

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

MARYLAND INSURANCE
ADMINISTRATION
*EX REL R.G.*¹,

Complainants,

v.

LIBERTY MUTUAL PERSONAL
INSURANCE COMPANY,

Licensee.

* REVIEW OF A RECOMMENDED
* DECISION ISSUED BY
* CARLTON A. CURRY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MIA-CC-33-22-31751
* MIA No.: MIA-2022-11-021

* * * * *

FINAL ORDER

Pursuant to Md. Code Ann., Ins. § 2-210(d) and COMAR 31.02.01.10-2H, the undersigned Maryland Insurance Commissioner, hereby issues this **summary affirmance** of the proposed decision below.

On February 22, 2023, this case was heard by Administrative Law Judge (“ALJ”) Curry. On March 24, 2023, the ALJ issued a Proposed Decision, and on the same date the Office of Administrative Hearings mailed the Proposed Decision to the parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions advising all 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.

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

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Curry. In consideration thereof, and pursuant to COMAR 31.02.01.10-2D, I am persuaded that the result reached by the ALJ is correct. This Proposed Decision which is summarily affirmed under COMAR 31.02.01.10-2H is not precedent within the rule of *stare decisis* in other cases.

On page 12 of the Proposed Decision ALJ Curry proposes that “the Licensee not be found in violation of sections 4-113 or 27-303 of the Insurance Article and that the complaint made by the Complainant be **DENIED AND DISMISSED.**” I find it necessary to clarify the disposition of the case. Rather than dismissing the Complaint, I conclude that the determination issued by the Maryland Insurance Administration shall be hereby **AFFIRMED** based on the Findings of Fact and Discussion provided by ALJ Curry.

THEREFORE, it is hereby

ORDERED that the Proposed Decision of ALJ Curry be adopted as the Commissioner’s Final Order, and it is further

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

It is so **ORDERED** this 8th day of May, 2023.

KATHLEEN A. BIRRANE
Commissioner

Tammy R. J. Longan

TAMMY R.J. LONGAN
Acting Deputy Commissioner

MARYLAND INSURANCE

* BEFORE CARLTON A. CURRY,

ADMINISTRATION

* AN ADMINISTRATIVE LAW JUDGE

EX REL.

* OF THE MARYLAND OFFICE

R.G.,¹

* OF ADMINISTRATIVE HEARINGS.

COMPLAINANT

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v.

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LIBERTY MUTUAL PERSONAL

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INSURANCE COMPANY,

* OAH No.: MIA-CC-33-22-31751

LICENSEE

* MIA No.: 2022-11-021

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On September 7, 2022, the Maryland Insurance Administration (MIA) received a complaint from the Complainant alleging unfair claim settlement practices by Liberty Mutual Personal Insurance Company (Licensee). Specifically, the Complainant alleges that the Licensee denied a claim under her homeowner's insurance policy for damages to a garage door and appliances.

After an investigation, the MIA found that the Licensee did not violate sections 4-113 (b)(5) or 27-303 (1), (2), or (6) of the Insurance Article and notified the Complainant of its

¹ The Complainant's initials are used to protect her confidentiality.

finding by a letter dated November 18, 2022. On November 21, 2022, the Complainant requested a hearing. On December 14, 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.²

On February 22, 2023, I held a hearing at the OAH in Hunt Valley, MD. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022),³ COMAR 31.15.07. The Complainant represented herself. Moyah Panda, Esquire, represented the Licensee.

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; COMAR 28.02.01.

ISSUE

Did the Licensee engage in any unfair claim settlement practice under the Insurance Article?

SUMMARY OF THE EVIDENCE

Exhibits

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

1. Letter from the Complainant to the Licensee and the MIA, August 29, 2022
2. Letter from the MIA to the Licensee, September 22, 2022
3. Letter from the Licensee to the MIA, October 13, 2022, with attachments:
 - Cover letter, summary of the history and claim status, October 13, 2022
 - Claim file/log, May 18, 2022, to September 26, 2022
 - Various correspondence, various dates

² 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.

³ Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2017 Replacement Volume and 2022 Supplement of the Maryland Annotated Code.

