

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

R.D.,¹

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Plaintiff,

*

v.

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Case No. 27-1001-22-00084

**ALLSTATE PROPERTY AND
CASUALTY INSURANCE
COMPANY,**

*

*

Defendant.

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DECISION

R.D. (“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 Company (“Defendant”) breached its contractual obligations to her by failing to fully pay her first-party claim for damages under a homeowner’s insurance policy (the “Policy”) issued to Plaintiff by Defendant². Plaintiff’s claim was for damage to her residence (the “Dwelling”) located in Bryan’s Road, Maryland, allegedly caused by a fire to a neighboring residence on July 21, 2020 (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has not satisfied her burden of demonstrating that

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

² The Plaintiff improperly named Allstate Property and Casualty Insurance Company as the Defendant in this matter. Here, the underlying policy was issued Allstate Vehicle and Property Insurance Company. As documents were produced in response to the Complaint on behalf of Allstate Vehicle and Property 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 Vehicle and Property Insurance Company.

Defendant breached its duty of coverage by not paying the full amount of the losses claimed by Plaintiff.

I. STANDARD OF REVIEW

Section 3-1701, Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action 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 seeking special damages pursuant to § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within ninety (90) days of the receipt of such a complaint, the Administration must render a decision on the complaint that determines:

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.

“Good faith” is defined in §27-1001 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.”

Further, an insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov't § 10-217 (2014 Repl. Vol.); *Md. Bd. Of Physician v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On November 14, 2022, the Administration received Complaint No. 27-1001-22-00084 (the "Complaint") stating a cause of action in accordance with § 27-1001. In the Complaint, Plaintiff alleges that Defendant breached its obligations under the Policy by failing to pay the entire amount of damages sought by Plaintiff.

Plaintiff alleges that while Semper Fi submitted an estimate to Defendant in the amount of \$98,869.60, as the amount required to restore the Dwelling to its pre-loss condition, the Claim remains severely underpaid as Defendant has only paid \$2,628.81. Plaintiff asserts that Defendant has incorrectly interpreted the Policy, as Defendant has failed to cover any damages to the Dwelling beyond the direct physical loss caused by the hail storm. As a consequence, Plaintiff contends that Defendant has breached its contractual duty to provide coverage required under the Policy. Further, Plaintiff asserts that Defendant's refusal to provide full indemnification of Plaintiff's Claim demonstrates that Defendant failed to act in good faith. Additionally, Plaintiff asserts that Defendant has willfully and consistently ignored facts, failed to make a judgement on the Claim based on honesty and diligence, refused to justify its positions with regards to denying the Claim, failed to cite policy exclusions, refused to provide Semper Fi with a certified copy of the Policy, and refused to negotiate in clear terms.

On December 8, 2022, as required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. Defendant submitted a timely response to the Complaint and accompanying documents as required by § 27-1001(d)(4).

III. FINDINGS

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

At the time of the loss, the Dwelling was covered under a homeowner's insurance policy issued by Defendant that provided Coverage A – Dwelling limits in the amount of \$471,623, with a deductible in the amount of \$1,000. The Policy states,

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in Dwelling Protection - Coverage A and Other Structures Protection - Coverage B except as limited or excluded in this policy.

* * * *

Siding and Roofing Restoration - Coverage SR - Reimbursement Endorsement - AVP205

For an additional premium and when your Policy Declarations indicates that Siding and Roofing Restoration applies, the following coverage is added:

Siding and Roofing Restoration - Coverage SR

We will reimburse you for the additional cost that you incur to replace mismatched, undamaged vinyl or aluminum siding, soffit, fascia or composition shingle roofing material of building structures on the residence premises covered under Dwelling Protection - Coverage A or Other Structures Protection - Coverage B with materials of like kind and quality that are substantially similar to materials that were damaged as a result of a covered loss under Section I of the policy.

For the purposes of this Endorsement, a mismatch of vinyl or aluminum siding, soffit or fascia material or composition shingle roofing material occurs when the same vinyl or aluminum siding, soffit or fascia material or composition shingle roofing material is no longer available for the damaged portion of the covered building structure.

Your claim for reimbursement under Siding and Roofing Restoration - Coverage SR for the additional cost that you incur must be made within 365 days of the date of the loss covered under Section I of the policy

that resulted in the mismatch.

* * * *

On July 21, 2020, Plaintiff contacted Defendant and reported that a fire from a neighbor's house caused damage to the siding of the Dwelling. Plaintiff also reported that she smelled smoke inside of the Dwelling and asked that Defendant also inspect the roof of the Dwelling.

On July 22, 2020, Allstate Adjuster Ryin Watson, ("Adjuster Watson") contacted Plaintiff concerning the Claim. Plaintiff reported that a fire from a neighbor's house caused damage to the siding of the Dwelling and that there was a smoky smell on the top level of the Dwelling in the air conditioning unit. On July 24, 2020, Plaintiff sent photographs of the Dwelling to Adjuster Watson, which showed damage to the siding. An inspection was then scheduled for July 29, 2020.

