

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

**MARYLAND INSURANCE  
ADMINISTRATION  
EX REL. J.L.<sup>1</sup>,**

**Complainant**

v.

**Case No. MIA 2022-03-029**

**ALLSTATE INDEMNITY COMPANY,**

**Licensee**

**AZQA GORAYA,**

**Producer**

\* \* \* \* \*

**MEMORANDUM AND FINAL ORDER**

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,<sup>2</sup> the Undersigned concludes that J.L. (“Complainant”) has not satisfied his burden of proving, by a preponderance of the evidence, that Allstate Indemnity Company (“Licensee Allstate”) engaged in discrimination in underwriting in violation of § 27-501 or that Azqa Goraya, a licensed insurance producer on behalf of Allstate Insurance Company, (“Producer Goraya”), violated § 10-126, with respect to obtaining a quote for automobile insurance for the Complainant.

**STATEMENT OF THE CASE**

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<sup>1</sup> The MIA uses initials to identify a Complainant and to protect the privacy of the Parties.

<sup>2</sup> Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (the “MIA”) on February 10, 2021. (MIA Exhibit (“Ex.”) 1.) In his Complaint to the MIA, Complainant alleged that Licensee Allstate engaged in marketing and solicitation for insurance that Complainant was not eligible for and that Producer Goraya obtained a quote for an automobile insurance policy without his permission, and thereby caused a decrease in Complainant’s credit score.

After investigating the Complaint, the MIA’s Property and Casualty Complaints Unit determined that neither Licensee Allstate, nor Producer Goraya violated the Insurance Article. The MIA’s Property and Casualty Complaints Unit notified the parties of its findings by letter dated February 24, 2022. (MIA Ex. 16.) The determination letter gave the Parties the right to request a hearing. (*Id.*) The Complainant disagreed with the MIA’s determination and timely requested a hearing, which was granted on March 1, 2022. (MIA Ex. 20.)

### **ISSUE**

The issue presented in this case is whether Licensee Allstate engaged in discrimination in underwriting in violation of § 27-501 and whether Producer Goraya violated § 10-126, with respect to obtaining a quote for automobile insurance for Complainant.

### **SUMMARY OF THE EVIDENCE**

#### **A. Testimony**

An in-person hearing was held on October 25, 2022.<sup>3</sup> Complainant provided sworn testimony on his own behalf, with the assistance of a Spanish language interpreter. Licensee was

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<sup>3</sup> The Parties previously convened and started an in-person hearing on September 20, 2022. However, after the hearing started, the attorney representing the Licensees raised a concern that the Spanish-language interpreter was not correctly translating the testimony or proceedings for the Complainant. As a result, the Undersigned ended the hearing and the parties agreed to begin a new hearing and strike the previous testimony. A conference call was then convened on October 4, 2022, with a Spanish-language interpreter to assist the Complainant. At that time, the

represented by Melissa McNair, Esquire, of Budow & Nobel, P.C. Ms. Doris Hernandez and Janine Goraya, provided sworn testimony on behalf of Producer Goraya. Ms. Megan Thompson-McKenna, Senior Product and Risk Management Litigation Consultant, provided sworn testimony on behalf of Licensee Allstate.

## **B. Exhibits**

### *MIA Exhibits (In Record)*

1. Complaint from Complainant to MIA, dated February 10, 2021
2. Correspondence from the MIA to Complainant requesting additional information, dated February 11, 2021
3. Correspondence from the MIA to Licensee Allstate, dated February 12, 2021
4. Response from Complainant to MIA, received February 18, 2021
5. Correspondence from the MIA to Complainant, dated February 18, 2021
6. Correspondence between the MIA to Licensee Allstate, acknowledging request for an extension to respond to the MIA, dated March 5, 2021.
7. Response from Licensee Allstate to MIA, received March 12, 2021
8. Correspondence between the MIA to Licensee Allstate requesting additional information, dated June 14, 2021
9. Response from Licensee Allstate to MIA, received June 14, 2021
10. Correspondence between the MIA to Licensee Allstate requesting additional information, dated October 21, 2021
11. Correspondence between the MIA to Licensee Allstate, acknowledging request for an extension to respond to the MIA, dated November 5, 2021.
12. Response from Licensee Allstate to MIA, received November 10, 2021.
13. Correspondence between the MIA to Producer Goraya requesting additional information, dated February 4, 2022
14. Correspondence between the MIA to Producer Goraya requesting additional information, dated February 4, 2022
15. Response from Licensee Goraya to MIA, dated February 14, 2022
16. Determination letter from the MIA to the Complainant, Licensee Allstate and Producer Goraya, dated February 24, 2022
17. Spanish-language Hearing Request from Complainant to MIA, dated February 26, 2022

