

**OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION**

MARYLAND INSURANCE ADMINISTRATION <i>EX REL</i> K.J. ¹ ,	*	REVIEW OF A RECOMMENDED
Complainant,	*	DECISION ISSUED BY
v.	*	DEBORAH S. RICHARDSON
STATE FARM FIRE AND CASUALTY COMPANY	*	AN ADMINISTRATIVE LAW JUDGE
Licensee.	*	OF THE MARYLAND OFFICE OF
	*	ADMINISTRATIVE HEARINGS
	*	OAH No.: MIA-CC-33-22-18313
	*	OAH No.: MIA-CC-33-22-18016
	*	MIA No.: MIA-2022-06-034

* * * * *

FINAL ORDER

Pursuant to Md. Code Ann., Ins. § 2-210(d)² and Code of Maryland Regulations (COMAR) 31.02.01.10-2D, the undersigned Associate Commissioner for the Maryland Insurance Administration (MIA) hereby issues this summary affirmance of the Proposed Decision below.

On October 12, 2021, the MIA received a complaint from K.J. (hereinafter “Complainant”) alleging that State Farm Fire and Casualty Company (hereinafter “Licensee”) erred in its handling of her insurance claim resulting from water damage. (“Complaint”). The MIA investigated the Complaint, and on May 31, 2022, it issued a determination letter concluding that the Licensee did not violate Maryland’s insurance laws in handling the claim under K.J.’s policy; this letter specifically referenced Sections 4-113(b)(5) and Sections 27-303(1), (2), and (6). The Complainant

¹ The MIA uses initials to protect the identity of the Parties.

² Unless otherwise noted, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

requested a hearing, which was granted on June 28, 2022. This matter was then transmitted to the Office of Administrative Hearings (“OAH”) to conduct a contested case hearing and to issue a Proposed Decision pursuant to COMAR 31.02.01.04-1A. In its referral to the OAH, the MIA noted that specific attention at the hearing will be directed to the Annotated Code of Maryland, Insurance Article, Sections 4-113 and 27-303.

On December 9, 2022, a hearing was held before Administrative Law Judge (“ALJ”) Richardson. On January 9, 2023, ALJ Richardson issued a Proposed Decision setting forth factual and legal findings with respect to Sections 4-113(b)(5) and 27-303(2), but did not make Conclusions of Law with respect to Sections 27-303(1) or 27-303(6). On the same date, OAH mailed the Proposed Decision to the Parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions which advised the Parties that, pursuant to COMAR 31.02.01.10-1, they had the right to file written exceptions with the Undersigned within twenty (20) days from receipt of the Proposed Decision. Neither Party filed exceptions in this case.

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Richardson. Based on this review, I am persuaded that ALJ Richardson’s Conclusion of Law that Licensee did not violate Section 4-113(b)(5) and Section 27-303(2) is correct, and, pursuant to COMAR 31.02.01.10-2D, hereby affirm this finding.

I further find, pursuant to COMAR 31.02.01.10-2(C)(2), that ALJ Richardson’s Findings of Fact clearly support a finding that Licensee did not violate Section 27-303(1). ALJ Richardson found that Complainant’s Policy states that Licensee will not pay for damage as a result of fungus, including:

- “(1) any loss of use or delay in rebuilding, repairing, or replacing covered property, including any associated cost or expense due to interference at the **residence premises** or location of the rebuilding, repair, or replacement, by **fungus**;
- (2) any remediation of **fungus**, including the cost to:
- (a) remove the **fungus** from covered property or to repair, restore, or replace that property; or
 - (b) tear out and replace any part of the building structure or other property as needed to gain access to the **fungus**; or
- (3) the cost of any testing or monitoring of air or property to confirm the type, absence, presence, or level of **fungus**, whether performed prior to, during or after removal, repair, restoration, or replacement of covered property.”

(MIA Ex. 11.)

ALJ Richardson also found that Licensee explained that fungus was not covered in Complainant’s Policy in the denial letter that was sent to Complainant of December 3, 2021. I, therefore, find that Complainant has not shown that Licensee misrepresented pertinent facts or policy provisions that relate to the claims in violation of Section 27-303(1).

