

<p>IN THE MATTER OF THE CLAIM</p> <p>OF PATRICIA RUSS,</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 JUSTIN ROY,</p> <p>T/A BLUESTAR HOME</p> <p>INNOVATION, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE TRACEE N. HACKETT,</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-02-22-14058</p> <p>* MHIC No.: 22 (75) 547</p> <p>*</p>
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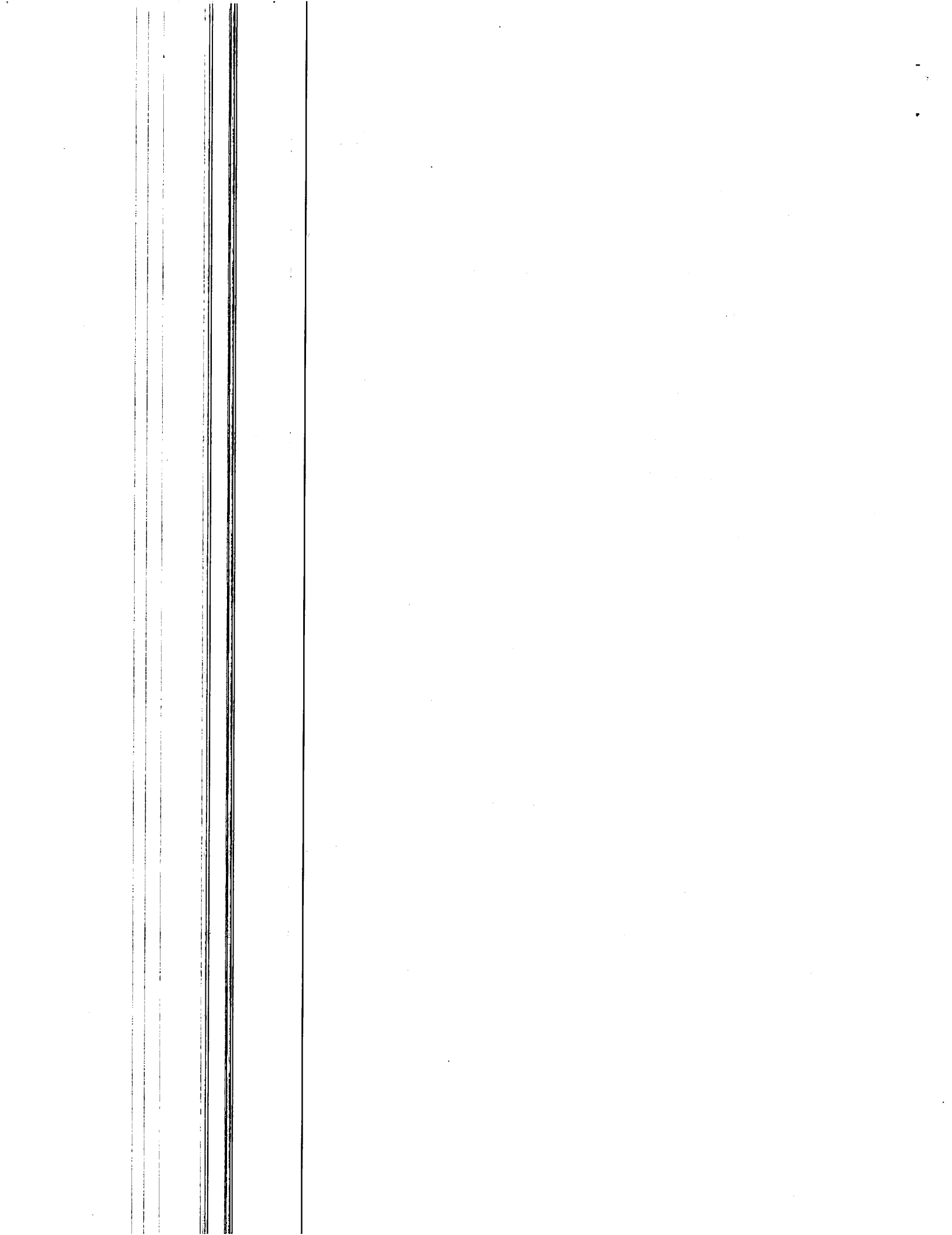
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PROPOSED DECISION

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

STATEMENT OF THE CASE

On March 8, 2022, Patricia Russ (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 \$8,995.00 for actual losses allegedly suffered as a result of a home improvement contract with Justin Roy, trading as Bluestar Home Innovation, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015 & Supp.



2022).¹ 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 December 9, 2022, I held a hearing at the OAH in Hunt Valley, Maryland.² Bus. Reg. §§ 8-407(a), 8-312. Jonathan Phillips, Assistant Attorney General, Department, represented the Fund. The Claimant was self-represented.

