

<p>IN THE MATTER OF THE CLAIM OF PAMELA HAMILTON, CLAIMANT AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ALLEGED ACTS OR OMISSIONS OF STEFANIE PETROVITCH, T/A PETROS PAVING AND SEALCOATING, RESPONDENT</p>	<p>* BEFORE WILLIS GUNTHER BAKER, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE * OF ADMINISTRATIVE HEARINGS * * * * OAH No.: LABOR-HIC-02-22-14042 * MHIC No.: 21 (75) 934</p>
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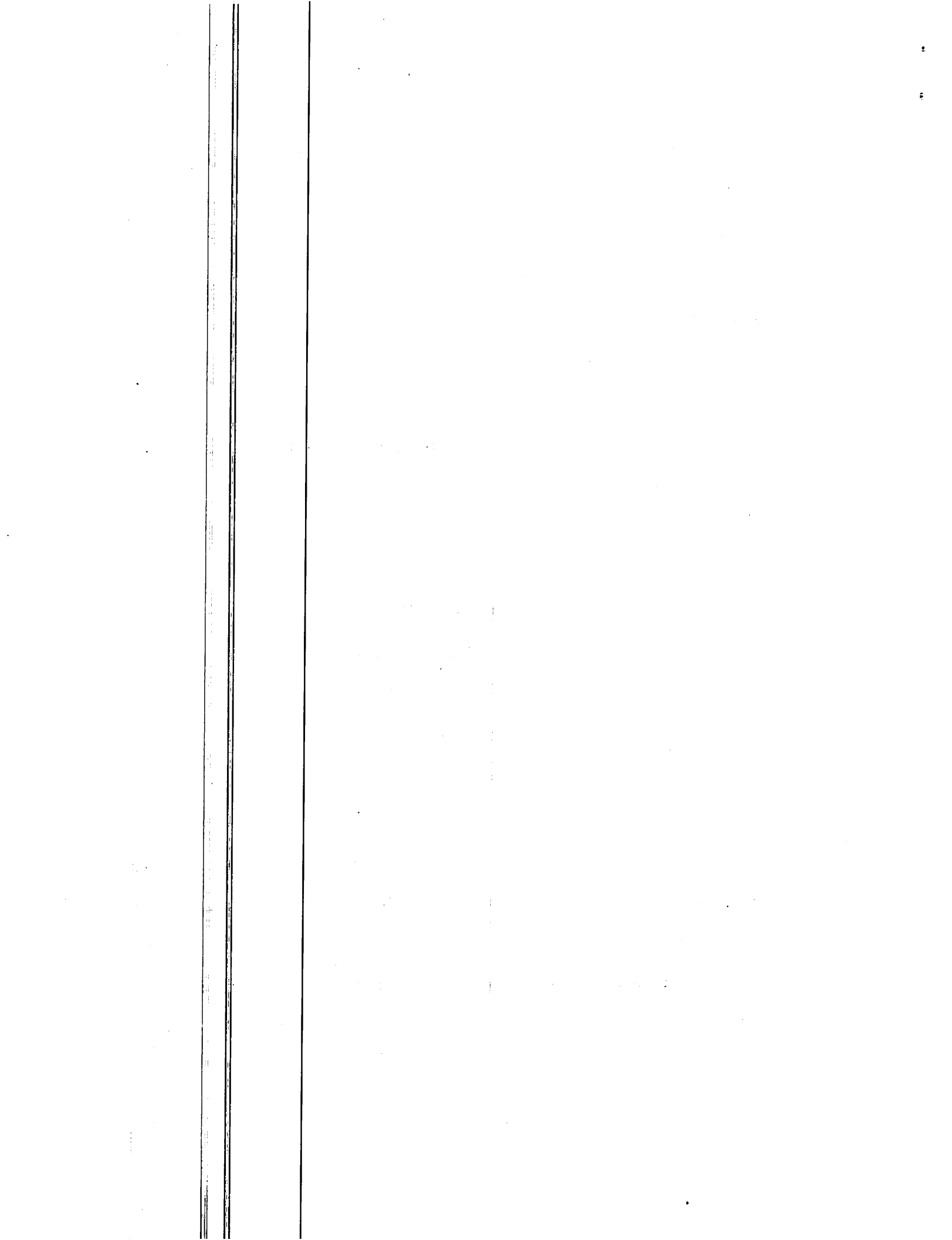
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PROPOSED DECISION

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STATEMENT OF THE CASE

On July 26, 2021, Pamela Hamilton (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 \$16,665.00 for actual losses allegedly suffered as a result of a home improvement contract with Stefanie Petrovitch, trading as Petros Paving and Sealcoating (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 &



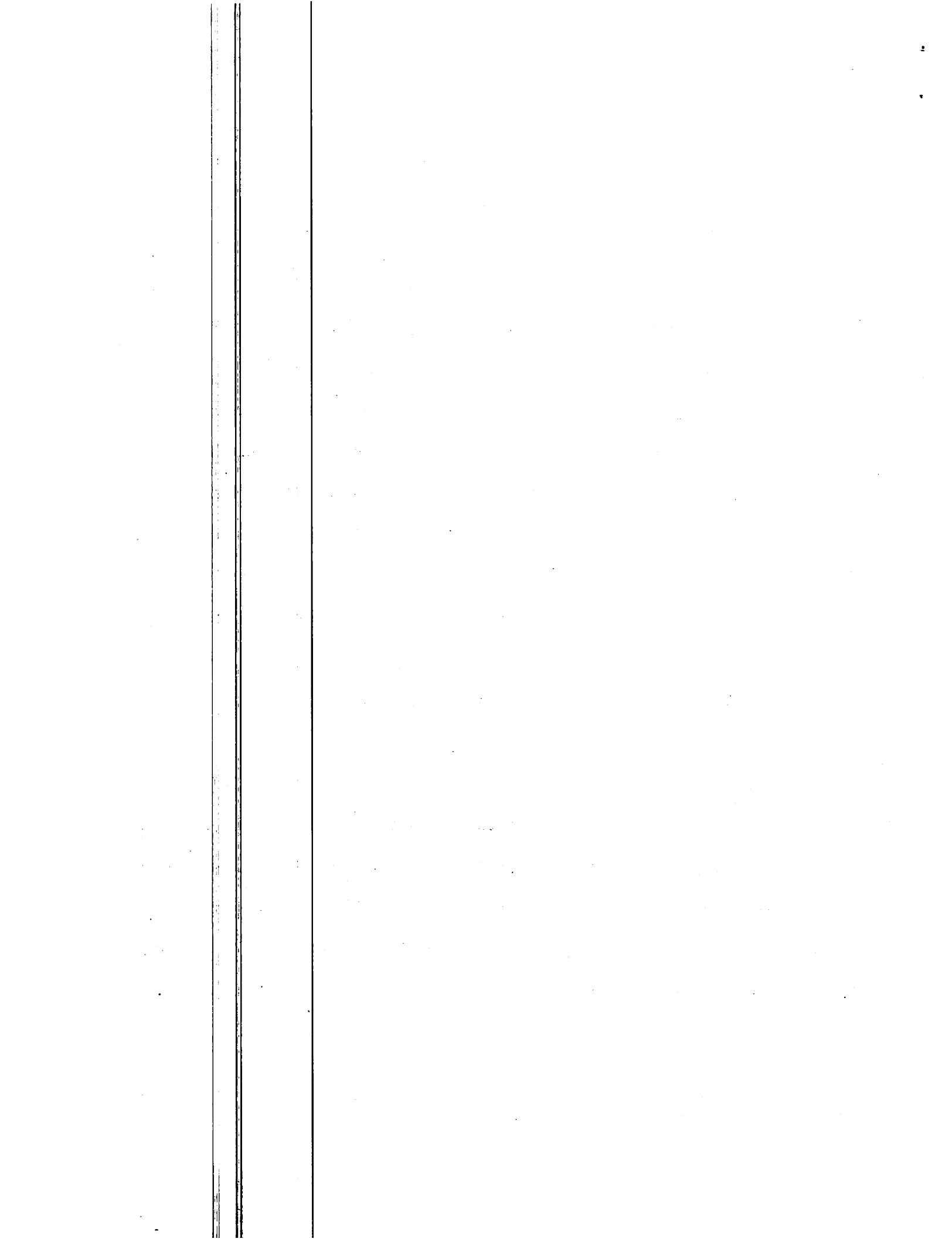
Supp. 2022).¹ On June 8, 2022, the MHIC issued a Hearing Order on the Claim. On June 13, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 5, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent failed to appear.

