

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JERRY CLAY,</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 JUAN ALAMAS LA</p> <p>ROSA,</p> <p>T/A J & J MULTISERVICES, LLC.,</p> <p>RESPONDENT</p>	<p>* BEFORE SYEETAH HAMPTON-EL,</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-02-21-08669</p> <p>* MHIC No.: 20 (75) 558</p> <p>*</p>
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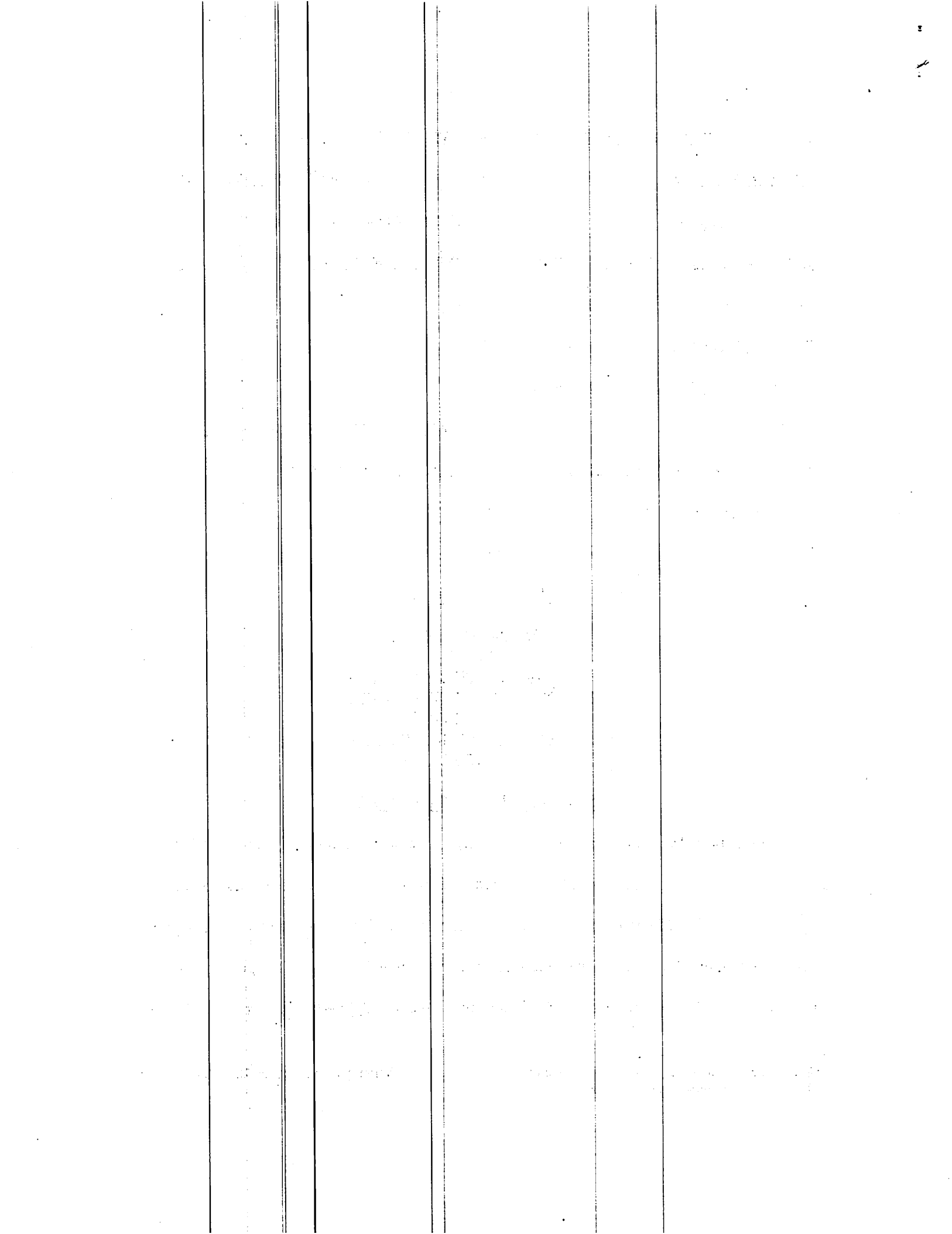
PROPOSED DECISION

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 January 28, 2020, Jerry Clay (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 \$22,975.00 in actual losses allegedly suffered as a result of a home improvement contract with Juan Alamas La Rosa, trading as J & J Multiservices, LLC. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹

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



On April 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 3, 2021 via the Webex videoconferencing platform (Webex). Bus. Reg. §§ 8-407(a), 8-312, and Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Justin Dunbar, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself.

After waiting approximately 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. COMAR 28.02.01.23A. On April 20, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States 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 June 3, 2021, at 9:30 a.m., via Webex. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

Before the hearing, the United States Postal Service (USPS) did not return the Notice to the OAH. However, on August 5, 2021 the USPS returned the Notice to the OAH with the notation "Return to Sender Refused Return to Sender."

On the date of the scheduled hearing, 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.

