

<p>IN THE MATTER OF THE CLAIM</p> <p>OF RON KLINE,</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 JOHN MARTIN,</p> <p>T/A MARTIN CONSTRUCTION &</p> <p>RENOVATION</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-02-21-25198</p> <p>* MHIC No.: 21 (75) 572</p> <p>*</p>
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PROPOSED DECISION

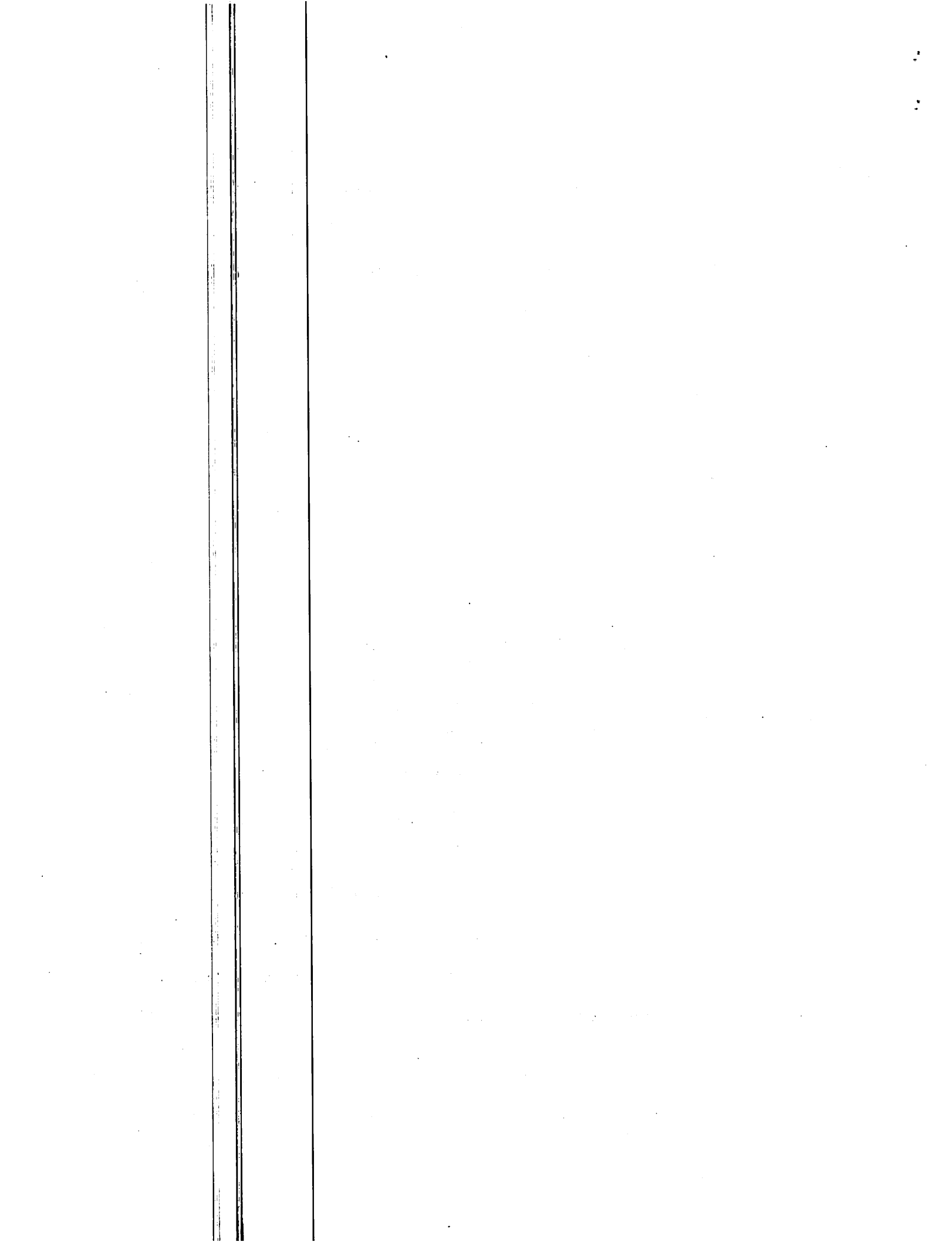
STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 11, 2021, Ron Kline (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 \$8,183.00 for actual losses¹ allegedly suffered as a result of a home improvement contract with John Martin, trading as Martin Construction & Renovation (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to 411 (2015).²

¹ The Claimant noted this amount on the Claim Form but also stated “We will claim \$7500[.]” I further address this below.

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



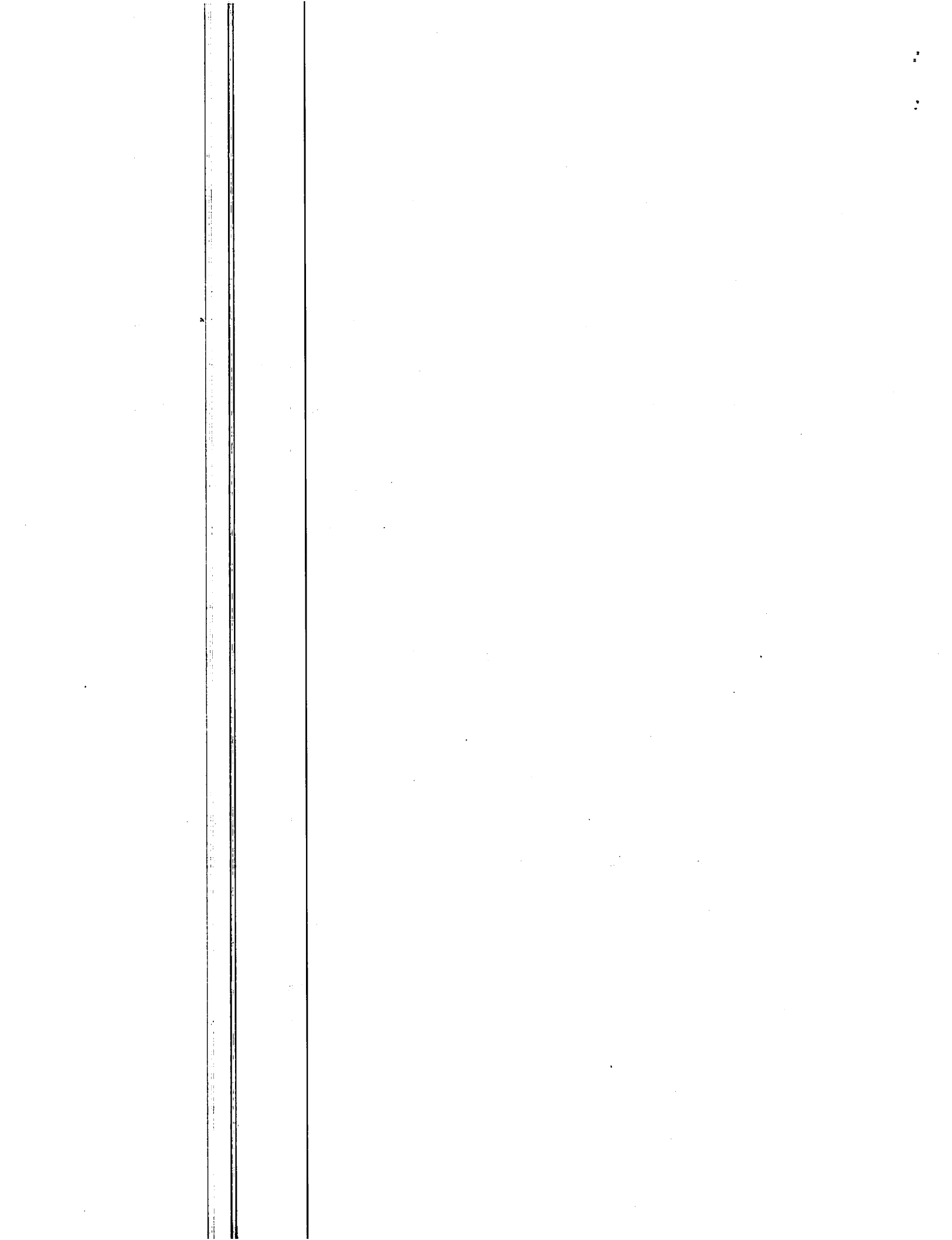
On October 22, 2021, the MHIC issued a Hearing Order on the Claim. On November 2, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On January 12, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. 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 November 3, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by United States mail to the Respondent's address of record. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for January 12, 2022, at 9:30 a.m., at the OAH in Hunt Valley, Maryland. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The United States Postal Service did not return the Notice to the OAH. 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.

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; and COMAR 28.02.01.

³ Additionally, the Fund submitted an affidavit affirming that it had reviewed the records of the Motor Vehicle Administration (MVA) and confirmed that the address on record with the MVA for the Respondent is the same address to which the OAH sent notice of hearing. (GF Ex. 5.)



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?

