

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

MARYLAND INSURANCE
ADMINISTRATION
EX REL S.W.¹,

Complainant,

v.

WINDSOR-MOUNT JOY MUTUAL
INSURANCE COMPANY,

Licensee.

* REVIEW OF A RECOMMENDED
* DECISION ISSUED BY
* WILLIAM F. BURNHAM
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MIA-CC-33-22-24489²
* OAH No.: MIA-CC-33-22--24445
*
* MIA No.: MIA-2022-09-013
* MIA No.: MIA-2022-09-018

* * * * *

FINAL ORDER

Pursuant to Md. Code Ann., Ins. § 2-210(d)³ and Code of Maryland Regulations (COMAR) 31.02.01.10-2D, the undersigned Associate Commissioner for the Maryland Insurance Administration (MIA) hereby issues this summary affirmance of the Proposed Decision below.

On December 21, 2021⁴, the MIA received a complaint from S.W. (hereinafter “Complainant”) alleging that Windsor-Mount Joy Mutual Insurance Company (hereinafter

¹ The MIA uses initials to protect the identity of the Parties.

² The parties agreed that the complaint arose from the same set of operative facts. At the request of the MIA, and for judicial economy, the cases were heard together, and one decision was issued. *See* Code of Maryland Regulations (COMAR) 28.01.02.11(B).

³ Unless otherwise noted, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

⁴ In the OAH proposed decision, ALJ Burnham states that the complaint was received on September 19, 2022, however, since the MIA issued its Determination Letters on August 11, 2022 and September 14, 2022, it is

“Licensee”) erred in its handling of his insurance claim resulting from damage to the roofs of two of Complainant’s rental properties. (“Complaint”). The MIA investigated the Complaint, and on August 11, 2022 and September 14, 2022, it issued two determination letters concluding that the Licensee did not violate Maryland’s insurance laws with respect to its cancellation of the Complainant’s dwelling fire policies or its handling of the Complainant’s claims. The August 11, 2022 letter specifically referenced Section 27-602 of the Insurance Article. The September 14, 2022 letter specifically referenced Sections 4-113(b)(5), Sections 27-303(1), (2), and (6) of the Insurance Article. The Complainant requested a hearing, which was granted on September 21, 2022. This matter was then transmitted to the Office of Administrative Hearings (“OAH”) to conduct a contested case hearing and to issue a Proposed Decision pursuant to COMAR 31.02.01.04-1A. In its referral to the OAH, the MIA noted that specific attention at the hearing will be directed to the Annotated Code of Maryland, Insurance Article, Sections 4-113, 27-303, and 27-602.

On February 16, 2023, a hearing was held before Administrative Law Judge (“ALJ”) Burnham. On March 13, 2023, ALJ Burnham issued a Proposed Decision setting forth findings of fact, as well as Conclusions of Law with respect to Sections 4-113(b)(5), 27-303(2), and 27-501. However, ALJ Burnham did not address Conclusions of Law with respect to Sections 27-602, 27-303(1) or 27-303(6).

On the same date, OAH mailed the Proposed Decision to the Parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions, which advised the

presumed, with support from the record, that the decision was meant to state the complaint was received on December 21, 2021.

Parties that, pursuant to COMAR 31.02.01.10-1, they had the right to file written exceptions with the Undersigned within twenty (20) days from receipt of the Proposed Decision.

Under COMAR 31.02.01.10-1(B), once Complainant received the proposed order, he had 20 days to file exceptions with the Commissioner. Additionally, under COMAR 31.02.01.10-1(C), receipt of the proposed order is presumed to occur 3 days after the mailing of the proposed order. Here, the proposed order was issued and mailed on March 13, 2023; therefore, it is presumed Complainant received the proposed order by March 16, 2023. Complainant submitted exceptions dated April 20, 2023, which the MIA did not receive until May 2, 2023. The due date for exceptions was April 5, 2023; thus making Complainant's submission untimely.

