

<p>IN THE MATTER OF THE CLAIM</p> <p>OF CHARLES HORNBECK, III,</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 MARK WEISMAN,</p> <p>T/A MARK'S LAWN AND</p> <p>LANDSCAPE, LLC,</p> <p>RESPONDENT</p>	<p>* BEFORE TAMEIKA LUNN-EXINOR,</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-02-21-00978</p> <p>* MHIC No.: 20 (75) 339</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 December 4, 2019, Charles Hornbeck III (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),¹ for reimbursement of \$6,000.00 in actual losses allegedly suffered as a result of a home improvement contract with Mark Weisman trading as Mark's Lawn and Landscape, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401

¹ On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

Date	Particulars	Debit	Credit	Balance
1900-01-01	Balance b/d			
1900-01-05	To Cash		100	100
1900-01-10	By Cash	50		50
1900-01-15	To Cash		200	250
1900-01-20	By Cash	100		150
1900-01-25	To Cash		150	300
1900-01-30	By Cash	50		250
1900-02-05	To Cash		100	350
1900-02-10	By Cash	150		200
1900-02-15	To Cash		50	250
1900-02-20	By Cash	100		150
1900-02-25	To Cash		100	250
1900-02-30	By Cash	50		200
1900-03-05	To Cash		100	300
1900-03-10	By Cash	100		200
1900-03-15	To Cash		50	250
1900-03-20	By Cash	50		200
1900-03-25	To Cash		100	300
1900-03-30	By Cash	100		200
1900-04-05	To Cash		50	250
1900-04-10	By Cash	100		150
1900-04-15	To Cash		100	250
1900-04-20	By Cash	50		200
1900-04-25	To Cash		100	300
1900-04-30	By Cash	100		200
1900-05-05	To Cash		50	250
1900-05-10	By Cash	100		150
1900-05-15	To Cash		100	250
1900-05-20	By Cash	50		200
1900-05-25	To Cash		100	300
1900-05-30	By Cash	100		200
1900-06-05	To Cash		50	250
1900-06-10	By Cash	100		150
1900-06-15	To Cash		100	250
1900-06-20	By Cash	50		200
1900-06-25	To Cash		100	300
1900-06-30	By Cash	100		200
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1900-07-10	By Cash	100		150
1900-07-15	To Cash		100	250
1900-07-20	By Cash	50		200
1900-07-25	To Cash		100	300
1900-07-30	By Cash	100		200
1900-08-05	To Cash		50	250
1900-08-10	By Cash	100		150
1900-08-15	To Cash		100	250
1900-08-20	By Cash	50		200
1900-08-25	To Cash		100	300
1900-08-30	By Cash	100		200
1900-09-05	To Cash		50	250
1900-09-10	By Cash	100		150
1900-09-15	To Cash		100	250
1900-09-20	By Cash	50		200
1900-09-25	To Cash		100	300
1900-09-30	By Cash	100		200
1900-10-05	To Cash		50	250
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1900-10-15	To Cash		100	250
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1900-10-25	To Cash		100	300
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1900-12-10	By Cash	100		150
1900-12-15	To Cash		100	250
1900-12-20	By Cash	50		200
1900-12-25	To Cash		100	300
1900-12-30	By Cash	100		200
1901-01-05	To Cash		50	250
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1901-01-15	To Cash		100	250
1901-01-20	By Cash	50		200
1901-01-25	To Cash		100	300
1901-01-30	By Cash	100		200
1901-02-05	To Cash		50	250
1901-02-10	By Cash	100		150
1901-02-15	To Cash		100	250
1901-02-20	By Cash	50		200
1901-02-25	To Cash		100	300
1901-02-30	By Cash	100		200

through 8-411 (2015).² On January 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on March 8, 2021 using the Webex platform. Bus. Reg. §§ 8-407(a), 8-312. Andrew J. Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

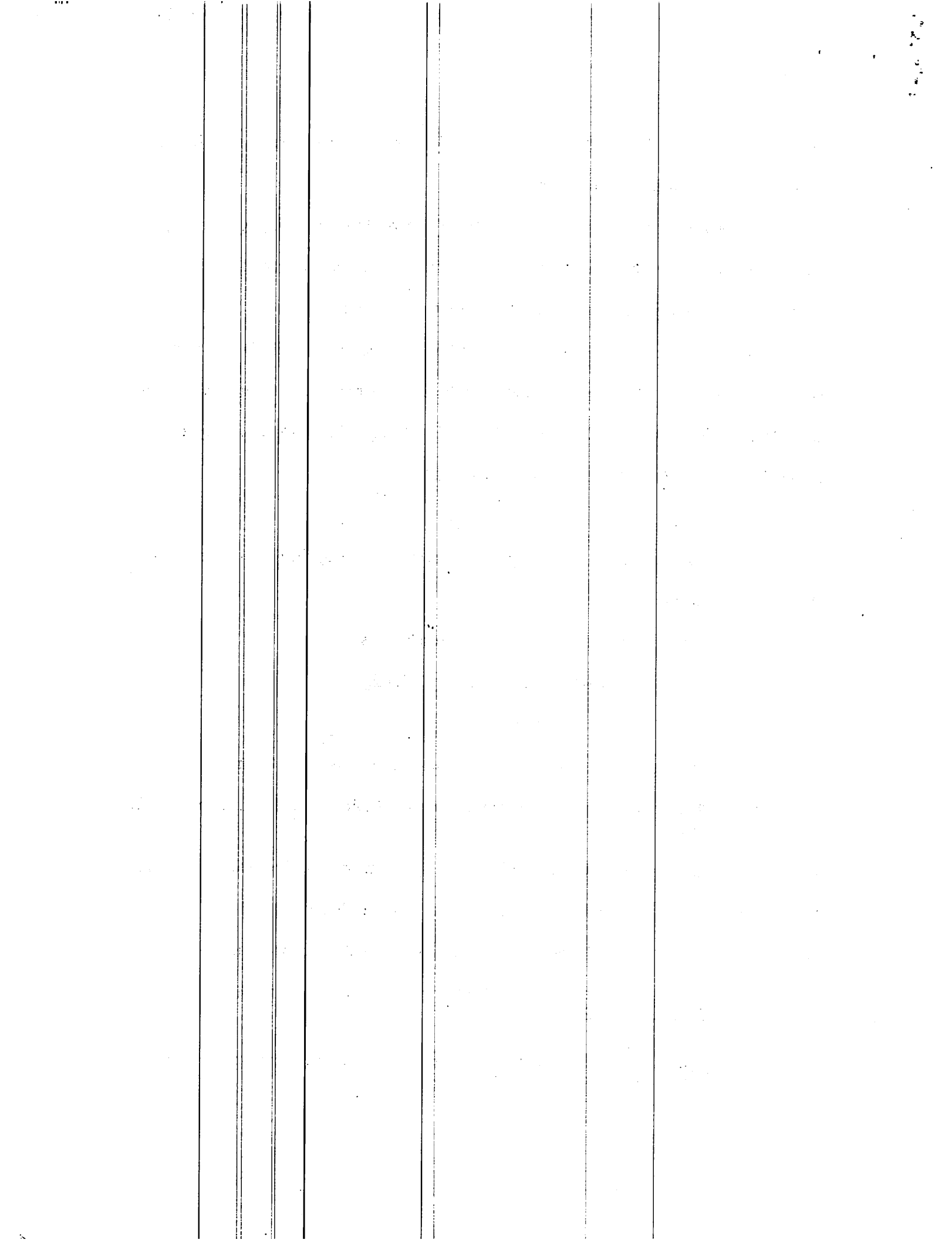
Exhibits

Unless otherwise indicated, I admitted the following exhibits on the Claimant's behalf:

- Clmt. Ex. 1 - Photo³ of part of patio near the wall, taken by Claimant on or about September 20, 2016
- Clmt. Ex. 2 - Photo of part of the deck railing, taken by Claimant on or about October 8, 2016
- Clmt. Ex. 3 - Photo of one wall, taken by Claimant on or about October 20, 2016
- Clmt. Ex. 4 - Photo of the yard near the patio, taken by Claimant on or about August 2018
- Clmt. Ex. 5 - Photo of the patio after the Seal and Lock application, taken by Claimant on or about August 9, 2018

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

³ All photos were taken by the Claimant.