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. 2020); 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 on the Fund's behalf:

- Fund Ex. 1 - Notice of Hearing, dated April 20, 2021
- Fund Ex. 2 - Hearing Order, dated April 2, 2021
- Fund Ex. 3 - MHIC Claim Form, dated January 28, 2020
- Fund Ex. 4 - Letter from the MHIC to the Respondent, dated February 11, 2020
- Fund Ex. 5 - Licensing history for the Respondent, dated May 27, 2021

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

- Section A - MHIC Complaint Form, undated, and a signed Contract, dated May 1, 2019
- Section B - Copy of a \$1,000.00 check from the Claimant to the Respondent, dated June 1, 2019 and the following attachments:
 - Receipt from the Baltimore County Employees Federal Credit Union for \$3,500.00 from the Claimant to the Respondent, dated July 24, 2019
 - Receipt from the Baltimore County Employees Federal Credit Union for \$3,000.00 from the Claimant to the Respondent, dated September 12, 2019
- Section C - Five color photographs of the bathroom demolition, undated
- Section D - Color photographs of the bathroom remodel

Date	Description	Debit	Credit	Balance
1901	Jan 1			
	Jan 2			
	Jan 3			
	Jan 4			
	Jan 5			
	Jan 6			
	Jan 7			
	Jan 8			
	Jan 9			
	Jan 10			
	Jan 11			
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	Jan 28			
	Jan 29			
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	Jan 31			
	Feb 1			
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	Nov 23</			

- Twenty-seven color photographs of the shower ceramic tile, undated
- Nine color photographs of the porcelain floor tile, undated
- One color photograph of the shower and tub fixture, undated
- Five color photographs of the mirror and vanity sink cabinet, undated
- One color photograph of the bathroom ceiling exhaust fan, undated
- Five color photographs of the bathroom light and painted walls, undated
- Three color photographs of the bathroom vent, undated
- Ten color photographs of the basement door and new door installed, undated
- Six color photographs of the baseboard quarter round molding in the dining room, undated
- One color photograph of the linen closed shelves and unwired LED lights, undated
- One color photograph of installed HVAC register, undated
- Thirteen color photographs of damaged wood floors, undated

Section E - Written summary of damages by the Claimant, undated, and the following attachments:

- Spreadsheet of payments, expenses, and repair costs totaling \$21,879.12, undated
- Twenty-five color photographs, undated

Section F - Multiple text messages between the Claimant and the Respondent, various dates

Section G - Email from the Claimant to the Respondent, dated January 7, 2020 and the following attachments:

- Letter from the Claimant to the Respondent, dated January 7, 2020
- Returned envelope, dated January 8, 2020
- Email from the Claimant to the Respondent, dated December 21, 2019
- Text message from the Claimant, dated October 7 (no year listed),
- Email from the Claimant to the Respondent, dated September 29, 2019

Section H - BGE Home Products and Services, LLC. (BGE Home) billing summaries, dated August 30, 2017 through October 23, 2019 and the following attachment:

- BGE Home repair and install payment in the amount of \$1,474.75, dated November 19, 2019

Section I - Receipts from Home Depot, various dates and the following attachments:

- Receipt from New Penn, dated September 18, 2019
- BGE Home receipts, various dates
- Receipts from Office Max, various dates
- Receipt from La Quinta, dated September 16, 2019

Year	Month	Day	Time	Location	Activity	Remarks
1950	Jan	1	08:00	...	...	...
1950	Jan	2	08:00	...	...	...
1950	Jan	3	08:00	...	...	...
1950	Jan	4	08:00	...	...	...
1950	Jan	5	08:00	...	...	...
1950	Jan	6	08:00	...	...	...
1950	Jan	7	08:00	...	...	...
1950	Jan	8	08:00	...	...	...
1950	Jan	9	08:00	...	...	...
1950	Jan	10	08:00	...	...	...
1950	Jan	11	08:00	...	...	...
1950	Jan	12	08:00	...	...	...
1950	Jan	13	08:00	...	...	...
1950	Jan	14	08:00	...	...	...
1950	Jan	15	08:00	...	...	...
1950	Jan	16	08:00	...	...	...
1950	Jan	17	08:00	...	...	...
1950	Jan	18	08:00	...	...	...
1950	Jan	19	08:00	...	...	...
1950	Jan	20	08:00	...	...	...
1950	Jan	21	08:00	...	...	...
1950	Jan	22	08:00	...	...	...
1950	Jan	23	08:00	...	...	...
1950	Jan	24	08:00	...	...	...
1950	Jan	25	08:00	...	...	...
1950	Jan	26	08:00	...	...	...
1950	Jan	27	08:00	...	...	...
1950	Jan	28	08:00	...	...	...
1950	Jan	29	08:00	...	...	...
1950	Jan	30	08:00	...	...	...
1950	Jan	31	08:00	...	...	...

Section J - Proposal from Amazing Home Remodeling, Inc., dated January 19, 2020 and the following attachments:

- MHIC Claim Form, dated January 28, 2020

The Respondent did not appear or offer any exhibits for admission.

Testimony

The Fund did not present any witnesses.

The Claimant testified and presented the testimony of Victoria Clay, his wife.

The Respondent did not appear and did not present other 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 5115708.

2. The Claimant and Victoria Clay own the three-story residence (Residence) located in Baltimore City, Maryland. The residence has one bathroom. They do not own any other residence.

3. On May 1, 2019, the Claimant and the Respondent entered into a contract (Contract) to complete the following home improvement projects:

- Complete bathroom remodel
- Install new baseboard and quarter round in the dining room
- Reconstruct the basement entrance and install a new basement door
- Repair second floor wall and install new wall panel
- Install new doorbell
- Install new linen closet shelves and install an LED light fixture
- Remove and replace twelve HVAC registers and grills throughout the house.

