

NOTICE OF AGENCY'S FINAL DECISION

(Please keep form with file until a final decision is issued)

Case Name: [REDACTED] v. Arag Insurance

ALJ: Frisby Trout Decision Date: 1/28/19

Case No.: MIA-CL-33-18-34664

Agency Case No. (if applicable): MIA-2018-05-009

Document Name (CRS): _____

Please check one:

☒

AFFIRMED

☒

AFFIRMED w/ comment

☐

MODIFIED

☐

REVERSED

☐

OTHER _____

If not affirmed in its entirety, please append a copy of the Agency's Final Decision.

03/08/2019

Date

Signature Appears on Original

[REDACTED]
Secretary or Designee

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G+

MARYLAND INSURANCE	*	BEFORE ALECIA FRISBY TROUT,
ADMINISTRATION	*	AN ADMINISTRATIVE LAW JUDGE
EX REL.	*	OF THE MARYLAND OFFICE
██████████	*	OF ADMINISTRATIVE HEARINGS
COMPLAINANT	*	
v.	*	
ARAG INSURANCE COMPANY	*	OAH No.: MIA-CC-33-18-34664
LICENSEE	*	MIA No.: MIA-2018-05-009

* * * * *

PROPOSED DECISION¹

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STATEMENT OF THE CASE

On October 26, 2017, the Maryland Insurance Administration (MIA) received a complaint from ██████████² (Complainant), alleging that Arag Insurance Company (Arag) improperly denied coverage on several claims submitted under a policy issued to the Complainant. The MIA opened an investigation into the Complainant's allegations and on January 30, 2018, issued a Determination Letter indicating that the ██████████ Department of Insurance, not the MIA, was the proper regulatory authority to hear this complaint.

¹ Under the relevant statute and regulations, the Insurance Commissioner may, on a case-by-case basis, delegate to the Office of Administrative Hearings (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. Md. Code Ann., State Gov't § 10-205 (2014); Code of Maryland Regulations 31.02.01.04-1A(2). In this case, the Commissioner has delegated to the OAH the authority to issue proposed findings of fact and a proposed order.

² I have used the Complainant's initials to protect his confidentiality.

On February 14, 2018, pursuant to § 2-210 of the Maryland Insurance Article, the Complainant filed a request for a hearing on the Determination Letter. The hearing was originally scheduled for October 31, 2018 before the MIA's hearing and appeals unit. Due to the Complainant's several requests for accommodations, including a request that the hearing be held close to the Complainant's home, the MIA referred the matter to the Office of Administrative Hearings (OAH) so that it could be heard in [REDACTED] County.

On November 5, 2018, the MIA transmitted this matter to the OAH to schedule a hearing and issue a proposed decision. On November 16, 2018, the OAH sent a Notice of Hearing to the parties advising that a hearing was scheduled for January 8, 2019 at the OAH at [REDACTED]
[REDACTED]

On December 20, 2018, Philip Pierson, Assistant Attorney General and counsel for the MIA, filed with the OAH a Motion for Summary Decision (Motion), with an attached Memorandum in Support of the Motion, and eleven exhibits. Accompanying the Motion was a certificate of service certifying that on December 20, 2018, a copy of the Motion was mailed to the Complainant at both his Maryland and [REDACTED] addresses, and to [REDACTED] Esquire, counsel for Arag.

On December 26, 2018, the Complainant filed a written response to the Motion titled "Motion to Strike So-Called, Attorney General, Brian E. Frosh And So-Called, Assistant Attorney General, Philip Pierson and Respondents: Arag; [REDACTED] [REDACTED] [REDACTED] [REDACTED] et. al's Frivolous Motion for Summary Decision And Frivolous Memorandum and Accompanying Exhibits." (Emphasis in original). Accompanying the Motion was a certificate of service certifying that on December 28, 2018, a copy of the Motion was "faxed and/or hand-delivered and/or mailed" to Philip Pierson and [REDACTED]

On January 2, 2019, Philip Pierson filed with the OAH a written response to the Complainant's Motion to Strike. Accompanying the Response was a certificate of service certifying that on January 2, 2019, a copy of the Response was mailed to the Complainant at both his Maryland and [REDACTED] addresses, and to [REDACTED].

On January 8, 2019, I conducted a hearing at the OAH in [REDACTED] Maryland. I first heard argument on the two Motions followed by testimony and argument on the merits of the case before me. Philip Pierson, Assistant Attorney General, appeared on behalf of the MIA. [REDACTED] [REDACTED] appeared on behalf of Arag.³ The Complainant appeared and was unrepresented.