On July 29, 2020, Infinity Environmental, Inc., ("Infinity") inspected the Dwelling. Thereafter, based in the inspection findings, on August 6, 2020, Infinity prepared an estimate to repair the damage to the Dwelling including, cleaning the brick on the front of Dwelling near the neighbor's garage, as well as removal and replacement of the damaged vinyl siding on the right elevation of the Dwelling. The total amount of the estimate was \$4,096.32. After subtracting the \$1,000.00 deductible, a payment in the amount of \$3,096.32 was issued to Plaintiff. On August 13, 2020, Adjuster Watson spoke with Plaintiff concerning the estimate. While Adjuster Watson explained that no fire damage was identified on the roof of the Dwelling, based on the inspection conducted by Infinity, he also informed Plaintiff that her contractor could submit photographs of any damage to the roof for further review.

On October 1, 2020, Mr. Joseph Kriner of Just Call Joe, LLC ("Just Call Joe") contacted Adjuster Watson and requested another inspection of the Dwelling. Adjuster Watson explained

that an inspection was conducted on July 29, 2020. However, to the extent that additional damage to the Dwelling was observed during an inspection completed by Just Call Joe, Adjuster Watson requested any estimate and photographs showing any further damage. Thereafter, on October 14, 2020, Adjuster Watson received photographs from Just Call Joe primarily of the roof, as well as other exterior photographs of the Dwelling.

On October 27, 2020, Defendant closed the subrogation claim, as the insurer of the neighboring residence indicated that the cause and origin of the fire at the neighbor's residence was undetermined and its insured was therefore not liable. Defendant sent a letter advising Plaintiff of this determination on October 27, 2020.

On November 23, 2020, Mr. Kriner, on behalf of Just Call Joe, submitted an estimate in the amount of \$40,784.18, including a full roof and siding replacement. On December 15, 2020, Plaintiff contacted Defendant to inquire as to the status of the Claim and was informed that the Claim remained under review. Thereafter, Defendant reassigned the Claim to Outside Field Adjuster Christopher Adams ("Adjuster Adams"). Adjuster Adams contacted Plaintiff on December 15, 2020 to explain the status of the Claim. Then, Adjuster Adams scheduled another inspection of the Dwelling to be completed by Hancock Claims Consultants ("Hancock") on December 17, 2020.

On December 17, 2020, Hancock inspected the roof, but did not find fire damage. Instead, Hancock determined that there was hail damage to the roof of the porch, aluminum ridge vent, HVAC, and vents, as well as wind damage to the roof. Further, Hancock determined that the burn marks identified by Just Call Joe's inspection were instead caused by ordinary wear and tear.

On January 4, 2021, Adjuster Adams provided a copy of the photographs taken by Hancock during its inspection of the Dwelling on December 17, 2020 to the Plaintiff. As it relates to the wind and hail damage identified on the roof, Adjuster Adams explained to Plaintiff that she would need to submit a new claim. Plaintiff subsequently submitted a new claim for the wind and hail damage to the roof and another inspection of the roof was then completed on February 17, 2021. Defendant prepared an estimate for the wind and hail damage in the amount of \$3,628.81 for a partial replacement of the front slope of the roof. After subtracting the deductible amount and an amount for depreciation, Defendant issued a check in the amount of \$2,628.81 for the separate wind and hail claim.

With respect to the Claim pertaining to the fire damage to the Dwelling, on January 6, 2021, Mr. Kriner notified Adjuster Adams that he disagreed with the Hancock inspection findings and asserted that all of the siding, for matching purposes, and all of the roofing should be replaced due to the fire. However, with respect to the siding, Mr. Kriner did not provide any documentation demonstrating that the siding was no longer available.

Approximately ten months later, on November 5, 2021, Mr. Joseph Kriner, this time on behalf of Semper Fi Public Adjusters, LLC (“Semper Fi”), notified Defendant by email that it had been retained to represent Plaintiff and to assist with the adjustment of the Claim. Semper Fi requested information from Defendant related to the Claim. Semper Fi also provided certain information including a “[p]roper Scope of work that will restore the insured’s home to ‘pre-loss’ condition.” At that time, the Claim was then reassigned to Outside Adjuster Amber Unglesbee, (“Adjuster Unglesbee”). In response to the correspondence from Mr. Kriner, Adjuster Unglesbee sent a certified copy of the Policy on November 17, 2021.

Approximately two months later, on January 14, 2022, Mr. Kriner, again acting on behalf of Semper Fi, sent an estimate to Amber Unglesbee in the amount of \$98,359.60. Notably, the amount of this estimate was more than twice the amount of the prior estimate submitted by Mr. Kriner, on behalf of Just Call Joe, on November 23, 2020. Among the additional costs listed on the Semper Fi estimate, Mr. Kriner now included a public adjuster fee in the amount of \$16,394.93. On January 20, 2022, Defendant denied the supplement, as the two prior inspections found no fire damage to the roof of the Dwelling. Further, Adjuster Unglesbee requested the ITEL report showing the availability of the siding. Adjuster Unglesbee also explained that the Policy does not provide additional coverage for building code upgrades. Lastly, Adjuster Unglesbee stated that the public adjuster fee was denied.

