

**IN THE MATTER OF THE CLAIM
OF DORIS WEAVER,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF FREDERICK
SCHRAMM,
T/A FIVE STAR PAINTING
NATIONAL HARBOR, LLC,
RESPONDENT**

*** BEFORE TAMEIKA LUNN-EXINOR,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-09952
* MHIC No.: 20 (90) 581

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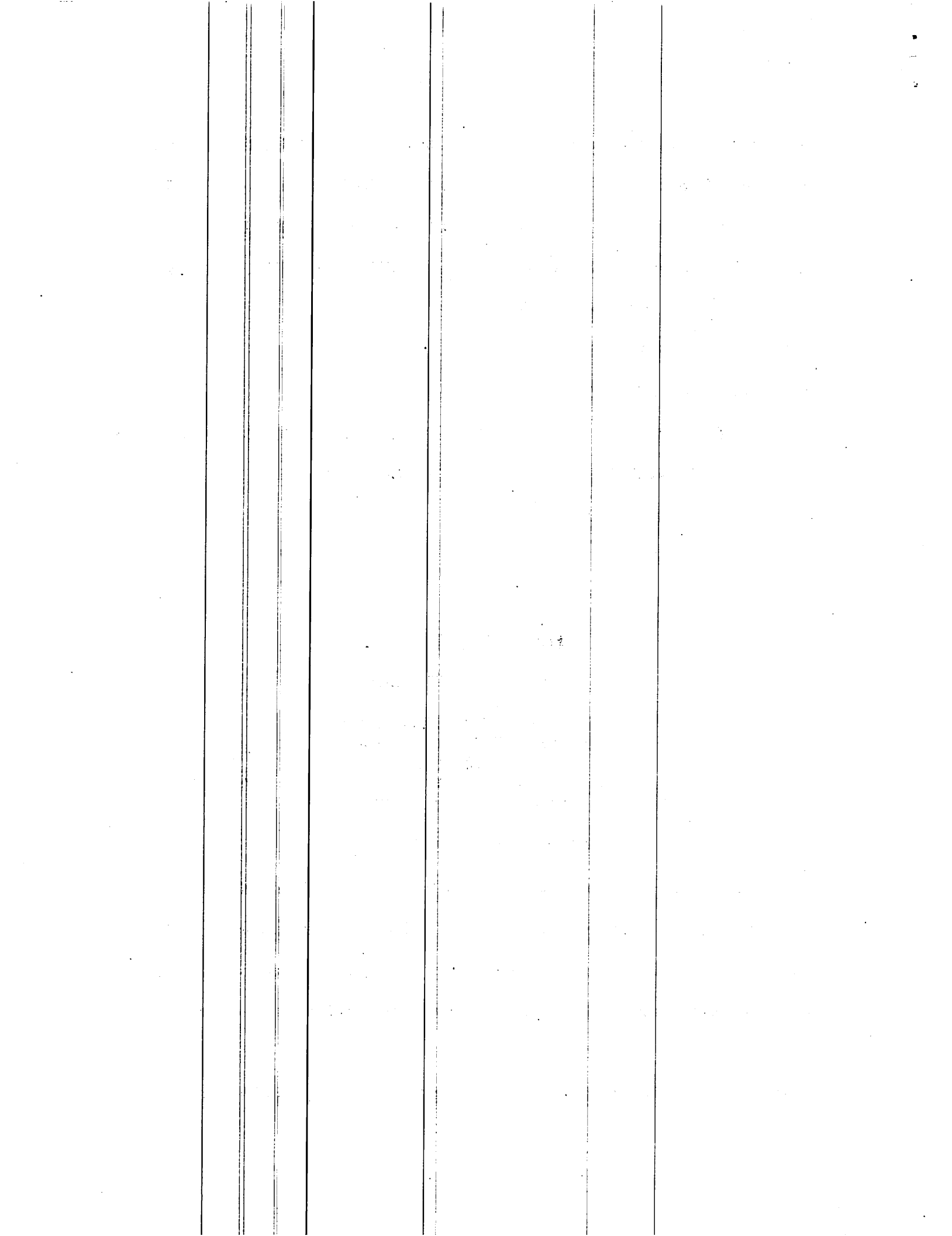
PROPOSED DECISION

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 30, 2020, Doris Weaver (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),¹ for reimbursement of \$1,881.05 in actual losses allegedly suffered as a result of a home improvement contract with Frederick Schramm trading as Five

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.



