

**IN THE MATTER OF THE CLAIM
OF YASIR ARFAT,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF
WILLIAM YOST,
T/A W. YOST CONTRACTING,
RESPONDENT**

*** BEFORE JENNIFER M. CARTER JONES,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-24176
* MHIC No.: 21 (75) 780

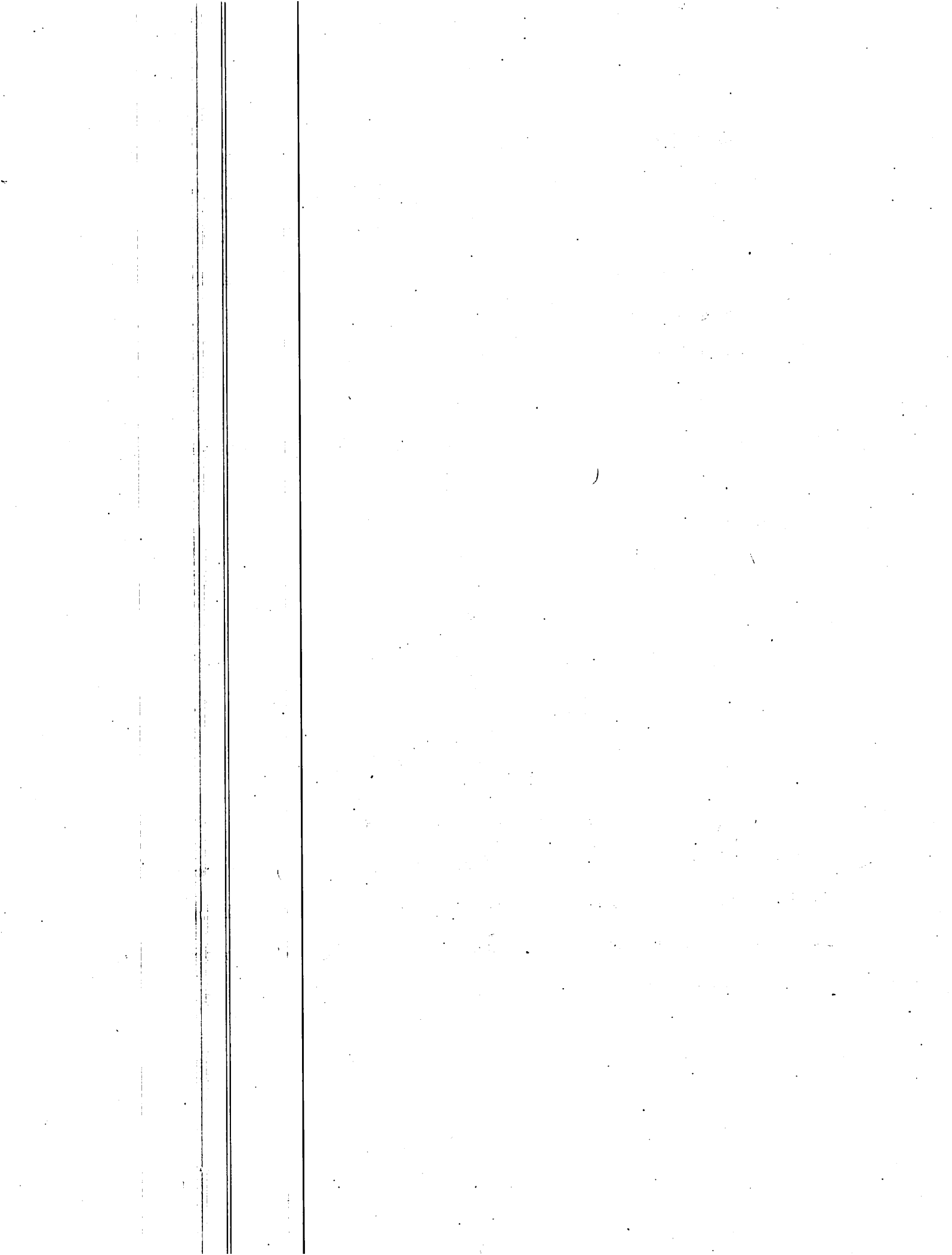
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PROPOSED DECISION

**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 or about June 1, 2021, Yasir Arfat (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (DOL) for reimbursement of \$11,000.00 in alleged actual losses suffered as a result of a home improvement contract with William Yost, T/A W. Yost Contracting



(Respondent).¹ On October 15, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 11, 2022, I held a hearing at the OAH in Hunt Valley, Maryland.² Hope Sachs, DOL Assistant Attorney General, represented the Fund. The Claimant represented himself. The Respondent failed to appear for the hearing.

