

**IN THE MATTER OF THE CLAIM
OF FELECIA HOOVER,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF DAVID ANTHONY
MARROCCO,
T/A MARROCCO'S STAMPED
CONCRETE, INC.,**

*** BEFORE MARY R. CRAIG,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-20-03020
* MHIC No.: 19 (05) 10**

RESPONDENT

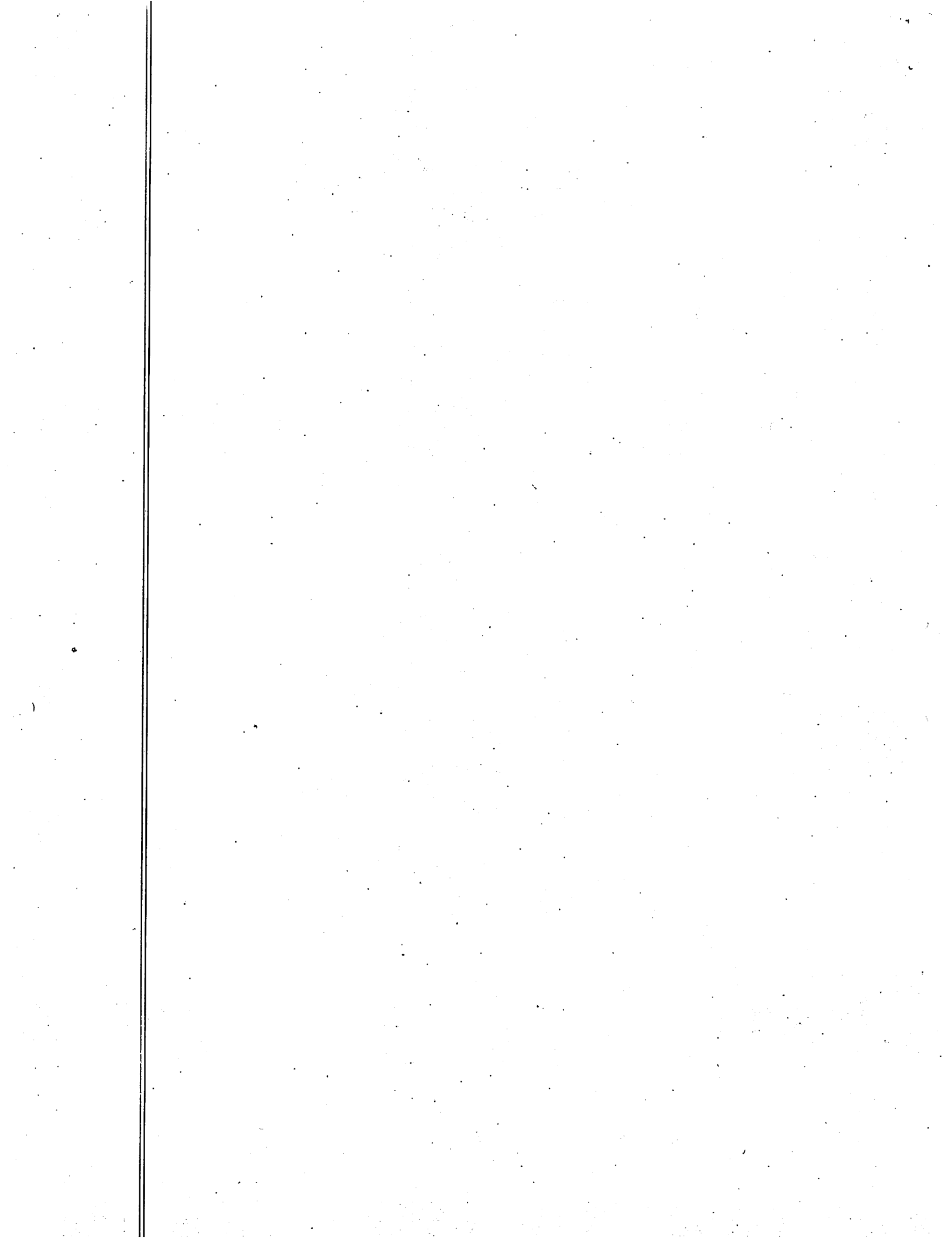
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PROPOSED DECISION

**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 29, 2019, Felecia Hoover (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$6,285.00 in actual losses allegedly suffered as a result of a home improvement contract with David Anthony Marrocco, trading as Marrocco's Stamped Concrete, Inc. (Respondent). Md.



Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On January 13, 2020, the Office of Administrative Hearings (OAH) received the matter from the MHIC for a hearing.

I held an in-person hearing on August 18, 2020 at the Hunt Valley, Maryland offices of the OAH. Bus. Reg. § 8-407(e)(2015).^{2 3} Hope Sachs, Assistant Attorney General, Department of Labor (Department), represented the Fund. The Claimant appeared with her husband, Jonathan Hoover, Esquire.⁴ After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing in his absence. Code of Maryland Regulations (COMAR) 28.02.01.23A.⁵

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. 2019); 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?

