

MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE	*	REVIEW OF A RECOMMENDED
ADMINISTRATION	*	DECISION ISSUED BY
<i>EX REL.</i> C.D. and R.D. ¹ ,	*	MICHAEL R. OSBORN
Complainant	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
STATE FARM FIRE AND	*	ADMINISTRATIVE HEARINGS
CASUALTY COMPANY,	*	OAH No.: MIA-CC-33-22-23592
Licensee	*	MIA No.: MIA-2022-08-017

* * * * *

FINAL ORDER

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

On June 29, 2022, the MIA received a complaint from Complainant (hereinafter “Complainant”) alleging unfair claim settlement practices by State Farm Fire and Casualty Company (hereinafter “Licensee”). The MIA investigated the Complaint, and on July 28, 2022, it issued a determination letter concluding that the Licensee did not violate Maryland’s insurance laws in its denial of the Complainant’s claim for wind damage to her residence that occurred on May 13, 2022. Specifically, the MIA concluded that Licensee’s denial of the Complainant’s claim was not arbitrary

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.

and capricious, lacking in good faith, or otherwise in violation of the Maryland Insurance Article. The determination letter referenced Sections 4-113 (b) (5), and 27-303 (1), (2), and (6) of the Annotated Code of Maryland, Insurance Article. The Complainant requested a hearing, which was granted on August 25, 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 would be directed to the Annotated Code of Maryland, Insurance Article, Sections 4-113 and 27-303(1), (2) and (6).

On January 18, 2023, a hearing was held before Administrative Law Judge (ALJ) Osborn. On February 3, 2023, ALJ Osborn issued a Proposed Decision setting forth factual findings and conclusions of law with respect to 27-303(1), (2) and (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 Osborn. Based on this review, I am persuaded that ALJ Osborn’s Conclusion of Law that Licensee did not violate Sections 4-113, and 27-303(1), (2) and (6) is correct, and, pursuant to COMAR 31.02.01.10-2D, hereby affirm this finding.

On page eight of the Proposed Decision, ALJ Osborn ordered that “the Licensee not be found in violation of sections 27-303 (1), (2), and (6) 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 Osborn.

I further find, pursuant to COMAR 31.02.01.10-2(C)(2), that ALJ Osborn's Findings of Fact clearly support a finding that Licensee did not violate Section 4-113 (b)(5). Specifically, the ALJ's Findings of Fact demonstrate that Licensee physically inspected Complainant's property on May 23, 2022, within ten days of the date when the loss was reported to the company, with Complainant present. Following the inspection, no windows were found to be damaged, and the screens and trim were also found to be in good condition. There were several stains, signs of degradation, and peeling paint demonstrating wear and tear. ALJ Osborn also noted that under the policy issued by Licensee to Complainant, Section 1 Losses Insured, Coverage A Dwelling, and Section 1, Losses Not Insured, coverage is excluded for wear, tear, decay and deterioration. As such, Complainant did not show that Licensee refused payment without just cause in violation of 4-113(b)(5).

THEREFORE, it is hereby

ORDERED that, as a matter of law, it be found that Licensee did not violate Sections 4-113, and 27-303(1), (2) and (6),

ORDERED that the determination issued by the Maryland Insurance Administration is hereby **AFFIRMED** based on the Findings of Fact and Discussion provided by ALJ Osborn,

ORDERED that the Proposed Decision of ALJ Osborn 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 26th day of July 2023.

KATHLEEN A. BIRRANE
Commissioner

signature on original

ERICA J. BAILEY
Chief Hearing Officer/Associate Commissioner
Office of Hearings

MARYLAND INSURANCE

* BEFORE MICHAEL R. OSBORN,

ADMINISTRATION

* AN ADMINISTRATIVE LAW JUDGE

EX REL. C.D.,

* OF THE MARYLAND OFFICE

COMPLAINANT

* OF ADMINISTRATIVE HEARINGS

v.

