

**MARYLAND INSURANCE ADMINISTRATION**

MARYLAND INSURANCE ADMINISTRATION <i>EX REL</i> J.S. AND M.S.,	*	REVIEW OF A RECOMMENDED
Complainants	*	DECISION ISSUED BY
v.	*	MICHELLE W. COLE,
ERIE INSURANCE COMPANY,	*	AN ADMINISTRATIVE LAW JUDGE
Licensee.	*	OF THE MARYLAND OFFICE OF
	*	ADMINISTRATIVE HEARINGS
	*	OAH No.: MIA-CC-33-22-23605
	*	MIA No.: MIA-2022-09-002
	*	
* * * * *		

**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 hereby clarifies the disposition and issues this **summary affirmance** of the proposed decision below.

On September 19, 2022, the MIA received a complaint from J.S. and M.S. (hereinafter “Complainants”) alleging that Erie Insurance Company (hereinafter “Licensee”) violated Maryland insurance law by improperly increasing Complainants’ homeowner’s policy premium and for requiring that Complainants purchase an umbrella policy in order to receive a discount on the premium amount. The MIA investigated the Complaint, and on August 5, 2022, it issued a determination letter concluding that the Licensee did not violate Maryland’s insurance laws. Specifically, the MIA concluded that Licensee had not violated Maryland insurance laws in its

calculation of the Complainants' policy's renewal premium, as Licensee calculated the renewal premium in accordance with its rate filings at the time of the policy renewal. The determination letter referenced Sections 11-230, 11-341, and 27-216 of the Annotated Code of Maryland, Insurance Article. The Complainants requested a hearing which was granted on September 1, 2022. 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 11-230, 11-341, and 27-216.

On December 5, 2022, a hearing was held before Administrative Law Judge (ALJ) Cole. On January 3, 2023, ALJ Cole issued a Proposed Decision setting forth factual findings and conclusions of law with respect to Sections 11-205, 11-306(b)(2), and 27-216(b)(1)(i), but did not make Conclusions of Law with respect to Sections 11-230 and 11-341. 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.

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Cole. Based on this review, I am persuaded that ALJ Cole's Conclusion of Law that Licensee did not violate Sections 11-205, 11-306(b)(2), and 27-216(b)(1)(i) is correct, and, pursuant to COMAR 31.02.01.10-2D, hereby affirm this finding.

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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 further find, pursuant to COMAR 31.02.01.10-2(C)(2), that ALJ Cole's Findings of Fact support a finding that Licensee did not violate Sections 11-230(a) or 11-341. Specifically, as provided in ALJ Cole's Findings of Fact, paragraph 3, "The Licensee filed a rate revision with the MIA that affected all of its homeowner policy renewals, effective April 1, 2022." Moreover, as stated in ALJ Cole's Findings of Fact, paragraph 4, "As a result of the changes to the Licensee's base rates and an increase in the dwelling limit, the Complainants' policy premium for the period of July 31, 2022, through July 31, 2023, increased by \$1,527.00." As the evidence demonstrates that Licensee applied the premium increase to Complainants' homeowner's policy in accordance with its filed rates, I find that Complainants did not demonstrate that Licensee knowingly issued or delivered a policy that was not in accordance with the filings that were in effect for Licensee at the time of renewal.

Further, on page 8 of the Proposed Decision ALJ Cole orders that "the Licensee not be found in violation of sections 11-205, 11-230, 11-341 and 27-216 of the Insurance Article and that the charges made by the Complainants 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 Cole.

Finally, ALJ Cole correctly noted that the burden of proof in this matter rests with the Complainants as the moving party to prove by a preponderance of the evidence that the Licensee violated the Insurance Article.

**THEREFORE**, it is hereby

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

**ORDERED** that, as a matter of law, it be found that Licensee did not violate Sections 11-205, 11-230, 11-341 and 27-216,

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

**ORDERED** that the Proposed Decision of ALJ Cole 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 28<sup>th</sup> day of February, 2023.

