

IN THE MATTER OF THE CLAIM	* BEFORE GERALDINE A. KLAUBER,
OF MICHAEL GORDON,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF NEIL SNYDER,	*
T/A EXTERIOR EXPERTS, INC.,	* OAH No.: LABOR-HIC-02-19-24033
RESPONDENT	* MHIC No.: 18 (75) 1397

* * * * *

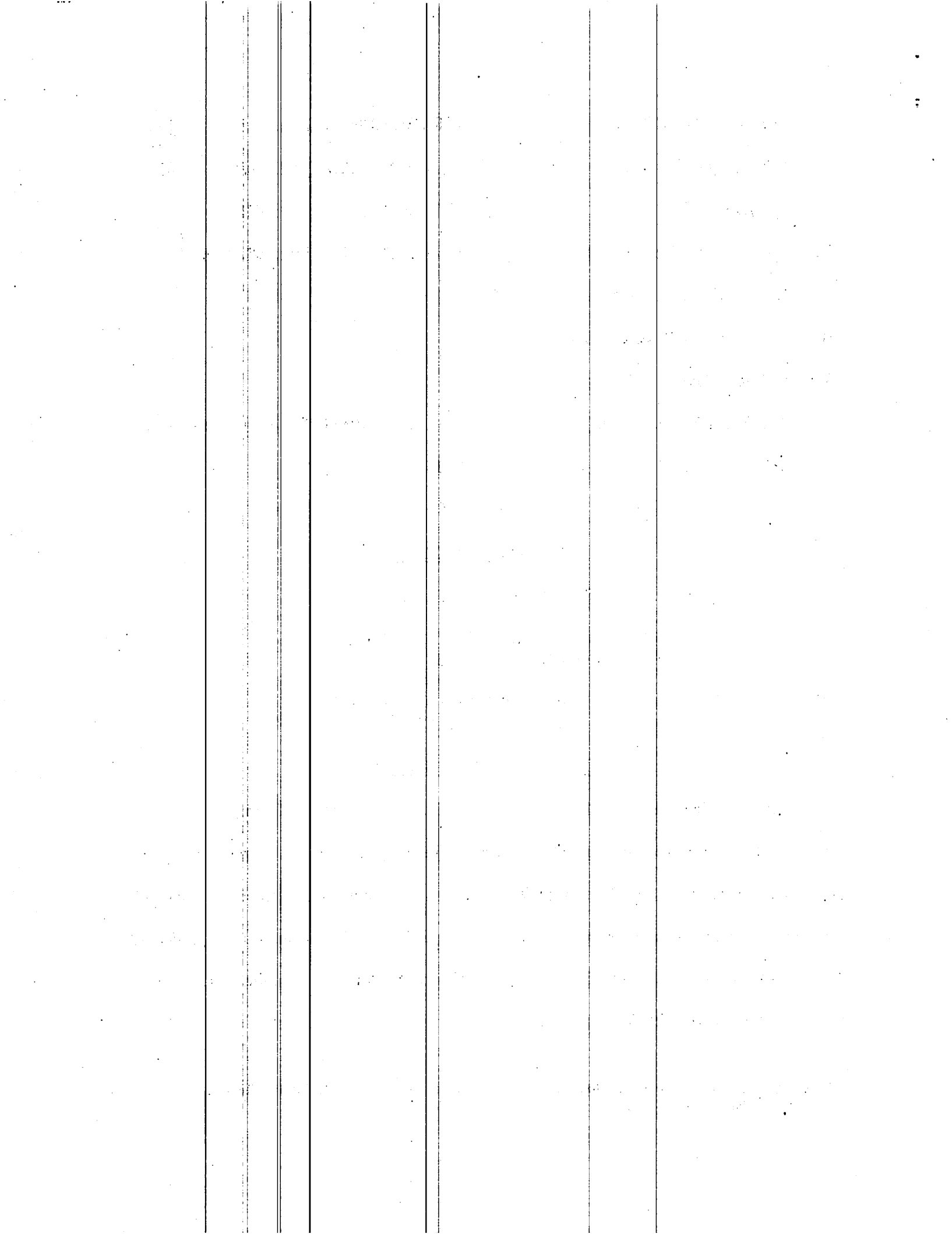
PROPOSED DECISION

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 September 28, 2018, Michael Gordon (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$9,800.00 in actual losses allegedly suffered as a result of a home improvement contract with Neil Snyder, trading as Exterior Experts, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On July 15, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

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



I held a hearing on November 18, 2019 at the OAH in Hunt Valley, Maryland. Bus. Reg. § 8-407(e). Robert McCray, Assistant Attorney General, Department of Labor (Department),² represented the Fund. The Claimant represented himself. Eric Lickstein, Esquire, represented the Respondent, who was present.

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. 2019); Code of Maryland Regulations (COMAR) 09.01.03; 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:

- Clmt. Ex. 1 - Contract between the Claimant and the Respondent, undated
- Clmt. Ex. 2 - Letter from Claimant to Respondent, May 22, 2018
- Clmt. Ex. 3 - Claimant's Complaint Form, June 28, 2018
- Clmt. Ex. 4 - Photographs of bubbling on Claimant's ceiling, undated
- Clmt. Ex. 5 - Photograph of exterior of Claimant's house, undated
- Clmt. Ex. 6 - Photographs of water stains on wall by window, undated

