NOTICE OF AGENCY'S FINAL DECISION

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Case Name: [redacted] vs Geico

ALJ: Blumer Decision Date: 8/24/2022

Case No.: MIA-CC-33-22-06560

Agency Case No. (if applicable): _____

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MARYLAND INSURANCE	*	**BEFORE KRISTIN E. BLUMER,**
ADMINISTRATION	*	**AN ADMINISTRATIVE LAW JUDGE**
EX REL.	*	**OF THE MARYLAND OFFICE**
[redacted]	*	**OF ADMINISTRATIVE HEARINGS**
COMPLAINANT	*	**OAH No.: MIA-CC-33-22-06560**
v.	*	**MIA No.:** [redacted]
GEICO CASUALTY COMPANY,	*	
LICENSEE	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On August 2, 2021, the Maryland Insurance Administration (MIA) received a complaint from the Complainant alleging unfair claims settlement practices by Geico Casualty Company (Licensee). Specifically, the Complainant asserted that the Licensee erred in handling his property claim for the total loss of his vehicle as a result of damages in an accident that occurred on July 11, 2021, in which the Licensee's insured was at fault.

After an investigation, the MIA found that the Licensee did not violate Sections 4-113 and 27-303 of the Insurance Article of the Maryland Code, except as to one written communication in which the Licensee failed to clearly explain its position. The MIA notified the Complainant of its

finding by a letter dated January 31, 2022. On March 1, 2022, the Complainant requested a hearing. On March 18, 2022, the MIA transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a hearing. *See* Md. Code Ann., State Gov't § 10-205 (2021). In its transmittal, the MIA delegated the authority to issue a proposed decision and instructed that specific attention at the hearing should be directed to Sections 4-113 and 27-303 of the Insurance Article of the Maryland Code.[1]

On March 24, 2022, the OAH issued a Notice of Hearing to the parties indicating that the merits hearing was scheduled for June 1, 2022 at 1:00 p.m. at the OAH in Hunt Valley, Maryland. On May 6, 2022, the Complainant filed a request to subpoena witnesses for the hearing. The OAH issued the requested subpoenas on May 9, 2022.

On May 18, 2022, [redacted] Esquire, counsel for the Licensee, filed a Motion for Summary Decision with the two attachments.

On May 19, 2022, Assistant Attorney General [redacted] Esquire, counsel for the MIA, filed a Motion to Quash Subpoena in reference to one of the witnesses who had been subpoenaed at the Complainant's request.

On May 23, 2022, the Complainant emailed an OAH clerk, advising that he had mailed a postponement request to Chief Administrative Law Judge (CALJ) Chung Pak, requesting more time to respond to the Motion for Summary Decision and Motion to Quash Subpoena. That same day, an OAH administrative aide emailed counsel for the Licensee, requesting his position on the postponement request. Counsel for the Licensee responded on May 24, 2022, indicating he had no objection to the Complainant's postponement request. On May 27, 2022, I sent a letter to the parties, stating that I was converting the merits hearing set for June 1, 2022 into a remote

[1] The Insurance Commissioner may delegate to the OAH the authority to issue: (a) proposed or final findings of fact; (b) proposed or final conclusions of law; (c) proposed or final findings of fact and conclusions of law; or (d) a proposed or final order. Code of Maryland Regulations (COMAR) 31.02.01.04-1A.

motions hearing and pre-hearing conference (PHC) to be conducted on the Webex videoconferencing platform.[2] In the letter, I also instructed the Complainant to file a written answer to the Motion for Summary Decision and Motion to Quash Subpoena[3] by the close of business on May 31, 2022.

On May 27, 2022, after receiving my letter, the Complainant sent a letter by email to CALJ Pak's executive assistant, again asking for more time in which to respond to the pending motions and for a postponement of the June 1, 2022 proceedings. On May 31, 2022, the Complainant forwarded the original email and the letter to an OAH docket clerk.

I convened the remote motions hearing and PHC on June 1, 2022 as scheduled. The Complainant represented himself. Mr. [redacted] represented the Licensee. Ms. [redacted] represented the MIA.

At the outset of the hearing on June 1, 2022, I disclosed to all parties that counsel for the MIA and I are acquaintances, having met each other in social settings from time to time in the past; I explained that she and I have not been acquainted in a professional context. I stated that this fact would not affect my ability to be fair and impartial in this case. I offered the Complainant an opportunity to request my recusal as a result of this disclosure and the Complainant declined to make any such request.

After receiving a proffer from the Complainant regarding his request to subpoena the witness who is the subject of the Motion to Quash and hearing argument from the MIA, I denied the Motion to Quash for the reasons stated on the record.[4] I then stated that I interpreted the

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[2] COMAR 28.02.01.12B(4), (5), COMAR 28.02.01.17A.

