

**BEFORE ALAN MCVEY INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA**

Heidi Schimmelpfenning

Complainant,

v.

**ADMINISTRATIVE PROCEEDING NO.:
25-IC-180821**

Allstate Vehicle and Property Insurance Company

Respondent.

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. The Complainant proved that the Respondent violated West Virginia Code § 33-11-4(11). The Complainant failed to prove that the Respondent violated any other West Virginia Code Section. Therefore, the Complainant's complaint should be dismissed in part and granted in part.

In addition to the reasoning set forth in the Hearing Examiner's recommended decision, the Commissioner notes that W. Va. Code § 33-12-22 is "consistent with the general rule that if either party must suffer from the insurance agent's mistake, it must be the insurance company." *Westfield Ins. Co. v. Paugh*, 390 F. Supp 2d 511 (2005) (internal quotations omitted). Here, where the insurance producer's mistake or misrepresentation on the insurance application ultimately resulted in uncollected premium for the insurance company, the company is the party that should bear the loss.

The Commissioner's final orders are subject to judicial review in the Intermediate Court

of Appeals as set forth in W.Va. Code § 51-11-4(b)(4). Any person aggrieved by this Order may, **within 30 days of the entry of the judgment being appealed**, file an appeal as set forth in W.Va. Code § 33-2-14 and Rule 5(b) of the West Virginia Rules of Appellate Procedure.

THEREFORE, it is **HEREBY ORDERED** that the Complaint by Heidi Schimmelpfenning is upheld in part and denied in part.

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

ENTERED this 13th day of November, 2025.



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

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**ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY**

Respondent.

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On August 4, 2025, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Heidi Schimmelpfenning (hereinafter "Complainant") appeared pro se and by telephone. Tanya Kesner, Esquire, Patrick Hambrick and Megan Thompson-McKown appeared on behalf of Allstate Vehicle and Property Insurance Company (hereinafter "Respondent"). 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. The Complainant purchased a home located [REDACTED] Normantown, West Virginia. The purchase of the home was closed in October or November of 2023. (Tr. P. 6)
2. At the time of the purchase, the Complainant was living in New York. She did not

move to West Virginia until the summer of 2024. (Tr. P. 12)

3. The Respondent insured the former owner of the home. The Complainant decided to use the same insurance company for her insurance. Since the Complainant was in New York, she contacted Patrick Hambrick, a local agent. (Tr. P. 6)

4. When the Complainant called Mr. Hambrick's office, she talked to Donna Groves. Ms. Groves asked the Complainant several questions. While Ms. Groves did not testify, it was assumed during the hearing that Ms. Groves completed the application for insurance. The Complainant testified that she did not complete the form and had not talked to Mr. Hambrick until after the policy had been issued. It is customary practice in the insurance industry for applications to be completed on the phone. (Tr. P. 62; Ex. 4)

5. At some point in December 2023, the Complainant noted that her premium was higher than she thought it should be. According to the testimony of the Complainant, she contacted the Respondent's agent. According to the Complainant, she was told that the premium was higher due to there being a pool on the property and that there was a pipe coming out of the house. (Tr. P. 6-7, 21)

6. The Complainant's house does not have a pool, and she had no idea what pipe they were talking about. During the hearing, the Respondent denied that there were any emails about a pool causing an increase in the premium. After the hearing, the Complainant produced an email from her insurance agent's office that did mention a pool. This email was admitted into evidence, as Exhibit 14, after being provided to counsel for the Respondent. There was no objection to the admission of the email by the Respondent. (Ex. 14)

7. The email from Donna Groves stated, "I removed the pool and put it back to 2 story which adding the 2 story takes the square footage to 1,000 and also took off the pellet stove." (Ex.

14)

8. The Complainant testified that she cancelled the policy and told the Respondent that she was getting insurance from another provider. (Tr. P. 7)

9. The Complainant did not move to West Virginia until the summer of 2024. When she got to her West Virginia home, she discovered several bills from the Respondent. The Complainant then contacted the Respondent and was told that she had the bill due to the fact she did not get her vehicle insured by the Respondent. According to the Respondent, the Complainant had been given a discount for multi-policy discount and since she did not get her car insured by the Respondent, she lost that discount. (Tr. P. 7-8, 40)

10. The Complainant denied that Ms. Groves talked to her about a multi-policy discount when she was applying for insurance coverage.

