

<p>IN THE MATTER OF THE CLAIM</p> <p>OF MARK BREITENBACH,</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 HENRY TWIST, JR.,</p> <p>T/A HCT HOME REMODELING,</p> <p>LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE WILLIS GUNTHER BAKER,</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-02-22-08912</p> <p>* MHIC No.: 22 (75) 797</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 March 23, 2022, Mark Breitenbach¹ (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 \$10,000.00 for actual losses allegedly suffered as a result of a home improvement contract with Henry Twist, Jr.

¹ The MHIC spelled the Claimant's name wrong in the Order and transmittal, omitting the "r." This is the correct spelling.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent data collection procedures and the use of advanced analytical techniques to derive meaningful insights from the data.

3. The third part of the document focuses on the role of technology in data management and analysis. It discusses how modern software solutions can streamline data collection, storage, and processing, thereby improving efficiency and accuracy.

4. The fourth part of the document addresses the challenges associated with data management, such as data quality, security, and privacy. It provides strategies to mitigate these risks and ensure that the data remains reliable and secure throughout its lifecycle.

5. The fifth part of the document concludes by summarizing the key findings and recommendations. It stresses the importance of ongoing monitoring and evaluation to ensure that the data management processes remain effective and aligned with the organization's goals.

trading as HCT Home Remodeling, LLC (Respondent).² Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).³ On April 15, 2022, the MHIC issued a Hearing Order on the Claim. On April 18, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On August 17, 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. Neither the Respondent's Representative nor his attorney, Anthony J. DiPaula, Esquire, appeared at the hearing. Mr. DiPaula's office contacted the OAH on August 15, 2022 via email to alert the OAH that neither the Respondent's Representative nor his attorney would be attending the hearing. The OAH clerk telephoned Mr. DiPaula's office and advised that the hearing would proceed in their absence.

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 June 10, 2022, the OAH provided a Notice of Hearing (Notice) to the Respondent's Representative and his attorney by United States certified mail to their addresses on record with the OAH, and the green receipt cards were returned to the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1).

The Notice stated that a hearing was scheduled for August 17, 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 Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the

² Mr. Twist tragically passed away on October 25, 2021 shortly after the contract at issue was created. The Respondent's Personal Representative Robert M. Twist and the Respondent's attorney, Anthony J. DiPaula, Esquire, received notices and participated in the prehearing process on the Respondent's behalf.

³ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

[The text in this block is extremely faint and illegible, appearing to be a series of lines of handwriting or a typed document.]

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.