**KATHLEEN A. BIRrane**  
Commissioner

/S/ Lisa Larson  
LISA LARSON  
Director of Hearings

MARYLAND INSURANCE

\* BEFORE MICHELLE W. COLE,

ADMINISTRATION

\* AN ADMINISTRATIVE LAW JUDGE

*EX REL.*

\* OF THE MARYLAND OFFICE

J.S. and M.S.,<sup>1</sup>

\* OF ADMINISTRATIVE HEARINGS

COMPLAINANTS

\*

v.

\*

ERIE INSURANCE COMPANY,

\* OAH No.: MIA-CC-33-22-23605

LICENSEE

\* MIA No.: MIA-2022-09-002

\* \* \* \* \*

**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 July 1, 2022, the Maryland Insurance Administration (MIA) received a complaint from J.S. and M.S. (collectively, Complainants) alleging that Erie Insurance Company (Licensee) improperly increased the Complainants' homeowner's policy premium. The MIA investigated the complaint and determined that the Licensee did not violate Maryland insurance law, specifically referencing sections 11-230(a), 11-341, and 27-216(b)(1) of the Insurance Article of the Annotated Code of Maryland in its letter. The MIA notified the Complainants of its finding in a letter dated August 5, 2022, explaining the reasons for the rate increase and

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<sup>1</sup> The Complainants are identified by their initials only to preserve the confidentiality of the proceeding.

finding that the increase was consistent with the policy documents provided and with the Licensee's filed rating plan.

On September 19, 2022, the Complainants requested review of the MIA's decision. On September 21, 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.<sup>2</sup>

On December 2, 2022, the Licensee filed a Motion for Summary Decision, arguing that the OAH did not have the authority to hear the Complainants' claim, citing to specific relief requested by the Complainant. On that same date, the Complainants filed a response. Prior to the merits hearing, I permitted the parties to present arguments and subsequently denied the Motion.

On December 5, 2022,<sup>3</sup> I held a hearing by videoconference. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022)<sup>4</sup>; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). J.S. presented the Complainants' case. Leonard C. Redmond, III, 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 violate Maryland insurance law when it increased the Complainants' homeowner's policy premium?

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<sup>2</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 31.02.01.04-1A.

<sup>3</sup> I granted the Licensee's motion to postpone the original hearing date of November 14, 2022, based on witness unavailability.

<sup>4</sup> Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2017 Replacement Volume of the Maryland Annotated Code.

## SUMMARY OF THE EVIDENCE

### Exhibits

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

- MIA Ex. 1 Complaint Summary, received July 1, 2022, with attachments: Email correspondence from Complainants, printed July 1, 2022; Licensee Revised Declarations, July 15, 2021
- MIA Ex. 2 Letter from the MIA to the Licensee, July 5, 2022
- MIA Ex. 3 Letter from the Licensee to the MIA, July 12, 2022, with attachments: Notice of Policy Change, June 30, 2022; Home Insurance Policy, undated; U.S. National Building Cost Trends First Quarter 2022; Policy Rating Underwriting Tier Calculation, July 31, 2021; Maryland Rates, effective April 1, 2022
- MIA Ex. 4 Letter from the MIA to the Licensee, July 15, 2022
- MIA Ex. 5 Letter from the Licensee to the MIA, July 26, 2022, with attachment: Construction Cost Factors, January 2022
- MIA Ex. 6 Letter from the MIA to the Licensee, July 28, 2022
- MIA Ex. 7 Letter from the Licensee to the MIA, August 4, 2022, with attachment: Construction Cost Factors, January 2022
- MIA Ex. 8 Letter from the MIA to the Complainants, August 5, 2022
- MIA Ex. 9 Hearing Request Form, August 26, 2022
- MIA Ex. 10 Letter from the MIA to the Complainants and Licensee, September 1, 2022

I admitted the following exhibits on the Complainants' behalf:

- Compl. Ex. A Effects of Change Chart, undated
- Compl. Ex. B Owner Territorial Analysis, April 2022

The Licensee did not offer any exhibits for admission into evidence.

### Testimony

Complainant J.S. testified on behalf of the Complainants. The Licensee did not offer any witness testimony.

