

<p><b>IN THE MATTER OF THE CLAIM</b></p> <p><b>OF KRYSTLE RAGIN,</b></p> <p><b>CLAIMANT</b></p> <p><b>AGAINST THE MARYLAND HOME</b></p> <p><b>IMPROVEMENT GUARANTY FUND</b></p> <p><b>FOR THE ALLEGED ACTS OR</b></p> <p><b>OMISSIONS OF VASILIOS</b></p> <p><b>POLYZOS, T/A POLYZOS PAINTING,</b></p> <p><b>INC.</b></p> <p><b>RESPONDENT</b></p>	<p><b>* BEFORE ROBERT B. LEVIN,</b></p> <p><b>* AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>* OF THE MARYLAND OFFICE</b></p> <p><b>* OF ADMINISTRATIVE HEARINGS</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>*</b></p> <p><b>* OAH No.: LABOR-HIC-02-22-16001</b></p> <p><b>* MHIC No.: 22 (75) 877</b></p> <p><b>*</b></p>
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**PROPOSED DECISION**

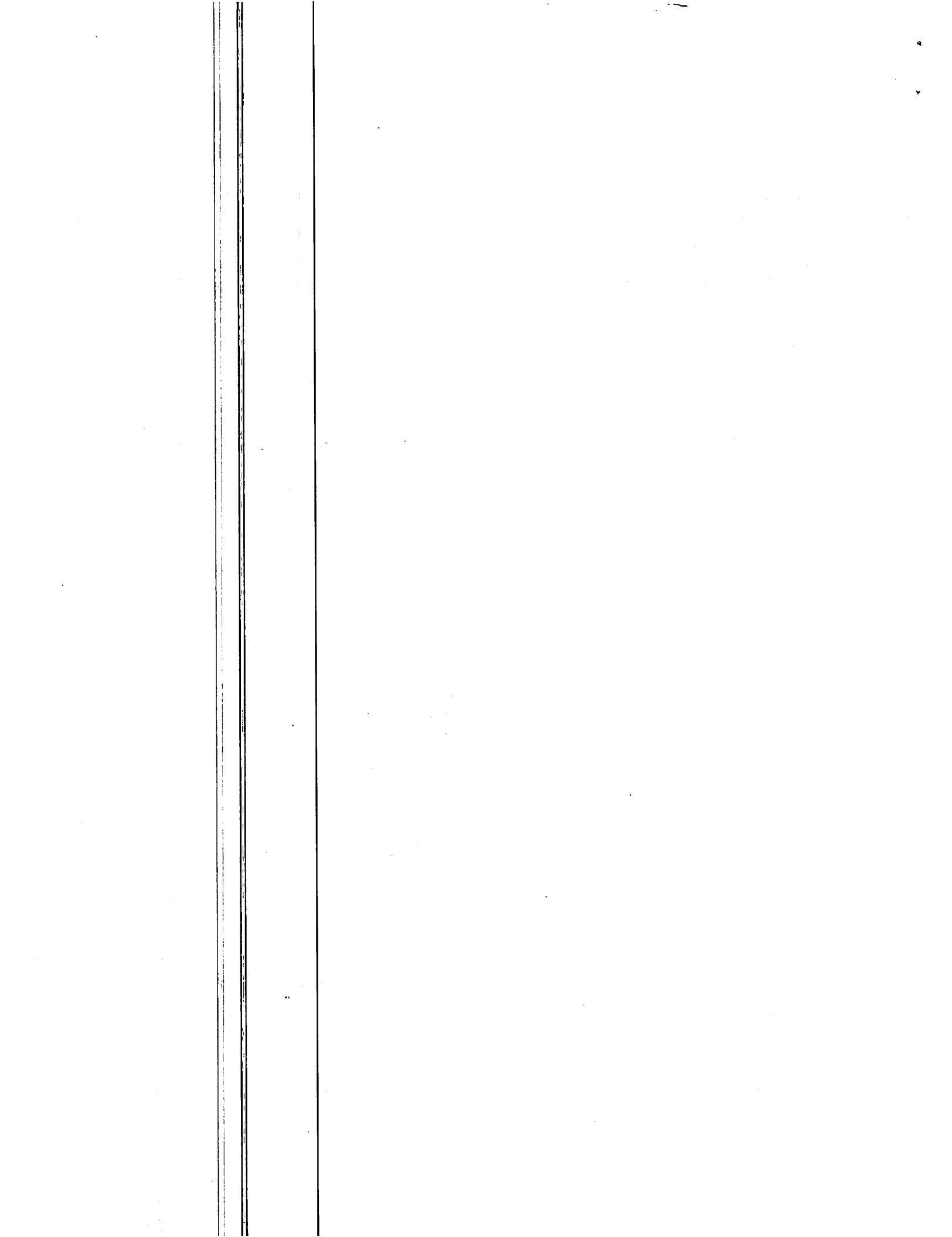
STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSION OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On May 5, 2022, Krystle Ragin<sup>1</sup> (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 \$5,825.00 for actual losses allegedly suffered as a result of a home improvement contract with Vasilios Polyzos, trading as Polyzos

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<sup>1</sup> The Office of Administrative Hearings' (OAH) file and the Notice of Hearing mailed to the parties showed the Claimant's first name as Kristie; she stated at the hearing that her first name is Krystle.



Painting, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022).<sup>2</sup>

On June 24, 2022, the MHIC issued a Hearing Order on the Claim. On June 28, 2022, the MHIC forwarded the matter to the OAH for a hearing.

On October 28, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Hope Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented. The Respondent was self-represented.

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); Code of Maryland Regulations (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

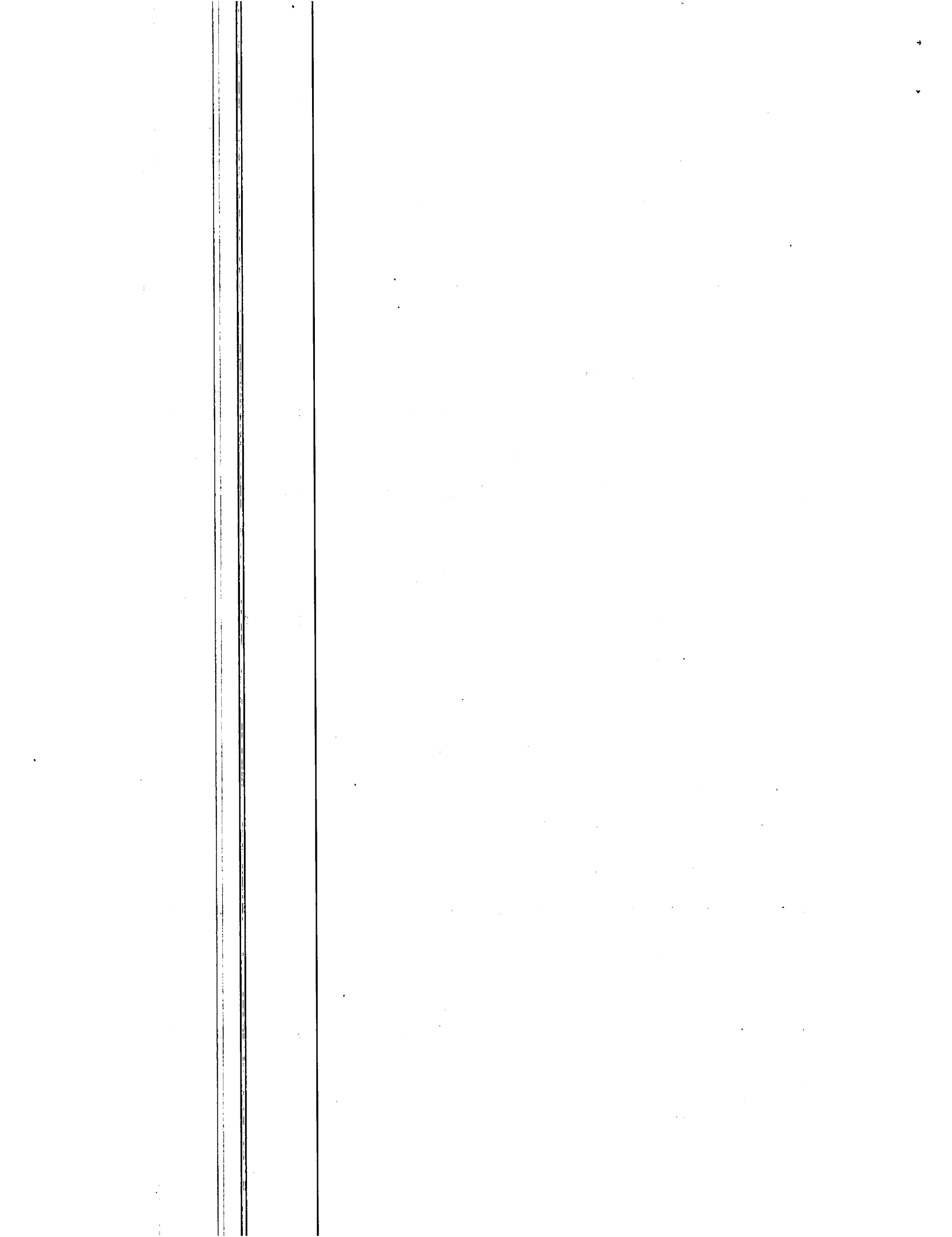
#### Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Respondent's Estimate, 7/24/22
- Clmt. Ex. 2 - Sheldon & Sons, Inc. (Sheldon) Invoice, undated (marked "Job started 12/20")
- Clmt. Ex. 3 - Sheldon Invoice, 12/7/21
- Clmt. Ex. 4 - Sheldon Invoice, 12/27/21
- Clmt. Ex. 5 - Claimant's check #1662 payable to the Respondent for \$3,430.00, 8/2/21

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

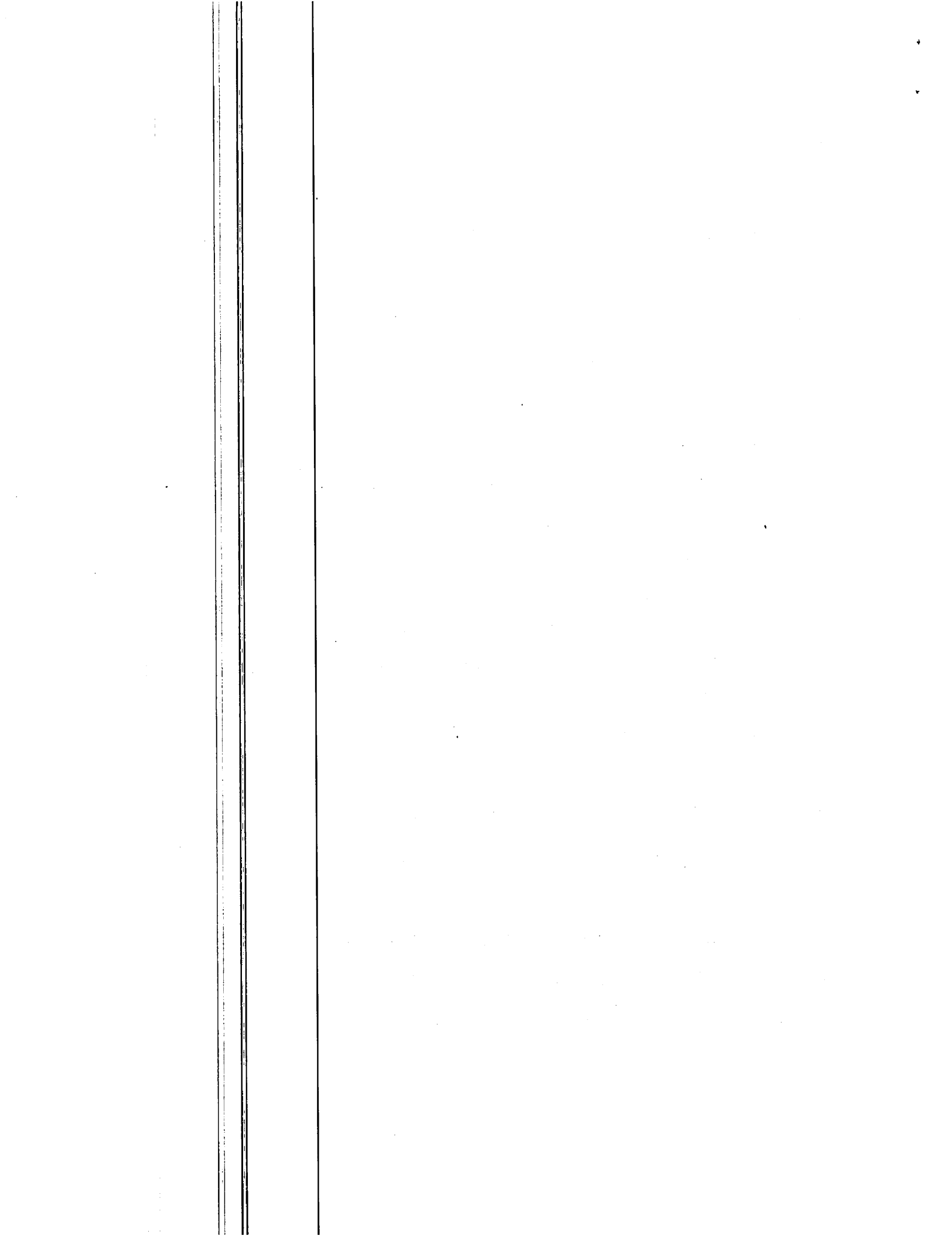


- Clmt. Ex. 6 - Photograph, undated
- Clmt. Ex. 7 - Photograph, undated
- Clmt. Ex. 8 - Screenshot of text message, 8/3/21
- Clmt. Ex. 9 - Screenshot of text message, 8/4/21
- Clmt. Ex. 10 - Screenshot of text message, 8/4/21
- Clmt. Ex. 11 - Screenshot of text message, 8/4/21
- Clmt. Ex. 12 - Screenshot of text message, 8/4/21
- Clmt. Ex. 13 - Screenshot of text messages, 8/5/21 and 8/11/21
- Clmt. Ex. 14 - Screenshot of text messages, 8/12/21 and 8/28/21
- Clmt. Ex. 15 - Screenshot of text message, undated
- Clmt. Ex. 16(a) - 16(g) Photographs, undated
- Clmt. Ex. 17 - Screenshots of a portion of the Claimant's Google Maps review of the Respondent and Respondent's response, undated, with 9/21/21 "update"
- Clmt. Ex. 18 - Screenshot of a portion of the Claimant's Google Maps review of the Respondent, undated
- Clmt. Ex. 18A - Claimant's email to Irene Polyzos, 9/1/21
- Clmt. Ex. 18B - Email chain between the Claimant and Irene Polyzos, 9/17/21
- Clmt. Ex. 18C - Email chain between the Claimant and Irene Polyzos, 9/20/21
- Clmt. 19 - Complaint Form, received by MHIC, 2/15/22
- Clmt. Exs. 20-29 - Photographs, undated

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibit offered by the Fund:

Fund Ex. 1 - License information for the Respondent.



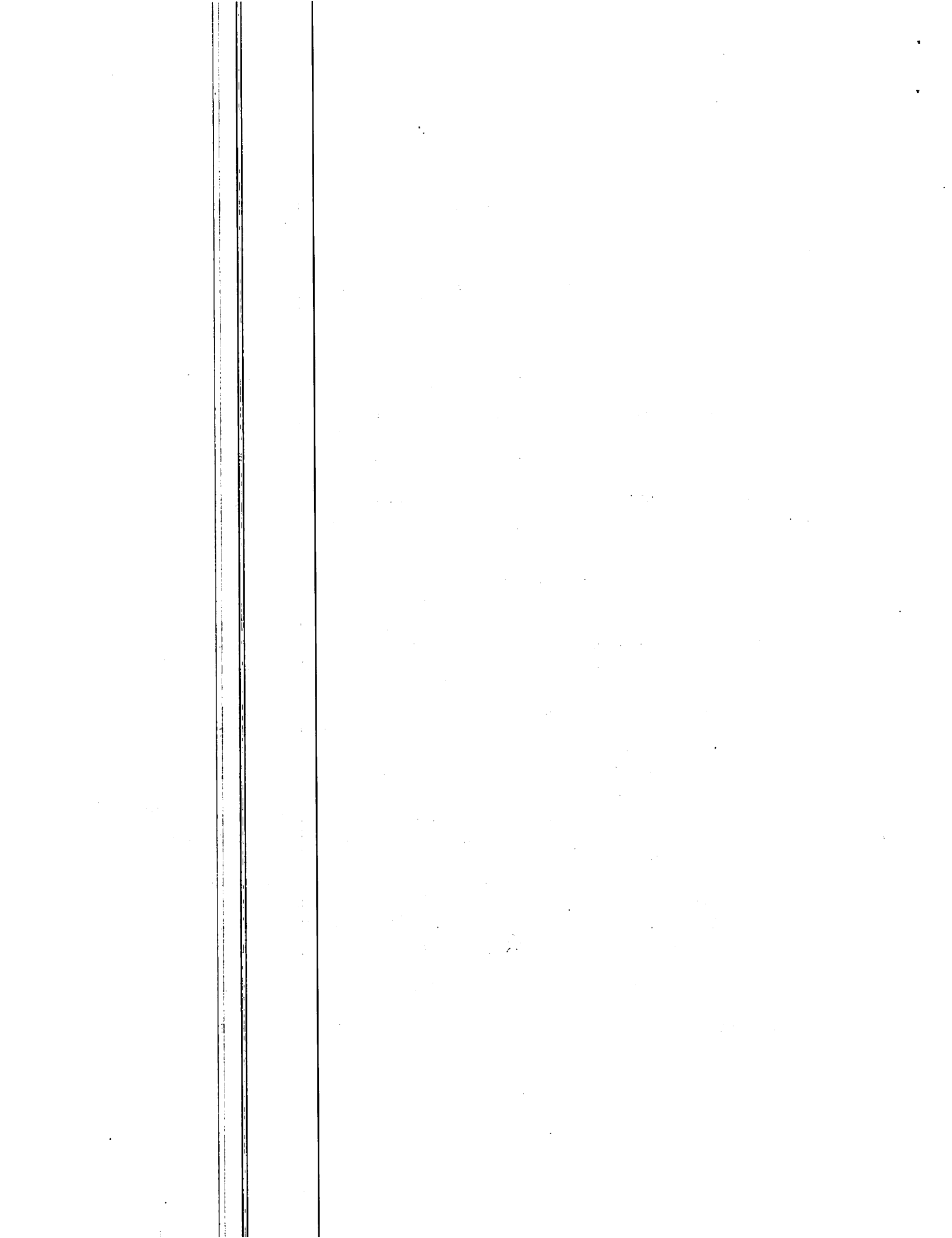
Testimony

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 01-17750.
2. On July 24, 2021, the Respondent gave the Claimant an estimate in the amount of \$4,000.00 to paint portions of the interior of the Claimant's residence. The estimate called for the Respondent to do the following:
  - repair all holes, cracks and nail pops in areas to be painted
  - lightly sand & paint right trim of coat closet & front door
  - Foyer, Living Room, 2d Level Hall and Stairway, Guest Room, Master Bedroom, Master Bathroom and closet, basement Stairway and Basement Rec Room: Paint ceilings, walls, baseboards & trims on sides of steps, Excluding doors, door & window frames
  - Powder Room, Kitchen, Dining Room, Mud Room and closet, Boy's Bedroom & Family Room: Paint walls & baseboards, Excluding ceilings, doors, door & window frames
  - Lightly sand & paint door frame to Master Bathroom & Main Level Hallway Powder Room
  - 3-4 wall colors included, flat finish, Sherwin Williams Paints, Ceiling flat white for ceilings, semi-gloss white for baseboards, Excluding girl's bedroom & all closets, unless mentioned above.
  - Lightly sand, patch & paint all remaining doors and frames not mentioned above
  - Install new doors & frames & paint-\$125 each per door (cost for Labor & paint only). Materials can be picked up & would be billed separately with receipts
  - Eggshell finish for all walls. (Clmt. Ex. 1).
3. The Claimant and the Respondent subsequently agreed to remove from the estimate the painting of the basement stairway, the basement rec room and the doors and





frames.<sup>3</sup> As a result of the removal of those items the parties agreed to reduce the total price for the project from \$4,000.00 to \$3,430.00. Both parties accepted the revised, \$3,430.00 estimate as their agreement.

4. On August 2, 2021, the Claimant paid the Respondent the full \$3,430.00 required under their agreement.

5. In forming the parties' agreement and in subsequent communications regarding the project, the Claimant dealt with Irene Polyzos (Ms. Polyzos), the Respondent's daughter, who works in the Respondent's painting business.

6. The Claimant never communicated directly with the Respondent.

7. The Respondent's employees started work on July 29, 2021.

8. On July 29, 2021, Ms. Polyzos told the Claimant the crew would come to her home with selected colors of Sherwin Williams eggshell paint. The crew, however, did not show up with any paint. They sat around while the Respondent's project manager, Giovanni, was away buying the paint for half the day. This resulted in a loss of a day of work.

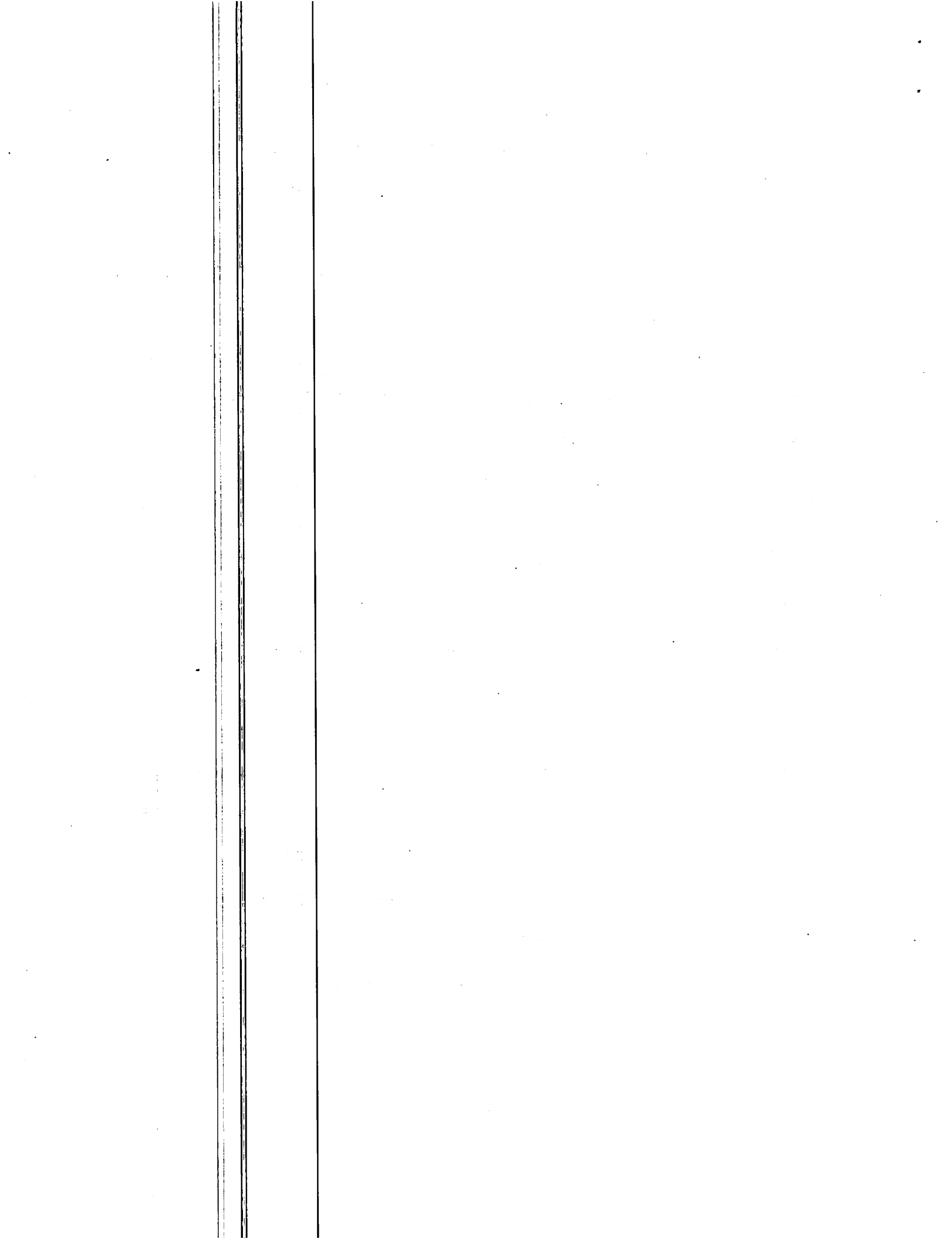
9. The next day, the crew began the prep work. The prep was unworkmanlike and inadequate, in that the crew did not repair cracks and nail pops as required under the parties' agreement; rather the cracks and nail pops were painted over. The areas that the crew repaired were left with splotches on the walls and ceilings due to improper sanding.

