OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE ADMINISTRATION,	*	
	*	
	*	
v.	*	**Case No. MIA 2021-08-019**
TRANSAMERICA LIFE INSURANCE COMPANY,	*	
	*	
Respondent.	*	

* * * * * * * * * * * * *

MEMORANDUM AND FINAL ORDER

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,[1] the Undersigned concludes that Transamerica Life Insurance Company ("Respondent") violated the Code of Maryland Regulations ("COMAR") when it failed to timely send an annual report to D.M.L. ("Complainant") for the policy period ending on April 1, 2021.

STATEMENT OF THE CASE

This matter arose from an administrative order ("Order") issued by the Maryland Insurance Administration (the "MIA" or the "Administration") on August 26, 2021. (Respondent Exhibit ("Resp. Ex.") 21.) The Order found that Respondent had violated COMAR 31.09.15.11 by "failing to send an annual report for the policy year 2021" to Complainant. (*Id.*) The Order imposed a $500.00 administrative penalty against Respondent. (*Id.*) Respondent

[1] Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

disagreed with the determinations reflected in the Order and filed a timely request for a hearing, which was granted. (Resp. Ex. 23.)

ISSUE

The issue presented in this case is whether Respondent was obligated to send, and failed to timely send, an annual report to Complainant for the policy period ending on April 1, 2021 in violation of COMAR.

SUMMARY OF THE EVIDENCE

A. Testimony

A hearing was held using remote video technology on April 27, 2022.

The MIA was represented by Phillip Pierson, Assistant Attorney General, with the Office of the Attorney General. Terri Smith ("Ms. Smith"), Director of the Administration's Life and Health Complaints Unit, appeared as a witness and provided sworn testimony on the Administration's behalf.

Respondent was represented by Scott Trager, Esquire, of Funk & Bolton. Mary Treshnock ("Ms. Treshnock"), employed by Respondent as the head of insurance compliance, appeared as a witness and provided sworn testimony on Respondent's behalf.

B. Exhibits

MIA Exhibits

1. Complaint form submitted by Complainant, dated April 22, 2021
2. Letter from MIA to Respondent, dated May 4, 2021
3. Notice from Respondent to Complainant, dated February 22, 2021
4. Notice from Respondent to Complainant, dated April 11, 2021
5. Notice from Respondent to Complainant refunding recent premium payment, dated April 11, 2021
6. Notice from Respondent to Complainant extending the grace period, dated April 16, 2021
7. Response from Respondent to MIA, dated May 24, 2021

8. Letter from MIA to Respondent, dated May 26, 2021
9. Response from Respondent to MIA, dated June 9, 2021

Respondent's Exhibits

1. Policy specimen
2. November 8, 2005 Policy Loan Request
3. November 14, 2005 Respondent Check Detail
4. Annual Report of Financial Values for Policy Year Ending April 1, 2017
5. Annual Report of Financial Values for Policy Year Ending April 1, 2018
6. Annual Report of Financial Value for the Policy Year Ending April 1, 2019
7. Annual Report of Financial Value for Policy Year Ending April 1, 2020
8. Policy Financial History
9. February 22, 2021 Grace Period Notice
10. Notes for the Policy
11. April 11, 2021 Respondent Correspondence to Complainant regarding Policy Lapse
12. April 11, 2021 Respondent Correspondence to Complainant regarding Insufficient Payment and Refund of Premium
13. April 11, 2021, Respondent Check Detail
14. Letter from Respondent to Complainant, dated April 16, 2021
15. Correspondence to Respondent from MIA, dated May 4, 2021
16. MIA Complaint, dated April 22, 2021
17. Correspondence from Respondent to MIA, dated May 24, 2021
18. Correspondence from MIA to Respondent, dated May 26, 2021
19. Correspondence from Respondent to MIA, dated June 9, 2021
20. Annual Report of Financial Values for Policy Year Ending April 1, 2021
21. August 26, 2021 Order
22. Correspondence from MIA to Respondent, dated September 13, 2021
23. Correspondence from Respondent to MIA, dated September 23, 2021
24. Correspondence from Respondent to MIA, dated September 27, 2021
25. Correspondence from MIA to Complainant, dated October 8, 2021

PROCEDURAL HISTORY

This matter was directed to the Hearings Unit for a hearing on November 15, 2021 and a prehearing conference call was scheduled by letter dated December 13, 2021 for January 10, 2022. During the January 10, 2022 prehearing conference call, the Parties agreed to set deadlines

for the submission of any dispositive motions, any oppositions to dispositive motions, and any replies to oppositions to dispositive motions. Following the prehearing conference call, a scheduling order was issued on January 26, 2022. The scheduling order included deadlines of February 23, 2022 for any dispositive motions; March 11, 2022 for any oppositions to dispositive motions; and March 25, 2022 for any replies to oppositions to dispositive motions. The scheduling order also set a hearing date of April 27, 2022.

