

IN THE MATTER OF THE CLAIM	* BEFORE KRISTIN E. BLUMER,
OF ROGER ABANGAN,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF JASON BOBBITT,	*
T/A J. SCOTT DESIGNS LLC,	* OAH No.: LABOR-HIC-02-22-16717
RESPONDENT	* MHIC No.: 22 (75) 947

* * * * *

PROPOSED DECISION

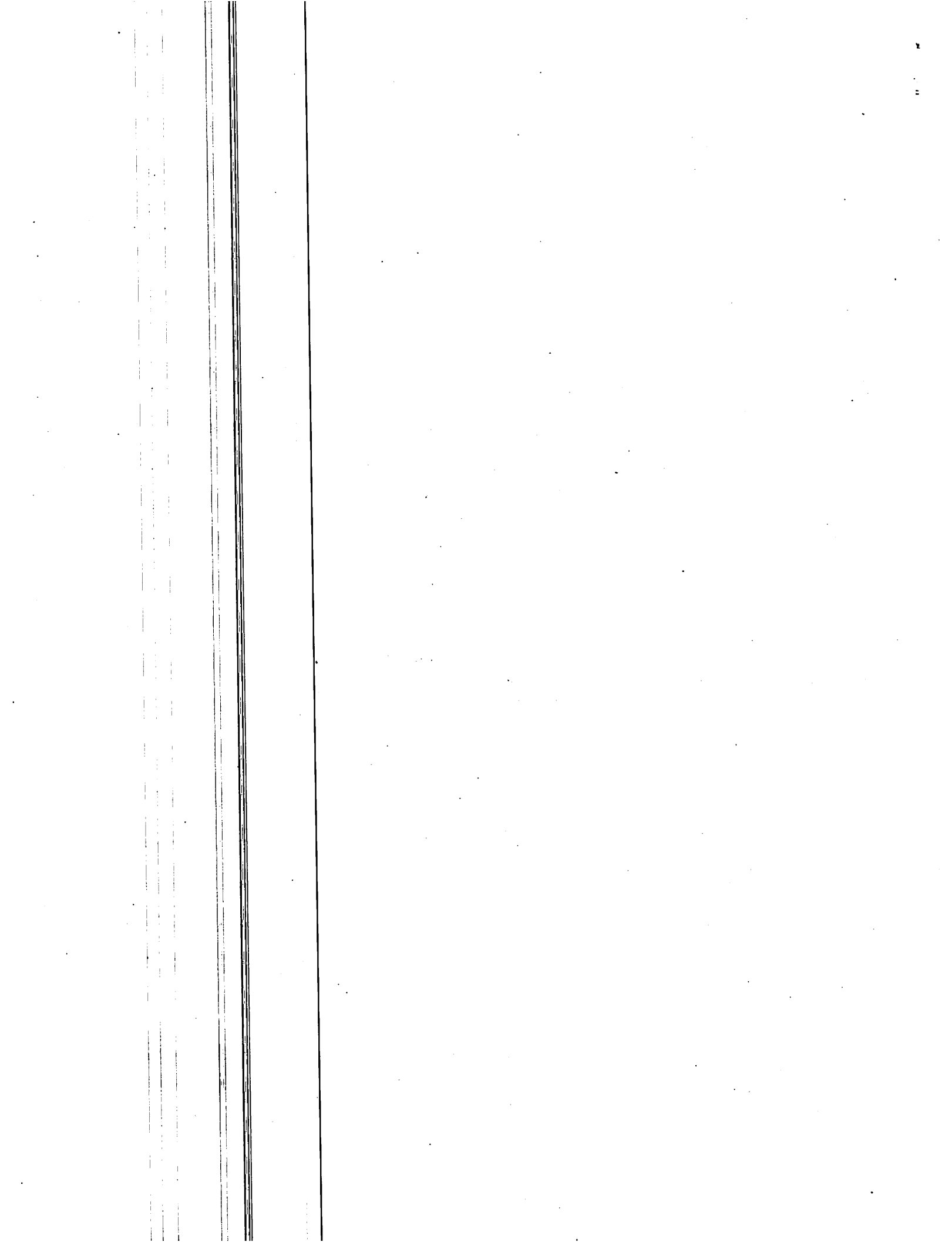
STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 20, 2022, Roger Abangan, on behalf of himself and his spouse, Bernadeth Abangan, (Claimants)¹ 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 \$11,254.00 for actual losses allegedly suffered as a result of a home improvement contract with Jason Bobbitt, trading as J. Scott Designs LLC (Respondent).²

¹ Mr. Abangan is listed as the Claimant on the Claim form. He and his spouse appeared at the hearing and both seek the requested relief.

² Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp. 2022). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.



On July 1, 2022 the MHIC issued a Hearing Order on the Claim. On July 8, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 22, 2022, I held a remote hearing using the Webex videoconferencing platform.³ Hope Sachs, Assistant Attorney General, represented the Fund. The Claimants represented themselves, with Mrs. Abangan taking the primary role. The Respondent failed to appear.

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.⁴ On August 5, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail and certified mail to the Respondent's address on record with the OAH.⁵ The Notice stated that a hearing was scheduled for November 22, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland.⁶ The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

On October 18, 2022, the Claimants filed a request to convert the in-person hearing to a remote hearing because they no longer live in Maryland.⁷ On that same date, I instructed my administrative aide to contact the Assistant Attorney General and the Respondent to ascertain whether they objected to holding the hearing remotely. When contacted by telephone, neither party objected to the Claimants' request. The Respondent provided a valid email address to my administrative aide during their telephone conversation.

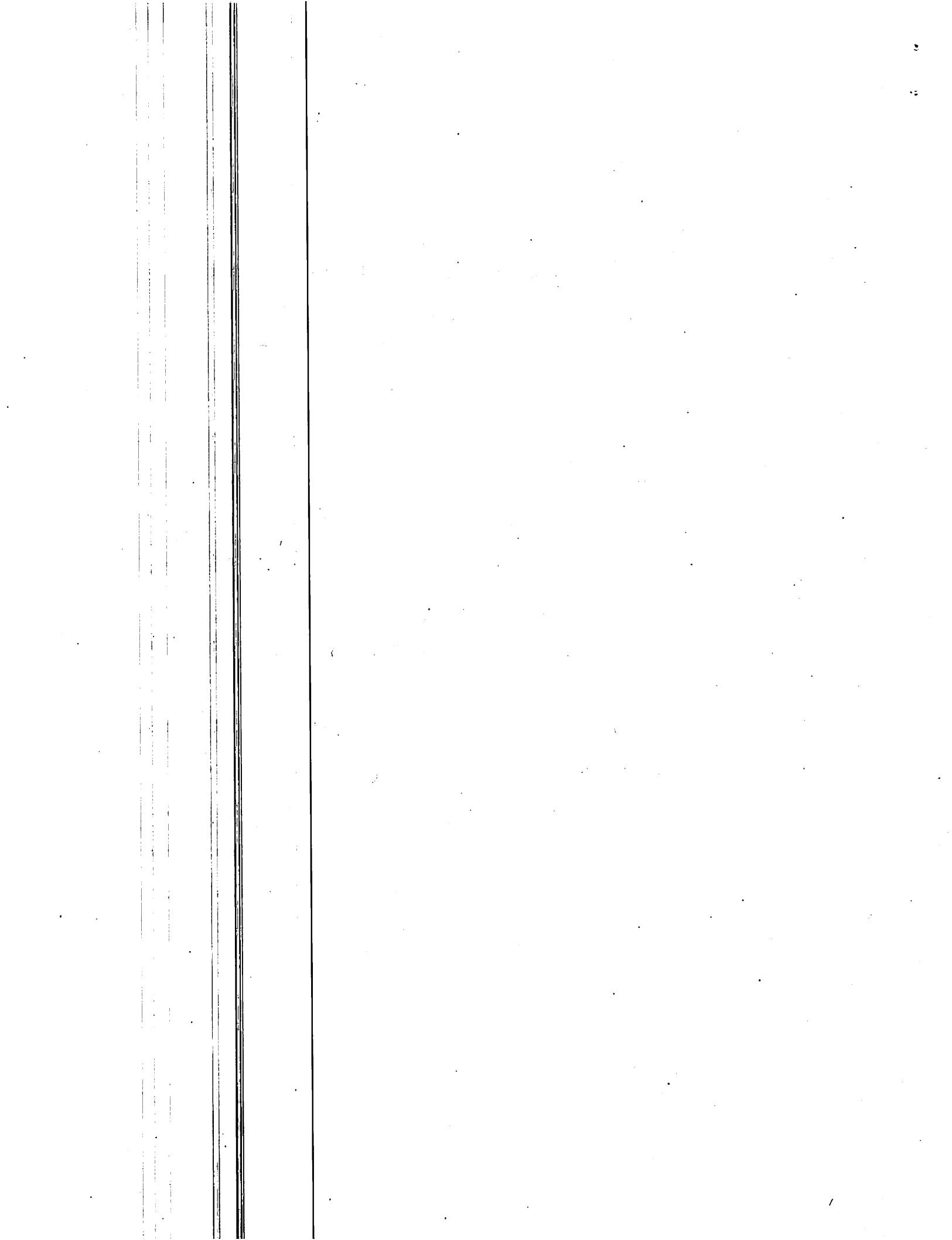
³ Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).