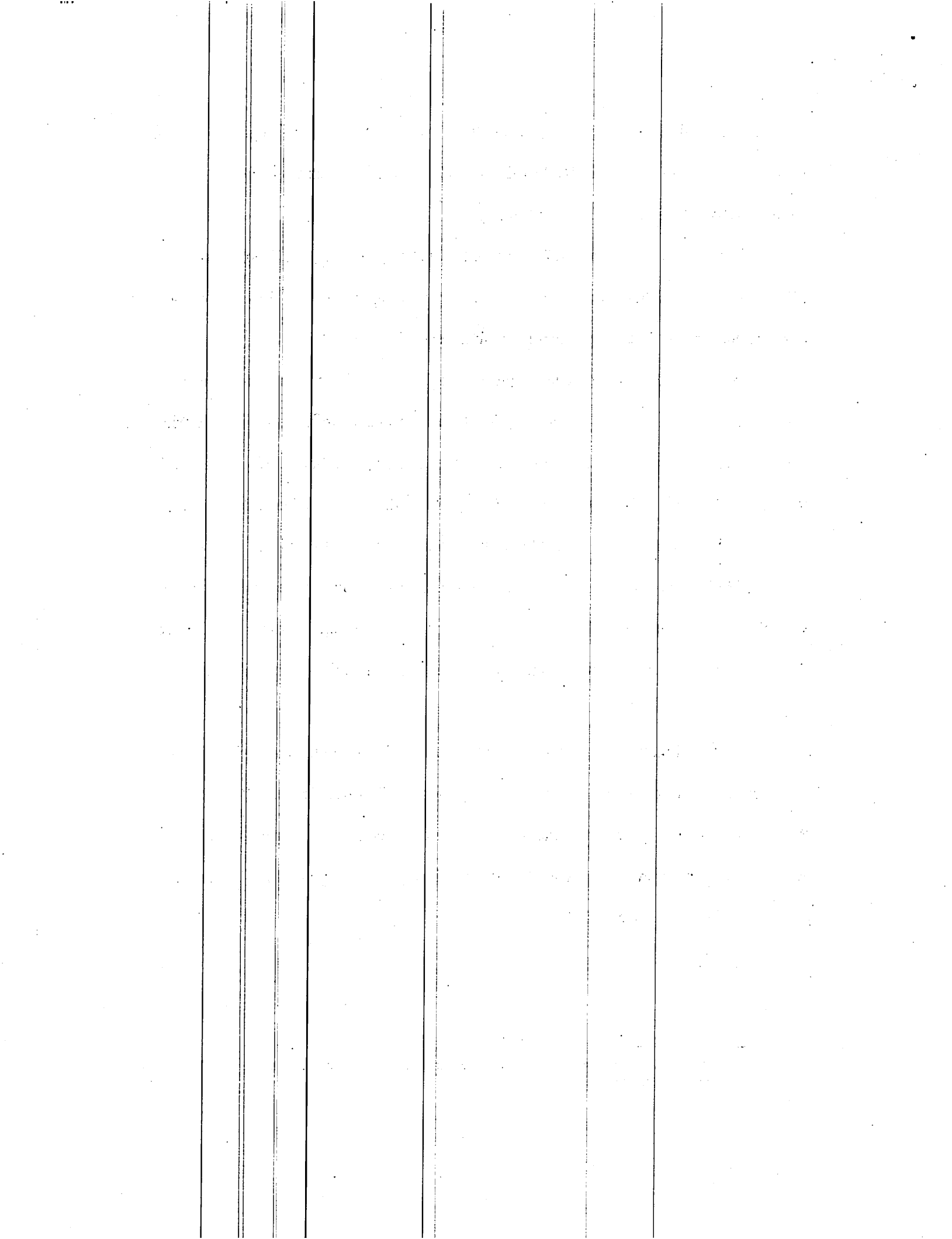
Star Painting National Harbor, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).² On April 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 14, 2021 using the Webex platform. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent failed to appear.

After waiting twenty 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 May 5, 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 14, 2021, at 9:30 a.m., via the Webex remote platform. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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



The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure 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

