

**IN THE MATTER OF THE CLAIM
OF KEITH VOGEL,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF STEPHEN
JOHNSON,
ALLFINISH, LLC,¹
RESPONDENT**

*** BEFORE M. TERESA GARLAND,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-08291
* MHIC No.: 20 (90) 89

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PROPOSED DECISION

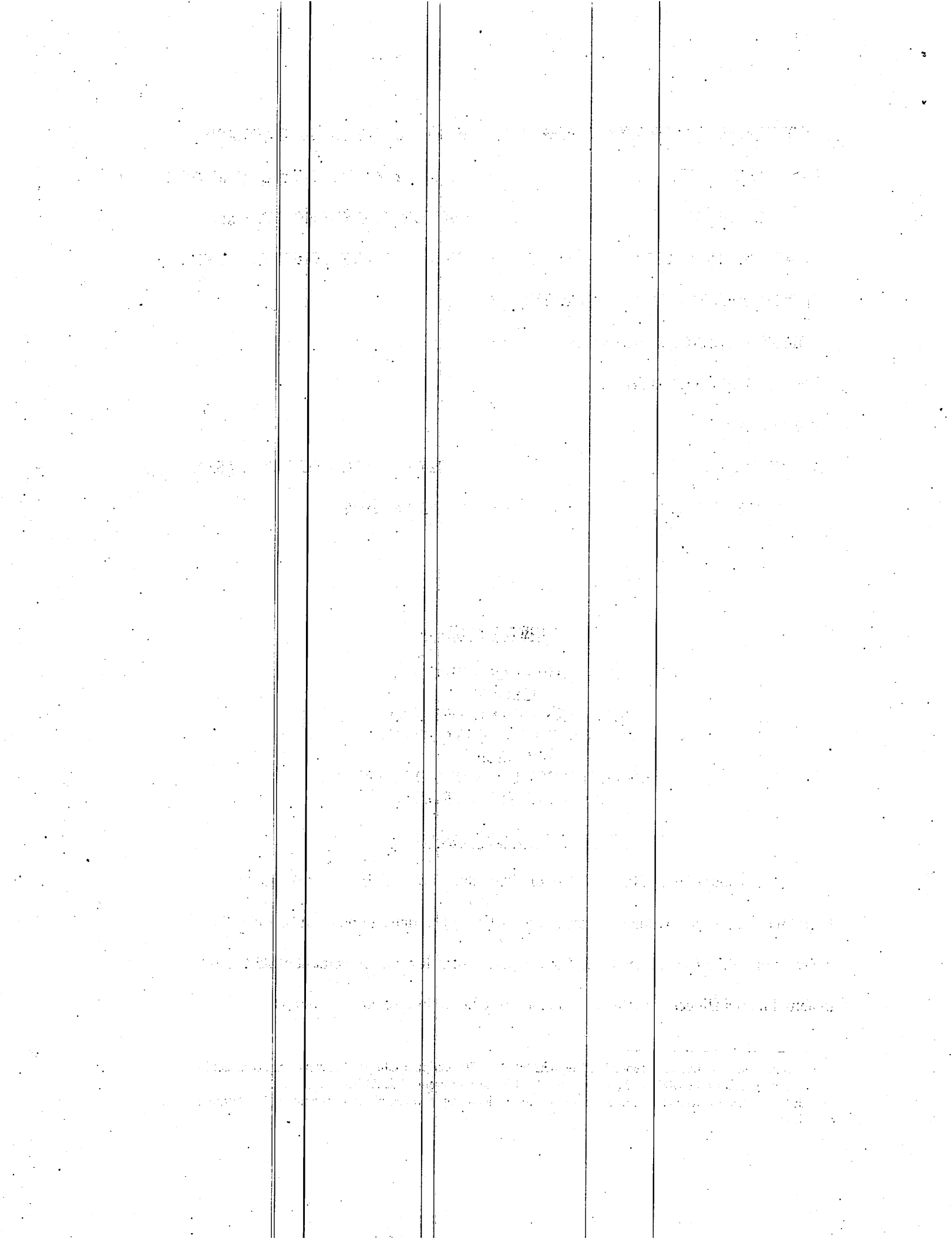
**STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER**

STATEMENT OF THE CASE

On January 16, 2020, Keith Vogel (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department),² for reimbursement of \$5,689.00 in actual losses allegedly suffered as a result of a home improvement contract with

¹ This matter has also been referenced as Stephen Johnson T/A Chipper Clipper. However, the contract in this matter as well as the MHIC Claim form has the business referenced as AllFinish, LLC.

² On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.



Stephen Johnson, trading as AllFinish, LLC, (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).³ On April 2, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on May 27, 2021 via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself and appeared with his wife. The Respondent represented himself.⁴