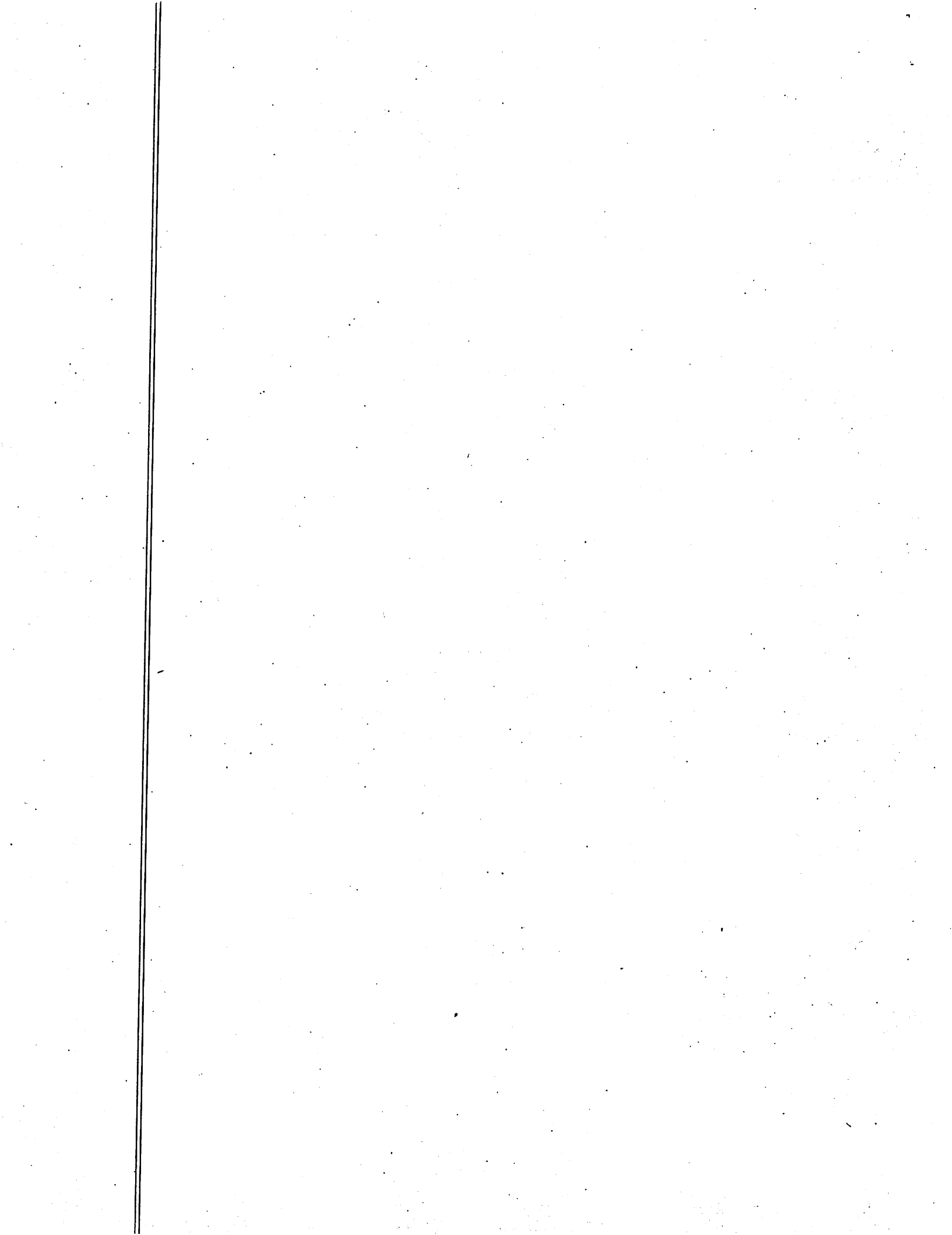
¹ As noted above, "COMAR" refers to the Code of Maryland Regulations.

² A hearing scheduled for May 26, 2020 was postponed due to the closure of State offices as a result of the COVID-19 pandemic.

³ All references to the Business Regulation Article of the Annotated Code of Maryland are to the (2015) volume.

⁴ Mr. Hoover testified as a fact witness; he did not appear as attorney for the Claimant, his wife.

⁵ Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on May 28, 2020. COMAR 09.08.03.03A(2). The regular mail was not returned as unclaimed or undeliverable. The Respondent signed the return receipt for the certified mail. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent received proper notice, and proceeded to hear the captioned matter.