- Clmt. Ex. 6 - Photo of the patio after the Seal and Lock application, taken by Claimant on or about August 9, 2018
- Clmt. Ex. 7 - Photo of the wall, taken by Claimant on or about August 15, 2019
- Clmt. Ex. 8 - Photo of the wall, taken by Claimant on or about August 16, 2019
- Clmt. Ex. 9 - Not offered into evidence.
- Clmt. Ex. 10 - Close up photo of the wall, taken by Claimant on or about August 2019
- Clmt. Ex. 11 - Photo of the wall and patio, taken by Claimant on or about August 2019
- Clmt. Ex. 12 - Photo of repairs being made by a different contractor, taken by Claimant on or about August 2020
- Clmt. Ex. 13 - Photo of repairs being made by a different contractor, taken by Claimant on or about August 2020
- Clmt. Ex. 14 - Photo of repairs being made by a different contractor, taken by Claimant on or about August 2020
- Clmt. Ex. 15 - Photo of the completed project by Respondent, taken by Claimant on or about September 2016
- Clmt. Ex. 16 - Photo taken during installation by Respondent, taken by Claimant on or about September 2016
- Clmt. Ex. 17 - Video of the wall, taken by Claimant in August 2020
- Clmt. Ex. 18 - Video of the patio, taken by Claimant in August 2020
- Clmt. Ex. 19 - Not offered into evidence.
- Clmt. Ex. 20 - Scope of Work for Wall and Patio, August 25, 2016
- Clmt. Ex. 21 - Emails between Claimant and Respondent, October 7, 2016
- Clmt. Ex. 22 - Emails between Claimant and Respondent, December 9, 2016
- Clmt. Ex. 23 - Emails between Claimant and Respondent, August 28, 2017
- Clmt. Ex. 24 - Emails between Claimant and Respondent, July 15, 2018
- Clmt. Ex. 25 - Emails between Claimant and Respondent, November 14, 2018

Year	Month	Day	Time	Location	Activity	Remarks
1944	Jan	1	10:00	...	...	...
1944	Jan	2	10:00	...	...	...
1944	Jan	3	10:00	...	...	...
1944	Jan	4	10:00	...	...	...
1944	Jan	5	10:00	...	...	...
1944	Jan	6	10:00	...	...	...
1944	Jan	7	10:00	...	...	...
1944	Jan	8	10:00	...	...	...
1944	Jan	9	10:00	...	...	...
1944	Jan	10	10:00	...	...	...
1944	Jan	11	10:00	...	...	...
1944	Jan	12	10:00	...	...	...
1944	Jan	13	10:00	...	...	...
1944	Jan	14	10:00	...	...	...
1944	Jan	15	10:00	...	...	...
1944	Jan	16	10:00	...	...	...
1944	Jan	17	10:00	...	...	...
1944	Jan	18	10:00	...	...	...
1944	Jan	19	10:00	...	...	...
1944	Jan	20	10:00	...	...	...
1944	Jan	21	10:00	...	...	...
1944	Jan	22	10:00	...	...	...
1944	Jan	23	10:00	...	...	...
1944	Jan	24	10:00	...	...	...
1944	Jan	25	10:00	...	...	...
1944	Jan	26	10:00	...	...	...
1944	Jan	27	10:00	...	...	...
1944	Jan	28	10:00	...	...	...
1944	Jan	29	10:00	...	...	...
1944	Jan	30	10:00	...	...	...
1944	Jan	31	10:00	...	...	...

Clmt. Ex. 26 - Emails between Claimant and Respondent, May 20, 2019

Clmt. Ex. 27 - Emails between Claimant and Respondent, July 20, 2019

Clmt. Ex. 28 - Nicolock Wall Collection Manual, not dated

Clmt. Ex. 29 - Estimate from Maryland Decking, November 13, 2019

Clmt. Ex. 30 - Proposal from Stallings Landscaping, Inc., July 15, 2020

Clmt. Ex. 31 - Email between Claimant and Stallings Landscaping, Inc., August 28, 2020

Respondent did not submit any exhibits for admission.

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 - Hearing Order, January 7, 2021

Fund Ex. 2 - Notice of Remote Hearing, January 29, 2021

Fund Ex. 3 - Letter from MHIC to Respondent enclosing Complaint Form, December 12, 2019

Fund Ex. 4 - MHIC Registration Printout for Respondent, printed February 5, 2021

Fund Ex. 5 - Affidavit of Thomas Marr, February 17, 2021

Testimony

The Claimant testified and did not present other witnesses.

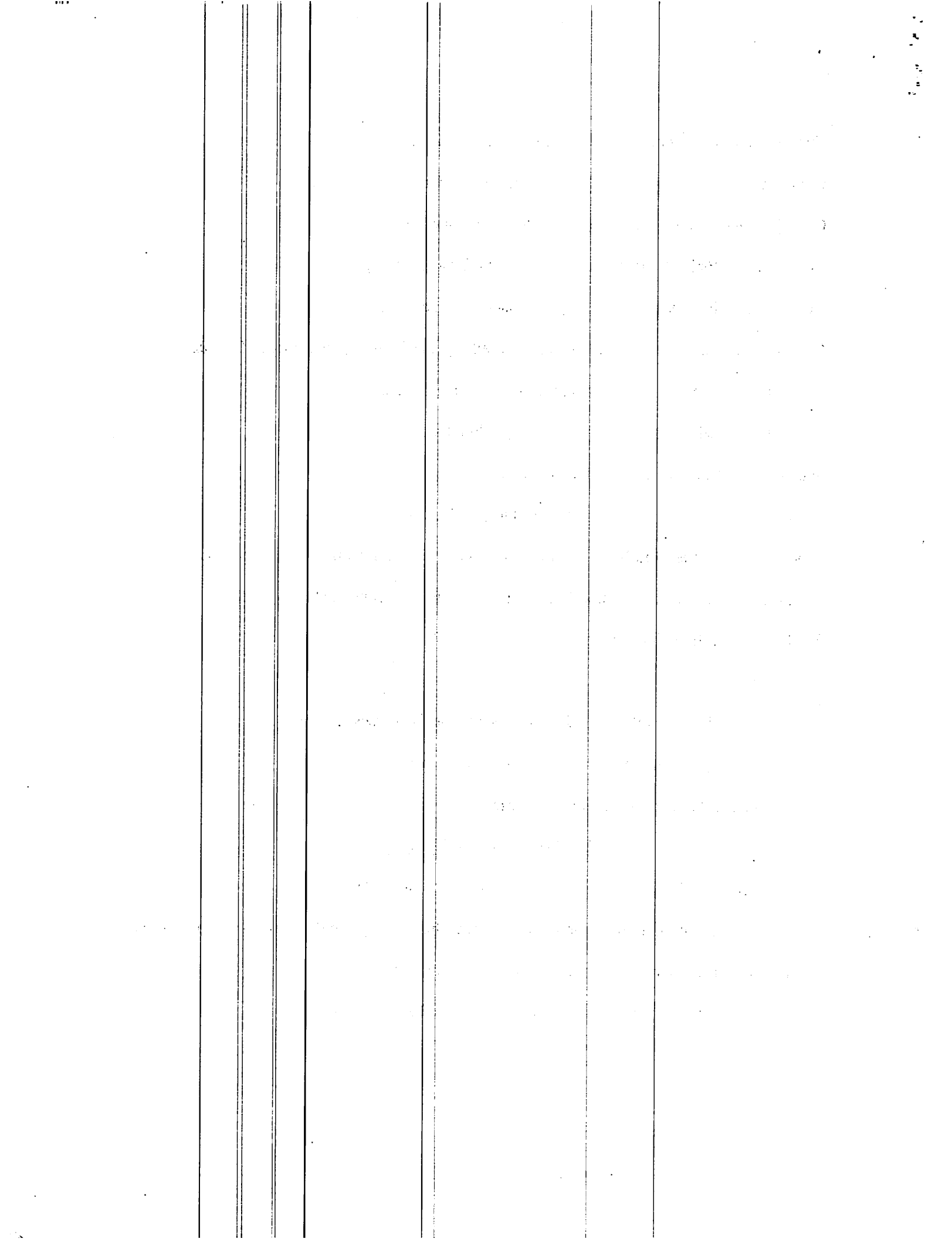
The Respondent testified and did not present other witnesses.

