

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

**SIDNEY J. JETT,**

Complainant,

v.

Administrative Proceeding No. 21-IC-02457

**STATE FARM FIRE AND CASUALTY INSURANCE COMPANY,**

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER DENYING REQUEST FOR A HEARING

This matter came before the Insurance Commissioner of West Virginia (hereinafter, “Commissioner”), on Complainant Sidney J. Jett’s (hereinafter, “Complainant”) request for a hearing on his first-party administrative complaint filed against State Farm, (hereinafter, “Respondent”). After consideration of Complainant’s hearing request, the undersigned Commissioner did proceed to make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Complainant is the owner of a home located in Lost Creek, West Virginia that is insured by a homeowner’s policy issued by Respondent. The policy has a deductible in the amount of One Thousand Eight Hundred Seven Dollars (\$1,807.00).
2. On December 6, 2021, Complainant alleges the roof to his home suffered damage as the result of a rain and windstorm.
3. Complainant reported the damage to Respondent who advised him to take steps to reduce any more damage. Claimant purchased a roof coat with tar in it and covered the damage to the roof.

4. On December 13, 2021, Respondent inspected the roof and interior of Complainant's home. Complainant was present for the inspection. The inspection did not show any storm damage to the roof. The inspection did reveal a leak around an area where an addition was built onto the home and connected to the roof. The leak appeared to cause water to leak into the home. Respondent's policy covered the damage to the interior of the home, although the estimate was less than the policy deductible.

5. On or about December 21, 2021, Respondent mailed Complainant a letter and enclosed a copy of the estimate of the damages. The letter stated that the estimate for the damages to the interior of the home was less than the policy deductible. Complainant disagreed with Respondent's result of their investigation.

6. On or about August 23, 2022, Complainant had an estimate for repairs to his roof made by R&R Services, LLC located in Grafton, WV. The estimate shows labor and materials needed to remove and replace shingles and other items at a cost of Sixteen Thousand Two Hundred Dollars (\$16,200.00). Complainant provided this estimate to Respondent as evidence of wind and storm damage to his roof.

7. On or about September 15, 2022, Respondent spoke with Jeff Robinson of R&R. Respondent requested pictures of the roof. Mr. Robinson stated the roof was originally inspected in February or March of 2022, and no photos were taken.

8. On or about September 20, 2022, R&R sent Respondent a letter (the author of the letter is not shown) stating that it is the author's "professional opinion after doing this type of work for 25 years that roofs don't start leaking after 10 years without a reason. So, it is quite obvious that storm damage was responsible for this."

9. Respondent stood by their inspection and conclusion that there was no wind nor storm damage to Complainant's roof that was responsible for the damage. Respondent pointed to an AccuWeather report that does not show wind speed gusts over 40 mph on or around the date of loss.

10. On or about October 5, 2022, Complainant filed his first-party administrative complaint with the Commissioner against Respondent.

11. On December 20, 2022, Commissioner sent Complainant a "no violations letter" stating their investigation into his complaint did not uncover any violations of the state of West Virginia insurance laws or regulations.

12. On January 12, 2023, Commissioner received a letter from Complainant requesting a hearing upon the merits of his first-party administrative complaint.

### CONCLUSIONS OF LAW

1. A disagreement regarding liability or value for an underlying claim does not alone signal an unfair claims settlement practice. "So long as the insurer acts in good faith, the insurer is not held to standards of omniscience or perfection; it has leeway to use and should consistently employ its honest business judgment." *Jackson v. State Farm Mut. Auto. Ins. Co.*, 215 W.Va. 634, 600 SE2d 346 (2004), quoting *Peckham v. Continental Cas. Ins. Co.*, 895 F2d 830, 835 (1<sup>st</sup> Cir. 1990). Respondent simply must show that its investigation was done in good faith given its own knowledge at the time of the relevant facts and claim concerning the underlying claim. See *Jackson supra*, at 642, quoting *Bolden v. O'Connor Café of Worchester, Inc.*, 50 Mass App 577; 34 N.E.2d 726 (2000).

2. Respondent inspected Complainant's roof in a timely manner, and their investigation was thorough, fair and reasonable. Although the contractor hired by Complainant reached a different conclusion, a good faith dispute alone is not an unfair trade practices violation.

3. The dispute between the parties is one of good faith.

4. W. Va. Code §33-2-13 states, in pertinent part, "the commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties." Further, W.Va. Code R. § 114-13-3.3 states:

3.3 Hearing on written demand ~ When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

a. Would involve an exercise of authority in excess of that available to him or her under the law; or


b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

5. W.Va. Code §33-2-13 and W.Va. R §114-1-3.3 afford the Commissioner discretion in deciding whether a hearing would serve a useful purpose. Holding a hearing in this matter would involve an exercise of authority in excess of that available to the Commissioner under the law in that it would be asking him to adjudicate a good faith dispute regarding the Complainant's underlying claim. This matter was properly closed pursuant to W.Va. Code § 33-1-4a(g), and a hearing on the matter would serve no useful purpose. Respondent conducted a reasonable investigation and, based upon the information it gathered, determined that the claim was excluded under the policy. There is no evidence that Respondent's decision was improper.

ORDER

Wherefore, since a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the Commissioner under the law, it is **ORDERED** that the Complainant's request for a hearing is **DENIED**. Pursuant to W.Va. Code §33-2-14, the Complainant has the right to appeal this Order of the Insurance Commissioner to the Circuit Court of Kanawha County within 30 days of receipt.

**ENTERED** this the 10<sup>th</sup> day of February, 2023.

  
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Allan L McVey  
CPCU, ARM, AAI, Aam, AIS  
Commissioner of Insurance