

<p>IN THE MATTER OF THE CLAIM</p> <p>OF JULIEANN RAPP,</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 BARBARA BARGER,</p> <p>T/A GLB CONSTRUCTION, INC.,</p> <p>RESPONDENT</p>	<p>* BEFORE EDWARD J. KELLEY,</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-02-21-07310</p> <p>* MHIC No.: 20 (75) 616</p>
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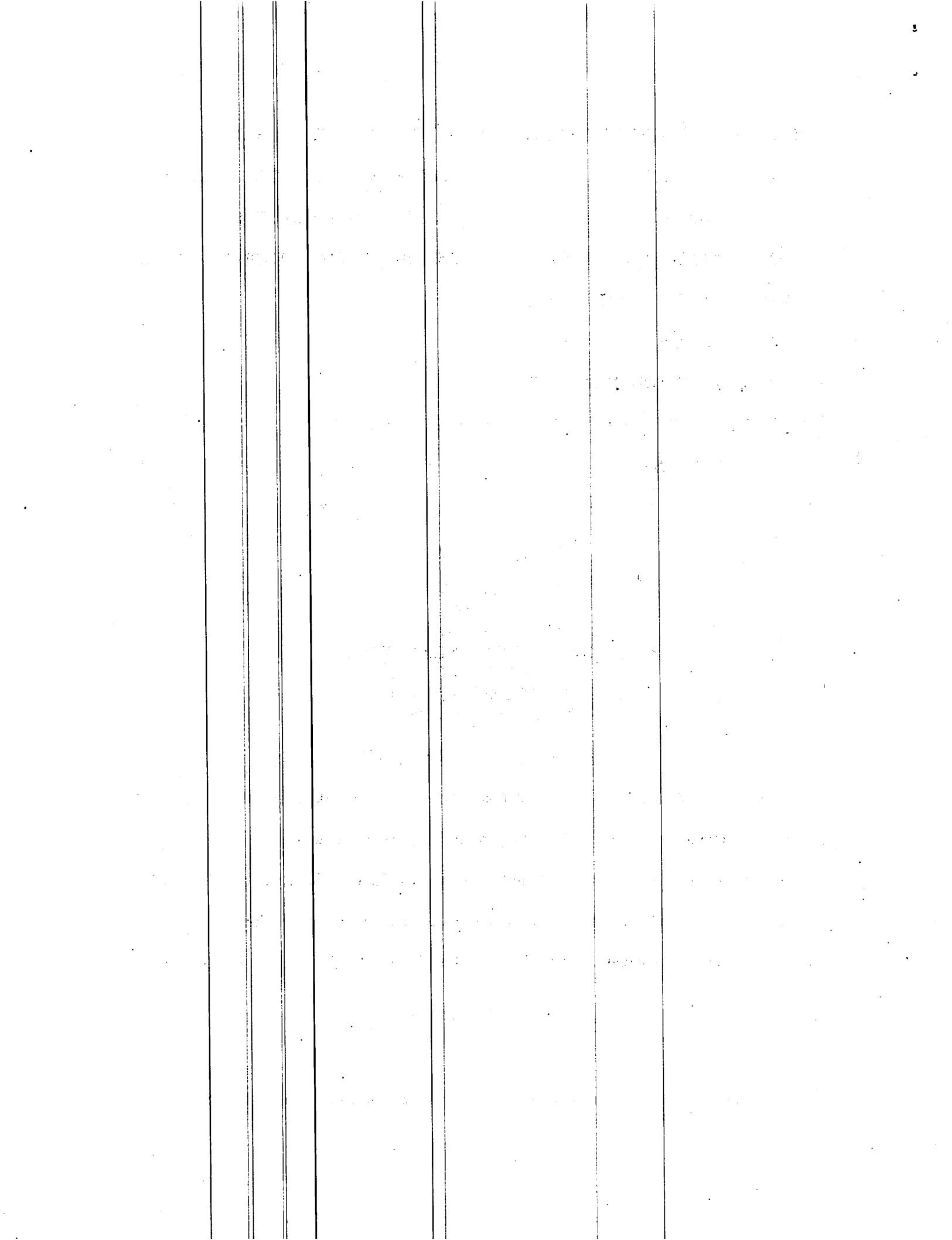
PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
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STATEMENT OF THE CASE

On January 29, 2020, Julieann Rapp (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 \$29,580.43 in actual losses allegedly suffered as a result of a home improvement contract with Barbara Barger, trading as GLB Construction, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On

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



March 23, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

By notice dated April 12, 2021, the OAH scheduled a hearing for May 13, 2021, on the Webex videoconferencing platform (Webex). After granting the Respondent's unopposed request for postponement, the OAH rescheduled the Webex hearing for June 28, 2021, and I held the hearing as scheduled. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. Devon J. Miller, Esquire, represented the Claimant, who was present. Lisa P. Ellis, Esquire, represented the Respondent, who was present.

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); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

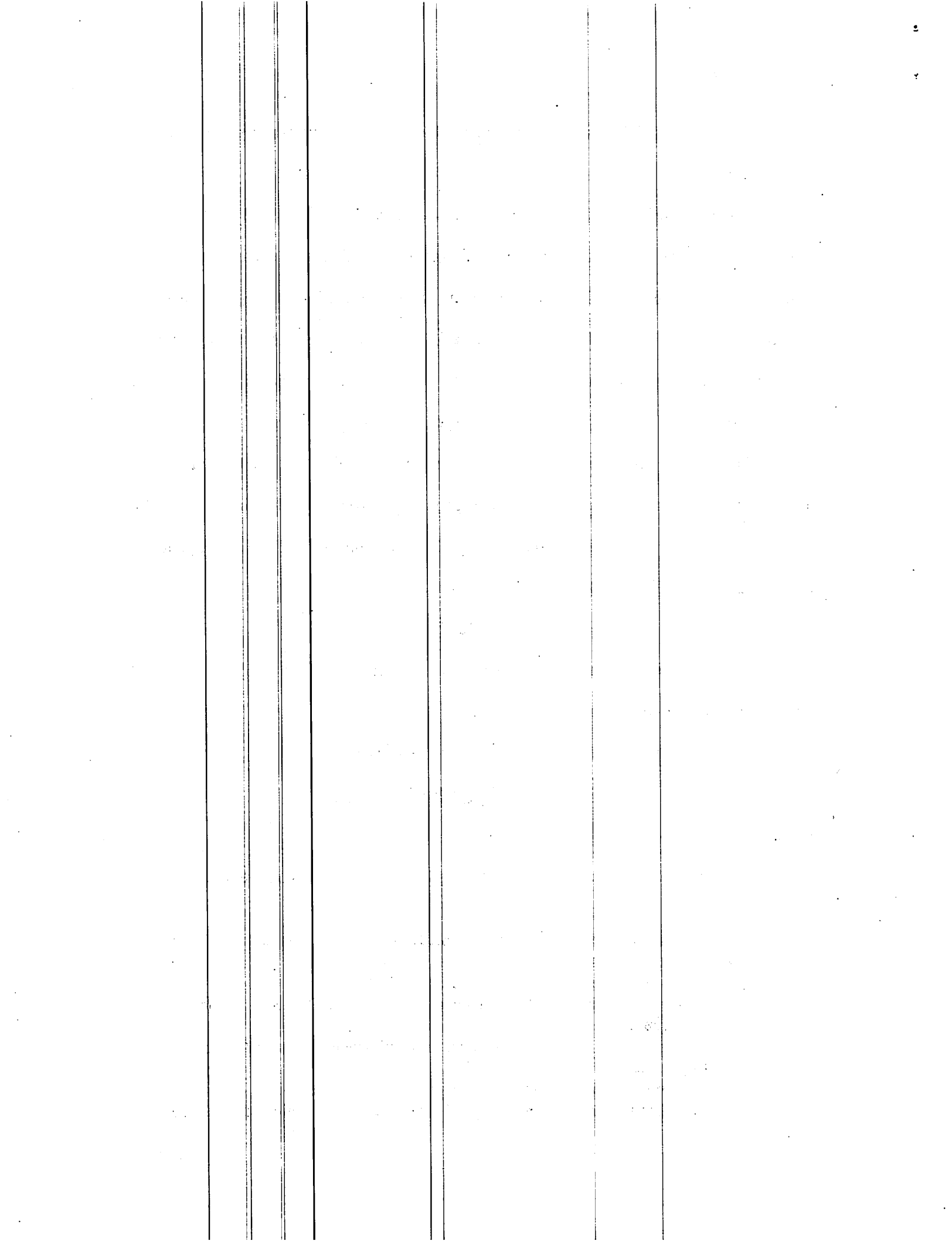
1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the Claimant's Exhibit 1, which is 112-pages and contains the following documents:

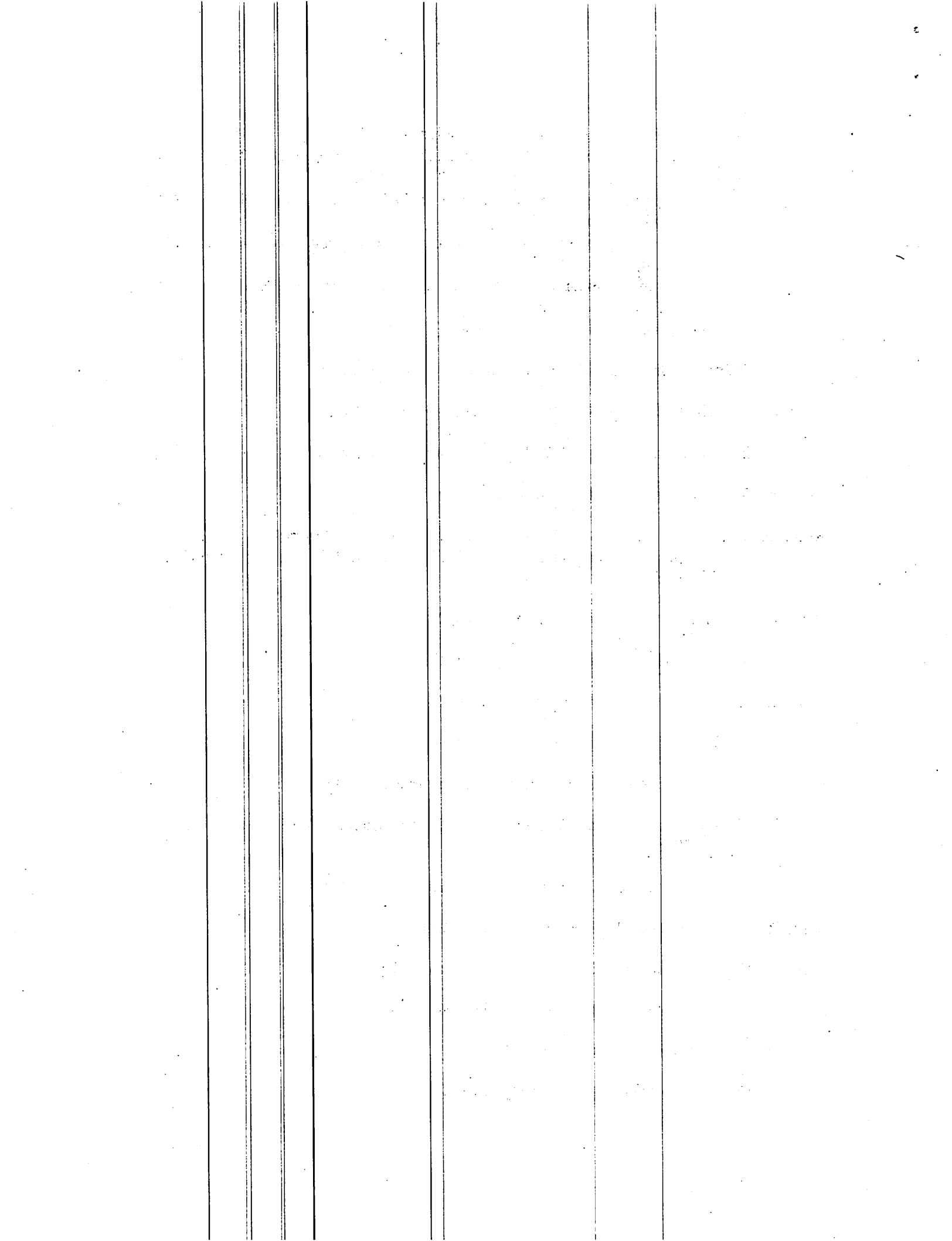
- Contract between the Claimant and the Respondent, December 8, 2017 (pp. 1-4)
- Addendum to Contract, February 16, 2018 (p. 5)
- Second Addendum to Contract, June 29, 2018 (p. 6)
- Contracts between the Claimant and Old Harbor GT, LLC, July 15 and August 5, 2019 (pp. 7-11)
- Copies of Checks from the Claimant to Rick Sneden, various dates, and Nathaniel Boyce, January 18, 2019 (pp. 12-28)
- Emails and Invoices from TW Perry, various dates (pp. 29-33)
- Copies of Checks from the Claimant to various parties, various dates (pp. 34-43)



- Letter from the Claimant to Rick Sneden, July 11, 2019 (pp. 44-45)
- Email exchange between the Claimant and Rick Sneden, July 9, 2019 (p. 46)
- HIC Complaint form, November 6, 2019 (pp. 47-50)
- Tables of payments from the Claimant to the Respondent and Old Harbor GT, LLC, undated (pp. 51-52)
- Email exchange between the Claimant and Rick Sneden, November 20-21, 2017 (pp. 53-54)
- The Claimant's email correspondence regarding the project, December 12, 2018, through July 15, 2019 (pp. 55-103)
- Photographs of the worksite, undated (104-112)

I admitted the following exhibits on behalf of the Respondent:

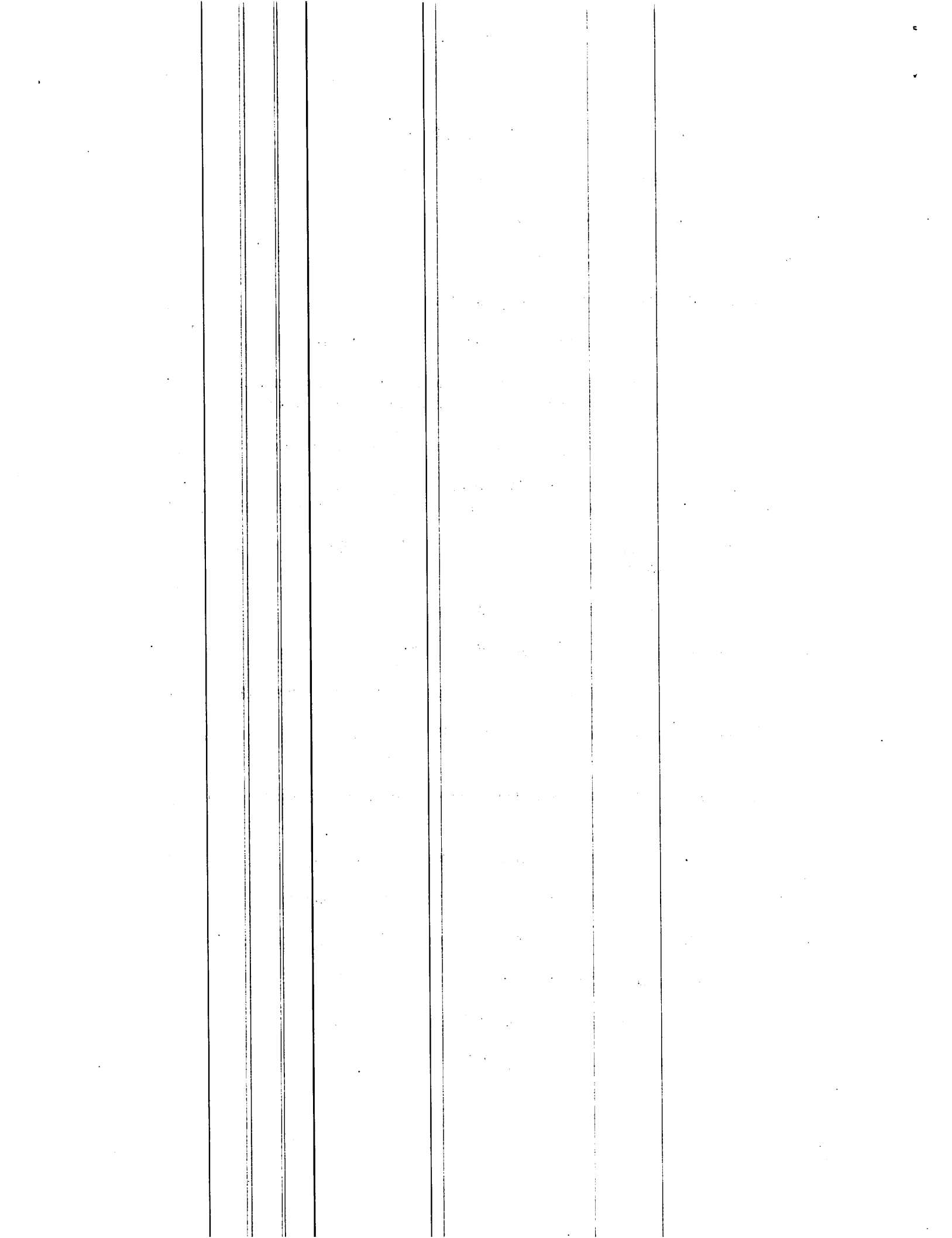
- Resp. Ex. 1: The Respondent's MHIC License information, undated
- Resp. Ex. 2: The Respondent's MHIC License information, undated
- Resp. Ex. 3: Certificate of Liability Insurance, May 7, 2020
- Resp. Ex. 4: Contract between the Claimant and the Respondent, December 8, 2017; Addendum to Contract, February 16, 2018; Second Addendum to Contract, June 29, 2018.
- Resp. Ex. 5: Addendum to Contract, February 16, 2018
- Resp. Ex. 6: Second Addendum to Contract, June 29, 2018
- Resp. Ex. 7: Third Addendum to Contract, undated
- Resp. Ex. 8: Blueprints, January 2018
- Resp. Ex. 9: Prince George's County Permits, issued June 26, 2018
- Resp. Ex. 10: Maryland National Capital Park and Planning Commission Permit, issued May 29, 2018
- Resp. Ex. 11: Greenbelt Homes, Inc., Permits, various dates
- Resp. Ex. 12: City of Greenbelt Permit, August 14, 2018
- Resp. Ex. 13: Prince George's County Electrical Permit, May 6, 2019
- Resp. Ex. 14: Receipts from the City of Greenbelt, various dates
- Resp. Ex. 15: Inspection tickets, various dates
- Resp. Ex. 16: Weather data, August and September 2018



- Resp. Ex. 17: Weather data, August 2018 – May 2019
- Resp. Ex. 18: Photographs of worksite, undated
- Resp. Ex. 19: Photograph of worksite, undated
- Resp. Ex. 20: Home Depot receipts, various dates
- Resp. Ex. 21: Miscellaneous receipts, various dates
- Resp. Ex. 22: Checks from the Respondent to Nathaniel Boyce, various dates
- Resp. Ex. 23: Contract between the Respondent and Tavon Samuels, December 10, 2018; checks from the Respondent to Tavon Samuels, various dates
- Resp. Ex. 24: Checks from the Respondent to Santos Alonzo, various dates
- Resp. Ex. 25: Contract between the Respondent and Tripp Plumbing, December 5, 2018; checks from the Respondent to Tripp Plumbing, April 18 and September 18, 2018
- Resp. Ex. 26: Contract between the Respondent and Cole Roof Systems, Inc., March 19, 2019, and invoice, May 28, 2019
- Resp. Ex. 27: Invoice from Devere Insulation, May 20, 2019
- Resp. Ex. 28: Documentation from Acadia Windows & Doors, various dates
- Resp. Ex. 29: Email correspondence regarding neighbor's property, January 18-19, 2019
- Resp. Ex. 30: Email correspondence between the Respondent and the Claimant, May 17-23, 2019
- Resp. Ex. 31: Email and text correspondence between the Respondent and the Claimant, May 22-24, 2019
- Resp. Ex. 32: Email exchange between the Respondent and the Claimant, July 9-15, 2019
- Resp. Ex. 33: Termination letter from the Claimant to the Respondent, July 11, 2019
- Resp. Ex. 34: The Respondent's responsive documentation package, December 13, 2019
- Resp. Ex. 35: The Respondent's MHIC License information, undated

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

- Fund Ex. 1: Notice of Hearing, May 11, 2021



Fund Ex. 2: Hearing Order, March 11, 2021

Fund Ex. 3: Letter from MHIC to Respondent with attached Home Improvement Claim Form, January 29, 2020