⁴ COMAR 28.02.01.23A.

⁵ COMAR 28.02.01.05C(1).

⁶ COMAR 09.08.03.03A(2).

⁷ COMAR 28.02.01.20B.



On October 20, 2022, I issued a letter ruling to the parties, granting the Claimants' request to convert the hearing to a remote proceeding, stating that the OAH would send a new notice for the hearings, and providing instructions regarding the use of Webex and the advance submission of exhibits.⁸ My administrative aide emailed this letter to the parties.

On October 21, 2022, the OAH issued a second Notice of Hearing (Second Notice) to the Respondent by United States mail and certified mail to the Respondent's address on record with the OAH.⁹ The Second Notice stated that a remote hearing was scheduled for November 22, 2022, at 9:30 a.m., and provided the Webex login information for the hearing.¹⁰ The Second 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 or the Second Notice, sent by regular mail or certified mail, to the OAH, nor were the certified mail cards returned to the OAH. The email that my administrative aide sent to the Respondent on October 20, 2022, was not returned as undeliverable. The Respondent did not notify the OAH of any change of mailing address, email address, and/or telephone number.¹¹ The Respondent made no request for postponement prior to the date of the hearing.¹² I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.¹³

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure.¹⁴

⁸ COMAR 28.02.01.05; COMAR 28.02.01.20B, E.

⁹ COMAR 28.02.01.05C(1).

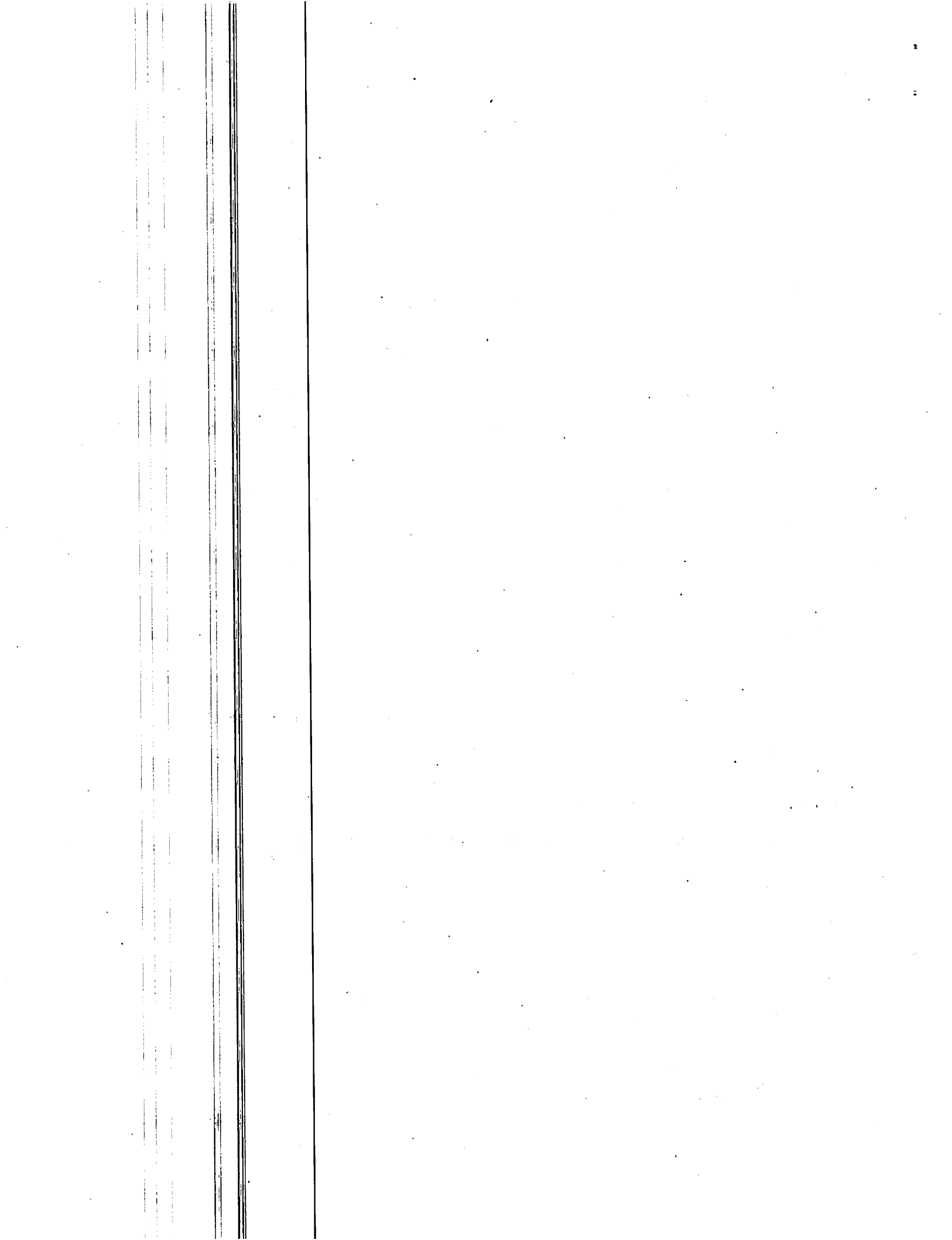
¹⁰ COMAR 09.08.03.03A(2).

¹¹ COMAR 28.02.01.03E.

¹² COMAR 28.02.01.16.

¹³ COMAR 28.02.01.05A, C.

¹⁴ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.



