

<p>IN THE MATTER OF THE CLAIM</p> <p>OF GREGORY CZECHOWICZ,</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 OSCAR PADILLA,</p> <p>T/A SOLID BRICK CONTRACTING</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE MARY PEZZULLA,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: LABOR-HIC-02-22-09824</p> <p>* MHIC No.: 22 (75) 118</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>
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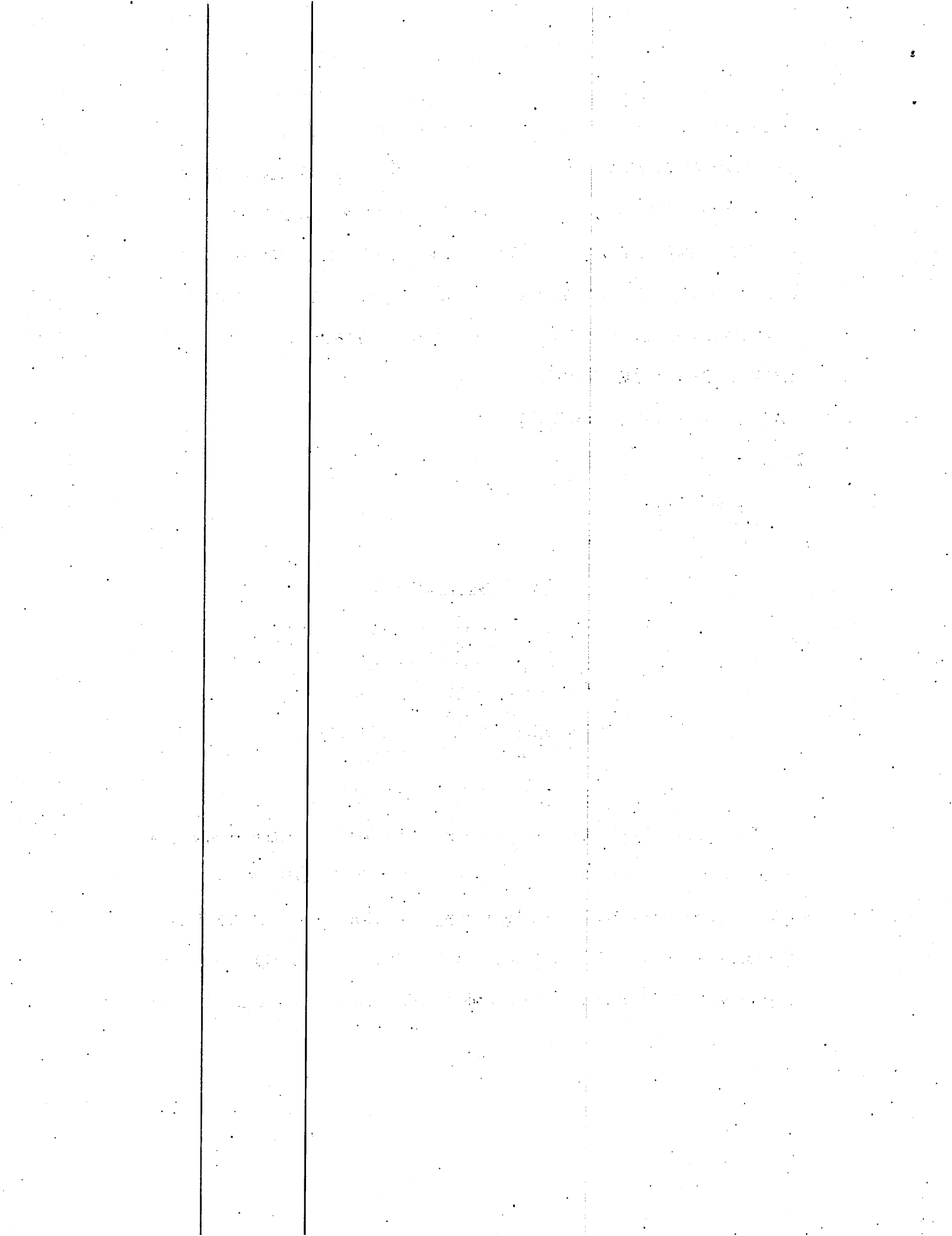
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PROPOSED DECISION

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 December 17, 2021, Gregory Czechowicz (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 \$19,236.75 for actual losses allegedly suffered as a result of a home improvement contract with Oscar Padilla, trading as Solid Brick Contracting LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to –



411 (2015).¹ On April 22, 2022, the MHIC issued a Hearing Order on the Claim. On April 28, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On July 11, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent represented himself.

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

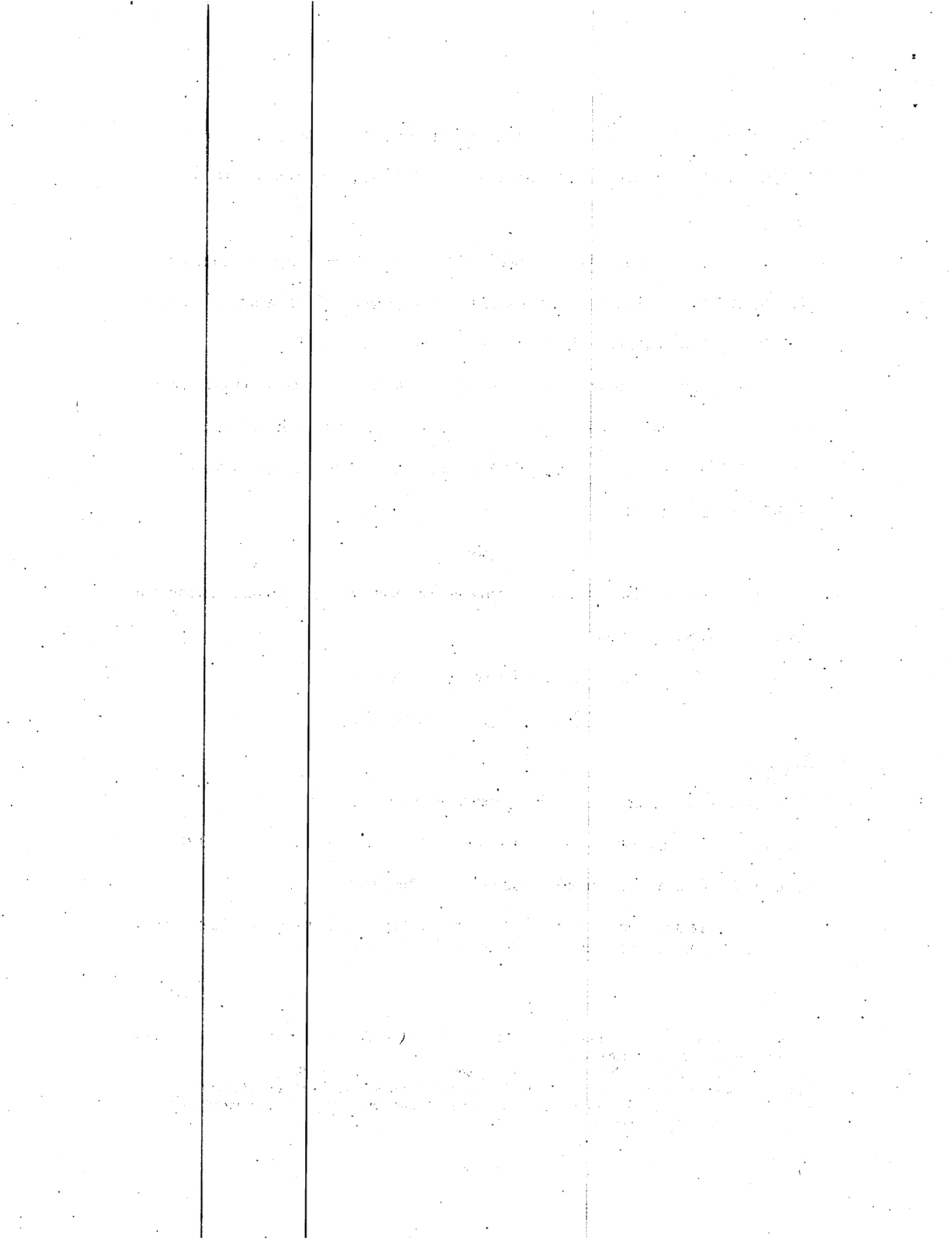
I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, signed May 19, 2020²
- Clmt. Ex. 2 - Estimate from Rooted in Nature, September 27, 2021
- Clmt. Ex. 3³ - Text messages between the Claimant and the Respondent, various dates; six color photographs taken by the Claimant, October 2021

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

² The Contract is dated May 18, 2020, but was signed by both parties on May 19, 2020.

