

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

**MARYLAND INSURANCE  
ADMINISTRATION  
EX REL. H.I.<sup>1</sup>,**

**Complainant**

v.

**Case No. MIA 2022-04-007**

**LIBERTY MUTUAL FIRE INSURANCE  
COMPANY,**

**Licensee**

\* \* \* \* \*

**MEMORANDUM AND FINAL ORDER**

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,<sup>2</sup> the Undersigned concludes that Liberty Mutual Fire Insurance Company (“Licensee”) has satisfied its burden of proving, by a preponderance of the evidence, that it has not engaged in discrimination against H.I. (“Complainant”) in its underwriting practices in violation of § 27-501, and that Complainant has not satisfied his burden of proving that Licensee has violated § 27-902(b)(1).

**STATEMENT OF THE CASE**

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (the “MIA”) on April 28, 2021. (MIA Exhibit (“Ex.”) 1.) In his Complaint to the MIA, Complainant alleged that he contacted Licensee concerning his automobile insurance policy and the price he was charged for his insurance

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<sup>1</sup> The MIA uses initials to identify a Complainant and to protect the privacy of the Parties.

<sup>2</sup> Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

premium. From that call, Complainant alleged that he was transferred to Safeco and believes that Licensee was using the same phone numbers and employees, but that he was overcharged because the companies were not charging the same price for automobile insurance. Specifically, Complainant asserts that Licensee charged him \$1,800 per year for his automobile insurance with Licensee, while Safeco only charged \$600 per year. Complainant asserts that the escalated pricing reflected discrimination by age or other factors.

After investigating the Complaint, the MIA's Property and Casualty Complaints Unit, determined that Licensee did not violate the Insurance Article. The MIA's Property and Casualty Complaints Unit notified the parties of its findings by letter dated March 11, 2022. (MIA Ex. 22.) The determination letter gave the Parties the right to request a hearing. (*Id.*) The Complainant disagreed with the MIA's determination and timely requested a hearing, which was granted on March 25, 2022. (MIA Ex. 24.)

### **ISSUE**

The issue presented in this case is whether Licensee engaged in discrimination in underwriting in violation of § 27-501 and/or age discrimination in violation of § 27-902(b)(1).

### **SUMMARY OF THE EVIDENCE**

#### **A. Testimony**

A virtual evidentiary hearing was held on February 9, 2023 and February 15, 2023.<sup>3</sup> Complainant provided sworn testimony on his own behalf. Licensee was represented by Moyah

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<sup>3</sup> The virtual evidentiary hearing was initially scheduled for August 24, 2022. The hearing was then administratively postponed to January 26, 2023. The Parties convened for the virtual evidentiary hearing on January 26, 2023, and at that time, Complainant stated that he had not yet received an electronic copy of the investigation file. Licensee's attorney acknowledged that she had received it. The Undersigned informed the parties that the investigation file would be re-sent later on January 26, 2023, and to contact the Clerk, Office of Hearings, if either party had not received it by the following day. A brief postponement was then granted to ensure that the investigation file had been sent to both parties. On January 26, 2023, an electronic copy of the investigation file was sent to the parties by secure email. On February 6, 2023, the Complainant sent an email to the Clerk, Office of Hearings, stating that he

K. Panda, Esquire, of the Law Offices of Jonathan P. Stebenne. Ms. Mary Driggett, Regulatory Compliance Analyst, provided sworn testimony on behalf of Licensee.

**B. Exhibits**

*MIA Exhibits (In Record)*

1. Complaint from Complainant to the MIA, dated April 28, 2021
2. Correspondence from the MIA to Licensee, dated April 30, 2021
3. Correspondence from the Licensee to the MIA, dated May 16, 2021
4. Correspondence from the MIA to Licensee, dated May 18, 2021
5. Correspondence from the Complainant to the MIA, dated May 20, 2021
6. Correspondence from the Licensee to the MIA, dated May 24, 2021
7. Correspondence from the MIA to Licensee, dated June 14, 2021
8. Correspondence from the Complainant to the MIA, dated June 22, 2021
9. Correspondence from the Licensee to the MIA, received on June 24, 2021
10. Correspondence from the MIA to Licensee, dated September 2, 2021
11. Correspondence from the Licensee to the MIA, received on September 16, 2021
12. Correspondence from the Complainant to the MIA, received on September 20, 2021
13. Correspondence from the MIA to the Complainant, received on September 21, 2021
14. Correspondence from the MIA to Licensee, dated September 21, 2021
15. Correspondence from the Licensee to the MIA, received on October 1, 2021
16. Correspondence from the MIA to the Complainant, received on December 21, 2021
17. Correspondence from the MIA to Licensee and correspondence from the MIA to the Complainant, dated September 21, 2021
18. Correspondence from the Licensee to the MIA, received on January 5, 2022
19. Correspondence from the MIA to the Licensee, dated January 6, 2022
20. Correspondence from the Licensee to the MIA, received on January 27, 2022

