

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

C.A,

*

Plaintiff,

*

v.

*

Case No. 27-1001-23-00007

**USAA CASUALTY INSURANCE
COMPANY,**

*

Defendant.

*

*

* * * * *

DECISION

This proceeding was initiated by C.A. (“Plaintiff”) under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that USAA Casualty Insurance Company (“Defendant”) breached its contractual obligations by failing to fully pay Plaintiff’s first-party claim for damages under the terms of Plaintiff’s homeowner’s insurance policy (the “Policy”). The first-party claim arose in connection with a May 4, 2021 storm, which caused damage to the Plaintiff’s home (“Dwelling”) located in Waldorf, Maryland. (“Claim”)

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has not demonstrated that Defendant breached its duty of coverage owed to Plaintiff by not paying the full amount of the losses claimed by Plaintiff.

I. STANDARD OF REVIEW

Section 3-1701 Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a

first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages pursuant to Section 3-1701, the insured must first submit a complaint to the Administration under Section 27-1001. Within ninety (90) days of the receipt of such complaint, the Administration must render a decision on the complaint that determines:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

“Good faith” is defined in § 27-1001 as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.”

Further, an insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov’t Art., section 10-217; *Md. Bd. Of Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On January 5, 2023, the Administration received Complaint No. 27-1001-23-00007 (the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleges that Defendant breached its obligations under the Policy by failing to pay the entire amount of damages sought by Plaintiff in connection with the May 4, 2021 storm. Plaintiff alleges that he hired Semper Fi Public Adjusters, (“Semper Fi”) to evaluate the Claim and to secure proper indemnification from Defendant and that on January 22, 2022, Semper Fi requested certain documentation from Defendant to evaluate the Claim. Further, Plaintiff asserts that Defendant rejected Semper Fi’s scope of work and reasonable requests for full indemnification on Plaintiff’s Claim, as Defendant does not believe that it is responsible for damage beyond the direct physical loss. As a consequence, Plaintiff asserts that the Claim remains severely underpaid, as the amount required to restore the Dwelling to its pre-loss condition is \$88,388.10, of which, Defendant has only agreed to pay \$7,048.91. Plaintiff contends that Defendant has breached its duty to act in good faith by failing to make an informed judgement on Plaintiff’s claim based on honesty and diligence supported by evidence Defendant knew or should have known at the time it denied the Claim. Specifically, Plaintiff alleges that Defendant’s decisions were not supported by evidence, that Defendant ignored the facts Plaintiff presented, refused to justify its position, refused to discuss or negotiate the Claim with Semper Fi, and failed to provide a certified copy of Plaintiff’s Policy to Semper Fi.

On January 12, 2023, as required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. Defendant requested and was granted an extension of time to submit its response to the Complainant. Defendant submitted its response to the Complaint and accompanying documents on February 10, 2023, as

required by Section 27-1001(d)(4), acknowledging that Defendant issued a homeowner's insurance policy to Plaintiff, which was in effect on May 4, 2021, and provided dwelling coverage.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the parties, and by a preponderance of the evidence, the Administration finds that Plaintiff has failed to establish that he is entitled to additional coverage for the Claim under the Policy.

At all relevant times, the Dwelling was covered under a homeowner's insurance policy (Policy number ending 99-32-90A) issued by Defendant to Plaintiff under policy number ending 99-32-90A ("Policy"), with a policy of \$352,000, subject to a \$500 deductible.

The Policy provides,

SECTION I – PERILS INSURED AGAINST COVERAGE A – DWELLING PROTECTION COVERAGE AND COVERAGE B – OTHER STRUCTURES PROTECTION COVERAGE

We insure against "sudden and accidental", direct, physical loss to tangible property described in PROPERTY WE COVER – Coverages A and B unless excluded in Section I – LOSSES WE DO NOT COVER.

....

LOSSES WE DO NOT COVER UNDER DWELLING PROTECTION AND OTHER STRUCTURES PROTECTION

1. Unless otherwise stated in 3. below we do not insure for damage consisting of or caused directly or indirectly by any of the following, regardless of:

...

f. Wear and tear, marring, deterioration;

....

On October 27, 2021, Plaintiff first reported to Defendant that a storm caused damage to the Dwelling on May 4, 2021. Based on Plaintiff's initial report of damage, Defendant opened the Claim and hired IAS Claims Services ("IAS") to conduct an inspection of the Dwelling.

Within a week after the Claim was reported by Plaintiff, Frank Boone ("Inspector Boone"), on behalf of IAS, conducted an inspection of the Dwelling on November 4, 2021. Inspector Boone then prepared an initial report of his inspection findings dated November 5, 2021. In his initial Loss Report, Inspector Boone noted the following,

The date of the inspection had to be rescheduled from 11/2/21 to 11/4/21 due to weather. When we arrived, we started the inspection and the roofer did not show. We rang the doorbell and asked the member if the roofer was on his way. [Plaintiff] advised his roofer could not make it and indicated he was supposed to call and let me know. I advised I had never heard from the roofer but we were finishing up the inspection. [Plaintiff] became upset and ordered us off the roof claiming we did not have his permission to be on his roof. I explained he granted this permission when we made the appointment for the inspection. We terminated the inspection at that time before obtaining all relevant photographs.

...

Found no storm related damage to the vinyl siding, windows, screens or gutters.

Dwelling/Building Roof: Found in excess of 12 wind damaged shingles mostly on the front slopes. We noted the markings from the roofer indicating hail damage however we found no sign of hail damage to the shingles, ridge vent or soft metals. We were unable to complete obtaining photos of all our marks and the damaged shingles since we were ordered off the property by the member. Later that day we received a call from an individual identifying himself as a P.A representing the member. We advised him to send his LOR to the carrier and upon receipt we would be in a position to discuss our findings but not before. He felt we were being difficult and hung up. Although we were unable to complete obtaining the photographs, we found enough wind damage to complete our estimate and review.

....

Inspector Boone prepared a revised Loss Report dated November 6, 2021, stating,

CLOSING SUMMARY AND RECOMMENDATIONS:

Reviewed and agreed with member on the scope of damages.

Reviewed with the member the claims process and tracking the estimate on USAA.com.

Member agrees with receiving funds through EFT.
No advance payments made

....

The Revised Loss Report dated November 6, 2021 also included a Statement of Loss, as follows,

STATEMENT OF LOSS:

Item	RCV	Dep	ACV	Limit
Dwelling	\$7,548.91	\$1,170.40	\$6,378.51	\$7,048.91
Contents	\$0.00	\$0.00	\$0.00	\$0.00
Other Structures	\$0.00	\$0.00	\$0.00	\$0.00
Loss of Use	\$0.00	\$0.00	\$0.00	\$0.00
TOTALS	\$7,548.91	\$1,170.40	\$6,378.51	

Deductible	\$500.00
Less Prior Payments	\$0.00
Claim Payable	\$7,048.91
Due Insured	\$7,048.91
Recoverable Depreciation Totals:	<u>\$1170.40</u>
Non-Recoverable Depreciation Totals:	<u>\$0.00</u>
Net Claim Without Rec. Depreciation:	<u>\$5,878.51</u>

On November 8, 2021, Defendant issued a payment to Plaintiff in the amount of \$5,878.51.

On November 30, 2021, Plaintiff submitted an estimate prepared by Rapid Restorations, LLC, to Defendant. The Rapid Restorations, LL estimate was completed on November 9, 2021. The estimate included the following line items: general demolition, framing and carpentry, insulation, masonry, moisture protection, roofing, scaffolding, siding, soffits, fascia, gutter, and windows, as well as overhead and profit. The Rapid Restorations, LLC estimate included repairs in the amount of \$29,142.95.

Defendant sent the Rapid Restorations, LLC estimate to Inspector Boone for review. Thereafter, on December 1, 2021, Defendant prepared a revised estimate to Plaintiff which increased the previous November 6, 2021 estimate by \$106.85.

On December 20, 2021, Joseph Kriner (“Adjuster Kriner”), on behalf of Semper Fi, sent an email to Defendant stating that is had previously sent emails to Defendant on November 5, 201, November 17, 2021, November 30, 2021, and December 1, 2021. Adjuster Kriner asserted that Defendant had ignored the previous emails and had not provided the requested documentation or a certified copy of the Policy. Additionally, Adjuster Kriner noted that a scope of work could not be completed without the requested documents.

