

<p>IN THE MATTER OF THE CLAIM</p> <p>OF VICKI RUMMEL,</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 EDWARD</p> <p>GALLAGHER,</p> <p>T/A G & R LOCAL CONTRACTING,</p> <p>LLC</p> <p>RESPONDENT</p>	<p>* BEFORE JENNIFER L. GRESOCK,</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-02-22-06754</p> <p>* MHIC No.: 21 (75) 484</p> <p>*</p> <p>*</p>
---	---

* * * * *

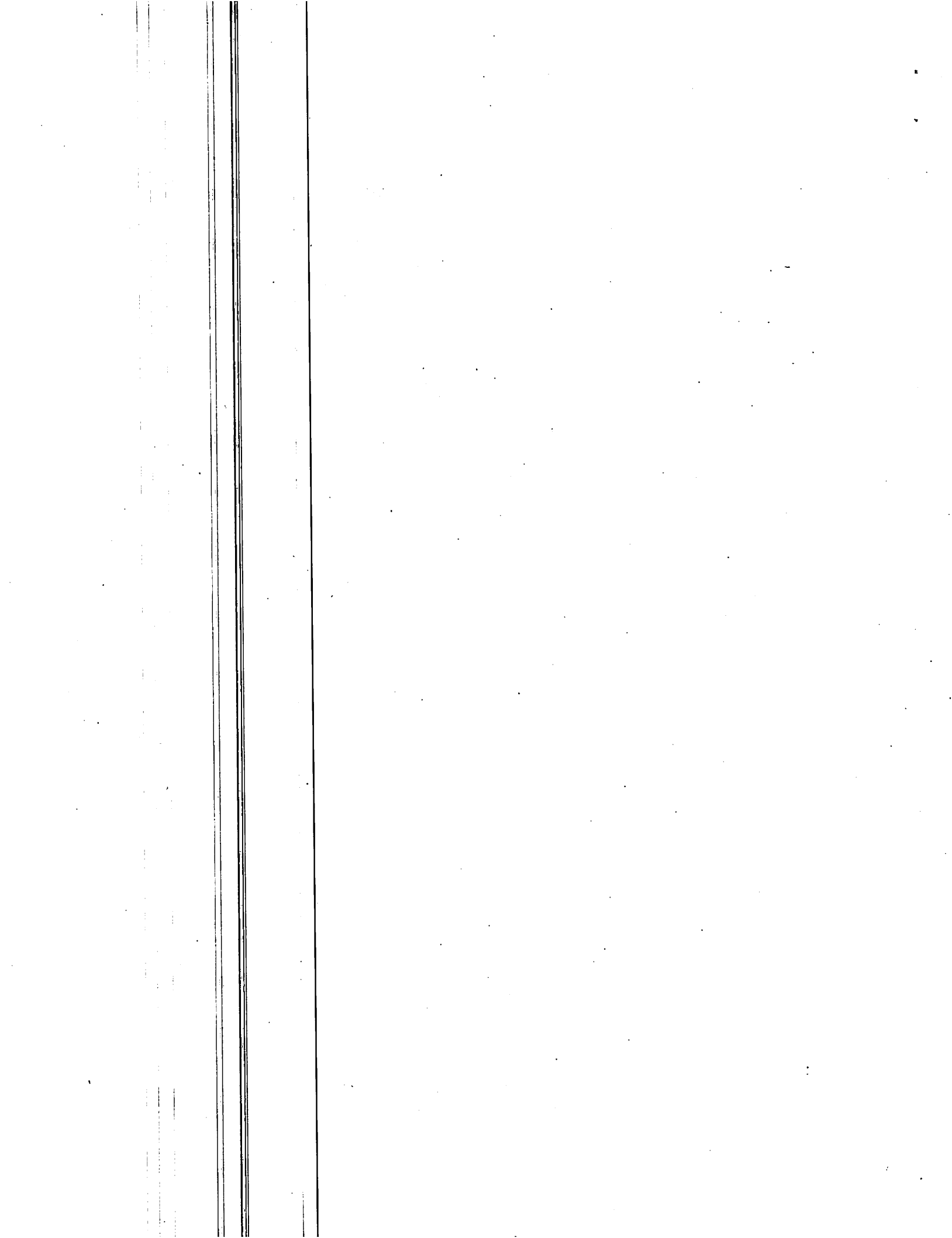
PROPOSED DECISION

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 February 10, 2021, Vicki Rummel (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 \$20,000.00¹ for actual losses allegedly suffered as a result of a home improvement contract with Edward

¹ At the time the Claimant filed her Claim, the maximum award was \$20,000.00. It has since been increased to \$30,000.00, as discussed below.



Gallagher, trading as G & R Local Contracting, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).² On March 16, 2022, the MHIC issued a Hearing Order on the Claim. On March 21, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 27, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. John Hart, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented, as was the Respondent.

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

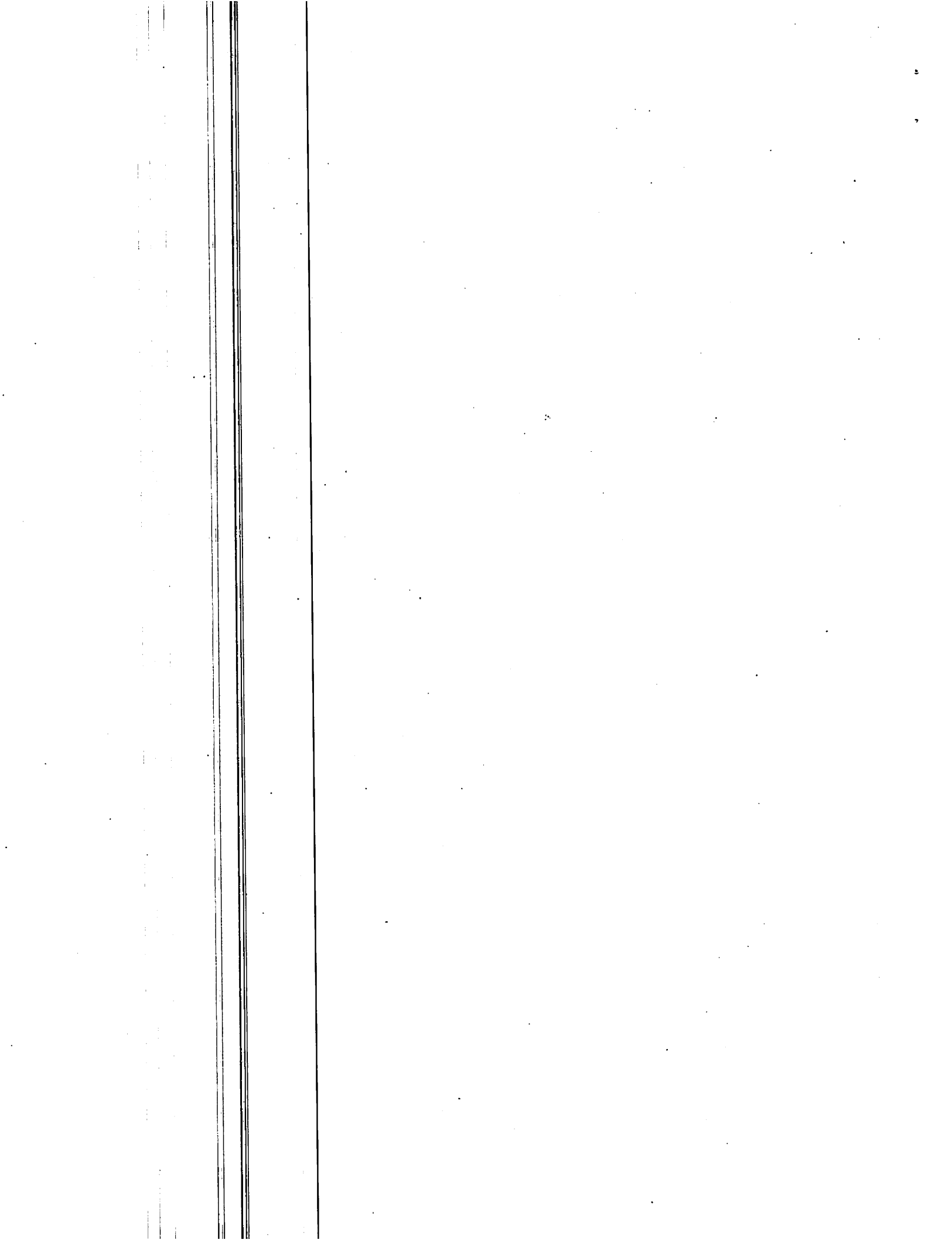
Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 Contract, dated June 19, 2020 (incomplete)³
- Clmt. Ex. 2 Claimant's narrative, undated

² Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

³ It emerged during the hearing that the two-page copy of the Contract offered by the Claimant was not the complete contract, as it was missing a page. Counsel for the Fund stated that the Fund had a complete copy, which the Claimant must have submitted to the MHIC. For that reason, the Fund called the Claimant as a witness and I admitted the complete Contract as Fund Ex. 5.



- Clmt Ex. 3 Claimant's list of unfinished items, undated
Clmt. Ex. 4 Estimate from Twins Home Improvement, LLC, dated June 14, 2022
Clmt. Ex. 5 Photographs (lettered A through R)

I admitted the following exhibits offered by the Respondent:

- Resp. Ex. 1 Handwritten contract regarding permits, undated
Resp. Ex. 2 Handwritten contract to reassign Contract to Dan Rexroad, dated September 1, 2020

I admitted the following exhibits offered by the Fund:

- Fund⁴ Ex. 1 Notice of Hearing, dated June 2, 2022
Fund Ex. 2 Hearing Order, dated March 16, 2022
Fund Ex. 3 Letter from the MHIC to the Respondent, dated February 24, 2021
Fund Ex. 4 Respondent's Licensing Information, printed July 26, 2022
Fund Ex. 5 Contract, dated June 19, 2020 (all pages)

Testimony

The Claimant testified and presented the testimony of Thomas Andersen, her boyfriend.

The Respondent testified and presented the testimony of his business partner and project manager, James Rexroad.