I have carefully evaluated the record in this case and the Proposed Decision by ALJ Burnham. Based on this review, I am persuaded that ALJ Burnham's Conclusions of Law that Licensee did not violate Section 27-303(2), Section 4-113(b)(5), and Section 27-501 are correct, and, pursuant to COMAR 31.02.01.10-2D, hereby affirm these findings.

I further find, pursuant to COMAR 31.02.01.10-2(C)(2), that ALJ Burnham's Findings of Fact clearly support a finding that Licensee did not violate Section 27-303(1). Specifically, ALJ Burnham found that Complainant's Policy, regarding general exclusions, states:

"We do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

4. Intentional Acts – We do not pay for loss that results from an act committed with the intent to cause a loss:

- 1) by you or at your direction; or
- 2) by or at the direction of any other insured.

11. Wear and Tear – We do not pay for loss which results from wear and tear, marring, deterioration, inherent vice, latent defect, mechanical breakdown, rust, wet or dry rot, corrosion, mold, contamination, or smog. We do pay for ensuing loss unless the ensuing loss itself is excluded.

13. Errors, Omissions, and Defects – We do not pay for loss caused by one or more of the following:

- a. an act, error, or omission (negligent or not) relating to:
 2. the design, specification construction, workmanship, or installation of property;
 4. maintenance of property (including land, structures, or improvements);

Whether on or off the insured premises;

- b. a defect, a weakness, the inadequacy, a fault, or unsoundness in materials used in construction or repair whether on or off the insured premises.”

(MIA Ex. 4.)

ALJ Burnham also found that Licensee sent a letter to Complainant, dated November 17, 2021, in which it denied the claims for roof damage. The November 17, 2021 letter from Licensee states that Licensee was not covering the claims because the inspections revealed that the damage was either intentionally man-made or a result of normal wear and tear, both of which are not covered under Complainant’s policy. Further, the November 17, 2021 letter included the relevant exclusion language from the Policy. I, therefore, find that Complainant has not shown that Licensee misrepresented pertinent facts or policy provisions that relate to the claims in violation of Section 27-303(1).

I further find that Complainant has not shown that Licensee violated Section 27-303(6). Based on ALJ Burnham’s Findings of Fact and the evidence incorporated by ALJ Burnham into the record, including the MIA file, Licensee sent Complainant a claim denial letter on November 17,

2021. In this denial letter, Licensee specifically stated that it was denying the claim because its investigation found the damage to the properties' roofs were due to either normal wear and tear or intentional man-made damage, both of which are not covered under Complainant's policy. Additionally, Licensee cited to the relevant sections of Complainant's policy as support for its denial of the claim. As Licensee clearly identified the basis for the denial, supported by the relevant provisions of the policy, I find that Complainant has not shown that Licensee failed to provide a reasonable explanation for the denial of the claim in violation of Section 27-303(6).

I also find, based on ALJ Burnham's Findings of Fact & Discussion, that the record does not demonstrate that Licensee unlawfully canceled Complainant's insurance policy in violation of Section 27-602(c). Specifically, the record includes the cancellation notices sent to Complainant on December 13, 2021 and December 14, 2021, respectively, with an effective date of cancellation on January 31, 2022. The record also includes a proof of mailing form by the United States Postal Service (USPS), showing that Licensee sent correspondence to Complainant's mailing address on December 13, 2021. The letters also provide the following reason for the cancellation as, "[s]ubstantial change in the risk as there is damage to the roof by a cause other than wind or hail and damages were characteristic of a man-made attempt at replicating wind Damage." (MIA Ex. 4.) As the record demonstrates that Licensee mailed the cancellation notice at least 45 days before the date of the proposed cancellation, I find that Licensee is not in violation of Section 27-602.

Lastly, ALJ Burnham concluded, as a matter of law, that "Licensee properly notified the Complainant of its intention to cancel the Properties' policies and did so reasonably related to the

Licensee's economic and business purposes." I find that the record does not demonstrate that Licensee cancelled the Complainant's policies for an arbitrary, capricious or unfairly discriminatory reason, in violation of violation of Section 27-501(a)(1).

