BEFORE MICHAEL RILEY INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

STEVEN AND SUSAN BALL
Complainants,

v. **Admin. Proceeding #11-AP-FP-02034**

STATE FARM FIRE AND
CASUALTY COMPANY
Respondent.

ORDER GRANTING REHEARING

FINDINGS OF FACT

1. This matter came before the Insurance Commissioner on Complainants' Motion for a Rehearing.

2. The Insurance Commissioner set a timeframe for each party to submit written arguments in support of their respective positions and each party timely filed their written arguments.

3. The Complainants previously filed an Administrative Complaint against their insurance company pertaining to an insurance policy on rental property owned by the Complainants. The Insurance Commissioner granted the Complainants a hearing in which the Complainants appeared *pro se*. The property was allegedly damaged by the tenant and the Complainants were not satisfied with the way Respondent handled the claim, including the number of occurrences found and deductibles applied. The Complainants also had issue with the amount of their deductible and with the way the Respondent handled a hail damage claim. The Complainants also alleged State Farm

failed to disclose a pertinent policy provision on coverage for loss of rental income if the home is not habitable.

4. The Hearing Examiner issued a decision, which the Insurance Commissioner adopted, finding that the failure to disclose a pertinent policy provision was a good faith dispute over whether or not the house was habitable and, therefore, not a violation. The Hearing Examiner also found that the Complainants failed to prove their case regarding how many occurrences there were and failed to prove State Farm violated the law by identifying fifteen occurrences. With respect to the hail damage claim, the Hearing Examiner found that State Farm's investigation was timely, thorough and fair and not a violation of the West Virginia insurance code or rules.

5. In Complainants' Motion for Rehearing, argument was made that the issue of what constitutes an occurrence was not fully argued. The Complainants argue that neither party at the hearing cited any statutory code, rules, regulations, or case law to support their respective positions. The Complainants further argue that neither party submitted briefs after the hearing asserting their legal arguments and, therefore, the record for the Hearing Examiner to consider was incomplete.

CONCLUSIONS OF LAW

6. W.Va. Code §33-2-13 and W.Va. Code R. §114-13-6.12 give the Insurance Commissioner discretion in deciding if a rehearing should be granted.

7. The Commissioner believes it is in the best interests of the parties if the issues concerning when an occurrence causes a loss and the parameters of the same should be

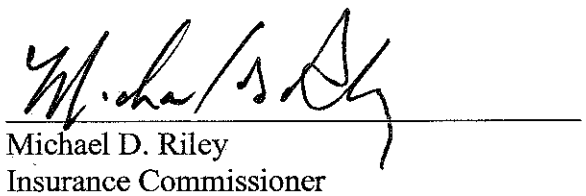
fully explored with the caution that it would be the burden of the Complainants to prove their case.

ORDER

Consequently, based upon the circumstances of this case, the legal issues involved, the motions of the parties and the possibility that not all the legal issues were fully argued and/or considered, the Insurance Commissioner hereby GRANTS the Complainants' Motion for Rehearing and ORDERS that another hearing be set on all issues. The previous ORDER of the Commissioner is hereby VACATED in its entirety. The Parties are encouraged to resolve their dispute where possible but otherwise are to proceed according to a new hearing schedule.

A separate Notice of Hearing will be sent to the parties.

Entered this 8th day of February, 2013.



Michael D. Riley
Insurance Commissioner
State of West Virginia