Circuit Court for Baltimore County
Case No. C-1710937

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 588

September Term, 2018

IN THE MATTER OF ROBERT HOROWITZ, et al.

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 28, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Robert Horowitz and Cathy Horowitz, appellants, filed a notice of appeal from an order of the Circuit Court for Baltimore County dismissing their petition for judicial review of a final order of the Maryland Insurance Administration. They present one question for our review which we have rephrased for clarity:

> Did the circuit court err in dismissing the petition for judicial review by concluding that the Horowitzes' financial interests were not directly affected by the Maryland Insurance Commissioner's order denying their request for a hearing?

We shall affirm.

BACKGROUND

The Horowitzes hired the law firm of Selzer, Gurvitch, Rabin, Wertheimer, Polott & Obecny, PC ("Selzer") to represent them in a legal malpractice action against their former attorneys. After that action was settled, Selzer sued the Horowitzes for breach of contract, alleging that they failed to pay legal fees. The Horowitzes filed a counterclaim against Selzer for legal malpractice.

Selzer's professional liability insurance carrier, Federal Insurance Company, doing business under the trade name, Chubb ("Chubb"), retained the law firm of Miles and Stockbridge to represent Selzer on the counterclaim. Miles and Stockbridge filed motions for summary judgment on behalf of Selzer on the contract action as well as on the malpractice counterclaim, and the court granted both motions. The Horowitzes appealed and we affirmed in an unreported opinion. *Horowitz v. Selzer, et al.*, No. 2459, Sept. Term 2014 (Md. App. September 25, 2016), *cert denied,* 451 Md. 259 (2017).

The Horowitzes then filed a complaint with the Maryland Insurance Administration ("Administration"), alleging that Chubb paid Miles and Stockbridge to represent Selzer in its breach of contract action, as well on the Horowitzes' counterclaim for malpractice, and that such conduct amounted to an illegal rebate within the meaning of § 27-212 of the Insurance Article ["Ins."].[1] The complaint further alleged that the conduct "puts the insurer in conflict with its responsibilities under [Ins.] § 27-304 to make a good faith attempt to settle clear cases of liability" and that the conduct "likely illegally reduces policy limits[.]"[2]

The Administration investigated the complaint and, in a letter dated January 29, 2016, advised that it found no evidence that Chubb provided Selzer with legal representation for anything other than the defense of the malpractice action. The letter further explained that § 27-304 "pertains to unfair claims settlement practices committed

[1] In general, and as it relates to the complaint that the Horowitzes filed with the Administration, § 27-212 of the Insurance Article prohibits an insurer from giving to an insured a "rebate, discount, abatement, credit, or reduction" in the policy premium "as an inducement to insurance or after insurance has become effective." Ins. § 27-212(b)(1). The Court of Appeals has observed that "[s]tate legislatures have targeted this practice primarily to protect insureds from the concentrated power of large insurance concerns with the capacity to offer large rebates, from unethical sales practices engaged in by competing agents and a concomitant decrease in service, and from generally discriminatory practices." *Insurance Com'r for the State v. Engelman*, 345 Md. 402, 413-14 (1997).

[2] In pertinent part, § 27-304 of the Insurance Article provides that

> [i]t is an unfair claim settlement practice and a violation of this subtitle for an insurer . . . when committed with the frequency to indicate a general business practice, to: . . . (6) fail to make a prompt, fair, and equitable good faith attempt, to settle claims for which liability has become reasonably clear[.]

with the frequency to indicate a general business practice[,]" and therefore, a violation of that provision "cannot be found based upon the Insurance Administration's review of a single claim file" but would have to follow "a review of a population of claims files" in accordance with a formula set forth in agency regulations.[3] Lastly, the Administration informed that it had "also reviewed Chubb's claim handling with respect to Maryland Unfair Claim Settlement Practice Act [Ins. § 27-303] . . . and determined that Chubb's actions are not in violation of Maryland insurance law."

Dissatisfied with that determination, the Horowitzes filed a request for a hearing before the Administration, characterizing the Administration's findings as "entirely conclusory and opaque." They reasserted their claim that Chubb violated § 27-212 and § 27-304, and requested a hearing to: (1) "[e]numerate what documents [the Administration] relied upon in reaching its conclusions; (2) [p]rovide analysis of . . . Chubb's form policy; and (3)[a]ddress the dual representation conflict issue[.]" Chubb filed a Motion to Dismiss the request for hearing on grounds that the Horowitzes were not "aggrieved parties" and therefore were not entitled to a hearing under § 2-210(a)(2)(ii) of the Insurance Article.[4]

[3] *See* COMAR 31.15.07.09

[4] Section 2-210(a)(2)(ii) of the Insurance Article provides that "[t]he Commissioner shall hold a hearing . . . on written demand by a person aggrieved by any act, threatened act of, or failure to act by the Commissioner or by any report, regulation, or order of the Commissioner, except an order to hold a hearing or an order resulting from a hearing."

(continued)

In an 18-page memorandum and final order that was the subject of the petition for judicial review in the circuit court, the Administration granted the motion to dismiss, stating:

> Complainants' hearing request states their basis for being aggrieved was simply the determination by the [Administration] finding no evidence indicating that Chubb paid Miles for legal work not related to the defense of Selzer, and that Chubb's actions did not violate Maryland Insurance Laws. The hearing request says "these unfair practices give Chubb an unfair advantage in the marketplace for insurers and discriminates against other insureds in the same pool." Complainants did not allege the specific and personal harm required to be an aggrieved party. Complainant is not a policyholder and does not allege any facts that he was in the pool of potential policyholders for similar policies.