I further find that Complainant has not shown that Licensee violated Section 27-303(6). Based on ALJ Richardson’s Findings of Fact and the evidence incorporated by ALJ Richardson into the record, including the MIA file, Licensee sent Complainant a claim denial letter on December 3, 2021. In this denial letter, Licensee specifically stated that it was denying the claim because its investigation found that the home was not uninhabitable from the loss and that Complainant’s policy specifically excludes mold. Additionally, Licensee cited to all relevant sections of Complainant’s as support for its denial of the claim. As Licensee clearly identified the basis for the denial, supported by the relevant provisions of the policy, I find that Complainant has not shown that Licensee failed to provide a reasonable explanation for the denial of the claim in violation of Section 27-303(6).

On page 14 of the Proposed Decision ALJ Richardson proposes that “the Licensee not be found in violation of section 27-303(2) or section 4-115(b)(5) of the Insurance Article and that the charges made by the Complainant be DENIED AND DISMISSED.” I find it necessary to clarify the disposition of the case. Rather than dismissing the Complaint, I conclude that the determination issued by the Maryland Insurance Administration shall be hereby AFFIRMED based on the Findings of Fact and Discussion provided by ALJ Richardson.

THEREFORE, it is hereby

ORDERED that the Proposed Decision of ALJ Orechwa is affirmed, and

ORDERED that, as a matter of law, it be found that Licensee did not violate Sections 4-113, 27-303(1) or 27-303(6);

ORDERED that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 18th day of May, 2023.

KATHLEEN A. BIRRANE
Commissioner

Tammy R.J. Longan
Tammy R.J. Longan
Acting Deputy Commissioner

MARYLAND INSURANCE

ADMINISTRATION

EX REL.

K.J.,

COMPLAINANT

v.

STATE FARM FIRE AND

CASUALTY COMPANY,

LICENSEE

* BEFORE DEBORAH S. RICHARDSON,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

*

*

* OAH No.: MIA-CC-33-22-18016¹

* OAH No.: MIA-CC-33-22-18313

* MIA No.: 2022-06-034

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On October 12, 2021, the Maryland Insurance Administration (MIA) received a complaint from the Complainant alleging unfair claim settlement practices by State Farm Fire and Casualty Company (Licensee). Specifically, the Complainant alleges that the Licensee mishandled her insurance claim resulting from water damage on July 17, 2021.

After an investigation, the MIA found that the Licensee did not violate section 27-303 of the Insurance Article of the Maryland Code and notified the Complainant of its finding by a letter dated May 31, 2022. On June 26, 2022, the Complainant requested a hearing. On

¹ The MIA mistakenly transmitted this case twice to the OAH. When the MIA transmitted number 2022-06-034, the OAH generated case number MIA-CC-33-22-18313. The OAH case number MIA-CC-33-22-18016 was generated when the MIA mistakenly transmitted case MIA-2022-06-027, which relates to another Complainant.

August 1, 2022, the MIA transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a contested case hearing. In its transmittal, the MIA delegated to the OAH authority to issue a proposed decision.²

On December 9, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022); COMAR 31.15.07. The Complainant represented herself. Laura Jacobs, Esquire, represented the Licensee.

The contested case provisions of the Administrative Procedure Act, the MIA's hearing regulations, and the OAH's Rules of Procedure govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 31.02.01; COMAR 28.02.01.

ISSUE

Did the Licensee refuse or delay payment on a claim without just cause, or otherwise engage in any unfair claim settlement practice under the Insurance Article of the Maryland Code?

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire MIA file, consisting of eighteen exhibits, into the record as follows:

1. Complaint, October 12, 2021
2. Letter from the MIA to the Licensee, October 21, 2021
3. Letter from the Licensee to the MIA, November 4, 2021, with attachments
4. Letter from the MIA to the Licensee, December 2, 2021
5. Letter from the Licensee to the MIA, December 9, 2021, with attachments
6. Letter from the MIA to the Licensee, January 28, 2022

² The Insurance Commissioner may delegate to the OAH the authority to issue: (a) proposed or final findings of fact; (b) proposed or final conclusions of law; (c) proposed or final findings of fact and conclusions of law; or (d) a proposed or final order. Code of Maryland Regulations (COMAR) 31.02.01.04-1A.

