OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE ADMINISTRATION *EX REL.* C.P. & E.P.[1]	*	
Complainants,	*	
v.	*	**Case No. MIA 2021-12-024**
STATE FARM FIRE AND CASUALTY COMPANY	*	
Licensee.	*	

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

AMENDED FINAL ORDER

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,[2] the Undersigned concludes that State Farm Fire and Casualty Company ("Licensee") did not violate the Insurance Article in its handling of Complainant C.P.'s and Complainant E.P.'s (collectively referred to as "Complainants") homeowner's insurance claim.

STATEMENT OF THE CASE

This matter arose from an administrative complaint ("Complaint") filed by Complainants with the Maryland Insurance Administration ("MIA") on November 30, 2020. (MIA Exhibit ("Ex.") 1.) Complainants alleged that Licensee erred in its handling of their claim resulting from water loss. (*Id.*) After investigating the Complaint, the MIA determined that Licensee had not violated Maryland insurance law and notified the Parties of its findings by letter dated October 6,

[1] The MIA uses initials to identify a Complainant and to protect the privacy of the parties.
[2] Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

2021 ("Determination"). (MIA Ex. 17.) The Determination included a notice of hearing rights for the Parties. (*Id.*) Complainants disagreed with this Determination and filed a timely request for a hearing, which was granted. (MIA Ex. 19.)

ISSUE

The issue presented in this case is whether Licensee violated the Insurance Article in its handling of Complainants' homeowner's insurance claim.

SUMMARY OF THE EVIDENCE

A. Testimony

A hearing was held by video conferencing on November 14, 2022.

Complainants were self-represented and Complainant C.P. provided sworn testimony on their behalf.

Licensee was represented by Melissa McNair, Esquire, with the law offices of Budow & Noble. Additionally, Jeff Wentworth, a Weather Catastrophe Claim Specialist with Licensee, provided sworn testimony on Licensee's behalf.

B. Exhibits

MIA Exhibits[3] *(In Record)*

1. Complaint from Complainants to MIA, received November 30, 2020.
2. Request for Response from MIA to Licensee, dated December 1, 2020.
3. Correspondence from Complainant to MIA, dated December 4, 2020.
4. Response from Licensee to MIA, received December 11, 2020.
5. Correspondence from Complainant to MIA, received December 19, 2020.
6. Request for Response from MIA to Licensee, dated March 5, 2021.
7. Response from Licensee to MIA, dated March 10, 2021.
8. Request for Response from MIA to Licensee, dated March 29, 2021.
9. Response from Licensee to MIA, dated April 8, 2021.
10. Correspondence from Complainant to MIA, dated May 5, 2021.
11. Request for Response from MIA to Complainant, dated May 7, 2021.

[3] At the start of the hearing, the Parties stipulated to the admission of all of the MIA exhibits.

12. Correspondence from Complainant to MIA, dated May 3, 2021.
13. Request for response from MIA to Licensee, dated May 21, 2021.
14. Response from Licensee to MIA, dated May 26, 2021.
15. Request for response from MIA to Licensee, dated July 1, 2021.
16. Response from Licensee to MIA, dated July 12, 2021.
17. Request for Response from MIA to Complainant, dated October 6, 2021.
18. Request for Hearing from Complainant, dated November 5, 2021.
19. Notice of Hearing from MIA to Licensee, dated November 10, 2021.
20. Response from Counsel for the Licensee to MIA, dated December 3, 2021.

Complainants' Exhibits

1. Page 1 – Structural Damage Claim Policy and page 4 – Explanation of Building Replacement Cost Benefits.
2. State Farm Letter, dated August 3, 2018.
3. Service Master's estimate, page 17, dated June 25, 2021.
4. Status Report to MIA from State Farm, date July 5, 2019.
5. Capitol Insurance Restoration Email, dated September 21, 2018.
6. State Farm Email, dated June 5, 2020.
7. State Farm Estimate, page 17, dated April 6, 2021.
8. Payment Stub and Check Copy, date April 6, 2021, for $13,599.10.
9. Letter from State Farm, dated May 20, 2020.
10. Capitol Restoration Email, dated July 6, 2018.
11. State Farm Letter, dated July 14, 2018.
12. State Farm Letter, dated July 16, 2018.
13. State Farm Letter, pages 1 and 2, dated July 31, 2020.
14. State Farm Email, dated July 31, 2020.
15. State Farm Payment Work Sheet, page 6, dated August 1, 2020.
16. State Farm Payment Work Sheet, page 7, dated August 1, 2020.
17. State Farm Trade Summary, page 11.

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, Licensee held, and currently holds, a Certificate of Authority from the State of Maryland to act as a property and casualty insurer.

2. Complainants purchased a homeowner's insurance policy from Licensee under policy number 20CK52374 ("Policy"). (MIA Ex. 4.) This Policy provided coverage for Complainants' home located at 12601 Longwater Drive, in Mitchellville, Maryland ("Property"), and was in force at all applicable times. (*Id.*) The Policy provided coverage as follows: dwelling, other structures, personal property, loss of use, personal liability and medical payments. (*Id*.) The Policy provided replacement cost coverage subject to depreciation and Complainants' $876.00 deductible. (*Id.*) Complainants also purchased additional optional back up of sewer and drain coverage. (*Id.*) The declarations page also named Wells Fargo Bank as the mortgagee on the Property. (*Id.*) The Policy provided in pertinent part:

