

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

**MARYLAND INSURANCE
ADMINISTRATION**
*EX REL. A.T.*¹,

Complainant

v.

Case No. MIA 2022-09-006

**HARTFORD INSURANCE
COMPANY OF THE MIDWEST**

Licensee.

* * * * *

MEMORANDUM AND FINAL ORDER

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,² the Undersigned concludes that Hartford Insurance Company of the Midwest (“Licensee”) did not commit an unfair claim settlement practice in violation of § 27-303 or refuse or delay payment of amounts due without just cause in violation of § 4-113 in its handling of A.T.’s (“Complainant”) March 28, 2021 and July 2, 2021 homeowner’s insurance claims.

STATEMENT OF THE CASE

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (“MIA”) on June 23, 2022. (MIA Exhibit (“Ex.”)

1.) In her Complaint to the MIA, Complainant alleged that Licensee erred by refusing to replace the roof of her residence. Instead, Complainant asserts that Licensee improperly offered to replace shingles on the roof of her residence that did not match. (*Id.*) After investigating the

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

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

Complaint, the MIA's Property and Casualty Complaints Unit determined that Licensee had not violated the Insurance Article, and notified the Parties of its findings by letter dated August 30, 2022. (MIA Ex. 6.) 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 September 8, 2022. (MIA Ex. 9.)

ISSUE

The issue presented in this case is whether Licensee violated the Insurance Article in its handling of Complainant's March 28, 2021 and July 2, 2021 homeowner's insurance claims.

SUMMARY OF THE EVIDENCE

A. Testimony

A virtual hearing was held on March 21, 2023. Complainant and her husband, Y.A., provided sworn testimony on her behalf. Licensee was represented by Ms. Jessica Port, Esq., of Zelle, LLP.

B. Exhibits

*MIA Exhibits*³ (*In Record*)

1. Complaint from Complainant to MIA, received June 23, 2022
2. Correspondence from MIA to Licensee, dated June 29, 2022
3. Response from Licensee to MIA, dated July 15, 2022
4. Correspondence from Complainant to MIA, dated July 22, 2022
5. Correspondence from MIA to Complainant, dated August 25, 2022
6. Determination Letter from MIA to Parties, dated August 30, 2022
7. Correspondence from Complainant to MIA, dated September 1, 2022
8. Correspondence from Complainant to MIA, dated September 7, 2022
9. Letter Granting Hearing Request from MIA to Parties, dated September 8, 2022
10. Correspondence from Complainant to MIA, dated September 12, 2022.

³ At the start of the Hearing, the Parties stipulated to the admission of all of the MIA exhibits.

Licensee's Exhibits (In Record)

1. SeekNow Report, dated April 10, 2021
2. Eagle View Estimate, dated April 15, 2021
3. Colson Letter to Insured, dated April 15, 2021
4. Colson Email to Insured, dated April 21, 2021
5. Eagle View Revised Estimate, dated May 24, 2021
6. Colson Email to Affordable Home Solutions, dated July 26, 2021
7. Colson Email to Affordable Home Solutions, dated August 4, 2021
8. SeekNow Second Report, dated August 9, 2021
9. Eagle View Revised Estimate, dated August 23, 2021
10. Partial Denial Letter, dated August 23, 2021
11. Affordable Home Solutions Estimate, dated September 14, 2021
12. Daniels Email to Colson, dated November 2, 2021
13. Colson Email to Daniels and Insured, dated November 9, 2021
14. Second Denial Letter, dated December 14, 2021
15. Colson Email to Insured, dated December 14, 2021
16. ITEL Report, dated January 20, 2022
17. SeekNow Third Report, dated January 16, 2022
18. Vehslage Email to Insured, dated February 18, 2022
19. Colson Email to Insured, dated March 25, 2022
20. [MARKED FOR IDENTIFICATION AND EXCLUDED]⁴
21. Policy

Complainant's Exhibits (In Record)

1. Email Correspondence from Complainant to MIA, Office of Hearings, and the attorney representing Licensee, dated February 23, 2023
2. Photograph marked with the caption, "water damage, garage ceiling,"
3. Photograph marked with the caption, "water garage damage ceiling cutout to replaced by new ceiling"
4. Photograph marked with the caption, "replaced new garage ceiling"

⁴ Licensees Exhibit 20 is excluded because it was not provided to the investigator in response to the MIA's June 29, 2022 letter from the MIA Property & Casualty Complaints Unit. (MIA Ex. 2.)

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 March 21, 2023 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.

FACTS

A. Policy

1. At all relevant times, Licensee held, and currently holds, a Certificate of Authority from the State of Maryland to act as a property and casualty insurer. Licensee issued a homeowner's insurance policy to Complainant under policy # 55*****81 ("Policy"), with a Dwelling coverage policy limit in the amount of \$421,000, and a deductible amount of \$1,000. (MIA Ex. 3.)

2. In relevant part, the Policy provides the following coverages:

DEDUCTIBLE – SECITON I: WE COVER ONLY THAT PART OF A LOSS
OVER \$1,000

SECTION I – PERILS INSURED AGAINST

A. Coverage A – Dwelling And Coverage B – Other Structures

1. We insure against risk of direct physical loss to property described in Coverages A and B.

* * * *

(MIA Ex. 3)

3. Further, with respect to Loss Settlement, the Policy provides:

SECTION I – CONDITIONS

* * *

C. Loss Settlement

In this Condition C., the terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in E.11. Ordinance Or Law under Section I - Property Coverages. Covered property losses are settled as follows:

* * *

2. Buildings covered under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts:

- (1) The limit of liability under this policy that applies to the building;
- (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
- (3) The necessary amount actually spent to repair or replace the damaged building.