[3] Pursuant to COMAR 28.02.01.12B(3), the "answer to a written motion shall be filed on the earlier of: (a) 15 days after the motion was filed; or (b) The date of the hearing." Fifteen days from May 18, 2022 was Thursday, June 2, 2022 and fifteen days from May 19, 2022 was Friday, June 3, 2022. Therefore, the Complainant's answers to the pre-hearing motions were originally due on the date of the hearing, June 1, 2022. COMAR 28.02.01.12B(3)(b).

[4] COMAR 28.02.01.12B(5).

Complainant's postponement request of May 27, 2022 as a motion to extend time in which to reply to the motions and a postponement of the motions hearing. After hearing from the parties on this issue, including opposition from the Licensee and the MIA with respect to further postponement, I granted the request to extend time to reply to the Motion for Summary Decision and the request to postpone the hearing on the Motion for Summary Decision.[5] Although the Complainant requested an additional thirty days in which to respond to the Motion for Summary Decision, I declined to extend the deadline for the requested timeframe. I granted the Complainant an additional fifteen days in which to respond, as he had already had the benefit of fourteen days between the date of the filing of the Motion for Summary Decision and the June 1, 2022 hearing. I directed him to file his response by June 16, 2022 by the end of the business day.

After consultation with the parties on scheduling, I rescheduled the remote motions hearing on the Motion for Summary Decision for June 17, 2022 and the remote merits hearing for July 25, 2022. On June 10, 2022, I issued a Pre-Hearing Conference Report and Scheduling Order.

The Complainant filed his pleading entitled "Response to Motion for Summary Judgement"[6] on June 16, 2022.[7] I convened the remote motions hearing on June 17, 2022 as scheduled. The Complainant represented himself. Mr. [redacted] represented the Licensee. Ms. [redacted] represented the MIA.

On June 24, 2022, the Complainant filed a Motion for Recusal. On July 1, 2022, the Licensee filed an Opposition to the Complainant's Motion for Recusal.

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[5] COMAR 28.02.01.11B(7); COMAR 28.02.01.16; COMAR 31.02.01.09.
[6] The regulations applicable to these proceedings use the term "Summary Decision." *See* COMAR 31.02.01.07G; COMAR 28.02.01.12D. I consider the Complainant's response as one in opposition to summary decision.
[7] The Complainant emailed his pleading to the OAH after the close of business on June 15, 2022 at 9:17 p.m.

I denied the Motion for Summary Decision and the Motion for Recusal in a Recommended Ruling issued on July 18, 2022.

On July 25, 2022, I held a remote hearing using the Webex videoconferencing platform. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017); COMAR 31.15.07; COMAR 28.02.01.20B(1)(b). The Complainant represented himself. Mr. [redacted] represented the Licensee. Ms. [redacted] represented the MIA.[8]

Preliminarily, the Complainant made a motion to bifurcate the proceedings and requested that a hearing on the appropriate sanction, if any, be scheduled for a later time. The Complainant argued that the issue of sanctions was "a complicated matter [that] would require a lot more work to address" and represented that he did not intend to address sanctions in his case in chief. He stated his preference for a second hearing to address any sanctions, if warranted, based on factual findings in his favor as to the question of whether the Licensee engaged in unfair claim settlement practices. The Complainant cited to no authority in support of his motion to bifurcate this hearing. The Licensee noted its opposition and argued there was no reason to bifurcate the hearing. The MIA did not take a position on the Complainant's request. I denied the motion to bifurcate the hearing as requested.[9]

[8] On July 18, 2022, counsel for the MIA filed a Notice of Substitution of Counsel, entering the appearance of Assistant Attorney General [redacted] At the hearing on July 25, 2022, the Complainant asked why Ms. [redacted] was present instead of Mr. [redacted] Ms. [redacted] explained that another one of her cases had been scheduled for a hearing at the same time as the instant case on July 25, 2022. Mr. [redacted] appearance was entered so as to avoid any scheduling conflict. Ms. [redacted] represented that the other hearing had been postponed, which allowed her to appear for the instant case.

[9] At the time I denied this request, the Complainant further inquired if he would generally be permitted a "post-hearing filing" under the OAH's Rules of Procedure at COMAR 28.02.01; he did not specify what issue might be raised in any such filing. I explained that the parties to this case will have the ability to file exceptions to my proposed decision with the Commissioner of the MIA. COMAR 31.02.01.10-1.

Prior to the hearing, the Complainant also noted an objection to the failure to appear of [redacted] Claims Director for the Licensee.[10] The Complainant had requested a subpoena for Mr. [redacted] on May 6, 2022. The Licensee argued that Mr. [redacted] is located out of state and that the subpoena was defective as a result. The Licensee further noted that two in-state employees directly involved in the Complainant's claim were present and available for testimony. I overruled the objection at the outset of the hearing. I stated that in the event the Complainant perceived that the testimony of Licensee's witnesses was somehow deficient during the hearing, I would allow him to be further heard on that issue at that time.[11]

After the MIA's file was admitted into evidence and during opening statement, the Licensee renewed its Motion for Summary Decision and incorporated by reference its prior written and oral arguments. COMAR 28.02.01.12D. I permitted the parties to make any additional arguments they deemed necessary as to the Motion for Summary Decision during the hearing. At the conclusion of the Complainant's case in chief, the Licensee made a Motion for Judgment. COMAR 28.02.01.12E. I stated that I would address the renewed Motion for Summary Decision and the Motion for Judgment in the proposed decision.

