

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CYNTHIA PALUS,</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 LUIGI DiFOLCO,</p> <p>T/A LOUIS SEBASTIAN</p> <p>CONTRACTORS,¹</p> <p>RESPONDENT</p>	<p>* BEFORE MARC NACHMAN,</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-02-22-01223</p> <p>* MHIC No.: 21 (75) 522</p> <p>*</p>
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CORRECTED PROPOSED DECISION²

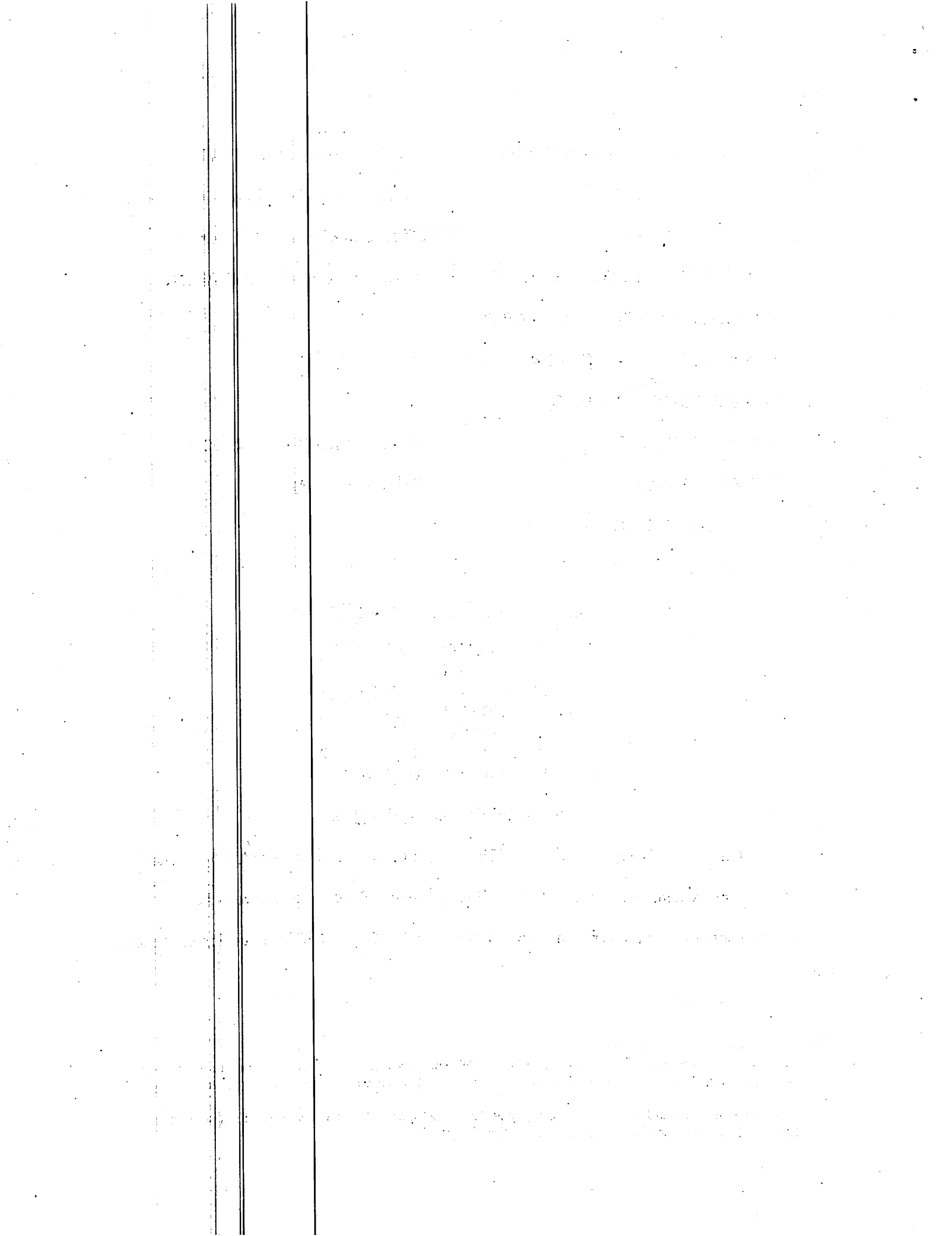
STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
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STATEMENT OF THE CASE

On July 30, 2021, Cynthia Palus (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 \$12,070.00 for actual losses allegedly

¹ The MHIC records show the company name "Louis Sebastian Contractorg" although much of the documentation in the record omits the "s" at the end of the company name. The difference presents no impediment to deciding this claim.

² The decision issued on June 27, 2022, reflected MHIC No. 21 (75) 552 in error. This decision issued on August 12, 2022, is issued to correct the MHIC No. to reflect 21 (75) 522.



suffered as a result of a home improvement contract with Luigi Difolco, T/A Louis Sebastian Contractors (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015).³ On December 28, 2021, the MHIC issued a Hearing Order on the Claim. On January 4, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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

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; 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?

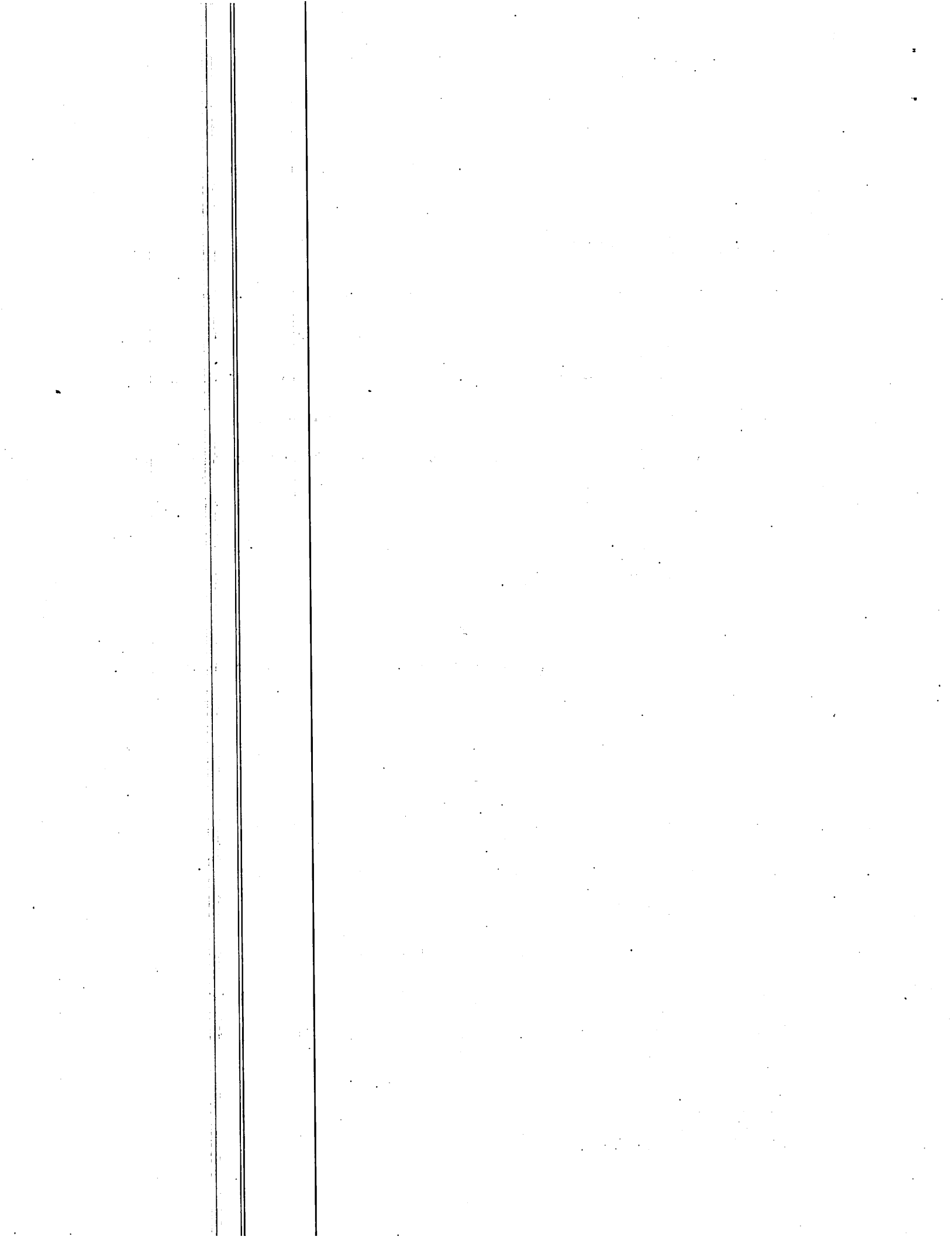
SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

- Cl. Ex. 1 Narrative from Claimant, undated
- Cl. Ex. 2 Aerial view of Claimant's property, undated
- Cl. Ex. 3 Proposal by Columbia Concrete & Stoneware, LLC, (Columbia) undated
- Cl. Ex. 4 Contract between Claimant and J.W. Calvert Manufacturing Company (J.W. Calvert), dated November 18, 2020

³ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.



