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

CHARLES BURKHART,

Complainant,

v.

ADMINISTRATIVE PROCEEDING NO.: 21-AP-FP-02000

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY,

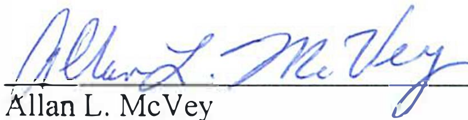
Respondent.

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. It is consequently ORDERED that Complainant, Charles Burkhart, failed to prove that the Respondent, Nationwide Agribusiness Insurance Company, violated West Virginia Unfair Trade Practices Act. Therefore, the consumer complaint of Charles Burkhart against Nationwide Agribusiness Insurance Company, and the same, is hereby, denied and dismissed.

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

ENTERED this 25th day of February, 2022.



Allan L. McVey
Insurance Commissioner
State of West Virginia

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RECOMMENDED DECISION OF THE HEARING EXAMINER

On December 16, 2021, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner, Charleston, West Virginia. Complainant, Charles Burkhart (hereinafter "Complainant") did not make an appearance but his counsel, Samuel Cook, Esq. was present. On behalf of Nationwide Agribusiness Insurance Company (hereinafter "Respondent") was Jill Rice, Esq., Lauren Cyphers, Esq., Shannon Hagen and Michael Hoskins. Prior to the hearing, Counsel for the Complainant attempted to contact the Complainant numerous times but was unsuccessful. It was noted in the record that if there had been some emergency on the part of the Complainant an opportunity to hear his testimony would be scheduled.

On December 17, 2021, the West Virginia Offices of the Insurance Commissioner (hereinafter "WVOIC") contacted the Complainant. During that conversation, the Complainant claimed that he was unaware that the hearing was scheduled for December 16, 2021. As a follow up to the conversation with the WVOIC, the Complainant sent a letter to Mr. Cook reiterating the

claim that he was unaware of the hearing and requested an opportunity to present his testimony.

After a discussion with both parties, the Hearing Examiner decided to allow the Complainant to present his testimony. The Respondent objected to the decision and its objections were noted.

A new hearing was scheduled for January 18, 2022, via zoom. This hearing was limited to the testimony of the Complainant and cross examination by the Respondent.

At the January 18, 2022 hearing, the Complainant appeared by phone while his Counsel, Samuel Cook, Esq. appeared via Zoom. On behalf of the Respondent was Jill Rice, Esq., Lauren Cyphers, Esq., both of which appeared by Zoom.

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] WV 25405. The Complainant filed a complaint with the WVOIC on August 23, 2019. (Tr. 2 P. 11-12; Ex. 1)[1]

2. In 2006 the Complainant purchased a building located at the corner of Sawmill Road, with plans that it would be used as rental property. The Complainant testified that immediately after purchasing the structure he went to his insurance agent in Martinsburg, West Virginia, Myers Insurance Agency, to obtain insurance coverage for the home.

[1] The hearing held December 16, 2021, will be referred to as Tr. 1 and the hearing held on January 18, 2022, will be referred to as Tr. 2.

3. In the complaint, the Complainant alleged that the Respondent failed to provide insurance coverage on the rental building owned by the Complainant. According to the testimony, the Complainant's building caught fire on February 18, 2019, and was highly damaged. (Tr. 1, P.11)

4. Following the fire, the Complainant filed a claim with the Respondent. The Respondent conducted an investigation and, on April 25, 2019, sent the Complainant a letter denying the claim. The letter was signed by Bryan Seward, and employee of the Respondent. (Ex. 2)

5. The Denial letter stated that, after investigating, the Respondent determined that the building in question did not have property coverage, only liability coverage. The property on which the building is located is identified as Location 2 on the policy. (Tr. 1 P. 13, 16; Ex. 1, 2)

6. According to the Complainant, he assumed that the agent would make sure that his request was being followed and provide the necessary insurance. The Complainant stated that one of the reasons he believed that he had insurance on the building is that the Respondent required him to put in a new furnace into the house. (Tr. 2 P. 15, 22)

7. Another basis of the Complainant's belief that he had insurance was that on February 10, 2006, the Complainant's Attorney in Fact, Charlene T. Caldwell, the Complainant's sister, signed a document titled Agreement To Provide Insurance. On February 16, 2006, a representative of Myers Insurance Agency signed the same document. There was an undated signature by Rick Manning, a representative of Centra Bank. This appears to indicate that the Complainant was intending to obtain insurance on the property. (Tr. 2 P. 18-19; Ex. 9)

8. The Agreement to Provide Insurance, Section 4 Coverages, does not show that any of the boxes for Property Coverages are checked. These boxes are titled Fire, Theft, Collision,

Comprehensive and Liability. Section 5 states as follows; "Status. Your status shall be listed on the insurance policy as follows". In that section the only box marked was Mortgagee. (Tr. 2 P. 20-21; Ex. 9)

9. Ms. Shannon Hagen, a Supervising Adjuster for the Respondent, testified at the hearing. She has worked for the Respondent since 1997. Ms. Hagen supervises Mr. Bryan Seward who sent the denial letter to the Complainant. (Tr. 1 P14-15; Ex. 2)