Lastly, on page 14 of the Proposed Decision ALJ Burnham proposes that "the Licensee not be found in violation of section 27-303 or section 4-115 or section 27-602 of the Insurance Article and that the charges made by the Complainant be DENIED AND DISMISSED." I find it necessary to clarify the disposition of the case. Rather than dismissing the Complaint, I conclude that the determination issued by the Maryland Insurance Administration shall be hereby AFFIRMED based on the Findings of Fact and Discussion provided by ALJ Burnham.

THEREFORE, it is hereby

ORDERED that the Proposed Decision of ALJ Burnham is AFFIRMED, and

ORDERED that, as a matter of law, it be found that Licensee did not violate Sections 4-113, 27-303(1), 27-303(2), 27-303(6), 27-602, or 27-501(a)(1);

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

It is so **ORDERED** this 26th day of September 2023.

KATHLEEN A. BIRRANE

Commissioner

signature on original

Erica J. Bailey

Associate Commissioner of Hearings

MARYLAND INSURANCE

* BEFORE WILLIAM F. BURNHAM,

ADMINISTRATION

* AN ADMINISTRATIVE LAW JUDGE

EX REL.

* OF THE MARYLAND OFFICE

S.W.,¹

* OF ADMINISTRATIVE HEARINGS

COMPLAINANT

*

v.

* OAH No.: MIA-CC-33-22-24489²

WINDSOR-MOUNT JOY MUTUAL

* OAH No.: MIA-CC-33-22-24445

INSURANCE COMPANY,

* MIA No.: 2022-09-013

LICENSEE

* MIA No.: 2022-09-018

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On September 19, 2022,³ the Maryland Insurance Administration (MIA) received a complaint from the Complainant regarding the cancellation of his policies and alleged unfair claim settlement practices by Windsor-Mount Joy Mutual Insurance Company (Licensee). Specifically, the Complainant alleges that the Licensee wrongfully denied his insurance claim

¹ The Complainant's initials are used to maintain privacy.

² The parties agreed that the complaints arose from the same set of operative facts. At the request of the MIA, and for judicial economy, the cases were heard together, and one decision issued. See Code of Maryland Regulations (COMAR) 28.01.02.11.

³ The Complainant emailed the MIA and indicated that he contested the Licensee's cancellation of his policies. On September 19, 2022, the MIA confirmed with the Complainant that he challenged both the denials of coverage and the cancellations of the policies.

resulting from alleged wind damage to two properties on September 1, 2021. As a result of the claims filed by the Complainant, the Licensee sent the Complainant notices of cancellation.⁴

After an investigation, the MIA found that the Licensee did not violate sections 4-113, 27-303, or 27-602 of the Insurance Article of the Maryland Code and notified the Complainant of its finding by letters, dated August 11, 2022 and September 14, 2022, and the Complainant requested a hearing. On October 5, 2022, the MIA transmitted the matters to the Office of Administrative Hearings (OAH) to conduct a consolidated contested case hearing. In its transmittal, the MIA delegated to the OAH authority to issue proposed decisions.⁵ The MIA indicated that “[t]hese cases should be heard together and consolidated.” (MIA Transmittal Forms).

On February 16, 2023, I held a consolidated hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022);⁶ COMAR 31.15.07. The Complainant represented himself. Sunny Chung, Esquire, represented the Licensee.

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

ISSUES

Did the Licensee refuse or delay payments on claims without just cause, or otherwise engage in any unfair claim settlement practice?

Did the Licensee improperly cancel the Complainant’s policies?

⁴ Many of the documents referenced in this matter contain an additional named insured. That individual did not file complaints or appeals of the Licensee’s actions and was not present at the hearing.

⁵ The Insurance Commissioner may delegate to the OAH the authority to issue: (a) proposed or final findings of fact; (b) proposed or final conclusions of law; (c) proposed or final findings of fact and conclusions of law; or (d) a proposed or final order. COMAR 31.02.01.04-1A.

