

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

A.C.¹, *
Plaintiff, *
v. * Case No. 27-1001-23-00010
STATE FARM FIRE AND *
CASUALTY INSURANCE COMPANY, *
Defendant. *

* * * * *

DECISION

A.C. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that State Farm Fire and Casualty Insurance Company (“Defendant”) breached its contractual obligations to him by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a homeowner’s insurance policy (the “Policy”) in connection with wind damage that occurred on January 23, 2021, which caused damage to Plaintiff’s home and shed (the “Property”) located in Woodsboro, Maryland (the “Claim”).

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

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

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 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.”

Further, 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).

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 Physician v. Elliott*, Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On January 5, 2023, the Administration received Complaint No. 27-1001-23-00010 (the "Complaint") stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged Defendant breached its obligations under the Policy by failing to pay the entire amount sought in the Claim. Plaintiff contends that Defendant, in doing so, breached its duty to act in good faith by failing to make an informed judgement on Plaintiff's claim based on honesty and diligence supported by evidence Defendant knew or should have known at the time it denied the Claim. Specifically, Plaintiff alleges that Defendant's decisions were not supported by evidence, that Defendant ignored the facts Plaintiff presented, refused to justify its position with regard to its claim denial, refused to discuss or negotiate the Claim with Plaintiff's public adjuster, and failed to provide a certified copy of Plaintiff's Policy to the public adjuster in a timely manner.

On January 12, 2023, as required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. On January 26, 2023, counsel for the Defendant emailed and requested an extension of the deadline to respond to the Complaint. Counsel for the Plaintiff did not object and I granted a two-week extension for Defendant to respond. On February 27, 2023, Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4), acknowledging that the Policy provided dwelling coverage for Plaintiff's Property with policy limits of \$305,600 subject to a \$1,528.00 deductible.

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 failed to establish that he is entitled to additional coverage for the Claim under the Policy.

On January 29, 2021, Plaintiff notified Defendant of the Claim reporting wind damage to the roof of the dwelling and interior water damage. Defendant acknowledged receipt of the Claim and stated that a representative would reach out to Plaintiff to obtain his availability to schedule an inspection. On February 3, 2021, Plaintiff spoke to Defendant and agreed to send photographs of the interior damage to Defendant and agreed to schedule a physical inspection with Seek Now, a contractor chosen by Defendant, based on Seek Now's and Plaintiff's availability. During this conversation Plaintiff stated that he was not sure of the date of the loss and that he had filed the Claim after noticing interior water damages. Plaintiff stated that he had spoken to a roofing company, Bulletproof Exteriors, and they recommended he file a claim with his insurance company. Plaintiff also stated that a shed behind the garage on the Property also sustained wind damage.

On February 4, 2021, Plaintiff submitted photographs of the interior of the dwelling and shed where he stated water leaks had occurred. The photographs showed wet and dry rot to the ceilings which was unrelated to wind damage. Defendant determined that the rot was likely related to the pipe jack openings in the roof and a change in pitch on the shed, which would not have been caused by direct physical loss, so Defendant identified potential coverage issues related to the repairs. Defendant proceeded with a roof inspection to confirm its determination.

Seek Now had initially scheduled an inspection in early February; however, due to snow, the inspection was pushed back to February 26, 2021. Defendant received Seek Now's

inspection report on March 3, 2021, which showed the dwelling roof was in fair condition and had wind damage to three (3) shingles on the left slope and 50 shingles on the right slope. The inspection of the shed showed one (1) wind damaged shingle on the right and two (2) wind damaged shingles on the left with the remaining shingles in fair condition. Based on Seek Now's report, Defendant issued payment for the actual cash value of \$4,337.29. Defendant also issued a partial denial letter for the interior damages noting these damages were the result of wet and dry rot and or improper installation/construction, which are excluded under the Policy.

In September, 2021, Defendant received correspondence from Adjust It Once Public Adjusting ("Adjust It Once"). This correspondence included a letter of representation and requested a copy of the Policy and copies of inspection reports among other things. Defendant emailed Adjust It Once a copy of Defendant's estimate, summary of loss, and a copy of the Policy. Defendant also called Adjust It Once and left a voicemail detailing its claim decisions. At that time, Adjust It Once did not provide any information which warranted Defendant re-opening the Claim.

On October 5, 2021, Adjust It Once forwarded an estimate and proof of loss in the amount of \$45,928.35. This estimate provided for a total roof replacement for both the dwelling and the shed, replacement of the sheathing on both roofs, and a blank line item for a public adjuster's fee. The report stated that wind creased and tore shingles on the roof, but the inspection revealed "no storm related damage observed or reported at the time of the inspection" to the front, right, back, and left elevations of the roof.

Based on Adjust It Once's estimate, Defendant scheduled a re-inspection of the Property to consider any additional damages not identified during Seek Now's inspection. Defendant retained Rothfuss Engineering Company ("Rothfuss") to inspect the Property and opine as to the

reparability of the dwelling roof, the shed roof, the cause of the interior damages, and the cause of the rust and rot noted by the Plaintiff.

Rothfuss conducted an inspection on November 5, 2021, and Defendant received Rothfuss' report on November 30, 2021. Rothfuss opined that the right side of the dwelling roof was damaged and should be replaced, but that the left side of the roof could be repaired because it had limited wind damage, that it was unlikely that the sheathing of either the dwelling or shed roof needed to be replaced as there was no damage from wind loss to the sheathing, and that the roof of the shed could be repaired although the shingles were brittle. Rothfuss also noted that the interior leaks were the result of improper installation of rubber flashing boots, not from wind damage.