7. Letter from the MIA to the Licensee, February 22, 2022
8. Letter from the Licensee to the MIA, February 25, 2022, with attachments
9. Letter from the MIA to the Licensee, March 3, 2022
10. Letter from the MIA to the Licensee, March 8, 2022
11. Letter from the Licensee to the MIA, March 9, 2022, with attachments
12. Letter from the MIA to the Licensee, May 13, 2022
13. Letter from the Licensee to the MIA, May 17, 2022, with attachment
14. Letter from the Licensee to the MIA, May 29, 2022, with attachments
15. Letter from the MIA to the Complainant, May 31, 2022, with attachments
16. Complaint, June 26, 2022
17. Letter from the MIA to the Complainant and the Licensee, June 28, 2022
18. Letter from Ms. Jacobs to the MIA, July 27, 2022

I admitted the following exhibits offered by the Complainant:

- Compl. Ex. 1 -Letter from BGE to the Complainant, October 11, 2021
- Compl. Ex. 2 -Photographs, September 5, 2021
- Compl. Ex. 3 -Hilton confirmation, July 17, 2021
- Compl. Ex. 4 -Photograph, undated
- Compl. Ex. 5 -Photographs, August 1, 2020
- Compl. Ex. 6 -Photographs, December 17, 2021

I admitted the following exhibits offered by the Licensee:

- Lic. Ex. 1 - Photographs, March 1, 2016
- Lic. Ex. 2 - Authorization to Repair, July 22, 2021
- Lic. Ex. 3 - Certification of Completion and Release with Power of Attorney, July 25, 2021
- Lic. Ex. 4 - Authorization to Pay – Mitigation Only, July 25, 2021

- Lic. Ex. 5 - ServiceMaster of Baltimore Invoice, July 28, 2021
- Lic. Ex. 6 - Certified Policy Record, March 7, 2022, attaching Complainant's Policy in effect July 17, 2021
- Lic. Ex. 7 - Fire Claim File Print File History Information, printed July 1, 2022
- Lic. Ex. 8 - NOT ADMITTED
- Lic. Ex. 9 - Letter from the Licensee to the Complainant, July 21, 2021
- Lic. Ex. 10 - Photographs, undated
- Lic. Ex. 11 - Structural Damage Claim Policy, August 11, 2021
- Lic. Ex. 12 - Letter from the Licensee to the Complainant, August 11, 2021
- Lic. Ex. 13 - Fire File History – File Notes, printed March 8, 2022
- Lic. Ex. 14 - Fire File History – File Notes, printed March 8, 2022
- Lic. Ex. 15 - Photographs, undated
- Lic. Ex. 16 - HVAC Investigators Damage Assessment, October 13, 2021
- Lic. Ex. 17 - StrikeCheck Onsite Damage Assessment Report, October 18, 2021
- Lic. Ex. 18 - Letter from the Licensee to the Complainant, July 17, 2021
- Lic. Ex. 19 - Letter from the Licensee to the Complainant, October 30, 2021
- Lic. Ex. 20 - Structural Damage Claim Policy, October 15, 2021
- Lic. Ex. 21 - HVACi Assessment Report, December 9, 2021
- Lic. Ex. 22 - Claim payment, December 18, 2021

Testimony

The Complainant testified in her own behalf and presented testimony from Mark Wright, her contractor.

The Licensee presented testimony from John Jordan, a claims specialist for the Licensee.

FINDINGS OF FACT

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

1. The Complainant is the owner of a single-family home in Baltimore, Maryland that at all times relevant to this matter was covered by a homeowner's insurance policy provided by the Licensee.

2. The Complainant's policy excludes coverage for fungus.

3. On February 24, 2016, the Complainant filed a claim with the Licensee for water damage to her basement due to a failed sump pump. The Licensee issued payment for damage to the Complainant's basement less deductible in the amount of \$1,355.81 but did not issue replacement cost benefits in the amount of \$629.79 because the Complainant never submitted documentation that the repairs were completed. The Complainant did not complete water mitigation for that loss by the conclusion of the claim.

4. In September 2018, the Complainant filed a claim with the Licensee with respect to foundational water seepage causing fungus in her basement. The Licensee denied this claim as the loss was not covered by the policy.

5. On July 17, 2021, the Complainant filed a claim with the Licensee for damage to the flooring, walls, and personal items in her basement, due to the sump pump not working caused by a power outage during a rainstorm.

6. The Licensee referred the Complainant to Service Master to perform water mitigation.

7. On July 22, 2021, the Complainant hired Service Master to mitigate the water in the Complainant's home. Service Master completed the work on July 25, 2021.

8. On July 25, 2021, the Complainant signed a Certification of Completion and Release with Power of Attorney indicating she was satisfied with Service Master's work and that the home had been properly mitigated.

9. The Licensee paid Service Master \$3,286.27 for the water mitigation to the Complainant's home.

10. Sometime after July 25, 2021, the Complainant contacted Service Master to complain that it had disconnected her carbon monoxide detector during its mitigation. Service Master returned to the Complainant's home and reconnected the carbon monoxide detector.

