Circuit Court for Montgomery County
Case No. 448282-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2932

September Term, 2018

MORIFERE TOURE

v.

MARYLAND INSURANCE ADMINISTRATION

Kehoe,
Gould,
Kenney, James A., III
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: February 18, 2020

This appeal arises out of a petition for judicial review filed in the Circuit Court for Montgomery County by Morifere Toure against the Maryland Insurance Administration ("MIA"). In 2014, appellant filed an administrative complaint with the MIA alleging that Safeco Life Insurance Company of America had engaged in unfair claim settlement practices, in violation of Md. Code (2011 Repl. Vol., 2014 Supp.), §§ 27-303[1] and 27-304[2]

[1] Section 27-303 of the Insurance Article provided then, as it does now:

> It is an unfair claim settlement practice and a violation of this subtitle for an insurer, . . . to:
> (1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
> (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;
> (3) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;
> (4) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which payment is being made;
> (5) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;
> (6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim;
> (7) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service;
> (8) fail to comply with the provisions of Title 15, Subtitle 10A of this article;
> (9) fail to act in good faith, as defined under § 27-1001 of this title, in settling a first-party claim under a policy of property and casualty insurance; or
> (10) fail to comply with the provisions of § 16-118 of this article.

[2] Section 27-304 of the Insurance Article provided then, as it does now:

> It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization, when committed with the frequency to indicate a general business practice, to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
(2) fail to acknowledge and act with reasonable promptness on communications about claims that arise under polices;
(3) fail to adopt and implement reasonable standards for the prompt investigation of claims that arise under polices;
(4) refuse to pay a claim without conducting a reasonable investigation based on all available information;
(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
(6) fail to make a prompt, fair, and equitable good faith attempt, to settle claims for which liability has become reasonably clear;
(7) compel insureds to institute litigation to recover amounts due under policies by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
(8) attempt to settle a claim for less than the amount to which a reasonable person would expect to be entitled after studying written or printed advertising material accompanying, or made part of, an application;
(9) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;
(10) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which the payment is being made;
(11) make known to insureds or claimants a policy of appealing from arbitration awards in order to compel insureds or claimants to accept a settlement or compromise less than the amount awarded in arbitration;
(12) delay an investigation or payment of a claim by requiring a claimant or a claimant's licensed health care provider to submit a preliminary claim report and subsequently to submit formal proof of loss forms that contain substantially the same information;
(13) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;
(14) fail to provide promptly a reasonable explanation of the basis for denial of a claim or the offer of a compromise settlement;
(15) refuse to pay a claim for an arbitrary or capricious reason based on all available information;
(16) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service;

of the Insurance Article, in its handling of his homeowner's insurance claim for damages resulting from a fire that occurred in his home on June 22, 2013. The procedural history of the case will be discussed in detail, below, but ultimately, the MIA determined that Safeco did not violate the Insurance Article. On judicial review, after considering the parties' oral arguments, memoranda of law, and the entire record, the circuit court, the Honorable Michael D. Mason presiding, entered a judgment dated October 29, 2018, affirming the MIA's decision. Judge Mason concluded that appellant failed to show that the administrative proceedings prejudiced any of his substantial rights, that the MIA's decision that Safeco did not violate the Insurance Article was based on substantial evidence, and that the MIA's decision did not constitute an error of law.

Appellant presents two questions for our consideration, which we have reworded slightly:

> 1. Was the circuit court ruling on an incomplete record provided by the MIA, in disregard of the Maryland Rule 7-206(b) and (d), legally correct?
>
> 2. Was the circuit court's ruling on the constitutional requirements of the Fifth and Fourteenth Amendments (procedural due process) for the Appellant in the MIA's and the Office of Administrative Hearing's procedures, legally correct?

For the reasons set forth below, we shall affirm.

> (17) fail to comply with the provisions of Title 15, Subtitle 10A of this article; or
> (18) fail to act in good faith, as defined under § 27-1001 of this title, in settling a first-party claim under a policy of property and casualty insurance.

