

MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE
ADMINISTRATION
EX REL S.M.M.,

Complainant

v.

GEICO SECURE
INSURANCE COMPANY,

Licensee.

* REVIEW OF A RECOMMENDED
* DECISION ISSUED BY
* MICHAEL R. OSBORN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MIA-CC-33-22-27080
* MIA No.: MIA-2022-10-012

* * * * *

FINAL ORDER

Pursuant to Md. Code Ann., Ins. § 2-210(d)¹ 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, 2022, the Maryland Insurance Administration (MIA) received a complaint from S.M.M. (“Complainant”) alleging unfair claim settlement practices by GEICO Secure Insurance Company (“Licensee”). Specifically, the Complainant alleges that the Licensee failed to properly handle his claim for damages to his insured vehicle and failed to pay rental vehicle reimbursement. The MIA investigated the Complaint, and on October 17, 2022, 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

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

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 Complainant requested a hearing which was granted on October 18, 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 4-113 and 27-303.

On January 6, 2023, a hearing was held before Administrative Law Judge ("ALJ") Osborn. On January 25, 2023, ALJ Osborn 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.

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

I further find, pursuant to COMAR 31.02.01.10-2(C)(2), that ALJ Osborn's Findings of Fact clearly support a finding that Licensee did not violate Section 4-113. Specifically, Complainant did not show that Licensee refused payment without just cause in violation of Section 4-113, as the

evidence does not support a finding that the partial denial of payment for vehicle repair went against Complainant's policy. In this case, Licensee determined that the damages to Complainant's vehicle amounted to \$6,006.54, and issued a payment of \$5,576.54 (representing the cost of repairs minus Complainant's \$250.00 deductible). Licensee also advised Complainant at least four times that if he received an estimate from a body shop, he must provide the estimate to Licensee and that Licensee would discuss the estimate with the body shop prior to approving the repairs.

Nonetheless, on May 10, 2022, Complainant had his vehicle repaired at Raven Auto. The cost of the repairs was \$8,697.00. On June 2, 2022, Complainant notified Licensee that he had completed the repairs to his vehicle and that he wanted reimbursement for approximately \$3,000, based on the additional amount that he paid out of pocket. Licensee again advised Complainant that it would not issue an additional payment until it received an invoice from Raven Auto. In response, on June 8, 2022, Complainant provided Raven Auto's handwritten invoice, but it included very little detail and an increased amount for labor than Licensee's initial estimate. On July 7, 2022, Licensee attempted to obtain a more detailed invoice from Raven Auto, however, they refused to provide any additional documentation. Additionally, Complainant also requested that Licensee reimburse him for rental car expenses. In response, Complainant was directed to submit documentation of rental car expenses before he could be reimbursed. However, Complainant submitted neither an adequate vehicle repair invoice, nor evidence of rental car expenses. Given that Complainant never provided proper documentation to receive any additional reimbursement for vehicle repair and rental car expenses, I find that Licensee did not refuse payment without just cause in violation Section 4-113.

I also find that Complainant did not prove by a preponderance of the evidence that Licensee

misrepresented pertinent facts or policy provisions in violation of Section 27-303(1). Here, ALJ Osborn found that Licensee advised Complainant at least four times that if he received an estimate from a body shop, he must provide the estimate to Licensee and that Licensee would discuss the estimate with the body shop prior to approving the repairs. Additionally, the record shows that after Complainant requested reimbursement for the out of pocket expenses for his vehicle repairs and for rental car expenses, Licensee told Complainant that he would need to submit documentation of rental car expenses before he could be reimbursed. Despite Complainant having knowledge that proper documentation was a requirement to receive any reimbursement for vehicle repairs or rental car expenses, he never provided any documentation. I, therefore, find that **Complainant has not shown that Licensee** misrepresented pertinent facts or policy provisions that relate to the claims in violation of Section 27-303(1).

I further find that Complainant has not shown that Licensee violated Section 27-303(6). Based on ALJ Osborn's Findings of Fact and the evidence incorporated by ALJ Osborn into the record, including the MIA file, Licensee advised Complainant that proper documentation was required for reimbursement. Based on the record, Osborn found that Licensee told Complainant at least four times that when he received an estimate from a body shop for vehicle repair, he must provide the estimate to Licensee. Furthermore, after Complainant paid out of pocket for the repairs and rental car services, he contacted Licensee to be reimbursed, and Licensee told Complainant that he would need to submit documentation of the repair and rental car expenses before he could be reimbursed. However, after being advised that proper documentation was required for reimbursement, Complainant never provided Licensee with such documentation. As Licensee clearly identified that Complainant needed to provide an invoice for vehicle repairs and rental car

services before being reimbursed for the expenses, I find that Complainant has not shown that Licensee failed to provide a reasonable explanation for the partial denial of the claim in violation of Section 27-303(6).

