

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

S.O.¹, *
Plaintiff, *
v. * Case No. 27-1001-22-00078
ENCOMPASS HOME *
AND AUTO INSURANCE, *
COMPANY *
Defendant. *

* * * * *

DECISION

S.O. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Encompass Home and Auto Insurance Company (“Defendant”) breached its contractual obligations to her by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a property insurance policy, (the “Policy”) in connection with storm damage caused to the roof of Plaintiff’s residence in Millersville, Maryland on April 12, 2020 (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has failed to demonstrate that Defendant breached its duty of coverage owed to Plaintiff by not paying the full amount of the loss claimed by Plaintiff.

I. STANDARD OF REVIEW

Section 3-1701 Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the

¹ The Maryland Insurance Administration (MIA) uses initials to protect Plaintiff’s and other individuals’ privacy.

insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages pursuant to Section 3-1701, the insured must first submit a complaint to the Administration under Section 27-1001. Within ninety (90) days of the receipt of such complaint, the Administration must render a decision on the complaint that determines:

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.

“Good faith” is defined in § 27-1001 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.”

An insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. Maryland Board of Physicians v. Elliott, 170 Md. App. 369, 435, cert denied, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On November 3, 2022, the Administration received Complaint Number 27-1001-22-0078 (the “Complaint”) stating a cause of action in accordance with Section 27-1001 of the Maryland Insurance Code. A corrected version of the Complaint was submitted on January 18, 2023. In the Complaint, Plaintiff alleged that Defendant failed to act in good faith with respect to Plaintiff’s claim for damages relating to the roof of the subject Property. Specifically, Plaintiff contends that the claim remains severely underpaid, and that Defendant willfully and consistently failed to make a prompt decisions regarding the claim, refused to communicate with the Plaintiff regarding the claim, and failed to make decisions supported by the evidence regarding the claim.

Plaintiff seeks \$84,393.69 in actual damages and \$2,500 in expenses and litigation costs. As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on January 24, 2023. Defendant provided a response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on March 14, 2023, and acknowledged the obligation to provide coverage on the claim.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the parties, the Administration finds that Plaintiff has failed by a preponderance of the evidence to establish that she is entitled to additional damages for the Claim, based on the provisions under the Policy, the Maryland Insurance Code or that the Defendant failed to act in good faith in its handling of the Claim.

Plaintiff resides at the subject property located at 765 Cougar Drive Millersville, MD 21108-2028. The residence is covered by a property insurance policy with Defendant. Plaintiff’s policy

number is 281273855. Plaintiff's policy included aggregate limits of \$745,954 with a \$500 deductible.

On April 12, 2020, a storm caused damage to the roof of Plaintiff's residence. Plaintiff hired Semper Fi Public Adjusters ("Semper Fi") to evaluate the claim. On April 14, 2020, Plaintiff reported the loss to Defendant. Semper Fi also began its inspection of the subject property. After completing their inspection on December 30, 2020, Semper Fi totaled the net Claim amount to \$86,035.87.

On April 15, 2020, Defendant began its review of the claim. Plaintiff was contacted by the Defendant. The parties discussed applicable coverages, contact information, the nature of the damage, and policy provisions with regard to the loss. By April 16, 2020 Defendant sent an Acknowledgement Depreciation Letter. On April 23, 2020, the Defendant met with Plaintiff and a representative from Semper Fi at the Subject Property, and conducted an inspection of the damages. A copy of the claim brochure was provided to the insured and explained. The Defendant totaled the coverable loss at \$3,441.16 (minus the deductible and depreciation).

On April 24, 2020, Defendant submitted payment of \$554.81 (Check Number 500134626) and an additional payment of the same (Check Number 700011630) to cover wind and hail related damage. Additionally, conclusions of loss as well as non-covered damages were included. A copy of the estimate was provided to Plaintiff. On April 25, 2020, Plaintiff contacted Defendant to request a manual check be sent for the damages, and the previous payment be voided for check number 700011630. The transaction was completed on April 28, 2020 with a final payment of \$26.51 on May 7, 2020, made by Defendant.

On May 21, 2020 a supplemental claim request was submitted by Plaintiff to the Defendant for water damage to the floor of the subject property, and a crack in the cement

flooring of the garage. The representative for Defendant found no overlap in coverage for this loss. Parties disputed over the inclusion of the water damage as coverable damage under the policy.