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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On June 30, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail delivery to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for October 5, 2022, at 9:30 am at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service (USPS) did not return the Notice to the OAH. The certified mail green card was illegibly signed and returned by the USPS to the OAH, but also had the notation sticker that it was "undeliverable" at the address of record. 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. Mr. Brouwer noted that the address that was used by the OAH is the same address as on the Respondent's Licensing information that was printed on August 24, 2022 (Fund Ex. 7) and that

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



the Licensee has an active license and is required to keep her current address on file with the MHIC. I determined that the Respondent received proper notice, 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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; 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 -

- 1a. Contract between the parties for a walkway, retaining wall, and paved driveway, dated October 4, 2020 (Contract);
- 1b. Four checks totaling \$22,500.00 from the Claimant to the Respondent, various dates;
- 1c. MHIC Claim Form and narrative, October 4, 2020;
- 1d. Bollinger & Brooks Construction, Inc. Proposal, December 11, 2020; and,
- 1e. BlackToppers, LLC Proposal, January 18, 2021

Clmt. Ex. 2 - Four pages of photographs of the Claimant's property from November 2020 to January 2021 showing: the condition of the driveway shortly after completion; the drain installed; and the condition of items to be removed by the Respondent that were left

Clmt. Ex. 3 - Emails between the parties October 5, 2020 to February 2, 2021, and emails between the parties with the MHIC, June 9, 2021 to January 31, 2022

Clmt. Ex. 4 - Not admitted, duplicates of the Fund exhibits

Clmt. Ex. 5 - Letter from MHIC to the Claimant that her claim was approved for a hearing, June 8, 2022

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - MHIC Hearing Order, June 8, 2022

Fund Ex. 2 - Notice of Hearing, June 30, 2022

Fund Ex. 3 - Notice of Settlement on the Record, January 18, 2022

Fund Ex. 4 - MHIC Hearing Order, November 17, 2021

Fund Ex. 5 - Notice of Hearing, December 3, 2021

Fund Ex. 6 - MHIC Notice of Claim to the Respondent with copy of Claim Form, August 17, 2021

Fund Ex. 7 - Respondent's Licensing information, printed August 24, 2022

The Respondent was not present and did not submit any documents.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent failed to appear.

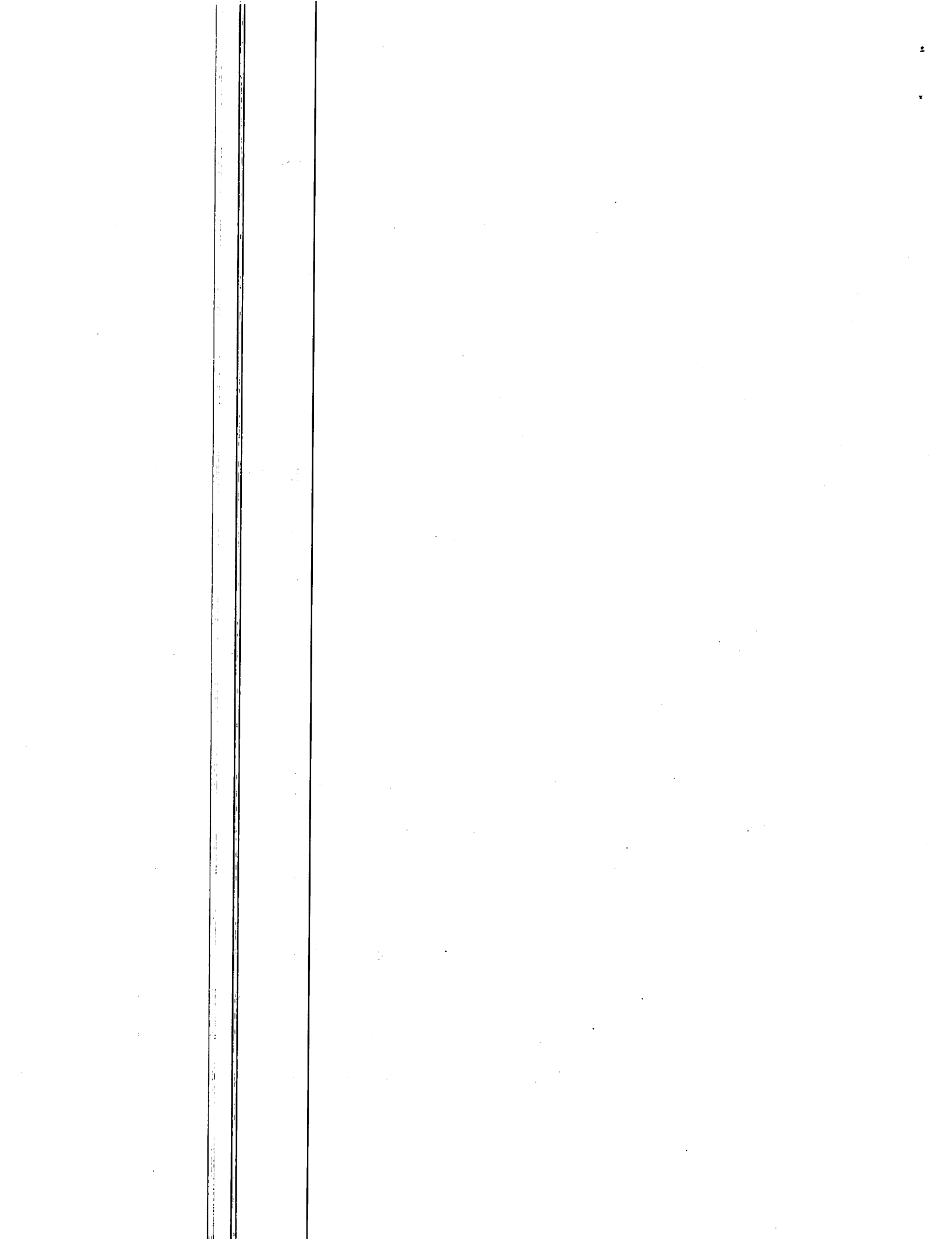
The Fund did not present any witnesses.