On December 3, 2021, Defendant revised its estimate to include replacement of the shingles on both the right side of the dwelling roof and the shed shingles and Defendant issued a payment in the amount of \$7,566.36 for the actual cash value of the revised estimate. Defendant also issued a denial letter for the interior damages.

There was no further activity on this Claim until January 30, 2022, when Defendant received correspondence from Adjust It Once entitled "Final Reasonable Demand." Adjust It Once demanded that Defendant issue payment for the full amount of its estimate, but Adjust It Once did not provide any additional evidence to support its estimate and repair report.

Defendant reviewed Adjust It Once's correspondence and completed a line-by-line comparison of Defendant's and Adjust It Once's estimate. Defendant determined that most of its estimated costs for the repairs were actually greater than the costs listed on Adjust It Once's estimates. However, Defendant agreed to increase the number of days that safety equipment was needed to complete the roof, which increased Defendant's actual cash value payment by \$54.47.

Defendant issued this additional payment and sent a copy of its revised estimate to Adjust It Once and Plaintiff.

There was no further activity on this Claim until January 5, 2023, when Plaintiff filed the subject 27-1001 Complaint. Included with the Complaint, was an estimate written by Adjust It Once in the amount of \$45,928.35. This estimate included a full roof replacement for both the dwelling and the shed, replacement of the roof sheathing for both the dwelling and shed, and a blank public adjuster's fee which stated that the amount was "to be determined" among other things.

IV. DISCUSSION

The evidence demonstrates that Defendant acted promptly to hire Seek Now who conducted an inspection of the Property on February 26, 2021. Based on Seek Now's initial inspection, a payment was issued. Moreover, the evidence demonstrates that Defendant communicated its initial coverage decision clearly and promptly to Plaintiff.

After receiving an estimate from Adjust It Once, Defendant decided a re-inspection was proper and Defendant requested that Rothfuss perform a second inspection. Rothfuss' re-inspection found some additional damages and Defendant provided an additional payment based on Rothfuss' inspection and report. On December 2, 2021, Defendant issued a letter to Plaintiff explaining the results of the inspection, explaining the additional payment, and noting which portions of the Claim were being denied and explaining why. Specifically, the December 2, 2021, letter noted that the interior damages were caused by an ongoing active leak and that additional damages were caused by deterioration, wet and dry rot which are not covered by the Policy.

In January 2022, Defendant received a letter from Adjust It Once requesting that Defendant issue payment of its full estimate, but this letter did not provide any additional information or evidence to dispute Defendant's or Rothfuss' conclusions. Defendant still reviewed Adjust It Once's estimate again and compared it to Defendant's estimate. Based on this comparison Defendant issued an additional payment to the Plaintiff.

There was no further activity on this Claim for approximately a year until Plaintiff filed the subject 27-1001 Complaint. Included with the Complaint, was an estimate written by Adjust It Once in the amount of \$45,928.35. This estimate included a full roof replacement for both the dwelling and the shed, replacement of the roof sheathing for both the dwelling and shed, and a blank public adjuster's fee which stated that the amount was "to be determined" among other things.

Plaintiff has not provided evidence documenting whether or how the additional repairs shown on Adjust It Once's estimate were necessitated by wind damage, nor has he provided any explanation for the substantial difference in the extent of the alleged damages and therefore in the scope of repairs included in Adjust It Once's estimate. Plaintiff also has not identified specific repairs he contends were improperly denied by Defendant, but simply contends that Defendant is obligated to indemnify Plaintiff based on the scope of work prepared by Adjust It Once. Despite the allegations in his Complaint, Plaintiff has failed to offer any proof that Defendant's decisions were not supported by evidence, that Defendant ignored the facts he presented, refused to justify its position with regards to its claim denial, failed to provide him with a certified copy of the subject policy, and/or refused to discuss or negotiate the Claim with Plaintiff's public adjuster. Rather Plaintiff simply contends that Defendant is incorrect in its interpretation that Defendant only owes for "direct physical loss" under the Policy.

In Maryland, insurance policies are construed like other contracts. *North River Ins. Co. v. Mayor & City Council of Balto.*, 343 Md. 34, 39, 680 A.2d 480, 483 (1996). Maryland follows the objective law of contract interpretation, and the rights and liabilities of the parties are determined by the terms of the agreement. *Maryland Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694–95, 114 A.3d 676, 681 (2015).

The Policy at issue in this case includes the following pertinent terms and conditions:

SECTION I – LOSSES INSURED

COVERAGE A – DWELLING

We will pay for accident direct physical loss to the property described in Coverage A, unless the loss is excluded or limited in **SECTION I – LOSSES NOT INSURED** or otherwise excluded or limited in this policy. However, loss does not include and *we* will not pay for, ***any diminution in value.***

* * * *

Here the Policy specifically states that coverage will be extended for damages caused by “accidental direct physical loss”. The Policy does not provide blanket coverage to fix everything that is wrong with the insured’s property and is limited to those damages caused by accidental direct physical loss. In this case, Plaintiff has also not referenced any provision of the Policy that would require Defendant to provide coverage for additional repairs not resulting from direct physical loss to the covered dwelling or for the public adjuster fees included in Adjust It Once’s estimate.

Based on these findings, Plaintiff has failed to meet his burden to prove that Defendant breached any obligation owed to him 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 issued

to Plaintiff a dwelling coverage policy obligating Defendant to pay a claim for damage to the Property caused by wind damage on January 23, 2021.

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 8th day of March, 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

/S/ Lisa Larson
Lisa Larson
Director 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).