10. Ms. Hagen testified that the Complainant's policy refers to specific properties or structures that are covered. Under Farm Property Schedule A, all properties covered under the policy are listed. The rental home is not listed in Schedule A. Upon further testimony, it was determined that the rental home also is not listed in schedule B. Since the rental property was not listed as being insured under either Schedule A or Schedule B, the Respondent denied the claim. (Tr. 1 P. 13; Ex. 1)

11. Following the testimony of Ms. Hager, Mr. Michael Hoskins, a Farm Underwriting Consultant for the Respondent since 2003, then testified. He stated that after the claims department conducted its investigation, he was called in to verify that there was no coverage on the Complainant's building. In addition, he was the person who conducted another investigation once the Respondent received the Complainant's complaint from the WVOIC. (Tr. 1 P. 19-20)

12. During direct examination, Mr. Hoskins was asked to go over the Farm Declarations page of the Complainant's policy. According to Mr. Hoskins, the property that was damaged by the fire does not appear on Schedules A or B. His testimony was that if there had been coverage on the building, also referred to as being located on Location 2, it would appear on Schedule B. All the items listed in Schedule B are for Location 2. (Tr. 1 P, 21-23; Ex. 3)

13. Mr. Hoskins testified that, after reviewing the Farm Declaration for 2007-2008, that if there had been coverage on Lot 2, it would appear on this document and it does not. (Tr. 1 P. 24-26; Ex. 40)

14. The next document introduced by the Respondent was the Farm Declaration for the year 2005-2006. At that time, there were four locations listed which was increased to five in 2006. While the property that the building is located was added to the policy in 2006, the building was not listed. (Tr. 1 P. 26-27; Ex. 5)

15. The Farm Declaration for 2009 does not list Lot 2 as being covered, except for liability. (Tr. 1 P. 30; Ex. 7)

16. The Farm Declaration page for 2010 indicated that the Complainant had added a John Deere grain drill to his policy. The Complainant also added additional acreage to his policy in 2006. When these items were added to the policy the Complainant was charged an additional premium. The Complainant admitted that he knew that he would have had to contact his agent to add the grain drill, the additional acreage and he would pay an additional premium. (Tr. 1 P. 21; Tr. 2 P. 16; Ex. 6)

17. Mr. Hoskins testified that the Complainant received copies of the Farm Declaration pages and premium notices every year. He stated that there was nothing in any of these notices that indicated that anything on Lot 2 was covered other than for liability. (Tr. P. 32)

18. Mr. Hoskins admitted that while conducting his investigation, he did not contact the original insurance agency, Myers Agency, to determine their version of the events surrounding the allegations that the Complainant had added the rental building to his policy in 2006. (Tr. 1 P. 35)

19. During the Complainant's testimony, he admitted he did review his policy after the fact and determined that there was no coverage for the rental building. The Complainant also testified that he had not contacted anyone from the Myers Agency concerning the lack of insurance. (Tr. 2 P. 23)

Issue

Whether the Respondent committed unfair trade practices when it denied coverage for a damaged building owned by the Complainant that was destroyed by fire, and if so, what should be 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 Unfair Trade Practices Act.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this Complaint under West Virginia Code § 33-2-3.

Analysis

The Complainant filed this complaint because he believed that he had insurance coverage for a rental building that he owned that was damaged by fire. After the Complainant filed his claim, the Respondent denied coverage. The basis of the denial was that the Complainant did not have damage coverage on the building, only liability coverage.

The Complainant testified that after purchasing the building he went to Myer Insurance Agency to obtain a policy on the property. He claimed, at that time, he was told that he had to replace the furnace before[2] he could get coverage. In addition, he states that his representative had

[2] It was unclear whether the Complainant was told to replace the furnace by Myer Agency or by the Respondent.

completed an application to provide insurance for the rental building.

On February 18, 2019, there was a fire in the rental building. Following the fire, the Complainant went to Fargo Insurance, the successor to the Myer Agency, to file a claim to recover damages from the fire.

After receiving the claim, the Respondent testified that its claims department investigated to determine whether there was coverage. The claims department reading of the Complainant's policy, was that the building located on Lot 2 did not have coverage for damages and only had coverage for liability.

In support of the assertion of the Respondent, it presented the Farm Declaration page for each year, beginning in 2006. In each of these Farm Declarations, the building located on Lot 2 does not appear as a covered building for damages. Evidently, Schedules A and B, of the Farm Declaration, lists the properties that had damage coverage and the building on Lot 2 was not on that list.

Another argument made by the Respondent, in support of its position, is that there was no increase in premium charged to the Complainant when the building was allegedly added. As an example, the Respondent showed evidence that when the Complainant added a John Deere grain drill to the policy in 2010 there was a corresponding increase in the premium. There was no increase in the 2005-2006 policy or any following policies for the rental building located on Lot 2. The Respondent uses these examples to show that the Complainant understood the process of adding properties to his policy and that doing so, increased his premium.