## FINDINGS OF FACT

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

1. In July 2021, the Complainants purchased a homeowner's insurance policy from the Licensee for their property located in Silver Spring, Maryland.
2. The policy premium for the period of July 31, 2021, through July 31, 2022, was \$1,218.00.
3. The Licensee filed a rate revision with the MIA that affected all of its homeowner policy renewals, effective April 1, 2022.
4. As a result of the changes to the Licensee's base rates and an increase in the dwelling limit,<sup>5</sup> the Complainants' policy premium for the period of July 31, 2022, through July 31, 2023, increased to \$1,527.00.<sup>6</sup>
5. On July 1, 2022, the Complainants filed a complaint with the MIA regarding the increased premium.
6. The MIA investigated the Complainants' complaint. As part of its investigation, the MIA requested documents and explanations from the Licensee.
7. On July 12, 2022, the Licensee submitted documents to the MIA and listed the following as the cause for the increase to the Complainants' policy premium:
  1. As part of [the Licensee's] rating component refresh, several rating factors were updated which resulted in an increase of 4%
  2. Changes to base rates resulted in an approximate increase of 3%
  3. Changes to Fire Station Distance and territory factors resulted in an increase of 7%
  4. Changes related to the amount of insurance (includes automatic adjustment of coverage amounts) resulted in an increase of 5%<sup>7</sup>

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<sup>5</sup> Based on increased dwelling reconstruction costs and inflation percentage by zip code, the Licensee applied a 7% inflation percentage in determining the Complainants' dwelling's insurable value limit, which increased from \$434,500.00 to \$465,000.00. (MIA Exs. 3, 5, 8).

<sup>6</sup> The Complainants reduced the amount of coverage under the policy for personal property loss from \$325,500.00 to \$279,000.00, which reduced the premium to \$1,463.00.

<sup>7</sup> The increase related to the automatic adjustment of coverage amount was impacted by the countrywide increase in construction materials as reflected in the CoreLogic 2022 Quarter One data.

5. Increase in the endorsement premium resulted in an increase of 1% (MIA Ex. 3).

8. After reviewing the Licensee's documents and explanations, the MIA determined that the Licensee did not violate Maryland insurance law when it increased the Complainants' premium. On August 5, 2022, the MIA issued a letter to the Complainants explaining its decision.

### **DISCUSSION**

The Complainants requested review of the MIA's determination that the Licensee did not violate Maryland insurance law when it increased the Complainants' homeowner's policy premium. They contend that this increase demonstrated rates that are excessive when compared to changes to premiums for other policyholders. The Licensee maintained that the increase of the Complainants' premium was consistent with Maryland insurance law and its filed rating plan.

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. Md. Code Ann., 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 show that it is "more likely so than not so" when all the evidence is considered.

*Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the Complainants, as the party asserting that the Licensee improperly calculated their premium, bear the burden of proof. COMAR 28.02.01.21K(1), (2)(a). Based on the evidence, I conclude that the Complainants have failed to meet this burden.

When the MIA referred this case to the OAH, it directed the Administrative Law Judge conducting the hearing to pay specific attention to sections 11-230, 11-341, and 27-216 of the Insurance Article. Md. Code Ann., Ins. § 4-113(b)(5) (Supp. 2022). In reaching my decision, I

have considered these sections and other relevant sections of Title 11 pertaining to rates. *See* Md. Code Ann., Ins. §§ 11-205, 11-306.

Maryland insurance law generally requires insurers to file their rating plans with the MIA and to comply with their filed rating plans in calculating premiums. Md. Code Ann., Ins. § 11-206 (Supp. 2022). “The Commissioner shall review each filing as soon as reasonably possible after it is made to determine whether it meets the requirements[.]” *id.* § 11-206(f), and “may disapprove the filing . . . [u]nless the filer demonstrates that a proposed rate is not excessive, inadequate, or unfairly discriminatory[.]” Md. Code Ann., Ins. § 11-208(a). Section 11-230 of the Insurance Article prohibits an insurer from knowingly issuing or delivering a policy unless it is “in accordance with the filings that are in effect for the insurer as provided in this subtitle.” Md. Code Ann., Ins. § 11-230(a). *See also* § 11-341 (“An insurer may not make or issue an insurance contract or policy . . . except in accordance with the filings that are in effect for the insurer as provided in this subtitle.”). Section 27-216 also provides, in pertinent part: “A person may not willfully collect a premium or charge for insurance that . . . exceeds or is less than the premium or charge applicable to that insurance under the applicable classifications and rates as filed with and approved by the Commissioner[.]” Md. Code Ann., Ins. § 27-216(b)(1)(i) (Supp. 2022).