The contested case provisions of the Administrative Procedure Act, the MIA hearing regulations, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 31.02.01; and COMAR 28.02.01.

ISSUES

Should the MIA's Motion for Summary Decision be stricken?

If not, should the MIA's Motion for Summary Decision be granted?

If not, does the MIA have jurisdiction over the Complainant's complaint against Arag?

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire MIA file, consisting of eleven exhibits, into the record:

MIA Ex. 1 Online Complaint form, completed on October 26, 2017

MIA Ex. 2 Letter from the MIA to the Licensee, November 3, 2017

³ On October 12, 2018, the Circuit Court for [REDACTED] Ordered that out-of-state attorney, [REDACTED] is Admitted Specially, pro hac vice, for the purposes of appearing and participating in this case, MIA-2018-05-009. Circuit Court for [REDACTED] Case No: [REDACTED]

- MIA Ex. 3 Letter from the MIA to the [REDACTED] Department of Insurance, November 3, 2017, with attached blank "Consumer Questionnaire 2017," and Note from [REDACTED] Director, MIA, dated October 30, 2017
- MIA Ex. 4 Letter from the Complainant to the MIA, November 17, 2017
- MIA Ex. 5 Letter from the Complainant to the MIA, November 17, 2017
- MIA Ex. 6 Legal Insurance Declarations, Arag, January 3, 2017 through May 7, 2017
- MIA Ex. 7 Legal Insurance Declarations, Arag, July 5, 2017 through May 7, 2018
- MIA Ex. 8 Letter from the MIA to the Complainant, December 7, 2017
- MIA Ex. 9 Declaration Letter from the MIA to the Complainant, January 30, 2018
- MIA Ex. 10 Complainant's Hearing Request, received by the MIA February 20, 2018, includes attached letter from the Complainant to the MIA, February 14, 2018
- MIA Ex. 11 Letter from the MIA to the Complainant and to Arag, February 22, 2018

I admitted the following eleven exhibits which were attached to the MIA's Motion⁴:

- MIA Ex. 12 Online Complaint form, completed on October 26, 2017
- MIA Ex. 13 Letter from the Complainant to the MIA, November 17, 2017
- MIA Ex. 14 Legal Insurance Declarations, Arag, January 3, 2017 through May 7, 2017
- MIA Ex. 15 Legal Insurance Declarations, Arag, July 5, 2017 through May 7, 2018
- MIA Ex. 16 Emails between Arag and the MIA, November 29-November 30, 2017
- MIA Ex. 17 Declaration Letter from the MIA to the Complainant, January 30, 2018
- MIA Ex. 18 Notice of Hearing from the MIA to the Complainant and Arag, June 4, 2018
- MIA Ex. 19 Letter from the MIA to the Complainant and Arag, October 29, 2018
- MIA Ex. 20 Emails between the MIA and the [REDACTED] Department of Insurance, December 5, 2017
- MIA Ex. 21 Letter from the Complainant to the MIA, October 31, 2018
- MIA Ex. 22 Federal Publ. Law 106-336 and USPS Location List in reference to the address of [REDACTED]

⁴ The MIA labelled both its exhibits in the file and attached to the Motion as exhibits 1-11. I have re-numbered the exhibits attached to the Motion as MIA exhibits 12-22 for clarity.

I admitted the following exhibits offered by the Complainant:

Compl. Ex. 1 Letter from Arag to the Complainant, August 2017⁵

Compl. Ex. 2 Letter from Arag to the Complainant, July 2017

Compl. Ex. 3 Letter from Arag to the Complainant, October 2017

Compl. Ex. 4 Letter from Arag to the Complainant, August 2017

Compl. Ex. 5 Letter to the Complainant from the State of [REDACTED] Department of Insurance, October 2017

Testimony

The Complainant testified on his own behalf.

Neither the MIA nor Arag offered testimony.

PROPOSED FINDINGS OF FACT

1. The Complainant has a policy with Arag titled Legal Protection Plus. The policy had two effective periods. The first policy was effective from January 3, 2017 through May 7, 2017. The second policy was effective from July 5, 2017 through May 7, 2018.

2. The initial policy was issued on January 3, 2017 in [REDACTED] at the Complainant's request. (MIA Ex. 16).

3. Both policies list the Complainant as the Insured and include a [REDACTED] address as his address of record. Neither policy makes reference to the Complainant as having a Maryland residence. Neither policy makes any reference to the state of Maryland.