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.

2. On October 5, 2020, the Claimant and the Respondent entered into the Contract to conduct home improvements at the Claimant's home. The Contract called for the Respondent to excavate and create a concrete walkway and retaining wall, excavate existing driveway, remove vegetation and haul away wooden ties, grade, and add stone, and apply three inches of "9.5 mil"



asphalt for 2,800 square feet driveway to proper grade and proper compaction, with a two-year guarantee (Contract). (Clmt. Ex. 1.)

3. The Respondent was represented by her employee Peter Petrovich for the signing of the Contract and the work performed.

4. The original agreed-upon Contract price was \$18,000.00.

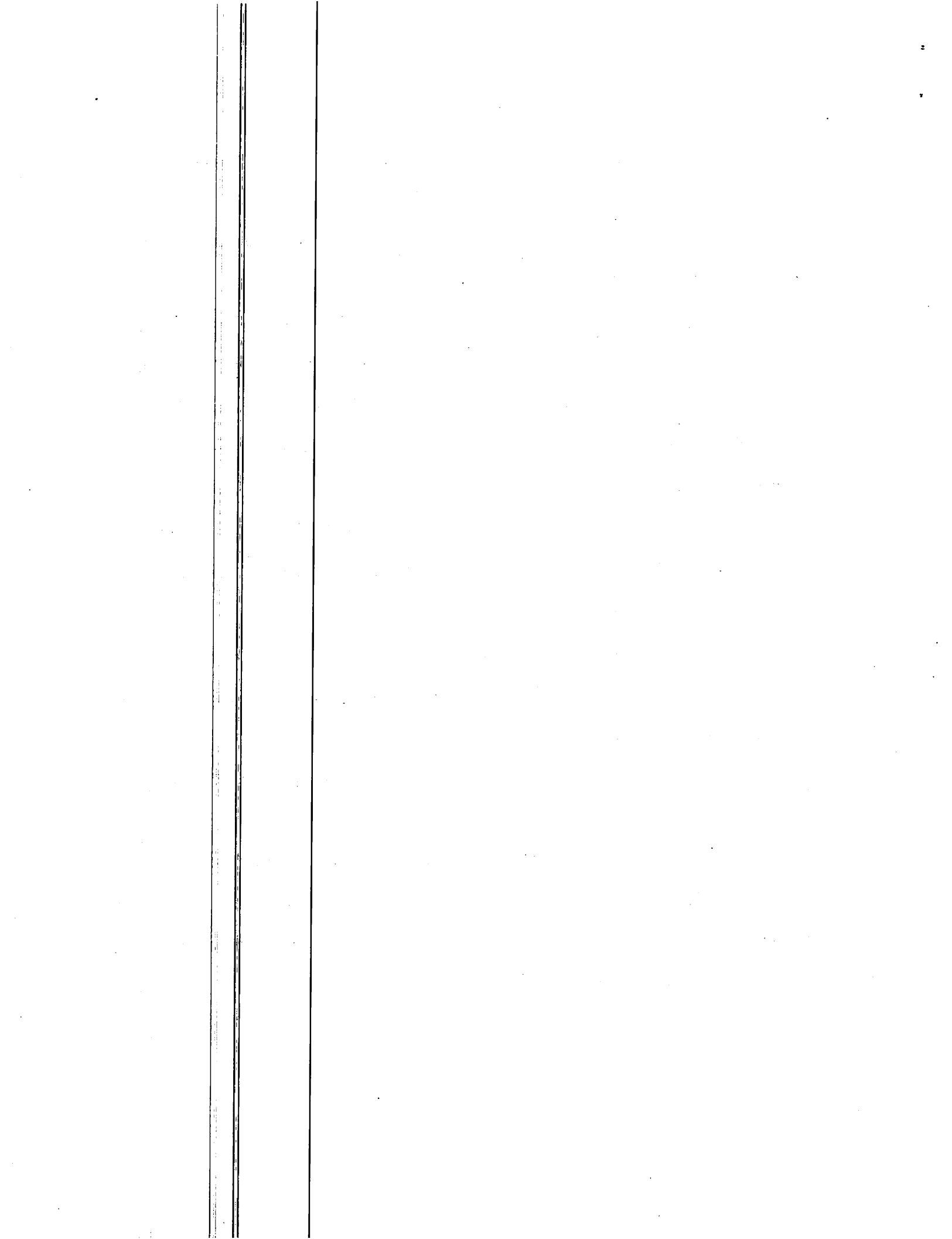
5. The parties amended the Contract to add additional materials and labor, stump-grinding, a flower bed, caps on the retaining wall, and the installation of a drain in the driveway. Rather than charge \$1,800.00 for the drain, the parties agreed that the wooden ties would be cut up into smaller pieces and dumped over the embankment on the Claimant's property rather than be removed. The agreed upon price for the additional items was \$4,500.00.

6. The Claimant requested a copy of the addendum multiple times in writing, but never received the addendum.

7. The Claimant paid the Respondent \$6,000.00 on October 5, 2020, \$6,000.00 on October 13, 2020, \$6,000.00 on October 16, 2020, and \$4,500.00 on October 21, 2020, for a total of \$22,500.00. (Clmt. Ex. 1.)

