

<p>IN THE MATTER OF THE CLAIM</p> <p>OF DEBORAH L. McADAMS,</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 JASON</p> <p>WEISENBERG, T/A JATO</p> <p>CONSTRUCTION,</p> <p>RESPONDENT</p>	<p>* BEFORE SUSAN A. SINROD,</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 Nos.: LABOR-HIC-02-21-11224</p> <p>LABOR-HIC-02-21-11230</p> <p>*</p> <p>* MHIC Nos.: 20 (75) 674</p> <p>20 (75) 675</p>
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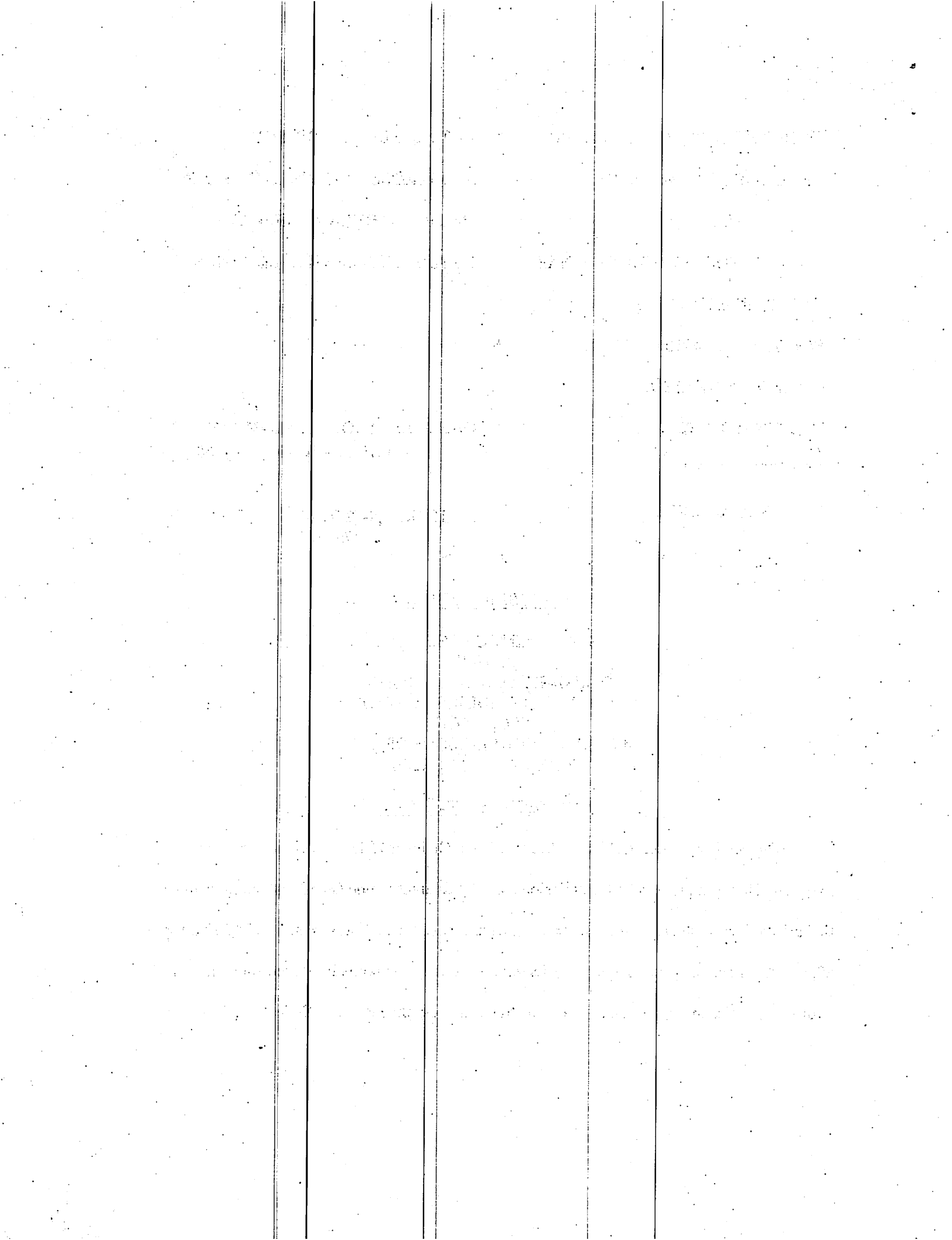
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PROPOSED DECISION

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 October 30, 2020, Deborah L. McAdams (Claimant) filed two claims with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), which falls under the jurisdiction of the Department of Labor (Department), for reimbursement of \$24,517.00 and \$9,250.00 for actual losses allegedly suffered as a result of two home improvement contracts with Jason Weisenberg, trading as Jato Construction (Respondent). Md. Code Ann., Bus. Reg.