For property insurance, all rates shall be made in accordance with the principles set forth in sections 11-205 and 11-303 of the Insurance Article. Due consideration shall be given to:

- (1) past and prospective loss experience within and outside the State;
- (2) conflagration and catastrophe hazards, if any;
- (3) past and prospective expenses, both countrywide and those specially applicable to the State;
- (4) underwriting profits;
- (5) contingencies;
- (6) investment income from unearned premium reserve and reserve for losses;

(7) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders; and

(8) all other relevant factors within and outside the State.

Md. Code Ann., Ins. § 11-205(c). “Rates may not be excessive, inadequate, or unfairly discriminatory.” *Id.* § 11-205(d); *see also* § 11-306(b). Under Maryland law, “a rate may not be held to be excessive unless . . . the rate is unreasonably high for the insurance provided; and (ii) the Commissioner has issued a ruling under § 11-308(c) of this subtitle that a reasonable degree of competition does not exist in a market to which the rate is applicable.” Md. Code Ann., Ins. § 11-306(b)(2).

The Complainants’ argument before me was two-fold. They claimed that (1) the increase of their premium resulted in an excessive rate; and (2) the MIA did not properly consider whether the rate was excessive. Based on the evidence presented at the hearing, I conclude that the Licensee acted lawfully in applying its rating plan on file with the MIA when renewing the Complainants’ homeowner’s policy for the renewal period. I also conclude that the MIA thoroughly reviewed the Complainants’ complaint and correctly determined that the Licensee did not violate Maryland insurance law when it increased the Complainants’ premium.

While I sympathize with the Complainants’ circumstance, having made no claims under their policy but experiencing a significant increase in the premium, the evidence fails to support the Complainants’ contention that the Licensee acted in violation of Maryland insurance law by charging excessive rates. At the hearing, the Complainants presented a self-prepared chart that compared changes in policy premiums for other homeowners and argued that the statistics and data support their claim that the significant increase in their premium resulted in an excessive rate. This evidence was not persuasive evidence that the Licensee’s rate was excessive. The Complainant very generally explained what he intended the chart to show. However, he does not have expertise in insurance or statistics, and did not explain in any detail the populations

included or excluded in the statistical analysis nor explain what factors contributed to the changes for the other policies represented in the chart. Based on the evidence, including the contents of the MIA file, I conclude that the premium increase in the Complainants' case did not result in an excessive rate.

As the MIA explained in its decision letter, the premium increase for the renewal period of the Complainants' policy beginning July 31, 2022, was due to an increase in dwelling replacement costs and a general rate revision filed by the Licensee with the MIA. The Insurance Article permits such factors to be considered in rate making. Specifically, section 11-205(c)(3) provides that due consideration shall be given to "past and prospective expenses, both countrywide and those specially applicable to the State." There is no evidence that the rate is unreasonably high for the insurance provided or that a reasonable degree of competition does not exist in a market to which the rate is applicable. Md. Code Ann., Ins. § 11-306(b)(2). The increase in the Complainants' premium complied with the Licensee's filed rating plan, which was approved by the Commissioner. On this record, the Complainants have not established that the premium increase resulted in an excessive rate.

#### **CONCLUSION OF LAW**

I conclude as a matter of law that the Complainants did not show that the Licensee violated Maryland insurance law when it increased the Complainants' premiums. Md. Code Ann., Ins. §§ 11-205, 11-306(b)(2), 27-216(b)(1)(i) (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 11-205, 11-230, 11-341 and 27-216 of the Insurance Article and that the charges made by the Complainants be **DENIED AND DISMISSED**.

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

**signature on original**

January 3, 2023  
Date Decision Issued

Michelle W. Cole  
Administrative Law Judge

MWC/dlm  
#202685

**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:**

**Complainants**

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MARYLAND INSURANCE	* BEFORE MICHELLE W. COLE,
ADMINISTRATION	* AN ADMINISTRATIVE LAW JUDGE
<i>EX REL.</i>	* OF THE MARYLAND OFFICE
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**FILE EXHIBIT LIST**

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