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

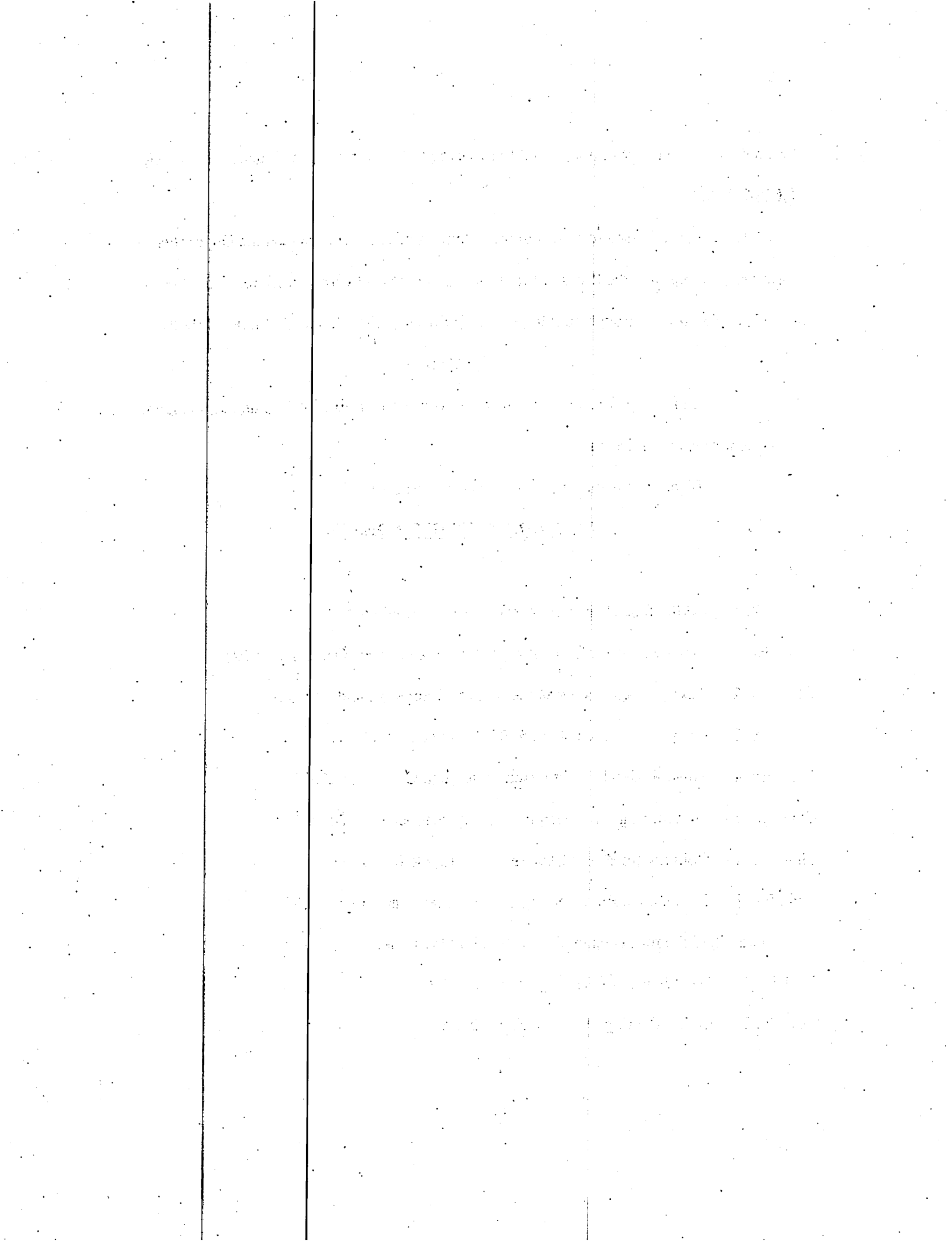
Exhibits

I admitted the following exhibits offered by the Claimant:

- Clmt. Ex. 1.- Kitchen renovation contract between the parties, October 10, 2021
- Clmt. Ex. 2 - Text messages between the parties, October 11 and 12, 2021
- Clmt. Ex. 3 - Copy of cancelled check #101, October 11, 2021
- Clmt. Ex. 4 - Tower Federal Credit Union Statement, October 31, 2021
- Clmt. Ex. 5 - Text messages between the parties, October 18 to 24, 2021
- Clmt. Ex. 6 - Obituary for Henry Charles Twist, Jr., October 2021
- Clmt. Ex. 7 - Cornerstone Remodeling , LLC Contract, January 10, 2022

I admitted the following exhibits offered by the Fund:

- Fund Ex. 1 - OAH Notice of Hearing, June 10, 2022
- Fund Ex. 2 - MHIC Hearing Order, April 15, 2022



Fund Ex. 3 - Respondent's MHIC Licensing records, printed May 5, 2022

Fund Ex. 4 - MHIC correspondence to the Respondent advising of claim and enclosing a copy of the claim (Claim), April 4, 2022

The Respondent did not submit any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

Neither the Respondent nor the Fund presented 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 under the MHIC.
2. On October 10, 2021, the Claimant and the Respondent entered into a contract to completely demo and remodel the Claimant's kitchen (Contract).
3. The original agreed-upon Contract price was \$71,992.00.
4. On October 11, 2021, the Claimant paid the Respondent \$10,000.00.
5. On October 25, 2021, the Respondent passed away without beginning any work at the Claimant's home.