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

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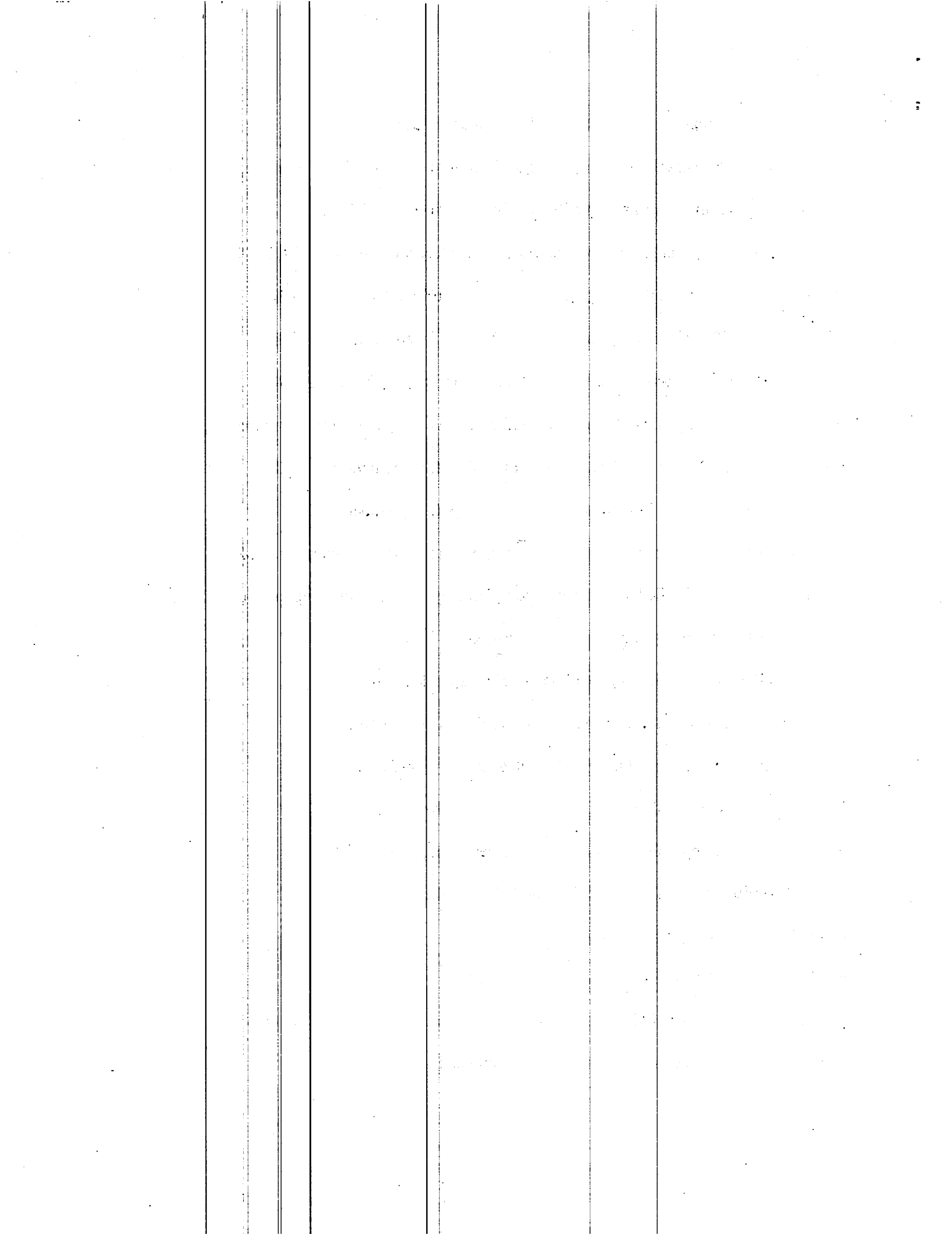
- Clmt. Ex. 7 - Proposal from Firestone, September 18, 2019
- Clmt. Ex. 8 - Proposal from Patch Boys of Baltimore County, LLC, September 20, 2019
- Clmt. Ex. 9 - Proposal from Dove Remodeling Services, April 20, 2019
- Clmt. Ex. 10 - Proposal from Advance Moisture Protection, September 18, 2019
- Clmt. Ex. 11 - Photographs of right upper slope of roof, September 21, 2018
- Clmt. Ex. 12 - Photographs of rear lower slope of roof, September 21, 2018
- Clmt. Ex. 13 - Photographs of left upper slope of roof, September 21, 2018
- Clmt. Ex. 14 - Photographs of pipe jacks, left rear lower slope of roof, September 21, 2018
- Clmt. Ex. 15 - Photographs of rear upper slope of roof, September 21, 2018
- Clmt. Ex. 16 - Photographs of rear lower slope of roof, September 21, 2018
- Clmt. Ex. 17 - Photographs of turtle vent and upper gutter flash, September 21, 2018
- Clmt. Ex. 18 - Sketch of Claimant's roof completed by Dale Snoddy, September 21, 2018
- Clmt. Ex. 19 - Report of Dale Snoddy, September 21, 2018

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

- Resp. Ex. 1 - Better Business Bureau Activity Summary, undated
- Resp. Ex. 2 - ABC Supply Order Acknowledgement, February 22, 2018
- Resp. Ex. 3 - Photograph of vent pipes on roof, October 18, 2018
- Resp. Ex. 4 - Photograph of worker caulking vent pipe, October 18, 2018

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 - Hearing Order, July 9, 2019
- Fund Ex. 2 - Notice of Hearing, August 28, 2019
- Fund Ex. 3 - Letter from HIC to Respondent with attached Claim Form, October 3, 2018
- Fund Ex. 4 - Respondent's licensing history, undated



Testimony

The Claimant testified and presented the testimony of the following witnesses:
Dale Snoddy, who was accepted as an expert in roof inspections; and Constance Hardy, the Claimant's caregiver and friend.

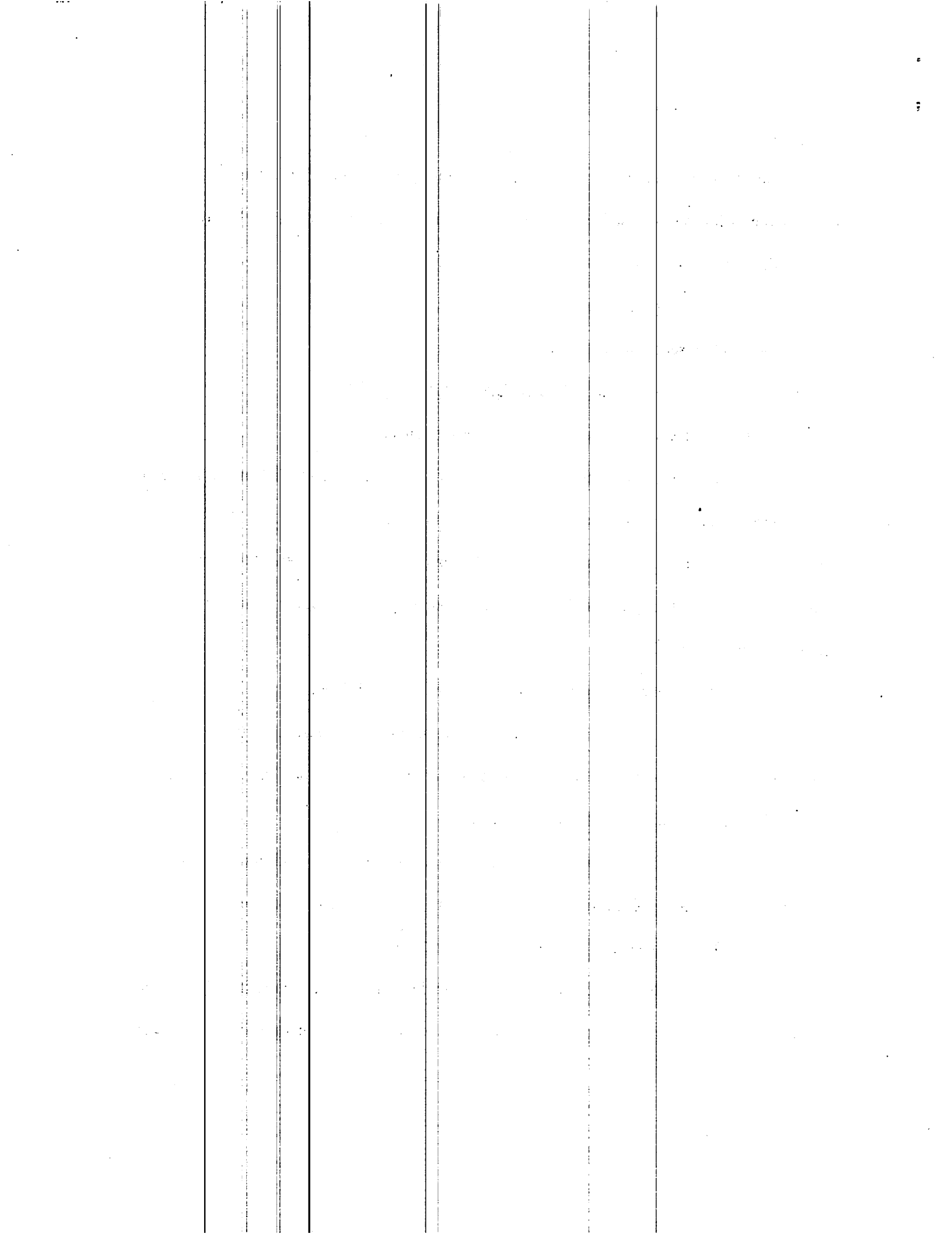
The Respondent testified on his own behalf.