- Cl. Ex. 5 Howard County Office of Consumer Protection (HCOCP) letter to the Respondent, dated November 3, 2020, with attachments
- Cl. Ex. 6 Emails between Claimant and HCOCP letter to the Respondent, dated November 3, 2020, with attachments
- Cl. Ex. 7 Complaint form, HCOCP, dated October 26, 2020, with notes
- Cl. Ex. 8 MHIC claim form, undated
- Cl. Ex. 9 Contract between Claimant and Respondent (Contract), dated March 27, 2019
- Cl. Ex. 10 Complaint form, MHIC, dated December 7, 2020, with notes
- Cl. Ex. 11 Emails between Claimant and Respondent, various dates
- Cl. Ex. 12 A thru G – Photographs
- Cl. Ex. 13 A thru F – Photographs
- Cl. Ex. 14 A thru E – Photographs

I admitted the following exhibit offered by the Respondent:

- Resp. Ex. 1 Respondent's letter to MHIC, dated January 12, 2021⁴

I admitted the following exhibits offered by the Fund:

- GF. Ex. 1 OAH Notice of Remote Hearing, dated January 27, 2022, with MHIC Hearing Order, dated October 28, 2021
- GF. Ex. 2 Respondent's licensing information
- GF. Ex. 3 Letter from MHIC to Respondent dated August 10, 2021, transmitting claim and attachments

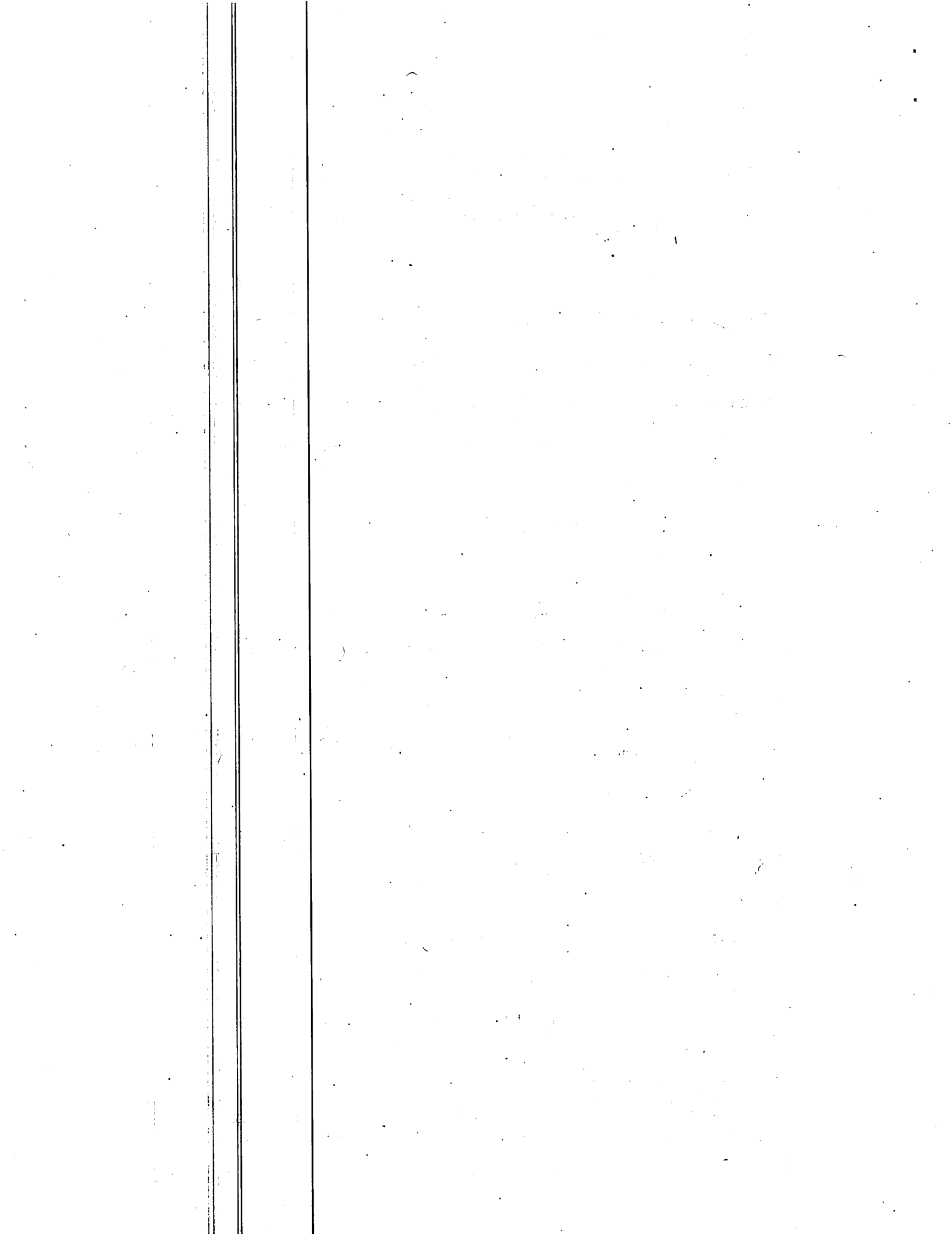
Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present the testimony of any witnesses.

⁴ After the hearing, the Respondent submitted several photographs by e-mail. However, these exhibits were not served on either the Claimant or the Fund, and were not subject to testimony or cross examination. Therefore, I did not admit them into evidence, although the email was retained in the MHIC file.



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 01-3802.

2. On March 27, 2019, the Claimant and the Respondent entered into the Contract to perform the following work at the Claimant's property:⁵

Remove and replace appx [approximately] 1000 sq [square] ft [feet] of concrete dash thickness to be appx. 5" [inches] and reinforced with [] wire mesh.

Power wash existing steps and the spaces against wall. Install new aluminum railing (black) also install new step at rear entrance (side entrance) also stucco existing retaining wall (white)[.] All debris hauled away.

3. The original agreed-upon Contract price was \$16,000.00.⁶

4. The Contract stated that work would begin "Summer 2019" and no completion date was stated.

5. On the following dates, the Claimant paid the Respondent the following amounts:

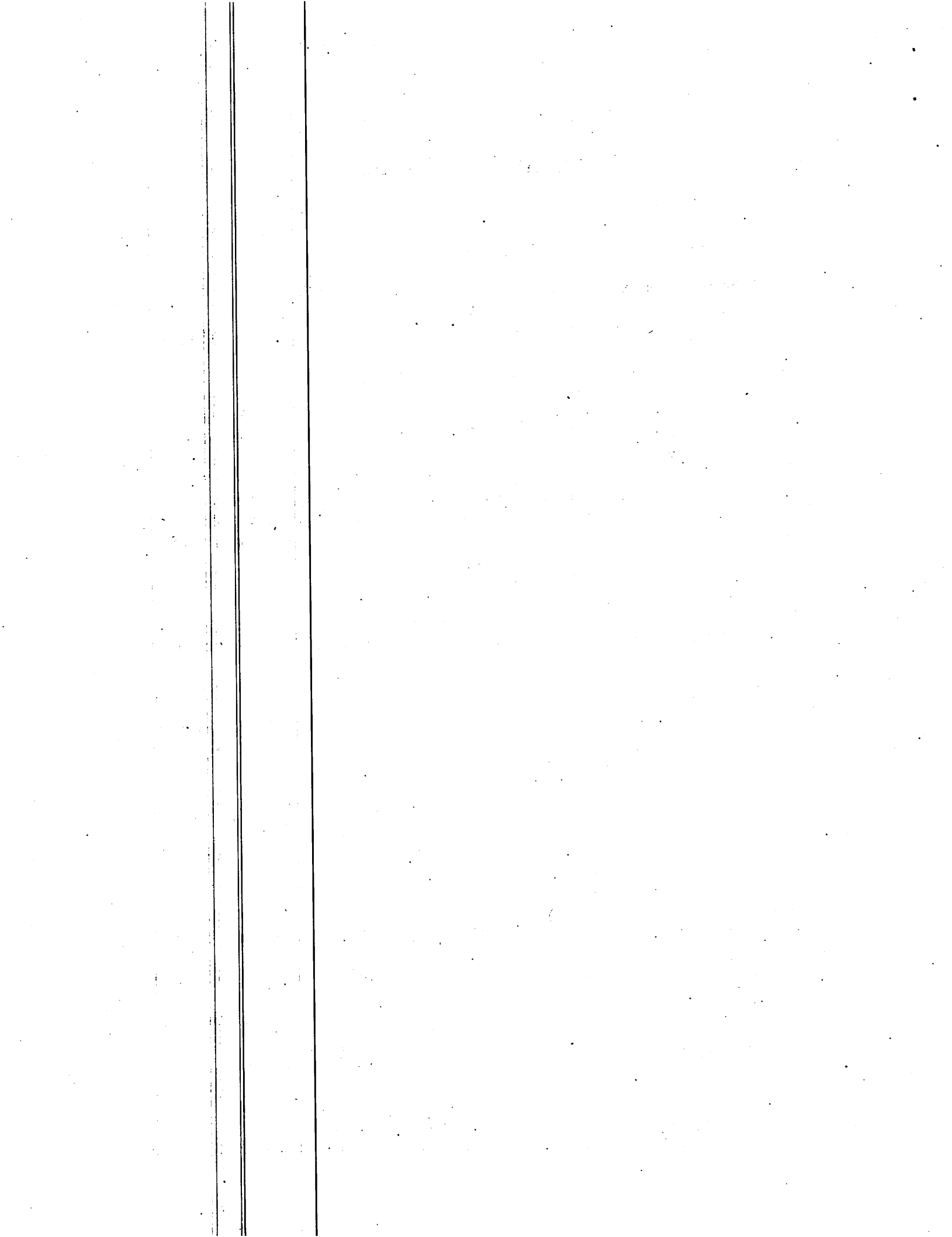
- \$3,000.00 as an initial deposit;
- \$6,750.00 by check (no date specified); and
- \$5,000.00 by cash (no date specified).

6. The Claimant paid the Respondent a total of \$14,750.00.

7. The Respondent completed the concrete work, but it was not properly finished, leaving unmatching surfaces, some of which were not textured, causing the driveway to be slippery. Additionally, spalling has occurred since the construction, with stones showing through where the surface concrete wore off.

⁵ This language is copied verbatim from the Contract. Cl. Ex. 9.

⁶ Details of the Contract terms in Findings of Fact 2 through 5 are stated in the Contract. Cl. Ex. 9.