⁶ Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2017 Replacement Volume and 2022 Supplement of the Maryland Annotated Code.

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire MIA file, consisting of fourteen exhibits,⁷ into the record as follows:

- MIA Ex. 1 Emails to/from the MIA and the Complainant, December 22, 2021; email and letter from the Complainant to the MIA, December 21, 2021; SmartRoof Inspection Reports, October 13, 2021
- MIA Ex. 2 Email to/from the Complainant and the MIA and photographs, January 14, 2022
- MIA Ex. 3 Letter from the MIA to the Licensee, January 18, 2022
- MIA Ex. 4 Letter from the Licensee to the MIA, January 26, 2022; Notice of Cancellation, mailed December 14, 2021; Licensee PS Form 3877, stamped December 13, 2021; Licensee Policy, undated; Valeo Insurance Solutions LLC (Valeo) photographs, November 17, 2021; letter from Valeo to the Licensee, October 18, 2021; page from a letter signed by A. Beatty, undated
- MIA Ex. 5 Email from the MIA to the Complainant with attached letter, February 2, 2022, January 26, 2022
- MIA Ex. 6 Letter from the MIA to the Licensee, March 23, 2022
- MIA Ex. 7 Letter from the Licensee to the MIA, April 5, 2022; Claim W311542 Assignment and Declaration page, October 11, 2021; Claim W311541 Assignment and Declaration page, October 11, 2021
- MIA Ex. 8 Letter from the MIA to the Licensee, June 23, 2022
- MIA Ex. 9 Letter from the Licensee to the MIA and picture, July 1, 2022
- MIA Ex. 10 Letter from the MIA to the Complainant, August 11, 2022
- MIA Ex. 11 Email from the Complainant to the MIA and attached Complaint, September 8, 2022
- MIA Ex. 12 Letter from the MIA to the Complainant, September 14, 2022
- MIA Ex. 13 Email from the Complainant to the MIA, September 19, 2022
- MIA Ex. 14 Letter from the MIA to the Complainant and the Licensee, and attached insurance policies, declarations, September 21, 2022; letter from the Licensee to the

⁷ See fn8.

Complainant, January 26, 2022; Valeo photos, taken October 14, 2021; Initial Report from Valeo to the Licensee, October 18, 2021; letter from the Licensee to the Complainant, November 17, 2021; Letter from the Licensee to the MIA, January 26, 2022; Vannoy & Associates (Vannoy) report and photos to the Licensee, November 17, 2021

MIA Exs. 15 and 16 Relabeled/numbered as the Licensee's exhibits⁸

The Complainant did not offer any exhibits.

I admitted the following exhibits into the record for the Licensee:

- Lic. Ex. 1 - Valeo photographs Property A, taken October 14, 2021
- Lic. Ex. 2 - Valeo photographs Property B, taken October 14, 2021
- Lic. Ex. 3 - Vannoy Report and photographs, November 17, 2021
- Lic. Ex. 4 - Not offered
- Lic. Ex. 5 - Declaration page Property A, policy period November 13, 2021 to November 13, 2022
- Lic. Ex. 6 - Broad Form, undated
- Lic. Ex. 7 Letter for the Licensee to the Complainant, February 13, 2023
- Lic. Ex. 8 Broad Form, undated

Testimony

The Complainant testified in his own behalf and presented no other witnesses.

The Licensee presented testimony from:

- Darren Taylor, Valeo Independent Property/Casualty Adjuster
- Thomas Krauth, Vannoy Consultant Engineer
 - Richard B. Merritt, V, Licensee Adjuster

⁸ The Licensee submitted these documents to the OAH on February 14, 2023 and labeled them as MIA exhibits. At the hearing, the exhibits were entered as if they were sent by the MIA as MIA exhibits fifteen and sixteen. Because the documents were sent to the OAH by the Licensee and NOT the MIA, I labeled and admitted them as Licensee exhibits seven and eight.