8. The Claimant was satisfied with the work done on the walkway, retaining wall and flower bed. The Claim relates only to the asphalt driveway.

9. Within a month of the driveway installation, the Claimant experienced weeds growing throughout the driveway, pooling water on the driveway, and no noticeable activity with the drain that was placed near the garage and covered in asphalt that did not appear to be connected to the drainpipe. (Clmt. Ex. 2.)



10. The Respondent did not cut up the wooden ties and dump them over the embankment as agreed. The Respondent left the wooden ties and other construction detritus in the Claimant's yard and damaged the Claimant's lawn with a bobcat. (Clmt. Ex. 2, p. 4.)

11. Within a few months, the driveway developed waves, was uneven, had pools of standing water and ice sheets, and started crumbling.

12. The Claimant, her son Ian Hamilton (Son), and her daughter-in-law Jessica Louque (Daughter), all were in contact with the Respondent and with Peter Petrovitch throughout November 2020, December 2020, January 2021, and February 2021. The Son and the Daughter had the Claimant's consent to represent the Claimant's interests with the Respondent on her behalf. (Clmt. Ex. 3.)

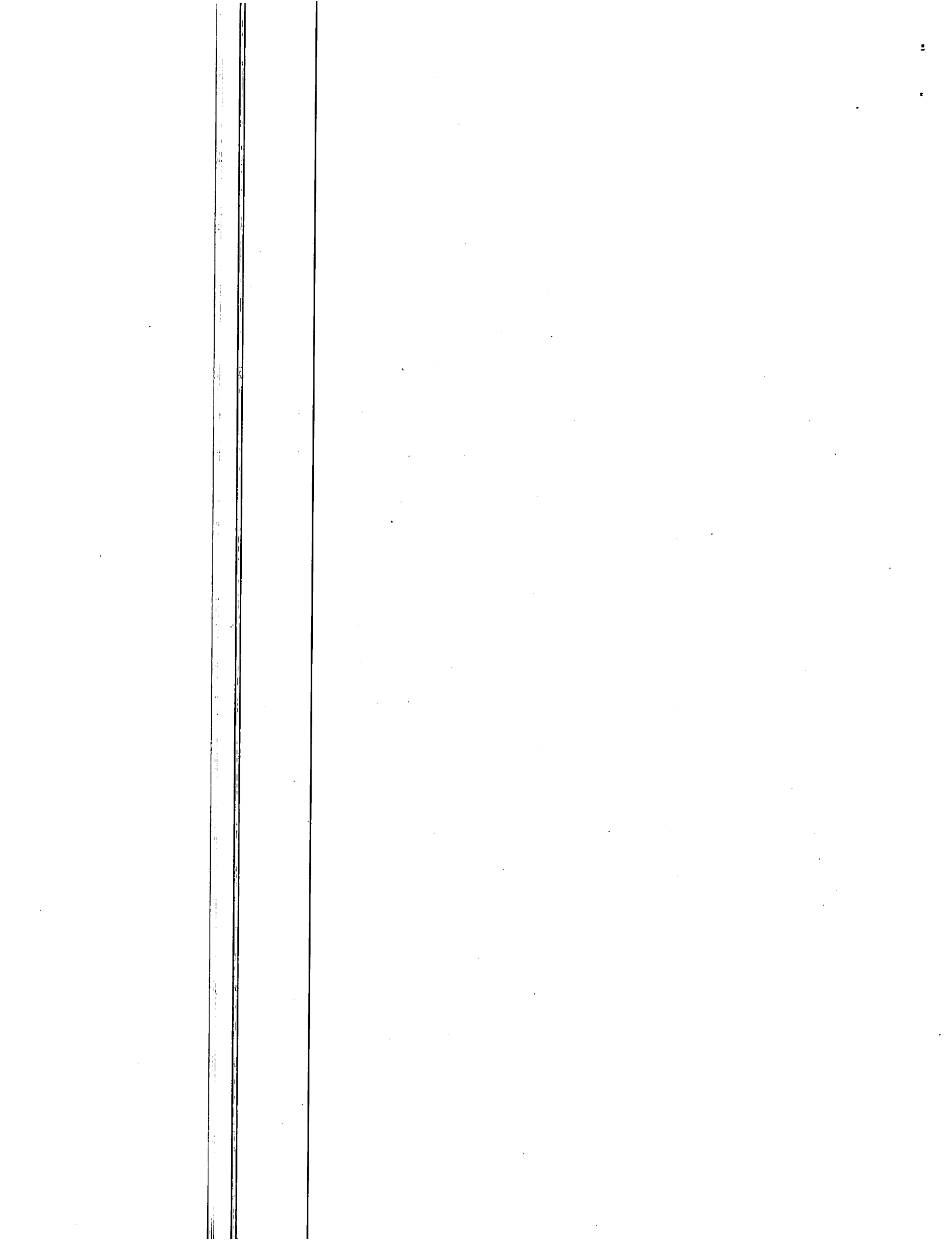
13. On December 11, 2020, the Claimant received an estimate from Bollinger & Brooks Construction, Inc. (B & B) to remove and replace the Claimant's driveway to the same requirements as in the Contract with the Respondent for \$16,665.00.

14. On January 18, 2021, the Claimant received an estimate from BlackToppers, LLC to remove and replace the Claimant's driveway to the same requirements as in the Contract with the Respondent for \$14,290.00.

15. In an email to the Son on February 2, 2021, the Respondent admitted that the "driveway failed" and stated that they had "no problem removing it and replacing it." (Clmt. Ex. 3.)

16. The Respondent never returned to the Claimant's property to redo the driveway.

17. The Claimant filed a complaint with the MHIC in June 2021 and filed her Claim with the Fund on July 26, 2021. A hearing was scheduled at the OAH but the parties settled on the record on January 18, 2022.



18. The Respondent failed to comply with the terms of the settlement, the MHIC issued a new Hearing Order on June 8, 2022, and the matter was set in for a new hearing on October 5, 2022.