§§ 8-401 through 8-411 (2015).¹ On May 4, 2021, the MHIC forwarded both matters to the Office of Administrative Hearings (OAH) for a hearing.²

I conducted a hearing on July 7, 2021 via the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Nicholas Sokolow, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent did not appear for the hearing.

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); 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

The Claimant submitted the following exhibits, which were admitted into evidence:

- Cl. Ex. #1- Contract, dated February 12, 2019 (Case Number 21-11230); copies of canceled checks; Estimate, dated January 3, 2019; Respondent's advertisement, undated
- Cl. Ex. #2- Home Inspection Report of High-Tech Home Inspections, dated December 26, 2018
- Cl. Ex. #3- Proposal of Tyler Building Company, dated January 30, 2020
- Cl. Ex. #4- Letter from Scott Donnelly, High Tech Home Inspections, to the Claimant, dated June 24, 2021

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

² The OAH created two files for these claims. However, as explained later in the decision, due to the applicable regulations regarding the maximum recovery against one contractor, I have consolidated both into this decision.

- Cl. Ex. #5- Contract, dated April 9, 2019 (Case Number 21-11224)
- Cl. Ex. #6- Estimate, dated December 27, 2018; bank activity printout from Wells Fargo bank, dated April 1, 2019
- Cl. Ex. #7- Email chain between Tyler Watson and Courtney Culyer, dated May 28, 2019; Application for Residential Building Plan Review, submitted May 13, 2019

The Respondent did not appear or offer any exhibits

The Fund submitted the following exhibits, which were admitted into evidence:

- Fund Ex. #1(A)- Notice of Remote Hearing, dated June 16, 2021 (Case No. 21-11224)
- Fund Ex. #1(B)- Notice of Remote Hearing, dated June 16, 2021 (Case No. 21-11230)
- Fund Ex. #2(A)- Hearing Order, dated April 22, 2021 (Case No. 21-11224)
- Fund Ex. #2(B)- Hearing Order, dated April 22, 2021 (Case No. 21-11230)
- Fund Ex. #3(A)- Letter from the MHIC to the Respondent, dated January 7, 2021; Home Improvement Claim Form (Case No. 21-11224)
- Fund Ex. #3(B)- Letter from the MHIC to the Respondent, dated November 20, 2020; Home Improvement Claim Form (Case No. 21-11230)
- Fund Ex. #4- Licensing History, dated June 20, 2021
- Fund Ex. #5- Affidavit of Kevin Neibuhr, dated June 10, 2021

Testimony

The Claimant testified and did not present other witnesses.