After waiting 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.³ On October 22, 2021, the OAH mailed, by first-class and certified mail, a Notice of Remote Hearing (Notice) to the Respondent at his address of record with the MHIC on Cheshire Road in Bel Air, Maryland.⁴ The Notice stated that a hearing was scheduled for 9:30 a.m. at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service (USPS) did not return the first-class Notice to the OAH. Furthermore, the USPS forwarded to the OAH the green certified mailing card for the certified mail version of the Notice, signed by someone on the Respondent's behalf.⁵ The Respondent did not notify the OAH of any change of mailing address.⁶ The Respondent made no request for postponement prior to the date of the hearing.⁷ I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.

¹ Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

² Bus. Reg. §§ 8-407(a), 8-312.

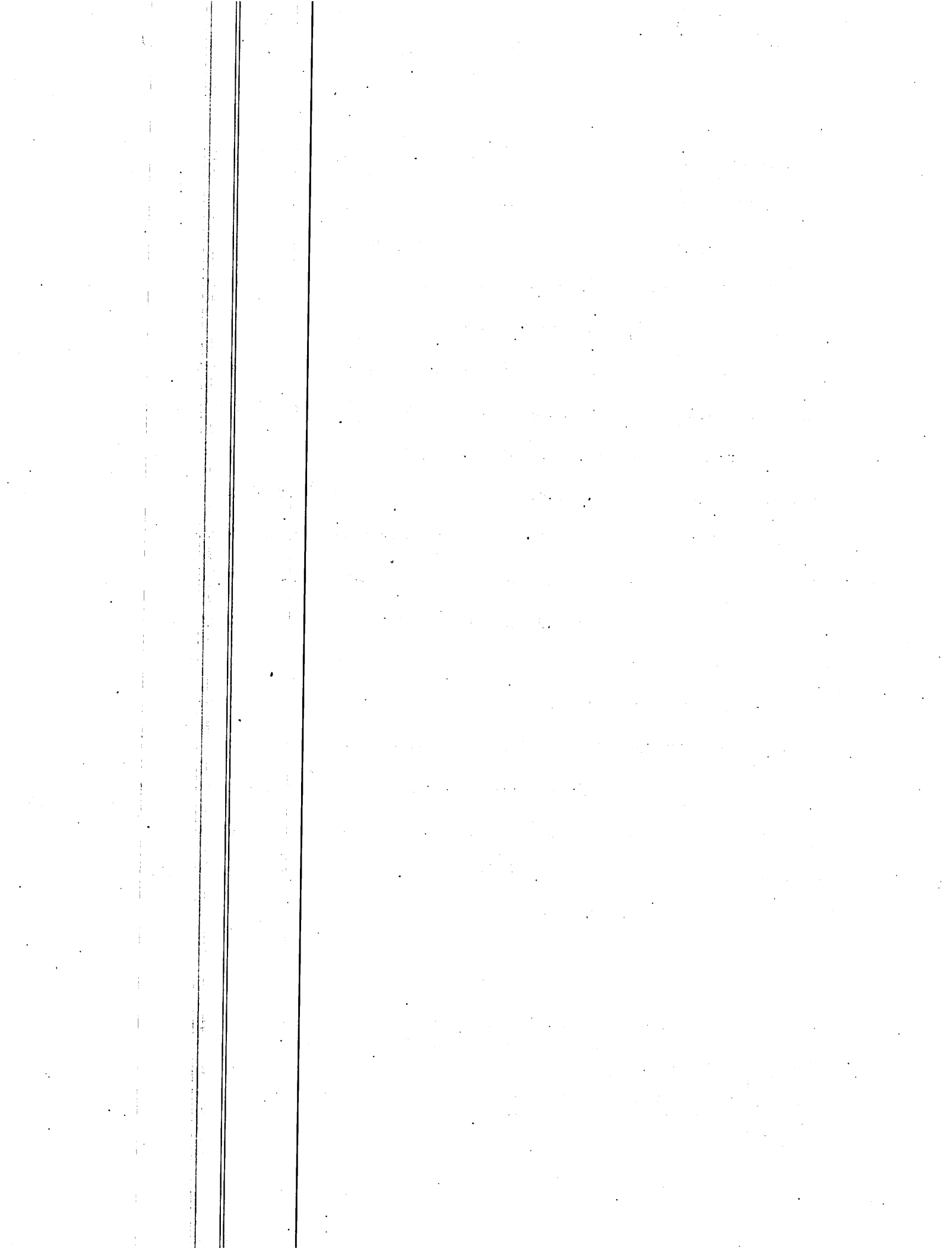
³ COMAR 28.02.01.23A.

⁴ COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).

⁵ The name on the certified mailing card appears to be "Bellis."

⁶ COMAR 28.02.01.03E.

⁷ COMAR 28.02.01.16.



The contested case provisions of the Administrative Procedure Act, the DOL's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case.⁸

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 that loss?

