

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

MARYLAND INSURANCE
ADMINISTRATION
EX REL H.R.¹,

Complainant,

v.

THE BALTIMORE EQUITABLE
SOCIETY,

Licensee.

* REVIEW OF A RECOMMENDED
* DECISION ISSUED BY
* TRACEY JOHNS DELP
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MIA-CC-33-22-12375
* MIA No.: MIA-2022-05-015

* * * * *

FINAL ORDER

Pursuant to Md. Code Ann., Ins. § 2-210(d)² and Code of Maryland Regulations (COMAR) 31.02.01.10-2D, the undersigned Associate Commissioner for the Maryland Insurance Administration (MIA) hereby issues this summary affirmance of the Proposed Decision below.

On February 24, 2022, the MIA received a complaint from H.R. (hereinafter “Complainant”) alleging that the Baltimore Equitable Society (hereinafter “Licensee”) erred by cancelling the Complainant’s policy due to dwelling conditions (“Complaint”). The MIA investigated the Complaint, and on March 31, 2022, it issued a determination letter concluding that the Licensee did not violate Maryland’s insurance laws in cancelling H.R.’s policy; this letter specifically referenced Sections 27-602(c) and Sections 27-604. The Complainant requested a

hearing, which was granted on May 3, 2022. This matter was then transmitted to the Office of Administrative Hearings (“OAH”) to conduct a contested case hearing and to issue a Proposed Decision pursuant to COMAR 31.02.01.04-1A. In its referral to the OAH, the MIA noted that specific attention at the hearing will be directed to the Annotated Code of Maryland, Insurance Article, Sections 27-501, 27-602 and 27-604.

On September 8, 2022, a hearing was held before Administrative Law Judge (“ALJ”) Delp. On September 14, 2022, ALJ Delp issued a Proposed Decision setting forth factual and legal findings with respect to Sections 27-501(a)(2), 27-502(g), 27-602(b), and 27-602(c), but did not make Conclusions of Law with respect to Sections 27-604(b)(1). On the same date, OAH mailed the Proposed Decision to the Parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions which advised the Parties that, pursuant to COMAR 31.02.01.10-1, they had the right to file written exceptions with the Undersigned within twenty (20) days from receipt of the Proposed Decision. Neither Party filed exceptions in this case.

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Delp. Based on this review, I am persuaded that ALJ Delp’s Conclusion of Law that Licensee did not violate Sections 27-501(a)(2), 27-502(g), 27-602(b), and 27-602(c) is correct, and, pursuant to COMAR 31.02.01.10-2D, hereby affirm this finding.

I further find, pursuant to COMAR 31.02.01.10-2(C)(2), that ALJ Delp’s Findings of Fact clearly support a finding that Licensee did not violate Section 27-604(b)(1). Specifically, based on ALJ Delp’s Findings of Fact and the evidence incorporated by ALJ Delp into the record, including

¹ The MIA uses initials to protect the identity of the Parties.

² Unless otherwise noted, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

the MIA file, Licensee properly issued a statement of actual reasons for the cancellation to Complainant. Licensee issued a letter on January 14, 2022 that stated the Complainant's policy was being cancelled and the notice was accompanied by a list of reasons for the policy cancellation. (MIA Ex. 1.) The cancellation letter outlines a number of dwelling conditions that led to the cancellation of the policy, including: garage damage, missing roof shingles, paint peeling on the porch, ceiling damage, excessive clutter, rust, and water damage. (*Id.*) Such damage is clearly stated in the policy to be valid reasons for Licensee to issue a notice of cancellation to the policy holder, in this case, Complainant. (MIA Ex. 3.)

As Licensee clearly identified the basis for the cancellation, supported by documentation from a home inspection, and issued a cancellation letter that clearly laid out the actual reasons for cancelling Complainant's policy, I find that Complainant has not shown that Licensee failed to act properly in cancelling Complainant's homeowner's policy.

THEREFORE, it is hereby

ORDERED that the Proposed Decision of ALJ Delp is affirmed, and

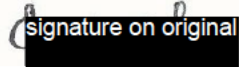
ORDERED that, as a matter of law, it be found that Licensee did not violate Sections 27-501, 27-602, and 27-604;

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

It is so **ORDERED** this 7th day of March, 2023.

KATHLEEN A. BIRRANE

Commissioner

signature on original

ERICA J. BAILEY

Associate Commissioner for Hearings

MARYLAND INSURANCE

* BEFORE TRACEY JOHNS DELP,

ADMINISTRATION

* AN ADMINISTRATIVE LAW JUDGE

EX REL.

