

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
3RD FLOOR, SUITE 300
COLUMBUS, OHIO 43215

In the Matter of:	:	
BARBARA & RICHARD OWSLEY	:	
Plaintiffs-Appellants,	:	
	:	
vs.	:	JUDITH L. FRENCH
	:	Superintendent/Director
OHIO FAIR PLAN	:	
UNDERWRITING ASSOCIATION	:	
Defendant-Appellee.	:	
	:	

ORDER

After considering the hearing officer’s report and recommendation, the transcript of testimony, and exhibits, and in accordance with Ohio Revised Code (“R.C.”) 3929.47, the Superintendent of the Ohio Department of Insurance (“Department”) confirms and approves the recommendation of the hearing officer. Therefore, the decision of the Ohio Fair Plan (“OFP”) Board of Governors to uphold the denial of the claim submitted by Barbara and Richard Owsley (“Appellants”) under their insurance policy stands.

The OFP insured Appellants’ property located on Anne Drive in Franklin, Ohio under a Homeowners 3 – Special Form, which provided insurance coverage subject to conditions and exclusions. OFP Ex. 1, p. 6-37. The policy had a term of July 9, 2022, to July 9, 2023. *Id.* at 6.

On January 10, 2023, Appellants submitted an insurance claim to the OFP for wind damage. OFP Ex. 1, p. 38; Tr. 63: 14-18. Appellants stated the wind damage to their property occurred on November 5, 2022. Tr. 63: 19-24. Following receipt of the claim, the OFP hired an independent adjuster, Chris Dean of Summit Claims, to conduct an investigation. Tr. 11-12. Mr. Dean took photographs and submitted a report to the OFP. OFP Ex. 1, p. 39-83. The report contained an estimate of \$789.14 to repair wind-damaged shingles on the roof of Appellants’ home and shed. *Id.* at 41-42.

Ray Allen, a claims representative from the OFP, reviewed Mr. Dean’s photographs and report. Tr. 11-16, 44-45, 62-63. On January 31, 2023, Mr. Allen wrote to Appellants. OFP Ex. 1, p. 84. In the letter, Mr. Allen confirmed that wind damaged shingles on their property. *Id.* However, Mr. Allen noted that Mr. Dean’s estimate of \$789.14 to repair the shingles was less than Appellants’ deductible of \$1,000. *Id.* As a result, no payment was made to Appellants. *Id.*

In addition to the letter, Mr. Allen called Appellants to inform them that there would be no payment made. Tr. 20: 11-21. Appellants did not raise any concerns, and did not mention any water damage. Tr. 20: 11-25. Approximately six months after Mr. Allen's telephone conversation with Appellants, the OFP became aware that Appellants had hired counsel to represent them in this matter. OFP Ex. 1, p. 87; Tr. 64-65.

On November 10, 2023, Appellants appealed the OFP's decision to the OFP Board of Governors. OFP Ex. 1, p. 137-138. The Board of Governors held a hearing on Appellants' appeal on December 14, 2023. *Id.* at 206-207. At the hearing, Appellants argued that they should receive more money than the estimate of \$789.14. Tr. 64-66. Appellants stated that the wind caused internal water damage in addition to the damage to the roofs of their home and shed. Tr. 65-66. The Board of Governors considered Appellants' arguments. OFP Ex. 1, p. 206-207; Tr. 65-66. After the hearing, the Board of Governors issued a letter upholding the OFP's decision to deny Appellants' claim. OFP Ex. 1, p. 206-207.

Appellant appealed the Board of Governors' decision. *Id.* at 208-209. On January 26, 2024, the Department sent a notice to Appellant. *Id.* The notice set a hearing on Appellants' appeal of the Board of Governors' decision. *Id.* The Department held a hearing on March 6, 2024. Tr. 2. Appellants did not attend the hearing, but were represented by counsel, Zachary Lotspeich. Tr. 4: 10-18. The OFP was represented by counsel, Matt Planey. Tr. 4: 22-25. The OFP called Mr. Allen as a witness. Tr. 10.

After the hearing, the hearing officer reviewed the record and submitted his report and recommendation. In the report and recommendation, the hearing officer provided the following recommendation:

[I]t is recommended that the Director of the Ohio Department of Insurance affirm the claim denial of the OFP Board of Governors and deny the Owsley claim.

The Superintendent confirms and approves the findings of fact, conclusions of law, and recommendation of the hearing officer contained in the attached report and recommendation, which is incorporated into this Order by reference. The Board of Governors' decision stands.