> **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.**
> **COVERAGE B – PERSONAL PROPERTY**
> We insure for accidental direct physical loss to the property described in Coverage B caused by the following perils, except as provided in **SECTION I – LOSSES NOT INSURED:**
> * * *
> 12. Sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or from within a household appliance.
>
> * * *
>
> **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 similar construction 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:
   (1) 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;
   (2) 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;
   (3) 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; and
   (4) We will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under **Option OL – Building Ordinance or Law Coverage.**

* * *

SECTION I – LOSS SETTLEMENT
COVERAGE B – PERSONAL PROPERTY

1. **B1- Limited Replacement Cost Loss Settlement.**
   a. We will pay the cost to repair or replace property covered under **SECTION I – COVERAGES, COVERAGE B- PERSONAL PROPERTY**, except for property listed in item b. below, subject to the following:
      (1) Until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation;
      (2) After repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have actually and necessarily spent to repair or replace the property; and
      (3) If property is not repaired or replaced within two years after the date of loss, we will pay only the cost to repair or replace less depreciation.

* * *

SECTION I – CONDITIONS
* * *
10. Mortgage Clause. The word "mortgagee" includes trustee.
a. If a mortgagee is named in this policy, any loss payable under Coverage A shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order of precedence of the mortgages.

* * * *

(MIA Ex. 4.)

3. On June 6, 2018, Complainant C.P. reported that on June 2, 2018, water had backed up through his sump pump causing damage to his finished basement and personal property. (MIA Ex. 4; Transcript ("Tr.") at 19, 53.)

4. Licensee made an initial inspection on June 13, 2018. (MIA Ex. 4; Tr. at 19, 53.) At that time, a representative from Servpro was present and indicated it would be another week before it could begin any mitigation work. (MIA Ex. 4; Tr. at 55.) An estimate of repairs was completed and explained to Complainant C.P. (MIA Ex. 4; Tr. at 57.) The actual cash value of the estimate was in the amount of $18,412.42 and was sent to Complainants on June 14, 2018. (MIA Ex. 4; Tr. at 19, 58.)

5. On June 18, 2018, Complainant C.P. advised Licensee that Servpro had not performed any mitigation work and that he was waiting for something from them. (MIA Ex. 4.) Licensee advised Complainant C.P. to seek another contractor as soon as possible to mitigate the water damage and explained that mold is not covered under the Policy. (*Id.*) At that time, Licensee suggested Service Master as a State Farm Water Mitigation Premier Service Provider; however, Complainant C.P. would not initially agree with contacting Service Master and expressed disagreement with the Mortgagee being listed on the payment he received. (MIA Ex.

4; Tr. at 16, 59-60.)[4] Licensee emailed a Contents Collaboration link to Complainants that day to itemize any damaged personal property. (*Id.*) Also on that day, Licensee had two additional discussions with Complainant C.P. (*Id.*) During those discussions, Complainant C.P. told Licensee that the mitigation work could not be started until Complainants made a security deposit to Service Master. (MIA Ex. 17; Tr. at 58.) Licensee advised Complainant C.P. to forward the estimate once received from the vendor, and it would issue payment for the mitigation. (*Id.*)

6. On June 22, 2018, a three-way call was arranged with Complainant C.P., Licensee, and Service Master. (MIA Ex. 4; Tr. at 61.) At that time, it was agreed that Service Master would prepare an estimate for the demolition and water mitigation work, as well as the personal property that would need to be cleaned and packed up. (*Id.*)

7. On June 21, 2018, Licensee issued a reservation of rights letter which stated in part "[i]t is questionable whether there has been compliance with the condition of the policy requiring the assistance and cooperation of the insured." (MIA Ex. 4; Tr. at 59.) The letter then cited to "SECTION I – CONDITIONS Your Duties After Loss" in the Policy, which reads in pertinent part:

> **SECTION I – CONDITIONS**
> **2. Your Duties After Loss.** After a loss to which this insurance may apply, you shall see that the following duties are performed:
>
> b. protect the property from further damage or loss, make reasonable and necessary temporary repairs required to protect the property, keep an accurate record of repair expenditures;
> c. prepare an inventory of damaged or stolen personal property. Show in detail the quantity, description, age, replacement cost and amount of loss. Attach to the inventory all bills, receipts and

[4] Initially, Complainants identified the Mortgagee being listed on the payout as one of their complaints against Licensee. However, at the Hearing, Complainants stated that after the MIA investigation of the Complaint, they understood why the Mortgagee was added to their payments and therefore they are not pursuing this as an issue. Therefore, this will not be discussed further in this Order.

related documents that substantiate the figures in the inventory.
d. as often as we reasonably require:
(1) exhibit the damaged property;
(2) provide us with records and documents we request and permit us to make copies;
(3) submit to and subscribe, while not in the presence of any other insured:
(a) Statements; and
(b) Examinations under oath [.]

(MIA Ex. 4.)

8. On June 25, 2018, Licensee received two pieces of correspondence which had been sent directly to the claim file. (MIA Ex. 4.) One was from Woodmoor Cleaners for the cleaning of personal property in the amount of $2,211.91 with a work authorization form signed by Complainant C.P. (*Id.*) The second correspondence was an email from Electronic Restoration Services ("Electronic Restoration") advising that they were at Complainants' house that day to collect damaged electronics. (*Id.*) Complainant C.P. needed Electronic Restoration to come back to pick up his treadmill and asked Licensee if it would approve for a second pick up. (*Id.*) At that time, Independent Adjuster Wendell Howell ("Adjuster Howell") attempted to contact Complainants and left a message. (*Id.*)

9. On June 26, 2018, Adjuster Howell received a return telephone call from Complainant C.P. (MIA Ex. 4.) Adjuster Howell advised of the communications received from Woodmoor Cleaners and Electronic Restoration. (*Id.*) Adjuster Howell advised Complainant C.P. that Licensee was waiting to receive an estimate for pack out and mitigation from Service Master. (*Id.*) Complainant C.P. stated that he would call Service Master to follow up. (*Id.*)

10. On June 29, 2018, an estimate was received from Electronic Restoration in the amount of $1,047.00 for pack out and cleaning of electronic items. (MIA Ex. 4.)

