

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

MARYLAND INSURANCE ADMINISTRATION <i>EX REL</i> M.S. <sup>1</sup> ,	*	REVIEW OF A RECOMMENDED
	*	DECISION ISSUED BY
Complainant,	*	PATRICK E. MAHER
	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
LIBERTY MUTUAL PERSONAL INSURANCE COMPANY,	*	ADMINISTRATIVE HEARINGS
	*	OAH No.: MIA-CC-33-22-19334
Licensee.	*	MIA No.: MIA-2022-08-001

\* \* \* \* \*

**FINAL ORDER**

Pursuant to Md. Code Ann., Ins. § 2-210(d)<sup>2</sup> and Code of Maryland Regulations (COMAR) 31.02.01.10-2D, the undersigned Associate Commissioner for the Maryland Insurance Administration (MIA) hereby issues this summary affirmance of the Proposed Decision below.

On March 31, 2022, the MIA received a complaint from M.S. (hereinafter “Complainant”) alleging that Liberty Mutual Personal Insurance Company (hereinafter “Licensee”) erred by denying a claim for mold damage to her property (“Complaint”). The MIA investigated the Complaint, and on June 30, 2022, it issued a determination letter concluding that the Licensee did not violate Maryland’s insurance laws in denying the claim under Complainant’s policy; this letter specifically referenced Sections 4-113(b)(5) and Sections 27-303(1), (2), and (6). The Complainant requested a

hearing, which was granted on July 28, 2022. This matter was then transmitted to the Office of Administrative Hearings (“OAH”) to conduct a contested case hearing and to issue a Proposed Decision pursuant to COMAR 31.02.01.04-1A. In its referral to the OAH, the MIA noted that specific attention at the hearing will be directed to the Annotated Code of Maryland, Insurance Article, Sections 4-113 and 27-303.

On February 1, 2023, a hearing was held before Administrative Law Judge (“ALJ”) Maher. On March 2, 2023, ALJ Maher issued a Proposed Decision setting forth factual and legal findings with respect to Sections 4-113(b)(5) and 27-303(2), but did not make Conclusions of Law with respect to Sections 27-303(1) or 27-303(6). On the same date, OAH mailed the Proposed Decision to the Parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions which advised the Parties that, pursuant to COMAR 31.02.01.10-1, they had the right to file written exceptions with the Undersigned within twenty (20) days from receipt of the Proposed Decision. Neither Party filed exceptions in this case.

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Maher. Based on this review, I am persuaded that ALJ Maher’s Conclusion of Law that Licensee did not violate Sections 4-113(b)(5) and 27-303(2) is correct, and, pursuant to COMAR 31.02.01.10-2D, hereby affirm this finding.

I further find, pursuant to COMAR 31.02.01.10-2(C)(2), that ALJ Mather’s Findings of Fact clearly support a finding that Licensee did not violate Section 27-303(1). Specifically, ALJ Maher observed that Complainant’s policy with Licensee states that mold is only covered under the

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<sup>1</sup> The MIA uses initials to protect the identity of the Parties.

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

policy if it is a direct result of a covered loss and is not a result of gradual, continuous, or repeated leakage over a period of fourteen days or more. Furthermore, Licensee alerted Complainant of this policy language via a denial letter date March 21, 2022 by specifically stating the denial of the claim was due to the mold being a result of ongoing seepage, which was not covered under the policy. I, therefore, find that Complainant has not shown that Licensee misrepresented pertinent facts or policy provisions that relate to the claims in violation of Section 27-303(1).

I further find that Complainant has not shown that Licensee violated Section 27-303(6). Based on ALJ Maher's Findings of Fact and the evidence incorporated by ALJ Maher into the record, including the MIA file, Licensee provided Complainant with an explanation for denying the claim multiple times. First, on March 21, 2022, Licensee sent Complainant a denial letter accompanied with relevant policy sections, which explained coverage was denied because the water damage that caused the mold was ongoing and not related to a loss covered under the policy. Additionally, on March 24, 2022 and March 28, 2022, after Complainant questioned Licensee's denial, Licensee again explained that the mold damage was not covered under the policy because it was result of ongoing water damage and was not a result of a loss covered in the policy. Lastly, after conducting additional inspections, on April 27, 2022, Licensee sent a final denial letter to Complainant that included a summary of findings and policy language that led Complainant to deny the claim because the mold damage was caused by ongoing water damage and not from a covered loss. As Licensee clearly identified the basis for the denial, supported by the relevant provisions of the policy, I find that Complainant has not shown that Licensee failed to provide a reasonable explanation for the denial of the claim.

