

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

**MARYLAND INSURANCE
ADMINISTRATION
EX REL. J.T.¹,**

Complainant

v.

Case No. MIA 2022-07-022

**CRESTBROOK
INSURANCE COMPANY,**

Licensee.

* * * * *

MEMORANDUM AND FINAL ORDER

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,² the Undersigned concludes that Crestbrook Insurance Company (“Licensee”) did not commit an unfair claim settlement practice in violation of § 27-303 or refuse or delay payment of amounts due without just cause in violation of § 4-113 in its handling of J.T.’s (“Complainant”) homeowner’s insurance claim.

STATEMENT OF THE CASE

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (“MIA”) on May 17, 2022. (MIA Exhibit (“Ex.”) 1.) Complainant alleged that Licensee improperly denied his homeowner’s insurance claim for damage to his home, which allegedly occurred as a result of hail on July 17, 2021. (*Id.*) After investigating the Complaint, the MIA’s Property and Casualty Unit determined that Licensee had

not violated the Maryland Insurance Article and notified the Parties of its findings by letter dated July 19, 2022 (“Determination”). (MIA Ex. 4.) The Determination included a notice of hearing rights for the Parties. (*Id.*) Complainant disagreed with this Determination and filed a timely request for a hearing, which was granted. (MIA Ex. 5 and 6.)

ISSUE

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

SUMMARY OF THE EVIDENCE

A. Testimony

A virtual hearing was held on November 10, 2022. Complainant was *pro se* and provided sworn testimony on his own behalf. Additionally, Will Fannin (“Mr. Fannin”), Complainant’s contractor, provided sworn testimony for Complainant. Licensee was represented by Douglas K. Schrader, Esquire, of Wharton, Levin, Ehrmantraut & Klein, P.A. Thomas Frankland (“Adjuster Frankland”) and Evgeny Nemirovsky (“Engineer Nemirovsky”) provided sworn testimony for Licensee.

B. Exhibits

MIA Exhibits³ (In Record)

1. Correspondence received from Complainant, dated May 17, 2022.
2. Letter of notification from MIA to Licensee, dated June 29, 2022.
3. Letter of response from Licensee to MIA, dated July 14, 2022.
4. Determination Letter from MIA to Complainant, dated July 19, 2022.
5. Hearing request from Complainant to MIA, dated July 21, 2022.
6. Letter notifying Parties of a Hearing from MIA, dated July 26, 2022.

Licensee’s Exhibits (In Record)

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.

1. Licensee Claim Log, dated February 7, 2022 through May 17, 2022.
2. Seek Now Inspection Summary, dated March 2, 2022.
3. Letter denying coverage from Licensee to Complainant, dated March 15, 2022.
4. NFC Engineer Report to Parties identifying interior leaks that would be covered, dated May 5, 2022.
5. Letter offering partial coverage from Licensee to Complainant, dated May 10, 2022.
6. Letter of settlement from Licensee to Complainant, dated May 17, 2022.

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. Complainant purchased a homeowner's insurance policy ("Policy") from Licensee under policy number HO0022611. (MIA Ex. 3, Policy form P1405 (05-16).) This Policy provided coverage for Complainant's residence in Owings Mills, MD, and was in force at all applicable times. (*Id.*)

3. The Policy provided coverage in pertinent part for the dwelling, with a limit of liability of \$1,712,000; other structures, with a limit of liability of \$342,400; and personal

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

property, with a limit of liability of \$1,198,400. (MIA Ex. 3, Policy Declarations pg. 2, form P1501 (11-15).) The Deductible was \$2,500 All Peril. (*Id.*)

4. With respect to Loss Settlement, the relevant Policy language states:

a. Covered losses to your property under Coverage A—Dwelling will be paid as follows:

(1) We will pay the cost of repair or replacement, without deduction for depreciation and without regard to the limit of liability shown on the Declarations.

(2) You agree to:

(a) Insure your Dwelling to at least one hundred percent (100%) of its replacement cost as determined by our replacement cost estimation or an inspection authorized by us.

b. Under Coverage B—Other Structures:

(1) We will pay the cost of repair or replacement, without deduction for depreciation and up to the limit of liability shown on the Declarations.

(MIA Ex. 3 (Policy pg. 16 of 26 form P1405 (05-16).)

5. The Policy contained the following pertinent exclusions:

**Property Exclusions
(Section I)**

1. We do not cover loss to any property resulting directly or indirectly from any of the following:

o. A fault, weakness, defect or inadequacy in the;

(1) Specifications, planning, zoning;

(2) Design, workmanship, construction, materials;

However, any ensuing loss to property described in Coverage A, B and C not precluded by any other provision in this policy is covered.

y. Gradual or Sudden Loss due to:

(1) wear and tear, marring, deterioration;

(2) Inherent vice, latent defect, mechanical breakdown;

(MIA Ex. 3 (Property Exclusion pg. 13-14 of 26 form P1405 (05-16).)