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

I admitted the following exhibits on the Claimant's behalf:⁵

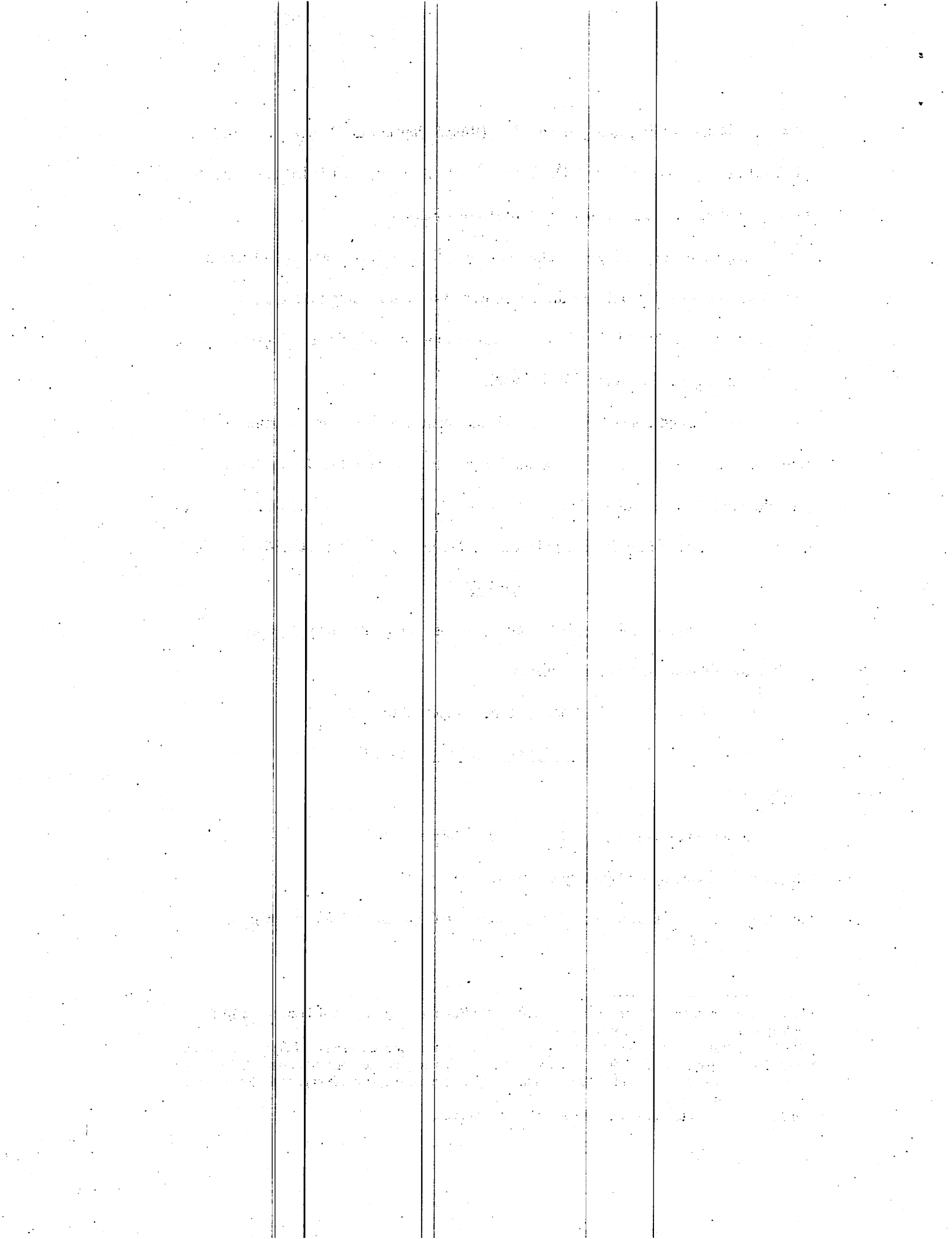
Clmt. Ex. 1 – Drawing by Whorley Claim Services

Clmt. Ex. 2 – Screen shot of text messages between Claimant and Whorley Claim Services

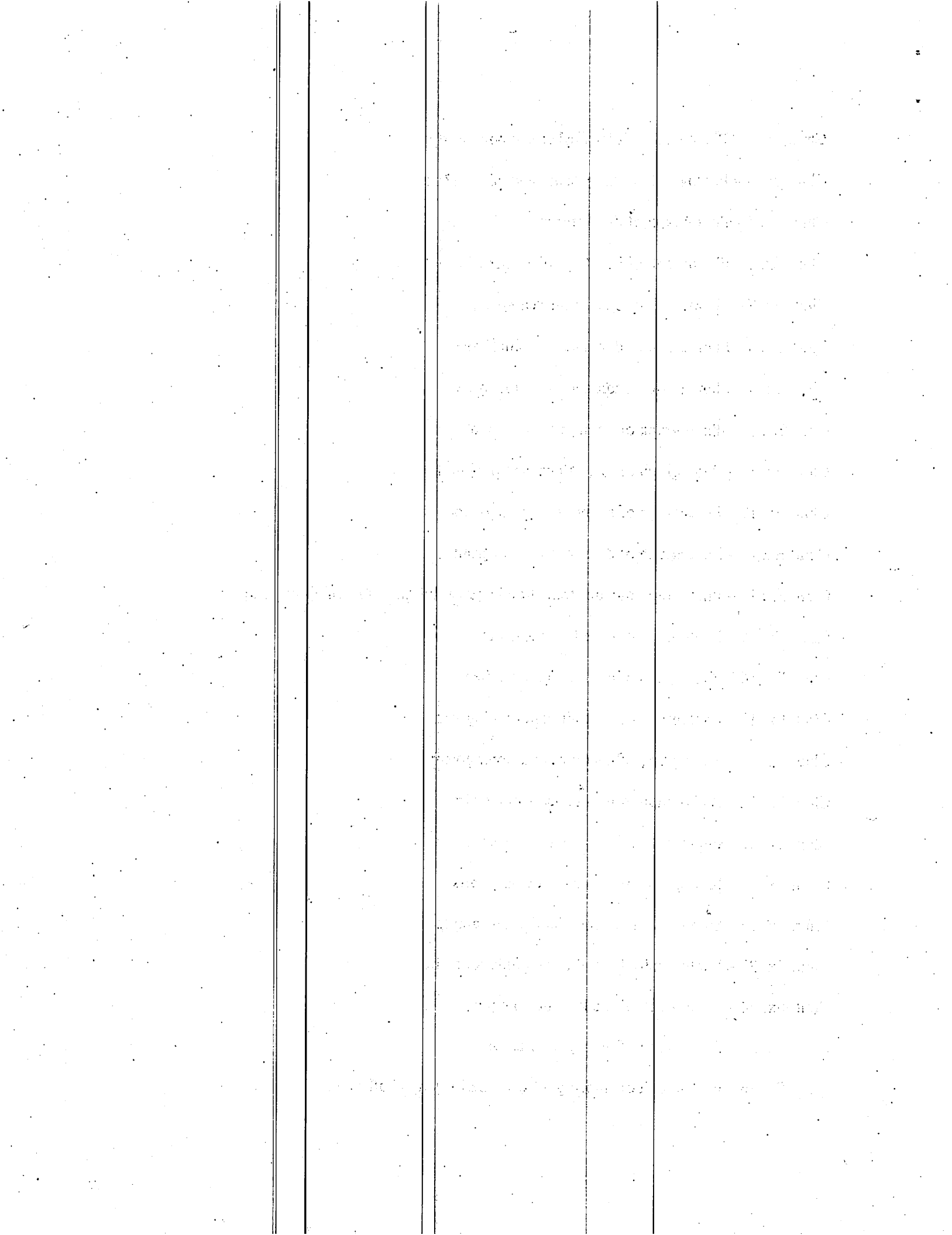
³ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

⁴ The Respondent, Stephen Johnson, is deceased. His business partner and co-signer of the contract in this matter, Dayn Graves, appeared for the hearing. He was the signatory on the contracts at issue in this matter and was the person with whom the Claimant communicated. Heretofore, any reference to the Respondent is a reference to Mr. Graves.