SUMMARY OF THE EVIDENCE

Exhibits

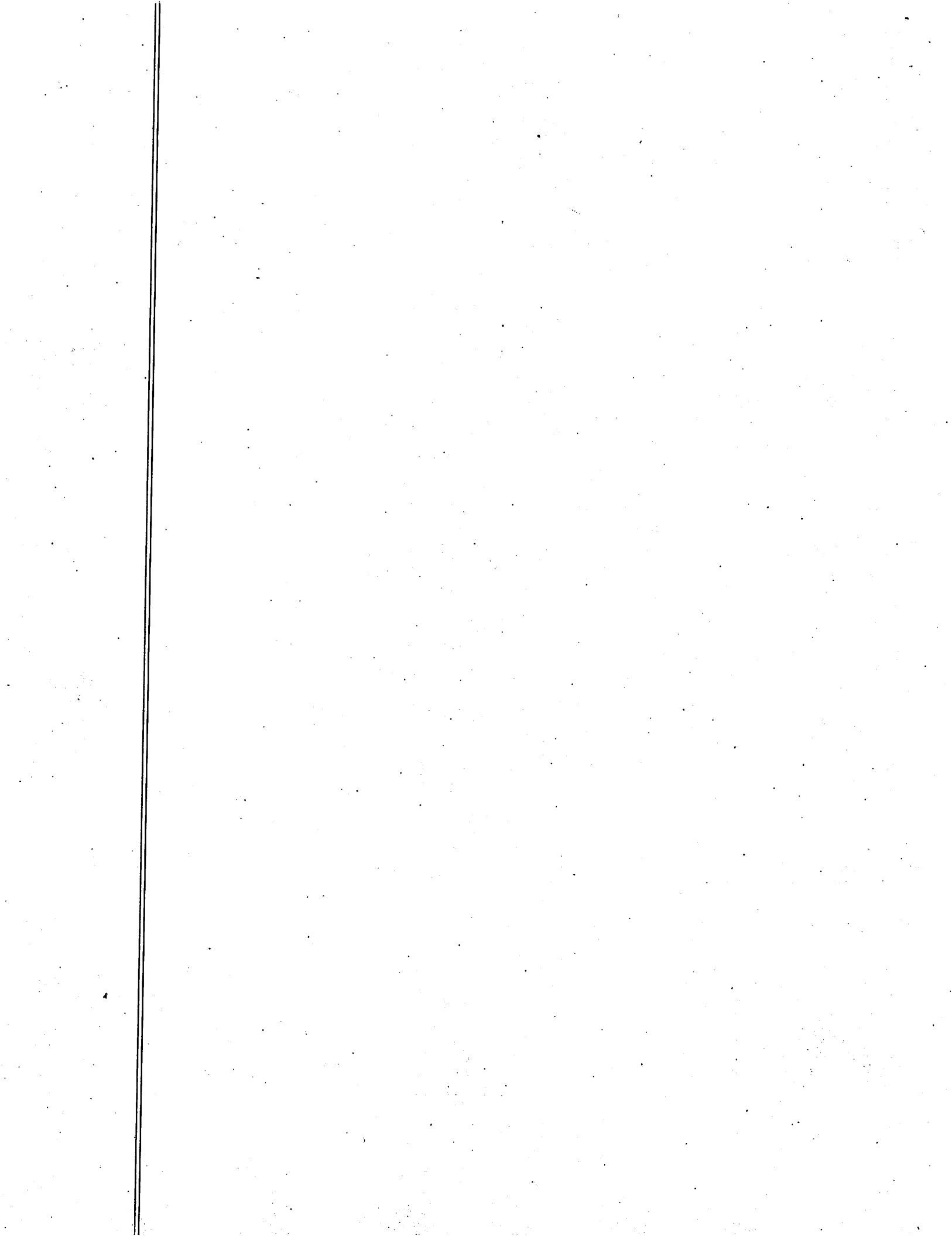
I admitted the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 - Contract between Jonathan & Felecia Hoover, homeowners, and Respondent, April 4, 2018
- Clmt. Ex. 2 - Check from Jonathan Hoover to Respondent, April 19, 2018
- Clmt. Ex. 3 - Drawing of patio and pool area, March 12, 2018
- Clmt. Ex. 4 - Emails between Mrs. Hoover and Respondent, June 13, 2018
- Clmt. Ex. 5 - Text messages between Mr. Hoover and Respondent, June 28, 2018
- Clmt. Ex. 6 - Emails between Mrs. Hoover and Respondent, June 28, 2018
- Clmt. Ex. 7 - Additional emails between Mrs. Hoover and Respondent, June 28, 2018
- Clmt. Ex. 8 - Letter from Respondent to Mr. and Mrs. Hoover, August 30, 2018
- Clmt. Ex. 9 - Notice from Wells Fargo of returned check, October 10, 2018; Respondent's check dated August 30, 2018
- Clmt. Ex. 10 - Complaint filed in the Circuit Court for Baltimore County, Jonathan Hoover, *et al.* v. Marrocco's Stamped Concrete, Inc., Case No. 03-C-18-011282, November 13, 2018
- Clmt. Ex. 11 - Judgment entered in Hoover, *et al.* v. Marrocco, October 17, 2019
- Clmt. Ex. 12 - Subpoena and Wells Fargo Bank business records for Respondent, various dates

The Respondent offered no exhibits.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Notice of rescheduled hearing, May 28, 2020; certified mail return receipt signed by Mr. Marrocco, June 6, 2020
- Fund Ex. 2 - MHIC Hearing Order, January 8, 2020
- Fund Ex. 3 - MHIC licensing history, Respondent, printed August 5, 2020
- Fund Ex. 4 - Letter from MHIC to Respondent, November 1, 2019 enclosing Claim, October 28, 2019; Letter from Mrs. Hoover to MHIC, October 28, 2019



Testimony

Jonathan Hoover testified in support of the Claim. Felecia Hoover agreed with Mr. Hoover's testimony.