The contested case provisions of the Administrative Procedure Act, the MIA's hearing regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 31.02.01; and COMAR 28.02.01.

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[10] The Complainant and the Licensee both noted that this issue had been discussed at the PHC on June 1, 2022. Counsel for the Licensee stated that, at that time, he had pointed out the defect in the subpoenas for out of state witnesses to the Complainant. Counsel for the Licensee further noted that at the time of the PHC, he expected that the Complainant would seek to re-issue the subpoenas. Counsel for the Licensee also noted that he made clear at the PHC that he was willing to work through the issue with the Complainant prior to the hearing and that he would make available for the hearing two in-state witnesses who had worked on the Complainant's claim. Prior to beginning the merits hearing on July 25, 2022, the Complainant conceded that he "let it slip" but questioned why I had not ruled on the issue in my Pre-Hearing Conference Report and Scheduling Order, issued on June 10, 2022. No party filed a motion requesting relief on this issue or noted any objection as to it, prior to the Complainant's objection at the hearing on July 25, 2022; therefore, no ruling was required until that time.

[11] The Complainant did not raise this issue again during the hearing.

ISSUE

Did the Licensee engage in any unfair claim settlement practice under the Insurance Article?

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire MIA file, consisting of twelve exhibits, into the record as follows:

1. Complaint Summary, August 2, 2021
2. Letter from the MIA to the Licensee, August 6, 2021
3. Complaint and related emails from Complainant, various dates
4. Letter from the MIA to the Licensee, August 16, 2021
5. Email from the Complainant to the MIA, August 18, 2021
6. Letter from the Licensee to the MIA, August 23, 2021, with the following attachments:
   - Complete copy of the claim file/log
   - Copies of the vehicle photos estimate
   - Complete copy of the policy in effect on the date of the loss, including forms, endorsements, and declaration page
7. Letter from the MIA to the Licensee, September 9, 2021
8. Letter from the Licensee to the MIA, October 26, 2021; Letter from the Licensee to the MIA, September 23, 2021, with the following attachments:
   - Complete copy of the claim file/log
   - Final settlement breakdown and supporting documentation
9. Letter from the MIA to the Licensee, January 31, 2022
10. Complainant's request for hearing and envelope, received by the MIA on March 1, 2022
11. Letter from the MIA to the Complainant, March 1, 2022
12. Letter from the [redacted] to the MIA, March 8, 2022

The Complainant did not offer any exhibits to be admitted.

The Licensee did not offer any exhibits to be admitted.

Testimony

The Complainant presented the following witnesses for testimony: [redacted] Geico Auto Damage Supervisor; [redacted] MIA; and [redacted] who was accepted as an expert in automobile appraisal.

The Licensee also presented Mr. [redacted] for testimony.

The MIA did not present any witnesses for testimony.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On July 11, 2021, the Licensee's insured struck the Complainant's vehicle, a 2013 Mazda 3i Touring hatchback with an odometer reading of 74,624 miles.

2. The Licensee accepted liability for the damages to the Complainant's vehicle.

3. The Licensee deemed the Complainant's vehicle a total loss.

4. On July 15, 2021, [redacted] (a company hired by the Licensee) determined the cash value of the Complainant's vehicle was $10,565.00.

5. On July 23, 2021, [redacted] increased its estimate of the cash value of the Complainant's vehicle to $10,706.00, after receiving information that the Complainant's vehicle was equipped with blind spot detection.

6. The July 23, 2021 [redacted] valuation relied on four vehicles it identified as comparable to the Complainant's vehicle that were located within fifty miles of [redacted] Maryland.

7. The four vehicles in the July 23, 2021 [redacted] valuation had valuations of $10,328.00, $10,699.00, $10,729.00, and $11,516.00.

8. On July 23, 2021, the Licensee offered the Complainant a settlement amount of $11,458.36. The Complainant rejected this offer.

9. [redacted] issued five subsequent estimates of the cash value of the Complainant's vehicle, one on July 30, 2021, two on August 6, 2021, one on August 9, 2021, and one on August 18, 2021.

10. . The July 30, 2021 and both August 6, 2021 estimates maintained the cash value of the Complainant's vehicle at $10,706.00.