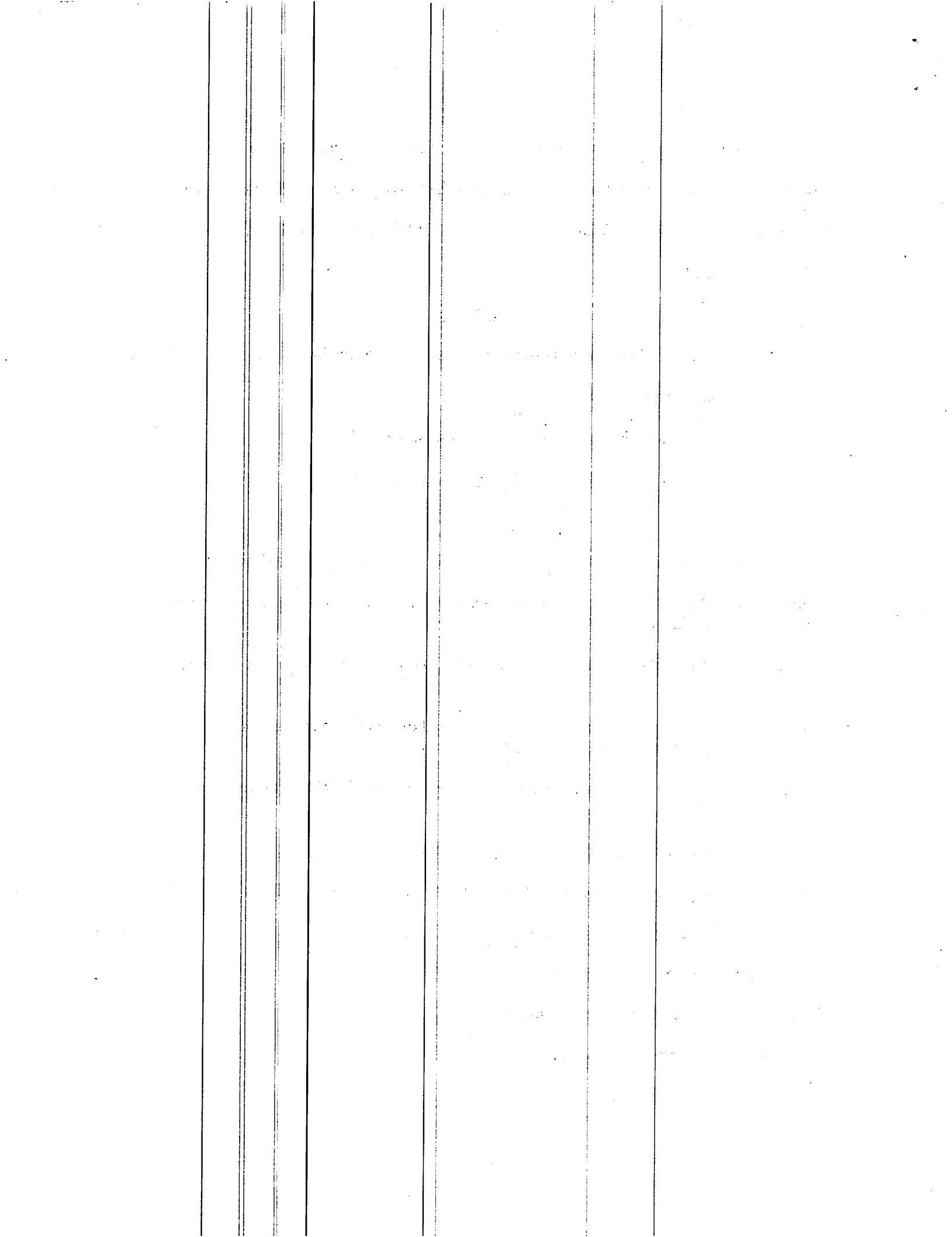
Unless otherwise indicated, I admitted the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 - Photo of front door paint bleeding into the inside of the door, taken by Claimant on January 12, 2020
- Clmt. Ex. 2 - Three photos of the incomplete 3-foot railing, taken by Claimant on January 12, 2020
- Clmt. Ex. 3 - Four photos of paint from the brick wall that bled into the patio, taken by Claimant on January 12, 2020
- Clmt. Ex. 4 - Claimant's payment transaction in the amount of \$2,721.05 to Respondent, October 4, 2019
- Clmt. Ex. 5 - Exterior Quote from Respondent, September 24, 2019
- Clmt. Ex. 6 - Proposal from Jeeves Handyman Services, January 24, 2020

The Respondent did not submit any exhibits for admission.

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

- Fund Ex. 1 - Notice of Remote Hearing, May 5, 2021
- Fund Ex. 2 - Hearing Order, April 2, 2021



Fund Ex. 3 - Letter from MHIC to Respondent enclosing Complaint Form, February 4, 2020

Fund Ex. 4 - MHIC Registration Printout for Respondent, printed May 26, 2021

Fund Ex. 5 - SDAT:³ Real Property Search for Respondent, printed May 26, 2021

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not appear.