Date	Particulars	Debit	Credit	Balance	Remarks
1998-01-01	Balance b/d				
1998-01-05	By Cash		1000	1000	
1998-01-10	To Cash	500		500	
1998-01-15	By Cash		2000	2500	
1998-01-20	To Cash	1000		1500	
1998-01-25	By Cash		3000	4500	
1998-02-01	To Cash	2000		2500	
1998-02-05	By Cash		1500	4000	
1998-02-10	To Cash	1000		3000	
1998-02-15	By Cash		2500	5500	
1998-02-20	To Cash	1500		4000	
1998-02-25	By Cash		3500	7500	
1998-03-01	To Cash	2500		5000	
1998-03-05	By Cash		4000	9000	
1998-03-10	To Cash	3000		6000	
1998-03-15	By Cash		5000	11000	
1998-03-20	To Cash	4000		7000	
1998-03-25	By Cash		6000	13000	
1998-04-01	To Cash	5000		8000	
1998-04-05	By Cash		7000	15000	
1998-04-10	To Cash	6000		9000	
1998-04-15	By Cash		8000	17000	
1998-04-20	To Cash	7000		10000	
1998-04-25	By Cash		9000	19000	
1998-05-01	To Cash	8000		11000	
1998-05-05	By Cash		10000	21000	
1998-05-10	To Cash	9000		12000	
1998-05-15	By Cash		11000	23000	
1998-05-20	To Cash	10000		13000	
1998-05-25	By Cash		12000	25000	
1998-06-01	To Cash	11000		14000	
1998-06-05	By Cash		13000	27000	
1998-06-10	To Cash	12000		16000	
1998-06-15	By Cash		14000	30000	
1998-06-20	To Cash	13000		17000	
1998-06-25	By Cash		15000	32000	
1998-07-01	To Cash	14000		18000	
1998-07-05	By Cash		16000	34000	
1998-07-10	To Cash	15000		19000	
1998-07-15	By Cash		17000	36000	
1998-07-20	To Cash	16000		20000	
1998-07-25	By Cash		18000	38000	
1998-08-01	To Cash	17000		21000	
1998-08-05	By Cash		19000	40000	
1998-08-10	To Cash	18000		22000	
1998-08-15	By Cash		20000	42000	
1998-08-20	To Cash	19000		23000	
1998-08-25	By Cash		21000	44000	
1998-09-01	To Cash	20000		24000	
1998-09-05	By Cash		22000	46000	
1998-09-10	To Cash	21000		25000	
1998-09-15	By Cash		23000	48000	
1998-09-20	To Cash	22000		26000	
1998-09-25	By Cash		24000	50000	
1998-10-01	To Cash	23000		27000	
1998-10-05	By Cash		25000	52000	
1998-10-10	To Cash	24000		28000	
1998-10-15	By Cash		26000	54000	
1998-10-20	To Cash	25000		29000	
1998-10-25	By Cash		27000	56000	
1998-11-01	To Cash	26000		30000	
1998-11-05	By Cash		28000	58000	
1998-11-10	To Cash	27000		31000	
1998-11-15	By Cash		29000	60000	
1998-11-20	To Cash	28000		32000	
1998-11-25	By Cash		30000	62000	
1998-12-01	To Cash	29000		33000	
1998-12-05	By Cash		31000	64000	
1998-12-10	To Cash	30000		34000	
1998-12-15	By Cash		32000	66000	
1998-12-20	To Cash	31000		35000	
1998-12-25	By Cash		33000	68000	
1999-01-01	To Cash	32000		36000	
1999-01-05	By Cash		34000	70000	
1999-01-10	To Cash	33000		37000	
1999-01-15	By Cash		35000	72000	
1999-01-20	To Cash	34000		38000	
1999-01-25	By Cash		36000	74000	
1999-02-01	To Cash	35000		39000	
1999-02-05	By Cash		37000	76000	
1999-02-10	To Cash	36000		40000	
1999-02-15	By Cash		38000	78000	
1999-02-20	To Cash	37000		41000	
1999-02-25	By Cash		39000	80000	
1999-03-01	To Cash	38000		42000	
1999-03-05	By Cash		40000	82000	
1999-03-10	To Cash	39000		43000	
1999-03-15	By Cash		41000	84000	
1999-03-20	To Cash	40000		44000	
1999-03-25	By Cash		42000	86000	
1999-04-01	To Cash	41000		45000	
1999-04-05	By Cash		43000	88000	
1999-04-10	To Cash	42000		46000	
1999-04-15	By Cash		44000	90000	
1999-04-20	To Cash	43000		47000	
1999-04-25	By Cash		45000	92000	
1999-05-01	To Cash	44000		48000	
1999-05-05	By Cash		46000	94000	
1999-05-10	To Cash	45000		49000	
1999-05-15	By Cash		47000	96000	
1999-05-20	To Cash	46000		50000	
1999-05-25	By Cash		48000	98000	
1999-06-01	To Cash	47000		51000	
1999-06-05	By Cash		49000	100000	
1999-06-10	To Cash	48000		52000	
1999-06-15	By Cash		50000	102000	
1999-06-20	To Cash	49000		53000	
1999-06-25	By Cash		51000	104000	
1999-07-01	To Cash	50000		54000	
1999-07-05	By Cash		52000	106000	
1999-07-10	To Cash	51000		55000	
1999-07-15	By Cash		53000	108000	
1999-07-20	To Cash	52000		56000	
1999-07-25	By Cash		54000	110000	
1999-08-01	To Cash	53000		57000	
1999-08-05	By Cash		55000	112000	
1999-08-10	To Cash	54000		58000	
1999-08-15	By Cash		56000	114000	
1999-08-20	To Cash	55000		59000	
1999-08-25	By Cash		57000	116000	
1999-09-01	To Cash	56000		60000	
1999-09-05	By Cash		58000	118000	
1999-09-10	To Cash	57000		61000	
1999-09-15	By Cash		59000	120000	
1999-09-20	To Cash	58000		62000	
1999-09-25	By Cash		60000	122000	
1999-10-01	To Cash	59000		63000	
1999-10-05	By Cash		61000	124000	
1999-10-10	To Cash	60000		64000	
1999-10-15	By Cash		62000	126000	
1999-10-20	To Cash	61000		65000	
1999-10-25	By Cash		63000	128000	
1999-11-01	To Cash	62000		66000	
1999-11-05	By Cash		64000	130000	
1999-11-10	To Cash	63000		67000	
1999-11-15	By Cash		65000	132000	
1999-11-20	To Cash	64000		68000	
1999-11-25	By Cash		66000	134000	
1999-12-01	To Cash	65000		69000	
1999-12-05	By Cash		67000	136000	
1999-12-10	To Cash	66000		70000	
1999-12-15	By Cash		68000	138000	
1999-12-20	To Cash	67000		71000	
1999-12-25	By Cash		69000	140000	
2000-01-01	To Cash	68000		72000	
2000-01-05	By Cash		70000	142000	
2000-01-10	To Cash	69000		73000	
2000-01-15	By Cash		71000	144000	
2000-01-20	To Cash	70000		74000	
2000-01-25	By Cash		72000	146000	
2000-02-01	To Cash	71000		75000	
2000-02-05	By Cash		73000	148000	
2000-02-10	To Cash	72000		76000	
2000-02-15	By Cash		74000	150000	
2000-02-20	To Cash	73000		77000	
2000-02-25	By Cash		75000	152000	
2000-03-01	To Cash	74000		78000	
2000-03-05	By Cash		76000	154000	
2000-03-10	To Cash	75000		79000	
2000-03-15	By Cash		77000	156000	
2000-03-20	To Cash	76000		80000	
2000-03-25	By Cash		78000	158000	
2000-04-01	To Cash	77000		81000	
2000-04-05	By Cash		79000	160000	
2000-04-10	To Cash	78000		82000	
2000-04-15	By Cash		80000	162000	
2000-04-20	To Cash	79000		83000	
2000-04-25	By Cash		81000	164000	
2000-05-01	To Cash	80000		84000	
2000-05-05	By Cash		82000	166000	
2000-05-10	To Cash	81000		85000	
2000-05-15	By Cash		83000	168000	
2000-05-20	To Cash	82000		86000	
2000-05-25	By Cash		84000	170000	
2000-06-01	To Cash	83000		87000	
2000-06-05	By Cash		85000	172000	
2000-06-10	To Cash	84000		88000	
2000-06-15	By Cash		86000	174000	
2000-06-20	To Cash	85000		89000	
2000-06-25	By Cash		87000	176000	
2000-07-01	To Cash	86000		90000	
2000-07-05	By Cash		88000	178000	
2000-07-10	To Cash	87000		91000	
2000-07-15	By Cash		89000	180000	
2000-07-20	To Cash	88000		92000	
2000-07-25	By Cash		90000	182000	
2000-08-01	To Cash	89000		93000	
2000-08-05	By Cash		91000	184000	
2000-08-10	To Cash	90000		94000	
2000-08-15	By Cash		92000	186000	
2000-08-20	To Cash	91000		95000	
2000-08-25	By Cash		93000	188000	
2000-09-01	To Cash	92000		96000	
2000-09-05	By Cash		94000	190000	
2000-09-10	To Cash	93000		97000	