³ This is a six-page document. It originally did not have page numbers, but during the hearing, I requested permission to number the pages for ease of reference. All parties agreed and I handwrote page numbers at the bottom of each page of the document.



Clmt. Ex. 4 - [Marked for identification, but not offered]⁴

I admitted the following exhibits offered by the Respondent:

Resp. Ex. 1 - Photograph of steps, undated

Resp. Ex. 2 - Text messages between the Respondent and the Claimant, July 9, 2020

Resp. Ex. 3 - Email from Shane Robinson, EP Henry, to the Respondent, July 11, 2022

Resp. Ex. 4 - Estimate from Lazo Landscaping, September 21, 2021

Resp. Ex. 5 - Photograph of completed work, undated

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, May 5, 2022

Fund Ex. 2 - MHIC Hearing Order, April 22, 2022

Fund Ex. 3 - Letter from the MHIC to the Respondent, February 7, 2022 with attached Home Improvement Claim Form, December 13, 2021

Fund Ex. 4 - MHIC Licensing History for the Respondent, June 15, 2022

Testimony

The Claimant testified and presented the testimony of Jeremy Chilcoat, Production Manager and Director at Rooted in Nature, accepted as an expert in pavers and pool coping.

The Respondent testified and did not present other witnesses.

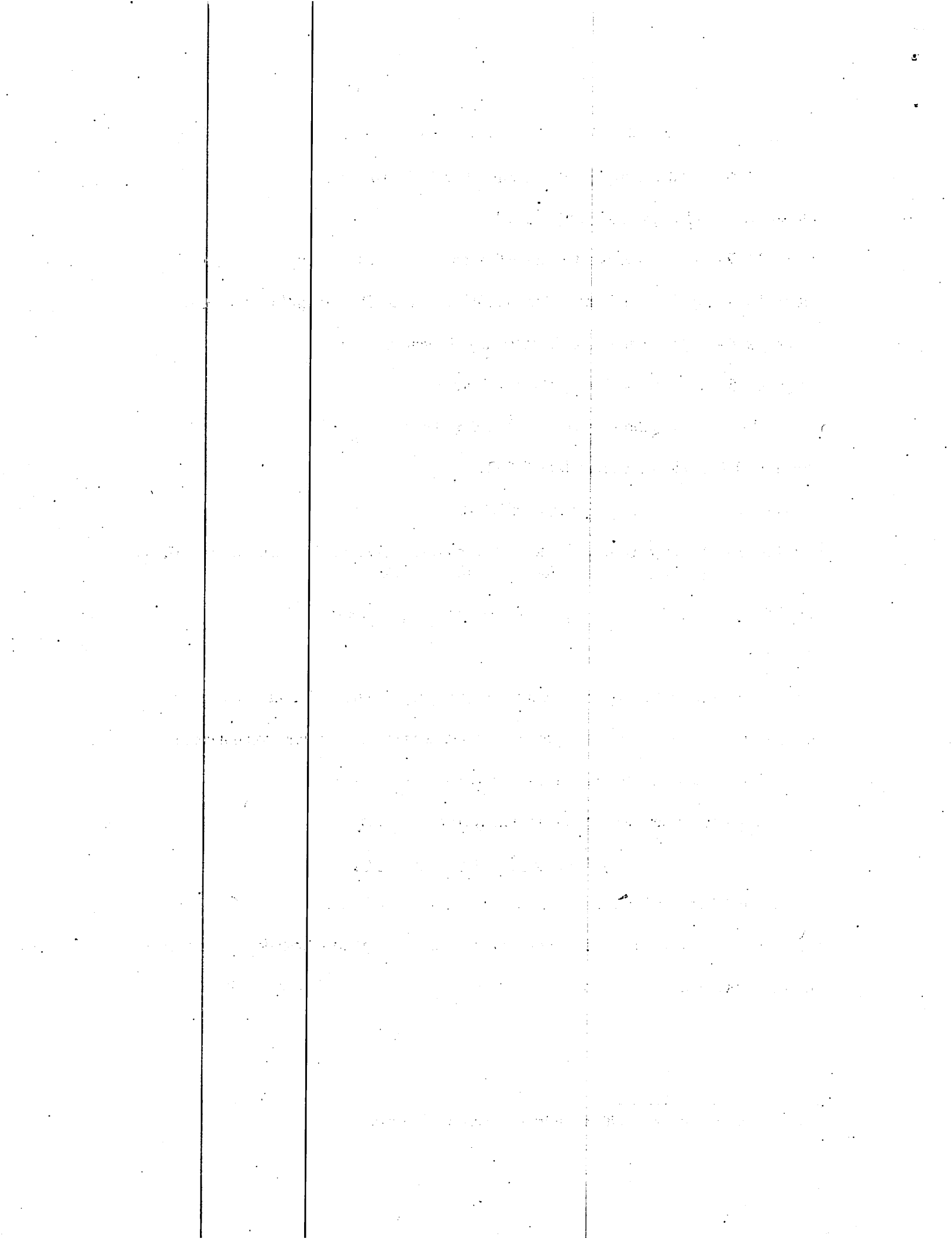
The Fund presented additional testimony from Mr. Chilcoat.

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 01-114634 and 05-135102.

⁴ This document will be retained with the file but is not admitted into evidence.



2. On May 19, 2020, the Claimant and the Respondent entered into a contract to demolish the existing patio around the Claimant's pool, install a new paver patio and walkway filled with polymeric sand, install new paver steps with bluestone caps, remove the existing pool coping and replace it with bull nose coping, and install a new fire pit at the Claimant's home in Bel Air, Maryland (Contract).

3. The original agreed-upon Contract price was \$28,000.00.

4. The Contract stated that work would begin on June 22, 2020 and would be completed in approximately ten days.

5. The Claimant was to make three installment payments in the amounts of \$9,500.00, \$7,000.00, and a final payment upon completion of \$11,500.00.