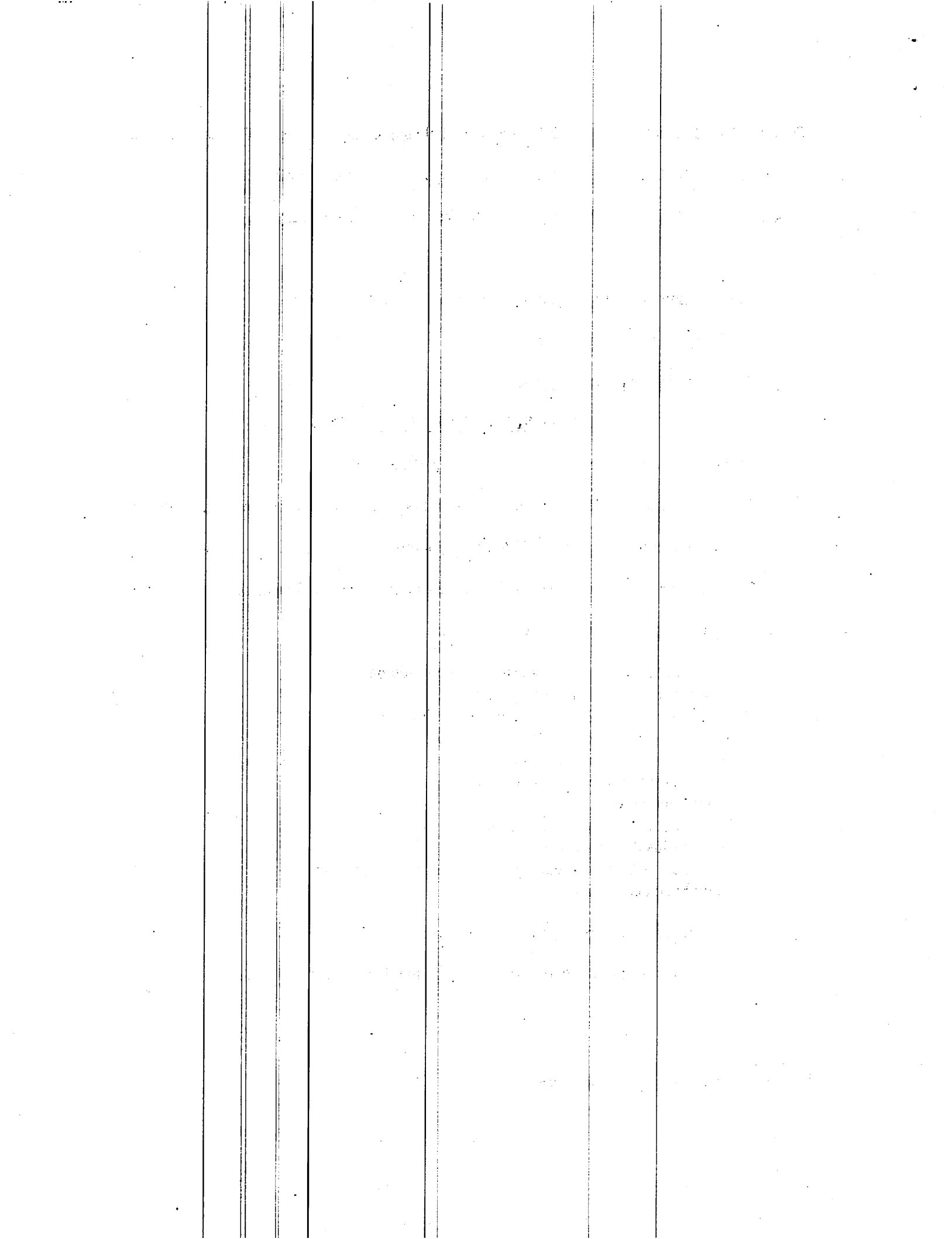
The Fund did not present any witnesses.

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 license number 08 110219.
2. On or about September 24, 2019, the Claimant and the Respondent entered into a contract (Contract) for the following scope of work:
 - Assemble 3 feet of railing, customer to provide parts
 - Power wash two metal garage doors
 - Scrape to remove all loose and peeling paint
 - Caulk all gaps and cracks to seal and protect
 - Spot prime bare wood and metal
 - Mask and cover areas to prevent overspray
 - Paint brick base
 - Paint exterior of doors and outside trim
 - Replace insulation strip around door
 - Paint garage trim only and replace three strips of insulation
 - Paint back deck trim only
3. The original agreed-upon Contract price was \$2,731.05.
4. On October 4, 2019, the Claimant paid the Respondent \$2,731.05.