Background

This case's long procedural history began on June 22, 2013, when appellant suffered a fire at his home. The fire originated in the master bedroom. Investigators determined that the fire was caused by appellant's infant son, who lit a bedspread on fire while playing with a lighter. Appellant's home sustained damage from smoke, water, and firefighting efforts. At the time of the fire, appellant's home was covered by a homeowner's insurance policy issued by Safeco. The parties disputed whether some of the damages to the home were, in fact, related to the fire. Appellant hired Adam Levitt, a public claims adjuster with American Claim Management Services ("ACMS"), to assist with the contents portion of his claim. Safeco made payments for dwelling repairs, additional living expenses, cleaning and storage, and for the undisputed portion of appellant's lost contents claim. In addition, Safeco paid for a new HVAC system, although it questioned whether damage to the unit was the result of the house fire.

Dissatisfied with the handling of his claim, on July 10, 2014, appellant filed a complaint with the MIA in which he argued that Safeco refused to pay his claim without conducting a reasonable investigation, failed to act in good faith, refused to pay his claim for an arbitrary or capricious reason, failed to provide a prompt and reasonable explanation for the denial of his claim, made an improper attempt to settle a claim for less than a reasonable amount, and refused to settle the claim in violation of the Insurance Article. On February 29, 2016, the MIA determined that Safeco did not violate the Insurance Article,

did not refuse to pay appellant's claim for an arbitrary or capricious reason, and did not commit any other violation of the Insurance Article.

A. The November 3, 2016 Evidentiary Hearing

In response to the MIA's decision, appellant requested a full evidentiary hearing. That hearing was held on November 3, 2016, before Robert D. Morrow, Jr., Associate Commissioner of the MIA. The parties agreed that the contents portion of appellant's claim had been settled except for certain items of African clothing and some jewelry. Resolution of the claims for those items would await appellant's provision of receipts for cleaning or, if an item could not be cleaned or was missing, further information from which a value could be determined.

Appellant provided sworn testimony on his own behalf. We have reviewed appellant's testimony, but it is not necessary for the resolution of this case to recount it in detail here. It is sufficient to note that he testified that he had issues with both the dwelling and contents portions of his claim and argued, but did not present evidence, that there had been "criminal activity" with regard to the handling of his claim. He also testified, *inter alia*, about water on the carpet in his living room. He claimed he had witnesses who would testify that there was water on the living room carpet and that his furniture had been piled up on it after the fire, but he did not produce any evidence or witnesses to testify on that point. Appellant also testified about water damage to a wall, the handling of claims for damage to electronic and computer equipment, jewelry that went missing from the home and jewelry claims that had not yet been accepted, and a claim for special African clothing that had not yet been

accepted. He asserted that Safeco hired a dry cleaner without his agreement. He also testified about his lack of trust in Safeco personnel, particularly Jeffrey Winkler, one of the claims adjusters assigned to his case. He maintained that Service Master, a company retained to provide clean-up services after the fire, had complained that Safeco did not want to pay them and was trying to reduce their scope of work. Numerous documents were admitted in support of appellant's case.

Mr. Levitt, the adjuster retained by appellant, testified on appellant's behalf. He testified about difficulties encountered in putting together an inventory because of problems valuing certain items of jewelry and valuable clothing from Africa. Nevertheless, by February 15, 2016, appellant, working with Mr. Levitt, negotiated a settlement of the contents claim, and Safeco paid $52,163.02 to appellant and ACMS for the undisputed actual value of the contents. The parties did not dispute that the settlement left open the contents claim for personal documents, jewelry, and African clothing items for which appellant had not provided a value and Safeco could not value through standard methods.

Jeffrey Winkler, the field claims examiner for Safeco who was assigned appellant's case, testified that he contacted appellant two days after the fire and met with him four days after the fire. He retained Service Master to provide cleaning services and to mitigate damages. He was advised that there was a problem getting a building inspector to allow electricity to be turned on in the house, so he arranged for a generator to run the drying equipment.