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 01 97690.
2. The Respondent's MHIC license expired May 20, 2020.



3. On or about August 25, 2016, the Claimant and the Respondent entered into a contract (Contract) for the following scope of work:

Patio and wall scope of work

- Excavate an area 18' x 20' for patio foot print, subsoil remains on site
- Furnish and install patio base and wall footer, crushed stone base and compact
- Furnish and install approx. 360 sq. ft. of Nicolock regular stone ridge paver, color Oyster blend, Charcoal color 6" x 6" border
- Furnish and install 2 seat walls 12' x 20" on both sides of patio, material 38 linear feet of Nicolock 6" double face colonial wall with 3" cap, color Oyster blend
- Patio will back up to deck stairs

Deck and steps scope of work

- Remove and dispose of all decking boards, railing, lattice and band boards
- Add the necessary 12" on center floor "Joyce's" (2" x 8"), furnish and install 216 sq. ft. Trex Transcend Tiki Torch deck boards, furnish and install 4 - 5' x 36" and 2, 3' x 36" LVL Washington T rail style white vinyl railing, white vinyl sleeve for all 4" post, New England style cap and bottom base plate cover, white Klear wrap the entire deck band board with 1" x 8", replace old lattice with new white vinyl lattice
- Remove and dispose of existing steps, replace and build with 2 steps leading to patio 14' wide, thread material to match deck material, install white Klear filler board for each step rise (2).

4. The original agreed-upon Contract price was \$16,527.00.

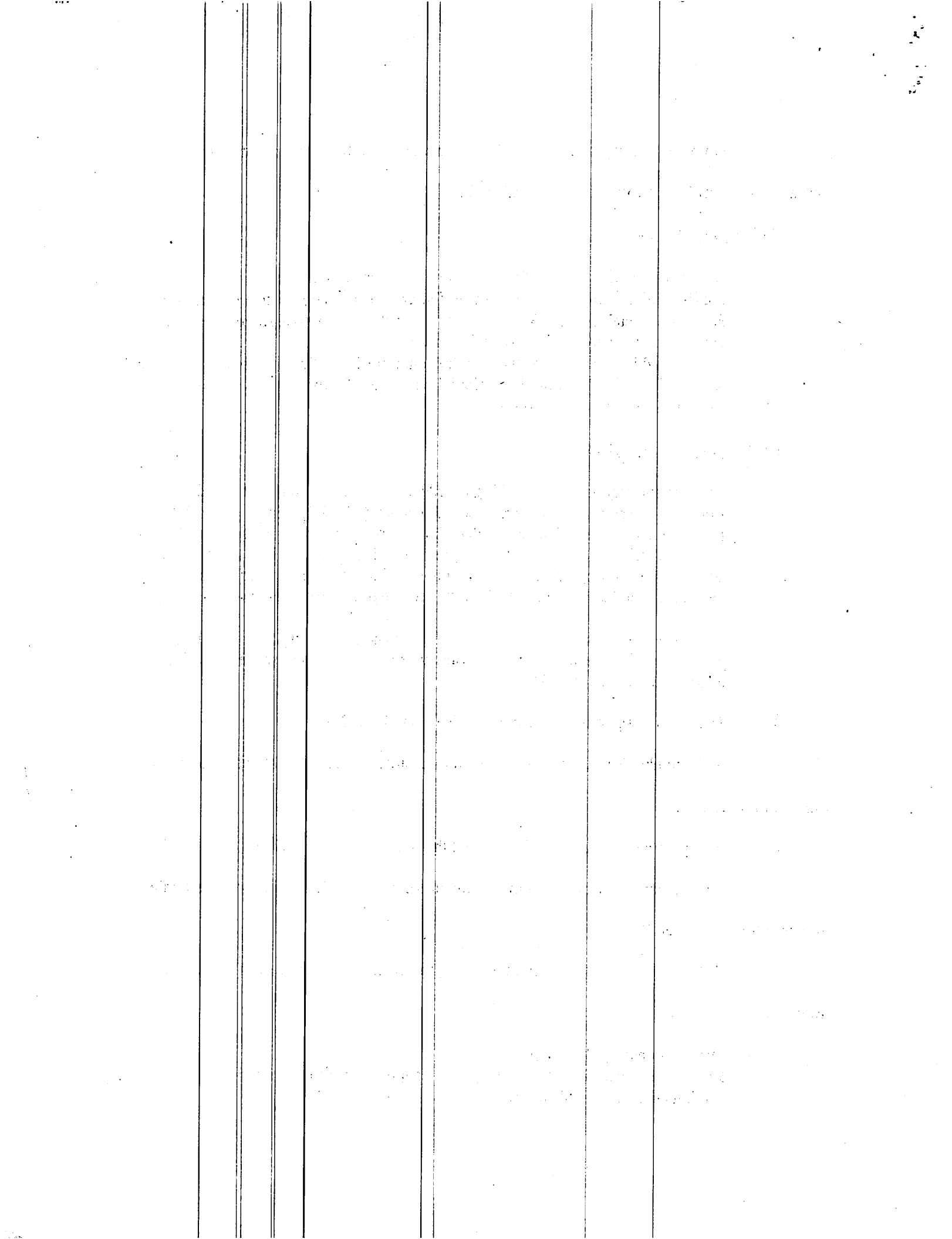
5. In September 2016, the parties agreed to an additional \$200.00 to cover additional trim work on the deck.

6. In September 2016, the Claimant paid the Respondent \$16,727.00.

7. The Respondent worked on the Claimant's deck, patio and stairs from September 2016 through December 2016.

8. Within one year of the completed work, the Claimant began to see the following problems:

- Sunken stones by the fire pit
- No level of brick installed below grade to support the sitting walls
- Railings pulled away from the post



- Severely damaged base stones under the retaining wall
- Sitting walls by the fire pit were separating
- Lock and seal decking coming apart and discolored
- Grass killed by gasoline and the power washer

9. In 2017 and 2018, the Respondent returned to the Claimant's home to repair separation in the sitting walls but the problem persisted.

10. The Claimant's last communication with the Respondent was on June 20, 2019 and the Respondent offered to refund the Claimant \$600.00 for the seal and lock.

11. The Claimant did not receive a refund from the Respondent.

12. In June 2019, the sitting walls by the fire pit were still separating and the deck was dangerous and discolored, and the railings were pulling away from the posts.

13. On November 13, 2019, the Claimant received an estimate in the amount of \$6,000.00 from Maryland Decking to remove and replace the decking installed by the Respondent on the patio.

14. On or about July 15, 2020, the Claimant paid Stallings Landscaping, Inc. (Stallings) \$5,075.00⁴ to remove the sitting walls and extend the pavers.