11. On June 29, 2018, Service Master provided an estimate for the mitigation work to

Licensee. (MIA Ex. 4; Tr. at 21, 62.) This estimate was in the amount of $16,717.61 for water mitigation and pack out of personal property; however, this amount also included repairs related to mold mitigation and removal. (MIA Ex. 4; Tr. at 62-63.)

12. On June 30, 2018, Adjuster Howell advised Complainants that the estimate was received and he attempted to speak with Complainants regarding the estimate. (MIA Ex. 4; Tr. at 63.) Complainant C.P. stated that he did not want to review an estimate that he did not write and requested a three-way call be set up with Service Master. (*Id.*)

13. A three-way call was attempted on July 2, 2018, but Service Master's representative was not available. A message was left for Complainant C.P. that Adjuster Howell would wait to hear back from Service Master and would schedule a call at that time. (*Id.*)

14. On July 5, 2018, Capital Insurance Restorations ("Capital") came to inspect the Property. (MIA Ex. 3.) Complainants chose Capital as their repair company to repair the basement once the mitigation work was completed. (MIA Ex. 3; Tr. at 30.) Capital submitted its estimate for repairs to Licensee on July 14, 2018. (Tr. at 65.)

15. On July 9, 2018, Complainant C.P., Adjuster Howell, and Joseph from Service Master all spoke about Service Master's estimate. (Tr. at 64.) Licensee had some questions regarding mold mitigation and duct cleaning which were included on Service Master's estimate. (*Id*.) Following that conversation, Service Master agreed to revise its estimate and re-submit it to Licensee for review. (*Id.*)

16. On July 14, 2018, Independent Adjuster Tina Cash ("Adjuster Cash") contacted Complainant C.P. (MIA Ex. 4.) At that time, the Woodmoor Cleaners bill was discussed and Complainant C.P. stated that it was okay to send him the funds to pay the Woodmoor Cleaners bill. (*Id.*) Additionally, Licensee asked if the electronic items had been removed from the

basement by Electronic Restoration yet and Complainant C.P. stated all but two televisions, a treadmill, and the washer and dryer had been removed. (*Id.*) He advised that he did not have an invoice from Electronic Restoration yet, but stated that he did not want Licensee to contact Electronic Restoration itself and, rather, wanted all communications to go through him. (*Id.*) During that call, the Service Master estimate was also discussed and Adjuster Cash noted that mold remediation expenses would not be covered. (*Id.*) Adjuster Cash stated that once she was able to reach Service Master, she would set up a three-way call with Complainant C.P. (MIA Ex. 4.) A letter was mailed and emailed to Complainant C.P. that day regarding the information needed from Electronic Restoration regarding the electronic items listed on its estimate. (Tr. at 65-66.)

17. On July 16, 2018, payment in the amount of $2,211.91 was forwarded to Complainants for the Woodmoor Cleaner's bill. (MIA Ex. 4.)

18. On July 30, 2018, a three-way call was completed with Complainant C.P., Licensee's Independent Adjuster Ronald Erickson ("Adjuster Erickson") and Joseph of Service Master. (MIA Ex. 4; Tr. at 66.) The Service Master estimate was discussed and Adjuster Erickson advised that Licensee would not pay for any mold cleaning or remediation. (MIA Ex. 4; Tr. at 26, 66.) Joseph of Service Master voiced concerns with the pack out, and advised that some of the personal property had mold growth and would need to be cleaned prior to storage. (MIA Ex. 4.) Adjuster Erickson explained that personal property that was damaged by water would be repaired or replaced, but that items that were not damaged by water and had mold growth would not be covered. (*Id.*) Complainant C.P. requested payment in advance of the mitigation work and Adjuster Erickson advised that it was payable when the work was incurred.

(*Id.*) Joseph of Service Master advised Complainant C.P. this was the normal process and that a final invoice would be sent for the mitigation and pack out. (*Id.*)

19. On August 3, 2018, Adjuster Erickson contacted Complainant C.P. (MIA Ex. 4.) Complainant C.P. stated that he did not want Licensee to contact his contractor directly without him being on the line in a three-way call. (*Id.*) Complainant C.P. was upset that the mitigation had not taken place yet and Adjuster Erickson stated that the authorization to make the repairs needed to come from Complainant C.P. himself as the homeowner. (*Id.*) Complainant C.P. expressed concern that the estimate submitted by his contactor, Capital, had not been reconciled. (MIA Ex. 4; Tr. at 67.) Adjuster Erickson stated that the mitigation needed to be completed first as some of the items on Capital's estimate may need to be removed as Service Master would be doing the tear out of items. (*Id.*) Complainant C.P. requested this information in writing and a letter was sent to Complainants on August 3, 2018, reiterating the conversation. (*Id.*)

20. On August 9, 2018, a partial denial letter for the mold portion of the claim was sent to Complainants. (MIA Ex. 4; Tr. at 67-68.)

