BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

DEBBIE GRIMM,

Complainant,

v. ADMINISTRATIVE PROCEEDING NO. 19-THP-02091

TRAVELERS PROPERTY & CASUALTY COMPANY OF AMERICA,

Respondent.

FINAL ORDER

On a prior day, to-wit, March 19, 2020, the Hearing Examiner in this matter submitted his Recommended Decision, appended hereto, containing findings of fact, discussion, analysis and conclusions of law. After review, thereof, it is **ORDERED** that the said Recommended Decision is adopted as the decision of the Commissioner in this matter and is, by this reference, incorporated herein and made a part hereof.

It is further **ORDERED** that, inasmuch as it has been determined that the Respondent violated *W. Va. Code § 33-11-4(9)(c)*, *W. Va. Code § 33-11-4(9)(d)*, and *W. Va. Code R. § 114-14-6.1*, an additional investigation shall be commenced in order to determine whether the aforesaid violations occurred with such frequency as to constitute a general business practice.

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

ENTERED this 31st day of July, 2020.

JAMES A. DODRILL
Insurance Commissioner

BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

DEBBIE GRIMM,

Complainant,

v. **ADMINISTRATIVE PROCEEDING NO.: 19-THP-02091/19-AP-THP-02091**

TRAVELERS PROPERTY & CASUALTY COMPANY OF AMERICA,

Respondent.

RECOMMENDED DECISION OF THE HEARING EXAMINER

On, December 17, 2019, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Complainant, Debbie Grimm appeared in person and by counsel, David Barney, Esquire. Appearing on behalf of Travelers Property & Casualty Company of America were Jeff Wakefield, Esquire, Charles Matthew Shackleford, and Eric Eckart. 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. Ms. Debbie Grimm (hereinafter "Complainant") resides at _____, Charleston, West Virginia. The basis of her Complaint concerns a water leak that occurred at her residence sometime in August 2017. (Tr. 115)

2. Travelers Property and Casualty Company of America (hereinafter "Respondent") is the insurance company for the West Virginia American Water Company (hereinafter "Water Company").

3. Sometime in 2016, a year prior to the events surrounding this complaint, the Complainant observed water going down the street and realized that she did not have any water service in her home. The Complainant contacted the Water Company. When the Water Company employee arrived at the Complainant's home, the employee shut off the water main. The employee then told the Complainant that the leak was on her property and that she was responsible for the repair. The Complainant attempted to find the leak by digging a six-foot trench. She eventually hired a plumber and the plumber told her that the leak was not on her side of the meter, but on the Water Company's side. Since it was on the Water Company's side, it was responsible for the repair of the leak. (Tr. 165-166)

4. The Complainant contacted the Water Company to inform them that she had been told, by her plumber, that the leak was not on her side of the meter. According to the Complainant, the Water Company returned to her home and told her that the leak was the responsibility of the Water Company. The Water Company then repaired the leak. The Complainant had been without water for seven days. (Tr. 165-166)

5. Sometime in August 2017[1], there was another leak at the Complainant's home. When she went into her basement, she saw cement grit blowing all over her basement. She called the Water Company and an employee of the Water Company came to her house to determine the cause

[1]A Water Company work order indicated that there was work performed at the Complainant's address on July 29, 2017. The Complainant testified it was in August. The actual date is not germane to this decision.

of the problem. The employee then shut off the water and told the Complainant that there would be another employee sent out. When the second employee showed up, he told the Complainant that someone had forgotten to put a clamp where the Water Company's pipe is connected to the Complainant's pipe during the 2016 repair. (Tr. 170)

6. Over the next four days the Complainant attempted to get the Water Company to come and fix the problem. She was told each time that the leak was not on the Water Company's side of the meter but on the Complainant's side, therefore, the Water Company was not responsible. After being without water for four days, a Water Company employee came to her home and admitted that the problem was a clamp that had not been placed correctly. The Water Company repaired the problem, however, it did not repair the damage in the Complainant's home. (Tr. 171)

