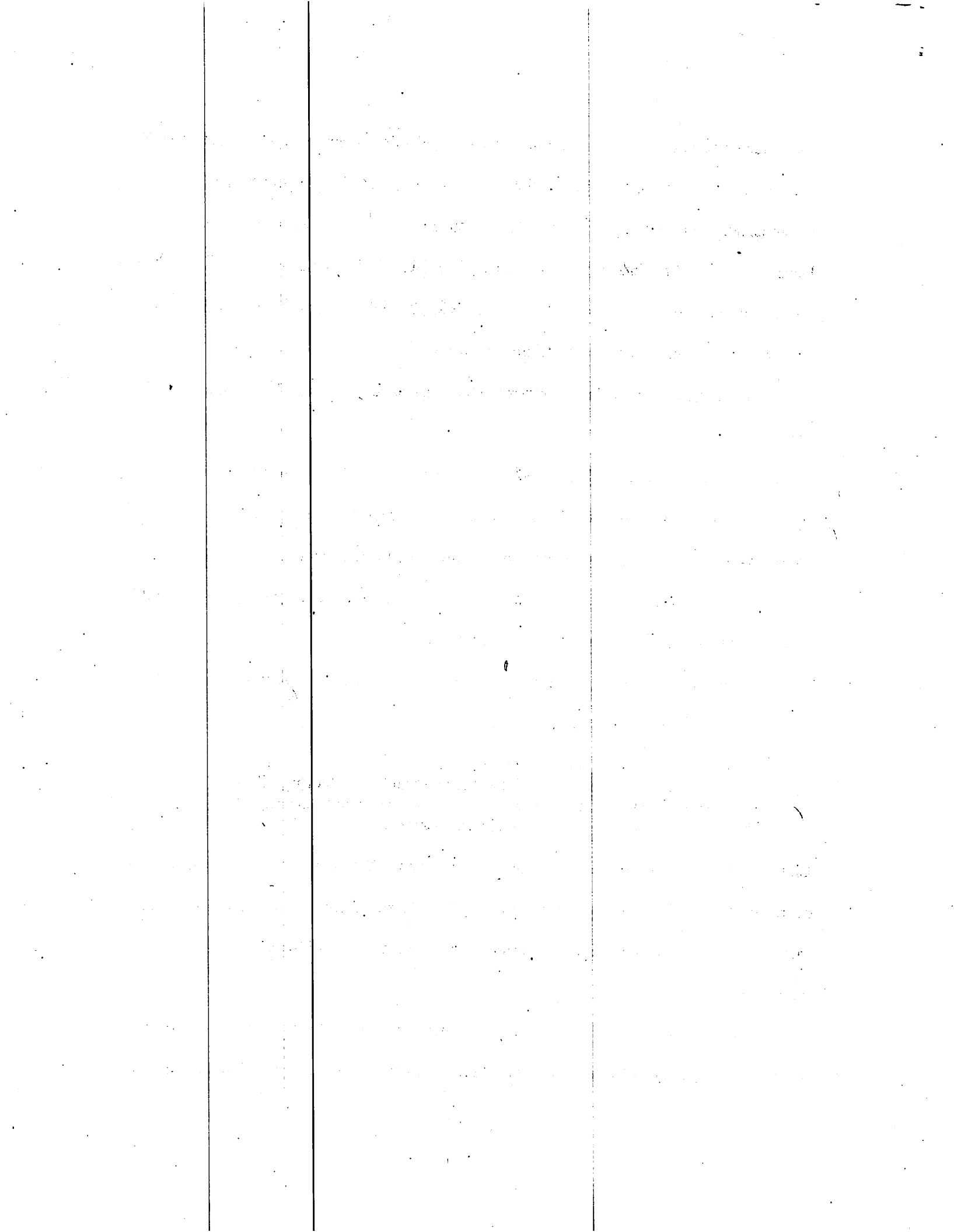
The contract was not reduced to writing. However, the Claimant submitted an April 8, 2020 Estimate, which states, in its entirety, as follows:

Shower Surround and LVP flooring	\$2,300.00
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[O]ne shower pan, tub surround shower diverter and LVP flooring will be installed. [T]he shower diverter and drain needs to be done at the same time as shower walls and pan. The price includes materials.

Cl. #1. The Estimate is unsigned by either party but is on a Precision Home Improvements letter head. In addition, the Claimant submitted a May 6, 2020 receipt from Lowe's for \$1,611.66 for materials. There is no documentation for any additional amounts paid by the Claimant for the Respondent's work.

The Claimant testified that after he and his wife moved into the Maryland home, they noticed water seeping under the bathroom wall into the next room. They called the Respondent



who attempted to correct the problem on August 29, 2020 by hammering the shower drain with a mallet but did not respond to further requests by the Claimant, until an exchange of text messages on September 14, 2020, in which the Respondent called the Claimant an obscene name, claimed that any problem with the plumbing was not his fault and refused to perform any further work.