21. On August 21, 2018, in an effort to move the claim forward, Adjuster Erickson reviewed the Capital estimate. (MIA Ex. 4; Tr. at 68.) Adjuster Erickson found the following items had to be reconciled: overlapping drywall removal charges, differences in the size of baseboards, differences in room dimensions, painting of concrete floors in all rooms and replacement of electrical outlets and wiring in all rooms. (*Id.*) Adjuster Erickson attempted to contact Complainant C.P. on August 25, 2018, to conduct a three-way call with Capital to review the items. (*Id.*)

22. On August 29, 2018, Complainant C.P. returned Licensee's call and Claim

Representative Ben Yue ("Claim Representative Yue") explained the reason for the call was to go over Capital's estimate. (MIA Ex. 4; Tr. at 70-71.) Claim Representative Yue went over the differences between Capital's estimate and Licensee's estimate with Complainant C.P. and Complainant C.P. advised that he wanted to handle the issues with Capital himself and did not want Licensee involved. (MIA Ex. 4; Tr. 71.) Claim Representative Yue requested that Capital submit an updated estimate once the issues were resolved. (MIA Ex. 4; Tr. at 71-72.)

23. On September 6, 2018, Adjuster Erickson reviewed correspondence received on September 1, 2018, from Capital. (MIA Ex. 4.) This email indicated that they were in agreement that they had the wrong size baseboards. (*Id.*) Capital stated that normally there would be some diagnostic hours for an electrician to check the electrical system, but agreed to leave the electrician hours out of the estimate and submit a supplement if they tore into the walls and needed to test wiring. (*Id.*) Adjuster Erickson reached out to Complainant C.P. that day regarding this email and Complainant C.P. requested authorization from Adjuster Erickson to have Capital repair his home. (MIA Ex. 4; Tr. at 72.) Adjuster Erickson told Complainant C.P. that he had to give the authorization for the repairs as the homeowner. (*Id.*) Adjuster Erickson stated that if Capital made the changes to the estimate mentioned in the email, then Capital's estimate would be in line with Licensee's. (MIA Ex. 4; Tr. at 73.) Complainant C.P. requested an email stating this and a letter outlining this discussion was sent to Complainants that day. (*Id.*)

24. On September 10, 2018, Adjuster Erickson received a call from Complainant C.P. asking how to proceed with the claim. (MIA Ex. 4; Tr. at 73.) Adjuster Erickson stated that Capital should submit an updated estimate after removing those items it agreed to change. (MIA Ex. 4; Tr. at 74.) Complainant C.P. stated that Licensee had not paid him to make repairs to his

home and Adjuster Erickson stated that the actual cash value settlement of $18,412.42 had been issued to Complainants back in June 2018. (*Id.*) Complainant C.P. stated that he believed that payment was for water mitigation and Adjuster Erickson stated that that payment had been estimated by Licensee to make repairs to the home. (*Id.*) Adjuster Erickson stated that when the Service Master invoice is received for the water mitigation, it could be added to the estimate and an additional payment would be made. (*Id.*) Complainant C.P. requested a response in writing stating what additional information Licensee needed to make payment for the water mitigation. (*Id.*) Licensee sent a letter that day stating that a final invoice was needed from Service Master. (*Id.*)

25. On October 23, 2018, Independent Adjuster Patricia Demars ("Adjuster Demars") contacted Complainant C.P. in regards to an invoice Licensee received from Electronic Restoration in the amount of $1,221.00. (MIA Ex. 4; Tr. at 74-75.) This invoice included a list of items that were considered to be a total loss. (*Id.*) Complainant C.P. asked Licensee not to contact Electronic Restoration directly and to not issue any payments to it directly either. (Tr. at 75.) Adjuster Demars explained the contents collaboration system to Complainant C.P. and its use to list the personal property that was damaged. (*Id.*) A contents collaboration form was initiated with the Electronic Restoration invoice amounts for the cleaning of the electronics and a link was emailed to Complainant C.P. (*Id.*)

26. On November 20, 2018, the claim was closed as no additional information had been provided. (MIA Ex. 4.)

27. On June 18, 2019, Licensee's Independent Adjuster Freddie Donaldson ("Adjuster Donaldson") reviewed correspondence that had been received from Complainant C.P. on June 13, 2019. (MIA Ex. 4; Tr. at 75.) The correspondence included a copy of Complainants'

Complaint submitted to the MIA through its Rapid Response Program. (*Id.*) The Rapid Response Complaint focused on Licensee's handling of the claim and the inclusion of the Mortgagee on the payments. (*Id.*) Adjuster Donaldson called Complainant C.P. and explained the Mortgagee Clause in the Policy to him. (*Id.*) The claim was re-closed at that time. (*Id.*)

28. On July 1, 2019, while addressing the Rapid Response Complaint, and although the requested Service Master mitigation billing and revised estimate from Capital had not been received, Licensee's Team Manager David Ego recommended that Licensee's estimate be updated to include the agreed water mitigation amounts based on the Service Master estimate. (MIA Ex. 4; Tr. at 76.) The Service Master estimate also included an amount for pack out, cleaning/disposal, storage, and returning of personal property. (MIA Ex. 4; Tr. at 78.)