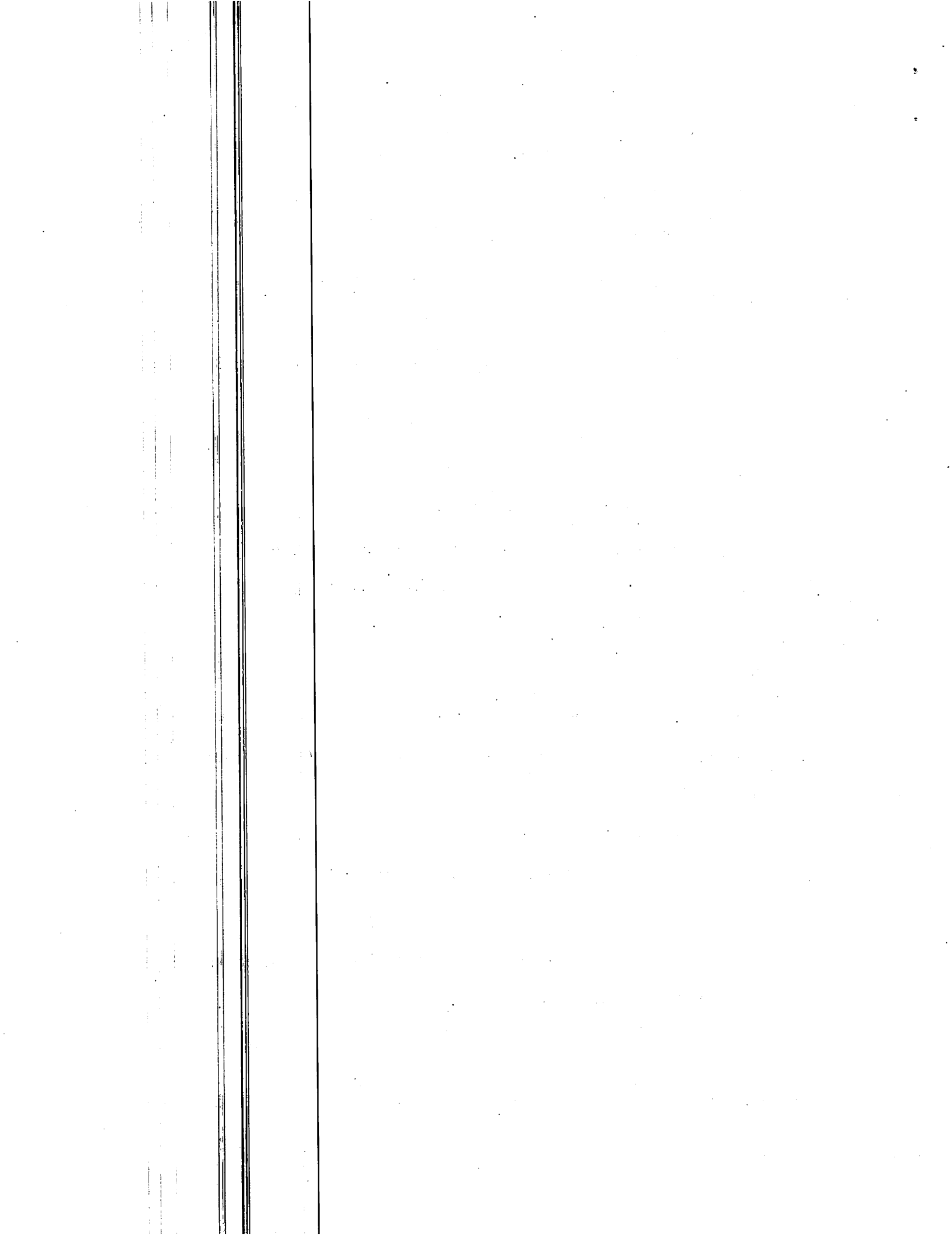
The Claimant testified for the Fund.

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. James Rexroad is his business partner.

⁴The exhibits themselves are marked "GF" for Guaranty Fund.

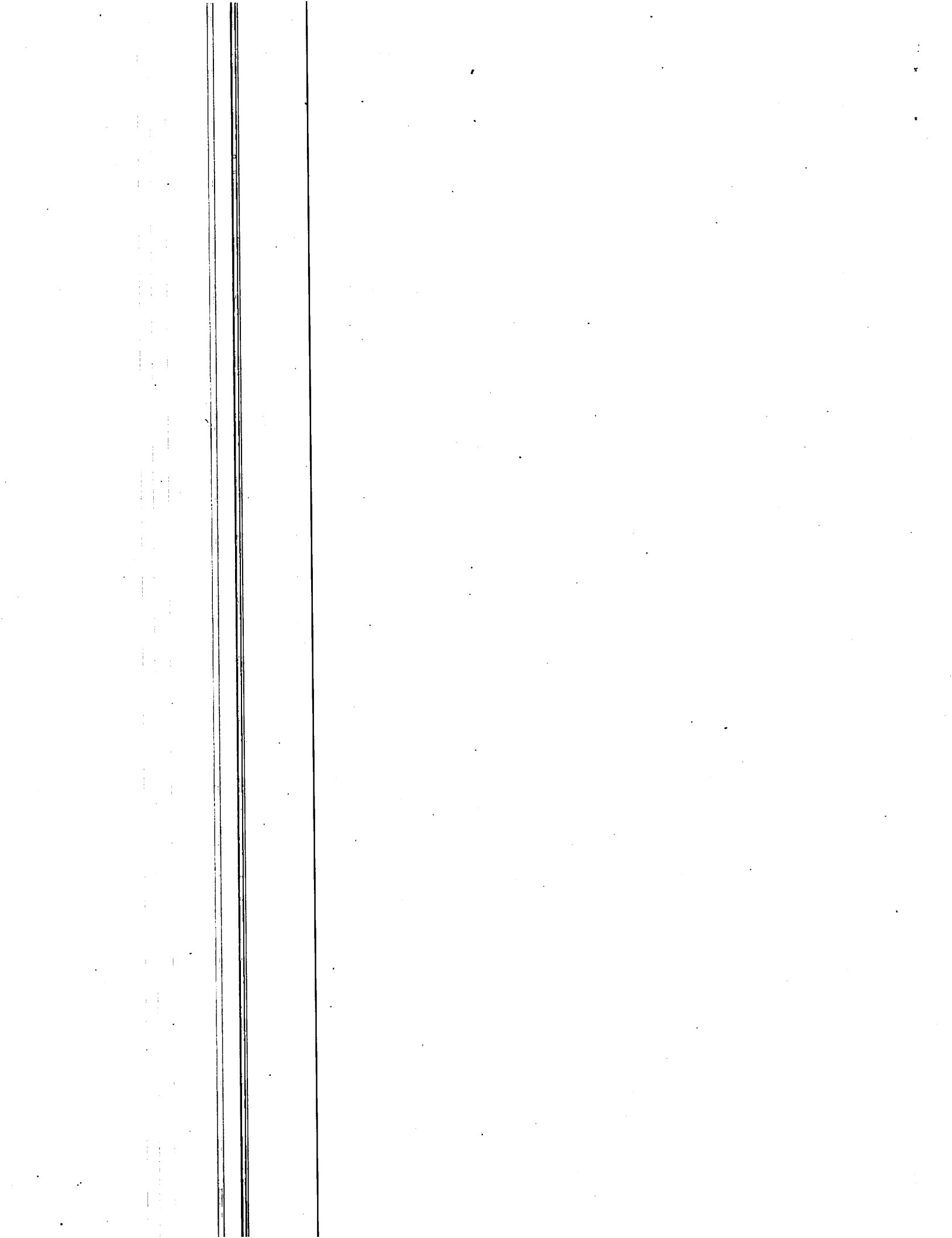


2. The Claimant owns a single-family home in Nottingham, Maryland. It is the only property she owns.

3. On or about June 19, 2020, the Claimant and the Respondent entered into a contract to substantially renovate her home (Contract). The Contract included the following:⁵

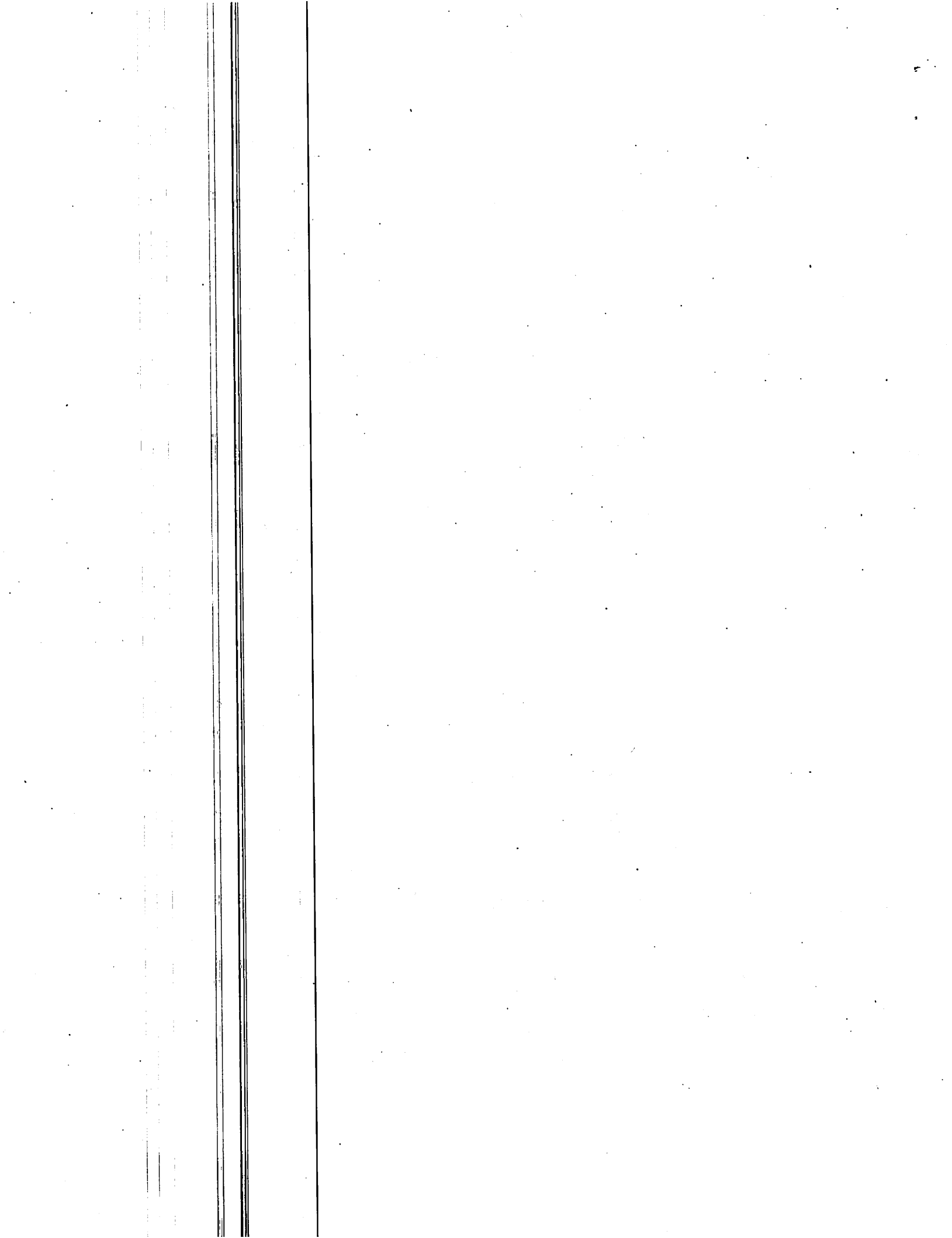
- Exterior: installation of deck; construction of sunroom, with new windows and French door, hot tub, and ceiling fans; demolition and replacement of front concrete stoop; replacement of 13 windows and three slider doors; replacement of existing storm doors;
- Top Level: mud, sand, prime, and paint, including walls and trim; installation of bifold closet door and shelving, and removal of door and shelving in another bedroom; install base molding; install bathroom vanity, mirror; install several lights; installation of waterproof vinyl flooring in all rooms, closets, and hallway, and install stair flooring, with wood risers; update outlets/switches and covers;
- Main level: mud, sand, prime, and paint walls, trim, molding, and doors; remove two existing doors and install barn doors; replace basement entry door; removal and replacement of kitchen cabinets, sink, and appliances (appliances and countertop to be purchased by Claimant), and new plumbing and electrical; install new vanity, light, and mirror in powder room;
- Basement: mud, sand, prime, and paint walls, trim, molding, doors, and stairwell; removal and capping of three floor heat vents; removal of fireplace