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Osborn. On page 13 of the Proposed Decision, ALJ Osborn orders that “the Licensee not be found in violation of sections 27-303(2) of the Insurance Article and that the charges made by the Complainant be **DENIED AND DIMISSED.**” However, 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 on Fact and Discussion provided by ALJ Osborn and pursuant to COMAR 31.02.01.10-2D.

THEREFORE, it is hereby

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

ORDERED that, as a matter of law, it be found that Licensee did not violate Sections 4-113 and 27-303,

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

ORDERED that the Proposed Decision of ALJ Osborn 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 19th day of July, 2023.

KATHLEEN A. BIRRANE

Commissioner

signature on original

ERICA BAILEY

Chief Hearing Officer/Associate Commissioner for Hearings
Office of Hearings

MARYLAND INSURANCE

* BEFORE MICHAEL R. OSBORN,

ADMINISTRATION

* AN ADMINISTRATIVE LAW JUDGE

EX REL.

* OF THE MARYLAND OFFICE

S.M.M.,

* OF ADMINISTRATIVE HEARINGS

COMPLAINANT

*

v.

*

GEICO SECURE

* OAH No.: MIA-CC-33-22-27080

INSURANCE COMPANY,

* MIA No.: 2022.10.012

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, 2022, the Maryland Insurance Administration (MIA) received a complaint from the Complainant alleging unfair claim settlement practices by GEICO Secure Insurance Company (Licensee). Specifically, the Complainant alleges that the Licensee failed to properly handle his claim for damages to his insured vehicle and failed to pay rental vehicle reimbursement.

After an investigation, the MIA found that the Licensee did not violate Maryland insurance law in the handling of the Complainant's claim and notified the Complainant of this determination by letter on October 17, 2022. On October 17, 2022, the Complainant requested a hearing. On October 18, 2022, the MIA granted the Complainant's request for a hearing and, on November 4, 2022, 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.¹

On January 6, 2023, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022). The Complainant appeared without representation. Frank F. Daily, 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 Summary, September 15, 2022
2. MIA letter to Licensee, September 23, 2022
3. Licensee letter to MIA, with enclosures, September 26, 2022

¹ 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.

4. MIA letter to Licensee, October 11, 2022
5. Licensee customer contact notes, July 13, 2022, through October 7, 2022, with an insurance policy declarations page for policy issued October 19, 2021
6. MIA letter to Licensee, October 12, 2022
7. Licensee's customer contact notes, February 3, 2022, through October 7, 2022
8. MIA letter to Licensee, October 12, 2022
9. Raven's Auto Sales, LLC repair estimate
10. MIA letter to Complainant, October 17, 2022
11. Hearing request, October 18, 2022
12. MIA letter to parties, October 18, 2022

I admitted the following exhibits offered by the Complainant:

- Compl. Ex. 1 - Jerry's Collision Center estimate, February 21, 2022
- Compl. Ex. 2 - Jerry's Collision Center estimate, April 18, 2022
- Compl. Ex. 3 - Licensee check, April 1, 2022
- Compl. Ex. 4 - Complainant letter to Licensee Manager, June 15, 2022

The Licensee did not offer any exhibits.

Testimony

The Complainant testified and did not present other witnesses.

Chris Reed, Claims Manager, testified for the Licensee.

FINDINGS OF FACT

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

1. The Licensee issued an automobile insurance policy to the Complainant to insure his 2019 Toyota Highlander (vehicle), in effect October 18, 2021 through April 18, 2022, policy number 6084-00-17-15 (Policy).
2. The Policy included uninsured motorist coverage of \$50,000.00 per incident, with a \$250.00 deductible, and rental car reimbursement of \$50.00 per day with a \$1,500.00 maximum.
3. On February 3, 2022, the Complainant reported to the Licensee that persons unknown damaged his vehicle while it was parked, unattended, at a friend's gas station while the

Complainant was out of town (the incident). The Licensee gathered information from the Complainant regarding the incident.

