

**IN THE MATTER OF THE CLAIM  
OF GEORGE BROOKS AND  
LATANYA BROOKS,  
CLAIMANTS  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF  
STEVEN HESSLER  
T/A ROCK CREEK DECKS &  
ADDITIONS LLC,  
RESPONDENT**

**\* BEFORE JENNIFER M. CARTER JONES,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\*  
\*  
\* OAH No.: LABOR-HIC-02-21-09942  
\* MHIC No.: 20 (75) 314  
\*  
\*  
\***

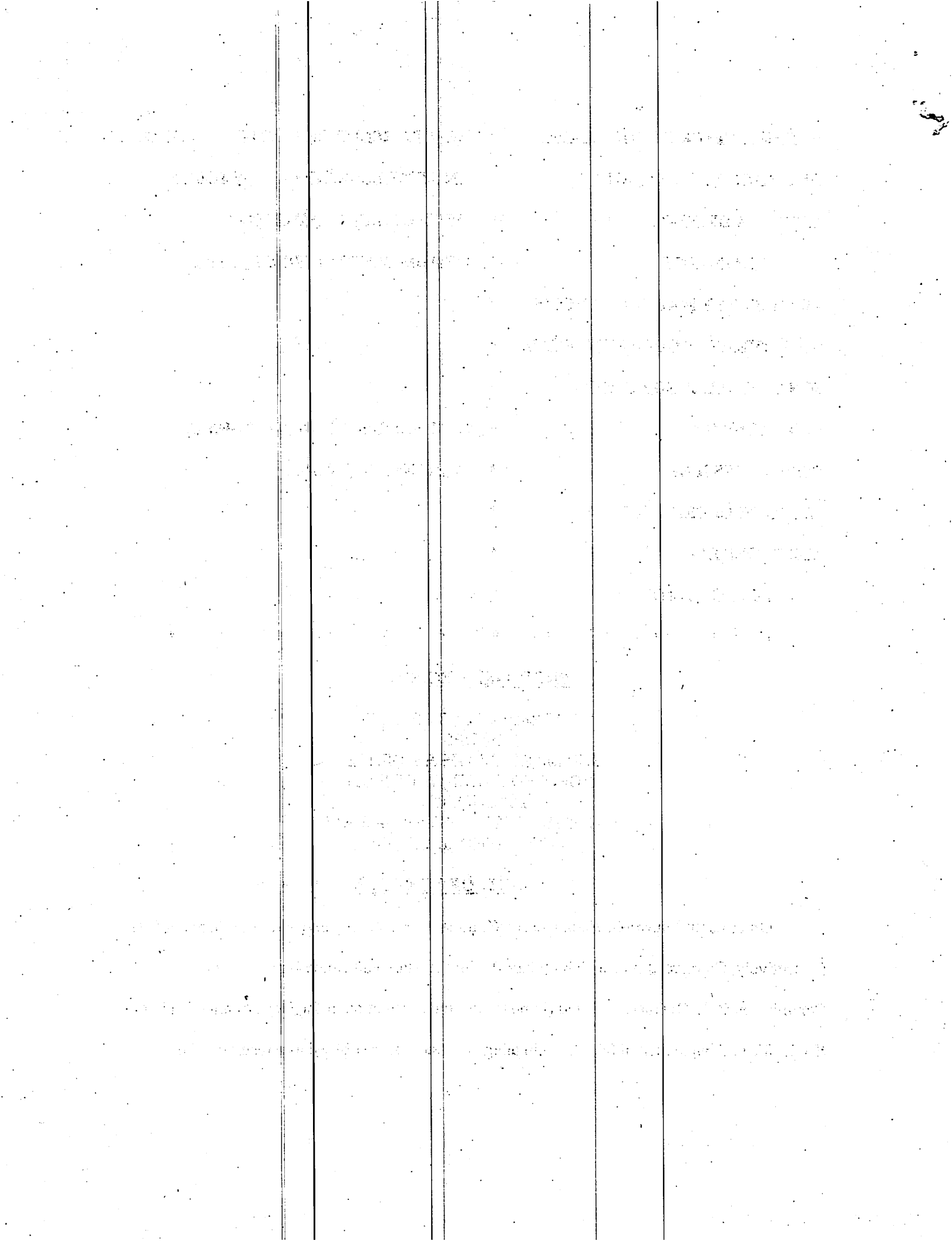
\* \* \* \* \*

**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 or about January 3, 2020, George (Claimant GB) and Latanya Brooks (Claimant LB) (collectively, Claimants) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) under the jurisdiction of the Department of Labor (DOL) for reimbursement of \$9,705.00 in alleged actual losses suffered as a result of a home



improvement contract with Steven Hessler, T/A Rock Creek Deck and Additions (Respondent).<sup>1</sup> On May 4, 2020, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.<sup>2</sup>

I held a hearing on June 11, 2021, using the Webex videoconferencing platform.<sup>3</sup> Justin Dunbar, DOL Assistant Attorney General, represented the Fund. The Claimant represented herself. The Respondent failed to appear for the hearing.

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.<sup>4</sup> On May 5, 2021, the OAH mailed, by regular and certified mail, a Notice of Remote Hearing (Notice) to the Respondent at his address of record with the MHIC on East West Highway in Chevy Chase, Maryland (East West Address). The United States Postal Service (USPS) returned the green certified mail receipt for the certified copy of the Notice the OAH sent to the Respondent at the East West address; however, the green certified mail receipt was not signed. The USPS did not return the copy of the Notice OAH sent by regular mail as undeliverable or for any other reason.

On May 28, 2021, the MHIC notified the OAH that it had discovered an additional address for the Respondent on Spruce Road in Baltimore Maryland (Spruce Address). Accordingly, on June 1, 2021, the OAH sent copies of the Notice by certified and regular mail to the Spruce Road address. The USPS returned the certified copy of the Notice on or about August 20, 2021 as undeliverable but it did not return the Notice OAH sent to the Respondent by regular mail as undeliverable or for any other reason. The Respondent made no request for

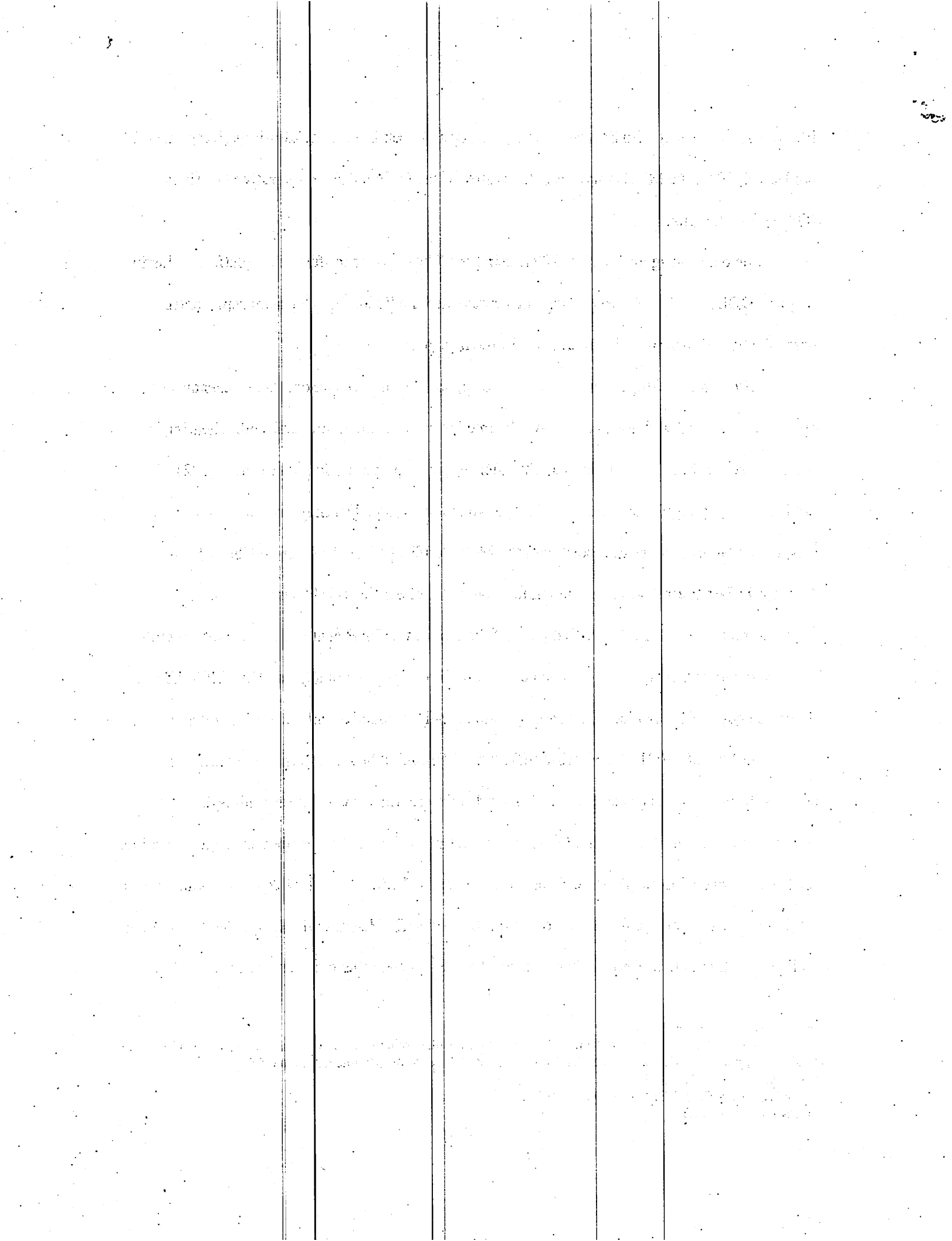
---

<sup>1</sup> Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

<sup>2</sup> Bus. Reg. §§ 8-407(a), 8-312.

<sup>3</sup> Bus. Reg. § 8-407(e); COMAR 28.02.01.20B.

<sup>4</sup> COMAR 28.02.01.23A.



postponement prior to the date of the hearing.<sup>5</sup> I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.