On May 25, 2020, Adjuster Nadine Land (“Adjuster Land”) began her investigation of Plaintiff’s supplemental claim for damage. On May 26, 2020, Adjuster Land discussed the claim with Plaintiff. An inspection was scheduled for June 4, 2020 between 9:00 AM and 9:30 AM.

On May 29, 2020, Defendant received a call from Plaintiff’s contractor Just Call Joe (“Contractor Joe”) and discovered the phone number that was originally received was not the correct number. After Contractor Joe rescheduled the inspection, Adjuster Land contacted Plaintiff and offered to complete the inspection herself, but was rejected by Plaintiff. Parties agreed that they would need to reschedule around the week of the 15th, and that Contractor Joe should be informed to approve the new date. On June 2, 2020, Defendant received a call from Contractor Joe called to inform Defendant that they would not be able to make the June 4, 2020 inspection date, and would need to reschedule. A new date was agreed to by Defendant and Contractor Joe for Tuesday, June 16, 2020 between 9:00 AM to 9:30 AM. Plaintiff agreed to the new inspection date.

On June 16, 2020, Defendant received a Letter of Representation from Semper Fi regarding Plaintiff’s claim. On June 16, 2020, Adjuster Land reported inspecting and photographing everything marked on the roof; per her instructions. Additionally, on June 17, 2020, Defendant secured a hail report from CoreLogic to determine the weather on the Date of Loss. On June 18, 2020, Defendant issued a payment to Corelogic in the amount of \$42.59.

On June 20, 2020, Adjuster Land submitted the estimate to Plaintiff and mailed out the payment for the covered damages. The Net Claim paid to Insured totaled \$1997.37. On June 23,

2020, Semper Fi sent a letter to Defendant expressing their displeasure with the results of the initial inspection, and their concern with the actions of Adjuster Land. On June 24, 2020, Defendant sent a Settlement Letter to Semper Fi.

On August 13, 2020, Semper Fi requested re-inspection of the damage, as well as re-consideration of window damage that may have been attributed to hail. On August 17, 2020, Adjuster Land spoke with Semper Fi to discuss the reasons for the re-inspection. Adjuster Land requested a Field Support accompany her on the re-inspection. On August 19, 2020, after review of all information, Adjuster Land determined no new information was submitted in the proposed supplement. Adjuster Land agreed to affirm the original estimate as submitted. Partial denial of the roof damage due to overdriven nails and improper installation was discussed. The file was closed, and prepared for partial denial.

On August 20, 2020, Defendant sent the Partial Denial Letter to Plaintiff. However, Plaintiff continued to dispute the amount of the loss. An unbiased, independent, professional engineer was procured to conduct an inspection of the property. On September, 9, 2020, Defendant received a call from Semper Fi alleging deception in the investigation by Adjuster Land and requesting a certified copy of the Policy.

On November 20, 2020 Plaintiff affirmed a sworn statement certifying the actual cash value, amount claimed, and amount of whole loss and damage as \$44,270.45. On December 9, 2020 the Claim was reopened for investigation by Defendant.

On December 11, 2020 CTL Group Engineering (, “CTL”) was requested by the parties to conduct an independent inspection to determine causation of damage and date of occurrence. On December 18, 2020, CTL Group and the parties scheduled the inspection for December 30, 2020 at 2:00 PM. On December 19, 2020, Defendant sent a letter to Plaintiff acknowledging

receipt of the December 7, 2020 letter alleging that Defendant's adjuster wrongfully tampered with the evidence during the inspection.

On February 1, 2021 a Denial of Coverage was sent to Plaintiff. Defendant sent its letter identifying the covered damages, in consideration of the Engineering Report prepared by CTL . On February 2, 2021, Defendant remitted the engineering fee to CTL in the amount of \$6701.66.

On February 9, 2021, the partial denial letter was sent to the involved Parties by Defendant. On February 10, 2021, Plaintiff and Defendant discussed the partial denial letter. Plaintiff did not have any additional questions, at the time.

