

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

J.H.,¹

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Plaintiff,

*

v.

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Case No. 27-1001-22-00079

**ALLSTATE PROPERTY AND
CASUALTY INSURANCE
COMPANY**

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Defendant.

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DECISION

J.H. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Allstate Property and Casualty Insurance Company² (“Defendant”) breached its contractual obligation to her by failing to fully pay Plaintiff’s first-party claim for damages under the terms of her homeowner’s insurance policy (the “Policy”), and in connection with damage to Plaintiff’s residence in Fort Washington, Maryland (“the Dwelling”) caused by an August 27, 2020 storm. Pursuant to Section 27-1001 of the Insurance Article of the Annotated Code of Maryland (“Section 27-1001”), the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has not demonstrated

¹ The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s privacy.

² Plaintiff improperly named Allstate Property and Casualty Insurance Company as the Defendant in this matter. Here, the underlying policy was issued by Allstate Insurance Company. As documents were produced in response to the Complaint on behalf of Allstate Insurance Company, the company that issued the relevant policy to the Plaintiff in this matter, I will nonetheless review the filings as if the Plaintiff had named the proper Defendant. All references to “Defendant” contained herein should be construed as Allstate Insurance Company.

that Defendant breached any duties owed to Plaintiff or otherwise failed to act in good faith in connection with Plaintiff's claim.

I. STANDARD OF REVIEW

Section 3-1701 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland ("Section 3-1701") authorizes the award to an insured of certain statutory remedies if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action pursuant to Section 3-1701, Section 27-1001 requires that the insured first submit a complaint to the Administration.

Section 27-1001 defines "good faith" as "an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim." The Administration in rendering a decision on the complaint is required by Section 27-1001(e)(1)(i) to focus on five issues:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov't Art., section 10-217; *Md. Bd. Of Physician v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On November 4, 2022, the Administration received Complaint No. 27-1001-22-00079 (the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged that her public adjuster submitted an estimate to Defendant in the amount of \$42,093.87, as the amount required to restore the Dwelling to its pre-loss condition. Further, Plaintiff alleges that the Claim remains severely underpaid as Defendant has only agreed to pay \$713.72. Plaintiff asserts that the Policy is an “indemnity contract” and contends that Defendant must restore the Dwelling to its “pre-loss” condition. However, Defendant has only agreed to pay for direct physical loss. Further, Plaintiff asserts that Defendant has consistently failed to make a judgment on Plaintiff’s Claim based on honesty and diligence; willfully and consistently ignored the facts of the Claim; refused to justify its position with regards to denying coverage; refused to negotiate or discuss the Claim in clear terms with Plaintiffs public adjuster; and refused to provide Plaintiffs’ public adjuster a certified copy of Plaintiffs’ Policy. Plaintiff contends that Defendant has attempted to avoid its indemnity obligation and that its failure to fully pay the Claim constitutes a breach of Defendant’s obligation under the Policy and demonstrates Defendant's failure to act in good faith.

As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on December 7, 2022. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4). on January 6, 2023.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the parties, and by a preponderance of the evidence, the Administration finds that Plaintiff has failed to establish by a preponderance of the evidence that that she is entitled to additional coverage for the Claim under the Policy.

On or about August 27, 2020, Plaintiff alleges that a storm caused damage to the Dwelling. Defendant issued a homeowner's insurance policy, (policy number ending 361137), to Plaintiff with an effective date of October 29, 2019 through October 29, 2020. (the "Policy") The Policy provided Dwelling coverage with a policy limit in the amount of \$289,000.

On September 2, 2020, Plaintiff reported a Claim to Defendant for damage to the Dwelling caused by the August 27, 2020 storm. Specifically, Plaintiff claimed that wind from the storm caused damage to the roof of the Dwelling. Defendant assigned the inspection of the Dwelling to a third-party vendor, Patriot Claims Consultants, LLC ("Patriot"). On September 11, 2020, Patriot completed an inspection of the Dwelling and found that there were twenty damaged shingles on the front slope of the roof caused by wind. Based on the inspection findings, an estimate was prepared to replace the damaged shingles in the amount of \$713.72. On September 12, 2020, Allstate Adjuster Maresha Ogbonna ("Adjuster Ogbonna") spoke with Plaintiff concerning the findings from the inspection. Thereafter, after subtracting the deductible in the amount of \$500.00, Defendant issued a check to Plaintiff in the amount of \$213.72.