- Copy of Homeowner's Policy, Policy Number H3V-231-423536-75 2 5, effective March 24, 2022, through March 23, 2023
 - First Notice of Loss Record, printed October, 13, 2022
 - Transcribed First Notice of Loss Call, May 18, 2022
 - Photographs, undated
 - Payment Ledger, undated
4. Letter from the MIA to the Complainant, November 18, 2022
 5. Letter from the Complainant to the MIA, November 18, 2022
 6. Letter from the MIA to the Complainant, Notice of Request for Hearing and Final Determination, November 23, 2022

I admitted the following exhibits offered by the Complainant:

- Compl. Ex. 1 - Photograph of the exterior of the Complainant's garage, undated
- Compl. Ex. 2 - Photograph of the interior of the Complainant's garage, undated
- Compl. Ex. 3 - Photograph of the interior of the Complainant's repaired garage door, undated
- Compl. Ex. 4 - Photograph of the exterior of the Complainant's repaired garage door, undated
- Compl. Ex. 5 - Atlantis Garage Doors estimate, Invoice # 0879, undated
- Compl. Ex. 6 - Liberty Mutual Insurance Coverage Information, undated
- Compl. Ex. 7 - Not admitted⁴
- Compl. Ex. 8 - Not admitted
- Compl. Ex. 9 - Email from Gina Lavoie to the Complainant, May 27, 2022
- Compl. Ex. 10 - Correspondence from the Complainant to the Licensee and the MIA with attachments, August 29, 2022
- Letter from the Complainant to the Licensee, August 8, 2022
 - Amarr site notes, August 4, 2022
 - Order confirmation, doorson-line.com, undated
 - Email from the Complainant to Gina Lavoie, May 26, 2022
- Compl. Ex. 11 - Emails between the Complainant and Gina Lavoie, May 20, 2022

The Licensee did not offer any exhibits.

⁴ Exhibits not admitted are retained with the file.

Testimony

The Complainant testified and did not present other witnesses.

Caleb Murthy, Claims Specialist, testified for the Licensee.

FINDINGS OF FACT

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

1. The Complainant had a homeowner's insurance policy in full force and effect with the Licensee for the policy period of March 24, 2022, through March 23, 2023.
2. On May 18, 2022, the Complainant submitted a claim for damage to a garage door that allegedly occurred at her residence on May 2, 2022. The Complainant's initial contact with the Licensee was a telephone call, which was recorded.
3. During the May 18, 2022 telephone call, the Complainant did not mention weather or wind as causing the damage to the garage door.
4. On May 19, 2022, the Licensee contacted the Complainant and informed her of the denial, based on the information provided.
5. On the same day, the Licensee issued a letter of denial. The denial letter relied on the exclusion for coverage for:

c. Faulty, inadequate or defective:

1. Planning, zoning, development, surveying, siting;
2. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
3. Materials used in repair, construction, renovation or remodeling; or
Maintenance;

of any part or all of any property whether on or off the “residence premises.” MIA Ex. 3, Denial Letter, dated May 19, 2022.

6. The Licensee did not send anyone to physically inspect the Complainant’s garage.
7. Between May 20, 2022, and May 27, 2022, the Licensee and Complainant had email communications regarding the claim denial.
8. On May 26, 2022, the Complainant sent an email to the Licensee indicating the damage to the garage door was caused by a weather event. Specifically, the letter stated “BY [sic] now, you should have known the high wind and rain turbulence picked up the single garage door and flipped it. Therefore, it fell off the track and hinges there.” Compl. Ex. 10.
9. On September 7, 2022, the MIA received a complaint from the Complainant that the Licensee failed to cover damage to the garage door and appliances inside the garage as a result of a high wind and rainstorm.

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 4-113 and 27-303 of the Insurance Article. Section 4-113(b)(5) provides that the Insurance Commissioner may suspend, refuse to renew, or revoke an insurer’s certificate of authority if the insurer “refuses or delays payment of amounts due claimants without just cause.” Ins. § 4-113(b)(5) (Supp. 2022). Section 27-303 lists ten unfair claim settlement practices. Md. Code Ann., Ins. § 27-303 (2017). The MIA decision letter referenced Subsections 1, 2, and 6 of Section 27-303. Section 27-303(1) prohibits an insurer from misrepresenting pertinent facts or policy provisions that relate to the claim or coverage at issue. Section 27-303(2) prohibits an insurer from refusing to pay a claim for an

“arbitrary or capricious reason.” Section 27-303(6) prohibits an insurer from failing to promptly provide, when requested, a reasonable explanation of the basis for a denial of a claim.

The Insurance Commissioner may impose a penalty not exceeding \$2,500.00 for each violation of section 27-303 and may require an insurer to 1) make restitution, subject to the limits of any applicable insurance policy, to each claimant who has suffered actual economic damage because of the violation or 2) provide a claimant a payment that has been determined to be denied in violation of the unfair claim settlement practices section of the Insurance Article. *Id.* § 27-305(a)(1), (c)(1), (2) (Supp. 2022).

Neither the statute nor any regulation promulgated by the MIA defines the “arbitrary or capricious” standard. In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Appellate Court of Maryland⁵ quoted from, and adopted, the Insurance Commissioner’s interpretation of the “arbitrary and capricious” standard in an earlier MIA case:

[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 [Insurance Article section] 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.

142 Md. App. 628, 671 (2002) (citations omitted). As used in section 27-303 of the Insurance Article, “arbitrary or capricious” essentially means without reason or just cause.

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, and the burden of proof rests on the party making an assertion or a claim. State Gov’t § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to

⁵ Effective December 14, 2022, the Maryland Court of Special Appeals was renamed the Appellate Court of Maryland.

show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). In this case, the Complainant, as the party asserting the affirmative on the issue of an unfair claim settlement practice, has the burden of proving by the preponderance of the evidence that the Licensee acted arbitrarily and capriciously in denying the claim. COMAR 28.02.01.21K(1), (2)(a).

Complainant’s Position and Testimony

The Complainant contends that the Licensee engaged in unfair claims settlement practices by denying a claim related to her damaged garage door, which was covered under her homeowner’s policy. The Complainant asserts the damage to the garage door was due to wind damage, not mechanical failure, and that the Licensee arbitrarily denied the claim without inspecting the property. Further, the Complainant contends that she had difficulty communicating with the Licensee.

The Complainant testified regarding the Licensee’s processing of the claim. She testified she briefly spoke with Mr. Murthy on the telephone while shopping and subsequently forwarded pictures to the Licensee. After the initial claim denial, the Complainant asked to speak with Mr. Murthy’s supervisor. The Complainant testified that the denial was not due to hardware, as the hardware was only three years old. She expressed frustration that the Licensee did not send someone out to view the damage and that the Licensee never apologized.

The Complainant also testified of her extensive efforts to have the garage door replaced and her interaction with several contractors. She testified that the cost of the repair exceeded the \$1,500.00 deductible per her homeowner’s policy and that she assisted the contractor with the physical work of replacing the door to expedite the process.

In her testimony, the Complainant acknowledged that she never sent any weather information to the Licensee concerning her claim.

Licensee's Position and Witness Testimony

The Licensee's position is that it made a reasonable decision based on the evidence it had at the time of the decision, and while the Complainant may disagree with that decision, it was not arbitrary or capricious and the Licensee did not violate any provision of the Insurance Article.

Caleb Murthy is a claims specialist for the Licensee. He has been in his current position with the Licensee for more than two years, serving as an adjuster for home, condo, and apartment claims. He handles twenty to twenty-five new claims a week.

Mr. Murthy did not take the initial information regarding the claim. However, Mr. Murthy testified that he reviewed the file and the Complainant's recorded statement of May 18, 2022, and contacted the Complainant on May 19, 2022. Mr. Murthy testified that he informed the Complainant that the claim was not covered because of the mechanical exclusion. Mr. Murthy further testified that the Licensee's determination was based on the initial information provided by the Complainant and the Licensee did not send anyone to inspect the property. According to Mr. Murthy, the Complainant provided the Licensee with no information or evidence that a weather event caused the damage to the garage door.

Analysis

Section 4-113(b)(5) of the Insurance Article provides that the Insurance Commissioner may suspend, refuse to renew, or revoke an insurer's certificate of authority if the insurer "refuses or delays payment of amounts due claimants without just cause."

The Complainant failed to establish that the Licensee refused or delayed payment of amounts due to her without just cause. The Complainant first initiated her claim on May 18,

2022. On May 19, 2022, the Complainant provided the Licensee with additional information regarding damage to her garage door. On the same day, Mr. Murthy informed the Complainant that her homeowner's policy did not cover loss caused by wear, tear, or faulty, defective, or mechanical breakdown. MIA Ex. 3.

Once the Complainant received the initial denial of her claim, she requested a supervisor. The Complainant testified, and the evidence supports, that between May 20, 2022 and May 27, 2022, emails were exchanged between the Complainant and Gina Lavoie, Mr. Murthy's supervisor. In a May 20, 2022 email, Ms. Lavoie stated,

In looking at the claim, the garage door fell or failed to continue, working at this time there is no direct impact or reasoning for this other than age or wear etc. [sic] Based on listening to the conversations and reviewing the file notes, I am in agreement with the coverage decision.

Compl. Ex. 11. Further, after the Complainant asserted a weather event caused the damage to the garage door, Ms. Lavoie noted in an email dated May 27, 2022, "you filed the claim as a 'collapse' and not with regards to any mention of wind or weather." Compl. Ex. 9.

The Licensee timely communicated with the Complainant and articulated clear reasoning as to why the Licensee denied the claim. The Complainant has failed to establish the claim denial was delayed or without cause.

Similarly, while the MIA analyzed the complaint under Section 27-303(6), the Complainant did not present any evidence during the hearing or make any argument during the hearing that the Licensee failed to promptly provide a reasonable explanation for the basis of the denial upon request. The MIA file provided evidence of the denial and the claims log included multiple conversations between the Licensee and the Complainant where the basis for the denial was discussed. MIA Ex. 3. The Complainant also provided evidence that the Licensee promptly communicated via email following the filing of the claim. Compl. Exs. 9, 10 and 11. While the

Complainant did not agree with the denial, there was no evidence that the Licensee failed to provide an explanation.

There was no evidence that the Licensee misrepresented policy provisions that relate to the claim or coverage, under Section 27-303(1). The claim log indicates that on May 19, 2022, the Complainant and adjustor discussed that the claim would be denied due to mechanical breakdown and wear and tear of the garage door materials. MIA Ex. 3. The May 19, 2022 denial letter contains specific sections of the homeowner's policy the Licensee invoked to deny the Complainant's claim. When the Complainant expressed dissatisfaction with the initial determination that garage door damage was excluded from coverage, a Licensee supervisor reviewed the denial and communicated directly with the Complainant. The supervisor determined the claim was properly denied based on a review of the claim file. Compl. Ex. 11. Further, the Complainant testified that the Licensee provided additional copies of the homeowner's policy upon request. Having reviewed the homeowner's policy, I do not find that the Licensee misrepresented any pertinent facts that relate to the claim or coverage at issue under Section 27-303(1).

Finally, I must consider whether the Licensee refused to pay the Complainant's claim for an arbitrary or capricious reason. I find that it did not. Mr. Murthy testified that the decision to deny the claim was based on information provided by the Complainant on May 18 and 19, 2022. Upon secondary review, the Licensee determined the initial claim denial was appropriate. On May 20, 2022, in corresponding with the Complainant, the Licensee offered, "[i]f there is evidence of a sudden event which caused the door to fall/fail to work then we can absolutely re-evaluate the coverage position for this claim. . . ." Compl. Ex. 11. Subsequently, in an email on

May 26, 2022, the Complaint first mentions that a weather event occurred, causing damage to the garage door. Compl. Ex. 10.

At the hearing, the Complainant testified that there was a wind gust, as she was opening the garage, causing the damage to the door. Unfortunately, the Complainant provided no evidence concerning weather to the Licensee or at the hearing. Even so, my determination is not predicated on whether I would have come to the same conclusion as the Licensee. Instead, my decision is whether the Licensee acted arbitrarily and capriciously, or without reason or without just cause, in making this decision. The Complainant filed her initial claim on May 18, 2022, sixteen days after she alleged the damage occurred, and a determination was made to deny the claim on May 19, 2022. That determination was based on information provided by the Complainant. I do not find that the Licensee refused to pay the claim for an arbitrary or capricious reason.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by misrepresenting facts or policy provisions that relate to the claim or coverage. Md. Code Ann., Ins. § 27-303(1) (2017).

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by refusing to pay a claim for an arbitrary or capricious reason. Md. Code Ann., Ins. § 27-303(2) (2017).

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by failing to promptly provide a reasonable explanation for the basis of the denial upon request. Md. Code Ann., Ins. § 27-303(6) (2017).

I further conclude as a matter of law that the Complainant did not show that the Licensee refused or delayed payment of amounts due to the Claimant without just cause. Md. Code Ann., Ins. § 4-113(b)(5) (Supp. 2022).

PROPOSED ORDER

Based upon the above Findings of Fact, Discussion, and Conclusion of Law, I **PROPOSE** that the Licensee not be found in violation of sections 4-113 or 27-303 of the Insurance Article and that the complaint made by the Complainant be **DENIED AND DISMISSED**.

I further **PROPOSE** that the records and publications of the Maryland Insurance Administration reflect this decision.

March 24, 2023
Date Decision Issued

signature on original

Carlton A. Curry
Administrative Law Judge

CAC/ja
#204048v3

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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