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

**ANDREW SMITH**

**Complainant,**

**v.** **ADMINISTRATIVE PROCEEDING NO.: 25-IC-179542**

**FARMERS & MECHANICS MUTUAL INSURANCE COMPANY OF WEST VIRGINIA**

**Respondent.**

## FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does 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. Complainant failed to prove that the Respondent violated West Virginia Unfair Trade Practices Act, West Virginia Code § 33-11-1. Therefore, the Complainant's complaint should be dismissed.

**THEREFORE,** it is **HEREBY ORDERED** that the Complaint by Andrew Smith denied and dismissed.

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

ENTERED this 25th day of August, 2025.

Allan L. McVey

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

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

**ANDREW SMITH**

**Complainant,**

**v.** **ADMINISTRATIVE PROCEEDING NO.: 25-IC-179542**

**FARMERS & MECHANICS MUTUAL INSURANCE COMPANY OF WEST VIRGINIA,**

**Respondent.**

# RECOMMENDED DECISION OF THE HEARING EXAMINER

On May 14, 2025, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Andrew Smith, (hereinafter "Complainant") appeared pro se. Daniel R. LeMasters, Esquire, and Eric Barger (via telephone) made appearances on behalf of Farmers & Mechanics (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 resides at [redacted] Morgantown, West Virginia. The Complainant owns several rental properties in and around Morgantown, West Virginia. He has been in the rental business for over 30 years. (Tr. P. 5-6)

2. Sometime in May 2024, or earlier, the Complainant must have met with his insurance agent, Melody Thomas, to obtain insurance coverage for approximately ninety-two

properties owned by the Complainant.[1] (Tr. P. 45; Ex. 2)

3. On May 17, 2024, the Respondent sent an email to Dynamic Insurance Group, the Complainant's insurance agency, advising the Complainant that it needed photographs of all 92 properties to be attached to any application. (Tr. P. 26, 43; Ex.1)

4. According to the testimony of the Complainant, Melody Thomas informed him that she was going to take pictures of the properties. (Tr. P. 25)

5. In another email dated May 17, 2024, the Respondent sent a list of nine properties to the Complainant's agent that needed to have repairs completed within sixty days. However, the policy would take effect immediately upon the receipt of the application. According to the Respondent's witness, Mr. Barger, Vice-President of Underwriting for the Respondent, allowing sixty days to complete the repairs is a normal procedure followed by the Respondent. The effective dates of coverage were May 21, 2024, to May 21, 2025. (Tr. P. 46-47; Ex. 3, 4)

6. The Complainant admitted that he was provided with a complete copy of his policy. The policy allowed the Respondent to inspect any or all the properties and allow the Respondent and/or the Complainant to cancel the policy at anytime. Specifically, the policy allows the Respondent to cancel the policy if the Complainant does not complete the requested repairs. (Tr. 49-50; Ex. 4)

7. On September 4, 2024, the Respondent sent an email to the Respondent's agent requesting an update on the repairs that had been requested in May 2024. The email stated that failure to make the repairs within thirty days of the date of the email could place the policy in jeopardy. (Tr. 30; Ex.5)

---

[1] There was some confusion during the hearing on whether the application was completed prior to an email from the Respondent asking for repairs to eight properties. The application for insurance indicated that the form was completed on May 21, 2024, but the email requesting the repairs was dated May 17, 2024. The testimony was that the repairs were not requested until after the application was completed.

8. At no point in the term of the policy did the Respondent cancel the policy or raise the premium rates. (Tr. P.59)

9. On January 2, 2025, the Respondent sent another email to the Complainant's agent concerning the status of the requested repairs. That email contained copies of the May 17, 2024, and the September 4, 2024, emails. As of January 2, 2025, the requested repairs had not been completed. (Tr. P. 52-53; Ex.6)

10. On January 27, 2025, the Respondent issued a Notice of Cancellation that was sent to the Complainant. The basis of the cancellation was that there was a substantial change in the risk because the Complainant failed to make the required repairs. The effective date of the cancellation was March 3, 2025. (Tr. P. 52-53; Ex. 7)

11. After sending the Notice of Cancellation, the Respondent began to receive information that the Complainant had begun making some of the requested repairs. The Complainant had sent the Respondent an email containing pictures showing that several repairs had been made. (Tr. P. 55-57; Ex. 8, 9)

12. On February 5, 2025, the Respondent sent an email to the Complainant's agent stating that there were still three outstanding repairs to be made. In the email from the Respondent there were pictures of three properties that still needed to be repaired. (Tr. P. 56-57)