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

1900

1901

1902

1903

1904

1905

1906

1907

1908

1909

1910

1911

1912

1913

1914

1915

1916

1917

1918

1919

1920

1921

1922

1923

1924

1925

1926

1927

1928

1929

1930

1931

1932

1933

1934

1935

1936

1937

1938

1939

1940

1941

1942

1943

1944

1945

1946

1947

1948

1949

1950

1951

1952

1953

1954

1955

1956

1957

1958

1959

1960

1961

1962

1963

1964

1965

1966

1967

1968

1969

1970

1971

1972

1973

1974

1975

1976

1977

1978

1979

1980

1981

1982

1983

1984

1985

1986

1987

1988

1989

1990

1991

1992

1993

1994

1995

1996

1997

1998

1999

2000

2001

2002

2003

2004

2005

2006

2007

2008

2009

2010

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

2021

2022

2023

2024

2025

2026

2027

2028

2029

2030

2031

2032

2033

2034

2035

2036

2037

2038

2039

2040

2041

2042

2043

2044

2045

2046

2047

2048

2049

2050

2051

2052

2053

2054

2055

2056

2057

2058

2059

2060

2061

2062

2063

2064

2065

2066

2067

2068

2069

2070

2071

2072

2073

2074

2075

2076

2077

2078

2079

2080

2081

2082

2083

2084

2085

2086

2087

2088

2089

2090

2091

2092

2093

2094

2095

2096

2097

2098

2099

2100

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, 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).

The Respondent did not perform any work at the Claimant’s home and abandoned the job. While it was not the Respondent’s intention that he would be unable to do the work, his untimely death made it impossible, resulting in an incomplete home improvement. The Respondent’s LLC may have had assets, but the Representatives were unable or unwilling to refund the Claimant his deposit. It was the Claimant’s understanding that the initial funds he paid were used to order a window and other items that had a long lead time. He believed that the items had been ordered with the funds, but he never received them. These failures to do work, refund the deposit money, or provide the items that were purchased with the funds, constitute acts or omissions by the Respondent resulting in an actual loss to the Claimant. I thus find that the Claimant is eligible for compensation from the Fund.

Faint, illegible text, possibly bleed-through from the reverse side of the page. The text is arranged in several horizontal lines across the page.

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. COMAR 09.08.03.03B(3). I find that the first formula is applicable to this case:

The Respondent abandoned the Contract without doing any work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract." COMAR 09.08.03.03B(3)(a).

The Claimant paid the Respondent \$10,000.00 and received nothing in return, as the contract was abandoned through the Respondent's untimely death. Therefore, the Claimant's actual loss is \$10,000.00 and is compensable by the Fund.

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.⁴ In this case, the Claimant's actual loss is equal to the amount paid to the Respondent and less than \$30,000.00. Therefore, the Claimant is entitled to recover his actual loss of \$10,000.00.

I would be remiss if I did not acknowledge the additional loss that the Claimant has suffered, that of a friend. It was clearly difficult for the Claimant to pursue this Claim, as he and

⁴ 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").

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. This section also outlines the various methods and tools used to collect and store data, ensuring that information is readily accessible and secure.

2. The second part of the document details the procedures for reviewing and analyzing the collected data. It describes how the information is processed, categorized, and interpreted to identify trends, patterns, and potential areas of concern. This analysis is crucial for making informed decisions and developing effective strategies to address any issues that arise.

3. The third part of the document focuses on the implementation of corrective actions and the monitoring of progress. It provides a framework for setting goals, assigning responsibilities, and tracking the implementation of these actions over time. Regular communication and reporting are highlighted as key components of this process to ensure that all stakeholders are kept informed and motivated.

4. The final part of the document discusses the importance of continuous improvement and the role of feedback in refining the organization's processes. It encourages a culture of learning and innovation, where lessons learned from past experiences are used to enhance future performance. This ongoing cycle of evaluation and improvement is essential for the long-term success and sustainability of the organization.

the Respondent were friends. He was noticeably conflicted about taking this action at the suggestion of the Respondent's Personal Representative, but in truth, this is why the Fund exists. It is to assist homeowners when things do not go as planned related to a home improvement contract. The Claimant deserves to be made whole.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$10,000.00 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)(1). I further conclude that the Claimant is entitled to recover that amount from the Fund. COMAR 09.08.03.03B, D.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$10,000.00 and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁵ and