15. The Claimant did not get the deck repaired.

DISCUSSION

In this case, 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 (2014); 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).

⁴ Stallings provided an estimate totaling \$3,875.00 to remove the stone walls installed by the Respondent, install additional pavers and power wash the existing patio. Additional materials cost the Complainant \$1,200. (Clmt. Exs. 30 and 31.)

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.

The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant in September 2016 . The record shows the Respondent had a valid license through May of 2020.

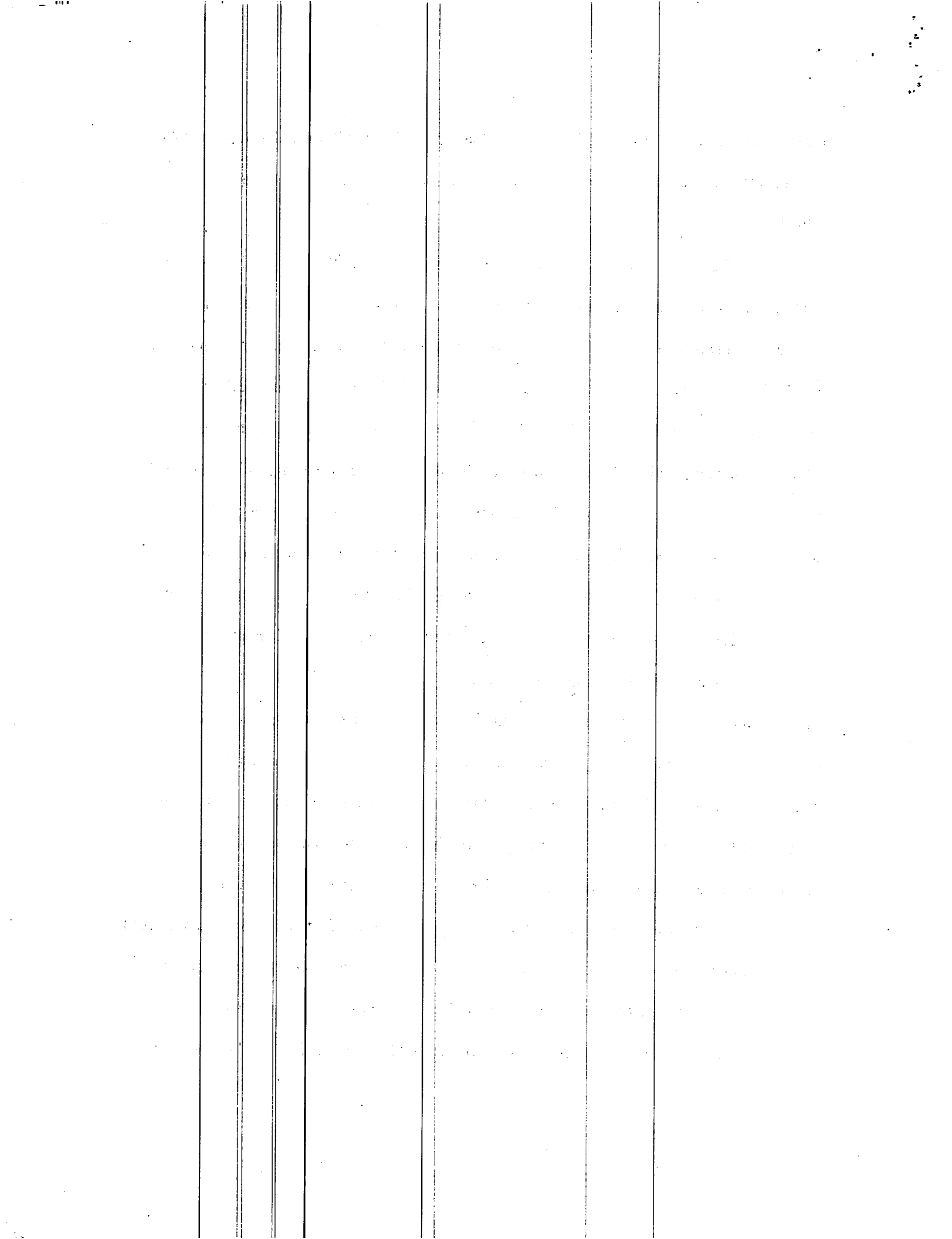
The Claimant testified that he found the Respondent on Angie’s List and hired him to build sitting walls, a fire pit, deck and railing in his backyard. The contract price was \$16,727.00. The Claimant paid the Respondent in full, which was not disputed. The Respondent began the work in September 2016 and completed it in December 2016. In 2017, the Claimant began to see problems with the Respondent’s work such as the railing separating from the posts, the stone sitting walls separating, the base of the stone walls were installed improperly and the seal and lock on the deck was inadequate causing discoloration. The Claimant provided photos and videos taken of the numerous issues of inadequate or unworkmanlike home improvement work performed by the Respondent. The Respondent also killed the grass in his backyard with gasoline that powered the power washer. In 2017, the Respondent returned to the Claimant’s home to repair the separating walls but the problem persisted despite the attempted repair. The Claimant testified that he continued to communicate with the Respondent in 2018 and 2019 to get some of the problems repaired. On June 20, 2019, in an email, the Respondent agreed to

Date	Particulars	Debit	Credit
1912			
Jan 1	Balance forward		100.00
Jan 5	By Cash	50.00	
Jan 10	To Cash		25.00
Jan 15	By Cash	75.00	
Jan 20	To Cash		100.00
Jan 25	By Cash	125.00	
Jan 30	To Cash		150.00
Feb 5	By Cash	175.00	
Feb 10	To Cash		200.00
Feb 15	By Cash	225.00	
Feb 20	To Cash		250.00
Feb 25	By Cash	275.00	
Feb 30	To Cash		300.00
Mar 5	By Cash	325.00	
Mar 10	To Cash		350.00
Mar 15	By Cash	375.00	
Mar 20	To Cash		400.00
Mar 25	By Cash	425.00	
Mar 30	To Cash		450.00
Apr 5	By Cash	475.00	
Apr 10	To Cash		500.00
Apr 15	By Cash	525.00	
Apr 20	To Cash		550.00
Apr 25	By Cash	575.00	
Apr 30	To Cash		600.00
May 5	By Cash	625.00	
May 10	To Cash		650.00
May 15	By Cash	675.00	
May 20	To Cash		700.00
May 25	By Cash	725.00	
May 30	To Cash		750.00
Jun 5	By Cash	775.00	
Jun 10	To Cash		800.00
Jun 15	By Cash	825.00	
Jun 20	To Cash		850.00
Jun 25	By Cash	875.00	
Jun 30	To Cash		900.00
Jul 5	By Cash	925.00	
Jul 10	To Cash		950.00
Jul 15	By Cash	975.00	
Jul 20	To Cash		1000.00
Jul 25	By Cash	1025.00	
Jul 30	To Cash		1050.00
Aug 5	By Cash	1075.00	
Aug 10	To Cash		1100.00
Aug 15	By Cash	1125.00	
Aug 20	To Cash		1150.00
Aug 25	By Cash	1175.00	
Aug 30	To Cash		1200.00
Sep 5	By Cash	1225.00	
Sep 10	To Cash		1250.00
Sep 15	By Cash	1275.00	
Sep 20	To Cash		1300.00
Sep 25	By Cash	1325.00	
Sep 30	To Cash		1350.00
Oct 5	By Cash	1375.00	
Oct 10	To Cash		1400.00
Oct 15	By Cash	1425.00	
Oct 20	To Cash		1450.00
Oct 25	By Cash	1475.00	
Oct 30	To Cash		1500.00
Nov 5	By Cash	1525.00	
Nov 10	To Cash		1550.00
Nov 15	By Cash	1575.00	
Nov 20	To Cash		1600.00
Nov 25	By Cash	1625.00	
Nov 30	To Cash		1650.00
Dec 5	By Cash	1675.00	
Dec 10	To Cash		1700.00
Dec 15	By Cash	1725.00	
Dec 20	To Cash		1750.00
Dec 25	By Cash	1775.00	
Dec 30	To Cash		1800.00
Total		1800.00	1800.00

refund the Claimant a portion of his money for the deck seal and lock issue, but June 20, 2019 was the last time the Claimant spoke with the Respondent and he stated that he received no refunds.