6. The Claimant made all payments, paying the Respondent a total of \$28,000.00.

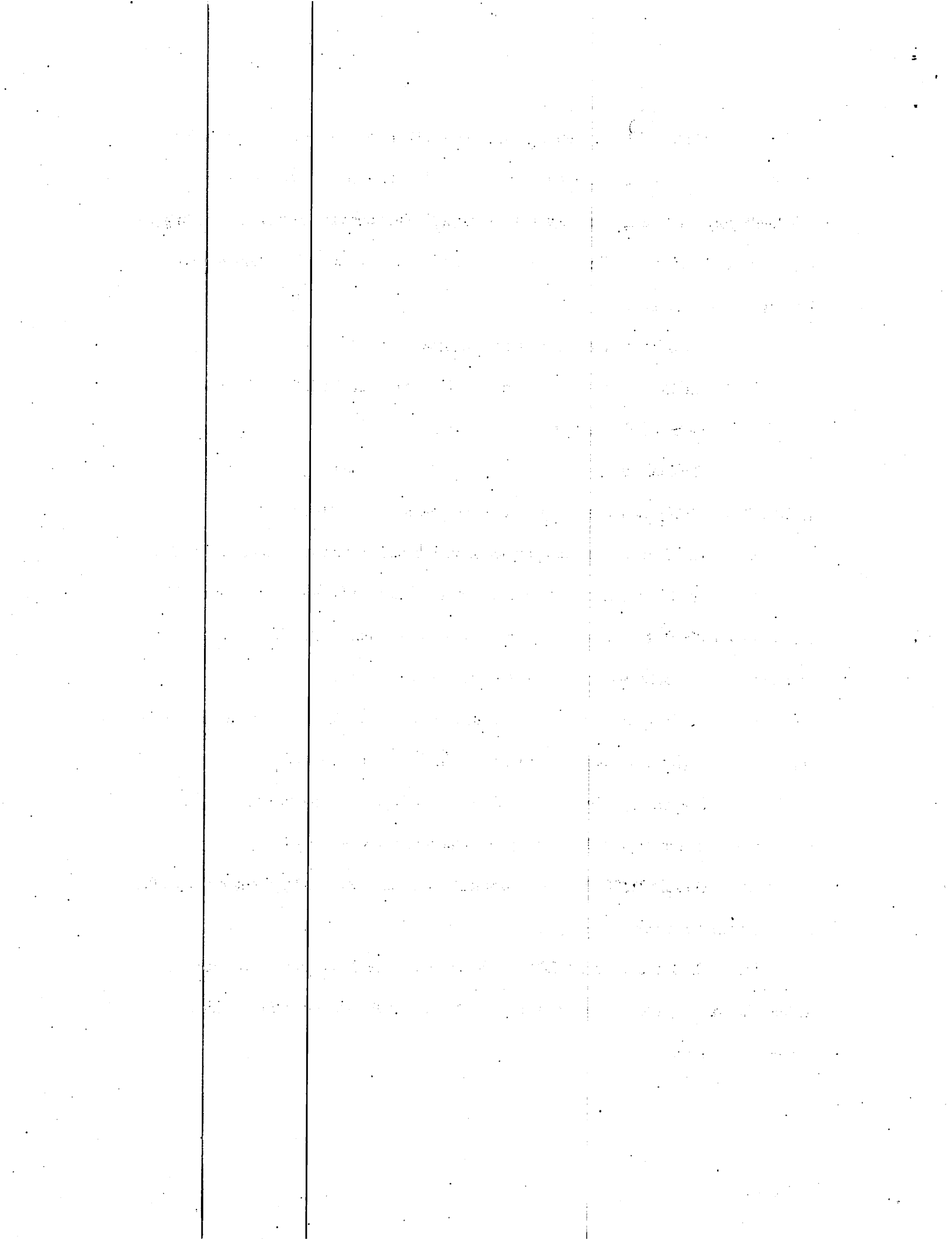
7. The Claimant received a settlement from the manufacturer of the pavers, EP Henry, for \$10,000.00 because the coloring of the pavers was not as specified. The settlement was for the product only and included no other materials or labor.

8. The Respondent did not install an expansion joint between the pavers and the pool coping, nor did he install caulk to seal the pavers where they meet the coping.

9. In approximately July 2020, the Claimant began to notice that some of the pavers were sunken and chipped, and there were gaps in the joints between the pavers.

10. On July 21, 2020, the Claimant texted the Respondent to let him know about the problems with the pavers. (Clmt. Ex. 3, p. 2).

11. On or about July 21, 2020, the Respondent agreed to return to the property to address the cracked, loose, and uneven pavers. The Respondent did not return to address these, or any other, issues.



12. At some point after July 2020, cracks began to develop in the pool coping and the coping was visibly uneven.

13. Additionally, the polymeric sand between the pavers began to wash away or was missing.

14. In October 2020, the Respondent again said he could send someone to the property to address the issues, but he never did.

15. In May 2021, the Claimant reported to the Respondent that the caps or treads of the bluestone steps were discolored.

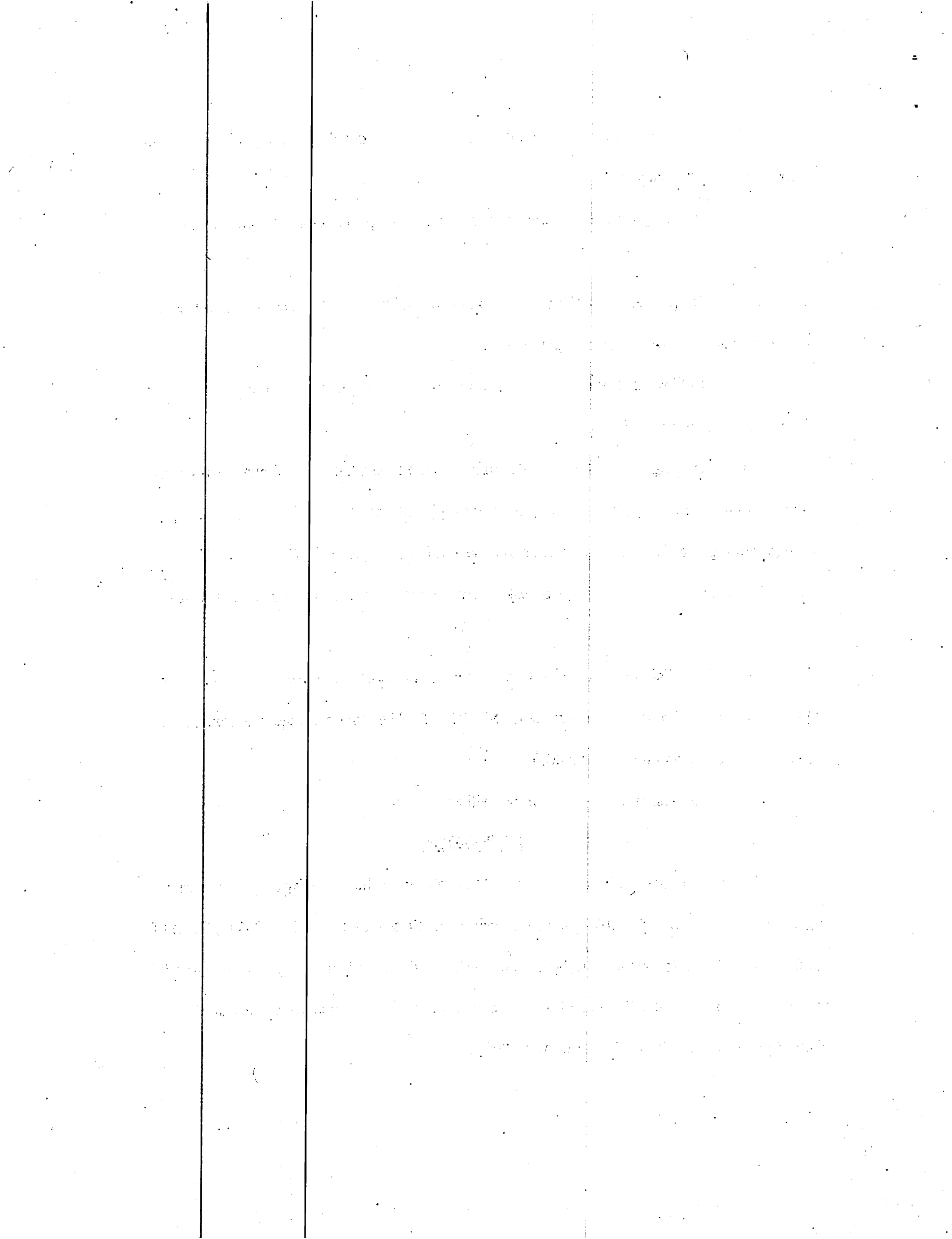
16. On August 18, 2021, the Respondent texted the Claimant and stated that he was “willing to pay for pool sealing, missing poly[meric] [sand], cracked pool coping, missing glue on pool coping, etc. [G]et a price from someone and I will pay for it...” (Clmt. Ex. 3, p. 5). He also stated that he would “cover” the bluestone caps of the steps only and not the entire steps. (*Id.*).

17. The Claimant obtained two estimates for the work that needed to be corrected. One estimate was from Rooted in Nature for \$19,236.75. The other estimate was from Lazo Landscaping in the amount of \$15,500.00.