29. On July 3, 2019, Adjuster Donaldson made the updates to the estimate. (MIA Ex. 4.) Based on these updates, a supplemental payment of $5,910.09 was made for water mitigation and a supplemental payment of $8,430.71 was made for personal property damages. (MIA Ex. 4; Tr. at 79.) These checks were sent to Complainants along with supporting documentation and the claim was re-closed. (*Id.*)

30. On October 10, 2019, Complainants sent a letter to Licensee regarding general complaints with the claim, including the inclusion of the Mortgagee on the payments. (Tr. at 80.) This letter was forwarded to Claim Specialist Jeff Wentworth ("Claim Specialist Wentworth"), who was the newly assigned claims adjuster on October 17, 2019. (*Id.*) Claim Specialist Wentworth contacted Complainants and stated that he would need a little bit of time to get caught up on the status of the claim and that he would follow up with them. (Tr. at 80-81.)

31. On November 13, 2019, Claim Specialist Wentworth emailed Complainants stating that the claim was still being reviewed. (Tr. at 81.)

32. On December 3, 2019, Claim Specialist Jeff Wentworth received a call from Complainant C.P. (MIA Ex. 4; Tr. at 81.) Complainant C.P. and Claim Specialist Wentworth discussed the personal property portion of the claim. (MIA Ex. 4.) Complainant C.P. advised additional items were damaged and Claim Specialist Wentworth explained that he would resend the Contents Collaboration link to Complainant C.P. to fill out and list the items. (*Id.*) The Contents Collaboration link was sent to Complainant C.P. that day. (*Id.*) Complainant C.P. also mentioned that the furnace and water heater also appeared to be damaged. (MIA Ex. 4; Tr. at 82.) Claim Specialist Wentworth told Complainant C.P. to submit a diagnosis of what was wrong with them along with estimates for repair or replacement. (*Id.*)

33. On December 24, 2019, a status letter was emailed to Complainant C.P. outlining what Licensee had done in the handling of this claim to date. (MIA Ex. 4; Tr. at 83-84.) This letter also discussed what items remained open on the claim and what additional information was needed from Complainants. (*Id.*) This letter also advised Complainants of the two-year statute of limitations for recovery of replacement cost benefits. (*Id.*)

34. On December 26, 2019, Claim Specialist Wentworth received a call from Complainant C.P. (MIA Ex. 4; Tr. at 84.) Complainant C.P. advised he was having trouble using the Contents Collaboration link and accessing the form; therefore, a paper copy of the form was mailed to Complainants. (*Id.*) Complainant C.P. also stated that his contractor had never agreed to Licensee's estimate. (*Id.*) Claim Specialist Wentworth offered the option of an additional inspection with Capital to attempt to move the claim forward. (*Id.*) Complainant C.P. declined that option and Claim Specialist Wentworth advised that options to move the claim forward included an additional inspection with Capital or a signed contract or updated estimate from Capital for Licensee to review. (*Id.*)

35. On January 8, 2020, Claim Specialist Wentworth sent a letter to Complainants outlining what was needed to complete the evaluation of this claim. (*Id.*) Nothing was received at that time, so the claim was re-closed on January 22, 2020. (*Id.*)

36. On February 21, 2020, in response to an invoice that was received from Complainant C.P., Claim Specialist Wentworth emailed him advising that the invoice had already been received and processed. (MIA Ex. 4.) Additionally, Claim Specialist Wentworth explained what was necessary to move the claim forward, which included receipt of the personal property inventory forms, and a signed contract so that the hold back depreciation could be released. (Tr. at 86.)

37. On April 23, 2020, Licensee's Independent Adjuster Martin Power ("Adjuster Power") reviewed a storage bill received from Electronic Restoration for storage of Complainants' electronic items for the period of November 2018 through February 2020, for a total of $675.00 and a bill for the period of March 2020 through May 2020 for a total of $135.00, along with an authorization to pay that had been signed by Complainant C.P. on June 25, 2018. (MIA Ex. 4; Tr. at 86.) Licensee had already issued payment in July 2019 for a portion of the bill. (*Id.*) Adjuster Power made the decision to extend payment for the storage charges incurred from October 2018 through June 2019, issued a payment in the amount of $405.00 to Electronic Restorations and the Complainants, and forwarded it to Electronic Restoration. (*Id.*) Adjuster Power also attempted to reach Complainant C.P. and left a message explaining this payment and advising that Complainants would be responsible for storage charges beyond July 2019. (*Id.*)

38. On May 20, 2020, Licensee attempted to review the payments made to date for structural repairs, water mitigation, and personal property with Complainants. (MIA Ex. 4; Tr. at 16, 87.) Licensee explained that the time frame for replacement cost benefits (recovery of

withheld depreciation) would be expiring on June 2, 2020. (MIA Ex. 4; Tr. at 87.) Licensee added that although the two-year Policy loss settlement provision for replacement cost benefits would be expiring, it was willing to approve the release of the currently withheld depreciation if Complainants provided a signed contract or contractor estimate for reconciliation. (MIA Ex. 4.)

39. On June 3, 2020, Licensee received a 43-page document from Complainant C.P. that listed personal property that was damaged totaling $14,597.97 and included internet pictures of items and the current costs. (MIA Ex. 4.)

40. On June 8, 2020, Claim Associate Cheryl Wilcox ("Claim Associate Wilcox") completed entry of the items into the Contents Collaboration system after receiving the paper copy of the form from Complainants. (MIA Ex. 4.) Claim Associate Wilcox sent a letter to Complainants requesting contact to review the policy information and the ages of certain items. (*Id.*) The letter also stated that authority had been approved to issue payment to replace the furniture that had been damaged. (*Id.*) Claim Associate Wilcox spoke with Complainant C.P. that day and settlement of personal property in the amount of $10,377.80 was reviewed and Complainant C.P. advised he would provide the ages of the additional items. (*Id.*) The Contents Collaboration System Payment Tracker form along with payment in the amount of $10,377.80 was sent to Complainants. (MIA Ex. 4; Tr. at 92.)