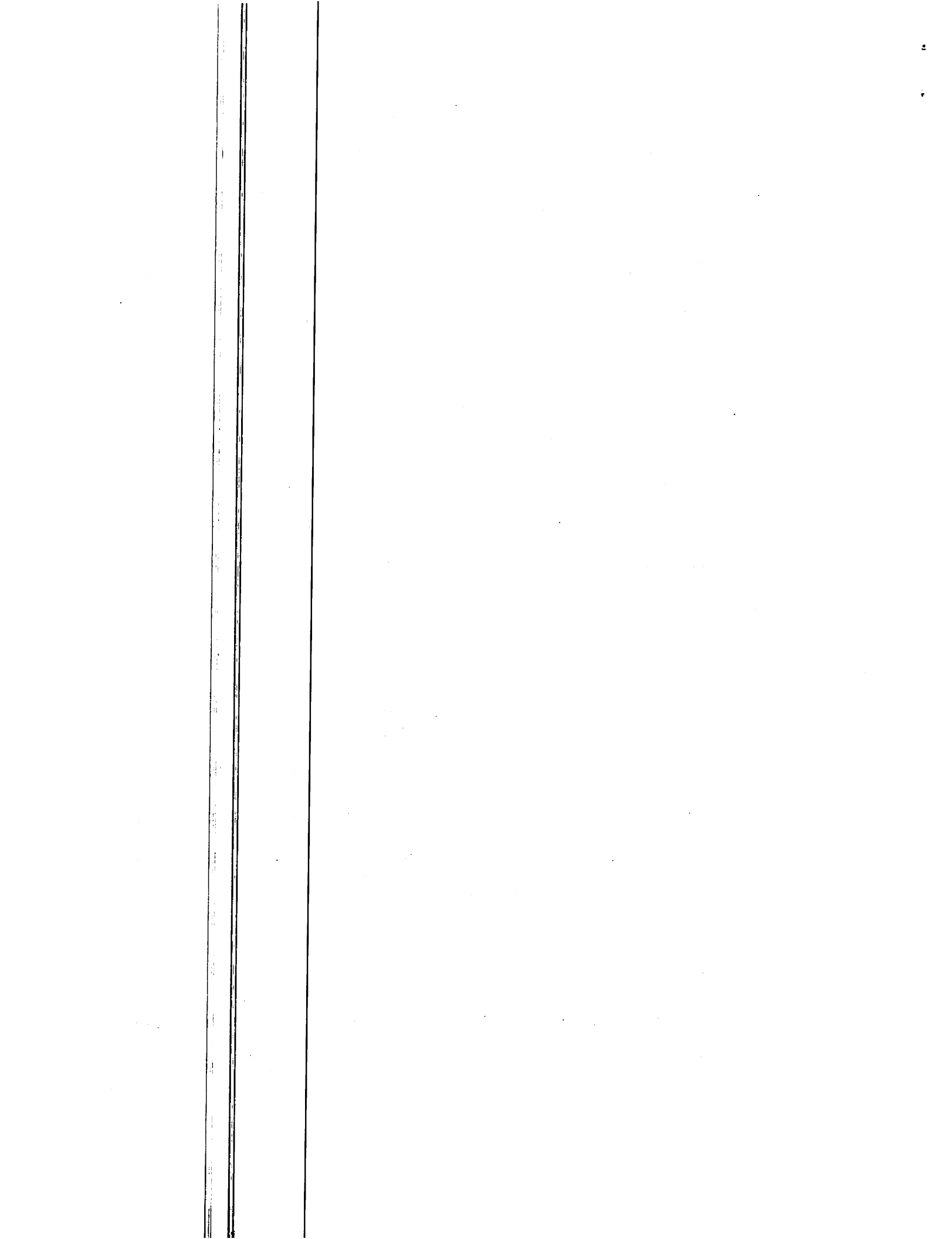
19. The Claim was timely filed, there is no pending court claim for the same loss, the Claimant did not recover the alleged losses from any other source, the work was conducted at the Claimant's only residence, and there was no arbitration agreement.

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); State Gov't § 10-217; 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 Cnty. 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) (Supp. 2022); *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.

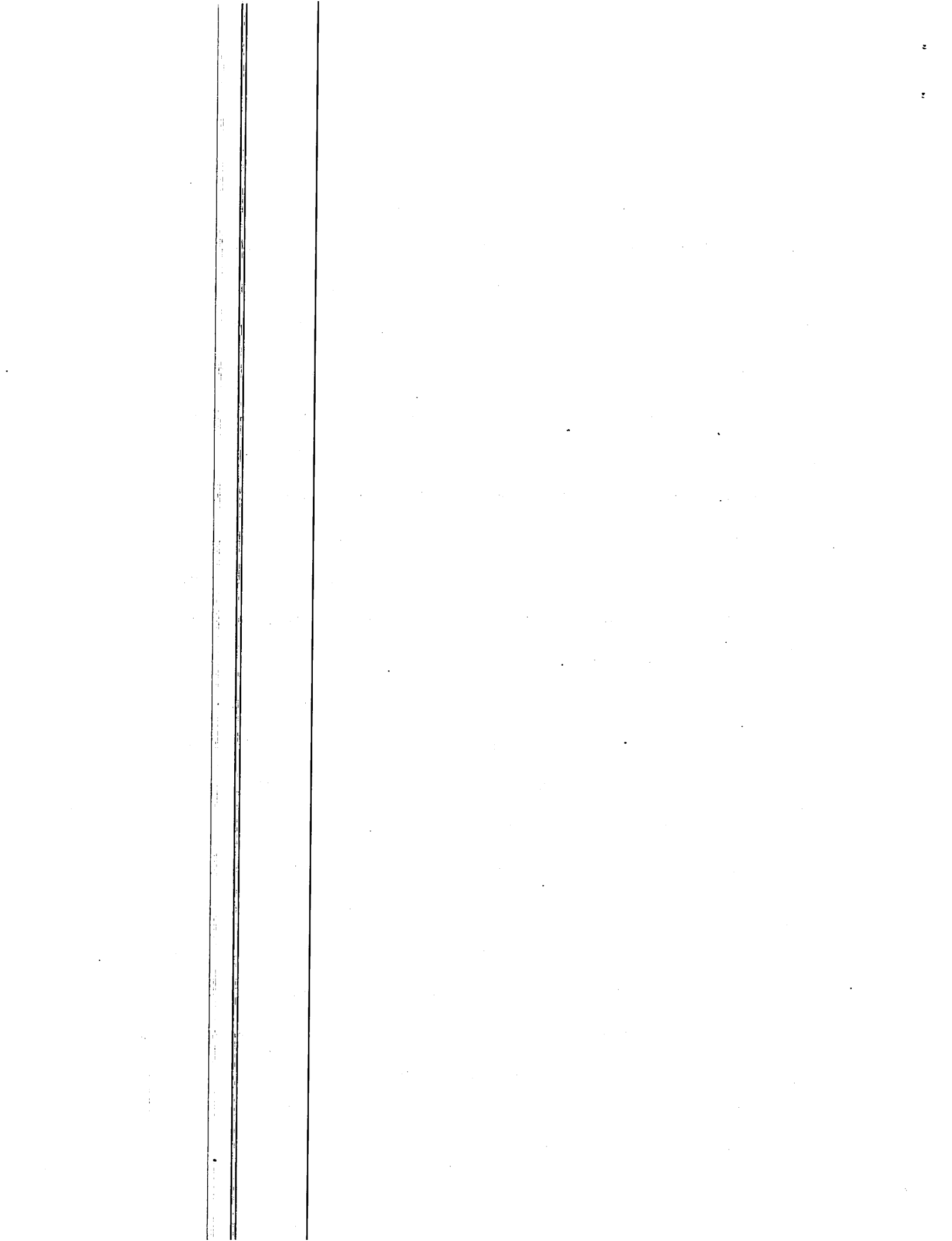
By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The Claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp.