13. Prior to March 3, 2025, the Respondent received information that the remaining three properties had been repaired. The Respondent then withdrew the Notice of Cancellation. (Tr. P. 58)

14. Mr. Berger testified that it is the practice of the Respondent to require that the insured repair property that is being insured to reduce risk of injury. When the premium is initially calculated, the Respondent assumes that the required repairs will be made. Therefore, the premium

is calculated based on the fact that all repairs will be made. (Tr. P. 59-60)

15. Mr. Berger stated that West Virginia law allows an insurance company to give the insured sixty days to make repairs. The Respondent gave the Complainant more time to make the repairs than the allowed sixty days, nearly nine months. (Tr. P. 60-61)

16. According to Mr. Berger the Respondent routinely communicates with the insurance agent and not directly with the insured. It is normal business practice for the Respondent to request pictures and updates from the agent of the insured. In this matter, the Respondent communicated directly with Melody Thomas and not with the Complainant. The Complainant testified that he was unable to talk to any underwriter about his concerns and was limited in talking to his agent. (Tr. P. 14, 61-63)

17. The Complainant could not give any examples of sending a communication to any of the Respondent's underwriters. (Tr. P. 12-13)

18. Mr. Berger testified that the required repairs were determined using the pictures provided by Ms. Thomas and by independent inspections performed by a third party on behalf of the Respondent. All ninety-two properties were not inspected. (Tr. P. 69-70)

19. The Respondent admitted that there have been other occasions where other insureds had not completed required repairs and the Respondent had cancelled the insurance policies for those entities. (Tr. P. 72)

20. It has been Mr. Berger's experience that some policyholders object to the repairs required by the Respondent. It is the practice of the Respondent that when there is an objection to the required repairs, the insured will raise the issue with his agent, and the agent will raise the objections to the Respondent's underwriter. Once the underwriter decides the issue, the decision is communicated back to the agent, who then informs the insured of the decision. (Tr. P. 74)

21. There have been adjustments in the past to the required repairs requests when the agent raised an issue with the required repair to the underwriter. This did not occur in the instant matter. (Tr. P. 74.)

22. In his Complaint with the West Virginia Offices of the Insurance Commissioner, it was stated by the Complainant that the repairs required by the Respondent will cost the Complainant $100,000.00. Mr. Berger testified that the repairs required by the Respondent would not cost anywhere near $100,000.00 (Tr. P. 76; Ex. 10)

23. The Complainant testified that the $100,000.00 specified in the Complaint included all the repairs he had to make under all the policies that he had with the Respondent and was not limited to the policy cited in his Complaint. (Tr. P. 65, 74; Ex. 10)

24. There were no claims made by the Complainant under the policy in question. (Tr. P. 20)

25. The Complainant testified that all the properties that he owns have letters of compliance with city codes. (Tr. P. 7)

26. The Complainant testified that if he had known that the Respondent was going to require all these repairs, it may have impacted his decision to purchase the policy from the Respondent. (Tr. P. 31)

27. The Complainant did concede that he was able to communicate with the Respondent's President and the President responded to his email. The subject of this communication was related to an agent issue and not related to this claim. (Tr. P. 35-36)

## Issue

Whether the Respondent violated West Virginia Unfair Trade Practices Act? 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 Complainant appears to have filed his Complaint because the Respondent forced the Complainant to make repairs to nine of the properties that were being insured by the Respondent. The Complainant claims that he was unaware of the required repairs prior to properties being insured and if he had known he may not have purchased the coverage. Another issue raised by the Complainant is that the Complainant did not believe that the required repairs were necessary since he was in full compliance with local building codes. Finally, the Respondent has complaints that the communication between the Complainant and the Respondent was not direct between the parties but through the Complainant's insurance agent, Melody Thomas.

The first issue to address is if the Respondent was not informed of the required repairs prior to purchasing the insurance policy would he decide not to purchase the policy. In this case, the application is dated May 21, 2024, and the request for pictures of the ninety-two properties is dated May 17, 2024. Coverage began on the same day as application was completed.

While not placed into evidence, there must have been some conversations between the parties prior to May 17, 2024. It is not clear what conversations were had between the parties but based on the May 17, 2024, email, the Complainant had indicated that he wanted insurance coverage on ninety-two properties and that the Respondent required pictures of the properties

before the application could be submitted.

The pictures of the properties must have been submitted prior to the completion of the application since the Respondent reviewed the photographs, and it was able to determine what repairs would have to be made on the properties. The repair list was provided to the agent on May 17, 2024. There was no evidence when the agent provided that list to the Complainant. The Complainant must have had the list of repairs to know which properties needed repairs.