The Claimant subsequently retained Alliance Contracting, which removed the fixtures and floor installed by the Respondent, corrected "the placement for the shower drain so the drain and the shower pan join correctly," reinstalled the fixtures, installed new flooring and repaired the drywall.

In his text message of September 14, 2020, the Respondent wrote,

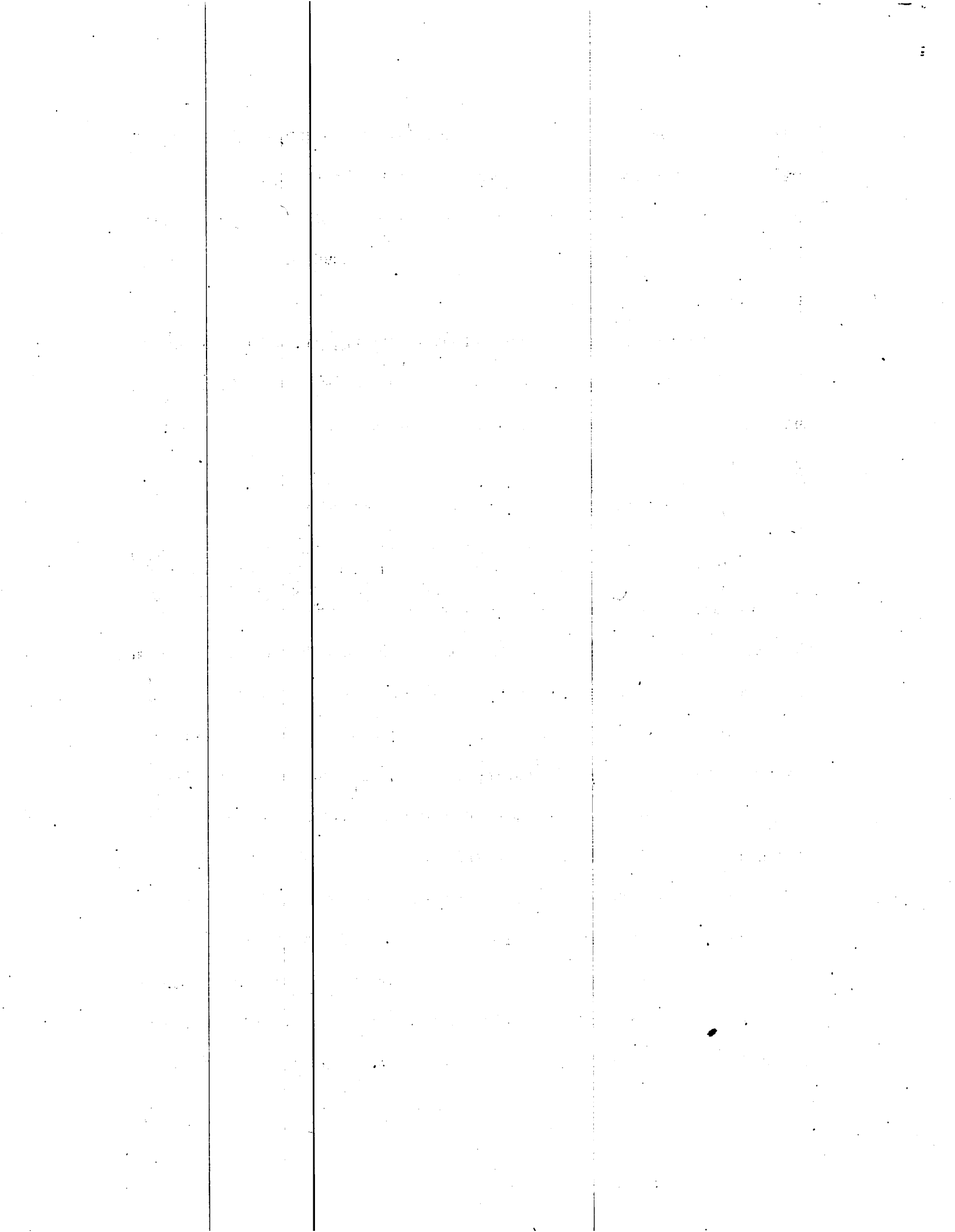
The pictures from the realtor show there was a shower pan in there in the beginning, not my fault your wife order [sic] the wrong kit. I wasn't suppose [sic] to be changing the pan as there was one already there. The plumbing before that isn't my problem as you already know you didn't want to pay nor give the proper time.

The Respondent's April 4, 2020 Estimate, however, explicitly called for a shower pan and states, "[T]he shower diverter and drain needs to be done at the same time as shower walls and pan."