7. On October 12, 2017, a claim was made by the Complainant to the Water Company for the damages arising out of the August 2017 leak. The Water Company contacted the Respondent and the claim was eventually assigned to Charles Shackleford. Mr. Shackleford is a claim manager with the Respondent. (Tr. 10; Ex. 8)

8. On the same day that Mr. Shackleford was assigned the claim, he attempted to contact the Complainant. After several attempts to call the Complainant, Mr. Shackleford sent the Complainant a letter requesting that she contact him. The letter was dated October 20, 2017. The Complainant contacted Mr. Shackleford on October 24, 2017. (Tr. 75-79: Ex. 8, 10)

9. According to the claim notes, the Complainant informed Mr. Shackleford that, she called the Water Company and complained that she had some kind of grit in her water lines and the grit caused damage to her hot water tank, toilet, shower, sink faucet and her boiler. She stated that a plumber told her it was going to take six to eight thousand dollars to make the repairs. The

Complainant then stated that she had been told that the Water Company had failed to place a clamp on the line when they had repaired the line following a water leak a year and a half before. (Tr. 79-80; Ex. 8)

10. Immediately following the conversation with the Complainant, Mr. Shackleford sent an email to Jana Lilly, the Respondent's main contact point with the Water Company. In the email, Mr. Shackleford asked Ms. Lilly to investigate both the 2016 and the 2017 incidents and to let him know what had to be done at the Complainant's residence. (Tr. 80-81; Ex. 8)

11. On November 1, 2017, Ms. Lilly responded to Mr. Shackleford's request for information. Ms. Lilly stated that the only order she had at the Complainant's address was for a July 29, 2017, call. According to the order, the Water Company's employee repaired the service leak on the customer's side of the meter and the Complainant was told to obtain a new outlet line. Kevin Westfall was the Water Company employee that went to the Complainant's home on July 29, 2017. (Tr. 83-84; Ex. 8)

12. On November 7, 2017, Ms. Shackleford contacted Mr. Lee White, an employee of the Water Company,[2] in order to get Mr. Westfall's telephone number. Mr. Shackleford wanted to talk to Mr. Westfall about the service call on July 29, 2017. Mr. White stated that he would talk to Mr. Westfall about the service call. (Tr. 86; Ex. 8)

13. On November 17, 2017, Kevin Thompson, Esquire, contacted Mr. Shackleford to inform him that he represented the Complainant. Mr. Shackleford informed Mr. Thompson that he needed additional information from the Water Company before he could make a decision about liability. He also informed Mr. Thompson that the evidence he had so far indicated that the problem

---

[2]Mr. White's position at the Water Company was not put into the record.

was on the Complainant's side of the meter. Mr. Thompson also told Mr. Shackleford that he was gathering information of support of the Complainant's claim and would provide the information after Thanksgiving. (Tr. 88-90; Ex. 8)

14. Also, on November 17, 2017, Mr. Shackleford sent an email to Mr. White asking what information he had received from Mr. Westfall. There was no evidence presented that either Mr. White or Mr. Westfall ever contacted Mr. Shackleford after this email. (Tr. 88-90; Ex. 8)

15. Mr. Shackleford sent emails to Mr. Thompson on December 12, 2017, and January 9, 2018. Mr. Thompson responded on January 11, 2018. In his response, Mr. Thompson stated that there was no longer a leak and the repair had been made by the Water Company's employee. The repair was on the Water Company's side of the meter. Mr. Thompson also requested the Complainant's work orders and work completion memos. In addition, Mr. Thompson stated that he would provide the Respondent with his expert's report within thirty days. (Tr. 90-92; Ex. 8)

16. On January 12, 2018, Mr. Shackleford sent an email to Ms. Lilly asking again for her to research any orders associated with the Complainant's address. He sent her a copy of the email from Mr. Thompson. On February 8, 2018, Mr. Shackleford again followed up with an email to Ms. Lilly for an update. (Tr. 92-94; Ex. 8)

