

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

MARYLAND INSURANCE ADMINISTRATION <i>EX REL</i> T.W. <sup>1</sup> ,	*	REVIEW OF A RECOMMENDED
	*	DECISION ISSUED BY
Complainant,	*	ABENA Y. WILLIAMS,
	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
UNITED SERVICES AUTOMOBILE ASSOCIATION CASUALTY INSURANCE COMPANY,	*	ADMINISTRATIVE HEARINGS
	*	OAH No.: MIA-CC-33-22-18010
Licensee.	*	MIA No.: MIA-2022-07-017

\* \* \* \* \*

**FINAL ORDER**

Pursuant to Md. Code Ann., Ins. § 2-210(d) and COMAR 31.02.01.10-2H, the undersigned Maryland Insurance Commissioner, hereby issues this **summary affirmance** of the proposed decision below.

On September 19, 2022, this case was heard virtually by Administrative Law Judge (“ALJ”) Williams. On October 19, 2022, the ALJ issued a Proposed Decision, and on the same date the Office of Administrative Hearings mailed the Proposed Decision to the parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions advising all 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 Williams. In consideration thereof, and pursuant to COMAR 31.02.01.10-2D, I am persuaded that the result reached by the ALJ is correct. This Proposed Decision which is summarily affirmed under COMAR 31.02.01.10-2H is not precedent within the rule of *stare decisis* in other cases.

**THEREFORE**, it is hereby

**ORDERED** that the Proposed Decision of ALJ Williams be adopted as the Commissioner's Final Order, and it is further

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

It is so **ORDERED** this 7<sup>th</sup> day of March, 2023.

**KATHLEEN A. BIRRANE**  
Commissioner

signature on original

---

**ERICA J. BAILEY**  
Associate Commissioner for Hearings

---

<sup>1</sup> The MIA uses initials to protect the identity of the parties.

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

MARYLAND INSURANCE ADMINISTRATION <i>EX REL</i> T.W. <sup>1</sup> ,	*	REVIEW OF A RECOMMENDED
Complainant,	*	DECISION ISSUED BY
v.	*	ABENA Y. WILLIAMS,
UNITED SERVICES AUTOMOBILE ASSOCIATION CASUALTY INSURANCE COMPANY,	*	AN ADMINISTRATIVE LAW JUDGE
Licensee.	*	OF THE MARYLAND OFFICE OF
	*	ADMINISTRATIVE HEARINGS
	*	OAH No.: MIA-CC-33-22-18010
	*	MIA No.: MIA-2022-07-017

\* \* \* \* \*

**FINAL ORDER**

Pursuant to Md. Code Ann., Ins. § 2-210(d) and COMAR 31.02.01.10-2H, the undersigned Maryland Insurance Commissioner, hereby issues this **summary affirmance** of the proposed decision below.

On September 19, 2022, this case was heard virtually by Administrative Law Judge (“ALJ”) Williams. On October 19, 2022, the ALJ issued a Proposed Decision, and on the same date the Office of Administrative Hearings mailed the Proposed Decision to the parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions advising all 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 Williams. In consideration thereof, and pursuant to COMAR 31.02.01.10-2D, I am persuaded that the result reached by the ALJ is correct. This Proposed Decision which is summarily affirmed under COMAR 31.02.01.10-2H is not precedent within the rule of *stare decisis* in other cases.

**THEREFORE**, it is hereby

**ORDERED** that the Proposed Decision of ALJ Williams be adopted as the Commissioner's Final Order, and it is further

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

It is so **ORDERED** this 7<sup>th</sup> day of March, 2023.

**KATHLEEN A. BIRRANE**  
Commissioner



---

**ERICA J. BAILEY**  
Associate Commissioner for Hearings

---

<sup>1</sup> The MIA uses initials to protect the identity of the parties.

MARYLAND INSURANCE

\* BEFORE ABENA Y. WILLIAMS,

ADMINISTRATION

\* AN ADMINISTRATIVE LAW JUDGE

EX REL.

\* OF THE MARYLAND OFFICE

T.W.,

\* OF ADMINISTRATIVE HEARINGS

COMPLAINANT

\*

v.