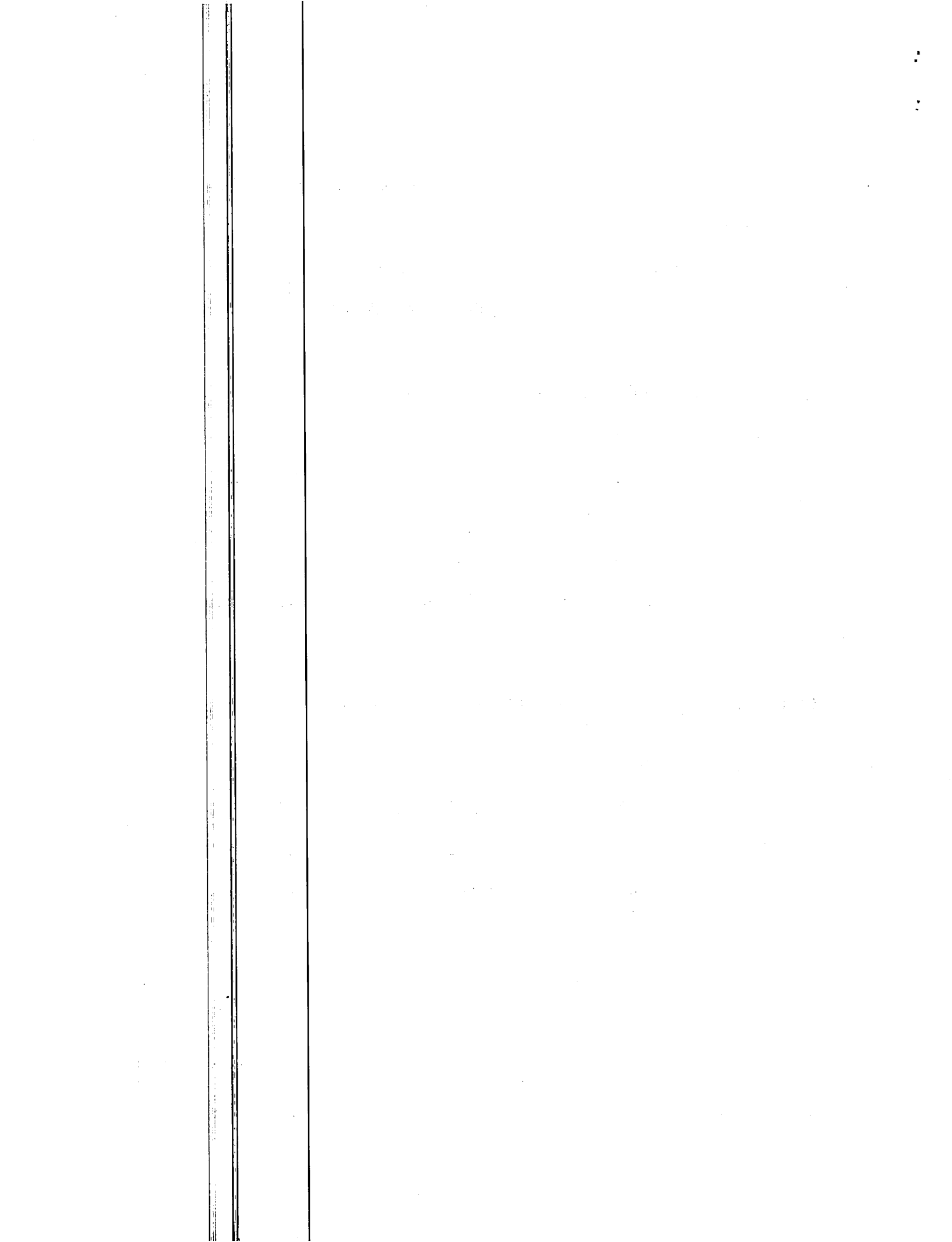
SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:⁴

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|--------------|---|
| Clmt. Ex. 1 | Contract, dated December 21, 2019 |
| Clmt. Ex. 2 | Southwest Account Activity, statement date August 19, 2020 |
| Clmt. Ex. 3 | Check, dated May 10, 2020 |
| Clmt. Ex. 4 | Email, dated October 24, 2020 |
| Clmt. Ex. 5 | Letter, dated November 9, 2020, with certified mail receipt and tracking form |
| Clmt. Ex. 6 | Letter, dated May 8, 2021 |
| Clmt. Ex. 7 | Green Builders, LLC Invoice, dated May 3, 2021, and contract, dated December 19, 2020 |
| Clmt. Ex. 8 | Rexel Invoice, dated February 12, 2021 |
| Clmt. Ex. 9 | CapitalOne Statement, dated January 14, 2021 – February 10, 2021 |
| Clmt. Ex. 10 | Fence & Deck Connection Order Confirmation, dated March 10, 2021 |
| Clmt. Ex. 11 | Electrician costs, undated handwritten note and check dated March 26, 2021 |

⁴ The Claimant's exhibits are printed on one side of each of the pages he submitted. Many of the pages also include text printed on the reverse side of the page. The Claimant explained that to conserve paper, he used the blank side of paper that had been previously used for another purpose. Accordingly, as I stated at the hearing, all exhibits admitted on behalf of the Claimant include only the front side of each page. The back sides were not admitted or considered.



- Clmt. Ex. 12 Firefly Technical Services LLC building plan, undated
- Clmt. Ex. 13 Trex 2021 Decking Installation Guide
- Clmt. Ex. 14A-I Photographs (Ex. 14A: stairs after Respondent stopped work; Ex. 14B and C: crossbeams installed by Respondent; Ex. 14D: crossbeam installed by Green Builders; Ex. 14E: in-progress installation of stairs by Green Builders; Ex. 14F: work by Rob Delatos on September 18, 2020; Ex. 14G and H (duplicate): stairs after Mr. Delatos left on September 18, 2020; Ex. 14I: missing fence.

I admitted the following exhibits offered by the Fund:⁵

- GF Ex. 1 Hearing Order, dated October 22, 2021
- GF Ex. 2 Notice of Hearing, dated November 3, 2021
- GF Ex. 3 Letter to the Respondent from the Fund, dated May 18, 2021, with attached Claim Form
- GF Ex. 4 HIC Registration for the Respondent, printed January 5, 2022
- GF Ex. 5 Affidavit of David Finneran, dated January 6, 2022

The Respondent did not offer any exhibits for admission into evidence.

Testimony

The Claimant testified and presented the testimony of his wife, Rachel Kline.

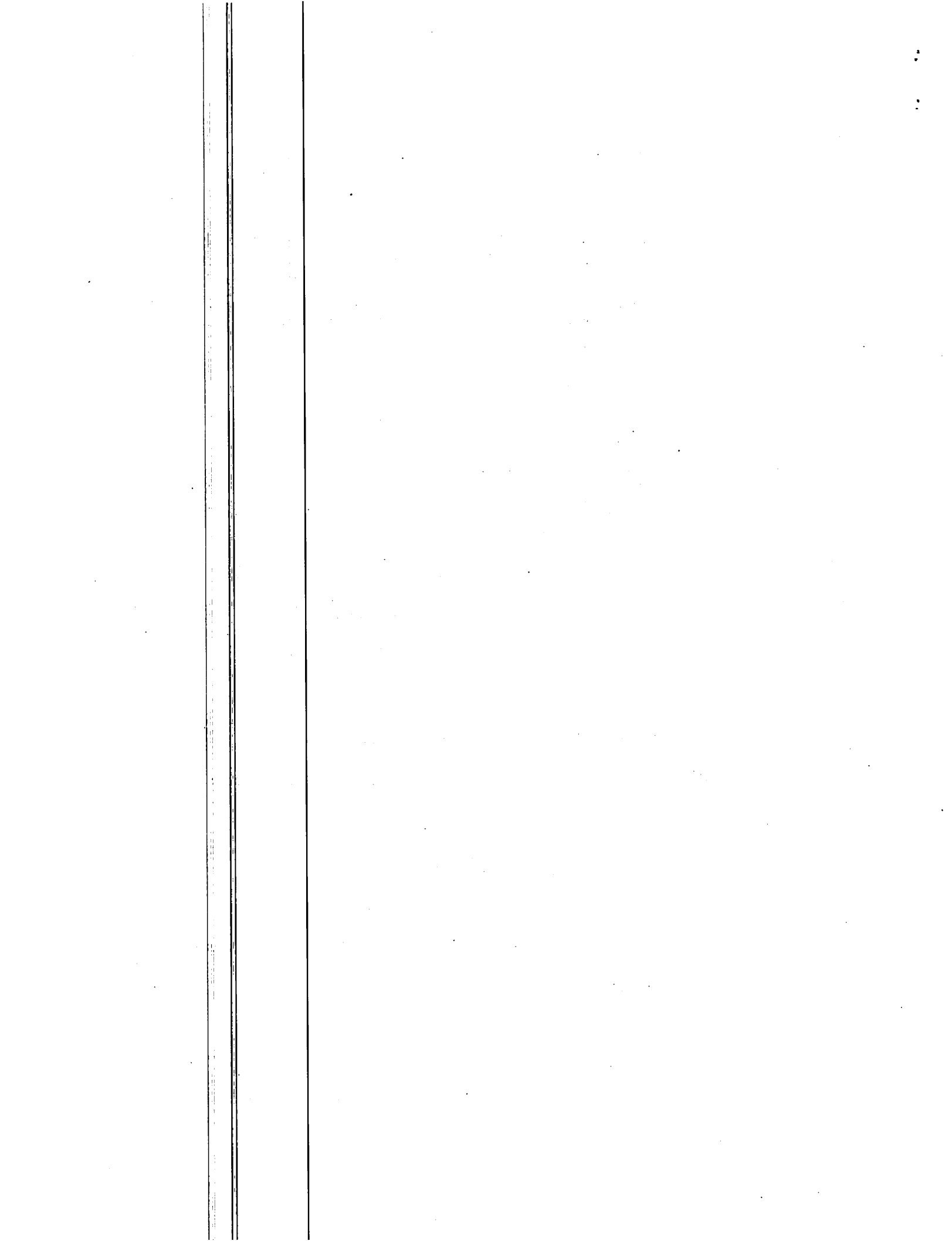
The Fund did not present any testimony, and the Respondent did not present any testimony.

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.

⁵ The Fund pre-marked its exhibits as "GF," for "General Fund."



2. The Claimant owns the property located at 100 Ridge Road, Riva, Maryland 21140. It is his primary residence.⁶

3. On December 21, 2019, the Claimant and the Respondent entered into a contract to construct a staircase (Contract).

4. The staircase was to be constructed at the rear of the Claimant's waterfront property and would provide access to the Claimant's pier. The Contract specified that the staircase was to include a landing at the top, three midspan platforms, and four sections of stairs, with approximately fifty-three steps in total. Lights would be installed along the staircase, and the staircase would include a railing, with an additional railing along the hot tub. Additionally, the Respondent agreed to remove an existing fence at the top of the hill and replace it with fencing material matching the deck.