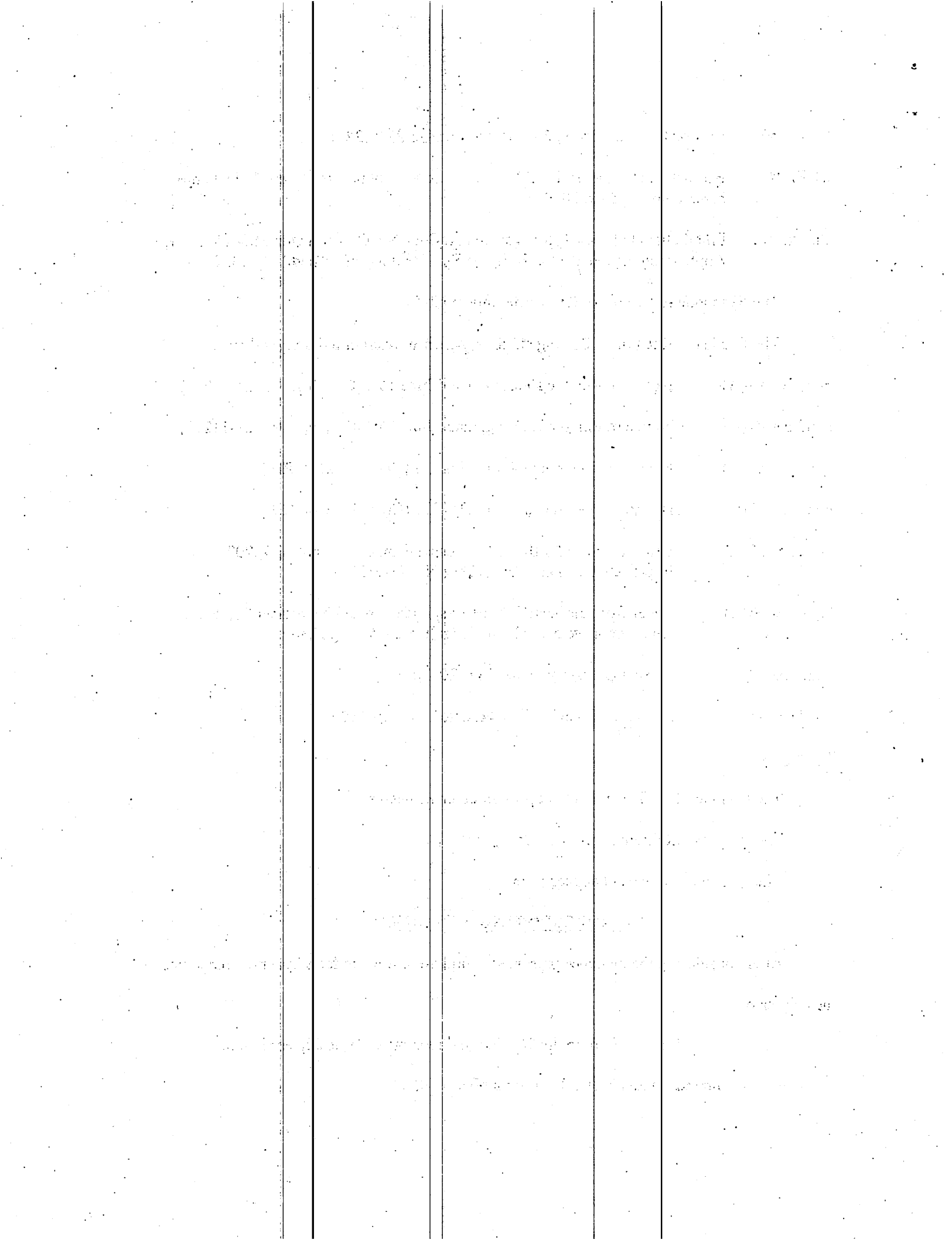
The Respondent did not appear or testify.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 01-95522.



2. The Claimant purchased a property in Salisbury, Maryland in February 2019 (Property).

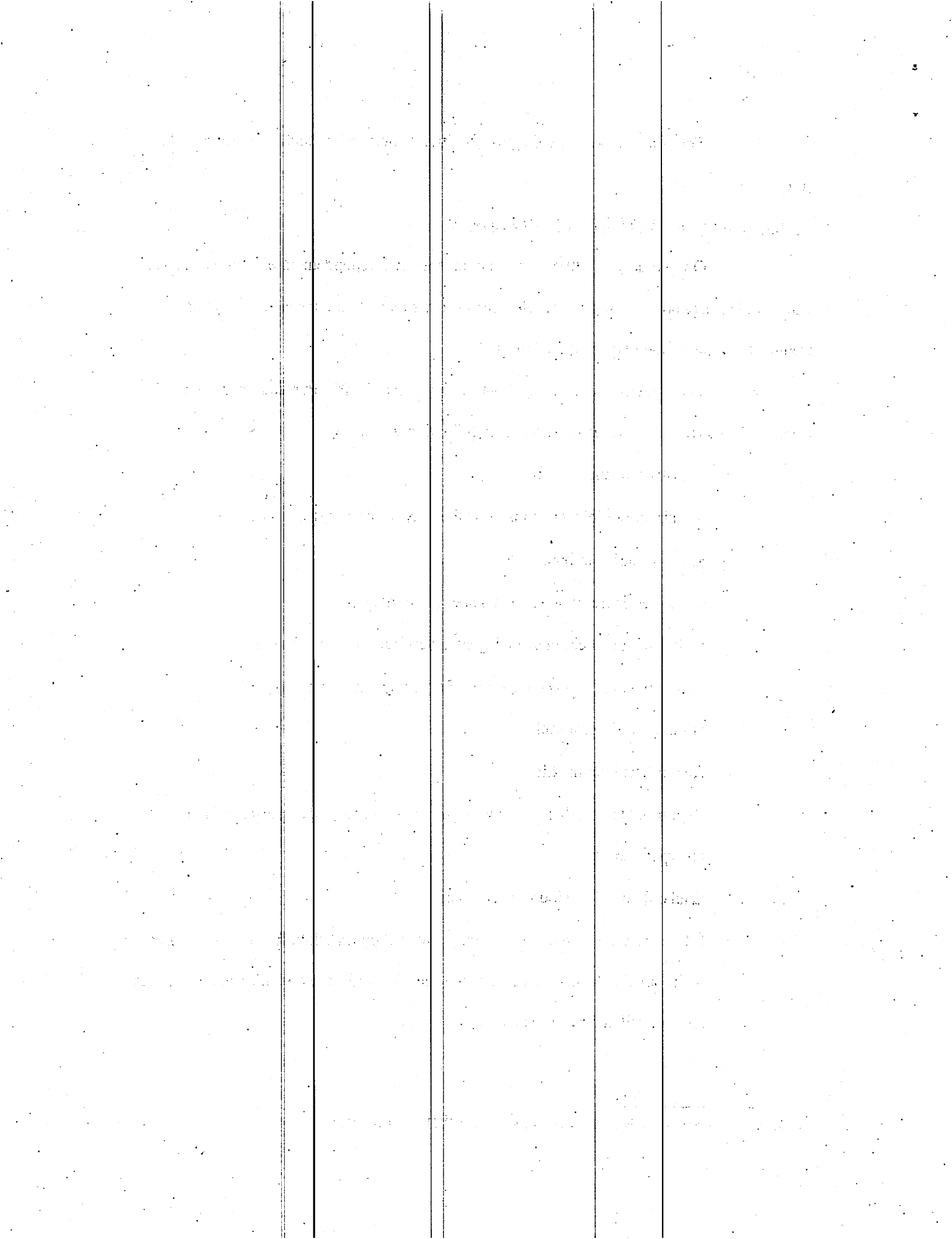
Facts pertaining to the February 12, 2019 contract