17. Ms. Lilly responded to Mr. Shackleford's email on February 8, 2017, and repeated the contents of the order for July 29, 2017, which stated, "Repaired service lead on customer's side. Customer was advised to get a new outlet line." The Water Company was taking the position that the leak was located on the Complainant's side of the water meter. This information was sent to Mr. Thompson. (Tr. 95-97; Ex. 8)

18. On March 9, 2018, Mr. Shackleford entered a resolution plan in the claim notes,

stating that unless the Complainant's attorney provided proof that the leak was on the Water Company's side of the meter, a denial would be issued. (Tr. 97-98; Ex. 8)

19. On April 9, 2018, Mr. Shackleford tried to contact Mr. Thompson. Mr. Shackleford had not received the information from Mr. Thompson that he had promised to send. (Tr. 99; Ex. 8)

20. On April 9, 2018, after receiving an email from Mr. Shackleford, Mr. Thompson called Mr. Shackleford. In the call, Mr. Thompson stated that the parties could not agree on a settlement and that he planned on filing suit in Kanawha County and filing an Administrative Complaint. Mr. Thompson followed up this call with an email stating that it was his belief that the Respondent had no interest in settling and was unwilling to continue the investigation. (Tr. 99-101; Ex. 3, 8)

21. Mr. Shackleford denied that he had told Mr. Thompson that he had no interest in settling or was unwilling to conduct further investigations. Mr. Shackleford stated that as of April 9, 2018, he had not received any additional information from the Complainant. (Tr. 101-102)

22. On April 26, 2018, Mr. Shackleford sent a follow up email to Ms. Lilly asking for copies of the work order. Ms. Lilly responded with a screen shot of the work order and indicated that she did not have a leak report at the Complainant's address. (Tr. 104-105; Ex. 8, 11)

23. On May 29, 2018, Mr. Shackleford entered a resolution plan into the claim notes. As of this point, the Complainant's counsel had not provided any information of where the leak had been located, any damage information, or an expert report. The plan stated, "Claim has been denied. Monitor for probable suit. Once suit has been filed, will act accordingly." Mr. Shackleford testified that even though the claim note said that the claim had been denied, he had not formally denied the claim at this time. (Tr. 107-108; Ex. 8)

24. On June 22, 2018, and July 5, 2018, there were entries in the claim file stating that the Respondent was monitoring this matter to determine whether a suit was being filed.

25. On July 13, 2018, Mr. Shackleford sent the Complainant a copy of the work order that had been sent to him by Ms. Lilly. Mr. Shackleford also asked Complainant's counsel whether he had the expert report he promised to send in February. Up to that point Complainant's counsel had not provided any of the information that the Respondent had requested. (Tr. 111-112)

26. On August 24, 2018, Mr. Barney, Complainant's other counsel, sent an email to the Respondent. The email demanded a settlement amount of $65,000.00 and contained an expert report from Mr. McVey. Mr. McVey's report stated that the Complainant's damages were caused by the Respondent's employee failing to properly apply a clamp to the Complainant's water line. Mr. Shackleford testified that this was the first time that the Complainant's attorney had mentioned that the 2016 repair was not done properly. However, in her initial call with Mr. Shackleford, the Complainant had told him that her problems were related to the Water Company's failure to properly install a clamp. In addition, Mr. Shackleford stated that the August 24, 2018, email was the first demand he had received from the Complainant's attorney. Again, during her first call to Mr. Shackleford, the Complainant said that she had damages between $6,000.00 and $8,000.00. Mr. Shackleford did not respond to the August 24, 2018, demand. (Tr. 114-116, 160; Ex. 8)

27. In the August 24, 2018, email, Complainant's counsel attached an expert report prepared by Mr. McVey. This report had been prepared on February 3, 2018. Mr. Barney also attached a copy of the complaint that he intended to file. Mr. Barney gave the Respondent until