⁵ Unless otherwise noted, the Claimant's exhibits were undated.



- Clmt. Ex. 3 – Photograph of dishwasher and countertop
- Clmt. Ex. 4 – Photograph of dishwasher and tape measure
- Clmt. Ex. 5 – Photograph of dishwasher
- Clmt. Ex. 6 – Photograph of ill-fitting dishwasher
- Clmt. Ex. 7 – Photograph of dishwasher/cabinetry
- Clmt. Ex. 8 – Photograph of damage to cabinet base
- Clmt. Ex. 9 – Photograph of damage to cabinet base
- Clmt. Ex. 10 – Photograph of damage to cabinet base
- Clmt. Ex. 11 – Photograph of wall, floor, and plywood
- Clmt. Ex. 12 – Photograph of screw through plywood
- Clmt. Ex. 13 – Photograph of deteriorating tile grout
- Clmt. Ex. 14 – Photograph of floor transition between living room and dining room
- Clmt. Ex. 15 – Photograph of deteriorating grout
- Clmt. Ex. 16 – Photograph of crooked/uneven tiles
- Clmt. Ex. 17 – Photograph of heat/air conditioning vent
- Clmt. Ex. 18 – Photograph of heat/air conditioning vent
- Clmt. Ex. 19 – Photograph of unfinished wood stairs
- Clmt. Ex. 20 – Photograph of damaged wood stairs
- Clmt. Ex. 21 – Photograph of unfinished wood stairs
- Clmt. Ex. 22 – Side view of 1/8 inch hardwood sample
- Clmt. Ex. 23 – Photograph of installation guide for stairs
- Clmt. Ex. 24 – Photograph of toe kick under cabinets
- Clmt. Ex. 25 – Photograph of poorly mitered trim
- Clmt. Ex. 26 – Photograph of flooring between hallway and bathroom



- Clmt. Ex. 27 – Photograph of unpainted trim with nails protruding
- Clmt. Ex. 28 – Photograph of overpainted surface
- Clmt. Ex. 29 – Photograph of poor painting
- Clmt. Ex. 30 – Photograph of paint on the back of basement toilet
- Clmt. Ex. 31 – Photograph of incomplete painting
- Clmt. Ex. 32 – Photograph of damaged door trim
- Clmt. Ex. 33 – Screen shot of text messages between the Claimant and Respondent, May and June 2019
- Clmt. Ex. 34 – Screen shot of text messages between the Claimant and Respondent, April 2019
- Clmt. Ex. 35 – Complaint Form (Labor Dept.), dated July 19, 2019, with attached narrative, checks, Respondent’s contracts, letter from W. Bradley Bauhof, Esq., and two proposals to remediate/complete work.

I did not admit any exhibits on the Respondent’s behalf.

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

- Fund Ex. 1 – Hearing Order, April 2, 2021
- Fund Ex. 2 – Notice of Remote Hearing, April 15, 2021
- Fund Ex. 3 – Letter from MHIC to the Respondent, March 10, 2020, with attached MHIC Claim form, dated January 16, 2020
- Fund Ex. 4 – Department of Labor licensing history, printed May 13, 2021
- Fund Ex. 5 – Articles of Organization for AllFinish, LLC, April 1, 2019

Testimony

The Claimant testified and did not present other witnesses.

The Respondent, Dayn Graves, testified and did not present other witnesses.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

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

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 101312.

2. On April 16, 2019, the Claimant and the Respondent entered into a contract to perform renovation work on the Claimant's home located in Mount Airy, Maryland (Contract). The work included the following areas in the home: kitchen, dining room, living room and hallway, basement bathroom, basement common areas and utility room, basement closet, and guest room.

3. The original agreed-upon Contract price was \$13,587.00.

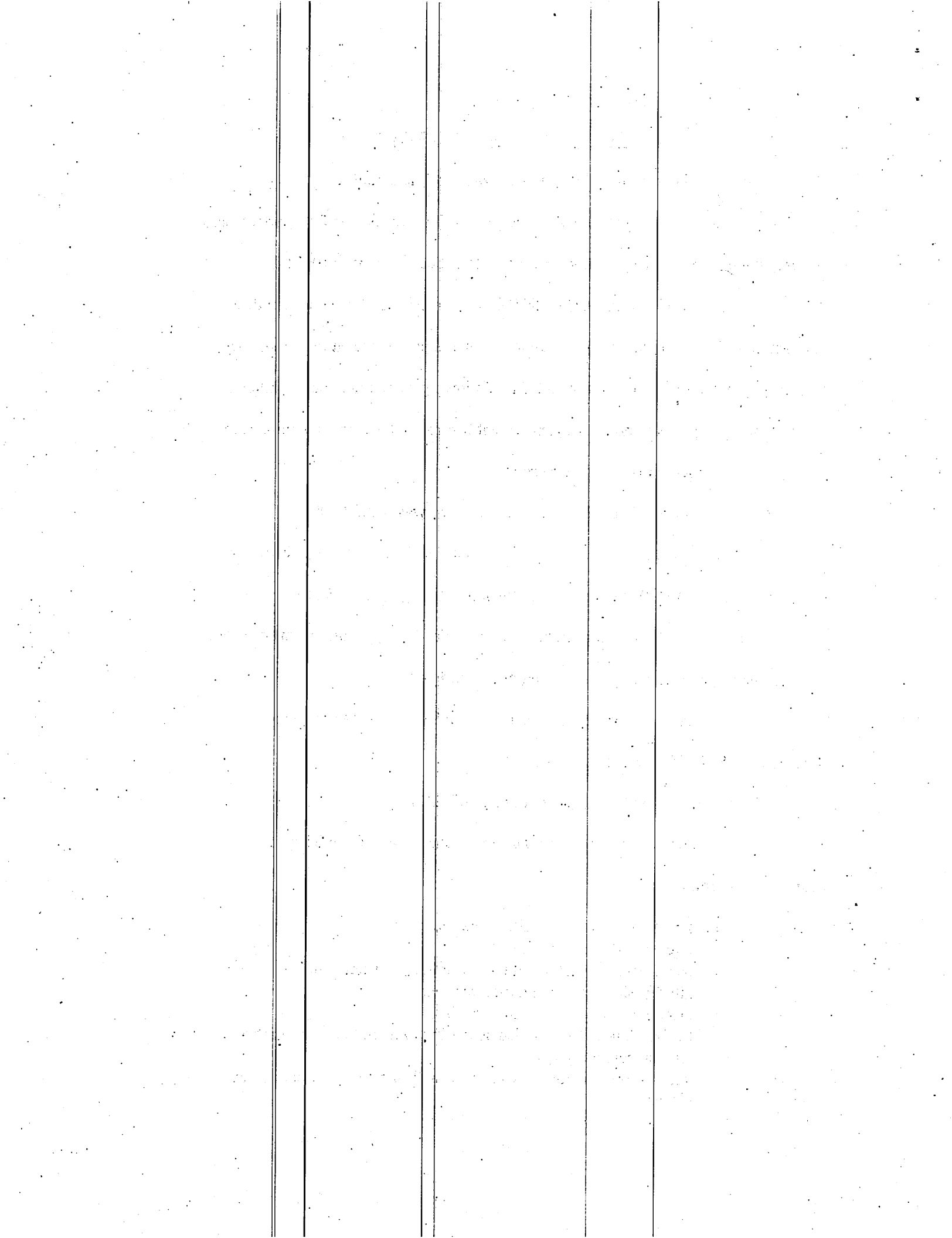
4. Also on April 16, 2019, the Claimant and Respondent entered into a second contract, for \$1,982.00, with the following scope of work: install laminate flooring on stairs; point up ceilings in both bedrooms and living room; paint living room ceilings, walls and trim, and paint two bedroom ceilings.

