

IN THE MATTER OF THE CLAIM	* BEFORE DANIA AYOUBI,
OF ENDEG ABEBE,	* 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 ALCIDES BARBOSA,	*
T/A AB REMODELING &	*
CONSTRUCTION INC.,	* OAH No.: LABOR-HIC-02-22-13894
RESPONDENT	* MHIC No.: 22 (75) 89

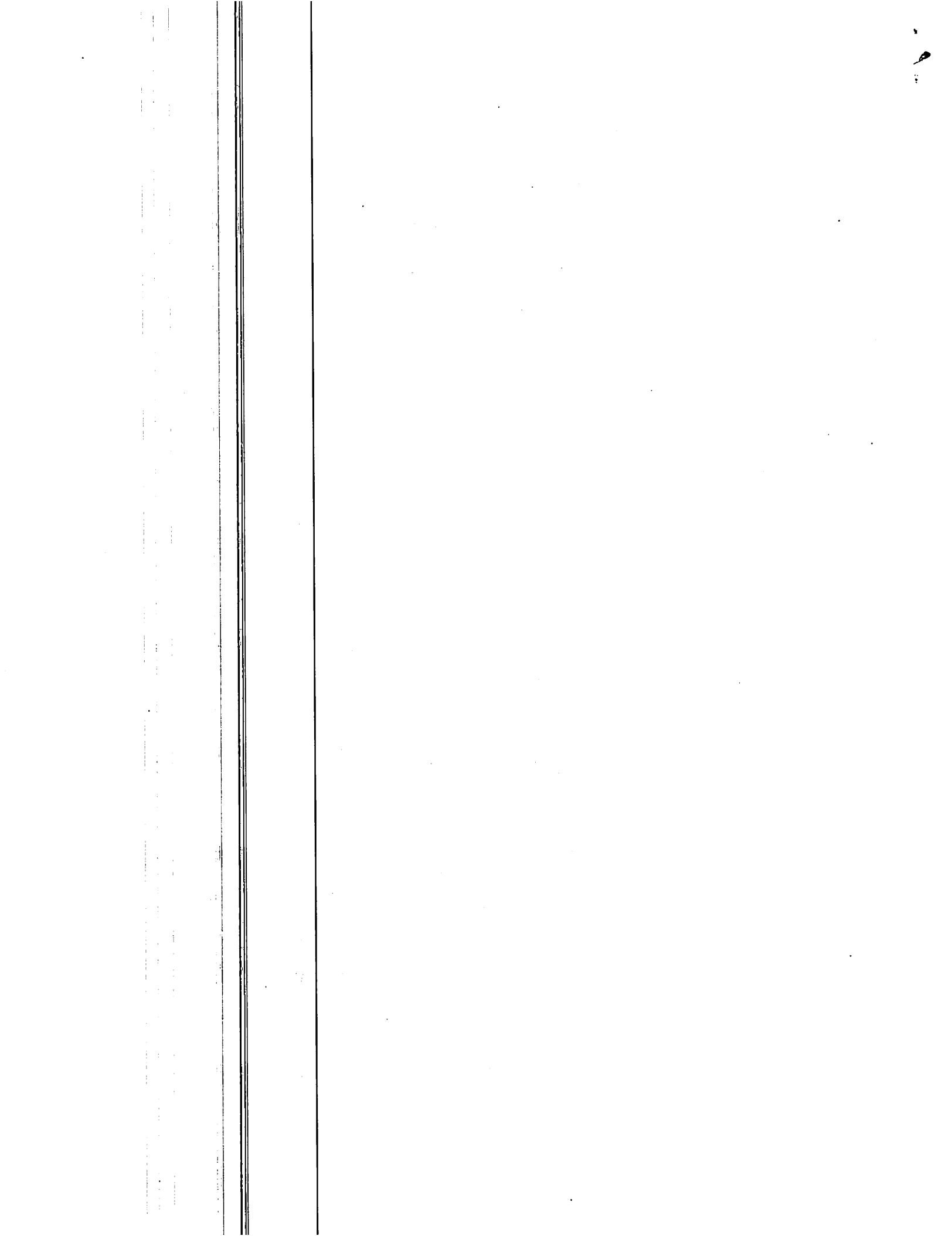
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**PROPOSED DECISION**

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 November 29, 2021, Endeg Abebe (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 \$15,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Alcides Barbosa, trading as AB Remodeling & Construction, Inc. (Respondent). Md. Code Ann., Bus.



Reg. §§ 8-401 to -411 (2015 & Supp. 2022)).<sup>1</sup> On June 8, 2022, the MHIC issued a Hearing Order on the Claim. On June 13, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 12, 2022, I held a hearing at the OAH in Rockville, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, Department, represented the Fund. Michael Grady, Esquire, represented the Claimant, who was present. The Respondent was self-represented.