3. On February 12, 2019, the Claimant and the Respondent entered into a contract, wherein the Respondent agreed to complete repair items that a home inspector cited when the Claimant purchased the Property (Contract 1).³

4. The agreed-upon price for Contract 1 was \$9,250.00. Pursuant to the terms of Contract 1, the Respondent was to perform the following work:

- Crawlspace remediation
- Repair mortar joints and install white vinyl railings at front steps
- Replace roof vent boot
- Clean debris from gutters and install gutter guards
- Re-flash around chimney and clean exterior of brick on chimney
- Point up mortar joints on exterior of chimney and seal exterior of brick on chimney with clear seal
- Repair heat duct in attic
- Repair lights, install exposed wires in junction boxes and inspect safety of electrical service
- Caulk all exterior windows and doors
- Plumbing work, including replacing washer box and shutoff valve under master bedroom sink, remove and reinstall toilet, install P-trap on utility sink and attach sink to wall and repair water system discharge

³ Contract 1 is the contract at issue in OAH Case No. LABOR-HIC-02-21-11230.



5. The Claimant was not residing at the Property at the time she and the Respondent executed Contract 1. The Respondent had a key to access the Property to perform the work.

6. On February 12, 2019, the Claimant paid the Respondent \$3,083.00.

7. On February 22, 2019, the Respondent informed the Claimant that the work under Contract 1 was complete. On that date, the Claimant paid the Respondent \$5,242.00. The Claimant paid the Respondent a total of \$8,325.00 for the work under Contract 1.

8. The Respondent did not adequately complete the work under Contract 1. He did not repair or replace a damaged crawl space door. The dehumidifier could not work because there was no electrical outlet nearby to plug it in. The Respondent did not install a vapor barrier in the crawlspace. He did not repoint the front steps or repair all of the mortar joints. He did not replace the vent stack boot. He did not reflash the chimney or clean and repoint the chimney bricks. There was still a gap in the duct work near the air handler. He did not caulk the exterior windows and doors. He did not replace the shut off valve under the master bedroom sink. The Respondent set the new toilet at an angle. He did not repair the water treatment system discharge. He did not repair the HVAC duct.

9. The Claimant received an estimate in the amount of \$19,832.00 from Tyler Building Company to complete and repair the work the Respondent was required to complete pursuant to Contract 1.

Facts pertaining to April 9, 2019 contract

10. On April 9, 2019, the Claimant and the Respondent entered into a contract, wherein the Respondent agreed to construct a single-story addition on the rear of the Property (Contract 2).⁴

11. The original agreed-upon price for Contract 2 was \$49,680.00.

⁴ Contract 2 is the contract at issue in OAH case number LABOR-HIC-02-21-11224.

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12. The Appellant paid the Respondent \$20,160.00 on April 10, 2019, which included an initial deposit of \$16,650.00 and an additional \$3,600.00 for a bonus room above the garage.

13. The Respondent never performed any work under Contract 2 and did not return the Claimant's deposit.

DISCUSSION

The Respondent's failure to appear

The statutory provisions governing disciplinary proceedings against MHIC licensees state that notice of the proceeding shall be sent by certified mail to "the business address of the licensee on record with the Commission." Md. Code Ann., Bus. Reg. § 8-312(d). These same notice procedures apply to proceedings involving claims against the Fund. Md. Code Ann., Bus. Reg. § 8-407(a).

The Respondent's license with the MHIC expired on June 20, 2019. Fund Ex. #4. The last business address that the Respondent provided to the MHIC was 10391 Kings Creek Drive, Princess Anne, Maryland 21853. Fund Ex. #4. On May 24, 2021, the OAH mailed notices of the hearing by first-class and certified mail to the Respondent at that address (First Notice). Someone signed the certified mail green card on behalf of the Respondent upon receipt of the First Notice. On June 10, 2021, an MHIC investigator reviewed the Motor Vehicle Administration's (MVA) database and obtained a home address for the Respondent, 10403 Kings Creek Drive, Princess Anne, Maryland 21853. Fund Ex. #5. On June 16, 2021, after being informed of this alternate address, the OAH mailed notices of the hearing by first-class and certified mail to the Respondent at that address as well (Second Notice). The United States Postal Service did not return the first-class mailings. The certified mailings of the Second Notice appear to be unclaimed.

Handwritten text, possibly bleed-through from the reverse side of the page. The text is arranged in approximately 15 horizontal lines across the page. Due to the low contrast and high noise of the scan, the specific words and characters are largely illegible. The text appears to be a list or a series of entries, possibly containing names and dates.

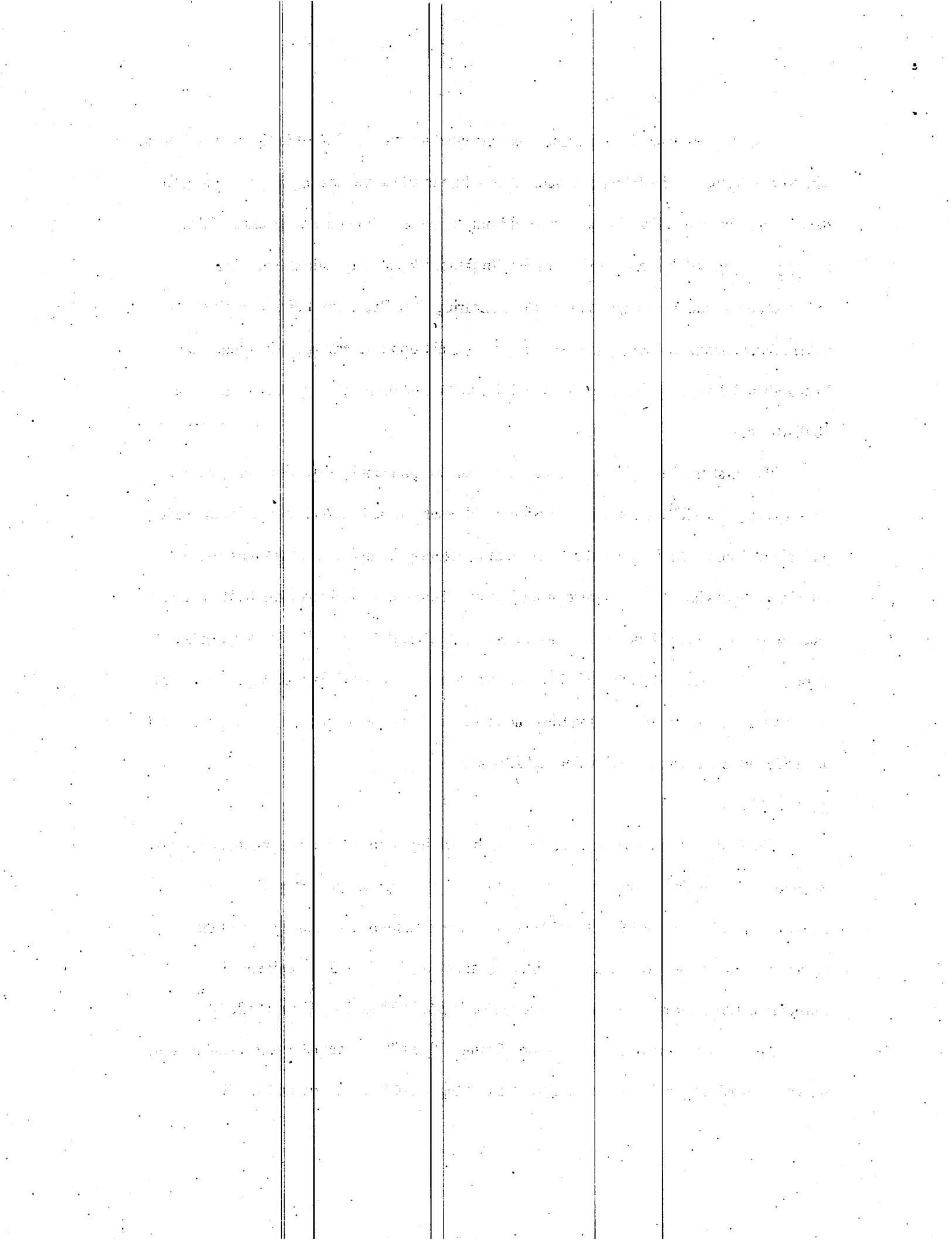
The Notices stated that a hearing was scheduled for July 7, 2021, at 9:30 a.m. via Webex. The Notice further advised the Respondent that failure to attend the hearing might result in “a decision against you.” The Notices provided information regarding how to access a Webex hearing and referred the parties to a website with frequently asked questions and other information regarding participation in a Webex hearing. The Respondent did not notify the OAH of any change of mailing address or any technical trouble accessing the hearing. The Respondent did not request a postponement prior to the date of the hearing. COMAR 28.02.01.16.