4. On February 9, 2022, the Licensee requested local police provide a police report relating to the incident. No police report was composed.

5. In many instances involving damages to an insured vehicle, an employee of the Licensee conducts a physical examination of the damages to evaluate the nature and extent of the damages and to evaluate the cost of parts and labor to repair the vehicle. From that information the Licensee's employee composes an estimate of the cost to repair the insured vehicle.

6. When the Licensee receives an estimate for repair of an insured vehicle from a policyholder, the Licensee contacts the auto body repair facility (body shop) that composed the estimate to review the estimate to ensure parts and labor costs are comparable to the estimate composed by the Licensee's employee, to ensure that hourly labor rates are consistent with labor rates of other body shops in the area, and to negotiate with the repair shop to lower the cost of repair.

7. The Licensee has an existing business relationship with several auto body shops. The existing relationship may eliminate the need for the Licensee to negotiate with the body shop to lower the overall cost of repair.

8. When an insured reports damage to a vehicle, the Licensee advises the insured that he or she may obtain an estimate to repair the vehicle from any body shop the insured chooses, but the Licensee typically also suggests the insured take the damaged vehicle to a body shop with which the Licensee has an existing business relationship.

9. When the Complainant reported the damage to the vehicle, the Licensee told the Complainant that he may take his vehicle for an estimate to the body shop of his choice. The Licensee told the Complainant that if he obtained an estimate to repair the vehicle from a body shop, he must provide the estimate to the Licensee before the Complainant authorized repair so that the Licensee could go over the estimate with the body shop.

10. On February 21, 2022, the Complainant took the vehicle to Jerry's Collison Center of Baltimore, which provided a preliminary estimate of \$9,015.13 to repair the vehicle. The Complainant provided this estimate to the Licensee on a date not clear from the record.

11. When the Complainant reported damage to the vehicle to the Licensee, the Licensee suggested he take the vehicle to Crash Champions in Bel Air, Maryland for an estimate. The Licensee arranged an appointment for the Complainant to take the vehicle to Crash Champions on February 25, 2022.

12. The Complainant took the vehicle to Crash Champions on February 25, 2022. A Crash Champions employee took photographs of the vehicle and uploaded the photos to a portal maintained by the Licensee. The uploading was not successful, and no photographs were uploaded to the Licensee's portal.

13. After visiting Crash Champions, the Complainant contacted the Licensee several times by telephone and by email for an update on the status of repairs to the vehicle as he had not heard from the Licensee nor from Crash Champions.

14. On March 11, 2022, Licensee employee Renee McCoy searched for the photographs taken by Crash Champion without success and emailed Crash Champions to obtain them.

15. On March 14, 2022, Crash Champions responded that it sent photographs to Licensee employee Kimberly Lippa, who handled the Complainant's claim before Ms. McCoy.

16. On March 15, 2022, Ms. McCoy called Crash Champions and on March 15, 2022, Crash Champions emailed photographs of the Complainant's vehicle to Ms. McCoy.

17. On March 15, 2022, Ms. McCoy used the photographs sent by Crash Champions and the Licensee's repair estimator software to create a damage repair estimate of \$2,197.34.

18. On March 28, 2022, the Complainant got a preliminary repair estimate from Randallstown Collision Center for \$8,818.25 to repair the vehicle. The Complainant provided this estimate to the Licensee on a date not clear from the record.

19. On March 31, 2022, the Complainant called the Licensee and requested the Licensee issue a single-party check directly to him in the amount of repair estimates he obtained from body shops. The Licensee explained to the Complainant that it would not issue such a check because the vehicle had a lien on it held by Raven Auto Sales, LLC (Raven Auto), and Raven Auto or the body shop must be a co-payee of any funds issued to the Complainant.

20. On March 31, 2022, the Licensee assigned Chris Reed, a manager of claims adjusters and adjuster supervisors, to handle the Complainant's claim.

21. On April 1, 2022, the Licensee issued a check for \$2,197.34 to the Licensee, made jointly payable to the Complainant and Raven Auto, the vehicle's lien holder, as partial satisfaction of the Complainant's claim.

22. On April 4, 2022, Allen Tracey, a Licensee's Auto Damage Adjuster, personally inspected the vehicle. Mr. Tracey determined that additional parts and labor were necessary to complete repairs to the vehicle. Mr. Tracey estimated the cost to repair the vehicle to be \$6,006.54. Mr. Tracey reviewed this estimate with the Complainant.

