

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

JUDITH ANN BROWNING,

Complainant,

v.

Administrative Proceeding No. 22-IC-02296

LIBERTY MUTUAL FIRE 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 Judith Ann Browning's (hereinafter, "Complainant") request for a hearing on his first-party administrative complaint filed against Respondent Liberty Mutual Fire Insurance Company, (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. On or about June 29, 2013, Complainant reported a claim for wind damage to her dwelling. Checks in the amount of \$313.60 and \$4712.66 were mailed to Complainant. The claim was closed.
2. On or about May 6, 2021, a review was completed by Respondent, and it was determined that recoverable appreciation was owed. A check in the amount of \$2,039.54 representing the recoverable depreciation and interest.
3. On or about May 12, 2021, Complainant called Respondent to ascertain why she received a check from them, since Complainant was no longer insured by Respondent.

4. Respondent noticed the 2013 checks issued to Complainant were never cleared in their system. It was further determined that the checks could not be reissued because it was determined that there was insufficient information to tell whether the checks were cashed as the checks were no longer in their system.

5. Respondent checked with the West Virginia Unclaimed Property Division and was informed that the checks were never escheated to them.

6. Complainant phoned Respondent regarding the checks and asked for copies. Complainant received the checks on or about July 9, 2021, and states the checks were cashed in Wilmington, Delaware, but there was no signature on the checks. Respondent advised Complainant the checks did not show as cashed in their current system as it is a different system than the one that existed in 2013.

7. Respondent stated that without a signature verification on the check, they could not verify who cashed the checks, and could not reissue them. Respondent requested additional information from Complainant such as banking information or other information, but Complainant did not receive any additional information from Complainant.

8. On or about August 13, 2021, Complainant filed her first-party administrative complaint with the Commissioner, alleging she is still owed the money from the 2013 checks.

9. Complainant did not provide copies of the disputed checks to the Commissioner.

10. On or about September 14, 2021, Respondent provided a response to the first-party administrative complaint. In their response, Respondent stood by their denial of reissuing the checks as they could not ascertain who cashed the 2013 checks.

11. On or about September 23, 2022, the Commissioner sent Complainant a “no merit” letter, stating the Commissioner did not find any violations of the West Virginia insurance laws or regulations.

12. On or about October 20, 2022, Complainant requested a hearing upon the merits of her 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 (1st 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 investigated Complainant’s complaint and conducted a good faith investigation into her claims. The dispute over whether the checks should be reissued is one of good faith.

3. Pursuant to W. Va. Code § 55-7-8a, the statute of limitations for bringing an action under the West Virginia Unfair Trade Practices Act is one year.

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. Code 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 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 29th day of November 2022.

A handwritten signature in blue ink that reads "Allan L. McVey". The signature is written in a cursive style and is positioned above a horizontal line.

Allan L McVey, CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner