

IN THE MATTER OF THE
MARYLAND INSURANCE
ADMINISTRATION

v.

AINXLE XAVIER
808 Gallop Hill Road, Apartment E
Gaithersburg, Maryland 20879

BEFORE THE MARYLAND
INSURANCE COMMISSIONER

CASE NO. MIA- 2015-08-021
Fraud Division File No. R-2015-2108A

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ORDER

This Order is entered by the Maryland Insurance Administration (“MIA”) against Ainxle Xavier (“Xavier” or “Respondent”) pursuant to §§2-108, 2-201, 2-204 and 2-405 of the Insurance Article, Md. Code Ann. (2011 Repl. Vol. & Supp.)(“the Insurance Article”).

I. Facts

1. Respondent had automobile insurance for his 2008 BMW, with Government Employees Insurance Company (“GEICO”), an authorized insurer. The GEICO policy number was [REDACTED] and was in effect from March 14, 2014, until it was cancelled by GEICO on September 26, 2014.

2. On September 15, 2014, GEICO sent a “Notice of Cancellation for Nonpayment of Premium” to Respondent. The notice stated, “As of 12:01 a.m. local time September 26, 2014, your policy will cancel due to nonpayment of your premium.”

3. On October 29, 2014, at approximately 6:00 a.m., Respondent was operating his BMW when he was involved in a multi-vehicle accident, in Montgomery County, Maryland. The Montgomery County police responded to the accident scene. One of the other involved vehicles was insured by Allstate Property and Casualty Insurance Company (“Allstate”). Respondent presented documentary proof to that individual that he was insured with GEICO.

4. On October 29, 2014 at approximately 6:28 a.m., Respondent completed an on-line automobile insurance application with United Services Automobile Association General Indemnity Company (“USAA”), an authorized insurer. The application was approved and USAA policy [REDACTED] took effect on October 30, 2014.

5. On November 6, 2014, Respondent notified USAA that on October 30, 2014, he had been involved in an accident while operating his BMW in Montgomery County, Maryland.

6. USAA made payments to an auto body repair facility totaling \$7,775.84, for repairs to Respondent’s BMW, and another \$601.06, to a rental car company, to cover Respondent’s rental car expenses.

7. Allstate notified USAA that according to its insured, the accident with Respondent occurred on October 29, 2014, which prompted USAA to refer the matter to its Special Investigations Unit (“SIU”).

8. On December 26, 2014, a USAA investigator interviewed Respondent, who admitted the accident occurred on October 29, 2014, not October 30, 2014, as he had originally reported to USAA.

9. Due to the fact that Respondent was not insured by USAA at the time of the accident, it requested that he reimburse the money USAA paid for his vehicle repairs and rental car expenses. Respondent agreed to make monthly payments to USAA in the amount of \$150.00; however, to date, he has only made one \$150.00 payment.

10. Section 27-802(a)(1) of the Maryland Insurance Article states, “An authorized insurer, its employees, or insurance producers, who in good faith have 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.” USAA, having a good faith belief that Respondent committed insurance fraud, referred the matter to the Maryland Insurance Administration, Fraud Division.

11. In the course of its investigation, MIA contacted USAA and confirmed its handling of Respondent’s insurance application and claim of loss.

12. MIA contacted GEICO, and confirmed Respondent’s policy had been cancelled by GEICO as of September 26, 2014. GEICO provided its “Notice of Cancellation for Nonpayment of Premium,” dated September 15, 2014, which was sent to Respondent, notifying him of the cancellation.

13. MIA obtained the police department’s Computer Aided Dispatch (“CAD”) log detailing the accident. The log corroborated that the accident involving Respondent’s BMW had been on October 29, 2014.

14. MIA interviewed a witness, whose vehicle was also involved in the accident with Respondent. The witness stated the accident occurred on October 29, 2014, and she provided her Allstate claim status report, which reflected the date of the accident as October 29, 2014.

15. MIA contacted Allstate after learning it had taken recorded statements from three drivers involved in the accident with Respondent. A review of their transcribed statements confirmed that the accident occurred on October 29, 2014. One of the drivers reported that Respondent presented him with a document as proof he was currently insured by GEICO.

16. An MIA investigator interviewed Respondent. He admitted the accident occurred October 29, 2014, and that he obtained the USAA policy after the accident. Respondent advised that he agreed to pay restitution to USAA and provided the MIA investigator with a letter he received from USAA, outlining the restitution agreement.