SUMMARY OF THE EVIDENCE

Exhibits

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

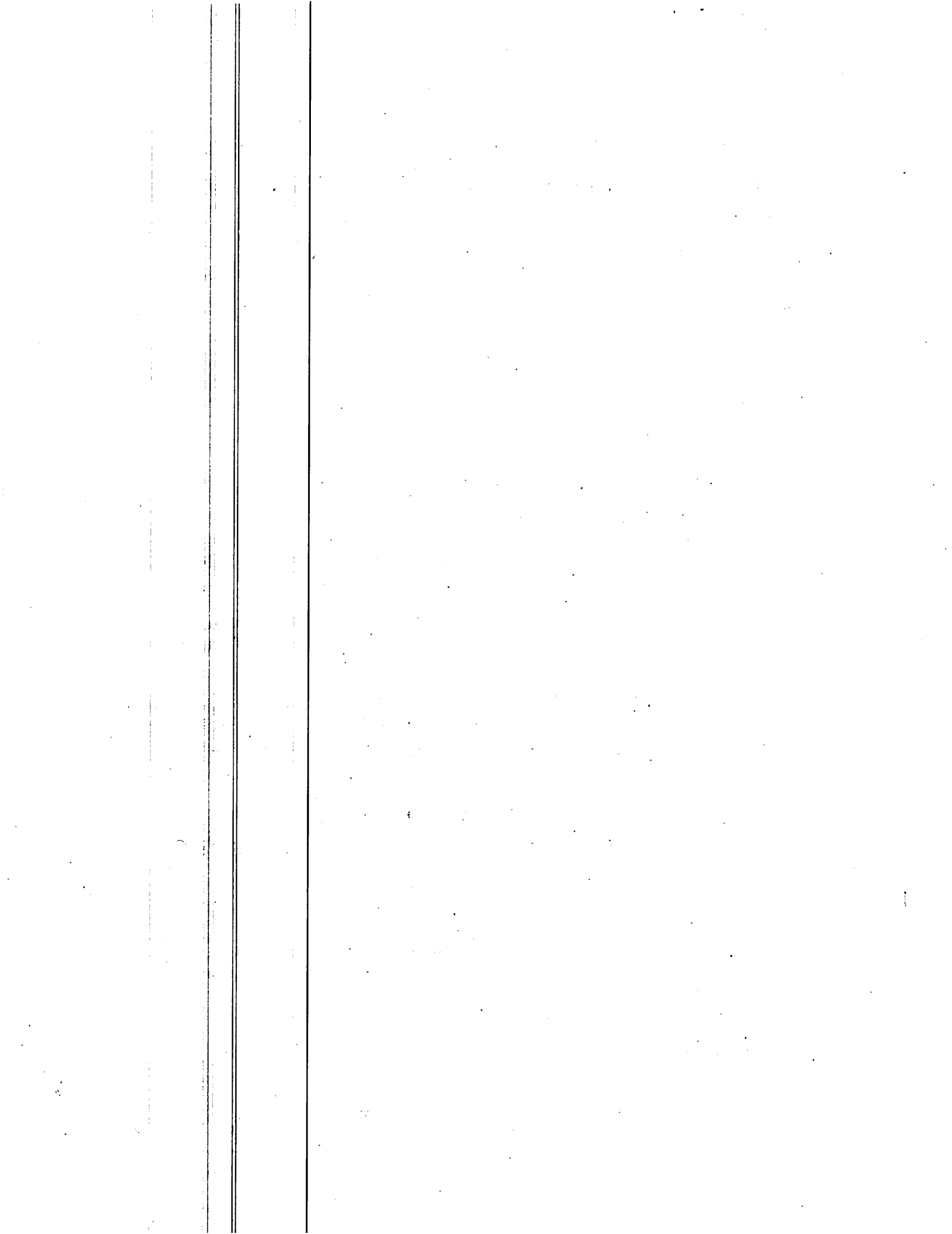
- CL #1 Contract, dated September 17, 2020
- CL #2 Copy of negotiated check number 1300, in the amount of \$5,000.00, dated July 26, 2018
- CL #3 Copy of the Claimant's Wells Fargo bank account transactions for November 2020 and copy of the Claimant's father's M&T Bank account transactions for November 2020
- CL #4 Copy of text messages between the Claimant and the Respondent, between mid-September 2021 through February 15, 2021; email from the Claimant to the Respondent, dated February 1, 2021; and photograph copy of holes in the Claimant's backyard, undated

I admitted the following exhibits on behalf of the Fund:

- Fund #1 Copy of the OAH Notice, dated October 22, 2021 and DOL Hearing Order, dated September 29, 2021
- Fund #2 Licensing History, printed on December 10, 2021
- Fund #3 Letter from the MHIC to the Respondent, dated June 7, 2021 and Copy of the Claim, received by the MHIC on June 1, 2021, with attachments

The Respondent did not appear for the hearing and therefore, he did not submit any exhibits for admission into the record.

