

IN THE MATTER OF THE
MARYLAND INSURANCE
ADMINISTRATION

v.

SMARTROOF, LLC
6862 Elm Street, Suite 300
McLean, Virginia 22101

11091 SUNSET HILLS RD
STE 600
Reston, Virginia 20190

and

JOHN MICHAEL MILLER
5814 Irish Creek Road
Royal Oak, Maryland 21662

CASE NO.: MIA- 2023-05-025

CASE NO.: MIA- 2023-05-026

Fraud Division File No.: R-2022-4131A

CONSENT ORDER

This Consent Order is entered into between the Maryland Insurance Administration (“MIA”) and Smart Roof, LLC (“SmartRoof”) and John Michael Miller (“Miller”) [collectively “Respondents”] pursuant to Md. Code Ann., Ins. Art. §§ 2-108, 2-201, 2-204 and 2-405 (2017 Repl. Vol. & Supp.).¹

I. RELEVANT MATERIAL FACTS:

1. A public adjuster (“PA”) is defined in the Insurance Article to include a person who, for compensation, acts for or assists a policyholder in assessing the value of, negotiating for, or effecting the settlement of a first property insurance claim under a property and casualty policy that insures the policyholder’s real or personal property. See § 10-401(g). A person is required to be licensed to act as a public adjuster in the State. See § 10-403(a).

¹ Unless otherwise indicated, all statutory references in this Order are to the Insurance Article of the Maryland Code.

2. SmartRoof is a limited liability company, with its principal office located in Reston, Virginia. SmartRoof is also licensed to operate in Pennsylvania, Florida, Maryland, New Jersey, Delaware, and Washington, DC. Joshua Jerge ("Jerge") is the owner of SmartRoof. Jerge holds a contractor and salesmen license issued by the Maryland Home Improvement Commission ("MHIC") (License No. 118402). Neither SmartRoof, nor Jerge have ever been licensed to act as public adjusters in Maryland.

3. In April 2022, Miller was employed by SmartRoof. Miller holds a salesmen's license issued by the MHIC (License No. 147978). Miller has never been licensed to act as a public adjuster in Maryland.

4. On April 13, 2022, Miller knocked on a homeowner's door (hereinafter "Teresa") in Frederick, Maryland and offered to inspect her roof for storm damage. Teresa agreed to the inspection. Subsequent to the inspection, Miller advised Teresa that he identified storm related damage to her roof.

5. Teresa's home, at the time, was insured under a homeowner's insurance policy (the "policy") issued by Erie Insurance Company ("Erie"), an authorized insurer. The policy contained the following stipulation:

In case of a loss, "anyone we protect" must:

1. give "us" or "our" Agent immediate notice other loss.
 - a. Hail losses must be reported within one year from the date the hail loss occurred.

6. On April 13, 2022, following Miller's inspection, Teresa, along with Miller, reported the storm damage to Erie, which opened a claim under claim number A*****56739. According to Erie's claim log notes, the following was reported:

...Contractor stated that there is a mixture of wind and hail damage ...

7. On April 13, 2022, Teresa executed a document entitled, "Authorization for Inspection," which stated:

Customer(s) is/are owner(s) of the listed Project Address and, jointly and severally, authorize SmartRoof, LLC to inspect the above-mentioned property to assess damages, potential repairs, and **potential insurance coverage and to communicate with Customer's insurance carrier on behalf of Customer** relating to potential insurance coverage for the replacement of the roof at Project Address. By signing below, Customer authorizes their insurance carrier to communicate with SmartRoof relating to potential insurance coverage for the replacement of the roof at Project Address. Customer understands and agrees that this authorization does not bind SmartRoof to perform any specific services relating to repair work, replacement work, and/or any other work at the Property Address. Rather, the sole purpose of this Authorization is to provide SmartRoof and Customer's insurance carrier with the requisite consent **to facilitate discussions regarding insurance coverage**. Customer agrees and understands that an agreement relating to roofing work at the Property Address, if any, will be covered by a separate agreement. [emphasis added]

8. On April 13, 2022, Miller asked Erie to send an independent adjuster to inspect the roof of Teresa's home "instead of the normal adjuster." Erie denied Miller's request.

9. On April 19, 2022, an Erie representative inspected the roof of Teresa's home. A representative for SmartRoof was present. The Erie inspector noted wind and hail damage.