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; 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:

Clmt. Ex. 1 - Results for Active Licensed Home Improvement, printed April 20, 2021, with attachments:

- Copy of the Respondent's business card
- Copy of the Respondent's Maryland Driver's License

Clmt. Ex. 2 - Copy of Contract, signed April 17, 2021

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



Clmt. Ex. 3 - Copy of check from the Claimant to the Respondent, April 17, 2021, with attachment:

- Transaction History, April 17, 2021, through May 19, 2021

Clmt. Ex. 4 - Email correspondence from the Claimant to counsel, September 13, 2022, with attachment:

- Copy of text message communication between the Claimant and the Respondent, November 11, 2020, through May 26, 2021

I admitted the following exhibit offered by the Respondent:

Resp. Ex. 1 - Copy of check from AB Remodeling & Construction Inc. to Jose F. Romero, April 30, 2021

I admitted the following exhibit offered by the Fund:

Fund Ex. 1 - Letter from David Finneran, MHIC, to Whom It May Concern, September 8, 2022

### Testimony

The Claimant testified and did not present other witnesses.

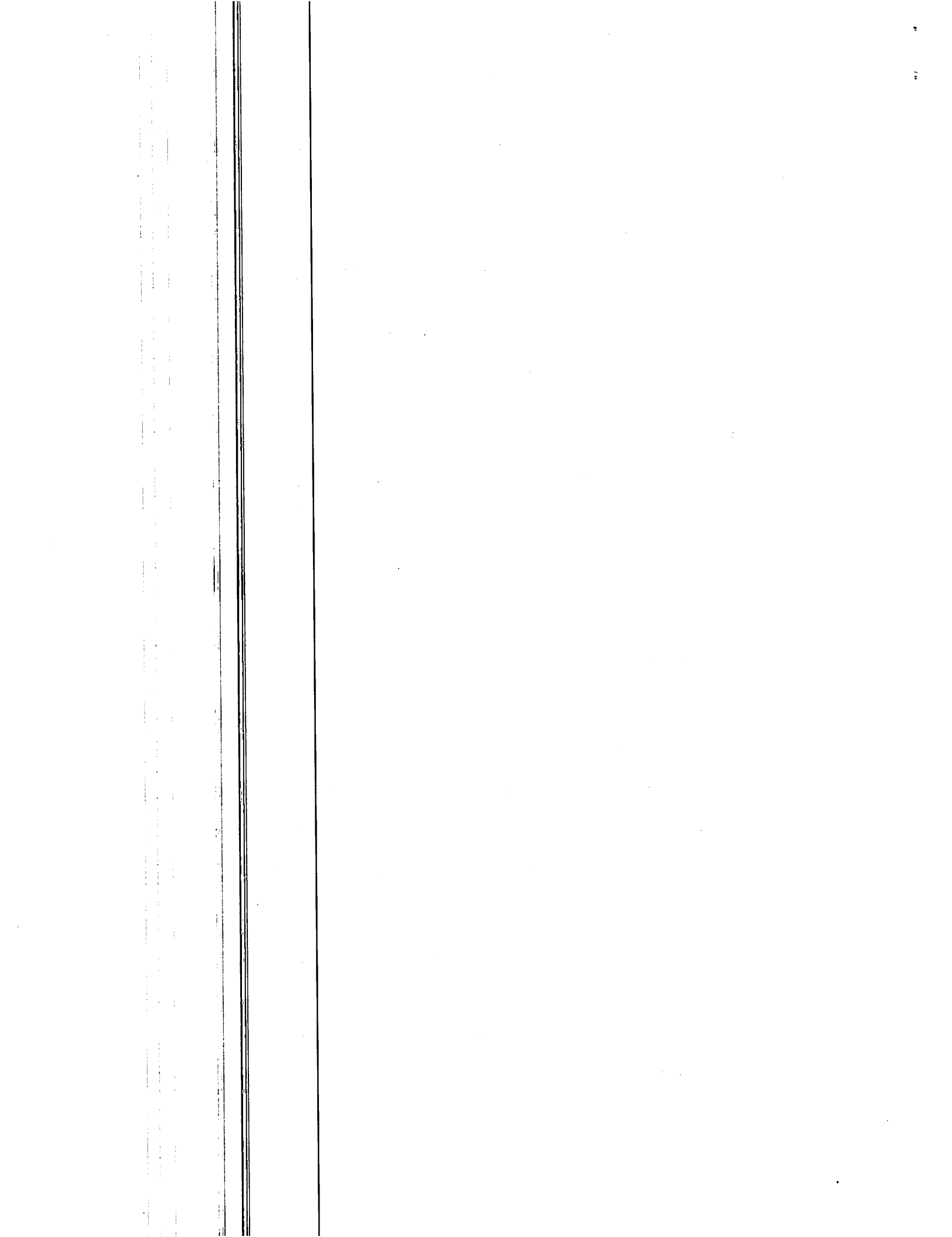
The Respondent testified and did not present other witnesses.