NOW, THEREFORE, IT IS ORDERED:

The Superintendent confirms and approves the OFP Board of Governors' decision to uphold the denial of the claim. This Order is effective immediately, signed this 11th day of October 2024.



JUDITH L. FRENCH
Director/Superintendent

NOTICE OF APPELLATE RIGHTS

This Order may be appealed by filing a Notice of Appeal with the Ohio Department of Insurance ("Department"), Attn: Hearing Program Administrator, 50 West Town St., Suite 300, Columbus, Ohio 43215, setting forth the order appealed from and stating that the Department's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal may, but need not, set forth the specific grounds of the appeal beyond the statement that the Department's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal shall also be filed by the party desiring the appeal with the appropriate court of common pleas. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the Department's Order as provided in R.C. 119.12. In filing a Notice of Appeal with the Department or court, the notice that is filed may be either the original notice or a copy of the original notice.

**STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
SUITE 300
COLUMBUS, OHIO 43215**

**RICHARD & BARBARA OWSLEY
Appellants,**

**ARTHUR J. MARZIALE, JR.
(Attorney Reg. 0029764)
Hearing Officer**

v.

**OHIO FAIR PLAN UNDERWRITING
ASSOCIATION,
Appellee.**

CASE NO. LGL-202401-029

Appearances:

On Behalf of Appellants:

**The Law Offices of Blake R. Maislin, LLC
Zachary Lotspeich, Esq.
2260 Francis Lane
Cincinnati, Ohio 45206**

On behalf of Appellee:

**Amundsen Davis, LLC
Mr. Matthew Planey, Esq.
500 South Front Street, Suite 1200
Columbus, Ohio 43215**

**And,
Ms. Kira Hertzfeld,
Ohio Fair Plan Underwriting Association
2000 Polaris Parkway
Columbus, Ohio 43240**

**Also present: Matthew Walsh, Esq., Ohio Department of Insurance
Cheryl Jeffrey, Ohio Department of Insurance**

REPORT AND RECOMMENDATION

REPORT

Facts

Statement of the Matter

This matter involves the appeal by Richard and Barbara Owsley (“Owsleys”) of a decision by the Appeals Committee of the Ohio FAIR Plan Underwriting Association (“OFP”) denying the Owsleys’ claim for the cost of a new roof.

As set forth below, based on the findings of fact and conclusions of law, it is recommended that the Director of the Ohio Department of Insurance affirm the claim denial of the OFP Board of Governors and deny the Owsley claim.

Statement of Facts

On January 26, 2024 the Ohio Department of Insurance (“Department”) sent a Hearing Scheduling Notification advising the Owsleys that it had received their request for an adjudication hearing arising from the OFP denial of their insurance claim. A hearing was held on March 6, 2024 for the purpose of taking testimony and evidence on the allegations. OFP introduced two exhibits. Exhibit 1 consisted of all the paper evidence related to the Owsleys’ insurance claim, and Exhibit 2 contained overhead photos of the residence. These were identified and entered at the beginning of the hearing (Tr. 4:4).

The Owsleys did not appear or testify at the hearing, nor were any witnesses called to testify on their behalf. However, their attorney appeared for purposes of cross-examining an OFP witness and presenting legal arguments on their behalf.

R.C. 3929.43 established the Ohio FAIR Plan Underwriting Association. The purpose of the OFP is, “...to assist applicants in urban areas to secure basic property insurance or homeowners insurance, and to formulate and administer a program for the equitable apportionment of basic property insurance or homeowners insurance which cannot be obtained in the normal market.” *Id.*

The Owsleys purchased a Homeowners Insurance Policy from OFP, OFP HOM 7282987 (OFP Ex. 1, p.6). The terms of the policy required the insured (the Owsleys) to give prompt notice to OFP after any claimed loss under Section I, B1. Subsection B7 of that same section required the insured to show the damaged property. (OFP Ex. 1, p. 20 [Page 13 of 22 of OFP HOM 7282987].) Section I, E provided that if OFP and the insured failed to agree on the amount of loss then either could demand an appraisal of the loss from a competent and impartial appraiser (*Id.* at p. 21).

On January 10, 2023, OFP was notified by Richard Owsley of a claim under that policy. He advised OFP of wind damage to the roof of his home from a storm on November 5, 2022 (OFP Ex. 1, p. 3). That same day OFP assigned a claims adjustor to investigate the claim (OFP Ex. 1, p. 39).