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had not received the investigation file. In response, on February 6, 2023, the Undersigned responded to the Complainant stating that the investigation file had been sent on January 26, 2023 and to check his email spam folder. The parties convened the virtual evidentiary hearing on February 9, 2023 and at that time, Complainant confirmed that he received the investigation file on February 6, 2023, but only had three days to review its contents. The evidentiary hearing was started, beginning with opening statements and the direct examination of Ms. Mary Driggett on behalf of Licensee. The Undersigned also granted a brief postponement until February 15, 2023, to complete the virtual evidentiary hearing. Following the evidentiary hearing, by email on February 9, 2023, Complainant requested that subpoenas issue for two witnesses. In response, the Undersigned notified the Complainant that the purpose of the adjournment of the evidentiary hearing is to afford Complainant an opportunity to review the investigation file. However, as the Complainant's requests for subpoenas was outside of the deadline set in the Notice of Virtual Hearing sent to the parties on January 27, 2023, Complainant's request for subpoenas is denied.

21. Correspondence from the Complainant to the MIA, received on March 8, 2022
22. Determination letter from the MIA to the Complainant and Licensee, dated March 11, 2022
23. Correspondence from Complainant to the MIA requesting an evidentiary hearing, received on March 25, 2022
24. Letter Granting Hearing Request from MIA to Parties, dated March 25, 2022

### FINDINGS OF FACT

The findings of fact contained herein are based upon a complete and thorough review of the entire record in this case. The record includes the above referenced exhibits and the transcript of the February 9, 2023 and February 15, 2023 virtual evidentiary hearing. To the extent that there are any facts in dispute, the following facts are found to be true by a preponderance of the evidence. Citations to particular parts of the record are for ease of reference and are not intended to exclude, and do not exclude, reliance on the entire record.

1. On April 28, 2021, Complainant filed a complaint with the MIA Property & Casualty Unit. (MIA Ex. 1.) In his complaint, Complainant stated that he contacted Licensee concerning his automobile insurance policy and the price he was charged for his insurance premium. (*Id.*) From that call, Complainant alleged that he was transferred to Safeco and believes that Licensee was using the same phone numbers and employees, but that he was overcharged because the companies were not charging the same price for automobile insurance. (*Id.*) Specifically, Complainant asserts that Licensee charged him \$1,800 per year for his automobile insurance with Licensee, while Safeco only charged \$600 per year. (*Id.*) Complainant asserts that the escalated pricing reflected discrimination by age or other factors. (*Id.*)

2. On April 30, 2021, the MIA Property & Casualty Unit notified Licensee of the Complaint and requested documentation concerning the Complainant's allegations. (MIA Ex. 2.)

3. On May 16, 2021, Licensee responded to the Complaint. (MIA Ex. 3.) In Licensee's response, Licensee stated that Complainant had inquired about why his 2020 automobile insurance premium rate provided by Licensee was higher than the premium rate from Safeco, a Liberty Mutual Company. (*Id.*)

4. Licensee stated that many factors are considered when determining the premium for a policy. (MIA Ex. 3.) Licensee stated in its response to the MIA Property & Casualty Unit that while Safeco is a Liberty Mutual Company, it has its own unique products and rates. (*Id.*) Further, Licensee stated that Safeco and Liberty Mutual use different distribution channels to sell policies. (*Id.*) Additionally, Licensee stated that Complainant's automobile insurance policy was written by a Liberty Mutual sales representative. (*Id.*) However, Complainant's Safeco auto policy was sold through an independent agent, Legacy Insurance, LLC. (*Id.*) Licensee further stated that its rates are based on its experience over a given point in time and that its rate plans are reviewed continuously, while working closely with state regulators to administer rates to policyholders that are adequate, not excessive, and non-discriminatory. (*Id.*)