On page 9 of the Proposed Decision ALJ Maher orders that “the Licensee not be found in violation of sections 4-113(b)(5) and 27-303(2) of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED.**” I find it necessary to clarify the disposition of the case. Rather than dismissing the Complaint, I conclude that the determination issued by the Maryland Insurance Administration shall be hereby **AFFIRMED.**

**THEREFORE,** it is hereby

**ORDERED** that the Proposed Decision of ALJ Maher is affirmed, and

**ORDERED** that, as a matter of law, it be found that Licensee did not violate Sections 27-303(1) or 27-303(6);

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

It is so **ORDERED** this 14<sup>th</sup> day of April, 2023.

**KATHLEEN A. BIRRANE**

Commissioner

signature on original

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ERICA J. BAILEY

Associate Commissioner for Hearings

MARYLAND INSURANCE	* BEFORE PATRICK E. MAHER,
ADMINISTRATION	* AN ADMINISTRATIVE LAW JUDGE
EX REL.	* OF THE MARYLAND OFFICE
M.S.,	* OF ADMINISTRATIVE HEARINGS
COMPLAINANT	*
v.	*
LIBERTY MUTUAL PERSONAL	* OAH No.: MIA-CC-33-22-19334
INSURANCE COMPANY,	* MIA No.: 2022-08-001
LICENSEE	*

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSION OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On March 31, 2022, the Maryland Insurance Administration (MIA) received a complaint from the Complainant<sup>1</sup> alleging unfair claims settlement practices by Liberty Mutual Personal Insurance Company (Licensee). Specifically, the Complainant alleges that the Licensee did not pay a claim for mold damage to her property.

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<sup>1</sup> The original complaint to the MIA was sent by email from the Complainant's email address. The email was in first person but identified both M.S. and her husband at the at the end of the email. However, the MIA Hearing Request Form dated July 26, 2022, and rest of the entire file does not identify the husband, and lists only M.S. as the Complainant.

After an investigation, the MIA found that the Licensee did not violate sections 4-113 or 27-303 of the Insurance Article of the Maryland Code and notified the Complainant of its finding by a letter dated June 30, 2022. On July 27, 2022, the Complainant requested a hearing. On August 12, 2022, the MIA transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a contested case hearing. In its transmittal, the MIA delegated to the OAH the authority to issue a proposed decision.<sup>2</sup>

On February 1, 2023, I held a remote hearing using the Webex videoconferencing platform. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022);<sup>3</sup> COMAR 31.15.07; COMAR 28.02.01.20B(1)(b). The Complainant represented herself. Moyah K. Panda, Esquire, represented the Licensee.

The contested case provisions of the Administrative Procedure Act, the MIA's hearing regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 31.02.01; and COMAR 28.02.01.

### **ISSUE**

Did the Licensee engage in any unfair claim settlement practice under the Insurance Article?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

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

Ex. 1 - Email from the Complainant to the MIA, March 31, 2022

Ex. 2 - Letter from the MIA to the Licensee, April 22, 2022

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<sup>2</sup> The Insurance Commissioner may delegate to the OAH the authority to issue: (a) proposed or final findings of fact; (b) proposed or final conclusions of law; (c) proposed or final findings of fact and conclusions of law; or (d) a proposed or final order. Code of Maryland Regulations (COMAR) 31.02.01.04-1A. The Transmittal from the MIA in this case delegates the authority to issue a Proposed Decision.

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

Ex. 3 - Letter from the Licensee to the MIA, April 4, 2022,<sup>4</sup> with attachments

Ex. 4 - Letter from the MIA to the Complainant, June 30, 2022

Ex. 5 - Email from the Complainant to the MIA, July 27, 2022, with attachment

Ex. 6 - Letter from the MIA to the Licensee, July 28, 2022, with attachments

The Complainant did not offer any exhibits for admission into evidence.

The Licensee did not offer any exhibits for admission into evidence.

### Testimony

The Complainant testified and did not present other witnesses.

The Licensee presented testimony from Jeffrey Tobias, Claims Team Manager.

### **FINDINGS OF FACT**

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

1. The Complainant owns a home with her husband in Fort Washington, Maryland (the Property).
2. At all times relevant to this matter, the Property was insured by a homeowners insurance policy provided by the Licensee (the Policy).
3. The Policy has a \$5,000.00 mold limit of liability under the Amendatory Mold, Fungus, Wet Rot, Dry Rot, Bacteria, or Virus Endorsement (Endorsement).
4. For remediation of mold to be covered under the Endorsement, the mold must be the result of a direct covered loss as provided for in the Policy.
5. Mold caused from seepage, defined as the gradual, continuous or repeated seepage or leakage of water or other contaminants over a period of fourteen days or more is not a covered loss.