On January 22, 2023 the assigned claims adjustor provided OFP with a Loss Report that identified a total of ten wind-damaged shingles that could be replaced at a total cost of \$789.14 (OFP Ex. 1, pp. 41 – 42). The policy deductible was \$1,000.00 (OFP Ex. 1, p. 6). Therefore, the Owsley claim was closed without payment. The Owsleys received notice of the denial by letter dated January 31, 2023 (OFP Ex. 1, p. 84).

As noted above, the Owsleys did not present any witnesses or evidence on their behalf. Therefore, OFP presented its case and called Raymond Allen (“Allen”), a claims representative for OFP, to testify (Tr. 11:10 – 11). Allen handled all aspects of the claim made by the Owsleys. He had nearly twenty-five years of experience in the area of claims involving roof damage (Tr. 66:13 – 16). He reviewed a minimum of 6,000 claims during that time, possibly as many as 8,000 claims, and applied his knowledge and experience in reviewing the Owsley claim (Tr. 67:2 – 21).

Allen received the report and photographs submitted by the insurance adjustor (Tr. 12:13 – 23). Allen stated that the adjustor did not report any water damage related to this loss (Tr. 13:2 – 6). The claims adjustor specifically noted in his report that the homeowner did not report any water damage on the interior of the home (OFP Ex. 1, p. 41). The adjustor did identify a total of ten damaged shingles that could be replaced or repaired (Tr. 14:2 – 23).

OFP acknowledged that some wind damage to the roof occurred (Tr. 17:15 – 20). Allen stated that the damaged shingles could be replaced (Tr. 17:21 – 18:15). Significantly, Allen also testified that the roof was previously repaired and already contained two colors of tiles (Tr. 18:19 – 19:6). In addition to sending the homeowners the adjustor’s report, Allen spoke with Mr. Owsley and advised him of OFP’s conclusions. Allen stated that Owsley accepted the conclusion there would be no payment and Owsley did not raise any issues with water damage to the interior of the home at that time (Tr. 20:11 – 25).

Allen also reviewed a number of photos demonstrating the condition of the roof, highlighting: 1) the different shingle colors, 2) the damaged shingles, and 3) the slope of the various roof elevations and sides (Tr. 18:16 – 19:24; 21:5 – 33:11).

Allen next testified about photographs showing water damage to an interior room ceiling. These photos were submitted sometime later by the Owsleys and their legal counsel (Tr. 33:12 – 34:7). Allen concluded that the water damage occurred to one room and, based on the location of the room, it was almost impossible for the damage to have been caused by the wind storm or the damaged roof shingles (Tr. 34:8 – 38:17). Rather, he concluded the roof damage was likely caused by ice damage and was not related to the loss claim at issue (Tr. 37:18 – 38:17).

On cross-examination, a significant amount of time was spent on the requirement set forth in OAC 3901-1-54(I)(1)(b). The provision provides that, “When an interior or exterior loss requires replacement of an item and the replaced item does not match the quality, color or size of the item suffering the loss, the insurer shall replace as much of the item as to result in a reasonably comparable appearance.” However, Allen testified that he was very confident that he could match new shingles to repair the roof shingles already installed on the roof (Tr. 51:6 – 11).

Allen was also asked why the adjustor did not ascertain whether there was interior water damage in any of the rooms. Allen testified that OFP made no attempt to determine any water damage because Mr. Owsley said there was none and Allen closed the file (Tr. 59:17 – 60:3).¹ Significantly, the Owsleys unilaterally replaced the roof of the main dwelling and the shed. Allen noted that it was therefore impossible to ascertain whether the damage could have been caused by the initial damage to the roof (Tr. 60:3 – 7).²

On re-direct examination Allen testified that the Owsleys did not initially appeal the denial of the damage claim to the OFP Board of Governors. An appeal must be made within thirty days of a claim denial. In this case the denial was dated January 31, 2023. He was also not aware of any claim of water damage made by the Owsleys (Tr. 64:13 – 65:2). Six months later OFP became aware that the Owsleys retained legal counsel and asked for an appeal (Tr. 65:3 – 7). OFP only became aware of the water damage claim after the appeal request, approximately nine months after the case file was closed (Tr. 65:22 – 66:7). The parties agreed that OFP did not see the photographs of the interior water damage until those photos were submitted by the Owsleys with their appeal (Tr. 71:5 – 25).