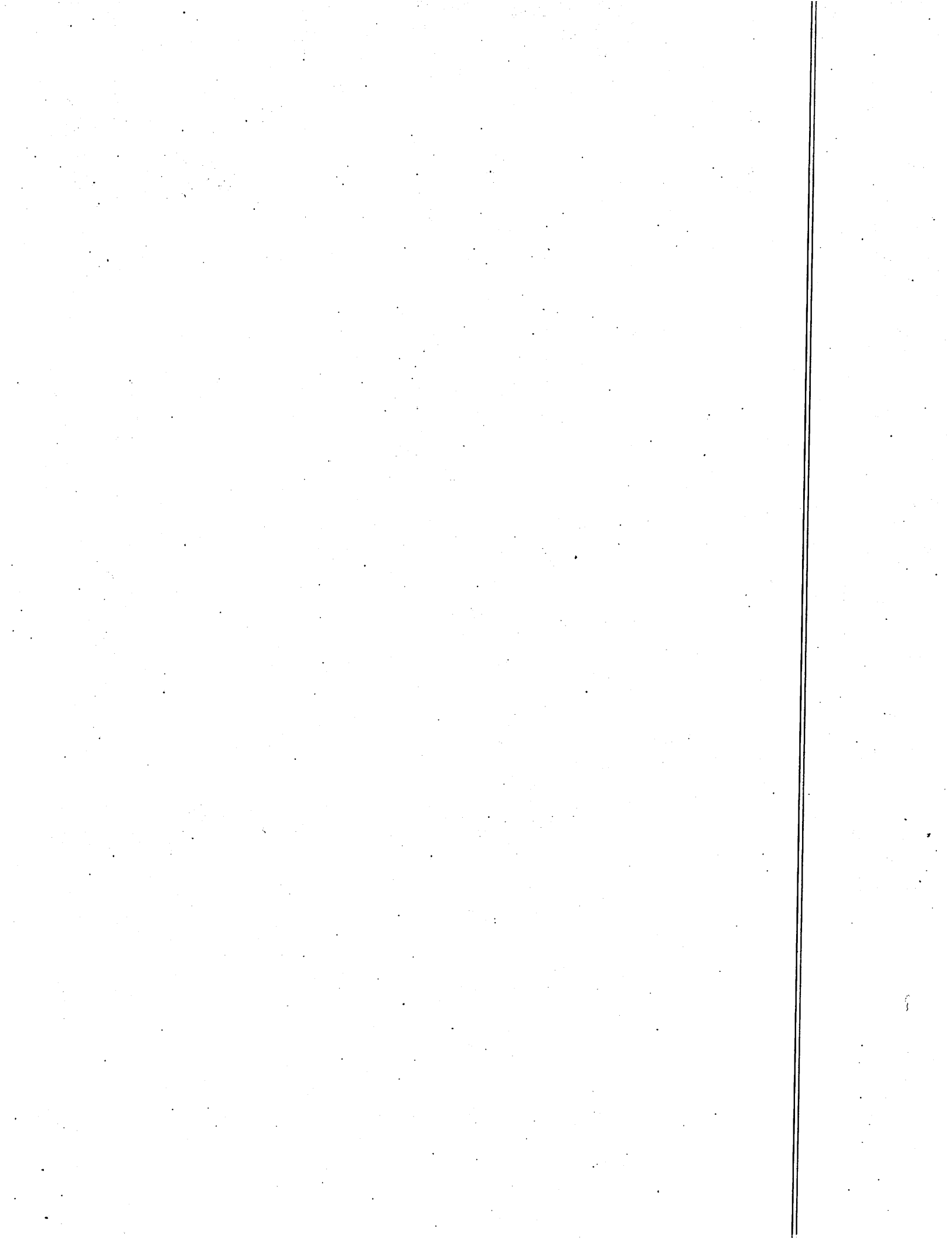
The Respondent failed to appear for the hearing.

The Fund did not offer 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 5190727.
2. On April 4, 2018, the Claimant and her husband, Jonathan Hoover, entered into a contract (Contract) with the Respondent to install a 1300 square foot area patio of stamped concrete in the area around the new pool being constructed in the back yard of their residence in Millers, Maryland (Project). The Contract provided that work on the Project would begin on a date to be determined and would be completed by a date to be completed.
3. The original agreed-upon Contract price was \$20,950.00.
4. On April 19, 2018, the Hoovers paid the Respondent \$6,285.00 as a deposit.
5. Prior to entering into the Contract with the Respondent, the Hoovers made it clear to Mr. Marrocco that it was essential that the Respondent be available to perform under the Contract in coordination with the contractor installing their new pool. The concrete patio had to be partially constructed and inspected by the County before the pool contractor was allowed by law to complete the pool. Then the Respondent could finish the patio. The Hoovers told the Respondent that the pool contractor would be ready for the patio contractor to begin work shortly, and Mr. Marrocco told the Hoovers that he had two crews available to start working as soon as the pool contractor signaled that it was time for the patio work to commence. The



Hoovers entered into the Contract in reliance on the Respondent's representations about his readiness to commence work.

6. Prior to signing the Contract the Hoovers provided the Respondent with drawings prepared by a third party for the Hoovers to show the scope of the patio project.

7. The Respondent did not prepare any drawings for the project.

8. The Hoovers visited the Respondent's office on April 3, 2018 and viewed samples of stamped concrete. The Claimant did not like any of the samples. The Respondent told the Hoovers he would prepare three additional samples of concrete and bring them to their house within two weeks for them to choose the exact color and style of concrete for the patio. The Respondent did not provide the Hoovers with the samples as promised.