4. The Contract stated that work would begin during the first week of September and be completed by September 20, 2019. The Contract stated the project would take fifteen days. (See Claimant Sec. A).

5. The original agreed-upon Contract price was \$10,500.00 to be paid in three installments: \$4,500.00 at the Contract signing, \$3,000.00 at the halfway part of the job, and \$3,000.00 upon completion.

6. The Contract included labor and the cost of materials. The Claimant and his wife purchased materials from Home Depot including the bathroom vanity and hardware (\$594.44), fixtures (\$104.94), paint (\$30.98), and light fixture (\$176.48) for a total of \$906.84.

7. On June 1, 2019, the Claimant paid the Respondent a deposit in the amount of \$1,000.00.

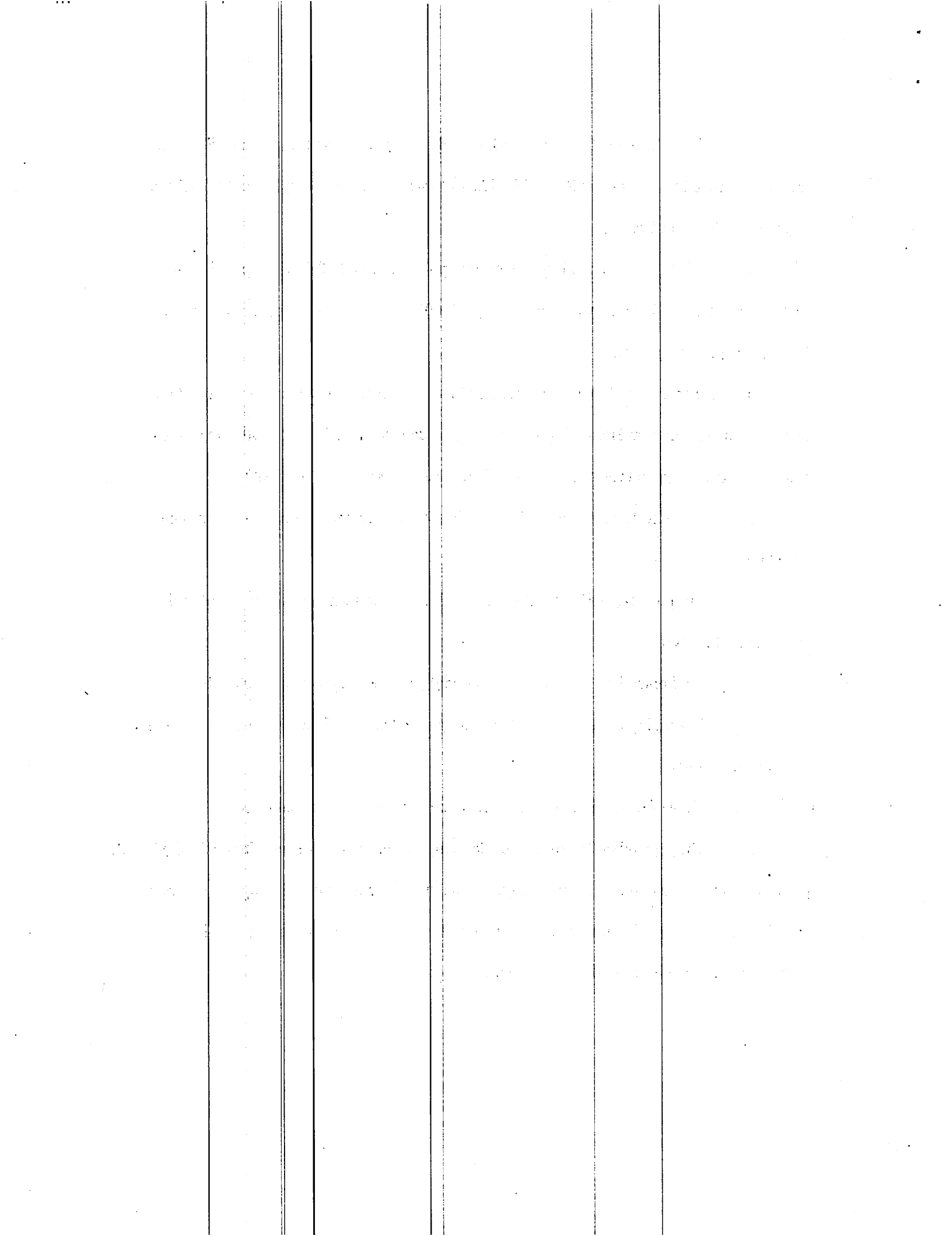
8. On June 24, 2019, the Claimant paid the Respondent a down payment in the amount of \$3,500.00.