41. On June 12, 2020, Licensee received correspondence from Complainant C.P. indicating the age of some of the items, including the pool table and some clothes. (MIA Ex. 4.) Claim Associate Wilcox updated the Contents Collaboration system with the ages. (*Id.*)

42. On June 16, 2020, Complainant C.P. returned Licensee's call and the updated personal property sheet was explained to Complainant C.P. (MIA Ex. 4.) Per Complainant C.P.'s request, the additional payment of $4,546.15 was issued and the updated Contents

Collaboration System Payment Tracker form and Statement of Loss were emailed to Complainants. (MIA Ex. 4; Tr. at 92.)

43. On June 29, 2020, Claim Specialist Wentworth received a return call from Complainant C.P. (MIA Ex. 4.) Complainants submitted a $70 diagnostic bill from Baltimore Gas and Electric ("BGE") and an estimate to replace the furnace, water heater, and air conditioner. (MIA Ex. 4; Tr. at 90.) This was the first time Complainant C.P. claimed damage to the air conditioner, so Claim Specialist Wentworth requested diagnostic information on how the air conditioner was damaged by the loss. (*Id.*)

44. On July 31, 2020, Claim Specialist Wentworth completed a revision to the Licensee's estimate to include the BGE diagnostic charge and the quoted replacement amounts for the furnace and water heater. (MIA Ex. 4; Tr. at 92-93.) This resulted in a supplemental actual cash value payment of $5,696.08. (*Id.*) An additional payment for personal property items was also approved and a supplemental payment of $2,325.49 was issued that day too. (MIA Ex. 4; Tr. at 93.)

45. On August 5, 2020, Claim Specialist Wentworth received a call from Complainant C.P. (MIA Ex. 4.; Tr. at 94.) During that telephone call, Complainant C.P and Claim Specialist Wentworth discussed the difference between personal property and structural items. (*Id.*) Claim Specialist Wentworth also explained the two-year timeframe to make a claim for replacement cost benefits. (*Id.*) Claim Specialist Wentworth explained that to release any replacement cost benefits for personal property items, the items had to have been replaced prior to the two-year mark of the date of loss and that any signed contract for structural repairs would need to be dated before the two-year mark of the date of the loss. (*Id.*)

46. On November 17, 2020, Licensee's Team Manager Ken Huster ("Team Manager Huster") contacted Complainant C.P. and reviewed all of the payments made to date for this loss. (MIA Ex. 4.) Complainant C.P. contended that additional money was still due. (*Id.*) Team Manager Huster requested a copy of Capital's estimate along with any final billing from Service Master to determine if any additional payments may be due. (*Id.*)

47. On November 30, 2020, the MIA received the Complaint from the Complainants asserting that Licensee erred in its handling of their claim. (MIA Ex. 1.)

48. On December 2, 2020, Team Manager Huster sent a letter to Complainants regarding this claim. (MIA Ex. 7.) This letter included attachments showing that Licensee had paid out a total of $30,018.59 for structural damages and $28,297.06 for personal property damages as a result of this loss. (*Id.*)

49. On December 19, 2020, Complainants provided additional documentation to Licensee and the MIA regarding this loss and another claim they had pending. (Tr. at 96.) Licensee reviewed these additional documents and issued another payment in the amount of $13,599.10 on April 6, 2021, which was the held back replacement cost benefits remaining on the claim. (Tr. at 96.) Claims Specialist Wentworth testified that even though Licensee did not have an official Capital signed document to release the funds, Licensee's management team agreed to release the funds. (Tr. at 96.)

50. During the MIA's investigation of the Complaint, Assistant Chief Investigator Jason Jackson, reached out to Complainant C.P. on May 27, 2021 by phone and email regarding the status of the claim. (MIA Ex. 14; Tr. at 97.) Complainant C.P. explained that there remained approximately an $8,000.00 discrepancy in the claim. (*Id*.) Complainant C.P. identified recoverable depreciation for personal property, storage costs for personal property, and payment

for the air conditioning system as outstanding costs. (MIA Ex. 14.) The MIA stated that if Complainants wanted to submit any additional documentation, the MIA would review it. (*Id.*)

51. On June 13, 2021, Complainant C.P. submitted a letter to Mr. Jackson outlining additional concerns, and promising a supporting attachment to follow. (MIA Ex 14.)

52. Mr. Jackson then sent an email to the Complainants on June 14, 2021, requesting a response as to when the promised attachment would be submitted, so that a comprehensive follow up could be sent to Licensee. (MIA Ex. 14.) On June 29, 2021, additional documentation concerning the claim was provided by Complainants. (*Id.*)

53. On July 1, 2021, the MIA sent a letter to Licensee which included supporting documentation and requested that Licensee review the additional information. (MIA Ex. 15.)

54. On July 9, 2021, Licensee sent two additional payments to Complainants. (MIA Ex. 16; Tr. at 97.) These payments were for $358.78 toward storage and $3,696.74 toward structural repairs. (*Id.*) Accompanying these payments was a letter to Complainants which explained the additional payments. (MIA Ex. 16.)

55. The MIA remained in contact with Complainant C.P. and advised that it would continue to hold the file open for a reasonable period of time in an effort to work with Complainants and provide the opportunity for Complainants to submit further additional documentation that they advised was forthcoming. (MIA Ex. 16; Tr. at 99.)

