

IN THE MATTER OF THE
MARYLAND INSURANCE
ADMINISTRATION

v.

ERNESTO C. ANTONIO
5510 San Juan Drive
Clinton, Maryland 20735

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BEFORE THE MARYLAND
INSURANCE COMMISSIONER

CASE NO. MIA- 2014-06-005
Fraud Division File No. R-14-1494A

ORDER

This Order is entered by the Maryland Insurance Administration (“MIA”) against Ernesto C. Antonio (“E. Antonio” or “Respondent”) pursuant to §§ 2-108, 2-201, 2-204 and 2-405 of the Insurance Article, Annotated Code of Maryland (“the Insurance Article”).

I. Facts

1. E. Antonio had an automobile insurance policy with Government Employees Insurance Company (“GEICO”), an authorized insurer, providing coverage for his vehicle. The GEICO policy number was [REDACTED]. The policy was in effect from March 3, 2013 through September 3, 2013.

2. On April 27, 2013, E. Antonio and his brother, N. Antonio, were in E. Antonio’s vehicle when a vehicle insured by State Farm Mutual Automobile Insurance Company (“State Farm”) struck them from behind. As a result of the accident, E. Antonio and his brother sought medical treatment for their injuries.

3. On April 27, 2013, E. Antonio reported the accident to GEICO and it assigned the event claim number [REDACTED].

4. On April 29, 2013, E. Antonio gave a recorded statement to GEICO. On the same date, the State Farm insured reported the loss to her insurance company.

5. Following the accident, E. Antonio retained the services of James A. Cleaver (hereinafter "Counsel") of the law offices of Alexander & Cleaver located at 11414 Livingston Road, Fort Washington, Maryland 20744, for losses he suffered as a result of the motor vehicle accident on April 27, 2013.

6. On May 3, 2013, Counsel, on behalf of E. Antonio, sent Letters of Representation to both GEICO and State Farm.

7. On July 3, 2013, Counsel, on behalf of E. Antonio, sent GEICO a demand letter, which listed specific damages suffered by E. Antonio and requested payment under his Personal Injury Protection ("PIP") coverage. Enclosed among other documents was a GEICO Wages and Salary Verification Form stating that E. Antonio was absent from his employment at Maaco, from May 6, 2013 through May 17, 2013. The form listed his wages as \$30.00 per hour, for 40 hours a week and stated that he had not been paid for two weeks. A lost wage letter on Maaco stationary was also included, stating that E. Antonio worked for Maaco as an auto body mechanic on the date of the accident, April 27, 2013. The letter further specified that as a result of injuries sustained in the accident, E. Antonio missed 80 hours of commission-based work, at \$240.00 per day. The letter reported the days missed as "May 6, 2013 to May 17, 2013."

8. On September 12, 2013, Counsel, on behalf of E. Antonio, sent State Farm a demand letter for coverage under the bodily injury portion of its insured's policy. In the letter, Counsel listed E. Antonio's medical expenses as well as \$2,400.00 in lost wages. As proof of loss, Counsel, on behalf of his client E. Antonio, submitted the lost wages letter described in paragraph 7, *supra*.

9. On October 18, 2013, a State Farm representative spoke to the manager of Maaco, in an effort to verify E. Antonio's lost wages. The manager advised that E. Antonio did not miss

any work during the time period alleged and that the person who signed the lost wages letter was not an authorized employee, and had been terminated from Maaco months before the date on the lost wages letter. On October 29, 2013, a State Farm investigator obtained a recorded statement from the manager of Maaco, memorializing what he had told him.

10. State Farm denied the lost wages portion of E. Antonio's claim due to the above misrepresentation, but paid the bodily injury portion.

11. Section 27-802(a)(1) of the Maryland Insurance Article states, "An authorized insurer, its employees, producers...or agents, who in good faith have cause to believe that insurance fraud has been or is being committed, shall report the suspected insurance fraud in writing to the Commissioner, the Fraud Division, or the appropriate federal, State or local law enforcement authorities." Having a good faith belief that insurance fraud had been committed, the State Farm investigator referred his files to the Maryland Insurance Administration Fraud Division.

12. MIA notified GEICO of the alleged fraud involving Respondent's lost wages claim. The GEICO Special Investigation Unit conducted an investigation and, having a good faith belief that insurance fraud had been committed, referred its file to the Maryland Insurance Administration Fraud Division pursuant to Section 27-802(a)(1) of the Maryland Insurance Article.

13. MIA interviewed the State Farm and GEICO investigators and confirmed their handling of the claims as set forth above.

14. MIA also spoke with the legal assistant for Counsel, whose signature appears on the correspondence submitted to both insurance companies on behalf of E. Antonio. She

confirmed her signature on the letters and that she mailed the documents on behalf of E. Antonio from the firm's Fort Washington location.