11. The work from Service Master came with a five-year warranty. The Complainant never made a warranty claim against Service Master for improper water mitigation and has never contacted Service Master to indicate that its work was unsatisfactory.

12. On August 5, 2021, the Licensee's claim specialist inspected the Complainant's home and prepared an estimate for covered damage from the sump pump overflow into the laundry room, office, hallway, closet, family room, and bathroom of the basement.

13. The Licensee issued payment to the Complainant in the amount of \$3,121.53 (\$4,158.53 less \$1,037.00 deductible) for damage to the property.

14. On September 3, 2021, the Complainant and her contractor, Mark Wright, reported to the Licensee that the mitigation team did not do a proper clean up and asbestos tile was not removed. The Complainant requested a hotel stating she is suffering from migraine headaches and could not breath and requested an additional inspection. The Licensee asked the Complainant to provide documentation that the mitigation work was not done properly and explained that it was not paying additional living expenses because the house was not uninhabitable for conditions in the basement.

15. On September 13, 2021, the Complainant informed the Licensee that she wanted Mr. Wright to re-mitigate the basement, which still had moisture. The Complainant stated that she was experiencing migraines, and wanted all the tiles in the basement replaced, and that some had asbestos.

16. On September 24, 2021, the Licensee's claim specialist completed an additional inspection of the Complainant's home. The claim specialist found additional water damage to the stairs. The claim specialist found that the damage reported to the interior doors and tiles was from prior claims and that there was no damage in the laundry room. The Complainant reported damage to her leather couches and the claim specialist requested that photos and an inventory form to be submitted for review.

17. The Licensee arranged for the Complainant's HVAC system to be inspected by an independent inspector.

18. On October 13, 2021, HVACi, the independent inspector, issued a report which indicated there was no damage to the Complainant's HVAC system.

19. On October 15, 2021, the Licensee issued a supplemental payment for repairs to the stairs and walls in the amount of \$441.00 with recoverable depreciation of \$182.84 withheld.

20. On or about October 18, 2021, StrikeCheck conducted an independent inspection of the Complainant's electronic items. The Complainant would not allow the technician to plug in the washer, four televisions, electric heater, monitor or printer that the Complainant had claimed were damaged. The technician determined there was power surge damage to a chest freezer and electric dryer.

21. On October 30, 2021, the Licensee issued a check for \$1,029.92 for the actual cash value for the chest freezer and electric dryer with recoverable depreciation of \$78.80 withheld.

22. On November 2, 2021, the Licensee called the Complainant and left a voice message requesting a call back to discuss her concerns.

23. On November 3, 2021, the Complainant called the Licensee and asked them to contact her claims adjuster, Mark Wright, and not to contact her. The Licensee sent her an email requesting she reconsider having a discussion to discuss her health concerns and damage relating to this claim.

24. On November 10, 2021, Mr. Wright spoke to the Licensee and he expressed concern about asbestos found under the flooring and damage he says was found to the water heater and heating system. He requested additional living expenses because of the Complainant's health concerns. Mr. Wright stated the mitigation was not done properly and requested additional payment to mitigate the property again. The Licensee informed Mr. Wright to send any documentation to determine if any additional amount would be owed to the Complainant.

25. On December 3, 2021, the Licensee sent the Complainant a letter denying payment for mold as it was excluded by the policy. The Licensee also denied a claim for additional living expenses as it opined the property was not uninhabitable. The Licensee also refused payment for flooring in the basement as the Complainant never submitted documentation that the floor had been replaced after the February 2016 loss or that the mold had been removed after the September 2018 foundational leaking.

26. On December 3, 2021, Mr. Wright expressed his disagreement with the HVACi results and requested an additional inspection.

27. On December 9, 2021, the Licensee provided an additional inspection which revealed water contacted the furnace and ductwork. Water submerged all critical components on the furnace, including the control board, blower compartment, and burners, rendering it unsafe to operate. No other components showed any visual signs of water related damage.

28. A second inspection of the water heater revealed no damages and the onsite investigation indicated the unit was operational.

29. On December 18, 2021, the Licensee issued payment to the Complainant in the amount of \$3,076.93 to repair and restore the components of the HVAC system to include replacement of the furnace within the system.