11. The Complainant denied that she was ever asked to have her car insured by the Respondent. Her car was licensed and insured in New York. (Tr. P. 16)

12. In the Complaint filed by the Complainant with the West Virginia Offices of the Insurance Commissioner, there was a copy of a collection letter that was sent to the Complainant concerning a premium that was not paid. The Complainant stated that she was charged for a premium after she had cancelled the policy. (Tr. P. 9; Ex. 1, 2)

13. Also contained in the Complaint was a declaration page from State Farm Insurance Company. The effective date of that policy was January 10, 2024. (Tr. P. 10; Ex.3)

14. During the first phone call to the Respondent's agent, when the Complainant was initially obtaining insurance coverage for her home, the Complainant testified that she told Ms. Groves that the house would be vacant until she moved to West Virginia. Mr. Hambrick testified that the Respondent does not insure vacant homes. (Tr. P. 14, 42)

15. The application completed by Ms. Groves indicates that there is no hot tub or pool on the Complainant's property. (Tr. P. 18; Ex. 4)

16. There was an amendatory endorsement that was issued by the Respondent on December 5, 2023. This endorsement indicated that her policy premiums had increased due to not having the multi-policy discount. The Complainant testified that she did not know anything about an amendatory endorsement. The Respondent testified that the multi-policy discount was given because it was anticipated that the Complainant would be adding her car insurance with the Respondent but when she did not add the vehicle, the multi-policy discount was removed. (Tr. P. 30, 33, 67, 69; Ex. 6)

17. The Complainant contacted Mr. Hambrick when she noticed that her premium had increased. Mr. Hambrick testified that the Complainant had told him that she had talked to someone and the reason the policy premium had increased was due to a pipe and a pool. Mr. Hambrick testified that he investigated that issue and determined that the increase was due to the removal of the multi-policy discount which was originally calculated into the initial premium. (Tr. P. 43-45, 51)

18. The Complainant alleged that during her conversation with Mr. Hambrick she told him that she had already got insurance from State Farm. Mr. Hambrick does not remember the Complainant telling him about a new insurance policy. (Tr. P. 51-52)

19. On January 1, 2024, there was a binder issued which decreased the Complainant's premium. This decrease was due the number of stories of the house being decreased, thus reducing the replacement costs of the house. Even though the premium was reduced, due to the binder, the premium was still more than what was originally quoted to the Complainant. (Tr. P 44-45, 70; Ex. 8)

20. On January 11, 2024, the Complainant sent an email to the Respondent telling them that they could not cancel the paid policy until it is cutoff time for forfeit. This email is dated the day after the effective date of the State Farm policy. (Tr. P. 36; Ex. 7)

21. In the response to the email, Ms. Groves said “Thanks for letting me know. Does it need to be cancelled now, or when the other policy goes into effect?” (Tr. P. 44; Ex. 7)

22. Ms. Thompson-McKenna, Senior Product and Risk Management Litigation Consultant for the Respondent, testified that the declaration page that was issued when the policy was originally written gave discounts for protective devices, claim free, responsible payment, multi-policy, home buyer and welcome. (Tr. P. 61, 65; Ex. 5)

23. The original collection amount was \$286.07 but that was reduced to \$137.53, which is the amount turned over to the collection agency. (Tr. P. 77-78; Ex. 13)

24. The Respondent backdated its coverage until January 10, 2024, the date the Complainant obtained insurance coverage from State Farm. (Tr. P. 84-85)

Issue

Whether the Respondent violated the insurance laws of the State of West Virginia? 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 of the Insurance Commissioner has jurisdiction over this matter under West Virginia Code § 33-11-1.

Analysis

The allegations made by the Complainant are unusual in that the facts presented do not fit neatly into any delineated item under the Unfair Trade Practices Act. The issue does not revolve around a claim for an accident but around whether the Respondent improperly provided a premium quote which included a discount for having multiple policies and whether the premium was increased due to a pool or a pipe.

There is no doubt in this matter that the Complainant was originally given a quote for a premium to provide insurance for a home located in Normantown, West Virginia. It is also a fact that this premium was increased. The ultimate issue is why the premium was increased.

The Complainant believes that the premium increase was because the Complainant allegedly had a pool and a pipe on her property that was not in the original quote. This position is supported by an email that was sent to the Complainant from Ms. Groves which stated that the pool had been removed from the premium cost along with the removal of a pellet stove and a reduction of the house's square footage.

The Respondent counters the Complainant's argument by proving that the application for insurance coverage completed by Ms. Groves indicates that there is not a pool or hot tub on the property.

The Respondent's position is that the increase in the premium was since the original quote included a multi-policy discount. According to the Respondent, the Complainant was given a multi-policy discount because it was anticipated that she would be purchasing automobile insurance from the Respondent. When the Complainant did not purchase automobile insurance coverage, the discount was removed thus increasing the premium.

The Complainant vehemently denies that she had ever told her insurance agent that she was going to purchase automobile insurance from the Respondent. This denial is because she was

still residing in the New York and under New York law she had to have coverage in that state.

It then becomes an issue of fact as to why the premium was increased. The Complainant believes that the premium increase resulted from the fact that she was being charged for a pool and pipe which did not exist. The Respondent stated that the increase was due to the failure of the Complainant to add insurance coverage for her vehicle to get the multi-policy discount.