ISSUES

1. Did the Claimants 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

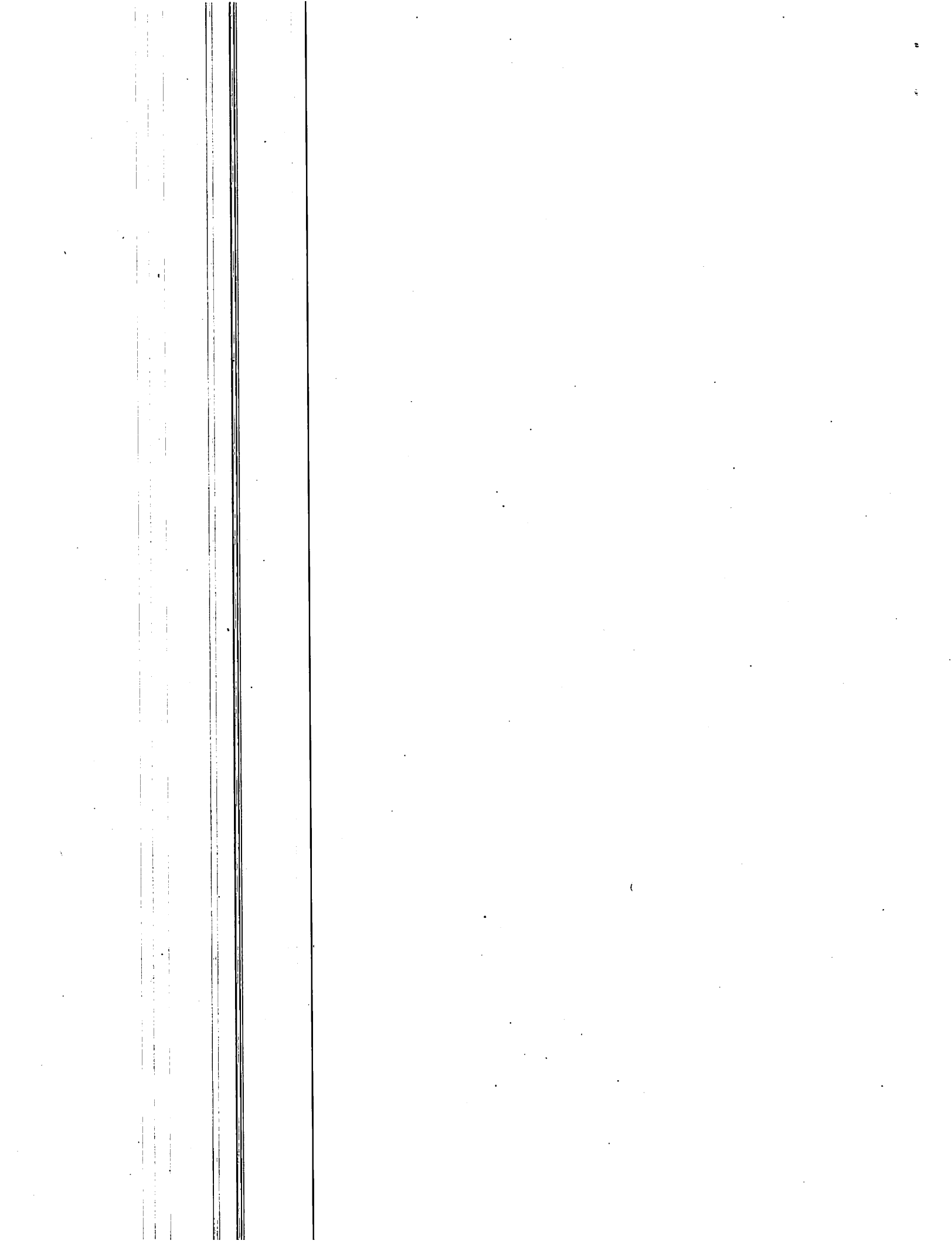
I admitted the following exhibits offered by the Claimants:

- Clmt. Ex. 1: Notice of Cancellation, October 16, 2020
- Clmt. Ex. 2: Contract, October 16, 2020
- Clmt. Ex. 3: Copy of text messages, November 6, 2020
- Clmt. Ex. 4: Copy of text messages, November 7, 2020
- Clmt. Ex. 5: Copy of text messages, November 7, 2020
- Clmt. Ex. 6: Bank Statement, October 22, 2020 to November 18, 2020
- Clmt. Ex. 7: Copy of text messages, December 11, 2020 and March 23, 2021
- Clmt. Ex. 8: Copy of text messages, March 23, 2021
- Clmt. Ex. 9: *not offered*
- Clmt. Ex. 10: Copy of text messages, March and April 2021
- Clmt. Ex. 11: MHIC Home Improvement Claim Form, April 20, 2022, and MHIC Complaint Form, undated

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1: Notice of Remote Hearing, October 21, 2022, and MHIC Hearing Order, July 1, 2022
- Fund Ex. 2: MHIC Licensing Information for the Respondent, printed October 27, 2022
- Fund Ex. 3: MHIC Home Improvement Claim Form, April 20, 2022

The Respondent did not offer any exhibits.



Testimony

Mrs. Abangan testified. The Claimants did not present other witnesses.

The Respondent did not present any witnesses.

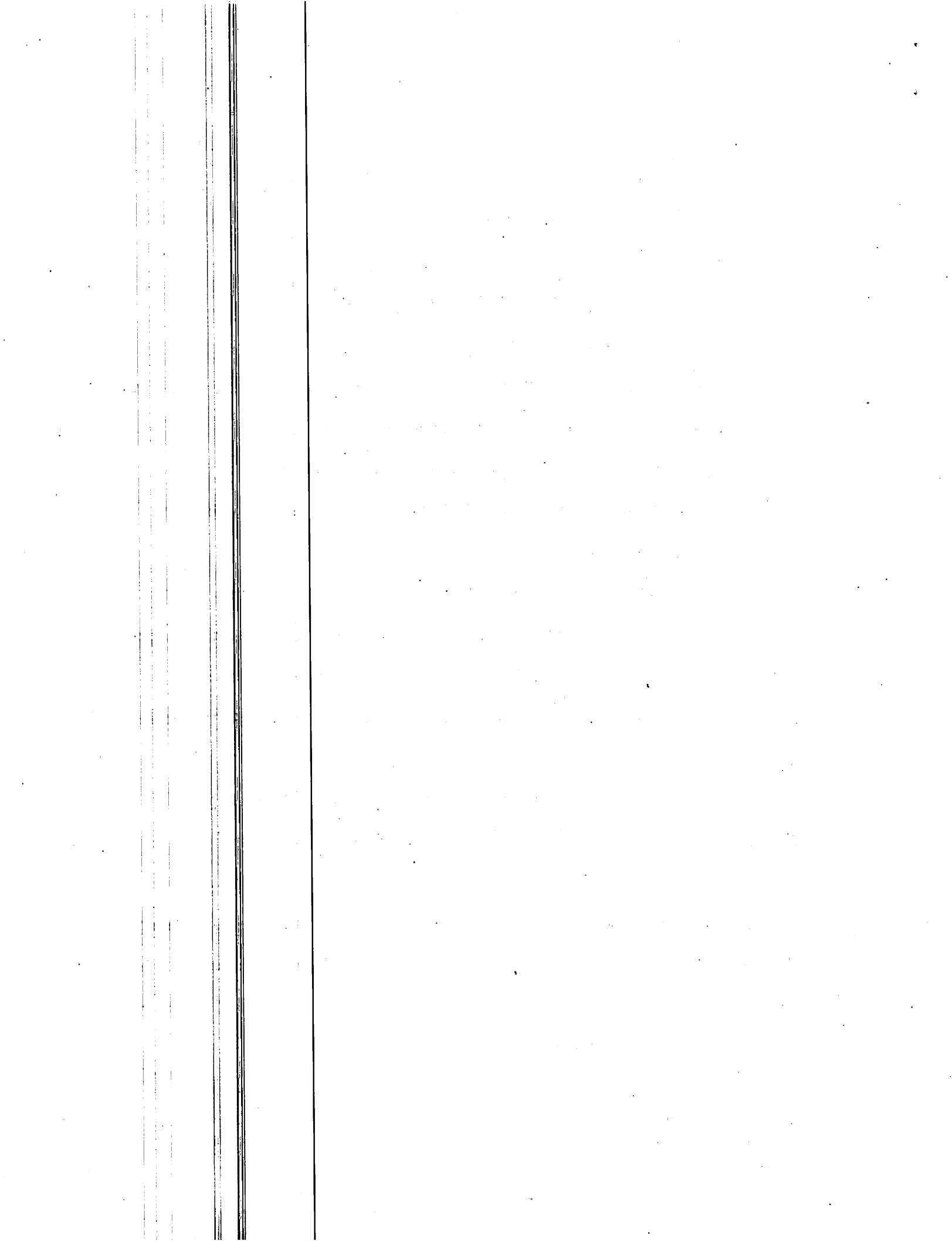
The Fund did not present any witnesses.