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. Code of Maryland Regulations (COMAR) 28.02.01.23A. On October 26, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States first-class mail and certified mail to the Respondent's address on record with the OAH. COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for December 9, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. COMAR 09.08.03.03A(2). The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Notices were returned to the OAH with the notation that the certified mail was unclaimed, and the first-class mail was undeliverable as addressed. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E.³ The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

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

² This case was previously scheduled on October 24, 2022, and was postponed on October 20, 2022, at the request of the MHIC Fund so that the Respondent's personal address could be updated with the OAH and a new notice could be sent. The OAH did update the Respondent's personal address prior to rescheduling the hearing.

³ See also Bus. Reg. §§ 8-309, 8-312(d), (h).

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); 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:⁴

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, dated April 9, 2021
- Clmt. Ex. 2 - Email exchange between the Respondent and the Claimant, dated August 12-13, 2021
- Clmt. Ex. 3 - Contract Amendment, dated September 15, 2021
- Clmt. Ex. 4 - Zelle Payments, various dates
- Clmt. Ex. 5 - MHIC Claim Form, signed March 3, 2022, with attachments
- Clmt. Ex. 6 - MHIC Complaint Form, signed October 31, 2021, with attachments
- Clmt. Ex. 7 - Two colored photographs of back of Claimant's home, undated
- Clmt. Ex. 8 - Home Depot Order email confirmation, dated March 14, 2022; checks to "Pride & Joy", various dates; business card for Rob Gray, Pride & Joy Carpentry, LLC, undated; Pride & Joy Carpentry, LLC, Invoice, "Labor and Material," signed by the Claimant and Rob Gray on March 9, 2022; and Pride & Joy Carpentry, LLC, Invoice, "Labor Only," signed by the Claimant and Rob Gray on March 9, 2022; check to "Mr. Handyman" for estimate, dated February 15, 2022; and pictures of

⁴I left the record open until Tuesday, December 13, 2022, to permit the Claimant to submit documentation regarding payments to "Pride & Joy," the contractor who the Claimant testified that she hired to complete the work, by 5:00 p.m. on Monday, December 12, 2022, and to permit the Fund to submit documentation regarding the license status of "Pride & Joy," by 5:00 p.m. on December 13, 2022. Both parties complied with providing the documentation within each set deadline.

back of Claimant's home showing work completed by Pride & Joy, LLC, undated.

The Respondent was not present and did not offer any exhibits.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Hearing, dated October 26, 2022

Fund Ex. 2 - Hearing Order, signed June 8, 2022

Fund Ex. 3 - HIC Claim Form, signed March 3, 2022

Fund Ex. 4 - Maryland Department of Labor, HIC, I.D. Registration search results, dated December 4, 2022

Fund Ex. 5 - MHIC Certification of Custodian of Records, regarding licensing history of Robert Gray, trading as Pride & Joy Custom Carpentry, LLC, signed by David Finnerman, Executive Director, MHIC, dated December 13, 2022

Testimony

The Claimant testified and did not present other 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 05-137694 and contractor license 01-118985.
2. On April 9, 2021, the Claimant and the Respondent entered into a contract (Original Contract) to remove and replace six glass panels, trim, and siding, on the back of the Claimant's home, which included the use of proper sealant, water testing, caulking, clean-up, and trash removal. The scope of work also included removal and replacement of sliding glass doors and repair of damaged wood siding on both sides of the residence.
3. The original agreed-upon Contract price was \$10,600.00.

