

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

N.B.,¹

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Plaintiff,

*

v.

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Case No. 27-1001-23-00006

**USAA General Indemnity
Company,**

*

Defendant.

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* * * * *

DECISION

N.B. (“Plaintiff”) has alleged that USAA General Indemnity Company (“Defendant”) breached its contractual obligations by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a homeowner’s insurance policy (the “Policy”) issued to Plaintiff by Defendant. Plaintiff’s claim was for damage to his home (“the Dwelling”) and detached garage located in Nottingham, Maryland caused by wind and hail on July 9, 2021. (the “Claim”). Pursuant to Section 27-1001 of the Insurance Article of the Annotated Code of Maryland (“Section 27-1001”), the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has not demonstrated that Defendant breached any duties owed to Plaintiff or otherwise failed to act in good faith in connection with Plaintiff’s claim.

I. STANDARD OF REVIEW

Section 3-1701 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (“Section 3-1701”) authorizes the award to an insured of certain statutory remedies if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in

¹ The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s privacy.

part, a first-party property insurance or disability insurance claim. However, before the insured may file an action pursuant to Section 3-1701, Section 27-1001 requires that the insured first submit a complaint to the Administration.

Section 27-1001 defines “good faith” as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.” The Administration in rendering a decision on the complaint is required by Section 27-1001(e)(1)(i) to focus on five issues:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov’t Art., section 10-217; *Md. Bd. Of Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On January 5, 2023, the Administration received Complaint No. 27-1001-23-00006 (the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged that he submitted a Claim for damage to the Dwelling and detached garage caused by a storm on November 10, 2021.² Plaintiff further alleges that during the

²The date of loss reported to Defendant is July 9, 2021.

investigation of the Claim, his public adjuster submitted an estimate to Defendant in the amount of \$162,057.40, as the amount required to restore the Dwelling and detached garage to pre-loss condition. However, Plaintiff asserts that Plaintiff's Claim remains severely underpaid as Defendant has only paid \$12,686.62. Plaintiff asserts that Defendant consistently failed to make a judgement on Plaintiff's Claim based on honesty and diligence; willfully and consistently ignored facts of the Claim; refused to justify its position with regards to denying coverage; refused to negotiate or discuss the Claim in clear terms with Plaintiff's public adjuster; and refused to provide Plaintiff's public adjuster with a certified copy of Plaintiff's Policy. Plaintiff contends that Defendant has attempted to avoid its indemnity obligation to the policyholder and its failure to pay under the Policy is a breach of Defendant's obligation and demonstrates Defendant's failure to act in good faith.

As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on January 12, 2023. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on February 8, 2023. In Defendant's response, Defendant acknowledged that it issued a homeowner's insurance policy to Plaintiff providing Dwelling coverage with policy limits of \$380,000 and coverage for other structures with policy limits of \$38,000.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the parties, and by a preponderance of the evidence, the Administration finds that Plaintiff has not established by a preponderance of the evidence that they are entitled to additional coverage for the Claim under the Policy.

On July 9, 2021, Plaintiff alleges that wind and hail caused damage to portions of the roof and exterior of the Dwelling, as well as to a detached garage. Plaintiff contacted Defendant to file the Claim on August 16, 2021. On August 24, 2021, an inspection of the Dwelling was completed by Defendant's Independent Adjuster, Matthew Giordano ("Adjuster Giordano") with IAS Claims Services ("IAS"). Adjuster Giordano prepared an estimate the following day for repairs totaling \$21,116.50, minus \$3,279.53 for recoverable depreciation and \$2,000.00 for the Policy deductible. On August 25, 2021, based on the estimate, Defendant issued a payment of \$15,836.97 to Plaintiff for repairs to the roof of the Dwelling and detached garage, including the cost of removing and reinstalling solar panels located on the roof.

By email dated August 25, 2021, Marcus Weber with Rapid Restorations ("Plaintiff's Contractor") sent Defendant an estimate dated July 10, 2021 for cost of repairs to the Dwelling in the amount of \$89,412.83, including costs to bring the roof in compliance with IRC Section R703 and R703.1; costs to tear off, haul, and remove roofing materials; costs to replace materials including sheathing, framing/truss hurricane strap, carpentry, vents, asphalt, shingles; ridge cap, and masonry; costs to detach and reset siding; costs to detach and reset the solar electric panel; costs to remove and replace flashing, gutters and aprons, rakes, downspouts, windows, drip edges, and ventilation; and lastly, costs for debris removal, and labor.