10. On April 29, 2022, Erie contends that Miller left Erie a voicemail which stated:

Hey (inaudible), my name is John Miller, I'm a roofing contractor. I'm calling, uh, uh, in reference to claim number A*****56739, um, for [Teresa], and, so, she had called me in, uh, basically said that, uh, the adjuster assigned to the claim cannot approve the roof because there was no storm date, um, within the past couple years, uh, in Frederick, um, and, so the storm date that I have is August 13th of 2021, um, and, so, I'm was wondering, like, I'm, I've, whatever I can do to send that over, to clear it up with you guys, um, if you need anything else, um, just to, um, clear it up, I, I didn't know what else to do besides call you, so, um, if you can just give me a call back when you can, uh, 443-786-[****], alright, thanks, bye.

11. On May 5, 2022, Miller called Erie a second time and reported to have evidence of a hail storm [within the last year]. Erie asked Miller to email the evidence for review.

12. On May 16, 2022, Miller sent an email to Erie which contained attachments and the following message from Miller:

I am the contractor helping Ms. [Teresa] out with this claim. The ladder assist from SeekNow gave us 3 slopes with a substantial amount of storm damage. I have included the photos of his summaries.

I have also included a hail report from Bench Mark stating that hail fell on Ms. [Teresa's] house on 8-13-21.

After looking over the estimate, I see that you included 7.41 squares for the front slope and then 2.74 squares for what looks like the shed. I appreciate that, but can you confirm that the 2.74 squares is for the shed? If so what was the reason it was included in the estimate?

My main concern here is the house roof. In my experience this is enough damage for a roof replacement. There is hail and wind on a discontinued, aged Certainteed Horizon Shingle and I have a ladder assist giving us 3 of 4 slopes damaged with damage to the metals on the roof.

I can perform a repair attempt and get an ITEL report if needed. Anything I can do to help the homeowner in getting her roof replaced and anything I can do to help you please let me know.

I have attached a DocuSign form that allows me to communicate with you as well.

The attachments to Miller's email were a Benchmark hail report and the Authorization for Inspection, referenced in paragraph 7, *supra*. The hail report reflected that hail ostensibly occurred near Teresa's home within the last year.

13. Erie's Special Investigations Unit ("SIU") conducted an investigation into the conduct and actions of Respondents.

14. On August 5, 2022, Miller sent the following email to Erie:

I am the contractor helping out Ms. [Teresa]. I understand you have paid for the front slope and thanks for that. I was wondering if you are willing to work with me on this?

You and I both know it's a Horizon shingle, discontinued. The roof is also old so it makes repairs unlikely to be successful. If I pulled a shingle and sent it to ITEL along with a repair attempt would that help you be able to help Ms. [Teresa]?

15. In response to Miller's email, an Erie representative advised Miller that she was unable to respond to his email other than to let him know that Erie had completed an estimate in accordance with [Teresa's] policy coverage.

16. Section 27-802(a)(1) of the Maryland Insurance Article states:

An authorized insurer, its employees, fund producers, insurance producers, ... who in good faith has cause to believe that insurance fraud has been or is being committed shall report the suspected insurance fraud in writing to the Commissioner, the Fraud Division, or the appropriate federal, State, or local law enforcement authorities.

Erie made a fraud referral to the MIA, which opened an investigation.

The Administration's Investigation

17. An investigator for the MIA reviewed and confirmed the language on the Authorization for Inspection, cited in paragraph 5, *supra*.

18. In the course of its investigation, an MIA investigator identified several SmartRoof consumer reviews on the Internet as well as within SmartRoof's business website "https://SmartRoofinc.com/testimonials." Many of the reviews noted that SmartRoof worked with the homeowner's insurer and assisted with the insurance claim. SmartRoof removed those reviews and agrees not act as public adjuster.

SmartRoof's Website

19. As part of its investigation, an MIA investigator examined SmartRoof's website. The website contained a section labeled "Storm Damage,"² which stated as follows:

Do- It- Yourself INSURANCE

You call your insurance company to come out and assess the storm damage without one of our roof consultants.

- Pay using the money awarded by insurance
- Navigate the complex storm damage restoration process alone...

Done-With-You INSURANCE

Have a SmartRoof consultant first assess your roof and then meet with the insurance adjuster.

² Available at <https://smartroofinc.com/storm-damage/>

- Pay using the money awarded by insurance.
- Navigate the complex storm damage restoration process with us as a guide...

20. The Storm Damage section of the website contained the following statement about the "insurance restoration process:"

We make the *complex* become *simple* by guiding you through the insurance restoration process.

4. File an Insurance Claim

If your roof has suffered storm related damages, you can file an insurance claim.

5. Meet Insurance Adjuster

You're not a roof expert. We act as a support while you move through the claims process.