The contested case provisions of the Administrative Procedure Act, the DOL's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case.<sup>6</sup>

### **ISSUES**

1. Did the Claimants 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 that loss?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

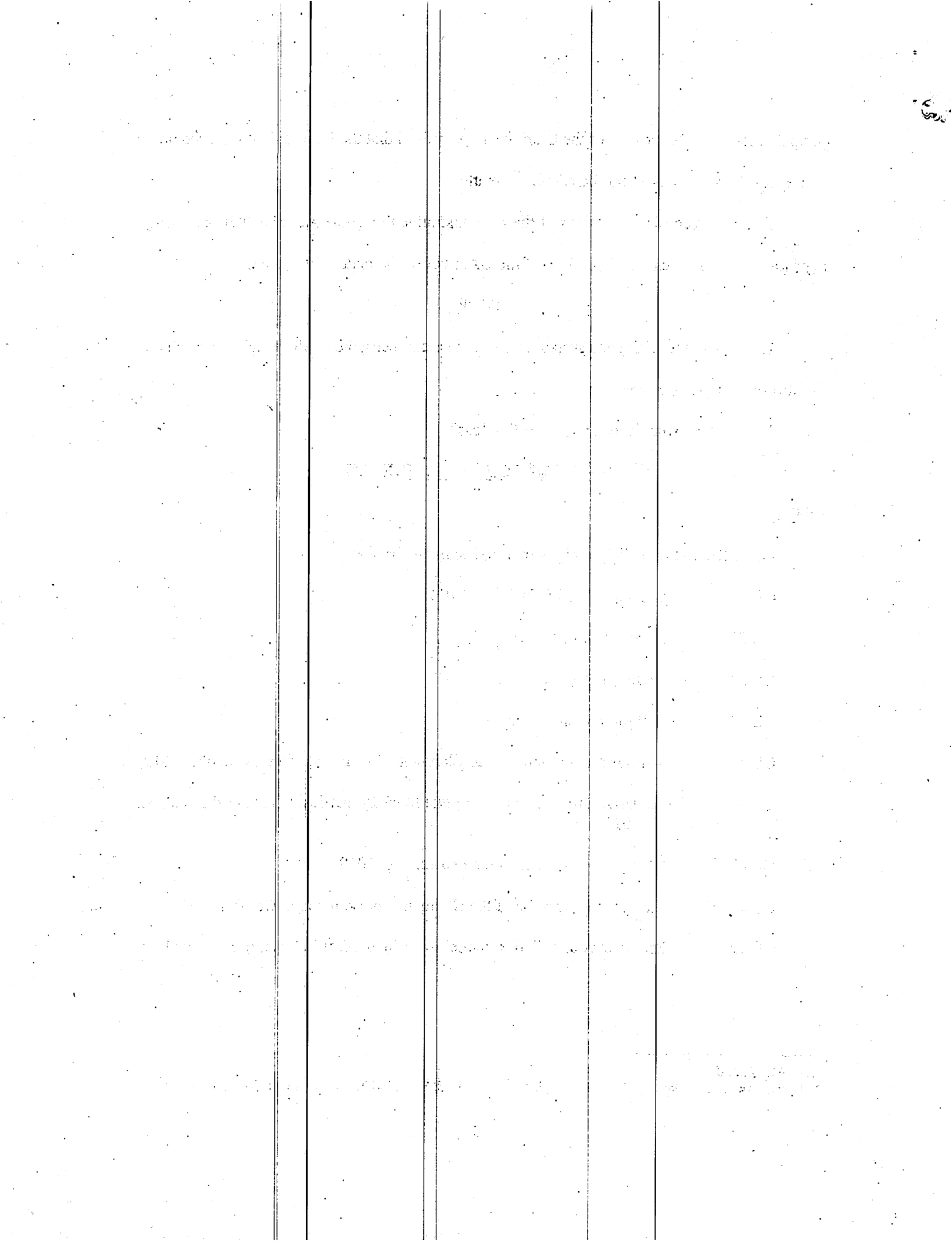
I admitted the following exhibits on the Claimants' behalf:

- |       |  |
|-------|--|
| CL #1 | Contract, dated February 9, 2019   |
| CL #2 | Deck plans, undated  |
| CL #3 | Addition plans, undated  |
| CL #4 | Bathroom plans, undated  |
| CL #5 | Various photographs of the Claimants' bathroom, taken in October 2019          |
| CL #6 | Construction Proposal from Style Mark Properties, LLC, dated December 25, 2019 |
| CL #7 | Home Depot Agreement, dated July 31, 2019                                      |
| CL #8 | Various photographs of the Claimants' deck, taken in October 2019              |
| CL #9 | Estimate from Allied Remodeling (Allied), dated November 18, 2019              |

---

<sup>5</sup> COMAR 28.02.01.16.

<sup>6</sup> Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; and COMAR 28.02.01.



CL #10 Copies of 6 negotiated checks, dated February 9, 2019, April 18, 2019, April 25, 2019, May 3, 2019, May 23, 2019, and May 5, 2019

CL #11 MHIC Claim Form completed by the Claimants, dated January 3, 2020

I admitted the following exhibits on behalf of the Fund:

Fund #1 DOL Hearing Order, dated April 2, 2021

Fund #2 Copy of OAH Notice of Remote Hearing sent to the Respondent at the East West Address, dated May 5, 2021

Fund #2A Copy of OAH Notice of Remote Hearing sent to the Respondent at the Spruce Address and the East West Address, dated June 1, 2021

Fund #3 Letter from the DOL to the Respondent, dated January 10, 2020, with attached MHIC Claim Form completed by the Claimants, dated January 3, 2020

Fund #4 Licensing History, dated May 27, 2021

Fund #4 DOL Home Improvement Claim Form, dated November 25, 2019

Fund #5 Affidavit of David Finneran, MHIC Executive Director, dated May 28, 2021

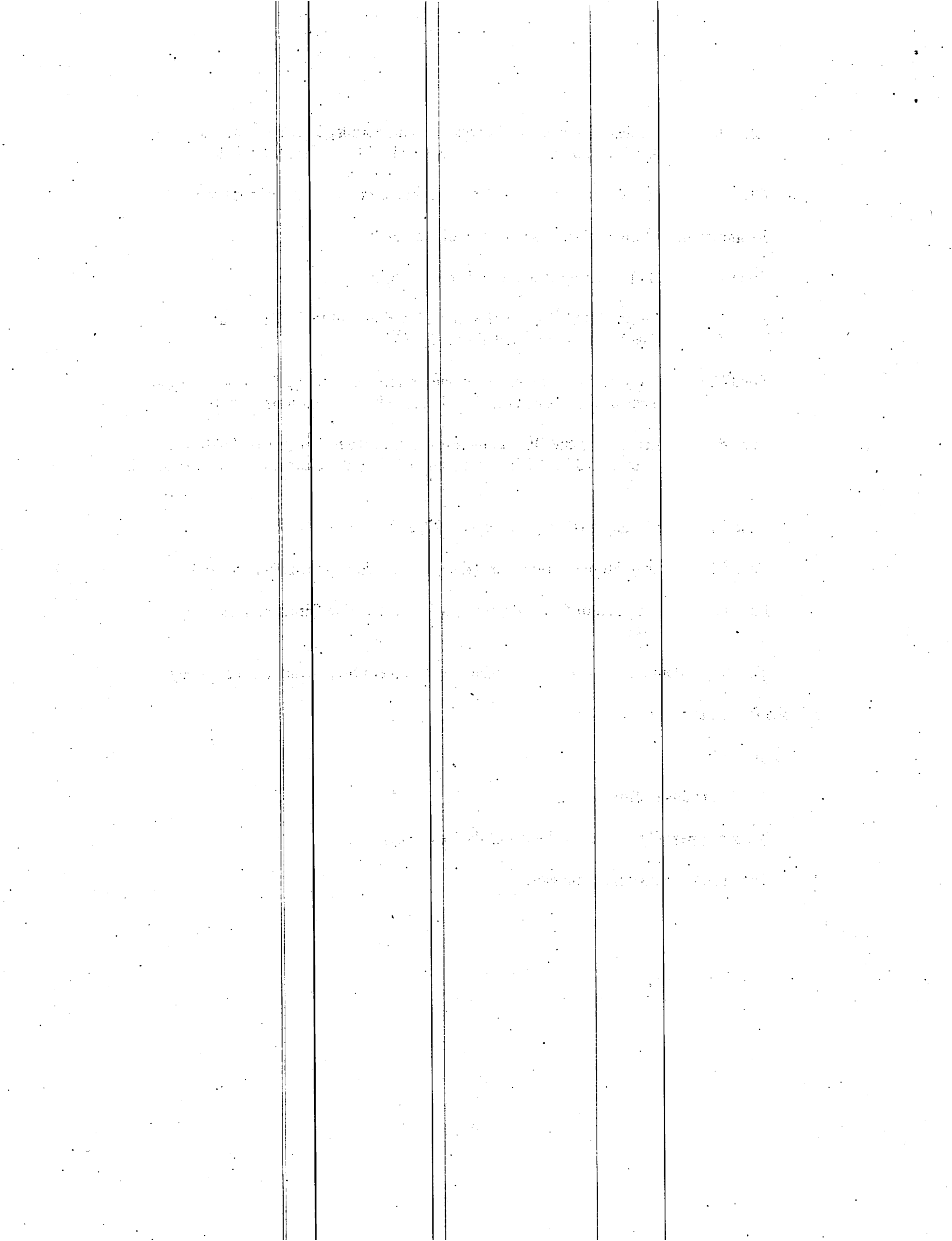
The Respondent did not appear for the hearing and therefore, he did not submit any exhibits for admission into the record.

#### Testimony

The Claimants testified.

No one appeared to testify on behalf of the Respondent.

The Fund presented no witnesses.