THE HOUSE OF COMMONS

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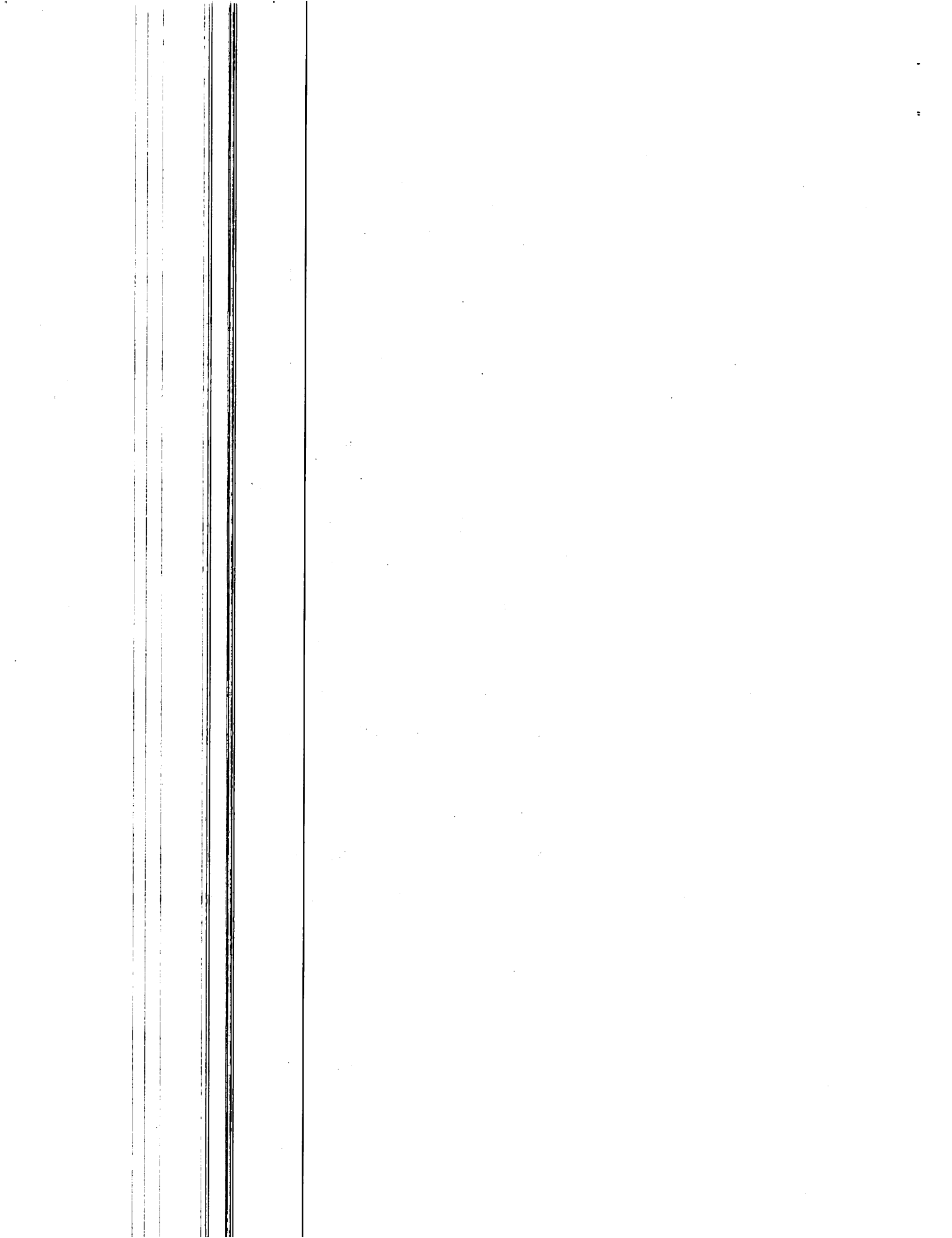
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4. On April 9 and April 10, 2021, the Claimant paid the total initial deposit of \$3,600.00 to the Respondent.⁵
5. The original Contract did not specify a start date or an end date.
6. Between April and May 2021, the Respondent performed no work on the project.
7. In May 15 and May 16, 2021, the Claimant paid a total additional cost of \$3,600.00⁶ which the Respondent claimed were due to the increased material costs as a result of the COVID-19 pandemic.
8. In June 2021, the Respondent notified the Claimant about concerns with rotted wood at the foundation and the need to remove the siding and plywood sheathing to investigate. The Respondent removed a couple of pieces of siding, drilled four holes into the plywood sheathing and sprayed insect repellent into the holes. The Respondent delivered a couple of pieces of new siding at that time, but did not install them.
9. In July 2021, after the Claimant called and texted the Respondent several times with no response, the Respondent informed her that he was in the hospital for a back injury.
10. From July 2021 to August 2021, the Respondent performed no work on the project.
11. On August 12, 2021, the Respondent emailed the Claimant inquiring if the Claimant would like to cancel the contract with a refund,⁷ given the Respondent's delays on the completion schedule; continue with the contract with stipulations; or continue the contract with no changes.

⁵ The Claimant paid the Respondent \$3,000.00 through Zelle on April 9, 2021, and \$600.00 through Zelle on April 10, 2021.

⁶ The Claimant paid the Respondent \$3,000.00 through Zelle on May 15, 2021, and \$600.00 through Zelle on May 16, 2021.

⁷ The amount of the refund was not specified.



12. On August 13, 2021, the Claimant replied to the Respondent's email and indicated that she wanted to continue the contract with the following stipulations:

- Complete the starter strip installation for vinyl siding; installation of four eye hooks; removal of "humps" in vinyl siding; inspection and securing of top metal frame/flashing; and trash removal, from the first Contract.
- Begin work on August 23, 2021 with a scheduled completion date of September 30, 2021. Completion date may need to be adjusted due to cost analysis of material. In any case, final completion would be no later than October 31, 2021.
- Add a 2 x 10 replacement/retrofit due to water damage, with a cost analysis.
- Update the Contract to reflect the materials being used.
- Provide a payment/draw schedule, including update to reflect the initial \$3,600.00 deposit and the additional \$3,600.00 payment.