On February 23, 2022, in accordance with the scheduling order, both Respondent and the Administration filed motions for summary decision. On March 11, 2022, I received both the Administration's Opposition to Respondent's Motion and Respondent's Opposition to the Administration's Motion. On March 25, 2022, I received the Administration's Reply to Respondent's Opposition and Respondent's Reply to the Administration's Opposition.

On April 13, 2022, I denied both the Respondent's Motion for Summary Decision and the Administration's Motion for Summary Decision as I found disputes existed as to material facts in the case. The evidentiary Hearing in this matter took place on April 27, 2022, as scheduled.

At the conclusion of the Hearing, the Parties requested additional time to submit post hearing briefs and I gave the Parties until June 24, 2022 to file their briefs. In light of the extensive materials submitted by the Parties, on August 11, 2022, the Parties agreed to an extension of time for the issuance of this decision.

FINDINGS OF FACT

These findings of fact are based upon a complete and thorough review of the entire record in this case, including the hearing transcript and all exhibits and documentation provided by the Parties. The credibility of the witnesses has been assessed based upon the substance of their testimony, their demeanor, and other relevant factors. 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. At all relevant times, Respondent held, and currently holds, a Certificate of Authority from the State of Maryland to act as a life insurer.

2. On April 1, 1992, Durham Life Insurance Company ("Durham") issued a universal life insurance policy, policy number 9676507 ("Policy") to Complainant. (Resp. Ex. 1, MIA Exhibit ("MIA Ex.") 7.) The Policy provided as follows in pertinent part:

Grace Period	We allow a grace period of 31 days after the due date for payment of each premium after the first. The policy remains in force during the grace period unless surrendered.
* * *	
Default in Payment of Premiums	Any planned premium not paid before the end of the grace period will result in default. The date of default is the due date of the first unpaid premium. Default will terminate this policy unless it has a surrender value. If it has a surrender value, the Insurance Options on default provision will apply.
* * *	
Termination	At any time, the outstanding loans on this policy, including accrued loan interest exceed the cash value, this policy will terminate without further value. However, in no event will the policy terminate until 31 days after we have mailed a notice of termination to the owner and any assignee of record at the last known address shown in our records covering this policy at our home office.
* * *	
Annual Report	Each year while this policy is in force other than under the Insurance Options on Default provision,

we will send the owner a report showing:

- The current cash value, accumulated value, and death benefit; and
- Premiums paid and charges made since the last report; and
- Outstanding policy loans.

* * * *

(Resp. Ex. 1.)

3. According to Respondent's witness at the hearing, Ms. Treshnock, Durham was part of the Providian Bank Corporation ("Providian") at the time the Policy was issued by Durham. (Tr. at 83.) Durham merged into Capital Security Life ("Capital Security"), and in the summer of 1997, Agon purchased the insurance operations of Providian. (*Id.*) Subsequent to that date, Capital Security and People's Security were merged into Monumental Life Insurance Company, and in 2014, Monumental changed its name to Transamerica Premier Life Insurance Company. (Tr. at 84.) In October, 2020, Transamerica Premier Life Insurance Company merged with Transamerica Life Insurance Company. (*Id.*) Following the merger, and the assumption of the Policy obligations by Transamerica Life Insurance Company, the Policy number changed to 009676507D. (Tr. at 85.)

4. In November, 2005, Complainant initiated a policy loan against the Policy's cash value for the maximum amount then available. (MIA Ex. 7, Resp. Exs. 2, 3.) Consistent with that request, Respondent issued a check to the Complainant for $2,999.87, dated November 14, 2005. (MIA Ex. 7, Resp. Exs. 2, 3, 8; Tr. at 85.)

5. Over the years, due to the policy loan, the accrual of interest on the unpaid loan, and Complainant's failure to pay sufficient premiums to cover the cost of insurance, the Policy's cash surrender value steadily decreased and the Policy was in grace and at risk of lapsing on more than one occasion. (MIA Ex. 7, Resp. Ex. 8, Tr. at 90.)

6. As required by COMAR and the Policy terms, Respondent prepared and mailed annual reports to the Complainant (the "Annual Report"). Each Annual Report was issued as of the April 1 Policy anniversary date and covered the preceding Policy year. (MIA Ex. 7, Resp. Exs. 4-7; Tr. at 89.) Examples of the Annual Reports were provided by Respondent and included the Annual Reports for the Policy years ending April 1, 2017, April 1, 2018, April 1, 2019, and April 1, 2020. (MIA Ex. 7, Resp. Exs. 4-7, 21, 25; Tr. at 87.) Ms. Treshnock testified that the Policy anniversary date triggers the Company's system to generate the Annual Report for the prior policy. (Tr. at 91.) Additionally, Ms. Treshnock stated that within 28 days of the policy's anniversary date, the Respondent mails out the annual report. (Tr. at 91.)