The Claimant filed a complaint with the HIC in September 2019 and reached out to other contractors to remedy the problems with his deck, the fire pit, and the walls. The Claimant testified that the fire pit area in his backyard was not safe for his grandchildren or his animals. The Claimant received an estimate in the amount of \$6,000.00 from Maryland Decking to remove and repair the deck area. The Claimant also received an estimate from Stallings for \$3,875.00 with an additional material cost of \$1,200.00 to remove the sitting walls and extend the patio pavers. The Claimant testified that it was cheaper to remove the sitting walls completely than to remove them and replace them so he went with the cheaper option. He paid Stallings a total of \$5,075.00. The Claimant stated that he still has not repaired the deck area.

The Respondent argues that the Claimant enlarged his patio area and wants the Respondent to pay for it. The Respondent stated that in June of 2019, he was under the impression that the Claimant was content with the final product and there were no further concerns other than the seal and lock on the deck. The Respondent stated that he would have returned and repaired all of the Claimant's problems if he knew about them. The Respondent testified that he returned to the Claimant's property three or four times to make repairs. The Respondent contends that the estimate from Maryland Decking for \$6,000.00 is too high for the square footage of decking needed to complete the job. The Respondent claims that the Maryland decking estimate should be closer to \$2,200.00. The Respondent testified that he has been in business for twenty years and has never had a problem with a customer. The Respondent, however, admitted that there were problems with the work he performed at the Claimant's home.

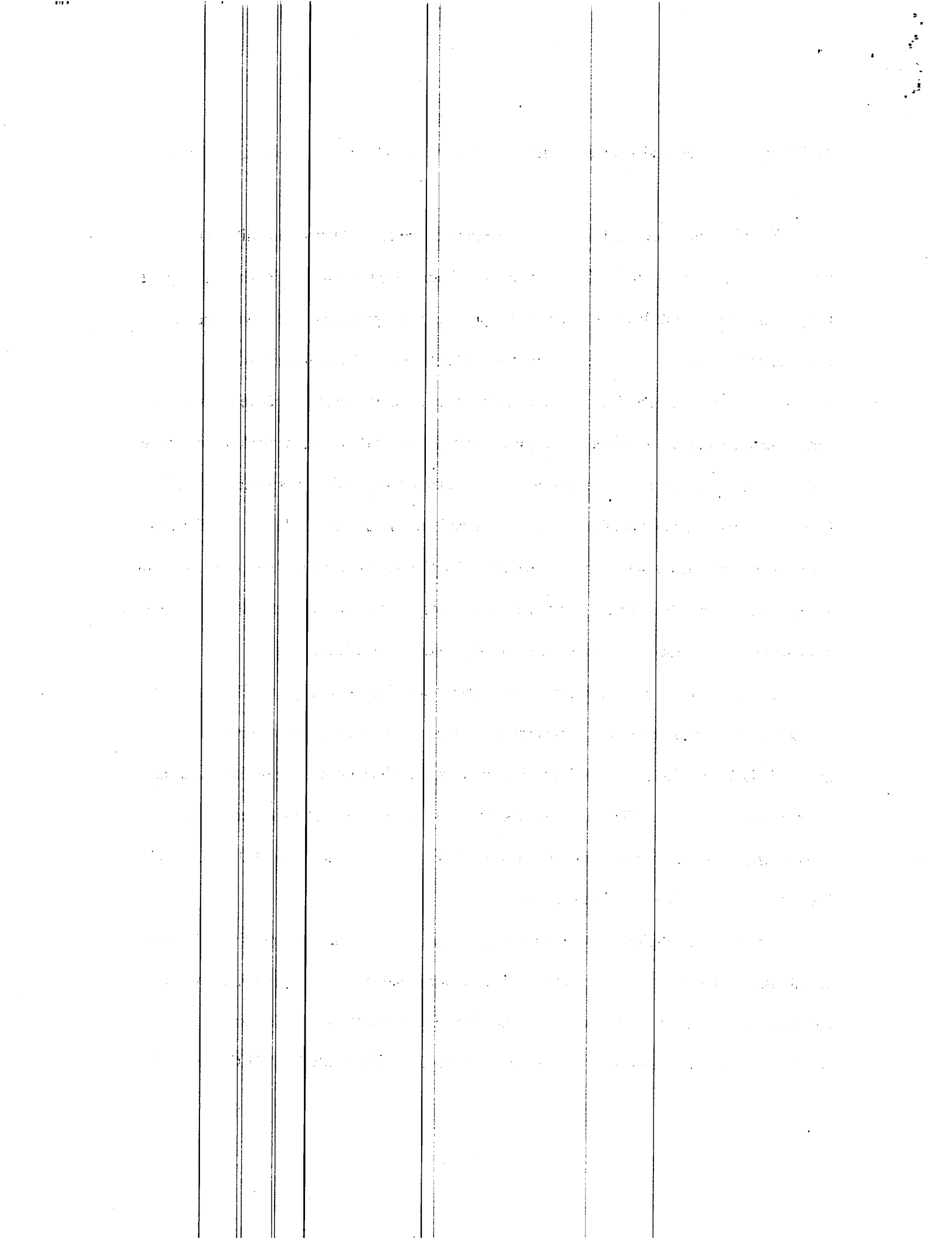


Additionally, the Respondent even admitted that the sitting wall needed to be torn down and redone.

Based on the evidence, I find that the Respondent performed unworkmanlike and inadequate home improvement. The Claimant's testimony regarding the work performed by the Respondent was credible because it was well supported by his photo and video evidence. The Respondent was unable to provide any information to refute the Claimant's photographic evidence in this matter. The Claimant also provided email communications between him and the Respondent in which he mentioned his concerns with the wall separating, the deck discoloration, and the railings separating. The emails demonstrate that the Respondent was aware of all of the Claimant's concerns about the Respondent's work and the issues that later developed. For this reason, the Respondent's statement that he thought the Claimant was content with the work as of June 2019 is not credible. There is evidence that the Respondent agreed to refund the Claimant some money for the issue with the seal and lock on the deck but failed to do so.

The photos of the railings clearly demonstrate separation from the posts. Photos of the sitting wall also demonstrate areas which are sinking as well as clear separation between stones making it dangerous for anyone to sit or climb on the wall. The photos of the deck show clear discoloration and poor installation of the decking. This is all evidence of an inadequate or unworkmanlike home improvement performed by the Respondent. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). 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 some work under the Contract, and the Claimant retained a contractor to repair the work performed by the Respondent. 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.

