

**MARYLAND INSURANCE ADMINISTRATION**

MARYLAND INSURANCE  
ADMINISTRATION  
*EX REL J.M.,*

Complainants

v.

STATE FARM FIRE AND  
CASUALTY COMPANY,

Licensee.

\* REVIEW OF A RECOMMENDED  
\* DECISION ISSUED BY  
\* MICHELLE W. KELLEY,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No.: MIA-CC-33-22-20667  
\* MIA No.: MIA-2022-08-014

\* \* \* \* \*

**FINAL ORDER**

Pursuant to Md. Code Ann., Ins. § 2-210(d)<sup>1</sup> and Code of Maryland Regulations (COMAR) 31.02.01.10-2H, the undersigned Maryland Insurance Commissioner hereby clarifies the disposition and issues this **summary affirmance** of the proposed decision below.

On September 15, 2020, the MIA received a complaint from J.M. (Complainant) alleging the Licensee erred in its handling of her homeowner’s insurance policy (Policy) claim arising from basement water damage that occurred on or about May 1, 2020. The MIA investigated the Complaint, and on February 11, 2021, it issued a determination letter concluding that the Licensee did not violate Maryland’s insurance laws in its handling and ultimate denial of Complainant’s claim. Specifically, the MIA concluded that Licensee’s actions were not shown to be arbitrary and capricious, to be lacking in good faith or to otherwise be in violation of the Maryland Insurance Article.

The determination letter referenced Sections 4-113, and 27-303 of the Annotated Code of Maryland Insurance Article. The Complainants requested a hearing which was granted on February 25, 2021. 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 4-113 and 27-303.

On December 6, 2022, a hearing was held before Administrative Law Judge (ALJ) Kelley. On December 16, 2022, ALJ Kelley issued a Proposed Decision setting forth factual findings and conclusions of law with respect to Sections 4-113 and 27-303. 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. However, neither Party filed exceptions in this case.

On page 9 of the Proposed Decision ALJ Kelley orders that “the Licensee not be found in violation of 27-303 and 4-113 of the Insurance Article and that the charges made by 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 Kelley.

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Kelley. Based on this review, I am persuaded that ALJ Kelley's Conclusion of Law that Licensee did not violate Sections 4-113, or 27-303 and, pursuant to COMAR 31.02.01.10-2D, hereby affirm this finding.

**THEREFORE**, it is hereby

**ORDERED** that references to the dismissal of the Complaint are hereby stricken from the Proposed Decision of ALJ Kelley,

**ORDERED** that the determination issued by the Maryland Insurance Administration is hereby **AFFIRMED** based on the Findings of Fact and Discussion provided by ALJ Kelley,

**ORDERED** that the Proposed Decision of ALJ Kelley 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 3<sup>rd</sup> day of April, 2023.

**KATHLEEN A. BIRRANE**

Commissioner

signature on original

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ERICA BAILEY

Associate Commissioner for Hearings

MARYLAND INSURANCE

\* BEFORE EDWARD J. KELLEY,

ADMINISTRATION

\* AN ADMINISTRATIVE LAW JUDGE

EX REL.

\* OF THE MARYLAND OFFICE

J.M.,

\* OF ADMINISTRATIVE HEARINGS

COMPLAINANT

\*

v.

\*

STATE FARM FIRE AND

\* OAH No.: MIA-CC-33-22-20667.

CASUALTY COMPANY,

\* MIA No.: 2022-08-014

LICENSEE

\*

\* \* \* \* \*

**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 September 15, 2020, the Maryland Insurance Administration (MIA) received a complaint from the Complainant alleging unfair claim settlement practices by State Farm Fire and Casualty Company (Licensee). Specifically, the Complainant alleged that the Licensee erred in its handling of her homeowners insurance policy (Policy) claim arising from basement water damage that occurred on or about May 1, 2020.