10. Corner beads were not repaired, paint drips were all over the baseboards, paint was uneven and certain areas were repaired, but not sanded or painted.

11. Walls were not repaired, but simply painted over.

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<sup>3</sup> The record is not clear as to exactly which doors and frames were excluded.



12. The Respondent's crew used flat paint instead of the eggshell paint called for in the parties' agreement.

13. The crew did not use caulk on the staircase area as required.

14. On August 2, 2021, the Claimant made Ms. Polyzos aware of her concerns. On August 3, 2021, the Claimant also posted a negative online review of her experience. Ms. Polyzos informed the Claimant that the project manager (Giovanni) would return to her home to correct all of the issues.

15. Giovanni returned on August 7, 2021<sup>4</sup> to repair the issues, but did not satisfactorily correct all the problem areas.

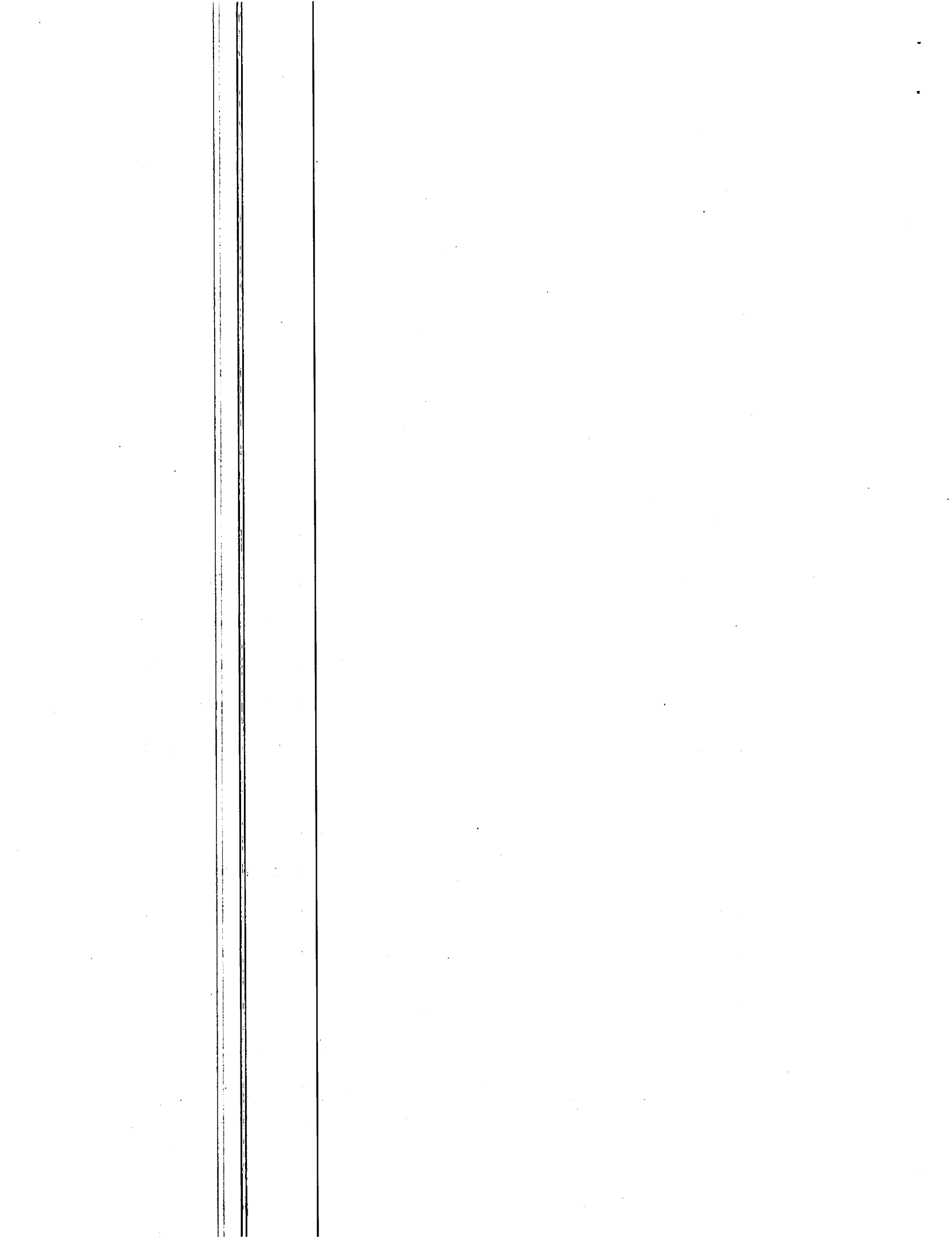
16. On August 11, 2021, Ms. Polyzos texted the Claimant and asked if she was happier with the "follow up touch-ups/work." (Cl. Ex. 13). The Claimant responded by text that "it was better" but that Giovanni had to travel so that when the Claimant returned home around noon he was already gone. (Cl. Ex. 13-14). The Claimant requested that she and Giovanni do a final walkthrough together "to make sure everything is good." (Cl. Ex. 14). On August 12, Ms. Polyzos texted the Claimant that Giovanni was on leave, asked her to send photographs and said "we will make sure to correct those as well." (*Id.*).

17. The Claimant sent Ms. Polyzos photographs as requested.

18. On September 1, 2021, the Claimant emailed Ms. Polyzos stating she had sent the requested photos but was not able to get through to Ms. Polyzos by phone. The Claimant asked when Giovanni could come back to her house. Ms. Polyzos responded by email that: "I am

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<sup>4</sup> The Claimant stated in the Complaint Form she submitted to the HIC that the project manager (Giovanni) "returned on 8/6 to repair the issues." (Cl. Ex. 19). In other documents she stated he returned on Saturday, which would have been August 7, 2021. She testified that on the day Giovanni returned she had to take her child to a sports activity in the morning, and I infer that the date Giovanni returned was Saturday, August 7, 2021. The discrepancy is not consequential to the disposition of this matter as it is undisputed that he returned on either August 6 or 7.



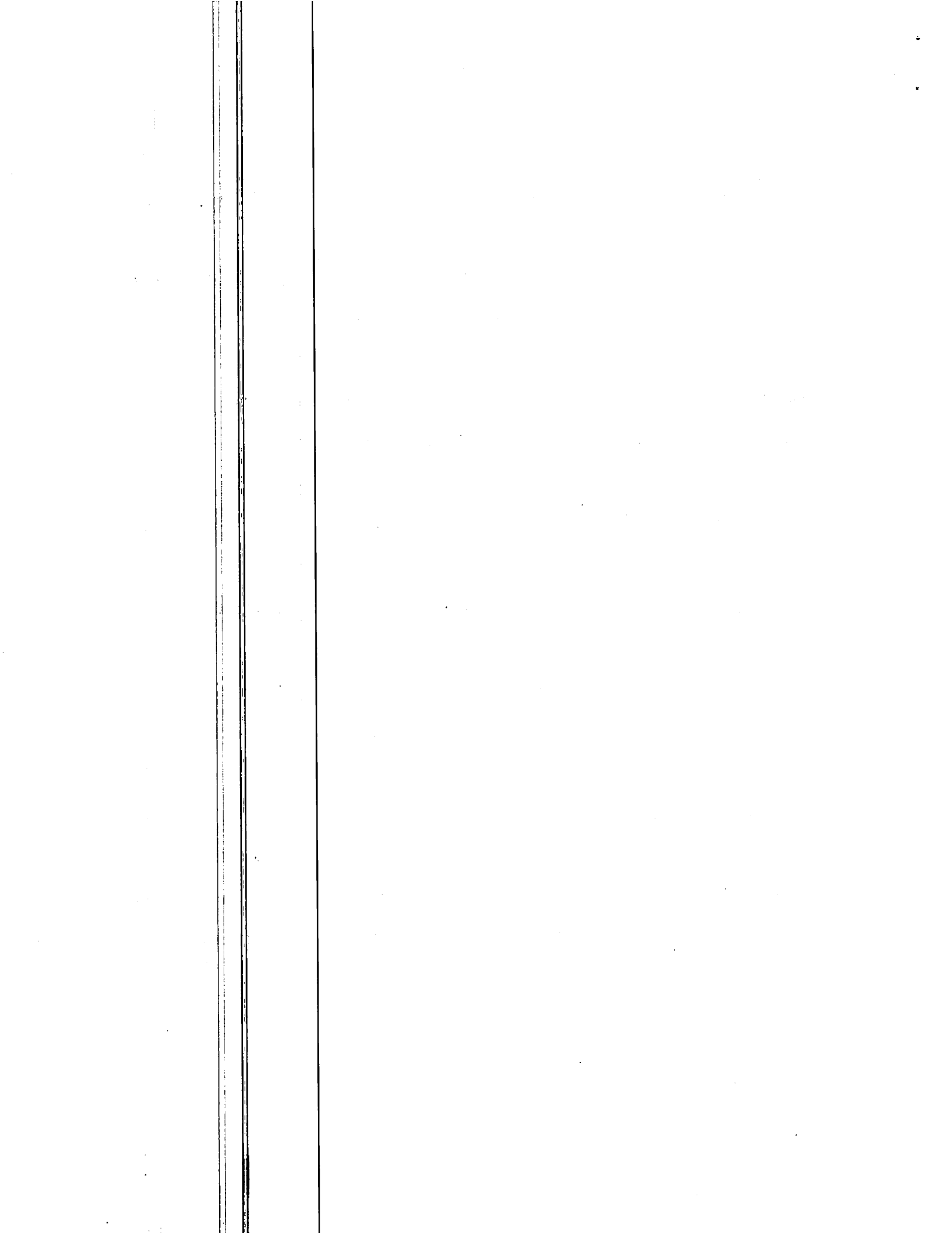
currently out of the country and will not be available until September 15<sup>th</sup>. In my absence, all requests or questions can be directed to Bill Polyzos [telephone number redacted].” (Clmt. Ex. 18B). “Bill” is the Respondent’s nickname.

19. Preferring to wait until Ms. Polyzos returned, the Claimant did not call “Bill” (the Respondent).

20. On September 17, 2021, the Claimant emailed Ms. Polyzos. She acknowledged that Ms. Polyzos had been out of the office, and stated that Ms. Polyzos had said “her guys” would be coming back to finish correcting the Claimant’s outstanding issues, that she had sent Ms. Polyzos photographs, and had reached out to Giovanni (who did not respond) to ask him when he could come back and sent him photographs. She asked Ms. Polyzos if “you guys plan to come back and when.” (*Id.*). Neither Ms. Polyzos nor Giovanni responded.

21. On September 20, 2021, having still received no commitment that the Respondent would perform any further corrective work, the Claimant, using her cell phone, called Ms. Polyzos who did not answer the call. Then the Claimant immediately called Ms. Polyzos from an unknown number (the Claimant created the unknown number by dialing “\*67” on her cell phone before dialing Ms. Polyzos’ number). Ms. Polyzos answered the call from the unknown number. The two did not speak.

22. Later on September 20, 2021, the Claimant emailed Ms. Polyzos, stating “Got you, dear. Good to know you answer unknown calls but avoid mine. Ahh, the games. Dishonesty never prevails and ppl talk. Remember that.” (Clmt. Ex. 18C). The Claimant determined not to deal further with the Respondent.



23. The Respondent did not correct the crew's unworkmanlike and inadequate work, including the missing caulking, knicks and scratches, areas not properly sanded down, splotches on the ceiling, cracks not repaired, paint drips, an unrepaired hole, and areas not smoothed.

24. The Claimant contracted with a new painting company, Sheldon, which performed extensive repainting work in order to correct the Respondent's work. Sheldon's work included painting the laundry room, which was excluded from the Claimant's agreement with the Respondent. The Claimant paid Sheldon a total of \$5,825.00.

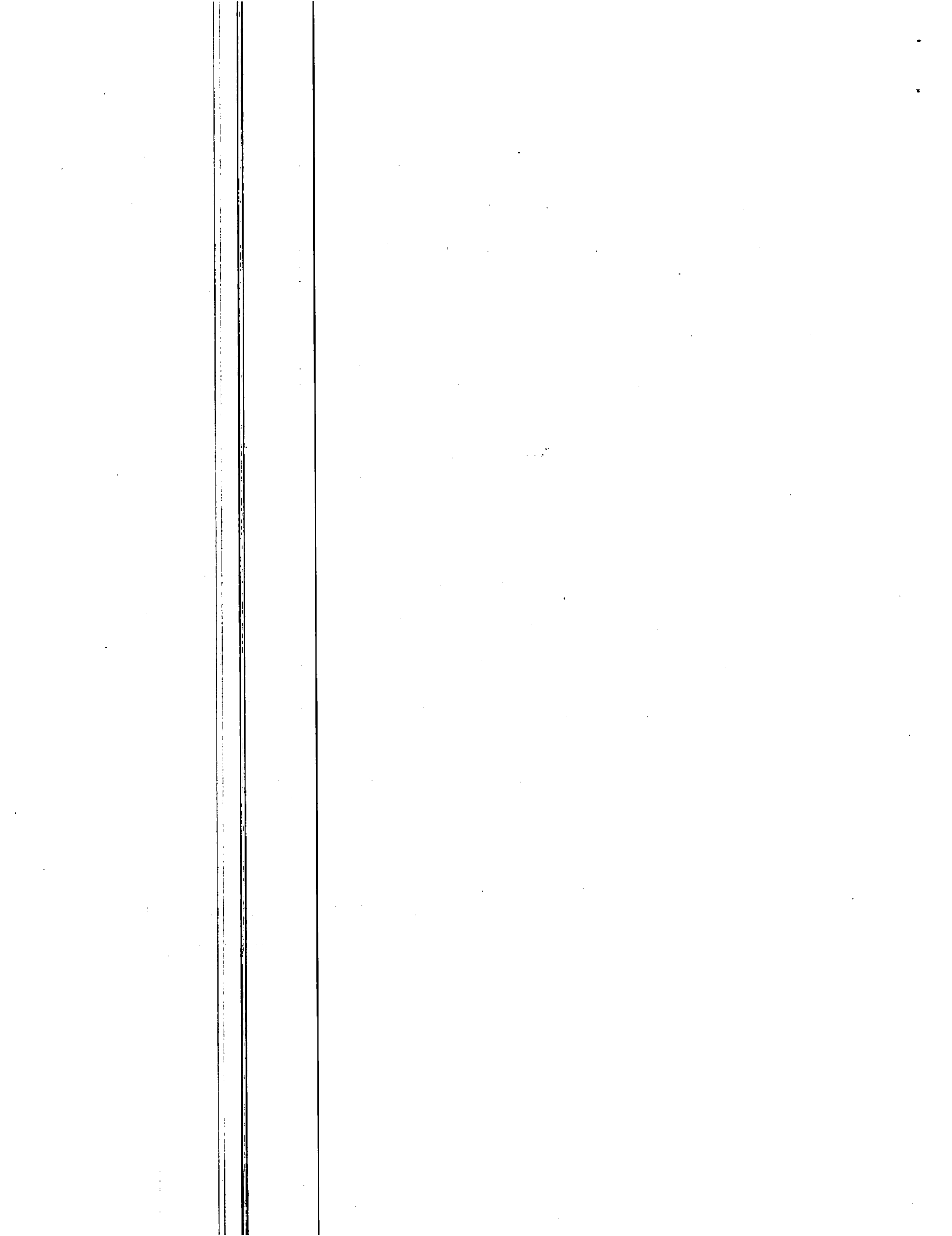
25. Sheldon corrected the Respondent's inadequate and unworkmanlike paint job.

## DISCUSSION

### *Legal Framework*

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 (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 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.