The Fund presented no 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 33435.
2. On or about March 7, 2018, the Claimant and the Respondent entered into a contract to remove existing layers of roofing and install a new roof, including the main roof and front and rear porches (Contract).
3. The original agreed-upon Contract price was \$6,488.00.
4. The Claimant informed the Respondent that there were issues with the roof that had been installed one year prior. After installation, the roof leaked. The Claimant settled the matter with the prior roofer and did not file a claim with the MHIC.
5. The Claimant showed the Respondent an area on the second floor bathroom ceiling and an area on a ceiling on the first floor where he believed there were leaks.
6. The Respondent completed the roof on March 9, 2018.
7. In May 2018 the Claimant noticed bubbled paint on the second floor bathroom ceiling. The Claimant also noticed a leak under a first floor window near the kitchen and stairs.



8. The Claimant telephoned the Respondent on May 16, 2018 to inform him about the leaks. The Claimant left a message with the Respondent's son to have the Respondent contact him. The Respondent did not return the call. On May 18, 2018, the Claimant's second attempt to contact the Respondent by telephone was unsuccessful.

9. On May 22, 2018, the Claimant wrote a letter to the Respondent requesting that the Respondent address issues with the roof.

10. The Respondent did not respond to the Claimant's correspondence. In June 2018, the Claimant filed a complaint with the MHIC.

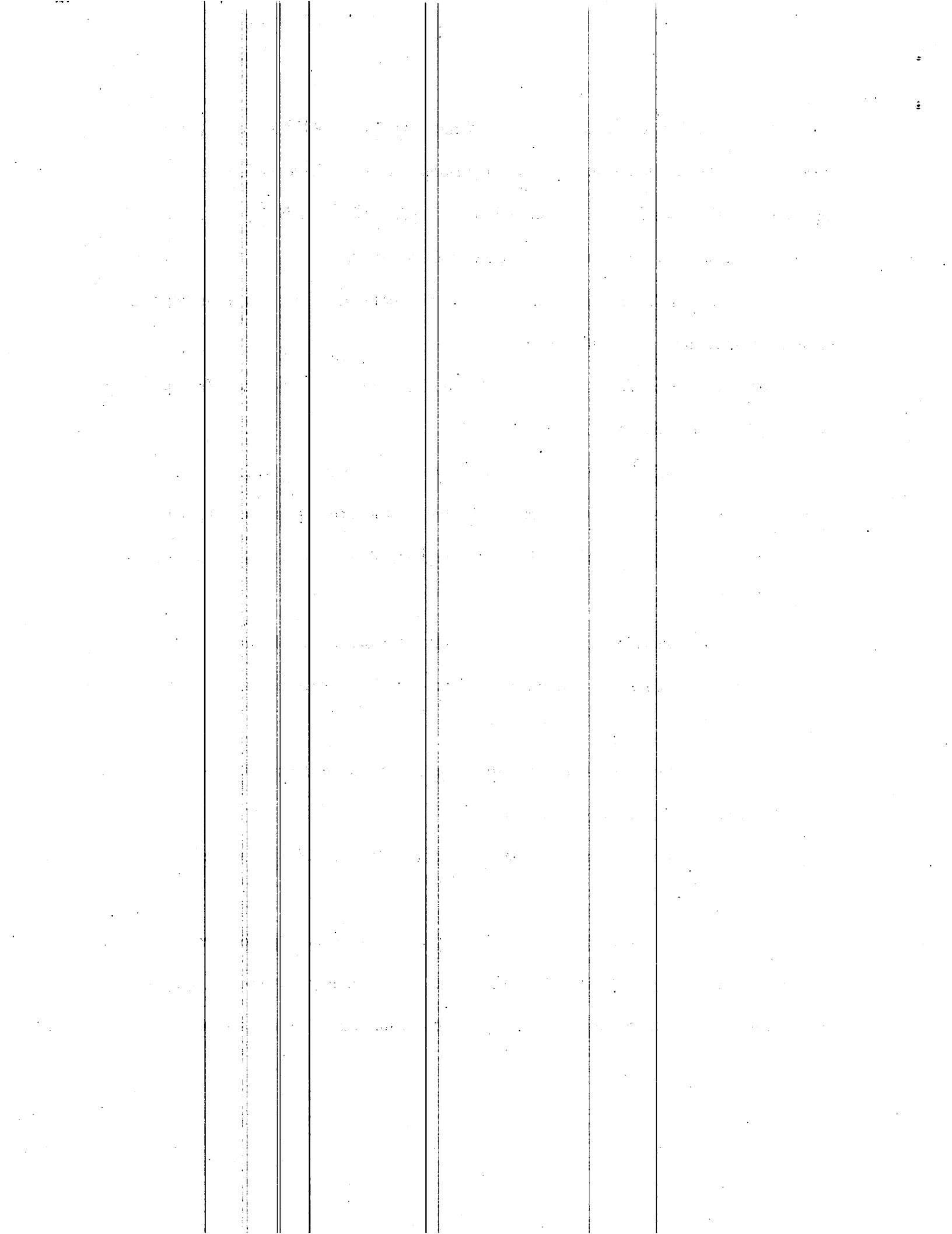
11. On August 29, 2018, the Respondent came to the Claimant's home and the Claimant showed the Respondent the same spot on the bathroom ceiling that he had pointed out before completion of the Contract. The bathroom ceiling was not wet and the Claimant did not mention any other issues.

12. On August 29, 2018, the Respondent did not observe any leaks but as a preventative measure he resealed and re-caulked the collar of the vent pipe located on the roof above the bathroom.

13. On August 30, 2018, the Respondent returned to the Claimant's home and installed an elbow on the bathroom vent pipe.

14. The vent pipes are not considered part of the roof and were not included in the Contract.

15. The Claimant contacted Dale Snoddy, a roof inspector, to perform an inspection of the roof. In September 2018, Mr. Snoddy inspected the roof, took photographs, and prepared a report. Mr. Snoddy did not inspect the interior of the Claimant's home.