23. The Complainant did not negotiate the Licensee's April 1, 2022, check for \$2,197.34, and on April 5, 2022, the Licensee stopped payment on it following a report by the Complainant that he had not received it.

24. On April 21, 2022, the Complainant told Mr. Reed that he did not agree with Mr. Tracey's repair estimate as he had received much higher estimates from body shops. The Complainant requested Mr. Reed contact Carmel Auto Sales and Service in Baltimore (Carmel), which the Complainant said had agreed to repair the vehicle. Mr. Reed called Carmel, and a representative said Carmel was familiar with the repair estimate process and requested the Licensee conduct a supplemental inspection of the vehicle, following which Carmel would work with the Licensee to resolve any discrepancies between Mr. Tracey's estimate and its own estimate of the extent of repairs the vehicle required and their cost.

25. On April 21, 2022, Mr. Reed called the Complainant to update him on his (Mr. Reed's) conversation with the representative at Carmel. The Complainant was unable to speak to Mr. Reed at the time but agreed to return Mr. Reed's call.

26. On a date not clear from the documentary record, the Licensee sent the Complainant a check for \$5,756.54 (\$6,006.54 estimate minus \$250.00 deductible).

27. Mr. Reed explained to the Licensee in at least four conversations that if the Complainant received an estimate from a body shop, he must provide that estimate to the Licensee, and that the Licensee would then contact the body shop to discuss the cost of parts and labor before any repairs were approved by the Complainant. Mr. Reed explained to the Complainant that the Licensee would not pay the amount of a body shop estimate without first discussing the estimate with the body shop.

28. On May 10, 2022, Raven Auto provided an estimate to the Complainant for \$8,697.00 to repair the vehicle. The Complainant authorized Raven Auto to make the repairs to the vehicle, and paid Raven Auto when the repairs were completed.

29. On June 2, 2022, the Complainant called Mr. Reed and told him he had paid approximately \$8,500.00 to Raven Auto, of which approximately \$3,000.00 was out of pocket, to repair the vehicle, and that he wanted to be reimbursed. Mr. Reed requested an invoice. On June 8, 2022, the Complainant provided a handwritten invoice from Raven Auto, which included little detail as to the parts purchased by Raven Auto to repair the vehicle, no details as to the cost of parts used, and a higher amount for labor than estimated by Mr. Tracey.

30. On July 7, 2022, the Complainant called the Licensee and spoke to Chris Calk, Auto Damage Director, who offered to visit Raven Auto, personally, on the Complainant's behalf to obtain more information that might substantiate a higher repair cost than Mr. Tracey's estimate. Then Mr. Reed, the Complainant, and a Raven Auto representative participated in a conference call during which the Raven Auto representative said he was unaware the repairs were related to an insurance claim. Mr. Reed requested Raven Auto provide invoices for the purchase of parts used to repair the vehicle. The Raven Auto Sales representative refused to provide any invoices or any other documents to substantiate the cost of the repairs to the vehicle. The Complainant requested Mr. Reed not visit Raven Auto.

31. On August 18, 2022, the Complainant drove to an office of the Licensee where he requested further review of his claim. Mr. Reed met with the Complainant, who presented another estimate for repairs to the vehicle from a body shop that did not perform the repairs to the vehicle. Following this meeting, through Mr. Reed, the Licensee sent the Complainant a check for \$451.22.

32. In several discussions with Mr. Reed, the Complainant requested the Licensee reimburse him for rental car expenses. Mr. Reed repeatedly told the Complainant that the Complainant should submit documentary evidence of rental vehicle expenses he incurred in order for the Licensee to consider reimbursing those expenses.

33. The Complainant never submitted any proof of rental vehicle expenses to the Licensee.

DISCUSSION

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).² Section 27-303 lists ten unfair claim settlement practices. Section 27-303(2), in particular, prohibits an insurer or nonprofit health service plan from refusing to pay a claim for an "arbitrary or capricious reason."

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).

² Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2017 Replacement Volume of the Maryland Annotated Code.

Neither the statute nor any regulation promulgated by the MIA defines the “arbitrary or capricious” standard. In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Court of Special Appeals quoted from, and adopted, the Insurance Commissioner’s interpretation of the “arbitrary and capricious” standard in an earlier MIA case:

“[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 [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.’”

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).