## PROPOSED FINDINGS OF FACT

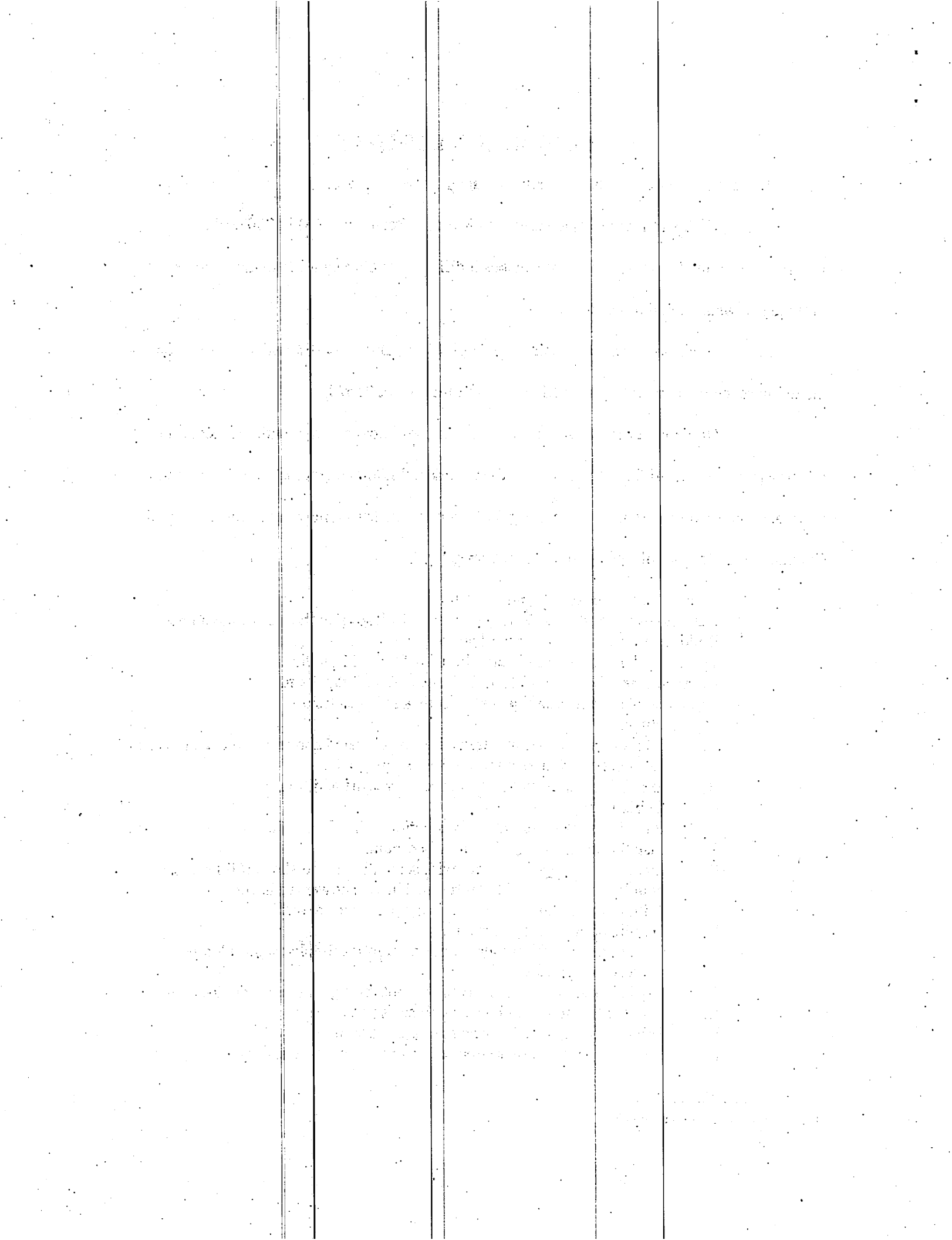
I find the following facts by a preponderance of the evidence:

1. Claimant LB was diagnosed with Multiple Sclerosis (MS) in 2007. She experiences pain in her legs, and the MS makes it difficult for Claimant LB to maintain her balance and walk up and down stairs.
2. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 5305670.
3. On February 9, 2019, the Claimants entered into a contract with the Respondent (Contract) to build an addition to the rear of the Claimants' home, including a master bedroom and master bathroom; to remove an existing deck; and to construct a new deck. Specifically, the Contract called for the following home improvement work:

1. Remove and dispose of existing deck.
2. Build a new 16 ft deep x 20 ft wide master bedroom on the rear of the home.
3. Build a new 16 ft x 12 ft master bathroom and walk in closet.
4. The new total addition size would be 16 ft deep x 32 ft wide.
5. **Bathroom will be 8 ft x 12 ft and closet will be 8 ft x 12 ft.**
6. Price includes architectural plans/ permits and inspections.
7. Price includes:
  - A. Frame floor on pressure treated frame elevated above ground on structural 8x8 post and concrete footers 36" below grade.
  - B. 2x6 framed walls with a-frame roof over the addition.
  - C. Ceiling will be flat.
  - D. Includes electric/ plumbing/ insulation/ HVAC to code.
  - E. Install mini split HVAC in new bedroom.
  - F. Labor for full size bathroom with separate tub and shower/ linen closet/ double vanity/ doored toilet room. Tile on shower walls and floor.
  - G. Trim to match house trim with 6 panel interior doors.
  - H. Double door to enter bedroom.
  - I. Cut out and install full glass door on right of fireplace and full size window on left side.
  - J. Drywall and paint with 2 coats of paint throughout, color choice by owner.
  - K. Vinyl siding to match house as close as possible.
  - L. Shingle roof to match house as close as possible.
  - M. Deck 10x15 #1 pressure treated wood deck with steps to ground.<sup>7</sup>

---

<sup>7</sup> CL #1, (Emphasis in the original).



8. The Contract specified that the Claimants were to supply the bathroom fixtures, tile, glass, mirrors, toilet, vanity, faucets, and the flooring.

9. When discussing the scope of the project, the Claimants made clear to the Respondent that due to her MS, Claimant LB had difficulty with maintaining her balance. The Claimants also told the Respondent that they wanted the addition and the deck to be on one level so Claimant LB would not have to go up or down steps to access the deck.

10. The Claimants told the Respondent that they did not want the Respondent to install any steps leading from the house to the deck.

11. The agreed-upon price for the addition and deck was \$74,444.00.<sup>8</sup>

12. The Claimants paid the Respondent \$70,683.00 of the \$74,444.00 Contract price.

13. The Respondent charged the Claimants \$983.00 for a tub and shower board.<sup>9</sup> This amount is included in the \$70,683.00 total the Claimants paid the Respondent.

14. At the beginning of the home improvement project, communication between the Claimants and the Respondent was consistent and friendly.

15. The Respondent constructed two steps leading from the house to the deck despite the Claimants' request that there be no steps installed in this area.

16. The Respondent agreed to revise the deck to make the deck flush with the floor of the addition.

17. Before the Respondent agreed to make the revision to the deck, the Claimants requested that the Respondent include a turn in the staircase that leads to the back yard from the

---

<sup>8</sup> According to the Contract, the original cost for the addition and the deck was \$76,944.00. The Respondent gave the Claimants a website customer discount and a military discount totaling \$2,500.00, making the cost for the projects \$74,444.00.

<sup>9</sup> This is the internal portion of the shower.

Year	1950	1951	1952	1953	1954	1955
1. Total	100.0	100.0	100.0	100.0	100.0	100.0
2. Government	40.0	42.0	45.0	48.0	50.0	52.0
3. Private	60.0	58.0	55.0	52.0	50.0	48.0
4. Federal	20.0	22.0	25.0	28.0	30.0	32.0
5. State	20.0	20.0	20.0	20.0	20.0	20.0
6. Local	0.0	0.0	0.0	0.0	0.0	0.0
7. Non-Federal	40.0	36.0	30.0	24.0	20.0	16.0
8. Federal Reserve	10.0	12.0	15.0	18.0	20.0	22.0
9. State	10.0	10.0	10.0	10.0	10.0	10.0
10. Local	0.0	0.0	0.0	0.0	0.0	0.0
11. Non-Federal	30.0	24.0	15.0	6.0	0.0	0.0
12. Federal Reserve	10.0	12.0	15.0	18.0	20.0	22.0
13. State	10.0	10.0	10.0	10.0	10.0	10.0
14. Local	0.0	0.0	0.0	0.0	0.0	0.0
15. Non-Federal	20.0	12.0	0.0	0.0	0.0	0.0
16. Federal Reserve	10.0	12.0	15.0	18.0	20.0	22.0
17. State	10.0	10.0	10.0	10.0	10.0	10.0
18. Local	0.0	0.0	0.0	0.0	0.0	0.0
19. Non-Federal	10.0	0.0	0.0	0.0	0.0	0.0
20. Federal Reserve	10.0	12.0	15.0	18.0	20.0	22.0
21. State	10.0	10.0	10.0	10.0	10.0	10.0
22. Local	0.0	0.0	0.0	0.0	0.0	0.0
23. Non-Federal	0.0	0.0	0.0	0.0	0.0	0.0

deck so that the stairs terminated on the cement floor in the carport. The Respondent agreed to construct the staircase in this manner without any additional charge but did not do so.

18. The Claimants and the Respondent did not sign a change order agreeing to change the structure of the deck stairs.

19. The Respondent used the beams and posts that supported the Claimants' previous deck rather than removing the entire structure and installing new beams and posts.

20. The Respondent never replaced the deck using new posts and beams or pressure treated wood and without the two steps from the addition to the deck.

21. The Respondent never constructed the deck staircase from the deck to the ground with a platform and a turn so that the deck stairs terminated on the cement floor of the carport.

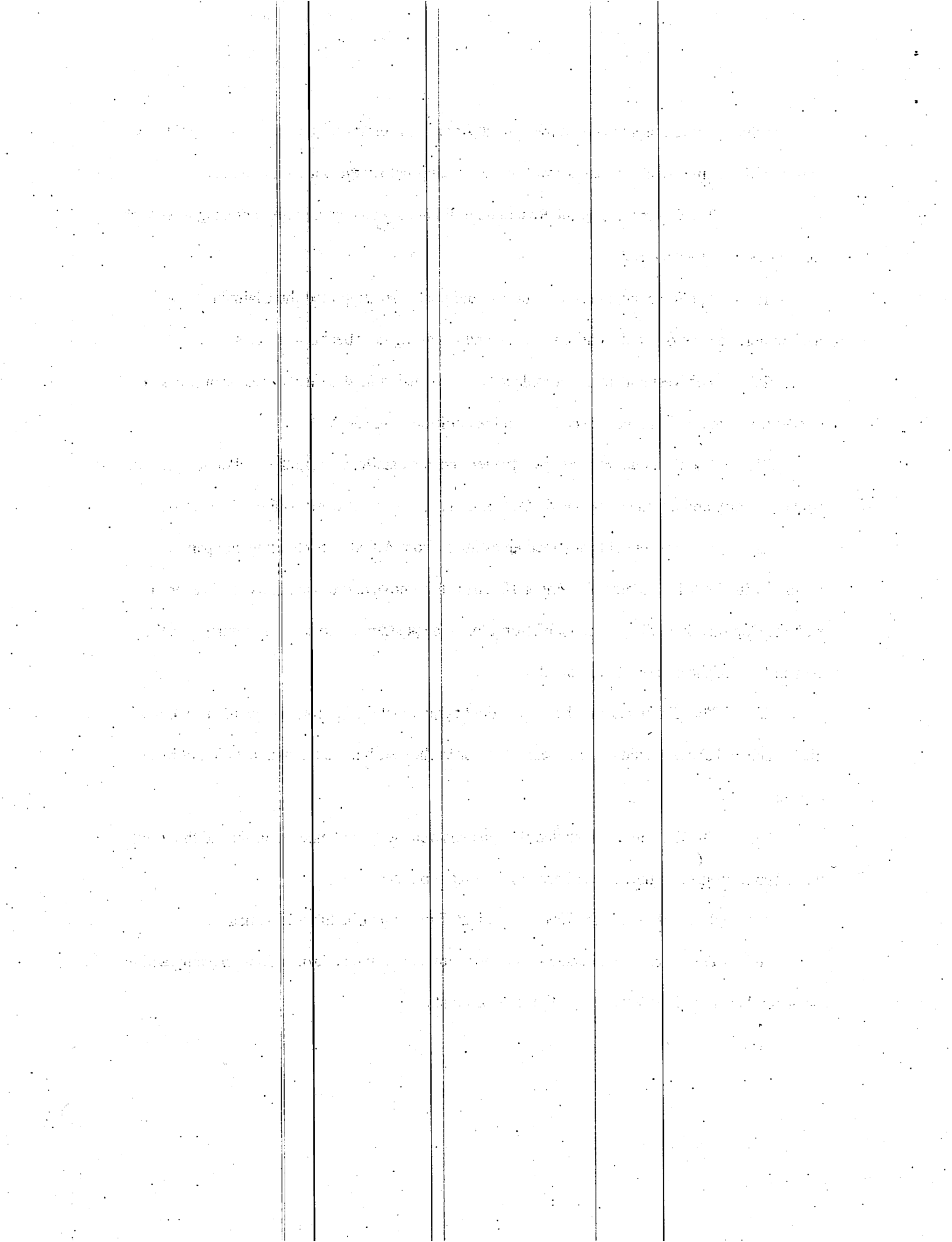
22. The Respondents obtained an estimate from Allied, a contracting company licensed with the MHIC, dated November 18, 2019, to remove and replace the deck in accord with the Contract, including adding a platform to the deck staircase so that it terminated on the cement floor of the carport, for \$9,866.00.