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parties agreed to reschedule the in-person hearing on October 25, 2022. On the date of the in-person hearing scheduled for October 25, 2022, a Spanish-language interpreter was present to translate for the Complainant and no further concerns were raised.

18. Correspondence from the MIA to Complainant translating the Complainant's Hearing Request to English-language, dated February 28, 2022
19. Correspondence from the MIA to Complainant, dated February 28, 2022
20. Letter Granting Hearing Request from MIA to Parties, dated March 1, 2022

*Complainant's Exhibits*

1. Complainant's TMobile phone records for the billing cycle December 10, 2020 – January 09, 2021
2. Complainant's TMobile phone records for the billing cycle January 10, 2021 – February 9, 2021
3. Complainant's TMobile phone records for the billing cycle February 10, 2021 – March 9, 2021

**FINDINGS OF FACT**

The findings of fact contained herein are based upon a complete and thorough review of the entire record in this case. The record includes the above referenced exhibits and the transcript of the October 25, 2022 in-person hearing. To the extent that there are any facts in dispute, the following facts are found to be true by a preponderance of the evidence. Citations to particular parts of the record are for ease of reference and are not intended to exclude, and do not exclude, reliance on the entire record.

1. From March 26, 1998 through March 26, 2000, Licensee Allstate issued an automobile insurance policy to Complainant under policy number ending 390457. (MIA Ex. 7.)
2. On June 25, 2018, an automobile insurance quote under control number ending 5887 was generated for the Complainant. (MIA Ex. 7.)
3. On January 9, 2021, Complainant contacted Producer Goraya by telephone to request a quote for an automobile insurance policy and spoke with Doris Hernandez, a licensed insurance producer and an employee of Producer Goraya. (MIA Ex. 15; Transcript ("Tr.") at 28.)

As an Allstate agent, Producer Goraya had access to all prior policyholder data and information maintained in Allstate's system. (MIA Ex. 12.) Ms. Hernandez testified at the evidentiary hearing that she was able to access the Complainant's prior automobile insurance quote from 2018 under control number ending 5887, by inputting the Complainant's telephone number. (Tr. at 28.) Ms. Hernandez testified that she was able to access Complainant's address, birth date, and social security number. (*Id.*) For all Allstate agencies, the standard custom and practice is to inform prospective insureds that their credit and customer reports will be ordered and to obtain their permission prior to ordering these reports. (MIA Ex. 7.) Ms. Hernandez testified that she asked the Complainant to verify the information available in the Allstate system and requested his consent to pull his consumer report. (Tr. at 30 -31.) Ms. Hernandez then informed Complainant that he did not qualify for an automobile insurance quote. (Tr. at 31.) Ms. Hernandez testified that with respect to the credit report, the inquiry consists of a "soft pull," which is used as a rating factor when generating an automobile insurance quote. (Tr. at 42.)

4. The consumer report used by Allstate agents to obtain an automobile insurance quote includes driving records, prior insurance, claim and credit history. (MIA Ex. 12.) Based on the information obtained from LexisNexis Risk Solutions on January 9, 2021, Licensee Allstate determined that it was unable to provide Complainant with an automobile insurance policy. (MIA Ex. 4.)

5. A standard letter was generated to Complainant dated January 9, 2021 and sent to his home address. The letter stated,

We're sorry, but we are not able to provide the auto coverage you requested at this time. We want to make sure you know that other alternatives may be available. Below you will find additional information about who to contact to learn about possible options.

....

(MIA Ex. 4.)

The January 9, 2021 letter to Complainant also included the following notice,

**You May Request a Free Consumer Report**

It's very important to us that we use accurate information to determine your premium. So we want to share some information about your rights under Section 612 of the Fair Credit Reporting Act.