56. The MIA contacted Licensee and advised that they were awaiting further documentation regarding additional costs under the claim and that Licensee prepare to do the same. (MIA Ex. 16) Licensee confirmed that it would be ready to review and consider the potential additional expenditures. (MIA Ex. 16.)

57. Complainant C.P. testified at the Hearing on November 14, 2022, that they have not completed the repairs to the basement and that they have not replaced all of their damaged personal property at this time. (Tr. at 31, 47.)

58. Complainant C.P. testified that he is still seeking $15,640.36 which is the hold-back depreciation on the personal property items. (Tr. at 98-99.) Claim Specialist Wentworth testified that these items have not yet been replaced or at least no documentation has been submitted to Licensee showing that they were replaced within two years of the date of loss. (Tr. at 99.)

59. The MIA investigated the Complaint and determined that Licensee had not violated the Insurance Article in its handling of Complainants' homeowner's insurance claim. (MIA Ex. 17.)

60. Complainants were not satisfied with the MIA's determination and requested the instant hearing. (MIA Ex. 18.) The hearing was granted in this matter by letter dated November 10, 2021. (MIA Ex. 19.)

61. The hearing was conducted on November 14, 2022.

DISCUSSION

A. Positions of the Parties.

Complainants contend that Licensee erroneously and inadequately handled their homeowners' insurance claim. Specifically, Complainants assert that Licensee delayed handling and issuing payments on their claim and failed to provide them all of the costs in which they are entitled. Complainants further argue that there is an additional amount of $15,640.36 due to them because of the withheld depreciation on the personal property portion of the claim.

Licensee argues that it properly handled Complainants' homeowner's insurance claim. Specifically, Licensee argues that it timely and properly worked on the settlement of the claim and that the delays were Complainants' fault. Furthermore, Licensee contends that it attempted to explain payments to Complainants multiple times and explained the additional information that was necessary to move the claim forward. Finally, Licensee contends that while Complainants may not agree with the amount of the loss, there has been no evidence presented that Licensee violated the Insurance Article in its handling of the claim.

B. Statutory Framework

The Notice of Hearing in this case states that specific attention at the hearing shall be directed to §§ 4-113 and 27-303 of the Insurance Article.

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 II of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:
>
> * * *
>
> (5) refuses or delays payment of amounts due claimants without just cause [.]
>
> * * * *

(LexisNexis 2022.)

Section 27-303 states in pertinent part:

> It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:
>
> * * *
>
> (1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
>
> (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

> * * *
>
> (6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim [.]
>
> * * * *

(LexisNexis 2022.)

In *Berkshire Life Insurance Co. v. Maryland Insurance Administration,* the Court of Special Appeals adopted the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard as articulated in an earlier case. *See* 142 Md. App. 628 (2002). As the Court explained:

> The Commissioner has previously construed [Section] 27-303(2) as requiring a licensee insurer to show that it refused to pay the claim at issue based on: (1) an otherwise lawful principle or standard which the insurer applies across the board to all claimants; and (2) reasonable consideration of "all available information."

Id. at 671. (*internal citations omitted*). Complainant bears the burden of proof. The Court explained a Complainant's burden of proof as follows:

> [A] claimant must prove that the insurer acted based on "arbitrary and capricious reasons." The word "arbitrary" means a denial subject to individual judgment or discretion, … and made without adequate determination of principle. …. The word "capricious" is used to describe a refusal to pay a claim based on an unpredictable whim. …. Thus, under Ins. Art. § 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on "all available information."

Id. at 671-72 (citations omitted).

Therefore, "[t]he claimant must… prove by a preponderance of the evidence that the insurer acted arbitrarily and capriciously." *Id.* at 672. In other words, the burden of proof rests with Complainant to demonstrate by a preponderance of the evidence that Licensee acted

without adequate factual support, in a "`nonrational' and `[w]illful and unreasoning… [manner] without consideration and regard for facts and circumstances presented' . . ." *Hurl v. Board of Educ. of Howard Co.*, 107 Md.App. 286, 306 [667 A.2d 970] (1995) (quoting Black's Law Dictionary, 6th Ed.); *see also Comm'r of Labor & Indus. v. Bethlehem Steel Corp.,* 344 Md. 17, 34 (1996); Md. Code Ann., State Gov't § 10-217 (LexisNexis 2022); *Berkshire, supra,* 142 Md. App at 672. 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 n. 16 (2002) (*quoting* Maryland Pattern Jury Instructions) (*internal citations omitted*). Under this 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. *Id*.

C. Licensee did not violate §§ 4-113 or 27-303 in its handling of Complainants' homeowner's insurance claim.

After investigating Complainants' Complaint concerning Licensee's handling of their homeowner's insurance claim, the MIA determined that Licensee did not violate the Insurance Article. For the reasons set forth below, I affirm.

In this instance, my determination in this matter is based on whether Licensee had a reasonable basis for its handling of Complainants' claim. Here, Licensee quickly inspected the loss and issued its first payment based on its initial estimate within two weeks of the claim being reported. Licensee had a reasonable basis for its initial estimate as Licensee's adjuster went to the Property and performed an inspection. Once the initial payment was issued, Licensee repeatedly asked Complainants to provide a final invoice from Service Master to issue additional payment or an updated estimate from Capital to review and reconcile as necessary. The Policy

provides that "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…." Complainants failed to timely provide an updated estimate from Capital or a final invoice from Service Master, so Licensee had no basis to initially issue additional payments. Licensee could only make payments based off of the information that Complainants or the contractors provided to it. Licensee considered additional information provided to it throughout the claims process by reviewing the information, updating its estimates and, if necessary, issuing additional payments. Licensee repeatedly told Complainants what additional information was needed to move the claim forward and even decided to update its estimate based on the estimates initially provided, even though Complainants failed to submit a final estimate or invoice.