23. The Claimants and the Respondent agreed that the Respondent would install a tiled bench and shower caddy in the master bathroom shower, but the Respondent did not install a bench.

24. The Respondent installed the tiled shower caddy with uneven grout and the grout the Respondent used in the shower between the tiles separated.

25. Some of the tile the Respondent installed around the tub was damaged.

26. The Respondent installed the floor trim behind the bathroom door unevenly and in a manner that caused the grout in the tile floor to crack.



27. The Respondent never replaced the grout in the shower caddy, installed a bench in the shower, fixed the tile in the bathroom tub surround, or fixed the trim behind the bathroom door.

28. The Claimants obtained an estimate from StyleMark, a contractor licensed by the MHIC, which stated that the cost to replace the damaged, grout, and trim tile in the addition master bathroom would be \$2,050.00.

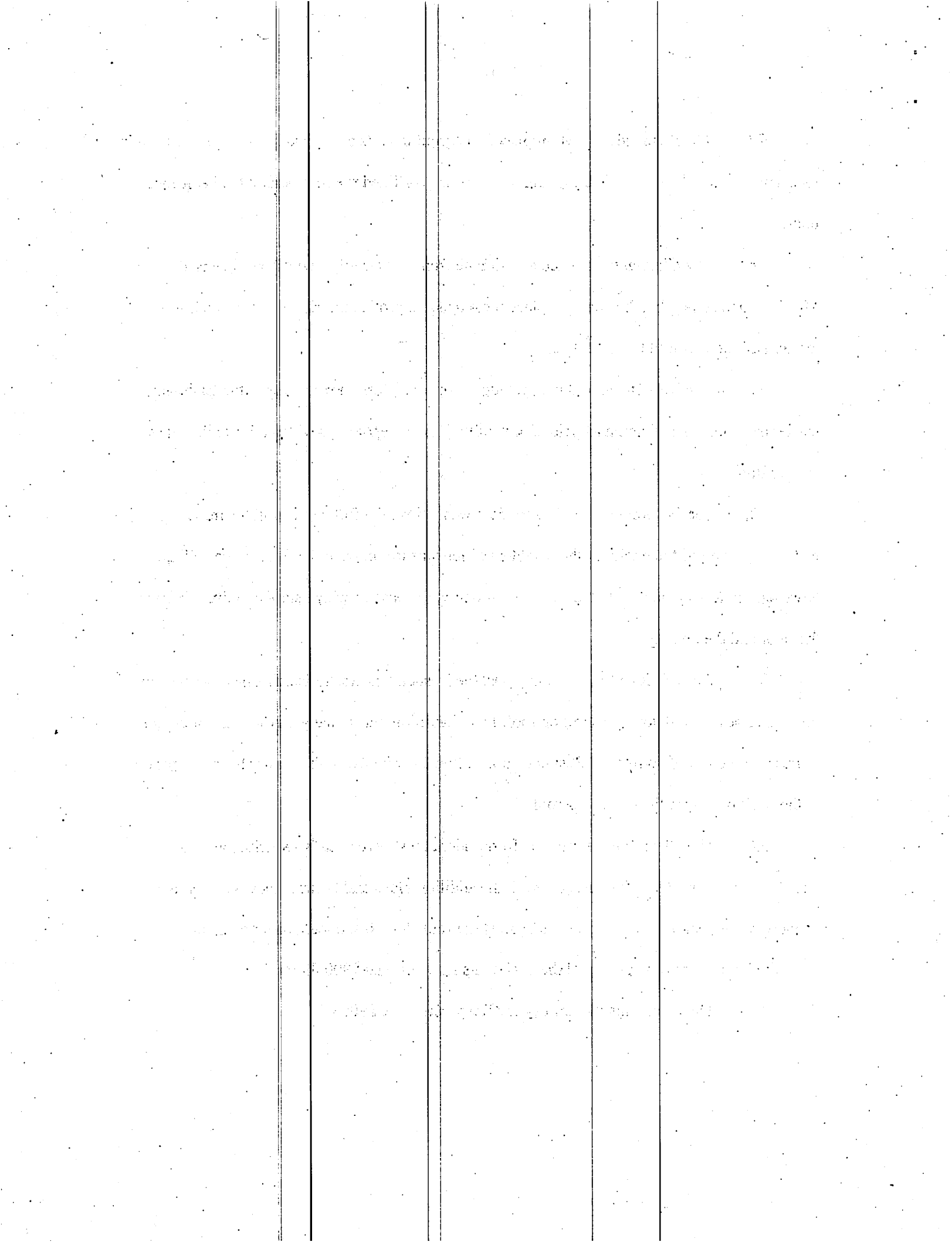
29. The Respondent did not provide or install a glass shower door in the Claimants' master bathroom. The Claimants paid \$2,450.00 to Home Depot to provide and install a glass shower door.

30. Per the Contract, the Respondent was to install a full window in the master bedroom portion of the addition, the height of which was to run from the floor to the ceiling; however, the Respondent installed a smaller window, the base of which started midway between the floor and the ceiling.

31. According to the addition plans, the Respondent was to install a new window in the master bedroom below the addition roof. In the addition plans, that window was not depicted as flush with the roof. When the Respondent installed the window in the master bedroom portion of the addition it was flush with the roof.

32. The Claimants advised the Respondent they were unsatisfied with the window installation because it was inconsistent with the addition plans and because they believed the window would leak if it remained flush against the roof. The Respondent disagreed, but reinstalled the window and charged the Claimants an additional \$900.00 for that work.

33. The Claimants did not pay the Respondent the \$900.00.





34. After the interaction between the Respondent and the Claimants about the master bedroom window, on or about May 20, 2019, the Respondent stopped communicating with the Claimants.

### DISCUSSION

The Claimants have the burden of proving the validity of her claim by a preponderance of the evidence.<sup>10</sup> “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.”<sup>11</sup>

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.”<sup>12</sup> Actual loss “means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.”<sup>13</sup> For the following reasons, I find that the Claimants have proven eligibility for compensation.

Based on the unrefuted evidence, the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimants. Per the Contract, the Claimants agreed to pay the Respondent \$74,444.00 to remove an existing deck, construct a master bedroom and master bathroom addition to the rear of the Claimant’s home, and construct a new deck. The Claimants paid the Respondent a total of \$70,683.99 and assert that the Respondent did not complete aspects of the home improvement project in accord with the Contract. Specifically, the Claimants argue that the Respondent:

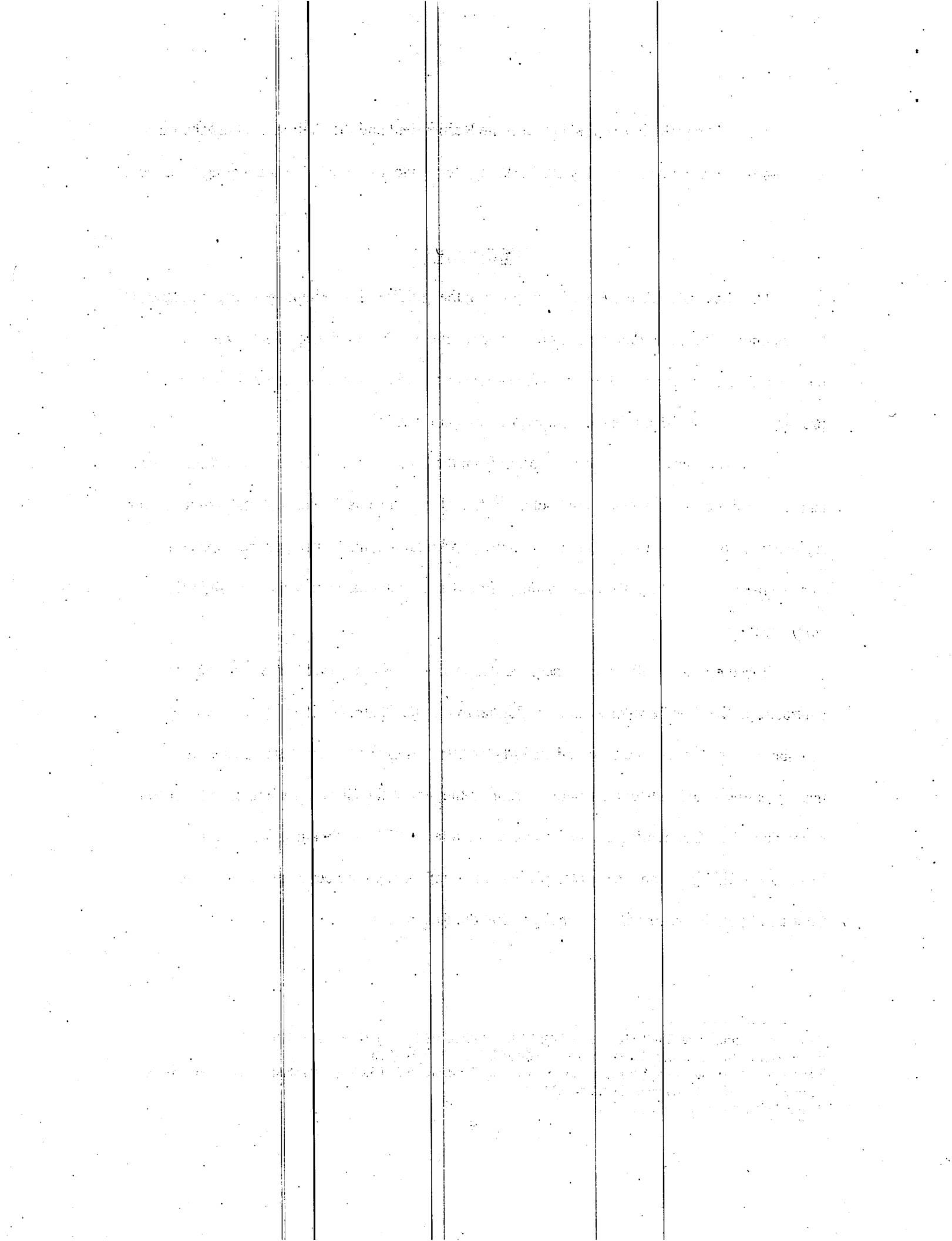
---

<sup>10</sup> Md. Code Ann., State Gov’t §10-217 (2014); COMAR 09.08.03.03A(3); COMAR 2.02.01.21K(1).

<sup>11</sup> *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>12</sup> Md. Code Ann., Bus. Reg. § 8-405(a) (2015); *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”).

<sup>13</sup> Md. Code Ann., Bus. Reg. § 8-401.

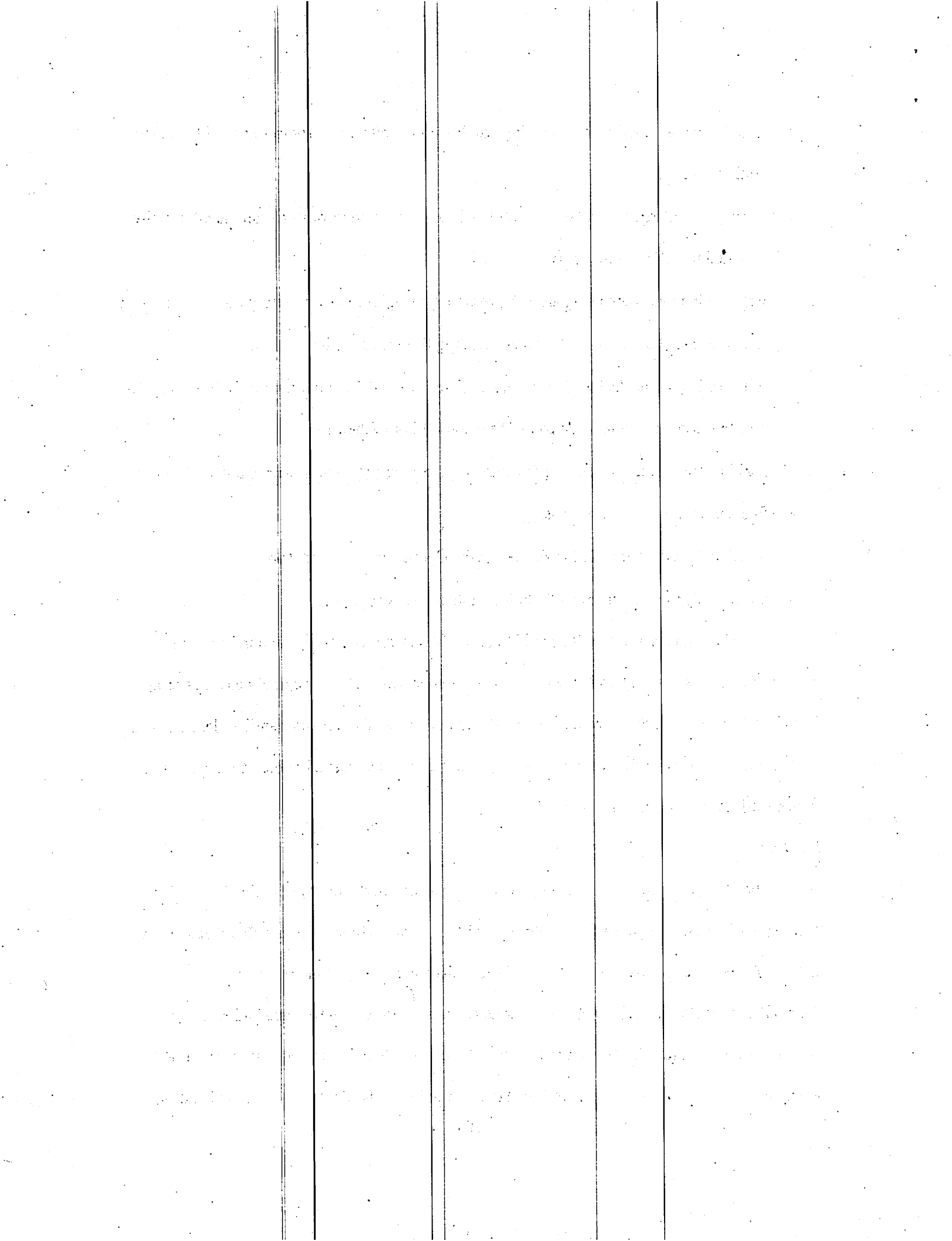


- failed to install a full floor-to-ceiling window in the master bedroom as called for in the addition plans;
- improperly charged the Claimants \$900.00 to correct a window the Respondent initially installed too close to the roof;
- failed to install a deck using all new pressure treated lumber – including posts and beams;
- failed to install the deck without steps leading from the addition to the deck
- failed to install the deck staircase between the deck and the ground with a platform and a turn in the stairs that terminated on the cement floor of the carport;
- installed tile, grout, and trim in the bathroom in an uneven and unworkmanlike fashion;
- failed to install the shower glass;
- failed to install a bench in the shower as the Claimants requested; and
- erroneously charged them \$983.00 for a tub and shower board.

The Claimants assert that they paid \$2,450.00 to Home Depot for the purchase and installation of the shower glass in the master bathroom shower. They also obtained an estimate from StyleMark stating that it would cost \$2,050.00 to correct the unworkmanlike tile, trim, and grout in the bathroom, and an estimate from Allied that it would cost \$9,866.00 to remove and reinstall the deck in accordance with the Contract.

### **The Deck**

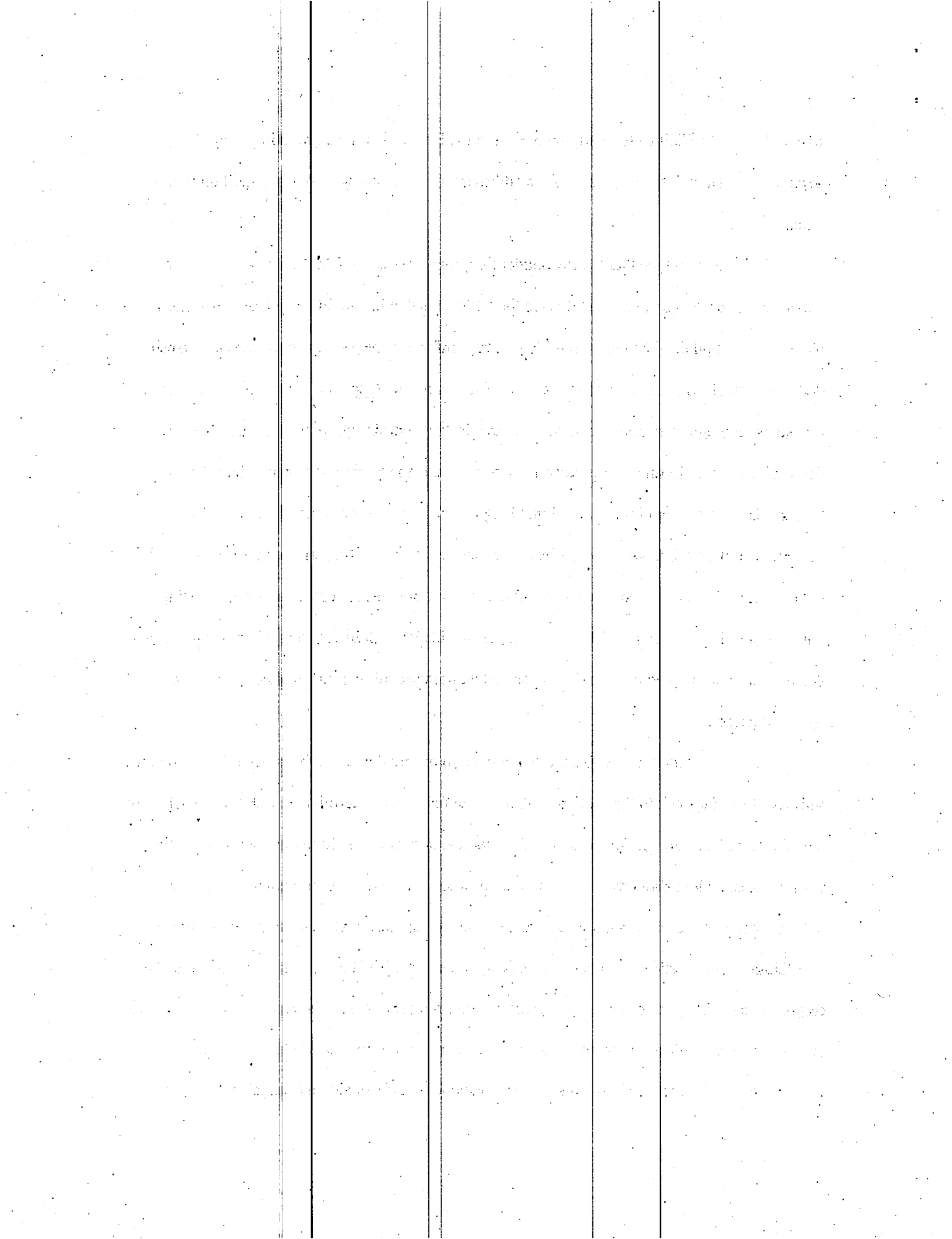
The Claimants presented credible evidence that they fully conveyed to the Respondent that they wished the deck to be flush with the addition floor. Claimant LB testified that she has MS and she experiences pain in her legs and difficulty maintaining balance. To that end, Claimant GB testified that the purpose for constructing a master bedroom and bathroom on the first floor of their home was to allow Claimant LB access to a bedroom and bathroom without having to climb and descend the household stairs. In light of Claimant LB's medical condition, I



conclude that the Claimants clearly conveyed to the Respondent that it was important for the deck to be flush with the first floor of the addition without any steps from the addition to the deck.