2022). The Claimant resides in the home that is the subject of the Claim or does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). The Claimant is not a relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent. *Id.* § 8-405(f)(1) (Supp. 2022).

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the Claim. *Id.* § 8-405(d) (Supp. 2022). The Claimant and her Son were in regular contact with the Respondent in the four months following the initial completion of the driveway. The Respondent kept scheduling meetings then failing to show up and eventually stopped communicating altogether, even after admitting that the driveway had failed and needed to be replaced. In fact, the Claimant and Respondent reached a settlement during the first scheduled hearing at the OAH, but the Respondent failed to meet its obligation under the agreement and the matter was set in for this hearing.

I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. The Claimant contracted with the Respondent to remove her old gravel driveway and wooden ties and replace it with a three inch depth of asphalt that was level and graded, which did not occur. While the Claimant did not provide expert testimony, the inadequacy of the driveway is clearly visible in the photographs provided as Claimant Exhibit 2. Within weeks of the driveway installation, weeds were visibly popping up throughout the asphalt, which was clearly not properly compacted, nor three inches thick. The Claimant testified that the asphalt has only gotten worse since the photos were taken and that within a couple of months the driveway developed “waves” and was not smooth to drive on. Rain pooled on the driveway then ice sheets developed in the winter that caused the asphalt to start breaking apart. In addition, the



Respondent did not cut and transport the wooden ties down the embankment, but left them whole and unmovable on the Claimant's property. The drain that was installed does not appear to have any function or purpose and the Claimant has never seen any water exiting the allegedly attached pipe.

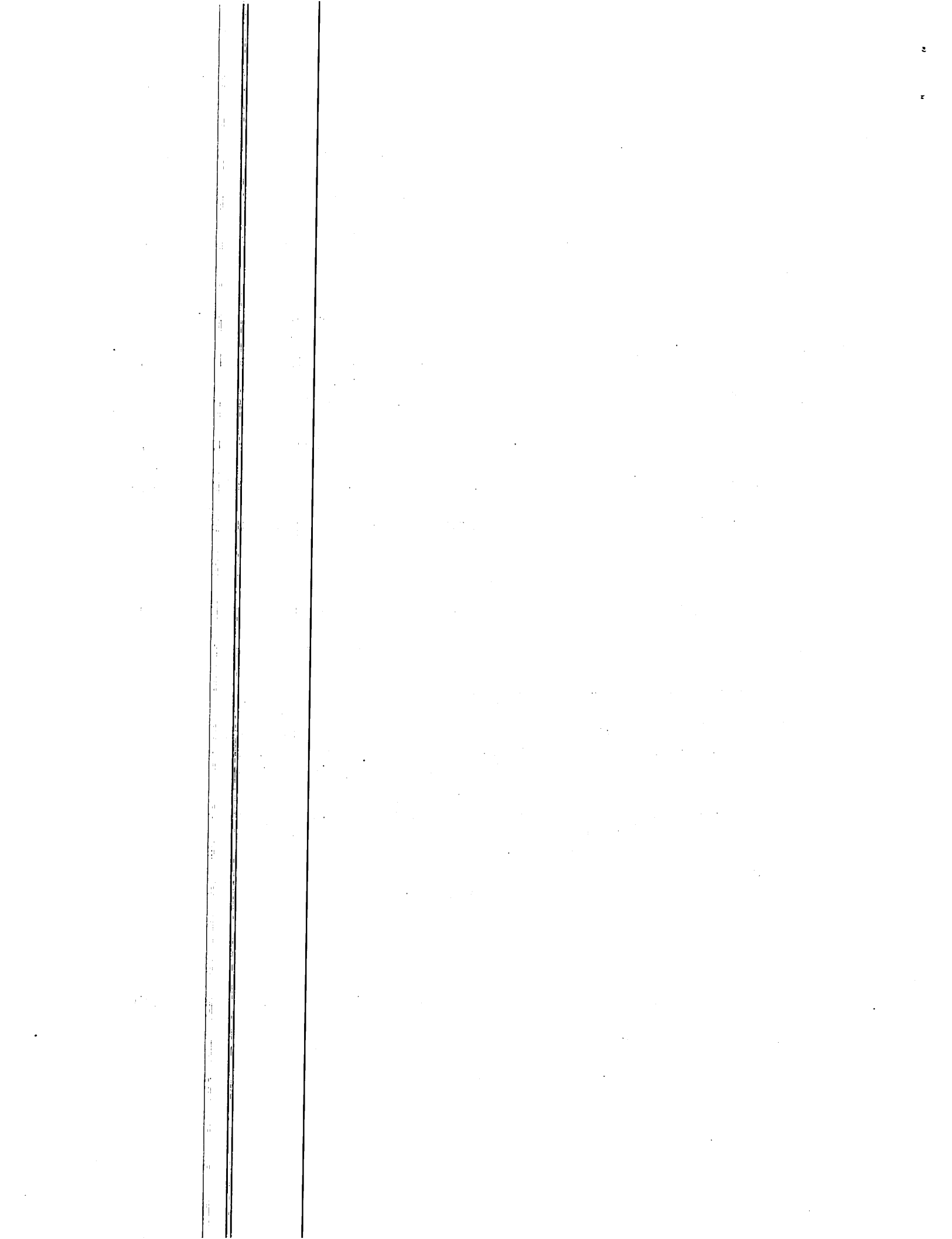
I find that the Claimant is eligible for compensation from the Fund. Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3) (Supp. 2022); 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 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.