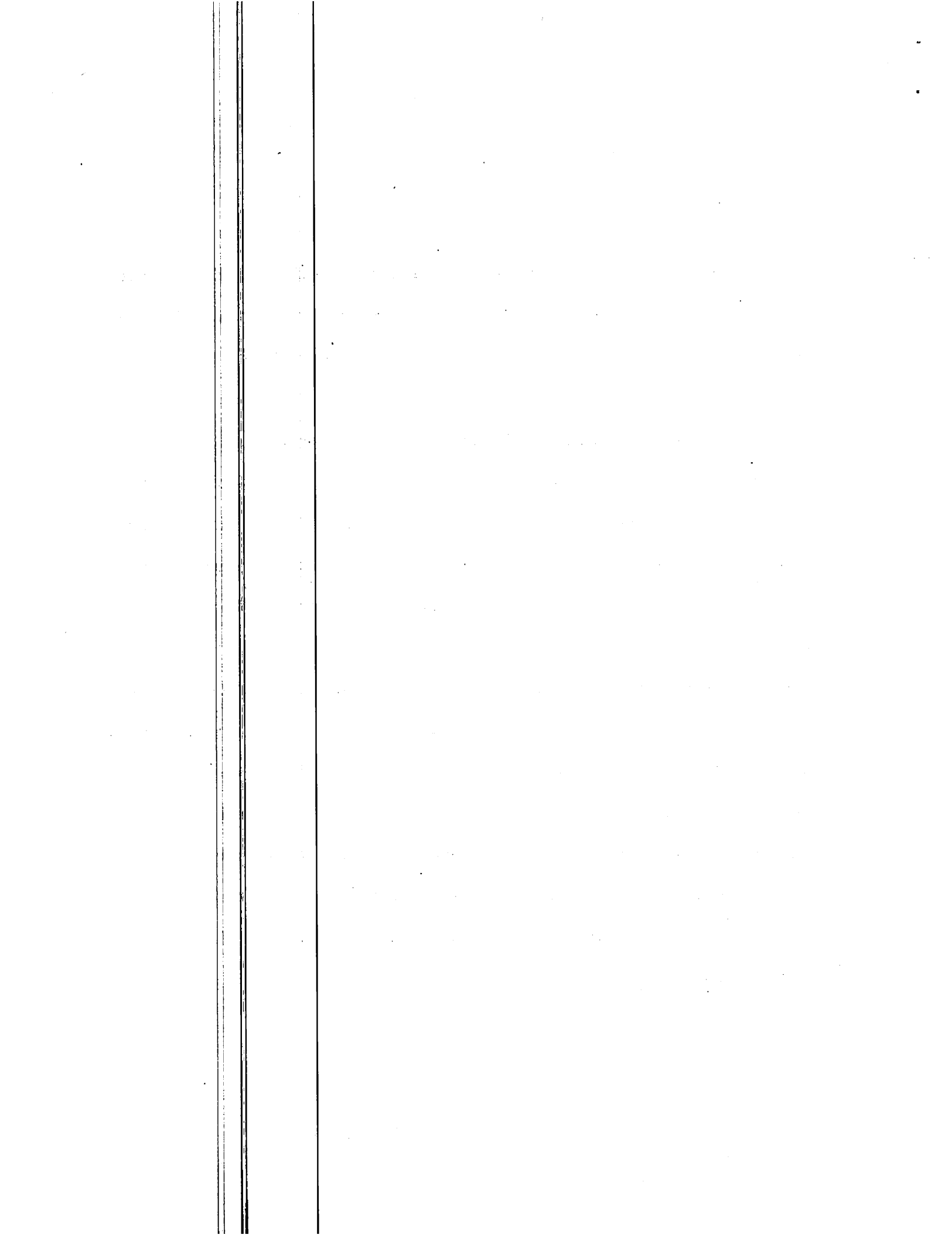




*The Claimant's Position*

The Claimant argued that in an August 2, 2021 text message she notified Ms. Polyzos that her company's work was inadequate and unworkmanlike: ceilings were not properly painted because the sanded areas were visible, the living room had knicks and scratches, the corner beads were unsatisfactory, the bedroom ceiling was repaired but not painted, only one side of the stairwell was caulked, the main bedroom wall was poorly sanded and painted and the wall by the Claimant's shower was rough.

On Saturday, August 7, 2021, the Respondent's project manager, Giovanni returned to the Claimant's home but did not correct all outstanding issues. The Claimant asked Ms. Polyzos to send him back for a final walkthrough and correction of all remaining issues. Giovanni never returned. On September 1, 2021, the Claimant emailed Ms. Polyzos when Giovanni could come back to the house. Ms. Polyzos responded that she was out of the country until September 15, and suggested the Claimant call her father, the Respondent in the interim. The Claimant preferred to wait until Ms. Polyzos returned. On September 17, 2021, the Claimant emailed Ms. Polyzos, noting she had sent photos but received no response and also received no response from Giovanni to whom she also sent photographs. The Claimant asked whether and when the Respondent would send anyone back to her house. She received no response from Ms. Polyzos. On September 20, 2021, the Claimant called Ms. Polyzos. Ms. Polyzos did not answer the Claimant's call but did answer when the Claimant called her from an unknown number (by using \*67). The Claimant lost confidence in the Respondent's company and they had no further dealings. She paid Sheldon \$5,825.00 to correct the issues.



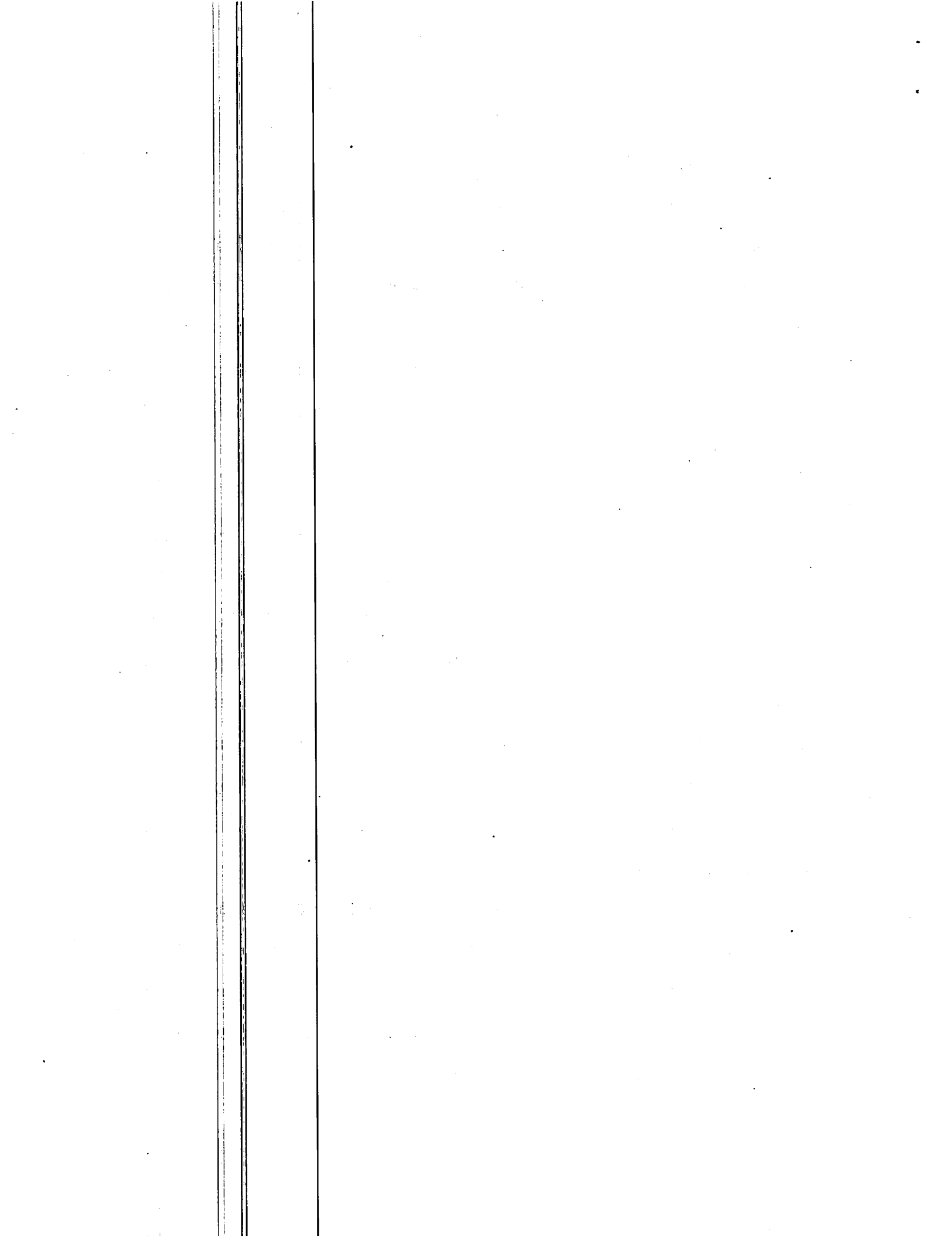
*The Respondent's Position*

The Respondent responded that his company did the best they could for the Claimant. He said the job was not perfect, but was not so bad. The Respondent disputed the Claimant's testimony that Giovanni only returned to the property one time. The Respondent testified that Giovanni actually returned three or four more times and that he paid Giovanni for those visits. He faulted the Claimant for not calling him when his daughter was out of the country. He argued that the Claimant is just trying to get a free paint job. He said the Claimant should have sent him a letter rather than filing a complaint.