13. On August 16, 2021, the Respondent replied to the Claimant's email and indicated that he "agree[d] to all of [the Claimant's] requirements." Clmt. Ex. 2.

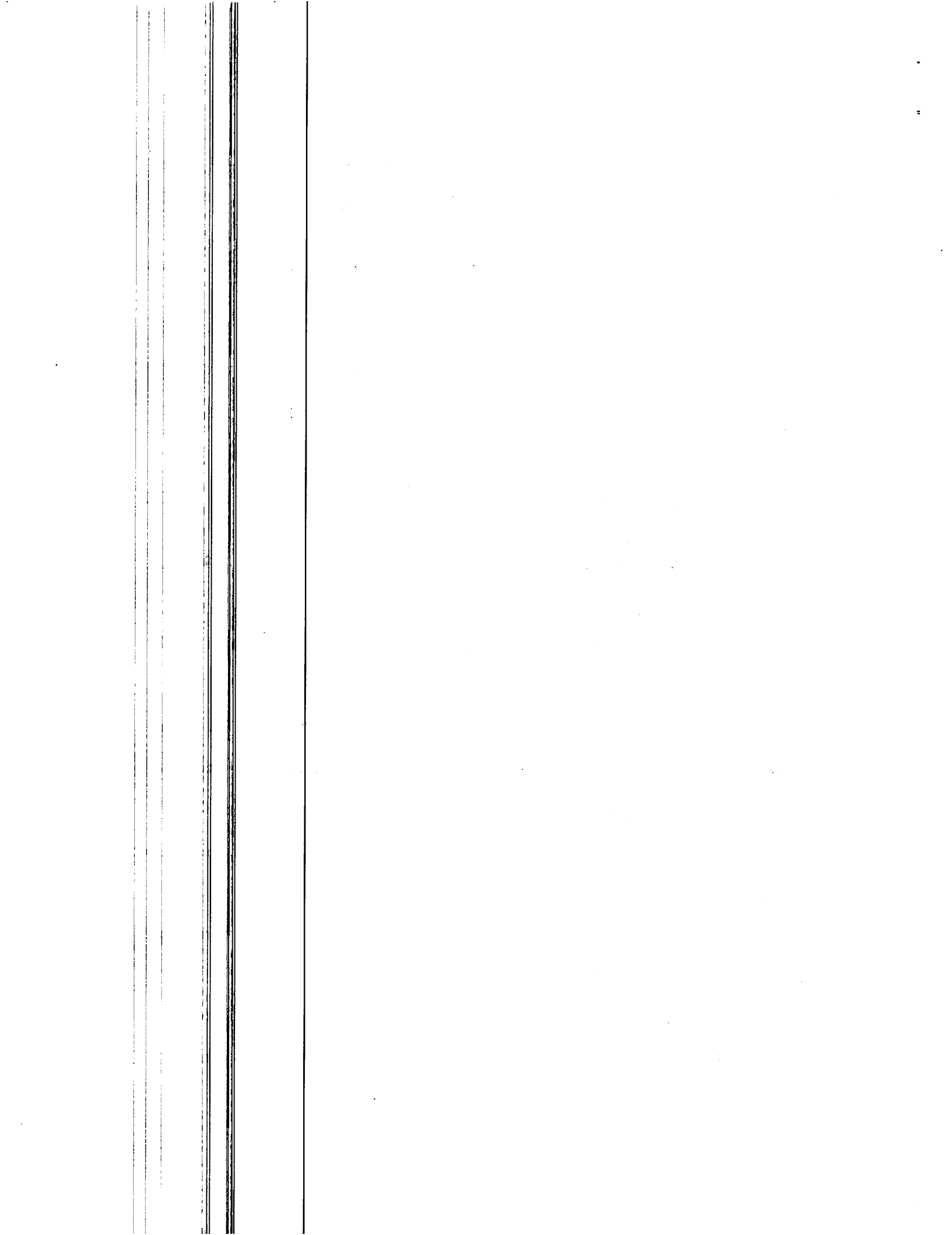
14. There was no formal amendment to the original Contract other than the email communication in August 2021 between the Respondent and the Claimant.

15. On or around August 23, 2021, the Respondent cut a portion of the 2 x 10 rim board to check for rotted wood and he delivered two sheets of plywood and 2 x 4 wood studs. This was the last time that the Respondent performed work on the Claimant's home.

16. Between September 1 and September 14, 2021, the Claimant continued to call and text the Respondent regarding the status of work to no avail.

