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

JAMES ICE,

Complainant,

ADMINISTRATIVE PROCEEDING NO. 24-IC-172845

v.

FOREMOST INSURANCE GROUP,

Respondent.

ORDER DENYING MOTION FOR REHEARING

This matter came before the West Virginia Offices of the Insurance Commissioner (hereinafter, "OIC") on Complainant James Ice's (hereinafter, "Complainant") Motion for a Hearing filed on or about February May 17, 2024, pursuant to W.Va. Code §33-2-13 and W.Va. Code R §114-13-6.12.

FINDINGS OF F FACT

1. On February 2, 2024, Complainant filed a claim with Foremost Insurance Group (hereinafter, "Respondent") for damage to the ceiling of his residence caused by water. Complainant alleged the damage occurred on January 30, 2024.

2. Complainant had filed two prior claims with Respondent for damage to the ceiling of his residence. One claim was filed with a loss date of November 27, 2022, and another with a loss date of June 6, 2023.

3. On December 2, 2022, the interior of Complainant's residence was inspected by Respondent in response to his reported loss. Respondent's investigation found that the leak leading to the damage of Complainant's roof was the result of wear and tear and deterioration.

Complainant's policy with Respondent did not provide for coverage for wear and tear and deterioration, and the claim was denied.

4. On June 6, 2023, Complainant filed another claim with Respondent for the same ceiling damage. The complainant stated that he believed the ceiling damage was related to improper installation of cable completed by a cable company. This claim was also denied by Respondent due to improper workmanship being excluded from Complainant's policy.

5. Regarding the third claim filed on February 2, 2024 , Complainant submitted photos of the ceiling to Respondent on February 19, 2024. The photos showed interior damage to the ceiling areas of his residence as well as flooring in affected rooms.

6. Respondent observed from the photos that the reported loss was from the same location as the previous claims.

7. Sometime between February 15 and February 20, 2024, Respondent conducted an exterior inspection of Complainant's residence. The inspection revealed the Complainant recently had his roof replaced. Complainant advised Respondent's inspector that he did not observe any leaks after the installation of the roof. Additionally, Complainant advised Respondent that the roofing contractor advised him that the sheathing on the corner of the roof had deteriorated and may have contributed to water intrusion.

8. Based upon the inspection, the statement by Complainant regarding the deterioration of the sheathing, and the photos submitted by Complainant, Respondent denied Complainant's claim as not being the result of a direct, sudden and accidental event, which is required to trigger coverage under the policy.

9. On or about March 26, 2024, Complainant filed a first-party administrative complaint with the OIC regarding the February 2, 2024, claim. Complainant alleged the claim was separate from the other claims, and Respondent did not inspect the inside of his residence.

10. The OIC investigated Complainant's complaint and did not find any violations of the West Virginia insurance laws or unfair trade practices. Complainant was mailed a "no merit" letter dated May 8, 2024.

11. On May 17, 2024, the OIC received a request from the Complainant requesting a hearing upon the merits of his first-party administrative complaint.

CONCLUSIONS OF LAW

1. W.Va. Code §33-2-13 states, in pertinent part, "[t]he commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties." Additionally, W.Va. Code §33-2-13 further states, "[i]n the discretion of the commissioner a rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty days of the mailing of such order."

2. W.Va. Code R §114-13-6.12 states "[i]n the discretion of the commissioner, a rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty days (30) of entry.

3. Regarding first-party complaints, the WVOIC does not have the general authority to adjudicate the merits of an underlying claim involving a good faith dispute over liability or value. The authority of the WVOIC is limited by statute.

4. 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. Ct. 56, 734 N.E.2d 726 (2000).

5. 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 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.

6. Respondent conducted a reasonable inspection into Complainant's claim. It was determined that damage to the ceiling was not the result of a covered peril that would result in coverage under the policy. The dispute between the parties is one of good faith.

7. No violations of West Virginia laws or regulations or unfair trade practice violations were found in the handling of Complaint's complaint.

8. W.Va. Code §33-2-13 and W.Va. R §114-1-3.3 give 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 OIC under the law in that it would be asking the OIC to adjudicate a good faith liability dispute regarding the Complainant's underlying claim. The OIC properly closed this matter pursuant to W.Va. Code § 33-1 l-4a(g), and a hearing on the matter would serve no useful purpose.

9. Wherefore, a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to it under the law.

ORDER

It is therefore **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 Intermediate Court of Kanawha County within 30 days of receipt.

ENTERED this the 12th day of June, ~~2024~~ 2024

Allan L. McVey

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