6. On February 7, 2022, Complainant contacted Licensee to report the loss. (Licensee (“Lic.”) Ex. 1 at 10; Transcript (“Tr.”) at 54.) The date of loss was reported as July 17, 2021. (Lic. Ex. 1 at 9.)

7. Complainant reported the loss as caused by a hail event, resulting in damage to Complainant’s roof and interior water leaks on ceilings in three rooms. (*Id.*) Complainant stated that he noticed a water drip in the second floor bath over his bathtub in October of 2021. (*Id.*) Later, two other rooms with water stains on the ceiling were noticed. (*Id.*) Complainant was advised by his contractor that these leaks were the result of hail damage to the roof. (*Id.*)

8. Also on February 7, 2022, Licensee advised Complainant that Ladder Now/Seek Now (“Seek Now”) would be contacted to schedule an inspection. (*Id.*) Seek Now would be responsible for photographing, measuring and marking any damage to be submitted for coverage review. (*Id.*)

9. On February 14, 2022, Seek Now called Complainant to reschedule its inspection with the Complainant, because additional equipment was needed to inspect portions of the roof. (Lic. Ex. 1 at 9; Tr. at 57-58.)

10. On February 16, 2022, Licensee’s Claim Log reports that Seek Now’s first inspector was not able to properly inspect the more difficult sections of the roof, due to lack of experience. (Lic. Ex. 1 at 9; Tr. at 57-58.)

11. On February 17, 2022, Licensee contacted Seek Now to determine the progress of the inspection. (Lic. Ex. 1 at 8.) The Complainant had instructed Seek Now to make arrangements to conduct the inspection with the supervision of Complainant’s contractor. (Lic.

Ex. 1 at 8; Tr. at 58.) Seek Now attempted to contact Complainant's contractor, but no calls were returned. (*Id.*)

12. On February 18, 2022, the Parties made arrangements for Seek Now to commence its inspection on February 24, 2022. (Lic. Ex. 1 at 8.)

13. On March 2, 2022, Seek Now concluded its inspection of the roof and submitted its initial report. (Lic. Ex. 2; Lic. Ex. 1 at 7-8.) Seek Now confirmed that the interior inspection of the house could not be conducted due to the Complainant's contractor informing Seek Now that it was not necessary. (Lic. Ex. 2 at 5; Lic. Ex. 1 at 7-8.) The Seek Now investigation determined that there was no wind or hail damage found on any slope of the roof. (Lic. Ex. 2 at 4; Tr. at 61-62.) Seek Now further stated that there was no storm related tree damage, missing shingles, or hail/wind damages to the hip and ridge, roof accessories or the valleys. (Lic. Ex. 2 at 3; Lic. Ex. 1 at 7-8.) Licensee noted in its Claim Log that heavy mechanical damage was observed on all surfaces. (Lic. Ex. 1 at 8.) Furthermore, a Corelogic analysis conducted on March 2, 2022 determined that there were no hail events within three miles of complainant's residence during the timeframe alleged. (*Id.*)

14. On March 15, 2022, the Licensee sent a denial letter to the Complainant stating that the investigation was completed and it determined that the "loss was caused by wear/tear, deterioration and/or mechanical damage and not from hail." (Lic. Ex. 3.) Thus, coverage for the reported loss was denied. (*Id.*)

15. On March 16, 2022, Licensee reviewed the decision and confirmed the decision to deny the claim. (Lic. Ex. 1 at 6-7.) On the same day, Complainant was contacted, and Complainant requested another inspection. (*Id.*) A copy of the Seek Now inspection report was sent to Complainant. (*Id.*) Complainant then requested the roof be inspected by an engineer.

(*Id.*) Licensee rejected this request at first, believing that the findings of the Seek Now investigation and Corelogic analysis, and Licensee's analysis of the Policy reported in the March 15, 2022 denial letter to the Complainant precluded the possibility of any covered damages under the Policy. (*Id.* at 5.)

16. On March 18, 2022, Complainant and his contractor spoke to Licensee and refuted the denial of the damage claim. (Lic. Ex. 1 at 5; Tr. at 65-66.) Complainant advised that he had supporting documentation that hail damage had, in fact, occurred on the subject property, and that Complainant would email it to Licensee soon. (*Id.*)

17. On April 5, 2022, upon receipt of Complainant's additional documentation, a reevaluation of the Claim was initiated by the Parties. (Lic. Ex. 1 at 4-5.)

