

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

B.V.¹, *

*
Plaintiff, *

* **Case No. 27-1001-23-00021**

*
STATE FARM FIRE AND *
CASUALTY COMPANY *

*

*
Defendant.
* * * * *

DECISION

B.V. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that State Farm Fire and Casualty Company (“Defendant”) breached its contractual obligations to Plaintiff by failing to fully pay Plaintiff’s first-party claim for damages under the terms of his homeowner’s insurance policy, (the “Policy”) in connection with wind and hail loss occurring on Plaintiff’s residence (the “Property”) in Waldorf, Maryland on June 17, 2019 (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has failed to demonstrate that Defendant breached its duty of coverage owed to Plaintiff by not paying the full amount of the loss 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

¹ The Maryland Insurance Administration (MIA) uses initials to protect Plaintiff’s and other individuals’ privacy.

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 Section 3-1701, the insured must first submit a complaint to the Administration under Section 27-1001. Within ninety (90) days of the receipt of such 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.”

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).

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., § 10-217; *Maryland Board of Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On March 9, 2023, the Administration received Complaint Number 27-1001-23-00021 (the “Complaint”) stating a cause of action in accordance with § 27-1001 of the Maryland Insurance Code. In the Complaint, Plaintiff alleged that Defendant breached its obligations under the Policy to fully indemnify the Plaintiff and return the Property to its “pre-loss” condition by not paying the full amount of Plaintiff’s claim relating to wind, hail and flying debris damage to the Property. Plaintiff alleges that Defendant failed to act in good faith by failing to fully indemnify the Plaintiff. Specifically, Plaintiff contends that the claim remains severely underpaid. Plaintiff further contends that Defendant failed to make a judgment on Plaintiff’s claim based on honesty and diligence and that Defendant’s decisions were not supported by the evidence. Plaintiff states that Defendant ignored the facts of the claim and underpaid the claim by a substantial amount totaling \$51,340.48; refused to justify its positions and has failed to cite a Policy exclusion that would deny Plaintiff full coverage; refused to negotiate with or discuss in clear terms Plaintiff’s claim with Plaintiff’s public adjuster; and refused to provide Plaintiff and Plaintiff’s public adjuster with a certified copy of Plaintiff’s Policy.

Plaintiff seeks \$54,395.08 in actual damages, \$18,131.70 in expenses and litigation costs and \$19,944.87 in interest. As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on March, 10, 2023. Defendant provided a response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on April 25, 2023, and acknowledged the obligation to provide coverage on the claim.

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 he is entitled to additional damages for the Claim, based on the provisions under the Policy and the Maryland Insurance Code. Plaintiff has also failed to establish by a preponderance of the evidence that Defendant failed to act in good faith in its handling of the Claim.

Plaintiff resides at the Property located at 4055 Cotton Top Court in Waldorf, Maryland and at all relevant times was covered under the Policy issued by Defendant. Plaintiff's Policy included aggregate limits of \$343,360.00 and a dwelling limit of \$204,160.00, subject to a \$2,000 deductible.

On June 17, 2019, a storm caused damage to the roof of Plaintiff's residence. At the time of the loss, Plaintiff was insured under the Policy issued by Defendant. The Policy provided coverage for accidental direct physical loss to the dwelling and its extensions.

On May 19, 2020, Plaintiff first reported the Claim to Defendant. On May 22, 2020, Plaintiff advised Defendant that on June 17, 2019 wind and hail caused damage to the Property's roof, siding gutter, windows, and window screens. Plaintiff noted pre-existing interior damage from a prior loss that had not been repaired. Defendant requested an inspection to identify damages caused by this loss, and Plaintiff requested that Defendant coordinate the inspection with his contractor, Just Call Joe (hereinafter, "Contractor Joe").

On June 9, 2020, Defendant conducted a physical inspection of the exterior and interior of the Property. Defendant determined that the roof of a shed and the dwelling on the Property had sustained wind damage and that a window screen attached to the shed had sustained damage from flying debris. Contractor Joe contended that two small holes in the siding were caused by the same loss event; however, Defendant concluded the damages were caused by a lawnmower or hose striking the side of the house based on the height of these damages and the fact that there were numerous other marks and scuffs at the same height of these damages around the Property.

Defendant informed Contractor Joe that these damages were not covered under the Policy, which excluded marring, scratching, inherent vice, and mechanical breakdowns.

Defendant prepared an estimate to replace the damaged window screen and the roof of the shed and dwelling on the Property, including an ice and water shield and a drip edge. Defendant's estimate provided a total cost to replace the damaged property of \$8,229.38. After taking into account Plaintiffs \$2,000 deductible, Defendant issued payment to Plaintiff in the amount of \$6,229.38. Defendant did not withhold depreciation as Plaintiff indicated that he had already signed a contract with Contractor Joe to replace the roof on the dwelling and shed of the Property.

On July 10, 2020, Defendant received a supplemental estimate of \$29,882.84 from Contractor Joe. The estimate included \$16,986.33 of repairs for complete replacement of the siding on the dwelling and shed. On July 15, 2020, Defendant questioned Contractor Joe about the absence of evidence that the siding was damaged during this loss. Contractor Joe agreed to send photographs of damage not previously exhibited at the inspection that was caused by flying debris. On July 16, 2020, Contractor Joe submitted various photographs showing minor damage to the siding of the property, which Contractor Joe alleged was caused by falling debris.

On July 22, 2020, Defendant requested further information from Contractor Joe regarding the need for complete replacement of the siding as the photographs exhibited minor damage that could be repaired by partial replacement. Contractor Joe did not believe that the siding on Plaintiff's home was still being manufactured, and recommended a total replacement of the siding. Defendant determined that the damage shown in the photographs was likely the result of flying debris based on the height of the damage, and completed a supplemental estimate for partial replacement of the siding to repair the damages outlined in the photographs submitted by Contractor Joe. On July 30, 2020, Defendant issued a payment to Plaintiff in the amount of \$288.11

to replace up to 12 square feet of siding. Defendant sent a copy of its estimate and correspondence to Plaintiff explaining the basis of its payment.

On August 17, 2020, Contractor Joe requested Defendant reconsider its determination to cover a partial repair of the siding, as they could not locate replacement siding. Defendant requested a sample of the siding, which it collected on August 28, 2020, after obtaining permission from Plaintiff. A search of currently available siding showed that siding of similar material was available. However, the color of the siding was discontinued and no similar color was available.

Defendant revised its estimate to include full replacement of the siding. On September 10, 2020, Defendant issued a supplement payment of \$4,720.39 and spoke to the insured about the status of his claim. Defendant also sent a copy of its estimate to the insured explaining the basis of its payment. Defendant withheld \$2,879.21 of depreciation from its payment in accordance with the Policy terms and advised Plaintiff that replacement cost was recoverable if repairs were completed within two years of the date of loss and Defendant was notified within 30 days after the work had been completed. Defendant also explained its estimate to Plaintiff including the basis for Defendant's payment and the process to recover the withheld depreciation. Defendant sent a copy of its estimate to Contractor Joe after he requested it be provided to him.

On April 13, 2021, Contractor Joe submitted another supplemental estimate of \$32,098.04 for the repairs to the Property. Defendant determined that several of the items listed were not necessary to repair the property (i.e., scaffolding). Defendant also determined that the estimate had increased measurements from those taken by Defendant during its inspection and increased pricing. The estimate also included additional items, such as the costs to remove and replace an attic vent and downspouts, for which no damage was seen during Defendant's inspection nor was documentation produced by Contractor Joe to demonstrate such damages. Additionally, Plaintiff

had selected premium siding to replace his current siding, at a higher price. On April 21, 2021, Defendant and Contractor Joe discussed the foregoing concerns and Defendant requested photographs to show that the additional items were damaged in this loss.

