

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

DWAYNE WESLEY RADCLIFFE,

Complainant,

v.

Administrative Proceeding No. 19-FP-CC-02051

WESTFIELD INSURANCE COMPANY,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER DENYING REQUEST FOR A HEARING

This matter came before the West Virginia Insurance Commissioner (hereinafter, “Commissioner”) on Dwayne Wesley Radcliffe’s (hereinafter “Complainant”) request for a hearing on his first-party administrative complaint against Westfield Insurance Company (hereinafter, “Westfield”). Whereupon, the Commissioner made the follow findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Complainant alleges that the asphalt shingle roof of his residential home located in Charleston, West Virginia, was damaged as the result of a hailstorm on May 31, 2019.
2. As a result, Complainant filed a claim with Westfield, his homeowner’s insurer, seeking coverage for the alleged damages to the roof.
3. Westfield retained Ryze Claims Solutions to inspect Complainant’s roof on or about September 3, 2019. Ryze Claims Solutions thereafter issued a report indicating that there was minor hail damage to the gutters, but the remaining damage to Complainant’s roof was the result of a cause or causes unrelated to the hailstorm.

4. Westfield's estimate to repair the hailstorm-related damages was less than Complainant's deductible on his policy, so no payment was issued for the cost to repair those damages. Westfield denied the remainder of Complainant's claim for damages as, based upon the report from Ryze Claims Solutions, not having resulted from a peril covered under Complainant's Westfield policy.

5. Complainant provided his own estimate of the damages to his roof that was performed by J&J Construction on September 19, 2019. The "Notes" section of the estimate stated, "We installed two porch roofs before the storm and never noted any damage to the existing shingles or roof boots."

6. After denying a portion of Complainant's claim as set forth above, Westfield offered Complainant the opportunity to have a structural engineer perform another inspection of his roof. Westfield alleges that Complainant never responded to this offer before filing the instant administrative complaint.

7. On or about October 29, 2019, Complainant filed the instant first-party administrative complaint. Complainant alleged therein that his claim should have been covered by Westfield because his surrounding neighbors had their roofs replaced or they received payment for roof damage from their insurers after the storm. Complainant further asserted that his roof is only seven or eight years old and, therefore, it would not be in the condition he alleges if it had not been damaged by the hailstorm. Complainant also acknowledged that Westfield acknowledged and paid for repair of hail damage to the gutters which are attached to the roof and asserted that his shed sustained slight hail damage.

8. On or about November 13, 2019, Westfield responded to the administrative complaint, denying the allegations raised therein and, relying on the report issued by Ryze Claims

Solutions, stated that any damage to Complainant's roof was the result of various factors other than the hailstorm and, therefore, was not the result of a peril covered under its policy issued to Complainant. Westfield also stated it had offered Complainant the opportunity to have his roof inspected by a structural engineer, but he never responded to this offer and otherwise never made arrangements for the inspection prior to instituting this administrative complaint proceeding.

9. On or about June 24, 2020, the Complainant was mailed a "no merit" letter closing his first-party administrative complaint. As stated in the "no merit" letter, this agency's investigation did not reveal any unfair claims settlement practices committed by Westfield in the handling of his claim, and found this matter to be a good faith dispute over the cause of the alleged damage to his roof surface or covering.

10. On or about August 12, 2020, Complainant requested a hearing on the merits of his first-party administrative complaint against Westfield, pursuant to W.Va. Code §33-2-13.

#### CONCLUSIONS OF LAW

1. A disagreement regarding the value of a claim or whether it is covered under a policy does not, in and of itself and without evidence of a want of good faith, signal an unfair claims settlement practice by an insurer.

2. "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. Code 634, 600 S.E.2d 346 (2004), quoting *Peckham v. Continental Cas. Ins. Co.*, 895 F.2d 830, 835 (1<sup>st</sup> Cir. 1990).

3. Westfield had an inspection performed of Complainant's roof which resulted in the conclusion that the damage to Complainant's roof surface (shingles) was due to a cause or causes unrelated to a peril that is covered under Complainant's homeowner's policy issued by Westfield. Although

Complainant, in attempting to counter Westfield's assertion, relies upon an estimate from J&J Construction indicating there was no damage to the shingles when they installed a porch at some point prior to the storm, there is no indication as to when the porch was installed or what, if any, inspection was performed of the roof surface or covering which Complainant claims was damaged in the hailstorm of May 31, 2019. Additionally, Westfield offered to have a structural engineer inspect Complainant's roof, but there is no evidence that Complainant ever responded to this offer before he filed the instant complaint.

5. 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.

7. W.Va. Code §33-2-13 and W.Va. Code R. §114-1-3.3 give the Commissioner discretion in deciding whether a hearing would serve a useful purpose. The only purpose to be served by conducting a hearing in this matter would be for the Commissioner to adjudicate a good faith dispute over causation and/or damages in the Complainant's underlying claim. To grant Complainant's request and conduct a hearing, therefore, would serve no *useful* purpose because it would involve an exercise of authority by the Commissioner in excess of that available to him under 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 may, if he so chooses, appeal this order to the Circuit Court of Kanawha County within 30 days of his receipt hereof.

**ENTERED** this the 21<sup>st</sup> day of September, 2020.



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JAMES A. DODRILL  
Insurance Commissioner