⁸ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.



Testimony

The Claimant testified on his own behalf.

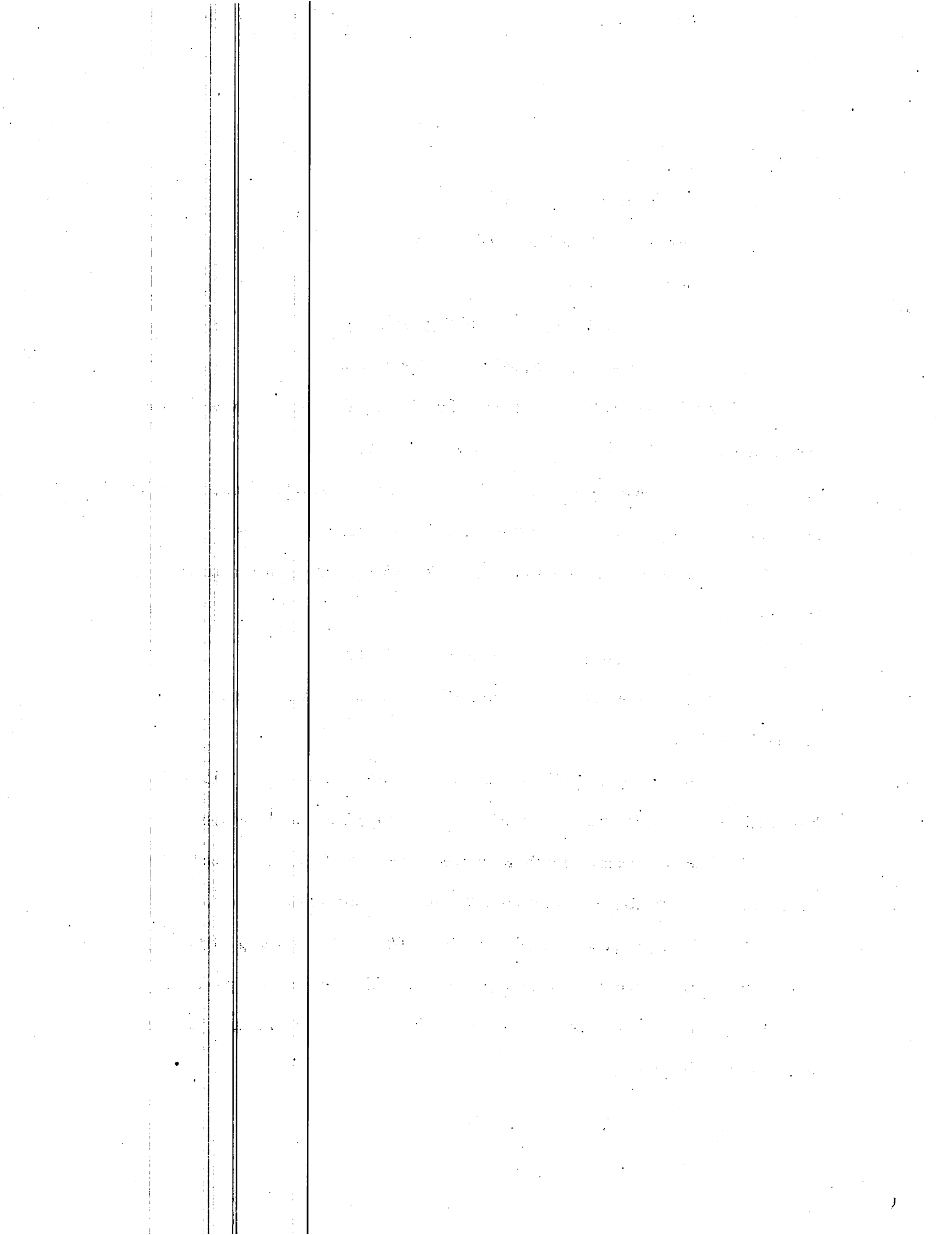
No one appeared to testify on behalf of the Respondent.

The Fund presented no 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 80972.
2. On September 17, 2020, the Claimant entered a contract with the Respondent for the Respondent to construct a 14-foot by 40-foot rear deck with stairs and railings.
3. The contract specified that the Respondent would begin working on the deck in November 2020.
4. The agreed-upon price for the deck was \$16,000.00.
5. The Claimant paid the Respondent a \$5,000.00 deposit by check dated September 16, 2020.
6. On November 17, 2020, the Claimant gave the Respondent access to his Wells Fargo debit card information and the Respondent withdrew \$1,000.00 from that account.
7. The Claimant also gave the Respondent access to his father's M&T Bank debit card information and the Respondent withdrew \$5,000.00 from that account.
8. After the Respondent withdrew the \$6,000.00 from the Claimant's and the Claimant's father's bank accounts, the Respondent stopped taking the Claimant's phone calls.
9. The Respondent came to the Claimant's home only once and he dug a few holes in the Claimant's backyard.