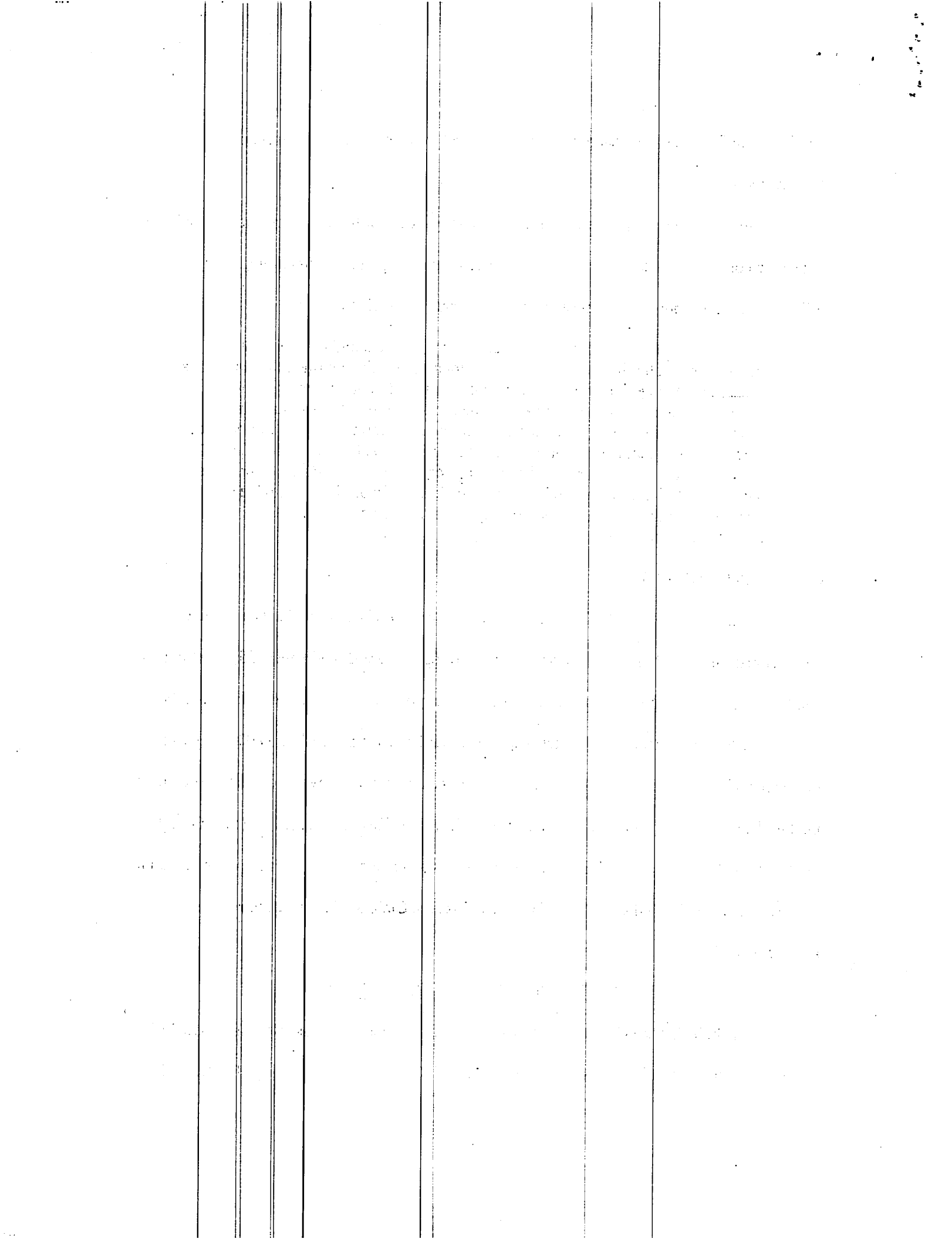
COMAR 09.08.03.03B(3)(c).

Utilizing this formula, I find the Claimant's actual loss is \$5,675.00. The original contract price is \$16,727.00 plus the amount paid to repair the wall and pavers \$5,675 (Stallings and Seal and Lock Refund) minus the original contract price of \$16,727.00 equals \$5,675.00.

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. Therefore, the Claimant is entitled to recover his actual loss of \$5,675.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,675.00 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)(c). I further conclude that the Claimant is entitled to recover \$5,675.00 from the Fund. Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,675.00; 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.

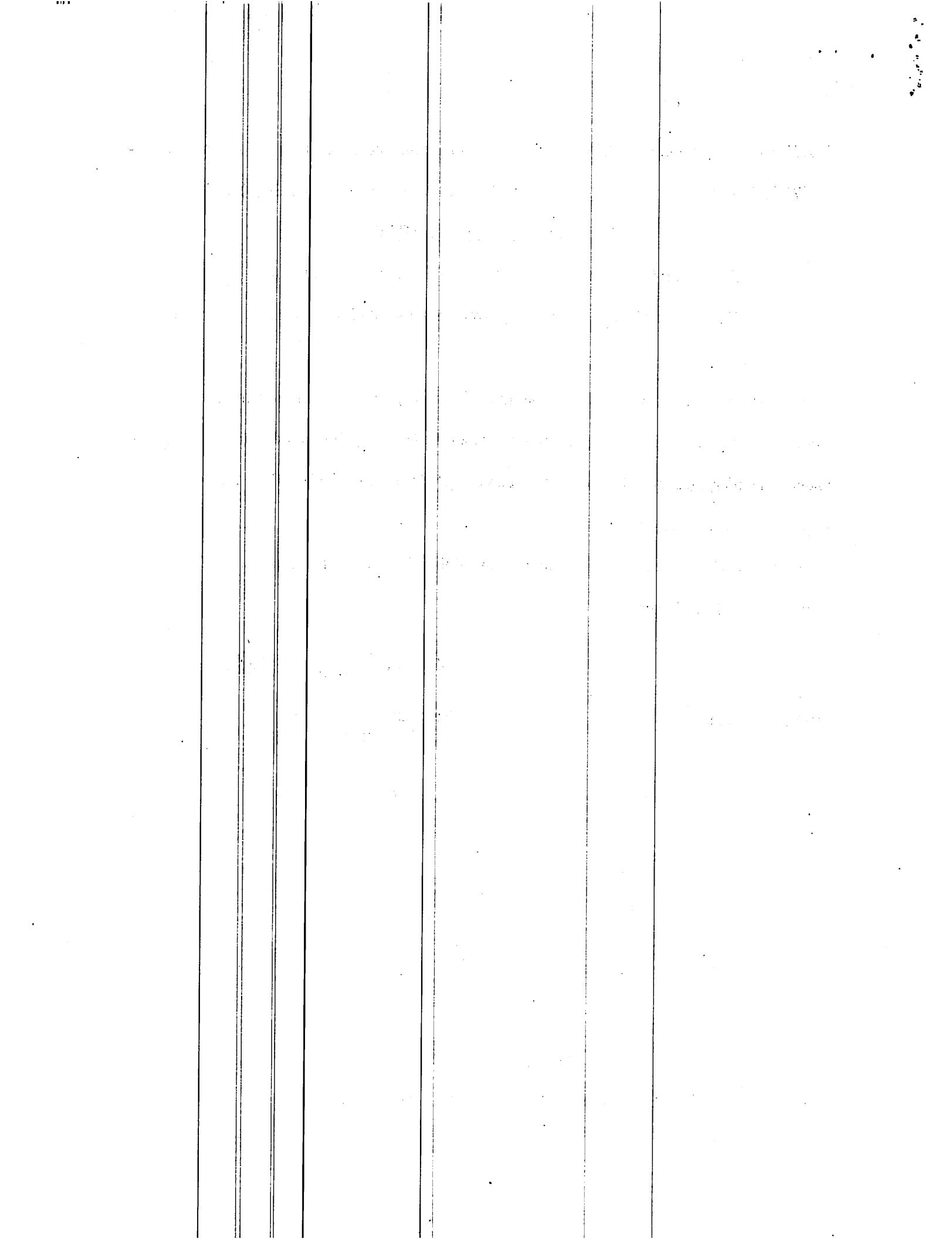
June 7, 2021
Date Decision Issued

Tameika Lunn-Exinor

Tameika Lunn-Exinor
Administrative Law Judge

TLE/dlm
#191096

⁵ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 6th day of September, 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.