The Fund did not present 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 numbers 01-82905 and 05-122547.
2. On April 17, 2021, the Claimant and the Respondent entered into a contract for the Respondent to construct a two-story back addition at the Claimant's home (Contract).
3. The original agreed-upon Contract price was \$98,453.00, including labor, material, and permits.
4. The Contract stated that work would begin on April 22, 2021 and would be completed within ninety days by July 22, 2021.

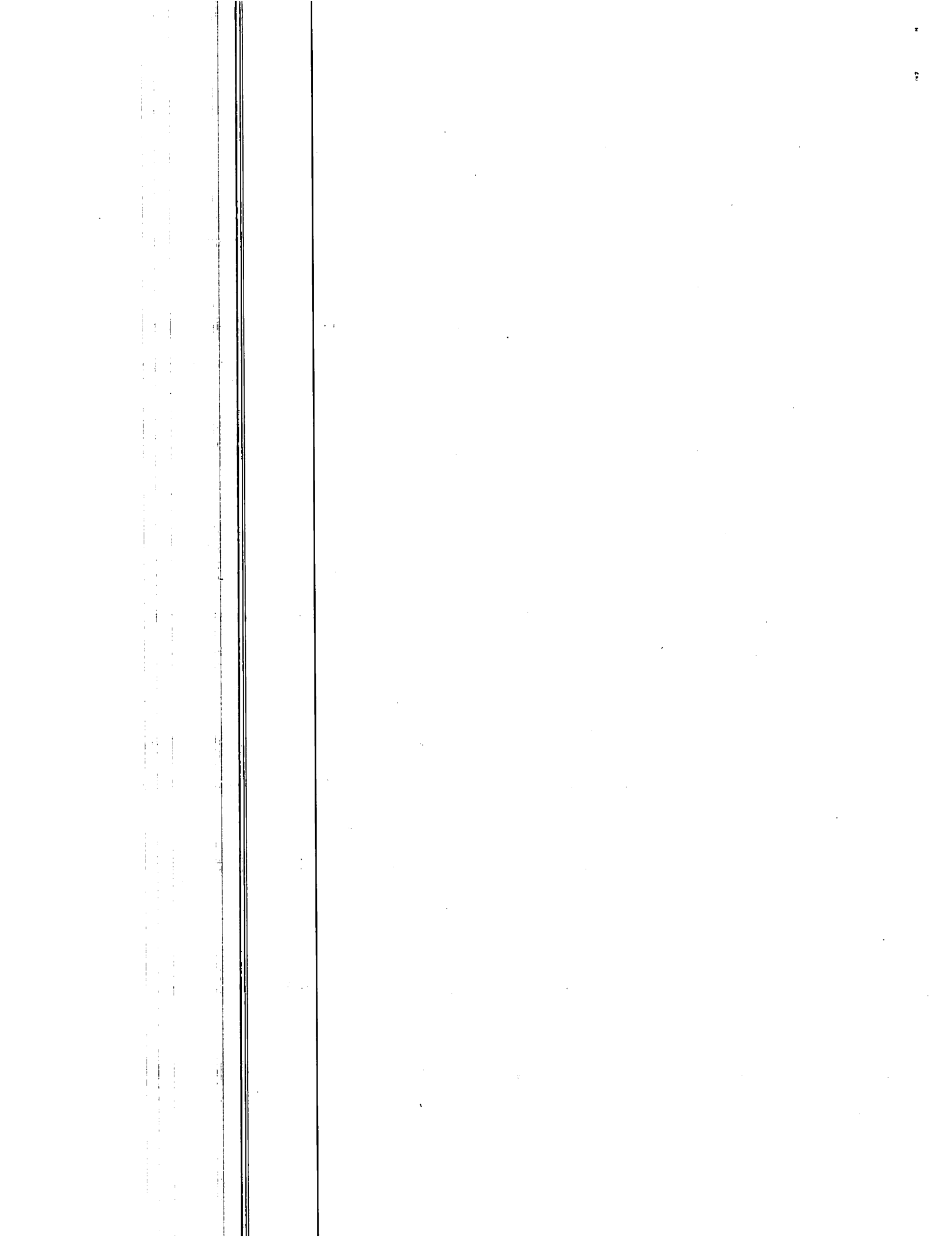


5. On April 17, 2021, the Claimant paid the Respondent \$15,000.00 as an initial deposit for the work to be performed.
6. On April 26, 2021, the Claimant advised the Respondent via text message that he could begin work at his home.
7. On April 30, 2021, the Respondent paid Jose F. Romero \$3,000.00 as a deposit for plumbing work that Mr. Romero was to perform at the Claimant's home. Mr. Romero never performed the plumbing work.
8. On May 10, 2021, the Respondent had still not begun work on the Claimant's home. The Claimant inquired via text message whether the Respondent was coming. The Respondent did not reply.
9. On May 17, 2021, the Claimant inquired via text message whether the Respondent would begin construction. Receiving no response, the Claimant then asked that the Respondent return the \$15,000.00 deposit.