9. On June 13, 2018, the Claimant emailed the Respondent inquiring about the samples and other matters.

10. The Respondent's office manager emailed the Claimant on that day, promising to get answers for the Claimant from the Respondent.

11. On June 18, 2018, the Hoovers told the Respondent they were ready for him to start work. The Respondent replied that he could start on June 26, 2018.

12. The Respondent agreed to meet the Claimant at the house several times to discuss the Project after June 18, 2018, but the Respondent failed to appear for the meetings or explain his absence.

13. On June 28, 2018, Mr. Hoover texted the Respondent, informing him that the Hoovers were cancelling the Contract because the Respondent had not performed any services under the Contract. The Respondent texted Mr. Hoover that he would give the Hoovers a refund after deducting his expenses.

14. Also on June 28, 2018, the Claimant wrote an email to the Respondent cancelling the Contract and requesting a full refund.

15. The Respondent replied that he would give the Hoovers a full refund less his expenses, and he promised to give them a spreadsheet of his expenses by July 2, 2018.

16. On August 30, 2018, the Respondent presented a letter to the Hoovers enclosing a Wells Fargo Bank check in the amount of \$4,285.00, which the Respondent said was the amount he owed the Hoovers, taking into account \$2,000.00 for the following deductions: 1) \$500.00 per meeting for two meetings with the Hoovers = \$1,000.00; 2) one set of drawings at \$300.00; and 3) one set of specially made samples at \$700.00.

17. The Respondent's check was returned by Wells Fargo Bank due to insufficient funds.

18. The Hoovers filed a civil lawsuit against the Respondent in the Circuit Court for Baltimore County. The Court entered judgment against the Respondent for \$7,412.74, plus prejudgment interest. The Hoovers have not collected anything from the Respondent.

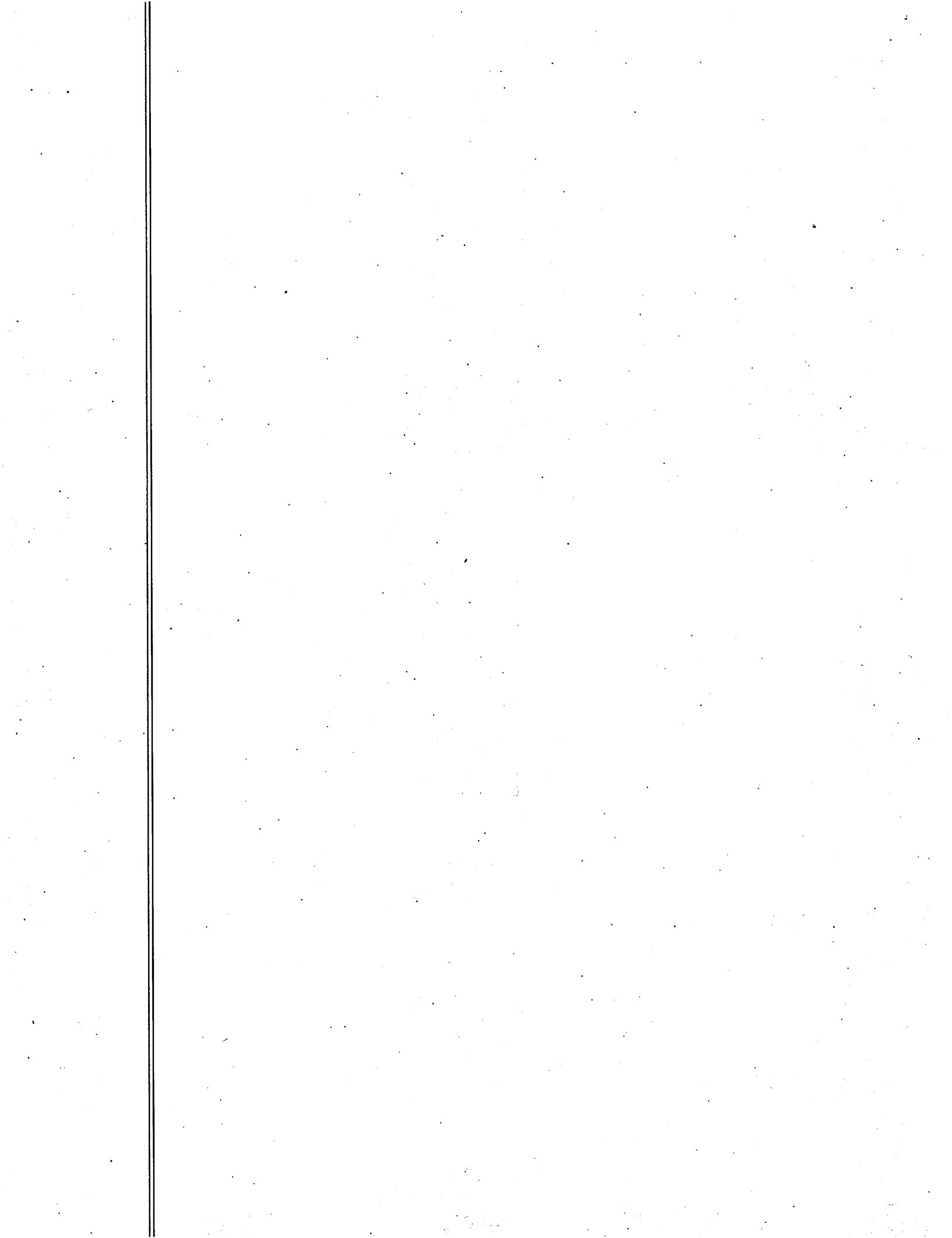
19. Neither of the Hoovers is a relative of the Respondent, an employee, officer, or partner of the Respondent, or an immediate relative of an employee, officer, or partner of the Respondent's company.