* * * *

(MIA Ex. 3.)

B. March 28, 2021 Loss – Claim PP0019040000

1. On April 8, 2021, Complainant's husband, Y.A., reported to Licensee that a wind storm caused damage to the roof of his residence located in Bowie, Maryland. ("Dwelling") (MIA Ex. 3.) Licensee assigned number PP0019040000 for the March 28, 2021 date of loss ("First Claim"). (*Id.*)

2. On April 9, 2021, Associate Claims Representative Ian Colson (“Adjuster Colson”) contacted Y.A. (MIA Ex. 3.) Y.A. reported that a wind damage caused damage to the roof and window shutters of the Dwelling. (*Id.*)

3. Adjuster Colson sent an assignment to Seek Now, in order to conduct an inspection of the Dwelling. (MIA Ex. 3.) On April 10, 2021, Inspector Michael Amner, Jr. (“Inspector Amner”) of Seek Now conducted an inspection of the Dwelling. (Lic. Ex. 1.)

4. Inspector Amner prepared a report of his findings (“First Seek Now Report”) and concluded that based on the exterior inspection, no damage was found to the front, back left, and right elevations of the Dwelling. (Lic. Ex. 1) However, Inspector Amner further noted:

Wind damage was found on the Front and Back slopes. No hail damage was found on any slope. No storm related tree damage was found on any slope. No non-storm related tree damage was found on any slope. No damage was found on any hip & ridge. No damage was found to the roof accessories. No Damage was found to the valleys. All damage and accessory counts including accessory damages can be found in the tables below.

* * * *

(*Id.*)

Under the House Roof Damage and Condition Table, the First Seek Now Report listed nine wind-damaged shingles to the front slope of the roof (Lic. Ex. 1.) The Table also listed six wind-damaged shingles to the back slope of the roof. (*Id.*)

5. On April 15, 2021, Adjuster Colson prepared an estimate in the amount of \$813.71 for the repairs to the residence, including the fifteen wind-damaged shingles and resetting six shutters that had fallen. (Lic. Ex. 1; MIA Ex. 3.)

6. On April 15, 2021, Adjuster Colson contacted Y.A. to discuss the estimate, and sent a letter explaining that the damage was below the policy deductible amount. (Lic. Ex. 1; MIA Ex. 3.) Adjuster Colson's letter stated, in pertinent part:

We have received your claim with the above-captioned date of loss. Your policy has a deductible provision that provides we will only pay the part of all covered losses that exceed the applicable policy deductible amount of \$1,000.

We have attached the repair estimate(s) dated April 15, 2021, which shows that the total damages payable under the policy are \$813.71. Therefore, we regret to inform you that we are unable to pay your claim since the amount of the damages are below your deductible.

If there is any additional information or documentation that you would like use to consider, please send this information to my attention immediately. Hartford Insurance Co. Of [sic] The Midwest reserves the right to supplement and/or to amend its position should facts and circumstances indicate the need to do so in connection with your claim.

* * * *

(Lic. Ex. 3; MIA Ex. 3.)

7. On April 21, 2021, Y.A. contacted Adjuster Colson and stated that his contractor did not believe the roof of the residence was repairable. (MIA Ex. 3.) Adjuster Colson informed Y.A. that a repair of the roof of the residence needed to be attempted. (*Id.*)

8. On April 27, 2021, Adjuster Colson spoke with Y.A. and a contractor from MLM Home Improvements ("MLM"). (MIA Ex. 3) The contractor from MLM agreed to attempt the repair to the roof. (*Id.*) Adjuster Colson also provided a link to allow the MLM contractor to upload a video of the attempted repairs. (*Id.*)

9. On May 12, 2021, Adjuster Colson received an uploaded attachment but was unable to access it. (MIA Ex. 3.) On May 24, 2021, Adjuster Colson advised Y.A. that he was experiencing technical issues with the video. (*Id.*)

10. On May 24, 2021, Adjuster Colson received an uploaded video from the MLM contractor showing attempted repairs to the roof of the residence. (MIA Ex. 3.) Upon review of the video on May 27, 2021, Adjuster Colson determined that, “[b]ased on the video the shingles are flexible enough to support a reasonable repair.” (*Id.*)

11. Adjuster Colson called Y.A. on May 27, 2023 to explain his findings from the video uploaded by the MLM contractor. (MIA Ex. 3.) Adjuster Colson also explained that he noticed that the shingles were lifted too far, causing creasing, and stated, “To avoid [this result] can reimburse the cost of a tool to facilitate the repair.” (*Id.*) Y.A. requested a written statement that the roof of the residence was repairable. (*Id.*)

12. On May 27, 2021, Adjuster Colson prepared a revised estimate for \$846.55, including the cost of a tool that would allow the repair of the roof shingles without, “over bending the undamaged shingles in the process.” (MIA Ex. 3; Lic. Ex. 5) Specifically, the revised estimate included a repair tool for \$31.13, and included a link to the website for Home Depot. (*Id.*) In the estimate, the repair tool was described as additional equipment to facilitate repair. (*Id.*)

13. Adjuster Colson sent the revised estimate to Y.A. on May 28, 2021 by email and explained that the roof of the residence was repairable (MIA Ex. 3). In the email correspondence, Adjuster Colson also stated, “[a]s available, you are welcome to send any additional information or documentation with the claim number for review. Let us know if you have questions or need anything further.” (*Id.*)

14. On June 9, 2021, Adjuster Colson spoke with Y.A. (MIA Ex. 3.) Y.A. stated that he was obtaining a second opinion from Roofmasters. (*Id.*) Adjuster Colson received no further communication from Y.A. until July 6, 2021. (MIA Ex. 3.)