17. At some point in September 2021, the Respondent changed his phone number and sent the Claimant a few text messages.

18. On September 15, 2021, the Claimant signed an additional contract for the Respondent's labor, materials, and inspection costs in the amount of \$1,100.00 (Second



Contract). The cost breakdown consisted of \$200.00 in labor, \$250.00 for an inspection; and \$650.00 for materials.

19. The Second Contract indicated that the Claimant paid the \$1,100.00 in full, which the Claimant paid in cash.

20. On February 15, 2022, the Claimant paid Mr. Handyman a total of \$75.00 for an estimate regarding the completion of the unfinished work in the Original and Second Contracts.

21. On March 9, 2022, the Claimant entered into a contract with Pride & Joy Custom Carpentry, LLC (Pride & Joy) to complete the unfinished work in the Original and Second Contracts.

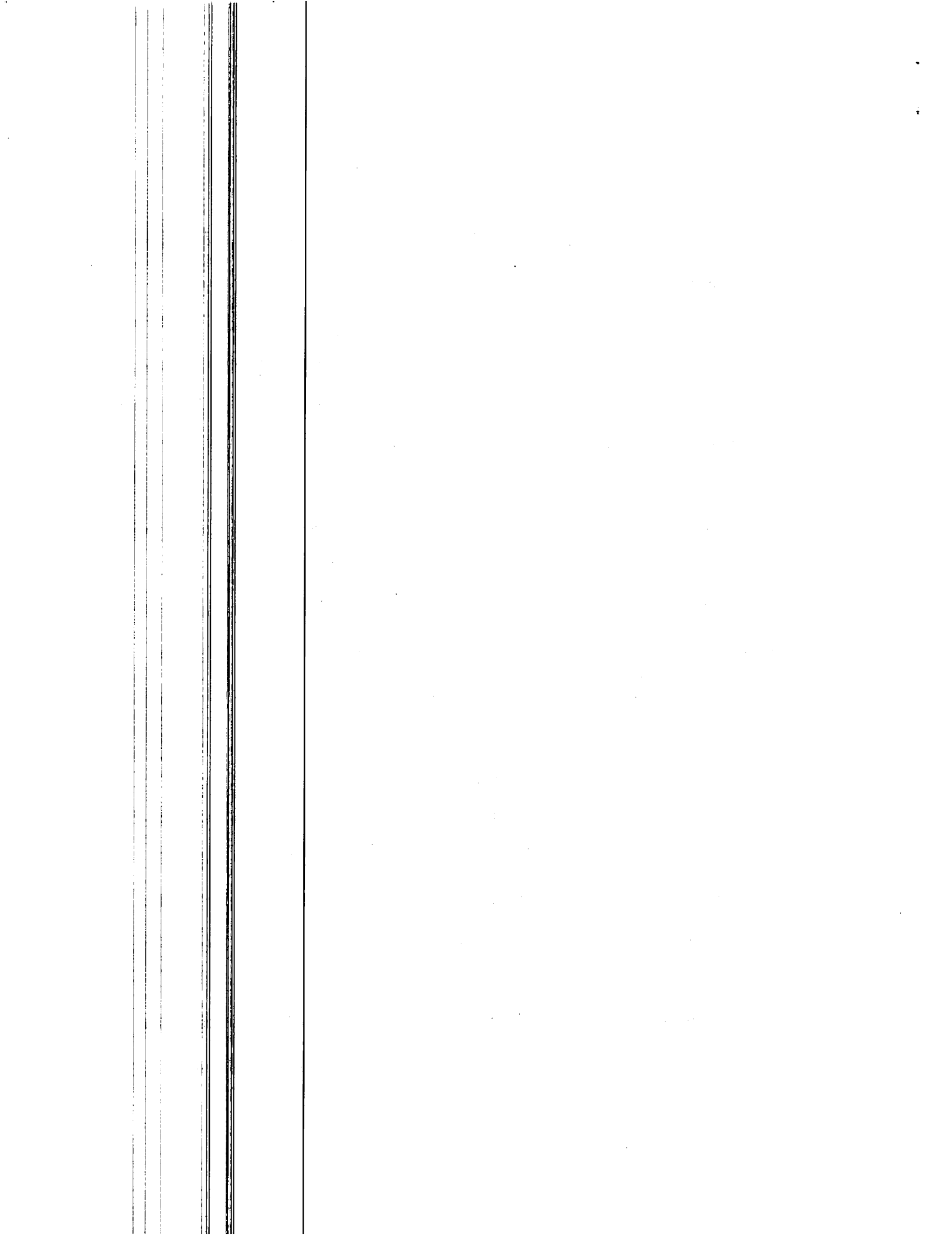
22. On or around March 14, 2022, the Claimant purchased a right and a left 60-inch by 80-inch sliding patio door from Home Depot for a total of \$1,305.92.