7. The April 1, 2017 report shows a cash surrender value of $3,573.10. (MIA Ex. 7, Resp. Ex. 8.) By April 1, 2020, the cash surrender value of the account was down to $3,191.71. (*Id.*) The April 1, 2020 Annual Report also stated that assuming guaranteed interest, mortality, expense loads, and continued scheduled premium payments, the Policy's net cash surrender value was such that the Policy would lapse in seven months from the statement date. (*Id.*)

8. As of November 1, 2020, the Policy's outstanding loan balance was $3,004.82 and the Policy's cash value was $3,089.13. (MIA Ex. 7, Resp. Ex. 8.) On December 1, 2020, Complainant made a premium payment of $39.50 at which time the loan balance was $3,023.94 and the Policy's cash value was $3,041.31. During that month, because of the cost of morality and the sum of the loan expense charge, the loan balance became greater than the cash surrender value and a grace period notice was sent on December 21, 2020 ("December 21 Notice"). (*Id.*)

9. On February 2, 2021, Complainant submitted a payment in the amount of $162.00. (MIA Ex. 7, Resp. Ex. 8.) This payment included a copy of the December 21 Notice, which had stated that a payment of $161.32 was needed to keep the coverage in force, with it.

(*Id.*) Accordingly, since the payment included a copy of the December 21 Notice, Respondent applied the payment as a premium payment to the account. (*Id.*)

10. After applying the $162.00 as a premium payment, on February 22, 2021, the Policy's outstanding loan balance of $3,062.18 equaled the Policy's cash value of $3,062.18. (MIA Ex. 7, Resp. Ex. 8, 17.) Because Complainant had not paid sufficient premium and no additional cash value existed in the Policy to borrow or advance to cover the cost of insurance, the Policy entered its grace period on that date. (*Id.*)

11. On February 22, 2021, Respondent sent a "Notice of Payment Due" (the "February 22 Notice") to the Complainant notifying Complainant that the Policy was in grace and directing Complainant to make a premium payment of $134.45 by April 10, 2021 in order to avoid a lapse and termination of the Policy. (MIA Exs. 3, 7, Resp. Exs. 9, 17, 21, 25; Tr. at 34, 56, 60, 94.) The February 22 Notice stated, in pertinent part:

> [y]our life insurance has entered its grace period and is in danger of lapsing. In order to prevent your policy from lapsing, we must receive a minimum payment of $134.45 by 04/10/2021.
>
> * * *
>
> If we don't receive the minimum payment by this date, your policy will lapse and terminate, except as to the right to any cash surrender value or nonforfeiture benefit. To avoid a lapse in coverage, we encourage you to send your scheduled premium payments as they become due.
>
> * * * *

(MIA Ex. 3, Resp. Ex. 9; Tr. at 34-35, 94.) Ms. Treshnock testified that the February 22 Notice was sent on that date, because that was the date that the Policy loan amount equaled or exceeded the Policy value, causing the Policy to enter its grace period. (Tr. at 94.)

12. On March 5, 2021, the Complainant contacted Respondent and requested that a premium payment that he had previously made for $162.00 be reversed and applied as a loan interest payment, rather than as a premium payment. (MIA Ex. 7, Resp. Exs. 10, 17; Tr. at 44, 96-97.) Respondent followed that instruction and, on March 10, 2021, the $162.00 premium payment was reversed and applied as a loan interest payment, rather than a premium payment. (MIA Ex. 7, Resp. Exs. 8, 17; Tr. at 44-45, 97.)

13. An additional premium payment was drafted on March 29, 2021, in the amount of $39.50. (MIA Ex. 7, Resp. Ex. 8.) Because the premium payment of $39.50 was insufficient to satisfy the grace amount, a termination notice was sent to Complainant on April 11, 2021 (the "April 11 Termination Notice"). (MIA Ex. 4, Resp. Exs. 11, 17, 21, 25; Tr. at 35, 99-100.) The April 11 Termination Notice stated, in part:

> [w]e regret to inform you that your universal life insurance policy has been terminated. The entire cash value has been used to pay premiums, and the contract has no further value.

(MIA Ex. 4, Resp. Ex. 11; Tr. at 35.) Included with the April 11 Termination Notice was a refund check in the amount of $201.50 ($162.00 loan interest payment plus the $39.50 premium payment). (MIA Ex. 7, Resp. Ex. 8.) Ms. Treshnock testified that if Complainant had made a premium payment before the April 10, 2021 deadline, the Policy would have been kept in force with no lapse in coverage. (Tr. at 132.)