The only evidence that the Complainant has concerning her position is the alleged conversations between her and Ms. Groves and the email.

The Respondent's proof that any increase was not related to an alleged pool or pipe on the property was the application, which was completed by Ms. Groves. The application contained a question on whether there was a pool or hot tub on the premises which was answered no. The original quote is based on the information contained in the application and since the answer was no to the question about a pool or hot tub, there is no doubt that the original quote did not include coverage for a pool or hot tub.

The next issue is, since the original quote did not contain coverage for a pool or hot tub, then why did the premium increase? The Complainant argues that the premium increased due to the adding of a pool or pipe, however, the only proof offered was the email wherein Ms. Groves stated that the pool and other items had been removed from the premium. This only explains why the premium went down and not why it was raised initially.

To counter that proof the Respondent offered an amendatory endorsement that was issued by the Respondent on December 5, 2023, indicating that her policy premiums had increased due to not having the multi-policy discount. While the Complainant challenges that she never requested coverage for her automobile, the policy does indicate that she received the discount. That position makes more sense than adding coverage for a non-existent pool or pipe. At the very least the

explanation offered by the Complainant is not sufficient to meet her burden of proof.

One violation identified by the Complainant is a violation of West Virginia Code § 33-11-4(11) which states as follows:

(11) Misrepresentation in insurance applications. -- No person shall make false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

One must consider West Virginia Code § 33-12-22 in conjunction with § 33-11-4(11).

West Virginia Code § 33-12-22 states as follows:

Any person who shall solicit within this state an application for insurance shall, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, be regarded as the agent of the insurer and not the agent of the insured.

The Complainant insisted in the hearing that Ms. Groves did not talk to her about getting insurance on her car to get the multi-policy discount. She even stated that since she was still residing in New York, she was required to maintain her car insurance in that state. Ms. Groves did not testify as to what was discussed when the insurance application was completed, so the only evidence we have is the Complainant's testimony that auto insurance was never discussed and she did not want that kind of coverage. With the only evidence being that the Complainant did not want auto coverage and she was given the discount in anticipation of her getting that coverage, the only conclusion that can be reached is that Ms. Groves misrepresented the information on the application in order to get the Complainant a lower premium without the permission of the Complainant thus violating West Virginia Code § 33-11-4(11).

Under West Virginia Code § 33-12-22 Ms. Groves was acting as the agent for the Respondent. As an agent of the Respondent, the actions of Ms. Groves are the actions of the Respondent. Since Ms. Groves misrepresented the application process in violation of West

Virginia Code § 33-11-4(11), under West Virginia Code § 33-12-22 the Respondent, without any other evidence, it can only be concluded that the Respondent violated West Virginia Code § 33-11-4(11).

The next issue is why the premium decreased later. On January 1, 2024, there was a binder issued reducing the premium. The Respondent argued that the reduction was due to a decrease in the square footage of the house. The email from Ms. Groves indicates that the reduction was the removal of a pool, a pellet stove, and the square footage of the house.

For whatever reason the premium was decreased, it does not prove that the price increase was due to a pool or a pipe. The Complainant has the burden of proof, by a preponderance of the evidence, to show that the increase of the premium was a violation of law and the Complainant failed to do so.

Another issue raised during the hearing was the fact that the house was vacant from November 2023 until the Complainant moved into the home in the summer of 2024. Whether the Respondent insured a vacant house against its policy is immaterial as to the issues raised about the increase in premiums.

The Complainant also appears to argue that the collection amount was not only due to the increase in her premium but also included the cost of a premium that covered time after she had cancelled her coverage. In other words, after January 10, 2024. The testimony was that the collection amount was reduced, prior to being turned over to collections, when the coverage was backdated by the Respondent to January 10, 2024. Therefore, this argument is without merit.

Conclusions of Law

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

matter by virtue of West Virginia Code Chapter 33-11-1.

2. The Complainant has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated any West Virginia Code or West Virginia State Rule.

3. Under West Virginia Code § 33-12-22, the person completing the application was the agent of the Respondent.

3. The Complainant proved that the Respondent violated West Virginia Code § 33-11-4(11) by proving, by a preponderance of the evidence, that Ms. Groves misrepresented information on the application for insurance when she included a multi-policy discount.

3. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated any other West Virginia Code or State Rule.

RECOMMENDED DECISION

It is the recommendation of the Hearing Examiner that the Complainant proved that the Respondent violated West Virginia Code § 33-11-4(11) but failed to prove, by a preponderance of the evidence, that the Respondent violated any other West Virginia Code or State Rule. Therefore, the complaints should be upheld in part and dismissed in part.

Respectfully recommended,



MARK W. CARBONE