5. On May 18, 2021, the MIA Property & Casualty Unit requested the premium calculation breakdown from Licensee, including the base rates and applicable rating factors used to derive the Complainant's policy premium amount of \$1,812 for the policy period effective June 5, 2020 to June 5, 2021. (MIA Ex. 4.) The MIA Property & Casualty Unit also requested a copy of Licensee's filed rate manual pages reflecting the base rates and applicable rating factors supporting the premium calculation breakdown. (*Id.*)

6. On May 24, 2021, Licensee submitted its response to the MIA Property & Casualty Unit's May 18, 2021 request. (MIA Ex. 6.) In Licensee's May 24, 2021 response, Licensee submitted a previously prepared letter to a prior complaint from the Complainant, dated

June 4, 2020. The June 4, 2020 letter stated, “[Complainant’s] premium increased from \$1,601 in 2019 (endorsement effective date December 30, 2019) to \$1,812 at the 2020 renewal due to the several factors:

1. The policy was affected by rate revision filed with the Department of Insurance (SERFF filing number <LBPM- LBPM-132034596) effective for renewals on or after October 31, 2019.
2. The policy was also impacted by the CycleGuard factor that applies a factor to the policy premium to account for expected inflationary increases.
3. Finally, the policy was impacted by a change in the Class Factor as [Complainant’s] class changed from 7 to 67 per the attached rule page. This change is due to his age, which changed his classification from “Mature” to “Senior”.

....

(MIA Ex. 6.)

7. Licensee also submitted a copy of the declaration pages, premium computations for 2019 and 2020, the base rate page, the CycleGuard Rate/Rule, and the Rate/Rule pages regarding Class Factor. (MIA Ex. 6.)

8. On June 14, 2021, the MIA Property & Casualty Complaint’s Unit sent another letter to Licensee regarding Licensee’s May 16, 2021 response, in which Licensee stated that the Complainant’s policy was written by a Liberty Mutual sales representative and not through an independent agent. (MIA Exs. 3 and 7.) Specifically, the MIA Property & Casualty Complaint’s Unit requested the following:

What auto products / writing companies are available for sales representatives to solicit? Explain and/or define the role/responsibility of a sales agent with respect to renewal reviews and solicitation of cost saving coverages and/or movement to a better cost saving product.

....

(MIA Ex. 7.)

9. On June 24, 2021, Licensee responded to the MIA Property & Casualty Complaints Unit, stating,

The role of the sales representative does not typically include proactively conducting renewal reviews. As part of our practice pertaining to existing customers, our company provides an annual notice (PMKT 861 04 17 enclosed) advising the customer of their option to request a complete re-evaluation of their automobile insurance rate with up-to date information. This form was included in the policyholder's renewal package. We cannot make any assumptions about an insured's qualifications for a new program, nor rewrite a policy without a specific request from the insured. Additionally, we do not automatically move customers from one program to another at renewal because not all customers will see a decrease in their premium.

....

(MIA Ex. 9.)

10. As part of Licensee's June 24, 2021 response to the MIA Property & Casualty Complaints Unit, Licensee submitted a copy of their annual notice (PMKT 861 04 17) which states,

**Information about Policy Rate Determination**

Thank you for trusting Liberty Mutual Insurance to protect the things you value most. We want to provide you with the right coverage at the right price.

Since you purchased your policy, new rating features may have become available, and we want to make sure you take advantage of them. We also want to make sure we have the most up to date information about you, your family, your vehicles and your home to ensure you have the right coverage at the right price.

When determining your rate, we may consider many factors, such as your credit history, claims history, and household risk characteristics. For example, you may be eligible for certain safety discounts if your vehicle includes features such as adaptive cruise control, lane departure warning, and collision preparation systems. Or, you may qualify for a discounted homeowner's insurance rate if you have a newly installed roof or connected home devices. If your community recently added new fire stations or moved fire hydrants close to your home, that may also reduce your rate. An improved credit history could also lead to additional savings.

**You may request that Liberty Mutual re-evaluate your current insurance rate with your most recent information, including your credit history, before your policy expires on 06/05/2021.**

Policy rate re-evaluation is limited to one request per twelve month period, or as otherwise permitted by law, and it may not result in a quoted premium lower than your current one. If you would like your policy re-evaluated, please call us at 1-844-316-4423 and someone from our team will be happy to help you.

