

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

**MARYLAND INSURANCE
ADMINISTRATION**

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v.

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DAVID AJIBADE

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Case No. MIA-2016-07-001

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RESPONDENT

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MEMORANDUM AND FINAL ORDER

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland¹, the Maryland Insurance Commissioner (“Commissioner”) concludes that David Ajibade violated § 27-403 when he submitted the same receipts for two different insurance claims. Pursuant to Respondent’s violation of § 27-403, the Commissioner concludes that Respondent must pay Liberty Mutual Insurance Company \$1,541.08 in restitution and pay the Maryland Insurance Administration \$3,000.00 as an administrative penalty.

STATEMENT OF THE CASE

This matter arises from an Order entered by the Maryland Insurance Administration (“MIA”) made pursuant to §§ 2-108, 2-201, 2-204, and 2-405 against the Respondent. After an investigation the MIA concluded that Respondent had violated § 27-403 when he reported two separate theft claims to his insurance company and produced the exact same receipts as a way to prove he had replaced the stolen items. On July 6, 2016, the MIA ordered that the Respondent pay Liberty Mutual \$1,541.08 in restitution and pay the MIA \$3,000.00 as an administrative penalty. The Respondent disagreed with this finding and timely requested a hearing on July 25, 2016.

¹ Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

ISSUE

The issue presented in this case is whether the administrative penalty and restitution amount ordered against the Respondent is appropriate under the facts and circumstances of this matter.

SUMMARY OF THE EVIDENCE

A. Testimony

A hearing was held at the MIA on November 9, 2016. The Respondent was represented by Jarad Akman, Esq. and provided sworn testimony on his own behalf. The MIA was represented by Phillip Pierson, Assistant Attorney General. Mark Mason, a Civil Fraud Investigator with the Maryland Insurance Administration provided sworn testimony on the MIA's behalf.

B. Exhibits

MIA Exhibits (Hearing):

- A. Liberty Mutual's claim file – 2014 claim
- B. Liberty Mutual's claim file – 2015 claim
- C. Transaction records from Amazon
- D. Liberty Mutual loss worksheet from 2014 claim
- E. Liberty Mutual loss worksheet from 2015 claim
- F. Police report from 2015 claim
- G. Letter from Liberty Mutual to Respondent confirming withdrawal of 2015 claim

Respondent did not submit any Exhibits for consideration.

FINDINGS OF FACT

These findings of fact are based upon a complete and thorough review of the entire record in this case including the hearing transcript and all exhibits and documentation provided by the parties. The credibility of the witnesses has been assessed based upon the substance of their testimony, their demeanor, and other relevant factors. To the extent that there are any facts in dispute, the following facts are found, by a preponderance of the evidence, to be true. 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.

Respondent obtained a renter's insurance policy, policy number H4723825537540 ("Policy") through Liberty Mutual Insurance Company ("Liberty") for his apartment located at 2008 Richglen Drive, Gwynn Oak, Maryland. (MIA Ex. A.) The Policy was in force at all relevant times to this case. (MIA Ex. A, B.) On March 11, 2014, the Respondent contacted Liberty and reported that on March 10, 2014, there had been a theft at his apartment and several items had been stolen. (MIA Ex. A.) In response to this reported theft Liberty asked the Respondent to fill out a spreadsheet listing the contents that had been stolen. (MIA Ex. D.) On the spreadsheet the Respondent listed that he had had two Apple MacBook pro computers, and two Apple iPad airs stolen. (MIA Ex. A, D; T. at 35.)

In the settlement of this claim, the Respondent submitted receipts from Amazon.com, the online retailer. (MIA Ex. A.) These receipts were submitted in support of the Respondent's recoverable depreciation portion of the claim. (Id.) One receipt was submitted to the Liberty claims adjuster, John Baust, on April 8, 2014. (MIA Ex. A.) This receipt was for one Apple MacBook Pro and one iPad Air both of which had been purchased on April 6, 2014. (MIA Ex. A; Transcript ("T.") at 22.) The Respondent sent the receipt to Mr. Baust on April 8, 2014, and included a message which read, "hey john here is the receipt of the new iPad and computer that i bought." (MIA Ex. A; T. at 31.)