5. The original agreed-upon Contract price was \$31,517.00, with an initial deposit of \$10,000.00.

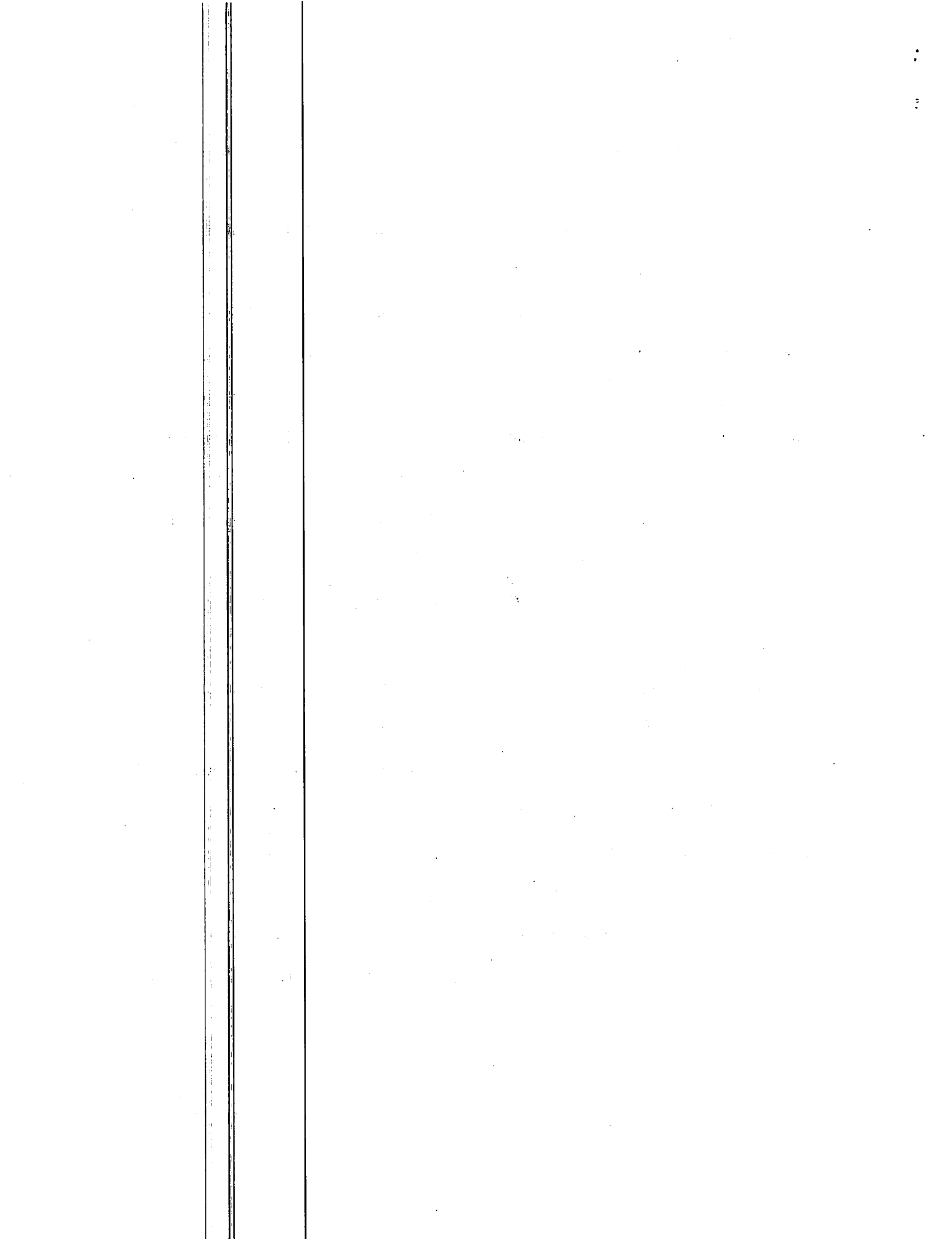
6. Work began in January 2020. The Contract specified that construction would be completed approximately six to eight weeks after the start of work.

7. The Respondent stopped work three to four weeks after he began, citing mental health issues. In February 2020, he promised that he would return to complete the work and estimated completion by mid-May 2020.

8. The Respondent resumed work on the project in March 2020.

9. The Claimant paid the Respondent \$24,000.00 for performance of the Contract, with \$10,000.00 paid on January 17, 2020; \$7,000.00 paid on May 27, 2020, and \$7,000.00 paid on June 5, 2020. All payments were made in cash.

⁶ The Claimant also owns a condominium in New Jersey and, as a member of a limited liability company, a nonresidential medical office building.



10. The Claimant paid the Respondent an additional \$2,540.00 on May 10, 2020 (for Trex decking materials). This charge was not part of the original Contract but was agreed to by the Claimant and Respondent.

11. Sometime in July 2020, the Respondent stopped work on the project, even though it was not complete.

12. On August 18, 2020, the Claimant purchased construction materials for \$5,070.08. Under the Contract, the Respondent was responsible for purchasing these materials.

13. The Respondent was present for the delivery of construction materials on August 18, 2020. That was the last day he performed any work on the project.

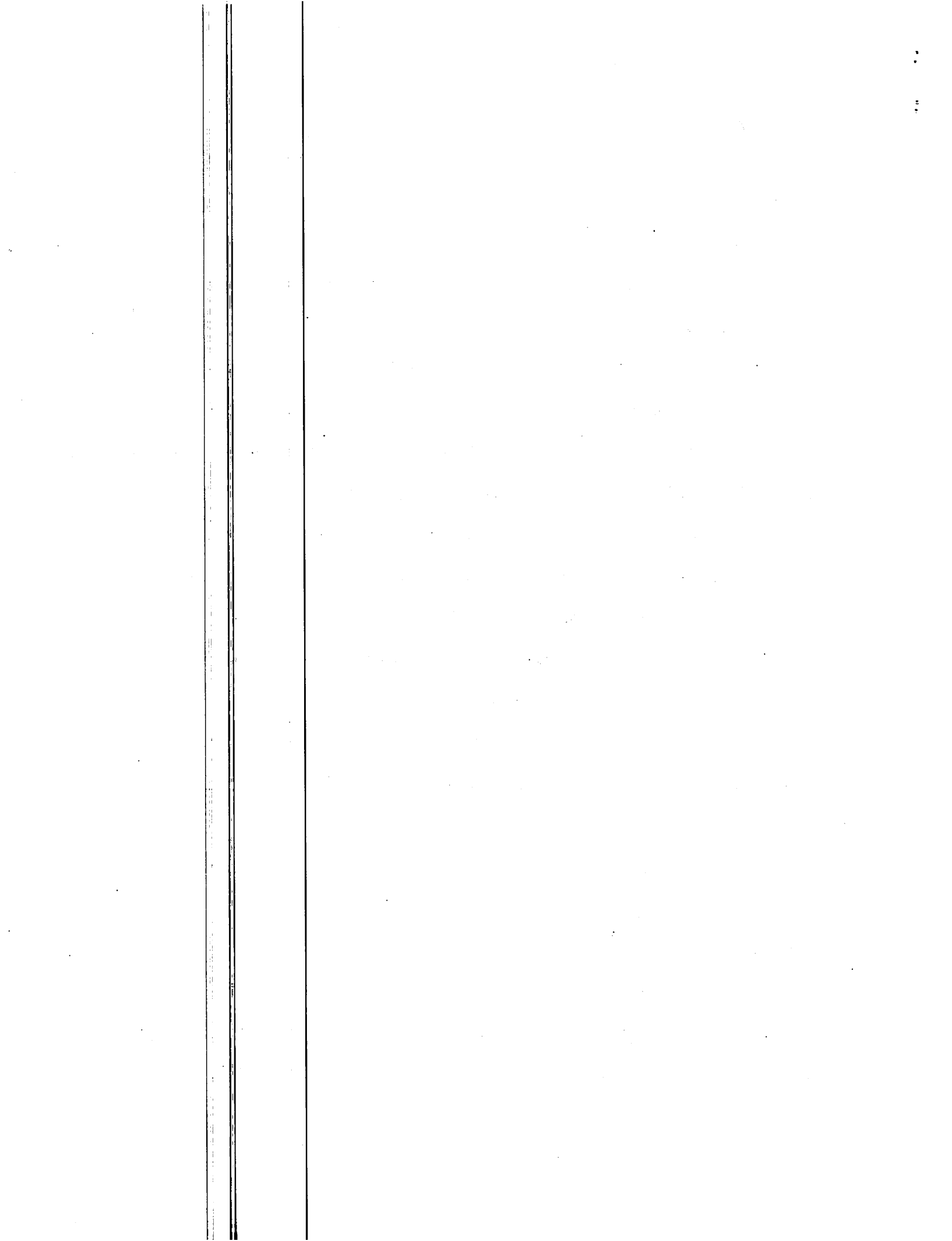
14. On or about September 12, 2020, the Respondent arrived at the Claimant's home with a work crew headed by his friend, Rob Delatos. Mr. Delatos told the Claimant that the crew would complete the job that same day.

15. The Respondent remained at the property for about an hour but did no work, and then left Mr. Delatos's crew to complete the work.

16. The work crew did not complete the job that day. They miscut some railings, did not complete railing installation, and did not install the lights or fencing specified in the Contract.

17. The portions of the staircase completed by the Respondent and/or the work crew headed by Mr. Delatos were not built with the supports recommended by the product manufacturer (Trex).

18. In mid-November 2020, the Claimant sent a letter to the Respondent acknowledging that \$2,450.00 was still outstanding under the Contract, but that the Respondent had failed to complete the work. The Claimant set a deadline of November 30, 2020, for



completion of the project, noting that if the Respondent did not complete the work by that date, the Claimant would pay no additional money and hire another contractor instead.

19. The Respondent did not respond to the Claimant's letter.

20. Following construction, the stairs installed by the Respondent bowed, and some broke, due to insufficient support.

21. On or about December 19, 2020, the Claimant contracted with Green Builders, LLC (Green Builders) for the repair and completion of the work specified in the Contract.

22. Green Builders determined that all previously installed structural beams and posts were insufficient and needed to be replaced, riser treads had not been installed, miscut railings had to be replaced and additional railings installed, and sixteen miscut stair treads needed to be replaced.

23. The Claimant paid Green Builders \$9,330.00 for repair or completion of work that was within the scope of the Contract.