10. The Claimant paid someone to fill the holes as requested by his homeowner's association.
11. Between November 2020 and February 10, 2021, the Claimant called and sent text messages to the Respondent inquiring when the Respondent intended to construct the deck.
12. The Respondent did not return the Claimant's phone calls. The Respondent did respond to multiple texts from the Claimant and consistently advised the Claimant that he intended to start the deck soon, but he never came to the Claimant's property.
13. Other than digging a few holes, the Respondent never performed any work on the deck.
14. On February 15, 2021, the Claimant sent an email to the Respondent in which he again asked for a date when the Respondent would complete the deck. In that email, the Claimant stated "I don't want to take a legal action against your company but I will if I don't get a date and material on my driveway soon[. W]aiting time is over."⁹
15. The Respondent did not respond to the Claimant's February 15, 2021 email.
16. The Respondent did not refund any money to the Claimant.

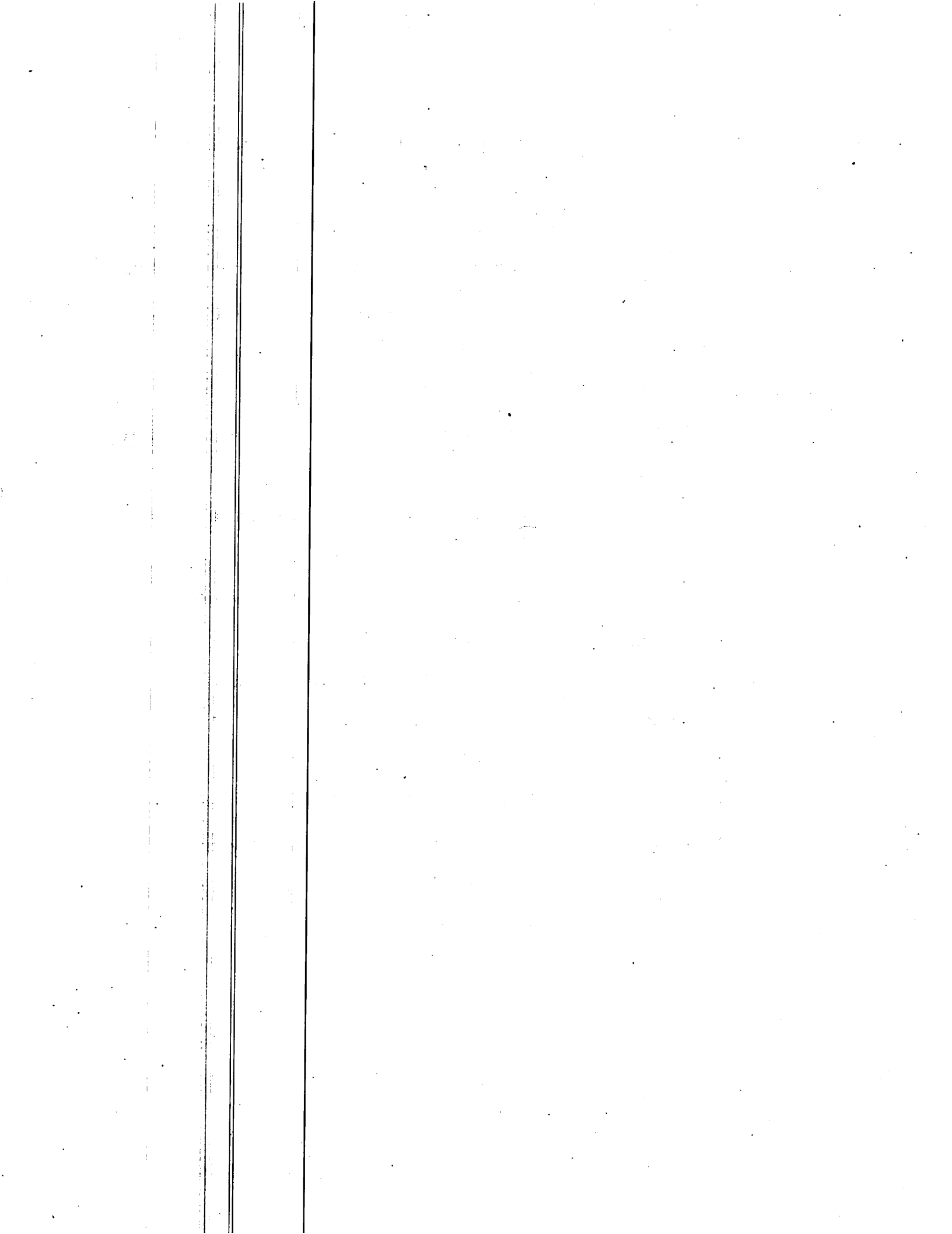
DISCUSSION

The Claimant has the burden of proving the validity of his claim by a preponderance of the evidence.¹⁰ "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true."¹¹

⁹ CL #4.