On December 22, 2021, Defendant contacted Inspector Boone concerning the scope of damages to the Dwelling. Thereafter, Defendant also contacted Adjuster Kriner concerning the requested documentation. Adjuster Kriner again informed Defendant that the certified copy of the Policy would be needed in order to prepare a scope of work. Adjuster Kriner also requested a re-inspection of the Dwelling, as the initial inspection was not completed by Inspector Boone because Plaintiff ordered him to leave prior to completing the inspection.

Thereafter, IAS re-assigned the Claim to Badou Hadidane (“Inspector Hadidane”) in order to complete another inspection of the Dwelling, which took place on January 22, 2022. On the date of the inspection, Adjuster Kriner was present and informed Inspector Hadidane that the entire roof sheathing and all of the siding needed to be replaced. On January 23, 2022, Inspector Hadidane prepared a revised Loss Report and estimate, which increased the previous estimate by \$782.04. In his report, Inspector Hadidane noted that the revised amount was needed because the cost for the Ice & Water Barrier/Shield (IWS) was not inputted properly in the estimate previously prepared by Inspector Boone. Inspector Hadidane then provided the revised Loss

Report to Defendant on January 24, 2022. In Inspector Hadidane's January 23, 2022 report, he also noted the following,

Mr. Kriner is a licensed Public Adjuster in the State of Maryland. Upon receipt of his letter of representation I contacted his office and advised we had resolved the claim and submitted a request for a roof replacement before we knew of his involvement.

We later received a supplement request from Rapid Restoration in the amount of \$29,642.95. This proposal included replacement of 1,776.84 SF of sheathing, replacement of gutters and O&P in the amount of \$5,928.62 with no explanation as to the reason for deck replacement. We contacted the number listed on the proposal from Rapid Restoration (301-751-9133) and found this to be odd as the address listed on the estimate was 9631 C Harford Road #121 Baltimore, MD 21234. This exchange would normally be 410. We also noted there was no contractor license number on the estimate which is required. When we called the number, a woman advised she would not discuss the supplement request because the member was represented by a Public Adjuster and we needed to speak with him. I explained I was calling in response to the supplement request. She again refused to discuss this with me and hung up. Upon further review, I noted the supplement request was forwarded to USAA by the member, not the contractor or the P.A.

I called and discussed the issue with the P.A. Joseph L. Kriner of Semper FI P.A. LLC. Mr. Kriner advised there was no damage to the sheathing but it is part of a complete roofing system and it should be replaced along with the felt and shingles. If it was our position replacement was not necessary, he wanted it in writing citing the policy language and the letter should be on official USAA stationery. I explained my roll was simply to address the supplement request and re-inspect the additional damage if necessary. Since by his own admission there was no damage to the sheathing, there was nothing additional to inspect and I would be returning the file to the carrier to address the remainder of his concerns.

Mr. Kriner believed I was being rude and asked me to never call him again. It was clear Mr. Kriner was interested in developing some "bad faith" issues as he mentioned we were delaying the handling of the member's claim by not immediately agreeing to pay the additional funds requested.

....

On January 26, 2021, Defendant issued a supplemental payment in the amount of \$782.04, as the difference between the revised estimate amount prepared by Inspector Hadidane and the previous amount paid by Defendant. Then, on January 31, 2022, Defendant issued a partial denial letter stating,

Your claim for sheathing damage is not covered because your policy does not cover wear and tear damages.

Policy Provisions

The specific policy language, which is the basis for the denial, is located on: Page 15-16, Section 1, LOSSES WE DO NOT COVER, HO-9R (02) (07-08). The policy states:

SECTION I - LOSSES WE DO NOT COVER LOSSES WE DO NOT COVER UNDER DWELLING PROTECTION AND OTHER STRUCTURES PROTECTION.

1. Unless otherwise stated in 3. below we do not insure for damage consisting of or caused directly or indirectly by any of the following, regardless of:

f. Wear and tear, marring, deterioration;

....

On February 16, 2022, Defendant submitted a certified copy of the Policy to Semper Fi.

Since that time, Defendant has not received any further communication from Plaintiff, or Semper Fi, until the filing the Complaint.