15. MIA interviewed the manager of Maaco. The manager examined the time cards which he had already provided to State Farm and GEICO. He verified they accurately reflected his official corporate time-keeping records. He confirmed that E. Antonio worked the weeks of May 6-10, 2013 and May 13-17, 2013 - the weeks E. Antonio alleged he was off due to injuries sustained in the car accident of April 27, 2013. The manager advised that E. Antonio worked on commission as an auto body mechanic and made 45% of the total amount billed. The manager provided payroll records which showed that E. Antonio was paid \$207.90 for the week ending May 10, 2013 and \$349.65 for the week ending May 17, 2013. Furthermore, the manager told MIA the Maaco letter provided by E. Antonio was not on official Maaco stationary and was fabricated.

16. On April 14, 2014, MIA interviewed E. Antonio in Clinton, Maryland. E. Antonio said he submitted the "Maaco" lost wages letter to his attorney for transmittal to State Farm and GEICO. Further, E. Antonio admitted to the MIA investigator that he worked at Maaco and earned wages for the time period of May 6 through May 17, 2013 – the time period for which he had claimed lost wages in violation of § 27-403(2) of the Insurance Article. He signed a written statement to the foregoing.

II. Violation(s)

17. In addition to all relevant sections of the Insurance Article, the Administration relies on the following pertinent sections in finding that Ernesto C. Antonio violated Maryland's insurance laws:

18. § 27-403(2)

It is a fraudulent insurance act for a person:

(2) to present or cause to be presented to an insurer documentation or an oral or written statement made in support of a claim...with knowledge that the documentation or statement contains false or misleading information about a matter material to the claim.

19. § 27-408(c)(1)

In addition to any criminal penalties that may be imposed under this section, on a showing by clear and convincing evidence that a violation of this subtitle has occurred, the Commissioner may:

(i) impose an administrative penalty not exceeding \$25,000 for each act of insurance fraud; and

(2) In determining the amount of an administrative penalty, the Commissioner shall consider:

(i) the nature, circumstances, extent, gravity, and number of violations;

(ii) the degree of culpability of the violator;

(iii) prior offenses and repeated violations of the violator; and

(iv) any other matter that the Commissioner considers appropriate and relevant.

20. By the conduct described herein, Respondent knowingly violated § 27-403 and is subject to an administrative penalty under the Insurance Article.

III. Sanctions

21. Insurance fraud is a serious violation which harms consumers in that the losses suffered by insurance companies are passed on to consumers in the form of higher premiums. The Commissioner may investigate any complaint that alleges that a fraudulent claim has been submitted to an insurer. Insurance Article §§ 2-201(d) (1) and 2-405.

22. Respondent caused a fabricated lost wages letter to be submitted to State Farm and GEICO for financial gain. This letter had several misrepresentations, including a false wage rate and a false claim of hours and days missed. The stationary used was not genuine, and the person who signed the letter was not authorized to sign such a letter. Therefore, an administrative sanction of \$2,000.00 is an appropriate penalty.

23. Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number (R-14-1494A) and name (Ernesto C. Antonio). Unpaid penalties will be referred to the Central Collections Unit. Payment of the administrative penalty shall be sent to the attention of: Associate Commissioner, Insurance Fraud Division, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

24. This Order does not preclude any potential or pending action by any other person, entity or government authority, regarding any conduct by E. Antonio including the conduct that is the subject of this Order.

WHEREFORE, for the reasons set forth above, and subject to the right to request a hearing, it is this 4th day of June 2014, **ORDERED** that:

- (1) Ernesto C. Antonio shall pay an administrative penalty of \$2,000.00 within thirty (30) days of the date of this Order.

THERESE M. GOLDSMITH
Insurance Commissioner

Signature on original

BY:

CAROLYN HENNEMAN
Associate Commissioner
Insurance Fraud Division

RIGHT TO REQUEST A HEARING

Pursuant to § 2-210 of the Insurance Article and Code of Maryland Regulations (“COMAR”) 31.02.01.03, an aggrieved person may request a hearing on this Order. This request must be in writing and received by the Commissioner within thirty (30) days of the date of the letter accompanying this Order. However, pursuant to § 2-212 of the Article, the Order shall be stayed pending a hearing only if a demand for hearing is received by the Commissioner within ten (10) days after the Order is issued. The written request for hearing must be addressed to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, Attn: Appeals Clerk. The request shall include the following information: (1) the action or non-action of the Commissioner causing the person requesting the hearing to be aggrieved; (2) the facts related to the incident or incidents about which the person requests the Commissioner to act or not act; and (3) the ultimate relief requested. The failure to request a hearing timely or to appear at a scheduled hearing will result in a waiver of your rights to contest this Order and the Order shall be final on its effective date. Please note that if a hearing is requested on this initial Order, the Commissioner may affirm, modify, or nullify an action taken or impose any penalty or remedy authorized by the Insurance Article against Respondent in a Final Order after hearing.