FINDINGS OF FACT

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

1. The Complainant is the owner of several homes in North East, Maryland that at all times relevant to this matter, were covered by homeowner's insurance policies provided by the Licensee. The two homes at issue are located on Turkey Point Road (Properties A and B, respectively) (collectively Properties).⁹

2. At the time of the claims, Property A was covered under an FL-2 policy and Property B was covered under an HO-2 policy.¹⁰

3. At the time of the claims, Property A was a rental property and Property B was not. On a date not contained in this record, Property B became a rental property.

4. At some point after Property B became a rental property, the Licensee issued an FL-2 policy to provide coverage.

5. The Complainant's policies covered wind damage to the Properties.

6. On October 11, 2021, the Complainant filed claims with the Licensee for wind damage to the rooves of the Properties that allegedly occurred on September 1, 2021.

7. On or before October 11, 2021, T. Snyder of SmartRoof inspected and photographed the Properties.

8. On October 14, 2021, Mr. Taylor of Valero inspected the Properties for wind and/or hail damage. Mr. Taylor photographed the Properties, including the rooves.

9. Mr. Taylor informed the Licensee that he observed inconsistencies in the damages to the Properties' rooves.

⁹ Property A's address and claim and policy number are contained in Licensee Exhibit One. Property B's address and claim and policy number are contained in Licensee Exhibit Two.

¹⁰ Other than references to FL-2 being a policy for rental property, the terms FL-2 and HO-2 were not otherwise defined.

10. Vannoy inspected and photographed the Properties on November 1, 2021.

Vannoy provided the Licensee a report on or about November 17, 2021.

11. There was no collateral damage to suggest hail damage to the Properties.

12. Shingles on the Properties were in fair to poor condition and contained stairstep creasing.

13. The shingle damage was inconsistent with wind damage and more consistent with man-made attempts at replicating wind damage.

14. On November 17, 2021, the Licensee informed the Complainant it denied the claims for roof damage to the Properties.

15. On December 13, 2021, the Licensee mailed the Complainant a cancellation notice for Property B. On December 14, 2021, the Licensee mailed the Complainant a cancellation notice for Property A (collectively Notices). The cancellations were both effective January 31, 2022, at 12:01 a.m.

16. Each Notice contained the following cancellation reason:

SUBSTANTIAL CHANGE IN RISK AS THERE IS DAMAGE TO THE ROOF BY A CAUSE OTHER THAN WIND OR HAIL AND DAMAGES WERE CHARACTERISTIC OF A MAN-MADE ATTEMPT AT REPLICATING WIND DAMAGE.

(MIA Ex. 4).

DISCUSSION

When the MIA referred the cases to the OAH, it directed the Administrative Law Judge to conduct a consolidated hearing and pay specific attention to sections 4-113, 27-303, and 27-602 of the Insurance Article. Section 4-113(b)(5) provides that the Insurance Commissioner may suspend, refuse to renew, or revoke an insurer's certificate of authority if the insurer "refuses or delays payment of amounts due claimants without just cause." Md. Code Ann., Ins. § 4-113(b)(5). Section 27-303 lists ten unfair claim settlement practices. Section 27-303(1)

prohibits the misrepresentation of facts or policy provisions related to a claim at issue; (2) prohibits an insurer from refusing to pay a claim for an “arbitrary or capricious reason;” and (6) prohibits an insurer from failing to promptly provide a reasonable explanation for a denial of a claim upon request. Cancellation under section 27-602 requires written notice of cancellation or nonrenewal for reasons other than nonpayment of premiums. Md. Code Ann., § 27-602. Section 27-602(c) requires, subject to paragraph (5), forty-five days written notice to the named insured. *Id.* (c). An insurer may cancel a policy midterm if there exists “a change in the condition of the risk that results in an increase in the hazard insured against.” *Id.*

The Insurance Commissioner may impose a penalty not exceeding \$2,500.00 for each violation of section 27-303 and may require an insurer to 1) make restitution, subject to the limits of any applicable insurance policy, to each claimant who has suffered actual economic damage because of the violation or 2) provide a claimant a payment that has been determined to be denied in violation of the unfair claim settlement practices section of the Insurance Article. *Id.* § 27-305(a)(1), (c)(1), (2).

