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

DAVID TABB,

Complainant,

v. Administrative Proceeding No. 20-FP-02025

ERIE 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 David Tabb's (hereinafter, "Complainant") request for a hearing on his first-party administrative complaint filed against Respondent Erie 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. Complainant is the owner of a home insured by Respondent which is currently used as rental property.

2. Before he obtained the policy with Respondent insuring the home, Respondent required Complainant to expend $4,500 in upgrades to the home.

3. After the upgrades were made, Respondent issued to Complainant a "Erie/Secure Rental Insurance Policy" insuring the rental unit.

4. On or about December 12, 2019, Complainant filed a claim with Respondent for water and mold damage to the basement of the rental unit.

5. At the time of the claim for damages, the rental unit was occupied by a disabled tenant, who was unable to reach the basement.

6. On or about December 12, 2019, Respondent inspected Complainant's rental unit. Complainant stated that he had removed the carpet and contents prior to the inspection. Respondent's inspection found mold growth on some of the walls and deterioration at the base of some door frames, requiring further inspection.

7. On or about January 14, 2020, Thomas Krauth, P.E., for Vannoy and Associates, performed an inspection of Complainant's rental unit. The inspection was originally scheduled for December 20, 2019, but was rescheduled at the request of Complainant.

8. On or about January 23, 2020, Mr. Krauth issued his report regarding the inspection of the rental unit. Mr. Krauth found that the water damage to the rental unit was the result of a leak, ongoing for a lengthy time, in a water supply line to the toilet. Mr. Krauth also opined that the mold was consistent with long-term moisture exposure, ground water intrusion, inadequate dehumidification, and HVAC imbalances.

9. Based upon Mr. Krauth's report, Respondent denied Complainant's claim for damages by letter dated January 30, 2020. Respondent stated that the claimed damage was the result of long-term water damage and cited policy language denying coverage as the claimed damage was not the result of a peril covered under the policy. Respondent also stated that the required upgrades to the home had no relation to the claimed damage nor the reason for the denial.

10. On or about March 12, 2020, Complainant filed his first-party administrative complaint with the West Virginia Offices of the Insurance Commissioner ("WVOIC"). Complainant alleges that he never received the apparent binder which Respondent cites as a reason for denial of his claim; that the policy does not contain time frames regarding when an inspection

of his rental unit is to be made; and makes no mention of how the inspection is to be made if occupied by a disabled tenant.

11. On June 11, 2020, Respondent responded to the first-party administrative complaint. Respondent stated that although the WVOIC stated they had sent the first-party administrative complaint previously with no response, Respondent received it for the first time on June 8, 2020.

12. In their response to the first-party administrative complaint, Respondent confirmed their original denial. Respondent agreed with Complainant that the policy does not set forth a time requirement for property inspections, but stated it is the policy holder's responsibility to inspect the property and promptly notify Respondent of any damages. Respondent further stated that all policies and renewals were sent to Complainant at the address he provided, which they verified as the correct address. Respondent stated that coverage does not exist for the water and mold damage in Complainant's house. Damage caused by constant or repeated seepage from the plumbing over a period of weeks, months or years is specifically excluded under the insurance policy.

13. On or about October 28, 2020, Complainant requested, via email, a hearing on his first-party administrative complaint. Complainant stated that the upgrades required by Respondent when the original policy was issued do not match the codes used to deny his claim for damages, and raises the additional claim that the policy is written as a homeowner's policy when it is a commercial policy with no provisions for the American with Disabilities Act.

14. Respondent responded to Complainant's request for a hearing and again stood by its denial of Complainant's claim for damages. Respondent stated that Complainant completed an "ERIE Secure Rental Application" and verified through the application that the premises would be used as a rental. The rate charged Complainant was consistent with the rental policy issued to

him. Respondent further stated that the policy issued Complainant does not provide direction for the tenant or Complainant to complete routine inspections of the premises.

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

2. The claimed damage was inspected by a licensed engineer and determined, by him, to be the result of a long-term water leak. Said engineer further determined that the long-term water damage also contributed to the mold in the home. While Complainant disputes these findings, he has provided no facts to contradict them and, therefore, this matter is a good faith dispute over liability and/or coverage under the policy and does not constitute a matter involving an unfair claims practice.

3. Complainant completed an "ERIE Secure Rental Application." In the application, Complainant verified that the property would be used as a rental unit. Based upon that information, Respondent issued an "Respondent/Secure Rental Insurance Policy." Complainant knew he was using the property as a rental unit and knew, or should have known, the policy was a rental policy.

"A party to a contract has a duty to read the instrument.' *American States Ins. Co. v. Surbaugh,* 231 W.Va. 288; 745 S.E.2d 179 (2013).

4. The policy does not place upon anyone the responsibility of inspecting the premises. Consequently, there is no need for a distinction for tenants with disabilities.

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.

6. W.Va. Code §33-2-13 and W.Va. 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 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 6th day of January, 2021.

James A. Dodrill
Commissioner of Insurance