\*

UNITED SERVICES AUTOMOBILE

\* OAH No.: MIA-CC-33-22-18010

ASSOCIATION CASUALTY

\* MIA No.: MIA-200-07-017

INSURANCE COMPANY,

\*

LICENSEE

\*

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On April 28, 2022, the Maryland Insurance Administration (MIA) received a complaint from T.W. (Complainant) alleging unfair claim settlement practices and the refusal or delay of payments by United Services Automobile Association Casualty Insurance Company (Licensee). Specifically, the Complainant alleges that the Licensee erred in denying her theft and vandalism claim.

After an investigation, the MIA found that the Licensee did not violate sections 27-303(1), (2), (6) and 4-113(b)(5) of the Insurance Article and notified the Complainant of its finding by a

letter dated July 12, 2022. On July 26, 2022, the Complainant requested a hearing. On July 28, 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.<sup>1</sup>

On September 19, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017)<sup>2</sup>; Code of Maryland Regulations (COMAR) 31.15.07. The Complainant appeared without representation. Benjamin A. Beasley, 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.

### **ISSUES**

1. Did the Licensee refuse or delay payments to the Complainant without just cause?
2. Did the Licensee engage in any unfair claim settlement practice under the Insurance Article?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

1. Complaint Summary, April 28, 2022
2. Letter from the MIA to the Licensee, April 29, 2022

---

<sup>1</sup> 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. COMAR 31.02.01.04-1A.

<sup>2</sup> Unless otherwise noted, all references to the Insurance Article are to the 2017 Replacement Volume of the Maryland Annotated Code.

3. Letter from the Licensee to the MIA, May 20, 2022, with the following CONFIDENTIAL documents attached:<sup>3</sup>
  - Correspondence, April 4, 8, 9, 12, 14, 2022
  - Claim Denial, April 20, 2022
  - EW Granite & Marble, April 5, 2022
  - Original Contract, October 30, 2021
  - Contract Termination Letter, April 4, 2022
  - Photographs, undated
  - Policy Declaration, December 11, 2021
  - Insurance Policy, undated
  - District Court Criminal Complaint, April 20, 2022
  - Claims Documentation, April 4, 2022
4. Letter from the MIA to the Licensee, June 30, 2022
5. Letter from the Licensee to the MIA, July 8, 2022, with attachment: District Court Application for Statement of Charges, April 20, 2022
6. Letter from the MIA to the Licensee, July 11, 2022
7. Hearing Request filed by the Complainant, July 11, 2022
8. Letter from the Complainant to the Licensee, July 12, 2022
9. Entry of Appearance sent to the MIA from Benjamin A. Beasley, Esquire, of Rollins, Smalkin, Richards & Mackie, LLC, July 21, 2022

I admitted the following exhibits offered by the Complainant:

- Compl. Ex. 1 – District Court of Maryland for Baltimore City Subpoena regarding State of Maryland vs. Njeri Powell, July 22, 2022
- Compl. Ex. 2 – Investigation Questionnaire, June 30, 2022
- Compl. Ex. 3 – Home Improvement Commission (HIC) Complaint, May 31, 2022
- Compl. Ex. 4 – Original Contract, October 31, 2021 with attachments:
- USAA Contract Addendum Totals, Undated
  - USAA Checking Account Transaction, Njeri Powell, in the amount of \$1,000.00, November 1, 2022
  - USAA Checking Account Transaction, Njeri Powell, in the amount of \$1,000.00, November 2, 2021
  - USAA Checking Account Transaction, Njeri Powell, in the amount of \$1,000.00, November 3, 2021

---

<sup>3</sup> The Licensee identified the documents as confidential.