8. The railing was uneven and out of alignment, and the vertical posts were not anchored in the concrete wall as they should have been.

9. When the Claimant complained to the Respondent about the concrete work, he was unable to agree on the scope of work to be done. He later had physical health issues that caused him to be unable to complete any repairs.

10. The Claimant and Respondent agreed that the railing work was not satisfactory. However, John Nelson (Nelson), the subcontractor hired by the Respondent to perform the railing work, was unresponsive and never completed the necessary repairs.

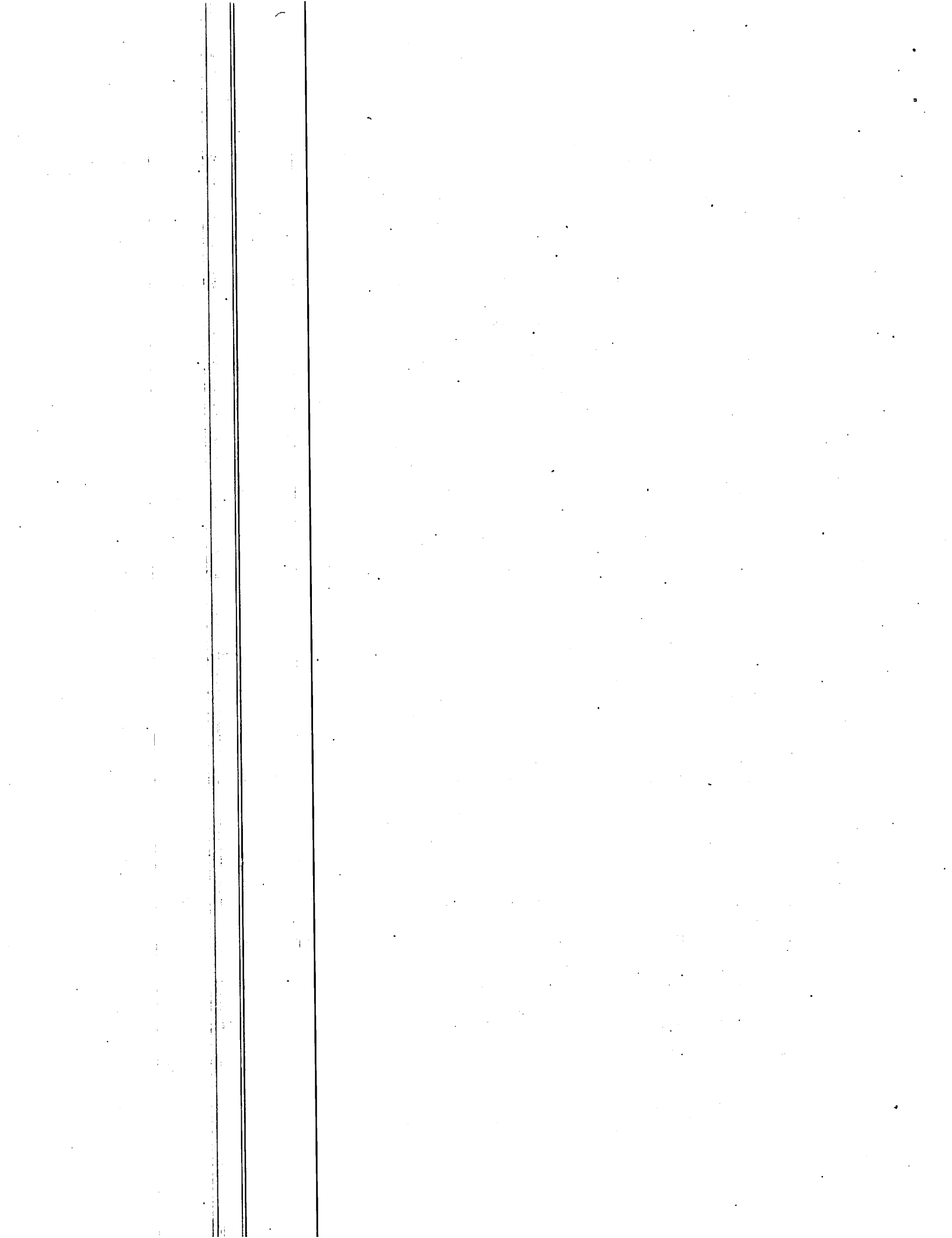
11. The repair to the unworkmanlike concrete work would cost the Claimant \$11,100.00.

12. The repair to the unworkmanlike railing work would cost the Claimant \$2,220.00.

DISCUSSION

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 (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 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 legal requirements for this claim have been satisfied. The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. 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). The Claimant resides in the home that is the subject of the claim or does not own more than three dwellings. *Id.* § 8-405(f)(2). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3). 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).

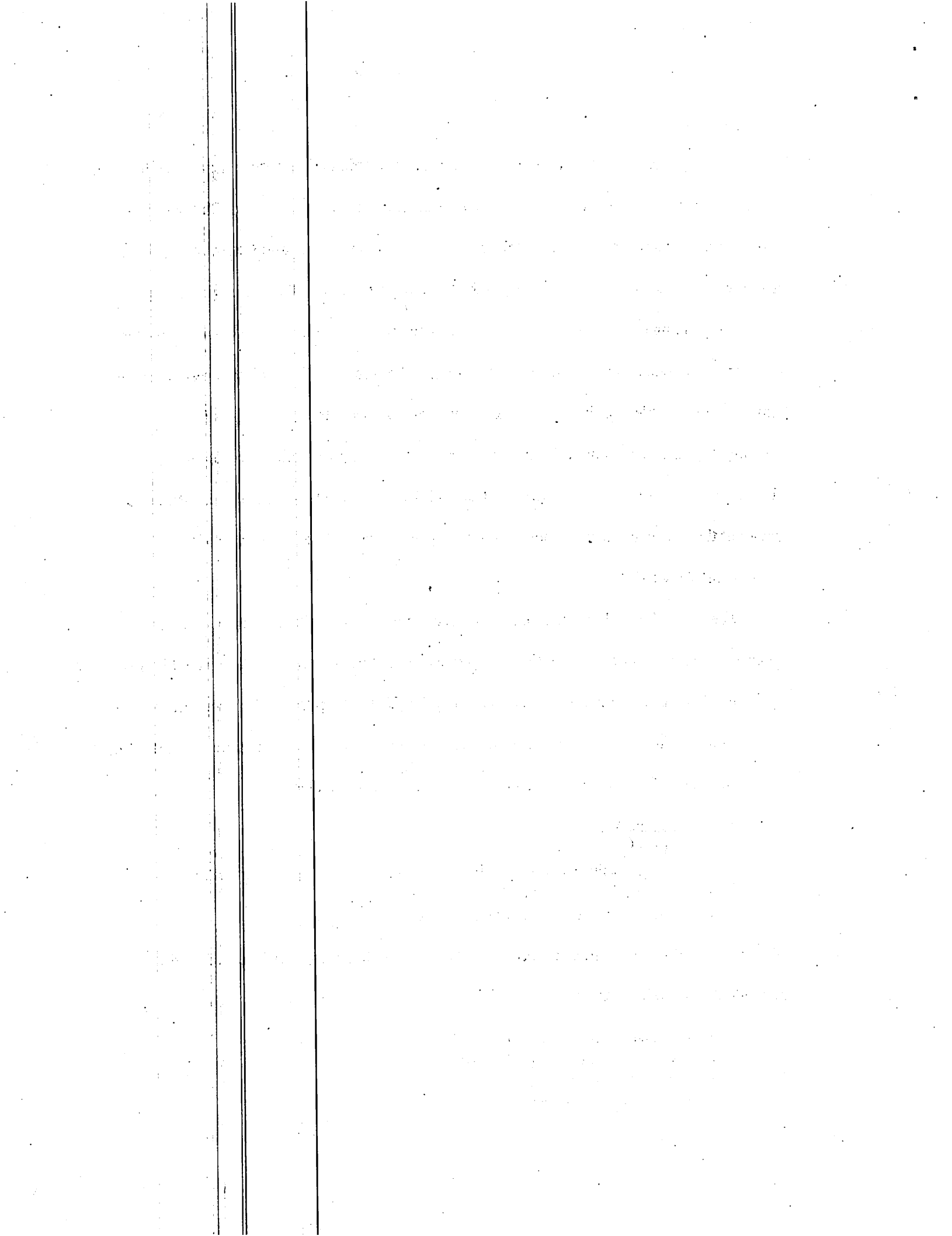
The basis of the Claimant's claim involved the two separate items in the Contract – the driveway concrete work and the railing. Regarding the former, the Claimant testified that she signed the Contract with the Respondent on March 27, 2019. Despite the Contract term that the work would start in the summer of 2019, she testified that the work was not started until the fall.

The Claimant raised specific complaints about the work, including:

- Pock marks;
- Wavy signs of deterioration;
- Smooth surfaces that were slippery (incorrect brooming the surface);
- Deteriorating spacers; and
- Surface wearing away exposing the concrete mixture.

Regarding the railing, the Claimant's complaints were that the railing was installed by the Respondent's subcontractor, who:

- Cracked the concrete steps;
- Installed the railing out of alignment;
- Soldered supports; and
- Did not fasten the supports firmly.



Cl. Ex. 1. The complaints were echoed in the HCOCP and MHIC complaint forms (Cl. Exs. 7 and 10, respectively). The Claimant's testimony was consistent with her complaints.

Regarding the concrete work, the Claimant testified and presented photographs supporting her testimony. Cl. Exs. 12 and 13. The photographs, which the Claimant testified were fair and accurate representations of the condition of the driveway after the Respondent completed his work, showed rocks surfacing in the concrete in large areas of the cement. Cl. Exs. 12 A, B and C. The Claimant testified that the other photographs showed a rough surface that would have been broom swept, or at least an aesthetically pleasant pattern and not the blotchiness that appeared to cover the surface. Cl. Exs. 12 D and E. Other similar surface patterns since the driveway was poured as well as additional deterioration, are shown on Cl. Ex. 13 A through F, which are more recent photographs of the driveway condition.