Defendant revised its estimate to include items that were warranted. Based on these revisions, Defendant issued payment to the insured in the amount of \$4,445.13 on April 21, 2021. Defendant sent correspondence and its estimate to the insured explaining the basis of its payments, that it had withheld depreciation and overhead and profit on the depreciation, and that the replacement cost benefits could be claimed if Plaintiff completed the repairs to the property within two years of the date of loss. Defendant also sent Contractor Joe an email discussing the information it needed to reconcile Defendant and Contractor Joe's estimates.

On May 4, 2021, Plaintiff advised Defendant that the repairs to his property had been delayed and he was having trouble reaching Contractor Joe. Plaintiff was concerned about being able to recover replacement cost benefits as the deadline for those benefits was approaching. Defendant reaffirmed that Plaintiff had two years from the date of loss to recover replacement cost benefits and Plaintiff acknowledged that he understood the time limit to claim these benefits. On the same date, Contractor Joe discussed additional interior repairs that the contractor wanted Defendant to consider. Defendant requested that Contractor Joe submit documentation to support the interior damages and reminded him Defendant was still waiting on additional documentation to support the various line items in Contractor Joe's estimate for the roofs.

On May 5, 2021, Defendant received photos of the interior of the Property, but not a new estimate. Defendant sent correspondence to Plaintiff advising that it could not further consider the claim without an estimate for the interior repairs. Contractor Joe advised Defendant on May 12,

2021 that the interior repairs would be subcontracted to another company but that an estimate would be forthcoming.

On June 4, 2021, Defendant reviewed Plaintiff's \$2,990 interior estimate. Defendant concluded the photographs did not support that the damages listed on the estimate were caused by this loss. Specifically, Contractor Joe sought to replace a brick molding around a window. The photographs sent by the contractor showed no damage related to the wind or hail. Defendant determined that the damage exhibited was normal wear, tear, and deterioration, which coverage was excluded under terms of Plaintiff's Policy. That same day, Defendant told Plaintiff that no evidence had been provided to support the assertion that the interior repairs were related to this loss. Plaintiff initially disagreed with Defendant's determination, asserting that he sought to have the window replaced when he first reported this loss. Defendant reviewed its estimates and inspections notes, which did not reflect a prior claim for the window replacement. Plaintiff requested Defendant contact Contractor Joe to discuss its determination. On the same day, Defendant called Contractor Joe and left a message explaining the reason for this call and requesting a call back.

Contractor Joe contacted Defendant on July 26, 2021, at which time it requested a release of financial information relating to Defendant's prior payments on the claim. On August 3, 2021, Defendant received a certificate of completion of repairs and another copy of Contractor Joe's \$32,098.04 estimate. On August 9, 2021, Defendant sent correspondence to Plaintiff citing to the relevant Policy language, and explaining that it could not issue payment for replacement cost benefits as the time to receive those benefits had expired. On September 23, 2021, Contractor Joe argued that Defendant was obligated to pay his final invoice regardless of the terms of Plaintiff's Policy and that if Plaintiff refused to pay his final invoice, he would get a public adjuster and an

attorney involved. Defendant reaffirmed the language of the Policy, at which time Contractor Joe ended the call.

On February 7, 2022, Defendant received an estimate and demand for payment from Semper Fi Public Adjusters, LLC (hereinafter, “Semper Fi”). Semper Fi’s estimate determined replacement costs of \$52,395.08 for repairs to the Property and it demanded full payment of its estimate. Defendant determined that Semper Fi’s estimate included items that were not covered by the Policy (i.e., Semper Fi’s public adjuster fee of \$8,732.51). Furthermore, on February 15, 2022, Defendant reiterated to Semper Fi that Plaintiff’s replacement costs benefits had expired. On December 24, 2022, Defendant sent another letter to Semper Fi explaining that the period for Plaintiff to recover replacement cost benefits under the Policy had expired. No response was received from Plaintiff nor any agent of Plaintiff until it received a copy of the Complaint filed in this action.