10. On May 19, 2021, the Respondent replied via text message that he could no longer perform the work at the Contract price and would refund the deposit. And on May 21, 2021, the Respondent reassured the Claimant via text message that he would return the deposit.
11. The Respondent never began work pursuant to the Contract.
12. The Respondent never returned the deposit of \$15,000.00 to the Claimant.

## DISCUSSION

### *Burden of Proof and the Statutory Framework*

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); State Gov't § 10-217; 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





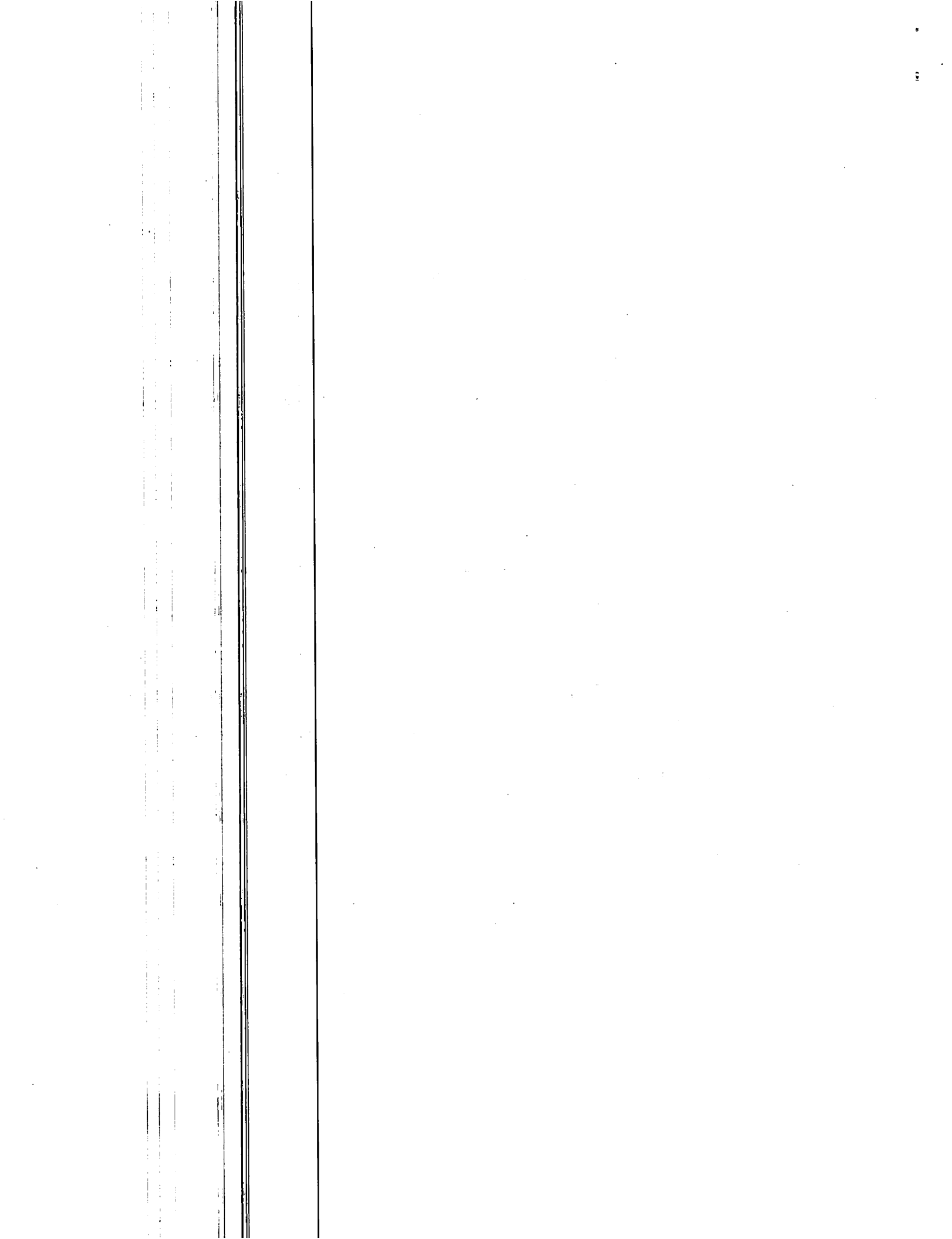
not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

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) (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.”). “[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 Parties’ Positions***

The Claimant argued that the Respondent performed an incomplete home improvement by entering into the Contract but failing to begin or perform the work. The Claimant argued that the Respondent abandoned the Contract and that he is entitled to recover the \$15,000.00 deposit paid to the Respondent. The Respondent did not dispute the Claimant’s position and conceded that the Claimant is entitled to recover the deposit. The Fund agreed that the Claimant is eligible to recover the deposit paid to the Respondent in the amount of \$15,000.00.