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 117575.
2. At all relevant times, the Claimants owned a home located in Owings Mills, Maryland (Residence). The Claimants lived at the Residence until August 2022, when they moved out of state.
3. On October 16, 2020, the Claimants and the Respondent entered a contract to build a garage extension to the Residence (Contract). The garage was to be built on a concrete slab. The work included matching the siding and roofing of the garage to the Residence; installation of a garage door, insulation, and drywall; painting; moving an HVAC¹⁵ unit to the rear of the garage; and electrical work.
4. The Contract specified that the Respondent must apply for a building permit within thirty days after the Contract was signed, unless a variance was needed that would delay obtaining a permit; that work would begin within ninety days of the date that any permit was issued; and that the work would be completed within 120 days of the start of the work, absent delays caused by late delivery of materials, weather conditions, or circumstances outside of the Respondent's control.
5. The original agreed-upon Contract price was \$33,761.00.

¹⁵ Heating, ventilation, and air conditioning.



6. The Contract required a deposit of one-third of the Contract price, in the amount of \$11,254.00; a second payment of \$11,254.00 at the start of the work; and a third payment of \$10,000.00 when the garage was under roof. The Contract did not specify when the remaining balance of \$1,253.00 must be paid.

7. The Contract included a cancellation provision that permitted the Claimants to cancel the Contract without penalty or obligation within five business days from the date of the ratification of the Contract.

8. The Claimants paid the deposit of \$11,254.00 in three installments: a Zelle transfer of \$3,500.00 on November 5, 2020; a Zelle transfer of \$3,500.00 on November 6, 2020; and a check for the balance, on or about November 7, 2020.

9. No work occurred on the project in October, November, or December, 2020.

10. On December 11, 2020, an employee of the Respondent advised the Claimants that a variance would be required before the permit would be issued.

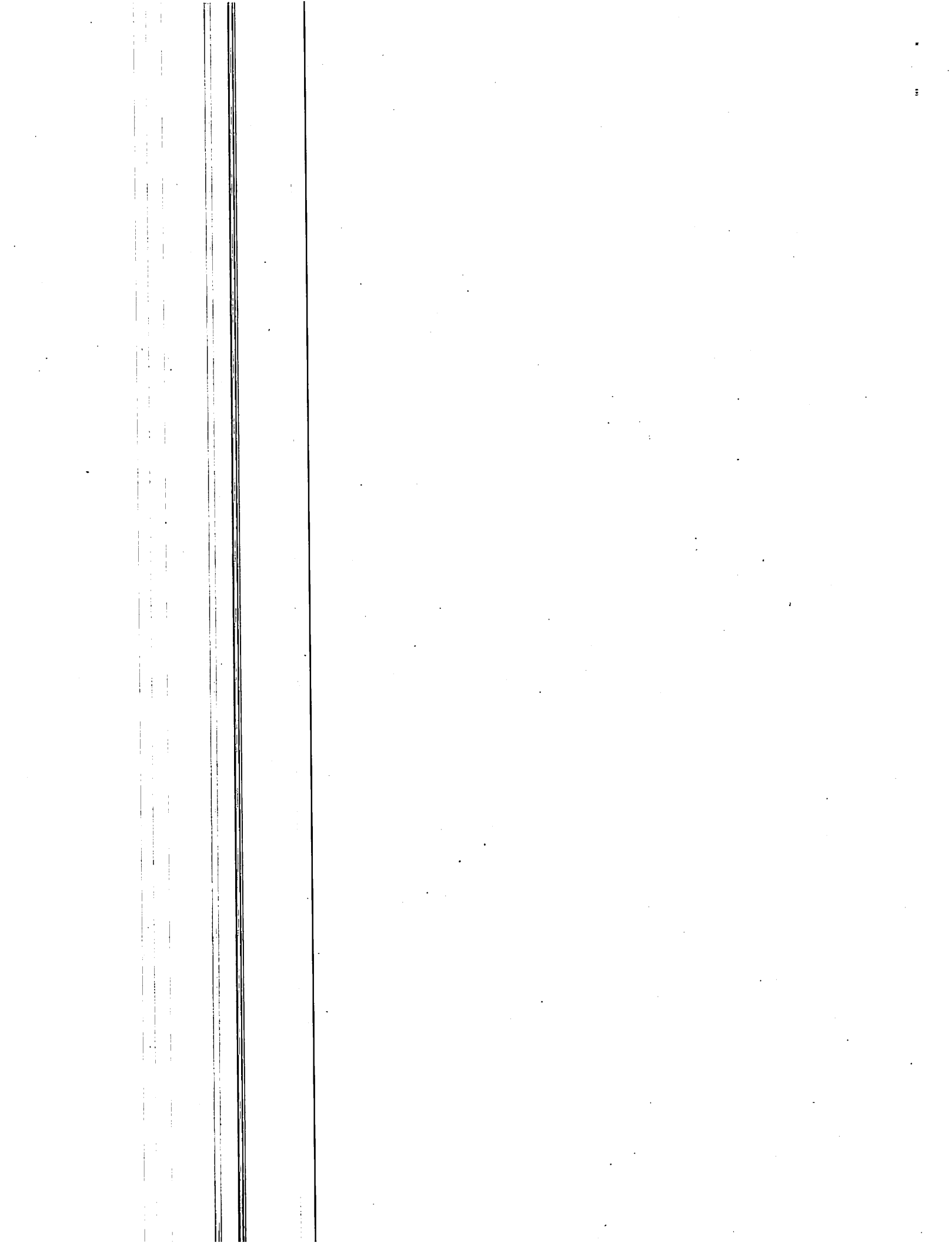
11. On a date not specified in the record, the Claimants paid \$800.00 for the variance application.

12. No work occurred on the project in January, February, or March 2021.

13. March 23, 2021, an employee of the Respondent informed the Claimants that the permit fee had been paid and the permit would soon issue.

14. On March 30, 2021, the Claimants informed the Respondent that they wished to terminate the Contract because they expected to be moving out of state due to Mrs. Abangan's new job.

15. Thereafter, the Respondent advised the Claimants that their deposit would not be refunded due to the intended cancellation.



16. Over the summer of 2021, the Claimants advised the Respondent that they wished to continue with the project since their deposit would not be refunded.

17. On a date not specified in the record, the Claimants learned that Baltimore County issued the permit for the project on March 31, 2021.

18. The Respondent never started the work described in the Contract.

19. The Respondent never refunded the deposit paid by the Claimants.

DISCUSSION

Legal Framework

The Claimants have the burden of proving the validity of the Claim by a preponderance of the evidence.¹⁶ 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.¹⁷

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”¹⁸ “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”¹⁹ For the following reasons, I find that the Claimants have proven eligibility for compensation.

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimants’ recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimants did not recover the alleged losses from any other source.²⁰