Neither the statute nor any regulation promulgated by the MIA defines the “arbitrary or capricious” standard. In *Berkshire Life Insurance Company v. Maryland Insurance Administration*, the Appellate Court¹¹ adopted the Insurance Commissioner’s interpretation of the “arbitrary and capricious” standard in an earlier MIA case:

[A] claimant must prove that the insurer acted based on ‘arbitrary and capricious reasons.’ The word ‘arbitrary’ means a denial subject to individual judgment or discretion, and made without adequate determination of principle. The word ‘capricious’ is used to describe a refusal to pay a claim based on an unpredictable whim. Thus, under [Insurance Article section] 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on ‘all available information.’

¹¹ The Maryland Court of Special Appeals became the Appellate Court of Maryland on December 14, 2022.

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

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

An insurer or insurance producer may not cancel, or refuse to underwrite or renew, a particular insurance risk or class of risk unless it can show that its standards are “reasonably related to the insurer’s economic and business purposes.” Md. Code Ann., Ins. § 27-501(a)(2). In order to meet this requirement, an insurer must either employ statistical validation or adopt standards that the legislature has deemed reasonable *per se* by virtue of statutory enactment. Such standards are set forth in section 27-501 of the Insurance Article and include:

- (j) *Reasonable standards.* —
 - (1) In the case of homeowner’s insurance, standards reasonably related to an insurer’s economic and business purpose under subsection (a)(2) of this section, include, but are not limited to, the following and do not require statistical validation:
 - (i) a material misrepresentation in connection with the application, policy, or presentation of a claim;
 - (ii) nonpayment of premium;
 - (iii) a change in the physical condition or contents of the premises or dwelling which results in an increase in a hazard insured against and which, if present and known to the insurer prior to the issuance of the policy, the insurer would not have issued the policy;
 - (iv) conviction:
 - 1. within the preceding 5-year period, of arson; or

2. within the preceding 3-year period, of a crime which directly increases the hazard insured against;

(v) subject to subsection (i) of this section, the claims history of the insured where the insured makes more than three claims in the preceding 3-year period;

(vi) subject to subsection (o)(2) of this section, any other standard approved by the Commissioner that is based on factors that adversely affect the losses or expenses of the insurer under its approved rating plan and for which statistical validation is unavailable or is unduly burdensome to produce; and

(vii) subject to subsection (o)(2) of this section, any other standard set forth in regulations adopted by the Commissioner that is found to be reasonably related to the insurer's economic and business purposes.

(2) An insurer is not required to produce statistical validation that excludes weather-related claims or that makes any distinction between weather-related claims and nonweather-related claims in order to sustain the insurer's burden of persuasion under subsection (g) of this section with respect to a cancellation or refusal to renew for a reason that is not listed in this subsection.

Id. § 27-501(j); *see also* COMAR 31.15.10.02; COMAR 31.15.10.04. The burden of persuasion “is on the insurer to show that the cancellation or refusal to underwrite or renew is justified under the underwriting standards demonstrated.” Md. Code Ann., Ins. § 27-501(g).¹²

For the reasons explained below, I find the Complainant has not met his burden and the Licensee has met its burden.

At the hearing, the Complainant argued that it was “disheartening” and “arbitrary and capricious” for the Licensee to assume that he intentionally, or in collusion with another, created the Properties’ damage because “that did not occur.” He lamented the fact that he first called Mr. Snyder at SmartRoof instead of the Licensee. He contended that the area where the Properties are located is very windy and has caused a lot of damage over the years due to its proximity to the Chesapeake Bay and its tributary. He wished that he did not have to come to a hearing on these matters, stated that he does not care about the money, and that he would have accepted a denial based on other circumstances not related to fraud. The Complainant does not want his insurance cancelled.

¹² The Complainant was assigned the burdens at the hearing. I reassign the cancellation burden according to the Maryland Code. *See* Md. Code Ann., § 27-501.