For the reasons stated below, I conclude that the Claimant met his burden to demonstrate that the Respondent performed an incomplete home improvement and that he is therefore eligible for compensation from the Fund. Further, I recommend an award in the amount of the Claimant’s actual loss as explained below.



## *Analysis*

### *No Statutory Bars to Recovery*

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,<sup>2</sup> and the Claimant did not recover the alleged losses from any other source. Bus. Reg §§ 8-405(g), 8-408(b)(1) (2015 & Supp. 2022). The Claimant resides in the home that is the subject of the claim and does not own more than three dwellings. *Id.* § 8-405(f)(2) (Supp. 2022). The parties did not enter into a valid agreement to submit their disputes to arbitration. *Id.* §§ 8-405(c), 8-408(b)(3) (2015 & Supp. 2022). 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) (Supp. 2022).

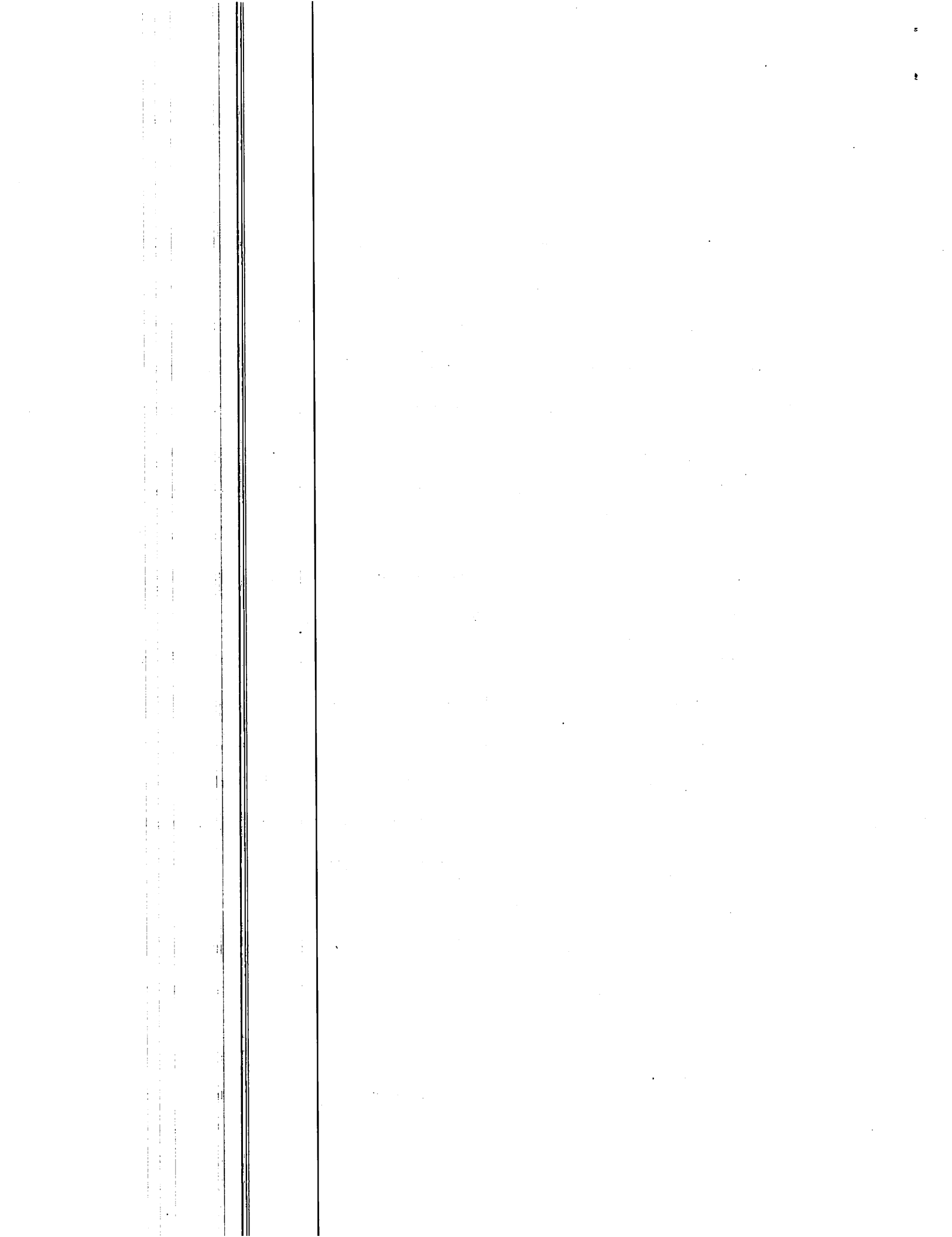
### *The Respondent Performed Incomplete Home Improvements*