Regarding the alleged violation of Chubb's responsibility to settle claims in good faith, the Administration noted that "[t]he party who would be harmed in this scenario would be the policyholder who would be denied the benefit or insurance monies to settle a case where liability is clear." The Administration ultimately denied the hearing request,

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(continued)

Pursuant to regulations that apply to requests for a hearing before the Maryland Insurance Administration, a request for hearing must include, *inter alia*, "[t]he action or non-action of the Commissioner causing the person requesting the hearing to be aggrieved." COMAR 31.02.01.03(D)(1). COMAR 31.02.01.03(E) provides that "[u]pon receipt of a proper request, the Commissioner shall grant a hearing unless:

> (1) In viewing the facts set forth by the person making the request, in the light most favorable to that person, the Commissioner has no authority to take action;
> (2) The Commissioner determines that the request is frivolous or made in bad faith;
> (3) The request does not contain the information required by these regulations;
> (4) The request is untimely; or
> (5) At the end of the Commissioner's review, the request is moot.

concluding that the Horowitzes were not aggrieved parties, but were "simply asserting a right to address a public wrong[.]"

The Horowitzes then filed a petition for judicial review of the Administration's refusal to grant a hearing. Chubb filed a motion to dismiss the petition, asserting that the Horowitzes were without standing to seek judicial review because they "do not have any financial interests which are directly affected by the Maryland Insurance Administration's refusal to grant a hearing[.]"

In opposition to the motion to dismiss, the Horowitzes asserted that their financial interests were directly affected because a hearing would have availed them of the opportunity to obtain a finding that Chubb violated insurance law and/or debt collection laws. They further asserted that such a finding would "form the basis to reverse approximately $200,000 in judgment debt and recover for previously precluded claims and counter claims, as well as for pursuing civil recovery against Chubb."[5] At the hearing on the motion, Mr. Horowitz responded to the court's query as to why he was aggrieved by the refusal to hold a hearing by explaining that, if he and Ms. Horowitz "can get that decision [they] are looking for from the Insurance Commissioner, then the judgments against [them] are void and these other judgments would be open."

Following the hearing, the court dismissed appellant's petition for judicial review. The court found that even if the Administration had determined that Chubb had violated

[5] We assume the reference to judgment debt was the judgment entered against the Horowitzes in Selzer's breach of contract action to recover attorney's fees.

insurance law, that determination would have no effect on any judgment that had already been entered against the Horowitzes in either State or federal court.[6] The court further found that, in any event, a collateral attack on a previous judgment that was based on a decision of the Administration would not "directly affect" the Horowitzes' financial interests as required by § 2-215(b)(2). This appeal followed.

DISCUSSION

In reviewing the grant of a motion to dismiss a petition for judicial review, our task is to determine whether the court was legally correct. *Modell v. Waterman Family Limited Partnership*, 232 Md. App. 13, 19 (2017) (citation and internal quotation marks omitted). We conclude that the court did not err in determining that the Administration's refusal to grant a hearing did not directly affect the Horowitzes' financial interests, and dismissing the petition for judicial review on that basis.

"[I]n order for an administrative agency's action properly to be before . . . any court[] for [statutory] judicial review, there generally must be a legislative grant of the right to seek judicial review." *Appleton v. Cecil County*, 404 Md. 92, 98-99 (2008) (citation omitted). Section 2-215(b) of the Insurance Article limits the right to appeal an action of the Administration as follows:

Authorized appellants. – An appeal under this subtitle may be taken by:

(1) a party to the hearing;

[6] According to the Horowitzes' brief, they filed two federal lawsuits against Selzer, Chubb, and others, alleging violations of debt collection laws and collection agency licensing laws. Both lawsuits were apparently dismissed on motions filed by the defendants.

(2) an aggrieved person whose financial interests are directly affected by the order resulting from a hearing or refusal to grant a hearing; or
(3) a party to the decision issued under § 15-10A-04 of this article.

The issue before us is whether, under subsection (b)(2), the Horowitzes' financial interests were "directly affected" by the Administration's refusal to grant a hearing on their complaint alleging that Chubb violated § 27-212 and § 27-304 of the Insurance Article.

The Horowitzes' argument that their financial interests were directly affected by the Administration's denial of their request for hearing appears to be premised on two assumptions. First, they suggest that if the Administration had granted their request for a hearing, it would have reversed its earlier finding that there was no violation of § 27-212 or § 27-304. Assuming the Administration were to issue a finding that Chubb violated insurance law, the Horowitzes next contend that judgments that were entered against them in various lawsuits, including the judgment that was entered against them in Selzer's claim for legal fees, would be void or "could [be] set aside."[7] In support of the latter assertion, the Horowitzes cite *Finch v. LVNV Funding*, 212 Md. App. 748 (2013).

We find no merit in this argument. Even if the Administration were to reverse its previous finding and issue a determination that Chubb violated § 27-212 and § 27-304, as the Horowitzes claimed in the complaint that they filed with the Administration and in

[7] In addition to the claims they presented before the Administration, the Horowitzes now allege that Chubb violated non-insurance related law, including debt collection laws, collection agency licensing laws, and criminal statutes. As those claims would not entitle them to a hearing before the Maryland Insurance Administration, even if they had been included in the Horowitzes' original complaint and in their request for a hearing, they are irrelevant to this issue before us and therefore we do not address them.

their request for a hearing, such a finding would not, under *Finch*, void any judgment against the Horowitzes. *Finch* stands only for the proposition that "a judgment obtained by an unlicensed collection agency is void." *Id.* at 759. It has no relevance to the facts of this case.

Accordingly, we conclude that the circuit court did not err in determining that the Horowitzes' financial interests were not directly affected by the Administration's refusal to grant a hearing, and dismissing their petition for judicial review on that basis.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.