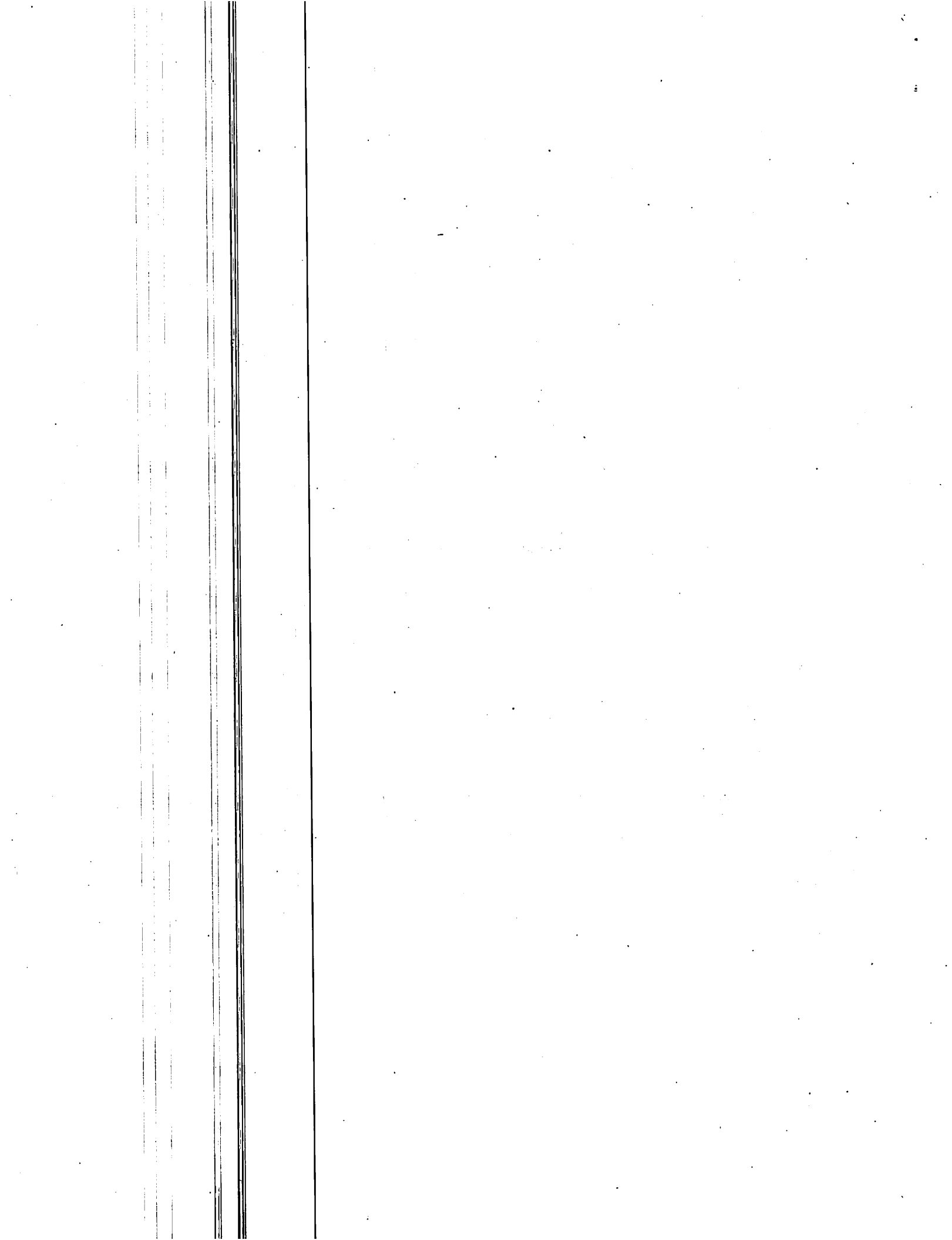
¹⁶ Bus. Reg. § 8-407(e)(1); State Gov’t § 10-217; COMAR 09.08.03.03A(3).

¹⁷ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

¹⁸ Bus. Reg. § 8-405(a) (Supp. 2022); *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.”).

¹⁹ Bus. Reg. § 8-401.

²⁰ Bus. Reg. §§ 8-405(g), 8-408(b)(1).



The Claimants resided in the home that is the subject of the claim at all times relevant to these proceedings and did not own more than three residences.²¹ The parties did not enter into a valid agreement to submit their disputes to arbitration.²² The Claimants are not a relatives; employees, officers, or partners of the Respondent, and are not related to any employee, officer, or partner of the Respondent.²³

Analysis

The Claimants entered into the Contract with the Respondent on October 16, 2020.²⁴ At the outset, the Claimants worked with T.²⁵, an employee of the Respondent, in determining the scope of the work and the approval of the Contract. The Claimants paid the deposit as required under the Contract.²⁶ T. advised the Claimants that the foundation for the garage would be completed by December 2020. The Claimants requested an update on the permit application monthly, but never received a response until December 11, 2020 when another Respondent employee, C., advised the Claimants that a variance would be required before the permit would be issued. The Claimants paid \$800.00 for the variance application. No work was started between December 2020 and March 2021. On March 23, 2021, T. informed the Claimants that the permit had been paid for “the other day” and that he expected to have it “in hand soon.”²⁷

In March 2021, the Claimants became aware that they might be relocating due to a change in employment. On March 30, 2021, the Claimants notified T. that they did not wish to proceed with the work because they would be moving out of state.²⁸

²¹ *Id.* § 8-405(f)(2).

²² *Id.* §§ 8-405(c), 8-408(b)(3).

²³ *Id.* § 8-405(f)(1) (Supp. 2022).

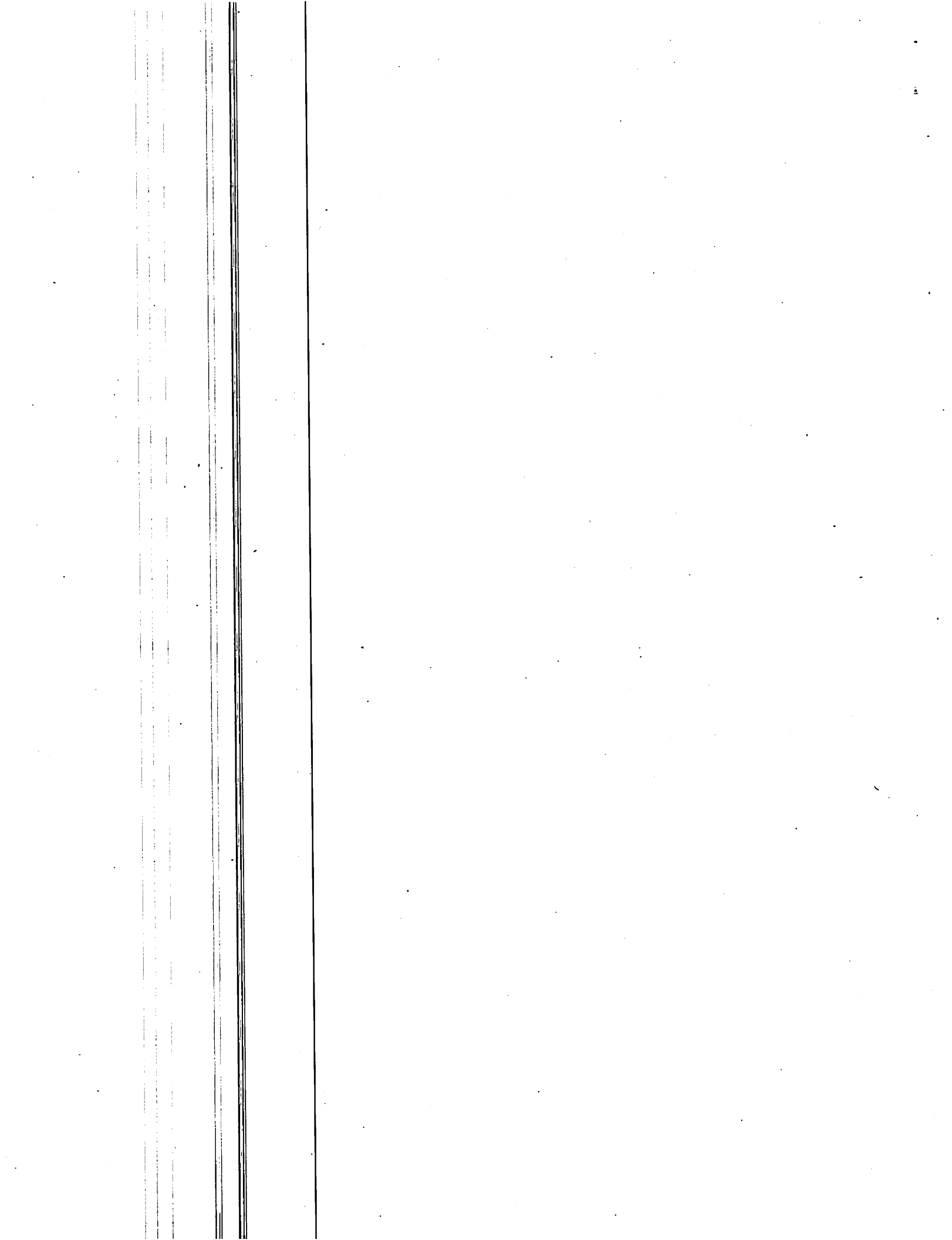
²⁴ Clmt. Ex. 2.

²⁵ All employees will be identified by first initial to maintain privacy.

²⁶ Clmt. Ex. 6.

²⁷ Clmt. Ex. 8.

²⁸ Clmt. Exs. 5, 10.



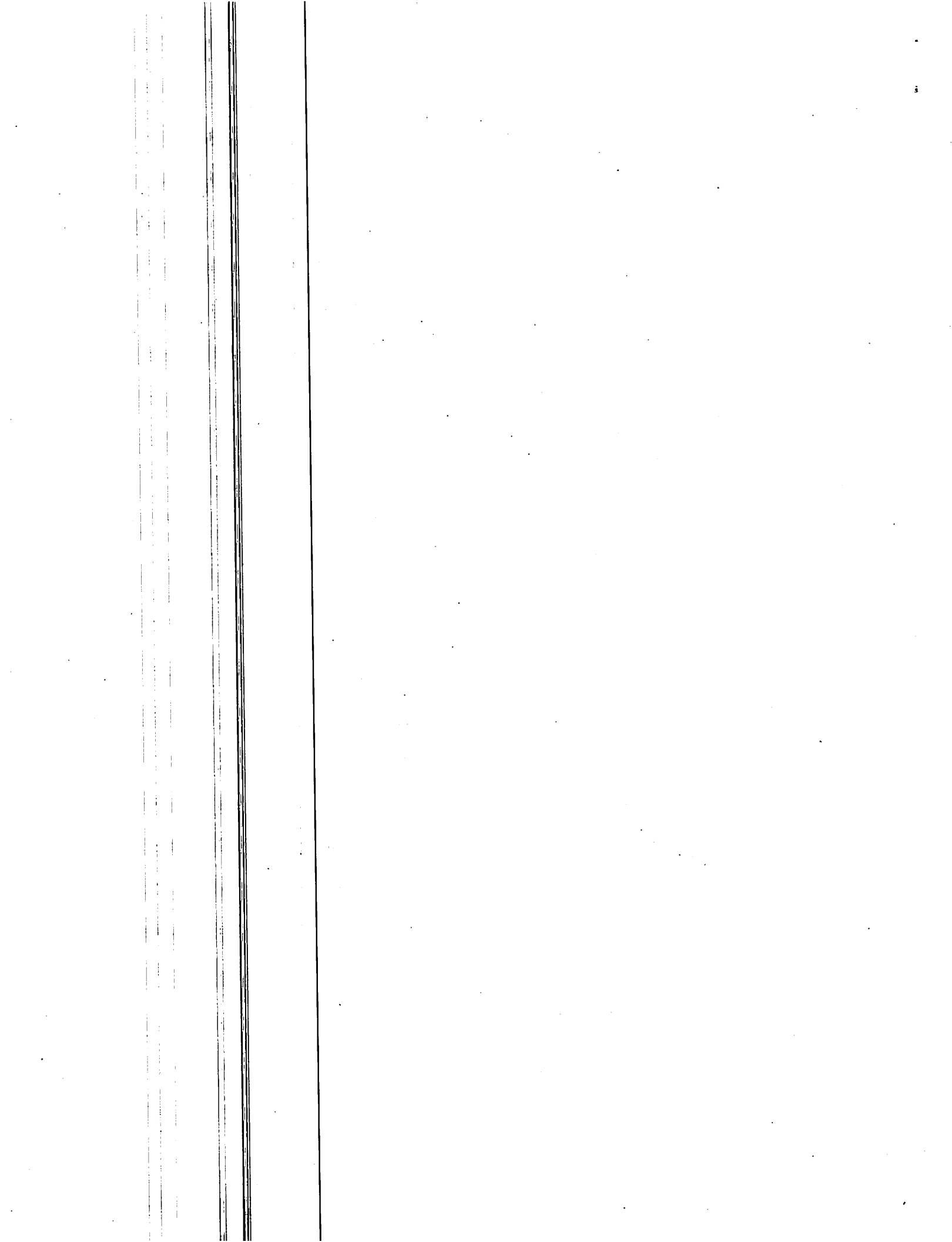
After the Claimants notified the Respondent that they did not intend to go through with the work, the Respondent advised that they would not return the Claimants' deposit, because needed materials had already been purchased and the permit had been obtained. The Respondent never provided the Claimants with any receipts for the materials, despite the Claimants' request to see them. The Respondent told the Claimants that they could back out of the Contract only under the cancellation terms as agreed to by the parties, and that the time for cancelling the Contract without penalty had passed.²⁹

On a date not specified in the record, the Claimants contacted Baltimore County and discovered that the permit had been issued on March 31, 2021; the Respondent never notified them that the permit had been issued. Sometime between May and August, 2021, the Claimants discussed the situation with the Respondent and ultimately decided to go forward with the project since the Respondent advised they would not refund the Claimants' deposit. However, the Respondent never began the work.

In August 2021, T. advised the Claimants that they were working on a big job and that they could not start work at the Residence. When the Claimants asked for a tentative start date for the project, T. replied that he would text them with that information but then stopped responding to the Claimants' communications. On October 13, 2021, the Claimants' spoke with M. in the Respondent's office; M. stated that she would be scheduling the start of the project. However, the start date was never scheduled and the work never occurred.

In December 2021, the Claimants informed M. that they intended to sell the Residence and move out of state. The Claimants again requested a refund of the deposit and M. replied that she expected that the Respondent would give them their money back.

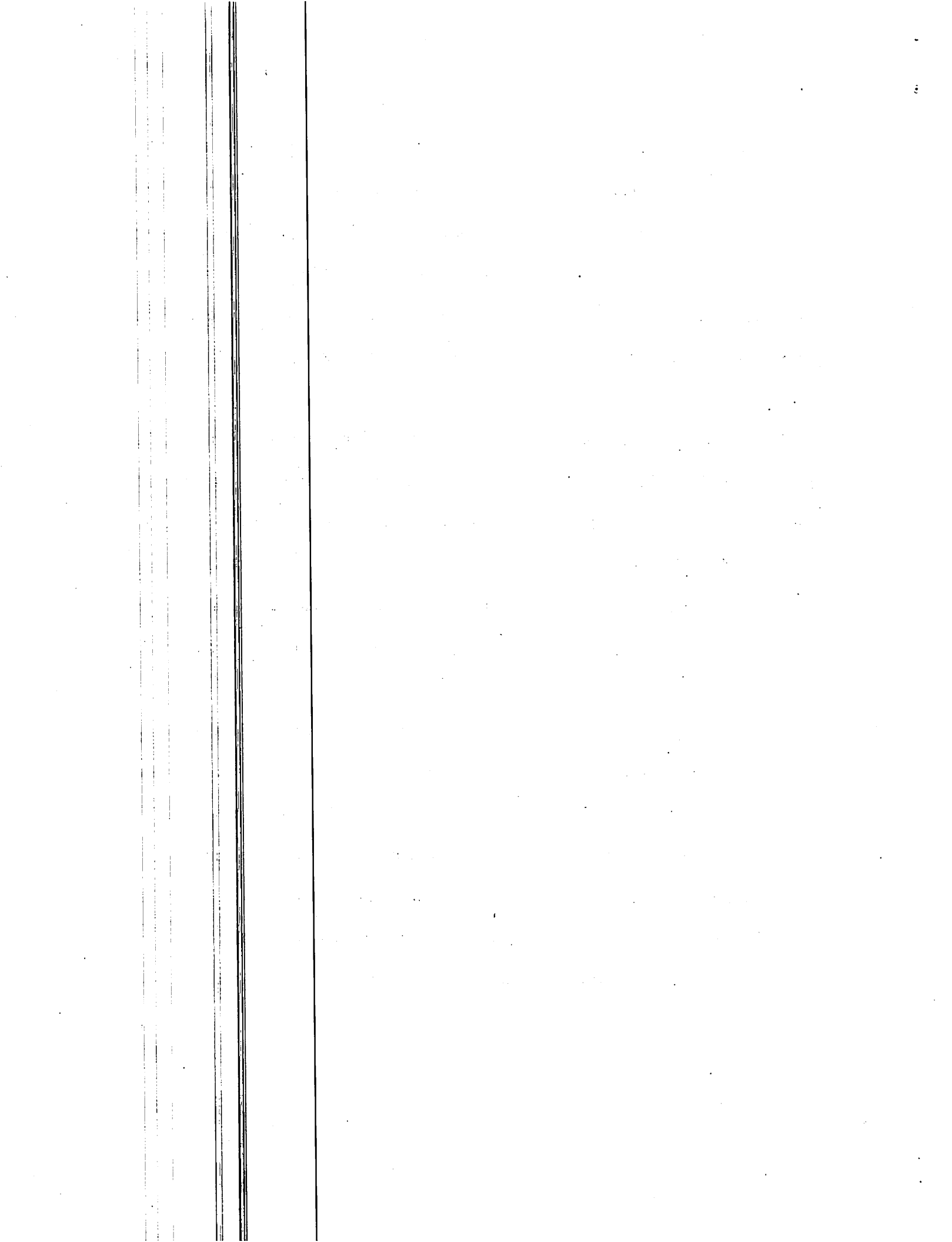
²⁹ Clint. Ex. 1.