A second receipt for another Apple MacBook Pro Computer and iPad Air was submitted by Respondent to Mr. Baust on April 21, 2014. (MIA Ex. A; T. at 22.) This receipt shows the purchases were made that day. (Id.) Once Mr. Baust received these receipts, he processed a check issued to the Respondent in the amount of \$1,541.08 for the recoverable depreciation. (MIA Ex. A.)

On April 10, 2015, the Respondent called Liberty and reported another theft at his apartment and several items were stolen. (MIA Ex. 1.) On that day, the Respondent called the Baltimore County Police Department and reported the crime. (MIA Ex. F; T. at 36.) The Police Report states as follows, "I observed no forced entry to the door...[T]he lock is a secure deadbolt which could not be defeated without severe damage or a key." (MIA Ex. F.)

On April 14, 2015, in response to the Respondent's claim filing, Liberty reached out to the Respondent through email and requested that he fill out a spreadsheet listing the contents that had been

stolen from his apartment. (MIA Ex. E.) In this email, the Liberty representative asked the Respondent to submit any receipts he had for the items. (Id.) In response to this email, the Respondent returned the spreadsheet and on the spreadsheet he had listed that he had two Apple MacBook Pro Computers, two Apple iPad Airs, and a Sony PlayStation 4 stolen. (Id.) In addition, the Respondent submitted the exact same Amazon receipts he had submitted for his prior 2014 claim. (T. at 36.) Due to the fact that the Respondent had a very similar incident occur approximately one year earlier and that the Respondent submitted the same receipts to Liberty, Liberty decided to move the claim to their Special Investigations Unit (“SUI”) for further review. (MIA Ex. B.) During the review of the claim, the SUI team discovered that the Respondent had cancelled his Amazon purchases the same days in 2014 he had made them. (Id.) The Respondent had made a purchase on April 6, 2014 then cancelled it the same day without having ever been charged for the purchase. (MIA Ex. B; T. at 23.) In addition, the purchase that had been made on April 21, 2014 had been cancelled that day and the Respondent was never charged for the purchase. (MIA Ex. B; T. at 24.)

Shortly after following up with Amazon, Liberty reached out to Respondent to take a recorded statement regarding this claim. (MIA Ex. B.) Respondent began a phone conversation with Liberty, but then subsequently disconnected the call. (Id.) The next day, Respondent called Liberty back and informed it that he would like to close his claim. (MIA Ex. B.) Liberty then issued the Respondent a letter confirming his withdrawal of the April 2015 claim. (MIA Ex. G.)

Regarding the cancellation of the Amazon items, Respondent testified at the Hearing that he decided to purchase replacement items after the 2014 burglary elsewhere. (T. at 35.) Respondent stated that he was able to find replacements for the stolen items through Craigslist and decided to purchase them through that channel instead of using Amazon. (Id.) Additionally, Respondent testified that he spent approximately \$1,400 to replace the stolen items. (Id.) Respondent testified that he does not remember the name of the individual or party who he purchased the items through Craigslist from. (T. at 39.) Respondent also stated that he did not have any type of receipts or purchase statement from his Craigslist transaction and that he had met the seller in the parking lot of a mall. (Id.)

After Respondent stated that he wanted to close his claim, Liberty referred the case to the Maryland Insurance Administration for further follow up. (T. at 21.) Liberty believed that the Respondent had committed insurance fraud. (Id.) The MIA followed up and performed its own investigation. (T. at 20.) At the end of the investigation, the MIA issued an Order dated July 6, 2016 against the Respondent. The Order stated that Respondent was required to pay \$1,541.08 in restitution to Liberty and \$3,000 in administrative penalties to the MIA.

Regarding the penalty assessed in this case, Mr. Mason testified that he considered the nature, circumstances, number of violations, the culpability of the violator, if there were any previous offenses, and any repeated violations by the violator. (T. at 26.) Additionally, Mr. Mason testified that the fact that there were two incidents, one from the 2014 claim and one from the 2015 claim, of false information being provided to Liberty influenced the amount of the penalty. (Id.) Finally, Mr. Mason testified that the amount of the penalty in this case was consistent with prior orders and not unusually high. (Id.) Upon receipt of this Order, the Respondent requested a Hearing, which was subsequently granted.