B. July 2, 2021 Loss -Claim PP0019139339

1. On July 6, 2021, Adjuster Colson spoke with Y.A. (MIA Ex. 3.) Y.A. informed Adjuster Colson that another storm on July 2, 2021 caused damage to the residence. (*Id.*) Adjuster Colson asked Y.A. if a second claim was opened based on the July 2, 2021 storm, and Y.A. responded that he believed a second claim was opened. (*Id.*) However, the record does not show that a second claim was opened until July 23, 2021. (MIA Ex. 3.)

2. On July 23, 2021, Adjuster Colson created a second claim for the loss caused by the July 2, 2021 storm under claim number PP0019139339 (“Second Claim”). (MIA Ex. 3.) Also on July 23, 2021, Y.A. spoke to Adjuster Colson and identified Affordable Home Solutions, (“AHS”) as the primary contact with respect to the Second Claim. (*Id.*)

3. On July 26, 2021, Adjuster Colson spoke with a representative from AHS, who informed him that there were eight additional damaged shingles on the front slope, eight damaged shingles on the back slope of the roof, and water damage to the garage ceiling. (MIA Ex. 3.) The AHS representative indicated that he would send over documentation of the additional damage. (*Id.*)

4. As Adjuster Colson had not received the documentation from AHS showing the additional damage to the residence, Adjuster Colson arranged for a second inspection to be conducted by Seek Now on August 5, 2021. (MIA Ex. 3.)

5. On August 9, 2021, Inspector Jackson Luke (“Inspector Luke”) conducted an inspection of the residence. (MIA Ex. 3; Lic. Ex. 8.) At the time of the inspection, both Y.A. and an AHS representative were present. (*Id.*)

6. On August 23, 2021 Inspector Luke prepared a report of his findings (“Second Seek Now Report”). Based on the exterior inspection, he concluded that there was damage to the

front elevation, and scattered wind damage was found on the front, back, and left slopes. (MIA Ex. 3; Lic. Ex. 8.) Specifically, under the section of the Second Seek Now Report titled, “Data Collections,” Inspector Luke noted thirteen damaged shingles to the front slope of the roof, nine damaged shingles to the back slope and two damaged shingles to the left slope of the roof. (*Id.*) He also noted that a tarp was placed on the roof to prevent leaking. (MIA Ex. 3.) The Second Seek Now Report also included photographs of water damage to the ceiling of the garage. (*Id.*) Further, Complainant introduced evidence at the Hearing showing that the roof of the garage had been damaged due to water. (Complainant’s Exhibit (“Compl. Ex.” 2.))

7. In Licensee’s July 15, 2022 response to the MIA, Licensee explained its response to the Second Seek Now Report as follows:

Adjuster Colson reviewed the photos and determined that the water damage in the garage was preexisting and had likely been occurring for some time. There was visible mold in the area indicating a long term, repeated issue. The gutters from the upper level of the house empty directly on to the valley on the lower roof. That valley is directly above this leak. Over time, the excess water enters to intrude as water accumulates. The inspection confirmed no wind damage in the area of the leak. As such, Mr. Colson concluded that the interior damage is not related to the wind event and would need to be a separate claim. This was conveyed to Y.A. on August 25, 2021. After this point the issues from both claims merged into the same issue of the roof being repairable.

* * * *

(MIA Ex. 3.)

8. On August 23, 2021, Mr. Colson completed an estimate for the loss associated with the Second Claim number. (MIA Ex. 3.) The August 23, 2021 estimate included repairs for nine additional shingles, excluding the cost of repairs under the First Claim. (MIA Ex. 3; Lic. Ex. 8) The total estimate amount for repairs under the Second Claim was \$801.89. (*Id.*)

9. On August 23, 2021, Mr. Colson sent the Complainant and Y.A. a copy of the August 23, 2021 estimate and a letter stating:

We have received your claim with the above-captioned date of loss. Your policy has a deductible provision that provides we will only pay the part of all covered losses that exceed the applicable policy deductible amount of \$1,000.

We have attached the repair estimate(s) dated August 23, 2021, which shows that the total damages payable under the policy are \$801.89. Therefore, we regret to inform you that we are unable to pay our claim since the amount of the damages are below your deductible.

* * * *

(MIA Ex. 3; Lic. Ex. 10.)

10. On August 25, 2021, Adjuster Colson contacted Y.A. and explained that the interior damage to the Dwelling would require a separate claim. (MIA Ex. 3.) Adjuster Colson reviewed the photographs provided with the Second Seek Now Report with Y.A., including those showing water damage to the ceiling of the garage. (*Id.*) With respect to the water damage to the ceiling of the garage, Licensee's claim log notes reflect that Adjuster Colson explained to Y.A. that: "[r]egarding water, appears water from downspout is directed to roof above garage area [*sic*] of rot/mold. Potential coverage as anticipate rot/mold below the shingles of that part of the roof. Can pursue with a separate claim. Uncertain if damage would be above deductible if rot/mold." (*Id.*) Further, Adjuster Colson reported in the claim log notes that the water damage was considered unrelated to the March 28, 2021 and July 2, 2021 dates of loss and that a separate claim could be pursued. (*Id.*)

11. On August 26, 2021, Adjuster Colson sent Y.A. the inspection reports and an ITEL report showing prices to replace the damaged shingles. (MIA Ex. 3.)

