BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER OF THE STATE OF WEST VIRGINIA

Kent Hartsog,
Complainant

v. **Admin. Proceeding No. 24-IC-174503**

State Farm Fire & Casualty Company,
Respondent

FINAL ORDER

The undersigned Insurance Commissioner of the State of West Virginia hereby adopts and approves the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. Kent Hartsog failed to prove that the Respondent violated West Virginia Code §§ 33-11-4(9)(a), 33-11-4(9)(b), 33-11-4(9)(f), 33-11-4(9)(k), 33-17A-5(f), and 33-17A-5 and West Virginia Code of State Rules §§ 114-14-5 and 114-14-6, therefore the Complainant's complaint should be dismissed.

THEREFORE, it is **HEREBY ORDERED** that the Complaint by Kent Hartsog is denied and dismissed.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted are preserved.

ENTERED this 8th day of April, 2025.

Allan L. McVey

ALLAN L. MCVEY, CPCU, ARM, AAI, AAM, AIS.
INSURANCE COMMISSIONER

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER OF THE STATE OF WEST VIRGINIA

KENT HARTSOG,

Complainant,

v. **ADMINISTRATIVE PROCEEDING NO.: 24-IC-174503**

STATE FARM FIRE & CASUALTY COMPANY,

Respondent.

RECOMMENDED DECISION OF THE HEARING EXAMINER

On September 23 and 25, 2024, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Complainant, Kent Hartsog, appeared pro se. Appearing on behalf of State Farm Fire & Casualty Company was Sabrena Gillis, Esq. and Joshua Tucker. Following the hearing, the matter was deemed submitted for recommended decision.

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Kent Hartsog, (hereinafter "Complainant") resides at 23 Cedar Drive, Hurricane, W.V. At all times relevant to this matter, State Farm Fire & Casualty Company (hereinafter "Respondent") insured the Complainant's home. (Resp. Ex. 3)

2. On April 2, 2024, a windstorm went through the Complainant's neighborhood. The Complainant claimed that the wind damaged his home's roof and part of his back patio. (Tr. P. 11)

3. Later that same day as the windstorm, the Complainant contacted the Respondent to report the damage. On that same day, the Respondent sent an individual to put a tarp on the Complainant's roof. (Tr. P. 11; Resp. Ex. 2)

4. On April 3, 2024, the Complainant talked to a Claims Specialist. The Claims Specialist advised the Complainant on the claim process and procedures. The Complainant was advised that his deductible was $4,849.00. (Tr. P. 11, 76-77; Resp. Ex. 2)

5. On April 3, 2024, the Respondent sent a letter to the Complainant acknowledging the claim and advising the Complainant that he should take steps to protect his property from further damage. (Tr. P. 47, 78; Resp. Ex. 3)

6. On April 4, 2024, the Complainant had Design Roofing look at his roof. The Complainant stated that his roof was only ten to twelve years old. (Tr. P. 11)

7. On April 10, 2024, an inspector with Seek Now went to the Complainant's home on behalf of the Respondent. The inspector did not go onto the roof but visualized it from the ground. The Complainant provided the inspector with pictures he had taken on the day of the storm. (Tr. P. 11, 78; Resp. Ex. 4)

8. On April 18, 2024, a contractor from Design Roofing went to the Complainant's home. The contractor had an opening in its schedule and could begin the repairs immediately. The Complainant contacted the Respondent to get authorization to repair his roof. The Complainant was told that the claim had not been completed. The Complainant then told Design Roofing to hold off doing the repairs. (Tr. P. 12, 80)

9. Once the Respondent reviewed the first inspection report by Seek Now, it was determined that the original inspector did not remove the tarp. The Respondent scheduled another inspection. During the conversation with the Respondent on April 18, 2024, the Complainant was

told that another inspector would be sent to his home. The second inspection occurred on April 21, 2024. (Tr. P. 13, 79-80)

10. The second inspector took pictures of the roof and the back porch. While on the roof, the inspector removed the tarp, walked all over the roof, and took several pictures. (Tr. P. 13; Resp. Ex. 5)

11. On April 22, 2024, a representative of the Respondent left a voicemail for the Complainant stating that the Complainant's claim for damage to his roof was being denied due to poor workmanship. A letter was sent to the Complainant by the Respondent on April 22 stating that, after evaluating his claim, the Complainant's loss did not exceed the deductible of $4,849.00. (Tr. P. 13; Resp. Ex. 6)

12. During a follow-up call to the Respondent, the Complainant was told that even though the wind speed during the storm was high, the damage was caused by a zippering effect. Therefore, according to the Complainant, the basis of the denial was poor workmanship. The Complainant also told the representative that the tarp on his roof had come loose. (Tr. P. 13-14, 84-85)