20. The Claimant and Mr. Hoover reside in the home related to the claim.

21. Neither of the Hoovers owns more than three residences or dwelling places.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing



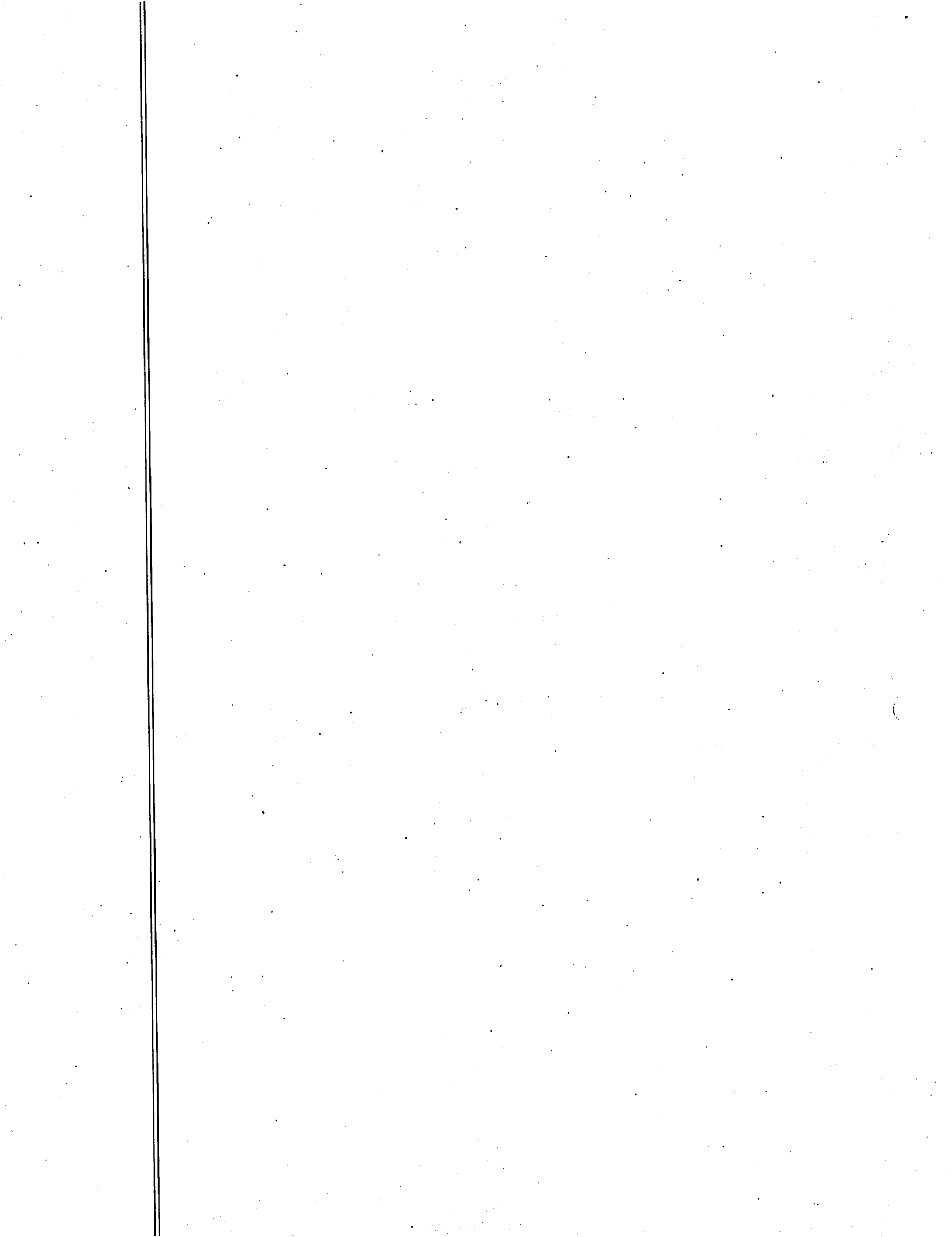
force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“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 was a licensed home improvement contractor at the time he entered into the Contract with the Claimant.

Mr. Hoover testified in a clear, straightforward manner about the dispute. Mrs. Hoover, who signed the Claim on behalf of the Hoovers, agreed with his testimony. Mr. Hoover’s testimony was corroborated by all the relevant documents in evidence. I found Mr. Hoover to be a thoroughly credible witness. The Respondent failed to appear for the hearing after receiving notice.