18. On April 11, 2022, Licensee assigned a second adjuster to the claim, Adjuster Frankland. (Lic. Ex. 1 at 4.)

19. On April 12, 2022, Licensee agreed to obtain the services of an engineer with National Forensic Consultants ("NFC") to complete another inspection of the roof. (MIA Ex. 5; Tr. at 68-69.) NFC hired Engineer Nemirovsky to do the job. (Tr. at 89.)

20. On April 13, 2022, Licensee received a letter from NFC explaining that a re-inspection of the residence for exterior hail damage and for interior damage was needed. (Lic. Ex. 1 at 4.) The letter included an adjusted budget for an additional \$2,250. (*Id.*)

21. On April 18, 2022, correspondence was sent to Licensee from NFC scheduling the inspection for April 21, 2022 at 2:00 pm. (Lic. Ex. 1 at 3.)

22. On April 25, 2022, Licensee received an update from NFC on the progress of its inspection. (*Id.*)

23. On May 5, 2022, NFC completed and submitted its report of its site inspection of Complainant's residence. (*Id.*) The results of the NFC investigation determined that there was no hail damage event of functional significance or other singular weather event that caused damage to the roof; however, based upon the NFC investigation, Licensee would cover the interior water damage resulting from the roof leaking. (Lic. Ex. 4.; Tr. at 70, 71, 75.)

24. On May 10, 2022, Licensee communicated via letter to Complainant that the NFC inspection indicated that the water damage to the interior home resulting from his roof leaking was covered under the Policy; however, Licensee would not assist with repair/replacement of the roof because there were no singular weather related damages that were found to the roof and all damages that were found were excluded by the Policy. (Lic. Ex. 5.)

25. On May 17, 2022, Licensee sent a letter to Complainant confirming that the re-inspection of the claim warranted a payment of \$3,319.47 for the interior damage repairs. (Lic. Ex. 6.)

26. Also on May 17, 2022, the MIA received the Complaint from Complainant alleging that Licensee violated the Maryland Insurance Code by failing to pay all of Complainant's damage claim. (MIA Ex. 1.)

27. On June 29, 2022, the MIA sent correspondence to Licensee advising that a Complaint had been filed and requesting a claim log, declaration pages, claim denial photos, diagrams, estimates and inspections. (MIA Ex. 2.)

28. On July 19, 2022, the MIA sent correspondence to Complainant and Licensee advising that it had completed its investigation of the Complaint, and Licensee had not violated the Insurance Article in its partial denial of Complainant's claim. (MIA Ex. 4.)

29. On July 21, 2022, the MIA received correspondence from the Complainant requesting a hearing. (MIA Ex. 5.)

On July 26, 2022, the MIA sent correspondence to the Complainant and Licensee advising that the Complainant's request for a hearing had been granted. (MIA Ex. 6.)

DISCUSSION

A. Positions of the Parties.

Complainant contends that Licensee erroneously and inadequately handled his homeowner's insurance claim. Specifically, Complainant asserts that Licensee wrongfully denied his claim for hail related damage to his roof. Even though Licensee paid the claim with respect to water damage to his interior home as a result of his roof leaking, Complainant argues that there is an additional amount due to him because of the denial of coverage on the hail damage portion of the claim pertaining to the roof.

Licensee argues that it properly handled Complainant's homeowner's insurance claim. Specifically, Licensee argues that its inspections were unable to uncover any evidence of a hail event or any other singular weather event that would have caused the damage to the roof alleged in the claim. The Licensee further argues that the Policy language excludes coverage of the type of damage found on the roof by its inspections. The Policy does cover damage to the interior home as a result of the roof leaking, and Licensee has paid that portion 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 2 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 Complainant's homeowner's insurance claim.

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

The evidence demonstrates that Licensee had a reasonable basis for its partial denial of Complainant's claim. Here, the loss was reported on February 7, 2022 with a date of loss as July 17, 2021. (Lic. Ex. 1 at 9; Tr. at 54.) Licensee inspected the loss on March 2, 2022. (Lic. Ex. 1 at 7-8.) Licensee had a reasonable basis for its initial denial of the claim in its entirety, because there was no wind or hail damage found on any slope of the roof, and Licensee's inspection company could not obtain access to the interior. (Lic. Ex. 2 at 4; Tr. at 61-62.) The inspection also revealed that there was no storm related tree damage, missing shingles, or hail/wind damages to the hip and ridge, roof accessories, or the valleys. (Lic. Ex. 2 at 3; Lic. Ex. 1 at 7-8.)