⁵ The Contract is in the record and has not been unnecessarily recreated here verbatim. However, I have included some details of the Contract to show the extensive scope of the work, especially since the Claimant has alleged that many of the specified tasks were not even started, much less completed.



and surrounding brick, and installation of new insert and brick veneer surround and floor tile; demolition of bathroom shower, cabinet, vanity, mirror, and lighting, and installation of custom tile shower; replacement of window; installation of waterproof vinyl flooring throughout; replacement of wet bar cabinets, and installation of plumbing and faucet.

4. The original agreed-upon Contract price was \$74,100.00, with an initial payment of \$50,000.00.
5. The Respondent began work on or about June 25, 2020. The Contract did not provide an anticipated date of completion.
6. Work was problematic from the start, and the Respondent complained about difficulty obtaining supplies and hiring subcontractors.
7. For a period of at least three weeks, the Respondent did not work on the project at all.
8. In August 2020, the Respondent hired subcontractor Dan Rexroad, James Rexroad's brother, who worked on the sunroom and deck for two weeks before stopping work and only showing up at the home intermittently.
9. On September 1, 2020, the Claimant, the Respondent, and Dan Rexroad signed an agreement stating that Dan Rexroad would take over the project in full.
10. Dan Rexroad is not a licensed contractor, which his brother James is and was aware of at all times relevant.
11. The Claimant made numerous cash payments to Dan Rexroad, totaling \$24,000.00.
12. Dan Rexroad stopped work sometime in November 2020.



13. The Respondent continued to do intermittent work on the project through December 2020. The last date that he did work under the Contract was January 5, 2021.

14. The front stoop was poorly installed, with sloping steps of different heights and without the railing.

15. The deck is not finished (there are missing boards, gaps, and no railing), and the centerpoint is bowed. The stair railing was not installed.

16. The sunroom is not finished. Windows are crooked, a concrete panel remains uncovered, the ceiling is not painted properly, and ceiling fans were never installed. The sunroom ceiling also leaks, as do the misaligned windows.

17. The flooring throughout the house that was to be waterproof is not. Flooring was not installed in some closets.

18. At least one window was never replaced.

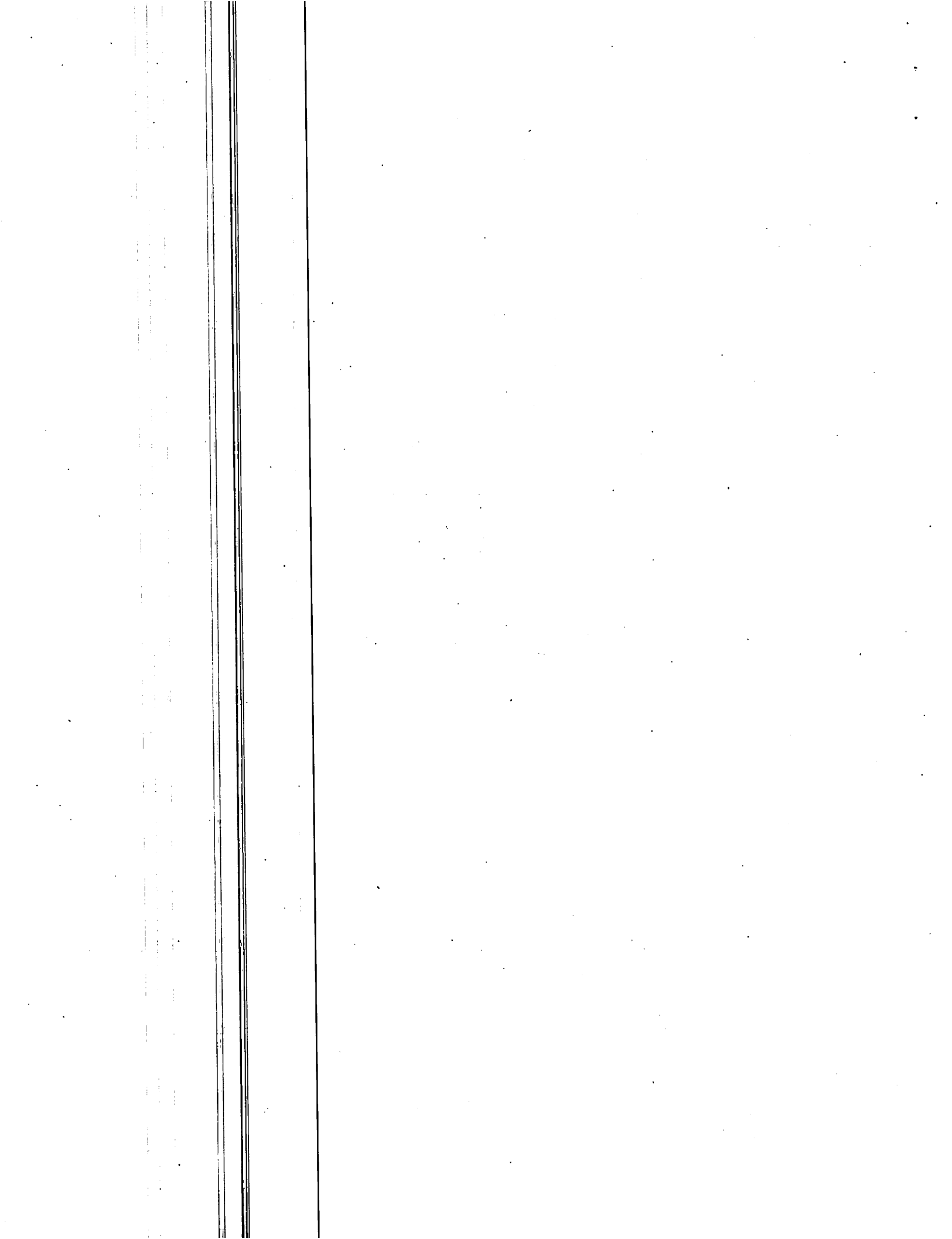
19. The basement slider was installed without its screen.

20. At least one storm door was never installed, and the front door has the wrong storm door installed.

21. Painting throughout the house is incomplete (trim, windowsills, and closets were left unpainted), and drywall damage in a closet was never repaired. Some trim was never installed at all.

22. The kitchen sink backsplash is falling off, the kitchen ceiling and walls are poorly painted, and a heat vent that was left uncapped beneath the flooring has caused the kitchen floor to wrinkle.

23. The stairs to the top level were installed in such a way that the nosing broke off most stairs, making the stairs too small and awkward to navigate.



24. The basement fireplace replacement was not completed, and the basement wall was painted the wrong color.

25. The basement shower was improperly tiled, preventing the door from hanging properly. The shower door cannot be fully closed, resulting in flooding to the basement when the shower is used.