August 28, 2018, to respond to his demand or the complaint would be filed.[3] (Tr. 117-118; Ex 8)

28. On August 28, 2018, Mr. Shackleford responded to the Complainant's demand by asking for additional photos, as well as a couple of weeks to review the expert's report. Mr. Barney responded to the August 28, 2018, email by stating that the Respondent could have more time but only until September 7, 2018. (Tr. 120-121; Ex. 8)

29. On August 28, 2018, Mr. Barney sent pictures from the 2016 water leak and said he would send more pictures. The pictures supplied by the expert evidently were too large to send by email, so Mr. Barney sent the pictures on a CD. The CD was inadvertently sent to Buffalo, New York. The Respondent did eventually receive the CD. (Tr. 122-124; Ex. 5, 6)

30. On August 30, 2018, Mr. Shackleford sent an email to Ms. Lilly requesting an update.

31. On September 6, 2018, Mr. Shackleford contacted Mr. Mike Staley, a field supervisor for the Water Company. Based on this conversation, Mr. Shackleford decided that this case would only settle for nuisance value, which the Complainant would not accept. Mr. Staley also confirmed that the service leak had been repaired by a Water Company employee and that employee advised the Complainant to replace her outlet line. Mr. Staley stated that all potential damages were due to the age of the existing water line and not due to the repairs made by the Water Company. As of that date, Mr. Shackleford was planning on denying the claim. (Tr.1-24-126; Ex. 8)

32. On September 11, 2018, Mr. Shackleford sent an email to Mr. Barney stating that, based on a discussion with the insured, " . . . we are going to keep our denial in this claim." Mr. Shackleford testified that this was not a formal denial since he was still in communication with the

---

[3] Mr. Shackleford received the email on August 24, 2018, at 3:40 p.m.,which was a Friday and his response was due on August 28, 2018, which was a Tuesday. The Complaint had been filed on August 27, but not served on the Respondent.

attorneys representing the Complainant. (Tr. 127; Ex. 7, 8)

33. Mr. Shackleford stated that he could not have issued a formal denial because under the terms of the Respondent's representation with the Water Company, the Water Company must first give permission before any settlement can happen. Mr. Shackleford never sought approval from the Water Company to deny the claim. He also admitted that he had not informed the Complainant's counsel that the Water Company had to approve any denial or settlement. (Tr. 129, 160)

33. Mr. Shackleford did not do a site inspection nor did he hire an expert on behalf of the Respondent. Once suit was filed, Mr. Shackleford no longer had any involvement in this matter. (Tr. 143-146)

34. The West Virginia Offices of the Insurance Commissioner issued a Merit Letter on October 4, 2019. The Merit Letter stated that the Respondent may have violated West Virginia Code §§ 33-11-4(9)(c), 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1.

Issue

Whether the Respondent violated West Virginia Code §§ 33-11-4(9)(c), 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1.

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 matters arising under the insurance laws pursuant to West Virginia Code § 33-2-3.

Analysis

The West Virginia Offices of the Insurance Commissioner issued a Merit Letter stating that the Respondent may have violated West Virginia Code §§ 33-11-4(9)(c), 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1. These are the only Code and Rules sections that will be addressed in this decision.

The first issue is whether the Respondent violated West Virginia Code §33-11-4(9)(c), which states as follows:

> (9) *Unfair claim settlement practice.* - - No person shall commit or perform with such frequency as to indicate a general business practice any of the following:
>
> (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

In conjunction with 33-11-4(9)(c) one must also look at West Virginia Code of State Rules §114-14-6.1, which states as follows:

> Standards for Prompt Investigations and Fair and Equitable Settlements Applicable to All Insurers.
>
> 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.

These sections of the law require an insurance company to timely and diligently pursue a thorough, fair and objective investigation. Therefore, we must look at the investigation conducted by the Respondent to determine if its investigation was timely, thorough, fair and objective.