Once the inspection was completed, Licensee communicated to Complainant that roof damage was a result of wear/tear, deterioration and/or mechanical damage. In a letter dated March 15, 2022, Licensee denied Complainant's claim based on its findings that the roof damage was a result of wear/tear, deterioration and/or mechanical damage, and that there was no reported hail event on the date of loss. (Lic. Ex. 3.)

The Complainant was dissatisfied with the initial inspection and demanded an engineer make an additional inspection. The additional inspection was approved by the Licensee, and the inspection was conducted in a timely manner. (Lic. Ex. 1 at 3-5; Lic. Ex. 4.; Tr. at 70, 71, 75.) NFC's assessment confirmed that the roof damage was the result of wear, tear, and deterioration, faults, weaknesses, defects or inadequacy in the workmanship, construction and materials, among other things, which could not be attributed to a specific weather event:

1. Second-floor leaks are a result of improper installation of the transitions between dissimilar roof surfaces. The condition has been ongoing for several years. Attribution of the condition to a specific weather event, including the event on the date of loss, cannot be made.
2. Surface abrasion at the areas of preferential roof access is a result of lack of surface protection during installation and/or servicing of the roof. Attribution of the condition to a specific weather event, including the event on the date of loss, cannot be made.
3. Uniform, distributed loss of granules on the right section of the detached structure roof is a result of manufacturing defect and/or improper ventilation. Attribution of the condition to a specific weather event, including the even on the date of loss, cannot be made.
4. The overall condition of the roof is assessed as fair. No wind or hail “damages” of functional significance are found. The interior leaks can be addressed with localized repairs. No indication for full replacement of the roof covering is identified.

(Lic. Ex. 4 at 5; Tr. at 100-102.) Following the inspection, based on NFC’s report, Licensee maintained that the damages sought for the roof were still excluded from the policy; however, Licensee agreed to cover the interior water damage resulting from the roof leaking. (Lic. Ex. 5.)

After two inspections of the damage, Licensee reasonably concluded that the damage had not been caused by a specific weather event, including any event on the date of loss. 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:

**Property Exclusions
(Section I)**

1. We do not cover loss to any property resulting directly or indirectly from any of the following:

- o. A fault, weakness, defect or inadequacy in the;
 - (1) Specifications, planning, zoning;
 - (2) Design, workmanship, construction, materials;

However, any ensuing loss to property described in Coverage A, B and C not precluded by any other provision in this policy is covered.

y. Gradual or Sudden Loss due to:

(1) wear and tear, marring, deterioration;

(2) Inherent vice, latent defect, mechanical breakdown;

(MIA Ex. 3 (Property Exclusion pg. 13-14 of 26 form P1405 (05-16).)

The language of the Policy makes clear that coverage is not provided for loss due to wear and tear, marring or deterioration; or from fault, defect, weakness or inadequacy of design, workmanship, construction or materials. Complainant failed to prove by a preponderance of the evidence that Licensee applied these exclusions in an arbitrary and capricious manner. As such, the claim for the roof is ineligible for recovery under the Policy. 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). The record before me demonstrates that Licensee had numerous conversations and email exchanges with Complainant regarding the information it needed to evaluate the claim. (Lic. Ex. 1.) Even after being prevented from conducting a needed inspection of the interior of the property by Complainant, Licensee continued to contact Complainant in attempts resolve his claim. (*Id.*)

The initial inspection was completed on March 2, 2022 and Licensee sent Complainant its decision on March 15, 2022. Since the Complainant was dissatisfied with the initial inspection and demanded an additional inspection, Licensee agreed to hire an engineer. The additional inspection was conducted in a timely manner and the report was completed on May 5, 2022. (Lic. Ex. 1 at 3-5; Lic. Ex. 4.; Tr. at 70, 71, 75.)

Licensee sent Complainant a letter on May 10, 2022 explaining that as a result of the engineering report, interior damages would be covered. (Lic. Ex. 1 at 3; Lic. Ex. 5.) Licensee confirmed by letter dated May 17, 2022 that Licensee would pay \$3,319.47 for the interior damage repairs. (Lic. Ex. 6.) Licensee made the necessary payment to Complainant on time and provided updated estimates and documentation with the payment. (Lic. Ex. 1 at 1.) At no time was the Licensee's payment unduly delayed or cancelled. Moreover, Licensee's letters to Complainant denying coverage were timely sent. Therefore, I find that Licensee did not violate § 27-303(6) or § 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 Licensee has not committed an unfair claim settlement practice in violation of § 27-303 or delayed or denied 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 2 day of March, 2023.

KATHLEEN A. BIRRANE
Insurance Commissioner

Tammy R. J. Longan

TAMMY R. J. LONGAN
Acting Deputy Commissioner