13. On April 23, 2024, a Claims Specialist contacted the Complainant and stated that they would now authorize repair of the roof. The Complainant stated that the roofing repairman had told him that the damage could not be repaired, and the entire roof would have to be replaced. Later that day the Respondent's representative again called the Respondent and told him that they would only authorize repair but was open to new information that the Complainant may have. (Tr. P. 14, 86)

14. On April 24, 2024, the Seek Now inspector returned to the Complainant's home to fix the tarp. This inspector also took additional pictures. The Complainant then provided the

inspector with a copy of the report prepared by Design Roofing. (Tr. P 14-15)

15. According to the Respondent, the damage to the roof only involved forty-eight shingles, however, it decided to replace the right slope of the roof. In addition, it determined that forty square feet of the roof of the porch and the porch door needed to be replaced. (Tr. P. 86)

16. The Respondent estimated repairing the parts of the house's roof, the repair to the roof of the porch and the porch door to be $2,318.14. This was below the Complainant's deductible of $4,849.00. (Tr. P. 87)

17. On or about, April 24, 2024, the Complainant provided the Respondent with the Design Roofing's report, stating that his repairman said it was not possible to repair the roof and that the entire roof needed to be replaced. Mr. Joshua Tucker, a claim Specialist for the Respondent reviewed Design Roofing's report and stated that the report was considered in making the decision to only repair the roof. (Tr. P. 88)

18. Design Roofing's report stated that wind damage occurred on the right slope of the house's roof. The remaining portions of the roof did not sustain wind damage. The report went on to state that the undamaged shingles would need to be replaced to properly repair the roof. In addition, the report stated that the local building code stated that in order to meet the code, a total roof replacement was necessary. (Tr. P. 88; Comp. Ex. 1)

19. On April 29, 2024, the Complainant sent an email to the Respondent asking for a response to the April 24, 2024, email. There was no evidence that the Complainant sent an email to the Respondent but only gave the Design Roofing report to the inspector. However, the Complainant did testify that he sent Design Roofing's report to the Respondent on April 25, so that may have been in an email. (Tr. P. 15)

20. On May 2, 2024, the Complainant called the Claims Specialist and asked when he could expect an answer about his April 24, 2024, email. According to the Complainant, the Claims Specialist stated that she would respond whenever she got to it. (Tr. P. 15)

21. On May 6, 2024, after not receiving any response from the Claims Specialist, the Complainant went to his insurance agent. The insurance agent contacted the Respondent to inquire about the Complainant's situation. The insurance agent was told that the matter was still under review but that the roof should not require a replacement. The insurance agent was also told that the Complainant's policy does not provide that the roof repair must meet the standards to obtain a warranty. (Tr. P. 15, 97-98)

22. According to the testimony of the Complainant, the insurance agent told him that he could not assist him because the Claims Specialist would make the final decision. (Tr. P. 15)

23. On May 8, 2024, the Claims Specialist called the Complainant and stated that his agent should not be bothering her. According to the Complainant, the Claims Specialist was angry, and it was not a pleasant conversation. Later that same day, the Claims Specialist called the Complainant to apologize for raising her voice and being rude. (Tr. P. 15-16)

24. On May 9, 2024, the Claims Specialist called the Complainant and allegedly told the Complainant that the many emails were wasting her time, and she needed to review the entire claim and call him back. Later that same day, the Claims Specialist called the Respondent back and told him that the roof could be repaired, and she added more money to the offer. The additional money was to be used to repair the ridge and hip of the roof slope. This increase in money still did not exceed the Complainant's deductible. The Complainant asked the Claims Specialist to talk to his contractor. It was the Complainant's interpretation that the roof could not be repaired and still meet the manufacturer's requirements. (Tr. P. 16, 98-99)

25. The Complainant stated that he had sent an email to the Respondent on May 10, and 12, 2024. The only email put into evidence was the May 10, 2024, email. The email stated the following: "Was just following up. Thank you.". It is unknown what was contained on May 12, 2024, email, if it exists.

26. On May 19, 2024, the Complainant claimed that he sent an email to the Respondent stating that the Respondent failed to respond to his May 10 and 12, 2024 emails. In addition, the Complainant submitted sworn proof of loss and appraisal demand. However, neither party introduced this email into evidence. (Tr. P. 17)

27. Also contained in the email, there was a request by the Complainant to invoke the Appraisal Process. The appraisal process would allow two disinterested parties to review the claim and make an objective decision. (Tr. P. 17)

28. It was the Respondent's position that the Appraisal Process is not applicable to the Complainant's claim because that process is only used when there are differing estimates about the amount of damage and this dispute is over the scope of the covered repairs. (Tr. P. 102-103)

29. The Complainant's policy states, "If **you** and **we** fail to agree on the amount of loss, either party can demand that the amount of the loss be set by the appraisal." The policy goes on to state that "Appraisal is only available to determine the amount of the loss of each item in dispute."

30. Again, on May 27, 2024, the Complainant sent another email as a follow up to his May 19, 2024, email. Again, neither party submitted proof that this email occurred. (Tr. P. 17)

31. On May 30, 2024, the Complainant filed a complaint with the West Virginia Offices of the Insurance Commissioner. (Tr. P. 17-18; Resp. Ex. 17)

32. The following events occurred after the filing of the complaint with the West Virginia Offices of the Insurance Commissioner.

33. On June 4, 2024, the Complainant stated that the Claims Specialist called him again and that she was angry and told him that she had eighty pages to review and would get back to him. Twenty-four minutes later, the Claims Specialist called him back and made a couple of adjustments to the offer and told him that she considered the estimate final. The Respondent stated that on that same date, it sent the Complainant a letter advising him that the roof could be repaired and did not need to be replaced. (Tr. P. 18, Resp. Ex. 11)

34. On June 5, 2024, the Claims Specialist calls the Complainant to confirm that he had received some pictures from earlier inspections. According to the Complainant, the representative told the Complainant that he would just have to accept her decision. (Tr. P. 18)

35. According to the Respondent, it revised its estimate to include the tarp, with the total now being $3,239.12, which is below the deductible. The Respondent also told the Complainant that the manufacturer's bulletin and the code documents did not support the Complainant's position.

36. Also on June 5, 2024, Design Roofing called the Complainant and said that he had heard from the Respondent and that the Respondent had told him that the roof must be repaired and not replaced. Design Roofing asked the Respondent how they can make a coverage decision without knowing how the repair can be done. (Tr. P. 19)

37. On June 5, 2024, the Respondent contacted Putnam County and determined that the Complainant lives in an unincorporated section of Putnam County and building codes are not enforced outside of incorporated areas. (Tr. 93; Resp. Ex. 2)

38. The Complainant testified that he was concerned that if the entire roof was not replaced, then if there was additional damage, his claim would be denied due to poor workmanship. He also stated that Design Roofing would not provide a warranty unless the entire roof was replaced. (Tr. P. 36-37)

39. In response to the concern of the Complainant, Mr. Tucker testified that the policy does not talk about warranties and according to the GAF the replacement of shingles does not void any warranties. In addition, it is pure speculation what the Respondent would do in any future claims involving having the roof repaired and not replaced. (Tr. P. 156-157; Resp. Ex. 19)

40. According to the Complainant, the Respondent told Design Roofing that since the Complainant's house was outside the city limits, there was no requirement that the roof repair must meet code or the manufacturer's instructions. (Tr. P. 19)

41. On June 12, 2024, the Respondent contacted the Complainant and stated that it was going to send out another Claims Specialist to determine what shingles to be used in repairing the roof. The Complainant also stated that he told the Respondent that he was going to send a copy of his homeowner's policy, building code, state code and manufacturer's instructions. (TR. P.22)

42. On June 14, 2024, the Respondent sent another individual to pick up a shingle. While the individual was at the residence, he inspected the back porch and revised the estimate. With the revision, the amount was still less than the deductible.

43. On June 22, 2024, the Respondent sent a letter to the Complainant stating that the repair estimate did not exceed the deductible, therefore, the Respondent would not be making a payment.

44. Mr. Tucker, on behalf of the Respondent, testified that, in his opinion, no one on behalf of the Respondent misrepresented anything to either the Complainant or to Design Roofing.

(Tr. P. 185)

45. It was also Mr. Tucker's position that the Respondent did not misrepresent any pertinent fact or policy provisions. (Tr. P. 187)

46. Mr. Tucker testified that there was no arbitration requirement under the Complainant's policy. (Tr. P. 188)

47. It was the Respondent's position that any communication from the Complainant that reasonably required an answer, prior to the filing of the complaint with the West Virginia Offices of the Insurance Commissioner, was answered timely and in accordance with the rules. (Tr. P. 187-188)

48. Mr. Tucker also testified that all information provided by the Complainant was reviewed and that the Complainant was given the opportunity to supplement any information that he believed was relevant to the claim. (Tr. P. 189)

49. During his testimony, the Complainant identified West Virginia Code §§ 33-11-4(9)(b), 33-11-4(9)(f) and 33-11-(4)(9)(f), 33-11-4(9)(k) as potential violations by the Respondent.

Issue

Whether the Respondent violated West Virginia Code §§ 33-11-4(9)(a), 33-11-4(9)(b), 33-11-(4)(9)(f), 33-11-4(9)(k) and 33-17A-5(f) and West Virginia Code of State Rules §§ 114-14-5 and 114-14-6.1, if so, what is the remedy?

Burden of Proof

The Complainant has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of the State of West Virginia.

Jurisdiction

The West Virginia Offices has jurisdiction over this matter under West Virginia Code § 33-2-3.

Analysis

The Complainant had a homeowner's policy, with the Respondent, which was in effect on April 2, 2024. On that date a windstorm occurred at the Complainant's house. The storm damaged the Complainant's roof of his home and his porch. The Complainant filed a complaint against the Respondent on May 30, 2024.[1]

During his testimony, the Complainant alleged that the Respondent violated West Virginia Code §§ 33-11-4(9)(a), 33-11-4(9)(b), 33-11-4(9)(f), 33-11-4(9)(k) and 33-17A-5(f). Those Code Sections are as follows:

§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined. The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

> (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue [...]
> (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies [...]
> (f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;...
> (k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

These Code Sections are further clarified in West Virginia Code of State Rules §§ 114-14-

[1] Once a complaint is filed with the West Virginia Offices of the Insurance Commissioner any evidence which occurred after that date is not considered in the Hearing Examiner's decision. However, in this case that evidence is considered to keep the facts straight and complete.

5 and 114-14-6 which in relevant parts state as follows:

> §114-14-5. Standards For The Acknowledgment Of Pertinent Communications.
>
> 5.1. Acknowledgment of notices of claims. -- Every insurer, upon receiving notification of a claim shall, within fifteen (15) working days, acknowledge the receipt of such notice unless full payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.
>
> 5.3. Replies to other pertinent communications. -- A reply shall be made within fifteen (15) working days of receipt by the insurer to all other pertinent communications from a claimant which reasonably suggest that a response is expected.
>
> §114-14-6. Standards For Prompt Investigations And Fair And Equitable Settlements Applicable To All Insurers.
>
> 6.1. Investigation of claims. -- Every insurer shall promptly conduct and diligently pursue a thorough, fair and objective investigation and may not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of a claim dispute. This section is not intended to conflict with the statutory requirements of the Medical Professional Liability Act, W. Va. Code §§55-7B-1 to 11, as the same relate to the assertion and investigation of medical professional liability claims.
>
> 6.2. Establishment of investigatory procedures. -- a. Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within fifteen (15) working days of receipt of notice of claim. b. Every insurer shall provide to every first-party claimant, or to the claimant's authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of such claimant, within fifteen (15) working days of receiving notice of the claim. c. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent promptly provides written notification to the person filing the claim that the agent is not authorized to receive notices of claim.
>
> 6.3. Duty after investigation. -- Within ten (10) working days of completing its investigation, the insurer shall deny the claim in writing or make a written offer, subject to policy limits and, with respect to medical professional liability claims, subject to applicable statutory requirements set forth in the Medical Professional Liability Act, W. Va. Code §§55-7B-1 to 11.

6.4. Offers of settlement. -- a. In any case where there is no dispute as to coverage and liability, it is the duty of every insurer to offer claimants or their authorized representatives, amounts which are fair and reasonable, as shown by the insurer's investigation of the claim, providing the amounts so offered are within policy limits and in accordance with the policy provisions.

b. No insurer may attempt to settle a claim by making a settlement offer that is unreasonably low. The Commissioner shall consider any evidence offered regarding the following factors in determining whether a settlement offer is unreasonably low:

1. The extent to which the insurer considered evidence submitted by the claimant to support the value of the claim;

2. The extent to which the insurer considered legal authority or evidence made known to it or reasonably available;

3. The extent to which the insurer considered the advice of its claims adjuster as to the amount of damages;

4. The extent to which the insurer considered the opinions of independent experts; property damage;

5. The procedures used by the insurer in determining the dollar amount of

6. The extent to which the insurer considered the probable liability of the insured and the likely jury verdict or other final determination of the matter; and

7. Any other credible evidence presented to the Commissioner that demonstrates that the final amount offered in settlement of the claim by the insurer is or is not below the amount that a reasonable person would have offered in settlement of the claim after taking into consideration the relevant facts and circumstances at the time the offer was made.

§33-17A-5. Permissible cancellations.

After coverage has been in effect for more than sixty days or after the effective date of a renewal policy, a notice of cancellation may not be issued unless it is based on at least one of the following reasons…
(f) A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

A. MISREPRESENTATION

The Complainant alleges that the Respondent misrepresented the terms and conditions of his policy thus violating West Virginia Code § 33-11-4(9)(a).

It is difficult to determine exactly how the Complainant believes that the Respondent misrepresented the Complainant's policy. The first probable reason is that the Respondent was not willing to replace the entire roof to meet building codes and the manufacturer's recommendations.

There is nothing in his policy that indicates that any repairs must be done in accordance with building codes; however, there is a section that requires a homeowner to maintain the home by being in compliance with local building codes.

An investigation was conducted by the Respondent which indicated that the Complainant's home is out of any town and building codes are only enforced on homes located in a town and not in the county itself. Therefore, the failure of the Respondent to replace the entire roof is not a violation of any building code.

As to the issue of meeting a manufacturer's requirements, the Complainant's contractor told the Complainant that the manufacturer would require the entire roof to be replaced or there would not be any warranty. The testimony of Mr. Tucker indicated that GAF would honor any warranty, and it did not depend on whether the roof was replaced in its entirety or just repaired.

The last possible misrepresentation that the Complainant is concerned about was that his policy could be cancelled if it were determined that the Complainant did not meet building codes. First, this is speculation, therefore, difficult to prove. Secondly, the fact that a policy can be cancelled for failure to meet building codes is clear in the policy.

The only misrepresentation that may occur, according to the Complainant, is that the Respondent refuses to replace the entire roof and later can come back and cancel the policy due to failure to meet building codes. Again, while this is speculative, the Complainant will have a compelling case against the Respondent if it occurs in the future. However, until the Respondent

acts of that type against the Respondent, the matter is not ripe for consideration currently.

Based on the above discussion, the Complainant fails to meet is allegations of misrepresentation, therefore, there is no violation of West Virginia Code § 33-11-4(9)(a).

B. TIMELINESS OF COMMUNICATION

The next issue to address in this decision is whether the Respondent violated West Virginia Code § 33-11-4(b) and West Virginia Code of State Rules § 114-14-5.

In subsection 5.1 of West Virginia Code of State Rules § 114-14-5, the insurer is required to acknowledge the claim within fifteen (15) working days of the claim being made. In this matter, the Respondent sent a person out to place a tarp on the Complainant's roof. On the next day, after the storm, the Respondent spoke with the Complainant about the claim process and procedures. Based on the Respondent's immediate response to the claim, there is no question that the Respondent did not violate West Virginia Code of State Rules § 114-14-5.1.

The more relevant issue, based on the allegations of the Complainant is whether the Respondent violated West Virginia Code of State Rules § 114-14-5.3.

The Complainant stated several times that the Respondent failed to respond to his emails. As stated in the Rule, a response to correspondence is required when stated in such anyway to that a reasonable person would understand that a response is expected. This response must occur within fifteen (15) business days.

The testimony of the Complainant did not state that he sent the Respondent an email on April 24, 2024, however, he testified that he had sent an email on April 29, 2024, requesting an answer to his April 24, 2024, email. Since this email was not admitted into evidence, it is unknown whether the email contained a question that reasonably could require a response.

On May 2, 2024, the Complainant called the Claims Specialist and asked when he would be receiving a response to his email of April 24, and April 29, 2024, emails. According to his testimony, the Complainant was told that she would get to it when she gets to it.

On May 6, 2024, the Complainant claimed that he still had not received any response from his April 24, 2024, email even though he had talked to the Claims Specialist on May 2, 2024. The Complainant then went to his State Farm agent's office to see what the agent could do. The agent contacted the Claims Specialist and did not get any additional information.

On May 9, 2024, the Claims Specialist contacted the Complainant. In the first call the Claims Specialist agent allegedly told the Complainant that all the emails were wasting her time and that she needed to review the entire file. Later that day, the Claims Specialist called the Complainant again stating that the roof could be repaired and added more money to the cost of repair.

The original email, according to the Complainant occurred on April 24, 2024, and by May 9, 2024, the Claims Specialists told the Complainant that the roof could be repaired and added to the amount of money. Looking at a calendar, the Respondent responded to the Complainant within eleven business days, which is within the time allowed under West Virginia Code of State Rules § 114-14-5.3.

The next alleged violation of West Virginia Code of State Rules § 114-14-5.3. This violation surrounds an email sent by the Complainant on May 10, 2024. The body of that email stated "Was just following up. Thank you." This does not appear to be a question that one would reasonably conclude that an answer was expected. Therefore, that email did not require a response within fifteen working days and failure to respond is not a violation of West Virginia Code of State Rules § 114-14-5.3.

The text of May 12, 2024, email was not put into evidence. The Complainant claimed in an email on May 19, 2024, that the Respondent failed to respond to either his May 10, or May 12, 2024, email. Since it cannot be known what the text of May 12, 2024, contained, it is impossible to determine whether there was a question there that would reasonably require a response. Again, no violation of the West Virginia Code of State Rules § 114-14-5.3 was proven. Even if the email of May 12 contained a question that would reasonably require an answer, the Complainant filed his complaint with the Offices of the West Virginia Insurance Commissioner before the fifteen business days would have expired. As stated in the footnote above, it is the standard procedure of the West Virginia Offices of the Insurance Commissioner that once a complaint is filed, then anything that occurs after that will not be considered in the decision.

Therefore, based on the discussion above, the Complainant failed to meet his burden of proof to show any violation of West Virginia Code of State Rules § 114-14-5.3 or West Virginia Code § 33-11-4(9)(b).

C. RESPONDENT'S INVESTIGATION

As part of a fair and equitable settlement, under West Virginia Code of State Rules § 114-14-6.1, the Respondent is required to promptly conduct an investigation, and that investigation is pursued in a fair and objective manner. There can be no doubt that the Respondent acted promptly when it received the claim from the Complainant. The windstorm occurred on April 2, 2024, and the Complainant contacted the Respondent that same day. The Respondent immediately sent out an individual to put a tarp on the Complainant's roof. On April 3, 2025, the Complainant talked to a Claims Specialist and was advised on the claims process and procedures. The Respondent could not have acted more promptly.

The second requirement under West Virginia Code of State Rules § 114-14-6.1, is that the investigation is fair and objective. As discussed below, the Respondent reviewed all the information provided by the Complainant, which was the report by Design Roofing. However, the Respondent also considered the information from its own investigator, Seek Now. Since both views were considered in the Respondent's decision that the roof can be repaired, the investigation was both fair and objective even though the Complainant disagreed with the decision.

The next Rule to consider is West Virginia Code of State Rules § 114-14-6.2. The relevant portion of this Rule is that the Respondent must establish procedures that begin when the claim is filed. This did occur in the instant matter. The Respondent, the day after the claim was filed, provided the Complainant with a list of the procedures and the process that would be followed for the claim. Next, the Respondent sent an inspector to cover the roof with a tarp immediately upon receiving the claim. Finally, the Respondent sent out an inspector, Seek Now, to ascertain the damage to the roof.

The remaining portion of West Virginia Code of State Rules § 114-14-6.2 is not applicable to the complaint filed by the Complainant. Therefore, the Complainant did not prove that the Respondent violated West Virginia Code of State Rules § 114-14-6.2.

D. GOOD FAITH SETTLEMENT

The Complainant argues that the offer to repair the roof on his house instead of replacing the entire roof was not a good faith settlement offer. As seen above, West Virginia Code § 33-11-4(9)(f), the Respondent is required to effectuate a fair and equitable settlement. To determine whether a fair and equitable settlement occurred, one must look at West Virginia Code of State Rules § 114-14-6.4.

The first item to discuss under West Virginia Code of State Rules § 114-14-6.4(b)(1) is whether the Respondent considered the evidence submitted by the Complainant to support the contention that his roof should be replaced and not just repaired. The evidence supplied by the Complainant was the report and opinions expressed by his contractor, Design Roofing.

Initially, the argument, by Complainant and Design Roofing, was that due to the damage to the roof could not be properly repaired and had to be replaced. Evidently, Design Roofing believed that repair would not be the proper approach to the issue and to properly repair the damage the entire roof needed to be replaced.

The Respondent took the position that since the damage was due to a zippering effect, the roof could be repaired and that the repair would maintain the integrity of the roof. Therefore, there was disagreement as to the proper way to remediate the damage.

Design Roofing and the Complainant went on to argue that if the roof is only repaired, the repair would not satisfy the building codes or the manufacturer's specifications. The Respondent contacted Putnam County officials and determined that there were no applicable building codes in effect for the area in which the Complainant lived. In addition, it was the testimony at the hearing that GAF would warrant any shingles that would be placed on the roof. By contacting Putnam County and GAF, it was clear that the Respondent took into consideration the concerns of Design Roofing and the Complainant when making its decision.

The next issue, under West Virginia Code of State Rules § 114-14-6.4(b)(2), is whether the Respondent considered legal authority or evidence that was brought to its attention. The only legal authority raised by the Complainant, except for those raised by the Complainant at the hearing, which are the subject of this decision, was the discussion of building codes. It was clear in the testimony that the Respondent was aware of the issue of building codes and took steps to

determine whether any building codes would be applicable to the Complainant's claim. The Respondent contacted the building authorities in Putnam County and were told that the building codes in the county were only applicable to those homes located within various city limits.

The next step under West Virginia Code of State Rules § 114-14-6.4(b)(3) is to analyze the extent to which the Respondent considered the opinions of its claim adjusters. The evidence was that Mr. Tucker reviewed the entire claim, including the report from Design Roofing, and concluded that the decision of the initial adjuster was correct, and the damage could be fixed by a repair and not a complete replacement of the roof.

The Respondent is also required to consider the opinion of any independent expert when making an offer. In this case, the only potential independent experts would be Design Roofing and Seek Now Inspection company. It could be argued that neither one of these entities is independent experts. Design Roofing is a company retained by the Complainant to fix his roof, therefore, had a financial interest in the outcome. Whether Seek Now is independent is also questionable because the Respondent employed them to investigate damage to roofs. While it does not appear that Seek Now has a financial interest in this particular outcome, it is easy to speculate that if they recommended replacement for every roof they inspected, they would not be used by the Respondent very often.

Therefore, based on the above discussion, neither Design Roofing nor Seek Now were completely independent experts. Since neither side obtained absolute independent experts, one cannot use this section of the West Virginia Rules to determine whether the offer was fair and equitable.

Under West Virginia Code of State Rules § 114-14-6.4(b)(5), the insurer must use reasonable procedures to determine the dollar amount of damages. It does not appear that the

Complainant is complaining about the dollar amount of the damages but that the damages are such that it cannot be repaired and must be replaced. In this case, the Respondent used the calculations of Seek Now to determine the cost of repairs to the roof. The Complainant urges that the calculations by Design Roofing for replacing the roof should be used in the calculation of damages. It is reasonable for the Respondent to use the calculation of damage by Seek Now since it is based on its determination that the roof does not need to be replaced and only repaired.

This section of the Rules would only be applicable to this decision if there was an agreement between the Complainant and the Respondent that the roof needed to be replaced or an agreement that it needed to be repaired. Then, and only then, if the Complainant thought that the Respondent's calculation of the damage was unreasonable would this Rule be used. However, since there is no agreement about how the damage will be repaired, then the Respondent's calculation for the repair is reasonable. No proof was offered that the calculation of the cost of the roof repair was unreasonable, so the Complainant failed to prove that the Respondent violated West Virginia Code of State Rules § 114-14-6.4(b)(5).

Under West Virginia Code of State Rules § 114-14-6.4(b)(6), the insurer must consider the probable liability and well as a likely jury verdict. In this matter the Respondent admitted liability for the damage, however, the amount to repair the damage was less than the Complainant's deductible. Therefore, this Rule Section would not be applicable.

The final Rule to review to determine whether the Respondent's offer was unreasonably low is West Virginia Code of State Rules § 114-14-6.4(b)(7). Under this rule, the Commissioner must consider any credible evidence presented by the Complainant that indicates that the offer by the Respondent was unreasonably low.

The only evidence presented by the Complainant was the opinion of Design Roofing that

the roof needed to be replaced and should not be repaired. That evidence was considered in making this decision.

Therefore, the Complainant failed to prove that the Respondent violated West Virginia Code § 33-11-4(9)(f) or West Virginia Code of State Rules § 114-14-6.2.

E. ARBITRATION

Another issue raised by the Complainant was that the Respondent violated West Virginia Code § 33-11-4(f). This section does not allow an insurance company to inform a claimant that it is the insurance company's policy to appeal arbitration awards. This information could compel the claimant to accept a settlement in an amount less than what was awarded in arbitration.

There was no evidence admitted to prove that the Complainant or the Respondent engaged in any arbitration. In fact, the insurance policy in question did not require the parties to arbitrate their disagreement.

Since there was no arbitration, West Virginia Code § 33-11-4(f) cannot be applicable to this matter. Therefore, the Complainant's assertion that the Respondent violated West Virginia Code § 33-11-4(f) is without merit.

F. CANCELLATION

During the hearing, the Complainant cited West Virginia Code § 33-17A-5 as a potential violation by the Respondent. This code section deals with the cancellation of the Complainant's homeowners insurance policy. There was no evidence indicating that the Respondent canceled the Complainant's homeowner's insurance policy. There was some discussion concerning the cancellation of the Complainant's auto policy but that is not subject to this Complaint and is not

considered in this decision.

The only possible basis for this allegation is that the Complainant is concerned about a future cancellation of his homeowner's policy. This concern is whether the repair of the roof would allegedly violate a local building code or a manufacturer's requirement.

As discussed above, any future cancellation is speculative and as such is not ripe for consideration at this time. Therefore, the Complainant did not prove that the Respondent violated West Virginia Code § 33-17A-5.

G. APPRAISAL

Another issue, raised by the Complainant, was that the Complainant requested that the Respondent engage in the Appraisal Process and the Respondent refused this request.

Upon review of the policy, appraisals are limited to a disagreement concerning the amount of loss. The Respondent argues that the disagreement with the Complainant involves the scope of the claim and not the value of the claim. The Complainant takes the position that an appraisal can be invoked when the parties disagree about dollar amounts of loss.

The argument between the parties is the meaning of the word loss. The Respondent's adjuster claimed that the meaning of the word loss is monetary loss. In other words, the Appraisal Process can only be invoked when one of the parties believes that the repairs can be done for one price and the other party believes that it can be repaired at a different price. The Respondent claims that the disagreement here is not about the cost of repair but whether the whole roof needs to be replaced or whether it can be repaired.

The disagreement here is clearly about how the claim can be adjusted, repaired or replaced. There was no disagreement about the amount of money that would be spent on any action taken

on the roof.

Since I believe that either interpretation, cost, or scope, are reasonable interpretations of word loss, the Complainant has the burden of proof to prove, by a preponderance of the evidence, that it means cost. The Complainant failed to meet his burden of proof by not introducing any evidence concerning the meaning of the word loss in this insurance policy.

H. MISCELLANEOUS CONCERN

On several occasions during the hearing, the Complainant testified as to the problems that he had with the Respondent's Claims Specialist on the telephone. On May 2, 2024, the Complainant said that he asked the Claims Specialist when he could get a response from an earlier email. According to the Complainant, the Claims Specialist said she would get to it when she got to it.

The Complainant also stated that the day after he had gone to see his insurance agent to find out the status of his claim, he received a call wherein the Claims Specialist told the Complainant that all his emails were wasting her time.

On June 4, 2024, the Complainant claimed that the Claims Specialist contacted him and that she was angry because she had eighty pages to review on his claim.

While the actions of the Claim Specialist are poor customer service, there is nothing in the Code or Rules that address the rudeness of a representative of the insurance company. Therefore, while the behavior of the Claims Specialist is poor business, it is not against the law.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commission have jurisdiction over this

matter by virtue of West Virginia Code Chapter § 33.

2. The Complainant has the burden of proof, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-11-4(9)(a), 33-11-4(9)(b), 33-11-4(9)(f), 33-11-4(9)(k) and 33-17A-5(f).

3. The Complainant has the burden of proof, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules §§ 114-14-5 and 114-14-6.

4. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(a) by failing to prove that the Respondent misrepresented pertinent facts or policy provisions relating to coverage.

5. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(b) by failing to prove that the Respondent failed to acknowledge and act reasonably promptly to communications dealing with the Complainant's claim.

6. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(f) by failing to prove that the Respondent acted in bad faith in attempting to effectuate a prompt, fair and equitable settlement once liability became clear.

7. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(k) by failing to prove that the Respondent told the Complainant that it typically appeals arbitration decisions to compel the Complainant to accept a settlement less than the arbitration award. This accusation is unfounded since there was no arbitration award.

8. The Complainant failed to prove that the Respondent violated West Virginia Code § 33-17A-5 by failing to prove that the Respondent cancelled his homeowner's policy.

9. The Complainant failed to prove that the refusal of the Respondent to use the Appraisal Process was a violation of the policy.

10. The fact that the Claims Specialist was rude to the Complainant is not a violation of any West Virginia Code Section or Rule.

11. By failing to prove that the Respondent violated West Virginia Code §§ 33-11-4(9)(a), 33-11-4(9)(b), 33-11-4(9)(f), 33-11-4(9)(k) and 33-17A-5(f), the Complainant failed to prove that the Respondent violated West Virginia Code of State Rules §§ 114-14-5 and 114-14-6.

RECOMMENDED DECISION

It is the recommendation of the Hearing Examiner that the Complainant failed to prove that the Respondent violated West Virginia Code §§ 33-11-4(9)(a), 33-11-4(9)(b), 33-11-4(9)(f), 33-11-4(9)(k), 33-17A-5(f) and West Virginia Code § 33-17A-5 and West Virginia Code of State Rules §§ 114-14-5 and 114-14-6, therefore the Complainant's complaint should be dismissed.

Mark Carbone
Hearing Examiner