Mr. Winkler did not recall any conversation with appellant about water on the living room carpet, and he testified that if he had seen water on the carpet during his initial visit to the home, he would have had it removed. After Service Master began its work, Mr. Winkler returned to the house and saw that the living room was completely filled with furniture and he could not enter the room. At the hearing, appellant questioned Mr. Winkler about an email addressing the issue, as follows:

> [Appellant]: Here's two pages. I believe this is my copy, but you can read over it. This is the email that you sent, and in the back there's a note. If you don't mind reading that.
>
> [Mr. Winkler]: That's exactly what I just said.
>
> Q. Well, I want you to read it to the court.
>
> A. "It is also agreed at this time that there may be a supplement for carpeting in the room between the office and the main floor kitchen," which would be this living room.
>
> Q. Okay.
>
> A. "We will reinspect and handle accordingly after the personal property has been removed to storage or another unaffected area of your home such as the garage."
>
> Q. Okay. And in the back of it you have also a note that I believe you write [sic] to yourself?
>
> A. "He then mentioned the room" – "He then mentioned the room between the office and the kitchen and asked about the floor in that area. I told him that currently we don't have anything scheduled for repair or replacement. He said the fire department walked through, all over the carpet in that room and it's probably ruined. I told him that I will take this issue up with his contractor."

> Q. Okay. Have you ever taken the issue? Even though we have this email conversation, did you ever address it?
>
> A. I don't recall. I would have to look back at all my notes.

Mr. Winkler conducted a post-mitigation inspection of the house with building contractor Paul Davis Restoration ("PDR"), and arrived at a scope of work and damage estimate in the amount of $66,119.99, less recoverable depreciation of $22,380.62. Mr. Winkler suggested that appellant use PDR because that contractor was a Safeco-recommended contractor and, as a result, Safeco would warrant their work.

Appellant was not satisfied with Mr. Winkler's selection of PDR and, therefore, contracted with Masterpiece Builders to complete repairs to the home. Safeco agreed to work with Masterpiece Builders and to a larger replacement cost estimate of $70,923.56. Through his questioning, appellant attempted to imply that Mr. Winkler tried to influence Masterpiece Builders to limit its scope of work in order to save money for Safeco, but Mr. Winkler denied that he ever attempted to influence appellant to use PDR instead of Masterpiece Builders. Appellant also implied through his questioning that Mr. Winkler tried to reduce the scope of work assigned to Service Master, but again Mr. Winkler expressly testified that he did not do so. Mr. Winkler had an expert examine the HVAC system in appellant's house. The expert reported that it was old and needed to be replaced, but there was also some water damage that could possibly have been related to the fire, so Safeco paid to have the system replaced.

Safeco claims examiner Martha Gundel, who handled the contents portion of appellant's claim, worked with Mr. Levitt to adjust the claim. She testified that she used a third-party vendor, ReSource, to obtain prices for items listed on a claimant's inventory. According to Ms. Gundel, jewelry is usually salvageable from a fire, but for a claim of lost jewelry, appellant was required to confirm that the items were lost and provide some basis from which to determine the value. She testified that she did not deny appellant's claim for jewelry, but simply asked for more proof. She further testified that appellant's failure to provide a reasonable basis for the valuation of certain African clothing and personal documents prevented a final adjustment for those items. Ms. Gundel testified that it was six months after the fire before appellant provided an initial list of contents and another year before he provided the age of the items claimed so that the claim could be processed.

B. Associate Commissioner Morrow's Findings of Fact and Conclusions of Law

After the hearing, Associate Commissioner Morrow prepared a written memorandum and final order that included extensive findings of facts, which we summarize here. Associate Commissioner Morrow found that when Ms. Gundel spoke with appellant on June 24, 2013, she learned that Service Master had been retained to conduct mitigation and clean up after the fire. Ms. Gundel offered to have a drycleaner sent to the house, but did not ask appellant about having electronics cleaned because Service Master was on-site and provided that type of service, so she believed that issue had been addressed.

Mr. Winkler contacted appellant on June 24, 2013, and inspected the property on June 26, 2013. At some time after June 26, 2013, employees from Service Master stacked

appellant's furniture in the living room off of the kitchen. Safeco's initial report, dated July 1, 2013, noted that there was a great deal of pre-existing damage to the house, including some mold and dry rot. Although those items were not likely the result of the fire, Safeco included them in its report because of the possibility that some of the damage was the result of the fire. At the hearing, appellant acknowledged that his house was not in perfect condition. On Sunday, July 2, 2013, a Service Master representative emailed Mr. Winkler that, "[w]e have taken up all of the wet areas of the home."