- USAA Checking Account Transaction, Njeri Powell, in the amount of \$3,000.00, November 4, 2021
- Screenshot of Check paid to Njeri Powell for \$15,665.00, Home Renovations, posted November 3, 2021
- Screenshot of Check paid to Njeri Powell for \$21,665.00, posted November 26, 2021
- Screenshot of Check paid to Njeri Powell for \$7,000.00, posted December 16, 2021
- Screenshot of Check paid to Njeri Powell for \$7,000.00, posted December 24, 2021
- Screenshot of Check paid to Njeri Powell for \$6,000.00, posted January 13, 2022
- Email correspondence from Complainant to Njeri Powell, January 31, 2022
- Email correspondence from Complainant to Njeri Powell, April 6, 2022
- Contract Termination Letter, April 4, 2022
- Photographs, undated

Compl. Ex. 5 – Circuit Court for Baltimore City, Writ of Summons for Njeri Powell, September 15, 2022

Unless otherwise indicated, I admitted the following exhibits offered by the Licensee:<sup>4</sup>

- Lic Ex. 1 - Inspection Photo Report, May 6, 2022
- Lic. Ex. 2 - Claim Activity Log, dates between April 8, 2022 through May 13, 2022
- Lic. Ex. 3 - Certified Policy, Effective December 11, 2021 to September 17, 2022
- Lic. Ex. 4 - Coverage Denial Letter, April 14, 2022
- Lic. Ex. 5 - Coverage Denial Letter, April 20, 2022
- Lic. Ex. 6 - General Contract Agreement, October 30, 2021 (NOT ADMITTED)
- Lic. Ex. 7 - Contract Termination Letter, April 4, 2022
- Lic. Ex. 8 - Application for Statement of Charges, April 20, 2022
- Lic. Ex. 9 - Williams v. Powell Civil Complaint, undated
- Lic. Ex. 10 - State v. Powell Statement of Charges, August 24, 2022

#### Testimony

The Complainant testified on her own behalf.

The Licensee presented the testimony of Dawn Meyers, Claims Specialist.

---

<sup>4</sup> Prior to the hearing, the Licensee pre-marked and Bates stamped its proposed exhibits.



## FINDINGS OF FACT

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

1. The Complainant had a homeowner's insurance policy (policy) in full force and effect with the Licensee for the policy period of December 11, 2021 to September 17, 2022.
2. On or about October 30, 2021, the Complainant entered into an agreement with Njeri Powell of Bulldog Builders to extensively renovate the interior of her home (Contract). Pursuant to the Contract, Mr. Powell agreed to complete extensive renovations within sixty days or by January 2022 for a total of \$65,000.00, inclusive of labor and materials and exclusive of all appliances.
3. The scope of work included:
  - i. Demolish basement ceiling and partition wall; master bedroom partition wall; master bathroom; first bedroom ceiling, walls and carpet; removal of all toilets; kitchen; pantry; pink room lights/corner hutch; bathtub wall; mail room wall.
  - ii. Master Bedroom: Drywall and framing of closet; master bath installation of tile floor and shower; walk-in shower/vanity/toilet; drywall and paint custom shelves
  - iii. Kitchen: Install new cabinets and custom shelves, new drywall, paint walls, install new flooring and pantry, close air conditioning opening.
  - iv. Plumbing: Install new toilets, vanity, update plumbing in kitchen and master bathroom as needed, add walk-in shower
  - v. Miscellaneous upgrades: Install cigar room, glass doors, cabinets, skim walls, hardware, and installation of an entry room ceiling
4. Mr. Powell failed to obtain permits for the work to be completed.

5. On November 1, 2021, Mr. Powell began demolition. Thereafter, Mr. Powell replaced two electric panels and requested an additional \$5,000.00 to complete the electrical work.

6. On the following dates, the Complainant paid Mr. Powell, totaling \$63,330:

- \$1,000.00 on November 1, 2022
- \$1,000.00 on November 2, 2021
- \$1,000.00 on November 3, 2021
- \$3,000.00 on November 4, 2021
- \$15,665.00 on November 3, 2021
- \$21,665.00 on November 26, 2021
- \$7,000.00 on December 16, 2021
- \$7,000.00 on December 24, 2021
- \$6,000.00 on January 13, 2022

7. Mr. Powell never completed the renovations as outlined in the Contract. He performed faulty and incomplete renovations and repairs on the Complainant's property. Mr. Powell failed to install sinks, vanities, an LED mirror, a bathtub, a washer and dryer, plumbing, toilets, lighting, new cabinets, a corner hutch, a coffered ceiling, and electrical outlets.