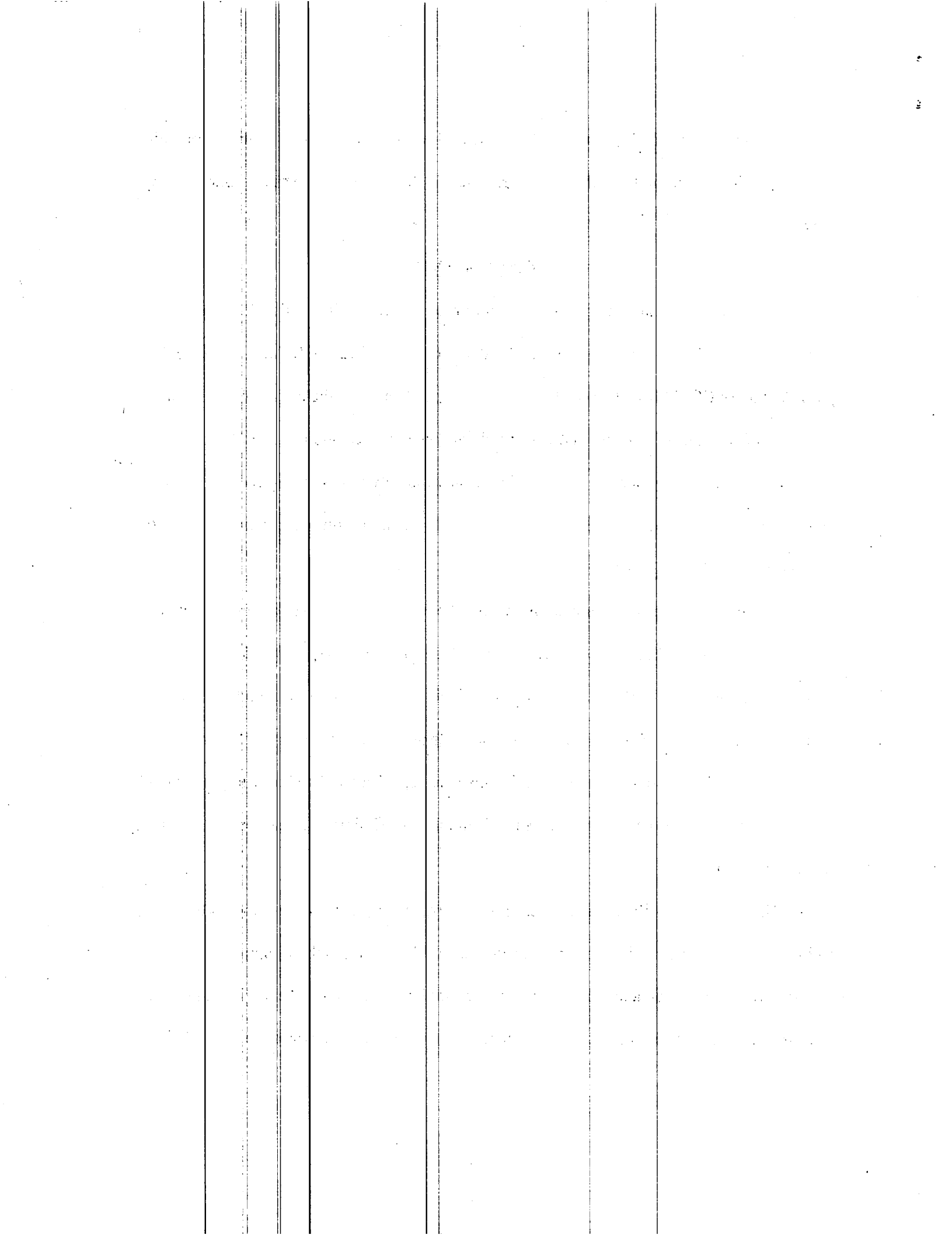
16. Mr. Snoddy concluded that the roof had been installed in an unworkmanlike manner, but he did not find that the work performed by the Respondent was the source of any leaks.

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) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). “[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.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” 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”). “[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 not proven eligibility for compensation.

The Claimant testified that one year prior to contracting with the Respondent he had the entire roof torn off and replaced by another contractor. According to the Claimant’s opening remarks, after the Respondent’s installation of the roof in March 2018, he experienced the same leaks in the bathroom ceiling that he had experienced before the work was done. The Claimant



testified that in August 2018, he noticed leaking in the bathroom ceiling as well as the wall near a window on the first floor. The Respondent was very slow in responding to the Claimant's concerns due to family issues, but eventually reported to the Claimant's home on August 29, 2018. The Claimant showed the Respondent the bubbling on the bathroom ceiling. After viewing the ceiling and the roof, the Respondent surmised that any leak was resulting from the plumbing vent pipe, which was galvanized metal. The vent pipes are not considered part of the roof and were not included in the Contract. As a preventative measure, the Respondent resealed and re-caulked around the vent pipe and installed an elbow on the plumbing vent pipe. The Respondent's thought was that the elbow would possibly prevent water infiltration. On August 30, 2018, the Claimant informed the Respondent that the roof was still leaking. The Respondent offered to have a third party come out to the roof to render an opinion. The Claimant declined and instead contacted roofing inspector Dale Snoddy.

On September 21, 2018, Mr. Snoddy performed a thorough inspection of the roof, took photographs and prepared a report. Mr. Snoddy testified as an expert in roofing inspections and explained his findings. According to Mr. Snoddy, he has inspected over 1,000 roofs in the past five years and the roof installed by the Respondent is the worst installation he has ever seen. He explained the Respondent's installation of the shingles is not in accordance with and is inferior to the manufacturer's warranty requirements. He further found that the flashing does not adequately divert water onto the roofing shingles. He further noted that the drip edge is incorrectly installed over ice and water shields at the eaves, allowing water to access decking under drip edge flashing and the drip edge is missing from rakes of the rear lower slope. Finally, he found that the pipe boot was inverted, which allows it to hold water.

Most importantly, Mr. Snoddy testified that during his inspection he only observed places in the installation that may cause future leaks and did not see any source of current leaks. He also confirmed that vent pipes are not part of the roof and from what he observed, the base of the pipes were heavily caulked and would not likely lead to leaks at the time he inspected the roof.

I found Mr. Snoddy, an expert in roofing inspection, to be a credible witness who provided detailed testimony regarding the deficiencies in the Respondent's workmanship, which were many. While the evidence offered by the Claimant established that the Respondent's work was unworkmanlike, there was no evidence that connected the Respondent's unworkmanlike roof installation to the leaks complained of by the Claimant. Unfortunately, the roof may eventually leak and cause damage, but at this time the Claimant has not sustained an actual loss and this is not the appropriate forum for the Claimant to obtain relief.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

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

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

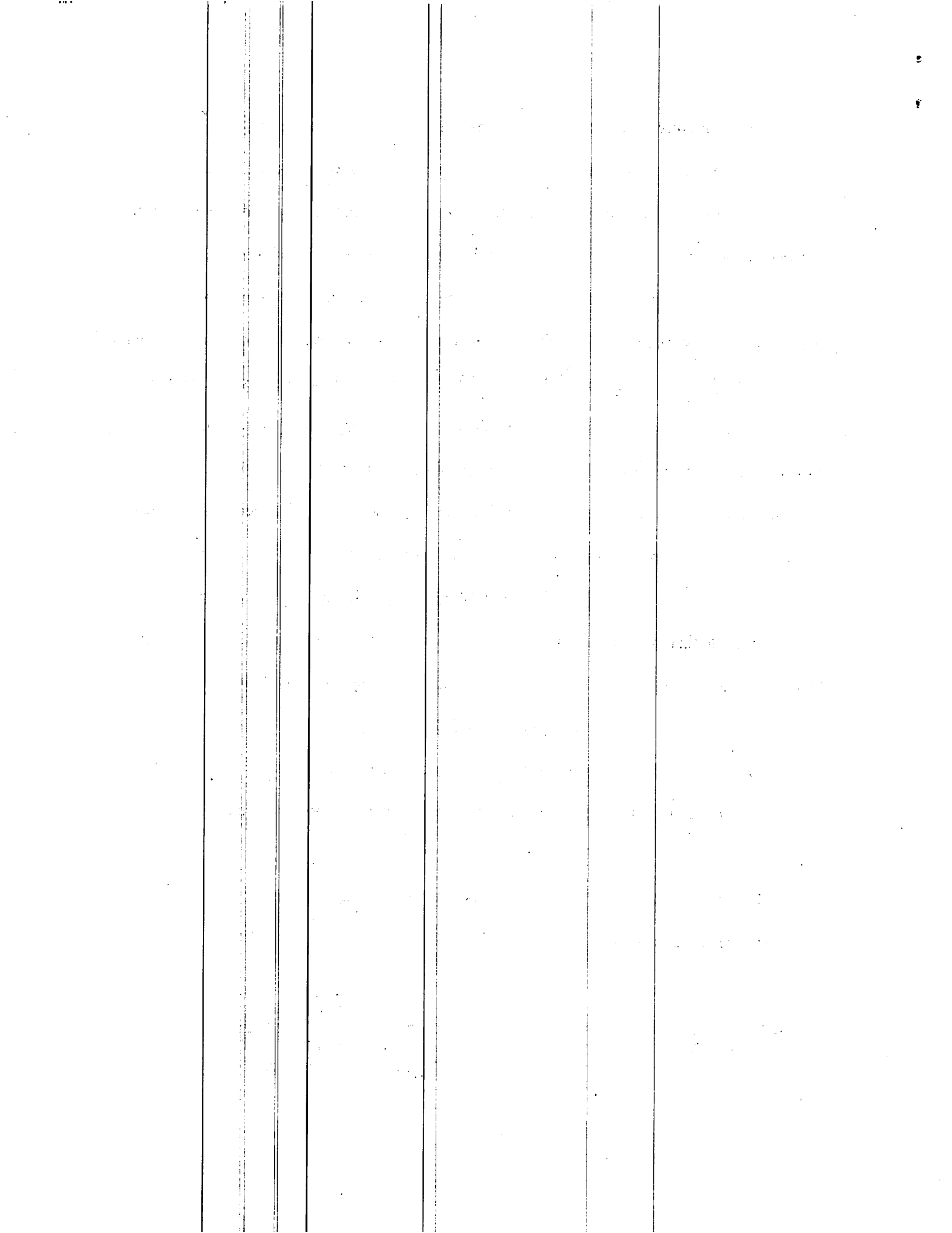
ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