On January 24, 2022, Adjuster Unglesbee notified Mr. Kriner that an engineer had been retained to conduct another inspection of the roof to identify any fire damage. Thereafter, Forensic Engineer Jake Carlyle of EFI Global, Inc. (“EFI”), conducted an inspection of the Dwelling on February 2, 2022. On February 10, 2022, Defendant again reassigned the Claim to Outside Adjuster Austin Garbett, (“Adjuster Garbett”). EFI submitted its inspection report to Defendant on February 11, 2022, concluding that,

CONCLUSIONS AND RECOMMENDATIONS

The analysis of available evidence related to this assignment supports the following opinions:

1. EFI did not observe any damage to the roof that would have been caused by exposure to fire or excessive heat.
2. Several shingles were creased and/or torn, and there were several shingle tabs with temporary repairs (shingle tabs torn off and a new scab shingle nailed in its place). Some of the creased shingles exhibited characteristic evidence of being lifted intentionally.
3. Based on the age and condition of the shingles, it is EFI’s opinion the shingles are flexible enough to be individually replaced in warm-weather months without causing collateral damage to the overlying shingles.

4. It would be acceptable to fasten the replacement shingles to the existing OSB roof deck.

* * * *

On February 14, 2022, Adjuster Garbett sent a copy of the EFI Report to Semper Fi. In the body of his email, Adjuster Garbett stated, “[t]hey found no fire related damages to the roof. Under this claim we will not provide coverage for the roof since nothing is related to the fire.”

Defendant received no further communication concerning the Claim until the Complaint was filed.

IV. DISCUSSION

The evidence demonstrates that Defendant acted promptly and diligently to investigate the Claim. Specifically, Defendant contacted Plaintiff within one day of the reported loss due to the fire. The Defendant then arranged the initial inspection of the Dwelling within one week of the reported loss. Based on the inspection findings, as well as the two additional inspections, there was no fire damage detected on the roof of the Dwelling. As a consequence, a payment in the amount of \$3,096.32 was issued to Plaintiff to clean the brick on the front of Dwelling near the neighbor’s garage, and to remove and replace the damaged vinyl siding on the right elevation of the Dwelling.

Based on concerns from Plaintiff that the inspection did not address damage to the roof, and a review of the Just Call Joe estimate in the amount of \$40,784.18, including a full roof and siding replacement, a second inspection was conducted by Hancock on December 17, 2020. Again, no fire damage was found to the roof of the Dwelling. Instead, Hancock determined that there was hail damage to the roof of the porch, aluminum ridge vent, HVAC, and vents, as well as wind damage to the roof. Further, Hancock determined that the burn marks identified by Just Call Joe’s inspection were instead caused by ordinary wear and tear. As a result of the findings

from the second inspection, Plaintiff submitted a separate claim for the wind and hail damage and Defendant issued a check in the amount of \$2,628.81 for the separate wind and hail claim.

Then, on January 14, 2022, Mr. Kriner, acting on behalf of Semper Fi, sent another estimate to Amber Unglesbee in the amount of \$98,359.60. Notably, this estimate was over twice the amount of the previous estimate Mr. Kriner submitted on behalf of Just Call Joe. Further, the Semper Fi estimate included a public adjuster fee in the amount of \$16,394.93, which is plainly disallowed under the Policy. Moreover, Plaintiff has provided no documentation supporting the substantially increased costs between the two estimates. Nonetheless, a third inspection was completed by EFI on February 2, 2022. Based on the inspection findings from EFI, there was no damage to the roof caused by exposure to fire or excessive heat. Adjuster Garbett then notified Semper Fi that its supplement was denied on February 14, 2022. Finally, the Policy language specifically states that, “We will cover *sudden and accidental direct physical loss to property* described in Dwelling Protection - Coverage A and Other Structures Protection - Coverage B except as limited or excluded in this policy (emphasis added).”

Based on these findings, the evidence reflects a dispute between the parties regarding the value of the Claim. However, Plaintiff has not demonstrated that Defendant breached any obligation owed under the Policy or that she is entitled to any additional payment under the Policy.

V. CONCLUSIONS OF LAW

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

1. Plaintiff established by a preponderance of the evidence that Defendant issued a dwelling coverage Policy to Plaintiff obligating Defendant to pay a claim for damage to the Dwelling caused by the July 21, 2020 fire.
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 Plaintiff 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. Since Plaintiff did not establish a breach or failure by Defendant to act in good faith, there is no basis for the Administration to address the issue of special damages.

VI. DECISION

Based on the foregoing findings and conclusions, it is the Administration's Decision on This 13th day of February, 2023 that Defendant did not violate Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

This Decision shall take effect as a Final Decision if no administrative hearing is requested or appeal is taken in accordance with § 27-1001(f) and (g).

KATHLEEN A. BIRRANE

Insurance Commissioner

BY:

signature on original

ERICA J. BAILEY

Chief Hearing Officer- 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, or to appeal the decision to the Circuit Court under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. § 27-1001(f) and (g) (2017 Repl. Vol.).