*

STATE FARM FIRE & CASUALTY

*

COMPANY,

* OAH No.: MIA-CC-33-22-23592

LICENSEE

* MIA No.: MIA-2022-08-017

* * * * *

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 June 29, 2022, the Maryland Insurance Administration (MIA) received a complaint from the Complainant alleging unfair claim settlement practices by State Farm Fire & Casualty Company (Licensee). Specifically, the Complainant alleges that over the years; wind damaged the windows in the home she occupies with her husband, and the Licensee failed to pay for replacement windows.

After an investigation, the MIA found that the Licensee did not violate section 27-303(1), (2), or (6) of the Insurance Article and notified the Complainant of its finding by a letter dated July 28, 2022. On August 25, 2022, the Complainant requested a hearing.

On September 21, 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.¹

On January 18, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Ins. §§ 2-210 (2017) and 2-213 (Supp. 2022); COMAR 28.02.01.20A. The Complainant appeared without representation. Jordan Cockrum, 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 engage in any unfair claim settlement practice under the Insurance Article?

SUMMARY OF THE EVIDENCE

Exhibits

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

1. Complaint, June 29, 2022
2. MIA letter to Licensee, July 8, 2022
3. Licensee letter to MIA, July 22, 2022
4. MIA letter to Complainant, July 28, 2022
5. Request for hearing, August 25, 2022
6. MIA letter to parties, August 25, 2022
7. Licensee email to MIA, with attachments, September 1, 2022

¹ 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.

The Complainant did not offer any exhibits.

I admitted the following exhibits offered by the Licensee:

- Lic Ex. 1 - Homeowners policy 20-BR-1221-0, effective December 29, 2021, through December 29, 2022
- Lic Ex. 2 - Claim history, May 13, 2022, through August 30, 2022
- Lic Ex. 3 - AccuWeather three-year sustained wind history, printed May 14, 2022
- Lic Ex. 4 - Photographs of exterior and interior of Complainant's home, undated
- Lic Ex. 5 - Licensee letter to Complainant, May 31, 2022

Testimony

The Complainant testified and did not present other witnesses.

Akele Rasheed Montgomery, Claims Specialist, testified for the Licensee.

FINDINGS OF FACT

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

1. At all relevant times the Complainant's home was covered by a homeowner's insurance policy issued by the Licensee, policy number 20-BR-1221-0 (Policy).

2. The Policy included the following relevant provisions:

Section 1 – Losses Insured

Coverage A – Dwelling – We insure for accidental direct physical loss to the property described in Coverage A except as provided in Section 1 – Losses Not Insured

Section 1 – Losses Not Insured

- Wear, tear, decay, marring, scratching, deterioration, inherent vice, latent defect, or mechanical breakdown

- Settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings
- Neglect

3. On or about May 13, 2022, the Complainant reported to the Licensee that the windows of her home had experienced wind and storm damage, and that there had been cracking around the windows over the years. She reported that there was a dirt pile two blocks from her home and that dirt from the pile was getting into the home, which negatively affected her and her husband's health.

4. On May 23, 2022, Gary Alston, a claims adjuster for the Licensee, visited the Complainant at her home. The Complainant told Mr. Alston that there had been nineteen hurricanes and storms since 2020 that had damaged the integrity of the windows, which allowed dirt and insects into the home. The Complainant requested that the Licensee replace all the windows in her home.²

5. On May 23, 2022, none of the windows of the Complainant's home were broken, all window frames and external and internal trim were intact, all window glass was intact, and all window screens were intact. There was no evidence of an accidental direct physical loss to any of the windows.

6. On May 23, 2022, there was some discoloration and evidence of decay on one or more window frames on the interior of the home. Some window frames had peeling and cracking paint on the exterior and on the interior and in areas where dirt accumulated in the corners.

² At the hearing the Complainant clarified her request and said she did not want the Licensee to replace all the windows in her home, but only those with a southern exposure, which she estimated to be fifteen windows.