In this case, the Respondent performed incomplete home improvements when he failed to begin or perform any work under the Contract. The undisputed evidence shows that the Claimant and Respondent entered into a Contract. The Claimant paid the Respondent \$15,000.00 as an initial deposit at Contract ratification on April 17, 2021. The work was to begin on April 22, 2021. However, by May 17, 2021, the Respondent had not begun the work, despite having paid a plumbing subcontractor \$3,000.00 for work to be done at the Claimant's home. Ultimately, the Respondent abandoned the Contract.

The Claimant rightfully demanded a refund of the deposit and hoping to resolve the claim, the Respondent made promises to return the deposit. However, he was ultimately unable

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<sup>2</sup> Though the Claimant initially filed a court claim related to this matter, he later withdrew the case to pursue this claim through the MHIC.



to do so. Therefore, no good faith efforts to resolve the claim were made by the Respondent. *Id.* § 8-405(d) (Supp. 2022).

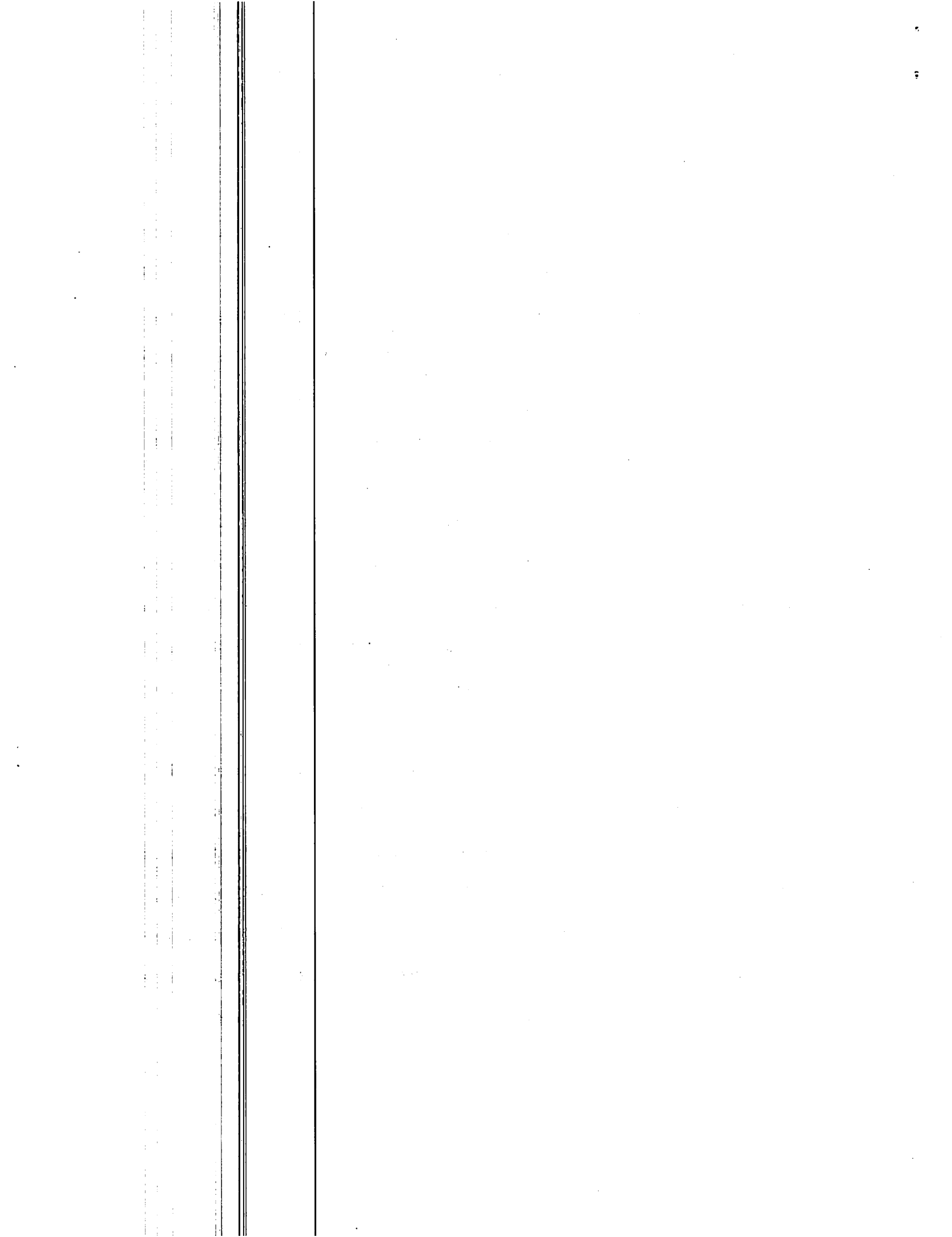
At the hearing, the Respondent sincerely apologized for what had occurred and explained that he had some recent health troubles. The Respondent explained that the delay in beginning the work was due to a subcontractor that was delayed, as well as a delay in getting quotes for materials from Home Depot. Ultimately, the Respondent found the Contract price too low for the work to be performed and agreed to refund the deposit but was later unable to do so.