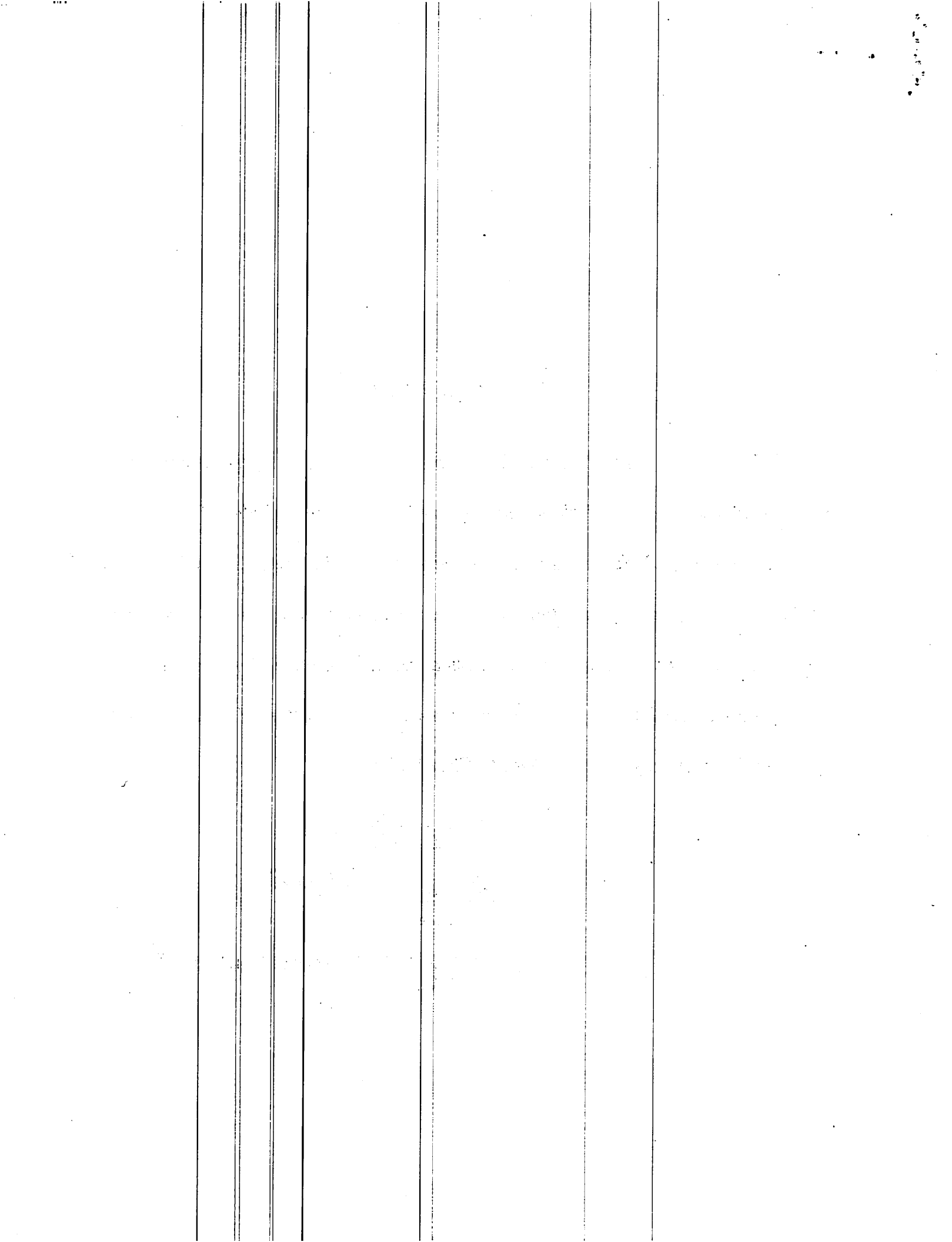
Wm Bruce

Quackenbush

Wm Bruce Quackenbush

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***



IN THE MATTER OF THE CLAIM OF CHARLES HORNBECK, III AGAINST THE MARYLAND HOME IMPROVEMENT GUARANTY FUND FOR THE ACTS OR OMISSIONS OF MARK WEISMAN AND MARK'S LAWN AND LANDSCAPE, LLC	* MARYLAND HOME * IMPROVEMENT COMMISSION * * MHIC CASE NO. 20(75)339 * OAH CASE NO. LABOR-HIC- * 02-21-00978 * * * * * *
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FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on March 8, 2021. Following the evidentiary hearing, the ALJ issued a Proposed Decision on June 7, 2021, concluding that the homeowner, Charles Hornbeck, III (“Claimant”) suffered an actual loss as a result of the acts or omissions of Mark Weisman and Mark’s Lawn and Landscape, LLC (collectively, “Contractor”). *ALJ Proposed Decision* p. 10. In a Proposed Order dated September 6, 2021, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ to grant an award of \$5,675.00 from the Home Improvement Guaranty Fund. The Contractor subsequently filed exceptions to the MHIC Proposed Order.

On January 20, 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 Hope Sachs 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

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09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties for the installation of a patio and seat walls and the restoration of a deck at the Claimant's home. The ALJ found that the Contractor's performance under the contract was unworkmanlike. *ALJ's Proposed Decision* pp. 6-9.

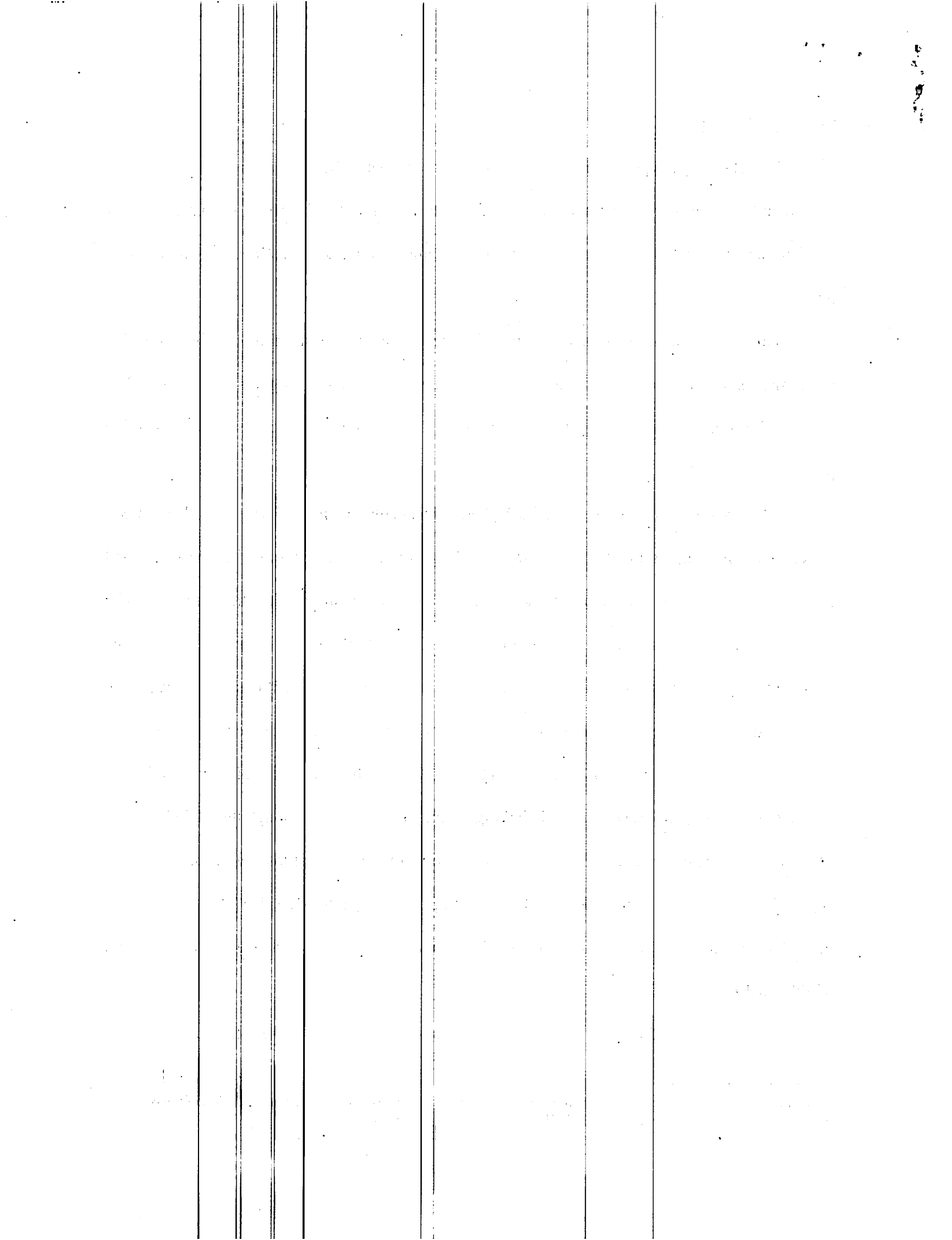
On exception, the Contractor argued that he had corrected some of the defects in his performance, but he did not cite to evidence in the record supporting his argument. The Commission agrees with the ALJ's findings regarding the Contractor's unworkmanlike performance.