Appellant asserted that at the time of the inspection, there was noticeable water damage in the living room off the kitchen, where his furniture had been stacked, and that numerous witnesses saw the damage, although no one, including appellant's wife, testified to that fact. Nevertheless, when appellant raised the issue with Mr. Winkler, and told him that fire department personnel had walked all over the carpet and ruined it, Mr. Winkler advised that the carpet was not scheduled for repair, but because it was covered with contents from appellant's home, he would take up the issue with the contractor. In an email to appellant, Mr. Winkler acknowledged that "there may be a supplement for carpeting in the room between the office and the main floor kitchen," but that it would be handled after the personal property that was being stored in that room had been moved.

On July 9, 2013, Safeco reminded appellant that he had a duty under Section 1 of his insurance policy to "prepare an inventory of the loss to the building and the damaged personal property showing . . . replacement cost and age[.]" Appellant testified that he "provided what we had to provide." On the same day, Mr. Winkler completed a post-

mitigation inspection of the home along with appellant and a representative from building contractor PDR. Mr. Winkler went from room to room to establish the scope of work and an estimate. Mr. Winkler had an agreement with PDR to repair the damage for a cost of $66,119.99 and to have the work completed by October 25, 2013. Mr. Winkler encouraged appellant to work with PDR because, as part of Safeco's preferred contractor program, Safeco would warrant PDR's work. According to appellant, Mr. Winkler told him that the ceiling would be repaired and painted all the way to the kitchen if he agreed to the contract with PDR. In August 2013, appellant elected not to use PDR because he believed that the representative from PDR and Mr. Winkler were friends and appellant did not trust him. Appellant selected Masterpiece Builders to complete the repairs to his home.

Safeco agreed to appellant's chosen contractor and ultimately agreed to a replacement cost of $70,923.56. Appellant testified that, in his view, by providing Masterpiece Builders with the written estimate and scope of work agreed to by PDR, Safeco engaged in illegal price fixing, although he did not provide any explanation for or evidence in support of that allegation.

As of August 14, 2013, appellant had not submitted his contents inventory to Safeco. In a letter dated September 20, 2013, Safeco informed him that it had received a contents inventory of non-salvageable items from the drycleaner, but had not received the remainder of his contents loss inventory. As of October 22, 2013, appellant had not selected fixtures for the repairs in his home. Eventually, appellant and Masterpiece Builders advised Safeco that there had been a delay in the completion of the dwelling repairs, in part due to an

electrical panel problem and because some work had taken longer than expected Mr. Winkler spoke with a representative of Masterpiece Builders who indicated that delays were due to appellant's failure to choose tile and carpet. The completion date was moved to November 8, 2013. Appellant testified that he believed Mr. Winkler pressured the contractor to do the job in a substandard manner, but Associate Commissioner Morrow found that the full context of the emails and the evidence presented at the hearing did "not reveal that to be the case."

On October 30, 2013, Ms. Gundel sent an email to appellant stating that Safeco had not received any contents inventory from him. She noted that appellant had selected carpeting that was out of stock and, therefore, would take a few more weeks. She also noted that appellant had not yet selected bathroom vanities. In addition, she wrote:

> I believe you misunderstand the information about replacement. You have two years from the date of loss to submit receipts to claim replacement cost but that is after you have turned in your contents claim. At this time, we have not even received your loss inventory. We did send you your policy coverages and what was available in our 6/24/2013 email to you. We also included the inventory form at that time. The majority if [sic] your contents were not directly damaged by fire and Service Master advised were cleanable with the exception of the items in the master bedroom. I can send you a small 2,500 advance against your contents at this time but we do not have enough information to support 8000-10000.