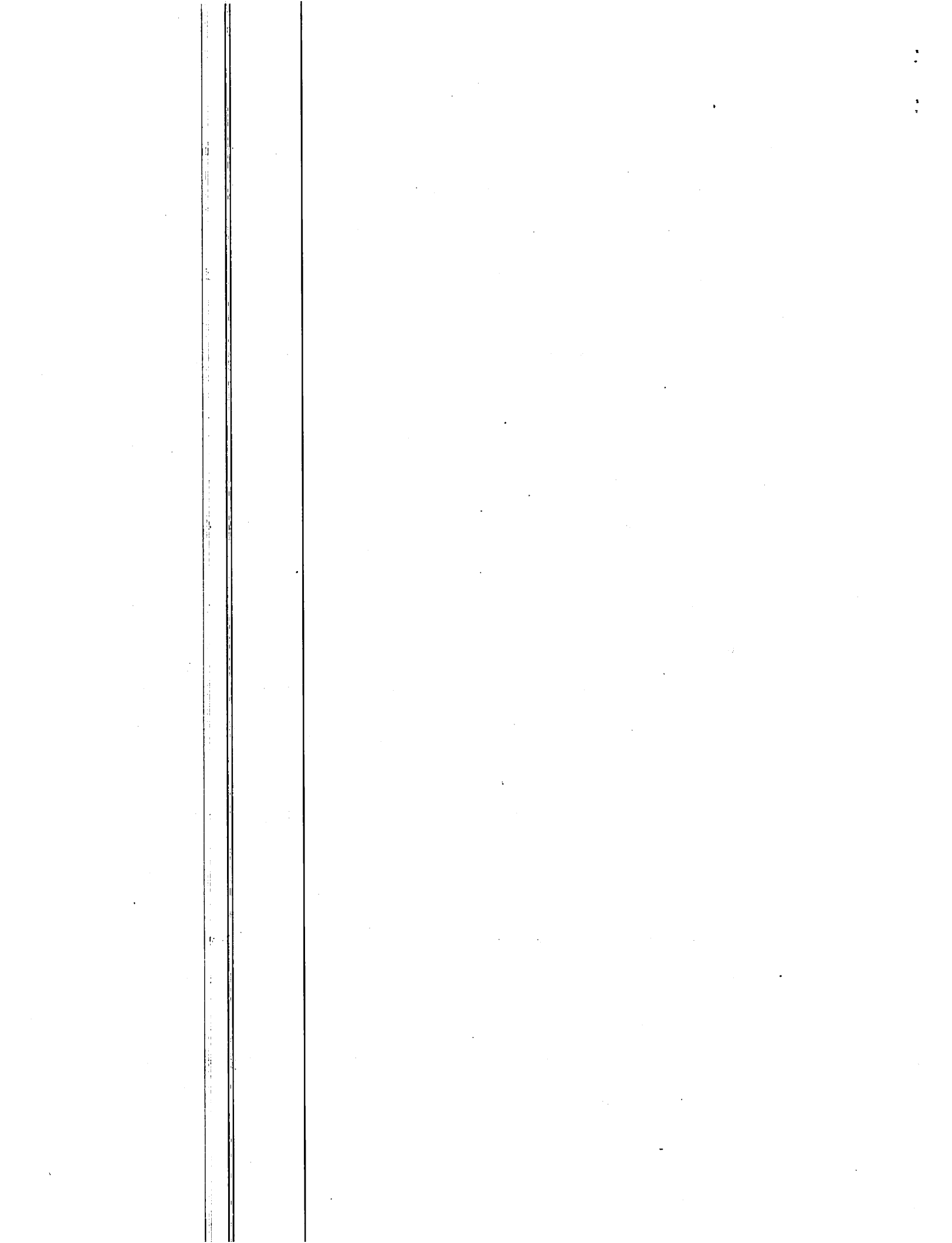
24. The Claimant paid electrician Bob Harvey \$808.57 for installation of lights, as well as an additional \$350.00 to another electrician, for a total cost of \$1,158.57 to complete all electrical work specified in the Contract.

25. The Claimant paid \$521.16 for electrical parts needed to complete the work specified in the Contract.

26. The Claimant purchased fourteen lights at a cost of \$782.00.

27. The Claimant paid a total cost of \$11,791.73 for repair and completion of work specified in the Contract (\$9,330.00 to Green Builders + \$782.00 for lights + \$521.16 for electrical parts + \$1,158.57 for work by electricians).

28. The Claimant is not related to the Respondent or any of his employees, officers, or partners, nor is he employed by him.



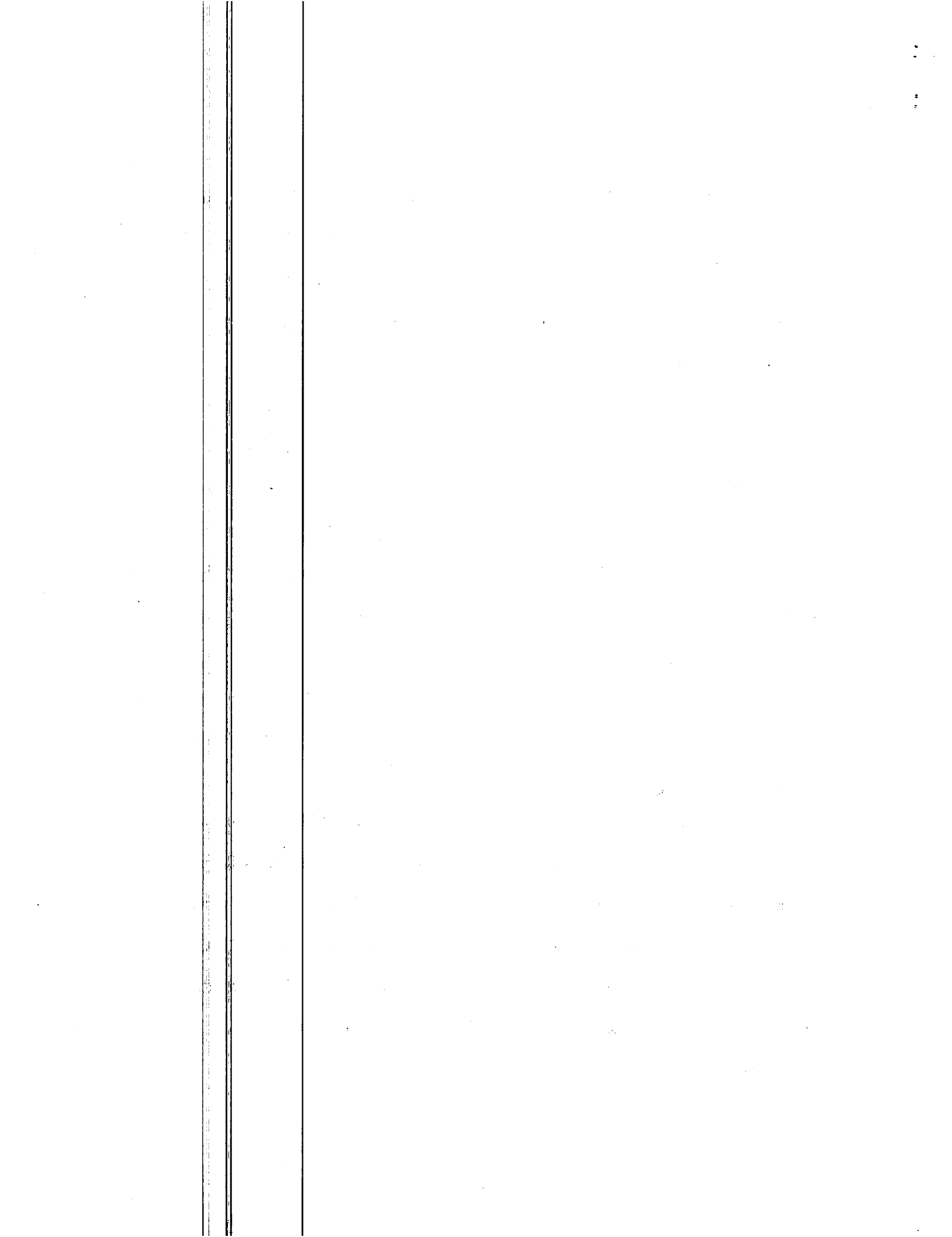
DISCUSSION

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 Cty. 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.

First, there is no dispute that the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The Fund submitted his HIC registration information into evidence. (GF Ex. 4.)

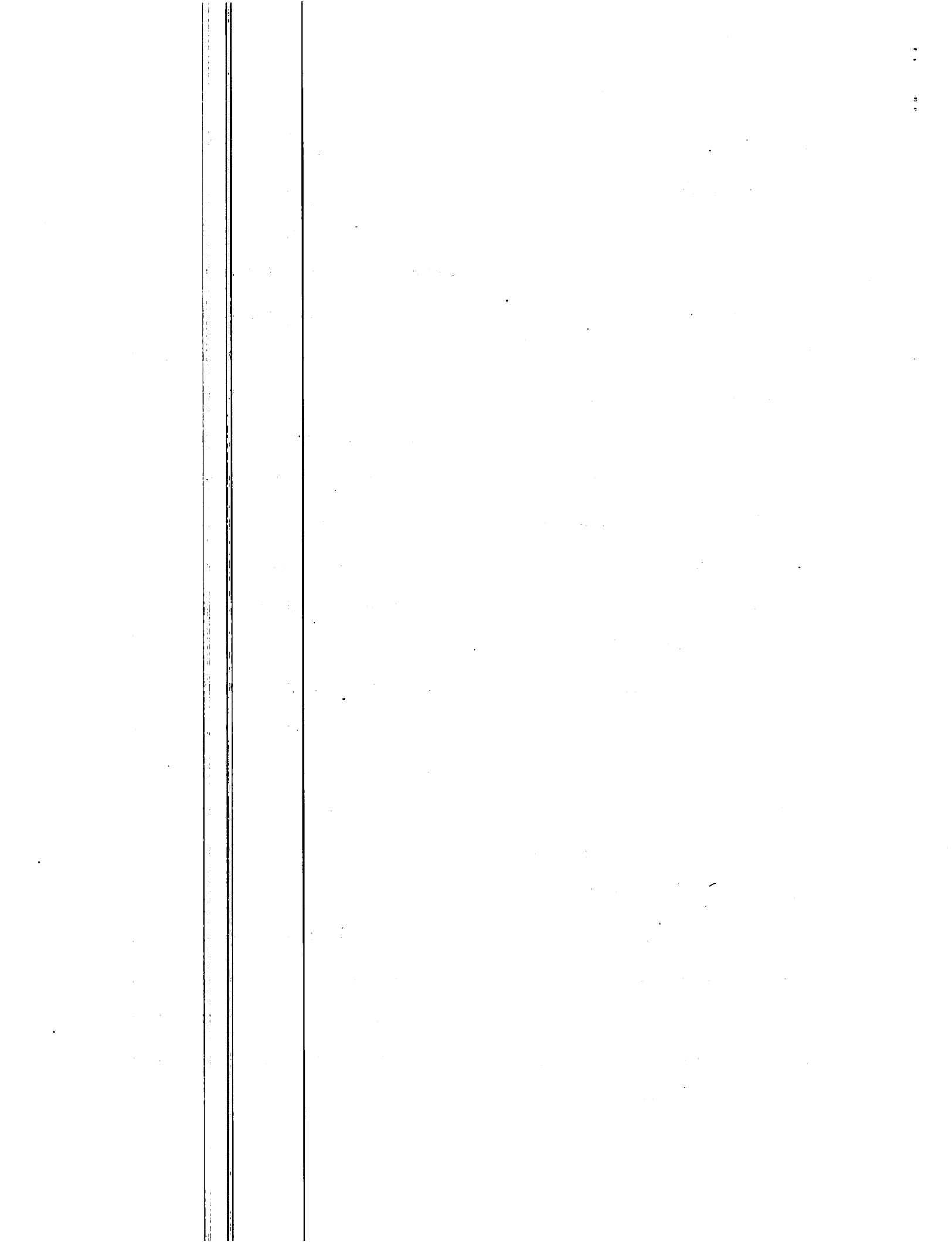
Second, I conclude that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. The Claimant credibly testified that despite the Respondent’s agreement that he would complete the job approximately six to eight weeks after the start date, the job remained unfinished in December 2020, nearly a year after work began. The Claimant’s testimony that the Respondent’s last day on the job was in September 2020, and that the Respondent did not respond to the Claimant’s efforts to contact him after that date, is uncontradicted.