14. Notwithstanding the April 11 Termination Notice, on April 16, 2021, Respondent sent a letter to Complainant advising Complainant that due to the COVID-19 pandemic, Respondent was unilaterally extending the grace period and the time in which Complainant could pay the outstanding premium by 30 days (the "April 16 Extension Letter"). (Resp. Ex. 14, MIA Ex. 6.; Tr. at 102.) The April 16 Extension Letter stated, in part:

> [w]e're following up on the policy lapse notice you recently received from us. In response to the novel coronavirus (COVID-19) and in order to give you more time to pay your premium and preserve your coverage, we're extending by an additional 30 days the period of time in which you can pay. In effect, you have a 90-day grace period from when your last premium was due to make payment without your policy lapsing. If you pay your overdue premium within this 90-day period, your policy will stay in force.
>
> The additional 30-day period does not act as forgiveness of any premium owed under your policy, but it does extend your time to pay and keep coverage.
>
> * * *
>
> This letter supersedes any billing, grace period, or lapse notices we previously sent you.
>
> * * * *

(*Id.*)

15. On April 22, 2021, Complainant submitted a consumer complaint (the "Complaint") to the MIA's Life and Health Unit. (MIA Ex. 1, Resp. Ex. 16.) The Complaint challenged the termination and requested reinstatement of the Policy. (MIA Ex. 1, Resp. Ex. 16; Tr. at 42, 106.) Specifically, the Complaint alleged that Complainant had made payments by due dates provided by Respondent and was told multiple times that his account was "good" and "not to worry"; however, Complainant reported that he subsequently received a notice that his coverage was terminated. (MIA Ex.1.)

16. The MIA initiated an investigation. (MIA Ex. 2, Resp. Ex. 15.) On May 4, 2021, the MIA sent a letter to Respondent requesting information, including a complete premium and loan history, a copy of the application for coverage, a copy of the last four Annual Reports sent to the policy owner, and a telephone log of conversations regarding the Policy. (*Id.*) The MIA

requested this information to aid it in its investigation of the premium and loan payment history and to assess Complainant's assertion that Respondent had erred in lapsing the Policy for nonpayment. (*Id.*)

17. On May 24, 2021, Respondent submitted its response to the MIA. (MIA Ex. 7, Resp. Ex. 17; Tr. at 106.) Respondent stated "[t]he 2021 Annual Report of Financial Values did not generate due to the policy being in a grace period." (MIA Ex. 7, Resp. Ex. 17; Tr. at 37.) In its response, the Respondent also stated that a payment in the amount of $80.00 was received on May 17, 2021, for the April and May payments from Complainant. (*Id*.) Respondent further stated that it had voided the check that it had sent to Complainant on April 11, 2021, and applied it to the premium. (*Id.*) Therefore, Respondent stated that the Policy was in the process of being reinstated. (MIA Ex. 7, Resp. Ex. 17; Tr. at 107.)

18. On May 26, 2021, the MIA sent a follow up letter to Respondent seeking additional information. (MIA Ex. 8, Resp. Ex. 18.) Specifically, the MIA asked if the Policy would be reinstated with no lapse in coverage. (MIA Ex. 8, Resp. Ex. 18; Tr. at 45.)

19. On June 3, 2021, the Policy was reinstated with no lapse in coverage. (MIA Ex. 9, Resp. Exs. 19, 21; Tr. at 110.)

20. On June 9, 2021, Respondent verified to the MIA that the Policy had been reinstated with no lapse in coverage. (MIA Ex. 9, Resp. Ex. 19; Tr. at 47, 110-111.)

21. On August 26, 2021, the Administration issued the Order. (Resp. Ex. 21.) The Order found Respondent had violated COMAR 31.09.15.11 for failing to send an annual report to Complainant for the policy period ending April 1, 2021 and imposed an administrative penalty of $500.00. (*Id.*)

22. On September 13, 2021, the Administration sent a follow up letter to Respondent inquiring as to the current status of the Policy and requesting a copy of all paperwork received from and sent to Complainant since June 9, 2021, including a telephone log of any conversations. (Resp. Ex. 22; Tr. at 112-113.)

23. On September 23, 2021, Respondent submitted its request for a hearing. (Resp. Ex. 23; Tr. at 113.) In its request for a hearing, Respondent stated as follows:

> [t]he policy administration system did not generate an annual report in 2021 when the policy lapse date was prior to the policy anniversary, but the grace period expired after the policy anniversary date. This rare occurrence was caused by the timing of the policy owner's premium payments, the low net cash value of the policy, the premium billing and due dates, the policy anniversary date, and the required grace period.

(Resp. Ex. 23.)

24. On October 8, 2021, after investigating the Complainant's underlying complaint, the MIA issued a determination letter which stated that "Respondent had made reasonable efforts to resolve your [Complainant's] complaint." (Resp. Ex. 25; Tr. at 120.) Consequently, and since the relief requested (reinstatement) had been provided voluntarily by Respondent, the MIA did not find any violation by the Respondent with respect to the April 11 termination. (Resp. Ex. 25.) The MIA did, however, find the Respondent in violation of COMAR 31.09.15.11 for failing to send the Complainant the 2021 Annual Report. (Resp. Ex. 21.)

25. On November 3, 2021, Respondent mailed the Annual Report to Complainant for the policy year ending April 1, 2021. (Resp. Ex. 20; Tr. at 66.) Ms. Treshnock testified that while the MIA was investigating the complaint, the Policy had been put in a "frozen" status, so that no changes could be made to the Policy, so that Respondent would have time to resolve all

of the issues. (Tr. at 115.) As of October 31, 2021, the Policy had been "unfrozen" so that an Annual Report could be generated. (Tr. at 115.)