9. On September 12, 2019, the Claimant paid the Respondent \$3,000.00.

10. Beginning September 9, 2019 through September 16, 2019, the Claimant and his wife stayed in a hotel.

11. On a date not specified, the Respondent demolished the bathroom.

12. On September 26, 2019, the Claimant noticed several issues with the limited work performed by the Respondent including: grout cracking at the tub base, shifting toilet, uneven, cracking, and breaking tile, improper installation of bathroom fixtures causing scalding hot water, and damaged hardwood floors. (Claimant Sec. G).



13. On September 29, 2019, Mrs. Clay emailed the Respondent regarding incomplete items and a change order to install electrical wall outlets in the first and second bedrooms, install a double light switch for the dining room, and reinstall the ceiling fan. (Claimant Sec. G).

14. On October 3 and 4, 2019, BGE Home completed electrical work in the bathroom and other areas covered in the Contract and pursuant to the change order. The Claimant paid BGE Home \$873.80 on October 3, 2019 and \$756.50 on October 4, 2019.

15. On October 7, 2019, the Respondent abandoned the Contract.

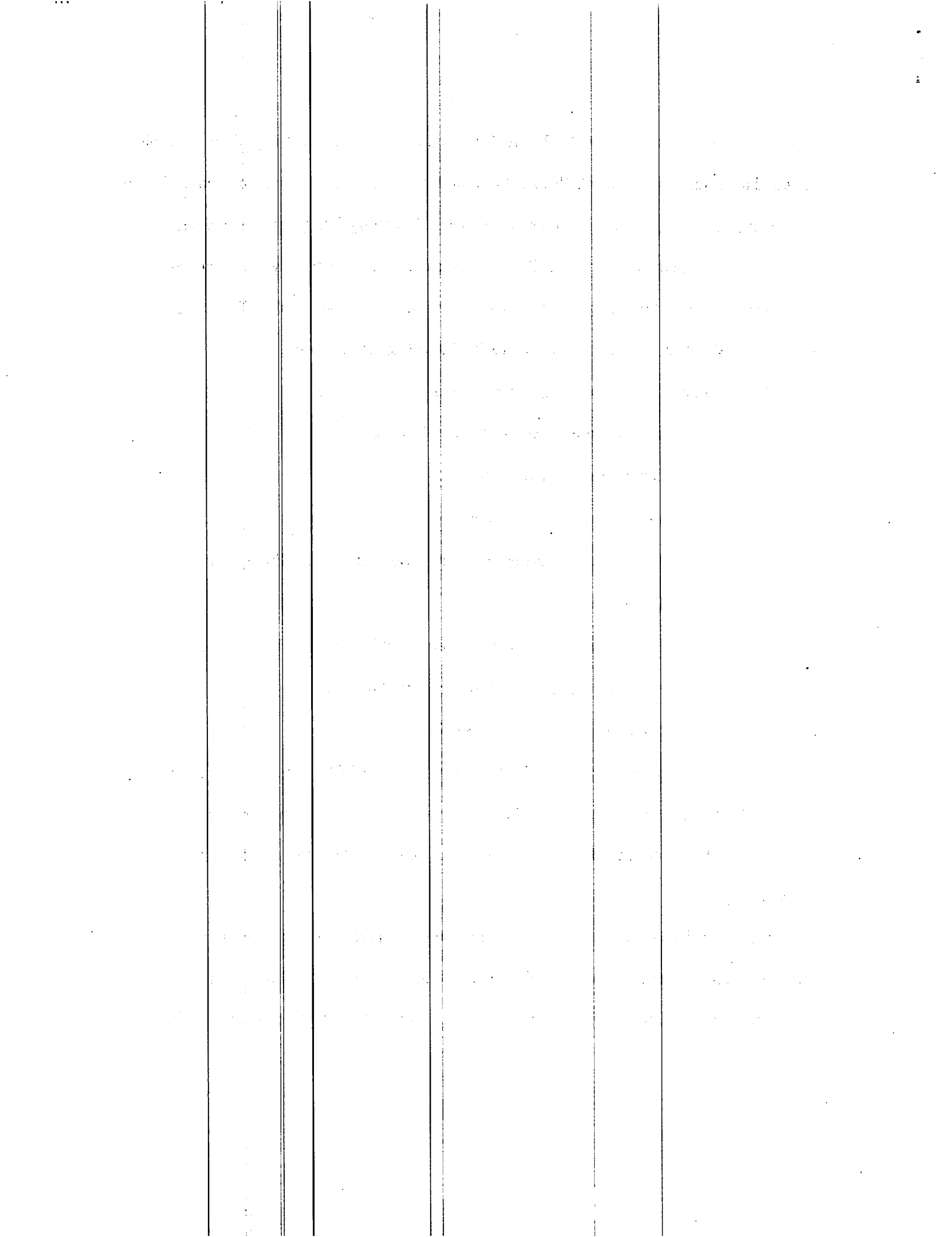
16. The Respondent did not complete the following:

- Remove and install registers
- Install the linen closet shelves
- Install the second-floor wall or quarter round in the dining room
- Install the baseboards
- Reconstruct the basement entrance and install a new basement door
- Paint and install the bathroom recessed lighting
- Complete the bathroom remodel

17. On October 23 and 24, 2019, the Claimant paid BGE Home to correct the selector to regulate the hot and cold water for \$1,474.75 and install the bathroom light for \$50.00.

18. On behalf of the Respondent, the Claimant paid BGE Home \$3,155.05 for electrical work.

19. On January 19, 2020, the Claimant obtained an estimate from Amazing Home Remodeling, Incorporated (Amazing), MHIC license number 128987, to redo and complete the Contract in the amount of \$15,975.00. The Amazing estimate included sanding and refinishing



the living room and dining room floors at a cost of \$1,755.00 to repair damage caused by the Respondent.

DISCUSSION

In this case, 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 (2014); 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 he entered into a Contract with the Respondent to remodel the bathroom, install new baseboard and quarter round in the dining room, reconstruct the basement entrance and install a new basement door, repair second floor wall and install new wall panel, install new doorbell, install new linen closet shelves and install an LED light fixture, remove and replace twelve HVAC registers and grills throughout the house. The Claimant agreed to pay the Contract price of \$10,500.00 and the Respondent agreed to begin the Contract during the first week of September and finish by September 20th.

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50	100	100	100	100	100

The Contract price included the cost of materials and labor. However, the Claimant testified he and his wife purchased the bathroom fixtures and other materials.

At the signing of the Contract, the Claimant paid the Respondent a \$1,000.00 deposit. In August, the Claimant paid the Respondent a \$3,500.00 down payment. In September, the Claimant paid the Respondent \$3,000.00. The Claimant agreed to stay in a hotel for three to four days while the Respondent completed the bathroom remodel since the residence has one bathroom. However, the Claimant explained he and his wife stayed in the hotel from September 9, 2019 through September 16, 2019 due to the slow work schedule of the Respondent. The Respondent removed the old bathroom but took three to four weeks to actually start the remodel. The Claimant gave the Respondent access to the residence by providing both a house key and the alarm code. The Claimant noticed that the Respondent showed up at 11:00 a.m. and would generally leave by 1:00 p.m. without doing any work. As a result, Mrs. Clay spoke to the Respondent about the unnecessary delay.

The Claimant noticed issues with the limited work completed by the Respondent including the uneven, cracking, and breaking tile in the bathroom, shifting toilet, and grout cracking around the tub. The Claimant testified the Respondent failed to complete the many items detailed in the Contract including vent installation, reconstruction of the basement entry and installation of a new door, painting, installation of linen closet shelves, installation of baseboards and quarter round in the dining room, electrical work including installation of recessed lighting, and installing the fixtures without a seal. The Claimant testified the Respondent only did "something in the bathroom."

The Respondent abandoned the Contract on October 7, 2019. The Claimant explained the Respondent left and never returned or responded to any emails, letters, or text messages requesting that the Respondent return to finish the Contract.

Because of the incomplete work performed by the Respondent, on January 19, 2020, the Claimant obtained an estimate from Amazing to finish the Contract. Amazing, a licensed contractor, provided an estimate to both complete the Contract and fix the damage caused by the Respondent for \$15,975.00. The Claimant explained the Respondent damaged the hardwood floors by failing to put down plastic covering and damaged the interior shower window by improperly installing the shower.

Victoria Clay, the Claimant's wife, also testified about the Contract problems with the Respondent. Mrs. Clay explained that the Respondent improperly installed the bathroom fixtures causing scalding hot water. As a result, BGE Home had to correct the selector because the Respondent installed it backward causing the scalding hot water. In addition, Mrs. Clay noticed that both the tub and toilet were sitting high, and uneven tile in the bathroom.

She explained the Contract had one change order regarding electrical work in the bedrooms and dining room, but the Respondent failed to complete the electrical work. As a result, the Claimant hired BGE Home to complete the electrical work. Before the Respondent discontinued the Contract, Mrs. Clay testified she sent multiple emails and letters regarding Contract issues.

Based on the evidence presented, I find that the Claimant has met his burden to show that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Respondent was a licensed home improvement contractor at the time he entered the Contract with the Claimant. The Contract included the cost of materials and labor. However, the

Year	Month	Day	Event	Location	Notes
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1950	Mar	1
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1950	Apr	30

Claimant spent \$906.84 purchasing paint, bathroom vanity, hardware, fixtures, and a light fixture. The Contract identified specific work to be completed by the Respondent and the evidence shows he performed incomplete work. Specifically, the Respondent did not complete the vent installation, reconstruction of the basement entry and installation of a new door, painting, installation of linen closet shelves, installation of baseboards and quarter round in the dining room, electrical work including installation of recessed lighting, and installing the fixtures without a seal. In addition, the Respondent did not finish the bathroom remodel.