*The Fund's Position*

The Fund noted the Claimant was dissatisfied with both the original work and the project manager Giovanni's effort to correct the issue on August 7, 2021. She tried in early September through Ms. Polyzos to have Giovanni do a walk through. The Fund did not fault the Claimant for not calling "Bill" (the Respondent), but instead waiting for his daughter to return. When Ms. Polyzos returned, however, she avoided the Claimant's call, as shown by Ms. Polyzos not answering the call from Claimant's phone number but answering the call from the unknown number the Claimant created with \*67. The Fund also pointed out the absence of any corroboration of the Respondent's testimony that Giovanni went back to the house three or four more times after August 7, 2021.

The Fund argued that the Claimant's payment of more than five thousand dollars to Sheldon supported her claim that the Respondent's work was inadequate. The Fund asked rhetorically why the Claimant would have paid Sheldon to her financial detriment in the absence of substantial problems with the Respondent's work. The Fund recommended an award of \$3,430.00, the amount the Claimant paid the Respondent.

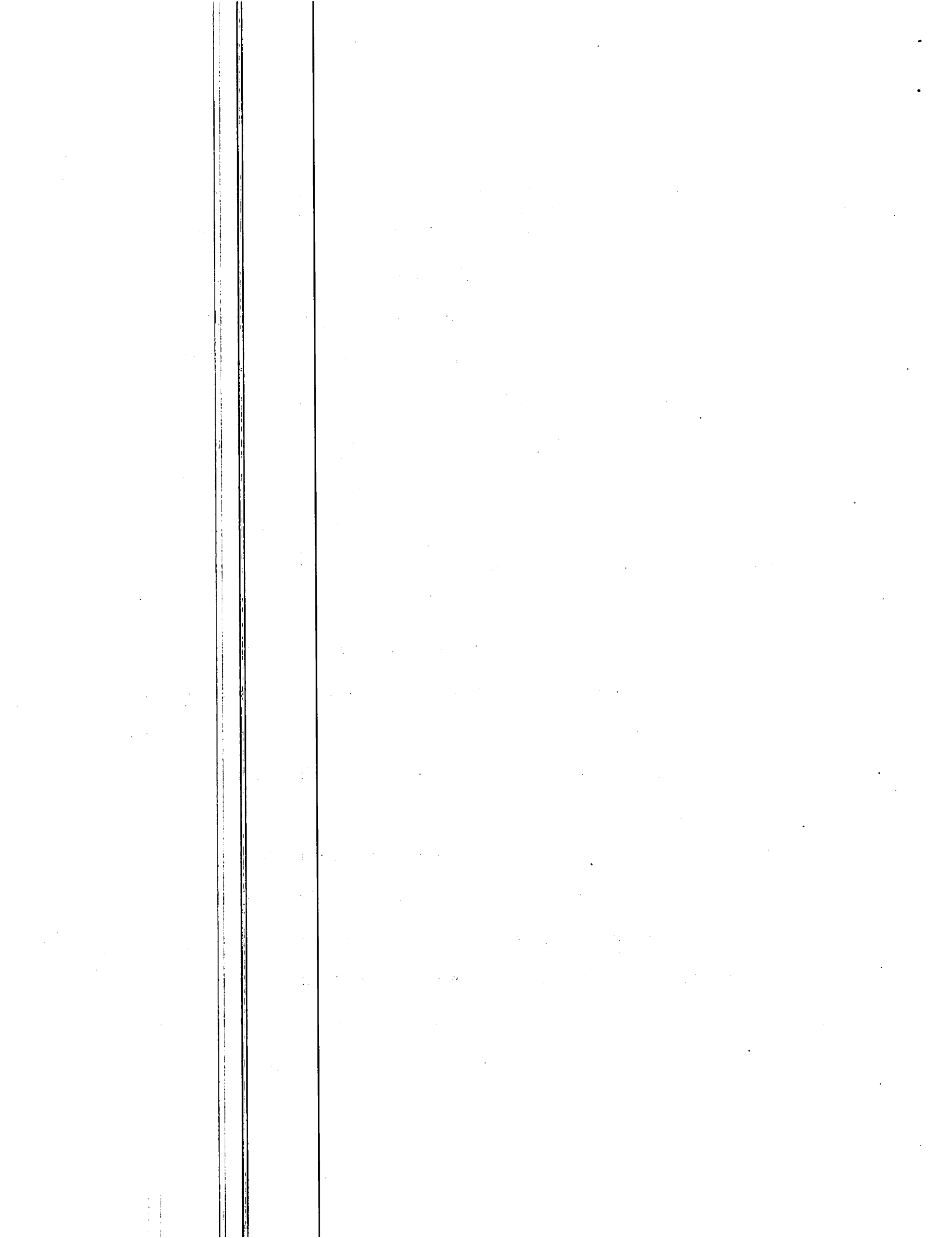


*Analysis*

For the following reasons, I find that the Claimant has proven eligibility for compensation. First, I note that 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 and 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 Respondent performed unworkmanlike and inadequate home improvements. The Claimant's testimony, corroborated both by numerous photographs she submitted and the fact of her hiring and paying Sheldon, shows the Respondent's crew painted over unrepaired areas, left cracks, nail pops, blotches, and paint drips, failed to sand or paint certain areas and failed to use eggshell paint as required.

I conclude that the Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d) (Supp. 2022). While she did not call the Respondent personally during his daughter's absence in September 2021, when Ms. Polyzos returned she failed to respond to the Claimant's September 17, 2021 email and avoided the Claimant's September 20, 2021 call. But she answered the Claimant's \*67 call, which demonstrates that Ms. Polyzos was avoiding the Claimant. This led to the Claimant's loss of trust