Allen reviewed the photographs of the water damage contained in OFP Exhibit 2. He determined that the ceiling was underneath the rear roof of the original structure rather than the subsequent addition to the house (Tr. 34: 23 – 25). No missing shingles were found in this area of the roof (Tr. 36:4 – 7). He opined that it was unlikely that water infiltrated the roof (Tr. 36:8 – 11). Rather, he concluded that the water damage likely occurred from an ice backup or water that backed-up from the valley of the two adjoining roofs. He testified that wind was not the cause (Tr. 36:17 – 25).

In their closing argument, the Owsleys claimed that OFP failed to conduct a full investigation (Tr. 72:9 – 12). They also claimed that OFP failed a duty of good-faith dealing. They argued that their contractor had no idea of any shingle-color matches made by OFP (Tr. 72: 18 – 73:12). They also appeared to claim that they were entitled to replace the entire roof when they noticed water in the interior ceiling (Tr. 73:10 – 12). Finally, they also argued that it was their right to decide to upgrade to a better, more expensive shingle (Tr. 13 – 18). They claimed reimbursement for the shed roof and main dwelling roof (Tr. 73:21 – 23).

Factual Conclusions

1. On January 10, 2023, OFP was notified by the Owsleys of a claim under a Homeowners Insurance Policy, OFP HOM 7282987.
2. That same day OFP assigned a claims adjustor to review the Owsleys' claims of wind damage to the roof of their home from a November 5, 2022 storm.

¹ In this interchange, Owsleys' counsel agreed that OFP's adjustor was told there was no interior water damage. "[Allen]. Well, I didn't at first, like you said, because [Mr. Owsley] told me not to. [Owsley Counsel]. Agreed." Tr. 59:21 – 23.

² The Owsleys also replaced the roof to a detached garage but there is no claim for that repair. Tr. 8:10 – 25.

3. On January 22, 2023 the assigned claims adjuster provided OFP with a Loss Report that identified a total of ten wind-damaged shingles that could be replaced at a total cost of \$789.14.
4. The Owsleys did not report any water damage to the interior of the home to the OFP claims adjuster.
5. The Loss Report identified a total of ten wind-damaged shingles that could be replaced at a total cost of \$789.14.
6. The roof was previously repaired and already contained two colors of tiles.
7. The Owsleys' policy deductible was \$1,000.00.
8. The Owsley claim was closed without payment.
9. Six months after the Owsleys' claim was closed they retained legal counsel and requested an appeal.
10. Prior to the appeal, the Owsleys replaced the roof of the main dwelling and the shed.
11. During the course of the appeal, OFP learned that water damage occurred to the ceiling in one room in the main dwelling.
12. The Owsleys never informed OFP of the water damage allegedly caused by damage from the November 5, 2022 storm.
13. OFP never had the opportunity to inspect the interior room ceiling to determine whether the leak was caused by the November 5, 2022 storm.

Legal Analysis

Legal Standard

The standard of proof in administrative proceedings is the preponderance of evidence standard. *VFW Post 8586 v. Ohio Liquor Control Comm.*, 83 Ohio St. 3d 79, 81, 697 N.E.2d 655, 658 (1998). Preponderance of evidence means that the appellant has the burden to show that it is more likely than not that the events charged occurred. See, *Pang v. Minch*, 53 Ohio St.3d 186, 197, 559 N.E.2d 1313, 1324 (1990).

The Owsleys claim that OFP acted in bad faith. An insurer fails to exercise good faith where the circumstances do not furnish reasonable justification for its refusal to pay the claim. *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 644 N.E.2d 397 (1994), Syllabus ¶ 1. An insurer's obligations to its insured are governed by the coverage stated in the policy. *Neal-Pettit v. Lahman*, 125 Ohio St. 3d 327, 2010-Ohio-1829, 928 N.E.2d 421, at ¶ 7, citing, *Gearing v. Nationwide Ins. Co.*, 76 Ohio St.3d 34, 665 N.E.2d 1115 (1996).

Application of Law to Facts

The Owsley claims may be summarized as follows: 1) a subsequent roof leak occurred as a result of the November 5, 2022 storm; 2) OFP failed to fully investigate their claim and any damage to the roof; 3) the roof could not be repaired with matching shingles; 4) they were entitled to replace the main dwelling roof and a shed roof with materials of their choosing; and, 5) OFP's failure to pay for the new roof constituted bad faith.

A large part of the Owsley cross-examination of the OFP claims examiner Allen involved questions about the duty to match tiles in order to provide a roof with a uniform appearance. However, the provisions in OAC 3901-1-54(I)(1)(b) are relevant only if OFP determined that a significant roof repair was necessary. In such a circumstance the parties might well argue whether the roof, already containing two shades of shingles, could be adequately repaired with closely matched shingles. However, as noted above, that is not what happened in the instant case.