The First and Second Notices were sent to the Respondent by first-class and certified mailing using the MHIC’s last known business addresses for the Respondent and a home address it obtained from the MVA’s records. Service of the Notices in this manner was reasonably calculated to provide him with notice of the hearing; therefore, I concluded that the Respondent received proper notice of the hearing. Md. Code Ann., Bus. Reg. §§ 8-312(d), 8-407(a); Md. Code Ann., State Gov’t § 10-209 (2014); *Board of Nursing v. Sesay*, 224 Md. App. 432 (2015). After waiting fifteen minutes for the Respondent or the Respondent’s representative to appear, I proceeded with the hearing. COMAR 28.02.01.23A.

Applicable Law

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., 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).

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.” Md. Code Ann., Bus. Reg. § 8-401. The Fund may not award more than \$20,000.00 to one claimant for the acts or omissions of one contractor. Md. Code Ann., Bus. Reg. § 8-401(e)(1). For the following reasons, I find that the Claimant has proven eligibility for compensation related to Contract 1 and Contract 2.

Contract 1

On June 24, 2021, High Tech Home Inspections (High Tech) performed a limited home inspection for the purpose of determining whether the Respondent performed the items in Contract 1 in a workmanlike manner. Cl. Ex. #4. High Tech also performed the Claimant’s original home inspection which set forth the repairs the Respondent was supposed to perform under Contract 1. Cl. Ex. #2. In its June 24, 2021 limited inspection, High Tech discovered unsatisfactory repairs, all which are listed in Finding of Fact 4 above. High Tech noted several additional issues that did not appear to be specifically within the scope of Contract 1, and I omitted those items from the list. Although High Tech conducted this inspection more than two years after the date of Contract 1, the unsatisfactory work that High Tech noted was work that the Respondent agreed to perform. The Claimant had not yet hired anyone to complete or repair those items. The evidence was unrefuted. High Tech was the Claimant’s original home inspector, and I found the report to be credible in assessing whether Respondent completed the items set forth in the original home inspection report. Cl. Ex. #2. I relied upon High Tech’s report in my determination herein.

The Claimant testified that she trusted the Respondent. She gave him a key to access the Property so he could perform the work before she moved in. When the Respondent told her he

finished the work, she gave him the second check for \$5,242.00, only to later discover that the Respondent did not complete some of the repairs, and some of the repairs were inadequate. The Claimant obtained an estimate from Tyler Building Company (Tyler) to complete and repair the Respondent's work. The total proposal was \$19,832.00. The Claimant testified that she believed this was lower than any other contractor would have proposed for the job. I questioned at first why this proposal was so much higher than the Contract 1 price; however, when I compared Tyler's proposal with Contract 1 and High Tech's limited inspection report, I found that the items listed in Tyler's proposal were all within the scope of Contract 1 and the proposal sought to repair the items mentioned in High Tech's report. Cl. Ex. #1, 3 and 4. I conclude that the Claimant established that she suffered an actual loss from the incomplete and inadequate home improvement work that the Respondent performed under Contract 1.

Contract 2

The Claimant gave the Respondent \$20,160.00 as an initial deposit under Contract 2. This amount was comprised of \$16,560.00 as the deposit amount plus \$3,600.00 which the Claimant attributed to a bonus room above the garage. The Respondent did not perform any work under the Contract and did not return the Claimant's money. The Respondent abandoned the project and the Claimant has therefore established entitlement to recovery from the Fund.

Compensable loss for Contract 1

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Maryland Code Ann., 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.

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Regarding Contract 1, the Respondent performed some work under the Contract, and the Claimant intends to retain another contractor to complete and 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.