23. The Claimant paid Pride & Joy a total of \$6,735.00 which consisted of a check payment of \$2,675.00 on March 9, 2022; a check payment of \$1,110.00 on April 5, 2022; a check payment of \$1,275.00 on April 9, 2022; and a check payment of \$1,685.00 on April 15, 2022.

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); 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. By employing the word “means,” as opposed to “includes,” the legislature intended to limit the scope of “actual loss” to the items listed in section 8–401. *Brzowski v. Maryland Home Improvement Comm’n*, 114 Md. App. 615, 629 (1997).

For the following reasons, I find that the Claimant has proven eligibility for compensation. The Claimant argued that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements because he never finished the project despite numerous payments and consistent contact by the Claimant. The Claimant provided a detailed timeline of events regarding her numerous requests for the Respondent to complete the work required by the Original and Second Contracts. The Claimant’s testimony was supported by photographs of the condition that her home was left in when the Respondent failed to complete the work. The Claimant also provided signed invoices to show that Pride & Joy completed the same scope of work left unfinished by the Respondent. Despite the Respondent receiving \$7,200.00 of the \$10,600.00 due under the Original Contract and the full \$1,100.00 due under the Second Contract, he completed minimal work between April 9, 2021 (when the Original Contract was signed) and October 31, 2021 (the amended completion date). I find that the Respondent performed inadequate and incomplete home improvements and thus, I 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) (Supp. 2022); 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. However, none of the following three regulatory formulas is appropriate in this case:

(a) 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.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) 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)(a)-(c).

The Fund argued that the Claimant is entitled to recovery utilizing the calculation under COMAR 09.08.03.03B(3)(c) because the Respondent performed inadequate work before abandoning the Contract. In this case, the Claimant paid the Respondent a total of \$8,300.00 out of the total \$11,700.00 (price of both Contracts). Additionally, the Claimant has paid a total of \$8,116.00 to another contractor and \$1,306.00 for materials. I will include the \$75.00 estimate to Mr. Handyman as well, because the Claimant had to paid for the estimate in order to determine if Mr. Handyman could complete the work left unfinished by the Respondent. Therefore, the actual cost under this calculation is \$4,716.00.

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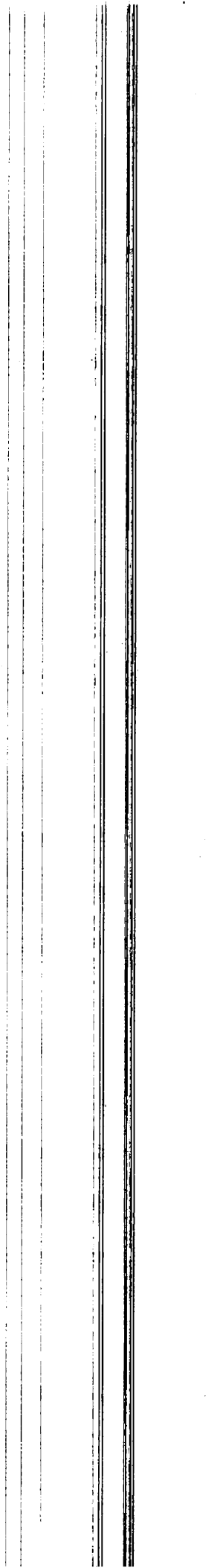
This calculation is as follows:

Amount paid to other contractors	\$ 6,735.00	Pride & Joy
	75.00	Mr. Handyman
	+ <u>1,306.00</u>	Cost of sliding doors
	\$ 8,116.00	
Amount paid to Respondent	+ <u>8,300.00</u>	
	\$16,416.00	
Price of both Contracts	- <u>11,700.00</u>	
Actual Loss under this calculation	\$ 4,716.00	

The Fund also argued that the Respondent effectively abandoned the work. I agree. As the Respondent performed minimal work, using the calculation under COMAR 09.08.03.03B(3)(c) does not appropriately measure the Claimant's actual loss and would result in a windfall to the Respondent.⁸ Further, the abandonment calculation is inappropriate because there was some work, although minimal. Since the Claimant hired another contractor to complete the work, the second calculation is inapplicable. Accordingly, I shall apply a unique formula to measure the Claimant's actual loss.

The work performed by the Respondent was an inspection of the rotten wood, at best. In June 2021, the Respondent delivered some plywood, removed a couple of pieces of siding, drilled four holes into the plywood sheathing, and sprayed insect repellent into the holes. In August 2021, the Respondent cut a portion of the 2 x 10 rim board to check for rotted wood and he delivered two sheets of plywood and 2 x 4 wood studs. All of the materials delivered by the

⁸ "The Fund was established to provide an additional remedy for homeowners who suffered actual loss due to unsatisfactory work performed by a home improvement contractor." *Brzowski v. Maryland Home Improvement Comm'n*, 114 Md. App. 615, 628 (1997).