Fund Ex. 4: Respondent's MHIC licensing information, May 14, 2021

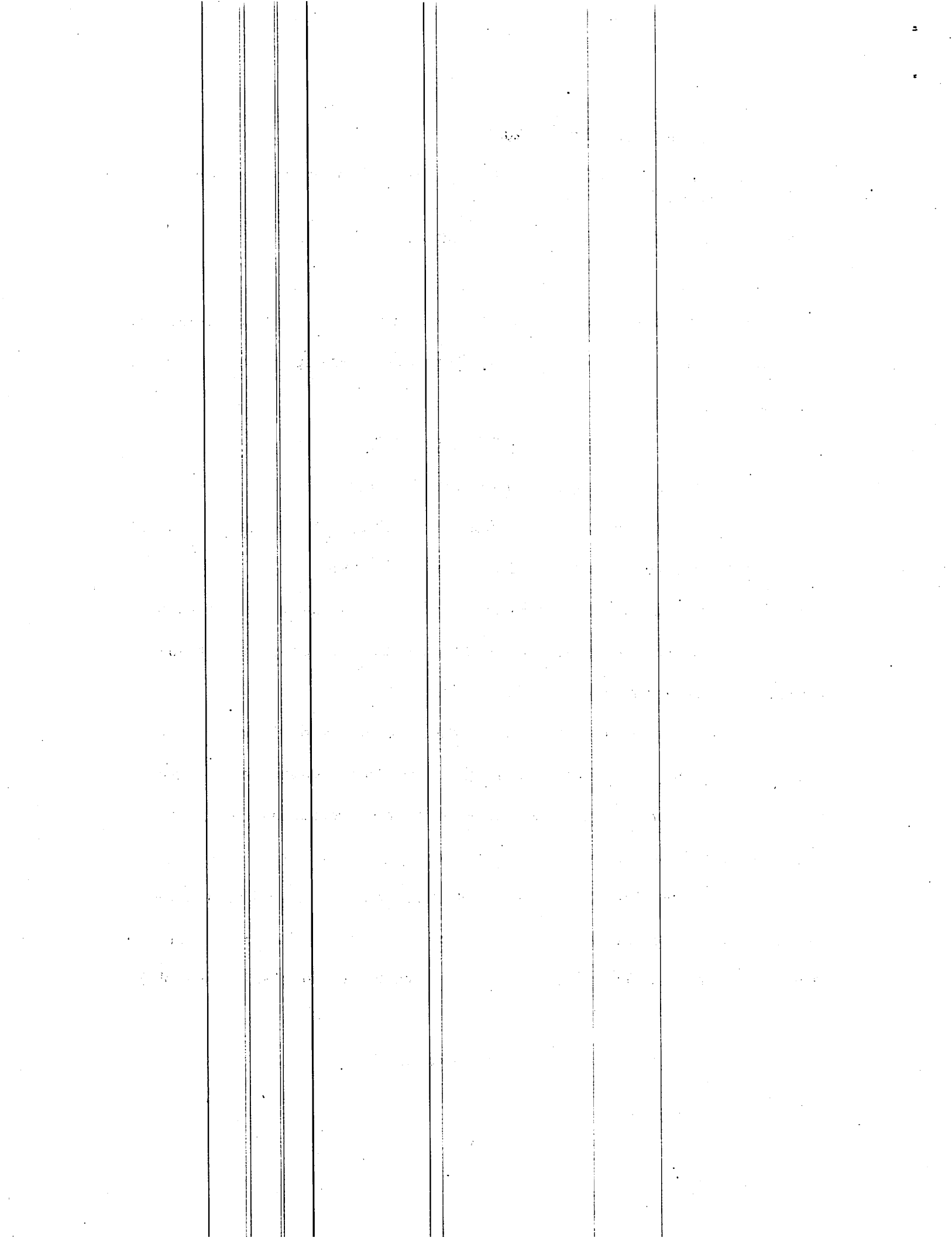
Testimony

The Claimant testified and did not present other witnesses. The Respondent testified and also presented the testimony of Rick Sneden, the Respondent's salesman. 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 01-95926.
2. At all times relevant, Mr. Sneden was a licensed salesman for the Respondent.
3. The Claimant's residence is part of a cooperative managed by Greenbelt Homes, Inc. (GHI), which maintains very strict building requirements.
4. In November 2017, the Claimant and Mr. Sneden discussed the possibility of the Respondent performing a home improvement project at the Claimant's residence. Mr. Sneden told the Claimant that the Respondent had successfully completed several home improvements projects at GHI residences and was familiar with the cooperative's processes.
5. On December 8, 2017, the Claimant and the Respondent entered into a contract to construct an addition with a deck to the Claimant's residence (Contract). The Contract stated that work would begin on December 18, 2017, and would be substantially completed by September 30, 2018.
6. The original agreed-upon Contract price was \$70,000.00.

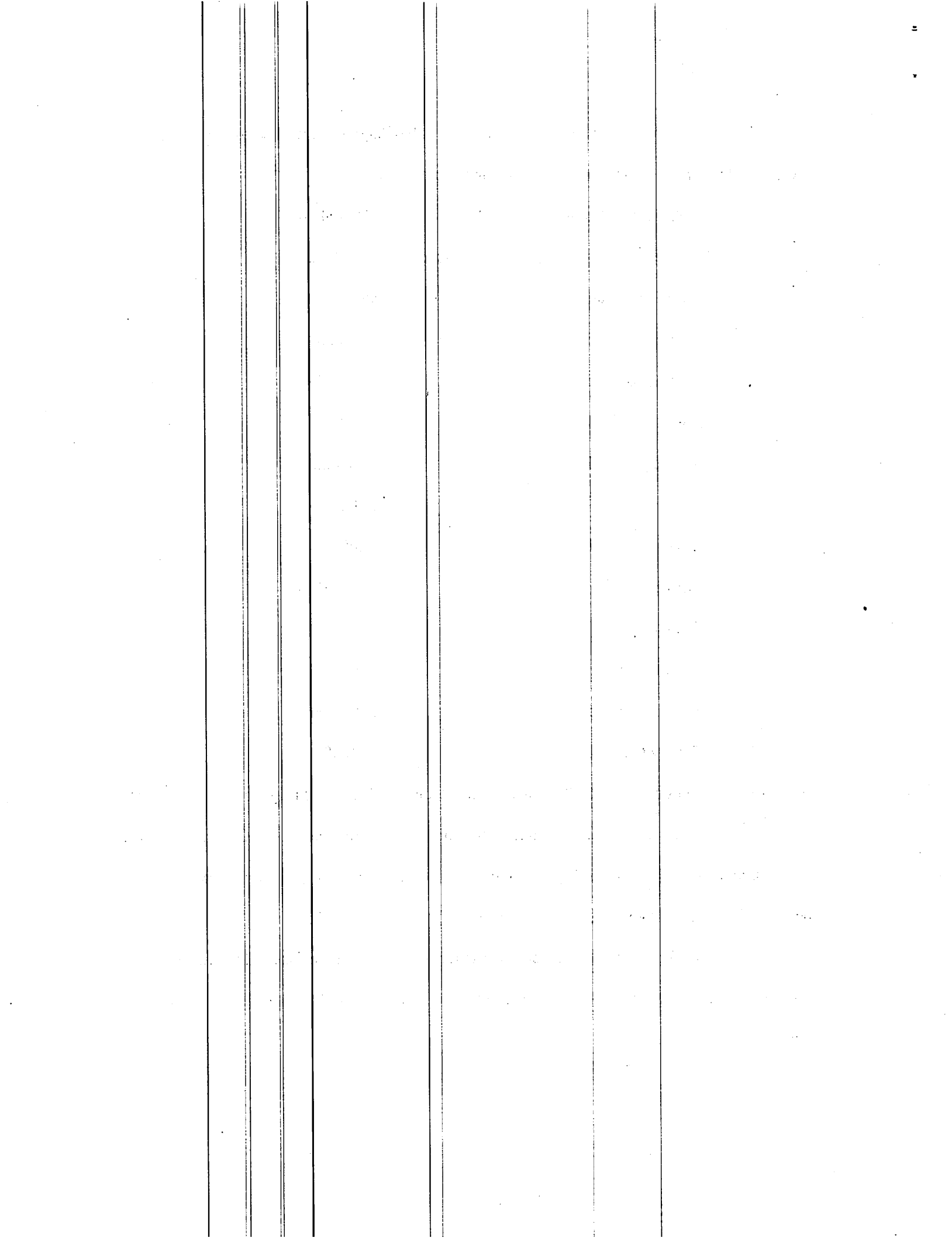


7. The Claimant paid the Respondent a \$10,000.00 deposit when the Contract was executed. The Contract provided the following payment schedule:

GHI Permits Complete	\$10,000.00
Prince George's County Permits Issued	\$6,500.00
Foundation Started	\$5,500.00
Plumber Started	\$5,500.00
Framing Started	\$5,500.00
Electrician Started	\$5,500.00
Roofing Started	\$4,000.00
Siding Started	\$4,000.00
Drywall Started	\$6,000.00
Trim Started	\$4,000.00
Paint Started	\$3,000.00
Tile Started	\$3,000.00
Flooring Started	\$2,000.00
County Final Inspection	\$500.00

8. On February 16, 2018, the Claimant and the Respondent signed an Addendum to the Contract to enlarge the addition and the deck for an extra \$10,000.00. The Claimant agreed to add \$1,000.00 to each draw starting from completion of GHI permits until the \$10,000.00 was paid. The project completion date was extended to December 31, 2018.

9. In May 2018, GHI issued permits for the project and in June 2018, Prince George's County issued permits for the project. The Claimant paid the Respondent \$13,500.00 after the permits were issued.



10. The Respondent did not begin work on the project until August 20, 2018, when the foundation was started.

11. On September 11, 2018, the Claimant paid the \$6,500.00 foundation draw. The Respondent announced completion of the foundation in November 2018.

12. Between November 2018 and December 2018, the Respondent started the framing, plumbing, and electric work, and the Claimant paid the Respondent \$19,500.00.

13. In December 2018, GHI notified the Claimant that the newly constructed foundation did not meet specification and would have to be modified. As a result, work on the project halted.

14. The Respondent rebuilt the foundation to meet GHI's specifications.

15. After rebuilding the foundation, the Respondent did not have the resources to continue the project. After a meeting in January 2019, the Claimant agreed to directly pay the Respondent's foundation subcontractor \$2,100.00, and a supplier \$1,246.00.

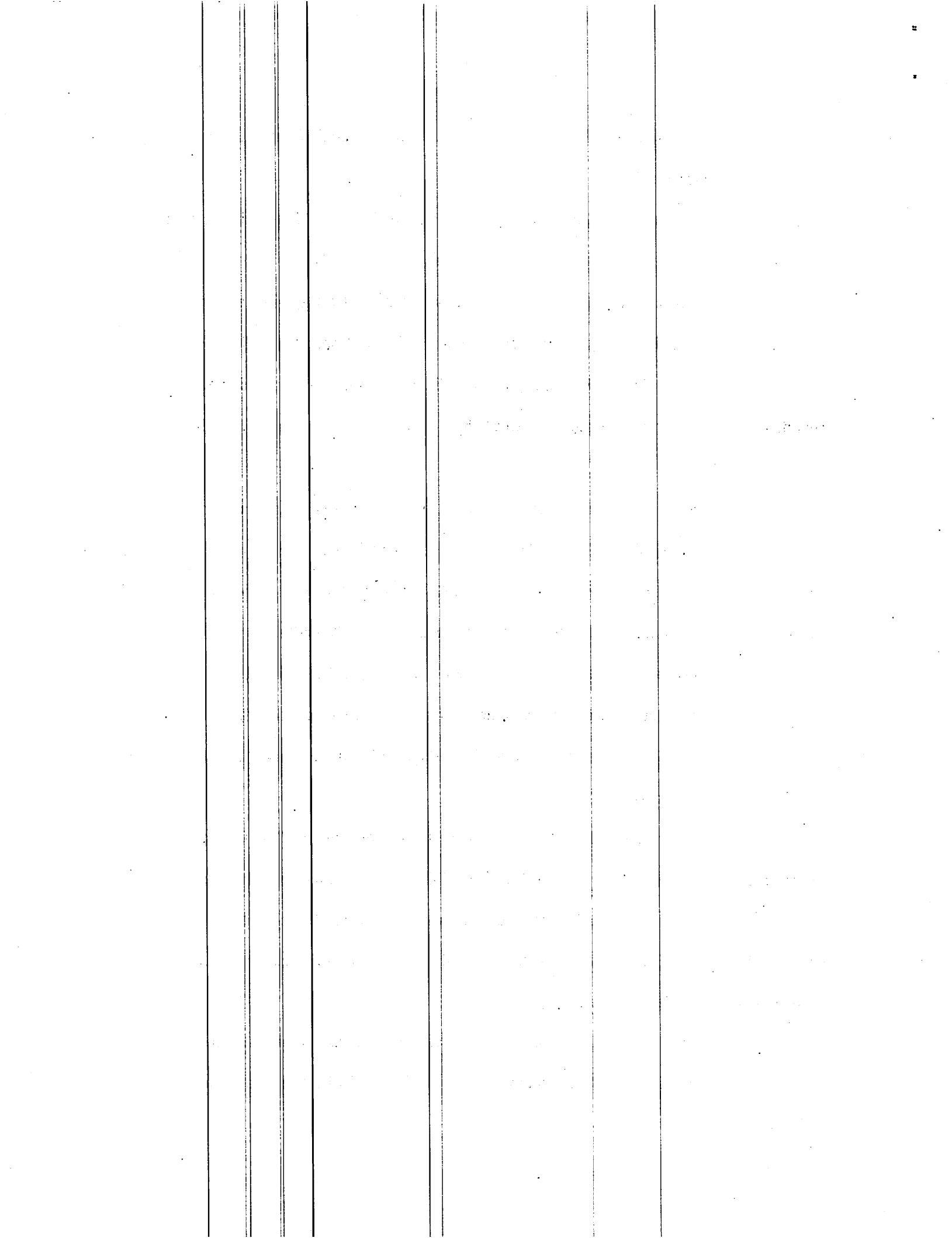
16. Between March 2019 and June 24, 2019, the Respondent started the siding, roofing, drywall, trim, painting, and tile, and the Claimant paid the Respondent \$20,853.76.

17. In May 2019, the Claimant directly paid GHI \$216.00 to repair a neighbor's fence that the Respondent damaged.

18. Through June 2019, the Claimant paid the Respondent \$74,716.00 of the Contract, but the only aspect of the project the Respondent had completed was the foundation.

19. On July 11, 2019, the Respondent demanded \$15,750.00 to complete the project. Of this \$15,750.00, \$10,000.00 was an extra charge due to an "[u]nusual amount of rubble, existing drainage problems." (Cl. Ex. 1, p. 102).

20. On July 11, 2019, the Claimant terminated the Contract because the Respondent had not fulfilled the terms of the Contract and was not willing to fulfill the terms of the Contract.



21. On July 15, 2019, the Claimant entered into another contract with a licensed contractor, Old Harbor GT, LLC (Old Harbor), which completed the project to the Contract specifications for \$33,800.00.