18. The Respondent refused to pay either amount.

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 Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

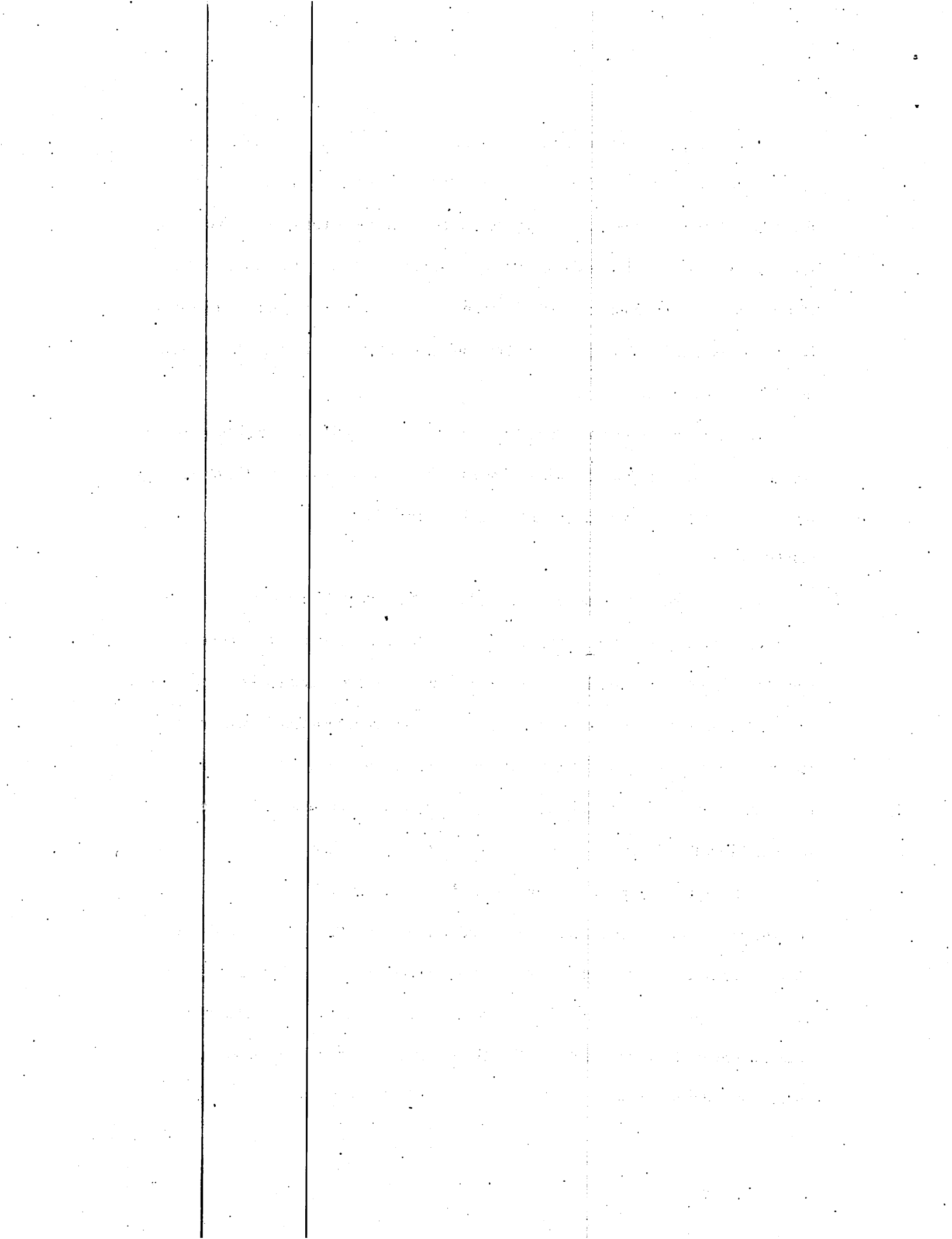


An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”). “[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.

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 and there is no pending court claim for the same loss. Bus. Reg §§ 8-405(g), 8-408(b)(1).

In this matter, the Claimant received a \$10,000.00 settlement from the manufacturer of the pavers, EP Henry, because the coloring of the pavers was not as specified. The Respondent argued that the Claimant should not be entitled to recovery from the Fund for the pavers since he already received this settlement payment. The Respondent maintained that the settlement was for everything associated with the pavers and the installation of the pavers. The Claimant argued that the settlement was because the coloring of the pavers was not correct. Neither party submitted the settlement agreement between EP Henry and the Claimant.

The Respondent’s position is not supported by the evidence. The Respondent entered into evidence an email from EP Henry, which states “in January 2021, EP Henry and [the Claimant] reached a warranty agreement addressing concerns [the Claimant] had regarding the quality of the manufactured stone. This agreement was to address only the stone itself, no other matters are covered in our warranty.” (Resp. Ex. 3). As the settlement was not related to the installation of the pavers, or for any of the additional materials or labor required to install the

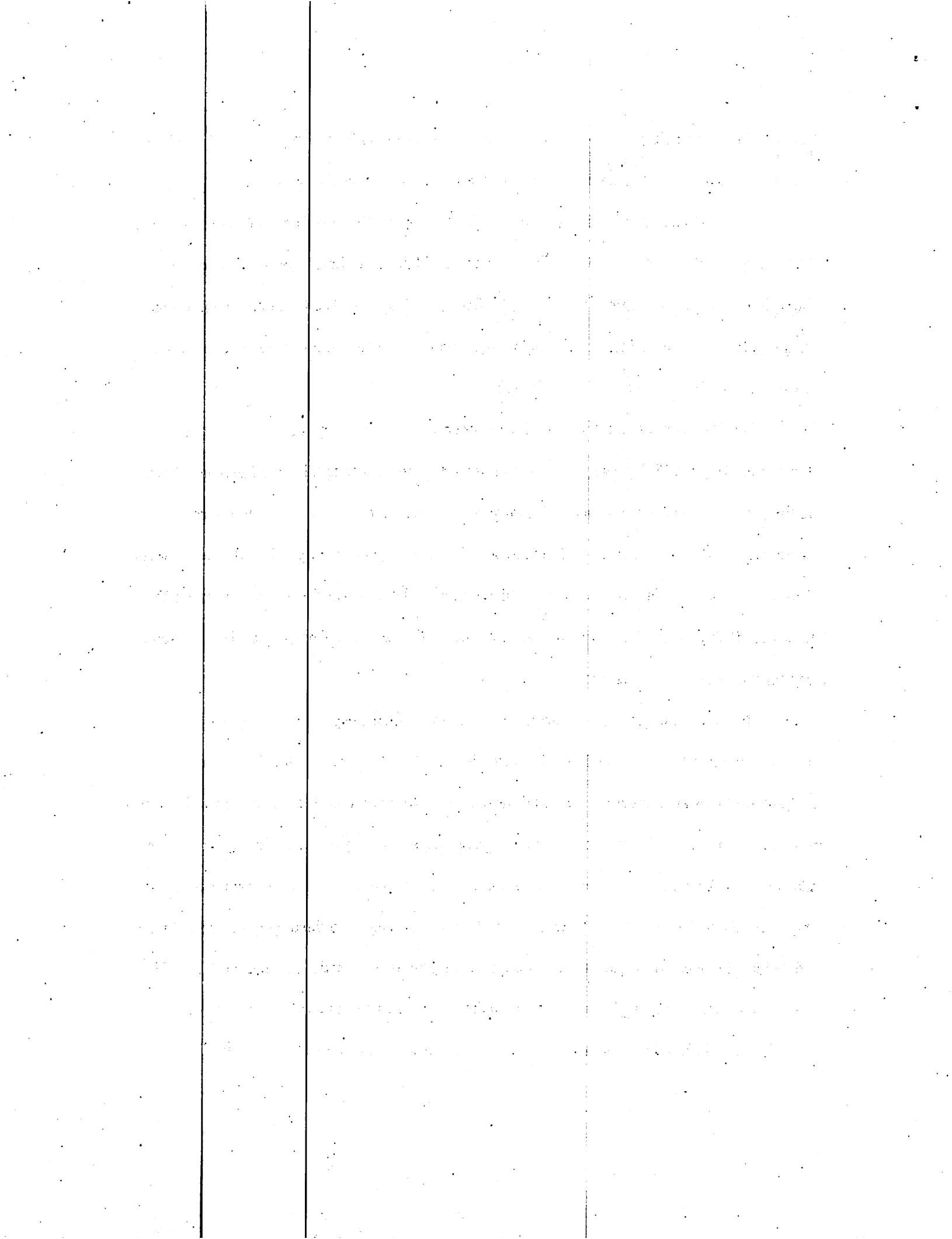


pavers, I do not find that this settlement is a bar to the Claimant's recovery from the Fund due to actual losses allegedly suffered as a result of the Contract with the Respondent.