26. Basement ceiling tiles are missing, and the basement cabinets are not properly leveled.

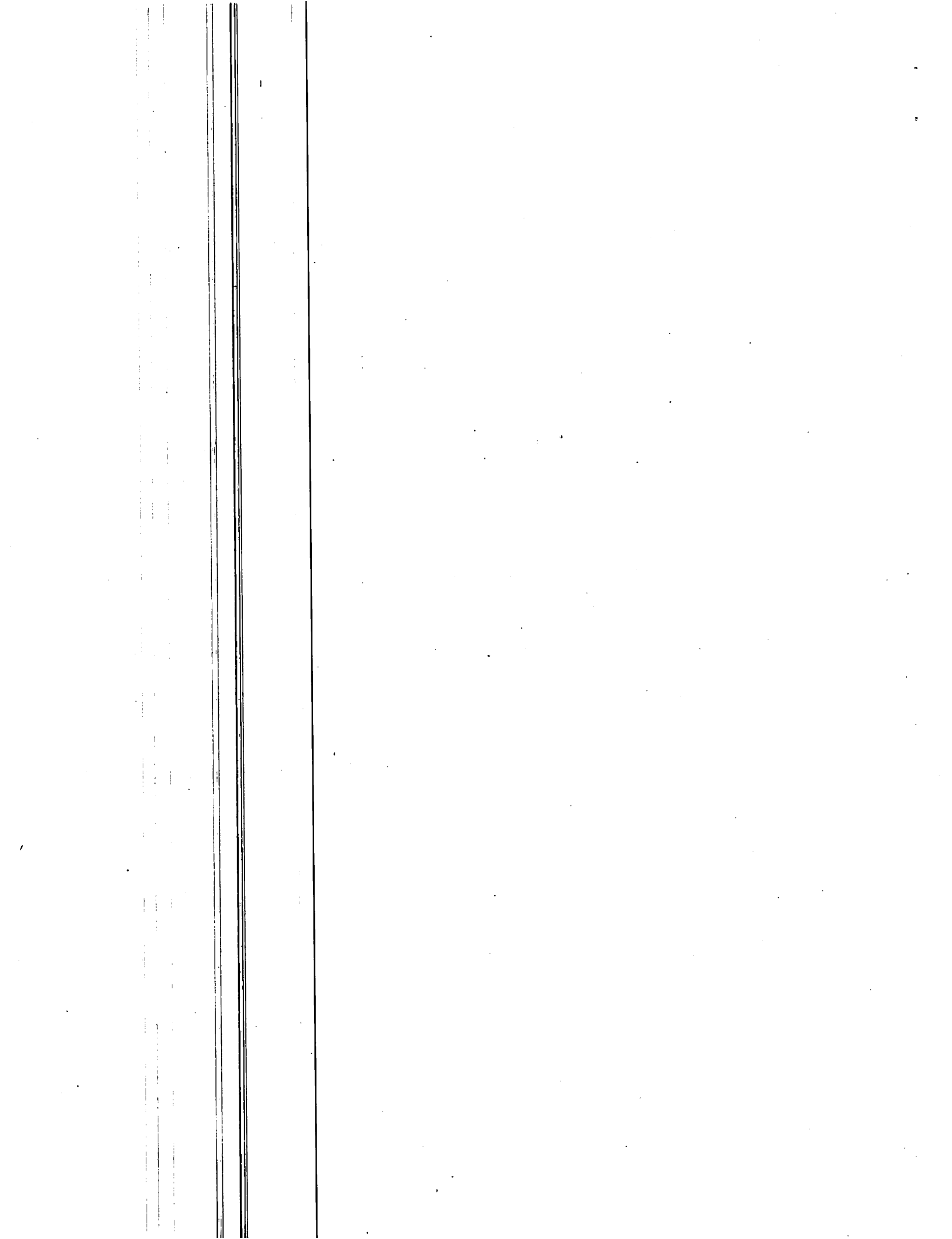
27. On June 14, 2022, Twins Home Improvement LLC estimated the cost of demolition of work completed by the Respondent, and replacement of that work, to be \$51,820.00. The scope of work did not exceed that of the Contract.

DISCUSSION

The Claimant seeks reimbursement from the Fund both for work the Respondent allegedly did not complete and for work performed in an unworkmanlike and inadequate manner. 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); *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.")⁶ "[A]ctual loss' means the costs of restoration,

⁶ There is no dispute that the Respondent was a licensed contractor. *See* Fund Ex. 4.

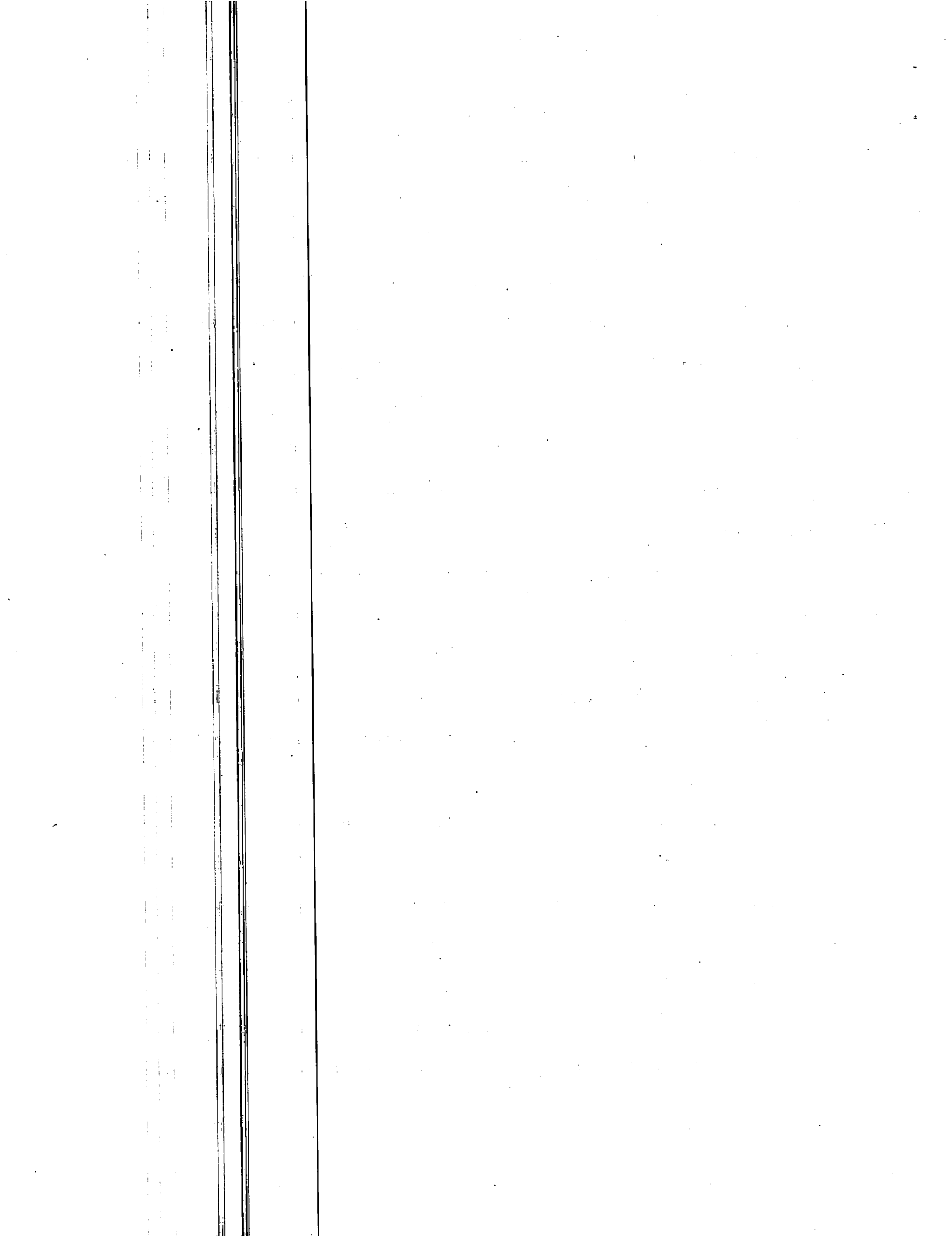


repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant contends that she hired the Respondent in June 2020 to complete an extensive renovation of her home, and that the work progressed far slower than they had agreed, with weeks passing with no work performed at all. She argues that the Respondent last worked on the project in January 2021, and that the project not only remains incomplete, but that numerous deficiencies are apparent in the work performed, including leaks in the sunroom ceiling and windows, flooring that is not waterproof, unworkmanlike stairs both indoors and outdoors, poorly painted ceilings and walls, wrinkled kitchen flooring, a basement shower so poorly tiled that the door cannot close and the shower floods the basement, and a kitchen backsplash that is falling off. She emphasized that she recognized some problems were beyond the Respondent’s control, such as supply chain delays, and that she was patient and attempted to work with the Respondent nonetheless, until he stopped work in January 2021. In June 2022, she obtained an estimate for correcting and completing the work the Respondent was to perform under the Contract.

The Respondent acknowledged that some work was poorly done and that the project was not complete but contended that he did not know of the extent of the deficiencies until the hearing date, and that he had worked to rectify what he could, even using his own money to fund the work. He was apologetic about the incomplete and poor work but said he did not know how to resolve the matter and felt he had done the best he could.

The Claimant testified in detail regarding the scope of the Contract, the slow progress of the work, tasks that were never completed, work that was performed in a poor manner, and her