On May 23, 2021, Defendant contacted Plaintiff via email, regarding her May 21, email. On May 31, 2021, Defendant received a claim to confirm that no information was neglected from Semper Fi's estimate. Defendant's report confirmed that no other covered damages were excluded from consideration. Defendant attempted to contact Semper Fi via phone, but was not able to. On June 4, 2021, Defendant attempted to contact the Building Inspector to discuss the repairs, but was unable to connect.

On June 6, 2021, The file was closed by Defendant and the estimate was sent to Semper Fi. A payment of \$144.81 was sent to Plaintiff and Semper Fi. Defendant concluded that all coverable damage had been accounted for.

On November 3, 2022, Plaintiff filed a Complaint asserting Defendant failed to act in good faith with respect to Plaintiff's claim for damages. However, all of the supporting documentation was for an improper individual and improper carrier. On November 10, 2022 this office acknowledged receipt of the Complaint and accompanying case materials, via written communication.

On January 18, 2023, Plaintiff submitted the additional information to amend the original Complaint. A new complaint was created, and the statutory deadlines for responses from Defendant, and decisions from the MIA were reset. On January 24, 2023, The MIA acknowledged its receipt of the corrected Complaint via written letter.

IV. DISCUSSION

Plaintiff asserts that Defendant breached its duty under the Policy by failing to grant full coverage over Plaintiff's claim, and that Defendant's evaluation and adjustment of the property damage claim lacked good faith. Specifically, Plaintiff asserts that Defendant has violated Section 27-303(6) by failing to provide prompt and reasonable explanation of the basis for a denial of the claim, and that Defendant refuses to make full payment on the Claim for arbitrary or capricious reason based on all available information, in violation of Section 27-303(2). However, Plaintiff has not proven entitlement to said relief.

Maryland Code of Insurance Section 27-1001(e)(2)(i)-(ii) provides for the Maryland Insurance Administration to determine whether an insurer is obligated to cover the first-party claim at issue and, if so, whether the insurer failed to act in good faith. "Good faith" for purposes of this statute has been defined as, "an informed judgement based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim." Maryland Code of Insurance Section 27-1001(a).

Under Section 27-1001 of the Maryland Insurance Code, Plaintiff has the burden to prove by a preponderance of the evidence they are entitled to benefits under the subject insurance policy. (Md. Code Ann., State Gov't§ 10-217); Board of Physicians v. Elliott, 170 Md. App. 369, 907 A.2d 321 (2006). Plaintiff is required to attach "each document that the insured has submitted to the insurer for proof of loss." Maryland Code of Insurance §27-1001(d)(2)(i).

The relevant Policy language reads as follows:

3. We do not insure for loss to real property caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.
 - d. Any of the following:
 1. Wear and tear, aging, marring, scratching or deterioration; ...
 - g. To covered real property caused by any of the following. However, any ensuing loss not excluded or excepted in this Segment is covered.
 3. Faulty, inadequate or defective:
 - b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - d. Maintenance; of part or all of any real property whether on or off your residence premises by any person or organization.

Form H2-B Ed. 10-11: LOSSES WE DON NOT COVER; Form H88-D Ed. 03-18: AMENDMENT OF DELUXE HOME PROVISIONS-MARYLAND.

VIOLATION OF 27-303(2)

Plaintiff alleges that Defendant arbitrarily and capriciously failed to pay the remainder of Plaintiff's claim for damages. However, the record reflects that Defendant made reasonable attempts to promptly conduct and conclude investigations and decisions regarding Plaintiff's claim in a timely transparent manner.

Plaintiff reported the damage to Semper Fi on April 14, 2020. On this date Semper Fi began evaluation of the damage. After completing their inspection on May 18, 2021 the Net Claim amount was totaled at \$86,035.87. On November 20, 2020 Plaintiff affirmed in a sworn statement, certifying the actual cash value, amount, claimed, and amount of whole loss and damage as \$44,270.45. Defendant began its inspection on April 23, 2020 and concluded the inspection on the next day. The total damage claim calculated was \$3,441.16.

On May 21, 2020 a supplemental claim request was submitted by Plaintiff to Defendant for water damage to the floor of the subject property, and a crack in the cement flooring of the garage. The representative for Defendant found no overlap in coverage for this loss.

On May 25, 2020, Adjuster Land for the Defense began her investigation with consideration of the supplemental claim for damage, and on May 26, 2020 Adjuster Land discussed the claim with Plaintiff. Parties confirmed interior water damage may provide cause for an additional inspection, and one was scheduled for June 4, 2020.