* OF THE MARYLAND OFFICE

H.R.,

* OF ADMINISTRATIVE HEARINGS

COMPLAINANT

*

v.

*

THE BALTIMORE EQUITABLE

* OAH No.: MIA-CC-33-22-12375

SOCIETY,

* MIA No.: 2022-05-015

LICENSEE

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On February 24, 2022, the Maryland Insurance Administration (MIA) received a complaint from the Complainant regarding The Baltimore Equitable Society's (Licensee) proposed action to cancel the Complainant's homeowner's insurance policy (Policy). After an investigation, the MIA found that the Licensee's proposed action did not violate Maryland insurance law. On April 28, 2022, the Complainant requested a hearing. On May 24, 2022, the MIA transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a

contested case hearing. In its transmittal, the MIA delegated to the OAH authority to issue a proposed decision.¹

On September 8, 2022, I held a hearing at the OAH Administrative Law Building in Hunt Valley, Maryland. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017). The Complainant appeared without representation. Mary Harlee, President of The Baltimore Equitable Society, represented the Licensee, and she was accompanied by Lisa Stevenson, Director of Compliance.

The contested case provisions of the Administrative Procedure Act, the MIA's hearing regulations, and the OAH's Rules of Procedure govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 31.02.01; and COMAR 28.02.01.

ISSUE

Does the Licensee's proposed cancellation of the Complainant's Policy comply with Maryland insurance law?

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire MIA file, consisting of seven exhibits, into the record as follows:

1. Complaint, February 24, 2022, and related email correspondence
2. MIA correspondence to Licensee, March 3, 2022
3. Licensee correspondence to MIA, with attachments, March 3, 2022
4. Licensee correspondence to MIA, March 31, 2022
5. MIA correspondence to Complainant, March 31, 2022
6. Complainant correspondence to MIA, April 28, 2022

¹ The Insurance Commissioner may delegate to the OAH the authority to issue: (a) proposed or final findings of fact; (b) proposed or final conclusions of law; (c) proposed or final findings of fact and conclusions of law; or (d) a proposed or final order. Code of Maryland Regulations (COMAR) 31.02.01.04-1A.

7. MIA correspondence to Complainant and Licensee, May 3, 2022

Neither the Complainant nor the Licensee submitted any additional exhibits.

Testimony

Ms. Harlee testified for the Licensee.

The Complainant testified on her own behalf.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Complainant's Policy has been in effect since December 1983. (MIA Ex. 3.)
2. On October 25, 2008, the Complainant's property was inspected by the Licensee for insurance purposes. (MIA Ex. 4.)
3. Policy coverage continued after the October 25, 2008, inspection.
4. On September 3, 2021, the Complainant's property was inspected by the Licensee for insurance purposes.
5. The September 3, 2021, inspection revealed significant issues, to include:
 - Detached garage damage – missing wood, peeling paint, missing mortar and brick, missing garage door windowpane
 - Missing roof shingles
 - Front porch paint peeling on door frame, underneath porch roof and iron railing
 - Excessive clutter throughout the home specifically, dining room, bedrooms and basement
 - Missing grout in tub and shower and visible damage to ceiling
 - Oil tank excessive rust
 - Damage to basement wall and ceilings
 - Water damage to basement wall and ceiling
 - Upper rear porch damage – missing wood on porch and excessive rust underneath porch

(MIA Exs. 1 and 3.)

6. The condition of the property at the time of inspection was memorialized in a plethora of photographs. (MIA Ex. 3.)

7. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if there exists damage to porches, sheds, doors and windows that prevents intended function. (*Id.*)

8. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if there exists damaged wood on the exterior of the dwelling or other structure such that it is not performing its intended purpose. (*Id.*)

9. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if there exists missing tub and/or shower grout. (*Id.*)

10. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if there exists non-cosmetic visible ceiling, wall and/or flooring damage. (*Id.*)

11. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if the roof is damaged. (*Id.*)

12. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if the home contains excessive clutter. (*Id.*)

13. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if any home appliance that holds liquid displays excessive rust. (*Id.*)

14. The Licensee's underwriting standards provide that it will not continue any homeowner's policy if the foundation is visibly weakened. (*Id.*)

15. The Licensee deemed the issues identified in the September 3, 2021, inspection as indicative of a substantial decline in the condition of the property and representative of an

increased hazard in contravention of the Licensee's underwriting standards. (Testimony, Ms. Harlee.)

