

IN THE MATTER OF THE
MARYLAND INSURANCE
ADMINISTRATION

v.

DAYANA R. OSORIO HERNANDEZ
2900 Lisage Way
Silver Spring, Maryland 20904

*
*
*
*
*
*
*
*
*
*

BEFORE THE MARYLAND
INSURANCE COMMISSIONER

CASE NO. : MIA-2019-10-003
Fraud Division File No.: R-2019-2989A

ORDER

This Order is entered by the Maryland Insurance Administration (“MIA”) against Dayana R. Osorio Hernandez (“Respondent”) pursuant to §§ 2-108, 2-201, 2-204 and 2-405 of the Insurance Article, Md. Code Ann. (2017 Repl. Vol. & Supp.) (the “Insurance Article”).

I. Facts

1. On January 31, 2019, Respondent applied to Progressive Group of Insurance Companies (“Progressive”), an authorized insurer for automobile insurance for her 2017 Toyota. In consideration of Respondent’s application, and initial premium payment, Progressive issued Respondent an automobile insurance policy, which took effect on the same date at 2:29 p.m.

2. On February 1, 2019, a Progressive representative conducted a recorded interview with Respondent who reported she had an accident on January 31, 2019, at 3:00 or 3:30 p.m., as she was going home from a pharmacy. Respondent reported that she purchased the Progressive insurance policy, on-line, on January 31, 2019, at 12:30 p.m., (prior to the accident) and that her vehicle was not previously insured. Respondent submitted a photograph of the damage to her insured vehicle to Progressive, as well as a photograph of the police information exchange form. The top portion of the form was cut off; therefore, the Progressive representative asked Respondent to submit the top portion of the form. Upon receipt of the form, the representative

noticed the time of the accident reflected 13:50 [military time], or 1:50 p.m., forty-one minutes before Respondent's insurance policy took effect.

3. On February 2, 2019, Respondent asked a Progressive representative whether she could get a rental car. The representative advised that Progressive's investigation of the claim was ongoing.

4. On February 5, 2019, Respondent contacted Progressive to check on the status of her claim. A Progressive representative advised Respondent that the police exchange form reflected that the accident occurred 1:50 p.m., and her policy was not in effect at that time. Respondent replied that she thought the accident was at 3:30 p.m. but it may have been 2:00 p.m. Further, she reported obtaining her insurance policy earlier on the day of the accident, while on her phone at a pharmacy, and the online report showed a later time than when she obtained the policy.

5. On February 11, 2019, a Progressive representative requested that Respondent's insurance policy be cancelled due to fraud in the presentation of a claim in order to obtain coverage. The cancellation took effect on March 1, 2019.

6. On February 12, 2019, Progressive sent Respondent a letter denying her claim as it was "...unable to find coverage for this claim..."

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

An authorized insurer, its employees, fund producers, or 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.

Progressive, having a good faith belief that Respondent committed insurance fraud referred the matter to the MIA, Fraud Division.

8. During the course of its investigation, the MIA contacted Progressive and confirmed the facts regarding its handling of the Respondent's claim.

9. An MIA investigator examined the police information exchange form and confirmed the accident date and time was recorded as January 31, 2019, at 1:50 p.m. The operator of the vehicle involved in the accident with Respondent was driving a car owned by PV Holding Corp., identified as a rental car company.

10. On August 22, 2019, an MIA investigator interviewed a representative for the rental car company, which owned the car involved in the accident with Respondent. The representative reported that according to a statement provided by the operator of the rental car, the accident occurred on January 31, 2019, at around 1:48 p.m. An MIA investigator also contacted the Montgomery County Police Department Information Management Division and confirmed that accident involving the Respondent occurred on January 31, 2019, at about 1:50 p.m.

11. On August 27, 2019, an MIA investigator obtained a copy of the police accident report for Respondent's January 31, 2019 accident. The report reflected that the reporting police agency was the Montgomery County Police Department. The police officer recorded the accident time as 1:50 p.m.

II. Violation(s)

12. 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:

13. § 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[.]

14. § 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.

15. By the conduct described herein, Respondent knowingly violated § 27-403. A fraudulent insurance act of making a false statement in support of a claim is complete upon making the false statement and is not dependent on payment being made. Respondent committed a violation of the Insurance Article when she made a false statement to Progressive. As such, Respondent is subject to an administrative penalty under the Insurance Article § 27-408(c).

III. Sanctions

16. 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.

17. Having considered the factors set forth in § 27-408(c)(2), the MIA has determined that \$1,500.00 is an appropriate penalty.

18. Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number (R-2019-2989A) and name (Dayana R. Osorio Hernandez). 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. Unpaid penalties will be referred to the Central Collections Unit for collection.

19. This Order does not preclude any potential or pending action by any other person, entity, or government authority regarding any conduct by 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 1st day of October 2019, **ORDERED** that:

Dayana R. Osorio Hernandez shall pay an administrative penalty of One Thousand Five Hundred Dollars (\$1,500.00) within 30 days of the date of this Order.

ALFRED W. REDMER, JR.
Insurance Commissioner

BY:

signature on original

STEVE WRIGHT
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 served. The written request for hearing must be addressed to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, Attn: Melanie Gross, Executive Assistant to the Deputy Commissioner. 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.