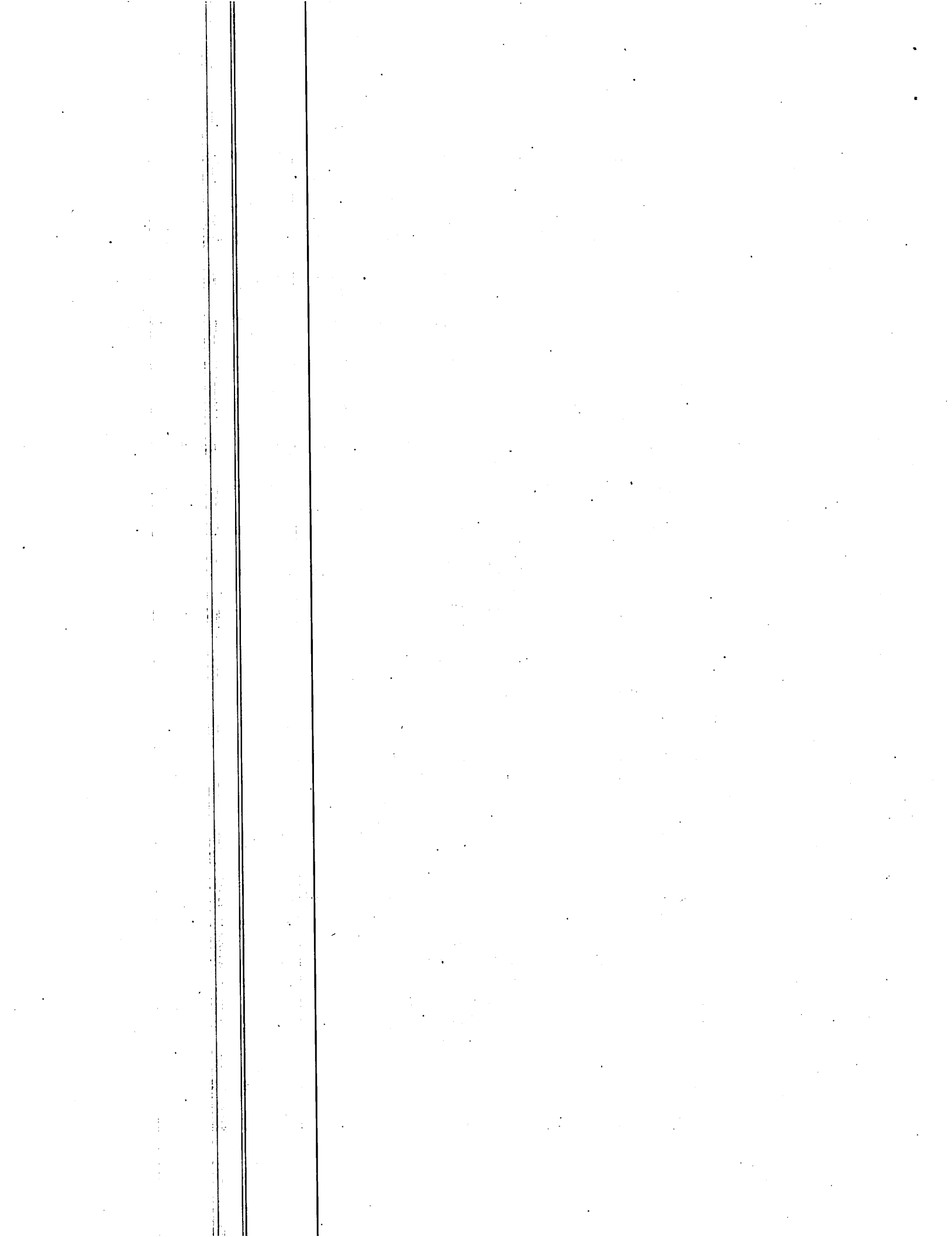
The Columbia proposal supports the Claimant's contentions and covers the scope of the work contained in the contract:

We hereby propose to furnish the materials and perform the labor for the completion of:

- To tear out sections of a driveway that were installed and haul away.
- To re pour (sic) area with a 4000 psi air entrained mix.
- To also install rebar throughout. (Sic)
- To tamp down all areas where concrete is to be poured.
- To broom finish.

Regarding the newly poured concrete, when you look at the finish you can tell that it was not floated properly and I'm sure that they added water to the surface which will in a short time start to fail. When water is added to the top it weakens the strength of the concrete. When that happens it also make the surface more porous and when it's porous it will absorb more water. When more water is in that top layer you have to worry about freezing and when it freezes it's going to cause spalling and failure to the slab. Just looking at the job Ms. Paulus (sic) I could tell that it wasn't done professionally or more than likely they just didn't have the man power to finish the job correctly.

Cl. Ex. 3. Although the writer of this proposal did not testify, his statements in the last full paragraph match up with the evidence in this matter. There was evidence of spalling in the



Claimant's testimony and photographic evidence, which is addressed in the proposal.

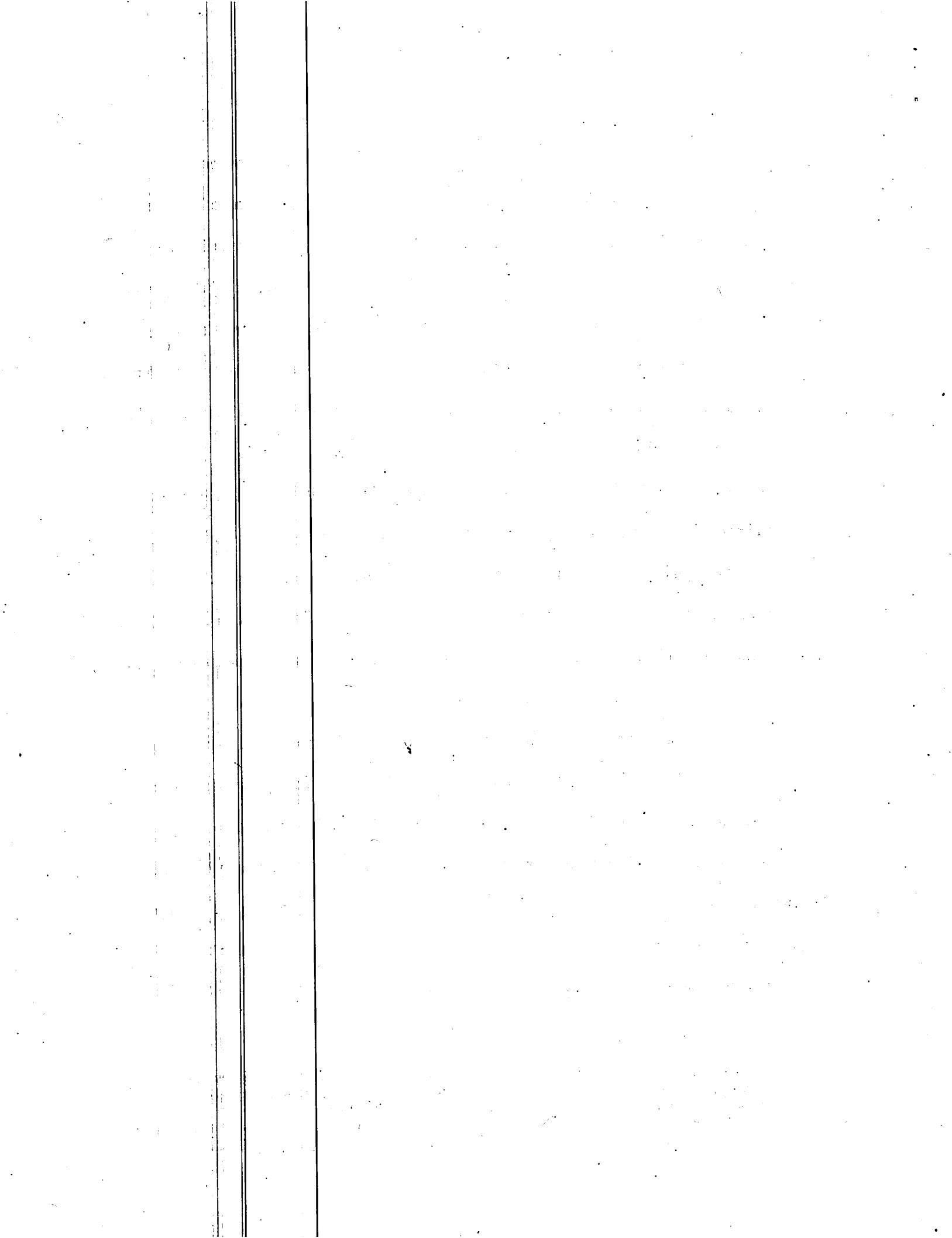
Additionally, the Respondent did not give a good explanation of why only part of the work needed to be redone, and what that scope would entail.⁷ By failing to produce sufficient evidence to limit the scope of the work necessary to be redone, I am convinced that the work that the Respondent did – either due to spalling or surface issues present – required the concrete installation to be redone. The Claimant's position was logical: she did not want a patchwork of repairs on her driveway, and even after her communication with the Respondent stopped, the driveway continued to deteriorate, requiring the work estimated by Columbia.