4. On the first page of both policies, the policy is identified by policy number, effective dates for the policy, type of payment plan for the policy and state. On both policies, the state listed is "[REDACTED]"

⁵ The dates on all of the Complainant's exhibits have been redacted so as only to show the month and the year.

5. On each page of the declarations for both policies, the pages are identified by the label "[REDACTED]". On each page of the terms for both policies, the pages are identified by the label "[REDACTED]".

6. Both policies contain a termination provision that states the policy will terminate if there is "[a] determination by the Commissioner of Insurance that continuation of this policy would place us in violation of the laws of [REDACTED] or of our domicile state. . . ."

7. On October 26, 2017, the Complainant filed a complaint with the MIA in relation to his Legal Protection Plus policy with Arag.

8. In October, 2017, the Complainant also contacted the State of [REDACTED] Department of Insurance ([REDACTED] Dept. Ins.) in reference to his complaint regarding Arag. The [REDACTED] Dept. Ins. replied to the complaint with a request for additional information. The [REDACTED] Dept. Ins. response was mailed to the Complainant at a [REDACTED] address.

9. The Complainant has maintained a residence in Maryland since 2007.

10. The Complainant has family who live in [REDACTED], [REDACTED] and he utilizes that address regularly.

11. The Complainant receives state health insurance based on [REDACTED] residency.

12. The Complainant calls [REDACTED] his "primary home state" and Maryland his "secondary home state." (MIA Ex. 21).

DISCUSSION

Motion to Strike Motion for Summary Decision

The Complainant titled his response to the MIA's Motion for Summary Decision as a "Motion to Strike" the MIA's Motion. The Complainant cited Rule 7-202 of the Maryland Rules of Court as his authority to file the Motion to Strike. Within the Motion to Strike, the Complainant did not cite specific reasons that the MIA's Motion should be stricken, or ask for

the MIA's Motion to be stricken as a prayer for relief. The Complainant's Motion to Strike merely makes conclusory accusations against the Maryland Office of the Attorney General as using "[f]rivolous and totally racist tactics" to prevent him from "obtaining any justice whatsoever!!!!!!!!!!!!!!!!!" (pg. 3).

During oral argument regarding the Motion to Strike, the Complainant did not offer additional argument or evidence as to why the MIA's Motion should be stricken, nor did he provide any supporting evidence or testimony as to what "tactics" were employed by the Attorney General's office to deny him justice.

The Motion to Strike the MIA's Motion is, therefore, denied. Maryland Rule 7-202, as cited by the Complainant in his Motion to Strike, applies to judicial review of agency decisions in Circuit Court and not proceedings before the OAH. The MIA's Motion for Summary Decision was filed timely, properly served on all parties and did not contain improper, immaterial, impertinent or scandalous statements or requests. The Complainant's Motion, though titled as a Motion to Strike, contains a response to the MIA's Motion for Summary Decision rather than support for a Motion to Strike and will be considered as such.

Motion for Summary Decision

The OAH Rules of Procedure provide the following with regard to summary decision:

D. Motion for Summary Decision

- (1) Any party may file a motion for summary decision on all or part of an action, at any time, on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Motions for summary decision shall be supported by affidavits.
- (2) The response to a motion for summary decision shall identify the material facts that are disputed.
- (3) An affidavit supporting or opposing a motion for summary decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated in the affidavit.

(4) The judge may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

COMAR 28.02.01.12D; *see also* Md. Code Ann., State Gov't § 10-210(6) (2014).

A motion for summary decision is the equivalent of a motion for summary judgment. In a motion for summary decision, the moving party must demonstrate that no genuine disputes exist as to any material fact and that it is entitled to prevail as a matter of law. COMAR 28.02.01.12D(1). Because Md. Rule 2-501 and Federal Rule of Civil Procedure 56 set nearly identical standards for summary judgment, the requirements of those rules, as analyzed by the appellate courts, are particularly instructive in analyzing the standards for summary decision in administrative proceedings.

In *Washington Homes, Inc. v. Interstate Land Development Co.*, 281 Md. 712 (1978), the Court of Appeals summarized the standards for summary judgment set forth in numerous other Maryland cases:

The summary judgment procedure is not a substitute for a trial, but a means by which the trial court may determine, summarily, whether a trial is necessary. . . . [I]f there is a genuine dispute as to any material fact, summary judgment would not properly be granted.

(E)ven where the underlying facts are undisputed, if those facts are susceptible of more than one permissible inference, the choice between those inferences should not be made as a matter of law, but should be submitted to the trier of fact.

A court cannot rule summarily as a matter of law until the parties have supported their respective contentions by placing before the court facts which would be admissible in evidence.

(W)hen the moving party has set forth sufficient grounds for summary judgment, the party opposing the motion must show with some precision that there is a genuine dispute as to a material fact. A bare allegation in a general way that there is a dispute as to material facts is never sufficient to defeat a motion for summary judgment. . . . General allegations which do not show facts in detail and with precision are insufficient to prevent the entry of summary judgment. A material fact is one the resolution of which will somehow affect the outcome of the case.

Washington Homes, Inc., 281 Md. at 716-18 (1978) (quotations and internal citations omitted); *see also King v. Bankerd*, 303 Md. 98, 111 (1985); *Dietz v. Moore*, 277 Md. 1, 5 (1976); *Hurl v. Howard Cty. Bd. of Educ.*, 107 Md. App. 286 (1995).

In its Motion, the MIA argued that regardless of the factual issues involved in the Complainant's underlying complaint, the MIA does not have jurisdiction over the matter because the policy under dispute is a [REDACTED] policy. The MIA attached a Memorandum and eleven exhibits to its Motion, but no affidavit.

The Complainant filed a timely response to the Motion that was properly served on all parties. He contends that the policy could have never been delivered to the [REDACTED] address because the [REDACTED] address he provided has never been a mailing address.

At the hearing, the MIA and the Complainant provided argument on the MIA's Motion, but neither presented testimony. As the MIA did not present an affidavit or testimony of anyone with personal knowledge to support its claims in the Motion, as is required, the Motion is denied.

Merits of the Case

The Complainant filed a claim alleging various faults with Arag's handling of his claims under his Legal Protection Plus policy. The MIA issued a Determination Letter concluding that the MIA does not have jurisdiction to investigate the Complainant's claims due to the fact that the policy is a [REDACTED] policy. The Complainant appealed the finding of that Determination Letter. When the MIA transferred this case to the OAH, the precise instruction was to issue a proposed order on the issue of whether or not the findings in the Determination Letter are correct. In other words, the issue before me is one of jurisdiction, and not on the merits of the Complainant's claims against Arag.

While the Insurance Commissioner's authority is broad, it does not extend beyond the statutory mandate that restricts it to regulating the insurance industry in Maryland. *See Insurance*

Commissioner v. Blue Shield of Maryland Inc., 295 Md. 496 (1983). The general rule of the appellate courts of Maryland is that a dispute arising from a contract of insurance is governed by the laws of the state where the insurance policy was delivered. See *Allstate Ins. Co. v. Hart*, 327 Md. 526 (1992); *Cooper v. Berkshire Life Insurance Co.*, 148 Md. App. 41, 55 (Md. 2002). The Court in *Hart* held:

To hold that the limited prohibition against household exclusion clauses, grounded entirely on the statutory provisions constituting the compulsory insurance law, extends to an automobile which is not required to be registered in Maryland and which is not covered by an insurance policy issued, sold, or delivered in Maryland, would be to extend the statutory provisions beyond the limits carefully drawn by the Legislature.

327 Md. at 533.

In certain instances, the Commissioner has limited authority to take some action against an insurer even absent a policy delivered in Maryland. Most relevant to this present complaint, the Commissioner has the authority to find an insurer in violation of Title 27, Subtitle 3 of the Insurance Article for committing an unfair claims settlement practice. The scope of this Subtitle is provided by § 27-303(a), which states:

- (a) This subtitle applies to each individual or group policy, contract, or certificate of an insurer, nonprofit health service plan, or health maintenance organization that:
 - (1) Is delivered or issued in the State;
 - (2) Is issued to a group that has a main office in the State; or
 - (3) Covers individuals who reside or work in the State.

The MIA argued that the MIA does not have jurisdiction over the Complainant's claim because the policy was created, sold and delivered for a [REDACTED] resident. They further argue that the claim does not appear to raise evidence of an unfair claims settlement practice, but even if it did, the Complainant is not someone who resided or worked in Maryland and therefore his policy is not subject to review by the MIA.

The Complainant argued that he has resided in Maryland since 2007. He argued that he has not resided in [REDACTED] since the time he was born. He argued that the [REDACTED] address is his "extremely wealthy Muslim family's" address, and while he does use the [REDACTED] address for some business, it is not, and has never been, a proper mailing address. Any mail sent to the [REDACTED] address is returned as undeliverable. He receives mail at his Maryland mailing address, a post office in [REDACTED] Maryland, which is where he has received all communications from Arag, including the policy. He presented letters he has received from Arag that were mailed to his [REDACTED] address, and also letters that were mailed to his Maryland address. Because any mail sent to the [REDACTED] address is returned, he only receives mail sent to the Maryland address. For those reasons, the Complainant argued that Maryland has jurisdiction over his claims regarding the policy.