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 Claimant did not unreasonably reject good faith efforts by the Respondent to resolve the claim. *Id.* § 8-405(d). The Claimant attempted multiple times to have the Respondent return to the property to correct the issues. Although the Respondent initially agreed to return to correct the work on the project, he failed to actually return. Additionally, when the Respondent told the Claimant to get estimates to have the work completed by another contractor and offered to pay for the work, the Claimant obtained two such estimates. The Respondent then refused to pay for the work in either estimate.

I find the Claimant has met his burden to show that the Respondent performed unworkmanlike and inadequate home improvements. The Claimant paid the Respondent \$28,000.00 to install a paver patio around his existing pool with a paver walkway; install a bull nose pool coping; install a fire pit; and install paver steps. The Respondent did not contest that additional work needed to be done to correct issues with installation of the pavers; however he characterized the issues as "minor" and argued that the estimates provided by the Claimant were inflated and he does not believe the other contractors provided the estimates in good faith. The Respondent testified that he knows Jose Lazo, the owner of Lazo Landscaping, and he believes the estimate of \$15,500.00 was just Mr. Lazo "trying to sell a job" and make money. The

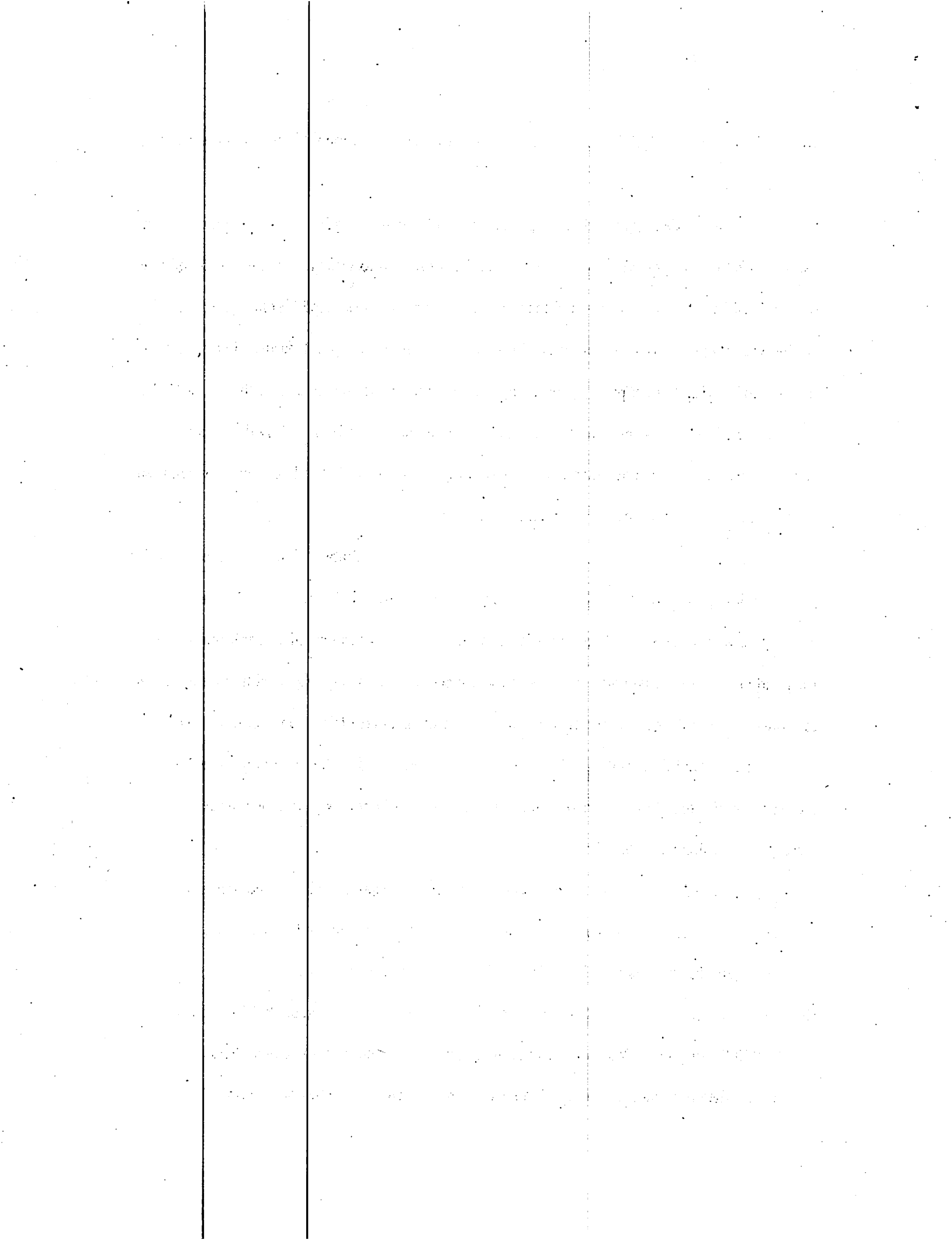


Respondent conceded that the Lazo Landscaping estimate did not include replacing the existing pavers.

The Respondent agreed that the polymeric sand was missing in places, but stated that re-sanding has to occur periodically as it is normal for some of it to wash away. He estimated that it would only cost \$600.00 to re-sand the area. The Respondent testified that he agreed that the coping was not perfectly level, but argued that it was within industry standards. He also argued that he did not install an expansion joint between the coping and the pavers, but he did not believe he had to because he used the polymeric sand to serve as a buffer. Finally, he stated that based on the pictures, he could see that some of the pavers had settled or had gaps between them, but this was not the result of unworkmanlike installation.

I found the Respondent's testimony self-serving and unreliable. The Respondent testified that he believed the estimates provided by the Claimant from two different MHIC licensed contractors were excessively high, but provided no evidence to support this. Additionally, the Respondent did not explain why, if he believed the corrections would only cost hundreds instead of thousands of dollars to rectify, he did not return to the property to make the corrections, as he had assured the Claimant multiple times that he would. He testified that he returned to the property three or four times to correct minor things, but this is not supported by the text messages in evidence. (Clmt Ex. 3).

The Respondent also testified that he had agreed to install new bluestone treads on the steps because the Claimant was not happy with the way the treads looked as they were discolored, but that he was only installing the new treads, not providing the new stone. However, the text message the Respondent sent to the Claimant on August 18, 2021 states, "You paid \$3,000 for the steps. You are complaining about the bluestone caps only so I can cover only the caps not the entire steps. And I will also keep the bluestone that they will remove." (Clmt.



Ex. 3, p. 5). This text message does not support the Respondent's position that he was only installing new bluestone caps and not providing new ones. There is nothing in the text exchange that states, or even implies, that the Claimant would be purchasing new caps for the Respondent to install. The Respondent's inconsistencies and mischaracterizations render his testimony untrustworthy.