DISCUSSION

When the MIA referred this case to the OAH, it directed the Administrative Law Judge conducting the hearing to pay specific attention to sections 4-113 and 27-303 of the Insurance Article. Section 4-113(b)(5) provides that the Insurance Commissioner may suspend, refuse to renew, or revoke an insurer's certificate of authority if the insurer "refuses or delays payment of amounts due claimants without just cause." Ins. § 4-113(b)(5) (Supp. 2022).³ Section 27-303 lists ten unfair claim settlement practices. Section 27-303(2), in particular, prohibits an insurer or nonprofit health service plan from refusing to pay a claim for an "arbitrary or capricious reason."

The Insurance Commissioner may impose a penalty not exceeding \$2,500.00 for each violation of section 27-303 and may require an insurer to 1) make restitution, subject to the limits of any applicable insurance policy, to each claimant who has suffered actual economic damage because of the violation or 2) provide a claimant a payment that has been determined to be denied in violation of the unfair claim settlement practices section of the Insurance Article. *Id.* § 27-305(a)(1), (c)(1), (2) (Supp. 2022).

Neither the statute nor any regulation promulgated by the MIA defines the "arbitrary or capricious" standard. In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the

³ Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2017 Replacement Volume of the Maryland Annotated Code.

Court of Special Appeals adopted the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard in an earlier MIA case:

[A] claimant must prove that the insurer acted based on 'arbitrary and capricious reasons.' The word 'arbitrary' means a denial subject to individual judgment or discretion, and made without adequate determination of principle. The word 'capricious' is used to describe a refusal to pay a claim based on an unpredictable whim. Thus, under [Insurance Article section] 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on 'all available information.'

142 Md. App. 628, 671 (2002) (citations omitted). As used in section 27-303 of the Insurance Article, "arbitrary or capricious" essentially means without reason or just cause.

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or 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 Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the Complainant, as the party asserting the affirmative on the issue of a refusal or delay in payment and unfair claim settlement practice, has the burden of proving by the preponderance of the evidence that the Licensee acted arbitrarily and capriciously in denying the claim. COMAR 28.02.01.21K(1), (2)(a). For the reasons explained below, I find the Complainant has not met her burden.

At the hearing, the Complainant argued that the Licensee has not fully compensated her for her damaged furnace and her personal belongings. In her written complaint and in communications to the Licensee, the Complainant argued that the mitigation of her home was not performed properly, that the Licensee improperly refused to reimburse her for additional living expenses and to replace the floor tiles in her basement, and to remediate for mold.

As to the furnace, the Complainant argued successfully to the Licensee that there was damage to her HVAC unit even after the Licensee initially found there was no such damage. Accordingly, the Licensee issued payment to the Complainant in the amount of \$3,076.93 to repair and restore the components of the HVAC system to include replacement of the furnace within the system. At the hearing, the Complainant argued that she is using space heaters in her home. When asked why when she had been issued payment for the furnace, the Complainant stated that her furnace is attached to her air conditioning unit, and no one wants to replace the furnace without replacing the air conditioning. However, that was the first time that claim was made to the Licensee. The Complainant has obtained no estimates to replace the furnace and air conditioning unit and admitted she had done nothing to advance that issue. I cannot find the Licensee has acted arbitrarily and capriciously in denying a claim that was never presented to it.

As to her personal belongings, at the hearing the Complainant mentioned that her Christmas decorations were saturated with water. Again, there is nothing in the record to indicate the Complainant ever brought this to the attention of the Licensee. There is nothing with respect to the Christmas decorations or any other personal belongings that was requested and denied by the Licensee. The Complainant did not present a spreadsheet or any kind of itemized list of the personal belongings she claims were damaged by the water in her basement. Again, I cannot find the Licensee has acted arbitrarily and capriciously in denying a claim that was never presented to it.

The only other personal belongings mentioned by the Complainant were her leather couches. However, the record indicates that on September 22, 2021, the Complainant argued the leather couches were damaged by Service Master when it placed mitigation items on the couches. That is not something that would have been included in this loss. The Complainant should have pursued that alleged damage with Service Master. The Complainant also mentioned

there was mold on the bottom of the couches. The Complainant's policy specifically excluded mold and the Licensee was not wrong to deny any such claim.

The Complainant also complained to the Licensee that the mitigation of her basement was not completed properly and that her basement is still damp. The Licensee argued persuasively that the Complainant contracted with Service Master, which is a separate entity from the Licensee. The Complainant argued that she did not understand that she was hiring Service Master and that she was required to file a warranty claim directly with it if she was dissatisfied with their work. She said that she thought they were hired by the Licensee, she did not read the documents that she signed, and believed the Licensee was advocating on her behalf and acting in her best interests.