In support of the claim, both the Claimant and Mrs. Clay provided credible testimony and a binder of exhibits. The binder included color photographs depicting the incomplete and poor workmanship such as uneven tile, cracking tile and grout, incomplete shower tile, improperly installed exhaust fan, exposed electrical wiring and outlets, exposed HVAC vent hole in the bathroom, crumbling basement door frame, improperly installed HVAC registers and grills, and missing linen closet shelves.

Due to the Respondent failing to complete the Contract including the electrical change order, the Claimant hired BGE Home to complete the electrical work and correct the bathroom selector. In total, the Claimant paid BGE \$3,155.05 for the electrical components of the Contract. I find that the Claimant paid the \$3,155.05 because of what the Respondent did not do as required by the Contract and the change order.

As a result, the Claimant obtained a proposal from Amazing to complete the Contract and redo the bathroom. Amazing quoted \$15,975.00 to redo and complete the Contract. I do not find that the Amazing exceeded the original Contract. The Claimant requested that the Respondent cover the floors to protect damage and the Respondent failed to comply. As a result,

Year	1990	1991	1992	1993	1994
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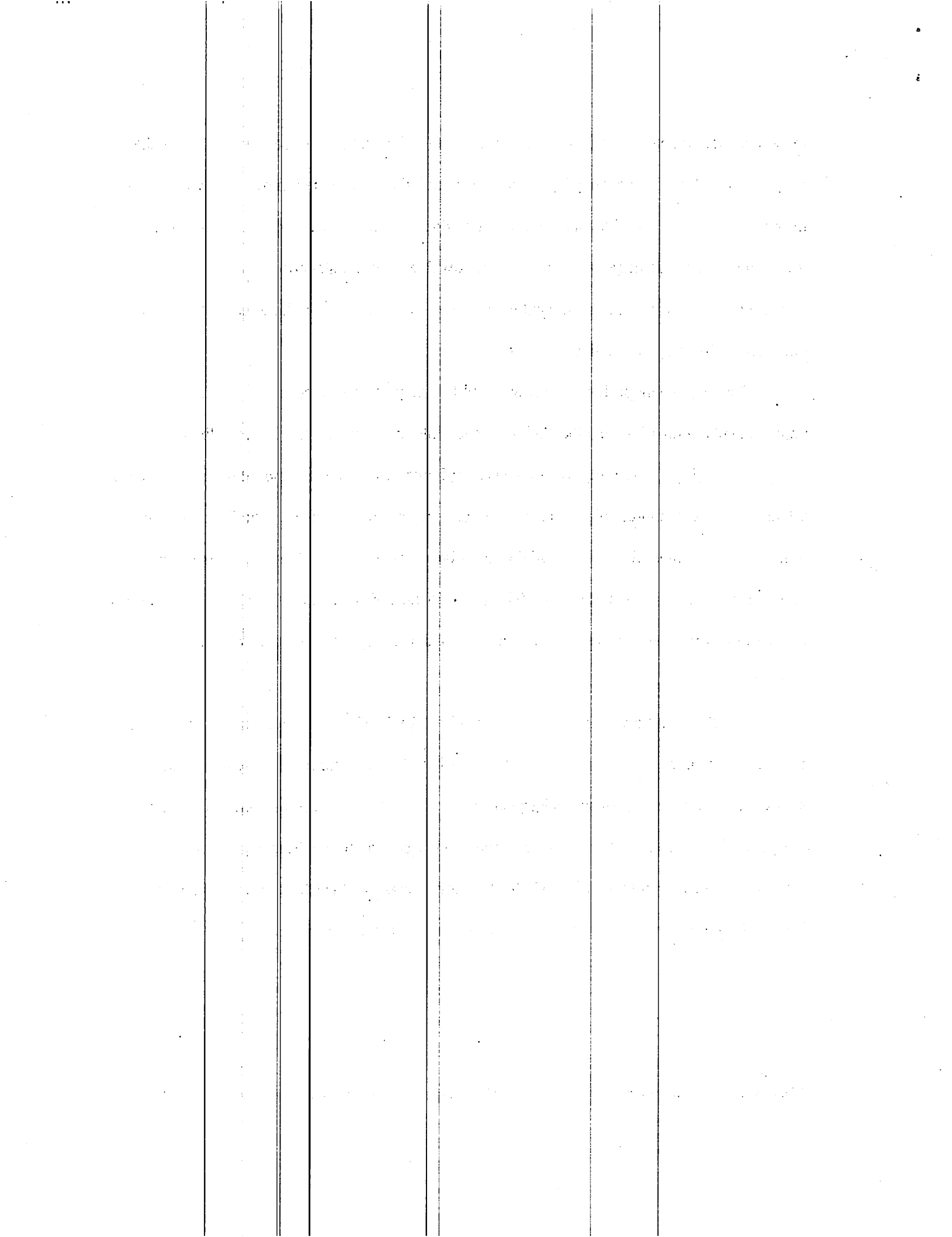
the Respondent damaged the hardwood floors and the Claimant purchased covering² once the Respondent failed to. The Amazing contract also includes the installation of a new window in the bathroom. I find that the window installation does not exceed the Contract because the Respondent caused damage to the existing window due to poor installation of the shower. Because of the poor work, the Claimant experienced water puddling in the window ledge and ultimately damaging the existing window.