DISCUSSION

A. Position of Parties.

The Respondent argues that he did not commit insurance fraud and rather that there was a misunderstanding of what occurred in the claims process. The Respondent argues that he did not knowingly mislead anyone with regard to his claims. Additionally, the Respondent argues that he did in fact use the money from Liberty to purchase replacement items and as such he should not have to pay restitution.

The MIA argues that the statute doesn't require the Respondent to act knowingly, but rather to have presented the insurer documentation with the knowledge that the documentation contains misleading information. Additionally, the MIA argues that the penalty assessed against the Respondent is reasonable and consistent with prior orders.

B. Statutory Framework

The Order issued in this case relies on Section 27-403 and 27-408 of the Insurance Article.

Section 27-403 states the following in pertinent part:

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 a claim.

Section 27-408 allows the Commissioner to impose a penalty for a violation of this subtitle.

Specifically, section 27-408(c) states:

- (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
 - (ii) order restitution to an insurer or self-insured employer of any insurance proceeds paid relating to a fraudulent insurance claim.
- (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.

The burden of proof in this case rests with the MIA to prove by clear and convincing evidence that the Respondent violated the Insurance Article.

C. The MIA proved by clear and convincing evidence that the Respondent violated Section 27-403 of the Insurance Article. In addition, the administrative penalty and restitution ordered in this case are appropriate.

Section 27-403 specifically states that it is a fraudulent insurance act for a person to present to an insurer documentation they know is misleading about a matter material to the claim. In this case, the Respondent submitted a receipt from Amazon to Liberty showing that he had purchased replacement items in order to collect the recoverable depreciation on these items. The Respondent submitted a receipt from Amazon on April 8, 2014 with the message reading "hey john here is the receipt of the new iPad

and computer **that I bought**". (emphasis added.) While it is true that the Respondent had bought the iPad and computer from Amazon at one time, by the date that the Respondent emailed a copy of this receipt to Mr. Baust he had **already cancelled** his order with Amazon. (emphasis added.) The Respondent had made the purchase of the iPad and computer on April 6, 2014, and subsequently cancelled the purchase that same day. So on the date that the Respondent emailed Mr. Baust a copy of the Amazon receipt he knew that he had cancelled his purchase through Amazon and was no longer going to receive the items from them. Therefore, I find that the Respondent submitted the receipt with the specific intention to mislead Mr. Baust into paying him the recoverable depreciation portion of his claim based on this Amazon receipt.

In addition, the Respondent emailed a second Amazon receipt to Mr. Baust on April 21, 2014, for another iPad and computer. This receipt was submitted to Mr. Baust again in support of the Respondent's recoverable depreciation claim. This purchase had been made on that day, but again had been cancelled the same day. Respondent had again submitted receipts for items that he initially purchased, but never actually paid for or received.

In 2015, the Respondent reported a second theft to his apartment. In the paperwork he submitted to Liberty he was required to fill out a spreadsheet listing the items that had been stolen. He reported that the exact same items had been stolen the second time, with the addition of a PlayStation 4. Upon the initial investigation into this claim, Liberty asked the Respondent to submit receipts for replacement items. In response to this request, the Respondent submitted the same receipts from Amazon that he had submitted from his 2014 claim. He attempted to use the receipts to show that he had purchased these items again to replace the missing items from the 2015 claim. He submitted these receipts in his attempt to be paid for his recoverable depreciation claim. I find again that Respondent knew these receipts were not legitimate and submitted them to Liberty in an attempt to mislead it into paying the recoverable depreciation portion of his 2015 claim. Therefore, Respondent violated Section 27-403(2) when he submitted false receipts as proof of recoverable depreciation in both of his 2014 and 2015 claims.