21. Within the website was a video of a customer review which showed a man speaking in front of a house. Within the video, the customer stated, among other things:

So we thought 'hey let's go check out SmartRoof and see how things go'...having them work with us through the process with insurance you know, showing us how to handle that and work with insurance and I [sic] how insurance can work for us in making the roof replacement happen. I think that eased a lot of our fears with how much it was going to cost. That went a long way towards making us feel good about it...JJ came out and took a look at the roof and talked about the process going forward and how he was going to help you.³

22. SmartRoof has removed these sections from its website.

23. An MIA investigator learned that on January 24, 2020, under case No. INS-2019-00135, SmartRoof and Jerge entered into a Settlement Order with the Commonwealth of Virginia, State Corporate Commission ("SCC"), Bureau of Insurance ("Bureau"), wherein the Bureau alleged:

...Smart Roof and Jerge acted as public adjusters in Virginia by negotiating with customers for public adjusting services without first obtaining a license from the Commission.

* * *

...Defendants, without admitting or denying any violation of Virginia law, have

³ Available at https://www.youtube.com/watch?v=Vaz9JkgVR_A&t=33s

made an offer of settlement to the Commission, wherein the Defendants have tendered to the Treasurer of Virginia the sum of One Thousand Five Hundred Dollars (\$1,500); agreed to cease and desist from public adjusting activities, or to obtain a license to conduct such activities; agreed not to violate § 38.2-1845.1 *et seq.* of the Code in the future; and waived their right to a hearing.

II. MARYLAND INSURANCE LAWS:

24. In addition to all other relevant sections of the Insurance Article, the Administration relies on the following provisions of the Maryland Insurance Article, which apply to acts and omissions of the Respondents in the State.⁴

Section 10-401(g)(1) of the Insurance Article provides, in pertinent part:

(g)(1) "Public adjuster" means a person who for compensation or any other thing of value:

(i) acts or aids, solely in relation to first-party claims arising under an insurance policy that insures the real or personal property of the insured, on behalf of the insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance policy;

(ii) except as provided in § 10-403 of this subtitle, directly or indirectly solicits for employment as a public adjuster of insurance claims, solicits business, or represents oneself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of insurance policies that insure real or personal property; or

(iii) investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of an insurance policy that insures real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

Section 10-403 of the Insurance Article provides, in pertinent part:

(a) Except as otherwise provided in this subtitle, a person must obtain a license before the person acts as a public adjuster in the State.

Section 27-405 of the Insurance Article provides, in pertinent part:

(a) It is a fraudulent insurance act for a person to act as or represent to the public that the person is:

⁴ The failure to designate a particular provision in this proposed Order does not deprive the Commissioner of the right to rely on that provision. The Order also does not contain references to regulations contained in Title 31 (Maryland Insurance Administration) of the Code of Maryland Regulations (COMAR), which may be applicable.

(1) an insurance producer or a public adjuster in the State if the person has not received the appropriate license under or otherwise complied with Title 10 of this article[.]

Section 4-205(b) of the Insurance Article provides, in pertinent part:

(b) An insurer or other person may not, directly or indirectly, do any of the acts of an insurance business set forth in subsection (c) of this section, except as provided by and in accordance with the specific authorization of statute.

Section 4-205(c) of the Insurance Article provides, in pertinent part:

(c) Any of the following acts in the State, effected by mail or otherwise, is considered to be doing an insurance business in the State:

... (6) except as provided in subsection (d) of this section, with respect to a subject of insurance resident, located, or to be performed in the State, directly or indirectly acting as an insurance producer for, or otherwise representing or helping on behalf of another, an insurer or other person to:

...

(vii) investigate or adjust claims or losses;...

(ix) in any other manner represent or help an insurer or other person to transact insurance business;

(7) doing any kind of insurance business specifically recognized as doing an insurance business under statutes relating to insurance;

(8) doing or proposing to do any insurance business that is substantially equivalent to any act listed in this subsection in a manner designed to evade the statutes relating to insurance;

Section 4-212 of the Insurance Article provides, in pertinent part:

An unauthorized insurer or person that violates this subtitle is subject to a civil penalty of not less than \$100 but not exceeding \$50,000 for each violation.

Section 27-408(c) of the Insurance Article provides, in pertinent part:

(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.

III. VIOLATIONS:

25. By the conduct set forth above, the Administration contends that Respondents violated the Insurance Article by acting as public adjusters, despite lacking the requisite licenses to do so. In particular, Respondents:

- offered to inspect the above-mentioned property to assess damages, potential repairs, and potential insurance coverage and to communicate with Customer's insurance carrier on behalf of Customer;
- offered to facilitate discussions regarding insurance coverage;
- contacted Erie in an effort to negotiate the claim on behalf of the policyholder;
- offered to act as a support while customers moved through the insurance claims process.