³ State Department of Assessment and Taxation



5. In October 2019, the Respondent sent painters from his company to work in the Claimant's home.

6. The Claimant's front door was not professionally painted. It was not smooth and blue tape was left on the door.

7. The Respondent did not power wash the garage doors.

8. The Respondent did not install the railing as contracted.

9. The Respondent did not prime before painting.

10. The Respondent did not install the weather stripping.

11. The paint bled onto other surfaces.

12. The Respondent's work was unworkmanlike and inadequate.

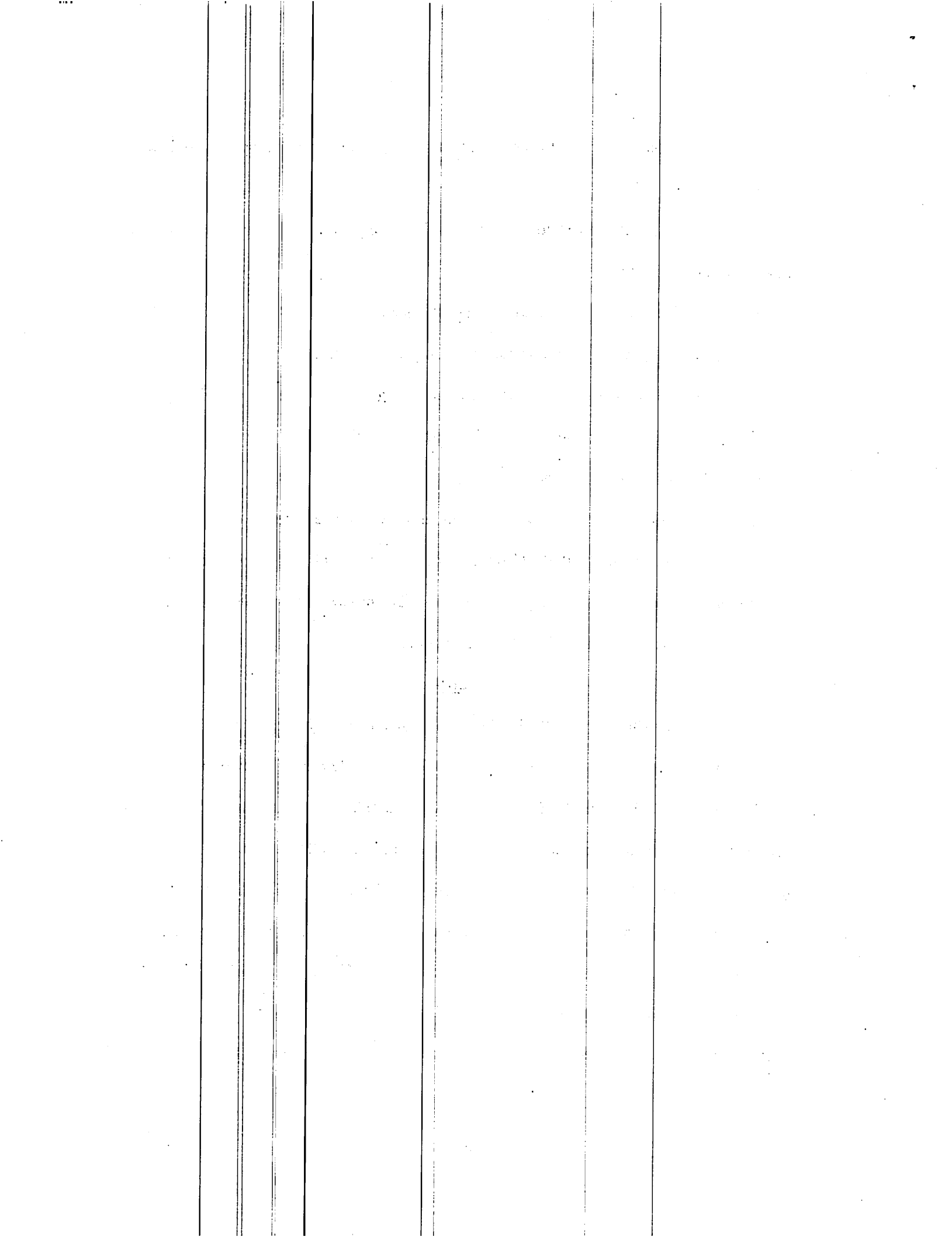
13. On January 24, 2020, the Claimant received a proposal from Jeeves Handyman Services to repair and complete the Respondent's work. The proposal amount was \$2,950.00.