DISCUSSION

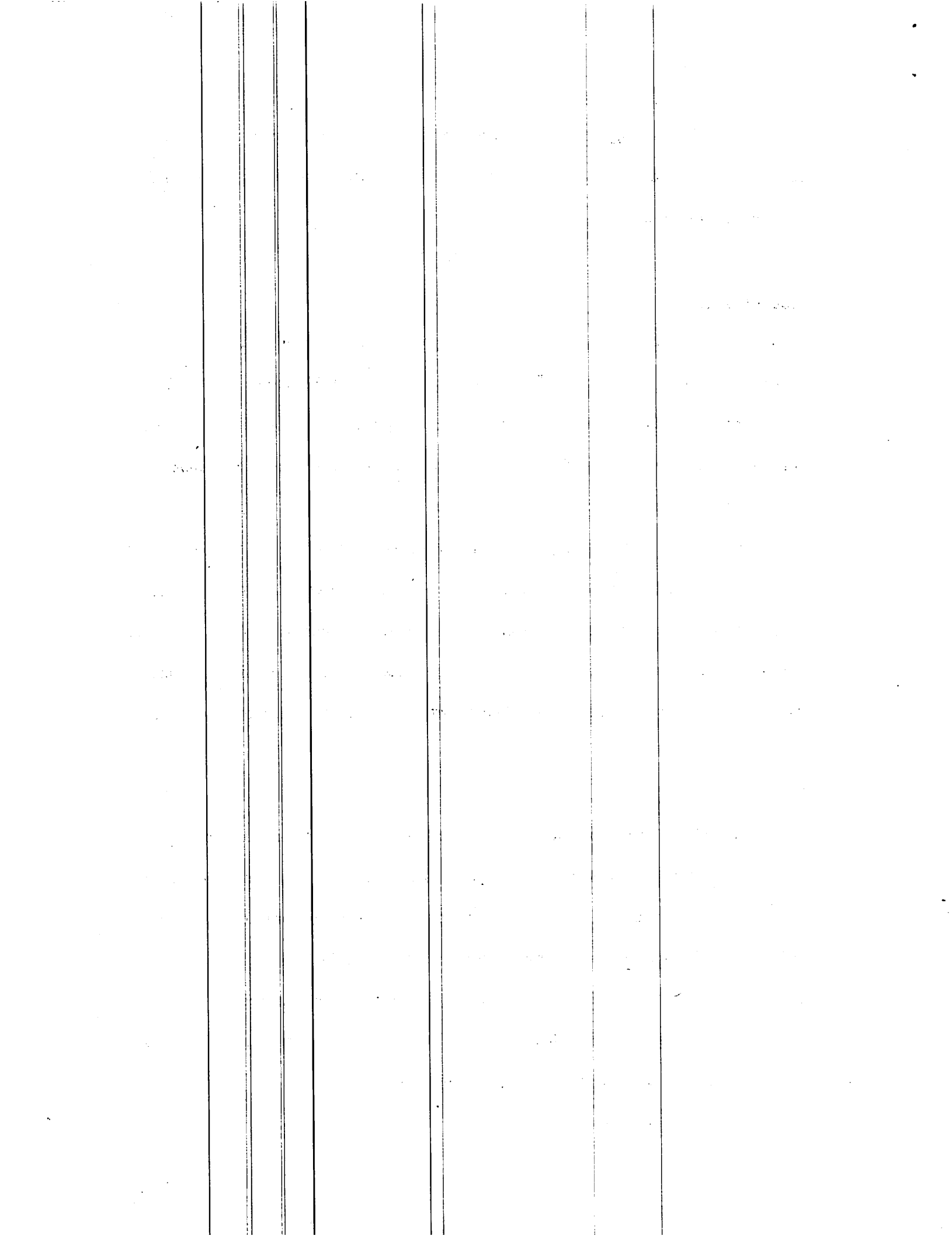
Legal Framework

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.

Positions of the Parties

The Claimant argued that the Respondent performed an unworkmanlike, inadequate and incomplete home improvement by failing to timely complete the addition and deck as required by the terms of Contract. The Respondent countered that she did not perform an unworkmanlike, inadequate and incomplete home improvement because the substantial delays and cost overruns were beyond her control. The Fund agreed with the Claimant and recommended that the Claimant receive an award of \$20,000.00 from the Fund. For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

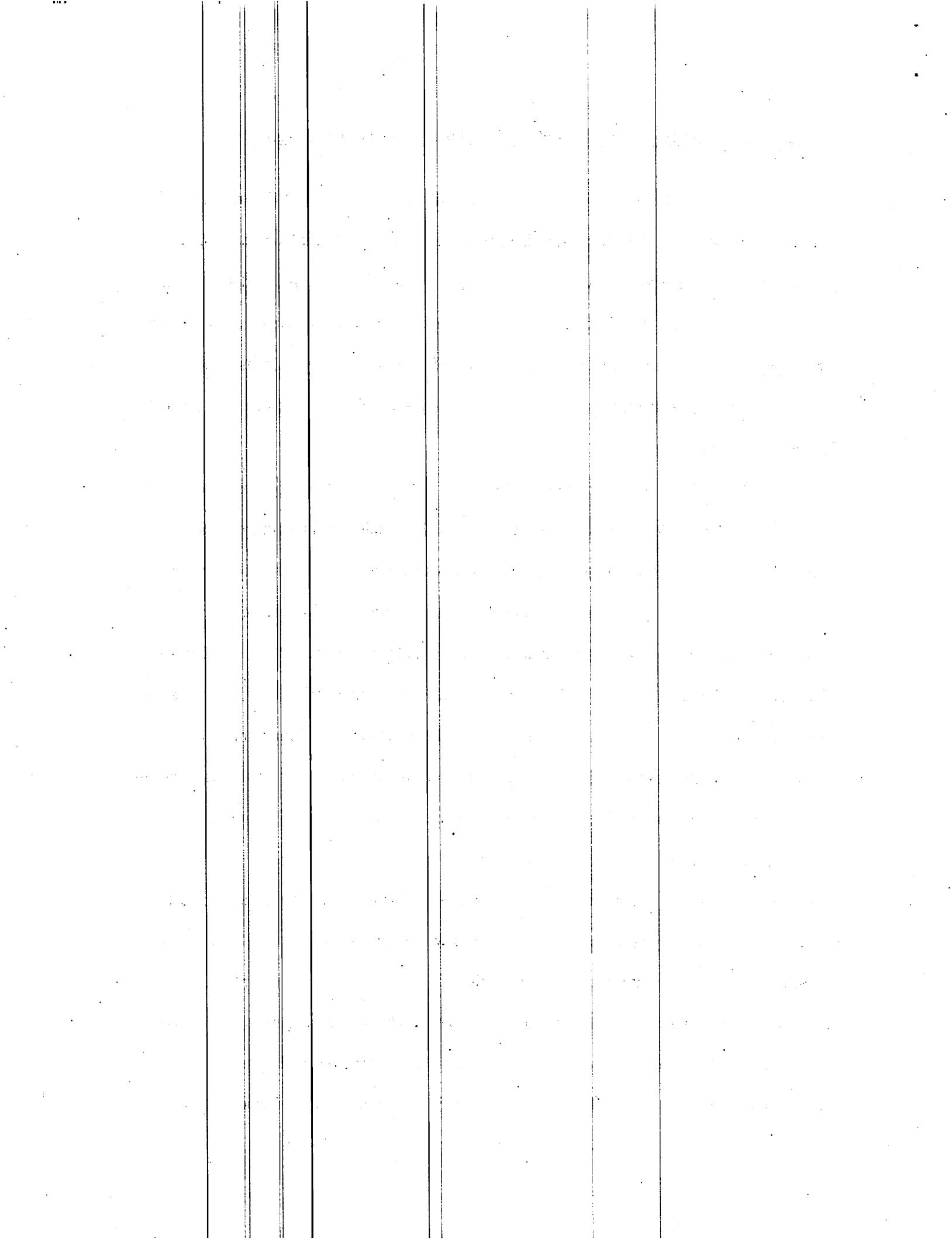


The Respondent Performed an Unworkmanlike, Inadequate and Incomplete Home Improvement

The Claimant testified credibly and cogently about all aspects of the Contract, and I find that her testimony accurately describes what occurred. The Claimant hired the Respondent because she wanted a contractor who was experienced with GHI's stringent standards, and the Respondent represented that she could meet this requirement. Notwithstanding a delayed start, the project seemed to progress as anticipated until the foundation failed GHI's inspection. Meeting GHI's requirements was a condition of the Contract, and the Respondent's failure in this regard was unworkmanlike.