The first issue is the timeliness of the investigation. On or about October 12, 2017, the

Complainant filed a claim with the Water Company. The claim was then sent to the Respondent. On the same day, Mr. Shackleford was assigned the claim and immediately tried to contact the Complainant. Mr. Shackleford was unable to contact the Complainant on that day so he tried several times after that but eventually had to send the Complainant a letter. The Complainant contacted Mr. Shackleford on October 24, 2017.

During the conversation between Mr. Shackleford and the Complainant, the Complainant outlined her claim. She stated that sometime in early August she noticed that there was grit coming out of a pipe in her basement. She also said that there had been damage to her hot water tank, toilet, shower, sink faucet and boiler. She was told by a plumber that it would take $6,000.00 to $8,000.00 to fix the damage. In addition, the Complainant told Mr. Shackleford that she was told that the cause of the problem was that a Water Company employee had fixed a leak that she had in 2016, but failed to put a necessary clamp on the line.

After talking to the Complainant, Mr. Shackleford sent an email to Jana Lilly requesting that she investigate the alleged water leaks of 2016 and 2017 at the Complainant's address. On November 1, 2017, Ms. Lilly replied to the email and stated that there was one record of a response to a call at the Complainant's address. The service call occurred on July 29, 2017. The Water Company employee that responded to that call was Kevin Westfall.

Mr. Shackleford attempted to contact Mr. Westfall on two occasions, November 7, 2017, and November17, 2017, through Mr. Lee White of the Water Company. While Mr. White told Mr. Shackleford that he would talk to Mr. Westfall about the service call to the Complainant's home, following this conversation there were no other references to Mr. White or Mr. Westfall in the record.

On January 11, 2018, Complainant's counsel requested copies of any work orders or completion memos. A copy of the only work order was not produced until April 26, 2018.

Up to January 2018, the investigation appeared to be timely, but at this point the investigation seemed to slow down. The Respondent would argue that the reason the investigation slowed at this point was because the Respondent was waiting for a response from the Complainant. The undersigned agrees that the Respondent was waiting for a response from the Complainant. Since there was nothing the Respondent could do until it received the response, the investigation was timely.

The next issue to address is whether the investigation was thorough. Initially the investigation appeared to be thorough and objective, because the Respondent first contacted his insured and then attempted to get in contact with the Complainant. When the Respondent finally heard from the Complainant, he obtained her version of the events. Following this conversation, the Respondent then again contacted its insured requesting specific information.

Approximately a week later, the Respondent's employee Ms. Lilly replied that there had only been one work order for the Complainant's address on July 29, 2017. Mr. Shackleford did not question this information even though he knew from the Complainant that there was an alleged work order in 2016. The Complainant had stated that she was without water for seven days at that time. Even if the Complainant had been mistaken, which is difficult to believe, at the very least, Mr. Shackleford should have questioned Ms. Lilly further.

In addition, Mr. Shackleford was told by the Complainant that a clamp had been improperly installed and that was causing the Complainant's problems. At no point was there any indication that Mr. Shackleford informed the Water Company that there was an allegation that there was an

improperly installed clamp. At the very least, the Water Company should have been informed of this accusation.

The Complainant seems to argue that the Respondent's failure to visit the work site or hire an expert indicates that the Respondent's investigation was not thorough. While in certain situations a site investigation or the hiring of an expert would be necessary, in this matter the repair had been made several months before the claim was filed and an inspection or an expert would do little good at this point.

The next issue that would indicate that the investigation was not thorough was the fact that, once Mr. Shackleford had learned that Mr. Westfall was the Water Company employee that had gone to the Complainant's home, he should have made talking with him a high priority. While it is true that Mr. Shackleford made two attempts to contact Mr. Westfall, no attempts were made after December 17, 2017. Mr. Westfall would have been the key person to talk to in order to determine what really happened during the visit repair on July 29, 2017. The failure to talk to Mr. Westfall clearly indicates that the investigation was not thorough.