14. The Claimant has not had the repairs done.

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,

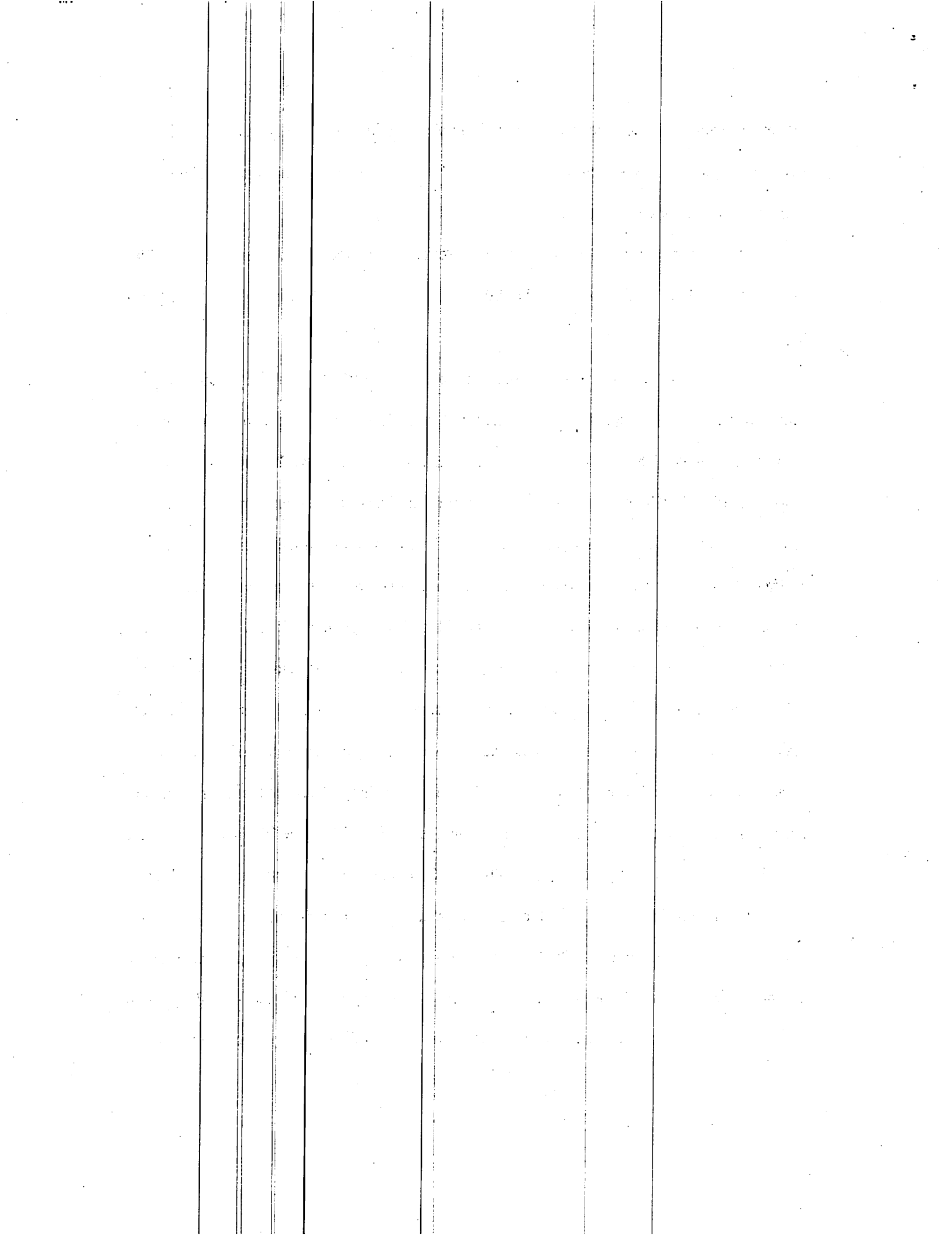


repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant in October 2019. The record shows the Respondent had a valid license.

The Claimant testified that she lives a humble life on a fixed income and wanted to get some painting repairs done to her home. She hired the Respondent and he came to her home to prepare an estimate. The Claimant testified that the Respondent sent workers to perform the scope of work. The Claimant stated that the Respondent did not power wash or prime before painting. The front door was painted unprofessionally and was not smooth. The Claimant testified that there were many imperfections in the painting done by the Respondent, such as the paint bleeding onto other surfaces. She also stated that the Respondent did not install the railing or the weather stripping as contracted. The Claimant testified that she paid the Respondent in full and was not satisfied with the work he performed at her home. The Claimant testified that she received a proposal from Jeeves Handyman Services in the amount of \$2,950.00 to repair the work performed by the Respondent. The Claimant testified that she has not had the repairs done. The Claimant filed a complaint with the MHIC on February 3, 2020. The Claimant testified that she valued the Respondent’s work at \$850.00. The Claimant’s loss claim was for \$1,881.05.

Based on the evidence, I find that the Respondent performed unworkmanlike and inadequate home improvement. The Claimant’s testimony regarding the work performed by the Respondent was credible because it was well supported by her photo evidence. The Respondent failed to appear so there was no evidence to refute the Claimant’s testimony. The photos of the



painting performed by the Respondent clearly show inadequate painting with bleeding onto other surfaces, the unfinished railing and the imperfections in the painted surfaces. This is all evidence of an inadequate or unworkmanlike home improvement performed by the Respondent. I thus find that the Claimant is eligible for compensation from the Fund.

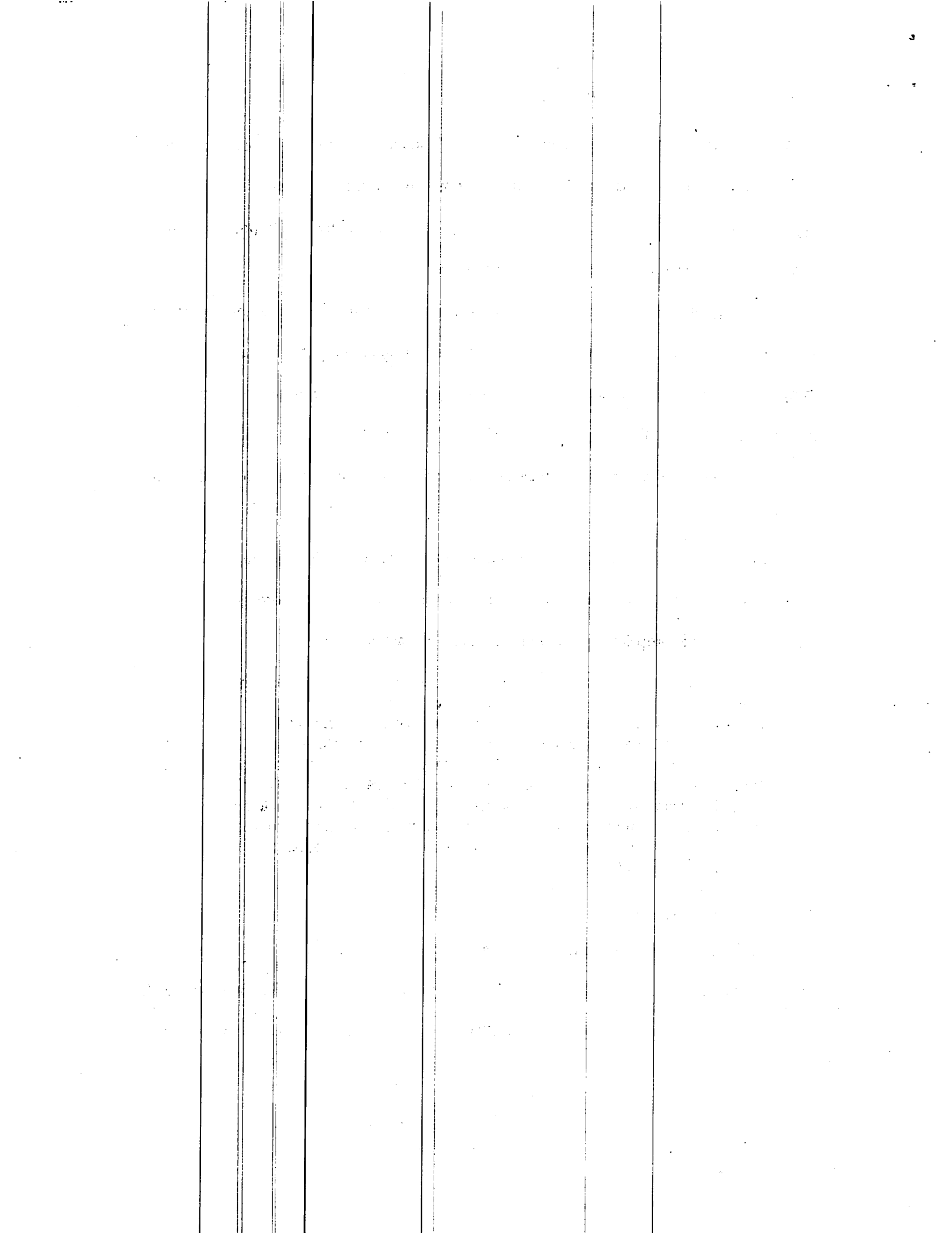
Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The 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 performed some work under the Contract, and the Claimant retained a contractor to repair the work performed by the Respondent. 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).