December 9, 2019
Date Decision Issued

GAK/sw
#183199

CONFIDENTIAL

Geraldine A. Klauber
Administrative Law Judge



PROPOSED ORDER

WHEREFORE, this 29th day of January, 2020, 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.

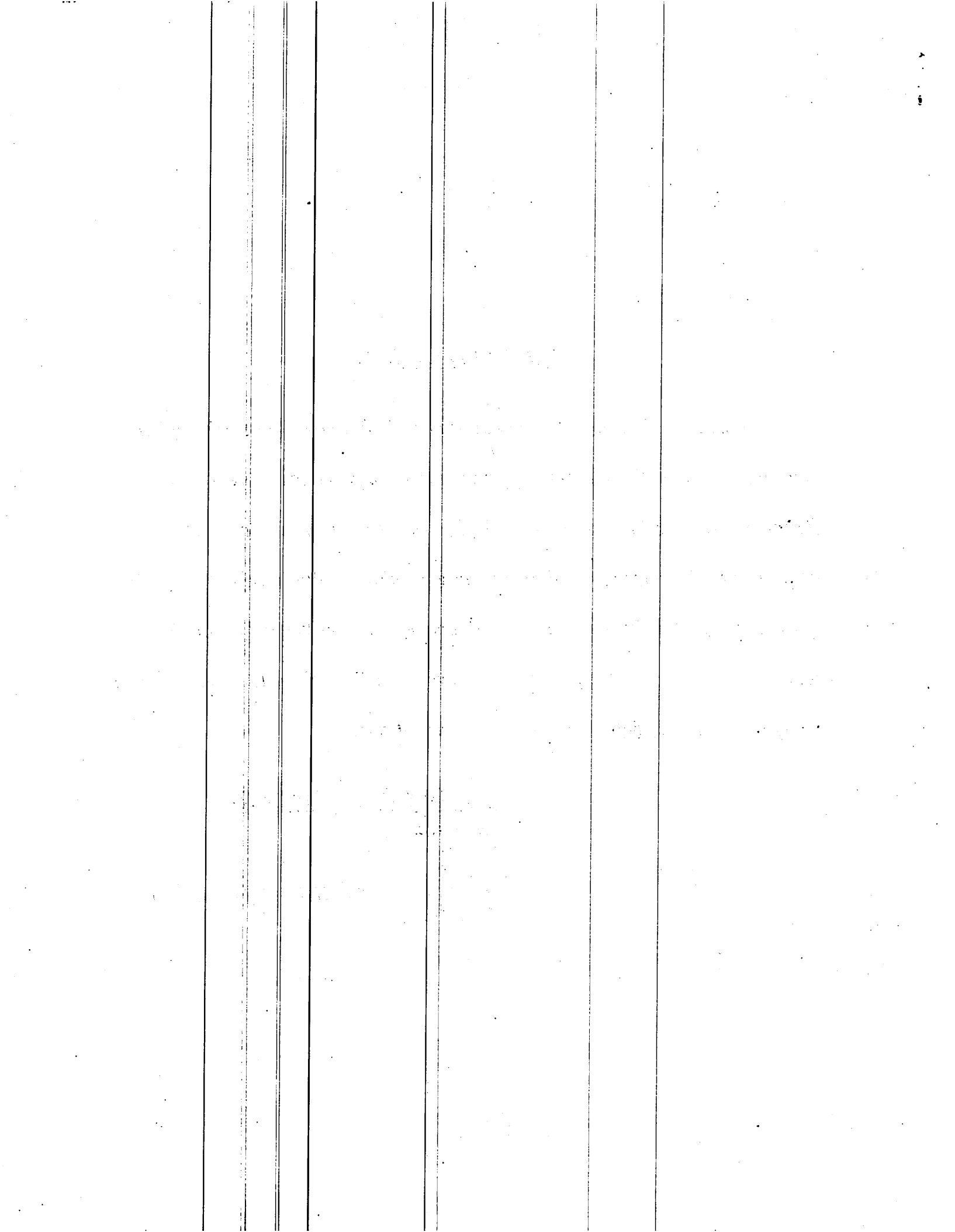
Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***