I further conclude that the Respondent improperly used the old beams and posts to construct the deck despite representing to the Claimants that he would use all new materials. As I have stated, I find the Claimants credible that they informed the Respondent that they wished the deck to be flush with the floor of the addition. However, the Respondent installed the deck with two steps leading down from the addition to the deck. Accordingly, in order to make the deck flush with the addition floor, it is reasonable to conclude the Respondent would have had to use longer beams to account for the additional height necessary to accomplish that task. Indeed, according to the Claimants, Allied, a business licensed with the HIC, advised the Claimants that the only way to make the deck level with the addition floor was to replace all of the existing posts. According to Claimant GB, Allied further advised the Claimants that the existing post and beams were not safe and that the Respondents had not used all pressure-treated wood as required by the Contract.

I also conclude that the Respondent agreed to ensure that a platform was installed on the staircase from the deck to the ground so that the staircase would terminate on the cement floor of the Claimants' carport. As I have stated, the Claimants credibly testified that they were clear with the Respondent about their desire that all aspects of the home improvement project be optimized to allow Claimant LB to access them despite the physical restrictions posed by her MS. Claimant GB testified that he told the Respondent he wished the stairs to terminate on the carport cement floor rather than in the grass because the cement floor is sturdier and thus, would be better suited to allow Claimant LB to maintain her balance upon descending the stairs. Accordingly, although the Claimants and the Respondent did not sign a change order, I find the



Claimants credible that the Respondent agreed to include the platform and the turn in the deck staircase so that it would terminate on the carport cement floor at no additional cost. Indeed, the Contract does not offer any detail about the structure of the deck staircase, but as a staircase was constructed, in the absence of any evidence contrary to the Claimants' testimony, I conclude that the Respondent agreed to charge the same amount for the turning staircase terminating in the carport as he would for a straight staircase terminating in the grass.

Ultimately, I conclude that in order to raise the deck to the desired level, a contractor would have to remove the entire existing deck and replace it, including new beams and posts. Allied estimated this work would cost \$9,866.00. As I have no evidence to refute this estimate, I conclude this is a reasonable amount to replace the deck in accord with the Contract.

#### **Master Bathroom**

The Claimants presented pictures of the bathroom that demonstrate that the Respondent installed the tile on the tub surround and on the shower caddy in an unworkmanlike manner. The grout and tile around the shower caddy were uneven, and some of the trim work was uneven. The Claimant submitted a proposal from StyleMark, a contractor licensed by the HIC, that it would cost \$2,050.00 to make these repairs.

The Claimants also testified that the Respondent failed to install a bench in the shower per the Contract and the master bathroom plans;<sup>14</sup> however, the Contract does not specify how much the Respondent charged, specifically, for the bench installation. Furthermore, the Claimants did not present any estimates for the cost to install a bench. Accordingly, I have no means by which to measure the amount of the Claimants' actual loss for the absence of the bench.

---

<sup>14</sup> CL #4.

Date	Description	Debit	Credit	Balance
1912				
Jan 1	Balance forward			100.00
Jan 5	Jan 1	100.00		
Jan 10	Jan 5		100.00	100.00
Jan 15	Jan 10	100.00		
Jan 20	Jan 15		100.00	100.00
Jan 25	Jan 20	100.00		
Jan 30	Jan 25		100.00	100.00
Feb 1	Jan 30	100.00		
Feb 5	Feb 1		100.00	100.00
Feb 10	Feb 5	100.00		
Feb 15	Feb 10		100.00	100.00
Feb 20	Feb 15	100.00		
Feb 25	Feb 20		100.00	100.00
Feb 28	Feb 25	100.00		
Mar 1	Feb 28		100.00	100.00
Mar 5	Mar 1	100.00		
Mar 10	Mar 5		100.00	100.00
Mar 15	Mar 10	100.00		
Mar 20	Mar 15		100.00	100.00
Mar 25	Mar 20	100.00		
Mar 30	Mar 25		100.00	100.00
Apr 1	Mar 30	100.00		
Apr 5	Apr 1		100.00	100.00
Apr 10	Apr 5	100.00		
Apr 15	Apr 10		100.00	100.00
Apr 20	Apr 15	100.00		
Apr 25	Apr 20		100.00	100.00
Apr 30	Apr 25	100.00		
May 1	Apr 30		100.00	100.00
May 5	May 1	100.00		
May 10	May 5		100.00	100.00
May 15	May 10	100.00		
May 20	May 15		100.00	100.00
May 25	May 20	100.00		
May 30	May 25		100.00	100.00
Jun 1	May 30	100.00		
Jun 5	Jun 1		100.00	100.00
Jun 10	Jun 5	100.00		
Jun 15	Jun 10		100.00	100.00
Jun 20	Jun 15	100.00		
Jun 25	Jun 20		100.00	100.00
Jun 30	Jun 25	100.00		
Jul 1	Jun 30		100.00	100.00
Jul 5	Jul 1	100.00		
Jul 10	Jul 5		100.00	100.00
Jul 15	Jul 10	100.00		
Jul 20	Jul 15		100.00	100.00
Jul 25	Jul 20	100.00		
Jul 30	Jul 25		100.00	100.00
Aug 1	Jul 30	100.00		
Aug 5	Aug 1		100.00	100.00
Aug 10	Aug 5	100.00		
Aug 15	Aug 10		100.00	100.00
Aug 20	Aug 15	100.00		
Aug 25	Aug 20		100.00	100.00
Aug 30	Aug 25	100.00		
Sep 1	Aug 30		100.00	100.00
Sep 5	Sep 1	100.00		
Sep 10	Sep 5		100.00	100.00
Sep 15	Sep 10	100.00		
Sep 20	Sep 15		100.00	100.00
Sep 25	Sep 20	100.00		
Sep 30	Sep 25		100.00	100.00
Oct 1	Sep 30	100.00		
Oct 5	Oct 1		100.00	100.00
Oct 10	Oct 5	100.00		
Oct 15	Oct 10		100.00	100.00
Oct 20	Oct 15	100.00		
Oct 25	Oct 20		100.00	100.00
Oct 30	Oct 25	100.00		
Nov 1	Oct 30		100.00	100.00
Nov 5	Nov 1	100.00		
Nov 10	Nov 5		100.00	100.00
Nov 15	Nov 10	100.00		
Nov 20	Nov 15		100.00	100.00
Nov 25	Nov 20	100.00		
Nov 30	Nov 25		100.00	100.00
Dec 1	Nov 30	100.00		
Dec 5	Dec 1		100.00	100.00
Dec 10	Dec 5	100.00		
Dec 15	Dec 10		100.00	100.00
Dec 20	Dec 15	100.00		
Dec 25	Dec 20		100.00	100.00
Dec 30	Dec 25	100.00		
Total		100.00	100.00	100.00



Regarding the Claimants' assertion that the Respondent improperly charged the Claimants \$983.00 for a tub and shower board, I conclude that contrary to the Claimants' position, the Contract dictates that the Claimants were expected to purchase those items themselves. The Contract specified that the Claimants were to supply the "bathroom fixtures, tile, glass, mirrors, toilet, vanity, faucets, and flooring."<sup>15</sup> None of these terms are defined in the Contract. The term "fixture" is generally defined as "something that is fixed or attached (as to a building) as a permanent appendage or as a structural part."<sup>16</sup> A tub and shower board certainly meet this definition of "fixture," and therefore, I conclude that the Respondent properly charged the Claimants for these items.

Similarly, the Contract also requires the Claimants to provide the glass for the bathroom. The Claimants asserted that they did not believe that "glass" the Contract required the Claimants to purchase meant the glass for the shower door. Rather, the Claimants surmised that the "glass" referred to the bathroom lighting. I conclude that the Claimants are incorrect. According to the Claimants' contract with Home Depot,<sup>17</sup> the shower door Home Depot provided and installed for the Claimants was 76 inches high with a thickness of 3/8 of an inch.<sup>18</sup> Arguably, the glass necessary to complete the Claimant's shower is the one of the larger pieces of glass that would have been used in the Claimants' bathroom. Accordingly, I find it unreasonable for the Claimants' to have interpreted the term "glass" in the Contract to exclude the shower door.