Safeco advised Mr. Levitt that it had made multiple requests for appellant to submit a contents inventory and had offered to send a vendor to assist appellant with the preparation of that inventory. Safeco had issued a $2,500 cash advance toward the contents loss associated with the master bedroom and living room contents

In December 2013, a representative from Masterpiece Builders emailed Mr. Winkler to say that appellant told him a carpet runner needed to be added to the stairs, that there was a water stain on the living room wall, and that the carpet had been wet and appellant wanted to make sure there was no mold. Mr. Winkler responded that there "was no water at all in the Living Room after the fire. Any damage there is either pre-existing or occurred during the repair process."

On February 2, 2014, appellant, through Mr. Levitt, submitted a new contents inventory claiming over $138,351. Mr. Winkler and Mr. Levitt met with appellant at his home to conduct an additional inspection of the contents, but appellant had very few items available for inspection. It was agreed, at that time, that certain artwork would have to be reviewed by an art store to determine restorability and value. In addition, it was decided that a new company, Dial, would be brought in to evaluate certain electronic items that were claimed. Appellant did not raise any issue with regard to water damage or mold in the living room at that time.

In June 2014, Ms. Gundel combined inventories she had received from Service Master, Dial, and the dry cleaner, and sent them to ReSource, the third party vendor Safeco was using to price items. On July 10, 2014, appellant filed his claim with the MIA. The following day, Ms. Gundel sent appellant a contents loss inventory and asked that he add an age for each item, so that Safeco could process that portion of the claim. Similar requests were made by Ms. Gundel by letters dated August 12, 2014, October 9, 2014, November 7, 2014, December 9, 2014, January 15, 2015, and March 19, 2015.

On January 28, 2015, Safeco provided an updated contents inventory to the MIA investigator in which it stated that the jewelry items claim of approximately $23,236.09 "should have been cleanable" and that "[n]o allowance has been concluded for these items and the recommendation is to request proof of ownership." Ms. Gundel also communicated with Mr. Levitt about the status of adding the age of items to the contents inventory. At the hearing, Mr. Levitt testified that he and his tech/adjuster spent hours researching the cost of appellant's items; however, Mr. Levitt also noted that at that time, appellant preferred to wait to have his complaint with the MIA resolved before proceeding. When Mr. Levitt questioned the removal of certain items from a contents inventory he had prepared, Ms. Gundel explained that she felt the inventory included non-salvageable items that Mr. Winkler had agreed to.

Ms. Gundel testified that she never denied appellant's jewelry claim, but that she did ask for more proof. In addition, she stated that Safeco used a third party, ReSource, to price out each item on all of her claims. According to Ms. Gundel, appellant never told her that certain items of jewelry were thrown out in a pile of debris and that he did not have them. Nor did he ever mention to her his belief that certain items had been stolen or that there were items for which there was no proof of ownership. According to Ms. Gundel, there was a settlement for the undisputed portions of the loss, but the claim was left open with regard to certain documents, African clothing, and jewelry. On February 15, 2016, Safeco wrote to appellant stating that its evaluation of the property contents claim was complete and it paid appellant $52,163 for the undisputed portion of the lost contents. Safeco also

wrote that it would "continue to review any documentation you care to submit on the original purchases of the clothing you have questioned as well as any inspection and repair reports on the jewelry."

C. The Associate Commissioner's Decision

After making the detailed findings of fact, summarized above, Associate Commissioner Morrow found that appellant failed to prove "by a preponderance of the evidence that Safeco acted in an arbitrary or capricious manner in denying his claims[,]" and affirmed the MIA's determination. In support of that finding, he wrote:

> Safeco had two claims people working on the claim, Ms. Gundel and Mr. Winkler, from the very beginning. It is clear from the record that Safeco obtained and considered the information submitted by Complainant, continuously sought additional information from Complainant, sought input and information from outside vendors, and provided the Complainant with substantial deference in the claims determinations. Although the Safeco representatives may not have been perfect in all of their actions in handling of these claims, I do find that they acted reasonably at all times.

He went on to state that appellant failed to show that Safeco acted unreasonably, arbitrarily, or capriciously in handling and adjusting his dwelling claim. He again noted that Safeco assigned two employees to the case who worked quickly with contractors, paid for appellant's living expenses, agreed to appellant's chosen contractor, and paid for items, including the HVAC system, that were possibly unrelated to the fire. Further, he determined that the delays were the result of several factors and that Mr. Winkler was not the predominant cause of delays, but in fact tried to keep the target dates for the project.