IV. DISCUSSION

Plaintiff asserts that the claim remains severely underpaid. Specifically, Plaintiff alleges that Semper Fi's estimate to restore the Dwelling to its pre-loss condition is \$88,388.10 and that Defendant has willfully and consistently ignored facts of the claim and has underpaid Plaintiff's claim by a substantial amount totaling \$81,339.19. Plaintiff also asserts that the Policy was issued on an indemnity basis and that Defendant has acted improperly by only paying for direct losses.

First, the evidence demonstrates that Defendant diligently and promptly conducted its investigation Claim. Specifically, Defendant hired IAS to conduct the inspection of the Dwelling within a week after the Plaintiff reported the loss. Defendant then made an initial payment of \$5,878.51 on November 8, 2021. Within days after the initial payment was issued,

Plaintiff sent an estimate to Defendant prepared by Rapid Restorations, which Defendant sent to Inspector Boone to review. Thereafter, the estimate was revised and a second payment in the amount of \$106.85 was issued to Plaintiff. In December 2021, based in Semper Fi's request for a re-inspection of the Dwelling, as separate inspector, Inspector Hadidane, conducted another inspection of the Dwelling on January 22, 2022. Adjuster Kriner, on behalf of Semper Fi, was present on the date of the second inspection. Based on the Loss Report prepared by Inspector Hadinane and Adjuster Kriner's own admission, there was no damage to the sheathing of the roof. As Inspector Hadidane noted that the amount for the Ice & Water Barrier/Shield (IWS) was not inputted properly by Inspector Boone, a revised estimate was prepared, which increased the previous estimate by \$782.04.

Despite the conclusory allegations in the Complaint, Plaintiff has not offered any evidence that Defendant ignored the facts Plaintiff presented, refused to justify its position, or refused to negotiate the Claim with Semper Fi. Instead, the evidence demonstrates that Defendant conducted a diligent investigation of the Claim, which included all of the information Defendant received from two inspections of the Dwelling and the Rapid Restorations, LLC estimate submitted by Plaintiff.

Further, the gravamen of Plaintiff's Complaint is that Defendant was incorrect in stating that it only owes for "direct physical loss" under the Policy. In Maryland, insurance policies are construed like other contracts. *North River Ins. Co. v. Mayor & City Council of Balto.*, 343 Md. 34, 39, 680 A.2d 480, 483 (1996). Maryland follows the objective law of contract interpretation, and the rights and liabilities of the parties are determined by the terms of the agreement. *Maryland Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694-95, 114 A.3d 676, 681 (2015).

Here, the Policy specifically states that coverage will be provided for damage caused by “sudden and accident, direct, physical loss”. Accordingly, the Policy does not obligate Defendant to fix everything that is wrong with the Dwelling. Instead, the coverage is limited to those damages caused by “sudden and accident, direct, physical loss”. In this case, Plaintiff has also not referenced any provision of the Policy that would obligate Defendant to provide coverage for additional repairs not addressed in the Policy.

Based on these findings, Plaintiff has failed to meet his burden to prove that Defendant breached any obligation owed to him under the Policy or that he is entitled to any additional payment under the Policy.

V. CONCLUSIONS OF LAW

In accordance with Section 27-1001, the Administration concludes:

1. Plaintiff established by a preponderance of the evidence that Defendant issued to Plaintiff a dwelling coverage Policy obligating Defendant to pay a claim for damage to the Dwelling caused by the May 4, 2021 storm.
2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiff did not establish by a preponderance of the evidence that he is entitled to additional damages as a result of the claim.
4. Plaintiff did not establish by a preponderance of the evidence that Defendant breached its obligation under the policy to cover and pay the claim.
5. Since a breach is a necessary element of a failure to act in good faith, Plaintiff did not establish a failure by Defendant to act in good faith.
6. Plaintiff is not entitled to expenses and litigation costs.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED on this 12th day of April, that Defendant did not violate Section 27-1001 of the Insurance Article of the Maryland Annotated Code; and it is further

ORDERED that pursuant to Section 27-1001(f)(3), this Final Order shall take effect if no administrative hearing is requested in accordance with Section 27-1001(f)(1).

KATHLEEN A. BIRRANE

Insurance Commissioner

signature on original

Erica J. Bailey, Associate
Commissioner, Office of Hearings

APPEAL RIGHTS

If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration's decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. ART., §27-1001(f).