The Contractor also argued that the ALJ erred in calculating the Claimant's loss based upon the estimate of Stallings Landscaping, Inc. ("Stallings") because the Stallings estimate included the enlargement of the patio that he had installed under his contract with the Claimant. The Commission agrees that the ALJ erred in relying on the Stallings estimate to calculate the Claimant's actual loss because, although the Claimant actually hired Stallings to perform work that included the correction of some portions of the Contractor's deficient work,¹ the Claimant presented an estimate from Maryland Decking for \$6,000.00, the scope of which was limited to correcting the Contractor's work (OAH Hearing Claimant's Ex. 29.) Although the Claimant hired Stallings to do the corrective work, he was entitled to recover his actual loss, which is the cost to correct Petitioner's deficient work. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(a). Accordingly, the Commission calculates the Claimant's actual loss in accordance with COMAR 09.08.03.03.B(3)(c) as follows:

\$16,727.00

Amount paid to or on behalf of the contractor

¹ The Stallings estimate called for the repair of the patio, removal of the seat walls, and the extension of the patio instead of the repair of the seat wall. (OAH Hearing Claimant's Exhibit 30.)

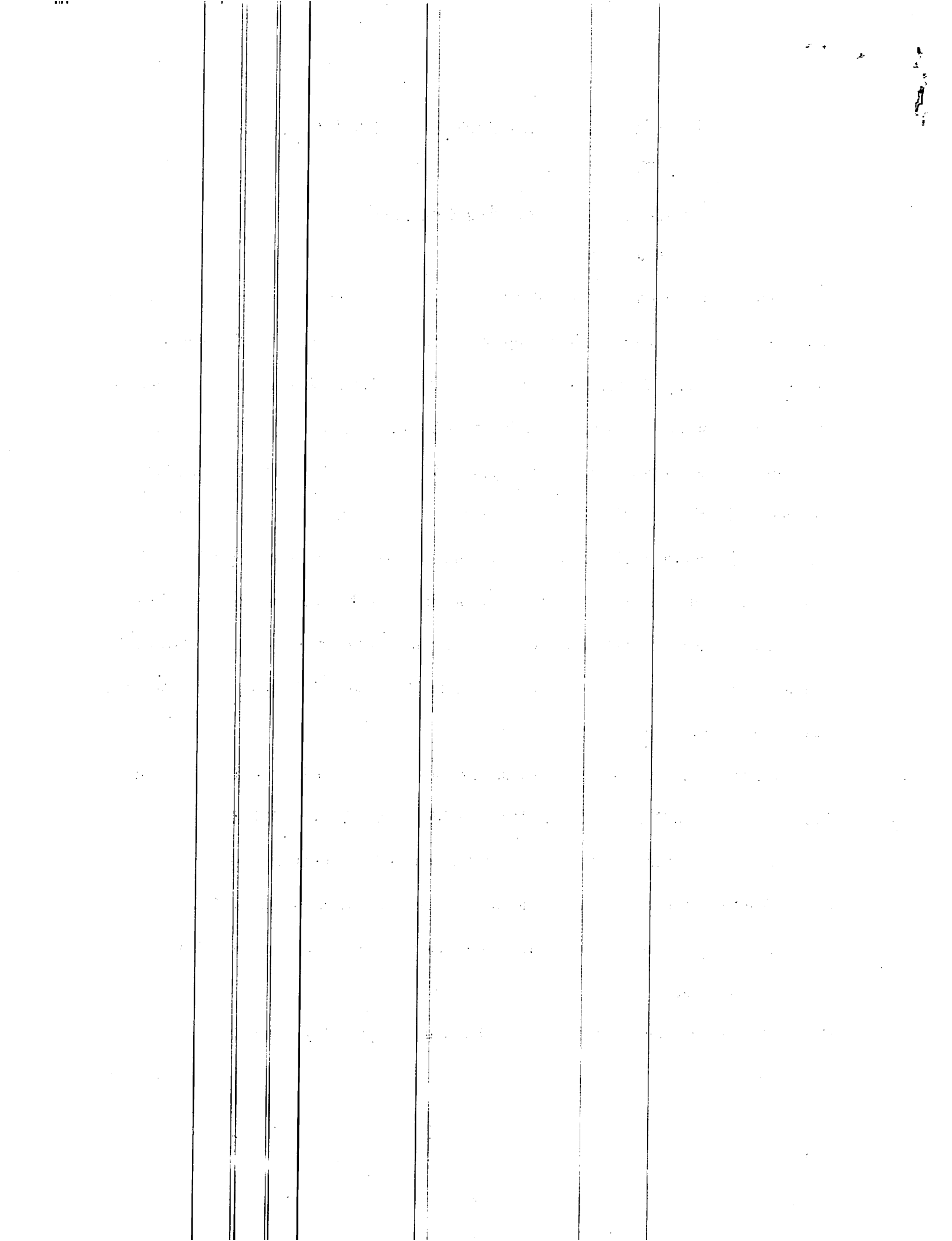


+	<u>\$6,000.00</u>	<u>Cost to correct and complete the work</u>
	\$22,727.00	
-	<u>\$16,727.00</u>	<u>Original contract price</u>
	\$6,000.00	Actual Loss

Finally, the Contractor argued that the ALJ erred in granting an award to the Claimant because the Claimant did not give him an opportunity to correct his work. The Commission finds no error. Under Md. Code Ann., Bus. Reg. § 8-405(d), the Commission may deny a claim if the Claimant unreasonably rejected good faith efforts by the contractor to resolve the claim. A contractor need not be given an opportunity to cure a defective home improvement before a claimant is eligible for a Guaranty Fund award. The Contractor did not identify, and the Commission is not aware of, evidence demonstrating that the Contractor made good faith efforts to resolve the claim. To the contrary, the record indicates that the Contractor promised the Claimant a partial refund but then never paid the refund, and that the Claimant allowed the Contractor to attempt to repair the sitting walls in 2017 and 2018, but the Contractor was unsuccessful. *ALJ's Proposed Decision* p. 6.

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 16th day of February 2022, **ORDERED:**

- A. That the Findings of Fact of the Administrative Law Judge are **AMENDED**;
- B. That the Conclusions of Law of the Administrative Law Judge are **AMENDED**;
- C. That the Proposed Decision and Recommended Order of the Administrative Law Judge is **AMENDED**;
- D. That the Claimant is awarded \$6,000.00 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.

Joseph Tunney
Chairperson –Panel
Maryland Home Improvement
Commission