Here, OFP denied the original claim on the basis that the ten damaged shingles could be repaired and matched with similar replacement shingles at a cost of \$789.14. This amount was within the deductible amount established by the policy. The Owsleys failed to mention any ceiling water damage at that time and failed to timely appeal the denial of coverage or seek an independent appraisal of the damage report.

Six months later the Owsleys retained legal counsel and sought an appeal. During that time, the Owsleys never advised OFP of any water damage that occurred to the ceiling of one room in their home. Rather, they unilaterally concluded that the ceiling damage was related to the November 5, 2022 storm and replaced the roof of the main dwelling, a shed, and a garage. The first time that OFP was notified of water damage allegedly caused by the prior damage was at the appeals hearing that OFP granted to the Owsleys.

The Owsleys failed to sustain their burden to demonstrate bad faith by OFP. Here, OFP furnished sufficient justification for its initial denial. The claims adjuster had a significant number of photographs showing the various pitches of the roof, the exterior of the home, the damaged shingles, and the two shades of shingles present on the roof. The claims adjuster specifically noted that the insured stated that there was no interior water damage.

The failure of the Owsleys to contact OFP at a later date, after the water damage occurred, seriously impaired the ability of OFP to assess any subsequent claim of damage due to the November 2022 storm. Mr. Allen did render a professional opinion on the cause of the water damage. He based this opinion on the extensive photographic evidence in the record. The Owsleys did not offer any contravening expert opinion. Rather, they unilaterally decided the damage was related to the storm and replaced the roof. That action rendered it impossible to conduct any further investigation. Having selected this course of action they cannot now claim that OFP acted in bad faith.

The Owsleys' argument that OFP failed to conduct a full and complete investigation of their claim is likewise not supported by the evidence and testimony. They received a determination from OFP denying their claim. OFP set forth the reasons for its denial. The claims adjuster presented a thorough report. OFP, through Allen, discussed the report and denial with Mr. Owsley.

The Owsleys did not seek an independent appraisal of the damages as provided in the contract. The Owsleys did not immediately appeal or otherwise dispute the denial. The Owsleys never contacted OFP to notify it that there was subsequent water damage to their home. It is not clear what further action the Owsleys believed OFP was required to take. Further, it was not possible for OFP to fully investigate a claim about which it was never notified. OFP's original investigation was full and complete.

Conclusions of Law

1. OFP fully and completely investigated the January 1, 2023 claim made by the Owsleys arising from a storm on November 5, 2022.
2. The Owsleys never advised the claims adjustor or the OFP claims representative of any water damage at the time of the initial claim investigation.
3. The Owsleys never notified OFP of any subsequent claim for water damage to a ceiling in the main dwelling until after they were granted a late appeal by OFP.
4. The Owsleys failed to establish by a preponderance of the evidence that the water damage to the interior room ceiling was the result of damage sustained in the November 5, 2022 storm.
5. OFP provided competent and credible evidence that, more likely than not, the water damage to the interior room ceiling was not the result of wind damage from the November 5, 2022 storm.
6. The Owsleys failed to sustain their burden of proof that the OFP claim investigation was not full and complete.
7. The Owsleys failed to sustain their burden of proof that OFP acted in bad faith by denying their claim for the cost of a new roof.
8. OFP furnished reasonable justification for its refusal to pay the Owsley claim.
9. OFP acted in good faith in denying the Owsley claim.

RECOMMENDATION

The Department appointed this Hearing Officer to take evidence, weigh the facts adduced at hearing, and apply the Ohio Revised Code and applicable case law to determine whether to affirm or reverse the OFP denial of the appeal by Richard and Barbara Owsley of a decision denying their claim for the cost of a new roof.

Having concluded that Richard and Barbara Owsley failed to sustain their burden of proof that OFP failed to fully investigate their claim or that OFP acted in bad faith, and based on the findings of fact and conclusions of law, it is recommended that the Director of the Ohio Department of Insurance affirm the claim denial of the OFP Board of Governors and deny the Owsley claim.

WRITTEN OBJECTIONS

Richard and Barbara Owsley may, within ten days of the receipt of a copy of this Report and Recommendation, file with the Ohio Department of Insurance written objections to this Report and Recommendation. Such objections will be considered by the Ohio Department of Insurance before approving, modifying, or disapproving the Recommendation contained herein.

/s/ Arthur J. Marziale, Jr.

Arthur J. Marziale, Jr. (0029764)
Hearing Officer