IV. DISCUSSION

Plaintiff asserts that Defendant breached its duty under the Policy by failing to fully pay the Claim, and that Defendant’s evaluation and adjustment of the property damage claim demonstrates a lack of good faith. Specifically, Plaintiff asserts that Defendant violated Section 27-1001 when it failed to pay for the entire amount of Semper Fi’s estimate. However, Plaintiff has not proven entitlement to said relief.

Maryland Code of Insurance Section 27-1001(e)(2)(i)-(ii) provides for the Maryland Insurance Administration to determine whether an insurer is obligated to cover the first-party claim at issue and, if so, whether the insurer failed to act in good faith. “Good faith” for purposes of this statute has been defined as, “an informed judgement based on honesty and diligence supported by

evidence the insurer knew or should have known at the time the insurer made a decision on a claim.” Md. Code Ann., Ins. § 27-1001(a).

Under § 27-1001 of the Maryland Insurance Code, Plaintiff has the burden to prove by a preponderance of the evidence they are entitled to benefits under the subject insurance Policy. (Md. Code Ann., State Gov’t, § 10-217); *Maryland Board of Physicians v. Elliott*, 170 Md. App. 369, 907 A.2d 321 (2006). Plaintiff is required to attach “each document that the insured has submitted to the insurer for proof of loss.” Ins. § 27-1001(d)(2)(i).

The relevant Policy language reads as follows:

* * *

3. POLICY LANGUAGE

“**actual cash value**” means the value of the damages part of the property at the time of loss, calculated as the estimated cost to repair or replace such property, less a deduction to account for pre-loss depreciation. For this calculation, all components of this estimated cost including, but not limited to:

- a. materials, including tax;
 - b. labor, including any tax; and
 - c. overhead and profit;
- are subject to depreciation.

The depreciation deduction may include such considerations as

- d. age;
- e. condition;
- f. reduction in useful life;
- g. obsolescence; and
- h. any pre-loss damage including wear, tear, or deterioration;

of the damaged part of the property.

* * *

DEFINITIONS

5. “**Insured location**” means:

- a. the **residence premises**;
- b. the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for **your** use as a residence;

* * *

10. “residence premises” means:

- a. The one, two, three, or four family dwelling, other structures and grounds; or
- b. That part of any other building structure

Where you reside and which is shown in the **Declarations**.

* * *

SECTION I – COVERAGES

COVERAGE A – DWELLING

- 1. **Dwelling.** We cover the **dwelling** and materials and supplies located on or adjacent to the **residence premises** for use in construction, alteration, or repair of the **dwelling** or other structures on the **residence premises**

Dwellings includes:

- a. structures attached to the dwelling;
 - b. materials and supplies located on or adjacent to the residence premises for use in the construction, alteration, or repair of the dwelling or other structures on the residence premises;
 - c. foundation; floor slab and footings supporting the dwelling; and
 - d. wall-to-wall carpeting attached to the dwelling.
- 2. **Dwelling Extensions.** We cover other structures on the residence premises, separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.

We do not cover other structures:

- a. Not permanently attached or otherwise forming a part of the realty;
- b. Used in whole or in part for business purposes; or
- c. Rented or held for rental to a person not a tenant of the dwelling, unless used solely as a private garage.

* * *

SECTION I – ADDITIONAL COVERAGES

The following Additional Coverages are subject to all the terms, provisions, exclusions, and conditions of this policy.

- 1. **Debris Removal.** We will pay the reasonable expenses you incur in the removal of debris of covered property damaged by a loss insured. This expense is included in the limit applying to the damaged property. The following coverages and limits also apply:

When the amount payable for the property damage plus the debris removal exceeds the limit for damaged property, an additional 5% of that limit is available for debris removal expense. This additional amount of insurance does not apply to SECTION I – ADDITIONAL COVERAGES, Trees, Shrubs, and Landscaping.

We will also pay up to \$500 in the aggregate for each loss to cover reasonable expenses you incur in the removal of tree debris from the residence premises when the tree has caused a Loss Insured to Coverage A property.

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SECTION I – LOSSES INSURED

COVERAGE A – DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I – LOSSES NOT INSURED.