11. The July 30, 2021 [redacted] valuation relied on four vehicles it identified as comparable to the Complainant's vehicle that were located within fifty miles of [redacted] Maryland. The four vehicles in the July 30, 2021 [redacted] valuation had valuations of $10,328.00, $10,699.00, $10,729.00, and $11,516.00. It also included information for nine additional vehicles for information purposes; one of those vehicles was located within fifty miles of [redacted] Maryland; the remaining eight vehicles were located between ninety-seven and 493 miles from [redacted] Maryland. The nine vehicles included for information purposes ranged in value from $10,156.00 to $10,991.00.

12. The first August 6, 2021 [redacted] valuation relied on four vehicles it identified as comparable to the Complainant's vehicle that were located within fifty miles of [redacted] Maryland. The four vehicles in the first August 6, 2021 [redacted] valuation had valuations of $10,328.00, $10,699.00, $10,729.00, and $11,516.00. It also included information for thirteen additional vehicles for information purposes; one of those vehicles was located within fifty miles of [redacted] Maryland; the remaining twelve vehicles were located between seventy and 493 miles from [redacted] Maryland. The thirteen vehicles included for information purposes ranged in value from $9,654.00 to $11,659.00.

13. The second August 6, 2021 [redacted] valuation relied on four vehicles it identified as comparable to the Complainant's vehicle that were located within fifty miles of [redacted] Maryland. The four vehicles in the second August 6, 2021 [redacted] valuation had valuations of $10,328.00, $10,699.00, $10,729.00, and $11,516.00. It also included information for fifteen additional vehicles for information purposes; one of those vehicles was located within fifty miles of [redacted] Maryland; the remaining fourteen vehicles were located between fifty-nine and 493 miles from [redacted] Maryland. The fifteen vehicles included for information purposes ranged in value from $9,654.00 to $11,659.00.

14. On August 9, 2021, [redacted] increased its estimate of the cash value of the Complainant's vehicle to $11,347.00, after receiving information from the Complainant regarding brake work done on the vehicle earlier in 2021 and re-reviewing the vehicle, resulting in an upgrade of the vehicle's condition rating.

15. The August 9, 2021 [redacted] valuation relied on four vehicles it identified as comparable to the Complainant's vehicle that were located within fifty miles of [redacted] Maryland. The four vehicles in the August 9, 2021 [redacted] valuation had valuations of $10,328.00, $10,699.00, $10,729.00, and $11,516.00. It also included information for fifteen additional vehicles for information purposes; one of those vehicles was located within fifty miles of [redacted] Maryland; the remaining fourteen vehicles were located between fifty-nine and 493 miles from [redacted] Maryland. The fifteen vehicles included for information purposes ranged in value from $9,569.00 to $11,659.00.

16. On August 10, 2021, the Licensee offered the Complainant a revised settlement amount of $12,137.82. The Complainant rejected this offer.

17. On August 18, 2021, [redacted] increased its estimate of the cash value of the Complainant's vehicle to $12,190.67, after adding an adjustment of $843.67 from the Licensee to settle the matter.

18. The August 18, 2021 [redacted] valuation relied on four vehicles it identified as comparable to the Complainant's vehicle that were located within fifty miles of [redacted] Maryland. The four vehicles in the August 18, 2021 [redacted] valuation had valuations of $10,328.00, $10,699.00, $10,729.00, and $11,516.00. It also included information for fifteen additional vehicles for information purposes; one of those vehicles was located within fifty miles of [redacted] Maryland; the remaining fourteen vehicles were located between fifty-nine and 493 miles from [redacted] Maryland. The fifteen vehicles included for information purposes ranged in value from $9,569.00 to $11,659.00.

19. On August 18, 2021, the Licensee offered the Complainant a revised settlement amount of $13,032.12. On that same day, the Complainant accepted the offer.

DISCUSSION

Legal Framework

When the MIA referred this case to the OAH, it directed the Administrative Law Judge conducting the hearing to pay specific attention to sections 4-113 and 27-303 of the Insurance Article. Section 4-113(b)(5) provides that the Insurance Commissioner may suspend, refuse to renew, or revoke an insurer's certificate of authority if the insurer "refuses or delays payment of amounts due claimants without just cause." Ins. § 4-113(b)(5) (2017).[12] Section 27-303 lists ten

[12] Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2017 Replacement Volume of the Maryland Annotated Code.

unfair claim settlement practices.[13] Section 27-303(2), in particular, prohibits an insurer or nonprofit health service plan from refusing to pay a claim for an "arbitrary or capricious reason."

The Insurance Commissioner may impose a penalty not exceeding $2,500.00 for each violation of section 27-303 and may require an insurer to make restitution, subject to the limits of any applicable insurance policy, to each claimant who has suffered actual economic damage because of the violation. *Id.* § 27-305(a)(1), (c)(1), (2).