The Respondent acknowledged that there were problems with the equipment used in the initial pouring. The Respondent was very responsible and sincere, telling the Claimant that the work she complained about was "unacceptable," and although he offered to make the repairs, the process took way too long, and was interrupted by unfortunate medical issues that arose during the time that he might have started the repair. However, through no fault of his own, his health denied him the opportunity to make the repair or replace the defective concrete.⁸

Regarding the railing work, the Claimant testified and presented photographs supporting her testimony. Cl. Ex. 14. The photographs, which the Claimant testified were fair and accurate representations of the condition of the railing after the Respondent's subcontractor completed his work, showed that vertical railing, that appears designed to either rest on or be inserted into the existing concrete, neither met there nor was so inserted. In fact, there appears to be a large, obvious gap between the bottom of the railing and the concrete. Cl. 13 Exs. A, B and C. Where the railing is inserted into the concrete, it appeared to be cracked, uneven and amateurishly

⁷ The Contract also called for "[p]ower wash existing steps and the spaces against wall... also install new step at rear entrance (side entrance) also stucco existing retaining wall (white)[.]" Neither party addressed the completion or quality of this work, so it is not being considered in this decision.

⁸ A side issue was whether the work that the Respondent was willing to do was as broad as the Claimant believed it should have encompassed. The estimate by Columbia supported the Claimant's contention. Cl. Ex. 2.



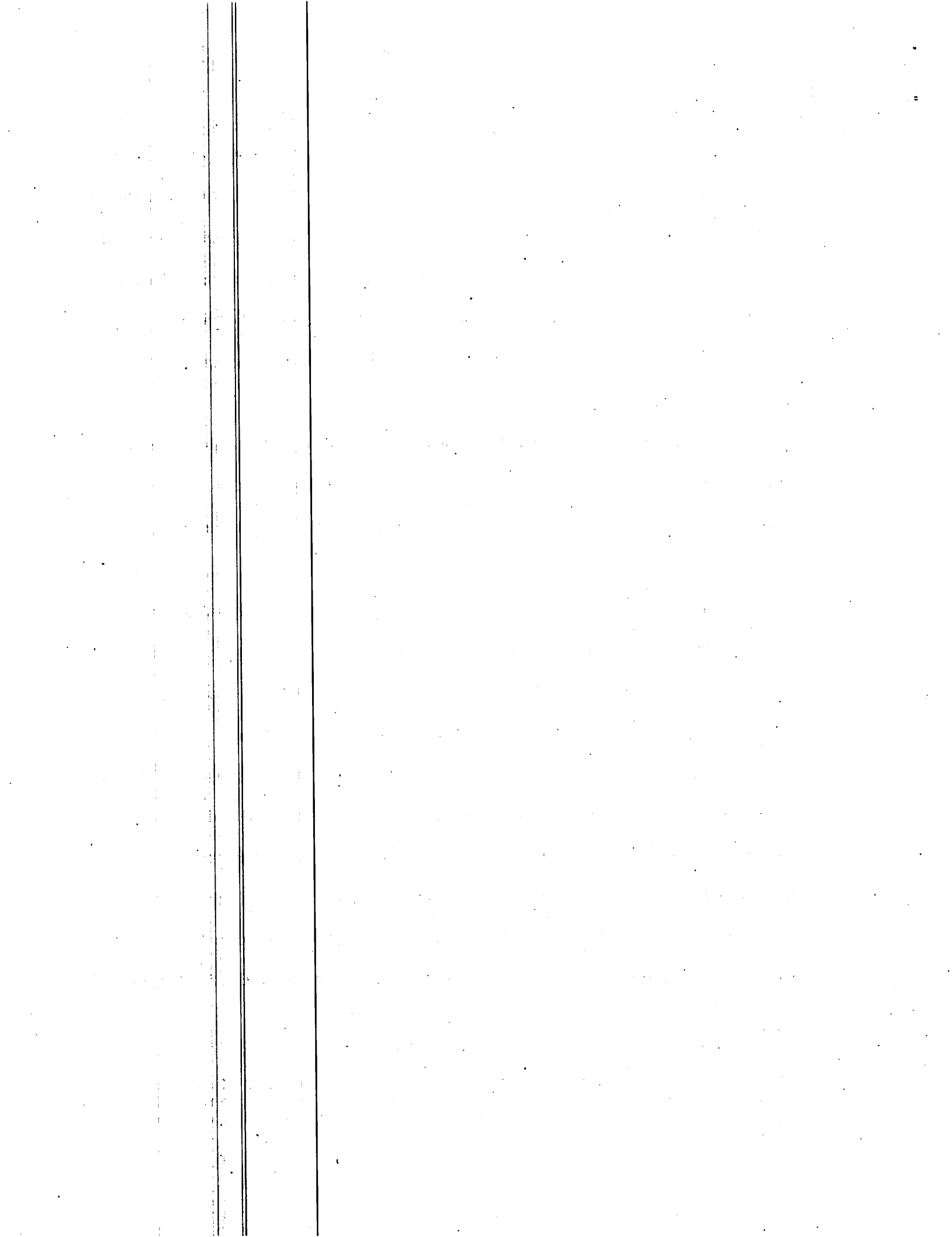
cemented. Cl. Exs. 13 D and E.⁹ The Respondent saw the work and acknowledged that it was poor, but neither he nor the subcontractor made the necessary repairs. The J.W. Calvert estimate submitted into evidence by the Claimant covers the scope of the contract and explains the repair work needed to correct it. Cl. Ex. 4. The \$2,220.00 estimate describes the railing, includes a rudimentary drawing and fuller description of the railing, and concludes with “[r]emove existing railing and haul away,” an obvious conclusion that the railing was neither properly installed nor could be salvaged.¹⁰

Both the Claimant and the Respondent agreed that the railing work was unacceptable. Moreover, both complained about “Nelson,” the subcontractor responsible for the railing work and his lack responsiveness to their inquiries. Nelson promised to show up, but in the end, never did.

I can readily see that the Respondent is a responsible craftsman who knows his craft and is proud of the work he has accomplished for other clients over his forty-year career in the concrete construction business. The Respondent wanted to show pictures of work he performed for other clients, and although denied that opportunity at the hearing (as it was immaterial and irrelevant to the present controversy), I have no doubt that he takes pride in his work and his other clients are satisfied. However, in this matter, the pour and finishing of the driveway concrete were not up to the expectations or aesthetics expected by the Claimant, and her photographic evidence supports her concerns. I also sympathize with the Respondent who felt limited by his physical health concerns that stopped him from acting more promptly, but regardless of the reason, the promised repair was neither timely nor completely offered to the

⁹ There were other defects on the wall, but the Claimant acknowledged that these were preexisting defects and she was not seeking a claim for them.

¹⁰ The Respondent testified that there were two sets of railings, which is also evident from J.W. Calvert’s estimate. The Respondent testified that the upper railing was not part of the initial written contract, but subject to a subsequent verbal contract. However, the Contract, written by the Respondent, did not make such a distinction and is binding on him.



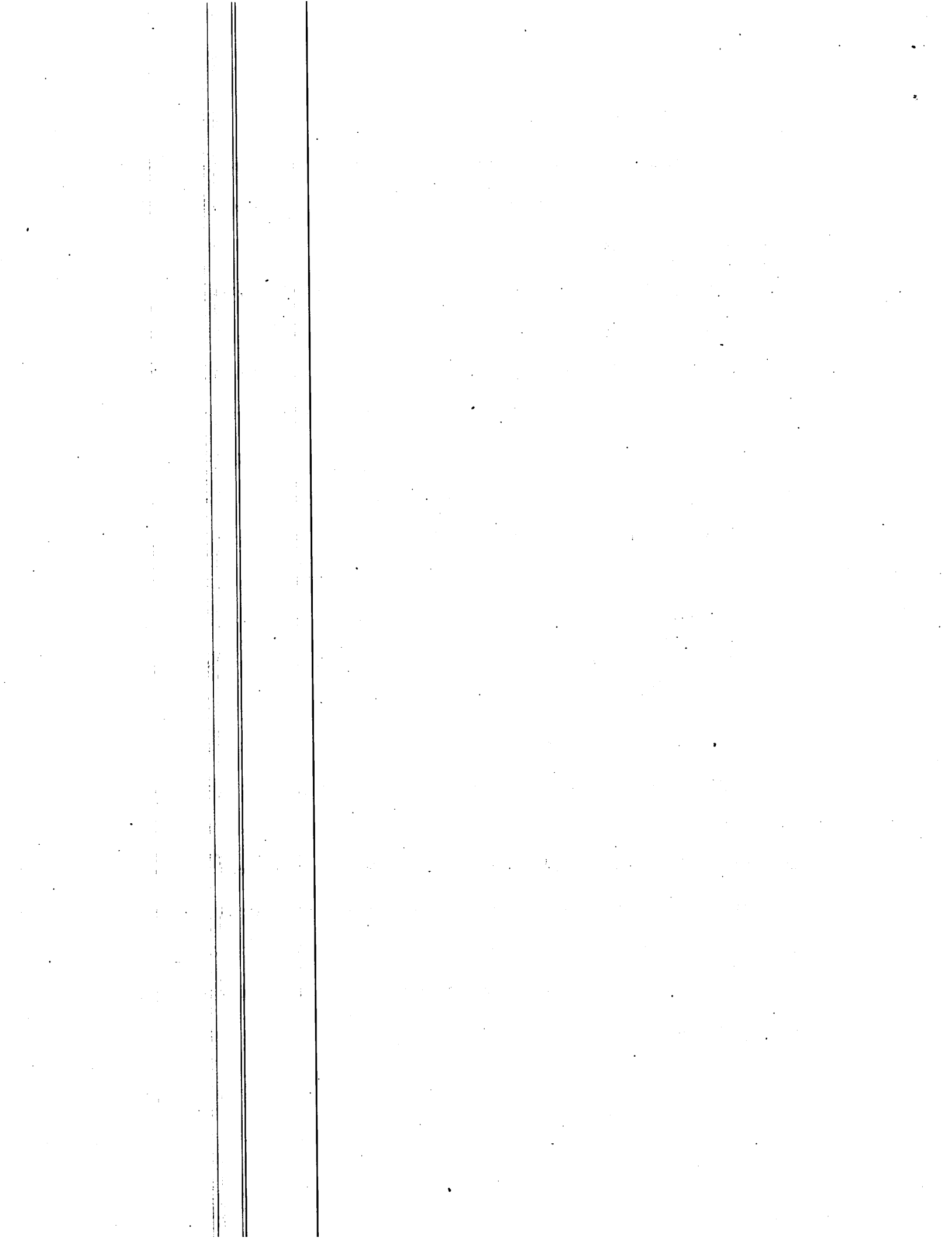
Claimant, who no longer had faith in the Respondent's (or his railing subcontractor's) ability to complete the work. The Claimant need not wait for the Respondent to physically heal before expecting the job to be completed.