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

The Claimant filed a HIC Claim and sought \$22,975.00. For the reasons noted below I find for the Claimant but determine the actual loss based on the appropriate calculation and exclusions as noted by the Business Regulations Article. The Claimant testified and included receipts for hotel costs, costs to copy documents in preparation for the hearing, and other consequential costs that totaled \$1,153.79. The law is clear that the Claimant cannot recover these costs and the costs cannot be used to determine the actual loss.

² The Claimant included receipts but the totals were difficult to read for the cost of the plastic covering.



In this case, 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).

Pursuant to the Contract, the Claimant paid the Respondent \$7,500.00. In addition to Contract payments, the Claimant purchased materials from Home Depot and paid BGE Home to complete projects not completed by the Respondent as contracted. The Claimant obtained a \$15,975.00 estimate from Amazing to repair the poor work performed by the Respondent.

Amount paid to the Respondent:	\$7,500.00
BGE Home Costs:	\$3,155.05
Home Depot materials:	+ \$906.84
Amount paid to or on behalf of the Respondent: =	\$11,561.89

Amazing estimate:	+ \$15,975.00
Subtotal =	\$27,536.89
Original Contract price:	- \$10,500.00
	= \$17,036.89

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). Although the actual loss calculation totals \$17,036.89, the Claimant

cannot recover more than what he paid to the Respondent or on his behalf. In this case, the Claimant actually paid \$11,561.89 to the Respondent (\$7,500.00) and on behalf of the Respondent to BGE Home (\$3,155.05) and for materials (\$906.84). The Fund argued the Claimant should receive \$8,605.12 but failed to include \$3,155.05 paid by the Claimant to BGE Home on behalf of the Respondent.

In this case, the Claimant's actual loss is more than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$11,561.89.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$11,561.89 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 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 \$11,561.89; 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

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

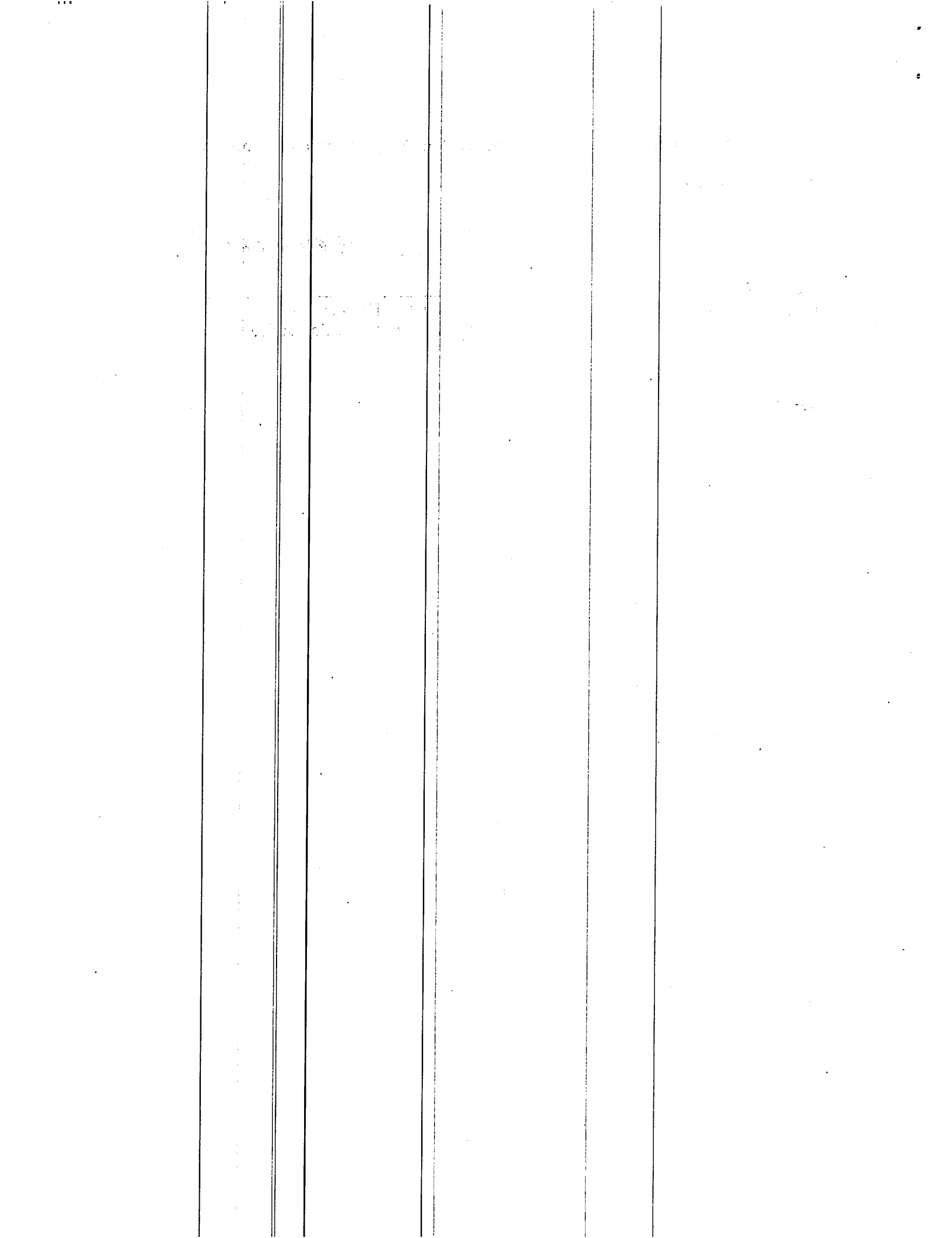
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Syeetah Hampton-EL

August 17, 2021
Date Decision Issued

Syeetah Hampton-EL
Administrative Law Judge

SAH/cj
#193722



PROPOSED ORDER

WHEREFORE, this 22nd day of November, 2021, 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***

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