The Claimant further testified that he personally liked the Respondent and had been understanding of delays in the Respondent's performance of the Contract, even though the Claimant and his wife were forced to use their neighbors' stairs to access their pier for the duration of construction. The Claimant's patience with the Respondent was such that he even offered the Respondent additional work in September 2020, because he recognized the Respondent was struggling. Accordingly, the Claimant gave the Respondent every opportunity to complete the job. However, when the work had still not been completed by the end of November 2020, he was forced to hire another contractor. My determination that the Claimant was highly credible is based on his excellent recall of the sequence of events, as well as his detailed memory of his interaction with the Respondent. It was also clear that he was scrupulously honest – for example, he was careful to count only the lights included in the Contract when calculating his claim by excluding the four additional lights he purchased as extras (discussed further below).

In support of his testimony that the Respondent failed to complete performance of the Contract, the Claimant submitted photographs showing the incomplete work. These photographs show that the Respondent never installed stair risers, railings, or fencing. (Clmt. Exs. 14A, 14G, and 14I.) The Claimant also submitted the contract with Green Builders, which identifies tasks unfinished under the Contract, including the absence of risers and railings, corroborating the Claimant's testimony. (Clmt. Ex. 7.)

I am also persuaded that the work completed by the Respondent, or at his direction under Mr. Delatos, was both unworkmanlike and inadequate. Again, the Claimant's contract with Green Builders cites specific deficiencies that had to be corrected, including "insufficiently installed" posts and beams, improperly sized and spaced posts, miscut railings and rail caps, and miscut stair treads. (Clmt. Ex. 7.)



Further, the Claimant credibly testified that stairs installed by the Respondent bowed and broke due to insufficient support. The Claimant submitted guidelines from the manufacturer of Trex showing that the span of the stairs installed by the Respondent required more support than he had constructed. (Clmt. Ex. 13.)

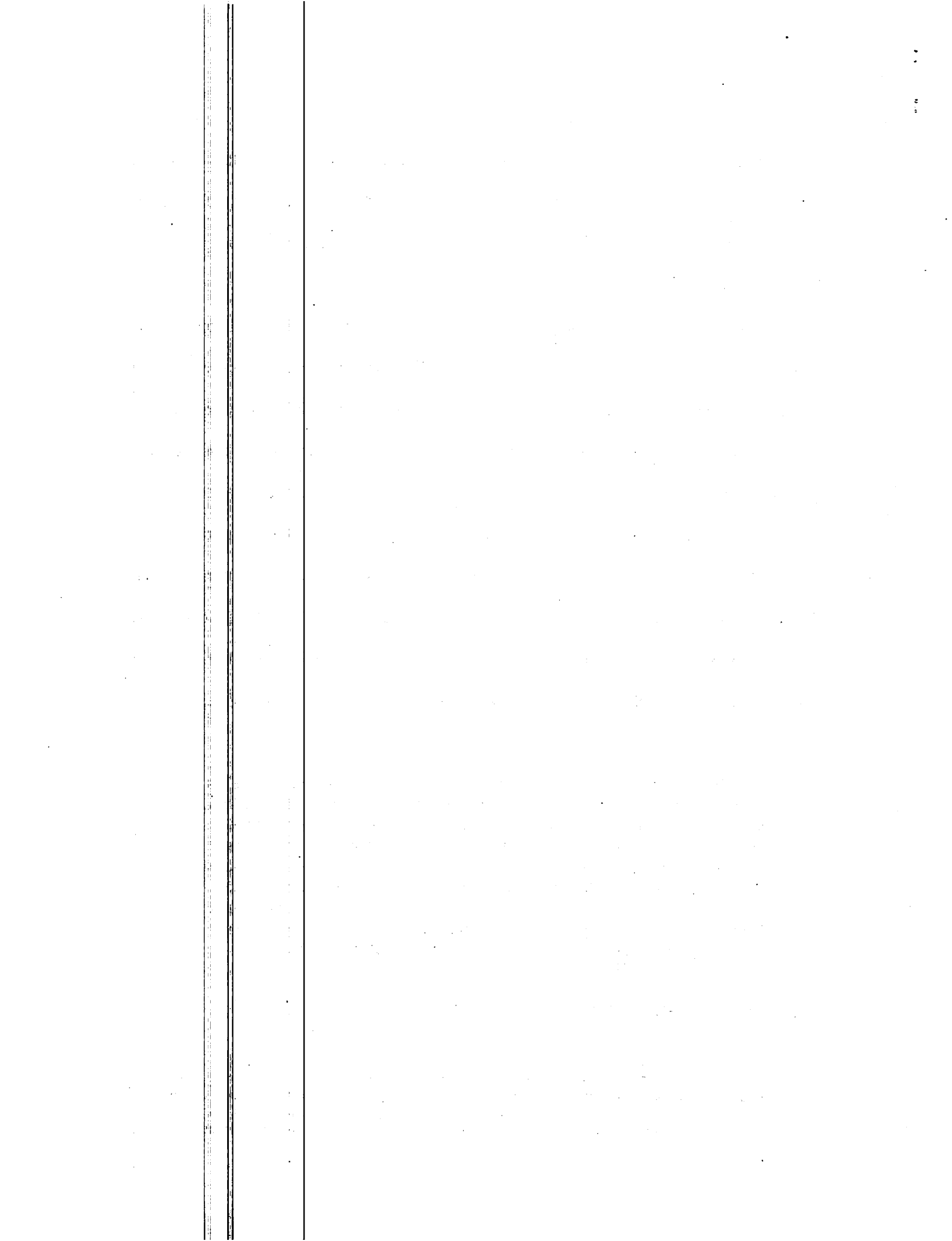
I thus find that the Claimant is eligible for compensation from the Fund.⁷ I note that the Fund agrees that the Claimant met his burden to show that the Respondent failed to complete the work, and that the work he did complete was inadequate and unworkmanlike. Having found eligibility for compensation 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 has retained 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).

⁷ Section 8-405(f) prohibits an award to a spouse or immediate relative of the contractor; an employee, officer, or partner of the contractor; or an immediate relative of an employee, officer, or partner of the contractor. The Claimant testified that he has no personal or professional relationship with the Respondent that would prohibit an award. This section also requires that a claimant either reside in the home as to which the claim is made (which the Claimant testified he does) or not own more than three residences or dwelling places (which the Claimant testified he does not).



For the work outlined in the Contract, I conclude that the Claimant paid a total of \$31,610.08. This includes \$24,000.00 paid in cash to the Respondent, plus \$2,540.00 in Trex materials, plus \$5,070.08 in materials from the Fence and Deck Connection. To this figure, I add \$11,791.73, which was the Claimant's cost to complete the unfinished work and to repair the deficiencies. The \$11,791.73 includes \$9,330.00 paid to Green Builders,⁸ \$782.00 paid for lights,⁹ \$521.16 paid for other electrical parts,¹⁰ and \$1,158.57 paid to electricians.¹¹ Together, \$31,610.08 and \$11,791.73 total \$43,401.81. The formula then calls for the original contract amount to be subtracted from this total. The December 21, 2019 Contract specifies that the Respondent was to be paid \$31,517.00 for the work. However, the Claimant testified that he and the Respondent effectively agreed to amend the Contract with the additional cost of purchasing Trex materials for \$2,540.00. The full amount of the original contract was therefore \$34,057.00. When this amount is subtracted from \$43,401.81, the resulting actual loss is \$9,344.81.