The Respondent testified that he could perform the concrete work that needs to be done for \$4,000.00, which is significantly less than Columbia's bid of \$11,100.00. This assertion assumes the Respondent's wholesale price of the work (i.e., what it would cost the Respondent who buys the supplies wholesale and prices his own labor), and not the retail price of the work (i.e., what the Claimant needs to pay another contractor). Contractors mark up their supplies and labor, as did the Respondent when first estimating the work to be done under the Contract.

The Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim because the Respondent did not agree with the scope of the work that I find necessary, nor could he have physically done it timely. *Id.* § 8-405(d). Particularly with the difficulties getting Nelson the subcontractor to redo his work, I do not find that the Claimant's lack of faith in the Respondent or his subcontractor was inappropriate.

Therefore, I find that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements and 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.



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). The calculation of the actual loss is as follows:

\$14,750.00	Amount paid by the Claimant to the Respondent under the Contract, plus
\$0.00	Amount paid by the Claimant to the Respondent under any addendum
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\$14,750.00	Total Amount paid by the Claimant to the Respondent, plus
\$13,320.00	Fair market cost to make corrections and complete Respondent's work
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\$28,070.00	Subtotal, less
\$0.00	Work adequately performed by the Respondent
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\$16,000.00	Original contract price (including the price of any addendum) equals
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\$12,070.00	Amount of the Actual Loss to the Claimant.

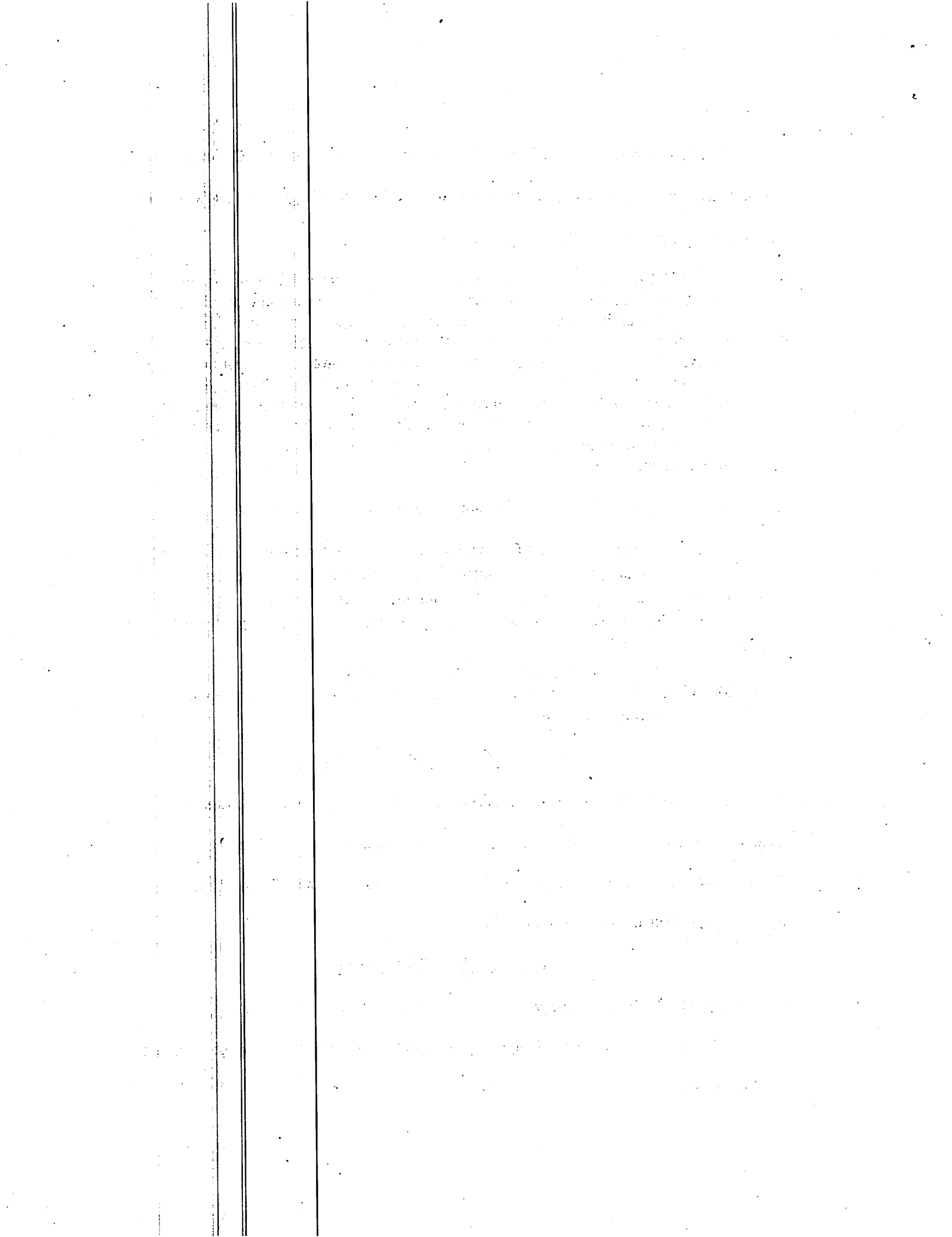
PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$12,070.00, 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)(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 \$12,070.00; 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,¹¹ and

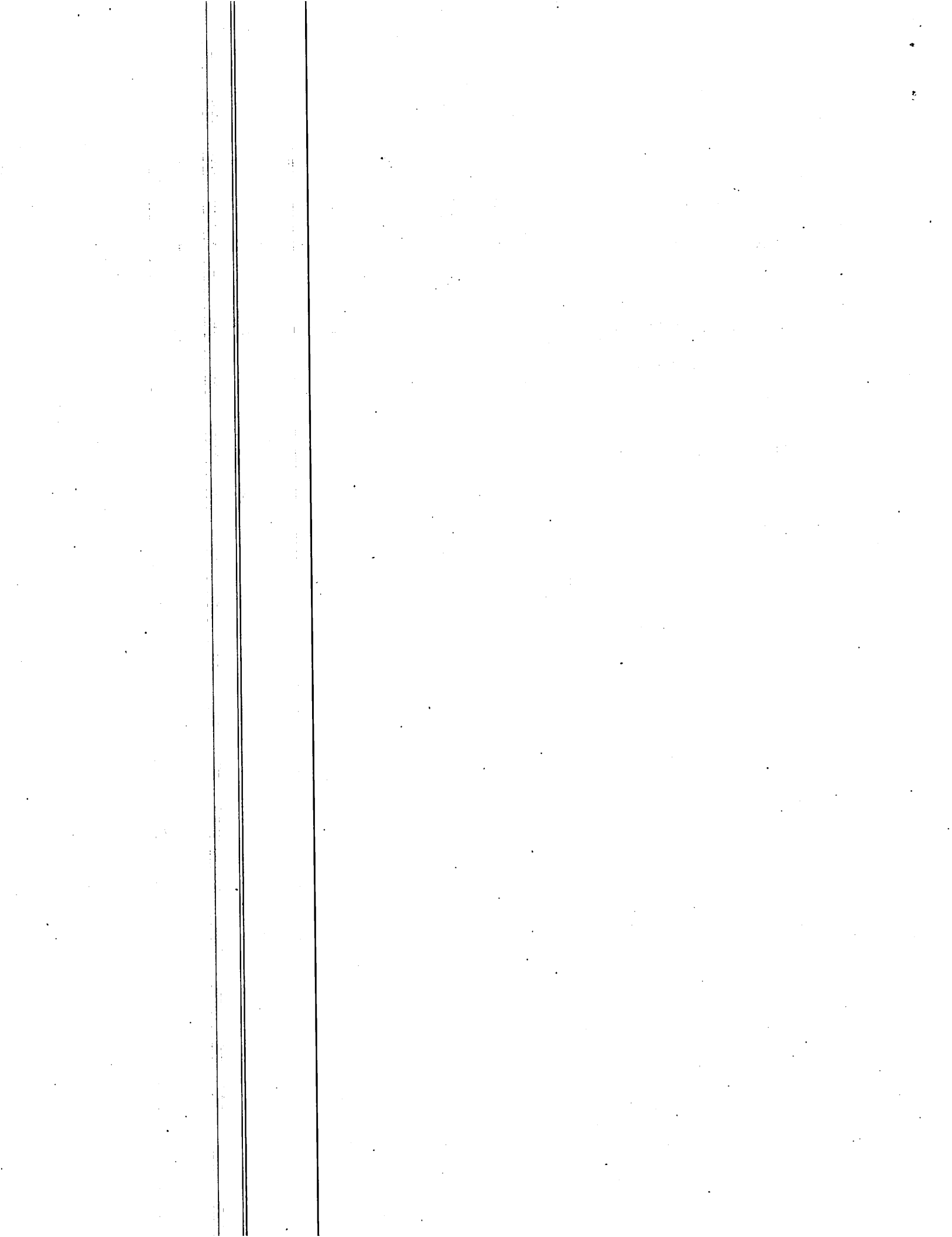
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

August 12, 2022
Date Decision Issued

Marc Nachman
Marc Nachman
Administrative Law Judge

MN/lp
#200153

¹¹ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 19th day of August, 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.