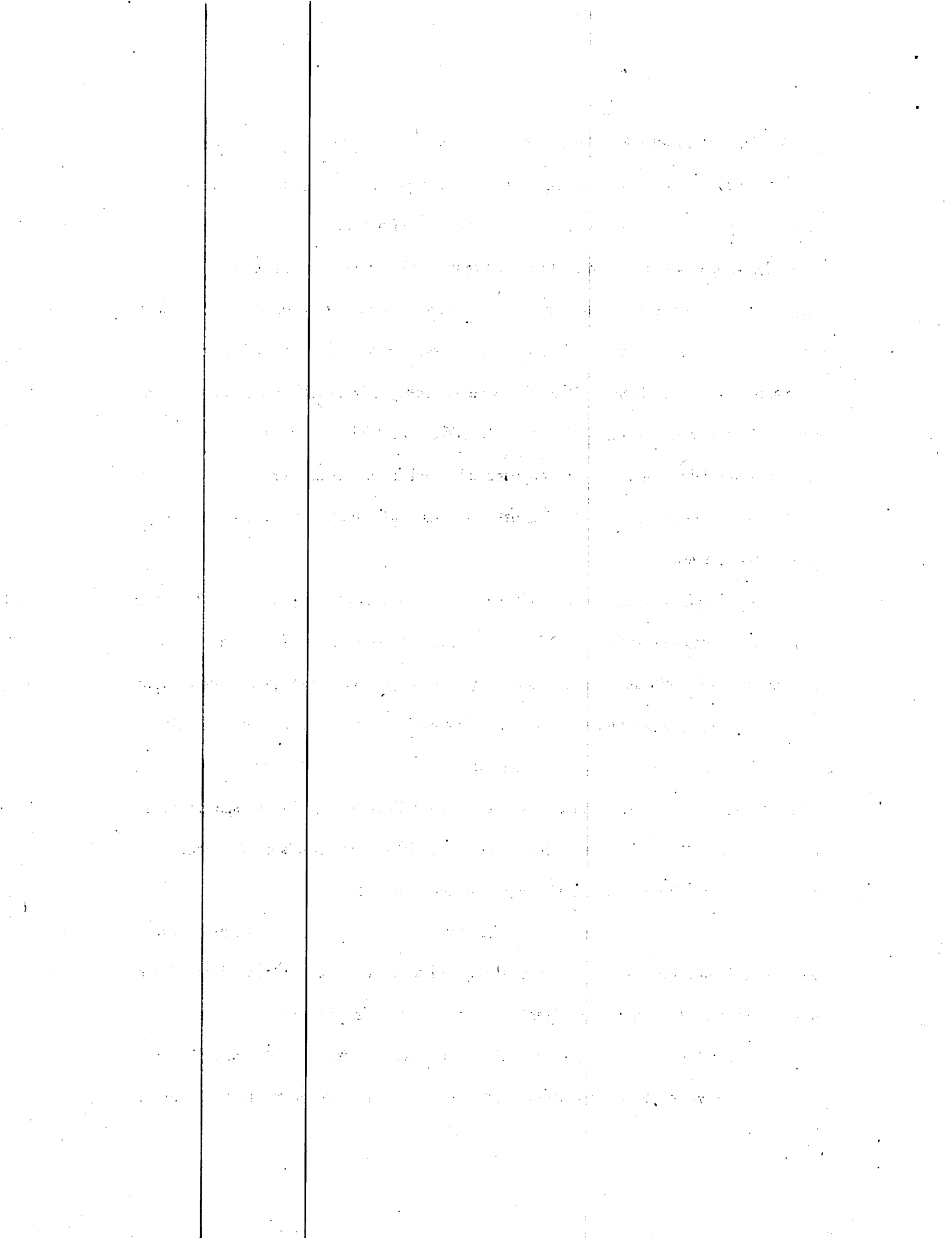
The Claimant presented the testimony of Jeremy Chilcoat, who I accepted as an expert in pavers and pool coping. Mr. Chilcoat is a Production Manager and Director at Rooted in Nature, one of the MHIC licensed contractors that the Claimant hired to provide an estimate for the work necessary to correct the work done by the Respondent. Mr. Chilcoat was clear in his testimony that the Respondent performed an unworkmanlike home improvement in the installation of the Claimant's pavers and pool coping. Mr. Chilcoat explained that there was no expansion joint between the pool coping and pavers, which means the pavers cannot move freely, so where they meet the coping, they hit against it and the shell of the pool, which causes cracks in the coping and is not good for the structure of the pool. When he inspected the Claimant's property in June 2022, Mr. Chilcoat noted cracks in the pool coping and that the pool coping was loose. Mr. Chilcoat directly attributed the cracks in the pool coping to the lack of an expansion joint. Mr. Chilcoat further explained that polymeric sand cannot be used in place of an expansion joint and that the use of an expansion joint between the pavers and the pool coping is the industry standard.

Mr. Chilcoat also stated that he noticed that the area with the pavers was not graded properly, some pavers were sinking, and there were lines or uneven gaps between some of the pavers. He also noted that there were places where the polymeric sand was either not installed or not installed properly. He explained that over time polymeric sand can naturally wash away, but what he observed was not normal wear and tear, but the result of poor and improper installation.

The Fund recalled Mr. Chilcoat in order for him to review the estimate provided by Rooted in Nature. Mr. Chilcoat stated that he did not prepare the estimate but believed it to be a fair market price for the work that needed to be done. The Rooted in Nature estimate broke down the work to be done in three categories: Coping; Paver Repairs; and Step Tread Replacement. The estimate for the work to replace and install new coping is listed as \$9,248.00. The cost to repair the pavers, including to “[r]epair/replace pavers that have sunken, chipped, have gaps in joints, or which need the existing cut corrected” is \$6,901.09. (Clmt. Ex. 2). The cost for the step tread replacement is listed as \$3,086.86. Mr. Chilcoat explained that the estimate was solely for the labor and supplemental materials, such as the sand, mortar, and caulk needed to complete the repairs. Mr. Chilcoat was explicit that the estimate did not include the cost to purchase new pavers.

The Fund also inquired of Mr. Chilcoat why there was a difference of \$3,736.37 between the Rooted in Nature estimate for \$19,236.75 and the \$15,500.00 estimate from Lazo Landscaping. Mr. Chilcoat stated that as written, the contracts were for the same scope of work, which was also the scope of the work under the Claimant’s Contract with the Appellant. He explained that the Lazo Landscaping estimate was not as detailed as the Rooted in Nature estimate, so he could not be certain as to why there was a difference in price. He speculated that it could be due to a valuation of the labor, or possibly a difference in materials, but without seeing a breakdown from Lazo Landscaping, he could not be positive.

I found Mr. Chilcoat’s testimony detailed and thorough. He was familiar with the work done at the Claimant’s property, the repairs that would be needed to correct the work done by the Respondent, and his testimony was clear that the Respondent’s installation of the pavers, polymeric sand, and pool coping was unworkmanlike, which is what caused the damage to the pavers and the coping. I thus find that the Claimant is eligible for compensation from the Fund.



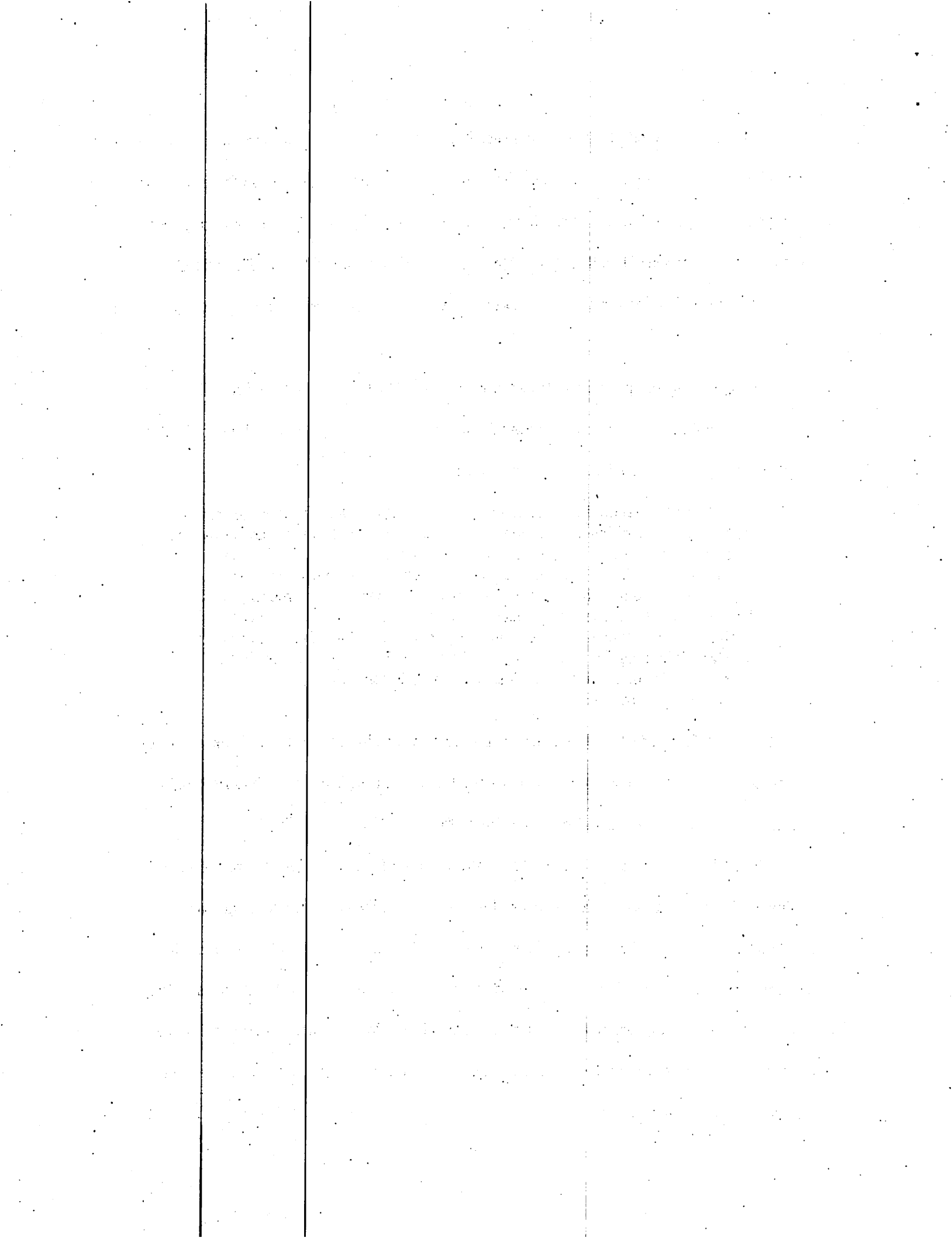
Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. 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 Claimant provided two estimates for the work necessary to repair the poor work done by the Respondent: the Rooted in Nature estimate for \$19,236.75 (Clmt. Ex. 2); and the Lazo Landscaping estimate for \$15,500.00 (Resp. Ex. 4).