With regard to appellant's claim for the wet carpet in the living room, Associate Commissioner Morrow concluded that:

> insufficient evidence was presented to show that the carpet was wet and/or damaged as claimed. For these reasons I conclude that the Living Room did not have a wet carpet or wall which should have been replaced by Safeco, that such or similar repairs were never promised, and that Safeco's investigation and handling of these repairs was not arbitrary or capricious.

Finally, with respect to appellant's claim for jewelry items, it was acknowledged that there was still an open claim for jewelry that appellant claimed was either lost or stolen. Associate Commissioner Morrow found that the denials of coverage were not made as final determinations and that any inadvertent omissions by Safeco did not rise to the level of arbitrary and capricious decision making. Although Safeco made some errors in handling the contents claim, it did not treat appellant's claim differently from other contents claims and its requests for information were reasonable. The associate commissioner found:

> Complainant believes that he provided everything he needed to provide and that Safeco should have simply done what is right. However, that point of view fails to account for the possibility that there may be a legitimate question about whether a claim or a portion of it is payable under the stated terms of the policy. Safeco was acting reasonably when it continued to ask for status updates and offered to have additional vendors brought into assist in order to move the process forward. Complainant dug in his heels and essentially stopped participating in the claims process in order to focus on the hearing process as was his right. However, this hurts his argument that his claim settlement has been delayed by Safeco for years. A large part of the delay in this matter can be squarely attributed to Claimant.

Because appellant's claims for lost or stolen jewelry and some African clothing of significant value was still open, and appellant had not submitted all of the information necessary to adjudicate his claim, Associate Commissioner Morrow found that there had

not been any inexcusable delay on the part of Safeco, that appellant failed to meet his burden of proving, by a preponderance of the evidence, that Safeco acted arbitrarily or capriciously in its handling of the claims to date, and that appellant's claim with respect to the disputed items was not ripe for decision.

D. The Judicial Review Proceeding

Appellant filed a petition for judicial review in the Circuit Court for Montgomery County to contest the MIA's decision. The MIA sent a certified record to the circuit court that did not include 18 exhibits that had been cited in the agency's decision. On August 14, 2017, the circuit court remanded the case to the MIA to determine whether appellant "had the opportunity to review the MIA exhibits, whether he is due any additional opportunity to be heard or present evidence, and any other proceedings not inconsistent with this Order." The MIA delegated those issues to the Office of Administrative Hearings ("OAH"), which, after a hearing, determined that appellant had the opportunity to review the subject exhibits, but did not do so, that appellant was not entitled to an additional opportunity to be heard or to present evidence on the merits of his complaint, and that no additional proceedings were necessary.[3] Appellant filed exceptions. In a written order dated

[3] After the MIA delegated to the OAH the authority to conduct a hearing on the issues identified in the court's order, the OAH sent a hearing notice to the parties that indicated that the issue was whether Safeco had violated Maryland insurance law. The notice did not contain any reference to the specific items outlined in the circuit court's remand order. Safeco filed a motion to clarify the purpose of the hearing and requested that the hearing be limited to the issues identified by the circuit court. In its motion, Safeco advised that the MIA concurred with the relief requested. Appellant opposed Safeco's motion and argued

May 2, 2018, the MIA denied all of appellant's exceptions, adopted the decision of the administrative law judge as its own, and entered a final order in favor of Safeco.

The case returned to the Circuit Court for Montgomery County for judicial review of the final order entered by the MIA in favor of Safeco.(E. 4, 13) A hearing was held on October 12, 2018. (E. 7) On October 29, 2018, after considering the parties' oral arguments, memoranda of law, and the entire record, the court entered an order holding that appellant failed to meet his burden of showing that the administrative proceedings

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that the hearing should not be limited to the issues set forth in the remand order. He requested the OAH to conduct a *de novo* hearing or, alternatively, for the OAH to "decline jurisdiction over the whole case."