In his written complaint, and in communications to the Licensee, the Complainant indicated that he was a long-time insured of the Licensee and had another area property repaired due to wind damage around the same time as the alleged wind damage to the Properties. He wrote that he allowed Mr. Snyder to inspect the Properties because Mr. Snyder handled a different claim to another area property from the same wind storm. Although he did not attend Mr. Snyder's inspections of the Properties, he does not believe Mr. Snyder would intentionally create damage to replicate wind damage.

The Complainant testified that he took the word of Mr. Snyder that there was wind damage to the Properties. The Complainant further testified that he believes, because he owns more than one property and they were damaged in the September 2021 windstorm, the Licensee is unfairly cancelling his policies. The Complainant would accept a denial based on the condition of the roof, or less than a full replacement of the rooves based upon depreciation. He just "want[s] [his] reputation back."

The Licensee argued that its decision to deny coverage was based on the investigations by Valero and Vannoy and was neither arbitrary nor capricious. Further, according to the Licensee, it followed its procedures for investigating claims and that it employed Valero to initially investigate. The Licensee averred that when Valero found anomalies, it made no decision to deny, and allowed Vannoy to investigate. It was only after Vannoy sent its report on November 17, 2021, that the Licensee issued its denials to the Complainant, and the denials were based on the independent findings of Vannoy and the Licensee's policy terms. The Licensee further argued that the Complainant brought forth no evidence, no expert, and or no report to suggest that the reports the Licensee relied upon to deny the claims were anything but factual.

In regard to the cancellations, the Licensee argued that it followed Maryland law in its determination to cancel and notify the Complainant of its decision. According to Licensee, there

is no violation of law because the cancellation is related to its economic interest and was a business decision based on the denials for a change in risk to the Licensee.

The Complainant testified that SmartRoof was very professional in its handling of the claim at his property that is not related this complaint. He related that Mr. Snyder asked him if he had other properties in the area that could have suffered damage in the September 1, 2021 windstorm. When the Complainant indicated that he did, Mr. Snyder offered to inspect the Properties and told the Complainant that there was significant damage. The Complainant testified that the rooves were not new and were not in better than fair or poor condition before the windstorm. The Complainant did not attend the inspections, and testified he is afraid of heights. He took Mr. Snyder at his word that there was damage to the Properties. He read an email Mr. Snyder sent him that indicated that although Mr. Snyder could not remember the inspections of the Properties, he never damaged any property.

Mr. Taylor testified that he was the independent inspector for Valeo. He was assigned the claim for the Properties and contacted the Complainant in order to arrange an inspection. He recalled that Mr. Snyder was scheduled to meet him at the Properties, but cancelled shortly before the inspection took place, and insisted Mr. Taylor continue without him.

Mr. Taylor described his inspection process beginning with his photographing the Properties and reviewing the rooves. He noted no collateral damage that would indicate hail damage. He described "staircase" creasing of the shingles on the rooves that he found to be anomalies. Because staircase creasing was an odd pattern, he took closeup photos. His inspections revealed damage that was not recent wind damage. For example, some shingles had straight edges like that from a utility knife versus jagged or frayed edges that wind damage causes. Additionally, he noticed dry seals and rusted nails that indicated older damage. Finally, there was no damage to adjacent shingles that one would expect if wind caused the damage.

Mr. Krauth testified that he is an engineer with thirty years forensic claims analysis experience. He was contacted and asked to inspect the Properties for wind damage. Like Mr. Taylor, he thought the rooves were in fair or poor condition and saw no collateral damage to indicate hail damage. He testified it is a "well known fact" that wind is a directional event. Therefore, according to Mr. Krauth, damage should be much worse on the windward side of a roof. At the Properties, he saw damage spread across every slope of every roof and that is atypical unless there was a major wind event. He noticed dozens of damaged shingles across all slopes at the Properties. He indicated that the damage did not "add up" because, for example, there was more damage in the middle of the rooves than the edges, where there should have been more damage.