The discussion above indicates that the investigation conducted by the Respondent was not thorough.

The next point to discuss is whether the investigation was fair and objective. As stated above, the Complainant had indicated that there had been a leak in 2016 and it had been repaired by the Water Company. Even though Mr. Shackleford had been provided this information, he took at face value the Water Company's assertion that it only had a record of being at the Complainant's address on July 29, 2017. In order to be fair and objective, at the very least, Mr. Shackleford should have questioned Ms. Lilly further, rather than to just rely on her initial report that indicated there had

not been a call to the Complainant's home in 2016.

Finally, whether the Respondent's investigation was fair and objective, can also be determined by how much investigation was done on the location of the break and the fact that the leak was fixed in 2017. The Complainant told Mr. Shackleford that both in 2016 and 2017, the Water Company's employees had originally asserted that the problem was on the Complainant's side of the water meter. According to the Complainant, the Water Company, on both occasions, later indicated that it had been mistaken and the leak was on the Water Company's side of the water meter.

Ms. Lilly stated that there had only been one call to that address, which was in 2017, and in that call, it had been determined that the problem was on the Complainant's side of the water meter. The work order indicated that the work that had been done by the Water Company at that time was on the Complainant's side of the water meter. In order to be fair and objective, with diametrically opposed versions of the events, Mr. Shackleford should have attempted to get more information on the differing versions of the facts. Instead, Mr. Shackleford simply relied on his insured version of the facts and failed to do any more investigation.

When there are conflicting facts, then the insurance company is under some minimal obligation to investigate the conflict in order to be fair and objective. In this matter, the Respondent accepted its insured's version of the facts, even though its version provided very little information. Mr. Shackleford received enough information from the Complainant during the initial phone call to put him on notice that the minimal information provided by the Water Company was not sufficient to perform a fair and objective investigation.

The Respondent's investigation was timely, but it failed to perform a thorough, fair or

objective investigation, therefore it violated West Virginia Code §33-11-4(9)(c) and West Virginia Code of State Rules § 114-14-6.1.

The next potential violation is of West Virginia Code §33-11-4(9)(d), which states:

> No person shall commit or perform with such frequency as to indicate a general business practice any of the following:
>
> (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

In order to find a violation of this Code section, it must be proven that the Respondent refused to pay claims without a reasonable investigation. As stated above, the Respondent did not conduct a reasonable investigation.

If the Respondent had conducted a reasonable investigation, it may have been possible that the Respondent would have determined that there, indeed, had been a repair in 2016 by a Water Company employee. It also could have found out that this 2016 repair caused the Complainant's problem in 2017. While it appears to be mere speculation at this point whether the Respondent would have even made an offer to the Complainant, it had conducted a reasonable investigation, Therefore, the Complainant, by proving that the Respondent did not conduct a reasonable investigation, proved the Respondent violated West Virginia Code §33-11-4(9)(d).

Conclusions of Law

The following are made as conclusions of law:

1. The West Virginia Offices of the Insurance Commission has jurisdiction over this matter by virtue of West Virginia Code § 33-2-3.

2. The Complainant has the burden to prove, by a preponderance, the evidence that the Respondent violated the West Virginia Unfair Trade Practices Act.

3. The Complainant proved, by a preponderance of the evidence, that the Respondent did not perform a thorough, fair and objective investigation, thus, proved a violation of West Virginia Code §§ 33-11-4(9)(c), and West Virginia Code of State Rules § 114-14-6.1.

4. The Complainant proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code §33-11-4(9)(d), when she proved that the Respondent failed to conduct a reasonable investigation.

Recommended Decision

It is recommended that the consumer complaint of Debbie Grimm against Travelers Property & Casualty Company of America be upheld.

Respectfully recommended,

Mark W. Carbone

MARK W. CARBONE
HEARING EXAMINER

Date: March 19, 2020