* * *

SECTION I – LOSSES NOT INSURED

1. We will not pay for any loss to the property described in Coverage A that consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through n. below, regardless of whether the loss occurs abruptly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:
 - g. Wear, tear, marring, scratching, deterioration, inherent vice, latent defect, or mechanical breakdown;
 - h. Corrosion, electrolysis, or rust;
 - i. Mold, fungus. Or wet or dry rot

* * *

SECTION I – LOSS SETTLEMENT

Only the Loss Settlement provisions shown in the Declarations apply. We will settle covered property losses according to the following.

COVERAGE A – DWELLING

1. A1 – Replacement cost Loss Settlement – Similar Construction
 - a. We will pay the cost to repair or replace with construction of similar kind and quality and for the same use on the premises shown in the Declarations, the damaged part of the property covered under Section I – Coverages, Coverage A – Dwelling, except for wood fences, subject to the following:
 - i. Until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property;
 - ii. When the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;
 - iii. To receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed...

* * * * *

Plaintiff alleges that Defendant failed to act in good faith by failing to pay the remainder of Plaintiff's claim for damages. However, the record reflects that Plaintiff has failed to meet Plaintiff's burden of proof.

Plaintiff alleges in the Complaint that Defendant has a contract of indemnity with Plaintiff; Defendant's contractual obligations are dictated by the terms of the Policy. The Policy is clear about the damages that are not covered. The Policy is clear about not covering "wear and tear", "scratching, and mechanical breakdowns." In pertinent part, the Policy states that, "to receive any additional payments on a replacement cost basis, ...[Plaintiff] must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify ...[Defendant] within 30 days after the work has been completed."

The Semper Fi estimate included a demand for replacement cost benefits, despite Plaintiff's failure to complete repairs to his property within two years of the date of loss. The record provides repeated instances of written correspondences on Defendant's behalf to alert Plaintiff of the approaching deadline. Contractor Joe's certificate of completion for repairs is signed August 3, 2021, more than two years after the date of loss. Under the explicit terms of the Policy, Defendant has no obligation to pay this portion of the Claim. Therefore, Plaintiff has not met the burden of proof to establish a breach of its contract with the Defendant.

The evidence provided to the Administration supports the conclusion that Defendant made an accurate and honest assessment of the Claim. Plaintiff submitted supplemental estimates for repairs and/or replacements that could not be reconciled by numerous inspections or requests for supporting documents. Defendant informed Plaintiff of the reasons why portions of the Claim were denied. On several occasions, Defendant denied claims for excluded damages, expired coverage amounts, and damages Plaintiff could not reconcile.

At all stages of the process, Defendant attempted to maintain communication with Plaintiff about the Claim, and paid the reconciled portions of the Claim. Plaintiff's dispute is with respect to the value of the Claim. Upon review of the evidence, the Administration cannot find that the Defendant failed to act in good faith with respect to the extent of its payment to Plaintiff. Therefore, Plaintiff has failed to meet the burden of proof that Defendant has failed to act in good faith pursuant to § 27-1001 of the Maryland Insurance Code.

V. CONCLUSIONS OF LAW

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

1. Plaintiff established by a preponderance of the evidence that Defendant issued a homeowner's policy obligating Defendant to pay a claim for property damages related to hail, wind, and flying debris on June 17, 2019;
2. Plaintiff did not establish by a preponderance of the evidence the amount Plaintiff was entitled to receive from Defendant under the Policy;
3. Plaintiff did not establish by a preponderance of the evidence that Defendant breached its obligation under the Policy to cover and pay the Claim;
4. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to act in good faith for reasons including Plaintiff's failure to establish a breach of Defendant's obligation under the Policy to cover and pay the Claim, which is a necessary element of a failure to act in good faith; and
5. Plaintiff is not entitled to the amount of damages, expenses, litigation costs and interest Plaintiff seeks.

ORDER

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

ORDERED on this 5th day of June, 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

Tammy R. J. Longan
TAMMY R. J. LONGAN
Acting Deputy Commissioner

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).