Section 27-408(c) allows the Commissioner to assess a penalty if a violation of 27-403 is found. Specifically, it states that the Commissioner can impose a penalty not to exceed \$25,000 and additionally can order restitution. In the Order at issue in this case both a penalty and restitution were ordered. In the Respondent's Prehearing Statement and at the Hearing, he argues that he should not be obligated to pay the restitution ordered in this case because he did in fact use the money Liberty paid him to obtain replacement items. The Respondent argues that he found these replacement items on Craigslist and purchased them through that website rather than through Amazon as he had originally intended. Respondent testified that he met the seller of the replacement items at the parking lot of a mall, however, when questioned further Respondent admitted he had no receipts from the purchase and did not know the seller's name. While I note that Craigslist is not a regular online retailer and instead a way for people to meet to sell goods privately, I find the fact that the Respondent did not know the name of the seller or have any other documentation regarding the sale to be problematic. Without any further evidence supporting the Respondent's position, other than his own testimony, I find that Respondent owes Liberty the restitution amount of \$1,541.08 as reimbursement for the recoverable depreciation amount paid to him from the 2014 claim.

The final remaining issue is the amount of the penalty that was assessed against the Respondent. Section 27-408(c)(2) states the factors that should be considered when assessing a penalty for a violation of Section 27-403. Mr. Mason provided sworn testimony that these factors were considered when determining the penalty. Specifically, Mr. Mason stated that he considered the nature, circumstances, the number of violations, the culpability of the violator, if there were any previous offenses, and any repeated violations by the violator. Mr. Mason testified that in regards to these factors, the fact that the MIA found there were two incidents of false information being provided to the insurance company was taken into consideration when assessing the penalty. Mr. Mason additionally testified that the penalty assessed in this situation was not unusually high and was consistent with prior orders. Based on Mr. Mason's testimony, I find that the penalty assessed in this case is reasonable for this violation and therefore I am upholding the penalty amount of \$3,000.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, it is found, as a matter of law, that Respondent violated the Insurance Article of the Annotated Code of Maryland § 27-403.

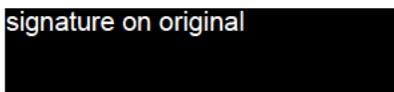
FINAL ORDER

IT IS HEREBY ORDERED that:

1. The Order issued by the Maryland Insurance Administration on July 6, 2016 is hereby
AFFIRMED;
2. The Respondent shall pay restitution in the amount of \$1,541.08 to Liberty within 30 days of
the date of this Order;
3. The Respondent shall pay an administrative penalty in the amount of \$3,000 to the
Administrative within 30 days of the date of this Order; and
4. The records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 8th day of December, 2016.

ALFRED W. REDMER, JR.
Insurance Commissioner

signature on original


LISA M. LARSON
Hearings Administrator

IN THE MATTER OF THE
MARYLAND INSURANCE
ADMINISTRATION

v.

DAVID AJIBADE
2008 Richglen Drive Apt TD
Gwynn Oak, MD 21207

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BEFORE THE MARYLAND
INSURANCE COMMISSIONER

CASE NO. : MIA- 2016-07-001

Fraud Division File No.: R-2015-3244A

ORDER

This Order is entered by the Maryland Insurance Administration (“MIA”) against David Ajibade (“Respondent”) pursuant to §§ 2-108, 2-201, 2-204 and 2-405 of the Insurance Article, Md. Code Ann. (2011 Repl. Vol. & Supp.)(“the Insurance Article”).

I. Facts

1. Respondent had a renter’s insurance policy with Liberty Mutual Insurance Company (“Liberty”), an authorized insurer, for his Maryland apartment. The policy provided coverage for personal property owned by Respondent and was in effect from February 13, 2015, to February 13, 2016.

2. On April 10, 2015, Respondent notified Liberty that earlier that day, someone broke into his apartment and stole several items, including, two Apple MacBook laptops, and two Apple iPad Air 32GB tablets. Respondent had contacted the Baltimore County Police Department, and filed a report under complaint number 151000714. Liberty assigned claim number 031848213.

3. On April 15, 2015, in support of his claim, Respondent provided Liberty with an itemized inventory of items stolen during the burglary, along with corresponding receipts as proof he had purchased the items. Among the receipts were the following Amazon.com orders:

- Apple MacBook - purchased on April 6, 2014, subtotal total \$1,289.99
- Apple iPad Air - purchased on April 6, 2014, subtotal \$712.95
- Apple MacBook/iPad Air - purchased on April 21, 2014, subtotal total \$1,974.99.