Neither the statute nor any regulation promulgated by the MIA defines the "arbitrary or capricious" standard. In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Court of Special Appeals quoted from, and adopted, the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard in an earlier MIA case:

> "[A] claimant must prove that the insurer acted based on 'arbitrary and capricious reasons.' The word 'arbitrary' means a denial subject to individual judgment or discretion, and made without adequate determination of principle. The word 'capricious' is used to describe a refusal to pay a claim based on an unpredictable whim. Thus, under [Insurance Article section] 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on 'all available information.'"

142 Md. App. 628, 671 (2002) (citations omitted). As used in section 27-303 of the Insurance Article, "arbitrary or capricious" essentially means without reason or just cause.

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence

[13] The MIA found that the Licensee failed to clearly communicate to the Complainant why the comparable valuations that he submitted "did not provide a more accurate evaluation than its own evaluation" in violation of Ins. § 27-303(6). (MIA Ex. 9). The MIA then noted that this failure "did not prevent you from reaching an agreed settlement of your claim." *Id.* The MIA did not sanction the Licensee for this violation. *Id.* No party presented evidence, testimony, or argument as to this finding. Therefore, I decline to address it.

means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the Complainant, as the party asserting the affirmative on the issue of an unfair claim settlement practice, has the burden of proving by the preponderance of the evidence that the Licensee acted arbitrarily and capriciously in denying the claim. COMAR 28.02.01.21K(1), (2)(a). The Licensee bears the burden as to the Motion for Summary Decision and the Motion for Judgment by a preponderance of the evidence. COMAR 28.02.01.21K(3).

The Positions of the Parties

The Complainant argued that the Licensee's methodology in determining the value of his vehicle for purposes of cash settlement was arbitrary and capricious because the Complainant asserted that the Licensee did not adhere to the requirements of COMAR 31.15.12.04, which states:

> If an insurer elects to make a cash settlement for the total loss of a motor vehicle pursuant to Regulation .03 of this chapter, the insurer's minimum offer, subject to applicable deductions, shall be:
> A. The total of:
> (1) The retail value for a substantially similar motor vehicle from a nationally recognized valuation manual or from a computerized data base that produces statistically valid fair market values for a substantially similar vehicle as defined in Regulation .02B(7) of this regulation; and
> (2) Regardless of whether the claimant retains salvage rights, the applicable taxes and transfer fees pursuant to COMAR 11.11.05; or
> B. The total of:
> (1) A quotation for a substantially similar motor vehicle obtained by or on behalf of the insurer from a qualified dealer at a location reasonably convenient to the claimant; and
> (2) Regardless of whether the claimant retains salvage rights, the applicable taxes and transfer fees pursuant to COMAR 11.11.05.

The Complainant argued that some of the comparable vehicles that the Licensee used in determining the valuation of his vehicle were not located "at a location reasonably convenient to the claimant." COMAR 31.15.12.04B(1). The Complainant further argued that the Licensee

improperly rejected or outright ignored the comparable vehicle information that he submitted, even though those vehicles were readily identifiable and more closely located than some of the vehicles considered by the Licensee in reaching its valuation of the Complainant's vehicle. The Complainant asserted that the Licensee attempted to suppress the value of his vehicle and shirk its responsibility under applicable statutes and regulations.

The Licensee disputed that its actions were arbitrary and capricious, and argued that its actions in determining a settlement amount comported with the requirements of COMAR 31.15.12.04A(1). The Licensee argued that [redacted] is a computerized database that generates valid and fair market values for substantially similar vehicles. The Licensee noted that the Complainant submitted additional information about his vehicle and comparable vehicles that he identified, which the Licensee considered in determining its proposals, and argued that this practice does not mean that the Licensee failed to comply with COMAR 31.15.12.04. The Licensee further argued that the difference between its initial settlement offer of $11,458.36 and its accepted settlement offer of $13,032.12, an increase of $1,573.76, does not support a finding that the Licensee attempted to suppress the value of the Claimant's vehicle.

The MIA did not present arguments at the hearing.

Analysis

The Complainant questioned [redacted] Geico Auto Damage Supervisor, extensively about the Licensee's use of comparable vehicles in determining the value of his vehicle, pursuant to COMAR 31.15.12.04B(1). Mr. [redacted] explained that the Licensee contracts with [redacted] an independent valuation company, to determine the value of any given vehicle. The Licensee provides [redacted] with the make, model, year, mileage, options, and condition of a vehicle, and [redacted] locates comparable vehicles in the local market to

determine a reasonable value for settlement. Mr. [redacted] testified that if he receives comparable vehicle information from a claimant, he will also submit that information to [redacted] for consideration; it is up to [redacted] to accept or reject information submitted by a claimant. He agreed with the Complainant's assertion that [redacted] has the authority to discard valuations as outside the market.