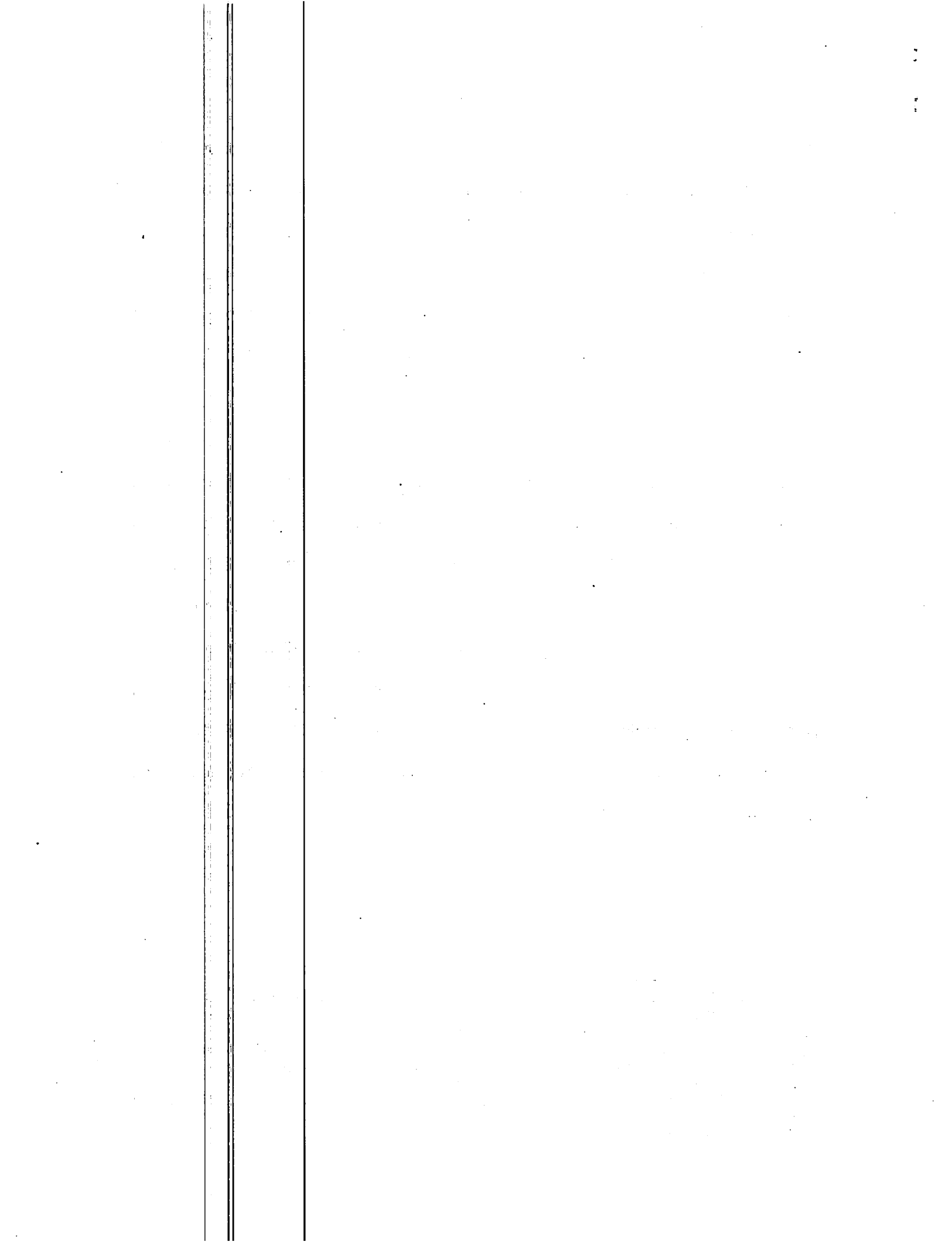
The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than \$20,000.00.

⁸ The Green Builders contract is for \$10,330.00. (Clmt. Ex. 7.) However, the Claimant explained that this included \$1,000.00 for painting that was not within the scope of the Contract. Again, I note that his scrupulousness was a factor in my determination that the Claimant was credible and forthright.

⁹ This cost is reflected in Clmt. Ex. 6. The Claimant explained that he actually purchased 18 lights from Fence & Deck Connection, but that four were extras – outside the scope of the Contract – to have on reserve. Accordingly, he counted only the 14 lights, plus shipping and tax for those lights.

¹⁰ This cost is reflected in Clmt. Ex. 8. The Claimant testified that while this invoice is billed to "Cox Electric KMC Incorporated," this invoice reflects a cost paid by him.

¹¹ This cost is reflected in Clmt. Ex. 11 and the credible testimony of the Claimant.



The Fund noted that on the Claim Form, the Claimant indicated \$8,183.00 as the amount of his claim. Next to this amount, the Claimant wrote "We will claim \$7500[.]" In his testimony, the Claimant explained that he sought to use this simpler figure just to make the process easier, and that he had actually understated the loss at the time he completed the Claim Form because it did not include an additional \$850.00 he paid for electrical work or approximately \$2,000.00 that would likely need to be paid for installation of fencing the Respondent had not installed.

The Fund's position was that these additional costs were both vague and insufficiently documented, particularly with regard to the fencing, the cost of which the Claimant acknowledged he was just estimating himself. In addition, the Fund noted that in fairness to the Respondent, any award should be limited to \$8,183.00, as the Respondent was notified of this amount as the extent of the Claimant's loss.¹² I agree. Therefore, the Claimant is entitled to recover \$8,183.00.

PROPOSED CONCLUSIONS OF LAW

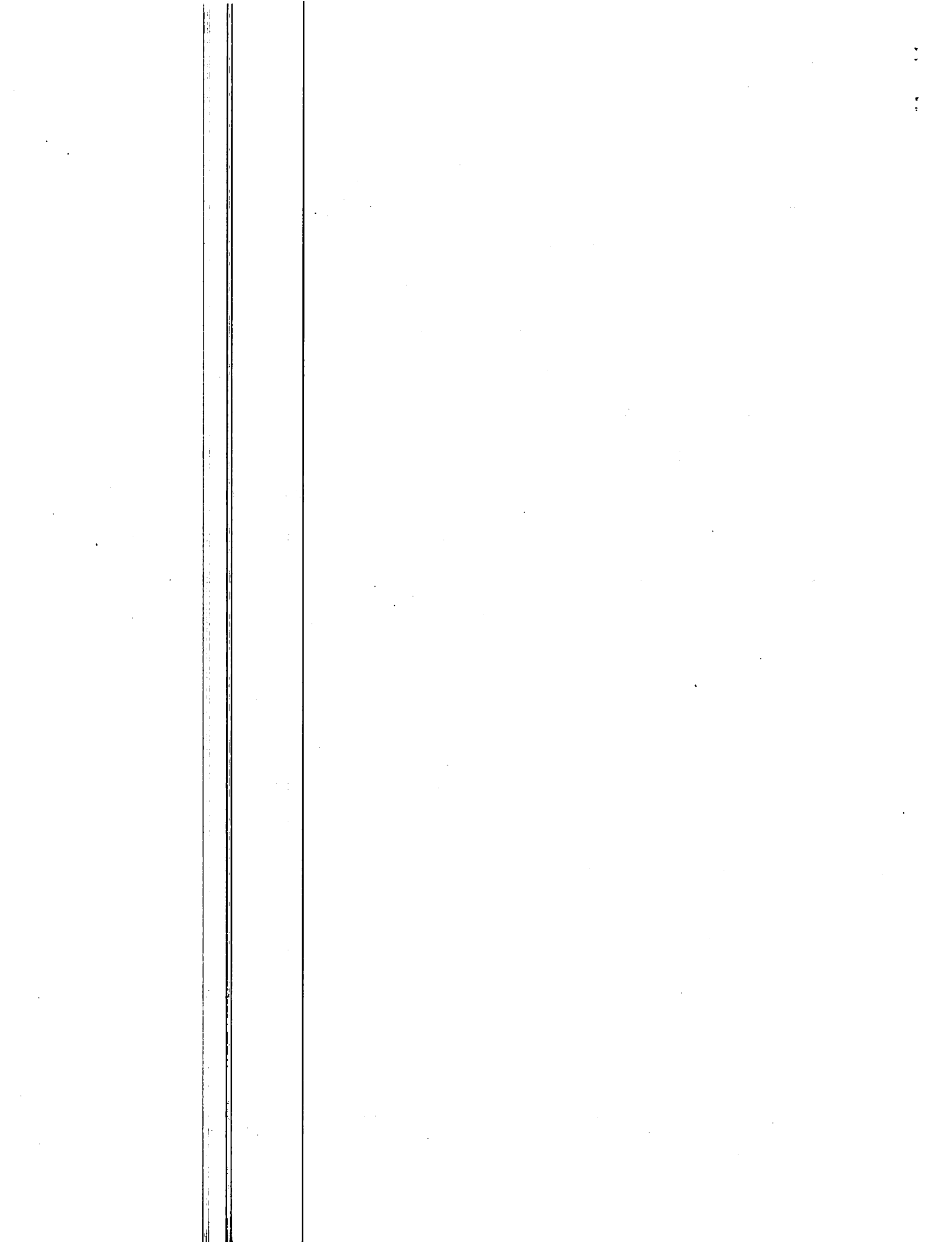
I conclude that the Claimant has sustained an actual and compensable loss of \$9,344.81 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$8,183.00 from the Fund. COMAR 09.08.03.02B and C.

RECOMMENDED ORDER

I RECOMMEND that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$8,183.00; and

¹² The importance of notification to the Respondent of the amount of the claim is reflected in COMAR 09.08.03.02B and C, which requires that the claim be forwarded to the contractor to allow for a response and limits the amendment of claims by claimants once verified.