12. On September 10, 2021, Adjuster Colson received an estimate from the AHS representative for a roof replacement. (MIA Ex. 3.) Adjuster Colson responded to the AHS representative on September 21, 2021 and explained that Licensee needed to first attempt to make the repairs. (*Id.*)

13. On November 3, 2021, a AHS representative contacted Adjuster Colson concerning their attempt to repair the roof of the residence. (MIA Ex. 3.) Specifically, the AHS representative stated that he obtained the recommended repair tool; however, the tool left marks on the undamaged shingles when used. (*Id.*) The AHS representative also provided photographs of the affected area of the roof. (*Id.*)

14. On November 9, 2021, Adjuster Colson contacted the AHS representative and advised that the photographs were not of sufficient quality to show if damage occurred when the repair was attempted. (MIA Ex. 3.) Adjuster Colson also informed the AHS representative that a video of the repair process is needed to confirm that the proper repair technique was used before Licensee could consider additional repairs. (*Id.*) Licensee did not receive a video upload in response to this request. (*Id.*)

15. On December 14, 2021, Complainant phoned Adjuster Colson and requested a full roof replacement. (MIA Ex. 3.) In response, Adjuster Colson, “advised [Complainant] of coverage for LKQ, like use, and direct physical loss.” (*Id.*) Additionally, Adjuster Colson advised Complainant of the number of shingles that had been damaged and that the roof was deemed repairable. (*Id.*) Further, Adjuster Colson advised Complainant that that the repair estimates were below the deductible for each claim. (*Id.*)

16. On December 14, 2021, Adjuster Colson also sent an email message to Complainant, which included an ITEL order form and a shipping label as attachments, stating:

Thank you for speaking with me today about your claims noted below—I understand you have concerns that repairing the roof is not reasonable. I want to review the status and the opportunity we discussed today.

PP0019040000

Wind on or about March 28th, 2021:

Damaged 9 shingles on the front and 6 shingles on the back slope of the roof;
And detached 6 shutters.

PP0019139339

Wind on or about July 2, 2021:

Damaged 4 additional shingles on the front and 3 additional shingles on the back slope of the roof.

Current Status

The policy covers the necessary cost to repair or replace the part of the building damaged with material of like kind and quality and for like use; or the necessary amount actually spent to repair or replace the damaged building.

Based on available documentation, the wind damage to the roof is considered repairable and the repair estimates are below the deductible.

Opportunity

If appropriate shingles are not available, we need the supporting documentation to afford replacement of the damaged slope(s):

- Please have your contractor send a sample according to the directions using the attached Order Form and Shipping Label.
- Please have your contractor ensure your property is protected from further damage.
- Please also send us the postage receipt for reimbursement.

Please let me know if you have any outstanding questions.

(MIA Ex. 3.)

Later that same day, Adjuster Colson sent a second email to Complainant, which stated, pertinent part:

Thank you again for speaking with me today and for your follow up email and voicemails. For us to address your concern about whether the roof shingles can be reasonably matched, please have your contractor obtain the third party matching report from ITEL [*sic*].

* * * *

(*Id.*)

17. On December 15, 2021, Sean Grinnan, Personal Property Team Leader for Licensee (“Adjuster Grinnan”) spoke with Complainant. (MIA Ex. 3.) Complainant explained to Adjuster Grinnan that she resides in a high-end neighborhood and she cannot patch the roof. Adjuster Grinnan explained that an estimate was prepared for the wind damage and that it is possible to repair the roof. (*Id.*) Adjuster Grinnan also explained that if there is no match available, Complainant’s contractor will need to complete the ITEL form to test the roof for matching shingles. (*Id.*)

Adjuster Grinnan’s call notes of the December 15 phone call include the following explanation regarding the Licensee’s request for the ITEL test to be completed:

If a reasonable match is found the repair we have written for would be accurate. I explained that if no reasonable match is found we would have to consider additional repairs at that time. But we need the ITEL test before we can address this.

[Complainant stated] that roofers have told here [*sic*] there is no match for her shingle. I explained that roofers would not have access to the same network ITEL does and roofers make more money from a replacement so that is what they prefer to do. I again explained that we need the ITEL report if she is claiming a matching issue.

She stated that because she lives in a high end neighborhood we need to me make sure it matches exactly. I told her that we handle the claim the same regardless of if it is a \$10,000 house or a million dollar house, we are bound by the policy and the state matching laws.

* * * *

(*Id.*)

18. On January 11, 2022, Complainant sent an email to Adjuster Grinnan stating, in part:

- 1- The contractors look like they are not interested to come to send you the shingle as your request I can not climb to the roof.
- 2- If you send a person from your insurance to go to the roof let me know? I still do not accept patch roof.
- 3- Hartford Insurance put temporary blue patch I am concern this bad weather for further damage.
- 4- On December 14, 2021 Ian deny my request. Please let me know your decision as soon as possible?
- 5- If your decision same like Ian I will appeal my case to Hartford CEO.

Please provide me she/he CEO email address as soon as possible.

* * * *

(MIA Ex. 3.)

19. On January 11, 2022, Adjuster Grinnan sent an email responding to Complainant's January 11, 2022 email, stating, in pertinent part:

We have estimated for the repair of your roof based on the damages related to wind across 2 claims. We have accurately estimated the repairs needed and it is not a temporary fix. The damage does not require a full roof replacement.