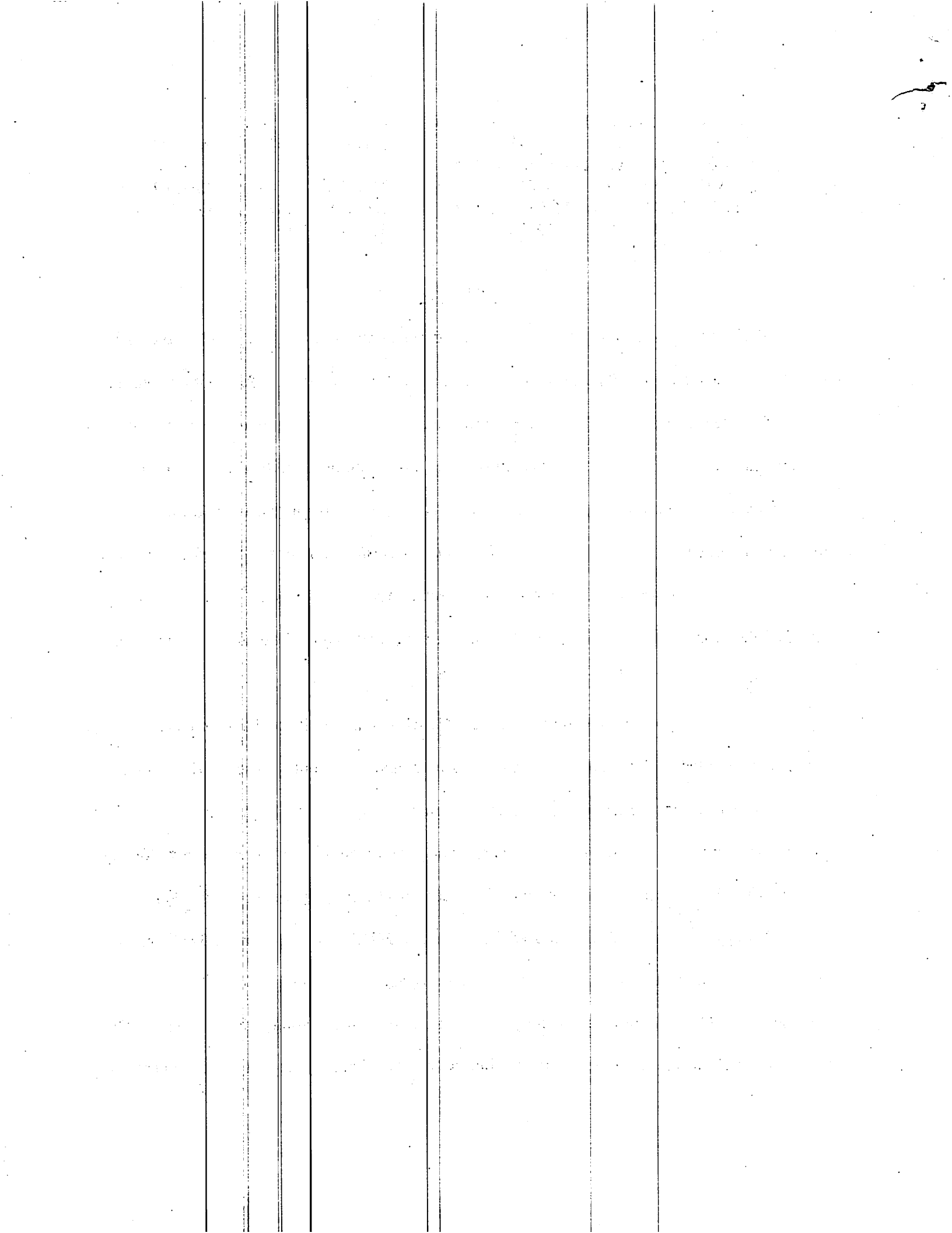
**IN THE MATTER OF THE CLAIM OF * MARYLAND HOME
MICHAEL GORDON * IMPROVEMENT COMMISSION
AGAINST THE MARYLAND HOME *
IMPROVEMENT GUARANTY FUND * MHIC CASE NO. 18(75)1397
FOR THE ACTS OR OMISSIONS OF * OAH CASE NO. LABOR-HIC-
NEIL SNYDER T/A EXTERIOR * 02-19-240323
EXPERTS, INC. ***

* * * * *

FINAL ORDER

This matter was originally heard before an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) on November 18, 2019. Following the evidentiary hearing, the ALJ issued a Proposed Decision on December 9, 2019 finding that Michael Gordon (“Claimant”) failed to prove that he suffered an actual loss resulting from the acts or omissions of Neil Snyder t/a Exterior Experts, Inc. (“Contractor”) and declining to grant an award from the from the Home Improvement Guaranty Fund. *ALJ Proposed Decision* p. 8. In a Proposed Order dated January 29, 2020, the Maryland Home Improvement Commission (“MHIC” or “Commission”) affirmed the Proposed Decision of the ALJ. The Claimant subsequently filed exceptions to the MHIC Proposed Order.

On March 4, 2021, a three-member panel (“Panel”) of the MHIC held a remote hearing on the exceptions filed in this matter. The Claimant participated without counsel. Eric Lickstein, Esq., represented the Contractor. 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; 3) Claimant’s exceptions, 4) Claimant’s letter in support of exceptions, and 5) Claimant’s request to present new evidence. The Claimant produced a copy of the transcript of the hearing before the ALJ. The Claimant sought to introduce new evidence but he failed to demonstrate that the documents he



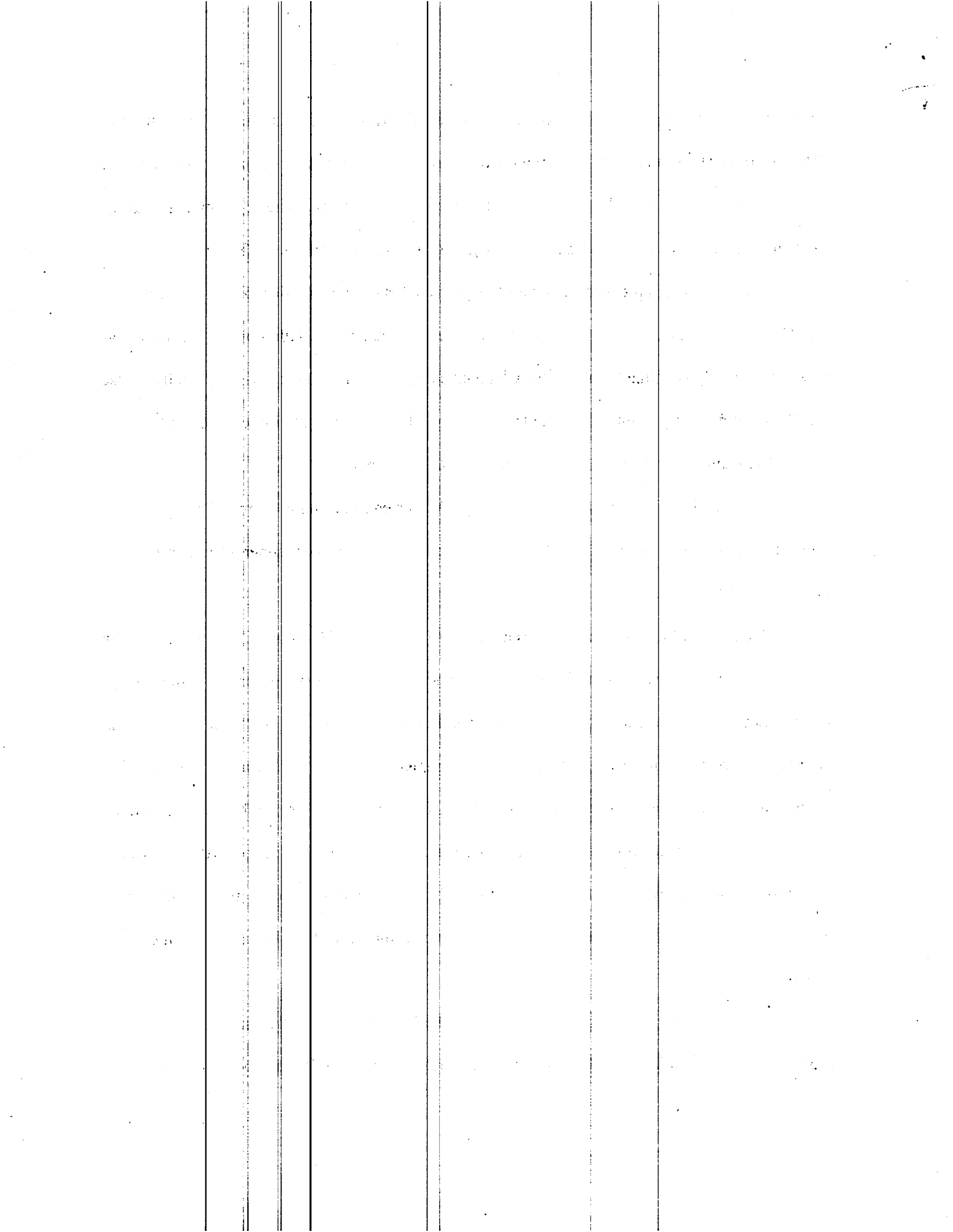
sought to present were not and could not have been discovered before the November 18, 2019 OAH hearing. Therefore, the Panel's review of the record was limited to the preliminary exhibits for the exceptions hearing, the OAH Proposed Decision, the exhibits offered as evidence at the OAH hearing, and the transcript of the OAH hearing. COMAR 09.01.03.09(G) - (I).