4. A Liberty claim adjuster referred Respondent's claim to its Special Investigations Unit ("SIU"), as Respondent had made a similar loss claim in 2014.

5. SIU examined the prior claim made by Respondent on March 10, 2014, and discovered Respondent had submitted the same Amazon.com receipts in the 2014 claim as he had presented to Liberty in his 2015 claim. In the 2014 claim, the receipts were submitted in support of recoverable depreciation for items Respondent reported had been stolen, which he purportedly replaced. Liberty relied on those receipts and paid Respondent \$1,541.08, the difference between the replacement cost and actual case value (recoverable depreciation) of items Respondent reported stolen.

6. SIU contacted a representative from Amazon who advised that the orders, specific to the items listed in paragraph #3 above, were placed. However, the orders were subsequently canceled on the same day. Therefore, the items were never delivered to the Respondent. The purchases were void.

7. On April 23, 2015, Liberty SIU contacted the Respondent and requested a recorded statement. Respondent began a phone conversation with Liberty SIU, but disconnected the call and refused to return a call from Liberty SIU. Respondent subsequently withdrew his claim.

8. Section 27-802(a)(1) of the Maryland Insurance Article states,

An authorized insurer, its employees, fund producers, insurance producers, ... who in good faith has 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.

Liberty, having a good faith belief that Respondent committed insurance fraud, referred the matter to the Maryland Insurance Administration, Fraud Division.

9. During the course of its investigation, MIA contacted Liberty and confirmed its handling of Respondent's claims.

10. MIA issued a subpoena to Amazon.com for records regarding the orders placed by the Respondent on April 6, 2014 and April 21, 2014. The records confirmed that the orders were placed and canceled. The items were not delivered to the Respondent and the purchases were not completed.

II. Violation(s)

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

12. § 27-403

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.

13. § 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

(ii) order restitution to an insurer or self-insured employer of any insurance proceeds paid relating to a fraudulent insurance claim

* * * * *

(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.

14. By the conduct described herein, Respondent knowingly violated § 27-403. As such, Respondent is subject to an administrative penalty under the Insurance Article § 27-408(c).

III. Sanctions

15. 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 a fraudulent claim has been submitted to an insurer. Insurance Article §§ 2-201(d)(1) and 2-405.

16. The Respondent submitted receipts to his insurer in support of two insurance claims (March 10, 2014 and April 10, 2015). The receipts were for Amazon.com orders which were cancelled, and Respondent had not purchased the items as he alleged. Having considered the factors set forth in § 27-408(c)(2) and COMAR 31.02.04.02, MIA has determined that \$3,000.00 is an appropriate penalty.

17. Additionally, Respondent is ordered to reimburse Liberty \$1,541.08, which is the amount it paid Respondent for recoverable depreciation related to his March 10, 2014 claim, when it relied on receipts as proof he had replaced items subsequent to a loss, although he had cancelled the purchases.

18. Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number (R-2015-3244A) and name, (David Ajibade). Unpaid penalties will be referred to the Central Collections Unit for collection. Payment of the administrative penalty shall be sent to the attention of: Deputy Commissioner, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

19. Notification of reimbursement to Liberty Mutual Insurance Company shall be made in writing to the Deputy Commissioner, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202. Such notification shall include a copy of the money order or canceled check issued to Liberty Mutual Insurance Company as proof of reimbursement and identify the case number (R-2015-3244A) and name, (David Ajibade).

20. This Order does not preclude any potential or pending action by any other person, entity or government authority, regarding any conduct by the Respondent 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 06th day of July 2016, **ORDERED** that:

(1) David Ajibade pay an administrative penalty of \$3,000.00 within 30 days of the date of this Order.

(2) David Ajibade pay restitution to Liberty in the amount of \$1,541.08 within 30 days of the date of this Order.

ALFRED W. REDMER, JR.
Insurance Commissioner

signature on original

BY:

NANCY GRODIN
Deputy Commissioner

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: Hearings and Appeals Coordinator. 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 the Respondent in a Final Order after hearing.