26. At the Hearing, Ms. Smith testified that it is the position of the Administration that an annual report is required to be sent to a policy owner as long as the policy is in force and regardless of whether the policy is in its grace period. (Tr. at 36.) Ms. Smith added that the Administration has determined an annual report is necessary, because an annual report lets the policy owner know the status of the policy and explains to the policy owner "how the policy is doing." (Tr. at 36-37.)

27. Ms. Smith testified that the MIA reviews complaints submitted by individuals and that, during its investigation, the Administration sometimes uncovers other statutory violations not necessarily related to the complaint. (Tr. at 38,76.) Ms. Smith added that sometimes the MIA may not grant relief or restitution to the Complainant, but may issue an order finding an insurer in violation of a law or regulation. (Tr. at 38-39.)

DISCUSSION

A. Positions of the Parties.

Respondent advances four arguments in support of its contention that the Administration erred in finding a violation of COMAR 31.09.15.11 in this case. First, Respondent argues that the Policy had terminated prior to April 1, 2021 and, thus, that no annual report was required to be sent to the Complainant, because the Policy was no longer in force at the time the policy period ended. Second, Respondent argues that, even if it were required to issue an annual report, the Annual Report for the policy period ending on April 1, 2021 was not required to be sent to Complainant on April 1, 2021 and Respondent had three months after the end of the policy reporting period to send the Annual Report to the Complainant. Third, Respondent argues that

the Administration failed to demonstrate that Respondent "knowingly" failed to comply with COMAR 31.09.15.11, as required under Section 4-113(b)(2) of the Insurance Article. Finally, Respondent argues that the Administration failed to perform a full investigation and improperly imposed an administrative penalty against Respondent in violation of Respondent's due process rights.

In response, the Administration argues that the facts demonstrate that the Policy was still in force on April 1, 2021 and, therefore, that the 2021 Annual Report was required to be sent to Complainant. The Administration next argues that, to be annual, the annual report must be sent within twelve months from the date of the last report and, therefore, there is no rational basis for Respondent's suggestion that it was entitled to an additional three months after the end of the policy period to send the annual report to Complainant. With respect to Respondent's third argument, the Administration counters that the Respondent admits that it did not send the 2021 Annual Report because the Policy was in grace, and, therefore, its actions meet the definition of "knowingly" as that term has been construed and applied under Section 4-113(b)(2). Finally, with respect to Respondent's fourth argument, the Administration argues that the Administration is charged with the enforcement of the Insurance Article as a whole and, in the context of its investigation of a consumer complaint, is not required to limit its investigation to those issues identified in the consumer complaint; rather, if the Administration believes that additional or other violations of State insurance laws and regulations may exist, the Administration has both the duty and the authority to investigation and act on those violations.

B. Statutory Framework

The Order at issue in this case found that Respondent violated COMAR 31.09.15.11. The Order also imposed an administrative penalty in the amount of $500.00 against the Respondent.

COMAR 31.09.15.11 states, in pertinent part:

> A. Annual Report
> (1) The policy shall provide that the policyowner will be sent, without charge, at least annually, a report which will serve to keep the policyowner advised of the status of the policy.
> (2) The end of the current report period shall be not more than 3 months before the date of the mailing of the report.
>
> * * * *
>
> Section 4-113 states, in pertinent part:
>
> (b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:
> (1) violates any provision of this article other than one that provides for mandatory denial, refusal to renew, suspension, or revocation for its violation;
> (2) knowingly fails to comply with a regulation or order of the Commissioner [.]
>
> * * *
>
> (d) Instead of or in addition to suspending or revoking a certificate of authority, the Commissioner may:
> (1) impose on the holder a penalty of not less than $100 but not more than $125,000 for each violation of this article; and
> (2) require the holder to make restitution to any person who has suffered financial injury because of the violation of this article including requiring the holder to:
> (i) fulfill any obligation under the policies or contracts of the holder that the holder failed to fulfill in violation of this article; or
> (ii) pay a claim or an amount due under an insurance policy or contract not paid in violation of this article.
>
> * * * *

The burden of proof in this case is by a preponderance of the evidence. The burden rests with the Administration to prove that the imposition of an administrative penalty in the amount of $500.00 against Respondent is proper. Md. Code Ann., State Govt. Art., § 10-217 (2014). To prove something by a "preponderance of the evidence" means "to 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, fn. 16 (2002). Under the preponderance of the evidence standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof.

C. Respondent violated COMAR 31.09.15.11 in failing to timely provide an annual report to Complaint for the policy period ending April 1, 2021. Furthermore, in accordance with § 4-113 of the Insurance Article, the imposition of an administrative penalty in the amount of $500.00 is legally justified.