The claim in this proceeding relates to a contract between the parties to replace the roof on the Claimant's home. The ALJ found that the Contractor's installation of the roof was unworkmanlike but declined to award the Claimant compensation from the Guaranty Fund because the Claimant did not prove that the Contractor's unworkmanlike installation caused the leak that led the Claimant to file his claim. *ALJ's Proposed Decision* p. 8.

On exception, the Claimant argued that the ALJ erred in declining to award compensation after finding that the Contractor installed his roof in an unworkmanlike manner. The Commission agrees with the Claimant.

Under § 8-405 of the Business Regulation Article of the *Maryland Code*, a homeowner "may recover compensation from the [Guaranty] Fund for an actual loss that results from an act or omission by a licensed contractor." *Md. Code Ann.*, Bus. Reg. § 8-405(a). An "actual loss" means "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." *Id.* § 8-401. Therefore, if a homeowner proves that they received an unworkmanlike home improvement and the cost to restore, repair, replace, or complete the improvement, they may recover that cost. The *Code* does not require that a homeowner prove that the unworkmanlike improvement manifest itself by causing some other damage.

In this case, there is extensive evidence that the Contractor's installation of the Claimant's roof was unworkmanlike, including an inspection report, a diagram of the expert's observations,



and the inspector's expert witness testimony describing faults with the installation, and photographs depicting those faults. The Commission agrees with the ALJ's finding that the Contractor's performance was unworkmanlike.

Because the Contractor's performance was unworkmanlike, we must now determine the amount of the Claimant's actual loss.

The Claimant's expert, Dale Snoddy, who inspected the Claimant's roof, observed "widespread" problems with the Contractor's work and described the installation of the Claimant's roof as "probably the worst installation I've found yet" after having inspected more than 1,000 roofs over the last five years. (Tr. 83) He found inadequate staggering of the shingles, which allows water to go past the shingles and onto the underlayment, throughout the roof. He testified that the shingle manufacturer calls for a minimum stagger of 5 ½" and that inadequate staggering becomes critical when it is less than four inches. (Tr. 83-84.) He observed approximately five areas of the roof with staggering of only 2", and over twenty areas where the staggering was under 4". (Tr. 84.) He also observed five or six areas of the roof where shingles on the same row overlapped each other. (Tr. 92.) He stated that improper installation voids the warranty of shingles and prevents them from lasting for their rated life expectancy. (OAH Hearing Claimant's Exhibit 19.)

Mr. Snoddy also observed several incidences of missing flashing, use of the wrong type of flashing, and improperly installed flashing, including the following:

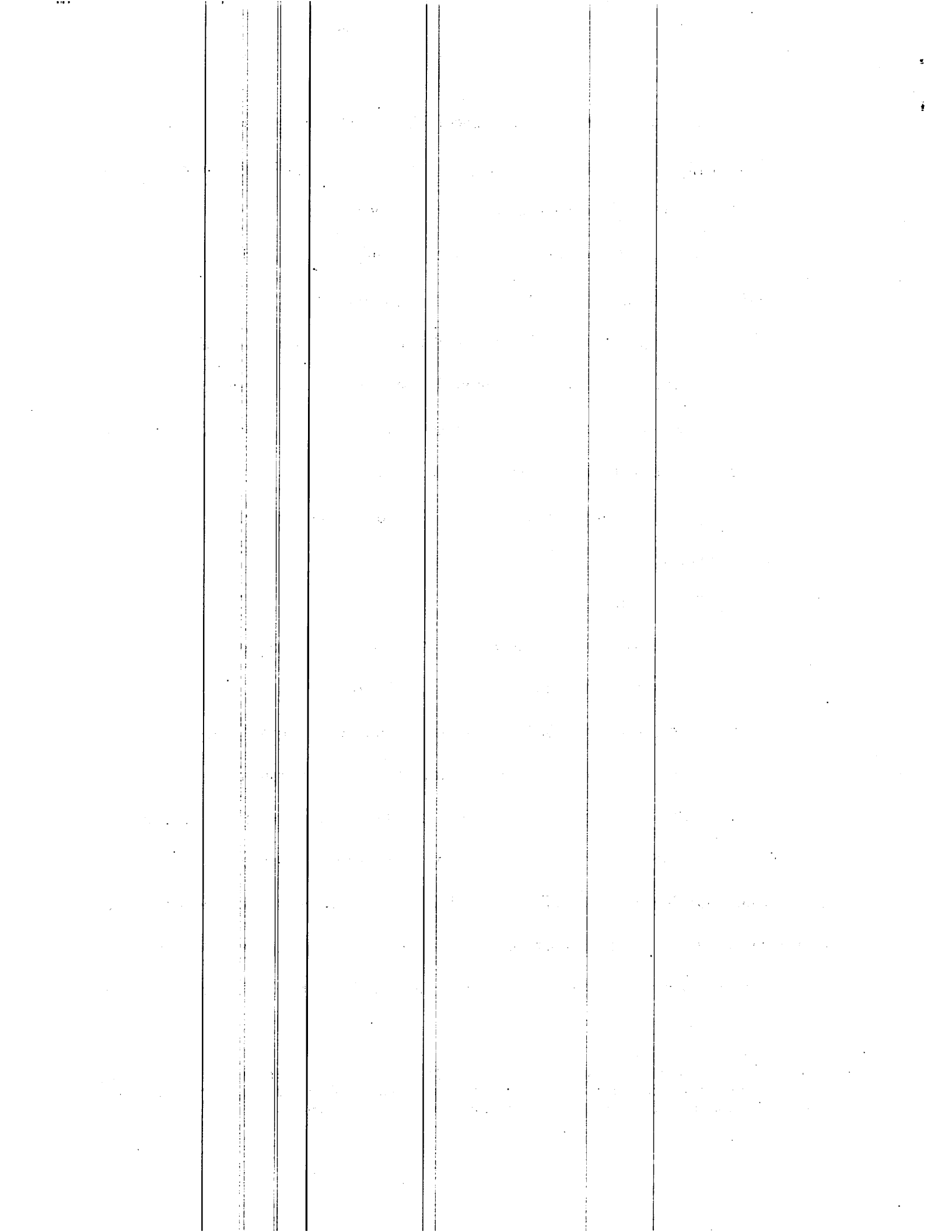
- The drip edge gutter apron flashing is improperly installed over the ice and water barrier at the eaves on the front lower hip slopes instead of under the barrier.
- Angle flashing was used where the front hip slope meets the siding on the house instead of the proper step flashing and the upper edge of the angle flashing is not caulked.

- Drip edges were not installed on both sides of the rake edge of the rear lower slope.
- The shingles overhang the left rake edge of the rear lower slope by 3", which will allow wind uplift the shingles and compromise the integrity of the roof.
- The flashing where the rear lower slope meets the siding on the house does not have crown flashing or caulking to prevent water from flowing into the house.
- The drip edge gutter apron flashing on the upper roof slopes is installed over the underlayment at the eaves instead of properly installed under the underlayment.
- A rubber boot around a vent pipe is installed upside down so that it holds water and will cause water to enter the house when the caulking fails.
- The shingles on the upper slope overhang the eaves too far and do not allow adequate water entry into the gutter.¹

(OAH Hearing Claimant's Exhibit 19.)