Discounts, credits and benefits are available where state laws and regulation allow and may vary by state. Please contact your insurance representative for additional details.

....

(MIA Ex. 9.)

11. On September 2, 2021, the MIA Property & Casualty Complaints Unit requested additional documentation from Licensee. (MIA Ex. 10.) Specifically, the following documents were requested,

1. Provide a copy of the Liberty Mutual policy file/telephone log notes supporting when the complainant called for a policy re-evaluation and/or was informed about the Safeco company. As well as any transaction / rewrite policy notes.
2. Provide a copy of the Safeco auto policy declarations page.
3. Provide a premium calculation breakdown including the base rates and applicable rating factors supporting the premium charged on the Safeco new business policy declarations page.
4. Provide a copy of your company's filed rate manual pages reflecting the base rates and applicable rating factors used in the premium calculation breakdown.

....

(MIA Ex. 10.)

12. On September 16, 2021, Licensee responded to the MIA Property & Casualty Complaints Unit's September 2, 2021 request. (MIA Ex. 11.) In its response, Licensee stated that Complainant called Licensee on September 29, 2020 and stated that he was cancelling his automobile insurance policy. (*Id.*) Further, Complainant informed Licensee that he had worked with his insurance agent, Legacy Insurance, to obtain another automobile insurance policy. (*Id.*) Based on the policy notes from the Complainant's September 29, 2020 call, Complainant did not



request a re-evaluation of his automobile policy. (*Id.*) In Licensee's September 16, 2021 response to the MIA Property & Casualty Complaints Unit, Licensee also stated that,

“[Complainant] independently worked with an insurance agent (Legacy Insurance) to get a new auto quote and policy from Safeco Insurance, which has different auto products and filed rates than that of Liberty Mutual Fire Insurance Company.  
....

(MIA Ex. 11.)

13. Also in Licensee's September 16, 2021 response, Licensee provided the policy notes from the Complainant's September 29, 2020 call, the policy declaration page and the premium calculation breakdown for Complainant's "new business auto policy" with Safeco, as well as Safeco's filed rate manual pages reflecting the applicable base rates. (MIA Ex. 11.) Finally, Licensee stated that Safeco's approved rate and rule pages can be referenced under SERFF# LBPM-132249207, approved June 16, 2020. (*Id.*)

14. On September 21, 2021, the MIA Property & Casualty Unit again contacted Licensee and stated,

Pursuant to a recent status update request from the complaint, he verbally contends that he has spoken with Liberty Mutual representatives several times regarding his homeowner and automobile policies and has sought rate reductions. The most recent response includes auto policy file notes from 08/26/2020 through 09/30/2020.  
....

(MIA Ex. 14.)

15. Based on the additional information provided by Complainant, the MIA Property & Casualty Unit requested a copy of the auto policy file/telephone log notes from April 28, 2018 to August 26, 2020, a copy of the homeowner policy file/telephone log notes from April 28, 2018 to present, and a copy of the Complainant's homeowner policy. (MIA Ex. 14.)

16. On October 1, 2021, Licensee responded to the MIA Property & Casualty Complaints Unit and submitted the policy notes for Complainant's automobile and homeowner policies, as well as the policy declaration pages for Complainant's homeowner's policies for the policy periods of March 10, 2018 through March 10, 2019; March 10, 2019 through March 10, 2020 and March 10, 2020 through March 10, 2021. (MIA Ex. 14.)

17. Based on its review of the policy notes, on December 21, 2021, MIA Property & Casualty Complaints Unit requested the retention policy for Licensee's telephone call records and further explanation of the handling of a request from the Complainant on May 28, 2020 to speak with Licensee's "Rate Specialist of Maryland." Specifically, the MIA Property & Casualty Complaints Unit requested the outcome of the referral. (MIA Ex. 17.)

18. The MIA Property & Casualty Complaints Unit received a response from Licensee on January 5, 2022 stating that it purges call recordings after 90 days. (MIA Ex. 18.) Additionally, Licensee responded that there is no process to submit a consumer complaint to a "Rate Specialist of Maryland." (MIA Ex. 18.) Instead, Licensee stated that "personal automobile insurance rates are filed with the Maryland Insurance Administration, and then approved rates are applied by our underwriting department to individual policyholders." (*Id.*)

19. On January 6, 2022, the MIA Property and Casualty Complaints Unit sent a letter to Licensee stating,

Your company's file notes state on 05/28/2020 that the policyholder wanted to forward a complaint to a rate specialist and on 09/29/2020 it states the policyholder did not ask to escalate. These statements alluded to a potential escalation process.