¹⁰ Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3); COMAR 28.02.01.21K(1).

¹¹ *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.”¹² Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹³ For the following reasons, I find that the Claimant has proven eligibility for compensation.

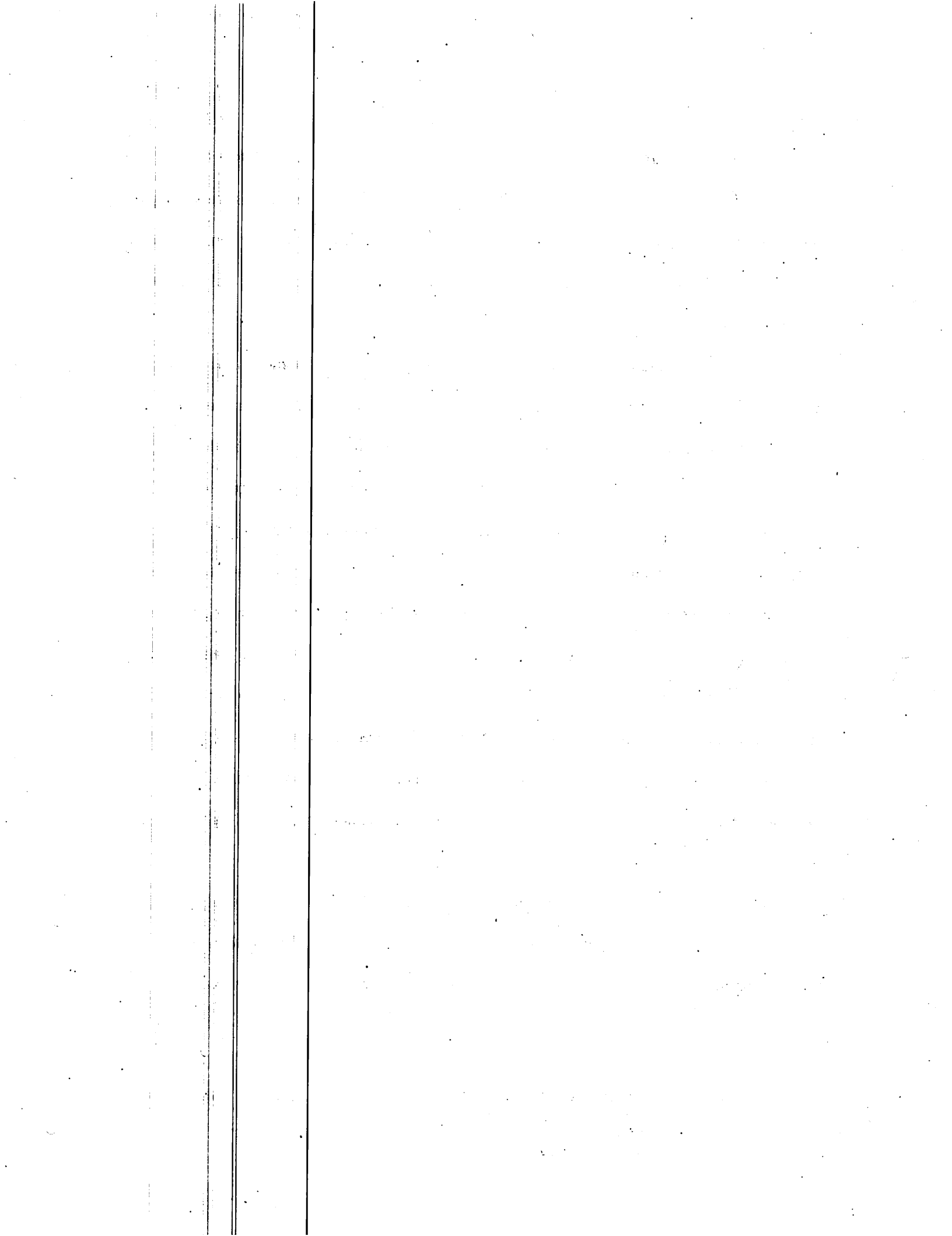
Based on the unrefuted evidence, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Claimant paid the Respondent \$11,000.00 to install a deck – consisting of a check in the amount of \$5,000.00 and \$6,000.00 in funds withdrawn from the Claimant’s and the Claimant’s father’s bank accounts.