The OAH granted Safeco's motion and determined that the issues at the hearing were as follows: (1) whether the Complainant had the opportunity to review the MIA exhibits before the hearing held by the Associate Commissioner on November 3, 2016; (2) whether the Complainant is due an additional opportunity to be heard or present evidence on the merits of his complaint; and (3) whether there are any other necessary proceedings not inconsistent with the circuit court's Order. Appellant filed a motion for further clarification and a request for the case to be decided on the underlying claim instead of the limited issues set forth in the remand order. That motion was denied.

On December 29, 2017, before any further action by the OAH, appellant filed a petition for judicial review in the Circuit Court for Montgomery County. As we noted in our prior unreported opinion in *Toure v. Maryland Insurance Commissioner*, No. 135, Sept. Term 2018, filed November 6, 2019, Safeco and the MIA filed motions to dismiss. Appellant opposed the motion to dismiss filed by the MIA. No party requested a hearing. The circuit court dismissed the petition for judicial review on the ground that appellant "failed to exhaust his administrative remedies by filing his Petition for Judicial Review prematurely without a final order of the agency[.]" Appellant filed a notice of appeal. In our unreported opinion, we decided, among other things, that the circuit court was correct in dismissing appellant's petition for judicial review because appellant failed to exhaust his administrative remedies.

prejudiced any of his substantial rights, that the MIA's decision that Safeco did not violate the Insurance Article was based on substantial evidence, and that the MIA's decision did not constitute an error of law. (E. 11)

The Standard of Review

In reviewing the decision of an administrative agency, we "look through" the circuit court's decision, *Kor-Ko Ltd. v. Maryland Dep't of the Env't,* 451 Md. 401, 409 (2017), and examine "whether there is substantial evidence in the record to support the agency's findings and conclusions and whether the agency's decision is premised upon an erroneous conclusion of law." *McClellan v. Dep't of Pub. Safety & Corr. Servs.*, 166 Md. App. 1, 18 (2005). It is not our role to substitute our judgment for the expertise of those persons who constitute the administrative agency. *United Parcel Serv., Inc. v. People's Counsel for Baltimore City,* 336 Md. 569, 576-77 (1994). We will accept the agency's factual findings if they are supported by substantial evidence but exercise *de novo* review over the agency's legal determinations. *Christopher v. Montgomery County Dep't of Health and Human Servs.*, 381 Md. 188, 198 (2004); *see also Gigeous v. Eastern Correctional Inst.*, 363 Md. 481, 495-96 (2001) (reviewing court shall determine the legality of the decision and whether there was substantial evidence from the record as a whole to support the decision). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Gigeous*, 363 Md. at 497 (internal quotations omitted).

Analysis

1.

Appellant contends that information pertaining to an October 21, 2016 conference call with Associate Commissioner Morrow and the parties, which was scheduled to address appellant's lack of access to MIA's investigative file, was not included in the record below. According to appellant, those records were necessary to a proper consideration of his case. We disagree.

After the hearing in the OAH, the administrative law judge ("ALJ") issued findings of fact, which were adopted by the MIA, pertaining to the October 21, 2016 conference call and appellant's opportunities to review the MIA file. The ALJ found that on June 15, 2016, the MIA, on behalf of Associate Commissioner Morrow, sent a letter and notice of hearing to appellant and Safeco which included the following statement, "Parties may review the file prior to the hearing and should contact my assistant, Debra Sawyer . . . to schedule a time to come to the office of the [MIA]." (E. 24) The ALJ found that appellant did not do so prior to the November 3, 2016 hearing. (E. 24) The ALJ further found that, on October 21, 2016, appellant and Safeco participated in a conference call with Associate Commissioner Morrow. (E. 24) According to the ALJ's findings of fact, appellant and Safeco agreed to exchange documents before the hearing, appellant agreed to provide Safeco's attorney with copies of the documents he intended to submit at the hearing, and Safeco's attorney agreed to provide appellant with a copy of Safeco's claim file. (E. 24)

The ALJ further found that on or about October 31, 2016, appellant and Safeco exchanged documents as agreed.