1. The Policy was still in its grace period, and thus, was in force as of April 1, 2021.

The primary dispute between the Parties is whether the Policy was actually in force as of April 1, 2021, so as to have triggered the annual reporting requirement.[2]

Respondent argues that the Policy's coverage terminated before April 1, 2021. Specifically, Respondent contends that, under the terms of the Policy, the grace period continued for 31 days after February 22, 2021, the date on which the Policy entered grace and the February 22 Notice was sent. According to Respondent, once the 31-day time period elapsed, the grace period ended and the Policy automatically terminated without the need for Respondent to take any additional action. By that calculus, Respondent contends that the Policy actually lapsed on March 25, 2021.

Respondent's position is undermined by the February 22 Notice that it sent to Complainant, which specifically stated:

> [y]our life insurance has entered its grace period and is in danger of lapsing. In order to *prevent* your policy from lapsing, we must receive a minimum

[2] Respondent's argument has changed over the course of these proceedings. At the beginning of the proceedings, the Respondent argued that an Annual Report was not required to be sent as the Policy was in its grace period; however, at the time of the Hearing and in its post hearing brief, the Respondent now argues that the Annual Report was not required to be sent because the Policy was no longer in force as of April 1, 2021.

> payment of $134.45 *by* 04/10/2021.
>
> * * *
>
> If we don't receive the minimum payment by this date, your policy *will lapse and terminate*, except as to the right to any cash surrender value or nonforfeiture benefit. To avoid a lapse in coverage, we encourage you to send your scheduled premium payments as they become due.

Emphasis added.

The February 22 letter clearly and unequivocally stated that the Policy, though in grace, would not lapse for nonpayment of premium until April 10, 2021. The February 22 Notice warned: (1) "In order to *prevent your policy from lapsing*, we must receive a minimum payment of $134.45 by 04/10/2021…"; (2) "If we don't receive the minimum payment *by*… [04/10/2021], your policy *will lapse and terminate*…"; and (3) "*To avoid a lapse* in coverage, … send your scheduled premium payments…." Emphasis added. Regardless of what Respondent now suggests it could have done or communicated to Complainant about the lapse date and the premium due date, what Respondent actually did was represent to the Complainant that the Policy, though in grace, would not lapse until April 10, 2021 and that the payment of the amount identified by Respondent by April 10, 2021 would avoid a lapse and a termination. The lapse date - April 10, 2021- was the date identified by the ***Respondent***. Whether that was a voluntary extension of the contractual grace period or an actual calculation of the end of the grace and notice period, Respondent is bound by that date.

Additionally, on April 16, 2021, Respondent sent the April 16 Extension Letter to Complainant further extending the grace period. The April 16 Extension Letter stated, in part:

> in order to give you more time to pay your premium and preserve your coverage, we're extending by an additional 30 days the period of time in which you can pay. In effect, *you have a 90-day grace period from when your last premium was due*

> *to make payment without your policy lapsing. If you pay your overdue premium within this 90-day period, your policy will* ***stay*** *in force.*
>
> The additional 30-day period does not act as forgiveness of any premium owed under your policy, but it does extend your time to pay and keep coverage.

Emphasis added.

The April 16 Extension Letter also stated that it superseded any billing, grace period, or lapse notices that were previously sent. The April 16 Extension Letter expressly recognized that the Policy was still in force and represented that it would "stay in force" for the 90-day period following the date that the last premium was due. The April 16 Extension Letter could not be more clear. Respondent advised Complainant: "you have a 90-day grace period from when your last premium was due to make payment without your policy lapsing." Per the April 16 Extension Letter, the Extended Grace Period ended on May 23, 2021 (90 days after February 22, 2021). Regardless of the initial intent to lapse the Policy as of April 10, 2021 absent payment, Respondent extended the grace period – and the time in which to make the required premium payment – to May 23, 2021.

A policy that is in its grace period is still in force. Section 16-202 provides:

> (a)(1) Each policy of life insurance shall contain a provision that a grace period shall be allowed within which the payment of any premium after the first may be made.
> * * *
> (b) *The policy continues in full force during the grace period*.
> (c) If a claim arises under the policy during the grace period, the amount of any premium due or overdue may be deducted from the policy provisions.

Emphasis added.

The Policy recognizes this as well. The Policy states:

> We allow a grace period of 31 days after the due date for payment of each premium after the first. *The policy remains in force during the grace period unless surrendered*.

Emphasis added.

Because the Policy was in its grace period as of and after April 1, 2021, under the terms of the Policy and the requirements of the Insurance Article, the Policy was in full force as of and after April 1, 2021. Consequently, Respondent was required to send a 2021 Annual Report to Complainant within the time frames required by COMAR and the Policy.