Mr. [redacted] acknowledged that, during their negotiations, the Complainant submitted comparable vehicle information for seven vehicles for sale from Carmax, Carvana, TrueCar, and Auto Trader, ranging in price from $10,995.00 to $16,998.00.[14] Mr. [redacted] stated that he submitted to [redacted] all of the comparable vehicle information provided by the Complainant, but that [redacted] did not consider all of them. Mr. [redacted] did not specify which of the Complainant's comparable vehicles were accepted and which were rejected. Mr. [redacted] testified that, after speaking with the Complainant about [redacted] s rejection of some of the Complainant's submissions, he called [redacted] to find out why they were rejected. He stated that [redacted] replied that some of the information was from Carmax; [redacted] told Mr. [redacted] that it did not accept valuations from Carmax because Carmax included destination fees in its prices, resulting in numbers that are not in line with the market. Mr. [redacted] stated that some car dealers add destination fees to their list price, and some do not do so. Additionally, Mr. [redacted] noted that [redacted] does not accept any comparable information from Carvana because Carvana does not provide an opportunity for inspection of the vehicles it sells. Furthermore, [redacted] will not accept a comparable vehicle submission if it cannot verify the information.

Mr. [redacted] acknowledged that some of the comparable vehicles listed in the [redacted] valuations were listed for sale as far away as [redacted] Massachusetts; [redacted] New

[14] The specific locations of these sellers were not identified in the record.

York; [redacted] North Carolina; and [redacted] Kentucky. He stated that [redacted] uses a radius that is dependent on the specific location of the loss vehicle in determining what qualified as the local market; he did not know what radius [redacted] used in determining its valuations in this case. He denied that the Licensee provided any direction to [redacted] as to its valuations, its consideration of the Complainant's comparable vehicles, or what [redacted] should consider as the local market, although he acknowledged that he did not ask the Complainant what he would consider to be the local market for him. However, he clarified that that [redacted]'s rejection of a proposed comparable vehicle does not mean that it was outside of the local market; [redacted] can reject a proposed comparable vehicle if the price is not in line with the average price in the selling market.

[redacted] MIA, stated that he did not investigate the Complainant's complaint with the MIA but that he was familiar with the file, as he supervised the MIA investigator assigned to the case. He addressed the language of COMAR 31.15.12.04B(1) and acknowledged that the phrase "location reasonably convenient to the claimant" is not defined in the regulations or statutes; he stated that he could not determine how that phrase should be interpreted. However, he testified that if a vehicle was totaled in Baltimore and an insurer stated an intention to rely on information on a vehicle located in [redacted] Tennessee in reaching a valuation of the loss vehicle, he would certainly make an argument that that proposed valuation was not convenient to the claimant if the claimant raised that issue in a complaint with the MIA.

The Complainant offered [redacted] as an expert witness in professional automobile appraisal, and I accepted him as such without objection. Mr. [redacted] testified that there are different methods by which the market value of vehicles is determined. He explained that the information can be obtained from

published sources like NADA,[15] Kelley Blue Book, Edmunds, Black Book, or other database sources. Mr. [redacted] explained that compiled data sources include nationwide pricing information; he opined that that it is unlikely that one could obtain data to distinctly establish the value of a car in a certain location. He stated that there is not a lot of variances in the prices of commonly sold vehicles, like the Complainant's vehicle; pricing is generally consistent across the country. He further noted that that consumers buy vehicles close to home as well as from afar, depending on what the consumer is looking for and where that type of vehicle is available.

Mr. [redacted] further explained that valuation information can be obtained by identifying comparable vehicles in the marketplace. Mr. [redacted] opined that the rejection of the Complainant's comparable vehicles as "not included in the local market" did not make sense to him, although he acknowledged that there were no criteria to establish the "local market." The Complainant asked Mr. [redacted] if the Licensee was correct when it told him that some of the comparable vehicles that he submitted could not be identified. Mr. [redacted] stated that his practice is to receive the vehicle identification number in addition to the make, model, year, trim level,[16] mileage, price, and vendor, in order to verify the information, but conceded that all of that information is not required in order to locate a specific vehicle.

Mr. [redacted] stated on cross-examination that he reviewed a timeline of the events that the Complainant provided to him in preparing for his testimony, as well as two or three of the [redacted] valuations.[17] He acknowledged that he did not participate in the valuations at issue in this case. Mr. [redacted] testified that [redacted] is not considered to be an independent appraiser of vehicles; it is always affiliated with insurance companies. He stated that the use of a database

[15] National Automobile Dealers Association.
[16] Mr. [redacted] explained that trim level is the tier of the model of the car, which dictates certain specifics about the car, such as the size of the engine and the wheels and the type of cloth used for the seats. He distinguished trim level from options.
[17] Mr. [redacted] did not specify which [redacted] valuations he reviewed.

by [redacted] was a valid method by which to determine the value of a car. He acknowledged that in determining the value of a vehicle, it is appropriate to consider the vehicle's maintenance record as well. Mr. [redacted] stated that he was unaware that the Complainant settled his claim with the Licensee before attending the hearing; he did not know any details of the settlement.