For these reasons, I find that the Claimant is eligible for compensation from the Fund.

*Amount of Actual Loss and Recovery*

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) (Supp. 2022); 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.

The Respondent abandoned the Contract without doing any work. 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." COMAR 09.08.03.03B(3)(a). In this case, the Claimant paid the Respondent \$15,000.00 as an initial deposit. Thereafter, the Respondent abandoned the Contract without doing any work. Therefore, the Claimant's actual loss is \$15,000.00, which is the amount that the Claimant paid the Respondent under the Contract.



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.<sup>3</sup> Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$15,000.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$15,000.00 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)(a). I further conclude that the Claimant is entitled to recover \$15,000.00 from the Fund.

### **RECOMMENDED ORDER**

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

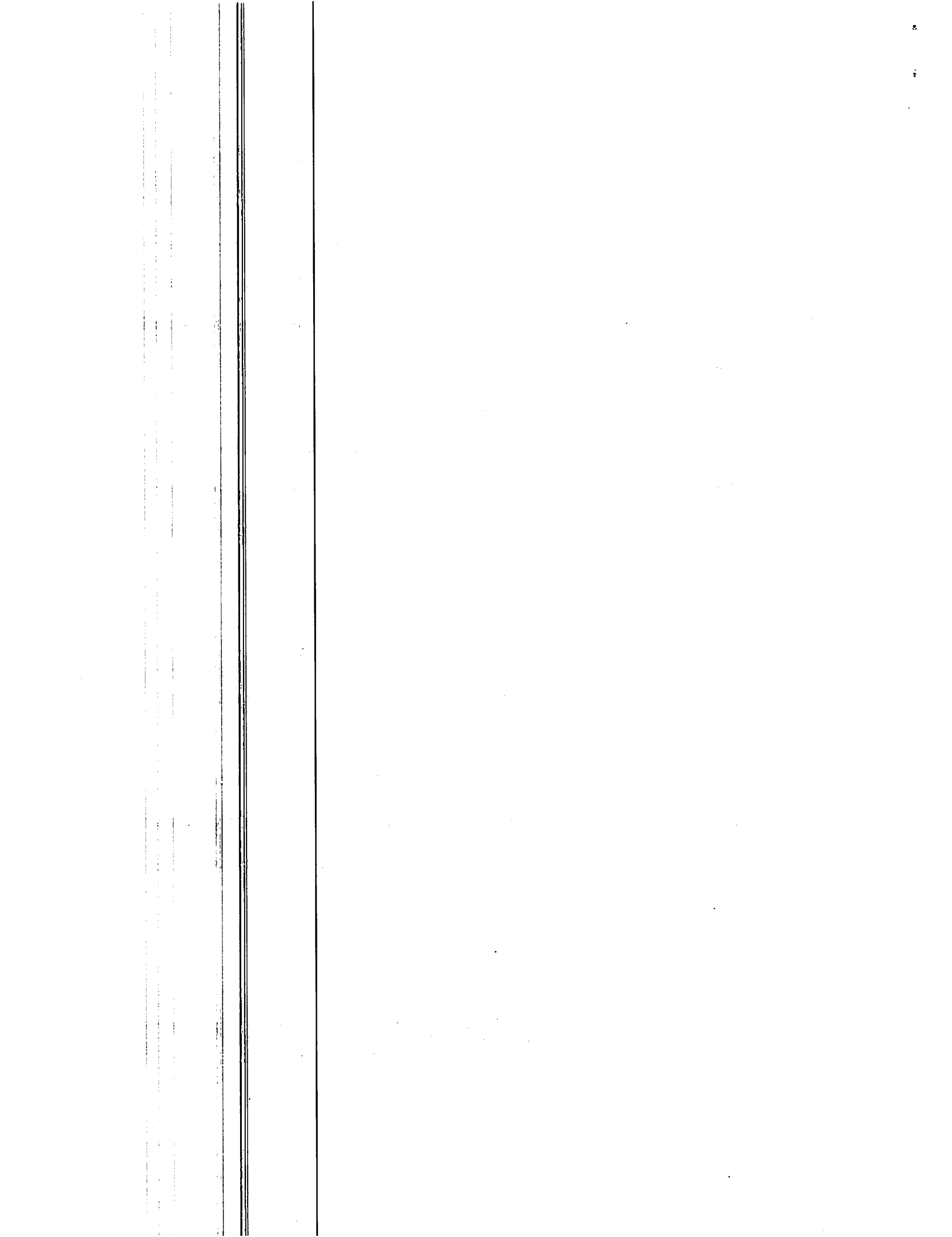
**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$15,000.00; and

**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;<sup>4</sup> and

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<sup>3</sup> 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").