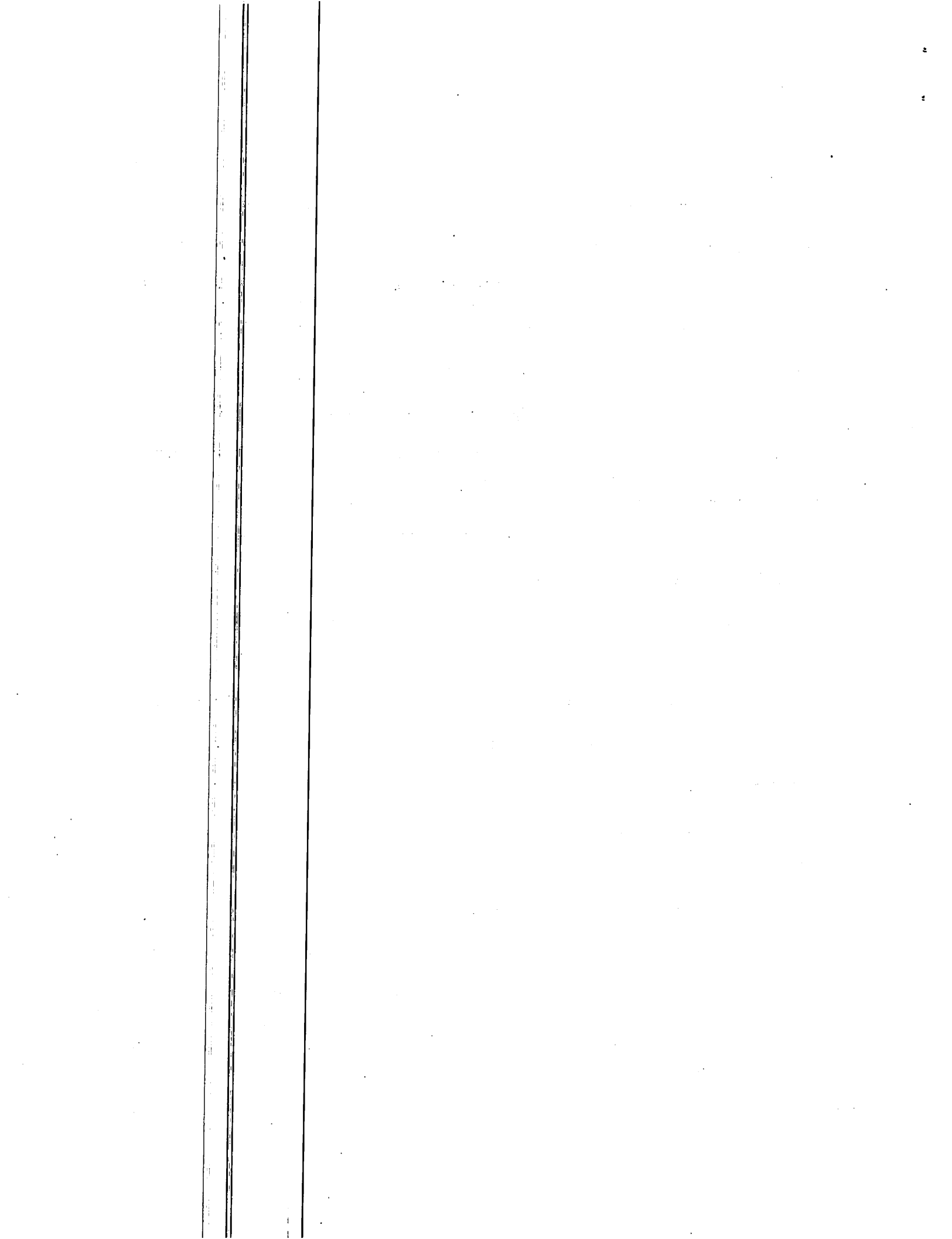
COMAR 09.08.03.03B(3)(c).

Two years ago, the Claimant explored hiring other contractors to redo the Respondent's work. She met with Darrin Brooks of B & B who walked the property with her, explained what would need to be done in order to repair the Respondent's unworkmanlike paving job and



replace the driveway in the same manner as the Contract with the Respondent at a cost of \$16,665.00. Mr. Brooks pointed out that the plastic and rubber drain in the asphalt was “a joke” because it would melt and should have been placed in concrete. The Claimant was unable to confirm whether B & B was licensed with MHIC, but she believed they were professional and knowledgeable. The Claimant also received an estimate from BlackToppers, LLC for \$14,290.00, which she understood had an MHIC license. The BlackToppers estimate only called for two and a half inches of asphalt, not three inches as the original Contract had. She contacted other companies but either received no response or no written estimate, so she did not pursue additional estimates any further.

I find that the Complainant has demonstrated that the entire driveway needs to be replaced and I find that the B & B estimate of \$16,665.00 most closely matches the Respondent’s contract. While there is no evidence that B & B holds an MHIC license, the Claimant did a great deal of research with other contractors and felt that B & B was the most thorough in its review of the situation. It is clear that the Claimant will not contract with anyone without a license, but there is no basis to believe that the B & B estimate is inappropriate. The Fund agreed that at a minimum the Claimant was entitled to the amount of the BlackToppers, LLC estimate of \$14,290.00. I find this estimate to be too low because it called for a half inch less asphalt than the original contract and based on the size of the Claimant’s driveway, had the estimate been for three inches of asphalt, it easily could have reached the additional cost of the B & B estimate. Therefore, I find that the Claimant’s actual loss is \$16,665.00. I would also note, as was pointed out at the hearing, construction costs have greatly increased over the last two years and it is doubtful that the Claimant can replace the driveway at that cost. However, I cannot speculate on what that amount would be and can only award damages that are proven.



Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.² Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$16,665.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$16,665.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022) ; COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover that amount from the Fund. Bus. Reg. § 8-405(a) (Supp. 2022); *see also* COMAR 09.08.03.03B(2), (3).