The Claimant seeks reimbursement for the amount of the Rooted in Nature estimate. The Claimant did not testify as to why the Rooted in Nature estimate is preferable to the Lazo Landscaping estimate. The Respondent argued that neither estimate was made in good faith and that both amounts are too high. As explained above, the Respondent provided no basis for this assertion and it was contradicted by the testimony of Mr. Chilcoat. The Fund argued that the Rooted in Nature estimate should be used as the Lazo Landscaping estimate was not as detailed and did not fully explain the totality of the scope of work to be completed. The Rooted in Nature

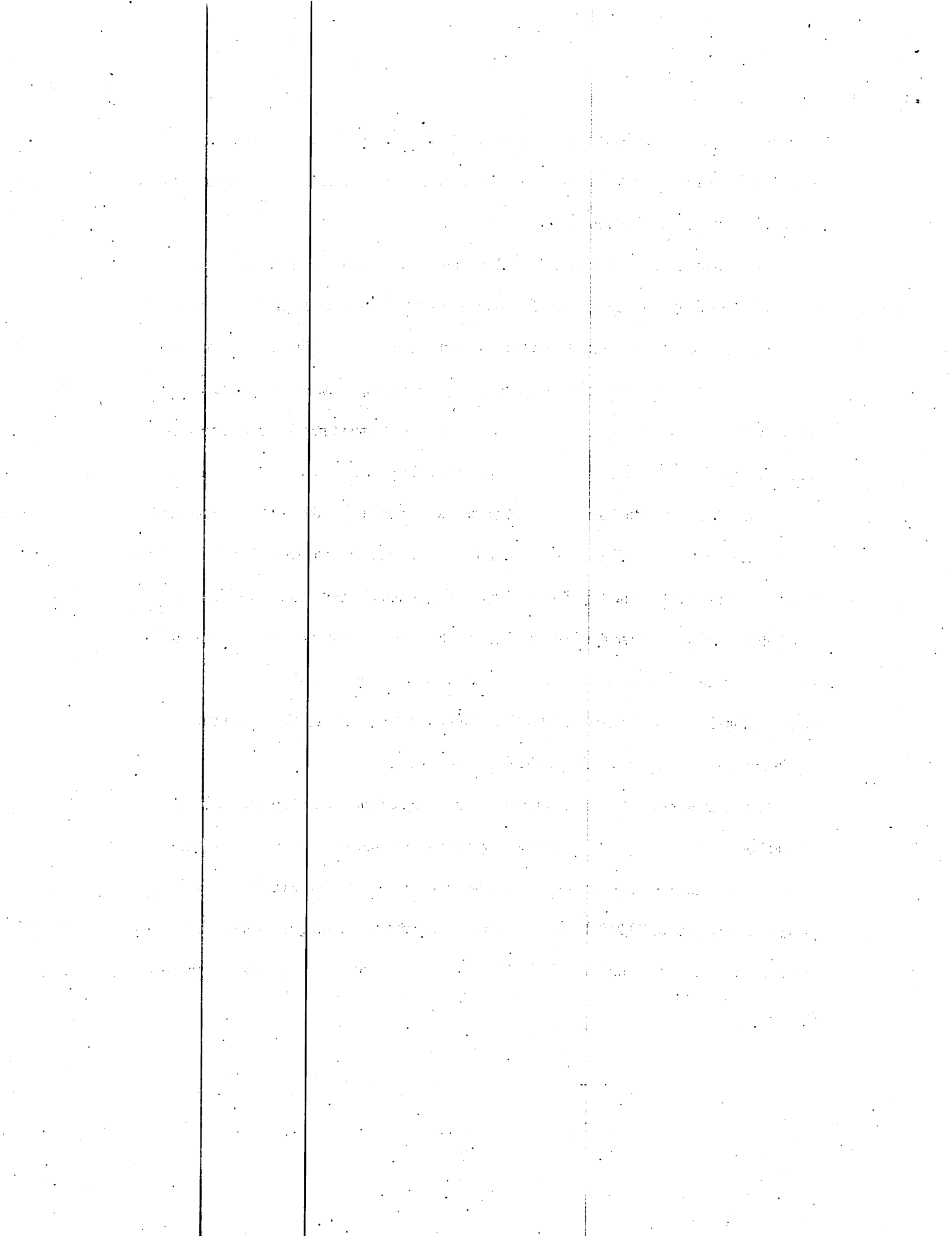


estimate is more detailed than the Lazo Landscaping estimate, breaks down the work into three areas, and attributes a cost for each one. As such, I find it appropriate to use the Rooted in Nature estimate in the calculation of the award.

The Fund additionally argued that although the Rooted in Nature estimate should be utilized in the calculation, the amount of \$3,086.86 for the "Step Tread Replacement" should not be included as the Claimant failed to meet his burden to show that any discoloration of the step treads was due to the Respondent's unworkmanlike, inadequate, or incomplete home improvement, as is required by the statute. I agree that the Claimant has failed to show that the discoloration of the steps was in any way related to the Respondent's installation of the steps.

Mr. Chilcoat testified that discoloration can occur naturally, although, in his experience, he would expect to see the discoloration occur after approximately two years. Mr. Chilcoat was not able to provide an explanation for the discoloration of the bluestone treads, or if improper installation could even cause the discoloration. As there was no evidence presented that the Respondent's installation of the bluestone treads was unworkmanlike and caused the discoloration, I shall not include the \$3,086.86 allotted in the Rooted by Nature estimate for the tread replacement in my calculation of the Claimant's actual loss.

It was uncontested that the Claimant paid the Respondent the total contract price of \$28,000.00. The evidence is clear that the Respondent performed an unworkmanlike home improvement in his installation of the pavers and pool coping. The Rooted in Nature Estimate provides an estimate of \$9,248.80 to remove and replace the pool coping and \$6,901.09 in order to repair the pavers. This totals \$16,149.89 that the Claimant will have to pay to have this work corrected.



Using the above formula, the Claimant's actual loss is calculated as follows:

Amount the Claimant paid to the Respondent	\$ 28,000.00
Amount the Claimant paid to repair/complete the work	+\$ 16,149.89
	\$ 44,149.89
Minus Contract price	-\$ 28,000.00
Actual loss	\$ 16,149.89

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.⁵ In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$16,149.89.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$16,149.89 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. COMAR 09.08.03.03B(2).