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;¹³ and

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

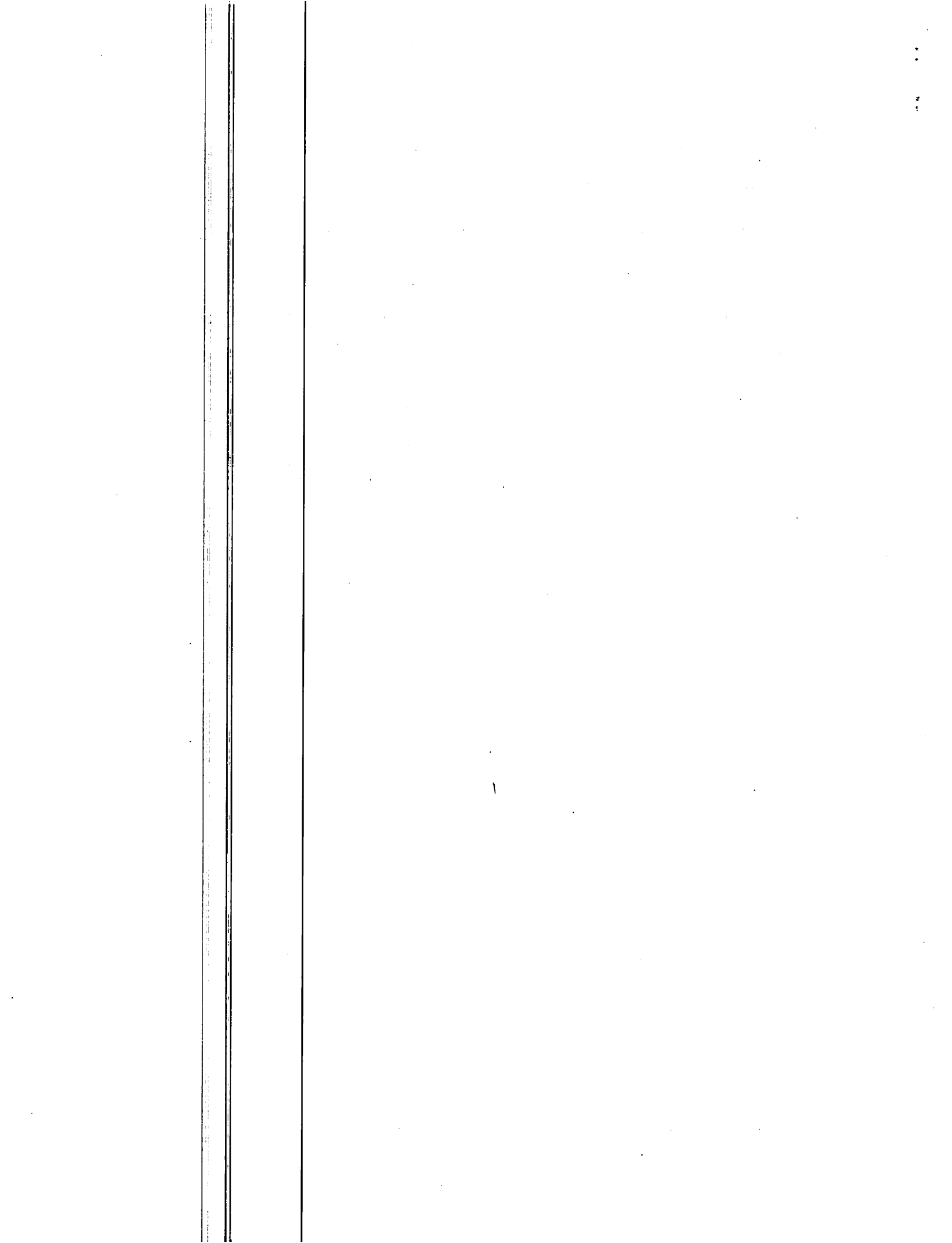
Jennifer L. Gresock

March 31, 2022
Date Decision Issued

Jennifer L. Gresock
Administrative Law Judge

JLG/sw
#197192

¹³ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

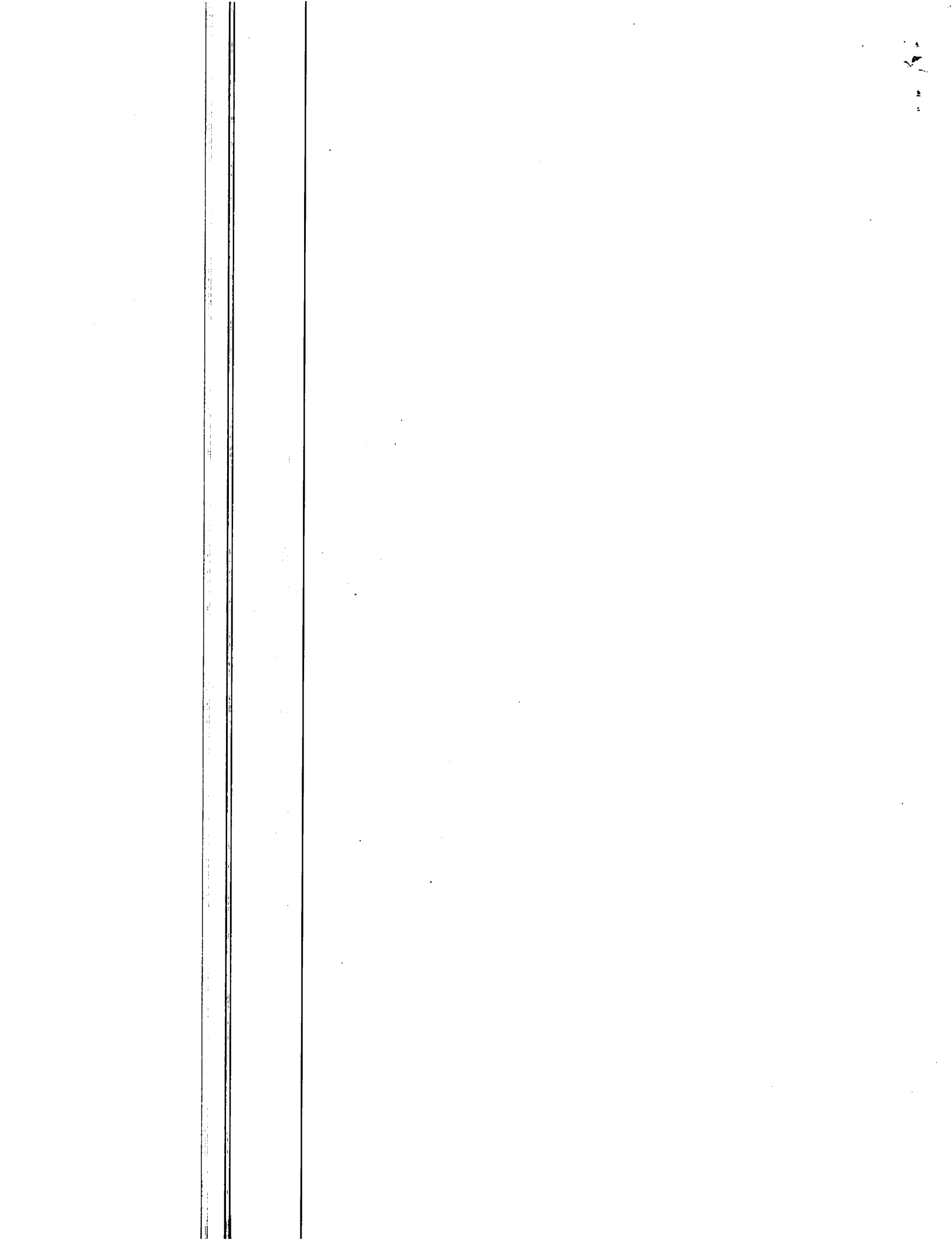
WHEREFORE, this 13th day of June, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then 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
RON KLINE
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ACTS OR OMISSIONS OF
JOHN MARTIN T/A MARTIN
CONSTRUCTION AND
ENGINEERING**

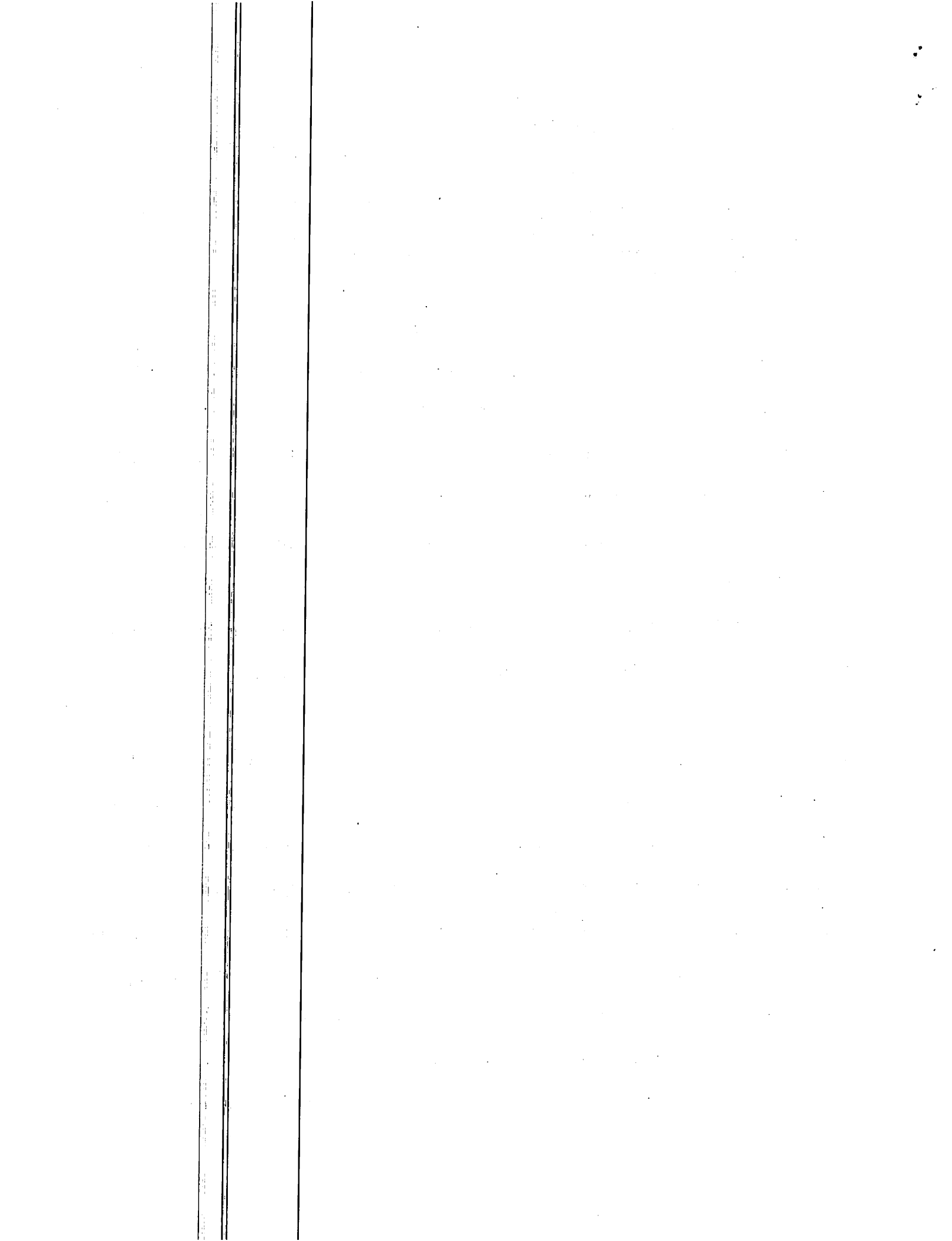
*** MARYLAND HOME
* IMPROVEMENT COMMISSION
*
* MHIC CASE NO. 21(75)572
* OAH CASE NO. LABOR-HIC-
* 02-21-25198