After an investigation, the MIA found that the Licensee did not violate Maryland insurance laws and notified the Complainant of its finding by a letter dated February 11, 2021. On February 24, 2021, the Complainant requested a hearing. On August 26, 2022, the MIA

transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a contested case hearing, delegating authority to issue a proposed decision.<sup>1</sup>

On December 6, 2022, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022);<sup>2</sup> COMAR 31.15.07.<sup>3</sup> The Complainant appeared without representation; her husband also was present.<sup>4</sup> Melissa McNair, 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 twelve exhibits, into the record as follows:

1. Complaint, September 15, 2020
2. Letter from the MIA to the Licensee, October 1, 2020
3. Letter from the Licensee to the MIA, with attachments, October 12, 2020
4. Email exchange between the Complainant and the MIA, November 2-4, 2020

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<sup>1</sup> 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. The record does not explain the MIA's delay in transmitting this matter to the OAH for a hearing.

<sup>2</sup> Unless otherwise noted, citations are to the 2017 Replacement Volume of the Insurance Article of the Maryland Annotated Code.

<sup>3</sup> A hearing scheduled for October 12, 2022, was postponed.

<sup>4</sup> Although not a named Complainant, the Complainant's husband jointly holds the Policy.

5. Email from the Complainant to the MIA, January 5, 2021
6. Email exchange between the Complainant and the MIA, January 7, 2021
7. Email exchange between the MIA and the Complainant, January 13, 2021
8. Letter from the MIA to the Licensee, January 20, 2021
9. Letter from the Licensee to the MIA, with attachments, January 26, 2021
10. Letter from the MIA to the Complainant, February 11, 2021
11. Request for a hearing, February 24, 2021
12. Letter from the MIA to the Complainant and the Licensee, February 25, 2021

I admitted the following exhibits offered by the Licensee:

Lic Ex. 1 - American Leak Detection (ALD) Inspection Report, June 8, 2020

Lic Ex. 2 - Letter from the Licensee to the Complainant, October 6, 2020

#### Testimony

The Complainant testified and did not present other witnesses.

Mark Ueltschy, Claims Specialist, testified for the Licensee.

#### **FINDINGS OF FACT**

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

1. The Complainant and her husband own a home, which at all times relevant to this matter was insured by the Licensee under the Policy.
2. The Policy does not cover damage caused by groundwater intrusion.
3. In May 2020, the Complainant discovered water pooling in the corner of her basement, which caused damage to drywall and carpeting.
4. The Complainant filed a claim with the Licensee under the Policy, and the Licensee assigned Freeman Rufus to handle the claim.

5. On June 8, 2020, ALD provided the results of its inspection of the Home, which determined that the water in the basement was the result of groundwater intrusion and the lack of interior drainage or other systems to contain groundwater seepage.

6. The Licensee paid ALD \$675.00 for the inspection report.

7. On June 18, 2020, Mr. Rufus informed the Complainant that her claim was covered by the Policy, and he directed the Claimant to obtain an estimate for repairs to the basement.

8. Before Mr. Rufus informed the Complainant that the claim was covered by the Policy, he needed to obtain approval from his supervisor.

9. After the Licensee informed the Complainant that the claim was covered by the Policy, JES Foundation Repair (JES) assessed the Home and provided a \$16,486.60 estimate to install a drainage system to contain groundwater seepage in the basement.

10. The Complainant did not enter into a contract with JES to install the drainage system.

11. On July 7, 2020, the Complainant provided JES's estimate to the Licensee.

12. On July 23, 2020, the Licensee mailed the Complainant a check for \$13,332.60, which represented the amount paid to ALD (\$675.00), plus the JES estimate (\$16,486.60), minus the Complainant's deductible (\$3,829.00).

13. The Policy does not provide coverage for the installation of a new drainage system to contain groundwater seepage.

14. On July 27, 2020, before she received the check, the Complainant contacted the Licensee to determine whether damages to the basement drywall and carpeting also were covered by the Policy. On this occasion, the Complainant spoke to a different representative, Diane Darnell, about her claim.

15. Ms. Darnell reevaluated the Complainant's claim and determined that it was not covered by the Policy, and she explained to the Complainant that groundwater intrusion was not covered by the Policy.

16. On July 27, 2020, the Licensee placed a stop payment on the check sent to the Complainant.

17. Between July 27, 2020, and August 20, 2020, the Licensee reevaluated the claim.

18. On August 21, 2020, the Licensee informed the Complainant that the claim was denied because groundwater intrusion was not covered by the Policy.

19. Before deciding not to make any payment to the Complainant, the Licensee confirmed with the Complainant that she did not contract with JES or any other contractor to install the drainage system.