2. Since the Policy was still in force as of April 1, 2021, the 2021 Annual Report was required to be sent.

Since the Policy was still in force on the Policy anniversary date, and would not have terminated until April 10, 2021 at the earliest, and would continue in good standing upon payment of the minimum premium, the 2021 Annual report was required to be sent under COMAR 31.09.15.11 and under the terms of the Policy itself. As noted above, COMAR 31.09.15.11 states "the policy shall provide that the policyowner will be sent, without charge, at least annually, a report which will serve to keep the policyowner advised of the status of the policy." Additionally, the Policy requires that "each year while the policy is in force… we will send the owner a report…."

Respondent contends that the MIA erred in finding that it was in violation of this requirement, because (according to Respondent) COMAR 31.09.15.11b provides Respondent with three months after the Policy's anniversary date to send the Annual Report.

COMAR 31.09.15.11b provides:

> A. Annual Report.
> (1) The policy shall provide that the policyowner will be sent, without charge, at least annually, a report which will serve to keep the policyowner advised of the status of the policy.
> (2) The end of the current report period shall be not more than 3 months before the date of the mailing of the report.

Subsection A(2) requires that any status report that is generated must be sent within three months of the end of the period covered by the report. This assures that the information provided to the policyowner about the status of the policy is current. However, the requirement that the report be current does not alter or supersede the requirement of subsection A(1) that one status report "be sent . . . at least annually . . .."

Respondent's practice has been to meet its annual reporting obligation under COMAR and the Policy by sending an Annual Report providing the status of the Policy as of its anniversary date. It is true that (under subsection (A)(2)) that report must be mailed within three months of April 1 (the end of the annual reporting period). It is also true, however, that (under subsection (A)(1)) no more than twelve months can pass between the dates on which each Annual Report is sent. Hence, by way of example, if an annual report is generated as of April 1 and sent on May 1 in year 1 and (as is the case here) a company sends only one status report a year, the next report must be sent on or before May 1 the next year to comply with subsection (A)(1).

If, as the Respondent suggests, it had an additional three months after the reporting period end date to send the 2021 Annual Report, then, in this case, the Complainant would not actually have received the 2021 Annual Report until fourteen months after the 2020 annual report. This is based on the testimony of Ms. Treshnock that an annual report is sent 28 days (or approximately one month) after the end of the prior reporting period. This would violate subsection A(1).

While there is no merit to the suggestion that the "staleness" requirement of subsection A(2) overrides the frequency requirement of A(1), even if Respondent's interpretation as to when the 2021 Annual Report was required to be sent is correct, Respondent admitted it did not send

the 2021 Annual Report until November 3, 2021, which is more than three months after the end of the reporting period. Hence, even under Respondent's own theory, it violated subsection A(2).

In summary, there is no dispute that more than twelve months elapsed between the date on which the 2020 Annual Report was issued and the date on which the 2021 Annual Report was issued. Likewise, there is no dispute that the 2021 Annual Report was issued more than three months after the end of the 2021 reporting period (April 1, 2021). Given that, I conclude that the Administration has proven by a preponderance of the evidence that Respondent violated COMAR 31.09.15.11 by failing to timely send an annual report to Complainant for the policy period ending on April 1, 2021.

3. The Administration has proven that Respondent "knowingly" violated COMAR 31.09.15.11, and therefore, the imposition of an administrative penalty is proper.

The Respondent argues that the Administration failed to prove that Respondent knowingly violated COMAR 31.09.15.11, which is the basis for disciplinary action under § 4-113(b)(2) (Commissioner may take action if an insurer "knowingly fails to comply with a regulation or order of the Commissioner."). There is no dispute that the Administration must establish that Respondent's violation was committed "knowingly." The disagreement between the Parties is what is required to show an action was committed "knowingly."

In *Hayden v. Maryland Department of Natural Resources,* 242 Md.App. 505 (2019), the Court of Special Appeals held that the term "knowingly" means to act consciously or intentionally. *Id.* at 521-522. An act is undertaken "knowingly" when the act itself is intended; it does not require that the person also have knowledge that their conduct was unlawful. *Id.* at 533-535.

Here, Respondent admitted on at least two occasions that it not only knew that it had failed to generate and send the 2021 Annual Report, it had deliberately and intentionally programed its systems so that the 2021 Annual Report would not be generated and sent. In its response dated May 24, 2021 to the Administration, Respondent stated that "[t]he 2021 Annual Report of Financial Values did not generate due to the policy being in a grace period" (MIA Ex. 7, Resp. Ex. 17). Later, in its request for a hearing on the Order, Respondent stated that "[t]he policy administration system did not generate an annual report in 2021 when the policy lapse date was prior to the policy anniversary, but the grace period expired after the policy anniversary date." (Resp. Ex. 23; Tr. at 113.) During the Hearing, Respondent similarly testified that:

> [t]he policy administration system did not generate an annual report in 2021 when the policy lapse date was prior to the policy anniversary, but the grace period expired after the policy anniversary date. This rare occurrence was caused by the timing of the policy owner's premium payments, the low net cash value of the policy, the premium billing and due dates, the policy anniversary date, and the required grace period[.]

(Resp. Ex. 23; Tr. at 113.)