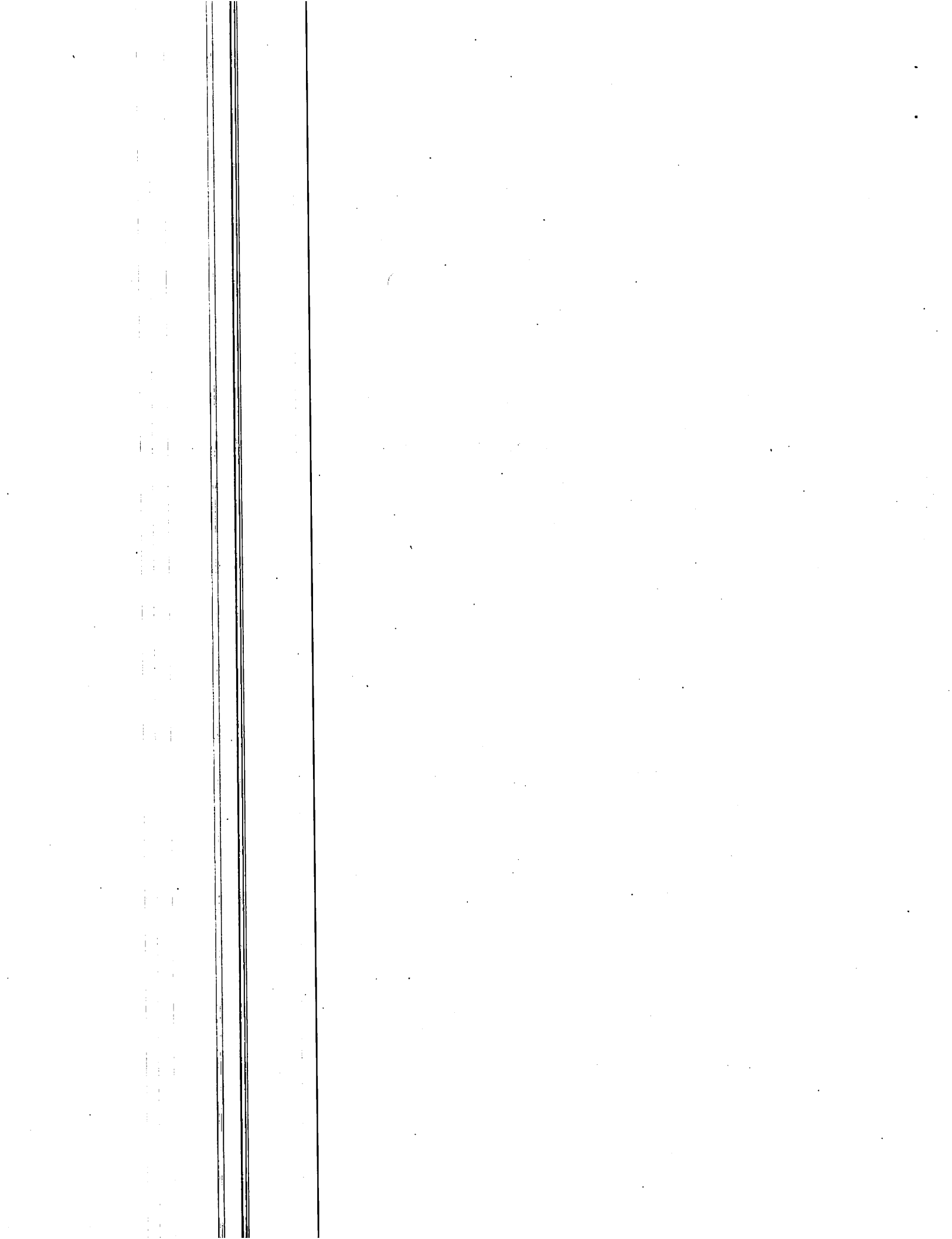


payments to the Respondent. She also provided numerous photographs (Clmt. Ex. 5A-R), as well as the testimony of her boyfriend, to corroborate her account. The Claimant's account is, for the most part, undisputed.

The Respondent testified that while the Claimant's testimony is generally true, she had complicated the project by requiring that he not obtain permits for the work, as she did not want any inspectors on her property. He testified that this made him uncomfortable, but that she was so adamant he agreed.⁷ He did not dispute her claim that the work progressed slowly, though he noted that he had not agreed to complete the work in thirty days. He stated that just obtaining the necessary materials was taking as long as sixteen weeks at that time. He acknowledged that there were significant delays in obtaining materials and in hiring subcontractors and explained that he was also frustrated at the slow pace of work. But he testified that work was also slowed by the condition of the home, as the Claimant had many pet cats and the cats would defecate and urinate throughout the home. The basement, in particular, was covered in feces, and the workers complained that it was difficult to breathe inside the home.

The Respondent further testified that while he was aware of some of the problems the Claimant had cited with the work, such as the broken stair nosing, missing railings, and misaligned shower door, he had tried to fix some of these deficiencies and was not aware of the extent of the poorly performed work. For example, he did not know the interior painting was not completed or done so poorly or that flooring and trim was not installed as the Contract required. The Respondent attributed the poor quality work to his subcontractor, Dan Rexroad, with whom

⁷ This account is somewhat contradicted by Mr. Andersen, who stated that the Claimant agreed that permits would not be obtained for the sunroom and deck because she did not want the project to be delayed, and the COVID-19 pandemic had slowed the permitting process. The parties memorialized their understanding of whether permits would be obtained in a handwritten document that appears to align more with the Respondent's account than the Claimant's, as it describes the Claimant as not wanting permits and includes language intended to protect the Respondent from additional costs "related to permits or reconstruction of deck & sunroom" because of any later inspection that might be required. See Resp. Ex. 1.



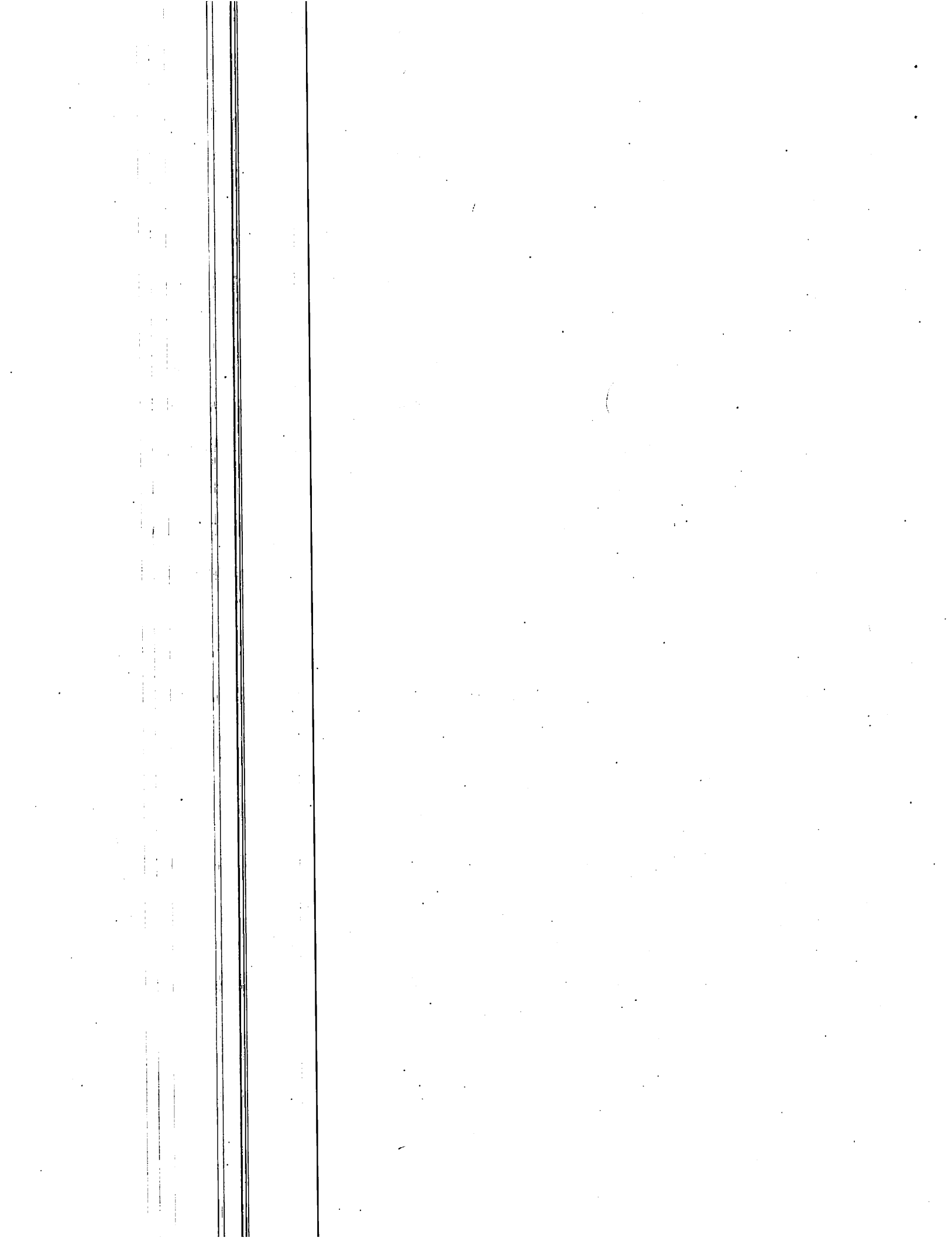
he had never worked with before, noting that his relationship with Dan Rexroad soured during work at the Claimant's home.

The Respondent explained that in September 2020, he tried to sign over his responsibility under the Contract to Dan Rexroad, who had started working on the deck the month prior.

(Resp. Ex. 2.) The Respondent noted that while he'd been away for a weekend, the Claimant had made some direct cash payments to Dan Rexroad for materials, which he did not approve of because he did not want subcontractors accepting any direct payments. He then described the bizarre circumstance that allegedly led to the September 1, 2020 agreement: according to the Respondent, one day when he had just returned to the property, Dan Rexroad approached him and said that the Claimant no longer wanted the Respondent to work on the project, and that she and Dan wished for Dan to take it over. This was the impetus for the Respondent to attempt to sign the Contract over to Dan.

It was the Fund's position that the attempt to reassign the Contract was not valid and is unenforceable, as Dan is not a licensed contractor.⁸ While the Respondent stated that he did not know whether Dan was licensed, James Rexroad, the Respondent's business partner, acknowledged that he knew Dan was not. (Like the Respondent, James Rexroad claimed that the poorly performed work was nearly all work that had been done by Dan Rexroad.) James Rexroad's testimony made clear that he and the Respondent were not happy with Dan and his work and they were reluctant to sign over their responsibilities under the Contract, but that Dan and the Claimant wanted Dan to take over. In any case, it is clear from the evidence that the Respondent felt some responsibility for completion of the Contract even after he supposedly

⁸ See *Harry Berenter, Inc. v. Berman*, 258 Md. 290, 299 (1970) ("when a statute is regulatory in nature, this Court will assume, if the legislature does not indicate otherwise, that contracts made by unlicensed persons subject to the statute are illegal as against public policy and will not be enforced.").



signed over the work, as he continued to work on projects for months afterwards. I agree with the Fund that the September 1, 2020 attempt to reassign performance of the Contract is unenforceable, and that the Respondent himself did not treat it as such.

In short, the picture that emerges from the evidence is a clear one, at least with regard to the issue before me: the Respondent found the Claimant difficult to work with, and the project more challenging than he'd expected; personal and professional tension between the Respondent and subcontractor Dan Rexroad knocked the project further off track; the good intentions the Respondent may have had with regard to completing the project and resolving the matter fell far short;⁹ and, as of the July 2022 hearing, the project remained unfinished, and those aspects of the work that were performed were performed in a manner both unworkmanlike and inadequate. The evidence of this last point is both overwhelming and undisputed, from missing windows, an undemolished side porch,¹⁰ missing ceiling fans, missing ceiling tiles,¹¹ missing exterior railings and trim,¹² missing fireplace mantel,¹³ to the bowed deck, wrinkled kitchen floor, deteriorating backsplash,¹⁴ leaking sunroom ceiling;¹⁵ uneven stairs,¹⁶ poorly painted walls, and misaligned shower door. It may be true that Dan Rexroad performed much of this work, but he was the Respondent's subcontractor, and the Respondent remained responsible for performance of the Contract.