16. On October 6, 2021, the Licensee telephoned the Complainant to advise that the Licensee would be canceling the Policy, but that the required 45-Day Notice would not issue until January 2022 to avoid receipt of the notice during the holiday season and to afford the Complainant an opportunity to make necessary repairs. (*Id.*; Testimony, Ms. Harlee.)

17. The Complainant did not make necessary repairs. (Testimony, Complainant.)

18. On January 14, 2022, the Licensee mailed a cancellation notice via United States Postal Service (USPS) Certified Mail to the Complainant, advising that the coverage would cancel effective February 28, 2022. The notice was delivered by USPS Certified Mail on January 25, 2022. (MIA Exs. 1 and 3.)

19. On February 24, 2022, the MIA received a complaint from the Complainant regarding the Licensee's proposed cancellation. The MIA directed the Licensee to hold the Policy in effect pending a final determination in this matter.² (MIA Ex. 1.)

20. The Licensee's standards do not contemplate coverage for the additional exposure presented by the condition of the Complainant's property. Continuation of coverage for such additional exposure will adversely affect the Licensee's losses and expenses.

21. The Licensee's application of its underwriting standards to the Complainant's Policy is reasonably related to its economic and business purposes.

22. At the time of the hearing, the Complainant had not made any substantial repairs to the condition of her property. (Testimony, Complainant.)

² See Md. Code Ann., Ins. § 27-501(f) (Supp. 2021).

DISCUSSION

When the MIA referred this case to the OAH, it directed the Administrative Law Judge conducting the hearing to pay specific attention to sections 27-501, 27-602 and 27-604 of the Insurance Article.

An insurer or insurance producer may not cancel, or refuse to underwrite or renew, a particular insurance risk or class of risk unless it can show that its standards are “reasonably related to the insurer’s economic and business purposes.” Ins. § 27-501(a)(2) (Supp. 2021).³ In order to meet this requirement, an insurer must either employ statistical validation or adopt standards that the legislature has deemed reasonable *per se* by virtue of statutory enactment. Such standards are set forth in section 27-501 of the Insurance Article and include:

(j) *Reasonable standards.* —

(1) In the case of homeowner’s insurance, standards reasonably related to an insurer’s economic and business purpose under subsection (a)(2) of this section, include, but are not limited to, the following and do not require statistical validation:

(i) a material misrepresentation in connection with the application, policy, or presentation of a claim;

(ii) nonpayment of premium;

(iii) a change in the physical condition or contents of the premises or dwelling which results in an increase in a hazard insured against and which, if present and known to the insurer prior to the issuance of the policy, the insurer would not have issued the policy;

(iv) conviction:

1. within the preceding 5-year period, of arson; or

2. within the preceding 3-year period, of a crime which directly increases the hazard insured against;

(v) subject to subsection (i) of this section, the claims history of the insured where the insured makes more than three claims in the preceding 3-year period;

(vi) subject to subsection (o)(2) of this section, any other standard approved by the Commissioner that is based on factors that adversely affect the losses or expenses of the insurer under its approved rating plan and for which statistical validation is unavailable or is unduly burdensome to produce; and

³ Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2021 Supplement to the 2017 Replacement Volume of the Maryland Annotated Code.

(vii) subject to subsection (o)(2) of this section, any other standard set forth in regulations adopted by the Commissioner that is found to be reasonably related to the insurer's economic and business purposes.

(2) An insurer is not required to produce statistical validation that excludes weather-related claims or that makes any distinction between weather-related claims and nonweather-related claims in order to sustain the insurer's burden of persuasion under subsection (g) of this section with respect to a cancellation or refusal to renew for a reason that is not listed in this subsection.

Id. § 27-501(j); *see also* COMAR 31.15.10.02; COMAR 31.15.10.04.

The burden of persuasion "is on the insurer to show that the cancellation or refusal to underwrite or renew is justified under the underwriting standards demonstrated." Ins. § 27-501(g). When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the Licensee bears the burden of proof by a preponderance of the evidence. COMAR 28.02.01.21K(1).⁴

The Licensee's President, Ms. Harlee, testified that the Licensee has had a relationship with the Complainant and her family for over fifty years. The Complainant has been a valued insured. However, the present condition of the Complainant's property exceeds the Licensee's underwriting standards. Ms. Harlee explained that homeowners are required to perform regular upkeep, maintenance and repair of their properties. The September 3, 2021, inspection photographs are shocking and clearly evidence the property's deterioration and perilous