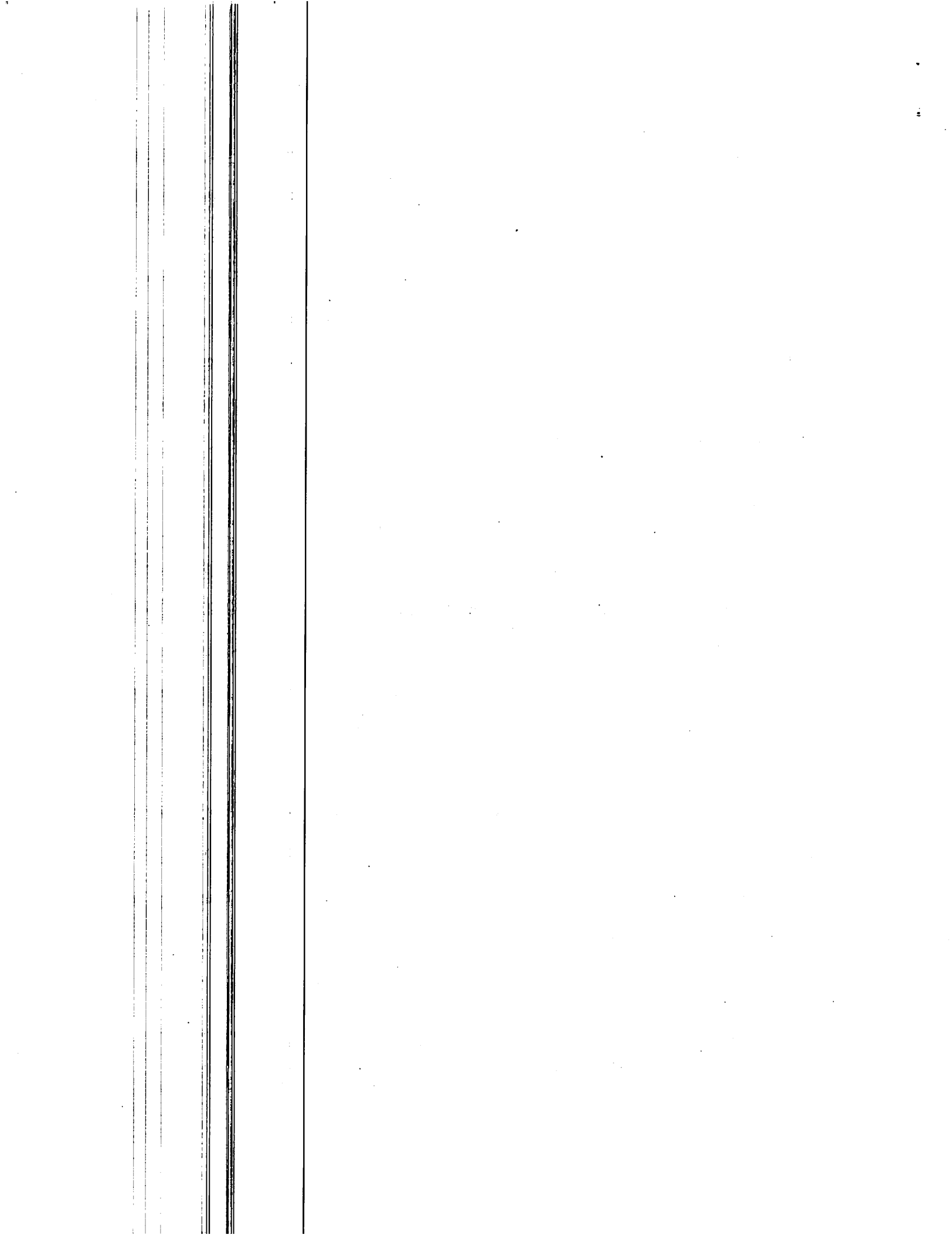
Respondent had to be replaced as they were left outside and were weather-damaged because the Respondent never returned to complete the work. The only costs related to an “inspection” is for \$250.00 in the Second Contract. I reasonably infer that this inspection refers to the work performed by the Respondent rather than a third party, because there was no evidence of any inspections by any licensing or regulatory agencies. I find it relevant that the Respondent was willing to offer the Claimant an unspecified refund and cancellation given his lack of performance in August 2021. As the Respondent abandoned the work after performing the \$250.00 inspection work, and the Claimant paid him a total of \$8,300.00, I find that the Claimant’s actual loss was \$8,050.00 (\$8,300.00 - \$250.00).