The Complainant's arguments are not convincing, given the documents in evidence. On July 22, 2021, the Complainant signed an Authorization to Repair with Service Master. (Lic. Ex. 2). The document specifically states:

I have agreed to use the State Farm Premier Service Program. I understand the use of this program is voluntary and I have been offered the opportunity to choose any independent contractor and/or independent service provider(s) participating in the State Farm Premier Service Program. I also understand they are independent contractor and/or service providers hired by me and not by the State Farm Insurance Companies. I understand State Farm is paying for the repairs to the property damage covered under my policy, subject to the deductible and the policy's terms and conditions, and that State Farm is not exercising its option under the insurance contract to repair or replace any part of the property damaged.

(Lic. Ex. 2). On July 25, 2021, the Complainant signed a Certification of Completion and Release indicating that the work done on her property was satisfactory. (Lic. Ex. 3). I cannot find that the Licensee acted arbitrarily or capriciously with respect to work done by Service Master, an independent contractor hired by the Complainant, when the Complainant indicated that work was satisfactory and never pursued a warranty claim.

With respect to the additional living expenses, the Licensee argued persuasively that the home was never uninhabitable. There was water in the basement for a brief period of time, which was very quickly remediated by Service Master. The Complainant's home is a three-level home, with the Complainant's living quarters upstairs. To the extent that there was an allegation of mold, mold is specifically excluded by the Complainant's policy and would not support a claim for additional living expenses based on said mold. Moreover, the Licensee produced evidence that there was mold in the Complainant's home dating back to the 2018 claim, which was denied and never remediated.

With respect to the floor tiles the Complainant alleges the Licensee refused to replace, the Licensee introduced voluminous documentary evidence that it paid the Licensee for damage to the basement, including the floor, in 2016 for another water loss. The Complainant never actually replaced the floor tiles at that time. As such, any damage appears attributable to the 2016 loss and not the 2021 loss. Again, I cannot say the Licensee acted arbitrarily or capriciously in denying this claim.

While the Complainant alleged many different ways in which she believed the Licensee mishandled her claim, the Licensee was able to successfully refute each and every one. The Complainant's complaint about the quality of the water remediation should have been addressed with Service Master. The Licensee showed that it paid the Complainant for her damaged floor tiles in 2016 but the Complainant never replaced those tiles. The Complainant did not show that the home was uninhabitable, making her ineligible for additional living expenses. And with respect to alleged damage to personal belongings, the Complainant produced no evidence that she submitted a specific claim that was denied. Under these circumstances, I simply cannot find that the Licensee acted arbitrarily or capriciously in handling the Complainant's claim and nor

can I find that the Licensee refused or delayed payment of amounts due to the Claimant without just cause.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by refusing to pay a claim for an arbitrary or capricious reason. Md. Code Ann., Ins. § 27-303(2) (2017).

I further conclude as a matter of law that the Complainant did not show that the Licensee refused or delayed payment of amounts due to the Claimant without just cause. Md. Code Ann., Ins. § 4-113(b)(5) (Supp. 2022).

PROPOSED ORDER

Based upon the above Findings of Fact, Discussion, and Conclusion of Law, I **PROPOSE** that the Licensee not be found in violation of section 27-303(2) or section 4-113(b)(5) of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED**.

I further **PROPOSE** that the records and publications of the Maryland Insurance Administration reflect this decision.

January 9, 2023
Date Decision Issued

DSR/at
#202665

signature on original

Deborah S. Richardson
Administrative Law Judge

RIGHT TO FILE EXCEPTIONS

Upon receipt of this proposed decision, affected parties have twenty (20) days to file exceptions with the Insurance Commissioner. COMAR 31.02.01.10-1B(1). If a party wishes to receive a transcript of the hearing before filing exceptions, the party has ten (10) days from receipt of the decision to either: 1) file a written request for a transcript with the Insurance Commissioner, or 2) request a transcript of the hearing from a private stenographer and file a copy of their written request to a private stenographer with the Insurance Commissioner. COMAR 31.02.01.10-1B(2). If a transcript is requested, the transcript must be filed with the Commissioner within sixty (60) days of the request, and then a party has thirty (30) days after the filing of the transcript to file exceptions. COMAR 31.02.01.10-1D. Written exceptions and requests for transcripts should be addressed to: Hearing and Appeals Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

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