The Claimants testified that in January 2022, an attorney acting on behalf of the Respondent sent them a letter, indicating that the Respondent intended to start the project. The Claimants stated that they did not respond because they intended to sell the Residence and they had already contacted MHIC about their options. In March 2022, the Claimants received another letter from the Respondent's attorney, stating that the Respondent wished to start the project, but the price for materials had increased since the Contract was approved. Again, the Claimants did not respond to the letter.

The Claimants argued that work should have begun within ninety days of obtaining the permit on March 31, 2021. They asserted that none of the circumstances justifying a delay of the work occurred. They further argued that the Respondent never told them that the permit had been obtained, and that the Respondent failed to comply with the terms of the Contract with respect to the timing of the work after the permit was issued. The Claimants could not get an answer from the Respondent or his employees about starting the job. No work was done, and no money was returned.

I find that the Respondent failed to start or complete the work contracted for in the time specified in the Contract. The permit was issued on March 31, 2021; ninety days from that date is June 29, 2021. Although the Claimants had tried to cancel the Contract on March 30, 2021, I credit their testimony that they changed their mind and attempted to have the Respondent complete the work sometime in the summer of 2021. The Respondent failed to timely start the work as specified in the Contract and failed to complete the project. I conclude that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements.



I further find that the Claimants did not unreasonably reject good faith efforts by the Respondent to resolve the claim.³⁰ I do not consider the letters sent to the Claimants in January and March 2022 to be good faith efforts to resolve the claim. Furthermore, the Claimants reasonably concluded that the Respondent had abandoned the work by that time.

I thus find that the Claimants are eligible for compensation from the Fund. Having found eligibility for compensation I must determine the amount of the Claimants' actual loss and the amount, if any, that the Claimants are entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.³¹ MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimants' 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."³² The Claimants paid the deposit of \$11,254.00 over three installments and received nothing in return, so I find that to be the Claimants actual loss.

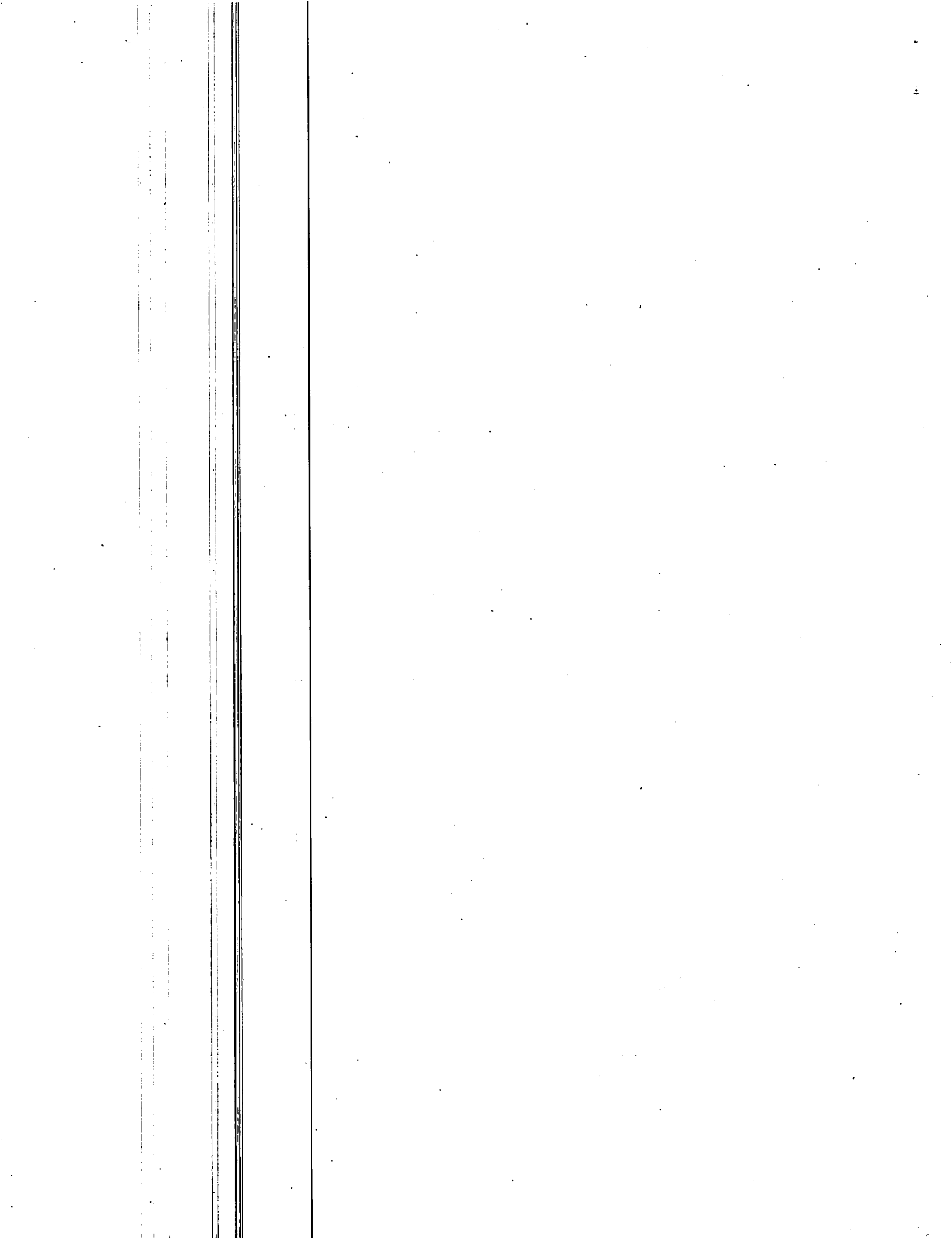
Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.³³

³⁰ Bus. Reg § 8-405(d) (Supp. 2022)

³¹ *Id.*, § 8-405(e)(3) (Supp. 2022); COMAR 09.08.03.03B(1).

³² COMAR 09.08.03.03B(3)(a).

³³ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").



At the hearing, the Claimants requested an additional recovery of the \$800.00 fee for the variance that was obtained prior to the issuance of the permit. I decline to award the Claimants that amount. That payment was not included as part of the Claim and the Contract is silent as to payments for variances and permits. Moreover, the variance, as paid for, was granted. In this case, the Claimants' actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimants are entitled to recover their actual loss of \$11,254.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimants have sustained an actual and compensable loss of \$11,254.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015 & Supp. 2022); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimants are entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(5) (2015); COMAR 09.08.03.03B(3)(c).