According to the Claimant, other than digging a few holes in his backyard, the Respondent did not complete any work outlined in the Contract. The Claimant testified that he called the Respondent many times to learn when the Respondent would begin working on the deck, but the Respondent never returned his calls. The Respondent did respond to many of the Claimant’s texts but, each time, he promised he would start on the deck soon, but he never did so. Ultimately, the Claimant sent the Respondent an email demanding that the Respondent begin building the deck and suggesting that he might take legal action against the Respondent if he failed to honor the Contract. According to the Claimant he never heard from the Respondent again.

The Claimant testified that he wanted to have the deck built for his daughter and he is very disappointed that the Respondent took his money but did no work. The Claimant also testified that he has to pay his father back the \$5,000.00 the Respondent withdrew from his

¹² Md. Code Ann., 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.”).

¹³ Md. Code Ann., Bus. Reg. § 8-401.



father's M&T Bank account. Finally, the Claimant testified that he does not have enough money to pay another contractor to build the deck.

I conclude that the Respondent failed to complete any work on the construction of the deck. Accordingly, the \$11,000.00 the Claimant paid the Respondent constitutes an actual loss.

As the Respondent did not complete any work on the contracted-for home improvements, I conclude that the Respondent abandoned the work on the Claimant's home. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract."¹⁴

The Claimant paid the Respondent \$11,000.00. Thus, the Claimant's actual loss is \$11,000.00.

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.¹⁵ As the Claimant paid the Respondent \$11,000.00, that is the amount of his actual loss and he is entitled to recover that amount from the Fund.

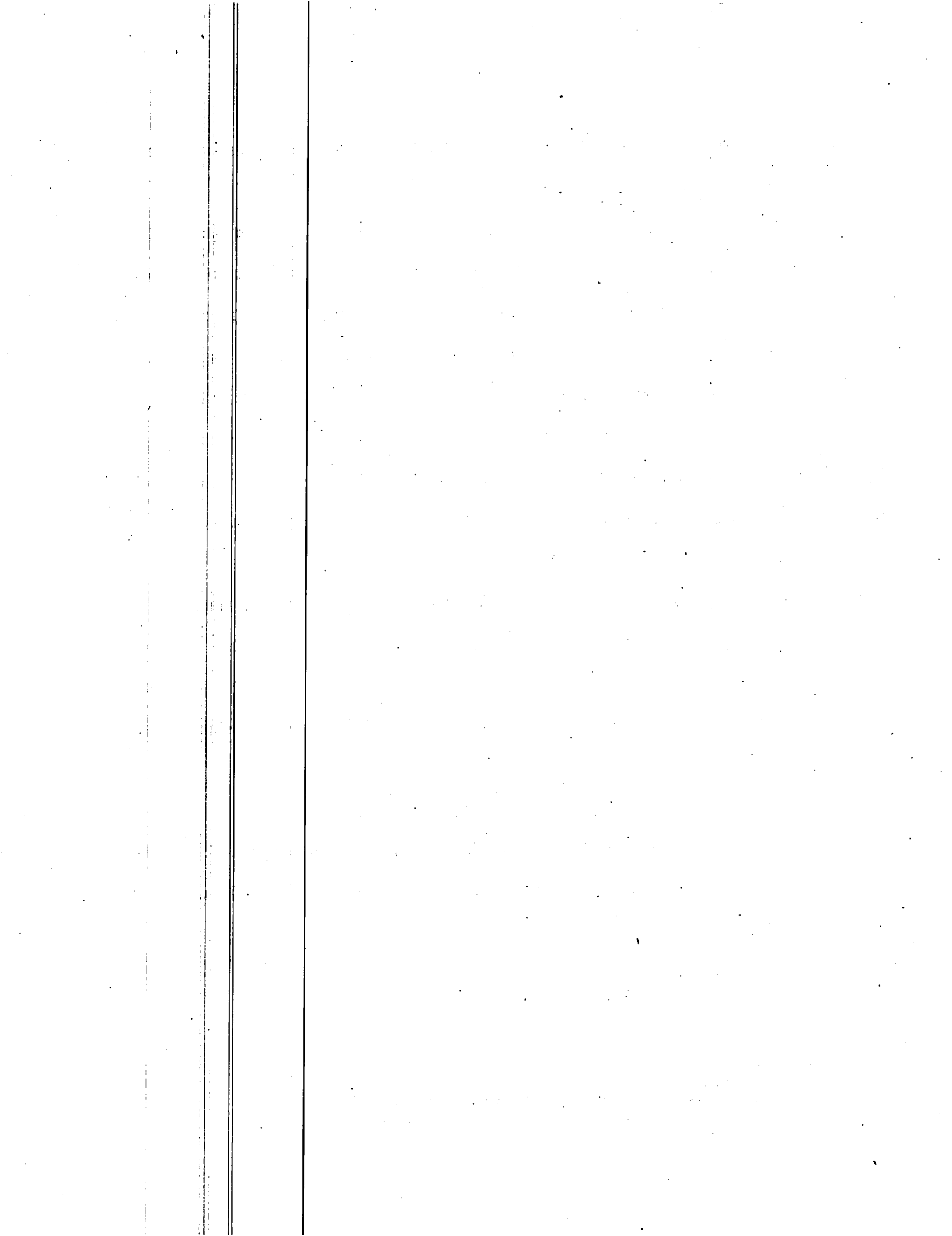
PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of 11,000.00 as a result of the Respondent's acts or omissions.¹⁶ I further conclude that the Claimant is entitled to recover that amount from the Fund.