On May 29, 2020, Defendant received a call from Plaintiff's contractor rescheduling the inspection. Adjuster Land offered to complete the inspection herself, but was asked to delay by Plaintiff. On June 2, 2020 the parties agreed to a new inspection date of June 16, 2020.

On June 16, 2020, Adjuster Land reported she was met by a representative of Plaintiff she believed to be from Contractor Joe, on the date of the inspection. She reported overdriven nails and missing nails, although, the representative for Plaintiff insisted otherwise. Adjuster Land insisted the evidence suggested a different result, as there was no creasing or other evidence of damage to the shingles that could have been caused by wind. Adjuster Land reported being able to pull out nails by hand, and easily replacing them with little to no resistance. This evidence was consistent with damage caused by the weakening of the materials over time.

On June 17, 2020, Defendant secured a hail report from CoreLogic. Based on the results, no hail weather events were reported on the date of loss. Defendant's claims team determined this to mean the hail damage to the window wraps would have to be a different claim.

On June 20, 2020, Submitted the estimate to Plaintiff. The inspection concluded no possibility for subrogation, because the material was properly installed and there is nothing to suggest exposure was caused by an individual or contractor. Damaged material was deemed to have no salvage value.

After this inspection Semper Fi sent a letter to Defendant expressing their displeasure with the results of the initial inspection, and their concern with the actions of Adjuster Land. On

August 17, 2020, Semper Fi requested re-inspection of the damage, as well as re-consideration of window damage that may have been attributed to hail. On August 19, 2020, Adjuster Land determined no new information was submitted in the proposed supplement. Furthermore, Partial denial of the roof damage due to overdriven nails and improper installation was a result discussed between Defendant's adjuster and Plaintiff's representative on the date of the inspection.

On August 20, 2020, Defendant sent the partial denial letter to Plaintiff. However, Plaintiff contended that Adjuster Land improperly tampered with evidence during the inspection, and failed to deliver a certified copy of the Policy. The record reflects that the request for the certified copy of the Policy was received by Defendant, and emailed to Semper Fi on September 10, 2020. Furthermore, although, disagreeing with Plaintiff, the parties agreed to procure CTL Group Engineering to conduct a separate inspection, for which, Defendants representative would not be present; to reduce the risk of bias addressed by Plaintiff in previous conversations.

On December 24, 2020, Defendant received a letter of representation from Semper Fi, on behalf of Plaintiff's claim. On December 28, 2020, the inspection was cancelled due to travel restrictions. CTL Group was charged with the responsibility to follow-up with the parties with the new inspection date, once the date was set with Semper Fi. On January 2, 2021, a second request for certified copy of the Policy was sent to Defendant by Semper Fi. Due to COVID they were not mailed, but once a PDF was received, it was emailed to Semper Fi.

On January 5, 2021, An email was sent by Defendant to Engineer to request an update on the inspection date. On January 10, 2021, Engineer contacted Defendant and informed that the inspection was rescheduled for Tuesday, January 12, 2021. On January 11, 2021, A claim status letter was sent by Defendant to Plaintiff. The CTL Group sent an email informing that the

inspection would be scheduled for January 14, 2021 at 9:00 AM. Semper Fi was informed of this notice, as well. On January 14, 2021, The engineer reported that the inspection was completed and the written engineering report was being prepared.

On January 28, 2021, the engineer submitted his report with his findings. The findings of this report were submitted to Plaintiff on February 1, 2021. On January 29, 2021, the engineer's Report was received by Defendant, and forwarded to the necessary parties, by CTL Group.

In the report CTL Group determined:

“...a strong wind and rain storm swept through the Baltimore area on April 13, 2020, one day after the reported date of loss of April 12. The diagonal pattern of un-bonded shingle overlaps observed on every facet of the roof is typically associated with thermal expansion and contraction and was not caused by wind. The power vent cap, near the ridge line, is heavily dented. The public adjuster's report that it blew off during a storm in April 2020, and was provisionally reinstalled, is credible. However, there was no evidence of recent hail damage. Minor scattered indentations in shingles appear old, and do not affect the serviceability of the roof. No hail has been reported at this location since 2019. Minor indentation of exterior window trim may be attributable to hail events that occurred prior to 2020, but are not readily noticeable and do not affect the serviceability of the windows. Scattered dents and splatter marks on the aluminum siding are attributable to a combination of hail events prior to 2020 and incidental mechanical impacts over the life of the home. A loose and displaced downspout at the right rear (south) corner of the house may be attributable to wind damage.”