⁹ Neither party contended that the Claimant unreasonably rejected good faith efforts to resolve the claim. § 8-405(d).

¹⁰ Clmt. Ex. 5A.

¹¹ Clmt. Ex. 5K.

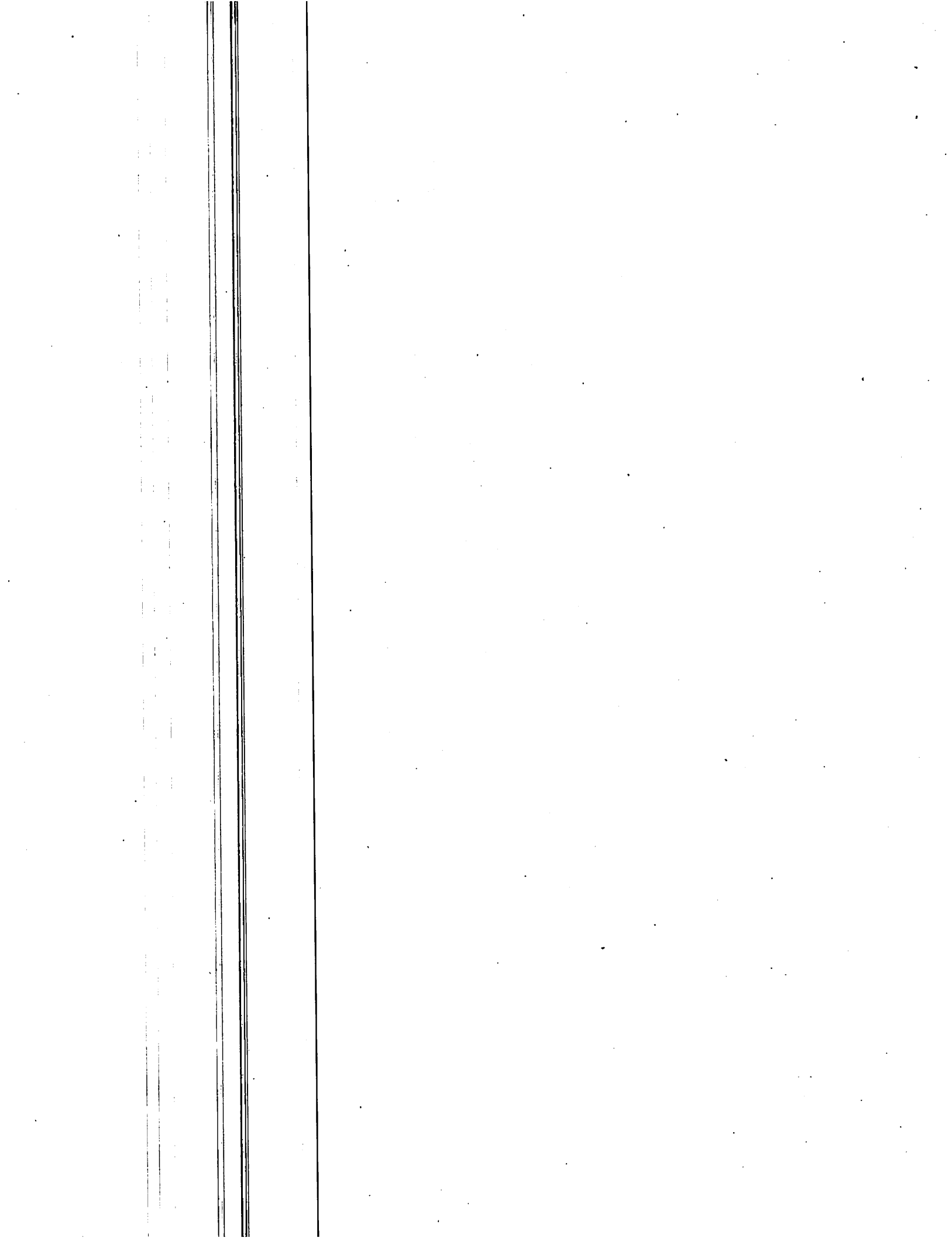
¹² Clmt. Ex. 5B, 5C, 5D, and 5E.

¹³ Clmt. Ex. I.

¹⁴ Clmt. Ex. 5J.

¹⁵ Clmt. Ex. 5F, 5G, 5H.

¹⁶ Clmt. Ex. 5P, 5Q, and 5R.



I thus find that the Claimant is eligible for compensation from the Fund.¹⁷

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.

The Respondent clearly 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:

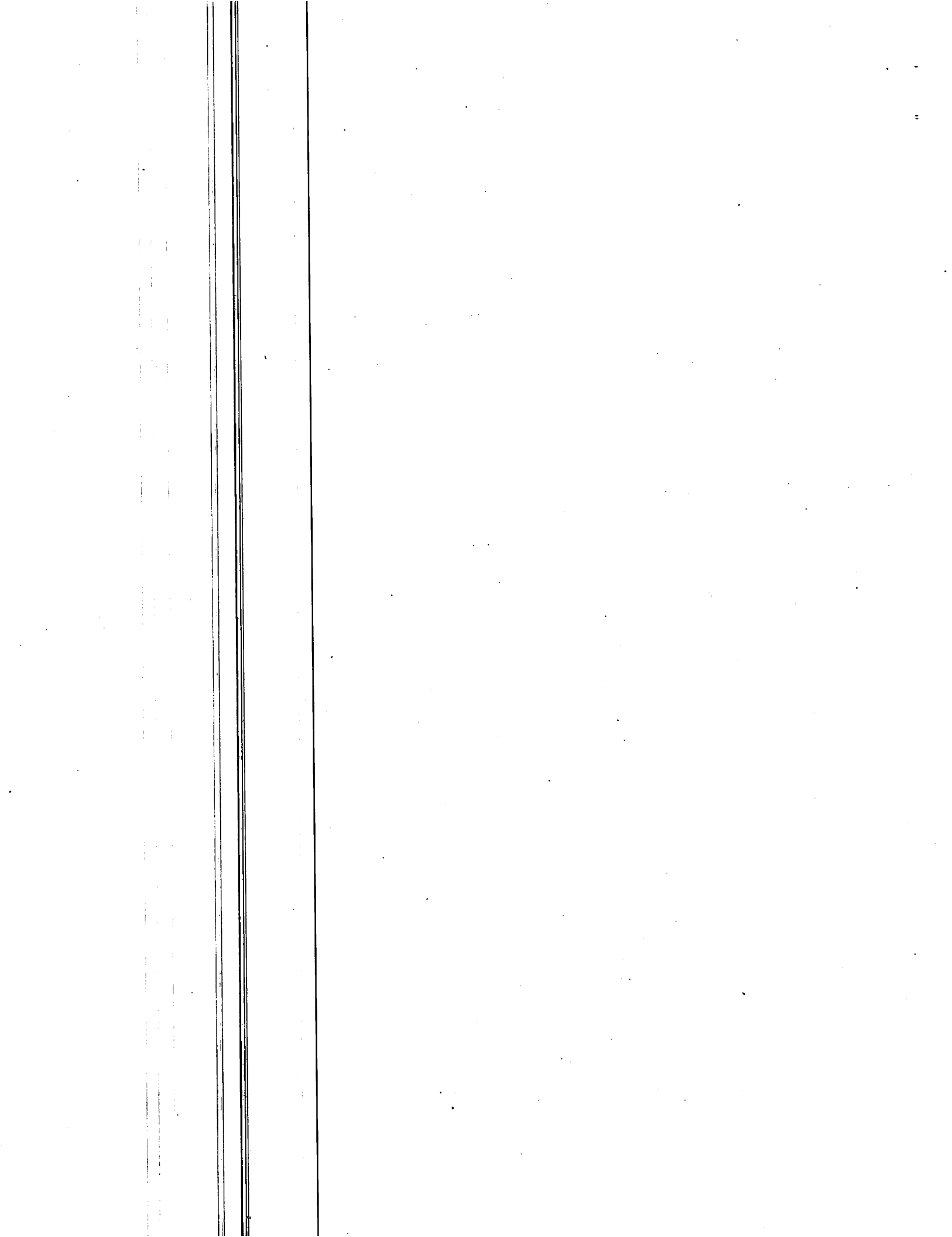
If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable 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).¹⁸

Here, the amount paid under the original contract was \$74,000.00, and the reasonable cost to complete and correct the work is \$51,820.00 (based on the estimate provided by the

¹⁷ 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).

¹⁸ It was the Fund's position that the Claimant had met her burden to show that she had suffered an actual loss due to acts or omissions by the Respondent, as the work was incomplete, inadequate, and unworkmanlike. The Fund recommended the application of this formula, noting the \$30,000.00 cap.



Claimant, Clmt. Ex. 4). Together, these figures total \$125,820.00. The original contract price of \$74,100.00 is then subtracted from this figure, resulting in an actual loss of \$51,720.00.

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.¹⁹ In this case, the Claimant's actual loss of \$51,720.00 exceeds \$30,000.00. Therefore, the Claimant's recovery is limited to \$30,000.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$51,720.00 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 \$30,000.00 from the Fund. Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a); *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002).