⁴ At the hearing, I incorrectly stated that the Complainant bears the burden of proof in this matter. All evidence was evaluated for this Proposed Decision with the knowledge that the Licensee bears the burdens of proof and persuasion by a preponderance of the evidence.

condition.⁵ As example of what the photographic evidence depicts: clutter fills rooms nearly to the ceiling, such that there is no place to stand or sit and doors cannot open fully; floor, wall and ceiling damage are evident; staircase carpets are significantly frayed and littered with bags attached to the railing and personal effects on the landings and steps; there is a rusty oil tank in the basement; an unusable wash closet is filled with shopping bags; tiles are broken and missing in the bathroom; there exists significant peeling of exterior and interior paint as well as rotted wood; porch fascia has fallen; roof shingles are missing; a basement access is door covered with tarp and cinderblock; vegetation impedes exterior stairway access; the garage entry door has broken door louvers and a screen torn and hanging from its frame; and, the garage is missing mortar and brick.

The Licensee's underwriting guidelines for existing policies, which I conclude are reasonably related to its economic and business purposes, indicate that these issues render the Policy ineligible for continued coverage. The demonstrated change in the property's physical condition has resulted in an increase in a hazard insured against. There is a myriad of legitimate concerns for the Licensee, including water issues, increased fire risk, and risk of oil seepage.

Pursuant to section 27-602(b) of the Insurance Article, cancellation notices must "notify the insured of the possible right of the insured to replace the insurance under the Maryland Property Insurance Availability Act or through another plan for which the insured may be eligible." The Licensee's January 14, 2022, notice complied with this provision of law. (MIA Ex. 1.) Section 27-602(c) of the Insurance Article required the Licensee's notice to have been sent at least forty-five days before the proposed date of cancellation. There are exactly forty-five days between January 14, 2022, and the Licensee's proposed cancellation date of February 28,

⁵ The property was not remotely near its present condition at the time of the Licensee's October 25, 2008, inspection. (MIA Ex. 4.)

2022. Further, as required by Section 27-602(c), the Licensee maintained proof of mailing.

(MIA Ex. 3.)

Finally, Section 27-602(c)(5)(i)(3) of the Insurance Article provides that an insured may not cancel a policy midterm except when there exists “a change in the condition of the risk that results in an increase in the hazard insured against[.]” As explained above, the Licensee’s evidence so demonstrates.

The Complainant acknowledged that the condition of her property is fairly depicted in the Licensee’s photographs. She testified that she has obtained roof, oil company, and handyman repair and/or replacement estimates. However, she has taken no action other than attempting to tackle some of the clutter, which she conceded would not appear as much progress. She presented as overwhelmed with the magnitude of the property issues identified by the Licensee. When discussing her rusted oil tank, the Complainant testified about her consideration of electric and gas alternatives with paralyzing indecision. Although she argued that she has made good faith efforts to address the Licensee’s concerns by securing proposals and estimates, she has been on notice of the concerns since October 2021 when she was notified by telephone of the Licensee’s intended cancellation action. Yet, even by the September 2022 hearing date, she had not remedied or contracted to remedy any major area of concern. For this reason, I agree with the Licensee that she has not made good faith efforts to come into compliance with the underwriting guidelines.

CONCLUSION OF LAW

Based upon the above Findings of Fact and Discussion, I conclude as a matter of law that the Licensee’s proposed non-renewal complies with the requirements of the Maryland insurance law. Md. Code Ann., Ins. §§ 27-501, 27-602, 27-604 (2017 & Supp. 2021).

PROPOSED ORDER

I PROPOSE that the Licensee is PERMITTED to put its proposed action into effect.

September 14, 2022
Date Decision Issued

signature on original
Tracey Johns Delp
Administrative Law Judge

TJD/cj
#200623

RIGHT TO FILE EXCEPTIONS

Upon receipt of this proposed decision, affected parties have twenty (20) days to file exceptions with the Insurance Commissioner. COMAR 31.02.01.10-1B(1). If a party wishes to receive a transcript of the hearing before filing exceptions, the party has ten (10) days from receipt of the decision to either: 1) file a written request for a transcript with the Insurance Commissioner, or 2) request a transcript of the hearing from a private stenographer and file a copy of their written request to a private stenographer with the Insurance Commissioner. COMAR 31.02.01.10-1B(2). If a transcript is requested, the transcript must be filed with the Commissioner within sixty (60) days of the request, and then a party has thirty (30) days after the filing of the transcript to file exceptions. COMAR 31.02.01.10-1D. Written exceptions and requests for transcripts should be addressed to: Hearing and Appeals Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

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