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 Further, 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).

Section 27-303 lists ten unfair claim settlement practices, three of which were included in the MIA's July 28, 2022, letter to the Complainant which advised her that the MIA found no violation of Maryland insurance law by the Licensee. In its July 28, 2022, letter, the MIA advised the Complainant that it found the Licensee did not violate Section 27-303(1), (2), or (6), of the Insurance Article. Section 27-303(1) prohibits an insurer from misrepresenting pertinent facts or policy provisions that relate to a claim. Section 27-303(2) prohibits an insurer from refusing to pay a claim for an "arbitrary or capricious reason based upon all available information." Section 27-303(6) prohibits an insurer from failing to act promptly on a request by an insured to explain the basis for denial of a claim.

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

The Complainant did not assert at the hearing that the Licensee misrepresented pertinent facts or policy provisions or failed to promptly explain why her claim was denied after she requested an explanation. Thus, I will focus on section 27-303(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 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; 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 an unfair claim settlement practice, has the burden of proving by the preponderance of the evidence that the Licensee acted arbitrarily and capriciously based upon all available information in denying the claim. COMAR 28.02.01.21K(1), (2)(a).

At the hearing, the Complainant expressed her displeasure with the handling of her claim by Mr. Alston, and described at length her dissatisfaction with his investigation, which she found hasty, less than thorough, and invasive. She complained that Mr. Alston copied her notes without her permission and should have been carrying his own notebook. The Complainant complained that Mr. Alston went to parts of her home without escort and was, generally, abrupt and hasty in his methods. The Licensee's claim log reflects the Complainant brought these concerns to the attention of the Licensee.

The Complainant described various weather events, mostly high winds and hurricanes, that swept through her neighborhood in the months preceding her claim. She asserted that these weather events are to blame for the current condition of the windows in her home, including that some do not operate smoothly, some are difficult or impossible to lock, and some show signs of wind and water intrusion.

The Licensee presented evidence that on July 19, 2019, there was a weather event at the Complainant's address in which sustained winds reached eighteen miles an hour with gusts up to fifty-one miles an hour. The Licensee's evidence also showed that a weather event occurred on February 18, 2022, with sustained winds of twenty-four miles an hour with gusts of forty-six miles per hour. The Licensee's evidence showed there were no hurricanes during the period May 13, 2019, through May 14, 2022.

Mr. Montgomery testified for the Licensee that he has several years' experience handling weather-related claims. He testified that the Policy covers losses due to single catastrophic events, and that there were none here. Mr. Montgomery testified that the Policy does not cover deterioration, settling, cracking, bulging, normal wear and tear, or failure to maintain a property over the course of years.

Mr. Montgomery saw no evidence that wind or storm caused any catastrophic loss to the Complainant's home. He testified that if wind or a storm had caused damage to the Complainant's windows that he would expect to see damage to siding and other parts of the home as well but saw none.

The Complainant, who bears the burden of proof, has not demonstrated that the decision by the Licensee not to cover the cost of new windows was arbitrary or capricious based upon all available information. The Licensee's decision was not based on individual discretion, nor was it made without adequate determination of principle. The Licensee's decision not to pay for new windows was not based on an unpredictable whim. The Licensee properly denied the claim based on lawful principles and standards.

CONCLUSION OF LAW

I conclude as a matter of law that the Complainant did not prove that the Licensee misrepresented pertinent facts or policy provisions that relate to her claim, that the Licensee engaged in an unfair claim settlement practice by refusing to pay a claim for an arbitrary or capricious reason, or that the Licensee failed to act promptly on a request by the Complainant to explain the basis for denial of her claim. Md. Code Ann., Ins. § 27-303(1), (2) and (6) (2017).

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(1), (2) or (6) 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.

February 3, 2023
Date Decision Issued

signature on original

Michael R. Osborn
Administrative Law Judge

MRO/sh
#203294

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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