The facts of this case are simple. The Respondent agreed to install a concrete patio around the new pool under construction at the Hoover residence. The Hoovers paid the Respondent \$6,285.00 as a down payment under the Contract. The Project required coordination with the pool company. The Respondent told the Hoovers that he was able to perform the work when the pool contractor was ready for the patio portion to begin. The Hoovers provided the Respondent with drawings of the project prepared by a third party for the Hoovers. The Respondent agreed to prepare samples of concrete to the Hoovers’ specifications, but failed to do



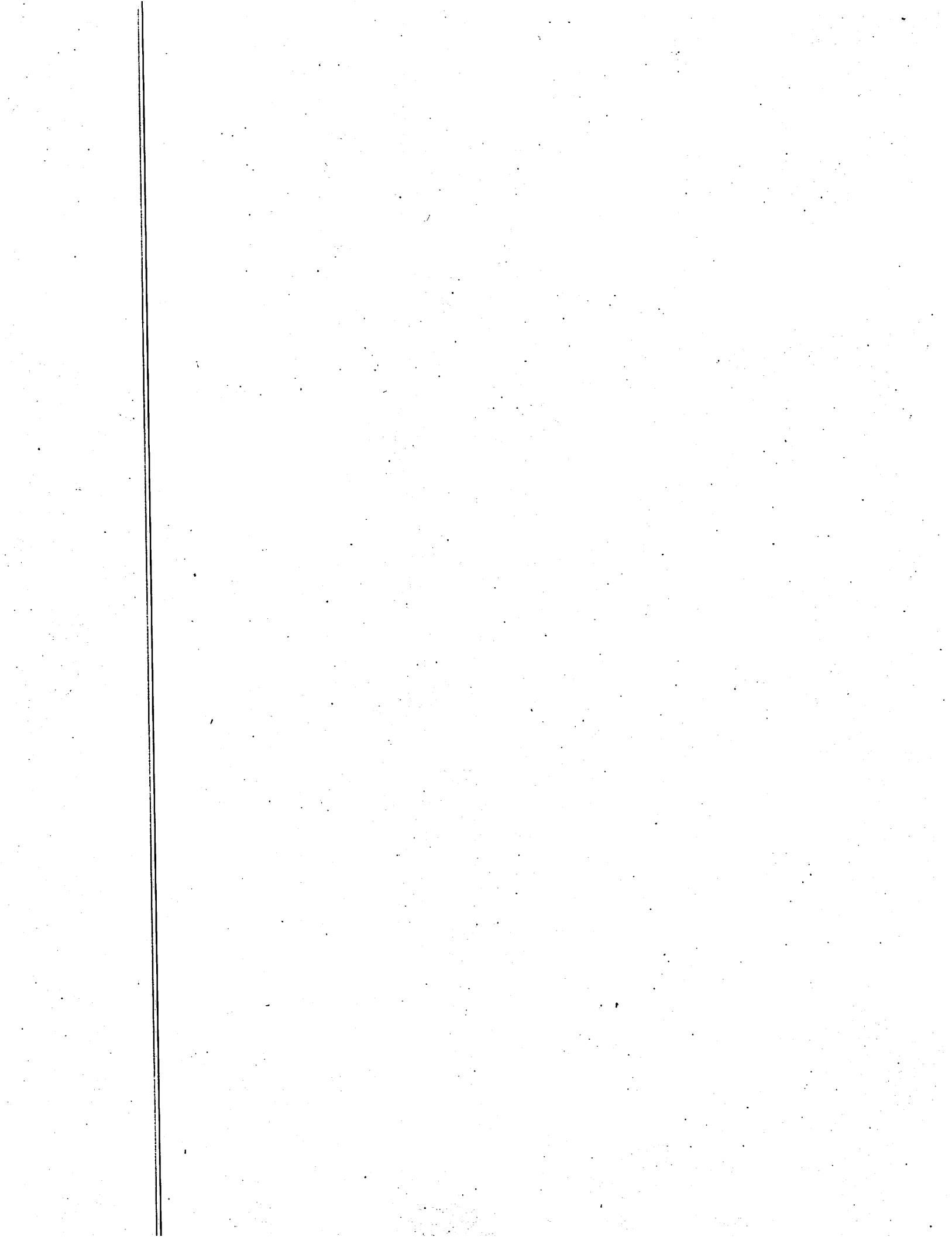
so. The Respondent missed several meetings with the Hoovers without offering any explanation or excuse. The Respondent performed no work under the Contract. The Hoovers cancelled the Contract and demanded a full refund.

In correspondence with the Hoovers, the Respondent claimed that he was entitled to deduct several items from the deposit refund, including charges for the time he spent meeting with the Hoovers. The Contract did not provide that the Respondent would be compensated for meetings. Mr. Hoover testified that the parties did not agree to compensation for meetings. The Respondent also claimed he was due \$300.00 for drawings, but Mr. Hoover testified that the Respondent never prepared any drawings. Finally, the Respondent told the Hoovers he was entitled to a deduction for special concrete samples. Mr. Hoover testified that the Respondent did not provide the Hoovers with any special samples.

The dispute about a deduction of amounts allegedly owed to the Respondent does not affect the outcome of this case because the check the Respondent gave the Hoovers for \$4,285.00 was returned for insufficient funds. The Respondent did not refund the Hoovers any portion of their deposit. Neither did the Respondent do any of the work required under the Contract. The Hoovers sued the Respondent and obtained a judgment, but they have not collected anything from the Respondent. I thus find that the Claimant is eligible for compensation from the Fund.