You have the right to obtain a free copy of your consumer report from the consumer reporting agency(ies) if you request it within 60 days of receiving this notice.

....

(MIA Ex. 4.)

6. Complainant also spoke with Janine Goraya, a licensed insurance producer also employed with Producer Goraya, concerning his prior phone call with Ms. Hernandez. (Tr. at 45.) As Ms. Goraya does not speak Spanish, she spoke with Complainant with the assistance of a Spanish-language interpreter. (*Id.*)

7. Ms. Hernandez testified that the Complainant contacted her again approximately one month later. (Tr. at 33.) Ms. Hernandez testified that she again explained to Complainant why he did not qualify for an automobile insurance policy with Licensee Allstate based on the information obtained on January 9, 2021. Ms. Hernandez testified that Complainant requested a letter of apology, however, Complainant did not explain why he wanted the letter. (*Id.*)

8. Megan Thompson-McKenna, Senior Product and Risk Management Litigation Consultant, testified that she has been employed with Licensee Allstate for thirty-three years and previously worked in the Allstate underwriting department. (Tr. at 48.) Ms. Thompson-McKenna testified that she is familiar with Allstate's underwriting guidelines, rating plan, and factors for automobile insurance policies in the state of Maryland. (Tr. at 49.) Ms. Thompson-

McKenna testified that credit scores are used as a rating factor, and not used to determine eligibility, for an automobile insurance policy. (Tr. at 49.) Ms. Thompson-McKenna also testified that Licensee Allstate sends standard letters to prospective insureds that do not qualify for an automobile insurance quote. (Tr. at 50.) Ms. Thompson-McKenna testified that when a credit score is pulled, it is not a hard inquiry that affects the prospective insured's credit score. (*Id.*)

9. On February 9, 2021, Complainant filed a complaint with the MIA Property & Casualty Unit. (MIA Ex. 1.) In his complaint, Complainant stated that he had received a letter informing him that he was not a good driver and because of the report of the credit companies, Licensee Allstate could not give him coverage. (*Id.*) Complainant also alleged that he never authorized a quote for insurance. (*Id.*) As a consequence of Producer Goraya pulling his credit score, Complainant alleged that his credit score decreased. (*Id.*)

10. The MIA investigated the complaint and issued a determination letter on February 24, 2022 finding that Licensee Allstate and Producer Goraya had not violated the Insurance Article in its handling of the Complainant's automobile insurance quote. (MIA Ex. 16.)

11. Complainant was not satisfied with the MIA's determination and requested a hearing. (MIA Ex. 17 - 19.) The Complainant's request for a hearing was granted by letter dated March 1, 2022. (MIA Ex. 20.)

## **DISCUSSION**

### **A. Positions of the Parties**

Complainant contends that he was notified by Licensee Allstate that he is not a good driver and that based on his credit score, he was not able to obtain insurance coverage.

Complainant also alleges that his credit score was fraudulently pulled without his consent, causing a decrease in his credit score.

Licensee Allstate and Producer Goraya contend that Complainant requested the insurance quote and that Complainant's consumer report was pulled with his knowledge and consent. Further, Licensee Allstate and Producer Goraya assert when pulling a credit score for a prospective insured, the inquiry does not impact their credit score. Further, Licensee asserts that a prospective insured's credit score is used as a rating factor, and not a basis to determine eligibility for automobile insurance coverage.

#### **B. Statutory Framework**

Complainant did not allege a specific violation of the Insurance Article in his Complaint. In its February 24, 2022 determination letter, the Property & Casualty unit considered §§27-501 (a) and (e-2), as well as 10-126 of the Insurance Article based on the allegations in the Complaint. Accordingly, the Parties were notified in the Notice of In-Person Hearing that specific attention at the Hearing would be directed to §§ 27-501 (a) and (e-2), as well as 10-126 of the Insurance Article.

While the Undersigned considered the applicability of §§ 27-501 (a) and (e-2), based on the allegations in the Complaint and the February 24, 2022 determination letter, the appropriate statutory violation at issue in this matter is § 10-126, based on the complete record, including the MIA Exhibits, Complainant's Exhibits, and the transcript from the Hearing. Indeed, nothing in the written Complaint or in Complainant's testimony raises a clearly identifiable allegation of a specific violation of § 27-501, which must be fatal to any potential § 27-501 claim. Complainant failed to state such a claim.