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<sup>4</sup> Although the letter is dated April 4, 2022, it is written in response to a letter from the MIA dated April 22, 2022, and is therefore obviously a typographic error.

6. Sometime in the first week of March 2022, the Complainant noticed a black spot on the living room wall of the Property.

7. The Complainant scheduled with Sears Home Services (Sears), who had installed the HVAC<sup>5</sup> unit approximately four years ago, to perform air duct cleaning at the Property on March 8, 2022.

8. On March 7, 2022, the Complainant noticed more black spots in the living room, dining room, upstairs home office, and on the carpet and curtains.

9. The Sears technicians identified the spots as mold on March 8, 2022, when they arrived to inspect and clean the air duct vents.

10. The technicians from Sears inspected the air conditioner unit and air ducts and determined that mold had built up in the air ducts and vents and spread to other areas of the house. The Sears technician noted water pooled in the bottom of the air conditioning unit.

11. The Complainant contacted the Licensee's customer service line to inquire whether mold was covered under the Policy.

12. The customer service representative advised the Complainant that mold was covered under the Policy.

13. The customer service representative did not advise the Complainant to get the work done.

14. The Complainant asked the Sears technicians if they could clean the mold in the ducts and they advised that they could.

15. The Complainant contracted with Sears to remediate the mold in the air ducts and vents on the Property on March 8, 2022, which was completed on the same day.

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<sup>5</sup> HVAC is an acronym for heating, ventilation, and air conditioning.



16. Sears charged the Complainant \$2,754.00 to clean the mold from the air ducts and vents. The Complainant's family members cleaned and removed the mold on the walls and floors.

17. On a date uncertain from the record, the Complainant submitted the Sears invoice to the Licensee for payment on the claim.

18. On March 17, 2022, the Licensee's adjuster performed an inspection of the Property and found no observed damage to the roof or exterior. The air conditioner filters that were kept by the Complainant showed evidence of the collection of long-term moisture.

19. The mold damage was a result of moisture created by water pooled under the air conditioner unit and long-term condensation in the air ducts.

20. The Licensee determined that the loss was not covered by the Policy as the mold damage was the result of an ongoing condition (seepage), and not a sudden or one-time occurrence that would be a covered loss.

21. The Licensee notified the Complainant by letter on March 21, 2022, and advised that there was no insurance coverage available and identified the relevant paragraphs in the Policy.

22. The Licensee's claims adjuster discussed the coverage denial with the Complainant on March 24, 2022, and March 28, 2022. On March 29, 2022, a claims manager discussed the claims denial with the Licensee.

23. On April 11, 2022, the Licensee assigned an independent inspector, Envirotex Environmental Services, to re-inspect the Property. The inspection was performed on April 15, 2022.

24. The result of the inspection revealed the presence of mold in the second-floor home office of the Property that did not result from a covered loss.

25. On April 27, 2023, the Licensee notified the Complainant by letter and provided a summary of findings and their position on coverage for the claim. Again, the Licensee advised the Complainant that coverage was not available for the loss due to mold damage.

### DISCUSSION

When the MIA referred this case to the OAH, it directed the Administrative Law Judge conducting the hearing to pay specific attention to sections 4-113 and 27-303 of the Insurance Article of the Maryland Code. Section 4-113(b)(5) provides that the Insurance Commissioner may suspend, refuse to renew, or revoke an insurer's certificate of authority if the insurer, "refuses or delays payment of amounts due claimants without just cause." Ins. § 4-113(b)(5) (Supp. 2022). Section 27-303 lists ten unfair claim settlement practices. Section 27-303(2), in particular, prohibits an insurer or nonprofit health service plan from refusing to pay a claim for "an arbitrary or capricious reason."

The Insurance Commissioner may impose a penalty not exceeding \$2,500.00 for each violation of section 27-303 and may require an insurer to make restitution, subject to the limits of any applicable insurance policy, to each claimant who has suffered actual economic damage because of the violation. *Id.* § 27-305(a)(1), (c)(1), (2). (Supp. 2022).

Neither the statute nor any regulation promulgated by the MIA defines the "arbitrary or capricious" standard. In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Appellate Court of Maryland<sup>6</sup> quoted from, and adopted, the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard in an earlier case, *Gabler v. American Manufacturers*:

[A] claimant must prove that the insurer acted based on 'arbitrary and capricious reasons.' The word 'arbitrary' means a denial subject to individual judgment or discretion, and made without adequate determination of principle. The word 'capricious' is used to describe a refusal to pay a claim based on an unpredictable

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<sup>6</sup> The Court of Special Appeals is now known as the Appellate Court of Maryland, effective December 14, 2022.

whim. Thus, under [Insurance Article section] 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on 'all available information.'