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

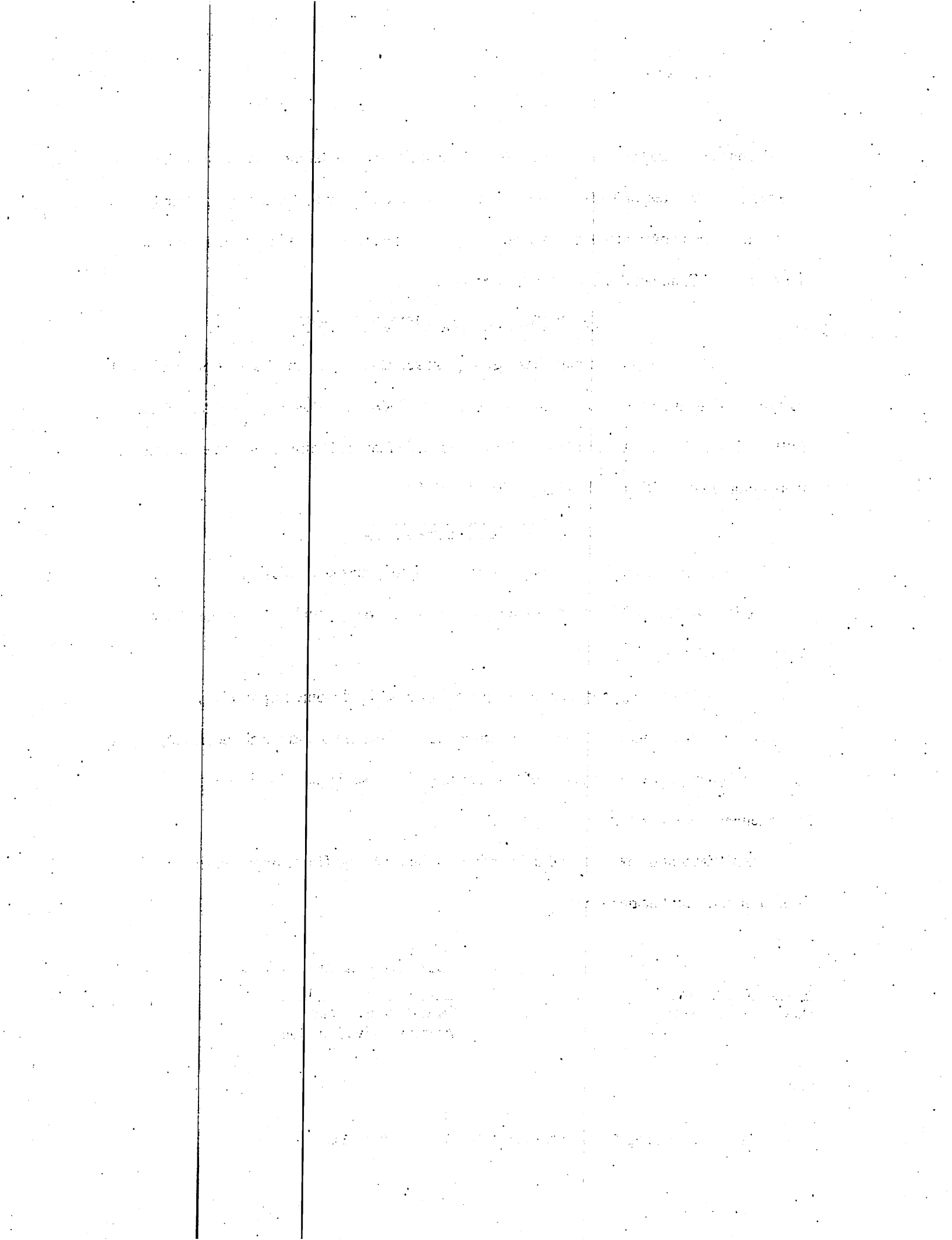
September 15, 2022
Date Decision Issued

Willis Gunther Baker

Willis Gunther Baker
Administrative Law Judge

WGB/emh
#200244

⁵ 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***