8. Mr. Powell failed to patch holes in the ceiling and install electrical outlets. He failed to properly install electrical wiring, causing the electricity to trip throughout the property. He failed to finish installing flooring, including tiles in several bathrooms. He also failed to install the guest bedroom window.

9. Mr. Powell damaged plumbing pipes and failed to patch holes in the walls that were created after performing electrical work.

10. Mr. Powell failed to purchase bricks for an interior brick accent wall, countertops, sinks, materials for shelving, materials for the coffer ceiling, a bathtub for the master bath, vanities, and flooring.

11. The Complainant lived in her home throughout the repairs and renovations.

12. On April 4, 2022, Mr. Powell and the Complainant agreed to terminate the Contract. Mr. Powell agreed to provide all materials to the Complainant that should have been purchased. He also agreed to provide a reasonable and fair reimbursement amount for the incomplete work by Tuesday, April 5, 2022.

13. On April 8, 2022, the Complainant contacted the Licensee and submitted a claim for losses related to the faulty and incomplete interior renovations in her home.

14. On April 14, 2022, the Licensee issued a letter of denial. The denial letter relied on the exclusion of coverage for:

- i. Faulty, negligent, inadequate or defective:
  1. Planning, zoning, development, surveying, siting;
  2. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  3. Materials used in repair, construction, renovation or remodeling, or maintenance.

(Lic. Ex. 3, p. 129.)

15. On April 14, 2022, the Licensee also contacted the Complainant and relayed the denial. On the same day, the Complainant contacted the Licensee and explained she also wanted to claim the theft of building materials that were taken. The Complainant stated that she would provide order receipts for the missing items, police reports and video footage of the items being stolen.

16. On April 20, 2022, the Complainant provided the Licensee with a police report citing the materials that were stolen from her property.

17. On April 20, 2022, the Licensee issued a revised letter of denial that excluded coverage for "theft in or to a dwelling under construction, or of materials and supplies for use in

the construction until the dwelling is finished and occupied.” The letter also referred to the exclusion of coverage for “vandalism and malicious mischief or breakage of glass and safety glazing materials; and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if the dwelling has been vacant for more than 180 consecutive days immediately before the loss...” (Lic. Ex. 3, p. 127.)

18. On the same day, the Complainant protested the denial. Thereafter, the Licensee reviewed the claim file to determine if the denial was appropriate pursuant to the policy.

19. On the same day, the Complainant filed a civil complaint at the District Court of Maryland for Baltimore City.

20. On April 28, 2022, the Complainant filed a complaint with the MIA stating that the Licensee erred in its denial of her theft and vandalism claims.

21. On May 6, 2022, the Licensee inspected the home and determined that there was no evidence to support any vandalism to the property and concluded that Mr. Powell failed to complete renovations and engaged in faulty, negligent work. The Licensee remained in contact with the Complainant.

22. Between May 11, 2022 and May 12, 2022, the Complainant submitted copies of the Contract, Contract Termination Letter, documentation of a farmhouse sink, dual flushing toilet, and stand alone black bathtub that were removed from her property.

23. Sometime in June of 2022, the Complainant filed a complaint with the Maryland Home Improvement Commission (MHIC).

24. On July 11, 2022, the MIA sent correspondence to the Complainant advising that the Licensee did not violate Maryland law in its denial of the theft and vandalism claim.

25. On July 11, 2022, the Complainant requested a hearing.

26. On July 12, 2022, the Complainant’s request for hearing was granted.

27. On July 22, 2022, Mr. Powell was criminally charged with Theft, Selling Home Improvement without a License, Acting as a Contractor without a License, and Failing to Perform a Contract.

28. As of the date of this hearing, Mr. Powell has not been served with the civil or criminal complaints.

29. The Licensee did not complete any other inspections after May 6, 2022.

30. The Licensee did not cover the damages cited by the Complainant as it was determined that they were excluded from her policy.

### **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." Md. Code Ann., Ins. § 4-113(b)(5) (2017). Section 27-303 lists ten unfair claim settlement practices. The MIA decision letter referenced Subsections 1, 2, and 6 of Section 27-303. *Id.* § 27-303(1), (2), (6). Section 27-303(1) prohibits an insurer from misrepresenting pertinent facts or policy provisions that relate to the claim or coverage at issue. Section 27-303(2) prohibits an insurer from refusing to pay a claim for an "arbitrary or capricious reason." Section 27-303(6) prohibits an insurer from failing to promptly provide, when requested, a reasonable explanation of the basis for a denial of a claim.