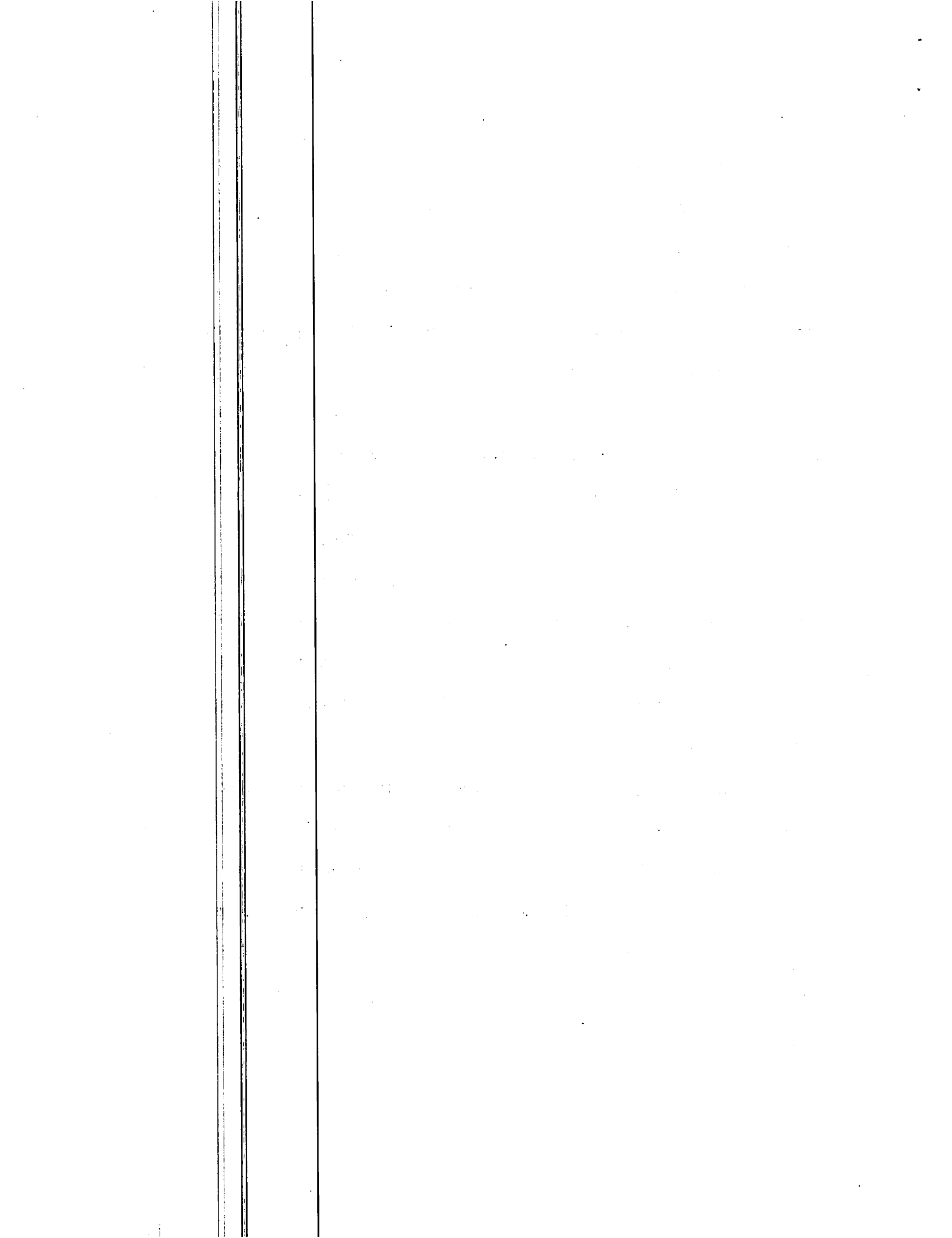


in the Respondent's willingness to correct her issues. I agree with the Fund and do not find the Claimant was unreasonable in deciding to hire Sheldon rather than continue to try to get the Respondent to correct the painting issues.

Relatedly, I agree with the Fund that the Claimant's testimony that Giovanni returned to her house only once--on August 7, 2021--is more credible than the Respondent's claim that Giovanni returned three or more times in an effort to correct the problems. The Respondent had no direct dealings with the Claimant. He did not produce any business records to back up his testimony that he paid Giovanni for multiple visits to the house. Neither Giovanni nor his daughter testified at the hearing. The Respondent stated that Giovanni was in Nicaragua and his daughter in Rome. But, he did not seek a postponement of the hearing.

Lastly, there is no evidence that the imperfections in the Respondent's work could have been fixed without the substantial repainting and other work that Sheldon did. The Claimant credibly testified, and her photographs showed, that there were numerous areas that needed correcting. These conditions required repainting rather than just patching. Otherwise the painted surfaces would not have had a uniform appearance.

I therefore 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.





Here, the Respondent performed some work under the Contract, and the Claimant has retained another contractor to remedy or complete that work. Accordingly, the following regulatory 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).

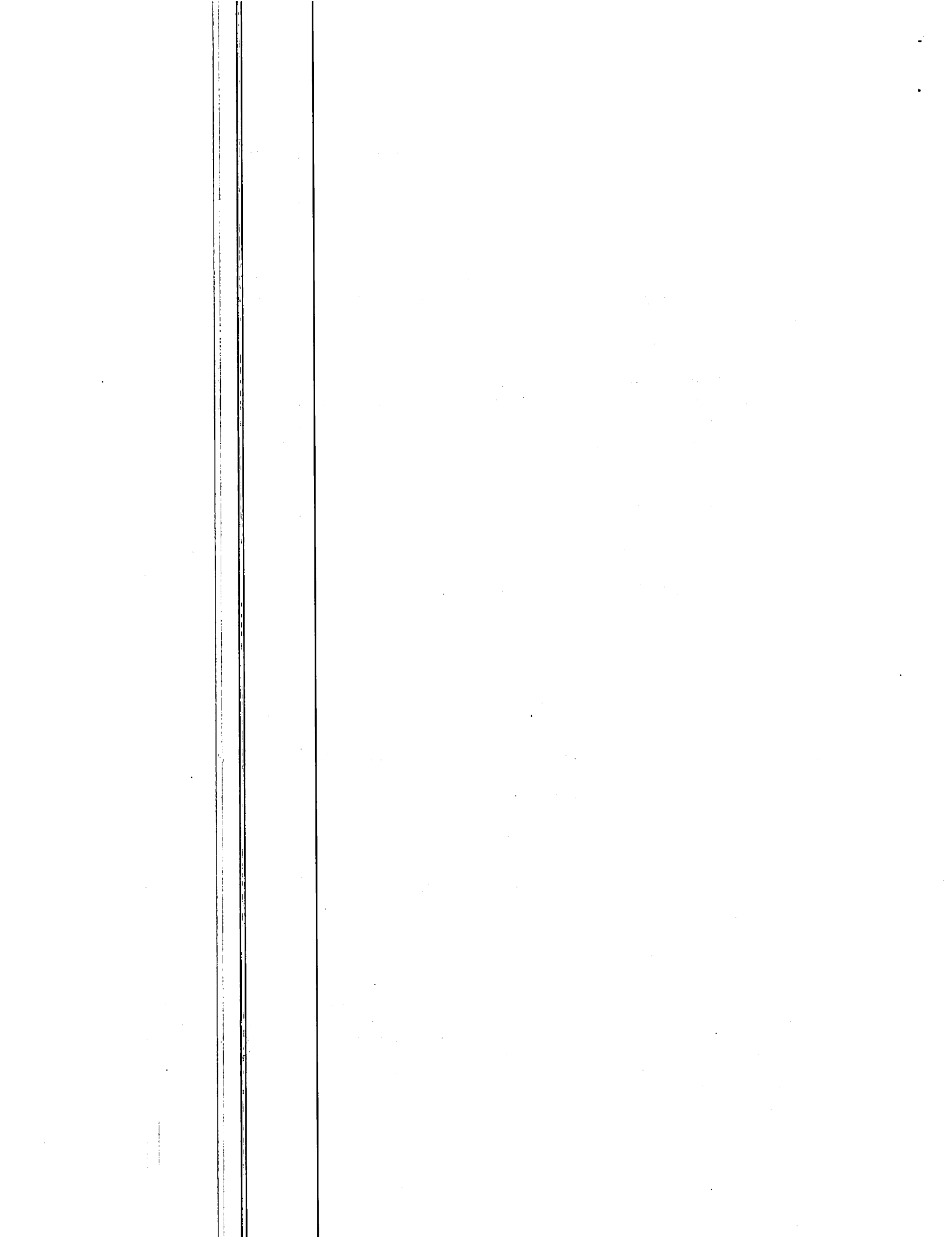
The calculation is as follows:

\$3,430.00	paid to the Respondent under the parties' contract
<u>+\$5,825.00</u>	paid to Sheldon to repair or complete the home improvements
\$9,255.00	
<u>- \$3,430.00</u>	(original contract price)
\$5,825.00	

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor.<sup>5</sup> However, pursuant to COMAR 09.08.03.03B(4), "[t]he Commission may not award from the Fund an amount in excess of the amount paid by or on behalf of the claimant to the contractor against whom the claim is filed." In this case, the Claimant paid the Respondent \$3,430.00 under the parties' agreement. Accordingly, her actual and compensable loss is limited to that amount. Therefore, the Claimant is entitled to recover \$3,430.00.

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<sup>5</sup> H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). See also Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, 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").



**PROPOSED CONCLUSION OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$3,430.00 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).

**RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$3,430.00; 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;<sup>6</sup> and

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

December 30, 2022  
Date Decision Issued

*Robert B. Levin*

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Robert B. Levin  
Administrative Law Judge

RBL/emh  
#202565

<sup>6</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 14<sup>th</sup> day of February, 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.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