On December 31, 2020, Defendant received an estimate prepared by Just Call Joe, LLC, including photographs of damage to the Dwelling resulting from the wind storm, as well as sections of the Prince George's County Building Code. The estimate included a full roof

replacement in the amount of \$14,044.80. Thereafter, Defendant assigned Adjuster Robert Cassell (“Adjuster Cassell”) to further handle the Claim.

On January 7, 2021, Adjuster Cassell contacted Plaintiff and advised her that he disagreed with the estimate prepared by Just Call Joe, LLC because a full roof replacement was not required, based on the twenty damaged shingles to the front slope of the roof.

Defendant received no further communication from Plaintiff for approximately eight months. Then, on September 2, 2021, Joseph Kriner of Semper Fi Public Adjusters, LLC (“Semper Fi”) notified Defendant that it had been contracted to manage the adjustment of the Claim on Plaintiff’s behalf. Mr. Kriner submitted an estimate to the Defendant, which also included the costs for a roof replacement (similar to the estimate prepared by Just Call Joe LLC). Of note, the estimate from Mr. Kriner also included a public adjuster fee of \$6,932.31.

On September 13, 2021, Adjuster Cassell acknowledged receipt of the estimate and informed Mr. Kriner twenty damaged shingles were identified on the front slope of the roof, and that no other damage was identified. As a result, a full roof replacement was not warranted. Adjuster Cassell also provided Mr. Kriner with a copy of the estimate that was previously prepared following the inspection of the Dwelling on September 11, 2020. On September 13, 2020, Mr. Kriner responded to Adjuster Cassell stating, “Then there is not (*sic*) more reason for communication or a reinspection. We will inform the unsured (*sic*) and push to exercise all rights of the policy...”

On September 17, 2021, Adjuster Cassell again informed Mr. Kriner that a roof replacement was not warranted, but also requested the proper point of contact to arrange a re-inspection of the roof. In response, Mr. Kriner requested the total amount paid by Defendant to settlement the Claim and provided a sworn proof of loss by Plaintiff. Adjuster Cassell advised

Mr. Kriner that, “There was no other damage found on the roof. If a repair is not able to be done, we would need documentation provided to us showing the repair is unable to be done and we will be happy to review and see if we can resolve the matter accordingly.”

On September 22, 2021, Adjuster Cassell made an assignment to Patriot to conduct another inspection, based on the additional claimed damage to the roof of the Dwelling. However, for approximately one year, Defendant received no further communication from Plaintiff or Semper Fi. Then, on December 21, 2021, Defendant received a letter of representation from Plaintiff’s attorney, Allan Poteshman. Adjuster Joseph Peyser (“Adjuster Peyser”) was assigned to handle the Claim and contacted Mr. Poteshman by email on December 27, 2021 to acknowledge receipt of the letter of representation. On December 28, 2021, Adjuster Peyser sent a certified copy of the Policy to Mr. Poteshman.

After approximately one month, on February 2, 2022, Defendant sent a letter to Mr. Poteshman advising that the claim was closed, as no further communication had been received since December 21, 2021. Defendant received no further communication from Plaintiff until the filing of Complaint No. 27-1001-22-00079, stating a cause of action in accordance with Section 27-1001.