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 make restitution, subject to the limits of any applicable insurance policy, to each claimant who has suffered actual economic damage because of the violation. *Id.* § 27-305(a)(1), (c)(1), (2).

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 Court of Special Appeals quoted from, and adopted, the Insurance Commissioner’s interpretation of the “arbitrary and capricious” standard in an earlier case, *Gabler v. American Manufacturers*:

“[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 without 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. Md. Code Ann., 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 Cty. 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 an unfair claim settlement practice, has the burden of proving by the preponderance of the evidence that the Licensee acted arbitrarily and capriciously or without just cause in denying the claim. COMAR

28.02.01.21K(1), (2)(a).

#### Complainant’s Position

The Complainant contended that the Licensee engaged violated Maryland Insurance Law when it denied her claim. According to the Complainant, she presented sufficient documentation

that made it clear that Mr. Powell engaged in theft, vandalism, and malicious mischief. She averred that the damages in her home are covered by her policy.

The Complainant testified that after filing a claim with the MHIC she learned that Mr. Powell falsified his licensing number. She stated that Mr. Powell worked on parts of her home that were not in the Contract, left exposed and cut electrical wiring throughout the house, left holes in the ceilings, walls and floors, performed incomplete work, installed faulty plumbing, and failed to complete the renovations pursuant to the contract. The Complainant also testified that she paid Mr. Powell over \$60,000.00 for labor and materials. She explained that Mr. Powell was paid to procure certain materials that were never purchased and delivered. She averred that she paid for the following items that were never purchased or provided by Mr. Powell: bricks for a brick wall, countertops, flooring for kitchen and powder room, sink in powder room, materials for shelving in the butler's pantry, materials for coffer ceiling in living room space, bathtub for master bath, shower and faucet, vanities for the various bathrooms and flooring, shelving, and a sink in butler's pantry.

Her testimony was genuine and her frustrations with Mr. Powell and the Licensee were apparent. She initially reported the claim because Mr. Powell left her home in a state of disrepair. She explained that Mr. Powell engaged in malicious mischief because he performed unlicensed work and disguised his unlicensed status by using different aliases to renovate her home, that he vandalized her property when he worked on parts of her home that were not included in the contract, and that he engaged in theft by keeping the funds she paid him to procure items for the renovations that he never purchased and removed items from her home. After discussing the claim with the Licensee, the entire claim was denied. When the Complainant discussed the denial with the adjuster, she provided photographs, a copy of the

police report, documentation of a sink, bathtub, and toilet. Further, the Complainant was cooperative and allowed the Licensee to inspect her home.

She explained that she filed a civil complaint against Mr. Powell in the Circuit Court for Baltimore City and that the MHIC has engaged in their own efforts to pursue criminal claims against him. As of the date of the hearing, the Complainant explained that Mr. Powell has not been served.

The Complainant did not testify as to any other direct interactions with the Licensee or Mr. Powell.

#### Licensee's Position and Witness Testimony

The Licensee's position is that it did not violate any provision of the Insurance Article and made a reasonable decision based on the evidence it had at the time, that it continued to work with the Complainant throughout the claims process, and that while the Complainant may disagree with that decision, it was not arbitrary or capricious.

Dawn Meyers is a manager of claims operations for the Licensee. She supervises a team of senior property adjusters. She has worked for the Licensee for twenty-three years and has been in her current position for the last seven years. She previously worked as a general adjuster and handled large losses, anything unlivable, lightening, and wind. She also worked as a property field adjuster where she handled claims adjustments and policy interpretation.

Ms. Meyers was not initially involved in the handling of this claim. However, she supervised the senior adjuster and inspected the property. She also reviewed the records regarding this matter and provided testimony based on her review of the records, as well as her involvement with the inspection of the property. According to Ms. Meyers' review of the claims log, the claim was first reported by the Complainant on April 8, 2020. An inspection was performed by herself and senior property adjuster, Nicholas Stevens, on May 6, 2022. Mr.