<sup>4</sup> *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.

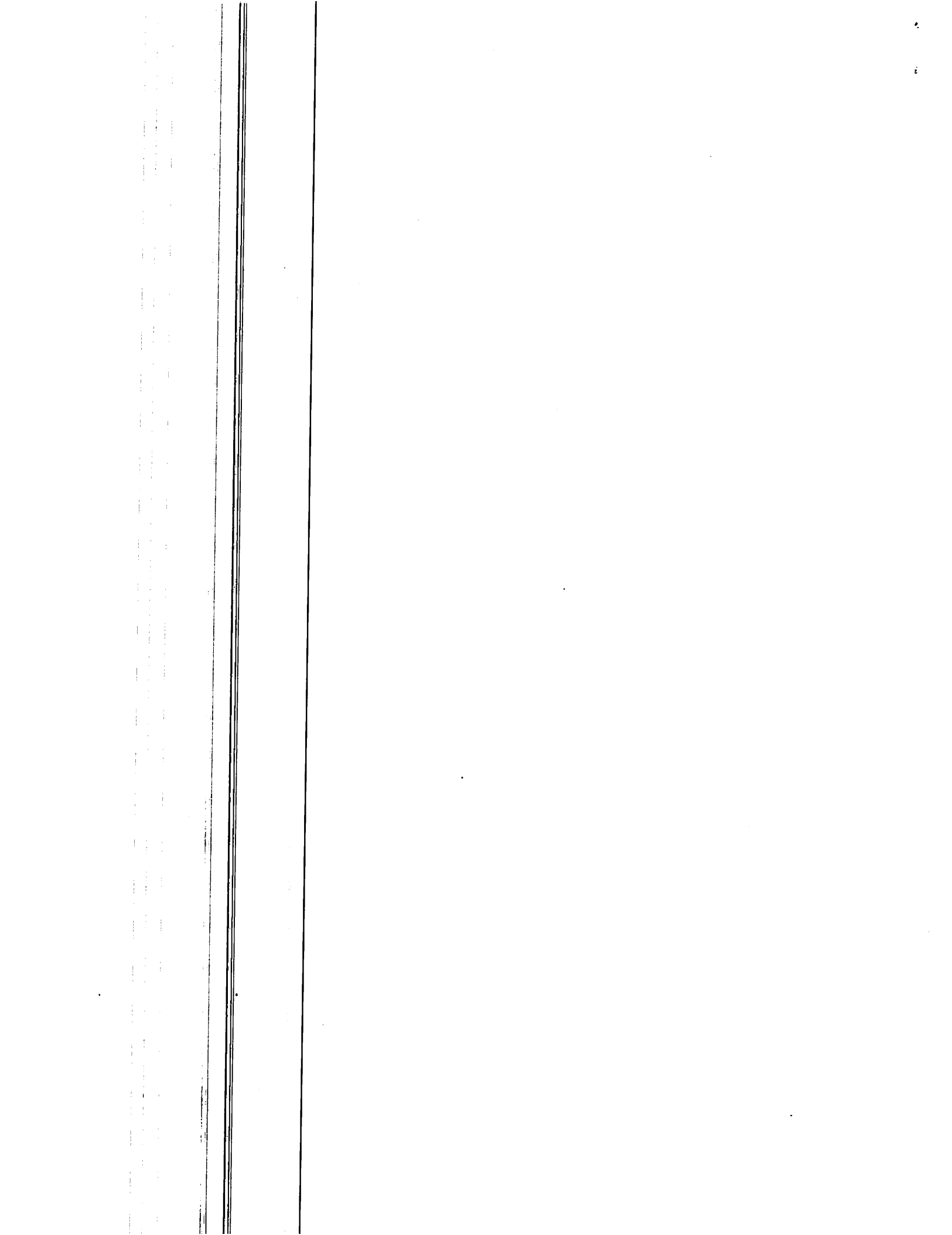
*Dania Ayoubi*

December 21, 2022  
Date Decision Issued

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Dania Ayoubi  
Administrative Law Judge

DLA/cj  
#202106



**PROPOSED ORDER**

***WHEREFORE, this 25<sup>th</sup> day of January, 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.***

***Michael Newton***

***Michael Newton***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***