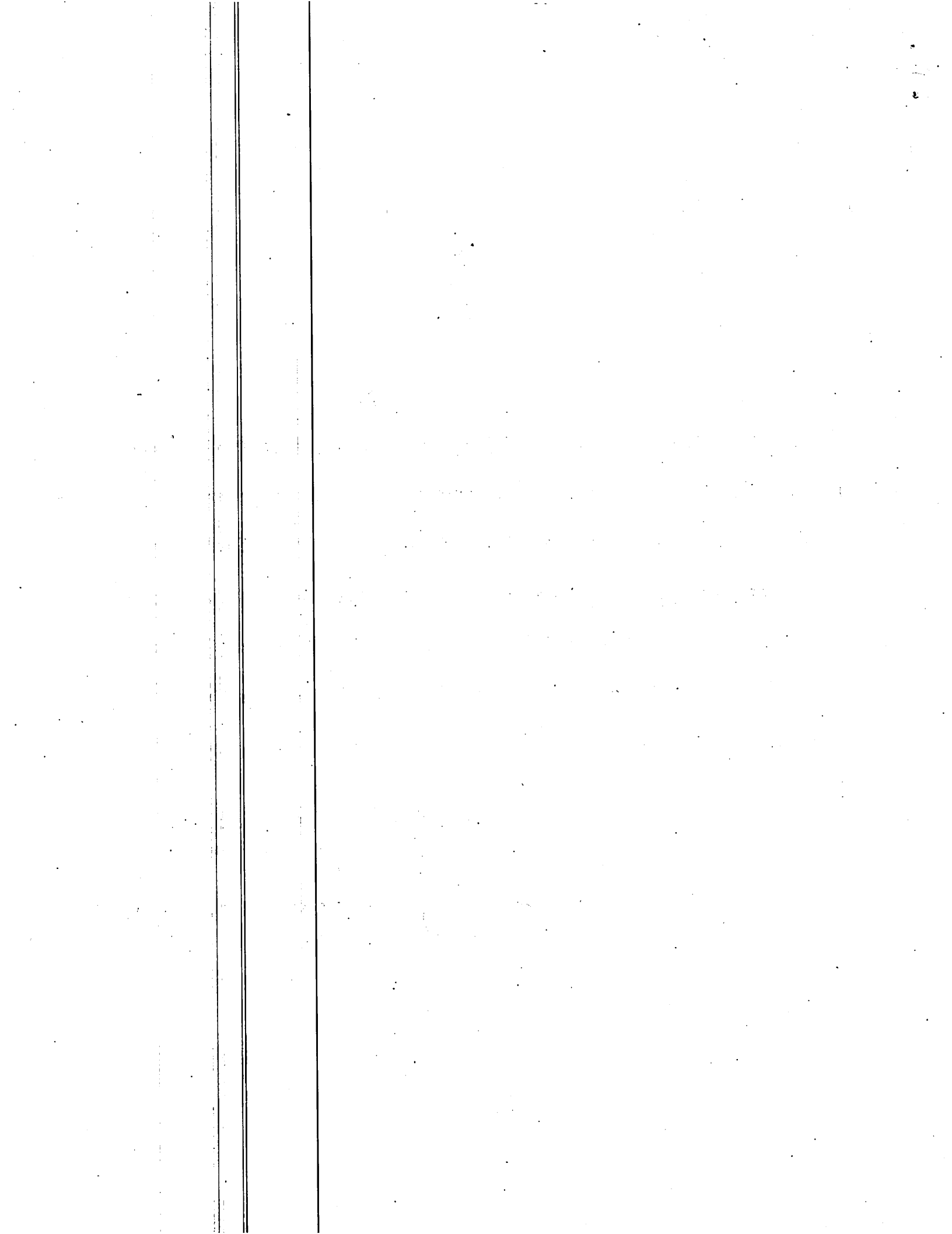
Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***



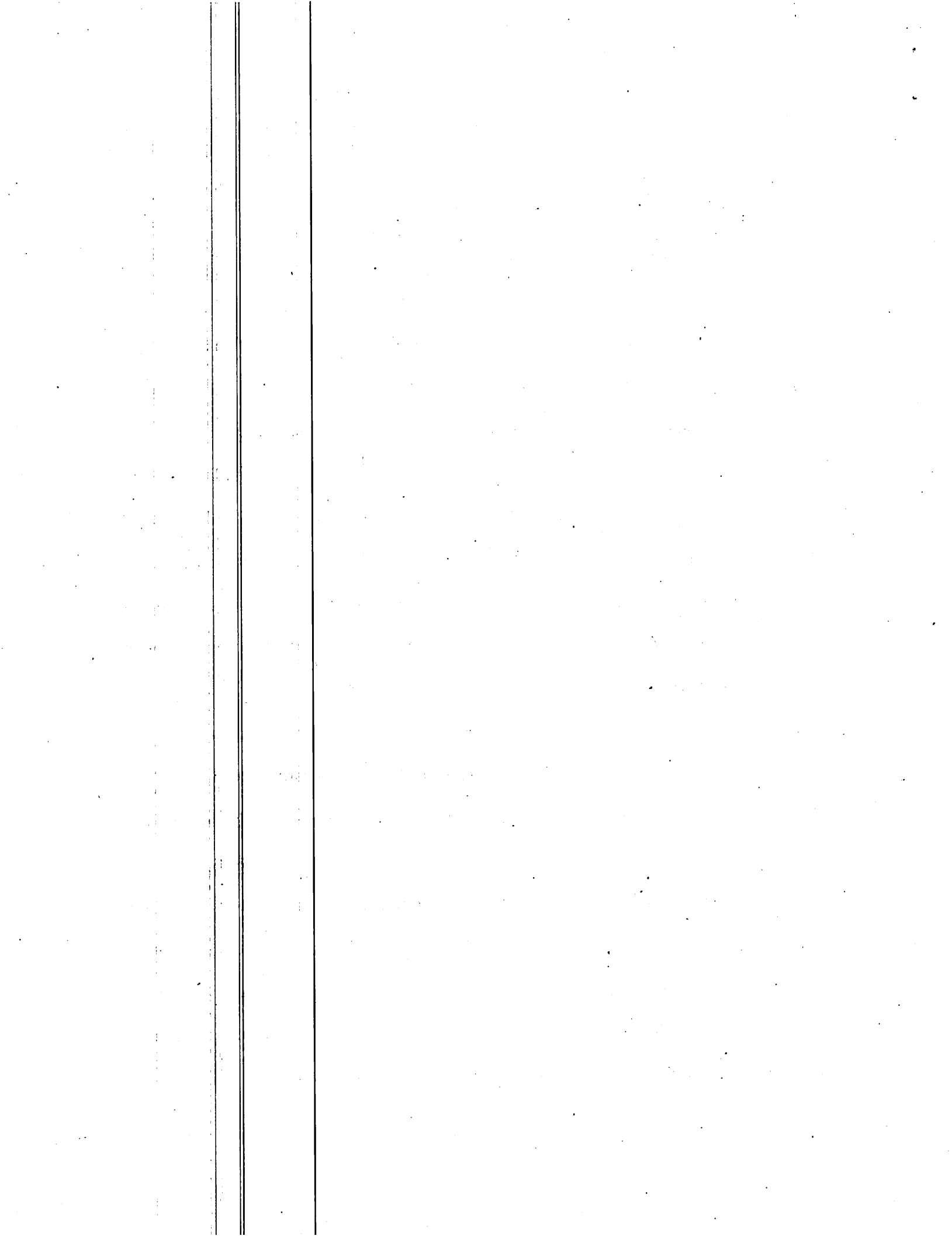
IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
CYNTHIA PALUS * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 21(75)522
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
LUIGI DIFOLCO T/A LOUIS * 02-22-01223
SEBASTIAN CONTRACTOR *

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on March 28, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on August 12, 2022, concluding that the homeowner, Cynthia Palus (“Claimant”) suffered an actual loss as a result of the acts or omissions of Luigi DiFolco t/a Louis Sebastian Contractor (“Contractor”). *ALJ Proposed Decision* p.11. In a Proposed Order dated August 19, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$12,270.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On January 19, 2023, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant and Contractor participated without counsel. Assistant Attorney General John Hart appeared at the exceptions hearing on behalf of the Guaranty Fund. The Commission entered the following preliminary exhibits as part of the record of the exceptions hearing without objection: 1) hearing notice; 2) transmittal letter, ALJ Proposed Decision, and MHIC Proposed Order; and 3) Contractor’s exceptions. Neither the Claimant nor the Contractor produced a copy of the transcript of the hearing before the ALJ. Therefore, the Panel’s review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, and the exhibits offered as evidence at the OAH hearing. COMAR