On February 1, 2021, a denial of coverage was sent to Plaintiff. Defendant sent its letter identifying the covered damages, in consideration of the engineering report prepared by CTL Group.

On February 10, 2021, Plaintiff and Defendant discussed the partial denial letter. Plaintiff did not have any additional questions at the time, nor any additional evidence to suggest coverable damage had been neglected from the estimates. On May 31, 2021, Defendant contacted Plaintiff via email, regarding her May 21, 2021 email. On May 31, 2021, Defendant

received a claim to confirm that no information was neglected from Semper Fi's estimate. Defendant's report confirmed that no other covered damages were excluded from consideration. Defendant attempted to contact Semper Fi via phone, but was not able to. On June 6, 2021, The file was closed by Defendant and the estimate sent to Semper Fi. Defendant concluded that all coverable damage had been accounted for.

At all times during the claims process, Defendant remained communicative with Plaintiff. After Plaintiff expressed displeasure with the first inspection, Defendant remained in contact with Defendant until a resolution could be reached. Defendant addressed every document request submitted by Plaintiff. To date three inspections have been conducted using three separate services. In each of the damage estimates the damages described are consistent with the characterization of damages not covered under the Policy. Furthermore, Plaintiff's exhibits fail to establish that Defendant reached an arbitrary or capricious result based on the available evidence. Therefore, Plaintiff has not proven Defendant has breached the terms of the Policy. Thus, there has not been a breach of §27-303(2).

Plaintiff's claim also alleges that Defendant failed to provide promptly on request a reasonable explanation of the basis for a denial of her claim; in violation of §27-303(6) of the Maryland Insurance Code.

Defendant submitted its first partial denial of the claim on August 19, 2020. On August 20, 2020, Defendant sent the Partial Denial Letter to Plaintiff.

However, Plaintiff continued to dispute the amount of the loss, and the veracity of the inspection conducted by Adjuster Land. To address the concerns of Plaintiff, on December 11, 2020, an engineer's inspection was requested from CTL Group and scheduled for December 30, 2020 at 2:00 PM.

On June 2, 2020, Defendant received a call from Contractor Joe informing Defendant that they would not be able to make the June 4, 2020 inspection date, and would need to reschedule. A new date was agreed to by Defendant and Contractor Joe for Tuesday, June 16, 2020 between 9:00 AM to 9:30 AM. Plaintiff agreed to the new inspection date. On June 16, 2020, Adjuster Land reported inspecting and photographing everything marked on the roof, per her instructions. The additional inspections determined poor installation caused the damage and there was nothing to suggest an individual or contractor caused any exposure. Furthermore, the CoreLogic report determined there was no hail on the reported date of loss. The results of these inspections was promptly reported by Defendant on June 24, 2020, in Defendant's Settlement Letter to Plaintiff.

Although, disagreeing with Plaintiff, about the results of the inspections and the conditions they were determined under, Defendants were prompt and diligent in their investigations and the communication of their results. Defendant was also able to reassure the results of its investigations by yielding additional investigations at its own expense. All of Defendant's payments on the claim were made promptly, and by virtue of the information yielded through investigation.

Accordingly, I find that Plaintiff has not demonstrated that Defendant breached its obligations under §27-303(6), the Policy or failed to act in good faith in connection with the Claim.

V. CONCLUSIONS OF LAW

In accordance with §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.

Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the property damage coverage required under the policy.

2. Plaintiff did not establish by a preponderance of the evidence that she is entitled to additional damages as a result of the claim.
3. Plaintiff did not establish by a preponderance of the evidence that Defendant breached its obligation under the policy to cover and pay the claim.
4. 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.
5. 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 25th 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 §27-1001(f)(3), this Final Order shall take effect if no administrative hearing is requested in accordance with §27-1001(f)(1).

KATHLEEN A. BIRRANE
Insurance Commissioner

TAMMY R. J. LONGAN
Commissioner 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).