After rebuilding the foundation, the Respondent did not have the resources to continue the project. In January 2018, the Claimant met with the Respondent and attempted to find a workable solution. The Claimant directly paid a subcontractor and a supplier and continued to make payments based on the Contract, but the Respondent failed to make substantial progress. The project was supposed to be completed in December 2018, but by July 2019, and after the Claimant paid the Respondent \$74,716.00 of the \$80,000.00 Contract price, the project was still not near completion. The Respondent then unjustifiably demanded the Claimant make a substantial additional payment of \$15,750.00 to complete the Contract to cover the cost overruns. Left with no other reasonable alternative, the Claimant terminated the Contract and found another licensed contractor to complete the project.

I do not find credible the testimony of Mr. Sneden that the substantial delay and cost overruns were caused by circumstances, such as bad weather, poor drainage, and unfavorable terrain, that the Respondent could not have anticipated or controlled. To the contrary, the evidence indicates that the Respondent had experience working in this cooperative and had the ability to properly price and schedule the project. The cost overruns resulted from the Respondent's failure to install a foundation that met GHI's standards, a requirement of the



Contract. This was not the Claimant's fault. After suffering the cost of rebuilding the unworkmanlike foundation, the Respondent did not make reasonable efforts to complete the project pursuant to the Contract terms. Instead, the Respondent started phases of the project in order to obtain the payments, but did not complete these phases. After eighteen months, the project was nowhere near completion, as evidenced by the photographs admitted into evidence and the Respondent's unjustified demand for additional funds. In light of the Respondent's unworkmanlike, inadequate, and incomplete home improvement, I find that the Claimant is eligible for compensation from the Fund.

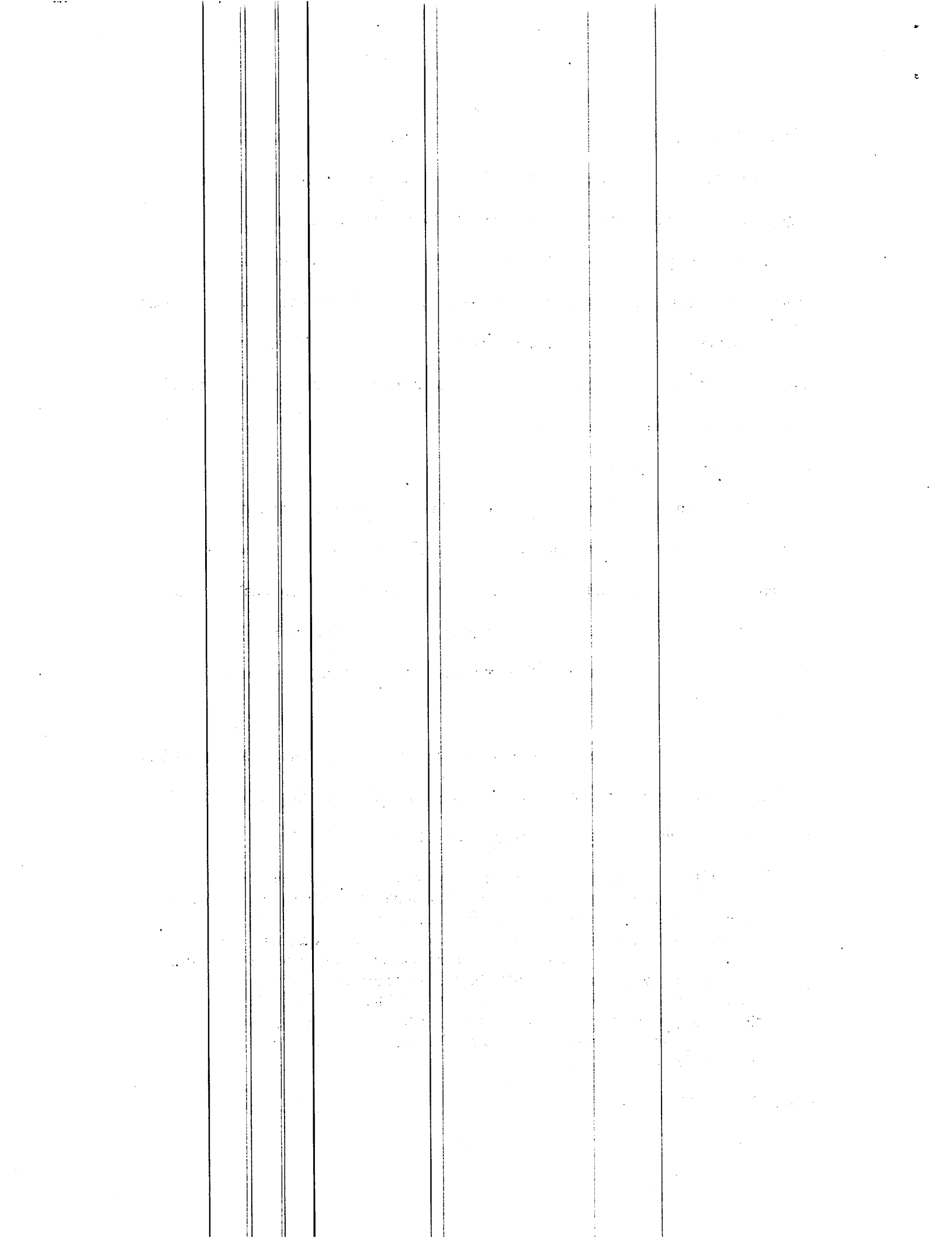
Calculation of Compensation

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 performed some work under the Contract, and the Claimant has retained 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).



The Claimant paid the Respondent \$74,716.00, and she paid Old Harbor \$33,800.00 to complete the work. When these figures are added together, the total is \$108,516.00. The Contract price as amended was \$80,000.00. When the Contract price is subtracted from \$108,516.00, the result is an actual loss amount of \$28,516.00.

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 of \$28,516.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$28,516.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03(A)(3), B(3)(c). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund. *Id.*; COMAR 09.08.03.03B(3), (4), D(2)(a).