You have stated that you are concerned about these repairs matching. We were under the impression that your contractor would be able to send a sample to ITEL for testing to locate a match. As they are not willing to do this I am having Ian send an inspector to obtain a sample for testing. Your state does have matching language that requires a reasonable match in the line of sight. If a reasonable match is available we will not be revising the estimate for repairs as we have accurately estimated based on the damages related to the wind. If a reasonable match is not available we will adjust our estimate accordingly.

Ian will set up the inspector to obtain the sample for ITEL so we can determine the availability of a reasonable match.

* * * *

(MIA Ex. 3.)

20. On January 13, 2022, Adjuster Grinnan notified Complainant that Licensee sent an assignment to Seek Now to obtain a roofing sample, and that an inspector from Seek Now

would be in contact with her to arrange a date to obtain the test sample from the roof . (MIA Ex. 3.)

21. On January 16, 2022, Inspector Adhemar Hiza (“Inspector Hiza”) arrived at the Complainant’s residence to obtain an ITEL sample. (Lic. Ex. 17.)

22. On January 31, 2022, Adjuster Grinnan received the ITEL report from the sample obtained from the roof of the Complainant’s residence. (MIA Ex. 3.) Based on the findings set out in the ITEL report, he identified a shingle match for material and color; specifically, the Grey Blend Tamko Elite Glass-Seal shingle was identified (MIA Ex. 3; Lic. Ex. 13.) He also identified three suppliers within 15 miles of the Complainant’s residence. (MIA Ex. 3.)

23. Complainant had previously instructed Licensee not to call her, and instead, to direct all correspondence to her in writing. (MIA Ex. 3.) On January 31, 2022, Adjuster Colson sent the ITEL report and the Seek Now photographs to Complainant by email. (*Id.*)

D. Complaint and Hearing Request

1. On June 23, 2022, Complainant filed a Complaint with the MIA. (MIA Ex. 1.) In the Complaint, Complainant averred that Licensee improperly denied Complainant’s claims for a full roof replacement. (*Id.*)

2. The MIA investigated the Complaint, and determined that the Licensee had not violated the Insurance Article in its handling of Complainant’s Claims. (MIA Ex. 6.)

3. Complainant was not satisfied with the MIA’s determination and requested the instant hearing. (MIA Ex. 8.) The Hearing was granted in this matter by letter dated September 8, 2022. (MIA Ex. 9.)

4. On September 12, 2022, Complainant sent a letter to the MIA containing a series of statements and questions directed to Licensee and to the MIA. (MIA Ex. 10.) In

Complainant's September 12, 2022 letter, she asserted that Licensee failed to directly respond to a series of "yes" or "no" questions that Complainant had raised concerning the Licensee's reliance on the ITEL report and her concerns that a mismatched roof would reduce the value of the residence. (*Id.*)

5. The case was referred to the MIA Office of Hearings and a preliminary hearing conference call was held on October 18, 2022.

6. The MIA Exhibits were sent to the Parties by secure email on November 3, 2023.

7. On January 18, 2023, the virtual evidentiary hearing was convened. At that time, Complainant asserted that she had not received the MIA Exhibits from the investigation conducted by the MIA's Property & Casualty Unit, and the Parties agreed to a postponement of the evidentiary hearing.

8. A scheduling conference was convened on February 15, 2023. At that time, Complainant confirmed that she received the MIA Exhibits and the Licensee's Exhibits. The evidentiary hearing was scheduled for March 21, 2023.

9. Complainant asserted several times, during the evidentiary hearing and the preliminary conference calls that the investigation file was too large and confusing for her to review. A preliminary scheduling conference call was convened on Wednesday, February 15, 2023. At the February 15, 2023 scheduling conference, Licensee's attorney objected to Complainant's request for an additional three months to postpone the evidentiary hearing. As the MIA Exhibits were initially sent to the Parties on November 3 2022, the Parties were afforded an additional month, until March 21, 2023, to review the documents to prepare for the evidentiary hearing.

10. A virtual hearing was held on March 21, 2023. Complainant and her husband, Y.A., provided sworn testimony on her behalf. Licensee was represented by Ms. Jessica Port, Esq., of Zelle, LLP.

DISCUSSION

A. Positions of the Parties.

Complainant contends that Licensee improperly denied her claims. Specifically, Complainant maintains that windstorms on March 28, 2021 and July 2, 2021 caused damage to her home. Complainant asserts that Licensee refused to replace the roof of Complainant's home, and instead found that the damaged shingles were repairable. Complainant argues that that replacing the shingles was insufficient to repair the damage to her roof, as an ITEL report revealed that there were no shingles available to match the other shingles on her roof and that mismatched shingles would reduce the value of her home. Complainant further contends that Licensee's refusal to replace the roof of the residence was motivated by its aim to save costs. Finally, Complainant believes that Licensee failed to adequately respond to her questions and that a broader investigation of Licensee's claim handling practices is warranted.

Licensee asserts that Complainant has failed to satisfy her legal burden of establishing that Licensee committed any unfair claims settlement practices by a preponderance of the evidence. Specifically, Licensee contends that Complainant requested a roof replacement for aesthetic reasons, rather than to repair the roof to its pre-loss condition. Licensee further asserts that it properly handled Complainant's claim since it promptly investigated the claims, and notwithstanding Complainant's requests for additional funds to cover a full roof replacement, the evidence demonstrates that the roof of the residence was repairable. Licensee maintains that the Policy covers replacement of damaged materials with like kind and quality and the costs to

replace the damaged shingles with the exact same shingles, which are still in production, falls below the policy deductible.