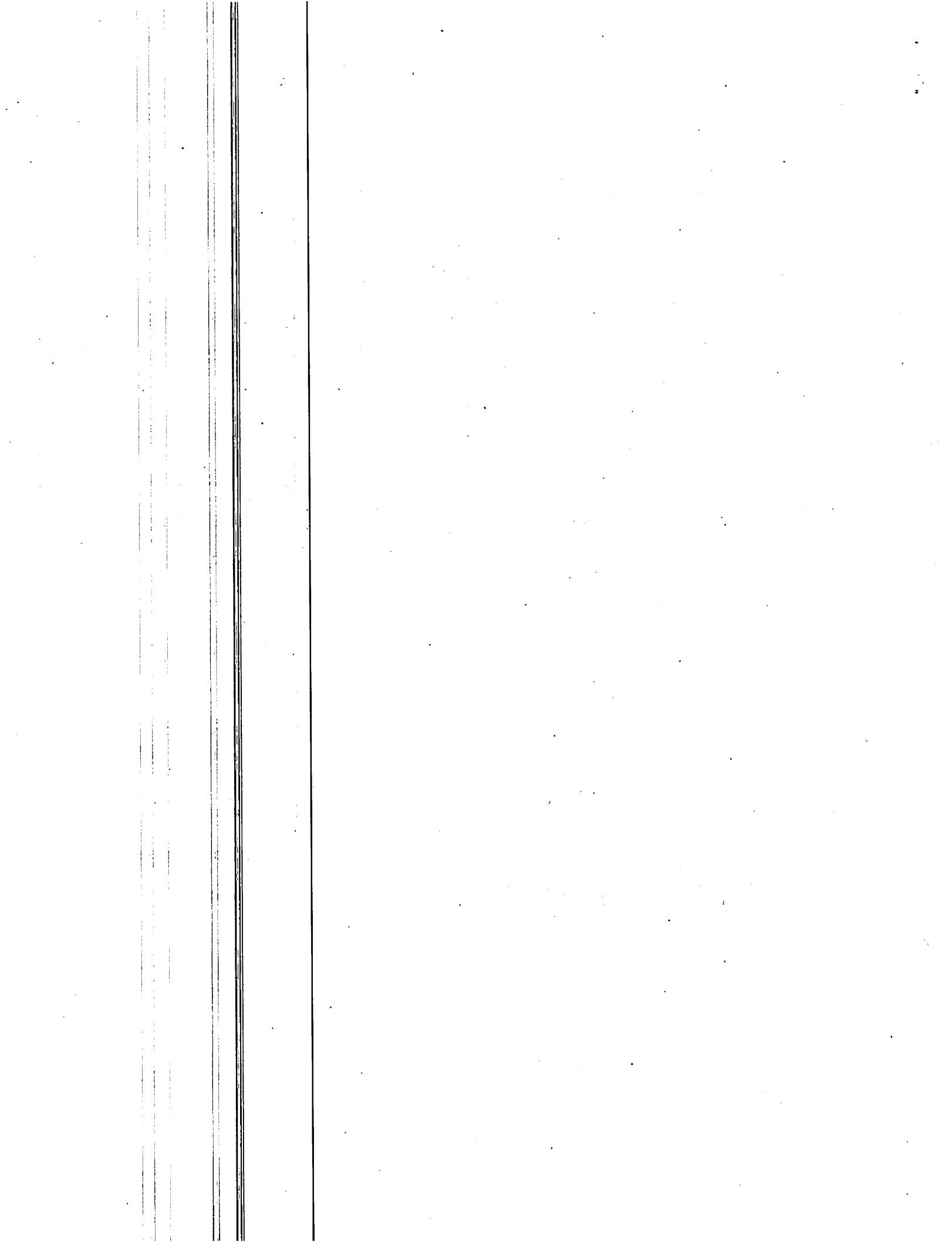
RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimants \$11,254.00; 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;³⁴ and

³⁴ 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

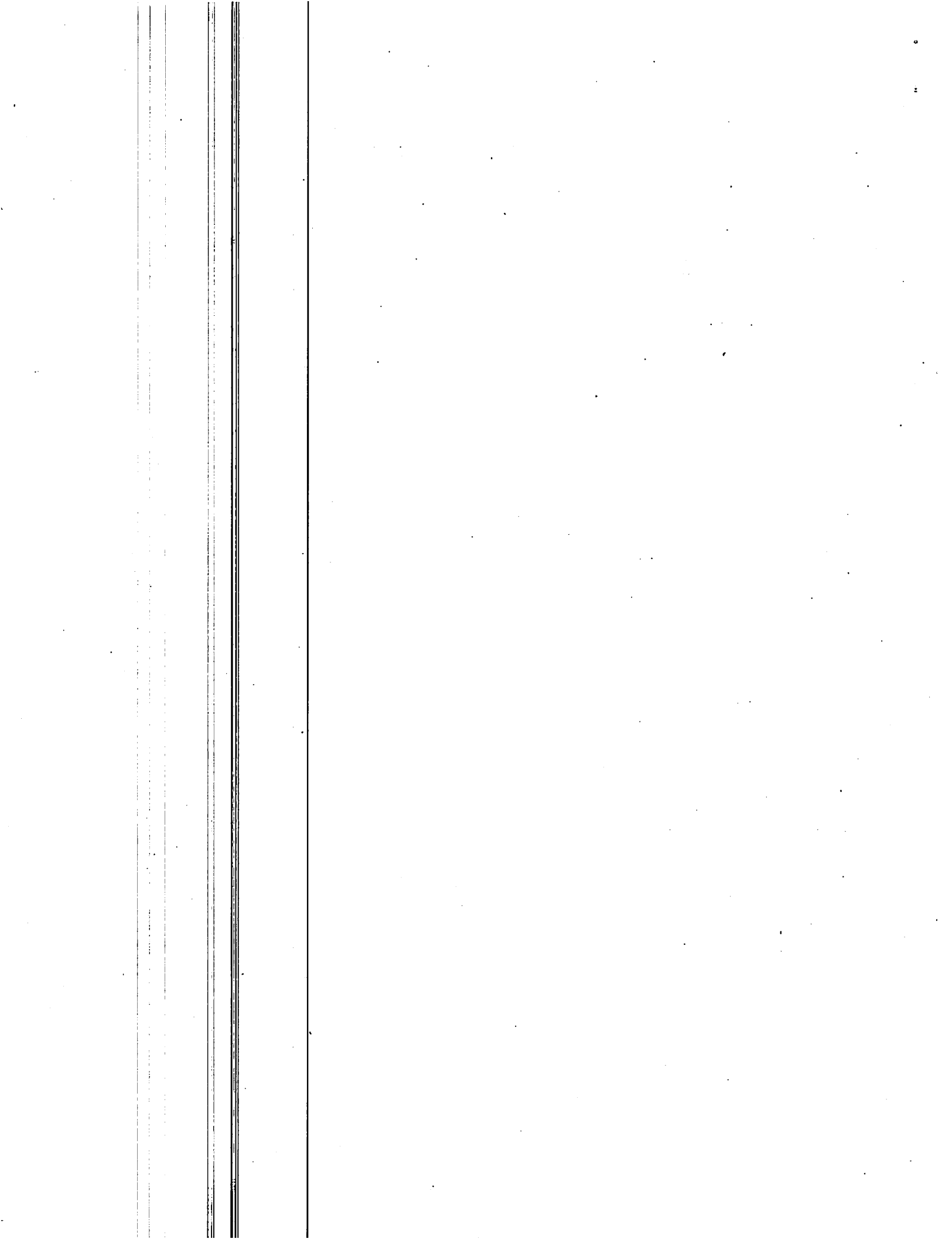
Commission reflect this decision.

February 2, 2023
Date Decision Issued

KEB/sh
#203190

Kristin E. Blumer

Kristin E. Blumer
Administrative Law Judge



PROPOSED ORDER

WHEREFORE, this 24th day of March, 2023, 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.

J Jean White

I Jean White

Panel B

**MARYLAND HOME IMPROVEMENT
COMMISSION**