20. The Complainant used her own funds to install the drainage system.

## DISCUSSION

### **APPLICABLE LAW**

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. The MIA decision letter referenced Subsections 1, 2, and 6 of Section 27-303. *Id.* § 27-303(1), (2), (6). 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.” *Id.* 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. *Id.*

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, but the Court of Special Appeals of Maryland has interpreted this phrase as follows:

“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.’”

*Berkshire Life Insurance Co. v. Maryland Insurance Administration*, 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; COMAR 28.02.01.21K. 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 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).

#### **POSITIONS OF THE PARTIES**

The Complainant contends that the Licensee unfairly denied her claim after informing her the claim was covered by the Policy. She argued that the Licensee should be required to pay the claim as it initially said it would. The Licensee countered that its initial decision to pay the claim was a mistake, and that it was not unfair, arbitrary, or capricious to deny the claim once the mistake was realized because the Complainant had not detrimentally relied on the mistake. For the reasons that follow, I find that the Complainant has failed to meet her burden to prove that the Respondent violated any Maryland insurance laws.

#### **ANALYSIS**

In one sense, this case is straightforward. ALD determined that the water damage in the basement resulted from groundwater intrusion. There is no dispute regarding the accuracy of ALD's inspection report, and there is no genuine dispute that the Policy does not cover damage caused by groundwater intrusion. *See, e.g.,* MIA #10; Lic. Ex. 2. There is also no genuine dispute that even if the Policy covered damage caused by groundwater intrusion, it would not cover the installation of a new drainage system to contain groundwater seepage in the basement. On these facts, it was not unfair, arbitrary, or capricious for the Licensee to deny the Complainant's claim. *Berkshire Life Insurance Co.*, 142 Md. App. at 671; Ins. §§ 4-113, 27-303.

In another sense, this case is confounding. The Licensee readily admits it made a "mistake" when it initially provided coverage for the cost of installing a new drainage system to contain groundwater seepage in the basement based on a claim clearly not covered by the Policy. Characterizing this action as a "mistake" is a sizeable understatement. The Licensee's own

witness, Mr. Ueltschy, had no explanation as to how Mr. Rufus and *at least* one supervisor approved \$13,332.60 for the installation of new drainage system for a claim that clearly was not covered by the Policy based on the ALD inspection report. As Mr. Ueltschy further explained, even assuming groundwater intrusion was covered by the Policy, which it was not, the most the Policy would cover is physical damage, such as damage to the drywall and carpeting. Under no circumstances was the Complainant entitled to the cost of installing a new drainage system to control the groundwater intrusion, which is what the Licensee initially authorized. By all accounts, the Licensee's initial handling of the Complainant's claim reflects glaring incompetence not just a simple mistake.

The Licensee nevertheless insists that because it communicated the proper denial of the claim to the Complainant before she contracted with anyone to install the new drainage system, it should not be required to pay any amount toward that repair. The Licensee is correct that the Complainant did not sign a contract with JES or any other contractor to install a drainage system before the claim was denied; the evidence on this point is undisputed. Therefore, I find that the Complainant is not entitled to the funds she erroneously was promised by the Licensee. Simply put, she was not entitled to these funds under the Policy, and she did not rely on the Licensee's mistake to her detriment.<sup>5</sup>

I sympathize with the Complainant's exasperation over the Licensee's inexplicably inept handling of her claim. Ultimately, however, the Licensee properly denied the Complainant's claim and promptly explained the reasons for its denial once that decision was reached. That being the case, I find that the Licensee did not violate Maryland Insurance law. *Berkshire Life Insurance Co.*, 142 Md. App. at 671; Ins. §§ 4-113 (2022 Supp.), 27-303.

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<sup>5</sup> The Complainant candidly acknowledged in her testimony that at the time she filed the claim, she did not expect it would be covered by the Policy, and she was surprised when she was told it was covered.

## CONCLUSION 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 refusing to pay a claim for an arbitrary or capricious reason. *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, 142 Md. App. 628, 671 (2002); Md. Code Ann., Ins. §§ 4-113, 27-303 (2017 & 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 27-303 and 4-113 of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED**.

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

December 16, 2022  
Date Decision Issued

signature on original

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Edward J. Kelley  
Administrative Law Judge

EJK/ds  
#202331

## 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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