II. Violation(s)

17. In addition to all relevant sections of the Insurance Article, the Administration relies on the following pertinent sections in finding that Respondent violated Maryland's insurance laws:

18. **§27-403**

It is a fraudulent insurance act for a person:

(2) to present or cause to be presented to an insurer documentation or an oral or written statement made in support of a claim...with knowledge that the documentation or statement contains false or misleading information about a matter material to the claim.

19. **§27-406**

It is a fraudulent insurance act for a person:

(5) with intent to deceive, knowingly to exhibit a false account, document, or advertisement about the affairs of an insurer.

20. **§27-408(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.

21. By the conduct described herein, Respondent violated §§27-403 and 27-406(5) when he knowingly presented a document indicating he was insured by GEICO, when he was not, and he knowingly made a false statement in support of his accident claim, namely that the

accident occurred on October 30, 2014. As such, Respondent is subject to administrative penalties under the Insurance Article §27-408(c).

III. Sanctions

22. Insurance fraud is a serious violation which harms consumers in that the losses suffered by insurance companies are passed on to consumers in the form of higher premiums. The Commissioner may investigate any complaint that alleges a person had exhibited a false document about the affairs of an insurer as well as allegations that a person had filed a fraudulent claim to an insurer. Insurance Article §§2-201(d)(1), 2-405 and 27-406(5).

23. Having considered the factors set forth in §27-408(c)(2) and COMAR 31.02.04.02, MIA has determined that \$2,500.00 is an appropriate penalty.

24. Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number (R-2015-2108A) and name (Ainxle Xavier). Unpaid penalties will be referred to the Central Collections Unit for collection. Payment of the administrative penalty shall be sent to the attention of: Associate Commissioner, Insurance Fraud Division, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

25. Respondent is ordered to reimburse USAA, \$8,226.90, which is the amount he had obtained when USAA issued payments for damage repairs to Respondent's BMW as well as rental car expenses. This amount is less the \$150.00 restitution payment Respondent made to USAA.

26. Notification of reimbursement to USAA shall be made in writing to the Associate Commissioner, Insurance Fraud Division, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202 within 10 calendar days of the date payments are made. Such notification shall include proof of reimbursement to USAA such as a copy of the money order or cancelled check issued to

USAA. The proof of reimbursement shall be identified by case number (R-2015-2108A) and name (Ainxle Xavier).

27. This Order does not preclude any potential or pending action by any other person, entity or government authority, regarding any conduct by the Respondent including the conduct that is the subject of this Order.

WHEREFORE, for the reasons set forth above, and subject to the right to request a hearing, it is this 17th day of August 2015, **ORDERED** that:

- (1) Ainxle Xavier pay an administrative penalty of \$2,500.00 within 30 days of the date of this Order.
- (2) Ainxle Xavier pay restitution to USAA in the amount of \$8,226.90 within 30 days of the date of this Order.

ALFRED W. REDMER, JR.
Insurance Commissioner

signature on original

BY:

CAROLYN HENNEMAN
Associate Commissioner
Insurance Fraud Division

RIGHT TO REQUEST A HEARING

Pursuant to §2-210 of the Insurance Article and Code of Maryland Regulations (“COMAR”) 31.02.01.03, an aggrieved person may request a hearing on this Order. This request must be in writing and received by the Commissioner within thirty (30) days of the date of the letter accompanying this Order. However, pursuant to §2-212 of the Article, the Order shall be stayed pending a hearing only if a demand for hearing is received by the Commissioner within ten (10) days after the Order is issued. The written request for hearing must be addressed to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, Attn: Hearings and Appeals Coordinator. The request shall include the following information: (1) the action or non-action of the Commissioner causing the person requesting the hearing to be aggrieved; (2) the facts related to the incident or incidents about which the person requests the Commissioner to act or not act; and (3) the ultimate relief requested. The failure to request a hearing timely or to appear at a scheduled hearing will result in a waiver of your rights to contest this Order and the Order shall be final on its effective date. Please note that if a hearing is requested on this initial Order, the Commissioner may affirm, modify, or nullify an action taken or impose any penalty or remedy authorized by the Insurance Article against the Respondent in a Final Order after hearing.