

**BEFORE THE
MARYLAND INSURANCE ADMINISTRATION**

MARYLAND INSURANCE ADMINISTRATION

*

v.

LORI A. KEARSE

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Case No. MIA-2014-01-035

Respondent

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MEMORANDUM AND FINAL ORDER

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,¹ the Maryland Insurance Commissioner (Commissioner) concludes that Lori A. Kearse (Respondent) committed a fraudulent insurance act in violation of § 27-403(2). The Commissioner further concludes that pursuant to § 27-408(c) and Code of Maryland Regulations (COMAR) 31.01.04.02, the Respondent shall pay an administrative penalty in the amount of \$6,000.

STATEMENT OF THE CASE

This matter arises from a referral made pursuant to § 27-802(a)(1) by the Allstate Insurance Company (Allstate) to the Maryland Insurance Administration (MIA). After an investigation, the MIA concluded that the Respondent committed a fraudulent insurance act in violation of § 27-403(2) and on January 23, 2014, Ordered the Respondent to pay an administrative penalty in the amount of \$6,000 pursuant to § 27-408(c). (MIA Ex. #1.) The Respondent disagreed with this finding and timely requested a hearing on February 3, 2014, which was granted. (MIA Ex. #2.)

ISSUE

The issue presented in this case is whether the administrative penalty assessed by the MIA is appropriate under the facts and circumstances of this matter.

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

SUMMARY OF THE EVIDENCE

A. Testimony

The hearing in this matter took place on March 4, 2014. The Maryland Insurance Administration was represented by Assistant Attorney General Jeffrey Shelton. Alexandra Cordero, an investigator with the MIA Insurance Fraud Division, provided sworn testimony on behalf of the MIA. Kellie T. Barnes, Esq. of the Law Offices of Kellie T. Barnes represented the Respondent. Ms. Kears provided sworn testimony on her own behalf.

B. Exhibits

MIA Exhibits:

1. MIA Order dated January 23, 2014.
2. Request for Hearing.
3. MIA's pre-hearing statement.
4. Respondent's pre-hearing statement.

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, by a preponderance of the evidence, to be true. 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.

At the hearing, the parties advised that they had previously reached a stipulation of liability as to the content of the January 23, 2014, Order and the violation. Only those facts that are relevant to the issue in this matter are set forth.

1. At all relevant times, the Respondent's 2001 Oldsmobile Bravada was insured under a policy issued by Allstate, policy number [REDACTED] with an effective date of April 2, 2013 through November 15, 2013.
2. The Respondent reported the theft of the Oldsmobile's tires and rims to Allstate on May 14, 2013, and provided a copy of a receipt showing that she had purchased for cash four 22-inch Asanti front and rear chrome rims and four Nitto tires from Auto Effects, Inc. on May 25, 2011, for \$5,828 plus sales tax of 3.584% for a total of \$6,037.50.

3. Although Auto Effects, Inc. was no longer in business, Allstate provided a copy of the receipt to the owner of the former business who advised that it was not an authentic receipt.
4. Allstate informed Kearsé of the allegation that the receipt was a forgery and she responded that the receipt she submitted to Allstate was the one she was given and the owner of Auto Effects, Inc. was lying.
5. Allstate denied the claim on the basis of "fraud or material misrepresentation."
6. Had Allstate paid the claim, it would have paid \$3,814.05 based on depreciation and a deductible of \$500.
7. On October 22, 2013, the MIA interviewed Kearsé, who again asserted that the receipt she submitted to Allstate was the one she received from Auto Effects, Inc. The Respondent asserted seven times during the investigation that this was the original receipt that was received. (T. at 19.)
8. Ms. Kearsé submitted a fabricated receipt to Allstate for financial gain and continued to support the false claim by asserting that the invoice was true when it was not.
9. The Respondent's conduct was dishonest and duplicitous.
10. On January 23, 2014, the Commissioner Ordered Ms. Kearsé to pay an administrative penalty of \$6,000.

DISCUSSION

A. Position of Parties.

The MIA asserts that Ms. Kearsé knowingly presented a receipt containing false information in support of her claim. Further, that she maintained her lie during two investigations, made a total of seven statements regarding her loss and the receipt, and alleged that the owner of Auto Effects, Inc. was a liar. Moreover, Ms. Kearsé failed to come forward with the truth until after the January 23, 2014, Order was issued. The MIA acknowledges that Ms. Kearsé does not have a criminal history and there was no record of any prior offenses or insurance violations. After taking all of this into consideration, the MIA concluded that a \$6,000 administrative penalty was appropriate.

According to Ms. Kearsé, she is financially unable to pay an administrative penalty of \$6,000. Ms. Kearsé contends that someone gave her some tires and a person from AAA was nice enough to put them on her car. She contends that her financial situation is very tight right now and that she is remorseful for making a very bad decision, never anticipating that it would lead to all of this. Finally, the Respondent asserts that her tires were in fact stolen and she was entitled to have them replaced under her

insurance policy, but because she made a very bad decision to submit a claim for more than she was entitled to, she was not reimbursed for her tires and is now responsible for paying a \$6,000 penalty.