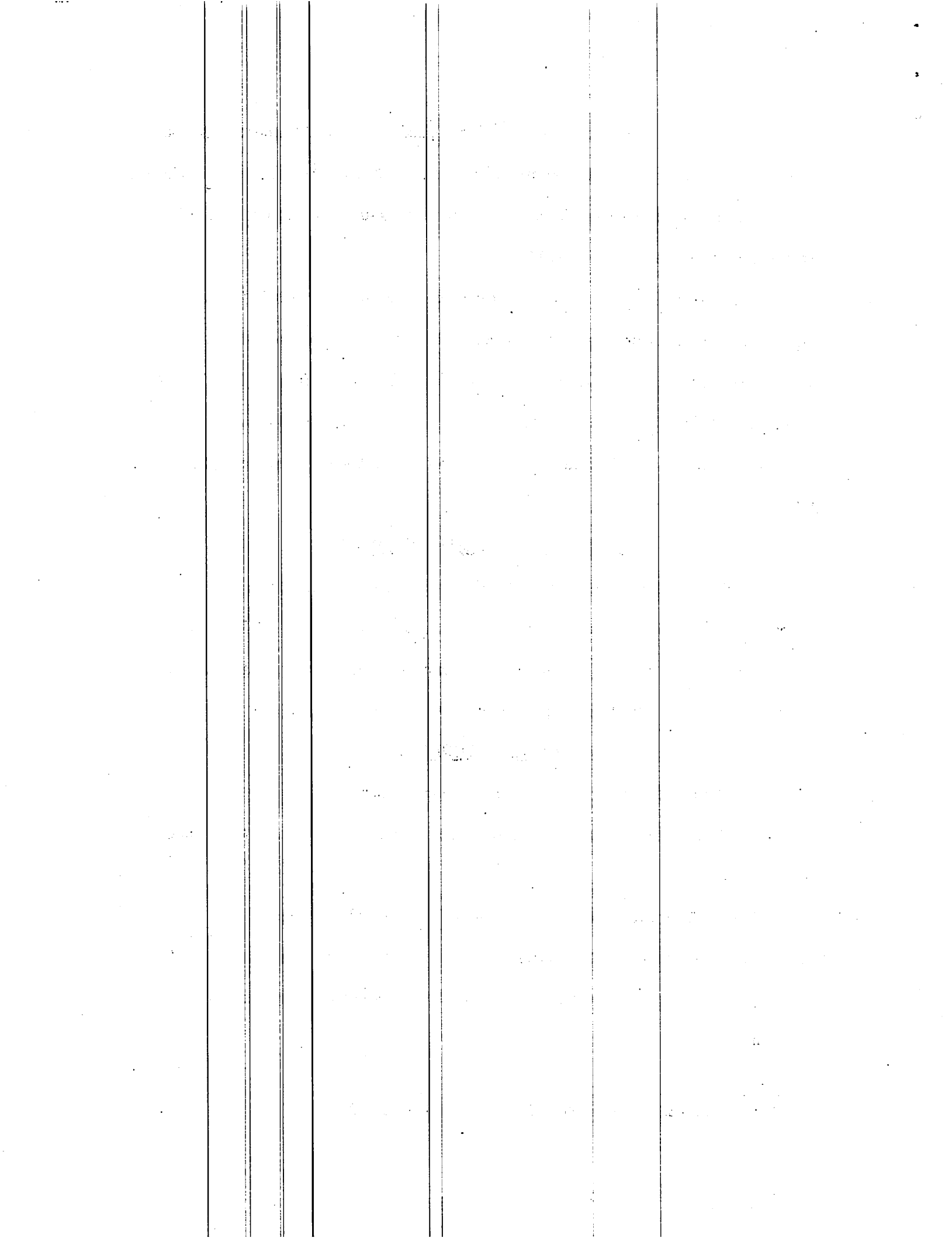
RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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;² and

² See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



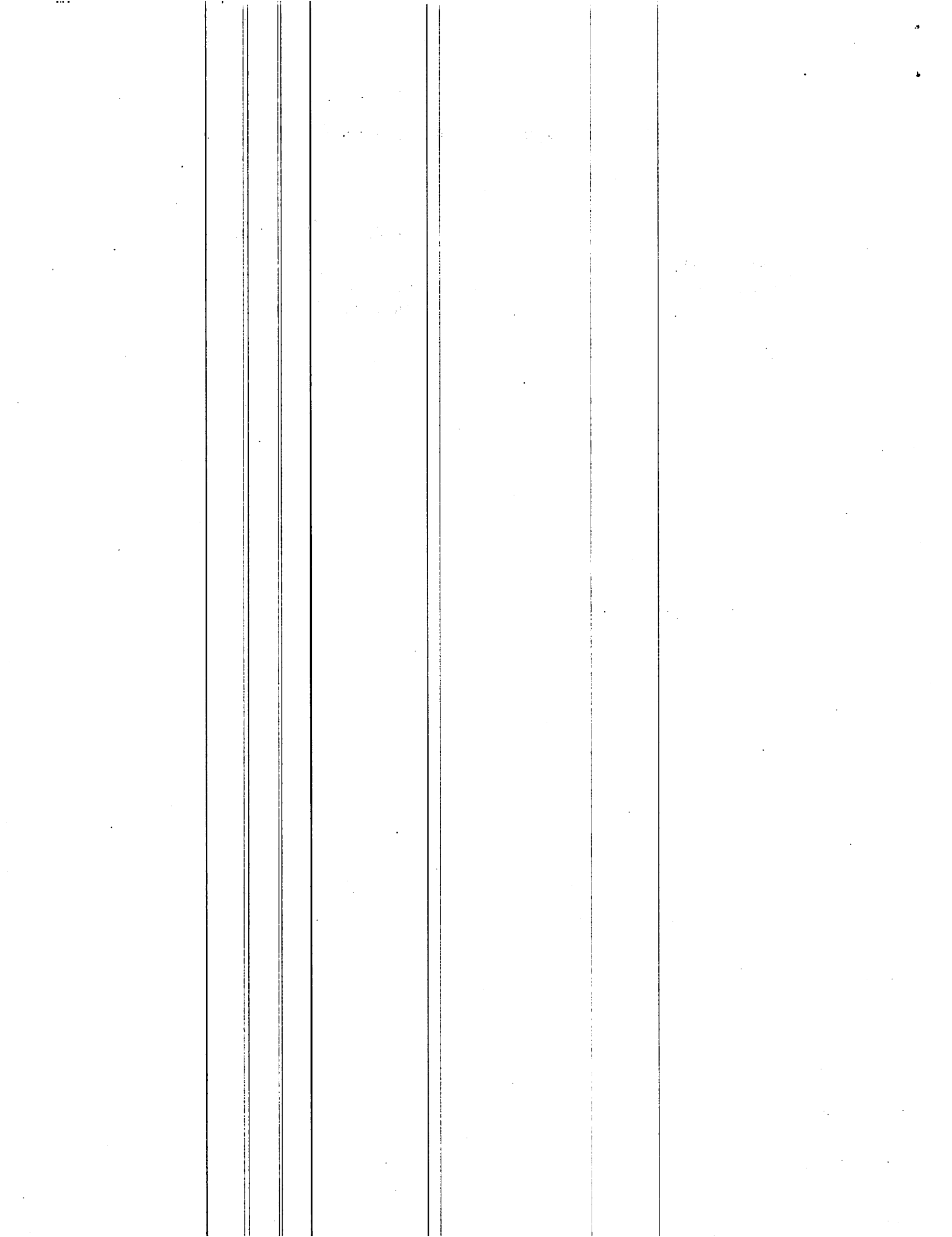
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Edward J. Kelley

September 20, 2021
Date Decision Issued

Edward J. Kelley
Administrative Law Judge

EJK/dlm
#194161



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***