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on January 12, 2022. Following the evidentiary hearing, the ALJ issued a Proposed Decision on March 31, 2022, concluding that the homeowner, Ron Kline (“Claimant”) suffered a compensable actual loss as a result of the acts or omissions of John Martin t/a Martin Construction and Engineering (“Contractor”). *ALJ Proposed Decision* p. 12. In a Proposed Order dated June 13, 2022, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On October 6, 2022, 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 Nicholas Sokolow 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



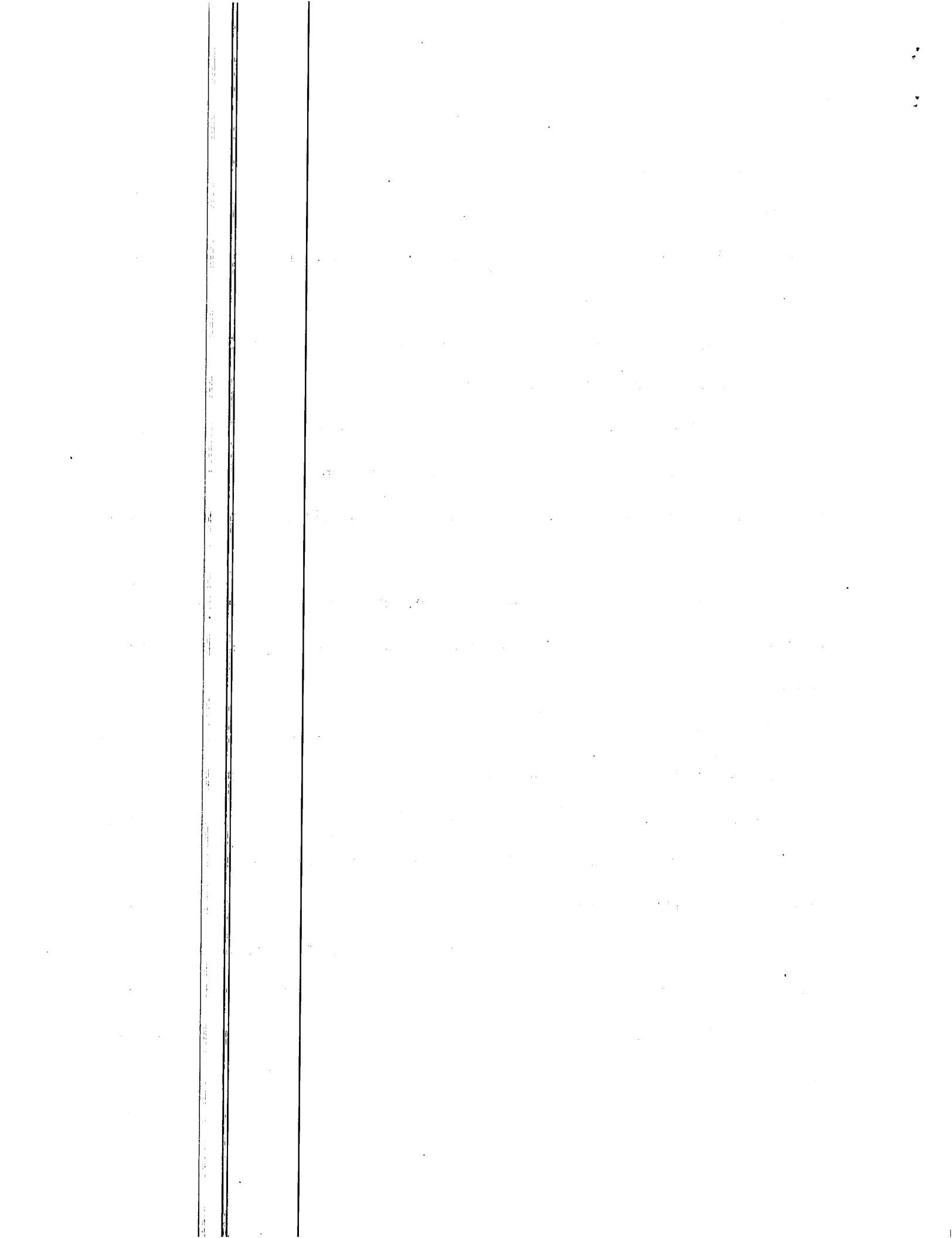
09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the construction of an exterior staircase to provide access to a pier at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike, incomplete, and inadequate. *ALJ Proposed Decision* pp. 8-10.

On exception, the Contractor argued that the ALJ erred in granting the Claimant an award based on the cost of correcting and completing electrical work because his contract did not call for electrical work, that the ALJ erred in granting any award because the Claimant did not give him an opportunity to address any defects in his performance or complete his performance, and that the Commission should deem his original contract to be too unrealistically low to provide a proper basis to measure the Claimant's loss and adjust the calculation of the Claimant's loss because lumber prices increased significantly from the time the parties executed the contract to the time the Claimant contracted with another contractor to correct and complete the Contractor's performance.

The Commission finds no error with the ALJ's inclusion of the costs the Claimant incurred to perform electrical work. Although the parties' original contract did not expressly include lights or electrical work, an addendum to the contract executed by both parties included the installation of lights on the staircase railing, which, the Commission finds, implicitly includes the electrical work necessary for the lights to operate.

The Commission also finds no error with the ALJ's grant of an award despite the Claimant's alleged failure to give the Contractor an opportunity to correct and complete his performance of the contract. First, the Home Improvement Law does not require a claimant to give a contractor the opportunity to remedy their deficient performance. Rather, it allows the

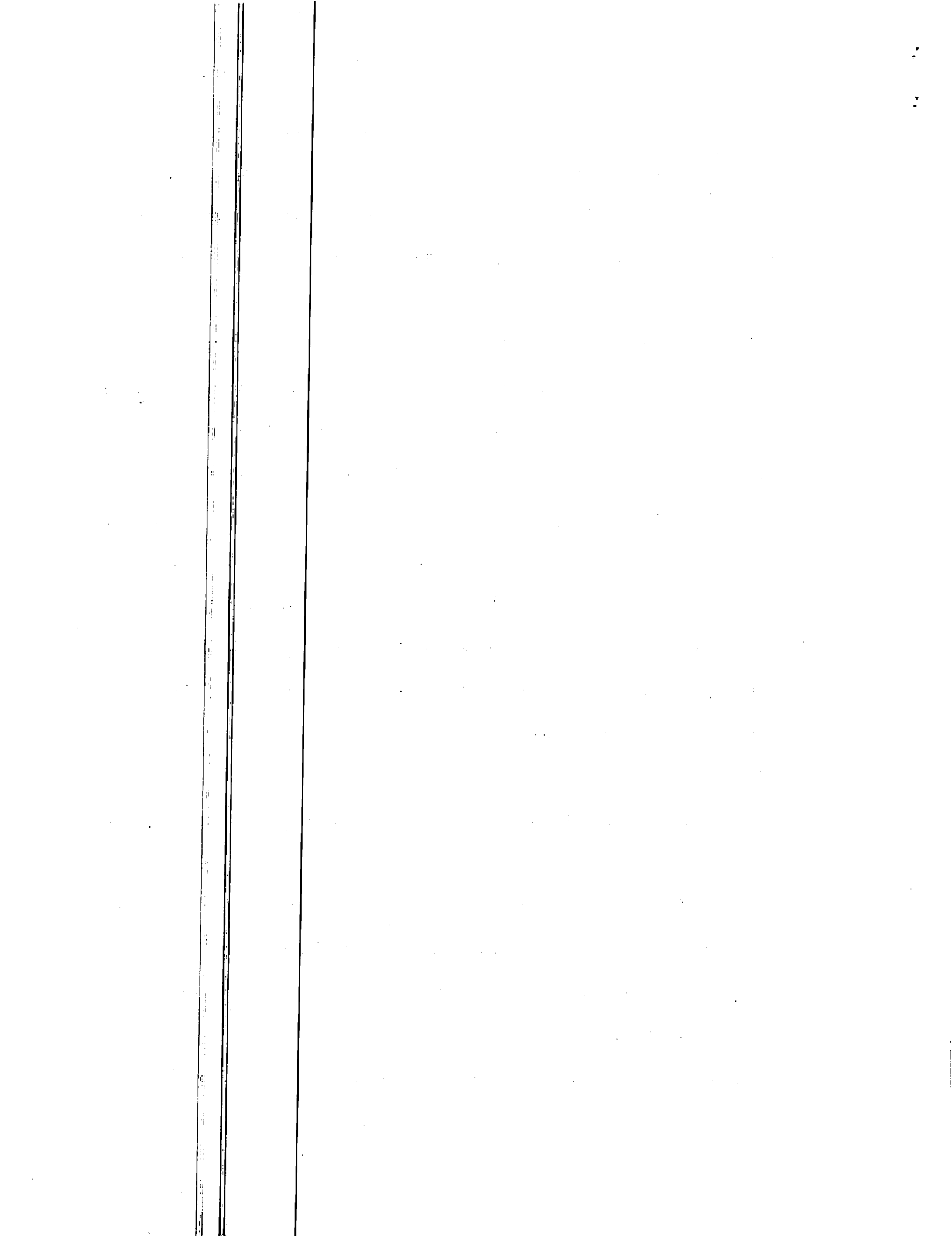


Commission to deny a Guaranty Fund award when a claimant unreasonably rejects good faith efforts by the contractor to resolve their claim. *Md. Code Ann.*, Bus. Reg. § 8-405(d). The Contractor did not identify, and the Commission is unaware of evidence that he made a good faith effort to resolve the claim or that the Claimants unreasonably rejected any effort by him to resolve the claim.

The Commission declines to adjust its calculation of the Claimant's award because of the increase in lumber prices after the parties executed their contract. Had the Contractor satisfactorily and timely performed the contract, the Claimants would not have incurred the additional expense for materials. Moreover, the Contractor assumed the risk that the cost of materials may increase by executing a fixed-price contract.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 24th day of October 2022, **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 \$8,138.00 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.

Jean White
Chairperson –Panel
Maryland Home Improvement
Commission