Utilizing this formula, I find the Claimant's actual loss is \$1,881.05. The original contract price is \$2,731.05 plus the estimated amount to repair the painting \$2,950.00 minus the original contract price of \$2,731.05 equals \$2,950.00. However, the Claimant's claim is for



\$1,881.05 and she did not amend her claim under COMAR 09.08.03.02C, which provides as follows:

C. Amending of Claims. Once a verified claim has been filed with the Commission, the claimant may not amend the claim unless the claimant can establish to the satisfaction of the Commission that either the:

(1) Claimant did not know and could not have reasonably ascertained the facts on which the proposed amendment is based at the time the claim was filed; or

(2) Claimant's proposed amendment would not prejudice the contractor whose conduct gave rise to the claim.

Therefore, the Claimant's actual loss cannot exceed the amount she is claiming and her recoverable actual loss in this matter is \$1,881.05

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 less than the amount paid to the Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to recover her actual loss of \$1,881.05.

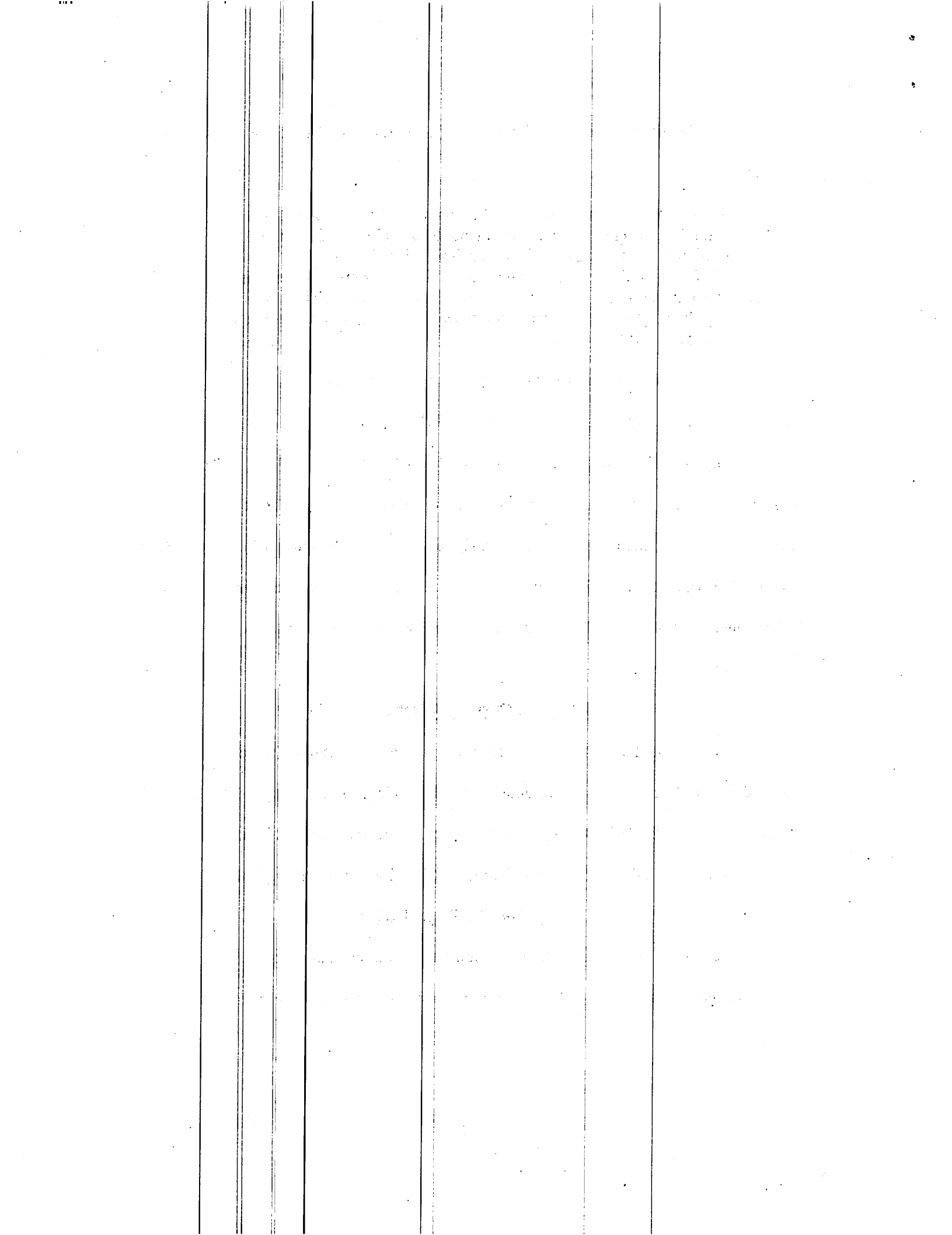
PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$1,881.05 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 \$1,881.05 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$1,881.05; and



ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁴ and

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

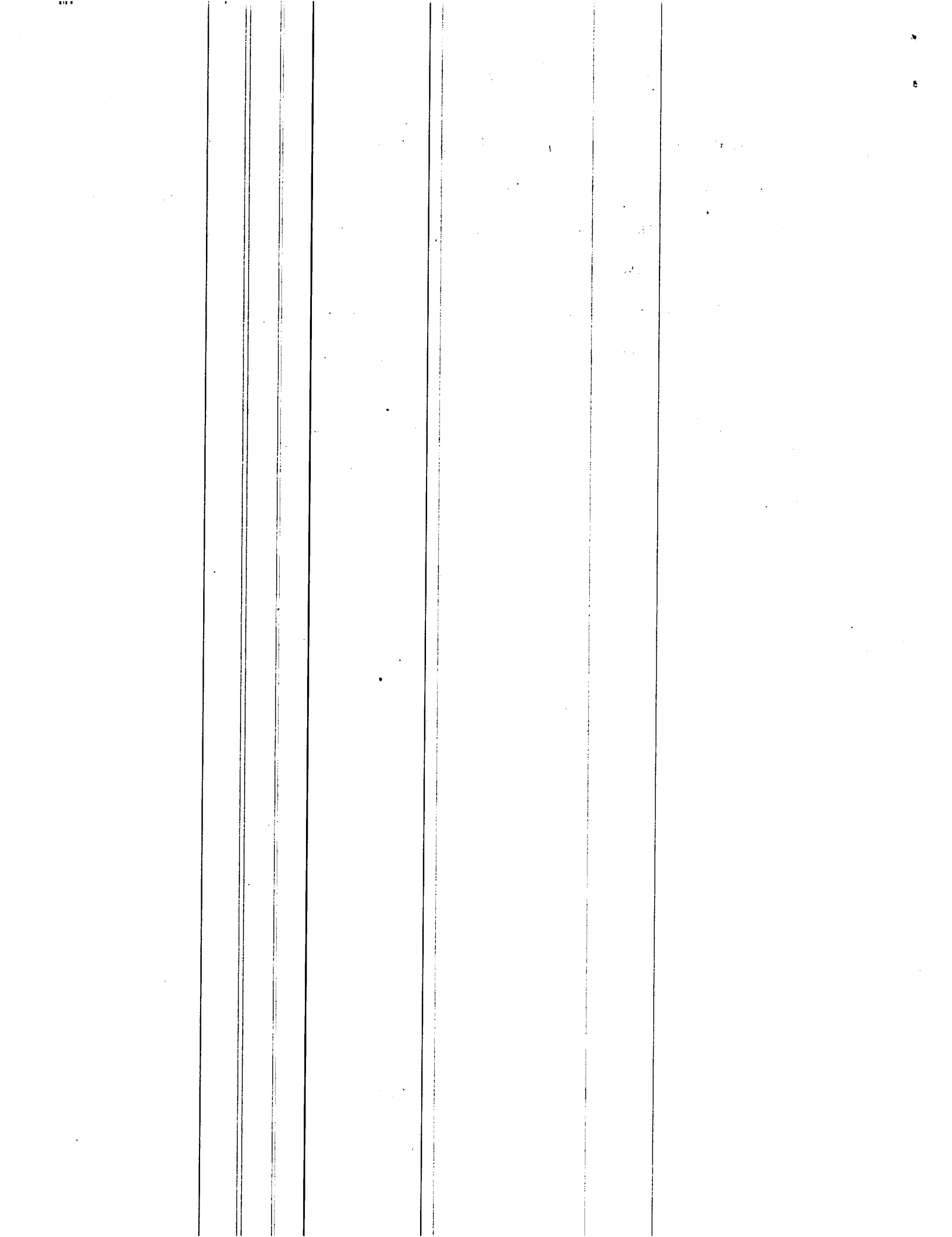
September 13, 2021
Date Decision Issued

Tameika Lunn-Exinor

Tameika Lunn-Exinor
Administrative Law Judge

TLE/da
#192682

⁴ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 28th day of January, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