Assuming arguendo, that the agent did not provide the repair list to the Complainant prior to the effective date of coverage of May 21, 2024, then it is a plausible argument by the Complainant that he could have declined the coverage prior to the effective date. However, as was stated at the hearing and in the insurance policy, the Complainant could cancel the policy at any time, and he did not. Even if the Complainant had not learned of the required repairs at the brief time between getting the list of repairs and the application, he could cancel the policy at anytime. Therefore, the net impact on the Complainant is zero.

If the Complainant was not informed of the required repairs that would be the fault of the Complainant's insurance agent since the evidence was that the Respondent informed the agent on May 17, 2024.

The next issue raised by the Complainant is that the Respondent was being unreasonable by requiring the repairs since the properties were in compliance with local codes. It is the Respndent's position that it is well within its rights to demand that certain repairs be made to maintain coverage.

An insurance policy is a contract between the insured and the insurance company. *Loudin v. National Liability Fire Insurance Company.* 255 W.Va. 34, 716 SE2d 696 (2011). The policy, once accepted by both parties, determines the parameters of the relationship. The policy between

the Complainant and the Respondent allows the Respondent to demand that certain repairs be made or it has the option to cancel the policy.

The Respondent gave the Complainant over nine months to make the repairs. If the Complainant had determined, at any time, that he was unable or unwilling to make the required repairs, he always had the option, under the terms and conditions of the policy, to cancel the policy. He chose not to cancel the policy but chose to make the repairs. By not cancelling the policy the Complainant conceded that the Respondent had the right to demand certain repairs be made to maintain the insurance coverage.

In the policy there is no mention that the Respondent can only require repairs if the property is in violation of local codes. The fact that the policy is silent about this issue. The important fact is that the Respondent is assuming liability for the properties and if it determines that, to reduce that liability risk, there are certain repairs that must be made, the Respondents requirements are well within the parameters of the insurance policy. While it may be true that the Complainant's properties complied with local codes, that does not protect the Respondent from risk, and it is the Respondent's right under the policy to have the Complainant make proper repairs.

The option available for the Complainant was to cancel the policy and seek coverage from another insurance company that may not require repairs. The Complainant did not exercise that option. Therefore, the fact that the Respondent did not take into consideration that the properties complied with local property codes are irrelevant to the ability of the Respondent to require repairs.

The final issue raised by the Complainant is his objection that he could not talk directly with an underwriter employed by the Respondent. The only potential violation would be of West Virginia Code of State Rule § 114-14-5.3, which states as follows:

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.

This rule requires an insurance company to respond to any communication that suggests that an answer is expected.

During the hearing, the Hearing Examiner asked the Complainant on two occasions to provide examples of times that he has communicated with the Respondent and failed to get a timely response. He did not provide any examples. When asked directly, the Complainant stated that he believes, based on his thirty years of experience, there is a barrier between the business customer and the Insurance Company. He went on to testify that the insurance companies force the insured to go through the insurance agent and not directly with the insurance company.

The only example that the Complainant gave about a specific contact with the Respondent was an email exchange with the Respondent's President. The Complainant stated that he had to do some research to get the President's email address, but he did get a timely response.

Without an example of the Complainant attempting to communicate with the Respondent and not receiving a timely response, there cannot be a violation of West Virginia Code of State Rule § 114-14-5.3.

The Complainant has the burden of proof, by a preponderance of the evidence, to prove that the Respondent violated the Unfair Trade Practices Act, and he failed to meet that burden.

## 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, by a preponderance of the evidence, to prove that the Respondent violated West Virginia Unfair Trade Practices Act.

3. The Respondent's alleged failure to inform the Complainant of the required repairs to the Complainant's property prior to providing insurance coverage, which was not proven, is not a violation of the Unfair Trade Practices Act.

4. The insurance policy entered between the parties is a contract. The terms of the policy grants rights and obligations to each party. The fact that the Respondent required the Complainant to make certain repairs to maintain coverage is in accordance with the terms of the policy. The fact that the properties did not violate the local codes and that the Respondent insisted upon the repairs is not a violation of the Unfair Trade Practices Act.

5. The Complainant failed to prove that the Respondent failed to respond to a communication in a timely manner indicates that there is no violation of West Virginia Code of State Rule § 114-14-5.3.

## RECOMMENDED DECISION

It is the recommendation of the Hearing Examiner that the Complainant failed to prove that the Respondent violated West Virginia Unfair Trade Practices Act. Therefore, the Complainant's complaint should be dismissed.

Respectfully recommended,

MARK W. CARBONE