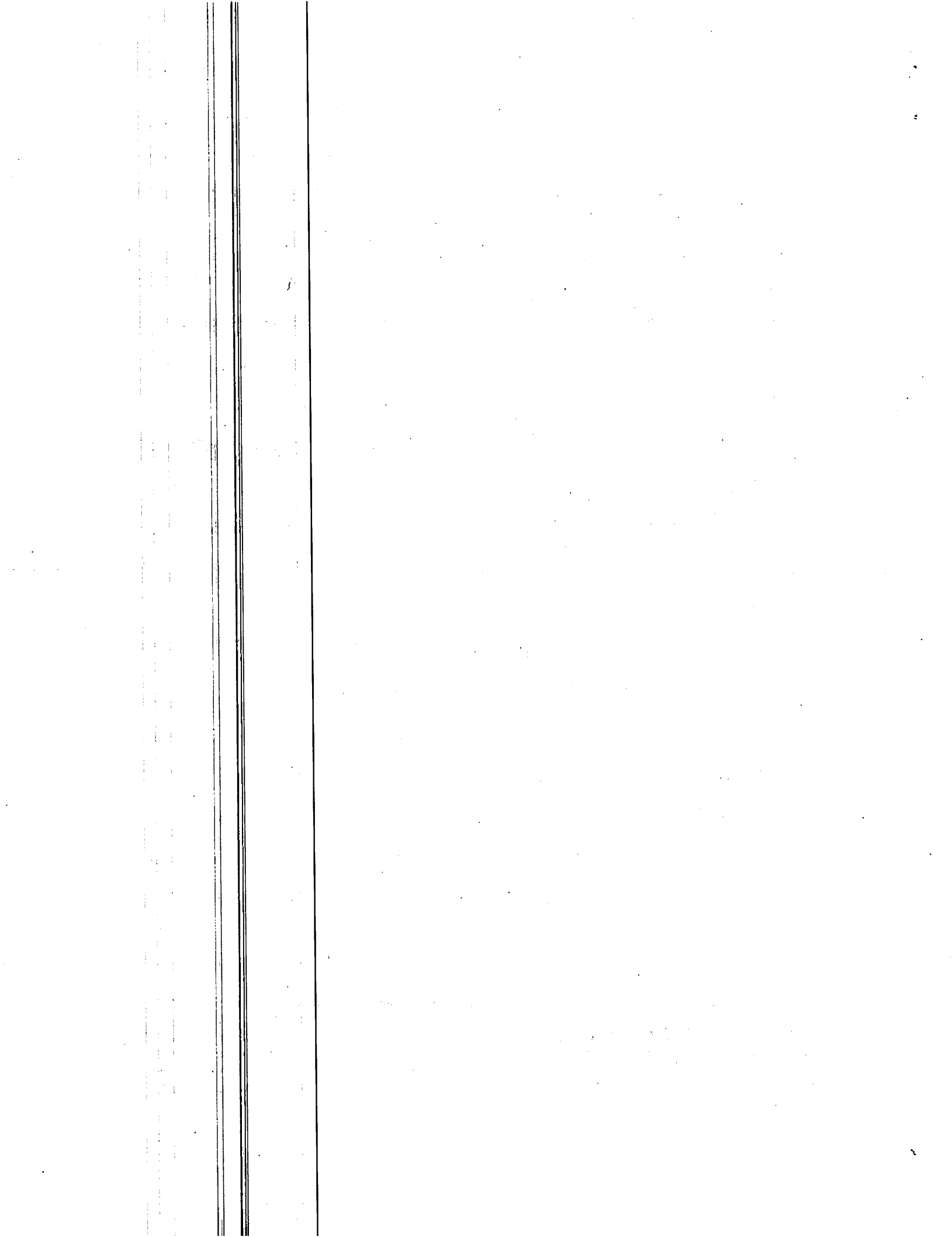
RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$30,000.00; 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

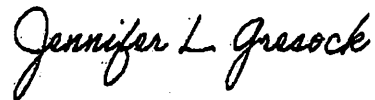
¹⁹ H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement 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").



under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;²⁰ and

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

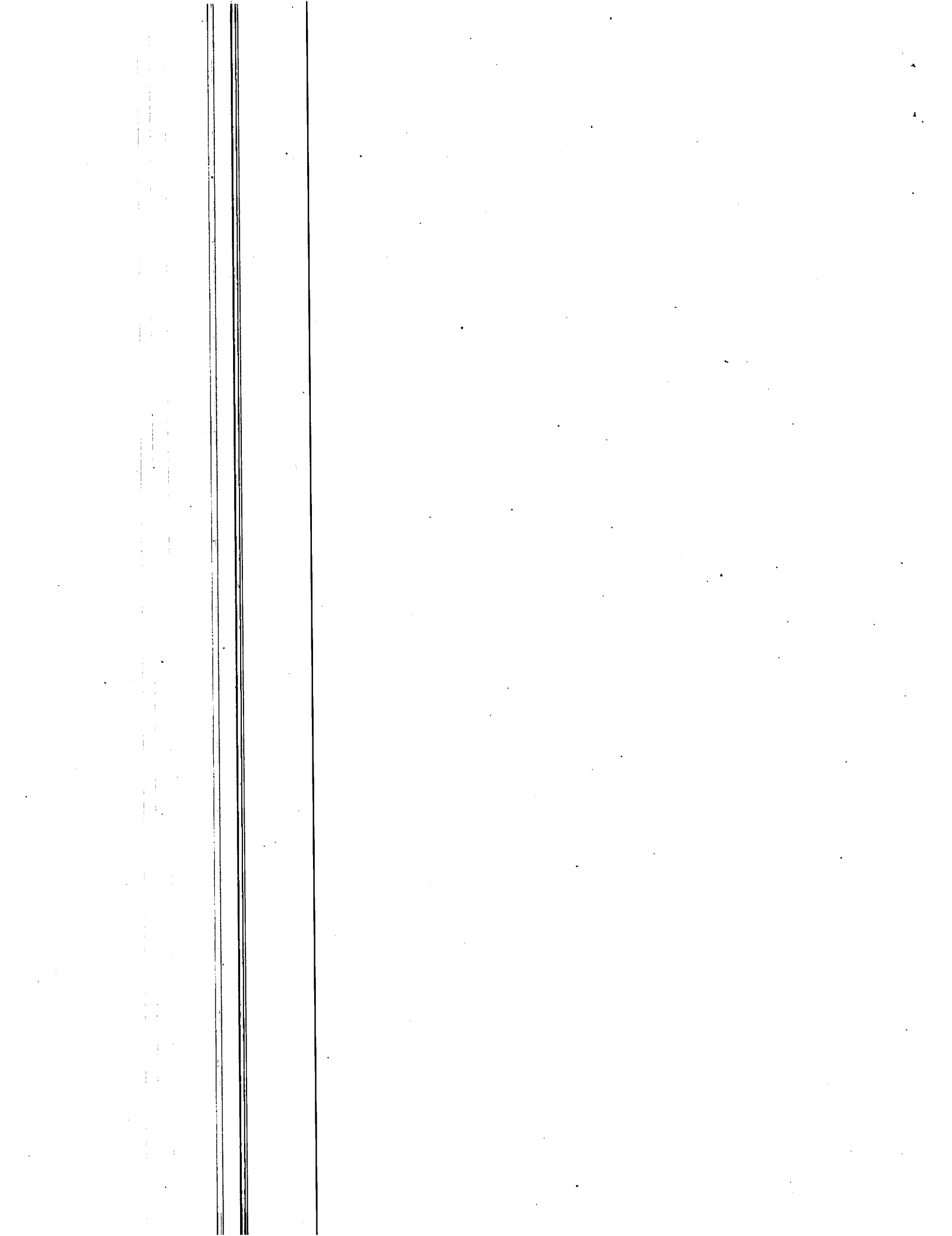
October 24, 2022
Date Decision Issued



Jennifer L. Gresock
Administrative Law Judge

JLG/cj
#201468

²⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

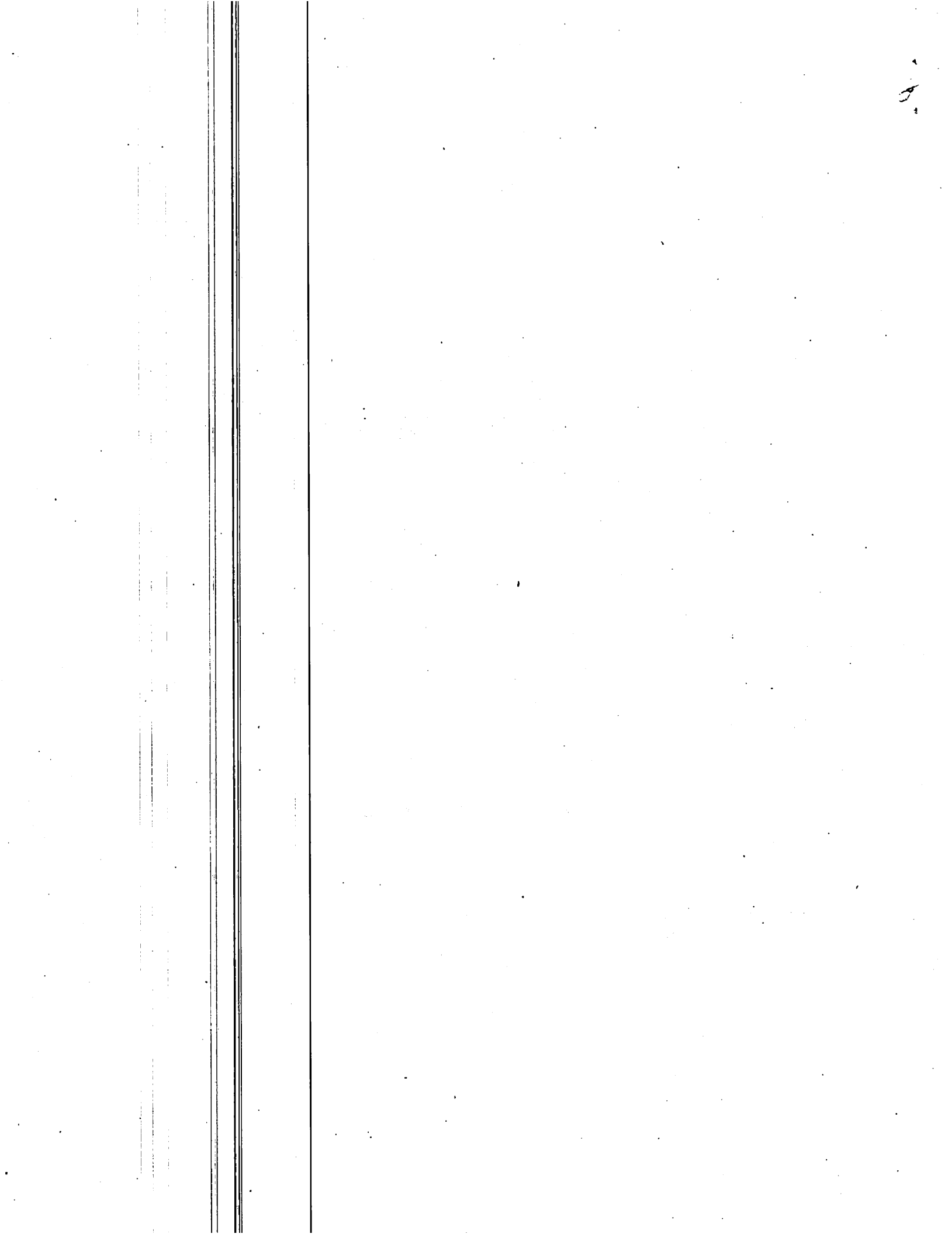
WHEREFORE, this 7th day of December, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, 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***