Defendant retained Adjuster Giordano to review the estimate prepared by Plaintiff's Contractor and determined that the estimate prepared by Plaintiff's Contractor was excessive. Specifically, the scope of work included replacement of all the roof sheathing on the theory that it was 3/8" thick sheathing. Additionally, the estimate exceeded the square footage of the shingled roof, improperly included "steep roof" charges, included approximately 700 linear feet of gutter replacement (which was mostly undamaged), and applied the same building code "roof

upgrades” for the unconditioned detached garage, as for the Dwelling itself. Adjuster Giordano also determined that the estimate included an excessive amount of profit and overhead for the requirements under the scope of work. Based on his review, Adjuster Giordano completed a revised estimate and issued a supplemental payment of \$1,221.96 to Plaintiff on November 12, 2021.

The evidence also includes an estimate prepared by Semper Fi Adjusters (“Semper Fi”), with an inspection date of November 10, 2021. The Semper Fi estimate includes repairs with a total replacement cost value in the amount of \$162,057.40 for exterior repairs to the front, right, rear, and left elevation of the Dwelling; repairs to the garage; debris removal; demolition, electrical, fireplaces, framing and carpentry, HVAC, light fixtures, moisture protection, plumbing, roofing, scaffolding, siding, soffit, fascia, gutters, and windows. The Semper Fi estimate also included \$15,355.19 for overhead and \$17,658.52, for profit.

The record does not include any subsequent correspondence between the parties until the filing of the Complaint.

IV. DISCUSSION

The evidence demonstrates that Defendant conducted a prompt, thorough and diligent investigation of the Plaintiff’s claim. Here, Defendant paid a total amount of \$17,058.93 for damage to the Dwelling resulting from the Claim. Moreover, the evidence demonstrates that Defendant relied on the estimate completed by its retained Independent Adjuster, and later referred the estimate submitted by Plaintiff’s Contractor to Adjuster Giordano for review. Based on his review of the estimate prepared by Plaintiff’s Contractor, Adjuster Giordano prepared a supplemental estimate and a second payment was issued to Plaintiff.

Plaintiff asserts that his public adjuster submitted an estimate to Defendant in the amount of \$162,057.40, and that Defendant failed to act in good faith by not paying the full amount of damages to the Dwelling based in this estimate. However, inexplicably, the evidence demonstrates that Defendant received an estimate from Plaintiff's Contractor, Rapid Restorations, on August 25, 2021 in the amount of \$89,412.83. While both estimates were prepared on behalf of the Plaintiff, and were completed approximately three months apart, the estimates reflect a difference in the costs to repair the Dwelling by over \$70,000. However, Plaintiff has not submitted any documentation supporting the additional costs, or identified specific repairs that he contends were improperly denied by Defendant.

Based on these findings, Plaintiff has failed to meet his burden to prove that Defendant breached any obligation owed under the Policy or that he is entitled to any additional payment under the policy.

V. CONCLUSIONS OF LAW

In accordance with Section 27-1001, the Administration concludes:

1. Plaintiff established by a preponderance of the evidence that Defendant is obligated under the policy to cover the claim.
2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiff did not establish by a preponderance of the evidence that he is entitled to additional damages as a result of the claim.
4. Plaintiff did not establish by a preponderance of the evidence that Defendant breached its obligation under the policy to cover and pay the claim.
5. Since a breach is a necessary element of a failure to act in good faith, Plaintiff did not establish a failure by Defendant to act in good faith.
6. Plaintiff is not entitled to expenses and litigation costs.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED on this 5th day of April, 2023, that Defendant did not violate Section 27-1001 of the Insurance Article of the Maryland Annotated Code; and it is further

ORDERED that pursuant to Section 27-1001(f)(3), this Final Order shall take effect if no administrative hearing is requested in accordance with Section 27-1001(f)(1).

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original

ERICA J. BAILEY
Associate Commissioner- Office of Hearings

APPEAL RIGHTS

If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration’s decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. ART., §27-1001(f).