B. Statutory Framework

The Parties were notified in the March 6, 2023 Notice of Virtual Hearing that specific attention at the Hearing would be directed to §§ 27-303 and 4-113 of the Insurance Article.

Section 27-303 states in pertinent part:

It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

* * *

(6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim[.]

* * * *

(Westlaw 2023.)

Section 4-113 states, in pertinent part:

(b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:

* * *

(5) refuses or delays payment of amounts due claimants without just cause[.]

* * * *

(Westlaw 2023.)

In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Court of Special Appeals adopted the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard as articulated in an earlier case. *See* 142 Md. App. 628 (2002). As the Court explained:

The Commissioner has previously construed §27-303(2) as requiring a licensee insurer to show that it refused to pay the claim at issue based on: (1) an otherwise lawful principle or standard which the insurer applies across the board to all claimants; and (2) reasonable consideration of "all available information."

Id. at 671. (*internal citations omitted*).

The Complainant, as the party asserting the affirmative on the issue, has the burden of persuasion to demonstrate by a preponderance of the evidence that Licensee violated the Insurance Article in its handling and denial of the Claim. Md. Code Ann., State Gov't § 10-217 (Westlaw 2023); *Comm'r of Labor & Indus. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996); *Berkshire*, 142 Md. App at 672. To satisfy its burden of persuasion in this case by a preponderance of the evidence, Complainant 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*). 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 did not violate § 27-303 (1), (2) or (6) or § 4-113(b)(5) in the handling of Complainant's Claims.

After investigating the Complaint concerning Licensee's handling of Complainant's Claim, the MIA determined that Licensee did not violate the Insurance Article. For the reasons set forth below, I affirm.

Section 27-303

Based on my evaluation of the evidence in this case, I find that Licensee was not in violation of § 27-303(2) with respect to its handling of Complainant's First Claim or Second Claim (collectively "Complainant's Claims"), because Licensee did not act arbitrarily or capriciously in handling Complainant's Claims or in denying the requests for a full roof replacement.

First Claim

At the Hearing, the gravamen of the Complainant's argument was that the roof was not repairable and a full roof replacement was warranted. On this point, however, I find that there is ample evidence in the Record that Licensee acted on a legal standard that is generally applicable to all claimants and which demonstrates that Licensee's investigation of Complainant's Claim was timely, diligent and extensive.

The relevant Policy provision, with respect to Loss Settlement, states:

SECTION I – CONDITIONS

* * *

C. Loss Settlement

In this Condition C., the terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in E.11. Ordinance Or Law under Section I - Property Coverages. Covered property losses are settled as follows:

* * *

2. Buildings covered under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts:

- (1) The limit of liability under this policy that applies to the building;
- (2) ***The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or***
- (3) The necessary amount actually spent to repair or replace the damaged building.

* * * *

(MIA Ex. 3.) (emphasis added).

The Policy had a deductible of \$1,000. (*Id.*)

In the instant matter, the Record shows that Y.A. reported to Licensee that a windstorm caused damage to the roof of the Dwelling on April 8, 2021. The following day, on April 9, 2021, Adjuster Colson contacted Y.A. and learned that a windstorm damaged the roof of the Dwelling, including two shingles that had fallen off from the windstorm and four shingles that previously fell off the roof and window shutters of the Dwelling. (*Id.*) One day later, on April 10, 2021, Inspector Amner of Seek Now conducted an inspection of the Dwelling. (*Id.*) In the First Seek Now Report, Inspector Amner reported wind damage on the front and back slopes of the Dwelling. (Lic. Ex. 1.) Specifically, Inspector Amner reported nine wind-damaged shingles to the front slope of the roof and six wind-damaged shingles to the back slope of the roof. Based on the findings in the First Seek Now Report, Adjuster Colson prepared an initial estimate of \$813.71, which fell below the Policy deductible of \$1,000.00. (Lic. Ex. 2.) Adjuster Colson then communicated the findings from the First Seek Now Report to Y.A., and followed up with a letter dated April 15, 2021 to the Complainant and Y.A. which stated, "we regret to inform you

that we are unable to pay your claim since the amount of the damages are below your deductible.” (Lic. Ex. 3.) Adjuster Colson also provided a copy of the initial estimate with the letter. (Lic. Ex. 4.)

Adjuster Colson later communicated with Y.A., and Daniel Ferguson of MLM, Complainant’s contractor, regarding the estimate for the First Claim. Adjuster Colson explained to Y.A. and his contractor that a roof repair must be attempted before determining whether a roof replacement was needed. (MIA Ex. 3.) Moreover, the record reflects that Adjuster Colson reviewed the MLM video showing an attempt to repair the roof submitted on May 24, 2021- three days after receiving a workable file; the record also shows that Adjuster Colson initially attempted to view the video on the same day it was submitted, but that the original video file was inaccessible. (*Id.*) The record further demonstrates that on May 28, 2021, based on his review of the video, Adjuster Colson prepared a revised estimate for \$846.55, including the cost of a tool that would allow the repair of the roof shingles without, “over bending the undamaged shingles in the process.” (MIA Ex. 3; Lic. Ex. 5) Adjuster Colson then sent the revised estimate to Y.A. and explained that the roof was repairable. (MIA Ex. 3.) While Y.A. told Adjuster Colson that he was seeking a second opinion from Roof Masters after receiving the revised estimate, there is no evidence in the Record that Y.A. submitted the revised estimate or any additional documentation after Adjuster Colson provided the revised estimate, even though Adjuster Colson advised Y.A. that he could submit additional documentation for his review. (*Id.*) In fact, the Record shows that Y.A. did not contact Licensee again until July 6, 2022 when he called regarding the damage from the July 2, 2022 storm. (*Id.*)