Mr. Merritt testified that he is an inhouse claims adjuster for the Licensee. According to Mr. Merritt, he assigned the Complainant's claims to Valeo who acted as his "eyes and ears" and produced reports for the Properties. He made no determination of coverage based upon Valeo's reports, and because there were notable inconsistencies with the damage, he allowed Valeo to hire Vannoy to inspect the Properties.

Mr. Merritt testified that the policies excluded intentional acts and normal wear and tear. He testified that because Vannoy determined the damage was intentional, coverage was declined. He stated that had the damage been reported as vandalism, it may have been covered, but the damage was reported as wind damage, and not vandalism.

As to the cancellation, Mr. Merritt testified that both policies were FL-2 policies when the Licensee sent notices to the Complainant of cancellation. Because Vannoy determined the damage was manmade, there was a substantial change in risk, and the Licensee was justified in cancelling the policies. Furthermore, the Notices were sent to the Complainant within the statutory time frame so the Licensee complied with Maryland law.

The Notices contained the following reason for the cancellations:

SUBSTANTIAL CHANGE IN RISK AS THERE IS DAMAGE TO THE ROOF
BY A CAUSE OTHER THAN WIND OR HAIL AND DAMAGES WERE
CHARACTERISTIC OF A MAN-MADE ATTEMPT AT REPLICATING
WIND DAMAGE

The evidence presented at the hearing was that the rooves of the Properties exhibited damage that had characteristics of man-made attempts to replicate wind damage. The shingles had straight edges as opposed to tears that occur when wind causes the damage. The shingles were damaged in a staircase fashion in the middle of the rooves, and not at the edges. The Complainant presented shingles he said he found all over his yard and testified that wind around the Properties is particularly destructive because of the confluence of the Chesapeake Bay and one of its tributaries. However, none of the evidence presented showed by a preponderance of the evidence that the reports from Valero and Vannoy were not authentic or that the Licensee should not rely upon them.

Although the Complainant was adamant that he did not attempt to create damage to the Properties or collude with anyone else to do so, the evidence is that the damage was characteristic of man-made attempts, by someone, to replicate wind damage and that information, contained in the investigative reports provided to the Licensee is what it relied upon to deny the claims. Md. Code Ann., Ins. § 27-501(j).

Because the Licensee relied upon the reports to deny the claims, it determined that there was a material misrepresentation in connection with the presentation of the claims, and therefore, there was a substantial change in risk to its insuring the Properties. The Licensee mailed the Notices on December 13, and 14, 2021. The Notices were both effective January 31, 2022, at 12:01 a.m. Therefore, the Notices complied with the forty-five-day notice requirement. *Id.* § 27-602.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by refusing to pay a claim for an arbitrary or capricious reason. Md. Code Ann., Ins. § 27-303(2) (2017).

I further conclude as a matter of law that the Complainant did not show that the Licensee refused or delayed payment of amounts due to the Claimant without just cause. Md. Code Ann., Ins. § 4-113(b)(5) (Supp. 2022).

I further conclude as a matter of law that the Licensee properly notified the Complainant of its intention to cancel the Properties' policies and did so reasonably related to the Licensee's economic and business purposes. Md. Code Ann., § 27-501 (2017).


PROPOSED ORDER

Based upon the above Findings of Fact, Discussion, and Conclusion of Law, I **PROPOSE** that the Licensee not be found in violation of section 27-303 or section 4-113 or section 27-602 of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED**.

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

March 13, 2023
Date Decision Issued

WFB/ja
#203951


signature on original

William F. Burnham
Administrative Law Judge

RIGHT TO FILE EXCEPTIONS

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

Copies Mailed To:

Complainant

Sunny Chung, Esquire
Thomas, Thomas & Hafer, LLP
10065 Red Run Boulevard
Suite 130
Owings Mills, MD 21117

Natalia Behr
Windsor-Mt Joy Mutual Insurance
21 West Main Street
Ephrata, PA 17522-0587