....

(MIA Ex. 19.)

20. In the MIA Property & Casualty Complaints Unit's January 6, 2022 letter, it also requested an explanation of any procedures used to "escalate and review the policy for accuracy and/or explain any protocols your company follows to shop the policy amongst your affiliate group of companies for a more affordable rate" (MIA Ex. 19.)

21. The MIA Property & Casualty Complaints Unit received Licensee's response on January 27, 2022. (MIA Ex. 20.) In its response, Licensee stated,

It is Liberty Mutual's procedure that when a policyholder asks to file a complaint, the caller is either transferred to a Resolution Specialist/Supervisor or they can request a callback from the supervisor for a later time. There is no documentation that indicates [Complainant] asked to be transferred to or receive a callback from a supervisor to file a complaint. Based on the limited information provided in the policy and the date in which this conversation took place; it cannot be determined if the policyholder was simply stating his intention of filing a complaint with the state or another form of communication.

Additionally, Liberty Mutual does have the ability to compare the policy against affiliated company groups, when speaking with a licensed company representative. However, since [Complainant] did not request a re-evaluation of his policy, he was not connected with a licensed representative who had the ability to offer this service. It is not procedure for a customer service representative to offer this service unless [Complainant] had requested his policy be re-evaluated, at which point he would have been re-directed to the appropriate department.

....

(MIA Ex. 20.)

22. Complainant testified at the virtual evidentiary hearing that on September 19, 2019, he asked to speak with someone higher and on May 29, 2020, he asked to speak with a rate specialist. (February 9, 2023 Transcript ("Feb. 9, 2023 Tr.") at 71.)

23. Complainant also testified at the virtual evidentiary hearing that he believes Licensee engaged in age discrimination. (Feb. 9, 2023 Tr. at 72.) Specifically, Complainant testified that, "It's definitely is [sic] age discrimination and it moves in that direction consistently

where we had, at the end, paid \$1,800 per year for one vehicle while today, with Safeco, an arm of Liberty Mutual, I am only paying \$600 and we have three vehicles under it.” (Feb. 9, 2023 Tr. at 73-74.)

24. Ms. Mary Driggett, Regulatory Compliance Analyst, (“Analyst Driggett”) provided sworn testimony at the virtual evidentiary hearing on behalf of Licensee. Based on her review of the policy notes, with respect to the Complainant’s September 28, 2020 call to Licensee, Analyst Driggett testified that “[Complainant] had called to cancel his policy advising that he had moved his coverage with Legacy Insurance, which is an independent agency, and that he was intending on filing a complaint with the Insurance Commissioner.” (Feb. 9, 2023 Tr. at 25.)

25. Analyst Driggett testified that had Complainant called to question his rates, the procedure for addressing his question would have been to transfer Complainant to the Sales Department to speak with a licensed representative that would have been able to provide a re-evaluation of the rate quote of his premium. (Feb. 9, 2023 Tr. at 27.) However, Analyst Driggett also testified that there is no record from the policy notes that Complainant requested a re-evaluation of his rates. (Feb. 9, 2023 Tr. at 27.)

26. On cross examination, Analyst Driggett testified that customer sales representatives are responsible for answering questions concerning coverages, claims, or premium increase questions. (February 15, 2023 Transcript (“Feb. 15, 2023 Tr.”) at 11.)

27. With respect to the Complainant’s May 28, 2020 call to Licensee, Complainant questioned Analyst Driggett concerning Licensee’s January 27, 2022 response to the MIA Property & Casualty Complaints Unit, in which Licensee stated, “There is no documentation that indicates [Complainant] asked to be transferred to or receive a callback from a supervisor to file

a complaint.” (MIA Ex. 20.) Analyst Driggett testified that, “if someone asks to be transferred or to request a policy review, then the policy is documented and that customer is then transferred to a licensed sales representative to have an account quote conducted, and I just don't have any record of that.” (Feb. 15, 2023 Tr. at 12.)

28. On March 11, 2022, the MIA Property & Casualty Complaints Unit completed its investigation of the complaint and issued a determination letter finding that Licensee had not violated the Insurance Article. (MIA Ex. 22.)