In sum, the Record demonstrates that the Licensee determined that no payment was owed because the estimate fell below the Policy deductible of \$1,000.00, Licensee’s estimate was for

the replacement cost of the damaged roof shingles “with material of like kind and quality”, as required by the Policy, and the estimated was based on all available evidence. Thus, I find that Licensee acted reasonably based on all available information and based upon a generally applicable standard in handling the First Claim.

I also find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the Claim in violation of § 27-303(1), as it pertains to loss settlement. While the Complainant asserts that a roof replacement was required to fix the damaged caused by the March 28, 2021 windstorms, Licensee concluded based on all available evidence, as discussed above, that a repair, rather than roof replacement was appropriate, and that no payment was owed since the repair cost fell below the Policy deductible of \$1,000.00. As evidenced by the excerpt of the Policy language above, the Policy language expressly states that it provides coverage for the cost to replace the damaged parts with material of like kind and quality. The Record is replete with Licensee’s attempts to explain and demonstrate to Complainant, Y.A. and their contractors that the roof could be replaced and the proper tool to do so. Therefore, I find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue.

I further find that Licensee did not fail to provide a reasonable explanation for the denial of the claim upon request in violation § 27-303(6) of the Insurance Article. The First Claim was filed on April 8, 2021 and the inspection completed two days later on April 10, 2021. (MIA Ex. 3.) The Licensee sent a letter explaining the basis for the denial of payment on the First Claim on April 15, 2021, only seven days after the claim was filed. (Lic. Ex. 3; MIA Ex. 3.) Moreover, even after sending the denial letter promptly, Licensee continued to respond to Y.A. in a timely fashion. (MIA Ex. 3.) After receiving additional information from Y.A. and his contractor regarding efforts to repair the roof on May 24, 2021, Adjuster Colson issued a revised estimate

and contacted Y.A. to explain the new estimate three days later on May 27, 2021. (*Id.*) He followed up by sending an email which included the revised estimate the next day. (*Id.*) I, therefore, find that Licensee did not violate § 27-303(6).

Second Claim

I also find that Licensee did not act arbitrarily or capriciously in handling the Second Claim. Y.A. reported the damage to the shingles from the July 2, 2021 storm on July 6, 2021. Adjuster Colson spoke with a representative from AHS on July 23, 2021, who reported that additional shingles had been damaged because of the July 2, 2021 windstorm; however, the contractor provided no documentation to Adjuster Colson demonstrating the amount of the loss. (MIA Ex. 3) Having received no communication from a representative from AHS or the Complainant, Adjuster Colson assigned Seek Now to complete an inspection and obtain photographs of the Dwelling on August 5, 2021. (Lic. Ex. 8.) On August 9, 2021, Inspector Luke conducted an inspection of the Dwelling with Y.A. and an AHS representative. Based on the findings detailed in the Second Seek Now Report, damage was identified on the front elevation of the Dwelling, as well as scattered wind damage was found on the front, back, and left slopes. (*Id.*) Specifically, under the section of the Second Seek Now Report titled, "Data Collections," Inspector Luke noted thirteen damaged shingles to the front slope of the roof, nine damaged shingles to the back slope and two damaged shingles to the left slope of the roof. (*Id.*) A tarp was placed on the roof to prevent leaking. (MIA Ex. 3.) The Second Seek Now Report also included photographs of water damage to the ceiling of the garage. (MIA Ex. 3; Lic. Ex. 8.) Based on Adjuster Colson's review of the photographs showing water damage to the garage ceiling in the Second Seek Now Report, he determined that the water damage to the garage

ceiling was unrelated to the March 28, 2021 and July 2, 2021 losses and that a separate claim could be pursued. (MIA Ex. 3.)

On August 23, 2023, Adjuster Colson completed an estimate for the loss associated with the Second Claim based on his review of the Second Seek Now Report. The estimate of \$801.89 included repairs for nine additional shingles, excluding the cost of repairs under the First Claim. (MIA Ex. 3; Lic. Ex. 8) Adjuster Colson also sent a letter regarding the Second Claim to Complainant and Y.A. on August 23, 2021 stating, “we regret to inform you that we are unable to pay our claim since the amount of the damages are below your deductible.” (MIA Ex. 3; Lic. Ex. 10.) The letter also explained that, based on Adjuster Colson’s review of the photographs in the Second Seek Now Report showing water damage to the garage ceiling, he determined that the water damage to the garage ceiling was unrelated to the March 28, 2021 and July 2, 2021 losses and that a separate claim could be pursued. (MIA Ex. 3.)