Finally, the Respondent argues that the Complainant should have been aware that the structure on Lot 2 had not been added to his policy because the Complainant would receive premium notices and Farm Declarations each year. The Complainant could not show any place

on the Farm Declaration which listed the structure on Lot 2 as being covered. In addition, the Complainant could not prove that there was any increase in his premium that reflected the additional coverage for that structure.

One of the arguments, of the Complainant, is that he told his agent at Myers Insurance Agency that he wanted to add the structure on Lot 2 to his policy. As proof that he had added the property to his policy was the document titled Agreement to Provide Insurance. This document appears to indicate that Centra Bank wanted the Complainant to have coverage for the newly purchased property, however, there was no evidence that anyone followed up on this agreement to make sure a policy was purchased. It is impossible to determine whether the Complainant failed to verify the existence of the policy or whether Myers Agency simply failed to obtain the additional coverage. After allegedly telling Myers to add the structure, the Complainant had assumed that the agency had done what he had instructed. The Complainant cannot explain why he did not see an increase in his premium since he got premium notices each year. In addition, he testified that he did not read his Farm Declaration page until after he had filed his complaint with the WVOIC. Therefore, he was unaware, prior to the fire, that the structure on Lot 2 was not listed.

It is well settled law in the state of West Virginia that failure to read your policy does not relieve you of responsibility to know what is contained in the policy.

American States Ins. Co. v. Surbaugh 231 W.Va. 288, 745 S.E. 2d 179 (2013), Syllabus Point 4 states as follows:

4. " A party to a contract has a duty to read the instrument." Syllabus point 5, *Soliva v. Shand, Morahan & Co., Inc.*, 176 W.Va. 430, 345 S.E.2d 33 (1986), *overruled on other grounds by National Mutual Insurance Co.* [231 W.Va. 290] *v. McMahon & Sons, Inc.*, 177 W.Va. 734, 356 S.E.2d 488 (1987).

Based on this decision, the Complainant had a duty to read his policy, which the Complainant clearly did not. The Complainant wants to rely on his opinion that Myers Insurance Agency failed to add the structure to his policy. The fact of the matter is that it does not matter whether Myers failed to add the structure to his policy, the Complainant had a duty to review the policy and he did not.

One final argument, that the Complainant makes, is that he alleges that the Respondent required the Complainant to repair the heating system in the house before it could be insured. The Complainant did not present any evidence that the Respondent made this requirement, nor did he present any evidence that showed he actually made the repairs to the heating system. Again, the Complainant has the burden of proof to show that he had coverage on the rental building.

While the Complainant did not specifically cite to any statute or rule that the Respondent may have violated, it appears that the Complainant believes that there could be some problem with the Respondent's investigation. The relevant rule governing an investigation is West Virginia Code of State Rules § 114-14-6.1 which states as follows.

> 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.

There is no question that the Respondent conducted a timely investigation. The claim was that the fire occurred on February 18, 2019 and the denial letter was sent on April 25, 2019. In addition, the Complainant did not introduce any evidence that the Respondent failed to conduct a fair and objective investigation.

The only criticism against the Respondent, relevant to this rule, is whether the investigation was thorough. Mr. Hoskins testified that during his investigation he did not contact the Myer Insurance Agency that allegedly added the structure to the Complainant's policy. While talking to the agent may have erased all doubt about whether the Complainant believed that he had purchased coverage, it is not required to conduct a proper investigation. The Respondent submitted sufficient evidence to show that the rental building was not on the policy.

There was a response from the Complainant to the complaint, which was contained in the packet provided to the Hearing Examiner, that indicated that the Insurance Agency conducted a thorough investigation to try to determine whether there was some mistake by the insurance agency. The Respondent claims in the response, that it reviewed each declaration page and even contacted the Complainant's mortgage company to see what records they had in their possession dealing with coverage. The mortgage company did not have any proof that the Complainant had coverage.

While the Response was not admitted into evidence and cannot be used to prove the thoroughness of the investigation, the Respondent did present evidence that the claims department investigated the initial claim. After the review by the claims department, the information was then sent to Mr. Hoskins for an additional review. These actions are sufficient to prove that the investigation was thorough.

Conclusions of Law

The following are made as conclusions of law:

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

2. The Complainant failed to prove that the Respondent violated West Virginia Code of State Rules §114-14-6.1 when he failed to prove that the investigation conducted by the Respondent wasn't timely, thorough, fair or objective.

3. A party to a contract has a duty to read the instrument." Syllabus point 5, *Soliva v. Shand, Morahan & Co., Inc.*, 176 W.Va. 430, 345 S.E.2d 33 (1986)

4. The Complainant's failure to read his policy was a violation of his duty. If the Complainant had reviewed his policy, he would have known that the building on Lot 2 was not insured for damages.

Recommended Decision

It is recommended that the Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated the Unfair Trade Practices Act. Therefore, the Complainant's complaint should be dismissed.

Respectfully recommended,

MARK W. CARBONE
HEARING EXAMINER

Date: Feb. 24, 2022