The burden of persuasion in this case is by clear and convincing evidence. It rests with the MIA to demonstrate that the Respondent committed a fraudulent insurance act in violation of § 27-403. On a showing of clear and convincing evidence that a violation has occurred, the Commissioner may impose an administrative penalty not exceeding \$25,000 for each act of insurance fraud.

B. Statutory Framework

Title 27, Subtitle 4 of the Insurance Article describes “fraudulent insurance acts” and the penalties therefor. Section 27-403(2) provides the following –

It is a fraudulent insurance act for a person:

(2) to present or cause to be presented to an insurer documentation or an oral or written statement made in support of a claim . . . with knowledge that the documentation or statement contains false or misleading information about a matter material to the claim.

Section 27-408 sets forth the penalties that may be imposed. According to § 27- 408(c),

(c) Administrative penalty. --

(1) In addition to any criminal penalties that may be imposed under this section, on a showing by clear and convincing evidence that a violation of this subtitle has occurred, the Commissioner may:

- (i) impose an administrative penalty not exceeding \$ 25,000 for each act of insurance fraud; and
- (ii) order restitution to an insurer or self-insured employer of any insurance proceeds paid relating to a fraudulent insurance claim.

(2) In determining the amount of an administrative penalty, the Commissioner shall consider:

- (i) the nature, circumstances, extent, gravity, and number of violations;
- (ii) the degree of culpability of the violator;
- (iii) prior offenses and repeated violations of the violator; and
- (iv) any other matter that the Commissioner considers appropriate and relevant.

C. An administrative penalty of \$6,000 is appropriate based on the factors to be considered.

The Respondent’s culpability is not in dispute. She conceded just prior to the March 4, 2014, hearing that she committed the fraudulent insurance act as alleged in the January 23, 2014, Order and

there was no evidence to suggest that anyone other than the Respondent was involved in perpetrating the fraud. Ms. Kearsse's submission of the fabricated receipt was premeditated and there was a continuing effort on her part to lie for almost nine months. Despite being given numerous opportunities to tell the truth, the Respondent maintained during both the Allstate and MIA investigations that the receipt showing that she paid \$6,037.50 for the tires and rims was genuine.

In addition to § 27-408(c), Code of Maryland Regulations (COMAR) 31.01.04.02 sets forth five factors that must be taken into consideration in determining the amount of a financial penalty and provides as follows-

.01 Scope.

These regulations apply in any instance in which the Insurance Commissioner intends to impose a financial penalty.

.02 Requirements.

In determining the amount of the financial penalty to be imposed, the Commissioner shall consider the following:

- A. The seriousness of the violation;
- B. The good faith of the violator;
- C. The violator's history of previous violations;
- D. The deleterious effect of the violation on the public and the insurance industry; and
- E. The assets of the violator.

Ms. Kearsse testified that the \$6,000 penalty would cause her financial hardship. She testified that she made a very bad decision, was sorry, and that she is unable to pay a \$6,000 penalty due to other obligations. She failed, however, to offer any documentary evidence or details to support her assertions. Moreover, she testified that she is gainfully employed, has worked for the Library of Congress since 2007, and did not pay out of pocket for the vehicle's replacement tires and rims.

Ms. Cordaro credibly and persuasively testified that prior to Ordering Ms. Kearsse to pay a \$6,000 penalty, the MIA took into consideration that the Respondent had no prior offenses. (MIA Ex. #4.) The MIA further explained that although she was given every opportunity to tell the truth, the Respondent asserted seven times over the course of nine months, and during two separate investigations, that this was the original receipt that she received. Fraud is a serious violation and an intentional deception. The Respondent did not have a good faith belief that she was entitled to be reimbursed more

than the cost of the tires and rims and determined to exaggerate an otherwise legitimate claim for personal financial profit. Insurance fraud is not a victimless crime. Had Allstate paid the claim, the Respondent's fraud would have negatively affected the insurance company and, moreover, had negative repercussions for the company's policyholders in the form of increased premiums. Allstate did not pay the claim, but it and the MIA expended valuable investigative resources. The MIA assessed a \$6,000 penalty which is appropriate under the facts and circumstances of the instant matter.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, it is found, as a matter of law, that Lori A. Kearse violated § 27-403(2) and shall pay an administrative penalty therefor of \$6,000.

FINAL ORDER

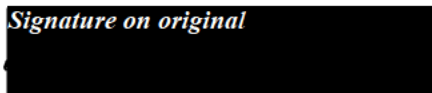
IT IS HEREBY ORDERED that

1. The determination of the Maryland Insurance Administration be and is hereby
AFFIRMED; and
2. Lori A. Kearse shall pay an administrative penalty of SIX THOUSAND DOLLARS (\$6,000) within thirty (30) days of the effective date of this Order and in accordance with the instructions set forth below; and
7. The records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 2nd day of April, 2014.

THERESE M. GOLDSMITH
Insurance Commissioner

Signature on original


NANCY GRODIN
Associate Deputy Commissioner

Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by invoice number, case number, and name. Unpaid penalties will be referred to the Central Collection Unit for collections. Payment of the administrative penalty shall be mailed to the

Melanie Gross, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD
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