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.⁹ Bus. Reg. § 8-405(e)(1), (5) (Supp. 2022); COMAR 09.08.03.03B(4). 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 their actual loss of \$8,050.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$8,050.00 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(4). I further conclude that the Claimant is entitled to recover that amount from the Fund. *Id.*

⁹ 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”).



RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,050.00; 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;¹⁰ and

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

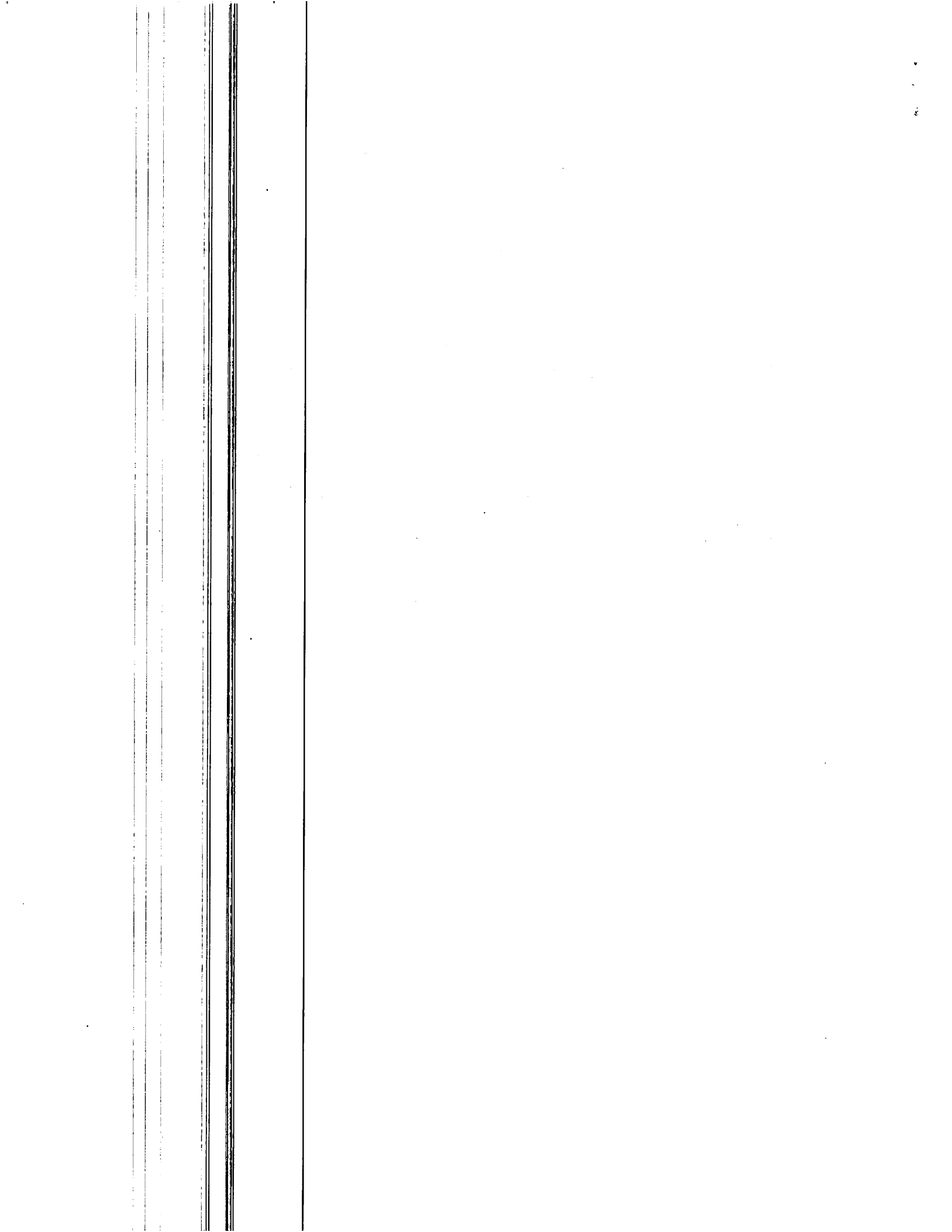
February 16, 2023
Date Decision Issued

Tracee N. Hackett

Tracee N. Hackett
Administrative Law Judge

TNH/ja
#203495

¹⁰ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



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***

PROPOSED ORDER

RESPECTFULLY, the Clerk of the Court, in accordance with the provisions of the Rules of the Court, do hereby certify that the within and foregoing proposed order is a true and correct copy of the original as the same appears in the files of the Court.

IN WITNESS WHEREOF, the Clerk of the Court, do hereby set her hand and seal of office at the City of New York, this 1st day of January, 1921.

J. Louis Williams

Clerk of the Court
New York