Cl. #1. Based upon the work done by Alliance, the leak was apparently the result of a poor connection between the drain and the shower pan. Thus, the preponderance of the evidence is that the leak and resulting damage was the result of poor workmanship by the Respondent. The Claimant testified that there was no enhancement or upgrade in either the scope of the work performed or materials used by Alliance and its Estimate is consistent with that testimony.

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,

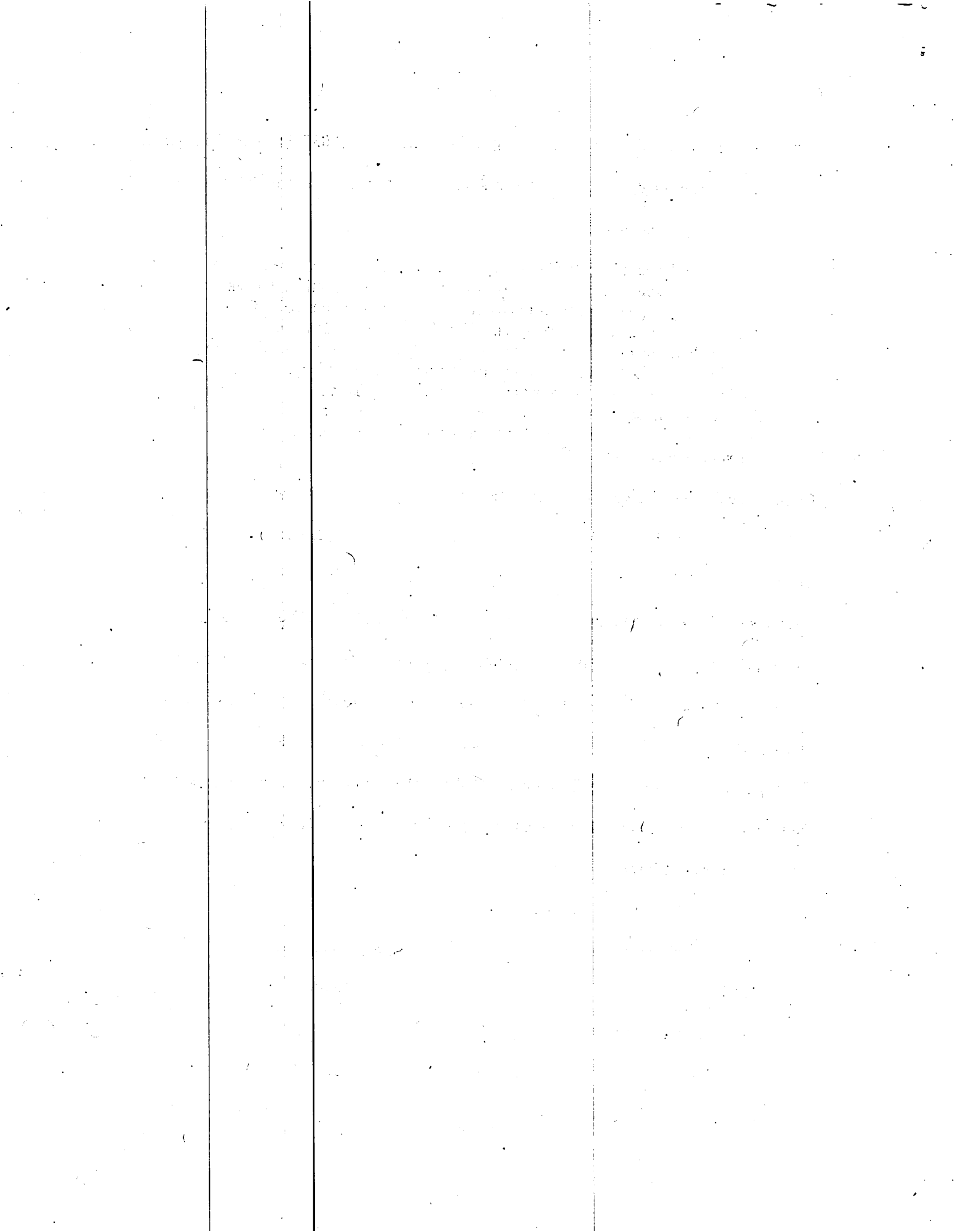


court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work, including the following:

(c) 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 original contract price of \$2,300.00 included the cost of materials. It is clear that the Claimant paid at least \$1,611.66 for materials and paid the Contractor \$2,000.00 directly. The Claimant testified that he agreed to pay \$2,000.00 for materials in addition to the original estimate, for a total cost of \$4,300.00, but he documented only \$1,611.66 paid for materials. Considering that the Respondent made no claim for any payment beyond the \$2,000.00 he received, for either labor or materials, and the fact that his original Estimate of \$2,300.00 included materials, I infer that the Respondent was fully paid. For purposes of the formula, I will consider that the total contract price was the \$2,000.00 paid to the Respondent plus the \$1,611.66, for a total contract cost of \$3,611.66, and calculate the Claimant's loss as follows:

Paid to/on behalf of Respondent	\$3,611.66
Paid to repair poor work	<u>+\$2,165.00</u>
Total cost	\$5,776.66
Original contract cost	<u>- \$3,611.66</u>
Actual loss	\$2,165.00



A claimant may not recover more than the amount paid to the contractor against whom the claim is filed. In this case, the Claimant's actual loss of \$2,165.00 exceeds the amount paid to the Respondent. COMAR 09.08.03.03B(4). Therefore, the Claimant's recovery is limited to \$2,000.00, the amount paid to the Respondent.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$ 2,165.00 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 \$2,000.00 from the Fund. Md. Code Ann., Bus. Reg. § 8-405(a); COMAR 09.08.03.03B(4).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$2,000.00; 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;⁴ and

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

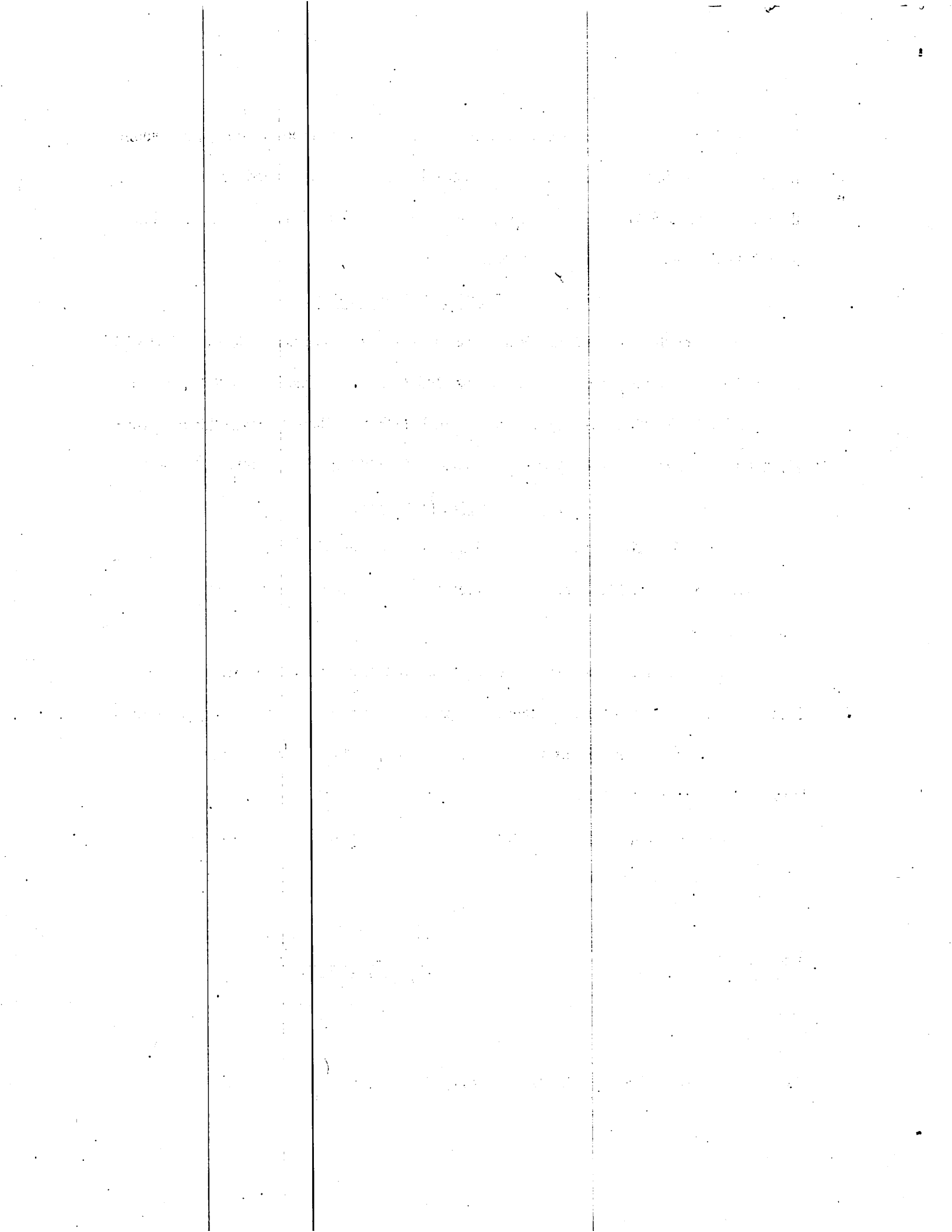
June 16, 2022
Date Decision Issued

NEP/CJ
#198980

Nancy E. Paige

Nancy E. Paige
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 2nd 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***