Additionally, while Complainants argue that they are entitled to additional payment under the personal property portion of the claim, Complainants failed to provide proof that they have replaced all of the damaged items and Complainant C.P. even testified that he has not replaced all of the damaged items as of the date of the Hearing. Regarding personal property damages, the Policy requires that "[u]ntil repair or replacement is completed, we will pay only the cost to repair or replace less depreciation." Therefore, I find that Licensee had a reasonable basis for its handling of this claim and did not act in an arbitrary or capricious manner, and therefore was not in violation of § 27-303(2).

I also find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the claim in violation of § 27-303(1). The language of the Policy states:

> **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.**
> **COVERAGE B – PERSONAL PROPERTY**

We insure for accidental direct physical loss to the property described in Coverage B caused by the following perils, except as provided in **SECTION I – LOSSES NOT INSURED:**

* * *

12. Sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or from within a household appliance.

* * *

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

2. A1- Replacement Cost Loss Settlement – Similar Construction.

b. We will pay the cost to repair or replace with similar construction 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:

(5) 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;

(6) 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;

(7) 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; and

(8) We will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under **Option OL – Building Ordinance or Law Coverage.**

* * *

SECTION I – LOSS SETTLEMENT

COVERAGE B – PERSONAL PROPERTY

2. B1- Limited Replacement Cost Loss Settlement.

b. We will pay the cost to repair or replace property covered under **SECTION I – COVERAGES, COVERAGE B- PERSONAL PROPERTY**, except for property listed in item b. below, subject to the following:
   (4) Until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation;
   (5) After repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have actually and necessarily spent to repair or replace the property; and
   (6) If property is not repaired or replaced within two years after the date of loss, we will pay only the cost to repair or replace less depreciation.

The language of the Policy makes clear that the Policy only provides coverage for structural items that were damaged by direct physical loss. Complainants claim that their air conditioner was damaged and Licensee has not paid for that damage. Complainants did not advise Licensee that their air conditioner was damaged until more than 2 years after the loss occurred. Licensee requested that Complainants provide a diagnostic report to confirm that the air conditioning unit was damaged as a result of this loss; however, Complainants never provided this information.

In addition, the Policy makes clear that recoverable depreciation is only available if the Complainants made the repairs under Coverage A or replaced the damaged items under Coverage B within two years of the date of the loss. Licensee repeatedly requested this documentation from Complainants so that it could issue additional payment for these items. Complainant C.P. testified that he has still not made the full repairs to the basement and has not fully replaced all of the items that were damaged. Therefore, the repairs and replacement of the items did not take place within two years of the loss and Complainants were not entitled to recover the depreciation for those items. Accordingly, Licensee complied with the terms of the Policy and did not misrepresent Policy terms that relate to the claim.

I also find that Licensee did not fail to promptly provide on request a reasonable explanation of the basis for handling of the claim in violation of § 27-303(6) of the Insurance Article. The record before me demonstrates that Licensee had numerous conversations with Complainants regarding the additional information it needed to evaluate the claim and emailed Complainants multiple letters on multiple dates which explained what additional information Licensee required to evaluate the claim. The letters explained the additional information that was needed and included examples of what information Complainants could provide to meet Licensee's request. These conversations and letters also explained that recoverable depreciation was only available if the Complainants made the repairs under Coverage A or replaced the damaged items under Coverage B within two years of the date of the loss. Additionally, Licensee made multiple payments to Complainants regarding this loss and provided updated estimates and documentation with the payments. Moreover, Licensee sent a letter to Complainants denying coverage for mold damage on August 9, 2018. Therefore, I find that Licensee did not violate § 27-303(6).

Finally, I find that Licensee did not refuse or delay payment of amounts due to Complainants without just cause in violation of § 4-113(b)(5). Licensee quickly inspected the Property and issued an initial check based on its estimate. Licensee asked Complainant C.P. to submit a final invoice from Service Master or an updated estimate from Capital for review and consideration, but Complainants failed to provide those updates. Finally, Licensee, on its own accord, reviewed its estimate compared to the Service Master and Capital estimates and issued additional payments even though Complainants had not submitted their final invoices. Licensee continued to make additional payments as Complainants submitted additional paperwork and even issued additional withheld depreciation to Complainants beyond the two-year statute of

limitations. As noted above, Complainants have not proven that they are entitled to additional payment under the personal property portion of the claim because they have not provided proof that the items were replaced within two years of the date of loss and even admitted at the Hearing that many of the damaged items have not been replaced. Additionally, Licensee asked Complainants to provide proof that the air conditioning unit was damaged by the loss and Complainants have failed to provide any proof of that damage, so Licensee does not owe any additional payments for the replacement of the air conditioning unit. While the Parties might not agree on the handling of the claim, Licensee had a reasonable basis for not issuing additional payment to Complainants as requested in this case. Therefore, I find that Licensee did not violate § 4-113(b)(5).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Complainants failed to prove by a preponderance of the evidence that Licensee committed an unfair claim settlement practice in violation of § 27-303 or delayed payment of amounts due without just cause in violation of § 4-113, or otherwise violated 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 13th day of February, 2023.

KATHLEEN A. BIRRANE
Insurance Commissioner

/S/ Lisa Larson
LISA LARSON
Director of Hearings