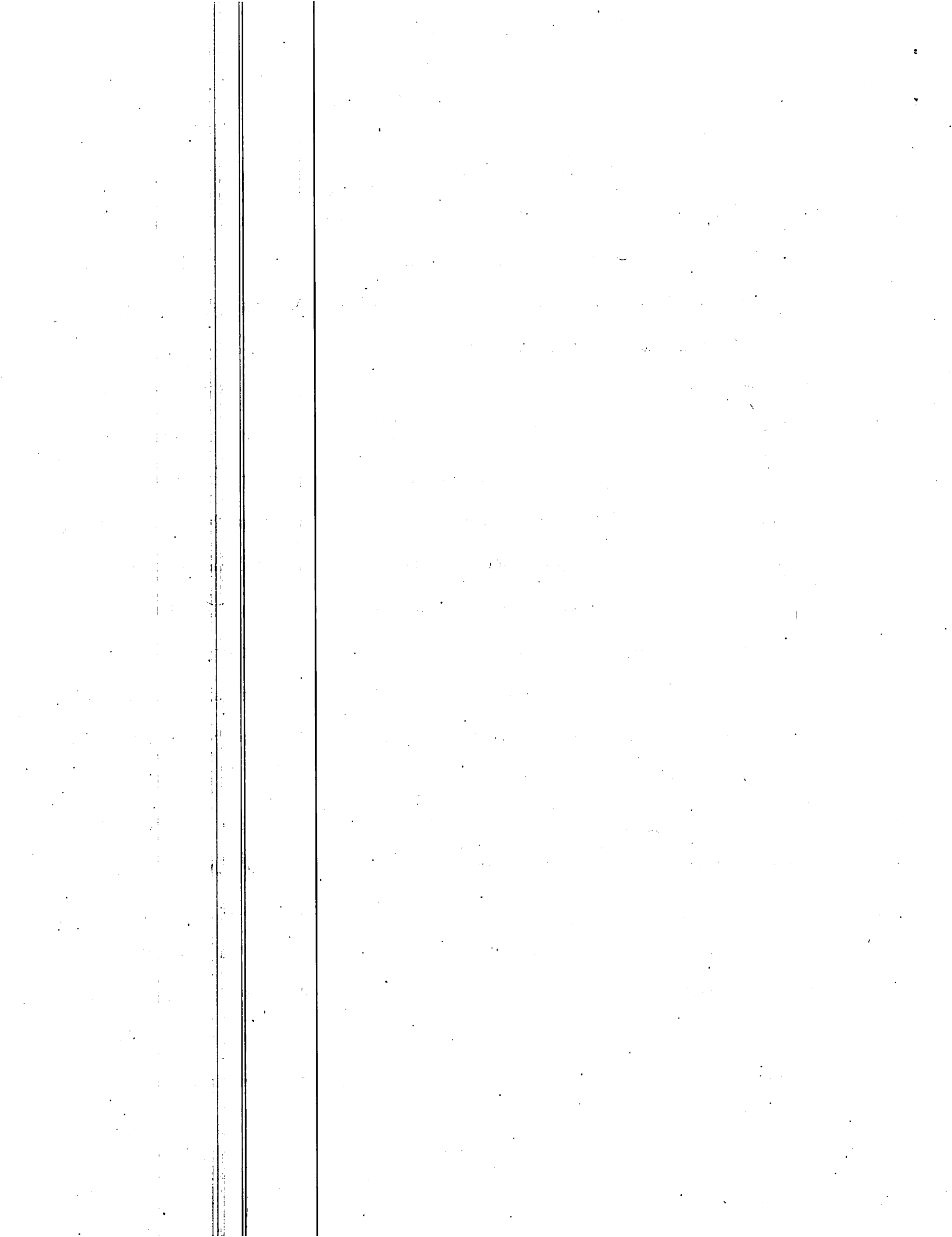


09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the removal and replacement of a concrete driveway, the installation of an outdoor railing and a step, and the application of stucco to a retaining wall at the Claimants' home. The ALJ found that the Contractor's performance under the contract was unworkmanlike with respect to the driveway and railing installation. *ALJ's Proposed Decision* pp. 10-11.

On exception, the Contractor argued that the ALJ erred in finding that the Claimant did not unreasonably reject his good faith offer to correct his deficient performance. Specifically, the Contractor argued that he offered to repair the driveway and railing, but that cold weather, an injury, and the Covid-19 pandemic prevented him from making the repair, and that the Claimant should have been more patient. The Commission agrees with the ALJ that the Claimant was reasonable to reject the Contractor's offer to repair the driveway because the Contractor did not agree to remove and replace the defective area of the driveway, instead offering only to patch portions of it, the Contractor had previously offered to have his subcontractor repair the railing but the subcontractor never did so, and the Contractor was not available to make the repairs for an extended period of time.

The Contractor also argued that the ALJ erred in finding that the Claimant suffered an actual loss with respect to the railing installation because he installed two railings, and the Claimant only paid for half of one railing. The Commission finds with the ALJ's calculation of the Claimant's actual loss relating to the railing installation is proper. The ALJ calculated the Claimant's actual loss in accordance with the formula prescribed in COMAR 09.08.03.03(B)(3)(c). That formula automatically reduces a claimant's award to the extent that the claimant failed to pay the entire contract. In this case, the Contract price was \$16,000.00, but the Claimant only paid the



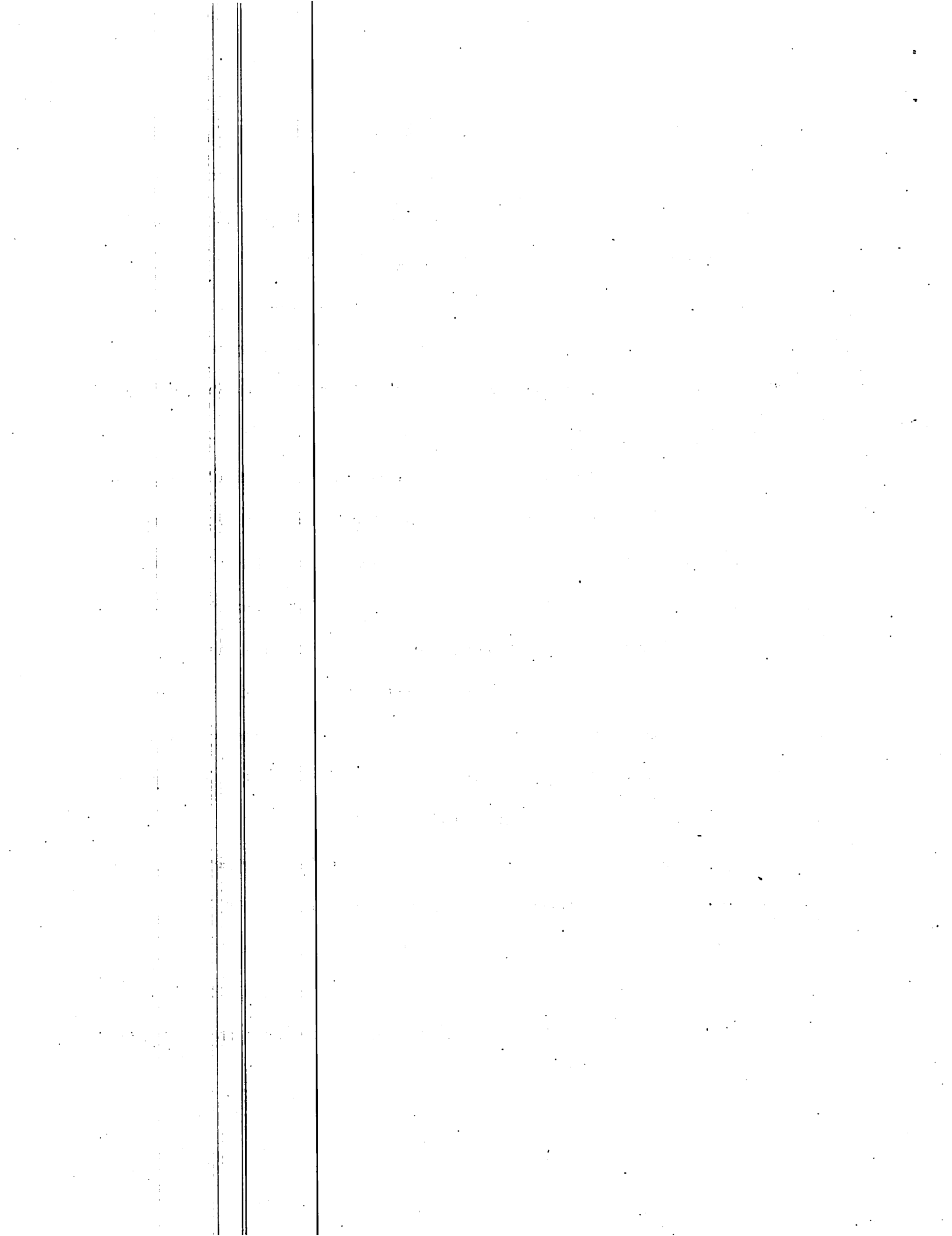
Contractor \$14,750.00. The ALJ added the amount the Claimant paid to the Contractor and the Claimant's cost to correct the Contractor's work, and then subtracted the original contract price from that sum to reach the Claimant's actual loss. Had the Claimant paid the full \$16,000.00 contact price, then her actual loss would have been \$1,250.00 higher.

The Contractor further argued that the ALJ erred in calculating the Claimant's actual loss because the ALJ failed to account for the value of the work the Contractor performed satisfactorily. The Commission finds no error in the ALJ's calculation. The formula prescribed by COMAR 09.08.03.03(B)(3)(c) automatically reduces a Claimant's actual loss to the extent the claimant received value for work performed by a respondent contractor because the cost of having another contractor correct and complete the deficient work is lower than if the respondent contractor did not perform any satisfactory work. For example, in this case, had the Contractor's application of stucco to the Claimant's retaining wall been deficient, the Claimant's actual loss would have been greater because it would have included the cost of correcting the stucco application.

The Commission notes that the ALJ erred including a line entitled "Work adequately performed by the Respondent" as a variable in the formula he used to calculate the Claimant's actual loss. *ALJ's Proposed Decision* p. 11. However, because ALJ entered \$0.00 in that line of his calculations, it had no bearing on the final calculation.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 8th day of February 2023, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED;**
- B. That the Conclusions of Law of the Administrative Law Judge are **AFFIRMED;**
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED;**



- D. That the Claimant is awarded \$12,070.00 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement Commission license until the Contractor reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent (10%) as set by the Commission, *Md Code Ann.*, Bus. Reg. §§ 8-410(a)(1)(iii), 8-411(a);
- F. That the records and publications of the Maryland Home Improvement Commission shall reflect this decision; and
- G. Any party has thirty (30) days from the date of this Final Order to appeal this decision to Circuit Court.

J. Jean White
Chairperson –Panel
Maryland Home Improvement
Commission