142 Md. App. 628, 671 (2002) (citations omitted). As used in section 27-303 of the Insurance Article, "arbitrary or capricious" essentially means without reason or without just cause.

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the Complainant, as the party asserting the affirmative on the issue of an unfair claim settlement practice, has the burden of proving by the preponderance of the evidence that the Licensee acted arbitrarily and capriciously in denying the claim. COMAR 28.02.01.21K(1), (2)(a).

The Complainant testified that her complaint is about how the Licensee handled and refused to pay the mold claim. The Complainant discussed how she engaged the services of Sears to clean the mold after she called the Licensee's customer service representative, who responded affirmatively when she asked if her Policy was "covered for mold." She acknowledged that the customer service representative did not tell her to proceed with the work. The Complainant further stated she thought "mold was mold."

The Complainant was upset and discussed how difficult it was to reach the claims adjuster for the Licensee. She explained that she believed the claim was initially denied based solely on the Sears invoice that she sent to the Licensee and that her calls were not returned. The Complainant stated that it took eight days for the Licensee to schedule an inspection.

The Complainant advised that she had to initiate every telephone call. She further expressed her frustration with how the Licensee handled the claims process. She stated that she "should not have to tell them to do their job," and that they only came to the house after she insisted.

The Complainant acknowledged that the Policy has an exclusion for damage due to seepage and remarked that "how would you know what it is if you didn't see it?"

Mr. Tobias testified that for mold damage to be covered under the Policy, it must arise from a covered loss. The reason the claim was denied was that the cause of the mold was long-term moisture in the air ducts, and that it falls under the exclusion of coverage due to seepage. He noted that the initial inspection by the adjuster confirmed the presence of mold in the HVAC system that spread through the rooms in the Property and was described in the invoice by Sears that was provided to the Licensee by the Complainant. He further stated that the Licensee acted in good faith, and that they do listen to the customer's position on these matters. The Licensee furthermore assigned an independent inspector to review the adjuster's decision. Mr. Tobias concluded that he was satisfied that the investigation was appropriately conducted and within industry standards.

My role is not to determine whether every aspect of the Licensee's coverage decision was correct, but instead only to determine whether it violated the Insurance Article of the Maryland Code in making its determination. Based upon the initial inspection that was performed by the Licensee and the subsequent report provided to the Licensee by the independent inspector, I cannot say the Licensee made a decision "without adequate determination of principle" or refused "to pay a claim based on an unpredictable whim." *See Berkshire*, 142 Md. App. at 671.

I also cannot find, based on the evidence discussed above, that the Licensee refused or delayed payment of an amount due to the Complainant without just cause. The Licensee provided the Complainant with a detailed explanation of its basis for denying her claim in its letters dated March 21 and April 27, 2022.

**CONCLUSION OF LAW**

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by refusing to pay a claim without just cause or for an arbitrary and capricious reason. Md. Code Ann., Ins. §§ 4-113(b)(5), 27-303(2) (2017 & Supp. 2022).

**PROPOSED ORDER**

Based upon the above Findings of Fact, Discussion, and Conclusion of Law, I **PROPOSE** that the Licensee not be found in violation of sections 4-113(b)(5) and 27-303(2) of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED**.

I further **PROPOSE** that the records and publications of the Maryland Insurance Administration reflect this decision.

March 2, 2023  
Date Decision Issued

**signature on original**

Patrick E. Maher  
Administrative Law Judge

PEM/sh  
#203786

## RIGHT TO FILE EXCEPTIONS

Upon receipt of this proposed decision, affected parties have twenty (20) days to file exceptions with the Insurance Commissioner. COMAR 31.02.01.10-1B(1). If a party wishes to receive a transcript of the hearing before filing exceptions, the party has ten (10) days from receipt of the decision to either: 1) file a written request for a transcript with the Insurance Commissioner, or 2) request a transcript of the hearing from a private stenographer and file a copy of their written request to a private stenographer with the Insurance Commissioner. COMAR 31.02.01.10-1B(2). If a transcript is requested, the transcript must be filed with the Commissioner within sixty (60) days of the request, and then a party has thirty (30) days after the filing of the transcript to file exceptions. COMAR 31.02.01.10-1D. Written exceptions and requests for transcripts should be addressed to Hearing and Appeals Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202. The Office of Administrative Hearings is not a party to any review process.

### Copies Mailed To:

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