29. Complainant was not satisfied with the MIA’s determination and requested a hearing. (MIA Ex. 23.) The Complainant’s request for a hearing was granted by letter dated March 1, 2022. (MIA Ex. 24.)

## **DISCUSSION**

### **A. Positions of the Parties**

Complainant contends that Licensee and Safeco are the same company using the same phone numbers and employees. However, the companies are not charging the same price for automobile insurance. Further, Complainant contends that when he contacted Licensee concerning his rates on numerous occasions, including on September 19, 2019 and on May 28, 2020, but Licensee failed to assist him and failed to inform him that he could save money on his automobile policy. Complainant asserts that Licensee’s automobile policy premium amount reflected discrimination by age or other factors.

Licensee asserts that Licensee and Safeco are separate companies. Further, Licensee asserts that there was no discrimination in its handling of Complainant's automobile insurance

policy premium, as Licensee did not act in an arbitrary and capricious manner when assigning Complainant his automobile insurance policy rates.

## **B. Statutory Framework**

The Parties were notified in the Notice of Virtual Hearing that specific attention at the Hearing would be directed to § 27-501 of the Insurance Article. However, since Complainant has alleged a claim of age discrimination, I find that § 27-902(b) may also be relevant in this matter, and I will consider that section of the Insurance Article pursuant to the authority granted to me to do so under § 2-204(b)(2) (“Failure to designate a particular provision of this article ... does not deprive the Commissioner of the right to rely on that provision.”).

Section 27-501 states, in pertinent part:

### Discrimination in underwriting

(a) *In general.* – (1) An insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk for a reason based wholly or partly on race, color, creed, sex, or blindness of an applicant or policyholder or for any arbitrary, capricious, or unfairly discriminatory reason.

(2) Except as provided in this section, an insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by the application of standards that are reasonably related to the insurer’s economic and business purposes.

....

Pursuant to § 27-501 (g), the insurer bears the burden of proof:

(g) At a hearing to determine whether this section has been violated, the burden of persuasion is on the insurer to show that the cancellation or refusal to underwrite or renew is justified under the underwriting standards demonstrated.

§ 27-501(g). To satisfy its burden of proof in this case by a preponderance of the evidence,

Licensee must “prove that something is more likely so than not so” when all of the evidence is

considered. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 125 n. 16 (2002)

(quoting the Maryland Pattern Jury Instructions) (*internal citations omitted*).

With respect to age discrimination in particular, § 27-902(b)(1) states:

(b) The premium for a policy or contract of motor vehicle insurance may not be increased solely because:

(1) an insured under the policy or contract is older than 65 years of age;

§ 27-902(b)(1). For this section of the Insurance Article, the Complainant bears the burden of proof. He must prove that his policy was “increased solely because... [he was] older than 65 years of age.”

Since the facts indicate that he was 64 years of age at the time of his rate increase (*see* MIA Ex. 11), if he wants to argue that his rate increase still violated the Insurance Article, “[t]he claimant must... prove by a preponderance of the evidence that the insurer acted arbitrarily and capriciously.” *Id.* at 672. In other words, the burden of proof rests with Complainant to demonstrate by a preponderance of the evidence that Licensee acted without adequate factual support, in a “nonrational’ and ‘[w]illful and unreasoning... [manner] without consideration and regard for facts and circumstances presented’ . . .” *Hurl v. Board of Educ. of Howard Co.*, 107 Md.App. 286, 306 [ 667 A.2d 970] (1995) (quoting Black’s Law Dictionary, 6<sup>th</sup> Ed.). *See also Comm’r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996); Md. Code Ann., State Gov’t § 10-217 (Westlaw 2023); and *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, 142 Md. App. 628, 672 (2002). As stated, *supra*, to prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so” when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep’t*, 369 Md. 108, 125 n. 16 (2002) (*quoting* Maryland Pattern

Jury Instructions) (*internal citations omitted*). Under this standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Id.*

**C. Licensee has satisfied its burden of demonstrating that its underwriting standards were justified, and Complainant has not satisfied his burden of proving that Licensee violated Section 27-902(b)(1) or acted arbitrarily or capriciously.**

After investigating the Complainant's Complaint, the MIA determined that Licensee had not violated the Insurance Article. For the reasons set forth below, I affirm.