26. The public justifiably expects the Administration and the Maryland Insurance Commissioner to ensure that only competent and trustworthy PAs are permitted to conduct the business of insurance in the State and with Maryland. Respondents' conduct violated §§ 27-405(a)(1), 10-401(g), 10-403(a), and 4-205(b) of the Insurance Article.

IV. SANCTIONS:

27. Respondents admits the facts regarding the actions of Respondents as stated herein are accurate, but deny any liability to any party because of their actions.

28. In consideration of the violations set forth above, Administration has determined and Respondents agree that immediately from the date of this Order:

- (a) Respondents shall immediately **DISCONTINUE** all business activities in the State of Maryland that fall within the scope of public adjusting activities defined in § 10-401;

- (b) Respondents shall not make any written agreement or authorization for SmartRoof to negotiate with an insurance company regarding the value of damages sustained by insured property or insurance coverage in connection with a first-party insurance claim.; and
- (c) Respondents shall immediately **DISCONTINUE** holding themselves out as persons or entities qualified to act on behalf of Maryland policyholders' in the facilitating and/or negotiation of insurance coverage for roof replacement.

29. In addition, having considered the factors set forth in § 27-408(c)(2), the MIA has determined and Respondents have agreed that an administrative penalty in the amount of \$3,000.00 against SmartRoof, LLC and an administrative penalty in the amount of \$500.00 against Miller is appropriate.

30. The aforesaid administrative penalty shall be made payable within thirty (30) days of the date of this Order to the Maryland Insurance Administration. Payments shall be made by immediately payable funds and shall identify the case by number (R-2022-4131A) and Respondents' names (SmartRoof, LLC and John Michael Miller). Payment of the administrative penalty shall be sent to the attention of: Joseph Smith Acting Associate Commissioner, Insurance Fraud and Producer Enforcement Division, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202. Unpaid penalties will be referred to the Central Collections Unit for collection.

31. The parties acknowledge and agree that this Consent Order and the penalties contained therein resolves the factual allegations with respect to Respondents. Accordingly, execution of this Consent Order concludes the investigation of Respondents with respect to the allegations and findings made in this Consent Order.

WHEREFORE, for the reasons set forth above, it is this 23rd day of May 2023, **ORDERED** by the Maryland Insurance Commissioner and CONSENTED to by Respondents, that:

- (1) SmartRoof, LLC shall pay an administrative penalty of Three Thousand dollars (\$3,000.00) within 30 days of the date of this Order;
- (2) John Michael Miller shall pay an administrative penalty of Five Hundred dollars (\$500) within 30 days of the date of this Order;
- (3) SmartRoof, LLC has amended its contracts and authorizations to remove language wherein it represents a homeowner in negotiating a homeowner's insurance claim.
- (4) SmartRoof, LLC shall otherwise fully and completely comply with Paragraph 28.
- (5) The parties acknowledge that this Consent Order contains the entire agreement between the parties relating to the administrative actions addressed herein and that this Consent Order resolves all matters relating to the assertions and agreements contained herein. All time frames set forth in this Consent Order may be amended or modified only by subsequent written agreement of the parties. The Administration agrees that no additional penalties or sanctions beyond those set forth herein may be levied against Respondents for the actions alleged and acknowledged in this Consent Order.
- (6) Respondents have had the opportunity to have this Consent Order reviewed by legal counsel of their choosing, and are aware of the benefits gained and obligations incurred by the execution of this Consent Order. Respondents waive any and all rights to any hearing or judicial review of this Consent Order to which they would otherwise be entitled under the Insurance Article.
- (7) For the purposes of the Administration and for any subsequent administrative or civil proceedings concerning Respondents, whether related or unrelated to the foregoing paragraphs, and with regard to requests for information about the Respondents made under the Maryland Public Information Act, or properly made by governmental agencies, this Consent Order will be kept and maintained in the regular course of business by the MIA. For the purposes of the business of the MIA the records and publications of the MIA will reflect this Consent Order.
- (8) Nothing herein shall be deemed a waiver of the Commissioner's right to proceed in an administrative action or civil action to enforce the terms of this Consent Order. Failure to fully comply with the terms of this Consent Order may subject Respondents to further legal and/or administrative action.

- (9) This Consent Order shall go into effect upon signing by the Commissioner or her designee, and is a Final Order of the Commissioner under § 2-204 of the Insurance Article.

KATHLEEN A. BIRRANE
Insurance Commissioner

BY: signature on original
JOSEPH E. SMITH
Acting Associate Commissioner
Insurance Fraud and Producer Enforcement Division

RESPONDENTS' CONSENT

RESPONDENTS hereby CONSENT to the representations made in, and the terms of, this Consent Order.

Name: John Miller

Signature: signature on original

Date: 5-19-2023

Name: Joshua Jerge

Signature: signature on original

Date: 5-22-2023