IV. DISCUSSION

Plaintiff has not provided any explanation for the substantial difference in its estimate for the damages caused by the August 27, 2020 storm, or any justification for the full roof replacement, which she contends was improperly denied by Defendant. Instead, Plaintiff simply contends that Defendant is obligated to indemnify Plaintiff based on the estimates prepared by Just Call Joe, LLC and Semper Fi. Despite the allegations in her Complaint, Plaintiff has failed

to offer any proof that Defendant's decisions were not supported by evidence or that Defendant ignored the facts, refused to justify its position, or refused to discuss or negotiate the Claim with Plaintiff or Semper Fi. Rather, the record demonstrates that Defendant acted diligently and promptly to investigate the Claim and obtain information related to the loss. Further, the record demonstrates that Defendant made an accurate and honest assessment based on the information that it obtained from the inspection conducted by Patriot, as well as the estimates prepared by Just Call Joe, LLC and Semper Fi.

First, Defendant acted promptly to schedule an inspection of the Dwelling nine days after the Claim was initially reported. Based on the findings from Patriot's inspection, payment in the amount of \$213.72 was issued to Plaintiff on September 12, 2020. Approximately three months later, on December 31, 2020, Just Call Joe, LLC sent an estimate for a full roof replacement in the amount of \$14,044.80. However, there was no justification or demonstration of any additional damage to the roof beyond the twenty damaged shingles discovered during by Patriot during its inspection of the roof. Accordingly, one week later, on January 7, 2021, Adjuster Cassell contacted Plaintiff and advised her that Defendant disagreed with the estimate prepared by Just Call Joe, LLC because a full roof replacement was not required, based on the twenty damaged shingles to the front slope of the roof.

Defendant received no further communication from Plaintiff for approximately eight months. Then, on September 2, 2021, Defendant received a second estimate from Semper Fi seeking substantially the same costs for a roof replacement. Further, the estimate from Semper Fi also demanded costs that are not covered under the Policy, including a public adjuster fee of \$6,932.31. The evidence demonstrates that Adjuster Cassell explained to Mr. Kriner that damage was found to twenty shingles on the front slope of the roof only, and that no other

damage was identified. As a result, a full roof replacement was not warranted. In response, on September 13, 2020, Mr. Kriner responded to Adjuster Cassell stating, “Then there is not (*sic*) more reason for communication or a reinspection. We will inform the insured (*sic*) and push to exercise all rights of the policy...”

Despite the response from Mr. Kriner, Adjuster Cassell informed him that, “[t]here was no other damage found on the roof. If a repair is not able to be done, we would need documentation provided to us showing the repair is unable to be done and we will be happy to review and see if we can resolve the matter accordingly.” Moreover, on September 22, 2021, Adjuster Cassell took steps to conduct another inspection by making an assignment to Patriot. Despite the efforts undertaken by Adjuster Cassell to obtain additional information concerning the loss, no further documentation was provided and no efforts were undertaken by Semper Fi or Plaintiff to arrange a date to re-inspect the Dwelling.

Based on these findings, Plaintiff has not met her burden of proving that Defendant breached any obligation owed under the Policy or that she is entitled to any additional payment under the Policy.

IV. CONCLUSIONS OF LAW

In accordance with Section 27-1001, the Administration concludes:

1. Plaintiff established by a preponderance of the evidence that Defendant is obligated under the policy to cover the claim.
2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiff did not establish by a preponderance of the evidence that she is entitled to additional damages as a result of the claim.
4. Plaintiff did not establish by a preponderance of the evidence that Defendant

breached its obligation under the policy to cover and pay the claim.

5. Since a breach is a necessary element of a failure to act in good faith, Plaintiff did not establish a failure by Defendant to act in good faith.

6. Plaintiff is not entitled to expenses and litigation costs.

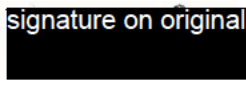
ORDER

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED on this 2nd day of February, 2023, that Defendant did not violate Section 27-1001 of the Insurance Article of the Maryland Annotated Code; and it is further

ORDERED that pursuant to Section 27-1001(f)(3), this Final Order shall take effect if no administrative hearing is requested in accordance with Section 27-1001(f)(1).

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original


ERICA J. BAILEY
Associate Commissioner - Office of Hearings

APPEAL RIGHTS

If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration's decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. ART., §27-1001(f).