The Licensee called Mr. [redacted] for testimony in its case in chief. Mr. [redacted] clarified that [redacted] is considered to be a nationally recognized database and the Licensee's use of that method of valuation falls under COMAR 31.15.12.04A(1). He testified that during the negotiation of the settlement in this case, he invited the Complainant to submit comparable vehicle information and documentation of work completed on the Complainant's vehicle when the Complainant voiced disagreement with the Licensee's initial valuations. He further explained that consideration of comparable vehicles submitted by the Complainant does not shift the valuation process to subsection B(1) of the regulation. However, he acknowledged that the practical difference between using a database and comparable vehicle information is unclear, as the terms are undefined.

Mr. [redacted] stated that the Licensee worked with the Complainant to negotiate a fair settlement; he denied that the Licensee attempted to suppress the value of the Complainant's recovery or that the Licensee "cherry picked" cars at a lower value to influence the outcome. He testified that he submitted all comparable vehicle information sent by the Complainant to [redacted] and considered all of the documentation submitted by the Complainant regarding the work performed on his car prior to the accident. Mr. [redacted] testified that when the Complainant agreed to the proposed settlement figure of $13,032.12, the Complainant wrote in an email to him that the "settlement was more in line with the market, so let's move forward with it." (*See also* MIA Ex. 8).

The parties disagree on whether the Licensee's methodology in determining the cash settlement figure was based on data from a nationally recognized database or comparable vehicle information. COMAR 31.15:12.04A(1); COMAR 31.15.12.04B(1). Here, I find that the Licensee's methodology in the use of [redacted] a nationally recognized database, falls under COMAR 31.15.12.04A(1). I credit Mr. [redacted]'s testimony on this point. He clearly explained how [redacted] operates and candidly acknowledged that there is some confusion arising from the use of comparable vehicle information. He characterized the use of the Complainant's comparable vehicle information as good customer service and disputed the Complainant's assertion that the Licensee was attempting to undervalue his vehicle in reaching a settlement.

I also find Mr. [redacted]' testimony persuasive in reaching this conclusion. His experience as an automobile appraiser is extensive. He noted that the information from databases and comparable vehicle information is not purely local, and that there is not a lot of variation in price throughout the country. He pointed out, however, that the nationally recognized valuation sources and databases do not obtain their data from a singular source, and there can be some variation in the values that they set forth.

Here, the range in the valuations from [redacted] is $9,569.00 to $11,659.00, a difference of $2,090.00. While the valuations differ, there is no evidence the Licensee's decision to rely on [redacted]'s valuation, or the determinations made by [redacted] itself, were arbitrary or capricious.

Because this decision is a proposed decision, I further address the Complainant's arguments with respect to the consideration and rejection of comparable vehicle information under COMAR 31.15.12.04B(1). The Complainant assiduously attacked [redacted]'s inclusion of comparable vehicle information from locations that he characterized as inconvenient to him and

not included in the local market. As previously discussed, these terms are not defined in the statutes and regulations, and I make no finding as to whether or not the information from locations as far away as [redacted] Massachusetts; [redacted] New York; [redacted] North Carolina; and [redacted] Kentucky meets that criteria.

What I do find persuasive is that each [redacted] valuation report distinguishes the use of data from sources within fifty miles of [redacted] Maryland from the sources that are more than fifty miles away. In each report, any location that is more than fifty miles from [redacted] Maryland is marked with an asterisk. In each report, the asterisk notes that "[t]he comparable vehicle was added, for informational purposes, and was not used to determine the vehicle value." (MIA Exs. 6, 8). Therefore, I find that [redacted] relied on valuations within fifty miles of [redacted] Maryland in determining the valuation of the Complainant's vehicle and that this methodology meets the requirements of COMAR 31.15.12.04B(1). I further find that this practice is not arbitrary and capricious.

Additionally, there is no evidence the Licensee's decision to rely on [redacted]'s exclusion of the Complainant's comparable vehicle information was arbitrary or capricious. The evidence before me established that [redacted] rejected some comparable vehicle information submitted by the Complainant from Carmax because it includes fees which inflate a car's selling price, and from Carvana because there is no inspection of the vehicle. The Complainant also asserted that [redacted] rejected some of his comparable vehicle information because it could not be verified; however, the record before me does not provide me with sufficient evidence to corroborate or refute this assertion. The Complainant has not met his burden as to this point.

Finally, I do not find that the Licensee refused to pay the Complainant's claim. On July 23, 2022, the Licensee initially offered the Complainant $11,458.36 to settle the claim. The Complainant rejected that offer and engaged in negotiations with the Licensee based on the information available to him about his car and the research he conducted on prices of similar vehicles. There is no evidence that the Licensee failed to accept or consider the Complainant's additional information during the negotiation. The Complainant then rejected the Licensee's August 10, 2022 offer of $12,137.82 to settle the claim. Ultimately, the Complainant accepted the Licensee's August 18, 2022 offer of $13,032.12 to resolve the matter. The Licensee increased its settlement offer by $1,573.76 in less than one month. The Complainant accepted the Licensee's August 18, 2022 settlement offer, stating it was "more in line with the market." (MIA Ex.8). I find no basis to conclude that the Licensee refused to pay the claim on the record before me.