5. On each of April 22, and April 29, 2019, the Claimant paid the Respondent \$4,529.00, for a total of \$9,058.00.

6. The Respondent began work on April 22, 2019.

7. There were numerous problems with the work completed by the Respondent, as follows:

- kitchen cabinets reinstalled incorrectly
- kitchen countertop not level
- lazy Susan cabinet incorrectly installed/does not spin
- kitchen sink scratched during removal
- grout between kitchen tiles cracking
- kitchen faucet not installed according to manufacturer's instructions
- kitchen cabinets damaged
- vinyl flooring incorrectly installed with short or poor cuts in several places



- painting poorly done and sloppy
- painters tape removed the finish from an upper cabinet
- tile grout stains on flooring trim
- baseboard installed directly over unpatched holes in drywall in the basement
- freshly painted walls damaged during stair railing reinstallation
- painted over light switches, outlet covers and picture hangers
- original kitchen granite backsplash pieces removed by Respondent and not returned

8. The following work was left incomplete:

- trim not completely painted
- basement ceiling not patched, textured or painted
- holes in basement drywall not patched
- basement carpet not installed in bedroom
- vinyl not installed in basement closet
- quarter round not installed
- stairs not completed or stained

9. The Respondent's painting of surfaces enumerated in the contracts was poor. The Respondent painted around or over light switches with the end result being sloppy and incomplete.

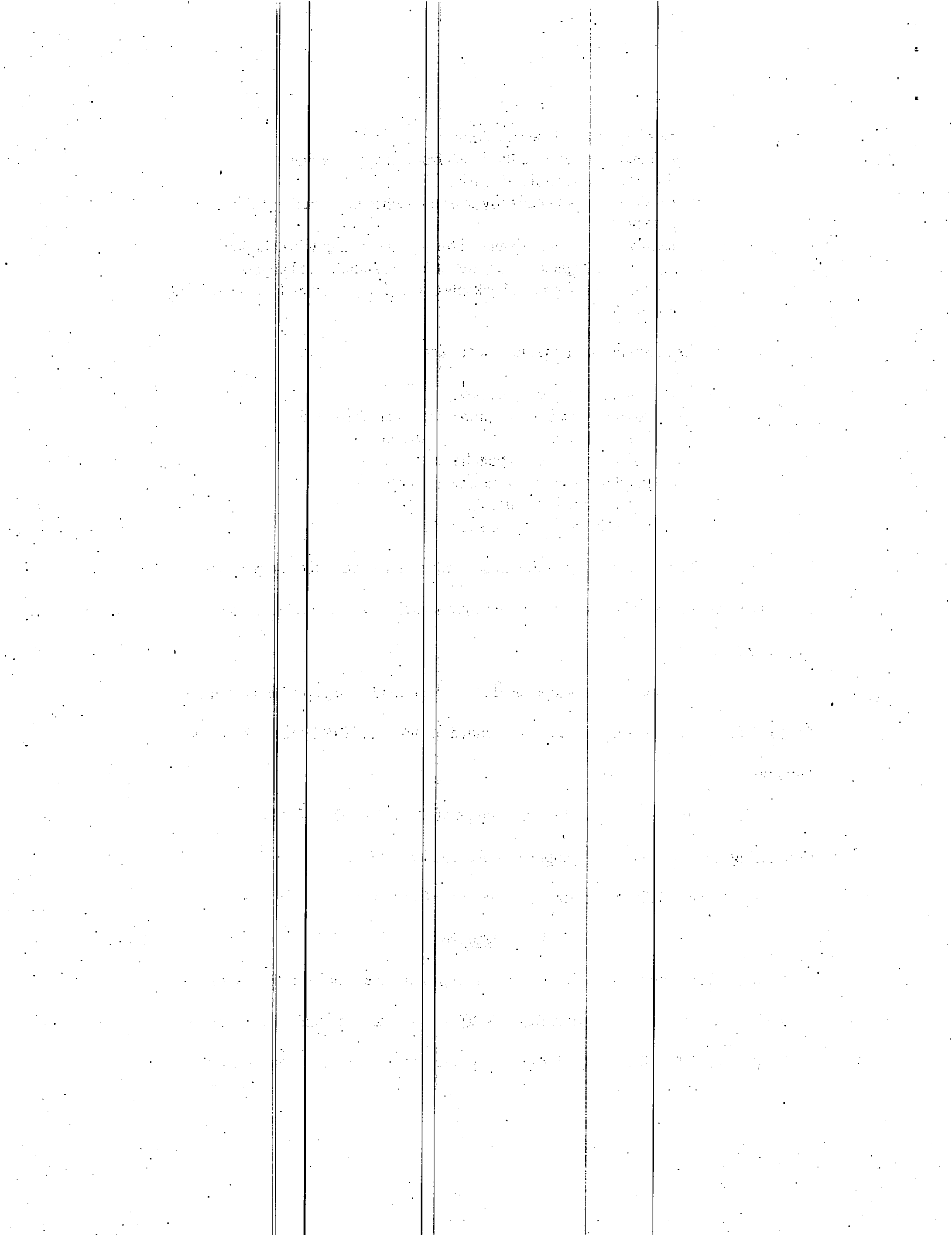
10. After numerous attempts by the Claimant to resolve to problems with the Respondent's work, all work on the contract ended on May 25, 2019 by the Claimant's initiative.