Mr. Snoddy testified that he did know whether the Contractor's work caused the water leak that damaged the Claimant's bathroom ceiling and gave rise to the claim in this proceeding (Tr. 121), but that "there are numerous faults in installation which will probably result in a leaking roof. It might not leak now, but the faults are grave and more numerous than any roof I've inspected." (Tr. 110.) He testified that repairing roofs results in holes in the underlayment that are likely to allow water to enter the home and that widespread repairs on a new roof installation greatly reduce the value of the roof. (Tr. 110-20.) Mr. Snoddy stated in his report that compliance with shingle manufacturers' installation instructions are necessary to comply with Maryland law and to meet manufacturers' warranty requirements and that the Contractor's installation of the

¹ Mr. Snoddy also stated that the Contractor improperly applied a single layer of felt underlayment on the 2/12 slope rear lower slope of the Claimant's roof. However, the Contractor presented evidence that he used adhesive ice and water guard instead of felt and correctly noted that such an installation is code compliant.



shingles on the Claimant's roof was "very different and very inferior to the manufacturer's installation instructions." (OAH Hearing Claimant's Exhibit 19.) Mr. Snoddy also stated that each row of shingles was strongly adhered the shingles in the row below, making repair "uncommonly difficult without damage to surrounding area shingles." (OAH Hearing Claimant's Exhibit 19.)

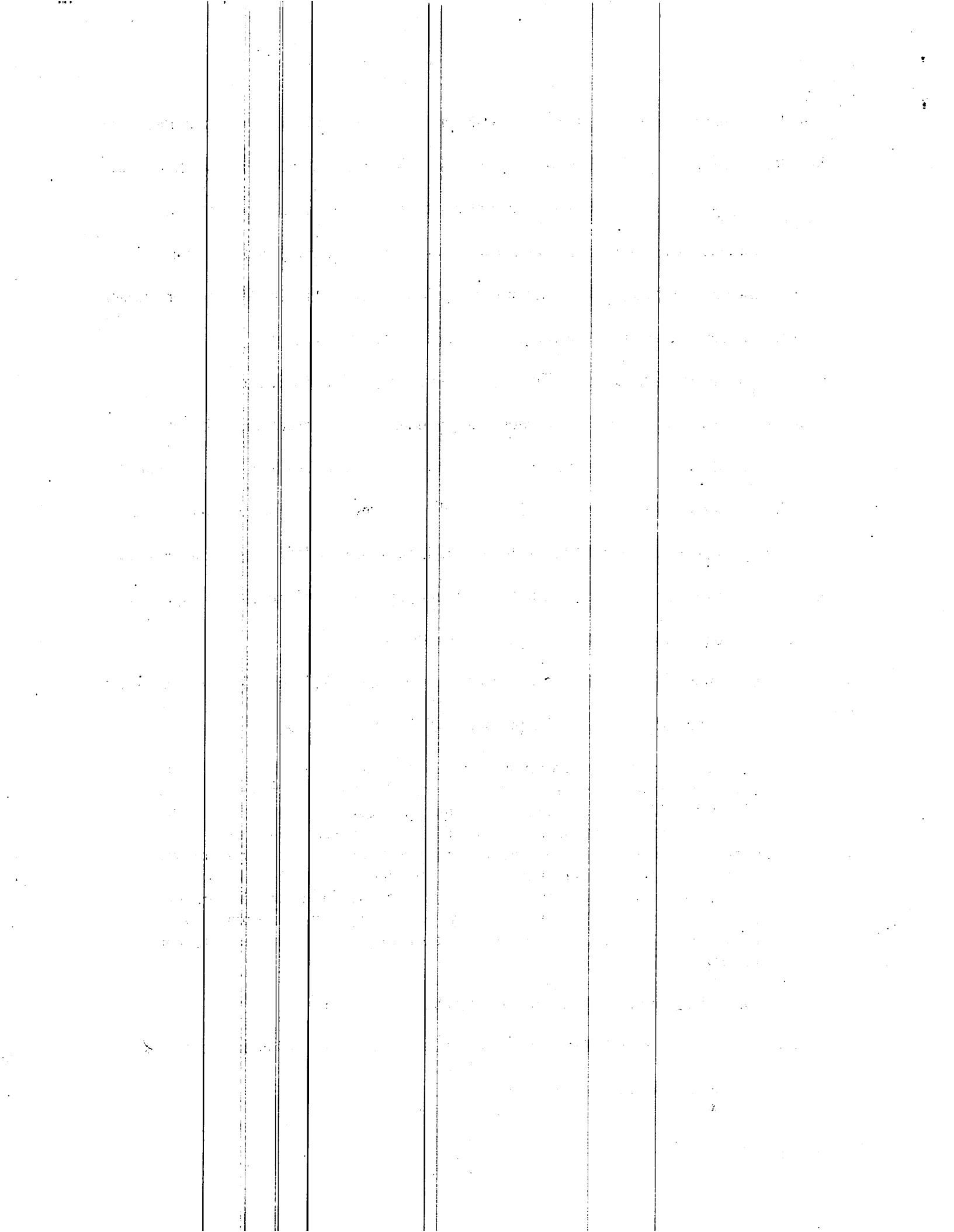
Based on the photographs, testimony, and written report of Mr. Snoddy, the Commission finds that the removal and replacement of the Claimant's roof is necessary to correct the contractor's unworkmanlike work. The Commission agrees with Mr. Snoddy's testimony that correcting the overlapping and inadequately staggered shingles will result in perforations in the underlayment that may allow water to enter the Claimant's home. The Commission also finds that repairing the Contractor's faulty installation of the drip edge gutter apron flashing, the addition of the missing drip edge on the rake edges that should have been installed under the underlayment and the removal of the improperly installed angle flashing and installation of the required step flashing will compromise the integrity of the Claimant's roof.

The Commission finds that the Claimant's actual loss should be calculated in accordance with COMAR 09.08.03.03(B)(3), which provides as follows:

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.

The formula can be expressed as the following equation:

$$\text{Amount paid to or on behalf of the contractor} + \text{Cost to correct and complete the work} \\ - \text{Original contract price} = \text{Actual Loss}$$



In this case, the Claimant paid the contractor \$6,936.00. (OAH Hearing Guaranty Fund's Exhibit 3.) Because the removal and replacement of the Claimant's roof is necessary to correct the Contractor's unworkmanlike work, the Commission finds, based on the original contract between the Claimant and the Contractor for the removal and replacement of the Claimant's roof, that the cost to correct the Contractor's unworkmanlike work is \$6,488.00.² (OAH Hearing Claimant's Exhibit 1.) The original contract amount, plus change orders, was \$6,936.00. (OAH Hearing Guaranty Fund's Exhibit 3.)

	\$6,936.00	Amount paid to or on behalf of the contractor
+	<u>\$6,488.00</u>	<u>Cost to complete the work</u>
	\$13,424.00	
-	<u>\$6,936.00</u>	<u>Original contract price</u>
	\$6,488.00	Actual Loss

Having considered the parties' arguments, the evidence contained in the record, and the ALJ's Recommended Decision, it is this 22nd day of March 2021, **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 \$6,488.00 from the Maryland Home Improvement Guaranty Fund;
- E. That the Contractor shall remain ineligible for a Maryland Home Improvement

² The amount stated on the contract differs from the payment amount presumably because, as is common with roofing contracts, the contract provided for additional charges if the Contractor discovered sheathing that required replacement after removing the existing shingles and underlayment. (OAH Hearing Claimant's Exhibit 1.) There is no evidence that the sheathing installed by the Contractor requires replacement.

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.

Bruce Quackenbush
Chairperson –Panel
Maryland Home Improvement
Commission