Stevens determined that the damages claimed by the Complainant were excluded from coverage, namely because the property was being renovated at the time the damage occurred and that Mr. Powell simply performed incomplete work. Ms. Meyers explained that all approvals or denials have to be approved by a manager. She explained that while she was out of the office, Bonnie Walker, reviewed Mr. Stevens' denial and documented that he could proceed with a denial based on faulty workmanship and negligence.

Ms. Meyers testified that the Complainant was contacted regarding the denial and an initial denial letter was issued. Mr. Stevens had subsequent discussions with the Complainant, and she informed him she wanted to claim theft of her property. Mr. Stevens requested documentation including receipts of the stolen materials, a police report, and video footage. Mr. Stevens reviewed the documentation submitted by the Complainant and issued a revised denial letter, denying the claim. Thereafter, the Complainant contacted the Licensee and requested to speak to a supervisor. Ms. Walker called her back and confirmed the denial.

Ms. Meyers testified that she later accompanied Mr. Stevens to inspect the Complainant's property on May 6, 2022. Ms. Meyers averred that vandalism and malicious mischief are not defined in the Complainant's policy. She noted that where a term is not defined in a policy, the Licensee will look to "google" or the dictionary to determine its meaning.

She explained that upon entering and inspecting the home, she observed the incomplete plumbing, the unfinished basement area under the kitchen, openings in ceiling, exposing plumbing to the kitchen and left behind supplies. According to Ms. Meyers, the Licensee denied coverage as it was clear that Mr. Powell performed inadequate and incomplete work but noted that there was no evidence to suggest that he maliciously damaged the home and that the home was under construction or being renovated at the time the alleged damages occurred.

## Analysis

While the MIA analyzed the complaint under Section 27-303 (6), the Complainant did not present any evidence during the hearing or make any argument during the hearing that the Licensee failed to promptly provide a reasonable explanation for the basis of the denial upon her request. The Licensee provided evidence of the denial and the claims log included multiple conversations between the Licensee and the Complainant where the basis for the denial was discussed. (Lic. Ex. 2.) While the Complainant did not agree with the denial, there was no evidence that the Licensee failed to provide its explanation.

There was similarly no evidence that the Licensee misrepresented policy provisions that relate to the claim or coverage, under Section 27-303(1). When cross examining Ms. Meyers, the Complainant alluded to the fact that a claims adjuster suggested that her claim could be covered based on malicious mischief. The Complainant, however, did not provide any further explanation in her case-in-chief or her closing. The claim log indicates, and the Complainant did not dispute, that the Licensee consistently responded to the Complainant's claims, questions, and concerns, requested follow-up information, followed up on any claims and information provided by the Complainant, and provided detailed explanations of its determinations. (Lic. Ex. 2.) While I can understand the Complainant's position, I do not find that the Licensee misrepresented policy provisions that relate to the claim or coverage.

Finally, I must consider whether the Licensee refused to pay the Complainant's claim for an arbitrary or capricious reason or denied payment without just cause. Initially, the Licensee reviewed the information provided by the Complainant before making a decision regarding the claim. While the Contract was not particularly specific, Mr. Powell was commissioned to perform electrical work, demolition, drywall framing and installation, installation of tiling,

showers, vanities, new cabinets, and custom shelving. The Contract also called for him to paint some of the walls in the home and install a coffered ceiling.

When the Complainant did not agree with the denial, she revised her claim and provided additional information to support her claim. Upon the Licensee's request she submitted a police report involving the alleged theft, and receipts for some of the items that she alleged were stolen, namely a farmhouse sink, dual flushing toilet, and standalone black bathtub that were removed from her property. Prior to making any decision regarding her claim, the Licensee reviewed the Complainant's supporting documentation and reviewed the applicable provisions of her policy to determine coverage. Based on the exclusions outlined in the policy, the Licensee, again, denied coverage. After the Complainant filed a complaint with the MIA, the Licensee completed a full "in person" inspection and affirmed their denial.

Pursuant to the policy, the Licensee and the Complainant refer to the following exclusions:

Section I – Losses We Do Not Cover

1. Unless otherwise stated in 3. below we do not insure for damage consisting of or caused directly or indirectly by any of the following, regardless of:
  - (c) Theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
  - (d) Vandalism and malicious mischief or breakage of glass and safety glazing materials, and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if the dwelling has been vacant for more than 180 days. A dwelling being constructed is not considered vacant;
2. We do not insure for loss caused by any of the following. However, any ensuing loss to property described in Dwelling Protection and Other Structures Protection not precluded by any other provision in this policy is covered.

- (c) Faulty, negligent, inadequate or defective;
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or maintenance.

The terms—theft, vandalism, and malicious mischief—are not defined in the policy, nor relevant law or regulations. Therefore, I look to the dictionary for the ordinary meaning of these terms. *See Ishola v. State*, 404 Md. 155, 161 (2008) (dictionary definitions help clarify the plain meaning of a statute). Theft is “the crime of stealing something from a person or place.”<sup>5</sup> Vandalism is “the crime of destroying or damaging something, especially public property, deliberately and for no good reason.”<sup>6</sup> Malicious is “having or showing a desire to harm somebody or hurt their feelings, caused by a feeling of hate.”<sup>7</sup> Mischief is “bad behavior that is annoying but does not cause any serious damage or harm.”<sup>8</sup>

The parties do not dispute that the property was being renovated at the time of the alleged theft and vandalism. The parties also do not dispute that the property was not vacant at the time of the alleged theft or vandalism. Pursuant to the policy, theft is not covered until the dwelling is finished and occupied.

The dwelling, though occupied, is still not completely renovated, nor finished. (Lic. Ex. 3, p. 127.) Thus, the exclusion applies.

Further, the Licensee reviewed the documentation, information, and photographs provided by the Complainant. Based on the evidence of record, Mr. Powell was hired to perform extensive renovations and repairs in the home, which involved demolition, electrical work, building, and repairing. Upon observing the Complainant’s home, the Licensee documented,

---

<sup>5</sup> Oxford Online Dictionary, <https://www.oxfordlearnersdictionaries.com/us/definition/english>, last visited October 17, 2022, 6:44 p.m.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

reported and relayed to the Complainant that there was no evidence that the incomplete workmanship in the home was the result of vandalism or that Mr. Powell destroyed or damaged items deliberately with a desire to harm the Complainant and for no good reason. (Lic. Ex. 3, pp. 127-129.) Further, some unused items including cabinets, vanities, and flooring were left in the home, untouched. I find the Licensee's determination to be based on the plain meaning of the exclusionary language in the policy, along with the documentation, photographs, and information provided by the Complainant.

Even so, my determination is not whether I would have come to the same conclusion as the Licensee. Instead, my decision is whether the Licensee acted arbitrarily and capriciously, or without reason or without just cause, in making this decision. I do not find that the Licensee refused to pay the claim for an arbitrary or capricious reason and denied the claim based on the applicable exclusions or just cause.

#### **CONCLUSIONS OF LAW**

I conclude as a matter of law that the Complainant did not show that the Licensee refused or delayed payment of amounts due to the Complainant without just cause. Md. Code Ann., Ins. § 4-113(b)(5) (2017).

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by misrepresenting facts or policy provisions that relate to the claim or coverage. Md. Code Ann., Ins. § 27-303(1) (2017).


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 conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by failing to promptly provide a reasonable explanation for the basis of the denial upon request. Md. Code Ann., Ins. § 27-303(6) (2017).

**PROPOSED ORDER**

Based upon the above Findings of Fact, Discussion, and Conclusion of Law, I **PROPOSE** that the Licensee is not found in violation of sections 4-113(b) (5), 27-303(1), (2), and (6) of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED**.

October 19, 2022  
Date Decision Mailed

**signature on original**  
  
Abena Y. Williams  
Administrative Law Judge

AYW/at  
#201426

**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:**

Complainant

Benjamin A. Beasley, Esquire  
Rollins, Smallkin, Richards & Mackie, LLC  
300 East Lombard Street, Suite 900  
Baltimore, MD 21202

Portia Henry  
United Services Automobile Association  
9800 Fredericksburg Road  
San Antonio, Texas 78288