11. The Claimant procured an estimate of \$12,200.00 from T.R.W Contracting, LLC, to repair and complete the Respondent's work.

12. The Claimant incurred an actual loss of \$5,689.00.

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).

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.

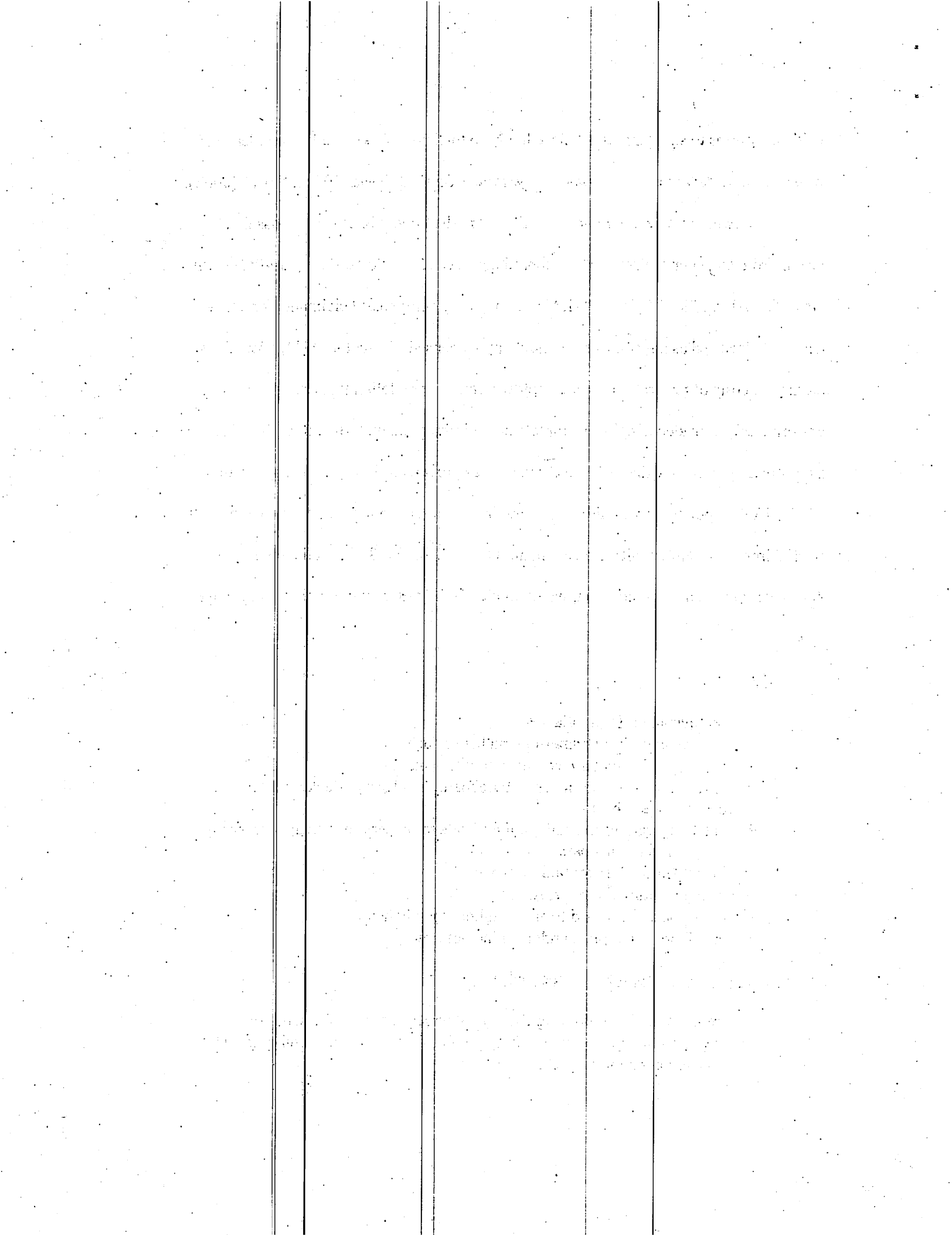
The Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. On April 16, 2019, the Claimant and the Respondent entered into a contract, which totaled \$13,587.00, with the following scope of work:

Kitchen:

- remove and reset appliances
- remove and reset countertop and backsplash
- remove and reset base cabinets, faucet, sink base
- remove ceramic tile flooring, baseboard, and Hardie Backer board, etc. down to the subfloor
- patch drywall, prime and paint all walls to owners specified colors using Sherwin-Williams paint
- install Hardie Backer underlayment
- install ceramic tile flooring and grout
- install new baseboard trim throughout the kitchen
- install new kick plate under cabinet kitchen

Dining Room, Living Room and Hallway

- remove laminate flooring and underlayment down to the subfloor
- replace damaged base molding, quarter round and paint semi-gloss white
- install new underlayment



- install new laminate flooring
- paint walls, ceiling and trim to owners specified color (necessary caulking and repairing of drywall included)

Basement Bathroom:

- replace baseboard entire
- paint bathroom to owners specified colors using Sherwin William paint-clean bathroom
- point up/paint drywall

Basement Common Area and Utility Room:

- patch hole in ceiling, match stippled ceiling texture and paint to match existing
- replace baseboard that was removed from water damage and paint semi-gloss white
- caulk and paint trim and casing from water damage
- drywall repair where needed

Basement Closet:

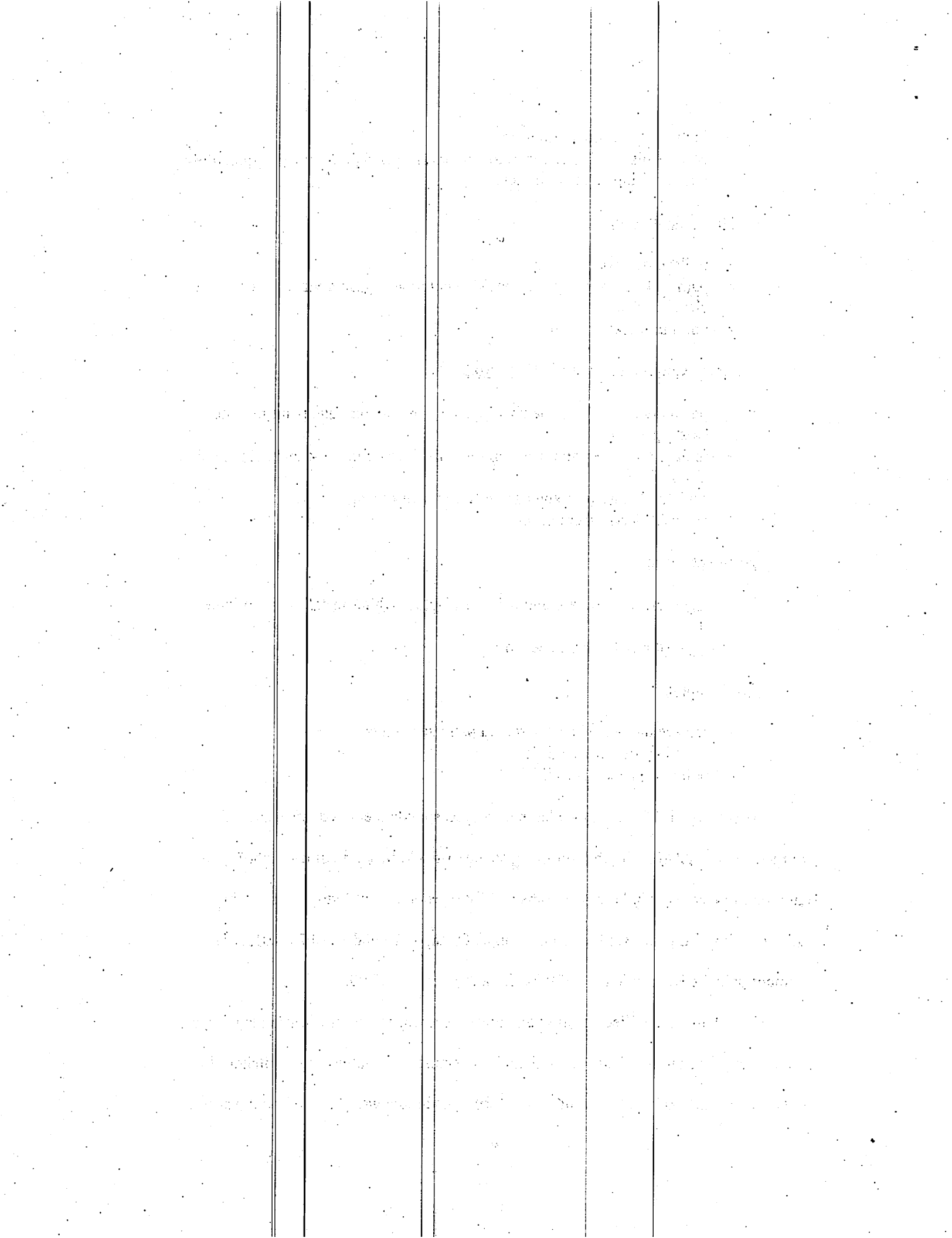
- install new baseboard and paint semi-gloss white- install new laminate floor
- drywall repair where needed

Guest Room:

- replace damaged baseboard and paint semi-gloss white
- install carpet and padding
- point up/ patch drywall

Also on April 16, 2019, the Claimant and Respondent entered into a second contract, for \$1,982.00, with the following scope of work: install laminate flooring on stairs; point up ceilings in both bedrooms and living room; paint living room ceilings, walls and trim, and paint two bedroom ceilings. On April 22 and April 29, 2019, the Claimant paid the Respondent \$4,529.00, for a total of \$9,058.00.

The Claimant testified credibly that there were issues with the Respondent's work from the very beginning. The ceramic tiles the Respondent installed on the kitchen floor were crooked and uneven, the grout was cracking, and there was grout left on the surface