The evidence demonstrates that the automobile premium rate that Licensee provided to the Complainant in the amount of \$1,812 for the 2020 renewal, was consistent with Licensee's standard business practices and not arbitrary, capricious, or unfairly discriminatory. Specifically, the evidence demonstrates that the policy was affected by a rate revision that was filed with the MIA Property & Casualty Unit under SERFF filing number LBPM- LBPM-132034596, and effective for renewals on or after October 31, 2019. (MIA Ex. 6.) This rate revision was properly filed in accordance with Title 11, Subtitle 3 of the Insurance Article. The following principles are given due consideration by the MIA to rates submitted by licensees for review:

- (c) Due consideration shall be given to:
- (1) past and prospective loss experience within and outside the State;
  - (2) conflagration and catastrophe hazards, if any;
  - (3) past and prospective expenses, both countrywide and those specially applicable to the State;
  - (4) underwriting profits;
  - (5) contingencies;
  - (6) investment income from unearned premium reserve and reserve for losses;
  - (7) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders; and
  - (8) all other relevant factors within and outside the State.



§ 11-205(c). Additionally, Complainant's policy was also impacted by the CycleGuard factor, which is a factor that applies to the policy premium to account for expected inflationary increases. (MIA Ex. 6.)

Lastly, Complainant's policy was impacted by a change in the Class Factor, as Complainant's class changed due to his age, which changed his classification from "Mature" to "Senior." (MIA Ex. 6.) According to Licensee's classification rule:

5. "Mature" means that the operator of the automobile resident in the same household or anyone customarily operating the automobile is more than 39 years of age but less than 64 years of age.
6. "Senior" means that the operator of the automobile resident in the same household or anyone customarily operating the automobile is age 64 or older.

(*Id.*) Licensee's witness Analyst Driggett also testified:

But rates are -- they include multiple things and there are classifications ... like change from mature to senior. So mature means that an operator of the automobile, resident in the same household, or anyone customarily operating the automobile is more than 39 years of age but less than 64 years of age. Whereas senior is a 64 or older.

(Feb. 15, 2023 Tr. at 44.)

The Complainant has alleged age discrimination. Unfortunately for Complainant, the section of the Insurance Article that pertains to the effect of age on premium increases for a policy or contract of motor vehicle insurance applies when "an insured under the policy or contract is older than 65 years of age." § 27-902(b)(2). The policy rate increase in this case applied to the policy coverage period beginning June 5, 2020, which was when Complainant was 64 years of age. (MIA Ex. 11.) Even though Complainant turned 65 during the policy year, the premium increase did not occur when he was "older than 65." It occurred when he was 64.

Furthermore, Analyst Driggett was asked: "Did Liberty Mutual handle [Complainant's]...file or treat [Complainant's]... file any differently than any other customer?"

Analyst Driggett responded: “No, [the Complainant’s]... file is treated the same as every policyholder.” (Feb. 9, 2023 Tr. at 29.) Therefore, Licensee did not act arbitrarily or capriciously. The terms arbitrary and capricious were defined in *Berkshire, supra*, as follows: “The word ‘arbitrary’ means... subject to individual judgment or discretion, and made without adequate determination of principle. The word ‘capricious’ [means]... based on an unpredictable whim.” *Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628, 671 (2002). Under this standard, no case was made that Complainant’s rates were applied in an arbitrary or capricious manner. In fact, Analyst Driggett testified that all policyholders are treated the same.

Additionally, the parties dispute whether the Complainant contacted Licensee seeking a re-evaluation of his rates. Specifically, with respect to Complainant’s May 28, 2020 call to Licensee, there is insufficient evidence in the record to demonstrate that Complainant requested a re-evaluation of his rate. Instead, the evidence indicates that Complainant contacted Licensee to notify Licensee of his intent to cancel his policy and file a complaint with the Maryland Insurance Administration.

For the foregoing reasons, I therefore find that Licensee did not violate § 27-501(a) or § 27-902(b)(1).

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I find as a matter of law that Licensee did not violate §§ 27-501(a) or 27-902(b)(1).


**FINAL ORDER**

**IT IS HEREBY ORDERED** that the determination issued by the Maryland Insurance Administration is **AFFIRMED**; and it is further

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

It is so **ORDERED** this 13th day of April, 2023.

**KATHLEEN A. BIRRANE**  
Insurance Commissioner

signature on original  


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**ERICA J. BAILEY**  
Associate Commissioner  
Office of Hearings