With respect to Complainant’s assertion that the roof needed to be replaced, the Record shows that Adjuster Colson sent Y.A. the inspection reports and an ITEL report showing the prices to replace the damaged shingles. (*Id.*) The evidence also demonstrates that on September 10, 2021 an AHS representative provided an estimate for a roof replacement, and that, in response, Adjuster Colson requested that AHS demonstrate that a repair was attempted. (*Id.*) To that end, the AHS representative stated that he obtained the recommended repair tool; however, the tool left marks on the undamaged shingles when used. (*Id.*) On November 9, 2021, Adjuster Colson informed the AHS representative that a video of the repair process would be needed to confirm that the proper repair technique was used before Licensee could consider additional repairs. (*Id.*) Licensee did not receive a video upload in response to this request. (*Id.*) On December 14, 2021, Complainant again contacted Adjuster Colson requesting a full roof

replacement. (*Id.*) In response, Adjuster Colson explained to Complainant that the roof was deemed to be repairable and that the Policy provides coverage for direct physical loss. (*Id.*) Further, Adjuster Colson explained that the Policy, *supra*, provides coverage for the replacement cost of that part of the building damaged with material of like kind and quality and for like use. *Id.* The Record also reflects that Licensee diligently handled the claim with respect to inquiries from the Complainant concerning the replacement of the damaged shingles, including sending the Complainant the ITEL order form and a shipping label on December 14, 2021. (*Id.*) With respect to the matching requirement for the shingles, Adjuster Grinnan also sent an email response to Complainant on December 15, 2021 explaining:

If a reasonable match is found the repair we have written for would be accurate. I explained that if no reasonable match is found we would have to consider additional repairs at that time. But we need the ITEL test before we can address this.

* * * *

(MIA Ex. 3.)

Further, in response to Complainant's concern that the Dwelling is in a high-end neighborhood, Adjuster Grinnan responded as follows: "I told her that we handle the claim the same regardless of if it is a \$10,000 house or a million dollar house, we are bound by the policy and the state matching laws." (*Id.*)

As further demonstration of Licensee's reasonable consideration of all available information, Licensee arranged for a third Seek Now inspection to obtain photographs of the roof of the Dwelling based on Complainant's January 11, 2022 email indicating that her contractor was not interested in sending a sample to ITEL. (*Id.*) Then, on January 31, 2022, Adjuster Grinnan received the ITEL report finding that an exact shingle match for material and color was

identified. (*Id.*) Further, the ITEL report identified three suppliers within 15 miles of the Complainant's residence. (*Id.*) Based on my evaluation of the evidence in this case, I find that Licensee acted based on the Policy language and all available information. I, therefore, find that Licensee's handling and denial of the Second Claim was not arbitrary or capricious, and not in violation of § 27-303(2).

I further find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the Second Claim in violation of § 27-303(1), as it pertains to loss settlement. Licensee concluded based on all available evidence, as discussed above, that a full roof replacement was not needed, and that instead, the missing shingles could be repaired with materials of like kind and quality. As evidenced by the excerpt of the Policy language above, the Policy language expressly states that it provides coverage for the cost to replace the damaged parts with material of like kind and quality. The Record is replete with Licensee's attempts to explain and demonstrate to Complainant, Y.A. and their contractor that the roof could be replaced and the proper tool to do so. Further, the Record clearly demonstrates that a matching shingle was identified from the ITEL report. Licensee also indicated that no payment was owed because the cost of repair fell below the Policy deductible of \$1,000.00. Therefore, I find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue.

Lastly, I find that Licensee did not fail to promptly provide a reasonable explanation for the denial of the Second Claim upon request in violation § 27-303(6) of the Insurance Article. While Adjuster Colson attempted to confirm with Y.A. that he had already opened the Second Claim on July 6, 2021, the evidence demonstrates that it was, in fact, opened until July 23, 2021. (MIA Ex. 3.) The investigation was then completed on August 23, 2021. (Lic. Ex. 10; MIA Ex. 3.) On the same day, Licensee sent a letter explaining the basis for the denial of payment of the

Second Claim. (Lic. Ex. 10; MIA Ex. 3.) Moreover, even after sending the denial letter promptly, Licensee continued to respond to Y.A. in a timely fashion. After receiving additional information from Y.A. on December 14, 2021, Adjuster Colson responded that same day by email providing an overview of the claim and the basis for denial including a reference to the relevant policy language and that the cost of repair fell below the deductible. (MIA Ex. 3.) Adjuster Grinnan spoke directly with Complainant when she telephoned on December 15, 2021 about her concerns that the repair would reduce the house value. (*Id.*) Then, when Complainant emailed on January 11, 2021, Adjuster Grinnan responded that same day by email explaining the steps that would be needed and to set up an ITEL inspection. (*Id.*) The ITEL inspection was conducted on January 16, and the ITEL report, identifying shingles of like material and quality, was issued on January 31, 2021. (*Id.*) Adjuster Grinnan sent Complainant a copy of the ITEL Report that same day. (*Id.*) I, therefore, find that Licensee did not violate § 27-303(6).

Section 4-113

I further find that Licensee did not refuse or delay payment of amounts due to the Claimant without just cause in violation of § 4-113(b)(5). As discussed under the Section captioned, “Section 27-303” for each of the two claims, the Licensee did not act arbitrarily or capriciously in denying payment on the First Claim or the Second Claim because the Policy only provided for replacement costs for materials of like kind and quality, and the cost to replace the damaged shingles fell below the Policy deductible of \$1,000. Therefore, I find that Licensee did not refuse or deny payment of the Claims without just cause in violation of § 4-113(b)(5).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Licensee has not committed an unfair claim settlement practice in violation of § 27-303 or delayed or denied payment of amounts due without just cause in violation of § 4-113, or otherwise violated the Insurance Article.

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 5th day of October 2023.

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original
ERICA J. BAILEY
Chief Hearing Officer/Associate Commissioner
Office of Hearings