The statute sets forth several criteria which must be met before a claimant may be awarded funds by the MHIC:

- (1) A claim against the Fund based on the act or omission of a particular contractor may not be made by:
 - (i) a spouse or other immediate relative of the contractor;
 - (ii) an employee, officer, or partner of the contractor; or
 - (iii) an immediate relative of an employee, officer, or partner of the contractor.
- (2) An owner may make a claim against the Fund only if the owner:



- (i) resides in the home as to which the claim is made; or
- (ii) does not own more than three residences or dwelling places.

Bus. Reg. § 8-405(f). None of these criteria prevent an award in this case.

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.

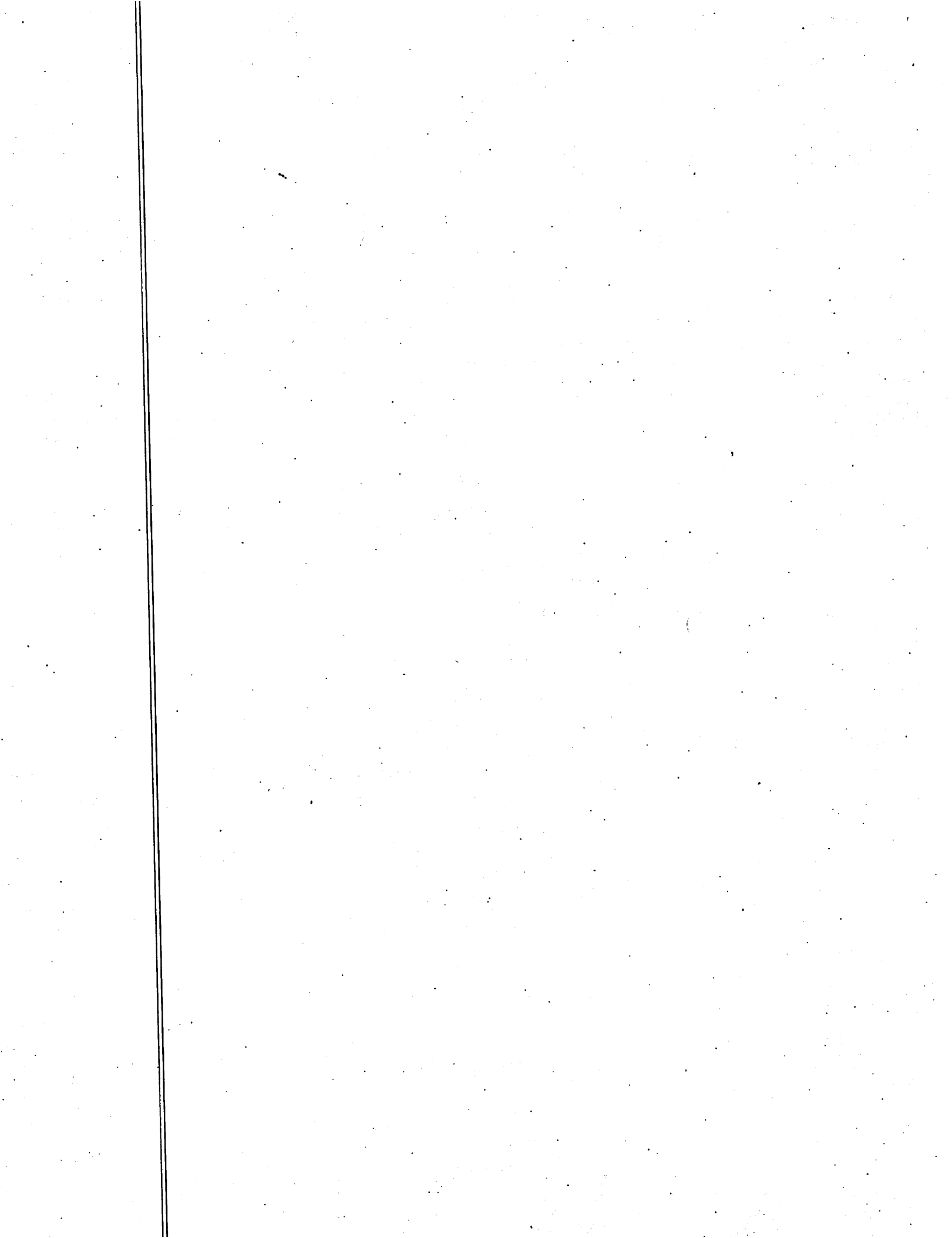
In this case, the Respondent abandoned the Contract without doing any work.

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 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 \$6,285.00 (the amount paid to the Respondent) and less than \$20,000.00. Therefore, the Claimant is entitled recover her actual loss of \$6,285.00. Counsel for the Fund agrees with this proposed result.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$6,285.00 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 \$6,285.00; 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;⁶ and

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

September 2, 2020
Date Decision Issued

MRC/cj
187356

CONFIDENTIAL
Mary R. Craig
Administrative Law Judge

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

PROPOSED ORDER

WHEREFORE, this 2nd day of October, 2020, 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***