In the instant appeal, appellant filed a motion to correct the record to include, among other things, the record of the October 21, 2016 conference call. In its opposition to appellant's motion, the MIA attached an affidavit signed by Associate Commissioner Morrow which provided that "[t]he conference call held on October 21, 2016, with Appellant and James Mehigan, Esquire counsel for Safeco Insurance Company was not recorded or transcribed." (E. 38)

Appellant has failed to present any evidence that he was denied an opportunity to review the MIA file prior to the November 3, 2016 hearing or that any information from the MIA's investigative file was concealed from him. Moreover, as there was no recording or transcription of the October 21, 2016 conference call, there was no additional evidence to present. Thus, we reject appellant's contention that the record provided by the MIA to the court was incomplete because the record of the October 21, 2016 conference call was not included in it. We also reject appellant's assertion that he "has a reasonable suspicion that the record was being concealed and manipulated" by Associate Commissioner Morrow and his secretary for the purpose of preventing the circuit court from having "a full picture of the case and to render a fair and equitable judgment." Suspicion is not enough. There are absolutely no facts to support such a contention.

To the extent that appellant's Brief in the instant appeal includes a challenge to the MIA's finding that Safeco did not violate the Insurance Article in its handling of

appellant's claim, we hold that there was substantial evidence in the record to support the agency's findings of fact and that its conclusions were legally correct. The evidence showed that immediately after the fire, Safeco assigned two claims adjusters, Mr. Winkler and Ms. Gundel, to appellant's case. Service Master was retained and began cleanup work at the property and Mr. Winkler obtained an estimate from PDR for the necessary renovations. When appellant expressed his dissatisfaction with PDR, Safeco agreed to work with appellant's chosen contractor, Masterpiece Builders, and to pay the increased cost charged by that contractor. Safeco agreed to pay for a new HVAC unit, even though it was not clear that damage to the unit was caused by the fire. With respect to the contents claims, the evidence showed that Safeco retained dry cleaning and storage services and worked diligently with appellant's public adjuster, notwithstanding the many delays that were caused by appellant. The evidence also showed that the contents claim was left open with respect to jewelry and African clothing which required additional documentation pertaining to ownership and value. Moreover, there was absolutely no evidence that Safeco made any misrepresentations to appellant. The record is simply devoid of evidence that Safeco acted in an arbitrary or capricious manner with respect to its handling of appellant's claim. The MIA's determination that Safeco did not violate the Insurance Article was clearly based on substantial evidence and was not premised upon an erroneous conclusion of law.

2.

Appellant next contends that he was denied due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article 24 of the Maryland Declaration of Rights.[4] These contentions are based on appellant's opinion that Associate Commissioner Morrow served as a party, judge, coordinator, witness provider, and final decision maker, that the OAH proceedings violated constitutional due process, and that there was fraud in the proceedings before the MIA. These contentions are entirely without merit.

There is absolutely nothing in the record before us to suggest that the proper administrative procedures were not followed. On judicial review, the circuit court remanded the case to the MIA for the very limited purpose we have discussed previously. In light of appellant's allegations of discrimination and wrongdoing by the associate commissioner, the case was properly referred to the OAH for an independent inquiry into appellant's opportunity to review the MIA documents. Appellant was given a full hearing

[4] The Due Process Clause of the Fourteenth Amendment provides, in part, that no State shall "deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV. The Fifth Amendment, applicable to the states through the Fourteenth Amendment, provides, in part, that "[n]o person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. Article 24 of the Maryland Declaration of Rights similarly provides that "no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." Md. Const., Decl. of Rights, Art. 24.

on the issues addressed in the court's remand order. He had an opportunity to call witnesses and present evidence. Appellant, however, failed to show that he was denied the opportunity to review the 18 MIA documents at issue and presented absolutely no evidence to show that his substantial rights were prejudiced or that he was not afforded due process.

At the second hearing on judicial review in the circuit court, appellant again failed to produce any evidence to support a claim that his rights had been substantially prejudiced by the administrative proceedings. Finally, the record is completely devoid of evidence to substantiate appellant's numerous assertions of fraud, discrimination, and criminal activity on the part of Safeco and others.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED; COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2932s18cn.pdf