¹⁴ COMAR 09.08.03.03B(3)(a).

¹⁵ Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

¹⁶ Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).



RECOMMENDED ORDER


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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$11,000.00; 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;¹⁷ and

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

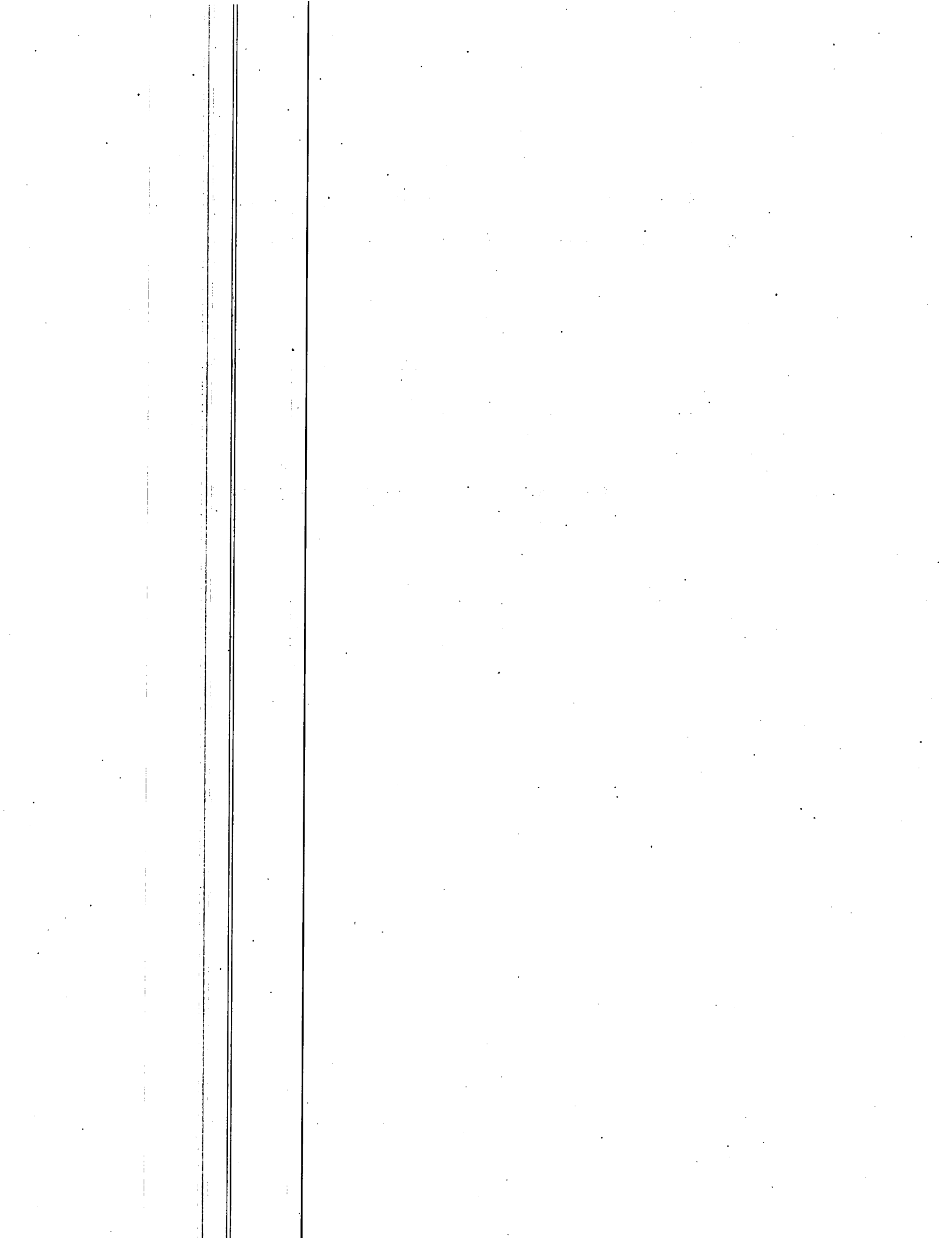
March 18, 2022
Date Decision Issued



Jennifer M. Carter Jones
Administrative Law Judge

JCJ/emh.
#197275

¹⁷ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 13th day of June, 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.

Lauren Lake

Lauren Lake

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