Section 27-501 states, in pertinent part,



## Discrimination in underwriting

(a) *In general.* – (1) An insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk for a reason based wholly or partly on race, color, creed, sex, or blindness of an applicant or policyholder or for any arbitrary, capricious, or unfairly discriminatory reason.

(2) Except as provided in this section, an insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by the application of standards that are reasonably related to the insurer's economic and business purposes.

...

(e-2) *Payment plan based on credit history of insured not permitted.* -

(1) In this subsection, "credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of determining personal lines insurance premiums or eligibility for coverage.

...

(3) (i) With respect to private passenger motor vehicle insurance, an insurer may not:

1. refuse to underwrite, cancel, refuse to renew, or increase the renewal premium based, in whole or in part, on the credit history of the insured or applicant; or
2. require a particular payment plan based, in whole or in part, on the credit history of the insured or applicant.

(ii) 1. An insurer may, subject to paragraphs (4) and (5) of this subsection, use the credit history of an applicant to rate a new policy of private passenger motor vehicle insurance.

2. For purposes of this subsection, rating includes
  - A. the provision or removal of a discount;
  - B. assigning the applicant to a rating tier; or
  - C. placing an applicant with an affiliated company.

(4) With respect to private passenger motor vehicle insurance, an insurer that rates a new policy based, in whole or in part, on the credit history of the applicant:

(i) may not use a factor on the credit history of the applicant that occurred more than 5 years prior to the issuance of the new policy;

(ii) 1. shall advise an applicant at the time of application that credit history is used;  
and

2. shall, on request of the applicant, provide a premium quotation that separately identifies the portion of the premium attributable to the applicant's credit history;

(iii) may not use the following factors in rating the policy:

1. the absence of credit history or the inability to determine the applicant's credit history; or
2. the number of credit inquiries about an applicant's credit history;

(iv) 1. shall review the credit history of an insured who was adversely impacted by the use of the insured's credit history at the initial rating of the policy:

- A. every 2 years; or
- B. on request of the insured; and

2. shall adjust the premium of an insured whose credit history was reviewed under this subparagraph to reflect any improvement in the insured's credit history; or

(v) shall disclose to the applicant at the time of the issuance of a policy that the insurer is required to:

1. review the credit history of an insured who was adversely impacted by the use of the insured's credit history at the initial rating or underwriting of the policy:

- A. every 2 years; or
- B. on request of the insured; and

2. adjust the premium of an insured whose credit history was reviewed to reflect any improvement in the insured's credit history.

....

While the Undersigned considered all statutes that could possibly be relevant in this matter, no claim was alleged of a specific violation of § 27-501, and therefore, the Undersigned finds the statute inapplicable. The Undersigned has carefully scrutinized the entire record and has found that failure to state the basic elements of a claim with respect to § 27-501 is fatal to any application of that statute in this matter.

Section 10-126 provides that the Commissioner may penalize an insurance producer for violations specified in subsection (a). After a careful review of the record, only three of the subsections could possibly apply in the instant case: subsections (1), (6), and (13). According to these subsections, it is a violation if an insurance producer,

(1) has willfully violated this article or another law of the State that relates to insurance;  
(6) has committed fraudulent or dishonest practices in the insurance business;

\* \* \*

(13) has otherwise shown a lack of trustworthiness or competence to act as an insurance producer;

\* \* \* \*

As the Undersigned determined that §§ 27-501 (a) and (e-2) are not applicable statutory violations, based on the complete record in this matter, the Complainant has the burden of proof, as to violations of §10-126, to demonstrate by a preponderance of the evidence that Producer Goraya violated the Insurance Article in its handling of Complainant's quote for automobile insurance. Md. Code Ann., State Gov't § 10-217 (LexisNexis 2022). To satisfy his burden of proof in this case by a preponderance of the evidence, Complainant must "prove that something is more likely so than not so" when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 125 n. 16 (2002) (*quoting* the Maryland Pattern Jury Instructions) (*internal citations omitted*).

**C. Complainant has not satisfied his burden of demonstrating that Producer Goraya violated Section 10-126 or fraudulently obtained Complainant's credit information to generate a quote for automobile insurance.**

After investigating the Complaint concerning Producer Goraya's handling of the Complainant's request for an automobile insurance quote, the MIA determined that neither

Licensee Allstate, nor Licensee Goraya, violated the Insurance Article. For the reasons set forth below, I affirm.

Based on the testimony of Ms. Hernandez at the evidentiary hearing and the documents accompanying the Complainant's Complaint in this matter, on January 9, 2021, Complainant contacted and spoke with Ms. Hernandez over the telephone for the purpose of obtaining an automobile insurance quote. Specifically, on January 9, 2021, Ms. Hernandez testified that she responded to an incoming call from the Complainant requesting an automobile insurance quote and located the Complainant's information in Allstate's computer system from a prior quote obtained in 2018. Upon review and verification of the Complainant's identity, Ms. Hernandez then requested consent from Complainant to pull his consumer report. Ms. Hernandez then pulled the Complainant's consumer report for the purpose of generating an automobile insurance quote. The record reflects that the factors used to determine eligibility for an automobile insurance quote include the prospective insured's driving records, prior insurance, claim and credit history, and this information is available using a report generated by LexisNexis Risk Solutions.

Upon learning that Complainant did not qualify for an automobile insurance quote, the record reflects that Ms. Hernandez attempted to explain the above mentioned factors to the Complainant. Additionally, a letter was automatically generated to Complainant explaining that he did not qualify for an automobile policy and providing instructions to obtain a copy of his consumer report generated by LexisNexis.

While Complainant argues that Licensee Allstate and Producer Goraya fraudulently pulled his consumer report and caused a reduction in his credit score, the evidence does not support such a conclusion. As an initial matter, Complainant does not dispute that he contacted

Licensee Goraya and spoke with both Ms. Hernandez and Ms. Goraya on or about January 9, 2021. Further, Complainant received a letter dated January 9, 2021 after his initial phone call to Producer Goraya, which also provided the contact information for Producer Goraya. Moreover, while Complainant contends that he was owed an apology for the decrease in his credit score caused by the quote, and that he contacted Producer Goraya for that purpose, Ms. Hernandez and Ms. Thompson-McKenna both testified that a prospective insured's credit is not impacted by this type of inquiry. Moreover, Ms. Thompson-McKenna testified that credit is used as a rating factor, not as a basis to determine eligibility for an automobile insurance policy. Lastly, Ms. Hernandez and Ms. Thompson-McKenna also testified that Complainant's information was accessible in Allstate's system, based on a prior quote obtained in 2018, and that Ms. Hernandez verified the information that already existed in Allstate's system.

Accordingly, I find that Licensee Allstate did not refuse to underwrite an automobile insurance policy for an arbitrary, capricious, or unfairly discriminatory reason. Instead, the record reflects that the factors used to obtain an insurance quote include driving records, prior insurance, claim and credit history. Further, to obtain the information necessary to determine eligibility for an automobile insurance policy, Licensee obtains a report prepared by LexisNexis Risk Solution. In this instance, Complainant was notified verbally and by mail that Complainant was not eligible for an automobile insurance policy from Licensee Allstate. Complainant was also provided with instructions to obtain a copy of his consumer report.

For the foregoing reasons, I therefore find that Licensee Allstate did not violate §§ 27-501 (a) or 27-501 (e-2). I also find that Producer Goraya did not violate § 10-126.

## **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Licensee Allstate did not violate §§ 27-501 (a) or 27-501 (e-2). I also find that Producer Goraya did not violate § 10-126 by obtaining the information necessary to determine Complainant's eligibility for automobile insurance in the manner described in the record, or otherwise violate the Insurance Article.

## **FINAL ORDER**

**IT IS HEREBY ORDERED** that the determination issued by the Maryland Insurance Administration is **AFFIRMED**; and it is further

**ORDERED** that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 17<sup>th</sup> day of January, 2023.

**KATHLEEN A. BIRRANE**  
Insurance Commissioner

signature on original

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ERICA J. BAILEY  
Associate Commissioner  
Office of Hearings