Based on all of the evidence presented, I find that the policy was created for and delivered to the Complainant as a resident of [REDACTED]. I do not find the Complainant's arguments that his [REDACTED] address should not be considered because mail sent to him at the [REDACTED] address was returned, or because Arag has communicated with him at his Maryland address, as persuasive. Whether or not the Complainant was actually a resident of [REDACTED] is not the issue. Whether or not the [REDACTED] address the Complainant provided to Arag when he purchased the policy was a valid address is likewise not the issue. The relevant inquiry is whether or not the Complainant held himself out to be a resident of [REDACTED] such that the policy was created for a [REDACTED] resident utilizing [REDACTED] law, and I find that he did.

The Complainant utilized a [REDACTED] address when he applied for the policy. The Complainant intended that the policy be created for him as a [REDACTED] resident. He never asked that his Maryland address be included on the policy. Arag completed the policy on [REDACTED] forms, included language citing to [REDACTED] law, and delivered the policy to the Complainant at his [REDACTED] address.

I also do not find that the Complainant has proven that he is a resident of Maryland such that the MIA should investigate the claim under the § 27-303(a) exception. The Complainant testified that he has lived in Maryland since 2007 and votes in Maryland. However the Complainant also testified that he regularly utilizes the [REDACTED] address and receives [REDACTED] state health insurance based on that address. The Complainant also, in a letter to the MIA, referred to [REDACTED] as his "primary home state." The Complainant has never asked Arag to change his address of record to a Maryland address.

The Complainant applied for a [REDACTED] policy, received a [REDACTED] policy, made claims under that policy and cannot now ask that Maryland investigate those claims because he was living in Maryland all along. The policy is a [REDACTED] policy and therefore the Complainant's complaints under the policy are not under the jurisdiction of the MIA. The state of [REDACTED] has authority to investigate the complaints. Representatives from the [REDACTED] Dept. Ins. have indicated their receipt of the Complaint's complaint as well as the MIA's referral of this matter to them. (MIA Ex. 20). The MIA is not the appropriate agency to investigate an insurance dispute over a [REDACTED] policy that is governed by [REDACTED] law.

PROPOSED CONCLUSIONS OF LAW

I conclude as a matter of law that the Complainant's Motion to Strike the MIA's Motion for Summary Judgment should be denied. Maryland Rule 7-202; COMAR 28.02.01.12D.

I conclude as a matter of law that the MIA's Motion for Summary Judgment should be denied. COMAR 28.02.01.12D.

I further conclude as a matter of law that the Complainant did not show that the MIA's conclusion in the Determination Letter, that the MIA does not have jurisdiction over the claims against Arag, was incorrect. I conclude that the conclusions of the MIA in the Determination Letter should be affirmed. Md. Code Ann., Ins. § 27-303(a).

PROPOSED ORDER

Based upon the above Findings of Fact, Discussion, and Conclusions of Law, I **PROPOSE** that the Complainant's Motion to Strike the Maryland Insurance Administration's Motion for Summary Judgment be **DENIED**;

And further, that the Maryland Insurance Administration's Motion for Summary Judgment be **DENIED**;

And further, that the Maryland Insurance Administration be found not to have jurisdiction over the Complainant's claims against Arag and that the conclusions made in the Maryland Insurance Administration's Determination Letter be **AFFIRMED**.

I further **PROPOSE** that the records and publications of the Maryland Insurance Administration reflect this decision.

January 28, 2019
Date Decision Mailed

Signature Appears on Original

Alecia Frisby Trout
Administrative Law Judge

AFT/dlm
#177829

RIGHT TO FILE EXCEPTIONS

Upon receipt of this proposed decision, affected parties have twenty (20) days to file exceptions with the Insurance Commissioner. Code of Maryland Regulations (COMAR) 31.02.01.10-1B(1). If they wish to have a transcript of the hearing before filing exceptions, they have ten (10) days to file with the Insurance Commissioner a copy of their written request to a private stenographer for preparation of a transcript. COMAR 31.02.01.10-1B(2). If a transcript is requested, the transcript must be filed with the Commissioner within sixty days of the request, and then the parties have thirty days after the filing of the transcript to file exceptions with the Commissioner. COMAR 31.02.01.10-1D. Written exceptions and copies of 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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]