The Complainant argued that the Licensee had intentionally delayed attention to his vehicle repairs in order to pay less on the claim than he was due. He viewed Crash Champions as the Licensee’s agent and decried the Licensee’s poor response to his complaints that he could

not obtain a repair estimate from Crash Champions despite several calls to both Crash Champions and to the Licensee. The Complainant testified that he was insulted when the Licensee sent him a check for \$2,197.34 made payable to him and the vehicle's lienholder, Raven Auto, and that the photographs taken by Crash Champions later delivered to the Licensee demonstrate that the vehicle had far more extensive damage than could be repaired for \$2,197.34. He argued that the Licensee wrongfully tried to convince him to accept \$2,197.34 in full satisfaction of his claim by intentionally delaying service on his claim and by making him devote so much of his time to phone calls and other inquiries. The Complainant also made several accusations against the insurance industry, generally, and argued that I should propose to the MIA that it should alter Maryland insurance law and policies relating to insurance to eliminate the significant advantages the industry has over all policyholders. He argued that insurance should be a public service and not a for-profit industry.

Regarding rental vehicle expenses, the Complainant testified that he repeatedly asked the Licensee how many days of rental expense he was eligible to recover, and that he planned to submit rental expense proof for however many days were covered, but the Licensee would not answer the question. He agreed that he has never submitted any proof of rental vehicle expenses related to his claim for damages to the vehicle.

The Licensee's claim log reflects many, many phone calls made by the Complainant to the Licensee in which he alleged the Licensee was playing games or was otherwise mishandling his claim. In several of those calls, he pointed to estimates for repair of the vehicle he had obtained that were much higher than the estimate composed by Mr. Tracey.

The Licensee agreed that its initial response to his claim was not a model of good service to an insured but denied it had taken any action to convince the Complainant that he should accept less than he was due on his claim. The Licensee's claim log reflects that the \$2,197.34 was a partial payment, which Mr. Reed testified was based on a computer estimate generated from photographs of the vehicle, only. Four days after the Licensee issued a check for \$2,197.34, the Licensee sent Mr. Tracey to conduct an in-person inspection of the vehicle and to compose a more comprehensive estimate of the costs of repair. The Licensee paid this estimate, minus a deductible, to the Complainant, in the amount of \$5,756.54. The Licensee, through Mr. Reed, later increased its payments to the Complainant by \$451.52.

The check the Licensee issued to the Complainant for \$2,197.34 does not include any reference that this check was in full satisfaction of the Complainant's claim or otherwise limit the Complainant from pursuing a greater recovery from the Licensee.

Mr. Reed testified that he told the Complainant at least four times that the Complainant could obtain an estimate to repair the vehicle from any body shop he chose, that he should submit the estimate to the Licensee, and that the Licensee would then contact the body shop to discuss the estimate. He described estimates obtained by body shop customers without insurance as "retail estimates" that are routinely higher than estimates by body shops that are aware an insurance company will be funding the repairs.

The Complainant authorized repair of the vehicle by Raven Auto and paid for those repairs, without any involvement by the Licensee. The Raven Auto invoice contained little detail and was limited to one handwritten page. The Licensee was unwilling to increase the amounts it paid to repair the vehicle without documents to support the higher cost. Raven Auto was unwilling to provide such documents.

The Complainant, who bears the burden of proof, has not demonstrated that the decision by the Licensee not to reimburse the Complainant approximately \$3,000.00 for the out-of-pocket expenses he said he incurred to repair the vehicle, was arbitrary or capricious. The Licensee's decision was not based on individual discretion, nor was it made without adequate determination of principle. The Licensee's decision not to pay the approximately \$3,000.00 in out-of-pocket expenses to repair the vehicle was not based on an unpredictable whim. The Licensee properly denied the claim based on lawful principles and standards and based its decision on all available information.

The Licensee's concession that its initial handling of the Complainant's claim was not a model of customer service does not mean the Licensee violated Maryland insurance law. From this record I see no evidence of an unfair claim settlement practice.

The Complainant has never submitted any receipts for rental vehicle expenses related to this claim. Thus, the Complainant has not demonstrated that the Licensee's decision not to reimburse him for rental vehicle expenses was arbitrary or capricious.

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. Md. Code Ann., Ins. § 27-303(2) (2017).

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 section 27-303(2) 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.

January 25, 2023
Date Decision Issued

signature on original

Michael R. Osborn
Administrative Law Judge

MRO/sh
#202878

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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