The evidence demonstrates that not only was Respondent aware that the 2021 Annual Report had not generated and sent, but that Respondent intended that an annual report would not be generated and sent **anytime** a policy was in a grace period on the policy anniversary date. Respondent's decision to program its system such that annual reports were not sent of policies in grace was deliberate and intentional and Respondent was fully aware that annual reports were not being generated and sent in that circumstance. Respondent's failure to generate the 2021 Annual Report was, therefore, deliberate and intentional and, thus, done knowingly. Whether Respondent was aware that its failure to issue an annual report for policies in grace was a

violation of COMAR is irrelevant. As the Court of Special Appeals determine in *Hayden*, the relevant inquiry is whether the act constituting the violation was done knowingly. Here, it was and, therefore, I find that the Administration has proven the violation of 4-113(b)(2.)

4. The MIA's investigation regarding the annual report was proper and does not violate due process.

Respondent's final argument is that the Administration's findings cannot be sustained because the Administration failed to perform a proper investigation and, further, that the Administration's imposition of a "summary fine" violated Respondent's due process rights.

As discussed below, the Respondent's due process arguments cannot be supported by the facts or the applicable law. While Respondent makes a general argument about its due process rights, it has failed to establish a due process case. Rather, Respondent has made broad arguments that the regulations and statutory provisions at issue are inadequate to provide the necessary notice of what is required by the Respondent, and therefore, the Administration's Order is arbitrary and capricious.

Respondent contends that the investigation of the complaint focused on the lapse of the Policy only, and therefore, Respondent had no notice that the Administration was investigating the issuance of the annual report. The facts, however, are clearly otherwise.

During the Administration's investigation of the complaint, the Administration specifically asked Respondent to provide copies of the last four annual reports sent to the Complainant. In addition, case law provides that procedural due process is satisfied when a party is notified of the issues of the case upon the issuance of an order and there are established rules for mounting a response. *See, e.g., Bush v. Public Service Com'n of Maryland*, 212 Md. App. 127, 141 (2013) (finding appellant "was duly apprised of the

Commission's Order *upon its issuance* and the rules establish a procedure to mount a response" (emphasis in original)); and *State v. Cates,* 417 Md. 678, 698 (2011) ("The minimum requirements of procedural due process are 'notice and opportunity for hearing **appropriate to the nature of the case**.'" (citations omitted) (emphasis in original)). Here Respondent was made aware of the basis for the penalty upon the issuance of the Order and Respondent was able to provide a response during the Hearings process. In this instance, Respondent was granted its request for a hearing; and provided an opportunity to participate in a prehearing conference, to file a motion, a response to the Administration's motion, and a reply brief. Additionally, the Respondent was allowed to participate in the Hearing process, present an opening statement, call a witness, cross examine the Administration's witness, exchange exhibits, and submit a post hearing brief explaining its positions and arguments.

Furthermore, the Commissioner has broad authority under § 2-108 of the Insurance Article to investigate violations beyond the limited scope of a complaint. Specifically, § 2-108 states:

> In addition to any powers and duties set forth elsewhere by the laws of the State, the Commissioner:
>
> (1) has the powers and authority expressly conferred on the Commissioner by or reasonably implied from this article;
> (2) shall enforce this article;
> (3) shall perform the duties imposed on the Commissioner by this article;
> (4) in addition to examinations and investigations expressly authorized, may conduct examinations and investigations of insurance matters as necessary to fulfill the purposes of this article; and
> (5) shall enforce § 15-103(b)(21)(vi) of the Health-General Article.

Section 2-108(4) specifically states that the Commissioner "may conduct examinations and **investigations** of insurance matters as necessary to fulfill the purposes of this article." In

this instance, during the Administration's investigation into the complaint, it found a violation regarding the timely issuance of the 2021 annual report. Therefore, I find no evidence to support the argument that Respondent makes that the Administration improperly issued the Order in this case and/or violated Respondent's due process rights.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Respondent has violated COMAR 31.09.15.11 in its failure to timely issue Complainant an annual report for the policy period ending April 1, 2021. Based on the violation of COMAR 31.09.15.11, the imposition of a $500.00 administrative penalty under § 4-113 is proper under the circumstances.

FINAL ORDER

IT IS HEREBY ORDERED that the Maryland Insurance Administration's Order dated August 26, 2021, in this matter is hereby AFFIRMED; and it is further

ORDERED that Respondent Transamerica Life Insurance Company shall pay an administrative penalty of Five Hundred Dollars ($500.00) within thirty (30) days of the effective date of this Order and in accordance with the instructions set forth below; and it is further

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

It is so **ORDERED** this 24th day of January, 2023.

KATHLEEN A. BIRRANE
Insurance Commissioner

/S/ Lisa Larson
LISA LARSON
Director of Hearings

Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by case number, and name. Unpaid penalties will be referred to the Central Collection Unit for collections. Payment of the administrative penalty shall be sent to attention of David Cooney, Associate Commissioner, Life and Health, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202.