IN THE MATTER OF THE CLAIM OF
VICKI RUMMEL
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
EDWARD GALLAGHER AND G&R
LOCAL CONTRACTING, LLC

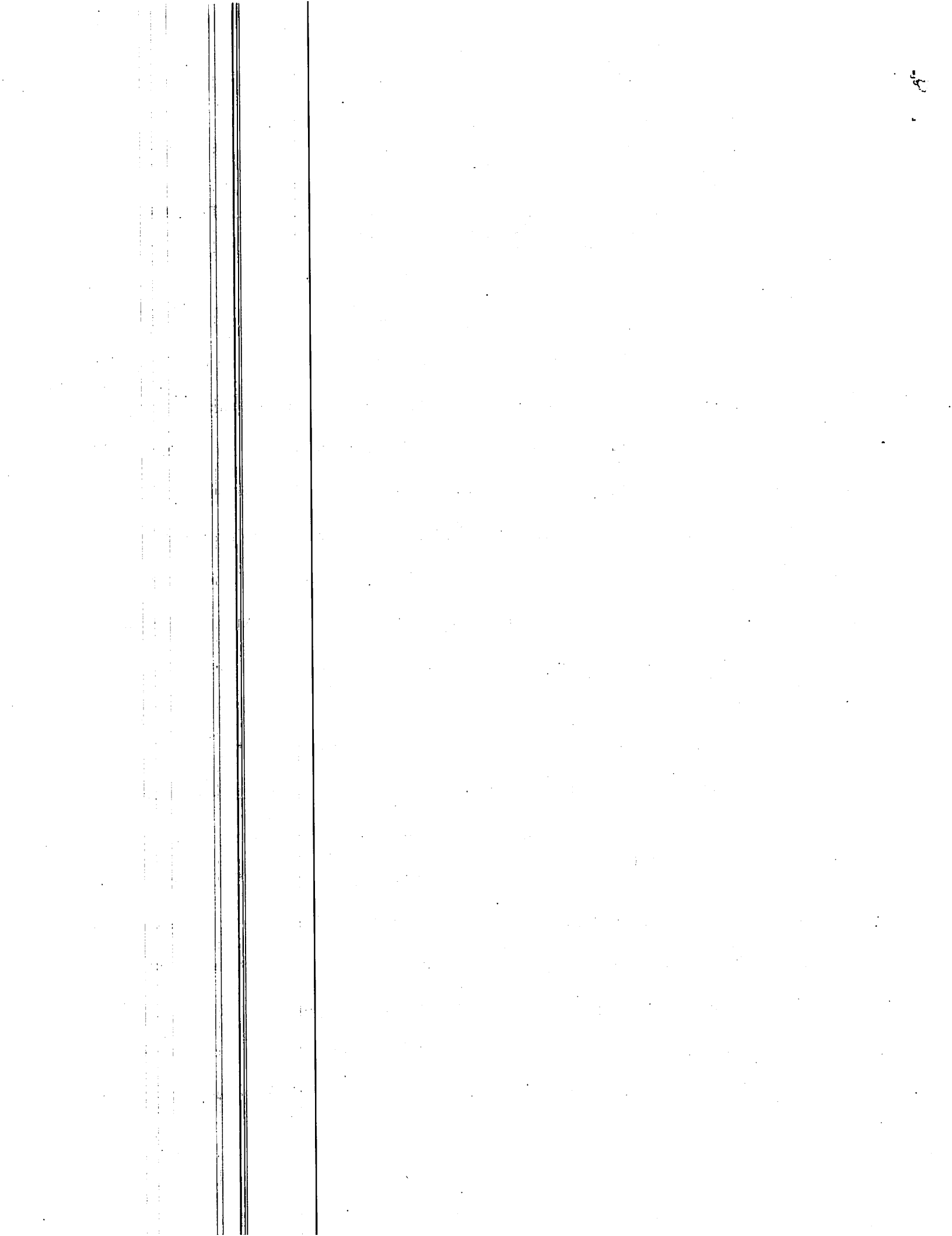
* MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 21(75)484
* OAH CASE NO. LABOR-HIC-
* 02-22-06754

*
* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on July 27, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on October 24, 2022, concluding that the homeowner, Vicki Rummel (“Claimant”) suffered an actual loss as a result of the acts or omissions of Edward Gallagher and G&R Local Contracting, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 13. In a Proposed Order dated December 7, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$30,000.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On March 16, 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 Catherine Villareale 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



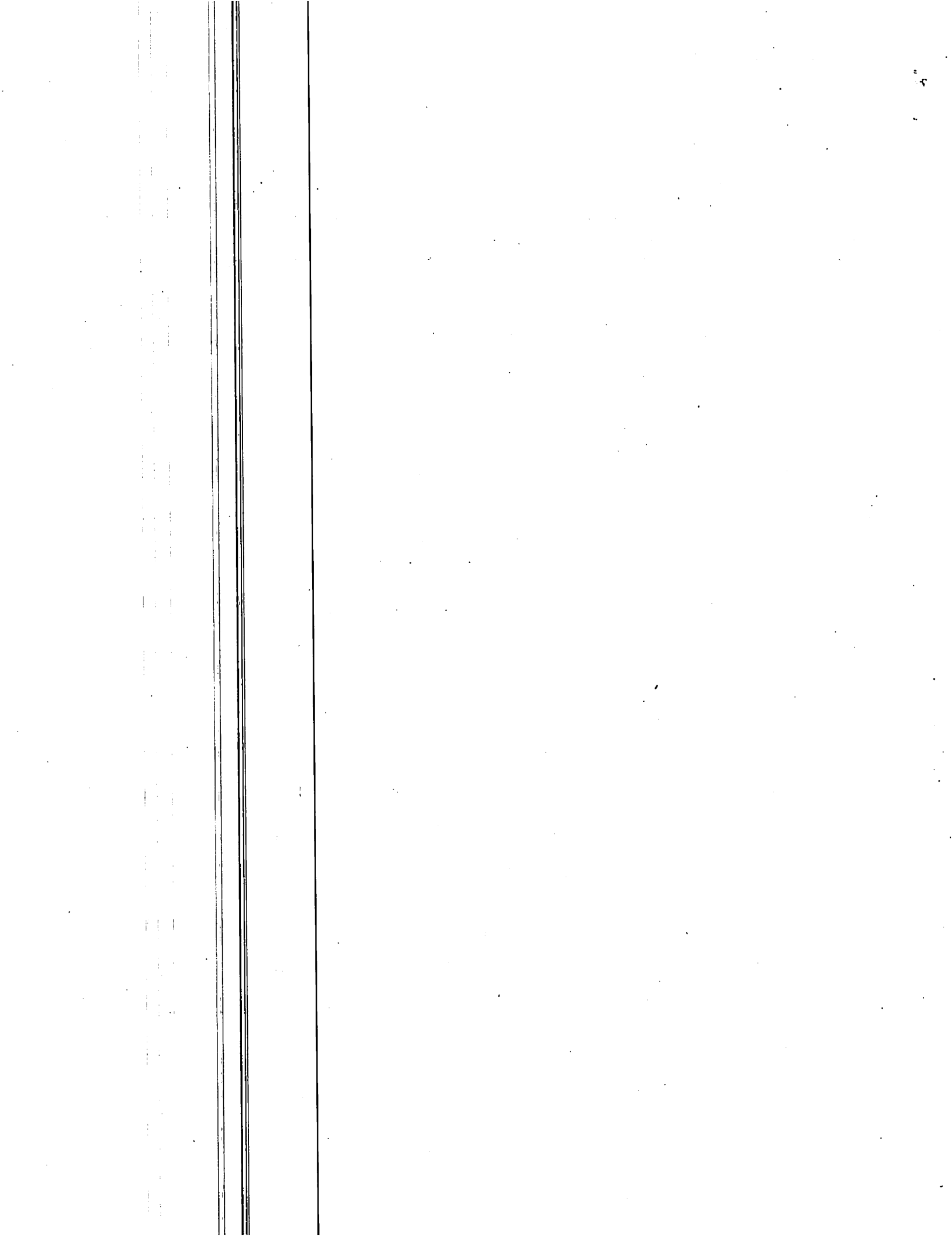
hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for a major renovation of the Claimants' home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, incomplete, and inadequate. *ALJ's Proposed Decision* p. 11.

On exception, the Contractor argued that the ALJ erred in holding him responsible for the Claimant's actual loss because signed his contract with the Claimant over to his subcontractor, Dan Rexrode. The Commission finds no error.

Md. Code Ann., Bus. Reg. ("BR") § 8-103 provides that the provisions of the Home Improvement Law may not be waived. BR § 8-601(a) prohibits unlicensed persons from acting as a home improvement contractor. BR § 8-612 prohibits the performance of "a home improvement with or through another person who is required to be licensed under [the Home Improvement title] but is not licensed." BR § 8-405 allows homeowners to recover compensation from the Guaranty Fund for the acts or omissions of a licensed contractor, including the acts or omissions of the contractor's subcontractors and employees.

In this case, the Contractor sold a home improvement to the Claimant and began performing the home improvement. An agreement between the parties and Mr. Rexrode dated September 1, 2020, provided that Mr. Rexrode would assume responsibility for performing the parties' original home improvement contract and that the Contractor was absolved of liability under the home improvement contract. Mr. Rexrode was not licensed to perform home improvement contracts. Therefore, the assignment of the contract and liability thereunder to Mr. Rexrode would constitute a waiver of the Claimant's right to file a Guaranty Fund claim. Accordingly, the Commission finds that the September 1, 2020, agreement assigning the parties' contract to an unlicensed contractor and releasing the Contractor from liability under the contract



was void for illegality because it violated BR §§8-103, 8-601, and 8-602.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 5th day of April 2023, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AFFIRMED**;
- 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 **AFFIRMED**;
- D. That the Claimant is awarded \$30,000.00 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.

I. Jean White
Chairperson –Panel
Maryland Home Improvement
Commission