RECOMMENDED ORDER

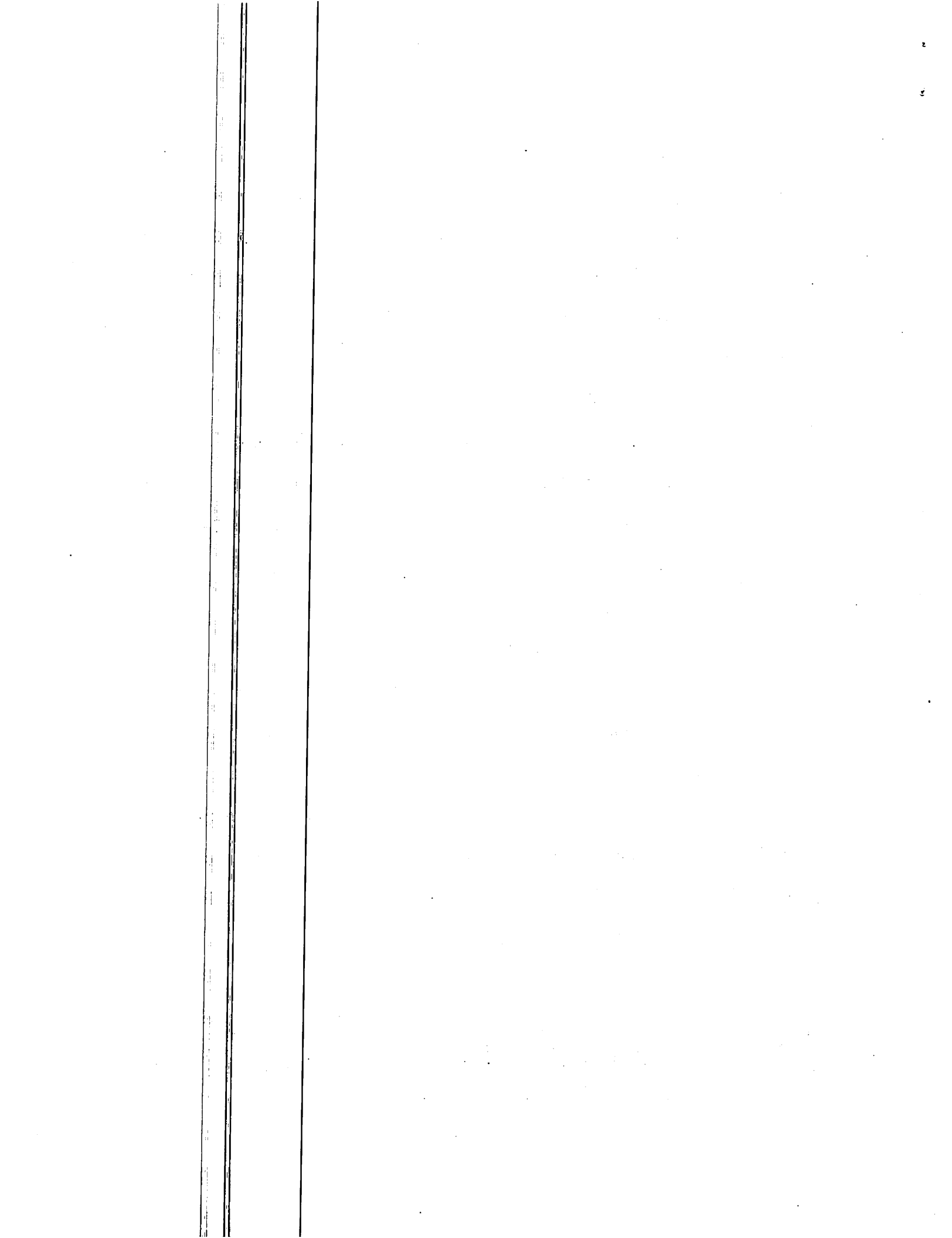
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,665.00; 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

² On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

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



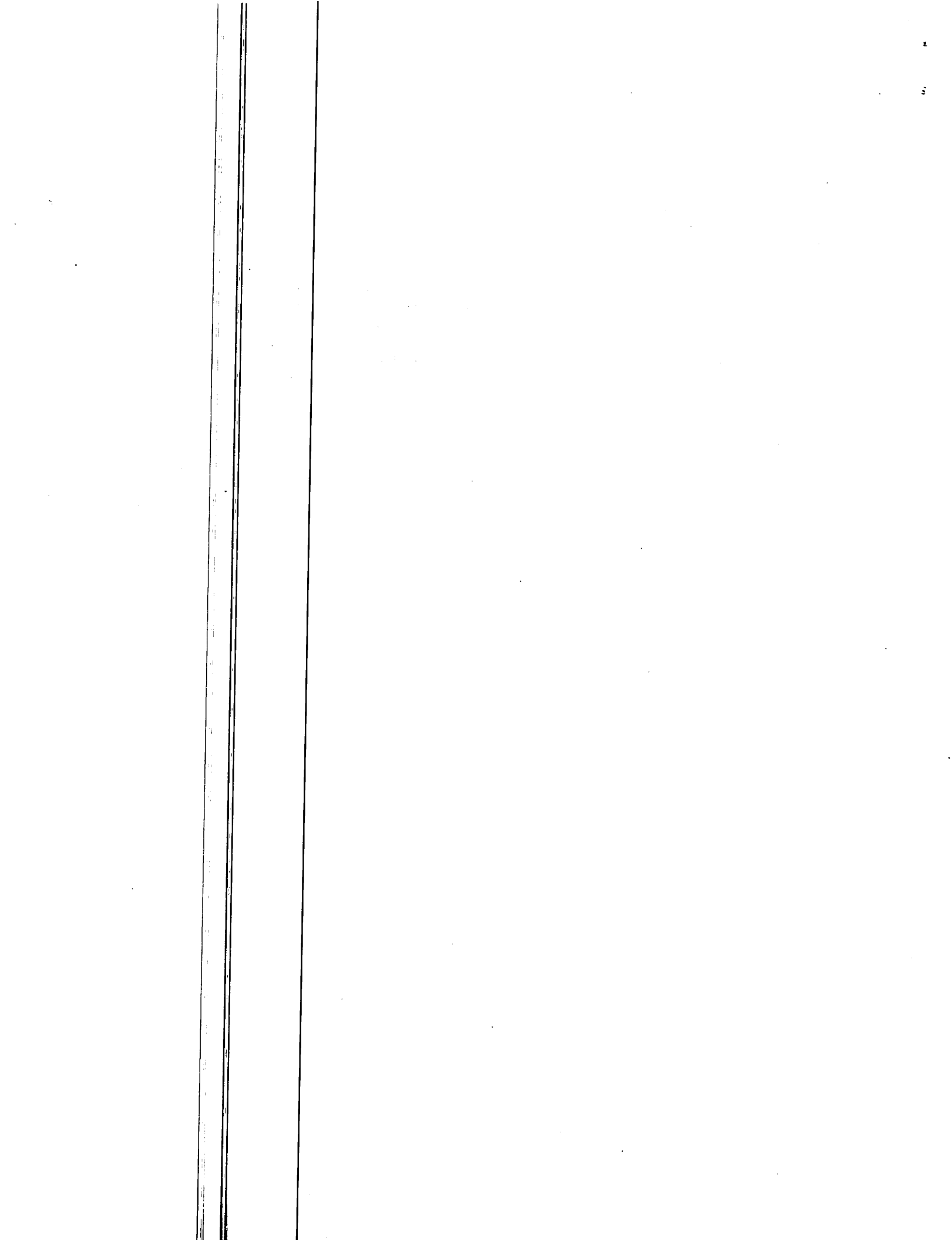
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Willis Gunther Baker

December 14, 2022
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/cj
#202394



PROPOSED ORDER

WHEREFORE, this 25th day of January, 2023, 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.

Michael Newton

Michael Newton

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