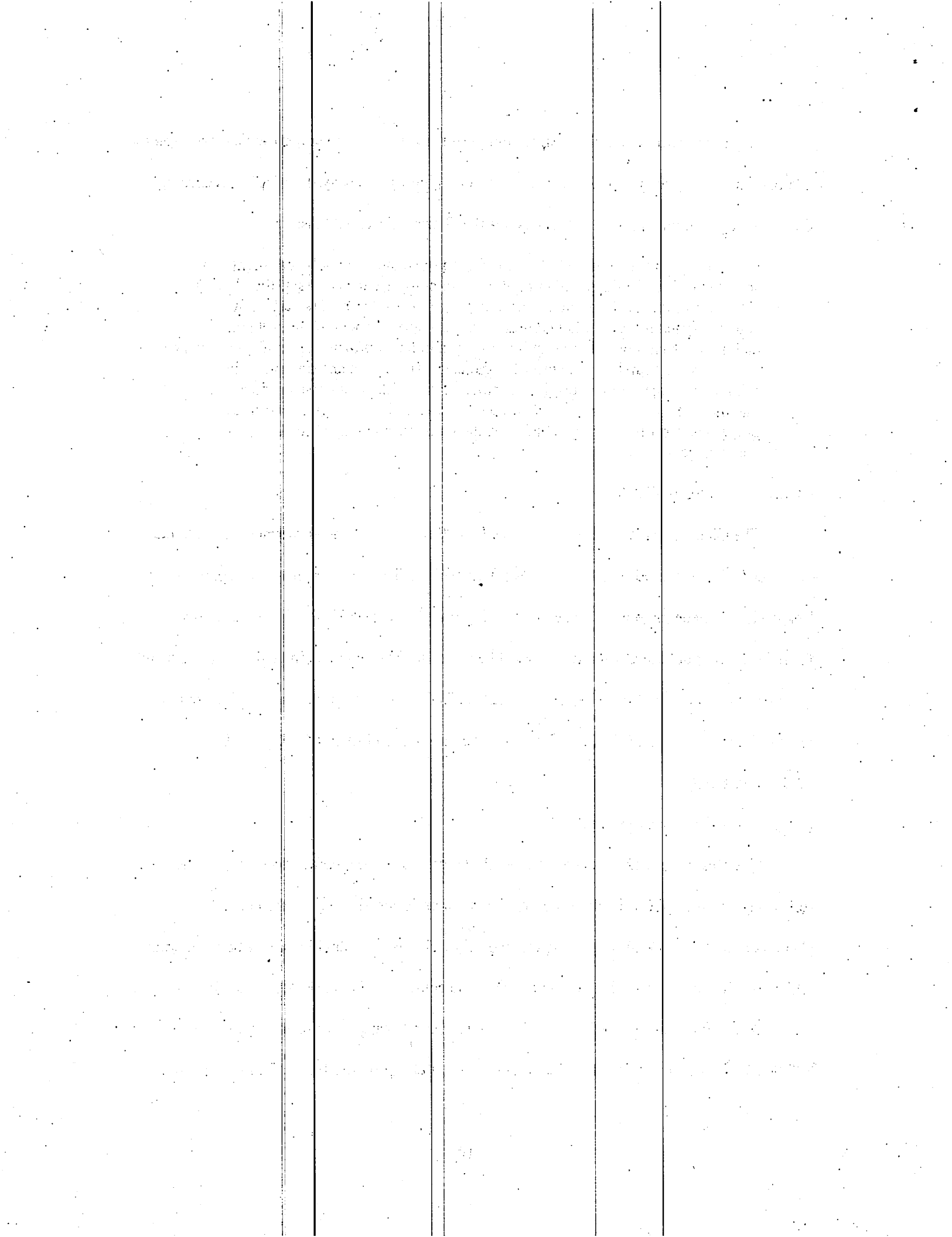
COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent \$8,325.00 for the work he performed pursuant to Contract 1. She received an estimate of \$19,832.00 from Tyler to complete and repair the Respondent's inadequate work. The price of Contract 1 was \$9,250.00. Pursuant to this formula, the amount the Claimant paid must be added to the amount estimated to complete and repair the work ($\$8,325.00 + \$19,832.00 = \$28,157.00$). Then, after subtracting the Contract 1 price ($\$28,157.00 - \$9,250.00$), the Claimant's actual loss is \$18,907.00. COMAR 09.08.03.03B(3)(c).

Compensable loss for Contract 2

The Respondent abandoned Contract 2 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).

As set forth above, the Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor. It also provides that a claimant may not



recover more than the amount paid to the contractor against whom the claim is filed. Maryland Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a).

The Claimant paid the Respondent \$20,160.00 for work to be performed under Contract 2. The Respondent did not perform any work and the Claimant's actual loss is \$20,160.00. Since the total of the Claimant's actual loss from both Contracts exceeds \$20,000.00 and the Claimant is only entitled to recover a maximum of \$20,000.00 for the acts and omissions of one contractor, the Claimant is entitled to a total award of \$20,000.00 from the Fund. Maryland Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts or omissions under Contract 1 and Contract 2. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a) and (c). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund.

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; 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

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

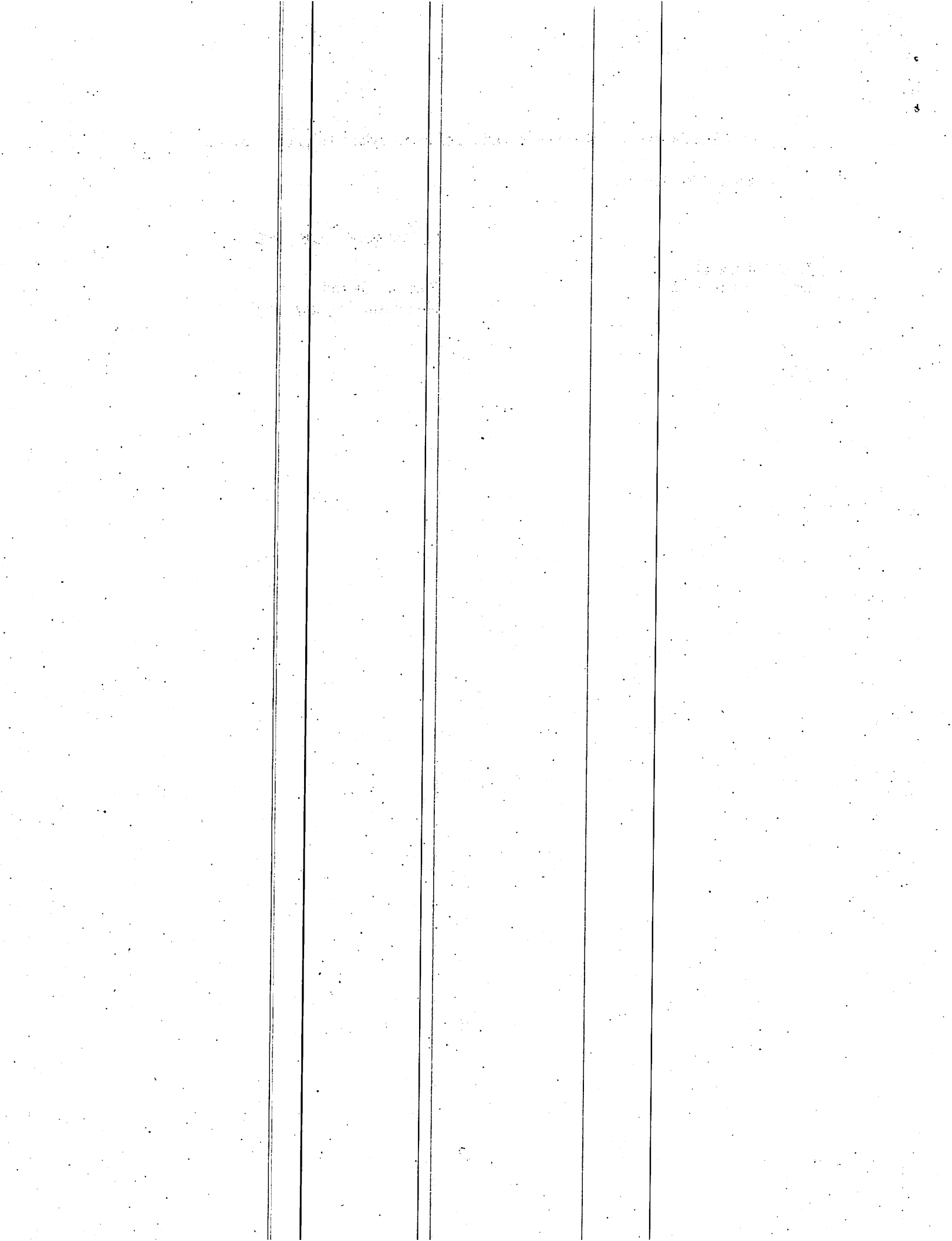
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

August 26, 2021
Date Decision Issued

Susan Sinrod

Susan A. Sinrod
Administrative Law Judge

SAS/at
#193755



PROPOSED ORDER

WHEREFORE, this 8th 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***