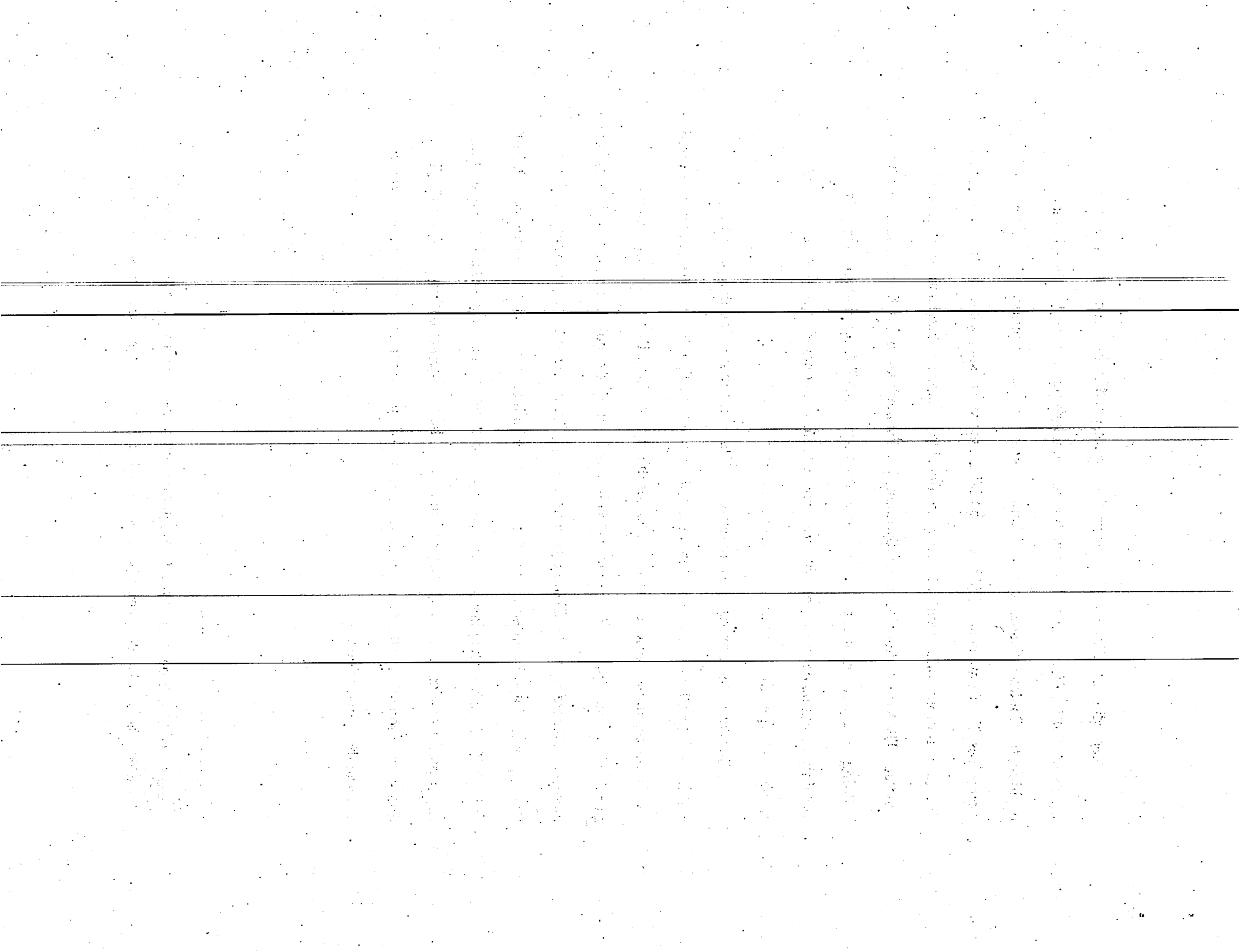
---

<sup>15</sup> CL #1.

<sup>16</sup> Fixture, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/fixture> (last visited Sept. 1, 2021).

<sup>17</sup> CL #7.

<sup>18</sup> The width is not stated on the contract, but, presumably, it is wide enough for a human to enter the shower.

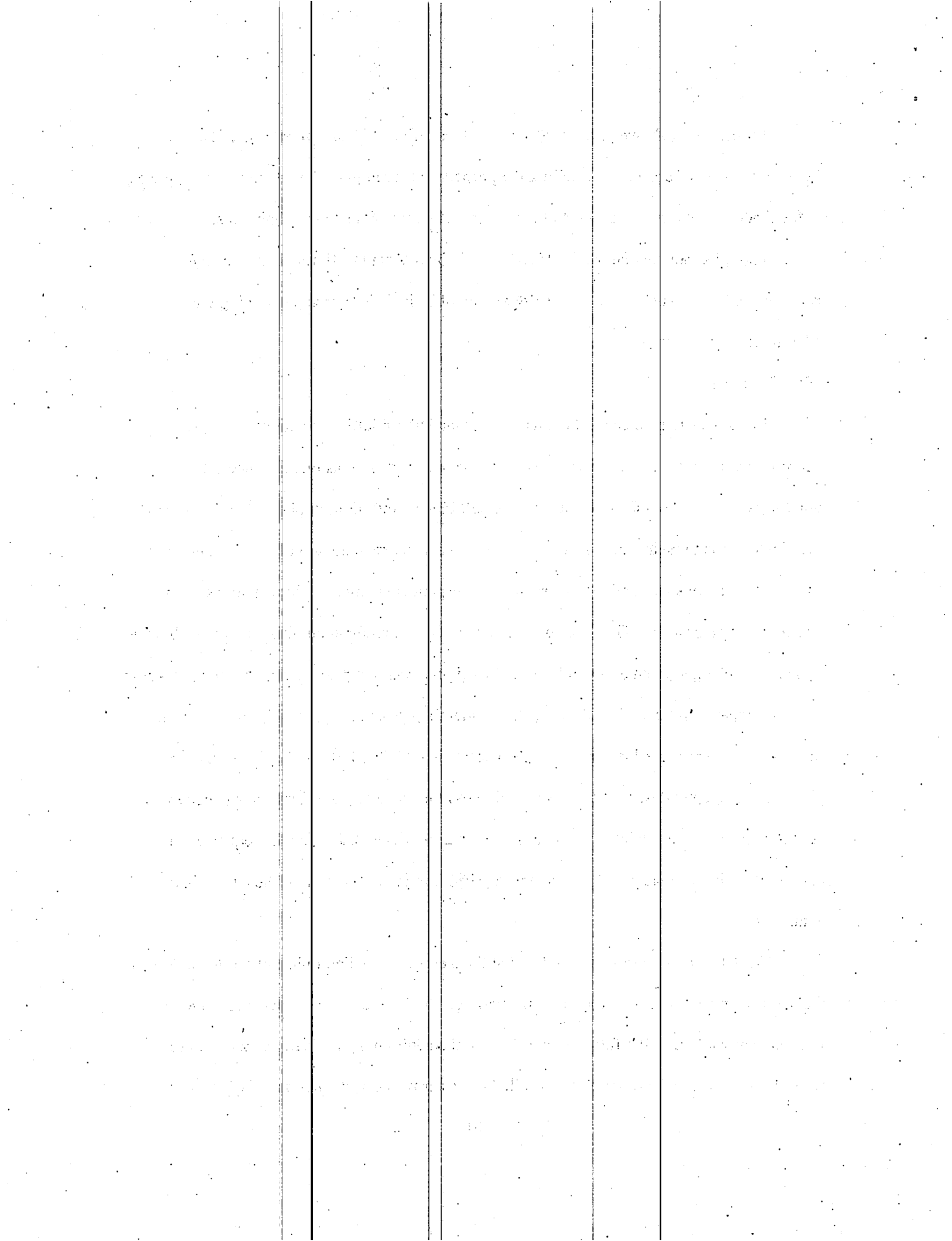


Furthermore, shower glass is affixed to the shower. It is not something that a homeowner would remove upon selling the property; accordingly, I conclude it is a fixture as defined above, the expense of which the Contract clearly assigns to the Claimants. Accordingly, I conclude that the \$2,450.00 the Claimants paid to Home Depot for the purchase and installation of the shower door cannot be included when calculating the Claimants' actual loss.

### **The Windows**

I find the Claimants credible that the Respondent initially improperly installed a bedroom window flush with the roof and that this caused them reasonable concern that the window would leak as a result of that placement. Indeed, the addition plans clearly show that the window was to be installed so that there was space between the top of the window and the roof. The Claimants testified, however that the Respondent resituated the window so that it was no longer a problem. The focus of the Claimants' complaint about this window is that the Respondent charged them \$900.00 beyond the original contract price to reposition the window when the repair was necessitated by the Respondent's own error. I agree with the Claimants that they are not responsible for paying the Respondent \$900.00 to resolve the erroneous placement of the window as it did not comply with the window placement as provided in the addition plans. As the Claimants did not pay the Respondent the \$900.00 he requested to address the window placement, I have not factored it in the calculation of the Claimants' actual loss.

The Claimants were also credible that the Respondent failed to install a full window in the addition, reaching from the floor to the ceiling. The Contract clearly states that the Respondent would install a full size window and the addition plans clearly depict a taller window. The Respondent, however, installed a shorter window, the bottom of which started



about midway up the wall. Unfortunately, the cost of this window is not clearly stated in the Contract and the Claimants offered no evidence showing the difference in the cost between the two windows. The Claimants also offered no evidence of how much it would cost to replace the shorter window with the taller window. Therefore, although I find the Respondent did not abide by the Contract as it relates to the window, I have no basis to determine the measure of actual loss attributable to the Respondent's error.

Ultimately, I conclude that to repair or replace the Respondent's unworkmanlike or incomplete home improvements, the Claimant would have to pay \$9,866.00 for the deck and \$2,050.00 for the master bathroom tile and trim repairs for a total of \$11,916.00. Accordingly, they are eligible for compensation from the Fund.

#### **Calculation of Actual Loss**

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.<sup>19</sup>

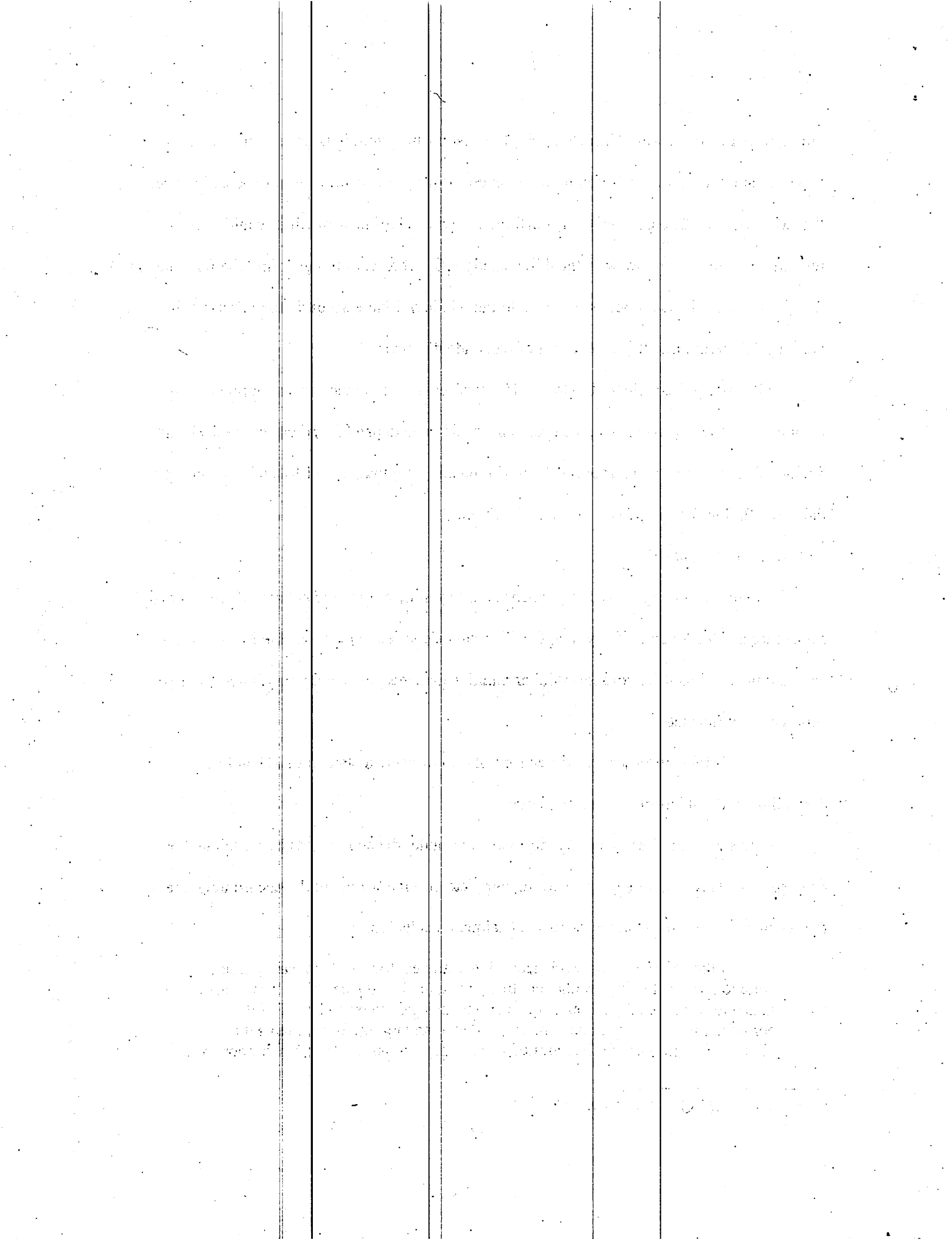
MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed work under the contract, and the Claimant has retained or will retain another contractor to complete or remedy that work. Accordingly, the following regulatory formula 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

---

<sup>19</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).