Therefore, I find that the Licensee did not engage in an unfair claim settlement practice. As I am finding in favor of the Licensee on the merits, I find that it is unnecessary to address the Motion for Summary Decision and Motion for Judgment as they are moot.

CONCLUSION OF LAW

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by refusing to pay a claim for an arbitrary or capricious reason.[18] Md. Code Ann., Ins. § 27-303(2) (2017).

[18] I propose that the Motion for Summary Decision and the Motion for Judgment be denied as moot.

PROPOSED ORDER

Based upon the above Findings of Fact, Discussion, and Conclusion of Law, I

PROPOSE that the Licensee not be found in violation of section 27-303(2) of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED**.

Signature Appears on Original

August 24, 2022
Date Decision Issued

Kristin E. Blumer
Administrative Law Judge

KEB/dlm
#199820

RIGHT TO FILE EXCEPTIONS

Upon receipt of this proposed decision, affected parties have twenty (20) days to file exceptions with the Insurance Commissioner. COMAR 31.02.01.10-1B(1). If a party wishes to receive a transcript of the hearing before filing exceptions, the party has ten (10) days from receipt of the decision to either: 1) file a written request for a transcript with the Insurance Commissioner, or 2) request a transcript of the hearing from a private stenographer and file a copy of their written request to a private stenographer with the Insurance Commissioner. COMAR 31.02.01.10-1B(2). If a transcript is requested, the transcript must be filed with the Commissioner within sixty (60) days of the request, and then a party has thirty (30) days after the filing of the transcript to file exceptions. COMAR 31.02.01.10-1D. Written exceptions and requests for transcripts should be addressed to: Hearing and Appeals Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

Complainant

MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE ADMINISTRATION *EX REL* [redacted]	*	REVIEW OF A RECOMMENDED
	*	DECISION ISSUED BY
Complainant	*	KRISTIN E. BLUMER,
v.	*	AN ADMINISTRATIVE LAW JUDGE
GEICO CASUALTY COMPANY,	*	OF THE MARYLAND OFFICE OF
	*	ADMINISTRATIVE HEARINGS
Licensee.	*	OAH No.: MIA-CC-33-22-06560
	*	MIA No.: [redacted]

* * * * * * * * * * * *

FINAL ORDER

Pursuant to Md. Code Ann., Ins. § 2-210(d)[1] and Code of Maryland Regulations (COMAR) 31.02.01.10-2H, the Undersigned hereby clarifies the disposition and issues this **summary affirmance** of the proposed decision below.

On July 25, 2022, this case was heard by Administrative Law Judge (ALJ) Blumer. On August 24, 2022, the ALJ issued a Proposed Decision finding in favor of the Licensee, and on the same date the Office of Administrative Hearings mailed the Proposed Decision to the parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions advising all parties that pursuant to COMAR 31.02.01.10-1, they had the right to file written exceptions with the undersigned, within twenty (20) days from receipt of the Proposed Decision.

No exceptions were filed.

[1] Unless otherwise noted, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

On page 22 of the Proposed Decision the ALJ orders that "the Licensee not be found in violation of section 27-303(2) of the Insurance Article and that the charges made by the Complainant be **DENIED AND DISMISSED.**" I find it necessary to clarify the disposition of the case. Rather than dismissing the Complaint, I conclude that the determination issued by the Maryland Insurance Administration shall be hereby **AFFIRMED** based on the Findings of Fact and Discussion provided by ALJ Blumer.

The ALJ correctly noted that the burden of proof in this matter rests with the Complainant as the moving party to prove by a preponderance of the evidence that the Licensee violated the Insurance Article. I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Blumer. In consideration thereof and pursuant to COMAR 31.02.01.10-2D, I am persuaded that the result reached by the ALJ is correct. This Proposed Decision which is summarily affirmed under COMAR 31.02.01.10-2H is not precedent within the rule of *stare decisis* in other cases.

THEREFORE, it is hereby

ORDERED that references to the dismissal of the Complaint are hereby stricken from the the Proposed Decision of ALJ Blumer,

ORDERED that the determination issued by the Maryland Insurance Administration is hereby **AFFRIRMED** based on the Findings of Fact and Discussion provided by ALJ Blumer,

ORDERED that the Proposed Decision of ALJ Blumer be adopted as the Commissioner's Final Order, and it is further

ORDERED that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 15th day of December, 2022.

KATHLEEN A. BIRRANE
Commissioner

Siginature Appears on Original
Lisa Larson
Director of Hearings