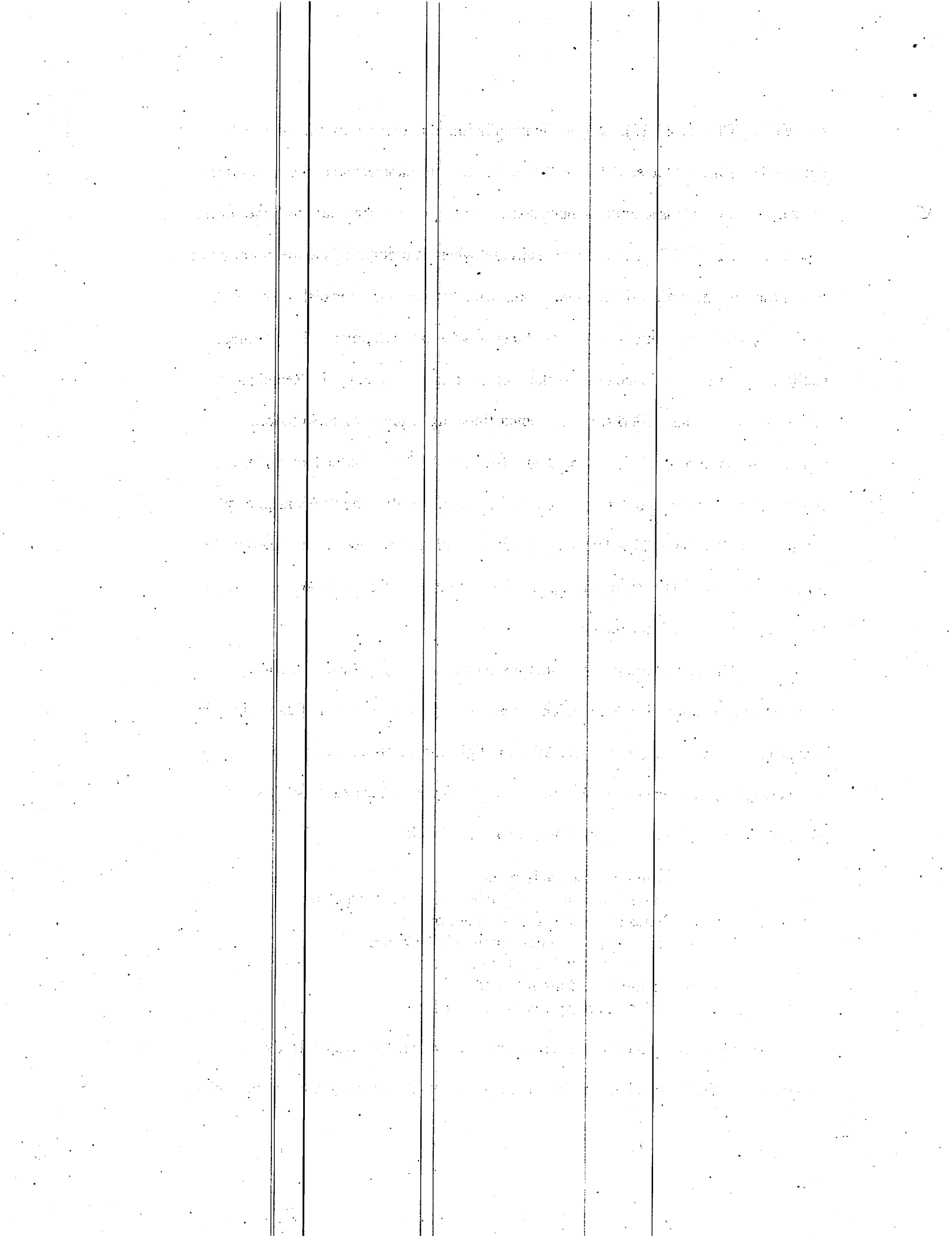


of the tiles. (Cl. Exs. 13-16). During the installation of new cabinets, the Respondent damaged existing cabinets. (Cl. Exs. 8-10). Further, the cabinets were neither uniform nor set correctly. Consequently, a new, standard-sized dishwasher was too large for the opening. (Cl. Exs. 3-6). The Claimant said that when he brought this to the attention of one of the Respondent's workers, the worker said, "we can make the dishwasher fit by cutting the cabinets." This solution was unacceptable to the Claimant. The Claimant testified that further evidence of unworkmanlike work performed by the Respondent included replacing hardwood stairs, but never finishing or prepping them before installation and improperly installing them. (Cl. Exs. 19-21). The toe kick under the cabinets was too small and did not extend to the cabinet itself. The trim was poorly mitered. (Cl. Exs. 24 & 25). The Respondent's painting of surfaces enumerated in the contracts was poor. The Respondent painted around or over light switches with the end result being sloppy and incomplete.

The Claimant attempted on numerous occasions to bring these issues to the Respondent's attention. The Respondent's response was to accuse him of damaging his own property and sabotaging the job. After multiple conversations either in person or via text messaging, there was no resolution. All work on the contract ended on May 25, 2019. Work that was not completed as of that date included:

- trim not completely painted
- basement ceiling not patched, textured or painted
- holes in basement drywall not patched
- basement carpet not installed in bedroom
- vinyl not installed in basement closet
- quarter round not installed
- stairs not completed or stained

On July 9, 2019, the Claimant received a letter from the Respondent's attorney requesting that the Respondent be permitted to complete the unfinished work and seeking



the balance due under the contracts, \$6,786.00. It further stated that, should the Claimant fail to respond and pay the balance due under the contracts, the Respondent would take action to collect the balance.

The Respondent testified that every day there would be sticky notes left by the Claimant about something he did wrong. He contends that the Claimant was trying to sabotage the job. He admitted that a lot of the work remained unfinished and that his workers did paint around or over light switches. However, regarding the cabinets, he asserted that perhaps the cabinets got warped from previous water damage. He said he installed the cabinets exactly as they came but the countertop was not level. Throughout his testimony, the Respondent paced and walked around. He appeared agitated with the hearing process. I found the Respondent's testimony unconvincing and afford it no weight.

The preponderance of the evidence before me convinces me that the Respondent performed unworkmanlike, inadequate, or incomplete home improvements. 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 intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

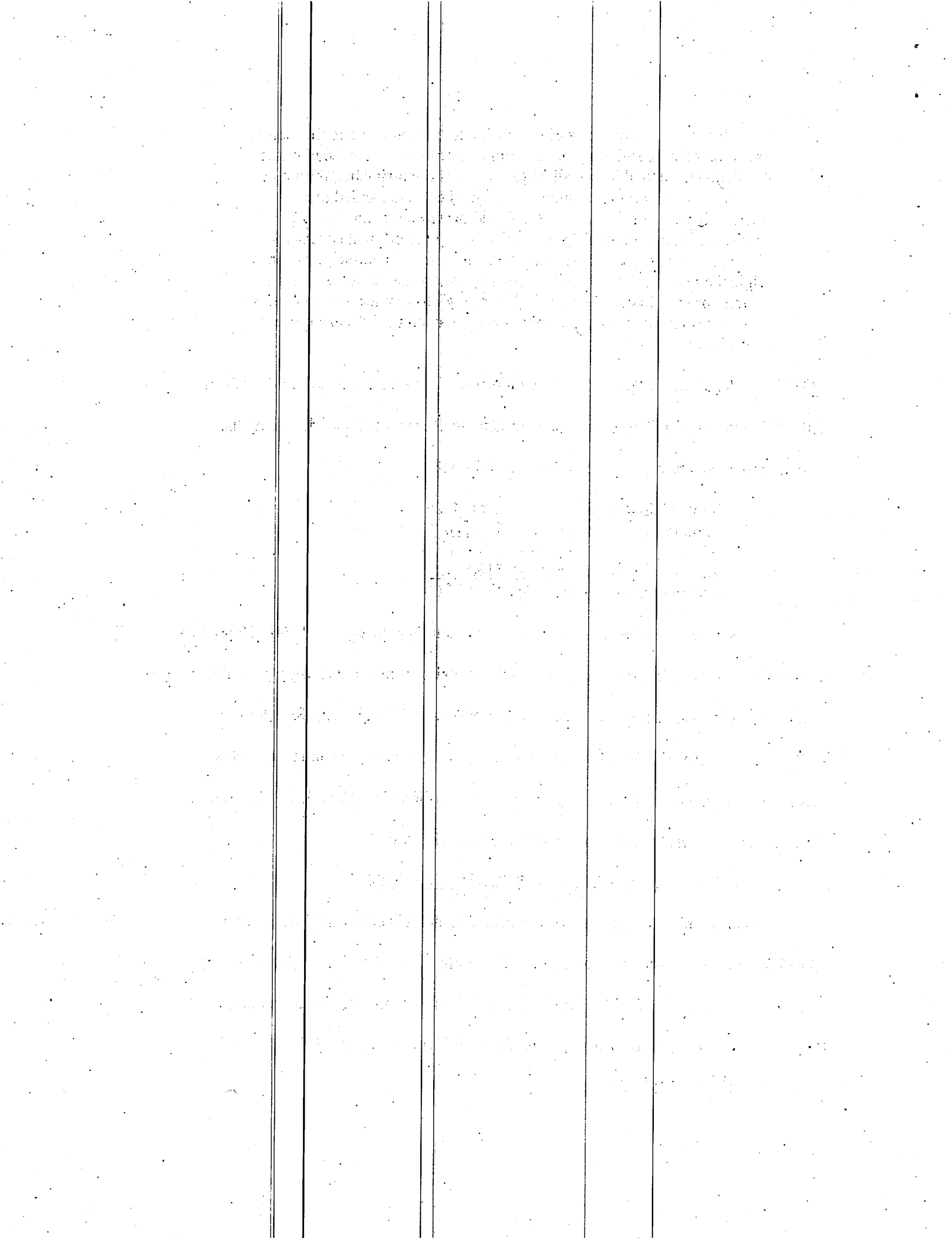
COMAR 09.08.03.03B(3)(c). The Claimant procured an estimate of \$12,200.00 from T.R.W Contracting, LLC, to repair and complete the Respondent's work. Using the formula provided, above, the calculation is as follows:

Amt. Claimant paid:	\$ 9,058.00
Amt. to repair/complete: (+)	<u>\$12,200.00</u>
	(=) \$21,258.00
Amt. of original contract: (-)	<u>\$15,569.00</u>
Claimant's actual loss:	(=) \$ 5,689.00

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 \$5,689.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$5,689.00 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 that amount 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 \$5,689.00; 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;⁶ and

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

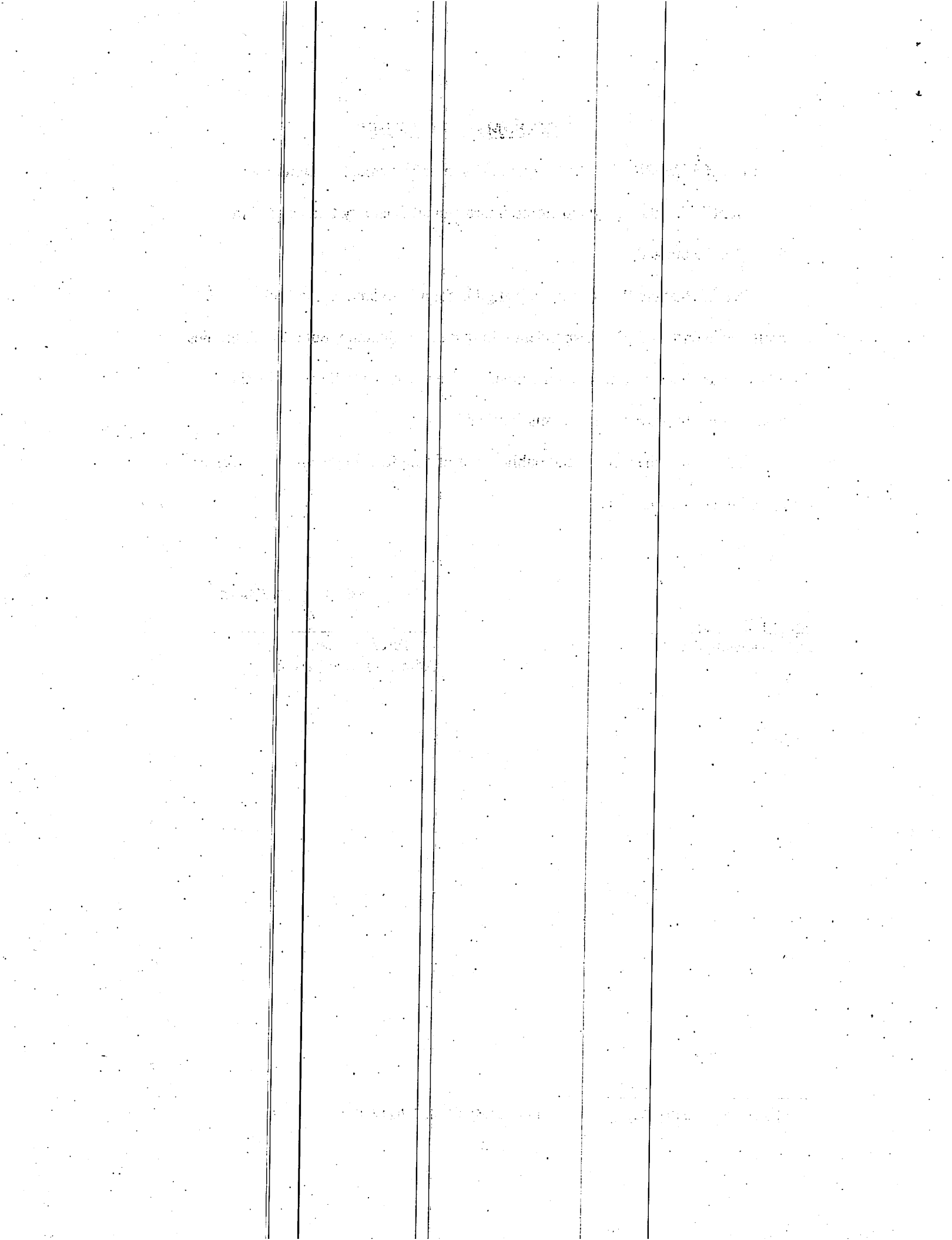
August 23, 2021
Date Decision Issued

M. Teresa Garland

M. Teresa Garland
Administrative Law Judge

MTG/emb
#192511

⁶ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.



PROPOSED ORDER

WHEREFORE, this 22nd day of November, 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.

Michael Newton

Michael Newton

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