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.<sup>20</sup>

The calculation is as follows:

\$70,683.00 paid to the Respondent under the contract  
+\$11,916.00 payable to repair the deck and master bathroom tile, grout, and trim  
\$82,599.00  
- \$74,444.00 (original Contract price)  
\$8,155.00 actual loss.

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.<sup>21</sup> As the Claimant's actual loss of \$8,155.00 does not exceed the amount paid to the Respondent or the statutory cap on a claimant's recovery, the Claimants shall recover 8,155.00.<sup>22</sup>

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimants have sustained an actual and compensable loss of \$8,155.00 as a result of the Respondent's acts or omissions.<sup>23</sup> I further conclude that the Claimants are entitled to recover that amount from the Fund.

### **RECOMMENDED ORDER**

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

**ORDER** that the Maryland Home Improvement Commission Guaranty Fund award the Claimants \$8,155.00; and

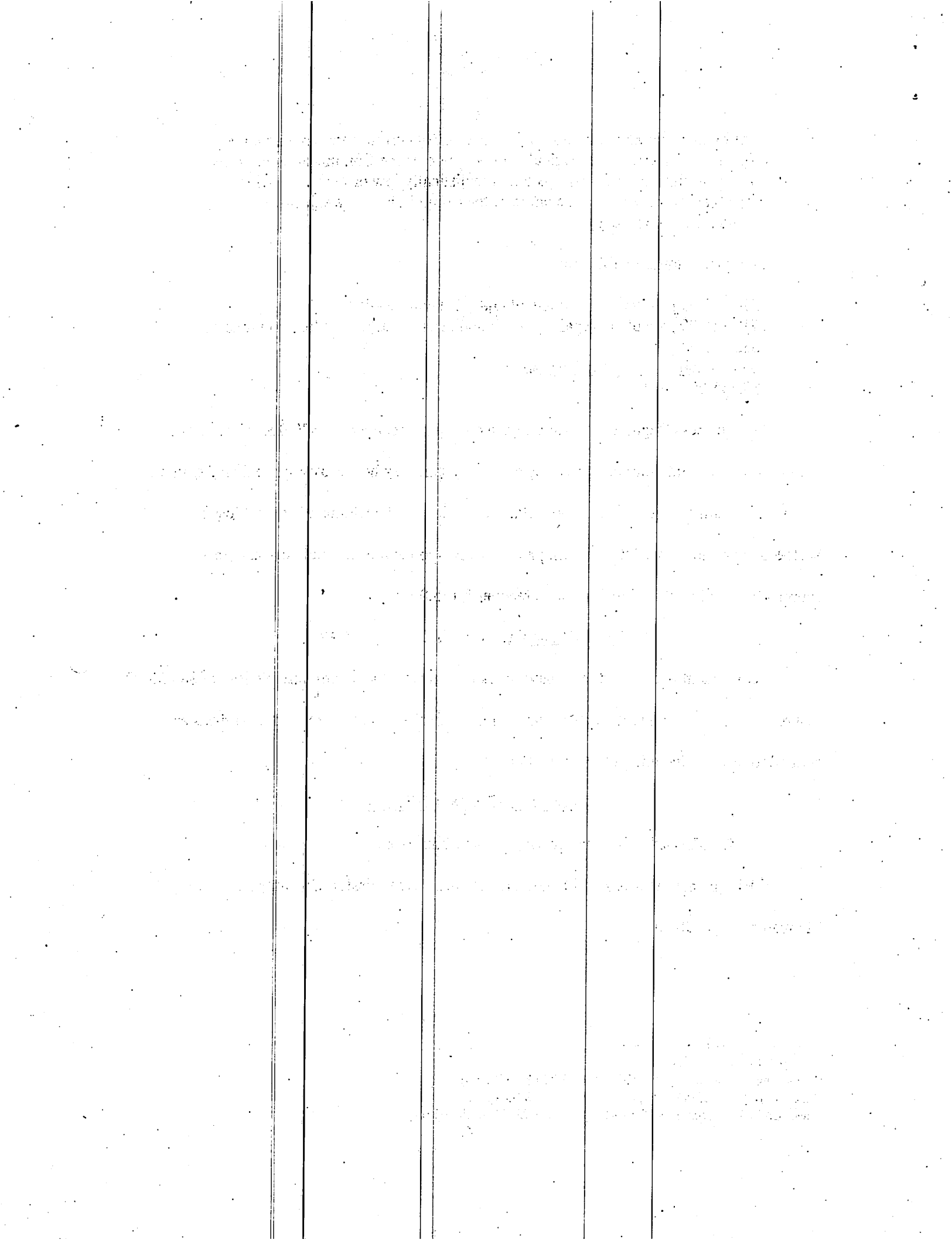
---

<sup>20</sup> COMAR 09.08.03.03B(3)(c).

<sup>21</sup> Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03D(2)(a).

<sup>22</sup> Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(3)(c).

<sup>23</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c).





I 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;<sup>24</sup> and

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

September 2, 2021  
Date Decision Issued



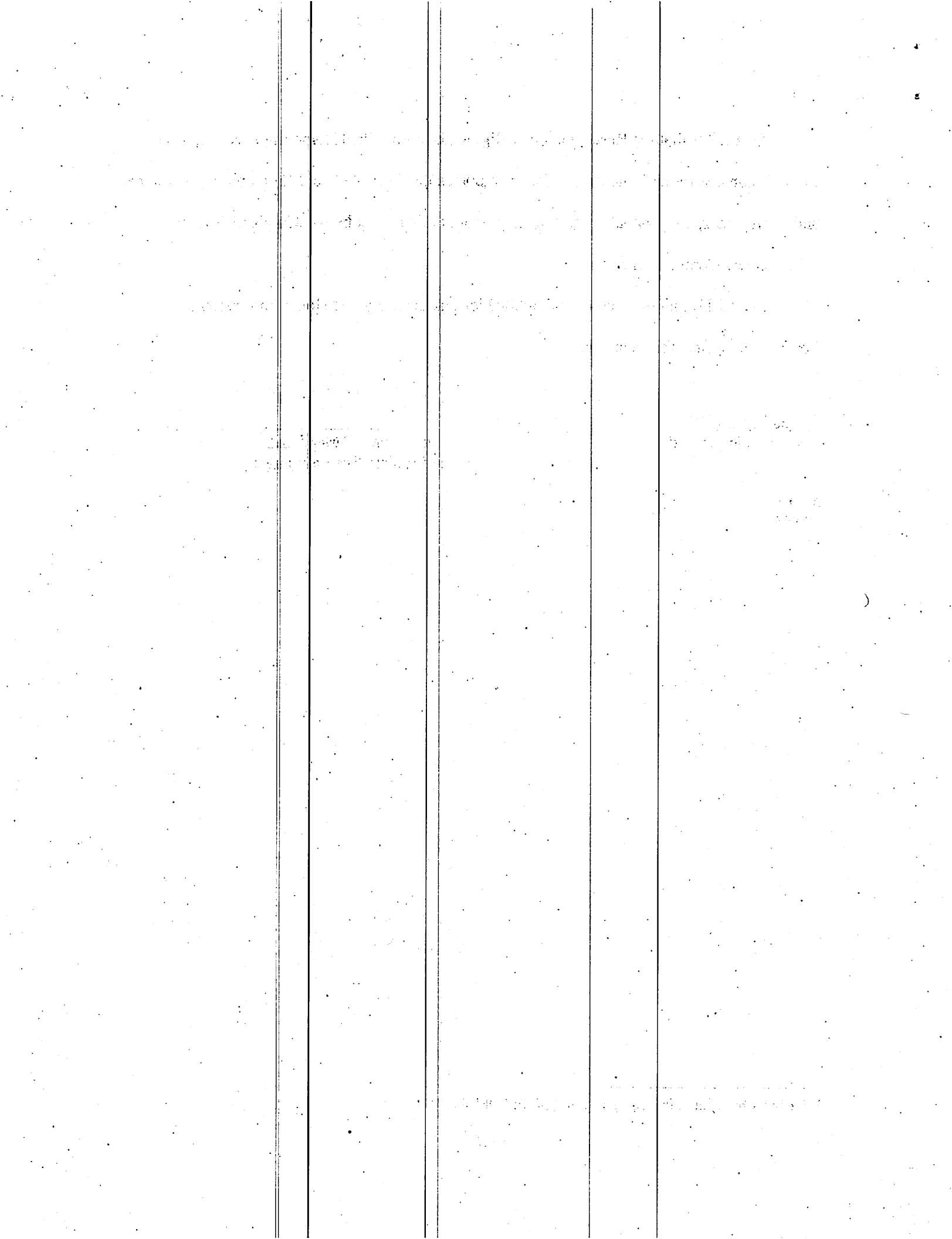
---

Jennifer M. Carter Jones  
Administrative Law Judge

JCI/emh  
#194098

---

<sup>24</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii); COMAR 09.08.01.20.



**PROPOSED ORDER**

***WHEREFORE, this 8<sup>th</sup> day of December, 2021, 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***

Table with 5 columns and 8 rows. The table contains faint, illegible text, likely bleed-through from the reverse side of the page. The columns are separated by vertical lines, and the rows are separated by horizontal lines. The text in each cell is too light to be accurately transcribed.