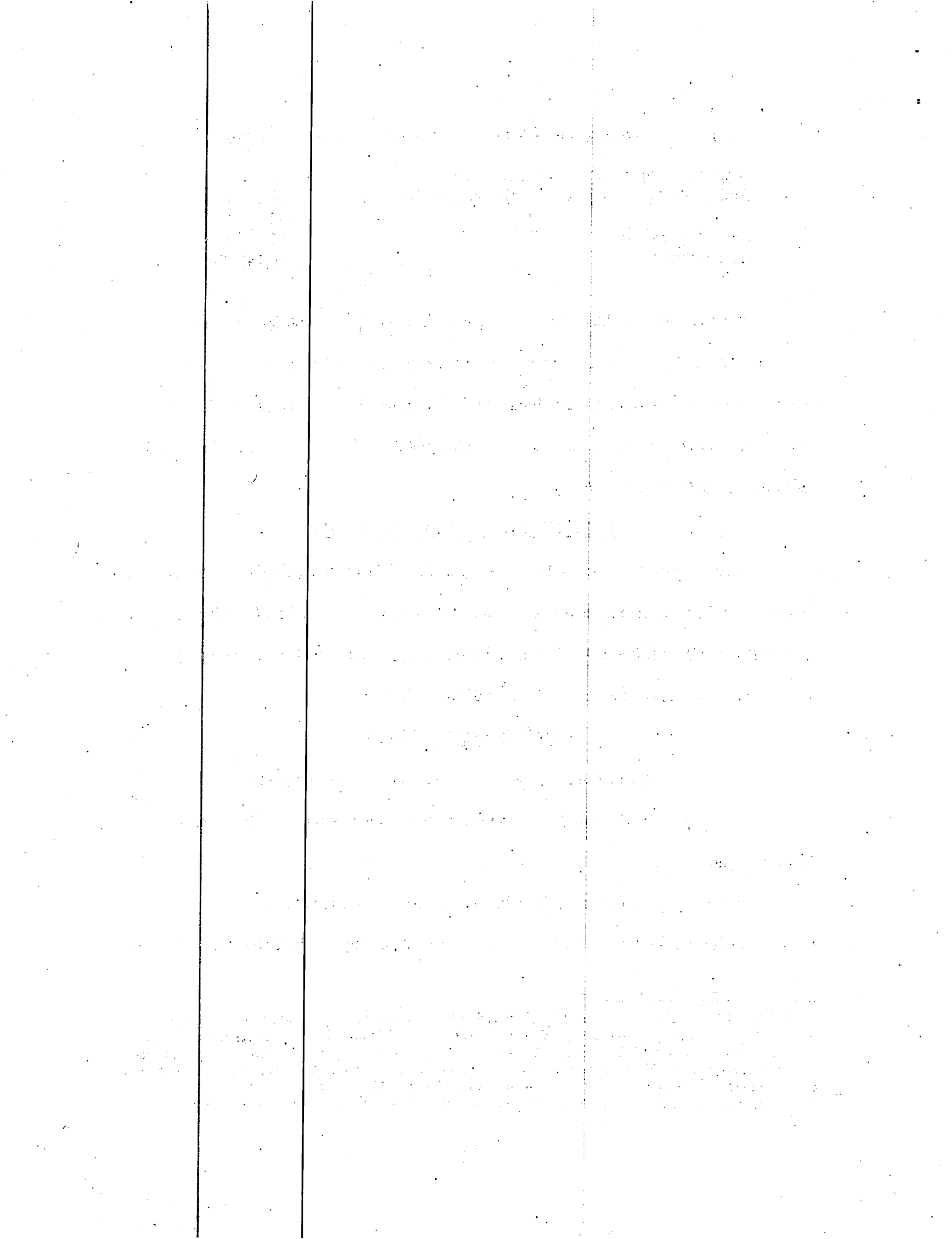
RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$16,149.89; 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

⁵ 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). The increased cap is applicable to any claim on or after July 1, 2022, 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,⁶ and

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

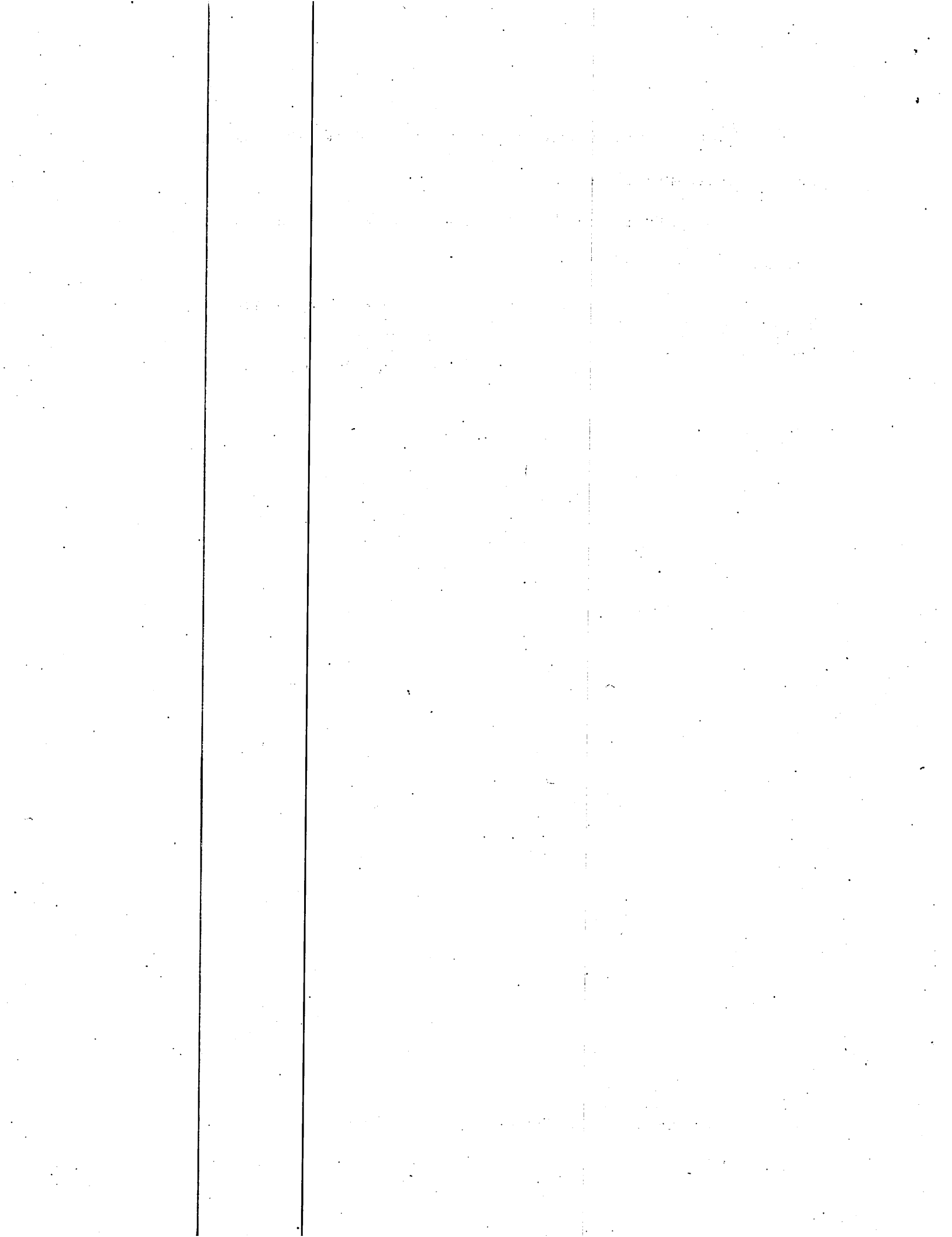
September 19, 2022
Date Decision Issued

Mary Pezulla

Mary Pezulla
Administrative Law Judge

MP/da
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⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 21st day of October, 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***

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